Promoting Better Management of Migration in Nigeria

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REVIEW OF NIGERIAN LEGISLATION AND POLICY IN VIEW OF THE ECOWAS PROTOCOL ON FREE MOVEMENT OF PERSONS, RESIDENCE AND ESTABLISHMENT

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FOREWORD

We are pleased to present our comprehensive and pioneering review of Nigerian national law and policy in view of the Economic Community of West African States (ECOWAS) Protocol on Free Movement of Persons, Right of Residence and Establishment.

Undertaking this review was a rather more ambitious project than initially anticipated. It is the first review we are aware of that comprehensively assesses a broad range of legislation and policy regarding the extent and nature of national domestication of all provisions of the four ECOWAS protocols concerning free movement, residence and establishment of persons.

We were obliged to invent a topical framework and procedure for this assessment. We read and evaluated over 1,150 pages of legislation and policy documents, including the Constitution of Nigeria. We elaborated a matrix that counts over 1,000 data cells. Many workdays were dedicated to examining legislation line by line to identify coincidences or divergences with Protocol provisions. This narrative report comprises 60 pages.

We anticipate this assessment will serve as a valuable tool for enhancing good governance of migration by Nigeria, by first and foremost, supporting full domestication of Nigeria's regional community legal commitments in national law and policy. This study is an important step anticipated in the national Labour Migration Policy framework adopted last October by the Federal Executive Council.

The Abuja office of the International Organization for Migration (IOM) merits recognition for sponsoring this study in the implementation of the national 10th EDF national migration management project funded by the European Union. The authors thank Lily Sanya and Safiya Abubakar, among other colleagues at the IOM Abuja office for their extensive support. We especially appreciated their organization of a “stakeholder review meeting” among members of the Nigeria inter-agency Technical Working Group on migration to carefully consider and comment the draft edition of this report; this was conducted in cooperation with Emmanuel Igbinosun of the Federal Ministry of Labour and Productivity.

We also acknowledge vital cooperation with the International Labour Organization (ILO) – given its standard setting and supervision, as well as technical competencies on labour migration – in particular, the ILO office in Abuja and its director, Sina Chuma Makwandire.

We thank all of the many stakeholder partners at ECOWAS, in government, the social partners and civil society, who provided perspective, advice and documentation for this review. In particular, Veronica – merits special mention for her extensive written comments, questions and suggestions that considerably strengthened accuracy of this final edition.

May this report help Nigeria be an exemplary ECOWAS partner in implementing free movement!

Patrick Taran
with
Katherine Youtz

INTRODUCTION

The context

Labour and skills mobility – meaning free movement of people and their rights of access to residence and establishment – across the Economic Community of West Africa States (ECOWAS) is an essential pillar in achieving regional integration and development. It is, nonetheless, no easy regime to accomplish.

The World Bank estimated that 31 million African people were living in countries other than their birthplace in 2010, with 77 per cent of the 31 million from sub-Saharan Africa.[1] It is estimated that over 5 million Nigerians live abroad, well over half of them in sub-Saharan Africa. Estimates of the number of foreigners residing in Nigeria range up to 2 million, with well over 80 per cent originating from other ECOWAS member West African countries.[2]

Migration is indeed becoming a prevalent feature of the entire world. In 2013, an estimated 235 million persons lived outside their country of birth or citizenship.[3] Around half this number were economically active, which means that most adult migrants of working age are employed, self-employed or otherwise engaged in remunerative activity.[4]

Migration is sustaining economic viability of developed countries and facilitating development in regional economic communities (RECs) worldwide – within which much of contemporary migration takes place, whether ECOWAS, the European Union, MERCOSUR or Caribbean Community among a dozen RECs with established regimes for liberalized or free circulation of people. This mobility primarily of labour and skills – workers and their families – maintains agriculture, construction, health care, hotel, restaurant and tourism and other sectors, meets growing demand for skills, and promotes entrepreneurship across Africa as elsewhere. Migrant remittances, investments, transfer of skills and expanded trade enhance development and well-being in many countries, certainly in Nigeria.

Migration should be an engine of development of Nigeria and the West Africa region. It is central to the integration of Nigeria into its REC. However, long experience worldwide shows that the potential of migration to advance integration, support development and spur well-being for people and countries concerned is only realized when it is effectively governed, properly regulated and when migrants' rights and dignity are protected under the rule of law.

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 International Labour Organization's (ILO) 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). (A separate report in this series reviews domestication of these instruments in Nigeria.)

Nigeria is part of the 15-member ECOWAS, which was established in 1975. Recognizing the centrality of free movement of persons – labour and skills, as well as commercial and trade workers – ECOWAS established the 1979 Protocol relating to Free Movement of Persons, Right of Residence and Establishment early in its history. Subsequently, three additional protocols were negotiated among Member States to further refine a comprehensive West African regime for free movement of persons. These are the: (a) 1985 Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, Right of Residence and Establishment; (b) the 1986 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, Right of Residence and Establishment; and the (c) 1990 Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment.

1 World Bank, 2010.
2 Figures obtained in author interviews with officials from government agencies and NGOs of Nigeria.
3 United Nations Department of Economic and Social Affairs (UN DESA), 2013.
4 ILO, 2010.

It should be noted that the ECOWAS legal regime for free movement remains a pioneer in advancing international legal norms for protection of human rights. It significantly expands recognition of rights on migration and mobility by defining rights for persons – citizens of ECOWAS Member States – to enter into, reside in and establish economic activity on the territory of another State of which they are not citizens. The ECOWAS instruments set out certain conditions that must be met to realize these rights. Nonetheless, the Protocols represent a significant advance in defining human mobility rights across a community of States, well beyond the right to leave and the right to return to one's country of citizenship recognized in current international human rights instruments and the right to non-refoulement recognized in the 1961 Convention and 1967 Protocol on the Status of Refugees.

Nigeria has ratified all four of the ECOWAS Protocols on free movement, residence and establishment of persons. As other ECOWAS Member States, the country is responsible for implementing these protocols to realize free circulation of persons as a key pillar of regional integration and development.

The stakeholder-elaborated National Policy on Labour Migration (LMP) for Nigeria, approved last 15 October 2014 by the Federal Executive Council, highlights the need to address the challenges and opportunities of labour migration within the framework of national laws and international agreements. Only a legal foundation for governance based on proven international standards, complemented by effective regulatory policy, will sustain development and well-being in Nigeria. Putting fully in place that legal foundation, especially regarding migration and free movement, contributes to strengthening the nation.

As this review highlights, many of the elements of the ECOWAS Protocol are incorporated in national legislation. However, a considerable number of important provisions are not.

Furthermore, it appears that lacunae in protocol domestication regarding existing immigration law, regulations and policy – particularly the laws dating from 1963 – are not yet resolved in the current Immigration Bill. Clearly, further effort is needed to fully domesticate these protocols to provide the necessary national legal foundation for full and effective implementation of the ECOWAS "free movement" regime.

The review

A review of national legislation and policy in view of the ECOWAS Protocols on free movement was anticipated in the National LMP framework, recently adopted by the Federal Executive Council.

This review was mandated as a component of the the national 10th EDF project "Promoting Better Management of Migration in Nigeria" funded primarily by the European Union and implemented by the International Organization for Migration (IOM).

The IOM Abuja office contracted with Patrick Taran – President of Global Migration Policy Associates (GMPA) and former Senior Migration Specialist at the ILO – to conduct the review, in particular considering his previous technical cooperation in Nigeria that included preparation of the initial draft of the LMP in extensive consultation with the Government of Nigeria and social partner stakeholders.

The overall consultancy included three component objectives: (a) assessing domestication and effective application of the ICRMW (1990), ILO C-97 (1949), and ECOWAS Protocol on the Free Movement of Persons, Right of Residence and Establishment; (b) conducting a comprehensive legislative review of national legal instruments and practices governing labour migration management in Nigeria to assess the feasibility and relevance of ratifying the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ILO C-143) and Private Recruitment Agencies, 1997 (No. 181) (ILO C-181); and (c) assessing effectiveness of the current legal framework on domestic workers' rights in view of the Decent Work for Domestic Workers Convention, 2011 (No. 189) (ILO C-189).

The tasks accomplished for this large "ECOWAS Protocols" component of the project were:

(a) comprehensive evaluation of Nigeria's legal instruments and regulations governing migration, immigration, employment, labour law and other related concerns;
(b) identifying Protocol provisions reflected directly or indirectly in national legislation and policy;
(c) identifying discrepancies between national legislation and the Protocol provisions; and
(d) proffering recommendations on where and how to resolve lacunae and/or discrepancies between the Protocol provisions and legislation and/or regulations or policy, including suggesting measures/steps to harmonize existing legislation, regulations and/or policy with Protocol provisions heretofore inadequately "domesticated".

This report is the central and key product of the review; it provides the detailed assessment of domestication of ECOWAS Protocol, reviewed together given their complementary and partly overlapping characteristics, identifies lacuna and obstacles hindering compliance, and presents recommendations proposing modifications for legislation and/or administrative measures to harmonize domestic law and practice with provisions of these instruments.

National law

The domestic legal system of Nigeria is a dualist one in terms of its relationship to international law. As such, the provisions of international treaties signed, ratified or acceded to by Nigeria, in this case, ratified ECOWAS Protocol, must be enacted into law by the National Assembly and/or into regulations and/or formal policy by relevant ministries in order to have legal standing and effect within the territory.

A review of national legislation, relevant regulations and policy assessing the extent of domestication of the provisions of the Protocols – or lacunae thereof – is crucial to ensuring that ECOWAS Community citizens can rely on their established rights and protections being upheld in Nigeria. Should standing law or policy be absent or in contradiction to provisions of these protocols, a legal gap remains in ensuring realization of these rights and protections, as well as possible non-compliance or contraventions to ratified ECOWAS treaties to which Nigeria is bound.

Given the review scope and complexity, it could not take account of legal measures, executive orders or other dispositions beyond published law that may provide for implementation of some Protocol provisions identified in this report as not fully or appropriately domesticated.

Structure of the report

The review is structured according to topical categories to identify and analyse whether and where each article (or article subsection) of the four ECOWAS Protocols examined appears in enacted national legislation and in national policy, including the newly approved LMP for Nigeria.

This arrangement in topical categories facilitated identification and review of relevant legislation that itself is generally elaborated by different subject topics and areas of law. As well, the various protocols contain different topics and follow somewhat differing order.

The articles/provisions of the 1979 Protocol are listed first in each category, followed by identification of whether and where they may be reflected in national law and/or policy. Provisions of the 1985, 1986 and 1990 Supplementary Protocols respectively that correspond to listed provisions of the 1979 Protocol are also shown. Subsequently, other relevant provisions of the 1985, 1986 and 1990 Supplementary Protocols are listed in each category.

Any provisions in the Constitution or national legislation that do not give effect or that may diverge from provisions of the Protocols are shown in italics.

National law and/or policy not corresponding to specific provisions of the Protocols, but which appear to uphold general principles in the Protocols and/or provide additional protections, are shown in each topical category where applicable.

Finally, any lacunae in implementation – that is, any provisions of the Protocols for which no corresponding domestic law or policy was found – are identified in each topical category.

Each category-section concludes with recommendations, first to address lacunae and then to propose rectification of provisions of law or policy found not in compliance with the Protocols.

ENTRY AND RESIDENCE

1979 Protocol relating to Free Movement of Persons, Right of Residence and Establishment:

Right to enter, reside and establish in the territory of Member States for the purpose of seeking and carrying out income-earning employment; to be progressively established in the course of a maximum transitional period of 15 years from the definitive entry into force (Article 2 of the 1979 Protocol, Article 3.7 of the 1985 Supplementary Protocol and Article 2 of the 1986 Supplementary Protocol).

The Immigration Act (1963)

- Section 4 sets forth the terms and conditions of issuance of residency permits. *These permit restrictions – and in particular those concerning entry visas – would not be applicable to ECOWAS Community citizens under the principles and terms of Phase 1 of the ECOWAS Protocol on Free Movement of Persons, Right of Residence and Establishment*.

