

**Promoting integration through mobility:
Free movement under ECOWAS**

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Disclaimer:

Though UNHCR commissioned this paper and UNHCR offices in West Africa contributed to its preparation through the provision of relevant information on country legislation and fees charged for ECOWAS residence permits, the views represented in the paper are those of the authors.

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Purpose of paper

This paper examines the main elements and limitations of the ECOWAS free movement protocols, evaluates the degree of the protocols' implementation in ECOWAS member states and identifies their utility to refugees from ECOWAS countries residing in other ECOWAS countries. It suggests that the protocols constitute a sound legal basis for member states to extend residence and work rights to refugees with ECOWAS citizenship residing in their territories who are willing to seek and carry out employment. It briefly describes current efforts to assist Sierra Leonean and Liberian refugees to achieve the legal aspects of local integration through utilization of ECOWAS residence entitlements in seven countries in West Africa. The paper concludes with a number of recommended next steps for further action by both UNHCR and ECOWAS.

The ECOWAS Treaty

Seeking to promote stability and development following their independence from colonial rule, countries in the West African sub-region determined to embrace a policy of regional economic and cultural integration. On 28 May 1975, a treaty establishing the Economic Community of West African States (ECOWAS)¹ was signed in Lagos, Nigeria, by sixteen West African nations.² The treaty aimed at once to strengthen sub-regional economic integration through the progressively freer movement of goods, capital and people and to consolidate states' efforts to maintain peace, stability, and security.³

The ECOWAS Protocols

In May 1979, four years after the promulgation of the treaty, states adopted a Protocol⁴ relating to the Free Movement of Persons, Residence and Establishment.⁵ It stipulated among other things the right of community citizens to enter, reside and establish economic activities in the territory of member states and outlined a three-phased approach to achieve the "complete freedom of movement" envisaged by the treaty.

¹ Known in French as *La Communauté de Économique de l'Afrique de l'Ouest (CEDEAO)*

² The original 16 ECOWAS states were Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania Niger, Nigeria, Senegal, Sierra Leone, and Togo. Mauritania withdrew its membership in 2002. ECOWAS today therefore consists of 15 member states.

³ The original treaty was revised and updated in 1993. The Revised 1993 Treaty of ECOWAS (signed 24 July 1993 in Cotonou, Benin) reconfirmed at article 59 the right of community citizens to enter, reside and establish in member states and enjoined member states to adopt all appropriate measures to implement and ensure such right.

⁴ For the purposes of this paper, when cited alone, the *Protocol relating to Free Movement of Persons, Residence and Establishment* is referred to in the singular, i.e. the "Protocol." When the Protocol is cited in connection with the four supplementary protocols described in footnote 6, the plural "protocols" is used to describe all five documents (i.e. the Protocol and four supplementary protocols).

⁵ 1979 *Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment*. See Page 2 for major features of Protocol and Supplementary Protocols.

Major features of the Protocol 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 (Art. 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 appertaining to the issuance of such cards/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-fulfillment of essential condition 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 emphasizing 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)

Phased implementation

Phase I dealt with the right of entry and abolition of visas, Phase II with the right of residence and Phase III with the right of establishment. Each phase was to last five years, meaning obstacles to free movement and establishment would be completely overcome within 15 years⁶.

Phase I provided for the elimination, over five years, of the need for visas for stays of up to 90 days within ECOWAS territories by Community citizens in possession of valid travel documents and international health certificate. Importantly, however, member states reserved to themselves in article 4 of the Protocol the right to refuse admission to any Community citizen within the category of inadmissible immigrant under their domestic laws. This provision provided --and continues to provide-- broad scope to member states to undercut the purpose of the Protocol through the elaboration of overly restrictive domestic inadmissibility laws. Phase one has been fully implemented in the sub-region.

Slow Implementation of Phases II and III

Phase II, largely set out in the Supplementary Protocol adopted in 1985, was also foreseen to last five years. This phase purported to extend residency, including the right to seek and carry out income-earning employment, to Community citizens in host ECOWAS states, provided they had obtained an ECOWAS residence card or permit. Additionally, it obliged member states to grant migrant workers, complying with the rules and regulations governing their residence under ECOWAS, equal treatment with nationals in areas such as security of employment, participation in social and cultural activities and, in certain cases of job loss, re-employment and training.⁷

Phase III, the final five year period, focused on the facilitation of business through the right of Community citizens to establish enterprises (have access to, carry out and manage economic activities) in member states other than their states of origin. Its realization was intended to occur seamlessly, following the five years dedicated to implementing the right of residence. However, the right of establishment has not yet been meaningfully implemented in the sub-region.

Progress on the second and third phases appears to have fallen victim to the sub-regional decline in economic performance in the 1980's and massive, prolonged displacement from the wars in Liberia and Sierra Leone through the 1990s and into the early 21st century. With those wars now seemingly conclusively at an end and more favourable economic indicators apparent, there is renewed optimism in the sub-region that the full promise of free movement, residence and establishment can be achieved. This in turn could promote increased political and economic stability in a sort of virtuous circle.

⁶1979 *Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment*, article 2.

⁷ 1986 *Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*, Article 23

Accordingly, even with the adoption of the four supplementary protocols,⁸ the objective of complete freedom of movement in the sub-region has not yet been realized. Freedom of movement in the ECOWAS region is undoubtedly more advanced than in any other regional grouping in Africa but to date only the first of the three phases foreseen by the Protocol --visa-free entry for up to 90 days-- has been completely implemented by all ECOWAS countries.

Monitoring implementation

While ECOWAS urged member states to establish national committees to monitor the implementation of protocols, only about half of the member states have so far done so.⁹ Even where monitoring committees exist, their work is somewhat opaque and has not generally been credited with effectively promoting knowledge of or compliance with the protocols. The system of harmonized immigration and emigration documents foreseen by the ECOWAS Council of Ministers in 1992 has not been implemented anywhere.

There is a profound lack of access to accurate migration information in the sub-region, which is neither centralized in an ECOWAS database nor readily available at the national level. The problem is not peculiar to ECOWAS monitoring committees. A recent International Labour Organization (ILO) report stated that “existing statistics on international labour migration in the sub-region are generally agreed to be scarce, unreliable and subject to problems of comparability and availability.”¹⁰

A consequence of the lack of information on international labour migration, as made clear in a report of the ECOWAS Secretariat (as it was then called), is that immigration officials in member states appear to be unaware that ECOWAS nationals holding valid documents, such as passports or travel certificates, can enter their country freely. As a result, many West African migrants leave their home countries without proper travel documents and enter host countries irregularly even though if they were in possession of travel and health certificates to which they are entitled they would have been able to enter through regular channels.

