Promoting Better Management of Migration in Nigeria

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COMPREHENSIVE REVIEW OF NIGERIA LEGISLATION AND POLICY PERTAINING TO MIGRATION

REGARDING THE INTERNATIONAL CONVENTION ON RIGHTS OF MIGRANT WORKERS, ILO C-97 ON MIGRATION FOR EMPLOYMENT AND ILO C-143 ON MIGRANT WORKERS

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FOREWORD

We are pleased to present a summary of our comprehensive and pioneering review of Nigerian national law and policy regarding migration in view of the country's international treaty commitments.

We laud the foresight of the Government of Nigeria for having ratified the International Labour Organization's (ILO) Convention 97 on migration for employment years ago in 1960 and its ratification of the International Convention on the Rights of All Migrant Workers and Members of the Families in 2009. These instruments, together with ILO Convention 143 on migrant workers, provide the essential normative foundation for good governance of migration while under girding the "rights-based approach" to protecting migrant workers and members of their families.

Undertaking this review has been a far more ambitious project than initially anticipated. It is the first-ever comprehensive review in any country of national legislation assessing the extent and nature of domestication of these three instruments. It also identifies lacuna in full incorporation of treaty provisions in national law, administration and/or policy.

We were obliged to invent a framework and procedure for this evaluative review. We read and evaluated over 1,100 pages of legislation and policy documents, including the national Constitution. We elaborated a matrix that counts over 2,000 data cells. Many workdays were dedicated to examining legislation line by line to identify coincidences or "shades of difference" with convention provisions. This narrative report comprises over 80 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 international legal commitments in national law and policy. This study is an important step set out in the Labour Migration Policy adopted by the Federal Executive Council of Nigeria in October 2014.

The IOM Abuja office merits full recognition for sponsoring this study in implementation of the national 10th EDF project funded by the European Union, to promote better management of migration in Nigeria. In particular, authors wish to thank Lily Sanya, Safiya Abubakar and Amos Ojo among other colleagues at the IOM Abuja office for their extensive support and patience.

We also acknowledge vital cooperation with the ILO, given its international standard setting and supervision roles, as well as technical competencies on labour migration. In particular, we appreciate the support and guidance accorded by the ILO Abuja office and its director, Ms Sina Chuma Makwandire.

We thank all of the many stakeholder partners in government, social partners organizations and civil society organizations who provided perspective, advice and documentation to supporting this review.

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INTRODUCTION

The context

International migration is a major feature of an increasingly globalized world. In 2014, an estimated 235 million persons lived outside their country of birth or citizenship.[1] Around half of this number are economically active, meaning that most adult migrants of working age are employed, self-employed or otherwise engaged in remunerative activity.[2]

The World Bank estimated that 31 million Africans were living in countries other than their birthplace in 2010, with 77 per cent of the 31 million from sub-Saharan Africa.[3] Some 80 per cent of migrants originating in West Africa are in other Member Countries of the Economic Community of West African States (ECOWAS). 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 over 90 per cent originating from other West African countries.[4]

Migration is providing for viability – even economic survival – particularly in many industrialized countries. It rejuvenates workforces, maintains viability of agriculture, construction, health care, hotel, restaurant and tourism and other sectors, meets growing demand for skills, and promotes entrepreneurship in Africa as well. Migrant remittances, transfer of skills, investments and expanded trade enhance the development and well-being in many countries, particularly in Nigeria.

Migration should be an engine of development and integration for Nigeria, as well as for ECOWAS. However, long experience worldwide shows that the potential of migration is only realized when it is effectively governed, properly regulated and when migrants' rights and dignity are protected.

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 that provide 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). Furthermore, the core international human rights instruments – nearly all ratified by Nigeria, as well as general comments and findings of the respective treaty bodies – reinforce application of the rights-based approach to governance of migration.

Nigeria, as other States, has responsibilities of sovereignty to regulate migration; basic governance regarding migration necessarily takes place at national and local levels. The national stakeholder-elaborated and vetted National Policy on Labour Migration highlights the need to address the challenges and opportunities of labour migration within the framework of national laws and the relevant international conventions. Only a legal foundation for governance based on proven international standards, complemented by effective regulatory policy, will enhance development and obtain well-being in Nigeria, especially regarding migration. Putting fully in place that legal foundation contributes to strengthening the nation.

Some legal standards in the migration instruments ratified by Nigeria have been incorporated in national legislation. This report reinforces the policy framework in underlining that more work is needed to fully domesticate these norms to provide a sound national legal foundation for policy and practice.

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

The review

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

This review was mandated as a component of 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 Patrick Taran – President of Global Migration Policy Associates (GMPA) and former Senior Migration Specialist at the ILO – to conduct the review. The engagement took into account his previous technical cooperation activity in Nigeria including his contribution to the initial draft of the LMP.

The overall consultancy included three component objectives: (a) assessing domestication and effective application of the ICRMW (1990), ILO C-97, 1949, and the ECOWAS Protocol on 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 Employment Agencies Convention, 1997 (No. 181) (ILO C-181); and (c) assessing effectiveness of the current framework on domestic workers' rights in view of the Decent Work for Domestic Workers Convention, 2011 (No. 189) (ILO C-189).

Mandated tasks included: (a) comprehensive evaluation of Nigeria's legal instruments and regulations governing labour migration management to ascertain the extent to which they are in accordance with the ICRMW, ILO C-97, ILO C-143 and the ECOWAS Protocol; (b) review the implementation of the legal instruments, regulations and practices to ascertain the country's level of compliance with the requirement of the conventions and ECOWAS Protocol; (c) review and critically analyse discrepancies between the national legislation and practices vis-à-vis the requirements of the conventions and ECOWAS Protocol; (d) identify obstacles that hinder compliance and proffer recommendations on how to overcome them; and (e) propose ways to harmonize appropriate legislative instruments with the provisions of listed regional and international legal standards.

This report is the central and key product of the review; it provides the detailed assessment of domestication of the ICRMW, ILO C-97 and ILO C-143, 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.

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

National law

The domestic legal system of Nigeria is a dualist one in terms of its relationship to international law. As such, any treaties signed internationally or, in this case, any conventions signed and ratified, must be enacted into domestic law by the National Assembly in order to have legitimate legal standing and effect within the territory.

A review of national legislation analysing the extent of domestication of the provisions of the conventions is thus crucial to ensure that citizens and migrant workers alike may rely on the rights and regulations set forth in the Constitution and legislation. Should standing law or policy contradict the provisions of the conventions, there exists a legal gap in realization of these rights and protections, and possibly a contravention of international law to which Nigeria is or should be accountable.

Structure of the report

The review is structured according to topical categories in order to identify and analyse whether and where each article (or article subsection) of the three international conventions appears in enacted national legislation and national policy, such as the LMP for Nigeria.

The arrangement of the review into topical categories is intended to facilitate identification and review of relevant legislation that is generally elaborated by different subject topics and areas of law. As well, the structures of the respective conventions follow differing topical orders and logics. Nonetheless, all provisions/articles of the three conventions are included. However, the content of convention articles shown in italics is generally abbreviated or summarized and not presented verbatim.

The articles/provisions of the ICRMW are listed first in each category, followed by identification of whether and where they may be reflected in national law and/or policy.

Any provisions of ILO C-97 and C-143 respectively that correspond to listed provisions of the ICRMW are also shown. Subsequently, other relevant provisions of ILO C-97 and C-143 are listed in each category.

In many cases, the content of individual articles of the conventions is paraphrased for brevity.

Any provisions in the Constitution or legislation of Nigeria that do not give effect or that may diverge from provisions of the conventions are set in italics.

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

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

Each category-section concludes with recommendations. Recommendations first address lacunae where no relevant legislation or policy was found, and then present provisions of national law or policy that may be divergent from or not in full compliance with convention provisions.

A separate brief by the authors identifies steps forward, including steps to organize and mobilize stakeholder advocacy and activity to bring legislation and administrative practice into harmony with international standards.

SCOPE OF APPLICATION OF THE CONVENTIONS

This first section covers provisions defining the scope of content and application of the three conventions.

A broad reflection of the scope of application defined in the conventions is not usually apparent in national legislation, which is generally focused on giving effect to the subsequent content of the instruments. However, corresponding provisions supporting several of the Scope of Application articles were evident in the Nigerian Constitution, as well as in the LMP and the National Employment Policy.

Lack of corresponding legislation in this category does not necessitate action to address these gaps, as they may be addressed in Nigeria's reports to the committees overseeing implementation of the respective conventions.[5] However, a point of concern for reviewers is that both Nigeria Prisons Services and Nigeria Immigration Service have the same Board of Administration, putting them under one institutional governing structure under authority of the Ministry for Internal Affairs; both services were characterized as paramilitary agencies.

National law and policy on scope in view of the conventions

ICRMW Article 1 – Applicability of the convention to all migrant workers and members of their families without distinction of any kind.

- Section 1(1) of the Nigerian Constitution (1999) establishes the Constitution as supreme and has binding force on the authorities and persons throughout the Federal Republic of Nigeria. The nominal terminology is inclusive ("all persons") and implicitly establishes the scope of the Constitution as applicable to all migrant workers and members of their families in Nigeria without distinction of any kind. As highlighted in the stakeholder review of the draft report, "all persons", for all intent and purposes, includes migrant workers and foreigners residing in the country, which means the Constitution also applies equally to them, unless otherwise indicated.

- Section 6(6) of the Constitution extends the judicial powers vested in the courts in accordance with the provisions of Chapter 2 to "all matters between persons or between government/authority and any persons in Nigeria, and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person". The terminology used ("all persons in Nigeria") is non-exclusive and should be applicable to matters involving migrant workers and members of their families in Nigeria.

5 The UN Committee on Migrant Workers for the ICRMW, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) for ILO C-97 and ILO C-143.

ILO C-143 Article 10 – Commitment to declare and pursue a national policy designed to promote and guarantee equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for migrant workers and members of their families lawfully within the territory.

- The consultative and tripartite elaboration of the LMP represents the implementation of Article 10 in ILO C-143.

- Part 3.2 of the LMP states that treatment of all migrant workers should be based on the four pillars of the ILO Decent Work Agenda. It articulates the prohibition of forced labour and recognizes the right of all migrant workers to freedom of association and collective bargaining rights.

- Section 35 of the National Employment Policy (2000) reflects the government's commitment to upholding collective bargaining rights. While migrant workers are not explicitly mentioned, such commitment extended to migrant workers would be in accordance with Article 10 of ILO C-143.

Other relevant national law and policy pertaining to scope of application of the conventions

- Section 1 of the Immigration and Prison Services Board Act (1986) establishes the board responsible for administering the Act.

In the perspective of this review, the joint policy supervision and accountability of the immigration service and the national penal system under one board, and the character of the immigration service as a paramilitary agency, risk undermining the ability of the State structure charged with the administration of migration to effectively meet contemporary challenges. These challenges primarily involve regulating and facilitating migration as a function of economic viability, development and regional integration. The linkage between immigration and the penal system in a single policy supervisory structure also risks privileging a restrictive control approach to governance of cross-border mobility when a rights- or standards-based facilitation approach is demonstrably more appropriate, particularly in the West Africa ECOWAS context.

Recommendations:

- Review the assignment of administrative responsibilities and structures to accord, recognize and/or assign greater responsibility to the Federal Ministry of Labour and Productivity (FMLP)[6] in the administration of migration in Nigeria, given that the international standards to which Nigeria is committed apply particularly to migrant workers (and members of their families) and that migratory phenomena of concern to Nigeria are predominantly labour and skills mobility.

- Consider *unbundling* and redefining a separate governance body for the immigration service from that of an overseeing prisons administration. An appropriate national governance structure for administering migration in an increasingly mobile world requires, distinct ideological and conceptual bearings and reference to specific international standards and practices, as well as supervisory competences distinct from those of a national penal system.

- The effective implementation of the LMP will be an important concrete step towards conformity with these three conventions. As the LMP was consistently drafted with the provisions of these conventions, and as it emphasizes protecting basic human and labour rights of migrant workers and members of their families, its full implementation is instrumental to realizing the provisions of the ICRMW, ILO C-97 and ILO C-143. Implementing the LMP would also facilitate Nigeria's ratification of ILO C-143.

6 According to its formal mandate, the FMLP formulates, monitors, implements and enforces government policies on employment generation, industrial relations (in partnership with the National Industrial Court), social security, safety in workplaces and skills development and certification (Nelexnigeria.com, 2014).

DEFINITIONS

While most definitions used to designate beneficiaries and responsible parties in the legislation and policy under review would appear to include migrant workers, definitions are according to the corresponding articles of the Conventions. However, in certain cases, specific designation of beneficiaries in certain acts appears to explicitly exclude migrant workers and members of their families from rights or entitlements established in the Conventions.

National law and policy on definitions in view of the conventions

Definitions of "migrant worker" (ICRMW Article 2, ILO C-97 Article 11 and ILO C-143 Article 11); inclusion of migrant workers and members of their families in definitions in legislation designating who may benefit from the provisions therein.

- The definition of "employee" given in Section 73 of the Employee's Compensation Act (2010) clearly allows scope for recognition of informal employment relationships – a situation that may apply to many migrant workers in Nigeria. This definition makes no exclusion on the basis of citizenship, nationality or residence status, which may provide migrant workers with full access to the social security provisions, particularly regarding occupational injury compensation, articulated in this Act.

- Similarly, the definition of "worker" used in the National Minimum Wage (Amendment) Act (2011) is evidently inclusive and non-restrictive vis-à-vis migrant workers ("any employee […] who has entered into or works under a contract with an employer whether the contract is for manual labour, clerical work […] to execute any work or labour").

- However, the preamble of the National Health Insurance Scheme Act (1999) explicitly states its objectives as being to provide "good health care services *to every Nigerian* and protecting *Nigerian families* from financial hardship of huge medical bills; and for matter connected therewith". This definition would appear to exclude migrant workers and members of their families.

- Nonetheless, Section 49 ("Interpretation") of the National Health Insurance Scheme Act interprets the term "employee" to be "any person ordinarily resident in Nigeria and is employed in the service of the Federal, a State or Local Government in a civil capacity or in any of the public services or under a contract of service or an apprenticeship with an employer whether the contract is expressed or implied, oral or in writing", a non-exclusive definition.

Recommendations:

- Explicitly recognizing migrant workers as beneficiaries and/or participants in the implementation of the National Minimum Wage (Amendment) Act and the Employee's Compensation Act would ensure equal treatment with nationals regarding remuneration for migrant workers and facilitate access to relevant provisions on compensation for workplace illness, injury, incapacitation or death for migrant workers and members of their families. The inclusion of migrant workers and members of their families is interpreted as implied in the legislation surveyed. Nonetheless, the use of explicit language pertaining to migrant workers in the administration and implementation of these acts would demonstrate compliance in practice with the presumed intent of coverage under this legislation.

- Explicitly recognizing migrant workers' eligibility as participants in and beneficiaries of the National Health Insurance Scheme Act is advised to ensure that migrant workers and members of their families fully participate in and contribute to the scheme and receive benefits.

