

EXPULSION OF ECOWAS CITIZENS UNDER THE BUHARI REGIME (1984 - 85): LEGAL AND ECONOMIC PERSPECTIVES.

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(Received 15 June 2002; Revision Accepted 17 July 2003)

ABSTRACT

The spate of insecurity to life and property in which many countries find themselves today is a primary concern of not only the national governments, but also the international community. The latest terrorist attack of the United States' World Trade Centre in New York and the Pentagon in Washington, D. C. on September 11, 2002 raises an important question about the security of many countries against internal and external attacks. Apart from terrorist activities, the security of many countries is also seriously threatened by a variety of reported cases of drug, currency, human trafficking and dumping of toxic wastes across national boundaries. The suspension of these criminal acts depends to a large extent on the Immigration laws and other regulations of countries on the movement of persons and goods across national borders. The paper will discuss the legal (from ECOWAS Treaty and its relevant protocols) and economic perspectives with regard to Nigeria's expulsion of ECOWAS citizens under the Buhari regime, 1983 – 1985. Efforts will be made to examine the following questions which the author believes are of continuing interest:

- a) To what extent did Nigeria's efforts to regulate the movement of ECOWAS citizens across her borders violate its commitment to ECOWAS Treaty on movement of persons and goods?
- b) To what extent did Nigeria accept limitation on her right to regulate same?
- c) In what ways did Nigeria's economic security interest a major factor in controlling the movement of persons into Nigeria?

The purpose of the paper is three-fold. First, it seeks to take a cursory look at the conflict between the Nigerian constitutional provisions and the country's legal and moral obligations to the ECOWAS Treaty. Second, it will attempt to show through a discussion of how Nigeria can manage the tight-rope road of observing the provisions of the ECOWAS Treaty without at the same time sacrificing its sovereignty. The paper concludes that the rationale for the expulsion of the so-called illegal aliens from Nigeria by the Buhari regime was motivated by the problem of enforcement of the provisions of ECOWAS Treaty on movement of persons within the West African sub-region.

KEYWORDS: Illegal, aliens, expulsion, immigration, obligation, multilateral.

INTRODUCTION

The alarming rate of criminal activities has given rise to governments to device, various means to protect their countries' borders against the infiltration of illegal aliens. According to Vattel (quoted in Bedi, 1969:15), States are societies which are united to procure their mutual and welfare security. Every State, it is assumed, has the obligation to protect its citizens from the menace to which that peace and security are expressed, but obligation will not be achieved without the cooperation of other States.

The concern of the Nigerian governments about the security of her citizens has influenced her reactions to the economic community of West African States Treaty (ECOWAS) on Free Movement of persons across inter-state boundaries which economic union seeks to

promote. The illegal aliens and people with little or no qualifications who sneaked into the country for employment posed series of danger to the country's socio-economic and cultural development. As a result of this, the Buhari regime embarked on massive expulsion of the so-called illegal aliens between 1983 and 1985.

AN OVERVIEW OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATE (ECOWAS)

The Economic Community of West African States (ECOWAS), is a multi-lateral organization, consisting of sixteen member-states. The States signed the Treaty of Lagos in May 1975 establishing the organization. In some respects ECOWAS comes close to be a unified, supra-national entity, while in many other respects, it

seems little more than a fragile collection of sovereign States, designed to promote cooperation in socio-economic and technical sectors. Put differently, ECOWAS is a functional sub-regional organization based on David Mitrany's approach to sub-regional and regional integration.

Most national leaders in the community from the start viewed the undertaking in more narrow terms as a strategy for joint problem-solving in economic and technical spheres. By prolonged negotiation, the primary rationale behind the ECOWAS was the desire to follow the economic model of the European Economic Community (E.E. C) whose end-point was to build a pluralistic community with intensive transactional interactions (Pentland, 1975:14). According to Deutsch (1964:66), pluralistic communities exist when:

Two or more sub-systems each of the autonomous are linked together so that some output signals from one enter as part of the input into the other, but when memories, decisions area and main feedback circuits of the system and thus their main decision making facilities remain distinct.

In his analysis of the political community, Haas (1961: 94) focuses more attention on the creation of central institutions. For him, the end-point is one from which a political community emerges. To Haas (1958: 5), political community means:

a condition in which specific group and individuals show more loyalty to their central authority in a specific period of time and in a definable geographic space.

