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A Legal Appraisal of Labour Migration and Fair Recruitment in Nigeria

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Abstract

Labour migration is largely a foremost global issue cutting across most countries in the world today Labour migration basically involves recruitment of migrant workers in the various countries of destination and transit or within their country but outside their original place of residence. Labour migration strategies which include promotion of fair recruitment is top in the agenda of states, including Nigeria, as it became imperative in order to protect migrant workers from violation of their human rights and welfare and for the mitigation of the adverse effects of labour migration. This paper critically discusses fair recruitment practices in the recruitment of labour migrants as a national and international concern and examines the legal measures in place in Nigeria on the subject. Findings reveal that incidences of unfair recruitment practices abound in the face of increased labour migration in Nigeria. Labour Migrant rights protection activism and implementation of policies and laws are advocated.

Keywords – Labour Migration, Fair Recruitment, Migrant workers, Private Recruitment Agencies, international labour standards.

Introduction

In Nigeria today, where labour migration is trending, incidences of fraudulent and exploitative recruitment practices flourish. Every year, thousands of Nigerians looking for opportunities to improve their livelihoods outside the country, fall victim to fake and exploitative recruitment agents.[1] This is despite the veritable provisions of the Laws and policies in place in Nigeria for the protection and regulation of Labour migration and fair recruitment. In Nigeria PEAs Licences and certificates are issued by Federal Ministry of Labour and Productivity in accordance with the provisions of Section 23, 24, 25 and 71 of

[1] Nigerian Tribune, " PEAs new Code of Conduct in Nigeria raises hope for Recruiters Regulation. Available ata https://tribuneonlineng.com/peas-new-code-of-conduct-in-nigeria-raises-hope-for-recruiters-regulation/

the Labour Act [2], in line with C181- Private Employment Agencies Convention, 1997, which requires member states to issue licence and certifications to Recruiters for proper regulation and supervision of their activities. The Convention states that "Member state shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification' In a report by Tribune, "many potential migrants and their families, job seekers approached recruitment agencyy which offered them opportunity to work in the Gulf, but only in exchange for extortionate recruitment fees which run into hundreds of thousands of naira. Often, the recruit is unaware of the details of their employer or the receiving agency at their destination and may be misled about the nature of the job awaiting them. Some end up in slave-like employment and their human and labour rights are violated"[3]. The report further stated that investigation revealed many travel agencies now doublee as recruitment agents The report further noted that it is common in Nigeria to find travel agencies who are not registered as recruitment agencies promising young Nigerians job opportunities outside the country, especially in the Gulf region," Report further stated that a good number of PEAs that are not even registered exits and labour migrants fall victims on daily basis.. Despite thousands of Nigerians falling victim to these recruiters, there has not been any reported instance of prosecution of any recruitment agent by the government.[4] Incidences of Child labour, human trafficking, slavery and servitude, forced labour abound because of the proliferation of unregistered PEAs[5].

[2] Labour Act, Cap L1 , LFN , 2004.

[3] Nigerian Tribune, " PEAs new Code of Conduct in Nigeria raises hope for Recruiters Regulation. Available ata https://tribuneonlineng.com/peas-new-code-of-conduct-in-nigeria-raises-hope-for-recruiters-regulation/

[4] Ibid.

[5] For example it was on the news that Minister of Foreign Affairs, Geoffrey Onyeama in June, 2018, instituted a fact-finding mission to the Kingdom of Saudi Arabia to investigate complaints of human trafficking of Nigerian domestic workers and found that "there were many illegal recruitment agencies, including travel agencies that were recruiting domestic workers to Saudi Arabia and the Middle East."It was discovered too that the sectors most targeted by shoddy recruitment agents are low-paid professions where workers might be desperate for employment

This is worrisome, because these acts violate provisions of labour and human rights laws and policies aimed at protecting labour migrants. These rights are guaranteed under the Constitution and under other various laws in Nigeria[6]. Examining the relevant laws with a view to discussing the measures to be taken to address the foregoing issues for a fairer recruitment in labour migration is the crux of this paper. Another key interests that should be focused on is the factors that cause labour migration and cause illegal labour migration thereby exposing migrants to unfair recruitment and fraudulent recruiters. This can be traced to unemployment and poverty, however other causes such as armed conflicts, displacements, insecurity, poor economy also play a role in the narrative. Strengthening the economy of the country and creating an enabling environment for businesses to thrive will help in reducing the mass labour migration.

Conceptual Clarifications

Labour Migration is a key concept in this discourse. According to IOM, Labour migration is the movement of persons from one state to another, or within their own country of residence for the purpose of employment.[7] Labour migration is also defined as a cross-border movement for purposes of employment in a foreign country [8]. Labour migration has positive and negatives impacts on countries of origin and destination, while migrant workers contribute to the growth and development in the countries of destination and

or have less awareness of their rights, and most of the scams, take place in sectors like construction, sales reps and domestic workers. Nigerian Tribune, " PEAs new Code of Conduct in Nigeria raises hope for Recruiters Regulation. Available ata https://tribuneonlineng.com/peas-new-code-of-conduct-in-nigeria-raises-hope-for-recruiters-regulation

[6] Constitution of the FRN, 19999(as amended), chapter four; Child's Rights Act, 2003, National Policy on Labour Migration, 2014; National Employment policy, 2017; Nigerian Data Protection Regulation 2019; Immigration Act, 2015 and Regulations of 2017; Trafficking In Persons (Prohibition) Enforcement and Administration Act, 2015 Trafficking In Persons (Prohibition) Enforcement and Administration Act, 2015; Nigeria Code of Conduct for Private Employment Agencies (NCCPEA) etc..

[7] IOM and Labour Migration, https://www.iom.int>IDM.

[8] T Dakua, Labour Migration, International Journal of Research in Geography (IJRG) Volume 5, Issue 1, 2019, PP 9-26

issues of brain drain happens in the country of origin, the country of origin can benefit from remittances and skills acquired in the destination country during migration, while the economy of the destination country may be affected due to increase in population. Nigeria has put legal both legal and institutional framework and initiatives in place for the regulation of labour migration.