NON-DISCRIMINATION/ EQUALITY OF TREATMENT

The principles of non-discrimination and equality of treatment for migrant workers are generally not explicitly evident in the letter of the relevant laws and policies surveyed. Instead, equality of treatment appears to be extended, or could be interpreted as such, by the use of inclusive language in many of the legislative provisions regarding labour regulations, as well as in the Nigerian Constitution. Many provisions in national law on equality of treatment and non-discrimination are identified in subsequent survey categories: "Rights and protections at work" and "Employment and recruitment".

National law and policy on non-discrimination/equality of treatment

ICRMW Article 7 – Respect for equal rights provided in the Convention with no discrimination.

Acknowledgement of this principle is explicit in the Child Rights Act and in the LMP for Nigeria:

- Section 10 of the Child Rights Act (2003) states that "A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or *by reason of his place of origin*, sex, religion or political opinion." The language is non-restrictive, and thus should be applicable to the children of migrant workers.

- Part 3.3 of the LMP specifically calls for upholding "equality of treatment and non-discrimination as universal human and labour rights principles, applicable to migrant and national workers alike".

Equal treatment in conditions of work, terms of employment and others: ICRMW Article 25, ILO C-97 Article 6 and ILO C-143 Articles 8.2 and 9.1.

The review identified several seminal pieces of legislation using non-restrictive language articulating commitments to decent conditions of work, access to social services, fair and rigorous terms of contract, access to legal remedy and protection from neglect or ill treatment, as well as necessity of payment of the national minimum wage.

- While Section 17(3) of the 1999 Nigerian Constitution states that the country will "direct its policy towards ensuring […] adequate means of livelihood" for its own citizens, the subsequent paragraphs' use of non-restrictive language ("all persons in employment") should allow for providing non-discriminatory conditions of work and social services to migrant workers and members of their families, as well as to nationals.

- Section 40 of the Labour Act (1990) defines special terms and conditions of contract that apply to foreign workers. These special terms and conditions are explicitly in addition to all other terms and conditions required in contracts made under any other provision of the Labour Act, implicitly reinforcing equality of treatment of foreign workers under this act.

- Section 46 of the Labour Act prohibiting neglect or ill treatment of workers designates application to "any worker"; this should extend equal protection for migrant workers and members of their families from such treatment, as well as access to legal remedy.

- Section 1(1) of the National Minimum Wage (Amendment) Act (2011) uses the nominal terminology "every employer" in mandating the payment of the national minimum wage. This non-exclusive designation should thus also be applicable to employers of migrant workers and members of their families.

- *The legal requirement to pay workers no less than the national minimum wage, however, is subject to exemptions that may exclude migrant workers*. For example, Section 1(2)(a) of the National Minimum Wage (Amendment) Act exempts various employers or workplaces from the obligation to pay workers the national minimum wage, including establishments "in which less than fifty workers are employed", establishments "in which workers are employed on a part-time basis", and employers of "workers in seasonal employment such as agriculture".

    - The first exemption – that of establishments in which less than 50 workers are employed – is of particular concern for domestic workers, most of whom are the sole, or one of a few, workers within a household. The letter of the law could exclude employers of domestic workers from the necessity to pay their staff the minimum wage – a particular hardship for migrant domestic workers.

    - The second and third exemptions listed here are related; seasonal work and part-time work are both common characteristics of the industries for which migrant workers are often recruited and employed. If interpreted broadly, this could exempt, for example, the construction industry and almost all agricultural employers from paying migrant workers the national minimum wage. While nationals employed in the same sectors would be subject to the same exemptions, application to migrant workers as foreigners increases their vulnerability to abuse and exploitation.

ICRMW Article 43 – Equality of treatment with nationals in relation to educational institutions, vocational training, housing, social and health services, cooperatives, self-managed enterprises, and participation in cultural life for migrant workers and members of their families in a regular situation.

This review identified non-restrictive language in the Constitution and several acts that presumably extend social security protections and access to apprenticeship and other training programs to all those in the workplace regardless of nationality.

- Section 49 of the Labour Act uses the nominal terminology "a young person" in designating those who are party to the protective terms mandated by this article relating to contracts of apprenticeship. This terminology is non-exclusive. All other provisions under "Contracts of apprenticeship" in this act use the same inclusive term.

- Section 16 of the Employee's Compensation Act uses the nominal terminology "an injured employee" to designate those who may be assisted by social services administered by the Nigeria Social Insurance Trust Fund Management Board.

- Section 18 of the Nigerian Constitution states that the Government "shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels".

- Further, Section 15 of the Child Rights Act states that "Every child has the right to free, compulsory and universal primary education", and mandates the Government of Nigeria to provide such education.

- The National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI) Act (1989) explicitly extends access to public education to children of refugees on equal footing as nationals of the country – a provision not found in any other legislation that would apply to children of migrant/foreign workers in Nigeria. Presumably, children of migrants in regular status have access to the national public education system by virtue of their residency in Nigeria. However, children of migrants in irregular situation may be negatively affected by a lack of explicit legislation extending the right to basic education to all people.

Equality of treatment with nationals in the exercise of remunerated activity for migrant workers in a regular situation: ICRMW Article 55 and ILO C-143 Article 12.

- Section 17(3) of the 1999 Constitution states that "the country will direct its policy towards securing adequate means of livelihood for its own citizens", but subsequent paragraphs of the same article use non-restrictive language ("all persons in employment"), which should guarantee non-discriminatory conditions of work and access to social services to migrant/foreign workers, as well as to nationals.

ICRMW Article 70 – Treatment not less favourable than that provided to nationals ensuring safe and dignified living and working conditions for migrant workers and members of their families in a regular situation.

- Section 17(3) of the 1999 Constitution extends provision of decent working conditions to migrants as noted above. However, Section 16(2)(d) explicitly states that the State shall direct its policy to ensure adequate shelter and food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled to Nigerian citizens.

Other relevant national law and policy concerning non-discrimination and equality of treatment

Recognition of qualifications

- The NCFRMI Act grants explicit recognition of qualifications in the "liberal professions" equal and relative to the recognition provided to foreign nationals in regular status entering the Nigerian workforce. However, the review did not find any provisions in the law and policy surveyed regarding such recognition for migrant/foreign workers, regardless of status.

Lacunae in law or policy

ICRMW Article 48.1 – Prohibition of the imposition of taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances, without prejudice to applicable double taxation agreements.

- No law or policy was found in this survey to prevent migrants from being taxed duties or charges higher or more onerous than those imposed on nationals in similar circumstances. However, relevant provisions may exist in other Nigerian legislation or other bilateral or international agreements outside the purview of this review.

ICRMW Article 54 – Protection against dismissal, access to unemployment benefits and access to public work schemes intended to combat unemployment for migrant workers in a regular situation.

- No law or policy was found guaranteeing migrant workers in a regular situation equal protection against dismissal, unemployment benefits, or access to public work schemes intended to combat unemployment. Of note, the NCFRMI Act (Section 24) makes these provisions for refugees, given the particular characteristic of those in recognized refugee status.

ILO C-143 Article 12(e) – Social policy appropriate to national conditions and practice that would "enable migrant workers and their families to share in advantages enjoyed by its nationals" while maintaining sensitivity for the special needs of migrant workers until they are "adapted to the society of the country of employment"

This survey found no specific provisions in law mandating the creation of social policy to facilitate the "adaptation" referred to in ILO C-143 Article 12(e). Such policy provisions would more likely be found in national policy documents. However, no policy to this effect was found in the documents analysed in this survey.

Recommendations:

On lacunae:

- Using explicit language on non-discrimination and equality of treatment for migrant workers and members of their families in national legislation and policy would demonstrate explicit commitment to upholding these provisions of the conventions, as well as provide a clear legal basis for implementation and enforcement of these principles.

- The problematic exemptions noted in the National Minimum Wage (Amendment) Act should be addressed at the national legislative level to protect migrant workers in sectors of the economy subject to exceptions that preclude payment of the national minimum wage. The discretionary powers of the Minister could be used positively to this effect. However, the implementation of legislation extending the minimum wage to all sectors of the economy would provide more effective protection for migrant workers, as well as to national workers.

- Protection against dismissal and access to unemployment benefits and public work schemes should be extended to migrant workers in a regular situation (on a par with and as extended to nationals). Implementation could take the form of national policy and/or administrative measures rather than legislation.

- Elaborating social policy on integration of migrant workers and members of their families into national society and culture will give effect to ILO C-143 Article 12(e).

Regarding existing law or policy:

- Elaborate a comprehensive effort on recognition of qualifications to facilitate labour market participation and integration in Nigeria in conditions of equality of treatment of migrant workers. The NCFRMI Act provides an impetus in its stipulation of recognition of the qualifications of refugees in the liberal professions. Initiatives in Africa to harmonize training, as well as qualifications standards, such as anticipated in forthcoming regional technical cooperation programmes, should support efforts in Nigeria to obtain recognition of qualifications according to regional standards.

- Review legislation concerning taxation and duties to determine whether or not the principles of the conventions of equal treatment for migrant workers and members of their families are implemented in Nigeria.

RIGHTS AND PROTECTIONS AT WORK

This review found no legislative or national policy provisions directly contradicting the provisions pertaining to rights and protections at work for migrant workers in the conventions.

National law and policy on rights and protections at work

ICRMW Article 25 – Treatment, conditions of work and terms of employment not less favourable than those applicable to nationals.

- Section 17(3) of the 1999 Constitution utilizes non-restrictive language in directing State policy towards just and humane conditions of work, towards safeguarding health, safety and welfare, and towards equal pay for equal work for "all persons in employment".

- Section 13 of the Labour Act (1990) restricts regular hours of work to those fixed by mutual agreement between the employer and the employee, by collective bargaining, or by an industrial wages board. Mandatory breaks and overtime are defined in relation to these fixed hours. The protections of Section 13 are non-restrictive given the description of the beneficiary of these protections as "a worker" with no designation of nationality made.

- Section 18 of the Labour Act is likewise non-restrictive in its provision of annual holidays with pay.

- The Labour Regulations (1936) establish in Section 28(1) the maximum working hours beyond which "no labourer" may be compelled to work, except under explicit conditions listed in the Article. (The Labour Regulations were subsequently made subsidiary to the Labour Act.)

- Section 6(4) and (5) of the National Minimum Wage (Amendment) Act (2011) allows for government personnel to make claims on behalf of "a worker" for restitution or payment in arrears of wages owed under the Minimum Wage Act. This designation is non-restrictive.

- Finally, Part 3.4 of the LMP ("Enforcement of labour standards and contracts") demonstrates intent by government and other stakeholders to promote and enforce non-discrimination in conditions of work and in workplace standards through application of labour inspection activity and law enforcement to "all employment activities involving migrant workers". This is a major step to explicitly extending these protections to migrant/foreign workers in Nigeria.

Other relevant national law or policy concerning rights and protections at work

Occupational safety and health standards

- The National Employment Policy (2000), in section 4.7.3, calls for extending occupational health services to "all workers in all sectors of the economy" as well as to the self-employed. Although details of how this is to be implemented are not elaborated, the explicit policy focus on measures, such as expanding "primary health care access at affordable cost" and requiring workplaces to "maintain first aid kits", uses non-restrictive language, which should include migrant workers and their places of employment.

- The Factories Act (1987) lays out explicit occupational safety and health (OSH) standards, such as provisions on overcrowding, ventilation, lighting, floor drainage, sanitary conveniences, and protective clothing and appliances. The language used throughout these provisions is non-restrictive ("no person", "every factory", etc.), which should extend these protections to migrant workers, as well as to nationals employed in Nigeria. These standards are particularly crucial to migrant workers, many of whom are employed in 3D (dirty, dangerous or degrading) jobs where the conditions prohibited by the Factories Act commonly exist.

Obligations of employers

Several pieces of legislation contain provisions stipulating the obligations employers have to their employees in upholding rights and protections in the workplace.

- Section 27 of the Labour Regulations (1936), for example, holds employers responsible for providing a minimum amount of food to all labourers in their employ. The nominal terminology is non-restrictive and therefore should apply to migrant/foreign workers, as well as to nationals. Applying this provision in the agricultural sector, where migrant workers are prevalent, would enhance their well-being.

- The Employee's Compensation Act (2010) designates in Section 7 the terms under which employment contracts must be made and what they must include in terms of agreed-upon working hours, wage, holiday and provision for incapacity or sick days. The Act uses non-exclusive terminology that should extend these terms to migrant workers. Section 68 of the Act further requires employers to display any public notices sent by the board in a prominent and easily accessible location to facilitate the furnishing of labour and rights-related information to workers. The language used in this article ("an employer") is likewise non-restrictive and should apply to employers of migrant workers.

Lacunae in law or policy

- ICRMW Article 61.2 calls for project-tied workers to have the right to address their case to the competent authorities of the State that has jurisdiction over their employer. No law or policy was found guaranteeing this right to project-tied workers explicitly.

Recommendations:

The convention provisions addressed in this subsection appear to be well domesticated in Nigerian law and policy. Many existing national standards and legal provisions go beyond the specific content of the convention.

- Ensure explicitly that project-tied workers, as well as workers in all sectors of the economy, have effective access in addressing cases to competent authorities, to prevent any "loophole" lacuna in application of the convention provisions to all categories of migrant workers.

SOCIAL PROTECTION/ SOCIAL SECURITY

Social protection and extension of social security coverage and benefits for migrant workers is not explicitly established in the Nigerian legislation reviewed. However, it can be implied through the use of non-exclusive language in numerous national laws reviewed, as well as in the LMP.

The benefits available to refugees lawfully staying in the territory are clearly identified and defined in terms of equality of treatment with nationals. No such explicitly defined benefits were identified for migrant workers and members of their families in legislation reviewed.

The review identified several additional provisions of social protection in national law not explicitly elaborated in the conventions (such as disability or occupational disease compensation and maternity provisions) that could and should be applicable to migrant workers and members of their families. The review found no provisions in national law and policy contradicting the convention provisions pertaining to social protection and social security.

National law and policy on social security/Social security

Equal treatment with nationals in social security and possible reimbursement in case of lack of applicable legislation provided for migrant workers' and their families' benefits: ICRMW Article 27 and ILO C-97 Article 6.

- The effective entry into force with binding effect on Nigeria of the ECOWAS General Convention on Social Security (2012),[7] with its provisions addressing social security access, coverage and portability rights for ECOWAS citizens in all member countries, provides a great step forward for national legislation, to the extent it is domesticated and applied in Nigeria.

- The Pension Reform Act (2014) establishes the Nigerian Contributory Pension Scheme and delineates the conditions of participation in it. The nominal terminology used throughout the act is non-restrictive, which should facilitate inclusion of migrant workers' participation in, contributions to and benefits under the scheme.

- Section 43 of the National Health Insurance Scheme Act (1999) addresses potential gaps in legislation, policy and practice on maintaining access to social security and protection for Nigerian workers abroad by establishing authority for the government to enter into reciprocal agreements for mutual social protection health insurance that would benefit Nigerians in and foreigners from concerned countries.

- The LMP would further support the ICRMW Article 27 mandate for legislation and international agreements to address social security for migrants. The policy's "External protection or protection at destination" objective calls for bilateral agreements on the transferability of migrant workers' earnings and savings.

