Promoting Better Management of Migration in Nigeria

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REVIEW OF NIGERIAN LEGISLATION AND POLICY REGARDING ILO CONVENTION 189 CONCERNING DECENT WORK FOR DOMESTIC WORKERS

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Publisher: International Organization for Migration
No. 11 Haile-selassie Street
Asokoro District
Abuja
Tel.: +234 814 067 11 27
Fax: +234 807 209 31 33
E-mail: iomnigeria@iom.int
Website: www.iom.int

Researched and written by:

Patrick Taran, President, Global Migration Policy Associates (GMPA)
Katherine Youtz, Research Associate, GMPA

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INTRODUCTION

Adoption of the International Labour Organization's (ILO) International Labour Conference of Convention 189 concerning Decent Work for Domestic Workers (ILO C-189) was a landmark accomplishment in advancing international standards to provide for protection of the human and labour rights of domestic workers, many of whom are migrants. In the short time since its adoption by the International Labour Conference, the Convention has already garnered 16 ratifications around the world with several more currently in process. This is a convention eminently applicable to ensuring the protection of domestic workers, including migrant domestic workers, in Nigeria, as well as for Nigerians abroad.

The National Policy on Labour Migration (LMP) for Nigeria, recently approved by the Federal Executive Council, acknowledges that "Special attention will be given to vulnerable categories, such as women domestic workers, temporary migrants, and migrant workers in irregular status, who continue to suffer abuses and malpractices at the hands of employers, government officials and the general population in receiving countries".

As noted in other legislative assessment reports in this series, regulating migration and its attendant employment issues requires rules and regulations that all stakeholders must abide by. Nigeria ratified two of the cardinal international instruments providing the foundation for these rules and regulations, namely the ILO's Migration for Employment Convention, 1949 (No. 97) (ILO C-97) and the United Nations' International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICRMW). Furthermore, the core international human rights instruments – nearly all ratified by Nigeria, as well as general comments and findings of the respective treaty bodies – reinforce application of the standards-based approach to governance of migration. Nigeria, as other States, has primary responsibilities to regulate labour markets and ensure decent work conditions for all people working on its territory. ILO C-189 is a crucial tool for extending that regulatory protection to some of the workers that are mostly at risk of abuse and exploitation.

Numerous calls and initiatives are already underway to support Nigeria's eventual ratification of ILO C-189. For example, the LMP for Nigeria explicitly calls for the ratification of ILO C-189 on Domestic Work/Workers in Part 2.1.1 ("Legislative foundation").

This report shows that ratification is feasible as well as urgent. A number of the provisions of ILO C-189 are already incorporated in Nigerian national legislation and policy. There are certainly several gaps that would require remedy for compliance with the Convention. However, as with other already ratified conventions, existing gaps can be remedied following and with the support of ratification of this instrument.

The Nigerian domestic legal system is dualist in its relationship to international law. As such, any conventions signed and ratified must be enacted into law by the National Assembly in order to have legitimate legal standing and be given effect on the national territory.

The review

A comprehensive review of national legislation and formal policy in view of the international conventions on migration was anticipated in the National Policy on Labour Migration framework, approved on 15 October 2014 by the Federal Executive Council.

This review was mandated as a component of the national 10th European Development Fund project "Promoting Better Management of Migration in Nigeria" funded primarily by the European Union and implemented by IOM. The IOM Abuja office contracted Patrick Taran, President of Global Migration Policy Associates and former Senior Migration Specialist at the ILO, to conduct the review, also considering his previous cooperation in drafting the Nigeria LMP.

The overall consultancy included three objectives, one of which was assessing the effectiveness of the current framework on domestic workers' rights in view of ILO C-189 (2011).

Mandated tasks included comprehensive evaluation of Nigeria's legal instruments and policy documents governing labour migration to ascertain the extent to which they are in accordance with ILO C-189, as well as the ICRMW, ILO C-97, Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ILO C-143), Private Employment Agencies Convention, 1997 (No. 181) (ILO C-181) and the Economic Community of West African States' (ECOWAS) Protocol on Movement of Persons, Residence and Establishment. Reviews of transposition of these other instruments in Nigerian national law and policy are presented in three separate documents – one regarding the three international "migration conventions", another on ILO C-181, and a third on the ECOWAS Protocol.

This report is one of the key products of the review; it presents several recommendations that support ratification and proposes modifications for legislation and/or administrative measures to bring domestic law and practice into conformity with provisions of the yet un-ratified ILO C-189.

Katherine Youtz, Research Associate at GMPA and master's candidate in Human Rights and Humanitarian Action at the Paris School for International Affairs "Sciences Po", participated in the detailed assessment review of national legislation regarding ILO C-181.

Structure of the report

This review is structured according to the order of ILO C-189. The articles/provisions of the Convention are listed first, followed by identification of whether and where they may be reflected in the Constitution, national legislation and/or policy. Relevant texts or summaries of the national law or policy provisions are shown. Observations by this review on legislative or policy provisions that are diverge from the Convention are highlighted in italics.

A summary of provisions of the Convention for which no corresponding domestic law or policy was found is provided at the end of the review. The review concludes with recommendations, first to address lacunae and then to rectify provisions of law or policy apparently not in compliance with the Convention.