Loyalty in this context implies that the people obey the law of their authority and turn them for the satisfaction of important expectations. Furthermore, Haas specifies the following characteristics pertinent to political community:

i) Group conflict exists on the level of the present national state units and that of the new political community which emerges;

ii) There is sufficient body of general consensus which imposes limitations upon the violence of group conflict. These limitations form the basic agreement on the means of settling disputes; and

iii) There are central institutions capable of creating and perpetuating a new national consciousness. Decisions made by the central institutions are binding on the citizens and operate on the principle of majority rule.

From his analysis, of the political community, Haas tends to make the central

characteristics of pluralistic nations in Western Europe the primary focus of his model of a political community. Like Deutsch's, Haas's model presents a serious problem regarding the usefulness of this type of model when dealing with states, for instance, in Africa since the only areas of the world one can think of as having fully developed political communities are in Western Europe and North America.

Writing on the political distinctions among the United States, Great Britain and the Soviet Union, Huntington (1968:1) wrote:

Each country is a political community with an overwhelming consensus among the people on the legitimacy of the political system. In each country the citizens and their leaders share a vision of the public interest of the society and of the traditions and principles upon which the political community is based. All three countries have strong adaptable, coherent political institutions: effective bureaucracies well organized political parties, a high degree of political participation in public affairs, working systems of civilian control over the military, extensive activity by the government in the economy and reasonably effective procedures for regulating succession and controlling political conflicts

In his discussion of the governments of Africa, Asia and Latin America, Huntington also observes that:

These countries lack many things: They suffer real shortages of food, literacy, education, wealth, income, health and productivity

...Beyond and behind these shortages, however, there is greater shortage: a shortage of political community and effective authoritative legitimate government.

Etzioni (1965: 4) sees political community as one that performs three different functions, namely;

i) It has effective control over the means of violence, even though it can 'delegate' some of this control to member units;

ii) It has a center for decision making that has the ability to affect the allocation of resources and rewards throughout the community

iii) It is the dominant focus of political identification for the large majority of politically aware citizens.

In addition, Etzioni argues that the control of the means of violence distinguishes a political

community from other communities such as religious and ethnic ones because it safeguards the community from the interference of sub-groups. It also settles disputes among these sub-groups, encounters secessionist pressures and defends the community from external attack.

In summary, the Economic Community of West African States (ECOWAS) is already a reality. It is, however, an institutional framework which economic, technical and other cooperation has taken place in the West African sub-region. ECOWAS has probably attracted more interest from economists and political scientists than any other economic grouping, apart from the European Economic Community. The reason is that it is the most promising economic community.

The plan for establishing ECOWAS was to proceed in several stages. These include the creation of:

i) free trade area in which all tariff barriers were to be eliminated between the member-states themselves so that for example, Nigerian agricultural products could be exported to Ghana without Nigerian farmers having to pay an entry duty or tax;

ii) customs union whereby all member-states would impose a common external tariff on goods exported to the community from non-member states;

iii) a common market in which not only goods and services, but labour and investment funds would be able to move freely across national boundaries so that, for example a

Ghanaian construction worker could seek employment in Nigeria without worrying about a work permit; and

iv) an economic and monetary union in which all member states could harmonize their total economic policies and introduce a single ECOWAS currency (in place of Nigerian Naira, Ghanaian Cedis, Togolese Francs, and Liberian dollars)

For the purpose of this paper, our emphasis is on the provisions of ECOWAS protocol on the free movement of persons and goods across national borders within the sub-region as well as their socio-economic implications which resulted in the expulsion of illegal aliens by the Buhari regime between 1983 and 1985.

ECOWAS Treaty on the Movement of Persons and Goods within the West African Sub-region

The countless interconnections among the members of ECOWAS could not have been fostered successfully without the existence of a legal matrix in which to flourish. This matrix is

largely a treaty whose major function is to facilitate the activities of the community.

The preamble to ECOWAS Treaty aims at the elimination of all obstacles to the free movement of persons and goods. This principle is confirmed by Article 2 (d) which deals with the aims of ECOWAS. Article 27 of the Treaty provides in strict legal sense, for the freedom of movement and to some extent, the requirement for its implementation. According to the article, citizens of those states within the community are regarded as community citizens. In strict law, therefore, member states are obliged to abolish all obstacles for people to move from one state to another within the sub-region either for residence or employment without restrictions. This is to be achieved by agreements with member states which would exempt community citizens from holding visas to enter freely into other countries in West Africa.