- Section 35 concerning the revocation or variation of permits *authorizes the Director of Immigration to revoke at any time a residence permit or other permit under this Act if it is deemed to be in the public interest, and if the permit is revoked without replacement, the person affected may be deported at the discretion of the Minister*.

  Additionally, the Director of Immigration "may direct the holder of a permit to surrender it for replacement, or he may re-issue it with such additional conditions or varied conditions, as the circumstances may require".

  This authority granted to the Director of Immigration may not be applicable to ECOWAS Community citizens, as its discretionary application could inappropriately impede the exercise of ECOWAS Member State citizens' rights to enter, reside and establish in Nigeria.

The Immigration Regulations (1963)

- Section 4 states that "No residence permit issued to an alien shall be valid for entry into Nigeria unless the alien is in possession of a valid visa at the time of entry or unless the alien is the subject of a country with which Nigeria has entered into a visa abolition agreement."

  The ECOWAS Protocols are one such visa abolition agreement, and as such should preclude the need for an entry visa for those ECOWAS Community citizens seeking residency (or for other reasons) in Nigeria.

- Section 14 states that an "immigrant may be permitted to enter or remain in Nigeria if the Immigration Officer thinks fit conditionally – (a) upon the immigrant or some other person on his behalf, furnishing security by depositing with the Immigration Officer, such sum as in the opinion of the Immigration Officer is sufficient to cover the cost of the return of the immigrant to his country of origin".

  This section's allowance for such securities to be collected "as the Immigration Officer thinks fit", is contrary to the ECOWAS free movement provisions and therefore should be inapplicable to ECOWAS Community citizens.

Immigration (Control of Illegal Aliens) Regulations (1963)

Almost all the provisions laid out in these Regulations (subsidiary to the Immigration Act of 1963) would need to be revised or updated to bring them into accordance with the ECOWAS Protocols. The strict regulation of entry, movement and residence articulated in the Immigration Regulations is not wholly compatible with the goal of free movement required for effectively implementing the ECOWAS Protocols and in turn the regional integration and development that are essential purposes of ECOWAS itself as a regional economic community (REC).

Some provisions of these regulations regarding entry may be compatible, with minor alterations, with the ECOWAS Protocols (for example, requiring foreign entrants to Nigeria to submit their documents to an immigration officer on entry). However, many provisions of the Regulations, such as informing the Director of Immigration of all movements a foreigner makes away from his/her initial place of residence, when applied to ECOWAS Community citizens, would be impractical and counter to the free movement principle and practice of the Protocols.

"Any citizen of the Community who wishes to enter the territory of any other Member States shall be required to possess a valid travel document [to be provided by the Member State of which the citizen is a national] and international health certificate. A citizen of the Community visiting any Member State for a period not exceeding ninety (90) days shall enter the territory of that Member State through the official entry point free of visa requirements. Such citizen shall, however, be required to obtain permission for an extension of stay from the appropriate authority if after such entry that citizen has cause to stay for more than ninety (90) days." (Article 3 of the 1979 Protocol and Article 2.1 of the 1985 Supplementary Protocol)

Immigration Act

- Section 9 concerns entry requirements and conditions and requires that applications for visa or entry permit be made to the appropriate diplomatic Nigerian Mission established abroad. Section 9(d) states that "in the case of a person seeking entry into Nigeria for the purpose of taking up employment in Nigeria, [the Minister shall] refer the application to the Ministry of Internal Affairs".

  The application of these procedures to ECOWAS Community citizens evidently contradicts the basic principle of abolition of visas and entry permits that comprises the essence of Phase 1 of the Protocols.

- Section 32 establishes an authority through which the Minister may initiate a reciprocal abolishment of visas for citizens of countries abolishing visas for Nigerians. With the establishment of the free movement throughout the ECOWAS community, this authority would have provided for abolishment of visas for Members of the ECOWAS community if another measure is not used to implement the Protocols.

- Section 33 authorizes the Minister to prescribe conditions and fees for travel documents, visas or permits. This article may also be applicable under the ECOWAS free movement regime, as Member States are required to provide travel documentation to their citizens.

- Section 37 concerns the application of the Act to young persons and cases of dual nationality. The article requires that "any person of or above the apparent age of sixteen years who, on the coming into operation of this Act is in Nigeria but is not a citizen thereof, shall apply to an immigration officer at such time and place as may be required under this section for a permit under this Act".

  Nothing in this article is contradictory to the ECOWAS Protocols, but the implementation of ECOWAS Residence Cards should facilitate recognizing residency claims made by foreign-born children attaining the age of 16 years in Nigeria, and by dual citizens.

- Section 38 allows young persons "under the apparent age of sixteen years may be permitted by an immigration officer to enter Nigeria without a permit and to remain in Nigeria for so long as such person is with his parents, and any person so admitted shall not live elsewhere without the approval of an immigration officer". These young people may be required to leave Nigeria as and when required by the Director of Immigration upon attaining the age of 16 years, and to apply to an immigration officer for the issue of a new permit under Section 37.

Nothing in this section appears contrary to the provision in the 1979 Protocol (Article 3) that States may require non-national ECOWAS Community citizens to apply for extension of stay after an initial period of 90 days.

- Section 50 states that "Nothing in this Act shall be construed to prohibit an immigration officer from refusing entry into Nigeria of any person not a citizen of Nigeria if it appears to the immigration officer –

  (a) that the person concerned is a prohibited immigrant;

  (b) that, where a visa is required, such person has no current visa; or

  (c) that where a residence or other permit is required as a condition of entry it has not been obtained; or

  (d) on the active advice of a medical inspector it is undesirable for medical reasons to admit such person."

  This section appears in accord with the ECOWAS Protocols' stipulation that applicants for entry must possess valid travel documents. The ECOWAS Residence Card is being implemented in Nigeria through the Nigerian Immigration Service.

Immigration Regulations

- Section 5 concerns the procedures for issuing and extending visiting permits to Nigeria, stating that "an endorsement by a rubber stamp on the passport of a person visiting Nigeria containing such particulars as relate to the port of entry, the date of entry, the period during which the visitor is permitted to remain in Nigeria and such other conditions or information as the Director of Immigration may require" is required for all visitors entering the country, with the initial period of the permit not exceeding 28 days. Extensions may be granted up to 90 days for citizens of the Commonwealth.

  However, application of the premise of obtaining visiting permits articulated in Article 4 to ECOWAS Community citizens would contradict the basic principle of abolition of visas and entry permits, comprising the essence of Phase 1 of the ECOWAS Protocols.

  No legislation rescinding this requirement for ECOWAS Community citizens was found by this review (nor is articulated in the draft Immigration Bill of 2010).

- Section 11 states that "Every immigrant whilst in Nigeria shall, if so required by an Immigration Officer or Police Officer, produce as and when necessary a valid passport, a residence permit, visiting permit or transit permit (as the case may be) or other travel documents."

  This section appears in accord with the stipulation in the 1979 Protocol (Article 3) and the 1985 Supplementary Protocol (Article 2.1) that entrants into Member States must have valid travel documents.

Article 4 – "Notwithstanding the provisions of Article 3 above, Member States shall reserve the right to refuse admission into their territory to any Community citizen who comes within the category of inadmissible immigrant under its laws."

Immigration Act

- Section 18 articulates the categories of people who shall be deemed to be prohibited immigrants and liable to be refused admission into Nigeria or deported as the case may be. Paragraph 2 of the section authorizes the Minister at any time by notice to add or amend any class of prohibited immigrants elaborated in the article, and, "if he deems it conducive to the public good may prohibit the entry into or stay in Nigeria of any other persons or class of person not in any case citizens of Nigeria." Section 18(1) appears in accord with the allowances for classifying exclusion of prohibited persons in the 1979 Protocol. The provisions therein appear consistent with commonly established grounds for exclusion in immigration laws in many countries.

However, two provisions may be contradictory to full implementation of the Protocols. Section 18(1)(a) designates as a prohibited immigrant, "any person who is without visible means of support or is likely to become a public charge".

The terminology "visible support" is too broad and discretionary to serve as criteria for restricting ECOWAS Community citizens' right to move when, for example, they may be circulating to seek or take up employment.

- Further, Section 18(1)(f) states that "any person who – (i) has not in his possession a valid passport; or (ii) being a person under the age of sixteen years has not in his possession a valid passport or is unaccompanied by an adult on whose valid passport particulars of such person appear" may also be classified as a prohibited immigrant.

The ECOWAS Protocols allow for validity of other documents for ECOWAS Community citizens to enter other Member States; this provision appears technically too restrictive.

- Section 34(3) concerns the employment of immigrants and grants the Minister discretionary authority to designate "any person" who ceases to be employed as a "prohibited immigrant".

While the 1979 Protocol (Article 4) allows Member States to determine categories of prohibited immigrants, employment status prohibitions should not apply to ECOWAS Community citizens under terms of this treaty instrument, as Article 3 of the 1979 Protocol explicitly specifies, "the right of residence shall include the right […] to apply for jobs effectively offered" and "to travel for this purpose, freely, in the territory of Member States".

1986 Supplementary Protocol on the Second Phase (Right of Residence):

Article 3 – "With the exception of restrictions justifiable by reasons of public order, public security and public health, the right of residence shall include the right:

(1) to apply for jobs effectively offered;

(2) to travel for this purpose, freely, in the territory of Member States;

(3) to reside in one of the Member States in order to take up employment in accordance with the legislative and administrative provisions governing employment of national workers;

(4) to live in the territory of a Member State according to the conditions defined by the legislative and administrative provisions of the host Member State, after having held employment there."

Immigration Act

- Section 7 of the Act authorizes immigration officers to refuse entry into Nigeria or admit into Nigeria persons by notice in writing, delivered by the immigration officer to the person to whom it relates.

This article may not necessarily be contrary to Article 3 of the 1985 Supplementary Protocol, in that it accords authority to the Nigerian Immigration Service to implement "legislative and administrative provisions" regulating the refusal of entry into the country, as long as the refusal is based solely on reasons of "public order, public security or public health".

- Section 8 states that no person other than a citizen of Nigeria shall accept employment without the consent in writing of the Director of Immigration or "on his own account or in partnership with any other person, practice a profession or establish or take over any trade or business whatsoever or register or take over any company with limited liability for any such purpose, without the consent in writing of the Minister given on such conditions as to the locality of operation and persons to be employed by or on behalf of such person, as the Minister may prescribe."

The Minister of Immigration does not necessarily have the competencies to resolve appropriately questions of employment or issues of professional, trade or business practice.[5] Further, this provision appears to contradict the 1986 Supplementary Protocol (Article 3), in which citizens of ECOWAS Member States have the right to "apply for jobs effectively offered" and to "travel for that purpose within the territory of Member states", presumably without undue discretionary bureaucratic control.

This provision also may not be in accord with Article 3 of the 1990 Supplementary Protocol, which stipulates that "companies which are formed in accordance with the laws and regulations of a Member State with their headquarters, central seat of administration or principal establishment within the Community shall be considered in the same category as individual nationals of Member States", *which this review interprets to mean that they should not require the consent of the Minister of Immigration to establish business or trade or register in other Member States, in this case, Nigeria.*

- Section 47 concerns offences by immigrant employers and workers, and makes it an offence for "any employer of persons liable to repatriation to discharge any such persons without giving notice to the Director of Immigration, or for any such employed person to change his employment without the approval of the Director of Immigration".

This prohibition, if applied to ECOWAS Community citizens, could be interpreted to impede "the right to apply for jobs effectively offered; and to travel for this purpose, freely, in the territory of Member States".

Labour Act (1990)

- Section 38 restricts the period of foreign contracts to "one year, if the worker is not accompanied by his family; or two years if the worker is accompanied by his family".

This section is in conflict with the right to residence upon employment articulated in the 1986 Supplementary Protocol (Article 3). At present, this restriction is also contradictory to the free movement of persons and rights to establishment provisions in the ECOWAS Protocols.[6]

Article 5 – "Citizens of the Community who are nationals of Member States admitted without visa into the territory of one Member State, and desiring to reside in the territory of that Member State, shall be obliged to obtain an ECOWAS Residence Card or a Residence Permit."

