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Special Issue: Legal Infrastructures

Free Movement for Whom? Gendered Dynamics in the Access to Mobility Infrastructures in West Africa

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(Received 14 November 2024; accepted 09 December 2024)

Abstract

The Economic Community of West African States (“ECOWAS”) has established one of the most comprehensive free movement regimes. By declaring West Africa a borderless region, the organization affirms the right of free movement for all citizens of member states. Nevertheless, significant obstacles to securing this right persist and is particularly prevalent for female migrants. Studies reveal that widespread corruption, border harassment, and bureaucratic inefficiencies restrict female migration opportunities. However, current scholarship inadequately addresses the interrelation between regional mobility law, infrastructures, and female migration. This Article examines the gendered dimensions of access to mobility infrastructures from the perspective of ECOWAS officials. Mobility infrastructures are conceptualized as comprising legal, physical, and technological components that collectively facilitate or restrict movement. The analysis draws on documentary evidence and insights from 19 semi-structured interviews with ECOWAS Commission officials. It shows that access to mobility infrastructures is predominantly determined by embedded gender norms, laws, and practices. By analyzing accounts from officials involved in constructing the free movement regime, the Article provides unique insights into the disparities between institutional intentions, legal frameworks, and mobility trajectories. In doing so, it contributes to research on free movement in West Africa, mobility infrastructures, and the emerging scholarship on legal infrastructures.

Keywords: Mobility; legal infrastructures; female migration; free movement; ECOWAS

A. Introduction

The Economic Community of West African States (“ECOWAS”) has, from a formal legal perspective, established one of the most comprehensive regional free movement regimes in the world. In 1979, ECOWAS adopted the Protocol Relating to Free Movement of Persons, Residence, and Establishment,¹ which granted citizens the right to ninety days of visa-free entry, establishment, and residency in another ECOWAS member state. The primary rationale for adopting the protocol was to enhance regional economic development during times of newly gained independence. With the ratification of the protocol and the adoption of a series of supplementary protocols, ECOWAS formalized and legalized movement advocating for the re-establishment of pre-colonial ties that had been disrupted by the construction of arbitrary

¹See Economic Community of West African States, Protocol A/P 1/5/79 Relating to the Free Movement of Persons, Residence and Establishment, May 1, 1979.

colonial nation-state borders.² Despite proclaiming the creation of a “borderless region”³ and serving as an inspiration to other mobility initiatives across the continent,⁴ the ECOWAS free movement regime faces serious implementation flaws and a significant disparity between the *de jure* right of free movement and *de facto* mobility opportunities.⁵

The literature on free movement in West Africa is divided into several strands. One body of work addresses the persistent challenges in implementing free movement laws,⁶ with legal scholarship examining the limitations in national enforcement of regional laws⁷ and temporary restrictions on free movement laws.⁸ This inquiry also explores the influence of external actors as determinants of migration trajectories.⁹ Another research strand investigates the challenges of translating regional mobility laws into practice, highlighting disparities in the experiences of male and female labor migrants.¹⁰ This research shifts focus from outlining mobility laws and policies to understanding their effects, questioning their distributional power and impact.¹¹ Related studies have examined the experiences of free movement,¹² arguing that the challenges extend beyond legal norms and weak national implementation. They assert that free movement is disproportionately governed and largely inaccessible to many West African citizens, particularly women.¹³ Studies reveal that female migrants often face harassment at border

²See Kwaku Arhin-Sam, Amanda Bisong, Leonie Jegen, Harouna Mounkaila & Franzisca Zanker, *The (In)Formality of Mobility in the ECOWAS Region: The Paradoxes of Free Movement*, 29 S. AFR. J. INT'L AFFS. 187, 188 (2022).

³Samuel Kehinde Okunade & Olusola Ogunnubi, A “Schengen” Agreement in Africa? African Agency and the ECOWAS Protocol on Free Movement, 36 J. BORDERLANDS STUD. 119, 125 (2018).

⁴See, e.g., Cyril Obi, *The Economic Community of West African States (ECOWAS) and the Quest for Community Citizenship: Any Lessons for the Greater Horn Region?*, in REGIONAL INTEGRATION, IDENTITY, AND CITIZENSHIP IN THE GREAT HORN OF AFRICA 237, 237 (Kidane Mengisteab & Redie Bereketeab eds., 2012); African Union, Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence, and Right of Establishment, January 29, 2018. This Protocol has been signed by thirty-two African Union member states and ratified by one (Rwanda). It needs fifteen ratifications to come into force.

⁵See Thomas Yeboah, Leander Kandilige, Amanda Bisong, Faisal Garba & Joseph Kofi Teye, *The ECOWAS Free Movement Protocol and Diversity of Experiences of Different Categories of Migrants: A Qualitative Study*, 59 INT'L MIGRATION 228, 232 (2020).

⁶See Aderanti Adepoju, *Operationalizing the ECOWAS Protocol on Free Movement of Persons: Prospects for Sub-Regional Trade and Development*, in THE PALGRAVE HANDBOOK OF INTERNATIONAL LABOUR MIGRATION: LAW AND POLICY PERSPECTIVES 441, 442 (Marion Panizzon, Gottfried Zürcher & Elisa Fornalé eds., 2015).

⁷See Aderanti Adepoju, Alistair Boulton & Mariah Levin, *Promoting Integration Through Mobility: Free Movement Under ECOWAS*, 29 REFUGEE SURV. Q. 120, 121 (2010).

⁸See Abdoulaye Hamadou, *Free Movement of Persons in West Africa Under the Strain of COVID-19*, 114 AM. J. INT'L L. UNBOUND 337, 337–41 (2010).

⁹See generally Amanda Bisong, “Acting Together”: How Non-State Actors Shape Migration Policies in West Africa, (Merian Inst. for Advanced Stud. Afr., Working Paper No. 2019(2), 2019); Clare Castillejo, *The Influence of EU Migration Policy on Regional Free Movement in the IGAD and ECOWAS Regions* (German Inst. Dev. & Sustainability, Discussion Paper No. 11, 2019).

¹⁰See Yeboah et al., *supra* note 5, at 232.

¹¹See, e.g., Adepoju et al., *supra* note 7, at 121; Meshach Zhizhi & Chris Uche Nwamuo, *Ecows Free Movement Framework: A Review of the Socio-Political and Economic Repercussions*, 1 BENUE J. PEACE & CONFLICT STUD. 115, 123 (2023).

¹²See generally Armelle Choplin & Jerome Lombard, *On West African Roads: Everyday Mobility and Exchanges Between Mauritania, Senegal, and Mali*, 48 CAN. J. AFR. STUD. 59 (2014).

¹³In the document analysis and interview materials, I encountered a binary representation of gender—that is, female/male—that was largely presented as self-evident. However, insights from gender and queer theory highlight the need to critically examine and question such binary frameworks. See, e.g., Miriam Ines Wickham, Félice van Nunspeet & Naomi Ellemers, *Gender Identification Beyond the Binary and Its Consequences for Social Well-Being*, 52 ARCHIVES SEXUAL BEHAV., 1073–93 (2023). See generally JUDITH LORBER, THE NEW GENDER PARADOX: FRAGMENTATION AND PERSISTENCE OF THE BINARY (2022). This presents a significant research challenge, as it creates a tension between adopting a reductive perspective and potentially misrepresenting the empirical material. In this Article, I have sought to stay true to the representations that emerged from the organizational framework and within the interviews. However, this should not be interpreted as taking a particular stance and I encourage readers to engage with the broader literature on this topic.

crossing facilities,¹⁴ and that limited access to technological and legal infrastructures further restricts their opportunities for intra-regional movement.¹⁵ For instance, restrictive nationality laws in Liberia and Togo prevent women from conferring nationality on their children, resulting in a lack of necessary identification documents for regional movement.¹⁶

Collectively, these studies on free movement in West Africa have demonstrated that widespread corruption, border harassment, and bureaucratic inefficiencies severely limit access to movement, rendering the free movement regime largely ineffective and idealistic.¹⁷ While these examples provide valuable perspectives, they do not sufficiently address the interrelation between law, infrastructures, and movement, which are fundamental aspects of West African mobility.¹⁸ Specifically, current scholarship has neglected to analyze mobility infrastructures from the perspective of the officers formulating the laws and policies. This Article argues that a core issue within the ECOWAS free movement regime is the challenge of securing access to mobility infrastructures, particularly for female migrants. To address this gap, the Article integrates perspectives from legal scholarship on infrastructures with insights on free movement and mobility in West Africa.

This analysis relies on documentary evidence and insights from nineteen semi-structured interviews conducted with officials at the ECOWAS Commission between October and December 2019. The Article conceptualizes mobility infrastructures as comprising a set of interrelated components (i) legal—for example, laws; (ii) physical—for example, roads and border posts; and (iii) technological—for example, information and communication technologies. Inspired by Thomas Spijkerboer's conceptualization of the global mobility infrastructure regime,¹⁹ the Article argues that mobility law and regulations are integral to a broader infrastructure regime designed to facilitate movement. The theoretical foundation of this Article aligns with emerging scholarship on legal infrastructures, agreeing with the argument by William Hamilton Byrne, Thomas Gammeltoft-Hansen, and Nora Stappert that “legal norms, practices, and institutions themselves move through physical infrastructures.”²⁰ The Article shows that female migrants' access to mobility infrastructures is significantly influenced by restrictive gender norms, laws, and practices embedded within the ECOWAS free movement regime.

