



GUIDE ON THE FREE MOVEMENT OF PEOPLE AND GOODS IN SOUTHERN SENEGAMBIA

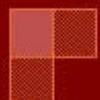


PUTTING PEOPLE AT THE HEART OF INTEGRATION PROCESSES



Enda Prospectives
Dialogues Politiques

Coopération Autrichienne
pour le Développement



This guide enters within the framework of the implementation of the program of reinforcement and consolidation of the conditions of the Peace and of southernmost Safety in Sénégambie (Guinea Bissau, Gambia, Senegal) from the point of view of transborder co-operation and regional integration.

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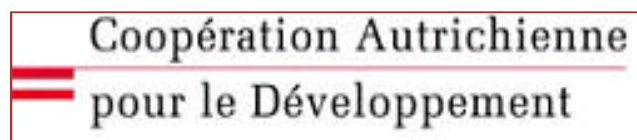
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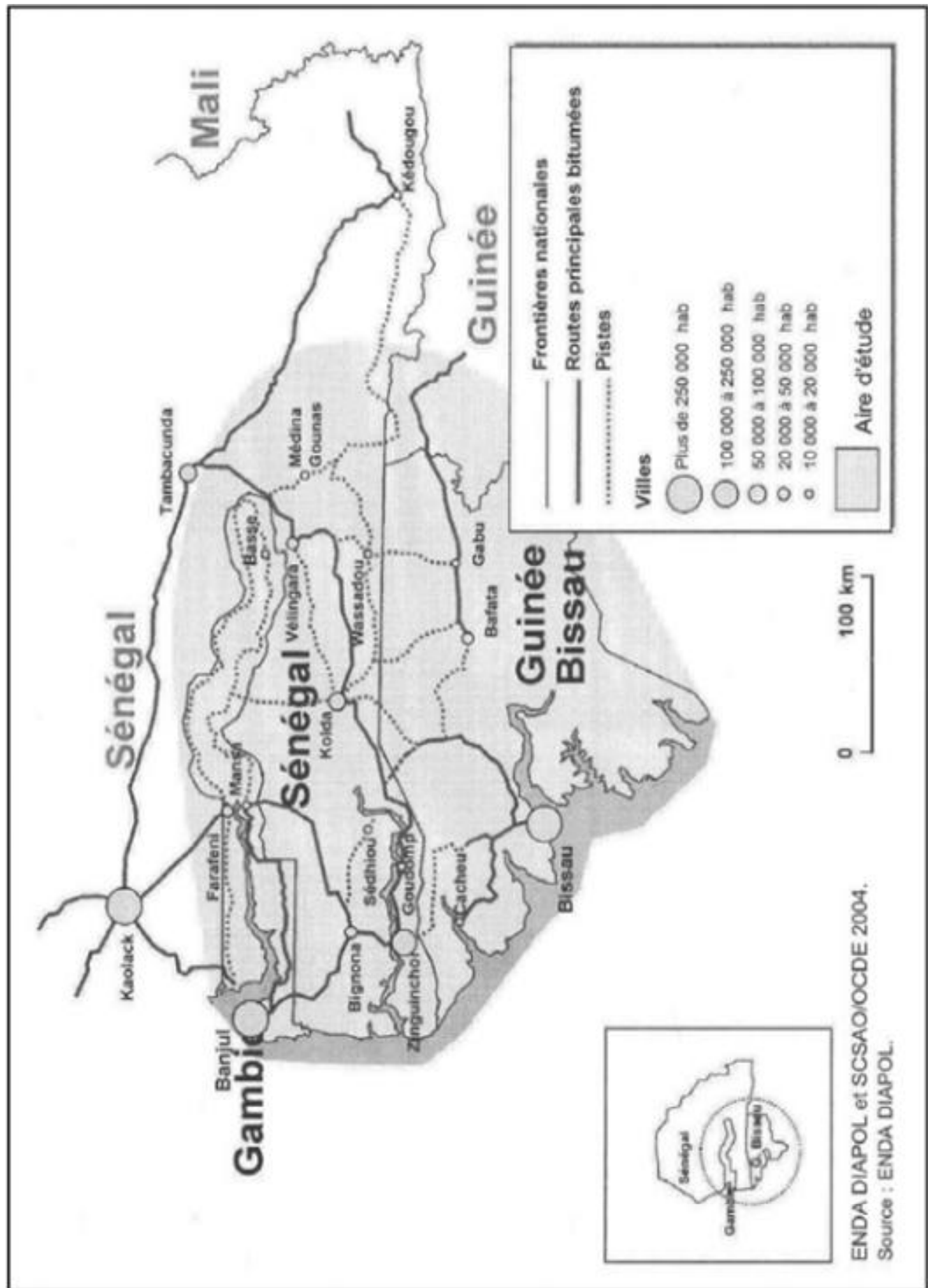
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The point of view expressed in this file engages only the authors and necessarily do not correspond with the opinion of Enda political Futurologies Dialogues.



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Guide on the Free Movement of People and Goods in SOUTHERN SENEGAMBIA

I. FOREWORD: OWNERSHIP OF THE PRINCIPLE OF FREE MOVEMENT: A TOOL FOR COMMUNITY CITIZENSHIP

The mobility of citizens is a major challenge for the construction of the Economic Community of West Africa (ECOWAS). To this end, information on opportunities offered by legal provisions to ensure the free movement of people and goods has emerged as a strategic resource for all players residing in West African states in general and the Southern Senegambia space (The Gambia, Guinea, Guinea Bissau, Senegal) in particular.

The issue of free movement should not be a matter of States alone that need to coordinate their interventions in terms of managing people's flows, but a concern for all citizens without exception.

This principle is, for sure, one of the most important expressions of our community citizenship. Indeed, any ECOWAS citizen has the right to move and reside freely within the territories of the Member States, including Guinea Bissau, Senegal, The Gambia, or any other ECOWAS member country. The Community offers its citizens from Member States an area of freedom, security and justice without internal frontiers, within which the free movement of persons and their goods is guaranteed.

The stakes are such that the Community, or even country right of origin, must cease to be an additional factor of social exclusion and become an opportunity to build a new political awareness.

In this case, Enda Diapol/Pôle InterAfriques, in partnership with GTZ, concerned about making accessible the ECOWAS rights to citizens of Southern Senegambia states, without exclusion, have developed this guide directed to local players.

This guide, resulting from this partnership is to offer simplified necessary tools for the ownership of the principles, rules and standards of free movement of people and goods. Users of this guide will find the necessary information enabling them to assert their rights and know the duties incumbent on them in relation to border crossings and the establishment and residence in a Member State.

By allowing players of cross-border cooperation to know their rights and duties, they are allowed to replace their impression of submission, subordination, with a new sense of dignity as an essential condition for the active and citizenship-based involvement.

However, this guide is not exhaustive and for more precision it requires that the so-called community laws and national legislations be consulted in-depth.

This guide will be regularly updated to reflect developments in the various legal standards.



II. EXPLANATORY NOTE ON THE POPULARIZATION GUIDE OF THE PRINCIPLE OF FREE MOVEMENT OF PEOPLE AND GOODS

A. PURPOSE OF THIS NOTE:

This note aims to explain the timeliness of developing a popularization guide of the rules on the free movement of people and goods. Resulting from a partnership between Enda Diapol / InterAfrique and GTZ Procas, the guide is directed to an area considered as a priority in the process of regional integration in West Africa: the mobility and movement within the ECOWAS space.

Intended for the people of the Southern Senegambia, local authorities, members of civil society, NGOs, associations, the guide is a tool available for them to learn and to better exercise their Community citizenship.

Thus, while helping for genuine ownership of the guide, we think we can all create an environment that is conducive to the control of the context, to adaptation and anticipation on current changes as a decisive contribution of these actors in the integration of West Africa.

B. CONTEXT FOR THE DEVELOPMENT OF THE GUIDE:

- Mobility: the people of the Southern Senegambia are characterized by their high mobility, because of commercial, religious, cultural exchange, family imperatives, but also because of the precarious living conditions.
- Cross-border cooperation as an alternative to increased instability, insecurity in the area. The political authorities of a single country hardly can curb crime that considerably affects cross-border trade.
- The dynamics of ECOWAS aim to promote free movement and "dialogue aimed at strengthening and developing good-neighbourly relations between local/territorial border assemblies or authorities pertaining to two or more Member States, and the conclusion of agreements and arrangements necessary for that purpose".
- The need to enhance opportunities to transform neighbourly relations that can maintain local communities and civil society members together and with local authorities on both sides of the border, could lead to a consulted management of issues related to economic and social development, consolidation of conditions of peace and security, the sustainable management of natural resources.
- The credibility of ongoing processes about creating cross-border networks of community radio stations, producers (beekeeping), the establishment of cross-border observatories and watchdogs committees to fight against cross-border insecurity and trafficking, and twinning initiatives between villages, rehabilitation of production tracks and road portions, the organization of local cultural festivals, etc.
- Advocacy for the removal of unlawful obstacles to the free movement of people and goods, setting up a trade observatory, installing national control offices side by side and a control system for exports and re-exports. Today, it is important that the road transport of goods or trade, the voluntarism of people, and more generally of other economic and social integration players, are not hampered by legal and regulatory barriers and that governments respect their commitments under bilateral and regional agreements. Thus, States must be at the centre of cross-border cooperation devices, of which they must drive policy.

C. PURPOSE OF THE POPULARIZED GUIDE

- Communication Tools: the rules and policies of ECOWAS on the free movement of people and goods, community standards designed to have priority over all other national standards. This approach will be largely dependent on the representation of the law by the



ones and the others about law, rules in general, or more exactly their real importance in the social and intellectual grounds of players. Yet the control of contexts required increased understanding of the law as an instrument of regulation and establishment of economic development framework - Informing: the guide provides an overview of standards that promote the free movement of people and goods. Without minimum access and understanding of the rule of law, only arbitrary, abuse, and corruption prevail, i.e. the very opposite of law. That is why this guide is designed to provide relevant data.

- Strengthen the capacity of players' networks to influence the contrary/negative dynamics to the fight against ignorance and misinformation of people: understanding in order to be able to participate; take action to stop suffering. The ignorance of the players (authorities, civil societies, local communities) about legal rules for the management of flows of people at borders and territorial limits of ECOWAS member states.

- Providing a simplified dialogue framework: actors must necessarily know the actual rules for the management of the flows of people and their properties, to understand the context and environment in order to better their actions on a daily basis and understand the actions of others. This will better promote the understanding of others about the trends to promote the freedom of movement in the Southern Senegambia area, their resources and constraints, the margins of possible interactions, to identify potential trends in the medium and long term, objectives of targeting and identifying actions to be implemented in order to promote the desired change(s) in regional integration and cross-border cooperation.

D. EXPECTED OUTCOMES OF THE POPULARISATION:

Assist in monitoring and evaluating the integration of West Africa;

The guide seeks to stimulate thinking and action by various players, to enrich the overall vision of all those involved in the decision making process. As such, it contributes to general thinking on the future of building greater coherence between neighbouring states.

A watchdog: enabling state players such as civil society to work in networks for detection, observation and analysis of meaningful integration facts, trends indicating possible changes in the medium and long term, but also phenomena of severance and discontinuity as well as changes and transformations already at work in the Southern Senegambia area.

Arousing a collective thinking about the principle of the free movement of people and goods; a theme pertaining to regional construction, which aims to later gather VIPs and authorities from various cultural backgrounds, representing the diversity of sensitivities Africa.

III. GETTING TO KNOW THE CONTENT OF FREE MOVEMENT:

A. The concepts to understand

Convention, covenant, treaty

Written agreement between States or between other subjects of the international society (e.g. international organizations), intended to produce legal effects and governed by the international law. It is legally binding for States which have ratified it.

The law:

The law designates the set of principles and rules governing normative relations of groups and individuals in a society. In this connection it should be noted that the rules and legal norms are not made for their authors (parliamentarians, governments), or their philosophers, but for his subjects,



people. This implies that these subjects can objectively learn to be within the legal environment. In this case they would be entitled to ask the question: how is the law revealed to them? Therefore, they will see that the right is revealed to them through its names (treaties, protocols, resolutions, etc.), through its attributes (positive law, natural law, economic law, criminal law, international law etc.), its world (its method, its men and women, its sources, the performers, its supporters, its opponents, its language, its reasons, its theories, etc.)

The directive:

It normally binds the Member States of the ECOWAS only with respect to the result to be achieved. Therefore, it does not impose any obligation related to the means that are used; Member States are totally free regarding the form of the legal adaptation of the directive (law, decree, order, circular, etc.) and institutional autonomy in the designation of the national body or services in charge of implementing it. In principle, the directive is not directly applicable. It is a means for coordination and harmonization of economic policies of Member States as well as national laws.

Decision:

It is an entirely compulsory act for the people it is addressed. It differs from a regulation by the fact that it is not of general obligation and is only compulsory for its recipients. In contrast to the directive, the decision is compulsory both regarding the result and the means.

Act:

Rule of behaviour or action issued by the competent legislative authority, which regulates, orders, permits or prohibits and of which the enforcement is controlled by the competent judicial authority.

Protocol:

This term is synonymous to treaty, convention ... and is used specifically to designate an agreement that complements an existing text (the Protocol on Free Movement of Persons, and the right of establishment), or which amends certain provisions (some protocols).

Ratification:

Approval of a treaty, an agreement by the competent bodies to engage the State. It is an act subsequent to the signing by which the State expresses its commitment. The State has an obligation to comply with its provisions. Ratification is often the responsibility of parliaments.

Signature:

Formality showing the agreement reached at the end of the negotiation of a treaty, convention, protocol, but that does not often directly binds States. It is the expression of the intention of the State to become party to the signed text, which does not become effective until after ratification.

Reservation:

Unilateral statement made by a State Party, when signing, ratifying, accepting a law or adhere thereto, by which it excludes or modifies the legal effect of certain provisions of the text, or specify the meaning it attributes to them. Some treaties prohibit reservations.

Recommendations and opinions:

They are opinions and advice to follow but not binding. They are not binding on the States in principle. They have no binding force. They are very useful tools for guiding behaviour, policies and legislation.

Treaty:

An agreement or convention entered into in writing between two states (bilateral) or more governments (treaty) and governed by international law and that supports their organization.

B. Some institutions for the promotion of free movement to know

1. ECOWAS

a. Establishment of the ECOWAS

The Economic Community of West African States (ECOWAS) was created by the Treaty of Lagos on 28 May 1975. The Convention was signed by fifteen States namely: Burkina Faso, Benin, Cape Verde (joined in 1977), Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Nigeria, Niger, Senegal, Sierra Leone, and Togo. (Mauritania withdrew from the community in 2002).

The total surface of the community is 5.1 million sq km, or 17% of the total surface of the continent. ECOWAS is the most populated of the regional economic communities in Africa. It has a separate economic sub-group. This subgroup comprises the eight (8) UEMOA countries forming a monetary and customs union with the CFA franc as common currency. These countries are Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo. In addition to the UEMOA countries, the ECOWAS includes seven countries, each with its own currency. This group represents 75% of the regional GDP and 70% of the population. Five (5) members (the Gambia, Ghana, Guinea, Nigeria and Sierra Leone) of this second group are actively preparing to form a second monetary zone (the West African Monetary Zone: WAMZ) in December 2009 under the monetary cooperation of ECOWAS. (Sources:www.bidc-ebid.org/fr/cedea0.php)

b. The Treaty of ECOWAS

The Treaty establishing the Economic Community of West Africa (ECOWAS) was signed in Lagos on 28 May 1975 and revised in Cotonou on 24 July 1993. It includes all the states in the region (the Republic of Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, the Gambia, the Republic of Ghana the Republic of Guinea, Guinea-Bissau, the Republic of Liberia, the Republic of Mali, the Islamic Republic of Mauritania, the Republic of Niger, Federal Republic of Nigeria, the Republic of Senegal, the Republic of Sierra Leone and Togolese Republic).

According to the Vienna Convention of 23 May 1969 on the Law of Treaties, a Treaty means "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." (Article 2) The treaty requires a concurrence of wills between two or more subjects of the international law (e.g. States), and this concurrence of wills with international law is to be called law. It includes, in those circumstances, such as contract under internal law, that the treaty only produces, in principle, effects for the signatories. It is on the basis of this rule that nationals of Senegal and Guinea Bissau cannot invoke the UEMOA norms against the Gambia that is not a member. Agreements only have the effect between the contracting parties. However, we must dare hope in the wake of the ECOWAS Treaty, in its Article 2, that the ECOWAS "Will eventually be the sole economic community in the region for the objectives of economic integration and the African Economic Community."

In the absence of a higher authority to the States which legislates for them, it is the States themselves that are their own legislators when they negotiate and conclude treaties. But the situation of each treaty is unique: it can encompass one or more smaller states, its field of application may be general or very specific, it can be economic, political, legal or otherwise, and Above all, it may be in competition with other treaties (as is the case between UEMOA and ECOWAS).



c. The institutions of ECOWAS

• **The Specialized Technical Committees:**

There are eight committees, namely the Committee on Agriculture and Food; of Industry, Science, Technology and Energy, Environment and Natural Resources; of Transport, Communication and Tourism; the Committee on Trade, customs, taxes, statistics, currencies and payments; the Committee on Political, judicial and legal, regional security and immigration Affairs; that of Human Resources, Information, Cultural and Social Affairs; and the Finance and Administrative Commission. Following a restructuring of the various committees we now have seven committees in addition to the offices of the President and Vice President. These are: the Committee on Administration and Finance; the Committee on Agriculture, Environment and Water Resources; the Commission for Human Development and Gender; the Infrastructure Committee; the Commission of macroeconomic policy; the Commission of Political Affairs, Peace and Security and the Commission of Trade, Customs, Free movement of people.