There is a further perverse effect of such irregular entry, that being that irregular entry makes compilation of accurate statistics on entry all the more difficult to obtain. Statistics thus remain, as the ILO observed, scarce, unreliable and hard to compare.

⁸ 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*
1986 *Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*
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*
1990 *Supplementary Protocol A/SP.2/5/90 on the implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment*

⁹ Benin, Burkina Faso, Mali, Niger, Nigeria, Senegal and Togo have established national monitoring committees.

¹⁰ Hamidou B. *Labour Migration Statistics in West Africa*. Geneva, International Labour Office, 2006, pp. 1 and 32

Table 1 – Implementation of selected ECOWAS initiatives					
	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	Harmonized 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>	●	○	○	●	●

ECOWAS has enjoyed more success with other initiatives. An ECOWAS Brown Card Motor Vehicle Insurance Scheme was developed in 1982 to provide a common, minimum insurance coverage for vehicles traveling between participating member states.¹¹ In 1985, a standardized ECOWAS Travel Certificate was adopted to make cross-border movement easier and cheaper.¹² These certificates are available in seven countries in the region¹³ and are valid for two years, renewable for a further two years.

¹¹ <http://www.sec.ecowas.int/sitecedea0/english/achievements-1.htm#6>

¹² Decision A/DEC.2/7/85 of the Authority of Heads of State and Government of the Economic Community of West African States Relating to the Establishment of ECOWAS Travel Certificate for Member States. <http://www.sec.ecowas.int/sitecedea0/english/adec020785.htm>

¹³ The ECOWAS travel certificate is currently used in Burkina Faso, The Gambia, Ghana, Guinea, Niger, Nigeria and Sierra Leone.

They are substantially cheaper to produce and acquire than national passports, the provision of which is less than systematic in numerous member states.¹⁴

In 2000, the Authority of Heads of State and Government adopted at its meeting in Abuja a uniform ECOWAS passport, modeled on the EU passport and with the ECOWAS emblem on the front cover. A five year transitional period was foreseen during which national passports would be used in conjunction with ECOWAS passports while ECOWAS passports were phased in and became more widely available.¹⁵ In reality a longer transition will be needed to bring all countries on board¹⁶ and to allow countries with large stocks of unused national passports to use them up.¹⁷

Aware of the uneven implementation of its protocols on free movement, ECOWAS is stepping up its workshops, seminars, and trainings for immigration officials, civil society and the private sector. It has trained teams of immigration officials and citizens on the right to free movement in a bid to reduce police harassment along the Lagos-Cotonou-Lomé-Accra-Abidjan-Ouagadougou-Bamako-Conakry migration corridor. At the end of a two year pilot period, the efficacy of the training will be assessed and, if appropriate, replicated.

Fees charged for ECOWAS entitlements

Officially, most ECOWAS member states do not charge fees for Community citizens' right to visa-free entry for stays of up to 90 days. There are reports from across the sub-region however of unofficial payments being made at border posts to facilitate such entry and stay. While some payments are made based on coercion, particularly at land borders and including even refugees,¹⁸ some are apparently freely offered by travelers accustomed to the expectations of underpaid customs and immigration officials or by those seeking to take advantage of the entry and stay provisions without possessing the requisite travel document and health certificate.

In terms of ECOWAS residence permits, the protocols neither prescribe nor proscribe fees for their issuance. All ECOWAS states, however, appear to levy such fees, with

¹⁴ Indeed many member states fail to provide travel documents of any sort to their citizens. Adepoju, A. 2005. *Migration In West Africa*. Global Commission on International Migration, September, Pg 19.

¹⁵ ECOWAS 2000a. *Executive Secretary's Report, 2000*. Abuja: ECOWAS Secretariat. <http://www.sec.ecowas.int/sitecedea/english/es-rep2000-3-2.htm>

¹⁶ The ECOWAS passport is currently only used by Senegal, Nigeria, Niger, Benin, Guinea, and Liberia though Ghana will apparently make it available in the near future.

¹⁷ Given the relative scarcity not only of passports but of travel and identity documents altogether in some countries in West Africa, the recent meeting of ECOWAS's Trade, Customs and Free Movement of Persons Committee in Accra, Ghana, on 25-27 September 2007 recommended amending the definition of "valid travel documents" to include securitized and harmonized national ID cards. In the meantime it requested Member States to accept national ID cards for travel within ECOWAS. See report of meeting at para 20(3). At present, a "valid travel document" is defined by the 1979 Protocol as "... a passport or other valid travel document establishing the identity of the holder with his photograph, issued by or on behalf of the Member State of which he is a citizen and on which endorsement by immigration and emigration authorities may be made [or a laissez-passer issued by the Community to its officials]."

¹⁸ "Border bribery: the price of being a refugee" Refugees International, 22 Sept 2003 (<http://www.reliefweb.int/rw/RWB.NSF/db900SID/SKAR-646KEH?OpenDocument>)

rates varying from less than USD \$10 annually to more than USD \$500, as shown in Table 2.

Fees for residence, even if confined to cost recovery, may well impede free movement given the rate of poverty in West Africa. For their own part, member states assert that the fees they charge are minimal and symbolic and that they refrain from levying higher fees so as to avoid inviting equally high fees being imposed on their own citizens by other states. This serves, at least theoretically, as an in-built check on ever-rising residence fees. On the other hand, this check is based on all states being roughly equally attractive destinations for community citizens, which has probably never been the case.