- The review found that the issuance of ECOWAS Residence Cards is already in effect in Nigeria, and that application for these cards may be made to the Nigerian Immigration Service (https://portal.immigration.gov.ng/ecowascard/cardForm).

5 A labour expert told the authors "This was a major issue at a time as it relates to issuance of the Expatriate Quota. An Inter-Ministerial Committee set up to consider the issues observed and noted the inappropriateness and lack of competencies of the Director of Immigration and Minister of Interior on issues of employment, trade etc. The Committee recommended that NIS and Ministry of Interior should base their decision on the recommendation by writing or issuance of a document by the Ministry of Labour and Productivity. Government should re-visit the Committee's report and recommendation."

6 The annual period of one year is an issue for extra-ECOWAS, as well as ECOWAS Community citizen workers. The insecurity imposed by limiting offers to one year for all contracts, together with the bureaucracy inevitably entailed in discretionary renewal regimes makes for precarious employment conditions that are inappropriate and counterproductive in many circumstances – especially when workers and skills need to be attracted from far away. This is all the more so when the workers needed have family, usually the case with skilled persons who have completed advanced training or education. This restriction should be reviewed for all categories/circumstances – not just ECOWAS mobility – if Nigeria wishes to be competitive in attracting and retaining needed skills and talent in a highly competitive international skills-labour market.

Article 6 – "The applicant for the Residence Card or Residence Permit in the territory of any Member State shall deposit with the Department of Immigration of the host Member State an application for a Residence Card or Residence Permit in accordance with the rules and regulations existing in each Member State."

- Rules and regulations have been established for those wishing to enter Nigeria from other ECOWAS Member States, as well as for nationals of countries who are not members of the ECOWAS Community. These may be found on the website of the Nigerian Immigration Service at https://portal.immigration.gov.ng.

Article 7 – "1. The application shall be addressed to the competent Ministry of the host Member State. 2. The applicant shall be issued with a receipt certifying that his application and the necessary documents have been submitted."

- Applications may be made at the website noted above under Article 6, with applicants receiving confirmation of their application upon completion.

Article 9 – "Within a period of one (1) year from the date of entry into force of this Protocol, the rules and regulations relating to the conditions for the issuance of Residence Card or Residence Permit in Member States shall be harmonised with a view to establishing an ECOWAS Residence Card."

- As noted above, the ECOWAS Residence Card is available, with directions facilitating the application process, on the website of the Nigerian Immigration Service: https://portal.immigration.gov.ng/pages/ecowascardguidelines.

Additional national law and policy concerning entry and residence in view of the ECOWAS Protocols

- Section 36 of the Immigration Act authorizes the Minister of the Interior "if he thinks it to be in the public interest, [to] by order prohibit the departure of any person from Nigeria; and if the travel documents of any person are not in proper order or there is, to the knowledge of the immigration officer, an unsatisfied order of a court of competent jurisdiction or warrant of arrest relating to that person, an immigration officer may refuse to allow such person to leave Nigeria, or in his discretion he may refer the case to the Director of Immigration for further consideration".

  While not uncommon in the practice of regulating entry and exit, this provision – if based only on a judgement of "proper order" of documentation – may be an inappropriate restriction on the principle of free movement articulated in the ECOWAS Protocols.[7]

7 The Protocols equally apply to free movement of Nigerians. The Immigration Act section in question may be construed as a potential restriction on circulation of nationals. As well, the problem is that wording of the article can be construed as applicable for non-Nigerians. In either case, this provision appears to be a potential legal constraint on cross-border freedom of movement in the ECOWAS space.

No law or policy found addressing certain ECOWAS Protocol provisions on entry and residence:

1979 Protocol Relating to Free Movement of Persons, Residence and Establishment

- Article 5.1 – Private vehicles registered in the territory of a Member State may enter the territory of another Member State and remain for up to 90 days upon presentation of a valid driving license, a matriculation certificate (ownership card) or log book, an insurance policy recognized by Member States and any international customs documents recognized within the ECOWAS Community.

- Article 5.2 – Commercial vehicles registered in the territory of a Member State and carrying passengers may enter the territory of another Member State and remain for up to 15 days upon presentation of a valid driving license, a matriculation certificate (ownership card) or log book, an insurance policy recognized by Member States and any international customs documents recognized within the ECOWAS Community. However, such vehicles shall not engage in any commercial activities within the territory of the Member State entered.

- Article 12 – "The provisions of the present Protocol shall not affect more favourable provisions contained in agreements that have already been concluded between two or among several Member States."

- Corresponds to **Article 24 of the 1986 Supplementary Protocol** – "No provisions of this Protocol may be interpreted to adversely affect more favourable rights or liberties guaranteed to migrant workers or members of their families by law, legislation or practice in the Member State or any international agreement in force vis-à-vis the Member State concerned."

1986 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol

- Article 4 – "The provisions of Article 3 above shall not be applicable to employment in the civil service of Member States, unless the relevant national laws and regulations of the host Member States so permit."

  No legislation was found explicitly overriding this exemption of applicability to employment in the civil service of Nigeria.

- Article 8 – "The processing of an application for a Residence Card or Residence Permit may not delay the immediate execution of employment contracts concluded by applicants."

RECOMMENDATIONS FOR CATEGORY I: ENTRY AND RESIDENCE

Subject to consideration of any other legislation, regulations, judicial or administrative decisions, or established policy that this review did not identify.

On lacunae:

- If not already evident in law or policy outside the purview of this review, ensure that private and commercial vehicles registered in other ECOWAS Member States are authorized to enter Nigeria with the necessary documentation and subject to the restrictions articulated in the 1979 Protocol in order to facilitate freedom of movement of persons and goods.

- Ensure that implementation of the provisions of the ECOWAS Protocols do not compromise or affect more favourable provisions already existent in legislation, policy or international agreements.

- If permitted in Nigerian law to be thusly employed, ensure that citizens of other ECOWAS Member States employed in the Nigerian civil service are extended the same rights to entry and residency afforded to all ECOWAS Community citizens, through the formulation of appropriate law and policy.

- Ensure that the processing of residency application does not delay the immediate execution of employment contracts concluded by applicants.

On existing law or policy:

- Consider review and potential revision of Section 14 of the Immigration Regulations to ensure that immigration officers do not levy securities against ECOWAS Community citizens wishing to enter Nigeria.

- Consider review of applicability of the Immigration (Control of Illegal Aliens) Regulations to ECOWAS Community citizens and, if not evident in law, policy or administrative measures outside the purview of this review, ensure that the Protocols are upheld in relation to this law.

- Consider review and potential revisions of Section 18(1)(1) and 18(1)(f) of the Immigration Act to ensure that ECOWAS Community citizens are not classified as "prohibited immigrants" due to lack of "visible means of support" or a lack of a valid passport, given the other valid means of identification available for use by ECOWAS Community citizens.

- Consider review and potential revision of Section 34(3) of the Immigration Act to ensure that an ECOWAS Community citizen's change in employment status in Nigeria does not affect the ability to remain and search for alternative employment or serve as criteria through which to expel them from the territory.

- Consider review and potential revision of Section 35 of the Immigration Act to ensure that the Minister's discretionary authority to revoke residency permits "in the public interest" does not inappropriately extend to ECOWAS Community citizens.

- Consider review and potential revision of Section 38 of the Labour Act to correct the amount of time for which foreign contracts may be written and accepted. The current stipulation – one year, if unaccompanied by family, and two years, if accompanied by family – is currently in contradiction to the free movement provisions of the ECOWAS Protocols.

- Consider review and potential revision of Sections 8, 9, 36 and 47 of the Immigration Act, if these are not already addressed through administrative or other measures, to ensure that immigration procedures do not unduly impede ECOWAS Community citizens' rights to freedom of entry and residency and to travel within the territory of Member States to look for employment.

CATEGORY 2: HUMAN RIGHTS AND EQUALITY OF TREATMENT

1986 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol:

Article 10 – "Border area workers, defined in Article 1 of this Protocol, shall enjoy all rights to which they are entitled through their presence and their work in the territory of the host Member State, with the exception of rights relating to residence or resulting therefrom."

- The fundamental rights applying to all persons in Nigeria are articulated in Chapter IV of the Nigerian Constitution (1999). For example, Section 17(3) states, "the State shall direct its policy towards ensuring that […] (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused".

- Most labour rights articulated in international instruments, particularly international labour standards, are articulated in the Labour Act using language that is non-restrictive ("all workers", "every worker" and others). A fuller analysis of recognition of these rights for migrant workers in Nigeria is found in the Comprehensive Review of Nigerian National Legislation and Policy on Migration Regarding the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

No references were found regarding border area workers.

Article 11 – "Seasonal workers, as defined in Article 1 of this Protocol, shall enjoy all rights to which they are entitled through their presence and their work in the territory of the host Member State."

- The fundamental rights applying to all persons in Nigeria are articulated in Chapter IV of the Nigerian Constitution. For example, Section 17(3) states, "the State shall direct its policy towards ensuring that […](c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused".

- Most labour rights articulated in international instruments, particularly international labour standards are articulated in the Labour Act using language that is non-restrictive ("all workers", "every worker" and others). A fuller analysis of recognition of these rights for migrant workers in Nigeria is found in the Comprehensive Review of Nigerian National Legislation and Policy on Migration Regarding the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

No references were found specifically regarding seasonal workers.

Article 12 – "Itinerant workers, as defined in Article 1 of this Protocol, shall enjoy all rights to which they are entitled through their presence and their work in the territory of the host Member State, with the exception of rights relating to residence or to employment or resulting therefrom."

- The fundamental rights applying to all persons in Nigeria are articulated in Chapter IV of the Nigerian Constitution. For example, Section 17(3) states that "the State shall direct its policy towards ensuring that […] (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused".

- Most labour rights articulated in international instruments, particularly international labour standards are articulated in the Labour Act using language that is non-restrictive ("all workers", "every worker" and others). A fuller analysis of recognition of these rights for migrant workers in Nigeria is found in the Comprehensive Review of Nigerian National Legislation and Policy on Migration Regarding the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

No references were found regarding itinerant workers.

Article 23 – "No matter the conditions of their authorization of residence, migrant workers who comply with rules and regulations governing residence, shall enjoy equal treatment with nationals of the host Member State in the following matters:

(a) security of employment;

(b) possibility of participating in social and cultural activities;

(c) possibilities of re-employment in case of loss of job for economic reasons; in this case, they shall be given priority over other workers newly admitted to the host country;

(d) training and advanced professional training;

(e) access to institutions of general and professional education as well as to professional training centres for their children;

(f) benefit of an access to social, cultural and health facilities."

Security of employment:

No legislation or policy was found addressing security of employment.

Possibility of participating in social and cultural activities:

- Section 17(3)(b) of the Nigerian 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".

This provision explicitly expresses commitment to providing adequate facilities for social and cultural life. This review presumes that equality of treatment for all, including migrant workers, is implicit in the Constitution regarding participation in social and cultural activities, as stipulated in Article 23 of the 1986 Supplementary Protocol.

Re-employment in case of job loss for economic reasons:

There was no legislation or policy that addressed re-employment in case of job loss for economic reasons, nor one that gives ECOWAS Community citizens priority over workers newly admitted to Nigeria.

Training and advanced professional training:

- Part 1.7 of LMP (International Cooperations) states that the Policy is designed to "promote programmes, initiatives and interventions that would attract and facilitate investment into training or higher education programmes by governments of destination countries".

This provision of the LMP is relevant if it is applied also to Nigeria as a destination country of migrants.

- Part 4.4 of the LMP ("Enhancing skills development to meet national and international needs") states that the Policy aims to "raise the skill levels of workers to higher standards, to improve their employment opportunities – both at home and abroad" and to "develop financial support schemes to help youths acquire skills that are sought on both domestic and foreign labour markets".

This provision reflects a commitment to enhance raising skill levels of workers and help youths acquire skills, presumably implying training, in terms implicitly supporting equality of treatment for all workers.

