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EDITORIAL NOTE

As we present the inaugural edition of the NILA Immigration Law Journal, we proudly honour HRM Obi (Prof) Epiphany Azinge SAN, the visionary founding President of the Nigerian Immigration Lawyers Association ("NILA") whose pioneering work has inspired a new generation of immigration law practitioners. Our esteemed dedicatee' seminal and magisterial work "AZINGE' IMMIGRATION LAW AND POLICY IN NIGERIA"published in 1998 was the first and remains the only authoritative and comprehensive treatise on Immigration Law and Practice in Nigeria.

This milestone marks the beginning of a dynamic conversation that will shape the future of Nigerian immigration law. Our mission is to provide a platform for scholars, practitioners, and experts to share cutting-edge research, analysis, and insights on current issues and trends in immigration law. We strive to foster informed discourse, promote intellectual curiosity, and uphold the highest standards of academic excellence and professional integrity.

In this maiden edition, we present a curated selection of articles tackling pressing issues in Nigerian immigration law. Our authors offer innovative solutions, rigorous analysis, and fresh perspectives on complex challenges facing our nation. It is hoped that the top-notch articles in this Journal will provide mental stimulation to all lawyers, policy makers and Judges that will result in informed and inclusive immigration policies and outcomes.

We invite scholars, researchers, and practitioners to submit articles, case notes, and book reviews for our upcoming editions. Please explore our website (www.nila.ng) for submission guidelines and deadlines.

Thank you for joining us on this exciting journey!

Prof. Larry Chukwu & Prince Ebere Nwokoro
Editors

ABOUT NILA

The Nigerian Immigration Lawyers Association (NILA)™ is a registered mark of Immigration Law Practitioners Association of Nigeria (Reg. No. 168102). We are a national association of immigration lawyers established by leading immigration lawyers and policy advocates in Nigeria under the superintendency of Prof. Epiphany Azinge (SAN) to promote justice, advocate for efficient immigration law and policy, advance the quality of immigration law and practice in Nigeria and enhance the professional development of our members.

OBJECTIVES OF NILA

The objectives for which the Association was established include, inter alia:

1. To promote the development of Immigration Law and Policy in Nigeria.
2. To promote the welfare of Immigration lawyers in Nigeria.
3. To increase member participation in advocacy before the National Assembly, the Judiciary, the Federal Agencies and the Media, for immigration related interests of clients and society.
4. To educate the public about the ways in which Nigeria immigration law and policy serves the national interest through the publication of journals and hosting of seminars, conferences and roundtables.
5. To enhance respect for immigration law and professional recognition of immigration lawyers by government, the bar and society.
6. To create a forum for interaction among various categories of stakeholders in global mobility and migration management.
7. To increase the level of knowledge and professionalism and foster the professional responsibility of our members.
8. To enhance the litigation capabilities of the membership as an important option to ensure the just administration of immigration law in Nigeria.
9. To assist members in effectively and competently pursuing their law practice zand enhancing their professional satisfaction.
10. To promote and support delivery of competent, ethical and lawful immigration services by lawyers.
11. To encourage and facilitate member participation in, and support for pro-bono services and programs.
12. To promote and encourage collaboration and alliances between public and private individuals and organizations (both nationally and internationally) with identical aims with the ASSOCIATION.

MEMBERSHIP

Membership is open to all legal practitioners, law teachers and policy advocates who practice, teach or research in the field of immigration law and other person(s) who have or share the vision of the Association.

CATEGORIES OF MEMBERSHIP

There are four types of membership:

i. Fellowship

Applicants for this category of membership must be seasoned legal practitioners or professionals in recognized allied sectors who have distinguished themselves in their respective fields and who are interested in the practice of Immigration Law and Policy as Fellows of the Association; must show evidence of over 20 years experience in the relevant fields, be referenced by at least 2 persons and adjudged as fit and proper by the BOT. Fellows are qualified to use the acronym "FNILA" after their names.

ii. Membership

Applicants for this category of membership must be legal practitioners or professionals in recognized allied sectors who are interested in the practice of Immigration Law and Policy as Members of the Association; must show evidence of between 10 to 20 years cognate experience in the relevant fields, be referenced by at least 2 persons and adjudged as fit and proper by the BOT. Members are qualified to use the acronym "MNILA" after their names.

iii. Associate Membership

Applicants for this category of membership must be legal practitioners or other professionals in recognized allied sectors who are interested in the practice of Immigration Law and Policy as Associate Members of the Association; with cognate experience of less than 10 years in the relevant filed, be referenced by at least 2 persons and adjudged as fit and proper by the BOT. Associate members are qualified to use the acronym "ANILA" after their names.

iv. Student Membership

Applicants for this category of membership must be law students or students in recognized allied disciplines with demonstrated interest in acquiring knowledge of Immigration Law and Policy; must be referenced by at least 2 persons and adjudged as fit and proper by the BOT.

Note: All prospective members are required to participate in the Membership Training Programmes of the Association before induction into the relevant membership cadre.

NILA™

Law Journal

A Publication of the Nigerian Immigration Lawyers Association

CALL FOR PAPERS

The Editorial Board of the NILA Law Journal (a publication of the Nigerian Immigration Lawyers Association) invites submissions for publication in the volume 2 No. 1 2025 edition of its journal. The NILA Law Journal is a peer-reviewed journal on a broad range of current and pragmatic topics related to the rapidly changing immigration law landscape, in support of NILA's mission to promote justice, advocate for fair and reasonable immigration law and policy in Nigeria, and enhance the professional development of its members.

The journal will consider articles on subjects relating (but not limited) to Nigeria or comparative immigration law and policy in general, business immigration, forced migration, refugee law, internal displacement and nationality law. As the journal is dedicated to publishing works falling under a broad conception of immigration law, articles might also touch upon related legal fields such as administrative law, constitutional law, criminal law, human rights and labour law. Articles must be original and must not have been submitted for consideration and publication elsewhere.