The protocol on Free Movement of Persons within the sub-region was not specifically provided for in the ECOWAS Treaty, but was added to it. The Protocol came into force provisionally when it was signed by the Heads of State and Government of member-states on May 29, 1979, and by July 1980, eight member States, Nigeria, Niger, Ghana, Guinea, Liberia, Gambia, Senegal and Togo had ratified the Community Protocol on Free Movement of Persons, thereby satisfying the required number (seven) of instruments of ratification necessary for its coming into force (Release from the ECOWAS Secretariat by the Executive Secretary, A. Diaby Quattara, July 24, 1980).

The Protocol was adopted based on the relevant provisions of the ECOWAS Treaty on the conviction of the member-states and on their need to spell out the various stages it will undergo to accomplish the complete freedom of movement as envisaged by Articles 2 and 27 of the ECOWAS Treaty.

Nevertheless, the free movement of community citizens into the territories of member-states under Article 2 (1) of the Protocol was to be accomplished in three phases and must be completed within fifteen years. Phase one deals with the right of entry and abolition of visa requirements. In other words, the community citizens visiting any member-state for the period of not more than ninety (90) days had to the right to enter the state through official entry point free of visa requirement, but with authorization from the appropriate authority of the state concerned for an extension of stay beyond 90 days.

The rationale behind such movement was to be effected through the entry point of a member state was to supervise and control the persons by the relevant authority of the receiving

country, including the apprehension of illegal aliens who might have stayed in the country beyond 90 days without application and approval for an extension of stay.

In a paper presented by President Shehu Shagari (1981: 70) on "Sub-regional Economic Integration with the Frame work of Lagos Plan of Action for the Development of Africa." jointly organized by the Organization of Africa Trade Union Unity (OATUU), and the Nigerian Labour Congress, (NLC), held in Lagos, he warned citizens of ECOWAS to comply strictly with the ECOWAS Charter which limited their duration of stay to 90 days. He added:

The ECOWAS citizens who pay visit to any country in the sub-region under the free Movement Provision of the ECOWAS Treaty should go through the normal immigration requirements of the country they intend to visit.

Phase two is related to the right of residence which came into force in 1986 in spite of the Nigeria's refusal to set it into motion, while phase three is concerned with the right of establishment.

The Expulsion of the So-called Illegal Aliens in Nigeria by the Buhari Regime, 1983-1985.

The massive expulsion of ECOWAS citizens, mostly Ghanaians, Ivoiriens and Togolese, popularly tagged illegal aliens in Nigeria during the regime of General Muhammadu Buhari (Rtd), and the closure of the Nigerian borders with her immediate neighbours between 1984 and 1985 have raised three fundamental issues. The first issue centers on Nigeria's legal obligation to the provisions of ECOWAS Protocol on the Free Movement of Persons across national boundaries within the West African sub-region. Second issue relates to what constitute an illegal alien. Third, involves the basis for the expulsion of illegal aliens.

i) Nigeria's legal obligation to Articles 27 of ECOWAS Protocol on Free Movement of Persons

The issue of whether the provisions of the ECOWAS protocol on the movement of persons has a binding force on Nigeria is not a subject of debate. It is submitted that where a country is a signatory to a treaty, the provisions of such a treaty is legally binding on it. The point that Nigeria is a signatory to the ECOWAS treaty and has ratified it with the required number of countries made it obligatory for her to abide by the provisions of the Treaty in accordance with

the legal principle, *pacta sunt servanda* (meaning that treaties must be obeyed).

Although most law scholars have argued that a treaty in its nature, is a contract between two or more states and does not have the force of law except to the extent to which such a treaty has been enacted into law by the National Assembly. One would submit that Nigeria being the strongest supporter of ECOWAS may have made provisions in her constitution to accommodate the country's obligations to international treaties like the ECOWAS's, while maintaining the country's sovereignty.

ii) What Determine whether a person in another country is an illegal alien:

The fact that a person resident in Nigeria, for instance, is not a Nigerian citizen by birth or by other criteria, does not make him an illegal alien. People are described as illegal aliens because they do not possess or meet the immigration requirements of the country in which they are found. Countries' immigration laws provide conditions under which citizens of other countries can gain entry into those countries.