REVIEW OF NIGERIAN NATIONAL LEGISLATION AND POLICY IN VIEW OF ILO C-189

Article 1 – "For the purpose of this Convention –

(a) the term "domestic work" means work performed in or for a household or households;

(b) the term "domestic worker" means any person engaged in domestic work within an employment relationship;

(c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker."

Section 91 of the Labour Act (1990) ("Interpretation") uses the term "domestic servant" to mean "any house, table or garden servant employed in or in connection with the domestic services of any private dwelling house, and includes a servant employed as the driver of a privately owned or privately used motor car".

Section 73 of the Employee's Compensation Act (2010) defines "employee" as a "person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer".

Section 9 of the National Minimum Wage (Amendment) Act (2011) defines "worker" as "any member of the civil service of the Federation or of a State or local government or any individual (other than persons occupying executive, administrative, technical or professional positions in any such civil service) who has entered into or works under a contract with an employer whether the contract is manual labour, clerical work or otherwise, expressed or implied, oral or in writing, and whether it is a contract personally to execute any work or labour". This definition should include domestic workers as beneficiaries of the provisions of the act.

Review Note: Despite the inclusive definition, domestic workers appear to be excluded from the national minimum wage entitlement under Section 2(a) of this act, which states that the requirement to pay the national minimum wage under section 1 of the act shall not apply to "(a) an establishment in which less than fifty workers are employed […]" – a situation that applies to almost all domestic workers.

The three definitions found by this review in national legislation appear to be consistent with the definitions characterizing domestic work and workers in the Convention, although they use the term "domestic servant" to refer to persons engaged in domestic work.

Article 2 – The Convention applies to all domestic workers. However, Member States may – after consultation with representative organizations of employers and workers and, where they exist, organizations representative of domestic workers and employers of domestic workers – exclude wholly or partly from its scope categories of workers who are otherwise provided with at least equivalent protection and limited categories of workers in respect of which special problems of a substantial nature arise. These exemptions must be reported under the Constitution of the ILO with the reasons for exclusion.

This review found no legislation or rules evoking exceptions to protection of all domestic workers, except for the exemption from minimum wage noted above.

Article 3.1 – "Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention."

The fundamental rights of all persons in Nigeria are explicitly delineated in Chapter IV of the Nigerian Constitution (1999).

Article 3.2 – "Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation."

Provisions of the Constitution of Nigeria addressing these rights and principles are listed following the order of their listing in Article 3.2 of the Convention.

(a) Freedom of association and the effective recognition of the right to collective bargaining

Section 40 of the 1999 Constitution guarantees freedom of assembly and association "every person", particularly concerning membership in "any political party, trade union or any other association for the protection of his interests". The non-restrictive language used should extend this provision to domestic workers.

In 1960, Nigeria ratified ILO C-87 concerning Freedom of Association and Protection of the Right to Organise Convention and ILO C-98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.

(b) Elimination of all forms of forced or compulsory labour

Section 34(b) 1999 Constitution states, "no person shall be held in slavery or servitude", while Section 34(c) states, "no person shall be required to perform forced or compulsory labour". The non-exclusive language used should extend these provisions to domestic workers.

(c) Effective abolition of child labour

Section 17(3) 1999 Constitution states, "The State shall direct its policy towards ensuring that […] (f) children, young persons and the age[d] are protected against any exploitation whatsoever, and against moral or material neglect". The protection against "any exploitation whatsoever" would appear to include exploitative child labour and should extend to children working in domestic service.

(d) Elimination of discrimination in respect of employment and occupation

Section 17(3) 1999 Constitution also states, "The State shall direct its policy towards ensuring that (a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment […]" and "(e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever."

As well, Section 73 of the Labour Act prohibits forced labour and articulates penalties of both fines and potential imprisonment for "any person who requires any other person, or permits any other person to be required, to perform forced labour". The nominal terminology ("any person") is non-exclusive and thus this prohibition should be extended to the domestic work sector, in accordance with subsection (b).

Further, Section 22 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003, amended 2005) states that "Any person who […] (b) employs a child to work in any capacity except where he is employed by a member of his family or light work of an agricultural, horticultural or domestic character, or […] (d) employs a child as a domestic help outside his own home or family environment…" commits an offence and is liable to the sanctions outlined in the section, in accordance with sections (b) and (c).

Article 3.3 – Member States "shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations, and confederations of their own choosing".

Section 40 of the 1999 Constitution, as noted under ILO C-189's Article 3.2, upholds the right to freedom of association and assembly for "every person", which should apply also to domestic workers. As previously noted, Nigeria ratified ILO C-87 and ILO C-98 in 1960.

Section 2 of the National Commission for Women Act (1992) articulates the Commission's objectives as including: "(b) (iii) mobilising women collectively in order to improve their general lot and ability to seek and achieve leadership roles in all spheres of society […] (f) stimulate actions to improve women's civic, political, cultural, social and economic education, […] and (h) encourage the sense and essence of co-operative societies and activities amongst women both in the urban and rural areas".

The broad mandate for the National Commission and the fact that many domestic workers are women suggest that the Commission should address collective mobilization and freedom of association for domestic workers, as there is no language that would exclude them from its mandated activities. The excerpted subsections above provide for training on bargaining and employment, and are particularly relevant for women employed as domestic workers.

