Promoting Better Management of Migration in Nigeria

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REVIEW OF NIGERIAN LEGISLATION AND POLICY REGARDING ILO CONVENTION 181 ON PRIVATE EMPLOYMENT AGENCIES

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INTRODUCTION

Regulating migration and its attendant employment issues requires rules and regulations that all stakeholders must abide by. Nigeria ratified two of the cardinal international instruments providing the foundation for these rules and regulations, namely the International Labour Organization's (ILO) Migration for Employment Convention, 1949 (No. 97) (ILO C-97) and the United Nations' International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICRMW). Furthermore, the core international human rights instruments – nearly all have been ratified by Nigeria, as well as general comments and findings of the respective treaty bodies – reinforce application of the standards-based approach to governance of migration.

Nigeria, as other States, has 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 relevant international conventions.

The National Policy on Labour Migration states explicitly in Article 1.1, "The other Conventions that need to be ratified are Private Employment Agency Convention 181 and Recommendation 188".

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

This review and its accompanying matrix serve as indication that many of the provisions of ILO Convention 181 are already established in legislation and presumably being applied or are intended to be applied. There are certainly several gaps, which would require remedy for compliance with the convention. However, as with other already ratified conventions, existing gaps can certainly be remedied following and with the support of ratification of this instrument. We conclude that ratification is more than feasible and, indeed, urgent.

The review

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

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

The overall consultancy included three component objectives: (a) assessing domestication and effective application of the ICRMW, ILO C-97 and Economic Community of West African States' (ECOWAS) Protocol on Movement of Persons, 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 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 Decent Work for Domestic Workers Convention (2011) (ILO C-189).

Mandated tasks included comprehensive evaluation of Nigeria's legal instruments and policy documents governing labour migration to ascertain the extent to which they are in accordance with ILO C-181, as well as the ICRMW, ILO C-97, ILO C-143, ILO C-189 and the ECOWAS Protocol; reviews of the latter are produced as separate documents.

This report is one of the key products of the review; it provides a detailed assessment of incorporation to date of the provisions of the as yet un-ratified ILO C-181. In addition to supporting ratification, this review presents recommendations proposing modifications for legislation and/or administrative measures to bring domestic law and practice into conformity with provisions of this instrument.

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

Structure of the report

This review is structured according to the order of ILO C-181. The articles/provisions of the convention are listed first, followed by identification of whether and where they may be reflected in the Constitution, national legislation and/or policy. Relevant texts or summaries of the provisions are shown. Review observations on legislative or policy provisions that diverge from the convention are highlighted in italics.

Provisions of national legislation or policy that are in accord with or exceed the provisions of the convention but do not pertain to any article are listed after the final article of the Convention.

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

REVIEW OF NIGERIAN NATIONAL LEGISLATION AND POLICY IN VIEW OF ILO C-181

Article 1.1 – Defines "private employment agency" as any natural or legal person, independent of the public authorities, which provides services for matching offers of and applications for employment without becoming party to the employment relationships arising therefrom; services employing workers to make them available to a third party, who may be a natural or legal person and who assigns tasks and supervises execution of these tasks; or other services related to job-seeking, such as the provision of information that are determined by the competent authority after consultation with representative employers' and workers' organizations.

While there is no explicit designation of private employment agencies (PEA) as such in national legislation, there are references to recruitment entities in the Labour Act (1990) using language such as "employers and their agents" and "recruiters", which implies that such agents/agencies are definable as PEAs. The reference made to a fee-charging employment agency and its definition in Section 71(3a) of the Labour Act is considered by Nigerian authorities to be a clear designation for PEAs. The LMP (2014), explicitly refers to the regulation of "private employment agencies" while the National Employment Policy refers to "labour contractors" a specific class of PEAs in section 48 (2).

Article 1.2 – "For the purpose of this Convention, the term 'workers' includes jobseekers."

The review did not find any specific legislative reference to "job-seekers". However, the LMP explicitly uses the term "job-seekers" in Part 1.3 ("Institutional frameworks") in referring to the role and functions of the National Electronic Labour Exchange Project (NELEX); the National Employment Policy also uses the term "job-seeker".

Article 1.3 – "For the purpose of this Convention the term [processing of personal data of workers] means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker."

