

No. 32496

MULTILATERAL

Protocol relating to free movement of persons, residence and establishment. Concluded at Dakar on 29 May 1979

Supplementary Protocol on the code of conduct for the implementation of the above-mentioned Protocol. Concluded at Lomé on 6 July 1985

Supplementary Protocol on the second phase (right of residence) of the above-mentioned Protocol of 29 May 1979. Concluded at Abuja on 1 July 1986

Supplementary Protocol on the implementation of the third phase (right of establishment) of the above-mentioned Protocol of 29 May 1979. Concluded at Banjul on 29 May 1990

Authentic texts: English and French.

Registered by the Economic Community of West African States on 1 February 1996.

PROTOCOL¹ RELATING TO FREE MOVEMENT OF PERSONS, RESIDENCE AND ESTABLISHMENT

THE HIGH CONTRACTING PARTIES

RECALLING that sub-paragraph (d) of paragraph 2 of Article 2 of the Treaty of the Economic Community of West African States² calls on Member States to ensure by stages the abolition of the obstacles to free movement of persons, services and capital;

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

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

¹ Came into force provisionally on 29 May 1979 in respect of the following States, on whose behalf it was signed on that date, and definitively on 8 April 1980, upon deposit with the Executive Secretary of the Economic Community of West African States of instruments of ratification by seven signatory States(*), in accordance with article 13 (1):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification</i>	
Benin		
Burkina Faso		
Cape Verde		
Côte d'Ivoire		
Gambia		
Ghana*	8 April	1980
Guinea*	17 October	1979
Guinea-Bissau*	20 August	1979
Liberia*	1 April	1980
Mali		
Mauritania		
Niger*	11 January	1980
Nigeria*	12 September	1979
Senegal		
Sierra Leone		
Togo*	9 November	1979

In addition, the Government of Mauritania deposited its instrument of ratification with the Executive Secretary of the Economic Community of West African States. The date of deposit was not supplied.

² United Nations, *Treaty Series*, vol. 1010, p. 17.

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

HAVE AGREED AS FOLLOWS:

PART II

DEFINITIONS

ARTICLE 1

In this Protocol:

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

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

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

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

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

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

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

"A valid travel document" means a passport or any other valid travel document establishing the identity of the holder

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

PART II

GENERAL PRINCIPLES ON MOVEMENT OF PERSONS,

RESIDENCE AND ESTABLISHMENT

ARTICLE 2

1. The Community citizens have the right to enter, reside and establish in the territory of Member States.
2. The right of entry, residence and establishment referred to in paragraph 1 above shall be progressively established in the course of a maximum transitional period of fifteen (15) years from the definitive entry into force of this Protocol by abolishing all other obstacles to free movement of persons and to the right of residence and establishment.
3. The right of entry, residence and establishment which shall be established in the course of a transitional period shall be accomplished in three phases, namely;
 - Phase I - Right of Entry and Abolition of Visa
 - Phase II - Right of Residence
 - Phase III - Right of Establishment
4. Upon the expiration of a maximum period of five (5) years from the definitive entry into force of this Protocol the Commission, based upon the experience gained from the implementation of the first phase as set out in Article 3 below, shall make proposals to the Council of Ministers for further liberalization towards the subsequent phases of freedom of residence and establishment of persons within the Community and these phases shall be dealt with in subsequent Annexes to this Protocol.

PART III

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

ARTICLE 3

- I. Any citizen of the Community who wishes to enter the territory of any other Member States shall be required to possess valid travel document and international health certificate.
2. A citizen of the Community visiting any Member State for a period not exceeding ninety (90) days shall enter the territory of that Member State through the official entry point free of visa requirements. Such citizen shall, however, be required to obtain permission for an extension of stay from the appropriate authority if after such entry that citizen has cause to stay for more than ninety (90) days.

ARTICLE 4

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

PART IV

MOVEMENT OF VEHICLES FOR THE TRANSPORTATION OF PERSONS

ARTICLE 5

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

I. Private Vehicles

A private vehicle registered in the territory of a Member State may enter the territory of another Member State and remain there for a period of ninety (90) days upon presentation of the documents listed hereunder to the competent authority of that Member State:-

- (i) Valid driving licence
- (ii) Matriculation Certificate (Ownership Card)
or Log Book

- (iii) Insurance Policy recognised by Member States
- (iv) International Customs carnet recognised within the Community.

2. Commercial Vehicles

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

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

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

PART V

MISCELLANEOUS PROVISIONS

ARTICLE 6

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

ARTICLE 7

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

ARTICLE 8

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

ARTICLE 9

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

ARTICLE 10

The provisions of this Protocol shall not operate to the prejudice of citizens of the Community who are already in residence and establishment in a Member State provided they comply with the laws in general and in particular the immigration laws of that Member State.

ARTICLE 11

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

government of the state of origin of the citizen and the Executive Secretary.

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

ARTICLE 12

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

PART VI

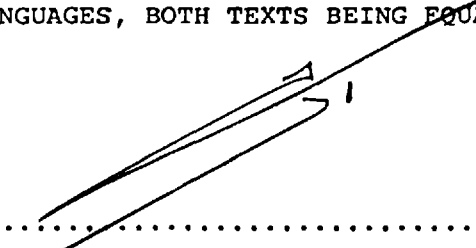
FINAL PROVISIONS: DEPOSIT AND ENTRY INTO FORCE

ARTICLE 13

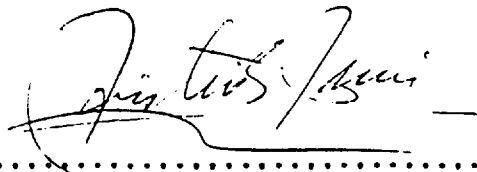
1. This Protocol shall enter into force provisionally upon signature by Heads of State and Government of Member States and definitively upon ratification by at least seven signatory States in accordance with the constitutional procedures applicable for each signatory State.
2. This Protocol and all the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

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

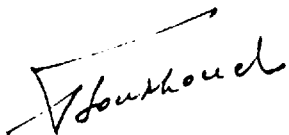
DONE AT DAKAR THIS..29TH..DAY OF MAY 1979 IN SINGLE ORIGINAL IN THE ENGLISH AND FRENCH LANGUAGES, BOTH TEXTS BEING EQUALLY AUTHENTIC.



