

# THE CRISIS OF INTERNATIONAL MIGRATION IN AN INTEGRATING WEST AFRICA: A Case Study of Nigeria and Ghana

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## **1. Introduction**

In November 1969 an estimated three hundred thousand immigrants were given fourteen days by the newly elected government of Dr. Busia within which to regularize their residence in Ghana or leave the country. The large majority were Voltaics (now Burkinabe), Nigerians, Togolese and Liberians. Many were long-term immigrants, among them the farm labourers who had helped create the cocoa boom of the 1950s, and other labourers and petty-traders who had been attracted to Ghana by that boom. Others had responded to the promise and romance of Ghana's independence in 1957, and to the hand of friendship extended by the Nkrumah government to Africans everywhere. The wretched drama of the trekking thousands during the weeks that followed may also have been a signal of the severe crisis already beginning to develop in Ghana's economy and its post-colonial state.

In January 1983 the world's media made spectacle out of a human tragedy, as an estimated two million West Africans hurried to beat a two-week deadline given to illegal immigrants to leave Nigeria. Drawn to Nigeria by a demand for their labour during the oil boom of the mid-1970s, they were expelled amidst accusations of being criminals, prostitutes and unemployed vagrants. While philanthropic Non-governmental Organisations (NGOs) rushed to their rescue with emergency aid and agencies of the United Nations debated which of them had mandated responsibility of alleviating the suffering of this human tide, the secretariat of the Economic Community of West African States (ECOWAS) looked on helplessly. The Executive Secretary of ECOWAS, Dr. Aboubakar Diaby-Ouattara declared that

the expulsion order was not a violation of the ECOWAS Protocol Relating to the Free Movement of Persons. President Mathieu Kerekou of Benin, in his capacity as chairman of the Economic Community, made a visit to Lagos to discuss the disquietude of his colleagues with the Nigerian government, at the end of which, however, a joint statement was issued by Presidents Kerekou and Shagari to assure West Africans that the expulsions would have no adverse effect on the development of ECOWAS. Apart from strong condemnation by the governments whose nationals were most affected, most notably the Ghanaian, Togolese and Liberian governments, the reaction of most other West African governments, though disapproving, was muted.

The unanimity with which the popular press in Nigeria supported the Shagari government's expulsion order and attacked hostile foreign press coverage of the exodus seemed complete. Yet within Nigeria itself there were significant dissident voices. Notable among these were Chief Obafemi Awolowo and Dr. Nnamdi Azikiwe, both old-time politicians and leaders of the major opposition parties, the Unity Party of Nigeria (UPN) and the Nigerian People's Party (NPP), who warned of the damage it would do to Nigeria's continental image and role. And throughout this period and especially more recently during April 1985 when the military government of General Buhari again expelled an estimated 700,000 illegal immigrants, a steady but little publicised minority body of opinion which recognises the futility and crudeness of these sudden mass expulsions has emerged, particularly among the intelligentsia. Often citing the Ghanaian example, this body of opinion has emphasized the total failure of mass expulsions to achieve any of the objectives for which they are intended. (2)

The above were only the more spectacular of the episodes of mass expulsions of immigrants within the subregion. My concern in this paper is not confined to them. I will consider the context within which they have taken place, including some of the long term causes, and the systematic nature of the migrations which preceded them; the ways in which these have been handled by the states concerned; and their implications for the rights and status of migrants as a particular form of exploited labour within the development process in the subregion. Although occasional references will be made to other situations. Ghanaian migration to Nigeria will provide the main source of empirical data for the paper. It is often pointed out in studies of contemporary African migrations that they have historical antecedents which go far back into pre-colonial times. Yet although a historical perspective is necessary, the implicit suggestion that modern migrations are simply more of the same must be guarded against. For

contemporary cross-border migrations in West Africa are distinct in origin and character from traditional migration. They have been rooted in the integration of the region into the global economy and in the policies of economic expansion of the colonial era; and continue to be propelled by the structural imbalances created by these policies which are still maintained by independent governments. They are, more often than not migrations of seekers of jobs rather than the traditional migrations of whole communities known to the pre-colonial period. As Zachariah and Condé (1981) have shown, a substantial floating population of job-seekers has existed in West Africa since the early part of this century. In 1975, 2.5 million West Africans lived in eight countries not their own (excluding Nigeria).

Of these, 1.3 million were workers. These figures would have been significantly larger if Nigeria had been taken into account Nor are they refugees in the classic African sense, in flight from famine, political strife and war, as have become endemic in other regions of the continent, particularly the Horn and Southern Africa. Twenty five per cent of the world's refugees are estimated to live in Africa. In numbers this ran into some six millions, even before the current Ethiopian famine broke in 1984. Surprisingly few of these live in West Africa. According to the office of the United Nations High Commissioner for refugees (UNHCR) in Lagos, Nigeria, by far the largest and strongest economy, with close proximity to some of the subregion's trouble spots, in May 1985 was offering asylum to only 5,000 registered refugees, mostly fugitives from the drought in Niger; and there had been no group determinations of asylum since the major Chad flare-up of 1979-80.

Labour migration then, is a longstanding feature of contemporary economic life in West Africa. Yet it is clear that there has been a quantitative and qualitative change in the momentum and consequences of this migration over the past decade; a change which is symptomatic of the crisis in development brought about by global economic recession, shifts in the international division of labour and the distortions which have emerged within the post-colonial state and its economic policies.

Over the past three decades a substantial body of literature on labour migration in West Africa has been accumulated. Much of this research has come from demographers, anthropologists, sociologists and geographers, and to a lesser extent, from economists. Most of these studies have been on internal migration and thus jurisdictional questions and questions of protection, or of inter-state-relations have

not been at issue; they have tended to be discipline bound; and many of them have been descriptive accounts, and therefore static in nature. Thus, their findings have become rapidly overtaken by events in a constantly changing socio-economic environment. Zachariah and Condé's above mentioned and otherwise excellent demographic study of internal and international migration in West Africa, suffers from false predictions regarding the future of migration partly due to these reasons. Writing about Ghana the authors state that until the 1960s Ghana was the principal recipient of immigrants in West Africa, with 12.5 % of her population in 1960 made up of immigrants. They further state:

*In 1970, 1% of Ghanaians were living outside their own country... The Ghanaians were, and still are, non-migratory; very few have migrated to other countries in the region for economic reasons, though some live in neighbouring countries for family reasons, such as marriage to a foreign national (3)... A cursory comparison of its economic situation with those of her neighbours (however) makes it unreasonable to assume that many immigrants will select Ghana as their destination. Nor is there much evidence that Ghanaians will emigrate to other countries in the region in large numbers. A constant number of just enough immigrants to replace returning emigrants is perhaps the best guess than can be made for Ghana in the 1980s (4).*

Amin (1974) was one of the first to draw attention to the need to move beyond conventional economic explanations in the analysis of the migration phenomenon in Africa. Amin takes issue with the functional individualist approach which ascribes particular centrality to the individual migrant's rational calculations of his likely economic gains in the place of destination. While Amin does not dispute the assertion of the economic rationality of the individual migrant, he calls for more structuralist analyses which recognize that individual motivations and the rational assessment by migrants of their objective material circumstances are merely an intervening variable which must not be allowed to mask the real determinants of modern migrations in Africa - the overall strategy of development, the failure of which the migrants' so-called choice to migrate is merely a manifestation.

In particular Amin questions attempts by some economists (eg. Berg, 1965) to support the contention that migration is in the interest both of the region of emigration and that of immigration by adopting a cost-benefit analysis that tries to quantify the value of remittances and emphasize the relief of pressure on national resources by departing emigrants. The causes of large-scale migration cannot be separated from

their consequences, in Amin's view, for:

*migration is not just the consequence of unequal development due to the natural potentialities of differing regions. Migration is also an element in unequal development, reproducing the same conditions and contributing in this manner to their aggravation. Hence, evaluation of the effect of migration in terms of 'cost- benefit' analysis is equally deceptive (5).*

The structuralist or neo-marxist framework of analysis suggested by Amin has been taken up more recently by a number of researchers. Oberai and Bilsbarrow (1984) have called for an integrated theory of the determinants of migration which places the "partial theory" of the migration decisions of individuals within the framework of the underlying structural-historical forces which create those conditions. Standing and Peek (1982) have also emphasized the continuing shifts in the social relations of production which generate migration in a study of Latin America and the Caribbean.

Such an analysis would call for a detailed study both of specific migration situations and of the economic policies of West African governments, including the historical antecedents to those policies. In the following section I briefly describe the major economic dislocations in both Ghana and Nigeria which brought about large-scale population movements and at the same time impelled the respective governments of the two countries to suddenly expel large numbers of migrant workers. However, it would be beyond the scope of this paper to provide the detailed analysis of the political economy of these countries which a full explanation of these dislocations would require.

Among the factors which such an analysis would have to consider are the integration of the economies of the regions into the international economy and the effects upon them of the global recession. It is within this context that we can consider attempts made by West African governments to collectively regulate migration through the process of regional economic integration initiated by ECOWAS. The ECOWAS model of regional economic integration is a market based model which assumes that the region's economy can be developed most effectively by dismantling all barriers to the free mobility of the factors of production, including labour. A parallel exists between this model and the functionalist approach to the determinants of labour migration in that both assume that economic efficiency will be maximized by leaving individuals free to make their

own rational economic choices. Such market-based models, however, do not take sufficient account of the fact of the unevenness of development within the subregion and the frequent shifts in the poles of economic prosperity which have made large scale labour migration endemic to the contemporary situation.

