

Free Movement and Insecurity in Sub-Saharan Africa: Is Reviewing the ECOWAS Protocol on Free Movement the Way to Go?

A presentation at the International Conference on “Externalization of borders: Consequences for freedom of movement in Africa and right to asylum.

A polycentric approach against delocalization.”

Held in Abuja, Rome & Tunis on 19 – 21 May, 2021.

Organized by ASGI, NULAI, ASF, Cairo Institute & FAI.

ONYEKACHI UMAH, ESQ., LL.M, ACIArb(UK)

+234 803766 5878

onyekachi.umah@gmail.com

www.LearnNigerianLaws.com



The 33rd
SabiLaw
Lecture
Series

FREE MOVEMENT AND INSECURITY IN SUB-SAHARANAFRICA: IS REVIEWING THE ECOWAS PROTOCOL ON FREE MOVEMENT THE WAY TO GO?

A PRESENTATION AT THE INTERNATIONAL CONFERENCE ON
"EXTERNALIZATION OF BOARDS: CONSEQUENCES FOR
FREEDOM OF MOVEMENT IN AFRICA AND RIGHT TO ASYLUM.
A POLYCENTRIC APPROACH AGAINST DELOCALIZATION."

By **ONYEKACHI UMAH, ESQ. LL.M. ACIArb (UK)**

Lawyer | Arbitrator | Notary Public | Legal Awareness Expert
#SabiLaw #DailyLawTips #SabiLawLectureSeries
www.LearnNigerianLaws.com



19 – 21 May 2021
10:30 to 7:00pm daily

Abuja, Rome
& Tunis

Materials will be made
available on our website
www.LearnNigerianLaws.com

Organized by **ASGI, NULAI, ASF, Cairo Institute & FAI.**

Reach us via www.LearnNigerianLaws.com to speak
on rights and laws to your group/organization.

INTERNATIONAL CONFERENCE

Externalization of borders: consequences for freedom of movement in Africa and right to asylum

A polycentric approach against delocalisation

19, 20 and 21 May 2021

ABUJA - ROME - TUNIS

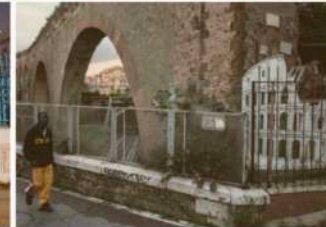


photo credits: Ginevra Sammartino

photo credits: Alessio Barbini

The conference is organized with the support of



In collaboration with



With the patronage of



Programme

*TIMES are in UTC+2 Rome

Wednesday 19th May 2021

10.30/11.00	Registration
10.30/11.00	Network building strategies to combat externalization policies Odinakaonye Lagi - <i>NULAI</i> Lorenzo Trucco - <i>ASGI</i> Karim Salem - <i>CIHRS</i> Atonio Mangarella - <i>ASF</i> Stefania Mancini - <i>FAI</i>
11.00/11.30	The new EU pact: hypothesis of Euro-African cooperation for the exclusion and emptying of the right to asylum Giulia Crescini - <i>Lawyer, ASGI Sciabaca&Druka project</i>
PANEL 1 THE CONSTRUCTION OF REGULATORY SYSTEMS AND MOBILITY CONTROL APPARATUS IN COUNTRIES OF ORIGIN AND TRANSIT: EUROPEAN INFLUENCES AND LOCAL INTERESTS	
11.30/11.50	The construction of regulatory systems governing migration in the Maghreb and the Sahel Delphine Perrin - <i>Researcher at IRD (Institut de recherche pour le Développement), Aix Marseille University. Co-coordinator of the international joint laboratory "MOVIDA"</i>
11.50/12.20	Criminalisation laws on migration from transit countries: the case of Niger and possible litigation at the ECOWAS court of justice Ibrahim Muktar - <i>Nile University Abuja</i> Ulrich Stege - <i>IUC International University college Turin, ASGI</i>
12.20/12.40	Unlawful detention as a tool to manage the transit of foreign citizens in Tunisia: the case of the decision of the Tunisian Administrative court Hélène Legeay - <i>Legal Director, World Organisation Against Torture (OMCT) Tunisia</i>
12.40/13.00	Migration management in Libya: the cycle of detention of foreign nationals rescued at sea and returned to Libya by the Libyan authorities Tarek Lamloum - <i>President of Belady Organization for Human Right</i> Hassan Kdno - <i>Coordinator of the Libya Platform, CIHRS and member of Al-Aman Organisation against Racial Discrimination</i>
13.00/13.30	Q&A
13.30/14.30	Lunch break
14.30/15.00	Follow the money: implication of the use of funds for the implementation of repatriation and border control agreements Sara Prestianni - <i>Euromed Rights</i>

