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How freedom of movement infringes on the right to leave

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This article contributes to discussions that problematize the recent proliferation of soft law instruments in relation to international migration. The Global Compact for Migration has placed soft norm instruments more formally on the agenda of plausible tools with which to regulate people's movement. I am contributing to these discussions by engaging with the question of how the amalgamation of soft and hard law contributes to and impacts on legal effects, using a postcolonial feminist lens. I do so by focusing on the interaction between freedom of movement and the right to leave in the ECOWAS area, drawing on original research material collected mainly in Abuja, Nigeria, but also in Senegal, Guinea, and The Gambia. It is argued that freedom of movement provisions, as they are promoted by the ECOWAS and largely funded by inter-governmental organizations and European donor countries, end up infringing the right to leave. In a first step, existing norms at international, continental, regional, and national level are discussed to prepare the ground to answer the question how such infringing is done. From this step, I conclude that the triple layers of legal instruments, political instruments, and programming are impairing the intent of the right to leave in the way that a politico-legal landscape is constructed within which programs operationalize freedom of movement. The next step then looks at freedom of movement programming at regional, national, and local levels by asking about the subjectivities that are created—for example the "potential migrant"; by shedding light on practices of resistance—for example in how national governments use diplomacy to disengage; and by highlighting how "home patch" talk renders those potential migrants leaving not just implausible but suspect. It is found that, in the legal and political context of West Africa, soft norms thrive. The GCM constitutes an unhelpful list of random contradictory approaches that orient ideas, policy initiatives, programs, and ultimately people, toward being fixed in place, rather than being able to leave and to move freely should they want to. This happens in-country when people have not yet begun to move.

KEYWORDS

freedom of movement, right to leave, potential migrant, norm-making, ECOWAS, postcolonial feminism, containment, GCM

1 Introduction

> … it is not simply that a part of African history lies somewhere else, outside Africa. It is also that a history of the rest of the world, of which we are inevitably the actors and guardians, is present on the continent. Our way of belonging to the world, of being in the world and inhabiting it, has always been marked by if not cultural mixing, then at least the interweaving of worlds, in a slow and sometimes incoherent dance with forms and signs that we have not been able to choose freely but which we have succeeded, as best we can, in domesticating and putting at our disposal (Mbembe, 2020, p. 59).

In the wake of independence from colonialism, influenced by ideas of Pan-Africanism, the Economic Community of West African States (ECOWAS) came into being in the 1970s. One provision in the ECOWAS Treaty was freedom of movement. What freedom of movement meant was, however, contentious (Comaroff, 1998). To the drafters and signatories of the first ECOWAS Treaty, it came to be carefully circumscribed in economic terms. What it however meant in the context of de-colonizing and establishing independence can best be understood by drawing on Mbembe's succinct observation of recollections of pre-colonial history "of African societies [looking back on] a history of people in perpetual movement throughout the continent. [. . .] It is this very culture of mobility that colonization once endeavoured to freeze through the modern institution of borders" (Mbembe, 2020, p. 58).

I want to problematize a contemporary version of such interweaving of worlds, especially in their "slow and incoherent dance", in the context where—arguably—African people need to domesticate, and put at their disposal, norms not entirely freely chosen. The problem I want to pose lies in such freezing and, more recently, the regulation of movement of people through soft norms. This is not a phenomenon unique to West Africa. Since the 1980s, significant change came into being in the way that mobile people are seen and acted upon in the world (Oelgemöller, 2011, 2017). But even if we consult the past, forces pull in different directions when looking at freedom of movement as derived from what is today known as the right to leave. Significant, to me, are themes of allegiance out of obligation and being subject to someone or constituting a resource for someone. More recent expressions would focus on solidarity with one's nation. These themes weave through the provision and interpretation of the scope of the right to leave today and inform the regulatory provisions of freedom of movement.[1]

1.1 The past from a European perspective as starting point?

The right to leave has history, which is summarized below to highlight both the racialized and gendered elements that still reverberate. Cornelisse (2008) dates the first important indication of the right to leave to the 1215 Magna Carta which established—albeit briefly—that it is lawful for any man to leave and return to the kingdom conditional on the preservation of allegiance and only if there was no war to be fought. The feudal orders established the person as subject and thus bound a person to the lord as serf unless they bought themselves out (Dowty, 1989). This was not just a person—it was man. This is relevant, as when the move to absolutism was made, men became subject to the king and hence were at the monarch's disposal (Kimmel, 1988, p. 9). Men were both an economic and a military resource. In this way, the logic of freedom of movement for the purpose of leaving became once more unintelligible. It was implausible in terms of allegiance and impractical in terms of constituting resource. Yet, while the notion of the right to leave disappeared, Zolberg (1992) narrates how immigration (that is a sense of freedom of movement) was welcomed during the time.

Staying with Cornelisse's (2008) chronology, the Enlightenment introduced natural rights: the logic now became that the human (still a man and still white, for the most part) has choice (La Vopa, 2017). Self-determination became meaningful, with leaving as a right as its ultimate expression.

The right to leave was now considered as a basic obvious right. However, not for everyone, it is at this point that the past shows itself not just as gendered but also racialized. The right to leave was for white people, establishing and expanding colonialism. Yet, it was not for colonial subjects who were understood much like people under feudalism and absolutism: a resource that owed allegiance, not rights and freedoms. This perspective was rooted in the theories of enlightenment (Henderson, 2013) and strengthened by the few exceptions to the rule, in which women insisted on place and voice and in which ambassadors from Asia or Africa were cited to show how patriarchy, colonialism, and imperialism were benign (Grovogui, 1996; Taylor, 1999 as discussed by Gathii, 1998).

In time, crystallized through World War I, the passport was introduced and redefined the right to leave by requiring documentation for lawful exit (Torpey, 2000). It is also at this point that the narrative of the tight link between the person, the territory/sovereign authority, and the passport is constructed and engages in discourses that begin to mythologize sovereignty (Cocks, 2014). The link is constructed out of Victorian era narratives of homogeneity and purity of blood that came out of the late Middle Ages and fine-tuned racist sentiments, before the biologically based construction was re-created as a cultural construction justifying the ongoing project of differentiation between white, brown, and black people (Young, 1995). The right to leave for the majority of colonial subjects became risky and unthinkable for colonial administrations, as the purity of the white race was to be protected. Emigration from colonial territories became suspicious and associated with (moral if not also legal) criminality. Exceptions to this were some elites, civil servants, and students. As Gathii (1998) explains, it was important in "weak" anti-colonial scholarship to be able to cite exceptions which aid in drawing boundaries for inclusion and exclusion.

During the 1920s and 1930s, the right to leave became restricted again, not just because there was perceived population scarcity, but because the logic of restricting the right to leave had become tied to the idea of nationalism in which belonging was defined by blood, then culture, and solidarity with one's people. The allegiance was now to the community. This is also often reflected in the way human mobility is studied (Düvell, 2021). In Europe, in particular, leaving was constructed as an act of disloyalty which saw violent expression in the USSR as it formed since the early 20th century. After the Second World War, walls were built to keep people, largely assumed to be men, in and the right to leave was very differently applied, as Keely (2001) discusses, depending on where people wanted to leave from: open arms for communist refugees, but not for the majority world.

