



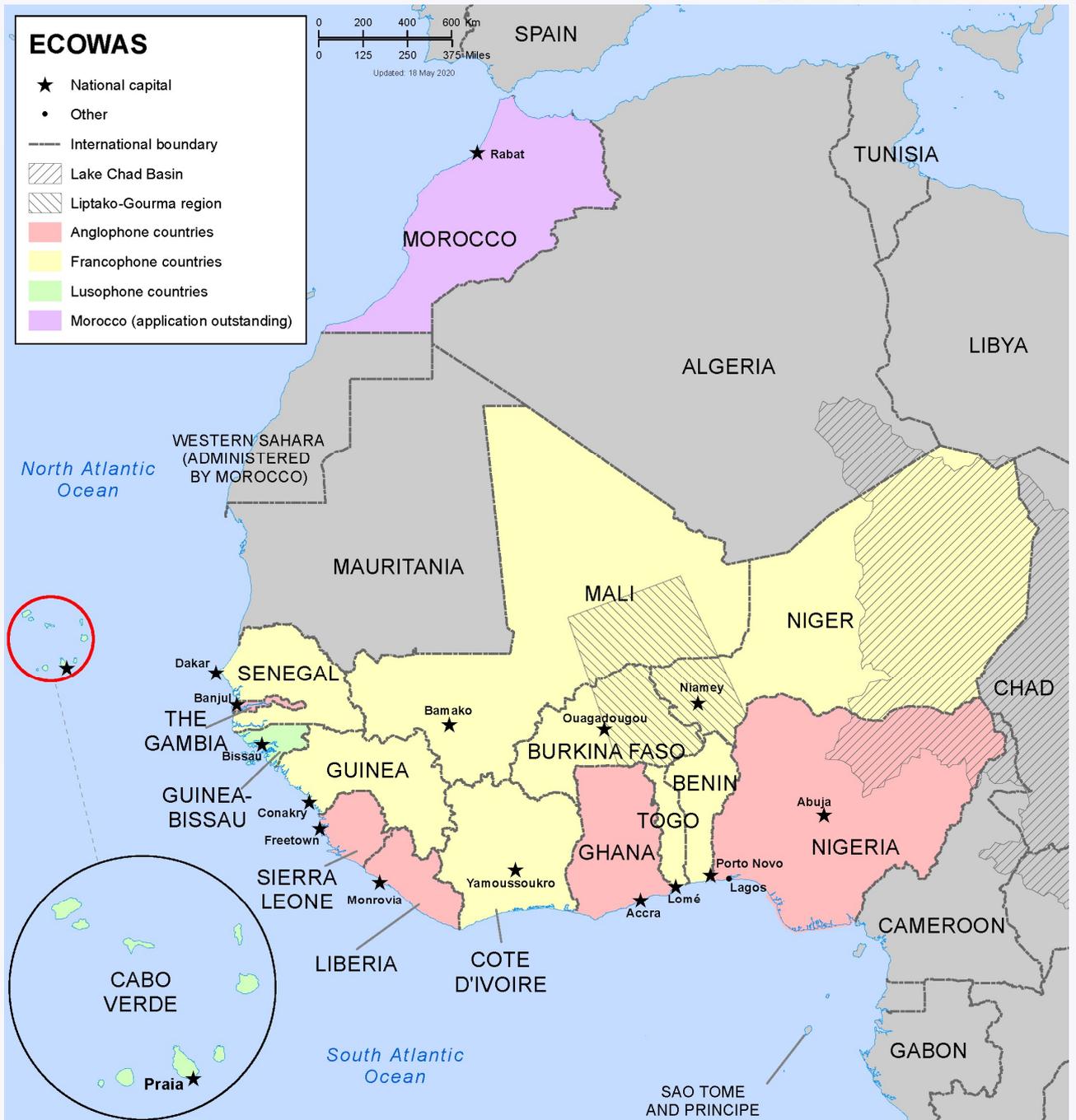
**Australian Government**  
**Department of Foreign Affairs and Trade**



# DFAT THEMATIC REPORT – ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

3 December 2020

# MAP



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# CONTENTS

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<b>ACRONYMS</b>	<b>4</b>
<hr/>	
<b>1. PURPOSE AND SCOPE</b>	<b>5</b>
<hr/>	
<b>2. ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) OVERVIEW</b>	<b>6</b>
Migration	10
<hr/>	
<b>3. ECOWAS LEGAL FRAMEWORK</b>	<b>14</b>
Residence Arrangements	16
Entry and Exit Procedures	16
<hr/>	
<b>4. TREATMENT OF CITIZENS AND RETURNS PROCEDURES</b>	<b>18</b>
Treatment of ECOWAS Citizens in other Member States	18
Returns Procedures	19
Conditions for Returnees	20
Relocation within ECOWAS	21
<hr/>	
<b>5. DOCUMENTATION</b>	<b>23</b>
Overview	23
Prevalence of Fraud	26
<hr/>	
<b>6. APPENDICES</b>	<b>28</b>

## ACRONYMS

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
ECOWAS	Economic Community of West African States
FGM	Female Genital Mutilation
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ISGS	Islamic State in the Greater Sahara
ITC	International Transhumance Certificate
JNIM	Jama'at Nasr al-Islam wal Muslimin (Group for Support of Islam and Muslims)
LGBTI	Lesbian, Gay, Bisexual, Transgender and/or Intersex
MIDAS	International Organization for Migration (IOM) Migration Information Data Analysis System
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
UEMOA	West African Economic and Monetary Union (French acronym)
VoT	Victims of Trafficking

# 1. PURPOSE AND SCOPE

1.1 This Thematic Report has been prepared by the Department of Foreign Affairs and Trade (DFAT) for protection status determination purposes only. It provides DFAT's best judgement and assessment at time of writing and is distinct from Australian government policy with respect to ECOWAS and its individual member states.

1.2 The report provides a general, rather than an exhaustive, overview, with a specific focus on the movement and relocation of citizens of ECOWAS member states between and within ECOWAS member states. It has been prepared with regard to the current caseload for decision makers in Australia without reference to individual applications for protection visas. The report does not contain policy guidance for decision makers.

1.3 Ministerial Direction Number 84 of 24 June 2019, issued under s 499 of the *Migration Act (1958)*, states that:

Where the Department of Foreign Affairs and Trade has prepared [a] country information assessment expressly for protection status determination purposes, and that assessment is available to the decision maker, the decision maker must take into account that assessment, where relevant, in making their decision. The decision maker is not precluded from considering other relevant information about the country.

1.4 This report is informed by DFAT's on-the-ground knowledge and discussions with a range of sources in Nigeria and Ghana. It takes into account relevant information from government and non-government reports, including (but not limited to) those produced by various United Nations agencies, Amnesty International, the Mixed Migration Centre, European migration agencies and credible news sources. Where DFAT does not refer to a specific source of a report or allegation, this may be to protect the source.

1.5 This Thematic Report is the first that DFAT has produced on ECOWAS.

## 2. ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) OVERVIEW

2.1 The Economic Community of West African States (ECOWAS) is an association of 15 states founded in 1975 with the aim of promoting regional economic integration. Current ECOWAS members are Benin; Burkina Faso; Cabo Verde; Cote d'Ivoire; The Gambia; Ghana; Guinea; Guinea-Bissau; Liberia; Mali; Niger; Nigeria; Senegal; Sierra Leone; and Togo. Morocco formally applied to join ECOWAS in February 2017 but has not yet been accepted.

2.2 ECOWAS consists of three distinct **linguistic blocs**, emanating from the region's colonial past. The Anglophone region comprises The Gambia, Ghana, Liberia, Nigeria and Sierra Leone; the Francophone region is made up of Benin, Burkina Faso, Cote d'Ivoire, Guinea, Mali, Niger, Senegal and Togo; while the smaller Lusophone region consists of Cabo Verde and Guinea Bissau. These linguistic divisions and differences between the political cultures of the Anglophone and Francophone blocs, in particular, reportedly contribute to occasionally challenging ECOWAS membership dynamics. The linguistic divide is reflected in the existence of two economic sub-groups within ECOWAS: all Francophone countries bar Guinea are members of the West African Economic and Monetary Union (French acronym UEMOA), which also includes Guinea-Bissau and which is a customs and currency union for countries using the West African franc; while Guinea and the five Anglophone countries make up the West African Monetary Union, which plans to introduce a separate common currency.

2.3 The combined estimated **population** of ECOWAS is 391 million, with a growth rate of 2.5 per cent. Nigeria alone accounts for more than half of the total population. The population is increasingly urbanised, and youth-centred: in 2019, 63 per cent of the population was aged under 25, with 20 per cent aged between 15 and 24.

2.4 ECOWAS has a mixed **religious** population. Muslims constitute majorities in Burkina Faso, The Gambia, Guinea, Guinea-Bissau, Mali, Niger, Nigeria, Senegal and Sierra Leone, whereas Christians are the largest religious community in Benin, Cabo Verde, Cote d'Ivoire, Ghana, Liberia and Togo. Traditional or animist beliefs are prevalent in most ECOWAS countries, and often overlap with established aspects of Islam or Christianity. While adherents of different religions generally coexist peacefully, tensions can exist in areas where there is a large Christian or Muslim community surrounding a smaller Muslim or Christian minority. Armed conflicts with religious overtones have increased in recent years in some areas, notably in Mali and Nigeria. At times, resource scarcity, changing economic conditions and developmental disparities between member states can cause or exacerbate religious tensions and intercommunal violence.

