

Ambiguity and Symbolism in the Implementation of the ECOWAS Free Movement Protocol: Evidence from Ghana and Sierra Leone

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Abstract

This paper examines the challenges to the implementation of the Economic Community of West African States (ECOWAS) Protocol on Free Movement, with particular reference to Ghana and Sierra Leone. The paper is based on a desktop review and in-depth interviews with selected ECOWAS migrants and officials of institutions responsible for managing migration in Ghana and Sierra Leone. The findings suggest that Ghana and Sierra Leone have made modest progress in the implementation of the protocol. Apart from abolishing visa and entry requirements for 90 days, both countries have adopted the standardized ECOWAS Travel Certificate. Despite a few achievements, the following challenges affect the implementation of the free movement protocol in both countries: Policy ambiguities resulting from contradictions between national laws on employment and the ECOWAS Free Movement Protocol; harassment of migrants; migrants' lack of travel documents; low level of knowledge about the ECOWAS protocol; resource constraints; fears of competition with immigrants, especially in Ghana; securitization of migration and migrants; weak labour market and migration information systems, economic challenges and political instability. This paper concludes that the future implementation outcomes of the ECOWAS protocol largely depend on the commitment of the member states and financial support that they receive from ECOWAS and its development partners. While ECOWAS should continue to lobby states to implement agreements and protocols, mechanisms must also evolve to deal with states that continue to violate the rights of citizens and migrants.

Keywords Free movement; protocol; Ghana; Sierra Leone, ECOWAS.

Introduction

Although the relationship between labour mobility and economic development is contested (Ajaero and Onokala, 2013), there is enough

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evidence to suggest that if properly managed, migration could contribute to economic transformation in both migrant sending and receiving areas (Switek, 2016; Teye et al, 2017). In response to increasing acknowledgement that properly managed migration could promote socio-economic transformation in both sending and receiving countries, a number of governments are making efforts to effectively mainstream labour migration into development planning and policy (Mangala, 2017; Teye et al, 2017). However, while the developmental outcomes of international migration is increasingly acknowledged, apparently in view of the flow of international remittances (Mazzucato et al, 2005; Ratha et al, 2011), the contributions of internal and intra-regional migration have not been adequately discussed in both policy and academic circles (Teye et al, 2015).

Recognizing the potential and actual benefits of intra-regional mobility, the Economic Community of West African States (ECOWAS) adopted the Protocol on Free Movement of Persons, Right of Residence and Right of Establishment in 1979 (Protocol A/P.1/5/79). This was followed by the formulation of a number of agreements and supplementary protocols aimed at facilitating the mobility of labour and goods within the ECOWAS region. While these protocols provide guidelines for promoting intra-regional mobility and regional integration, there is enough evidence to suggest that the full implementation of the Rights of Residence and Establishment, as detailed in the 1979 ECOWAS Protocol relating to the Free Movement of Persons, and its supplementary protocols has not been fully achieved (ICMPD and IOM, 2015).

While it is acknowledged that evidence-based data is needed for addressing the gaps in the implementation of the ECOWAS Protocol on Free Movement (Adepoju, 2005; Teye et al, 2015), there are only a few studies on its implementation. Against this background, this paper examines the implementation record and challenges to the full implementation of the ECOWAS Protocol on Free Movement, with particular reference to Ghana and Sierra Leone.

Conceptualising Gaps in the Implementation of the ECOWAS Free Movement Protocol

Based on insights from the policy science literature (Parsons, 1995; Grainger and Konteh, 2007), this paper analyzes gaps in the implementation of the ECOWAS Free Movement Protocol by assessing the intentions and commitments of governments of the ECOWAS countries towards the development of policy and institutional structures and resource availability

for the implementation of the protocol in Ghana and Sierra Leone. In analysing intentions and commitments of ECOWAS governments towards free movement, the paper argues that even though all ECOWAS governments have signed and ratified the Free Movement Protocol, some governments are not committed to certain aspects of the protocols they have signed. To explain why and how ECOWAS countries do not implement the ECOWAS protocol fully, the paper relies on the concept of *stated and actual policy* (Aucoin, 1971; Grainger and Konteh, 2007). According to Grainger and Konteh, (2007), *actual policy* reflects the true intentions of the governments towards free movement and regional integration. This actual policy may differ from *stated policy* published in official documents (in this case the free movement protocol). This theoretical perspective suggests that since governments cannot satisfy all interest groups, one governing strategy is to design or ratify policies of frameworks that satisfy powerful development partners and then implement a very different policy that satisfies the government's interest. This strategy creates policy ambiguities and stated policy then remains "symbolic statements" (Smith, 1985: 135) that are never fully implemented.

Grainger and Konteh (2007: 46-47) identified three main scenarios when *stated policy* may deviate from *actual policy*. First, a government may find it difficult to publicize its choice between competing interests of various sectors/groups of the economy. Such a government may publish sectoral policies which contradict those of other sectors, are internally inconsistent and do not reflect their actual intentions. The government may also implement policy poorly, or maintain uncertainty (e.g. by poor monitoring of policy outcomes) to discourage challenges to ambiguity. Secondly, actual policy has changed due to changes in government or priority goals compared with those at the time of the formulation of the stated policy. The third scenario occurs when a government wants to hide, especially from international actors, activities that clash with rules of the institutional state. This involves ambiguity by delusion and delay. Drawing on insights from this theoretical perspective, this paper argues that many governments of the ECOWAS countries, in reality are not committed to implementation of certain aspects of the protocol because they want to maintain autonomy and preserve certain privileges for their nationals. However, the governments have signed the protocol and supplementary agreements just to satisfy the interests of powerful regional and international policy actors. The current implementation record in the different countries, therefore, reflects the *actual policy* while the protocol can be seen as *stated policy* which is merely designed for symbolic

reasons. This conceptualization suggests that some aspects of the ECOWAS Free Movement Protocol are poorly implemented in some countries because the governments of those countries are actually in favour of restricting the flows of certain categories of immigrants who are likely to compete with citizens for jobs and scarce resources. This paper's conceptualization resonates with the argument by Mathias and de Haas (2013) that while many governments sign agreements to facilitate free movement of skilled labour, they also adopt policies which seek to discourage the immigration and settlement of particular categories of migrants, such as low-skilled labour migrants. Such selective immigration policies are intended to shape the skills and income composition of migrant inflows, based on perceived economic needs of the countries and social desirability of different categories of immigrants.