Since then, the right to leave has stayed bifurcated as something that is somewhat dubious in the case of the majority world, with an assumption that the mobility of men is particularly problematic, or an entitlement that is expected in the case of the white minority world, but this would be too simplistic;

1 In what follows I will focus on the right to leave as such, rather than on the right to return.

the right to leave is also deeply ambivalent. Walls today (physical, bureaucratic, and conceptual) are built not so much to keep people in, but to keep them out, yet the themes in which questions of leaving are framed are still allegiance and subjectivity.

1.2 West Africa today

This history chimes when focusing on more recent norm activity in West Africa and specifically on the space of encounter between the regional ECOWAS level and governments in the region as they become entangled with inter-governmental organizations (IGOs) and donor governments, especially from Europe [both in their embodiment as European Union (EU) and as individual European government agencies]. For the past two decades, there has been activity at the regional level in West Africa between ECOWAS and the EU, as well as regional governments and the International Organization for Migration (IOM) to establish something akin to a migration policy and to embed freedom of movement provisions more actively (Adepoju et al., 2010; Okunade and Ogunnubi, 2021; Yeboah et al., 2021; Bisong, 2022). In this context, the West African community has discussed freedom of movement as an important norm, establishing allegiance and subjectivity formally, since the early 1970s and enshrined it in the ECOWAS Treaty in 1975. From independence, West African countries were agreed on freedom of movement as an important regional norm, yet, in practice, implementation was varied: for example, at independence, Ghana engaged in large-scale expulsions whilst Senegal and Guinea started out assuming that all who were in the country were citizens (Peil, 1971, p. 214). At the same time, neighboring West African countries often reacted with generosity and compassion, Guinea in the 1990s being a case in point (Black and Sessay, 1997). Okolo (1984) observes that mobility was regulated in West Africa, but formal norms were not, or erratically enforced and sometimes violently engaged with through expulsions. Thus, like in many countries and despite, in this case, the intended commitment to freedom of movement across the West African region, the regulation of mobility, and hence freedom of movement, was problematic.

In the early 2000s, the IOM began regional processes to engage governments of the majority world in thinking about migration policymaking (Klein Solomon, 2005) and regional harmonization. The impetus had come from EU countries which re-defined migration in the 1980s to a problem of access (Oelgemöller, 2011). This shift to pre-departure checks and elaborate visa requirements is essentially an extension of European borders into Africa. It influenced assessments of legitimacy, if not legality, of allegiance, subjectivity and residence more broadly. It was this unfolding that gave birth to a very different reading of the il/legal migrant that cannot be found in any of the formal international legal instruments available until recently. It came to target mainly (young) men from non-white countries.

1.3 Norms

In West Africa, a twin process began to push countries to formulate migration policies at the same time as the EU engaged in norm activities supporting freedom of movement in regions such as West or East Africa. The logic to be implemented in the ECOWAS area was tested in the EU's Schengen negotiations, which began a good 10 years after freedom of movement had been enshrined in West Africa: Freedom of movement required categories defined and established in law and practice as to who was legitimately privileged and who was not (Oelgemöller et al., 2020). Knowledge, in this case, is also material practice. Law is not separate from those who produce it and those being produced by it; it is an embodied spatial and relational materiality (Käll, 2020). The EU funds freedom of movement work with governments but imposes its specific articulation and practices. The IOM engages by defining categories and practices and thus establishes the discursive other, not just the "illegal migrant", but, more diffusely, mechanisms by which to know migration and to place people into categories that become subject positions that are acted on. The problem is that these categories, because they are diffuse, are malleable and random. In 2019, a report to a German governmental development institute proposed that Europe's interventions regarding migration in West Africa undermine ECOWAS activities to establish freedom of movement by overemphasizing the notion that what migration occurs in West Africa is illegal and hence needs to be countered (Castillejo, 2019).

I will show that the engagements with soft norms around freedom of movement provisions in West Africa constitute what Mbembe in the quote above observes: "… the interweaving of worlds, in a slow and sometimes incoherent dance with forms and signs that we have not been able to choose freely but which we have succeeded, as best we can, in domesticating and putting at our disposal" (Mbembe, 2020, p. 59).

These worlds also include the international community. Harmonization was not only sought at the regional level. The latest expression of category establishment is the Global Compact for Migration (GCM) which holds a provision in Objective 5, para. 21(b), to facilitate free movement regimes. What I will argue here is that there is an interweaving of freedom of movement provisions with newly established migration policy and the right to leave that leads the operationalization and implementation of soft norms established in the GCM, and between the EU and ECOWAS via entrepreneurship programs, to de facto infringe the right to leave—not at the point of entry but at the point of exit from the country of residence. The infringement does not only happen in litigable ways but also because the legitimacy of mobility is undermined by political instruments and imposed programs.

I am interested not only in how this is deeply problematic but also in the instruments that become entangled between the local, the national, the regional, the continental, and the international. These instruments are varied and range from different orders of hard law to various orders of soft law, as will be discussed below. I do not offer so much a legal analysis as a political reading of a scenario in which these instruments make noteworthy appearances (Shelton, 2008). I draw on interviews with international and regional IOM staff, permanent and seconded ECOWAS staff, and

other actors involved, as well as on interview material conducted by MigChoice colleagues in my team. Interview partners were, in the majority, male; though at senior level and specifically that of UN agencies, the majority of interviewees were female. Positionality matters, however, as this is a small community: I have de-identified respondents as far as possible. Where either gender or background are relevant in the analysis, I will point to the interviewee's positionality. Archival and documentary data collected from an IOM repository that were kindly opened during the data collection phase of our project[2] and general observations while interacting with the organizations under discussion also inform what follows below, though is not explicitly drawn on. In the context of this project, we have conducted research in Guinea, The Gambia, and Senegal, as well as at ECOWAS in Abuja between 2019 and 2021.

Below, I will begin by outlining the feminist framing integrated with postcolonial thought that guides my reading of the literature and the data in Section 2. In Section 3, the argument is structured by discussing the triple layers of legal instruments, political instruments with legal capacity, and programming which bears normative elements of ordering and categorization. In this section, I conclude by establishing that not all is well with the right to leave and its derivative freedom of movement as the latter is declared and instituted in such a way that it infringes on the right to leave. Section 4 engages with the question how the infringing is actually done. First, the section shows how a specific subjectivity is established that is inescapable for any person found to be habitually living in the ECOWAS area which informs the norm-making process. Second, the section shows how national governments resist such norm-making. Third, the section shows that contradictions in positionalities allow intervention in the implementation of freedom of movement provisions by the EU to infringe the right to leave through entrepreneurship programs, which are structured such that leaving "the home patch" would undermine solidarity with the nation, i.e., that allegiance is broken. How the infringing is done is by using soft norms as promoted through political instruments and programming to create a discursive environment underpinned by material practices to inscribe the prohibition to emigrate on the bodies of those trained. Section 5 argues that, in conclusion, soft norms are not always a helpful way out of legal paralysis, as some propose, but an instrument to undermine such hard provisions as we have to advocate for the rights of "potential" mobile people acting on their wishes.

