



Terms of Reference for a comprehensive legislative review of national legislation on labour migration to assess the legal framework for the protection of Nigerian Migrant workers and migrant workers in Nigeria.

Background

Current globalization trends and changing labour markets have increased both the opportunities and pressure for people to migrate, with security and regulatory implications for migrants. Matching labour demand to supply inevitably expands the role of the migration industry, making the labour migration landscape more complex. In 2013, the international migrant population increased to 232 million¹. With 50% of this number constituting the proportion of labour migrants, the number of vulnerable migrant workers in the migration cycle across different economic activities and migrant groups is rising. Desperate for economic autonomy, a significant number of migrant workers accept hazardous jobs, making them more likely than national workers to suffer work-related illnesses and injuries. Various forms of labour exploitation especially among those in irregular situation are not uncommon. Women migrant workers are also vulnerable to multiple forms of discrimination – as women, migrants and foreigners.

In recognition of the expanding complexities of labour migration, the United Nations and the International Labour Organization (ILO) have over the years developed tools and instruments for governments, social partners and stakeholders in labour migration policy and practices in order to create a socially stable environment for all and improve the conditions of labour for workers worldwide. Likewise, since the West African sub-region is no exception to labour mobility, the West African community through its 15 member States adopted the ECOWAS Protocol; providing citizens of member States the freedom of entry, right of residence, work, and engagement in commercial and industrial activities in territories of member States.

International cooperation is provided for in the 1999 Constitution of the Federal Republic of Nigeria². With its voluntary accession to international and regional cooperation, Nigeria has committed to complying with the treaties championed by the international community. Notable labour migration related conventions ratified by Nigeria include the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, all 8 Fundamental ILO Conventions and ILO Migration for Employment Convention (C97). At the regional level, though the country has ratified the ECOWAS Protocol on the Free Movement of Persons, Right of Residence and Establishment, the progress of the three-phased implementation plan has been rather slow.

Among the International Conventions not ratified by Nigeria are the Migrant Workers Convention, 1975 (N0. 143) and the Private Recruitment Agencies Convention, 1997

¹ United Nations 2013 Population Facts – International Migration 2013: migrants by origin and destination.

² Section 19 – Constitution of the Federal Republic of Nigeria 1999.

(No. 181). The Conventions provide for basic human rights, protective measures for migrant workers not in employment; and the adaption of laws and regulations to prevent human rights abuse on migrant workers by private employment agencies respectively. It is important that Nigeria ratifies these conventions, incorporate the provisions of the instruments in its national legal and policy frameworks and ensure that the scope of their implementation extends to migrant workers. The institutionalization of these instruments will help in reinforcing the current paradigm shift in migrants' well-being; a necessary condition to sustain the much desired labour migration-development nexus.

Nigeria's current administration has demonstrated interest in the management of labour migration issues. To show its commitment, the country established in 2004 the International Labour Migration Desk (ILMD) within the Federal Ministry of Labour and Productivity with the mandate to manage international labour migration. A draft national policy on labour migration has been developed to provide a framework to regulate labour migration, ensure decent treatment of migrant workers and optimize the benefits of labour migration to development. The policy has been validated by national stakeholders and currently awaits presentation to the Federal Executive Council for approval. Notwithstanding, to effectively manage labour migration and ensure the protection of migrant workers, a coherent, comprehensive and institutionalized legislation is a pre-requisite.

To further strengthen the legal and policy framework for organised labour migration, under the framework of the European Union national 10th EDF project "Promoting Better Management of Migration in Nigeria", IOM aims to enhance the implementation of the legal framework for the protection of migrant workers in Nigeria. Against this background, an Expert is required to assess the effective application of the regional and international conventions relating to the protection of migrant workers' rights that have been ratified by Nigeria³. In addition, s/he would be required to assess the feasibility and relevance of ratification of other relevant international instruments⁴; and effectiveness of the current framework in guaranteeing domestic workers' rights as provided for in Convention n° 189 which addresses the protection of domestic workers.

Objective

This consultancy has three main objectives:

- I. To assess the domestication and effective application of the UN Convention on the Rights of all Migrant Workers and Members of their Families (1990), (ILO Co 97) - Migration for Employment Convention, (1949), and ECOWAS Protocols on the Free Movement of Persons, Right of Residence and Right of Establishment that have been ratified by Nigeria.