GUIDELINES FOR AUTHORS

1. Manuscripts must be in British English Language, Microsoft word format, 12pt font size (10pt for footnotes), and 1.5 line spaced.
2. References should comply with the NALT uniform Citation Guide-Style of Referencing, which is available on www.naltng.org.
3. Submission must include an abstract which should not exceed 250 words which should consist of an introduction, research method(s), findings, recommendation and conclusion.
4. Articles should not exceed 7500 words including footnotes, while commentaries and reviews should not exceed 4000 words including footnotes.
5. Author(s) details such as names, telephone number, email address, academic qualifications, and institutional affiliations should be indicated in the footnote of the first page of the paper.
6. All submissions will undergo double blind peer review and plagiarism check.
7. It is the responsibility of the authors to ensure that the material submitted does not infringe copyright.
8. All submissions should be sent to editor.nil.association@gmail.com not later than 31st May, 2025.
9. All correspondence concerning articles and other submissions should be addressed to:

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PAPER

NIGERIAN IMMIGRATION ACT 2015: AN EXAMINATION WITH THE 1999 CONSTITUTION AND INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Chukwuka Onyeaku, Ph.D.

ABSTRACT

The Nigerian Agency responsible for the control of immigrants under the Immigration Act 2015, is the Nigerian Immigration Service with the responsibility of regulating and approving the immigration of expatriates. It is also charged with responsibilities to grant visas and entry permits into Nigeria. The functions of the Nigerian Immigration Service obviously involves meddling with human rights enshrined in the Constitution of the Federal Republic of Nigeria and under the articles of international human rights instruments. The Immigration Act provides the legal and regulatory framework for the entry and exist into or out of Nigeria. Therefore, in the course of its work in monitoring and controlling movement into and out of the country, the Nigerian Immigration Service interferes with the freedom of movement guaranteed under the Constitution and international human rights framework. It is in this context that this paper examines the provisions of the Nigerian Immigration Act 2015 with respect to protection of human rights, fundamental freedom and dignity of human person. This is compared with what obtains under international human rights documents. When movement is restricted unlawfully, the question of right interference arises, giving rise to contest, litigations and claims against the Immigration Service in court. The paper argues that the Immigration Act 2015 was passed with little provisions on human rights protection thereby creating room for officials of Immigration Service to thinker with and violate human rights. It concludes that while curtailing movement of illegal immigrants and emigrants, the officials should respect human rights of immigrants or emigrants.

Keywords: Constitution, Human Rights Law, Humanitarian Law, Immigration, Migrant.

1. Introduction

Paramount to human being in his life is his security and welfare and every progressive government takes the responsibility to guarantee this. It is in this respect that the constitution of the Federal Republic of Nigeria provides that the security and welfare of the people shall be the primary purpose of government.[1] Equally important to every sensible government is the sanctity of its border, territorial integrity and security of the people. As a result, government impose measures to protect the sovereignty and integrity of the State. This is particularly important in the era of terrorist attack, refugee infiltration, and other security challenges.[2] The freedom of movement guaranteed under the constitution[3] is an

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[1] CRN 1999 (as amended) Section 14 (2) (b).

[2] O, Chinedu, *Nigerian Immigration Practice and Procedure* <https://www.dcsl.com.ngo> (Accessed July 10, 2019, 1.

[3] CFRN 1999 (as amended), Section 41.

important factor for consideration when promulgating legal framework for protection of borders and territorial integrity of the state. The Nigerian Immigration Act[4] which confers power to Nigerian Immigration Service does not contain sufficient provisions for protection of human rights enshrined in the constitution, particularly right to freedom of movement.[5] That is to say, that the power granted to the Nigerian Immigration Service (NIS) under the Act[6] to control the movement of persons entering or leaving the country, borders, and the enforcement of laws and regulations relating to immigration and emigration into and out of the country should be handled with regard to and respect for fundamental freedoms guaranteed under the Constitution of the Federal Republic of Nigeria 1999. It is in the context of this analysis that this paper examines the Nigerian Immigration Act 2015 with respect to human rights of people enshrined in the 1999 Constitution. That is, the paper seeks to examine the provisions of the Nigerian Immigration Act 2015 in comparison with the provisions of the Constitution and the Articles of international human rights law and international humanitarian law.

This is with a view to discover the extent to which the Nigerian Immigration law provide for human rights and respect the freedom of movement and association as guaranteed under the Constitution and international human rights instruments.[7] To examine the issues raised above, the paper is divided into five sections. Section one is the introduction. Section two is an overview of the Nigerian Immigration Act 2015. Section three is an examination of the provisions of Nigerian Immigration Act 2015 with the 1999 Constitution. Section four examines the Immigration Act 2015 with the international human rights frameworks with a view to seeing how both legal frameworks provide, protect and respect human rights. Section five is an overview of the Nigerian Immigration Act 2015 with International law. Section six concludes the paper. The paper adopts doctrinal and socio-legal research methodology in the conduction of the examinations. It looks at relevant literatures such as textbooks, journal articles, statutes, conventions, conference reports, and the Internet among other sources.

2. Nigerian Immigration Act 2015: An Overview

The Nigerian Immigration Act 2015 (The Act) was established pursuant to the Act of the National Assembly 2015.[8] The Act provides the legal and regulatory framework for the entry and exit of persons into and out of Nigeria. It also seeks to ensure that entry on non-nationals into the country is monitored and controlled. The Nigerian Immigration Service (NIS), is an Agency under the Federal Ministry of Interior, and is charged with the responsibility of regulating and approving the immigration and emigration of expatriates as well as granting visas and entry permits into Nigeria.[9] According to Adeyemi:

> the mandate of the NIS is hinged on the tripod necessity of advancing the security wellbeing of the citizenry, enhancing the in-flow of requisite skills and know-how required to drive the

[4] Nigerian Immigration Act (Act No.8) 2015.
[5] CFRN 1999 (as amended), Section 41.
[6] Nigerian Immigration Act (Act No,8) 2015, Section
[7] CFRN 1999 Section 40; Section 41.
[8] Nigerian Immigration Act (Act No.8) 2015 Section 1.
[9] Bisi Adeyemi, *Control of Migrants under the Immigration Act 2015*<https://www.irglobal.com/article/control-of-immigrants-under-the...> (Accessed July 10, 2017), 6.