2.5 The ECOWAS region comprises hundreds of **ethnic and language groups** and societies, many of which are inter-related. Frequent migration, particularly to major cities, and intermarriage have further blurred ethnic distinctions. Resource scarcity, changing economic conditions and development disparities between member states can similarly cause or exacerbate ethnic tensions and intercommunal violence.

2.6 **Economic growth** among ECOWAS states is uneven, resulting in developmental disparities both between and within member states. Countries rich in natural resources (particularly oil and minerals) like

Cote d'Ivoire, Ghana, Niger and Nigeria tend to have higher rates of economic growth and wealth (oil-rich Nigeria accounts for more than half of ECOWAS' total Gross Domestic Product). The UN classifies all member states bar Cabo Verde and Ghana as rating Low on the Human Development Index, and poverty continues to be a major challenge in the region. More than half of ECOWAS' total population lives on less than one US dollar a day, and 10 of the world's 28 poorest countries in 2018 were in the ECOWAS region. Conflicts and internal political instability have eroded marginal socioeconomic gains in some countries. Even in those parts of the region where post-conflict violence is waning, general instability has left a legacy of negative economic and developmental consequences in the ECOWAS region.

**2.7 Unemployment** and underemployment are both very high across the ECOWAS region, particularly for the young and for migrants. Informal labour is common, particularly for migrants who tend to work as traders, artisans, and farmers. In-country sources estimate workers employed in the informal sector and the underemployed together constitute around 70 per cent of the overall workforce. Fluctuations in labour demand and supply in the region are generally tied to trends in population growth, political stability and macroeconomic factors in member states. The demand for labour in the region generally stems from agriculture, industry and services.

**2.8 Health** systems across the ECOWAS region face significant human, financial, infrastructure and medical supply resource challenges, leading in many cases to inadequate provision of health services. The burden of disease in the ECOWAS region consists of persistent communicable diseases, including neglected tropical diseases; increasing prevalence of non-communicable diseases; and malnutrition. Among communicable diseases, malaria represents the primary cause of morbidity and mortality, and multi-drug resistant tuberculosis continues to be of concern. Although the COVID-19 pandemic began later in Western Africa than in other regions globally because of the limited international air traffic, a rapid acceleration in the number of cases could quickly overwhelm already vulnerable health systems. According to ECOWAS (and its subsidiary health body, the West African Health Organisation), as at 20 August 2020, the countries of ECOWAS had just over 28,000 active cases and 2,296 deaths from COVID-19. However, humanitarian groups suggest the true scale of the outbreak may be hidden due to the limited nature of testing and related data issues (and therefore it's difficult to determine the impact on health systems as at October 2020). The most common non-communicable diseases within ECOWAS countries are high blood pressure, diabetes, cerebrovascular accidents and ischaemic heart disease. Mortality and morbidity linked to communicable and non-communicable diseases are high across ECOWAS member states. Mental illness and ocular disorders are also considered major public health issues. The region also has high maternal and child mortality rates. The major causes of death among children under five are pneumonia, intrapartum complications, diarrhoea and malaria. Half of these deaths are associated with malnutrition. The majority of maternal and child deaths are due to weaknesses in regional health systems and lack of timely and quality health care.

**2.9 The security** situation is unstable in many parts of the ECOWAS region. Armed conflict, inter-communal tensions, civil and political unrest, banditry and other security threats have triggered considerable migration flows between ECOWAS member states. Armed groups continue to perpetuate serious human rights abuses and attacks against civilians, including in Mali, Niger, Burkina Faso and Nigeria, within and between ECOWAS member states. In some cases, this has resulted in protracted displacement and associated humanitarian crises (according to the World Food Programme in 2019, more than 1 million people have been displaced and 2.4 million are in urgent need of food aid as a result of escalating violence in Burkina Faso, Mali and Niger). The authority of the state tends to be weak in remote regions, which has enabled Islamic jihadist groups and criminal organisations to gain footholds. The Islamic State in the Greater Sahara (ISGS, an affiliate of the Islamic State), Jama'at Nasr al-Islam wal Muslimin (Group for Support of Islam and Muslims, JNIM) and Boko Haram continue to perpetrate attacks on state security forces and serious human rights violations against civilians, particularly in Burkina Faso, Mali, Niger and

Nigeria. In November 2020, in an attack centred on a village in Borno state in Nigeria, dozens of farmers were massacred, reportedly by Boko Haram or affiliates. Attacks by jihadists in Burkina Faso have claimed over 700 lives and displaced 500,000 people since 2015. In a high-profile incident in November 2019, jihadists ambushed a convoy transporting employees of a Canadian mining company in eastern Burkina Faso, resulting in at least 39 fatalities. The security situation in Mali is precarious, with ongoing jihadist attacks. In November 2019, the Islamic State claimed responsibility for an attack on a military base in northern Mali, near its border with Niger, leaving 53 soldiers and one civilian dead. It followed an earlier attack (September 2019) on two army bases in central Mali, which claimed the lives of 38 soldiers. Between March and September 2019, for example, inter-communal clashes, triggered by growing food insecurity and unemployment, killed over 500 people in central Mali. In December 2019, at least 70 Niger soldiers were killed in an attack on a military base in the west of the country, near Niger's border with Mali — the deadliest attack on security forces in Niger's history. The Islamic State's affiliate in Mali and Niger claimed responsibility for the attack. Boko Haram has reportedly committed crimes against civilians in the Lake Chad Basin region, leading to the death and displacement of civilians, and the abuse and rape of thousands of abducted women, girls and young men.

2.10 Regional security forces are often poorly equipped and trained. Human rights observers allege security forces in Nigeria have committed human rights violations and crimes under international law in response to threats by Boko Haram. These include extrajudicial killings, enforced disappearances, arbitrary arrests, incommunicado detentions, torture and other ill-treatment, which, in some alleged cases, have led to deaths in custody. The Joint Force of the Group of Five for the Sahel – comprising troops from Burkina Faso, Mali, Niger and non-ECOWAS members Chad and Mauritania – was established in 2017 to address the movement of jihadist and criminal groups along their shared borders.

2.11 On 18 August 2020, Mali's military overthrew the civilian government of President Ibrahim Boubacar Keïta in a coup which received considerable public support. (There had been anti-government demonstrations in the weeks preceding the coup.) ECOWAS members opposed the regime change, imposing sanctions and border closures to encourage a rapid return to civilian rule. The military leaders in Mali promised an 18-month transition to democratic elections and stated their intention to respect international agreements with regard to combatting jihadists, given that French, African Union and other troops remain in the country for this purpose. In September 2020, retired Malian colonel and former Defence Minister Bah Ndaw was sworn in as Mali's interim 'civilian' president. Following the additional appointment of a civilian Prime Minister, ECOWAS members lifted sanctions but continue to press for a return to democracy.

2.12 DFAT assesses the security situation remains unstable across many ECOWAS member states, which contributes to displacement and population movements. DFAT assesses inequalities in development levels between ECOWAS member states and lack of opportunities to improve quality of life – coupled with political, social and economic instability – drive population mobility across and beyond the ECOWAS region in search of improved livelihood opportunities.

2.13 International observers report **corruption** is prevalent across the ECOWAS region, presenting a significant ongoing challenge to good governance, sustainable economic growth, peace, stability and development. In the past decade, unconstitutional changes of government have occurred in Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, and Niger. International human rights organisations have reported cases in Niger, Sierra Leone and Togo where authorities have used excessive force or arbitrary arrest to disperse peaceful protests, resulting in deaths and injuries.

2.14 **Freedom of expression** is limited in many member states, particularly for the media. Some states, including Cote d'Ivoire and Nigeria, have introduced laws aimed at restricting the activities of human rights defenders, journalists and other political opponents. Nevertheless, Nigeria has, in practice, a vibrant press

and social media landscape. Cote d'Ivoire's press law, adopted in December 2017, includes several defamation-related offences, including the crime of 'offending the President'. Togo has periodically blocked the Internet to hinder journalists and closed media outlets. Sources report maltreatment of journalists is a significant issue in Nigeria, and claim attempts to silence journalists have included arrests, threats, torture and demonstrations labelling journalists as criminals.

2.15 Most member states are abolitionist in relation to the **death penalty**, either in legislation (Burkina Faso, Cabo Verde, Cote d'Ivoire, Guinea, Guinea-Bissau, Senegal, Togo) or practice (Benin, The Gambia, Ghana, Liberia, Mali, Niger, Sierra Leone). Amnesty International reported that Guinea abolished the death penalty for all crimes in 2017, and that The Gambia had established a moratorium on executions in 2018 and ratified an international treaty committing it to abolishing the death penalty. Nigeria continues to issue death sentences, although the last execution carried out was in 2016.

2.16 Human rights observers report discrimination, marginalisation and abuse of **women and girls** is highly prevalent across the ECOWAS region, often grounded in cultural traditions and formalised by law. Female genital mutilation (FGM) of women and girls, viewed as a traditional practice performed to promote chastity and increase a girl's marriageability, is widespread in the ECOWAS region, particularly in Nigeria. Despite legislative prohibitions, UN agencies estimate a quarter of women and girls in Nigeria have been subjected to FGM (and 15.3 per cent of girls aged 15 to 19), making Nigeria the third-highest country worldwide for FGM prevalence (after Egypt and Ethiopia). In-country sources report police routinely return to their families women and girls who attempt to flee their community to avoid FGM.