These shifts cannot be examined in isolation from the role of the state in the development process and in creating and maintaining the framework within which immigrant labour is employed. Behind the state are shifting amalgams of social classes and political interests. The accumulation strategies pursued by the state, and the social groups which control it, shape its need for foreign capital and immigrant labour. A market based policy of economic integration, (unlike the project based cooperation of the Southern African Development Cooperation Conference (SADCC) for example), is likely to reinforce existing imbalances, as Nigeria's immigration crisis has already shown.

## **2. Large Scale Population Movements and the Crisis in Development**

The external orientation of the economies of the West African subregion has made them more vulnerable and sharpened their sensitivity to the current recession in the global economy. This has resulted in a generalised crisis in the labour market, with massive increases in the region's reserve army of unemployed and the underemployed. I shall maintain that large scale migration out of Ghana over the past decade epitomises this situation. However I shall also argue that the mass expulsions from Nigeria have also to be seen in the context of a crisis in Nigeria's development of which the "problem" of immigrant labour is only a symptom. This crisis in turn arose from longer term structural patterns in her economy which were coming to a head with the collapse of the oil boom at the beginning of the 1980s.

The main feature of the Ghanaian economy since the 1960s has been the persistent downward spiral in which it has been caught for more than two decades. The beginning of the decline can be traced back to the Nkrumah period. Nkrumah's development strategy was based on large scale, largely foreign funded, public investment in industrialization and mechanised agriculture. It failed on the one hand because of difficulties endemic in the policy itself, and on the other hand because of a number of international factors, including a drastic fall in cocoa revenues in the mid 1960s. Nkrumah's overthrow occurred in that context.

The subsequent attempts to restructure the economy on orthodox free market lines by the first military government of the National Liberation Council and by the civilian Busia government which succeeded it, were associated politically with a resurgence of the Ghanaian petty bourgeoisie. The leading demand of this sector was an active policy of promoting indigenous business and the elimination of its foreign competitors which in this context was not foreign capital, but mainly middle level Lebanese and Yoruba traders. This occurred in a context in which economic decline had led to a reduction in the need for labour, and soon degenerated into a much broader demand which found "illegal" immigrants to be its easiest target. This was the background of the Aliens Compliance Order of 1969 under which, as we have seen, an estimated 300,000 West African immigrants were expelled from Ghana (6).

The liberalisation of the economy, the promotion of Ghanaian business and the expulsion of illegal immigrants ultimately did not yield the expected results and, in the long run the decline of the economy continued and generated the conditions under which Ghana became a labour exporter. During the 1970s and early 1980s Ghana's economic performance compared unfavourably with that of virtually every other economy in low-income sub-Saharan Africa. Between 1970 and 1982, while the rest of sub-Saharan Africa recorded a positive if low average GDP growth rate Ghana's economy experienced negative growth, an average decline of 0.5 per cent per annum (at constant prices). The decline in per capita food production and per capita income for a population that continued to grow at a rate of 2.6 per annum was even more severe. The reduction in Ghana's gross domestic investment which had been taking place steadily since the 1960s, accelerated in the 1970s, causing investment as a proportion of GDP to fall from 24 per cent in 1960 to a minimal 1.0 per cent in 1982. Government revenues declined from 15 per cent of GNP in 1972 to 4 per cent in 1981, a sharper fall than in all other low income countries. Inflation averaged 40 per cent between 1970 and 1982 (in 1983 it was 123 per cent) as against an average of 10-11 per cent for other African countries; and Ghana's terms of trade declined by 39 per cent between 1980 and 1982, as against 13 per cent for all low income countries.

The need to support what continued to be (in spite of a fall in revenue) a large public sector created large budgetary deficits. At the same time, a prolonged decline in the real purchasing power of cocoa farmers and other export producers reduced incentives and brought about a decline in exports and a further erosion of the base of

government revenue. A fixed nominal exchange rate became grossly over-valued, while the demand for foreign exchange grew. The result was a flourishing parallel market in foreign exchange and the smuggling of both cocoa and other local produce, and of price-controlled imports to neighbouring countries. The shortage of goods and rampant inflation led to a situation in which the major focus of government economic policy became, in effect, distribution. Extensive price controls and state-supervised distributive outlets were erected, placing further stress on the public sector and creating bureaucratic avenues for corruption and tax evasion. And the decline in public expenditure meant that there was less to spend on sharply deteriorating economic and social infrastructure.

For Ghanaians at all levels, this meant reduced economic opportunities and an erosion of real wages which made life, even for the middle classes, a perpetual act of juggling. Many left, from all sectors of the economy, in search of better opportunities abroad, a never ending stream of professionals, the intelligentsia, skilled and unskilled workers, thus draining Ghana of badly needed manpower. The great majority went to Nigeria, where the petroleum boom coincided with the decline in Ghana.

It is the impact of this economic deterioration which is reflected in the responses of a sample of 136 immigrants, mostly Ghanaians, who were interviewed in Lagos in 1984 (8). Relatively few of them stated their main motivation for migrating to be a desire to maximise their individual economic advantage at the margin, in response to the market. Rather they perceived themselves as being driven by the collapse of Ghana's economy and labour market. A few had become unemployed, but the majority had left Ghana because it had become literally impossible to feed themselves and their families, i.e. reproduce the cost of their own labour, with meagre salaries and wages.

Asked the open-ended question "why did you come to Nigeria?", 60 per cent of the respondents said that they had been driven out of Ghana (and in a few cases Togo) by harsh economic conditions. Comments such as "it was no longer possible to make ends meet in Ghana", "the economic situation in Ghana was unbearable", "basic needs were unobtainable in Ghana on one's salary", "things were hard at home" or "the construction industry was crumbling in Togo" were not untypical (less specific responses that could have meant the same thing, such as "for better conditions" are not included in the above figure). To be sure, a minority among the sample (14 per cent) gave replies suggesting a straightforward response to economic incentives, such as



"for money", "in search of greener pastures", "attracted by the oil boom"; but often their responses to other parts of the questionnaire made it clear that economic conditions in Ghana were also major influence on their behaviour. A few other respondents (7 per cent), most of whom were professionals, said they went to Nigeria for adventure, for a change of environment or "cultural interest in Nigeria"; no doubt some of these did not, for reasons of personal self esteem, wish to admit to economic motives.

Reliable estimates of the numbers involved in this exodus are hard to come by, although it is talked about in terms of millions. Current controversy over Ghana's 1984 census figures may, however, be an indication. A population of 14 million Ghanaians in 1984 had been projected on the basis of previous census and population growth figures. The resulting headcount of 12 million therefore took the government by surprise. Accusations of inefficiency were levelled against the census department. Yet the discrepancy between projections and actual results of the census is virtually the only indication to date of the possible size of the Ghanaian population now living abroad.

The Nigerian figures are equally imprecise. In January 1981 a press release from the immigration department put the number of "aliens" registered with them at 44,733. These, according to the release, included a mere 8,000 ECOWAS nationals. At about the same time the Ghana High Commission in Lagos was reporting 133,000 Ghanaians alone on its register (9a). Nigerian official labour statistics do not itemise immigrant workers, and labour department statisticians say they have no future plans to compile them, claiming that it is within the area of responsibility of the immigration department. In an interview with a spokesman for the department in 1984 he estimated an illegal immigrant population of between 3 and 4 million at the time of the mass expulsion in 1983. The Nigerian Labour Congress estimate for the same period was "more than 2 million"(9). Were one to accept the probably inflated estimate of 3 - 4 million illegal immigrants, that would make the total number of recorded and unrecorded immigrants at the time of the expulsion, at the very maximum, between 3,5 and 4 million, although the likelihood is that they were less.

Although these numbers seem large, they must be evaluated relative to Nigeria's own population, much the largest in the continent. Against an official guesstimate of 88.75 million, immigrants were at most 5 per cent of the total and probably less if we accept the more realistic estimate by the Nigerian Labour Congress. Although such a proportion was reaching what Nigerians regarded as a critical level, it

was nevertheless far less than the estimate of close to 35 per cent for the Ivory Coast by den Tuinder (1978) (10).

Any attempt to estimate the number of immigrants, the bulk of whom are unrecorded, as they are in West Africa, is at best a difficult task anywhere. In Nigeria it is daunting and not purely for technical reasons. The lack of reliable immigrant statistics must be seen in the context of the general absence of any reliable national population figures. This is primarily due to the fact that since independence questions of political power and the allocation of national resources have been closely linked with the size of regional populations, thus giving the question of population a peculiarly political character. Any statistics which might upset the precarious regional and ethnic balance that exists could, it is generally believed, throw Nigeria into another severe internal conflict.

The economic environment in Nigeria which attracted the substantial part of the drift from Ghana is well known. The transformation of Nigeria's economy from its essentially peasant agricultural base to a capital intensive petroleum economy in the 1970s was spectacular. The exporting of oil which had been disrupted by the civil war in the 1960s was showing dramatic effects by the end of the decade. Between 1969 and 1974 oil production quadrupled to a level of 2.5 million barrels a day and the price of crude oil tripled to \$11.7 between 1973 and 1974. By 1975, petroleum's share of Federal government revenue had risen to 86 per cent from 17 per cent in 1971. The Federal government which, prior to the civil war, had been relatively weak, acquired a new self-assurance, bolstered by periodic increases in the price of crude oil which reached \$40 per barrel in 1980. Revenue from petroleum rose correspondingly from its already high 1975 level of 4.733 billion naira to 9.825 billion naira in 1980. The result was a phenomenal state-funded expansion. The Second National Development Plan (NDP) of 1970-74 had been estimated at 3 billion naira. The Third NDP was costed at 30 billion naira and the Fourth, for 1981-85, was estimated at a massive 82 billion naira (11).

