

INTERNATIONAL MIGRATION PAPERS

80E

Legislation on migrant workers in West Africa

Hamidou Ba

With the collaboration of

Abdoulaye Fall



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INTERNATIONAL MIGRATION PROGRAMME

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Foreword

This report comprises part of the ILO working paper series *International Migration Papers* that disseminates current research findings on global migration trends and seeks to stimulate dialogue and policy development on issues of regulating labour migration.

The importance and immediacy of better regulating labour migration in Africa motivated the ILO to establish a programmatic *Africa Labour Migration Initiative* in 2002. The evident starting point for this initiative was to expand the knowledge base as a proper foundation for effective technical cooperation and practical activity. As a result, this report comprises one of a special series of 31 regional and national studies from East, West and Maghreb Africa being published in 2006 as *International Migration Papers*, starting with IMP number 76, or posted on the Project website¹.

Migration has come to the top of the political and social agenda across all of Africa. In recent years, regional integration initiatives have made considerable progress in development of frameworks, legislation, and mechanisms for increased economic and social integration among concerned states. At the continental level, the African Union and the Economic Commission for Africa have both taken up the challenges of exploring greater labour mobility across the region.

West Africa in particular has always been characterised by strong migratory dynamics due to prevailing political, labour market and political conditions. In Africa, this region has the highest concentration of intra-regional migrants and the highest rate of emigration towards Europe.

Labour mobility and market integration have been explicitly addressed in the context of the regional integration process of the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UMEOA). Over the last two decades, ECOWAS has elaborated Protocols on Free Movement of Persons and the Right of Residence and Establishment. However, these Protocols have not been fully implemented. Data necessary to make informed policy decisions is non-existent or at best insufficient. National legislation in ECOWAS member countries has not adequately incorporated the provisions of regional Protocols and international standards. Existing policy and practices often makes little or no reference to relevant labour market and labour migration conditions. Further, the involvement and capacity of labour ministries, worker organizations and employers in addressing labour migration needs to be strengthened by way of new mechanisms for institutionalized social dialogue and effective tripartite committees.

This report is the product of a process initiated by the ILO and supported by the European Commission on the basis of explicit constituent recommendations and requests for engagement. Following consultations with ILO constituent governments and social partners since 2001, West Africa, project activity has been ongoing over the last three years. A pilot phase was begun in 2003, followed by the project “Managing Labour Migration for Integration and Development in the Euromed Region, East Africa and West Africa” established in 2004, supported by the European Commission budget line for cooperation

¹ ILO-EU Project “Managing labour migration for integration and development in Africa” Website: <http://migration-africa.itcilo.org>

with third countries administered by DG Justice, Freedom and Security. Main programme aims are:

- to enhance the capacities of ILO tri-partite constituents for managing labour migration as an instrument for development
- to promote social dialogue and to raise awareness among stakeholders regarding regional labour migration issues
- to obtain knowledge and data essential for governments and social partners to effectively set policy and regulate labour migration
- to enhance cooperation between East Africa, West Africa, North Africa and Europe on labour migration.

This report is one of a complementary series of three sub-regional research studies covering West Africa countries intended to assist governments and social partners to address the fundamental building blocks of effective policy and practice to regulate labour migration. This paper analyses existing national legislation on labour migration –the legal foundation for State action on migration-- and in particular notes the extent of incorporation of relevant international normative standards and potential harmonization of national legislation with that of neighbouring countries and the relevant ECOWAS Protocols. Another study assesses the current state of data collection and suggests specific measures to improve and harmonize collection and analysis of statistical data on labour migration and to more effectively use it in policy formulation. A third regional study examines a number of key linkages between migration and development in order to identify what action and what policy tools can contribute to ensuring that migration indeed enhances development.

This report synthesizes the findings from three specific national studies conducted under auspices of the project in Burkina Faso, Capo Verde, Gambia, Mali, Mauritania and Senegal, executed by respectively par Timothée Soulama, Hélio de Jésus Pina Sanches, Janet Sallah-Jie, Pierre N. Cissé, Haïmoud Ramdan, et Abdoulaye Fall. It starts by outlining the rationale of international standards for the protection of migrant workers and by giving an overview of the regional existing instruments on labour migration in West Africa, followed by a presentation of the national laws and regulation in the region. This is followed by a look at the state of ratification of relevant international conventions and the provisions of the relevant ECOWAS regional Protocols on labour circulation and establishment. Subsequently, a number of constraints and obstacles for greater harmonisation are identified that lead the authors to make several recommendations for legislative adjustments and improved regional cooperation on labour migration in the region

As the research emanating from the project shows, there remain a number of obstacles to the effective management of intra-regional labour migration or from West Africa. Key challenges concern the availability of accurate data necessary to make informed policy decisions, the need to fully incorporate relevant provisions of international standards in national law, and the establishment or improvement of institutional structures and mechanisms with specific competence and capacity to regulate labour migration. The suggested lines of response presume common interest in optimizing potential development benefits for both countries of origin and destination to be derived from effective administration of labour migration. We sincerely hope that this report will serve as a building block for our member governments and social partner constituents to address the migration challenges before them. We also hope that dissemination of these research findings will enhance regional policy dialogue and cooperation on labour migration.

We wish to acknowledge the diligent and arduous work of the researchers who prepared the respective national studies as well as the effective efforts of Prof. Hamidou Ba to synthesize the six national studies into this West Africa regional overview. Appreciation is noted for the cooperation received from concerned governmental offices and agencies in Burkina Faso, Cabo Verde, Gambia, Mali, Mauritania and Senegal, as well as in Ghana and Nigeria that shared perspective, concerns and data essential to this effort.

Thanks are also due to the ILO West Africa project team based in Algiers, Prof. Hamidou Ba, Carole Brunet and Racky Sow for their support, editing and coordination efforts, and to the Director of the ILO sub-regional Office in Dakar, Mohamed Ould Sidi, and to Tharcisse Nkanagu for their editorial review and liaison work with governments and social partners.

Patricia Isimat Marin, Senior Specialist on Legislation and International Labour Standards in the ILO Sub-Regional Office for Central Africa in Yaoundé (Cameroon) reviewed and edited this report to ensure its technical accuracy. Finally, we note the dedicated attention by David Nii Addy, ILO Africa Project Officer, to ensuring that the entire research, writing and review process was carried through to completion, and the editing and publication support by Céline Peyron.

Geneva, June 2006.

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1. Introduction

Western Africa is the source of large migratory diasporas to the rest of the world, which contribute substantially to the economic and social development of their home countries. To a large extent, the status of these migrants remains uncertain and vulnerable. This leads to constraints on exercising their rights, due either to the absence of a legal framework or of an organisation devoted to their protection. However, more than any other category of workers, migrants are exposed to exploitation, especially when they are in an irregular situation.

In order to fulfill their need for protection while ensuring their participation in the development of both the home and host countries, the ILO, in conjunction with its constituents, has launched a project entitled “Managing Labour Migration for Integration and Development in Africa (RAF/02/312/EEC)” aiming at developing and promoting the adoption of a new general policy framework and to organise labour migration into a tool for development. The Project encompasses the countries of North, West and East Africa.

Indeed, the protection of workers outside their home country has always been a central concern in the work of the International Labour Organisation. Ever since its foundation in 1919, the fate of migrant workers was a concern, be it in the Versailles Treaty or in the preamble to the ILO Charter². As early as the first session of the International Labour Conference in 1919, a recommendation was drawn up outlining the Organisation’s two objectives in this matter: equal treatment for national and migrant workers and cooperation among States, governments and worker and employer organisations.

This study summarises the national reports on the international migration legislation conducted in 6 countries covered by the Project in the sub-region of Western Africa; namely Burkina Faso, Cape Verde, The Gambia, Mali, Mauritania and Senegal.

1.1 Background

This study reflects an effort to integrate, as all six countries involved are basically parties to most of the current regional or sub-regional integration experiments, including notably the adoption of joint instruments under the auspices of the Organisation of African Unity (OAU), the African Union (AU), or of the ECOWAS or the WAEMU.

The countries covered by the study belong mainly to the Sahel region. Either on account of unfavourable climatic conditions for some of them, or due to their landlocked geographical location for others (Burkina Faso and Mali), these countries soon became areas of high migration, internal or international.

Undoubtedly, these migratory flows are due to numerous and varied causes; nevertheless it seems that they stem essentially from economic motives: populations travel in search of gainful work, in particular salaried employment, trade or farming, in order to improve their standard of living. Where such migrations go is indicative in that regard.

² In “Travailleurs Migrants” (Migrant Workers), ILO Conference 87th session, 1999, International Labour Organisation, Geneva.

For example, Cape Verde is a country devoid of resources and periodically hit by droughts. Thus, to cope with the food crisis in this archipelago, many Cape Verdeans have opted for exile as a survival strategy. This has engendered a “spontaneous migration” and a major outflow of people. A policy to promote and organise a forced recruitment of Cape Verde labour by the colonial administration has further compounded such outflows. Moreover, a labour shortage in the former colonial power due to the Portuguese emigration to Western Europe, as of the sixties, gave rise to large displacements of Cape Verdeans to Lisbon, Portugal³.

Today, Cape Verde has large diasporas in the United States, in Europe and in Africa, who contribute greatly to the economic and social development of the country. However, as almost everywhere in the world, Cape Verde is affected by a labour immigration phenomenon, and is now turning into a host country for migrants.

Indeed, at the beginning of the nineties, Cape Verde observed large migratory flows from African countries with the enforcement of the *Protocol on the free movement of persons and the right of residence and of establishment*, adopted by the *Economic Community of West African States* (ECOWAS), signed in Dakar in 1979 and ratified by Cape Verde in 1982, pursuant to law number 18/II/82. Migratory flows proceeding from Members of the Community of Portuguese-speaking Countries (CPLP) were recorded when law number 36/V/97 came into force whereby “Portuguese-speaking citizenship” was established in Cape Verde. Cape Verde grants citizens from that “community”, among other prerogatives, active and passive participation in local elections, the right to Cape Verde citizenship to children of a Portuguese-speaking mother or father born in Cape Verde, and the right to the Cape Verde nationality without loss of their previous nationality.

In the rest of Western Africa, migration, which had followed traditional patterns, was enhanced by the colonial powers in their drive to develop the coastal territories. These migrations continued after independence in the 1960s. According to estimates, one third (1/3) of the population of Burkina Faso has emigrated. In 2000, Côte d’Ivoire had some 2.3 million immigrants in its territory.

Another example: Mauritania. Because of its geographical location between Europe and Africa, Mauritania acts as a link between the rest of Maghreb and sub-Saharan Africa. In recent years, it has become the destination favoured by migrants wishing to reach Europe.

This new state of affairs has caused concern among authorities, as new forms of immigration develop with a potential to disrupt the populations and to endanger the existing institutions in the medium term.