15.00/15.40	Repatriation and the deconstruction of the safe country concept: the case of Tunisia and the Harraga action Romdhane Ben Amor - <i>Forum Tunisienne pour le Droits Economiques et Sociaux (FTDES)</i> Martina Costa - <i>ASF</i>
15.40/16.20	The Italy/Libya agreement: experiments in combating illegitimate cooperation between Italian and Libyan authorities Salah El Margani - <i>Independent Lawyer</i> Loredana Leo - <i>Lawyer, ASGI</i>
16.20/16.40	The Spanish Experiment: bilateral agreements and cooperation between Spain, Senegal and Mauritania Maite Parejo - <i>Lawyer in MAIO legal</i>
16.40/17.00	Q&A
17.00/17.30	Break
17.30/19.00	Workshop

Thursday 20th May 2021

10.30/11.30	Presentation of the workshops's results
PANEL 2	THE RHETORIC OF SALVATION IN MIGRATION MANAGEMENT: WHAT IMPACT ON MIGRANTS' RIGHTS? LIMITATION OF THE RIGHT TO ASYLUM
11.30/11.45	Consequences of externalisation on victim of trafficking's rights in countries of origin and transit Maria Grazia Giammarinaro - <i>Judge (Retired) - Former UN Special Rapporteur on trafficking in persons especially women and children</i>
11.45/12.15	Voluntary returns as disguised expulsions, the role of the IOM in limiting freedom of movement and the right to asylum Odinakaonye Lagi - <i>NULAI</i> Alice Riccardi - <i>University of Roma Tre</i>
12.15/12.40	Protection of victims of trafficking in Nigeria: the instrumental use of victim protection systems in the rhetoric of externalization policies Cristina Laura Cecchini - <i>Lawyer, ASGI project Sciabaca&Druka</i> Blessing Okoedion - <i>Weavers of Hope</i> Tabore Ighofume Ovorie - <i>Freelance journalist</i>
12.40/13.10	The role of IOs in building an inefficient asylum system in Tunisia and the subsequent contraction of the right to asylum Migreurop, speaker to be confirmed Other international actors on the ground: migration management and the role of ICMPD Sofian Philip Naceur - <i>Freelance journalist</i>

13.10/13.30	Q&A
13.30/14.30	Lunch break
14.30/15.00	The role of Italian NGOs in Libya: the use of cooperation funds for activities in detention centers and the complaint to the Italian Court of Auditors Tarek Lamoun - <i>President of Belady Organization for Human Rights</i> Alberto Pasquero - <i>Lawyer, ASGI Sciabaca&Druka</i>

PANEL 3	MOBILITY, FREEDOM OF MOVEMENT AND SECURITIZATION OF BORDERS WITHIN THE AFRICAN CONTINENT
15.00/15.30	The accountability of African countries for the violations stemming from the cooperation in EU externalisation policies Karim Salem - <i>Maghreb Advocate, Cairo Institute for Human Rights Studies (CIHRS)</i> Zeineb Mrouki - <i>Coordinatrice de Projets, ASF</i> NULAI, speaker to be confirmed
15.30/16.00	Africa and the Challenges of Insecurity: Implications for Continental Free Movement, armed conflict and Migration Control Maryam Abdoukadir - <i>Baze University Abuja</i>
16.00/16.30	Free Movement and Insecurity in Sub-Saharan Africa: Is Reviewing the Ecowas Protocol on Free Movement the Way to Go? Onyekachi Umah - <i>Lawyer and Human Rights Experts</i>
16.30/16.50	Instruments in sub-Saharan Africa for identification and civil registration: what impact on freedom of movement? Giacomo Zandonini - <i>Freelance journalist</i>
16.40/17.00	Q&A
17.00/17.30	Break
17.30/19.00	Workshop

CONTENTS

0. Profile of Onyekachi Umah
1. Presentation Plan & Outcome
2. Justification
3. Assumptions
4. Facts/Statistics
5. Overview of the ECOWAS Protocol on Free Movement
6. Regional Security and the ECOWAS Protocol on Free Movement
7. Rethinking the ECOWAS Protocol on Free Movement for a Secured Region
8. Recommendations
7. Conclusion