Thus from the early seventies until the turn of the eighties there was a monumental infusion of capital into the Nigerian economy by both federal state (now numbering 19) governments, and an impressive number of infrastructural projects were undertaken. The construction industry was a major beneficiary of this expansion, with investments in this sector spanning communication networks, transport, housing, water supply and other public utilities and the construction of a new

federal capital at Abuja. Petroleum mining inspired other heavy industries such as oil refining, vehicle assembly, manufacture of petro-chemicals, liquified natural gas, cement and steel. The production and importation of consumer goods were expanded and there were significant increases in private consumption and spending, accompanied by a high level of ostentation and corruption. The expansion was not limited to commerce and industry. The federal government bureaucracy swelled and the creation of new states also meant the multiplication of state bureaucracies and their paraphernalia, including a rapid inflation in the number of educational institutions.

This surge in the Nigerian economy was to create a massive demand for labour in all sectors and there seemed no limit to the size of skilled manpower which could be absorbed by the formal sector and the informal sector provided a broad range of openings for unskilled workers.

As we have seen, it was precisely during this period of buoyancy in Nigeria's economy that many of her neighbours, particularly Ghana, but also Burkina Faso (Upper Volta), Togo, Benin and Niger suffered their worst setbacks. Large numbers of workers from these countries, especially Ghana, flocked to Nigeria in search of jobs and a better standard of living. There were professionals such as doctors, lawyers, engineers, architects, university lecturers, teachers and nurses; there were middle level skilled workers especially technicians and artisans for the building industry; and there were thousands of unskilled labourers to fill the gaps shunned by Nigerians, such as domestic servants, construction labourers, conservancy workers, casual dockworkers and hawkers for the food and beverage industry. Many of these were in an irregular immigration situation.

With the oil glut of the early 1980s, however, came a drastic reduction in the volume of oil production - from 2.054 million barrels per day in 1980 to 1.294 million barrels per day in 1982. Government revenue dropped correspondingly from 9.825 billion naira in 1979 to 5.161 billion naira in 1982. The weaknesses of the petroleum economy and the inequalities within Nigerian society with which it was identified suddenly became clearer. The fact that the agricultural sector had been allowed to stagnate because of the lack of producer incentives became more glaring - export production had dwindled and Nigeria had become dependent on imports for her staples. The illusion of an autonomous Nigerian state able to accumulate and allocate limitless oil surpluses was debunked.

Government expenditure necessarily had to be reduced, and other official policies adopted to manage the crisis. These included some fairly orthodox monetarist measures, including a wage freeze and a general reduction in the money supply. The Economic Stabilization Act of 1982 was promulgated; and this introduced a combination of import controls and fiscal policies. For example, all unused import licenses were recalled for review, capital projects not yet started were deferred and the issue of licenses for the importation of vehicles was suspended. Government-decreed interest rates were increased by 2 per cent and restrictions were placed on external borrowing of state governments. A programme of massive retrenchments in most sections of the public sector was begun and a temporary embargo was placed on hiring by government institutions. Negotiations begun with the IMF for a standby credit, but apprehensions concerning the possible outcome of these negotiations was among the stated reasons for which the military overthrew the Shagari government (12).

The enormous debts incurred by the Shagari administration at a time when the world recession had already reduced Nigeria's earnings from oil necessitated further drastic measures by the military governments of General Buhari and Babaguinda. These in many ways coincided with elements of an IMF package even though the government, for political reasons, balked at reaching an agreement with the IMF itself. A substantial reduction of liquidity in the economy was achieved through a currency change in May 1984. Almost 50 per cent of Nigeria's foreign earnings in 1985 was spent on debt servicing (13); other monetarist measures have been stepped up, including further retrenchments in the public sector, some of which have been specifically aimed at immigrant workers; and there has been protracted government-sanctioned public debate on the question of devaluation.

There are no reliable figures of the numbers laid off in the public and private sectors since the Economic Stabilization Act of 1982, although a figure of 30 per cent for the private sector has been attributed to the National Manpower Board. Trade Union sources have placed the numbers purged as a result of government ordered retrenchments during the twelve months ending January 1985 at 266,000, although a spokesman for the National Manpower Board who was interviewed in May 1985 said that this could not be verified from government sources, as the figures are jealously guarded by a government which refuses to admit formally that workers are being laid off.

In these circumstances it is not difficult to understand the complex of factors that came into play to cause the mass expulsion of illegal immigrants in January 1983; including the growing insecurity of the federal government and the NPN party, with the national elections imminent; widespread resentment of people and workers against aliens who were perceived to be part of the cause of Nigeria's economic predicament; and the enduring ethnic plurality of Nigerian society with its resultant parochialism. Nor was the rapid return to Nigeria of previously expelled illegal immigrants, particularly Ghanaians, which "necessitated" General Buhari's government's expulsion order of April 1985 unexpected.

Yet somewhat paradoxically, while all these shifts and dislocations in the economies and labour market of the region were taking place, the process of regional economic integration was apparently proceeding smoothly. Nigeria had emerged from the civil war with a new dynamism, to pursue an active foreign policy which saw Africa as its centerpiece. One of the earliest manifestation of that policy was her revival, jointly with Togo, of negotiations for the establishment of an Economic Community in West African States (ECOWAS) which had been initiated in 1964 by Liberia, but had previously foundered. The period up till the signature of the ECOWAS Treaty in May 1975 was a period of relative prosperity for the subregion as a whole, and for Nigeria in particular. Since then economic disequilibria have become heightened. Yet the process of ECOWAS institution building and further formal acts of liberalisation have continued to be negotiated between governments with apparently little disruption. The Protocol Relating to Free Movement of Persons, Residence and Establishment was signed in May 1975 and became operative a year later (14). In November 1984 the community's summit rejected a proposal by its secretariat that consideration of the transition to the second stage of free mobility - that of residence - due to take place in May 1985 be postponed for two years. Yet in April 1985 the Nigerian government ordered a second mass expulsion of illegal immigrants, with little obvious effect on the community. Indeed it may perhaps be precisely because of the lack of relationship between the community's processes and actual internal government policies and socio-economic realities inside member states, that the structure of the community has remained intact through such a turbulent period.

### **3. Nationalism and Class as a Factor**

One salient feature of large-scale cross-border migration is its singular tendency to evoke strong outpourings of nationalism, in positive sense of the affirmation of national identity, but also in the

negative sense of targeting alien groups, so clearly reflected in the popular use of abusive language in Ghana and in Nigeria during the critical periods of immigration in these countries. "God is not a Lagosian", denoting popular sentiments about the scruples of Yoruba traders in Ghana, has become a standard idiom (15). The use of "Zamrama" (the Zarma are a Burkina group) as a term of abuse is not uncommon in Ghana and "Omu Ghana" is shouted out with contempt in the shanties of Lagos. The word "alien" itself has assumed derogatory connotations in popular usage particularly in contemporary Nigeria and is often to be distinguished from "expatriate". The launching of the "War Against Indiscipline" (WAI) by the military successors to the Shagari administration in 1984, although not directly inspired by illegal immigration, provides one of the most superb examples of the jingoistic fervour which has characterized the campaign against illegal immigrants. A WAI poster issued by the Customs and Excise and Immigration Staff Union in 1984 read:

*"Support War Against Indiscipline: Be Firm and Courteous. Smugglers Must Be Arrested, Illegal Aliens Must Be Deported. Make Nigeria Proud".*

Much of contemporary debate about international migration in West Africa has focused on the critical floating mass of illegal immigrants who have been the butt of repeated mass expulsion orders. The predominant point of view is couched in terms of the artificiality of colonial boundaries. The argument is that national boundaries drawn by European powers at the Berlin conference in 1885 paid little regard to socio-cultural realities of the African continent, with the result that many traditional nations were bisected by international boundaries. Ethnic groups living on either side of international boundaries, as in the cases of the Brong of Ivory Coast and Ghana, the Yoruba of Benin and Nigeria, the Hausa-Fulani of Nigeria and Niger and the Ewe of Ghana and Togo, tend to regard movement within their cultural orbit as part of the routine of their lives and are not hindered by the lack of travel documents or any other restrictions. The implication is that a significant proportion of the so-called illegal immigration within the sub-region is the result of this state of affairs.

This argument represents a theme which was recently celebrated throughout Africa and in the liberal West, to commemorate the centenary of the Berlin Conference. Asiwaju (1984) rightly points out that "the fact of artificial boundaries is one shared by nation-states all over the world" and is not peculiarly African. Nevertheless, it is

unquestionable that important difficulties do arise from this lack of fit between the nation-state framework and pre-colonial social formations; although perhaps not from the lack of fit per se, but from the century of alien domination that has reinforced it.

This lack of fit may have exacerbated the universal problem of the frontier communities in West Africa's particular situation. But it is insufficient as a major explanation of the high level of illegal immigration that takes place in West Africa today. First of all, to take the Nigerian example, much of the illegal immigration is longer-range and not from adjacent countries. As we have seen, the highest concentration of immigrants in Nigeria during the critical period have come from Ghana, a country which shares neither a border nor same nationality with Nigeria. Moreover the "artificial borders" argument does not help to explain the way in which powerful national sentiments have developed around the existing so-called artificial West African state framework. The popular conception of the definition of an "alien" in Nigeria, as elsewhere, is the fact that he is non-Nigerian, a significant fact.

