

## INCLUSIVITY AND TRANS–BORDER SECURITY UNDER ECOWAS FREE MOVEMENT AND TRANSHUMANCE PROTOCOLS<sup>1\*</sup>

### **Abstract**

Recent world events, such as Brexit and President Trump's 'Make America Great Again' policies, suggest that a growing number of nation-states want a cap on immigration. The situation is not different in West Africa, notwithstanding establishment of the Economic Community of West African States. The ECOWAS Free Movement and Transhumance protocols respectively guarantee free movement of ECOWAS citizens and transhumance livestock across the sub-region. However, because these movements often allow criminal elements and weapons to transit through borders thereby exposing lawful persons in harm's way, there are security concerns on the protocols. From the Nigerian flank, the recent herders–farmers violent conflicts and even the festering Boko Haram insurgency have been linked to the migrations. This paper interrogates the elements of these ECOWAS protocols in view of Nigeria's security situation. The authors proffer measures of abating the security challenge as envisaged under the protocols and recommend ways to balance the needs of security and inclusivity.

**Keywords:** ECOWAS, Migration, Transhumance, Security.

### **1. Introduction**

Member states of the Economic Community of West African States (ECOWAS) fall within the poorest countries in the world and among countries with weak state capacities.<sup>2</sup> ECOWAS was formed in 1975 stemming from the desires of West African political leaders to develop the sub-region.<sup>3</sup> Nigeria piloted negotiations for establishment of the bloc and little wonder, ECOWAS headquarters is in Abuja, Nigeria's capital city.<sup>4</sup> The fifteen member states of ECOWAS are Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.<sup>5</sup> ECOWAS was birthed from the conviction that effective economic cooperation and integration is a prerequisite for harmonious economic development of the member states.<sup>6</sup> For the founding fathers of ECOWAS, easier trans-border migration was a crucial aspect of sub-regional development. More so, for West African peoples, migration is a way of life, dating back to the pre-colonial era as the peoples have migrated over the generations in response to demographic, political and economic factors.<sup>7</sup> Trans-border movement in West Africa is not a new thing and in the pre-colonial times, West Africans were one of the world's most mobile populations<sup>8</sup> although with stricter border controls, unrestrained migration is now impracticable in the post-colonial period. Stricter border controls are necessary for state security in the modern world. However, the vision of the ECOWAS founding fathers in making provisions for intra-ECOWAS migrations is to provide a balance between territorial integrity of member states and integration of ECOWAS community citizens in the post-colonial era. The aim is to achieve integration and facilitate economic exchange and development.<sup>9</sup>

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<sup>2</sup> Abena Oduro and Ivy Aryee, 'Investigating Chronic Poverty in West Africa' (2003) 28 *CPRC Working Paper* <[http://www.chronicpoverty.org/uploads/publication\\_files/WP28\\_Oduro\\_Aryee.pdf](http://www.chronicpoverty.org/uploads/publication_files/WP28_Oduro_Aryee.pdf)> accessed 17 February 2019

<sup>3</sup> ECOWAS Treaty, 1975. The 1975 Treaty was updated as The Revised 1993 Treaty of ECOWAS but retains Article 59 on the right of entry, residence and establishment for community citizens with a concomitant obligation on member states to adopt all appropriate measures for implementing and ensuring this right.

<sup>4</sup> ECOWAS, 'ECOWAS History' <<http://www.ecowas.int/about-ecowas/history/>> accessed 12 March 2019

<sup>5</sup> ECOWAS, 'ECOWAS Member States' <<http://www.ecowas.int/member-states>> accessed 12 March 2019

<sup>6</sup> Adranti Adepoju and Alistair Boulton and Mariah Levin, 'Promoting Integration through Mobility: Free Movement under ECOWAS' (2010) 29(3) *UNHCR Refugee Survey Quarterly*, 3 <<http://www.unhcr.org/49e479c811.pdf>> accessed 10 March, 2019

<sup>7</sup> John Agyei and Ezekiel Clotey, 'Operationalizing ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-Regional Integration' <<https://www.imi.ox.ac.uk/files/events/clotey.pdf>> accessed 15 February 2019

<sup>8</sup> ECOWAS History (n5)

<sup>9</sup> Olusegun Bolarinwa, 'The ECOWAS Free Movement Protocol: Obstacle or Driver of Regional Integration?' (2015) *Insight on Africa*, 7(2), 154–168 <<https://doi.org/10.1177/0975087815580731>> accessed 15 March 2019

This is more so that economic integration is seen as key to development, and a crucial aspect of economic integration was the free flow of persons, goods and services within the sub-region.<sup>10</sup>