Section 2 of the National Institute for Labour Studies Act (1984) articulates the Institute's objectives as including: "(a) to provide workers' education generally, so as to enhance the role of trade unions in the social and economic development of the country and equip trade union officials and managers with skills normally required for collective bargaining". While not explicitly referencing domestic workers, no language was found in the act that would exclude domestic workers from such training programmes.

Part 3.1 ("Protection") of the LMP states that "all migrant workers must have rights to freedom of association and access to engage in collective bargaining". This non-restrictive language thus extends this call for realization of rights to include rights of migrant domestic workers.

The main challenge is to determine ways of supporting domestic workers to effectively realize these rights to organize and collectively assert their rights under the law.

Article 4.1 – "Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No.138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally."

Section 49 of the Labour Act designates a minimum and maximum age (above 12 and under 16 years) at which parents may contract children into apprenticeships, specifically citing domestic work as one of the sectors of work permitted so long as such a contract does not exceed five years.

Section 59 of the Labour Act prohibits employment of a child "in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character approved by the Minister". The definition used throughout the act defines a "child" as a person under 12 years of age, establishing a minimum age below which no person may be employed.

While there appeared to have been some tension between the minimum age designated in the Labour Act of 1990 and the minimum age articulated in the Minimum Age Convention (which states in Article 2.3, "The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years"), the Child Rights Act of 2003 clearly defines "child" as any person under 18 years of age.

Article 4.2 – "Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training."

The Child Rights Act in Section 15 on the right of every child to free, compulsory and universal primary education mandates that "every parent or guardian shall ensure that his child or ward attends and completes his (a) primary school education; and (b) junior secondary education". The act further specifies penalties for non-compliance with this stipulation.

Article 5 – "Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence."

Section 46 of the Labour Act states, "Any employer who neglects or ill-treats any worker whom he has contracted to employ in accordance with this Part of this Act shall be guilty of an offence" and establishes penalties for such actions.

The Minimum Wage (Amendment) Act includes in its definition of "worker" any person "who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing, and whether it is a contract personally to execute any work or labour".

The use of "any employer" and "any person" in these two acts should extend legal protection from abuse, harassment and violence to all domestic workers.

Article 6 – "Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy."

Section 65 of the Labour Act states states that "The Minister may make regulations providing for (a) the engagement, repatriation or supervision of domestic servants; (b) the employment of women and young persons as domestic servants; (c) the housing accommodation and sanitary arrangements of domestic servants; and (d) the conditions of domestic service generally." This section manifests recognition of the need to take measures to ensure that domestic workers enjoy fair terms of employment and decent working and living conditions.

The authors of this report had no opportunity to review any existing pertinent regulations; however, the scope of this authority clearly provides for establishing regulations in line with provisions of ILO C-189.

Article 7 – "Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements" and in particular the employer's information, address, terms of the contract, remuneration, hours of work, paid leave and weekly rest periods, food and accommodation, if provided, terms of repatriation, if applicable, and terms and conditions of termination of employment.

As noted above, Sections 65 and 88 of the Labour Act provide ministerial authority in devising regulations to ensure that all domestic workers in Nigeria are informed of their terms and conditions of employment, in accordance with national laws, regulations or collective agreements.

Section 40 of the Labour Act defines special terms and conditions of contract applying to foreign workers.[1] These special terms and conditions are explicitly in addition to all other terms or conditions required in contracts by any other provision of the Labour Act, and include particular information on employers and the nature of employment to be engaged in, which is required to be provided to domestic workers in ILO C-189 Article 7. The non-restrictive language used ("every foreign contract") should apply this provision to terms of contracts for foreign/migrant domestic workers.

Section 7 of the Labour Act (1990) concerns written particulars of terms of employment, and requires that "not later than three months after the beginning of a worker's period of employment with an employer, the employer shall give to the worker a written statement specifying:" the name of the employer and nature of work to be performed, name and address of the worker and place and date of engagement, expiration date of the contract if it is for a fixed term, notice period should one party wish to terminate the contract, rates of wages to be paid and manner and periodicity of payment, and any terms and conditions related to hours of work, holidays, incapacity for work due to sickness or injury, and any special conditions of contract.[2]

The language used ("a worker") is non-restrictive, and as the term "employee" is defined in the act as including domestic workers, these terms of contract should be applicable to all domestic workers.

However, it should be expected practice that contracts and terms of employment are agreed upon and provided to workers prior to or at the start of employment.

Article 8.1 – "National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies."

Section 40 of the Labour Act detailed above under ILO C-189 Article 7 requires contracts to include the information stipulated in Convention Article 8.1; however, *it does not stipulate that such a contract or job offer be received prior to the worker crossing national borders.*

Section 7 of the Labour Act detailed above under C-189 Article 7 also addresses concerns of Article 8.1. However, it *allows for such contracts to be made up to three months after the start of employment, in contradiction to the requirement in Article 8.1 for contracts to be made prior to crossing national borders for the purpose of taking up employment.*

1 This provision of the Labour Act also corresponds significantly to Article 22 ("Contracts of Employment") of ILO's Migration for Employment Recommendation No. 86 (Revised), 1949 (ILO R86).

2 As noted by a stakeholder labour expert, "This provision and other observations should and would set the template for the Hon Minister/Ministry to improve on the Regulations".