Indeed it appears as if population movements within national boundaries and restrictions on population movement across national boundaries have become crucial factors in the construction of national consciousness. Anderson (1983) argues convincingly in his appropriately entitled book Imagined Communities that modern nationalism is learned and socially constructed, and not intrinsic; that it first emerged as a modern phenomenon not in Western Europe, but in Latin America and in the American colonies in the late eighteenth and early nineteenth century, in reaction to economic restrictions and to the barriers of social and career mobility exerted by the metropolis. This reaction was quickly transmitted because of the emergence of print capitalism. Further dimensions were added in the nineteenth century on the one hand by the construction of vernacular nationalisms in Europe around linguistic and cultural groupings challenging the existing state framework; on the other hand by the mobilisation of national sentiments to secure popular support for European imperialism. Anderson also suggests that restrictions on the mobility of indigenous elites were crucial in the emergence of nationalist independence movements in the Third World.

However, in West Africa - as elsewhere in the Third World - the social construction of a sense of nation has been modified by three particular factors. First was the fact that nationalism was anti-colonial in its *raison d'être*, and only later become associated with the

boundaries of particular states. This means that the task of crystallising state nationalism has been largely left to the post-colonial state. The latter has used elite patronage to reinforce bureaucratic loyalties and to construct political coalitions between different "sub-national" groupings. At the same time it has also used restrictions on large-scale population movements across state boundaries to reinforce a state-centred model of national sovereignty and territorial integrity, in line with international legal orthodoxy. Such measures have included the frequent closures of borders, mass expulsions of non-nationals in the economy. These have been important not only as assertions of state sovereignty; but also because of the way these have been used to mobilise resentment against aliens and thus to sharpen a popular sense of belonging to one nation.

This janus-faced aspect of nationalism as a pan-African and anti-imperial movement which nevertheless led to the establishment of a series of fragmented nation-states is clearly demonstrated in relation to the Economic Community of West African States. On the one hand there is an agreed recognition by the member states of ECOWAS of the need for combination in handling common predicaments, both economic and political, in relation to the outside world. On the other hand attempts to achieve this objective are constantly being obstructed by the ECOWAS member states' own nationalistic intransigence.

A second source of contradiction is between state nationalism and sub-nationalisms, a factor which, as we have already seen, is complicated by the fact that artificial national boundaries cut across pre-colonial political communities. In many West African states and especially Nigeria, ethnicity, region and religion are important factors in the arena of political power brokerage, in which too often non-nationals have become pawns.

Thirdly, both nationalism and sub-nationalism are inseparable from the process of class formation. Firstly, because in the absence of well developed social classes the bureaucratic interests which crystallise around the nation-state have been crucial in the process of class formation; and secondly, and this is more crucial for the analysis at hand, because ruling classes have tended to manipulate both nationalism and sub-nationalism to conceal their own failure to organise the process of development.

A comparison between Ghana's Aliens Compliance Order of 1969 and Nigeria's expulsion of illegal immigrants in 1983 is useful here, because the two episodes illustrate in some respects similar, in others



different, relationships between nationalism and class formation. While the former was patently related to an attempt by the newly elected Busia government to satisfy the interests of a fraction of the emerging bourgeoisie, the latter can probably best be interpreted as a political tactic to conceal the Shagari governments' corruption and mismanagement of the economy.

Dr. Busia's inauguration as Prime Minister took place on the first of October 1969. Could it have been coincidental that the next days "Daily Graphic" which covered the inauguration also carried a report about the launching of a National Crusade for the Protection of Ghanaian Enterprises by a group of Ghanaian businessmen? The declared aims of the crusade were to promote the enforcement of the Ghanaian Business Promotion Decree of 1969, to educate Ghanaians on how to run their businesses, to advise the government on conducting periodic checks on residence permits and to ensure the regular payment of income tax by non-nationals. The Business Promotion Decree promulgated by Busia's predecessors, had so far existed only on paper (16). However there was a concurrence between the decree and the Busia government's commitment to private enterprise expressed in the Progress Party's election manifesto, which also declared a concern to "give Ghanaians" a greater stake in the economy of their own country" (17).

There was also the concern of the popularly elected government of Dr. Busia to reward an important constituency on which it depended for the orchestration of much of its popular support. This political pressure took the form of a clearly defined and articulate lobby of Ghanaian business interests which sought to eliminate foreign competition, personified by the efficient Lebanese business and the ubiquitous Yoruba trader. Their blueprint was the Business Promotion Decree, a statute which reserved the middle sectors of the economy for Ghanaians, without in any way challenging the dominance of foreign capital. Its target groups were middle level business entrepreneurs, petty traders, market women, itinerant traders. And the campaign found natural allies among the mass of Ghanaians who welcomed the possibilities it seemed to offer them to participate in the opening up of the Ghanaian economy and the temporary consumer boom it stimulated.

Within a few weeks of the announcement of the National Crusade for the Protection of Ghanaian Enterprises letters began to appear in daily newspapers complaining about the activities of alien traders and criminals. The Minister of Interior announced a reorganisation of the

Immigration Department in order to control the influx of foreign nationals into Ghana and to revoke the permits of those whose activities were inimical to national security. A Daily Graphic editorial commended the Ghanaian business crusaders for their vigilance and exhorted Ghanaians to inform the police about the criminal activities of aliens in order to help curb the crime wave (18). Soon the substantial West African immigrant population in Ghana was being linked with unemployment and crime within the country and parliamentary debate on the question of the influx of aliens was being planned.

When suddenly on November 19 the expulsion order was published giving all foreigners without the requisite residence permit two weeks within which to regularise their stay or to leave the country, the government defended it both in legalistic terms and on the basis of social and public order. In a briefing statement to the press, the Minister of Interior said the government's action was "a matter of national policy vital to the success of the government's programme for national reconstruction" (19). But perhaps it was Dr. Busia himself who most clearly articulated his government's broader perspective on the aliens issue:

*Let me briefly give you the background: as you know, we inherited a debt - one billion dollars. Our gross national product has been increasing by only 0.8 per cent over the past four years, while our population has been growing at the rate of 2.6 - that creates problems.*

*Added to this, of course, is the fact that of the people who are registered for work, one in every four is unemployed; rising prices and pressures: what were we to do?*

*Then as you know our estimated population is 8 million. The aliens number 1,5 million. We know that many of them are inside the country without residence permits because of the policies of the Nkrumah regime which liked to invite anybody at all who liked to come and stay in Ghana. Some of them were even being kept here, housed and fed by the government, to further his imperialist policies. There is one other thing too that I must add - our prison records show that 90% of those on the books for the last year for which we have complete statistics (1968) - 90% of those in prison, especially for criminal things like robbery with violence and so on were aliens (20).*

Thus a gesture which started as a particular attempt to rid commerce in Ghana of middle-level foreign domination seemed to

assume the character of a broader campaign to rid Ghanaian society of all "problematic" foreign elements.

Similarly, the background to Nigeria's expulsion of illegal immigrants in 1983 was multifaceted. The aliens issue in Nigeria has not been dealt with purely on its own merits but has been manipulated to manage political dissent, popular unrest and emerging labour conflict in the Nigerian labour force itself, especially as the unemployment situation has worsened. It was already becoming apparent well before January 1983 that immigration had become a major political issue, linked to the crises in the economy described above, and expressed among other things, in criticism of the structure of ECOWAS which was popularly blamed for the large numbers of alien workers who were illegally in Nigeria.

Two events in 1980 were to bring the aliens issue to the fore. The first was the Black Maria episode in which fifty suspects in a Nigerian Police Force vehicle were suffocated to death while being conveyed from a Lagos magistrate court to Ikoyi prison, after having been charged with being "suspected persons and reputed thieves unable to give proper account of themselves". Thirty two among the dead were Niger nationals, six were Ghanaians and twelve were Nigerians. The aliens were found to have had no residence permits. The other, and perhaps more important in this context, was the Maitatsine riots which shook Kano in December causing hundreds of deaths, and re-erupted in Borno, Bauchi, Sokoto and Kaduna states over the next two years. Muhammed Marwe, alias Maitatsine, an illegal immigrant from Cameroon, led a fanatical Islamic movement whose doctrine was founded on the belief that Maitatsine was the true prophet of Allah and committed them to the elimination of those who believed in the Prophet Mohammed. The conflict with civil and religious authority which ensued took the military to crush and the hundreds who died included some 60 policemen. The Aniagolu inquiry into the unrest found that 6,000 Nigerian followers of Maitatsine had been joined by 185 illegal immigrants made up of 162 from Niger, 16 from Chad, 4 from Cameroon, 2 from Mali and 1 from Burkina Faso (21). It was the 185 aliens however who captures popular imagination and this episode was later to be used by the Nigerian government as a major justification for the expulsion of January 1983.

The aliens question was one of the most vexed public political media issue in 1981. Letters from readers, articles and editorials frequently appeared in all of the daily newspapers, particularly the Daily Times and the Nigerian Tribune (22). The general drift of these

was that most of the immigrants from ECOWAS countries, particularly the Ghanaians among them were a social and economic menace Nigeria could do without. Some even suggested that Nigeria withdraw from ECOWAS if all it could do was to turn Nigeria into a no-man's land. The pressure of public opinion was to continue mounting throughout the months that followed. Within the National Assembly the debate cut across party lines. Remarkably, the ruling NPN maintained a public aloofness from the debate, on occasion taking a firm public stand in support of the ECOWAS treaty and its implications.