2.17 International observers report **LGBTI** (lesbian, gay, bisexual, transgender and/or intersex) issues are taboo across the ECOWAS region, both officially and societally. The Gambia, Ghana, Guinea, Liberia, Nigeria, Senegal, Sierra Leone and Togo all criminalise consensual same-sex sexual acts between adults. In northern Nigeria, consensual same-sex sexual acts are punishable under *sharia* (Islamic law) with the death penalty. Benin, Burkina Faso, Cote d'Ivoire, Guinea Bissau, Mali and Niger do not criminalise consensual same-sex sexual acts between adults, but do not offer any specific protections. Cabo Verde is the only ECOWAS member state to offer employment protection to LGBTI individuals. LGBTI activists have reported recent cases of attacks by civilians and police on individuals perceived to be LGBTI in Benin, Ghana and Mali, and prosecutions of LGBTI individuals in Burkina Faso and Cote d'Ivoire seemingly motivated by their sexual orientation, despite the fact that neither country criminalises consensual same-sex sexual acts between adults.

## Human Rights Framework

2.18 Most ECOWAS member states have ratified the basic key international legal instruments protecting human rights, namely: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention Against Torture; and the Convention on the Rights of the Child.

2.19 As noted in [People Trafficking](#), all member states have ratified the United Nations Convention against Transnational Organized Crime (UNTOC) and its protocols on trafficking in persons and the smuggling of migrants. Burkina Faso, Cabo Verde, Ghana, Guinea, Mali, Niger, Nigeria and Senegal are all State Parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW). Benin, Guinea-Bissau, Liberia, Sierra Leone and Togo have signed, but not ratified, the ICMW. Benin, Burkina Faso, Guinea and Togo have all ratified the Supplementary Provisions of the International Labor Organization's Convention on Migrant Workers.

## MIGRATION

2.20 In pre-colonial times, significant movements of people and goods occurred regularly within West Africa, motivated by the search for security and fertile land for settlement and farming. The Atlantic Slave Trade also had a significant impact upon the movement of people, both out of West Africa and back to it, as many freed slaves settled in Sierra Leone and Liberia. The imposition of European colonial rule in the late 19<sup>th</sup> century significantly affected these movements, particularly through establishing national boundaries that in many cases separated ethnic groups. Cross-border migration during the colonial period mostly occurred in the form of labour migration, driven by export-oriented economic policies that created large-scale labour demands for plantations and mines that exceeded local supply.

2.21 After independence across the region in the 1950s and 1960s, migration both within and outside of West Africa further developed as a result of increased labour demands in European industrial countries and agricultural export-oriented countries in the region, notably Cote d'Ivoire and Nigeria. Changes in migration patterns were also driven by changing economic conditions and differences in ecological conditions across borders, necessitating exchange of goods.

2.22 Almost all West African countries are both migrant source and destination countries. Although there is a paucity of reliable, up-to-date and accurate data on migration numbers, international observers report Cote d'Ivoire is the highest migrant-receiving country in ECOWAS, followed by Nigeria, Guinea and The Gambia; while the top four migrant source countries are Burkina Faso, Mali, Benin and Guinea. Although Cote d'Ivoire and Nigeria host the highest number of immigrants from the region, with over 2 million registered immigrants, The Gambia and Cote d'Ivoire have the largest share of immigrants relative to the size of their populations.

2.23 Movements are generally intra-regional, short-term and male-dominated, and are in response to the interdependent economies of neighbouring countries, with some countries serving as transit points. However, more and more women are entering the traditional male-dominated migratory streams in West Africa. Female migrants are increasingly drawn to the wage labour market (both formal and informal) as a survival strategy to augment meagre family incomes.

2.24 Intra-regional labour migration in West Africa includes permanent migration, temporary/seasonal migration, cross-border movements, return migration and transit migration. Most intra-regional migration is reportedly driven by economic factors such as employment, education and urbanisation. West African migration is characterised by the same push-factors as found in most emigration regions: family, work and study, although labour migration is the dominant driver of migration flows in the ECOWAS region. Labour migration within the region includes temporary and seasonal migration, which is common in the agro-pastoral region of the Sahel.

2.25 Some nationals from member states have taken advantage of the provisions in the Free Movement Protocol (see [ECOWAS Treaty](#)) to relocate permanently or stay in another member State for relatively longer periods. Another group of permanent migrants (that is, where the period of stay may exceed a year) includes students, whose numbers are increasing among both immigrants and emigrants within the region.

2.26 Geographical proximity, ethnic ties, colonial legacy and common language also influence choice of destination for many migrants. Because artificially drawn colonial borders often span ethnic communities, most ECOWAS migrants reportedly perceive their mobility from one country to another as being within one sociocultural space rather than between two nations. These ethnic ties and the use of the same language make it easy for migrants to stay and work in different countries. Thus, the destinations of migrants have mainly been countries that share some political, historical and cultural ties. For example, colonial legacy and common language influence migrant flows between Ghana and Nigeria, or between Mali and Cote d'Ivoire.

2.27 The major labour-exporting countries in the region are currently Burkina Faso, Mali and Niger. The first quarter of 2019 saw an increase in movements towards neighbouring countries due to escalating armed violence in parts of Mali, the Liptako-Gourma region (the border regions of Burkina Faso, Mali and Niger) and the Lake Chad Basin.

## People Smuggling

2.28 All ECOWAS member states bar Sierra Leone have signed and ratified UNTOC. All signatories bar Guinea-Bissau have also ratified UNTOC's Supplementary Protocol against the Smuggling of Migrants by Land, Sea and Air.

2.29 Despite the ECOWAS Free Movement Protocol (see [ECOWAS Treaty](#)), de facto free movement in the ECOWAS region can be difficult for less privileged citizens, and migrants regularly rely on smugglers or undertake irregular crossings outside of official border-crossing points. This occurs mainly because many national regulations across ECOWAS member states contravene the ECOWAS Free Movement Protocols. As a result, most ECOWAS community citizens face visa-on-arrival fees or informal 'taxes' raised by misinformed or corrupt border officials when travelling within ECOWAS, which can push them towards irregular movements. The level of irregularity involved in movements increases the further north the migrants travel. Smuggling activities are primarily centred in northern Mali or Niger onwards. These nations function as transit countries for people smuggling across the Mediterranean and into Europe, especially through Libya following the collapse of central control during the on-going civil conflict.

2.30 Smugglers operating out of some ECOWAS member states, notably Nigeria, reportedly help families smuggle children overseas with a view to the child obtaining protection and the family then being able to seek chain migration opportunities. In many cases, this occurs where Nigerians are living illegally overseas, and wish to be reunited with their children.

## People Trafficking

2.31 All member states have adopted the 2001 Political Declaration and 2002-2003 Initial Plan of Action to Combat Trafficking in Persons in West Africa. ECOWAS created a specific anti-trafficking unit in 2015. Some member states also have additional bilateral agreements on trafficking, such as Burkina Faso and Mali (2004), Mali and Senegal (2004), Mali and Guinea (2005), and Benin and Nigeria (2005). In most member states, legislation punishes traffickers through fines and/or penalties, such as in Benin, Burkina Faso, Cote d'Ivoire, The Gambia, Ghana, Liberia, Mali, Niger and Senegal.

2.32 Trafficking nevertheless remains prevalent across the ECOWAS region. Victims of trafficking (VoT) are mainly trafficked domestically or into neighbouring countries: according to the United Nations Office on Drugs and Crime (UNODC), the majority of VoTs trafficked from the region are trafficked over a relatively short distance, within their country of origin or within the region. The member states most heavily affected by trafficking, as origin, transit and destination countries, are Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Ghana, Guinea, Mali, Niger, Nigeria and Togo. While the majority of West African trafficking victims are trafficked within ECOWAS, there is also trafficking of men, women and children to and through North Africa to Europe for various forms of forced labour including sex work. Some of those trafficked originated as smuggled irregular migrants who found themselves imprisoned and coerced by their erstwhile smugglers.

2.33 Major types of trafficking include trafficking in children, predominantly for farm labour and domestic work but also in the mining and fishing sectors; and trafficking in women and young persons for sexual exploitation. Academics estimate that between 10,000 and 100,000 children have been trafficked from

their home country for work in other countries, including Cote d'Ivoire, Togo and Nigeria. Child trafficking from Mali, Togo, and Nigeria to Cote d'Ivoire's cocoa and coffee plantations is especially pervasive. Media reports of trafficking in babies for childless couples, including between Niger and Nigeria, are also common.

2.34 Most member states have established protection mechanisms for victims of trafficking. In Burkina Faso, Guinea-Bissau, and Senegal, it is also possible to obtain permanent or temporary residence for victims of human trafficking under law. In Cabo Verde, national authorities run temporary shelters and protection and reintegration centres in order to assist child victims. However, the implementation of protection measures remains limited in most ECOWAS countries, and authorities rely on NGOs to provide support to victims. The Gambia, Ghana, and Togo have organised the return of child victims of human trafficking, provided temporary shelter and medical treatment, and conducted family tracing.

## Nomadic Pastoralism

2.35 Nomadic pastoralism is a way of life and livelihood for millions of people in the ECOWAS region. Although some pastoralists are settled or semi-settled, or move only between two poles of migration in response to the seasons, others have no fixed place of settlement and move freely across the region, in response to climate variations over the long term and other priorities. Many pastoralists do not have identity documents, and reportedly cross borders without any paperwork. Where borders exist, pastoralists without paperwork can be subject to extortion. Historically, attempts by individual member states to encourage nomadic pastoralists to settle or submit to centralised political organisation have proven unsuccessful.

