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SAME POLICY BUT DIFFERENT IMPLICATIONS  
FOR DIFFERENT PEOPLE?  
AN ANALYSIS OF HOW DIVERSE CATEGORIES  
OF ECOWAS NATIONALS EXPERIENCE THE  
FREE MOVEMENT PROTOCOL

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## **Same policy but different implications for different people? An analysis of how diverse categories of ECOWAS nationals experience the Free Movement Protocol**

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### **Abstract**

The adoption and implementation of the Economic Community of West African States (ECOWAS) Free Movement Protocol was meant to facilitate trade, investment and easy movement of persons within the West African sub-region. A number of empirical studies have been conducted on the ECOWAS Free Movement Protocol, its operationalization, and implementation challenges. Studies have drawn attention to areas of progress, success stories and difficulties associated with movement, residence and rights of establishment. However, little is known about how different aspects of the Protocol impact differently on diverse groups of ECOWAS migrants. This has created the impression that the ECOWAS Protocol on Free Movement has homogenous implications for all ECOWAS migrants. Drawing on desk-based research complemented by a critical literature review of policy documents and data/administrative records and by 23 in-depth interviews conducted with different ECOWAS nationals living and working in different sectors in Ghana as well as immigration officials and a trade union representative, this paper examines the diversity of experiences of ECOWAS migrants in relation to the Free Movement Protocol. The findings suggest that the experiences of ECOWAS nationals in areas such as awareness and knowledge of provisions in the Protocol, border crossing, processes of acquiring residence and work permits and renewing permits, as well as rights of establishment differ remarkably by dimensions of social difference. While the Protocol on Free Movement has enabled ECOWAS citizens to benefit from opportunities in member countries and from enhanced regional integration, there remain a number of challenges. Above all, the experiences of ECOWAS migrants with respect to the Protocol are not the same for everyone. Issues such as age, gender, social class, and nationality, among others, are fundamental and shape the experiences of ECOWAS migrants in divergent ways. The paper concludes with targeted suggestions for promoting intra-regional migration while addressing the diversity of experiences of ECOWAS migrants.

Keywords: ECOWAS; free movement; diversity; border crossing; migration; social class; gender

### **Résumé**

L'adoption et la mise en œuvre du protocole sur la libre circulation de la Communauté économique des États de l'Afrique de l'Ouest (CEDEAO) visait à faciliter le commerce, les investissements et la circulation des personnes dans l'espace régional ouest-africain. Plusieurs études empiriques ont été menées sur le protocole de la CEDEAO sur la libre circulation, son opérationnalisation et les défis de sa mise en œuvre. Les études ont mis en évidence les domaines de progrès, les réussites et les difficultés associées à la circulation, à la résidence et aux droits d'établissement. On ne sait pas très



bien, cependant, comment les différents aspects du protocole ont un impact différent sur les divers groupes de migrants de la CEDEAO. Cette situation a engendré l'impression que le Protocole de la CEDEAO sur la libre circulation a des implications homogènes pour tous les migrants de la CEDEAO. En s'appuyant sur une recherche documentaire complétée par une analyse critique des documents politiques et des données/dossiers administratifs et par 23 entretiens approfondis menés avec différents ressortissants de la CEDEAO vivant et travaillant dans différents secteurs au Ghana ainsi qu'avec des responsables de l'immigration et un représentant syndical, ce document examine la diversité des expériences des migrants de la CEDEAO par rapport au Protocole sur la libre circulation. Les résultats indiquent que les expériences des ressortissants de la CEDEAO dans des domaines tels que la sensibilisation et la connaissance des dispositions du Protocole, le franchissement des frontières, les processus d'acquisition de permis de séjour et de travail et de renouvellement des permis, ainsi que les droits d'établissement, diffèrent remarquablement selon les dimensions de la différence sociale. Si le Protocole sur la libre circulation a permis aux citoyens de la CEDEAO de bénéficier des opportunités offertes par les pays membres et d'une intégration régionale renforcée, un certain nombre de défis restent à relever. Par-dessus tout, les expériences des migrants de la CEDEAO en ce qui concerne le Protocole ne sont pas les mêmes pour tous. Des questions telles que l'âge, le sexe, la classe sociale et la nationalité, entre autres, sont fondamentales et façonnent les expériences des migrants de la CEDEAO de manière divergente. En guise de conclusion, l'Étude fait des propositions ciblées pour la promotion de la migration intrarégionale tout en abordant la diversité des expériences des migrants de la CEDEAO.

Mots-clés: CEDEAO; libre circulation; diversité; franchissement des frontières; migration; classe sociale; genre

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### **Introduction**

West Africa has historically served as an economic base within which trade in goods and services naturally takes place (Adepoju 2015). Migration within the region is seen as an integral part of livelihoods and a way of life and dates back to the pre-colonial era. Movement across generations in the region has been in response to political, cultural, demographic and socio-economic factors (Agyei and Clotey 2007). Narratives within the media and popular discourses on contemporary mobility flows in the West African context tend to create the notion that there is a mass exodus of people from West Africa to countries in the Global North, particularly Europe. According to data from the PEW Research Center, there has been an upsurge in the amount of sub-Saharan migration to Europe and the United States in the past few years. However, reliable data shows that much of the cross-border movement – encompassing farm labourers, traders and skilled workers, who are less in tune with what they see as arbitrary boundaries – has been essentially intra-regional (Adepoju 2015). Data indicates that, in 2006, 84% of migration from West African countries was directed towards another West African country (OECD/SWAC 2008; Awumbila et al.



2014). More recent data provided by UNDESA shows that 71.8% of migrants from the West African region migrate to destinations within the region (UNDESA 2018).

Although all countries in the sub-region serve as points of origin and destination for migrants, the wealthier economies along the coast, including Ghana, Côte d'Ivoire and Nigeria, are the dominant migrant destination countries. In contrast, countries in the Sahel zone, such as Niger, Mali and Burkina Faso, serve as countries of origin. Movement within and, in particular, to preferred destinations are shaped by factors such as common official language, proximity, ethnic ties and colonial legacy (Adepoju 2005; Awumbila et al. 2018). As a way of mitigating the disruptive effects of arbitrary boundary formation created by colonial administrations, and realizing the potential and actual contributions of intraregional mobility, the Economic Community of West African States (ECOWAS) Protocol on Free Movement of Persons, Right of Residence and Establishment was established in 1979 (Protocol A/P.1/5/79). Following this, a number of supplementary protocols and regulations geared towards facilitating flow of goods, services and labour within the ECOWAS region have been formulated (Awumbila et al. 2018; Teye et al. 2015). At its core, the Protocol was projected as an overarching framework for institutionalizing a single regional socio-economic space that could allow ECOWAS citizens to benefit from opportunities in member countries, including access to coastal areas by landlocked member states, utilization of arable land by indigenous agriculturalists, employment of English and French language experts, and unrestricted access to natural resources by member states (Adeniran 2012). The Protocol aimed at removing barriers and obstacles to free movement and promoting intra-regional and regional integration (Awumbila et al. 2018; Okunade and Ogunnubi 2018). Certainly, the literature is replete with an avalanche of studies on the ECOWAS Protocol, its operationalization, and implementation challenges (see Adepoju 2015; Adepoju et al. 2010; Awumbila et al. 2018; Clark 2013; Okunade and Ogunnubi 2018; Teye et al. 2015). Studies have drawn attention to the peculiar difficulties that ECOWAS citizens face when crossing borders, indicative of a disjuncture between the Protocol's objectives and migrant experiences on the ground (Adepoju 2002; Okunade and Ogunnubi 2018).