In December 1982 the Internal Affairs Committee of the House of Representatives presented its report on the influx of aliens into Nigeria. Among its recommendations which were accepted were some tough measures, for example, the training of immigration officers to use firearms and the creation of special immigration tribunals to try immigration offences (23). Although the report did not recommend mass expulsion, by this time frequent calls in the press were being made on the government to deport illegal immigrants. It had become clear that the immigration issue was going to be a crucial one in the election campaign which was already under way.

Among the official reasons given for the expulsion order, the involvement of aliens in crime was very prominent. The Police Force swiftly emerged with a myriad of statistical variables intended to establish the fact that foreigners were responsible for the alarmingly high level of crimes in Nigeria. Alhaji Ali Baba announced in a press statement that between January 1980 and January 1983 courts in Lagos convicted 163 Ghanaians, 51 Niger nationals, 30 Beninoise, 30 Chadians, 29 Togolese, 16 Indians and 9 Malians for criminal offences, adding that the total figures were even more alarming (24). To represent a total figure of 328 criminal convictions of foreigners over a period of 3 years as the substantial majority in a major city such as Lagos with an estimated population of between 4 and 6 million and a notorious reputation for crime and violence seemed laughable! President Shagari himself had earlier assured leading states-men attending the conference of the Non-Aligned Movement in New Delhi that most of the expelled aliens were criminals and unemployed (25).

Nevertheless there were also more substantial complaints against illegal immigrant workers from the labour unions. Nigerian workers saw their status being eroded by immigrant workers who because they were in an irregular situation, did not join the unions and could be used by employers to undermine them. A variant of this argument

formed the basis of a statement issued by the executive of the Dockworkers Union of Nigeria in 1982 in which they warned two stevedoring companies against the continued violation of a collective agreement which stipulated that immigrant labour would be employed for mid-stream operations only in the absence of Nigerian labour, and required the companies to replace all aliens within their establishments with some of the many unemployed Nigerian dockworkers (26a). Trade union officials who were interviewed spoke of bitter experiences with illegal immigrant workers and of mounting threat of massive labour unrest towards the end of 1982, which may have been averted by the expulsion.

Thus real grievances were also at stake. But in the event it was the immigrant who were to bear the brunt; rather than those who employed them or public officials who colluded in many cases to make their entry into and continued stay in Nigeria possible.

Rumours were also rife, linked with the campaign for the 1983 general elections. Ghanaian teachers in the Yoruba states were alleged to have been placed on the electoral register by agents of the opposition Unity Party of Nigeria (UPN), in order to boost their votes (26b). And interviews with some Ghanaian teachers in Lagos suggest that in the very least, attempts were made by some Lagos landlords to persuade Ghanaians through threats of eviction, to register as voters. Yet if the purpose of the UPN government was to prevent its opponents from reaping the benefits of their alleged fraud, then the exemption granted all employees of both Federal and State governments from expulsion would seem to have defeated that purpose. There were also reports of an audacious armed robbery at the residence of Dr. Alex Ekueme, Nigeria's Vice - President, on January 3, 1983. The apprehended robbers, as alleged, included Ghanaians, conveniently carrying their national identity cards.

But perhaps the more persuasive explanation would be that the Shagari government's expulsion order was a move to pre-empt opposition parties turning the immigration "crisis" into a major campaign issue, the government's disadvantage. In the light of the foregoing, the situation which arose in January 1983, or some variant of it, ought to have been foreseen. Immigrant communities as well as their embassies were aware of the rising public tension surrounding the large immigrant presence in Nigeria, and of the increasing isolated incidents of arrest and prosecution of their nationals for immigration offences. Without doubt, the immigration department itself foresaw that there would be a major political crisis over immigration as a

chorus of criticisms rose from several quarters, some attributing the problem of illegal immigration to the corruption and inefficiency of immigration officers. In 1982, the department reportedly presented the government with an integrated plan for the phased management of illegal immigration at an estimated cost of some 9 million naira. The plan was rejected by the government, apparently because of the high costs involved. Thus when Nigeria's immigration officials were overtaken by the radio announcement of the expulsion on the 17 January 1983 they may well have been as startled and as unprepared as the rest of the region. And while Nigeria's image as the protector of African interests and leading protagonist of the ECOWAS venture crumbled, the Shagari government could at least count on the total support of the Nigerian press (27).

#### **4. The State and Legal Regulation of Immigration.**

I now turn to an analysis of how Nigeria has attempted to regulate the flow of labour into its territory, setting it in the context of debates about the role of the state and its effectiveness in organizing the development process. In the Nigerian context Ohiorhenuan argues, as does Beckman (1981), against the simplistic neo-colonial model that has characterized much radical analysis of the Nigerian state. They advocate a reconsideration in the light of the broader debate on the nature of the post-colonial state which has emerged in the writings of theorists like Alavi (1972) and Saul (1979) and has been widely debated in the East African context. This emphasizes two central features which arise from the historical specificity of the post-colonial state, and distinguish it from the classical theories of the state: its "overdeveloped" nature and its relative autonomy. The notion of an overdeveloped state inherited from colonialism has been severely criticised by Leys (1976) among others. What in Leys's view is peculiar about the state in Africa is not that it is quantitatively too large in its scale and share of the national product, so much as its tendency to be pervasive in all aspects of the development process and its striking ineffectiveness in that role.

The concept of the "relative autonomy" of the state is more useful but only if one can move beyond generalized controversies over the nature of the state to more specific analysis of the conditions which increase its room for manoeuvre in particular historical circumstances. Ohiorhenuan points out the importance of windfall rents from oil in giving Nigeria's military governments a more autonomous role than they might have had if they had depended solely on foreign capital to initiate the process of accumulation. Transient oil wealth also

permitted the granting of wage rises to the industrial labour force, and the maintenance of a reasonable level of employment, including the importation of immigrant labour to perform the functions Nigerians either found unattractive or for which local manpower was unavailable.

Since the turn of the 1980s, however, the conditions of accumulation have drastically changed because of the recession. The room for manoeuvre of the state in Nigeria has been much narrowed by the disappearance of oil surpluses. It is consequently much more exposed to direct pressure from foreign capital and the major international financial institutions. At the same time it is having to face a sharpening of internal social conflict arising from the fact that real wages are declining, employment is falling, and the government is being forced to implement redundancies on a large scale. One of the ways in which it has handled this is to put part of the burden of readjustment on immigrant workers.

Such an analysis can be directly linked to the role of the state in regulating population movements across its borders. As argued earlier, oil surpluses were crucial in the inflow of foreign labour which occurred during the oil boom without restraint on the part of government or its agencies. Yet subsequently immigrant workers were used by those who control the state as a convenient scapegoat, in choosing to enforce laws which they had previously found convenient to ignore. As we have already seen, this scapegoating was also related to the way in which the government manipulated nationalistic feelings, in order to divert attention from the real problems facing the Nigerian economy, portraying the economic crisis as a nationalist rather than a class issue.

Conversely, large-scale emigration of labour from Ghana illustrates some of the limitations of relative autonomy - exposing the potential consequences of failure to manage the economy for the state and for those who control it. When during the latter part of the 1970s and early 1980s thousands of Ghanaians opted out of the framework of their own state by migrating elsewhere, those left behind aptly characterized the exodus by saying "they have voted with their feet" - referring to the demonstrated inability of successive governments to provide the barest of material needs for their people.

A second set of issues which has emerged in debates concerning the state relates to the efficiency of state regulation, particularly of the economy. This has emerged both in recent radical literature and in the new development orthodoxy emerging in current debate within the

policy circles of international financial institutions such as the IMF and the World Bank and informed by neo-classical economic theory. The Berg report on Accelerated Development in Sub-Saharan Africa (World Bank, 1981) and the Bank's 1983 World Development Report maintain that the state apparatus tends to be both too large and inefficient; and suggest that economic efficiency can be increased by making more use of the mechanisms of the market. There is some resemblance here to the radicals' concept of the overdeveloped nature of the state already discussed, although the Bank's position is arrived at from different premises. Questions of efficiency are addressed more explicitly by Marxists influenced by Warren (1973) who believe capitalist development possible in Africa, for example Smith and Sender (1984), who reject many of the standard left-wing criticisms of the Berg report.

In reality what is at stake is not the efficiency of the state per se, but its effectiveness in organizing particular patterns of accumulation. As White (1984) suggests:

*In a capitalist context, the state may strive to establish (28) a social structure of accumulation by nurturing the emergence of financial and industrial bourgeoisie and collaborating with capital in establishing the subordination of labour so crucial for sustained capitalist accumulation.*

Collusion to subordinate is no where more clearly demonstrated than in the situation of immigrant labour and particularly in that of the illegal among them. The way they were exploited, then discarded in Nigeria is a manifestation of the fact that in the predatory arena of labour exploitation, their place is at the very bottom of the pecking order.

In talking about the organization of accumulation by the state, one is also talking about particular modes of state intervention and the legal forms they take. As the Bolshevik jurist Eugeny Pashukanis (1924, trans. 1978) argued, legal forms have their own specificity; but yet are at the same time a manifestation of the fundamental relations of production, particularly within capitalist societies. Some attention therefore needs to be paid to the different forms of state intervention. White, for instance, draws a distinction between "parametric" and "pervasive" intervention. The former include measures limited to providing a framework of institutions and resources conducive to development, while leaving considerable amount of autonomy to economic actors and processes. The latter involves direct



managerial and legal controls of investment, production and exchange (White deals primarily with socialist systems; in non-socialist systems, "pervasive" is hardly appropriate terminology and "regulatory" intervention seems a more apt term to use).