Article 8.2 – "The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas."

As Nigeria is a Member State of ECOWAS and has ratified the ECOWAS Protocol, the preceding paragraph would not apply to workers originating in other ECOWAS Member States.

Article 8.3 – "Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers."

The review found no national legislation or policy concerning efforts between Member States to ensure the effective application of the provisions of the Convention for migrant domestic workers (Nigeria has not yet ratified this Convention, nor has any other ECOWAS Member State to date).

Article 8.4 – "Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited."

Section 65 (a) of the Labour Act authorizes the Minister to make regulations providing for "the engagement, repatriation or supervision of domestic servants". However, this review had no opportunity to identify whether any pertinent regulations exist.

Section 29 of the Labour Regulations (1936) stipulates that the employer shall, "if the labour has been brought to the place of employment by ship or railway at the cost of the employer, provide the labourer with a return passage or fare to the place of engagement". The language used is non-restrictive, and therefore these provisions on repatriation should apply to domestic workers.

Article 9 – Member States shall take measures to ensure domestic workers are free to reach agreement with their employer or potential employer on whether to reside in the household; that should they live in the household, they are not obliged to remain there or with household members during their periods of daily and weekly rest or annual leave; and that they are entitled to keep their travel and identity documents in their own possession.

Section 65 of the Labour Act states that "The Minister may make regulations providing for –

(a) the engagement, repatriation or supervision of domestic servants;

(b) the employment of women and domestic servants;

(c) the housing accommodation and sanitary arrangements of domestic servants; and

(d) the conditions of domestic service generally."

The authors of this report did not have the opportunity to review any existing pertinent regulations; however, the scope of this regulatory authority provides for establishing regulations in line with these provisions of ILO C-189.

Article 10.1 – "Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work."

Section 13 of the Labour Act (1990) restricts regular hours of work to those fixed by: (a) mutual agreement between the employer and the employee; (b) collective bargaining; or (c) industrial wages board. Mandatory breaks and overtime are defined in relation to these fixed hours. The provisions of Section 13 designate application to "a worker" – a non-restrictive term that should, in principle, make these terms of hours of work, mandatory breaks and overtime equally applicable to domestic workers.

Section 18 of the Labour Act is also non-exclusive in its stipulation of annual holidays with pay for "a worker", and thus, in the view of the reviewers, should also be applicable to domestic workers in Nigeria.

The Labour Regulations, in Section 28(1), establishes that "No labourer shall be required to work for more than ten hours a day, and every labourer shall be allowed to break off work for two hours during the day, and also adequate time to obtain fuel and prepare his food in the evening."

The regulation only exempts application from "piece workers, labourers employed on coaling a vessel, or night watchmen".

This review observes that this protection should extend equally to domestic workers as to workers generally, since the regulations do not exempt them from application.

Article 10.2 – "Weekly rest shall be at least 24 consecutive hours."

No national legislation or policy was found mandating a specific weekly rest period for domestic workers.

Article 10.3 – "Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice."

No national legislation or policy was found by this review distinguishing periods when domestic workers are not free to dispose of their time and must remain at the disposal of the employer as periods to be regarded as hours of work.

Article 11 – "Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex."

Section 2 of the National Minimum Wage (Amendment) Act appears to necessarily exclude domestic workers from the workers to whom employers are required to pay at least the national minimum wage by stating that *this requirement "shall not apply to […] an establishment in which less than fifty workers are employed" – a situation applicable to almost all domestic workers*.

Section 88(1)(d) of the Labour Act authorizes the Minister to make regulations "imposing upon persons who have accepted the services of any worker or domestic servant without paying wages therefore the obligation to provide for the maintenance of the worker or domestic servant during sickness or in old age".

This article explicitly allows an exemption from paying minimum wage or any wage at all to "domestic servants" or other workers during their period of employment, but instead stipulates (only) maintenance during sickness or in old age. This appears to allow a "loophole" that could allow for tolerating wage slavery for domestic workers.

Article 12.1 – "Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned."

Section 9 of the Labour Regulations (1936) states that "Wages payable under a contract of service, not being a contract to perform some specific work without reference to time or a contract under which wages are payable for piecework, shall be payable at a daily, weekly or monthly rate."

Section 10 mandates that these wages, no matter the interval of payment, "shall, in the absence of any written agreement to the contrary, be paid not later than eight days after they become due".

Section 11 regulates permissible deductions to pay for days when a "servant is absent from work and on which he is under an obligation to work".

The provisions of Sections 9, 10 and 11 are applicable to domestic workers given the non-restrictive terminology used; the application is made explicit in Section 11's reference to "a servant" (noting that the term "domestic servant" is used elsewhere in legislation to evidently refer to domestic workers).

These provisions of the Labour Regulations appear consistent with the stipulations for regular payment in Convention Article 12.1. *However, no stipulation is made regarding the form(s) of payment.*

Article 12.2 – "National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable."

No national legislation or policy concerning in-kind payment for domestic workers was found by this review. The reviewers note the allowance in Section 88(1)(d) of the Labour Act (previously mentioned in Convention Article 11) obliging employers of labourers or domestic workers to whom they do not pay wages to provide for their maintenance in sickness or old age.