Table 2 – Fees charged for residence entitlement under ECOWAS	
Country	Annual fees for ECOWAS residence permit
Benin	20,000 FCFA (USD \$40)
Burkina Faso	Proof of payment of applicable residence tax plus 500 FCFA (USD \$1) stamp
Cape Verde	30,000 Capeverdean Escudos (USD \$374)
Côte d'Ivoire	Although a 5-year ECOWAS residence permit could technically be obtained until recently at the cost of CFA 35,000 (USD \$73), such permits were not issued in practice and will be abolished officially in the near future. Instead, renewable Temporary Stay documents allow all foreigners to remain in Cote d'Ivoire for 6 months and cost FCFA 2000 (USD \$4).
The Gambia	A residence permit B, granting the right of employment, costs 1300 Gambian Dalasi (USD \$532) for ECOWAS citizens. The residence permit is valid from the date of issue until January 31 of the following year.
Ghana	1,850,000 cedis (USD \$200). The fee is waived for refugees (referred by UNHCR).
Guinea	FCFA 5,000 (USD \$10)
Guinea Bissau	FCFA 5,500 (USD \$11)
Liberia	5500 Liberian Dollars (USD \$95). The ECOWAS Residence Card is no longer in use. Instead, all non-nationals must obtain a Liberian residence permit booklet (USD \$75) and registration form (USD \$20).
Mali	No legislation or regulations governing the acquisition of residence permits in Mali has been put in place. In the interim, citizens of ECOWAS countries need only ID to enter and stay in Mali. There is no charge. Other foreigners require long or short-stay visas.
Niger	No legislation or regulations governing the acquisition of residence permits in Mali has been put in place. In the interim, citizens of ECOWAS countries need only ID to enter and stay in Mali. There is no charge. Other foreigners require long or short-stay visas.
Nigeria	25,000 Naira (USD \$197) for Togolese citizens. 6,580 Naira (USD \$52) for Ivorian citizens. 5,500 Naira (USD \$43) for other ECOWAS citizens.
Senegal	The National Identity Card for Foreigners entitles residence and is valid for one year, renewable. Its cost varies according to the nationality and financial capacity of the applicant.
Sierra Leone	50,000 Leone (USD \$17)
Togo	FCFA 50,000 (USD \$100)

Inadmissibility

Following independence, West African nations passed legislation designed to protect their national economies through, among other things, migration control.

Governments denied entry to immigrants without concrete work opportunities to

ensure that the economic stability, tranquility and territorial integrity of the state were not threatened.¹⁹

In initiating a policy of regional integration, ECOWAS set out a much more liberal legal basis for inter-state movement, stipulating that community citizens of employable age²⁰ with valid travel documents and health certificates were free to enter, remain and work in member states.

Meanwhile, as would-be migrants in West Africa may be able to overcome the lack of information about the protocols and to raise the funds required to pay the fees associated with a residence permit, they may not be able to overcome national bars on admissibility. The admissibility or non-admissibility of categories of persons remains a threshold issue which, it will be recalled, member states reserved to themselves in article 4 of the Protocol.

Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment, Chapter IV
Article 4
Notwithstanding the provisions of Article 3 [granting community citizens the right of entry and stay provided they have valid travel documents and health certificates] above, Member States shall reserve the right to refuse admission into their territory any Community citizen who comes within the category of inadmissible immigrant under its laws.

In acknowledging state sovereignty over admissions in such unqualified terms, ECOWAS virtually invites national provisions more restrictive than and perhaps antipathetic to the non-discrimination,²¹ regional social cohesion and promotion and protection of human and peoples' rights objectives at the heart of the ECOWAS initiative.²²

As can be seen from Table 3, much of the legislation setting out inadmissibility provisions in member states antedates the protocols. This may account for the dated and discriminatory language of some of the provisions (idiots, epileptics, lepers) but it does not render them inoperative, notwithstanding that they may well be in conflict with the exhortations to non-discrimination in the protocols.

The range of exclusions is at once detailed and vague. In some countries, state officials enjoy an absolute discretion to reject would-be migrants seemingly without need of explanation or process.

¹⁹ Ahooja-Patel, K. 1974. Regulations governing the employment of non-nationals in West Africa. In Amin, S. (ed.) *Modern Migrations in Western Africa*. London: Oxford University Press.

²⁰ Employable age is an implied rather than express condition of the protocols. No minimum or maximum age is in fact set out in them.

²¹ See for example article 7 of the 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*

²² Article 4 of revised 1993 ECOWAS Treaty sets out the fundamental principles of the community and includes solidarity and collective self-reliance (b), accountability, economic and social justice (h), equitable and just distribution of costs and benefits of economic cooperation (k), maintenance of regional peace, stability and security through good neighbourliness (e) and promotion of protection of human and peoples' rights (g).

Differing, ambiguous or lengthy inadmissibility provisions limit --or at least potentially limit-- the relevance of the ECOWAS protocols in facilitating mobility for citizens of an ECOWAS country interested in seeking and carrying out work in other member states. They would also frequently appear to directly contradict the qualification in article 3 of the 1986 *Supplementary Protocol (on Right of Residence)*, purporting to limit restrictions on the right of residence to those “justifiable by reasons of public order, public security and public health.”²³

Table 3: Inadmissibility provisions in ECOWAS countries	
Country	Law(s) and provisions
Benin	<p><u>Law n° 86-012 related to Foreigners in the Republic of Benin, 31 January 1986</u></p> <p>15. Foreigners must present a passport, medical certificate, entry visa (or other travel documents).</p> <p>16. People younger than 15 must be accompanied by a guardian.</p> <p><u>Order n° 218 instituting a residence card in Benin and specifying the conditions of its issuance, 3 November 1992</u></p> <p>16. Individuals can be refused residence permits if their presence constitutes a threat to public order.</p>
Burkina Faso	<p><u>Ordonnance n° 84-049/CNR/PRES establishing the conditions of entry, stay and exit for foreigners in Burkina Faso, 4 August 1984</u></p> <p>3. Foreigners must have recognized and valid travel documents and visas, up-to-date international health certification, return ticket (or other proof of ability to leave) and have completed appropriate application procedures.</p> <p>13. The minister of Public Health and Rural Development may impose special preventative conditions on travelers of all nationalities and origins.</p>
Cape Verde	No information presently available
Côte d’Ivoire	<p><u>Decision n° 2005-05/PR relating to the identification of persons and the stay of foreigners in Côte d’Ivoire</u></p> <p>8. ECOWAS citizens have the right to freely circulate within the country for up to 3 months with a passport. Stays of longer than 3 months require a residence card.</p>
The Gambia	<p><u>Immigration Act 1965</u></p> <p>12. It is unlawful for prohibited immigrants to enter or reside in The Gambia.</p> <p>13. (1) Prohibited immigrants include:</p> <p>(a) persons without visible means of support (or who in the opinion of the Principal Immigration Officer are likely to become a pauper or public charge);</p> <p>(b) idiots and insane persons and those suffering from communicable diseases (as may be prescribed);</p> <p>(c) undesirable persons;</p> <p>(d) persons who on arrival lack a valid passport (or if underage, corresponding details in the accompanying adult’s valid passport);</p> <p>(e) prostitutes or other persons who (in the opinion of the Principal Immigration Officer) derive their livelihood in whole or part from prostitution or other immoral occupations (whether such prostitute or person is male or female);</p> <p>(f) persons subject to deportation order (from The Gambia)</p>
Ghana	<p><u>Immigration Act, 202 February 2000 (Act 573)</u></p> <p>4.1. Foreigners must have a valid passport or other valid travel document, or be exempt from needing a visa;</p> <p>8.1. Individuals prohibited entry include those: facing a deportation order; destitute; refusing to have a medical exam; sentenced with an extraditable crime in a foreign country; medically unfit; not conducive to the public good; procuring or attempting to procure persons into Ghana for immoral purposes; carrying out activities that contradict the laws of Ghana; dependent on a prohibited person.</p>