³ UN Convention on the Rights of all Migrant Workers and Members of their Families (1990); ILO Migration for Employment Convention (C97); ECOWAS Protocols on the Free Movement of Persons, Right of Residence and Right of Establishment.

⁴ ILO Migrant Workers Convention (C143); ILO Private Employment Agencies Convention (C181)

- II.** To conduct a comprehensive legislative review of the national legal instruments and practices governing labour migration management in Nigeria in order to assess the feasibility and relevance of ratifying (ILO Co 143) - Migrant Workers Convention, 1975 and (ILO Co 181) - Private Recruitment Agencies Convention, 1997.
- III.** To assess the effectiveness of the current framework in guaranteeing domestic workers' rights in view of the objectives of (ILO Co 189) – Domestic Workers Conventions, 2011.

Job Description

I.

- a.) Conduct 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 UN Convention on the Rights of all Migrant Workers and Members of their Families (1990), (Co 97) - Migration for Employment Convention, 1949, and ECOWAS Protocols on the Free Movement of Persons, Right of Residence and Establishment.
- b.) Conduct a comprehensive assessment of 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 Protocols.
- c.) Review and critically analyze the discrepancies between the national legislations and practices vis-à-vis the requirements of the Conventions and ECOWAS Protocols.
- d.) Identify the obstacles hindering compliance and proffer recommendations on how to overcome them.
- e.) Propose ways to harmonize the appropriate legislative instruments with the provisions of listed regional and international legal standards.

II.

- a.) Conduct a comprehensive legislative review of existing national legal instruments, regulations and practices governing labour migration management in Nigeria to critically assess the relevance of the (Co 143) - Migrant Workers Convention, 1975 and (Co 181) - Private Recruitment Agencies Convention, 1997.
- b.) Assess the existing system and structures to determine the feasibility of ratification of the Conventions.
- c.) Outline a plan of action with specific strategies for ratification of the yet-to-be ratified Conventions.

III.

Compile a comprehensive legislative assessment report on (Co 189) – Domestic Workers Conventions, 2011 to ascertain the effectiveness of the current Nigerian legislative framework in guaranteeing domestic workers' rights and protection.

Methodology

The review should include the following elements, inter alia:

- i. Analyze current national legislations, regulations and practices governing labour migration in Nigeria.
- ii. Interview relevant government officials, labour migration experts, local legal experts to collect information on national legislation and understand existing gaps as regards the regional and international legal instruments in focus.
- iii. Collect data on regional and international instruments and international best practices regarding labour migration legislation.
- iv. The legislative review should assess the level at which gender issues is mainstreamed in the instruments.
- v. Hold briefing with the IOM focal team and staff representatives of ILMD/FMLP to present and finalize plans and work schedules for the review.
- vi. The expert will incorporate any comments provided by IOM staff, the ILMD/FMLP team, other partners/stakeholders and experts.
- vii. IOM will facilitate contact with the relevant government officials and identified partners and experts to be interviewed. The Consultant will be required to send in all interview questionnaires to the appropriate agencies and experts at least two weeks prior arrival to Nigeria if necessary.
- viii. Present the findings of the legislative assessment report to relevant government officials and stakeholders at Technical Working Group (TWG) meeting.
- ix. Incorporate comments and inputs from the TWG meeting into the presented draft report and present the final legislative assessment report to IOM.

Report Format

1. A typed version of the final report between 50 and 100 pages, giving a clear analysis of the labour migration legislation in Nigeria vis-à-vis the three main objectives of the review. The review should provide recommendations to support the government of Nigeria to review national legislation on labour migration in line with good

international standards and practices as propounded by the legal instruments under examination.

2. The following annexes should be attached to the final report:
 - i. All notes from meetings
 - ii. All notes from interviews
 - iii. All data and references consulted
 - iv. Any other material that is relevant to the review.

Duration

The Expert will be expected to work for an overall period of **thirty two (32)** working days. The period is inclusive of travel to Nigeria to conduct interviews and necessary data collection; and return trip for presentation of report to the Technical Working Group. The expert is expected to spend a maximum of **twelve (12 days)** in Nigeria in total.

The preparation of plan of action and final activity reports will be carried out in the Expert's country of residence.