Profile of Onyekachi Umah



- Onyekachi Umah is a Legal Practitioner, Arbitrator, Notary Public and Legal Awareness Expert, with over a decade experience in human rights, criminal law and civil law in Africa.
- He holds a Master of Laws; a Master of Business Administration and he is a doctoral degree candidate. He also holds a certificate in Law of Contract from Harvard University. He is an alumnus of the United Nations Institute for Training and Research, Geneva, Switzerland; the United States Institute of Peace, Washington, D.C., USA and the Tekedia Institute, Boston, USA.
- Mr. Umah is the managing partner of a leading law firm; Bezaleel Chambers International and the Executive Director of Sabi Law Foundation (a not for profit and non governmental legal awareness organisation) with the project website; www.LearnNigerianLaws.com. He consults for national and international organisations, including the United Nations.
- He has published over 795 legal articles in diverse areas of law, delivered over 32 public lectures, anchored over 57 law radio/tv shows and supported several legal awareness projects, for free. Mr. Umah has published numerous works on human trafficking laws and also on the African Continental Free Trade Area (AFCFTA).

1. Presentation Plan & Outcome

1. Justification of presentation
2. Establishment of baselines
3. Highlights on the ECOWAS Protocol on Free Movement & the Insecurity in the region
4. Insights on mechanisms for curbing regional insecurity through the ECOWAS Protocol on Free Movement & other regional instruments.
5. Measurable Expected Outcomes: Participants will understand and explain the state of regional insecurity in the ECOWAS region and the possibility of fixing this through the ECOWAS Protocol on Free Movement. Participants will reach informed conclusions for a communique on this issue.



2. Justification



- The subject matter of our discussion is justifiable and relevant in this time, having in mind the high level of insecurity and abuse of human rights in Sub-Sahara Africa and the world at large.
- As will be seen in this work, many researchers argue that regional integration not only deepened and widened inter-governmental relationships, but also increased trans-national crime.
- Statistics shown in slides 7 to 11, validate the claim of an increase in insecurity in Sub-Saharan Africa (especially in West Africa), even as free movement is guaranteed by the ECOWAS treaty and other regional integration instruments.
- Discussions that will proffer solutions to the insecurity in the Sub-Saharan Africa are undeniable necessities at this time.

3. Assumptions

It is assumed that participants understand the following terms/concepts;

1. Africa
2. Sahara
3. Protocols
4. Human Rights
5. Security and Insecurity
6. Economic Community of West African States (ECOWAS)
7. Free movement of Persons, Residence and Establishment