2.36 Member states have made efforts to address issues related to cross-border pastoralism, supported by bilateral and multilateral agreements to facilitate cross-border movement. For example, ECOWAS pastoralists have been issued livestock passports, international transhumance certificates (ITC), and handbooks of travel since 2000 (see [Documentation](#)). UEMOA has also adopted policies on the regulation of the free movement of animals among its eight member states, and the African Union adopted a Policy Framework for Pastoralism in Africa in 2010, which endorses the ECOWAS framework and creates strategic objectives relating to the recognition of pastoralism in development. However, in practice, these documents and policies do not address the nationality of the pastoralists, and are only for the purpose of facilitating conflict-free movement of the livestock.

## Border Communities

2.37 Ethnic groups residing across arbitrarily defined borders can face difficulties being recognised as nationals on either side of the border. Although all ECOWAS member states bar Liberia recognise dual nationality of origin, international observers report authorities tend to view with suspicion people with cross-border ties in relation to entitlement to nationality.

2.38 Across ECOWAS, individuals with family names that could also originate from a neighbouring country report discrimination and additional checks in relation to their identities, compared to those whose names are unambiguous. Irrespective of law, access to documentation can depend on administrative practice and attitudes of officials responsible for issuing documents. However, officials can also reportedly turn a blind eye to violations of immigration law in instances such as women trading market wares across borders, or children crossing to another country to go to the only nearby school.

2.39 Crises leading to cross border movement can increase scrutiny of the documentation of border community residents. During conflict, there can be suspicion regarding those who have sought refuge, even

if they are moving to a country where they are entitled to nationality. For example, election periods can increase difficulties and tensions for those who live in border communities, as politicians can fight to ensure supporters across the border are registered.

2.40 Populations affected by transfer of territory can also experience difficulties in relation to proof of nationality, especially when administration of territory has been transferred due to a ruling by the International Court of Justice (such as the mandated shift of the Bakassi Peninsula from Nigeria to Cameroon in 2008). The populations affected by these kinds of border disputes often have limited contact with the central administrations of either country, and are likely to have few documents of an existing nationality. Such populations may also be members of minority ethnic groups, or of nomadic or semi-nomadic lifestyle, rendering them more vulnerable to suspicion regarding their nationality.

## Stateless Individuals

2.41 Major categories of stateless persons in the ECOWAS region include:

- historical migrants, who arrived in a country prior to independence, and their descendants;
- contemporary migrants stranded in another country;
- returnees to a country of origin;
- refugees, asylum seekers and former refugees;
- cross-border populations, including: ethnic groups divided by international borders; nomads; and people who live in zones where borders have been changed; and
- vulnerable children, including: children born out of wedlock; abandoned babies and orphans; child workers; trafficked children; and girls forced into marriage.

2.42 The populations facing the greatest difficulties obtaining documentation of nationality of the country of residence are descendants of those who migrated before independence, for whom the transitional provisions adopted in the laws at independence were not well adapted; or where those laws were amended or manipulated early on to exclude targeted populations from access to nationality and the broader rights of citizenship. Children of migrants face higher risks, especially in countries that do not afford rights based on the country of birth, even if the children remain resident there until adulthood.

2.43 Not all irregular migrants in the ECOWAS region, who are without papers and who are transiting or living and working in a country that is not their country of origin, are stateless. However, irregular migrants may be detained because they cannot prove their nationality or regularise their immigration status, and there is no country to which they can be deported.

## 3. ECOWAS LEGAL FRAMEWORK

### ECOWAS Treaty

3.1 A desire among West African states to better regulate migration and promote regional economic integration led to the signing of the Economic Community of West African States (ECOWAS) Treaty in Lagos on 29 May 1975. Member states signed a revised treaty in Cotonou in July 1993 that aimed to strengthen further intra-regional economic and political integration and regional unity across national and linguistic borders.

3.2 The ECOWAS Treaty governs regional migration in line with three pillars: the Right of Entry, the Right of Residence, and the Right of Establishment. These pillars are enshrined in the 1979 Protocol Relating to the Free Movement of Persons, Right of Residence and Establishment and its Supplementary Protocols, commonly referred to as the Free Movement Protocol. All ECOWAS member states have ratified the Free Movement Protocol, which represents a step towards the creation of a borderless region. ECOWAS has subsequently adopted four additional supplementary protocols to the original Free Movement Protocol.

3.3 The ECOWAS Treaty confers the status of ECOWAS community citizenship on the citizens of ECOWAS member states (see [ECOWAS Community Citizenship](#)). The **Right of Entry** affords all ECOWAS community citizens in possession of valid travel documents (see [Documentation](#)) and international health certificates the right to stay in any ECOWAS member state for up to 90 days without any prior administrative or security-based immigration requirements. In accordance with the **Right of Residence**, ECOWAS community citizens have the right to settle or establish in another member state other than their 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'. ECOWAS community citizens wishing to utilise the Right of Residence must apply and obtain a residence permit or work permit just like non-ECOWAS immigrants. Granting of Right of Residence to ECOWAS community citizens is not guaranteed — refusal is possible on public order, public security or public health grounds. The **Right of Establishment** affords all community citizens the right to access economic activities and to hold employment, including pursuit of the liberal professions, throughout all ECOWAS member states. Refusal is, again, possible on grounds of public order, public security or public health.

3.4 While all member states have ratified the Free Movement Protocol, and gradual efforts to progress the ECOWAS protocols at the national level across member states are ongoing, implementation challenges persist. There has been some success with adoption of the Right of Entry, although only the first phase of the ECOWAS framework for regional integration (visa-free entry for 90 days) has been implemented by all member states.

3.5 There are no specific policies or programs driving the realisation of the ECOWAS Common Approach to Migration. A key challenge is inconsistency between the ECOWAS Protocols and the national laws and policies regarding migration across ECOWAS member states. According to international observers, national laws and policies often do not conform to the ECOWAS Protocols (despite being adopted to implement

protocol commitments). Few ECOWAS member states have adapted their legislation to be in accordance with the 1979 Protocol and supplementary protocols.

3.6 Although the ECOWAS Treaty suggests ECOWAS migrants and nationals have equal opportunities, in practice, many member states have provisions in their labour laws and regulations that protect certain economic sectors and public sector jobs from foreign nationals. In most member states, national labour legislation does not set specific provisions for access to employment by ECOWAS citizens, which jeopardises the implementation of the Right of Residence.

3.7 Capacity issues also restrict implementation. Reports indicate ECOWAS suffers from a severe shortage of staff and human capacity, which impedes ECOWAS' ability to run its programs and implement its mandate effectively. Other issues are due to inadequate administrative and financial support systems, which limit ECOWAS' capacity to absorb committed resources.

3.8 Resistance from influential member states, particularly Nigeria, has also hindered progress in implementing ECOWAS' mandate. Issues of sovereignty can prevent ECOWAS engagement, particularly in relation to conflict resolution, as member states can be reluctant to accept external influence over sovereign affairs. Sovereignty issues can also affect willingness to engage on immigration matters that intersect with national security. Other member state dynamics, such as the Anglophone-Francophone divide or the overlap with other regional groupings such as the G5 Sahel, also pose challenges for cooperation in peace and security.

## ECOWAS Governance

3.9 The ECOWAS Authority of Heads of States and Government, comprising the member states' leaders, is the supreme institution of ECOWAS. Member states chair the Authority on a rotating basis. ECOWAS also has a Council of Ministers comprised of ministers from member states, a Parliament (also known as the Community Parliament), a commission consisting of a president, a vice president and seven commissioners, an Economic and Social Council, and a Court of Justice. The ECOWAS Parliament is a forum for representatives of ECOWAS member states and has 115 seats. Each member state has a guaranteed minimum of five seats, with the remaining seats shared based on population. Nigeria currently has 35 seats; Ghana eight; Cote d'Ivoire seven; Burkina Faso, Guinea, Mali, Niger, and Senegal six each; and Benin, Cabo Verde, The Gambia, Guinea Bissau, Liberia, Sierra Leone, and Togo five each.

## ECOWAS Community Citizenship

3.10 The Protocol Relating to the Definition of a Community Citizen recognises the common rights and obligations among nationals of West African states. The Protocol is ambiguous regarding what community citizenship entitles an individual to over and above their native citizenship, and regarding who is responsible for recognition, refusal or withdrawal of community citizenship under the Protocol. No procedures exist for ECOWAS to recognise community citizenship outside of that performed by member states at the national level.

3.11 Article 1 of the Protocol outlines four pathways to becoming an ECOWAS community citizen: by descent; by place of birth (one parent must be a national); by adoption; and by naturalisation. Article 2(1) states community citizenship can be lost on the following grounds: permanent settlement in a state outside the Community; voluntary acquisition of the nationality of a state outside the Community; a de facto acquisition of the nationality of a state outside the Community; loss of one's nationality of country of origin; and on express request.

3.12 Article 2(2) allows for deprivation of community citizenship from a naturalised citizen if they are involved in ‘activities incompatible with the status of Community citizen, and/or prejudicial to the fundamental interests of one or more Member States of the Community’. Article 2(2) also states that ‘the situation is the same when such a crime is committed against a citizen of the Community.’ Article 2(3) allows for loss of citizenship in cases of fraud, or if it later transpires a person did not fulfil the conditions required to acquire citizenship.

3.13 The Protocol prohibits dual nationality with any non-ECOWAS state. In practice, most ECOWAS member states permit dual nationality (legally or customarily) without restrictions. To DFAT’s knowledge, only Liberia bans adult dual citizenship.

