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THE PROS AND CONS OF THE ECOWAS PROTOCOL ON FREE MOVEMENT OF PERSONS: A CONCEPTUAL DISCOURSE

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Abstract

The study has looked at scholarly articles that discuss the benefits and drawbacks of implementing the ECOWAS's free movement of people. People typically relocate from locations that are stagnating to those that are rapidly growing, from low-income to high-income neighbourhoods and from areas with irregular job prospects to areas where employment is more certain or promised by contact. This premise characterises the ECOWAS integration policy. These movements have far-reaching and intricate implications in the political, social, and economic domains. The literature on economic integration largely ignores them since they run counter to the conventional wisdom of comparative advantage and later trade ideas, which serve as the cornerstone of ECOWAS's integrative approach. Thus, the purpose of this study is to look into this stance. Neo-liberalism is the policy's main focus, and globalization's dynamic norms serve as the foundation for its flexible framework. Its methodology adopts a dynamic approach rather than a change-resistant one. The primary objective is to promote cross-border mobility among citizens of member states. These movements have far-reaching and intricate implications in the political, social, and economic domains. The literature on economic integration largely ignores them since they run counter to the conventional wisdom of comparative advantage and later trade ideas, which serve as the cornerstone of ECOWAS's integrative approach. Thus, the purpose of this study is to look into this stance. Neo-liberalism is the policy's main focus, and globalization's dynamic norms serve as the foundation for its flexible framework. Its methodology adopts a dynamic approach rather than a change-resistant one. The primary objective is to promote cross-border mobility among citizens of member states.

Keywords: ECOWAS, free, border, movement, pros and cons

1.0 Introduction

This paper's main goal is to analyse the conceptual gaps in academics' understanding of the ECOWAS Protocol on free movement. Without a doubt, the 1979 Protocol on the free movement of persons and the right of residence and establishment was prompted by the realisation that economic integration, which includes the unrestricted flow of people, products, and services, was necessary. The fundamental goal of the framework for free movement is to promote, expedite, and stimulate member states' social and economic development in order to raise the standard of living for their people (ECOWAS Treaty, 1975).

All member states signed the Protocol's first phase in 1980, which gave nationals of member states free entrance without a visa for ninety days. All member states accepted the Protocol's second phase, which grants residents the right of residency, which went into force in July 1986. As a result, experts disagree over the nature and character of this Protocol. First off, according to Agyei and Clottey (2018: p. 5), there are a variety of issues and difficulties with putting the Protocol into practice. Several border checks still persist even after ratifying the Protocol, which allowed people in the sub-region that had been prevented from moving freely by the colonial powers.

The argument put out by Agyei and Clottey concerns implementation rather than the core aim of the policy. Based on their conception, the Protocol was established to promote socioeconomic

integration that was hampered by the colonial domain in the area. Therefore, the gap in the researchers' perspectives regarding the Protocol is their inability to elaborate on whether or not the policy has promoted the socio-economic integration hampered by colonialism. Instead, the academics contended that the Protocol's worst enemies are the narrow-minded mindset of border security officers and communication gaps brought on by linguistic differences (Agyei and Clottey, 2018). Apart from this, the murder of community members in member states—such as the Gambia in 2005 and Zambia in 2015—remains a problem for the Protocol's implementation (Adeolar, 2017). Adepoju (2015: p.7-9) asserts that there may be a connection between economic concerns and the Protocol.

A significant number of West African nationals moved to Nigeria as a result of the protocol's implementation, which fell during a time of economic downturn in several of the member states. He claims that in 1983 and 1985, the Nigerian government annulled article 4 and 27 of the Protocol and removed 0.9 and 1.3 million non-national citizens, the majority of whom were Ghanaians, because the country's economic position became intolerable.
According to the foregoing argument, member nations were forcibly expelling persons from West Africa and killing them without cause, which is against Article 1 of the Protocol. By no means does the Protocol, general international law, or even local law support extrajudicial killings. The weakness in Adepoju's (2015) argument, however, is that he did not clearly articulate how the member nations' economic situations pose a serious obstacle to the ECOWAS Protocol's implementation. This paper's main idea is based on the conceptual assumption that examines the cost and benefits of the Protocol.