The Labour Act stipulates "particulars to be furnished on registration" and "taking of photographs and fingerprints of registered industrial workers" in Section 70 (c) and (d), indicating collection of personal data of workers.

Article 2.1 – "This Convention applies to all private employment agencies."

The Labour Act language referring to "employers and their agents" and "recruiters" appears to fully apply regulatory standards and measures to broadly cover actors and entities equivalent to PEAs.

Article 2.2 – "This Convention applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers."

Section 17 of the Nigerian Constitution (1999) explicitly refers to "all persons in employment" regarding conditions of work, health safety and welfare, and equal pay. This review presumes that the application of the Convention should consequently extend its protection to all categories of workers in all branches of economic activity.

Article 2.3 – "One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions."

The provisions of the Labour Act regarding recruiters and employers' agents clearly seek to regulate the operation of private employment agents/agencies, while various provisions of the Labour Act and other legislation spell out protections for workers that should apply when they use the services of recruiters (see below).

Article 2.4 – Member States may prohibit "private employment agencies from operating in respect of certain categories of workers or branches of economic activity" or "exclude, under specific circumstances, workers in certain branches of economic activity from the scope of the Convention or from certain of its provisions" after consultation with representative organizations of employers and workers.

Section 26 of the Labour Act (1990) states that "No recruiting operations shall be conducted in any area in which recruiting is prohibited by the Minister by order or in a labour health area," demonstrating the kind of prohibition of recruitment described in Article 2.4.

Article 2.5 – "A Member which ratifies this Convention shall specify, in its reports under Article 22 of the Constitution of the International Labour Organization, any prohibition or exclusion of which it avails itself under paragraph 4 above, and give the reasons therefore."

As Nigeria has not ratified this Convention, the review did not expect to find reporting dispositions.

Article 3.1 – "The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers."

The references in the Labour Act to "employers and their agents" and "recruiters" noted above are considered by Nigerian referents as adequate definition for determining legal status of PEAs; the Labour Act defines modalities and conditions for recognizing and registering recruitment agencies as noted below. Also as noted below, labour policy decisions are made in consultation with the social partners.

Article 3.2 – Member States "shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice."

The Labour Act addresses licensing, certification and recruitment regulations in several places:

- Section 23 of the Labour Act prohibits recruiting except under a permit or licence as stipulated in the Act, and appears to be in compliance with ILO C-181 Article 3.2.

  However, this section refers specifically to recruitment of "any citizen of Nigeria", while omitting the recruitment of foreign workers, whether inside or outside of Nigeria.

- Section 24 requires employers of recruited workers to have appropriate employers' permits, as designated in the Act, and articulates conditions and procedures for operating PEAs.

  However, this section also refers specifically to the recruitment of "any citizen of Nigeria", while omitting the recruitment of foreign workers, whether inside or outside Nigeria.

- Section 25 authorizes the Minister to "license fit and proper persons to recruit citizens in Nigeria for the purpose of employment as workers" both inside and outside Nigeria, and articulates the conditions and terms for the issuance of such a licence.

  However, this section also refers specifically to "any citizen of Nigeria", while omitting the recruitment of foreign workers.

- Article 27 requires the written approval of the Minister and the furnishing of the recruiter's written authority before any person may "assist a recruiter in a subordinate capacity in the actual recruiting operation".

  The Section 27 (5) additionally sets regulations on the practices of recruitment, such as prohibition on wage advances over 10 Nigerian naira for recruited workers Section 27 (5), stipulations protecting family unity in applicable situations Section 27 (7), and Section 27 (8) the non-binding nature of employment contracts offered to the heads of households for the members of their families. The language used is non-exclusive ("every recruiter") and should also be applicable to those recruiters engaging foreign workers.

The LMP enhances existing legislation in several areas:

- Part 1.3 Part 2.1.4.1 (Government Initiatives) identifies the Federal Ministry of Labour and Productivity (FMLP) as the authority responsible for licensing PEAs.
- Part 2.1.4.5 concerning the "Sub-national Level" include "State Labour Offices which are responsible for the registration of applicants for local or domestic employment and for job placement". These State offices are also identified as being responsible for the "pre-registration inspection of PEAs and issuance of reports to the headquarters".
- The LMP explicitly refers to the oversight of PEAs regarding recruitment for employment abroad. Part 3.6 ("Private employment agencies") states intent (and actual practice) of monitoring and regulating operations of PEAs by requiring them to register with the FMLP to ensure minimizing malpractices and abuses against those seeking overseas jobs.

