

Knowledge Platform for Migration Governance in Africa

Platform Policy Brief 02

Migration Governance Architecture in West Africa: The Case of ECOWAS

This is the second policy brief of the Knowledge Platform for Migration Governance in Africa¹ produced by the African Diaspora Policy Centre. The platform is devoted to strengthening the interface between research, policy, and practice in the area of migration governance at continental, regional, national, and local levels. The motto of the platform is: organizing a knowledge network for better migration governance in Africa. It contributes to the migration and mobility dialogue from the perspective of Africa. Additionally, it is committed to contributing to a better migration governance system that works to the benefit of all. The platform organized its second webinar in August to revisit the architecture of the Economic Community of West African States (ECOWAS) migration governance structures and processes in its entirety. The webinars also provide an opportunity for the platform's network to convene virtually, since they cannot meet face-to-face while the Covid-19 pandemic rages across countries.

Introduction

This policy brief is the product of a webinar organized by the Platform to revisit the architecture of the Economic Community of West African States (ECOWAS) migration governance structures and processes in its entirety. As a regional body, ECOWAS has instituted significant formal power to promote a viable government approach to migration governance with regards to the member states in the region. Migration in West African countries has been circular in many ways. This is due to the long tradition of seasonal labour migration that has been a feature of migration over many decades. The webinar reflected on the lessons learned from the role that ECOWAS plays in terms of institutional norm-setting, policy processes, and practical implementation of the migration dynamics in the region. It also reflected on the constraints and existing challenges that need to be addressed as well as positive examples and experiences that must be built on in order to achieve a better migration governance system in the West Africa region in the short- and medium-term. The webinar concluded by highlighting a set of challenges as well as potential solutions that can be deployed to address them effectively. The main outcomes of the webinar are briefly presented in subsequent sections of this policy brief.

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ECOWAS Migration Policy

Migration has been a focal policy area for ECOWAS since the organization's inception. It was enshrined in the ECOWAS Protocol of Free Movement of Persons, Residence and Establishment adopted in 1979.² This long-held migration policy Protocol is the bedrock of economic and trade integration in the region.³ To advance this migration policy, the Protocol guarantees the right of ECOWAS citizens to enter, reside, and establish economic activities in the territory of other member states. This is with the firm conviction that free movement of persons, goods, services, and capital advance and consolidate the dividends of economic integration under the auspices of ECOWAS. Moreover, this free movement also positively influences the harmonious development of social, economic, and cultural activities in the region.

The Protocol has three core pillars: the right of visa-free entry of citizens of ECOWAS member states into other member states; the right of residence; and the right of establishment in another member state. The first pillar, the right of visa-free entry, has been fully implemented, facilitated by effective bilateral agreements between states that promoted the circulation of labour movement between countries. Yet, experts from the region have cited certain restrictions and administrative barriers that still limit the free movement of persons from one to another country. For example, any person staying in another country in the region during 90-day period permitted by the Protocol must navigate a number of administrative hurdles before acquiring permission. The second pillar, the right to residency (including the right to apply for jobs and take up employment in accordance with the legal and administrative provisions governing national workers' employment) has been enforced to some extent, evidenced by the fact that citizens in the region have obtained ECOWAS residence cards or permits in fellow member states. The third pillar, the right of establishment (including access to economic activities and the right to carry out these activities, as well as the right to set up and manage enterprises under the same legislative conditions that host member states apply to their own nationals) has still not been ratified. Nonetheless, despite the slow process of ratification and implementation of the three pillars of the Protocol, the promotion of migration norms in the region is broadly supported by all the member states. This is with an understanding that the legal instruments and policies of the Protocol have positively advanced the migration governance system in the region. The Protocol has also become a model for good policy and practice for other regions on the continent and beyond. More importantly, despite its imperfections, the Protocol provides a best practice for regional and international cooperation on labor migration policy.