2.0 Conceptual and Theoretical Underpinnings

ECOWAS means Economic Community of West African States. It is a sub-regional integration organization that is committed to removing encumbrances that are capable of preventing free movement of persons and goods across border within the community. ECOWAS has the protocol for free movement of persons, and protocol for free movement of goods. These protocols are to enhance the free mobility aim of the sub-regional body. On the other hand, this study critiques the Economic Integration Theory, which provides an analytical tool to understand the nature and character of sub-regional, regional, or global integrative organizations. Originating from the groundworks of Viner (1950), Meade (1955), and Balassa (1961), the theory focuses on the commercial policy of discriminatively reducing or eliminating trade barriers among nations joining together.

It assumes the removal of tariff and non-tariff barriers among member states, a common external trade policy, free movement of goods and services, harmonisation of policies, unification of national monetary policies, and acceptance of a common currency. Balassa (1961) argues that economic integrative schemes can be pursued for various reasons, including enhanced economic growth and development. The theory delineates the welfare impact of regional economic integration from two perspectives: static effects in terms of productive efficiency and consumer welfare, and dynamic effects in terms of member states' long-term growth rates.

Economic integration encompasses various aspects, including free trade areas, customs unions, common markets, economic unions, and regional integration. The Common Market theory of economic integration is particularly relevant to the workability of ECOWAS as a regional economic integration organization. The theory emphasizes the free movement of goods and services among member states and the free movement of production factors across national borders within the economic bloc. The ECOWAS Protocol on the free movement of persons is a reflection of this theory, as it aims to remove encumbrances against movement factors among member-states. This promotes factor mobility, which equalizes returns on factors of production throughout the market. The primary reason for promoting factor mobility is to lead to a more efficient allocation of labor and capital within the economic bloc, enhancing the bloc's total level of production, income, and welfare.

Proponents of ECOWAS integration policy believe that the essence of free factor movement is to create wealth towards poverty reduction in the region. However, the study stands differently from proponents of economic integration theory, as it does not consider the security complexity that could come with the free movement of persons under the auspices of the Protocol on free movement.

Moreover, the establishment of ECOWAS as a model of a common market did not take into consideration the need to empower member states against challenges such as illegal migration, undocumented migration, arms smuggling, and drug trafficking that accompany the movement of factors across borders. This study fills a gap by subjecting the conventional perspective of the economic integration theory to scrutiny.

3.0 The Ideological Metaphor of the ECOWAS Protocol of Free Movement of Persons

For example, the majority of migrants from West Africa are not well off. In this case, their migration to other ECOWAS member nations has no appreciable impact on the economic development and prosperity of their new country. The majority of these immigrants are low-income individuals with limited professional experience and skill sets in their respective fields of endeavour. In order to improve the efficient and profitable movement of workers across member states, this emphasises the necessity of developing human capital, particularly within ECOWAS member nations. These are the unspoken concerns that Adepoju (2000) failed to take into account in his argument.

Moreover, the primary objective of Article 2 of the Protocol is to relax national regulations concerning immigration requirements for the transboundary movement and residency of community members. Because of this, Abdoulahi (2005: p. 9) believes that even if member states have "domesticated the protocol," its implementation "seems to slow down efforts at integration and realisation of free movement of persons." According to this study's analysis of Abdoulahi's (2005) submission, the researcher failed to explain why the Protocol's implementation has been moving slowly. This study therefore considers it to be a flaw in his argument. Nevertheless, the complete elimination of immigration restrictions did not start in 1981 as anticipated; instead, it happened in 1982, and the gains that were anticipated to be made during the postponement were not realised.