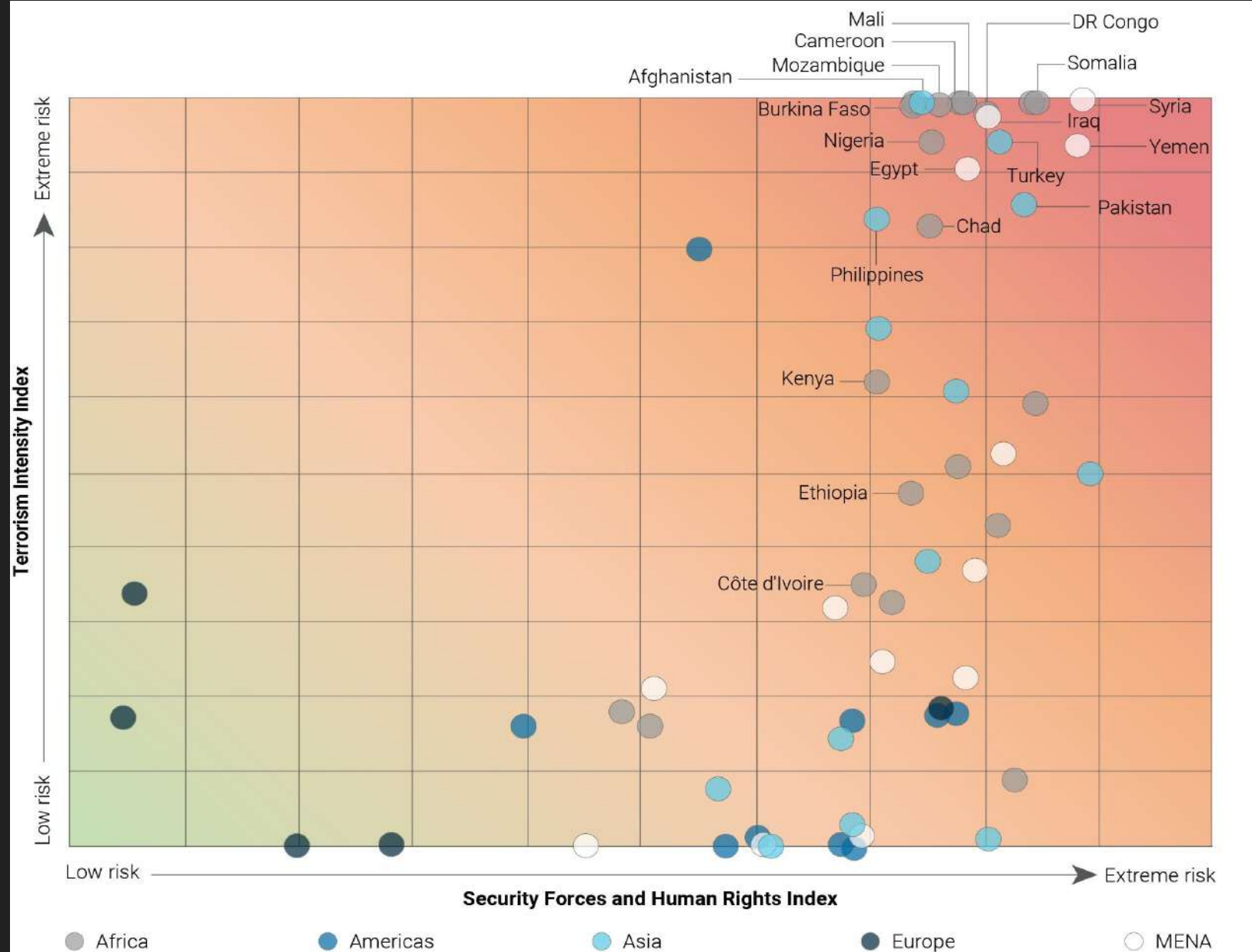


4. Facts & Statistics (1/3)



- There is insecurity in every part of the world.
- Life expectancy in Sub-Sahara Africa is 62 years but 74 years in the Middle East and North Africa. (World Bank)
- ECOWAS 2020-2024 Action Plan to End Terrorism has a budget of \$2.3 Billion USD.
- In 2019 Report, the AU identified “... the trafficking of arms and ammunition across land borders as the main type of illicit flow they are confronted with.” (WEAPONS COMPASS, Mapping Illicit Small Arms Flows in Africa)
- The Terrorism Intensity Index has 7 Sub-Saharan African countries as its 10 riskiest locations and the region as the worst performing, out of 198 countries. < Burkina Faso, Mali, Somalia, Cameroon (ranked 6th), Mozambique (7th), Niger (8th), DR Congo (9th) and Nigeria (11th). (Verisk Maplecroft)

