

# **Access to essential services for people on the move in the ECOWAS Region**

***A report on legal frameworks and barriers to freedom of  
movement, residence and establishment, and access to  
healthcare, education, employment, housing and legal  
assistance***

A study commissioned by the International Federation of Red Cross and Red Crescent Societies and the United Nations High Commissioner for Refugees

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# Contents

1	Executive Summary .....	8
2	Introduction .....	12
3	Research Design and Implementation.....	14
3.1	Research Methodology and Scope.....	14
3.2	Data Collection Method & Participants .....	14
3.3	Study Constraints .....	15
4	Legal and Policy Framework .....	16
4.1	International and Regional Protection Framework .....	16
4.1.1	General Guarantees of Access to Essential Services .....	19
4.1.2	Rights and Protections Specific to Victims of Trafficking .....	25
4.1.3	Rights and Protections Specific to Children .....	27
4.2	ECOWAS Legal and Policy Framework .....	28
4.2.1	ECOWAS Free Movement Framework.....	29
4.2.2	ECOWAS Framework on Trafficking in Persons.....	34
4.2.3	ECOWAS Framework on Child Protection .....	37
5	Key Findings .....	38
5.1	Access to Services.....	38
5.1.1	Health Services .....	38
5.1.2	Education .....	47
5.1.3	Employment.....	53
5.1.4	Housing/Shelter.....	62
5.1.5	Legal Assistance and Information.....	70
5.2	Special Protection Issues.....	74
5.2.1	Child Welfare.....	74
5.2.2	Trafficking in Persons.....	81
5.3	Impediments to Free Movement .....	89
5.3.1	Entry.....	89
5.3.2	Residence .....	95
5.3.3	Establishment.....	100
6	Conclusion.....	103
7	Recommendations .....	104
	Bibliography .....	110
	Annex 1 – Interviews and Focus Group Discussions.....	113
	Annex 2 – Treaty Ratifications .....	115
	Annex 3 – National Migration Policies.....	116
	Annex 4 – Select MMC 4Mi data .....	117

## Acronyms

AIRD	African Initiatives for Relief and Development
AVRR	Assisted Voluntary Return and Reintegration
BID	Best Interest Determination
CBI	Cash-Based Intervention
CFA	West African Franc
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
DAFI	Albert Einstein German Academic Refugee Initiative
DSW	Department of Social Welfare
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
ENBIC	ECOWAS National Biometric Identity Card
EU	European Union
FGD	Focus group discussion
GAFNA	Gambia Food & Nutrition Association
GCR	Gambia Commission for Refugees
GRB	Ghana Refugee Board
ICESCR	International Covenant for Economic, Social and Cultural Rights
ICMPD	International Centre for Migration Policy and Development
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICRC	International Committee of the Red Cross
ID	Identification
IDP	Internally displaced person
IFRC	International Federation of Red Cross and Red Crescent Societies
IHL	International humanitarian law
ILO	International Labour Organization
IO	International organization
IOM	International Organization for Migration
KII	Key informant interview
KYC	Know Your Customer
LD	Liberian Dollar
LIS	Liberia Immigration Service
LRRRC	Liberia Refugee Repatriation and Resettlement Commission
MMC	Mixed Migration Centre

MoU	Memorandum of Understanding
NAATIP	National Agency Against Trafficking in Persons (The Gambia)
NADMO	National Disaster Management Organisation (Ghana)
NAPTIP	National Agency for Prohibition of Trafficking in Persons (Nigeria)
NCR	National Commission for Refugees (Nigeria)
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
RSD	Refugee Status Determination
SGBV	Sexual and gender based violence
SOP	Standard Operating Procedures
STD	Sexually transmitted disease
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention on Transnational Organized Crime
WAEC	West Africa Examination Council
WAEMU	West African Economic and Monetary Union
WFP	World Food Programme

## Glossary

Asylum-seeker	An individual who seeks international protection in a country other than his or her country of origin based on persecution or serious harm (or risk thereof), or fleeing from situations of conflict, massive human rights violations or generalized violence in his own country. Asylum-seeker is someone whose application for refugee status has not yet been finally decided.
Child	Any person below the age of 18 years of age. <sup>1</sup>
Children on the move	Persons under the age of 18 and in a country other than his/her country of origin, including children moving voluntarily and involuntarily, with or without parents or other primary caregivers.
Irregular situation	The status of a person who, owing to unauthorized entry, breach of a condition of entry, expiry of his or her visa, or loss of documents lacks legal status in a transit or host country. <sup>2</sup>
Migrant	There is no internationally recognized definition of 'migrant'; migration can be forced or voluntary and can describe internal movement or movement across an international border. For purposes of this report, a 'migrant' is someone who changes his or her country of usual residence on a voluntary basis for economic reasons or family, health or education-related motives. A distinction is often made between short-term or temporary migration, covering movements with a duration between 3 and 12 months, and long-term or permanent migration, referring to a change of country of residence for a duration of one year or more. <sup>3</sup>
Mixed movements (or mixed migration)	Mixed movements refer to complex population flows—people using the same routes and modes of transportation to travel, but moving for different reasons and with different needs and profiles. In these movements, refugees and asylum-seekers, stateless persons, victims of trafficking move alongside migrants, including migrants in an irregular situation. <sup>4</sup>
Refugee	Any person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of

<sup>1</sup> UN Convention on the Rights of the Child.

<sup>2</sup> Save the Children and Mixed Migration Centre, *Young and on the Move in West Africa* (Feb. 2018).

<sup>3</sup> United Nations, *Refugees and Migrants* (2019), <https://refugeesmigrants.un.org/definitions>. Note that the term “migrant” is sometimes used by the IFRC as an umbrella term to refer to all people on the move at the global policy level, while recognizing that different legal frameworks apply. In this report, the term “migrant” should not be construed as encompassing asylum-seekers and refugees. Although asylum-seekers and refugees often travel alongside migrants in so-called “mixed flows”, they have specific needs and are protected by a specific legal framework: they should generally not be conflated with migrants. See Media Friendly Glossary on Migration, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_310235.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_310235.pdf).

<sup>4</sup> UNHCR Regional Representation for West Africa, *Mixed Movements in West Africa: UNHCR's Vision* (2018).

	the protection of that country.” <sup>5</sup> In addition, in those countries targeted for this study, “refugee” also includes “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” <sup>6</sup>
Refugee Status Determination (RSD)	Legal and administrative procedures undertaken by States and/or UNHCR to determine whether an individual qualifies for recognition as a refugee pursuant to national and international law.
Reintegration	A process which enables returnees to regain their physical, social, legal and material security needed to maintain life, livelihood and dignity. <sup>7</sup>
Returnees	For purposes of this report, “returnees” is used to describe migrants who have returned to their home country. Some returnees are considered “voluntary” and may have been assisted by IOM. Others may have been forcibly returned (e.g., deported by a government). <sup>8</sup>
Returning migrant	Migrants who are unable or unwilling to remain in the host country or country of transit and who decide to return to their country of origin. <sup>9</sup> Migrants may be returning voluntarily or by forced return (e.g., expulsion by host country).
Stateless persons	Persons who are not considered as nationals by any State under the operation of its law, <sup>10</sup> including persons whose nationality is not established.
Trafficking in Persons	The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms or coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. <sup>11</sup>
Unaccompanied child	A child who has “been separated from both parents and other relatives and [is] not being cared for by an adult who, by law or custom, is responsible for doing so.” <sup>12</sup>

<sup>5</sup> 1951 UN Refugee Convention and its 1967 Protocol; OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

<sup>6</sup> OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Art. 1(2).

<sup>7</sup> UNHCR Global Report 2005, <https://www.unhcr.org/449267670.pdf>.

<sup>8</sup> The authors recognize that in other contexts “returnees” may be used to refer to refugees who have returned to their country of origin—either those who have returned to their home country on a voluntary basis spontaneously or with assistance from UNHCR or refugees that have been forcibly returned (e.g., deported by a government). For purposes of this study, the term “returnee” is solely used to describe migrants returning to their home country as defined here.

<sup>9</sup> Migration Data Portal, available at <https://migrationdataportal.org/themes/return-migration>

<sup>10</sup> U.N. Convention Relating to the Status of Stateless Persons, adopted 28 Sept. 1954; *entered into force* 6 June 1960, Art. 1.

<sup>11</sup> UN Protocol on Trafficking in Persons, Art. 3(a).

<sup>12</sup> Committee on the Rights of the Child, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, U.N. Doc No. CRC/GC/2005/6, para. 7 (1 Sept. 2015) [hereinafter *CRC General Comment No. 6*].

# 1 Executive Summary

West Africa is a region that is characterized by complex mixed migration flows, which include refugees and other persons in need of international protection travelling alongside migrants (including irregular migrants), using the same routes and modes of transport.<sup>13</sup> The majority of movement within West Africa is intra-regional, with over 78 per cent of the refugees registered in West Africa from within the Economic Community of West African States (ECOWAS).<sup>14</sup> The region is also affected by extra-regional movements – with persons from Cameroon, Democratic Republic of the Congo, the Central African Republic, East Africa and sometimes even from Asian countries transiting through or arriving in West Africa. The mixed flows in West Africa therefore include populations with different profiles and protection needs that may not be readily identified. Moreover, the motivations for movement and intended destinations may change during the migration process, which can complicate the assessment of a person’s protection needs and legal status.<sup>15</sup>

The research conducted for this report examined the situation of people on the move and essential rights and services available to them in 10 ECOWAS<sup>16</sup> countries (Burkina Faso, The Gambia, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Senegal and Sierra Leone). The research focused on several populations of persons engaged in mixed movements in the region; namely, migrants (including migrants in an irregular situation), refugees and asylum-seekers. This report seeks to address their legal rights to accessing essential services such as healthcare, education, employment opportunities, housing and legal assistance, while highlighting the protections and rights afforded to vulnerable groups such as children on the move and victims of trafficking. It also identifies legal and practical barriers, implementation gaps and other protection issues that impede persons on the move from accessing these services in the ECOWAS sub-region. It further examines the ECOWAS Free Movement Protocol and impediments to realization of all three phases: entry, residence and establishment. The report concludes by setting forth priority recommendations to both government and non-governmental actors, including United Nations (UN) agencies, and also the Red Cross and Red Crescent Movement.

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<sup>13</sup> UN High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM) and ECOWAS, *Protecting Refugees and Other Persons on the Move in the ECOWAS Space*, p. 13, January 2011 (First ed.), available at: <https://www.refworld.org/docid/4e54961d2.html> [hereinafter UNHCR *et al.*, *Protecting Refugees and Other People on the Move*].

<sup>14</sup> UNHCR, 2018, population statistics, <http://popstats.unhcr.org/en/overview>.

<sup>15</sup> UNHCR *et al.*, *Protecting Refugees and Other People on the Move*, *supra* note 1, p. 15.

<sup>16</sup> ECOWAS was established through the adoption of the ECOWAS Treaty in May 1975, with the purpose of promoting cooperation and economic integration in the sub-region and fostering economic growth, stability and development on the African continent. There are currently 15 ECOWAS Member States: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.



In terms of **health care and medical treatment**, key barriers identified during the research include prohibitive costs of treatment and necessary medicines; denial of treatment by health facilities – including public health facilities – due to an inability to pay upfront (even in emergency situations); the detention of patients in hospitals after treatment if the bill cannot be paid immediately (this is particularly prevalent in the area of maternal health and the costs associated with giving birth); the distance to health facilities and no ambulance service; language barriers and poor reception by medical staff. In addition, the quality of healthcare was emphasized as particularly low in some target countries and adequate mental health services and psychosocial support – while a critical need for many persons on the move – are nearly non-existent in the region.

The key barriers that refugees, asylum-seekers and migrants face in realizing their **right to education** include the costs associated with education, even where education is tuition free; overcrowded and under-resourced schools that cannot accommodate the addition of refugees, asylum-seekers and migrants, and may turn them away as a result; identity document requirements (such as birth certificates to sit for final examinations); and the general low quality of education available in several target countries. A number of barriers were also identified during the study with respect to tertiary education. Universities across the region tend to charge higher fees for foreigners than nationals and there is little financial assistance in the form of scholarships. Entry examination requirements differ between Anglophone and Francophone West African countries, which poses a problem for some migrants, refugees and asylum-seekers due to the language component of the examination. Moreover, the ECOWAS Convention to harmonise the recognition of diplomas, degrees and certificates across the region has yet to enter into force due to an insufficient number of ratifications.<sup>17</sup>

The research identified the most significant legal barriers in the area of **employment and the right to work**. Many target countries maintain discriminatory labour laws that prioritize the hiring of nationals and set quotas and/or impose taxes on the hiring of foreign nationals, including citizens of other ECOWAS countries. Multiple relevant international labour conventions have not been ratified by the majority of target countries. Study participants reported discrimination in the informal market place in addition to the formal discrimination imposed by labour laws. Practical barriers include difficulties accessing the necessary work permits (both due to lack of knowledge and the cost of the permit), lack of awareness among employers regarding third country nationals' right to work in their country, lack of recognition of degrees and certificates – particularly when those degrees are in a foreign language – and informal discrimination in terms of equal pay and working conditions.

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<sup>17</sup> The Convention entered into force provisionally upon signature by the Heads of States and Government; however, pursuant to Article 10 of the Convention, it will not enter into force “definitively” until at least nine signatory states have ratified it. General Convention A/C.I/1/03 on the Recognition and Equivalence of Degrees, Diplomas, Certificates and Other Qualification in ECOWAS Member States, Art. 10.

Migrants, refugees and asylum-seekers all reported difficulties in accessing **housing** in the target countries. Little to no housing assistance is provided across the sub-region, and governments in the target countries do not have subsidized housing options for third-country nationals. Only refugees living in the camps supported by UNHCR have free housing. In urban areas, rents are reportedly very expensive when compared to income levels for migrants, refugees and asylum-seekers, and owners tend to charge higher rates to non-nationals. Many migrants and asylum-seekers reported being without any formal housing; as a result, they sleep on the street, on bridges, in market stalls and bus stops, churches and mosques. Even free temporary shelter is typically not available to persons on the move in the 10 target countries, with the exception of very few special shelters accessible for children, women survivors of sexual violence or trafficking, and voluntary returnees.

Access to **legal information and assistance** is the final service area examined during the course of the study. The ECOWAS sub-region lacks a strategy to provide legal advice and support to persons on the move, though several target countries have national legal aid structures in place that these populations can access. However, the study found that most persons on the move in West Africa are not accessing legal assistance, either for information/representation related to an application for international protection or in cases of employment discrimination, exploitation, acts of violence committed against them, or harassment by authorities. Some migrants, refugees and asylum-seekers fail to access legal aid providers due to a lack of awareness or distance to legal aid providers; others fear reporting law enforcement authorities and/or generally distrust formal justice systems. In addition, the legal aid organizations that do exist in ECOWAS Member States are often under-resourced and overstretched. As a result, many violations of migrants', refugees' and asylum-seekers' human rights go unreported and access to justice remains minimal.

In addition to the core service areas examined during this study, a few **key protection issues** were emphasized in the research findings. In particular, child protection, and trafficking in persons were identified as two areas that have fairly strong international and regional legal frameworks in place, but suffer from severe resource shortages, insufficient capacity, and gaps in implementation. In considering the specific vulnerabilities of children on the move, protection issues were identified in the contexts of some Quranic schools/talibé children<sup>18</sup> and other forms of trafficking and exploitation; conflict-related displacement; and recruitment by armed groups. While each of the target countries has some service structure in place to address child protection, those services are not typically well equipped to handle protection needs specific to children on the move. Child protection challenges reported during the study fall largely under insufficient funding of government child protection agencies, inadequate temporary shelter options for children on the move, including trafficked and abused children, and gaps in intake procedures,

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<sup>18</sup> Talibé children are usually boys from Senegal, The Gambia, Guinea, Guinea-Bissau, Mali or Mauritania who study the Quran at a daara (West African equivalent of madrasa).

referral mechanisms and coordination. The most significant protection challenges identified during the research in terms of trafficking in persons include: ad hoc referral mechanisms that lack standard operating procedures for the identification and referral of victims; the lack of identification of persons with potential international protection needs; inadequate shelters; insufficient psychosocial support; limited access to justice, with low prosecution rates when cases of trafficking in persons are identified; limited resources for the responsible government agencies; and a lack of coordination among relevant actors (governmental and non-governmental).

In terms of **free movement** under the 1979 ECOWAS Free Movement Protocol, barriers to realization persist in all three phases: entry, residence and establishment. Persons on the move within the ECOWAS sub-region still face challenges in terms of illegal fees extracted at official border crossings, and along the main travel routes; a lack of awareness among some immigration officials with respect to the ECOWAS and refugees travel documents, and restrictive national immigration laws that can be used to exclude third country nationals from entry based on finances and mental health conditions. Several barriers remain with respect to Phase II (residence), namely: resident and work permit requirements, a lack of awareness among immigration officers about asylum-seekers' documentation and refugees' identity cards; a lack of standardized procedures and processes to formalize one's status in the country after a person has entered in an irregular manner; and the inability of persons on the move – including migrants, refugees and asylum-seekers – to access banks and money transfer agents. Several challenges were also identified in the realization of the third phase of the Free Movement Protocol: the right to establishment. Administrative and financial hurdles impede migrants', refugees' and asylum-seekers' ability to establish themselves in another ECOWAS country. For example, resident and work permits often must be renewed on an annual basis, with an annual fee, and businesses must be registered once they begin making a certain amount of money. For those engaged in the selling of goods at a market or providing services who wish to expand their enterprise, obtaining the necessary capital is challenging due to the inability of migrants, refugees and asylum-seekers to access banking institutions.

Based on these findings, the report sets forth a number of recommendations in key focus areas: law and policy, implementation/procedures, training and capacity development, information and awareness raising, infrastructure, resource allocation, case management and child protection, and engagement with the private sector. The recommendations are intended to provide guidance for specific actors – whether e.g., governments, non-governmental organizations, UN agencies or the Red Cross and Red Crescent Movement – to facilitate greater access to services, protection and free movement within the sub-region.

## 2 Introduction

West Africa is characterized by fast-evolving and complex population movements. Most movement occurs within the region, with frequent cross-border movement to neighbouring countries as well as mixed migration routes originating in West Africa and running towards North Africa. The scope, complexity and magnitude, as well as the often irregular and clandestine nature of mixed flows makes it difficult to quantify persons on the move in the region and to assess their vulnerabilities and protection needs. In December 2017, the United Nations High Commissioner for Refugees (UNHCR) Regional Representation for West Africa hosted a symposium on asylum and migration in the region, bringing together representatives of the Economic Community of West African States (ECOWAS), the national asylum authorities from all 15 ECOWAS countries, the African Union, various UN bodies, civil society and academics. The objective of that symposium was to contribute to a comprehensive analysis of the current mixed movements context and forge a consensus around key priorities for enhancing protection of persons with international protection needs on the move in mixed flows. One crucial issue identified during the symposium was that a lack of protection measures and capacity was a risk factor for pushing people toward onward movements. Among the recommendations put forth were: strengthening collaboration and partnerships among actors, using regional policy instruments to ensure respect for the right to seek and enjoy international protection, and reinforcing protection services provided by States to persons in need of protection as well as increasing the provision of appropriate services along key routes for mixed movements.

Ensuring access to essential services for all people on the move constitutes a key strategic aim of the International Federation of Red Cross and Red Crescent Societies (IFRC) *Global Migration Strategy 2018-2022*<sup>19</sup> and is reflected in the IFRC Strategic Plan for the Sahel.<sup>20</sup> The IFRC has recently observed that migrants around the globe “increasingly face barriers to accessing essential services that are indispensable to their survival and basic dignity.”<sup>21</sup> Migration, however, can be more effectively managed when

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<sup>19</sup> IFRC, *Global Strategy on Migration 2018-2022*, 2017, available at: [http://media.ifrc.org/wp-content/uploads/sites/5/2017/12/IFRC\\_StrategyOnMigration\\_EN\\_20171222.pdf](http://media.ifrc.org/wp-content/uploads/sites/5/2017/12/IFRC_StrategyOnMigration_EN_20171222.pdf).

<sup>20</sup> This is in line with *Resolution 3 on Migration* adopted in 2011 at the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent Movement, which reaffirmed the role of National Societies in providing humanitarian assistance to vulnerable migrants whatever their legal status, based on the principles of humanity and impartiality and in consultation with public authorities. See 31<sup>st</sup> International Conference of the Red Cross and Red Crescent, *Resolution 3 – Migration: Ensuring Access, Dignity, Respect for Diversity and Social Inclusion*, 2011. Resolution 3 also includes a commitment from States to enable National Societies to enjoy effective and safe access to all people on the move, whatever their status. For a comprehensive review of the IFRC approach, see Moretti, S. and Bonzon, T. (2018), *Some reflections on the IFRC's approach to migration and displacement*, International Review of the Red Cross Vol. 99 Issue 904.

<sup>21</sup> IFRC, *A New Walled Order: How barriers to basic services turn migration into a humanitarian crisis*, 2018, available at: <https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2018/07/Migration-policy-Report-Final-LR.pdf>. The report presents the IFRC position in the current migration-related debate and offers an overview of the Humanitarian Service Points approach currently being implemented in the Sahel and in other regions.

the safety and dignity of all vulnerable people are protected. Access to essential services in the context of human mobility constitutes a key strategic priority for the IFRC in the Sahel, both from an operational standpoint as well as to strengthen humanitarian diplomacy initiatives with national and regional authorities. This research was undertaken in the framework of a collaborative effort between the IFRC Sahel Country Cluster Support Team and the UNHCR Regional Representation for West Africa,<sup>22</sup> aimed at building on the complementarity of mandates and correlative capacities of both uniquely positioned organizations. The main goal of this research was to gather an evidence base to inform the development of responses and recommendations aimed at ensuring better access to essential services and adequate protection for all persons on the move in the ECOWAS space.

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<sup>22</sup> UNHCR's Regional Representation for West Africa has since been folded into the UNHCR Regional Bureau for West and Central Africa.

# 3 Research Design and Implementation

## 3.1 Research Methodology and Scope

The research for this study was conducted in the period August 2019 to November 2019. It began with a thorough desk review of the international and regional frameworks and examination of the domestic laws and policies (constitutions, statutes, regulations, migration policies) in each selected country as well as a literature review of secondary data. The research focused on 10 of the 15 ECOWAS countries: Burkina Faso, The Gambia, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Senegal and Sierra Leone.

Primary qualitative data was collected to complement the secondary information. The consultants conducted key informant interviews (KIIs) with international organizations (IOs) and non-government organizations (NGOs)/civil society organizations (CSOs), government officials and academics as well as migrants, refugees and asylum-seekers affected by the relevant laws and practices. The primary data collected during the research is not necessarily a representative sample of persons on the move in West Africa. However, the interviews provided first-hand accounts regarding the practical realization of rights afforded by law and the access that persons on the move have to essential services in the target countries, as well as barriers and challenges they face in accessing services. The primary data collected was also used to take stock of implementation gaps in terms of protecting persons on the move and facilitating access to services in the region. The primary data was collected through a combination of stakeholder consultations, individual interviews, group interviews and focus group discussions (FGDs).

The scope of the research included refugees, asylum-seekers and transnational migrants, including migrants in an irregular situation. The study did not attempt to assess the access to services experienced by internally displaced persons (IDPs) or internal migrants, though both groups are prevalent in the ECOWAS sub-region.<sup>23</sup> The research does not purport to represent an exhaustive examination of the issues, but rather to serve as a starting point from which the relevant actors can identify their respective roles in addressing protection issues in the region.

## 3.2 Data Collection Method & Participants

The field research was conducted predominantly in English in the Anglophone countries targeted in the study, with interpretation provided on an ad hoc basis for those study participants who did not speak English. In the Francophone target countries, the

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<sup>23</sup> The study does not consider the situation of internal migrants or IDPs, as it focuses on the regional and international migration dimensions and the role of ECOWAS protocols. Furthermore, ICRC and UNHCR are currently conducting separate studies on the situation of IDPs in West Africa.

interviews were conducted predominantly in French, with some stakeholder interviews in English. Due to time constraints for completion of the study as well as security issues in certain target countries, field missions were conducted in 6 of the 10 target countries (The Gambia, Ghana, Guinea, Liberia, Mali and Senegal), and KIs were conducted via Skype with stakeholders in Burkina Faso, Niger, Nigeria and Sierra Leone.

During the research, the consultants conducted a total of 59 semi-structured interviews with stakeholders in the target countries, plus an additional 9 consultations with regional actors in Dakar.<sup>24</sup> The researchers also conducted interviews and FGDs with persons on the move (migrants, refugees and asylum-seekers) in the target countries. In total, 20 asylum-seekers, 31 migrants and 101 refugees participated in the study,<sup>25</sup> representing at least 15 different nationalities. This was through 14 FGDs, 3 group interviews and 19 individual interviews. The authors targeted an equal number of men and women during the study; however, more men ultimately participated in the study than women. The researchers did not exclude children from the scope, yet only one study participant was below the age of 18. The research partly draws on corroborating evidence provided by the West Africa Mixed Migration Centre (MMC) through the Mixed Migration Monitoring Initiative (4Mi).

### 3.3 Study Constraints

The study's limitations stem from the challenging logistics in West Africa, including road conditions and access to remote rural border regions, security restrictions in some target countries, tight research timeframe for the fieldwork, and difficulties reaching key informants and persons on the move, particularly near the border regions. Reaching migrants in irregular situations outside of voluntary return programmes proved particularly difficult, even when working through key actors on the ground in the target countries. The primary data collected cannot be considered equally representative of all countries in the region. However, the authors focused on themes seen in multiple target countries, while also providing references to specific target countries where appropriate to limit the scope of certain findings accordingly.

An additional research constraint was the scarcity of good quality secondary data and statistics relating to persons on the move in the ECOWAS region, particularly in mixed movements, and their access to essential services. Nor does the report purport to offer quantitative data in this regard.

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<sup>24</sup> See Annex 1, Table 1: *Key informant interviews conducted during research by type of actor.*

<sup>25</sup> See Annex 1, Table 2: *FGDs and interviews with migrants, refugees and asylum-seekers.* The refugees participating in this study comprised a mix of refugees in camp settings and out of camps.

# 4 Legal and Policy Framework

## 4.1 International and Regional Protection Framework

All 10 countries selected for this study have ratified or acceded to numerous international and regional human rights and refugee protection instruments that impose obligations on the States parties and afford rights to individuals, including to persons considered “on the move” for purposes of this study.<sup>26</sup> These treaties include: the International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>27</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>28</sup> Convention on the Rights of the Child (CRC),<sup>29</sup> African Charter on Human and Peoples’ Rights (“African Charter”)<sup>30</sup> and African Charter on the Rights and Welfare of the Child (“African Children’s Charter”),<sup>31</sup> the 1951 UN Convention Relating to the Status of Refugees (“1951 Refugee Convention”) and its 1967 Protocol,<sup>32</sup> and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Refugee Convention”).<sup>33</sup> In addition, all target countries except Liberia and Sierra Leone have ratified or acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).<sup>34</sup>

Each of these treaties – including those that do not focus specifically on persons on the move – provide an additional layer of rights and entitlements to such individuals, including

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<sup>26</sup> For purposes of this study, “persons on the move” include refugees, asylum-seekers and migrants, including irregular or undocumented migrants. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa defines “refugee” as “every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.” Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 Sept. 1969, 1001 U.N.T.S. 45, Art. 1(1) [hereinafter OAU Refugee Convention]. The OAU Convention further defines a “refugee” to include “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” *Id.*, Art. 1(2).

<sup>27</sup> International Covenant on Economic, Social and Cultural Rights, 16 Dec. 1966, 993 U.N.T.S. 3 (entered into force 3 Jan. 1976) [hereinafter ICESCR].

<sup>28</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 Dec. 1965, U.N.T.S. vol. 660, p. 195 [hereinafter ICERD], available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-2&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&lang=en).

<sup>29</sup> Convention on the Rights of the Child, 20 Nov. 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

<sup>30</sup> African Charter on Human and Peoples’ Rights, 27 June 1981, 21 I.L.M. 58 [hereinafter African Charter].

<sup>31</sup> African Charter on the Rights and Welfare of the Child, 11 July 1990, O.A.U. Doc. CAB/LEG/24.9/49 (entered into force 29 Nov. 1999) [hereinafter African Children’s Charter].

<sup>32</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, U.N.T.S. vol. 189, p. 137 [hereinafter 1951 Refugee Convention].

<sup>33</sup> OAU Refugee Convention, Art. 1(1).

<sup>34</sup> U.N. General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 18 Dec. 1990, A/RES/45/158 [hereinafter ICMW]. Liberia and Sierra Leone have signed but not ratified the treaty. See United Nations Human Rights Office of the High Commissioner, *Status of Ratification Interactive Dashboard*, <http://indicators.ohchr.org/>.



in the area of essential services such as health/healthcare, housing, education and employment. States must uphold the human rights of all persons on the move, whatever their status,<sup>35</sup> and afford these rights on the basis of equality, free from discrimination.<sup>36</sup> In a 2017 statement on the “Duties of States Towards Refugees and Migrants under the [ICESCR],” the Committee on Economic, Social and Cultural Rights identified the following among a list of “core obligations of the State” that “should therefore not be restricted on the basis of nationality or legal status”: satisfaction of basic needs, access to essential medicines and education (in compliance with the “minimum standards of education”).<sup>37</sup> The 1951 Refugee Convention sets out minimum standards for the treatment of refugees, including with respect to accessing essential services such as housing, education and employment.<sup>38</sup>

The international and regional human rights treaties also impose on States obligations to take active steps to protect the rights afforded within them. For example, Article 1 of the

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<sup>35</sup> UNHCR *et al.*, *Protecting Refugees and Other People on the Move*, *supra* note 1, p. 16; see also ECOWAS Commission, *Memorandum on the Equality of Treatment for Refugees with Other Citizens of Member States of ECOWAS in the Exercise of Free Movement, Right of Residence and Establishment* (August 2007), presented at Meeting of the Committee on Trade, Customs, Immigration, 25-27 September 2007 [hereinafter *ECOWAS Memorandum on the Equality of Treatment for Refugees*] (“Neither the ECOWAS Treaty nor its Protocols on Free Movement purport to limit the applicability of benefits conferred in other regional or universal instruments or agreements.”).

<sup>36</sup> See ICESCR, Art. 2(2) (“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); CRC, Art. 2(1) (“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”); ICERD, Art. 5(e)(i) (“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment to the following rights: the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.”) and Art. 5(e)(v) (“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . the right to education. . . .”); African Charter, Art. 2 (“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”); African Children’s Charter, Art. 3 (“Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child’s or his/her parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.”); see also Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, *Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return*, U.N. Doc. CMW/C/GC/4-CRC/C/GC/23, para. 53 (16 Nov. 2017) [hereinafter *Joint General Comment Nos. 4 and 23*] (“The Convention on the Rights of the Child stipulates that States parties shall respect and ensure the rights set forth in the Convention to each child within its jurisdiction without discrimination of any kind; this includes discrimination against children on the basis of their or their parents’ migration status.”).

<sup>37</sup> CESCR Statement on Duties of States, para. 9 (citing CESCR General Comment No. 12, paras. 6, 14 and 17; CESCR General Comment No. 15, para. 37; CESCR General Comment No. 14, para. 43; CESCR General Comment 13, para. 57).

<sup>38</sup> See 1951 Refugee Convention, Arts. 17-18 (employment); 21 (housing); 22 (public education).

African Charter provides: “The Member States of the Organisation of African Unity parties to the present Charters shall recognize the rights, duties and freedoms [set forth in the Charter] and shall undertake to adopt legislative or other measures to give effect to them.”<sup>39</sup> In considering State obligations, the African Commission on Human and Peoples’ Rights has held with respect to Article 1 that “if a State Party fails to ensure respect of the rights contained in the African Charter, this constitutes a violation of the African Charter even if the State or its agents were not the perpetrators of the violation.”<sup>40</sup>

Moreover, in December 2018, the U.N. General Assembly adopted two distinct but complimentary approaches at the international level for coordinating efforts to address migration and refugee situations: The Global Compact for Safe, Orderly and Regular Migration (“Global Compact for Migration”)<sup>41</sup> and the Global Compact on Refugees.<sup>42</sup> Although the compacts are non-binding on Member States, they reflect agreements between governments and stakeholders to establish comprehensive response frameworks for migrants and refugees, respectively. The Global Compact for Migration states among its objectives for safe, orderly and regular migration: “Provide access to basic services for migrants[.]”<sup>43</sup> To this end, governments have committed themselves to ensuring “that all migrants, *regardless of their migration status*, can exercise their human rights through safe access to basic services.”<sup>44</sup> To realize this commitment, governments agreed to enact laws and take other measures to ensure that delivery service is not done in a discriminatory manner against migrants.<sup>45</sup> The establishment and strengthening of “holistic and easily accessible service points at the local level that are migrant-inclusive [and] offer relevant information on basic services . . . and facilitate safe access thereto” was also identified as a concrete action to ensure the realization of this objective.<sup>46</sup>

Other relevant objectives set forth in the Global Compact for Migration include: “[p]rovide accurate and timely information at all stages of migration,” “[e]nsure that all migrants have proof of legal identity and adequate documentation,” “[a]ddress and reduce vulnerabilities in migration,” “[f]acilitate fair and ethical recruitment and safeguard conditions that ensure decent work,” “[i]nvest in skills development and facilitate mutual recognition of skills, qualifications and competences,” and to “[e]liminate all forms of discrimination. . . .”<sup>47</sup>

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<sup>39</sup> African Charter, Art. 1.