- The NCFRMI Act (1989) provides for equal treatment with nationals for refugees lawfully staying in Nigerian territory regarding social security, which is defined as "legal provisions in respect of employment injury and

7 See ECOWAS Extends Social Security to Migrant Workers to Facilitate Intra-regional Mobility, Partenariat Afrique-UE, 6 February 2013. Available from www.africa-eu-partnership.org/fr/node/5238.

occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme". It limits this access if other arrangements have been made for the maintenance of acquired rights, as well as by allowing for the State to "prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a pension" (Article 24(bii)).

While expressing a principle regarding treatment of foreigners, this provision applies exclusively to refugees, only addresses treatment relative to other foreign nationals, and only for those in recognized regular status. However, the review identified no corresponding legislation explicitly applicable to migrants regarding such access to social security.

ICRMW Article 71 – Repatriation of bodies of deceased migrant workers and compensation relating to the death of a migrant worker or members of their family.

- Section 30 of the Labour Regulations (1936), concerning reporting procedures and compensation due after the injury or death of a worker – including sending compensation to a person designated by the employee in the case of their injury or death – uses the nominal terminology "an employer" and "a labourer", which is non-restrictive and thus should facilitate access to such compensation for migrant workers and members of their families.

- Section 9 of the Employee's Compensation Act (2010), which concerns compensation in the case of death as a result of occupational disease, also uses this non-restrictive terminology in designating those who may benefit from such compensation. Migrant workers and members of their family should thus be included in this designation.

Other relevant national law or policy concerning social security/social protection

Disability compensation paid to the family of a worker

The Employee's Compensation Act contains numerous provisions for conditions of compensation in the event of workplace death or injury.

- Section 9(4) articulates the conditions for compensation to be paid to dependents in the case of workplace death or disability. The nominal terminology used is non-restrictive ("the employee"), which should extend the right to apply for such compensation to the families of disabled or deceased migrant workers.

- Section 12(3) further addresses compensation paid to family members through its allowance for dependents of injured or deceased employees to themselves seek compensation or to bring an action against the employer, using the same non-restrictive terminology – "an employee". As such, this provision should also extend to the families and dependents of migrant workers.

- Section 13 prohibits employers and employees from entering into agreements to waive or forego any benefit or right to compensation due under the Employee's Compensation Act in the event of workplace death or injury. The terminology "no employee" is non-restrictive and should be applicable to migrant workers.

- Sections 21 and 22 stipulate that in the event of permanent total disability, compensation shall be a periodic payment of 90 per cent of the employee's remuneration. Again, the nominal terminology used ("an employee") is non-restrictive and thus should be applicable to migrant workers.

- Section 28 further states that the benefits of the Employee's Compensation Act are non-prejudicial in relation to any entitlements due under the Pension Reform Act. In these and subsequent provisions, the terminology of "an employee" and "the beneficiary" clearly imply no exclusion for migrant workers or their dependents.

- Section 71 of the Factories Act (1987) provides for death or injury penalties on employers to be assigned to the victim or his or her family members as a court may order. The nominal terminology used is, again, non-restrictive and should be applicable to migrant workers and members of their families.

Maternity Provisions

- Section 54 of the Labour Act states that in "any public or private industrial or commercial undertaking or any branch thereof", women are entitled to maternity leave of at least six weeks before and six weeks after the birth of children.[8] It prohibits employers from dismissing women who are absent beyond this designated leave due to illness arising out of pregnancy or childbirth. This provision of the law is non-restrictive; it covers all female workers including migrant women.

Provisions on withdrawal from pension funds

- Section 3 of the Pension Reform Act (2014) concerning withdrawal from a retirement savings account prohibits such withdrawals until an employee has reached 50 years of age, with exceptions in cases of permanent mental or physical disability or where provided for within the terms and conditions of an employment contract. *While not making any distinction of nationality, the stated age restriction could restrict the portability of pension contributions for departing migrant workers in cases in which there are no alternative arrangements for portability*. While the ECOWAS General Convention on Social Security should resolve this issue for community citizens, the question remains for migrants from elsewhere.

Repatriation of sick or injured workers

- Section 29 of the Labour Regulations (1936) provides for repatriation of a worker if he or she is unable to complete their contract due to illness. This section has particular relevance to migrant workers in that it provides for medical care on the return trip to the worker's place of residence.

Lacunae in law or policy

ICRMW Article 62.1 – Entitlement of specified-employment workers to the social security rights provided for in Part IV of the ICRMW, except Article 43(b) and (c) Article 43(d) as it pertains to social housing schemes, Article 52 and Article 54(1)(d).

- This survey found no law or policy explicitly upholding the right of specified-employment workers to equality of treatment of nationals as regards access to education, housing and protection against exploitation in respect of rents, access to social and health services, access to cooperatives and self-managed enterprises, and access to and participation in cultural life. This gap in domestication of the convention could be addressed through the establishment of policy that explicitly includes specified-employment workers in those categories of workers benefiting from the provision of these services.

ILO C-143 Article 9 – Equality of treatment for migrant workers and members of their families in respect of rights arising out of past employment (remuneration, social security and other benefits) in cases where laws and regulations for controlling the movements of migrants for employment have not been respected.

- No specific law or policy was identified addressing the right of migrant workers and members of their families to their past remuneration, social security and other benefits in cases where laws regulating movement have not been respected and their situations cannot be regularized. This would require specific legislative provisions to remedy.

8 It was reported to authors that this coverage has now been extended to eight weeks before and eight weeks after childbirth and that it can all be taken all at once after childbirth.

Recommendations:

- Develop both law and policy that delineate the social security benefits specifically available to migrant workers and members of their families. This would provide an explicit legal basis to facilitate clear and thorough implementation of the provisions of international and regional conventions on social security. Domestication and effective application of relevant provisions of the ECOWAS General Convention on Social Security will be highly beneficial in delineating benefits available to community citizens working in Nigeria (and vice versa). Similar explicit measures will be needed regarding extension of social security access, coverage and portability for migrant workers and family members from other countries.

- Determine conditions under which migrant workers may withdraw from the retirement savings accounts they pay into before the age of 50 years. This would facilitate the portability of social security that is currently undefined in Section 3 of the Pension Reform Act. Enhancing portability may also be facilitated by bilateral or multilateral agreements between origin and employment countries. While implementation of the ECOWAS General Convention on Social Security should resolve this question for community citizens, definition may still be needed for other migrants in Nigeria.

- Further articulate the rights of specified-employment workers and further policy measures to ensure enjoyment of their rights to equality of treatment with nationals regarding access to education, housing and protection against exploitation in respect of rents, access to social and health services, access to cooperatives and self-managed enterprises, and access to and participation in cultural life, as mandated in Article 62.1 of the ICRMW.

- Legislative measures to ensure that migrant workers for whom the regulations controlling movements of migrants were not respected and whose status cannot be regularized are guaranteed any remuneration, social security and other benefits due to them by virtue of their past employment, based on Article 49 of ILO C-143. This could take the form of amendments and/or revisions to the Labour Act, the Pension Reform Act and the Employee's Compensation Act.

SPECIFIC PROVISIONS REGARDING HEALTH

While very few provisions of the conventions pertain specifically to health, this review found sufficient provisions in law to merit creating a stand-alone category.

The right to receive urgent medical care, based on Article 28 of the ICRMW, is clearly supported in the National Health Bill passed by the Senate in May 2008 (no corresponding act is listed in the National Assembly register of Laws of the Federation of Nigeria).

Most other provisions on health pertain to access to medical care and examination during the migration process – for the most part, on arrival to and departure from Nigeria. The Labour Act contains several provisions that call for such inspection at the expense of the employer.

However, workers in certain industries, notably agriculture, are exempted from such examination prior to entering into a contract with an employer. This may jeopardize the health of migrant workers and members of their families employed in these industries, as any prior medical conditions could be exacerbated or become hazardous, if not known and accounted for prior to beginning work.

The legislation surveyed in this review appears to provide access to medical care and health-related social security to migrant workers throughout their employment. Through inclusive language, migrant workers appear to have access to the benefits of the Employee's Compensation Act in the event of workplace death or injury.

Migrant workers may also have access to health insurance through the National Health Insurance Scheme Act, although this should be verified in actual practice; further clarification is advisable to remove any ambiguity in eligibility for access to insurance, as noted in Category 2: "Definitions" of this review (page 15).

National law and policy on health in view of the conventions

ICRMW Article 28 – Right of migrant workers and members of their families to receive urgent medical care.

- Section 20(1) of the National Health Bill (2008) prohibits health-care providers from refusing emergency medical treatment for any reason. The nominal terminology used ("a person") is non-restrictive and therefore should be applicable to migrant workers and members of their families.

ILO C-97 Article 5(a) – Member States' responsibility to maintain medical services to ascertain the health of migrant workers and members of their families on arrival and departure.

- Section 8 of the Labour Act (1990) requires that a registered medical practitioner at the expense of the employer must medically examine "every worker" entering into a contract. The use of "every worker" should extend such medical examination at the employer's expense to migrant or foreign workers. *However, paragraph 2 allows for exemptions of this requirement in industries in which migrant workers may be prevalent (notably agriculture), providing a potential risk to the assessment of their health*.

- Section 28 of the Labour Act specifically addresses migrant workers entering Nigeria, by requiring medical examination for recruited workers, with specification of those recruited outside Nigeria. Further, Section 28(4) provides the option for requiring additional medical examinations in situations of health concern – particularly as concerns travel to the place of employment – that could also apply to migrant workers.

- Section 39 of the Labour Act requires medical examination of citizens of Nigeria departing to take up a contract abroad.

Other relevant national law or policy concerning health

Medical care while employed

- Section 66 of the Labour Act allows for the Minister to create "labour health areas" in places where industrial or agricultural undertakings are located and which may be isolated or remote from medical and health facilities, water supplies and communications. This article requires employers of workers in these areas to provide for facilities and arrangements for medical care while operating in these areas. The nominal terminology used specifies "any worker" in these areas as being entitled to the benefits of this provision, which should be applicable to migrant workers.

- Sections 22 and 23 of the Labour Regulations (1936), regarding employers' obligation to make arrangements for convenient medical services for their labourers, also make use of non-restrictive language ("every employer") that should include the employers of migrant workers.

Medical care in case of injury or disability

- Section 26 of the Employee's Compensation Act (2010) specifies the amount of additional compensation to be provided by the board administering implementation of the act in the case of injury to an employee. The terminology used ("an injured employee") is non-restrictive and should include injured migrant workers.

Living conditions and health

- Section 67 of the Labour Act specifies the Minister's power to designate labour health areas and design/administer town planning, housing and other measures to ensure improved social health and decent living conditions. No language is present that implies the exclusion of migrant workers from the benefits afforded by the Minister's potential regulations.

- Sections 20 and 21 of the Labour Regulations stipulate employers' responsibility to equip housing and labourers' camps with sanitary conditions, water and fuel. The nominal terminology ("any labourers' camp") is non-restrictive and thus should be applicable to those in which migrant workers and members of their families may live.

Access to health insurance

- Section 17 of the National Health Insurance Scheme Act (1999) designates the conditions of registration to and participation of employers and employees in the scheme. *The preamble to the Act describes the National Health Insurance Scheme as being for "every Nigerian", clearly designating participation based upon citizenship. However, the definition given by the Section 49 interpretation for "employee" includes "those resident in Nigeria".*

The act thus leaves ambiguous whether migrant workers and members of their families may participate, either through registration of their employers or as voluntary contributors themselves. Such ambiguity concerning migrant workers' ability to participate in and contribute to the insurance scheme could impede access to any health insurance if no other measures are available.

However, Section 43 anticipates 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 Act, and the provisions of the agreement shall be read in conformity with the provisions of this Act."

Standards of health

- Section 13 of the Child Rights Act entitles "every child" to "enjoy the best attainable state of physical, mental and spiritual health". It states "every Government, parent, guardian, institution, service agency, organization or body responsible for the care of a child shall endeavour to provide for the child the best attainable state of health." It further enumerates that the government shall address infant and child mortality, necessary medical assistance and health-care services, adequate nutrition and safe drinking water, good hygiene and environmental sanitation, combatting disease and malnutrition, health care for expectant and nursing mothers, and supporting mobilization of national and local community resources in development of primary health care for children.

The language used is non-restrictive and thus should include all children of migrant workers in application of these provisions.

Lacunae in law or policy

ILO C-97 Article 5(b) – Ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination.

- This survey found no law or policy specifically providing for adequate medical attention and good hygienic conditions at all stages of the migration process for migrant workers and members of their families. Medical examination upon entry and exit is provided for in Section 8, 28 and 39 of the Labour Act, but the review found no specific provisions for health care and hygienic conditions during the journey.

Recommendations:

On lacunae:

- Require mandatory medical examination of migrant workers upon entry into a contract for every worker, regardless of the industry in which they are employed. In particular, agricultural and factory workers should have access to medical examination at the employer's expense, as they are industries in which workers' health can be severely compromised if proper OSH standards and procedures are not followed. Section 8 of the Labour Act could be amended to reflect this requirement.

On existing law or policy:

- Clearly define the terms for participation of migrant workers and members of their families in the National Health Insurance Scheme Act to facilitate access to health insurance for migrant workers, particularly those who may not have any other access to health insurance.

- Ensure that facilities for medical examination upon entry to and exit from Nigeria for employment purposes are available and accessible in appropriate locations, to give effect to Sections 8, 28 and 39 of the Labour Act.

FAMILY

The provisions of the ICRMW and ILO C-143 relating to the families of migrant workers pertain to basic rights or residency rights facilitating family reunification. Those provisions on basic rights regarding families are provided for in the 1999 Nigerian Constitution, with some ambiguities that may complicate their enjoyment for migrant workers and members of their families.

Those provisions pertaining to family reunification and residency are covered primarily in the Labour Act; however, they are articulated in language that clouds a clear interpretation of whether or not some of the protections extended are in fact available to migrant workers and members of their families from outside Nigeria.

National law and policy on family in view of the conventions

"Members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, and any dependent children and other persons recognized as members of the family by applicable legislation or bilateral or multilateral arrangements. Typically construed as "the spouse and dependent children, father and mother": ICRMW Article 4 and ILO C-143 Article 13.2.

- Section 91 of the Labour Act (1990) defines "child" as a young person under the age of 12 years, differentiated from "young person", which connotes a person under the age of 18 years.

- Section 277 of the Child Rights Act (2003) defines "child" to mean "any person under the age of 18 years".

- Section 73 of the Employee's Compensation Act (2010) defines "child" as any person not more than 21 years old not receiving full-time education or any training and who is not paid wages. "Dependent" is defined as those members of the family of deceased or disabled employees who were totally dependent on that person's earnings. "Spouse" is defined as the person who, at the date of the employee's death, cohabitated with the employee and to whom the employee is legally married or has cohabitated with as a couple for at least 12 months prior to the death of the employee. All of these terms are defined using non-restrictive language, and therefore should apply to the family members of migrant or foreign workers.

ICRMW Article 12.4 – Freedom of parents to ensure the religious and moral education of their children.

- Section 38 of the Constitution guarantees the freedom of thought, conscience and religion to "every person" and thus should be applicable to migrant workers and members of their families.

