

**Refugee Review Tribunal  
AUSTRALIA**

**RRT RESEARCH RESPONSE**

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**Questions**

**1. Please provide information about the right of a citizen of Liberia to enter and reside in Ghana. Are there certain rights of entry and possibly residence under ECOWAS??**

**RESPONSE**

**1. Please provide information about the right of a citizen of Liberia to enter and reside in Ghana. Are there certain rights of entry and possibly residence under ECOWAS??**

Sources indicate that the ECOWAS (Economic Community of West African States) protocols have made considerable legal headways in establishing freedom of movement and residency between ECOWAS member states (both Liberia and Ghana are member states). However, sources also suggest that full freedom of movement and rights to reside are limited by the independent laws and restrictions, administrative harassment, and extortion on the part of member nations, including Ghana.

The response to this question explores the [legal right to enter and reside in Ghana under ECOWAS protocols](#), and the [limitations on this right to enter and reside within Ghana](#).

**Legal right to enter and reside in Ghana under ECOWAS protocols**

Sources indicate that over the past 30 years a series of protocols signed by ECOWAS member states have provided citizens of member states with the legal ‘right to reside’ in any other member state, providing they have legitimate travel documents.

In May 1979 the member states of ECOWAS signed 'Protocol A/P.1/5/79 Relating To Free Movement Of Persons, Residence And Establishment' that formed the foundation for further steps to provide freedom of movement and residence within member states. This protocol established the following:

## PART II

### GENERAL PRINCIPLES ON MOVEMENT OF PERSONS, RESIDENCE AND ESTABLISHMENT

#### Article 2

- 1. The Community citizens have the right to enter, reside and establish in the territory of Member States.**
- 2. The right of entry, residence and establishment referred to in paragraph 1 above shall be progressively established in the course of a maximum transitional period of fifteen (15) years from the definitive entry into force of this Protocol by abolishing all other obstacles to free movement of persons and the right of residence and establishment.**
- 3. The right of entry, residence and establishment which shall be established in the course of a transitional period shall be accomplished in three phases, namely:**

Phase I – Right of Entry and Abolition of Visa

#### **Phase II – Right of Residence**

Phase II – Right of Establishment

Upon the expiration of a maximum period of five (5) years from the definitive entry into force of this Protocol, the Commission, based upon the experience gained from the implementation of the first phase as set out in Article 3 below, shall make proposals to the Council of Ministers for further liberalisation towards the subsequent phases of freedom of residence and establishment of persons within the Community and phases shall be dealt with in subsequent Annexes to this Protocol.

## PART III

### IMPLEMENTATION OF THE FIRST PHASE : ABOLITION OF VISAS AND ENTRY PERMIT

#### Article 3

- 1. Any citizen of the Community who wishes to enter the territory of any other Member State shall be required to possess a valid travel document and an international health certificate.**
- 2. A citizen of the Community visiting any Member State for a period not exceeding ninety (90) days shall enter the territory of that Member State through the official entry point free of visa requirements. Such citizen shall, however, be required to obtain permission for an extension of stay from the appropriate authority if after such entry that citizen has cause to stay for more than ninety (90) days.**

#### Article 4

**Notwithstanding the provisions of Article 3 above, Member States shall reserve the right to refuse admission into their territory to any Community citizen who comes within the category of inadmissible immigrant under its laws** (ECOWAS 1979, 'Protocol A/P.1/5/79 Relating To Free Movement Of Persons, Residence And Establishment', ECOWAS website, 29 May <http://www.sec.ecowas.int/sitecedeo/english/ap010579.htm> – Accessed 11 July 2008 – Attachment 1).

Since the signing of this protocol, ECOWAS has gradually implemented a number of related (and supplementary) protocols over three phases that have outlined the legal requirements of member nations. The most relevant of these are explored below.

A July 1985 decision to introduce an ECOWAS Travel Certificate was based on “the need and advisability of adopting a harmonised travel document other than national passports for use within ECOWAS, in order to facilitate and simplify formalities governing movement of persons across the borders of Member States” (ECOWAS 1985, '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', ECOWAS website, 6 July <http://www.sec.ecowas.int/sitecedeo/english/adec020785.htm> – Accessed 11 July 2008 – Attachment 2).