Nigerian economy as well as preventing indiscriminate employment of under-qualified immigrants with its attendant negative consequences.[10]

The Act provides that persons entering into Nigeria, or leaving Nigeria are required to be examined by the Immigration Officer.[11] On this basis, the officer may, on the information provided, refuse admission to any non-Nigerian citizen in any proper case. Thus, in *Awolowo v. Minister of Internal Affairs*[12] the defendant argued that the Constitution of the Federal Republic of Nigeria entitles him to the defence counsel of his choice.[13] After reviewing section 13 of the Immigration Ordinance, the court held that the right to enter Nigeria must be accorded to counsel who is called to Nigerian Bar and has the right to enter and leave the country. The Act also requires every passenger who arrives or departs Nigeria from any recognized port to produce to an immigration officer "anding or embarkation"cards in such form as the Minister or the Comptroller-General of Immigration may specify and to satisfy the immigration officer that he is the holder of a valid travel document.[14]

The Act authorizes the Minister of Interior to prescribe the conditions for entry into Nigeria and the fees payable in respect of such authorized entry.[15] Thus, where such conditions are not met, the Minister is at liberty to deny such visitor entry, irrespective of the nature or purpose of that visit.[16] Flowing from this, the Act further prescribes that a foreigner, intending to come into the country either for business meetings, specialized projects or long-term employment may only enter the country after obtaining the appropriate entry visa.[17] It also specifies that any person in Nigeria, who wants to employ a migrant shall, unless exemption is granted, apply to the Comptroller - General of Immigration for the migrant to enter Nigeria. Among other conditions, the Comptroller-General of Immigration has the discretion to grant an expatriate permission as he deems fit. Following this is the condition that an employer of migrant worker must obtain an Expatriate Quota and Business Permit before employing the migrant worker. However, the Act provides that nationals of member States of the Economic Community of West African States (ECOWAS) are exempted from obtaining entry visas and can reside, work, travel freely to Nigeria and undertake commercial and industrial activities without resident permits, visa or special permission.[18] They are only required to apply for and obtain what is known as an ECOWAS Resident Card. In the context of these and other provisions of the Immigration Act 2015, the next section of the paper examines the Act with the constitution.

3. Immigration Act and the 1999 Constitution

Nigeria as a sovereign authority with responsibility for security of its citizens, it needs to protect the socio-economic interests of its populace. Recognizing this objective and in a bid to ensure strict

[10] Ibid.
[11] Nigerian Immigration Act (Act No.8) 2015 Section 15.
[12] (1963) LCN/1050(SC)
[13] CFRN 1960 Section 21 (5) ©.
[14] Nigerian Immigration Act (Act No.8) 2015 Section 17.
[15] Ibid, Section 19.
[16] Bisi Adeyemi (n 9) 3.
[17] Nigerian Immigration Act (Act No. 8) 2015 Section 18.
[18] Ibid, Section 37 (13).

compliance to lay down laws, the immigration Act empowers the Minister of Interior, the Nigerian Immigration Service and the Nigerian Courts, where necessary, to detain persons suspected to have violated the provisions of the Act for the purpose of establishing their guilt and enforcing specific provisions of the Act.[19] The Act empowers an Immigration Officer to detain, after due examination, any person who appears to him to be a prohibited immigrant who enters Nigeria by inland waters or overland.[20] Furthermore, the Act empowers the Minister of Interior or the Comptroller General of Immigration to prohibit the departure of any person who is yet to satisfy an order of a court of competent jurisdiction or against whom a warrant of arrest had been issued.[21]

The Act provides that where a recommendation for deportation is in force in respect of an offender he shall be detained unless the Minister otherwise directs.[22] And the Act also provides that where a deportation order is in force in respect of an offender, he may be detained under the authority of the Minister until he is removed from Nigeria pursuant to the Act.[23] It is important to note that whilst Section 52 of the Act empowers an Immigration Officer to detain, within a reasonable time, prohibited immigrants who are due for deportation from Nigeria, Section 53 of the Act empowers the Minister to direct the detention of any person against whom a detention order has been made where the deportation is impracticable or prejudicial to national interest. The Act in particular empowers the Division of Irregular Migration (established under Section 62 of the Act) to arrest, detain and prosecute offenders under the Act or any other law relating to smuggling of migrants and similar offenders.[24]

As Ozor argues, the most controversial provision of the immigration Act as regards the detention of persons for alleged immigration offence is Section 48 (1).[25] It is pertinent at this stage to reproduce the section. It states:

> "where a person is charged with an offence upon conviction of which the offender may be recommended under this Act or any other Act for deportation…; and notwithstanding the provision of any other Act or enactment, the offender at the hearing may be remanded in custody for a period not exceeding 21 days at the first instance, and thereafter as occasion may require, the offender may be so remanded from time to time, but in no case shall the total period of remand exceed 90 days."

As Ozor posits, the above Section clearly confers the power to detain an immigrant whose possible punishment may climax in his deportation for a period not exceeding three months.[26] Again, it is must be noted that this power is conferred on the court and not the Immigration Service or the Minister. The Section purports that, during trial, the offender may be detained whilst a deportation order is being awaited by the Minister. With respect, this section is contradiction with human rights and fundamental

[19] Ibid, Section 53.
[20] Nigerian Immigration Act (Act No. 8) 2015 Section 26.
[21] Ibid, Section 31.
[22] Ibid, Section 50 (1).
[23] Ibid, Section 51(2).
[24] Ibid, Section 63.
[25] Ozor Chinedu, *Nigerian Immigration: Practice and Procedure*, DCSL Corporate Services Ltd, www.dcsl.com.ng 2019.
[26] Ibid.

freedoms under the constitution and international human rights.[27] Thus, in *Lucien Habib v Principal Immigration Officer*[28] the court held that an immigrant' fundamental right to freedom of movement, association or assembly must be respected while awaiting his removal from the country. The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for Fundamental Objectives and Directive Principles of State Policy and states that the state social order shall be founded on Freedom, Equity and Justice.[29] It is against this fundamental principle that the Immigration Act 2015 provisions on detention of foreigners or immigrants is contrary to the Constitution. Detention of person up to three months or more is illegal, and moreover, detention of immigrants most often is carried on mere allegation and on proof on guilt by a court of law.