- Section 76 of the Child Rights Act (2003) allows for a court to make orders ensuring that a child not in the custody of its parent(s) must be "brought up in the religion in which the parent requires the child to be brought up". This provision, protecting the freedom of parents to ensure the religious education of their children, uses non-restrictive language ("a parent", "a child"), and thus should include all children of migrant workers in its application.

ICRMW Article 14 – Prohibition of unlawful or arbitrary interference with privacy, family or communications.

- Section 37 of the 1999 Constitution *guarantees protection of privacy only for citizens, with no provisions found providing the same protection to foreign residents and members of their families.* This appears not to be in conformity with Article 14 of the ICRMW.

ICRMW Article 29 – "Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality."

- Section 5 of the Child Rights Act states that every child has a right to a name and shall be given one either upon birth or upon "another date as dictated by the culture of his parents or guardian". It further stipulates that the birth of "every child" shall be registered in accordance with the Births, Deaths, etc. (Compulsory Registration) Act of 1992. The language used is non-restrictive and thus should include all children of migrant workers, notably those born in Nigeria.

ICRMW Article 30 – Equal right of children of migrant workers to access to education.

- Section 18 of the 1999 Constitution states that the Government will direct its policies towards ensuring equal and adequate educational opportunities at all levels. The language used in this article is non-restrictive, and in view of Nigeria's obligations under the Convention on the Rights of the Child, this Constitutional provision should uphold the right of access to education on the basis of equality of treatment with nationals for children of migrant workers as specified in ICRMW Article 30.

Ensuring protection of the unity of the families of migrant workers: ICRMW Article 44 and ILO C-143 Article 13.

- Section 34 of the Labour Act guarantees the right of "citizens recruited for service in Nigeria" to be accompanied by family to their place of employment. *The use of "any citizen" in paragraph 1 of this section implies non-inclusion of foreign workers*. However, paragraph 2 uses the non-exclusive "any recruited worker" and seeks to prevent the discouragement of family unity. *Further clarification may be needed to uphold the right of migrant workers to be accompanied by family*.

- Section 44 of the Labour Act guarantees the right to be accompanied by family at the employer's expense for those recruited for employment outside Nigeria. This is a broad and positive provision evidently applying to workers recruited in Nigeria for employment abroad that requires that the employer provide facilities to enable family members to accompany these workers. However, as noted above, *the review found no such clear provision applying to migrant workers from abroad recruited for work in Nigeria*.

- Section 1 of the Child Rights Act stipulates, "In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration."

The Committee on the Rights of the Child (CRC), in several general comments, recommendations and other communications, emphasizes family unity as being in the best interests of a child in most cases. Nigeria ratified the Convention on the Rights of the Child in 1991. Section 1 of the Child Rights Act, implemented in accord with the CRC recommendations, should give effect to the provision of Article 44.1 of the ICRMW that States parties shall "take appropriate measures to ensure the unity of the families of migrant workers".

Other relevant national law and policy concerning family

Individual nature of employment contracts

- Section 9 of the Labour Act prohibits interpretation of any contracts as being binding upon the family or dependents of a worker unless expressly provided for in the contract. It also prohibits persons under the age of 16 years from entering into any contract of employment under the act unless it is one of apprenticeship. The nominal terminology used ("a worker" and "no person") is non-restrictive and should also protect migrant workers and members of their families from contracts that implicate family members.

- Section 18 of the Child Rights Act further reinforces the provision of Section 9 of the Labour Act by prohibiting children from entering into a contract, unless it is for "necessaries, entered into by a child for repayment of money lent or for payment of goods supplied to the child".

Lacunae in law or policy

ICRMW Article 17.5 – Equal treatment for migrant workers regarding the right to be visited by family members during detention or imprisonment.

- No law or policy was found in this review that guarantees migrant workers equal rights to visitation by family members. This gap may require implementation of new legislation or of existing legislation not covered by this review to ensure equal treatment with nationals.

ICRMW Article 17.6 – Appropriate attention paid by the competent authorities of the State to the problems posed to members of the family when a migrant worker is deprived of his or her liberty, and in particular to spouses and children.

- No law or policy was found articulating intent or procedure for providing support to the family of imprisoned or detained migrant workers. This gap may require administrative measures, as well as policy formulation to adequately domesticate this stipulation of the ICRMW.

ICRMW Article 50 – Favourable consideration by the State of employment regarding authorization for family members resident on the basis of family reunification to remain in the case of death of a migrant worker or dissolution of marriage.

- No law or policy was found articulating such consideration of authorization to remain by the Nigerian government. However, these decisions may be decided on a case-by-case basis. The implementation of both legislative provisions and policy measures to make clear the conditions under which such authorization to remain may be considered may be necessary for full implementation of the convention.

ICRMW Article 53 – "(1) Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions are applicable to the said migrant worker. (2) With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements."

- No law or policy was found articulating the provisions of Article 53. Regarding part 2, measures to facilitate favourable consideration over other applicants for entry into Nigeria for those family members of migrant workers not allowed to choose their remunerated activity would be required to remedy this gap in domestication of the convention.

ICRMW Article 62.2 – Equal rights relating to family members of migrant workers for members of the families of specified-employment workers.

- No law or policy was found in this review explicitly articulating equal rights for family members of specified-employment workers. This may require adoption of new legislative provisions to recognize equal rights of family members for this category of workers.

ICRMW Article 82 – "The rights of migrant workers and members of their families provided for in the ICRMW may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected."

- No law or policy was found articulating this prohibition or imposing penalties for violations. Policy measures may be needed to address this gap.

Recommendations:

- Extend equal access to the right to privacy and freedom from interference in family life to migrant workers and members of their families. The designation of the fundamental right to privacy as applying explicitly to citizens in Section 37 of the 1999 Constitution should be modified or formally interpreted to extend the right to privacy to migrant workers and members of their families with the same protections and exemptions that apply to citizens.

- Adopt legislation or policy facilitating detained or imprisoned migrant workers' equal rights to visitation by family members.

- Establish administrative measures, resource allocation and explicit policy as necessary to ensure that appropriate attention is paid by the competent authorities of the State to problems posed to members of the family when a migrant worker is deprived of liberty.

- Establish administrative measures to grant favourable consideration to resident family members of migrant workers to obtain permission to engage in a remunerated activity.

- Establish and implement measures, such as regulations and sanctions to ensure pressure is not applied to migrant workers or members or their families, to renounce their rights recognized in the ICRMW, or to sign contracts of employment that restrict enjoyment of these rights.

CIVIL AND POLITICAL RIGHTS

The vast majority of the civil and political rights articulated in the conventions are upheld in the Nigerian Constitution with language apparently applicable to migrant workers and members of their families. Very few provisions in this category were not addressed in some form in both the law and policy surveyed in this review.

However, as noted above, Constitutional provisions concerning privacy appear to not extend to migrant workers and their family members, protection from arbitrary or unlawful interference with their privacy, family, correspondence or other communications articulated in Article 14 of the ICRMW, in its designation of "citizens" as those entitled to the protection of privacy.

National law and policy on civil and political rights in view of the conventions

ICRMW Article 8 – Migrant workers and members of their families shall be free to leave any State […] and "have the right at any time to enter and remain in their State of origin".

- This right is provided for in Section 41 of the Constitution, which provides freedom of entry and exit from Nigeria for Nigerian citizens and hence the "right to leave any state and to enter and remain" for Nigerian migrant workers.

ICRMW Article 9 – Right to life.

- Section 33 of the 1999 Constitution states that "Every person has a right to life, and no one shall be deprived intentionally of his life […]". The nominal terminology used ("every person") should be applicable to migrant workers and members of their families.

- Section 4 of the Child Rights Act (2003) states that "Every child has a right to survival and development." This provision both supports the right to life articulated in Article 9 of the ICRMW, and goes further by adding an additional right to development. The terminology used is non-restrictive ("every child") and should apply to all children of migrant workers.

ICRMW Article 10 – Prohibition of torture and cruel and unusual punishment.

- This prohibition is articulated in Section 17 of the 1999 Constitution, which pertains to the sanctity of the human person and the prohibition in Nigeria of the use of torture. Again, the language used ("every person") is inclusive and thus should be applicable to migrant workers and members of their families.

- Section 11 of the Child Rights Act entitles "every child" to respect for dignity of person, and accordingly, "no child shall be (a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse; (b) subjected to torture, inhuman or degrading treatment or punishment […]." The language used ("no child") is non-restrictive and thus should be applicable to all children of migrant workers.

ICRMW Article 11 – Prohibition of slavery and forced labour.

- This provision is articulated in Section 34 of the 1999 Constitution, which explicitly prohibits slavery and forced labour in Nigeria. The language used ("every individual", "every person") is inclusive and should be applicable to migrant workers and members of their families.

- Forced labour is prohibited in Section 73 of the Labour Act (1990) using the same inclusive language ("every person") as used in the Constitution; thus, this protection should extend to migrant workers and members of their families in Nigeria.

- Section 11(d) of the Child Rights Act upholds the right to dignity of person for "every child" and states, "no child shall be […] held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child." The language used ("no child") is non-restrictive and thus should apply to all children of migrant workers.

- The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003) contains several explicit provisions on forced labour. The terminology used ("any person") nominally extends the protections of this act to migrant workers and members of their families.

    - Section 22 prohibits forced labour and establishes a set prison term of five years or a fine not exceeding 100,000 Naira for anyone requiring another person or persons to engage in forced labour.

    - Section 23 sets a life sentence in prison as the penalty for traffic in slaves.

    - Section 24 defines the various forms of dealing in slaves and sets a life sentence in prison as the penalty for anyone found engaging in such activity.

- Finally, the draft Nigeria LMP acknowledges an explicit prohibition of forced labour in Part 2.1 regarding protection.

ICRMW Article 12 – Freedom of thought, conscience and religion.

- This right is articulated in Section 38 of the 1999 Constitution, using inclusive language ("every person") that should be applicable to migrant workers and members of their families.

- Section 7 of the Child Rights Act entitles "every child" to freedom of thought, conscience and religion, and articulates the duty of parents and legal guardians to provide guidance and direction in the enjoyment of this right, which "shall be respected by all persons, bodies, institutions, and authorities". The language used is non-restrictive, and thus should apply to all children of migrant workers.

ICRMW Article 13 – Freedom of expression.

- Freedom of expression is protected in Section 39 of the 1999 Constitution, using the same inclusive language ("every person"), which should include migrant workers and members of their families.

ICRMW Article 14 – "No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to protection of the law against such interference or attacks."

- As noted above, Section 37 of the 1999 Constitution guarantees the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications. *This protection is explicitly guaranteed to nationals of Nigeria, but the Constitution does not explicitly extend such guarantees to migrant workers and members of their families*.

- Section 8 of the Child Rights Act states, "Every child is entitled to privacy, family life, home, correspondence, telephone conversation and telegraphic communication" subject to the right of parents or legal guardians "to exercise reasonable supervision and control over the conduct of their children and wards". The language used is non-restrictive and should apply to all children of migrant workers.

- Section 11 (c) of the Child Rights Act upholds the right of "every child" to respect for their dignity of person, and states, "no child shall be […] subjected to attacks upon his honour or reputation".

- Section 205 of the Child Rights Act articulates the right of "the child" to privacy and states that this right "shall be respected at all stages of child justice administration in order to avoid harm being caused to the child by undue publicity or by the process of labelling". The language used is non-restrictive and thus should apply to all children of migrant workers.

ICRMW Article 15 – "No migrant worker or member of his or her family shall be arbitrarily deprived of property […] Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation."

- Section 44 of the 1999 Constitution articulates a right to protection of moveable property for "any person", and thus should extend this right to migrant workers and members of their families. However, Section 43 preceding it states that "every citizen shall have the right to acquire and own immoveable property anywhere in Nigeria"; *however, this right is not explicitly extended to migrant workers*.

ICRMW Articles 16.1, 16.2 and 16.3 – Right to liberty and security of person.

- Section 35 of the 1999 Constitution entitles "every person" to personal liberty and prohibits deprivation of this liberty subject to exceptions made in accordance with procedures permitted by law.

- Section 215(1)(c) of the Child Rights Act states that "where a child offender is brought before the Court, the court shall ensure that […] the personal liberty of the child is restricted only after careful consideration of the case, including the use of alternative methods of dealing with the child, and the restriction is limited to the possible minimum".

  It further stipulates that a child is not to be deprived of liberty unless found guilty of "a serious offence involving violence against another person or persistence in committing other serious offences, and there is no other appropriate response that will protect the public safety […]". The language used is non-restrictive ("a child offender"), and thus should apply to all children of migrant workers.

ICRMW Articles 16.4, 16.5 and 16.6 – Procedures for arrest, detention and access to due process.

- Section 36(1) and (4) of the 1999 Nigerian Constitution entitle "a person" to a fair trial within a reasonable time by a court or other tribunal established by law. Section 36(6) establishes the right of "every person" charged with a criminal offence to be "informed promptly in a language that he understands and in detail of the nature of the offence", as well as other procedure supporting the right to due process. The language used is inclusive and thus should be applicable to all migrant workers and members of their families.

Article 17.4 – "During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status."

- Section 204 of the Child Rights Act states that "No child shall be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act." This provision uses non-restrictive language that should apply to all children of migrant workers in its application.

ICRMW Article 18.7 – Prohibition of re-trial for an offence of which one has already been convicted or acquitted.

- This prohibition is directly addressed through Section 36(9) of the 1999 Constitution, which explicitly prohibits retrial in case of conviction or acquittal, making use of inclusive language ("a worker", "no person") that should be applicable to migrant workers and members of their families.

ICRMW Article 19 – Non-conviction if an act or omission did not constitute a criminal offense at the time of occurrence.

- This prohibition is explicitly addressed in Section 36(8) of the 1999 Constitution, using inclusive language ("no person") that should be applicable to migrant workers and members of their families.

ICRMW Article 21 – Illegality of anyone other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry or stay, residence or establishment in the national territory or work permits.

- Section 2 of the Immigration Act (1963) allows for public officials duly authorized by law (in this case, immigration officers) to legally examine and detain identity documents of anyone entering Nigeria for a period of up to seven days. *This review did not find any law or policy prohibiting others from doing so, nor were any penalties found for violation of this provision.*

ICRMW Article 23 – Right to protection and assistance from the consular and diplomatic authorities of one's state of origin (ICRMW Article 23).

- Part 3.7 of the LMP, titled "External protection or protection at destination", demonstrates the Government's recognition of the need to expand consular services in order to better protect migrant workers, both Nigerians abroad and foreign nationals in Nigeria.

ICRMW Article 24 – Right of migrant workers and members of their families to recognition everywhere as a person before the law.

- 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 may be inferred that the right to due process applies to migrant workers and members of their families.

- Part II of the Child Rights Act sets out the legal status and fundamental rights of the child, while Section 210 stipulates that the "presumption of innocence, the right to be notified of charges, the right to remain silent, the right to the presence of a parent or a guardian, and the right to legal representation and free legal aid" shall be respected in administration of the child justice system. The language is non-restrictive ("the child") and thus should apply to all children of migrant workers as persons before the law.