In order to control the influx of irregular migrants, Mauritania cooperates with European and North African countries. Such efforts are framed by a partnership between countries North and South of the Mediterranean basin and reflect the Mauritanian authorities’ growing awareness of the need to manage and anticipate the massive migratory flows at its borders, which are likely to upset its economic and social balance, and its international image.

³ In Study, “Migrações” (Migrations), National Institute of Statistics, 2000.

All these circumstances cannot fail to affect the migration laws and regulations of the countries concerned, in one way or another; nevertheless, despite the economic and demographic impact of the migratory flows, a real migratory policy has yet to be developed in Western Africa. In other words, within the general context of sub-regional integration and of the international efforts to provide comprehensive protection for migrants, this issue gains particular importance and pertinence.

1.2 Aims of the study

The main purpose of this summary is to take stock of the legislation and regulations related to the migratory phenomena in the six countries targeted by the study. It aims to review the body of instruments, both national and international, governing international migrations in general terms and migrant workers' rights in particular. It also intends to analyse the degree of consistency of laws among the different countries in the sub-region, identifying discrepancies and suggesting methods to harmonise the various legislations.

This study also attempts to discern legal loopholes and to highlight the main obstacles in the way of ratification by these States of international instruments, advocated either by international organisations or by regional charters.

On the basis of a comparison of the various laws and regulations, the study suggests policies focused on a comprehensive, even harmonized, approach to the legal framework, relying on dialogue and negotiation involving all the stake-holders in managing the migratory phenomena.

1.3 Outline of the study

Following the introduction, the study will be divided into four parts:

- The first part is mainly descriptive of the principal provisions whether international, African or national, based on the country studies.
- The second part refers to the harmonisation of national legislation with international standards, and it attempts to explain the constraints that the States face, which hamper the effective implementation of regional protocols, specifically in the context of ECOWAS.
- The third part relates to weaknesses and shortcomings in the enforcement of the conventions.
- The last part reflects the country study recommendations to steer the migration policies into a development perspective.

2. Legal framework for migrations

Generally the West African sub-region and particularly the ECOWAS/WAEMU area, have a longstanding tradition of migration. While migratory movements reflect the vitality of the area, and act as a powerful integration factor, they undoubtedly represent a series of challenges to the States in the sub-region: to their safety and stability, to their economic development and social cohesiveness, to the human rights of the migrants and their families.

To confront these challenges, the countries of the sub-region tried to adopt institutional and legal frameworks, be they multilateral, bilateral or national. These were designed, firstly, to foster greater consistency between migrations and economic and social development goals and secondly, to ensure full protection of the human rights of migrants and their families.

2.1 International Law

a) International Instruments enforced by the United Nations

Various international standards and political recommendations have been adopted by the six African States pertaining to this study.

Political recommendations

Paragraph 2 of Article 13 of the Universal Declaration of Human Rights provides that “everyone has the right to leave any country, including his own, and to return to his country”.

From that point on, this declaration embodies a moral obligation governing relations between individuals and their governments; it also guarantees the defense of the human rights, fundamental liberties and dignity belonging to all members of the family.

The impact of this Declaration throughout the world has been considerable. It inspired and promoted the adoption of a wide range of international decisions, both within and outside the United Nations, which led to the establishment of new rules.

This major endeavour, to which the United Nations devoted its efforts since its inception, ended on December 16, 1966 when two covenants were adopted :

- International Covenant on Civil and Political Rights (1966) came into force on March 23rd 1976. Paragraph 1 of Article 2 provides that “Each State Party...undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction, the rights recognized in the present Covenant,” namely:
 - The right to equal treatment before the courts of justice;
 - The right to personal safety;
 - The right to take part in elections and to run as candidates;
 - The right to circulate freely and to elect residence inside a state;
 - The right to leave any country including one’s own and to return to one’s home country;
 - The right to a nationality; the right to marry;
 - The right of opinion and the right to free thought;
 - The right to meet and to associate peacefully;
 without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin”.
- The International Covenant on Economic, Social and Cultural Rights (1966) came into force on September 3rd 1976 as the counterpart to the Covenant on Civil and Political Rights. It presents in greater detail some of the rights enshrined in the Universal Declaration of Human Rights. It is recognised that the ideal in terms of Human Rights can only be attained if “conditions are created whereby everyone may enjoy his

economic, social and cultural rights, as well as his civil and political rights”. Among economic social and cultural rights, the following may be mentioned:

- the right to work, to choose one’s job freely, under equitable conditions, with insurances against unemployment, to equal pay for equal work;
- the right to health, to medical care;
- the right to education and to training;
- the right to access all public places and services.

The International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families

This Convention adopted by the United Nations General Assembly in 1990, sets out a full definition of the “fundamental values” and establishes a legal foundation for a national policy to be developed and applied in relation to the migrant workers and their families.

It acts as a tool to encourage States to design their national legislation in keeping with the international standards.

Many provisions overlap with detailed programmes geared to developing national policies encouraging States to cooperate and consult with each other, in order to draw up labour migration policies, exchange information, provide information to migrants, proceed to their systematic return and assist them to reintegrate.

Part 5 of this Convention contains an eight (8) article detailed programme calling for international intergovernmental consultations and cooperation on international migration management.

b) International Instruments enforced by the ILO

The ILO stressed the need to muster all its normative means of action, its technical cooperation and research capacity in all of its areas of competence, with a view to devote special attention to the problems faced by those with specific social needs, concretely those of migrant workers. In this field, the ILO adopted two fundamental standards dealing specifically with migrant workers.

First, Convention No. 97 (revised), adopted in 1949, lays down the foundations for equal treatment of nationals and legal migrants in areas such as: hiring procedures, living and working conditions, access to justice, taxation and social security regulations.

Second, Convention No. 143 on migrant workers, adopted in 1975, the aim of which is to regulate migratory flows, to eliminate irregular migration and to fight against trafficking in human beings and slave trade.

Convention No. 97 (1949)

The convention regarding migrant workers, revised in 1949, at the outset, states in Article 1 that: “each Member of the International Labour Organisation for which this Convention is in force undertakes to make available on request to the International Labour Office and to other Members:

- information on national policies, laws and regulations relating to emigration and immigration;

- information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment;
- information concerning general agreements and special arrangements on these questions concluded by the Member”.

Members shall set up a service, provided free of charge, designed to assist migrant workers with information to facilitate their departure, arrival and travel.

Members must provide adequate health care for migrants and their families.

They must ensure the elimination of all forms of discrimination either in relation to their treatment (wages, social security system, taxation, etc...) or in terms of union membership or benefiting from the results of collective bargaining.

Member States must also make sure that migrant workers are able to transfer all or part of their income or savings.

Annex I of the Convention regarding hiring, placement and working conditions for migrant workers provides for these services to be free for this category, when public employment agencies are involved.

Upon arrival in the host country, the migrant shall receive a copy of his/her work contract. Before departure, the migrant shall be informed in writing of the terms of his contract and conditions of work, in particular the remuneration offered.

Administrative transactions must be simplified, interpretation services shall be provided whenever necessary, and their welfare must be guaranteed.

The migrant’s personal belongings, as those of his/her family, that travel with them or follow them, must be allowed a duty free entry and exit to the host country and back to the home country (Annex III).

Convention No. 143 (1975)

Convention No. 143 was adopted at a time of growing concern about irregular migration. Its two main objectives are to:

- regulate migratory flows, eliminate irregular migration and combat human trafficking and slave trade;
- facilitate the integration of migrants in host societies.

This Convention provides advice on dealing with irregular migration. Its first part includes minimum protection standards that apply to irregular migrants, or who have been irregularly employed, including situations that cannot be legalized. This principle is set out in Article 1 which established the obligation for ratifying States to “respect the basic human rights of all migrant workers” regardless of their migrant status or legal standing in the host country.

In parallel, the rights for legal migrant workers listed in Part II of this text do not apply to irregular migrants.

The Convention does not explicitly mention which basic rights apply to all migrant workers.

However, the Committee of Experts for the Implementation of Conventions and Recommendations (the ILO body for monitoring treaties) interpreted this standard referring to the fundamental human rights enshrined in the United Nations Human Rights instruments, especially those contained in the Universal Declaration of Human Rights and the United Nations International Convention on the protection of migrant workers and their families, along with the rights included in the ILO Declaration of 1998 on Fundamental Principles and Rights at Work.

This Convention also refers to the issue of social benefits, but only those derived directly from previous employment. Nevertheless, its provisions encompass entitlement rights and benefits due according to the duration of employment, whether legal or not.

Both these Conventions provide a basic framework to develop national legislation and practice designed to manage labour migration.

International Recommendations

The main recommendation related to migrant workers was adopted on June 8th 1949, by the International Labour Conference. It goes much farther in migrant labour management as it stipulates that the following be provided, *inter alia*:

- a service, free of charge, to assist migrants and their families in their own language or dialect, or at least in a language they are able to understand in all matters that may interest them as migrants;
- adequate housing, food and clothing;
- vocational training enabling them to acquire the qualifications required in the host country;
- free time, well being and access to specific facilities during the initial installation period.

Pursuant to the principles and rights enshrined in the ILO Constitution and in the Philadelphia Declaration, in 1998 the International Labour Conference adopted the ILO Declaration on Fundamental Principles and Rights at Work. This declaration provides that all ILO members, even those who have not ratified the ILO fundamental conventions, are under the obligation, merely on the strength of their belonging to the organisation, to abide by, promote and implement the principles pertaining to the fundamental labour rights, namely:

- freedom of association and the right to collective bargaining;
- the elimination of forced and compulsory labour;
- the abolition of child labour, and;
- the elimination of discrimination in the workplace.

These principles are stated in the eight (8) basic ILO Conventions that apply to all workers, regardless of their nationality, and in many cases, of their legal status.

Other Minimum Standards

Other instruments, although not specifically intended for migrant workers, contain interesting provisions, which may serve as references for the Committee of Experts in monitoring their

implementation in a context involving migrant workers. The relevant instruments are the following:

- Convention No. 100 on equal remuneration, 1951;
- Convention No. 103 on maternity protection (revised), 1952;
- Convention No. 111 on discrimination (employment and occupation), 1958;
- Convention No. 122 on employment policy, 1964;
- Convention No. 138 on minimum age, 1973;
- Convention No. 142 on human resources development, 1975;
- Convention No. 155 on occupational health and safety, 1981;
- Convention No. 168 on employment promotion and protection against unemployment, 1988.

2.2 Inter-African legislation

a) *In the OAU Treaty*

In the OAU Charter signed on May 25th 1963 in Addis-Ababa, African heads of State and government agreed to set up the Organisation of African Unity, convinced that reasserting their commitment to the principles of the United Nations Charter and the Universal Declaration of Human Rights, establishes a sound basis for fruitful technical cooperation among their States. Indeed, in keeping with Article 2 of the OAU Charter, one of the OAU's stated aims is to foster international cooperation bearing in mind the United Nations Charter and the Universal Declaration of Human Rights.