<sup>40</sup> African Commission on Human and Peoples’ Rights, *Institute for Human Rights and Development in Africa v. Angola*, No. 292/05 (2008), para. 83.

<sup>41</sup> U.N. General Assembly, Global Compact for Safe, Orderly and Regular Migration, 73<sup>rd</sup> Sess., U.N. Doc. A/RES/73/195 (11 Jan. 2019) [hereinafter Global Compact for Migration].

<sup>42</sup> U.N. General Assembly, Report of the United Nations High Commissioner for Refugees, Part II: Global Compact on Refugees, G.A.O.R. Supp. 12, 73<sup>rd</sup> Sess., U.N. Doc. A/73/12 (Part II) (13 Sept. 2018) [hereinafter Global Compact on Refugees]. The Global Compact on Refugees is “grounded in the international refugee protection regime” and is “guided by relevant international human rights instruments, international humanitarian law, as well as other international instruments as applicable.” *Id.* at para. 5 (citing *inter alia* the UDHR, CERD, ICCPR, ICESCR and CRC).

<sup>43</sup> Global Compact for Migration, para. 16.

<sup>44</sup> Global Compact for Migration, para. 31 (emphasis added).

<sup>45</sup> Global Compact for Migration, para. 31(a).

<sup>46</sup> Global Compact for Migration, para. 31(c).

<sup>47</sup> See Global Compact for Migration, para. 31.

The Global Compact on Refugees addresses the issue of access to essential services for refugees upon reception as well as specialized services for vulnerable groups.<sup>48</sup> The Compact recognizes the following as persons with specific needs: “children, including those who are unaccompanied or separated; women at risk; survivors of torture, trauma, trafficking in persons, sexual and gender-based violence, sexual exploitation and abuse or harmful practices; those with medical needs; persons with disabilities; those who are illiterate; adolescents and youth; and older persons.”<sup>49</sup> Specific protection needs include the identification and referral of victims of trafficking in persons “and other forms of exploitation to appropriate processes and procedures, including for identification of international protection needs or victim support[;] . . . identification and referral of stateless persons and those at risk of statelessness, including to statelessness determination procedures.”<sup>50</sup> The need for further support for “appropriate care arrangements and other services” for children – including unaccompanied and separated children – was also recognized.<sup>51</sup>

#### **4.1.1 General Guarantees of Access to Essential Services**

##### *Right to Health*

The ICESCR, African Charter, CRC and African Children’s Charter all guarantee a right to the highest attainable standard of physical and mental health.<sup>52</sup> The Committee on Economic, Social and Cultural Rights explained in its General Comment 14 that this right is not limited to the right to health care. Rather, the right to the highest attainable standard of health “extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”<sup>53</sup> States parties to the Covenant must

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<sup>48</sup> Global Compact on Refugees, para. 54 (“In support of government strategies to manage arrivals, UNHCR, States, and relevant stakeholders will contribute resources and expertise to strengthen national capacities for reception, including for the establishment of reception and transit areas sensitive to age, gender, disability, and other specific needs . . . as well as to provide basic humanitarian assistance and essential services in reception areas.”); para. 76 (“In support of host countries, States and relevant stakeholders will contribute resources and expertise toward policies and programmes that take into account the specific vulnerabilities and protection needs of girls and boys, children with disabilities, adolescents, unaccompanied and separated children, survivors of sexual and gender-based violence, sexual exploitation and abuse, and harmful practices, and other children at risk. . . . [T]his will include resources and expertise to support integrated and age-sensitive services for refugee and host community boys and girls, including to address mental health and psychosocial needs, as well as investment in national child protection systems. . . .”).

<sup>49</sup> Global Compact on Refugees, para. 59.

<sup>50</sup> Global Compact on Refugees, para. 60.

<sup>51</sup> *Ibid.*

<sup>52</sup> ICESCR, Art. 12 (“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”); CRC, Art. 24(1) (“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”); African Charter, Art. 16(1) (“Every individual shall have the right to enjoy the best attainable state of physical and mental health.”); African Children’s Charter, Art. 14 (“Every child shall ha[ve] the right to enjoy the best attainable state of physical, mental and spiritual health.”).

<sup>53</sup> Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, U.N. Doc. E/C.12/2000/4, para. 4 (11 August 2000) [hereinafter CESCR General Comment No. 14].

ensure satisfaction of “minimal essential levels” of the right to health, “including essential primary health care.”<sup>54</sup> In the Committee’s view, the core obligations imposed on States parties with respect to the right to health include *inter alia*: (i) ensuring “the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;” (ii) ensuring “access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;” (iii) “ensur[ing] access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;” and (iv) providing essential medicines.<sup>55</sup>

As with all rights contained in the ICESCR, the right to health must be afforded on the basis of equality, regardless of nationality.<sup>56</sup> The Committee on Economic, Social and Cultural Rights has underscored that most measures undertaken to eliminate health-related discrimination “can be pursued with minimum resource implications.”<sup>57</sup> It has also called upon States parties to put in place “strict walls . . . between healthcare personnel and law enforcement authorities” and to ensure that “adequate information [is] made available in the languages commonly spoken by migrants in the host country.”<sup>58</sup>

The ICMW guarantees emergency health care for migrant workers and their family members, including those in an irregular situation.<sup>59</sup> ICMW Article 28 provides: “Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals or the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.”<sup>60</sup>

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<sup>54</sup> CESCR General Comment 14, para. 43.

<sup>55</sup> CESCR General Comment 14, para. 43 (a)-(d).

<sup>56</sup> See ICESCR, Art. 2(2); see also CESCR General Comment No. 14, para. 8 (“[T]he entitlements [with respect to the right to health] include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”); *id.* at para. 17 (“‘The creation of conditions which would assure to all medical service and medical attention in the event of sickness’ (art. 12.2(d)), both physical and mental, includes the provision of equal and timely access to basic preventative, curative, rehabilitative health services and health education.”); *id.* at para. 34 (“States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including . . . minorities, asylum-seekers and illegal immigrants, to preventative, curative and palliative health services; . . .”).

<sup>57</sup> CESCR General Comment No. 14, para. 18.

<sup>58</sup> Statement by the Committee on Economic, Social and Cultural Rights, *The Duties of States Towards Refugees and Migrants Under the International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/2017/1, para. 12 (24 Feb. 2017) [hereinafter CESCR Statement on Duties of States].

<sup>59</sup> Indeed, the ICMW guarantees all fundamental rights contained therein to migrant workers in irregular situations. See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *General Comment No. 2 on the Rights of Migrant Workers in an Irregular Situation and Members of Their Families*, para. 5, U.N. Doc. CMW/C/GC/2 (28 Aug. 2013) [hereinafter CMW General Comment No. 2] (“[M]igrant workers can never be deprived of their fundamental rights, as protected under Part III of the Convention, by virtue of their irregular situation.”). The term “migrant workers in an irregular situation” is defined as those migrant workers/members of their families who are “not authorized to enter, to stay or to engage in remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which it is a party.” CMW General Comment No. 2, para. 3 (referencing ICMW, Art. 5).

<sup>60</sup> ICMW, Art. 28.

### *Right to Housing*

Related to – and occasionally subsumed within – the right to health is the right to food, water and housing (also referred to collectively as the right to an “adequate standard of living”). ICESCR Article 11 guarantees “the right of everyone to an adequate standard of living,” including the right to adequate food, clothing and housing.<sup>61</sup> With respect to housing, States parties to the 1951 Refugee Convention must “accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.”<sup>62</sup> The CRC underscores this right for children. The CRC guarantees every child the right to a “standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”<sup>63</sup> States parties are required “in the case of need” to provide material assistance for “nutrition, clothing and housing.”<sup>64</sup>

### *Right to Education*

Every individual – including every child – within the State is entitled to an education.<sup>65</sup> Under the ICESCR and the CRC, the right to education includes free primary education.<sup>66</sup> Moreover, the aim of the child’s education should be to develop “the child’s personality, talents and mental and physical abilities to their fullest potential.”<sup>67</sup>

Although the right to education under the ICESCR – like other social rights – is subject to progressive realization, States parties “have ‘a minimum core obligation to ensure . . . the most basic forms of education.’”<sup>68</sup> To this end, States parties must “ensure the right of access to public educational institutions and programmes on a non-discriminatory basis” and “provide primary education for all[.]”<sup>69</sup> The 1951 Refugee Convention also mandates that States treat refugees equally to nationals with respect to elementary education.<sup>70</sup> The

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<sup>61</sup> ICESCR, Art. 11(1).

<sup>62</sup> 1951 Refugee Convention, Art. 21.

<sup>63</sup> CRC, Art. 27(1).

<sup>64</sup> CRC, Art. 27(3).

<sup>65</sup> ICESCR Art. 13(1) (“The States Parties to the present Covenant recognize the right of everyone to education.”); African Charter, Art 17(1) (“Every individual shall have the right to education.”); *see also* CRC, Art. 28(1) (“States Parties recognize the right of the child to education. . . .”); African Children’s Charter, Art. 11(1) (“Every child shall have the right to education.”).

<sup>66</sup> ICESCR, Art. 13(2) (“The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all[.]”); CRC, Art. 28(1) (“States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular: (a) Make primary education compulsory and available free to all[.]”); *see also* African Children’s Charter, Art. 2(3) (“States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular: (a) provide free and compulsory basic education[.]”).

<sup>67</sup> CRC, Art. 28(3); African Children’s Charter, Art. 11(2)(a).

<sup>68</sup> CESCR General Comment 13, para. 57 (quoting CESCR General Comment No. 3).

<sup>69</sup> CESCR General Comment 13, para. 57.

<sup>70</sup> 1951 Refugee Convention, Art. 22(1); *see also id.* at Art. 22(2) (“The Contracting States shall accord to refugees treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education. . . .”).

ICMW similarly guarantees to “[e]very child of a migrant worker” “the basic right of access to education on the basis of equality of treatment with nationals.”<sup>71</sup>

### *Right to Work*

States parties to the ICESCR recognize the right to work<sup>72</sup> and the right to favourable work conditions, including fair wages and equal pay for equal work.<sup>73</sup> In General Comment 23 on the Right to Just and Favourable Conditions of Work, the Committee on Economic, Social and Cultural Rights recognized the vulnerability of migrant and refugee workers to exploitation and unfair wages and called on States parties to enact legislation or reform their laws to enable refugees to work and to ensure that refugees and migrant workers enjoy the same treatment and working conditions as nationals.<sup>74</sup> The 1951 Refugee Convention similarly requires States to “accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards to the right to engage in wage-earning employment.”<sup>75</sup> The Refugee Convention further requires States parties to “give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals. . . .”<sup>76</sup>

However, the ICESCR provides a limited exception that could be invoked by some of the selected countries with respect to the right to work for persons on the move. ICESCR Article 2(3) states: “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”<sup>77</sup> While the ICESCR provides developing countries flexibility with respect to the extent to which they guarantee economic rights such as the right to work to non-nationals, the African Charter and ICMW are not so limited. Article 15 of the African Charter guarantees every individual “the right to work under equitable and satisfactory conditions” and to “receive equal pay for equal work.”<sup>78</sup> The African Charter does not qualify this right to protect nationals. In finding a

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<sup>71</sup> ICMW, Art. 30.

<sup>72</sup> ICESCR, Art. 6(1).

<sup>73</sup> ICESCR, Art. 7(a)(i).

<sup>74</sup> See Committee on Economic, Social and Cultural Rights, *General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/GC/23 (27 April 2016) [hereinafter CESCR General Comment No. 23], para. 47(e) (“[Migrant] workers, in particular if they are undocumented, are vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments. . . . Laws and policies should ensure that migrant workers enjoy treatment that is no less favourable than that of national workers in relation to remuneration and conditions of work.”); *id.* at para. 47(i) (“Because of their often precarious status, refugee workers remain vulnerable to exploitation, discrimination and abuse in the workplace, may be less well paid than nationals, and have longer working hours and more dangerous working conditions. States parties should enact legislation enabling refugees to work and under conditions no less favourable than for nationals.”).

<sup>75</sup> 1951 Refugee Convention, Art. 17(1).

<sup>76</sup> 1951 Refugee Convention, Art. 17(3).

<sup>77</sup> ICESCR, Art. 2(3).

<sup>78</sup> African Charter, Art. 15; see also African Commission on Human and Peoples’ Rights, *Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) v. Angola*, 292/04 (2008), <https://www.refworld.org/cases/ACHPR,51b6fd4e7.html> (finding that the “abrupt expulsion” from Angola of Gambian

violation of Article 15 in a case of the expulsion of Gambian nationals with proper passports and work visas from Angola,<sup>79</sup> the African Commission emphasized that while nothing in the African Charter requires Member States to guarantee non-nationals an absolute right to enter and/or reside in its territory, this “does not in any way mean that the African Charter gives Member States the free hand to unnecessarily and without due process deal with non-nationals to such an extent that they are denied the basic guarantees enshrined under the African Charter for the benefit of everyone.”<sup>80</sup>

The ICMW similarly guarantees migrant workers equal treatment in employment, particularly with respect to remuneration and conditions of employment such as working hours and health and safety.<sup>81</sup> Pursuant to ICMW Article 25(3), States parties must take “all appropriate measures to ensure that migrant workers are not deprived” of such rights “by reason of any irregularity in their stay or employment.”<sup>82</sup>

### *Non-Discrimination*

As highlighted above, States cannot discriminate against non-nationals – including asylum-seekers, refugees, stateless persons and migrants – in the individuals’ realization of their rights to access essential services under the international and regional human rights treaties.<sup>83</sup> The Committee on Economic, Social and Cultural Rights has affirmed that the economic, social and cultural rights guaranteed in the Covenant “apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”<sup>84</sup> The ICESCR’s only limitation to the general principle of non-discrimination is very narrow – applying only to developing countries and only with respect to economic rights such as access to employment.<sup>85</sup> The Committee specifically excluded

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nationals in possession of official documents such as passports and work and residence visas “without any possibility of due process or recourse in national courts . . . compromised the victims’ right to continue working in Angola under equitable and satisfactory conditions” and therefore violated Article 15).

<sup>79</sup> According to the Complaint filed in this case, “although the victims had work permits and relevant documents to engage in mining activities in Angola, they were arrested on the mere premise that foreigners were not allowed to engage in mining activities in the country.” *Institute for Human Rights and Development in Africa v. Angola*, para. 8.

<sup>80</sup> *Institute for Human Rights and Development in Africa v. Angola*, para. 84. The Commission also found the Respondent State in violation of Articles 1, 2, 5, 6, 7(1)(a), 12(4), 12(5) and 14. *Id.*; see also *id.* at para. 76 (“[T]he abrupt expulsion without any possibility of due process or recourse to national courts to challenges the Respondent State’s actions severely compromised the victims’ right to continue working in Angola under equitable and satisfactory conditions.”).

<sup>81</sup> ICMW, Art. 25(1).

<sup>82</sup> ICMW, Art. 25(3).

<sup>83</sup> ICESCR, Art. 2(2); CRC, Art. 2(1); African Charter, Art. 2; African Children’s Charter, Art. 3; see also Joint General Comment Nos. 4 and 23. In addition, in situations of international and non-international armed conflict, prohibited grounds of ‘adverse distinction’ under International Humanitarian Law (IHL) include race, colour, religion, language and national origins. Persons on the move who are civilians for the purposes of IHL should not suffer from any discrimination vis-à-vis other civilians, irrespective of whether they are considered regular or irregular migrants.

<sup>84</sup> CESCR General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20, para. 30 (2009).

<sup>85</sup> See CESCR Statement on Duties of States, para. 8 (“Article 2(3) of the Covenant establishes one limited exception to the principle of non-discrimination on grounds of nationality in the enjoyment of the rights of the Covenant. . . . That

a child's right to education from this exception: "[W]hereas education has sometimes been described as an economic right, the right of each child to education should be recognized by States independently of the nationality or the legal status of his or her parents."<sup>86</sup> Nonetheless, through ratification of the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>87</sup> all 10 selected countries have obliged themselves to eliminate discrimination based upon racial, ethnic or national origin – including in the fields of education and employment.<sup>88</sup> And Article 3 of the 1951 Refugee Convention obliges States parties to apply the Convention rights "without discrimination as to race, religion or country of origin"<sup>89</sup> and mandates certain protections against different treatment between refugees and other non-nationals and refugees and nationals as discussed in the sections above.

In two recent Joint General Comments, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child underscored the fundamental nature of the right to non-discrimination and its applicability in the context of international migration.<sup>90</sup> In their Joint General Comment on the General Principles Regarding the Human Rights of Children in the Context of Migration, the Committees called on the States parties to ensure integration of migrant children and their families "through the effective realization of their human rights and access to services in an equal manner with nationals."<sup>91</sup> Similarly, in Joint General Comment Nos. 4 and 23 (on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return), the Committees "urge[d] States parties to provide equitable access to economic, social and cultural rights" and to "expeditiously reform legislation, policies and practices that discriminate against migrant children and their families, including those in an irregular situation, or prevent them from effectively accessing services and benefits[.]"<sup>92</sup>

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exception only applies to developing countries and it only concerns economic rights, in particular access to employment.").

<sup>86</sup> CESCR Statement on Duties of States, para. 8.

<sup>87</sup> See U.N. Human Rights Office of the High Commissioner, *Status of Ratification Interactive Dashboard*, <http://indicators.ohchr.org/>.

<sup>88</sup> See ICERD, Art. 5(e)(i) and Art. 5(e)(v).

<sup>89</sup> 1951 Refugee Convention, Art. 3; see also *id.* at Art. 5 ("Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.").

<sup>90</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, *Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration*, U.N. Doc. CMW/C/GC/3-CRC/C/GC/22, para. 21 (16 Nov. 2017) [hereinafter Joint General Comment Nos. 3 and 22] ("The principle of non-discrimination is fundamental and, in all facets, applies with respect to children in the context of international migration. . . . This principle is fully applicable to every child and his or her parents, regardless of the reason for moving, whether the child is accompanied or unaccompanied, on the move or otherwise settled, documented or undocumented or with any other status."); *id.* at para. 22 ("The principle of non-discrimination shall be at the centre of all migration policies and procedures, including border control measures, and regardless of the migration status of children or their parents.").

<sup>91</sup> Joint General Comment Nos. 3 and 22, para. 22.

<sup>92</sup> Joint General Comment Nos. 4 and 23, para. 53.



### **4.1.2 Rights and Protections Specific to Victims of Trafficking**

Beyond the general protections of human rights set forth above, countries around the world – including those selected for this study – have committed themselves to combating trafficking in persons and to affording specific protections to victims of trafficking, especially women and children. The legal framework specific to trafficking in persons includes State obligations for the provision of certain essential services. In many ways, the framework related to trafficking in persons is more comprehensive and more detailed than the general set of rights and obligations pertaining to access to essential services, discussed above.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (UNTOC) (hereinafter Palermo Protocol or UN Protocol on Trafficking in Persons)<sup>93</sup> is the core international document that sets out the prohibition against trafficking and obligates States parties to engage in the protection of trafficking victims. It also recognizes that some victims or potential victims of trafficking may fall within the definition of refugee contained in the 1951 Refugee Convention and its 1967 Protocol.<sup>94</sup>

The UN Protocol defines “trafficking in persons” as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms or coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>95</sup>

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<sup>93</sup> UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, adopted 15 Nov. 2000 [hereinafter UN Protocol on Trafficking in Persons],

<sup>94</sup> See UN Protocol on Trafficking in Persons, Art. 14(1) (“Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.”); see also UN High Commissioner for Refugees, *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, U.N. Doc. HRC/GIP/06/07 (7 April 2006), para. 12 (“Some victims or potential victims of trafficking may fall within the definition of a refugee contained in Article 1A(2) of the 1951 Convention and may therefore be entitled to international refugee protection. Such a possibility is not least implicit in the saving clause contained in Article 14 of the Trafficking Protocol. . . .”); *id.* at para. 13 (providing examples of how/when a claim for international protection may arise in the case of a victim or potential victim of trafficking).

<sup>95</sup> UN Protocol on Trafficking in Persons, Art. 3(a). The term “exploitation” includes “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs[.]” *Id.* By contrast, “[s]muggling of migrants” is defined as “the procurement, in order to obtain directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident[.]” United Nations Protocol

The Protocol expands the definition of trafficking in persons in the case of children,<sup>96</sup> stating: “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article[.]”<sup>97</sup> This more expansive definition of trafficking when it comes to children both recognizes the vulnerable position of children and allows for protection mandates to attach to a larger number of children in mixed migration movements.

The purposes of the UN Protocol on Trafficking in Persons are three-fold: (i) to “prevent and combat trafficking in persons, paying particular attention to women and children;” (ii) to “protect and assist the victims of such trafficking, with full respect for their human rights;” and (iii) to promote cooperation among State Parties to meet these objectives.<sup>98</sup> With the view of achieving its objective to protect and assist victims of trafficking, the Protocol urges States parties to implement measures “to provide for the physical, psychological and social recovery of victims of trafficking” – in cooperation with non-governmental organizations (NGOs) and other representatives from civil society (e.g., CSOs) as appropriate – to provide: appropriate housing,<sup>99</sup> information and counselling (including about legal rights) in a language understandable to the individual,<sup>100</sup> medical, psychological and material assistance,<sup>101</sup> and opportunities for employment, education and training.<sup>102</sup> In implementing these protection measures, the States Parties must take into consideration the age, gender and special needs of the victims, “in particular the special needs of children, including appropriate housing, education and care.”<sup>103</sup> Finally, the UN Protocol mandates that each State Party “consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.”<sup>104</sup>

Other international agreements call specifically for the protection and access to services for child victims of trafficking. For example, the International Labour Organization’s

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Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (2000), available at:

[https://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM\\_Protocol\\_English.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM_Protocol_English.pdf) [hereinafter Protocol on the Smuggling of Migrants]. The Protocol on the Smuggling of Migrants defines “[i]llegal entry” as “crossing borders without complying with the necessary requirements for legal entry into the receiving State[.]” *Id.* at Art. 3(b). The purpose of the Protocol on the Smuggling of Migrants—like the UN Protocol on Trafficking in Persons—is both to prevent and combat the smuggling of migrants and to protect the rights of the smuggled migrants. *See id.* at para. 2.

<sup>96</sup> Like the Convention on the Rights of the Child, the UN Protocol on Trafficking in Persons defines “child” as “any person under eighteen years of age.” UN Protocol on Trafficking in Persons, Art. 3(d).

<sup>97</sup> UN Protocol on Trafficking in Persons, Art. 3(c).

<sup>98</sup> UN Protocol on Trafficking in Persons, Art. 2. *See also* ICMW, Preamble (recognizing that “appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights[.]”).

<sup>99</sup> UN Protocol on Trafficking in Persons, Art. 6(3)(a).

<sup>100</sup> UN Protocol on Trafficking in Persons, Art. 6(3)(b).

<sup>101</sup> UN Protocol on Trafficking in Persons, Art. 6(3)(c).

<sup>102</sup> UN Protocol on Trafficking in Persons, Art. 6(3)(d).

<sup>103</sup> UN Protocol on Trafficking in Persons, Art. 6(4).

<sup>104</sup> UN Protocol on Trafficking in Persons, Art. 7.

Convention on the Worst Forms of Child Labour (No. 182) emphasizes the importance of education and requires each Member State to “ensure access to free basic education” for all children removed from trafficking.<sup>105</sup> While the CRC does not explicitly prohibit child trafficking, it does prohibit various forms of exploitation of children, which is broad enough to reach at least some level of trafficking,<sup>106</sup> and calls upon States parties to “take all appropriate measures to promote physical and psychological recovery and social integration of a child victim” of any form of exploitation or abuse “in an environment which fosters the health, self-respect and dignity of the child.”<sup>107</sup> Moreover, the Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography defines “sale of children” broadly enough to encompass forms of trafficking.<sup>108</sup> The CRC Protocol requires States Parties to protect children from such exploitation, including by providing information and education.<sup>109</sup>

### **4.1.3 Rights and Protections Specific to Children**

The international and regional children’s rights treaties – namely the CRC and the African Children’s Charter – provide a further layer of rights and protections for children that are applicable specifically to children on the move. For example, Article 22 of the CRC and Article 23 of the African Children’s Charter offer specific guarantees to refugee children. Both articles oblige States Parties to “take [all] appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee . . . receive appropriate protection and humanitarian assistance in the enjoyment of the rights” set forth in the respective treaty as well as in “other international human rights instruments and humanitarian instruments to which the States are Parties.”<sup>110</sup> As clearly stated in the

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<sup>105</sup> International Labour Organization (ILO), *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (No. 182), Art. 7(2), adopted 17 June 1999; entered into force 19 Nov. 2000, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182) [hereinafter ILO Convention No. 182] (“Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: . . . (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour.”).

<sup>106</sup> See, e.g., CRC, Art. 19(1) (“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”); *id.* at Art. 32(1) (“States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”); *id.* at Art. 34 (“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; [and] (b) The exploitative use of children in prostitution or other unlawful sexual practices] . . . .”; *id.* at Art. 36 (“States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.”).

<sup>107</sup> CRC, Art. 39.

<sup>108</sup> See UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, G.A. Res. A/RES/54/263, adopted 25 May 2000 and entered into force 18 Jan. 2002, Art. 2(a) (“Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration[.]”) [hereinafter CRC Optional Protocol].

<sup>109</sup> CRC Protocol, Arts. 8 and 9.

<sup>110</sup> African Children’s Charter, Art. 23(1); Convention on the Rights of the Child, Art. 22(1).

language of the article, States parties to the African Children's Charter must not only ensure appropriate assistance in the realization of the rights within that treaty, but in the realization of the rights afforded by all international human rights and humanitarian instruments. This obligation applies whether the child is unaccompanied or accompanied.<sup>111</sup> In addition, in General Comment 6, the Committee on the Rights of the Child specifically addressed the treatment of unaccompanied and separated children outside their country of origin. The Committee offered guidance on a number of issues based on the entire legal framework provided by the CRC, including access to asylum procedures, family tracing and reunification, and durable solutions.<sup>112</sup>

## 4.2 ECOWAS Legal and Policy Framework

The 10 countries selected for this study are all ECOWAS Member States. ECOWAS was established through the adoption of the ECOWAS Treaty in May 1975,<sup>113</sup> with the purpose of promoting cooperation and economic integration in the sub-region and fostering economic growth, stability and development on the African continent.<sup>114</sup> In 1979, the ECOWAS Member States adopted the Protocol Relating to Free Movement of Persons, Residence and Establishment, which was followed by four supplementary protocols.<sup>115</sup> The ECOWAS Treaty was revised in 1993.<sup>116</sup> The 1993 Revised Treaty, 1979 Protocol, and four supplementary protocols provide the legal framework under which ECOWAS Member States carry out their actions with respect to the movement of persons in the sub-region. In addition, ECOWAS has developed a number of policies and action plans at the national level that affect persons on the move in the sub-region.

While the ECOWAS framework was not adopted for the purpose of ensuring protection of persons on the move, ECOWAS itself has recognized the possibilities that this regional legal framework offers refugees<sup>117</sup> from ECOWAS countries “to claim rights and access

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<sup>111</sup> African Children's Charter, Art. 23(1).

<sup>112</sup> CRC, *General Comment No. 6*.

<sup>113</sup> Economic Community of West African States (ECOWAS), *Treaty of the Economic Community of West African States (ECOWAS)*, 28 May 1975, available at: <https://www.refworld.org/docid/49217f4c2.html> [hereinafter ECOWAS Treaty (1975)].

<sup>114</sup> See ECOWAS Treaty (1975), Preamble and art. 2(1).

<sup>115</sup> See Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment (1979) [herein after 1979 Free Movement Protocol]; Supplementary Protocol A/SP.1/7/85 on The Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, The Right of Residence and Establishment (1985), [hereinafter 1985 Supplementary Protocol]; Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment (1986) [hereinafter 1986 Supplementary Protocol]; Supplementary Protocol A/SP.1/6/89 Amending and Complementing the Provisions of Article 7 on the Protocol on Free Movement, Right of Residence and Establishment (1989); Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment (1990) [hereinafter 1990 Supplementary Protocol].

<sup>116</sup> See Economic Community of West African States (ECOWAS), *Revised Treaty of the Economic Community of West African States (ECOWAS)*, 24 July 1993, available at: <https://www.ecowas.int/wp-content/uploads/2015/01/Revised-treaty.pdf> [hereinafter Revised Treaty of ECOWAS (1993)].

<sup>117</sup> ECOWAS does not have its own convention governing the rights and protections afforded to refugees; however, it applies the 1951 UN Refugee Convention and the 1968 OAU Convention.

durable solutions in [other] ECOWAS countries.”<sup>118</sup> And recently, ECOWAS has recognized the need to address protection issues for persons on the move in mixed movements. In 2018, ECOWAS – with the assistance of IOM – developed a mixed migration manual and training kit, which provides guidance for the protection of migrants.<sup>119</sup> At the 2019 Retreat of ECOWAS Ambassadors to discuss mixed flows and durable solutions in the ECOWAS Region, the participants agreed that in order to protect refugees in the context of mixed flows, “[e]fforts to operationalize existing regional and international legal standards and policy frameworks should be redoubled[.]”<sup>120</sup> Participants also agreed that the ECOWAS Regional Migration Policy should be adopted swiftly, along with corresponding Plans of Action.<sup>121</sup> In June 2019, ECOWAS and IOM held a workshop aimed at “developing a regional strategy to strengthen the protection environment for migrant[s] within and outside” the ECOWAS sub-region.<sup>122</sup>

#### 4.2.1 ECOWAS Free Movement Framework

The 1979 Free Movement Protocol guarantees to ECOWAS Community citizens “the right to enter, reside and establish in the territory of Member States.”<sup>123</sup> The protocol provided for progressive realization of these rights over a 15 year period, set out in three phases: right to entry and abolition of visa requirements (Phase I), right of residence (Phase II) and right of establishment (Phase III).<sup>124</sup> However, full implementation has not yet been achieved. While several sources suggest that Phase I has been fully implemented,<sup>125</sup> the implementation of the second and third phases is still in progress<sup>126</sup> and the research

<sup>118</sup>UNHCR *et al.*, *Protecting Refugees and Other People on the Move*, *supra* note 1; see also ECOWAS Memorandum on the Equality of Treatment for Refugees (“While the ECOWAS Treaty is primarily economic in orientation, it promotes greater integration within the West African region for other reasons, including . . . promotion and protection of human and peoples’ rights in accordance with the provisions of the *African Charter on Human and Peoples’ Rights*.”); *id.* (“[W]here provisions overlap on any given right or entitlement available to ECOWAS citizens who are also refugees, the most generous provision applies.”).

<sup>119</sup> IOM Dakar Regional Office for West and Central Africa, *IOM, ECOWAS Take Steps Toward Establishing Regional Strategy on Mixed Migration*, 1 July 2019, <https://rodakar.iom.int/news/iom-ecowas-take-steps-toward-establishing-regional-strategy-mixed-migration>.

<sup>120</sup> ECOWAS and UNHCR, Outcome Document: 2019 Retreat of ECOWAS Ambassadors: *Mixed flows and Durable solutions in the ECOWAS region*, held in Uyo, Akwa Ibom State, Federal Republic of Nigeria (15-16 April 2019), para. 15, available at: <https://data2.unhcr.org/en/documents/download/69626>.

<sup>121</sup> *Ibid.*

<sup>122</sup> *IOM, ECOWAS Take Steps Toward Establishing Regional Strategy on Mixed Migration*.

<sup>123</sup> 1979 Free Movement Protocol, Art. 1(1).

<sup>124</sup> 1979 Free Movement Protocol, Art. 2(3).

<sup>125</sup>United Nations Economic Commission for Africa, *ECOWAS-Free Movement of Persons*, <https://www.uneca.org/pages/ecowas-free-movement-persons> [hereinafter UNECA *ECOWAS –Free Movement of Persons*]; Adepaju, A. *et al.* (2007) *New Issues in Refugee Research – Research Paper No. 150: Promoting Integration through Mobility: Free Movement and the ECOWAS Protocol*, UN High Commissioner for Refugees Policy Development and Evaluation Service, available at: <https://www.unhcr.org/476650ae2.html>. [hereinafter UNHCR *Research Paper No. 150*].

<sup>126</sup> According to the UN Economic Commission for Africa’s website, both the first and second phases have been implemented. See UNECA *ECOWAS –Free Movement of Person* (“The second phase, the right of residency, has also been implemented, given that citizens had obtained an ECOWAS residence card or permit in fellow member State.”). However, studies conducted by or on behalf of UNHCR, IOM, and the MADE West Africa project suggest that only the first phase (visa-free entry) has been fully implemented. See, e.g., AFFORD, Centre for Migration Studies, FORIM and ICMC Europe, *Assessment of the Implementation of the ECOWAS Free Movement Protocol in*



conducted for this report reveals lingering barriers to full implementation of Phase I in the target countries, as discussed in section 4.1.1.

As a result of the implementation of Phase I, citizens of ECOWAS Member States can enter another ECOWAS country without a visa for up to 90 days<sup>127</sup> with a “valid travel document and international health certificate.”<sup>128</sup> Entry pursuant to the Protocol must take place at an official entry point.<sup>129</sup> However, if a Community citizen wishes to stay longer than 90 days, the citizen must “obtain permission for an extension of stay from the appropriate authority” if the citizen “has cause to stay for more than ninety (90) days.”<sup>130</sup> If a Community citizen did not enter through an official entry point, that likely hinders the individual’s ability to go to the necessary authorities for an extension, as the individual would be considered an “illegal immigrant” under the 1985 Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, The Right of Residence and Establishment.<sup>131</sup> (See discussion in Chapter 4 for further information about the regularization of one’s status following an irregular entry.)