In addition to the ECOWAS Protocol on Free Movement of Persons into member countries, the porous nature of borders between Nigeria and her immediate neighbours and ineffective surveillance by the Nigerian Immigration Officers, many citizens of other West African countries found entry into Nigeria without adhering to the provisions of the right to free movement of ECOWAS citizens in member states or meeting the immigration requirements of the countries where they want to reside or work.

iii) Basis for the Expulsion of Community Citizens in Nigeria

The expulsion of ECOWAS citizens who were described as illegal aliens in Nigeria during the General Buhari regime can be discussed under two main factors. Some scholars have paid greater attention to the legal aspect of Nigeria's action, while others have focused their attention on Nigeria's economic interest as a motivating force in the expulsion exercise.

Starting from the legal stand point, it is necessary to avoid the impression that the expulsion of the illegal aliens from Nigeria was based on frivolous grounds. The Buhari regime acted in accordance with the provisions of ECOWAS Treaty, but this action attracted public outcry in some of the ECOWAS member -states because the illegal aliens were expelled without the due process of the law. The issue here was not that of Nigerian government complying with the provisions of the ECOWAS Protocol on Free

Movement of Persons into her territory without visa requirements, but that of non-adherence to the Article 27 of the ECOWAS protocol. ECOWAS citizens who over-stayed in Nigeria after entry beyond 90 days without application and approval for an extension of stay or accepted employment without work permit violated the provisions of the community protocol.

On the other hand, the illegal aliens did not meet the Nigerian immigration law promulgated to regulate the admission or exit of aliens. The immigration law defines all conditions under which an alien may be admitted into Nigeria, the duration of stay or for what purpose. For instance, the Nigerian Immigration Act which can be traced back to 1963 provides that:

A person who satisfies the immigration officer as to his identity as a Nigerian citizen can neither be prevented from entering Nigeria or deported from it, and no citizen of Nigeria shall be refused entry thereto or exist therefrom S. 1 (2) (see also S. 38 of the 1979 Nigerian Constitution).

The Immigration Act empowers the Immigration officers to refuse entry non nationals defined to include;

any person who is without visible means of support or is likely to become a public nuisance; any person convicted in any country of a crime where committed which is an extradition crime within the Extradition Act, and any person whose administrative in the opinion of the Ministry of State be contrary to the interests of national security. (The Immigration Act, 1963, S. 17 (1).

Under the immigration Act, the Minister of State has at his discretion the power at any time, and by notice to include or amend any class of prohibited immigrants, and if he deems in the public interest, prohibit the entry into Nigeria of such a person or class of persons (*Ibid.*, S. 17(2).

It is important to mention at this point that each country is the sole judge of the extent to which aliens are allowed entry into her territory. Under normal conditions, an alien traveling to a given country for business or residence is required to satisfy the country's immigration law or act. This is a view recognized and accepted by a number of countries and provided in their constitutions. It has become very difficult for non nationals to enter into another country not even to take up a gainful employment without special

permission. Where such Immigration Act is not obeyed by citizens of other countries and are caught by immigration officers, they are repatriated to their home countries. The same was the case with the ECOWAS citizens who entered into Nigerian territory illegally. Technically speaking, the strongest weapon which most countries hold against aliens is immigration law, and this is a major obstacle to free movement of non nationals. This was one of the reasons why Nigerians were deeply concerned about Ghana's Aliens Deportation Order of 1971 which affected 200,000 aliens, including many Nigerians who lived in Ghana for many years and citizens of other West African countries (See Nigerian Institute of International Affairs (NIIA) Bulletin, Vol. 1, NO. 3, January, 1972: 21; Chukwurah, 1983: 490).

The provisions of ECOWAS protocol which aimed at abolishing all obstacles for people to move from one state to another within the sub-region either for residence or employment without restrictions were seen as creating socio-economic problems to Nigeria. As a country with fairly stable economy relative to her neighbours, Nigerian was likely to attract such movement for the community citizens with little or no compliance to the provisions of ECOWAS protocol on the free movement of persons. The mass movement of persons into Nigeria was seen as a means of redistributing the wealth of the sub-region concentrated in Nigeria. In fact, the impression people in other West African countries had about Nigeria was that the average Nigerian was better off materially than citizens in other countries.

It is however, argued that the expulsion of illegal allens from Nigeria was eminently economically motivated. Nevertheless, the action of Buhari regime was tilted toward the protection of Nigeria's economic interest. However, this was an illustration of economic factor as a desirable instrument of Nigeria's foreign policy.