Article 4 – Measures are to be taken to ensure workers recruited by PEAs are not denied freedom of association and collective bargaining rights.

> **Review Note**: For this review, Article 4 was understood to imply that recruitment agencies for overseas employment must take measures to inform workers of the situation of freedom of association/collective bargaining rights in destination countries and/or that agencies might restrict recruitment in countries where these rights are not respected.

Section 40 of the Constitution (1999) entitles freedom of assembly and association to all persons, particularly regarding membership of "any political party, trade union or any other association for the protection of his interests". Collective bargaining rights are not specified.

Additionally, Nigeria ratified both ILO C-87 on freedom of association and ILO C-98 on collective bargaining in 1960. As such, these rights should be actively implemented in Nigeria.

Section 71(2) of the Labour Act empowers the Minister to make regulations in supervising and controlling fee-charging employment agencies. Consequently, in exercising this power, the Minister/Ministry provided regulations and conditions for the registration of PEAs. The stated conditions provide for respecting freedom of association and collective bargaining rights in placements for workers recruited by PEAs.

Section 2 of the National Institute for Labour Studies Act (1984) states the objects of the Institute as being, among others, "to provide workers' education generally, so as to enhance the role of trade unions in the social and economic development of the country and equip trade union officials and managers with skills normally required for collective bargaining […]" and to "provide and arrange comparative study and investigation of the principles and techniques of trade unionism". This mandate should encourage measures to inform workers recruited by PEAs of their freedom of association and collective bargaining rights.

Article 5 – Member States shall ensure that PEAs treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin or any other form of discrimination covered by national law and practice, such as age or disability. However, this shall not apply to special services provided by PEAs to assist the most disadvantaged workers in their job-seeking activities.

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".

The ministerial regulations also require PEAs to respect equality of treatment and non-discrimination in recruitment.

Article 6 – Processing of workers' personal data must be done in a private manner and be limited to matters related to qualifications, professional experience and any other directly relevant information.

Section 37 of the 1999 Constitution guarantees and protects the right to privacy of "citizens", thereby risking exclusion of migrant/foreign workers from the same right to privacy, including personal data.

Article 7.1 – "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers."

Section 30 of the Labour Act requires that the expenses of the journey to the place of employment and everything necessary for the welfare of recruited workers during the journey to the place of employment must be covered by the recruitment agencies themselves.

Section 5 of the Labour Regulations (1936) prohibits any person from demanding or accepting any payment from a recruited servant as a reward for obtaining employment, except with the consent of a Governor or the Minister.

Article 7.2 – "In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies."

Section 71 of the Labour Act allows for fee-charging employment agencies to operate with Ministerial authorization, in compliance with Article 7.2 of ILO C-181.

Nigerian stakeholders insist that "the decision was made in consultation with the social partners. All decisions on labour issues are made in consultation with the social partners in the country".

Article 7.3 – "A Member which has authorized exceptions under paragraph 2 above shall, in its reports under Article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor."

As Nigeria has not yet ratified this Convention, the review did not expect to find reporting dispositions.

Article 8.1 – Adoption by Member States of "all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies".

The provisions of the Labour Act address Article 8.1 in several places:

- Section 40 of the Labour Act makes explicit reference to providing for external protection at destination.

- Section 45 prohibits inducing recruitment by fraud on the part of employers and their "agents" and establishes measures for covering the cost of return for recruited workers and accompanying members of their families who have been engaged under fraudulent auspices. The section also designates the Federal Government as the party who shall pay any wages not paid to recruited workers, with the sum to be recovered from the employer or their agent either through deductions to any deposit or security given under Section 24.7 of the Labour Act, or through civil proceedings. The language used ("no person") is non-restrictive and should also extend this protection to migrant workers on its territory.

  The scope of the Act and this article apply in Nigeria. This review did not find language nor references to practice that explicitly guarantee this protection and compensatory cost coverage for workers recruited in Nigeria for employment abroad, notably when fraud may take place outside Nigeria or perpetrated by external actors.