The foregoing forms the impetus for the enactment in 1979, of an ECOWAS protocol guaranteeing right of entry, residence and establishment for community citizens. There are supplementary protocols added to this initial protocol. Also, much later in 1998, the ECOWAS member states realizing that transhumance is a major agricultural practice in the sub-region, came up with the Transhumance Decision of 1998 to facilitate the practice. Further, the Transhumance Regulation aimed at improving the implementation of the 1998 Decision was made in 2003. But there is a security concern to freer trans-border movements.<sup>11</sup> As any state would testify, security is a scarce commodity and issues of security must be cautiously treated. Therefore, with the security challenges facing ECOWAS member states as a result of migration,<sup>12</sup> it is a legitimate concern for the states to moot the question whether they should refuse to open their borders to community citizens from other member states (foreigners) if only to inhibit the free movement of terrorists, marauding livestock herders, bandits and other nefarious criminals. However, as much as states would seek to secure the population within their borders from external threats, the demands of international relations mean they cannot live in an isolationistic fashion. They must necessarily, inter-relate with other states. The concern then should not be about closing the borders but about making sure criminal elements and their weapons do not move across the borders. In beginning this work, we discuss the elements of the ECOWAS protocols on free movement and on transhumance. We then appraise the concerns of Nigeria on the continual practicability of the protocols in view of the security risk. Prescriptively, we proffer solutions for abating the insecurity problems through measures envisaged under the protocols. Our recommendations highlight ways to balance the fundamental freedoms of ECOWAS citizens to free movement with member states national security. This way, states can avoid the mutually exclusive choice of sacrificing inclusivity for security or security for inclusivity to the end that ECOWAS is both a secured and an inclusive community.

## **2. Interrogating the Elements Of The ECOWAS Free Movement And Transhumance Protocols**

### **Elements of the ECOWAS Protocols on Free Movement of Persons, Right of Residence and Establishment**

Five protocols guarantee community citizens, the right of entry, residence and establishment within the ECOWAS. The original protocol is the Protocol relating to Free Movement of Persons and the Right of Residence and Establishment 1979.<sup>13</sup> Subsequently added to Protocol 79 are four supplementary protocols, namely:

- (a) Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment made at Lome, Togo on 6<sup>th</sup> July, 1985;<sup>14</sup>
- (b) Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment made at Abuja, Nigeria on 1<sup>st</sup> July, 1986;<sup>15</sup>

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<sup>10</sup> The preamble to Protocol 85 states that implementation of the free movement protocol shall constitute the fundamental basis for building up ECOWAS and influencing harmonious development of the sub-region; The preamble to Protocol 90 states that the implementation of the free movement protocol is a fundamental basis of Community building and a pre-requisite for harmonious development of the economic, social and cultural activities of the ECOWAS States

<sup>11</sup> Julia Tallmeister, 'Is Immigration a Threat to Security?' (2013) *E-International Relations* <<https://www.e-ir.info/2013/08/24/is-immigration-a-threat-to-security/>> accessed 18 January, 2019

<sup>12</sup> ECOWAS, 'ECOWAS Immigration chiefs endorse Nigeria's proposal for the establishment of a Migration Training Academy' <<https://ecowas.int/ecowas-immigration-chiefs-endorse-nigerias-proposal-for-the-establishment-of-a-migration-training-academy/>> accessed 10 January, 2019

<sup>13</sup> Protocol A/P.1/5/79 made at Dakar, Senegal on 29<sup>th</sup> May, 1979 ("Protocol 79") <[http://documentation.ecowas.int/download/en/legal\\_documents/protocols/PROTOCOL%20RELATING%20TO%20FREE%20MOVEMENT%20OF%20PERSONS.pdf](http://documentation.ecowas.int/download/en/legal_documents/protocols/PROTOCOL%20RELATING%20TO%20FREE%20MOVEMENT%20OF%20PERSONS.pdf)> accessed 12 January, 2019

<sup>14</sup> "Protocol 85" <[http://documentation.ecowas.int/download/en/legal\\_documents/protocols/Supplementary%20Protocol%20on%20the%20Code%20of%20Conduct%20for%20the%20Implementation%20of%20the%20Protocol%20on%20Free%20Movement%20of%20Persons,%20Right%20of%20Residence%20and%20Establishment.pdf](http://documentation.ecowas.int/download/en/legal_documents/protocols/Supplementary%20Protocol%20on%20the%20Code%20of%20Conduct%20for%20the%20Implementation%20of%20the%20Protocol%20on%20Free%20Movement%20of%20Persons,%20Right%20of%20Residence%20and%20Establishment.pdf)> accessed 12 January, 2019

<sup>15</sup> "Protocol 86" <[http://documentation.ecowas.int/download/en/legal\\_documents/protocols/Supplementary%20Protocol%20on%20the%20Second%20Phase%20\(Right%20of%20Residence\)%20of%20the%20Protocol%20on%20Free%20Movement%20of%20Persons,%20Right%20of%20Residence%20and%20Establishment.pdf](http://documentation.ecowas.int/download/en/legal_documents/protocols/Supplementary%20Protocol%20on%20the%20Second%20Phase%20(Right%20of%20Residence)%20of%20the%20Protocol%20on%20Free%20Movement%20of%20Persons,%20Right%20of%20Residence%20and%20Establishment.pdf)> accessed 12 January, 2019

- (c) Supplementary Protocol A/SP.1/6/89 Amending and complementing the provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment made at Ouagadougou on 30<sup>th</sup> June, 1989;<sup>16</sup> and
- (d) Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment made at Banjul on 29<sup>th</sup> May, 1990.<sup>17</sup>