In 2000 the ECOWAS Passport was introduced, with the intention that this would gradually replace the ECOWAS Travel Certificate over a number of years (ECOWAS 2000, 'Executive Secretary's Report', 'Chapter II: Implementation Of The Community Work Programme', ECOWAS website <http://www.sec.ecowas.int/sitecedeo/english/es-rep2000-3-2.htm> – Accessed 14 July 2008 – Attachment 3).

In July 1986 the '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' established what rights were included in this 'right of residence', and what was required of ECOWAS citizens in order to gain the right of residence within ECOWAS member states:

#### **Article 2**

For the purpose of implementing the second phase (right or residence) of the Protocol on free movement of persons, the right of residence and establishment, each of the Member States shall 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.

#### **Article 3**

With the exception of restrictions justifiable by reasons of public order, public security and public health, the right of residence shall include the right:

1. to apply for jobs effectively offered ;
2. to travel for this purpose, freely, in the territory of Member States ;
3. to reside in one of the Member States in order to take up employment in accordance with the legislative and administrative provisions governing employment of national workers ;

4. to live in the territory of a Member State according to the conditions defined by the legislative and administrative provisions of the host Member State, after having held employment there.

### ...Article 5

Citizens of the Community who are nationals of Member States admitted without visa into the territory of one Member State, and desiring to reside in the territory of that Member State, shall be obliged to obtain an ECOWAS RESIDENCE CARD or a RESIDENCE PERMIT.

### Article 6

The applicant for the RESIDENCE CARD or RESIDENCE PERMIT in the territory of any Member State shall deposit with the Department of Immigration of the host Member State [whereby the 'host Member State' "means the Member State or country of residence of the migrant worker"] an application for a Residence Card or Residence Permit in accordance with the rules and regulations existing in each Member State (ECOWAS 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', ECOWAS website, 1 July <http://www.sec.ecowas.int/sitecedea0/english/asp010786.htm> – Accessed 11 July 2008 – Attachment 4).

The 'Third Phase' of the 1979 'General Principles' was implemented in 1990 with the signing of the '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' and this outlined the 'right of establishment' within other ECOWAS member states. This 1990 protocol outlined the 'right of establishment' as follows:

"Right of Establishment" means the right granted to a citizen who is a national of the Member State to settle or establish in another Member State other than his State of origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals (ECOWAS 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', ECOWAS website, 2 May <http://www.sec.ecowas.int/sitecedea0/english/asp020590.htm> – Accessed 14 July 2008 – Attachment 5).

It further established a basis for this 'right of establishment' in ECOWAS member states by establishing legal guidelines in a number of areas, such as 'access to enterprises', 'provisions for sectors of economic activity', and 'provisions for the promotion and protection of capital for investment'. The articles relating to 'Establishment of or Access to Enterprises' are outlined below:

## CHAPTER II

### ESTABLISHMENT OF OR ACCESS TO ENTERPRISES

#### Article 2

The right of establishment as defined in Article 1 above shall include access to non-salaried activities and the exercise of such activities as well as the creation and management of enterprises and companies which comply with the definition contained in Article 3 below are

subject to the same conditions stipulated by the laws and regulations of the country of establishment for its own nationals.

### **Article 3**

For the purpose of implementation of this Protocol, companies which are formed in accordance with the laws and regulations of a Member State with their headquarters, central seat of administration or principal establishment within the Community shall be considered in the same category as individual nationals of Member States. Where, however, only the statutory headquarters of the company are established in a Member State, activities of such a company should have effective and sustained links with the economy of the Member State (ECOWAS 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', ECOWAS website, 2 May <http://www.sec.ecowas.int/sitecedeo/english/asp020590.htm> – Accessed 14 July 2008 – Attachment 5).

An undated ECOWAS analysis of the “status of ECOWAS priority programmes in Ghana” noted:

Ghana has abolished entry visas and permits for ECOWAS nationals, adopted the ECOWAS travel certificate and put into use the ECOWAS Brown Card scheme.