However, this provision is not in accord with Convention Article 12.2, which limits in-kind payment to a "limited proportion of the remuneration".

Article 13.1 – "Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers."

Section 17 (3)(b) and (c) of the Constitution states that "The State shall direct its policy towards ensuring that […] (b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life; and (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused".

The use of non-restrictive language ("all persons in employment") implies the State's responsibility to direct its policy towards ensuring safe and healthy working environments are provided for domestic workers.

Section 65 of the Labour Act authorizes the Minister to make regulations providing for "(c) the housing accommodation and sanitary arrangements of domestic servants; and (d) the conditions of domestic service generally".

Section 88 (1)(b) authorizes the Minister to make regulations "requiring employers to report any accident involving the death of or injury to a worker or domestic servant, in cases not coming within the provisions of any other enactment".

Although the authors of this report did not have the opportunity to review any existing pertinent regulations, the scope of this ministerial authority in Labour Code Articles 65 and 88 provides for establishing regulations in line with these provisions of ILO C-189.

Section 4.7.3 ("Strengthening of Occupational Health Services") of the National Employment Policy (2000) calls in Section 156 for "the development of Occupational Health Services for all workers in all sectors of the economy and in all enterprises, as well as for the self-employed". This call manifestly implies making these services available and accessible to domestic workers.

Article 13.2 – "The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers."

The National Employment Policy calls for evidently progressive development of occupational health services for all workers in all sectors.

The LMP also stipulates a policy goal of ensuring that "all employment of migrant workers is subject to labour standards and code of ethics".

The reviewers noted that regarding consultation with the most representative organizations of employers and workers, while no specific references were found on occupational safety and health, Section 5.2 Article 205 of the National Employment Policy calls for "The social partners viz Nigeria Employers' Consultative Association (NECA) and Nigeria Labour Congress (NLC) will be expected to cooperate closely with the government constituted bodies."

Section 2.1 ("Social dialogue") of the LMP stipulates that "Implementation and monitoring of the policy […] will be conducted through social dialogue and in collaboration with the various state branches of the Social Partners".

The review notes ample precedent in Nigerian policy for consultation with the most representative organizations of employers and workers in developing and applying measures to ensure occupational safety and health for domestic workers.

Article 14.1 – "Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity."

Section 54 of the Labour Act concerns maternity protection and articulates the right of women employed "In any public or private industrial or commercial undertaking or any branch thereof, or in any agricultural undertaking or any branch thereof" to leave work with authorization of a medical practitioner if "her confinement will probably take place within six weeks" and for the six weeks following the birth of her child. Additionally, provisions are given for mandatory rest periods for nursing newborns at the place of employment.

Domestic workers are manifestly not addressed by these provisions; however, their work does not fall into the sectors designated above, which refer explicitly to public or private industrial or commercial undertakings or agriculture.

Section 1 to 32 of the Employee's Compensation Act are provisions concerning injury, workplace disability and death at the workplace – all of which are articulated in a language that contains no explicit exclusion of domestic workers. For a full listing of relevant provisions, refer to the GMPA review of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families under subcategory 5: Social Protection and Social Security.

Sections 1 and 2 of the Pension Reform Act (2014) articulate the creation of the Contributory Pension Scheme and the terms of inclusion therein. In particular, Section 2(3) stipulates that employees of organizations with less than three employees and self-employed persons will be eligible to participate in the scheme according to guidelines issued by the commission regulating its functions and application. While domestic work often takes place in an environment where less than three workers are employed, the particular nature of domestic work is not articulated, nor excluded, in this act. Nonetheless, the right for domestic workers to participate, while not explicit, appears evident.

Section 7 of the National Health Insurance Scheme Act (1999) provides access to the scheme to those employers with a minimum of 10 employees.

This designation evidently excludes domestic workers from coverage given that most work in environments with fewer than 10 employees.

No provisions were found by this review extending access to the scheme to domestic workers.

However, Section 88(1) of the Labour Code provides that "The Minister may make regulations - (a) providing for the payment of compensation by employers to workers or domestic servants for injury arising out of and in the course of their employment in cases not coming within the provisions of any other enactment, and for the recovery of the compensation in question; (b) requiring employers to report any accident involving the death of or injury to a worker or domestic servant, in cases not coming within the provisions of any other enactment; […] and (e) prescribing anything which is to be prescribed under this Act and is not otherwise provided for".

Although the authors of this report did not have the opportunity to review any existing pertinent regulations, the scope of ministerial authority in Labour Code Section 88, as well as in Section 65, provides for establishing regulations that could assure domestic workers with social security protection not less favourable than those for workers generally.

Article 14.2 – "The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers."

The LMP stipulates promoting the "right to decent work, including access to social protection for female and male migrant workers".

As noted above under Convention Article 13.2, the review finds ample precedent in Nigerian policy for consulting with the most representative organizations of employers and workers in the development and application of measures in extending social protection to domestic workers.

Article 15.1 – Effective protection of domestic workers, such as migrant domestic workers, recruited or placed by private employment agencies, against abusive practices through State regulation of (a) the conditions "governing the operation of private employment agencies"; (b) adequate machinery and procedures for the "investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers"; (c) necessary and appropriate measures, in collaboration with other Member States as appropriate, to "specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties"; (d) bilateral, regional or multilateral agreements to prevent abuses; and (e) "measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers."