As disclosed by its preamble, Protocol 79 aims at implementing the provisions of Article 2(2)(d)<sup>18</sup> and Article 27<sup>19</sup> ECOWAS Treaty. Part I of Protocol 79 is on Definitions.<sup>20</sup> Part II deals with the General Principles of Movement of Persons, Residence and Establishment and provides that community citizens have the right to enter, reside and establish in territory of member states. This right of entry, residence and establishment is to be progressively established in a 15 year transitional period and in three phases: Phase I – Right of Entry and Abolition of Visa; Phase II – Right of Residence and Phase III – Right of Establishment. In its Part III, Protocol 79 contains provisions for implementation of Phase I. By the provision, any community citizen who wishes to enter the territory of another Member State shall possess valid travel document and international health certificate, shall enter through the official entry point and may stay visa-free for a period not exceeding ninety (90) days. But member states reserve the right to refuse admission to community citizen categorized as inadmissible immigrants under its laws.<sup>21</sup> In supplementing Protocol 79, Article 1 of Protocol 85 clarifies some important terminologies relating to Protocol 79:

- (i) ‘Right of Residence’ means the right granted to a citizen who is a national of one Member State to reside in another Member State;
- (ii) ‘Resident’ means any citizen who is a national of a Member State to whom the right of residence is granted;
- (iii) ‘Right of establishment’ means the right granted to a citizen who is a national of one Member State to settle or establish in another Member State, and to have access to economic activities, to carry out these activities, set up and manage enterprises;
- (iv) ‘Migrant’ means a national of one Member State of the Community who has travelled from his country to the territory of another Member State.

Also, Protocol 85 creates an obligation on member states to provide valid travel documents to their citizens, establishes additional requirements for treatment of persons being expelled and enumeration of protections for illegal immigrants. Next in line is Protocol 86 which makes detailed provisions for realization of Phase II -right of residence- of Protocol 79. Protocol 86 provides the substance for the right of residence by granting Community citizens, who are nationals of one member state, the right to reside in another member state’s territory for the purpose of seeking and carrying out employment.<sup>22</sup> This right is however, subject to restrictions justifiable by reasons of public order, public security and public health.<sup>23</sup> Protocol 86 also stipulates that the pre-condition entitling right of residence is possession of an ECOWAS Residence Card or Permit and provides for harmonization of procedure for issuance of the card.<sup>24</sup> The Protocol also contains provisions for protecting border area workers,

<sup>16</sup> “Protocol 89”

<[http://documentation.ecowas.int/download/en/legal\\_documents/protocols/Supplementary%20Protocol%20Amending%20and%20Complementing%20the%20Provisions%20of%20Article%207%20of%20the%20Protocol%20on%20Free%20Movement,%20Right%20of%20Residence%20and%20Establishment.pdf](http://documentation.ecowas.int/download/en/legal_documents/protocols/Supplementary%20Protocol%20Amending%20and%20Complementing%20the%20Provisions%20of%20Article%207%20of%20the%20Protocol%20on%20Free%20Movement,%20Right%20of%20Residence%20and%20Establishment.pdf)> accessed 12 January, 2019

<sup>17</sup> “Protocol 90”

<[http://documentation.ecowas.int/download/en/legal\\_documents/protocols/Supplementary%20Protocol%20on%20the%20Implementation%20of%20the%20Third%20Phase%20\(Right%20of%20Establishment\)%20of%20the%20Protocol%20on%20Free%20Movement%20of%20Persons,%20Right%20of%20Residence%20and%20Establishment.pdf](http://documentation.ecowas.int/download/en/legal_documents/protocols/Supplementary%20Protocol%20on%20the%20Implementation%20of%20the%20Third%20Phase%20(Right%20of%20Establishment)%20of%20the%20Protocol%20on%20Free%20Movement%20of%20Persons,%20Right%20of%20Residence%20and%20Establishment.pdf)> accessed 12 January, 2019

<sup>18</sup> Which mandates member states to progressively ensure the abolition of obstacles to free movement

<sup>19</sup> Conferring the status of Community citizenship on citizens of Member States and enjoining Member states to abolish obstacles to freedom of movement and residence. It also mandates Member States to exempt Community citizens from holding visitor’s visas and residence permits and to allow them to work and undertake commercial and industrial activities within their territories.

<sup>20</sup> For example, it defines; "Community" as the Economic Community of West African States; "Member State" as a Member State of the Economic Community of West African States; "A citizen of the Community" as a citizen of any Member State.

<sup>21</sup> Article 4

<sup>22</sup> Article 2

<sup>23</sup> Article 3

<sup>24</sup> Articles 5-9

seasonal workers and itinerant workers.<sup>25</sup> Furthermore, it protects community citizens who are migrants against collective and arbitrary expulsion and limits the grounds for individual expulsion to national security, public order or morality, public health and non-fulfillment of essential condition of residence.