## RESIDENCE ARRANGEMENTS

3.14 All ECOWAS member states have implemented the first phase of the ECOWAS framework for regional integration in relation to the Right of Entry. In principle, this means community citizens in possession of valid travel documents and international health certificates can stay in any ECOWAS member state for up to 90 days without any prior administrative or security-based immigration requirements (i.e. without a visa). The eight UEMOA member states also have separate agreements on freedom of movement, allowing travel and residence based only on a national identity card rather than a passport. Immigration authorities can refuse entry if the would-be migrant is a prohibited immigrant, a person without visible means of support, an undesirable person, or a mentally disabled person (on advice of the health authorities).

3.15 Although the ECOWAS regime allows stays of up to 90 days visa-free, longer stays over 90 days theoretically require a residence permit. Few ECOWAS citizens resident in other ECOWAS countries possess the necessary identification documents to apply for residence permits, and documentation can be difficult and expensive to acquire. Sources report if a form of ID other than a passport is used for border crossing, a stamp is not issued and it is therefore impossible to date entry. In addition, although passports should technically be stamped and the stamp initialled, in-country sources report this does not happen reliably in practice.

3.16 Benin, Burkina Faso, Cote d’Ivoire, The Gambia and Nigeria are the only member states that grant a specific residence permit to ECOWAS citizens. These countries have ratified: the Supplementary Protocol relating to the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment; the Supplementary Protocol relating to the second phase (Right of Residence); the Supplementary Protocol relating to amending and complementing the provisions of Article 7 of the Protocol on the Free Movement Rights of Residence and Establishment; and the Supplementary Protocol relating to the Implementation of the third phase (Right to Establishment).

## ENTRY AND EXIT PROCEDURES

3.17 ECOWAS community citizens are generally able to enter and exit ECOWAS countries without significant processing delays at airports. The reliability and efficiency of passport processing at land border crossings is more variable, particularly as ECOWAS nationals still require entry visas when crossing a land border. Although the International Organization for Migration’s Migration Information Data Analysis System (MIDAS) entry and exit system was introduced in some ECOWAS member states in 2015, it has not been adopted or used consistently across ECOWAS. Media reporting in October 2018 claimed Liberians, Sierra Leoneans and Guineans experienced delays, harassment, and disrespect for their travel documentation at borders when crossing between each other’s countries for market trade.

3.18 Border management capacity across ECOWAS is limited and borders remain porous. In Sierra Leone, for example, only 33 of over 400 border points are formally controlled. Sources also report that, irrespective of formal requirements, all borders along Cote d'Ivoire, Togo, Benin and Nigeria have different documentation and crossing requirements. Various ECOWAS member states are looking to implement joint border crossings. Ghana and Liberia have plans to strengthen joint cross-border patrols with neighbouring countries; for example, Ghana and Togo have constructed a joint border post at Noepe-Akanu. Niger and Mali have also jointly patrolled their common border since 2007.

3.19 Nevertheless, the reliability and efficiency of passport processing at land border crossings is variable. Movement across land borders can be met with harassment and administrative challenges. The Free Movement Protocols have reportedly been abused in some instances; for example, to smuggle goods and trade narcotics, which has increased negative sentiment between source and destination member states. Sources also report borders operated by Nigerian officials often accept school identification and driving licenses, which are easily forged (see [Prevalence of Fraud](#)), and that ECOWAS community citizens do not always carry a valid travel certificate or passport (community citizens from Francophone member states often show national IDs). Rivalry between Francophone and Anglophone countries can also occasionally manifest in the rejection of other countries' documents.

## 4. TREATMENT OF CITIZENS AND RETURNS PROCEDURES

### TREATMENT OF ECOWAS CITIZENS IN OTHER MEMBER STATES

4.1 An irregular stay is considered a criminal offence in Burkina Faso, Cote d'Ivoire, Niger and Senegal. However, in practice, prosecutions in relation to irregular migration, or an irregular stay, are rare. Most countries (for example Benin, Burkina Faso, Cote d'Ivoire, Ghana, The Gambia, Guinea, Liberia and Sierra Leone) grant legal status to irregular migrants ('regularisation'), especially regarding ECOWAS nationals, upon payment of a fee.

4.2 Immigration provisions vary among the ECOWAS countries. In general, procedures and requirements for obtaining a residence permit are not well defined. In some cases, to obtain a residence permit applicants must provide a medical certificate and an extract from the police register and pay fees (Benin, Guinea, and Togo). It is more difficult for foreigners to receive a residence permit in Liberia, Senegal, and Togo, as an official application has to be submitted prior to entering the country.

4.3 The immigration provisions of many member states either do not reference family reunification rights or do not specify provisions and conditions. Discriminatory regulations also exist. For example, access to citizenship in Liberia is only for those who are 'Negro or of Negro descent,' while the Liberian legislation prohibits immigration to persons who are 'feeble-minded' and 'insane'. Although application can be more tolerant in practice, the law remains discriminatory and can lead to negative outcomes.

4.4 As noted in paragraph 3.16, Benin, Burkina Faso, Cote d'Ivoire, The Gambia and Nigeria are the only member states that grant a specific residence permit to ECOWAS citizens. Ivorian legal provisions also include the obligations contained in the Protocols. In other countries, the requirements for issuing residence cards or permits for ECOWAS nationals are similar to those for other foreigners. The Cabo Verdean authorities aim to review the ECOWAS protocols as stated in their National Immigration Strategy.

4.5 Difficulties can be faced by ECOWAS community residents, businesses and traders residing in other ECOWAS member states, and, at times, additional national-level requirements regarding residence and/or business permits can be met once in country. The ECOWAS Trade Liberalisation Scheme (ETLS), a set of protocols in place since 1979 on the movement of people, goods and vehicles within ECOWAS, is the main framework under which trade liberalisation takes place in the region. Work under the ETLS to ease the movement of goods, and to harmonise customs processes, nomenclature and regulations, continues. However, in practice, illicit taxation, withholding of required documentation and various forms of extortion, particularly on the main road corridors connecting the region, is highly prevalent. The application of ETLS rules in relation to trade in goods varies enormously across member states and little data is available to assess the effectiveness of its protocols. To codify new procedures in member states is an often protracted and sensitive process, particularly where the removal of old practices and duties can mean loss of state (and personal) revenue. In 2019, however, and in apparent violation of these rules, Nigeria closed its land borders to goods trade, with the aim of protecting its rice industry and preventing petrol and other forms of smuggling. It is not known when the borders will be reopened.

4.6 In most member states, national labour legislation does not outline specific provisions for access to employment for ECOWAS citizens. As such, the common labour immigration system applies. However, in practice, authorities reportedly apply a tolerant approach. The Guinean Labour Code (2014) states ECOWAS member states' nationals are not under an obligation to obtain a work authorisation. In Cote d'Ivoire, although not explicitly stated, ECOWAS member state nationals are also not required to obtain a work authorisation. In Liberia, the draft National Migration Policy proposes an amendment of the current labour legislation to ensure full implementation of the ECOWAS protocols. In Mali, full access of ECOWAS member states' nationals to the labour market is common practice as long as any migrant worker possesses a valid identity document.

4.7 Although the ECOWAS Free Movement Protocols provide for equal treatment in terms of employment, in practice member states' nationals are reportedly still exposed to discrimination. In almost all ECOWAS member states, labour legislation requires foreign workers to hold a work permit. Community citizens are not able to work legally until after they have been granted a work permit.

4.8 With the exception of Guinea, Mali, Senegal, and Togo, an official labour market test or quota system is also used. These practices contravene the Rights of Residence and Establishment. Some sectors of employment are reserved for nationals, which creates discontentment among community citizens from different member states. For example, Togo does not prevent foreigners from working in various sectors of its economy, and has reportedly expressed dissatisfaction that Ghana legally restricts the employment of foreigners in certain sectors (marketplace trading, petty trading, hawking, kiosk trade, operation of taxi and car hire services, sports pool betting, and operation of beauty salons and barber shops). In Mali, restricted sectors include health, law, and public services. Where labour legislation lacks precision concerning the conditions and procedural steps to grant a work permit, such as in Benin, Burkina Faso, Cabo Verde, Ghana, Niger and Togo, this can lead to arbitrary decisions by authorities appointed to decide on the entry of foreign workers. In practice, few member states recognise foreign workers as crucial to meeting national labour market needs.

4.9 Local media reported that protests occurred outside the ECOWAS Secretariat in Abuja (Nigeria) in September 2018, following the large-scale, forced closures of around 400 Nigerian businesses in Ghana. Ghanaian security authorities allegedly arrested and detained Nigerian traders who did not have appropriate documents (passport, resident permit and work permit) to regularise their business as required by law. The Ghana Union of Traders Association denied allegations they had harassed Nigerian business owners in Ghana, and claimed complaints of unfair treatment were from foreign traders who had not been acting in accordance with the rules for conduct of foreign businesses in the country.

4.10 The implementation of policies to protect ECOWAS community members residing overseas in other member states has been limited by financial constraints. The lack of diplomatic representation for many member states limits the ability of diplomatic and consular missions to advocate for the protection of their nationals: Burkina Faso, for example, has diplomatic missions in only five other member states. Benin's National Policy for Beninese Nationals Abroad has as a central objective the protection of migrants' rights and interests, and provides for recourse to local lawyers for consular and diplomatic posts in order to protect nationals abroad. Cabo Verde has established a Community Solidarity Fund to provide assistance to diaspora associations that work towards migrants' integration and protection in destination countries.

## RETURNS PROCEDURES

4.11 The ECOWAS Supplementary Protocol on the Code of Conduct provides for expulsion of undocumented migrants to be carried out 'solely on strictly legal grounds' and member states are enjoined to 'take all possible steps to ensure or facilitate the obtaining of the correct documents by illegal

immigrants.’ The Supplementary Protocol on the Right of Residence provides for each state to ‘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.’ Chapter V of the same Supplementary Protocol prohibits collective and arbitrary expulsion, and Chapter VI provides for extensive rights of due process in cases of individual expulsions. The protocols also set various parameters to guarantee expulsions and repatriations meet international human rights standards.