Pursuant to Article 13 of this Declaration which asserts that “everyone has the right to leave any country, including his own, and to return to his country”, inter-African legislations have included virtually all the provisions concerning the circulation of people in multilateral and bilateral agreements. For the purposes of this study, we will limit its scope to certain Africa / Europe experiences, and later to inter-African experiences specifically in the West African region.

b) *In the framework of the Cotonou Agreements*

The Cotonou Agreements, signed on June 23rd 2000, between the European Union and the ACP countries (Africa, Caribbean, Pacific) are an update of the former Lome Agreements signed in 1975. These agreements encompass three of the main measures required to reach the aim of combating poverty through development adequate to globalisation and to the prevailing situation in the countries:

- institutional arrangements;
- cooperation strategies;
- development financing.

Three out of the one hundred articles comprised in these agreements relate to migrants and migration:

- Article 13 is devoted to the conditions of migrations, inter alia, it stresses the need to “develop implementation strategies for national and regional cooperation programmes in favour of improved living and working conditions and of job creation, and to develop actions fostering the professional integration of nationals from ACP

countries in their home country or in one of the Member States of the European Union”.

In relation to this Article, the Parties reassert their obligations and commitments under international law to guarantee human rights and the elimination of all forms of discrimination based specifically on origin, sex, race, language or religion. The Parties agree to consider that a partnership implies, in so far as migration is concerned, equal treatment of nationals, an integration policy, an occupation in the territory, etc...

- Indent 1 of Article 79 provides that “ technical cooperation shall help ACP countries to develop their national and regional human resources as well as the necessary institutions for their lasting development, to strengthen the consultancies and private organisations in the ACP countries as well as arrangements for consultant exchanges between ACP countries and the European Union”.
- Article 80 specifies that “in order to reverse the brain drain from the ACP countries, the Community shall assist ACP States, upon their request, to bring back the qualified ACP nationals who reside in developed countries by appropriate means and incentives for repatriation”.

These three Articles represent the space attributed to migration issues in the partnership for development.

c) In the ECOWAS framework

The Treaty of the Economic Community of West African States (ECOWAS) was adopted on May 28th 1975 in Lagos, Nigeria.

Article 1 of this Treaty states:

“subject to the provisions governing police regulations and public safety, as well as the prescriptions of the sanitary rules, nationals of Member States are free to enter the territory of any of the Members, to travel, to stay and to leave by simply showing a valid national passport, with no other formality, such as obtaining an entry or exit visa, required”.

In January 1993, in Cotonou, the Member States adopted a new, revised version of the Treaty.

ECOWAS included sixteen Member States of which the following :

- nine French-speaking countries: i.e. Benin, Burkina Faso, Cote d’Ivoire, Guinea, Mali, Mauritania, Niger, Senegal and Togo;
- five English-speaking countries: Ghana, The Gambia, Liberia, Nigeria, Sierra Leone;
- two Portuguese-speaking countries: Cape Verde and Guinea Bissau.

Mauritania withdrew from ECOWAS in 1999. After that departure, the organisation’s membership stands at 15 countries.

Despite Mauritania's withdrawal from ECOWAS, nationals from the fifteen Members are still allowed entry and stay in Mauritania as before, with their passports, ID cards or other documents. As this favourable treatment is not sanctioned by a legal text it relies on the reciprocity rule applied and tolerated by the other States who have not yet irrevocably ratified Mauritania's withdrawal.

The first Article of the revised Treaty stipulates that ECOWAS is destined to become in the future the only Economic Community in the Region with economic integration and the achievement of an African Economic Community as its aims.

The principle of free movement of persons and goods, freedom of residence and of establishment

The ECOWAS Treaty clearly indicates in Article 3, that the establishment of a common market, also implies: "the removal between the Member States of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment".

Article 59 devoted specifically to immigration, under paragraph 1 provides: "the citizens of the Community shall have the right of entry, residence and establishment and the Member States undertake to recognize these rights of Community citizens in their territories, in accordance with the provisions of the Protocols relating thereto."

Paragraphs 2 and 3 specify that: "Member States undertake to adopt all appropriate measures to ensure that Community citizens enjoy fully the rights referred to in paragraph 1 of this Article."

"The Member States undertake to adopt, at national level, all measures necessary for the effective implementation of the provisions of this Article."

Implementation of Articles 3 and 59 of the Treaty

To guarantee the implementation of the Treaty, both the Conference of Heads of State and Government and the Council of Ministers and the ECOWAS Secretariat have resorted to a variety of legal mechanisms including: protocols, decisions, directives and resolutions.

Worth noting are the following:

- protocol A/P1/5/79 relating to the free movement of persons and goods, the right of residence and establishment;
- protocol A/P5/82 adopted on May 29th 1982 including a code of conduct for citizenship in the Community.

For these Protocols to become fully effective, particularly the one related to the free movement of persons, the right of residence and establishment, they were strengthened by additional Protocols, resolutions, decisions and directives focusing on specific aspects.

Among these, the following are noteworthy:

- directive A/DIR1/5/79 adopted on May 29th 1979, by the Conference of Heads of State and Government on the implementation of the Protocol regarding the Free Movement of Persons, the Right of Residence and Establishment;

- resolution A/RES2/11/84 adopted on November 23rd 1984, by the Conference of Heads of State and Government on the implementation of the first stage of the Protocol regarding the Free Movement of Persons, the Right of Residence and Establishment;
- the additional Protocol A/SP2/7/85 adopted on May 21st 1985, regarding the Code of Conduct for the Implementation of the Protocol on the Free Movement of Persons, the right of residence and establishment;
- decision A/DEC2/7/85 adopted on July 3rd 1985 including the creation of a travel document for the ECOWAS Member States;
- additional Protocol A/SP1/7/86 adopted on July 1st 1986, , relating to the implementation of the second stage (right of residence) of the Protocol regarding the Free Movement of Persons, the Right of Residence and the Right of Establishment;
- additional Protocol A/SP2/5/90 adopted on May 29th 1990, regarding the implementation of the third stage (right of establishment) of the Protocol on Freedom of Movement of Persons, Right of Residence and Establishment;
- decision A/DEC2/5/90 adopted on May 30th 1990, regarding the creation of a residents' card for ECOWAS Member States;
- decision C/DEC3/12/92 adopted on December 5th 1992, regarding the institution of a harmonised immigration form for ECOWAS Member States.

d) In the framework of the West African Economic and Monetary Union (WAEMU)

By virtue of a Treaty dated January 10th 1994, the Member States of the West African Monetary Union (WAMU) decided to finalise its integration process so as to turn that Union into the West African Economic and Monetary Union (WAEMU). Its set objective is to strengthen the competitiveness of its Members' economic and financial activities within an open and competitive market. The aim is to create a rationalised and harmonised legal environment, and principally to establish a common market among Member States based on the free movement of persons, goods, services and the right of establishment for persons whether salaried or self-employed, along with a common external tariff and a common trade policy.

Chapter I of title IV provides for the establishment of guiding principles in view of the harmonisation of the legislation in Member States in priority areas in which greater cohesiveness is required to reach the Union's aims.

Article 91 states that "subject to limitations justified by reasons pertaining to public order or public safety, nationals of Member States are entitled to freedom of movement and residence throughout the territory of the Union. This implies that:

- all forms of discrimination based on nationality be abolished in relation to recruitment and employment, with the exception of jobs in the civil service;
- the right to travel and stay throughout the Member States;
- the right to maintain their residence in a Member State after being employed there.

As a result of the above, this Article ensures migrant workers and their beneficiaries the continued entitlement to benefits that may accrue to them on account of successive periods of employment in the territory of any Member State.

As for Article 92 of the Treaty, it expressly provides for the right of establishment throughout the Union. This includes the right to exercise any non-salaried activity, as well as to establish and manage companies under conditions defined by the domestic legislation in the host country, subject to limitations attributed to public order or public health and safety.

The WAEMU encompasses eight (8) Member States: Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo. The Gambia and Cape Verde are not members of the WAEMU.

e) NEPAD and migration

The New Initiative for Africa (NIA) adopted in Lusaka in July 2001, is born of a merger between the African Renewal Programme for the New Millennium (The MAP sponsored by Presidents Wade, Obassanjo and Bouteflika) and the Omega Plan (President Wade).

The NIA, which later became the New Partnership for Africa's Development (NEPAD), identifies priority sectors, indispensable for the development of Africa in a more unified environment, with more democratic and better adapted institutions and it recommends actions to fulfill these objectives.

The identified sectors are the following:

- infrastructures;
- human resources development;
- education and training;
- health;
- information and communication technology;
- agriculture, energy and access for African products to developed markets.

The plan of action will be basically regional and sub-regional, favouring trans-border actions and projects.

Migration is covered in a single chapter dealing with the utilization of skilled African labour. However, it remains true that the role played by the diasporas and migrants (skilled or not) is always present and often essential.

The programme of action plans to absorb "in an initial phase, all the available human resources in Africa as well as the Africans working in the "developed world"

To reverse the immigration flows, the new initiative notes in particular that "the implementation of the initiative implies the work of African experts who live in the Northern hemisphere."

f) African Charter of Human and Peoples' Rights

With the adoption of an African Charter on June 27th 1981, Africa, like Europe, gave itself legal instruments to defend Human Rights and adequate protection mechanisms.

For a long time, the development of a regional instrument for the defense of Human Rights and the establishment of a corresponding implementation mechanism, met with resistance from African leaders often entrenched in the concept of national sovereignty and non-interference enshrined in the Constitutional Charter of the OAU. The African Charter has departed from that selective vision of Human Rights. It includes a catalogue of rights (civil and political, economic, social and cultural) and mainstreams a new generation of rights described as solidarity rights of which the people are the main beneficiaries.

There is indeed a noticeable resemblance between the African Charter and the Universal Declaration of Human Rights.

As part of the protection mechanisms, an attempt was made to establish a Court of Law which provides recourse to individual, natural persons.

Finally, an African Commission for Human and Peoples' Rights was founded in parallel to the Conference of Heads of State and Government of the OAU.

This Commission has become the main instance invoked in monitoring the implementation of the African Charter.

It is made up of 11 members, elected by secret ballot (for a 6 year mandate) by the Conference of Heads of State, upon proposals of the States Party.

These Commissioners, who are virtually un-removable, serve in their personal capacity and are paid out of the regular budget of the OAU, in order to secure a degree of independence.

Any State Party to the Charter may resort to this Commission whether or not the victim of the violation, either an individual person or a people, is legally bound to the State.