- Section 46 prohibits "any employer" or their "agent" from engaging or being complicit in neglect or ill treatment of workers. The language used is non-restrictive and explicitly extends this provision to private recruitment agencies as "agents" of employers.
- Section 47 prohibits "any person" from engaging or being complicit in the offences designated therein. Section 47(c), which prohibits recruitment of citizens for a person who is not a holder of an employment permit, would be particularly relevant for PEAs.

Part 2.6 ("External protection or protection at destination") of the LMP identifies a role for social partners – trade unions and employers' organizations in particular – in protecting migrant workers and their families. The Part states that these groups should form "solidarity alliances with their counterparts in destination and origin countries for applying labour laws and other social protection policies".

Article 8.2 – "Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment."

Bilateral and multilateral agreements lay outside the scope of this review. However, Part 3.7 of the LMP calls for "negotiate[ing] bilateral agreements and Memoranda of Understanding with major origin and destination countries". Furthermore, Section 40 of the Labour Act sets out a series of terms and conditions for foreign contracts that should be respected and incorporated in any bilateral or multilateral agreement concluded by the Government of Nigeria. Other provisions in Nigerian legislation regarding recruitment and employment are also applicable to negotiation and conclusion of agreements with other States.

Article 9 – Measures taken to ensure child labour is not used or supplied by PEAs.

Section 27(4) ("Recruiting: miscellaneous provisions") of the Labour Act prohibits recruiters from recruiting "any young person", unless authorized in writing by the Minister, to recruit young persons whose apparent age exceeds 16 years with the consent of the parents or guardians of the said young person, and only for employment in occupations deemed not to be injurious to their moral or physical development. The language used is non-restrictive, and thus should make this provision applicable for young persons.

Section 22(1) and (3) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003) (Amended 2005) concerns "Unlawful forced labour" and prohibits employment of children in any capacity except where employed by a family member or in light work of an agricultural, horticultural or domestic character. The nominal terminology used ("any person") is non-exclusive and therefore should prohibit PEAs from recruiting young persons or children in any capacity except as permitted by the Act.

Article 10 – Competent authorities are to ensure adequate machinery and procedures for investigation of complaints and abusive practices, in consultation with representative organizations of employers and workers.

Section 78 of the Labour Act empowers the authorized labour officer to carry out examinations in the course of her/his duties. This includes investigation of complaints and abusive practices. As recognized in the LMP, the Federal Ministry of Labour and Productivity is the government body tasked with regulating and supervising PEAs.

Part 2.1.2.1 ("Regulation") of the LMP states that "Recruitment agencies should be held to high standards of conduct, and penal provisions should be present, and regularly applied, to address offences." The provisions of the LMP were drafted in consultation with social partners, including representative organizations of employers and workers.

Article 11 – Necessary measures to be taken by Member States to ensure protection of the right to: (a) freedom of association; (b) collective bargaining; (c) minimum wage standards; (d) working time and other working conditions; (e) statutory social security benefits; (f) access to training; (g) occupational safety and health; (h) compensation in case of occupational accidents or diseases; (i) compensation in case of insolvency and protection of workers' claims; (j) maternity protection and benefits, and parental protection and benefits for workers employed through PEAs.

With one exception, each of the rights and protections articulated in Article 11 are addressed to varying degrees in the Constitution and several national legislative acts – particularly labour laws – as well as in the LMP.

(a) Freedom of association

- Section 40 of the 1999 Constitution entitles freedom of assembly and association to all persons. Additionally, Nigeria ratified ILO C-87 (freedom of association) in 1960.

(b) Collective bargaining

- Collective bargaining rights are not specified in the Constitution. However, as noted above in ILO C-181 Article 4, Nigeria ratified ILO C-98 (collective bargaining rights) in 1960, and thus these rights should be respected for all workers regardless of nationality or status.

(c) Minimum wage standards

- The National Minimum Wage (Amendment) Act (2011) establishes a minimum wage to be paid to "any employee […] who has entered into or works under a contract with an employer […] to execute any work or labour". The language is non-restrictive and therefore should be applicable to workers recruited through PEAs.
- Exemptions to minimum wage are addressed in Section 1.2 of the National Minimum Wage (Amendment) Act.
- *Exemption "a", in particular, exempting establishments in which less than 50 workers are employed from obligation to pay the national minimum wage, concerns workplaces where many migrant workers are employed, and would also concern the PEAs themselves.*

(d) Working time and other working conditions

- Section 17(3)(b) of the Nigerian Constitution states that "The State shall direct its policy towards ensuring that […] conditions of work are just and humane". Section 17(3)(c) further states that "the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused." Additionally, Section 17(3)(c) commits the State to ensuring that "there is equal pay for equal work without discrimination on account of sex or on any other ground whatsoever". The use of "all persons in employment" and "without discrimination on account of sex or on any ground whatsoever" should extend these protections to all workers employed through PEAs, whether the workers are Nigerian nationals or of any other nationality.