- Section 214 of the Child Rights Act further states that "In the trial of a child under this Act, the observance of his rights to fair hearing, and compliance with due process shall be observed." This provision implies that personhood before the law is a state extended equally to children, and since no language is present that would prevent their inclusion, all children of migrant workers should be included in applying this provision.

ICRMW Article 26.2 – Prohibition of restrictions placed on the exercise of these rights other than those prescribed by law and which are necessary in a democratic society in the interests of national security, public order or the protection of the rights and freedoms of others.

- Section 45(1) of the Constitution states that nothing in the provisions concerning the fundamental rights of privacy and freedom of expression, association and assembly "shall invalidate any law that is justifiable in a reasonable and democratic society (a) in the interest of public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons."

ICRMW Article 29 – Right of each child of a migrant worker to a name, to registration of birth, and to a nationality.

- Section 5(1) of the Child's Right Act, 2003 states that "every child" has a right to a name and shall be given one either upon birth or upon "another date as dictated by the culture of its parents or guardian". It further stipulates Section 5(2) that the birth of "every child" shall be registered in accordance with the provisions of the Birth, Death, etc. (Compulsory Registration) Act of 1992. The language used is non-restrictive and thus should apply to all children of migrant workers.

ICRMW Article 39 – Right to liberty of movement in the territory of the State of employment.

- Section 15(3)(a) of the 1999 Constitution encourages the free mobility of people, goods and services throughout the Federation in the interest of national integration. The nominal terminology used ("every individual") is inclusive and therefore should be applicable to migrant workers and members of their families in Nigeria. No mention is made of any distinction on the basis of nationality.

- However, Section 41 of the 1999 Constitution entitles every citizen of Nigeria to move freely throughout the country and reside in any part thereof. *The designation of this right, specifically for citizens, does not explicitly extend this guarantee of free movement to migrant workers or other foreign nationals*.

- Section 9 of the Child Rights Act entitles "every child" to freedom of movement subject to parental control that is not harmful to the child. The language used is non-restrictive, and thus should include all children of migrant workers in application of this provision.

ICRMW Article 40 – Right to freedom of association and to form trade unions.

- Section 40 of the Constitution guarantees freedom of assembly and the right to belong to political parties and trade unions to "every person". This inclusive language should include migrant workers and members of their families in Nigeria in enjoyment of these rights.

- Section 6 of the Child Rights Act states that "Every child has a right to freedom of association and peaceful assembly in conformity with the law and in accordance with the necessary guidance and directions of his parents or guardians." The language is inclusive ("every child") and thus should include all children of migrant workers in Nigeria in enjoyment of these rights.

- The Trade Union (International Affiliation) Act (1996), in its very existence, affirms recognition of freedom of association rights, trade union rights, and allows for international affiliation of Nigerian trade unions.

- Section 2 of the National Institute for Labour Studies Act (1984) sets out the "Objects of the Institute"; 2(a), 2(b) and 2(d) provide for supporting the technical capacity and competencies of trade unions that are essential to effectively realizing freedom of association and trade union rights. The nominal terminology used is non-exclusive, and thus these dispositions should be applicable and available to migrant workers.

- Interestingly, the NCFRMI Act's (1989) First Schedule, Section 15 provides refugees with equal collective bargaining rights and access to trade unions as nationals. *Such explicit recognition is not present for migrant workers and members of their families*, but is instead inferred or implied through non-exclusive language. The extension of these rights to migrant workers in an explicit terms would be beneficial to ensure full implementation of the conventions.

- Part 3.1 of the LMP ("Protection") demonstrates the Government's intent to support the "associations and trade unions in the State of employment for the promotion and protection of [migrant workers'] economic, social, cultural and other interests", which would further facilitate access to trade unions for migrant workers and members of their families.

ICRMW Article 42.3 – Right of migrant workers to enjoy political rights in the State of employment if that State grants them such rights.

- Section 77(2) of the 1999 Constitution on elections to National Assembly, entitles every citizen of Nigeria who are 18 years of age and older and who are residing in Nigeria at the time of registration to be registered as a voter for the election of members of the Senate and House of Representatives.

This review noted news stories that Nigerian citizens residing abroad (Nigerian diaspora) are reportedly not enabled to register and exercise voting rights in Nigerian elections.[9]

- Section 117 entitles every citizen of Nigeria to register to vote for any legislative house; Section 132(5) entitles those registered for legislative house elections to also vote at election to the office of President, and Section 175(5) entitles these voters to vote at election to the office of Governor of a State.

This review found no Constitutional provisions that either entitle or preclude resident migrant workers from political participation and/or voting at the State or local levels.

- However, the Electoral Act of 2010 (amended in 2011) explicitly restricts voter registration to: (a) citizens of Nigeria (b) 18 years of age or older and (c) ordinarily lives, works or originates from the Local Government Area Council or Ward covered by the registration centre (see Section 12(1)).

Recommendations:

- Ensure that the right to privacy is appropriately upheld in law for migrant workers and members of their families with protections and exemptions that apply to citizens.

- Ensure that migrant workers and members of their families are recognized as persons before the law. Explicit recognition of this right should be articulated in Constitutional and/or other law, rather than inferred from other provisions.

- Establish explicit law and/or administrative rules guaranteeing that "no migrant worker or member of his or her family shall be arbitrarily deprived of property" and that migrants shall have the right to fair and adequate compensation in case of expropriation. Arbitrary uncompensated expropriation of migrants/foreigners property has occurred in many countries, especially in circumstances of expulsions; explicit legal protections are advisable prevention, including in Nigeria.

- Establish explicit legal measures prohibiting anyone other than a duly authorized public official from retaining, confiscating or destroying migrant identity and/or immigration documents. Retention of migrant identity and/or immigration documents by others is a widespread method of pressure or coercion commonly exercised to oblige compliance with unacceptable working and living conditions and/or to hold migrant workers in situations with character of forced labour.

- Uphold due process in all immigration procedures and ensure that arbitrary detention of migrant workers and members of their families does not take place.

- Ensure that migrant workers and members of their families legally residing in Nigeria enjoy their right to freedom of movement. Particular reference to community citizens of ECOWAS may be appropriate.

- Explicitly recognize rights of migrant workers to freedom of association, collective bargaining and access to trade union membership in national legislation and policy. Given potential for policy changes under different governments, explicit recognition of these rights for migrant workers in law is advisable. Such provisions explicitly afforded to refugees in the National Commission for Refugees, etc. Act could serve as a model.

9 See, for example, The New Telegraph, "Diaspora voting: Still a long wait for Nigerians abroad", 8 April 2014. Available from http://newtelegraphonline.com/diaspora-voting-still-long-wait-nigerians-abroad/ Adibe, J., "Nigeria: Debating Diaspora Voting," The Daily Trust. 28 August 2014, Available from http://allafrica.com/stories/201408281138.html

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Many of the provisions on social and cultural rights found in the conventions are cited above under Category 7 ("Family,"), as they relate to children and cultural identity of migrant workers and members of their families.

Additional relevant provisions of the conventions concerning economic, social and cultural rights are listed hereafter, in particular concerning cultural identity, economic rights and protection of wages.

While provisions related to economic rights in the conventions are relatively few, this review found ample national legislation not corresponding to articles of the conventions that nonetheless protects economic rights of workers in Nigeria, particularly regarding prohibition of deductions from workers' wages. The language used, almost without exception, is inclusive and suggests applicability of these protections to migrant/foreign workers, as well as to nationals.

National law and policy on economic, social and cultural rights

Respect for cultural identity of migrant workers and members of their families: ICRMW Article 31 and ILO C-143 Article 12(f).

- Section 23(6) of the Labour Regulations (1936) articulates a provision that "workers recruited shall be grouped at the place of employment under suitable ethnical conditions". This provision implies encouragement for measures of respect for and preservation of national, ethnic and/or cultural identity.

Right to transfer earnings, savings and personal effects on termination of stay in the State of employment: ICRMW Article 32 and ILO C-97 Article 9.

- Part 3.7 ("External protection or protection at destination") of the LMP calls for bilateral agreements on the transferability of migrant workers' earnings and savings. This provision should help facilitate effective implementation of these articles of these two conventions.

ICRMW Article 40 – Right to form associations and join trade unions (also addressed under category 8 of this review: Civil and political rights).

- Section 2 of the National Institute for Labour Studies Act (1984) lays out the objects of the Institute and the activities, programs, studies and other resources it is meant to provide. In particular, the stated objective of paragraph (a) to "provide workers' education generally, so as to enhance the role of trade unions in the social and economic development of the country […]" represents an inherent recognition of the role of trade unions in the national economy. The nominal terminology used is non-restrictive, thus the programs listed should be applicable and available to migrant workers.

- Section 15 of the NCFRMI Act (1989) accords to "refugees lawfully staying in the territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances" regarding non-profit associations and trade unions. *However, the legislation neither explicitly mandates full respect for freedom of association rights nor equality of treatment with nationals*.

- Part 3.7 of the LMP ("Protection") demonstrates the intent to support the "associations and trade unions in the State of employment for the promotion and protection of [migrant workers'] economic, social, cultural and other interests", in accord with Article 40 of the ICRMW.

ICRMW Article 46 – Exemption from "import and export duties and taxes in respect of their personal and household effects, as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment".

- Section 43 of the Labour Act (1990) provides explicit exemptions from customs on repatriation for Nigerian migrant workers in paragraphs (a) and (b).

However, no provisions were found exempting departing foreign migrant workers from any potential import/export duties and double taxation on personal or household effects, as well as on equipment necessary for remunerated activity.

Other relevant national law and policy pertaining to economic, social and cultural rights

Protection of wages

- Section 6(4) and (5) of the National Minimum Wage (Amendment) Act (2011) allows for government personnel to make claims to employers on behalf of workers for restitution or payment in arrears of wages owed under the act. The terminology used ("a worker") is inclusive, and therefore should be applicable to migrant workers.

Provisions concerning deductions to wages

- Section 4 of the Labour Act (1990) prohibits deductions made from wages by employers, such as those made for overpayment of wages, except where expressly permitted by the Labour Act itself. The terminology used ("a worker") is inclusive, and therefore should be applicable to migrant workers.

- Section 7 of the Labour Regulations (1936) requires that wages be paid personally with no deductions whatsoever except as authorized by contract, using terminology ("an employee") that is inclusive, and should therefore be applicable to migrant workers.

- Section 26 of the Labour Regulations prohibits deductions made from wages for housing and other benefits provided for or paid for by the employer, using inclusive terminology ("an employee") that is inclusive, and therefore should be applicable to migrant workers.

- Section 14 of the Employee's Compensation Act (2010) prohibits employers from deducting any part of payments meant to be paid by employers under this act from workers' wages, using terminology ("an employee") that is inclusive, and therefore should be applicable to migrant workers.

- Section 3 of the National Minimum Wage (Amendment) Act requires payment of a wage not less than the national minimum wage clear of all deductions, except those required by law or those made for pension funds. The terminology used ("the worker") is inclusive, and therefore should be applicable to migrant workers.

- Section 62 of the Factories Act (1987) prohibits any deductions from employees' wages in respect of anything to be done or provided by the employer under the terms of this act. The terminology used ("a person") is inclusive and therefore should be applicable to migrant workers.

- Section 17 of the National Health Insurance Scheme Act (1999) concerns payment of contributions under the scheme. Under the second paragraph of this act, *the National Health Care Scheme is limited to "every Nigerian", with no provisions made for foreign nationals. Therefore, it could be interpreted to exclude deductions for the health-care scheme for foreign migrant workers.*

Due process

- Section 81 of the Labour Act addresses labour complaints and the procedures to be followed in pursuance of these complaints. The terminology used ("an employer") is non-exclusive and therefore should be applicable to migrant and foreign workers. However, *this provision appears to be limited to individual dispute settlement, without prejudice to industrial disputes.*

Participation in cultural life

- Section 12(2) of the Child Rights Act (2003) states that "Every child is entitled to participate fully in the cultural and artistic activities of the Nigerian, African and world communities." Sub-section (3) further states that "Every Government, person, institution, service, agency, organisation and body, responsible for the care and welfare of a child shall, at all times, ensure adequate opportunities for the child in the enjoyment of [this] right […]." The language is inclusive ("every child") and thus should apply to all children of migrant workers in Nigeria.

Lacunae in law or policy

ICRMW Article 48 – Prohibition on taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar situations, without prejudice to double taxation agreements, as well as entitlement to deductions or exemptions from taxes of any description and tax allowances applicable to nationals in similar circumstances – also cited in Category 3 of this review: Non-discrimination/Equality of treatment

- This review found no law or policy that either allows equal tax deductions and allowances with nationals in similar circumstances or prohibits higher taxes, duties or charges on migrants than those imposed on nationals. However, this review did not examine potentially relevant Nigerian tax law (outside the scope of this survey).

ICRMW Article 61.4 – Provision for payment of the earnings of project-tied workers in their State of origin or habitual residence.

- This review found no law or policy pertaining to payment of project-tied workers in their State of origin or habitual residence. However, this review did not examine bilateral or multilateral agreements or standard contracts outside the scope of the review.

Recommendations:

On lacunae:

- If not in place, formulate and implement law, as well as tax codes and regulations, on duties that ensure Nigeria's compliance with convention prohibitions on levying more onerous taxes, duties or charges on migrant workers.

- Ensure that project-tied workers may be paid in their State of origin or habitual residence should they choose to be. If no legislation or policy is in place, appropriate measures to adopt legislation and/or enter into bilateral or multilateral agreements with other States that allow such payment should be taken.

On existing law or policy:

- Adopt or amend legislation to ensure that arriving and departing foreign workers are not charged with import and export duties on personal and household goods on tools required for remunerated activities, from which nationals are exempted, similar to those applied to arriving and departing Nigerian citizens under Section 43 of the Labour Act. Providing for equality of treatment with nationals in import/export duties may also be addressed in bilateral or multilateral agreements, subject to ICRMW Articles 46 and 48.[10]

- Amend or interpret the relevant provisions to the National Health Insurance Act to ensure that migrant workers are eligible to participate in the National Health Care Scheme.

- Amend or ensure interpretation of Section 81 of the Labour Act to apply the labour complaint procedures described therein to industrial disputes, as well as individual cases, with explicit applicability to migrant workers.

10 The authority of binding international human rights law implies that bilateral and multilateral agreements on such issues should be subject to conformity with provisions of this (and other) international conventions. In practice, some states – usually non-party to binding international instruments – use bilateral agreements as a means to oblige contracting States to forgo treaty commitments, allowing for reduction of or non-protection of rights of migrants spelled out in these instruments.

WOMEN AND YOUTH

At the time the international conventions concerning migrant workers were elaborated, little attention was accorded to specificities of gender and youth. However, it is generally understood that the provisions in these conventions apply fully and equitably to women and to both female and male youth and adolescent migrants.

Furthermore, provisions of the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child, as well as general comments and findings of the respective treaty bodies, reinforce the application of human rights principles contained in these instruments to all migrant workers and members of their families – particularly women and children migrants.

National law and policy on women and youth applying to migrants (beyond the provisions of the conventions)

Women

- The Labour Act contains specific provisions regulating the conditions under which women may work in certain industries and during certain hours.