Communications can be submitted by individuals claiming to be victims of the violation of one of the recognized rights.

One shortcoming needs mention: admissibility is premised on the prior acceptance of the State impeached.

g) Other Multilateral Agreements

The main multilateral agreements pertaining to this area generally cover the following:

- commercial law: this is the subject of the Treaty on the Organisation for the Harmonisation of Commercial Law in Africa (OHADA), signed on October 17th 1993 by 14 French-speaking States;
- social security: this is the purpose of the Treaty for the creation of the Inter-African Conference on Social Welfare (CIPRES), founded in 1992 by 14 French-speaking States.

Given its scope, the OHADA Treaty provides answers to many of the questions arising around the right of establishment. The Treaty creates a sound legal environment for business and trade.

CIPRES aims to integrate social security rights among the countries involved by harmonising their social laws and social security contributions. To this end, CIPRES has undertaken to draw up a multilateral social security convention and corresponding administrative arrangement. This document confirms the CIPRES Member States' commitment to uphold the universal principles to achieve equality among all workers and to guarantee their rights in the field of social security.

The implementation of all these agreements will doubtless contribute to the integration of the Maghreb in all such areas, excluding the issue of migration, which has been left out of all these agreements despite its current acuteness in the sub-region.

Mention must be made especially that the absence of any convention on the protection of migrants, may prove to be a distinct liability for the free movement of persons, one of the corner-stones of the Union of the Arab Maghreb.

The Arab Treaties Protecting Migrant Workers

Mauritania belongs to the following Arab regional institutions: the League of Arab States and the Union of the Arab Maghreb, both of which have developed legal instruments for the protection of migrant workers.

Mauritania vis a vis the League of Arab States' Conventions

Although Mauritania is deeply rooted in the Arab world, the fact remains that its level of ratification of the conventions enacted by this organisation for the protection of migrant workers is virtually nil.

Like other countries in the Maghreb, Mauritania has yet to ratify the Arab convention on the protection of migrant workers. There are three such conventions:

The Arab Convention on the Placement of Labour

Born of the consensus and unanimous spirit that inspired the League of Arab States during its search for the creation of a united and modern Arab world, Convention N°2 on the placement of labour of 1967, aimed to establish a social and economic union by permitting the free movement of persons throughout Arab States.

With this Convention, the Parties undertook to facilitate the placement of labour and to grant migrant workers the same rights and privileges that their nationals enjoy, especially in the area of labour protection.

Notwithstanding the noble aims of unity proclaimed by this Convention, Mauritania has not ratified it yet, and substantial migratory flows of Arab workers to Mauritania or from Mauritania to the Arab countries have not been registered.

The Arab Convention on Labour Force Movements

The Arab Convention N°4 of 1975 on the movement of labour also contributes to the edification of a united Arab region through the mobility of the labour force. It encourages each State to devise and implement a medium and long-term migratory policy in keeping with its economic and social requirements. It also innovates with the introduction of family regrouping and granting resident permits to each member of the migrant worker's family.

Mauritania's failure to ratify this Convention may also be attributed to the insignificant Arab migratory flows to and from Mauritania.

The Arab Convention on Training

Vocational training for migrant workers is a subject to which the League of Arab States have devoted special attention, as well as Convention N°9 and Recommendation N°2 of 1977. The manifest concern is to confront the dearth of qualified labour to which Arab States are so openly exposed.

To this end these two legal texts commit the Arab States to facilitate the movement and employment of foreigners. The Convention elicited mixed feelings among the main countries that employ foreign workers and who, like Mauritania, have not ratified it.

In spite of their relevance, these Arab Conventions for the protection of migrant workers have not been introduced in the body of Mauritanian legislation, for lack of ratification. Nevertheless, Arab State nationals working in Mauritania still enjoy the legal protection provided under the new labour code and under those international instruments ratified by Mauritania.

Treaty establishing the Union of the Arab Maghreb

Article 2 of the Treaty of the Union of the Arab Maghreb (UMA) adopted on February 17th 1989 states that this institution aims to achieve, progressively, free movement of persons, services, goods and capital.

To this end, the UMA promotes the circulation of persons and goods as a vehicle for the edification of a united Maghreb region. In this perspective, various Conventions and Agreements have been signed under the auspices of this Union in areas such as: trade, customs, social security, law,...

2.3 National Legislations

Let us recall that four of the countries included in this study belong to the French-speaking linguistic community, and the other two use English (The Gambia) or Portuguese (Cape Verde).

The countries that inherited French traditions also kept the legal texts and practices in use during the colonial period, in particular the decree of January 12th 1932, regulating the conditions of entry and stay of the French and other foreigners to French-speaking Western Africa, whereas the English and Portuguese-speaking countries for a relatively protracted period lived in a legal vacuum.

These countries belong to the United Nations Organisation and to the International Labour Organisation and are thus liable to mainstream the instruments adopted by these international organisations in their domestic legal statutes. In the African region, they are Members of the ECOWAS and the OAU, but do not all belong to the WAEMU.

The legal origins of the national laws in force in the countries we are studying all apply the same principle of normative hierarchy (legal precedence): Constitution, Law, implementation Regulations.

a) Constitutions

The basic charters of all the countries encompassed by this study, include provisions referring to migration, broadly ensuring the freedom to come and go.

For example, Article 9 of the Constitution of Burkina Faso of June 2nd 1991 provides that free movement of persons and goods, the freedom to choose one's residence and the right of asylum are guaranteed by the prevailing laws and regulations.

Though migration is not expressly mentioned, there is no doubt that the freedom to come and go is not restricted to the national territory; it also encompasses the right to leave that territory.

Likewise, the basic Law of Cape Verde provides under Article 24 that: with the exception of political rights and of rights and obligations extended to national citizens in the Constitution, foreigners and stateless persons residing or staying in the national territory are entitled to the same rights, freedoms and guarantees and are subject to the same obligations as Cape Verdeans.

As foreigners are entitled to the same rights as nationals, they are equally eligible for employment and fair pay, with no gender discrimination.

The Constitution of The Gambia, 1997, under Chapter IV entitled "Fundamental Rights and Protection" in section 17 provides that any person in The Gambia, regardless of his or her race, colour, gender, religion, language, political opinions, national or social origins, place of birth or other status, is entitled to the basic rights contained in this Chapter and is subject to the rights and freedoms in others of general interest.

Pursuant to this Constitutional provision, nationals and foreigners are entitled to the same basic rights in the territory of the Republic of The Gambia.

Indeed, the principles of equality before the Law, of prohibition of all forms of discrimination based on race, colour, creed, language, political opinions or birth are stated forcefully (Chapter IV, section 33 of the Constitution).

b) Laws and Regulations

Distinctions must be drawn between different areas of legislation: labour, social security, entry and stay criteria, etc...

i) National Labour Law

On the whole, the Labour Laws of the countries under scrutiny prescribe regimes based on freedom to hire and generally provide that employment contracts are freely subscribed by the Parties involved.

The Labour Act of The Gambia includes no specific provisions for foreigner workers. This text applies to all workers, except for public sector employees.

In Senegal, general principles are enshrined in the Labour Code derived from Law 97-17 of December 1st 1997 by regulations based on bilateral and multilateral arrangements, as well as on the Conventions ratified by this country.

The main innovation in this new Code is that it includes more provisions relating to expatriates. The particular circumstances pertaining to this category of workers are established by the will of the Parties and therefore are of a contractual nature.

This development has had noticeable effects on hiring, on working conditions and on union rights.

▪ *On recruitment in Senegal*

Under Article 199 of the previous Labour Code (law 61-34 of June 15th 1961), a placement monopoly was granted to the Labour Service of the Employment Directorate, thus banning any other placement agency, under any guise, from opening or functioning, whether free of charge or not.

Under such circumstances, any worker in search of a job was under the obligation of registering as job seeker with that service. Likewise, all employers were bound to report any vacancy in their firm to the same Labour Service and to the relevant job center.

Job offers and requests were disseminated in the media (press or audio visual) only if authorized by prior approval from the Labour Service (SMO), proving that the offers and requests had been duly recorded.

The Labour Service specifically applied the following criteria:

- With equal qualifications, priority in hiring was given to workers holding Senegalese nationality, whose usual place of residence was that of the job offer, the same county or region;

- Without equal qualifications, priority in hiring was given first to Senegalese, and second to nationals of countries granting equal employment opportunities to Senegalese.

The Labour Service exercised its monopoly over hiring through a prior administrative authorization to hire or by an approval visa from the Labour Inspection Directorate.

The Labour Service also proceeded on behalf of the employers, bringing and repatriating foreign workers or sending and repatriating national labour abroad. To perform this function, the employers commissioned the Service (with a written commitment), undertaking to cover the costs of hiring, bringing or sending abroad the labour force recruited in Senegal.

The 1997 Code introduced radical innovations in this process, allowing company CEO's to proceed to direct hiring of workers without any prior authorization or payment, in any form as stipulated in indent 6 of Article L228.

Inter alia, it authorizes the creation of placement offices acting as correspondents of the employment service, thus eliminating *de facto*, the Labour Service's monopoly.

However, under the new code, as in the old, a limit may be imposed on the number of foreign workers in a given company. In fact, despite the principle of non-discrimination in employment posited by the ILO, both the former Article 196 and the new Article L224 provide that according to economic, demographic and social requirements, company employment policies can be decided by decree. They may ban or limit the hiring of foreign workers for certain professions or at certain levels of professional qualification, to achieve full employment of the national labour force.

Moreover, only a given percentage of foreign workers may be hired as established according to decisions adopted in 1956 still in force today.

Decision 2145 of March 26th 1956 sets a maximum share of the total staff of a company for foreign workers in public works or their suppliers, and in concessions granted or leased to Senegal.

The share may vary according to the professional category or the industry.

Decision 2146 adopted on the same date sets a maximum share of the total staff of a company, for foreign workers that may be hired in private enterprises.

Furthermore, the 1997 Code standardized the maximum duration of fixed term contracts to two years.

Indeed, the former Article 36 established a difference between Senegalese and foreign workers whose usual residence is in Senegal, on the one hand, with a maximum contract period of 2 years, and on the other hand, foreigner workers based abroad, for whom, except for waivers, fixed term contracts can be extended for an initial period of 30 months and a second of 20 months.

In 1997 legislators considered that this distinction was no longer necessary, particularly in view of the length of stay of expatriates and, above all, given the opportunity to erase this type of discrimination between workers from the Code.

- *On working conditions in Senegal*

Under Senegalese Labour Law, derived from law 97-17 of December 1st 1997, migrant workers enjoy the same protection as nationals in term of working conditions and pay.

Article L105 of the Labour Code in essence provides that: under equal working conditions, professional qualifications and productivity, pay shall be equal for all workers regardless of origin, gender, age or legal status.