On its part, Protocol 89 amends the provisions of Article 7 of Protocol 79 to confirm obligation on signatories to amicably resolve disputes regarding the interpretation and application of the Protocol. Protocol 90 is the final supplement to Protocol 79. It provides the substance for Phase III of Protocol 79 (i.e., the right of establishment). In doing so, Protocol 90 defines the right of establishment and emphasizes non-discriminatory treatment of nationals and companies of other member states except as justified by exigencies of public order, security or health.<sup>26</sup> Protocol 90 forbids confiscation or expropriation of assets or capital on a discriminatory basis and requires fair and equitable compensation where such occurs.<sup>27</sup> Overall, the five free movement protocols sought to achieve the right of visa-free entry, residence and establishment within the ECOWAS Community by Community citizens within a 15 year period (5 year for each phase). By 1980, Protocol 79 was ratified by all ECOWAS member states. Phase I on right of entry has been fully implemented as Community citizens can enter and stay in member states visa-free for up to 90 days.<sup>28</sup> Phase II on right of residence was equally ratified by all member-states and became effective in July, 1986 and has been implemented with the advent of the ECOWAS Residence Card. Phase III on the right of establishment is outstanding.<sup>29</sup>

However, even with the adoption of the supplementary protocols, the objective of freedom of movement in the sub-region as envisaged by Protocol 79 has not yet been realized and the system of harmonized migration documents foreseen by ECOWAS Council of Ministers in 1992 has not been implemented anywhere.<sup>30</sup> Further, while ECOWAS urged member states to establish national committees to monitor implementation of protocols, only about half of the member states have so far done so and even at that, the work of these monitoring committees remain somewhat opaque and has generally, failed to effectively promote knowledge of or compliance with the protocols.<sup>31</sup> The table below illustrates the implementation of selected ECOWAS initiatives:<sup>32</sup>

<b>Country</b>	<b>Abolition of Visa and entry requirements for 90-day stay</b>	<b>Introduction of ECOWAS travel certificate</b>	<b>Harmonized immigration and emigration forms</b>	<b>National committee for monitoring free movement of persons and vehicles</b>
Benin	Yes	No	No	Yes
Burkina Faso	Yes	Yes	No	Yes
Cape Verde	Yes	No	No	No
Cote d'Ivoire	Yes	No	No	No
The Gambia	Yes	Yes	No	No
Ghana	Yes	Yes	No	No
Guinea	Yes	Yes	No	No
Guinea Bissau	Yes	No	No	No
Liberia	Yes	No	No	No
Mali	Yes	No	No	Yes
Niger	Yes	Yes	No	Yes
Nigeria	Yes	Yes	No	Yes
Senegal	Yes	No	No	No
Sierra Leone	Yes	Yes	No	No
Togo	Yes	No	No	Yes

<sup>25</sup> Articles 10-12

<sup>26</sup> Articles 2-4

<sup>27</sup> Article 7

<sup>28</sup> UNECA 'ECOWAS Free Movement of Persons' <<http://www.uneca.org/pages/ecowas-free-movement-persons>> accessed 31 January 2019

<sup>29</sup> Aderanti Adepoju, 'Promoting Integration through Mobility (n7)

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid. Adapted from Table I at p. 5

### Elements of the ECOWAS Transhumance Decision 1998

The ECOWAS Decision A/DEC.5/10/98 relating to the regulations on Transhumance between ECOWAS Member States<sup>33</sup> was made at the 21<sup>st</sup> Conference of Heads of States at Abuja, Nigeria on 31<sup>st</sup> October, 1998. The decision was made to develop livestock breeding as an integral part of food security policy so as to alleviate the numerous technical, climatic, legal and socio-economic constraints of livestock breeding through regulated transhumance.<sup>34</sup> Under the Decision, animals of the bovine, caprine, cameline, equine plus asinine species (transhumance livestock) are allowed free passage across borders of all Member States, under certain conditions.<sup>35</sup> The main condition is possession of ECOWAS International Transhumance Certificate.<sup>36</sup> The certificate contains details on composition of herd, vaccinations given, itinerary of herds, border posts to be crossed, and the final destination. It is issued by the livestock department and initiated by the local administrative authorities in country of origin. The certificate is verified and counter-signed by competent authorities at entry and exit points in the host country.<sup>37</sup> The Decision restricts transhumance herds to routes defined by Member States in accordance with the itinerary indicated on the ECOWAS International Transhumance Certificate.<sup>38</sup> It also prohibits transhumance livestock from crossing borders during the night.<sup>39</sup> Further, and without prejudice to the sanctions provided for in the laws of the country concerned, herds not covered by a certificate are to be placed under quarantine and the costs borne by the owners.<sup>40</sup> Chapter IV of the Decision provides for supervision of nomadic livestock.<sup>41</sup> Transhumance livestock must be constantly guarded by sufficient herdsmen (one herdsman to a maximum of fifty heads of cattle and in all cases, a minimum of two herdsmen) both while moving and during grazing. The herdsman, who must be at-least 18 years old, must possess identity papers duly issued by competent authorities. Also, transhumance livestock must enter and depart host country within the period so fixed by the host country and while within the host country, may only graze in zones allotted to them.<sup>42</sup>