    - Section 55 of the Labour Act (1990) establishes the conditions under which women may engage in night work, except in the sectors of nursing and agricultural work. It is intended to regulate decent working hours and mandatory rest periods for women in these sectors. The terminology used ("no woman") is explicit, and evidently should be applicable to migrant women workers.

    - Section 57 of the Labour Regulations (1936) grants the Minister of Labour and Productivity authority to make "regulations prohibiting or restricting, subject to such conditions as may be specified in the regulations, the employment of women in any particular type or types of industrial or other undertakings or in any process or work carried on by such undertakings". *Caution may be advisable in an exercise of this discretionary authority to ensure that its exercise does not result in inappropriate restrictions on employment opportunities available for women, including migrant women*.

- Section 2 of the National Commission for Women Act (1992) articulates the objectives of the Commission, which include, among others, promoting women's welfare generally, improving the living standards and educational opportunities of rural women, mobilizing women collectively to improve access to leadership, raising awareness on women's rights and promoting the rights of the child. The terminology used is non-exclusive and therefore should be applicable to migrant women workers. Paragraphs 2(b)(iii), (f) and (h) – providing for collective bargaining, training on collective bargaining, and training in employment and entrepreneurship – are particularly relevant for migrant/foreign women workers.

Youth

- The Labour Act contains specific provisions regulating the conditions under which youth (defined above in Category 2 of this review: Definitions) may be employed.

    - Section 58(1)(a) allows for children to be employed in "light work of […] domestic character", *but does not stipulate regulations around the conditions of work for such children. Subsequent provisions of this law exempt young domestic workers from the regulations stipulated for employment of children in other occupations.*

      In general, the conditions under which children/youth may be employed and the protections provided in this article are articulated in non-exclusive language ("no child"), and therefore should be applicable to migrant workers. *Explicit regulations of conditions under which children may work in domestic employment would be necessary to prevent exploitative child labour.*

    - Section 60 articulates similar provisions regarding night work for young persons as those established in Section 55 for women. The nominal terminology used ("no young person") is non-restrictive and thus these provisions should be applicable to migrant workers.

- The Child Rights Act (2003) also contains specific provisions on the prohibition of exploitative child labour.

    - Section 18 prohibits children from entering into contracts, "except a contract for necessaries, entered into by a child for repayment of money lent or for payment of goods supplied to the child" and states that any other contract shall be void.

    - Section 28 states, "no child shall be (a) subjected to any forced or exploitative labour; or (b) employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character; […] or (d) employed as a domestic help outside his own home or family environment." The section uses non-restrictive language ("no child") that should extend this protection to all children of migrant workers.

    - Section 29 states that the provisions relating to young persons in sections 58, 59, 60, 61, 62 and 63 of the Labour Act shall apply to children under the Child Rights Act. These provisions are elaborated above in this section, as well as in category 4: Conditions of work.

    - Section 30 prohibits the buying, selling, hiring, letting for hire, disposition of or possession of a child. It further prohibits the use of children for begging, prostitution, domestic or sexual labour, hawking goods on the street, or "any other purpose that deprives the child of the opportunity to attend and remain in school as provided for under the Compulsory, Free Universal Basic Education Act". The language used is non-restrictive ("no person", "a child") and thus should apply this provision to all children of migrant workers.

- The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003) includes specific provisions regarding children and young persons.

    - Section 21 articulates a penalty for the procurement of child labour in the sex industry in particular. Prohibition of forced labour in all industries is also articulated in Sections 22 (Unlawful forced labour), 23 (Traffic in slaves) and 24 (Slave dealing) of this act, for "any person," regardless of age.

    - The language used in Sections 21–24 is non-exclusive ("a child") and thus should be applicable to migrant children. The review understood this act to be specifically applicable to trafficked or potentially trafficked migrants of all ages.

Recommendations:

- Ensure that any provisions intended to protect the health and safety of women workers do not inappropriately restrict their access to employment or facilitate gender-based discrimination in the workplace.

- Ensure clear and stringent regulations on the conditions of employment of children and young persons, particularly in domestic work.

DETENTION AND EXPULSION

In its survey of the legislation and policy pertaining to detention and expulsion, this review found several provisions regarding immigrant detention and expulsion that could impede effective implementation of the conventions.

The first issue arises from designation of "prohibited immigrants" under the Immigration Act and the discretionary power of the "Minister charged with the responsibility for immigration" to designate persons under this category who may then be deported in consequence. Such arbitrary authority appears to allow for incidents of collective and/or arbitrary arrest, detention and expulsion that could contradict one or more articles of the ICRMW.

The second issue is a lack of distinction between administrative infractions regarding immigration and criminal offences and proceedings. No distinction between the legal procedures for criminal cases and those for migrants in irregular situations was identified in any law surveyed in this review. While the Immigration Act does not clearly define the term "offence", the act's definition of offences, procedures and sanctions associate transgressions of immigration laws with criminal matters, whereas the terminology used in the ICRMW refers to "infractions" generally understood as civil or administrative.

Nonetheless, certain constitutional provisions apparently afford migrant workers rights to due process, representation, translation and other procedural guarantees for proceedings concerning arrest, detention and deportation, as well as other offences.

National law and policy on detention and expulsion

ICRMW Article 16.4 – Prohibition of submitting migrant workers and members of their families, whether individually or collectively, to arbitrary arrest or detention.

- *The Immigration Act (1963) contains two provisions that appear liable to allow contraventions of Article 16.4 of the ICRMW.*

    - Section 18(2) regarding "prohibited immigrants" allows for the Minister to classify groups of persons as such and to prohibit their entry into or stay in Nigeria. Such arbitrary authority appears to allow the possibility for incidents of collective and/or arbitrary arrest, detention and expulsion that could contravene Article 16.4.

    - Section 31(4) provides "that any person required or authorised by this Act to be detained may be arrested without warrant by an immigration officer duly authorised in writing either generally or specifically by the Director of Immigration, or by any police officer; and any person who is detained by virtue of this Act, or is being removed in pursuance of this section, shall be deemed to be in legal custody."

      This provision establishes a procedure for arrest requiring written authorization from the Director of Immigration or any police officer. *However, subsequent to Section 18(2), it appears that this authority could nonetheless leave migrant workers vulnerable to arbitrary arrest or detention "without warrant"* should they be classified by the Minister or the Director of Migration as part of a specified category of person to be detained subject to deportation.

ICRMW Article 16.8 – Right to take proceedings before a court in case of arrest or detention to determine the lawfulness of such arrest or detention.

- Section 35(4) and (5) of the Constitution mandate that any arrested or detained person shall be brought before a court of law "within a reasonable period of time" that is defined in Section 35(5) as within one day of arrest or detention in areas where a competent court is within a 40-km radius, and two days or any other period deemed "reasonable" by a court in areas where a competent court lies at a further distance.

ICRMW Article 16.9 – Right to compensation for unlawful arrest or detention.

- Section 35(6) of the Constitution states that any person unlawfully arrested or detained shall have the right to compensation and public apology from the appropriate authority or person. The language used is non-exclusive ("any person"), and thus this right to compensation should pertain also to migrant workers and members of their families.

ICRMW Article 17 – Rights and treatment of detained migrant workers (be treated with humanity and dignity, be separated from convicted persons, be treated with the essential aim of reformation and social rehabilitation, right to family visitation, attention by the State to problems posed to detained person's family, equality of treatment with nationals, relieved of bearing the cost of verification of any infractions or provisions related to migration).

- Section 35(2) of the Constitution states that any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his/her choice. Section 35(3) states that any person who is arrested or detained shall be informed in writing within 24 hours in a language that he/she understands of the facts and grounds for arrest or detention. While these provisions do not correlate directly to the provisions of the convention, which are primarily focused on specificities of equal treatment with nationals in similar situations and detention conditions differentiated from conditions of other convicted persons as befits the particular nature of administrative detention, Section 35 articulates principles with non-restrictive language ("any person") that should ensure their applicability to migrant workers and members of their families.

Prohibition of depriving migrant workers or members of their families of their liberty, of depriving them of their authorization of residence or work permits, and of expulsion "merely on the grounds of failure to fulfil a contractual obligation unless fulfilment of that obligation constitutes a condition for such an authorization or permission to stay": ICRMW Article 20 and ILO C-97 Article 8.

- Section 35(1) of the Constitution articulates the circumstances under which persons may be deprived of their liberty, specifying that "no person" shall be deprived of liberty save in the cases listed in the section – none of which pertain to fulfilment of contractual obligations. The nominal terminology used ("every person", "no person") is inclusive and therefore should also protect migrant workers and members of their families from imprisonment save in the conditions given.

However, no law or policy was found that would explicitly prohibit depriving migrants and members of their families of their authorization to stay or their work permits in case of non-fulfilment of a contractual obligation.[11]

ICRMW Article 22.1 – "Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually."

- Section 25 of the Immigration Act grants the Minister discretionary authority to deport as prohibited immigrants persons in categories that he may specify upon entry to Nigeria by otherwise than by sea or air.

Any designation of a class under the exercise of this authority could give rise to situations of de facto collective expulsion of designated groups in the absence of a clear requirement for case-by-case examination.

11 The specificity of reference to migrant workers is because Nigerian citizens do not face risk of deprivation of residence or work authorizations nor expulsion in case of non-fulfilment of contract. For this reason, some form of explicit protection is needed that is by definition justified differential treatment, not discrimination, due to specifically different circumstances.

ICRMW Article 22.2 – Prohibition of expulsion except as ordered by a competent authority in accordance with law.

- The Immigration Act articulates the legal provisions and procedures necessary for expulsion.
    - Sections 20 and 21 require that an appeal process take place before a deportation order may be executed, and place the decision for deportation as one available only upon conviction by an appropriate court.
    - Section 19 concerning deportation orders in special cases allows for the Minister to order the deportation of any person as a prohibited immigrant regardless of whether or not they have been prosecuted for a criminal offence, if he/she feels that it is in the public interest. This section qualifies that of the appeals and deportation process described in Section 20, but does place such deportations in accordance with ICRMW Article 22.2 as a "competent authority in accordance with law" orders them.

ICRMW Article 22.3 – Right to have the decision of expulsion communicated to migrant workers in a language they understand, in writing upon request where not otherwise mandatory, and the reasons for the decision stated.

- Section 36(6) of the Constitution guarantees every person charged with a criminal offence the right to be informed in detail of the nature of the offence in a language he/she understands and to have, free of charge, the assistance of an interpreter if one cannot understand the language used at the trial of the offence. While this provision pertains specifically to criminal proceedings, if administrative offences are treated as such, migrant workers and members of their families should have the right to these protections, given the non-exclusive language used ("every person").

However, treating immigration infractions as criminal offences has troubling implications in stigmatizing migrants in public opinion, imposing disproportionate sanctions on transgression of civil or administrative law, and arbitrarily criminalizing comportment only applicable to non-citizens.

ICRMW Article 22.4 – Right to have expulsion orders appealed and reviewed by a competent authority.

- Sections 19, 20 and 21 of the Immigration Act appear in accordance with Article 22.4 of the ICRMW in providing for an appeals process before a deportation order may be valid.

ICRMW Article 22.5 – Right to seek compensation if an expulsion order is subsequently annulled.

- Section 35(6) of the Constitution deals specifically with arrest and detention, both of which generally precede the execution of a deportation order. As such, while it does not specifically reference deportation, this provision for the right to seek compensation may allow for pursuit of the "right to seek compensation according to law" in cases of deportation. The language used is non-exclusive ("any person") and thus should enable migrant workers and members of their families to seek compensation in relevant circumstances.

Prohibition of requiring migrant workers or members of their families to bear the costs of their expulsion: ICRMW Article 22.8 and ILO C-143 Article 9.3.

- Section 22(3) of the Immigration Act and Article of the Labour Act designate the employer as the responsible party for the costs of expulsion of deported workers. The nominal terminology used ("any person") is inclusive, and thus should be applicable to migrant workers and members of their families.

ICRMW Article 22.9 – Right to receive wages and entitlements due to migrant workers and members of their families subject to expulsion orders.

- Part 3.7 of the LMP ("External protection or protection at destination") calls for bilateral agreements on the transferability of migrant workers' earnings and savings, and would support allowing transfer of wages and benefits owed to migrant workers and members of their families subject to expulsion orders.

However, no legal provision was found in this review that explicitly guarantees the right of migrant workers and members of their families subject to expulsion orders to receive wages and entitlements due to them.

Other national law concerning detention and expulsion

Detention of minors

- Section 212 of the Child Rights Act stipulates that detention of children pending trial shall only be used as a measure of last resort and for the shortest possible period of time. It states that, wherever possible, detention of minors should be replaced by "alternative measures, including close supervision, care by and placement with a family or in an educational setting or home". While in detention, children are to be given "care, protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance, that they may require" depending on "age, sex and personality".

  This section is in accordance with the CRC's recommendations regarding child detention. Nigeria ratified the Convention on the Rights of the Child in 1991. The language used in this provision is non-restrictive ("a child") and thus should protect all children of migrant workers in its application.

Lacunae in law or policy

ICRMW Article 16.7 – Right to communicate with and be represented by the diplomatic or consular authorities of the State of origin in case of arrest or detention, and to be informed of any rights deriving from relevant treaties between the States concerned.

- This review found no specific law or policy assuring respect of this right for migrant/foreign workers and/or members of their families. This right is also supposed to be guaranteed by the 1963 Vienna Convention on Consular Relations (Article 36), to which Nigeria is a State Party.[12]

ICRMW Article 22.6 – Right in the case of expulsion to a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due and any pending liabilities.

- No law or policy was found in this review giving migrant workers and members of their families the right to a reasonable opportunity to settle any claims for wages or other entitlements before or after departure. The LMP calls for seeking bilateral agreements to ensure the portability of wages and benefits; however, no mention is made regarding cases of expulsion. In any case, a policy statement would not have the binding legal authority of relevant legislation.

12 An incident reported at a "stakeholders meeting" in December 2014 reviewing draft assessment reports in this series illustrated that absence of clear authoritative instructions on respecting this right can result in serious diplomatic problems, as well as mistreatment of individuals.

ICRMW Article 56.1 – Prohibition of expelling migrant workers and members of their families in regular situations from a State of employment, except for reasons defined in the national legislation of that State and subject to the safeguards established in part III; and

ICRMW Article 56.2 – Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.

- No law or policy was found by this review providing explicit prohibition of expulsion of migrant workers in regular situations, nor any criteria protecting migrant workers from expulsion for purposes of depriving them of rights arising out of authorization of residence and work permits.[13]

ICRMW Article 56.3 – Account taken of humanitarian considerations and the length of time that a person has already resided in the State of employment in decisions of expulsion.

- No law or policy was found by this review articulating a commitment to take into account humanitarian considerations or the length of time spent in the country by a person to be expelled from Nigeria.

Recommendations:

On lacunae:

- Adopt appropriate legislation and/or administrative measures to guarantee migrant workers facing arrest, detention or deportation access to the diplomatic or consular authorities of their States of origin.

- Adopt appropriate legislation and/or administrative measures to ensure that migrant workers have adequate time in cases of expulsion to settle any claims for wages and other entitlements before or after departure.