Access to institutions of general and professional education, as well as professional training centres for their children:

- Section 18(1) and (3) of the Nigerian Constitution specifically provide access to the educational provisions called for in Article 23 of the 1986 Supplementary Protocol, using non-restrictive language and that should include migrant/foreign residents in Nigeria.

- Section 49 of the Labour Act concerns contracts of apprenticeship and sets regulations for the employment of young persons above the age of 12 and under the age of 16 as apprentices or domestic servants.

The nominal terminology used ("a young person") is non-restrictive and should be applicable to migrant/foreign workers. This provision supports "access to professional training centres" for children articulated in Article 23 of the Protocol. All other provisions on contracts of apprenticeship in the Labour Act use this same inclusive term in designating application of such provisions.

- See comment on Part 4.3 of the LMP under "Training and advanced professional training".

1. Section 22 of the National Employment Policy (2000) (NEP) "The rationale for the National Employment Policy demonstrates a commitment to linking education and training to employment. Section 28, in particular, states that the government "will pay greater attention to the needs of vulnerable groups; improve the working environment, and strengthens the institutional framework for the promotion of employment, and sustainable livelihoods".

   This review considers that migrant workers can and should, as necessary, be considered under the "vulnerable groups" category designated in Section 28 of the NEP.

2. Section 44 of the NEP ("Ensuring Supportive Population, Migration and Regional Development Policies") demonstrates a commitment to facilitate access to education and vocational training to women and youth in particular, using non-restrictive language that should envisage the inclusion of migrant workers in benefiting from the Policy.

3. Section 4.6.1.10 of the NEP ("Funding (Education)") states that the "Government is to provide adequate funding for all public educational institutions".

   Some sections of the NEP describe the goals of the Policy as being to improve the labour and education situation for Nigerians; however, no language is used that would preclude access to the benefits of the Policy to migrant/foreign workers and members of their families in Nigeria.

Benefit of access to social, cultural and health facilities:

Nigerian Constitution

- Section 17(3) 1999 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".

These provisions explicitly express commitment to provide adequate facilities and contribute to the health, safety and welfare of "all persons in employment".

This review notes that equality of treatment for all, such as migrant workers, is implicit in the Constitution regarding participation in social and cultural activities. Safeguarding the health, safety and welfare of all employed persons requires access to adequate social, cultural and health facilities, as stipulated in Article 23 of the 1986 Supplementary Protocol.

Other legislations

- Section 66 of the Labour Act authorizes the Minister to establish "labour health areas" in areas where industrial or agricultural undertakings are situated where "existing medical and health conditions and facilities, water supplies and communications" are isolated and remote. Employers in such areas should provide such facilities and make such arrangements as are required by the Minister in providing access to water, health care and others.

  The nominal terminology used ("any worker") is non-restrictive and should be applicable to migrant/foreign workers. This provision iterates access to health facilities in accordance with Article 23 of the Protocol.

- Sections 22 and 23 of the Labour Regulations (1936) require employers to make arrangements with the person in control "of the nearest or most convenient Local Government Council or other hospital" to "provide for the medical and surgical treatment of his labourers", and that "every employer shall be responsible for the care and supervision, and for the proper feeding to the satisfaction of the medical officer, of his sick and injured labourers until such time as they are formally received and accepted as in-patients by a hospital authority".

  These provisions provide for access to health facilities in accordance with Article 23 of the Protocol. The nominal terminology ("every employer") is non-restrictive and should apply to employers of migrant/foreign workers.

No law or policy found addressing certain ECOWAS Protocol provisions on human rights and equality of treatment:

1986 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol

- Article 25.1 – "Rights guaranteed in this Protocol may not be withdrawn."

- Article 25.2 – "Any form of pressure exerted on migrant workers or members of their families to force them to give up any of these rights or to refrain from exercising them shall be prohibited."

- Article 25.3 – "Any clause of an Agreement or Contract designed to force the migrant worker to give up any of these rights or refrain from exercising them shall be null and void according to the provisions of this Protocol."

RECOMMENDATIONS FOR CATEGORY 2: HUMAN RIGHTS AND EQUALITY OF TREATMENT

Subject to consideration of any other legislation, regulations, judicial or administrative decisions, or established policy that this review did not identify.

On lacunae:

- Adopt legislation and/or regulations that ensure explicit protection of rights and equality of treatment for seasonal workers, frontier workers and itinerant migrant workers, except regarding residency, as specified in Articles 10, 11 and 12 of the 1986 Supplementary Protocol.

- Ensure that provisions concerning human rights and equality of treatment upheld in the ECOWAS Protocols are protected in applicable legislation and that mechanisms exist and are used to allow ECOWAS Community citizens to exercise their rights to recourse in the case of infringement of these rights (Articles 25.1 and 25.2, 1986 Supplementary Protocol).

- Formulate appropriate law or regulations to encourage and ensure that contracts between migrant/foreign workers and employers in Nigeria are in compliance with the provisions of the 1986 Supplementary Protocol, and in particular that such contracts do not contain any clause that might compel a migrant/foreign worker from giving up or refraining from exercising any of their rights protected in the Protocol (Article 25.3, 1986 Supplementary Protocol).

- Formulate appropriate legislation, regulations and/or policy measures to ensure that migrant workers who comply with rules and regulations governing residence shall enjoy equality of treatment with nationals of the host Member State in:

  - Security of employment; and
  - Provisions concerning job loss due to economic reasons.

  (Article 23, 1986 Supplementary Protocol).

CATEGORY 3: EMPLOYMENT RIGHTS AND ASSETS

1986 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol:

Article 17.1 – "Each Member State shall allow the transfer of all or part of the earnings or savings of the migrant worker which he may wish to transfer, according to modalities fixed by legislation. This provision shall also apply to the transfer of funds due to migrant workers as maintenance. The transfer of amounts due to the migrant worker as maintenance may under no circumstances be hampered or impeded."

- Part 4.5 of the LMP of Nigeria ("Enhancing the developmental impact of remittances") states that "measures shall be taken to ensure freedom for migrants to remit their wages back to their home countries" and that low-cost means for such transfers will be facilitated.

This section demonstrates a commitment to the requirement of facilitating transfer of earnings or savings, as well as funds due migrant workers as maintenance as stipulated in Article 17.1 of the 1986 Supplementary Protocol.

Article 17.2 – "Within the framework of bilateral agreements or by any other means, each Member State shall allow the transfer of amounts which remain outstanding to migrant workers when they finally leave the host Member State."

- Section 3 of the Pension Reform Act (2004) states that "no person shall be entitled to make any withdrawal from his retirement savings account, opened under section 11 of this Act, before attaining the age of 50 years".

While not making any distinction based on nationality, *this provision could restrict the portability of pension contributions for departing migrant workers in cases where there are no alternative arrangements for portability.* Further bilateral and multilateral arrangements, such as those referred to in Article 17.2 of the 1986 Supplementary Protocol, would need to be made to facilitate the payment of "amounts which remain outstanding to migrant workers when they finally leave the host Member State".

- Part 4.7 of the LMP states, "Bilateral agreements shall be sought, to ensure the portability of social security and other entitlements and benefits earned by migrant workers."

This section's call for such bilateral agreements, while not directly addressing earnings, could support the stipulation in Article 17.2 of the 1986 Protocol that any outstanding earnings of savings must be transferred to migrant workers when they leave the country. However, the LMP does not refer to multilateral agreements, which may be a more appropriate solution in the multi-country ECOWAS context, and as may be anticipated in the recently adopted ECOWAS Convention on Social Security.

Article 23 – "No matter the conditions of their authorization of residence, migrant workers who comply with rules and regulations governing residence, shall enjoy equality of treatment with nationals of the host Member State in the following matters: (a) security of employment; (b) possibility of participating in social and cultural activities; (c) possibilities of re-employment in case of loss of job for economic reasons; in this case, they shall be given priority over other workers newly admitted to the host country; (d) training and advanced professional training; (e) access to institutions of general and professional education as well as to professional training centres for their children; (f) benefit of an access to social, cultural and health facilities."

* See Category 2: Human rights and equality of treatment above for a full and detailed analysis of the provisions in the Nigerian Constitution, the Labour Act, the Labour Regulations, the LMP for Nigeria, and the NEP that address the provisions of Article 23, both regarding the categories of human rights and equality of treatment and employment rights and assets.

Article 26 – "In accordance with their constitutional procedures and with the provisions of this Protocol, Member States shall: (a) guarantee that any person whose rights and liberties are recognized by this Protocol have been infringed upon, shall enjoy the right of recourse, even when this infringement has been committed by persons exercising their official functions; (b) guarantee that competent judicial, administrative or legislative authority, or any other competent authority, according to the laws of the Member State, shall rule on the rights of the person who is making an appeal."

- Section 81 of the Labour Act concerns labour complaints and articulates the conditions under which complaints may be brought to a relevant court.

  The non-restrictive language used in these provisions should extend the "right to recourse" by a "competent judicial authority" to migrant/foreign workers involved in labour disputes. This provision appears to be limited to individual dispute settlement, without prejudice to industrial disputes.

- Section 87 of the Labour Act concerns contracts made abroad and states that, "nothing in this Act shall prevent any employer, worker or other person to whom this Act applies from enforcing his rights or remedies in respect of any breach or non-performance of any lawful contract made outside Nigeria, and the rights of the parties under such a contract (both against each other and against third parties invading those rights) may be enforced in the same manner as other rights arising outside Nigeria may be enforced and as if this Act had not been made".

  The nominal terminology ("any employer, worker or other person to whom this Act applies") is non-restrictive, and as it specifically deals with foreign contracts, it should be applicable to migrant/foreign workers.

- Section 6(4) and (5) of the National Minimum Wage Act (1981, amended 2000) allows for government personnel to make claims on behalf of workers for restitution or payment in arrears of wages owed under the Minimum Wage Act. The nominal terminology ("a worker") is non-restrictive and should be applicable to migrant/foreign workers.

Additional national law and policy addressing employment rights and assets in view of the ECOWAS Protocols

- Section 10 of the Labour Act states that "The transfer of any contract from one employer to another shall be subject to the consent of the worker and the endorsement of the transfer upon the contract by an authorized labour officer."

- Section 40 of the Labour Act articulates special terms and conditions of employment for foreign contracts. These special terms and conditions are explicitly in addition to all other terms and conditions required to be inserted into contracts by any other provision of the Labour Act, implicitly reinforcing equality of treatment of foreign workers under the Labour Act. The additional provisions provide enforcement of the particular contract terms that may apply to foreign workers.

No law or policy found addressing certain ECOWAS Protocol provisions on employment rights and assets

1985 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol:

- Article 7 – "(1) The host Member State shall protect properties legally acquired on her territory by immigrants who are Community citizens, and shall respect their rights deriving therefrom. (2) Member States shall not apply any measures detrimental to the properties, rights and benefits legally acquired on their territory by citizens and nationals of other Member States which would not be applicable to their own nationals under the same conditions."

  Where such detrimental measures are taken, victims shall be liable to payment of a fair and equitable compensation.

  - "(4) Host Member States shall not enact any tax laws of a kind that may result in a less favourable treatment of immigrant Community citizens residing or established in their territories. This provision applies to both natural and legal persons."

  - ECOWAS Community citizens shall have freedom to prosecute and defend their rights under any jurisdiction within the Community.

1986 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol:

- Article 10.2 – "Border area workers shall enjoy the right to choose their employment freely within the limits of any restrictions imposed by the host Member State on access of migrant workers to limited categories of jobs, posts or activities, when the interests of the State so dictate."

- Article 23.2 – "Migrant workers who comply with the rules and regulations governing residence shall enjoy equal treatment with nationals of the host Member State in the holding of employment or the practice of their profession."

- Article 25.3 – "Any clause of an Agreement or Contract designed to force the migrant worker to give up any of these rights or refrain from exercising them shall be null and void according to the provisions of this Protocol."

1990 Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol

- Article 4.1 – "In matters of establishment and services, each Member State shall undertake to accord non-discriminatory treatment to nationals and companies of other Member States."