¹⁴See Ayodeji Anthony Aduloju, *ECOWAS and Free Movement of Persons: African Women as Cross-Border Victims*, 18 J. INT'L WOMEN'S STUD. 89, 98 (2017).

¹⁵See, e.g., Shikha Vyas-Doorgapersad & Angelita Kithatu-Kiwেকে, *Gender and ICT in East and West Africa for Sustainable Development Goals: A Comparative Study*, 9 INT'L J. EBUSINESS & EGOVERNMENT STUD. 24, 28–29 (2017); Godiya Allanana Makama, *Patriarchy and Gender Inequality in Nigeria: The Way Forward*, 9 EUR. SCI. J. 115, 129 (2013); Robtel Neajai Pailey, *Women, Equality, and Citizenship in Contemporary Africa*, OXFORD RSCH ENCYCL. POL. (2019), <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-852>.

¹⁶See generally BRONWEN MANBY, *CITIZENSHIP LAW IN AFRICA: A COMPARATIVE STUDY* (2016) (discussing these restrictive nationality laws).

¹⁷See Aderanti Adepoju, *Migration Management in West Africa Within the Context of ECOWAS Protocol on Free Movement of Persons and the Common Approach on Migration: Challenges and Prospects*, in REGIONAL CHALLENGES IN WEST AFRICAN MIGRATION: AFRICAN AND EUROPEAN PERSPECTIVES 17, 17 (Marie Trémolières ed., 2009).

¹⁸See Nauja Kleist & Jesper Bjarnesen, *Mediating Mobility in West Africa: Improvisation, Culture, and Volatility in Migration Infrastructures*, 57 INT'L MIGRATION REV. 1, 2 (2023).

¹⁹See generally Thomas Spijkerboer, *The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control*, 20 EUR. J. MIGRATION & L. 452 (2018).

²⁰William Hamilton Byrne, Thomas Gammeltoft-Hansen & Nora Stappert, *Legal Infrastructures: Towards A Conceptual Framework*, 25 GERMAN L.J. 1229 (2024).

The Article contributes to current research on free movement in West Africa,²¹ mobility infrastructures,²² and the emerging scholarship on legal infrastructures.²³ Theoretically, it enhances the expanding body of research that is developing new theoretical understandings of how legal infrastructures shape societies,²⁴ particularly in terms of human mobility.²⁵ The Article argues that law itself functions as a form of infrastructure with material and distributional power.²⁶ By examining the gendered dynamics of access to mobility infrastructures, the Article offers new insights into how legal infrastructures integrate material elements—for example, border posts—and social practices, which in turn shape legal infrastructures. Empirically, the Article provides novel data on the perceptions of bureaucrats at the ECOWAS Commission regarding mobility infrastructures, the inherent gender imbalances, and their understanding of the organization's free movement regime, including its legal framework and its limitations. The focus on gender dynamics enriches current research on the mobility challenges faced by female migrants²⁷ and the diverse experiences of labor migrants moving across the region.²⁸ This empirical focus is innovative in the study of free movement in West Africa.

Through analyzing accounts from officials working on the free movement regime, the Article offers unique insights into the disparities between institutional intentions, legal frameworks, and mobility opportunities. These accounts allow for an examination of the gendered norms embedded in the legal, physical, and technological mobility infrastructures of ECOWAS, which may not be evident from an analysis of the organization's laws and policies. This institutional perspective is essential as it opens up discussions on the functioning of the ECOWAS free movement regime and the governance of movement “from above.” Moreover, it sheds light on how mobility infrastructures are facilitated and managed by ECOWAS officials, whose work on the free movement regime ultimately shapes the trajectories of (im)mobility for millions of ECOWAS citizens relying on access to official ECOWAS mobility infrastructures.

The remainder of this Article is structured as follows: Section B presents a brief description of gendered migration patterns in West Africa to contextualize the empirical analysis. Subsequently, Section C discusses theoretical perspectives on mobility infrastructures and outlines the framework of this Article, building on the conceptualization of global mobility infrastructure as

²¹See Joseph Kofi Teye, Mariama Awumbila & Yaw Benneh, *Intra-Regional Migration in the ECOWAS Region: Trends and Emerging Challenges*, in MIGRATION AND CIVIL SOCIETY AS DEVELOPMENT DRIVERS—A REGIONAL PERSPECTIVE 97, 98 (Ablam Benjamin Akoutou, Rike Sohn, Matthias Vogl & Daniel Yeboah eds., 2015). See also Adepoju, *supra* note 6, at 441. See generally JERRY UKAIGWE, *ECOWAS LAW* (2016).

²²See Spijkerboer, *supra* note 19, at 452; Biao Xiang & Johan Lindquist, *Migration Infrastructure*, 48 INT'L MIGRATION REV. 122, 124 (2014); Kleist & Bjarnesen, *supra* note 18, at 2.

²³See Byrne et al., *supra* note 20, at 10; Léna Pellandini-Simányi & Zsuzsanna Vargha, *Legal Infrastructures: How Laws Matter in the Organization of New Markets*, 42 ORG. STUD. 865, 867 (2019); Mariana Valverde, *Infrastructure: Socio-Legal Aspects of a Key Word of Our Time*, in THE ROUTLEDGE HANDBOOK OF LAW AND SOCIETY 170, 170 (Mariana Valverde, Kamari M. Clarke, Eve Darian Smith & Prabha Kotiswaran eds., 2021) [hereinafter *Infrastructure: A Key Word*]. See generally Mariana Valverde, *INFRASTRUCTURE: NEW TECHNOLOGIES IN LAW* (2022).

²⁴See, e.g., Valverde, *Infrastructure: A Key Word*, *supra* note 23, at 170; Pellandini-Simányi & Vargha, *supra* note 23, at 867; Spijkerboer, *supra* note 19, at 452.

²⁵See, e.g., Spijkerboer, *supra* note 19, at 452; Kleist & Bjarnesen, *supra* note 18, at 2; Byrne et al., *supra* note 20, at 10. See generally Magdalena Kmak, *LAW, MIGRATION, AND HUMAN MOBILITY: MOBILE LAW* (2023).

²⁶See Byrne et al., *supra* note 20, at 10 (arguing the same).

²⁷See generally Jubril Olayiwola Jawando, Ezekiel Oluwagbemiga Adeyemi & Busoye Oguntola-Laguda, *Survival Strategies of Women in Informal Cross Border Trade Along Lagos Seme Border Axis*, 12 GLOB. J. HUM. SCI., SOCIOL., ECON. & POL. SCI. 29 (2012); Omotomilola Ikotun, *Gendered Insecurity and Mobility in West African Borderlands: Putting the Nigeria/Niger Border in Perspective*, in ECOWAS PROTOCOL ON FREE MOVEMENT AND THE AfCFTA IN WEST AFRICA: COSTS, BENEFITS & CHALLENGES 45 (Samuel Kehinde Okunade & Olusola Ogunnubi eds., 2023).

²⁸See, e.g., Aderanti Adepoju, *Creating a Borderless West Africa: Constraints and Prospects for Intra-Regional Migration, in MIGRATION WITHOUT BORDERS: ESSAYS ON THE FREE MOVEMENT OF PEOPLE* 161, 167 (Antoine Pécoud & Paul de Guchteneire eds., 2007); Yeboah et al., *supra* note 5, at 228; Kleist & Bjarnesen, *supra* note 18, at 2; Joshua Olusegun Bolarinwa, *The ECOWAS Free Movement Protocol: Obstacle or Driver of Regional Integration?*, 7 INSIGHTS AFR. 149, 154 (2015).

developed by scholars such as Thomas Spijkerboer. Section D offers an overview of the research methods and data utilized for the empirical analysis. The empirical analysis and discussion are, thereafter, presented in Section E, which is divided into three sub-sections, each focusing on access to legal, physical, and technological mobility infrastructures. Finally, Section F provides a summary of the empirical findings and a conclusion.

B. Migration and Gender in West Africa

Contemporary West African migration predominantly manifests as cross-border trade, seasonal migration, and transit migration.²⁹ The migratory corridors and routes in use are still partially influenced by the mobility patterns established during the colonial administrations in the region. Infrastructure developments, particularly railroads and road constructions from the north to the south, facilitated substantial migration flows, driven largely by the economic imperatives of the European colonial states, rather than the organic trading and network routes that existed prior to colonial influence in the region.³⁰ Consequently, the colonial legacy remains evident in established mobility routes, legislative norms and laws, and the arbitrary nation-state borders that partly dictate how people move in the region today. For instance, shared languages and proximity to kin and ethnic ties across national borders explain some key intra-regional mobility trends.³¹

Since the establishment of ECOWAS in 1975, intra-regional movement has predominantly been governed by the provisions outlined in the 1979 Protocol on Free Movement of Persons, Right of Residence, and Establishment. Notably, the founding Treaty committed ECOWAS member states to the elimination of barriers to free movement.³² To facilitate the implementation of the free movement protocol, the organization ratified several subsequent protocols³³ and decisions.³⁴ The ECOWAS Treaty and the protocols defining the citizenship regime and the right to free movement do not contain specific provisions regarding gender and migration. Only two documents currently address gender and migration: The ECOWAS Common Approach on Migration,³⁵ adopted in 2008, and the ECOWAS Gender and Migration Framework and Plan of Action,³⁶ adopted in 2015. The former document provides an institutional acknowledgment of issues pertaining to gender and migration, identifying specific needs and concerns of migrating women. The latter serves as the principal policy document outlining necessary measures for the ECOWAS Commission, member states, and external actors to address the gender-based challenges of migration.