- Section 13(3) of the Labour Act states that "Where a worker is at work for six hours or more a day, his work shall be interrupted (to the extent which is necessary having regards to its character and duration and to working conditions in general) by allowing one or more suitably-spaced rest intervals of not less than one hour on the aggregate […]", setting six hours as the maximum number of hours to be worked consecutively by "a worker".
- Sections 55, 59 and 60 of the Labour Act concern "Night work" and set restrictions for the maximum hours of work permitted for women and youth in select industries. The use of non-restrictive language ("no woman", "no young person") should extend these provisions to workers recruited by PEAs, regardless of nationality or status.

(e) Statutory social security benefits

- Section 1 and 2 of the Pension Reform Act (2014) concern the establishment and objectives of the Contributory Pension Scheme. Participation extends to "any employment in the Public Service of the Federation, the Public Service of the Federal Capital Territory, the Public Service of the States, the Public Service of the Local Governments and the Private Sector". Section 2.2 stipulates, "In the case of the Private Sector, the Scheme shall apply to employees who are in the employment of an organization in which there are 15 or more employees." However, Section 2.3 adds that "employees of organizations with less than three employees as well as self-employed persons shall be entitled to participate under the scheme".

  The nominal terminology is non-restrictive, and thus the participation and benefits from the Scheme should also be available to workers who are recruited by PEAs, regardless of nationality.
- Section 17 of the National Health Insurance Scheme Act (1999) states that an employer under the scheme shall register itself and its employees under the scheme and pay into the account of a designated health maintenance organization, its contributions and the contributions in respect of its employees. The Act includes in its definition of "employee" "any person who is ordinarily resident in Nigeria", thus appearing to include foreign workers recruited for employment in Nigeria. PEAs, both as employers and "agents", would be required to register themselves under the scheme and to pay into it under the conditions stated in Section 17.

(f) Access to training

- The Labour Act and other labour laws provide for training.
- Part 1.7 of the LMP describes the policy itself as being "designed to promote programmes, initiatives and interventions that would attract and facilitate investment into training or higher education programmes by governments of destination countries". As the policy does not designate its programmes and objectives as pertaining only to workers in certain sectors, the training and educational programmes proposed should be available to all workers, including those recruited by PEAs.

(g) Occupational safety and health standards

- The Factories Act provides for occupational safety and health protection for workers.
- Section 4.7.3 of the National Employment Policy (2000) ("Strengthening of Occupational Health Services") calls for "the development of Occupational Health Services for all workers in all sectors of the economy and in all enterprises, as well as for the self-employed", thus manifestly including those workers recruited by PEAs.

(h) Compensation in case of occupational accidents or disease

- Section 8 and 30 of the Labour Regulations (1936) set out procedures to be followed by employers regarding reporting and compensation for their employees in case of workplace injury or death. The language is inclusive ("any worker") and should thus extend to workers recruited by PEAs.
- Section 9 of the Employee's Compensation Act (2010) allows for workplace disability/injury or death claims to be made under this Act. The language used is non-restrictive ("any employee"), and thus access to compensation should be available to workers recruited by PEAs.

- Sections 12, 13, 21, 22, 26 and 28 of the Employee's Compensation Act regulate the payment of compensation for workplace injury, disease or disability that may be claimed from the government under this Act. The language is again non-restrictive, and should make such compensation available to all workers, including those recruited by PEAs.

(i) Compensation in case of insolvency and protection of workers' claims

- *The review found no legislation or policy specifically addressing unemployment compensation, "insolvency" or protection of workers' claims.*

(j) Maternity protection and benefits and parental protection and benefits

- Section 54 of the Labour Act articulates the responsibility of employers in providing "suitable" maternity leave to female employees. While no specific mention of PEAs is made, the language used is non-restrictive ("no employer") and therefore should cover workers recruited by PEAs.