The Constitution of the Federal Republic of Nigeria[30] provides that:

> "very person shall be entitled to his personal liberty and no person shall be deprived of such liberty save…in accordance with procedure permitted by law –for the purpose of preventing the unlawful entry of any into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto: Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence."

Also, in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.[31] In view of these provisions of the constitution, it is argued that detention of a person for a period of twenty-one days as provided in the Nigerian Immigration Act 2015[32] is unconstitutional, illegal and null and void. The Constitution equally provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.[33] In this respect, delaying or denying a citizen of Nigeria from travelling out of the country without cogent reasons under the Immigration Act will be unlawful.[34] Thus, in *Nigeria v Secretary of State for the Home Department*[35] the court held that delaying or total refusal by Immigration Service to allow a citizen travel in and outside his country is manifestly illegal under the Immigration law and this must apply to every civilized country.

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[27] CFRN 1999 Sections 33, 40, and 41; ACHPR Article 2, 12.
[28] (3PLR/1959/37 (FSC) 15.
[29] CFRN 1999 Section 17, ACHPR Article 2, 12.
[30] CFRN Chapter IV Section 35 (1) (f).
[31] CFRN 1999 Section 36 (1).
[32] Nigerian Immigration Act 2015 Section 48 (1).
[33] CFRN 1999 Section 41 (1).
[34] Ibid.
[35] (2009) ECtHR 15.

Therefore, the provision of the Nigerian Immigration Act which empowers the Minister of Interior or the Comptroller General to prohibit the departure of any person who is yet to satisfy an order of a court or against whom a warrant of arrest had been issued (but not yet arrested or detained lawfully) is against fundamental human rights principles provided under the constitution and as reflected in the above case law. This paper argues that much as the provisions of the Immigration Act 2015 is laudable, its provisions and its enforcement must be in tandem with and respect the provisions of the 1999 Constitution. The Act was couched in such way that may suggest that the country has scant regard for human rights. For instance, in the case of an immigrant or emigrant, subjecting him or her to long period of detention that deprive him of his liberty pending the issuance of an administrative order is reprehensible. Against this background, it is necessary for the Act to specify a time frame for issuing relevant detention and deportation order in conformity and consistent with the provisions of the constitution.

Therefore, allowing the Minister of Interior or the immigration officer to detain persons whether immigrant or emigrant at will or for a reasonable time, again is unconstitutional. Moreover, the term "reasonable" is subjective, not defined in the Act and can easily be abused by immigration officer. The Immigration Act provides for categorization of migrants into regular and irregular migrants.[37] The Act also authorizes the Minister of Interior to prescribe the conditions for entry into Nigeria and the fees payable in respect of such authorized entry. Thus, where such conditions are not met, the Minister is at liberty to deny such visitor or irregular migrant entry, irrespective of the nature or purpose of the visit.[38] With respect to the power of division of irregular migration, this paper argues that irregular migrant worker or non-documented migrant worker which is defined as a person who enters a country without authorization for the purpose of obtaining employment,[39] has the same right as other migrant workers under the International Convention on the Right of Migrant Workers and their Families (ICRMW).[40] Therefore, as with other migrant workers, States may not, on the basis of the irregular status, deprive an irregular migrant worker the rights afforded to him under the ICRMW.[41]

The Act still uses the term illegal or irregular migrants[42] which has been outlawed by the United Nations General Assembly[43] in 1975. Since that time, the term non-documented migrant is used to avoid the stigma attached to term irregular or illegal migrant. The use of the term illegal or irregular migrant amounts to discrimination against migrants who entered the country illegally. This in contravention of the Constitution and international human right instruments.[44]

[36] Nigerian Immigration Act 2015 Section 31.
[37] Nigerian Immigration Act 2015, Section 63.
[38] Ibid.
[39] ICRMW Article 5.
[40] A/Res. /45/158, 18 December, 1990, Article 7.
[41] ICRMW Article 25 (3).
[42] Nigerian Immigration Act 2015 Article 62.
[43] UN General Assembly Resolution3449 (XXX), *Measures to Ensure the Human rights and Dignity of Migrant Workers*, UN Doc, A/Res/32/120, 9 December 1975, para, 2.
[44]

4. Immigration Act 2015 and International Human Right Law and International Humanitarian Law

In the examination of Immigration law and migrants' rights under international human right law and international humanitarian law, it is necessary to define the term migrant under international law. There is no clear, universally agreed upon definition o the term a migrant, sometimes referred to as international migrant.[45] Whatever definition generally accepted by human rights bodies and whatever the category of migrants, what is mostly important is their right under the law. In other words, what is necessary is to determine the rights of migrants. According to international human right norms, which are based upon the inherent dignity of every person, migrants enjoy the fundamental rights afforded to all persons regardless of their legal status in a State.[46] On this note, the paper examines the rights of migrants under international law with a view to determine how the Nigerian Immigration Act 2015 complies with the law protecting the rights. The basic rights of migrants under international law are therefore outlined as follows.

Right to Life

Just as enshrined in national constitutions, migrants have all the rights proved for under international law. First, all migrants have a right to life, and States have an obligation to ensure that no migrant is arbitrarily deprived of this right.[47] To maintain international standard, States are enjoined to prosecute right to life violations, including extrajudicial killings that take place during a migrant' journey from the country of origin to the country of destination and vice versa.[48]

As stated in International Justice Resource Center:

> "States also have a duty to mitigate loss of life during land and sea border crossings[49] and generally, under international human rights law and international law of the sea, the State has a duty to protect and ensure the right to life of individuals at sea within the State' territory or that a ship under the State' jurisdiction comes across. The international law of the sea in particular has developed provisions concerning the rescue and protection of individuals, including migrants, lost at sea.[50] For example, Article 98 of the United Nations (UN) on the Law of the Sea (UNCLOS) places an obligation on ship masters to assist any person found at sea who is in danger of being lost and rescue persons in danger if informed of their for assistance, so long as such actions do not seriously endanger the ship, crew or passengers."[51]

Equality and Non-Discrimination

International human rights law guarantees freedom from discrimination in the enjoyment of human rights for all people, including migrants. For instance, International Covenant on Economic, Social and

[45] OHCHR, *Migration and Human Rights: Improving Human Rights-Based Governance of International Migration* (2013), 7.
[46] UDHR 1948 Article 2 (UNGA Res 217 A (111)).
[47] ICCPR, 1966 Article 6, ICRMW, Article 9.
[48] UNGA Res. 23/20, *Human Rights of Migrants*, UN Doc. A/HRC/RES/23/20, 26 June 2013. Para. 4 (c).
[49] Ibid, para.4 (d).
[50] UNCLOS 1982 Article 98.
[51] Ibid, Article 98 (2), International Justice Resource Center, Migration and Migrants' Rights <https://ijcenter.org/thematic-research-guides/immigration-emira...> (Accessed June 21, 2021), 7.