² See here the original documents of the Protocol: www.ecowas.int

³ Adepoju, Aderanti, Boulton, Alistair, & Mariah Levin (2010). 'Promoting Integration through Mobility: Free Movement under ECOWAS', *Refugee Survey Quarterly*, UNHCR, 29 (3), 1-25.

Development Agenda on Migration

The experts agree that the centrepiece of the ECOWAS migration governance regime is the promotion of an overall development agenda on migration in the region. This is exemplified by the ECOWAS mandate to facilitate greater mobility and labour migration in the region in order to boost employment, economic growth, and development driven by overarching trade and regional integration. This rationale characterizes the migration governance regime in the ECOWAS region as a regional integration process, on the one hand, and as intra-regional mobility on the other hand. From this point of view, mobility and migration are understood as contributing to development that, in turn, informs the narratives of the normative processes in the field within the context of the ECOWAS region. Hence, the ECOWAS development agenda on migration facilitates much-needed labour mobility among member states' labour markets. It has also improved trade relations among members states as the circulations of goods, services, and capital has substantially increased. Moreover, the ECOWAS development agenda on migration greatly contributes to efforts geared to achieving strong and sustainable regional integration across many fields in the West Africa region. In sum, the ECOWAS development agenda on migration is an exemplary model for other regional organizations on the continent striving to advance their regional integration processes through labour mobility, trade, and deeper economic ties. The ECOWAS migration governance regime is embedded within the Protocol on free movement, which only exists in the West Africa region. In this regard, the Protocol determines the institutional norm-setting, policy processes, and practical implementation of the ECOWAS migration governance regime, which, despite some drawbacks, can be judged as successful.

It is important to note here that the regional experts emphasize that, since 2000, the development agenda on migration pursued by ECOWAS has been somewhat derailed. It has become subsumed under a migration governance agenda driven by external pressures and interests. This has created competing narratives and prioritized approaches and operations on migration. It has also been at odds with ECOWAS prioritizing migration from the outset, as discussed above. Managing and controlling the movement of migrants within the region and beyond has become a priority over development. For instance, before 2000, the movements of people within the region were not seen to be irregular as this pattern of internal labour migration had been going on for decades. Rather, it was considered to be part of the free movement-oriented framework promoted by the ECOWAS Protocol. However, imposed external pressure forced ECOWAS to shift the focus of its migration policy to the management of migration, both within the region and beyond. Consequently, a large part ECOWAS's work is diverted to addressing human trafficking, smuggling, and irregular migration issues seen as important from the point of view of controlling migration. This policy shift has gravely undermined the original development agenda on migration promoted by ECOWAS with dire repercussions for economic development in the region through migration. According to the experts, the main discussions with regards to the migration governance regime in the EOWAS region should centre on how to balance the

need for regional economic development and the management of migration both within and beyond West Africa. We encourage ECOWAS and its international partners to engage in this kind of discussion as part of their policy dialogues on migration and mobility in the near future.

Enforcement of ECOWAS Migration Policy

ECOWAS has a strong mandate to enforce its migration policy agenda. It also has significant authority in terms of institutional norm-setting, policy processes, and practical implementation governing the migration policy adopted by member states in the region.

ECOWAS plays a leading role in many issues across the region, whether it is security, unfair trade disputes, resolving conflicts, or negotiating peace settlements arising from movements of people between countries. However, in terms of the practical implementation of the Protocol of free movement, bilateral relations between governments have been most effective in advancing labour mobility, trade, and regional integration. The experts cite a number of cases in which bilateral relations between governments have been the key instrument in facilitating further labour regulations and have increased the trade and movements of goods between countries. Likewise, many governments in the region have signed treaties that protects the labour rights of their nationals working in other countries in the region. They have also facilitated a process that allows for the reliable and fast shipment of goods between countries. These efforts by governments of member states reinforce further economic integration in the region with valuable benefits in terms of development. Hence, bilateral relations between governments have made possible the practical implementation of ECOWAS migration policy in the region. This is with the understanding that the free movement Protocol benefits the economic growth, trade, and development of all member states.