### Elements of the ECOWAS Transhumance Regulation 2003

The ECOWAS Transhumance Regulation<sup>43</sup> was made at the 49th session of the Council of Ministers in Dakar, Senegal, 2003. Its aim is to improve on the ECOWAS Transhumance Decision 1998. Article 1 of the Regulation provides for measures member states should take at national level to include establishment of national committees to manage, monitor and appraise transhumance. Member states are also to organize education programs directed at transhumant herdsmen and the different actors involved in transhumance as well as ensure strict compliance with the ECOWAS Transhumance Decision and ECOWAS Free Movement Protocols. Article 2 of the Regulation provides for measures to be taken at the level of ECOWAS Executive Secretariat to include technical and financial support, printing and circulating the ECOWAS international transhumance certificate, organizing meetings on transhumance in the region and conducting up to date studies on transhumance routes and itineraries. On its part, Article 3 provides for measures to be taken concertedly by both member states and the ECOWAS organization to include coverage of transhumance routes, creation of information and communications network for transhumance, creation of a Ministerial monitoring committee on transhumance, creation of a regional transhumance observatory to monitor compliance with ECOWAS measures and promotion of dialogue and collaboration between Member States on transhumance related issues.

<sup>33</sup> ECOWAS, 'Decision A/DEC.5/10/98 Relating to the regulations on Transhumance between ECOWAS Member States' (1998) *Official Journal of the Economic Community of West African States* <<http://ecpf.ecowas.int/wp-content/uploads/2016/01/Decision-1998-English.pdf>> accessed 22 January 2019

<sup>34</sup> See the Preamble of the Decision. Article 2 of the Decision defines transhumance as the seasonal movement between Member States of herds leaving their usual grazing areas in search of water and pasture

<sup>35</sup> Article 3

<sup>36</sup> Article 5

<sup>37</sup> Article 6

<sup>38</sup> Article 7

<sup>39</sup> Article 8

<sup>40</sup> Article 9

<sup>41</sup> Articles 10-13

<sup>42</sup> Article 14

<sup>43</sup> ECOWAS, 'Regulation C/REG.3/01/03 Relating to the Implementation of Regulations on Transhumance between the ECOWAS Member States' (2003) 42 *Official Journal of Economic Community of West African States* <<http://ecpf.ecowas.int/wp-content/uploads/2016/01/Regulation-2003-English.pdf>> accessed 12 March 2019

### **3. ECOWAS Free Movement and Transhumance Protocols and Insecurity in Nigeria**

Notwithstanding the claim that studies on sub-regional integration in West Africa affirm that one of the reasons for integration is Nigeria's selfish interest,<sup>44</sup> three fundamental security challenges facing Nigeria, namely farmers-herders violent conflict, Boko-Haram insurgency and activities of marauding cattle rustlers and bandits have been attributed to migrants from other West African states.<sup>45</sup> The violent herders-farmers conflict is Nigeria's most vicious security challenge that is more directly linked with the ECOWAS free movement and transhumance protocols. The conflict which, fundamentally, is with respect to land and water resource use, has now assumed religious, tribal and political dimensions.<sup>46</sup> The states within the middle-belt of Nigeria such as Benue, Taraba, Adamawa, Nassarawa and Plateau are most affected by the conflict. Exacerbating the herders-farmers conflict is the ease of accessing small and light weapons as well as ease of trans-border movements of mercenary elements who use the trafficked weapons to spur even more conflict. In this connection, the conflicts in neighboring countries like Libya, has led to the availability of small and light, but sophisticated illegal weapons.<sup>47</sup> This is facilitated by Nigeria's porous borders and poor identification regime<sup>48</sup> meaning mercenary elements easily move across the borders. The conflict has led to colossal loss of lives, displacement of communities, loss of properties and loss of livelihoods.<sup>49</sup> One writer lamented that the free movement and transhumance protocols aid deadly crimes in Nigeria, further warning that if the trend continues, the situation would exacerbate to even more ugly atrocities.<sup>50</sup> The writer reports Nigeria's Chief of Army Staff stating that Boko Haram terrorist elements masquerade as herdsmen to enter the country and cause violence.<sup>51</sup> Another report quotes Nigeria's Minister of Agriculture and Rural Development as stating that the protocols is the reason why herdsmen and cattle from ECOWAS member states are allowed to free movement across Nigeria, adding that nothing much can be done from that angle with respect to the farmers-herders violent conflict even though it is accepted that some of these migrant herders are responsible for the violent conflict.<sup>52</sup> Furthermore, while declaring open the ECOWAS Ministerial Meeting on Conflicts between Herders and Farmers in the region, Nigeria's President Muhammadu Buhari established a link between the herders-farmers killings and the ECOWAS protocols, blaming the conflict on non-implementation of protocols.<sup>53</sup> Due to the linkage between intra-ECOWAS migration and the heightening insecurity in Nigeria, many Nigerians have called on Nigeria to break faith with the ECOWAS protocols. Dr. Samuel Ortom, Governor of Nigeria's Benue State – which is perhaps, the state, most affected by the conflict- is one of such