Article 12 – Member States are to "determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises" in relation to the rights and protections articulated in Article 11, except freedom of association.

While the Labour Act and other labour laws designate certain responsibilities of employers ("user enterprises") in providing for most of the rights and protections stipulated in Article 11, *this review found no mention of the responsibilities of PEAs in upholding these rights and protections, nor for respective responsibilities between employers/user enterprises and PEAs in relation to the rights and protections articulated in Article 11.*

Article 13.1 – "A Member shall, in accordance with national law and practice and after consulting the most representative organizations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment service and private employment agencies."

The review found no national legislation specifically referring to cooperation between public employment services and PEAs. However, the terms of reference for NELEX delineated in the LMP suggest considerable scope for such cooperation, at least regarding migrant workers and international labour migration. The International Labour Migration Desk (ILMD) and the Recruiters Licence Division of FMLP were both reported to be engaged in facilitating such cooperation.

Article 13.2 – "The conditions referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for: (a) formulating labour market policy; (b) utilizing or controlling the use of public funds earmarked for the implementation of that policy […]."

The reviewed legislation, as well as the National Employment Policy and LMP for Nigeria, suggest that the Federal Government and the National Legislature are exercising authority for formulating labour market policy.

Article 13.3 – "Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information" to provide information on the structure and activities of PEAs and for statistical purposes.

Section 27 of the Labour Act ("Recruiting: miscellaneous provisions") requires that "every recruiter" shall keep records of their recruitment activities in the prescribed form, to be furnished to the relevant government authorities upon request. The language used throughout the Labour Act implies that FMLP is the relevant competent authority.

While there is no explicit designation of PEAs as such in the legislation, other references to recruiters such as language of "employers and their agents" clearly suggest that such agents/agencies are definable as PEAs and should be required to provide information on their structure and activities and for statistical purposes as provided for in Article 13.3 of ILO C-181. The LMP, however, does explicitly refer to regulation of PEAs.

Article 13.4 – "The competent authority shall compile and, at regular intervals, make this information publicly available."

Sections 23(5) ("Prohibition of recruiting except under permit or license") and Section 25(6) ("Recruiter's licence") of the Labour Act requires the Government of Nigeria to publish the particulars of every permit granted to recruiters and any notifications of suspension or withdrawal of such licences in the Federal Gazette.

Article 14.1 – Application of the provisions of the Convention "by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements".

This review and its accompanying matrix serve as indication that many of the provisions of the Convention are already established in legislation and presumably being applied or are intended to be applied.

This review did not have the mandate or capacity to examine actual practice, court decisions, arbitration awards or collective agreements.

Article 14.2 – "Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities."

Section 33 of the Labour Act ("Procedural Requirements") states that "authorized labour officers" will oversee compliance with the regulations set out in the Act, many of which uphold or exceed the standards set for private employment recruitment agencies by ILO C-181. Section 78 of the Labour Act also makes similar reference.

Part 2.1.2 of the LMP ("Regulations") implicates the Federal Ministry of Labour and Employment as the "competent authority" designated to regulate and interact with PEAs.

Article 14.3 – "Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention."

As Nigeria has not yet ratified the Convention, no specific dispositions were found regarding violations of the Convention itself. However, penalties are outlined for violation of provisions in specific legislative acts – for example, the Labour Act – address violations of certain provisions in the Convention.

Articles 15–24 concern administration of reporting and oversight by the ILO of application of the Convention.

These articles have not been included in this review, given that Nigeria has not yet ratified the Convention. However, once ratified, the reporting procedure and content would require at least administrative dispositions by Nigeria.

Other national law or policy concerning private employment agencies

Transport and travel to place of employment

Section 29(1) of the Labour Act states that "the recruiter or employer shall provide transport to the place of employment" unless exempted from this requirement by an authorized labour officer due to the impossibility of doing so for the whole or any part of the journey. Paragraphs 2, 3 and 4 authorize the Minister of Labour to make additional provisions for recruited employees' well-being during transport to the workplace. The language used in the section referring to "the recruiter" explicitly invokes this responsibility for PEAs engaged in both domestic and international recruitment of workers.

