

**RABAT PROCESS THEMATIC MEETING ON
“MIGRANTS IN A CRISIS CONTEXT” WHAT IS THE
ROLE OF ECCAS?**

By Dr. Pierre Siméon ATHOMO-NDONG
Head of the Election Support Unit at the Secretary General of ECCAS, Focus
point “ Migration and the Circulation of People”
Paris, April 24th 2014

*By Dr. Pierre Siméon ATHOMO-NDONG
Head of the Election Support Unit at the Secretary General of ECCAS,
Focus point ‘Migration and the Circulation of People’
Paris, April 24th, 2014*

INTRODUCTION

In the name of his **Excellency Mr. Ahmad ALLAM-MI**, Secretary General of ECCAS, I would first like to thank the organisers of this thematic meeting on “**MIGRANTS IN A CRISIS CONTEXT**”, part of the RABAT process. Yet without wishing to expose myself to polemics, at such a distance from the lands of Central Africa, it would be difficult for me to avoid telling the ECCAS member states present in this room that this invitation, in terms of the norms for Community Integration, is seen by the Secretary General as a lever which can be used under the principle of transposition. In other words, ECCAS cannot have any authority in respect of migration issues outside of its own geographical boundaries unless its member states endow it with an authority pertaining to this issue in the context of their own mutual relations.

Indeed, the RABAT process could not even consider deploying its “usefulness” unless it registers itself in the wider framework of a Euro-African Dialogue on Migration and Development. For the record, you may remember that between 1990 and 1999 the ECCAS had ceased to operate because seven (7) out of the eleven (11) member states were experiencing crises among each other or within their own boundaries. And this had engendered population movements (a massive flow of refugees displaced by internal forces). One of the first decisions that was taken was to reactivate the Kigali Decision on the Free Circulation of “*certain categories of nationals from its member states within the Community*”, a Decision which in itself had been able to bring the Community back to more political pragmatism, albeit tainted by temporary distrust which had made the Kigali Decision into an obstacle to the Free Circulation of People.

In short, ECCAS did not extend legal recognition to a share tradition of migration due to the discrimination by wealthier member states in its midst.

In simple terms, ECCAS abuts several Regional Economic Communities with which it shares all or some of its member states and especially the movement of populations in times of crises.

Speaking in the name of the states who obviously believe that it is vital to avoid working together to manage migration in a crisis context, this presentation revolves around six (6) points:

1. Migration in a crisis context is rarely desired. It pits a state where the responsibility to protect cannot or will not be accepted against a state where deference to laws and rules concerning the protection of people is accepted;
2. Migration in a crisis context is managed by proxy, through the international community (**UNHCR, IOM, RED CROSS, UNITED NATIONS**) ;
3. Migration in a context of crisis makes states into unwilling spectators of tragedy (**DRC/RWANDA, CRISIS IN CAR, with uprooted people become unclassifiable**) ;

**RABAT PROCESS THEMATIC MEETING
“MIGRANTS IN A CRISIS CONTEXT” WHAT IS THE ROLE OF ECCAS?**

4. At end of such periods of migration, the states end up in the de facto position of acting administrators, or caretakers;
5. Opportunities for ECCAS, from a legal, political and strategic angle;
6. Reasons to not give up hope.

I- MIGRANTS IN A CRISIS CONTEXT WITHIN THE ECCAS SPACE: THE DUTY OF THE HOST STATE TO PROTECT

3

When a state cannot or will not ensure the protection of people present on its territory, the latter may have recourse to the only right inalienable from their human condition, the only right that remains when all other rights have been lost, which is the right to flee when it is still possible. Thus, the Universal Declaration of Human Rights states in article 14, “*Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*” And all states refer to this instrument enshrined as an agreement that to this day has yet to be challenged. And so, the Constitution of the Republic of Cameroon states in its preamble, “its adhesion to the fundamental freedoms enshrined in the Universal Declaration of Human Rights...,” stating subsequently that “Every person has the right to life and to physical and moral integrity. A person must under all circumstances be treated humanely.