- Adopt appropriate legislation and/or administrative measures to ensure that migrant workers and members of their families in regular situations are not expelled (except for reasons defined in national legislation), and no expulsion takes place for purposes of depriving them of rights arising out of authorization of residence and work permits.

- Adopt appropriate legislation and/or administrative orders to ensure that humanitarian considerations and the length of time a migrant worker has already spent in the country are taken into account in rendering decisions of expulsion. In such cases, consultation between relevant government bodies and concerned social service and civil society organizations would be advisable.

13 Historical incidences of arbitrary and sometimes mass expulsions of migrants from countries in West Africa as well as elsewhere – objectively depriving migrant workers of their rights – certainly gave impetus to including these provisions in the ICRMW.

On existing law or policy:

- Review sections 18(2), 25 and 31(4) of the Immigration Act:

    - To safeguard that discretionary classification of "prohibited immigrants" and the procedures following such classification do not result in collective arrest and detention of migrant workers and members of their families and/or lead to collective expulsion.[14]

- Amend existing legislation and/or establish administrative orders that prohibit depriving migrant workers and members of their families with authorization of residence or work permits solely on the basis of non-fulfilment of a contractual obligation, unless that obligation constitutes a legitimate condition for authorization to stay under applicable law.

- Explicitly classify or reclassify immigration status infractions as administrative rather than (explicitly) criminal offences in law and policy to ensure that migrant workers and members of their families have full access to the rights articulated in the conventions, particularly those pertaining to due process, especially in arrest detention and expulsion procedures.

14 In this and other cases where legislation provides discretionary authority for public officials to take actions that could transcend convention standards, international treaty supervision will usually expect to see some form of explicit rule, regulation or instruction ensuring compliance, rather than sole reliance on discretionary judgements that can indeed "change without notice" subject to political or administrative factors if not regulated by explicit parameters or limitations.

EMPLOYMENT AND RECRUITMENT

This review found ample legislation concerning employment and recruitment, particularly in the Labour Act of 1990 and the Immigration Act of 1963. While several contradictions to the provisions of the conventions are present in both acts, these are primarily provisions concerning the linkage between immigration and residency related to employment.

Provisions pertinent to this review concerning terms of contract, opportunities for consultation with migrant workers and regulation of private recruitment agencies are almost all in accordance with the provisions of the conventions. Implementation of the LMP adopted by the Federal Executive Council in 2014 will contribute to further domestication of the provisions of the conventions, as well as to effective application of the legislation and policy already in place.

National law and policy on employment and recruitment in view of the conventions

ICRMW Article 37 – Right to be fully informed by the State of origin or the State of employment of the conditions applicable to admission, stay and the remunerated activities migrant workers may pursue.

- The LMP contains two key provisions that address Article 37 of the ICRMW:
    - Part 2.1.3 of the LMP ("Institutional framework") implicitly anticipates the formulation and provision of pre-departure information, counselling and training to intending migrants by assigning the institutional responsibility for it to the International Labour Migration Desk.
    - Part 3.5 of the LMP ("Orientation programmes") calls for the development of orientation seminars and intensified information campaigns that would be in accordance with the "appropriate services to deal with questions concerning international migration of workers and members of their families" also relevant to Article 65 of the ICRMW, including:
        a. "the provision of appropriate information, particularly to employers, workers, and their organizations on policies, laws, and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters"; and
        b. "the provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations."

      The activities proposed in Part 3.5 of the LMP appear to give ample effect to upholding the right of migrant workers to be fully informed, articulated in ICRMW Article 37.

ICRMW Article 42.1 – "States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions."

- The LMP for Nigeria is an important official initiative to monitor and respond to needs of both Nigerian workers abroad and those foreign workers present in Nigeria. The relatively unrestricted and vibrant civil society situation in Nigeria conducive to the self-organization of migrant community organizations, the engagement of other civil society organizations – notably trade unions – on migration concerns, and the participation of migrant representatives in such civil society organizations is another manifestation this review observed, giving effect to the concern of ICRMW Article 42.1.

The visible concern in and outside government for the Nigerian diaspora also appears to give effect to this article.

Prohibition of designating migrants who have lost their employment as in an irregular situation, and the right to seek alternate employment: ICRMW Article 51 and ILO C-143 Article 8.1.

- The review found no explicit prohibition of designation of migrants who have lost their employment as being in an irregular situation.

However, Section 34(3) of the Immigration Act (1963) concerning the employment of immigrants grants the Minister discretionary power to designate "any person" as a "prohibited immigrant" who ceases to be employed. This appears to allow the possibility of discretionary acts that would contravene ICRMW Article 51 and ILO C-143 Article 8.1.

ICRMW Article 63 – Rights of self-employed migrant workers and members of their families.

- No law or policy relating specifically to the rights of self-employed migrant workers and their families was found in this review. However, *Chapter III, Section 18 of the NCFRMI Act (1989) affords to refugees' equal treatment with nationals regarding self-employment*. While expressing a principle regarding treatment of foreigners, this provision applies exclusively to refugees, only addresses treatment relative to other foreign nationals, and only for those in recognized regular status. No other legal provisions were found explicitly addressing self-employed foreign nationals, although anecdotal data indicates that self-employed migrants may constitute a substantial proportion of the immigrant/migrant population in Nigeria.

- Nonetheless, implementation of the ECOWAS Protocol and government policy in Nigeria to attract direct foreign investment by encouraging foreigners to come and invest in the country may provide some measures of protection for at least certain classes of self-employed migrants.

ICRMW Article 66 – Right to recruit workers for employment in another State restricted to public services or bodies of the State of employment or the State where such operations take place, or a body established by virtue of a bilateral or multilateral agreement.

- Section 23 of the Labour Act (1990) is titled "Prohibition of recruiting except under permit or licence" and provides an initial framework for licenced labour recruitment, which may be applicable to recruiting foreign workers and/or regulating recruitment of Nigerians for employment abroad. Further discussion is found in the GMPA assessment review on potential ratification and application of ILO C-181.

- Section 2 of the National Directorate of Employment Act (1989) defines the objectives of the directorate itself. According to this definition, the Directorate is a public body dealing with employment and recruitment; however, no provision is mentioned for establishing its cooperation with public services or bodies of other States, or bodies established by virtue of a bilateral or multilateral agreement.

- Part 2.1.2.1 of the LMP ("Regulation – Employment and recruitment agencies") highlights the FMLP's designation of registration and licensing procedures.

- Part 3.6 of the LMP ("Private employment agencies") articulates intent to monitor and regulate the operations of private employment agencies – that the FMLP is already officially engaged in doing.

ILO C-97 Article 3.1 – Member States' responsibility to take appropriate measures against misleading propaganda related to emigration and immigration.

- Part 2.1.3 of the LMP ("Institutional framework") designates the International Labour Migration Desk to provide information on migration for employment. This review notes that in so doing, it may be "tak(ing) all appropriate measures against misleading propaganda" as called for in Article 3.1 of ILO C-97.

ILO C-97 Article 4 – Member States' responsibility to take measures in facilitating the departure, journey, and reception of migrants for employment.

- Section 39 of the Labour Act provides a regulatory framework for Nigerian nationals leaving the country for purposes of employment abroad. Section 39(b) also provides a measure of protection against potential trafficking and the spread of false information for departing Nigerian migrant workers.

ILO C-143 Article 14(a) – Member States' rights to make the free choice of employment based on prescribed conditions.

- Section 47 of the Immigration Act 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 […]"

This section establishes an authorization to restrict migrants' free choice of employment and additionally assigns the approval authority to an official not generally charged with employment competencies.

ILO C-143 Article 14(b) – Member States' rights to make regulations concerning recognition of training and qualifications in consultation with social partners.

- Part 4.3 of the LMP ("Linking Labour migration and employment") states that the International Labour Migration Desk shall be strengthened to "provide information for the certification of professional and technical qualifications standards in harmony with international expectations". However, the review did not find specific legislation or policy on government regulation of recognizing training and qualifications.

ILO C-143 Article 14(c) – Member States' rights in restricting access to limited categories of employment.

- No general restrictions on access to select economic sectors for foreign-born or migrant workers were found in this review. However, the review presumes that there may be legal restrictions on employment of foreign-born or migrants in certain civil service, military or other categories that many States restrict to citizens. The review noted restriction of certain public offices to citizens in the Constitution.

Other relevant national law and policy pertaining to employment and recruitment

Application for entry

- Section 8 ("Entry for business purposes, etc.") of the Immigration Act requires the written consent of the Director of Immigration before any person other than a Nigerian citizen who may accept employment within the territory of Nigeria.

- Section 9 ("Employment of immigrants") of the Immigration Regulations (1963) states that "any application relating to employment in Nigeria of any person who is a national of any country other than Nigeria, shall be made to the Director of Immigration […]"

  The Director of Immigration may not necessarily have labour market or employment competencies; authorizations on employment immigration should normally also entail the competencies of the Minister of Labour in consultation with Immigration authorities. This review did not determine whether these sections in the two acts apply to the implementation of the ECOWAS Protocol.

Foreign contracts

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

  Section 40 also corresponds significantly to Article 22 ("Contracts of employment") in ILO Recommendation (No. 88) concerning the Migration for Employment Convention (Revised 1949).

- Section 87 of the Labour Act concerns contracts made abroad and stipulates that such contracts shall be enforced within the territory of Nigeria – providing they have been made in conformity with this act – explicitly protecting both employers and workers from derogation of contract or breaches to any rights designated under such a contract. The nominal terminology ("any employer, worker or other person to whom this Act applies") is inclusive, and as the section specifically deals with foreign contracts its provisions should be applicable to migrant workers.

  The reviewers note that this section appears to establish an expectation of engaging Nigerian diplomatic officials to support enforcement of executing employment contracts of Nigerians abroad.

Conditions of payment – Domestic work

- Section 59 of the Labour Act allows for children to be employed in "light work of an […] domestic character". However, as noted in Category 10 ("Women and youth") of this review (page 49), this article *does not stipulate regulations on the conditions of work for such children*.

- Section 65 of the Labour Act concerns regulations pertaining to domestic service. Discussion of the applicability of Section 65, particularly concerning migrant workers, is found in the separate assessment narrative on the current framework on domestic workers' rights in view of ILO C-189.

- Section 10 of the Labour Regulations concerns domestic work, while Section 11 concerns deductions to wages. Discussion of the applicability of Section 11, particularly regarding migrant workers employed in domestic work, is found in the separate assessment narrative noted above.

Conditions of payment – Other workers

- Sections 14 and 15 of the Labour Regulations (1936) require that workers produce an attendance book daily to keep record of days worked and wages paid. The nominal terminology used ("every labourer") is inclusive, and should make these provisions applicable to migrant/foreign workers.

Lacunae in law or policy

ICRMW Article 38 – Member States' responsibility to make every effort in authorizing migrant workers and members of their families to be temporarily absent without effect upon their authorization to stay or work, as the case may be, and inform migrant workers of the terms under which temporary absences are authorized.

- No law or policy was found in this review stipulating terms under which temporary absences for migrant workers or members of their families are authorized.

ICRMW Article 42.2 – Facilitation by the States of employment of consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities, in accordance with national legislation.[15]

- No law or policy was found regarding consultation of migrant workers on matters concerning life in and administration of local communities.

ICRMW Article 49 – Requirement that where separate authorization to reside and engage in employment are mandated by national legislation, States of employment shall issue residence permits to migrant workers for at least the same period of time as their work permits, and the right of such migrants to change their employment without being regarded as in an irregular situation or losing their residence permit.

- No law or policy was found stipulating that residence permits must be issued for the same period of time as employment permits.

ICRMW Article 52 – Right of migrants to freely choose their remunerated activities subject to conditions set by the State of employment regarding restricted economic sectors, occupational qualifications acquired outside the territory, and any time restrictions on their employment authorization imposed by the State of employment.

- No law or policy was found specifically addressing the right of migrant workers to freely choose their remunerated activity (subject to conditions set by the State of employment regarding restricted sectors, qualifications and time restrictions).

ICRMW Article 58 – Rights applying to frontier workers by reason of their presence and work in the territory of the State of employment and the consideration by States of employment of allowing frontier workers to freely choose their remunerated activity after a specified period of time.

- This review found no law or policy concerning the rights of frontier workers by reason of their presence and work in Nigeria or consideration of their freedom to choose remunerated activity after a specified period of time.

15 The definition of this issue in many countries is establishing recognized, formal participation of migrants in governance of local communities where they reside. Many municipalities, and now several countries as a whole, across Europe and Latin America permit resident migrants (including Nigerians) to register and vote in local elections and hold local political office – the most formal means of consultation and participation in life and administration of local communities.

ICRMW Article 60 – "Itinerant workers, as defined in Article 2, paragraph 2(A) of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State."

- No law or policy was found in this review concerning itinerant workers' rights by reason of their presence and work in the territory of Nigeria.

ICRMW Article 61 (1) – "Project-tied workers […] and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 45, paragraph 1(b), and articles 52 to 55. (2) Right of project-tied workers in addressing cases to the competent authorities of the State of employment in situations of violation of the terms of contract by their employers.

- No law or policy was found in this review concerning project-tied workers' rights under Article 61 of the ICRMW.

ICRMW Article 62 – "Specified-employment workers […] shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 52, and article 54, paragraph I (d)."

- This review found no law or policy concerning specified-employment workers' rights under the conventions.

ICRMW Article 63 – Rights of self-employed workers and exemptions of those rights exclusively applicable to workers having a contract of employment, with protection of residence authorization in States allowing for it in the case of termination of employment.

- No law or policy was found in this review that concerns self-employed workers' rights under Article 63 of the ICRMW. *However, Chapter III Section 15 of the NCFRMI Act affords equal treatment with nationals regarding self-employment to refugees*. This act could provide a model to articulate similar rights for self-employed migrant workers.

Recommendations:

On lacunae:

- Adopt legislation allowing migrant workers and members of their families to be temporarily absent without negative implications to their authorizations of residence. Ensure that information regarding the terms and conditions of such absences are readily available.

- Consider entitling resident migrants to participate in decisions and administration of the local communities in which they live by according entitlement to voting in local elections and to local office.

- Adopt policy ensuring that residence permits are issued for the same amount of time as a migrant workers' work permit and/or contract.

- Fully implement the LMP, in this case to enhance the role and activity of the International Labour Migration Desk in providing information about the labour market, restricted sectors and recognition of qualifications.

- If not yet existent in other laws, enact laws clearly articulating the rights of frontier, itinerant, project-tied and specified-employment workers.

- If not yet existent in other laws, enact laws clearly articulating the rights of self-employed migrant workers and the conditions under which they are entitled to authorization of residence.

On existing law or policy:

- Review and revise, as needed, certain sections of the Immigration Act and the Immigration Regulations, to ensure consistency with purposes of the conventions regarding coherent governance of labour migration and protection of rights of migrant workers.

    - Section 34(3) of the Act to ensure that migrant workers who lose their employment may not be classified as "prohibited immigrants" in contravention of ICRMW Article 51 and ILO C-143 Article 8.1.