An ample review of existing regulation of private employment agencies in Nigeria is contained in the report "Review of Nigerian Legislation and Policy Regarding ILO Convention 181 on Private Employment Agencies" by the same authors. The said review found numerous provisions in Nigerian legislation and policy in conformity with the Convention, but also some lacunae.

Section 23 of the Labour Act prohibits recruiting for employment except under permit or license, and provides a framework for labour recruitment that should be applicable to recruitment of domestic workers.

Section 5 of the Labour Regulations prohibits demanding or accepting from "a recruited servant any payment as a reward for obtaining employment for the servant except with the consent of a Governor or the Minister". Section 6 further prohibits contracts "under which a servant has engaged to repay to his employer the whole or any part of any payment which the employer has made or has agreed to make in connection with the recruiting of such servant".

Part 2.1.2 of the LMP ("Regulation – Employment and recruitment agencies") calls for "clear guidelines for recruitment […] to be issued and the recruitment process more closely monitored and regulated", and advocates the signing and ratification of ILO C-181 and its Recommendation No. 188. Part 3.2 of the LMP specifically notes, "Special attention will be paid to the recruitment and deployment of categories of workers – such as female domestic workers – who are especially vulnerable to malpractice and abuse."

These provisions indicate substantial existing conformity in national legislation and policy with Article 15.1 of ILO C-189.

Article 15.2 – "In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers."

Part 2.1 of the LMP ("Social dialogue") articulates intention for the Federal Ministry of Labour and Productivity to invoke social dialogue and engage State branches of Social Partners in implementing the provisions of the LMP. The language used throughout the LMP refers to "all workers" and thus should extend equally to the protection of domestic workers.

As noted under Convention Articles 13.2 and 14.2, this review found ample precedent in Nigerian policy for consultation with the most representative organizations of employers and workers in regulating recruitment of domestic workers.[3]

Article 16 – "Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally."

Section 81 of the Labour Act concerns labour complaints and states that where "an employer or worker neglects or refuses to fulfil a contract" or if "any question, difference or dispute arises as to the rights or liabilities of a party to a contract or touching any misconduct, neglect, ill-treatment or injury to the person […] any party to the contract feeling himself aggrieved may make complaint to a court having jurisdiction". The nominal terminology used ("an employer, a worker") is non-restrictive and thus should make this provision applicable to domestic workers, as well as their employers.

It was reported to the reviewers that, in addition to the regular courts, the National Industrial Court (a competent constitutional court of records) and Industrial Arbitration Panel are structures provided by law to handle labour complaints including those that might involve domestic workers.

3 As noted by a stakeholder labour expert, "…the Social Partners are consulted and involved in all labour matters in the country. The structures to absorb the Domestic Workers Union (NLC) and those representative of employers of domestic workers (HUCAPAN) representing the Association of PEAs are already on ground in the country. HUCAPAN is an affiliate of NECA."

Article 17.1 – "Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers."

Sections 5, 7 and 8 of the National Minimum Wage (Amendment) Act provide a framework for legal action against an employer should s/he violate the provisions of the act.

However, domestic work is not explicitly mentioned, and domestic workers appear not to be covered under the act, as noted above.

Other labour law contains similar provisions for compliance and admitting complaints.

Article 17.2 – "Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations."

Section 78(1) of the Labour Code provides broad "Powers of authorized labour officers" to "for the purpose of facilitating or ensuring the proper operation of this Act –

(a) enter, inspect and examine by day or night any labour encampment, farm, factory or other land or workplace whatsoever (and every part thereof) if he has reasonable cause to believe that any worker is employed therein or thereon;

(b) enter, inspect and examine by day any premises provided by an employer in which he has reasonable cause to believe that workers are living;

(c) enter, inspect and examine any hospital building, sanitary convenience, messroom or water supply provided for or used by workers;

(d) take with him a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his functions;

(e) require the production of any registers, certificates, notices or other documents kept in pursuance of this Act and inspect, examine and copy any of them;

(f) make such examination and enquiry as may be necessary to ascertain whether the provisions of this Act are being complied with, so far as respects any labour encampment, farm, factory or other land or workplace whatsoever and any person employed therein or thereon;

(g) inspect and examine all food provided for the use of workers and take samples thereof, so however that - (i) any sample taken in pursuance of this paragraph shall be taken in duplicate in the presence of the employer of the workers (or, if the employer is not readily available, in the presence of a foreman or other responsible person) and shall be labelled and sealed in the presence of the employer, foreman or other responsible person, and (ii) one sample so labelled and sealed shall be left with the employer, foreman or other responsible person;

(h) take or remove for the purpose of analysis samples of materials and substances used or handled by workers from premises not covered by the Factories Act, subject to the employer or his representative being notified and given an opportunity to be present when the samples are taken;

(i) interrogate, either alone or in the presence of another person as he thinks fit, with respect to matters to which this Act relates, any person whom he finds in or on any labour encampment, farm, factory or other workplace whatsoever or whom he has reasonable cause to believe to have been within the preceding three months employed in or on any labour encampment, farm, factory or other land or workplace whatsoever, so however that no person shall be forced to answer any question tending to incriminate himself;

(j) with the consent in writing of the Minister and subject to any powers conferred by the Constitution of the Federal Republic of Nigeria on the Attorney-General or Director of Public Prosecutions of the Federation or a State, prosecute, conduct or defend before a magistrate's court, a district court or a court given jurisdiction under section 80 (2) of this Act in his own name (or, where he is acting under section 83 (5) of this Act, in the name of the complainant) any complaint or other proceeding arising under this Act or otherwise in the exercise of his functions as an authorized labour officer;

(k) direct any person who has in his opinion contravened any provision of this Act, to remedy the contravention within a specified and reasonable period; and

(l) direct the posting of a notice in any premises if he is satisfied that it is necessary or expedient for the proper implementation of this Act."