The right to enter visa-free even with proper documentation and through an official entry point is not absolute. The 1979 Protocol permits Member States to refuse admission to any Community citizen identified as an “inadmissible immigrant” under the state’s national law.<sup>132</sup> Moreover, the Protocol’s definition of “illegal immigrant” could be read to include

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*Ghana and Sierra Leone* (2018), available at:

<http://www.madenetwork.org/sites/default/files/CMS%20research%20Guinea%20Sierra%20Leone%20fdWA%202018.pdf> [hereinafter *Assessment of the Implementation of ECOWAS Free Movement Protocol*] (“[T]here are still serious challenges to the implementation of the Free Movement Protocols, especially with regards to the Phase 2 and Phase 3 components. . . .”); International Centre for Migration Policy Development (ICMPD) and International Organization for Migration (IOM), *A Survey on Migration Policies in West Africa* (2<sup>nd</sup> ed.), 2016, available at: [https://publications.iom.int/system/files/pdf/survey\\_west\\_africa\\_en.pdf](https://publications.iom.int/system/files/pdf/survey_west_africa_en.pdf); UNHCR *et al.*, *Protecting Refugees and Other People on the Move*, *supra* note 1, p. 27 (identifying as a challenge to intra-regional migration the “slow implementation of the second and third phases of [the] protocols” and stating that “[t]he right of establishment has not yet been fully implemented in the sub-region.”).

<sup>127</sup> 1979 Free Movement Protocol, Art. 3(2). If a Community citizen wishes to stay longer than 90 days, the citizen must “obtain permission for an extension of stay from the appropriate authority” if the citizen “has cause to stay for more than ninety (90) days.” *Id.* If a Community citizen did not enter through an official entry point, that likely hinders the individual’s ability to go to the necessary authorities for an extension, as the individual would be considered an “illegal immigrant” under the 1985 Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, The Right of Residence and Establishment. See 1985 Protocol, Art. 1 (defining “illegal immigrant” as “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”).

<sup>128</sup> 1979 Free Movement Protocol, Art. 3(1). The Protocol defines “a valid travel document” as “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.” 1979 Free Movement Protocol, Art. 1. The ECOWAS passport was introduced in December 2000 to serve as a valid international travel document. See UNECA *ECOWAS –Free Movement of Persons*.

<sup>129</sup> 1979 Free Movement Protocol, Art. 3(2).

<sup>130</sup> *Ibid.*

<sup>131</sup> See 1985 Supplementary Protocol, Art. 1 (defining “illegal immigrant” as “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”).

<sup>132</sup> 1979 Free Movement Protocol, Art. 4; see also UNHCR *Research Paper No. 150*, *supra* note 125 (“[M]ember states reserved to themselves in article 4 of the Protocol the right to refuse admission to any Community citizen within

asylum-seekers and refugees, who often pass through unofficial borders and/or in a clandestine manner. In fact, as discussed *infra* in Chapter 4, many target countries have restrictive national immigration laws in place that similarly identify many persons on the move as inadmissible, including those deemed “destitute” or in need of financial assistance and persons suffering mental illness.<sup>133</sup> Not only are such definitions problematic in terms of free movement within ECOWAS, but they may also conflict with a proper reading of both the UN Refugee Convention and OAU Refugee Convention.

Under the 1985 Supplementary Protocol (A/SP.1/7/85), all ECOWAS Member States must “ensure that their nationals who travel to the territory of another State possess valid travel documents recognized within the Community.”<sup>134</sup> However, even in the case of undocumented migrants, Member States must take measures to guarantee the enjoyment and exercise of their fundamental human rights.<sup>135</sup> For purposes of the 1985 Supplementary Protocol, “fundamental human rights” includes “the right of any individual recognized by the International Declaration of Human Rights adopted on 10 December, 1948 by the United Nations General Assembly.”<sup>136</sup> Despite such guarantees, migrants in an irregular situation (i.e., those without documents or who enter a Member State through an unofficial border crossing or who overstay the 90 days without adjusting their status) often are not in a position to realize their fundamental human rights in the target countries, as discussed in Chapter 4.

The 1986 Supplementary Protocol (A./SP.1/7/86) establishes the right of residence (Phase II) for Community citizens in ECOWAS Member States “for the purpose of seeking and carrying out income earning employment.”<sup>137</sup> The ECOWAS Member States have agreed “to promote healthy, fair and humane conditions to ensure legal migration of workers and their families[,]” including through consideration of, *inter alia*, the social and economic consequences for migrant workers.<sup>138</sup> The 1986 Supplementary Protocol also provides for the equal treatment of migrant workers with nationals of the host Member State in matters such as employment, participation in social and cultural activities, education and access to health facilities.<sup>139</sup> Furthermore, the 1990 Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) stipulates

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the category of inadmissible immigrant under their domestic laws. This provision provided—and continues to provide—broad scope to Member States to undercut the purpose of the Protocol through the elaboration of overly restrictive domestic inadmissibility laws.”)

<sup>133</sup> See discussion in 4.3.1, *infra*.

<sup>134</sup> See 1985 Supplementary Protocol, Art. 2.

<sup>135</sup> 1985 Supplementary Protocol, Art. 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 rights.”). The 1985 Supplementary Protocol defines “illegal immigrant” as “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[.]” *Id.* at Art. 1.

<sup>136</sup> 1985 Supplementary Protocol, Art. 1.

<sup>137</sup> 1986 Supplementary Protocol, Art. 2. The right of residence is implemented through the issuance of an ECOWAS Residence Card or a Residence Permit by the Member State receiving the national of another Member State. *Id.* at Art. 5; see also UNHCR *et al.*, *Protecting Refugees and Other People on the Move*, *supra* note 1, p. 24.

<sup>138</sup> 1986 Supplementary Protocol, Art. 19.

<sup>139</sup> 1986 Supplementary Protocol, Art. 23.

that “[i]n matters of establishment and services, each Member State shall undertake to accord non-discriminatory treatment to nationals . . . of other Member States.”<sup>140</sup> Notwithstanding the regional framework in place, the study identified a number of barriers that persist for non-nationals (including Community citizens) seeking employment in ECOWAS countries, including *de jure* and *de facto* discrimination.<sup>141</sup>

The 1993 Revised Treaty recommitted the ECOWAS Member States to the rights of entry, residence and establishment for Community citizens.<sup>142</sup> Indeed, the revised treaty incorporates the aim of establishing a common market, in part through “the removal, between Member States, of obstacles to the free movement of persons, . . . and to the right of residence and establishment.”<sup>143</sup> The 1993 Revised Treaty also expanded upon the Community’s aims and objectives and the fundamental principles underlying the ECOWAS agreement. Notably, the fundamental principles of the ECOWAS Revised Treaty include the “recognition[,] promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights.”<sup>144</sup>

In 2008, ECOWAS Member States’ Heads of State and Government developed the ECOWAS Common Approach on Migration, a plan of action for better management of migration in the region. The Common Approach document, which is non-binding,<sup>145</sup> underscores the commitment by ECOWAS Member States to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as well as the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees.<sup>146</sup> It provides guidance on the promotion of free movement within the ECOWAS zone, the harmonization of Member States’ policies on migration, the protection of the rights of migrants, refugees and asylum-seekers, and combatting human trafficking.<sup>147</sup>

The Common Approach on Migration lists under its general principles on the “protection of the rights of migrants, asylum-seekers and refugees,” (i) a “reaffirmed commitment” by

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<sup>140</sup> 1990 Supplementary Protocol, Art. 4(1).

<sup>141</sup> See Chapter 4, *infra*.

<sup>142</sup> See UN High Commissioner for Refugees (UNHCR), *UNHCR & IOM – Nationality, Migration and Statelessness in West Africa*, June 2015, p. 82, available at <https://www.refworld.org/docid/55b886154.html> [hereinafter *Nationality, Migration and Statelessness in West Africa*].

<sup>143</sup> Revised Treaty of ECOWAS (1993), art. 3(2)(d).

<sup>144</sup> Revised Treaty of ECOWAS (1993), art. 4(g).

<sup>145</sup> See *Assessment of the Implementation of ECOWAS Free Movement Protocol*, p. 16 (“While this agreement is non-binding in nature, scope and content, . . . it provides guidelines and action plans to be implemented by ECOWAS Member States to arrive at effective migration management in West Africa.”).

<sup>146</sup> ECOWAS Commission, *ECOWAS Common Approach on Migration*, 18 Jan. 2008, available at <http://ecowasmigration.ug.edu.gh/ecowas-common-approach-migration-2008/>.

<sup>147</sup> *ECOWAS Common Approach on Migration*; see also *Assessment of the Implementation of ECOWAS Free Movement Protocol*, p. 16 (“The Common Approach is based on the [following] six principles, namely: a. Free movement of persons within the ECOWAS zone; b. Promoting legal (regular) migration as an integral part of the development process; c. Combatting human trafficking; d. Policy harmonization; e. Protection of the rights of migrants, asylum-seekers and refugees; and f. Recognition of the gender dimension of the migration[.]”).



ECOWAS Member States “to ensure the implementation of the Protocol on the Free Movement of Person within the ECOWAS zone”<sup>148</sup> and (ii) a commitment to ensure the implementation of the ICMW and to put in place regional integration mechanisms to manage the “increasing movement of refugees in West Africa” and to regularize their status after conflicts.<sup>149</sup> It does not distinguish between the different categories of persons; however, with respect to the actions that Member States should take “to protect the rights of migrants, refugees and asylum-seekers,” the Common Approach identifies separately those actions to be taken for the protection of the rights of migrants on the one hand and those actions to be taken for the protection of the rights of refugees and asylum-seekers on the other.<sup>150</sup>

To protect the rights of migrants, Member States should: (i) “Formulate an active integration policy for migrants from ECOWAS Member States and combat exclusion and xenophobia[;]” (ii) “Encourage Member States and their EU partners to ratify the UN Convention on the Rights on Migrants[;]” and (iii) “Put in place regional mechanisms to monitor the UN Convention on the Rights of Migrants.”<sup>151</sup> For refugees and asylum-seekers, just one plan of action was identified and it only speaks to the rights of refugees: “Put in place *mechanisms for granting* rights of residence and establishment to refugees from ECOWAS countries.”<sup>152</sup> The wording of the proposed action for protecting asylum-seekers and refugees suggests that the 1979 Protocol on Free Movement and supplementary protocols themselves do not afford the rights of residence and establishment to refugees and asylum-seekers. And that per the Common Approach, those rights, once granted, are limited to recognized refugees.<sup>153</sup>

In its 2007 Memorandum on the Equality of Treatment for Refugees, the ECOWAS Commission recognized the “imperative need to ensure that refugees benefit from the protocols on free movement”<sup>154</sup> and clarified that the ECOWAS framework on free movement of persons does not “limit the applicability of benefits conferred in other regional or universal instruments or agreements.”<sup>155</sup> The rights afforded refugees under

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<sup>148</sup> ECOWAS Common Approach on Migration, section 1.2.

<sup>149</sup> ECOWAS Common Approach on Migration, section 1.2.

<sup>150</sup> Note that although the Common Approach policy document identifies as one of its six priority questions “How to protect migrant’s and asylum-seekers rights?,” the action plan only addresses that question with respect to migrants and refugees. Compare ECOWAS Common Approach on Migration, Introduction, with *id.* at section 2.5.

<sup>151</sup> ECOWAS Common Approach on Migration, section 2.5.

<sup>152</sup> *Ibid.* (emphasis added).

<sup>153</sup> This limitation is consistent with the international framework discussed above, which affords asylum-seekers many rights to access essential services, but does not grant the right of residence to those individuals seeking asylum.

<sup>154</sup> ECOWAS Memorandum on the Equality of Treatment for Refugees.

<sup>155</sup> ECOWAS Memorandum on the Equality of Treatment for Refugees (“Neither the ECOWAS Treaty nor its Protocols on Free Movement purport to limit the applicability of benefits conferred in other regional or universal instruments or agreements.”). The Commission cited Article 84 of the revised 1993 Treaty of ECOWAS and Article 24 of the 1986 Supplementary Protocol in support of this statement. Article 84(1) provides: “Member States may conclude agreements among themselves and with non-Member States, regional organisations or any other international organization, provided that economic agreements are not incompatible with the provisions of this Treaty.” 1993 Revised Treaty of ECOWAS, Art. 84(1); see also 1986 Supplementary Protocol, Art. 24(1)(b) (“No provisions of this Protocol may be interpreted to adversely affect more favourable rights or liberties guaranteed to

either body of law – the ECOWAS framework or the international and regional human rights framework – may be applied simultaneously,<sup>156</sup> and “where provisions overlap on any given right or entitlements available to ECOWAS citizens who are also refugees, the most generous provision applies.”<sup>157</sup> Furthermore, the ECOWAS framework explicitly recognizes the rights set forth in the Universal Declaration of Human Rights (UDHR)<sup>158</sup> and the African Charter.<sup>159</sup>

#### **4.2.2 ECOWAS Framework on Trafficking in Persons**

ECOWAS has taken numerous steps to combat trafficking in persons,<sup>160</sup> promote the realization of trafficking victims’ human rights, and ensure protection and assistance for victims. The legal and policy framework for victims of trafficking is one of the most evolved areas at the ECOWAS level and largely in compliance with the international framework (Palermo Protocol). In 2001, ECOWAS issued a Declaration on the Fight Against Trafficking in Persons<sup>161</sup> and adopted an Initial Plan of Action Against Trafficking in Persons.<sup>162</sup> The Initial Plan of Action set forth the “most urgent actions” to be taken by ECOWAS Member States against trafficking in persons during 2002-2003. These actions

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migrant workers or members of their family by . . . any international agreement in force vis-à-vis the Member State concerned.”)

<sup>156</sup> *ECOWAS Memorandum on the Equality of Treatment for Refugees* (“[W]here provisions overlap on any given right or entitlement available to ECOWAS citizens who are also refugees, the most generous provision applies. Rights that refugees enjoy according to either body of law may be applied simultaneously. Refugees may therefore enjoy rights under the Free Movement Protocols additional to the rights to which they are entitled under international refugee law.”).

<sup>157</sup> *ECOWAS Memorandum on the Equality of Treatment for Refugees* (citing 1951 Refugee Convention, Article 5 (noting that the 1951 Refugee Convention, which all ECOWAS Member States have ratified, “clarifies that refugees may benefit from more favorable provisions where they exist.”)).

<sup>158</sup> The Universal Declaration of Human Rights guarantees everyone the right to work, favourable working conditions and “just and fair remuneration” for his/her work (Article 23); the right to an adequate standard of living, including food, clothing, housing, medical care and necessary social services (Article 25); the right to education (Article 26). See UN General Assembly, *Universal Declaration of Human Rights*, 10 Dec. 1948, 217 A (III), available at [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf) [hereinafter UDHR]. The UDHR protects against discrimination generally and against discrimination in the realization of the rights contained in the Declaration. See UDHR, Arts. 2 and 7. It also guarantees “the right to social security” and—in accordance with the resources of each State—“the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” UDHR, Art. 22.

<sup>159</sup> See Revised Treaty of ECOWAS (1993), Art. 4(g); 1985 Supplementary Protocol, Art. 1.

<sup>160</sup> “Trafficking of persons” is defined in the same manner under the ECOWAS framework as the international framework (UN Protocol on Trafficking in Persons). See Economic Community of West African States (ECOWAS), *Regional Policy on Protection and Assistance to Victims of Trafficking in West Africa* (2009), section 1.6.a. In addition, the ECOWAS framework provides specific examples of purposes for which trafficking could take place: exploitative labour, sexual exploitation, sexual abuse, slavery, organ harvest/sale, pornography, marriage/forced or early marriage, baby harvest/sale, begging, the sale of drugs, armed conflicts and other related matters and sex tourism. *Id.*

<sup>161</sup> Economic Community of West African States (ECOWAS), *Declaration on THE FIGHT against Trafficking in Persons*, 21 Dec. 2001, available at: <http://ecowasmigration.uq.edu.gh/ecowas-declaration-on-the-fight-against-trafficking-in-persons-2001/> [hereinafter ECOWAS Declaration on the Fight Against Trafficking].

<sup>162</sup> Economic Community of West African States (ECOWAS), *ECOWAS Initial Plan of Action against Trafficking in Persons (2002-2003)*, Dec. 2001, available at: [https://www.unodc.org/documents/treaties/trafficking/Minimum\\_Plano\\_CEDEAO.pdf](https://www.unodc.org/documents/treaties/trafficking/Minimum_Plano_CEDEAO.pdf) [hereinafter ECOWAS Initial Plan of Action Against Trafficking].

included adopting and implementing the laws and structures “needed to support the provisions of” the UN Protocol on Trafficking in Persons.<sup>163</sup>

The ECOWAS Initial Action Plan – in line with the UN Protocol on Trafficking in Persons – urged States to adopt legislative or other appropriate measures to “permit victims of human trafficking to remain in their territory, temporarily or permanently, in appropriate cases[.]”<sup>164</sup> It further called on ECOWAS States to “give appropriate consideration to humanitarian and compassionate factors in the consideration of permitting victims of trafficking to remain in their territory.”<sup>165</sup> The Initial Action Plan also envisioned the creation of reception centres for victims of trafficking where they could be provided with “physical security, basic material assistance, medical care, and counseling and information,” including in the form of legal assistance.<sup>166</sup> Again in line with the UN Protocol’s mandate, this protective measure was to be taken in cooperation with NGOs and civil society actors, as appropriate.<sup>167</sup>

Additional progress has been made at the regional level to fight against trafficking in persons and protect victims of trafficking in the years since the adoption of the Initial Action Plan. In 2005, ECOWAS established a specific Trafficking in Persons (TIP) Unit within the ECOWAS Commission.<sup>168</sup> Subsequent action plans have been adopted, including the ECCAS/ECOWAS Plan of Action (2006-2009), which identifies a number of implementation strategies.<sup>169</sup> In 2008, the ECOWAS Common Approach considered trafficking in persons within the broader migration context. It sets out action items to

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<sup>163</sup> ECOWAS Initial Plan of Action against Trafficking, p. 3. All 10 selected countries have ratified or acceded to the protocol; Sierra Leone was the last to do so, in August 2014. *See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (15 Nov. 2000), ratification status available at:

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en).

However whether the 10 countries have complied with this action plan will be determined through examination of the national criminal codes. *See* ECOWAS Initial Plan of Action Against Trafficking, p. 3 (identifying the input as the national governments and the success indicator as “Criminal Code amended”). This action was to be completed by December 2003. *See id.*

<sup>164</sup> ECOWAS Initial Plan of Action Against Trafficking, p. 3.

<sup>165</sup> ECOWAS Initial Plan of Action Against Trafficking, p. 3. To assess implementation of this action, review must be conducted of national governments’ immigration laws and regulations. *See* ECOWAS Initial Plan of Action Against Trafficking, para. 8 (identifying the input as the national government and the success indicator as “Immigration code and regulations amended”). This action was to be completed by December 2003. *See id.*

<sup>166</sup> ECOWAS Initial Plan of Action Against Trafficking, p. 5.

<sup>167</sup> ECOWAS Initial Plan of Action Against Trafficking, p. 5. The expectation was that at least one reception centre would open in each ECOWAS country by June 2003. *See* ECOWAS Initial Plan of Action Against Trafficking, p. 5.

<sup>168</sup> United Nations Office on Drugs and Crime, *Regional Strategy for Combating Trafficking in Persons and Smuggling of Migrants 2015-2020*, p. 12, available at

[https://www.unodc.org/documents/westandcentralafrica/UNODC\\_Regional\\_Strategy\\_for\\_Combating\\_TIP\\_SOM\\_West\\_and\\_Central\\_Africa\\_2015-2020.pdf](https://www.unodc.org/documents/westandcentralafrica/UNODC_Regional_Strategy_for_Combating_TIP_SOM_West_and_Central_Africa_2015-2020.pdf); *see also* ECOWAS Regional Policy on Protection and Assistance to Victims of Human Trafficking (2009) [hereinafter 2009 Regional Policy].

<sup>169</sup> *See* ECCAS/ECOWAS Plan of Action Against Trafficking in Persons (2006-2009); ECOWAS Plan of Action Against Trafficking in Persons (2008-2011). There is a more recent plan of action for 2016-2020; however, the authors were unable to locate the document prior to publication of this report.

strengthen the protection and assistance system for victims of trafficking in persons, particularly women and children.<sup>170</sup>

Finally, the ECOWAS Regional Policy on Protection and Assistance to Victims of Trafficking in Persons in West Africa (2009) serves as the key document informing State response to trafficking in persons in the region. The policy adopts a holistic, victim-centered approach to protecting and assisting victims of trafficking and provides more detailed and practical guidance in terms of the reception and identification of victims, shelter, health, counseling, family tracing, return/repatriation, integration, empowerment and follow-up care.<sup>171</sup> For example, implementation strategies for the policy objective of sheltering – which is identified as a “paramount” need for victims of trafficking – include providing adequate shelters for trafficked persons for an average period of 6 weeks.<sup>172</sup> In addition, it calls for counselling, psychological, medical and legal services; recreational and cultural services and facilities; interpreters; an effective referral system for the protection and assistance of trafficked persons; and a library or reading room.<sup>173</sup> The need to provide victims of trafficking with access to education is repeated under various policy objectives, including under the need for shelter, integration and empowerment.<sup>174</sup> The policy also identifies access to education and employment opportunities among the implementation strategies for preventive measures.<sup>175</sup>

Recognizing that victims of trafficking are often exposed to various health risks and abuse,<sup>176</sup> the Regional Policy calls for the provision of “non-discriminatory, comprehensive and equal access to adequate health-care services” for all victims of

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<sup>170</sup> ECOWAS *Common Approach on Migration*, section 2.4 (urging, among others, the following actions: (i) “[s]etting up project[s] to help and promote the rehabilitation of human trafficking victims in collaboration with external partners;” (ii) “[p]romoting at the national level a solidarity fund to support victims of human trafficking;” (iii) “[h]armonizing national legislation on combatting human trafficking in line with international standards; and (iv) “[s]trengthening cooperation with the framework of providing humanitarian assistance to migrants in distress.”)

<sup>171</sup> 2009 Regional Policy, section 1.5.

<sup>172</sup> 2009 Regional Policy, section 2.3. The policy notes with the suggested average period that the actual “time spent in shelters must be primarily based on the needs of each case and the availability of facilities and resources.” *Ibid.*

<sup>173</sup> 2009 Regional Policy, section 2.3.

<sup>174</sup> See 2009 Regional Policy, section 2.3 (stating as an objective of sheltering: “to provide an opportunity for educational attainment”); 2.8 (stating as an objective of integration: “To assist trafficked persons to achieve socio-economic independence through community-based vocational skills acquisition, education, etc. . . .” and as an implementation strategy: “Facilitating placement in formal educational institutions for trafficked persons”); 2.9 (stating as an objective of empowerment: “To empower trafficked persons to achieve socio-economic independence through vocational skills acquisition, education, etc.” and as an implementation strategy: “Provision of formal/informal education for trafficked persons.”).

<sup>175</sup> 2009 Regional Policy, section 2.12.

<sup>176</sup> 2009 Regional Policy, section 2.4 (“Victims of Human Trafficking are exposed to various health risks and abuse. This may result in health problems such as sexually transmitted infections (STIs), HIV/AIDs, pelvic inflammatory disease, hepatitis, tuberculosis, skin infections and other communicable diseases; unwanted pregnancy, forced abortion, abortion-related complications, mental and emotional health problems including recurring nightmares, insomnia, suicidal tendencies, alcoholism, drug abuse and addiction. Victims also face neglect and poor living conditions which often result in anemia, malnutrition, diarrhea and parasitic infestations.”).

trafficking.<sup>177</sup> It also identifies several objectives and implementation strategies regarding the issue of health, including “educating law enforcement officers and other stakeholders on the importance of health care services and referrals for victims,” providing adequate health information, ensuring “the delivery of health services that meet specific needs of [trafficked persons],” and upholding the fundamental human rights of victims of trafficking – “especially [of the] mother and child.”<sup>178</sup> The policy’s comprehensive list of implementation strategies includes providing “access to standardized and equitable health care services at the shelters” for all victims of trafficking, “irrespective of their gender or circumstances[.]”<sup>179</sup> The provision of mental health services, comprehensive health information and information about fundamental human rights, culturally appropriate counselling services, and the sensitization of law enforcement officers and other stakeholders are among the identified implementation strategies.<sup>180</sup>

However, as explained in section 4.2.2, the comprehensive regional framework on trafficking in persons remains largely unimplemented at the national level. The reception centres identified in the Initial Action Plan and 2009 Regional Policy have not been established, implementation gaps persist in the identification and referral of victims, and the availability and quality of services – including medical and psychosocial services – remains inadequate.

### **4.2.3 ECOWAS Framework on Child Protection**

ECOWAS Member states are similarly taking active steps to enhance child protection in the region. In January 2019, ECOWAS Member States adopted an updated ECOWAS Child Policy and its Strategic Action Plan 2019-2023).<sup>181</sup> There are also established standards for the protection and reintegration of child migrants, asylum-seekers and refugees, such as the “ECOWAS Support Procedures and Standards for the Protection and Reintegration of Vulnerable Children on the Move and Young Migrants.” These standards, which have been in use since 2015, guide State and civil society responses to child protection across a number of key areas including identification, emergency care, family tracing, alternative care, and reintegration.<sup>182</sup>

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<sup>177</sup> 2009 Regional Policy, section 2.4 (recalling that the provision of health care for victims of trafficking is a “basic human right and must be promoted and protected in accordance with” Article 16 of the African Charter and Article 25 of the UDHR).

<sup>178</sup> See 2009 Regional Policy, section 2.4.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> ECOWAS, *ECOWAS moves to protect Child rights and prevent Child marriage in the region*, 28 Jan. 2019, <https://www.ecowas.int/ecowas-moves-to-protect-child-rights-and-prevent-child-marriage-in-the-region/>.

<sup>182</sup> Bhaba, J. et al (2018) *Research handbook on child migration*, Cheltenham: United Kingdom.

# 5 Key Findings

While the ECOWAS countries examined for this study have ratified numerous international and regional treaties that recognize the rights of persons within their territory to certain basic services such as health, education, employment and housing, the research conducted to inform this report found that many refugees, asylum-seekers and migrants (including migrants in an irregular situation) face legal and/or practical barriers in realizing these rights in the target countries. This Chapter identifies key legal and practical barriers that refugees, asylum-seekers and migrants face in accessing these essential services. In addition, it sets forth key protection challenges facing vulnerable populations such as children on the move and victims of human trafficking and outlines the key impediments to full realization of the ECOWAS Free Movement Protocol. The key findings are organized around themes that were identified in multiple target countries, with specific country examples noted within the identified themes to serve as illustrations.

## 5.1 Access to Services

### 5.1.1 Health Services

#### Right to Health/Legal Access

In all 10 target countries, migrants, refugees and asylum-seekers have a right to access healthcare. The study did not uncover any legal barriers in terms of their ability to access healthcare in any of the 10 countries. Identity documents are not required to receive services. Therefore, even migrants in an irregular situation and persons without a national ID card, passport, residence permit, or other identity document are legally able to access healthcare in the target countries.

The rights of migrants, refugees and asylum-seekers to healthcare/medical services are the same as those of nationals – migrants, refugees and asylum-seekers can access emergency and all general health services, reproductive and maternal health care, and health services for children. Under some national legislation and policy the cost of health services should be the same for migrants, refugees and asylum-seekers as for nationals.

In several target countries (e.g. Burkina Faso, Mali, Niger, Senegal, Sierra Leone) health care is free for children 0 to 5 years of age and pregnant women.<sup>183</sup> In Niger, for example, the range of free health services for women includes contraceptives, antenatal care, deliveries including caesarean sections, and treatment for breast and uterus cancers.<sup>184</sup>

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<sup>183</sup> In Sierra Leone, the Government's Free Health Care Initiative, introduced in 2010, also abolished health user fees for lactating mothers. Witter, S. *et al.* (2016) The Sierra Leone Free Health Care Initiative (FHCI): process and effectiveness review (technical report).

<sup>184</sup> Oxfam, 2012, Free healthcare initiative in Niger makes health gains but many challenges remain, available at <https://reliefweb.int/report/niger/free-healthcare-initiative-niger-makes-health-gains-many-challenges-remain>.

In Burkina Faso and Senegal, health services are also free for the elderly. In Liberia, primary health care is technically free, and migrants, refugees and asylum-seekers are treated equally to nationals;<sup>185</sup> however, as discussed below, it is often not realized in practice. In some target countries (e.g. Guinea, Ghana, The Gambia, Nigeria) health care is not free and migrants, refugees and asylum-seekers often must pay prior to receiving treatment, as do nationals of those countries.

A few of the target countries (e.g., Ghana, Nigeria, Mali) have national health insurance schemes, which migrants, refugees and asylum-seekers may access at the same price as nationals. While the national health insurance schemes are accessible to migrants, refugees and asylum-seekers, the study revealed that many medical procedures and services are not covered by the insurance. Medications are often not covered.

### **Practical Barriers/Challenges:**

While there are no legal obstacles to migrants, refugees and asylum-seekers accessing healthcare in the 10 target countries, the study identified a number of significant practical barriers.

#### *Prohibitive Costs*

A key barrier to accessing healthcare is the cost of medical procedures/treatment and medication. Migrants, refugees and asylum-seekers are reportedly well aware that they have the right to access health services in transit and destination countries; it is the cost that prevents them from accessing healthcare, which is sometimes higher than the cost paid by nationals.

*“They know they have the right to go to [the] hospital. It’s just they can’t afford to access it. They don’t see it in terms of rights. It’s the impossibility to access different services because of the costs involved.”* – NGO, Senegal

*“The problem is that [healthcare] is very expensive. So we get our country medicine and try to treat [things] ourselves.”* – Urban Refugee, Montserrado County, Liberia

*“It’s hard to get medicine here. Because of money. When you’re sick you go to the hospital, but it’s a lot of money and you can’t pay.”* – FGD participant in Guinea

The study identified that while health care is accessible to migrants, refugees and asylum-seekers in the target countries, in some countries where some services are legally free, in practice patients are being charged for treatment and/or medicine. An NGO interviewed in Liberia explained that “[i]t is currently the case that primary health care at public facilities should be free, but that is not the practice.”<sup>186</sup> FGD participants similarly reported that

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<sup>185</sup> FGD with urban refugees, Monrovia, Liberia, 20 Sept. 2019; Interview with NGO, Monrovia, Liberia, 23 Sept. 2019.

<sup>186</sup> Interview with NGO, Monrovia, Liberia 23 Sept. 2019.



“nothing is free!” when asked whether they have to pay for treatment at public hospitals.<sup>187</sup> In other instances, study participants reported that the prices charged for health services may be artificially inflated in some hospitals and clinics, because of the migrants’ and refugees’ status as non-nationals.

*“You pay as a foreigner. They don’t consider [the refugee card]. They charge us as foreigners.” – FGD participants in The Gambia*

*“These centres, if they know they can earn something, they try to get paid for the services.” – NGO, Mali*

Interviews and FGDs conducted for the study identified that healthcare is prohibitively expensive for many migrants, refugees and asylum-seekers, including for those who have national health insurance. As many hospitals demand up-front payment for healthcare, including emergency procedures, migrants, refugees and asylum-seekers who do not have the money to pay for the services tend to simply stay home or return home from hospital without the procedure. This was reported by all categories of persons, whether covered by national health insurance or not.

*“If you know you’re sick and you don’t have much money, you just go for self-medication.” – Migrant from Nigeria in Ghana*

*“Most women and children sit at home because they know they don’t have money for treatment.” – FGD participant, Krisan Refugee Camp, Ghana*

*“No one can pay. So they just give up and choose to leave, to go home, without the surgery.” – NGO, Mali*

Others delay seeking necessary health services:

*“They will wait until they’re not able to wait anymore.” – NGO, Burkina Faso*

*“[My] grandchild is suffering from a hernia. As I know the insurance card doesn’t cover everything, I am afraid to go to the hospital. The boy is at home suffering.” – FGD participant, Ampain Refugee Camp, Ghana*

Delaying medical treatment can lead to serious health consequences for migrants, refugees and asylum-seekers, as they delay seeking medical attention until they are extremely unwell. One female refugee in The Gambia explained:

*“Because of our financial situation . . . and other conditions related to our refugee status, we find it difficult to access the health facility on time and it leads to many*

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<sup>187</sup> FGD with urban refugees, Monrovia, Liberia, 20 Sept. 2019.



*complications or even death. I can give the example of myself. I was very sick while I was pregnant, but we didn't have the means to go to the hospital at the right time. At the time of labour, it was so tense, they had to evacuate me to the main referral hospital in Banjul.*" – FGD Participant, Sibanor, The Gambia

Migrants in an irregular situation, in particular, may delay seeking healthcare as they prefer to remain 'invisible' to the authorities.<sup>188</sup> In some cases, by the time the migrants, asylum-seekers and refugees present themselves at a hospital or are transported there by family, friends, or NGO representatives, it is too late and the patients succumb to their injuries or illness.<sup>189</sup>

In some cases, migrants, refugees and asylum-seekers may receive support from UN agencies (e.g. UNHCR, UNICEF), Red Cross and Red Crescent National Societies or NGOs to cover their medical treatment costs. Some stakeholders interviewed for this study identified that, where possible, representatives of NGOs try to accompany the migrants, refugees and asylum-seekers under their care to hospital to ensure that they receive health services and are not turned away: "If they're with us, accompanied for referral, they'll be treated. But if they go by themselves, well they usually don't have the money, they might be refused treatment."<sup>190</sup>

### *Denial of Treatment*

The study identified some examples of migrants, refugees and asylum-seekers being refused treatment by hospital staff even in emergency situations when they did not have the means to pay up-front for medical services. An Ivorian refugee in The Gambia told a story of rushing an elderly Ivorian man to the hospital after he collapsed. Upon arrival, when the hospital staff thought he was a citizen, they ordered a blood sample and sent the sample to the laboratory, where they were charged a certain amount of money. Later, when the laboratory asked for the man's identity card, "that is the time when they realized this man is not a citizen. From there, we [noticed] the discrimination. . . . We had to pay more before they would even go on with the treatment."<sup>191</sup> One interviewed migrant from Cameroon reported that she sought medical treatment in Mali and was told that if she became extremely unwell, she would have to return to her country to access medical assistance there.