On the other hand, it has not yet adopted the harmonised immigration and emigration form or set up the committee to monitor programmes on free movement of persons and vehicles. In addition, all vehicles entering Ghana must pay a transit tax in foreign exchange (ECOWAS (undated), 'Ghana in ECOWAS', ECOWAS website <http://www.sec.ecowas.int/sitecedeo/pays/gh/> – Accessed 14 July 2008 – Attachment 7).

### **Limitations on the right to enter and reside in Ghana**

Although the above noted series of ECOWAS protocols have established a legal basis for citizens of ECOWAS member states to reside in other ECOWAS member states, sources indicate that in reality there are a number of other limitations within the individual member states that have affected this right to reside.

A 2007 UNHCR research paper titled 'Promoting integration through mobility: free movement and the ECOWAS Protocol' outlined the ECOWAS protocols (as summarised above), and argued that:

To date, however, even with the adoption of the four supplementary protocols, 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.

... There is a profound lack of access to accurate migration information in the subregion, which is neither centralized in an ECOWAS database nor readily available at the national level.

... 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.

...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 (Adepoju, A., Boulton, A. & Levin, M. 2007, 'Promoting integration through mobility: free movement and the ECOWAS Protocol', *New Issues In Refugee Research*, Research Paper No. 150, December, Reliefweb website, p. 4 [http://www.reliefweb.int/rw/lib.nsf/db900sid/EVOD-7AAKCM/\\$file/unhcr\\_Dec2007.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/EVOD-7AAKCM/$file/unhcr_Dec2007.pdf?openelement) – Accessed 10 July 2008 – Attachment 6).

The UNHCR research paper, cited above, also noted that the immigration admissions laws in ECOWAS member states have sovereignty over these ECOWAS protocols, and thus the ECOWAS protocols invite “national provisions more restrictive than and perhaps antipathetic to the non-discrimination, regional social cohesion and promotion and protection of human and peoples’ rights objectives at the heart of the ECOWAS initiative” (Adepoju, A., Boulton, A. & Levin, M. 2007, 'Promoting integration through mobility: free movement and the ECOWAS Protocol', *New Issues In Refugee Research*, Research Paper No. 150, December, Reliefweb website, p. 8 [http://www.reliefweb.int/rw/lib.nsf/db900sid/EVOD-7AAKCM/\\$file/unhcr\\_Dec2007.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/EVOD-7AAKCM/$file/unhcr_Dec2007.pdf?openelement) – Accessed 10 July 2008 – Attachment 6).

The main inadmissibility provisions in place within Ghana were reported as follows:

Immigration Act, 202 February 2000 (Act 573)

4.1. Foreigners must have a valid passport or other valid travel document, or be exempt from needing a visa;

**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** (Adepoju, A., Boulton, A. & Levin, M. 2007, 'Promoting integration through mobility: free movement and the ECOWAS Protocol', *New Issues In Refugee Research*, Research Paper No. 150, December, Reliefweb website, pp. 9-10 [http://www.reliefweb.int/rw/lib.nsf/db900sid/EVOD-7AAKCM/\\$file/unhcr\\_Dec2007.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/EVOD-7AAKCM/$file/unhcr_Dec2007.pdf?openelement) – Accessed 10 July 2008 – Attachment 6).

A paper presented by John Agyai and Ezekiel Clottey at the African Migrations Workshop in Accra, Ghana, in 2007 also reported:

It is worthy to note that Ghana's Immigration Act, 2000 (Act 573) ... has no specific provisions for citizens from ECOWAS Member States; as such it fails to address the process of integration as espoused in the ECOWAS treaty (Agyai, J. & Clottey, E. 2007, 'Operationalizing ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-Regional Integration', African Migrations Workshop, Accra, Ghana, 18-21 September <http://www.imi.ox.ac.uk/pdfs/CLOTTEY%20and%20AGYAI.pdf> – Accessed 14 July 2008 – Attachment 8).

The Ghanaian government also outlined entry requirements on their official website, and the following sections may be of relevance:

All persons entering Ghana must be in possession of a valid passport or Travel Documents establishing the identity of the holder.

Travel Documents include Laisser-Passer and other travel documents issued by International Agencies recognised by the Government of Ghana.