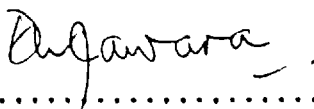
.....
 H.E. Colonel Mathieu KEREKOU
 President of People's Republic of Benin.



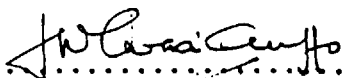
.....
 H.E. Mr. Aristides PEREIRA
 President of the Republic of Cape Verde.



.....
 H.E. Mr. Felix HOUPOUET-BOIGNY
 President of the Republic of Ivory Coast.



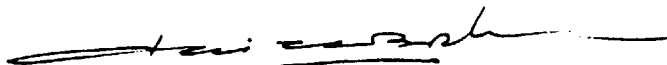
.....
 H.E. Alhaji Sir Dauda K. JAWARA
 President of the Republic of Gambia.



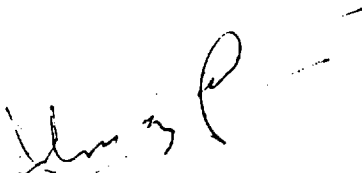
.....
H.E. General Frederick William Kwasi AKUFFO
The Head of State and Chairman of the Supreme
Military Council of the Republic of Ghana.



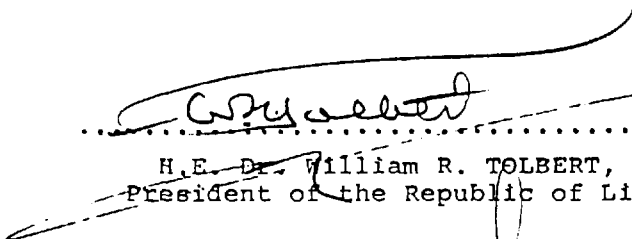
.....
H.E. Dr. Lansana BEAVOGUI
Prime Minister
For and on behalf of the Head of State and
Commander-in-Chief of the People's
Revolutionary Armed Forces
President of the People's Revolutionary
Republic of Guinea.



.....
H.E. Mr. Luiz CABRAL
President of the Republic of Guinea-Bissau.



.....
H.E. General A. Sangoule LAMIZANA
President of the Republic of Upper Volta.



.....

H.E. Dr. William R. TOLBERT, Jr.
President of the Republic of Liberia.



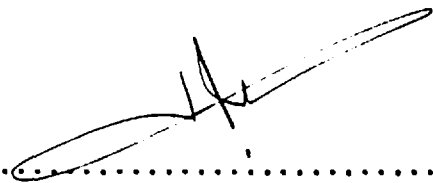
.....

H.E. General Moussa TRAORE
Chairman of the Military Committee of
National Liberation
President of the Republic of Mali.



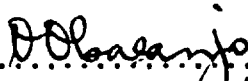
.....

H.E. Mr. Moulaye MOHAMED
Minister of Finance and Commerce
For and on behalf of the Chairman of the
Military Committee of National Redemption of
the Islamic Republic of Mauritania.



.....

H.E. Lt. Col. Seyni KOUNTCHE
Head of State and Chairman of the
Supreme Military Council of the Republic of Niger.



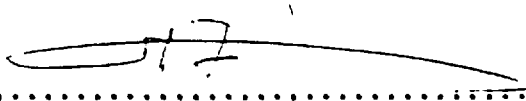
.....
H.E. General Olusegun OBASANJO
Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces of the
Republic of Nigeria.



.....
H.E. Mr. Leopold Sedar SENGHOR
President of the Republic of Senegal.



.....
H.E. Dr. Siaka STEVENS
President of the Republic of Sierra Leone.



.....
H.E. General Gnassingbe EYADEMA
President of the Republic of Togo.

SUPPLEMENTARY PROTOCOL¹ ON THE CODE OF CONDUCT FOR THE IMPLEMENTATION OF THE PROTOCOL ON FREE MOVE- MENT OF PERSONS, THE RIGHT OF RESIDENCE AND ESTAB- LISHMENT

THE HIGH CONTRACTING PARTIES,

- MINDFUL of the Treaty establishing ECOWAS,² particularly its Article 2 paragraph (d) and Article 27, as amended by Decision A/DEC.8/5/82 of the Authority of Heads of State and Government dated 29 May, 1982;
- CONSIDERING the Protocol on Free Movement of Persons, the Right of Residence and Establishment;³
- CONVINCED that the implementation by all Member States of the provisions of the texts on free movement of persons, goods, services and capital shall constitute the fundamental

¹ Came into force provisionally on 6 July 1985 in respect of the following States, on whose behalf it was signed on that date, and definitively on 28 June 1989, upon deposit with the Executive Secretary of the Economic Community of West African States of instruments of ratification by seven signatory States(*), in accordance with article 11 (1):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification</i>	
Benin		
Burkina Faso*	28 June	1989
Cape Verde		
Côte d'Ivoire		
Gambia		
Ghana*	12 May	1989
Guinea		
Guinea-Bissau		
Liberia		
Mali*	2 December	1988
Mauritania		
Niger*	4 May	1989
Nigeria*	18 April	1988
Senegal		
Sierra Leone*	8 November	1988
Togo*	17 February	1988

In addition, after the definitive entry into force of the Supplementary Protocol, the following States deposited instruments of ratification with the Executive Secretary of the Economic Community of West African States on the dates indicated hereafter, to take effect on the same date:

Gambia	4 June	1990
Guinea-Bissau	13 November	1990
Senegal	8 April	1991
Benin	24 May	1991
Côte d'Ivoire	19 July	1991
Liberia	9 April	1992
Cape Verde	13 April	1992
Guinea	18 July	1992

² United Nations, *Treaty Series*, vol. 1010, p. 17.