This comprehensive enumeration of labour inspection responsibilities reproduced in full does NOT exempt any workplace whatsoever or any part thereof, where any person may be working or any worker may be living. No exemption for domestic work was identified in this provision of the act. It therefore appears to provide full legally established measures for labour inspection, enforcement and penalties covering domestic work in Nigeria.

However, no mention is explicitly made for special characteristics of domestic work.

Article 18 – "Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate."

Part 2.1 of the LMP ("Social dialogue") articulates intention for the Federal Ministry of Labour and Productivity to invoke social dialogue and engage State branches of Social Partners in implementing the provisions of the LMP. The language used throughout the LMP refers to "all workers" and thus should extend equally to issues of implementation of this Convention regarding both migrant and national/citizen domestic workers.

As noted under Convention Articles 13.2 and 14.2, this review found ample precedent in Nigerian policy for consultation with the most representative organizations of employers and workers in addressing issues of common concern; these precedents should encourage the implementation of this Convention, once ratified, in consultation with the most representative employers' and workers' organizations, as well as through collective agreements, laws and regulations, and other measures.

Articles 19–27 concern reporting and administration of the convention in relation to the ILO, and as such are not listed in this review.

ILO C-189 provisions concerning reporting to the ILO and administration of the Convention are not shown in the following section listing lacunae.

LACUNAE

Review Note: Some provisions listed below as lacunae may exist in other laws, regulations, executive orders or judicial decisions bearing the force of law that are outside the scope of this review.

- Article 4.2 of the ILO C-189 – Measures to ensure work performed by domestic workers under 18 years of age and above the minimum age of employment does not deprive them of compulsory education or other vocational training opportunities.

- Article 6 of the ILO C-189 – Measures to ensure domestic workers enjoy fair terms of employment and decent working conditions, as well as living conditions that respect their privacy if they live in a household.

- Article 8.3 of the ILO C-189 – Measures to cooperate with other Member States to ensure effective application of the provisions of the Convention to migrant domestic workers.

- Article 9 of the ILO C-189 – Measures to ensure domestic workers are free to reach agreement with their employer on whether to reside in the household, on their right to leave the household or members of the household during periods of rest or leave, and to keep their travel and identity documents in their possession.

- Article 10.2 of the ILO C-189 – Requirement that weekly rest be at least 24 consecutive hours.

- Article 10.3 of the ILO C-189 – Periods during which domestic workers are not free to dispose of their time as they please and during which they remain at the disposal of the household shall be considered as hours of work.

- Article 12.2 of the ILO C-189 – Allowance for national laws, regulations, agreements or arbitration awards to provide payment of a limited proportion of the remuneration of domestic workers in the form of in-kind payments that are not less favourable than those made to other categories of workers – provided that the in-kind payments are agreed to by the worker and will be for their personal use and benefit.

- Article 17.3 of the ILO C-189 – Measures to specify the conditions under which access to household premises may be granted for labour inspection, with due respect for privacy.

- Article 18 of the ILO C-189 (also Articles 13.2, 14.2 and 15.2) – Measures and mechanisms to provide for consultation with the most representative employers' and workers' organizations, including domestic workers' own organizations, in implementing the provisions of the Convention and specifically in applying progressively the provisions of Articles 13.1 (Occupational safety and health), 14.1(Social protection) and 15.1 (Regulation of PEAs).

RECOMMENDATIONS

1. **Ratify ILO C-189 on Decent Work for Domestic Workers as a matter of urgency**. Nigerian legislation and policy already largely give effect to many provisions of the Convention.

2. Ensure contracts made with foreign domestic workers include all provisions listed under Article 8.1 of ILO C-189, and **consider revision of Section 40 of the Labour Act and Section 7 of the Employee's Compensation Act** to ensure these contracts are issued before foreign domestic workers across international borders take up employment.

3. **Consider review and revision of Section 54 of the Labour Act** to ensure that domestic workers may enjoy the same right to maternity leave as workers in other sectors.

4. **Any regulations made by discretionary authority of the Minister under Section 65** of the Labour Act concerning the "engagement, repatriation and supervision of domestic servants" **should be identified and reviewed to ensure conformity with the provisions of the Convention**.[4]

5. **Review the National Health Insurance Scheme Act** to ensure that domestic workers may participate in and receive benefits from the scheme.

6. **Consider review and revision of Section 88(1)(d) of the Labour Act, as well as the National Minimum Wage (Amendment) Act**, to ensure that domestic workers are included and paid at least the national minimum wage, in accordance with Article 11 of ILO C-189.