,**Legal Regime for Labour Migration and Fair Recruitment in Nigeria**.[9]

According to the General Principle and Operational Guidelines for Fair Recruitment, 2016, the term recruitment includes the advertising, information dissemination, selection, transport, placement into employment and for migrant workers return to the country of origin where applicable. This applies to both jobseekers and those in an employment relationship; and the terms recruitment fees or related costs. Accordingly, fair recruitment would then mean ethical recruitment to ensure the protection of the rights and welfare of job seekers to getting a decent job. Fair recruitment practices as provided under the Guidelines are recruitment done in these forms:

- Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation;

[9]the 6th objective of the UN Global Combat for safe, ordely and regular migration facilitates fair and ethical recruitment and safeguard conditions that ensure decent work. Again, Sustainable development goals contains fair recruitment goals, goal 3 for example is on substantial increase in health financing and the recruitment , development , training and retention of the health workforce in developing countries , especially in lesst developed countries and small island developing states. Goal 8 .7 is geared to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soilders and by 2015 end child labour in all its ramifications. Goal 10.7 calls for facilitating " orderly, safe, regular and responsible migration and mobility of people including through the implementation of planned and well- managed migration policies. 10.7.1 provides for recruitment cost borne by employee as a proportion of yearly income earned in contry of destination.

- Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.;
- Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers. 4. Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.
- Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualification
- Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.
- Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.
- No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.
- The terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and

transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.

- Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercison. Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.
- Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.
- Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.
- Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

The Guidelines also made provisions for operational guidelines for the responsibility of Governments, enterprises and public employment services towards realising fair recruitment.[10]

[10] General Principles and Operational Guidelines for Fair Recruitment 2016 ("Guidelines for Fair Recruitment").

It is non-binding document, its principles and guidelines are derived from international labour standards and related ILO instruments and other practices.[11]

Africa regional fair recruitment report: The recruitment of migrant workers to, within and from Africa[12], outlined forms of unfairness in recruitment as follows : deceptive recruitment, in which the worker is deliberately caused to believe something that is not true, such as the terms and conditions of employment and living conditions; coercive recruitment, in which the recruitment is imposed on the worker under the threat of penalty and to which the worker does not agree voluntarily, notably using violence or its threat, abduction, forced marriage, forced adoption or selling of the victim, confiscation of documents, and debt bondage; abusive recruitment, in which the position of vulnerability of the worker is abused, with such vulnerability possibly related to difficult socioeconomic situation, irregular migration status, lack of education, lack of information or economic reasons; discriminatory recruitment, in which equality of opportunity and treatment in recruitment is nullified or impaired, notably on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership in a workers' organization. corrupt recruitment, in which the recruiter or a third party influencing the recruitment acts dishonestly in return for money or personal gain, with such acts possibly including offering, promising, giving, requesting or accepting bribes, including bribes from workers or bribes to employers or government officials; fake recruitment, in which the private employment agency or the job advertised do not exist, or the job exists but what is depicted as the recruitment process that the worker goes through is unrelated to the job, and; worker-fee-

[11]General Principles and Operational Guidelines for Fair Recruitment 2016 ("Guidelines for Fair Recruitment").

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[12] IOL, Africa regional fair recruitment report: The recruitment of migrant workers to, within and from Africa, International Labour Office, Geneva, 2021. Available at www. Ilo,org/publs.

charging recruitment, in which recruitment fees and related costs are borne by the worker.[13]

Global efforts include- 2014, International Labour Organisation Global fair recruitment initiative launched to prevent human trafficking and forced labour, and to protect the rights of workers, including migrant workers from abusive and fraudulent practices during the recruitment and placement process (including pre-seletion, selection, transportation , placement and safe return and reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for country of origin and destination[14]. Followed by the ILO fair recruitment initiative phase ii (2021-2025) launched for African region for monitoring progress and promotion of the operation and practices of fair recruitment in the Region. The African Union Revised Migration Policy Framework for Africa and plan of action 2018- 2030 for strategies on fair recruitment of migrant workers is also a relevant instrument providing for the following strategies : Creating transparent and accountable labour recruitment system based on clear legislative categories and immigration policies that are harmonised with labour laws; aligning national laws, policies and regulations, bilateral and multilateral agreements and voluntary codes of conduct with the ILO General Principles and operational Guidelines for fair recruitment; monitor and enforce compliance with recruitment regulations including standardised contracts of employment which are free, fair and fully consented to, transparent and enforceable; promote consolidation and professionalism in the recruitment industry, reigning in the maze of subagents that are often involved with the aim of turning public and private recruiters into comprehensive " one-stop- shops"for employers and migrants, offering comprehensive services, including training and skills certifications , job placement and travel arrangements; explore opportunities to put special

[13] *Ibid*.

[14] International Labour Organisation (ILO), Africa regional fair recruitment report-The Recruitment of migrant workers to, within and from Africa

procedures in place for citizens working overseas, including limiting recruitment fees, introducing licensing requirement, contracts registration and review /approval mechanisms that only allow business to send workers abroad once a contract is approved by the authorities , putting in place measures to better secure the rights of workers, including frequent labour inspections, due payment of wages, banning deductions from wages for accommodation and including severe bans periods and fines for employers who violate labour requirements. etc[15]. The 2018 AU Protocol on Free Movement of Persons in Africa, is another regional instrument on the subject matter. It specifies that "the National of a member state shall have the rights to seek and accept employment without discrimination in any other member state in accordance with the laws and policies of the host member state [16] The 6th objective of the UN Global Combat for safe, ordely and regular migration, a global effort [17] facilitates fair and ethical recruitment and safeguard conditions that ensure decent work. Similarly, Sustainable development goals [18] contains fair recruitment goals, goal 3 for example is on substantial increase in health financing and the recruitment, developent, training and retention of the health workforce in developing countries, especially in least developed countries and small island developing states. Goal 8 .7 is geared to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers and by 2015 end child labour in all its ramifications. Goal 10.7 calls for facilitating "orderly, safe, regular and responsible migration and mobility of people including through the implementation of planned and well- managed migration policies. 10.7.1 provides for recruitment cost borne by employee as a proportion of yearly income earned in country of destination.