³ See p. 58 of this volume.

basis for building up ECOWAS and influencing the harmonious development of all economic, social and cultural activities within the sub-region, for the well-being of the peoples of Member States of the Community;

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

HEREBY AGREE AS FOLLOWS:

CHAPTER 1

DEFINITIONS

Article 1

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

- "Treaty" means the Treaty of the Economic Community of West African States;
- "Community" means the Economic Community of West African States;
- "Member State or Member States" means the Member State or Member States of the Community;
- "Member State or Member States of origin" means the Member State or Member States of which the migrant is a national or an indigene;
- "Host Member State or Member States" means the Member State or Member States in which the migrant is staying or residing;

- "Authority" means the Authority of Heads of State and Government created by Article 5 of the Treaty;
- "Executive Secretary and Executive Secretariat" means the Executive Secretary and the Executive Secretariat of the Community as defined in Article 8 of the Treaty;
- "Community citizen or citizens" means any national or nationals of a Member State who fulfill the conditions stipulated in the Protocol A/P.3/5/82 establishing the Community Citizenship Code;¹
- "Right of residence" means the right granted to a citizen who is a national of one Member State to reside in a Member State other than his State of origin which issues him with a Residence Card or Permit, enabling him to hold employment or otherwise;
- "Resident" means any citizen who is a national of a Member State to whom the right of residence is granted;
- "Right of establishment" means the right granted to a citizen who is a national of one Member State to settle or establish in another Member State other than his State of origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under conditions defined by the legislation of the host Member State for its own nationals;
- "Companies" means any company, including cooperative societies or any other legal entity governed by public or company law, with the exception of companies or societies which have no lucrative objective;
- "Migrant" means a national of one Member State of the Community who has travelled from his country of origin to the territory of another Member State;

¹ See "Protocol relating to the definition of Community citizen" in United Nations, *Treaty Series*, vol. 1690, No. I-29138.

- "Illegal immigrant" means any immigrant citizen of the Community who does not fulfill the conditions stipulated in the different Protocols relating to the free movement of persons, the right of residence and establishment;
- "Competent Administrations" means the national administrations of Member States responsible for matters relating to the free movement of persons, services and capital;
- "Fundamental human rights" means the rights of any individual recognised by the International Declaration of Human Rights adopted on 10 December, 1948 by the United Nations General Assembly.¹

CHAPTER II

ROLE AND OBLIGATIONS OF MEMBER STATES OF ORIGIN AND HOST MEMBER STATES OF IMMIGRANTS AND THE FORM OF COOPERATION REQUIRED BETWEEN COMPETENT ADMINISTRATIONS OF MEMBER STATES

Article 2

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

¹ United Nations, *Official Records of the General Assembly, Third Session, Part I*, p. 71.

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

CHAPTER III

RIGHTS AND OBLIGATIONS OF MIGRANTS IN HOST MEMBER STATES AND CONDITIONS AND PROCEDURES FOR EXPULSION

Article 3

1. In the event of clandestine or illegal immigration, both at national as well as Community level, measures shall be taken to guarantee that illegal immigrants enjoy and exercise their fundamental human rights.
2. The fundamental human rights of expelled immigrants or of the immigrant subject to such a measure by virtue of the laws and regulations of the host Member State, as well as the benefits accruing from his employment, shall be respected. Any expulsion orders shall be enforced in a humane manner without injury to the person, rights or properties of the immigrant.
3. Any person under an expulsion order shall be given a reasonable period of time to return to his country of origin.
4. Any expulsion order which may lead to the violation of fundamental human rights is prohibited.
5. By virtue of the fundamental human rights enjoyed by clandestine immigrants, host Member States shall

ensure that repatriation takes place under legal and properly controlled procedures.

6. Where it is absolutely necessary, expulsion shall be contemplated solely on strictly legal grounds; in any case, it shall be effected with due respect for the human dignity of the expelled immigrant.
7. Any immigrant citizen of the Community travelling to a Member State other than his State of origin or desiring to reside or establish in such a Member State shall fulfill the conditions stipulated under the different Protocols on the free movement of persons, right of residence and establishment, and the conditions regulating his entry, residence or establishment.

CHAPTER IV

PROVISIONS COVERING THE TREATMENT OF ILLEGAL IMMIGRANTS

Article 5

1. Member States shall take all possible steps to ensure or facilitate the obtaining of the correct documents by illegal immigrants, if desired and possible.
2. The regularisation of the status of illegal immigrants shall be effected under the conditions stipulated in the different Protocols relating to the free movement of persons, the right of residence and establishment and on the basis of the following factors:
 - the existence of an ample political consensus making regularisation of stay desirable or necessary;
 - the acceptability of the immigrants by a large section of society;

- deadline of admissibility;
- a well-conceived information campaign directed at the entire population and designed to ensure their support and understanding;
- the absence of legal punitive measures against persons wishing to regularise their stay.

CHAPTER V

SUB-REGIONAL COOPERATION FOR THE PURPOSE OF PREVENTING OR REDUCING THE FLOW OF ILLEGAL IMMIGRANTS

Article 6

1. With a view to reducing both the attractions as well as the phenomenon of illegal immigrants, measures taken on a national, sub-regional or regional scale must be initiated through bilateral or multilateral cooperation.
2. Member States undertake to work together to reduce and eliminate the incidence of clandestine immigration as well as the smuggling of illegal workers.

CHAPTER VI

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

Article 7

1. The host Member State shall protect properties legally acquired on her territory by immigrants who are

- Community citizens, and shall respect their rights deriving therefrom.
2. Member States shall not apply any measures detrimental to the properties, rights and benefits legally acquired on their territory by citizens and nationals of other Member States which would not be applicable to their own nationals under the same conditions.
 3. Any measure taken by a Member State which is detrimental to goods, movable properties or fixed assets legally acquired by Community citizens who are nationals of another Member State shall be liable to payment of a fair and equitable compensation.
 4. Host Member States shall not enact any tax laws of a kind that may result in a less favourable treatment of immigrant Community citizens residing or established in their territories. This provision applies to both natural and legal persons.
 5. Community citizens who are nationals of a Member State shall have on the territories of other Member States, under the same conditions as their nationals, freedom to prosecute and defend their rights under any jurisdiction.

CHAPTER VII

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

Article 8

1. Whenever a problem of internal security shall lead to the imposition of measures restricting the implementa-

tion of the provisions of the Protocol on free movement of persons, the right of residence and establishment, the Member State concerned shall inform the Executive Secretariat and other Member States within a reasonable period of time.