²³ 1986 *Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*, Article 3

Table 3: Inadmissibility provisions in ECOWAS countries (continued)	
Country	Law(s) and provisions
Guinea	<u>Law L/9194/019/CTRN relating to the conditions of entry and stay of foreigners in the Republic of Guinea, 1994</u> 3. Foreigners must have a valid passport. 6.2. Citizens from countries with whom Guinea has reciprocal agreements do not need visas. 7. Even where reciprocal agreements exist, the Guinean government can forbid a foreigner's entry for public security reasons. 14. Foreigners must be in possession of an appropriate health certificate.
Guinea Bissau	<u>Decree Law No.1/92</u> 3. Preconditions for entry include valid travel document, visa (if necessary), proof of means to support self, not subject to a prohibition of entry 17.1 Must be age of majority, must not be subject to a deportation or expulsion order, must not be involved in activities which could result in deportation.
Liberia	<u>The Alien and Nationality Law of the Republic of Liberia, Amended 9 May 1974</u> 5.1. Grounds for exclusion include: aliens who are feeble-minded, insane, mentally defective or epileptic, drug or alcohol addicts; those suffering from tuberculosis or leprosy; paupers, criminals, or prostitutes; persons without employment papers but seeking employment and likely to become a public charge (conditional entry permissible in some circumstances); persons previously deported; stowaways, drug traffickers or those engaging in activities endangering the security of the country; those accused of being anarchists, communists, dissidents or spies. 5.10. Foreigners must have a valid passport and medical certificate.
Mali	<u>Law n° 04-058 relating to the Conditions of Entry, Stay and Employment of Foreigners in the Republic of Mali, 25 November 2004</u> 2. Foreigners must hold a valid passport or travel document, entry visa (if needed), return or continuation ticket (or other proof of ability to repatriate, see article 43), and an international medical certificate.
Niger	<u>Ministry of Interior Decree n° 87-076/PCMS/MI/MAE/A of regulating the conditions of entry and stay of foreigners in Niger, 18 July 1987</u> 2. Foreigners must show a national passport or travel document with Niger visa (if necessary), international vaccination certificate, return ticket (or proof of resources to cover departure). 3. Notwithstanding the above, foreigners can still be expelled or refused authorization to continue their stay in Niger.
Nigeria	<u>Immigration Act, Amended 1972</u> 17. Prohibited migrants include those likely to become a public charge; idiots and insane persons; those convicted of crimes; whose presence is deemed contrary to the interest of national security; persons against whom an order of deportation is in force; and individuals without a valid passport.
Senegal	<u>Decree n° 71-860 relating to the conditions of admission, stay, and establishment of foreigners [in Senegal], 28 July 1971</u> 1. Foreigners must have a valid passport, entry visa, proof of sufficient funds to repatriate, and international health vaccination certificates.
Sierra Leone	<u>The Non-citizens (registration, immigration, and expulsion) Act, 1965</u> 19.2. Prohibited persons include those likely to become paupers; idiots and insane persons; those deemed undesirable or dangerous to peace; persons with an expulsion order against them; persons not in possession of valid travel documents; prostitutes, brothel keepers, or persons who allow the defilement of young girls. 20. The Governor General may prohibit entry of any non-citizen with absolute discretion.
Togo	<u>Law n° 87-12 relating to policy on foreigners</u> 11. Residence permits can be refused at the discretion of the authorities. 12. Residence permits are revoked in the cases of individuals convicted of crimes.

With national restrictions on entry open to interpretation, the more ambiguous or discretionary the provision and the more numerous the categories, the greater the

likelihood that interpretations will lead to unjust refusals or at least refusals inconsistent with the spirit and objectives of the protocols, particularly in the absence of clear interpretative guidance from responsible ministries or courts. Given the relatively poor level of implementation of the protocols throughout the region, such guidance is not likely to have been provided.

Expulsion

Also potentially undermining the protocols is overbroad recourse to expulsion. Member states sought to forestall such abuse by ensuring that the protocols, the Revised 1993 ECOWAS Treaty and the 1994 ECOWAS Convention on Extradition,²⁴ specified procedures for migrant admission and expulsion consistent with international human rights standards, in particular the International Covenant on Civil and Political Rights,²⁵ the International Covenant on Economic, Social and Cultural Rights²⁶ and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.²⁷

Main expulsion provisions in protocols

Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment, Chapter IV
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Article 11

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| <ol style="list-style-type: none">1. A decision to expel any citizen of the Community from the territory of a Member State shall be notified to the citizen concerned as well as the government of which he is a citizen and the Executive Secretary of ECOWAS.2. The expenses incurred in the expulsion of a citizen shall be borne by the Member State which expels him.3. In case of expulsion, the security of the citizen concerned as well as that of his family shall be guaranteed and his property protected and returned to him without prejudice to his obligations to a third party.4. In case of repatriation of a citizen of the Community from the territory of a Member State, that Member State shall notify the government of the State of origin of the citizen and the Executive Secretary.5. The cost of repatriation of a citizen of the Community from the territory of a Member State shall be borne by the citizen himself or in the event that he is unable to do so by the country of which he is a citizen. |
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²⁴ A/PI/8/94. The ECOWAS *Convention on Extradition* was signed by all member states (at that time including Mauritania) in Abuja, Nigeria, on 6 August 1994

²⁵ Adopted by UN General Assembly resolution 2200 on 16 December 1966, entered into force on 23 March 1976.

²⁶ Adopted by UN General Assembly resolution 2200 on 16 December 1966, entered into force on 3 January 1976.

²⁷ Adopted by UN General Assembly resolution 45/158 of 18 December 1990, entered into force on 1 July 2003.