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<sup>44</sup>Abimbola Opanike and Ayodeji Aduloju and Lawrence Adenipekun, 'ECOWAS Protocol on Free Movement and Trans-border Security in West Africa' (2015) 4 *Journal of Civil Legal Science* 154 <<https://www.omicsonline.org/open-access/ecowas-protocol-on-free-movement-and-transborder-security-in-west-africa-2169-0170-1000154.php?aid=60339>> accessed 21 January 2019

<sup>45</sup> Adetula David, 'ECOWAS Transhumance Protocol Aids Crime in Nigeria' (2016) <<http://venturesafrica.com/obama-foundation-leaders-2018>> accessed 12 January 2019

<sup>46</sup> M.B. Tukur, 'Perspectives on the Conflicts between Farmers and Transhumant Pastoralists in Nigeria' (2013) <<https://pastoralist2.wordpress.com/2013/06/11/conflicts-between-transhumant-pastoralist-and-farmers-in-nigeria-the-way-out/>> accessed 12 March 2019

<sup>47</sup> Helios Global, 'Libya: Weapons Proliferation and Regional Stability in the Sahel' (August 30 2013) *Fair Observer* <[https://www.fairobserver.com/region/middle\\_east\\_north\\_africa/weapons-proliferation-libya-threatens-stability-sahel-northwest-africa/](https://www.fairobserver.com/region/middle_east_north_africa/weapons-proliferation-libya-threatens-stability-sahel-northwest-africa/)> accessed 22 March, 2019

<sup>48</sup> Nigeria does not have a comprehensive database of its citizens with attendant consequence on security. See Johnson Rotimi and Onakoya Francis Ojo Adebayo and Olumide Owolabi, 'Creation of Central National Database in Nigeria: Challenges and Prospects' (2013) 3(12) *Information and Knowledge Management Journal* <[www.iiste.org/Journals/index.php/IKM/article/download/9640/9757](http://www.iiste.org/Journals/index.php/IKM/article/download/9640/9757)> accessed 22 March 2019

<sup>49</sup> Nneka Oli and Christopher Chaimaobi and Ignatius Nwakwo, 'Prevalence of Herdsmen and Farmers Conflict in Nigeria' (2018) 3(1) *International Journal of Innovative Studies in Sociology and Humanities* <<http://ijissh.org/wp-content/uploads/2018/01/IJISSH-030103.pdf>>

<sup>50</sup> Abimbola Opanike, 'ECOWAS Protocol on Free Movement and Trans-border Security' (n46)

<sup>51</sup> Ibid

<sup>52</sup> Godfrey Ewepu 'Herdsmen: ECOWAS treaty allows movement of persons' (June 11, 2016) *Vanguard* <<https://www.vanguardngr.com/2016/06/herdsmen-ecowas-treaty-allows-movement-persons-animals-ogbeh/>> accessed 22 January 2019

<sup>53</sup> Buhari blames security challenges on failure of ECOWA protocol' *Journal du Cameroun* <<https://www.journalducameroun.com/en/buhari-blames-security-challenges-on-failure-of-ecowas-protocol-on-free-movement/>> accessed 17 January 2019

persons as he posits that the protocols undermine Nigeria's security.<sup>54</sup> But experts have warned that breaking faith with the ECOWAS protocols is a radical measure of fundamental implications, adding that the whole ECOWAS organization could break up if Nigeria does not tactfully handle its concerns over the issue.<sup>55</sup> One of these experts proffered a solution:

I don't think people's freedom to move is the issue. Rather... if the member states do security checks adequately, they will be able to tackle these people. The free movement protocol does not permit terrorists. So, if terrorists are infiltrating, it is not the pact that should be scrapped. What we need to do is that each country should set up proper surveillance... The problem is not the pact but poor security architecture. The borders are porous. The security framework should be reviewed and made tighter. Amending the pact will not change anything. We should amend our border security.

#### **4. Balancing the Freedoms of ECOWAS Citizens and Livestock to Free Movement with Member States' Security Concerns**

Despite the linkage between the protocols and worsening insecurity in Nigeria, we submit that the fault is not in the protocols themselves but in the lack of proper implementation thereof. So, abrogating the protocols would be akin to throwing the baby with the bath water. With proper implementation of the protocols, Nigeria can change the narration on the herders-farmers violent conflict and its attendant carnage. There is no truth to the logic credited to Nigeria's Minister of Agriculture and Natural Resources that there is nothing Nigeria can do to forestall migrating herders and cattle from causing insecurity in Nigeria. Nigeria can do something- it can properly implement the protocol and ensure only legitimate and duly approved migrants and transhumance livestock cross into its borders and when they do cross over, that they move or graze in a regulated manner. If the foregoing is appreciated, then we do not need to sacrifice the freedoms of movement of migrants and transhumance livestock on the altar of state security. The protocols are not the problem and certainly, scrapping them is not the cure. Proper diagnosis would show that non-implementation of safeguard provisions embedded in the protocols is the disease and therefore, the proper medication would be effective implementation. The vision of ECOWAS founding fathers should not be derailed by a failure to comply with the safeguards that they, in their wisdom and foresight, embedded in the protocols. Indeed, we can have both inclusivity and security. We need not sacrifice the one for the other. The following are safeguard measures embedded in the protocols which when robustly implemented or enforced, would ensure security and inclusivity within the ECOWAS sub-region:

**Implementation of the documentation requirement:** Article 3 of Protocol 79 stipulates the conditions for free movement by ECOWAS citizens to include possession of a valid travel document and an international health certificate. The rule is that community citizens shall enter the territory of another member state only through the official entry point.<sup>56</sup> The question is, do the migrating community citizens coming into Nigeria and causing violent conflicts, possess valid travel documents and international health certificates? Importantly, do they enter into Nigeria through the official entry points? Apparently, the answers to these posers are in the negative. It should be appreciated that free movement is not haphazard movement and for any community citizen to enter into Nigeria's territory under the free movement protocol, they must enter at the official border post. It is at such point that they would be asked of travel documents and international health certificate. In other words, migrating community citizen entering through the official points of entry should be properly documented so that they can be tracked as necessary. Sadly, nothing much is done in this area. It is incumbent on Nigeria's government through the Nigeria Immigration Service to properly man the country's border points to ensure migrating community citizens do not migrate along the unofficial border posts. Migrating community citizens who use the unofficial border posts are to be seen, labeled and treated as illegal migrants. Also, community citizens migrating through official border posts are to be duly documented. Importantly, there should be a biometric database of all persons who enter into Nigeria through means of ECOWAS protocols. In this way, the incidence of criminal elements moving into Nigeria would be greatly diminished if not eradicated.

<sup>54</sup> n. 54

<sup>55</sup> Ebiri Onyekwere Salau 'ECOWAS protocol on free movement: Experts caution FG over risky moves' *TheGuardian* <<https://guardian.ng/news/experts-caution-fg-over-risky-moves/>&#x27; accessed 28 January 2019

<sup>56</sup> Article 3

**Implementation of the right to refuse admission:** The right to refuse admission as provided in Article 4 of Protocol 79 is better appreciated when taken together with the provisions of Article 3 thereof that entry should be through official border posts. Article 4 provides that even where a community citizen possesses valid travel document and an international health certificate and presents himself for right of entry at any official entry point, a Member state nevertheless reserves the right to refuse admission if the migrating community citizen falls within the category of inadmissible immigrants under the state’s domestic laws. This provision has been criticized for providing broad scope to member states to undercut the goal of free movement under the protocol through overly restrictive domestic inadmissibility laws.<sup>57</sup> However, we consider this provision as a necessary safety net for balancing free movement with national security and as such, a justified measure. ECOWAS member states have enacted a number of domestic laws for controlling migration on the grounds of economic stability and territorial integrity. Generally, the migrants kept out are those without valid reasons for migration or are unable to provide any evidence of concrete work opportunity in the host country. Generally also, migration is controlled on the basis of public order, public security and public health. For example, migrants likely to become a public charge; those convicted of crimes; those whose presence is deemed contrary to interest of national security; persons against whom an order of deportation is in force; and individuals without a valid passport, are prohibited from entering into Nigeria.<sup>58</sup> It stands to reason that the migrants coming into Nigeria and causing violent conflict could be sieved out from the country on these grounds.

**Implementation of the transhumance certificate requirement:** Article 3 of the Transhumance Decision 1998 provides for free passage for transhumance livestock across the borders of all Member State. However, this free passage is, by the same Article 3, made subject to ‘...the conditions set out in this Decision.’ The prominent condition as stipulated in Article 5 of the Decision is that all such transhumance livestock shall ‘...have the ECOWAS International Transhumance Certificate.’ The certificate contains details on the composition of herd, vaccinations given, itinerary of herds, border posts to be crossed and final destination. The certificate is issued by the livestock department and initiated by the local administrative authorities in the country of origin. The aims of the certificate are: (i) to enable authorities monitor herds before they leave country of origin; (ii) to protect the health of local herds; and (iii) to make it possible to inform host communities of the arrival of transhumance animals. Regrettably, there is scarcely any migrant transhumance livestock grazing in Nigeria that possesses the ECOWAS International Transhumance Certificate. Article 6 of the Decision provides further that the certificate shall be verified and counter-signed by the competent authorities at entry and exit points in host country. This is hardly done. Article 9 of the Decision stipulates that without prejudice to sanctions provided for in laws of the country concerned, herds not covered by a certificate shall be placed under quarantine and the costs borne by the owners. The question is, how many times have transhumance livestock in Nigeria, without the requisite certificate been quarantined and their owners sanctioned? Zero! There is no such case reported. There is therefore, the urgent need for Nigerian authorities to fully implement the transhumance certificate requirements.