4.12 While member states have historically been tolerant in their approach to irregular migrants, there have been cases in which some countries have expelled migrants, including refugees, in response to national economic or political crises. In 2017 and 2018, there was a significant increase in the number of returns, voluntary or involuntary, to transit or origin countries. Benin, Cabo Verde and Nigeria reportedly returned foreign nationals more often than other ECOWAS countries on the grounds of absence of visas, fraudulent travel documents and irregular entry/stay.

## Forced Returns

4.13 Member states are obliged to notify the Executive Secretary of ECOWAS of expulsion and repatriation decisions, to bear the related expenses, to return the migrant’s property to him/her, to provide reasonable time to leave the country and to grant the right of appeal. The 1986 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment prohibits collective or ‘en masse’ expulsions. However, member states have full discretionary authority regarding the grounds for individual expulsions. Aside from reasons of national security, public health and public order or morality, other grounds for individual expulsions refer to: the non-fulfilment of ‘an essential condition for the issuance or validity of their authorisation of residence or work permit’; and ‘the laws and regulations applicable in the host Member State’. These references do not define ‘essential conditions’ or specify any limit to the applicable domestic laws and regulations.

4.14 Although collective expulsion is prohibited, the 1986 Supplementary Protocol grants member states the right to expel individual ECOWAS citizens in accordance with the laws and regulations applicable in the host member state (Article 14). Grounds for expulsion of individuals are similar across the countries but they are not harmonised at the regional level. They range from the threat to public order and criminal behaviour (in Benin, Burkina Faso, Niger, Senegal and Sierra Leone) to violation of immigration rules (in Cote d’Ivoire, Ghana, Guinea, Liberia and Mali). Togo’s legislation does not specify the grounds for expulsion, while Liberia’s law violates the principle of non-discrimination since it allows deportation for political or health reasons.

## CONDITIONS FOR RETURNEES

4.15 Those returning or who are returned to their country of origin (where that country is not ambiguous) will generally be able to acquire recognition of nationality on their return, even if they have lost their identity documents. Reintegration problems are reportedly largely financial, and centred on lack of state support, lack of jobs and housing, and loss of dignity and respect, rather than lack of documentation. However, if the country of origin is considered ambiguous, those involved will likely face problems, especially the children of those who have migrated.

4.16 It is common for undocumented migrants to avoid registering the births of their children with either the country they are residing in, or their country of origin. Without documentation, a child may be unable to establish the nationality of his or her parents, and therefore their own nationality by descent, nor

establish a right to the nationality of the country where they were born, even if permitted by that country under law. This issue can be exacerbated further if the child grows up outside their country of origin without good knowledge of the languages and other identifying characteristics of that country.

4.17 In-country sources report the Nigerian Immigration Service and other government agencies wait at international airports in Nigeria for flights returning failed asylum seekers. Once disembarked, returnees are intercepted and taken to a reception centre for returnees, located in a cargo terminal in Lagos Airport. The Nigerian Immigration Service then processes the returnees in the centre. Sources report Nigerian authorities have demonstrated a particular interest in ascertaining if returnees are narcotics criminals.

4.18 Some ECOWAS member states have formal readmission agreements with neighbouring countries to support migrants returning to their countries of origin, including Benin, Nigeria, Senegal, and Sierra Leone. While a number of ECOWAS member states are considering assisted voluntary return programs, reintegration assistance to returning migrants is not guaranteed. For example, beneficiaries of a state program in Benin must have been registered at their diplomatic missions abroad for a minimum of 10 years to be eligible for assistance. Financial assistance is mostly limited to craftsmen, the self-employed and business people. In Mali, assistance to returnees involves a number of local associations that benefit from financial and in-kind support from the Directorate General for Malians Abroad and the *Centre d'information et de Gestion des Migrations*. The Mali National Employment Agency also provides technical and financial support to facilitate the integration of returnees into the labour market.

4.19 As borders are often only subject to controls at major entry and exit points, they can still be crossed informally without travel documents. Sources claim it is possible to cross external borders of ECOWAS, for example to travel into Libya or Algeria from Niger, as border guards have reportedly asked for cash bribes instead of checking documents.

## RELOCATION WITHIN ECOWAS

4.20 Internal relocation alternatives within other member states can generally be accessed due to the Free Movement Protocol. However, this protocol applies not just to an individual of concern, but also to any enforcement and security authorities, non-state actors, and individuals who may wish to pursue an individual of concern across ECOWAS borders.

4.21 Arrests across borders require joint operations or a request for Interpol assistance, which enacts the mutual assistance protocol. The 1986 Supplementary Protocol calls for member states to cooperate in preventing 'illegal or clandestine movement' and preventing the employment of irregular migrant workers. It also outlines a series of measures that member states should introduce, such as actions against the dissemination of misleading information on migration and sanctions on smugglers, traffickers, and employers of irregular migrant workers. In practice, the relevant government authorities' ability to obtain the information they require depends on the strength of the bilateral relationship between the countries concerned.

4.22 Some member states may have differing views on which groups of interest are considered terrorists or political activists, and thus who is considered a national security threat (or not). Member states have demonstrated reluctance to be bound by global legal instruments relating to collaboration on migration, and most prefer to maintain full authority (protection of refugees is an exception).

4.23 DFAT assesses options for relocation within ECOWAS are dependent on the nature of the claim, the relevant member states' national security interests, and the relationship between the member states in question. For example, relocation of a victim of gender-based violence to another member state offering requisite protections may be possible. However, relocation of a person accused of acting against state



interests across member state borders may not be possible (as it may not afford any protection from those pursuing the individual).

## Refugees and Asylum Claims

4.24 There is no mechanism through which an individual can claim asylum directly to ECOWAS. However, ECOWAS confirmed in 2007 that the free movement protocols applied to refugees along with other ECOWAS community citizens. The requirements to claim asylum, or appeal refusal of an asylum claim, vary across ECOWAS member states. Sources report the Ghanaian Immigration Service will allow entry upon a claim for humanitarian protection, at which point a ‘person of concern letter’ will be issued, as well as a certificate of asylum to protect the individual. The Ghanaian Refugee Board then assesses the claim, and an interview and any necessary checks may be performed. If granted, a refugee status card will be issued. DFAT does not have any specific information in relation to asylum claim procedures in other member states.

## 5. DOCUMENTATION

### OVERVIEW

5.1 The security context in the ECOWAS region, as well as the high prevalence of fraud and corruption, have created greater focus on the need for stronger identification systems within ECOWAS. ECOWAS has produced a number of travel documents aimed at facilitating cross-border movement. In practice, restrictive national inadmissibility laws limit the effectiveness of the ECOWAS protocols and documentation in facilitating mobility for community citizens. National rivalries, including between Anglophone and Francophone countries, can manifest through authorities rejecting documents issued in other countries.

5.2 Many migrants within the ECOWAS region have no documentation at all for a variety of reasons, including, but not limited to: inability to prove country of origin or trace parents; lack of access to relevant authorities due to distance; lack of understanding or education regarding the benefits of documentation; and costs associated with obtaining documentation. Living without documentation in a foreign country exposes migrants to risks of police extortion and problems of integration into the formal economy, as well as inability to access other rights guaranteed by constitutions and international human rights treaties.

### ECOWAS Passports and Travel Certificates

5.3 ECOWAS issued a standardised travel certificate in 1985. The travel certificate is a light blue manual card resembling a passport, which is valid for two years and renewable for a further two years. A uniform ECOWAS passport followed in 2000, with a five-year transitional period following during which time national passports could be used. ECOWAS also introduced a Harmonized Immigration and Emigration Form in ECOWAS Member States in 1990.

5.4 Sources advise the ECOWAS travel certificate was initially created to manage the issue of Francophone member state community citizens having national IDs and not passports. The certificate was essentially intended to serve as an emergency passport, limited to a specific journey or requirement, rather than for regular ongoing travel. While Ghana has reportedly phased out issuance of the ECOWAS travel certificates, DFAT understands other member states still issue them. Sources report it is generally quicker, cheaper and easier for ECOWAS community citizens to pay a bribe to enter another ECOWAS member state rather than obtain the ECOWAS certificate.

5.5 In order to address implementation challenges with regard to documented movement of ECOWAS citizens, ECOWAS is currently reviewing documentation requirements. This includes planned replacement of the travel certificate and ECOWAS passport with an ECOWAS national biometric identity card (ENBIC); removal of the residence card requirement for citizens of the community and abolition of the 90-day residence limit; revision of the concept of ECOWAS citizenship; and removal of the health card requirement. DFAT is not aware of the planned timeframe for implementation of the ENBIC, or likely uptake of these planned reforms by individual ECOWAS member states.

## National Identity Cards and Certificates of Identity

5.6 ECOWAS approved the introduction of a national biometric identity card for community citizens in July 2014, but these have not yet been rolled out fully across the ECOWAS region (see 5.5 above). Some countries have national biometric identity cards which are not yet part of the ENBIC system. Most member states do not have a single specific document that is proof of nationality, and a variety of documents may be accepted as proof of nationality in practice, depending on the circumstances. Where they exist (see Table 1 in Appendices), national identity cards usually indicate nationality on the face of the card, and will be accepted as proof of nationality by most institutions. In practice, identity card applications are usually vetted by low-ranking civil servants who are not trained in nationality law. Although complaints mechanisms may theoretically exist for applicants whose applications are wrongfully rejected, reports suggest they can be inaccessible unless the person is well-connected or has some legal assistance. Applicants may also be granted a national identity card even when they are not entitled to it. Nevertheless, government authorities are clear that holding an identity card is not proof of nationality, even in countries where it is mandatory for nationals to do so.