- Article 4.2 – If unable to accord such treatment, the Member State must indicate as much, in writing, to the Executive Secretariat, and other Member States shall then not be bound to accord non-discriminatory treatment to nationals and companies of the State concerned.

- Article 4.3 – This provision and all those in the 1990 Supplementary Protocol "shall be without prejudice to the application of legislative and administrative provisions, which provide a special treatment for non-nationals and are justified by exigencies of public order, security or public health".

- Article 7 – "(1) Assets and capital invested by ECOWAS citizens who are not nationals of the Member State of establishment, having been duly authorised, shall not be subjected to any act of confiscation or expropriation on a discriminatory basis. (2) Any act of confiscation, expropriation or nationalization must be followed by fair and equitable compensation."

RECOMMENDATIONS FOR CATEGORY 3: EMPLOYMENT RIGHTS AND ASSETS

Subject to consideration of any other legislation, regulations, judicial or administrative decisions, or established policy that this review did not identify.

On lacunae in law or policy:

- Formulate and enact appropriate legislative measures to ensure that the legally acquired properties of immigrants who are ECOWAS Community citizens are respected and not subject to detrimental measures that would not be applied to nationals in similar situations.

- If not already present in relevant tax law, ensure that taxes levied against immigrants who are ECOWAS Community citizens do not constitute treatment less favourable than that applying to nationals, whether natural or legal persons.

- Establish explicit legislation and/or regulations that ensure ECOWAS Community citizens in Nigeria the freedom to prosecute and defend their properties and rights deriving therefrom in a court of law.

- Formulate and enact appropriate regulations and/or policy ensuring that border area workers may enjoy the right to choose their employment freely within the limits of any restrictions imposed by the Government of Nigeria on access of migrant workers to limited categories of jobs, posts or activities.

- Establish appropriate regulations and/or policy measures to ensure that migrant workers who comply with the rules and regulations governing residence shall enjoy equal treatment with Nigerian nationals in the holding of employment or the practice of their professions.

- Formulate and enact appropriate legislation stipulating that any clause of an agreement or contract designed to force migrant workers to give up any of their rights articulated in the Protocol or to refrain from exercising them shall be null and void.

- Ensure that in matters of establishment and services in Nigeria, non-discriminatory treatment is afforded to nationals and companies of other Member States.

- Formulate and implement appropriate legislation and policy ensuring that assets and capital invested in Nigeria by ECOWAS citizens who are non-nationals, having been duly authorized, shall not be subject to any act of confiscation or expropriation on a discriminatory basis.

On existing law or policy:

- Ensure that measures for regulating access to pension funds do not restrict portability of social security for departing migrant workers in cases where there are no alternative arrangements for portability. Where not already present, consider concluding bilateral or multilateral agreements and/or full implementation of the ECOWAS Convention on Social Security (2013) to ensure such portability, as per Article 17.2 of the 1986 Supplementary Protocol.

- Consider effecting appropriate policy measures ensuring that migrants, especially ECOWAS Community citizens, are not restricted from State policy for sustainable livelihoods and employment. Application of such policy is currently restricted to Nigerian citizens in Section 17(3)(a) of the 1999 Constitution.

- Consider explicitly designating migrant workers as a "vulnerable group" – if and as appropriate – to be fully addressed under the NEP measures taken to "improve the working environment and strengthen the institutional framework for the promotion of employment and sustainable livelihoods".

CATEGORY 4: BUSINESS AND ENTERPRISE

No relevant law or policy found within the scope of this review

The scope of this review did not encompass surveying all potentially relevant business, commercial and trade law in Nigeria, which may contain provisions that correspond to these sections of the Protocols. The provisions of the Protocols relevant to this category are listed below nonetheless.

1990 Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol:

- Article 3 – "For the purpose of implementation of this Protocol, companies which are formed in accordance with the laws and regulations of a Member State with their headquarters, central seat of administration or principal establishment within the Community shall be considered in the same category as individual nationals of Member States. Where, however, only the statutory headquarters of the company are established in a Member State, activities of such a company should have effective and sustained links with the economy of the Member State."

- Article 5 – "Member States recognise the importance of capital (whether private or public) in the promotion of development cooperation and the need to take measures conducive to the promotion of such capital. Member States shall therefore undertake, jointly and severally, to:

  (i) implement measures to encourage participation in development efforts by economic operators who share the objectives and priorities of development cooperation and respect the law and regulations of their respective States;

  (ii) accord fair and equitable treatment to such capital to encourage and create conditions which favour investment of such capital;

  (iii) promote effective cooperation between economic operators in their respective States."

- Article 8 – "In recognition of the intermediary role of national development finance institutions in attracting the flow of capital for development cooperation, Member States shall undertake to encourage, as part of their monetary and financial cooperation, the establishment or enhancement of:

  1. national or regional export financing and export credit guarantee institutions; and
  2. regional payment mechanism likely to facilitate and promote intra-community trade."

- Article 10(1) – "In transactions involving movement of capital for investment and current payments, Member States shall refrain from taking exchange control measures which are incompatible with their obligations under the terms of this Protocol and earlier Community provisions, particularly Protocol A/P. 1/11/84 of the Authority dated 23 November, 1984, and relating to Community Enterprises.

- Article 10(2) – "However, such obligations shall not prevent Member States from taking the necessary protective measures for reasons of grave economic difficulty or serious balance of payment problems, provided that the decision-making bodies of the Community are given notification thereof.

- Article 11 – "In the case of foreign exchange transactions related to investment and current payments, Member States shall, as far as possible, refrain from taking discriminatory measures and from according preferential treatment to nationals of third countries."

RECOMMENDATION FOR CATEGORY 4: BUSINESS AND ENTERPRISE

A supplemental review of relevant business, commercial and trade law, as well as regulations, judicial and administrative decisions and policy in Nigeria is advisable to identify potentially existing provisions that may give effect to the above articles of the 1990 Supplementary Protocol.

CATEGORY 5: IRREGULAR IMMIGRATION

1985 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol

Article 2.3 – "In order to avoid illegal recruitment and its negative effects, Member States shall take all necessary measures to exercise stricter control on employers in their territories."

National Policy on Labour Migration

- Part 2.1.2 ("Regulation – Private employment and recruitment agencies") calls for closer monitoring and regulation of recruitment agencies to prevent trafficking, forced labour and the spread of misleading propaganda, and appears clearly in accordance with Article 2.3 of the 1985 Supplementary Protocol.

- Part 3.6 ("Private employment agencies") demonstrates the Government's intent to monitor and regulate the operations of private employment agencies, including the imposition of criminal proceedings against serious offenders.

Article 3.5 – "By virtue of the fundamental human rights enjoyed by clandestine immigrants, host Member States shall ensure that repatriation takes place under legal and properly controlled procedures."

- Part 4.6 of the LMP ("Facilitating reintegration of returning migrants") "supports voluntary return and strongly condemns the forceful return of migrants;" and "seeks to encourage collaboration between sending and receiving countries in the development of return and reintegration programmes".

  This section of the Policy provides a broader and more comprehensive approach to repatriation and reintegration than that stipulated in the 1979 Protocol.

- Part 4.7 of the LMP ("Negotiation of bilateral agreements with labour-receiving and sending countries") states that "Nigeria has concluded a number of bilateral migration agreements but these are essentially in relation to return and readmission of irregular migrants".

  This acknowledges that Nigeria has concluded bilateral agreements relating to the return of migrants in irregular situations; however, these agreements are with countries outside the ECOWAS Community.

Article 5.1 – "Member States shall take all possible steps to ensure or facilitate the obtaining of the correct documents by illegal immigrants, if desired and possible."[8]

- Section 36(c) and (e) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003, amended 2005) provide access to consular services and temporary residence visas during court proceedings specifically and only for victims of trafficking; both measures may facilitate their procurement of the "correct documents", access to which is provided for in Article 5.1 of the 1985 Supplementary Protocol.

1986 Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol

Article 22 – "Member States shall cooperate to prevent and stop illegal or clandestine movement and employment of migrant workers whose status is irregular. For this purpose, each Member State shall, within the limits of its jurisdiction, take:

(a) appropriate measures against the dissemination of misleading information on emigration and immigration;

(b) measures intended to detect and stop the illegal or clandestine movement of migrant workers and members of their families and to impose effective sanctions on persons or bodies who organise or help to organise such movements or participate in them;

(c) measures intended to impose effective sanctions on persons, groups or bodies which resort to violence, threats or intimidation against illegal migrant workers or members of their families.

Host Member States shall take adequate measures likely to effectively stop the employment of illegal aliens in their territory, by imposing sanctions on the persons or bodies which employ such workers. These measures shall not adversely affect the right of migrant workers vis-à-vis their employers and the rights resulting from their employment."

- Part 2.1.3 of the LMP ("Institutional framework") describes the activity of the International Labour Migration Desk (ILMD) and its involvement in "a media campaign to educate and sensitise Nigerians regarding the adverse consequences of irregular migration".

  This activity is consistent with the provisions of Article 22 of the 1986 Supplementary Protocol, particularly with the stipulation therein to take appropriate measures against the dissemination of misleading information on emigration and immigration.

8 This review highlights the concern with the terms *illegal immigrants* and *illegal aliens* in the 1985 and 1986 ECOWAS Supplementary Protocols. These terms are recognized as both inaccurate and dehumanizing by the United Nations and other international agencies. UN General Assembly Resolution 3449/XXX of 1975, "Measure to Ensure the Human Rights and Dignity of All Migrant Workers" requested that "United Nations organs and the specialized agencies concerned utilize in all official documents the term 'non-documented or irregular migrant workers' to define those workers that illegally and/or surreptitiously enter another country to obtain work."
This review adds that the use of *illegal* in defining a human begin contravenes the spirit and the letter of the 1948 Universal Declaration of Human Rights, which recognizes that "Everyone has the right to recognition everywhere as a person before the law" (Article 6) and that "All are equal before the law and are entitled without any discrimination to equal protection of the law" (Article 7). The ILO generally uses the term "migrants (migrant workers) in irregular situations"; the term *unauthorized migrants* is also acceptably used.

No law or policy found addressing certain ECOWAS Protocol provisions on irregular migration

- Article 5.2 of the 1985 Supplementary Protocol – "The regularisation of the status of illegal immigrants shall be effected under the conditions stipulated in the different Protocols relating to the free movement of persons, the right of residence and establishment and on the basis of the following factors:

  – the existence of an ample political consensus making regularisation of stay desirable or necessary;
  – the acceptability of the immigrants by a large section of society;
  – deadline of admissibility;
  – a well-convinced information campaign directed at the entire population and designed to ensure their support and understanding;
  – the absence of legal punitive measures against persons wishing to regularise their stay."

- Article 6 of the 1985 Supplementary Protocol – "With a view to reducing the attractions as well as the phenomenon of illegal immigrants, measures taken on a national, sub-regional or regional scale must be initiated through bilateral or multilateral cooperation. Member States undertake to work together to reduce and eliminate the incidence of clandestine immigration as well as the smuggling of illegal workers."

Review Note: No definition is provided in the Protocols on Free Movement, Residence and Establishment defining the terms "illegal migrant", "illegal worker" and other terms assigning illegality to persons by definition (contrary to international standards). Free movement, residence and establishment, clearly articulated as rights in the set of Protocols, contradicts the application of terms of illegality to movement and establishment of Community citizens in ECOWAS Member States. While regulatory conditions are set out for the exercise of these rights, non-compliance with these conditions cannot, by definition, invalidate the rights.

RECOMMENDATIONS FOR CATEGORY 5: IRREGULAR IMMIGRATION

On lacunae in legislation or policy:

- Consider formulating and implementing measures to facilitate the regularization of migrants in irregular situations, taking into account the factors listed in Article 5.2 of the 1985 Supplementary Protocol.

- Consider concluding bilateral and/or multilateral partnerships to work together with other Member States to reduce and eliminate the incidence of clandestine immigration, as well as the smuggling of illegal workers.

Regarding existing legislation:

- Consider extending to other migrants in irregular situations a measure similar to the temporary visas accorded (under the Trafficking in Persons Act) to victims of trafficking while proceedings are pending as an interim step to facilitate their obtaining the "correct documents" inferred in Article 5.1 of the 1985 Supplementary Protocol.