Within its area of jurisdiction, every committee has essentially been mandated to prepare projects and programs and submit to the Council of Ministers and to ensure harmonization and coordination of projects and programs.

These institutions have gradually acquired legislative powers and can impose directly applicable standards on Member States. This was only possible in the past for the Conference of Heads of State and Government which is in essence the less representative institution of a community as it represents the meeting of each State with its own interests and not the community as a whole.

2. Bilateral FRAMEWORKS

Nature of bilateral frameworks for the facilitation of the movement of people and goods:

Today, the mobility of people of the Southern Senegambia has greatly improved through the action of the various joint state commissions. These commissions are often responsible for designing the negotiation of agreements between States.

They are frameworks for dialogue and bilateral cooperation. One has to note that consultations frameworks with the particular aim of facilitating transport and trade are much more implemented between Senegal and the Gambia than between Guinea Bissau and Senegal (almost nonexistent). In this connection, we can mention on the one hand, the Advisory Committee, co-chaired by the Vice-President of the Gambia and the Prime Minister of Senegal, and on the other hand, the Joint Commission, which meets at the level of experts. It is chaired by the Ministers of Foreign Affairs of the Gambia and Senegal. It prepares the meetings of the Advisory Commission and monitors the implementation of resolutions and recommendations contained in minutes. These committees are supported by the expertise of the Permanent Secretariat which is based in The Gambia. It serves as a framework for dialogue between the two countries.

Their remits

In principle commissions are made competent by their various states and governments to sign conventions and agreements to facilitate the flow of goods, but also the movement of persons and services in this Southern Senegambia space. So even if today it is possible to see progress below the expectations of players of transport and trade of the two countries, some prospective exchanges around projects on the development of transport infrastructure, on mutual administrative assistance and customs in trade. In this context, Senegal and the Gambia are considering including the construction of joint border posts along the corridor of the Trans-Gambian, to facilitate the unimpeded use of the ISRT single book for the passage of one State to another and to install a radio communication system to better monitor the transit; It is certain that once these projects are implemented, mobility, transportation system and



trade in Southern Senegambia, will be significantly improved for the benefit of people and the economies of States.

IV. GETTING FAMILIAR with applicable instruments for the free movement of people and goods

A. The free movement of persons

What is it?

Free movement of persons consists in allowing to Member States' nationals to move freely within the Community area (and thus to exempt them from holding visitor's visa and residence permits) as well as to allow them to reside in a Member State other than their country of origin and to work and undertake commercial and industrial activities within their territories.

For who? - Recipients of free movement

The recipients of freedom of movement of persons within the ECOWAS area are the Community's Member States' nationals. In addition to that, the Community citizenship has been instituted in order to foster relations among West African people. A Community citizen is a citizen of Member State, who have the nationality of this State and who fulfill the conditions defined in the protocol relating to Community citizen.

Thus, every person who has the nationality of a Member State is a Community citizen. The Community citizenship is complementary to the national one and do not replace it. It is automatically acquired, by the mere fact of having a Member State's nationality. No formality has to be accomplished in order to benefit from this citizenship. However, the Community citizenship can be lost, forfeited or withdrawn for various reasons, such as the acquisition of a non member State of the Community; the loss of a Member State's nationality; or when conditions for acquisition are not or not any more met.

How? - The implementation of freedom of movement of persons

A complete freedom of movement of persons on the whole ECOWAS area must be established progressively. That is the reason why it has to be accomplished in three phases, namely: right of entry and abolition of visa, right of residence, and finally right of establishment.

RIGHT OF ENTRY

What is it? The right of entry's principle

The right of entry consists in the exemption between Member States of entry permit or visa for their Member States' nationals.

For who? - Recipients of the right of entry

Right of entry's recipients are the Community citizens who move from their country of origin to an other Member State's territory.

How? - The right of entry's implementation



Concretely:

Any citizen of the Community can enter the territory of any other Member State without being required to possess any visa or entry permit;

He is only required to possess a valid travel document (passport or any other valid travel document establishing the identity of the holder with his photograph, issued by or on behalf of the Member State of which he is a citizen and on which endorsement by immigration and emigration authorities may be made) and an international health certificate;

However, this right of entry free of any visa or entry permit requirement is limited to ninety days. Indeed, beyond this time limit, it is not the right of entry any more which applies but the right of residence, for which a permission is required.

In order to facilitate and simplify formalities governing movement of persons across the borders of Member States, a travel document known as the "ECOWAS travel certificate" was instituted. Its possession exempts his holder from filling the ECOWAS immigration and emigration form. It can be issued to any person above fifteen (15) years of age who satisfies the requirements stipulated in the laws and regulations of his country of origin. It costs a stamp's price. The issuance of travel documents being of national competence, any application shall be addressed to the competent Authority in one's country of origin. The application shall be directed to the nearest administrative Authority within the area of one's domicile or principal place of residence. The harmonised immigration and emigration form of ECOWAS Member States must only be used by Community citizens if they do possess neither a national passeport nor the ECOWAS travel certificate. This form is printed and issued free of charge by the competent authorities of each Member State.

The ECOWAS has also adopted measures in order to facilitate the movement of persons transported in private or commercial vehicles:

Private vehicles

A private vehicle registered in the territory of a Member State may enter the territory of another Member State and remain there for a period not exceeding ninety (90) days upon presentation to the competent authority of that Member State of valid driving licence; matriculation certificate (ownership card) or log book; insurance policy recognised by Member States; and international customs documents recognised within the Community.

Commercial vehicles

A commercial vehicle registered in the territory of a Member State and carrying passengers may enter the territory of another Member State and remain there for a period not exceeding fifteen (15) days upon presentation of the documents listed hereunder to the competent authority of that Member State: valid driving licence; matriculation certificate (ownership card) or log book; insurance policy recognised by Member States; and international customs documents recognised within the Community.

During the period of fifteen (15) days the commercial motor vehicle shall however not engage in any commercial activities within the territory of the Member State entered.

The ECOWAS brown card relating to insurance of motor vehicles

The ECOWAS brown card relating to insurance of motor vehicles covers the



civil responsibility of its owner within the ECOWAS area. It offers at least the same guarantees as those which are required by the laws in force on the territory of each Member State and it is worth certificate of insurance (Protocole portant création d'une carte brune CEDEAO relative à l'assurance responsabilité civile automobile au tiers - A/P1/5/82).

Currently, twelve Member States have instituted the ECOWAS brown card: Benin, Burkina Faso, Ivory Coast, Ghana, Guinea, Guinea Bissau, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

(**Contact:** Secrétariat Général Permanent Carte Brune CEDEAO – BP 2258 Lomé TOGO. Tel: (228) 22 39 55 / 21 68 64 email: brown-card@ecowas.int)

Current state of application of the right of entry

Every ECOWAS' Member States have abolished visas and entry permits. However, in almost every country remain many checkpoints and thus, Community citizens are still facing administrative troubles. That is the reason why free movement of persons within the ECOWAS area is not yet fully accomplished.

Eight States have printed and issued the ECOWAS travel certificate (ie Burkina Faso; Gambia; Ghana; Guinea; Niger; Nigeria; Sierra Leone; and Togo). The implementation at national level of ECOWAS' decisions is still a problem and some States do not recognise yet the validity of this travel certificate, and request national passports instead. In near future, this certificate shall be replaced by a common ECOWAS international passport, which replaces national passports. Currently, only Benin, Liberia and Senegal have issued this communitarian passport.

B. Right of Residence

What is it? - The right of residence's principle

Right of residence consists in recognising to Community citizens a right of residence enabling them to move and reside freely on other Member States' territory for the purpose of seeking and carrying out income earning employment (except from employment in the civil service of Member States, unless the relevant national laws and regulations of the host Member States so permit). (Article 2 du Protocole additionnel relatif à l'exécution de la 2ème étape (droit de résidence) du Protocole sur la libre circulation des personnes)

For who? - Recipients of the right of residence

Recipients of the right of residence are migrant workers, citizens of the Community (Articles 10 à 12 du Protocole additionnel relatif à l'exécution de la 2ème étape (droit de résidence) du Protocole sur la libre circulation des personnes - A/SP1/7/86). Seasonal workers, shall also benefit from the right of residence and rights which result from it, whereas border area workers and itinerant workers are excluded from the benefit of those rights.

Definitions:

"Border area workers" means migrant workers who, while in employment in one Member State, maintain their normal residence in a neighbouring Member State, which is their country of origin and to which they return each day or at least once a week.

"Seasonal workers" means migrant workers in employment or practising a business on their own account in one Member State of which they are not nationals, the activity being by its nature dependent on seasonal conditions and capable of being practised only during a part of the year.

"Itinerant workers" means migrant workers who, normally residing in one Member State, may have



to travel to another Member State for a short period for the requirements of their activities.

How? - Implementation of the right of residence

The right of residence includes:

Recognition of rights: Migrant workers enjoy the same rights as the host Member State's nationals, except for political rights (Article 10 de la Décision de la Conférence portant institution d'une carte de résident des États membres de la CEDEAO - A/DEC.2/5/90). This recognition of rights aims at protecting workers employed in another country than the country of their origin, that is why they enjoy equal treatment with nationals of the host Member State (Protocole additionnel relatif à l'exécution de la 2^{ème} étape (droit de résidence) du Protocole sur la libre circulation des personnes).

Protection of rights: Rights thus recognised are guaranteed and fundamental rights of migrant workers are respected. That is why they are inalienable, which means that one cannot give up any of these rights or refrain from exercising them, voluntarily or by constraint.

Member States still have the sovereign right to expel nationals of other Member States which are in irregular situation. However, migrant workers benefit from a protection against collective and arbitrary expulsion. Indeed, expulsion of migrant workers and members of their families is only possible for clear and limited motives, such as national security, public health or morality, or if an essential condition for the issuance or the validity of their authorisation of residence or work permit is not fulfilled. In addition to that, each case of expulsion shall be considered and judged on an individual basis and based on a well-founded legal or administrative decision taken in accordance with the law.

When an expulsion order is made out by a legal or an administrative authority the immigrant concerned may appeal the decision to the authority that took the expulsion measure.

Obligations for migrant workers: Community citizens admitted without visa or entry permit into the territory of one Member State, and desiring to reside in the territory of that Member State, shall be obliged to obtain an ECOWAS residence card or a residence permit if they wish to stay on the territory of the host Member State (Decision de la Conférence portant institution d'une carte de résident des États membres de la CEDEAO-A/DEC.2/5/90). The applicant for the residence card or residence permit in the territory of any Member State shall deposit with the Department of Immigration of the host Member State an application for a residence card (or permit) accompanied by some documents, in particular a letter of guarantee issued by the employer.

The residence card is delivered on an individual basis. It is worth stay and residence permit, it has a three-year validity as from its date of delivery and only costs the price of a stamp. Job loss or economic discontinuance of business before the expiry of the card or of any other similar authorisation does not involve the withdrawal of the residence card, and the migrant will not be regarded as being in irregular situation.

State of application of the right of residence

In order to benefit from the right of residence, the migrant has to possess his resident card. However, problems arise in the implementation of this right, which currently remains rather unapplied due to lack of means set up to enforce it and due populations' unawareness of this right. Moreover, the right of residence concerns only to legal workers and therefore excludes people who are employed in the informal sector.

C. Right of establishment

What is it? - The right of establishment's principle

The right of establishment allows Member States' nationals to access freely to employment (salaried and non-salaried) and to undertake commercial and industrial activities. It aims at promoting investments of Member States' nationals in the whole ECOWAS area(A/SP2/5/90).

For who? - Recipients of the right of establishment

Recipients of the right of establishment are migrant workers, citizens of the Community.

How? The right of establishment's implementation

The right of establishment is implemented through:

The recognition of a right to establish oneself and to access to economic activities:

The right of establishment includes the possibility to access to non-salaried activities and the exercise of such activities as well as the creation and management of enterprises and companies

A principle of equality:

The right of establishment allows migrant workers to benefit from the same rights as national workers of the host country. Thus, there is an equal treatment vis a vis national workers.

Current state of application of the right of establishment

The right of residence is not effective yet, therefore, the right of establishment of migrants who do not possess the required documents to access legally to employment cannot be effective.

D. Free movement of goods within the ECOWAS area

Created by the treaty of Lagos in 1975, the Economic Community of West African States (ECOWAS) is a regional organization gathering 15 States of West Africa. Its objective is the economic integration of the area i.e. the creation of a common market. This aim will be carried out through:

? the liberalization of trade by the abolition among Member States of custom duties levied on imports and exports and the abolition among Member States of non-tariff barriers in order to establish a free trade area at the Community level;

? the adoption of a common external tariff and a common trade policy vis-a-vis third countries; the removal between Member States of obstacles to free movement of persons, goods, service and capital, and to the right of residence and establishment.

In other words, it is envisaged to create a regional market inside which people and goods could circulate freely among Member States, without discrimination. Products profiting from this liberalization of trade are the products originating from the ECOWAS' Member States



PRODUCTS ORIGINATING FROM MEMBER STATES OF THE ECOWAS

There are three categories of products originating from the ECOWAS: unprocessed goods, traditional handicraft products and industrial products.

Products of the traditional craft industry originating in the Member States of CEDEAO are hand made articles (with or without tools, instruments or devices actuated directly by the craftsman).

Unprocessed products originating from the Community are the products of animal, mineral and vegetable reigns which have undergone no industrial transformation.

These two categories of products (Community-originating, unprocessed goods and traditional handicraft products) shall circulate within the region free of all import duties and quantitative restrictions. There shall be no compensation for loss of revenue resulting from the importation of these products Goods shall be considered as originating from Member States if:

they have been wholly produced in Member States;

- they have been produced with the use of materials which were obtained in the Community if at least 60% of the finished goods' materials are originated from the Community;

- they have been produced with the use of materials sufficiently processed or transformed in one or several Member States.

In order to benefit from the advantages of the trade liberalization scheme, i.e. to be exonerated from customs duties, an originating industrial product must be accompanied by a certificate of origin and be approved.

If a product is not accompanied by its certificate of origin, it cannot be declared in customs. The certificate of origin is an element of custom admissibility. The certificate of origin is issued by the competent authority designated for that purpose by the Member State of origin and countersigned by the Customs Department of that Member State.

In order to profit from the ECOWAS trade liberalization scheme the companies must be registered and the industrial products must receive a number of approval. Approval enables the product to be exonerated from customs duties within the ECOWAS area. Approvals of originating industrial products are granted by the competent authority designated for that purpose by the Member State of origin based on a proposal by the National Committee of Approval.

In short:

a product without certificate of origin and not approved cannot be declared in customs;

a product accompanied by a certificate of origin but which is not approved can be declared in custom but does not benefit from the preferential treatment of the originating products;

a product accompanied by a certificate of origin and approved can be declared in custom and it profits from the preferential treatment of the products originating from the Community.

The liberalization of trade goes through a reduction of customs duties and other charges with equivalent effect on the products originating from the Community. These first measures were supposed to come into effect on January 1, 1990, but today the objectives are far from being achieved. Indeed, every barriers are not eliminated yet and inopportune controls, which are important nontariff barriers, remain.

THE ROAD TRAFFIC

The road traffic within ECOWAS meets many difficulties that increase considerably the cost of goods because of the lengthening of the procurement lead times and because of additional expenses consequently to inopportune and irregular controls

In view to correct that, ECOWAS established an Inter-States Road Transit regime (ISRT). This special regime authorizes the transport of goods by road from one Member State custom office to another Member State custom office without paying any custom duties or taxes. In order to operate under this ISRT System, all goods shall be covered by an Inter-States Road Transit Declaration. Moreover the whole operation has to be carried out without unloading of the delivery during the way.

When an ISRT operation occurs in a State, the national Guarantee of country of departure delivers an Inter-States Road Transit Declaration. Only one Inter-States Road Transit Declaration is establishes by road vehicle and by transportation, from the office of departure to the destination office. It is equivalent to a custom declaration.

To be allowed to circulate with the advantages of ISRT the transporter must:

Use road vehicles or container vehicles previously approved. If not, the Custom escort remains mandatory.

Have two plates TRIE/CEDEAO by vehicle (these plates are sold by the national Guarantees.

Have valid vehicle usual documents (automobile license, driving licence corresponding to the vehicle category, insurance, international transport declaration etc.)

Although the procedure set out by the texts allows free movement of the goods, it is actually far from being effective because of an enormous delay in the implementation of ISRT. Indeed, Inter-States Road Transit Declaration, central piece of the system, is still not born. . Currently, the economic operator wishing to carry out an operation of road transit between various States must be provided with several declarations and has to pay several customs duties and taxes.