5.7 Proof of identity for voting registration varies greatly across the region. Systems can be circular: in Guinea, for example, it is easier to obtain an electoral card than an identity card, but the electoral card is then regarded as sufficient proof of identity to serve as the basis of an application for an identity card. This lack of a systematic approach can operate both to include people on the electoral roll who should not be there, and exclude those who should. There are theoretical provisions for issuing certificates of nationality in cases of doubt over nationality in Commonwealth countries, but application of these provisions is reportedly unheard of in practice.

5.8 In civil law (Francophone) countries, definitive proof of nationality is provided by a certificate of nationality issued by a tribunal, in line with requirements under nationality codes. A person whose nationality is in doubt is referred to the tribunal. Granting the courts the delegation of authority to decide if someone is a national provides some protection against arbitrary decision-making. However, in practice: legal interpretations can vary across tribunals; it can be difficult to prove all the elements required to obtain recognition of nationality; tribunals are often located in capitals and therefore far from where many people live; administrative staff can be unhelpful; applicants often need to resolve irregularities in their birth certificates or other documents, such as conflicting spelling of names on different official documents due to illiteracy or clerical errors at the time of processing; fraud can lead to issuance of duplicate documentation with the same identification number; intermediaries can charge substantial unofficial fees to assist; maintenance or reconstruction of archives (for example, those destroyed in conflict) is not prioritised; and actual issuance of national certificates is estimated to be low.

## Birth Certificates and Registration Procedures

5.9 Birth registration figures in member states range from more than 90 per cent of all births (Cabo Verde) to fewer than 10 per cent (Liberia). Birth registration rates can fall dramatically during periods of conflict; for example, in Cote d'Ivoire, the birth registration rate decreased from 72 per cent in 2000 to 55 per cent in 2006. However, record keeping and preservation procedures may be weak, even where births have been registered correctly, and an individual may find it impossible to obtain a copy of a birth certificate. International agencies report archiving is virtually non-existent across the ECOWAS region.

5.10 The UN has regularly criticised the low rates of birth registration across ECOWAS member states, highlighting in particular the low rates of registration for children in border areas, the children of refugees, and abandoned children. The UN has noted concerns that lack of birth registration may prevent children from being admitted to school or entering exams, and from obtaining national identity documents on

reaching majority, especially in the Francophone countries. Lack of birth certificates can also prevent citizens from registering to vote and accessing health care.

5.11 A number of countries in the ECOWAS region have adopted new legislative frameworks that decentralise civil registration processes to make them more accessible, including in relation to late registration based on the testimony of witnesses. Moves to improve registration rates have included measures such as support to mobile registration drives or the creation of village committees charged with ensuring all births are registered. Some countries have launched pilot projects supported by mobile phone companies to declare births by short message service. In theory, fees for registration and late registration have also been reduced, or removed altogether, and thus are less of a barrier.

5.12 The children of refugees are often most at risk of non-registration. A valid birth registration must be issued by the state itself, not a UN agency. Although UNHCR seeks to ensure registration occurs, it is dependent on collaboration by national authorities. Registration in a country of refuge can also cause problems. Ivorian refugees have expressed reluctance to have their children registered in Guinea because Guinean birth certificates include a statement of the nationality of the child, with the default option being to state the child was Guinean. The refugees felt this could lead to trouble upon return to Cote d'Ivoire, given the widely believed Ivorian history of suspicion of foreigners.

5.13 Official fees to acquire birth registrations (either at the time of birth or later), identity documentation and certificates of nationality are relatively low, and in some countries have been eliminated altogether. In practice, even low fees can impede registration. Officials and intermediaries commonly level additional unofficial charges, while costs associated with transport and loss of income-generation time also act as significant impediments to those in remote areas.

5.14 All member states provide for nationality to be transmitted on the basis of descent. In Burkina Faso, Cabo Verde, Ghana, Guinea Bissau, Nigeria and Senegal, the child of a father or mother who is a citizen, who was born in or out of the country, or in or out of wedlock, has an equal right to nationality. However, several countries, including Benin, Guinea, Liberia, Sierra Leone and Togo, still discriminate to different degrees with regard to the right of a mother to transmit her nationality to her children.

5.15 Opportunities for late birth registration vary across member states. Even when late birth registration is legally available, it can remain difficult to access and requires substantial evidence and fees. Late registration can be inaccessible for individuals who are not in contact with their extended families. Adoptive parents can usually acquire legal identity documents for an adopted child, but exceptions exist, such as in Sierra Leone, which has no provisions for adoption under nationality law. Customary adoption is common in the ECOWAS region, whereby families take in the children of other family members. Customary adoption is not always supported with documentation demonstrating guardianship.

## Naturalisation

5.16 Costs for naturalisation can be high and there are onerous, cross-country documentation requirements. In practice, the discretionary nature and procedural requirements attached to naturalisation mean naturalisation is only available to a small elite. It can be easier for nationals of countries from outside the region to naturalise in an ECOWAS member state than for other ECOWAS citizens. Naturalisation is often inaccessible to long-term refugees who cannot return home, or who have established their lives in a new country.

## ECOWAS Brown Card Motor Vehicle Insurance Scheme

5.17 A motor vehicle insurance scheme was implemented in 1982, and aims to ensure fair compensation to the victims of road accidents for damages caused by non-residing motorists travelling from other member states. Those entitled to the scheme hold a Brown Card, which is required to facilitate access for motorists across ECOWAS borders. While ECOWAS intends to make the Brown Card scheme universal, at present it is more commonly used in Francophone countries. Sources report Cote d'Ivoire traders also commonly use another form of identity document: a special sticker on their car, which allows travel between borders for a limited period.

5.18 According to sources, border officials commonly extort Brown Card holders, with traders in particular often harassed. In October 2016, the Ghana Haulage Transport Association reportedly accused authorities in some Francophone countries of harassing and showing little respect for Brown Cards issued by insurance companies in Ghana.

## ECOWAS Livestock Passports and International Transhumance Certificates

5.19 ECOWAS member states have issued livestock passports, international transhumance certificates (ITC) and handbooks of travel to ECOWAS pastoralists since 2000. The ITC is a pass issued to transhumant pastoralists and their herds to manage the departure of herds, ensure sanitary protection of local herds, and provide inhabitants of reception zones with advance information on the arrival of transhumant herds.

## Refugee Documentation

5.20 Refugees registered with UNHCR generally receive a UN identification document and a document issued by the relevant national refugee agency of the host country, which recognises their refugee status, and states their nationality or stateless status. Nevertheless, children born to refugee parents in the host country may face difficulties establishing their nationality, depending on whether and how their birth was registered. For refugees who return to their country of origin within a few years, this UN documentation is generally sufficient to provide them both with a legal status in their country of refuge and proof of nationality on return. However, these documents do not protect against harassment by host country security forces, who have reportedly often regarded refugees as an extortion target. It is reportedly common in ECOWAS for people to flee to neighbouring countries during times of civil unrest in their home country and not register as refugees. Rejected asylum seekers are reportedly not always deported, particularly from Nigeria, and therefore remain outside their country of origin without documentation.

5.21 UNHCR invoked cessation clauses under the 1951 Refugee Convention with Sierra Leone and Liberia in 2008 and 2012 respectively in an attempt to resolve the protracted refugee situations resulting from the conflicts in those countries. On invocation of a cessation clause, refugees from the relevant situation become foreigners with the same status (and requirements to regularise their status) as any other foreigner. In-country sources report that, while ECOWAS citizens who have held refugee status in another ECOWAS country should be in possession of a residence permit, it is possible to remain without a permit provided the individual possesses identity documents.

## PREVALENCE OF FRAUD

5.22 As noted elsewhere, corruption is highly prevalent across the ECOWAS region, and can manifest in relation to obtaining all forms of identification document. The unreliable nature of the system means

possession of documents cannot always be trusted as evidence a person is a genuine national, or, if genuine, that the details on the documentation match the holder's actual biodata (even if they fulfil conditions for nationality from birth or procedures for naturalisation).

5.23 Genuine documents with fraudulent information and fraudulent documents with genuine information are both common in the ECOWAS region. Due to the ease of obtaining a genuine document with fraudulent information, sources report only more economically disadvantaged applicants tend to use fraudulent documents. Bribery is not always required to obtain a genuine document with fraudulent information. Sources report it can be as simple as stating 'child x was born in xx on xx date and their name is xx' and obtaining a primary document, which is then used to obtain secondary documentation.

5.24 In many ECOWAS member states, including but not limited to Nigeria, birth and death certificates are not considered documents of trust. Sources report some individuals seek a new birth certificate to change their age in order to apply for a civil service position, scholarship or other benefit, due to age restrictions in many countries. In other cases, applicants may not always be aware of genuine issues of fraud in relation to their documentation. For example, in Senegal the process of digitalising the national identity card system has revealed widespread problems with duplicate or triplicate birth registrations, when the system has rejected people who apply with the same birth certificate number.

5.25 Marriage certificates are similarly easy to purchase. So-called 'ABA' marriage fraud is also common in the region, and occurs when a claimant is married to 'spouse A' in their country of origin, then divorces 'spouse A' to marry 'spouse B' (a foreign national) to obtain a visa. Sources report Nigerian marriage fraud rings reportedly offer vulnerable foreign nationals up to USD15,000 in return for 'love' to facilitate ABA marriage fraud.