Nevertheless, there have been also downsides to bilateral relations between governments, namely, when a treaty does not accord with domestic policies at certain times. The Protocol grants discretionary powers to the governments of member states to determine who they allow into their countries and under what conditions migrants are permitted to work. They can also expel migrant workers from their countries, as shown when the government of Nigeria expelled one million Ghanaian labour migrants from Nigeria in 1983. This was a serious violation of the bilateral relations signed by the governments of both countries under the free movement Protocol. The same problem has arisen in Ghana since the outbreak of Covid-19, where the Nigerian migrant community is being harassed, violently attacked, and some have had their businesses destroyed. There is currently a growing and sometimes violent xenophobia in Ghana being directed towards migrants in the country. This surge in xenophobia is in violation of the Protocol, which guarantees the free movement of people and the rights of West African nationals to trade and residency.⁴ The harassment and intimidation of Nigerian migrants in Ghana has even led to diplomatic friction between both governments' two countries. It has also badly affected the economic survival of many local traders in both countries, who cannot move or sell their goods across the borders due

⁴ For more information on this aspect, see 'Nigeria: The politics of Ghana's xenophobic attacks on Nigerians', available at: <https://allAfrica.com/stories/202007070181.html>.

to the ongoing tensions. This is despite documented evidence of the considerable contribution made by immigrants from the region to Ghana's economy.⁵ Clearly, widespread problems across member states in the region are negatively impacting the fundamental rights of, among others, migrant workers. Most member states have reported cases of migrants being criminalised due to the securitization of border crossings. Others face harsh treatment in host countries such as exploitation, abuse, social exclusion, and, in some cases, arbitrary detention.

This brief discussion attests the limitations of ECOWAS's enforcing power on migration policy. It also demonstrates an inconsistency in member states' implementation of the Protocol. Undoubtedly, the architecture of the ECOWAS migration policy has advanced trade integration among the countries in region but, clearly, more needs to be done to build on the achievements to date. This responsibility largely lies with policy decisions by the member states in their bilateral relations with regards to migration and mobility within the region.

ECOWAS Common Approach on Migration and Development

The ECOWAS Common Approach on Migration and Development was adopted in 2008 to provide a broader policy framework for addressing the nexus between migration and development in a comprehensive manner within the region. This includes promoting free movement within the ECOWAS zone. According to the ECOWAS Protocol, free movement of persons in the region is a pinnacle element for the regional integration and development process. The Common Approach also includes the harmonization of policies related to the management of regular migration as well as the promotion of migration for development. Other aspects addressed by this policy framework are: controlling irregular migration and human trafficking; promoting the rights of migrants, asylum seekers, and refugees; and the consideration of gender dimensions in migration policies.

The centrepiece of the policy framework is gaining a commitment from all member states to ratify and implement all aspects of the ECOWAS free movement protocols. However, as mentioned, member states have not yet ratified the third pillar of the free movement protocol, i.e. the right of establishment of all nationals in the region. In fact, the implementation of this pillar was originally planned for 1990. Another area requiring attention is the ECOWAS Regional Labour and Employment Policy, which has not yet been sufficiently implemented. The Common Approach policy was formulated to support the needs of labour markets in the region, which is viewed as fundamental to regional economic integration and development. Since ECOWAS adopted the Common Policy framework, a host of new policy issues have been, promoted, notably in the area of higher education. Specifically, measures have been stipulated to facilitate West African students' access to universities and research institutions within Africa and beyond. Steps have also been proposed to establish support institutions for entrepreneurship training for female migrants. This is in response to the fact that migrant women are dynamic entrepreneurs and acquiring additional skills will further hone their business practices and scale up their enterprises.

⁵ See: OECD/ILO. (2018). *How Immigrants Contribute to Ghana's Economy* (Paris: OECD Publishing). Available at: <http://dx.doi.org/10.1787/9789264302037-en>.