There are reports of migrants, refugees and asylum-seekers becoming gravely ill or even dying as a result of the hospital's refusal to provide emergency services. A study participant in Ghana discussed the case of a refugee who was transported to a hospital after a snake bite in the camp. The hospital refused to provide treatment to him because he could not pay for the anti-venom injection. He was made to wait for hours, with his leg

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<sup>188</sup> IFRC, *New walled order: How barriers to basic services turn migration into a humanitarian crisis*, 2018, 15.

<sup>189</sup> Interviews with NGOs in Burkina Faso and Mali.

<sup>190</sup> Interview with NGO, Head Office in Dakar, speaking about the region, 2 Oct. 2019.

<sup>191</sup> FGD with urban refugees and asylum-seekers, Greater Banjul, The Gambia, 3 Oct. 2019.

rapidly swelling, until a camp coordinator arrived at the hospital pleading for the hospital staff to give the migrant the injection, and promising that he would return the next day with the money to pay the hospital for the injection.<sup>192</sup> In The Gambia, an Ivorian refugee spoke of a situation where an elderly refugee woman died when the hospital refused to provide treatment until they could pay for it: “When [the hospital realized] she was not a Gambian, they charged her more. We didn’t have the money. During the time we were going out to look for money, they called and said she passed away.”<sup>193</sup>

Data collected by the Mixed Migration Centre’s (MMC) 4Mi project<sup>194</sup> suggest that many male and female migrants and refugees would value better access to healthcare while on the move. MMC data show that 33.19 per cent of surveyed female migrants and refugees reported wanting medical assistance, and 22.44 per cent of surveyed male migrants and refugees reported medical assistance as the most useful assistance while on the move.

**Table 1: Which kind of assistance would have most helped during your journey?**

	Female		Male	
	Number	%	Number	%
Cash assistance	661	72.4	1449	65.68
Food	534	58.49	1089	49.37
Shelter	484	53.01	1030	46.69
Water	462	50.6	1007	45.65
<b>Medical assistance</b>	<b>303</b>	<b>33.19</b>	<b>495</b>	<b>22.44</b>
Blankets/sleeping bags	288	31.54	383	17.36
Legal assistance (documentation, information on asylum procedure etc.)	190	20.81	477	21.62
Bathroom/washing facilities	197	21.58	398	18.04
Clothes/shoes	248	27.16	293	13.28
Safe spaces for women	399	43.7	106	4.81
Psycho-social support	238	26.07	263	11.92
Help to access money transfer (to receive money)	138	15.12	284	12.87
Safe spaces for children	117	12.81	52	2.36

Source: 4Mi West Africa data (May-September 2019).

<sup>192</sup> FDG in Krisan Refugee Camp, Ghana, 17 Oct. 2019.

<sup>193</sup> FGD with urban refugees and asylum-seekers, Greater Banjul, The Gambia, 3 Oct. 2019.

<sup>194</sup> 4Mi Data. The Mixed Migration Monitoring Mechanism Initiative (4Mi) is an innovative approach of the Mixed Migration Centre for the collection and analysis of data along major mixed migration corridors. 4Mi seeks to help fill knowledge gaps regarding the nature of the mixed migratory movements and the protection risks for migrants and refugees on the move within and from West Africa. 4Mi data, graphics and analysis are based on the accumulated, ongoing data collection by 4Mi field monitors through direct interviews with people on the move in Burkina Faso, Mali and Niger. Sample sizes are clearly indicated and represent a limited section of those on the move. As survey data collection relies on a non-randomized, purposive sampling, the survey results supply insights on mixed migration dynamics, but findings should not be considered representative of the total population of migrants and refugees. Further information on 4Mi approach and methodology can be found [here](#).

### *Held at Health Facilities Until Payment*

The study also uncovered examples of migrants, refugees and asylum-seekers in several target countries (e.g., The Gambia, Ghana, Liberia, Nigeria) being treated in hospitals and effectively discharged, but not being allowed to leave the facility until they could pay the hospital bill. This issue has been previously reported as a problem in certain target countries (e.g., Nigeria and Ghana) outside the context of persons on the move, indicating that nationals are also affected by such practices, particularly women in the post-delivery context.<sup>195</sup> However, there has been little reporting to date on this issue in many of the target countries, where refugees, asylum-seekers and migrants reported themselves or a relative being held at the hospital until the bill could be paid in full.

One focus group participant in Ghana told the story of her son who, post-treatment, was made to leave his hospital room and had to sleep outside in the hospital yard for a night until the family could collect the money to pay his hospital bill.<sup>196</sup> Several study participants reported that they themselves or their wives had been prevented from leaving hospitals after giving birth until the bill was paid. A woman in Bahn Settlement in Liberia was held at the hospital two extra days after given birth until her husband could come up with the money to pay the bill.<sup>197</sup> An interview participant in Ghana described how she was forced to move from her hospital bed shortly after giving birth and waited in the hospital hallway for several hours until a family member could come and pay the hospital bill:

*“I went for delivery. I had two surgeries. Then I presented the [health] insurance card. Even with the insurance card, I was given a bill of 317 Ghana Cedis [approximately \$55 USD]. When I received the bill for 317 Cedis, I didn’t have the money to pay for the bill. I was blocked at the hospital because I didn’t have the money. I had to call friends, people to help. [They] had to collect the money so I could leave the hospital. . . . I was no more on [a] bed. They put me outside in the hallway for some hours. Even though I was feeling pain, I spent some hours in the hallway before going home.” – FGD participant, Ampain Refugee Camp, Ghana*

Medication is also prohibitively expensive for some migrants, refugees and asylum-seekers, preventing many from accessing the medications they need. In cases where

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<sup>195</sup> Secondary research indicates that the detention of women after giving birth in some target countries—e.g., Ghana and Nigeria—applies also to nationals of those countries. See, e.g., Health and Human Rights Journal, 2016, Medical Hostages: Detention of Women and Babies in Hospitals, <https://www.hhrjournal.org/2016/01/medical-hostages-detention-of-women-and-babies-in-hospitals/>; Center for Reproductive Rights and Women Advocates Research and Documentation Centre, 2008, Broken Promises: Human Rights, Accountability, and Maternal Death in Nigeria, [https://reproductiverights.org/sites/default/files/documents/pub\\_nigeria2.pdf](https://reproductiverights.org/sites/default/files/documents/pub_nigeria2.pdf). In August 2019, the U.N. Human Rights Committee expressed its concern to the Government of Nigeria regarding “allegations of the detention of women post-delivery because they could not pay their medical bills.” U.N. Human Rights Committee, *Concluding Observations on Nigeria in the Absence of its Second Periodic Report*, U.N. Doc. CCPR/C/NGA/CO/2, paras. 22-23 (29 Aug. 2019).

<sup>196</sup> FGD in Ampain Refugee Camp, Ghana, 16 Oct. 2019.

<sup>197</sup> FGD in Bahn Refugee Settlement, Liberia, 26 Sep. 2019.

persons on the move cannot afford to pay for medication, they tend to either seek the assistance of UN agencies and NGOs to pay for the medication; however, the requests for assistance are not often met. As a result, many simply forego the purchase of the medication, which can lead to negative health consequences. This is particularly true in the case of chronic illnesses that require medication on an on-going basis. In addition to the prohibitive cost of medication, interviews conducted for this study identified that, when drugs are available, health facilities may prioritize, or be perceived to be prioritizing, giving drugs to nationals.<sup>198</sup>

### *Distance to Health Facilities*

Another important barrier for migrants, refugees and asylum-seekers in accessing health services is their ability to reach health services. Many hospitals are located in urban centres meaning that migrants, refugees and asylum-seekers may have to travel long distances to receive treatment. In some cases, those who are ill may opt to stay at home, rather than travelling to a hospital, or may seek health assistance at private facilities, which are closer to home, but sometimes of inferior quality to public hospitals.

*“Sometimes, we get sick and want to go to the hospital, but we don’t even have money to pay the transport.” – Female refugee from Senegal in The Gambia*

The lack of an ambulance service was identified as a major concern by asylum-seekers and refugees, particularly those living in camps (e.g. in Liberia and Ghana) but also those in urban areas (e.g., The Gambia). Without an ambulance service, the ability of the refugees to access hospitals in main cities is significantly curtailed. Using public transport or private cars at night is difficult, and security and safety concerns in some areas mean that night-time travel to hospitals and clinics is problematic.

### *Language Barriers*

Another barrier for some migrants, refugees and asylum-seekers in accessing health services is that of language. Some migrants, refugees and asylum-seekers (e.g. Syrians and Sudanese) don’t speak English, French, or any of the local languages so their ability to convey to medical staff what their medical issue is can be challenging. No official interpreter services are available at hospitals and clinics in the target countries, though study participants reported that informal interpretation – through hospital staff or a friend accompanying the patient – is often available.

### *Poor Reception by Hospital Staff*

Some interviews highlighted poor behaviour of medical staff and receptionists at public and private hospitals, with reports of migrants, refugees and asylum-seekers being turned

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<sup>198</sup> FGD participants in Bahn Settlement, Liberia (discussing the integrated Bahn Health Clinic near the camp that is now run by the Ministry of Health).

away when they arrive at hospitals or clinics, or being chastised for being foreigners and a burden on the national health services.

*“When they notice that you are Ivorian, they will say ‘Every day, you people are sick, sick, sick.’”* – FGD participant, Bahn Settlement, Liberia

*“When you are talking to them, they don’t want to even listen to you.”* – FGD participant in The Gambia

### *Quality of Care*

The study identified that the quality of healthcare in the region is generally quite poor, especially in more remote areas of the countries. The hospitals and clinics receive minimal funding from the governments, and some are largely supported, financially and in terms of human resources, by UN agencies, the Red Cross and Red Crescent Movement, and NGOs. While basic healthcare provided to people on the move was typically described as “adequate” for minor problems, more complex care, including operations, usually requires persons to travel to urban centres to access treatment at larger hospitals. Private health clinics may be closer in distance to where the migrants, refugees and asylum-seekers live, but even the services at private clinics are considered low quality: “The private health centres aren’t covered by the State, so the quality is bad. There’s a lack of qualified human resources.”<sup>199</sup>

### *Lack of Psychosocial/Mental Health Services*

Specialized healthcare in the region is lacking. A key lacuna is that of access to psychosocial services in the region. According to one stakeholder interviewed for this study, “[a]ll mental health (in the region) is non-existent.”<sup>200</sup> Migrants, refugees, and asylum-seekers interviewed for this study reported that they encountered an array of stressful situations while on the move, including experiencing or witnessing physical and/or sexual abuse, having their possessions and money stolen, and being forced to pay illegal fees (bribes) to various government, and non-government actors. Some interviewed migrants and asylum-seekers reported being tortured by authorities in Libya and Algeria, and some reported rape, and pregnancy as a result of the rape.<sup>201</sup>

*“There are so many stories of them being raped during migration. There needs to be more attention to helping women and girls.”* – NGO in Senegal

MMC 4Mi data<sup>202</sup> show that 16.5 per cent of surveyed female migrants and refugees on the move in Burkina Faso, Mali, and Niger had witnessed or experienced sexual assault or harassment while on their journeys. Over 20 per cent of female migrants and refugees,

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<sup>199</sup> Interview with NGO in Mali, 15 Oct. 2019.

<sup>200</sup> Interview with UN agency in Guinea, 16 Oct. 2019.

<sup>201</sup> Interviews with female migrants and asylum-seekers in Guinea and Mali, Oct. 2019.

<sup>202</sup> See Annex 4 tables 1 and 2.

and over 16 per cent of male migrants and refugees surveyed in these countries in 2019 reported experiencing physical abuse or harassment while in transit.

Migrants, refugees, and asylum-seekers interviewed for the study reported that they wanted to access mental health services while on the move, in the destination country, and in their home country, after they returned home; however, they met various challenges in accessing mental healthcare.

A key factor contributing to the dearth of mental health services available to migrants, refugees and asylum-seekers, as well as nationals of the target countries, is that there are few trained psychologists, and next to no psychiatrists (For example, in Niger, there is only one trained psychiatrist). Migrants, refugees and asylum-seekers requiring mental health support, therefore, face difficulties in accessing appropriate mental health care in the target countries.

Where mental health care is available, the approach may be limited to “diagnose and prescribe” rather than counselling:

*“Everything is symptoms and medicine . . . . [T]he way they approach it, they’re not even asking ‘Why do you feel this way?’ They say, ‘These are the symptoms and here is the medicine.’ It’s all about being ill.” – Aid Worker in The Gambia*

*“[The] last time I had a migrant that was mentally sick, they took [him] to the medical home. Some come home with serious [mental health] needs and they don’t get treatment. Especially those . . . [who] are sexually exploited, sexually abused, they come back home with no attention from the government. No attention from other organizations, except my organization.” – Sheku Bangura, Founder & Director, Advocacy Network Against Irregular Migration, Sierra Leone*

MMC 4Mi data suggests that migrants and refugees may have a difficult time in accessing mental health care while on the move. Of the female migrants surveyed by 4Mi in Burkina Faso, Mali and Niger, 5.26 per cent reported having received psychosocial support services during their journey. Only 2.99 per cent of the male migrants surveyed by 4Mi in the same countries indicated that they had received such services.

**Table 2: Did you receive any of the following assistance during your journey?**

	Female		Male	
	Number	%	Number	%
I did not receive any assistance.	530	58.05	1148	52.04
Shelter	290	31.76	856	38.8
Water	282	30.89	765	34.68
Food	246	26.94	643	29.15

Bathroom/washing facilities	143	15.66	374	16.95
Help to access money transfer (to receive money)	53	5.81	205	9.29
Blankets/sleeping bags	55	6.02	144	6.53
Medical assistance	48	5.26	143	6.48
Cash assistance	59	6.46	119	5.39
Clothes/shoes	42	4.6	91	4.13
<b>Psycho-social support</b>	<b>48</b>	<b>5.26</b>	<b>66</b>	<b>2.99</b>
Safe spaces for women	81	8.87	12	0.54
Legal assistance (documentation, information on asylum procedure etc.)	12	1.31	30	1.36

Source: 4Mi West Africa data (May-September 2019).

## 5.1.2 Education

### Right to Education/Legal Access

Migrants, refugees and asylum-seekers have a right to education, including free primary education, in the 10 target countries. In some countries, such as Ghana and Mali, both primary and secondary education is tuition free. National legislation in the target countries does not discriminate against migrants, refugees or asylum-seekers in terms of education; the rights of non-nationals are the same as those of nationals, and the fees paid for education at the primary and secondary levels are the same as the fees paid by nationals. While migrants, refugees and asylum-seekers have the right to access free primary education, and in some countries free secondary education, there is no right for migrants, refugees and asylum-seekers to access tertiary education in the target countries. The study did not identify any legal barriers in terms of migrants, refugees and asylum-seekers accessing education in the ten target countries.

### Practical Barriers/Challenges

While there are no legal barriers to accessing education in the 10 target countries, migrants, refugees and asylum-seekers face a range of practical obstacles in accessing education at all levels.

#### *Cost of Education*

A key barrier is that of the cost of education. Even in countries where education is “free,” there is often still a range of costs that migrants, refugees and asylum-seekers, like the local population, must pay fees to attend school. UNHCR still provides support to some refugees and asylum-seekers for school expenses such as material for uniforms or cash support for families to purchase books. However, refugees, asylum-seekers and migrants reported that costs such as the purchase of school books, stationery, and uniforms can be prohibitively expensive, and those receiving UNHCR assistance reported that it is not sufficient to cover education costs.

*“Tuition is free, but you pay for other things such as uniforms and books. I would say free tuition, not free education.”* – NGO, Sierra Leone

*“Migrant children can go to the schools, there’s no discrimination, but they have to pay. The economic question is the problem.”* – UN agency, Guinea

*“Most refugees are not able to access services [such as] education . . . not because of legal impediments, but because of lack of finances.”* – UNHCR, Abuja, Nigeria

Study participants in some countries reported that schools are even finding ways around free tuition – they simply call it by another name. In Senegal and Liberia, stakeholders reported schools charging a “registration fee.”<sup>203</sup> In Ghana, an asylum-seeker showed the list of fees she received from the schools her nephews are enrolled in this year (one primary and one secondary), each of which included an “admission fee.”<sup>204</sup>

*“They call it registration fees. They don’t call it tuition, they call it registration fees because it is not official.”* – NGO, Liberia

*“The government has services on the book—for example, free primary school. But in practice, [schools] say to keep the services running, you [the parents] have to pay these fees.”* – UN agency, Monrovia, Liberia

Similarly, in Nigeria, there is a formal agreement at the state-level between the Ministry of Education and UNHCR to waive all fees for refugee students. However, those agreements are not well known among school directors, who still want to collect fees. This, in turn, can lead to delays in enrolment.<sup>205</sup>

In some schools there is no budget for the teacher’s salary, so the parents of the students, including migrant and refugee parents, are required to contribute funds to pay for the teacher’s salary.<sup>206</sup> These costs can also represent a financial struggle for migrant and refugee parents.

Study participants reported that, in cases where migrant, refugee or asylum-seeker parents cannot afford to send their children to school, they will either elect to choose just one child or a few children to go to school while the others stay home, or have all the children stay at home or go to work. Some stakeholders noted that in cases where the families cannot afford to continue to pay for all their children’s education, it is often daughters that are forced to leave school early.<sup>207</sup>

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<sup>203</sup> Interview with NGO in Liberia, 23 Oct. 2019.

<sup>204</sup> FGD with asylum-seekers in Accra, Ghana, 18 Oct. 2019.

<sup>205</sup> Consultation with UN agency, Dakar, Senegal, 5 Sep. 2019.

<sup>206</sup> Interview with UN agency in Guinea, 16 Oct. 2019.

<sup>207</sup> NGO respondents in Burkina Faso and Mali.



### *Identity Documents*

Some study participants in Guinea, Mali and Senegal reported that enrolment in school is next to impossible for those refugees, asylum-seekers and migrants who do not have a *carte de séjour* or birth certificate. In cases where migrant, refugee or asylum-seeking parents or guardians attempt to enrol their children (or children in their care) in school, without having identity documents for the children, they are usually turned away by the school administrators and told to return when they have located the children's birth certificate, which may take weeks to months to be issued. This has been reportedly particularly problematic for refugees who have lost identity documents, and whose refugee cards have expired in Senegal.<sup>208</sup>

*“We don't have papers... I wanted to put the children, register them in public school, but it's not possible without papers.”* – Female asylum-seeker from the Democratic Republic of the Congo, in Senegal

*“They need education, they need papers. They can't enrol in school after 9 years of age without papers. So they can't access education.”* – NGO, Mali

Interviews further highlighted that, for some refugees in possession of a refugee card, their children were still denied enrolment at school because the school administrators were not cognisant that they could accept the refugee card as identification for enrolment: “Normally when the refugee has the card, they should be able to enrol children in school, but the difficulty is that certain schools don't know the rules.”<sup>209</sup> UNHCR's Abuja office reported there have been a few instances where refugees were not admitted to school because their name is not Nigerian, in locations where there are not refugees in large numbers and thus the communities are not aware that the children are allowed to attend school.

The study identified that a related problem is that some refugees, asylum-seekers and migrants who are allowed to attend school may be asked to produce identity documents in order to sit for examinations. If students do not have a national ID or a birth certificate, in some schools, they cannot sit for national examinations.<sup>210</sup> The inability to sit for examinations impedes access to progressing to higher levels of education. When the students cannot produce the requested documents, the schools may opt to not issue their diplomas.<sup>211</sup>

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<sup>208</sup> Interview with NGO in Senegal; interview with female refugee from the Central African Republic, in Senegal.

<sup>209</sup> Interview with NGO in Senegal, 9 Oct. 2019.

<sup>210</sup> Consultation with UN agency, Dakar, Senegal, 5 Sep. 2019; FGD with Female Refugees from Senegal, Sibanor, The Gambia, 2 Oct. 2019 (One participant reported that she has a child who was born in Senegal and does not have a birth certificate. The child attends public high school in The Gambia, but last year at the time he was to sit for the final exam, the school sent him home because he did not have a birth certificate. The mother had to go to the school and speak to the principal; in order to convince him to let her son take the exam, she told him that she will bring the birth certificate, that it was just misplaced.)

<sup>211</sup> Information provided by an International Organization in Senegal, 22 Nov. 2019.

### *Overcrowded Schools*

Physical space for students in the schools is another obstacle identified by interviewees in multiple target countries. In Liberia, refugees in the capital reported that when they tried to enrol their students in school this year, classes that have a capacity of 55 already have 100 students and so administrators told them they could not enrol.<sup>212</sup> Migrants and refugees interviewed for this study in Senegal were instructed by school administrators to acquire the birth certificates in order to enrol them in school, but by the time they returned with ID documents, they were told that there was insufficient space in the school.<sup>213</sup> One migrant interviewed for this study noted that she approached all three public schools in her area – all the schools instructed her to locate the children’s birth certificates, but a month or so later when she returned to the schools, they told her that they were all at capacity, and that she could not enrol them there. This meant that the mother had to enrol the children in more expensive private schools. This highlights the problem of over-crowding in schools in some countries, and the need for States to invest in primary and secondary education, including school infrastructure.

### *Quality of Education*

In addition to primary schools often being overcrowded, the quality of education given to the children in some schools is reportedly inadequate. There is an insufficient number of trained teachers in some countries in the region, for example, in Mali, Liberia and Burkina Faso. Children are often in large classes and have little access to books as the schools are not equipped with libraries. Children are often unable to take books home to study due to limited quantities, which limits their ability to learn.

*“The overall problem is . . . quality. Quality is low in all the schools. There is an insufficient work force, poorly trained teachers, under motivated teachers. Many areas don’t have schools. There is over-crowding. There’s lack of opportunities for children, like school libraries.” – NGO, Mali*

Some refugees participating in the study expressed concern about the low-quality education their children are receiving in the host country and whether that education will be of any value if their children want to return to their home country in the future.

*“We know that we are already old. Our lives are already spoiled. [But] our children, they are counting on us. When they move from here and go to Ivory Coast, [we don’t want] the same thing to happen to them.” – FGD participant, Bahn Settlement, Liberia<sup>214</sup>*

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<sup>212</sup> FGD with urban refugees, Monrovia, Liberia, 20 Sep. 2019.

<sup>213</sup> Interviews with NGOs in Mali and Senegal.

<sup>214</sup> Children in Bahn Settlement are now attending integrated schools, run by the Liberian Ministry of Education.

There is also a lack of specific programmes for refugee children in public schools across the region (e.g., language training, catch-up classes, psychosocial support) to support refugee students' inclusion.<sup>215</sup>

### *Quranic Schools*

Some migrant, refugee and asylum-seeking families in the ECOWAS region may choose to send one or more of their children to Quranic schools in some of the target countries (e.g., Senegal, Mali, Nigeria). While some Quranic teaching, such as after-school weekly teaching, has no negative impact on children's education or welfare, some Quranic schools effectively keep children out of formal education, and have been linked to child abuse and child trafficking.<sup>216</sup> Some families in West Africa send their children to this latter type of school because the schools are free, and parents believe the children will learn from the teachers/masters and be taught discipline. There is no shortage of reports on the abuse of migrant and refugee children in the latter type of Quranic schools.<sup>217</sup> As discussed in section 4.2.1, the children are often forced to beg on the streets to earn their keep, and are beaten if they do not bring back to their teacher a sufficient amount of money each evening.

### *Higher Education*

There are also various practical barriers to young migrants, refugees and asylum-seekers accessing higher education in the target countries. For most refugees, asylum-seekers and migrants in an irregular situation, tertiary education is unattainable. A key problem is that tertiary education is expensive and little financial assistance is available. Universities in several target countries (e.g., Senegal, Ghana, Liberia) charge higher fees for foreigners and some may also have quota systems to prioritise nationals in the selection process. At the same time, higher education can serve as a pull factor for some people living in countries where universities are heavily under-resourced and who wish to migrate in order to access better education in cities such as Dakar or Accra.

In Guinea, refugees have access to a government sponsored loan scheme for higher education in public universities and a minimum monthly stipend in the same way as nationals; however, the other costs associated with higher education study, such as housing and food, represent major barriers for refugees in pursuing higher education.<sup>218</sup>

In a few countries (e.g., Ghana and Liberia), the government refugee agency and partnering organizations have been negotiating with universities to charge refugees the

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<sup>215</sup> Consultation with UN agency, Dakar, Senegal, 5 Sep. 2019.

<sup>216</sup> See discussion on Child Welfare, *infra*, in section 4.2.1.

<sup>217</sup> See, e.g., Human Rights Watch, 2019, There is Enormous Suffering: Serious Abuses Against Talibé Children in Senegal, 2017-2018, <https://www.hrw.org/report/2019/06/11/there-enormous-suffering/serious-abuses-against-talibe-children-senegal-2017-2018>; Human Rights Watch, 2017, I Still See the Talibés Begging: Government Program to Protect Talibé Children in Senegal Falls Short, <https://www.hrw.org/report/2017/07/11/i-still-see-talibes-begging/government-program-protect-talibe-children-senegal>.

<sup>218</sup> Information provided by UNHCR's Regional Bureau for West and Central Africa, 26 Nov. 2019.

same fees as nationals; however, no national policy/strategy for this exists and no similar advocacy is being undertaken for asylum-seekers or migrants.

*“[A]s a foreigner . . . I face a lot of challenges in terms of payment of my tuition and some necessary [school] materials. I don’t have any support either from my country’s government (the Nigerian Government) or the Ghanaian government.”* – Migrant from Nigeria in Ghana

Another obstacle to higher education identified during the study was the lack of available financial assistance. The UNHCR higher education programme – the Albert Einstein German Academic Refugee Initiative (“DAFI”), sponsored by the Government of Germany – was the only formal support for tertiary education identified by study participants in the target countries, and it is only accessible to refugees (asylum-seekers and migrants are not eligible). Many refugees participating in this study noted their inability to access this scholarship due to the scholarship’s age criteria and the limited number of DAFI scholarships available each year. The scholarship has an upper age limit of 28 years, which excludes from eligibility many refugees interested in seeking higher education. Several refugees whose education was interrupted during the war in their home countries reported wanting to continue study at the tertiary/university level, but they are too old to qualify for DAFI and thus unable to pursue higher education.

Even for those who meet the eligibility criteria, they may not be selected to receive the scholarship due to the limited number available, not enough to meet the numbers of refugees who qualify for it and who want to enrol in tertiary education. For the 2019-2020 academic year, 7 DAFI scholarships were awarded to refugee students in Burkina Faso and 10 in Mali.<sup>219</sup> Moreover, a refugee is not eligible for the scholarship if a family member is a current *or former* DAFI scholar,<sup>220</sup> which may result in families choosing who among their children should attend university.

Meeting the entrance requirements was also cited as a barrier to tertiary/university education for refugees, asylum-seekers and migrants. The type of examination is different between Anglophone and Francophone West African countries. For example, in the Anglophone target countries (The Gambia, Ghana, Liberia, Nigeria, Sierra Leone), students must obtain a certificate from the West African Examination Council (WAEC). One of the required subjects they must pass is English. For some French-speaking refugees, asylum-seekers or migrants, their English language skills may not be sufficient to pass the language component of the examination, which could prevent them from accessing higher education.<sup>221</sup>

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<sup>219</sup> Information provided by UNHCR’s Regional Bureau for West and Central Africa, 6 Dec. 2019.

<sup>220</sup> UNHCR, Albert Einstein Refugee Academic Initiative, DAFI Programme Policy and Guidelines, <https://www.unhcr.org/568bc43a6.pdf> (2019).

<sup>221</sup> Interview with Former Protection Officer at Gambia Commission for Refugees, Banjul, The Gambia, 1 Oct. 2019.

### 5.1.3 Employment

*“There’s free circulation in the region. Free circulation needs to be accompanied by the right to work in other locations. If they can’t work, they’ll keep migrating, keep circulating.” – NGO, Mali*

#### Right to Work/Legal Barriers

Employment is one of the areas with the most significant legal hurdles in terms of access. Unlike with services such as health and education, when it comes to accessing employment, legal barriers are prevalent across the region, including for ECOWAS citizens and in some cases for engagement in the informal sector. The legal challenges identified during the study with respect to employment are two-fold: (1) Most target countries require non-nationals to obtain a work permit; and (2) Many of the target countries have discriminatory labour laws in place to protect the domestic labour market.

Most migrants, refugees and asylum-seekers interviewed for the study – like the vast majority persons in West Africa – earn income by working in the informal sector.<sup>222</sup> Study participants reported engaging in a variety of petty businesses, such as selling second-hand clothes and bags, tailoring, selling food items or dry goods, as well as working in agriculture or performing domestic chores. However, many migrants, refugees and asylum-seekers interviewed for this study have technical or professional skills that could qualify them for employment in the formal sector. For example, some study participants were teachers, nurses, painters or welders in their home countries. Some held university degrees. But their lack of employment opportunities in the target countries has forced them into informal employment or underemployment (i.e., working at jobs in the formal sector that do not match/are below their education or skill level).

#### *Discriminatory Labour Laws*

The protective labour laws discriminate against non-nationals in multiple ways: they may require employers to prioritize the hiring of nationals (Liberia)<sup>223</sup> or impose approval requirements on employers wishing to hire a foreigner (e.g., Senegal),<sup>224</sup> exclude non-

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<sup>222</sup> A recent report published by the International Labour Organization indicates that 97.9 per cent of youth (ages 15-24) and 92.4 per cent of adults (age 25+) in West Africa are engaged in informal employment. ILO, 2018, Women and Men in the Informal Economy: A Statistical Picture, [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_626831.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf). The percentage of persons engaged in informal employment is reportedly higher in rural areas (95.2 per cent) compared to urban areas (87.3 per cent); while education levels greatly impacted whether someone was working in the informal sector (dropping from 96.2 per cent among those with no education and 92 per cent for those with a primary education to 73.7 per cent for persons with a secondary education and just 49.4 per cent for persons completing tertiary education). Ibid.

<sup>223</sup> Liberia Decent Work Act, 2015.

<sup>224</sup> In Senegal, a distinction is made between local and foreign workers under Articles L 33 and L 34 of the Senegal Labour Code, which include provisions concerning the contracts of foreign workers. These provisions set out specific rules and processes with which an employment contract with a foreign worker should comply—employers must send any employment contract with a foreign worker to the Department of Labour for approval. Senegal Code du Travail, 1997. This arguably places a burden on employers in hiring migrants, which may lead to employers prioritising the employment of nationals. Furthermore, refugees and migrants cannot work in the public service in Senegal as they

nationals from certain sectors (Ghana),<sup>225</sup> set a quota for the number of non-national workers a company can employ and/or charge employers a tax for employing foreigners (The Gambia).<sup>226</sup> In The Gambia and Ghana, foreigners – including refugees – cannot obtain a commercial driver’s license,<sup>227</sup> meaning they cannot be hired as commercial drivers, excluding them from that sector of employment. In some target countries, the discriminatory labour laws affect not only those seeking employment in the formal sector, but also those engaged in the informal sector and a work permit may be required even for engagement in the informal sector.

In contrast, the labour laws in Guinea and Mali appear to be less protective of the domestic work force. They do not apply labour market tests or quota systems. The 2014 Guinean Labour Code explicitly states that ECOWAS Member States’ nationals are not under an obligation to obtain a work authorization.<sup>228</sup> However, non-ECOWAS nationals wanting to work in Guinea must obtain work authorization.<sup>229</sup>

In most instances, where a country has imposed legal restrictions on foreigners’ access to employment to protect the national labour market, refugees have been exempted from such restrictions – either in the law itself or through efforts undertaken by the government agencies responsible for refugees and/or UNHCR.<sup>230</sup> In Nigeria, the National Commission for Refugees (Establishment, etc.) Act, 1989, permits the issuance of regulations that require employers, when considering applications by foreigners, to give preference to applicants who are refugees.<sup>231</sup> However, in some target countries (e.g., Liberia and Ghana), they still must obtain a work permit. The relevant government agency and/or UNHCR typically assists in the process of obtaining a work permit for refugees, including in paying the fees or getting the fees waived.

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have to go through a competitive exam, which requires that a person holds a national identity card in order to take the exams (*concours national*).

<sup>225</sup> Interview with Hon. Clement Kofi Humado, Member of Ghanaian Parliament and ECOWAS Parliament, Accra, Ghana (14 Oct. 2019) (“In our Investment Code, there are various classifications of work. There is one that has been isolated a little bit to protect the poor and vulnerable in Ghana. That is the retail sector—roadside selling; small kiosks—only Ghanaians can do this.”).

<sup>226</sup> Interview with Former Protection Officer at Gambia Commission for Refugees, Banjul, The Gambia, 1 Oct. 2019; Interview with Allubata Jatta, Local Integration and Livelihoods Associate, UNHCR, The Gambia, 3 Oct. 2019.