According to Umar (2016: p. 34), this is sometimes explained by the small size and homogeneity of the member states' economies. The incapacity to guarantee the complete execution of the Protocol is attributed to the numerous memberships and intersecting interests of member states in other organisations, which might present significant challenges when coordinating or harmonising policies/programs and member-state foreign policy.

This analysis concurs with Umar's (2016) assessment that the Protocol's implementation has been somewhat successful despite these challenges. In most of the member nations, the population flow from the sub-region makes up a sizable part of all immigrants. According to Ghana Immigration Service statistics, ECOWAS member states accounted for at least one-third of all entries in Ghana between 1999 and 2017 (Ghana Immigration Service, 2018). Furthermore, according to National Bureau of Statistics (2018), over 50% of the 740,191 non-Ghanaian population in 2017 were citizens of West African sister nations. Likewise, more than half of the 740,610 Ghanaians who were born outside of the country claimed to have been born in an ECOWAS nation (Ghana Statistical Service, 2018).

This indicates that a major component of population dispersion is mobility within West Africa. Notwithstanding the supporting data, Umar (2016) did not go into detail about how member state harmonising policies and activities relate to one another and the Protocol. This study considers it to be a gap in his research. Thus, in terms of member states' foreign policies, it can be deduced that some member nations implement financial and economic policies that are unfavourable to the other ECOWAS members in an effort to safeguard their economies.

The financial regulation policies of Nigeria, which prohibit the usage of Nigerian ATM cards overseas, serve as a prime example. Even while the goal of this regulation is to encourage Nigerian ATM card users to use their cards responsibly and set spending limits, it has an impact on how easy and convenient it is for Nigerian nationals to conduct business abroad. The ban on the entry of used automobiles into Nigeria is also associated with this. As a result, this strategy will have an impact on member state relations and foreign policy.

The Ghana Immigration Service (2018) and Ghana Statistical Service (2018) provided demographic data that supported Umar (2016)'s intellectual utility despite this gap. Additionally, it has made room for the convergence of issues. First and foremost, migration is essential to realising and optimising the potential of a worldwide labour force (Wolf, 2004, Rodrik, 2002, and Abdullahi, 2017). Eze (2016: p. 9) asserts, in support of this claim, that a large number of nations, including those that are members of the Economic Community of West African States, are changing their immigration laws from ones that restrict immigration to ones that manage it as a global phenomenon. Beyond resolving intra- and inter-state coordination issues between governments, regional organisations, international organisations, and interest groups, managing migration entails more.

However, this analysis finds a vacuum in Eze (2016)'s proposal since he neglected to consider the impact that interdependence and globalisation have on the ECOWAS Protocol's implementation. This is due to the fact that factors influencing migratory convergence include obstacles to and opportunities for the free movement of people within the ECOWAS protocol. Going one step further, Uba (2016) connected the evolving dynamics of globalisation to the ECOWAS Protocol's implementation. Uba (2016, p. 9) states that the sub-region's globalisation has gained a fresh impetus with the protocol's deployment. Because of the ECOWAS free movement agreement, which has substantially enhanced international trade and tourism, West African states are now more accessible to the global economy as a result of globalisation.

The ECOWAS States' international migration patterns are becoming more complex despite the protocol's implementation. Regarding the claim that the ECOWAS member states do not effectively execute the migration framework, this study differs from Uba (2016). The execution of the policy—rather than the migration itself—is the issue. Since shifting migratory patterns pose a danger to the protocol's sustainable implementation, member states' adoption of the ECOWAS Protocol on free movement is the source of controversy. Obe (2016: p. 54) rightly asserts that "the challenges of the implementation of the ECOWAS Protocol of free movement are multifaceted," in opposition to this idea. Migration patterns are changing in the majority of states. This suggests that the member states of ECOWAS are not responding collectively enough. Among these difficulties are the trafficking of women and children as well as unskilled migration.