Under no circumstances may this person be subject to torture or cruel, inhumane or degrading treatment. Furthermore, it affirms that “no person may be harassed because of their origins, of for opinions or religious, philosophical or political beliefs that are consistent with a respect of the public order or morality.”

We have just listed the main reasons that push people to migrate in a crisis context.

Thus, from its initial function as a collection of technical rules bearing purely on the organization and function of public powers, the Constitution may become a contemporary charter for a State of Law, an instrument for girding power with a moral sense, to the extent that it shall henceforth include the protection of Fundamental Rights of human beings and the affirmation of a national and international ethical principle. These ambitions are in fact only relevant to the extent that they can be enforced when confronted with those who manage state policy.

Also, Gabonese **law N° 05/90 concerning the status of refugees**, contributes a final touch by stating that any person presenting a request for refugee status shall not be considered an illegal migrant. In light of the submission of a legal framework, this presents the answer drafted by the ECCAS members in response to the problem of migration in a crisis context.

*By Dr. Pierre Siméon ATHOMO-NDONG
Head of the Election Support Unit at the Secretary General of ECCAS,
Focus point ‘Migration and the Circulation of People’
Paris, April 24th, 2014*

II- THE INTERNATIONAL COMMUNITY, A PROXY WITHIN THE ECCAS SPACE

As a reminder, migration in a crisis context is inscribed within the terms of an equation with many unknown variables:

- The country of origin or of residence cannot or will not ensure the safety of persons living in its territory;
- Persons who no longer can or no longer want to appeal to its protection shall seek temporary asylum or protection beyond its borders;
- The host country (or the most accessible country) that is generally chosen is not prepared for an inflow of people who multiply the need for welfare; powerless in the face of this inflow, the host finally asks for assistance from the international community.

The reasons for considering such a crisis involving forced migration of population depends on a limited number of predictable factors (a dispute arising out of contested election results).

However, neither the states nor ECCAS have existing “plans” to face the arrival of people often in mass. One obvious outcome is that initial generosity soon gets overwhelmed, and the rapidly improvised response leads to International Community channels, provided the latter can indeed mobilise itself or that some of its members will enact the principle of a humanitarian intervention. This usually implies the following organisations, not including the UN:

- a) The Red Cross which had early on created the Law of War which is implemented in particular in the context of reuniting dispersed families, by searching for safe place for each member;
- b) The High-Commissioner for Refugees of the United Nations which acts on state level to ensure that the fundamental rights of migrants are guaranteed in spite of the states.

Under these terms, the success of the outcome of a forced migration is often the fact of the humanitarian organisations, which, acting in an auxiliary capacity, participate as a proxy in the response to migration in a crisis context.

Moreover, the success of the humanitarian plans is the factor which underscores the process leading to the reliability of the forced migrant count (Congo/Gabon) or access to health care.

Thus, in parts of Africa where forced migration is unknown, the states count on the International Community and its precarious schedule.

III- MIGRATIONS IN A CRISIS CONTEXT: THE ECCAS MEMBER STATES, “THIRD PARTIES” IN THE TRAGEDY AFFLICTING THE POPULATIONS THEY ARE SUPPOSED TO PROTECT

The case of the crisis afflicting the East of the Democratic Republic of Congo (DRC) has been so extensively commented on that the sole issue that remains for consideration is forced migration as an ongoing problem despite the creation of ECCAS, even though it is an instrument that bears exclusive state competence.

This is all the more striking when one considers that the protocol provisions for the Council for Peace and Security in Central Africa (COPAX) of February 20th 2000 are especially imprecise in regard to forced migration:

1. Article 3, the sole paragraph of its kind, merely reaffirms the adherence of the states to the principles enshrined in International Norms, including the Universal Declaration of Human Rights, which in point (9) specifically addresses “the protection of fundamental rights and freedom of all people”.
2. Article 4, addressing the objectives of COPAX, successively highlights three points (k, j, m):
 - ✓ Coordinate the action of member countries in fighting against illegal immigration;
 - ✓ Ensure the cooperative management of displaced persons, ex-combatants and refugees, in accordance with the provisions in the international legal instruments in force;
 - ✓ Propose measures which reflect the organization and coordination of humanitarian assistance, and which **IMPLEMENT CONSEQUENTIAL INSTRUMENTS.**

In other words, the member states of the ECCAS have agreed that in case of a crisis, they must gather together to determine what is to be done. As such, the guiding principles of the Permanent Court of International Justice (PCIJ) have been restored but the occurrence of crises is not contingent on the readiness of the states to provide a response. One might even wonder about the usefulness of article 5 of the related protocol (attachment 1).