7. **Ensure that domestic workers under the age of 18 and above the age of 15 are not deprived of compulsory education or vocational and/or other training opportunities** (ILO C-189 Article 4.2).

8. If not already enacted through ministerial regulations as noted in Recommendation 4, **formulate and adopt regulations to ensure that domestic workers enjoy fair terms of employment and decent working conditions, as well as living conditions that respect their privacy if they live in the household in which they work** (ILO C-189 Articles 6 and 9).

9. **Ensure that the equal treatment between domestic workers and workers generally** in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave apparently provided for in Section 13 and 18 of the Labour Act is **effective in practice**, with reference to the special characteristics of domestic work.

10. Formulate and/or revise and enact regulations ensuring that domestic workers' weekly rest time is for a period of at least 24 consecutive hours, and that periods during which domestic workers are not free to dispose of their time as they please and during which they remain at the disposal of the household **shall be considered as hours of work** (ILO C-189 Articles 10.2 and 10.3).

4 Section 65 of the Labour Act states that "The Minister may make regulations providing for - (a) the engagement, repatriation or supervision of domestic servants; (b) the employment of women and domestic servants; (c) the housing accommodation and sanitary arrangements of domestic servants; and (d) the conditions of domestic service generally."

11. **Ensure that national laws, regulations, agreements or arbitration awards to provide payment of a limited proportion of the remuneration of domestic workers in the form of in-kind payments are not less favourable than those made to other categories of workers** – provided that the in-kind payments are agreed to by the worker and will be for their personal use and benefit (ILO C-189 Article 12.2).

12. **Extend labour inspection activity to domestic work as permitted under the Labour Code (Section 78), with due regard for the special conditions of domestic work and the private household workplaces and domestic worker living premises**, with due respect for privacy (ILO C-189 Article 17.3).

13. **Initiate consultations and negotiations for measures or agreements in cooperating with other Member States to ensure effective application of the provisions of the Convention to migrant domestic workers** (ILO C-189 Article 8.3).

14. **Formulate and/or revise and enact regulations to ensure that domestic workers are free to reach agreement with their employer** on whether to reside in the household, on their right to leave the household or members of the household during periods of rest or leave, and to keep their travel and identity documents in their possession. Sections 65 (c) and (d) of the Labour Act explicitly provide authority for the Minister to do so.

15. **Formulate and enact measures to provide domestic workers with a safe and healthy working environment and ensure the occupational safety and health of domestic workers**. Access to household premises for labour inspection may facilitate this process.

16. **Ensure full and substantive consultations with the most representative organizations of employers and workers – including organizations of domestic workers** – in fully implementing the provisions of the Convention (ILO C-189 Article 18, as well as Articles 13.2, 14.2 and 15.2). Such consultations and cooperation should also be engaged to promote ratification of the Convention.

CONCLUSION

This review provides a comprehensive assessment of where Nigerian legislation and policy already incorporates provisions of ILO Convention 189 on Decent Work for Domestic Workers, or where dispositions are missing to give effect to the Convention.

This review and its accompanying matrix show that many of the provisions of ILO C-189 are already established in legislation and/or policy. However, the assessment could not determine to what extent these existing provisions are actually being applied to give effect to the Convention.

There are certainly several important gaps that require remedy for compliance with the respective provisions of the Convention. However, this review notes that existing gaps could be most effectively remedied following and with the support of ratification of this instrument.

The review concludes that ratification is more than feasible and, indeed, urgent.

Given the significant degree of legislative and stated policy accord with the provisions of the Convention, the reviewers believe that ratification should be proposed and could be accomplished in short order with support from ILO, cooperation by IOM, and promotional advocacy by the concerned stakeholders – in particular Social Partners – in Nigeria.

ANNEX

List of national legislations and policies reviewed

- Constitution of the Federal Republic of Nigeria (1999)
- Constitution of the Federal Republic of Nigeria (First Alteration) Act (2010)
- Constitution of the Federal Republic of Nigeria (Second Alteration) Act (2010)
- Constitution of the Federal Republic of Nigeria (Third Alteration) Act (2010)

List of national legislation (by order of year of enactment)

- Labour Regulations (1936)
- Immigration Act (1963)
- Immigration Regulations (1963)
- Immigration (Control of Illegal Aliens) Regulations (1963)
- Labour Act (1974)
- Social Development Act (1974)
- National Minimum Wage Act (1981)
- National Institute for Labour Studies Act (1984)
- Immigration and Prison Services Board Act (1986)
- Factories Act (1987)
- National Commission for Refugees, etc. Act (1989)
- National Directorate of Employment Act (1989)
- National Population Commission Act (1989)
- Labour Act (1990)
- National Commission for Women Act (1992)
- National Primary Heath Care Development Act (1992)
- Trade Unions (International Affiliations) Act (1996)
- National Health Insurance Scheme Act (1999)
- Child Rights Act (2003)
- Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003) – Amended 2005
- Pension Reform Act (2004)
- National Health Bill (2008)
- Employee's Compensation Act (2010)
- National Electoral Commission Act (2010)
- National Minimum Wage (Amendment) Act (2011)
- Pension Reform Act (2014)

List of national policy documents

- National Employment Policy (2000)
- National Labour Migration Policy (2013 revised draft)

International Organization for Migration (IOM)