In concrete terms, migrants are entitled to family regrouping (to be paid by the employer), to housing, to paid normal leave and exceptional home leave, for which travel expenses shall be covered (for the worker and his family) at the end of the contract whether expired or terminated.

- *On Labour Union Rights in Senegal and Burkina Faso*

Under Senegalese law, migrant workers in similar circumstances, enjoy the same union rights and union protection as nationals.

Union membership is not subject to nationality or gender criteria. According to Article L5 of the Code, all workers or employers may join a professional union freely.

However, foreigners may obtain access to management positions or the upper echelons of the union only after five year's residence in Senegal, and if their country of origin extends the same rights to Senegalese nationals.

This is a major restriction based on the principle of reciprocity.

Such developments have not been observed in Burkina Faso where, although the principle of freedom to contract is enshrined in law, unless prior authorization is granted jointly by the ministries of labour, foreign affairs, and security, collective hiring of workers for employment abroad is banned throughout the territory of Burkina Faso.

Moreover, once a medical checkup is performed, all employment contracts for foreign workers are subject to mandatory clearance by the Ministry of Labour and further registration with the Labour Service (Article 31 of the Labour Code).

Articles 64 and 72 of the Labour Code in Burkina Faso contain specific provisions regarding contract clearance for foreign workers, their duration and clearance costs.

Regarding clearance procedures, the labour services in Burkina Faso are strict for cases involving nationals from WAEMU and ECOWAS Member States, particularly for processing their employment contracts.

When the Consultative Commission for Labour examined the Labour Code in 1997, it unanimously opposed the institution of a foreign worker's ID card. The new Code, derived from Law 033-2004 took this concern into account and did not include Article 9 of the 1992 Code, which recommended the establishment of a "card for migrant workers".

As for the duration of employment contracts for foreign workers, Article 62 of the Labour Code of Burkina Faso imposes a three-year limit.

As for the clearance fees, employers of foreign workers must pay fees according to the worker's gross monthly salary:

25% for a salary below 100.000 CFA Francs

30% for a salary ranging between 100.001 and 500.000 CFA Francs

33% for a salary ranging between 500.001 and 1.000.000 CFA Francs

35% for a salary above 1.000.000 CFA Francs

Foreign workers must also undergo a medical checkup (Article 64 of the Labour Code).

ii) Domestic Legislation regulating the right of entry, stay and establishment for foreign workers

Prior to their independence, in the countries belonging to former French Western Africa, the conditions for entry, and stay of French and foreign citizens were regulated by a decree of March 12th 1932. This was complemented by the regulation adopted on November 2nd 1945, which set out the conditions for admission and residence in certain territories administered by the Overseas Ministry.

Most of the countries included in this study kept this legislation in force after their independence and later developed specific laws to regulate situations related to migrations.

Emigration

Most of the countries involved in the study have adopted the principle of freedom of movement, right of residence and establishment enshrined in the ECOWAS and WAEMU Treaties. Some, however, have developed legislation and regulations specific to the emigration of their nationals.

Thus Burkina Faso, though its Constitution provides for freedom to come and go, has included certain restrictions which apply mainly to emigration to countries other than ECOWAS and WAEMU Members.

Indeed, Burkina Faso enacted regulation n° 81-008/PRES/CMRPN of March 11th 1981 suspending emigration and on the same date decreed n° 81-135/PRES/CMRPN for its enforcement, a laissez passer issued to Burkina nationals traveling abroad. Luckily, this text fell into disuse and it was repealed by regulation n° 83-005/CSP/PRES on February 23rd 1983. The current text regulating travel abroad for Burkina nationals is regulation 84-89/CNR/PRES of August 4th 1984, which provides under Article 2 that: any natural person and Burkina Faso national wishing to leave Burkina Faso shall fulfill the following conditions:

- a) hold either a valid passport with an exit visa, or a Burkina Faso identity card, or a laissez passer recognized by the host country;
- b) have cleared all tax and other official duties if the stay lasts over 30 days. This applies to traders and self-employed workers;
- c) hold a return ticket or post security, or an exemption from security for repatriation; exit visas are valid for one year.

Immigration

Regulations in force in the countries covered by the study dwelled more on criteria of entry, stay and establishment of foreigners. In this connection, it is worth recalling that in the countries that belonged to French Western Africa, the decrees of March 12th 1942 and regulation of November 2nd 1945 time after their Independence remained the basic laws regulating access for foreigners.

Senegal, with law 71-10 enacted on January 25th 1971 establishing the conditions of entry and temporary residence for foreigners, was the first to amend the pre-independence texts.

Next was Burkina Faso to adopt regulation N° 84-049/CNR of August 4th 1984, establishing conditions of entry, temporary residence and exit for Burkina Faso nationals and foreigners.

Finally Mali with Law 04-058/AN/RM enacted on November 25th 2004 set out the conditions of entry, temporary residence and establishment of foreigners in Mali.

The Gambia regulated immigration under a text entitled “Immigration Act-Cap 16-02” which is part of “The law of The Gambia”.

As for Cape Verde, the principles regulating the legal status of foreigners in Cape Verde are proclaimed chiefly in the basic Law of the land and legal order N° 6/97 of May 5th 1997, which repeals law 93/III/90 of October 27th 1990.

A comparative study of the legal provisions and regulations of the States covered by our work will lead us to examine the problems related to migrant workers’ admission and other rights.

Admission

Definition of foreigners: Most of the domestic texts mentioned above include a definition and classification of foreigners.

The Senegalese Law states outright in its Article 1 that: any person who does not hold Senegalese nationality, either having some other nationality or having none, shall be considered as foreign.

Cape Verde also considers that are foreign: those who do not hold Cape Verde nationality. Mainly the domestic texts, applied by the countries considered in our study, classify foreigners in two categories according to the length of their stay or to their professional activity:

- non-immigrant foreigners;
- immigrant foreigners

though most do not include specific provisions for nationals of ECOWAS and WAEMU Member States.

Conditions of admission of foreigners: Domestic laws generally provide that admission of foreigners to their territory is subject to conditions related to:

- holding a valid passport or ticket;
- obtaining an entry visa for a limited period of time, barring exemptions;
- holding an international vaccination certificate required by the host country’s sanitary authorities.

Both Senegalese and Burkina regulations require guaranteed repatriation either in the form of a return or circular ticket or a ticket to a destination outside Senegal or Burkina.

The Burkina legislation requires, in addition, either a security or a bank reference or, otherwise an exemption to post security for repatriation.

Visas

Regarding visa requirements specifically, there is a distinction to be drawn between immigrant and non-immigrant visas.

- *Non-immigrant foreigners*

- Article 38 of the legislation in force in Cape Verde provides that a temporary visa, valid for 180 days shall be extended to foreigners requesting entry in Cape Verde for cultural purposes, for study or for business, as an artist or a sportsman, as a student, technician, professor or belonging to any other professional category under contract to provide services to the State of Cape Verde, or to another public or private entity.

Foreigners must, however, prove their means of subsistence, that they have no criminal record and possess a medical certificate. In certain cases, proof of a contract is required.

This 180 day visa may be extended if the foreigner fulfills these conditions and proves the validity of his professional activity (Article 41).

- Senegalese Law requires a residence permit for non-immigrant foreigners according to decree 71-860 of July 28th 1971 derived from law 71-10 of January 25th 1971, who are travelers in transit, crew members of aircraft and vessels on stopovers, tourists, civil servants on mission and their families. Concerning travelers in transit, their stay in Senegal may not exceed 10 days, unless some obstacle were to prevent their further journey, in which case they must apply to the Ministry of Interior for a temporary residence permit (Article 4) before their legal stay has elapsed.

The crews of aircraft and other vessels may be allowed entry to the territory upon presentation of the travel document, their license or crew member identification.

Entry visas delivered by the Ministry of Interior (or under its authority), by Senegalese diplomatic or consular offices, or by those authorised to represent Senegal in such instances, shall indicate the duration of the temporary residence permit. The visa is valid for one year starting on the date it was issued to the holder.

- The legislation of Burkina Faso also provides for a three-month residence visa. The three-month limit is the result of a contrary interpretation. In fact the text does not mention this time limit, but Article 5 of regulation 84-049 of August 4th 1984 states that “any foreigner wishing to establish him or herself in Burkina Faso or stay beyond a period of three months shall apply for a residence permit.”

- *Immigrant foreigners*

- Article 4 of Law 71-10 of Senegal defines immigration as foreigners traveling to Senegal intent on establishing their residence there or exercising a gainful activity or profession on a permanent basis. Such a foreigner may enter only after an establishment permit has been issued, prior to crossing the border or, exceptionally, it may be granted to a foreigner holding a temporary residence permit.

Such a permit may also be granted to the immigrant's spouse, ascendants, descendants who are minor or unmarried and living as dependents under the same roof.

Should the foreigner wish to have a salaried job, the permit is subject to a certificate delivered by the competent authority, stating that legal obligations or regulatory requirements applied to foreign workers have been met.

Withdrawal of the permit implies automatic cancellation of the employment contract.

Certain professions or gainful activities may not be allowed for foreigners or may be restricted by regulations. Indeed, like most of the countries encompassed in this study, Senegal in principle excludes foreigners from the civil service. This principle applies not only to foreigners proper, but also to naturalized foreigners, as under Article 16 of the law passed on March 7th 1961 defining Senegalese nationality, for five years following the official naturalization, they are barred from the Senegalese public service.

Pursuant to this principle, foreigners are excluded from being magistrates, jurors on a grand jury, a notary publics, a bailiffs, auctioneers, or from joining the army.

Concerning public office or entitlement to public services, foreigners are subject to the same obligations and enjoy the same benefits as nationals.

In the realm of private law, foreigners are entitled to the same rights as nationals under Family Law, the right to sue, freedom of association, right to acquire real estate and to exercise many professions.

o Cape Verde legislation establishes a residence visa granted to all foreigners intending to establish their usual residence in the national territory. This visa allows foreigners to remain for a period of one year, with unlimited extensions until a "residence permit" is requested and granted.

Article 47 established a number of criteria to be applied in considering such requests. Applicants must:

- Abide by the laws of Cape Verde;
- Have adequate and sufficient means of subsistence;
- Not represent a danger to public health;
- State alleged aims while in Cape Verde;
- State family ties with Cape Verde residents whether national or foreign.

At age 14 years and one month, minors may request an individual residence permit. Article 48 leaves it to the free judgment of the Government under the regulation on conditions and modalities for extending residence permits for three, ten or twenty years.

However, tight restrictions are in force to control foreigners through a register and bulletin on foreigners' housing.

In theory, legal residents in Cape Verde are entitled to the same rights and guarantees and are subject to the same duties as national citizens, except for those rights and obligations expressly extended to Cape Verde citizens by law.