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

Article 3

1. In the event of clandestine or illegal immigration, both at national as well as Community level, measures shall be taken to guarantee that illegal immigrants enjoy and exercise their fundamental human rights.
2. The fundamental human rights of expelled immigrants or of the immigrant subject to such a measure by virtue of the laws and regulations of the host Member State, as well as the benefits accruing from his employment, shall be respected. Any expulsion orders shall be enforced in a humane manner without injury to the person, rights or properties of the immigrant.
3. Any person under an expulsion order shall be given a reasonable period of time to return to his country of origin.
4. Any expulsion order which may lead to the violation of fundamental human rights is prohibited.
5. By virtue of the fundamental human rights enjoyed by clandestine immigrants, host Member States shall ensure that repatriation takes place under legal and properly controlled procedures.
6. Where it is absolutely necessary, expulsion shall be contemplated solely on strictly legal grounds; in any case, it shall be effected with due respect for the human dignity of the expelled immigrant.
7. Any immigrant citizen of the Community traveling to a Member State other than his State of origin or desiring to reside or establish in such a Member State shall fulfill the conditions stipulated under the different Protocols on the free movement of persons, right of residence and establishment.

Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, Residence and Establishment [1986]

Article 13

1. Migrant workers and members of their families may not be affected by collective or en masse expulsion orders.
2. Each case of expulsion shall be considered and judged on an individual basis.

Article 14

1. Migrant workers and members of their families whose status comply with the residence requirements may only be expelled from the host Member State:
 - a. for reasons of national security, public order or morality
 - b. if, having been duly informed of the consequences, they refuse to comply with the orders given to them by a public medical authority for the purpose of protecting public health
 - c. if an essential condition for the issuance or the validity of their authorization of residence or work permit is not fulfilled;
 - d. in accordance with the laws and regulations applicable in the host Member State.
2. Any form of expulsion may only be based on a well-founded legal or administrative decision taken in accordance with the law.
3. The immigrant, the Government of his country of origin and the Executive Secretariat should receive written notice of the decision for information purposes.
4. When an expulsion order is made out by a legal or an administrative authority the immigrant concerned may appeal, or may have recourse to an appeal in accordance with the rules and regulations of the host Member State. The recourse to an appeal shall constitute a suspension of the expulsion order, unless it is not explicitly justified by reasons of national security or public order.
If such a decision has already been executed and is subsequently annulled, the person concerned is entitled to claim damages in accordance with the law.
5. In case of expulsion, the immigrant concerned shall be granted a reasonable period of time to allow him collect any salaries or other allowances due to him from his employer, settle any contractual commitments and, when required --for reasons of personal security-- to obtain authorization to go to a country other than his country of origin. The situation of the family of the immigrant concerned shall also be taken into consideration.
6. The expulsion or departure from the host Member State shall conversely affect the entitlements obtained through legislation by the migrant worker or a member of his family.
7. In case of expulsion, the authorities of the host Member State shall bear the expenses resulting therefrom and shall not pressurise those affected in any way to accept a simplified procedure, such as "voluntary departure" if such affected persons have not expressly requested it.

Supplementary Protocol A/SP.1/7/86 [1986] (continued)

Article 15

1. Consular or diplomatic authorities of the Member State of origin or of the country representing the interest of the country of origin shall be advised of any decision to expel a migrant worker or member of his family legally present in the host Member State, at least forty-eight (48) hours before the expulsion takes effect.
2. The migrant worker and members of his family may appeal for the protection and assistance of consular and diplomatic authorities of their countries of origin and may receive advisory services from them to defend his right, if the rights conferred on him by this Protocol or by legislation in the host Member State are infringed upon.
3. The migrant worker as well as members of his family are legal personalities.
4. In case of dispute of the rights mentioned in paragraph 3 of this Article, the worker may put forth his claims to a competent body, either personally, or through his representatives.

Article 16

1. Any expulsion decided upon for the reasons mentioned above shall, in accordance with the applicable laws, conform with the procedures stipulated under the provisions of this Protocol.
2. No expulsion order may be carried out without ensuring that all the fundamental rights of the migrant worker have been respected.

Compared to the untrammelled authority of member states to erect inadmissibility provisions, the protocols stipulate wide-ranging protections against expulsion.

The (1979) Protocol sets out the general requirements of notice (to the individual concerned and their state of origin), the responsibility for paying for the expulsion and the need to ensure the person concerned's security and protect their property.

The 1985 Supplementary Protocol confirms the undiminished entitlement of even illegal immigrants to their fundamental rights and dignity, requiring that expulsion orders be carried out humanely without injuring the person concerned's rights or property and that those concerned be given a reasonable time to leave.

The 1986 Supplementary Protocol explicitly forbids mass or collective expulsion and guarantees to all individuals subject to expulsion the right to contest such order through an appeal with suspensive effect. It also obliges expelling states to notify authorities of the person concerned's state of origin at least two days prior to the expulsion taking effect.

Dealing as it does with Community citizens lawfully residing in a host country, one would expect the 1986 Supplementary Protocol to establish very onerous restrictions on expulsion. And so, initially, it does. Four categories are enumerated. The first two pertain to national security, public order, morality and public health, echoing but not repeating the public order, public security and public health grounds for refusing the right of residence to a Community citizen in the first place.²⁸

The third permits expulsion for non-fulfillment of an essential condition for the issuance or validity of residence or work authorization, without stipulating what such essential conditions are. Given the opacity of member states' residence and work

²⁸ 1986 *Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*, Article 3

authorization regimes, the ambiguity of the “essential condition provision” undermines the justifications for expulsion.

The fourth, in a manner akin to the deference shown to member states on matters of inadmissibility, permits expulsion of migrants legally residing in a host country “in accordance with the laws and regulations applicable in the host Member State.”²⁹ This provision does not require such laws and regulations to be within national security, public order, morality or public health grounds. Thus, it would appear to affirm whatever discretionary authority member states reserve to themselves on the matter of expulsion in their domestic laws. Given the breadth of states’ inadmissibility provisions, which are undoubtedly “laws and regulations applicable in the host Member State,” the protocols’ apparent circumscription of grounds for expulsion appears somewhat illusory.

Expulsion in practice

Certainly mass expulsions were a feature of West Africa migration management prior to the ECOWAS Treaty and protocols: Côte d’Ivoire (1958, 1964), Senegal (1967), Ghana (1969), Sierra Leone (1968), and Guinea Conakry (1968).