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

CHAPTER VIII

MISCELLANEOUS PROVISIONS

Article 9

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

Article 10

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

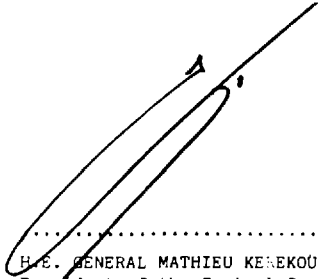
CHAPTER IX

DEPOSIT AND ENTRY INTO FORCE

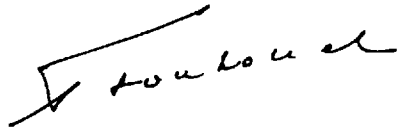
Article 11

1. This Protocol shall enter into force provisionally upon signature by the Heads of State and Government of Member States and definitively upon ratification by at least seven (7) signatory States in accordance with the constitutional procedures applicable for each signatory Member State.
2. This Protocol and all the instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies to all Member States and notify them of the dates of deposits of the instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations Organisation and all other Organisations.
3. This Protocol shall be annexed to and shall be an integral part of the Treaty.
4. In faith whereof, we the Heads of State and Government of the Economic Community of West African States have signed this Protocol.

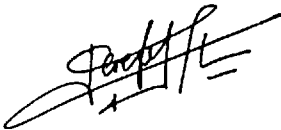
DONE IN LOME ON THIS 6th DAY OF JULY 1985 IN
ONE SINGLE ORIGINAL IN THE ENGLISH AND FRENCH
LANGUAGES, BOTH TEXTS BEING EQUALLY AUTHENTIC.



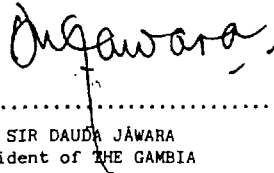
.....
H.E. GENERAL MATHIEU KERÉKOU
President of the Central Committee
of the People's Revolutionary
Party of Benin, President of
National Executive Council, Head
of State, President of the Republic



.....
H.E. MR. FELIX HOUPHOUËT-BOIGNY
President of the Republic of
IVORY COAST



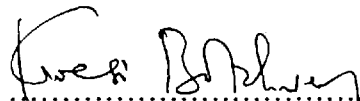
.....
H.E. CAPTAIN THOMAS SANKARA
President of FASO




.....
H.E. SIR DAUDA JÁWARA
President of THE GAMBIA



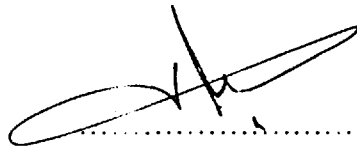
.....
HONOURABLE MR. OSWALDO LOPEZ Da SILVA
Minister of Economic Affairs and
Finance, for and on behalf of the
President of the Republic CAPE VERDE



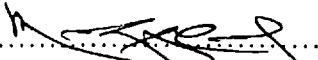
.....
HONOURABLE DR. KWESI BOTCHWEY
P.N.D.C. Secretary for Finance
and Economic Planning, for and on
behalf of the Head of State of the
Republic GHANA .



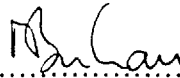
.....
H.E. COLONEL LANSANA CONTE
President of the Republic of GUINEA



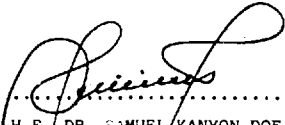
.....
H.E. COLONEL SEYNI KOUNTCHE
President of the Republic of NIGER



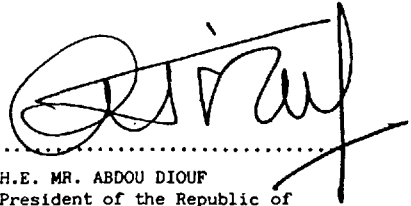
HONOURABLE MR. MARIO CABRAL
Minister of Commerce and Tourism,
for and on behalf of the President
of GUINEA BISSAU



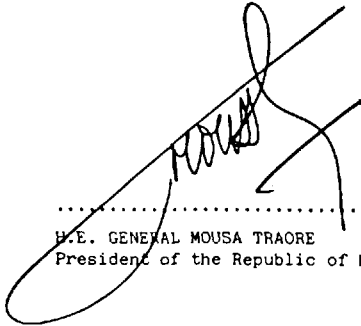
H.E. GENERAL MUHAMMADU BUHARI
Head of State of the Federal
Republic of NIGERIA




H.E. DR. SAMUEL KANYON DOE
Commander-in-Chief, Chairman of
the People's Redemption Council and
Head of State of LIBERIA



H.E. MR. ABDOU DIOUF
President of the Republic of
SENEGAL



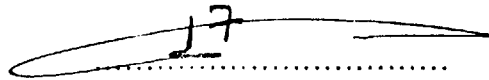
H.E. GENERAL MOUSA TRAORE
President of the Republic of MALI



H.E. DR. SIAKA STEVENS
President of the Republic of
SIERRA LEONE



HONOURABLE LT. COL. ANNE MAMADOU BABALY
Minister of Finance and Commerce,
for and on behalf of the President of
the Islamic Republic of MAURITANIA



H.E. GENERAL GNASSINGBE EYADEMA
President of the Republic of TOGO

SUPPLEMENTARY PROTOCOL¹ ON THE SECOND PHASE (RIGHT OF RESIDENCE) OF THE PROTOCOL ON FREE MOVEMENT OF PERSONS, THE RIGHT OF RESIDENCE AND ESTABLISHMENT

PREAMBLE

THE HIGH CONTRACTING PARTIES,

MINDFUL of Article 5 of the ECOWAS Treaty² establishing the Authority of Heads of State and Government and defining its composition and functions,

MINDFUL of the ECOWAS Treaty, particularly its Article 27,

MINDFUL of the Protocol on free movement of persons, the right of residence and establishment, signed in Dakar on 29 May, 1979,³