²⁹See, e.g., Adepoju et al., *supra* note 7, at 121; Mariama Awumbila, *Dynamics of Intra-Regional Migration in West Africa: Implications for ECOWAS Migration Policy*, in *MIGRATION IN A GLOBALIZING WORLD: PERSPECTIVES FROM GHANA* 1, 9 (Mariama Awumbila, Delali Badasu & Joseph Teye eds., 2018). See generally Aderanti Adepoju, *Fostering Free Movement of Persons in West Africa: Achievements, Constraints, and Prospects for Intra-regional Migration*, 40 INT'L MIGRATION 3 (2002).

³⁰See Kwabena O. Akurang-Parry & Isaac Indome, *Colonialism and African Migrations*, in *THE PALGRAVE HANDBOOK OF AFRICAN COLONIAL AND POSTCOLONIAL HISTORY* 373, 374 (Martin S. Shanguhya & Toyin Falola eds., 2018).

³¹See Joseph Kofi Teye, *Migration in West Africa: An Introduction*, in *MIGRATION IN WEST AFRICA* 1, 6–7 (Joseph Kofi Teye ed., 2022).

³²See Economic Community of West African States, ECOWAS Treaty, May 28, 1975 [hereinafter ECOWAS Treaty of May 28, 1975].

³³See Economic Community of West African States, Protocol A/P.3/5/82 Relating to the Definition of Community Citizens, May 3, 1982; Economic Community of West African States, Supplementary Protocol A/SP.1/7/85, July 1, 1985; Economic Community of West African States, Supplementary Protocol A/SP.1/7/86, July 1, 1986; Economic Community of West African States, Supplementary Protocol A/SP 1/6/89, June 1, 1989; Economic Community of West African States, Supplementary Protocol A/SP 2/5/90, May 2, 1990 [hereinafter ECOWAS Protocols].

³⁴See Economic Community of West African States, Decision A/DEC.2/7/85 of the Authority of Heads of State and Government of the Economic Community of West African States Relating to the Establishment of ECOWAS Travel Certificate for Member States, Dec 2, 1985 [hereinafter Decision A/DEC.2/7/85].

³⁵See Economic Community of West African States, ECOWAS Common Approach on Migration, Jan. 18, 2008.

³⁶See Economic Community of West African States, ECOWAS Gender and Migration Framework and Plan of Action 2015–2020, 2015.

Following the recognition of the high occurrence of gender-based violence targeting female migrants within the region, ECOWAS founded its Gender Development Centre in 2003, with the objective of “mainstreaming gender in ECOWAS institutions and member states.”³⁷ The Center’s initiatives include the formulation of the Strategic Plan 2023-2027 of the ECOWAS Gender Development Centre, which aligns with the objectives of the ECOWAS Vision 2050 to “promote gender equality and the empowerment of women and girls.”³⁸ Although male and female mobility patterns exhibit variations, they are equally influenced by local and regional developments, gender norms, economic conditions, political realities, and legal rights.³⁹ For instance, a significant development contributing to the increased number of female migrants is the rising demand for services in the care sector and domestic work. Additionally, women are progressively engaged in cross-border trade activities.⁴⁰ These trends indicate that female migrants are not merely accompanying partners. Rather, socio-political and economic developments throughout the region over the past decades have prompted an almost equal gender composition in current intra-regional West African migration trajectories.⁴¹

C. Migration and Infrastructures

Infrastructures, encompassing, for example, roads, border posts, laws, regulations, and information and communication technologies (“ICTs”), constitute essential determinants of human mobility.⁴² These infrastructures reflect and embody the socio-political and economic priorities of a community, thereby influencing the types of infrastructures developed and their accessibility. Consequently, infrastructures both mirror and maintain social stratification within a community.⁴³ Traditional material approaches have largely focused on the physical properties of infrastructures in shaping human behavior.⁴⁴ As Brian Larkin argued, “[i]nfrastructures are built networks that facilitate the flows of goods, people, or ideas and allow for their exchange over space.”⁴⁵ Particularly early conceptualizations favored a more materialist perspective, viewing infrastructures as “matter that enable[s] the movement of other matter.”⁴⁶ Social constructivist approaches, particularly advanced by scholars in anthropology and science and technology studies (“STS”), have more recently unpacked the relationship between infrastructures and human mobility. These approaches highlight that “social networks and institutions are seen as connectivity systems and conceptualized as forms of (social) infrastructures.”⁴⁷ This body of research focuses on how infrastructures serve as mechanisms for politicizing human mobility,

³⁷Objectives of the Center, ECOWAS GENDER DEV. CTR., https://www.ecowas.int/special_agency/ecowas-gender-development-centre-egdc/.

³⁸ECONOMIC COMMUNITY OF WEST AFRICAN STATES, ECOWAS VISION 2050: ECOWAS OF THE PEOPLES: PEACE AND PROSPERITY FOR ALL (2022).

³⁹See, e.g., Adepoju, *supra* note 28, at 161; Ernest Tooichi Aniche, Ikenna Mike Alumona, Victor Chidubem Iwuoha, Chris Isike & Rebecca Ginikanwa Nnamani, ‘Your Land or Your Life’ ECOWAS Free Movement Regime, Migration, and Resource Conflicts in West Africa, 60 SOC’Y 320, 320 (2023); Hamadou, *supra* note 8, at 337.

⁴⁰See Mariama Awumbila & Gertrude Dzifah Torvikeh, *Women on the Move: An Historical Analysis of Female Migration in Ghana*, in MIGRATION IN A GLOBALIZING WORLD: PERSPECTIVES FROM GHANA 171, 180 (Mariama Awumbila, Delali Badasu & Joseph Teye eds., 2018).

⁴¹See Mary Boatemaa Setrana & Nauja Kleist, *Gendered Dynamics in West African Migration*, in MIGRATION IN WEST AFRICA, *supra* note 31, at 57, 59.

⁴²See, e.g., Xiang & Lindquist, *supra* note 22, at 124; Kleist & Bjarnesen, *supra* note 18, at 2.

⁴³See, e.g., Johannes Theodor Aalders, *Building on the Ruins of Empire: The Uganda Railway and the LAPSET Corridor in Kenya*, 42 THIRD WORLD Q. 996, 996 (2021); Julie Sera Spray, Karen Witten, Janine L. Wiles, Anneka Anderson, Dolly Paul, Julie Wade & Shanthi Ameratunga, *Inequitable Mobilities: Intersections of Diversity with Urban Infrastructure Influence Mobility, Health and Wellbeing*, 6 MIGR. CITIES & HEALTH 711, 711-712 (2022).

⁴⁴See generally THE PROMISE OF INFRASTRUCTURE (Anand Nikhil, Akhil Gupta & Hannah Appel eds., 2018).

⁴⁵Brian Larkin, *The Politics and Poetics of Infrastructure*, 42 ANN. REV. ANTHROPOLOGY 326, 328 (2013).

⁴⁶*Id.* at 329.

⁴⁷Kleist & Bjarnesen, *supra* note 18, at 5.

acting as modes of inclusion and exclusion⁴⁸ by providing differentiated access.⁴⁹ The studies highlight that infrastructures are not neutral or equally accessible; rather, they are systems that determine human mobility and have the power to (re)produce social, economic, and political inequalities.⁵⁰

The scholarship on the intersection of migration and infrastructures has been significantly advanced by Biao Xiang and Johan Lindquist, who conceptualize migration infrastructures as “the systematically interlinked technologies, institutions, and actors that facilitate and condition mobility.”⁵¹ In their conceptualization, migration infrastructures encompass both material and symbolic components that determine connectivity. They identify five overlapping and interrelated components of these infrastructures, namely: Commercial, regulatory, technological, humanitarian, and social.⁵² Drawing on the work of Deleuze and Guattari, Nauja Kleist and Jesper Bjarnesen employ an “assemblage approach” in their examination of West African migration, advocating for a focus on elements of improvisation, culture, and instability in the analysis of migration infrastructures. They propose the concept of migration infrastructure assemblages to capture the “composite and relational nature of the mediation of migration and its modular components of connection.”⁵³ Another significant contribution to this field is the study of global mobility infrastructure by Thomas Spijkerboer. Spijkerboer argues that access to mobility infrastructures is mediated through various modes of restriction, such as laws or norms, based on factors such as nationality or ethnicity.⁵⁴ His study reveals how countries in the global North control access to migration through physical, service, and legal infrastructures. Across these studies, the legality or regulatory quality of infrastructures is a recurrent component.⁵⁵ Notably, the theorization of infrastructures as legal is particularly prominent in the work of William Hamilton Byrne, Thomas Gammeltoft-Hansen, and Nora Stappert, who demonstrate that law possesses infrastructural properties and that infrastructures are “comprised of interconnected legal norms, practices, and institutions.”⁵⁶

This Article draws on the conceptual work of studies on migration and infrastructures.⁵⁷ Specifically, it proposes to focus on access to mobility infrastructures, paying particular attention to access to legal, physical, and technological infrastructures. The conceptualization of access in this Article draws upon Jesse Ribot and Nancy Lee Peluso’s definition of access as “the ability to benefit from things—including material objects, persons, institutions, and symbols.”⁵⁸ Their sociological conceptualization of access is significant to the discussion in this Article, as it encompasses various actors involved in determining access, such as material assemblages or individuals as well as put into question who can benefit from having access. Nearly forty years ago, Malcolm Moseley⁵⁹ introduced the notion of an “access gap” when analyzing infrastructures.