<sup>227</sup> Interview with Tetteh Padi, Programme Manager, Ghana Refugee Board, Accra, Ghana, 14 Oct. 2019; Interview with Former Protection Officer at Gambia Commission for Refugees, Banjul, The Gambia, 1 Oct. 2019.

<sup>228</sup> International Centre for Migration Policy Development, and International Organization for Migration (2015) A Survey on Migration Policies in West Africa.

<sup>229</sup> Article 131, paragraph 1, of the Guinea Labour Code states: “An employer that is considering hiring a foreign worker from outside ECOWAS is required to obtain prior authorization from the State employment service under the conditions specified in an order of the Minister of Employment. The recruitment of foreign workers is governed by special regulations.” Guinea Code du Travail, 2014, available at <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/96583/114158/F200086881/GIN-96583.pdf>.

<sup>230</sup> See, e.g., Liberia, Refugee Act, 1993, sec. 12(3).

<sup>231</sup> Nigeria, National Commission for Refugees (Establishment, etc.), 1989, Act, Section 19(2)(j).

### *Outdated Definitions*

Another obstacle that migrants, refugees and asylum-seekers face is that in many cases, the labour laws have not been updated to ensure full implementation of the ECOWAS free movement protocol. And in some target countries, even recent legislation continues to draw a clear distinction between national workers and foreign workers without taking into account ECOWAS citizenship. For example, Liberia’s Decent Work Act, 2015 defines a “foreign worker” as any person working in Liberia who is not a citizen of Liberia,<sup>232</sup> requires all foreign workers to obtain a work permit before engaging in work,<sup>233</sup> and forbids employers from hiring such foreign workers that do not possess a valid work permit.<sup>234</sup> In addition, the Act prohibits the Ministry of Labor from issuing a work permit “unless it is satisfied that: (i) there is no suitably qualified Liberian to carry out the work required by the employer; and (ii) the applicant satisfies the requirements for foreign residence in Liberia.”<sup>235</sup> The 2019 Revised Regulation No. 17 maintains that any employer in Liberia “who seeks to employ an alien must first convince the Ministry of Labor that he/she cannot find a suitable Liberian for an existing vacancy[.]”<sup>236</sup> To this end, the employer must show “proof of publication of information regarding [the] vacancy for at least one month, in at least two local newspapers and on two local radio stations, as well as on two Liberian websites.”<sup>237</sup>

Yet as Honourable Clement Kofi Humado, a member of both the Ghanaian Parliament and ECOWAS Parliament, explained during an interview for this study, continuing to distinguish between nationals and citizens of other ECOWAS countries should not persist:

The problem so far in most ECOWAS countries has been the inability to distinguish in their national laws who is a foreigner. They are still living with the previous idea that a foreigner is a non-Ghanaian. But with the establishment of ECOWAS, we should really say that a non-ECOWAS citizen is a foreigner. And an ECOWAS citizen should be considered as a national so that whatever applies to a Ghanaian applies also to the ECOWAS citizen. So the present law that we have that retailing is reserved

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<sup>232</sup> Liberia, Decent Work Act, 2015, sec. 1.4 (p).

<sup>233</sup> Decent Work Act, 2015, sec. 45.1 (b). Liberia’s 2019 Revised Regulation No. 17 Concerning Employment/Work Permits. Regulation No. 17 reiterates that “all aliens must obtain work permits from the Ministry of Labor”; the very limited exception does not apply to refugees or asylum-seekers or most migrants (including those from other ECOWAS countries). Republic of Liberia Ministry of Labor, Revised Regulation No. 17 Concerning Employment/Work Permits (2019) [hereinafter Revised Regulation No. 17]. The regulation exempts the following “aliens” from obtaining work permits: “employees of accredited diplomatic missions, the United Nations Mission in Liberia, Specialized organs of the United Nations, World Bank, IMF, African Development Bank and other institutions recognized by the Ministry of Foreign Affairs to have diplomatic status” as well as, *inter alia* physicians, pharmacists, forensic experts and other medical professionals for which there are not a sufficient number of Liberians, teachers of courses where there is an inadequate supply of trained Liberians, university professors, interns and volunteers working with the Liberian Government, and “refugees with LRRRC identification cards.” *Ibid.*, section 2 (Categories E and F).

<sup>234</sup> Decent Work Act, 2015, sec. 45.1(a).

<sup>235</sup> Decent Work Act, 2015, sec. 45.1(c).

<sup>236</sup> Revised Regulation No. 17, section 6.

<sup>237</sup> *Ibid.*

for Ghanaians shouldn't be there. It should be written that it [can]not [be] undertaken by non-ECOWAS citizens.<sup>238</sup>

### *Work Permit Requirements*

Obtaining the work permit is itself a barrier for many migrants, refugees and asylum-seekers. In Mali, for example, migrants wanting to work in the private sector must have their contract approved by the labour department before commencing salaried work. This concerns all commercial and industrial professions.<sup>239</sup> In Liberia, the fee for all aliens who seek employment in the formal sector is US\$ 1,000. For ECOWAS citizens seeking employment in the informal sector, the work permit fee is US\$ 100 and for non-ECOWAS Africans, the fee for a work permit for the informal sector is US\$ 200.<sup>240</sup> No refugees participating in this study in Liberia had a work permit. One man from Côte d'Ivoire who has been living in Liberia for a decade was not aware that he could get one: "We are not Liberian, [we] cannot get work permits. . . . I am not Liberian, they won't give me [a] work permit."<sup>241</sup> Another man admitted that he "ha[s] no idea how to apply" for a work permit.<sup>242</sup> Another explained: "Before you get a work permit, you have to have a job. There are no jobs, so [we] can't apply for a work permit."<sup>243</sup>

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<sup>238</sup> Interview with Hon. Clement Kofi Humado, Member of Ghanaian Parliament and ECOWAS Parliament, Accra, Ghana, 15 Oct. 2019.

<sup>239</sup> IOM, *Profil de gouvernance de la migration: la République du Mali*, 2018.

<sup>240</sup> Revised Regulation No. 17, section 2.

<sup>241</sup> FGD with Urban Refugees in Monrovia, Liberia, 20 Sep. 2019.

<sup>242</sup> FGD with Urban Refugees in Monrovia, Liberia, 20 Sep. 2019.

<sup>243</sup> FGD with Urban Refugees in Monrovia, Liberia, 20 Sep. 2019.



### **Asylum-Seekers Denied the Right to Work in Ghana**

In some countries, asylum-seekers are guaranteed the same legal right to employment as refugees (e.g., The Gambia, Mali and Liberia); in others, such as Ghana, asylum-seekers have no legal right to work.

Two asylum-seekers in Ghana participating in this study reported that they had been hired for jobs (for which they were being paid in cash), but had to leave their jobs when the owners came and asked for identity documents. The young men have been in the country since 2016 and 2017, yet they still cannot legally work. One explained:

*“I am an asylum-seeker. I can’t work because I don’t have identification. I was working [as a plumber] before, when I [first] came here. They stopped me from work [after the owner of the company] asked me for identification. I don’t have, so I am jobless now.”* – FGD with asylum-seekers in Accra, Ghana

He went to the Ghana Refugee Board and asked for a passport so that he could continue working, but he was told that he could not get a passport until he is recognized as a refugee.

### **Practical Barriers/Challenges**

In addition to the legal barriers that migrants, refugees and asylum-seekers face to realizing a right to work, numerous practical barriers exist in accessing employment – whether in the formal or informal sectors. One challenge that migrants, refugees and asylum-seekers all face in the target countries is the simple fact that these countries generally have weak labour markets and high unemployment rates – even for nationals – meaning that competition is high and there are few jobs available that match refugees’ and asylum-seekers’ experience and skills.

*“It is very hard for Liberians to get a job. Imagine, I am Ivorian . . . how [is someone] going to give [a job] to a stranger if he can’t hire his brother.”* – FGD participant in Monrovia, Liberia

*“Even as a Sierra Leonean, to get a job in Sierra Leone is very difficult. I haven’t seen any bill that says foreign migrants can’t work. But the possibility of job opportunities is very slim.”* – Sheku Bangura, Founder and Director, ANAIM

These general labour market conditions compound the other obstacles to accessing employment for migrants, refugees and asylum-seekers. The lack of access to employment opportunities, like the legal barriers, can have significant impact on a person’s decision to move – particularly in the case of migrants:

*“If people don’t have opportunities, they will leave the country and go. . . . [The biggest reason migrants move on from Sierra Leone is] job opportunity. All of them going out are looking for greener pastures. They are looking for a better life. If these migrants are given a job opportunity, believe me, they would not leave Sierra Leone and risk their lives.”* – Sheku Bangura, Founder and Director of Advocacy Network Against Irregular Migration, Sierra Leone

*“Right now, I am about to graduate from the school. But I am thinking of what to do. I don’t have any work when I finish. So my struggling now is when I graduate, where am I going to [go for] my life [to] start.”* – Migrant from Nigeria in Ghana

### *Certificates, Degrees and Diplomas*

Migrants, refugees and asylum-seekers reported facing problems accessing employment because of not having original certificates/diplomas with them when they fled or migrated or due to employers not accepting certificates or diplomas in a foreign language (e.g., French if in an English-speaking country). Stakeholders interviewed during the study similarly identified the lack of recognition of degrees and certificates from other countries as a challenge accessing (formal) employment in the region.<sup>244</sup>

*“Some migrants have technical qualifications; some are even graduates. How do you facilitate this movement? The issue is [recognizing] equivalence of certificates and degrees. For example, Ghana should be able to look at a certificate from Burkina Faso and find the equivalent in the Ghanaian system.”* – Hon. Clement Kofi Humado, Member of Ghanaian Parliament and ECOWAS Parliament

ECOWAS has recognized the need to harmonize the recognition of degrees and certificates throughout the region with its General Convention A/C.1/01/03 on the Recognition and Equivalence of Degrees, Diplomas, Certificates and Other Qualifications in ECOWAS Member States; however, the treaty has not been implemented at the national level. A few target countries (Ghana, Nigeria and Sierra Leone) have yet to ratify the Convention<sup>245</sup> and it has not been widely operationalized in those target countries that have ratified it.<sup>246</sup>

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<sup>244</sup> E.g., Interview with UN agency, Accra, Ghana, 15 Oct. 2019.

<sup>245</sup> Information provided by the ECOWAS Directorate of Humanitarian and Social Affairs. Burkina Faso, The Gambia, Guinea, Liberia, Mali, Niger and Senegal have all ratified the Convention. Ibid.

<sup>246</sup> Interview with Hon. Clement Kofi Humado, Member of Ghanaian Parliament and ECOWAS Parliament, in Accra, Ghana.

### *De facto Discrimination*

Many interviewees also reported *de facto* discrimination by employers in hiring and in conditions of employment (e.g., not receiving equal pay for the same position as nationals or employers not paying them at all at the end of a project). One study participant explained: “People don’t know what their rights are. There are so many unemployed, they don’t want to be challenging their employer on [work] conditions like wages or time off because they are worried that if they do that, they will lose the job because there are so many people lined up to take it.”<sup>247</sup>

#### **Work Without Pay**

*A refugee at the Krisan Refugee Camp in Ghana is a painter. He reported that he recently painted over 26 rooms in a hotel. He finished his work, but was not paid. When he started calling the owner, the owner told him, “You people, we are pitying for you. That is why we even have you in this country.” One month later—at the time the research was conducted in Ghana—he had not received “a single cent of that money.” He expressed concern not only for himself, but the other men who worked with him. “I took other guys from the camp with me to do the work . . . They need the money.”*

– FGD participant, Krisan Refugee Camp, Ghana

This man was one among many reporting that business owners hired them for projects but never paid them after the work was completed and nothing was done about it, even when camp management was aware of the issue.

Refugees, migrants and asylum-seekers also reported many challenges they face working in the informal sector. Refugees in Ghana reported that when they engage in this type of economic activity, they face discrimination in prices charged and paid (higher prices charged if buying in the market; lower prices paid when selling in the market). Migrants and asylum-seekers elsewhere in the region reported harassment by police when attempting to engage in commercial activities (e.g., selling in markets or on the street):

*“I’m trying to repair mobile phones but it’s all regulated. There are those who are fixed, who have a spot, they pay something to the council. You get hassled by the police, you don’t have the right to have your business. So I move, I go and come, when they leave I put things back out.”* – Asylum-seeker from the Central African Republic in Senegal

<sup>247</sup> Interview with Janet Nickel, World Hope International, Sierra Leone (via Skype), 23 October 2019.

*“You have to pay at the police checkpoints if you’re carrying firewood or charcoal [to sell]. You have to pay at every check point.”* – Female refugees from Senegal in The Gambia

### *Lack of Awareness Among Employers*

In addition, where refugees and asylum-seekers are to be treated like nationals and thereby exempt from labour laws that place quotas or taxes on the hiring of foreign nationals, stakeholders and refugees alike reported that employers are often not aware that refugees are exempt from the protective legal measures.<sup>248</sup>

*“I am a welder. I have my certificate and everything. But when you go to any company here . . . They say you, refugee, need a work permit.”* – FGD participant in Krisan Refugee Camp, Ghana

### *Insufficient Capital and Customers*

Many interviewees discussed the difficulty that migrants, refugees and asylum-seekers face in setting up a small business with limited to no funds available. Some interviewees expressed the desire for financial assistance from IFRC, as well as NGOs and UN agencies, to support them during the initial business set up phase.

*“What they care about is to set up businesses. There aren’t specific structures that help them with how to get support, to be financed for individual projects.”* – NGO, Senegal

*“What I really need is to get a little bit of money so I can open a small business.”*  
– Migrant from Cameroon, in Mali

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<sup>248</sup> Interview with Tetteh Padi, Programme Manager, Ghana Refugee Board, Accra, Ghana, 14 Oct. 2019; Interview with asylum-seeker, Serrakunda, The Gambia, 2 Oct. 2019; Interview with Allubata Jatta, Local Integration and Livelihoods Associate, UNHCR, Serrakunda, The Gambia, 3 Oct. 2019; Interviews with UN agencies, NGOs and government agencies in Guinea.

Some migrants, refugees and asylum-seekers discussed the challenges they have had selling enough items or services in the informal sector to support themselves, even without identifying barriers such as harassment or discrimination.

### **Economic Migrants Wishing to Return Home**

*“The only problem is that I can buy the clothes and walk for some weeks before selling anything . . . So sometimes the money you have is finished.”*

– Migrant from Nigeria in Ghana, who sells second-hand clothes

*“The only problem is maybe you work 10 hours without servicing any customers.”*

– Migrant from Nigeria in Ghana, who works as a cobbler

Both of these young men came to Ghana in search of better opportunities. They thought they could come to Ghana and work and save money. But that has not been the case. Instead, both of them struggle to survive – one sleeps on the floor of a friend’s shop in the market; the other sleeps in a mosque. Both said that they would return to Nigeria if they had the means. but they cannot even afford the transport.

### *Reports of Sexual Violence*

Finally, there were some reports of refugee women being raped while at work or when seeking work:

*“[W]hen our men go to work, people don’t pay them. We women, we have to go out and wash clothes to get something to feed our family. When we go, sometimes, people rape us. . . . They may not pay you correctly or they may not even pay you. Besides that, they will try to force you to do things you don’t want to do. So women are being raped. Me, myself, I am also a victim.”*

– Female refugee from Côte d’Ivoire in Ghana

*“Two years ago, I went to look for a job in the next town. . . . Someone told me there is a hotel where I could get a job. So I went there and I met the owner of the hotel. He said ‘okay, what can you do? Can you dress the beds?’ I said ‘yes, I can do that.’ He said ‘okay, I can pay 300 Ghana Cedi monthly.’ I said ok. He said ‘Come and see which type of job you have to do.’ He opened a room, as soon as I entered the room, he pushed me inside the room, locked the door and raped me. After he finished raping me, he said ‘okay you, Ivorian girl, just take 9 Ghana cedi and [go back to] your house.’”*

– Female refugee from Côte d’Ivoire in Ghana

### **Stories of Survival Sex**

In multiple countries, interviewees spoke of engagement in prostitution as a means of survival. The reported “survival sex” cut across countries and categories of persons – from single female refugees in Liberia to migrants in Ghana to LGBTI asylum-seekers in The Gambia to returned victims of trafficking in Sierra Leone. It is being done in the absence of other employment opportunities – to be able to afford the most basic necessities such as food to eat, clothes to wear, and a place to sleep.

*“We the single women, we are suffering a lot. The [livelihoods] money [from UNHCR] is not sufficient. The money is finished already, so we are forced to go and do other things. **It is not our desire to go out of the camp to do things over there . . . but the money is very small. So we are going out of the camp to do other things.**”*

– Single woman in Bahn Refugee Settlement, Liberia

***“We are tired of doing the prostitution. . . .We are many in the camp.”***

– Single woman, age 22, Bahn Refugee Settlement, Liberia

*“[My husband used to work, but] now he is sick [and can’t]. . . .Now he is tired. What can you do for feeding the children? . . . **Now, me [I am] suffering for my husband and my children [to] pay their lunch, go to school, we should sell our body. . . .to feed the children.**”*

– Married woman, Krisan Refugee Camp, Ghana

## **5.1.4 Housing/Shelter**

### **Right to Housing/Legal Access**

Unlike with service areas such as health, education and employment, there is little legal and policy framework addressing the right to housing for persons on the move in the target countries. In domestic legislation and policy, there is no “right” to housing; nor are there protective laws prohibiting migrants, refugees and asylum-seekers from accessing available housing. The discussion pertaining to access to housing/shelter, therefore, focuses entirely on practical barriers that refugees, asylum-seekers and migrants face in this area.

## Practical Barriers/Challenges

### *No Free Housing*

Not having access to housing or other secure shelter was emphasized as a critical unmet need by many study participants across the targeted countries. For refugees living in camps, generally they have housing provided to them free of charge. However, for urban refugees, asylum-seekers and migrants, virtually no free housing or shelter is available, even for short periods of time. Where housing is accessible, there is often an absence of a lease or other type of contract, which may lead migrants, refugees and asylum-seekers to be vulnerable to premature eviction from properties.<sup>249</sup>

Even single women arriving with children are not provided with shelter upon arrival and registration as an asylum-seeker:

*“The first night we arrived, we slept outside at the Ghana Refugee Board. We explained our situation at the Ghana border and the man gave us the information of the Ghana Refugee Board. We called them, but they said ‘no, we have closed. Come early tomorrow morning.’ So we just slept there; we didn’t know where to go.”* – Female asylum-seeker in Ghana

Some UN agencies and NGOs attempt to support migrants, refugees and asylum-seekers by providing cash transfers to those identified as vulnerable, for the purpose of paying rent:

*“For those in urban cities, they have to pay for housing, for rent. For some vulnerable people, when they arrive we give them some money, just some, which can cover one or two months of the rent. After that they have to manage by themselves.”*  
– UN agency, Mali<sup>250</sup>

However, such cash transfers are usually only a one-off payment and have been accessed by very few. For the vast majority of migrants, asylum-seekers and urban refugees, no housing support is accessible to them through these agencies and organizations nor through the government. Some refugees, asylum-seekers and migrants reported receiving assistances from religious institutions or individuals in the community.<sup>251</sup>

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<sup>249</sup> Interviews conducted with migrants, asylum-seekers and refugees in Guinea.

<sup>250</sup> In The Gambia, a refugee or asylum-seeker can go to the Gambia Commission for Refugees (GCR) and ask for assistance. GCR may, if it determines the individual is in sufficient need based on his or her situation, write a letter to GAFNA, the NGO responsible for such cash assistance. Interview with Gambia Commission for Refugees Staff, Banjul, The Gambia, 1 Oct. 2019. However, no similar assistance was reported for migrants, including migrants in an irregular situation.

<sup>251</sup> E.g., Group interview with asylum-seekers, Serrakunda, The Gambia, 2 Oct. 2019. FGD with migrants, Accra, Ghana, 15 Oct. 2019; FGDs with asylum-seekers, Accra, Ghana, 18 Oct. 2019.

### *Homelessness*

As a result of the dearth of free housing or housing assistance, asylum-seekers and migrants are sleeping on the streets, under bridges, in abandoned buildings, under market stalls, in bus stops, schools, mosques, and churches.<sup>252</sup>

*“Most of us, we are sleeping outside. . . . To bathe, you have to pay. For a toilet, you pay.”* – Male asylum-seeker in Ghana

*“I don’t have a house. I sleep outside—on the bridge, in markets, or bus stops.”* – Male asylum-seeker in Ghana

*“I don’t have a house. I am only in the street.”* – Male asylum-seeker in The Gambia

Asylum-seekers and migrants from Sudan reported that they and many other Sudanese are sleeping in the mosques in Ghana. They go there to sleep at night and then they must be out during the day.<sup>253</sup> Asylum-seekers in The Gambia reported sleeping outside, moving from place to place, squatting and engaging in prostitution to have a place to sleep at night.<sup>254</sup>

Even when asylum-seekers, urban refugees and migrants manage to rent a place to live, the housing cannot be considered adequate. One asylum-seeker who participated in the study rents a room with two others said the room is so small that “you are not able to put a bed; just a mattress.”<sup>255</sup> A woman who fled Cameroon and arrived in Ghana in April 2019 with her two nephews, five years old and fourteen years old, paid to rent a place for six months. “Where I am staying, the place is not comfortable. It is [in] a swampy area with mosquitos. The small boy was sick. . . .”<sup>256</sup>

Asylum-seekers, refugees and migrants in some countries reported challenges to accessing housing due to discrimination by the owners. For example, as non-nationals they are charged higher rents than nationals and may be forced to pay six months to two years’ rent up front. One asylum-seeker explained, “For sleeping, it is very difficult for us. If you want to rent a house . . . first they ask you where are you from. If you [do not] speak their own language, the price is increased.”<sup>257</sup>

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<sup>252</sup> No refugees interviewed during this study reported being homeless and/or sleeping in such locations.

<sup>253</sup> FGD with migrants, Accra, Ghana, 15 Oct. 2019; FGD with asylum-seekers, Accra, Ghana, 18 Oct. 2019.

<sup>254</sup> Group interview with asylum-seekers, Serrakunda, The Gambia, 2 Oct. 2019; Interview with asylum-seeker, Serrakunda, The Gambia, 2 Oct. 2019.

<sup>255</sup> FGD with asylum-seekers, Accra, Ghana, 18 Oct. 2019.

<sup>256</sup> FGD with asylum-seekers, Accra, Ghana, 18 Oct. 2019.

<sup>257</sup> FGD with migrants in Accra, Ghana, 15 Oct. 2019.



### *Resulting Protection Issues*

The lack of free or affordable housing places migrants, asylum-seekers and refugees in a situation of even greater personal insecurity and leads to other protection issues. Asylum-seekers reported being exposed to theft, violence and sickness, as well as engaging in prostitution due to the lack of housing available to them and their inability to pay for housing on their own.

*“The church gave us a space that was open, everybody can come in any time, it is open. It is there we were the first 8 months. . . .It had a roof and walls but the windows were broken.”* – Female asylum-seeker in Ghana

*“When I came to Accra, because I didn’t know anyone, I slept in uncompleted buildings. Because of that, I was sick with malaria. A serious case.”* – Male migrant from Togo in Ghana

### **Additional Access and Protection Issues for LGBTI Asylum-Seekers in The Gambia**

*“I was renting a house in Bakau, but I had a problem with the landlady. Her children cannot support the idea [that I am gay]; they don’t accept it, so I had a problem, even a fight and I sustained some injuries. . . . Since then, I don’t have a specific place to stay. Because I move and then when people find out about my sexual orientation, I have to leave.”*

– LGBTI asylum-seeker from Senegal, age 27, in The Gambia

When asked where he sleeps, another LGBTI asylum-seeker replied, *“wherever I meet someone and [it] is comfortable.”* This approach to housing comes with added risks—one night when this young man met a Gambian man and went home with him, the man exposed him to the people in his compound and they beat the young man badly. He had a gash on his head from the beating, but he couldn’t get treatment: *“The man refused to pay, so I didn’t have money to go to the hospital.”*

– LGBTI asylum-seeker from Senegal, age 26, in The Gambia

These young men, and other similarly situated, are particularly at risk due to the added stigma of their sexuality and the high likelihood of rejection with their asylum applications. Homosexual conduct is illegal under The Gambia’s penal code. And while the former president’s outspoken admonition of homosexuality does not seem to have carried over into this administration, no LGBTI asylum claims have been granted and the Gambia Commission for Refugees does not appear to be in a position to issue positive decisions on LGBTI asylum claims any time soon. This not only leaves LGBTI asylum-seekers without access to safe and secure housing while their cases hang in limbo, it also puts them in a position where they must consider secondary movements.

*“I wish to leave The Gambia because I want to go somewhere I can practice and live my sexual orientation freely without any obstacles.”*

– LGBTI asylum-seeker from Senegal, age 26, in The Gambia

### *Few Temporary Shelters*

In addition to the lack of housing in the target countries, there are also very few temporary shelters. Some target countries – such as The Gambia and Sierra Leone – have only one temporary shelter in the entire country.<sup>258</sup>

*“We have one shelter in this country. That is where supposedly all children’s cases go - through that shelter.” – UNICEF Gambia*

The few shelters that do exist are usually accessible only by those identified as vulnerable (typically, children and female victims of trafficking). For example, in Nigeria, NAPTIP has shelters in 9 states for women and children who have been trafficked or sexually exploited.<sup>259</sup>

Even among those identified as vulnerable, obstacles persist – some shelters have age limits and/or gender requirements and there are simply too few in number. Earlier this year, the NGO, Welfare of Children & Youth Association in Ghana rescued three girls brought from Nigeria to Ghana for prostitution. They referred the girls to a shelter, but the shelter said it could not take them because they are not in the proper age category (the girls were ages 16 to 18).

*“One of the things that NGOs complain about is that when they receive cases [of vulnerable children] they don’t have anywhere to place them.” – International Organization, Nigeria*

The existing shelters in the targeted countries tend to be available only to women and female children and very young unaccompanied male children, with no protection for trafficked men and adolescent boys.

*“We are the only facility able to handle highly traumatized individuals. It is just for females or for very young boys; I think the oldest boy we’ve had is 7 years old.” – Janet Nickel, Anti-Trafficking Technical Adviser, World Hope International, Sierra Leone<sup>260</sup>*

*“Boys are excluded from most shelters. We once tried to put a 16 year old boy in a shelter and NAPTIP wouldn’t accept him.” – Child Rights INGO, Nigeria*

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<sup>258</sup> The shelter in The Gambia is government-funded and run through the Department of Social Welfare, with occasional assistance from partner organizations. SOS operates one additional shelter, but it is for permanent placement and children are not sent there. Interview with Department of Social Welfare, The Gambia, 3 Oct. 2019. In Sierra Leone, the shelter is run by World Hope International. There is no government-run shelter. Interview with Sheku Bangura, Founder and Director, Advocacy Network Against Irregular Migration (ANAIM), 24 Oct. 2019.

<sup>259</sup> Interview with INGO, Nigeria, 11 Oct. 2019.

<sup>260</sup> World Hope International runs a Recovery Center (shelter) for victims of trafficking and highly traumatized persons. It is the only formal shelter for VoTs in Sierra Leone.

Amanda Azzali, Regional Children on the Move/Migration Advisor with Save the Children in Dakar, Senegal, explained that they have problems placing children who are not unaccompanied: “There are no shelters that accommodate families and this can contribute to family separation.”<sup>261</sup>

In Burkina Faso, while there are several State-run shelters available for vulnerable women and children (including migrants, refugees, and asylum-seekers), it is still not enough to meet the needs. The focus of the social services department is therefore on finding alternative care arrangements for children, for example, in foster care families.<sup>262</sup>

### *Transit Centres and Mass Influxes*

The problem of shortages in temporary shelter is particularly acute in countries in the West Africa region that are experiencing large waves of returning migrants or in border areas where recent surges in cross-border movement have taken place due to rising conflict. In Mali, for example, there are shelters for migrants under State and/or UN/NGO management; however, there is insufficient capacity to accommodate the large groups of migrants and asylum-seekers being forcibly returned from Algeria. The returned migrants tend to sleep in parking lots and other open spaces until they are collected by IOM and NGOs, and transported to a transit centre.<sup>263</sup> However, in some countries – such as Ghana – the government, community members and organizations reportedly work together to provide temporary shelter when faced with sudden influxes such as that from Burkina Faso in 2019. The National Disaster Management Organisation (NADMO) together with community chiefs and elders secured a school for those arriving from Burkina Faso. Some individuals also provided their houses for shelter.<sup>264</sup> The Ghana Red Cross Society also will mobilize with tents in response to such circumstances.<sup>265</sup>

In some target countries (e.g., Nigeria and Burkina Faso), IOM works with the State social welfare departments to assist returning migrants in transit centres, where they may stay for up to three days. Stakeholders interviewed for this study described the three-day stay period as designed to allow a brief period of reflection while the migrants decide if they want to return home. During the three days they have time to prepare documents, and make arrangements for their return. During the three-day stay in the centres, IOM and the social welfare departments provide the migrants with accommodation, and food; NGOs provide psychosocial services and other health services.<sup>266</sup> A criticism of the centres is that the children who are returning to their home country with their families have very little to keep them occupied in the centres – there are no activities or games for the children, and they are accommodated in the centres with adults.<sup>267</sup>

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<sup>261</sup> Stakeholder Workshop in Dakar, 7 Nov. 2019.

<sup>262</sup> Interview with NGO in Burkina Faso, 14 Oct. 2019.

<sup>263</sup> Interview with NGO in Mali, 15 Oct. 2019.

<sup>264</sup> Interview with Jonathan Hope, Disaster Manager, Ghana Red Cross Society, Accra, Ghana, 15 Oct. 2019.

<sup>265</sup> Interview with Jonathan Hope, Disaster Manager, Ghana Red Cross Society, Accra, Ghana, 15 Oct. 2019.

<sup>266</sup> Interviews with NGOs in Burkina Faso, Mali and Senegal.

<sup>267</sup> Interview with NGO in Burkina Faso, 14 Oct. 2019.

### **Foyers in Mali: A place of refuge**

Study participants in Mali reported that some migrants in the region receive temporary shelter in “foyers,” which are run by non-profit groups or associations that were established to provide shelter and support to migrants in need of assistance. While the foyers tend to provide assistance primarily to migrants of the same ethnicity (e.g., foyers for migrants from Cameroon in Mali, run by nationals of Cameroon), they will provide temporary shelter and assistance to other migrants. The foyers are a place of temporary security – all migrants are welcome; the migrants can register to stay at the foyer, bathe, eat, and rest for up to a week while they decide what are the next steps in their journey.

Women, especially pregnant women, and male and female migrants who are ill tend to stay for longer periods of time in these foyers. The foyer managers reportedly do not apply any pressure on vulnerable migrants to leave, even when the migrants have been there for months.

These foyers are of immense benefit to people on the move, providing shelter, safety and security. For returning migrants, who are often exhausted after journeys lasting months or years, the foyers represent a welcome refuge and a place for temporary recovery.

– Interview with NGO in Mali

### *A Gap to Fill*

Generally, there is little work being done by government actors in the target countries in terms of providing housing solutions for asylum-seekers, migrants and urban refugees. The Director of Migration at NADMO explained the situation like this:

*“In Ghana, we are in a shelter deficit of one million. . . . [W]e ourselves don’t have shelter, so how do we provide for others? Of course it is the responsibility of government to provide. But will they provide for asylum-seekers and refugees and not their own citizens? They will lose the next election.”* – Gavivina Tamakloe, Director of Migration, National Disaster Management Organization of Ghana

In fact, some estimates put Ghana's housing deficit closer to two million.<sup>268</sup> Nigeria suffers from the highest housing deficit in the region, with estimates ranging from 17 to 20 million.<sup>269</sup> And in 2017, the World Bank estimated a need of 800,000 new housing units each year to address the housing deficit in the countries that make up the West African Economic and Monetary Union (WAEMU), which includes Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.<sup>270</sup> With severe demands on governments to address the persistent and growing housing shortages in their countries, the protection gap for migrants, refugees and asylum-seekers in this area is not likely to close without interventions by non-governmental actors.

Where government efforts were identified during the study, the focus continues to be on temporary shelters for vulnerable populations. For example, in The Gambia, the government is working to open a second shelter in Bassé, but like the existing shelter in Bakoteh, it will focus on vulnerable children, women and elderly. In Guinea, there are plans to build shelters for vulnerable children, including child migrants. Four such shelters will be built in Guinea in the near future, managed by the Government of Guinea.<sup>271</sup> The focus in Guinea, similarly to other countries, is on providing temporary protection in these shelters to children needing emergency accommodation, while alternative care arrangements are made for the longer-term protection of the children.

### **5.1.5 Legal Assistance and Information**

#### **Right to Legal Assistance and Information**

The region lacks a strategy to provide people on the move with legal advice and support; however, several target countries have legal aid structures in place that can be accessed by migrants, refugees and asylum-seekers. For example, Sierra Leone's Legal Aid Act of 2012 provides for access to legal advice and assistance in both civil and criminal matters, including legal representation in court.<sup>272</sup> Such legal assistance and representation is available to "indigent" persons, which is defined in the act as "a person who cannot afford to pay for legal services" and makes no distinction on the basis of nationality.<sup>273</sup> Ghana similarly has a Legal Aid Scheme Act, enacted in 1997, which at least in theory can be accessed by migrants, asylum-seekers and refugees.<sup>274</sup> In Niger, the government has

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<sup>268</sup> See, e.g., Centre for Affordable Housing Finance in Africa, *Africa Housing Finance Yearbook (9<sup>th</sup> ed. 2018)*, *Ghana Country Profile*, available at: [http://housingfinanceafrica.org/app/uploads/V19-Ghana\\_c\\_approved-at.pdf](http://housingfinanceafrica.org/app/uploads/V19-Ghana_c_approved-at.pdf) ("The housing deficit is estimated to be in excess of 1.7 million units as at December 2015.").