Hence, foreigners cannot be employed as civil servants nor "exercise authority". The only exceptions allowed being "essentially technical" duties or those pertaining to the field of "teaching or scientific research".

Freedom of movement and residence (Article 7), of assembly and demonstration (Article 8) are identical to those of nationals, except that they are framed (or limited) by "public order and security" considerations.

The article recognizes the right to join unions, to strike and to be admitted to membership in professional organisations.

- Burkina Faso issues a permanent residence permit to all foreigners wishing to stay over three months in the country.
- In the specific case of The Gambia, there is no policy, or legal instrument specially designed to deal with the legal status of migrant workers. However, provisions concerning migration are to be found in various laws and regulations of The Gambia.

Indeed, the “Immigration Act” chapter 16:02 of the Gambian law regulates entry and temporary residence in the country and provides that no one may reside in the Gambia unless he or she:

- has special status as a legal immigrant;
- holds a passport or temporary residence permit issued by a competent authority;
- is the ascendant or descendant of a legal immigrant.

Within this legal framework, any person may acquire the special legal status of immigrant on condition that he or she:

- obtain the Gambian nationality;
- has rendered special services to the Republic, such assessment pertaining exclusively to the discretion of the Ministry of the Interior;
- is a he Gambian civil servant.

Such special immigrant status is withdrawn when:

- The Gambian citizenship is lost;
- The Ministry of the Interior so decides acting within its discretionary powers and publishes such a decision in the Official Bulletin;
- The position within the civil service ceases.

Migrant workers with this status, enjoy the same prerogatives as The Gambian citizens. Likewise, foreigners working in The Gambian civil service, particularly those providing technical cooperation or working under bilateral agreements pursuant to partnerships for development (mainly in the legal and medical areas as well as in the field of education and general administration) are also entitled to the same rights and prerogatives as nationals.

Foreigners who are not civil servants, but rather work in the private sector or the informal sector and who have spent many years in the country and have made substantial contributions to the economic and social development of The Gambia may also obtain this status. The law derived from this chapter stipulates the conditions under which work permits are issued and legal residence is regulated.

As for residence, the main immigration officer may issue a residence permit to any person fulfilling the legal requirements, showing a good moral standing and sufficient financial resources to live in The Gambia.

Any person who is not a Gambian national may establish him or herself, stay in the country, work either independently or in partnership only if granted a written authorisation by the Immigration Directorate.

This requirement does not apply, though, to Government or United Nations Agency officials. Temporary residence and work permits are extended for a period of three months upon payment of a security and taxes. These may be renewed.

Should such permits be denied, various recourses are available, in particular before the Ministry of the Interior.

There is a foreigner's identification card regularly submitted to a foreigners' registry.

- *The fate of irregular migrants*

Foreigners who fail to comply with domestic laws regulating entry, temporary residence and exit in the countries covered by this study, expose themselves to a variety of administrative, legal, monetary and other sanctions.

1.- The Senegalese law foresees, among other sanctions, the following:

- Withdrawal of the temporary residence or establishment permit whenever:
- the conditions under which they were delivered are no longer met;
- essential facts were omitted or concealed;
- changes of residence or employment went unreported.

2.- Expulsion when:

- Condemned for crimes or offenses;
- Conduct or actions lead to the conclusion that the foreigner involved will not adapt to the established order;
- Serious and patent cases of interference in the internal affairs of Senegal;
- The person involved can no longer sustain him or herself and family.

3.- 2-month to 2-year prison sentence and/or a 20 000 to 100 000 franc fine when the foreigner concerned:

- enters or returns to Senegal despite the refusal of which he has been notified;
- stays or establishes him/herself in Senegal without an appropriate authorization or once it has expired;
- obtains the residence or establishment permit on the basis of false repatriation guarantees or having concealed essential facts.

4.- 1 to 3-month prison sentence and/or a 20 000 to 50 000 franc fine when the foreigner concerned:

- engages in gainful employment or other remunerated activity without the required establishment permit;
- having an establishment permit, engages in a gainful activity, whether as an employee or not, in spite of statutory restrictions or limitations;
- maintains a gainful activity, whether salaried or not, after the establishment permit has been withdrawn. In such cases, if the withdrawal of his worker's permit was notified to the employer, he too is charged as an accomplice.

The law of Cape Verde provides for an administrative expulsion or a judiciary expulsion applying respectively fines to foreign non-residents and foreign residents.

Article 68 paragraph 3 sets out three non-cumulative criteria for administrative expulsions:

- Irregular entry;

- Overstaying the duration of the visa or beyond the stay extended by a residence permit or if such a permit was denied;
- Detention or imprisonment upon entry in the country, for a crime deserving a maximum prison sentence of over 2 years.

The “Chief of Public Order” is responsible for such decisions, or the “Regional Commanders or the Border Police authorities” by delegation.

Such decisions must be taken within 48 hours and may be challenged in court.

Judiciary expulsions, pursuant to Article 72, apply to foreigners who:

- Threaten national security, public order and safety, accepted customs;
- Threaten the interests or dignity of Cape Verde or its people, by their presence or actions;
- Interfere in any way with the national political life or the internal affairs of the State without authorization;
- Disregard the laws applied to foreigners;
- Commit crimes;
- Engage in activities that would have barred their entry into the country had these been known by the Cape Verde authorities.

Article 83 provides that the authority responsible for ordering the foreigner’s expulsion shall order his property to be sold or proclaim their loss by transfer to the State.

Foreigners who stay in Cape Verde beyond the period authorized, or who are found to have stayed irregularly upon exiting the country, are liable to fines. These range from 2 000 to 10 000 escudos.

In Burkina Faso, anybody who fails to comply with the entry requirements may incur the following sanctions:

- detention in international zone or in custody of the security forces, the carrier being liable for repatriation;
- fine: in keeping with Article 12 of regulation n. 84-049, all foreigners who have deliberately made false statements on their entry form, or used falsified documentation are liable to a fine from 100 000 to 300 000 CFA francs and/or a prison sentence of 1 to 3 months.

As for violations related to residence requirements, foreigners already in the country who do not comply with the residence regulations incur the following penalties:

- immediate expulsion and eviction from the national territory by the security forces;
- expulsion under the carrier’s responsibility;
- fine of 50 000 to 300 000 CFA francs and/or
- imprisonment for 1 to 3 months.

iii) Domestic legislation on social protection

In general terms, migrant workers and their families are eligible for all the social benefits to which national workers are entitled, once the residence requirements in the country are met.

In principle, the laws of the countries considered do not include discriminatory provisions as regards the eligibility of foreigners for social security benefits. The implementation of the principle of the territoriality of laws prevails in the area of social security.

Indeed, according to Article 3 of law 13-72/AN of December 28th 1972 containing the Social Security Code of Burkina Faso all workers subject to the provisions of the Labour Code are subject to the social security regime instituted by this law, without distinction due to race, nationality, gender, origin, when their main occupation is in the country on behalf of one or more employers, regardless of the nature or form of such, the validity of the contract, the nature or volume of remuneration.

Concerning the payment of a retirement pension, Senegalese law establishes no restriction in relation to the place of residence of migrant workers.

They may choose to be paid either in Senegal, in their home country, or in any other place of their choice. Transfer costs of the pension payments are borne by the paying retirement institution.

To this end, many bilateral social security or technical coordination agreements were negotiated with social security organisations, to facilitate settlements for migrant workers or members of their family.

Indeed a noticeable expansion of the number of social security agreements and conventions is observed, although they are based on the general principle of coordination. Considerable restrictions are included on the basis of the principle of reciprocity.

Most of the bilateral conventions, though founded on equal treatment, introduce reciprocal treatment for foreigners residing in their country.

The following table attempts to reflect the main social security agreements in Senegal.

2.4 Bilateral Agreements

In addition to the multilateral agreements, a number of bilateral arrangements have been concluded between States, in particular regarding terms and conditions of employment, movement of persons, social security, payments, etc...

Cape Verde has reached various agreements (with Angola, Gabon, Sao Tome and Principe, Senegal, Guinea, Côte d'Ivoire and Mali) covering *inter alia* the legal status of persons and goods, freedom of movement of persons and goods, immigration, etc...

Côte d'Ivoire and Burkina Faso have agreements on terms and conditions of employment for Burkina workers in Côte d'Ivoire since 1960. This Convention also covers transfers and protection of Voltaic-speaking migrants.

Mali and Burkina Faso concluded a general social security Convention in 1967, between Mali and Senegal in 1996, as well as between Burkina and Mali in 1992.

The following table attempts to reflect some of these bilateral agreements. These agreements cover hiring and terms of employment for workers or social security arrangements (general Social Security Conventions or payment procedures).

Naturally, bilateral agreements are worth encouraging when they strengthen integration treaties by ensuring an effective implementation of the principles enshrined in these multilateral agreements.

Table 2: Bilateral agreements in West Africa

	Burkina	Mali	Senegal
France		1960 movement and residence of persons (1994)	Number of dependent children limited to four March 5 th 1960, renegotiated on March 29 th 1974 according to law 75-33 of March 3 rd 1975
Gabon			Signed and ratified by Senegal in 1995 (but not by Gabon)
Mali	Convention of September 30 th 1969 on the movement and residence of persons. Convention on Social Security signed in Bamako on November 14 th 1992.		Implementation limited to administrative cooperation. Ratified by Mali in 1996 and by Senegal on May 13 th 1965 renegotiated on July 26 th 1966.
Mauritania		Convention for administrative cooperation and mutual assistance (1987)	Implementation limited to industrial risks (arrears payments) no social benefits as Mauritanian rates are higher. By Senegal on October 28 th 1973 substituted by a new Convention on December 5 th 1987.
Cameroon		General Convention on the movement and residence of persons (1964)	Notified and ratified by Senegal. Not ratified by Cameroon
Côte d'Ivoire	Convention on terms and conditions of employment of March 9 th 1970. Draft Convention.	Yes	
Ghana		Yes (1977)	
Guinea		(1964)	
Niger		(1964)	

2.5 Migratory flow management structures

The countries encompassed by this study have quite original experiences in this area.

Burkina Faso has a Permanent Secretariat for Burkina nationals abroad and, in 2003, adopted a support programme for the social and economic reintegration of returning migrants from Cote d'Ivoire, following the tensions in Cote d'Ivoire.

Mali is endowed with a Ministry in charge of Foreign Affairs, of Overseas Malians and of Integration, to which the General Directorate of Overseas Malians reports. In each country where a high level of Malian migration is registered, a local Council for Malians is formed (the Council for Malians in Cote d'Ivoire, Council for Malians in Togo, etc...)

Regularly and periodically, a Forum of the Malian Diaspora is convened to carry out promotion and advocacy work.