V. LEGAL PROVISIONS TO CONSIDER



A. ECOWAS protocols and decisions

PROTOCOL A/P.1/5/79 RELATING TO FREE MOVEMENT OF PERSONS, RESIDENCE AND ESTABLISHMENT

THE HIGH CONTRACTING PARTIES

RECALLING that sub-paragraph (d) of paragraph 2 of Article 2 of the Treaty of the Economic Community of West African States calls on Member States to ensure by stages the abolition of the obstacles to free movement of persons, services and capital ;

RECALLING also that paragraph 1 of Article 27 of the Treaty of the Economic Community of West African States confers the status of Community citizenship on the citizens of Member States, and also enjoins Member States to abolish all obstacles to freedom of movement and residence within the Community ;

RECALLING further that paragraph 2 of Article 27 of the Treaty of the Economic Community of West African States further calls on Member States to exempt Community citizens from holding visitor's visa and residence permits and allow them to work and undertake commercial and industrial activities within their territories :

CONVINCED of the need to spell out in this protocol the various stages to be undergone to accomplish complete freedom of movement as envisaged by sub-paragraph (d) of paragraph 2 of Article 27 of the Treaty of the Economic Community of West African States ;

HAVE AGREED AS FOLLOWS:

PART 1: DEFINITIONS

Articles I

In this Protocol:

"Treaty" means the Treaty of the Economic Community of West African States ;



"**Council of Ministers**" means the Council of Ministers established by Article 6 of the Treaty of the Economic Community of West African States ;

"**Executive Secretary**" means the Executive Secretary of the Economic Community of West African States;

"**Community**" means the Economic Community of West African States ;

"**Member State**" or "**Member States**" means a Member State or Member States of the Economic Community of West African States;

"**A citizen of the Community**" means a citizen of any Member State;

"**A valid travel document**" means a passport or any other valid travel document establishing the identity of the holder with his photograph, issued by or on behalf of the Member State of which he is a citizen and on which endorsement by immigration and emigration authorities may be made. A valid travel document shall also include a laissez-passer issued by the Community to its officials establishing the identity of the holder.

PART II: GENERAL PRINCIPLES ON MOVEMENT OF PERSONS, RESIDENCE AND ESTABLISHMENT

Article 2

1. The Community citizens have the right to enter, reside and establish in the territory of Member States.

2. The right of entry, residence and establishment referred to in paragraph 1 above shall be progressively established in the course of a maximum transitional period of fifteen (15) years from the definitive entry into force of this Protocol by abolishing all other obstacles to free movement of persons and the right of residence and establishment.

The right of entry, residence and establishment which shall be established in the course of a transitional period shall be accomplished in three phases, namely:

Phase I - Right of Entry and Abolition of Visa

Phase II - Right of Residence

Phase II - Right of Establishment

Upon the expiration of a maximum period of five (5) years from the definitive entry into force of this Protocol, the Commission, based upon the experience gained from the implementation of the first phase as set out in Article 3 below, shall make proposals to the Council of Ministers for further liberalisation towards the subsequent phases of freedom of residence and establishment of persons within the Community and phases shall be dealt with in subsequent Annexes to this Protocol.

PART III: IMPLEMENTATION OF THE FIRST PHASE: ABOLITION OF VISAS AND ENTRY PERMIT

Article 3

1. Any citizen of the Community who wishes to enter the territory of any other Member State shall be required to possess a valid travel document and an international health certificate.

A citizen of the Community visiting any Member State for a period not exceeding ninety (90) days shall enter the territory of that Member State through the official entry point free of visa requirements. Such citizen shall, however, be required to obtain permission for an extension of stay from the appropriate authority if after such entry that citizen has cause to stay for more than ninety (90) days.

Article 4

Notwithstanding the provisions of Article 3 above, Member States shall reserve the right to refuse admission into their territory to any Community citizen who comes within the category of inadmissible immigrant under its laws.

PART IV: MOVEMENT OF VEHICLES FOR THE TRANSPORTATION OF PERSONS

Article 5

In order to facilitate the movement of persons transported in private or commercial vehicles the following shall apply:

Private Vehicles

A private vehicle registered in the territory of a Member State may enter the territory of another Member State and remain there for a period not exceeding ninety (90) days upon presentation of the documents listed hereunder to the competent authority of that Member State:

- i. Valid driving licence
- ii. Matriculation Certificate (Ownership Card) or Log Book.
- iii. Insurance Policy recognised by Member States
- iv. International customs documents recognised within the Community.

Commercial Vehicles

A commercial vehicle registered in the territory of a Member State and carrying passengers may enter the territory of another Member State and remain there for a period not exceeding fifteen (15) days upon presentation of the documents listed hereunder to the competent authority of that Member State :

- i. Valid driving licence
 - ii. Matriculation Certificate (Ownership Card) or Log Book.
 - iii. Insurance Policy recognised by Member States
- International customs documents recognised within the Community.

During the period of fifteen (15) days the commercial motor vehicle shall however not engage in any commercial activities within the territory of the Member State entered.

PART V : MISCELLANEOUS PROVISIONS

Article 6

Each Member State shall deposit at the Executive Secretariat specimen of travel documents defined in Article 1 in the present Protocol with a view to communicating them to all Member States.

Article 7

Any dispute that may arise among Member States regarding the interpretation or application of this Protocol shall be amicably settled by direct agreement. In the event of failure to settle such disputes, the matter may be referred to the Tribunal of the Community by a party to such disputes and the decision of the Tribunal shall be final.

Article 8

1. Any Member State may submit proposals for the amendment or revision of this Protocol. Any such proposals shall be submitted to the Executive Secretary who shall communicate them to other Member States not later than thirty (30) days after the receipt of such proposal. Amendments or revisions shall be considered by the Council of Ministers after Members States have been given one month's notice thereof.

Article 9

Member States undertake to co-operate among themselves by exchanging information on such matters that are likely to affect the effective implementation of this Protocol. Such information shall also be sent to the Executive Secretary for necessary action in accordance with the provisions of the Treaty.

Article 10

The provisions of this Protocol shall not operate to the prejudice of citizens of the Community who are already in residence and established in a Member State provided they



CONSIDERING that Community origin is conferred on products with a view of liberalising intra-Community trade;

CONVINCED of the importance of a handicraft sector in the economies of Member States of the Community;

DESIROUS of promoting intra-Community trade in handicraft and to extend a preferential treatment to these products ;

ANXIOUS to conclude an Additional Protocol amending Article 2 of the Protocol relating to the definition of the concept of originating products of Member States ;

HAVE AGREED AS FOLLOWS:

Article 1

Article 2 of the Protocol relating to the definition of the concept of originating products of Member States is amended as follows:

NEW ARTICLE 2

1. "The promotion of trade in goods originating in Member States as well as the collective economic development of the Community requires indigenous ownership and participation. Goods shall be accepted as originating in Member States for purposes of trade liberalisation if :

a. they have been wholly produced as defined in Article V of this protocol ; or

b. they have been produced in a Member State other than by any of the operations and processes listed in Article IV of this Protocol or with the material from a foreign or undetermined origin used in the process of production of goods whose CIF value does not exceed 60% of the total cost of the material employed in the production or with the material of Community origin whose value must not in any case be less than 40% of the total cost of the material used in the process of production or with the raw material of Community origin representing in quantity at least 60% of the whole raw material used in the production ; or

if the goods have been produced from material of a foreign or undetermined origin and having received in the process of production a value added of at least 35% of the ex-factory price before tax of the finished products ; and

d) if the enterprises producing these goods attain a desirable level of indigenous ownership and participation, the Commission shall, on the basis of appropriate statistics, make proposals to the Council of Ministers to determine orientation and levels to ownership and participation.

Traditional handicraft shall also be considered as originating products.

Traditional handicraft means articles generally made by hand with or without tools, instruments or devices operated directly by the craftsman.

The raw materials used are essentially of Community origin.

The list of products is attached as an Annex to this Protocol.

The list may be extended to new products that satisfy the above definition in the future.

All the conditions for the acceptance of products originating from Member States for trade within the Community are subject to amendments periodically by the Council".

Article 2: DEPOSIT AND ENTRY INTO FORCE

1. This Supplementary Protocol shall enter into force provisionally upon signature by the Heads of State and Government of Member States and definitively upon ratification by at least seven signatory Member States in conformity with the constitutional regulations in force in each Member State.

This protocol as well as the instruments of ratification shall be deposited with the Executive Secretariat which shall forward certified true copies of this Supplementary Protocol to all the Member States and shall inform them of the dates of deposit of the instruments of ratification and shall register this Supplementary Protocol with the Organisation of African Unity, the United Nations Organisation as well as any other Organisation approved by the Council.

This Supplementary Protocol is annexed to the Treaty as an integral part thereof.

PROTOCOL RELATING TO THE RE-EXPORTATION WITHIN THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES OF GOODS IMPORTED FROM THIRD COUNTRIES.

THE HIGH CONTRACTING PARTIES,

Aware of the necessity to facilitate the implementation of Article 22 of the Treaty of the Economic Community of West African States on the re-exportation within the Community of goods imported from third countries.



AGREE AS FOLLOWS :

Article I: Definitions

In this Protocol :

"**Treaty**" means the Treaty of the Economic Community of West African States ;

"**Community**" means the Economic Community of West African States ;

"**Council**" means the Council of Ministers established by Article 6 of the Treaty of the Economic Community of West African States ;

"**Commission**" means the Trade, Customs, Immigration, Money and Payments Commission established by Article 9 of the Treaty of the Economic Community of West African States ;

"**Barter Agreement**" means any agreement or arrangement by which goods are imported into a Member State of the Community, being goods for which settlement may be affected, in whole or in part, by the direct exchange of goods ;

"**Customs Duty**" shall include import duties and taxes of equivalent effect ;

"**Re-exportation**" means the exportation from a Member State to another Member State of goods originally imported from a third country.

Article II

Customs duty collected to be refunded in the collecting State

1. Where any goods which are imported into a Member State of the Community from a third country and in respect of which customs duty has been charged and collected in that State (in this paragraph referred to as "the Collecting State") are transferred to one of the other Member States of the Community (in this paragraph referred to as "the Consuming State") the following provisions shall apply :

a. An administrative fee representing 0.5% of the c.i.f. value of every consignment being re-exported is to be charged by the Collecting State ;

b. The Collecting State shall refund to the importer within its territory, the full amount of duty paid on the goods while other costs such as c.i.f., port charges, etc. involved in the importation are to be included in the invoiced price to be paid by the importer in the Consuming State ;.

c. The Consuming State shall charge and collect the duty payable on such goods.

Where goods which imported into a Member State of the Community from a third country and in respect of which customs duty is charged and collected in that State (in this paragraph referred to as "the Collecting State") are wholly or in part used in the Collecting State in the manufacture of other goods are subsequently transferred to another Member State of the Community (in this Article referred to as "the Consuming State"), the Collecting State shall refund to the importer within its territory the full amount of the manufactured goods subsequently transferred to the Consuming State.

Article III: Power of the Council of Ministers of the Community



comply with the laws in general and in particular the immigration laws of that Member State.

Article 11

1. A decision to expel any citizen of the Community from the territory of a Member State shall be notified to the citizen concerned as well as the government of which he is a citizen and the Executive Secretary of ECOWAS.
2. The expenses incurred in the expulsion of a citizen shall be borne by the Member State which expels him.
3. In case of expulsion, the security of the citizen concerned as well as that of his family shall be guaranteed and his property protected and returned to him without prejudice to his obligations to third party.
4. In case of repatriation of a citizen of the Community from the territory of a Member State, that Member State shall notify the government of the State of origin of the citizen and the Executive Secretary.

The cost of repatriation of a citizen of the Community from the territory of a Member State shall be borne by the citizen himself or in the event that he is unable to do so by the country of which he is a citizen.

Article 12

The provisions of the present Protocol shall not affect more favourable provisions contained in agreements that have already been concluded between two or among several Member States.

PART VI: FINAL PROVISIONS: DEPOSIT AND ENTRY INTO FORCE

Article 13

1. This Protocol shall enter into force provisionally upon signature by Heads of State and Government of Member States and definitively upon ratification by at least seven signatory States in accordance with the constitutional procedures applicable for each signatory State.
2. The Protocol and all the instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposit of the instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations and such Organisations as the Council shall determine.

This Protocol shall be annexed to and shall form an integral part of the Treaty.

In faith where of, we WE, THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED THIS PROTOCOL

Done at Dakar, this 29TH Day of may, 1979 in a single original in the English and french languages, both texts being equally authentic.



SUPPLEMENTARY PROTOCOL A/SP.1/7/85 ON THE CODE OF CONDUCT FOR THE IMPLEMENTATION OF THE PROTOCOL ON FREE MOVEMENT OF PERSONS, THE RIGHT OF RESIDENCE AND ESTABLISHMENT THE HIGH CONTRACTING PARTIES,

MINDFUL of the Treaty establishing ECOWAS, particularly its Article 2 Paragraph (d) and Article 27, as amended by Decision A/DEC.8/5/82 of the Authority of Heads of State and



Government dated 29 May, 1982;

CONSIDERING the Protocol on Free Movement of Persons, the Right of Residence and Establishment;

CONVINCED that the implementation by all Member States of the provisions of the texts on free movement of persons, goods, services and capital, shall constitute the fundamental basis for building up ECOWAS and influencing the harmonious development of all economic, social and cultural activities within the region, for the well-being of the peoples of Member States of the Community ;

CONSCIOUS of the urgent need to establish an effective and adequate co-operation between the administration of Member States in view of the need for mutual administrative assistance between them on the free movement of persons, goods, services and capital ;

HEREBY AGREE AS FOLLOWS:

CHAPTER 1: DEFINITIONS

Article 1

In this Protocol, and in the other Protocols relating to the implementation of the different phases of the Protocol on Free Movement of Persons, the Right of Residence and Establishment,

"Treaty" means the Treaty of the Economic Community of West African States ;

"Community" means the Economic Community of West African States;

"Member State" or **"Member States"** means the Member State or Member States of the Community;

"Member State of origin" or **"Member States of origin"** means the Member State or Member States of which the migrant is a national or an indigene;

"Host Member State" or **"Host Member States"** means the Member State or Member States in which the immigrant is staying or residing;

"Authority" means the Authority of Heads of State and Government created by Article 5 of the Treaty;

"Executive Secretary" and **"Executive Secretariat"** mean the Executive Secretary and the Executive Secretariat of the Community as defined in Article 8 of the Treaty ;

"Community citizen" or **"Community citizens"** means any national or nationals of a Member State who fulfill the conditions stipulated in the protocol A/P.3/5/82 establishing the Community code ;

"Right of residence" means the right granted to a citizen who is a national of one Member State to reside in a Member State other than his State of origin which issues him with a Residence Card or Permit, enabling him to hold employment or otherwise ;

"Resident" means any citizen who is a national of a Member State to who the right of residence is granted ;

"Right of Establishment" means the right granted to a citizen who is a national of one Member State to settle or establish in another Member State other than his State of origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises and, in particular companies, under conditions defined by the legislation of the host Member State for its own nationals ;

"Companies" means any company, including co-operative societies or any other legal entity governed by public or company law, with the exception of companies or societies which have no lucrative objective ;

"Migrant" means a national of one Member State of the Community who has travelled from his country of origin to the territory of another Member State ;

"Illegal immigrant" means any immigrant citizen of the Community who does not fulfill the conditions stipulated in the different Protocols relating to the free movement of persons, the right of residence and establishment ;

"Competent Administrations" means the national administrations of Member States responsible for matters relating to the free movement of persons, services and capital ;

"Fundamental human rights" means the right of any individual recognised



by the International Declaration of Human Rights adopted on 10 December, 1984 by the United Nations General Assembly.

CHAPTER II: ROLES AND OBLIGATIONS OF MEMBER STATES OF ORIGIN AND HOST MEMBER STATES OF IMMIGRANTS AND THE FORM OF CO-OPERATION REQUIRED BETWEEN COMPETENT ADMINISTRATIONS OF MEMBER STATES

Article 2

1. Member States shall ensure that their nationals who travel to the territory of another Member State possess valid travel documents recognised within the Community.
2. Member States shall establish or strengthen appropriate administrative services in order to furnish migrants with all necessary information likely to permit legal entry into their territory.
3. In order to avoid illegal recruitment and its negative effects, Member States shall take all necessary measures to exercise stricter control on employers in their territories.

With a view to ensuring close co-operation between national administrations of Member States responsible for matters relating to the free movement of persons, goods, services and capital, and to ensure the harmonisation of techniques and methods of actions to be undertaken, Member States shall authorize the convening of regular meetings of the appropriate national officials for the exchange of all forms of information and experiences.

CHAPTER III: RIGHTS AND OBLIGATIONS OF MIGRANTS IN HOST MEMBER STATES AND CONSTITUTIONS AND PROCEDURES FOR EXPULSION

Article 3

1. In the event of clandestine or illegal immigration, both at national as well as Community level, measures shall be taken to guarantee that illegal immigrants enjoy and exercise their fundamental human rights.
2. The fundamental human rights of expelled immigrants or of the immigrant subject to such a measure by virtue of the laws and regulations of the host Member State, as well as the benefits accruing from his employment, shall be respected. Any expulsion orders shall be enforced in a humane manner without injury to the person, rights or properties of the immigrant.
3. Any person under an expulsion order shall be given a reasonable period of time to return to his country of origin.
4. Any expulsion order which may lead to the violation of fundamental human rights is prohibited.
5. By virtue of the fundamental human rights enjoyed by clandestine immigrants, host Member States shall ensure that repatriation takes place under legal and properly controlled procedures.
6. Where it is absolutely necessary, expulsion shall be contemplated solely on strictly legal grounds ; in any case, it shall be effected with due respect for the human dignity of the expelled immigrant.

Any immigrant citizen of the Community travelling to a Member State other than his State of origin or desiring to reside or establish in such a Member State shall fulfill the conditions stipulated under the different Protocols on the free movement of Persons, right of residence and establishment.