¹ Came into force provisionally on 1 July 1986 in respect of the following States, on whose behalf it was signed on that date, and definitively on 12 May 1989, upon deposit with the Executive Secretary of the Economic Community of West African States of instruments of ratification by seven signatory States(*), in accordance with article 30 (1):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification</i>	
Benin		
Burkina Faso		
Cape Verde		
Côte d'Ivoire		
Gambia		
Ghana*	12 May	1989
Guinea		
Guinea-Bissau		
Liberia		
Mali*	2 December	1988
Mauritania		
Niger*	4 May	1989
Nigeria*	18 April	1988
Senegal*	11 February	1987
Sierra Leone*	8 November	1988
Togo*	17 February	1988

In addition, after the definitive entry into force of the Supplementary Protocol, the following States deposited instruments of ratification with the Executive Secretary of the Economic Community of West African States on the dates indicated hereafter, to take effect on the same date:

Burkina Faso	28 June	1989
Guinea	13 October	1989
Gambia	4 June	1990
Guinea-Bissau	13 November	1990
Côte d'Ivoire	19 July	1991
Liberia	9 April	1992

² United Nations, *Treaty Series*, vol. 1010, p. 17.

³ See p. 58 of this volume.

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

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

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

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

HEREBY AGREE AS FOLLOWS:

CHAPTER 1: DEFINITIONS

Article 1

1. In this Protocol, the following expressions shall have the meaning assigned to them hereunder.

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

"Community" means the Economic Community of West African States as defined in Article 1 of the Treaty.

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

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

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

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

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

"Community citizen or Community citizens" means any person or persons fulfilling the conditions stipulated in the Protocol A/P.3/5/82 relating to the definition of Community citizen.¹

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

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

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

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

"Competent Administrations or relevant Departments" means national Administrations of Member States responsible for immigration and emigration matters.

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

¹ United Nations, *Treaty Series*, vol. 1690, No. I-29138.

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

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

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

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

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

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

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

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

(d) persons whose main income does not come from the host Member State.

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

CHAPTER 11 : RIGHT OF RESIDENCE

Article 2

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

Article 3

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

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

Article 4

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

CHAPTER III : RESIDENCE CARD VALID AS VISITING AND
RESIDENCE PERMIT

Article 5

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

Article 6

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

Article 7

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

Article 8

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

Article 9

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

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

Article 10

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

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

Article 11

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

Article 12

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

CHAPTER V : PROTECTION AGAINST COLLECTIVE AND ARBITRARY
EXPULSION

Article 13

1. Migrant workers and members of their families may not be affected by collective or en masse expulsion orders.
2. Each case of expulsion shall be considered and judged on an individual basis.

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

Article 14

1. Migrant workers and members of their families whose status comply with the residence requirements may only be expelled from the host Member State:
 - (a) for reasons of national security, public order or morality;
 - (b) if, having been duly informed of the consequences, they refuse to comply with the orders given to them by a public medical authority for the purpose of protecting public health.
 - (c) if an essential condition for the issuance or the validity of their authorisation of residence or work permit is not fulfilled.
 - (d) in accordance with the laws and regulations applicable in the host Member State.
2. Any form of expulsion may only be based on a well-founded legal or administrative decision taken in accordance with the law.

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

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

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

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

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

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

Article 15

1. Consular or diplomatic authorities of the Member State of origin or of the country representing the interest of the country of origin shall be advised of any decision to expel a migrant worker or member of his family legally present in

the host Member State, at least forty-eight (48) hours before the expulsion takes effect.

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

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

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

Article 16

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

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

CHAPTER VII : TRANSFER OF SAVINGS

Article 17

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

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

CHAPTER VIII: COOPERATION BETWEEN COMPETENT ADMINISTRATIONS
OF MEMBER STATES

Article 18

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

1. identify the types of migratory movement within the Community as well as the reasons for such movement;
2. identify the types of employment sought and the qualification of the employment-seekers as well as the cost of labour in Member States through exchange of information between the Executive Secretariat and each Member State;
3. consider trade union organisations in each Member State and their attitude to immigrant job-seekers;
4. monitor the problems of migrant labour, as well as the types of industry of activity which attract such labour and to inform the Executive Secretariat on the subject ;
5. endeavour to harmonise the employment and labour policies in Member States, on the basis of this exchange of information on migrant labour.

Article 19

While they shall be free to determine the criteria authorising the admission, stay, employment of migrant workers

and members of their family, the host Member States shall hold consultations and act in collaboration with the other Member States concerned in order to promote healthy, fair and humane conditions to ensure legal migration of workers and their families.

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

Article 20

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

These organs shall be responsible for:

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

5. recommending for adoption, laws, regulations and any other measures necessary to facilitate the application of the provisions of this Protocol, and settling questions relating to movement within the Community and to migrant workers.

Article 21

1. At the national level of each Member State only the following bodies shall be authorised to carry out operations for the purposes of recruitment or placement of workers in another State;
 - (a) official departments or bodies of the Member State of origin or the host Member State, if agreements have been concluded between the Member States concerned;
 - (b) any body set up by a bilateral or multilateral agreement.
2. Through national legislation and bilateral or multilateral agreements, the following may be authorised to carry out the recruitment exercise, subject to the approval and supervision of the authorities of the Member State concerned:
 - (a) the employer or a person in his employ acting on his behalf;
 - (b) private agencies

Article 22

1. Member States shall cooperate to prevent and stop illegal or clandestine movement and employment of migrant workers whose status is irregular.
2. For this purpose, each Member State shall, within the limits of its jurisdiction, take:
 - (a) appropriate measures against the dissemination of misleading information on emigration and immigration.

- (b) measures intended to detect and stop the illegal or clandestine movement of migrant workers and members of their families and to impose effective sanctions on persons or bodies who organise or help to organise such movements or participate in them;
- (c) measures intended to impose effective sanctions on persons, groups or bodies which resort to violence, threats or intimidation against illegal migrant workers or members of their families.

3. Host Member States shall take adequate measures likely to effectively stop the employment of illegal aliens in their territory, by imposing sanctions on the persons or bodies which employ such workers. These measures shall not adversely affect the right of migrant workers vis-a-vis their employers and the rights resulting from their employment.