<sup>269</sup> Centre for Affordable Housing Finance in Africa, *Africa Housing Finance Yearbook (9<sup>th</sup> ed. 2018)*, *Nigeria Country Profile*, available at: <http://housingfinanceafrica.org/app/uploads/Nigeria-2018-Final.pdf>.

<sup>270</sup> See The World Bank, Press Release, "World Bank Group Supports Access to Affordable Housing Finance in West Africa (13 Oct. 2017)", <https://www.worldbank.org/en/news/press-release/2017/10/13/world-bank-group-supports-access-to-affordable-housing-finance-in-west-africa>.

<sup>271</sup> Interview with UN agency in Guinea, 16 Oct. 2019.

<sup>272</sup> Sierra Leone, The Legal Aid Act 2012, Section 20; Nigeria, Legal Aid Act, 2011, Section 8.

<sup>273</sup> Sierra Leone, Legal Aid Act, 2012, Section 1.

<sup>274</sup> See Ghana Legal Aid Scheme Act, 1997, Section 2 (2) (In addition to claims made under the Constitution, "[a] person shall also be entitled to legal aid – (a) if he earns the Government minimum wage or less and desires legal representation in any (i) criminal matter; or (ii) civil matter relating to landlord and tenant, insurance, inheritance, . . .

recognized the right of migrants to take their cases to court, and to access judicial assistance (for only some crime types) and legal aid.<sup>275</sup> And in The Gambia, the government not only established a legal aid system in 2010 – the National Agency for Legal Aid (NALA) – but the Gambian Commission for Refugees has an MoU with NALA and refers cases to NALA for legal assistance.<sup>276</sup> In Ghana, there is no formal MoU between the Ghana Refugee Board and the national legal aid society; however, UNHCR refers cases to them for assistance and is currently trying to establish an MoU.<sup>277</sup>

Some target countries also guarantee the right to legal assistance through other domestic legislation. For example, Sierra Leone’s Child’s Rights Act<sup>278</sup> and Guinea’s Child Code<sup>279</sup> afford children, including migrant and refugee children, the right to be assisted by a lawyer. In Guinea’s Code, that assistance is explicitly provided free of charge. Niger’s law N° 2015-36 on trafficking of migrants specifically recognizes the right of migrant workers to take their cases to court, where they can access free legal aid and have the right to compensation.<sup>280</sup>

Other target countries have legal aid schemes, but they are not available to persons on the move. For example, Nigeria’s Legal Aid Act, 2011 calls for the provision of legal assistance in civil and criminal matters; however, the explanatory memorandum and preamble to Nigeria’s law suggest that the provision of legal aid is only available to citizens.<sup>281</sup>

## Practical Barriers/Challenges

While the necessary legal structure is in place in several domestic frameworks in the region, access to legal information and assistance for migrants, asylum-seekers and refugees tends to be the exception rather than the norm. Interviews conducted for this study identified a number of scenarios in which migrants, refugees and asylum-seekers may want to access legal information and support, such as trafficked persons seeking legal support before and during lengthy court cases, and compensation; migrants and refugees abused by nationals of the host country seeking legal advice; migrants and refugees abused by the police or other authorities, seeking legal support and access to

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maintenance of children and such civil matters as may from time to time be prescribed by Parliament; or (b) if in the opinion of the Board the person requires legal aid.

<sup>275</sup> NGO, Niger; UNODC, 2011, Access to legal aid in criminal justice systems in Africa: Survey report.

<sup>276</sup> Interview with Gambia Commission for Refugees Staff, Banjul, The Gambia, 3 Oct. 2019.

<sup>277</sup> Interview with Tetteh Padi, Programme Manager, Ghana Refugee Board, Accra, Ghana, 14 Oct. 2019; Interview with UNHCR, Accra, Ghana, 15 Oct. 2019.

<sup>278</sup> Sierra Leone, The Child Right Act, 2007, Section 87.

<sup>279</sup> Code de L’Enfant Guineean, Loi L/2008/011/AN of 19 Aug. 2008.

<sup>280</sup> United Nations Office of the High Commissioner for Human Rights, “Committee on the Protection of the Rights of Migrant Workers considers the initial report of Niger,” 2016, available at

<https://ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20436&LangID=E>

<sup>281</sup> Nigeria’s Legal Aid Act of 2011, Explanatory Memorandum and Preamble (“This Act . . . provide[s] for the establishment of legal aid an access to justice fund into which financial assistance would be made available to the Council on behalf of indigent citizens to prosecute their claims in accordance with the Constitution . . .”) (emphasis added).

justice; migrants, refugees and asylum-seekers held for protracted periods in detention seeking legal support so that they can be removed from detention; migrants and refugees who have had their identity documents confiscated by border police seeking assistance to have their documents returned to them; and refugees and asylum-seekers seeking legal advice on, e.g., how to speed up their asylum claim. These are just some of many examples of scenarios in which migrants, refugees and asylum-seekers may seek legal support and advice, and access to justice.

However, while the need for legal assistance is great, there are reportedly many obstacles to migrants, refugees and asylum-seekers accessing free legal advice and support in the target countries. Free legal aid, where available, is reportedly rarely accessed by migrants, refugees and asylum-seekers because they are not aware that they can access free legal aid.<sup>282</sup> Indeed, no asylum-seekers participating in the study had received legal information about applying for asylum or legal assistance in the preparation of their claim or during the interview.<sup>283</sup> Some asylum-seekers participating in the research had asylum applications pending for three to five years, with no decision and without legal assistance.<sup>284</sup>

In addition, the legal aid organizations are under-resourced and overstretched, and private legal firms and individual lawyers typically do not offer *pro bono* legal aid. When legal aid is offered by lawyers/legal firms, it is often for trafficking in persons and related offences legal cases.<sup>285</sup> Another problem is the location of legal aid services – lawyers offering legal aid are often located in urban centres, so migrants, refugees and asylum-seekers living outside cities have to travel long distances to receive legal support and advice.<sup>286</sup>

Migrants and refugees interviewed for the study reported long investigations into abuse claims, with no access to legal support or advice during the lengthy court process.<sup>287</sup> One interviewed refugee, who reported to the authorities that his daughter had been raped, was engaged in a lengthy legal process, and feared for the safety of his daughter and the rest of his family. He had to withdraw his daughter and other children from school for fear of their safety. The family had difficulties leaving the house due to threats made by the child's rapist and his friends. He had requested police assistance to protect them, and routinely made requests for legal support, but, at the time of the interview, had received no legal advice or support.

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<sup>282</sup> Interview with NGO in Senegal, 30 Sep. 2019.

<sup>283</sup> The Gambian Commission for Refugees confirmed that asylum-seekers come to the RSD interview alone, without legal assistance. Interview with Gambia Commission for Refugees Staff, Banjul, The Gambia, 3 Oct. 2019.

<sup>284</sup> FGDs with asylum-seekers, Accra, Ghana, 18 Oct. 2019.

<sup>285</sup> Interviews with NGOs in Mali, Niger and Senegal.

<sup>286</sup> Ibid.

<sup>287</sup> Interview with refugee from Sierra Leone, in Guinea, 11 Oct. 2019.



*“My daughter was raped here. A human rights group came to talk and I reported this matter to them. But I received no lawyer. The UN didn’t do anything. No one would even take my call.” – Male refugee from Sierra Leone in Guinea*

While some countries have specific trafficking in persons legislation, few trafficking cases are identified and investigated in the target countries. There is little compensation available for victims of trafficking, and victims are reportedly ill prepared for court as they do not have access to legal advice or lawyers. Interviews conducted for this study suggested that it is usually UN agencies or NGOs that provide legal advice and support to trafficked migrants and refugees: “If there’s no NGO help (for trafficking cases), there’s no legal support. The documents you need for court, you need to pay for them.”<sup>288</sup>

Interviews and FGDs conducted for the study suggested that migrants, refugees and asylum-seekers rarely seek legal advice or access justice as they cannot pay for legal support, and do not believe that their complaints will be adequately assessed and crimes investigated. The migrants, refugees and asylum-seekers often fear the authorities, so any complaint related to police harassment, detention, or confiscation of property or money, tends to go un-reported. This is particularly the case for migrants in transit, whose main goal is to reach the destination country, and who may be reluctant to report abuse to the authorities as it may slow their journey. For others, the abuse happened in countries that they have already left. The study also identified that when the abuse was committed by the police or other authorities, there is a very low reporting rate by the abused persons, especially when the victims are migrants in an irregular situation.<sup>289</sup> Many persons on the move distrust the formal justice system, which “lead[s] to invisibility and perpetuates a cycle of vulnerability that is very hard to break” according to a regional stakeholder in Dakar.<sup>290</sup> The few complaints that do make their way to the authorities, and courts are almost always supported by NGOs, which provide legal advice and support, or funds for the migrant/refugee/asylum-seeker to hire a lawyer.

Legal assistance is a priority need for people on the move, as reflected in MMC 4Mi data.<sup>291</sup> Of migrants and refugees surveyed by 4Mi in Burkina Faso, Mali and Niger, 1.31 per cent of females and 1.36 per cent of males reported having accessed legal assistance while on their journeys. At the same time, 20.81 per cent of surveyed female migrants and refugees and 21.62 per cent of surveyed male migrants and refugees reported that they would find such assistance helpful.

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<sup>288</sup> Interview with UN agency, Guinea, 16 Oct. 2019.

<sup>289</sup> Interviews conducted with NGOs in Senegal, 30 Sep. and 2 Oct. 2019.

<sup>290</sup> Amanda Azzali, Regional Children on the Move/Migration Advisor, Save the Children, at a Stakeholder Workshop in Dakar, Senegal, 7 Nov. 2019.

<sup>291</sup> See Annex 4 tables 3 and 4.

## 5.2 Special Protection Issues

### 5.2.1 Child Welfare

#### Domestic Legal Framework

The protection of child migrants, refugees and asylum-seekers is generally outlined in the national legislation of the target countries. For example, in Burkina Faso, key national laws are the Law for the Protection of Children in Conflict with the Law or in Danger (2014), and the Law for the Repression of the Sale of Children, Child Prostitution and Child Pornography (2014). In The Gambia, the Children's Act (2005), and the Child Protection Strategy (2016–2020) and its plan of action provide a framework for the protection of children, including child migrants, refugees and asylum-seekers. Liberia enacted the Children's Law of 2011, setting forth a Bill of Child Rights and aiming to facilitate respect and promote child rights and maximize the protection of “every child in Liberia.”<sup>292</sup> In Ghana, there is the Children Act (1998) and the Child and Family Welfare Policy (2014). Ghana also has in place a National Plan of Action for the Elimination of the Worst Forms of Child Labour (2017–2021) and Ghana's Migration Policy (2016) addresses child protection issues and outlines strategies specifically aimed at the protection of children on the move, such as victims of trafficking.<sup>293</sup> In Senegal, the National Child Protection Strategy (2013) and its plans of action outline the protection framework for children, including child migrants. Nigeria also has a Child's Rights Act; however, 12 states are yet to domesticate it.<sup>294</sup> Therefore it is not operating throughout the entire country. According to one international organization operating in Nigeria, part of the reason (mostly northern) states have not adopted the Child's Rights Act is their failure to accept that children have rights.<sup>295</sup> However, some Nigerian states – e.g., Lagos State – are further advanced in child protection. Lagos State has a child protection policy in place and through that policy has established emergency hotlines to report cases of sexual abuse/exploitation.<sup>296</sup>

In addition to the range of national laws that cover the protection of children in the target countries, including migrant, refugee and asylum-seeker children, there is also a range of government agencies working on child protection issues, such as the National Working Group for Child Protection in Burkina Faso, the Department of Social Welfare in The Gambia, the Child Protection Advisory Committee in Ghana, and the Inter-Sectoral Committee of Child Protection and its inter-commission in Senegal.

While various laws, policies and standards exist in the region, which outline the protection frameworks for children, including migrant, refugee and asylum-seeker children, the

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<sup>292</sup> Liberia, An Act to Establish the Children's Law of Liberia (2011).

<sup>293</sup> See Government of Ghana, Ministry of the Interior, National Migration Policy (April 2016).

<sup>294</sup> Interview with Child Rights INGO in Nigeria (via Skype), 11 Oct. 2019.

<sup>295</sup> Interview with Child Rights INGO in Nigeria (via Skype), 11 Oct. 2019. Because of this sentiment present in some states, there is a move to change the name of the act to refer to “Youth Protection” rather than “Child Rights.” Ibid.

<sup>296</sup> Interview with Child Rights INGO in Nigeria (via Skype), 11 Oct. 2019.

interviews conducted for this study suggest that not all relevant government staff are aware of the legislation or that States lack the capacity to enforce the laws:

*“You’ll see migrant kids who are 8 or 10 years working. The authorities don’t really apply the law regarding children.” – UN agency, Guinea*

There are no comprehensive laws specifically covering the protection of children on the move, although bilateral and tripartite agreements (e.g. between Benin, Burkina Faso and Togo) are under development.

*“In Burkina, migrant children are central to the national child protection strategy. There’s a tripartite agreement being finalised between Burkina, Togo and Benin, on child migrant protection. So the kids aren’t phantom anymore. There are protection mechanisms developed that are adapted to their situation.” – NGO, Burkina Faso*

While comprehensive policies and mechanisms have been developed, which outline child protection frameworks and the services that should be provided to child migrants and refugees, a lack of financial and human resources and capacity means that the target States often rely on UN agencies and NGOs for the actual delivery of services to child migrants and refugee children and their families.

## **Protection Issues**

Children engage in many forms of movement in West Africa and the act of being on the move can itself place children at risk. Children on the move include children travelling with their parents, as well as unaccompanied or separated children, whether sent by their parents alone or who began their journey with family members but became separated. Children are moving to and within West Africa for a variety of reasons, including: for paid work; to attend school; to live with relatives or in other households; to escape from abuse and violence at home, school or in the community; to escape conflict; or because children have no parents or caregivers. The context of general instability in the region is also a basis for on-going child movements. Uncertain security environments, in addition to environmental catastrophes, and a general lack of employment opportunities, act as push factors for the movement of children in the region.

Children are often considered a vulnerable population in mixed movements, particularly when unaccompanied or separated.<sup>297</sup> The interviews conducted for this study identified various protection issues for children on the move. For example, children migrating to work as domestic workers, in plantations and farms, in mining sites, as well as other sectors, face protection risks and challenges including physical and sexual abuse, non-payment of wages, and trafficking. In mines, both boys and girls are exposed to hazardous work conditions and long work hours. Security is a serious concern for children on the move, particularly children who are unaccompanied. Children can easily become

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<sup>297</sup> Save the Children and Mixed Migration Centre, *Young and on the Move in West Africa* (Feb. 2018).

victims of attacks by armed groups or bandits, or kidnapping. Children on the move may encounter challenges in terms of accessing essential services such as healthcare and education.

### *Talibé, Trafficking and other Exploitation*

Study participants highlighted *Talibé* children as a group of concern in the region. According to a Child Rights INGO in Nigeria, one-half of the children on the move in Nigeria are those in with the *almajiris* (the Sharia schools).<sup>298</sup>

*“The ones who are most at risk are not those in the refugee camps; it’s those not accounted for—those on the roads begging, the almajiris children.”* – Child Rights INGO, Nigeria

One study participant explained that young boys are sent to *daaras* in Senegal and equivalent schools in other countries by their families to learn the Quran under a religious master/teacher. For the duration of the boys’ study of the Quran they live in boarding schools. Children in some of the Quranic schools are forced to beg daily as a source of income for their masters. The *talibé* children are highly vulnerable to abuse (by their master, and by community members), and to being hit by cars while begging in the streets.<sup>299</sup>

*“The teachers beat the children. We have some cases of children who escaped because they were beaten too much. This issue is worse in Senegal, there are so many [of these] schools.”* – NGO, Mali

*“It exposes the children to problems of health, they are killed by cars, STDs, moral problems, delinquency; [it’s] no fault of their own, it’s also a problem of social security for the country, terrorists can recruit them. The children come from everywhere”* – NGO, Senegal

*“Recently you find that these children, most of them are going to urban areas begging because the Sharia teachers have sent them out to beg and bring money back to them. A lot of exploitation is taking place in these [Islamic] schools. Also sexual exploitation in these schools – of both boys and girls. These teachers aren’t accountable to anybody. . . It is difficult for NGOs or INGOs to penetrate these schools.”* – Child Rights INGO, Nigeria

Another group of concern is street children. Some child migrants become separated from their families, and end up living on the streets. Interviews conducted for this study

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<sup>298</sup> Interview with Child Rights INGO in Nigeria (via Skype), 11 Oct. 2019. Another study participant in Nigeria discussed that there is now a situation of children coming from Burkina Faso and other States who come to the Islamic schools in Nigeria and may be abused. Interview with UN agency in Nigeria (via Skype), 29 Oct. 2019.

<sup>299</sup> Interview with UN agency in Guinea, 16 Oct. 2019; interview with NGO in Senegal, 16 Oct. 2019.

suggested that the children living on the streets are mostly separated child migrants, Talibé children who have run away from their masters, and children who decided to migrate by themselves but became stranded due to a lack of financial means to continue the journey.

Child trafficking is also a problem in the region with boys and girls from various countries being trafficked to and through West Africa for labour and/or sexual exploitation. Girls from Nigeria, for example, are trafficked for sexual exploitation in Senegal and Ghana. Stakeholders in Mali and Burkina Faso also reported cases of domestic trafficking of girls for sexual exploitation or domestic work.

*“In the Northeast [of Nigeria], we see not so much children on the move in the traditional sense of migrants, as [we see] trafficked or abducted children.”* – UN agency in Nigeria

### *Conflict-related Displacement*

There are also large numbers of refugee and asylum-seeking children in the region. For example, the ongoing conflict in northern Mali has generated significant levels of displacement, both internally and across borders into neighbouring Burkina Faso, Niger and Mauritania. Data provided by study participants suggest that children represent the majority of Malian refugees in neighbouring countries.<sup>300</sup>

### *Recruitment by Armed Groups*

Another key concern among study participants is the risk of children on the move being recruited by armed groups. This is a particular concern at present in Mali, due to the presence of several armed groups, and in Nigeria, mainly due to Boko Haram.<sup>301</sup>

## **Services Available and Protection Challenges**

In most of the target countries, the protection of children, including child migrants, refugees and asylum-seekers, is the responsibility of the department of social welfare or equivalent ministry or department. Key government responsibilities and activities include identifying vulnerable children and families in the community, visiting the children and families and conducting needs assessments, providing social work/case management, linking the children to health and other services and, where necessary, finding emergency and longer-term accommodation for unaccompanied or separated minors.

*“There’s a continuum of care; there are teams of people who go and meet the children. The children may just receive information, or they might be referred to social services if they have a problem; the government might put them in a foster family if they need*

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<sup>300</sup> Interview with an NGO in Mali, 14 Oct. 2019.

<sup>301</sup> Interview with UN agency in Nigeria (via Skype) (reporting that in the northeastern parts of the country there are children who are “abducted and taken up by non-state armed groups.”); see also Save the Children and Mixed Migration Centre, *Young and on the Move in West Africa* (Feb. 2018).

*shelter, or accompany them back home if that's what the kids want, or invite them to participate in an activity in city.” – NGO, Burkina Faso*

*“In the child protection sphere it's quite good. They focus social services, on children.”  
– NGO, Senegal*

### *Identification, Referral and Case Management*

Community approaches to child welfare are reportedly key in child protection systems in the region. National child protection committees exist in some of the target countries (e.g. Burkina Faso, Ghana, Senegal, Sierra Leone).<sup>302</sup> The responsibility of the committees sits under the respective Departments of Social Welfare, with support from UN agencies and NGOs. Committee membership tends to include traditional leaders, teachers and health workers. The role of these committees is to identify child protection issues in communities, and refer cases to relevant government agencies for follow up. There are many of these committees in the target countries. In Ghana, for example, the committees are present in approximately 600 communities.<sup>303</sup> Interviewees reported that these committees often identify migrant/refugee/asylum-seeking children and their families and refer them to the authorities and/or NGOs.

In Senegal, child protection is decentralized, through the Child Protection Departmental Committees, which have been developed through the support of UNICEF and Save the Children, and are chaired by the prefects. The committees bring together all the relevant actors and activities in the child protection space, *i.e.* education, social welfare, health, and government, non-government and community actors. The committees meet approximately once a month. In dealing with cases of child migrants, refugees, or asylum-seekers, and their families, the committees follow ECOWAS support procedures and standards for the protection and reintegration of migrants.

These committees are essential in identifying and referring vulnerable child migrant, refugee and asylum-seeker cases to the authorities and to NGOs. Central level social welfare agencies have broad mandates, but lack human and financial resources, and therefore face various challenges in travelling to communities to meet with vulnerable children. The local committees therefore play an important role in ensuring that the authorities are aware of the children, and that the children are referred to local health and other services.

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<sup>302</sup> Training Resources Group and Play Therapy Africa (2012) Strengthening Child Protection Systems in Sub-Saharan Africa: A Working Paper, available at [https://www.unicef.org/protection/files/strengthening\\_child\\_protection\\_systems\\_in\\_sub-Saharan\\_Africa\\_-\\_August\\_2012.pdf](https://www.unicef.org/protection/files/strengthening_child_protection_systems_in_sub-Saharan_Africa_-_August_2012.pdf)

<sup>303</sup> Lustin, A. and Altai Consulting (2017) *Protection Mechanisms for Vulnerable Migrants in Burkina Faso, The Gambia, Ghana and Senegal*, p. 33.

During the study, some stakeholders indicated that one challenge in child protection in the region is that many countries have not put in place standard operating procedures (SOPs) to formalize intake processes and referral mechanisms. The Gambian government has taken positive steps in this regard, though further work remains to be done. The Gambia’s Department of Social Welfare, with assistance from UNICEF, has developed case management forms, including an assessment form and a referral form for use by child protection actors, including personnel at the state-run temporary shelter in Bakoté.<sup>304</sup> However, there remains a need to develop and operationalize SOPs on case management to standardize the process across the country.<sup>305</sup> A study participant in Nigeria similarly reported that there are no SOPs in place in Nigeria for the people running the shelters and orphanages.<sup>306</sup> Even where such initiatives have been undertaken (e.g., in The Gambia), it appears that there is not an adequate assessment of whether the child needs assistance to apply for international protection (asylum); rather, the focus tends to be on family tracing and returning the child to his or her family.

### *Shelter*

Some target countries (e.g., Niger and The Gambia) have at least one State facility that provide child migrants, refugees and asylum-seekers with short-term shelter while alternate solutions for their care are arranged by the authorities. However, as noted in section 4.1.4, the number of temporary shelters available in the target countries is inadequate and the quality of services provided at those shelters has been questioned by study participants.

In the target countries where State shelters for children exist, the shelters are not specifically designed or adapted to the specific needs of children on the move and many exclude male children or families.<sup>307</sup> Children are often accommodated in shelters with adults and there are few services or activities for the children in the shelters.

*“The State has no means to provide care, and if there are no other actors providing assistance they will go to the government person’s home. This happens with abandoned children who are given to the authorities. There are many new born children who are abandoned. We can’t take them—they’re not our beneficiaries and we can’t assist so many small children, so it’s the State authorities who bring them home with them as a temporary solution. There’s no other care centres. The child protection sector, it’s not very well financed, so there are great limitations.” – NGO, Mali*

*“We have . . . a girl child and a boy in Libya. They don’t know their family or their family died. They are children, they don’t know their mother at home. They asked me to do some tracing, but it is very difficult. . . .They want to send them back home [to Sierra*

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<sup>304</sup> Interview with Department of Social Welfare, Banjul, The Gambia, 3 Oct. 2019.

<sup>305</sup> Interview with UNICEF Gambia, Greater Banjul, The Gambia, 8 Oct. 2019. When the SOPs are developed, they will be for case management “across the board” – to be used by all child protection actors in the country. Ibid.

<sup>306</sup> Interview with Child Rights INGO in Nigeria (via Skype), 11 Oct. 2019.

<sup>307</sup> See discussion *supra* in section 4.1.4.

*Leone] but they don't know where to send them to.” – Sheku Bangura, Founder and Director, Advocacy Network Against Irregular Migration, Sierra Leone*

In some target countries (e.g., Guinea and The Gambia), there are currently plans in place to build more shelters in the near future, which will accommodate child migrants and other vulnerable children. While expanding the shelter system is one strategy for protecting children, some stakeholder interviews conducted for the study suggested that States in the region are wary of moving towards the institutionalization of children as a protection response, and are focusing their efforts on strengthening alternative care systems:

*“Today in Burkina there are 253 formal foster families, they have been checked. Now it's well organized, it's the Department of Social Services that manages them, has a strategy for identifying the children, supporting them, following the children.” – NGO, Burkina Faso*

*“A foster system has been in place since the Ebola crisis. We wanted to continue this dynamic. There's a strong tradition of welcoming children into families. The government selected host families, and has revised the process.” – UN agency, Guinea*

#### *Financial and Human Resources*

A key challenge for States in terms of providing support services to migrant, refugee and asylum-seeker children is the lack of financial and human resources. Social services agencies struggle to provide support to children on the move because of the large number of children needing support, the lack of qualified social workers, lack of budget for social workers to access child migrants where they are living, and lack of shelters to accommodate the children. Even where decentralized structures exist, and governments identify vulnerable children in the outer communities, challenges persist due to insufficient resources:

*“The biggest challenge we have so far is related to the system being able to respond to the needs of children on the move. . . . In the regions, they will tell you they do find children on the move, but they are so stretched with resources, they don't even have the money to put the child on public transport and bring them to the shelter.” – UNICEF Gambia*

*“The child protection sector globally is not well funded. . . It is normal to understand that children on the move don't have the best services they need. . . . If we have funds for the sector, we can fix the problem of training. We can have tools, improve services. . . .” – Ahmadou Gning, Child Protection Manager, Save the Children Senegal*

The lack of dedicated social welfare workers in the region was identified as one of the most crucial areas for improvement. Study participants highlighted the reality that, if social welfare mechanisms were in place, then children may not have migrated in the first place.



*“There needs to be a better child protection system. Children leave their families, to flee a forced marriage... there are many child protection problems that aren’t resolved and push the children to migrate for better opportunities. The protection needs were there from the beginning.” – UN agency, Guinea*

### *Gaps in Coordination*

Another protection gap affecting children on the move is the lack of coordination among the relevant actors. As one stakeholder emphasized, “[t]he child protection sector is not well organized to help children benefit from [a] strong protection framework.”<sup>308</sup> Several stakeholders interviewed during the study noted the need to strengthen coordination efforts to enhance child protection in the region.

## **5.2.2 Trafficking in Persons**

All of the target countries are either source, transit or destination countries for the trafficking of adults and children.<sup>309</sup> While data on trafficking victims are lacking, figures suggest that identified trafficking cases range from single digits to up to approximately 1,000 cases in the target countries each year.<sup>310</sup> Victims are trafficked for labour and sexual exploitation purposes. Key sectors of exploitation in the target countries include forced prostitution, begging, domestic work, construction, mining, and agriculture. Trafficking in persons is a topic that has gained a lot of attention at the regional and international level and even at the national level in terms of enacting legislation and setting up specific bodies to address the issue. Yet, on the ground, coordination efforts, capacity of personnel, and resources appear to be lacking in this area, leaving a large protection gap in the context of mixed movements in the region.

### **Domestic Legal Framework**

Nearly all the target countries of this study now have specific anti-trafficking legislation pursuant to their obligations under the Palermo Protocol. Guinea is the exception, having incorporated provisions prohibiting trafficking in persons into its penal code, but not yet enacting legislation dedicated specifically to combatting trafficking in persons.<sup>311</sup> Nigeria has the oldest anti-human trafficking law in place among the 10 target countries, with its 2003 Trafficking in Persons Law Enforcement and Administration Act.<sup>312</sup> As amended in 2015, Nigeria’s law criminalizes labour and sex trafficking and prescribes a minimum

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<sup>308</sup> Interview with Ahmadou Gning, Child Protection Manager, Save the Children Senegal (via Skype), 11 Oct. 2019.

<sup>309</sup> U.S. Department of State, Trafficking in Persons Report (2019).

<sup>310</sup> Interviews with NGOs and UN agencies in Burkina Faso, Guinea, Mali, Niger and Senegal; U.S. State Department Reports on Trafficking in Persons (2019) for The Gambia, Ghana, Liberia, Nigeria, and Sierra Leone.

<sup>311</sup> Article 323 of the Guinean penal code, as amended in 2016, criminalizes labour and sex trafficking. Article 324 prescribes penalties of three to seven years imprisonment, a fine, or both for adult trafficking, and 5 to 10 years imprisonment, a fine, or both for child trafficking.

<sup>312</sup> Nigeria, Trafficking in Persons and Law Enforcement and Administration Act (2003).

sentence of five years imprisonment.<sup>313</sup> In 2005, Senegal, Ghana, Liberia and Sierra Leone all adopted anti-human trafficking laws, which prohibit trafficking in persons and provide for the prosecution of such offenses. Liberia's 2005 Act to Ban Trafficking in Persons imposes a multi-tiered sentencing structure ranging from a minimum of one year imprisonment (for adult trafficking) to life in prison,<sup>314</sup> while both Senegal and Ghana prescribe minimum penalties of five years imprisonment for offenders,<sup>315</sup> with an upward maximum of 10 years in Senegal and Sierra Leone. However, Sierra Leone's anti-trafficking law permits a fine in lieu of imprisonment for sex trafficking offenses.<sup>316</sup> Ghana's anti-human trafficking law was amended in 2009 to expand the definition of trafficking.<sup>317</sup> And Senegal's law is currently being revised to take into account additional forms of trafficking, such as trafficking of babies, and organ trafficking.<sup>318</sup>

The Gambia's Trafficking in Persons Act was enacted in 2007 and amended in 2010 to criminalize labour and sex trafficking with prescribed penalties up to life imprisonment.<sup>319</sup> Burkina Faso adopted its anti-trafficking law in 2008, which prohibits all forms of trafficking in persons, and provides for penalties of a maximum of 10 years imprisonment or life imprisonment under certain aggravating circumstances.<sup>320</sup> Niger's law of December 2010 (Order No. 2010-86) similarly prohibits all forms of trafficking in persons<sup>321</sup> and prescribes minimum sentences of 5 to 10 years' imprisonment for adult trafficking and 10 to 30 years' imprisonment for child trafficking.<sup>322</sup> In Mali, Law 2012-023 Relating to the Combat against Trafficking in Persons and Similar Practices, enacted in 2012, prohibits all forms of trafficking in adults and children. Mali's law prescribes a 5 to 10 year prison sentence for trafficking offenses, with the exception of forced begging, which carries a penalty of 2 to 5 years' imprisonment and a fine.<sup>323</sup>

On the whole, the Palermo Protocol's definition of trafficking in persons, and the included procedural steps for penalties and prosecution, have been transposed into national law in the existing anti-trafficking legislation. At the institutional level, several of the target

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<sup>313</sup> U.S. State Dept. Report on Trafficking in Persons, Nigeria (2019). In 2018, the government of Edo State approved a state-level anti-trafficking law that criminalizes sex trafficking and labour trafficking, with minimum penalties of five years' imprisonment and a fine. Where the victim is a child, the minimum prison sentence is seven years under Edo State's legislation. *Ibid.*

<sup>314</sup> Liberia, An Act to Ban Trafficking in Persons Within the Republic of Liberia (2005), article 8. The Act imposes a minimum prison sentence of six years for child trafficking, with no maximum sentence. U.S. State Dept. Report on Trafficking in persons, Liberia (2019).

<sup>315</sup> Ghana, Human Trafficking Act, 2005 (Act 694).

<sup>316</sup> U.S. State Dept. Report on Trafficking in Persons, Sierra Leone (2019).

<sup>317</sup> Ghana, Human Trafficking (Amendment) Act, 2009 (Act 784) (“(1) Human trafficking means the recruitment, transportation, transfer, harbouring, trading or receipt of persons for the purpose of exploitation within and across national borders by (a) the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or (b) giving or receiving payments and benefits to achieve consent.”).

<sup>318</sup> Interview with NGO in Senegal, 2 Oct. 2019.

<sup>319</sup> The Gambia, Trafficking in Persons Act, 2007 (amended 2010). Child trafficking is also illegal under The Gambia's Tourism Offences Act.

<sup>320</sup> ILO and others, 2018, Counter Trafficking: ECOWAS Plans of Action. Assessing the impact, p. 22.

<sup>321</sup> ILO and others, 2018, Counter Trafficking: ECOWAS Plans of Action. Assessing the impact, p. 22.

<sup>322</sup> U.S. State Dept. Report on Trafficking in Persons, Niger (2019).

<sup>323</sup> U.S. State Dept. Report on Trafficking in Persons, Mali (2019).

countries have established specific bodies for combating trafficking in persons (e.g. The Gambia, Ghana, Guinea, Liberia, Nigeria, Senegal and Sierra Leone) and/or developed National Action Plans pertaining to human trafficking.<sup>324</sup> In some of the target countries (e.g. The Gambia, Ghana and Senegal) there are anti-trafficking units within the police, while in others, there is a specific body set up – outside of the police and immigration authorities – that acts as the focal point for trafficking (e.g., the National Anti-Human Trafficking Taskforce in Liberia, the National Agency Against Trafficking in Persons (NAATIP) in The Gambia and the National Agency for the Prohibition of Trafficking in Persons, (NAPTIP) in Nigeria). This entity is usually responsible for coordinating the government and non-government response to trafficking in persons across the areas of trafficking prevention, victim identification, and protection of victims.