CATEGORY 6: EXPULSION AND REPATRIATION

1979 Protocol Relating to Free Movement of Persons, Residence and Establishment

Articles 11.1, 11.2 and 11.3 – (11.1) In the event of a decision to expel an ECOWAS Community citizen from the territory of a Member State, notification must be given to the citizen, the government of which s/he is a citizen, and the Executive Secretary of ECOWAS. (11.2) Any expenses incurred during the expulsion of a citizen shall be borne by the Member State expelling him/her. (11.3) The security of the citizen concerned and that of his/her family shall be guaranteed and their property protected and returned to them without prejudice to obligations to a third party.

Also corresponds to:

Article 13 of the 1986 Supplementary Protocol – "Migrant workers and members of their families may not be affected by collective or en masse expulsion orders. Each case of expulsion shall be considered and judged on an individual basis."

Article 14.3 of the 1986 Supplementary Protocol – "The immigrants, the Government of his country of origin and the Executive Secretariat should receive written notice of the decision for information purposes."

Article 14.5 of the 1986 Supplementary Protocol – "In case of expulsion, the immigrant concerned shall be granted a reasonable period of time to allow him to collect any salaries or other allowances due to him from his employer, settle any contractual commitments and, when required – for reasons of personal security – to obtain authorisation to go to a country other than his country of origin. The situation of the family of the immigrant concerned shall also be taken into consideration."

Article 14.7 of the 1986 Supplementary Protocol – "In case of expulsion, the authorities of the host Member State shall bear the expenses resulting therefrom and shall not pressurise those affected in any way to accept a simplified procedure, such as 'voluntary departure' if such affected persons have not expressly requested it."

Immigration Act (1963)

- Section 19 of the Immigration Act (1963) authorizes the Minister to, "if [he/she is] satisfied that it is in the public interest, and whether or not any person has been prosecuted for an offence under this section, make a deportation order against that person as a prohibited immigrant". Section 25(1) of the Act further states that "the Minister may, from time to time, by notice direct that persons within any category specified in the notice, entering Nigeria otherwise than by sea or air, shall be liable to deportation as prohibited immigrants without the intervention of any court".

The discretion of the Minister to designate prohibited immigrants to be deported upon entry would be in line with Article 4 of the 1979 Protocol's allowance for Member States to "reserve the right to refuse admission into their territory to any Community citizen who comes within the category of inadmissible immigrant under its laws".

However, *the ministerial authority to designate a category within which persons liable to deportation under the terms specified in Section 25(1) could allow for designation of migrant workers and members of their families and/or arbitrary expulsion of members of the designated group without individual due process, in contradiction to Article 13 of the 1986 Supplementary Protocol.*

- Section 22 *designates the employer of a deported person as the one responsible for the expenses of the deportation process, in conflict with Article 11.2 of the 1979 Protocol, which designates Member States as responsible for the costs of deportation of ECOWAS Community citizens from their territory.*

- Section 34 concerns the employment of immigrants and appears *to allow for liability to deportation of migrant workers who "cease for any reason to be so employed" as prohibited immigrants, at the discretion of the Minister.* Article 14.1 of the 1986 Supplementary Protocol specifies that migrant workers and members of their families who comply with residence requirements may only be subject to expulsion "for reasons of national security, public order, or morality" (Noted also in this review's category 1).

- Section 47 states that "It shall be an offence under this Act for any employer of persons liable to repatriation to discharge any such persons without giving notice to the Director of Immigration, or for any such employed person to change his employment without the approval of the Director of Immigration; and upon conviction, the employer if not a citizen of Nigeria and the employed person as the case may be and any dependants shall if the Minister thinks fit, be deported, and the business of the employer may be wound up as prescribed by this Act."

  The language in Section 47 regarding the winding up of the employer's business may also give rise to a potential conflict with Article 11(3) of the 1979 Protocol which states that "in case of expulsion, the security of the citizen concerned as well as that of his family shall be guaranteed and his property protected and returned to him without prejudice to his obligations to a third part", Article 49 notwithstanding.

- Section 49 articulates the power of a deported person to appoint a receiver or manager for their business in Nigeria subject to any modifications, restrictions or extensions as a court sees fit. "The High Court shall also have the power to direct how and by whom the costs of any proceeding under this section, and the remuneration, charges and expenses of the receiver or manager shall be borne, and may order that the costs and expenses be charged against the property of the person whose business is being wound up in such order of priority in relation to any existing charges thereto as it thinks fit."

  Execution of the procedures of this article may or may not provide adequate protection for deported persons' assets, particularly in the case of a "wound up" business, in view of the stipulation in Article 11(3) of the 1979 Protocol that property of expelled ECOWAS Community citizens must be protected and returned to them.

Articles 11.4 and 11.5 of the ECOWAS Protocols

(11.4) "In case of repatriation of a citizen of the Community from the territory of a Member State, that Member State shall notify the government of the state of origin of the citizen and the Executive Secretary.

(11.5) The cost of repatriation of a citizen of the Community from the territory of a Member State shall be borne by the citizen himself, or in the event that he is unable to do so, by the country of which he is a citizen."

- Section 31 of the Labour Act provides for repatriation of recruited workers who may, for reason of sickness or "a reason for which he is not responsible", be unable to perform the work for which he/she was recruited. The article stipulates that the expenses shall be borne by the employer or recruiter – in fact a higher standard than that stipulated in the 1979 Protocol.

Provisions for the repatriation of migrant workers and/or members of their families in other circumstances were not found by this review.

- Part 4.6 of the LMP ("Facilitating reintegration of returning migrants") "supports voluntary return and strongly condemns the forceful return of migrants; seeks to encourage collaboration between sending and receiving countries in the development of return and reintegration programmes".

This section of the Policy provides a broader and more comprehensive approach to repatriation and reintegration than that stipulated in the 1979 Protocol.

1985 Supplementary Protocol

Article 3.1 – "In the event of clandestine or illegal immigration, both at national as well as Community level, measures shall be taken to guarantee that illegal immigrants enjoy and exercise their fundamental human rights."

- Chapter 4 of the Nigerian 1999 Constitution elaborates and protects the fundamental rights of "every person" on its territory. This inclusive language appears fully in conformity with Article 3.1 of the 1985 Supplementary Protocol.

- Nigeria has signed and ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). Chapter 3 of the ICRMW provides protection for the enjoyment of fundamental rights of "all migrants" regardless of status or situation.

> **Review Note**: See comment on page 43 regarding terminology.

Article 3.6 – "Where it is absolutely necessary, expulsion shall be contemplated solely on strictly legal grounds; in any case, it shall be effected with due respect for the human dignity of the expelled immigrant."

Also corresponding:

Article 14.2 of the 1986 Supplementary Protocol – "Any form of expulsion may only be based on a well-founded legal or administrative decision taken in accordance with the law."

and:

Article 14.4 of the 1986 Supplementary Protocol – "When an expulsion order is made out by a legal or an administrative authority, the immigrant concerned may appeal, or may have recourse to an appeal in accordance with the rules and regulations of the host Member State. The recourse to an appeal shall constitute a suspension of the expulsion order, unless it is not explicitly justified by reasons of national security or public order. If such a decision has already been executed and is subsequently annulled, the person concerned is entitled to claim damages in accordance with the law."

Immigration Act (1963)

- Section 19 concerns "deportation orders in special cases" and states that the Minister, "if satisfied that it is in the public interest, and whether or not any person has been prosecuted for an offence under this section, [should] make a deportation order against that person as a prohibited immigrant".

  This provision establishes a discretionary authority for proceedings leading to expulsion that could be contested as not necessarily a "well-founded legal or administrative decision" in view of Article 14.2 of the 1986 Supplementary Protocol.

- Sections 20 and 21 specifically concern deportation following criminal proceedings, and appear to be in accordance with Article 3.6 of the 1985 Supplementary Protocol and Articles 14.2 and 14.4 of the 1986 Supplementary Protocol in their provision for an appeals process. These provisions also place the decision for deportation within a "well-founded legal or administrative decision taken in accordance with the law."

  However, the reviewers did not find similar language assuring due process for civil or administrative expulsion procedures.

- Section 25(1) states that the Minister "may, from time to time, by notice direct that persons within any category specified in the notice, entering Nigeria otherwise than by sea or air, shall be liable to deportation as prohibited immigrants without the intervention of any court; and any person in any such category may be arrested and detained by an immigration officer and may, subject to subsection (2) of this section, be deported forthwith".

  This section poses a contradiction with Article 3.6 of the 1985 Supplementary Protocol and Article 14.2 of the 1986 Supplementary Protocol in that persons in designated categories are liable to deportation as prohibited immigrants without the intervention of any court – a situation that appears to allow for deportation decisions that might not based on "a well-founded legal or administrative decision".

1986 Supplementary Protocol

Article 15.3 – "The migrant worker as well as members of his family are legal personalities."

- Section 36(1) of the 1999 Constitution provides the right to due process to "a person", with no distinction made on the basis of nationality.

  While recognition of personhood before the law is not explicitly stated, it appears implicit that the right to due process applies to migrant workers and members of their families.

1985 Supplementary Protocol

Article 3.2 – "The fundamental human rights of expelled immigrants or of the immigrant subject to such a measure by virtue of the laws and regulations of the host Member State, as well as the benefits accruing from his employment, shall be respected. Any expulsion orders shall be enforced in a humane manner without injury to the person, rights or properties of the immigrant."

Article 3.3 – "Any person under an expulsion order shall be given a reasonable period of time to return to his country of origin."

Article 3.4 – "Any expulsion order which may lead to the violation of fundamental human rights is prohibited."

1986 Supplementary Protocol

Article 14.6 – "The expulsion or departure from the host Member State shall conversely affect the entitlements obtained through legislation by the migrant worker or a member of his family."

Article 15.1 – "Consular or diplomatic authorities of the Member State of origin or of the country representing the interest of the country of origin shall be advised of any decision to expel a migrant worker or member of his family legally present in the host Member State at least forty-eight (48) hours before the expulsion takes effect."

Article 15.2 – "The migrant worker and members of his family may appeal for the protection and assistance of consular and diplomatic authorities of their countries of origin and may receive advisory services from them to defend his right, if the rights conferred on him by this Protocol or by legislation in the host Member State are infringed upon."

RECOMMENDATIONS FOR CATEGORY 6: EXPULSION AND REPATRIATION

On lacunae:

- Establish legal or regulatory measures to ensure that fundamental human rights of expelled immigrants are respected, and that expulsion orders are carried out "in a humane manner without injury to the person, rights or properties of the immigrant" (Article 3.2 of the 1985 Supplementary Protocol).

- Establish regulatory measures to provide any person under an expulsion order a reasonable period of time to return to the country of origin (Article 3.3 of the 1985 Supplementary Protocol).

- Establish regulatory measures to ensure that any expulsion order that may lead to the violation of fundamental human rights is prohibited (Article 3.4 of the 1985 Supplementary Protocol).

- Take appropriate legislative or administrative measures to ensure that the expulsion or departure from the host Member State shall conversely affect the entitlements obtained through legislation by the migrant worker or a member of his/her family (Article 14.2 of the 1986 Supplementary Protocol).

- Take appropriate measures to ensure that consular or diplomatic authorities of the Member State of origin or of the country representing the interest of the country of origin are "advised of any decision to expel a migrant worker or member of his family legally present in the host Member State, at least forty-eight (48) hours before the expulsion takes effect" (Article 15.1 of the 1986 Supplementary Protocol).

- Ensure appropriate measures or procedures so that migrant workers and members of their families "may appeal for the protection and assistance of consular and diplomatic authorities of their countries of origin and may receive advisory services from them to defend their right, if the rights conferred on him by this Protocol or by legislation in the host Member State are infringed upon" (Article 15.2 of the 1986 Supplementary Protocol).

On existing law and/or policy:

- Ensure that the ministerial authority granted in Section 19 of the Immigration Act to designate a category within which persons liable to deportation under the terms specified in Section 25(1) does not allow for arbitrary expulsion of members of the designated group without individual due process (Article 13 of the 1986 Supplementary Protocol).