CHAPTER IV: PROVISIONS COVEING THE TREATMENT OF ILLEGAL IMMIGRANTS

Article 5

1. Member States shall take all possible steps to ensure or facilitate the obtaining of the correct documents by illegal immigrants, if desired and possible.
2. The regularisation of the status of illegal immigrants shall be effected under the conditions stipulated in the different Protocols relating to he free movement of persons, the right of residence and establishment and on the basis of the following factors :

- the existence of an ample political consensus making regularisation of stay desirable or necessary ;
- the acceptability of the immigrants by a large section of society ;
- deadline of admissibility ;
- a well-convincing information campaign directed at the entire population and designed to ensure their support and understanding ;
- the absence of legal punitive measures against persons wishing to regularise their stay.

CHAPTER V: SUB-REGIONAL CO-OPERATION FOR THE PURPOSE OF PREVENTING OR REDUCING THE FLOW OF ILLEGAL IMMIGRANTS

Article 6

1. With view to reducing both the attractions as well as the phenomenon of illegal immigrants, measures taken on a national, sub-regional or regional scale must be initiated through bilateral or multilateral co-operation.

Member States undertake to work together to reduce and eliminate the incidence of clandestine immigration as well as the smuggling of illegal workers.

CHAPTER VI: PROTECTION OF PROPERTIES LEGALLY ACQUIRED BY IMMIGRANTS WHO ARE CITIZENS OF THE COMMUNITY

Article 7

1. The host Member State shall protect properties legally acquired on her territory by immigrants who are Community citizens, and shall respect their rights deriving therefrom.

2. Member States shall not apply any measures detrimental to the properties, rights and benefits legally acquired on their territory by citizens and nationals of other Member States which would not be applicable to their own nationals under the same conditions.

3. Any measure taken by a Member State which is detrimental to goods, movable properties or fixed assets legally acquired by Community citizens who are nationals of another Member State shall be liable to payment of a fair and equitable compensation.

4. Host Member States shall not enact any tax laws of a kind that may result in a less favourable treatment of immigrant Community citizens residing or established in their territories. This provision applies to both natural and legal persons.

Community citizens who are nationals of a Member State shall have on the territories of other Member States, under the same conditions as their nationals, freedom to prosecute and defend their rights under any jurisdiction.

CHAPTER VII: OBLIGATIONS OF MEMBER STATES IN RESPECT OF FURNISHING THE EXECUTIVE SECRETARIAT AND OTHER MEMBER STATES WITH INFORMATION IN THE EVENT OF BORDER CLOSURE BY ONE OF THEM

Article 8

1. Whenever a problem of internal security shall lead to the imposition of measures restricting the implementation of the provisions of the Protocol on free movement of persons, the right of residence and establishment, the Member States concerned shall inform the Executive Secretariat and other Member States within a reasonable period of time.

Whenever, for reasons of internal security, a Member State shall deem it necessary to close its borders, the Member State concerned shall inform the Executive Secretariat, and the other Member States, if necessary even after the act, regardless of the reasons justifying such measures.

CHAPTER VIII : MISCELLANEOUS PROVISIONS

Article 9

Any dispute which may arise between Member States regarding the interpretation or application of this Protocol, shall be settled in conformity with the procedure for the



settlement of disputes stipulated in Article 56 of the Treaty.

Article 10

1. Any Member State may submit proposals for amendment or revision of this Protocol. Any such proposals shall be submitted to the Executive Secretary who shall communicate them to other Member States within (30) thirty days of the receipt of such proposals. The amendments or revisions shall be examined by the Authority at the expiration of the thirty- (30) days-notice period given to Member States.

CHAPTER IX: DEPOSIT AND ENTRY INTO FORCE

Article 11

1. This Protocol shall enter into force provisionally upon signature by the Heads of State and Government of Member States and definitively upon ratification by at least seven (7) signatory States in accordance with the constitutional procedures applicable for each signatory Member State. This Protocol and all the instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies to all Member States and notify them of the dates of deposit of the instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations Organisation and other such Organisations as the Council shall determine.

This Protocol shall be annexed to and shall be an integral part of the Treaty.

IN FAITH WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED THIS PROTOCOL

Done at LOME, this 6TH day of july, 1985 in a single original in the English and French language both texts being equally authentic.



SUPPLEMENTARY PROTOCOL A/SP.1/7/86 ON THE SECOND PHASE (RIGHT OF RESIDENCE) OF THE PROTOCOL ON FREE MOVEMENT OF PERSONS, THE RIGHT OF RESIDENCE AND ESTABLISHMENT

PREAMBLE

THE HIGH CONTRACTING PARTIES,

MINDFUL of Article 5 of the ECOWAS Treaty establishing the Authority of Heads of State and Government and defining its composition and functions,

MINDFUL of the ECOWAS Treaty, particularly its Article 27,

MINDFUL of the Protocol on free movement of persons, the right of residence and establishment signed in Dakar on 29 May, 1979 ;

MINDFUL of Decision A/DEC.8/5/82 amending paragraph 1 of Article 27 of the ECOWAS Treaty ;

CONSIDERING that the deadline for the implementation of phase 1 of the Protocol on the free movement of persons, the right of residence and establishment, which effectively entered into force on June 5, 1980, expired on 4 June, 1985 ;

CONVINCED of the need to proceed to the second phase of this Protocol, which relates to the right of residence at the present stage of the evolution of ECOWAS activities;

HAVING STUDIED the Resolution of the Council of Ministers on the subject, on the recommendation of the competent technical Commission, at its fifteenth meeting held in Lome from 6 to 17 May, 1985;

HEREBY AGREE AS FOLLOWS:



CHAPTER 1 : DEFINITIONS

Article 1

In this Protocol, the following expression shall have the meaning assigned to them hereunder

"Treaty" means the Treaty of the Economic Community of West African States ;

"Member State" or **"Member States"** means a Member State or Member States of the Economic Community of West African States ;

"Host Member State" means the Member State or country of residence of the migrant worker ;

"Member State of origin" means the Member State or country of origin of the migrant worker or the country of which he is a national ;

"Authority" means the Authority of Heads of State and Government established by Article 5 of the Treaty ;

"Executive Secretary" and **"Executive Secretariat"** means the Executive Secretary and the Executive Secretariat of the Community as defined in Article 8 of the Treaty ;

"Community citizen" or **"Community citizens"** means any person or persons fulfilling the conditions stipulated in the Protocol A/P.3/5/82 relating to the definition of Community citizen ;

"Right of Residence" means the right of a citizen who is a national of one Member State to reside in a Member State other than his State of origin and which issues him with a residence card or permit that may or may not allow him to hold employment ;

"Residence card" or **"Residence Permit"** means the document issued by the competent authorities in the territory of a Member State granting right or residence in the territory of the Member State ;

"Migrant worker" means any citizen who is a national of one Member State, who has travelled from his country of origin to the territory of another Member State of which he is not a national, and who seeks to hold or proposes to hold or is holding or has held employment ;

"Competent Administrations" or **"Relevant Departments"** means national Administrations of Member States responsible for immigration and emigration matters ;

"Competent authority of place of residence" means the competent local authority responsible for problems concerning the residence of foreigners in the territory of the host Member State ;

"Fundamental rights" means the right granted to any migrant worker by this Protocol and the Conventions of the International Labour Organisation (ILO) on the protection of the rights of migrant workers ;

"Border area workers" means migrant workers who, while in employment in one Member State, maintain their normal residence in a neighbouring Member State, which is their country of origin and to which they return each day or at least once a week.

"Seasonal workers" means migrant workers in employment or practising a business on their own account in one Member State of which they are not nationals, the activity being by its nature dependent on seasonal conditions and capable of being practised only during a part of the year.

"Itinerant workers" means migrant workers who, normally residing in one Member State, may have to travel to another Member State for a short period for the requirements of their activities.

1. In this Protocol, the term "migrant workers" excludes :

a. persons on official posting who are employed by international organisations and persons employed by a State outside the territory of that State, whose entry into the country and conditions of service are governed by general international law or by specific International Agreements or Conventions ;

b. persons on official posting who are employed by a State outside the territory of that State for the implementation of co-operation programmes for development agreed on with the host country, the entry into the country and conditions of service of such persons being established by specific International Agreements or Conventions ;

c. persons whose working relations with an employer have not been established in the host Member State ;



d. persons whose main income does not come from the host Member State ;
persons who become residents in their capacity of investor in a country other than their State of origin or who, since their arrival in that country, have been carrying out an economic activity as an employer.

CHAPTER II : RIGHT OF RESIDENCE

Article 2

For the purpose of implementing the second phase (right of residence) of the Protocol on free movement of persons, the right of residence and establishment, each of the Member States shall grant to citizens of the Community, who are nationals of other Member States, the right of residence in its territory for the purpose of seeking and carrying out income earning employment.

Article 3

With the exception of restrictions justifiable by reasons of public order, public security and public health, the right of residence shall include the right:

1. to apply for jobs effectively offered ;
2. to travel for this purpose, freely, in the territory of Member States ;
3. to reside in one of the Member States in order to take up employment in accordance with the legislative and administrative provisions governing employment of national workers ;
to live in the territory of a Member State according to the conditions defined by the legislative and administrative provisions of the host Member State, after having held employment there.

Article 4

The provisions of Article 3 above shall not be applicable to employment in the civil service of Member States, unless the relevant national laws and regulations of the host Member States so permit.

CHAPTER III: RESIDENCE CARD VALID AS VISITING AND RESIDENCE PERMIT

Article 5

Citizens of the Community who are nationals of Member States admitted without visa into the territory of one Member State, and desiring to reside in the territory of that Member State, shall be obliged to obtain an ECOWAS RESIDENCE CARD or a RESIDENCE PERMIT.

Article 6

The applicant for the RESIDENCE CARD or RESIDENCE PERMIT in the territory of any Member State shall deposit with the Department of Immigration of the host Member State an application for a Residence Card or Residence Permit in accordance with the rules and regulations existing in each Member State.

Article 7

1. The application shall be addressed to the competent Ministry of the host Member State ;
The applicant shall be issued with a receipt certifying that his application and the necessary documents have been submitted.

Article 8

The processing of an application for a Residence Card or Residence Permit may not delay the immediate execution of employment contracts concluded by applicants.

Article 9

Within a period of one (1) year from the date of entry into force of this Protocol, the rules and regulations relating to the conditions for the issuance of Residence Card or Residence Permit in Member States shall be harmonised with a view to establishing an ECOWAS RESIDENCE CARD.

CHAPTER IV: SPECIAL PROVISIONS CONCERNING BORDER AREA, SEASONAL OR ITINERANT WORKERS.

Article 10

1. Border area workers, defined in Article 1 of this Protocol, shall enjoy all rights to which they are entitled through their presence and their work in the territory of the host Member State, with the exception of rights relating to residence or resulting therefrom.

2. Border area workers shall enjoy the right to choose their employment freely within the limits of any restrictions imposed by the host Member State on access of migrant workers to limited categories of jobs, posts or activities, when the interests of the State so dictate.

Article 11

Seasonal workers, as defined in Article 1 of this Protocol, shall enjoy all rights to which they are entitled through their presence and their work in the territory of the host Member State.

Article 12

Itinerant workers, as defined in Article 1 of this Protocol, shall enjoy all rights to which they are entitled through their presence in the territory of the host Member State, with the exception of rights relating to residence or to employment or resulting therefrom.

CHAPTER V: PROTECTION AGAINST COLLECTIVE AND ARBITRARY EXPULSION

Article 13

1. Migrant workers and members of their families may not be affected by collective or *en masse* expulsion orders.

Each case of expulsion shall be considered and judged on an individual basis.

CHAPTER VI: PROTECTION AGAINST INDIVIDUAL EXPULSION AND RESPECT OF FUNDAMENTAL RIGHTS OF THE MIGRANT WORKER

Article 14

1. Migrant workers and members of their families whose status comply with the residence requirements may only be expelled from the host Member State :

- a. for reasons of national security, public order or morality ;
- b. if, having been duly informed of the consequences, they refuse to comply with the orders given to them by a public medical authority for the purpose of protecting public health ;
- c. if an essential condition for the issuance or the validity of their authorisation of residence or work permit is not fulfilled ;
- d. in accordance with the laws and regulations applicable in the host Member State.

2. Any form of expulsion may only be based on a well-founded legal or administrative decision taken in accordance with the law.

3. The immigrants, the Government of his country of origin and the Executive Secretariat should receive written notice of the decision for information purposes.

When an expulsion order is made out by a legal or an administrative authority the immigrant concerned may appeal, or may have recourse to an appeal in accordance with the rules and regulations of the host Member State. The recourse to an appeal shall constitute a suspension of the expulsion order, unless it is not explicitly justified by reasons of national security or public order.

If such a decision has already been executed and is subsequently annulled, the person concerned is entitled to claim damages in accordance with the law.

5. In case of expulsion, the immigrant concerned shall be granted a reasonable period of time to allow him collect any salaries or other allowances due to him from his employer, settle any contractual commitments and, when required --for reasons of personal security-- to obtain authorisation to go to a country other than his country of origin. The situation of the family of the immigrant concerned shall also be taken into consideration.



6. The expulsion or departure from the host Member State shall conversely affect the entitlements obtained through legislation by the migrant worker or a member of his family.

In case of expulsion, the authorities of the host Member State shall bear the expenses resulting therefrom and shall not pressurise those affected in any way to accept a simplified procedure, such as "voluntary departure" if such affected persons have not expressly requested it.

Article 15

1. Consular or diplomatic authorities of the Member State of origin or of the country representing the interest of the country of origin shall be advised of any decision to expel a migrant worker or member of this family legally present in the host Member State, at least forty-eight (48) hours before the expulsion takes effect.

2. The migrant worker and members of his family may appeal for the protection and assistance of consular and diplomatic authorities of their countries of origin and may receive advisory services from them to defend his right, if the rights conferred on him by this Protocol or by legislation in the host Member State are infringed upon.

3. The migrant worker as well as members of his family are legal personalities.

In case of dispute on the rights mentioned in paragraph 3 of this Article, the worker may put forth his claims to a competent body, either personally, or through his representatives.

Article 16

1. Any expulsion decided upon for the reasons mentioned above shall, in accordance with the applicable laws, conform with the procedures stipulated under the provisions of this Protocol.

No expulsion order may be carried out without ensuring that all the fundamental rights of the migrant worker have been respected.

CHAPTER VII: TRANSFER OF SAVINGS

Article 17

1. Each Member State shall allow the transfer of all or part of the earnings or savings the migrant worker which he may wish to transfer, according to modalities fixed by legislation. This Provision shall also apply to the transfer of funds due to migrant workers as maintenance. The transfer of amounts due to the migrant worker as maintenance may under no circumstances be hampered or impeded.

Within the framework of bilateral agreements or by any other means, each Member State shall allow the transfer of amounts which remain outstanding to migrant workers when they finally leave the host Member State.

Article 18

CHAPTER VIII : CO-OPERATION BETWEEN COMPETENT ADMINISTRATIONS OF MEMBER STATES

The competent Administrations of Member States shall co-operate closely with one another and with the Executive Secretariat on matters relating to the movement of persons within the Community and particularly as far as migrant labour is concerned in order to :

1. identify the types of migratory movement within the Community as well as the reasons for such movement ;
2. identify the types of employment sought and the qualification of the employment-seekers as well as the cost of labour in Member States through exchange of information between the Executive Secretariat and each Member State ;
3. consider trade union organisations in each Member State and their attitude to immigrant job-seekers ;

4. monitor the problems of migrant labour as well as the types of industry of activity which attract such labour and to inform the Executive Secretariat on the subject ;

5. endeavour to harmonise the employment and labour policies in Member States, on the basis of this exchange of information on migrant labour.

Article 19

While they shall be free to determine the criteria authorising the admission, stay and employment of migrant workers and members of their family, the host Member States shall hold consultations and act in collaboration with the other Member States concerned in order to promote healthy, fair and humane conditions to ensure legal immigration of workers and their families.

In this case, not only labour requirements and resources, but also social, economic, cultural, political and other consequences both for migrant workers and for the Community and the Member States concerned shall be duly taken into consideration.

Article 20

Member States shall set up appropriate public organs to deal with the problems relating to the movement of workers and their families.

These organs shall be responsible for :

1. formulating the policies on this movement ;
 2. the exchange of information, consulting and co-operation with the competent authorities of other Member States concerned by this movement ;
 3. the supply of information, particularly to employers and their organisations as well as to workers and workers' organisations, on policies, laws and regulations relating to migration for the purposes of employment and on working and living conditions of migrant workers and members of their families in the host Member States ;
 4. informing and assisting migrant workers as well as members of their families on the authorisations, formalities and arrangements relating to their departure, travel arrival, stay, employment, exit and return to their State of origin and the working and living conditions in the host Member State. They should also be informed on customs, fiscal and monetary laws and regulations as well as laws and regulations on other relevant issues ;
- recommending for adoption, laws, regulations and many other measures necessary to facilitate the application of the provisions of this Protocol, and settling questions relating to movement within the Community and to migrant workers.

Article 21

1. At the national level of each Member State only the following bodies shall be authorised to carry out operations for the purposes of recruitment or placement of workers in another State :

- a. official departments or bodies of the Member State of origin or the host Member State, if agreement have been concluded between the Member States concerned ;
- b. any body set up by a bilateral or multilateral agreement.

2. Through national legislation and bilateral or multilateral agreement, the following may be authorised to carry out the recruitment exercise, subject to the approval and supervision of the authorities of the Member State concerned :

- a. the employer or a person in his employ acting on his behalf ;
- private agencies.