⁴⁸See, e.g., Aalders, *supra* note 43, at 1001; Soumhya Venkatesan, Laura Bear, Penny Harvey, Sian Lazar, Laura Rival & Abdou Maliq Simone, *Attention to Infrastructure Offers a Welcome Reconfiguration of Anthropological Approaches to the Political*, 38 CRITIQUE ANTHROPOLOGY 1, 3 (2017); Hannah Appel, *Infrastructural Time*, in THE PROMISE OF INFRASTRUCTURE, *supra* note 44, at 1, 4.

⁴⁹See Appel, *supra* note 48, at 6–7.

⁵⁰See Antje Bruns, Simon Meisch, Abubakari Ahmed, Richard Meissner & Patricia Romero-Lankao, *Nexus Disrupted: Lived Realities and the Water-Energy-Food Nexus from an Infrastructure Perspective*, 133 GEOFORUM 79, 83 (2022).

⁵¹Xiang & Lindquist, *supra* note 22, at 122.

⁵²See *id.* at 124.

⁵³Kleist & Bjarnesen, *supra* note 18, at 7.

⁵⁴See Spijkerboer, *supra* note 19, at 456.

⁵⁵See, e.g., Spijkerboer, *supra* note 19, at 452.

⁵⁶Byrne et al., *supra* note 20, at 10.

⁵⁷See Kleist & Bjarnesen, *supra* note 18, at 7; Xiang & Lindquist, *supra* note 22, at 122; Spijkerboer, *supra* note 19, at 452; Byrne et al., *supra* note 20, at 10.

⁵⁸Jesse Ribot & Nancy Lee Peluso, *A Theory of Access*, 68 RURAL SOCIOL. 153, 153 (2003).

⁵⁹See generally MALCOLM J. MOSELEY, ACCESSIBILITY: THE RURAL CHALLENGE (1979).

His pioneering study initiated critical inquiries into accessibility within and of material assemblages. In contemporary infrastructure scholarship, this nexus between access and infrastructures has become a well-established topic of inquiry.⁶⁰ Infrastructure studies have analyzed physical assemblages and examined their roles as determinants of unequal access, enabling opportunities of particular individuals or populations while restricting it for others,⁶¹ such as women.⁶² A part of this research examines the power dynamics embedded in infrastructures, with scholars focusing on the violence of inaccessibility and conceptualizing infrastructures as material manifestations of structural violence.⁶³ Particularly relevant to this Article is the discourse on the diverse capabilities of infrastructures as “relational arrangements co-formative of harm.”⁶⁴

For the purposes of this Article, gendered dynamics in the access to mobility infrastructures is analyzed through a three-tiered framework, where the concept of mobility infrastructures contains the following, interrelated dimensions:

- *The Legal Dimension:* Law itself can be conceptualized as a form of infrastructure and movement is determined by mobility laws and legal norms on, for example, visa regulations.⁶⁵ Rooted in the conceptualization of legal infrastructures put forward in the introductory Article of this special issue, legal infrastructures are “socio-technical platforms that mediate normativity across society.”⁶⁶
- *The Physical Dimension:* This socio-material dimension of infrastructures is concerned with the “material forms that allow for the possibility of exchange over space,”⁶⁷ and specifically pertain to the material dimension of infrastructures such as roads, railways, or border posts.⁶⁸
- *The Technological Dimension:* Movement of people is informed by, for example, information and communication technologies (“ICT”) and human mobility is determined by having access to technological infrastructures such as Wi-Fi hotspots, online information, or biometric technologies.⁶⁹

⁶⁰See generally Nick Gallent, *Rural Infrastructures*, in THE ROUTLEDGE COMPANION TO RURAL PLANNING (Mark Scott, Nick Gallent & Menelaos Gkartzios eds., 2019); Tommaso M. Valletti & Antonio Estache, *The Theory of Access Pricing: An Overview for Infrastructure Regulators* (World Bank, Working Paper No. 2097, 1999); Tony Lloyd-Jones & Alison Brown, *Spatial Planning, Access, and Infrastructure*, in URBAN LIVELIHOODS: A PEOPLE-CENTRED APPROACH TO REDUCING POVERTY 188 (Carole Rakodi & Tony Lloyd-Jones eds., 2002); IN-BETWEEN INFRASTRUCTURE: URBAN CONNECTIVITY IN AN AGE OF VULNERABILITY (Douglas Young, Patricia Burke Wood & Roger Keil eds., 2010).

⁶¹See, e.g., Yaffa Truelove & Hanna A. Ruszczyk, *Bodies as Urban Infrastructure: Gender, Intimate Infrastructures, and Slow Infrastructural Violence*, 92 POL. GEO. 1, 4 (2022).

⁶²See, e.g., Pierre-Richard Agénor & Madina Agénor, *Access to Infrastructure and Women's Time Allocation: Implications for Growth and Gender Equality*, 75 J. MACROECONOMICS 1, 1 (2023); Jesús Oliva & Luís Camarero, *Mobilities, Accessibility, and Social justice*, in THE ROUTLEDGE COMPANION TO RURAL PLANNING, *supra* note 60, at 296; Farhana Sultana, *Embodied Intersectionalities of Urban Citizenship: Water, Infrastructure, and Gender in the Global South*, 110 ANN. AM. ASS'N GEOGR. 1407, 1408 (2020).

⁶³See Dennis Rodgers & Bruce O'Neill, *Infrastructural Violence: Introduction to the Special Issue*, 13 ETHNOGRAPHY 401, 401 (2012).

⁶⁴Yannis Kallianos, Alexander Dunlap & Dimitris Dalakoglou, *Introducing Infrastructural Harm: Rethinking Moral Entanglements, Spatio-Temporal Dynamics, and Resistance(s)*, 20 GLOBALIZATIONS 829, 829 (2023).

⁶⁵See Valverde, *Infrastructure: A Key Word*, *supra* note 23, at 170.

⁶⁶Byrne et al., *supra* note 20.

⁶⁷Larkin, *supra* note 45, at 327.

⁶⁸See Penny Harvey, *Infrastructures In and Out of Time: The Promise of Roads in Contemporary Peru*, in THE PROMISE OF INFRASTRUCTURE, *supra* note 44, at 80.

⁶⁹See Mark Latonero & Paula Kift, *On Digital Passages and Borders: Refugees and the New Infrastructure for Movement and Control*, 4 SOC. MEDIA + SOC'Y. 1, 3 (2018).

D. Researching Mobility Infrastructures: A Brief Note on Methods and Data

This Article integrates doctrinal legal analysis with qualitative methods. In traditional legal research, the methodological approach is often implied.⁷⁰ However, the recent adoption of social science research methods has fostered growing methodological interdisciplinarity in legal scholarship,⁷¹ which this Article is situated in. The Article relies on document analysis of legal sources and nineteen semi-structured interviews conducted at the ECOWAS Commission in Abuja, Nigeria, between October and December 2019. The rationale for conducting interviews with officials at the ECOWAS Commission stems from the commission's responsibility for the daily functioning of the regional organization, its mandate to develop infrastructure projects and free movement laws, and its central role in collaborating with national authorities responsible for implementing regional laws.

The document analysis provided a detailed description of legal rules, norms, and specific laws related to movement, gender, and infrastructures. The material included legal and policy documents such as treaties,⁷² protocols and supplementary protocols,⁷³ decisions,⁷⁴ reports,⁷⁵ masterplans,⁷⁶ strategies,⁷⁷ policies,⁷⁸ online information on the ECOWAS webpage,⁷⁹ and internal notes and statements of the ECOWAS Commission departments commonly obtained and discussed during the interviews. The written material provided in-depth knowledge on official definitions, laws, and institutional frameworks of free movement, gender, and infrastructures as defined by the ECOWAS Commission and its various departments and divisions. The document analysis detailed the legal framework of mobility infrastructures, which served as the basis for discussions during the interviews. Consequently, they provided a thorough account of the official formulation and communication of ECOWAS mobility infrastructures, complementing the insights gained from the interviews.

The nineteen semi-structured interviews were guided by an open-ended interview guide focused on three overarching themes: Citizenship, mobility infrastructures, and free movement. Before fieldwork, relevant departments were chosen based on their official mandates. Additionally, the departments were identified by analyzing their roles in formulating policies and laws related to infrastructures, free movement, and gender mainstreaming. During field research, initial contact was made with officials from the Department of Infrastructure, Energy

⁷⁰See Luc Leboeuf, *Lost in Translation? The Promises and Challenges of Integrating Empirical Knowledge on Migrants' Vulnerabilities into Legal Reasoning*, 23 GERMAN L.J. 976, 987 (2022).