Apart from the lack of commitment on the part of governments, this paper recognizes that in some countries poor implementation of some aspects of the ECOWAS protocol may be a result of institutional weaknesses and resource constraints. To explain such institutional constraints, the authors reviewed the various approaches to analyzing policy implementation and chose the *top-down rational policy implementation analysis approach* and the *bottom-up policy implementation analysis approach* to guide this assessment. The *top-down* approach regards policy implementation as a top-down rational activity whereby policy-makers formulate policies and street-level bureaucrats implement those policies. It is assumed that implementation can only be effective when goals are clearly defined, when there are adequate resources and where an effective chain of command exists (Pressman and Wildavsky, 1984). In contrast, the *bottom-up* approach posits that policy outcomes largely depend on the interests and decisions of street-level bureaucrats. The approach assumes that the implementation of any given policy involves a multiplicity of organisations at national and local levels. This produces a complex system, which top-down mechanisms of coordination are unable to handle. Since strict hierarchical control is not possible, street-level policy implementers have the power to change stated policies (Linder and Peters, 1987). Given that migration flows in both Ghana and Sierra Leone are managed by immigration departments that operate top-down coordination systems, this paper employs the top-down approach to examine how the chain of command and resource availability within the immigration departments in both countries shape the implementation of the protocol. On the other hand, the paper employs the *bottom-up* approach to examine how the interests and

decisions of street-level border officials may determine how the free movement protocol is implemented in various parts of the countries.

Methodology

The data used to write this paper was gathered as part of the research activities of the MADE West Africa Project which is financed by the European Union and aims to promote good governance of migration and mobility and protection of migrants' rights in the ECOWAS region. The study involved a desktop review and in-depth interviews with selected ECOWAS migrants and key informants, made up of officials of institutions/agencies responsible for managing migration in Ghana and Sierra Leone. In all, 35 persons in Ghana and 28 persons in Sierra Leone were interviewed. Both the key informants and individual migrants interviewed were selected purposively. The migrant category comprises both highly skilled migrants (i.e. professionals) and low-skilled migrants working in the informal sector. The instruments used to interview public officials and social partners responsible for migration management were flexible and focused on the following themes: trends of immigration and emigration; perceptions on the developmental impacts of migration; respondents' knowledge of the ECOWAS protocol; challenges to the implementation of the ECOWAS protocols; and migrants' rights. The flexible instruments used to interview ECOWAS migrants focused on motivations for migration and migration processes and experiences. All the interviews were recorded electronically and transcribed. The transcripts were further analysed thematically. While the findings of this study could have been enhanced by a combination of in-depth interviews and a questionnaire survey among a larger sample of ECOWAS migrants in the two countries, the authors believe that the conclusions drawn from the rich qualitative data alone are valid.

Overview of ECOWAS Free Movement Protocol and Supplementary Instruments

Efforts to promote cooperation and integration of the ECOWAS countries date back to 1975, when the ECOWAS treaty was adopted by member states. This treaty conferred the status of community citizenship on nationals of member states. The treaty also enjoined member states to ensure to gradually work towards the abolition of the obstacles to free movement of persons, services and capital (Adepoju, 2005). In line with the ECOWAS treaty, the ECOWAS Free Movement Protocol was adopted in 1979 (ECOWAS, 1979). It emphasizes the Free Movement of Persons, Right of Residence and Right of Establishment.

The Revised ECOWAS Treaty of 1993 further provides in Article 3 (1) for “the removal, between member states, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment”. The major provisions on “Immigration” under Article 59 are as follows:

- a) Community citizens are granted the rights of entry, residence and establishment and member states undertake to recognize these rights of Community citizens in their territories in accordance with the provisions of the Free Movement Protocols.
- b) Member states undertake to adopt all appropriate measures to ensure that Community citizens enjoy fully the rights granted them.
- c) Member states undertake to adopt, at a national level, all measures necessary for the effective implementation of the provisions of this Article (ECOWAS, 1993).

These provisions are consistent with the 1979 Protocol Relating to the Free Entry, Right of Residence and Establishment (Agyei and Clotey, 2007; Awumbila et al, 2014). By this protocol, citizens of member states do not need to apply for a visa to enter another ECOWAS country for stays up to 90 days. However, ECOWAS citizens who plan to stay for more than 90 days are required to obtain permission for an extension of stay from the appropriate authority in the member states. Other supplementary protocols have been passed following this major protocol. The 2008 ECOWAS Common Approach on Migration, for instance, provides guidelines for dealing with challenges affecting the implementation of the ECOWAS Free Movement Protocol. It also provides strategies for dealing with other key migration issues, including combating human trafficking; policy harmonization; protection of the rights of migrants, asylum seekers and refugees; and recognition of the gender dimension of the migration (ECOWAS, 2008).