Article 22

1. Member States shall co-operate to prevent and stop illegal or clandestine movement and employment of migrant workers whose status is irregular.

2. For this purpose, each Member State shall, within the limits of its jurisdiction, take :



- a. appropriate measures against the dissemination of misleading information on emigration and immigration ;
 - b. measures intended to detect and stop the illegal or clandestine movement of migrant workers and members of their families and to impose effective sanctions on persons or bodies who organise or help to organise such movements or participate in them ;
 - c. measures intended to impose effective sanctions on persons, groups or bodies which resort to violence, threats or intimidation against illegal migrant workers or members of their families.
- Host Member States shall take adequate measures likely to effectively stop the employment of illegal aliens in their territory, by imposing sanctions on the persons or bodies which employ such workers. These measures shall not adversely affect the right of migrant workers vis-a-vis their employers and the rights resulting from their employment.

Article 23

1. No matter the conditions of their authorisation of residence, migrant workers who comply with rules and regulations governing residence, shall enjoy equal treatment with nationals of the host Member State in the following matters :

- a. security of employment ;
- b. possibility of participating in social and cultural activities ;
- c. possibilities of re-employment in case of loss of job for economic reasons ; in this case, they shall be given priority over other workers newly admitted to the host country ;
- d. training and advanced professional training ;
- e. access to institutions of general and professional education as well as to professional training centres for their children ;
- f. benefit of an access to social, cultural and health facilities.

Migrant workers who comply with the rules and regulations governing residence shall enjoy equal treatment with nationals of the host Member State in the holding of employment or the practice of their profession.

CHAPTER IX : GENERAL AND MISCELLANEOUS PROVISIONS

Article 24

1. No provisions of this Protocol may be interpreted to adversely affect more favourable rights or liberties guaranteed to migrant workers or members of their families by :

- a. law, legislation or practice in a Member State, or
- b. any international agreement in force vis-a-vis the Member State concerned.

No provision of this Protocol may be interpreted as implying the right of any Member State to undertake an activity or action designed to remove the rights or liberties recognised in this Protocol or to any restriction of such rights or liberties beyond those stipulated in the Protocol.

Article 25

1. Rights guaranteed in this Protocol may not be withdrawn.
 2. Any form of pressure exerted on migrant workers or members of their families to force them to give up any of these rights or to refrain from exercising them shall be prohibited.
- Any clause of an Agreement or Contract designed to force the migrant worker to give up any of these rights or refrain from exercising them shall be null and void according to the provisions of this Protocol.

Article 26

In accordance with their constitutional procedures and with the provisions of this Protocol, Member States shall :



a. guarantee that any person whose rights and liberties as recognised by this Protocol have been infringed upon, shall enjoy the right of recourse, even when this infringement has been committed by persons exercising their official functions ;
guarantee that competent judicial, administrative or legislative authority, or any other competent authority, according to the laws of the Member State, shall rule on the rights of the person who is making an appeal.

Article 27

In accordance with their constitutional procedures and the provisions of this Protocol, Member States shall take all necessary legislative and other measures for the implementation of the provisions of this Protocol.

Article 28

Any dispute between Member States arising from the interpretation or application of this Protocol shall be settled in accordance with the provisions of the procedure for the settlement of disputes stipulated in Article 56 of the Treaty.

Article 29

1. Any Member State may submit proposals for the amendment or review of this Protocol. All proposals shall be sent to the Executive Secretariat which shall communicate such proposals to Member States within thirty (30) days of receiving them. Amendments or modifications shall be considered by the Authority on the expiration of the thirty-day- notice granted to Member States.

CHAPTER X : DEPOSIT AND ENTRY INTO FORCE

Article 30

1. This Protocol shall enter into force provisionally upon signature by the Heads of State and Government and definitively upon ratification by at least seven (7) signatory States in accordance with the constitutional procedures of each Member State.
2. This Protocol and all instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposit of the instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations and other such Organisations as may be determined by the Authority of Heads of State and Government.
This Protocol shall be annexed to and shall form an integral part of the Treaty.

IN FAITH WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES HAVE SIGNED THIS PROTOCOL

Done at ABUJA, this 1ST day of July, 1986 in one single original in the english and French languages, both texts equally authentic.



SUPPLEMENTARY PROTOCOL A/SP.2/5/90 ON THE IMPLEMENTATION OF THE THIRD PHASE (RIGHT OF ESTABLISHMENT) OF THE PROTOCOL ON FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND ESTABLISHMENT THE HIGH CONTRACTING PARTIES,

MINDFUL of Article 5 of the ECOWAS Treaty establishing the Authority of Heads of State and Government and defining its composition and functions ;



MINDFUL of Article 27 of the ECOWAS Treaty relating to freedom of movement and residence within the Community ;

MINDFUL of Protocol A/P.1/5/79 dated 29 May, 1979, on Free Movement of Persons, Right of Residence and Establishment ;

MINDFUL of Protocol A/P.3/5/82 dated 29 May, 1979, establishing the Code of Citizenship of the Community ;

MINDFUL of Protocol A/P.1/11/84 dated 23 November, 1984 on Community Enterprises ;

MINDFUL of Supplementary Protocol A/SP.1/7/85 dated 6 July, 1985, establishing the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, Right of Residence and Establishment ;

CONSIDERING the deadline for the implementation of Phase II (Right of Residences) of the Protocol on Free Movement of Persons, Right of Residence and Establishment, which deadline will expire on 4 June, 1990 ;

CONVINCED of the imperative need to proceed to the third phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment, in-as-much-as the uniform implementation of the provisions of ECOWAS texts on free movement of persons, goods, services and capital by all Member States is a fundamental basis of Community building and a pre-requisite for the harmonious development of the economic, social and cultural activities of the States of the region which will ensure the welfare of their peoples ;

HEREBY AGREE AS FOLLOWS:

CHAPTER 1: DEFINITIONS

Article 1

In this Protocol, the following terms shall have the meanings assigned to them hereunder :

"**Treaty**" means the Treaty of the Economic Community of West African States ;

"**Community**" means the Economic Community of West African States ;

"**Member State**" or "**Member States**" means a Member State or Member States of the Economic Community of West African States ;

"**Host Member State**" means the Member State or country of residence of the migrant worker ;

"**Member State of Origin**" means the Member State or country of residence of the migrant worker or the country of which he is a national ;

"**Authority**" means the Authority of Heads of State and Government established by Article 5 of the Treaty ;

"**Council**" means the Council of Ministers established by Article 6 of the Treaty ;

"**Executive Secretary**" and "**Executive Secretariat**" mean the Executive Secretary and the Executive Secretariat of the Community as defined in Article 8 of the Treaty.

"**Commission**" means the Trade, Customs, Immigration, Money and Payments Commission of the Community, as defined in Article 9 paragraph 1 (a) of the Treaty.

"**Community Citizen**" or "**Community Citizens**" means any national or nationals of a Member State fulfilling the conditions stipulated in the Protocol A/P.3/5/82 relating to the definition of Community Citizen ;

"**Right of Residence**" means the right of a citizen who is a national of one Member State to reside in a Member State other than his State of origin which issues him with a residence card or permit that may or may not allow him to hold employment ;

"**Right of Establishment**" means the right granted to a citizen who is a national of the Member State to settle or establish in another Member State other than his State of origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals ;

"**Residence Card**" or "**Residence Permit**" means the document issued by the competent authorities of a Member State granting right of residence in the territory of the Member

State ;

"Resident" means any citizen, who is a national of one Member State, and who is accorded the right of residence.

"Migrant Worker" or **"Migrant"** means any citizen who is a national of one Member State, who has travelled from his country of origin to the territory of another Member State of which he is not a national and who seeks to hold employment there ;

"Competent Administrations" or **"Relevant Departments"** means national Administrations of Member States responsible for immigration and emigration matters ;

"Competent Authority of place of residence" means the competent local authority responsible for problems concerning the residence of foreigners in the territory of the host Member State ;

"Fundamental Rights" means the right granted to any migrant worker by this Protocol and the Conventions of the International Labour Organisation (ILO) on the protection of the rights of migrant workers.

"Border area workers" means migrant workers who, while in employment in one Member State, maintain their normal residence in a neighbouring Member State, which is their country of origin and to which they return each day or at least once a week.

"Seasonal Workers" means migrant workers in employment or practising a business on their own account in one Member State of which they are not nationals, the activity being by its nature dependent on seasonal conditions and capable of being practised only during a part of the year.

"Itinerant Workers" means migrant workers who normally residing in one Member State, may have to travel to another Member State for a short period for the requirements of their activities.

"Company" means a company constituted under civil or commercial law or any other legal entity constituted under public or private law with the exception of non-profit-making companies.

2. In this Protocol, the term **"migrant workers"** excludes :

i. Persons on official posting who are employed by international organisations and persons employed by a State outside the territory of that State, whose entry into the country and conditions of service are governed by general international law or by specific International Agreements or Conventions ;

ii. Persons on official posting who are employed by a State outside the territory of that State for the implementation of co-operation programmes for development agreed on with the host country, the entry into the country and conditions of service of such persons being established by specific International Agreements or Conventions ;

iii. Persons whose working relations with an employer have not been established in the host Member State ;

Persons who become residents in their capacity as investors in a country other than their State of origin or who, since their arrival in that country, have been carrying out an economic activity as an employer.

CHAPTER II: ESTABLISHMENT OF OR ACCESS TO ENTERPRISES

Article 2

The right of establishment as defined in Article 1 above shall include access to non-salaried activities and the exercise of such activities as well as the creation and management of enterprises and companies which comply with the definition contained in Article 3 below are subject to the same conditions stipulated by the laws and regulations of the country of establishment for its own nationals.

Article 3

For the purpose of implementation of this Protocol, companies which are formed in accordance with the laws and regulations of a Member State with their headquarters, central seat of administration or principal establishment within the Community shall be considered in the same category as individual



nationals of Member States. Where, however, only the statutory headquarters of the company are established in a Member State, activities of such a company should have effective and sustained links with the economy of the Member State.

CHAPTER III: PROVISIONS FOR SECTORS OF ECONOMIC ACTIVITY GOVERNED BY SPECIAL MEASURES WHERE SUCH ACTIVITY INVOLVES NON-NATIONALS

Article 4

1. In matters of establishment and services, each Member State shall undertake to accord non-discriminatory treatment to nationals and companies of other Member States.
2. If, however, for a specific activity, a Member State is unable to accord such treatment, the Member State must indicate as much, in writing, to the Executive Secretariat. Other Member States shall then not be bound to accord non-discriminatory treatment to nationals and companies of the State concerned.
3. The provisions of this Protocol and measures taken as a result thereof shall be without prejudice to the application of legislative and administrative provisions, which provide a special treatment for non-nationals and are justified by exigencies of public order, security or public health.
4. On the recommendation of the Commission, and on the proposal of the Council, the Authority shall take the relevant decision for the co-operation and harmonisation of legislative, statutory and administrative provisions which, in at least one Member State, make access to certain non-salaried activities (liberal or non-liberal professionals) and the exercise of such activities subject to protective or restrictive measures.
5. To facilitate access to non-salaried activities and the exercise of such activities, the Commission shall recommend to the Council, which shall propose to the Authority that decisions be taken for the mutual recognition at Community level of diplomas, certificates and other qualifications. Activities which, in a Member State, form part, even occasionally, of the exercise of public authority, shall be exempted from the provisions of this Protocol.

CHAPTER IV: PROVISIONS FOR THE PROMOTION AND PROTECTION OF CAPITAL FOR INVESTMENT OR ALREADY INVESTED IN THE ESTABLISHMENT OF AN ENTERPRISE OR FOR THE PURPOSE OF OBTAINING ACCESS TO ECONOMIC ACTIVITY

Article 5

Member States recognise the importance of capital (whether private or public) in the promotion of development co-operation and the need to take measures conducive to the promotion of such capital. Member States shall therefore undertake, jointly and severally to :

- i. implement measures to encourage participation in development efforts by economic operators who share the objectives and priorities of development co-operation and respect the law and regulations of their respective States ;
 - ii. accord fair and equitable treatment to such capital to encourage and create conditions which favour investment of such capital ;
- promote effective co-operation between economic operators in their respective States.

Article 6

In order to further accelerate co-operation in their development efforts and increase directly productive investments, Member States shall undertake to adopt provisions which will facilitate and increase the flow of more stable private capital and enhance:

1. co-financing of productive investment with the private sector ;
 2. the activities and efficacy of domestic financial markets ;
- access to international financial markets.

Article 7

1. Assets and capital invested by ECOWAS citizens who are not nationals of the Member State of establishment, having been duly authorised, shall not be subject to any act of confiscation or expropriation on a discriminatory basis.

Any act of confiscation, expropriation or nationalisation must be followed by fair and equitable compensation.

Article 8

In recognition of the intermediary role of national development finance institutions in attracting the flow of capital for development co-operation, Member States shall undertake to encourage, as part of their monetary and financial co-operation, the establishment or enhancement of :

1. national or regional export financing and export credit guarantee institutions ; and regional payment mechanism likely to facilitate and promote intra-community trade.

Article 9

In recognition of the need to promote and protect the investments of each Member State in their respective territories, Member States shall undertake, in their mutual interest, to harmonise their national legislations, administrative rules and regulations governing the promotion and protection of investments in order to establish the foundations for the Community guarantee and insurance systems.

CHAPTER V: PROVISIONS GOVERNING THE MOVEMENT OF CAPITAL FOR INVESTMENT AND CURRENT PAYMENTS

Article 10

1. In transactions involving movement of capital for investment and current payments, Member States shall refrain from taking exchange control measures which are incompatible with their obligations under the terms of this Protocol and earlier Community provisions, particularly Protocol A/P.1/11/84 of the Authority dated 23 November, 1984 and relating to Community Enterprises.

However, such obligations shall not prevent Member States from taking the necessary protective measures for reasons of grave economic difficulty or serious balance of payment problems, provided that the decision-making bodies of the Community are given notification thereof.

Article 11

In the case of foreign exchange transactions related to investment and current payments, Member States shall, as far as possible, refrain from taking discriminatory measures and from according preferential treatment to nationals of third countries.

CHAPTER VI: CO-OPERATION BETWEEN RELEVANT ADMINISTRATIONS IN MEMBER STATES

Article 12

The relevant authorities of Member States shall co-operate closely with one another and with the Executive Secretariat in accordance with the general conditions for the realisation of the right of establishment in order to :

1. identify activities in which freedom of establishment has a particularly useful contribution to make to the development of production and trade and to deal with such activities in order of priority ;
2. eliminate administrative practices and procedures emanating either from internal legislation or from agreements earlier concluded between Member States which, if maintained, would be an impediment to the freedom of establishment ;
3. ensure that salaried workers of one Member State employed in the territory of another Member State shall remain in the said territory to carry out non-salaried activity on condition that they fulfill



the requirements binding upon any ECOWAS citizen arriving from his State of origin for the purpose of carrying out a non-salaried activity ;

4. make possible the acquisition and exploitation of landed property situated in the territory of one Member State by a national of another Member State, in-so-far as this is permitted by the laws and regulations or the host Member State ;

5. eliminate restrictions to freedom of establishment in any sector of activity both in terms of conditions for the establishment of agencies, branches or subsidiaries and in terms of conditions of entry for staff of the parent establishment into the management or supervisory organs of the subsidiaries ;

co-ordinate as far as necessary with a view to making them equivalent, the guarantees required from companies by Member States to protect the interests of both partners and third parties.

CHAPTER VII: GENERAL AND MISCELLANEOUS PROVISIONS

Article 13

Member States shall undertake to institute all legislative and other measures which are in conformity with their constitutional procedures and necessary for the implementation of the provisions of this Protocol.

Article 14

Any dispute arising between Member States on the interpretation or implementation of this Protocol shall be resolved in accordance with the procedure for settlement of disputes as laid down in Article 56 of the Treaty.

Article 15

1. Any Member State may submit proposals for amendment or revision of this Protocol.

All proposals shall be forwarded to the Executive Secretary who shall communicate them to Member States within thirty (30) days of receiving them. Amendments or revisions shall be considered by the Authority at the expiration of the thirty- (30) days-period of notice granted to Member States.

CHAPTER VIII: DEPOSIT AND ENTRY INTO FORCE

Article 16

1. This Supplementary Protocol shall enter into force, provisionally, upon signature by the Heads of State and Government and definitively, upon ratification by at least seven signatory States in accordance with the constitutional procedures of each signatory State.

2. This Supplementary Protocol and all instruments of ratification shall be deposited with the Executive Secretariat, which shall forward certified copies of the instruments of ratification to all Member States and shall notify them of the dates of deposit of the instruments of ratification. This Protocol shall be registered with the Organisation of African Unity, the United Nations Organisation and such Organisations as may be determined by the Authority of Heads of State and Government. This Supplementary Protocol shall be annexed to the Treaty of which it shall form an integral part.

IN FAITH WHEREOF, WE, HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED THIS PROTOCOL.

Done at BANJUL, this 30TH day of May, 1990, in one single original in the French and English language, both texts being equally authentic.