⁷¹See, e.g., Ellen Desmet, *Methodologies to Study Human Rights Law as an Integrated Whole from a Users' Perspective: Lessons Learnt*, in FRAGMENTATION AND INTEGRATION IN HUMAN RIGHTS LAW: USERS' PERSPECTIVES 12–38 (Eva Brems & Saïla Ouald-Chaib eds., 2018); Mandy Burton, *Doing Empirical Research: Exploring the Decision-Making of Magistrates and Juries*, in RESEARCH METHODS IN LAW 66 (Dawn Watkins & Mandy Burton eds., 2017).

⁷²See ECOWAS Treaty of May 28, 1975, *supra* note 32; Economic Community of West African States, ECOWAS Revised Treaty 22, July 24, 1993.

⁷³See ECOWAS Protocols, *supra* note 33.

⁷⁴See Decision A/DEC.2/7/85, *supra* note 34.

⁷⁵See ECOWAS Common Approach on Migration, *supra* note 35.

⁷⁶See ECONOMIC COMMUNITY OF WEST AFRICAN STATES, ECOWAS REGIONAL INFRASTRUCTURE MASTER PLAN (2021); ECONOMIC COMMUNITY OF WEST AFRICAN STATES, ECOWAS MASTER PLAN FOR THE DEVELOPMENT OF REGIONAL POWER GENERATION AND TRANSMISSION INFRASTRUCTURE 2019–2033 (2018).

⁷⁷See Decision A/DEC.2/7/85, *supra* note 34; ECONOMIC COMMUNITY OF WEST AFRICAN STATES, ECOWAS DISASTER RISK REDUCTION GENDER STRATEGY AND ACTION PLAN 2020–2030 (2020); Economic Community of West African States Parliament, Gender Strategy: ECOWAS Parliament 2010–2020, July 30, 2013, http://womenscount4peace.org/en/bibliographies/publications/gender_strategy_-_ecowas_parliament_2010_-_2020.

⁷⁸See Economic Community of West African States, ECOWAS Policy for Gender Mainstreaming in Energy Access, June 4, 2015, https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/ECOWAS_Policy_for_Gender_Mainstreaming_in_Energy_Access.pdf.

⁷⁹For instance, the ECOWAS Digital Observatory ("ECODOB"), which serves as ECOWAS' management and information system for telecommunications and ICT, and the ECOWAS online portal containing documents on, for example, ordinary sessions, policies, and annual reports.

and Digitalization, and the Department of Human Development and Social Affairs. Both departments play key roles in formulating mobility infrastructure laws, and as such a majority of the interviews were conducted at these departments and their directorates and divisions. Subsequent interviews⁸⁰ were arranged using the “snowball sampling” method, ensuring, where possible, that all relevant departments were represented in the empirical data. Given the gender perspective in assessing access to mobility infrastructures, special attention was paid to the gender balance of interviewees during planning, resulting in the participation of twelve male and seven female interviewees.

The insights from the interviews are vital for understanding the institutional thoughts behind official laws and initiatives. However, the interviews do not provide exhaustive, neutral, or objective data. Instead, they offer insights into how the officials conceptualize and formulate mobility infrastructures and perceive challenges of access to free movement.⁸¹ These insights are essential for discussing access to mobility infrastructures. Specifically, the possibility of combining the written material with data from the semi-structured interviews at the Gender Development Center adds important insights on the relationship between movement and gender policies, or the lack thereof.

E. Analyzing Gendered Access to Mobility Infrastructures in West Africa

1. Access to Legal Mobility Infrastructures

ECOWAS law and legal norms both influence and are influenced by human mobility. Consequently, a critical component of mobility infrastructures is the legislative and regulatory frameworks that govern movement, including visa regulations.⁸² During interviews conducted at the ECOWAS Commission, two interrelated claims were frequently made by the officials. Firstly, there is a recognition that a persistent disparity exists between national and regional laws, which impedes women’s access to free movement. These disparities are predominantly attributed to the legacies of colonial legal frameworks and legal norms. One officer elaborated on how gender perceptions and legal norms may limit the mobility opportunities available to women:

The ECOWAS passport was one of the first steps to break down barriers to movement, but we see that although women hold these passports, they cannot access migration in the same way. We also know that even though we have made a law where everyone should be able to get a passport, women might not receive them because there are national laws or local customs where a husband decides if the wife can receive identity documents.⁸³

Legal infrastructures significantly influence (im)mobility and shape the migration trajectories of individuals. In his analysis of mobility infrastructures, Thomas Spijkerboer argues that various mobility laws, including those related to visas and free movement, interact with other forms of

⁸⁰At the Department of Economic Affairs and Agriculture, I conducted interviews with officials from the Directorate of Trade, the Directorate of Customs Union and Taxation, the Directorate of Free Movement of Persons, Migration and Tourism, and the Directorate of Research and Statistics. At the Department of Political Affairs, Peace, and Security, I interviewed officials from the Directorate of Political Affairs and the Directorate of Peacekeeping and Regional Security. At the Department of Infrastructure, Energy, and Digitalisation, I interviewed officials from the Directorate of Transport. At the Department of Human Development and Social Affairs I conducted interviews with officials at the Directorate of Education, Culture, Science and Technology and the Directorate of Humanitarian and Social Affairs. Furthermore, I interviewed officials from the ECOWAS Gender Development Center and the Office of the Vice President.

⁸¹Informed consent was obtained for each interview, either in written form or recorded verbally. All of the interviews were audio-recorded and subsequently transcribed.

⁸²See Spijkerboer, *supra* note 19, at 462.

⁸³Interview with an Officer at the Department of Human Development and Social Affairs, ECOWAS, in Abuja, Nigeria (Nov. 8, 2019).

infrastructure, such as physical border posts, thereby determining who is able to move and the ease with which movement is facilitated.⁸⁴ For instance, the ECOWAS free movement protocol ensures the right of free movement for all ECOWAS citizens. Thus, at least rhetorically, the organization grants equal access to physical border crossings. However, regional laws frequently face challenges when being included into national legislation. A prominent example of the discord between regional and national legal frameworks is the issue of statelessness and the right to nationality:

The issue of statelessness is also gendered. Some of our countries still have laws that make it impossible to claim citizenship through your mother. And even in the countries where the nationality law has changed after our Abidjan declaration, we know that birth registration is low and that oppressive practices still mean that nationality is not passed on although it should be.⁸⁵

In the statement, the officer refers to the Abidjan Declaration. This declaration, ratified in 2015 by the ECOWAS member states, signifies their commitment to ensuring gender-equal nationality rights.⁸⁶ The issues of low birth registration rates and the high prevalence of stateless persons in the region⁸⁷ led ECOWAS to advocate for amendments to national legislation, which also have implications for free movement. Through this legally binding declaration, ECOWAS member states agreed to uphold equal rights to acquire, change, and retain nationality, as well as to confer nationality on children and spouses, irrespective of gender. However, it has been observed that, “although nationality laws can be complex, reforms to ensure gender equality can often be achieved through relatively simple changes to the formulation of relevant provisions.”⁸⁸ Despite this perspective, Liberia and Togo persist in maintaining restrictive nationality laws. Nevertheless, the heightened regional focus on the issues posed by restrictive nationality laws, particularly concerning the facilitation of free movement, has led to recent legislative changes in Senegal and Sierra Leone.⁸⁹

Regional laws can generate legal normative change, as evidenced by the recent modifications to nationality laws in West Africa. Specifically, in the context of nationality laws, regional legal normative change results in altered access to national legal infrastructures. This serves as an illustration of how legal infrastructures facilitate normative change and highlights their distributional effects. In other words, “it foregrounds the role infrastructures play in granting the benefits of society to some, whilst restricting them for others.”⁹⁰ The issue of disparity between regional law and national legal norms was a central topic of discussion at the ECOWAS Commission. While this disparity was occasionally cited as a scapegoat for implementation challenges, it indeed presents practical difficulties for female migrants who have reduced access to legal infrastructures. One officer mentioned that:

ECOWAS should take the lead and try enforcing changes to the laws in the member states, especially when we have agreed on protocols. But the member states are still sovereign and can make national decisions which also makes it difficult for us to change laws. Another

⁸⁴See Spijkerboer, *supra* note 19, at 469.

⁸⁵Interview with an Officer at the ECOWAS Gender Development Centre, ECOWAS, in Abuja, Nigeria (Dec. 2, 2019).

⁸⁶See Economic Community of West African States, Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness, February 25, 2015.

⁸⁷See Economic Community of West African States, ECOWAS Child Policy 2019–2030, 2019, <https://ecowas.int/wp-content/uploads/2022/03/ECOWAS-CHILD-POLICY-ENG-CON-Printed.pdf>.

⁸⁸United Nations High Commissioner for Refugees, Background Note of Gender Equality, Nationality Laws and Statelessness 2024, March 8, 2024, 3, <https://www.refworld.org/reference/themreport/unhcr/2024/en/147696>.