While the last ten years have been better, state practice since the advent of the Treaty and protocols fails to completely reassure. Expulsions, including mass expulsions after their specific proscription in the 1986 Supplementary Protocol, and border closures have occurred.³⁰

The mass expulsions which have taken place in most instances involved individuals forming part of a large, unregistered population understandably of concern to the host state. This being said, it is apparent that mass expulsions of ECOWAS migrant workers would violate not only the spirit and letter of the regional law,³¹ they would undermine the broader regional aims and principles set out in the ECOWAS Treaty: co-operation and integration leading to economic union,³² balanced development,³³ equality and inter-dependence,³⁴ solidarity,³⁵ good neighbourliness,³⁶ promotion of human rights,³⁷ equitable distribution of costs and benefits of economic cooperation

²⁹ 1986 *Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*, Article 14(1)(d)

³⁰ In September 1982, Ghana closed its borders with Togo. In December 1982, Sierra Leone expelled members of the Foulah Community. In 1983, Liberia expelled its so-called foreigners. Also in 1983, Nigeria evicted nearly 1.5 million West African migrants and, in 1985, a further 700,000 citizens of Ghana, Niger and other ECOWAS states. In 1985, Côte d’Ivoire expelled 10,000 Ghanaians. In 1990, Senegal deported approximately 500,000 Mauritians. Early in 1996, and again in 2003 and 2004, Nigeria closed its border with the Republic of Benin. Even as recently as February 2007, in the run up to its elections in April, Nigeria indicated it intended to deport ECOWAS migrants. See: Adepoju, 1983; 1984; 1986; 1995b; Adebuseye, 1995; Afolayan, 1988; 1999; BBC, 2007; OhmyNews, 2007; Tonah, 2002,

³¹ 1986 *Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*, Article 13(1)

³² 1993 Revised Treaty of ECOWAS, Articles 3(1) and 3(2)(e)

³³ 1993 Revised Treaty of ECOWAS, Article 3(2)(k)

³⁴ 1993 Revised Treaty of ECOWAS, Article 4(a)

³⁵ 1993 Revised Treaty of ECOWAS, Article 4(b)

³⁶ 1993 Revised Treaty of ECOWAS, Article 4(e)

³⁷ 1993 Revised Treaty of ECOWAS, Article 4(g)

and integration³⁸ and, importantly, observance of the rules of the Community,³⁹ including presumably protections against mass expulsion and respect for due process in individual expulsions.

Refugees in West Africa

At the end of 2006, there were approximately 261,800 refugees in West Africa, including approximately 117,000 from Liberia and 18,000 from Sierra Leone.⁴⁰ Though ECOWAS citizens, toleration of the residence of these individuals in their host countries, whether in refugee camps, in rural communities or dispersed in urban settings, often depended upon their status as refugees. Fuller implementation of the ECOWAS protocol, particularly its Phase II dealing with residence, would entitle all citizens of West African member states willing and able to work, including refugees, to secure residence and the right to seek and carry out such work.⁴¹

Relationship between ECOWAS Treaty and refugees

The ECOWAS Treaty is not a refugee instrument. The 1951 *Convention relating to the status of refugees*, its 1967 Protocol, and the regional 1969 *OUA Convention governing the specific aspects of refugee problems in Africa* are not economic instruments. Nor however are the refugee instruments and the protocols in conflict.

As observed in the immediately preceding section, the ECOWAS Treaty promotes a number of aims broader than economic integration, including solidarity and collective self-reliance, maintenance of regional peace, stability and security through good neighbourliness and promotion and protection of human and peoples' rights. Moreover, neither the Treaty nor its protocols purports to limit the applicability of benefits in other regional or universal instruments. Article 84 of the 1993 Revised Treaty of ECOWAS provides that:

1. Member States may conclude agreements among themselves and with non-Member States, regional organisations or any other international organisation, provided that economic agreements are not incompatible with the provisions of this Treaty⁴²

Similarly, article 24 of the 1986 Supplementary Protocol states that:

1. No provisions of this Protocol may be interpreted to adversely affect more favourable rights or liberties guaranteed to migrant workers or members of their families by:

³⁸ 1993 Revised Treaty of ECOWAS, Article 4(k)

³⁹ 1993 Revised Treaty of ECOWAS, Article 4(i)

⁴⁰ UNHCR. 2006 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons. Division of Operational Services, Field Information and Coordination Support Section, June 2007.

⁴¹ Article 2 of the 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment obliges member states to "grant to citizens of the Community, 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."

⁴² 1993 Revised Treaty of ECOWAS, Article 84

- a. law, legislation or practice in a Member State, or
- b. any international agreement in force vis-à-vis the Member State concerned.⁴³

For its part, the 1951 *Convention relating to the status of refugees* stipulates, at article 5:

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.⁴⁴

The only question therefore was whether the entry, stay, residence and establishment provisions in the protocols, though not drafted with refugees in mind, apply to them nevertheless. UNHCR and ECOWAS appear to believe that they do.⁴⁵ Many member states however are more equivocal.

Formal articulations of member state concerns are difficult to obtain. The concerns underpinning them, however, are not difficult to identify. Given the recent history of massive displacement in West Africa unforeseen by the founders of ECOWAS and the significant deterioration in West African economies through the 1980s and 1990s, there is reluctance to accede to an interpretation of the protocols which would oblige host states to regularize the stay of, in some cases, many thousands of ECOWAS citizens who became refugees in their countries.

The principal fears of host states appear to be twofold: first, that large numbers of refugees pose a threat of instability through --the perception of-- disproportionate involvement in common crime or in support for dissident political factions in their countries of origin; second, that recognizing an entitlement of refugees to remain in the host states on the basis of the ECOWAS protocols will *ipso facto* terminate the status of the refugees and result in a withdrawal of support to the refugee communities from UNHCR and other actors.

The first set of concerns may be overstated given the absence of reliable data on the proportion of crimes committed by refugees in the states concerned but form a powerful, emotive and not infrequently political issue for government officials in host states. Notwithstanding that refugees in West Africa often share significant ethnic, linguistic and other affinities with the populations of their host states, they are perhaps as often scapegoats for ills in West African societies as they are for the same sorts of ills in European, North American or other societies.