[15] African Union Revised Migration Policy Framework for Africa and plan of action 2018- 2030

[16] The 2018, AU Protocol on Free Movement of Persons in Africa. Article 14(a)

[17] The 6th objective of the UN Global Combat for safe, ordely and regular migration

[18] Sustainable development goals

The UN Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families of 1990 provides for the protection all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status. The Convention applies during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated the activity in the State of employment as well as return to the State of origin or the State of habitual residence.[19] The convention provides right to non-discrimination, right to enter and remain in their state of origin, right to life, right to freedom from torture or to cruel and inhumane and degrading treatment, right not to be held in slavery or servitude, right from freedom from forced or compulsory labour, right to freedom of expression and thoughts, right to property, right to liberty, right to equal treatment, right to recourse to consular and diplomatic authorities, right to freedom of association etc for migrant workers. There are other several international and Regional instruments for the protection of the rights of labour migrants and fair recruitmrnts[20]. These rights are also found in our National Laws for the protection of citizens and migrant workers too. Some of these National Laws are:

Constitution of the FRN, 1999 (As amended)- makes provision for protection of human rights under chapter four. Some of these rights are to be protected during recruitment to ensure fair recruitment. The Constitution provides for freedom from discrimination on grounds of ethnic group, place of origin, sex, religion ir political opinion. The Constitution

[19]The UN Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families of 1990 Article 1

[20] Worst forms of child labour convention, 1999; UN Convention on the Rights of the child , 1989, The optional protocol to the Convention on the Rights of the child on the sale of children, child prostitution and child pornography ; Minimum age Convention , 1973; Optional Protocol to the Convention on the Rights of the Child in the involvement of Children in Armed cionflicts ,2000 , ILO Convention on forced labour; African Charter on the Rights and Welfare of the Child; African Charter on Human and People's Rights; United Nations Protocol to prevent, supree, and punish Trafficking 2003 etc.

also provides for right to privacy of citizens. This constitutional provision has been the relevant provision for the privacy and protection of data and information rights of workers before the enactment of the Nigerian Data Protection Regulation 2019. The Constitution also guarantees the right to dignity of human person , thus no person shall be subjected to torture or to inhuman or degrading treatments, or held in slavery or servitude or required to perform forced or compulsory labour. Many unfair recruitment practices subject workers to degrading and inhuman treatments thereby violating the human rights of workers. These rights are justiciable and can be enforced in court upon infringement. [21]

The Discrimination Against Persons with Disabilities (Prohibition) Act, 2018[8] prohibits discrimination of any person on the grounds of disability by any person or institution in any manner or circumstance. It also provides a person living with disability's right to work on equal basis with others and includes the right to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open. There are sanctions provided under the Act for violation ranging from fines to imprisonment and civil actions[22]**.**

The Labour Act, 2004 regulates labour and employment matters in Nigeria, the Act is implemented by the Ministry of Labour and Productivity. The labour Act provides for recruitment for several categories of works by recruitment agencies. These include recruitment for work inside and outside Nigeria for works, including migrant workers. The Act provides that where the work is to be performed outside Nigeria, the Minister may require the production of a letter of recommendation from the government of the place where the work is to be performed certifying that the applicant is a fit and proper person to be granted a permit. Upon receipt ,the minster may grant permit to the applicant and the particulars of the permit will be published in the Official Gazette. The Minister may licence fit and proper persons to recruit citizens in Nigeria for the purpose

[21] Constitution of the Federal Republic of Nigeria, 1999(as amended) , sections 42, 37 and 34.

[22] Discrimination Against Persons with Disabilities (Prohibition) Act, 2018. Sections 1 and 28.

of employment as workers outside Nigeria; and or employment as workers in Nigeria. Licences can also be withdrawn by the Minister on the contravention of the provisions of the Act on recruitment and also published in the official Gazette. The Act provides for restriction of recruitment on areas prohibited and prohibition of public officers as recruiters. Recruiters are prohibited from recruiting young persons.[23] Where there is in existence a treaty, convention or other international agreement between Nigeria and any other country relating to the recruitment of citizens for employment outside Nigeria, the President may by order give the force of law to all or any of the provisions of the agreement in place of or in addition to the provision of the Act[24]. The Act provides for enforcement of some provisions such as inducing recruitment by fraud, neglect, or ill treatment of citizens and other offences such as a recruitment licence holder recruiting citizens for a person who is not a holder of an employer's permit. [25] The Act provides that no person shall establish or operate a fee-charging employment agency save with the written consent of the Minister. The Act provides that the Minister may make regulations providing for the supervision and control of fee-charging employment agencies and prescribing the scale of fees which they may charge. Fee charging for recruitment is prohibited under the relevant international conventions and the Code of Conduct for PEAs in Nigeria. It is important to note that the Constitution has empowered the National Industrial Court to apply international conventions and treaties that Nigeria has ratified when resolving labour issues to be in tandem with international standards and best

[23] Labour Act, Cap L1,LFN, 2004.sections 23 to26

[24] Labour Act, Cap L1,LFN, 2004, section 37.

[25] Labour Act, Cap L1,LFN, 2004, section 45-47.

practices.[26] The Act also prohibits forced labour and provides sanctions for any person who contravenes the provision.

National Policy on Labour Migration, 2014 addresses the Promotion of good governance of labour migration; Protection of migrant workers and promotion of their welfare and that of families left behind; Optimization of the benefits of labour migration on development while mitigating its adverse impact.[27]

National Employment policy, 2017 Promotes the goal of full employment as a priority in national, economic and social policy, and to enable all men and women who are available and willing to work, to attain secured and sustainable livelihood through full productive and freely chosen employment and work; Secure improvement in the productivity of labour, so that the national workforce is afforded quality and well-remunerated employment consistent with national productivity gains; iii. Provide the fullest possible opportunity to each worker to qualify for and to use his/her skills and endowments in a job for which he/she is well suited, irrespective of race, sex, religion , political opinion, physical disabilities, national extraction, ethnic or social origin; Safeguard the basic rights and interest of workers, and to that end, promote respect for relevant International Labour Standards, including those on Forced Labour, Freedom of Association, the Rights to Organize and Bargain Collectively, the Principle of Non-Discrimination and Equality of Treatment and Opportunities and elimination of the most extreme forms of Child Labour; Secure maximum cooperation from, and participation by the Nigeria Employers Consultative Association (NECA), the Nigeria Labour Congress (NLC), the Senior Staff Consultative Association of Nigeria (SESCAN), and other interested parties in decisions

[26] CFRN 1999, SECTION 254C(a) provides –"Notwithstading anything to the contrary in this constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified.