Cultural Rights states "The States Parties to the present Covenant undertakes to guarantee the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[52] When migrants belong to any group within the contemplation of the Convention, right freedom from discrimination on any ground applies. Regional human rights instruments such as Inter- American Convention on Human Rights,[53] Arab Charter on Human Rights,[54] African (Banjul Charter on Human and Peoples'Right),[55] and European Convention on the protection of Human Rights and Fundamental Freedoms.[56] Also, a migrant' right to non-discrimination in the workplace is protected.[57] In accordance with the above principles of international law, the Inter-American Court of Human Rights held in its *Advisory Opinion On the juridical Conditions and Rights of Undocumented Migrants*[58] that the principle of equality and non-discrimination has reached the status of jus cogens or a preemptory norm of general international law. Therefore, all states are bound to these rules regardless of whether they have ratified specific international treaties. The Court emphasized:

> A person who enters a State and assumes an employment relationship, acquires his labour human rights in the State of employment, irrespective of migratory status, because respect and guarantees of the enjoyment and exercise of those rights must be made without any discrimination. In this way, the migratory status of a person can never be a justification for depriving him or her of the enjoyment and exercise of his human rights, including those related to employment.

Right to Protection against Arbitrary Arrest and Detention

It is against the provisions of international law to subject individuals, including migrants, to arbitrary arrest and detention.[59] Specifically, under Article 9 of International Covenant on Civil and Political Rights (ICCPR), a State must not arbitrarily arrest and detain an individual, and the State must show that other less intrusive measures besides detention have been considered and found to be insufficient to prove detention is not arbitrary. Therefore, the prolong detention of a migrant is not justified simply by the need to wait for an entry permit or until the end of removal proceedings when reporting obligations or other requirements would be less intrusive measures to ensure that the migrant's situation complies with domestic law. This was the decision of Human Rights Committee in A v Australia.[60]

In line with the above decision, the European Court of Human Rights has held that holding a migrant for an unreasonable long period of time without informing him of the reason for detention violates the European Convention of Human Rights. In Saadi v the United Kingdom,[61] Saadi fled Iraq and arrived in

[52] ICSCR 1966 Article 2 (2), ICCPR 1966 Article 2 (1).
[53] IACHR 1969 Article 1.
[54] ACHR 2004 Article 3.
[55] ACHPR 1981 Article 2.
[56] ECHR 1950 Article 14.
[57] Vincent Chetal, "Sources of International Law", in (Brian Opeskin et al, eds.), *The ILO Declaration on Fundamental Principles and Rights at Work*, 2012, 79.
[58] (2003) I/A Court H.R., Advisory Opinion OC-18/03, para. 173 (4).
[59] AFCHPR Article 6; IACHR Article 7; ArCHR Article 14; ECHR Article 5; ICCPR Article 9.
[60] (1997) Communication No. 560/1993, Views of 30 April 1997, para. 8.2.
[61] (2008) ECtHR paras. 67-74.

London where he claimed asylum and was granted temporary admission. However, immigration officials detained him in January 2001 for 76 hours before his representative was informed of the reason why he was being detained. The European Court of Human Rights found that the United Kingdom violated Article 5 (2) which states that (everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest, and of any charge against him).

The ECtHR noted that in order for States to comply with the European Convention detention must be carried out in good faith, it must be closely connected to the purpose of preventing unauthorized entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but also aliens who, often fearing for their lives, have fled from their own country. International Covenant on the Rights of Migrant Worker and their Families (ICRMW) specially protects migrant workers and their families from individual or collective arbitrary arrest or detention.[62] And the Committee on Migrant Workers notes that in order for arrest or detention to not be arbitrary, it must be prescribed by law, pursue a legitimate aim under the law.[63] Additionally, the Convention on Migrant Workers stresses that the criminalization of irregular migration does not constitute a legitimate interest in regulating irregular migration.[64] Furthermore, the Convention on Migrant Workers emphasize that lawful administrative detention may transform into an arbitrary detention if it exceeds the time period for which a State can properly justify the detention.[65]

Right to Protection against Torture or Inhuman Treatment

The prohibition against torture is a jus cogen or pre-emptory norm of international law, which means that States have an obligation to enforce the prohibition of torture even if the State has not ratified a relevant treaty. Additionally, Article 2 (2) of the Convention against Torture states that a State may never cite exceptional circumstances, including war or a public emergency, to justify torture.[66]

Non-Refoulment

Non-refoulment, a basic principle of refugee law, refers to the obligation of States not to refoule, or return, a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of in a particular social group or political opinion.[67] Non-refoulment is universally acknowledged as a human right. It is expressly stated in human rights treaties such as Article 3 of the Convention against Torture[68] and Article 22 (8) American Convention on Human Rights. The right of non-refoulment is also applicable to individuals who do not have refugee status and may be interpreted more broadly than under the 1951 Refugee Convention. Non-refoulment include the obligation to not return a migrant to a State where he or she would face a risk of persecution or other

[62] ICRMW Article 16 (4).
[63] General Comment No. 2, 28 August 2013, para. 23.
[64] Ibid, para. 24.
[65] Ibid, para. 27.
[66] ICCPR 1966 Article 7; ECHR Article 3; IACHR Article 5 (2); ArCHPR Article 8.
[67] Convention Relating to the Status Refugees 1951, Article 33 (1).
[68] Convention against Torture 1948.