Record of implementation of the Free Movement Protocols in Ghana and Sierra Leone

The ECOWAS Free Movement Protocol is expected to be implemented in stages. During Phase 1 (Right of Entry), member states are expected to allow free entry of citizens of member countries without visa. Phase 2 and Phase 3 respectively, emphasize the granting of citizens of member states the right of residence and right of establishment in other ECOWAS countries that they may

choose to migrate to. This study has shown that Phase 1 has been implemented well in the ECOWAS region. All 15 ECOWAS countries, including Ghana and Sierra Leone, have abolished visa and entry requirements for 90 days. The implication of this is that ECOWAS citizens with valid travel documents and international health certificates are allowed to enter and stay in any ECOWAS country for 90 days without going through a prior visa application process.

Both Ghana and Sierra Leone have adopted the standardized ECOWAS Travel Certificate, which was introduced in 1985 to make cross-border movements easier and cheaper. The two countries have also adopted the harmonized “Immigration and Emigration Form of ECOWAS member states” which aims to facilitate and simplify cross-border formalities in member states. Both Ghana and Sierra Leone now use the ECOWAS common passport which was adopted by the Authority of Heads of State and Government in May 2000. With regards to the second phase (Right of Residence), which came into force in July 1986 following ratification by all member states, ECOWAS citizens who want to stay and work in another member state for more than 90 days are required to apply for and obtain residence permits or work permits just like immigrants from other parts of the world. However, refusal is possible on grounds of public order, public security or public health. In relation to the third phase (Right of Establishment), all citizens of ECOWAS member states have the right to access economic activities and to hold employment, including pursuit of the liberal professions. Discrimination may only be justified by exigencies of public order, security or public health. As a result of these provisions, many ECOWAS citizens have migrated to Ghana and are working mainly in the informal sector. Sierra Leone also has a few ECOWAS citizens. Apart from facilitating labour mobility, the ECOWAS protocol has contributed to student mobility within the region. For instance, tertiary institutions in Ghana have reduced the international students’ fees for students from ECOWAS countries. This has contributed to an increase in the number of ECOWAS students at Ghanaian universities.

Despite these achievements, there are serious gaps in the implementation of both the Right of Residence and Right of Establishment components of the ECOWAS protocol. A major challenge to the implementation of the Right of Residence is created by the procedures for issuing work permits. A recent assessment conducted by Teye and Asima (2017) on work permit regimes in four West African countries, including Ghana and Sierra Leone, showed that the procedures for issuing work permits in these countries do not support the Right of Residence enshrined in the ECOWAS protocol. In both Sierra Leone

and Ghana, the requirements and procedures for issuing work permits are the same for both ECOWAS citizens and other nationals. In principle, work permits are expected to be issued to all foreigners, including ECOWAS citizens, only in situations whereby there is a proof that the skills possessed by the migrant do not exist locally.

In both countries, certain sectors are reserved for citizens and as such work permits cannot be granted to ECOWAS citizens who want to work in such sectors. Public service jobs are available to nationals only, except under special arrangements (see also Teye et al, 2015). Foreigners in Ghana, including those from ECOWAS member states, are not permitted to work in the security services. Again, Ghana's Investment Act, 2013 (Act 865) prohibits migrants from engaging in petty trading, operating taxis, beauty salons or barber shops, printing of recharge cards for subscribers of telecommunication services, producing exercise books, supplying retail sachet water and retailing finished pharmaceutical products. Given that these economic activities are undertaken by mainly low-skilled persons, it is safe to conclude that the governments are adopting selective policies which will make it difficult for low-skilled immigrants to settle in those countries. This is consistent with the argument of Mathias and de Haas (2013) that many governments use such restrictive policies to affect the composition of immigrants and discourage low-skilled persons from settling in some countries. These restrictive employment policies discriminate against nationals from other member states and as such these policies violate the ECOWAS Free Movement Protocol, which stipulates that ECOWAS nationals who intend to pursue livelihood activities should be subjected to the same laws as nationals of the destination member state (Agyei and Clotey, 2007; Teye et al, 2015).

This scenario resonates with the idea of *actual and stated* policies discussed earlier. The governments of Sierra Leone and Ghana are not committed to the aspect of the protocol that seeks to ensure equal employment opportunities for nationals and citizens of member states. As a result, they have formulated domestic policies that contradict the principles of the protocol, creating policy ambiguities (see Grainger and Konteh, 2007). The protocol then becomes only a symbolic document (see Smith, 1985) which can be interpreted as a token gesture, designed to portray the governments as committed to regional integration without making any real change in the status quo.

Challenges and Gaps in the Implementation of the ECOWAS Protocol on Free Movement

Despite the modest progress made with respect to the implementation of the free movement protocol in Ghana and Sierra Leone, there are a number of issues that affect the successful implementation of the protocols. This section discusses these gaps and challenges based on evidence from Ghana and Sierra Leone.

Refusal of Admission and Discrimination

A major challenge to the implementation of the ECOWAS Protocol on Free Movement is presented by the Protocol affording member states the right to refuse admission into their territory, community citizens deemed inadmissible under their domestic laws (Article 4). According to Adepoju et al, (2007), this provision undermines the purpose of the Protocol through the use of restrictive domestic inadmissibility laws. As highlighted in the statement below, some countries may intentionally cite security reasons to prevent migrants from entering or staying in their countries:

[...] countries can hide behind national order and security concerns to refuse granting of residence permits...Practically anything can fall under public security. I mean if I get up and say that you are against the security of the state so I'm deporting you that is it, I don't have to explain to you how you are against the security of this state. So that provision gives a leeway for nations to manipulate the system depending on whether they want you or they don't want you (G.A., Ghana Immigration Service, Kotoka International Airport).