PROTOCOL RELATING TO THE DEFINITION OF THE CONCEPT OF PRODUCTS ORIGINATING FROM MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES

THE HIGH CONTRACTING PARTIES,

HAVING REGARD to paragraph 2 of Article 15 of the Treaty of the Economic Community of West African States concerning the definition of the concept of products originating from Member States ;
AGREE AS FOLLOWS:

Article I: Definitions

In this Protocol :

"**Treaty**" means the Treaty of the Economic Community of West African State ;

"**Council**" means the Council of Ministers established by Article 6 of the Treaty of the Economic Community of West African States ;

"**Commission**" means the Trade, Customs, Immigration, Money and Payments Commission established by Article 9 of the Treaty of the Economic Community of West African States ;

"**Member State**" or "**Member States**" means a Member State or Member States of the Economic Community of West African States;

"**Producer**" includes a grower or a manufacturer or any person who supplies his goods otherwise than by sale to another person and to whose order the last process in the course of the manufacture of the goods is applied by that other person ;

"**Materials**" include raw materials, semi-finished products, parts and components used in the production of goods;

"**Produced**" and "**process of production**" include the application of any operation or process with the exception of any operations or processes listed in Article IV of this Protocol ;

"**Value-added**" means the difference between the ex-factory price of the finished product including subsidies if any, less local taxes and duties, and c.i.f. value of the material imported from third countries and used in the production.

Article II: Rules of Origin of Community Goods

The promotion of trade in goods originating in Member States as well as the collective economic development of the Community requires indigenous ownership and participation. Goods shall be accepted as originating in Member States for purposes of Trade liberalisation if :

- a. they have been wholly produced as defined in Article V of this Protocol ; or
- b. they have been produced in a Member State other than by any of the operations and processes listed in Article IV of this Protocol or with the material from a foreign or undetermined origin used in the process of production of goods whose C.I.F. value does not exceed 60% of the total cost of the material employed in the production or with the material of Community origin whose value must not in any case be less than 40% of the total cost of the material used in the process of production or with the raw material of Community origin representing in quantity at least 60% of the whole raw material used in the production ; or
- c. if the goods have been produced from material of a foreign or undetermined origin and having received in the process of production a value added of at least 35% of the F.O.B. price of the finished product ; and

If the Enterprises producing these goods attain a desirable level of indigenous ownership and participation. The Commission shall, on the basis of appropriate statistics, make proposals to the Council of Ministers to determine orientation and levels relating to ownership and participation.

Article III: Evidence of Community Origin

1. The claim that goods shall be accepted as originating from a Member State in accordance with the provisions of this Protocol, shall be supported by a certificate in the form prescribed in Annex A



to this Protocol and indicating therein the percentage and origin of the materials used and/or the percentage of value-added as the case may be in the process of production and the fact of direct consignment. A certificate shall be given by the competent authority designated for that purpose by the exporting Member State where the goods have been produced and countersigned by the Customs Department of that Member State.

2. The competent authority designed by an importing Member State may, notwithstanding the presentation of a certificate issued in accordance with the provisions of paragraph 1 of this Article, require, in case of doubt, further verification of the declarations made in a certificate.

3. In determining the place of production of marine, river or lake products and goods, a vessel of a Member State shall be regarded as part of that State. In determining the place from which goods originated marine, river or lake products taken from the sea, river or lake or goods produced therefrom at sea or on a river or lake, shall be regarded as having their origin in a Member State if they are taken by or produced in a vessel of that State and have been brought directly to the territories of the Member States.

4. For the purpose of paragraph 3 of this Article, a vessel shall be regarded as a vessel of a Member State only if :

- a. it is registered in a Member State ;
- b. it carries a complement (inclusive of the Master thereof) of which not less than fifty per cent are nationals of Member States ; and

at least majority control and equity holdings in respect of the vessel are in the hands of nationals of Member States and/or a Government or Governments of Member States or institutions, agencies, enterprises or corporations of such Government or Governments.

Article IV: Processes not Conferring Origin

For the purpose of sub-paragraphs (b) and (c) of paragraph 1 of Article II of this Protocol, the following operations and processes shall be considered as insufficient to support a claim that goods originate from a Member State :

- a. packing, bottling, placing in flasks, bags, cases, boxes, fixing on cards or boards and all other simple packing operations ;
- b. mixing of products except as provided for in Article VIII of this Protocol ;
- c. operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions, removal of damaged parts and similar operations ;
- d. changes of packing and breaking up or assembly of consignments ;
- e. simple assembly of parts of a product to constitute a complete product ;
- f) marking or labelling for distinguishing products or their packages ;

g) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching including the making up of sets of goods, washing, painting and cutting up ;

h) a combination of two or more operations specified in sub-paragraphs (a) to (g) of this Article.

Article V: Goods wholly produced in the Member States

For the purpose of sub-paragraph (a) of paragraph 1 of Article II of this Protocol, the following are among the products which shall be regarded as wholly produced in the Member States:

- a. mineral products extracted from the ground or sub-soil or sea of the Member State ;
- b. vegetable products harvested within the Member States ;
- c. live animals born and/or raised within the Member States ;
- d. products obtained within the Member States from live animals in (c) above ;
- e. products obtained by hunting or fishing conducted within the Member States ;

- f. products obtained from the sea and from rivers and lakes within the Member States by a vessel of a Member State ;
- g. products manufactured in a factory of a Member State exclusively from the products referred to in sub-paragraph (f) of this Article ;
- h. used articles fit only for the recovery of materials, provided that such articles have been collected from users within the Member States ;
- i. scrap and waste resulting from manufacturing operations within the Member States ;
- j. goods produced within the Member States exclusively or mainly from one or both of the following :
 - i. products within sub-paragraphs (a) to (i) ;materials containing no element imported from outside the Member States or of undetermined origin.

Article VI: Application of percentage and value-added criteria

For the purpose of sub-paragraph (b) and (c) of paragraph 1 of Article II of this Protocol :

- a. the value of any materials which can be identified as having been imported from a third country shall be their c.i.f. value accepted by the Customs Authorities on clearance for home use, or on temporary admission, at the time of last importation into the Member State where they were used in a process of production, less the amount of transport costs incurred in transit through other Member States ;
- b. if the value of any materials imported from outside the Member States cannot be determined in accordance with sub-paragraph (b) of this Article, their value shall be the earliest ascertainable price paid for them in the Member State where they were used in a process of production ;
- c. if the origin of any materials cannot be determined, such materials shall be deemed to have been imported from a foreign country and their value shall be the earliest ascertainable price paid for them in the Member State where used in a process of production ;
the ex-factory price of the goods shall be the price paid or payable for them to the exporter in the Member State where the goods were produced, that price being adjusted, where necessary, to an f.o.b. or free at frontier basis in that State.

Article VII : Segregation of Materials

For those products or industries where it would be impracticable for the producer to segregate physically materials of similar character but different origins used in the production of goods, such segregation may be replaced by an appropriate accounting system which ensures that no more goods are deemed to originate in the Member States than would have been the case if the producer had been able physically to segregate the materials.

Article VIII : Treatment of Mixtures

1. In the case of mixtures, not being groups, set or assemblies of goods dealt with under Article VII of this Protocol, a Member State may refuse to accept as originating in a Member State any product resulting from the mixing together of goods which would qualify as originating in the Member State with goods which would not so qualify, if the characteristics of the product as a whole are not essentially different from the characteristics of the goods which have been mixed.

In the case of particular products it is, however, recognised by the Council to be desirable to permit mixing of the kind described in paragraph 1 of this Article, such products shall be accepted as originating in the Member States in respect of such part thereof as may be shown to correspond to the quantity of goods originating in the Member States used in the mixing subject to such conditions as may be agreed by the Council upon the recommendation of the Commission.



Article IX : Treatment of Packing

1. Where, for purposes of assessing customs duties, a Member State treats goods separately from their packing, it may also, in respect of its imports consigned from another Member State, determine separately the origin of such packing.

2. Where paragraph 1 of this Article is not applicable, packing shall be considered as forming a whole with the goods and no part of any packing required for their transport or storage shall be considered as having been imported from a foreign country, when determining the origin of the goods as a whole.

For the purpose of paragraph 2 of this Article, packing with which goods are ordinarily sold by retail shall not be regarded as packing required for the transport or storage of goods.

Article X : Unit of Qualification

1. Each product in a consignment shall be considered separately.

2. For the purpose of paragraph 1 of this Article :

a. where the Nomenclature of the Customs Co-operation Council specifies that a group, set or assembly of products is to be classified within a single heading, such a group, set or assembly shall be treated as one product ;

b. tools, parts and accessories which are imported with a product, and the price of which is included in that of the product or for which no separate charge is made, shall be considered as forming a whole with the product, provided that they constitute the standard equipment customarily included on the sale of products of that kind ;

c. in cases not within sub-paragraphs (a) and (b) of this Article, goods shall be treated as a single product if they are so treated for purposes of assessing customs duties on like products by the importing Member State.

An unassembled or disassembled product which is imported in more than one consignment because it is not feasible for transport or production reasons to import it in a single consignment, shall be treated as one product.

Article XI: Movement of Goods in Transit

Where a Member State exports its products to another Member State through other Member States, such exportation shall be in accordance with International Transit procedures

Article XII: Regulations

The Council shall make regulations concerning proof and the verification of proof of goods originating from Member States in pursuance of this Protocol.

Article XIII : Infringement and Sanctions

1. Member States undertake to introduce legislation, making such provision as may be necessary for penalties against persons who, in their state, furnish or cause to be furnished a document which is untrue in a material particularly in support of a claim in another Member State that should be accepted as originating from the Member States.

2. Any Member State to which an untrue claim is made in respect of the origin of goods shall immediately bring the issue to the attention of the exporting Member State from which the untrue claim is made so that the appropriate action can be taken.

3. Any Member State shall be under no obligation to institute or continue court proceedings, if it has not been requested to do so by the importing Member State to which the untrue claim was made.

Without prejudice to the powers conferred upon the Tribunal of the Economic Community of West African States established by Article 11 of the Treaty, continued infringement by a Member State of the provisions of this Protocol may be referred by another Member State to the Council through the Commission.

Article XIV: Deposit and Entry into Force

1. This Protocol shall enter into force provisionally upon signature by Heads of State and Government of Member States and definitively upon ratification by at least seven signatory States in accordance with the constitutional procedures applicable for each signatory State.

2. This Protocol and all the instruments of ratification shall be deposited with the Depository Government of the Treaty which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposit of the instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations and such Organisations as the Council shall determine.

This Protocol shall be annexed to and shall form an integral part of the Treaty.

IN THE FAITH WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES HAVE SIGNED THIS PROTOCOL.

Done at LOME, this 5TH day of November, 1976 in one single original in the English and French languages, both texts being equally authentic.

Rules for the Issuing of Certificate of Origin

- i. The forms may be completed by any process, provided that the entries are indelible and legible ;
- ii. Neither erasures nor super-impositions should be allowed on the certificates. Any alterations should be made by striking out the erroneous material and making any addition required. Such alterations should be approved by the person who made them and certified by the appropriate authority or body ;
- iii. Any unused spaces should be crossed out to prevent any subsequent addition ;
- iv. If warranted by export trade requirements, one or more copies may be drawn up in addition to the original.

2. Origin Criteria

- i. That all the goods (mentioned overleaf) have been wholly produced or manufactured in the Member State ;
 - ii. They have been produced in the Member State but not manufactured as a result of any of the processes listed in Article IV of the Protocol on Definition of Originating Products and the percentage of the materials imported from a foreign country or undetermined origin which have been used at any state of the production of the goods does not exceed 60 per cent or the percentage of the inputs of Community origin shall not be less than 40% ; or
 - iii. They have been produced in the Member State (but are not manufactured as a result of any of the processes listed in Article IV of the Protocol on Definition of originating products) from materials imported from a third country or of undetermined origin and the value-added in the process of production accounts for at least thirty-five per cent of the f.o.b. price of the finished product ;
- They have been produced by enterprises referred to in paragraph 1 of the Protocol ;

They have been consigned directly from one Member State to another



SUPPLEMENTARY PROTOCOL A/SP.1/5/81 AMENDING ARTICLE 2 OF THE PROTOCOL RELATING TO THE DEFINITION OF THE CONCEPT OF ORIGINATING PRODUCTS OF THE MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES.

THE HIGH CONTRACTING PARTIES,

MINDFUL of Article 5 of the ECOWAS Treaty establishing the Authority of Heads of State and Government, its composition and functions;



1. The Council of Ministers of the Community may make regulations generally for the better carrying into effect of the provisions of this Protocol and matters connected therewith.

Without prejudice to the measures referred to in Article 23 of the Treaty and to this Protocol, the Council may, on the recommendation of the Commission lay down other conditions under which re-exportation of goods from third countries may be permitted under this Protocol. Such conditions shall include the type, the minimum value and quantity of goods that may be re-exported and the minimum amount of customs duty that may be refunded by a Member State.

Article IV : Infringements

Without prejudice to the powers conferred upon the Tribunal of the Community established under Article 11 of the Treaty, continued infringement by a Member State of the provisions of this Protocol may be referred by another Member State to the Council through the Commission.

Article V: The Provisions of this Protocol and the Treaty

The provisions of this Protocol shall, where specific provisions exist on the same subject matter in the Treaty, be so construed as to complement each other.

Article VI: Deposit and Entry into Force

1. This Protocol shall enter into force provisionally upon signature by Heads of State and Government of Member States and definitively upon ratification by at least seven Member States in accordance with the constitutional procedure applicable for each signatory State.

2. This Protocol and all the instruments of ratification shall be deposited with the Depository Government of the Treaty which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposit of the instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations and such organisations as the Council shall determine.

This Protocol shall be annexed to and shall form an integral part of the Treaty.

IN FAITH WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES HAVE SIGNED THIS PROTOCOL.

Done at Lome, 5TH day of November, 1976 in one single original in the English and French languages, both texts being equally authentic.

B. Decisions and regulations



DECISION C/DEC.3/12/92 ON THE INTRODUCTION OF A HARMONISED IMMIGRATION AND EMIGRATION FORM IN ECOWAS MEMBER STATES

THE COUNCIL OF MINISTERS,

MINDFUL of Article 6 of the ECOWAS Treaty establishing the Council of Ministers and defining its composition and functions ;

MINDFUL of Protocol A/P.1/5/79 dated 29 May, 1979 relating to Free Movement of Persons, Right of Residence and Establishment ;

MINDFUL of Decision A/DEC.5/7/92 dated 29 July, 1992 of the Authority of Heads of State and Government mandating the Executive Secretariat to prepare a specimen of the harmonised immigration and emigration form ;



CONSIDERING the crucial role of the Protocol on Free Movement of Persons, Right of Residence and Establishment in the West African integration process ;

CONVINCED that the adoption of a harmonised Community immigration and emigration form will facilitate and simplify cross-border formalities in Member States ;

DECIDES

Article 1

1. a) There is hereby established a harmonised immigration and emigration form hereinafter referred to as the "Immigration and Emigration Form of ECOWAS Member States".

The form shall be a rectangular card measuring 15 cm x 9 cm and containing several carbon copies.

2. a) The form shall be used by citizens of the Community only in exceptional cases. The first sheet shall be detached and kept at the first border post after verification of the information contained therein.

After the stamped copy has been removed, the rest of the form shall be released to the

traveller for presentation at subsequent border posts.

The acronym "ECOWAS/CEDEAO", the ECOWAS logo and the name of the Member State (Republic of) shall be printed at the top of the leaves of the booklet.

Article 2

The immigration and emigration form shall be printed and issued free of charge by the competent authorities of each Member State.

Article 3

The specimen of the form is annexed to this Decision.

Article 4

Member States shall take all necessary statutory and administrative measures to ensure the prompt implementation of this Decision.

Article 5

This Decision shall enter into force upon signature and shall be published in the Official Journal of the Community and in the National Gazette of each Member State.

DONE AT ABUJA, THIS 5TH DAY OF DECEMBER, 1992

HON. PAUL DOSSOU

CHAIRMAN

FOR COUNCIL

ECOWAS/CEDEAO COAT OF ARMS REPUBLIC OF :

ARMOIRIE REPUBLIQUE DE :

DISEMBARKATION FORM

EMBARKATION AND

CARTE D'EMBARQUEMENT ET DE DEBARQUEMENT

Surname (Mr./Mrs./Miss)

Nom (M./Mme/Mlle)

First name(s)

Prénom(s)

Date of Birth (Day/Month/Year/Place)

Date de Naissance (Jour/Mois/Année/Lieu)



Nationality

Nationalité

Passport No

Numéro de Passport

Place and Date of Issue of Passport

Lieu et Date de Délivrance du Passport

Occupation

Profession

Permanent Address

Domicile Permanent

Address While in Country

Adresse dans le pays hôte

Place of Embarkation/Disembarkation

Lieu d'Embarquement/de Débarquement

Signature

FOR OFFICIAL USE ONLY/RESERVE A L'ADMINISTRATION

**B. FREE MOVEMENT OF GOODS
COMMUNITY TRADE LIBERALISATION PROGRAMME**

A. Basic Text

ECOWAS TREATY

Article 2

Aims of the Community

1. It shall be the aim of the Community to promote co-operation and development in all fields of economic activity particularly in the fields of industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions and in social and cultural matters for the purpose of raising the standard of living of its peoples, of increasing and maintaining economic stability, of fostering closer relations among its members and of contributing to the progress and development of the African continent.
2. For the purposes set out in the preceding paragraph, and as hereafter provided for in this Treaty, the Community shall by stages ensure :
 - a. the elimination as between the Member States of customs duties and other charges of equivalent effect in respect of the importation and exportation of goods ;
 - b. the abolition of quantitative and administrative restrictions on trade among the Member States ;
 - c. the establishment of a common customs tariff and a common commercial policy towards third countries ;
 - d. the abolition as between the Member States of the obstacles to the free movement of persons, services and capital ;
 - e. the harmonisation of the agricultural policies and the promotion of common projects in the Member States notably in the fields of marketing, research and agro-industrial enterprises ;



- f. the implementation of schemes for the joint development of transport, communication, energy and other infrastructural facilities as well as the evolution of a common policy in these fields ;
 - g. the harmonisation of the economic and industrial policies of the Member States and the elimination of disparities in the level of development of Member States ;
 - h. the harmonisation, required for the proper functioning of the Community, of the monetary policies of the Member State ;
 - i. the establishment of a Fund for Co-operation, Compensation and Development ; and ;
- such other activities calculated to further the aims of the Community as the Member States may from time to time undertake in common.