While these perceptions are unlikely to change quickly, there is no doubt that the protocols already contain significant exceptions for the exclusion from benefits of

⁴³ 1986 *Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*, Article 24

⁴⁴ 1951 *Convention relating to the status of refugees*, article 5

⁴⁵ See for instance the final report of the meeting of ECOWAS's Trade, Customs and Free Movement of Persons Committee in Accra, Ghana, 25-27 September 2007, at paras 21 to 23, which endorses the view that refugee status and ECOWAS residence are not incompatible and urges, inter alia, that ECOWAS member states issue travel documents to their nationals who are refugees, that host states formally confer the right of residence on ECOWAS citizens who are refugees and that the validity of such residence be for three years and renewable.

those determined to be dangers to national security or public order. There is accordingly no reason on this ground to deny the benefits of the protocols to ECOWAS citizens who happen to be refugees and who are not dangers to national security or public order.

The second set of concerns may also be overstated. States' anxiety at having to provide for indigent refugees supposes that governments make such assistance available. This is in West Africa, for the time being, not necessarily the case. Moreover, most countries have inadmissibility provisions relating to those unable to support themselves. Even the relatively much richer European Union conditions the right of residence of Community citizens for periods of more than three months on the individual's ability to support her or him self.⁴⁶ The practice of the European Union is instructive in this regard and should allay the concern of West African Governments that they would, by recognizing individuals' right of residence under the ECOWAS protocols, become responsible for providing for individuals unable to provide for themselves.

The protocols do not purport to oblige host states to support ECOWAS citizens residing in their states. What they require is that host states facilitate such residence for ECOWAS citizens --in possession of a valid travel document and health certificate and not otherwise inadmissible-- for the purposes of seeking and carrying out employment. It is up to individuals to support themselves, ideally from the income they derive carrying out employment in the host state, but otherwise however they might, including, for refugees, potentially, with transitional support from UNHCR or other entities.

Misunderstandings all round

As set out in a recent paper by Jeff Crisp and Amy Slaughter, the prevailing model of refugee protection and assistance since the 1960s has been:

[for] UNHCR and other humanitarian organizations [to assume] a primary role in the delivery and coordination of support to refugees, initially by means of emergency relief operations and subsequently through long-term 'care and maintenance' programmes. Host country involvement has been limited, focused primarily on the admission and recognition of refugees on their territory; respect for the principle of *non-refoulement* (which prevents refugees from being returned to a country where their life or liberty would be [sic] at danger); and the provision of security to refugees and humanitarian personnel.

Under the terms of this arrangement, the notion of 'state responsibility' (i.e. the principle that governments have primary responsibility for the welfare of

⁴⁶ By contrast, the Nordic Common Labour Market of Denmark, Finland, Iceland, Norway and Sweden established in 1954 gave rise to the Nordic Social Security Convention in 1955 which allows citizens of a member state working or living in another state enjoy the same social security and other social rights (health and child care, welfare, pension and unemployment benefits) as the host country's own nationals. This order of reciprocal benefit is unusual and undoubtedly owes much to the relatively small populations of the several countries, their advanced economies and the progressive realization of such benefits over the more than 50 years operation of the arrangement. See address by Mr. Sten Svensson, representative of the Nordic council to the UN Social Summit in Copenhagen, 2000 (<http://www.un.org/documents/ga/conf166/una/950309144703.htm>)

refugees on their territory) has become progressively weaker in its application, while UNHCR and its humanitarian partners have assumed a progressively wider range of long-term refugee responsibilities, even in countries which are signatories to the 1951 Refugee Convention⁴⁷

By thus transforming itself from a humanitarian organization into a sort of government, or, as the paper suggests, even a colonial administration,⁴⁸ UNHCR has created a problem for itself. While the organization wishes, logically, at the end of a refugee crisis, to downscale or withdraw from a particular theatre, it is precisely this withdrawal that host states, including ECOWAS host states, suspect and fear.

It is all somewhat paradoxical. Lacking the resources to provide the level of assistance refugees have become accustomed to receiving from UNHCR, governments do not wish to be made responsible for meeting refugees' expectations, even though under refugee law the primary obligation for such assistance rests with host states. At the same time, UNHCR hopes to assist refugees from ECOWAS countries able to seek and carry out employment to achieve a secure legal status, including residence, in their host states which would allow them voluntarily to relinquish their refugee status.⁴⁹ The protocols impose no obligation on host states to assist or provide for refugees yet some host states resist a transition from refugee to ECOWAS residence status because of the perception of an obligation to provide assistance to the refugees as UNHCR and other agencies have done.

The refugees themselves appear equally confused. Having grown used to assistance from UNHCR and other humanitarian agencies, many are reluctant to relinquish it. Many would appear to prefer to remain refugees --knowing that in practice this has protected them against expulsion, secured some level of assistance and presented the possibility of other solutions such as third country resettlement-- even when the reasons for their original displacement may have ceased to exist or they already work to support themselves.

A role for ECOWAS protocols in local integration

Local integration is the term used by UNHCR to describe one of three enduring solutions for refugees, the others being voluntary repatriation and resettlement to a third country. In essence, local integration means the effective realization by the former refugee of a new national identity replete with the full range of legal, social and economic rights. This is generally achieved progressively, through intervening statuses such as permanent residence or domicile, access to which is ideally provided earlier through the recognition of the individual as a refugee.

⁴⁷ Jeff Crisp and Amy Slaughter, "Humanitarian actors in protracted refugee situations: the role of UNHCR" for publication in forthcoming book to be published by the UN University, pp. 1-2

⁴⁸ Ibid p.2

⁴⁹ See, for example, the Multipartite Agreement signed in June 2007 in Abuja, Nigeria, by UNHCR, ECOWAS and the Governments of Liberia, Sierra Leone and Nigeria, which provides, inter alia, for Liberia and Sierra Leone to issue national passports to those of its citizens who are registered as refugees in Nigeria, for Nigeria to provide residence entitlements under the ECOWAS protocols to those refugees, for UNHCR to pay for the cost of both the passport and residence permit issuance (including one renewal) and for refugees to acknowledge that in accepting such passport and residence permits they were voluntarily re-availing themselves of the protection of their countries of origin and hence ceasing to be refugees.