[27] National Policy on Labour Migration, 2014. (Preamble)

relating to national development and harmony, and minimize job loses through industrial unrest; and Stimulate economic growth and development, eradicate poverty, and improve the levels of living by minimizing the rates of unemployment and underemployment, optimizing the utilization of labour and human resources and protecting areas in which Nigeria is well endowed. Furthermore, to promote the development of relevant manpower/human resources that will continually meet the needs of the nation[28] The policy provides that employment is a multi-dimensional and sectoral issue that need to be pursued from the perspective of national macro-economic and sectoral policies and other perspectives and adopted the following strategies for employment promotion; implementing more employment intensive enabling macro-economic and sectoral policies; promotion of micro, small –scale and informal sector enterprises; accelerating the growth rate of the agricultural sector;. promotion of Labour Intensive Technology including current Information Technology; linking education and training to labour market requirements; promotion of entrepreneurship education & culture through institutionalization of Entrepreneurship Development Programmes (EDP); improving working conditions, environment, and labour productivity; strengthening of labour market information and monitoring; mainstreaming of special/target groups, e.g. women, youths, disable etc. strengthening tripartism – enhancing the participation of employers and workers with government; improving the industrial relations climate; strengthening the mechanisms for monitoring and evaluation of employment generation strategies on a continuous basis; and improving the institutional framework for employment policy implementation, review and revisions.[29]

[28] National Employment policy, 2017

[29] National Employment policy, 2017, section 4.

Nigerian Data Protection Regulation 2019 provide for protection of data during electronic, , rrecruitment basically involving the collection and processing of personal data of employment seekers which in turn demands data and information privacy and protection, the Regulation became imperative for protection of data and information privacy rights , which was hitherto protected under the Nigerian Constitution[30]. The regulation aims at safeguarding the rights of natural persons to data privacy; to foster safe conduct for transactions involving the exchange of Personal Data; to prevent manipulation of Personal Data; and to ensure that Nigerian businesses remain competitive in international trade through the safe-guards afforded by a just and equitable legal regulatory framework on data protection and which is in tune with best practice[31]. It provides for the collection and processing of data in accordance with specific, legitimate and lawful purpose consented to by the Data Subject. Under the Act, anyone who is entrusted with Personal Data of a Data Subject or who is in possession of the Personal Data of a Data Subject owes a duty of care to the said Data Subject; and anyone who is entrusted with Personal Data of a Data Subject or who is in possession of the Personal Data of a Data Subject shall be accountable for his acts and omissions in respect of data processing, and in accordance with the principles contained in this Regulation. According to the regulation, data processing is only lawful if the consent of the data subject is obtained Data Controller is under obligation to ensure that consent of a Data Subject has been obtained without fraud, coercion or undue influence; processing is necessary for the performance of a contract to which the Data Subject is party or in order to take steps at the request of the Data Subject prior to entering into a contract; or for compliance with a legal obligation to which the Controller is subject; or in order to protect the vital interests of the Data Subject or of another natural person, and or for the performance of a task carried out in the public interest or in exercise of official public mandate vested in the controller. Consent sought,

[30] Constitution of the FRN 1999(as amended) section 37.

[31] Nigerian Data Protection Regulation 2019.

given or accepted in any circumstance that may engender direct or indirect propagation of atrocities, hate, child rights violation, criminal acts and anti-social conduct is prohibited. It further provided for publicity and clarity of privacy policy and provision of security measure to protect data by data processors. Data processing by a third party shall be governed by a written contract between the third party and the Data Controller and the right of a Data Subject to object to the processing of his data shall always be safeguarded. Penalty for breach is in addition to any other criminal liability in the case of a Data Controller dealing with more than 10,000 Data Subjects, payment of the fine of 2% of Annual Gross Revenue of the preceding year or payment of the sum of 10 million Naira, whichever is greater; in the case of a Data Controller dealing with less than 10,000 Data Subjects, payment of the fine of 1% of the Annual Gross Revenue of the preceding year or payment of the sum of 2 million Naira, whichever is greater. [32]

Immigration Act, 2015 established the National Immigration services (NIS) and vests in it the responsibility of controlling the entry and exit of persons in and out of Nigeria. [33]The Act provides that the NIS is responsible for Issuance of travel documents including Nigerian passports to bonafide Nigerians within and outside Nigeria; Issuance of Residence Permits to foreigners in Nigeria, Border Surveillance and Patrol, Enforcement of laws and regulations with which they are directly charged, performance of such para military within or outside Nigeria as may be required of them.[34] The Act restricts the responsibility for the issuance of Nigerian Passports strictly to the Comptroller-General of Immigration (CGI) and an application for a Nigerian Passport shall only be made to an Immigration office within Nigeria, or a Nigerian diplomatic mission abroad [35]. Pursuant to the Act, the Immigration Regulations 2017 was established to further strengthen the legal framework. The

[32] Nigerian Data Protection Regulation 2019, sections 1 and 2.

[33] Immigration Act, 2015, section 1.

[34] Ibid ,Section 2

[35] Ibid ,Section 9

Regulation provides for immigrant wishing to enter Nigeria for business purposes pursuant to section 36(1) of the Act to be possession of a valid entry visa. The entry visa shall be obtained at the relevant Nigerian Foreign Minister[36]. The regulation also provides for issuance temporary work permit to be authorised by the Comptroller General where necessary by way of a letter of approval transmitted to the appropriate Nigeria Mission.[37]

Trafficking In Persons (Prohibition) Enforcement and Administration Act, 2015 prohibits all acts of human trafficking in Nigeria. it provided that any person who recruits, transports, transfers, harbours or receives another person by means of threat or use of force or other forms of coercion; abduction, fraud, deception, abuse of power or position of vulnerability; or giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation of that person, commits an offence and is liable on conviction to imprisonment for a term of not less than 2 years and a fine of not less th N250,000.00.[38] The Act prohibits offences of importation and Exportation of person, Abuse, procurement or recruitment of person under 18 years for prostitution or other forms sexual exploitation, Procurement of person for sexual exploitation, Foreign travel which promotes prostitution or sexual exploitation, Procurement or recruitment of person for use in armed conflicts, Procurement or recruitment of person for organ harvesting, Prohibition of buying or selling of human beings for any purpose, Forced labour. Employment of child as domestic worker and inflicting grievous harm, trafficking in slaves and slave

[36] Immigration FRegulations 2017, reg. 11(1

[37] Ibid, reg 8.