serious human rights violation, including torture and cruel, inhuman or degrading treatment or punishment, lack necessary medical treatment, or be threatened with the risk of onward fefoulement.[69] State' obligation with regard to non-refoulment also apply extraterritorially whenever they operate and hold individuals abroad, including to the extent of armed conflict or offshore detention or refugee processing facilities. Unlike under the 1951 Refugee Convention, which bases the principal of non-refoulment on the individual' refugee status, non-refoulment in the context of Convention against Torture applies regardless of refugee status.[70]

Prohibition against Collective Expulsion

The prohibition of collective expulsion of aliens is part of customary international law, and therefore, every State, regardless of the international treaty it has ratified, or not ratified, is still bound by the obligation to uphold the prohibition.[71] Additionally, many of the major human rights instruments prohibit the collective expulsion of aliens.[72]

Family Rights

International human rights norms require States to consider migrants' family life and their family members in decision regarding their admission, detention, or expulsion. For example, the Integration Convention on the Right of Migrant Workers (ICRMW) obligates States parties to "pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children"when a migrant worker is detained and to "take appropriate measures to ensure the protection of the unity of the family of the migrant workers."[73] The Inter-American Commission on Human Rights has similarly concluded that States subject to its jurisdiction must take into account a migrant' family ties, and the impact on the family members, in the host country in determining whether to deport him or her.[74]

4(a) Jurisprudence of Rights of Migrants under International Law

Having analyzed the rights of migrants under international law, it is necessary to see some selected case laws on the rights of migrants. In *A v Australia*[75] the Human Rights Committee found Australia had violated the right to liberty under Article 9 of the ICCPR by arbitrarily detaining the applicant, a migrant and Cambodian national who arrived to Australia by boat. He alleged that he was arbitrarily detained in Australia while his application for refugee status was pending. His detention was arbitrary, he argued, because there was no legitimate reason to detain him, at the time of filing his application, his detention had lasted for over three and half years, and there was no available judicial review of his detention. The Human Rights Committee found that the State' justification for detention –that the applicant was a flight risk and entered the country illegally –were insufficient to keep the applicant in detention for a total of

[69] CMW, General Comment No. 2 2013, para.50.
[70] Interim Report of the Second Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. A/70/303, 7 August 2015, para. 38.
[71] Third Report on the Expulsion of Aliens by the Mourice Konto Special Rapporteur, UN Doc A/CN.4/581, 19 April 2007, para. 115.
[72] Protocol 4 to the ECHR, Article4' ACHR Article 2 (5); AMCH, Article 22 (9) ArCHR, Article 26 (2); ICRMW, Article 22 (1).
73 ICRMW Articles 17 (6), 44.
[74] *US v Woyne Smith, Hugo Armendariz* (2010), IACHR, Report No. 81, 10, Case 12.562,
[75] Human Rights Committee, Communication No. 560/1993.

four years. In violation of the rights to liberty and security of Article 9 (1) of the ICCPR. Additionally, the Committee found that the State' restricted ability under recently passed legislation to review the lawfulness of detention of migrants was in violation of Article 9 (4). In *Hirsi Jamaa & Ors v Italy*[76] the European Court of Human Rights held that Article 3 of the European Convention on Human Rights,[77] which prohibits torture and cruel, inhuman, or degrading treatment, places an obligation on State parties not to expel migrants to a country where the State party is aware that the migrants face risk of the treatment prohibited under Article 3.

The 24 applicants, who are nationals of Somalia and Eritrea and were sent by Italian police to Libya, alleged that the Italian authorities returned them to a country where they were likely to face torture or cruel, inhuman, or degrading treatment within the country and likely to be repatriated back to their countries of origin where they would also likely face similar treatment. Because the Italian authorities knew the applicants were likely to be exposed to treatment as described under Article 3 both within Libya and in their home countries, which they were likely be sent back to once in Libya, the European Court of Human Rights held that Italy violated Article 3 of the Convention.[78] In *Good v Botswana*, the African Commission on Human and Peoples' Rights held that the inability to challenge an order of removal in the judicial system is a violation of the right to fair trial and right of non-nationals to be expelled according th the law. The complainant is a national of Australia who was working in Botswana when the President ordered him removed from the country after he wrote and published an article critical of the government. National legislation prohibited the domestic courts from hearing an appeal of an executive order of removal. The African Commission found violation of Articles 7 (1) and 12 (4) of the African Charter on Human and People' Right, which guarantees the right to have one' case heard by a competent tribunal and the right of non-nationals to only be expelled in accordance with the law. Furthermore, because the deportation orders, which were carried out the same day as the court' ruling that it could not hear the complainant' case, did not take into account the complainant' family and mutual support they derive from one another, the removal of the complainant violated his right to family life under Article 18

In *Ramon Martinez v United States*,[79] the Inter-American Commission on Human Rights found that the United States violated the rights to due process and a fair trial under the American Declaration on the Rights and Duties of Man because the State failed to inform the applicant, who was convicted of a crime in the United States, of his right to consular relations. The Inter-American Commission referenced the obligation under Article 36 of the Vienna Convention on Consular Relation[80] to inform the rights under the American Declaration. Article 36 of the Vienna Convention requires a State party to inform a non-national who has been arrested or detained that they have a right to communication with the consular office of their home State. A lack of

[76] (2012) ECHR 2776/09
[77] ECHR 1950 Article 3.
[78] (2010) ACommHPR, Communication No. 313/05.
[79] (2002) IACHR, Merits Report No. 52/02.
[80] Vienna Convention on Consular Relation 1969

communication with the consular office could result, the Commission noted, in due process violations due to factors including a lack of familiarity with the State' judicial system or a language barriers.

In *Simone Ehivet Gbagbo and Micel Gbagbo v Republic of Cote d'voire*,[81] the court held that the State did not act in accordance with the derogation principle under Article 4 of the ICCPR and Article 48 of the Ivorian Constitution. In addition, under the African Charter, the prohibition on arbitrary arrest and detention is absolute, and derogation is not permitted. Thus, the State also violated Michel' Article 6 right to be free from arbitrary arrest and detention. In relation to the compulsory residence order, the Court found that Michel' right to movement and choice of residence under Article 12 of the ICCPR and Article 12 of the African Charter, had been violated, as the authorities did not respond to his request to be moved to a safer and more comfortable location. The State also violated Michel' right to moral health of the family under Article 18 (1) of the African Charter, because it denied Michel any communication with his family and didn't inform him when he would be able to leave Bouna. Lastly, the Court held that Michel was not able to access any available domestic remedies because he was held under house arrest during a political crisis, and rejected the State' argument that Michel was actually able to enter a complaint through the appropriate channels before a competent judge. He was therefore denied his right to an effective remedy under Article 7 (1) of the African Charter.