Article 23

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

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

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

CHAPTER IX : GENERAL AND MISCELLANEOUS PROVISIONS

Article 24

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

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

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

Article 25

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

Article 26

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

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

Article 27

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

Article 28

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

Article 29

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

CHAPTER X : DEPOSIT AND ENTRY INTO FORCEArticle 30

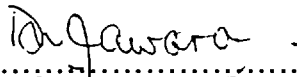
1. This Protocol shall enter into force provisionally upon signature by the Heads of State and Government and definitely upon ratification by at least seven (7) signatory States in accordance with the constitutional procedures of each Member State.
2. This Protocol and all instruments of ratification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

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

DONE AT ABUJA THIS 1st DAY OF July 1986
IN SINGLE ORIGINAL IN THE ENGLISH AND FRENCH
LANGUAGES, BOTH TEXTS BEING EQUALLY AUTHENTIC.



.....
Hon. Dr. Soule DANKORO
Minister of Trade, Handicraft and
Tourism, for and on behalf of the
President of the People's
Republic of BENIN



.....
H.E. Alhaji Sir Dauda K. JAWARA
President of the Republic of
THE GAMBIA

FO



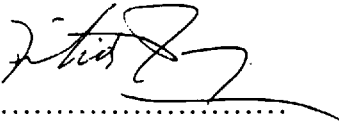
.....

H.E. Captain Thomas SANKARA
President of FASO



.....

Hon. Alhaji Mahama IDRISU
Member, PNDC, for and on behalf of
the President of PNDC, Head of State
of the Republic of GHANA



.....

H.E. Mr. Aristides PEREIRA
President of the Republic of
CAPE VERDE



.....

Hon. Major Kerfalla CAMARA,
Permanent Secretary, Military
Committee for National Recovery,
for and on behalf of the President
of the Republic of GUINEA



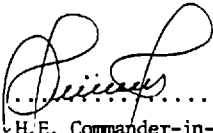
.....

Hon. Mr. Simeon AKE
Minister of Foreign Affairs,
for and on behalf of the
President of the Republic of
COTE D'IVOIRE



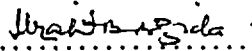
.....

H.E. Brigadier Joao Bernardo VIEIRA
President of the Republic of
GUINEA BISSAU



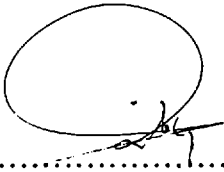
.....

H.E. Commander-in-Chief
Samuel Kanyon DOE
President of the Republic of
LIBERIA

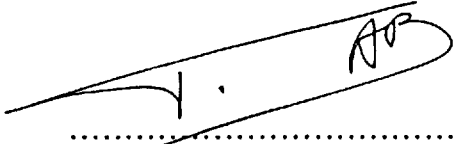


.....

H.E. Major-General
Ibrahim Badamasi BABANGIDA
President of the Federal Republic
of NIGERIA



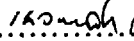
.....
 Hon. Mr. Dianka Kaba DIAKITE
 Minister of Finance and Trade,
 for and on behalf of the
 President of the Republic of
 MALI




.....
 Hon. Mr. Abdourahmane TOURE
 Minister of Trade, for and on
 behalf of the President of the
 Republic of SENEGAL



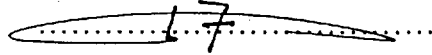
.....
 H.E. Colonel
 Maouiya Ould Sid'Ahmed TAYA
 President of the Islamic Republic
 of MAURITANIA



.....
 H.E. Major-General
 Dr. Joseph Saidu MOMOH
 President of the Republic of
 SIERRA LEONE



.....
 Hon. Mr. Hamid ALGABID
 Prime Minister, for and on behalf
 of the President of the Republic
 of NIGER



.....
 H.E. General Gnassingbe EYADEMA
 President of the Republic of TOGO

**SUPPLEMENTARY PROTOCOL¹ ON THE IMPLEMENTATION OF
THE THIRD PHASE (RIGHT OF ESTABLISHMENT) OF THE
PROTOCOL ON FREE MOVEMENT OF PERSONS, RIGHT OF
RESIDENCE AND ESTABLISHMENT**

THE HIGH CONTRACTING PARTIES

MINDFUL of Article 5 of the ECOWAS Treaty² establishing the Authority of Heads of State and Government and defining its composition and function;

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

MINDFUL of Protocol A/P.1/5/79 dated 29 May 1979 on Free Movement of Persons, Right of Residence and Establishment;³

MINDFUL of Protocol A/P.3/5/82 dated 29 May 1979 establishing the Code of Citizenship of the Community;⁴

¹ Came into force provisionally on 29 May 1990 in respect of the following States, on whose behalf it was signed on that date, and definitively on 18 July 1992, upon deposit with the Executive Secretary of the Economic Community of West African States of instruments of ratification by seven signatory States(*), in accordance with article 16:

<i>Participant</i>	<i>Date of deposit of the instrument of ratification</i>	
Benin		
Burkina Faso*	19 May	1992
Cape Verde*	13 April	1992
Côte d'Ivoire		
Gambia*	9 April	1991
Ghana*	16 April	1991
Guinea*	18 July	1992
Guinea-Bissau*	27 June	1991
Liberia		
Mali		
Mauritania		
Niger		
Nigeria*	27 August	1990
Senegal		
Sierra Leone		
Togo		

² United Nations, *Treaty Series*, vol. 1010, p. 17.

³ See p. 58 of this volume.

⁴ See "Protocol relating to the definition of Community citizen" in United Nations, *Treaty Series*, vol. 1690, No. I-29138.

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

MINDFUL of Supplementary Protocol A/SP.1/7/85 dated 6 July 1985 establishing the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, Right of Residence and Establishment;²

MINDFUL of Supplementary Protocol A/SP.1/7/86 of 1 July 1986 on the implementation of the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, Right of Residence and Establishment;³

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

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

¹ See p. 185 of this volume.

² See p. 69 of this volume.

³ See p. 81 of this volume.