A further issue is the fact that states operate in a context of international as well as national regulation. In particular recent attempts by the Nigerian government to manage the flow of immigrants into its territory have taken place in the context of regional economic integration. A parametric framework for labour mobility is outlined in the ECOWAS Protocol Relating to Free Movement of Persons, Residence and Establishment. As argued below this framework has thus far had very little to do with the way the Nigerian or any other ECOWAS government actually regulate the flow of immigrants. The latter still takes place within the framework of statutory regulatory controls, involving in theory direct restrictions on the flow of immigrants by administrative means, rather than by manipulating incentives.

The juridical basis for immigration administration within all sovereign states is the doctrine of territorial sovereignty, a fundamental principle of customary international law which recognises and asserts the rights of states to exercise control over their own particular tracts of the earth's surface. This right is conventionally expressed through statutory laws which prescribe the conditions and procedures under which non-nationals will be admitted into territorial domain. Nigeria's primary statute for the regulation of immigration into its territory is the Immigration Act of 1963, supplemented by regulations, orders and immigration rules. This act proclaims the duty of all persons entering or leaving Nigeria to present themselves to an immigration officer for examination, and to furnish such information in their possession as that officer may reasonably require for the purposes of the act. In any case they must satisfy the immigration officer that they are in possession of a valid travel document. It also affirms the power of an immigration officer to refuse entry into Nigeria or to admit subject to conditions, while admitting the necessary exceptions in the case of those who satisfy the officer that they are citizens of Nigeria.

Section 8 of the act prohibits the employment of non-Nigerians without the written consent of the Chief Federal Immigration Officer; and requires non-Nigerians who wish to establish themselves in a profession or trade to obtain the written consent of the Minister of Internal Affairs. Entry into Nigeria for the purpose of residence shall

only be on the production of a residence permit or, in the case of Commonwealth citizens entering to take up government employment, on the production of any evidence which an immigration officer may reasonably require (section 9). In addition the act gives the Minister of Internal Affairs discretionary powers to abolish or extend visa and other entry conditions, to prohibit entry, to deport in certain broadly defined circumstances and to expand the established categories of "prohibited immigrants" outlined in section 17. Much of the foregoing encapsulation of the Nigerian Immigration Act portrays fairly standard international practice. At different times during the turbulent history of the Federal Republic the act has been enforced with varying degrees of rigour.

Nigeria's ratification of the ECOWAS treaty in 1975, along with fourteen other states including Ghana, had potentially profound implications for the immigration laws broadly outlined above. The ultimate objective of the community, as stated in the preamble to the treaty, is the creation of a homogeneous society in which all obstacles to the free movement of goods, capital and persons will be eliminated and a union of the countries achieved. This by definition implies a significant cession of sovereignty by member states of the community in the organisation of their economic affairs. The treaty has created a framework of community law in the sense not only of institutions which have a separate legal personality in international law, but also a system of law within which those institutions, the member states and their nationals will have rights and duties. Yet although the treaty and its legal regime in theory restricts the sovereignty of members states, the community cannot be regarded as a supra-national entity and its subsistence depends on the continued contractual will of member states.

Inter-regional institutions of this nature are now no longer a novelty in international law. Yet unresolved doctrinal and theoretical disputes still surround the nature of the relationship between national law and community law. The debate, commonly framed in terms of the supremacy of one system over the other, is identical in character with certain aspects of the question of the relationship between customary international law and national law. This dispute however, has little or no practical significance in the present context; for from the point of view of the Nigerian Constitution (1979 article 12, as well as constitutional practice since independence), and indeed the practice of most member states, the express incorporation of treaty provisions into municipal law is necessary if they are to affect private rights. In other words, treaties are not self-executing in Nigerian law; and the

question of the extent to which Nigeria must give effect to community law is simply a question of her treaty obligation. Thus although Nigeria assumed a major international obligation when it ratifies the community's treaty in 1975, the provisions of the treaty became applicable within Nigeria only after it was statutorily so declared. Subsequent ECOWAS protocols and supplementary regulations, as is the practice, have been given effect through publication in the official gazette.

The principle of free mobility of persons was institutionalized by the Residence and Establishment in 1979. The only one of the community's protocols to have been unanimously ratified by all member States, Nigeria's ratification and official publication took place in 1980.

Briefly, article 27 of the treaty creates the concept of community citizen and requires member states, progressively and through agreements with each other, to exempt community citizens from holding visitors's visa and residence permits and to allow them to work and undertake commercial and industrial activities within their territories (29).

The main feature of this Protocol is the provision of a timetable for the implementation of this principle of free movement. Free mobility is to be achieved over a minimum transitional period of fifteen years and in three stages, each lasting five years (30). During the first phase, community citizens have a right of entry into the territory of member states provided their stay does not exceed a maximum period of ninety days, and visa requirements hitherto applicable to them are abolished. During the second quinquennium, residence permit requirements are to be abolished in respect of community citizens and during the final phase they will have the right to freely establish themselves in professions and businesses within the region without restriction.

For present purposes attention will be limited to phase one of the transition. During this period which was to turn tentatively from May 1980 to 1985, the right of entry which is conferred on community citizens would seem, *prima facie*, to make profound inroads into the pre-existing immigration law. A closer examination of the modifications introduced by the Protocol at the present stage of implementation would however suggest a much greater scope, for the Nigerian immigration administration to curtail the so-called right to little money and no more than hazy ideas of where to find relatives

and friends.

Secondly, the notion of entry for a limited stay of ninety days contains an implicit circumscription of the right entry. Total liberty of movement entails an inviolable right to enter, for the exercise of which the simple presentation of a valid travel document should suffice (32). The right should be available to all nationals of all member states without discrimination on the basis of purpose for entry, professional qualifications, employment status or on any other grounds. But a requirement that the right to enter should be limited by a maximum stay of ninety days creates a need to establish that the entrant in fact does not intend to stay for a longer period (without seeking the necessary extensions as provided by law). This of course raises formidable administrative problems for immigration officials in member states, particularly in view of the limitations of resources and bureaucracy of countries in the community.

Thus the right to enter is far from being an absolute right and while it is limited by the concept of the inadmissible alien and by restrictions on the duration of stay, there is yet a third limitation, which though not implicit in the concept, is endemic in the conditions of poverty and illiteracy under which the mass of the inhabitants of the community live. This is the documentary pre-requisite of the right of entry specified by the protocol and which seems to make free movement the privilege of the middle classes (33). Article 3 of the Protocol provides that a community citizen seeking entry into the territory of another must possess a valid travel document. He or she must also be in possession of a health certificate. Yet for the vast majority of West Africans, obtaining these documents is virtually impossible, at least at the present time in the region. Nor is the law relevant to those whose entry and continued illegal stay in Nigeria is made possible only through the systematic way in which immigration and other law enforcement officers bend the rules, demanding bribes from immigrants, in some cases with hardly any distinction between those who fulfill the immigration requirements and those who do not (34).

Data from interviews with the Lagos sample of 136 immigrant workers, already described showed that 77, slightly more than 50 per cent did not possess residence permits as required by law. Several among these volunteered the information that they had no travel documents whatever, and this only a few months after memories of the 1983 mass expulsion had been revived with a briskly carried out swoop on and deportation of some 5,000 illegal immigrants in April

1984. The default rate among dockworkers, domestic servants and self-employed petty-traders was, as could be expected, 100 per cent: for by Nigerian immigration rules the possession of skills is a prerequisite for residence permits. Among construction workers (including electricians, carpenters, bricklayers, tractor drivers and manual labourers), the rate of default was 95 per cent. Out of 55 teachers interviewed, 10 did not have residence permits, while some of those who did, had obtained them after the January 1983 expulsion.

Excluding teachers, 30 per cent of the remainder of the sample (25) had been affected by that expulsion, but had soon returned, in some cases at the invitation of their former employers. Many had negotiated their entry at officially guarded border posts at fees ranging between 2 and 20 naira, although others had travelled by "cassava airways", as unguarded bush paths are now popularly known in Ghana. It is almost impossible to determine how far these figures are representative of the general situation. However they tend to lend some credence to the claims by The Nigerian authorities that the majority of immigrants in Nigeria were there illegally, an assertion which may be formally correct but has little practical meaning.

The reason for the ineffectiveness of immigration controls are systemic in a way that extends beyond the failure to enforce regulations. Indeed it should not be assumed that governments always wish to enforce their own rules, as Power (1979) and others suggest with regard to illegal immigration into Europe and the United States. Such ambiguity has also characterized the approach of the Nigerian authorities to the immigration question. The initial announcement of the expulsion order in January 1983 caused as much panic among government institutions as it did in the private sector. The Lagos state government alone employed some 2,600 illegal immigrant teachers in its schools, a situation not uncommon in other Yoruba states where the institution of free universal primary education had dramatically raised the demand for teachers (35). In the Northern states, Ghanaian teachers were often preferred to southern Nigerians as a result of ethnic politics. Thus schools, hospitals and vital government industrial projects joined the chorus of protests which resulted in the amendment of the order to permit professional and skilled workers to regularise their status (36). And when the Nigerian press decided to police Alhaji Ali Baba's exhortation to the whole nation to help "crackdown" on illegal immigrants, they knowingly chose to investigate the "one thousand and four" flats, the plush complex on Victoria Island which housed Nigeria's legislators. There they found "about 200" illegal immigrants blithely going about their chores as domestic servants

(37a).