[38] Trafficking In Persons (Prohibition) Enforcement and Administration Act, 2015. Section 13.

dealing etc.[39] The Act provides sanctions for any contravention of the provisions of the law by persons and corporate bodies.

Child Rights Act, 2003 prohibits child labour. It provides that no child shall be subjected to any forced or exploitative labour; 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 required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development ; or employed as a domestic help outside his own home or family environment; employed or work in an industrial undertaking except in technical school or approved institutions if the work is supervised by the appropriate authority. Any person who breaches commits an offence and is liable on conviction to a fine not exceeding fifty thousand Naira or imprisonment for a term of five years or to both such fine and imprisonment. Where an offence under this section is committed by a body corporate, any person who at the time of the commission of the offence was a proprietor, director, general manager or other similar officer, servant or agent of the body corporate shall be deemed to have jointly and severally committed the offence and may be liable on conviction to a fine of two hundred and fifty thousand Naira.[40] Other Initiates made by Nigeria directed at protection of the rights of labour migrants include

[39] Trafficking In Persons (Prohibition) Enforcement and Administration Act, 2015.sections 14 to 22.

[40] Child Rights Act, 2003, section 28.

-Nigeria has also made several initiates such as the establishment of the migration desk at the Ministry of Labour and productivity to carry our both pre-departure trainings and other activities.

Recruitment can be done by Public Recruitment System or Private Recruitment Agencies (PEA). The public recruiters are usually Government and its Agencies, while the private Recruitment Agencies, according to C181- private employment Agencies Convention , 1997 are any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

- services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
- services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;
- other services relating to job seeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.[41]

PEA are also defined as companies that are involved directly or indirectly with recruitment, selection and placement (and in some cases, the management) of employees, skilled and unskilled for themselves and other companies. They are involved in the process of matching employees to employers and vice versa. [42] Similarly, PEAs are defined as a body

[41] C181 – Private Employment Agencies Convention, 1997, Articke 1.

[42] Human Capital (HuCaPAN) , Private Employment Agencies , "Who are the private Employment Agencies.? Available at https://hucapan.org/wp-content/uploads/2022/03/Code-of-Conduct-for-Private-Employees-Agencies.pdf

corporate which acts as an intermediary for the purpose of procuring employment for a worker or recruiting a worker for an employer[43]

International Labour standards regulating private employment agencies currently are the C181- Private Employment Agencies Convention, 1997 and R188 – Private Employment Agencies Recommendation 1997. The **Private Employment Agencies Convention 1997(No 181)** recognises the role which private employment agencies play in a well-functioning labour market, the need to protect workers against abuses, guarantee the right to freedom of association and promote collective bargaining and social dialogue among [44]other and provides that :

- 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.
- Member state 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.
- Workers are not denied the right to freedom of association and the right to bargain collectively.
- to promote equality of opportunity and treatment in access to employment , Member state shall ensure that private employment agencies 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.

[43] Law insider "Private employment definition", Available at https://www.lawinsider.com.accessed;.

[44] Preamble to C181 – Private Employment Agencies Convention, 1997,

- Protection of data and respect for workers privacy in accordance with national law and practice;
- Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. Except under authorised exceptions under the convention and must be appropriately reported in accordance with section 22 of the ILO Constitution.
- to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.
- The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.
- Member shall take measures to ensure that child labour is not used or supplied by private employment agencies.
- 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.
- Member state shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers in relation to: freedom of association; collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; access to training; occupational safety and health; compensation in case of occupational accidents or diseases; compensation in case of insolvency and protection of workers claims; maternity protection and benefits, and parental protection and benefits.

- Member state shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services under 1 and of user enterprises in relation to: collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; access to training; protection in the field of occupational safety and health; compensation in case of occupational accidents or diseases; compensation in case of insolvency and protection of workers claims; maternity protection and benefits, and parental protection and benefits.
- 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 provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements and 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, and aadequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.etc[45] Nigeria has ratified this Convention and most its provisons are incorporated in the Nigerian Code of Conduct for Private Employment Agencies and various laws such as the Labour Act, Child Rights Act, Constitution of the Federal Republic of Nigeria 1999 (as amended) etc.

The **R188 Private Employment Agencies Recommendation 1997(No 188)** is made upon the decision of the adoption of certain proposals in form of a Recommendation to

[45] C181 - Private Employment Agencies Convention, 1997 (No. 181), Articles 2 to 15 of the

supplement the Private Employment Agencies Convention[46]. The Recommendation provides as follows:

- that tripartite bodies or organizations of employers and workers should be involved as far as possible in the formulation and implementation of provisions to give effect to the Convention. Where appropriate, national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means consistent with national practice. Members should, as may be appropriate and practicable, exchange information and experiences on the contributions of private employment agencies to the functioning of the labour market and communicate this to the International Labour Office.[47]

- Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices. Workers employed by private employment agencies should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, these workers should be informed of their conditions of employment before the effective beginning of their assignment. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike. The competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for

[46] R188 Private Employment Agencies Recommendation 1997(No 188), preamble.

[47] R188 Private Employment Agencies Recommendation 1997(No 188), General provisions(recommendations 1to 3)

non-existent jobs. Private employment agencies should: not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind; inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment. Private employment agencies should be prohibited, or by other means prevented, from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers organization. Private employment agencies should be encouraged to promote equality in employment through affirmative action programmes. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered. Private employment agencies should store the personal data of a worker only for so long as it is justified by the specific purposes for which they have been collected, or so long as the worker wishes to remain on a list of potential job candidates. Measures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected. Unless directly relevant to the requirements of a particular occupation and with the express permission of the worker concerned, private employment agencies should not require, maintain or use information on the medical status of a worker, or use such information to determine the suitability of a worker for employment. Private employment agencies and the competent authority should take measures to promote the utilization of proper, fair and efficient selection methods. Private employment agencies should have properly qualified and trained staff.