Naturalization is the fullest form of local integration as it conveys the fullest range of rights on the person concerned. In West Africa, access to naturalization varies from state to state. In practice, for refugees, it has been difficult to realize owing to requirements as various as excessively long residence periods (frequently not including residence when a refugee), knowledge of an indigenous language, good character certificates (often from high state officials or citizens of a restricted set of occupations to whom refugees may not have access) or subjective capability tests (e.g. the ability to make a substantial contribution to the development of the country).⁵⁰

In the context of West Africa, however, many refugees are reluctant to naturalize⁵¹ in their host states even when an offer to do so is provided.⁵² At the same time, many would also reject the possibility under the ECOWAS protocols of acquiring secure residence and work entitlements while retaining their original nationality as they hold out hope of solutions such as third country resettlement not likely available to them. In short, they suggest to states that they do not wish to stay. Nor, however, do they always wish to go. By definition, the remaining Liberian and Sierra Leonean refugees in West Africa opted not to voluntarily repatriate despite the promotion of this solution by UNHCR, the countries hosting the refugees, and the countries of origin.⁵³

Regional local integration strategy

While a formal UNHCR position urging host governments to give favourable consideration to invoking cessation (i.e. the formal termination of refugee status) is likely for both Sierra Leonean and Liberian refugees at some point, UNHCR has indicated its focus for the time being is on local integration for the remaining Sierra Leonean and Liberian refugees in the seven countries in West Africa where they are most populous.⁵⁴

UNHCR and ECOWAS appear already to enjoy a common understanding of the applicability of the protocols' residence provisions to refugees able to seek and carry out work. Convincing member states of the correctness of this position and persuading refugees of the desirability of pursuing local integration are the principal challenges addressed in UNHCR's recently developed framework for the local integration of Sierra Leonean and Liberian refugees in West Africa.

The framework aims, through a multi-year (to 2010), multi-agency, community-based approach, to ensure the economic, social and legal integration of Sierra Leonean and Liberian refugees in West Africa and by so doing contribute to peace and stability in

⁵⁰ See, for example, section 14 of Ghana's *Citizenship Act, 2000*, section 26 of Nigeria's *1999 Constitution* and section 8 of the *Sierra Leone Citizenship Act 1973*.

⁵¹ To a considerable extent this may be explained by the general absence in West Africa of legal authority for dual or multiple nationality.

⁵² Based on the result of a survey of the intentions of Sierra Leonean refugees intending to locally integrate in Liberia who were offered a choice between naturalizing as Liberians and being provided with a residence entitlement under domestic Liberian law (and thus keeping their Sierra Leonean nationality), only 45% opted for naturalization.

⁵³ In Sierra Leone, UNHCR assistance to the organized return of Sierra Leonean refugees began in late 2000 and continued until December 2004; in Liberia, the promoted phase of the refugee repatriation operation ran from February 2006 until 30 June 2007.

⁵⁴ Liberia, Sierra Leone, Guinea, Cote d'Ivoire, The Gambia, Ghana and Nigeria.

the sub-region. In consequence, it is conceived broadly, to address some of the root causes of forced displacement and includes protection, self-reliance, social service provision, camp rehabilitation and capacity building components as well as an emphasis on youth employment and, in particular, the promotion of regionalization through greater implementation of the ECOWAS protocols.

Achieving integration through mobility

Integration is a notion ordinarily associated with permanence. It is thus somewhat counterintuitive to suppose that integration can be achieved through greater mobility. Yet it is precisely this possibility that the ECOWAS protocols present for refugees who are citizens of one Community country residing in another community country.

It is a possibility that refugees themselves have indicated they would prefer in most cases to naturalization: the combination of secure residence and work entitlement without having to give up the citizenship of their country of origin which would be necessitated by most countries in the region not tolerating dual nationality.

Unlike other regions in Africa, the impediments to secure residence and work entitlement are not the absence of appropriate laws but the relatively lesser challenges of harmonizing domestic laws with the norms established in the regional protocols and the slow implementation of the second and third phases of those protocols.

In order to redress these impediments and allow refugees to achieve integration through enhanced mobility, it is recommended that the following steps be taken:

BY ECOWAS:

- Promote the formal, high-level embrace of the principle of the applicability of the protocols to refugees (who are ECOWAS citizens staying in an ECOWAS state)⁵⁵
- Consider the appropriateness and timing for expansion of entitlements under the protocols to refugees from non-ECOWAS countries⁵⁶

BY UNHCR

- Promote the desirability of increased regionalization through the protocols at the UN Country Team level and with sub-regional organizations such as the Mano River Union
- Formalize cooperation with the ECOWAS Community Court of Justice and refer appropriate questions of rights and entitlements interpretation to the Court

⁵⁵ Note that the interpretation sought is broader than the applicability of the residence provisions of the protocols to residual --or remaining-- Sierra Leonean and Liberian refugees. The entitlements would apply to any refugee who is an ECOWAS citizen staying in another ECOWAS state.

⁵⁶ As the European Union is currently considering.

- Facilitate the acquisition of ECOWAS residence status by refugees by, inter alia, assisting member states as appropriate in verifying individuals' possession of refugee status

BY ECOWAS AND UNHCR:

- Collaborative study of texts of relevant ECOWAS legislation with a view to identifying gaps requiring clarification, including the possibility of supplementary legislation:
 - Constraining the grounds for inadmissibility, residence entitlement and expulsion to three common grounds: public [including national] security, public order, and public health
 - Establishing a standard duration for residence entitlements and presumption of renewability
 - Harmonizing passport and residence entitlement issuance procedures and applicable fees
- Lobby member states to embrace principle of the applicability of the protocols to refugees (who are ECOWAS citizens staying in an ECOWAS state)
- Conduct joint awareness campaigns to promote knowledge of the provisions of the ECOWAS protocols among refugees, host communities, media and civil society
- With Member State concurrence, carry out joint awareness training and capacity-building for officials of members states responsible for implementing the protocols
- Monitor the issuance and renewal of ECOWAS residence permits for refugees in the sub-region

BY ECOWAS MEMBER STATES

- Endorse the principle applicability of the protocols to refugees (who are ECOWAS citizens staying in an ECOWAS state)
- Enact the clarifications and supplementary legislation proposed in respect of:
 - Constraining the grounds for inadmissibility, residence entitlement and expulsion to three common grounds: public [including national] security, public order, and public health
 - Establishing a standard duration for residence entitlements and presumption of renewability
 - Harmonizing passport and residence entitlement issuance procedures and applicable fees

- Promote awareness of linkages between the residence and establishment provisions in the ECOWAS protocols and national legislation on naturalization⁵⁷

⁵⁷ For example, a period of lawful residence under the ECOWAS residence entitlement counting towards the requirement for a minimum period of residence in the country, or the possible satisfaction of requirements of “substantial contribution” through work performed pursuant to an ECOWAS entitlement.

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