This failure of government and its agencies to implement its own laws should be seen not only in the context of the corruption and ineptitude among customs and immigration agencies at Nigeria's borders and at the borders of other countries in the sub-region, but also within the context of economic decline, in which unofficial sources of rent have become an indispensable supplement to official salaries. There are also other contributory factors. There is, for example, the lack of social acceptance of modern state boundaries already referred to. I have argued that the latter is a marginal problem as far as the volume of illegal immigration into Nigeria is concerned. Nevertheless the wider social issue it raises is important and must be seen as linked with the broader dilemmas presented by the structure of the post-colonial state.

#### **5. Toward a Framework for the Protection of Migrant Workers.**

The critical issue of international migration in West Africa, however, is not the efficiency with which immigration laws and structures are erected and maintained. Rather, it is the realism with which migration policies are formulated and administered. The nature of the regional market for labour within the framework of differing relative national patterns of development as they relate to the global economy, has set in motion powerful currents of migration which no amount of regimentation will stem. In this sense the adoption of a sub-regional policy which aims at liberalising migration may be viewed as an attempt to formalize a longstanding *de facto* situation. The circumstances of the two mass expulsions by Nigeria, both occurring since the erection of the ECOWAS structures, have reinforced the fact that the mechanisms for coping with the crises which will continue to arise from these large-scale migrations of labour within the community still function very imperfectly. In neither of the two episodes, for example, did Nigeria forewarn her neighbours about the momentous measures it was about to introduce.

The problems of protecting the rights of migrant workers in routine situations are difficult enough even without crises of the kind which prompted these expulsions. Any framework for the protection of migrant workers which does not take account of the socio-economic realities of the region is bound to fail. Such factors, as already discussed, include the dynamics of the economy, the force of nationalism, the state and the interest which develop around it and the intrinsic logic of regional economic integration.

These socio-economic forces do not necessarily mean that migrant workers cannot be given more effective protection. From the purely economic point of view, commerce and industry require a relatively free access to a wider labour market during periods of economic buoyancy. Over the longer run some way should be found of ensuring that these sectors also absorb the costs when the economy is in recession; or in the very least, that the migrant labour force is protected from the kind of cavalier treatment which finds justification in the fact of their so-called clandestine presence.

All migrant workers, the legal as well as the illegal, deserve more recognition and protection than has been hitherto provided by governments. Political rights are linked exclusively to citizenship or nationality; and political pressure is often crucial in the struggle for greater equality. Yet immigrant workers are often completely disenfranchised. Because they lack the political rights enjoyed by citizens and are unable to organise politically and bring pressure to bear on government, they are the most down-trodden group in society and work under terms unacceptable to nationals. Nearly 90 per cent of the Lagos sample recognized this with a fatalistic resignation. Asked whether they thought being ECOWAS nationals made any difference to their position as foreigners in Nigeria, they said it did not, and many added that they felt maltreated and discriminated against in their work places because they are non-Nigerian.

Proposals to protect migrant workers in the maze that exists in West Africa, must secure two objectives. First, they must aim to clarify rights which already exist. Second, they can attempt to establish new rights. An appropriate starting point might be the United Nations Draft Convention for the Protection of All Migrant Workers and their Families which was completed in 1984. This recognises three main principles from which the rights of migrants workers can be derived. These are: fundamental human rights, labour rights and the obligation of governments to give special protection to those who are in a defenseless position. Of these three sources of rights, the area of fundamental human rights is the most highly developed in international law.

Founded on the Universal declaration of Human rights (1948), which proclaims such basic rights as the right to be free from torture, the right to equal treatment by the courts, the right to security of the person and to human dignity, the fundamental human rights of individuals have been incorporated into a host of international

instruments and made applicable to all without distinction of any kind such as race, colour, sex, language, religion, birth of other status, national or social origin. Thus it is already well acknowledged in general international law that non-nationals, whatever their legal status, are entitled to the protection of their basic rights, by virtue of being individuals. Over the years more specific assertions of these rights for migrant workers have been scattered through international labour conventions, which have now been consolidated and expanded into a single Draft convention for the Protection of All Migrant Workers.

In the regional context in Africa, the African Charter on Human and People's Rights was adopted by the heads of state of the Organization of African Unity in 1981. Though the charter has not yet received the number of ratifications required to make it operative, its importance in laying the foundation for a regional regime of human rights standards cannot be overrated. Article 2 of the charter contains a non-discrimination clause guaranteeing the rights it sets out for all without distinction on the basis of "national and social" origin etc. Article 5 provides:

*Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly, slavery, slave trade torture, cruel, inhuman or degrading treatment or punishment shall be prohibited.*

In addition to international standards, it is now customary for national constitution to guarantee the basic rights of all persons within the territorial domain of the state. For example chapter 5 of the 1979 constitution of Nigeria guaranteed the fundamental human rights of "every individual" including the right of everyone to respect for the dignity of his person and protection from torture, inhuman and degrading treatment. While acknowledging the exclusive prerogative in international law of all sovereign state to determine who to admit and who to exclude from their territory, and the difficulties which unregulated large-scale migration may pose for some governments within the region, the legitimacy of measures such as sudden mass expulsions may still be questioned.

Such measures may amount to an infringement of basic rights because they generate conditions which are inhuman, degrading and cruel. For example the forced exodus in 1983 of more than one million ECOWAS nationals from Nigeria over a period of no more



than four weeks was accompanied by appalling but predictable human sufferings (37b). These again recurred in May 1985 (38). And this was in spite of the fact that the question of basic rights in such situations had been taken up between the governments of Ghana, Togo, Benin and Nigeria, being incorporated in the Agreement on Mutual Administrative Assistance on Matters relating to Customs, Trade and Immigration in December 1984. Article 14 of this Agreement provides, in substance, that when it becomes necessary for one of the signatories to expel nationals of another from their territory, whether such nationals are involved in illegal activities or not, necessary steps will be taken to guarantee the safety of the persons involved and to safeguard their property. Unfortunately, however, the provisions of this article may be construed as implicitly accepting the principle of mass expulsion; and they were indeed invoked by Ghana during the 1985 mass expulsions by Nigeria.

These developments suggest that the states of the region will be obliged to rethink the ECOWAS concept of freedom of movement of persons on a narrower basis - probably by means of detailed bilateral negotiations within a general ECOWAS framework. But even if the attainment of the ECOWAS goals renders the distinction between illegal and legal immigrants largely obsolete, the problem of the vulnerability of a large non-national labour force in a volatile economic environment will still remain.

**Footnotes:**

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1. The order which was announced by Ali Baba, the Minister of Internal Affairs on 18 January, was modified on 25 January as follows:

(a) that all aliens who are unemployed, as well as those employed in unskilled labour, such as cooks and stewards (including those employed by hotels and catering establishments) drivers, watchmen (including those employed in security services firms), gardeners, nannies etc. must leave within the period of 14 days as allowed in my earlier announcement. Those who are self-employed in petty trading, tailoring, hair-dressing and similar traders, must also leave within the same period;

(b) that an extension of a period of four weeks to terminate on 20th February, 1983 is granted to all those employed in skilled work such as carpenters, masons, factory workers, fitters, blacksmiths, welders, typists, nurses etc. This extension of time will allow them a sufficient period within which to tidy up their personal affairs and leave in an orderly manner, as well as for their erstwhile employers to engage the services of Nigerians so as to continue with their respective business without due disruption;

(c) that those employed in the professional and technical grades will have their stay in Nigeria regularized provided their employers are able to make adequate representation for

expatriate quota slots to be granted for the positions they occupy; and

(d) that having regard to Nigeria's posture in African affairs and taking into account the spirit of the OAU and ECOWAS, the Federal Government has agreed that all citizens of ECOWAS member- states, as well as Cameroon and Chad, who have been living in the country prior to the coming into force of the 1963 Immigration Act may remain in Nigeria irrespective of what they do. It is the view of the Federal Government that such people have already settled down to some gainful employment, assimilated with the Nigerian population, intermarried, developed roots and generally lived amongst us in peace and harmony. People in this category can easily be identified by local Government Authorities, Village and Ward Heads, who are in a position to establish their antecedents. Ministry of Information, Lagos, January 25, 1983.

2. See for example, Aribisala, "The Aliens Expulsion Order Revisited - A Minority Viewpoint", Spectrum, Nov./Dec. 1983; "Aliens made scapegoat - Tai Solarin", Satellite, 11 February 1983; Opoola, "Thoughts on the Aliens Exodus", New Nigerian, 21 February 1983; interview with Professor Bolaji Akinoyemi, then Director-General of the Nigerian Institute of International Affairs, Sunday Concord, 14 April, 1985.

3. Zachariah and Conde, p. 53.

4. *Ibid.*, p.53.

5. Amin, p. 93.

6. illick, 1978, on which this section draws, presents a detailed analysis of economic change in Ghana up to this point.

7. These figures are taken from World Bank Special Report on Ghana, 1984.

8. Van Hear, N., "Organised Labour and the Recession in Nigeria, 1979-1984", Review of African Political Economy (ROAPE) Conference paper, 1984.

9a. Business Times, 6 January and 13 January 1981.

9. Interview with NLC officials.

10. den Tuinder, p. 205.