INSTITUTIONS OF THE COMMUNITY

Article 4

Institutions

- 1. The institutions of the Community shall be :
 - a. the Authority of Heads of State and Government ;
 - b. the Council of Ministers ;
 - c. the Defence Council ;
 - d. the Executive Secretariat ;
 - e. the Tribunal of the Community ; and
 - f. the following Technical and Specialised Commissions :
 - ? the Trade, Customs, Immigration, Money and Payments Commission ;
 - ? the Industry, Agriculture and Natural Resources Commission ;
 - ? the Transport, Communications and Energy Commission ;
 - ? the Social and Cultural Affairs Commission ;
 - ? the Defence Commission ;
- the Administration and Finance Commission ;

and such other Commissions or bodies as may be established by the Authority of Heads of State and Government or are established or provided for by this Treaty.

The institutions of the Community shall perform their functions and act within the limits of the powers conferred upon them by or under this Treaty and by Protocols thereto.

CHAPTER III

CUSTOMS AND TRADE MATTERS

Article 12

Liberalisation of Trade

There shall be progressively established in the course of a transitional period of fifteen (15) years from the definitive entry into force of this Treaty, and as prescribed in this Chapter, a Customs Union among the Member States. Within this Union, customs duties or other charges with equivalent effect on imports shall be eliminated. Quota, quantitative, or like restrictions or prohibitions and administrative obstacles to trade among the Member States shall also be removed. Furthermore, a common customs tariff in respect of all goods imported into the Member States from third countries shall be established and maintained.

Article 13

Customs Duties

- 1. Member States shall reduce and ultimately eliminate customs duties and any other charges with equivalent effect except duties notified in accordance with Article 17 and other charges which fall within that Article, imposed on or in connection with the importation of goods which are



eligible for Community tariff treatment in accordance with Article 15 of this Treaty. Any such duties or other charges are hereinafter referred to as "import duties".

2. Within a period of two (2) years from the definitive entry into force of this Treaty, a Member State may not impose any new duties and taxes or increase existing ones and shall transmit to the Executive Secretariat all information on import duties for study by the relevant institutions of the Community.

3. Upon the expiry of the period of two (2) years referred to in paragraph 2 of this Article and during the next succeeding eight (8) years, Member States shall progressively reduce and ultimately eliminate import duties in accordance with a schedule to be recommended to the Council of Ministers by the Trade, Customs, Immigration, Money and Payments Commission. Such a schedule shall take into account, *inter alia*, the effects of the reduction and elimination of import duties on the revenue of Member States and the need to avoid the disruption of the income they derive from import duties. The Authority may at any time, on the recommendation of the Council of Ministers, decide that any import duties shall be reduced more rapidly or eliminated earlier than is recommended by the Trade, Customs, Immigration, Money and Payments Commission.

However, the Council of Ministers shall, not later than one calendar year preceding the date in which such reductions or eliminations come into effect, examine whether such reductions, or eliminations shall apply to some or all goods and in respect of some or all the Member States, and shall report the result of such examination for the decision of the Authority.

Article 14

Common Customs Tariff

1. The Member States agree to the gradual establishment of a common customs tariff in respect of all goods imported into the Member States from third countries.

2. At the end of the period of eight (8) years referred to in paragraph 3 of Article 13 of this Treaty and during the next succeeding five (5) years, Member States shall gradually, in accordance with a schedule to be recommended by the Trade, Customs, Immigration, Money and Payments Commission, abolish existing differences in their external tariffs.

In the course of the same period, the above-mentioned Commission shall ensure the establishment of a common customs nomenclature and customs statistical nomenclature for all the Member States.

Article 15

Community Tariff Treatment

1. For the purposes of this Treaty, goods shall be accepted as eligible for Community tariff treatment if they have been consigned to the territory of the importing Member State from the territory of another Member State and originate in the Member States.

2. The definition of products originating from Member States shall be the subject of a Protocol to be annexed to this Treaty.

The Trade, Customs, Immigration, Money and Payments Commission shall from time to time examine whether the rules referred to in paragraph 2 of this Article can be amended to make them simpler and more liberal. In order to ensure their smooth and equitable operation, the Council of Ministers may from time to time amend them.

Article 16

Deflection of Trade

1. For the purposes of this Article, trade is said to be deflected if :

- a. imports of any particular product by a Member State from another Member State increase,
 - i. as a result of the reduction or elimination of duties and charges on that product, and
- because duties and charges levied by the exporting Member State on imports of raw

materials used for manufacture of the product in question are lower than the corresponding duties and charges levied by the importing Member State ; and

b. this increase in imports causes or would cause serious injury to production which is carried on in the territory of the importing Member State.

2. The Council of Ministers shall keep under review the questions of deflection of trade and its causes. It shall take such decisions, as are necessary, in order to deal with the causes of this deflection.

In case of deflection of trade to the detriment of a Member State resulting from the abusive reduction or elimination of duties and charges levied by another Member State, the Council of Ministers shall study the questions in order to arrive at a just solution.

Article 17

Revenue Duties and Internal Taxation

1. Member States shall not apply directly or indirectly to imported goods from any Member State fiscal charges in excess of those applied to like domestic goods or otherwise impose such charges for the effective protection of domestic goods.

2. Member States shall eliminate all effective internal taxes or other internal charges that are made for the protection of domestic goods not later than one (1) year after the period of two (2) years referred to in paragraph 2 of Article 13 of this Treaty. Where by virtue of obligations under an existing contract entered into by a Member State and such a Member State is unable to comply with the provisions of this Article, the Member State shall duly notify the Council of Ministers of this fact and shall not extend or renew such contract at its expiry.

3. Member States shall eliminate progressively all revenue duties designed to protect domestic goods not later than the end of the period of eight (8) years referred to in paragraph 3 of Article 13 of this Treaty.

Each Member State shall, not later than the end of the period of two (2) years referred to in paragraph 2 of Article 13 of this Treaty, notify the Council of Ministers of any duty it wishes to apply under the provisions of paragraph 3 of the aforementioned Article.

Article 18

Quantitative Restrictions on Community Goods

1. Except as may be provided for or permitted by this Treaty, each of the Member States undertakes to relax gradually and to remove ultimately, in accordance with a schedule to be recommended by the Trade, Customs, Immigration, Money and Payments Commission, and not later than ten (10) years from the definitive entry into force of this Treaty, all the then existing quota, quantitative or like restrictions or prohibitions which apply to the import into that State of goods originating in the other Member States and thereafter refrain from imposing any further restrictions or prohibitions.

2. The Authority may at any time, on the recommendation of the Council of Ministers, decide that any quota, quantitative or like restrictions or prohibitions shall be relaxed more rapidly or removed earlier than is recommended by the Trade, Customs, Immigration, Money and Payments Commission.

3. A Member State may, after having given notice to the other Member States of its intention to do so, introduce or continue to execute restrictions to prohibitions affecting :

- a. the application of security laws and regulations ;
 - b. the control of arms, ammunition and other war equipment and military items ;
 - c. the protection of human, animal or plant, health or life, or the protection of public morality ;
 - d. the transfer of gold, silver and precious and semi-precious stones ; or
- the protection of national treasures ;

provided that a Member State shall not so exercise the right to introduce or continue that a Member State shall not so exercise the right to introduce or continue to execute the restrictions or prohibitions conferred by this paragraph as to justify the free movement of goods envisaged in this Article.

Article 19

Dumping

1. Member States undertake to prohibit the practice of dumping goods within the Community.
2. For the purposes of this Article "dumping" means the transfer of goods originating in a Member State to another Member State for sale :
 - a. at a price lower than the comparable price charged for similar goods in the Member States where such goods originate (due allowance being made for the differences in the conditions of sale or in taxation or for any other factors affecting the comparability of prices) ; andunder circumstances likely to prejudice the production of similar goods in that Member State.

Article 20

Most Favoured Nation Treatment

1. Member States shall accord to one another, in relation to trade between them, the most favoured nation treatment and, in no case, shall tariff concessions granted to a third country under an agreement with a Member State be more favourable than those applicable under this Treaty.
 2. Copies of such agreements referred to in paragraph 1 of this Article shall be transmitted by the Member States which are parties to them, to the Executive Secretariat of the Community.
- Any agreement between a Member State and a third country, under which tariff concessions are granted, shall not derogate from the obligations of that Member State under this Treaty.

Article 21

Internal Legislation

Member States shall refrain from enacting legislation which directly or indirectly discriminates against the same or like products of another Member State.

Article 22

Re-exportation of Goods and Transit Facilities

1. Where customs duty has been charged and collected on any goods imported from a third country into a Member State such goods shall not be re-exported into another Member State except as may be permitted under a Protocol to this Treaty entered into by the Member States.
2. Where goods are re-exported under such a Protocol, the Member State from whose territory such goods are re-exported shall refund to the Member State into whose territory such goods are imported the customs duties charged and collected on such goods. The duties so refunded shall not exceed those applicable on such goods in the territory of the Member State into which such goods are imported.
3. Each Member State, in accordance with international regulations, shall grant full and unrestricted freedom of transit through its territory to goods proceeding to or from a third country indirectly through that territory to or from other Member States ; and such transit shall not be subject to any discrimination, quantitative restrictions, duties or other charges levied on transit.
4. Notwithstanding paragraph 3 of this Article,
 - a. goods in transit shall be subject to the customs law ; and
 - b. goods in transit shall be rendered, provided such charges are not discriminatory.
5. Where goods are imported from a third country into one Member State, each of the other Member States shall be free to restrict the transfer to it of such goods whether by a system of licensing and controlling importers or by other means.

The provisions of paragraph 5 of this Article shall apply to goods which, under the provisions of Article 15 of this Treaty, fail to be accepted as originating in a Member State.

Article 23

Customs Administration

Member States shall, upon the advice of the Trade, Customs; Immigration, Money and Payments Commission, take appropriate measures to harmonise and standardise their customs regulations and procedures to ensure the effective application of the provisions of this Chapter and to facilitate the movement of goods and services across their frontiers.

Article 24

Drawback

1. Member States may, at or before the end of the period of eight (8) years referred to in paragraph 3 of Article 13 of this Treaty, refuse to accept as eligible for Community tariff treatment, goods in relation to which drawback is claimed or made use of in connection with their exportation from the Member States in the territory of which the goods have undergone the last process of production.

2. For the purpose of this Article :

a. "**drawback**" means any arrangement, including temporary duty-free admission, for the refund of all or part of the duties applicable to imported raw materials, provided that the arrangement, expressly or in effect, allows such refund or remission if goods are exported but not if they are retained for home use ;

b. "**remission**" includes exemption from duties for goods imported into free ports, free zones or other places which have similar customs privileges ; and

"**duties**" means customs duties and any other charges with equivalent effect imposed on imported goods, except the non-protective element in such duties or charges.

Article 25

Compensation for Loss of Revenue

1. The Council of Ministers shall, on the report of the Executive Secretary and recommendation by the appropriate Commission or Commissions, determine the compensation to be paid to a Member State which has suffered loss of import duties as a result of the application of this Chapter.

A Protocol to be annexed to this Treaty shall state precisely the methods of assessment of the loss of revenue suffered by Member States as a result of the application of this Chapter.

Article 26

Safeguard Clause

1. In the event of serious disturbances occurring in the economy of a Member State, following the application of the provisions of this Chapter, the Member State concerned shall, after informing the Executive Secretary and the other Member States, take the necessary safeguard measures pending the approval of the Council of Ministers.

These measures shall remain in force for a maximum period of one year. They may not be extended beyond that period except with the approval of the Council of Ministers.

The Council of Ministers shall examine the method of application of these measures while they remain in force.





SUPPLEMENTARY CONVENTION A/SP.1/5/90 ESTABLISHING A COMMUNITY GUARANTEE MECHANISM FOR INTER-STATE ROAD TRANSIT OF GOODS.

THE GOVERNMENT OF MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES

Mindful of Article 5 of the ECOWAS Treaty establishing the Authority of Heads of State and Government and defining its composition and functions;

Mindful of the provisions of Article 22, paragraphs 3 and 4 and Article 23 of the ECOWAS Treaty on the re-exportation of goods and transit facilities and on customs legislation;

Mindful of the provisions of paragraph 3 of Article 28 of Convention A/P.4/5/82 of the ECOWAS Authority of Heads of State and Government on Inter-State Road Transit of Goods;

Considering the urgent necessity to establish a Community guarantee mechanism to facilitate the free flow of goods in the field of Inter-State Road Transit of Goods.

HEREBY AGREE AS FOLLOWS:

Article 1

In this Supplementary Convention, the following expression shall have the meaning assigned to them hereunder:

1. "**Treaty**" means the Treaty of the Economic Community of West African States.
2. "**Community**" means the Economic Community of West African States.
3. "**Member State**" or **Member States**" means a Member State or Member States of the Economic Community of West African States.
4. "**Authority**" means the Authority of Heads of State and Government established by Article 5 of the Treaty.

"**Executive Secretary**" or **Executive Secretariat**" means the Executive Secretary or the Executive Secretariat of the Economic Community of West African States as defined in Article 8 of the Treaty.

Article 2

There is hereby established within the Community a guarantee mechanism for Inter-State Road Transit of Goods.

Article 3

1. The mechanism shall consist of a chain of national bodies responsible for guaranteeing the payment of duties, taxes and other imposition incurred in the territory of the Member State transmitted within the framework of the Inter-State Road Transit of Goods.
2. The national body shall be the institution or body corporate designated by each Member State to provide the principal obligee with the requisite guarantee for cover under ISRT-ECOWAS booklets. The national institution or body corporate so designated shall also be appointed by the Member State as the correspondent of the national institutions or body corporate designated by the other Member States of the Community.

Article 4

Each guarantee provided by the national institution or designated body corporate shall be valid for a single transit operation commencing from the customs office of departure to the customs office of final destination.

Article 5

1. Each designated correspondent shall represent the guarantor in its relations with the competent authorities in the territory of the Member State of the correspondent.

The national institution or body corporate designated in each Member State and their correspondents in each of the other Member States shall be linked to one another by an agreement which shall define the obligations between them.

Article 6

The national institutions and its correspondents, as well as the principal obligee, shall jointly and severally undertake to comply with the obligations stipulated in the Convention on the Inter-State Road Transit of Goods in force within the Community.

Article 7

In the event of partial or total failure to honour obligations or contravention of customs legislation and regulations, the guarantor or its correspondents shall pay the amounts due from the defaulting principal obligee on demand by the Customs Department of the Member State in which the offence is committed.

Article 8

Each Member State shall inform the Executive Secretariat of all measures taken for the implementation of this Supplementary Convention and of all measures taken for the implementation of Convention A/P.4/5/82 dated 29 May, 1982, on Inter-State Road Transit of Goods.

Article 9

Any dispute which may arise between Member States regarding the interpretation of application of this Supplementary Convention shall be settled in conformity with the procedure for the settlement of disputes stipulated in Article 56 of the Treaty.

Article 10

1. Any Member State may submit proposals for amendment or revision of this Supplementary Convention.

Any such proposals shall be submitted to the Executive Secretary who shall communicate them to other Member States within (30) thirty days of the receipt of such proposals. The amendments or revisions shall be examined by the Authority at the constitutional procedures applicable for each signatory Member State.

Article 11

1. This Supplementary Convention shall enter into force provisionally upon signature by the Heads of State and Government of Member States and definitively upon ratification by at least seven (7) signatory Member States in accordance with the constitutional procedures applicable for each signatory Member State.

2. This Supplementary Convention and all the instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies to all Member States and notify them of the dates of deposit of the instruments of ratification and shall register this Supplementary Convention with the Organisation of Africa Unity, the United Nations Organisation and other Organisations designated by Council.

This Supplementary Convention shall be annexed to and shall be an integral part of the Convention A/P/4/5/82 of May, 1982.



ECONOMIC COMMUNITY OF
WEST AFRICAN STATES

COMMUNAUTE ECONOMIQUE
DES ETATS DE L'AFRIQUE DE L'OUEST

Fifth Extra-Ordinary Session of the Council of Ministers
Abuja, 22nd - 23rd April 2002

REGULATION C/REG.4/4/02 ADOPTING AN ECOWAS
CERTIFICATE OF ORIGIN

The Council of Ministers,

Mindful of articles 10, 11 and 12 of the Treaty establishing the Council of Ministers and defining its composition and functions;

Mindful of Decision A/DEC.6/7/92 relating to the adoption and implementation of a single ECOWAS trade liberalisation scheme;

Bearing in mind the directives of the Authority of Heads of State and Government issued at Lome on 10 December 1999 on the need for the coordination of the Integration

Programmes of ECOWAS and the West African Economic and Monetary Union (UEMOA);

Also bearing in mind the conclusions of the ECOWAS/UEMOA Ministerial Meetings held in Bamako on 28th and 29th January 2000 on the need for the harmonisation of the Trade Liberalisation Schemes of ECOWAS and UEMOA.