The most eloquent example of this, demonstrating the ancillary role of ECCAS in these issues, is the situation in CAR today, where the United Nations have planned to evacuate Muslims out of the country. This event calls for several observations to be made:

1. Does it concern Central Africans or Muslim persons;
2. Does it concern Muslim persons because they are from Chad, or vice versa;
3. Does it concern who are at risk of, or been forced into exile (temporarily or permanently);
4. Does it concern people displaced by force.

And what are actually the lasting solutions, keeping in mind all the while the words of

**RABAT PROCESS THEMATIC MEETING
“MIGRANTS IN A CRISIS CONTEXT” WHAT IS THE ROLE OF ECCAS?**

Mrs. Sadako OGATA, High Commissioner for Refugees of the United Nations in the 1990s: “international protection (by substitution) does not makes sense unless there is a lasting solution.”

Indeed, the programmed smuggling of “Muslims” lays bare the deficiency of the ECCAS in terms of a “focused management of displaced persons (...).”

In fact, in relation to this subject area the member states of the ECCAS, concerned with their own sovereignty, seem to rely on “the guiding principles concerning the displacement of persons within their own countries.” This is echoed in principle 25 which states:

1. The duty and responsibility of providing humanitarian aid to displaced persons within their own countries is, first and foremost, incumbent on the national authorities;
2. Nonetheless, the authorities involved may authorise and facilitate the free passage of humanitarian aid, allowing those in charge of distribution quick and unhindered access to displaced persons within their own country.”

IV- THE END OF FORCED MIGRATION IN A CRISIS CONTEXT

It is obvious enough that the question concerns refugees or displaced persons within their own countries. In the first case, one must contend with the fact that the states are acting administrators, or caretakers, while in the second case, the states conserve their sovereignty.

In accordance with international instruments and practices, the abandonment of refugee status involves a personal decision. In the case of the mass inflow of people, the free return of former refugees must be undertaken in the context of a tripartite agreement between the country of origin, the High Commissioner for Refugees of the United Nations, and the country of asylum.

The return of displaced persons overlaps the underlying issue of security in the preceding paragraph, which receives an admirable treatment in principles 28, 29 and 30, worded as follows:

“It is the incumbent on the authorities in charge to first assume the duty and responsibility for creating suitable conditions for the voluntary return, in security and dignity, of persons within their own countries to their homes or customary residence, or their voluntary settlement in another part of the country, as well as providing them with the means to do so. These authorities shall endeavour to facilitate the reintegration of persons displaced within their own country who have returned to their place of origin or who were resettled.

Special efforts shall be made to ensure the full participation of persons displaced within their own country in the planning and management of their own return, resettlement or reintegration.

Persons displaced within their own countries who have returned to their homes or customary place of residence, or who have been resettled in other regions of the country must not be subject to any discrimination rooted in their displacement. They have the full right to participate as equals in public affairs at all levels, and to have access to public services under equal terms.

The competent authorities have the duty and the responsibility to help persons displaced within their own country and who have returned to their place of origin or who have been resettled, to recover to the extent that is possible their property and possessions which they had left behind or which they had been dispossessed of them when they left. When such repossession is not possible, the competent authorities shall grant these persons an appropriate compensation or other form of fair reparation, or shall help them to obtain it.

All concerned authorities shall authorize and assist the International Humanitarian Organizations and other actors involved, in their respective missions, to obtain free and unhindered access to the persons displaced within their own countries so as to help their

**RABAT PROCESS THEMATIC MEETING
“MIGRANTS IN A CRISIS CONTEXT” WHAT IS THE ROLE OF ECCAS?**

return or resettlement, and their reintegration.

FREE CONCLUSION