Bilateral agreements to strengthen cooperation in the fight against child trafficking have also been signed between a number of countries in the region, such as the agreement on trafficking between Mali and Senegal (2004), the agreement against child cross-border trafficking between Burkina Faso and Mali (2011), and the agreement signed between Côte d'Ivoire and Ghana to combat the trafficking of children and the worst forms of child labour (2016). In addition, most ECOWAS countries are part of the 2007 multilateral cooperation agreement on the fight against child trafficking in West Africa.

**Table 3: Selected bilateral and multilateral agreements between countries in West Africa**

Multilateral agreements		
Multilateral agreement for the fight against child trafficking in West Africa	2005	Benin, Burkina Faso, Côte d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo
Multilateral Cooperation Agreement to Combat Trafficking in Persons, Especially Women and Children in West and Central Africa	2006	Benin, Burkina Faso, Côte d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo
Multilateral anti-trafficking cooperation agreement	Not yet finalized. <sup>325</sup>	Benin, Nigeria and Togo
Multilateral agreement on child mobility and the fight against trafficking	Not yet finalized. <sup>326</sup>	Benin, Burkina Faso and Togo

<sup>324</sup> E.g., Liberia currently has a National Action Plan on Trafficking in Persons for December 2017-January 2019. Interview with Phil Dixon, Deputy Minister, Manpower Planning and Human Resource Development, Ministry of Labor, Monrovia Liberia, 23 Sep. 2019; The Gambia has a National Action Plan on Trafficking 2016-2020. Interview with UN agency, Greater Banjul, The Gambia, 4 Oct. 2019.

<sup>325</sup> U.S. State Department Trafficking in Persons Report (2019), p. 98, <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

<sup>326</sup> Ibid.

Bilateral agreements		
Cooperation Agreement against Child Cross-Border Trafficking	2000	Côte d'Ivoire and Mali
Cooperation agreement in the fight against cross-border trafficking of children	2004	Burkina Faso and Mali
Agreement on Trafficking	2004	Mali and Senegal
Anti-trafficking Accord	2005	Guinea and Mali
Cooperation agreement to prevent, suppress and punish trafficking in persons with emphasis on trafficking in women and children	2005	Benin and Nigeria
Agreement against Child Cross-Border Trafficking	2011	Burkina Faso and Mali
Agreement against Child Cross-Border Trafficking	2013	Burkina Faso and Côte d'Ivoire
MoU on cross-border trafficking	2013	The Gambia and Senegal
Agreement relating to the fight against trafficking	2014	Burkina Faso and Côte d'Ivoire
Agreement to Combat the Trafficking of Children and the Worst Forms of Child Labour	2016	Côte d'Ivoire and Ghana
Bilateral Agreement for the Protection of Children on the Move	Not yet finalized. <sup>327</sup>	Mali and Guinea

Despite these efforts, study participants suggested that the enforcement of the various laws and policies in the region – particularly regarding the identification of trafficking victims, investigation and prosecution – is weak, due to a lack of funds and human resources.

Moreover, some of the domestic laws in place are not in line with the international and regional framework in terms of protection and support for victims of trafficking. The target countries' laws focus primarily on prohibited conduct, prosecutions, penalties and to some extent compensation, with little to no attention on rehabilitation or other support for the victim. Even in those countries that do have protection mechanisms for victims of trafficking outlined in the legal text (i.e. Burkina Faso, The Gambia, Ghana, Mali, Niger, Nigeria and Senegal), the interviews conducted for this study suggested that the protection mechanisms are also not well operationalized in practice, due to a lack of State financial and human resources.

<sup>327</sup> Service Social Internationale Afrique de l'Ouest, n.d., Protection des enfants, available at <http://www.ssiao.org/fr/cedeaol/>.

*“We domesticated the [Palermo] Protocol through the trafficking act. The full implementation of it is another issue altogether.” – UN agency in The Gambia*

In Burkina Faso and Senegal, the possibility to obtain permanent or temporary residence for victims of trafficking in persons is also part of the legal text; however, the interviews conducted for this study could not determine whether any trafficking victims have been able to obtain temporary or permanent residence in Senegal.

### **Protection Issues/Challenges:**

#### *Ad Hoc Referral Mechanisms*

An overarching gap in protection for victims of trafficking is the lack of operationalized national anti-trafficking action plans and SOPs for identifying and referring cases of trafficking in the target countries. The identification of victims is difficult, due to the lack of police financial means – police are not present in all areas of the countries, especially remote areas, and police agencies suffer from a lack human and financial resources. While there are reportedly large numbers of identified victims in some target countries (e.g., Burkina Faso and Senegal), data on other target countries (e.g., The Gambia, Guinea and Liberia) provides a stark contrast – with numbers as low as four and five cases in 2018 (see Table 4). Not all the countries have developed standardized procedures for the referral of victims to care. “There is also a lack of knowledge that affects reporting, both among the population and the law enforcement officers – even to be able to refer or report [someone] for support.”<sup>328</sup> A stakeholder in Nigeria identified trafficking as the biggest protection challenge for children on the move, because “[n]o one is looking after them – so even when they go missing, [there is] no one to report it.”<sup>329</sup>

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<sup>328</sup> Interview with Counter Trafficking Project Officer, IOM The Gambia, Serrakunda, The Gambia, 4 Oct. 2019.

<sup>329</sup> Interview with Child Rights INGO in Nigeria (via Skype), 11 Oct. 2019.

**Table 4: Data on trafficking in persons victims, investigations, prosecutions and convictions in the ten target countries<sup>330</sup>**

	U.S. Trafficking in Persons Report ranking	Number of identified victims/ potential victims	Number of investigations	Number of prosecutions	Number of convictions
<b>Burkina Faso</b>	Tier 2	851 victims; 2,844 potential victims	[Incomplete data] <sup>331</sup>	71 <sup>332</sup>	61
<b>The Gambia</b>	Tier 3	4 victims	1	2	0
<b>Ghana</b>	Tier 2	385 potential victims	82	13 (against 42 suspected traffickers)	7
<b>Guinea</b>	Tier 2	5 potential child victims	62 (individuals)	54 suspected traffickers	55
<b>Liberia</b>	Tier 2 watch list	8 victims; 30 potential child victims	5 (cases)	2 suspected traffickers	1
<b>Mali</b>	Tier 2	122 victims; 46 potential victims	17 (cases)	37 (involving 55 suspected traffickers)	1
<b>Niger</b>	Tier 2	70 victims (mostly women and girls from	28 (individuals)	27 (involving 27 suspected traffickers)	11

<sup>330</sup> Figures sourced from U.S. Department of State, Trafficking in Persons Report 2019. The U.S. Department of State Trafficking in Persons Reports rate State efforts to prevent and combat trafficking in persons. There are three main 'tiers', as well as a 'watch list':

**Tier 1:** Countries whose governments fully meet the TVPA's minimum standards for the elimination of trafficking.

**Tier 2:** Countries whose governments do not fully meet the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards.

**Tier 2 Watch List:** Countries whose governments do not fully meet the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards, and for which:

- a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;
- b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or
- c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional steps over the next year.

**Tier 3:** Countries whose governments do not fully meet the TVPA's minimum standards and are not making significant efforts to do so.

<sup>331</sup> From September 2017-May 2018, Burkina Faso reported 6 new investigations, with 11 suspects, with data from 2 regions.

<sup>332</sup> For the number of prosecutions, Burkina Faso reported data from 12 regions, again for the time period of 2017-May 2018.

		Benin and Nigeria)			
<b>Nigeria</b>	Tier 2	126 victims (of forced labour); 1,028 potential victims	192 (cases) <sup>333</sup>	64 suspected traffickers	43
<b>Senegal</b>	Tier 2	1,559 potential child trafficking victims	12 (cases)	12 suspected traffickers	6
<b>Sierra Leone</b>	Tier 2 watch list	481 potential victims	13	3	0

### *Inadequate Shelters and Insufficient Psychosocial Support*

Even when victims are identified, there is a lack of State-run facilities to protect victims of trafficking in the target countries. And where facilities exist, victims of trafficking tend to receive short-term shelter in State facilities that are not specifically designated for victims of trafficking.

*“There are services – there are safe homes, but not safe homes exclusively for trafficking victims.”* – International Organisation, Liberia

The shelters tend to have social workers that have not received any specific training on victims of trafficking.<sup>334</sup> There are limited support services provided at the shelter, and few activities for children. There is limited security at the shelters, meaning that victims may be targeted by their traffickers<sup>335</sup> or try to leave the shelter before families have been traced (in the case of children). Interviewees expressed concern that both adults and children, after leaving these shelters, may return to their traffickers.<sup>336</sup>

Reintegration and rehabilitation activities are reportedly also limited. Some victims benefit from income generation activities, which are usually provided by UN agencies or NGOs. Some trafficking victims receive psychosocial care – where this is provided, it is typically provided by UN agencies or NGOs – though the care may not be individualized and/or may be provided once, but not on an on-going basis.

<sup>333</sup> According to the U.S. State Department Report, NAPTIP received 938 cases for investigation, but completed 192 investigations. U.S. State Dept. Report on Trafficking in Persons: Nigeria (2019).

<sup>334</sup> Interview with Counter Trafficking Project Officer, IOM The Gambia, Serrakunda, The Gambia, 4 Oct. 2019; U.S. State Department Report on Trafficking in Persons, The Gambia (2019).

<sup>335</sup> See U.S. State Department Report on Trafficking in Persons, The Gambia (“Shelter security was weak; an international organization reported unauthorized individuals entered the shelter and intimidated four trafficking victims residing there. There victims were pressured by unknown individuals to drop their testimony against their Nigerian traffickers. The three adult victims ran away from the shelter and their whereabouts were unknown.”).

<sup>336</sup> Interview with UN agency in Guinea; Interviews with NGOs in Senegal.

### *Limited Access to Justice*

As noted in section 4.1.5, access to justice and compensation for trafficking victims is extremely limited. The number of investigations and prosecutions of trafficking offences remains low, even in those target countries where a significant number of victims have been identified. (See Table 4). Prosecutions can actually cost trafficking victims money in that they have to pay for documents and lawyers themselves.

*“There’s no functioning judicial system in Guinea. NGOs might help you get a lawyer. But if there’s no NGO help, there’s no legal support. The documents you need, you need to pay for them.”* – UN agency, Guinea

In some target countries (e.g., The Gambia and Sierra Leone), despite having the legal framework in place, there have not been any convictions under the law.<sup>337</sup> In other instances, interviewees reported that due to the length of time to prosecute a case, sometimes the victim(s) will give up and go home.

*“The cases take so long to go through court, people give up.”* – Janet Nickel, Anti-Trafficking Technical Adviser, World Hope International, Sierra Leone

### *Lack of Resources and Coordination*

Lack of resources and coordination were identified by study participants as additional challenges in terms of protection for victims of trafficking. Trafficking in persons is a clandestine operation and victims of trafficking require specialized attention compared to other migrants. Therefore, this category of persons requires a very close and coordinated approach/intervention.<sup>338</sup> Government departments or agencies that serve as the trafficking focal points are aware of the need to address trafficking; however, they are often financially stretched,<sup>339</sup> which limits their ability to do so.

*“Sierra Leone went down from ‘Tier 2’ to ‘Tier 2 Watchlist’ and is at risk of going down to Tier 3. The ramifications of that are understood by government officials.”*  
– Humanitarian Actor, Sierra Leone

Stakeholder interviews noted that The Gambia has been downgraded to Tier 3 in the 2019 U.S. State Department Report on Trafficking.<sup>340</sup> This was in part due to the lack of prosecutions, failure to investigate child sex tourism, and the Government’s “decreased

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<sup>337</sup> Interview with Janet Nickel, Anti-Trafficking Technical Adviser, World Hope International, Sierra Leone (via Skype), 23 Oct. 2019 (“We cannot find any record of any convictions under the anti-trafficking law specifically in the past 8 years.”); U.S. State Department Report on Trafficking in Persons, Sierra Leone (2019), <https://www.state.gov/wp-content/uploads/2019/06/2019-TIP-Report-Narratives-N-S.pdf>; Interview with Counter Trafficking Project Officer, IOM The Gambia, Serrakunda, The Gambia, 4 Oct. 2019 (reporting that there has been no conviction in The Gambia under the 2007 Trafficking in Persons Act since its enactment).

<sup>338</sup> Counter Trafficking Project Officer, IOM The Gambia, Serrakunda, The Gambia, 4 Oct. 2019.

<sup>339</sup> Interview with UNICEF Gambia, Greater Banjul, The Gambia, 8 Oct. 2019.

<sup>340</sup> Interview with International Organization, Greater Banjul, The Gambia, 4 Oct. 2019;



efforts to identify and protect trafficking victims.”<sup>341</sup> According to the report, despite doubling NAATIP’s budget for 2019, the Gambian government “identified and assisted the fewest number of trafficking victims in five years[.]”<sup>342</sup>

## 5.3 Impediments to Free Movement

The ECOWAS sub-region is marked by an ease of mobility. The target countries have taken steps to implement the free movement protocol, including through the drafting of national migration policies in several target countries. Many sources suggest that the first phase—free entry—has largely been implemented across the region.<sup>343</sup> However, several target countries are yet to finalize or adopt their migration policies (see Annex 3), and interviews and FGDs conducted for this study identified a number of barriers and implementation gaps that persist in all three aspects of the free movement framework—entry, residence, and establishment.

### 5.3.1 Entry

Under the ECOWAS legal framework, nationals of any of the 15 ECOWAS Member States, in possession of valid documents (e.g., national ID card or passport) and an international health certificate, can enter any of the Member States without a visa for up to 90 days. To further facilitate cross-border movement, ECOWAS introduced standardized travel documents – in the form of the ECOWAS Travel Certificate (1985) and the ECOWAS passport (2000). In December 2014, ECOWAS recognized that the ECOWAS Travel Certificate, which had only been implemented in some Member States, was out-dated and not in compliance with standard international travel documents. It further recognized that to promote security in the region, national identity cards must be biometric and harmonized across the region.<sup>344</sup> ECOWAS therefore decided to replace the ECOWAS Travel Certificate with the ECOWAS National Biometric Identity Card (ENBIC). Pursuant to that decision, Member States were required to roll out the biometric national identity cards by 2016.<sup>345</sup>

Many aspects of the entry phase of the Free Movement Protocol have been realized in the region and have had the intended effect of promoting mobility across regional borders.

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<sup>341</sup> US Department of State, Trafficking in persons report, 2019, <https://www.state.gov/wp-content/uploads/2019/06/2019-TIP-Report-Narratives-D-I.pdf>

<sup>342</sup> Ibid. According to the report, the government identified and referred a total of four sex trafficking victims to care, compared to 91 potential trafficking victims the previous reporting period.

<sup>343</sup> UNHCR *Research Paper No. 150*, *supra* note 125; UNECA *ECOWAS – Free Movement of Persons*; Regional Mixed Migration Secretariat, *Mixed Migration in West Africa: Data, Routes and Vulnerabilities of People on the Move* (Extended Summary) (August 2017) (“[T]o date only the first phase relating to the free movement of persons has been fully implemented by all ECOWAS countries.”).

<sup>344</sup> ECOWAS, Decision A/DEC.01/12/14 Amending Decision A/DEC.2/7/85 Establishing a Travel Certificate for ECOWAS Member States, <https://www.ecowas.int/wp-content/uploads/2015/01/3-Travel-Certificate.pdf>.

<sup>345</sup> Ibid.

In fact, many study participants reported that crossing borders in West Africa can be very easily done, even without the requisite documentation. Study participants reported that at land borders ECOWAS citizens can generally easily enter ECOWAS Member States with just a national ID card (without any health certificate). One ECOWAS migrant reported that he entered Ghana showing a photocopy of his national ID on his mobile phone.<sup>346</sup> Another said that he entered ECOWAS States easily just using his academic certificate.<sup>347</sup> Others reported that if they did not have their identity documents, they could still enter by paying a small amount of money to the officials at the border.

At airports, the additional entry requirement – proof of a health certificate – typically will be sought in addition to an approved identification document. Beyond the formal border crossings, several stakeholders interviewed for this study – including both government officials and persons on the move – referred to the region’s “porous borders” and the fact that many migrants and asylum-seekers avoid showing documentation at the border by entering at informal crossings.

Even with the ease of mobility and the relatively low documentation requirements for entry under the Protocol, some barriers still persist in law and in implementation of the free entry. Therefore, complete freedom of movement is not yet realized in the region, owing to the domestic laws in some Member States that contradict the Protocol by barring entry to broad categories of persons as “prohibited immigrants,” as well as to a lack of access to ECOWAS travel documents, and inadequate border management, including frequent harassment of migrants, refugees and asylum-seekers at border crossing points.

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<sup>346</sup> FGD with migrants, Accra, in Ghana, 15 Oct. 2019.

<sup>347</sup> Interview with a Nigerian migrant in Mali, 1 Oct. 2019.

### **Restrictions on freedom of movement in ECOWAS: Increased border control in Niger and the introduction of anti-migrant smuggling legislation**

The principle of visa-free movement within the ECOWAS sub-region effectively means that all nationals from ECOWAS Member States are supposed to be able to legally travel as far as the Libyan border. With many West African migrants transiting through Niger en route to North Africa and Europe, Agadez in Niger has long served as a key transit point on the route to Europe.

Under pressure from the European Union (EU) to reduce migration flows to Europe, Niger introduced anti-migrant smuggling legislation in 2015, which, although aimed at smugglers, increases the vulnerability of migrants, refugees and asylum-seekers to exploitation, abuse, and detention during already dangerous journeys through the desert (Interview with an NGO in Senegal, 15 Oct. 2019).

In addition to the introduction of migrant smuggling in Niger, there has also been a significant increase in funding for strengthened border control in Niger. In September 2017, the European Commission suggested Member States should strengthen the capacity of border guards in third countries along the Central Mediterranean Migration Route to control borders, and support border controls in southern Libya, Niger, and Chad. A 2017 MMC study, ‘Protection Fallout: How increasing capacity for border management affects migrants’ vulnerabilities in Niger and Mali’, recorded 69 capacity building activities in Niger and Mali, funded by various donors between 2007 and 2017, with a combined financial volume of least EUR 1.2 billion.

Reinforcement of border check points at Agadez has meant that there is a large section of Niger that is essentially cut off to free movement in ECOWAS.

*“ECOWAS now basically stops in Agadez, which is quite far from the border with Libya. There’s no freedom of movement after Agadez.”* – NGO in Senegal

Study participants noted concern regarding the push for the development of national migrant smuggling legislation in ECOWAS. Following the example of Niger, Senegal is currently drafting a specific anti-migrant smuggling law. The concern expressed regarding the new trend in the development of migrant smuggling legislation is largely around the reversal of recent efforts around strengthening freedom of movement, free trade, and economic integration frameworks in ECOWAS, and the impact of such anti-smuggling legislation on migrants.

*“It will create a legal framework to criminalize an almost non-existent phenomenon. It (the legislation) is being used to target helping migrants. Assisting migrants is essentially illegal . . . this contrasts with the principles of free movement in ECOWAS.”*

– NGO in Senegal

### *Implementation Challenges*

One challenge that Member States face in implementing the free entry phase of the ECOWAS free movement framework is the continued lack of awareness among some immigration officers regarding what documents should be shown and what are the current documents required for entry by ECOWAS community members and a lack of uniformity in monitoring the land borders.

*“The immigration officers at airports and borders are aware of the ECOWAS free movement. They are taught this in training. We are aware, but there are challenges in implementation.”* – Immigration Official, The Gambia

*“How our borders are, it is sometimes difficult to identify who is a traveller and who is a border resident. For example, someone is in Ghana, his family is from Burkina Faso. It is hard to identify if the person crossing is a traveller or a farmer. There are certain documents that should be inspected, but how it is at the borders, it is hard to identify [who should show what documents].”* – Government agency, Ghana

Another implementation gap is that not all Member States have issued the necessary documentation to facilitate a harmonized system necessary for full realization of the protocol’s right to free entry. Very few target countries (e.g., Senegal, Ghana, Nigeria) have issued the ECOWAS passport.<sup>348</sup> And although the 2014 decision to replace the ECOWAS Travel Certificate with the biometric national ID cards gave Member States until 2016 to implement the decision, in practice, the rollout is in nascent stages at best. Senegal, Mali and Niger were the first Member States to begin the implementation.<sup>349</sup> The study revealed that Ghana, Liberia and Nigeria have also all begun rolling out the biometric ID cards, to varying degrees.<sup>350</sup> Interviews with government agencies indicated that the biometric ID cards, where available, are only being issued to the national population at this point in time. No migrants, refugees or asylum-seekers interviewed for this study had obtained a biometric ID card either in their country of origin (if from an ECOWAS Member State) or in the hosting country and many of them were not aware that they are eligible for the biometric ID cards.

### *Restrictive National Immigration Laws*

A key limitation to the realization of the free movement framework within the ECOWAS region stems from restrictive national immigration laws that prohibit the entry of large

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<sup>348</sup> Charriere, F. and Fresia, M., n.d. West Africa as a migration and protection area. UNHCR, and the European Union, p. 22.

<sup>349</sup> ECOWAS Annual Report 2016, [https://www.ecowas.int/wp-content/uploads/2017/11/Annual-Report-2016\\_English-Fina\\_Final.pdf](https://www.ecowas.int/wp-content/uploads/2017/11/Annual-Report-2016_English-Fina_Final.pdf).

<sup>350</sup> Interview with Tiah Nagbe, Director of National Identification Registry, Liberia, 24 Sep. 2019; Interview with Tetteh Padi, Programme Manager, Ghana Refugee Board, Accra, Ghana, 14 Oct. 2019; Interview with UNHCR Nigeria (via Skype), 29 Oct. 2019.

groups of migrants, with no exceptions for those coming from other ECOWAS countries. As discussed in section 3.2, the 1979 Protocol permits Member States to refuse admission to any ECOWAS citizen identified as an “inadmissible immigrant” under the State’s national law.<sup>351</sup> Under the domestic legislation in several targeted countries, “prohibited immigrants” range from persons considered mentally ill to those identified as “destitute” or otherwise without means to support themselves after entering the Member State. By way of example, under Gambia’s Immigration Act (1965), persons can be excluded from admission as prohibited migrants for being “an undesirable person,” “an idiot or insane person,” without visible means of [financial] support, or “a prostitute.”<sup>352</sup> The Gambian Immigration Act even includes among its prohibited immigrations “a person who on his or her arrival does not have in his or her possession a valid passport . . .”<sup>353</sup>

An immigration official interviewed for this study acknowledged that Gambia’s Immigration Act does not align with the ECOWAS free movement framework and noted that there is currently work being done to revise it.<sup>354</sup> Other target countries contain similarly concerning descriptions of who can be prohibited from entry. In Ghana, any person who is “unable to show that he has the means of supporting himself or his depend[e]nts if any, or is destitute and likely to be a burden on the public” shall not be permitted to enter the country.<sup>355</sup> Nigeria’s 2015 Immigration Act lacks clarity with respect to entry into Nigeria, as section 19 of the act permits an immigration officer to refuse entry to any non-citizen of Nigeria if “the person concerned is a prohibited immigrant”;<sup>356</sup> however the act only defines “prohibited immigrant” as including “any person liable to be refused entry or to be deported under this Act.”<sup>357</sup>

### *Illegal Entrance Fees*

The most crucial challenge for migrants, refugees and asylum-seekers in the target countries is that of the illegal fees charged by border police in order to enter an ECOWAS State.

*“Even if you have the complete documents with you, they [border agents] still need money from you in the form of [a] bribe. They won’t say it’s a bribe, they will say this [money] is for this, this is for something.” – Migrant from Nigeria in Ghana*

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<sup>351</sup> 1979 Free Movement Protocol, Art. 4; see also UNHCR *Research Paper No. 150*, *supra* note 125 (“[M]ember states reserved to themselves in article 4 of the Protocol the right to refuse admission to any Community citizen within the category of inadmissible immigrant under their domestic laws. This provision provided—and continues to provide—broad scope to Member States to undercut the purpose of the Protocol through the elaboration of overly restrictive domestic inadmissibility laws.”).

<sup>352</sup> The Gambia, Immigration Act (1965), section 13(1).

<sup>353</sup> *Ibid.*

<sup>354</sup> Interview with Immigration Official, Banjul, The Gambia, 1 Oct. 2019.

<sup>355</sup> Ghana, Immigration Act, 2000 (Act 573), sections 4(2) and 8(1). The Act provides for the deportation of persons identified as prohibited migrants as well as persons who “ha[ve] been found by a court to be destitute or without means of support or to be of unsound mind or mentally handicapped.” *Ibid.*, section 35.

<sup>356</sup> Nigeria, Immigration Act, 2015 (Act No. 8), section 19(6)(a).

<sup>357</sup> Nigeria, Immigration Act, 2015 (Act No. 8), section 116.

*“Yes, those complaints [of being charged fees to enter] are there. They’re all over Africa. That’s not professional, but it is happening.”* – Gambian Commission for Refugees Staff, The Gambia

Study participants reported that the amount of the illegal fee is different from country to country, and even from person to person. As one NGO interviewee commented, “[t]hey charge depending on how they see you.”<sup>358</sup> The border police agents quickly determine the country of origin of the migrant, and make a decision regarding the payment amount based on what they think the migrant can possibly afford.

The amount charged reportedly tends to increase along the migration routes headed north, with higher illegal fees being charged at check points located toward the end of the migration routes, as migrants, refugees and asylum-seekers are desperate to reach their destination.<sup>359</sup>

*“Bribes at the beginning of the journey aren’t very high. It’s between franc CFA 2,000 – 5,000<sup>360</sup>, going up to 6,000 or 7,000<sup>361</sup>, from Côte d’Ivoire to Burkina Faso, Burkina Faso to Niger, for example, then much, much higher Niger to Algeria, Niger to Libya”* – NGO, Senegal

One regional NGO interview participant based in Senegal described a practice of ‘reciprocity’ that appears to be in effect in the region. Under this practice, there is an alleged informal agreement between the border guards that if one side is charging (illegal) fees, then the other will too. Examples provided include the borders of Mali and Burkina Faso; and Côte d’Ivoire, Ghana and Togo.

Some migrants interviewed for the study reported that their bus drivers collected the fees at the start of the journey, and paid the money as the bus passed through checkpoints. Some migrants and asylum-seekers reported that persons travelling without ID documents are simply required to pay higher amounts.

*“There are bus drivers who are familiar with the routes. You pay the driver and he manages problems for each person at checkpoints, [even] if you don’t have papers. They wanted more, 15,000 francs in Nigeria. The goal was to arrive. But apart from that, after entering in ECOWAS, we used buses, it was fine.”*  
– Asylum-seeker from the Central African Republic in Senegal

Interviewees reported that illegal fees at checkpoints are so common that people think it’s normal, even legal:

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<sup>358</sup> Interview with NGO, Senegal, 30 Sep 2019.

<sup>359</sup> Interview with NGO, Senegal, 2 Oct. 2019.

<sup>360</sup> Approximately US\$ 3–US\$ 8 (currency conversion as at 25 Nov. 2019).

<sup>361</sup> Approximately US\$ 11 (currency conversion as at 25 Nov. 2019).

*“It has become so common that people think it’s normal.”*

– NGO, Senegal

*“There are basic rights, free movement in ECOWAS. It’s supposed to be effective. Most migrants don’t know about it. . . . If you’re travelling without documentation, for example, then what usually happens if they cross at a border post is they slip the agent money. Even when you do have documentation, the agents at the border are getting better and better at discerning who is going to the market, who is going to see his mum at the other side of the border and who is a migrant. So there’s a better chance of getting money off the migrants because they are scared, vulnerable, so it happens a lot. But in any case the migrants aren’t aware of their rights and wouldn’t know where to go if the rights are violated.”* – NGO, Senegal

The use of force to extract illegal fees at checkpoints is reportedly rarely used:

*“If the migrants can’t pay, well, the border police can’t do much, there’s no point detaining them for that, and it’s illegal anyway what they’re doing, so they give them [the migrants] a hard time but they tend to eventually just let them pass.”* – NGO, Mali

Regardless of whether a border bribe is facilitated by force or extortion or whether it is offered voluntarily by migrants and asylum-seekers, the continued system of illegal entry fees is operating outside of the ECOWAS framework. Until such unofficial payments are eliminated at the land borders across the region, even the first phase of the free movement protocol cannot be described as “fully implemented.”

### **5.3.2 Residence**

The goal of the 1979 Free Movement Protocol and supplementary protocols was to foster economic and social integration in the sub-region by conferring upon citizens of ECOWAS Member States not only the right to travel freely within the ECOWAS region, but also to “carry out economic activities and contribute to the achievement of meaningful regional integration.”<sup>362</sup> Despite the commitments made by each of the target countries to the Free Movement Protocol, many barriers persist in terms of ECOWAS citizens being able to realize their right to residence (Phase II of the Protocol). The study identified barriers in four key areas: (1) resident and work permit requirements; (2) failure by immigration officers to recognize the identity documents of refugees and asylum-seekers; (3) a lack of prescribed processes in place to formalize an ECOWAS citizen’s status if they enter irregularly; and (4) the inaccessibility of banks and money transfer agents.

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<sup>362</sup> ECOWAS Memorandum on the Equality of Treatment for Refugees. According to the ECOWAS Commission, “[t]he right to access economic activities and to hold employment . . . is entrenched in the protocols for all citizens of an ECOWAS member state holding a residence card or resident permit.” *Ibid.*

### *Permit Requirements*

The 90-day visa free entry itself is a barrier to residence, as it is only valid for 90 days. Moreover, the 90-day entrance does not permit those entering visa-free to work in most of the target countries.

*“Any non-national coming in who wants to work here needs [a work] permit.”*  
– Former Protection Officer at Gambia Commission for Refugees, The Gambia

At least a small number of targeted countries (e.g., Liberia and Mali) reportedly take a relaxed approach to enforcement.<sup>363</sup> In Mali, ECOWAS nationals’ access to the labour market is common practice, so long as the migrant possesses a valid identity document.<sup>364</sup>

An ECOWAS citizen must apply for a resident permit to stay longer than 90 days and a work permit in order to be able to work – including in some target countries, in the informal sector. In some countries, this may be one permit (e.g., The Gambia) while in others (e.g., Liberia) this will require two separate permits.

Refugees in the target countries do not need to apply for resident permits in any of the target countries, while in a few target countries they still must apply for a work permit (e.g., in Liberia and Ghana).

*“Once refugee status has been granted, you can reside. They don’t need to apply for a resident permit and they don’t need to apply for an extension.”* – Government agency, Ghana

For migrants or asylum-seekers who travelled without documents or lost documents en route, the challenge to obtain a resident permit can be even greater than the cost alone. Typically, some form of nationality document – either a national ID card or a passport – is required in order to get a resident work permit.<sup>365</sup> The national ID and passport serve as baseline documents. ECOWAS citizens seeking a resident permit in a neighbouring country such as The Gambia may also be required to produce documentation in the form of a certificate of character or vaccination card.<sup>366</sup>

### *Lack of Awareness / Corruption among Immigration Authorities*

Another challenge when it comes to full implementation of the free movement protocol is with regards to a lack of awareness and/or corruption among immigration officers and police in some of the target countries. Study participants in Liberia, The Gambia and Mali

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<sup>363</sup> Interview with Phil Tarpeh Dixon, Deputy Minister, Manpower Planning and Human Resources Development, Ministry of Labour, Monrovia, Liberia, 23 Oct. 2019.

<sup>364</sup> ICMPD and IOM, 2015, A survey on migration policies in West Africa, p. 46.

<sup>365</sup> Interview with Former Protection Officer at Gambia Commission for Refugees, Banjul, The Gambia, 1 Oct. 2019.

<sup>366</sup> Interview with Former Protection Officer at Gambia Commission for Refugees, Banjul, The Gambia, 1 Oct. 2019.



reported being harassed or extorted by police and immigration officers even when traveling within the host country, not trying to enter or leave.

*“We are harassed a lot by the police. I have all the documents that allow me to live and work here. When they see us they grab us and they don’t ask for papers they just take us and ask us for money and we pay to free ourselves.”* – Female migrant from Burkina Faso, in Mali

Refugees and asylum-seekers noted that immigration officials refused to recognize the refugee card and asylum attestation as valid identity at specific internal checkpoints and other instances where they came into contact with the authorities. In some instances, immigration officers reportedly told refugees that their refugee card is not valid, detained and/or harassed them, and made them pay money to pass the checkpoint or leave the encounter.<sup>367</sup>

An ECOWAS citizen cannot realize his or her right to reside in another ECOWAS state if that individual’s identification documents (e.g., refugee card or asylum-seeker attestation) are being challenged by authorities – even when simply moving about within the country. Government officials interviewed for this study stated that they are aware of this happening, and efforts are being made throughout the region to sensitize immigration officers and police on issues such as the validity of refugees’ and asylum-seekers’ identity documents.<sup>368</sup> For example, in The Gambia, the Immigration Department has established a Professional Standards Unit, which disseminates information throughout the country and can receive complaints such as extortion by an immigration officer.<sup>369</sup>

### *No Formal Procedures to Regularize an Irregular Entry*

Another barrier to residence is that the target countries lack a formal process to regularize someone once they enter irregularly. In a few target countries (e.g., The Gambia and Ghana), this is true even for ECOWAS citizens. According to immigration officials, unless such persons apply for asylum, the likely result would be deportation.