Recalling its directives issued to the Executive Secretariat of ECOWAS on 12th December 2000, to elaborate and submit legal texts for the harmonisation of the Trade Liberalisation schemes of ECOWAS and UEMOA;

Convinced of the need to adopt a harmonised document in order to facilitate the movement of products within the ECOWAS Community;

On the recommendation of the Extraordinary meeting of the Trade, Customs, Taxation, Statistics, Money and Payments Commission meeting at Abuja, from 5th to 6th April 2002;

E N A C T S

Article 1

The ECOWAS origin of products manufactured within the ECOWAS Community is attested by a certificate of origin, a specimen of which is attached to this regulation.

However, agricultural and livestock products as well as hand-made articles or articles manufactured without the use of tools, instruments, or implements directly operated by the manufacturer are exempted from this requirement.

Article 2

The certificate of origin shall be of A4/ISO size (210x297mm) and green in colour.

Specimen copies shall be printed by the Executive Secretariat and sent to the Member States.

Article 3

The certificate of origin shall be issued by the national authority designated by the Member State for the purpose.

Officials authorised to issue or endorse the certificate of origin are required to append their signature, name and function legibly to the document.

Article 4

The previous certificate of origin referred to in article 1, decision C/DEC.3/5/80, relating to proof and verification of the Community origin of goods, shall become invalid one year from the date of signature of this regulation.

The old format of the certificate may continue to circulate together with the new, but shall be withdrawn progressively within the time-frame prescribed above.

Article 5

This regulation shall be published by the Executive Secretariat in the Official Journal of the Community within thirty (30) days of its signature by the Chairman of the Council of Ministers. It shall also be published in the Official Gazette of each Member State within the same time-frame.

DONE AT ABUJA. THIS 23RD DAY OF APRIL 2002

DR. KADI SESAY

CHAIRMAN FOR COUNCIL

(3) Name of signatory and rank in block capitals (otherwise, indicate registration number)

INSTRUCTIONS

1. Use block capitals except for names and signatures.

Do not write in margins or in between lines.

Any unused space must be struck through in such a manner as to make any later additions impossible..

2. The certificate must contain no erasures or words written over one another.

Alterations should be made by crossing out the incorrect particulars and adding any corrections where necessary. All such alterations must be initialled by the person filling the certificate and endorsed by the Customs authorities of the issuing Member State.

3. This certificate is issued in a single original. All copies must bear the word “copy”. In the event of loss of the original, a duplicate may be issued, bearing the word “Duplicate”.

4. Goods must be described in accordance with commercial practice and in sufficient detail to enable their identification.

5. This certificate of origin covers one product only.

6. The period of validity of this certificate is six (6) months commencing from the date of issuance.



**DECISION C/DEC.1/12/92 RELATING TO THE USE OF LOCAL CURRENCIES
BY COMMUNITY CITIZENS FOR PAYMENT OF SERVICES RENDERED IN
CONNECTION WITH TRAVEL WITHIN THE REGION**

THE COUNCIL OF MINISTERS

Mindful of Article 6 of the ECOWAS Treaty establishing the Council of Ministers and defining its composition and functions;

Mindful of the Protocol A/P.1/5/79 relating to the Free Movement of Persons, Rights of Residence and Establishment;

Mindful of the provisions of Decision A/DEC.5/7/92 on the Minimum Agenda for Action requesting Member States to remove all forms of administrative barriers to the free movement of persons and goods;

Mindful of Decision A/DEC.2/7/87 relating to the adoption of an ECOWAS Monetary Co-operation Programme aimed at achieving in the short-term regional currency convertibility through the increased use of local currencies for intra-regional payments transactions;

Mindful of the efforts being made by Member States under structural adjustment to liberalise exchange controls and payments restrictions;

Convinced that an agreement among Member States to use and accept local currencies for making payment for services rendered in connection with intra-Community travel will facilitate the integration process;

DECIDES

Article 1

Member States shall create the enabling environment for Community citizens to pursue their legitimate activities by removing all forms of restrictions including administrative restrictions.

Article 2

No discriminatory measures shall be applied by Member States against Community citizens with regard to the use of local currencies to pay for services rendered while travelling within the region.

Article 3

Member States shall allow the use of local currencies by Community citizens to pay for services rendered, such as airport service charges, hotel bills and purchase of air tickets.

Article 4

The Executive Secretariat shall monitor the implementation of this Decision and make periodic reports to Council.

Article 5

This Decision shall enter into force upon signature and shall be published in the Official Journal of the Community and in the National Gazette of each Member State.

DONE AT ABUJA, THIS 5TH DAY OF DECEMBER, 1992

PAUL DOSSOU

CHAIRMAN

FOR THE COUNCIL

BIBLIOGRAFICAL

C. Sites internet:

<http://www.ecowas.int>
<http://www.comm.ecowas.int>
<http://www.parl.ecowas.int>
<http://www.court.ecowas.int>
<http://www.bidc-ebid.org>
<http://www.crdi.com>

ANNEXES

1. LEGAL FRAMEWORK for Senegal, Gambia cooperation

The cooperation between Senegal and the Gambia is governed by the agreements and conventions below:

1. Agreement on the Senegal-Gambia Inter-Ministerial Committee, signed in Dakar on 25 October 1962, approved on 12 February 1963.
2. Agreement on Cooperation in Defence and Security, signed in Accra on 18 February 1965 approved on 13 April 1966.
3. Agreement on Cooperation in Foreign Policy, signed in Accra on 18 February 1965, approved on 13 April 1966.
4. Agreement to establish an Inter-State sub-Committee for the Integrated Management of the Gambia River, signed in Accra on 18 February 1965, approved on 13 April 1966.
5. Protocol on issues of Health, signed in Banjul on 11 December 1965.
6. Agreement on rescue aircraft, signed in Dakar on 22 June 1966.
7. Exchange of letters on the movement of persons, signed respectively in Banjul on 15 February 1966 and in Dakar on 27 May 1966, approved on 3 March 1967.
8. Treaty of Association, signed in Banjul on 19 April 1967, approved on 03 July 1968.
9. Cultural Agreement signed in Accra on 10 June 1967, approved on 3 July 1968.
10. Agreement on Agriculture, signed in Dakar on 10 June 1965.
11. Protocol on the organization of the Executive Secretariat of the Senegal-Gambia Inter-States Committee, signed in Dakar on 16 June 1967.
12. Technical Cooperation Agreement in respect of staff, signed in Accra on 18 February 1965, approved on 13 April 1966.
13. Agreement on Cooperation in Defence and Security, signed in Accra on 31 July 1968, ratified on 1 April 1971.
14. Cooperation Agreement between the Broadcasting Corporation of Senegal and the Gambia Broadcasting Corporation signed in Banjul on 31 July 1968, approved on 13 April 1966.
15. Agreement on mutual administrative assistance between customs services of Senegal and the Gambia, signed in Dakar on 7 February 1970, approved on 4 May 1972.
16. Cultural Exchange Protocol, signed in Dakar on 05 June 1971.
17. Convention on road transport, signed in Dakar on 26 June 1970.
18. Consular Assistance Protocol, signed in Banjul on 21 March 1973, approved on 13 April 1966.
19. Judicial agreement signed in Dakar on 28 April 1973, ratified on 18 November 1974.
20. Agreement on forestry issues, signed in Dakar on 31 May 1975, approved on 12 June 1976.
21. Treaty on delimitation of maritime borders, signed in Accra on 13 November 1975.
22. Convention on the Use of Trans-Gambian bridge signed in Banjul, on 13 November 1975.
23. Convention on the establishment of the Coordination Committee for the project of the Gambia River Basin, signed in Dakar on 16 April 1976.
24. Memorandum of Cultural Exchanges for the year 1976-1977, signed in Accra on 9 June 1976.
25. Treaty on delimitation of borders in Kantora signed in Accra on 9 June 1976.
26. Treaty on delimitation of borders in Kantora signed at Kaolack, 30 June 1978, ratified on 28 February 1979.
27. Cultural Exchange Agreement for the year 1978/1979, signed in Banjul on 16 December 1978.
28. Convention in the field of Maritime Fisheries, signed in Banjul on 22 October 1982, ratified on 2 May 1984.

29. Protocol on the application of Article 2 of the Convention in the field of marine fisheries, signed in Accra on 8 March 1984.
30. Protocol on the application between the Government of the Republic of Senegal and the Government of the Republic of Gambia on the merchant marine signed in Banjul, the 16/01/1987.
31. Agreement of Cooperation in new and renewable energy sources between the Republic of Senegal and the Gambia, signed in Dakar on 14/07/1987.
32. Treaty of Friendship and Cooperation signed in Banjul on 25/05/1991, ratified on 07/01/1992, by Senegal and 13/10/1993.
33. Protocol of Convention for Health, signed in Dakar on 15/10/1993.
34. Memorandum of understanding on tourism signed in Banjul, the 20/01/1996.
35. A/P1/7/92 Convention on Mutual Assistance in Criminal Matters, signed in Dakar on 29 July 1992 (date of entry into force 28 October 1998).
36. Agreement on cross-border management of protected areas, signed in Accra on 20 January 2001.
37. Memorandum of Understanding on cross-border management of protected areas, Djinack signed on 02 June 2001.
38. Agreement between the Government of the Republic of Senegal and the Government of the Republic of Gambia on the establishment of a cavalry unit, signed in Dakar on 05 June 2002.
39. Protocol on the implementation of the Convention between the Republic of Gambia and the Republic of Senegal in the field of marine fisheries, signed in Dakar on 19 January 2004.
40. Agreement on Road Transport between the Government of the Republic of Senegal and the Government of the Republic of Gambia, signed in Dakar on 05 October 2004.
41. AA/P1/9/94 Convention on Extradition, adopted in Abuja on 6 August 1994, not yet entered into force as of 30 April 2005. Ratified by Senegal on 16 May 1996.
42. Agreement establishing a permanent Secretariat between the Republic of Senegal and the Gambia, signed in Dakar on 24 February 2006.

II. ECONOMIC AND TRADE ISSUES

DETAILS OF TRADE

1.1 Background

As a legacy of its position as capital of the former French West Africa (AOF), Senegal has continued to consolidate the specialization of its economy, dominated by the production of goods. Accompanied by an increasingly active diversification in service activities, this process has greatly contributed to improving the current performance of the trade sector in the GDP (around 40%), without losing sight of the achievements of the secondary sector.

In contrast to the orientation of the Gambian economy, focused on the development of re-export trade, this feature should exempt the Senegalese economy from any decision to increase the external competition, which would not be sustained by the existence of a customs union or a multilateral agreement based on the liberalization of trade.

However, the ECOWAS trade regime is of very limited scope in the trade between Senegal and the Gambia. Similarly, delays in work on the harmonization of UEMOA and ECOWAS add to the difficulties noted. Nevertheless, both countries mutually grant each other the

treatment of most favoured nation, which is concretely equivalent to the UEMOA External Common Tariff (ECT) for Gambian imports.

In addition, despite the absence of a border agreement in accordance with established rules of the WTO, Senegal has, since 2002 continuously granted customs concessions or any other facility to promote its relations with the Gambia.

1.2 The situation of trade

The analysis of the trade balance along seven years (2000-2006) has shown very high levels of imports coverage by exports.

It should be noted that there has been a huge surplus trade balance in favour of Senegal over the period of analysis.

It should also be noted that exports have evolved in an exponential way. Indeed, from 2,059 billion CFA francs in 2000, they increased to 38,005 billion CFA francs in 2006.

However, imports are almost negligible except for the years 2000 and 2002, where they were respectively around 2,059 billion CFA francs and 1,984 billion CFA francs.

The Gambia was the 19th largest trading partner and the 5th client of Senegal in 2006.

Main products exported

Senegalese exports to the Gambia cover a wide enough range of products and are dominated by oil products (18%), hydraulic cement (8%), mineral and chemical fertilizers (1%), and footwear (1%).

Then come cotton fabrics, sugar products, cigarettes, fish and crustaceans, flour etc.

Main products imported

The main imports include, inter alia, cooking oils and animal fats, vegetables, footwear, printed and unprinted cotton fabrics, tea, canned fruit and vegetables.

TYPE OF CUSTOMS CONCESSIONS AND OTHER MEASURES OF TRADE FACILITATION

II.1 The main customs concessions

Since 2002, both countries have agreed on customs concessions and trade facilitation measures:

1. Setting concerted values on the products exported by the Gambia to Senegal and to other countries in the region. (These values refer to the products listed in Annex 1);
2. Opening in 2002 of the border customs checkpoints of Karang and Keur Ayib that were closed due to smuggling;
3. Facilitation of road transit operations (decrease in the costs of escort, unification of escort operations, downscaling the workload covered by the Senegalese Customs);
4. Simplifying customs clearance procedures, of which the value should not exceed 50,000 CFA francs.

Control exemption procedures before shipment of goods exported from the Gambia to Senegal;

6. Accelerated management of road transit operations at the customs checkpoint of Kaolack.

II.2 Exchange and transit trade facilitation measures

a) Draft agreement between Senegal and the Gambia

Following the comments of the Senegalese party regarding the inability to negotiate and sign bilateral trade agreements with third countries, because of its UEMOA membership, the Gambian party had informed that the draft text was subject a review.

The Gambia has also raised the possibility of signing this agreement with the UEMOA Commission.

The Senegalese party pointed out the existence of opportunities offered by the ECOWAS Treaty in the development and strengthening of trade relations covered by the draft agreement.

However, Senegal is still waiting for the transmission of the reviewed draft agreement.

b) The establishment of the trade watchdog:

The establishment of the trade watchdog is underway.

It is worth reminding the missions assigned to the Watchdog:

Developing a draft agreement on mutual administrative assistance and monitoring thereof;

- Observing and preventing all forms of dysfunction, reported to the Directors General of Customs and inform the Ministry of Trade, Economy and Finance;
- Monitoring and centralizing external trade statistics for the establishment of a database;
- Publishing every six (6) months, all the new provisions relating to trade, customs procedures, transit, and Common organizations (ECOWAS, WTO);
- Reporting any unlawful practices found on roads;
- Exploring the possibility of harmonization between the two countries' positions on certain issues at sub-regional meetings.

c) Side by side national control offices:

The Customs Administrations of the Gambia and Senegal had last year, shared information on the estimated costs of control offices (30 million dalasis, representing 600 million CFA francs for the four offices to be built).

In this regard, the parties expressed the wish that the buildings should comply with the requirements of the MDGs Standards Framework in order to facilitate trade and secure the international supply chain (equipment with scanners and other necessary materials).

d) Implementation of the ISRT-ECOWAS Convention

The Chambers of Commerce and Industries of both countries held very fruitful working meetings. In this context, the Chamber of Commerce and Industry of Dakar attended the meeting of its counterpart in Banjul for launch of test phase ISRT.

ANNEX 1: LIST OF PRODUCTS COVERED BY CONCESSIONS

Types de products	Price in the Gambia	Price in Senegal
WAX	D 8.95/m	420 F CFA
Jacquard (Made in Europe)	D 112/yard	4000 F CFA/yard
Jacquard (Made in Asia)	D 15.00/m	574 F CFA/yard
Embroidery	D 70.00/m	USD 4.6/yard
« Rich bombazine »	D 8.95/m	2131F CFA/yard
« Ordinary bombazine »	D 5.00/m	230F CFA/yard
Khartoum	D 120.00/m	150F CFA/yard
Dry battery (R6)	D 1.50/unit	50 F CFA/unit
(R20)	D 2.50/unit	120 F CFA/unit
Alkaline (R6)	D 3.16/unit	113F CFA/unit
(R20)	D 8.26/unit	295F CFA/unit
Pepper (B2)	D 1161.45/kg	USD 1,351/metric ton
(B1)	---	USD 1425/metric ton
Tomato	D 15.00/kg	561F CFA/unit
Tobacco	D 2,831.10 box	1,200 F CFA/kg
Sandals (big size)	D 96.00/dz	
(small size)	D 72.00/dz	USD 4.16/dz
Tea	D 48.00/kg	USD 3/dz USD 1.80/kg/cond

Produits obtenus:-----	Année de référence.....		
Désignation des matières premières	Numéro de la nomenclature Douanière/CEDEAO	Quantité utilisée	Valeur entrée Usine
A. Origine étrangère B. Origine CEDEAO			

Produits obtenus:---- -----	Année de référence.....		
Désignation des matières premières	Numéro de la nomenclature Douanière/CEDEAO	Quantité utilisée	Valeur entrée Usine
A. Origine étrangère B. Origine CEDEAO			

Produits obtenus:----	Année de référence.....	
Désignation des matières premières	Numéro de la nomenclature Douanière/CEDEAO	Quantité utilisée Valeur entrée Usine
A. Origine étrangère B. Origine CEDEAO		

Protocole A/P3/5/82 relatif à la définition de la citoyenné communautaire

Article 2 du Protocole sur la libre circulation des personnes, le droit de résidence et d'établisse

Article 3 du Protocole sur la libre circulation des personnes, le droit de résidence et d'établisse

Décision de la Conférence portant institution d'un carnet de voyage des Etats membres - A/DEC.2/7/85

Article 5 du Protocole sur la libre circulation des personnes, le droit de résidence et d'établisse