Having due regard to the rights and duties laid down in national law concerning termination of contracts of employment, private employment agencies providing the services should not: prevent the user enterprise from hiring an employee of the agency assigned to it; restrict the occupational mobility of an employee; impose penalties on an employee accepting employment in another enterprise.[48]

- Cooperation between the public employment service and private employment agencies in relation to the implementation of a national policy on organizing the labour market should be encouraged; for this purpose, bodies may be established that include representatives of the public employment service and private employment agencies, as well as of the most representative organizations of employers and workers. Measures to promote cooperation between the public employment service and private employment agencies could include: (a) pooling of information and use of common terminology so as to improve transparency of labour market functioning; exchanging vacancy notices; launching of joint projects, for example in training; concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed; training of staff; consulting regularly with a view to improving professional practices.[49]

PEAs play a serious role in the labour sector, with many businesses considering them essential to ensure that the demand for labour in both local and international market is met. The vast majority of employment agencies are reputable and professional. However, there are a few agencies which exploit workers, particularly those that are vulnerable. In recent years, the proliferation of private employment agencies and the challenge of curtailing the unwholesome activities have raised the concern of stakeholders. Thus, in

[48] R188 Private Employment Agencies Recommendation 1997(No 188), II Protection of Workers (Recommendations 4 to 15)

[49] R188 Private Employment Agencies Recommendation 1997(No 188), III Relationship between public employment service and private employment agencies.(Recommendations 16 and 17)

attempt to regulate and set standards for the operations of private employment agencies, the Code of Conduct for Private Employment Agencies (NCCPEA) became imperative, not only to set standards of best practices, but also to nip in the bud the ever-alarming global threat of unwholesome labour practices and human trafficking[50].

The Code of Conduct for Private Employment Agencies (NCCPEA) is a product of one of the activities of "Enhancing the Cooperation to Fight Trafficking in Human Beings from Nigeria to Europe project" (ECTIP), funded by the European Union[51] with the coloaborative efforts of Human Capital Providers Association (HuCaPAN[52]), Nigeria Employers' Consultative Association (NECA), Federal Ministry of Labour and Productivity and the International Labour Organisation[53]. In Nigeria, Recruiters are issued with licence by the Federal Ministry of Labour and Productivity 'in accordance with the Labour Act[54]. Private Employment Agencies under the umbrella of HuCaPAN are controlled by the Ministry of Labour and productivity and the Nigerian Employers 'consultative Association (NECA). The Code is projected to infuse confidence and sanity in the labour market, help PEAs become better service providers and help prescribe ethical conduct for practitioners to be guided. It sets out principles that guide practitioners in Private Employment Industry. Practitioners are therefore expected to respect, observe and run their business in such a way that

[50]Human Capital (HuCaPAN, Code -of -Conduct -for -Private -Employees-Agencies.pdfhttps://hucapan.org/wp-content/uploads/2022/03/Code-of-Conduct-for-Private-Employees-Agencies.pdf

[51] ILO , NOTE ON NIGERIA CODE OF CONDUCT FOR PRIVATE EMPLOYMENT AGENCIES, Available at https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-abuja/documents/presentation/wcms_227241.pdf.

[52] An Association of Private Employernt Agencies in Nigeria.

[53] Private Employment Agencies (HuCaPAN) 'Code of Conduct for Private Employmnet Agencies in Nigeria"

[54] See sections 23, 24, 25 and 71 of the Labour Act, Cap L, LFN, 2004.

enhances consistency, fairness, transparency, accountability and diversity in recruitment practices[55].

The Guiding principles under NCCPEA include:

- Respect for Ethical and Professional Conduct: requires integrity, professional conduct, fairness that safeguard the image and reputation of the industry
- 2. Respect for Laws: calls for compliance with all relevant statutory and non-statutory laws, legislations and official guidelines regulating the practice
- 3. Respect for Transparency: employees must be given factual information concerning the working conditions relating to the contract or employment
- 4. Respect for free—of –charge provision of services to jobseekers: PEAs shall not charge directly or indirectly, in whole or part any fees or costs to prospective employees
- 5. Respect for Health and Safety at work: PEAs must be concerned about the health and safety of workers Guiding Principles contd.
- 6. Respect for Diversity: Unlawful and unethical discrimination must be avoided
- 7. Respects for workers' Rights: All rights of workers must be respected – fair wages, freedom of association, must not replace workers on strike.
- 8. Respect for Confidentiality: do not divulge employees information to a third party without permission
- 9. Respect for Professional knowledge and quality of service: Ensure the training of staff and clients

[55] ILO , NOTE ON NIGERIA CODE OF CONDUCT FOR PRIVATE EMPLOYMENT AGENCIES, Available at https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-abuja/documents/presentation/wcms_227241.pdf.

- 10. Respect for Fair competition: Ensure no bias for or against any one, treat all equally
- 11. Social Dialogue: Ensure social dialogue if you must ensure industrial harmony
- Commitment to Professional Development: Be well informed and knowledgeable about recruitment practices. [56]

The Code also provided for responsibilities of the PEAs towards stakeholders. These responsibilities can be summarized as Respect for work relationships; Respect for honesty and transparency; Respect for Confidentiality and Privacy ; Respect for Laws ; Respect for Diversity[57]. 'The Code provided for Duties to clients (hiring companies) as follows : On initial contact with a client, PEAs shall provide clear and accurate information about the services they may provide, including but not limited to, clear written terms of business, policies regarding checking of references, qualifications and obtaining criminal records where relevant. ; PEAs shall submit or transmit details of prospective employees to clients only in respect of registered vacancies or fields of potential interest. Where the PEA has previously received a fee for placing a prospective employee with their current clients, PEA shall not approach the prospective employee to offer work seeking services with a view to placing the prospective employee elsewhere, unless the current client has been fully informed. PEAs shall at all times observe the duty of confidentiality to the prospective employee while providing work-seeking services to the prospective employee, PEAs shall treat information from clients with confidentiality. Disclosure of information of data identifying a client either

[56] Nigeria Code of Conduct for Private Employment Agencies(Revised).