In these studies, ECOWAS migrants have been treated as though they were a homogenous group. Thus, relatively little attention has been paid to how the Protocol impacts differently on different groups of ECOWAS migrants, creating the impression that the Protocol on Free Movement has the same implication for all ECOWAS migrants. The ECOWAS Protocols identify categories of migrants within the sub-region including migrant workers and their family members, students, traders, border area workers, seasonal workers and itinerant workers, all of whom may be differentiated by class, gender, age, nationality and socio-economic status. These dimensions of social difference, we argue, are key to shaping migration experiences and outcomes for diverse categories of people (Bonjour and Chauvin 2018). Drawing on desk-based research and data from in-depth interviews conducted in April 2019, this paper aims to contribute to the literature on free movement



in the ECOWAS region by examining the diverse ways in which different categories of ECOWAS citizens experience the Free Movement Protocol. An analysis of the diverse implications of the Protocol on different categories of migrants in the sub-region should provide valuable policy insights for the development of targeted initiatives to address the unique experiences of ECOWAS nationals based on dimensions of social difference. We argue that ECOWAS migrants are not a homogeneous group and that different groups of ECOWAS citizens experience the Protocol in dissimilar ways based on their gender and social class.

The paper begins by engaging in some conceptual and theoretical issues, firstly by engaging with some theoretical debates on regional integration, issues of nation-state interests against regional integration initiatives and ambiguity and autonomy in policy-making, as well as the factors that may help explain differences in experiences of migrants. This will be followed by our methodological approach. The focus then turns to a discussion of the ECOWAS Free Movement Protocol and the supplementary protocols and regulations. This section will also bring to light the achievements and incompatibilities or contradictions between national laws and the Protocol as part of the factors inhibiting the successful implementation of the Free Movement Protocol. Specific examples will be drawn from Ghana and Nigeria, which are countries within the sub-region. Drawing on our field research and existing data, the next part will provide a more nuanced analysis of daily lived experiences of ECOWAS migrants. The section will provide evidence to show that there is diversity in the ways different categories of ECOWAS migrants experience the Free Movement Protocol. The last part concludes with some reflections and implications of our work for policy.

### **Theoretical Perspectives on Regional Integration in West Africa**

Much of the discussion on regionalism as a domain for migration governance stems from state-led purposeful action, an outcome of migration flows and mobilization from non-state actors. From a migration governance perspective, Lavenex and Piper (2019) define regionalism as ‘encompassing perspective to address both intergovernmental migration from above, that is, through the action of states in more or less formalized institutional settings, and societal migration from below, that is through the activities of private actors with state actors’ (p.15). From this perspective, intraregional migration flows set the context for the proliferation of declarations, processes and regional treaties. Theories of regional integration have gone through a number of changes, moving from a comparative focus on different parts of the world to a single focus— for example European Union (EU) as the model for regional integration. While three dominant theories of regional integration (i.e. intergovernmentalism, neofunctionalism and post-functionalism) have emerged, for the purposes of this paper we will elaborate on neofunctionalism (Schimmelfennig 2018).

Neofunctionalism sees regional integration as largely driven by social segments with an interest in cross-border activities. These may be firms and transnational businesspersons.



Such social segments usually wield enormous influence in society, enabling them to affect the direction of state policy. While regional integration is set in motion by this influential social segment, its continued existence depends on the international or multilateral institutions that are created to administer integration. The institutions come to depend on the continuation of the integration for their own existence. Over time, the ideas, values, norms and outlooks that govern the region shape the self-definition and notion of belonging that ordinary citizens of the member states of such a union may come to possess (Jiboku 2015). An example here would be the Euro enthusiasts who have come to define themselves as European largely in tandem with the consolidation of the European Union. For neo-functionalists, economic interests of dominant sections of society drive regionalism, which later entrenches itself by acquiring cultural and political dimensions that sustain it (Jiboku 2015).

When regional integration is set in motion by the interests of influential segments of society as posited by neo-functionalists, others are likely to experience a downward spiral in their situation as a result of the processes and outcomes of integration. This may be due to the movement of 'competitive' labour from member states of the regional body, a loss of sovereignty, and a sense of loss of national culture and sovereignty. Such feelings of having lost out could lead to sentiments opposed to integration. Campaigns and political parties may emerge, calling for a return to the pre-integration era in the hope that sovereignty, unique national identity and self-determination will be restored (Jiboku 2015). Brexit is a case in point. An economic and political backlash defines regionalism under this understanding.

The predominant assumption in the literature is that regional integration attempts in Africa mirror European models. While there is some basis for this position if one concentrates solely on recent attempts at regional integration, the historical antecedents of regionalism in Africa are largely driven by local realities and aspirations. Regional integration in Africa has to be thought of alongside a number of situated factors: political unity as a prelude to socio-economic development, the need to harmonize, expand and collectively leverage larger markets, historical human, ideational and trade links, expanding educational attainment and outcomes, and encouraging closer cultural ties. Against the foregoing, regional integration in West Africa can be conceived of as an attempt to implement a continental aspiration at a sub-regional level. Accordingly, the promotion of the free movement and settlement of persons, the free movement of goods, and access to services across the sub-region is an instance of an attempt to ensure continental unity on the African continent.

There was, in the 1950s and 1960s, an important debate about the creation of a continental African union government in order to gain leverage on the market, create a continental federation and strengthen the bargaining power of Africa on the world stage (Nkrumah 1963). The counter-proposal was that continental unity should begin via the creation of regional blocs to serve as a basis for eventual continental unity. Key in the



debates about the creation of a continental body or a regional political and economic bloc was the right of people to move across the continent as citizens of a unified political entity – continentally or sub-regionally (Nkrumah, 1963). While each time period is mediated by a specific set of factors that are products of the existing political arrangements, regional integration in Africa is a historical politico-economic project dating back to the immediate independence period (Shivji 2008). In West Africa, and before ECOWAS, there was the attempt to create a union called the Ghana-Guinea-Mali union with a common citizenship, close economic collaboration and common position on international affairs. The 1960s saw the creation of the Economic Union for West Africa between Liberia, Côte d'Ivoire, Guinea and Sierra Leone. There also existed the Ghana-Guinea-Mali Union of African States, formed in 1958.

An intractable issue in the promotion of regional integration in Africa is migration (Davids, 2019). The Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment was adopted on 29 January 2018. To date, more than half of the 54-member states of the African Union have signed up to it, but only one country, Rwanda has ratified it. This inertia on the part of African states is due to a desire to keep out Africans in the belief that the migration of working-class Africans will weaken their economies and swamp their societies.

Such class-based migration regimes inform the immigration policies of many states on the continent. Using European Union member states as examples of best practice, African states erect tremendous barriers to the mobility of Africans within the sub-region, even in instances where protocols exist to facilitate such movements. The South African state, for example, issued a white paper on international migration in 2016. In some cases, the white paper identified and encouraged intra-African mobility. In others, it undermined the obligations of the South African state to the Protocol on the Facilitation of Movement of Persons within the Southern African Development Community. While the right to entry is often upheld, the provision on establishment and permits is at the discretion of state officials (Government of South Africa 2017).

While efforts to integrate West African countries are not new, national policies continue to act as impediments to successful regional integration (Badiane 1996). This is manifested in the form of disjuncture between national development initiatives and regional economic aspirations and commitments, and further complicated by the transaction costs involved in activities across ECOWAS member states, such as the cost of transportation and money transfer, and issues of non-harmonized taxation. In the case of free movement, the continual contradiction between national policies and the tenets of the Free Movement Protocol relating to admission of persons, right to engage in certain areas of the economy and processes for acquiring residency creates a structural impediment to free movement. For free movement, as envisaged in the Protocol on Free Movement, does not end with the act of admittance into a member state; it recognizes the need to make a livelihood in the place of settlement, as well as the requirement of space for social mobility.



## Conceptualizing Differences in Mobility and Working Experiences of Different ECOWAS Migrants

We explain why and how experiences of different ECOWAS migrants vary even at the same borders and within the same country in terms of three factors, namely (1) selective migration policies of ECOWAS countries, (2) differential attitudes of nationals of host countries and border officials towards different categories of migrants and (3) differences in the socio-demographic characteristics and agency of migrants.