Apart from the refusal to admit unwanted migrants, nationals of ECOWAS member states are sometimes exposed to some discrimination in both countries. As noted already, in both Sierra Leone and Ghana, public service jobs are available to nationals only and foreigners can only be employed in the public services under special arrangements. Additionally, both countries also have a quota system of issuing work permits which implies that some ECOWAS citizens may not get work permits even if they applied. For instance, according to Section 35 of the Ghana Investment Act (Act 865), an enterprise with a paid-up capital of between US\$50,000 and US\$250,000 is entitled to an automatic expatriate quota of one person. An enterprise with a paid-up capital range of US\$250,000-US\$500,000 is entitled to an automatic expatriate quota of 2 persons while the US\$500,000-US\$700,000 range allows for an automatic expatriate quota of 3 persons and paid up capital of more than US\$700,000 allows for an automatic expatriate quota of 4 persons. In Ghana, quotas are

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granted by the Ghana Investment Promotion Centre (GIPC). Similarly, the Sierra Leone local content policy makes provision for quotas for its citizens in all employment fields as follows: at least 10% for top management, 25% for middle management, and 50% at the bottom cadre (Teye and Asima, 2017). Given that ECOWAS citizens are not exempted from the application of the quota system, these requirements are not consistent with the rights of residence and establishment proposed by the protocol. This is highlighted in the statement below by an officer in Ghana:

In terms of residency, we have a quota system and you have to apply it. If we talk about right of establishment then we can say that the current work permit law is not consistent with the ECOWAS protocol because the quota system restricts the number of foreigners to be given work permits. ECOWAS citizens have a right of establishment so they don't even need to come to us, I mean practically if we want to implement the right of establishment (G.A., Ghana Immigration Service, Kotoka International Airport).

These domestic laws reflect the true intentions (actual policy) of the government of Ghana while the protocol that Ghana has ratified is a symbolic document (Smith, 1985). In such situations, different policy actors are expected to read different aspects of the policy. Ghanaians could read the investment promotion policies and be happy that the government is protecting their interests while ECOWAS countries can also read Ghana's ratification of the protocol and conclude that it fully supports regional integration.

Harassment of Migrants at Borders

Many migrants from member states are harassed at the borders and asked to make unofficial payments before being allowed to enter some ECOWAS countries. Migrants who travel by air are harassed to a lesser extent because of the presence of senior migration officials at the airports. Given that poor people are likely to cross borders by road, they tend to experience harassment more than rich people who travel by air. Among people who travel by roads, persons without genuine travel documents are more likely to be asked to make unofficial payments. A.N., a 48-year-old highly skilled Nigerian migrant living in Ghana who crosses several borders in a year for business purposes, reported that he does not face problems at the borders on occasions when he carries genuine travel documents but he was seriously harassed on other occasions when he appeared at the borders without documents:

The border officers don't worry me much because I have all the documents...When they say, 'Bring your bag', I bring it, 'bring your passport', I bring all those things. And once I give it to them and they check it, I am free to go. I remember there are some occasions I forgot my yellow card and they asked for some surcharge. For the Francophone countries they may surcharge you about 1000 CFA or less if you forgot a card and then they let you go (A.N., highly skilled Nigerian migrant in Ghana).

However, the border crossing experiences of some other highly skilled migrants sharply contrast with the accounts of A.N. Some of them reported harassment whether they had the documents or not. For instance, M.B.A. is a Beninois migrant who holds a PhD and works as a researcher in Ghana. He arrived in Ghana in 2015 by crossing the Togolese and Ghanaian borders and has since been crossing these borders at least once every two months. He noted that there is extortion at almost every immigration check-point even though he possesses valid travel documents:

[...] if we rely on what is in the ECOWAS [protocol], we are supposed to freely move to any country of ECOWAS as long as we have ID or passport. However, at every checking point, especially at the immigration, you have to pay...I have fought with them once but I later decided to just pay and forget about the ECOWAS and this free movement protocol. I don't know what it stands for and whether it means that when you want to cross you just present your ID or passport and then you go or if it comes along with some fees. I don't know what the free movement really means... If it's supposed to be that you freely move without paying anything then its not really working (M.B.A., highly skilled Beninois migrant in Ghana).

The accounts of A.J., a Nigerian tailor in Sierra Leone confirms reports of harassment. A.J., who has travelled widely in the ECOWAS region reported that some of the borders are more difficult but he believes that the officials at all the borders are only interested in the money and not the documents. He said:

Once you appear before them, they are only interested in the money and not the documents you carry along. If you have no passport and you are prepared to pay them, they are happy to let you go. If you carry all the documents and you don't want to pay, they keep you...One day I spent 2 hours at the Elubo border when returning from Ghana because I refused to pay and they said I must wait. I challenged them but at the end of the day I paid because they just wouldn't allow me to go (A.J., Nigerian tailor in Sierra Leone).

Besides the main border points, there are numerous barriers where payments are demanded from migrants by the police, customs officials and others and all these add to the challenges of crossing the borders. Another low-skilled migrant, F.R., spoke about these other barriers when moving from Burkina Faso to Ghana:

There are also people in-between the two countries [Ghana and Burkina Faso]. If the bus moves a bit further after crossing a border, they will also stop the bus and demand payment...I don't know them but they are also dressed like police or custom officers; they are always sitting under trees...It is very sad and we fear them because they will stop you after you have gone past the border (F.R., low-skilled migrant, Ghana).

Further interviews also revealed that ECOWAS citizens travelling on passports that have never been stamped are more likely to be harassed as they are required by border agents to pay 'disvirgin' fees, which is a kind of bribe, before their passports are stamped for the first time. This situation is explained by a migrant:

Always, [during] your first time of travelling, they say you should 'disvirgin' your passport through bribes. 'Disvirgin' means that your passport has not been used before, and so they assume that you have not travelled before. So to 'disvirgin' it, you have to pay money. So you pay the 'disvirginning' fee in combination with the money you are going to pay for the stamping of your passport...At least I know that it happens at the Elubo border in Ghana and the Nigerian border... Sometimes [the driver of] the vehicle you are travelling in takes the money and then when you get to the border they are going to 'de-virgin' it [the passport] for you, kind of for you (T.Q.G., cross-border trader and dual citizen of Nigeria and Ghana).