[57] ILO , NOTE ON NIGERIA CODE OF CONDUCT FOR PRIVATE EMPLOYMENT AGENCIES, Available at https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-abuja/documents/presentation/wcms_227241.pdf.

explicitly or implicitly shall be restricted to those involved in or an integral part of the recruitment process and any agency of government that may require such information. However, this shall not be applicable in cases where the client has given express permission/instruction that their identity can be revealed to the prospective employees in the course of the employment process. The Code provides for Duties to prospective employees as follows :Upon registration of a prospective employee, PEAs shall provide clear and accurate information about the services they may provide, including but not limited to clear and accurate written terms for employees, which state unequivocally the type of contract on which the employee is engaged and any services provided for which payment may be charged; PEAs shall ensure that they obtain from clients all relevant information relating to the position in question, including health and safety information and they all such information is made available to the prospective employee. PEAs shall pay employee promptly and in accordance with the PEAs contract with the employee. In the event of any unavoidable delay in payment, the employee should be informed immediately of the reason for the delay, steps to be taken to resolve late payment, and likely timescale for resolution of the reason for late payment.; PEAs shall not impose a restriction on any employee they have previously engaged from obtaining work, by withholding or refusing to provide any information reasonably requested by another employment business in respect of that employee, unless they can objectively justify their decision for refusing to give such information in any particular case.; Where possible, PEAs shall keep registered prospective employees informed of their progress in seeking to find work for them and of any application for work being pursed on their behalf.; PEAs shall ensure that deductions made from employees remuneration such as Pension contribution, PAYE tax, etc. are remitted to the appropriate body within the statutorily designated period.[58]

The Code provides for Recruitment from Outside Nigeria as follows: PEAs shall not engage in overseas recruitment without having secured the Licence to do so from the

[58] Nigeria Code of Conduct for Private Employment Agencies, Part 2.

Federal Ministry of Labour and Productivity.; PEAs recruiting prospective employees from outside Nigeria for placement within Nigeria must ensure that such prospective employees are provided with adequate documented information about the employment for which they are being considered. These shall include but not limited to notice periods, hours and location of work, the likely cost of living in the area of Nigeria in which the client is situated, the likely duration of the job in question and the state of the employment market into which they are being considered.; The relevant employment terms and conditions that shall apply between PEA and prospective employees and the client shall be explicitly stated. ; In order to enable the prospective employees to make an informed decision as to whether it is in their long term interests to accept a position with a Nigeria hirer, all documented information must be provided at no cost to the prospective employees. ; PEAs recruiting prospective employees from outside Nigeria shall not use overseas agents in circumstances where such agents charge overseas prospective employees for their services unless this is legal and normal custom and practice sanctioned by the government in the country of origin. PEAs shall make all reasonable efforts to ascertain whether such agents charge prospective employees for their services. ; PEAs shall make conscientious effort to ascertain the immigration status of the prospective employees and advise appropriately on the steps to regularize such status if they are short of legal requirements. [59]

The Code provided for Recruitment to Work Outside Nigeria as follows: PEAs shall not engage in overseas recruitment without having the required bond and other legal requirements as stipulated by the Federal Ministry of Labour and Productivity. The bong is without prejudice to the requirements of other governmental agencies responsible for curtailing human trafficking and child labour. ; PEAs employing prospective employees from Nigeria for job placement overseas must ensure that such

[59]Nigeria Code of Conduct for Private Employment Agencies, Part 3..

prospective employees are provided with adequate documented information about the employment for which they are being considered. In order to enable the prospective employees to make an informed decision as to whether it is in their long term interests to accept a position with a foreign client, all documented information must be provided at no cost to the prospective employees. ;PEAs employing prospective employees from Nigeria to overseas clients shall not use overseas agents in circumstance where such agents will charge Nigerian prospective employees for their services. ;PEAs shall make conscientious effort to assist emigrant prospective employees to update their immigration status and give appropriate advice on the steps to regularize such status if they are short of legal requirements as required overseas. 4.7 PEAs shall use only legal and safe means of transportation for sending prospective employees overseas. Such means shall not directly or indirectly cause mental, physical or emotional strain on the prospective employees. PEAs shall endeavour to coordinate with foreign partners and Nigerian representative agencies in the country of employment to protect the legitimate rights and benefits of migrant workers.; PEAs shall exercise due diligence in assessing hazards, risks, abuse, exploitation or discrimination of all kinds in the work places to which it intends to send prospective employees. Where hazards and risk are identified, it is the obligation of PEAs to inform prospective employees of such hazards and risks.; PEAs shall not retain identity documents of prospective employees such as passport, work license, etc. and other personal belongings such as cell phones and medication with the purpose of forcing them to work for the client. At the request of prospective employees, clients may keep these documents at a secure place; however, they must immediately return these documents to employees on request at any time. ; PEAs shall make conscientious efforts to expose and stop all forms of modern-day slavery, forced labour or trafficking, child labour, etc. [60]

[60] Nigeria Code of Conduct for Private Employment Agencies, Part 4..

The Code provided for Breach of the Code Of Conduct as follows- Breach of this code of conduct shall include all actions and inactions, expressed or implied, that are contrary to the spirit and letter of all parts of this code.; Any breach or alleged breach of the Code shall be investigated by the umbrella body of Private Employment Agencies (HuCaPAN).; If the umbrella body's investigation into a breach of this code by a PEA reveals that a breach has occurred, the PEA in breach may be subject to a separate investigation b the Federal Ministry of Labour and Productivity; Breach of any part of this code of conduct that is outside the jurisdiction of the Federal Ministry of Labour and Productivity, such as those relating but not limited to kidnapping, forced labour, trafficking etc, after due investigation shall be forwarded to such governmental agencies responsible, for further investigation and action.; PEAs shall cooperate with the Ministry of Labour and Productivity as well as provide necessary assistance that may be required of them by the Ministry in the course of its investigation of member(s) of the association of Private Employment Agencies. ; All established activities relating to child labour, forced labour or human trafficking directly or indirectly connected to any PEA shall be visited with maximum sanction, not limited to withdrawal of license. Any concealment of such acts by any PEA s shall be viewed as conspiracy and same penalty shall apply. The principle of fair-hearing shall be a guiding principle in the investigation of all alleged breach of this code of conduct.[61]