While earlier researchers have explained contradictions between the ECOWAS Free Movement Protocol and domestic migration governance instruments in terms of the desire of ECOWAS governments to preserve certain employment opportunities for their nationals exclusively (see Awumbila et al. 2014; Teye et al. 2015), a careful analysis shows that most of the national migration management instruments that contradict the Free Movement Protocol indirectly seek to limit the flow of low-skilled migrants, in particular, to the various ECOWAS countries. For instance, in Ghana and Sierra Leone, the local laws are intended to restrict migration for certain categories of low-skilled jobs (e.g. petty trading, barbering) which are usually undertaken by poor migrants (Awumbila et al. 2018). Recognizing the fact that the restrictive national policies do not only discriminate against all citizens of ECOWAS member states in general, but seek to prevent the inflow of low-skilled immigrants, we draw on the selective migration policy literature (see Borjas 2014; Koslowski 2013) to explain the contradictions between ECOWAS free movement protocols and national policies.

Selective migration policies have emerged as a result of the desire of destination countries not only to control the number of immigrants, but also to ensure that they receive migrants who will contribute to socio-economic development (Aydemir 2011). Consequently, a number of countries are moving towards immigration policies that screen potential immigrants on the basis of certain socio-demographic characteristics such as level of education, wealth, and language proficiency; admission into the destination country is only granted to migrants whose characteristics are deemed desirable by the recipient countries (Borjas 2014). Selective migration policies can be applied explicitly through visa and work permit regimes or implicitly through enforcement of laws (Bianchi 2013).

Koslowski (2013) has identified three models of selective migration policies. First is the 'human capital' model in which the state selects permanent immigrants using a point system. The Canadian selective migration policy, which has been in existence since 1967 and uses a point system for sorting applicants according to age, language proficiency, education, and skills (Green and Green 1999), is an example of this model. The second model is also based on state selection using a point system but with extensive business and labour participation. An example is the Australian 'neo-corporatist' model which differentiates admission of permanent immigrants into three categories: family, humanitarian and skill-stream applicants who, since 1973, have been selected by a point system. Australia's skilled migration system is open to people who have skills in particular occupations in demand within the country, meet English language requirements and are aged under 50 years. Third is the market-oriented, demand-driven model, which is based primarily on employer selection of migrants, as practiced by the United States of America. While some aspects of



US immigration law have long encouraged both temporary and permanent high-skilled migration, potential immigrants are increasingly required to receive a job offer from an employer, who practically selects individual migrants based on their qualifications and other characteristics (Tichenor 2012). While the early literature on selective migration policies tend to focus on developed countries (see Borjas 2014; Koslowski 2013), we have argued that many of the ECOWAS countries have implicit state-controlled 'human capital' selective migration instruments which seek to promote the migration of highly-skilled professionals and entrepreneurs under the Free Movement Protocol, while at the same time restricting the free movement of low-skilled ECOWAS citizens who are deemed to be in competition with nationals and/or a burden to the recipient countries. We will demonstrate in this paper how such selective models have contributed to contradictions between the ECOWAS Protocol and the legislative framework for governing migration in Ghana, Nigeria and Sierra Leone.

In addition to selective migration policies, we assume that differential attitudes of nationals and policy implementers of ECOWAS countries towards diverse categories of migrants also contribute to variances in the experiences of immigrants from disparate backgrounds. Based on insights from the literature (see Auer and Ruiden 2019), we predict that most nationals and border officials will have more positive attitudes towards migrants from high social backgrounds than those from poor social backgrounds. Consequently, in West African countries, discrimination against migrants from poor backgrounds will be higher than discrimination against immigrants from wealthy backgrounds. The attitudes of both nationals and immigration officials towards migrants will also be affected by several variables such as their gender, religion, ethnicity and country of origin.

Lastly, we also argue that the social differentiation along class or gender influences experiences with work, migrancy and space (Ye et al. 2018). Class standing and gender will make the experience of a free movement regime markedly different for one person from another. The form of transportation and social standing – both products and exemplars of social differentiation–enable some to easily access the right to movement and make it difficult or impossible for others.

## **Methodology**

This paper employs a desk-based research design complemented by a critical literature review of policy documents and data/administrative records, and field research carried out with ECOWAS migrants in Ghana and border officials at the Ghana-Togo border. The paper began with a review of policy documents, published journal articles and books, reports, and other relevant documents on the ECOWAS Free Movement Protocol and intra-regional mobility. The aim of the review was to identify good practices and challenges associated with the implementation of the Protocol, bringing to light areas which either contravene or support the stated objectives of the ECOWAS Protocol.

Our review of the policy documents and research literature on the Free Movement Protocol is complemented by field observations along the Ghana-Togo border, enriched by 23 in-depth interviews with ECOWAS migrants. In addition, data from previous studies and



recent data collection during the field observations were used to fill in the gaps from the literature review. In-depth interviews were held with a trade union representative and Ghanaian immigration officials at the Aflao border. The migrants we interviewed comprised 11 professionals, six traders, five university students and a driver. Their nationalities include Nigeria, Benin, Côte d'Ivoire, Niger, Ghana, and Sierra Leone. The interviews were used to map the perspective of the respondents concerning the ways in which aspects of the Free Movement Protocol impacted differently on different categories of migrants. The data collected covered the basic socio-demographic characteristics of the respondents, their awareness and knowledge of the Free Movement Protocol, experiences with border crossing, processes of acquiring work/resident permits, and experiences with discrimination while living in another ECOWAS country.

The data and information gathered were systematically analysed to identify contradictions between the stated objectives of the Free Movement Protocol and existing national laws and, more importantly, the experiences of different groups of ECOWAS migrants in the sub-region vis-à-vis aspects of the Protocol. All names used throughout the manuscript are fictitious and do not represent the real identity of the participants.

### **Implementation of Free Movement Protocol**

In 1975, the ECOWAS Treaty established the economic community (the 'Community') based on the realized need by the founding fathers to improve the welfare and development of the Community's citizens through economic integration. The Treaty noted that economic development could be achieved through two key objectives, namely the free movement of goods and services within the region, and the free movement of persons likewise. Therefore, free movement of persons within the region has been one of the foundational pillars of ECOWAS. In furtherance of the commitments under the Treaty, the Protocol relating to the Free Entry, Right of Residence and Establishment was adopted in 1979 and the supplementary Protocols afterwards in 1985, 1986, 1989 and 1990. The Protocols established the phased approach for the implementation of free movement in the region. The first phase commenced with the abolition of visas for all Community citizens. This provided all Community citizens with 90 days' visa-free access to another country within the Community. The second and third phases, i.e. the rights to residence and establishment, were also guaranteed by the Protocols. The protocols enjoin member states to grant the right of residence to Community citizens stating the reference to compliance with established national procedures in carrying out these practices (Article 4 Protocol A/P/3/5/82 Relating to the Definition of Community Citizen). The Protocols also require members to ensure that migrant workers enjoy the same treatment as nationals in terms of access to socio-cultural and health facilities and security of employment (ECOWAS Community 1982).

The right of establishment, which marks the third phase of the free movement implementation, grants the Community's citizens the right to settle in another country and



have access to economic activities and to set up and manage enterprises, as defined by the legislation of the host member state for its own nationals. Furthermore, in 2008, the ECOWAS member states adopted the ECOWAS Common Approach on Migration in order to address the challenges in the implementation of the Free Movement Protocols. The topics addressed in the Common Approach were identified based on the realities of free movement in the region. The document draws the link between migration and development and the potential benefits for member states. The Common Approach provides guidelines to member states on effective migration management based on six principles: free movement of persons within the ECOWAS zone; promoting legal (regular) migration as an integral part of the development process; combating human trafficking; policy harmonization; protection of the rights of migrants, asylum seekers and refugees; and recognition of the gender dimensions of migration. In addition, the ECOWAS Commission also passed the regulation adopting the common ECOWAS passport, which is being implemented by 14 out of 15 ECOWAS states. In 2000, the ECOWAS Authority of Heads of State and Government adopted, at its meeting in Abuja, a uniform ECOWAS passport, modelled 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 (ECOWAS 2000a, cited in Adepaju et al. 2010:6).

As noted earlier, the Protocol identifies different categories of migrants with different needs. States are encouraged not to discriminate in their laws against migrant workers; in cases of expulsion, the Protocols stipulate the procedures to be followed for migrant workers, and the migrant worker is obliged to follow the national regulations of the state. In the case of border area workers, national authorities are enjoined to use simplified procedures that enable them to move freely from their country of residence to their place of employment. Similarly, for seasonal workers such as agricultural workers who are required during harvest periods, member states are to ensure their flexible passage during their period of activity. Itinerant workers are migrant workers who, though normally resident in one-member state, may have to travel to another member state for a short period for the requirements of their activities (ECOWAS Community 1982).