A Nigerian migrant in Sierra Leone also reported being asked to make this unofficial payment when he first used the Elubo border:

My first time of crossing the Elubo border, things were more serious as they required me to pay more because I was new at that border...They worried me and delayed me so I paid more than the other passengers. I knew that if I argued with them they will ask me to wait and the car will leave me, so I just paid (A.J., Nigerian tailor in Sierra Leone).

Top immigration officials who were interviewed reportedly knew of these forms of harassment at the borders. Some of them noted that extortions are caused by low levels of salaries and lack of incentive packages. The claim that

low salaries contribute to harassment is consistent with resource constraints on the part of organisations, which suggests that resource constraints and low salaries may force employees to perform poorly (Pfeffer, 1997).

When asked about the measures they are adopting to deal with harassment, some top immigration officials in both Ghana and Sierra Leone stated that they have put in place some measures, such as organising training for officials and punishment of those found to have seriously violated migrants' rights. An official in Ghana also stated that they have asked officials to wear name tags so that travellers could identify and report those who harassed them. Another official, however, was less sanguine about the effectiveness of this approach. He noted that asking migrants to report incidents of harassment at the borders would not solve the problem as the migrants would not get to top immigration officials to make such reports. He noted that the ECOWAS secretariat should have mechanisms for dealing with state officials who harass migrants:

The major weakness with ECOWAS is that it does not have enforcement powers. So people will feel harassed but they have nowhere to turn. So when the issue arose in one of the joint meetings, they said that various countries should establish complaint desk at their borders. I don't think this will work. Like someone who went to Nigeria and was harassed at Akrake, how will he go back to Nigeria to complain that their men have harassed him or her? The best way to deal with this problem should be sanctions by the ECOWAS secretariat (RNT, Ghana Immigration Service).

The statements above indicate that harassment at the borders takes different forms and affect free movement within the sub-region negatively. The causes of harassment are consistent with both the top-down and bottom-up policy implementation analysis approaches discussed earlier. In relation to the *top-down approach* (Pressman and Wildavsky, 1984), the chain of command for managing border officials can be regarded as being weak which is why the street-level border officials are able to demand unofficial payments, with impunity. The situation also demonstrates the ability of street-level border officials to 'reformulate policy' governing mobility based on their own interests and this gives credence to the *bottom up approach* (Linder and Peters, 1987) which argues that policy outcomes depend more on the interests and actions of street-level bureaucrats.

Lack of Travel Documents and Residence/Work Permits

Another challenge to the implementation of the free movement Protocol has been the difficulty of establishing the nationalities of travellers because some of them do not carry national identity (ID) cards or passports. Border management officials of the Immigration Departments in Sierra Leone and Ghana described this situation in the following statements:

The Free Movement Protocol enjoins us to admit people into our territory but we also have to establish their nationalities and be sure they are ECOWAS citizens. However, most of the Guineans we have seen at the Sierra Leone border do not think they need passports...When you tell them they need passports to be allowed to pass, they get angry...They don't understand the 'free movement' thing very well because some ask, 'Why do I need a passport when I am an ECOWAS citizen and need to travel anywhere freely?'...And when we tell them what they need, they think we just want to make life difficult (M.J., Immigration Department, Sierra Leone).

People have always blamed immigration officers for harassment of travellers at the borders but the reality is that some of the travellers also get there without any travel document. You ask them to give you their passports for inspection and they tell you stories...In such situations, they are asked to wait...Sometimes our men may also take that opportunity to take money from those without documents (O.O.M., Ghana Immigration Service, ECOWAS Section, Ghana).

The statements above show that some of the ECOWAS citizens do not have adequate understanding of the Free Movement Protocol. The statements also indicate that harassment at the borders are linked to the lack of travel documents. However, the accounts of some migrants suggest that it is indeed the harassment at the borders that make people reluctant to acquire travel documents. They asserted that border officials are more interested in the money they extort from people than travel documents and given that travellers who have all their travel documents are also required to make unofficial payments, there is no incentive to acquire travel documents. This is clearly captured in the statements below:

Some travellers think it is not necessary to acquire any passport because whether you have documents or not you are forced to pay money before being allowed to cross the borders...The border officials even prefer those without any document...If you don't have any document, they appear excited dealing

with you because then they tell you, 'Well you don't have any document so just pay so that I allow you to enter' (A.J., Nigerian migrant in Sierra Leone).

When you get to the border, they are not even interested in any document. What they want is their money. That is the first thing they ask for. Even if you have all your documents, what they always say is that, they are not there for papers but money. I can swear that I was once beaten several times at the Burkina-Ghana border at Bawku. I told them that I don't have money and they beat me and locked me up in a room. I was in the room until everyone in our bus went through the process and got into the bus, then someone came from the bus and paid for me before I was allowed to join the bus (C.O., low-skilled Nigerien immigrant in Ghana).

A few migrants and immigration officials also spoke about the inefficient passport acquisition processes, especially in Ghana, as a reason why people travel without travel documents. In Ghana, it can take as long as 6 months or more to get a passport. While the passport can be obtained officially for just 50 Cedis (10 Euros), many people who require passports within a reasonably short time (e.g. 1 month) tend to use the services of 'middle men' locally referred to as *goro boys* who can charge as much as 1000 Cedis (200 Euros) to get a passport. The passport acquisition processes in Sierra Leone are more efficient and faster than the processes in Ghana.

Apart from travelling without appropriate documents, many ECOWAS migrants do not apply for residence/work permits even though this is a requirement for right of residence and establishment, as stated below:

Whenever we try to monitor the movements and activities of migrants in this country, we realize that the migrants from the ECOWAS countries hardly apply for work permits...If you ask them why they don't apply for work permits they will tell you that they are ECOWAS citizens (C.M., Ministry of Labour and Social Security (MLSS), Sierra Leone).