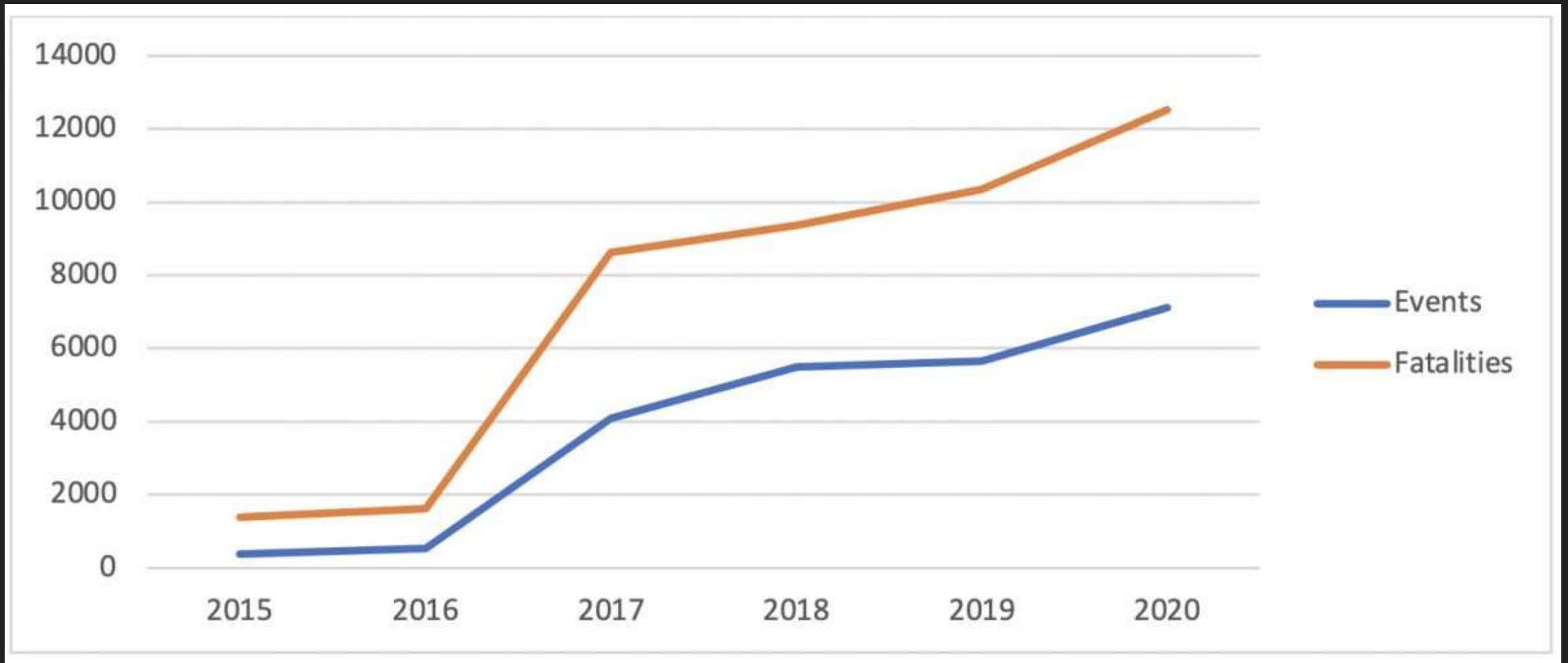
2020 Terrorism Intensity Index by Verisk Maplecroft



Facts & Statistics (2/3)

- In 2015, Africa had about 381 attacks and 1,394 deaths but this increased to 7,108 attacks and 12,519 deaths in 2020. (Armed Conflict Location and Event Data Project [ACLED])
- “The Turkana of Kenya, Dodoth of Uganda, and Toposa of South Sudan, for instance, have traded arms across the three countries’ borders, ..., in order to arm them- selves to protect their cattle ...” (WEAPONS COMPASS, Mapping Illicit Small Arms Flows in Africa)
- “In the Lake Chad area drug traffickers, illegal traders, and terrorist groups have been involved in weapons trafficking...” (WEAPONS COMPASS, Mapping Illicit Small Arms Flows in Africa)
- “Human rights groups have shown that government forces, in an effort to halt the spread of terrorist violence, have targeted civilians perceived as supportive of the extremists” (Joseph Mroszczyk and Max Abrahms).

Violence Against Civilians in Africa, 2015–2020 (by ACLED)



Facts & Statistics (3/3)

- Sub-Saharan Africa is the south of the Sahara and excludes Northern African countries of the Arab League (like, Algeria, Egypt, Libya, Morocco, Tunisia, Western Sahara, Sudan and Mauritania). Mauritania is excluded by the African Union definition, while the United Nations excludes Sudan.
- In the Sub-Saharan Africa are several regional economic communities (REC). Among the 8 recognized REC by the African Union, is; Economic Community of West African States (ECOWAS)
- ECOWAS is the economic group of the 15 West African countries (Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo). The exit of Mauritania in 2002 brought the number to the present 15. Visit ECOWAS via <<https://www.ecowas.int/>>

MAP of ECOWAS Member States (before the exit of Mauritania)



5. Overview of the ECOWAS Protocol on Free Movement (1/6)



- To achieve economic integration, four years after the formation of the ECOWAS, on 29 May 1979, member states adopted a Protocol for the Free Movement of Persons, Residence and Establishment within the region.
- The 1979 Protocol A/P.1/5/79 and its four (4) supplementary Protocols, make up the body of regional law on ECOWAS Free Movement of Persons, Residence and Establishment.
- On 29 May 2019, the ECOWAS celebrated the 40th anniversary of the Protocol and its advancement of intra-regional mobility and economic development. In 9 days from today, the Protocol will be 42 years.
- The 1979 Protocol and its supplementary Protocols will be considered in brief.