- Consider revision of both Sections 19 and 25(1) of the Immigration Act to ensure that all deportation decisions are based on "well-founded legal or administrative decisions in accordance with national law" (Article 14.2 of the 1986 Supplementary Protocol).

- Reconcile Section 22 of the Immigration Act with Article 11.2 of the 1979 Protocol to ensure that Nigeria (or the Member State of origin) is responsible for the costs of expulsion of an ECOWAS Community citizen from Nigerian territory.

- Consider revision of Section 34 of the Immigration Act to ensure that its provisions do not allow for liability to deportation of migrant workers who "cease for any reason to be so employed" as prohibited immigrants (Article 14.1 of the 1986 Supplementary Protocol).

- Consider revision of Section 47 of the Immigration Act to ensure that the winding up of the business of employers who discharge persons liable to repatriation without notifying the Director of Immigration does not conflict with Article 11(3) of the 1979 Protocol which states that "in case of expulsion, the security of the citizen concerned as well as that of his family shall be guaranteed and his property protected and returned to him without prejudice to his obligations to a third part", Section 49 notwithstanding.

- Ensure that the business of an ECOWAS Community citizen is protected and returned, either directly or through their appointed receiver or manager, in any case of deportation invoking Section 49 of the Immigration Act (Article 11.3 of the 1979 Protocol).

CATEGORY 7: INTERNATIONAL COOPERATION AND IMPLEMENTATION

1985 Supplementary Protocol

Article 6 – "With a view to reducing both the attractions as well as the phenomenon of illegal immigrants, measures taken on a national, sub-regional or regional scale must be initiated through bilateral or multilateral cooperation. Member States undertake to work together to reduce and eliminate the incidence of clandestine immigration as well as the smuggling of illegal workers."

- Part 2.1.2 of the LMP ("Regulation – Private employment agencies") acknowledges need for closer monitoring and regulation of private employment agencies in order to prevent trafficking, forced labour and irregular migration in accordance with Article 6 of the 1985 Supplementary Protocol.

1986 Supplementary Protocol

Article 18 – "The competent Administrations of Member States shall cooperate closely with one another and with the Executive Secretariat on matters relating to the movement of persons within the Community and particularly as far as migrant labour is concerned in order to:

1. identify the types of migratory movement within the Community as well as the reasons for such movement;
2. identify the types of employment sought and the qualification of the employment-seekers as well as the cost of labour in Member States through exchange of information between the Executive Secretariat and each Member State;
3. consider trade union organisations in each Member State and their attitude to immigrant job-seekers;
4. monitor the problems of migrant labour, as well as the types of industry and activity which attract such labour and to inform the Executive Secretariat on the subject;
5. endeavour to harmonise the employment and labour policies in Member States, on the basis of this exchange of information on migrant labour."

- The National Directorate of Employment Act (1989) establishes the Directorate in Section 1 and lays out its objectives in Section 2. These include "design[ing] and implement[ing] programmes to combat mass unemployment; articulate[ing] policies aimed at developing work programmes with labour intensive potential; obtain[ing] and maintain[ing] a data bank on employment and vacancies in the country, with a view to acting as a clearing house to link job seekers with vacancies, in collaboration with other government agencies".

While the Directorate is a public body addressing employment and recruitment, *no existing legal provision was found explicitly mandating its cooperation with public services or bodies of other States, or bodies established by virtue of a bilateral or multilateral agreement*.[9]

The Directorate's responsibilities are particularly relevant to the collection of information on employment and vacancies, which could be shared with the competent administrations of other ECOWAS Member countries as a basis for the cooperation called for in Article 18 of the 1986 Supplementary Protocol.

- The National Institute for Labour Studies Act (1984) articulates in Section 2 the objectives of the Institute as being, among others: "(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 and joint consultation […]; (c) to provide and arrange comparative study and investigation of the principles and techniques of trade unionism and thereby assist Government in evolving a virile and well-organised trade union movement capable of giving full and responsible expression to the needs of workers and the aspirations of the country".

The Institute's mandated roles provide a space for "consideration of trade unions and their attitudes towards immigrant job seekers", and in particular, the facilitation of international cooperation.

Each of the subsections of Section 2 references "collaboration", "comparison" or "consultation" in order to carry out the Institute's activities. The activities listed above are particularly relevant to promote the sharing of information with other Member States.

- The National Population Commission Act (1989) articulates the functions and powers of the Commission as being, among others, to "[…] (d) collect, collate and publish data on migration statistics; (e) research and monitor the national population policy and set up a national population information bank; […] (g) provide information and data on population for purposes of facilitating national planning and economic development; […] (i) disseminate information and educate the general public about the functions of the Commission under this Act".

The mandate of the National Population Commission – particularly its designation of responsibility for collecting, collating and publishing data on migration statistics, as well as demographic and population data relevant for labour migration policy formulation and implementation – provide an important basis for exchange of information among Member States and with the Executive Secretariat.

National Policy on Labour Migration

- Part 2.1.3 ("Institutional framework") describes the National Electronic Labour Exchange Project (NELEX), a specific tool administered by the Federal Ministry of Labour and Productivity explicitly set up to collect and supply information on job-seekers and employers internationally.

This provision specifically addresses the identification of the types of employment and qualifications sought, which is stipulated in Article 18.2 1986 Supplementary Provision. The indicated government intent to extend NELEX's services to neighbouring West African States, "to promote sub-regional integration of labour", would give further effect to enhancing close cooperation among Member States.

- Part 2.1.6 ("Building a knowledge base through data generation and research") stipulates that "The Federal Government will have to take charge of disseminating information about the Nigerian environment to migrants coming into the country, and of giving information about countries of destination to Nigerians intending to leave the country. A federal data bank, containing information about migrants and their skills, to aid employers in identifying job-seekers with relevant skills, should be expanded."

9 However, to the extent that the Directorate is an agency of the Ministry of Labour and Productivity with the mandate and authority for international activity in its areas of competence, the Directorate's authorization for international activities, such as bilateral and multilateral cooperation, can be inferred as deriving from its "mother Ministry". Nonetheless, providing an explicit mandate for such cooperation on migrant labour would certainly stimulate enhancing it.

Further, it states that, "the National Bureau of Statistics and the National Population Commission are the government institutions empowered with the overall coordination of, access to, and archiving of all data relevant to migration in Nigeria. […] one common migration database could be set up to register departures and returns, as well as to store details of employment possibilities both in Nigeria and abroad".

Much of the information collected by the federal databank on migrants and their skills, domestic and foreign labour markets, education and training institutions in the country, as well as relevant data gathered by the National Bureau of Statistics and the National Population Commission are among the types of information specified in the 1986 Supplementary Protocol that should be shared with the competent administrations of other ECOWAS Member States.

Review Note: In 2009, the ILO facilitated a consultation between the Federal Ministry of Labour and Productivity and the national employers association and trade union federations, to obtain inputs on the LMP. This consultation accords with the provision of Article 18 of the 1986 Supplementary Protocol for considering trade unions and their attitudes to immigrant job-seekers.[10]

The National Employment Policy

- Section 37 articulates an objective that "To meet the employment challenge through well-targeted policies and programmes, it is imperative to have detailed and frequently updated information on the size and structure of the labour force readily available. Hence, the need to endure the production of relevant labour and employment data. More importantly, it is imperative to have detailed and frequently updated reliable and accurate national census/population figures for the purpose of planning and labour-market projections."

  This section demonstrates the Government's recognition of the need for accurate and up-to-date data on the labour market that should also be shared with other competent administrations of other ECOWAS Member States, in accordance with sub-points 2 and 5 of Article 18 of the 1986 Supplementary Protocol.

- Section 77 states that "[…] The Government will also examine further measures, beyond the present Transfer of Knowledge through Expatriate Nationals (TOKTEN) arrangement, which would enable Nigeria to draw on expertise of highly skilled Nigerians living and working abroad. In this connection, efforts will be made to create a favourable investment climate in the country to encourage such expatriate nationals to contribute meaningfully to national development."

  This provision represents a first step in recognizing and addressing the need for free movement of migrant workers of ECOWAS Member States and appears in accordance with Article 18's provision to "identify migratory patterns".

  However, it would need further elaboration to address not only Nigerians working abroad but also nationals of ECOWAS Member States working in Nigeria to fully implement the Protocols.

- Section 176 states that "Priority attention is to be given to the institutional framework, especially to the functioning of an effective co-ordination mechanism, for the production and use of employment statistics, in particular and other labour market information in general".

- Section 177 states that "The Federal Ministry of Employment, Labour and Productivity and other stakeholders are to be encouraged; (i) to generate labour statistics from the systems of administrative records in its Inspectorate (Labour and Factory) and other relevant units; (ii) to continue producing, compiling and collating

10 The Trade Unions Congress is one of the members of the Social Advisory Board to be created under the Policy, again indicating consideration of trade unions in accord with Article 18.

current labour market statistics from its public employment services, returns of private employment services and other sources; […] (v) to create and maintain a National Employment Data Bank linked with the National Data Bank."

These sections of the NEP identify some of the types of information to facilitate cooperation called for in Chapter VIII, as well as identify the competent administrations in Nigeria responsible for generating such information.

Article 20 – "Member States shall set up appropriate public organs to deal with the problems relating to the movement of workers and their families. These organs shall be responsible for:

1. **formulating the policies on this movement;**
2. **exchange of information, consulting and cooperation with the competent authorities of other Member States concerned by this movement;**
3. **the supply of information, particularly to employers and their organisations as well as to workers and workers' organisations, on policies, laws and regulations relating to migration for the purposes of employment and on working and living conditions of migrant workers and members of their families in the host Member States;**
4. **informing and assisting migrant workers as well as members of their families on the authorisations, formalities and arrangements relating to their departure, travel, arrival, stay, employment, exit and return to their State of origin and the working and living conditions in the host Member State. They should also be informed on customs, fiscal and monetary laws and regulations as well as laws and regulations on other relevant issues;**
5. **recommending for adoption, laws, regulations and many other measures necessary to facilitate the application of the provisions of this Protocol, and settling questions relating to movement within the Community and to migrant workers."**

Also corresponding:

Article 2.2 of the 1985 Supplementary Protocol – "Member States shall establish or strengthen appropriate administrative services in order to furnish migrants with all necessary information likely to permit legal entry into their territory."

The Pension Reform Act

- Section 14 establishes the National Pension Commission. Article 16 stipulates the membership of the Commission, while Section 20 details the Commission's functions.

  The National Pension Commission's functions are complementary to activities of the "public organs to deal with the problems relating to the movement of migrant workers and their families", described in Article 20 of the 1986 Supplementary Protocol, as access to social security and pensions is a key issue in facilitating free movement of labour within the ECOWAS Community.

  While the Commission's explicit mandate does not include facilitating migrant access to social security coverage and portability, it would be a key public organ for "informing and assisting migrant workers on laws and regulations on other relevant issues".

- Section 39 ("Existing pension schemes in the private sector, etc.") allows for private sector pension funds to be incorporated into the National Pension Scheme according to certain regulations. This provision may be useful in facilitating international access to and transfer of pension funds within the ECOWAS Community.

National Health Insurance Scheme Act (1999)

- Section 43 ("Reciprocal agreements with other countries") states that "The Federal Government may enter into a reciprocal agreement with the government of any other country in which [a Scheme similar] to that established by this Decree [has been established, and] the provisions of the agreement shall be read [in conformity with] the provisions of this Decree."

The Act and the Scheme establish a public organ (the Governing Council of the National Health Insurance Scheme) appropriate in dealing with certain issues related to the movement of workers and their families.

Section 43 of the Act further establishes authority for the government to enter into reciprocal agreements for mutual social protection and health insurance that would benefit Nigerians in and foreigners from concerned countries.