2 Theoretical approach and data

When I began to think about soft norms and started reading the literature (Shaffer and Pollack, 2012; Pauwelyn et al., 2013), I was hoping that their extended and increasingly extensive use might help disruption and resistance to the most perverse outcomes of policy. But digging deeper (Frasca, 2021), I find that—at least in the context of the legal landscape that is engaged here—soft norms, to the contrary, are deeply problematic. The data I will draw on were generated by the MigChoice project. I am also drawing on legal texts to locate the problem in the literature and orientation. Much of the doctrine I am engaging was made in the white minority world and applied in the non-white majority world. For that reason, I will be guided by postcolonial thought as discussed by Mbembe. However, as we have already seen in the introduction, there is a gender dimension to the problem I am posing, and thus, I will weave Mbeme's thought with Sarah Ahmed's thinking to provide a lens for analysis.

> Postcolonial thought is [. . .] the product of the encounter between Europe and the worlds it once made into its distant possessions. In showing how the colonial and imperial experience has been codified in representations, divisions between disciplines, their methodologies and their objects, it invites us to undertake an alternative reading of our common modernity. It calls upon Europe to live what it declares to be its origins, its future and its promise, and to live all that responsibly. If, as Europe has always claimed, this promise has truly as its object the future of humanity as whole, then postcolonial thought calls upon Europe to open and continually relaunch that future in a singular fashion, responsible for itself, for the Other, and before the Other (Mbembe et al., 2006, p. 129).

Postcolonial thinking, here, is "for a politics of the fellow-creature" (Mbembe et al., 2006, p. 119)—it is future-oriented. Mbembe outlines how postcolonial thinking needs to proceed via a critique of the cruel effects of European claims to reason, humanism and universalism (Mbembe et al., 2006, p. 117) through the myriad ways it racializes all but itself as inferior. It is a critique of force, rather than power, showing the law is used to begin and maintain violence and wealth as a means of exploitation and elimination (Mbembe et al., 2006, p. 118–119). Finally, postcolonial thought is a way of showing that identity arises from multiplicity and dispersion. There is co-constitution in the relationship between colonized and colonizer by "ellipsis, disengagement and renewal" (Mbembe et al., 2006, p. 119).

Drawing the imaginary and textually discursive out is important, but discourse is live and material. It certainly is for those who are intervened with. I therefore address the politico-legal landscape as something that has bodily and material existence. This is not just in the sense that much law talks about "corpus" but more closely in the sense that these instruments are integrated into and expressed through bodies that are gendered and racialized. Such bodies, by way of the politico-legal spaces they inhabit, are entangled with this landscape: a space that orders and orients bodies as a result (Ahmed, 2010). With this, I am thinking of the consultant, the diplomat, or the migrant who all embody the wider space in which human mobility is regulated and in which regulation is made. They orient and are oriented toward or away from (Ahmed, 2006). This is important not least because the space is used to freeze a body into a particular direction and the material practices engaged in this dance achieve and annul demarcation. In other words, the hard and soft norms—which amalgamate and cannot be delineated easily, are not separate from those who produce them and those who are produced by them—are entangled in the space that infringes on the right to leave.

I will use body, space and entanglement (Käll, 2020) as my conceptual tools to tease out the orienting of bodies achieved by norm development and implementation in West Africa.

2 See Funding statement.

Ahmed (2006, p. 552) notes how "bodies are [...] shaped by contact [...] with 'what' is near enough to be reached. [...] What gets near is both shaped by what bodies do and in turn affects what bodies can do". Such specific embodiment orders bodies in space as it mediates and contains relations against a background: the norms (the incoherent interplay between hard and soft norms as they are expressed by legal political or programming instruments) that embody force sustained by patriarchal, racist and ageist histories and hierarchies. Such mediation and containment is a political process formalized into a particular shape and institution (Ahmed, 2006). "We are [...] orienting ourselves toward some objects more than others, including physical objects [...] but also objects of thought, feeling, judgement and objects in the sense of aims, aspirations and objectives" (Ahmed, 2006, p. 553). Such orienting then constitutes a negotiation about who and what finds legitimate place where. Bodies and spaces are entangled, raising the question of where each ends. How is demarcation arrived at or annulled to orient bodies in a particular direction, toward a particular time, and into a particular character? The legal texts and the literature help situate the discussion of the interview data that will make my argument tangible.

3 The right to leave in law and politics

Freedom of movement derives from the right to leave, as the substantial legal provision in international law (Chetail, 2003). The right to leave is expressed in a range of multilateral instruments. The Universal Declaration of Human Rights (UDHR) in Article 13(2) declares that:

> Everyone has the right to leave any country, including his own, and to return to his country.

Article 14(1) of the UDHR, meanwhile, states that:

> Everyone has the right to seek and enjoy in other countries asylum from persecution.

For the African context, Art 12(2) of the African Charter on Human and Peoples Rights uses the same language for the right to leave but has a more engaged Article 12(3) on the question of asylum. I contend that a purely legal analysis only goes so far, and hence, I am proposing a change of perspective. My argument may not be valid in terms of the law strictly speaking, but it is valid when discursively considered: The practice, the implied meaning and the assumed, as well as explicit, intention of freedom of movement provisions in the ECOWAS zone materially undermine the right to leave. This undermining is historically situated, gendered, and racialized. I will unpack this argument by discussing the literature focusing on legal instruments. I will differentiate between directly legal instruments, political instruments with legal capacity, and other interventionist programs with norm bearing elements. I will not attempt to characterize any of these as explicitly hard or soft law as such boundaries cannot easily be drawn, argued, or maintained.

3.1 International legal instruments

The International Covenant on Civil and Political Rights (ICCPR) in its Article 12(2) repeats the provision of the UDHR and adds in Article 12(3) that this right "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant". A similar provision is contained in Article 8(1) of the International Convention on the Protection of all Migrant Workers and Members of their Families. Article 5(d)(ii) of the International Convention on the Elimination of all Forms of Racial Discrimination restates the right in the context of providing that "... 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, ...". Importantly, these provisions do not differentiate with regard to the legal status of a person (Chetail, 2003, p. 54).

The UN Human Rights Committee has offered commentaries to interpret the meaning and scope of the right to leave. This is particularly important as it is neither a prominent nor a straightforward right in the canon. Specifically, General Comment No 27 (1999) is pertinent as it clarifies in paragraph 8 that

> Freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. [...] Likewise, the right of the individual to determine the State of destination is part of the legal guarantee.

This is a quite far-reaching provision; however, it is not unqualified. The General Comment also elaborates on restrictions to the right to leave and states, among other comments, that:

> 12. The law itself has to establish the conditions under which the rights may be limited. State reports should therefore specify the legal norms upon which restrictions are founded. Restrictions which are not provided for in the law or are not in conformity with the requirements of article 12, paragraph 3, would violate the rights guaranteed by paragraphs 1 and 2.

> 13. In adopting laws providing for restrictions permitted by article 12, paragraph 3, States should always be guided by the principle that the restrictions must not impair the essence of the right (cf. article 5, paragraph 1); the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.

At this level of legal instrument, it cannot clearly be identified what is a hard and what is a soft norm as they are given different status in custom and application. For example, the UDHR is a non-binding instrument adopted in 1948 but treated as hard law, while the General Comment, by offering interpretation, can act as hard norm instrument for adjudication, though identified as a soft norm

instrument (Chetail, 2019; Guild and Weiland, 2020). It, therefore, seems that soft norms often do reverse the relation between right and restriction without clear criteria, where restrictions are found in the programming and operationalizing of norms, rather than in norms themselves.