The available data support the claims of the officials that in both countries, the number of work permits issued to migrants from the ECOWAS countries is very low. In Ghana, only about 6% of the total work permits issued in 2015 went to migrants from ECOWAS even though they constitute a significant proportion of immigrants. In Sierra Leone, only about 17% of work permits issued in 2015 went to ECOWAS citizens (Teye and Asima, 2017).

Challenges with Harmonization of Immigration Procedures and Documents

While both Sierra Leone and Ghana can be commended for the significant progress made in the area of harmonization of travel documents, especially with regards to the adoption and use of the ECOWAS passport and the harmonized Immigration and Emigration Form of ECOWAS member states, there are still gaps in the area of the harmonization of procedures of admission and travel documents. One area of concern has to do with what constitutes a travel document. While the ECOWAS protocol provides for the use of other travel documents such as travel certificates and the *carte d'identité*, some of the border management officials in some countries, including Ghana, tend to emphasize the use of only passports:

You see the harmonization of policies is one of the biggest issues that must be addressed. The Francophone have what we call the “carte d'identité” which they use to travel among themselves but which the Anglophone countries don't recognize as a travel document. So the ECOWAS Common Approach aims at harmonizing policies but we still have problems with implementation because of lack of political will. So the political heads should be committed to whatever protocols they have signed (I. A., Ghana Immigration Service, Aflao Border).

While the statement above suggests that Anglophone countries in general tend to insist on the use of passports for travel purposes, this study found that Sierra Leonean border officials are more liberal with the acceptance of other travel documents than their Ghanaian counterparts. The Ghanaian border officials' rejection of other travel documents, apart from the passport, contravenes the 1979 Protocol Relating to the Free Movement of Persons, which defines a valid travel document as,

[...] a passport or any other valid travel document establishing the identity of the holder with his photograph, issued by or on behalf of the member state of which he is citizen and on which endorsement by immigration and emigration authorities may be made. A valid travel document shall also include a laissez-passer issued by the Community to its officials establishing the identity of the holder (ECOWAS, 1979).

However, Ghanaian immigration officials explained that they reject the *carte d'identité* because it is not biometrically readable.

While the existence of a harmonized work permit is good for intra-regional mobility and integration within any sub-region (Clarke and Salt, 2003), there

are significant variations in the procedures for issuance of work permits in the ECOWAS countries. According to Teye and Asima (2017), the residence and work permit regimes vary in terms of the categories, documents required, fees charged and delivery time. Sierra Leone requires more documentation than Ghana. Both countries have reduced fees for ECOWAS citizens but these charges vary significantly from one country to another.

Low-Level of Knowledge about ECOWAS Protocol

A few migration officials and social partners in both countries indicated that some training programmes have been organized on the ECOWAS protocol, but they were quick to add that the training workshops were not adequate. In view of the limited number of training programmes organized, a significant number of public officials and the general public have a low level of knowledge about the protocols, as highlighted in the statements below:

For me, I would say no, I don't have adequate knowledge of the protocol. Even as an Immigration Officer, I don't know much about it...I do not see any sensitization done on it (E.C., Immigration Department, Ministry of Internal Affairs, Sierra Leone).

No, there is little understanding of the principles. We as officers don't know the details and there is no platform for educating the public because for Immigration Service, for instance, the sensitization that we have is geared towards anti-human smuggling, but there are no programmes to teach people about ECOWAS (A.A.O., Ghana Immigration Service, Work Permit, Section).

The low level of knowledge about the protocol partly contributes to the harassment of migrants and the abuse of the rights of travellers. The authors also observed that, apart from the immigration officials, the general public has an even lower level of knowledge of the protocol and this also accounts for the agitation and demonstrations against the inflow of ECOWAS immigrants. In Ghana, for instance, most of the people who complained about the presence of many Nigerians in the petty-trading sector did not seem to be aware of the existence of the ECOWAS Protocol on Free Movement, as there is very little public education on this protocol. This was confirmed by a Ghanaian immigration official:

One challenge that needs to be addressed is the low level of knowledge about the protocol. So if you look at the kind of complaints about Nigerians in Ghana, especially if something bad happens, you will realize that many Ghanaians are ignorant about the protocol...Public education in schools, churches and even

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the market will be important so that people stop asking the government to drive Nigerians away (F.A., Migration Information Bureau, Ghana).

Some of the ECOWAS immigrants interviewed in the two countries stated that they did not know much about the rights that the protocols grant them, and that was why they did not challenge border officials who harassed them. A highly skilled Nigerian migrant noted that he does not challenge border officials who demand unofficial payments because of his low level of knowledge of the protocol:

I don't know much about the rights that ECOWAS migrants have...I can't challenge the officials because I don't know the laws very well, if you go to the border and tell them that they are supposed to allow you to enter freely...So the biggest problem is education. Both the immigration officers and we the ECOWAS citizens are not very conversant with our rights. We don't know our rights, we also don't know our obligations...Some people just travel; they don't have any documents (T.Q.G., highly skilled Nigerian migrant).

The low level of knowledge about the protocol also accounts for the lack of travel documents, as some ECOWAS citizens interpret free movement as being movement without documents. These findings highlight the need for more public education on free movement and the acquisition of genuine travel documents. Of the two countries, Ghana seems to have organized more public education programmes on migration than Sierra Leone. In Ghana, some information campaigns have been organized by the Ghana Immigration Service in collaboration with the International Organization for Migration (IOM). In Sierra Leone, the few training programmes on ECOWAS were organized recently by the International Centre for Migration Policy Development (ICMPD) and the IOM under the Free Movement of Persons and Migration (FMM) programme. The state institutions do not have long-term programmes for educating the public on free movement.