Examining the level of progress by ECOWAS states in the implementation of the Free Movement Protocols based on the various phases reveals mixed results. With regards to the Phase One objective of visa-free entry, all member states have granted visa-free access of 90 days to Community citizens, although this has been fraught with challenges, especially with reports of harassment at border crossings (Awumbila et al. 2014). The free movement of persons in the region has yielded great economic benefits in terms of boosting intra-regional trade and supporting the livelihood of Community citizens (Awumbila et al. 2018). However, there are several challenges when it comes to the implementation of Phase Two and Phase Three by the member states. Studies have highlighted the different challenges in the implementation of the right of residence and establishment in ECOWAS member



states (Adeniran 2012; Adepoju 2002, 2015; Clark 2013; Dick and Schraven 2018; Opanike et al. 2016; Teye et al. 2015). Dick and Schraven (2018) noted that Phase Three of the ECOWAS Protocols is yet to be implemented by ECOWAS member states because of the lack of coherence between the member state national laws and the ECOWAS Protocols. Assessing the state of implementation of the regional protocols by the ECOWAS member states, Awumbila et al. (2014) note that while all ECOWAS member states have ratified the 1979 Protocol, the supplementary protocols have been ratified by only four out of the 15-member states, and this leaves room for varied interpretation of the Protocols by the national authorities.

Based on the examination of three broad categories of the Protocol, the introduction of harmonized immigration procedures and the establishment of monitoring mechanisms, ECOWAS member states have fared variedly in the implementation of the ECOWAS Protocols. While the right to a visa-free entry has been established in all countries, access to and recognition of travel documents are yet to be implemented harmoniously by all member states. Also, the procedures regarding immigration and emigration have not been fully harmonized and thus data collection mechanisms are also not harmonized. Monitoring the implementation of the Protocol and the status of free movement of persons in the region has also not been implemented by all member states. As at 2018, only 55% of the member states had established a national committee for monitoring the free movement of persons and goods (Adepoju et al. 2010; Awumbila et al. 2014; Butu 2013; Sule 2018).

### **An Assessment of contradictions between the Free Movement Protocol and national laws in Ghana, Sierra Leone and Nigeria**

As noted elsewhere, most of the contradictions between national-level legislative instruments and the Free Movement Protocols are in the area of right of residence and right of establishment which are stated under Articles 2 and 4:

**Article 2:** *For the purpose of implementing the second phase (right of 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 4:** *The provisions of Article 3 above shall not be applicable to employment in the civil service of Member States, unless the relevant national laws and regulations of the Host Member States so permit. (Protocol A/P/3/5/82 Relating to the Definition of Community Citizen)*

Restrictions and conditions for entry have been removed for ECOWAS citizens with visa-free entry. However, conditions still exist on stay, especially with regards to employment. Non-



nationals are precluded from working in the civil service (Ghana, Nigeria). They are also not allowed to join the Judiciary either as judges or magistrates. Non-nationals are precluded from joining the army, acting as auctioneers or even, in some cases, engaging in teaching and scientific research in specific fields (Ba and Fall 2006).

While it is clear that contradictions exist between the national laws and the regional protocols (Ba and Fall 2006), the national laws are signed by the political class. This same group is responsible for agreeing on regional protocols and regulations. Therefore, there is ambiguity in the position of the political class which in turn reflects on the national position of countries in implementing the regional provisions to which they are committed. Specific examples are drawn from the Nigerian and Ghanaian context to further illustrate how different social classes of migrants experience the Protocol. The policies under review will focus on the contradictions with Phase Two and Three of the free movement agenda. Relating to the right of establishment and residence, the paper further examines the following specific areas: conditions for obtaining a work permit and for establishing a business in the selected member states. Relating to the right of residence, it examines the conditions for access to social services, including education and social benefits like welfare, in another ECOWAS member state. This is in line with the study done by Ba and Fall (2006) which reviewed key aspects of the national legislation – labour, social security, entry and stay criteria.

### **Phase Two: Right of Residence - Access to work permits, employment and social services.**

To exemplify the contradictions in implementing the right of residence, we review the access to social services and the process of obtaining work permits. In principle, all ECOWAS citizens and migrant workers are entitled to all the same benefits as national workers (Ba and Fall 2006). These include social benefits such as pensions. The costs of transferring pensions are borne by the institution making the payment. In Nigeria, the Immigration Act 2015, section 36 precludes any person other than a Nigerian citizen from accepting employment or establishing a business without the consent in writing of the Minister of Interior.

*(1) No person other than a citizen of Nigeria shall—*

- *accept employment (not being employment with the Federal, State or Local Governments) without the consent in writing of the Comptroller General of Immigration; or*
- *on his own account or in partnership with any other person, practice a profession or establish or take over any trade or business whatsoever or register or take over any company with limited liability for any such purpose, without the consent in writing of the Minister given on such by or on behalf of such persons, as the Minister may prescribe.*



*(2) Any person desirous of entering Nigeria for any of the purposes in subsection (1) of this Section, shall produce the consent of the Comptroller-General of Immigration to an Immigration officer: and the failure to so shall be an offence, and any person who commits such an offence shall be liable on conviction to a fine of one million Naira or deportation or both as a prohibited Immigrant. (Section 36, Nigerian Immigration Act 2015)*

The Act does not include any exemption or derogation for citizens of ECOWAS member states. The Pension Reform Act, 2014, governs and regulates the administration of the uniform contributory pension scheme for both the public and private sectors in Nigeria. The law, amongst other things, establishes a contributory pension scheme. It lays out the provisions on the rate of contribution, exemptions, and management of the scheme, and deals with the authorisation and regulation of Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs). Any employer that intends to employ a foreign national must obtain an expatriate quota approval from the Federal Ministry of the Interior. This approval permits a company to employ non-Nigerians for specifically approved job designations for a specified duration, usually two years in the first instance. In relation to nationals of ECOWAS member states who are entitled to reside and work in Nigeria, an employer can require the employee to provide his or her ECOWAS card or international ECOWAS passport. The employer will require either document to apply for an ECOWAS residence card, which enables the employee to live and work in Nigeria. In this case, practice clearly shows a difference in treatment between ECOWAS nationals and other nationals working in Nigeria. However, the fact that the employer needs to apply for a residence card for ECOWAS citizens is an implicit barrier which can make employers reluctant to employ non-Nigerians, except in situations where the services of the migrant are highly necessary. In practice, therefore, this provision favours only highly-skilled professionals. Employers in Nigeria will not go the extra mile to apply for residence cards for low-skilled migrants. Furthermore, the practice will mean that only ECOWAS professionals (e.g. professors, engineers) who get employment will be able to apply for residence permits. Low-skilled migrants who move in search of jobs will find it difficult to get residence permits. The system is an implicitly selective immigration policy (Koslowski 2013) where the state has put in place a residence permit regime that makes it difficult for low-skilled migrants, in particular, to obtain them.