Overview of the ECOWAS Protocol on Free Movement (2/6)

1. 1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment

- The 1979 Protocol initiated the right to community citizens of ECOWAS to enter, reside and establish economic activities in the territory of member states (abolition of visa).
- Citizens where to enter with valid travel and health documents but member state has right to refuse admission of community citizens deemed inadmissible under domestic laws of the member state.
- It made conditions for expulsion of a community citizen.

Overview of the ECOWAS Protocol on Free Movement (3/6)

2. 1985 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

- Mandates member states to provide travel documents for their citizens
- Creates additional requirement for the treatment of persons being expelled.
- Also creates protections for illegal immigrants
- Provides sub-regional co-operation for the purpose of Preventing or Reducing the Flow of Illegal Immigrants.

Overview of the ECOWAS Protocol on Free Movement (4/6)

3. 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence)

- Further mandates member states to grant right of residence to community citizens to seek and maintain income yielding employments.
- Condemns mass expulsion of community citizens, however, allows individual expulsion on certain conditions; like national security, public order, public health and breach of essential residence conditions.

Overview of the ECOWAS Protocol on Free Movement (5/6)

4. 1989 Supplementary Protocol A/SP.1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment

- This amended Article 7 of the 1979 Protocol, to now allow member states to amicably resolve disputes by direct agreement, where dispute is arising from the Protocol on free Movement.
- Failure to resolve dispute amicably, will prompt a fact finding mission of 3 member states to investigate the complaint and send report with a view of finding solutions.

Overview of the ECOWAS Protocol on Free Movement (6/6)

5. 1990 Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right to Establishment)

- This defines the right of establishment, allowing community citizens and their businesses to be established in territories of the member states, without discrimination from such member states.
- It prohibits nationalization and confiscation of property of community citizens and then guarantees compensation. The exception to this, is where there are issues of public health, security or public order.
- In reality, only the 90 days visa-free-entry seem to have been enforced across ECOWAS states, while the right of Residence and Establishment are poorly enforced.

6. Regional Security and the ECOWAS Protocol on Free Movement (1/4)



- As shown in the previous slides on Facts/Statistics, West Africa (the home of ECOWAS) has huge security challenges. So, what role has the ECOWAS Protocol played in the insecurity in the region?
- 1. "... regional arrangement or the other and this has further helped in facilitating the activities of transnational criminal activities." (Opanike, A.)
- 2. The aims and objectives of the ECOWAS Treaty are silent on regional security. (Revised ECOWAS Treaty, 1993)
- 3. However, Article 58 of the ECOWAS Treaty focuses on regional security and calls for consultations; dispute prevention and resolution; regional peace and security observation system; and peace keeping forces.
- 4. The ECOWAS Treaty is to be implemented via Protocols, and so far the ECOWAS has made several protocols on issues of interest; including free movement and regional security.

Regional Security and the ECOWAS Protocol on Free Movement (2/4)

○ Impact of the ECOWAS Free Movement Protocol on Regional Security;

1. The 1979 Protocol and the other 4 supplementary protocols guaranty entry, residence and establishment, and as such plays a huge IN-DIRECT role in internal conflicts and trans-border crimes in the ECOWAS zone. (Bola A. Akinterinwa).
2. Insecurity in West Africa, includes; armed conflicts, smuggling, armed robbery, human and drugs trafficking, proliferation of illegal arms, banditry, terrorism & jihadist movements. (Victor Adetula)
3. “ ... though ECOWAS prides itself as a community that allows for the free movement of goods and people, this has inadvertently aided trans-border crimes.” (Bukola Ejiwale)
4. Nigeria has the 3rd place (after Afghanistan and Iraq) out of 135 countries on the 2020 Global Terrorism Impact.