⁸⁹*Id.*

⁹⁰See Byrne et al., *supra* note 20, at 5.

problem is that although we have laws that member states should follow, it does not always work in local offices or are not followed by agents at for example our borders. We know that women have the right to get ID documents which they need for getting a passport, but some local offices might want bribe.⁹¹

The second, related claim made by the officers at the ECOWAS Commission is that the legal disparity between regional and national regulations and norms compels ECOWAS to advocate for legal reforms needed to improve the functioning of its free movement regime. This is being achieved through, firstly, formulating new laws that serve as catalysts for altering national legislation. For example, ECOWAS has adopted a series of supplementary acts to improve and harmonies the ICT sector's policy and regulatory frameworks across the member states.⁹² Secondly, improvement of the functioning of the free movement regime is done by attempting to modify the norms and practices observed at facilities, which may contravene official legislation, for example, bribes. In certain instances, access to legal infrastructures is influenced not only by laws but also by prevailing social norms and enactments of laws. This argument was emphasized during an interview, where an officer explained that:

One thing is for us to try change laws or make new policies, another issue is changing people's behavior. Some behaviors, like ones that discriminate against women at borders are very difficult to change even when we have the protocol on free movement.⁹³

Modifications to visa regulations, nationality laws, and travel documents hold the potential to effectuate normative change by facilitating access to the legal frameworks governing movement. However, an examination of the gendered dimensions of access to legal infrastructures exposes the inherent limitations of these regulations. Insights gathered during interviews at the ECOWAS Commission show that, notwithstanding the adoption of new regulations concerning legal mobility infrastructures, prevailing social behaviors and legal norms persist in influencing the access to mobility infrastructures for female migrants.

II. Access to Physical Mobility Infrastructures

Within the mobility infrastructure framework of ECOWAS, infrastructures are primarily conceptualized as physical and technological entities. During interviews conducted at the ECOWAS Commission, three interrelated issues emerged. The first issue identified was that the establishment of joint border posts had unforeseen repercussions concerning the risks encountered by female migrants accessing these facilities. The operationalization of the joint border posts constitutes a component of a broader regional integration strategy aimed at enhancing the governance of cross-border movement. In the ECOWAS Common Approach on Migration, the organization underscored that:

In order to promote mobility within the ECOWAS zone, it is important to give particular attention to border and cross-border areas. ECOWAS Member States thus recommend that the Regional Cross-border Cooperation Fund be made operational. The fund will help to . . . facilitate free movement through concrete actions such as the setting up of joint border posts, border markets, joint health centers, shared schools, etc.⁹⁴

⁹¹Interview with an Officer at the Department of Human Development and Social Affairs, *supra* note 82.

⁹²*Id.* at 16–18.

⁹³Interview with an Officer at the Directorate of Free Movement of Persons, Migration & Tourism, Department of Economic Affairs and Agriculture, ECOWAS, in Abuja, Nigeria (Nov. 6, 2019).

⁹⁴ECOWAS Common Approach on Migration, *supra* note 35.

The anticipated outcome of the joint border posts was to facilitate cross-border movement and mitigate the bureaucratic complexities associated with identification and customs checks at the borders. However, ECOWAS officials explained that these border facilities also pose the potential for border officials to mistreat women within a confined and isolated environment.⁹⁵ One officer highlighted that such incidents could occur in relatively concealed areas of the facilities, further stating that “the unsafe space at the joint border posts means that some female migrants will not use the official crossings.”⁹⁶ Another officer noted that the challenge of ensuring safe border crossings for female migrants at the joint border posts lies both in the norms and practices of the agents and in the management of the border crossings:

These joint border posts follow international laws as to how goods and persons should be treated so if there are any procedures that goes against that it should be pointed out and get solved according to international standards. We can keep building new infrastructures, new border posts, connect people, encourage integration and movement, but if our borders are managed wrongly and mistreat women, we will not achieve our goals. One way we try to change this is by combining the immigration, health, and custom checks into only one check, so we reduce the contact between women and border officials and the times they have to leave their cars.⁹⁷

When assessing the beneficiaries of physical mobility infrastructures, ECOWAS officials argued that the majority of the established infrastructures offer limited benefits for female cross-border migration. This statement is confirmed by the written materials.⁹⁸ According to the officials, at best, these infrastructures have a neutral impact on women’s access. Specifically, the findings presented in the ECOWAS Regional Infrastructure Master Plan⁹⁹ indicated that cross-border road projects, such as the Abidjan-Lagos highway, exhibited either a mildly negative or neutral gender impact. Furthermore, railways, airports, and ports established by ECOWAS demonstrated negative or mildly negative gender impacts. The Master Plan also evaluated trade facilitation projects, such as the dematerialization of trade procedures and the development of a connection platform between the customs systems in the ECOWAS region. These projects uniformly exhibited mildly negative gender impacts, while the evaluation of ICT projects revealed a negative gender impact. The Master Plan outlined the official ECOWAS infrastructure projects, both established and planned. The Master Plan emphasized that “socio-environmental expertise, including gender, is urgently needed for all infrastructure projects,” as a significant proportion of women were “affected by the effects of the project” or unable to benefit from the infrastructures altogether. This latter point was emphasized during several interviews at the ECOWAS Commission.¹⁰⁰

The second, related point emerging from the data pertained to the inaccessibility of the design of physical mobility infrastructures, particularly due to a lack of gender-specific functions. It was emphasized that mobility infrastructures are not only more difficult for women to access *physically* but are also designed in gendered and exclusionary ways, neglecting the specific needs of

⁹⁵Interview with an Officer at the Department of Human Development and Social Affairs, *supra* note 82; Interview with an Officer at the Department of Economic Affairs and Agriculture, ECOWAS, in Abuja, Nigeria (Dec. 12, 2019).

⁹⁶Interview with an Officer at the Department of Human Development and Social Affairs, *supra* note 82.

⁹⁷Interview with an Officer at the Department of Infrastructure, Energy, and Digitalisation, ECOWAS, in Abuja, Nigeria (Nov. 1, 2019).

⁹⁸See ECOWAS REGIONAL INFRASTRUCTURE MASTER PLAN, *supra* note 75.

⁹⁹*Id.*

¹⁰⁰Interview with an Officer at the Directorate of Free Movement of Persons, Migration & Tourism, *supra* note 92; Interview with an Officer at the ECOWAS Gender Development Centre, *supra* note 84; Interview with an Officer at the Department of Infrastructure, Energy, and Digitalisation, *supra* note 96.

women during travel.¹⁰¹ During an interview, an officer reflected on some of the more practical challenges women encounter when they move across the region:

We try to maintain and renew roads and border buildings and other facilities, but we know that women often have very limited access to sanitary facilities, or to clean spaces for, for example, nursing their child. This is very bad along the highways. We also lack offices or rooms where women can report any harassment or find safety.¹⁰²

In his analysis of access to global mobility infrastructures, Spijkerboer contends that exclusionary practices are not “natural situations,” but rather the outcomes of specific legal and socio-political decisions.¹⁰³ Over the past decades, the West African region has experienced a so-called “feminization of migration.”¹⁰⁴ Nonetheless, despite the significant increase in the number of female migrants, access to mobility infrastructures remains exclusive in both design and operation. This argument was underscored by an officer, who stated that:

At ECOWAS, we see movement as a part of our citizenship right. And we should all have the possibility of accessing the right of movement as formulated in the protocol. Access to this right means access to opportunities through migration and therefore we need to ensure equal access to trade and to migration. One very practical problem is the design of our facilities and that they are operated by men. It can be tough to move in our region, and sometime the roads or borders are not set up for the needs of women. I think there is a problem of acknowledging this even though so many women move daily. It is also very difficult to change societal norms and ideas, for instance women previously did not move around alone as often as they do now so we have to change our facilities to fit this.¹⁰⁵

The conceptualization of physical mobility infrastructures as material embodiments of structural violence and “relational arrangements co-formative of harm”¹⁰⁶ is particularly evident in the analysis of access to these physical facilities. Joint border posts are not merely assemblages that facilitate human mobility but are also sites infused with socio-cultural norms where practices of gender-based violence are (re)produced. Consequently, the design of these infrastructures determines who is permitted to move and under what conditions, owing to their function as political technologies capable of regulating human behavior.¹⁰⁷

The third point raised during the interviews addresses the disparity in women’s access to various types of physical mobility infrastructures. It was argued that unequal access to these infrastructures, and the harm caused by their design and management, are intrinsically linked to notions of class and socio-economic status. This argument aligns with findings from other studies, which indicate that “differential experiences of harassment and extortion at borders are influenced by the mode of transportation.”¹⁰⁸ Ultimately, “the wealthy, highly educated, and mostly professional ECOWAS nationals who tend to travel by air have a significantly different experience

¹⁰¹See International Federation of Red Cross and Red Crescent Societies and the United Nations High Commissioner for Refugees, *Access to essential services for people on the move in the ECOWAS Region*, Jan. 2020, 42, <https://ifrcgo.org/africa/img/Sahel/UNHCR-IFRC%20report%20v2.0%20-%20final%20web.pdf>.

¹⁰²Interview with an Officer at the Department of Human Development and Social Affairs, *supra* note 82.

¹⁰³Spijkerboer, *supra* note 19, at 468.