I specifically have West Africa as a region of freedom of movement in mind in this problematization. The African Charter on Human and People's Rights, as already indicated above, is more explicit and extensive. Importantly, it provides in Article 12 the following clause 2 that is already familiar:

> 2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

In clauses 3, 4, and 5, it then extends the right to leave for the purpose of asylum-seeking and against expulsions:

> 3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.

> 4. A non-national legally admitted in a territory of a State party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

> 5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Clause 3 goes thus further than the provisions in the 1951 Convention relating to the Status of Refugees in Articles 26, 31, to 33, which regulate the seeking of asylum and prohibition of *refoulement*. In West Africa, however, also lies a practical problem in that it is not easy to identify who is displaced and who is mobile for other reasons than persecution (Van Dessel, 2019). More than that, the mobility arising from West African countries is often classified as resulting from economic and political instability (Morsut and Kruke, 2018), introducing an ambiguity that makes the allocation of legal status difficult.

This is one reason why a strictly legal gaze is not satisfactory: It cannot sufficiently take account of the messiness of the political and practical context. A legal gaze is also problematic, as Mbembe (2020) points out, because law is used to violate those subordinated to the male and white norm (see also Chimni, 2007). Finally, the abstractness of the law hinders clear sight of the bodies that are shaped and suffer from a particular kind of patriarchy: young men and women who suffer most from being shaped, directed, and acted upon as they are racialized and targeted by their elders and the minority world. Subjectivity and assumptions of allegiance infuse international legal norms on the right to leave and freedom of movement. Yet, it is not actually the abstract character of the law that is problematic but the increasing operationalization, where embodied ordering and categorization become more apparent. I hence turn now to political instruments with legal capacity to show that freedom of movement provisions infringe on the right to leave.

3.2 Political instruments with legal capacity

It is at this point at which freedom of movement as a derivative idea becomes relevant. I classify freedom of movement not just as an international legal provision derived from the right to leave but also as a political instrument with legal capacity. It is provided for in the ECOWAS Treaty, and the ECOWAS court is explicitly engaging in adjudication/litigation and interpretation (Alter et al., 2013), but it is not just the treaty provisions that fall in the category of political instrument with legal capacity: the ECOWAS Treaty, the ECOWAS Common Approach on Migration and resulting policy development between ECOWAS and their national governments, as the developments toward the GCM are relevant here.

3.2.1 The ECOWAS Treaty

The original ECOWAS Treaty of 1975 affirms in the preamble the importance of freedom of movement and repeats in Article 2(2)(d) that an important aim of the community is the removal of obstacles to freedom of movement of persons, services, and capital. The revised ECOWAS Treaty of 1993 in its reprinted version of 2010 grounds Freedom of Movement in Article 3(2)(d)(iii) as one of the normative principles realizing regional market-based harmonization and integration. The ECOWAS developed several protocols attached to the original treaty dealing with questions of freedom of movement.[3] These were immediately integrated into national legislation of member states (Kabbanji, 2017, p. 99). The change of meaning in the protocols is slight, but important. Freedom of movement gains a comparably restrictive meaning (as it does in the EU) limited to movement, settlement, and establishment for particular economic purposes. What makes these protocols both progressive and deeply problematic is that while they allow for mobility within the region for specific economic purposes and thus do bring prosperity and a degree of performed liberty to some, they do not enable circulation more generally as a human practice that is historically anchored—the interweaving of worlds Mbembe emphasizes. What the provisions do is—again with Mbembe—to freeze mobility into tightly boundaried spaces that are—at least on paper—finely regulated. It is here where the ordering and categorization begins. Men are more likely to engage in international mobility than women; assumptions behind what counts as "good business"—presumably a formal business that makes money and brings taxes, rather than trading in the informal economy—make a difference to whether leaving and therefore freedom of movement is available (Carr and Alter Chen, 2002). It is in this way that bodies of knowledge orient to make movement more or less likely as they establish subjectivities that shape the imagination of young women and men.

It could be argued that the ECOWAS Treaty instruments fall under the hard law category. I am treating them as not quite

3 1979 Protocol relating to the Free Movement of Persons, Residence and Establishment alongside its four supplementary protocols.

hard law, along with African courts: The right to leave/freedom of movement seems to be breached by regular roadblocks, administrative red-tape, and push-backs/holding at the border (Brachet, 2009; Kabbanji, 2017; Helfer, 2018). Such restrictions are justified through national security or other political concerns (Brachet, 2009; Deridder et al., 2020). However, they do not go unchallenged. Helfer (2018) notes how the ECOWAS court justifies breaches of its members to freedom of movement particularly when litigation is based on ECOWAS Treaty instruments. In this case, claims to sovereign action seem to trump the provisions of the treaty—which is then read as a political instrument first and foremost, even if it is litigable. In other words, the court itself treats ECOWAS freedom of movement provisions as a soft norm of sorts. When claims are made about breaches of human rights instruments, specifically the right to leave, then the litigation engages in debates over permissible restrictions and jurisprudence. In other words, these instruments seem to be taken to have more weight. Helfer (2018, p. 251) concludes that freedom of movement is more often honored by its breaches than its facilitation and implementation.

The orienting of bodies is not limited to regional relations, with a rising obsession with migration, mostly represented as illegal migration, inter-regional relations complicate what assumptions are drawn on for ordering and categorizing.

3.2.2 The ECOWAS common approach on migration

From the 1980s, the Intergovernmental Consultations on Migration, Asylum, and Refugees (IGC) had begun to think about trialing deterrence measures to restrict migration (Oelgemöller, 2017). The forum, at that point, was mainly composed of Western European countries, North American countries, and Australia. In Europe, this coincided with negotiations of the Schengen agreement. The focus was trained on access to the physical territory of European countries by introducing bordering mechanisms that were removed from the physical boundaries of European countries (Oelgemöller, 2017). To European bureaucrats and politicians, it became necessary to identify who was not included in Schengen and thus had little or no right to enter and freely circulate, to determine what exactly freedom of movement meant and who had access to it. In short, the external dimension to what had until then been a domestic question of mobility began to crystallize (Oelgemöller et al., 2020). The assumption was that young black men are most often illegitimate; women were not visible in the calculation at all. Hence, my critique above that the current reading of freedom of movement as focused on settlement and establishment disables a wider notion of freedom of movement as racialization and gender discrimination is not reduced to European practices.

Moreno-Lax and Lemberg-Pedersen (2019, p. 7) propose to understand this process as the slow "rulification" of externalization in spaces outside of Europe and "lawification" inside the European Union. In the EU, these ideas found their way into strategy papers, then a range of treaties, e.g., the Amsterdam Treaty in 1999, and programs, e.g., The Hague Programme in 2004 (Lavenex, 2006). The "rulification" began in West Africa in 2000 when the IOM with forceful EU intervention and funding engaged West African countries in questions of governing migration and the ECOWAS agreed in 2008 on the "Common Approach on Migration". Brachet (2018, p. 24) comments the following:

> In January 2008, the heads of state of the [. . .] (ECOWAS) adopted a "common approach on migration" that aimed to improve their management of "intra-regional migration and migration to Europe" (ECOWAS 2008, 3). Largely influenced by European assumptions about West African migration, which are more ideological than based on facts, this objective reflected a change in the orientation of ECOWAS: from the facilitation of free movement of persons within the region to measures of control of its external borders.