    - Sections 8 and 47 of the Act and Section 9 of the Regulations to ensure that decisions regarding entry and stay in the territory for employment purposes include consideration and review by authorities with labour market and employment competencies.

- Ensure clear and stringent regulations on the conditions of employment of children and young persons, particularly in domestic work.

- Enable and encourage the National Directorate of Employment to engage in cooperation and partnerships with public services or bodies of other states, as well as bodies established by virtue of a bilateral or multilateral agreement.

GOVERNANCE AND SOCIAL DIALOGUE

The importance of social dialogue and consultation with social partners in formulating, adopting and implementing effective labour migration policy and legislation cannot be understated. Several National Commission Acts, through use of non-restrictive language in the designation of application to the specific groups and issues concerned, provide platforms for representation and consultation of migrant workers and members of their families.

However, a number of the provisions of the conventions concerning governance and social dialogue are addressed in the LMP. Where the LMP is cited regarding provisions of the conventions, no other law or policy was found, unless otherwise noted.

Law and policy on governance and social dialogue in view of the conventions

ICRMW Article 33.2 – Measures are to be taken by Member States to disseminate appropriate information regarding rights arising from the convention and to ensure it is provided to migrant workers by employers, trade unions and other bodies.

- A stated objective of the International Labour Migration Desk under the FMLP is to "disseminate the said information [on conditions of admission, work, etc.] or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions" to prospective migrant workers.

ILO C-143 Article 4 – Measures to be taken by Member States at the national and international levels for systematic contact and exchange of information with other States, in consultation with representative organizations of workers and employers.

- The International Labour Migration Desk mandate includes to "collaborate with other relevant stakeholders and agencies of government […] within and outside the country".

ILO C-143 Article 7 – Consultation with representative organizations with regards to preventing and eliminating abuses of the rights laid out in the convention.

- The National Directorate of Employment Act (2010) creates a Management Board to give guidelines for the affairs of the Directorate. Members of the Board are to be representatives from the various sectors of the economy, including a representative of the Nigerian Employers' Consultative Association (NECA) and a representative of the Nigerian Labour Congress (NLC), as well as a representative of the private sector, a successful private farmer, an educator, representatives from designated ministries including the FMLP and others listed in the act.

- The framework on which the LMP is built "consists of initiatives driven by the Nigerian government and by social partners"; the LMP explicitly identifies the NECA, NLC and the Nigeria Trade Union Congress.

  In Part 5.4, the LMP proposes establishment of a Social Partner Advisory Board consisting of these three social partner bodies and the Association of Private Recruiters, to "consult and elaborate on recommendations regarding labour migration issues arising in the context of employment and access to employment".

ILO C-143 Article 12 – Member States' commitment to seek cooperation with representative employers' and workers' organizations through educational programmes, legislation and other steps to further equality of treatment.

- Section 4 of the National Directorate for Employment Act (1989) establishes the National Advisory Council for the Directorate; the membership of the council shall include a representative of NECA and NLC, along with representatives of federal and state government entities, the private sector, academic and research interests and other persons.

- Section 2 of the National Institute for Labour Studies Act (1984) sets out objectives of the institute: (a) "to provide workers' education generally" and "equip trade union officials and managers with skills normally required for collective bargaining and joint consultation"; (b) to provide opportunities for policymakers and trade unionists alike to acquire a fuller understanding of the labour market; and (c) to undertake comparative studies and other educational endeavours concerned with industrial relations and labour matters, among others. The terminology used is non-restrictive; therefore, these dispositions should be applicable to migrant/foreign workers.

- Part 3.5 of the LMP states that "Orientation services will also be provided to employers and trade union organisations regarding relevant laws and responsibilities for the treatment of foreign workers, including the application of labour law" by the FMLP.

Other relevant considerations in the Labour Migration Policy

- The definition and drafting process spanned two full years – 2008 to 2010 – and involved extensive consultations with, contributions from and validation by the Nigerian national social partner organizations.

- The LMP recognizes that "Social Partners contribute significantly in setting standards for employment contracts, ensuring and/or providing welfare services for migrants, advocating for assigning labour attachés to Nigerian missions abroad and in cooperating with countries of destination."

Lacunae in law or policy

ILO C-143 Article 2.2 – Representative organizations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject (irregular labour migration).

- No law or policy was found directly addressing consultation on irregular labour migration; however, this may potentially be inferred in the provisions articulated above from the LMP.

Recommendations:

- Fully implement the LMP with full participation by social partner stakeholders to reinforce the convention-mandated consultation and cooperation with representative organizations of workers and employers, such as disseminating information on rights, systematic contact and exchange of information with other States, eliminating abuses and educational programmes, legislation and other steps to further equality of treatment.

INTERNATIONAL/ INTERGOVERNMENTAL COOPERATION

While several of the National Commission Acts surveyed in this review provide legislative provisions corresponding to the provisions of the Convention on international/intergovernmental cooperation, the main references to these provisions appear in the LMP.

This review did not, however, survey bilateral and multilateral agreements concluded between Nigeria and other States.

The review also noted provisions in the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act anticipating international cooperation in sharing information on and prosecution of trafficking offences, particularly relevant to Articles 5 and 15 of ILO C-143.

National law and policy on international/intergovernmental cooperation

ICRMW Article 47 – Right of migrant workers to transfer earnings and savings – in particular remittances – from the State of employment to the State of origin.

- Part 3.7 ("External protection or protection at destination") and Part 4.5 ("Enhancing the developmental impact of remittances") of the LMP propose measures to enhance portability of social security benefits and the transfer of remittances.

ICRMW Article 64 – Consultation among States to facilitate sound, equitable and humane conditions for international migration of workers, such as in terms of economic, social and cultural rights.

- Part 3.7 of the LMP urges expanding the roles and responsibilities of Nigerian missions abroad and, in particular, proposes that labour attachés be assigned to diplomatic missions in places where there is a strong presence of Nigerian workers.

ICRMW Article 65 – States should maintain appropriate services to deal with questions concerning international migration of workers.

- Section 1 of the Social Development Act (1974) creates a division within the FMLP intended to provide a locus of government responsibility for designated matters, such as social work, youth activities, generating social development, cooperating with voluntary agencies, "overseas and national repatriations" and others specified in the act. A number of these areas are manifestly relevant for labour migration policy formulation and implementation, for exchange with other authorities in Nigeria and with other States, as well as for attention directly to migrant workers and their family members.

- Section 6 of the National Population Commission Act (1989) details the functions and powers of the commission. The act provides a specific designation of responsibility for collecting, collating and publishing data on migration statistics, as well as other demographic and population data relevant for labour migration policy formulation and implementation.

- The International Labour Migration Desk in the FMLP has an explicit mandate (listed in the LMP) for:

    - "Formulation and implementation of policies regarding labour migration
    - "Exchange of information, consultation and cooperation with other Federal and State bodies within Nigeria as well as with authorities of other States
    - "Provision of appropriate information to employers, workers and other organizations on policies, laws and regulations
    - "Provision of information and appropriate assistance to migrant workers and members of their families."

- Part 3.5 of the LMP states that the FMLP will conduct "pre-employment seminars and intensified information campaigns, especially in rural communities, to provide potential migrant workers with sufficient information to enable them to make informed decisions". It will also design and, together with other relevant agencies, implement pre-departure training programmes for migrants ready to travel abroad.

ICRMW Article 67 – Cooperation between States parties on the orderly return and resettlement of migrant workers and their families when they decide to return to their States of origin.

- Section 38 of the Labour Act provides explicit conditions for contract recruitment and return of Nigerian migrant workers. According to the act, a foreign contract shall not be longer than one year if unaccompanied by family or two years if accompanied by family. *This particular restriction may not be applicable under the terms of the ECOWAS Protocol; it poses unrealistic restrictions for contracts or potential contracts to attract and retain foreign migrant workers, particularly in skilled occupations*.

- Part 4.6 of the LMP ("Facilitating reintegration of returning migrants") calls for encouraging collaboration between sending and receiving countries in the development of return and reintegration programmes.

ILO C-97 Article 10 – Commitment of States to enter into agreements to regulate migration when the number of migrants going between territories is sufficiently high.

- Section 37 of the Labour Act (1990) ("International agreements") allows for treaties, conventions or international agreements between Nigeria and any other country relating to the recruitment of citizens for employment outside Nigeria to be given the force of law by order of the President.

- Section 51 of the National Employment Policy (2000) 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 ECOWAS…."

This section goes beyond Article 10 of ILO C-97 by situating employment policy in the context of West African integration and implementation of the broader multilateral ECOWAS Protocol.

ILO C-143 Article 5 – Allowance for authors of manpower trafficking to be prosecuted whatever the country from which they exercise their activities.

- Several provisions of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2005) address this article of ILO C-143:

    - Sections 23 and 25 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act concerning traffic in slaves and effect of conviction of such offences abroad allow for prosecution of "any person" committing offences related to trafficking.

- Section 26 establishes that any Nigerian resident who engages in sex trafficking or is otherwise involved in compelling persons to engage in prostitution or pornography is liable to prosecution, imprisonment and deportation.

- Section 61 provides for the ability to prosecute across borders of citizens or permanent residents of Nigeria engaging in trafficking as if the offence were committed within the territory.

ILO C-143 Article 15 – Member States may conclude multilateral or bilateral agreements with a view to resolving problems arising from application of the convention.

- Part 4.7 of the LMP 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). It will further negotiate and enter into bilateral agreements and MoUs with destination countries with a view to maximizing their benefits for the migrants and the country."

Lacunae in law or policy

ICRMW Article 64 – Consultation and cooperation of States Parties with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families, with due regard paid not only to labour needs and resources but also to economic, social, cultural and other needs of migrant workers involved, as well as consequences of such migration for the communities concerned.

- Prompt and substantial reporting to the Committee on Migrant Workers according to treaty specifications and timelines is among the most effective means of implementing this article. Article 73 of the ICRMW requires that States Parties submit a report to the Secretary-General of the United Nations one year after ratification, and thereafter every five years or whenever the committee should request it. Nigeria ratified the convention in September 2009; no report has yet been submitted.

Recommendations:

On lacunae:

- Prepare and submit the initial States Party report to the UN Secretary-General for consideration by the committee that will, by definition, enable consultation and cooperation among States Parties.

- Implementation of the LMP will also enhance domestic activation of provisions of the conventions relating to international coordination and cooperation.

On existing law or policy:

- Review application of Section 38 of the Labour Act to allow for employment contracts and/or renewals for more than two years for foreign workers.

IRREGULAR MIGRATION

The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act and the Labour Act are the two existing laws reviewed that explicitly address issues of irregular migration in Nigerian domestic law. While the Constitution upholds the principles and protection of basic rights for all persons, these two acts establish firm penalties for employers engaged in abusive recruitment and employment practices.

The LMP contains numerous provisions addressing irregular migration and its practical considerations at both the national and regional levels. The LMP is the only document found in this review that addresses a number of the convention provisions.

National law and policy on irregular migration in view of the conventions

Measures taken by States Parties to ensure migrant workers are not deprived of any rights derived in the conventions by reason of any irregularity in their stay or employment: ICRMW Article 25.3 and ILO C-143 Article 1.

- As enumerated in Category 8 ("Civil and political rights") of this review, all fundamental rights, with the exception of the right to privacy, are explicitly applicable to "every person" in the Constitution of Nigeria (1999).

Collaboration between States to prevent and eliminate clandestine movements and employment of migrant workers in irregular situations and to discourage and prohibit the dissemination of misleading information: ICRMW Article 68, ILO C-97 Article 3.2 and ILO C-143 Articles 3 and Article 4.

- Section 4 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2005) establishes the National Agency for the Prohibition of Traffic in Persons and Other Related Matters, and charges it with, among other responsibilities, "strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing the international activities of traffic in persons".

- The LMP notes that the International Labour Migration Desk is charged with "collaboration and cooperation with other relevant stakeholders and agencies of government on migration within and outside the country", such as preventing child labour and other forced labour and child and migrant trafficking.

ILO C-143 Article 2 – Members shall systematically seek to determine whether there are illegally employed migrant workers on their territories and whether they depart from, pass through or arrive in their territories any movements of migrants for employment that contravene relevant international multilateral or bilateral instruments or agreements, or national laws and regulations.

- The National Agency for the Prohibition of Trafficking in Persons and Other Matters, created under Section 4 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, is mandated also to "establishing, maintaining and securing communication to facilitate the rapid exchange of information concerning offences, conduct research and improving international co-operation in the suppression of traffic in persons by road, sea and air […]"

ILO C-143 Article 6 – Provision made under national laws or regulations for the effective detection of illegal employment of migrant workers and administrative, civil and penal sanctions to be taken in respect of organization of movements of migrants for employment defined as involving abuses identified in the convention.

- Section 47 of the Labour Act (1990) sets penalties for recruiters and employers of Nigerian citizens operating outside the sanctioned methods for employing Nigerians abroad. It does not address recruitment or employment of migrant workers in irregular employment in Nigeria.

Lacunae in law or policy

ILO C-143 Article 9.4 – Nothing in the convention shall prevent Member States from giving persons illegally residing or working within the country the right to stay and take up legal employment.

- No law or policy was found explicitly addressing the regularization of migrants in irregular situations. However, discretionary authority given to the Director of Immigration in the Immigration Act to determine status of migrant workers should allow for measures of regularization.

Recommendation:

- Consider measures for regulating migrants in irregular situations, as appropriate, to resolve such situations, particularly for long-staying persons and family members of residents and citizens.

CONCLUSION

This review provides a comprehensive assessment of where Nigeria has domesticated its international treaty commitments under the two international conventions it has ratified, and where adequate domestication is still pending. It also identifies what needs to be done to ensure compliance with the third core international instrument on migration governance.

As noted in the recommendations, a number of lacuna – gaps or absences in legislation – need to be resolved, and consideration should be given to addressing some apparent discrepancies in existing law with provisions of the ratified conventions.

This review thus provides a thorough set of marching orders, the objectives of an action plan formulating proposals for amendments to existing or draft legislation, for improvement of administrative regulations and measures, and for further elaboration of formal migration policy. In turn, moving these forward to approval and implementation will require communicating with, informing and mobilizing constituencies, organizing advocacy and, on occasion, "lobbying", as well as working with public communications media.

The immediate next step is identifying a working group among concerned government offices, social partners and civil society stakeholders to collectively define and undertake this process. Experience shows that such a *focus group* is required to take responsibility in elaborating and implementing a programme of action to bring about the needed legislative reforms, administrative measures and policy specifications – to fully harmonize Nigeria law and practice with the international migration governance instruments.

An urgent priority is reviewing the relevant bills presently before the National Assembly, namely those on immigration and labour concerns, to ensure that legislation moving forward corrects rather than perpetuates the lacuna and divergences with international convention standards that Nigeria is beholden to.

In achieving full domestication and harmonization of these international standards, it is expected that Nigeria will make significant progress towards effective governance of migration and the consequences of realizing development and well-being opportunities of migration.

ANNEX

List of national legislations and policies reviewed

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

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

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

List of national policy documents

- National Employment Policy (2000)
- Labour Migration Policy for Nigeria (adopted 15 October 2014 by Federal Executive Council)

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