*“If the person is fleeing for their life, that is different – they can seek asylum/become a refugee. But if [you] willingly chose to enter irregularly, you cannot regularize once you are in. The only way is to seek asylum/become a refugee. If not, [you] have to come through [the] regular way.”* – Government agency, Ghana<sup>370</sup>

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<sup>367</sup> FGD with urban refugees, Monrovia, Liberia, 20 Sept. 2019; FGD with urban refugees and asylum-seekers, Greater Banjul, The Gambia, 3 Oct. 2019. In some instances, the individual may be able to go to their country’s embassy or consulate to be issued the necessary documentation.

<sup>368</sup> Interview with Immigration Official, Banjul, The Gambia, 1 Oct. 2019; Interview with Gambia Commission for Refugees Staff, Banjul, The Gambia, 1 Oct. 2019; Discussions with LRRRC, Liberia, 23 Sep. 2019.

<sup>369</sup> Interview with Immigration Official, Banjul, The Gambia, 1 Oct. 2019.

<sup>370</sup> Currently, there is no SOP or formal process for regularizing someone who enters Ghana without documents/in an irregular manner. Interview with Government agency, Accra, Ghana, 18 October 2019.

*“There should be a legalization process – to go to Ghana Immigration Service and say ‘I want to stay.’ But what happens in reality is if the Immigration Service finds you and you came in irregularly, they will send you back. . . . The ones who are just sent back, which is the majority, are those moving informally and have little or nothing to do.” – UN agency in Ghana*

Similarly, when asked what would be the process if someone is stopped who does not have identity documents, an immigration official in The Gambia responded: “That person would be required to leave.”<sup>371</sup>

In other target countries, the approach to regularizing the stay after irregular entry is more relaxed. For example, in Liberia, efforts reportedly will be made to assist regularization through the relevant embassy,<sup>372</sup> and in Burkina Faso and Guinea migrants who entered irregularly may be able to regularize their status upon payment of a fee.<sup>373</sup>

*“[I]f they are ECOWAS citizens and don’t have proper documents, LIS will work with the embassy to regularize their status in Liberia.” – UN agency, Liberia*

While irregular stay is considered a criminal offence in Burkina Faso, Niger and Senegal, irregular stay seems to be tolerated, at least at some level, in practice in those countries.<sup>374</sup> Interviews in those countries also suggested that deportation does not occur very frequently – in many cases the authorities simply turn a blind eye to the presence of irregular migrants in their territory.<sup>375</sup>

Although *en masse* expulsion is prohibited, the 1986 Supplementary Protocol grants Member States the right to expel individual ECOWAS citizens in accordance with the laws and regulations applicable in the host Member State (Article 14). The grounds for expulsion are similar in some respects across the study target countries, but they are not harmonized at national level and range from the threat to public order and criminal behaviour (Burkina Faso, Niger, Senegal and Sierra Leone) to violation of immigration rules (Ghana, Guinea, Liberia and Mali).<sup>376</sup>

### *Inability to Access Banks and Other Money Transfer Agents*

Finally, a major obstacle in the region in terms of realizing the right to residence for ECOWAS citizens is the inability of migrants, refugees and asylum-seekers to access banks—whether to open accounts, take out loans, or receive money from a friend or family member. The study revealed that refugees, migrants and asylum-seekers in the region have little to no access to banks and in some target countries (e.g., Ghana,

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<sup>371</sup> Interview with Immigration Official, Banjul, The Gambia, 3 Oct. 2019.

<sup>372</sup> Interview with UN agency, Monrovia, Liberia, 24 Sep. 2019.

<sup>373</sup> ICMPD and IOM, 2015, A survey on migration policies in West Africa, p. 56.

<sup>374</sup> ICMPD and IOM, 2015, A survey on migration policies in West Africa, p. 56.

<sup>375</sup> Interviews conducted with non-government agencies in Burkina Faso, Niger and Senegal.

<sup>376</sup> ICMPD and IOM, 2015, A survey on migration policies in West Africa, p. 46.

Senegal) they reportedly cannot even access money transfer agents such as Western Union or Money Gram. One obstacle is that banks have “Know Your Customer” (“KYC”) processes for verifying the identities of their clients, which includes what forms of identification will be accepted by the bank.<sup>377</sup> The refugee card is not recognized as a valid form of ID for banking institutions and the banks are even less likely to accept the asylum-seeker attestation/documentation as a valid form of identification. For refugees, asylum-seekers and migrants who arrived without any identification, there is no access to formal banks.

*“Someone who has received the refugee card should be able to send money overseas and receive money at the bank, but sometimes the banks refuse because they don’t recognize the card. They ask the refugees to come back with a passport or another document but they don’t have those documents, so they can’t open a bank account or receive any money.” – NGO, Senegal*

An exception to this general rule was found in The Gambia, where GCR and UNHCR engaged the Central Bank about the problems refugees were facing without access to banks. The Central Bank of The Gambia wrote a letter to all the banks informing them that they need to accept the refugee card as a valid form of identification.<sup>378</sup> While this is an important step in terms of access, refugees interviewed during this study reported that most banks in The Gambia are not honouring the letter and still refuse to serve refugees – whether it is to open an account or receive money from a friend or relative.<sup>379</sup> Moreover, the Central Bank letter only mentioned refugees because they have an identification card, however, and thus asylum-seekers still cannot access banks.

In Ghana and Liberia, government authorities discussed the need for refugees to obtain the biometric national ID card as a way to have access to banking institutions:

*“By January 1st, [refugees] may not be able to open a bank account or buy a sim card. You have to use the country’s system. [Right now,] they have a UNHCR refugee card. That is dead. . . . Going forward, it will be very difficult for them to do banking business. . . . They can move about freely, but the databases that support complex services, it will be difficult for them because it won’t read the card”.* – Tiah Nagbe, Director of National Identification Registry, Liberia

As more ECOWAS Member States roll out the biometric national identity cards, it will become increasingly important to ensure that non-nationals intending to reside in these countries – including migrants, refugees, and asylum-seekers – are aware that they can obtain the biometric national identity cards to ensure their access to all associated services.

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<sup>377</sup> Interview with UNHCR Regional Cash Based Interventions Officer, Dakar, Senegal, 24 Oct. 2019.

<sup>378</sup> Interview with Isatou Gillen Dibba, Protection Assistant, UNCHR, The Gambia, 3 Oct. 2019.

<sup>379</sup> FGD with urban refugees and asylum-seekers, Greater Banjul, The Gambia, 3 Oct. 2019.

### 5.3.3 Establishment

While the right to reside and the right to establish one's self are closely related concepts, there were some issues identified during the study that more closely address the establishment phase (Phase III) of the Free Movement Protocol. Some of the core issue areas pertaining to the establishment phase are similar to – or necessarily stemming from – issues identified in the discussion on barriers refugees, asylum-seekers and migrants face in accessing employment in the target countries. The protective labour laws inhibit non-national, ECOWAS citizens' ability to establish themselves in another ECOWAS Member State. There are also administrative and financial hurdles involved in establishing oneself in another ECOWAS country despite the legal framework in place. And there is a general lack of awareness among refugees and migrants about documentation that could better serve them in terms of establishing themselves in the host country (e.g., a biometric national ID card). In addition, a lack of awareness among immigration officers about the documents that are available to refugees to travel between countries (e.g., the "Convention Travel Document") was reported during the study.

#### *Permit Renewals and Registration Requirements*

The resident and work permits that must be obtained by foreigners, including ECOWAS citizens, must be renewed on an annual basis. This means that for someone from Togo who wants to live and work and establish himself in Ghana, for example, he or she must apply every year for a resident/work permit and pay every year another fee for that permit. These administrative and financial requirements will likely deter ECOWAS citizens from establishing themselves through formal channels in the region.

In addition, even for those engaged in informal sectors, some countries have registration fees that must be paid once a "business" is making more than a certain amount of money. For example, refugees or migrants may be engaged in selling goods in the markets or on the streets – e.g., clothes, shoes, soaps. They can access this petty business, but "if the capital value reaches a certain amount, then they have to follow the legal framework. . . . When your capital [value of business] goes beyond 250,000LD [approximately US\$ 1,300<sup>380</sup>], you are required to get business registration to operate."<sup>381</sup>

*"[I]f you are non-Ghanaian and you want to engage in bigger selling, you have to register your enterprise so that you are captured statistically. After that, [you must obtain] a tax ID number." – MP, Ghanaian Parliament and ECOWAS Parliament*

*"Most of the people are interested in business—in petty business, selling commercial [items]. But what was discovered is that they make money, but the profit is being consumed for supporting the family and other expenses." – AIRD, Liberia*

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<sup>380</sup> Currency conversion calculated on 26 Nov. 2019.

<sup>381</sup> Interview with AIRD, Liberia, 23 Sep. 2019.

However, if a refugee or migrant wants to increase their capital, as noted earlier, they cannot access bank loans in certain countries, which will limit their ability to grow and sustain a business as a non-national.<sup>382</sup>

### *Barriers Specific to Asylum-Seekers and Refugees*

Very long delays in the refugee status determination (RSD) process across the target countries also serve as a barrier to full implementation of the free movement protocol. Many asylum-seekers participating in this study reported that they have been waiting one to three years for a decision on their application. For an asylum-seeker from Senegal in The Gambia, for example, such delay in the RSD process impedes that individual's ability to realize his right as an ECOWAS citizen to establish himself in another ECOWAS country.

Moreover, in order to establish oneself in that country, one must be able not only to enter the country and move about freely within that country, but also to come and go from the country as needed. Some target countries – including The Gambia and Ghana – have the Convention Travel Document (CTD) for refugees that want to travel beyond the borders. The CTD has the ECOWAS emblem and looks like a passport.

*“Ghana has introduced the ECOWAS passport . . . [with] the ECOWAS stamp on it. The Convention Travel Document is exactly the same; just the colour of the booklet is different. It is machine readable, biometric and . . . is ECOWAS compliant.”* – Tetteh Padi, Programme Coordinator, Ghana Refugee Board

However, the cost of the Convention Travel Document and a lack of awareness by immigration officers in the region about the CTD (which has an ECOWAS emblem on it) are additional barriers that refugees face in terms of establishment. A refugee from Côte d'Ivoire in Ghana reported having to use her old Ivorian national ID to travel to Mauritania and being asked by a Ghana Immigration official “who gave you that?” in reference to the CTD. She reportedly had to show her refugee card on the Ghanaian side and use her old Ivorian national identity card on the Mauritania side of the border.<sup>383</sup>

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<sup>382</sup> Interview with AIRD, Liberia, 23 Sep. 2019.

<sup>383</sup> FGD in Ampain Refugee Camp, Ghana, 16 Oct. 2019.

### **Persons at Risk of Statelessness**

For those refugees, asylum-seekers and migrants who fled their home country without identity documents or who lost them or had them confiscated during transit, they will be faced with even greater challenges should they wish to establish themselves in another ECOWAS country. The risk of statelessness for persons on the move is a significant issue in the region and tackling that issue continues to prove challenging for governments, UN agencies and other relevant actors. Ghana has not yet acceded to the **1954 Convention on the Status of Stateless Persons** or the **1961 Convention on the Reduction of Statelessness**, and many other target countries have not domesticated the treaties to operationalize them at the national level.

*“In Ghana, when it comes to statelessness, we are managing the people but without any legal framework. There is no proper international procedure that they are using.”* – Honourable Clement Kofi Humado, Member of Ghanaian Parliament and ECOWAS Parliament

Until migrants, refugees and asylum-seekers have the ability to access their rights as an individual, discussed in Chapter 2, and in particular the services identified in Chapter 3, in an ECOWAS country that is not their country of origin, they cannot effectively establish themselves therein.

## 6 Conclusion

The ECOWAS free movement framework has provided ease of mobility and migration in the region for decades and in recent years, ECOWAS Member States have paid increasing attention to the protection needs of migrants, asylum-seekers and refugees in West Africa. However, as this report has identified, persons on the move in the ECOWAS region encounter a number of challenges accessing essential services due to legal and practical impediments and a lack of information about their rights. The research conducted for this study identified barriers to services in terms of financial resources, language and discrimination, as well as implementation gaps in terms of protecting particularly vulnerable populations such as children on the move and victims of trafficking in persons.

Financial barriers were observed in all key service areas: in accessing healthcare, education, employment (e.g., for individuals who engage in petty business or wish to start one), housing and legal services. Interviewees and FGD participants in the target countries emphasized the financial barriers they face even in accessing those services that the governments nominally provide free – e.g., healthcare and education. Language barriers were identified in accessing health services, education and employment (both formal and informal). The research also identified instances of discrimination in the target countries that impact refugees, asylum-seekers and migrants' access to employment opportunities (in both the informal and formal labour markets), housing and to some extent healthcare. Discrimination in employment manifests in both national labour laws and policies that limit the number of non-nationals an employer can hire or impose additional taxes or requirements on employers who hire non-nationals, as well as in informal (*de facto*) discrimination—by employers refusing to hire foreigners, nationals paying less for goods sold by foreigners, and police harassing migrants selling goods in the markets.

The key implementation gaps identified during the study in terms of addressing protection needs of children on the move and victims of trafficking include: under-resourced agencies, an inadequate number of temporary shelters and inadequately trained staff – particularly in the area of psychosocial support, a lack of SOPs for the identification and referral of vulnerable children on the move and victims of trafficking, and a lack of coordination between relevant actors.

The recommendations set forth in the next chapter seek to address key barriers and access issues as well as the identified implementation gaps in terms of protection. A number of recommendations also encourage ECOWAS Member States to take steps to bring their national legislation in line with the regional framework.

# 7 Recommendations

## Law & Policy

- To the extent they have not done so, States should sign and ratify key conventions and instruments concerning the protection of migrants, refugees, and asylum-seekers. In particular:
  - The Governments of Liberia and Sierra Leone should ratify the **International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990**;
  - The Governments of The Gambia, Ghana, Guinea, Liberia, Mali, Niger, Senegal, and Sierra Leone should ratify **ILO Convention No. 97 on Migration for Employment (Revised), 1949**;
  - The Governments of The Gambia, Ghana, Liberia, Mali, Niger, Nigeria, Senegal, and Sierra Leone should ratify **ILO Convention No. 143 on Migrant Workers (Supplementary Provisions), 1975**.
- The Government of Ghana should ratify as a priority the **1954 Convention on the Status of Stateless Persons** and the **1961 Convention on the Reduction of Statelessness**.
- The Governments of Ghana, Nigeria and Sierra Leone should ratify as a priority the **General Convention A/C.1/01/03 on the Recognition and Equivalence of Degrees, Diplomas, Certificates and Other Qualifications in ECOWAS Member States**.
- In line with the policy recommendations coming out of the April 2019 meeting of ECOWAS Ambassadors in Uyo, Nigeria, ECOWAS Member States should prioritize the adoption of the **ECOWAS Regional Migration Policy** and corresponding plans of action to implement the recommendations of the Symposium on Asylum and Migration held in Dakar, Senegal in December 2017.
- Member States, including The Gambia, Ghana and Nigeria, should review and **amend outdated immigration legislation**, including provisions related to those persons classified as “prohibited immigrants” or “prohibited migrants” to eliminate barring entry or justifying expulsion based on mental illness and/or financial status.
- Member States, including The Gambia, Ghana and Liberia should **update their domestic labour laws** to eliminate discriminatory provisions with respect to other ECOWAS citizens. The Government of Ghana should afford asylum-seekers the right to work, in accordance with the 1951 UN Refugee Convention.



- UN agencies, the Red Cross and Red Crescent Movement and NGOs should conduct research on the impact of existing and new legislation on freedom of movement and migrant/refugee/asylum-seeker protection. There is concern, for example, about the potential impacts of migrant smuggling legislation on migrants, asylum-seekers and refugees, and the impact such legislation may have on recent gains in ensuring freedom of movement in ECOWAS.

### **Implementation/Procedures**

- If training and sensitization continues to prove insufficient to curb the practice of border police/immigration officials demanding illegal fees from migrants, asylum-seekers and refugees crossing border check points, then States should focus on strengthening enforcement mechanisms for those immigration officers operating outside the formal legal framework. For example, when state agencies receive reports of such conduct, they should open an investigation and more consistently pursue disciplinary action through internal agency disciplinary procedures.
- States should operationalize legislation affecting persons on the move through the development of national plans of action, national migration policies and SOPs. States, with support from UN agencies, the IFRC and Red Cross and Red Crescent National Societies, and NGOs, should identify priority areas for the development of new SOPs for the referral of victims of trafficking, children on the move and other vulnerable migrants to protection and support services.
- States, especially social welfare departments, with support from UN agencies, the IFRC and Red Cross and Red Crescent National Societies, should develop and/or strengthen frameworks on the return of migrants and refugees to provide and/or strengthen reintegration programmes and support services, particularly in the area of livelihood assistance and psychosocial support.
- States should ensure that migrants, refugees and asylum-seekers are included in their rollout of the national biometric ID cards; UNHCR should work with State authorities to obtain biometric ID cards for refugees.
- States should develop mechanisms for regulating Quranic schools. As a first step States should map the existing schools. States, with the assistance of UN agencies and/or NGOs, should develop Codes of Conduct for teachers and students at these schools as well as Learner Protection Guidelines and SOPs for reporting and addressing instances of abuse. Appropriate measures should then be taken with any schools not meeting the established standards.
- States, with support from UNICEF and other agencies, should develop processes for regulating and managing alternative care systems (e.g., foster care families)

for unaccompanied and separated children. States, with support from UNICEF and NGOs, should map the current alternative care systems, develop guidelines for fostering and adoption, and train social workers to monitor the families and the welfare of the child.

### **Training and Capacity Building**

- States, with support from UN agencies and the Red Cross and Red Crescent Movement, should train government staff on relevant legislation, including refugee law and child protection laws—e.g., the Departments of Social Welfare (or the equivalent), law enforcement and immigration authorities, including border police; develop ongoing, regular training on the ECOWAS Support Procedures and Standards for the Protection and Reintegration of Vulnerable Children on the Move and Young Migrants; ensure that training is delivered not only to senior ranking government officials in the capital cities, but also to officers of various ranks in the provinces, including at border areas and in remote parts of the countries.
- UN agencies, and the IFRC and Red Cross and Red Crescent National Societies should provide training for State authorities that are in contact with migrants, refugees and asylum-seekers are adequately trained to recognize needs (e.g. for psychosocial support and other health services). Training on the identification of vulnerable migrants should include training on the identification of cases of trafficking in persons and protection standards applicable to, for example, trafficked persons and children on the move.
- States, UN agencies, and the IFRC and Red Cross and Red Crescent National Societies, should strengthen the capacity of communities, especially in border areas, to identify and refer instances of trafficking in persons to relevant authorities and/or NGOs.
- UNHCR should build capacity of States' RSD processes through periodic technical trainings; States, with support from UNHCR if necessary, should add human resources to RSD departments to address backlogs and ensure that RSD is performed efficiently.
- UN agencies and the IFRC and Red Cross and Red Crescent National Societies, should support States to ensure that shelter managers and staff are trained in child protection best practices, as well as best practices in supporting victims of trafficking in persons. Where not already drafted, guidelines for the care of children in facilities should be developed, and all relevant staff trained in the guidelines.

### **Information and Awareness Raising**

- The Red Cross and Red Crescent Movement, as well as NGOs, should establish and/or expand information hubs and humanitarian service points, located on key migration routes, that provide migrants, refugees, asylum-seekers and returning

migrants with information on services along the way and at the destination, as well as basic assistance in the form of referrals.

- UN agencies, the Red Cross and Red Crescent Movement, and NGOs should continue to develop campaigns, posters and written material (e.g. flyers) that provide key information to people on the move, including available services and practical measures to prevent family separation. Involved agencies should organize a targeted distribution of information material, e.g. at border points, in foyers and shelters, in bus stations, and other transport hubs, and newly established information hubs.
- UN agencies, the IFRC and Red Cross and Red Crescent National Societies, should increase the use of technology (SMS messaging, mobile phone applications, etc.) to inform migrants, and would-be migrants, of available services on the migration routes and in destination cities/countries, as well as of protection risks along such routes.
- States, UN agencies, the IFRC and Red Cross and Red Crescent National Societies, and/or NGOs should develop national hotlines for reporting abuse and trafficking of persons and for the provision of information on services available to people on the move. Interpreters should be recruited, and staff and volunteers trained in referring exploited migrants, refugees and asylum-seekers to assistance.

### **Infrastructure**

- UN agencies, the Red Cross and Red Crescent Movement, and NGOs should support State authorities in building temporary shelters for migrants, refugees and asylum-seekers, including trafficked persons, in capital cities, regional towns, and border areas. Shelters should be established for women and young children, for men and adolescent boys, separately, while shelters that accommodate families should also be established to prevent family separation. This should be achieved at the same time as alternative care systems are developed and strengthened so that the aim is not the institutionalization of children as a protection response.
- UN agencies, the IFRC and Red Cross and Red Crescent National Societies, and NGOs should coordinate with existing shelters (both state-run and those run by humanitarian organizations) on the provision of services for migrants, refugees, and asylum-seekers, with a special focus on the provision of support and activities for children.

### **Resource Allocation**

- States, with support from UN agencies, the IFRC and Red Cross and Red Crescent National Societies, and NGOs should support alternative income generation activities (i.e. activities to diversify and/or supplement income), of migrants/refugees/asylum-seekers.

- UN agencies, the IFRC and Red Cross and Red Crescent National Societies, and NGOs should consider establishing and/or expanding cash transfer programmes for returnees to support their reintegration.
- States, with support from UN agencies, the IFRC and Red Cross and Red Crescent National Societies, and NGOs should consider providing and/or expanding reintegration support programmes for returnees and victims of trafficking.
- States should allocate more resources to legal aid institutions dedicated to assisting victims of trafficking with costs associated with prosecutions, as well as refugees and asylum-seekers in need of legal assistance.

### **Coordination**

- UN agencies, the Red Cross and Red Crescent Movement, and NGOs should map current migrant/refugee/asylum-seeker assistance programmes and protection initiatives to identify gaps in coverage and service provision as well as areas of programme overlap and duplication of efforts.
- States, with support from UN agencies, the IFRC and Red Cross and Red Crescent National Societies, should take steps towards the development of national referral mechanisms for the identification, protection, return, and reintegration of adult and child victims of trafficking to facilitate more effective designation of responsibility and coordination by state and non-state actors.
- UN agencies, the IFRC and Red Cross and Red Crescent National Societies and NGOs should work together and with State authorities in order to ensure that the humanitarian needs of vulnerable people on the move, particularly those in transit, are adequately met at all key points along migration routes – including through humanitarian service points, mobile clinics and other initiatives grounded in humanitarian principles.

### **Case management and child protection**

- States, with support from UNICEF, UNHCR, IFRC and Red Cross and Red Crescent National Societies, and NGOs, should conduct more thorough and regular needs assessments of migrant, refugee and asylum-seeker vulnerabilities and needs in their countries. The assessments should cover, *inter alia*, the estimated population of vulnerable migrants, refugees and asylum-seekers in the country, the number and location of existing case managers, and identify the remote areas of the country where there is, at present, little to no support available for vulnerable persons on the move.

- States, with the assistance of UN agencies, particularly UNICEF, should develop and/or strengthen comprehensive case management systems for the protection of children on the move, including SOPs for intake, case management and referrals.
- State social welfare departments should plan, in the medium to long term, to scale up training and coaching programmes on social work skills for all State shelter staff and case managers, and staff of police, immigration and other agencies that come into contact with child and adult migrants, asylum-seekers and refugees.

### **Engagement with the Private Sector and Donor Governments**

- States, with support from UN agencies, the IFRC and Red Cross and Red Crescent National Societies, should engage with banking institutions and other money transfer agencies to recognize the refugee card, asylum-seeker attestations, and national ID cards from other ECOWAS Member States for purposes of opening bank accounts and/or accessing money transfers sent from abroad.
- States, with support from UN agencies, the IFRC and Red Cross and Red Crescent National Societies, NGOs and CSOs, should sensitize business owners on the right to work for ECOWAS citizens as well as refugees and asylum-seekers from non-ECOWAS States, through, for example, radio campaigns, distribution of informative fliers, and organizing/hosting events to serve as platforms to bring together employers, government officials/policymakers, NGOs and refugees, asylum-seekers and migrants.
- UNHCR should advocate to the Government of Germany for removal of the restrictive age and family criteria attached to the DAFI scholarship programme.
- UNHCR should explore possible partnerships with universities, embassies and the private sector for additional scholarship opportunities for those refugees and asylum-seekers interested in pursuing higher education.

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# Annex 1 – Interviews and Focus Group Discussions

Table 1: *Key informant interviews conducted during research by type of actor*

Country	Government	UN agencies	IOs/NGOs/CSOs	Totals
Burkina Faso	0	1	2	3
The Gambia	4	4	3	11
Ghana	4	2	2	8
Guinea	3	3	1	7
Liberia	3	3	2	8
Mali	4	1	2	7
Niger	0	0	2	2
Nigeria	0	2	3	5
Senegal	0	1	4	5
Sierra Leone	0	0	3	3
Consultations with regional actors	0	4	5	9
<b>TOTAL</b>	<b>18</b>	<b>21</b>	<b>29</b>	<b>68</b>

Table 2: *FGDs and interviews with migrants, refugees and asylum-seekers*

Country	Description	Number of Participants		
		Refugees	Asylum-seekers	Migrants
The Gambia	FGD with rural refugee leaders (mixed gender)	11		
	FGD with rural refugees (women only)	7		
	FGD with urban refugees and asylum-seekers (mixed gender)	9	1	
	Group interview (LGBTI asylum-seekers)		3	
	Individual interviews		1	1
Ghana	FGD with Migrants (from ECOWAS region)			7
	FGD at Ampain Refugee Camp (women only)	12		
	FGD at Ampain Refugee Camp (men only)	8		
	FGD at Krisan Refugee Camp (mixed gender)	11	2	

	FGD at Krisan Refugee Camp (mixed gender)	15		
	FGD with asylum-seekers in Accra (mixed gender)		5	
	FGD with asylum-seekers in Accra (mixed gender)		5	
	Individual Interview	1		
Guinea	Group interview with returnees			2
	Individual Interviews	1		3
	FGD with migrants from Sierra Leone (mixed gender)			5
	Group interview with refugees from Sierra Leone	2		
Liberia	FGD with urban refugees (mixed gender)	10		
	Individual interviews in Bahn Settlement	4		
	FGD in Bahn Settlement (mixed gender)	9		
Mali	Individual Interviews with migrants			5
	FGD with migrants from Cameroon (mixed gender)			8
Senegal	Individual Interviews	1	3	
<b>TOTAL</b>		<b>101</b>	<b>20</b>	<b>31</b>

## Annex 2 – Treaty Ratifications

Table 1: *International Conventions Concerning Employment and the Treatment of Migrant Workers*

	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990	ILO Convention No. 97 on Migration for Employment (Revised), 1949 <sup>384</sup>	ILO Convention No. 143 on Migrants Workers (Supplementary Provisions), 1975 <sup>385</sup>	ILO Convention No. 182 on Worst Forms of Child Labour, 1999
Burkina Faso	2003	1961	1977	2001
The Gambia	2018	Has not ratified	Has not ratified	2001
Ghana	2000	Has not ratified	Has not ratified	2000
Guinea	2000 (a) <sup>386</sup>	Has not ratified	1978	2003
Liberia	Has not ratified <sup>387</sup>	Has not ratified	Has not ratified	2003
Mali	2003 (a)	Has not ratified	Has not ratified	2000
Niger	2009 (a)	Has not ratified	Has not ratified	2000
Nigeria	2009 (a)	1960 <sup>388</sup>	Has not ratified	2002
Senegal	1999 (a)	Has not ratified	Has not ratified	2000
Sierra Leone	Has not ratified <sup>389</sup>	Has not ratified	Has not ratified	2011

<sup>384</sup> ILO Convention No. 97 was followed by the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86).

<sup>385</sup> The supplementary provisions address *inter alia* abusive conditions and the promotion of equal opportunity and treatment of migrant workers.

<sup>386</sup> The notation "(a)" indicates that the country acceded to the treaty rather than ratified after signing.

<sup>387</sup> Liberia signed the ICMW on 22 Sep. 2004. See

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=en).

<sup>388</sup> Nigeria has excluded the provisions of Annexes I to III.

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312242](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312242)

<sup>389</sup> Sierra Leone signed the ICMW on 15 Sep. 2000. See

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=en).

## Annex 3 – National Migration Policies

Table 1: *National Migration Policies*

	Migration Policy in Effect?	Status of Draft Policy
Burkina Faso	No	Draft National migration strategy 2014 – 2025
The Gambia	No	A National Migration Policy has been drafted and validated at the technical level; it needs to be validated at the political level. <sup>390</sup>
Ghana	Yes <sup>391</sup>	
Guinea	No	No (National Migration Policy is reportedly planned)
Liberia	No	A draft policy was validated 5 years ago, but the process stalled. It now must be revisited and go through the validation process again. <sup>392</sup> There is no estimated timeframe. <sup>393</sup>
Mali	Yes <sup>394</sup>	
Niger	No	Draft National Policy on Migration
Nigeria	Yes <sup>395</sup>	
Senegal	No	Draft National Policy on Migration ( <i>Politique Nationale de Migration du Sénégal</i> , 2018).
Sierra Leone	Yes <sup>396</sup>	

<sup>390</sup> Interview with Immigration Official, Banjul, The Gambia, 1 Oct. 2019 (noting that the draft policy should be validated at the political level “very soon”).

<sup>391</sup> National Migration Policy for Ghana, 2016.

<sup>392</sup> Interview with International Organization, Monrovia, Liberia 24 Sep. 2019.

<sup>393</sup> Meeting with LRRRC, Monrovia, Liberia, 23 Sep. 2019.

<sup>394</sup> Mali adopted a national migration policy in 2014. It should be noted that the policy targets Malians abroad; however, it does take into consideration migrants in Mali. IOM, Migration governance profile: Republic of Mali, 2018, <https://migrationdataportal.org/sites/default/files/2019-07/Migration%20governance%20profile-%20Republic%20of%20Mali.pdf>

<sup>395</sup> National Migration Policy, 2015. In addition to the National Migration Policy, Nigeria has a National Labour Migration Policy.

<sup>396</sup> Sierra Leone has adopted a National Labour Migration Policy, 2017. While Sierra Leone adopted a National Labour Migration Policy in 2017, it does not appear to have a general national migration policy in place.

## Annex 4 – Select MMC 4Mi data

Table 1: *Did you witness or experience any sexual assault or harassment during your journey?*

	Female		Male		Total	
No	740	80.8%	2143	95.6%	2883	91.3%
Refused to answer	25	2.7%	22	1.0%	47	1.5%
<b>Yes</b>	<b>151</b>	<b>16.5%</b>	<b>76</b>	<b>3.4%</b>	<b>227</b>	<b>7.2%</b>
Total	916	100.0%	2241	100.0%	3157	100.0%

Source: 4Mi West Africa data (May-September 2019).

Table 2: *Did experience any physical abuse or harassment (of a non-sexual nature) during your journey?*

	Female		Male		Total	
No	710	77.5%	1881	83.9%	2591	82.1%
Refused to answer	21	2.3%	38	1.7%	59	1.9%
<b>Yes</b>	<b>185</b>	<b>20.2%</b>	<b>322</b>	<b>14.4%</b>	<b>507</b>	<b>16.1%</b>
Total	916	100.0%	2241	100.0%	3157	100.0%

Source: 4Mi West Africa data (May-September 2019).

Table 3: *Did you receive any of the following assistance during your journey?*

	Female		Male	
	Number	%	Number	%
I did not receive any assistance	530	58.05	1148	52.04
Shelter	290	31.76	856	38.8
Water	282	30.89	765	34.68
Food	246	26.94	643	29.15
Bathroom/washing facilities	143	15.66	374	16.95
Help to access money transfer (to receive money)	53	5.81	205	9.29
Blankets/sleeping bags	55	6.02	144	6.53
Medical assistance	48	5.26	143	6.48
Cash assistance	59	6.46	119	5.39
Clothes/shoes	42	4.6	91	4.13
Psycho-social support	48	5.26	66	2.99
Safe spaces for women	81	8.87	12	0.54
<b>Legal assistance (documentation, information on asylum procedure etc.)</b>	<b>12</b>	<b>1.31</b>	<b>30</b>	<b>1.36</b>

Source: 4Mi West Africa data (May-September 2019).

Table 4: *Which kind of assistance would have most helped during your journey?*

	Female		Male	
	Number	%	Number	%
Cash assistance	661	72.4	1449	65.68
Food	534	58.49	1089	49.37
Shelter	484	53.01	1030	46.69
Water	462	50.6	1007	45.65
Medical assistance	303	33.19	495	22.44
Blankets/sleeping bags	288	31.54	383	17.36
<b>Legal assistance (documentation, information on asylum procedure etc.)</b>	<b>190</b>	<b>20.81</b>	<b>477</b>	<b>21.62</b>
Bathroom/washing facilities	197	21.58	398	18.04
Clothes/shoes	248	27.16	293	13.28
Safe spaces for women	399	43.7	106	4.81
Psycho-social support	238	26.07	263	11.92
Help to access money transfer (to receive money)	138	15.12	284	12.87
Safe spaces for children	117	12.81	52	2.36

Source: 4Mi West Africa data (May-September 2019).