¹⁰⁴See Gervin Ane Apatengaa, Emmanuel K. Kyeremehb & Godwin Arku, “Feminization of Migration”: The Implications for “Left-Behind” Families in Ghana, 11 *MIGRATION & DEV.* 83, 84 (2022).

¹⁰⁵Interview with an Officer at the Department of Human Development and Social Affairs, *supra* note 82.

¹⁰⁶Kallianos et al., *supra* note 64, at 829.

¹⁰⁷See Eva Magdalena Stambøl, *Borders as Penal Transplants: Control of Territory, Mobility and Illegality in West Africa*, 25 *THEORETICAL CRIMINOLOGY* 474, 474 (2021).

¹⁰⁸Yeboah et al., *supra* note 5, at 236.

of crossing borders compared with those of the poor, less literate, migrant traders who cross land borders.”¹⁰⁹

Consequently, female migrants must navigate not only the complexities of physical mobility infrastructures but also the detrimental aspects of these systems through which gendered norms are (re)produced and practiced. During an interview, an officer reflected on the findings of a recent internal ECOWAS survey regarding the use of various mobility infrastructures. Initially, the ECOWAS Commission had assumed that women’s most vulnerable position would be while travelling along roads. Although border harassment is common and well-documented, the officers believed that the establishment of improved border crossing facilities through the joint border post scheme would significantly reduce such incidents. However, the officer highlighted that crossing borders remains the most vulnerable position for women, with the poorest women being the most exposed to harassment. They are unable to choose alternative means of transportation and might not be able to comply with the illegal demand for bribe made by border agents. The officer explained that:

We know that people have very different experiences when they cross land or air borders. Almost no issues are reported at the airports, also not when it comes to harassment of women. This is surprisingly also the case along the roads. At the department we made a survey about the experiences of different infrastructures, and we discovered that most challenges lay at the borders, not the roads or airports. It is really when there is contact with agents at borders that women suffer most also in terms of access to our infrastructures and can be mistreated. It is not so difficult to access roads, but passing through borders are difficult, especially for women.¹¹⁰

The interviews revealed a significant disparity between the institutional intentions of mobility infrastructures and their practical implications as determinants of movement. As Darin Barney observes, this discrepancy is not unexpected, as “[t]here is typically a great distance between what state and industrial actors say about infrastructure . . . and what infrastructure actually does.”¹¹¹ The legal and policy documents of ECOWAS outlined the official objectives for establishing an equally accessible mobility infrastructure regime through law, physical assemblages, and technological developments. However, discussions with officers revealed that, in their view, the day-to-day functioning of physical infrastructures results in the reproduction of gender norms, which starkly contrasts with the otherwise gender-neutral written policies. This disparity is what Brian Larkin¹¹² refers to as the difference between the poetics of infrastructure and its complex materiality, where examining access to physical infrastructures highlights the gap between political intentions, material systems, and their impact on movement. Drawing on Judith Butler’s work,¹¹³ this disparity means that women are vulnerable to, dependent on, and exposed to various material infrastructural assemblages when moving. In short, physical mobility infrastructures may become sites of exploitation, both physically and psychologically. Amanda Bisong also emphasizes this point, noting that female migrants “are subject to exploitation in terms of the fees and charges levied on their imports and produce.”¹¹⁴ Consequently, the design and functioning of physical mobility infrastructures can result in precarious journeys, exemplified by demands for higher financial bribes to cross borders.

¹⁰⁹*Id.*

¹¹⁰Interview with an Officer at the Department of infrastructure, Energy, and Digitalisation, *supra* note 96.

¹¹¹Darin Barney, *Infrastructure and the Form of Politics*, 46 CANADIAN J. COMM’N 225, 233 (2021).

¹¹²See Larkin, *supra* note 45, at 328.

¹¹³See generally JUDITH BUTLER, NOTES TOWARD A PERFORMATIVE THEORY OF ASSEMBLY (2015).

¹¹⁴AMANDA BISONG, CTR. FOR INT’L GOVERNANCE INNOVATION, ASSESSING GENDER INCLUSION IN THE MIGRATION POLICIES OF ECOWAS 7 (2019).

III. Access to Technological Mobility Infrastructures

The final dimension of mobility infrastructures pertains to technologies. This dimension highlights how the movement of people is influenced by information and communication technologies (ICT) and depends on access to various technological infrastructures such as Wi-Fi hotspots, online information, and biometric technologies.¹¹⁵ The technological dimension, according to Biao Xiang and Johan Lindquist, is “perhaps the most obvious element of migration infrastructure.”¹¹⁶ In their conceptual investigation of mobility infrastructures, Xiang and Lindquist argue that ICTs have empowered migrants and revolutionized communication among them. Nonetheless, although technological mobility infrastructures offer the potential to provide migrants with access to necessary information or function as communication platforms, they can also serve as mechanisms of control for state actors, as evidenced by biometric identification and border surveillance technologies.¹¹⁷ In the West African context, the development of technological mobility infrastructures remains a relatively new phenomenon. One officer explained that:

Infrastructure is the backbone of free movement. If you look at the movement of the population in our region, we always assumed that we needed to improve transport and border crossing. But we are also now more focused on ICT. People really cannot move well without technologies. Our Abidjan—Lagos corridor is an example where it is not only a road but also a corridor where we now provide ICT along it. We believe that if we have G4 or G5 along the road, life will change, business will come, start-ups would be created, and movement would be better and safer.¹¹⁸

In 2014, ECOWAS authorized a novel technological infrastructure system through the agreement on “the abolition of the residence permit and the introduction of the Biometric Identity Card for Community citizens.”¹¹⁹ The biometric card was established to facilitate cross-border movement as part of the organization’s progressive shift towards e-governance. However, as early as the revised treaty of 1993, ECOWAS had already agreed on measures for “ensuring the harmonious integration of the physical infrastructures.”¹²⁰ Furthermore, “in the area of telecommunications, Member States undertake to evolve common communications policies, laws and regulations” and “develop, modernize, coordinate and standardize their national telecommunications networks in order to provide reliable interconnection among Member States.”¹²¹ To fulfil these objectives, ECOWAS established the West African Telecommunication Regulatory Association (“WATRA”) in 2002. The primary objective of WATRA was to create a regional framework for the coordination and harmonization of telecommunications policy and regulation within the region and among member states.¹²² Although WATRA aims to “contribute to the development of policies to facilitate universal access and telecommunications penetration in rural and poorly served areas in the subregion,”¹²³

¹¹⁵See Latonero & Kift, *supra* note 68, at 3.

¹¹⁶Xiang & Lindquist, *supra* note 22, at 124.

¹¹⁷See Kleist & Bjarnesen, *supra* note 18, at 5.

¹¹⁸Interview with an Officer at the Department of Infrastructure, Energy, and Digitalisation, ECOWAS, in Abuja, Nigeria (Nov. 4, 2019).

¹¹⁹Economic Community of West African States, Forty-fifth Ordinary Session of the Authority of ECOWAS Heads of State and Government, July 10, 2014.

¹²⁰Economic Community of West African States Revised Treaty, *supra* note 71, at 22.

¹²¹*Id.* at 23–24.

¹²²See ECOWAS REGIONAL INFRASTRUCTURE MASTER PLAN, *supra* note 75.

¹²³INTERNATIONAL TELECOMMUNICATION UNION, *ICT Regulatory Harmonization: A Comparative Study of Regional Initiatives* 35 (Dec. 2009), https://www.itu.int/ITU-D/projects/ITU_EC_ACP/hipssa/docs/D_REG_HIPSSA_2010_PDF_E.pdf.

and acknowledges that a “gender divide can be observed in terms of internet use,”¹²⁴ the organization lacks explicit gender mainstreaming policy objectives.

In 2007, the organization claimed that a key objective of ECOWAS is to implement “a regime of access to and interconnection of networks and services within the information and communication technology (ICT) sector in the West Africa subregion to foster competition for the benefit of operators and users in that sector.”¹²⁵ Despite this objective, a social digital divide persists throughout the region. This divide stresses that technological mobility infrastructures, specifically ICTs, are not gender-neutral, nor are they accessed equally by men and women.¹²⁶ Studies have demonstrated this by exposing the gender divide in access to ICT in the region.¹²⁷ For instance, in Guinea, women constitute less than ten percent of internet users, whereas in Burkina Faso, nearly seventy percent of internet users are men.¹²⁸ Factors such as income, social position, education level, and cultural norms may help explain this disparity in ICT access and usage. Regardless of the root cause, the unequal access to ICT limits women’s opportunities to utilize various communication forms. This limitation affects their migration trajectory, before, during, and after the migration journey. As noted by Jean-Yves Hamel, “[m]igration, both within and beyond borders, necessarily entails risks. These risks can be mitigated by access to information both prior to and during the migration journey.”¹²⁹ The gendered dynamics of ICT were also emphasized during an interview:

We still see that in most West African countries men and women use the phones and internet differently and have different knowledge about this. What it causes is unequal access to information for women, and this information is especially important for the ones moving across our borders. We have national and regional information about for example the situation at borders or roads which can affect the movement, but women have less access to this information. It is also problematic as having access to the internet might be safer for women if they have problems when they move. In our region we could not provide internet access in all areas, but we have improved this and it is also a main aim in our new ECOWAS Vision 2050.