11. From NNPC and F.G budget Estimates in National Economic Council Expert Committee Report on the State of the Nigerian Economy, (Lagos, 1985), as reproduced by Bangara, Y., "The Nigerian Economic Crisis", ROAPE, 1984.

12. For a more focused discussion of the situation of labour in Nigeria during this period, see Van Hear, *op. cit.*

13. Suzanne Cronje, New Statesman, 22 February 1985.

14. The provisions of the protocol, in particular its timetable for the graduated implementation of freedom of movement, is discussed in a later section of this paper.

15. Also referred to in Brydon, L., "The Long Frontier: Implications of Population Movement in West Africa", working paper of the University of Liverpool, 1984.

16. N.L.C.D. 328 constituted one of the economic measures adopted by the military government to stabilize the Ghanaian economy after the overthrow of Nkrumah. While aiming at more or less liberalising the economy, significant emphasis was placed on the role of private enterprise, particularly Ghanaian entrepreneurs; and measures were introduced to patronise Ghanaian businessmen and to wrest control of certain sectors of the

economy from foreign traders and entrepreneurs. Killick, on which much of this discussion is based, treats this in some detail.

17. Progress Party Manifesto, August 1969, page 5, as quoted in Killick T. Development Economics in Action, London. (1978).

18. 27 October 1969.

19. Kwaku Baak, 19 December 1969.

20. Interview published in Daily Graphic, 19 January 1970.

21. The Report of the Tribunal of Inquiry on the Kano Disturbances, (under the chairmanship of Justice ANTHONY N. Aniagolu), Lagos, 1981.

22. See for example ..."Menace of Aliens" Sunday Times, 12 September 1982; Check Alien Intruders", Nigerian Observer, 3 July 1982; "Aliens Worsen Robbery - Magistrate", Punch, 17 September, 1982; "Aliens Within Our Borders", Weekly Eagle, 24 October, 1982.

23. The report itself has not been available, but there is a short summary in the Federal Republic of Nigeria National Assembly Debates, Vol.1 N°. 28, Thursday 2 December.1982.

24. Daily Times, 15 February 1983.

25. New Nigerian, 31 January, 1983, p.3; also Daily Sketch, 16 February 1983, p. 16; New Nigerian, p.20; Daily Sketch, 12 February 1983, p.40

26a. New Nigerian, 29 October 1982, p. 2.

26b. This was also reported in Nigerian Newspapers, for example National Concord, 2 March 1983, p.2.

27. With the possible exception of the Guardian. See for example, National Concord, 14 February 1983, p.4; Daily Time, 5 February 1983 p.3 and 27 March 1983, p. 18; Punch, 17 February 1983, p. 5; Satellite, 22 January 1983, p.3.

28. White, G., The Journal of Development Studies, Vol. 21 N°1 p. 100.

29. o be read in the context of article 2 (2) which provides that this will be done "progressively".

30. Progress from one stage to the next shall depend upon the determination of the authority of the heads of state that the previous stage has been successfully completed.

31. As one senior official of immigration department told me "The determination of admissibility into the country is in the long run, at the discretion of the immigration officer.... The rules are at this point in time the same for non-ECOWAS nationals. On the whole the immigration officer has a lot of discretion - and I believe this should be used to the advantage of the country".

32. Subject only to considerations of national security and public health.

33. Though it is not maintained that a similar and more responsive alternative is easily available, the point is an important one. Democratisation of access to freedom of mobility will require a massive and expensive operation by governments to make travel documents available to all, or a substantial relaxation of bureaucratic rigidities at frontiers.

34. This indictment against immigration officials in particular, has been well documented. The Aniagolu Tribunal of Inquiry into the Maitatsine riots accepted evidence from one of

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the followers from Niger that "if you had no card, you just paid... the equivalent of 20 Naira and was allowed in." The Tribunal also found that this state of affairs was applicable in all parts of the country". See Punch, 12 November 1981, p.2, and 25 November p.2; Nigerian tide, 20 February 1982 p.16.

35. New Nigerian, 25 January 1983, p.1.

36. See New Nigerian, 10 March for an example of the chaos which resulted: several nurses employed by Ahmadu Bello University's Institute of Health were apparently refused registration by the Immigration Department despite the modification of the expulsion order to make the regularisation of the status of professional and technical grades of workers possible.

37a. The National Concord, 6 May 1983, p.1; Daily Times, 29 January 1983, p. 1.

37b. The chaos and suffering, including some deaths from hunger and drowning, were widely reported in Nigeria, eg. "4 Ghanaians die of hunger", New Nigeria, 31 January p. 1.

38. Some of this was witnessed by the author at the Apapa wharf. The debacle at the Hajj Transit Camp - where tens of thousands of departing aliens were herded from the Seme and Idioroko border posts when Nigeria closes its borders on May 10, after opening them for only 7 days for the exit of the aliens, was reported by all Nigerian news papers and television. See for example, The Guardian, May 14 and 15; "The Aliens Bungle", National Concord, Nigerian Statesman, May 11 and Daily Sketch, May 13. And it should be added that Hajj Camp situation was deplored by many among the Nigerian public, some of who made individual humanitarian gestures in donating food, water and first aid.

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## RESUME

*L'étude met en lumière les causes structurelles et la nature systématique des migrations dans la sous-région d'Afrique de l'Ouest et indique les remèdes que les Etats concernés y ont apportés et leurs effets sur les droits et les statuts des migrants, considérés comme une classe*

particulière de main- d'oeuvre exploitée dans le processus de développement de la sous- région. Les migrations de Ghanéens vers le Nigéria offrent de nombreux exemples concrets à cet égard.

Les migrations contemporaines de frontière à frontière ont une origine et un caractère distincts des courants précédents; déclenchées par l'expansion coloniale et les modèles ultérieurs d'intégration de la région au sein de l'économie mondiale, elles sont toujours favorisées par les déséquilibres structurels qui découlent de ces processus. La création d'un marché régional du travail qui a mis en branle d'importants courants migratoires en est un résultat patent. Ces migrants ne sont pas des réfugiés chassés par la famine, par des conflits politiques et/ou la guerre. Le thème examiné est celui d'"une population nombreuse et mobile de demandeurs d'emplois".

Les migrations de travailleurs, une réalité de notre siècle, ont néanmoins connu un changement quantitatif et qualitatif, en ce qui concerne leur rythme et leurs conséquences, au cours de la dernière décennie. Ce changement est une cristallisation de la crise de développement engendrée par la récession économique mondiale, par les modifications survenues dans la division internationale du travail et par les mutations intervenues dans l'Etat post-colonial et dans sa politique économique.

La récession que connaît actuellement l'économie mondiale a déclenché une crise générale du marché du travail qui a considérablement accru le nombre de chômeurs et de sous-employés de la région. Il convient de situer dans le contexte de cette crise les vagues de migrations en provenance du Ghana au cours de la dernière décennie et les expulsions massives des travailleurs immigrés du Nigéria. Face à la crise économique et au fléchissement consécutif de la demande en main-d'oeuvre, les immigrés clandestins, sont les premiers visés. Compte-tenu de la nature artificielle des frontières qui partagent des communautés politiques pré-coloniales en Afrique, l'éthnicité, la région et la religion sont des facteurs importants dans l'arène politique où les étrangers subissent trop souvent les conséquences de situations fâcheuses. Ils se heurtent à un appareil politico- juridique dans le cadre duquel les droits juridiques, politiques et civils leur sont niés. Les forts courants migratoires de frontière à frontière ont ceci de remarquable qu'ils tendent singulièrement à susciter de fortes effusions de nationalisme, encourageant l'affirmation de l'identité nationale, dans le meilleur des cas, mais désignant également les étrangers à la vindicte populaire lorsque la situation s'envenime comme il ressort clairement de

*l'emploi de certaines insultes courantes. Le mot "étranger" lui-même acquiert une connotation péjorative dans le langage populaire et a des relents de chauvinisme en temps de crise. A cet égard, les mouvements de population à l'intérieur des frontières nationales et les limitations de l'émigration sont devenus des facteurs éminemment importants dans le cadre de l'édification d'une conscience nationale. Dans l'Afrique post-coloniale, des mesures telles la fermeture des frontières, les expulsions massives d'étrangers et la réglementation limitant la participation des étrangers à la vie économique du pays ont renforcé un modèle de souveraineté nationale et d'intégrité territoriale centré sur l'Etat. Ces mêmes mesures servent à mobiliser le ressentiment contre les étrangers et partant à développer le sentiment populaire d'appartenance à une nation. De même, faute de classes sociales bien structurées, les intérêts bureaucratiques qui se cristallisent autour de l'Etat-nation ont grandement contribué au processus de formation des classes. Ainsi les classes dirigeantes ont tendance à se servir du nationalisme et de l'ethnicité pour masquer la structure profonde des classes et leur incapacité à élaborer une stratégie de développement viable.*

*Après avoir analysé les tentatives faites par les gouvernements ouest-africains pour réglementer de concert les migrations, par le biais du processus d'intégration économique régionale mis en place par la CEDEAO, l'article établit un parallèle entre le modèle de la CEDEAO et l'école fonctionnaliste en ce qui concerne les facteurs déterminants des migrations de travailleurs. Tous les deux sont en effet des modèles axés sur le marché et ne tiennent pas compte du développement inégal de la sous-région ni des revirements fréquents de l'activité économique, qui ont fait des forts courants migratoires un mal endémique de l'ère contemporaine. Compte tenu de cette réalité, l'auteur souligne la nécessité d'une politique sous-régionale qui viserait à libéraliser les migrations et à protéger les travailleurs migrants.*