Regional Security and the ECOWAS Protocol on Free Movement (3/4)

5. "... unhindered movements of goods, and people translate to unchecked proliferation of Small Arms and Light Weapons" (Bukola Ejiwale)
6. The preamble to the CONVENTION ON SMALL ARMS AND LIGHT WEAPONS, THEIR AMMUNITION AND OTHER RELATED MATTERS recognizes that illegal arms "have been seen to have negative effects on the security of each country in the sub-region, human security, international humanitarian law, sustainable development, and human rights;"
7. The Free Movement of armed Fulanis from the northern hemisphere of West Africa, in search of water and market has occasioned armed conflicts, in ECOWAS countries like; Nigeria, Ghana, and Cote d'Ivoire. (Bamfo, 2013)
8. "In the three-border area shared by Burkina Faso, Mali and Niger, terrorist groups are forcing thousands of people to flee" (United Nations, 2020)
9. West Africa has Al-Qaeda in the Islamic Maghreb in Mali and the Boko Haram in Nigeria.

Regional Security and the ECOWAS Protocol on Free Movement (4/4)

- **ECOWAS Protocols affecting Regional Security (aside the Free Movement Protocol), include;**
 1. CONVENTION ON SMALL ARMS AND LIGHT WEAPONS, THEIR AMMUNITION AND OTHER RELATED MATTERS. Designed to prevent, combat and eradicate the illicit manufacture and excessive accumulation of small arms and light weapons, trafficking, detention and use of such arms.
 2. PROTOCOL A/SP.3/5/81 RELATING TO MUTUAL ASSISTANCE ON DEFENCE.
 3. PROTOCOL A/P.1/12/99 RELATING TO THE MECHANISM FOR CONFLICT PREVENTION, MANAGEMENT, RESOLUTION, PEACEKEEPING AND SECURITY.
 4. PROTOCOL A/SP1/12/01 ON DEMOCRACY AND GOOD GOVERNANCE SUPPLEMENTARY TO THE PROTOCOL RELATING TO THE MECHANISM FOR CONFLICT PREVENTION, MANAGEMENT, RESOLUTION, PEACEKEEPING AND SECURITY.
 5. CONVENTION A/P.1/7/92 ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS
 6. PROTOCOL ON NON-AGGRESSION, 1978

7. Rethinking the ECOWAS Protocol on Free Movement for a Secured Region (1/2)



- Can the ECOWAS Protocol on Free Movement also, solve the insecurity in the West African region?
- While the Protocol on Free Movement increased mobility, the failure of member states to sincerely and effectively implement the free movement protocol and the regional security protocols have increased regional insecurity. Remedying this will include;
 1. Full & sincere implementation of the Protocol and establishment of national monitoring committees.
 2. Massive documentation & issuance of travel documents to citizens by member states
 3. Harmonization of immigration and emigration forms and charges

Rethinking the ECOWAS Protocol on Free Movement for a Secured Region (2/2)

4. Free legal awareness for citizens and agents of member states on the protocols
5. Revocation of the Inadmissibility Rights of Member States (Art. 3, 1979 Protocol)
6. Limitation of the discretion for Expulsion based on breach of essential residency conditions
7. Increased sanctions for mass expulsion and boarder closures
8. Revocation of the silence on Refugees Support
9. Easy local integration of refugees
10. Sub-Regional prevention and reduction of illegal immigration
11. Broader Regional and bilateral Agreements to support free movement protocols (AFCFTA)

8. Recommendations



1. Member states should sincerely review and implement the ECOWAS Protocol on free movement.
2. In line with the ECOWAS Protocol on Non-Aggression, member states should sincerely condemn and fight terrorists and bandits feasting on some member states.
3. ECOWAS Standby Force (ESF) should be more specific, active and responsive.
4. ECOWAS countries should seek industrialization to increase national revenue, support to ECOWAS and control of illegal migrations.
5. The United Nations, the African Union and allies of West Africa should sincerely support the ECOWAS 2020-2024 Action Plan to End Terrorism.

9. Conclusion

“On the schema of the ECOWAS is security, among other things. Without regional security, there cannot be regional economic integration. Where the Protocol on free movement is not effectively implemented and constantly modified to reflect regional realities, the objectives of the treaty will be buried on the same ground were they were planted. West Africa must review its protocols, seek sincere alliances as well as embrace effective and honest implementation of treaties, protocols and agreements.”

Sunday, 16 May 2021.

Chez Moi, Abuja.

Thanks to all participants and the organizers of this conference for this great opportunity.

Thanks to my awesome team for their support in this work:



The 33rd Sabi Law
Lecture Series
www.LearnNigerianLaws.com

Reach us via www.LearnNigerianLaws.com to speak
on rights and laws to your group/organization!