5. The Nigerian Immigration Act 2015 and International Law

This section of the paper examines the Nigerian Immigration Act 2015 in the context of international human rights law and international humanitarian law. This is with a view to determine the extent to which the Nigerian Immigration Act 2015 complies with the international human rights law and international humanitarian law. This is in the context of the fact that since human rights has entered the realm of international law, it has acquired jus cogen status and is now a peremptory norm of general international law. In this respect, States are not allowed to use their national constitutions or other legislation to limit or prevent the enjoyment of human rights protected under international conventions whether they have ratified, acceded to, or domesticated the treaty or not.

To this extent, States are not permitted to derogate from the rights or insert "law back"provisions (subject to, in accordance with, with respect to or with regard to the provisions of the constitution or law), in their legislation or the constitution as these have the effect of denying or limiting the enjoyment of human rights. While the existence of the Nigerian Immigration Act 2015 is commendable, there are limitations of the Act because of some loose Articles pertaining to human rights. One of the sections is section 18 of the Act, which stipulated in paragraph (b) of "prohibited immigrants"that any person suffering from any form of mental disorder is barred from entering Nigeria and shall be deported.[82] As International Alliance for Peace and Development[83] stated, this section is in apparent contravention of

[81] (2013) ECW/CCJ/APP/18/11; ECW/CC/JUD/03/13.
[82] Nigerian Immigration Act 2015 Article 18.
[83] International Alliance for Peace and Development, *Briefing on Nigeria for Committee on the Protection of all Migrants Workers, List of Issues Prior to Reporting*, 32nd Session, (30 March to 9 April 2020).

Article 7 of the Convention on non-discrimination in rights.

Therefore, it is necessary to amend section 18 of the Immigration Act 2015, more so when Nigeria has ratified the Conventions. Another limitation of the Nigerian Immigration Act, 2015 in the application of due process guarantee for migrant workers and members of their families, is that the Immigration Act 2015 did not include any procedural guarantees on detention and expulsion, despite the fact that Section 6 of the Nigerian Constitution1999 guaranteed to all persons civil and political rights, including the right to litigation, protection procedures.[84] This is contrary to Article 16 of the Convention on freedom for migrant workers and personal safety and also paragraph 7 of the Article regarding the arrest or the remand of a migrant worker or his family members. Also, the Nigerian Immigration Act 2015 is silent of right to compensation to migrant worker' work-related injury in contravention of Article 83 of the International Convention on the Rights of Migrant Workers, which affirmed that the State party to the Convention must ensure effective remedies for any person whose rights are violated. Since 2015, the Northeast Nigeria has witnessed an increase in violence and killings by armed groups called Boko Haram militias.[85] According to Alliance for Peace and Development,[86] the killings by the terrorists in the Northeast Nigeria has resulted in a major humanitarian crisis. The killings include aid workers and infrastructure workers, most of whom are foreigners. According to Article 2 of the Convention, the term migrant worker refers to a person engaging in a remunerated activity in a state of which he is not a national. In view of this therefore, it is Nigeria' responsibility, perhaps through the Immigration Act to provide protection for migrant workers who are forced to flee persecution and violence taking place in the Northeast Nigeria and elsewhere. This is a lacuna in the Nigerian Immigration Act 2015, at least with respect to protection of human rights of migrant workers and their families.

6. Conclusion

The paper has synthesized the Nigerian Immigration Act 2015 with the 1999 Constitution and international human rights instruments with respect to immigration and rights of migrants. Contrary to assumptions and the practices of some legislatures, migrants whether regular or irregular are holders of fundamental rights under the national and international law. For this reason, international and regional human right frameworks enshrine and enforce rights, which unless expressly stated otherwise, are applicable to everyone independent of a person' status. Therefore, the fact of not complying with conditions for entry, stay or residence in a Member State should not deprive an individual from certain basic rights which are shared by all human beings.

In view of the above, the international human right instruments established within the United Nations and the International Labour Organization frameworks provide a set of international norms and

[84] CFRN 1999 Section 6.
[85] United Nations Secretary-General: Statement attributed to the Spokesman for the Secretary-General on Nigeria, December 24, 2019 <https://www.un.org/sg/en/content/sg/statement/2019-12-24/statement-attributable-the-spokesman-for-the-secretary-general-nigeria> (Accessed August 9, 2020), 6.
[86] (n 74).

standards for the protection of human rights, including labour rights that are applicable to irregular migrants. Therefore, the Nigerian Immigration Act 2015 requires a comprehensive review to provide and recognize the human rights of migrants whether they are irregular or regular or whatever status they possess. That is, the Act supposed to undergo holist review so as to remove obstacles it pose to realization of basic rights of migrants to which they are entitled. The amendment will make the Act conform to international human rights instruments and best practices.

FREEDOM OF ESTABLISHMENT UNDER THE ECOWAS TREATY: RIGHT OF A COMMUNITY CITIZEN TO PRACTICE HIS OFFICE AS NOTARY PUBLIC IN NIGERIA

Chike B. Okosa, Ph.D.

ABSTRACT

In this paper, we examined discrimination against migrants in admission to general notarial office and practice in Nigeria. We established that a primary jurisdictional requirement in admission to general notarial practice in Nigeria is membership of the bar. However, there is statutory provision for the granting of a warrant to a non-citizen entitling him to restricted practice of law in Nigeria for the purpose of particular proceedings. There is also provision permitting granting of reciprocal facilities and the privilege of unrestricted practice of law locally to citizens of countries where Nigerians enjoy similar privileges. Definition of legal practitioner encompasses these two categories who are permitted to practice law in Nigeria by virtue of high grace. They are thus eligible for appointment to the office of notary. From this context of regulatory discrimination between citizens and non-citizens, we examined the provisions of the ECOWAS Treaty and the applicable protocols. We established that the ECOWAS right of establishment provides a comprehensive legal basis for community citizens residing in Nigeria to be admitted to practice the notarial office on the same basis as Nigerian citizens. We then brought out that contrary to the projected timeline for implementation of the ECOWAS right of establishment, till date, the right of establishment in the sub-region has not been realized or been meaningfully implemented. This leads us to the conclusion that until the full implementation of the complete right of establishment protocol, ECOWAS community citizens, just like other migrants, will continue to suffer the discrimination of being prohibited, as of right, to practice the notarial office in Nigeria.