Obe's reasoning is consistent with the main findings of this research, which say that while the ECOWAS Protocol on Free Movement is a valuable policy, member states may experience socioeconomic latent effects related to specific security concerns. Therefore, there are important concerns about the Protocol's operationalization that could jeopardise it. These include the lack of appropriate procedures to prevent criminals from infiltrating the country, the disunity of national immigration laws and regulations, and the deficiency of infrastructure to enable borderless West Africa. ECOWAS does not appear to have put in place sufficient controls on the entry of undocumented immigrants into its member states.

In light of this, Ikalama (2015: p.76) asserts that: the issue is that a large number of persons in the sub-region lack legitimate travel documents, such as birth certificates. People who engage in evil acts like armed banditry, terrorism, and human trafficking have taken advantage of this. Ikalama's point of view is undoubtedly valid. To monitor its borders, Ghana, for example, has set up a Border Patrol Unit (BPU) within the Ghana Immigration Service (Uba, 2017). In addition, the sub-regional organisation has not succeeded in bringing national immigration laws into compliance prior to the Protocol's implementation.

This has negatively impacted the Protocol on the Free Movement of Persons' seamless implementation. Some member states revoked the Protocol and expelled non-nationals during hard economic times because they did not give enough thought to the differences and diversities in the social, political, and economic backgrounds of the member states when enacting the Protocol. Ikalama (2015), however, did not provide a detailed explanation of how illegal migration has impacted the Protocol's execution.Thus, it is considered a gap in her literature by this analysis. Roads, efficient border security, and communication networks are examples of the sub-region's poor infrastructure,

which has not altered over time despite the intricacy of the Protocol's implementation. In order to enable the efficient flow of human traffic, road and rail networks were confined to national borders, just as they were when the Protocol came into operation. Little effort was made to develop these networks outside national boundaries. It's possible that insufficient planning prevented the Protocol from being implemented for the people's benefit in a seamless and efficient manner.

It is also important to note that the member-states are at different levels of economic development and this has impeded the realisation of free movement of persons within the sub-region," argue Durkin and Brinkman (2017: p. 3), based on this analytical premise. This suggests that the trend is in the direction of specific economic development nodes, placing undue strain on those economies. For example, these population shifts have benefited Nigeria, Senegal, Cote d'Ivoire, and Ghana (lately). The weakness of Durkin and Brinkman's (2017) argument, though, is that they don't focus on how to quicken the sub-region's economic development and decrease poverty in order to prevent some nations' population from becoming an economic burden on a small number of member states.

The Protocol also has additional problems, such as conflicting issues and stringent migration regulations. In this regard, the majority of nations worldwide are implementing immigration laws designed to limit the number of people who can enter their borders. According to Martin (2003: p. 45), "the top 25 richest countries spend between $25 billion and $30 billion a year on immigration enforcement." A large portion of these monies go towards policing borders, building physical structures and obstacles, and implementing rules and regulations like "airline inspections. However, advanced nations in the North are not the only ones with these kinds of immigration laws. The United Nations reported on migration in 2017 and identified 44 nations—30 of which were developing nations—as having tightened border controls as part of their own migration strategies.

Additionally, 57 developing nations, including those in Africa, made up the 78 States that implemented immigration reduction measures (UN, 2017: pp.17–18). Because of the spirit of the ECOWAS one-for-all strategic stance, several ECOWAS member nations' migration policies do not adhere to the letter. For this reason, the problem, according to Gambari (2016: p. 6), stems from the Protocol's divergent interests in allowing member states to defend and preserve the interests of just their population in each State. The intention to prevent internal political upheavals brought on by low rates of economic growth and development may account for this.