The insights from the interviews suggest, firstly, that incorporating a focus on ICT in mobility infrastructure developments is a relatively recent advancement. Secondly, the understanding and awareness of the gendered dynamics of ICT, particularly regarding its role in cross-border movement, remain limited. ECOWAS officials have called for more empirically grounded research to inform policy changes.¹³⁰ Technological mobility infrastructures were frequently mentioned as factors influencing the functioning of physical mobility infrastructures. For instance, during an interview, an officer emphasized that ICT access—or the lack thereof—may significantly affect the operation of joint border posts:

¹²⁴WEST AFRICAN TELECOMMUNICATION REGULATORY ASSOCIATION, *Strategic Plan 2022–2025 for the West Africa Telecommunications Regulators Assembly* 7 (Aug. 26, 2022), https://watra.org/wp-content/uploads/2024/03/9.-EN_WATRA-strategic-plan-2022-2025.pdf.

¹²⁵Economic Community of West African States, Supplementary Act A/SA.2/01/07 on Access and Interconnection in Respect of ICT Sector Networks and Services, Jan. 19, 2007, <https://africanlii.org/akn/aa-ecowas/act/2007/1-2/eng@2007-01-19/source.pdf>.

¹²⁶See, e.g., CAROLINE WAMALA, SWEDISH PROG. FOR ICT IN DEVELOPING REGIONS, EMPOWERING WOMEN THROUGH ICT (2012); Jean-Yves Hamel, *Information and Communication Technologies and Migration* (UN Dev. Prog., Paper No. 2009/39, 2009); Vyas-Doorgapersad & Kithatu-Kiwekete, *supra* note 15, at 26.

¹²⁷See generally Wamala, *supra* note 125.

¹²⁸See Vyas-Doorgapersad & Kithatu-Kiwekete, *supra* note 15, at 28.

¹²⁹See Hamel, *supra* note 125, at 115.

¹³⁰Interview with an Officer at the Department of Infrastructure, Energy, and Digitalisation, ECOWAS, in Abuja, Nigeria (Nov. 8, 2019); Interview with an Officer at the Department of Economic Affairs and Agriculture, ECOWAS, in Abuja, Nigeria (Nov. 12, 2019); Interview with an Officer at the Department of Political Affairs, Peace, and Security in Abuja, Nigeria (Nov. 8, 2019).

If we have poor or no internet or other issues with technology, then it prolongs the time it takes to cross borders. It could mean that the IT systems we use to check ID or custom and which need to be running smoothly would not work properly and delay the travel. We are also working on implementing the same IT systems in the region, because it delays travel time when two national border crossing systems need to work together.¹³¹

The effects of ICT developments by ECOWAS are delineated in the ECOWAS Regional Infrastructure Master Plan. The document reports that all ICT projects exert a significantly negative impact on female users.¹³² Furthermore, an officer noted that underdeveloped physical mobility infrastructures also have the potential to impede access to technological infrastructures. The officer explained that:

We are trying to not only facilitate movement through improving highways or community roads, but also by using the roads to affect economic development along these corridors so that the conditions for people who travel are also improved. If we take the multi-national corridor from Lagos to Abidjan, our primary focus used to be on road maintenance. But now, we also look at which economic zones the road can help bring out. There are a lot of potential economic development projects that are not linked to transport but are depended on it, for example hospitals or schools. These have not developed due to poor roads, but also, as we now better understand, because of bad internet connection.¹³³

In their conceptualization of mobility infrastructures, Xiang and Lindquist argued that the dimensions of infrastructure should be considered collectively, asserting that they “collide with and contradict one another,”¹³⁴ as evidenced by the preceding statement from the ECOWAS officers. This interrelatedness of the various dimensions of mobility infrastructures is further illustrated by the restriction of access to physical mobility infrastructures through the denial of technological infrastructures, exemplified by the risk of having phones confiscated as part of a bribe demand.¹³⁵ In other words, the gendered dynamics of physical mobility infrastructures can constrain access to technological infrastructures.¹³⁶

F. Conclusion

This Article examined the gendered dimensions of access to mobility infrastructures, focusing on how legal, physical, and technological infrastructures govern mobility, and how gender norms are embedded within the ECOWAS mobility infrastructures. The analysis reveals a prevalent “gender-blindness” in mobility infrastructures, leading to unequal movement opportunities. A significant issue with the current mobility infrastructures is the predominant exclusion of women from their construction, design, and operationalization,¹³⁷ resulting in unequal access to free movement, which is otherwise equally granted to all citizens of member states.

¹³¹Interview with an Officer at the Department of Infrastructure, Energy, and Digitalisation, ECOWAS, in Abuja, Nigeria (Dec. 6, 2019).

¹³²See ECOWAS REGIONAL INFRASTRUCTURE MASTER PLAN, *supra* note 75.

¹³³Interview with an officer at the Department of Economic Affairs and Agriculture in Abuja, Nigeria (Nov. 1, 2019).

¹³⁴Xiang & Lindquist, *supra* note 22, at 124.

¹³⁵See Ortrun Merkle, Julia Reinold, & Melissa Siegel, *Shaping the Migration Journey—The Role of Corruption and Gender*, in MIGRATION, REMITTANCE, AND SUSTAINABLE DEVELOPMENT IN AFRICA 199, 199 (Maty Konte & Linguère Mously Mbaye eds., 2020).

¹³⁶This argument was raised during several interviews at different departments of the ECOWAS Commission: Interview with an Officer at the Directorate of Free Movement of Persons, Migration & Tourism, *supra* note 92; Interview with an Officer at the Department of Economic Affairs and Agriculture, *supra* note 94; Interview with an Officer at the Department of Political Affairs, Peace, and Security, ECOWAS, in Abuja, Nigeria (Oct. 30, 2019).

¹³⁷See Interview with an Officer at the Department of Human Development and Social Affairs, *supra* note 82.

The gendered analysis of access to mobility infrastructures highlights several important points. The analysis shows that infrastructures function as socio-material assemblages embedded with specific gender norms, which in turn reinforce an unequal hierarchy between male and female migrants. Although institutional efforts, such as the ECOWAS joint border posts program, aim to facilitate cross-border movement, the design of physical mobility infrastructures is often not gender-neutral and can constrain the mobility trajectories of female migrants. The analysis also indicates that laws and practices determine who can move through these facilities, how they can move, and under what conditions. This underscores the necessity of examining mobility infrastructures from the perspective of ECOWAS lawmakers. Additionally, the analysis contributes to the currently limited understanding of the interplay between ICT, gender, and migration. It highlights how access to technological infrastructures, such as Wi-Fi hotspots or online information, which are presumably gender-neutral, is in fact shaped by inherent gender norms that influence physical migration trajectories, or the absence thereof. In this context, the Article conceptualizes mobility infrastructures as mechanisms of discrimination, characterized by legal, physical, and technological components that are predominantly more accessible to male migrants. Consequently, the analysis sheds light on the persistent disparity between national and regional legal frameworks, which continue to impede women's access to free movement, despite recent ECOWAS initiatives aimed at facilitating intra-regional mobility. This disparity primarily stems from colonial legal legacies and contemporary legal norms.

The analysis paves the way for new research avenues. Focusing on the distributional power of mobility infrastructures raises various normative debates and questions about how these infrastructures work for different groups and their embedded discriminatory dimensions. Future studies could investigate the distributional consequences of legal, physical, and technological mobility infrastructures by analyzing the migration trajectories and possibilities for female migrants, and how they use, access, and interact with different infrastructures before, during, and after their migration journey. This focus would contribute significant knowledge on the use of mobility infrastructures from a gendered perspective, while also empirically addressing the relationship, and disparity, between policy and practice in ECOWAS law.¹³⁸ Such research could further advance a nuanced understanding of female migrants and challenge the perception of female migrants as a homogenous group in ECOWAS policies, with similar aspirations and opportunities. This would contribute to ongoing debates on the relationship between intersectionality, legal infrastructures, and free movement regimes.¹³⁹

Acknowledgements. I am grateful to Professor Fredrik Söderbaum, School of Global Studies, University of Gothenburg, for his guidance during the data collection phase. I also extend my sincere thanks to Nora Stappert and William Hamilton Byrne, both of the Faculty of Law, University of Copenhagen, for their critical feedback on earlier drafts, as well as to the editorial team of the German Law Journal. Finally, I would like to thank the officials at the ECOWAS Commission for their insightful contributions during our interviews.

Funding Statement. This study has received funding from the European Union Horizon 2020 research and innovation programme under the Marie Skłodowska Curie grant agreement No 101154869 (REMOBILISE), and by the Danish National Research Foundation Grant No DNRF169.

Competing Interests. The author declares none.

¹³⁸See UKAIGWE, *supra* note 21.

¹³⁹See, e.g., Helma Lutz & Anna Amelina, *Intersectionality and Transnationality as Key Tools for Gender-Sensitive Migration Research*, in THE PALGRAVE HANDBOOK OF GENDER AND MIGRATION, 55 (Claudia Mora & Nicola Piper eds., 2021).

Cite this article: Weinrich AR (2024). Free Movement for Whom? Gendered Dynamics in the Access to Mobility Infrastructures in West Africa. *German Law Journal* 25, 1363–1381. <https://doi.org/10.1017/glj.2024.74>