In Senegal, the Senegalese Overseas Department was an offshoot of the Ministry of Foreign Affairs, as in Mali, but a few years ago a proper Ministry for Overseas Senegalese was established to cater to their concerns. The Senegalese Ministry of International Cooperation and Decentralised Cooperation is deeply involved in migration issues, particularly co-development.

Other organisational structures are directly or indirectly involved in migration problems.

Thus, in the context of this Project, a National Tripartite Committee was set up in each country made up of representatives of Government, Employers and Workers. These Committees pursue two main aims:

- provide a forum for discussions on migration issues to contribute to the implementation of national migration policies;
- draw up the main outline for Technical Cooperation and the main areas of action for the Project in each country.

Other organisational structures were set up in connection with ILO projects and those of other institutions. The Ministry of the Interior of Mauritania, in conjunction with the HCR, established a National Consultative Commission (CCN) responsible for implementing national eligibility procedures for refugee status, as well as a Study Group on Migratory Flows (GEFM), of which ILO is a member.

3. Study of the degree of harmonization of national laws and international instruments

The main relevant international instruments are: ILO and UN Conventions regarding migrant workers and general Protocols and texts for the African region, as well as more specific Western African agreements. All these instruments have substantial provisions, in particular concerning the principle of freedom of movement of persons, residence and establishment rights. We first need to ascertain ratifications, then to review the degree of harmonization with national legislations.

3.1 Ratifications of international instruments and regional protocols

The following two tables reflect the ratification status of these instruments and protocols in the countries involved in the study:

Table 3 – ratifications of international conventions in general and regarding migrant workers in particular

	Cape Verde	Burkina Faso	Mali	The Gambia	Senegal	Mauritania
International Convention on the protection of all migrant workers and their family members of 1990	16/9/97	Yes	6/6/03		9/6/99	
Nº17 Workmen's Compensation (Accidents) Convention of 1925	3/4/79					
Nº 19 Equality of Treatment (Accident Compensation) Convention of 1925	12/2/87					
Nº29 Forced Labour Convention of 1930	3/4/79	21/11/60	22/9/60	4/9/00	4/11/60	20/6/61
Nº81 Labour Inspection Convention of 1947	16/10/79	21/5/74	2/3/64		22/10/62	8/11/63
Nº87 Freedom of Association and Protection of the right to organise Convention of 1948	1/2/99	21/11/60	22/9/60	4/9/00	4/11/60	20/6/61
Nº97 Migration for Employment Convention (Revised) of 1949		9/6/61				
Nº98 Right to Organise and Collective Bargaining Convention of 1949	16/10/79	16/4/62	2/3/64	4/9/00	28/7/61	3/12/01
Nº.100 Equal Remuneration Convention of 1951	16/10/79	30/6/69	12/7/68	4/9/00	22/10/62	3/12/01
N.º102 Social Security (Minimum Standards) Convention of 1952					22/10/62	15/7/68
Nº.105 Abolition of Forced Labour Convention of 1957	3/4/79	25/8/97	25/8/62	4/9/00	28/7/61	3/4/97
Nº.111 Discrimination (Employment and Occupation) Convention of 1958	03/4/79	16/4/62	2/3/64	4/9/00	13/11/67	8/11/63
Nº.118 Equality of Treatment (Social Security) Convention of 1962	8/7/87					15/7/68
Nº.143 Migrant Workers (Supplementary Provisions) Convention of 1975		9/12/77				
Nº.155 Occupational Safety and Health Convention of 1981	9/8/00					
Nº.157 Maintenance of Social Security Rights Convention of 1982						

Table 4 – multilateral agreements (ECOWAS)

	Cape Verde	Burkina Faso	Mali	The Gambia	Senegal	Mauritania
Protocol on the free movement, residence and establishment for persons in ECOWAS adopted in Dakar on May 29 th 1979	Law N ^o . 18/II/82 of June 7 th 1982	Yes	Yes	Yes	Yes	
Protocol on the ECOWAS Citizenship Code adopted on May 29, 1982	Law N ^o . 60/II/85 of June 22 nd 1985	Yes	Yes	Yes	Yes	
Additional Protocol A/SP2/7/85 including a code of conduct for implementing the protocol on the free movement of persons , residence and establishment adopted on July 6 th 1985 in Lomé	Law N ^o . 31/IV/91 of December 30 th 1991	Yes	Yes	Yes	Yes	
Decision instituting a travel document for the ECOWAS States, adopted at Lomé in July, 1985	Yes	Yes	Yes	Yes	Yes	
Additional Protocol A/SP1/7/86 on the implementation of the second stage (Right of Residence) of the protocol on the free movement of persons, residence and establishment signed in Abuja on July 1 st 1986	Yes	Yes	Yes	Yes	Yes	
Additional Protocol A/SP1/6/89 modifying and completing the provisions of Article 7 of the protocol on the free movement of persons, residence and establishment signed in Lomé on November 23 rd 1984	Yes	Yes	Yes	Yes	Yes	
Additional Protocol A/SP2/7/90 concerning the execution of the third stage (Right of Establishment) of the protocol on the free movement of persons and goods adopted on May 29 th 1990	Law 35/IV/91 of December 30 th 1991	Yes	Yes	Yes	Yes	
Decision 1/DEC.2/5/90 adopting the institution of a residence card for the Member States of ECOWAS, signed in Abuja on May 30 th 1990	Yes	Yes	Yes	Yes	Yes	

a) *International Instruments:*

Burkina Faso is the country that has ratified the three main international instruments on migration: the UN Convention (International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families) the ILO Conventions (Nos.97 and 143 on migrant workers of 1949 and 1975 respectively).

Cape Verde, The Gambia, Mali and Senegal have not yet ratified ILO Conventions No.97 and No.143 but have ratified the UN text. Mauritania has yet to ratify any of these instruments.

In Africa, the coverage of ratifications of such international standards relating specifically to migrant workers, in particular ILO Conventions Nos.97 and 143 and the 1990 UN Convention on migrant workers and their families, is poor. Only 23 African States have ratified even one of these instruments.

The basic political dilemma faced by these governments is tangible in that they simultaneously combat and encourage migration. The gap between policy statements and *de facto* arrangements mirrors the major practical contradictions of these States.

In general terms, African countries are lagging quite far behind with regard to the protection of migrants and, as noted, they often tend to resort to bilateral solutions to deal with the free movement of persons and goods.

As for minimum standards established in other ILO conventions (Conventions No.29 on forced labour, No.87 on the freedom of association and protection of the right to organise, No.98 on the right to organise and collective bargaining, No.100 on equal remuneration, No.111 on discrimination (employment and occupation), No.118 on equality of treatment (for nationals and non-nationals vis-à-vis social security)), on the whole they have been ratified by the States object of this study.

b) *Regional Protocols*

In relation to the Economic Community of West African States (ECOWAS), all of the countries within the scope of this study and who belong to that organisation have ratified its protocols.

Hence, in keeping with Article 59 and paragraphs 1,2,3, mentioned above, and as members of that Community, those countries have undertaken to incorporate substantial improvements in their domestic laws, although in practice many obstacles still hinder the implementation of these regional protocols derived from the Treaty.

3.2 Harmonization of legislation: shortcomings of domestic laws

Taking the ECOWAS Treaty, the provisions of its protocols are not sufficiently integrated in the national law of the countries considered in our study. Some of the regulations and legal provisions on the national statute books may even at times run contrary to, or at least be inconsistent with, these regional protocols.

Nevertheless, the study on Cape Verde examines the impact of European Community law and the consequent copycat effect, leading to inadequate attention being paid to the manifold structural problems that the States of this sub-region have to face.

Indeed, how can States who do not guarantee certain basic rights to their own nationals extend them to foreigners in their country?

How can States on the brink of internal or external strife and where power is held arbitrarily by one man, assisted by his family, his ethnic group or home base, be expected to apply such standards?

The Cape Verde national report admits openly that in various respects its legislation is inconsistent with international protocols.

This appears clearly in the distinction drawn between the various types of migrants, whereas domestic law includes only provisions for foreigners in general.

Discrepancies are also apparent in the visa procedures. In fact, national law requires an "entry" or "temporary residence" visa to be allowed into the country, while the protocol on the freedom of movement of persons and goods provides that for a stay "not exceeding ninety days (90)", community citizens are allowed entry "without a visa".

Other differences emerge regarding the expulsion procedures, according to which, contrary to the protocol, national law makes no distinction between expulsion and repatriation. It distinguishes two types of expulsion, administrative or judiciary.

The Cape Verde law (Article 75 paragraph 1) regarding administrative expulsions provides indeed that the administrative and police authorities shall investigate with a view to determine whether the property of the expelled foreigner shall be used to cover the "expenses incurred to carry out the expulsion", while Article 11 of the protocol clearly states that "the expenses incurred in order to expel a (Community) citizen should be born by the expelling Member State".

The issue of time periods seems to be another area in which Cape Verde legislation is inconsistent with its international commitments.

In fact, Article 3 paragraph 3 of the protocol provides that "any person concerned with an expulsion order shall be granted a reasonable period of time to return to his/her home country". However, the Cape Verde law provides that when an "administrative expulsion" is issued, the relevant authorities have a period of "48 hours" to order the expulsion.

On the whole, upon reviewing several legislations, a natural tendency of States emerges, introducing clauses to safeguard public order, to enforce police order and public safety, leaving them various options derived from different reasons (mostly national internal and external safety) to justify their dismissing undesirable foreigners.

It may well be feared that the enforcement of these provisions may hinder the freedom of movement of political opponents to the prevailing regimes.

To conclude, although they have ratified a number of treaties, the situation that emerges reveals a lack of bold measures to implement the principles of freedom of movement and the right of residence.

4. Shortcomings and weaknesses in the implementation of international conventions

Only Burkina Faso has ratified all of the international conventions relevant to migrations. This section will focus mainly on regional protocols.

4.1 Hindrances to the freedom of movement of persons and goods

When the term provided in the relevant protocol elapses, the right of residence and establishment shall be progressively established over a maximum period of 15 years, in three stages, namely:

- stage 1 : right of entry, elimination of visa requirements
- stage 2 : right of residence
- stage 3 : right of establishment

The first stage should have ended by June 4th 1985;

The second stage should have ended by June 4th 1990;

The third stage should have been fulfilled by June 4th 1995.

Notwithstanding the hopes raised by the Treaty and its Protocols, they proved disappointing in the field. So far, all in all, ECOWAS has reached the first stage. Even this level of achievement is often challenged with borders being closed and foreigners expelled.

The assessment of the Community policy on the freedom of movement of persons and goods organised by the ECOWAS Secretariat at a sub-regional meeting in Ouagadougou on September 16th to 18th 1998, concluded that many hindrances remained connected to irksome police and customs practices, administrative red tape surrounding residence permits, insecurity at the borders, extortion, etc...

Concerning WAEMU, Articles 91 and 92 provide for the Commission to draft regulations or directives in order to organise free movement and the right of establishment and to foster the effective enforcement of these rights.