**Implementation of the monitoring system for transhumance livestock:** Under the Transhumance Decision 1998, transhumance herds are restricted to routes defined by Member States in accordance with the itinerary indicated on the transhumance certificate.<sup>59</sup> The Decision also prohibits crossing of borders during the night.<sup>60</sup> If the transhumance livestock coming into Nigeria are made to follow a defined route and restricted to day grazing, as envisaged under the Decision, the possibility of violent conflict would be minimized. Moreover, the Decision provides for supervision of nomadic livestock.<sup>61</sup> It stipulates that both while moving and while grazing, transhumance livestock must constantly, be under the guard of sufficient and duly validated herdsmen. But the questions whether the transhumance livestock grazing in Nigeria are sufficiently guarded and whether the herdsmen guarding them possess duly authenticated identity documents are bound to attract negative answers. This trend must be reversed for a secured Nigeria. Furthermore, it is not envisaged under the ECOWAS protocols that transhumance livestock are to enter and exit the host country just anyhow. The

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<sup>57</sup>Aderanti Adepoju ‘Operationalizing the ECOWAS protocol on Free Movement of Persons: Prospects for sub-regional Trade and Development’ <<https://www.gfmd.org/files/documents/AdepojuS8.pdf>> accessed 29 January, 2019

<sup>58</sup> Section 17 of Nigeria Immigration Act

<sup>59</sup> Article 7

<sup>60</sup> Article 8

<sup>61</sup> Chapter IV (Articles 10-13)

Decision provides that the transhumance livestock must enter and depart host country within the period so fixed by the host country.<sup>62</sup> Additionally, the transhumance livestock may only graze in allotted zones.<sup>63</sup> These provisions of the Decision are scarcely implemented. The fact is that with proper monitoring as envisaged under the Decision, transhumance livestock grazing would not be haphazard but organized in a way that it would not pose security challenges. If the livestock arrive and depart through designated points, move along designated grazing routes, are supervised by duly certified herdsmen and graze only within designated grazing zones, there would hardly be any conflict, not to talk of the carnage that is now the order of the day.

**Implementation of the provisions of the Transhumance Regulations 2003:** The Transhumance Regulations 2003 was made to improve on the Transhumance Decision 1998. In line with the requirements of the Regulations, Nigeria is called upon, to take certain measures at the national level. Such measures include sensitization and education campaigns and programs directed at transhumant herdsmen and other relevant stakeholders; establishment of national committee to manage transhumance and ensuring compliance with the ECOWAS protocols. On its part, the ECOWAS Executive Secretariat is to provide technical and financial support for education programs; print and circulate the ECOWAS international transhumance certificate; organize meetings to program transhumance, and otherwise facilitate transhumance.<sup>64</sup> All these are measures within the protocols that are envisaged for conflict prevention and resolution. They need to be implemented.

## 5. Conclusion

Despite the concerns of Nigeria and many of its citizens, that the ECOWAS protocols are aiding crime, notably herders-farmers violent conflict, proper analysis disclose that these ills happen because the protocols have not been properly implemented. Embedded within the protocols are measures to guard against misuse and to prevent criminal elements from crossing borders and causing mayhem. Nigeria should not because of the inadequacies in implementation, throw the baby with the bath water by renegeing on the protocols. The protocols are an important aspect of regional integration and development under the auspices of the ECOWAS. We need ourselves more. Just recently, Africa came up with a continent-wide free movement agreement to complement the Africa Continental Free Trade Agreement. These are south-south cooperation that should be encouraged since the north-south cooperation has largely failed Africa. We live in a globalized world and we can hardly survive if we act in an isolationistic manner. We must relate more and trade more with our kith and kin in West Africa and in Africa. That is the way to achieve the economic gains envisaged by the ECOWAS Treaty. However, apart from the measures embedded in the protocols, ECOWAS can do more to ensure it does not sacrifice security on the altar of integration. For example, ECOWAS may want to move with the times and review the whole transhumance experience in favor of ranching.<sup>65</sup> ECOWAS must explore all its options and appoint innovative solutions ranging from law enforcement, climate change and reforms in agricultural practices. Some of these innovative solutions were identified at the ECOWAS Regional Meeting of the Ministers in Charge of Security and Agriculture/Livestock on Transhumance held at Abuja, 26th April, 2018 which, among others, recommended review of the implementation of existing regulatory frameworks relating to transhumance and control of proliferation of small arms. At the end, and no matter the course of action chosen, ECOWAS and its member states must not sacrifice security for inclusivity or vice versa. Indeed, the two ideals are not mutually exclusive. We can have a secured and inclusive West African Community. We only need to play by the book. Acting in isolationistic manner would defeat the aims of ECOWAS. As poor as ECOWAS countries are and with their weak state capacities, they surely need each other. The checks and balances inherent in the free movement and transhumance protocols must be robustly implemented or reviewed to ensure security is ensured in an inclusive or integrated West African community.

<sup>62</sup> Article 14

<sup>63</sup> Article 15

<sup>64</sup> Article 2 of the Regulation

<sup>65</sup> ECOWAS, 'ECOWAS Regional Meeting of the Ministers in charge of security and Agriculture/Livestock on Transhumance' <<http://www.ecowas.int/wp-content/uploads/2018/05/Ministers-Meeting-Report-Final.pdf>> accessed 17 February, 2019