HEREBY AGREE AS FOLLOWS :

CHAPTER I

DEFINITIONS

ARTICLE 1

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

- "Treaty" means the Treaty of the Economic Community of West African States.
- "Community" means the Economic Community of West African States.
- "Member State or Member States" means a Member State or Member States of the Economic Community of West African States.
 - "Host Member State" means the Member State or country of residence of the migrant worker.
 - "Member State of Origin" means the Member State or country of origin of the migrant worker or the country of which he is a national.
 - "Authority" means the Authority of Heads of State and Government established by Article 5 of the Treaty.
 - "Council" means the Council of Ministers established by Article 6 of the Treaty.

- "Executive Secretary and Executive Secretariat" means the Executive Secretary and the Executive Secretariat of the Community as defined in Article 8 of the Treaty.
- "Commission" means the Trade, Customs, Immigration, Money and Payments Commission of the Community, as defined in Article 9 para. 1 (a) of the Treaty.
- "Community citizen or Community citizens" means any national or nationals of a Member State fulfilling the conditions stipulated in the Protocol A/P.3/5/82 relating to the definition of Community citizen.
- "Right of Residence" means the right of a citizen who is a national of one Member State to reside in a Member State other than his State of origin which issues him with a residence card or permit that may or may not allow him to hold employment.
- "Right of Establishment" means the right granted to a citizen who is a national of one Member State to settle or establish in another Member State other than his State of origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals.
- "Residence Card" or "Residence Permit" means the document issued by the competent authorities of a Member State granting right of residence in the territory of the Member State.

- "Resident" means any citizen, who is a national of one Member State, and who is accorded the right of residence.
- "Migrant worker" or "Migrant" means any citizen who is a national of one Member State, who has travelled from his country of origin to the territory of another Member State of which he is not a national and who seeks to hold employment there.
- "Competent Administration or relevant Departments" means national Administrations of Member States responsible for immigration and emigration matters.
- "Competent Authority of place of residence" means the competent local authority responsible for problems concerning the residence of foreigners in the territory of the host Member State.
- "Fundamental rights" means the right granted to any migrant worker by this Protocol and the Conventions of the International Labour Organisation (ILO) on the protection of the rights of migrant workers.
- "Border area workers" means migrant workers who, while in employment in one Member State, maintain their normal residence in a neighbouring Member State, which is their country of origin and to which they return each day or at least once a week.
- "Seasonal workers" means migrant workers in employment or practising a business on their own account in one Member State of which they are not nationals, the activity being by its nature dependent

on seasonal conditions and capable of being practised only during a part of the year.

- "Itinerant workers" means migrant workers who, normally residing in one Member State, may have to travel to another Member State for a short period for the requirements of their activities.
- "Company" means a company constituted under civil or commercial law or any other legal entity constituted under public or private law with the exception of non profit-making companies.

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

- i) Persons on official posting who are employed by international organisations and persons employed by a State outside the territory of that State, whose entry into the country and conditions of service are governed by general international law or by specific International Agreements or Conventions.
- ii) Persons on official posting who are employed by a State outside the territory of that State for the implementation of cooperation programmes for development agreed on with the host country, the entry into the country and conditions of service of such persons being established by specific International Agreements or Conventions.
- iii) Persons whose working relations with an employer have not been established in the host Member State.

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

CHAPTER II

ESTABLISHMENT OF OR ACCESS TO ENTERPRISES

Article 2

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

Article 3

For the purpose of implementation of this Protocol, companies which are formed in accordance with the laws and regulations of a Member State with their headquarters, central seat of administration or principal establishment within the Community shall be considered in the same category as individual nationals of Member States. Where, however, only the statutory headquarters of the company are established in a Member State, activities of such a company should have effective and sustained links with the economy of the Member State.

CHAPTER III

PROVISIONS FOR SECTORS OF ECONOMIC ACTIVITY GOVERNED BY
SPECIAL MEASURES WHERE SUCH ACTIVITY INVOLVE
NON-NATIONALSArticle 4

In matters of establishment and services, each Member State shall undertake to accord non-discriminatory treatment to nationals and companies of other Member States.

2. If, however, for a specific activity, a Member State is unable to accord such treatment, the Member State must indicate as such, in writing, to the Executive Secretariat. Other Member States shall then not be bound to accord non-discriminatory treatment to nationals and companies of the State concerned.
3. The provisions of this Protocol and measures taken as a result thereof shall be without prejudice to the application of legislative and administrative provisions which provide a special treatment for non-nationals and are justified by exigencies of public order, security or public health.
4. On the recommendation of the Commission and on the proposal of the Council, the Authority shall take the relevant decision for the coordination and harmonisation of legislative, statutory and administrative provisions which, in at least one Member State, make access to certain non-salaried activities (liberal or non-liberal

professions) and the exercise of such activities subject to protective or restrictive measures.

5. To facilitate access to non-salaried activities and the exercise of such activities, the Commission shall recommend to the Council, which shall propose to the Authority, that decisions be taken for the mutual recognition at Community level of diplomas, certificates and other qualifications.
6. Activities which in a Member State, form part, even occasionally, of the exercise of public authority, shall be exempted from the provisions of this Protocol.

CHAPTER IV

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

Article 5

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

- i) implement measures to encourage participation in development efforts by economic operators who share the objectives and priorities of development cooperation and respect the law and regulations of their respective States;

- ii) accord fair and equitable treatment to such capital to encourage and create conditions which favour investment of such capital;
- iii) promote effective cooperation between economic operators in their respective States.

Article 6

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

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

Article 7

1. Assets and capital invested by ECOWAS citizens who are not nationals of the Member State of establishment, having been duly authorised, shall not be subjected to any act of confiscation or expropriation on a discriminatory basis.
2. Any act of confiscation, expropriation or nationalisation must be followed by fair and equitable compensation.

Article 8

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

1. national or regional export financing and export credit guarantee institutions;

and

2. regional payment mechanism likely to facilitate and promote intra-community trade.

Article 9

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

CHAPTER V

PROVISIONS GOVERNING THE MOVEMENT OF CAPITAL FOR
INVESTMENT AND CURRENT PAYMENTSArticle 10

1. In transactions involving movement of capital for investment and current payments, Member States

shall refrain from taking exchange control measures which are incompatible with their obligations under the terms of this Protocol and earlier Community provisions, particularly Protocol A/P.1/11/84 of the Authority dated 23 November 1984, and relating to Community Enterprises.