Two things happened that opened the door wider for "rulification" at the regional level. ECOWAS member states realized that their focus on regulating diaspora relations but not emigration more broadly will have to change. At the same time, and by way of norm diffusion driven by European views, the notion of irregular migration became salient for ECOWAS members (Kabbanji, 2011). As a result, most ECOWAS countries have, on the back of the 2008 Common Approach, begun to develop migration policies (Arhin-Sam et al., 2022).

What is more is that these hard and soft norm activities were explicitly directed against refugees and asylum seekers and actively undermine human rights instruments. The right to leave is one of the first to be structurally and systematically breached. Now normalized ideas, such as illegitimate onward movement through third countries that are then responded to by detention and deportation, are doctrine formed in the 1980s, when British government officials were among the most vocal about developing mechanisms to process asylum seekers in the region of origin (Oelgemöller, 2017). The idea started decades ago and has not gone away. Countries of the Global North have been chipping away at the right to leave. They have been successful, through discursive means of amalgamating security and humanitarian articulations, to construct the refugee out of existence and introduce the migrant as the category that drives law and policymaking. International and UN agencies such as the United Nations High Commissioner for Refugees (UNHCR) and the IOM have consistently been helpful to governments in their obsessions (Van Dessel, 2019). It is in this context that, increasingly, border-management practices are located (by way of training, funding and capacity-building of legal and policy professionals) in countries of the Global South, such as those in the ECOWAS zone (Charles and Chappart, 2017).

As freedom of movement has increasingly become something that needs to be policed at the borders, the consequence is increasingly that the right to leave is infringed at the border point. Practices that were trialed since the 1980s led to the observation and problematization of international migration, imagined to be mostly young and black men, as a security issue in the early 2000s (Huysmans, 2006). The result was, as is impressively visible with the ECOWAS Common Approach on Migration, a focus on border management (Frowd, 2014; Lopez-Lucia, 2020; Aniche, 2022; Mouthaan, 2022), with ever more perverse effects evidenced by the many deaths in the Mediterranean and Aegean seas and African

deserts (Callamard, 2018; Forensic Architecture[4]). However, when the number of deaths became even untenable for European countries, the door opened for reigning in security measures to a certain degree and expanding measures of development. This was coterminus with the displacement of people in 2014/15 from Syria and resulted in a crisis of governance and protection (Morsut and Kruke, 2018; Almustafa, 2022), emphasizing practices around containment through development activities (Landau, 2019). The re-orientation toward development led to an effort at the international level to find a different way to regulate mobility in a softer manner.

3.2.3 The global compact on migration

This shift not only avoided attention to current displacements but also directed attention to the argument that development aid programs were needed for enhanced poverty reduction to "enable" people to stay, rather than move (Szent-Ivanyi, 2021), an active shaping and directing of bodies away from the border in the first place and with strong hints at arguments around allegiance. It was in this context that the UN General Assembly (UNGA) agreed on the New York Declaration (A/RES/71/1) to learn about migration and negotiate an instrument focused on migration that would tie together the fragmented elements that make up international migration regulation. The new instrument, adopted in 2018, is a Compact. The Compact emphasized the development-related thinking and practices relying on the Sustainable Development Goals (SDGs) rather than exclusively a framing of security with some humanitarian argumentation thrown in.

The GCM, with Objective 5, para. 21(b), calls for the facilitation of (labor) mobility through free movement regimes. The objective states the following:

> We commit to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration.

The objective does not commit to anything that is not already an obligation in the diverse field of international human rights or labor law (Chetail, 2017). The text of the objective then moves on and commits to:

> b) Facilitate regional and cross-regional labor mobility through international and bilateral cooperation arrangements, such as free movement regimes, visa liberalization or multiple country visas, and labour mobility cooperation frameworks, in accordance with national priorities, local market needs and skills supply;

Substantially, this is an odd collection of elements that sees a remark about "free movement regimes" smuggled into its middle. Importantly, the GCM makes no reference to the right to leave, which, as Chetail (2019) reminds us, has now entered into customary law. When looking at the list offered by the objective, it becomes clear it is not about leaving as much as it is about arriving or access to work, to visas in order to enter another jurisdiction restricted by definitions of local market needs and skills wanted.

The Compact came about in the context of externalization, practices that systematically introduce and implement containment. Here, we are offered an utterly contradictory "commitment" which indicates openness but confirms the contrary. The Compact amalgamates hard and soft law aspects insofar as these can be delineated in the way often proposed in the legal literature (Guild and Weiland, 2020). Yet, its political character is precisely what is so important to appreciate. It is for this reason that this section is titled political instruments with legal capacity. Merry (2015, p. 374) contends that indicators, or here commitments, clarify and specify obligations, might enhance accountability, and do remove the value content to reduce it to a technocratic exercise. The capacity in which those gendered and racialized can act on their right to leave grows increasingly narrow as they engage with the "free movement regime" that is implemented across Treaty, Common Agenda, and GCM and freezes people increasingly inside a country. The assumptions around youth, willingness to be illegitimately mobile, and a lack of understanding for why mobility is undertaken, e.g., to get away from forced marriage and to be free to build one's own life (Black et al., 2022) inform programming which, in the end, orders and categorizes.

3.3 Interventionist programs with norm-bearing elements of ordering and categorization

The Migration Dialogue for West Africa (MIDWA) was established in 2001 as a platform to bring West African member states together to exchange common migration concerns. MIDWA is one of several Regional Consultative Processes (RCPs) that the IOM instituted in the late 1990s and early 2000s. The IOM claims that these are fora for governments to exchange common concerns; yet, the organization has supplied the discursive and meaning-giving tools defining these common concerns (Lavenex, 2006). The language is revealing: West African states at that point were "concerned" with their diaspora communities and how to engage these in development activities (Ratha and Plaza, 2011). They were also concerned with development and implementing the Treaty's freedom of movement provisions more concretely (Bisong, 2020). They were not quite concerned enough with other aspects that donors were concerned with.

Hence, MIDWA did not make the progress that European governments hoped for and so, in 2013, a program, which was co-led by the ECOWAS, IOM, the International Centre for Migration Policy Development (ICMPD) and, only for certain elements, the International Labour Organization (ILO), was launched.[5] This

4 https://forensic-architecture.org/category/migration

5 This evolutionary justification was given by all those we interviewed, i.e., ECOWAS, ICMPD, IOM, and ILO staff.

program was called "Support to Free Movement of Persons and Migration in West Africa" (FFM West Africa) and brought 26 million Euros to West Africa (ICMPD, n.d.)[6]. The first phase focused on border management, among other elements, and thus already began to undermine freedom of movement by investing in border control technologies that re-instituted national boundaries interfering with freedom of movement in the region, rather than facilitating it as was enshrined in the ECOWAS Treaty and the declared goal of EU interventions (Prokoph et al., 2023).

Only 2 years later, the so-called "refugee crisis" led European governments to come together over the course of 2015 to devise and agree the "European Union Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa" (EUTF). Zaun and Nantermoz (2023, p. 2) show that

> By portraying the EUTF as a continuation of EU development policy, the Commission was able to reframe a political problem – how to deal with unmanaged and unwanted migratory flows to Europe – as a technocratic problem, that of addressing the "root causes" of poverty and migration in Africa. In so doing, the political salience and existing polarisation around the EU refugee crisis were downplayed.