In the late 1970s and early 1980s, Nigeria was caught up in serious economic down turn which was characterized by high external debts, hyper-inflation declining domestic output, balance of payment deficit and deteriorating standards of living. Without the major cause of the economic crises since the 1980s, oil accounted for the greater percentage of Nigeria Gross Domestic Product (GDP) and export revenue.

In addition, from 1979 to 1983, billions of Naira debts were incurred from different financial institutions and agencies across the globe by the Shagari administration. These debts were incurred following gross misappropriation of funds. In many cases loans were obtained for projects which were never executed or contributed to socio-economic benefits to the

nation. In other cases, money borrowed by State Governors from foreign creditors were siphoned into the private accounts of political leaders (Anaroké, 2002: 16).

By the time General Buhari came to power in 1983 after the demise of the Second Republic, Nigeria emerged with backward and disarticulated economic and political instability. Apart from the economic crisis in the country, the problem of illegal aliens was a major one that gave serious concern to the Buhari regime although many people have argued that the issue of illegal aliens was used by the military regime of General Buhari to divert the attention of the people from pressing domestic economic and political crisis.

However, the action taken by the Buhari regime was seen as necessary not for its own sake, but for enhancing the chances of solving Nigeria's economic problem at that time. The expulsion of illegal aliens from Nigeria was motivated by the desire to protect for Nigerian the employment or business activities which were taken over by the illegal aliens. It is fair to state that many of these illegal aliens lacked professional skills and investment capabilities. To allow them to stay in Nigeria could have placed heavy burden on Nigeria's ailing economy because there were more people (both Nigerian Citizens and aliens) to cater for. The most serious problems emanating from the free movement of illegal aliens, were religious riots, armed robbery and; drug and currency trafficking. Available evidence seemed to suggest that the Maitmasine uprising in many of the cities in the Northern States of Nigeria between 1984 and 1985 had their roots from the illegal aliens from Nigeria's neighbours. This state of instability and insecurity with their attendant consequences on socio-economic and political development in the country have given rise to poverty, joblessness and intense competition over scarce resources and services both in the urban and rural contexts. Such poor economic conditions nurtured frustration and state of hopelessness especially amongst the youth.

From the analysis raised here, it was likely that the Buhari regime would feel reluctant to allow unrestricted number of aliens into Nigeria. The regime was of the view (whether right or wrong) that there could have been no way Nigeria would move forward without first of all removing the threats the presence and activities of the illegal aliens imposed on the country.

CONCLUSION AND RECOMMENDATIONS

The conclusion emerging from this paper has been largely the problem of implementation of the ECOWAS Treaty on free movement of

persons within the West African sub-region. This problem as many scholars have argued has been the fall out of lack of political will among the ECOWAS members. The prediction that where members of any cooperative organization like ECOWAS have no confidence in the organization's treaty, they would pursue policies that undermine the implementation of the treaty is vividly illustrated in the case of ECOWAS Treaty on Free Movement of Persons across national boundaries. The utterances of most members regarding the implementation of the ECOWAS Treaty tended to convey the impression that ECOWAS is a mere paper tiger.

The reluctance by member states for instance, Nigeria to implement the ECOWAS Treaty because the free movement of persons threatened their economic development was a clear demonstration of the fact that the national interest of each member state was more paramount than the collective interests of the community. This action negated the spirit of security community which ECOWAS is designed to build among the states within the sub-region.

Furthermore, ECOWAS members have given more emphasis on admitting ECOWAS citizens into their territories on the basis of their meeting the procedures and requirements of the Immigration Acts of these countries, thus imposing a major problem which has plagued the implementation of free movement of persons across borders.

Lastly, the ECOWAS Treaty on Free Movement of Persons does not provide the authority responsible for the implementation of the provisions of the Treaty. It is submitted that the government of Buhari might have labeled these citizens as such to justify their expulsion.

However, to facilitate the implementation of the provisions of the Treaty on Movement of persons within the countries constituting ECOWAS, there must be a strong political will of the members. Without such a will, the greater or smaller clashes of interests, which unavoidably have to be faced will give rise to conflicts threatening the whole scheme.

Member states should also undertake to harmonize their immigration policies so as to assure similarity in their requirements for entry into their territories by ECOWAS citizens. The community as a whole would benefit by relaxing some of its entry barriers in order to facilitate free movement of persons. In other words, ECOWAS members should make considerable sacrifice if the free movement of persons must be realized.

Each member state should make efforts to improve her economy and the standards of living of her citizens. This will make movement to other States unattractive, considering the problems

such movement of persons to other countries will involve.

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