In 1998, the Commission prepared a draft regulation. Adoption of this draft was postponed until 2002 to allow all Member States to be properly prepared. Unfortunately, civil war broke out in Côte d'Ivoire in September 2002, preventing its consideration.

Administrative practices, border closures and regular expulsions, all compound the tendency to adopt specific domestic regulations, contrary to the spirit of the Treaty. Thus, freedom of movement and the right of residence or establishment have yet to materialize in law and in fact within the WAEMU Members.

Indeed, current events in the countries covered by our study bear witness to alarming situations, casting some doubt on the true will to form a common space, leading the former

Minister of the Economy of Cape Verde to say that “ECOWAS is an empty shell that has brought no benefits to Cape Verde, nor will it do so in the short or longer term”, and that the logical consequences need to be boldly drawn, and withdraw from the organisation.

The High Council for Malians Abroad records many cases in which the principle of freedom of movement is violated, particularly during the conflicts with Burkina Faso in 1974 and 1985 leading to border closures; the regional and ethnic conflict between the North and the South of Côte d’Ivoire hindered the movement of persons and goods between these two countries; Malian fishermen were expelled from the fishing grounds of Ayame and Kossou in Côte d’Ivoire in 1998 with the authorities of Côte d’Ivoire remaining suspiciously silent, etc...

Nonetheless, some progress is noted in certain countries such as Mali, where some of the ECOWAS texts are effectively in force, both in airports and train stations, in which a special window is available to Community citizens for whom no visa is required (only a national identity card is necessary).

Among other measures adopted to comply with ECOWAS texts, temporary residence cards may be mentioned instead of 5 year residence permits, with discriminatory connotations.

Building up in practice a pan-African philosophy based on hospitality (djatigiya) urged Mali through law 04-058/AN/RM of November 25th 2004, to fill the legal gaps prevailing for the management of migrants in general (either from ECOWAS Members or from elsewhere).

The Burkina Faso study also underscores noticeable differences between its national legislation and international conventions. As a matter of fact, neither regulation n° 84-0149, nor the Labour Code, make any special reference to WAEMU or ECOWAS Member States in terms of job access, although in practice they are given more favourable treatment than other foreign workers.

The requirement for Community citizens to obtain a visa on their employment contracts remains in force, which is no longer the case in Senegal, where all distinctions between national and ECOWAS workers have disappeared from the Senegalese Labour Code.

The main shortcomings might be listed in three broad categories:

- lack of coordination between institutions involved in the various areas of migration management;
- legislations and regulations are scattered and not kept up to date with international instruments;
- lack of a genuine migratory policy to match the size of the migrant population and its social and economic contribution.

In sum: Whereas the Treaties and Protocols drawn up by various regional African economic communities advocate freedom of movement for workers and certain guarantees for migrants within Member States, such instruments are yet to be effectively brought into force, either by WAEMU, ECOWAS or by the Central African regional organisations.

4.2 Constraints in the implementation of regional protocols

a) *Lack of a migration policy*

The prevalent situation can be attributed to a large extent to the fact that, often, the countries from which migrant workers flow, either do not have a policy regarding migration, or do not apply it when they do. Therefore, migrants are at the mercy of the host countries.

Various seminars have been held in Western Africa on migration policy, in order specifically to recommend that domestic legislation on internal and international migrations be developed, and that a national unit on migrations statistics and management be established, responsible for coordinating data from the various ministries concerned.

Overall, management and policy frameworks related to migration encounter a series of problems, despite the overriding importance States have attributed to controlling this phenomenon, and although they acknowledge the need to strengthen their policies, structures and national laws.

Their major handicap is a lack of resources and structures to cope with the myriad facets of the issue. When managing the freedom to establish permanent residence, the Member States of sub-regional organisations focus on inescapable priorities such as: the degree of under development of the State, demands placed by national promotion policies, protecting employment for nationals on a priority basis.

Virtually all, or at least most, of the countries considered in this study proclaim their will to conduct pro-African and pro-integration policies.

Djatigiya in Mali imposes a flexible, non-discriminatory policy, broadly open to foreigners and specifically pro-integration and pro-African.

Burkina Faso, the country belonging to the WAEMO zone with the highest number of citizens abroad, opted for an open, integrationist policy.

Senegal, the country of Teranga, claims to abide by its traditional hospitality, like Cape Verde, where migration issues are a priority concern for the government.

In spite of all their statements of principle, in essence the countries encompassed by the study, are groping for a migratory policy in keeping with national sensitivities and with the increasingly taxing demands of the immigrants, the asylum seekers, in favour of human rights, minority rights, social rights, etc...

Migration management policies often surge and plunge along with political fluctuations and circumstantial pressures.

The absence of global studies on the issue, the dearth of reliable statistics at a national or consolidated sub-regional or regional level, do not make available processed information on which to base cohesive political decisions consistent with the level of international commitments. Hence, navigation by feel-a-vision, according to immediate demands and to vested interests, is to a large extent the method on which governments rely.

b) Lack of coordination

In Mali, many institutions are involved in different aspects of migrations but they act independently with no regional coordination. This is a situation that applies generally to all the countries covered by this study.

The total absence of a coordination structure responsible for migration between the different States, accounts for the disparities in the sub-region in terms of the implementation of the protocols adopted by the governments.

Resorting to bilateral arrangements, as several States have considered, does not lead to a clear solution fostering African integration.

c) Scattered legal texts and regulations

States have passed laws on the basis of provisions that have accumulated layer upon layer, without the slightest overarching coherence, covering areas as varied as labour, entry and residence, social security, economic affairs, etc...

Thus, a veritable legal maze has been created, in which even specialists lose their way. Even they are unable to find the text to match a given situation, among the provisions dating back to the colonial times, but which were not expressly revoked, and current provisions which contradict the former ones.

Add to this, the drastic information vacuum in which the general public finds itself and even the middle management echelons of the administration in charge of migration, be it at the local, sub-regional or regional level.

Awareness campaigns and better information for the government services would have lessened the problems faced by immigrants and those wishing to migrate.

The Burkina Faso study advocates a single text devoted to the legal status of migrants.

d) Other failings

To mention a few:

- the lack of information and assistance services provided free of charge to migrants, either in the home or host countries, or their utter inadequacy.
- The lack of adequate protection for migrants. This situation is further compounded by the fact that even nationals have difficult working conditions.
- The often unequal access to social services.
- Impediments to family regrouping.
- Non-recognition of all civil rights.
- In certain cases, the non-respect of fundamental human rights of irregular migrants.

Moreover, the weakness of legal systems regarding international migrations fosters the appearance and development of serious ills that communities have to confront, such as:

- child trafficking;

- trans-border crime;
- trafficking of human beings, etc...

5. Conclusions and recommendations

For the prevailing international standards, the policy recommendations adopted by governments and the agreements contained in regional protocols to be viable and have any chance of success, they must be based on clearly defined policies implemented in a context of the rule of law.

The authors of the national studies, within a drive to further national policies, have identified five key elements to make these policies more viable, durable and comprehensive:

- 1) a transparent admissions system for migrant workers in order to supply the legitimate and quantified labour requirements, while also bearing in mind the national concerns. Such a system must fall under the authority of the Ministry of Labour and rely on periodic assessments of the labour markets to be carried out in consultation with the social partners so as to define and respond to the real and emerging needs of workers whether unskilled or scarcely qualified.
- 2) an approach based on “migration management” guaranteeing fundamental rights for all migrants and combating exploitation and trafficking while advocating justice, human dignity and democratic values.
- 3) implementation of minimum standards regarding conditions of employment, nationwide and in all industries.
 - In order to penalize abuses committed against workers and discourage irregular employment
 - Quickly identifying child exploitation, detecting and putting an end to forced labour, imposing minimum decent labour conditions, must become a higher priority for the Labour Inspection services.
- 4) a Plan of Action against discrimination and xenophobia with a view to maintain social unity.

The most salient points reflected in the Durban Action Programme⁴ include:

 - Adopt adequate standards in the domestic legislation in order to protect the rights of foreigners;
 - Make racist and xenophobic acts or behaviours unacceptable and illegal;
 - Establish independent national institutions to monitor the protection of human rights and to follow up on individual charges;
 - Promote respect of cultural diversity and pluralism;
 - Mobilize the civil society’s cooperation;
 - Encourage the media to stress positive images of diversity and migration;
- 5) create institutional mechanisms for consultation and coordination among social partners with a view to develop and implement a policy to ensure coordination amongst

⁴ *Global Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance*, held in Durban (South Africa), from 31 August to 8 September 2001.

governments and civil society institutions, involved in the main areas of political concern.

These employer-worker consultations should cover issues such as: hiring policy control, admissions system management, sensitization and education of the population, training for public and civil servants in charge of law enforcement, and of granting social benefits, etc...

These five pillars are the cornerstones of these policies. However, it would seem equally important to develop a labour mobility policy (freedom of movement) in regional integration areas, to set out procedures to ensure an inter-governmental dialogue so that, beyond monitoring, a long term view be adopted on the implementation of international standards pertaining to human rights.

In terms of legislation, there is an urgent need it would seem, for Cape Verde to amend all the shortcomings in its texts, to harmonise with inter-African legislation while making sure that social partners are duly involved.

Regarding textual *lacunae* , it would also be appropriate and urgent to fill the gaps, specifically to develop legislation on minimum wages and social coverage regulations.

For Burkina Faso too, the main recommendation is to harmonise national laws with international treaties and with inter-African legislation, to develop a single status for migrants, and to build up the capacities of the data collection and monitoring services.

Burkina, however, insists on the need to define a true migratory policy, which would be entirely responsible for organising awareness campaigns on the African regional treaties related to migratory issues.

As for Mali, the States must establish a broader partnership not only with other States with large Malian communities, but must give higher priority to educating its population so that they are aware of their economic rights.

The law should not depart from the country's cultural background nor from the community realm. These shall remain the fundamental regime.

The State should conduct studies geared to knowing more about the limitations encountered by Malians abroad.

It should strengthen cooperation with other States in the sub-region, aiming to effectively implement the regional protocols on freedom of movement of persons and goods.

Senegal stresses the main elements contained in the Durban Action Programme, including:

- to introduce in the national legislation adequate standards to guarantee the rights of foreigners;
- to make racist and xenophobic acts and behaviours unacceptable and illegal;
- to establish independent national institutions to monitor the protection of human rights and to follow up on individual charges;
- to mobilize the civil society's cooperation;
- to encourage the media to stress positive images of diversity and migration.

Furthermore, Senegal considers it important to establish:

- institutional mechanisms to foster consultations and coordination among social partners, firstly with the aim of developing policies, later to implement them;
- procedures for inter-governmental dialogue allowing for more than monitoring.

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