The 2015 Valletta summit and its outcome, the EUTF, locate "the problem" squarely in/with Africa, rather than with their own approach to protection and their international legal obligations. The EUTF also drew on mechanisms already in place, and it refocused the FFM West Africa by de-emphasizing border control and security issues and concentrating on development aid in line with the wider geopolitical tendencies concerning migration outlined above. In this context, entrepreneurship and similar trainings currently find much financial support on the part of donor institutions.

Lascoumes and Le Gales (2007, p. 4) cited in Zardo (2022, p. 589) explain that these programs are "a device that is both technical and social, that organizes specific social relations between the state and those it is addressed to, according to the representations and meanings it carries". One point that is important here, that Zardo (2022) emphasizes too, is that the ECOWAS, West African countries, and to a degree non-state actors contribute to the design and transformation of these programs (see also Szent-Ivanyi, 2021; Bisong, 2022). In other words, it is not purity of imposition that intervenes into the landscape and bodies I am concerned with here. Zardo (2022) terms the norms that engage in Ahmed's (2006) ordering and categorizing of bodies "flexible instruments". Counterintuitively, it is these soft norms—in the wider legal landscape—which infringe on the right to leave: conditionalities imposed based on assumptions about who those are who want to move out of "their" country—illegitimately.

If the conclusion of the above is that not all is well with the right to leave, its derivative freedom of movement and how the triple layers of legal instruments, political instruments, and programming are maintaining and consolidating problematic outcomes infringing on the right to leave even if they declare to enhance and institute freedom of movement, the question is, how is this done?

4 Mobility instruments and their effects on the right to leave

Technically, freedom of movement within the countries we researched is provided for. People of Senegal, The Gambia, and Guinea can move freely in their countries. Moreover, on paper as discussed above, that provision is extended to the ECOWAS area. The last section showed that political instruments with legal capacity are problematic in their direction-giving function if not their actual infringing on the right to leave. This section offers selected insights into the FFM West Africa and the EUTF by engaging with some of the activities those programs bore out. The question is about how the infringement that I am contending is actually done?

National migration policy sits at the heart of thinking about bodies in this story. This is not because the national policies were hard law instruments at the point of data collection or anticipated soon to be, but in our countries of research, and a number of other ECOWAS countries, this norm-making effort does something by essentially amounting to a plan of action, sometimes with and sometimes without budgetary elements. The soft law instruments have material effects capable of acting on bodies of thought, bodies of law, and bodies of people. The plans are undeniably forceful in that they have an effect on the programming which constitutes what is marked as enhancing freedom of movement. This happens by establishing the logic of the "potential migrant" as something that is operationally meaningful, by intervening in the spaces of discourse and positionalities, and by incentivizing people not to leave precisely through soft norms on freedom of movement.

4.1 The logic of the potential migrant, experts, and consultants

The body of the "potential migrant" is a non-sense, yet it acts as an ordering device and justification. First, most people who are intervened with by the action plans are not migrants at all; they are citizens of a country, whether that is, in our case, Guinea, The Gambia, or Senegal. Even if they are returnees in some way, they are citizens who have returned from abroad. This is not nit-picking but clearly illustrates from where—cartographically speaking—the perspective of policymaking is influenced: The European gaze which shapes norm ensures the bodies of "potential migrants" are oriented away from crossing borders. The intervention creates exception as not all people are intervened with. At the same time, the programs are widely rolled out to capture everyone who might fit into this bizarre category of the "potential migrant". One IOM country official who kindly shared their experience referred to the "potential migrant" regularly, so I asked for explanation. I had asked how migration was logically connected to livelihood

6 https://www.icmpd.org/our-work/projects/fmm-west-africa-support-to-free-movement-of-persons-and-migration-in-west-africa (accessed May 20, 2023).

interventions, such as entrepreneurship trainings that are to facilitate freedom of movement.

> Respondent: What we basically try to do is facilitate regular migration as opposed to irregular migration but this has no component on the labor migration aspect of our role, more on human development, so development more focusing on livelihoods [...]. The migration aspect comes in framing the beneficiaries of this type of intervention. We try to provide support to potential migrants, quote-un-quote, who for lack of similar opportunities would migrate, so that is basically the approach or the framing we have. By providing opportunities that we have adequately measured and understood to be lacking in one way or another contributing to reduced number of irregular migrants [...].

> Interviewer: [...] so really the logic was to enable economic independence?

> Responder: yeah, for us this is a livelihood intervention so to make sure that these individuals at the end of the day have means to prosper, strictly speaking our aim is not prosperity *per se*, it is just providing the opportunity that potential migrants perceive to be missing [...].

> Interviewer: [...], so who then is a potential migrant [...], how would you define a potential migrant?

> Responder: the holy grail of LAHD [labour migration and human development] as I call it, we don't have a definition so if a community is prone to an outward migration then that youth group 18 to 35 usually qualify as a potential migrant particularly if they are not exposed to the sort of opportunities that exist or that matches their aspiration. But it is not a technical definition we use in practice, this is basically what it means.

> Interviewer: no, I understand that there is no such thing as a technical definition here [...] of course we make assumptions of who a migrant is. Would you then also say that this is mainly actually men?

> Responder: it depends on how you look at migration, if you look at transnational irregular migration that assumption would be correct, if you look at internal migration then the picture is different, there are a lot of women migrating internally as well.[7]

The "potential migrant" is already oriented before a person thus targeted even begins to interact with the actual policy and interventions arising. The European construction of the body of the migrant, and based on that, their forming of norms, gives distinct shape. That in-country officers of the IOM and those engaged in programming add nuance show how co-constitution molds and absorbs. COVID-19 impacted on the logic in a surprising way:

> [...] It is very interesting how potential migrants change, it is an individual who has very good academic training, let us say formal education qualification in a certain institution with a formal job in the formal sector is not really regarded as a potential migrant at least operationally speaking or his aspiration is supposed to have increased and therefore his ambitions and opportunities etc. but that is not how we operate, that is not how we respond to challenges. But fast forward to 2020 COVID19 came and all of a sudden we started thinking of all of those young people whom we have not paid attention to are most likely going to end up as potential migrants, and those potential migrants who have been working in the informal sector let us say with some sort of income to support themselves or to fund their irregular migration journey should they choose that road, all of a sudden out of income and therefore even if they are from lack of opportunity perspective, all of a sudden a prime candidate for the regular migration they don't necessarily have the economic resources to support it and therefore should we still refer to these young people as potential migrants? [...][8]

The horizon against which the potential migrant is shaped is not first and foremost freedom of movement, especially not the right to leave. It is an amalgam of norms of the GCM that formulate a specific perspective of what development interventions ought to do (Oelgemöller and Allinson, 2020) with regional and national practices that are much more directly gendered and racialized as they transform with time. It is then no surprise that effort is made to shift the framing of "illegal" migration by emphasizing labor migration and human development. Equally, it is no surprise that the differentiations between men moving irregularly transnationally and women moving internally sneak back in. The empirical truth of this is not questioned, but it is important to point out that norms and activities are worn on the bodies of those who do move and also those who get labeled as potential movers.