The Code made provisions for Disciplinary Procedures as follows- Alleged breach of any part of this code discovered by the umbrella Association of PEAs or reported by another PEA shall be investigated by the umbrella Association.; Such breach or breaches shall be thoroughly investigated without fear, favour or bias due to ethnicity, race or colour, through the internal machineries of the umbrella Association (s).; The alleged PEA shall be given the opportunity to defend itself against all allegations of

[61] Nigeria Code of Conduct for Private Employment Agencies, Part 5..

breach of this code of conduct.; PEAs that are not satisfied with the outcome of the investigation could appeal such outcomes, stating the grounds of appeal. Such appeal(s) would be addressed by a separate body, distinct from the investigating body. 6.5 The decision or outcome of any investigation of breach of this code shall be unanimously adopted by a simple majority of members of the umbrella Association of PEAs (not executive body) so concerned before such outcome could be acted upon or such outcome sent to the Federal Ministry of labour and Productivity for further action.; In advising the Federal Ministry of Labour and Productivity of its investigations and outcome, the umbrella Association of PEAs shall avail the Ministry all relevant documents pertaining to the investigation, including the appeal by the alleged PEA. ; Without prejudice to the sanctions that could be imposed by the Federal Ministry of Labour and Productivity, the umbrella Association of PEAs, using its internal machineries, could imposed fines or give warnings as would be agreed by its members to PEAs within its fold. ; The Federal Ministry of Labour and Productivity may investigate all alleged breach discovered, or reported by another PEA, giving the alleged PEA the opportunity of fair hearing. ; Where a provision in this Code is less stringent than that of other Codes of the Ministry of Labour and Productivity, the relevant provision of the Ministry's Code shall apply. ; The Ministry of Labour and Productivity shall exercise authority on all alleged breach investigated by it or any other body designated or appointed by it. This is without prejudice to the right of the affected PEA to seek legal redress in the law courts if it so desires. [62]

The Code of Conduct provides for Sanctions For Breach Of The Code Of Conduct as follows- All breach(es) of this code of conduct shall be thoroughly investigated before sanctions would be imposed.; Investigated breach(es) proved beyond all reasonable doubt shall attract sanctions ranging from warning, suspension of license, withdrawal

[62] Nigeria Code of Conduct for Private Employment Agencies, Part 6...

of license, blacklisting or outright prosecution in a Court of Law. ; All investigated breach(es) proved beyond all reasonable doubt outside the jurisdiction of the Federal Ministry of Labour and Productivity such as kidnapping, forced labour or human trafficking shall be forwarded to such governmental agencies responsible for such offenses. The sanctions relating to such offences shall apply; Investigated PEAs are at liberty to exercise their fundamental human rights by providing defense for all or any allegation and also have the right of appeal. [63]

Legal Implications of Negative impacts of Labour Migration and unfair Recruitment.

1.Unfair recruitment practices and other vices associated with it such as human trafficking, child labour, forced labour etc is a violation of fundamental human rights of Labour Migrants. The basic rights of labour migrants violated by unfair recruitment practices and other vices includes but not limited to right to dignity of human person; right to good health; right to freedom from discrimination; right to protection from economic and sexual exploitation as provided under the various laws discussed. Victims can enforce violations of their rights in court. Also, the Third Amendment of the Constitution provides that the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters, connected with or related to child labour, child abuse, human trafficking or any matters connected therewith or related thereto and can apply international conventions ratified by Nigeria to resolve labour disputes in line with international labour standards.

2. **Some unfair recruitment practice amounts to crime in Nigeria, such as obtaining by false pretences, child and human trafficking, smuggling, recruitment fee exploitation, etc For example ,** Child trafficking and human trafficking , obtaining by false pretences are offence punishable under the Trafficking in Persons (Prohibition) Law

[63] Nigeria Code of Conduct for Private Employment Agencies, Part 7.

Enforcement and Administrative Act, the Child Rights Act, the Criminal Code, and the Economic and Financial Crime Commission (Establishment) Act respectively. Relevant authorities under the Law are empowered to make arrests and prosecute offenders accordingly.

Conclusion

According to ILO, the protection of Nigerian migrant workers abroad become necessary because of their vulnerability to discrimination, extortion, arbitrary detention, hazardous working conditions, deportation, rape, violence and even murder. Nigerian migrant workers, particularly those working in the informal sectors and those in irregular situations, are the most vulnerable. To curb the illegal activities of Nigerian migrant workers and also address their vulnerabilities, Nigeria leveraged many international conventions to review, enact, and implement legislations to promote human rights and offer protection to its citizens abroad.[64]. Despite these international and national strides, infringement of rights, incidences of fraudulent and exploitative recruitment practices, human trafficking, forced labour, child Labour, smuggling still thrive, The proliferation of fraudulent Private Recruitment Agencies in the country unlicenced by the Ministry of labour and productivity and not registered under HuCaPAN is catastrophic, coupled with lack of enforcement of laws and policies amisdst poor supervision and regulation of the activities of the PEAs by appropriate Authorities due to inadequate funding and logistics and corruption in the system. Ignorance of the existence of the relevant laws, policies and initiatives, especially on how to contact the licensed PEAs and accessing the migration help desk and knowledge of labour rights by the public renders labour migrants vulnerable to exploitation. This is very worrisome because these acts constitute violations of human rights and criminal offences, and in most cases perpetrators are not apprehended and punished. The following measures are therefore recommended in the struggle for the

[64] ILO, National Policy on Labour Migration 2014-iom publications , https://publications.iom.nit>books>national policy-labour-migration-2014.

eradication of violations of rights of labour migrants through unfair recruitment and other avenues- Labour Migrant rights protection activism , implementation and enforcement of policies and laws, creating enabling environment for fair recruitment to thrive by stakeholder, effective labour inspection and supervision of PEAs and informal recruiters, eliminating non-payment of recruitment fees and related costs, addressing misleading propaganda pertaining to migration and migrants, funding and building stronger capacity of institutions such as ministry of Labour and productivity , and other regulatory and appropriate government authorities. creating awareness and education to the public on labour rights, relevant laws, policies and initiatives available for their protection in labour migration through seminars, advertisements, jingles, fliers, workshops, outreaches, and other avenues by appropriate government agencies. Most importantly, strengthening Nigeria economy and creating enabling environment for business to thrive will go a long way to reduce the labour migration.

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