Similar to the Nigerian situation, ECOWAS nationals living in Ghana and Sierra Leone are required to obtain work and residence permits. This is in line with the provisions of the Protocols; however, there are no specific exemptions for ECOWAS nationals. In both Sierra Leone and Ghana, ECOWAS nationals are only expected to be issued work permits in situations where there is no national available for the same job (Awumbila et al. 2018). This provision is another case of implicitly selective migration policy which is intended to ensure that low-skilled migrants do not get residence and work permits to enable them to compete



with nationals. Indeed, research has indicated that low-skilled ECOWAS migrants in Ghana and Sierra Leone do not have formal residence and work permits because their applications would be denied due to the difficulty in proving that there are no nationals available to do the work they are applying for (Teye and Asima 2017). Thus, while the Protocol grants the same rights to all ECOWAS citizens, low-skilled migrants are unable to benefit from these rights because of selective state policies. In contrast, top-tier professionals such as engineers and doctors are able to get work permits. ECOWAS students are also able to get residence visas as highlighted in the statement below:

*There are different classes of residence permits. For students, you need to show evidence of schooling. An admission letter from the school, letter of introduction from the school, evidence of fees paid, fill out the requisite forms and a valid passport. You will be required to pay GHC 200 processing fee subject to a yearly renewal. Residence permits are granted if one is married to a Ghanaian national. Need to show evidence of marriage, processing fee is also required. Renewal is the same process. Other permits are dependent permit, work permit, quota permit. (Ghana Immigration Service Official – Aflao Border)*

### **Phase Three: Right of Establishment - Conditions for establishing a business**

The Protocol encourages Member States to ensure that Community citizens are granted reciprocal and equal rights as nationals in order to establish a business in the host country. In Nigeria, the Companies and Allied Matters Act, 1990 governs the registration of businesses; the government agency in charge of company registration is the Corporate Affairs Commission (CAC). Nigerian citizens can register any company with any threshold of authorized share capital as long as it is above N5,000,000 (five million Naira), but a foreigner or foreign company registering a company in Nigeria must have a minimum of N10,000,000 (10 million Naira) authorized share capital. However, it is a general requirement of law that every new company in Nigeria must have a minimum of two directors and two shareholders. A foreign entity registering in Nigeria without the requisite two people to act as directors may appoint a Nigerian citizen as nominee director(s) in order to meet statutory requirements, among other purposes. In addition, companies registered by foreigners are required to be registered with the National Investment Promotion Commission. There is no exemption for ECOWAS nationals in these requirements, but the threshold set for foreign businesses is much higher than regional businesses can afford.

In Ghana, the guidelines and conditions for establishing a business are targeting investments from outside the region, based on the volume of capital required. There are restrictions against foreign nationals operating certain businesses. The Ghana Investment Promotion Council (GIPC) is responsible for registering all enterprises in Ghana and implementing the Ghana Investment Promotion Centre Act, 2013 (Act 865). The GIPC, in its registration procedures, differentiates between wholly-owned Ghanaian businesses and



foreign-owned businesses. Whereas the former have no minimum capital requirement, foreign-owned businesses which have part Ghanaian ownership through a joint venture must have 200,000 USD foreign equity; wholly foreign-owned businesses must have 500,000USD foreign equity and a trading company, 1,000,000 USD (GIPC website).

Additionally, Ghana's Act 865 does not allow migrants to engage in jobs that are preserved for low-income people, and these include petty trading, operation of taxis, beauty salons or barber shops, production of exercise books, supply of retail sachet water and retail of finished pharmaceutical products. In the application of these laws there is no clear distinction between ECOWAS nationals and Ghanaian nationals. All other nationals are considered foreigners, with no exclusion for ECOWAS nationals, and this usually brings them in conflict with the ECOWAS regulations. Indeed, many businesses run by ECOWAS nationals are not able to come up with the minimum equity requirements as demanded by the law. One can argue again that these instruments are also selective in that ECOWAS citizens with large amounts of capital to invest can easily get permits while those of lesser means who wish to engage in low-income economic activities are not legally allowed to establish such ventures. Based on an understanding of the Free Movement Protocol, it could be argued that no specific reference is required in the national legislation for ECOWAS citizens and that a direct reading of the word "national" also incorporates ECOWAS citizens as nationals. However, this is not the case in practice.

Interviews with authorities reveal the disconnect between the ECOWAS and national regulations. Sometimes, there is a common understanding, for example, where the regulations state that ECOWAS migrants should be subjected to the national regulations. Relating to the Protocol grants of the right of entry, residence and establishment, an officer of the Ghana Immigration Service (GIS) told us: *'To a large extent I don't know whether this is misunderstood. You think that you can come and decide to reside without going through the laid-down procedures for residency and work permits.'* (Officer, GIS, Aflao Border, 4 April 2019).

Other times, there is a clear reflection of the conflicting policy views which leave room for interpretation by the implementing authorities. Relating to the challenges vis-à-vis the Protocol and the national laws, a GIS officer noted, *'Maybe it's our own interpretation of it [the laws]/ (the Protocols). That is what the Protocol is saying about the right of establishment. I don't know what they mean by that. You can do it [establish a business] with a certain amount of capital and within a designated place'* (Officer, GIS, Aflao Border, 4 April 2019).

### **Lived realities of ECOWAS migrants in relation to the Free Movement Protocol**

This section of the paper provides the findings on the lived realities of ECOWAS nationals in relation to the ECOWAS Protocol on Free Movement, Residence and Establishment. The analysis is structured to show how different ECOWAS citizens experience the Free



Movement Protocols differently. In particular, we highlight the diversity of experiences based on social class and gender.

### **Knowledge of the Protocol and Migrants Rights**

The extant literature identifies poor knowledge or awareness of the ECOWAS Protocol as a major challenge to its successful implementation (Adeniran 2012; Clark 2013; Opanike et al. 2016). However, and as noted earlier, such studies tend to assume and characterize ECOWAS nationals as though they were a homogenous group. Our study finds marked differences in the extent of knowledge of the Protocol among different social groups and even within similar social classes. For instance, the first phase of the ECOWAS Protocol grants rights to nationals of member states to move on a visa-free basis for 90 days. The enjoyment of this right, however, depends on how much the individual know about the Protocol as they traverse national borders within the sub-region. This awareness or lack thereof could be framed through the lens of the characteristic of the migrant. Our data suggests that, although knowledge of the Protocol is generally weak in all the countries, highly-educated people are more likely to know of its existence and of their rights under it. A little over half of all participants in our in-depth interviews claim to be aware of the existence of the Protocol. Nonetheless, the better-educated professionals tend to be more aware of the existence and privileges inherent in the Protocol as compared to less-educated traders and persons seeking to work in the informal sector. However, even among the knowledgeable segment of participants, the degree of knowledge is variable. The majority have basic knowledge without an in-depth appreciation for the rights and obligations embedded in the three phases of the Protocol (i.e. free movement, right of residence and right of establishment). A female Nigerian student studying at the University of Ghana says:

*No. I basically read about them [Protocols] in books and I read what I relatively know about them when I had tests in school. But I never knew what they were about. I just knew West African states had the community or something (A Nigerian female student in Ghana, 4 April 2019).*

Similar to the superficial knowledge of the female student, some highly-educated professionals did not have any knowledge of the Protocol. A Nigerian medical doctor who travelled to Ghana for the first time stated that he had no idea that he did not need a visa to travel to Ghana. He was pleasantly surprised to learn about this right during his maiden trip, and now considers exploring employment opportunities in Ghana. He notes:

*Yeah, I think the awareness is not all that there. To be honest with you, I didn't know I wouldn't need a visa to come to Ghana. I didn't know. We were having back and forth conversation about when I will come to Ghana and I was talking to one of my colleagues who was in Nigeria, he is a Ghanaian, he was now telling me that you don't need a visa to go to Ghana. He said it is when you stay in the country for a particular number of days that's when you will*



*be asked to apply. That is when I quickly decided to come down to Ghana. So, I came in November and left in December and I came back in January (A Nigerian medical doctor, 4 April 2019).*

What is abundantly clear is that highly-educated people who did not know much about the workings of the Protocol were aware about their rights and could challenge border officials trying to harass them. Ibitu, a 32-year-old Ghanaian-based businessman who had experienced harassment at the Aflao border, reported that he did not know much about the details of the Protocol but he knew that immigration officials could not ask him to pay them money when crossing the border. He noted that they were once stopped on the Aflao border and asked to pay, but he refused and argued with them on his rights.

*They stopped all of us and demanded that we make payment. I asked them why do we have to make payment and before they would answer some people began to pay. I told them as ECOWAS citizens we don't need to pay and one of the officers asked me which of the ECOWAS laws say that. You know I don't know much about these laws because I am not a lawyer. So, I told him I don't know but I know my rights that I am not supposed to pay. They let everyone go and kept me. I argued with them for some minutes and when they realized I knew my rights they allowed me to go (A 32-year-old Nigerian businessman, 4 April 2019).*

In contrast to the situation of Ibitu, Arama, a 29-year-old Ghanaian woman who crosses the border between Ghana and Nigeria to visit her husband does not know much about the Protocol or her rights. She recounted several instances where she was asked to make unofficial payments at the Ghana-Nigeria border. When asked why she kept paying, she said she thought such payments were required on entry to another country.