Repatriation

Section 31 of the Labour Act places the financial responsibility of repatriating recruited workers who become incapacitated by sickness or accident during the journey to the place of employment, who are found to be medically unfit for employment, or who are recruited by misrepresentation or mistake of the recruiter or employer. These provisions are also extended to cover the accompanying family of a recruited worker who is repatriated under these circumstances or who dies during the journey to the place of employment. The language used is non-restrictive ("any recruited worker") and should therefore apply this financial coverage of repatriation by the recruiter or employer to workers recruited or hired by PEAs.

LACUNAE IN LAW, RULES OR POLICY IN VIEW OF ILO C-181

Review Note: These provisions may be present in sectors of law, through executive orders or other administrative instruments bearing the force of law that fall outside the scope of this review. Thus, these gaps represent areas that bear further study of existing Nigerian laws.

- Article 1.3 – Definition of "processing of personal data of workers".
- Article 3.1 – Legal status of PEAs shall be determined in accordance with national law after consultation with representative organizations of employers and workers.
- Article 5.1 – Measures taken by States to ensure non-discrimination and equality of opportunity and treatment for workers in the practice of PEAs.
- Article 5.2 – PEAs may provide specialized or targeted programmes to assist the most disadvantaged workers in their job-seeking activities.
- Article 13 – Responsibility of Member States to formulate, establish and periodically review conditions to promote cooperation between public employment services and private recruitment services.
- Article 14.3 – Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.

RECOMMENDATIONS

To give full effect to ILO C-181 on private employment agencies in Nigeria

1. **Ratification of ILO C-181 as a matter of urgency**. Nigerian legislation and policy largely give effect to many provisions of the Convention.

2. **Full implementation of the LMP for Nigeria, particularly dispositions relevant to ILO C-181**. Implementation will immediately supplement and strengthen existing law and policy giving effect to provisions of the Convention.

3. **Consider the review of Sections 23, 24 and 25 of the Labour Act** to ensure that employers have appropriate licences or permits to recruit foreign workers, as well as Nigerian citizens.[1] The latter group is currently explicitly protected by 23 while the former appears not to be.

4. **Ensure that information gathered by private recruitment agencies on recruited workers are handled and processed in a manner that protects workers' privacy**. While Section 37 of the 1999 Constitution protects the right to privacy of Nigerian citizens, this right is not explicitly guaranteed to foreign residents of Nigeria.

5. **Review Section 1 of the National Minimum Wage (Amendment) Act** to ensure that workers recruited by PEAs are entitled to the same minimum wage conditions as other workers in the labour market.

6. **Formulate legislation to address compensation in case of unemployment, insolvency and protection of workers' claims** to ensure appropriate social protection, as well as full implementation of Article 12 of ILO C-181.

7. **Adopt appropriate legislation, administrative rules or policy to address**:

    a. **Non-discriminatory practices in the operation of PEAs**, with allowances for assisting the most disadvantaged workers in their job-seeking activities; and

    b. **Penalties for contravention of the provisions of the Convention**.

8. **Enhance dispositions for cooperation between public employment services and private recruitment services**, along with procedures for review of such collaboration at periodic intervals.

1 This may be required to give specific legal backing to recruitment of foreign workers by PEAs. PEAs are already being encouraged to be actively involved or actively engage in overseas employment activities for Nigerian citizens. Sections 40 (2a and c) and 41 presupposes that the Ministry can also issue employer's permit for overseas employment or that the employer's permit authorized by Section 24 can also cover overseas recruitment. The Act already empowers the Ministry (now acting through ILMD) to carry out overseas recruitment and every other activities thereon related to it.

CONCLUSION

This review provides a comprehensive assessment of where Nigerian legislation and policy already incorporates provisions of ILO C-181, or where dispositions are missing to give effect to the Convention.

This review and its accompanying matrix show that many of the provisions of ILO C-181 are already established in legislation and/or policy and that they are presumably being applied or are intended to be applied.

There are certainly several gaps, which would require remedy for compliance with the Convention. However, as with other already ratified conventions, existing gaps can certainly be remedied following and with the support of ratification of this instrument.

This review concludes that ratification is more than feasible and, indeed, urgent. Given the significant degree of legislative accord with the provisions of the Convention, it is believed that ratification could be proposed and accomplished in short order with consent and support of the concerned stakeholders in Nigeria.

ANNEX

List of national legislation and policy reviewed

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

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

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

List of national policy documents

- National Employment Policy (2000)
- Labour Migration Policy for Nigeria

International Organization for Migration (IOM)