Yet, it is not just the normal person that is given a function, there is also the making of a resource person at an institutionally formal level, often identified as capacity-building, as an international member of the IOM project team from the Global South explains[8]:

> Next time we need a resource person, we send the Doctor [a high-ranking ECOWAS official] to Valetta Action Plan or migration and climate change, [...] he has to have the capacity.

7 Conversation with IOM country officer, February 2021.

8 Conversation with IOM Team member, Abuja, March 2020.

In addition to the elite put in the service of bodies of ideas about norm-making in migration are the consultants, the insubstantial body who neither gets credit, nor is accountable:

> We have also hired consultants [...] embedded within the ECOWAS' different directories. [...] staff would be sent for trainings abroad on labor migration, on migration management, on counter trafficking. That way we can provide the technical support that the unit needs and also ensure continuity.

The explanation then moves to the institutional level:

> IOM basically takes advantage of all its country offices within the region, [...] if we are now coming up with free movement [...] we bring together expertise from the region's member states, [...], to bring together all these ideas on a framework and on a training guide.

But the consultant is pivotal for all connections:

> plus our own expertise, [...]. We have a resource person who comes, provides the technical definitions of these migration related terms, how these things shall be linked to regional processes or regional policies, continental policies or global policies....mostly we like hiring from the region, the consultant, to gather all of these comments and feedbacks and [who then] drafts it, [...].

What such a process of "drafting by consultant" does is what feminists problematize as an annulling of demarcations of space. This process demarcates the distance between policy and the potential migrant such that the policy seems to have more nuanced form than the person assumed to want to be mobile and who is targeted by the norms. Because these norms move from concept to material practice straight away, they de facto undermine self-determination. Neo-colonial engagements of policymaking are accepted—even invited—through the involvement and framing of the problem by former colonizing countries. The patriarchal and racial hierarchy of the past re-imposes itself through funding and the setting of bodies of knowledge as norm to be disseminated and implemented. Enloe (2017) discusses this as sustainable patriarchy. One of the ECOWAS Officials I talked to[9] portrays the muddling of boundaries in the way they describe the relationships:

> [...] from 2000 it was more of IOM and partners supported perhaps also driven but of course with the legal backing of ECOWAS and also endorsement of decisions that came out of [MIDWA] and the whole process of bringing member state that birthed the common approach and after that it really went dormant and now with the FMM project it is being re-awakened again.

National Migration policy, whether it exists as justiciable norm or plan of action and ostensibly to implement ECOWAS' freedom of movement provisions, is constituted such that donor countries keep a tight hold on the force they exert through technocratic means, i.e., the making of those polices, but more so by way of constituting subjectivities which embody an orientation for freedom of movement.

4.2 Governments: demand-making and dragging of feet

The IOM makes itself available diplomatically and technically by plugging into the environments at national level to ensure they are the organization orienting not just the migrants themselves but also national governments in what they do and how they do it.

> We sit with the development of the concept and the proposal and the budget. [...] We come down with a concept note, budget, agenda, and then ECOWAS invites its member states [...]. Then we take it through the review process, of the same technical experts, and then have it validated at the technical level and at the ministerial level, and then recommended for adoption and the ECOWAS council of ministers. [...] We like having one facilitator from our end and one from the ECOWAS end. And then have the other person, the consultant the writer now, the one that will do all the desk reviews, all the policy...[10]

The effort to bring national governments to the table to engage is substantial:

> [A] case in point is next week's heads of immigration meeting. ECOWAS have sent invitations letters to ministers [...] and heads of immigration. They've shared the same invitation that is with us so that we share it to the country director so that they can follow up [...].[10]

Member states are cajoled into participating, among other things by making these meetings constitute all-inclusive paid for travel experiences. The process is recounted with somewhat of a sigh:

> First of all, the back and forth between us and the ECOWAS secretariate on the proposal and the concept development, and the budget, and then deciding which member state to hold a conference in, because no one ever wants to come to Abuja [...] they want to travel indeed.[10]

By a high-level IOM official from the Global North, I was told that much management of expectation of country officials is needed, as well as reality checking as regards what could be offered from IOM and donor states. IOM was tasked to make the impossible possible, especially since "West Africa is all about

9 Conversation with ECOWAS official, Abuja, February 2021.

10 Conversation member of IOM staff, Abuja office, March 2020.

status—rather than using the right channel to get things done".[11] What this means is that regalia, and official photography, press releases and formal dinners with speeches are all important, stage presence with an understanding of face-to-face communication.

The problem here is not the diplomatic approach to relations, what is interesting is how this is used to resist the push to make migration policy and implement freedom of movement in the way it is framed by internationals and donors. One of the Abuja interviewees[12] said about follow-up after formal gatherings:

> Once we let them go, and we share the first draft the review process takes a long time. [. . .] And then the language differences between Francophone Lusophone and Anglophone. The Francophones are usually more detailed and they want the period to be here, the comma to be there, protocol, you're using the adjective wrongly.

Once the policy is accepted, it goes into verification with the various ministries in the countries and even if the policy makes that hurdle, it still is not adopted. This process seems to take years—maybe unsurprisingly. When Mbembe et al. (2006) talk about ellipsis, disengagement, and renewal, then resistance is not only done by ever changing resource people but also through critique of punctuation and insistence on fancy meals.

4.3 Entrepreneurship trainings: incentives not to leave

The IOM is by no means the only driving force. The ICMPD, represented by staff originating on the continent, has the role of capacity-building focusing on governments of the region to implement freedom of movement. The ICMPD makes a particular point that it is important that all activities are "demand-driven": "states know what their issues are".[13] The only ICMPD criterion for their technical assistance is that free movement is promoted. No mincing of what is to be understood from their activities though: the message is that movement is ok, but you should not kill yourself. Instead stay legal, get the right documents and stay at least in the ECOWAS area if you have to leave your country at all. This sentiment was very emphatically communicated during our conversation.

When asked about how employability and entrepreneurship training comes into this, the answer is equally clear: rather than having European donors spend money on deportations, it is better to impact trends by funding youth training—mainly for those identified as young men—to reverse migration. Having said this, the mainstreaming of gender, read women, in these programs in the past few years means that increasingly women are pushed into the programs too, though not with the same assumptions of illegality driving motivation, in short, fix people in space and make sure they do not leave in the first place. These trainings fall into the category used above: interventionist programs with norm bearing elements of ordering and categorization. ICMPD interviewees listed the benefits: Training means that young people have a job, it "sells well politically in Austria", and there is foreign investment in the respective West African country.[14]

None of this is neat. A government official interviewed by one of our team in country reflects the multiplicity of orientations that pull in so many different directions: The official explains in the same breath that migration and development policy are important because it allows for transfer of money from abroad, that migration is marked by "poor behavior and criminality", and that "on ne comprend pas", as an expression of exasperation and a general comment that people want to leave their country.[15] This comment resonates with how the right to leave has been treated and interpreted in the past as dubious and still resonates with suspect behavior.