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

Article 11

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

CHAPTER VI

COOPERATION BETWEEN RELEVANT ADMINISTRATIONS IN MEMBER STATES

Article 12

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

1. identify activities in which freedom of establishment has a particularly useful contribution to make to the development of production and trade and to deal with such activities in order of priority;
2. eliminate administrative practices and procedures emanating either from internal legislation or from agreements earlier concluded between Member States which, if maintained, would be an impediment to the freedom of establishment;
3. ensure that salaried workers of one Member State employed in the territory of another Member State shall remain in the said territory to carry out non-salaried activity on condition that they fulfill the requirements binding upon any ECOWAS citizen arriving from his State of origin for the purpose of carrying out a non-salaried activity;
4. make possible the acquisition and exploitation of landed property situated in the territory of one Member State by a national of another Member State, insofar as this is permitted by the laws and regulations of the host Member State;
5. eliminate restrictions to freedom of establishment in any sector of activity both in terms of conditions for the establishment of agencies, branches or subsidiaries and in terms of conditions of entry for staff of the parent establishment into the management or supervisory organs of the subsidiaries;

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

CHAPTER VII

GENERAL AND MISCELLANEOUS PROVISIONS

Article 13

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

Article 14

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

Article 15

1. Any Member State may submit proposals for amendment or revision of this Protocol.
2. All proposals shall be forwarded to the Executive Secretary who shall communicate them to Member States within thirty (30) days of receiving them. Amendments or revisions shall be considered by the Authority at the expiration of

the thirty (30) days' period of notice granted to Member States.

CHAPTER VIII

DEPOSIT AND ENTRY INTO FORCE

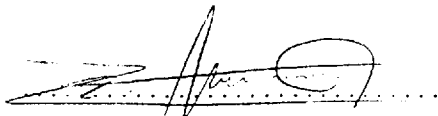
Article 16

1. This Supplementary Protocol shall enter into force, provisionally, upon signature by the Heads of State and Government and definitively, upon ratification by at least seven signatory States in accordance with the constitutional procedures of each signatory State.
2. This Supplementary Protocol and all instruments of ratification shall be deposited with the Executive Secretariat, which shall forward certified copies of the Protocol to all Member States and shall notify them of the date of deposit of the instruments of ratification. This Protocol shall be registered with the Organisation of African Unity, the United Nations Organisation and such Organisation as may be determined by the Authority of Heads of State and Government.
3. This Supplementary Protocol shall be annexed to the Treaty of which it shall form an integral part.

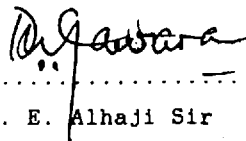
IN FAITH WHEREOF WE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED THIS PROTOCOL.

DONE AT BANJUL THIS 29TH DAY OF MAY 1990

IN ONE SINGLE ORIGINAL IN THE FRENCH AND ENGLISH LANGUAGES, BOTH TEXTS BEING EQUALLY AUTHENTIC.



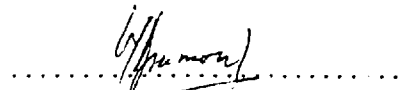
Hon. Theophile NATA
Minister of Foreign Affairs
and Cooperation, for and on
behalf of the President of
the Republic of BENIN



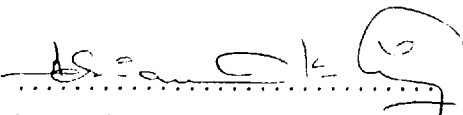
H. E. Alhaji Sir
Dawda Kairaba JAWARA
President of the Republic of
THE GAMBIA




H. E. Captain Blaise COMPAORE
Chairman of the Popular Front,
Head of State, Head of
Government of BURKINA FASO



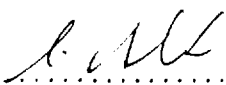
Hon. Dr. Obed Yao ASAMOAH
PNDC Secretary for Foreign
Affairs for and on behalf of
the Head of State and
Chairman of the Provisional
National Defence Council of
the Republic of GHANA



Hon. Adriano De Oliveira LIMA
Minister of Public Works, for
and on behalf of the President
of the Republic of CAPE VERDE




H. E. General Lansana CONTE
Chairman of the National
Military Committee of
Recovery, Head of State,
President of the Republic of
GUINEA



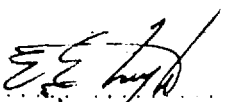
.....

Hon. Siméon AKE
Minister of Foreign Affairs
for and on behalf of the
President of the Republic of
COTE D'IVOIRE



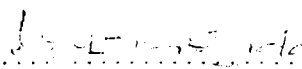
.....

H. E. João Bernardo VIEIRA
President of the Republic
of GUINEA BISSAU



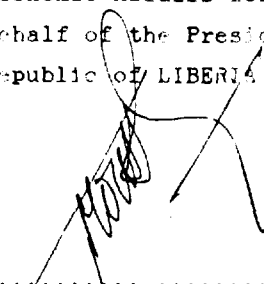
.....

Hon. Dr Elijah E. TAYLOR
Minister of Planning and
Economic Affairs for and on
behalf of the President of the
Republic of LIBERIA



.....

H. E. General
Ibrahim Badamasi BABANGIDA
President, Commander-in-
Chief of the Armed Forces of
the Federal Republic of
NIGERIA



.....

H. E. General Moussa TRAORÉ
Secretary-General of the
Democratic Union of the People
of Mali, President, Head of
State of the Republic of MALI

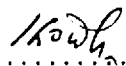


.....

H.E. Cheikh HAMIDOU KANE
Minister responsible for African
Economic Integration for and on
behalf of the President of the
Republic of SENEGAL

.....

Hon. Hasmi Ould DIDI
Minister of External Affairs
for and on behalf of the
President of the Islamic
Republic of MAURITANIA



.....

H. E. Major-General
Dr. Joseph Saidou MOMOH
President of the Republic of
SIERRA LEONE



.....
Hon. Aliou MAHIMIDOU
Prime Minister for and on
behalf of the President of
the Republic of NIGER



.....
H. E. Yaovi ADODO
Minister of Foreign Affairs
and Cooperation for and on
behalf of the President of
the TOGOLESE Republic