Other policy measures proposed include bringing the ECOWAS community to a next level of migration governance by formulating a regional migration policy. This, however, will require, among other things, the development of a common policy framework on migration that provides a reference point for all stakeholders in the field active at regional, national, and local levels.

The experts have listed a number of obstacles hindering the comprehensive implementation of the ECOWAS common approach on migration and development in a holistic manner. The first obstacle is the lack of a broader strategic vision of what the common policy approach on migration is meant to achieve in the short-, medium-, and long-term. The second obstacle is the lack of political will and commitment at all levels to translate the policy into actions and programmes in different areas. The third obstacle is the lack of funding, as no budgets are currently allocated for the operationalization of the policy. The fourth obstacle is the lack of coordination and cooperation mechanisms for its implementation within and across the countries in the region. The fifth obstacle is that there are no monitoring and evaluation mechanisms in place that can measure both the progress and the impact of the implementation of the policy over time.

Overall Challenges of ECOWAS Migration Policy

The experts in the meeting identified a host of challenges hampering the implementation of the norms of the ECOWAS Protocol at different levels. However, five challenges will be highlighted here currently considered to be critical in policy debates on this topic. The first challenge is the lack of policy coherence for the promotion of a meaningful labour migration and trade integration in the region, which is the centrepiece of the ECOWAS free movement Protocol. An example of this is the fragmentation of the migration portfolio within the ECOWAS Commission. For instance, the process is hampered by the limited internal coordination between the various directorates within the Commission dealing with different aspects of the migration portfolio. Consequently, there is insufficient synergy among diverse units dealing with different components on the issue. Where there is coordination, it tends to be on an ad hoc basis. However, the regional experts take the view that a number of strategic priorities recently endorsed by the ECOWAS Commission can perhaps provide a framework for a better policy coherence and coordination.⁶ The second challenge is lack of harmonization across the board and at all levels. For example, member states often formulate migration policies for different reasons or at different levels that sometimes contradict or do not match the core objective of the ECOWAS Protocol. The result is that, as member states pursue different policies in response to migration, be it labour migration, protection of stranded migrants, or security concerns, often frictions arise, fuelling already acrimonious relations. These kinds of tensions among member states could be avoided if their migration policies are harmonized across the board and at all levels. The third challenge is the piecemeal and partial implementation of Protocol norms by member states.

⁶ See further the new Community Strategic Framework Document (CSF) 2016-2020.

For instance, it has become a recurring pattern that governments of member states implement some aspects of the norms when it is politically expedient. At other times, the same governments impede or slow down the implementation of the Protocol if it does not serve their domestic political agenda. For this reason, the harmonization of the norms of labour migration remains a contested policy among governments of the member states. A workable labour migration policy is urgently needed to boost economic growth and overall development in the region. The fourth challenge is a lack of sufficient institutional capacity to implement the different aspects of the Protocol. The institutions dealing with migration issues in the region are not adequately equipped to advance the norms of the Protocol at all levels. This crystallizes the problems of designing policies that effectively protect migrants' human rights, facilitates an orderly process of migrants crossing borders, and the well-being of labour migrants in a host country. It also highlights an inability to mainstream the development potentials of migration into national development plans. The fifth challenge is the lack of adequate funding for migration issues. Governments of member states understand and appreciate migration as a source for development, in particular, the benefits of labour mobility. Yet, governments are not fully prepared to invest sufficient resources in migration portfolios at national and regional levels. This is the reason that the experts argue for strengthening the institutional capacity for migration governance at national and regional levels in the region. This will require both sustainable funding and capacity building.