5.26 Officials in some member states, such as Nigeria, can override passport biometrics if required to produce a genuine document with fraudulent information. Sources report purchasing a genuine Nigerian passport with fraudulent information is the easiest and cheapest option to commit fraud. Sources also report it is similarly easy to obtain a genuine Ghanaian passport with fraudulent information. In 2016, media reported a fake US Embassy, set up by organised crime, had been exposed after it had been targeting the vulnerable and selling visas and passports in Ghana for ten years.

5.27 Sources report scripts are also commonly available in some ECOWAS member states, such as Ghana, which describe how to make specific protection claims, such as claims based on sexuality. Sources also claim in some member states, such as Ghana and Nigeria, fraud is committed by government authorities applying for travel documents.

5.28 DFAT assesses systems of government administration lack adequate financial, human and material resources and capacity to ensure document integrity and prevent corruption. DFAT assesses that, although degrees of severity vary across ECOWAS member states, generalised corruption is common and documentation is commonly and easily obtained with little to no assessment of entitlement. DFAT notes Guinea is reported to be the most extreme case in this regard. DFAT also assesses there is a well-established history of individuals across ECOWAS using fraudulent (counterfeit or altered) documents and fraudulently obtained genuine documents to obtain visas.

## 6. APPENDICES

Table 1: ECOWAS Documentation; References to ECOWAS Nationals in National Legislation; and Gaps in National Immigration Frameworks with Implications for ECOWAS Nationals

ECOWAS Member State	Abolition of Visa and Entry Requirements for Stays of up to 90 days	ECOWAS Travel Certificate	National ID card	ECOWAS Passport	ECOWAS non-biometric or biometric ID card	Brown Card
Benin	Y	N	Y	Y	N	Y
Burkina Faso	Y	Y	N	-	N	Y
Cabo Verde	Y	N	Y	-	N	N
Cote d'Ivoire	Y	N	Y	Y	N	Y
The Gambia	Y	Y	Y	Y	N	Y
Ghana	Y	Y	Y	Y	Y	Y
Guinea	Y	Y	N	Y	N	Y
Guinea Bissau	Y	N	N	Y	Y	Y
Liberia	Y	N	N	Y	N	Y
Mali	Y	N	Y	-	N	Y
Niger	Y	Y	Y	Y	N	Y
Nigeria	Y	Y	Y	Y	N	Y
Senegal	Y	N	Y	Y	Y	Y
Sierra Leone	Y	Y	Y	Y	N	Y
Togo	Y	N	Y	Y	N	Y

Table 2: References to ECOWAS Nationals in National Legislation and Gaps in Immigration Frameworks

ECOWAS Member State	Other References in National Legislation to ECOWAS Nationals / Gaps in Immigration Frameworks
<b>Benin</b>	<p>Legislation: Specific residence permit for ECOWAS nationals, although rights are not defined.</p> <p>Gaps: No provisions on the status of family members. Requirement for stay permit: proof that the applicant does not have any sexual transmissible diseases. For foreigners who wish to leave their place of residence, the delivery of an authorisation is required.</p>
<b>Burkina Faso</b>	<p>Legislation: No reference in national legislation. No specific residence/stay permit is in place. However, in practice, ECOWAS nationals do not have to apply for the common stay permit (plus family members can join and enjoy full access to the labour market).</p> <p>Gaps: Provisions on the procedures for the delivery of a stay permit are missing. No specific status is defined for long-term residents and migrants' family members.</p>
<b>Cabo Verde</b>	<p>Legislation: Cabo Verde argues their specific situation requires regulation of admission.</p> <p>Gaps: Migrants' rights with regard to education, and participation in demonstrations, strikes, and trade unions are restricted (the legislation is currently being revised with a view to implementing the National Immigration Strategy, and improvements are foreseen as regards the facilitation of family reunification, better access to health and social services, and integration programs).</p>
<b>Cote d'Ivoire</b>	<p>Legislation: Not requested to obtain a residence permit (only identification document is needed).</p> <p>Gaps: Access of foreigners to land ownership is not clearly regulated.</p>
<b>The Gambia</b>	<p>Legislation: Yes, specific residence permit exists for ECOWAS nationals.</p> <p>Gaps: Lack of precision for process of obtaining stay and resident permits. No details with regard to family reunification (although it is mentioned).</p>
<b>Ghana</b>	<p>Legislation: Explicit reference to the absence of visa requirements.</p> <p>Gaps: Detention foreseen when an immigration officer has doubts regarding the right of entry of a person. No maximum detention period or juridical guarantees foreseen. Conditions for granting residence insufficiently defined.</p>
<b>Guinea</b>	<p>Legislation: No specific status is defined.</p> <p>Gaps: Provisions for family reunification are only defined in the case of family members of Guinean nationals and foreign experts (foreigners who are employed by state institutions).</p>
<b>Guinea Bissau</b>	<p>Legislation: No reference in national legislation.</p> <p>Gaps: Equal rights between foreigners and nationals 'based on reciprocity'.</p>
<b>Liberia</b>	<p>Legislation: No. However, the draft National Policy on Migration provides for an amendment of the immigration law.</p> <p>Gaps: Family reunification not foreseen. Discriminatory access to citizenship only for those who are 'Negro or of Negro descent'. Procedures for obtaining immigrant status not clearly defined (the draft National Policy on Migration does include amendment of the immigration law).</p>
<b>Mali</b>	<p>Legislation: No reference in national legislation, but administrative practices respect the right to enter and establish.</p> <p>Gaps: Lack of precision for obtaining stay and resident permits. No details attached to family reunification (although it is mentioned).</p>

<b>Niger</b>	<p>Legislation: No reference in national legislation.</p> <p>Gaps: Only one type of stay permit with a limited duration of 2 years. No provisions for family migration.</p>
<b>Nigeria</b>	<p>Legislation: No, but administrative practices grant ECOWAS nationals an ECOWAS Residence Card, valid for 5 years and renewable. (The draft National Migration Policy envisions a review of the immigration law.)</p> <p>Gaps: Procedures and conditions for granting and renewing residence permit are insufficiently defined. Duration of the permit is not specified. Family migration is not addressed (in practice, foreigners apply for a special permit/card which is valid for 2 years and is renewable).</p>
<b>Senegal</b>	<p>Legislation: No reference in national legislation.</p> <p>Gaps: Absence of provisions regarding the validity length of residence authorisation and status of long-term residents.</p>
<b>Sierra Leone</b>	<p>Legislation: No reference in national legislation. (However, drafting of a new immigration legislation is being considered).</p> <p>Gaps: No detailed provisions or conditions regarding granting permits, durations, renewal, or withdrawal. No provisions regarding family reunification.</p>
<b>Togo</b>	<p>Legislation: No reference in national legislation.</p> <p>Gaps: Conditions and procedures for the delivery of visas and permits and the rights attached to the different statuses are not clearly defined.</p>

Table 3: Immigration Information Captured by ECOWAS Authorities on Entry and Exit

ECOWAS Member State	Immigration related information captured by relevant Government Authorities on entry/exit, or while resident
Benin	The Border Police Agency of Benin collects data on all non-nationals entering the country, irrespective of the duration of stay.
Burkina Faso	The Burkina Faso Immigration Authority collects data on all non-nationals entering the country, irrespective of the duration of stay; The National Employment Promotion Agency (ANPE) collects data on all job applicants (migrants and non-migrants).
Cabo Verde	The Cabo Verde Immigration Authority collects data on people leaving and entering through approved routes.
Cote d'Ivoire	The Ivoirian Immigration Authority collects data on people leaving and entering Cote d'Ivoire through approved routes; The Department of Ivoirians living Abroad (DIE) collects data on Ivoirians who have gone through the consulate registration process.
The Gambia	The Gambia Immigration Department's Statistics Unit uses a questionnaire to collect data on non-Gambian nationals entering and leaving The Gambia.
Ghana	The Ghanaian Immigration Service (GIS) uses administrative procedures (completion of disembarkation forms at the entry point) to collect data on all non-nationals entering the country, irrespective of the duration of stay. The Immigration Quota Committee collects data on immigrants granted work permits. The Ghana Refugee Board collects data on refugees and asylum seekers in the country.
Guinea	The Department of Air and Border Police uses a migrant tracking form to collect data on people entering/leaving Guinea through approved entry points.
Guinea Bissau	No information available
Liberia	The Bureau of Immigration and Naturalization (BIN) collects data on people entering or leaving Liberia through approved routes. The Liberia Refugees Repatriation and Resettlement Commission collects data on refugees, returnees and asylum-seekers. Ministry of Labour uses administrative procedures (Work Permit Application Form) to collect information on the profile of non-Liberians within the labour market.
Mali	The Ministry of Territorial Administration and Decentralization uses a registration form to collect information on Malians and West Africans

	repatriated; The Ministry of Interior Administration collects data on the Malian Diaspora aged 18 years and over.
Niger	La direction de la surveillance du territoire (DST) collects data on foreigners entering Niger.
Nigeria	Nigeria Immigration Service collects data on non-nationals entering Nigeria.
Senegal	No information available
Sierra Leone	Bureau of Immigration collects data on regular, irregular, and temporary migrants and resident aliens. The Ministry of Labour, Employment and Social Security uses the Work Permit Application Form to collect data on non-Sierra Leoneans. The Sierra Leone Refugees and Internally Displaced Persons Commission compiles data on refugees, returnees and asylum-seekers.
Togo	National Immigration and Passport Authority collects data on Togolese and immigrants entering Togo through approved entry points.