*The border people do not listen to anything. It is only the money they want and if you don't give them enough money they will worry you. ... If I am in Ghana, nobody can ask me to pay money for going to another town, but once I leave Ghana I know they [border officials] can ask for money because it is their land and they can ask you to pay. So as for me I don't argue with them and my husband tells me to always pay or beg them if they ask for more money (A 29-year-old Ghanaian woman, 4 April 2019).*

Arama's low level of knowledge of both the Protocol and her rights may be a product of her low level of education. Her highest qualification is Junior High School and she can barely speak good English. Apart from not knowing of her rights, she also noted that border officials do not respect her because her English is poor.

In contrast to the low level of knowledge by many people, especially low-class persons, highly-educated people tend to know more about the Protocol. A senior manager



at an oil sector company is very knowledgeable of not only the existence but also the provisions of the Protocol. Uche is 46-years and has a postgraduate degree. He works for a Nigerian-based oil company that has subsidiaries in Ghana. The Ghana-based company relies on both local and foreign staff, who tend to be more experienced than the local counterparts. As a senior manager, Uche is expected to train a Ghanaian worker well enough to be able to replace Uche within two years. As a high-profile company, Uche says his company is very careful in the hiring processes in order not to breach the laws of any country they work in. As such, workers are recruited on the basis of their being mindful to obey all local laws. Uche recounts in detail what the ECOWAS Protocol entails:

*Sure, I'm quite aware of that Protocol. We have it among the ECOWAS member states. I think particularly it talks about free movement, visa ... that particular protocol talks about the entry, free movement, the establishment and residency. These are the three big areas that article talked about. If you ... that article very well, you will see that if you are a citizen of the member state, you are entitled to come into any of the member states to reside, to establish yourself, possibly get a permanent job in which you really want to work for a maximum period of 90 days. If it is beyond 90 days, you would have to write to the authorities like the immigration of that country and get those things validated. That article does not exclude you from having important documents for traveling like your international passport. That doesn't support you jumping into each member state the way you like, there must be a valid document. That is what basically the article talks about which is different from other practical experiences. Yes, the article clearly states that if you are a citizen of a member state and you want to work or reside then you have to apply for a resident permit in that particular country. One primary thing that will not make anybody to harass you is the fact that you are a citizen of an ECOWAS member state and that if you are still within that 90 days window, the immigration does not have any right to challenge you. Yeah, again if you look at the provisions of that Protocol, it says that given all these things that you have said you can do for citizens of member states, the receiving country has the right to deny entry based on their own local laws (A 46-year old Nigerian male, 25 April 2019).*

### **Experiences with border crossing**

The experiences of ECOWAS nationals with respect to border crossing are not homogenous. Our study unearthed marked differences across gender, social class and mode of transportation. The majority of female ECOWAS nationals who cross national borders tend to engage in itinerant trading activities and also travel mainly by land (Bello-Bravo 2015; Sudarkasa 1977). While a significant proportion of male migrants may equally participate in trading activities, their representation in professional non-trading activities tends to be



higher than for females. Generally, ECOWAS nationals who cross land borders (both male and female) are subjected to harassment and exploitation by border officials. This fact is well documented by previous studies (Adeniran 2012; Awumbila et al. 2018; Yussuff 2014). However, the extant literature generalizes on harassment and exploitation experiences as though they are uniform across gender. Similar to the findings reported by Yussuff (2014) along the Nigeria-Benin border, where 35 percent of female cross-border traders reported being harassed sexually by border officials, our findings indicate that itinerant female traders are compelled to offer sexual favours to some border officials to secure safe passage for their trading wares. Jatara, a 34-year-old trader, noted that border officials frequently harassed her. She noted that the situation was bad but that there was nothing she or other female traders could do:

*Hmm.... It is something [harassment] that many women go through at the borders. You know some of the immigration officers [they refer to both customs and immigration officials the same way] are young men and I think because they leave their wives at home, they become aggressive when they see us. So when you have a problem and they are talking to you some of them will be touching your breasts anyhow and you may not like it but you can't challenge them as at that time you are only interested in your goods (A 34-year old female trader, 4 April 2019).*

Jatara also noted that she knew some women who had sexual relations with border officials just to facilitate mobility through the borders. However, she explained that most of those women were unmarried and that only a few married women might do that. Using herself as example, she explained that the border officials harassed but did not rape them and that sexual relations with border officials was a kind of coping strategy for some women:

*The way people talk about it, things are not like that. When I first married, my husband nearly stopped me from this job (cross-border trading) because his sisters told him that we sleep with border people before they allow us to pass, but this is not true. When I was not married, I had only one boyfriend at the border. We became friends because one day they seized my goods and I was crying. They demanded money and I didn't have any and he helped me to get the things... We stopped the relationship when I told him I was going to marry... So I will say some young girls befriend some border people but that may be out of love. Sometimes they help them always and that is how friendships start (A 34-year old female trader, 4 April 2019).*

The statement above shows that some young women befriend border officials willingly in order to get assistance from them. A customs official interviewed at the same Aflao border seems to support this argument. He noted to the contrary, however, that most of the time,



they were chased and harassed by young women who wanted to befriend them to avoid paying required duties:

*What many people hear of is the harassment by border officials ... If you come to the borders you will see that most of the time, it is women who give their bodies to us so that they will not pay the right duties. Sometimes they will take your number and be calling you and once you befriend them they don't want to pay duties again... Yes they can get you in trouble (A Customs Official at Aflao, 4 April, 2019).*

Although the statements above suggest that women also chase border officials as a coping strategy, the relationship between border officials and cross-border traders is often shaped by unequal power relations and the desire by women to protect their goods, rather than by true love. Both males and females are forced to make unofficial payments. A 42-year old Nigerian female trader, who crosses the Aflao border regularly, noted that she is consistently compelled to make illegal payments to border officials in spite of her rights under the Protocol.

*Any time I cross, money is extorted from me. When I refuse to pay, I am delayed by border officials from both Ghana and Togo. Sometimes they will take me to the custody by Togolese and Ghanaian officials while the car I am travelling with leaves me behind. Crossing the border into Ghana is not easy, it is a big herculean task (A 42-year old Nigerian female trader, 4 April 2019).*

However, there are also some commonalities in experiences of extortion. The female traders' experience is not dissimilar from those of men. Kwaku, a 37-year-old Ghanaian businessman, says that he crosses the Ghana-Togo border 'hundreds of times' in a year because he imports cars from Germany and clears them through the Togo port. He prefers that port to the Tema port in Ghana because he considers the costs to be lower in Togo. Kwaku reports that illegal charges by border officials have increased his costs over time:

*I've never experienced that [free movement] before, because I'm a businessman. I normally clear cars from Germany to Lome here. That's why I see it to be quite easy here than me using the Tema harbour. So I found out that here is okay but now I've come to realize that the money I've been paying here, it has become the same as like Tema port... Yeah, after using my passport and the yellow card, yet still they decided to check in my bag, and they saw I had some pamphlet and all that, they said 'you have to pay some money before we allow you to go.' And I said Oh this is a normal paper' and they said no no no they don't care. Even apart from using the passport and all that, they still collected money. Just for carrying my personal stuff and I was not happy with it. So even my woman was telling me that even from*



*Ghana and Togo you shouldn't need to use a passport, it's supposed to be an ID so why all these challenges, and I said, 'Africa for you.'* (A 37-year-old Ghanaian businessman, 4 April 2019).