Potential Solutions

The experts presented a number of potential solutions to further improve institutional capacity for migration governance in the region. The proposals presented include but are not limited to the following aspects: The first proposal is the urgent need to increase the overall capacity of institutions dealing with migration related issues at regional, national, and local levels. This can be addressed by offering targeted technical support to policymakers in the form of coaching, mentoring, and consultancy services. This technical support would increase policy and practical knowledge in all aspects of migration, be it the protection of migrant rights, orderly management of migration, or appropriate ways for governments to harness the development potential of migration. The second proposal is the need to increase funding for migration, which remains a policy issue in all countries in the ECOWAS region requiring a response, domestically and across borders. Addressing migration issues effectively requires developing a comprehensive policy approach that goes beyond dealing with it in piecemeal or ad hoc manner, as many current actions illustrate. Viewed from a development perspective, increased funding for migration portfolios will enable governments to invest in policy-oriented knowledge that offers insights into and a blueprint for mainstreaming migration into the national development agenda. The third proposal is promoting cross-sectoral collaboration on all aspect of migration. This is because migration cuts across different sectors, ministries, and departments in any given country. A multi-sectoral approach to migration will significantly improve the implementation of migration policies. It will also reduce the policy tensions that may arise from the fragmentation of

migration portfolios across different departments and ministries. The fourth proposal is to support more active involvement by activists and civil society organizations (CSOs) in the protection of migrants' rights through advocacy. Vulnerable migrants and victims of human trafficking in the region are often discriminated against, exploited; some have even faced arbitrary detention. To address the problem, the experts proposed promoting close collaboration between the CSOs and local authorities in terms of protecting the human rights of vulnerable migrants and delivering needed services and better information to them. A case was presented demonstrating how active engagement by CSOs in the process made a difference. For example, the experts stated that active advocacy campaigns by local activists and civil society organizations significantly influenced the decision by the government of Morocco to regularize unauthorized migrants in the country in 2014 and 2017. The fifth proposal is to establish a mechanism that facilitates regular consultations and multi-stakeholder exchanges at national and sub-national levels on all migration matters. The aim is to improve the circulation of information among diverse stakeholders dealing with various aspects of migration at different policy levels. A related aim is to incentivise multi-stakeholder partnerships and cooperation across agencies and sectors for the practical implementation of migration-related activities on the ground. Having in place a mechanism for multi-stakeholder partnerships is crucial to having an integrated policy and practical approach to migration governance both nationally and locally.

Conclusion

ECOWAS wields significant formal power to enforce regional policies on migration. This formal power enables ECOWAS to set the agenda in terms of institutional norm-setting, policy processes, and practical implementation of migration dynamics across countries in the region. ECOWAS also has enforcement mechanisms to deal directly with migration issues of regional importance and in order to prevent conflicts and reduce tensions that may arise particularly in the process of implementing the free movement Protocol. More importantly, migration is traditionally viewed as inherent to the development agenda in West Africa. For this reason, migration has been a central policy area for ECOWAS from its inception in 1979. The lessons that can be learned from the ECOWAS case include the pathways that the organization has created to promote migration as a development agenda in order to advance labour mobility and trade integration in the region. ECOWAS has also used its migration policy mandate to stimulate the growth of integrated economics in the region through the free movement of persons, goods, services, and capital across countries. In addition, the ECOWAS migration policy has been influential in the development of positive societal and cultural relations among people in the region, which is no small feat. In sum, the architecture of the current migration policy and practice in the West Africa region is the most advanced on the continent and is a good model worth replicating elsewhere.

The analysis in this policy brief is informed by the knowledge, experience, and expertise of the African migration policy experts who participated in the second webinar organized by the Knowledge Platform for Migration Governance in Africa. The African migration policy experts added tremendous value to the policy discussion devoted to strengthening the institutional capacity of migration governance. The experts articulated a less familiar African narrative in the discussion – closely informed by insider observations, local perspectives, specific country experience, and deeper understanding of the complexity and challenges of multi-faceted migration and mobility dynamics on the continent – that receives little policy attention. The experts who participated in the second webinar of the Platform represented different partner countries in Africa, namely: Cameroon; Ethiopia; Ghana; Kenya; and Morocco.