These are:

- ECOWAS
- United Nations and its specialized agencies
- The World Bank
- African Development Bank, etc.

Where there is doubt, it should be cleared with the Ghana Immigration Service headquarters or the Ministry of Foreign Affairs, Accra.

### ...3. Exemptions

The following categories are exempted from obtaining entry visas to Ghana

#### a. Citizens Of Ecowas Countries

Nigeria  
Benin  
Mauritania  
Niger  
Gambia  
Senegal  
Guinea  
Sierra Leone  
Guinea Bissau  
Togo  
Cote D'ivoire  
Burkina Faso  
Liberia  
Cape Verde  
Mali

#### b. Nationals of Kenya, Malaysia And Singapore

Holders Of German And Cuban Diplomatic/Service Passports

#### c. Persons in direct airside transit.

### ... 5. Refusal

Visa to the following category of persons should generally be refused.

- Prohibited Immigrants
- A person without visible means of support
- An undesirable person

- And mentally handicapped person
- On the advice of the health authorities

## **6. Immigration notice**

Intending travellers must note that the possession of the appropriate documents does not confer a right of entry. Travellers may be refused entry into Ghana if they fall within the category of prohibited Immigrant and if they do not satisfy Immigration requirements at the point of entry.

The Government of Ghana will not be financially liable for their repatriation.

## **7. Immigration Regulations**

Immigrant Quota:

Persons who enter Ghana ostensibly as visitors may not be permitted to take employment.

No person shall be permitted to accept employment or undertake an occupation for reward in Ghana unless such employment is within and authorised Immigrant quota (an Immigrant quota being the number of non-Ghanaians that a person or firm can employ).

## **...11. Prohibited Immigrants**

Any person falling within the following categories.

- There is a deportation order in force – Part II ACT 160/63
- A destitute or person with no visible means of support
- A person of unsound mind
- A person declared by the Minister, or by Executive Instrument to be a person whose entry into Ghana would not be conducive to public good.
- A person against whom there is an extradition crime in force within the meaning of the Extradition Act, Act 22/60.

## **12. Fees**

Some amount of money is charged for Entry Visas ('Ghana Visa Regulations – Entry Requirements' (undated), Government of Ghana Official Website <http://www.ghana.gov.gh/ghana visa regulations entry requirements> – Accessed 14 July 2008 – Attachment 10).

An April 2008 report from the *Ghana News Agency*, appearing on the Government of Ghana Official Website, refers to a meeting between “Representatives of civil society, the private sector and the media from the Economic Community of West African States (ECOWAS) member-states” held in Accra, Ghana, that attempted “to fashion out practical ways to stem harassment on the highways and borders within the region”. The report further commented on restrictions to ‘free movement’ between ECOWAS member states, such as “illegal barriers and roadblocks”, “the extortion of money from travellers”, “systematic racketeering”, and some “immigration officers refused to recognise national identity cards as a valid intra-ECOWAS travel document”, as outlined below:



The three-day meeting which opened yesterday, is to mobilise civil society, the private sector and the media to combat harassment on the highways and at the borders as they were the main victims and beneficiaries of the implementation of the ECOWAS protocol on free movement.

**...The memorandum recalled that since the adoption of the ECOWAS protocol relating to free movement, the right of residence and establishment of citizenship on May 29, 1979, individual member-states had perpetually violated its provisions.**

It noted that those protocols provided for the removal of barriers between member-states to ensure free movement of persons, goods and services, grant community citizenship to nationals of member-states and the right of residence and establishment of enterprises by citizens of member-states.

By extension, the protocols also provided for the abolition of visa requirement for ECOWAS citizens travelling within the sub-region, issuance of ECOWAS passports and travellers' certificate to be recognised by all member-states and the use of ECOWAS Travellers cheques for trading, among other things.

**“Despite all these measures, travelling within the ECOWAS sub-region is extremely difficult, on account of the ever-increasing number of illegal barriers and roadblocks, and the extortion of money from travellers at every checkpoint,” the memorandum said.**

It noted that on the basis of the provision of the protocols, the President of the ECOWAS Commission, Dr Mohamed Ibn Chambas appointed an eight-member committee to study the situation at the borders and on the highways and make recommendations regarding the status of implementation of free movement protocols within the sub-region.