This study sees a vacuum in Martin's (2003) argument on the Protocol, however, in his refusal to acknowledge that migration matters are solely within the competence of states and that they must set policies in that regard. The sole recourse available to the affiliated international organization(s), such as the ECOWAS, is for member-states to confuse its multilateral framework. The majority of nations have the option to create policies on cross-border movement that prioritise giving nationals preference over non-nationals from the sub-region when it comes to employment possibilities. It is important to highlight that the Immigration Act, 2000 (Act 573) of Ghana, which nullified Act 160, did not address the integration process as outlined in the ECOWAS Treaty because it did not include any special provisions for nationals of ECOWAS member states (Ghanaian Law, 2000).

3.0 The Pros and Cons of the Protocol of Free Movement of Persons in West Africa

One could note that the viewpoints expressed by Gambari (2016), Martin (2003), and the UN (2017) all touch on matters pertaining to internal political instability as well as political and ideological divides among West African leaders. Consequently, it appears that a leader's personality may have hindered the successful execution of the Protocol. The divisions among the leaders increase mistrust and suspicion, which makes border controls more stringent. Additionally, there were worries that certain members were giving rebels or insurgents support, opening their territory to attacks aimed at toppling their governments.

Notwithstanding the presence of the Protocol, limits on cross-border travel rise in response to such threats. Such stringent border controls are inconsistent with international standards and the liberal democratic worldview that is prevailing worldwide. People have a right to mobility from the standpoint of human rights (Unazi, 2014). In addition to ECOWAS, the charters of NEPAD and the

AU support Africans' freedom to migrate without restrictions (Umozurike, 2010). Once more, political unrest and internal strife are problems that have attempted to impede the freedom of movement among residents of the sub-region.

Another obstacle to the Protocol's implementation is the growing unrest in the states where immigrants dominate trade and the labour sector of economies. "It creates anti-migration sentiments that degenerate into populist political movements," according to Castles (2014:873). These conflicts serve as undercurrents for the weakening of regimes. While there is freedom of movement within the sub-region in theory, discriminatory attitudes are leading to deportation, widespread harassment, and the rejection of migrants' human rights as stipulated by the Protocol. One observation regarding Castles's (2013) perspective is that it is lacking in acknowledgment of the fact that political and social turmoil in certain member states diverted the governments' focus from carrying out their responsibilities to the sub-regional organisation. Political turmoil occasionally acts as a springboard for the harassment and eviction of foreign nationals. One may assume that the political unrest in Cote d'Ivoire, Nigeria in the 1980s against Ghanaians, and other places ignited animosity towards foreigners in general and towards Burkinabes in particular.

This suggests that there is a direct correlation between the Protocol's implementation, a deficient institutional environment at the national level, and leadership shortcomings. Accordingly, Kim (2015:p98) contends that "poor governance and weak institutions are the bane of multilateral framework implantation, particularly in Africa." Kin (2015) argues that conflicting perspectives in the multilateral framework's implementation are a result of a weak institutional foundation at the country level. For example, multiple ministries, departments, and agencies control immigration rules throughout the majority of member states. As a result, a number of issues that impede the free flow of people around the region may arise from inadequate coordination and implementation flaws.

For example, in Nigeria, the ministries of foreign affairs, trade, and interior each have a distinct role to play in the State's migration policy. Inadequate communication between these ministries' multiple departments and agencies might easily lead to ECOWAS Protocol violations. At the supranational level, ECOWAS hosts far fewer fora on migration than it does economic exchanges and conferences. The ECOWAS's migration-related structures receive little attention. Nonetheless, Kim (2015) may face criticism for failing to acknowledge a conceptual gap in his understanding of the ECOWAS Protocol on Free Movement—namely, the incompatibility of migration and the welfare of migrants from West Africa under its regime. This is due to his refusal to acknowledge that strict immigration laws should be implemented in areas where trade policies are being liberalised. In addition to having a weak institutional foundation, the ECOWAS Protocol on Free Movement failed to take this neo-liberal theory of trans-movement into account.