Resource Constraints and Border Management Challenges

Given the importance of resource availability for effective policy implementation (Pfeffer, 1997), public officials were asked about the adequacy of resources for implementing the ECOWAS protocol. The data collected shows that both Ghana and Sierra Leone do not have sufficient technical and human resources for the effective management of their porous borders. Consequently, many irregular migrants are able to enter these countries. To address these challenges, both Ghana and Sierra Leone have

established Border Patrol Units within their Immigration Services to police their borders. However, the policing of borders is very difficult as there are several hundreds of unapproved border crossing points, which have security implications. As shown in the statements below, the immigration officials in both Sierra Leone and Ghana reported that as a result of resource constraints, they do not have equipment to patrol the unapproved border crossing points:

It is very difficult monitoring the borders along unapproved routes, especially during the rainy season...There are no rooms for officials manning some of those routes...The challenge we had was the means of transport to those crossing points (D.T., Ghana Immigration Service).

There are several challenges with border control in this country...We operate with limited resources. We need more electronic gadgets but we don't have the funds to buy these things. As border management is a challenge, border officials may be so stressed that they will also frustrate people crossing the borders (E.C., Immigration Department, Ministry of Internal Affairs, Freetown).

The statements above link resource constraints to the harassment at the borders. Apart from the lack of resources, officials also talked about the difficulty in managing border residents who can cross the border anywhere:

We face problems managing border residents...Those who fall within a five kilometre radius from the borders normally access both points without using any travel documents. And you know we have to recognize them as such, as border residents. And so it becomes difficult to monitor their movements and get data on them (K.D., Ghana Immigration Service).

Border control is very difficult because some people live very close to the borders and they cross it at any place. So the borders are porous and we don't have the resources to be monitoring the borders (C.L., Statistics Department, Sierra Leone).

The interviews highlight the fact that, with serious challenges associated with border management, immigration officials who are frustrated by the lack of resources, may engage in various forms of harassment in order to get money. Some officials also indicated that harassment at the borders may be partly explained by the poor conditions under which border officials do their work.

Security and Health Concerns

Increasing securitization of migration and migrants, especially in the wake of what is perceived as growing threats of terrorism, is also a challenge to the implementation of the ECOWAS Protocol on Free Movement. In Sierra Leone, there is a belief that the civil war was fuelled by mercenaries who entered the country and this belief has an influence on border management in the country. The influx of migrants has also been blamed for rising criminal activities, such as kidnapping and armed robberies, money laundering and the flow of fake goods in Ghana, as highlighted in the following statements:

I will say in recent times there is an increase in the number of robberies. When most of these guys are arrested, you will realize that most of them are foreigners. That is one of the negative impacts of free movement of people within the region (F.A.O., Immigration, Migration Information Bureau, Ghana).

Cross-border crime is a negative outcome of the protocol. Other problems are money laundering and inflow of fake drugs into the country...Most of these guys do one bad thing in Ghana, then they move into Togo, Nigeria or Benin, and then we have criminals roaming in the whole region (K.M., Ghana Immigration Service, Akanu Border).

Thus, as noted elsewhere (see Teye et al, 2015), there are concerns that the privileges enshrined in the protocol have been abused by some citizens of the sub-region, including the prevalence of armed robbery, fraud, and illicit trade in narcotics. These crimes have led to expressions of resentment among officials and the general public, especially in Ghana where Nigerian immigrants, in particular, were likely to be perceived as being associated with crime. Recent conflicts between Fulani herdsmen and local farmers in the Agogo area of Ghana have created local community resentment against ECOWAS migrants in Ghana. In addition to the security threat, migrants are perceived by some as sources of disease transmission, carrying “foreign pathogens” that would exacerbate the burden of disease in these countries. The fear of diseases was more marked in Sierra Leone:

Ebola was transported from Guinea to Liberia and Sierra Leone to another. So that was one of the disadvantages [of free movement]...There is the tendency for migrants to bring foreign pathogens into our country (A.J.S., Public Health Superintendent, Environmental Health Directorate, Ministry of Health and Sanitation, Freetown).

These findings underscore the need for more public education and campaigns that will change the negative perceptions that people have about ECOWAS migrants, especially in Ghana.

Data and Labour Market Information Challenges

While reliable data on migration flows is important to support ongoing policy initiatives (Adepoju, 2005; Quartey, 2009), there is a general lack of accurate and up-to-date data on the flow of immigrants and emigrants in both Ghana and Sierra Leone and this poses problems to migration management. In both countries, officials explained that the lack of data is caused by a lack of resources to conduct research on migrants and or to analyse the data which is collected at the exit and entry points. Another problem has to do with the technical capacity of the agencies responsible for data collection. It emerged that in both Ghana and Sierra Leone, there is a general lack of both equipment and the technical capacity of immigration officials to manage and disseminate the data collected on a daily basis. However, Ghana has more advanced systems of data collection and analysis than Sierra Leone. The porous nature of borders also affects data collection. The statements below by some officials stress the data management challenges in both countries:

We do not have the resources needed to collect and analyze data on migrants. The census questionnaire has a few questions on migrants but this is not done regularly...The data collected at the entry points are not really analyzed because we lack the capacity. We also don't have equipment like servers and computers even to store and share this data (C.L., Department of Statistics, Sierra Leone).

We don't have equipment, like computers and a server to store and analyze data. We also lack capacity but I think the IOM, in recent times have organized a training programme where data management was taught. So that capacity is being built now, so that the ministry or the unit will serve as the custodian of all information or data relating to migration...Issues of capacity building, staffing, office accommodation are really a challenge (O.A., Migration Unit, Ministry of Interior).