Labour Migration Policy

- Part 2.1.3 ("Institutional framework") describes the functions of the ILMD within the Federal Ministry of Labour and Productivity as being, "to formulate, review and implement the National Policy on Labour Migration as well as establish a database on migration within and outside Nigeria, and to formulate and conduct pre-departure training programmes, including counselling. The Desk also collaborates and cooperates with other relevant stakeholders and agencies of government on migration within and outside the country, to ensure smooth and orderly migration and successful overseas job placements. It is also charged with preventing child labour and other forced labour, and child and migrant trafficking."

The ILMD constitutes an appropriate administrative service providing migrants with information, as stated in Article 2.2 of the 1985 Supplementary Protocol. It can also be considered as an "appropriate public organ dealing with problems relating to movement of workers and families" performing most of the functions stipulated in Article 20 of the 1986 Supplementary Protocol.

- Part 5.2 ("Coordination mechanisms") describes the Technical Working Committee (TWC) and states that it "will provide a forum for consultation and coordination on migration matters across government departments". The TWC will be comprised of government representatives, relevant committees of the National Assembly, non-State actors and social partners.

The TWC should also serve to enhance the functions of the various administrative services and appropriate public bodies in fulfilling expectations and responsibilities stipulated in Article 2.2 of the 1985 Supplementary Protocol and Article 20 of the 1986 Supplementary Protocol.

- Part 3.5 ("Orientation programmes") describes the pre-employment orientation seminars and intensified information campaigns, especially in rural communities, to be provided by the Federal Ministry of Labour and Productivity and the ILMD, particularly intended to provide potential migrants with sufficient information to enable them to make informed decisions.

The designation of the ILMD gives further effect to Article 20's stipulation to set up appropriate public organs to, among other responsibilities, "provide information to employers and trade union organizations regarding relevant laws and responsibilities for the treatment of foreign workers, including the application of labour law".

Article 21 of the 1986 Supplementary Protocol – "At the national level of each Member State only the following bodies shall be authorised to carry out operations for the purposes of recruitment or placement of workers in another State: (a) official departments or bodies of the Member State of origin or the host Member State, if agreements have been concluded between the Member States concerned; (b) any body set up by a bilateral or multilateral agreement.

Through national legislation and bilateral or multilateral agreement, the following may be authorised to carry out the recruitment exercise, subject to the approval and supervision of the authorities of the Member State concerned: (a) the employer or a person in his employ acting on his behalf; (b) private agencies."

Labour Act

- Section 23 ("Prohibition of recruiting except under permit or license") provides a framework for licensed labour recruitment applicable to recruitment of foreign workers and/or regulating recruitment of Nigerians for employment abroad, in accordance with Article 21 of the 1986 Supplementary Protocol.

- Section 24 ("Employer's permit") requires that any person desiring to recruit workers, whether from inside or outside Nigeria, must apply to do so in writing to the Minister. Further, "where the work is to be performed outside Nigeria, the Minister may require the production of a letter of recommendation from the government of the place where the work is to be performed certifying that the applicant is fit and proper person to be granted a permit".

  This article's application on the recruitment of ECOWAS Member State citizens should be further considered as it sets discretionary licensing restrictions on recruitment and employment distinct from licensing and supervision of employment agencies; it also mandates government intervention in vetting individual applicants. This review queries whether such requirements could be construed to impede full implementation of free movement provisions and rights to pursue employment in Member States in the ECOWAS Protocols.

- Section 25(1) authorizes the Minister to license "fit and proper persons to recruit citizens in Nigeria for the purpose of – (a) employment as workers outside Nigeria; or (b) employment as workers in Nigeria".

  This section appears to conform with Article 21 of the 1986 Supplementary Protocol.

- Section 26(1) stipulates that "No recruiting operations shall be conducted in any area in which recruiting is prohibited by the Minister by order or in a labour health area."

  This section appears to conform with Article 21 of the 1986 Supplementary Protocol.

- Section 71 ("Fee-charging employment agencies") states that "No person shall establish or operate a fee-charging employment agency save with the written consent of the Minister," and authorizes the Minister to make regulations for supervision and control of such agencies.

  This section appears to be in conformity with Article 21 of the 1986 Supplementary Protocol.

1990 Supplementary Protocol

Articles 4.4, 4.5 and 4.6 – The Authority shall take the relevant decision for the cooperation and harmonization of legislative, statutory and administrative provisions that make access to certain non-salaried activities (liberal or non-liberal professionals). To facilitate access to non-salaried activities and the exercise of these activities, the Commission shall recommend to the Council, which shall propose to the Authority that decisions be taken for the mutual recognition at Community level of diplomas, certificates and other qualifications.

- Part 2.1.7 of the LMP articulates "enhancing cooperation with other governments and regional bodies, particularly within ECOWAS".

As above, this provision implicitly acknowledges a commitment to hold consultations and act in collaboration with other Member States, such as promoting healthy, fair and humane conditions to ensure legal immigration of workers and their families. However, the Policy is lamentably short on details regarding such collaboration and consultation in implementation of the Protocols.

- Section 51 of the NEP states that, "Nigeria will continue to actively support efforts directed at greater economic and social integration at the regional and sub-regional levels. At the West African level, Nigeria is an important and active member of the Economic Community of West African States (ECOWAS)".

This article presents Nigeria's commitment to membership in its REC and other agreements facilitating regional economic and social integration.

Article 12 – "The relevant authorities of Member States shall cooperate closely with one another and with the Executive Secretariat in accordance with the general conditions for the realisation of the right of establishment in order to:

1. **identify activities in which freedom of establishment has a particularly useful contribution to make to the development of production and trade and to deal with such activities in order of priority;**
2. **eliminate administrative practices and procedures emanating either from internal legislation or from agreements earlier concluded between Member States which, if maintained, would be an impediment to the freedom of establishment;**
3. **ensure that salaried workers of one Member State employed in the territory of another Member State shall remain in the said territory to carry out non-salaried activity on condition that they fulfill the requirements binding upon any ECOWAS citizen arriving from his State of origin for the purpose of carrying out a non-salaried activity;**
4. **make possible the acquisition and exploitation of landed property situated in the territory of one Member State by a national of another Member State, in-so-far as this is permitted by the laws and regulations or the host Member State;**
5. **eliminate restrictions to freedom of establishment in any sector of activity both in terms of conditions for the establishment of agencies, branches or subsidiaries and in terms of conditions of entry for staff of the parent establishment into the management or supervisory organs of the subsidiaries;**
6. **coordinate as far as necessary with a view to making them equivalent, the guarantees required from companies by Member States to protect the interests of both partners and third parties."**

- Objective 1.6 of the LMP's Action Plan ("Cooperation with ECOWAS towards full implementation of relevant protocols") articulates an intention of enhanced cooperation with other governments and regional bodies, particularly with ECOWAS.

As stated above, these provisions implicitly acknowledge a commitment to hold consultations and act in collaboration with other Member States, such as promoting healthy, fair and humane conditions to ensure legal immigration of workers and their families. However, the Policy is lamentably short on details regarding such collaboration and consultation in implementation of the Protocols.

Article 13 – Member States shall undertake to institute all legislative and other measures that conform to their constitutional procedures and necessary for the implementation of the provisions of this Protocol.

- This review is substantial evidence that Nigeria is taking steps to ensure legislative and policy measures are in accord with the provisions of the Protocol.

Lacunae:

- Article 19 of the 1986 Supplementary Protocol – "While they shall be free to determine the criteria authorising the admission, stay and employment of migrant workers and members of their family, the host Member States shall hold consultations and act in collaboration with the other Member States concerned in order to promote healthy, fair and humane conditions to ensure legal immigration of workers and their families."

  In this case, not only labour requirements and resources, but also social, economic, cultural, political and other consequences both for migrant workers and for the ECOWAS Community and the Member States concerned shall be duly taken into consideration."

  No explicit legislation or policy was found mandating or conditioning participation in such consultations and collaboration with other Member States by Nigeria on promoting healthy, fair and humane conditions for immigration, such as consideration of social, economic, cultural, political and other consequences.

  However, Part 2.1.7 of the LMP articulates "enhancing cooperation with other governments and regional bodies, particularly within ECOWAS". It further clearly states that "The Nigerian Government will promote regional cooperation in the context of ECOWAS agreements, and seek to monitor and effectively implement the agreements and Memorandums of Understanding (MoUs)," implying engagement in consultations necessary to effectively implement the agreements.

  Furthermore, ECOWAS and Nigerian referents for this review noted that delegates of the Ministry of Labour and Productivity, as well as the Nigerian Immigration Service have been regularly participating in ECOWAS ministerial and technical meetings and consultations regarding implementation of the Protocols on Free Movement, Residence and Establishment.

Articles of the Protocols concerning country reporting and ECOWAS Community administration were not considered relevant to the scope of this review on domestic application; consequently, they are not listed in lacunae.

RECOMMENDATIONS FOR CATEGORY 7: INTERNATIONAL COOPERATION AND IMPLEMENTATION

On lacunae:

- Take appropriate measures to ensure that Nigeria participates fully in and promotes consultations among ECOWAS Member States to collaborate with other Member States to endorse healthy, fair and humane conditions for legal immigration of workers and their families, such as consideration of social, economic, cultural, political and other consequences (Article 19 of the 1986 Supplementary Protocol).

On existing legislation and policy:

- Ensure an explicit mandate and expectation for the National Directorate of Employment to cooperate and form partnerships with the relevant competent administrations of other ECOWAS Member States, as per Article 18 of the 1986 Supplementary Protocol.

- Ensure that further examination of measures, proposed in the NEP, beyond the present TOKTEN arrangement, addresses not only Nigerians working abroad but also nationals of ECOWAS Member States working in Nigeria to fully implement the Protocols.

- Review and, if needed, revise Section 24 of the Labour Act to ensure that its provision of obtaining permission from the Minister to recruit workers does not inappropriately restrict the right of ECOWAS Community citizens to seek employment within the Member States of the Community and to travel for that purpose.

CONCLUSION

This review provides a comprehensive assessment of where Nigerian legislation and policy already incorporate the provisions of the ECOWAS Protocols on Free Movement, Residence and Establishment of persons, or where legislative dispositions are missing to give full effect to the Protocols.

This review and its accompanying matrix show that many provisions of these Protocols are established in national legislation and/or policy.

However, this review also found that a significant number of provisions, particularly applying to immigration law and regulations, were not reflected or were indeed contradicted in Nigeria's Immigration Act. This is not surprising, given that the Immigration Act in force and its accompanying regulations date back to 1963. These important gaps require remedy for Nigeria to comply with its ECOWAS treaty commitments, guarantee the rights and protections for ECOWAS Community citizens in Nigeria, and demonstrate respect for the rights and welfare of Nigerians circulating, residing and establishing employment or business activity in other ECOWAS Member States.

Of immediate concern is that the considerable lacuna in the domestication of provisions of the Protocols related to immigration law, regulations and policy is not resolved in the current Immigration Bill under consideration by the National Assembly. In fact, this review found no reference to the ECOWAS Protocols and none that gives effect to relevant provisions of these Protocols in the Immigration Bill.

This review concludes that much is already accomplished in domesticating the set of ECOWAS Protocols on free movement, residence and establishment. However, more work is needed to fully domesticate these Protocols by addressing the lacunae and divergences identified. This regards not only immigration law and regulations, but also several issues in labour and employment law and policy.

It is incumbent on national stakeholders, particularly social partners, to consider these recommendations and mobilize awareness raising and advocacy and accomplish the recommended legislative and policy adjustments deemed actionable in order to bring labour law and policy, as well as legislation and regulation in other areas into full compliance with the ECOWAS Protocols. Involvement and support by ILO is also essential.

This review urges immediate attention to resolving the discrepancies. We suggest that further efforts to refine current legislative proposals will be essential, as well as assertive stakeholder advocacy, to ensure the adoption and implementation of appropriate law, regulations and policy fully in compliance with the ECOWAS Protocol regime – so vital for the future development, integration and eventual well-being of Nigeria and the entire West African community.

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)
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)
Labour Migration Policy for Nigeria (2013 version, adopted 15 October 2014 by the Federal Executive Council)

Bill before the National Assembly

Immigration Bill (dated 2010; Senate second reading 7 July 2014)

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