It is in this context that the emphasis on entrepreneurship training begins to make sense. Skills and employability training are something that the development industry has operated for a long time. Some institutions have a long history of apprentice education (e.g., IOM video on Don Bosco Kankan, linking to MigChoice research giving the information that IOM spin[16]). Interviewees made it clear to another colleague on our project that for most of these actors who are serious about vocational education and training, managing flows of mobile people cannot be a focus of work because it is driven by right-wing populist European attitudes and will not fix people in place whatever the objective.[17] Another interviewee also explains that it is often the conditions for funding set by the umbrella projects like when the EUTF became integrated on the ground with FMM that make the training "ludicrous"—training is short and unprofessional and does not lead to skills gain, while small grants support "business proposals" that are often developed in these trainings that are either not viable or often not what the people actually want.[18] In any case, it was said that they prefer a territorial approach, indicating that young people need to be bodily situated with a proper job in a proper place,[19] all of which ends up working against an ability to choose to leave.

A final narrative mingles with the perspectives recounted above: The idea of the "home patch" does come back time and again in many of these interviews where we asked about freedom of movement specifically, and not just for development organizations, but also young entrepreneurs that are involved in youth advocacy organizations. In The Gambia, one of our researchers was told

11 Non-recorded conversation with high-level IOM official, Abuja office, March 2020.

12 Conversation member of IOM staff, Abuja office, March 2020.

13 Non-recorded interview with ICMP official (A), Abuja March 2020.

14 None-recorded interview with ICMPD official (A) and (B), March 2020.

15 Interview with country government official GD_SN3-1bis 2020.

16 Available online at: https://www.youtube.com/watch?v=Hlpk9iigDCc&t=27s (accessed June 13, 2023).

17 Interview with development agency staff AL_SN_FA2 (p. 3), 2020.

18 Interview with IOM in country staff, February 2021.

19 Interview with European development agency staff AL_SN_IL49 (p. 4), 2020.

> Within our approach, I think the way we can influence policy is in terms of building up entrepreneurship environment that allows young people to survive […]. If there are opportunities created here in the Gambia, it is going to help them to stay and not migrate […].[20]

It does not seem to matter that most trainings do not lead to anything that is sustainable, what matters is that people stay—to take care of the families, or the land, or to make money. There is future orientation in some of these efforts at building businesses—but it is very much a "despite" rather than a "because of". The hype around the potential migrant who must not move crowds out otherwise innovative and future-oriented ideas that young and not so young people may have.

In the end as one IOM staff remarked in surprise:

> But then, you know, I don't know how this will fit in your research, but something interesting we found out […], when you ask them the reasons for traveling, it's not the traditional [responses like] for economic, for employability [reasons]. It's just a tradition to move, like oh, [my friend/neighbor/father/grand-uncle] went from country A to country B - let me go. It's that sense of curiosity.[21]

5 Beware the soft norms

As there is now a global instrument that grounds efforts to promote free movement regimes by way of the GCM, one IOM staff interviewee comments:

> When ECOWAS is in the progression of free movement without borders it controls free movement at the borders, it's free movement with data, like you need to know who crosses where and where they are crossing to. And I understand when they have this idea of development, if you encourage free movement at the end it'd lead to development.[21]

This answer is worthy of note for its contradictions, convolutions, and real-life messiness, and it also neatly summarizes how the infringing of the right to leave is done: by using soft norms as promoted through political instruments and programming to create a discursive environment underpinned by material practices to inscribe the prohibition to emigrate on the bodies of those trained. The subjectivities created are unchanged: black young people, men in the first instance, but increasingly also women, are still assumed to want to engage in illegitimate activity. The GCM, despite its seemingly progressive focus on development, does nothing to make the situation for thus subjectified bodies any better.

In conclusion, the analysis has shown that soft norms are an instrument to undermine those hard provisions at our disposal to advocate for the rights of "potentially" mobile people acting on their wishes. Much of the literature on soft norms finds that they have capacity: to fill legal gaps or to pave the way to hard norm development. Instead, what I have found is that there are currently legal instruments, political instruments with legal capacity, and, finally, interventionist programs with norm bearing elements of ordering and categorization. There is a growing literature which points out that it is not easy to draw distinctions between soft and hard norms as they amalgamate and are difficult to differentiate. In many contexts, I would argue that flexibility in law, appreciating its historical and constructed character, is better than a strict differentiation and interpretation compounding law's capacity for violence. Yet, in the context of norm-making in the ECOWAS region, I find that soft norms shape the bodies it brings into being: The norms draw on development practices that not only lack ambition but re-enact the colonial subject. The bodies are oriented toward providing for the family, improving their patch at home and making a life that is future-oriented in a rather limited and small way, as provided for by the GCM.

The ECOWAS, with funding by the EU and forcing by the IOM and other organizations, is pushing for the development of hard norms in West African countries with regard to people's mobility. Migration policies, however, much the process is engaged with, are more often than not resisted and what is accepted instead is a norm that embodies plans of action, rather than law. Yet, the idea of the migration policy is nonetheless important as it allocates categories available for people to be ordered with. Freedom of movement plays a vital role in this, though neither in the historical sense outlined above, nor in the sense of being at liberty. Instead, it is operationalized and made meaningful in embodied practices that flatten the distinction between policy and the person. The idea of the potential migrant does not so much create a category of a specific kind of exclusion against which someone is included; it excludes all who might want to use their freedom of movement to actually leave.

Even if national governments domesticate what is imposed to become hard norm into a soft norm by playing the diplomatic sovereign doing pomp and ceremony rather than validating and legislating the trainers of employability and entrepreneurship, along with the international organization, they do much to undermine and infringe upon the right to leave. In this way, soft norms used to enact programs that seem unconnected to the question of law, such as entrepreneurship trainings, construct bodies which are then clearly subject to the law at the point when they might otherwise have chosen to exit but cannot because affectively and effectively they are barred. The above quote shows how the "freezing" that Mbembe observes is done: by turning already problematic programming to emancipate people into practices of containment, using "home patch" talk, and doing "free movement with data" such that those involved in soft norms turn important rights, protections, and values on their heads.

This way of embodying the future actively disregards curiosity for the world and a sense of wanting—legitimately—to spread wings and take up space, inhabiting the world fully and belonging to it, as Mbembe (2020) puts it, by culturally mixing and interweaving. Arguably then, Mbembe's observation might be reformulated into: It is this very culture of mobility that colonization once endeavored to freeze through the modern institution of borders and that

20 Interview with a social entrepreneur SM_GM_4_SIG (p. 33), September 2020.

21 Conversation with IOM Team member, Abuja, March 2020.

neo-colonization still endeavors to freeze by sponsoring Freedom of Movement.

Data availability statement

The raw data supporting the conclusions of this article will be made available by the authors, without undue reservation.

Ethics statement

The studies involving humans were approved by the Institutional Ethics Committee of the University of Birmingham (ERN_19-0742). The studies were conducted in accordance with the local legislation and institutional requirements. The participants provided their written informed consent to participate in this study.

Author contributions

CO contributed to conception and design of the MigChoice study as one of two principal investigators which generated the data drawn on here. The data drawn on were generated from within the work package 5 which CO conceived, designed, and led. Within WP5, CO supervised one post-doctoral researcher and four research assistants. Two quotes drawn on here stem from interviews not conducted by CO, one having been conducted by the post-doctoral researcher and one by a research assistant. All other interview material used stems from CO's interviews. Analysis, drafting, and revision of the article were exclusively performed by CO.

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Conflict of interest

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

Publisher's note

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