**The committee observed that with the exception of Burkina Faso, which recently reduced the number of checkpoints considerably, a large number of illegal roadblocks still existed in all the other member-states and systematic racketeering was also rife at such places.**

**The committee noted that, among other things, joint security patrols set up to combat organised crime had been turned into toll stations with security officials from immigration, customs and police extorting money from travellers.**

“At some borders, volunteers are recruited by immigration officers to carry out racketeering activities, some borders close at 10 pm whereas they are supposed to be operating round the clock and by that, they give way for criminal activities to be perpetrated,” the committee noted.

**It also observed that even though all member-countries had ratified the free movement protocols and their supplementary text, immigration officers refused to recognise national identity cards as a valid intra-ECOWAS travel document from sub-regional citizens.**

**The committee also noted that, apart from Benin, Nigeria, Senegal, Guinea, Liberia and Niger, where all the three types of ECOWAS passports, namely the ordinary, service and diplomatic passports have been put into circulation, the other member-states gave excuses that they had a backlog of national passports to issue (‘Ghana Hosts ECOWAS Meeting On Border Harassment’ 2008, *Ghana News Agency*, 3 April [http://ghana.gov.gh/ghana/ghana\\_hosts\\_ecowas\\_meeting\\_border\\_harassment.jsp](http://ghana.gov.gh/ghana/ghana_hosts_ecowas_meeting_border_harassment.jsp) – Accessed 14 July 2008 – Attachment 9).**

## List of Sources Consulted

### Internet Sources:

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All the web <http://www.alltheweb.com/>  
Altavista <http://www.altavista.com/>  
Ask <http://www.ask.com/?ax=5>  
Exalead <http://www.exalead.com/search>  
Yahoo! <http://search.yahoo.com/>

### **Government Information & Reports**

Immigration & Refugee Board of Canada <http://www.irb.gc.ca/>  
UK Home Office <http://www.homeoffice.gov.uk>  
US Department of State <http://www.state.gov/>

### **Non-Government Organisations**

Amnesty International website <http://www.amnesty.org/>  
Human Rights Watch <http://www.hrw.org/>

### **International News & Politics**

*BBC News* <http://www.bbc.co.uk/worldservice/index.shtml>

### Databases:

BACIS (DIMA Country Information database)  
REFINFO (IRBDC (Canada) Country Information database)  
ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)  
RRT Library Catalogue

## List of Attachments

1. ECOWAS 1979, 'Protocol A/P.1/5/79 Relating To Free Movement Of Persons, Residence And Establishment', ECOWAS website, 29 May <http://www.sec.ecowas.int/sitecedea0/english/ap010579.htm> – Accessed 11 July 2008.
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5. ECOWAS 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', ECOWAS website, 2 May <http://www.sec.ecowas.int/sitecedea0/english/asp020590.htm> – Accessed 14 July 2008.
6. Adepoju. A, Boulton, A. & Levin, M. 2007, 'Promoting integration through mobility: free movement and the ECOWAS Protocol', *New Issues In Refugee Research*, Research Paper No. 150, December, Reliefweb website, p. 4 [http://www.reliefweb.int/rw/lib.nsf/db900sid/EVOD-7AAKCM/\\$file/unhcr\\_Dec2007.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/EVOD-7AAKCM/$file/unhcr_Dec2007.pdf?openelement) – Accessed 10 July 2008.
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9. 'Ghana Hosts ECOWAS Meeting On Border Harassment' 2008, *Ghana News Agency*, 3 April [http://ghana.gov.gh/ghana/ghana\\_hosts\\_ecowas\\_meeting\\_border\\_harassment.jsp](http://ghana.gov.gh/ghana/ghana_hosts_ecowas_meeting_border_harassment.jsp) – Accessed 14 July 2008.
10. 'Ghana Visa Regulations – Entry Requirements' (undated), Government of Ghana Official Website <http://www.ghana.gov.gh/ghana Visa regulations entry requirements> – Accessed 14 July 2008.