Related to the challenges associated with data collection is the inability of governments of both countries to develop comprehensive data-sets on labour markets to provide information on employment opportunities to people entering the labour market. The Labour Market Information Systems (LMIS) are quite weak in both countries. A recent ICMPD/ECOWAS-commissioned

assessment conducted by Teye (2016) shows that there is currently no comprehensive Labour Market Information System in Sierra Leone. Individual government institutions and the private sector keep records of their employees in different forms and manners. Data on the labour market are mainly records of job vacancies and applications on public employment services. Although Ghana's LMIS is more advanced than that of Sierra Leone, it is still quite weak and does not provide adequate information on job avenues to both nationals and immigrants.

Economic Challenges and Political Instability

The poor economic situation in both Sierra Leone and Ghana and pressure from indigenes of these countries frustrate the migration process by making the benefits for most low-skilled jobs not worth the efforts of migrants. Economic challenges facing citizens create anti-migrant sentiments that render states reluctant to implement the ECOWAS Free Movement Protocols (Konan and Kouakou, 2012). The blame for economic problems is usually put on immigrants rather than on the root causes of corruption and mismanagement (Yaro, 2008). In the past, this has contributed to the mass expulsion of ECOWAS citizens from some countries. In both countries studied, economic challenges continue to create anti-migrant sentiments. These sentiments are more pervasive in Ghana's informal trading sector where Ghanaian traders attribute their low sales to the presence of Nigerian traders. There has been a series of demonstrations by Ghanaian traders against Nigerians and Chinese in the trading sector (Adjavon, 2013).

Additionally, political instability poses a serious challenge to using intra-regional mobility to promote development. As noted by Teye et al (2015), since the early 1990s, West Africa has experienced a number of intra-state conflicts. An immigration officer in Sierra Leone noted that as a result of the belief that the civil war was partly caused by mercenaries from other countries, border officials are concerned about the security implications of the inflows of migrants:

There is a general belief that the some fighters from other countries caused the civil war that destroyed our country. They crossed into Sierra Leone from Liberia where the same people fought during the civil war there. So we want people to come to Sierra Leone but we are concerned about security issues when we see many young men who appear at the borders without any travel document (TYN, Immigration Official, Sierra Leone).

The statement above shows that although border officials are not worried about inflows of all migrants, they are particularly concerned about young men who appear at the borders without travel documents. As Yaro (2008) noted elsewhere, since the conflicts created many refugees, both the individual countries and ECOWAS have to devote much attention and commit their scarce human and financial resources to the resolution of these conflicts, thereby constraining ECOWAS from achieving its set objectives.

Conclusions

The analysis in this paper indicates that both Ghana and Sierra Leone have made modest progress in the implementation of the ECOWAS Free Movement Protocol, especially in relation to Phase 1 (Right of Entry). All 15 ECOWAS countries, including Ghana and Sierra Leone, have abolished visa and entry requirements for up to 90 days. There are however, still serious challenges to the implementation of the free movement protocols, especially with regards to the Phase 2 and Phase 3 components. One challenge has to do with the harmonization of rules on travel documents. While some countries in the sub-region use identity cards (*carte d'identité*) as a travel document, these are not accepted by Ghanaian immigration officials.

The procedures for issuing work and residence permits in both Sierra Leone and Ghana also do not support the right of residence enshrined in the ECOWAS protocol. In principle, legislative instruments in both countries stipulate that work permits should be issued to all foreigners, including ECOWAS citizens, only in situations whereby there is a proof that the skills possessed by the migrants do not exist locally. These rules contradict the ECOWAS Free Movement Protocol which seeks to ensure that citizens of ECOWAS member countries are treated the same way as nationals of the host countries. The scenario resonates with the idea of governments having *actual and stated policies* (Grainger and Konteh, 2007) on the same issue. The governments of Sierra Leone and Ghana are not truly committed to the aspect of the protocol that seeks to ensure equal employment opportunities for nationals and citizens of ECOWAS member states. Consequently the domestic policies on employment contradict the principles of the protocol, creating policy ambiguities. The ECOWAS protocol, in some sense, remains a symbolic document, while the domestic rules governing the issuance of work permits constitute actual policy. By this strategy, the governments are able to maintain autonomy in the management of migration while also appearing to be abiding by the sub-regional protocol.

In line with reports of some earlier studies (see Adepoju, 2005; Teye et al, 2015), many migrants from member states are still harassed at the borders and asked to make unofficial payments. Another challenge to the implementation of the free movement protocol is the difficulty that immigration officials face in establishing the nationalities of the many migrants who arrive at the borders without travel documents. Many immigration officials and migrants in both countries have very low levels of knowledge about ECOWAS protocols. Of the two countries, Ghana seems to have more resources for border management than Sierra Leone, but both countries clearly need support to fully implement the Free Movement Protocol.

Other challenges which seriously affect the implementation of the ECOWAS protocol, in both Ghana and Sierra Leone, include fear of competition with immigrants, especially in Ghana; securitization of migration and migrants; lack of up-to-date data on migration flows, especially in Sierra Leone; weak Labour Market Information Systems, especially in Sierra Leone; and economic challenges and political instability in the ECOWAS region.

This study concludes that while some of the gaps in the implementation of the protocol, such as discriminatory work permit regimes, can be attributed to lack of ECOWAS governments' commitment which has led to the creation of policy ambiguities, other challenges (e.g. harassment at the borders) can be attributed to weak institutional arrangements and resource constraints. Although the top-down policy implementation model (Pressman and Wildavsky, 1984) is adopted to govern mobility in both countries, the lack of resources makes it difficult to ensure that street-level border officials protect these rights. This study concludes that the future implementation outcomes of the ECOWAS protocol largely depend on the commitment of the member states and financial and technical support that they receive from ECOWAS and its development partners.

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