Our study also finds that differential experiences of harassment and extortion at borders is also informed by the mode of transportation. ECOWAS nationals who travel by air are less likely to be subjected to the kind of harassment and exploitation that pertain at land crossings. This disparity is explained by the structure of airports compared to land borders and also the immediate presence of a hierarchy of officials and security operatives, complemented by surveillance equipment such as closed-circuit television (CCTV) cameras. The risk of being recorded taking bribes discourages airport staff who would otherwise be tempted to demand unapproved payments. Conversely, land borders tend to have little or no oversight by senior officials, nor any technology that could serve as a deterrent to corrupt officers. Even though land borders in Ghana are equally manned by officers from several branches of the security apparatus (e.g. Ghana Revenue Authority, National Security Service, Bureau of National Security, Narcotics Control Board, and Ghana Immigration Service), the oversight regime is less stringent than at airports. As a result, the wealthy, highly educated, and mostly professional ECOWAS nationals who tend to travel by air have a significantly different experience of crossing borders from the poor, less literate, migrant traders who cross land borders. The case of a Nigerian Information Technology Service Manager who works in Ghana typifies the differences in experiences at the border. The manager, who only travels to Ghana by air, is concerned about having to complete arrival and departure forms but not about any form of exploitation or direct harassment:

*I haven't had any problem so far. Only that there is a separate queue for nationals but I cannot remember if there's any for ECOWAS nationals so it makes one wonder why the separation. My actual experience is sometimes getting jokes from jovial officials by the fact that you're a Nigerian. And I think naturally as Nigerians anywhere we go, there seem to be an aura of suspicion so anytime you present your paper they look at you in that manner. Although, it's not conscious from the official you get that feeling of being suspected sometimes. So, after the officer examining your passport, you also fill a Disembarkation and Embarkation Form and regardless of the number of times you travel you have to fill it and it's a great bother to me. It's almost useless as some data required is already in my passport. Besides, the information I put on it cannot be validated so what value asking about all that info when one can lie?* (A Nigerian Information Technology Service Manager, 25 April 2019).

Similarly, a Sierra Leonean female student studying at the University of Ghana, who travels mainly via the airport, narrated how her travels have always been smooth, although the



outbreak of Ebola in her country in 2014 meant that she always had to be properly screened before being allowed entry into Ghana. Though the screening might be an inconvenience, it is not at the level of wilful extortion as experienced at the land borders. Also, the health checks are formally stipulated precautionary measures that are sanctioned by the health ministry of the country. In addition, being charged a penalty for being resident in an ECOWAS country beyond the 90-day threshold, without a valid residence permit, is standard. In this sense, the female student's experiences are justified, which is not the same for traders who use land borders.

*I think it has been very smooth but because our country has been affected with Ebola for some time so whenever you come from Sierra Leone you have been thoroughly screened when you enter Ghana. But it has always been smooth. No problems but, because I'm a foreigner, then they have to check, you should have a residence permit, so they will go through that. So, at one point I was traveling with my mum and she didn't have residence permit, so they had to halt us at the queue and we had to pay for her for the days she was in Ghana without a permit before we could process our documents.'* (A Sierra Leonean female student studying in Ghana, 25 April 2019).

By contrast, migrants, whether low-skilled workers or highly-skilled professionals, who travel by road reported various forms of extortion by immigration officials at border check points. Travelling by land, and the type of transportation system used, defines the experience of crossing a national border within ECOWAS and the likelihood of being harassed/extorted. Respondents noted that payment of unapproved fees at land borders has increasingly the norm. We use the experiences of a lecturer, trader and student to demonstrate how mode of transportation shapes migrant experiences. Firstly, a national of Benin, who lives and works in Ghana as a lecturer recounted his experience of crossing the Aflao border:

*I have had no challenges so far except that at the Aflao side of the Ghana border you pay GHC 15 or GHC 20 to Immigration as you leave or enter Ghana. At the Togo to Benin border, it's free. If you are travelling by State Transport Company (STC) or a big transport firm, you don't pay anything at the border in person. It may be that the fees are already included in the ticket price. What happens there is that, when you get to the border, the driver collects all the ID cards and passports of travellers. He visits the Immigration officials, give all to them, and he soon returns with all and when we cross the border, they are given back to us. After Aflao, there are other checkpoints where they collect GHC 5.00 from everyone with an ID card but I don't know if same is taken from those holding passports.* (A male Beninois lecturer, 4 April 2019).



The lecturer's account suggests that those who are able to afford the cost of travelling on more expensive buses experience extortion in a different way from those who travel by the cheaper means. Here, social class again is a defining feature of migrant experiences. This nuanced perspective contradicts the predominant portrayal of harassment in the existing literature as uniform. Additionally, a male Nigerian trader, who uses the Aflao border frequently, highlights how 'easy' crossing the land borders is, provided one apparently understands the corrupt regime at the border and obliges without challenging the system.

*Crossing the border at Aflao is not difficult when you have a familiar face with the border officials. All you need is to drop some few CFA or Cedi and the door is opened to you. Once you pay the money and you are not seen to be a security threat or do not carry any illegal goods, the border is opened to you 24/7.* (A male Nigerian trader, 4 April 2019).

A Togolese student in Ghana, who needs to cross the land border to visit his family routinely, recounts how blatant border officials are about demanding bribes from people.

*They will tell you that they don't eat the paper you're presenting to them. You have to give us the money. So, if say you're an ECOWAS citizen they will say, so what? After that if you reach a place called Dabala Junction, they will ask you... 'Are you a Togolese or Nigerian?' If you're not a Ghanaian they will say you should pay five Cedis... You tell them, 'Oh I'm an ECOWAS citizen,' they will say, 'And so what? We don't care, either you pay or you return back.' If you don't pay, they will waste your time. Last year in December I was travelling to Togo and there was a woman who had a little baby with her. They still told her to either pay or the car will leave her behind* (A male Togolese student, 4 April 2019).

Our analysis demonstrates clearly that academic literature that accounts for a myriad of challenges militating against the successful implementation of the ECOWAS Protocol by listing a litany of institutional and systemic failures is overly simplistic if the nuanced differences along social class and gender are not interrogated in any detail. While both men and women are harassed and forced to make unofficial payments, women face more sexual exploitation. This resonates with our conceptual framework, which suggests that gender could account for variations in the experiences of West African migrants.

### **Variations in Experiences with Permit Acquisition and Renewal processes**

The Free Movement Protocol mandates all ECOWAS nationals who intend to reside or establish themselves in another ECOWAS country beyond the grace period of ninety days to apply for and be granted a permit in order to reside and work or operate a business. Whereas other assessments of the success of the implementation of this provision merely lament the low level of awareness, they fail to interrogate differences in level of awareness



according to social class. Our study finds that knowledge about this requirement is not uniform. There are sharp differences across social classes. In addition, there are differential experiences in the application for and renewal of permits. Individuals who work in professional positions tend to be more aware of the need to apply for and obtain residential and work permits, while those who engage in the informal sector either genuinely are unaware of, or do not appreciate, the need to obtain such documentation.

A 43-year-old male Ghanaian Operations Manager of an International Oil Company (IOC), for instance, is very knowledgeable about the legal requirements on corporate bodies. He points to the likely reputational damage to companies as a driving force behind their keenness to ensure that all their staff satisfy the statutory requirements to obtain the necessary permits. Awareness is created among potential migrant workers throughout the recruitment process. Also, because well-established companies have dedicated human resource departments, newly-recruited workers are guided through the application process. The requisite documentation is requested from new recruits, but the actual application is completed by corporate representatives in charge of recruitment.