Trade concerns are more important in ECOWAS than immigration since the region has invested a great deal of time and resources in coordinating its trade policy. The fact that different States gain differently from international migration policy is a significant distinction. There are issues to negotiate, unlike in international trade. However, migrations almost always result in gains that are exclusive to one party. According to this viewpoint, in order to achieve maximum economic integration, each state must utilise all of its labour and capital potential due to the tiny size of its economies. However, the sub-regional organisation is unwavering in its execution of the Protocol, disregarding the previously indicated problematic relationship between trade liberalisation and cross-border mobility.

Additionally, as is evident in many regions of the world, collective welfare programmes and migration are incompatible (Raico, 1998; Wolf, 2004 and Uba, 2017). Naturally, there is nothing about it in the ECOWAS Protocol on free movement. State-owned social programmes in West African governments are insufficient to support their citizens, let alone the citizens of other ECOWAS members. Therefore, the goal of migration policy is to prevent migrants, especially those from West Africa, from receiving benefits from member state welfare systems. Hatton (2016: p.9) argues that there is an incompatibility between the welfare of citizens and unfettered trans-border migration.

As a result, our analysis concurs with Hatton (2016) that migration and a state's capacity for economic growth are important concerns. Hatton (2016), however, focused more on formal migration and less on the impact of informal cross-border movement on citizens' wellbeing and economic possibilities. This makes it regarded as a gap in this submission. However, Stryker (2015: p. 23) went one step further and clarified that “illegal migration and smuggling of goods by foreign nationals,

mostly from neighbouring countries, motivated by regional free movement framework" constitute informal cross-border mobility.

Meagher (2017: p. 2) reiterates the previous assertion that a nation such as "Togo, which garnered $150 and $40 million from gold and diamonds in 2016," would perceive informal cross-border trade as advantageous to its populace. Plunked and Stryker (2015: p2) went on to estimate that "between 4-5 million women were involved in West African states as informal cross-border traders, generating 80% of their income." Still, it is ironic that the majority of ECOWAS member states have different approaches to dealing with the issue of informal cross-border trade, which is one of the issues brought about by the Protocol's implementation. Regardless of viewpoint, the goal of the free movement protocol is to encourage the movement of labour, capital, and goods among ECOWAS member nations. However, transnational crimes like the smuggling of light or small arms, human trafficking, violent nomadic gangs, and even terrorism could abuse the policy by using their evil activities to jeopardise the security of their host nation.

Concluding Thought

Although the community's residents have the right to enter and reside, there have been difficulties in putting Articles 2 and 3 of the Protocol into practice (Adepoju, 2005; Afolayan, 1988; Brown, 1998). In particular, Brown (1989) said that the expulsion of almost 2.7 million other community members from Nigeria between January 1983 and May 1985 was the first domestic issue that the Protocol had to deal with. Brown bases his case on the fact that Nigeria disregarded the Protocol's provisions, which give community members more authority, in light of this development. He said that the actions of the Nigerian government were against the letter and the spirit of the Protocol on Free Movement (Brown, 1989).

Although it is a known fact that Nigeria deported a number of community members, as Brown (1989) argues, Nigeria did not violate any of the Protocol's stipulations in any way. This is due to the fact that, for a while, the Protocol restricted residents' ability to enter and dwell in any State within the community for a period of ninety days. Accordingly, this investigation perceives a void in Brown's material about the claim that Nigeria violated the Protocol with that expulsion. Because the initial phase of the Protocol only gave ECOWAS people the ability to join the State and stay there for a maximum of ninety days, Dokubo (2009: p. 156) contends that "Nigeria's expulsion did not technically violate the Protocol on the free movement of persons". Put differently, anybody desiring to remain in Nigeria past the designated duration would have applied for authorization from the appropriate authorities. Instead, there was in no way a breach of the letter or the spirit of the Protocol on free movement by Nigeria's expulsion of Ghanaians and other community members.

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