*I know the process for a foreigner to apply for a permit in Ghana. Because I deal with my work permit departments for a lot of expatriates so I know the processes involved in getting a work permit for someone who wants to come and work in Ghana...I am familiar with the processes but I might not know all the details. I am familiar to a level because I know before the person comes, you need to have the CV of the person. But before the person is brought in, you have to make sure you advertise the vacancy in the newspapers, make sure you have interviewed Ghanaians and if they do not have any Ghanaian who qualifies, that is where you have to submit proof that you have really conducted or advertised it in the newspapers to the Petroleum Commission and the authorities involved. You now bring the CV of the person you are bringing in. The recent law indicates that you need to have a Ghanaian understudy as well. That means that you bring the person or Ghanaian understudy and if you do not have one already you bring the person and train the person. You need to have a work permit for the person before he comes into the country and it requires a lot of things because you need to fill a couple of forms and have proof to defend it. (A 43-year-old male Ghanaian, 25 April 2019).*

Apart from differentials in terms of knowledge, highly skilled migrants are assisted to apply for permits by their companies in both Ghana and Sierra Leone. A male Nigerian Oil and Gas professional who works for a renowned multinational oil firm in Ghana corroborated the fact that highly-skilled migrant workers from the ECOWAS region are supported by their companies to apply for both working and residential permits. While the turnaround time



might vary from worker to worker, professionals abide by the obligation to acquire permits, as stipulated in the Protocol:

*Yeah. I think they [permit requirements] are the same as for any other country. There are a couple of forms that you need to fill. In the form, you put your details, what you're coming here for, how long you want to stay and also the succession plan. In Ghana if you're coming, definitely it means there is a loophole that you're coming to fill so they want to see what the plan is to train a Ghanaian to learn, how is it going to benefit the government? For you to train some Ghanaians so that at the end of your stay, someone in Ghana here should be able to fill your position. So, you fill in the form, you'll be assigned someone from the company assisting you in all of that to see if the form has been filled in correctly and we equally have an agent who follows up on the government and gives us feedback on our applications. I don't think it has been like this in the past, probably there might have been hit backs that made the form take longer in the past, but me I'm a bit lucky that even me that came last, I got my permit out but there are some of my colleagues that are still in the queue now. I got mine in less than 3 weeks or a month and that is very rare for anybody.* (A male Nigerian Oil and Gas professional, 25 April 2019),

Beyond the oil and gas sector, the same is true for migrants in the banking sector and also academia. A female banker recounts both her awareness and the ease of applying for permits among the professional class:

*Yes, I am aware of the need for permits. My office did it for me. Except when I needed to get a residence permit for my new son, I had to go to the Ghana Immigration Service (GIS) myself to go through a process called Validation of Passport. Thereafter, I gave the passport and a few other documents to the office and they applied for the residence permit for me. In terms of fees, it depends on the number of years and it's about USD1,500 or so which I need to confirm.* (A male Nigerian Oil and Gas professional, 25 April 2019.)

Also, a male academic from Benin, who teaches the French language in a prominent university in Ghana, alludes to the orderly manner in which work and residence permits are applied for and processed with support from his institution:

*Yes, you fill forms and you send them to an office at the International House for foreigners working here and they process it. Through the University, you pay USD500 and the University later refunds it to you. If you go yourself, you pay USD1000 but I can't tell whether the amount is refunded by the University* (A male Beninois lecturer, 25 April 2019.)



The level of awareness and the motivation to apply for work and residence permits is, however, remarkably low or even absent in many cases among low-level traders and ECOWAS nationals who work in the broader informal sectors. This phenomenon could be attributed to the fact that such forms of establishment and residential arrangements are unregistered and largely untraceable. Whereas corporate entities are registered and licensed by host governments, informal activities are not. Lack of registration suggests that such economic setups or engagements can afford to be impervious to the legal requirements, with minimal punitive sanctions. Additionally, informal economic activities are predominantly carried out by people who are less educated, less skilled and probably less well off. This points to a dyadic scenario in our examination of awareness and uptake of residence and working permits within the ECOWAS region. Narratives of some ECOWAS national interviewees engaged in the informal sector help illustrate this dichotomy. A male Nigerian dealer in auto and bicycle parts notes that:

*In all my life and seeing to my business operations in Ghana, I have never been asked to produce work or residence permit by anyone. Rather, it is my business operation license that has been asked of me by some market leaders and business operation inspectors. (A male Nigerian, 4 April 2019).*

When asked about his possession of and knowledge about work permits, a male trader, from Niger, who sells textiles and electronic products simply says:

*No, I haven't got any permit. No, I'm not aware of permits. No-one has demanded a permit from me in the course of going about my business in Ghana. (A male Nigerian trader, 4 April 2019).*

### **Attitudes towards ECOWAS immigrants**

Our data also show that attitudes of nationals towards ECOWAS immigrants vary based on their characteristics. As predicted by our model, one factor that influences perceptions and attitudes towards immigrants is nationality. In Ghana, for instance, most of the public concerns raised about immigrants were over Nigerians and Chinese. There are very few concerns over migrants from other ECOWAS countries. Similarly, in Sierra Leone, most of the concerns raised over immigrants had to do with Nigerians. While there is no data to suggest that Nigerians are disproportionately involved in crimes, local people in Ghana and Sierra Leone tend to associate Nigerians with crime (Awumbila et al., 2018).

Apart from nationality, social class also affects the way migrants are perceived. In Ghana, many immigrants with a higher level of education, working as managers in reputable financial institutions, reported that they felt welcome and that they were highly respected, although a few of them recounted instances where people insulted them as fraudsters. Ayuta, who is a Nigerian banker in one of the Nigerian banks in Ghana, reported:



*I would say the Ghanaians that I mainly come into contact with respect me and see me as a brother... At work you will not know any difference except maybe the way I talk is different. The place where I live too, I don't have any problem with my Ghanaian neighbours...[but] I remember one incident when I parked a car at a restaurant and someone parked to cross me and I asked him to move his car and he insulted me that I am a fraudster.' (A Nigerian banker, 4 April 2019).*

The high-profile, wealthy Nigerian and Ghanaian migrants working in formal Nigerian businesses in Sierra Leone also expressed that they felt more welcome although there were a few instances where people insulted them out of hatred. In Sierra Leone, indigenes praised Ghanaian electrical engineers and top business executives for promoting development in the country. Many of these people were recruited by the Sierra Leonean government (Awumbila et al. 2018). In contrast, nationals tend to discriminate against poorer migrants who are competing with them for jobs in the informal sector. In Ghana, for instance, there have been a number of demonstrations against Nigerian traders in the informal sector. In Sierra Leone, local traders have also raised complaints against traders from Nigeria and other ECOWAS countries. This observation is consistent with our argument that different types of migrants are perceived differently.

## **Conclusion and Some Policy Implications**

Since its enactment, the ECOWAS Protocol on Free Movement, Rights of Residence and Establishment has, in varied ways, contributed to increased intra-regional mobility and trade in the West African sub-region. Policy and academic literature on the Free Movement Protocol have drawn attention to opportunities and constraints that member countries face in their quest to ensure effective implementation of the Protocol. However, the literature has not been instructive in terms of how different ECOWAS citizens experience the Free Movement Protocol. Our study contributes substantially to the academic and policy literature, providing important insight into how different ECOWAS citizens experience free movement protocols differently.

Overall, what is clear is that the experiences of highly-skilled professionals (e.g. engineers and academics) in relation to the Free Movement Protocol differ remarkably from those of low-skilled workers such as itinerant traders. The experiences of men, especially with border crossing, also differ from those of women. We have demonstrated that socio-economic status, class differentials and gender play a key mediating role in explaining how different ECOWAS citizens experience aspects of the Free Movement Protocol. Our findings challenge the assumptions in existing literature that tend to create the impression of homogenous experience by paying little or no attention to the differential experiences of free movement due to social location (class and gender in the main). Important legal aspects of free movement, such as access to travel documents, assertion of rights at border



crossing and familiarity with the process for obtaining residential permits, are highly influenced by access to resources (material and symbolic), and gender identity.

In terms of policy implications, implementing the Protocol on Free Movement will require states to take conscious measures to simplify and decentralize the process of acquiring travel documents to enable less-privileged citizens of the sub-region to have access to passports and other acceptable travel documents. This has to be followed by continuous public education at grassroots level to inform all persons, irrespective of gender, class and social status, of their rights to move within the sub-region free of harassment and extortion. An on-site oversight mechanism at border posts, comprising personnel from countries sharing a border, is a possible way to tackle the class and gendered form of impediments that travellers face when crossing borders. If travellers have recourse to making complaints at the site where they face harassment, chances are that culprits might be dissuaded from extortion.

Finally, the process of granting residence permits to migrants in member states should be made accessible both in terms of location and requirement to encourage the acquisition of permits. Siting permit issuing centres in local government offices across member countries and making the process less cumbersome and more predictable could go a long way to empower ordinary migrants to assert their rights and take up permits to regularize their stay. Policies that seek to promote free movement must take into consideration issues of class, gender, and socio-economic status that differentiate ECOWAS citizens. These important social markers are central to citizens' experience of the Free Movement Protocol in the sub-region.



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