Keywords: Citizenship; Discrimination; ECOWAS; Law Practice; Notarial Office, Notary Public

1. Introduction

On May 28, 1975, sixteen West African nations signed a treaty to establish the Economic Community of West African States (ECOWAS). The purpose of the treaty was amongst other, strengthening of regional economic integration through freer movement of goods, capital and people. In 1979, the High Contracting Parties adopted a Protocol for the Free Movement of Persons, Residence and Establishment. This protocol, provided for *inter alia*, a right for community citizens to enter, reside and establish economic activities in the territory of member states. A Revised Treaty was signed on July, 24 1993 in which pursuant to its article 59, the High Contracting Parties reconfirmed the right of community citizens to enter, reside and establish in member states. Full implementation of the provisions of the ECOWAS Treaty would have entitled migrants, as community

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citizens to take up residence in Nigeria and under the establishment clause, pursue professional practice and business on the same grounds as Nigerian citizens. In this short note, we intend to explore the rights of migrants to practice the notarial office in Nigeria. In the section next, we will highlight the definition and history of the office of notary public. Thereafter, we will take a look at the classification of notaries in Nigeria, and leading from that, we will explain the procedure and requirements for appointment of notaries in Nigeria. This will take us to examination of the procedure by which migrant notaries may be permitted to practice their office in Nigeria. Leading from that, we will examine in detail, the right of a community citizen to practice the notarial office in Nigeria. We will then conclude.

2. Definition and History of Notarial Office

Most common law systems have what is called the office of a notary public (also called 'otaries' or 'ublic notaries', a public official who notarizes legal documents and who can also administer and take oaths and affirmations, among other tasks.[1] In this regard, and from this perspective, a notary is a public officer whose function is to attest and certify by his hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign divisions, to take acknowledgements of, and certify deeds and other conveyances, and to perform certain official acts, chiefly in commercial matters such as the protesting of notes and bills, the noting of foreign drafts and marine protests in cases of loss or damages.[2] In England and Wales, the notarial profession is best understood from a historical perspective. Until 1533 notaries were appointed on papal authority by the Archbishop of Canterbury. After the break from Rome, on enactment of the Ecclesiastical Licences Act 1533, appointments continued to be made by the Archbishop of Canterbury - but on the authority of the Crown. The Archbishop's jurisdiction was, and is, exercised through the Court of Faculties. The Court is presided over by the Master of the Faculties who is the most senior ecclesiastical judge and commonly (and currently) also a judge of the Supreme Court. Since 1801 the appointment and regulation of notaries has been underpinned by statutes enacted by Parliament.[3] In conclusion, a notary, *registrarius, actuarius, scrinarius,* was anciently a scribe who only took notes or minutes, and made short drafts of writings and other instruments, both public and private, but is at this day a public officer of the civil and canon law. The tradition of Notaries which goes back over 2000 years has imbued the notary with a reputation for trustworthiness.[4] Thus, though the office of the notary was at one time merely that of a scribe or scrivener, it has today in most jurisdictions become a public office and though generally regarded as ministerial has been held in some jurisdictions with respect to particular acts to be judicial.[5]

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[1] Alfred E. Piombino, *Notary Public Handbook: Principles, Practices & Cases*, (East Coast Pub.: 1st edn. 2011)

[2] *Kip v. People's Bank & Trust Co.,* 66 CJS 609"*; Black's Law Dictionary*, (St. Pauls: West Publishing, 6th ed. 1990); in *Halsbury's Laws of the England*", (4th edition), vol. 34, para 201", it is stated that he is a duly appointed officer whose public office it is, amongst other matters to draw, attest or certify, usually under his official seal, deeds and other documents, including conveyances of real and personal property, and powers of attorney relating to real and personal property situate locally or overseas, to note or certify transactions relating to negotiable instruments, to prepare wills or other testamentary documents, to draw up protests or other formal papers relating to occurrences on the voyages of ships and their navigation as well as carriage of cargo in ships."

[3] http://www.thenotariessociety.org.uk/public_statement.asp

[4] Maurice Megrah & FR Ryder, *Byles on Bills of Exchange*, (Sweet & Maxwell, 23rd ed.)

[5] *Halsbury's Laws of the England*', op. cit.

3. Classification of Notaries in Nigeria

The Notaries Public Act creates two classes of notaries public. S. 2 of the Notaries Public Act creates the first class of notaries public. These are general notaries public. S. 2(1) of the Notaries Public Act grants them powers to perform the same duties, and exercise the same functions as a notary in England. S. 17 of the Notaries Public Act, creates the second class of notaries public in Nigeria. These are the notaries public *ex-officio*. There is yet a bifurcation in the class of notaries public *ex-officio*. The first group of notaries public *ex-officio* comprises magistrates. S. 17(1) of the Notaries Public Act, empowers and authorizes all magistrates to act as notaries public *virtute officii*. It is not provided that a magistrate who by virtue of this statutory provision is constituted a notary public is entitled to perform the same duties and exercise the same functions as a notary in England, which s. 2(2) of the Notaries Public Act, has reserved only for those notaries public who are so appointed by the Chief Justice of Nigeria. Generally, magistrates exercise jurisdiction subject to the statutes creating their office. Such jurisdiction and its exercise are normally limited to the territory of each local state. In addition to the general civil and criminal jurisdiction granted magistrates by statute, they are also granted the authority and jurisdiction to take solemn affirmations and statutory declarations,[6] administer any oaths which may be required to be taken before them in the exercise of any of the jurisdiction and powers conferred upon them by law,[7] and witnessing the due execution of land instruments by illiterate grantors.[8] Although it is not explicitly stated, it may be implied that the powers of a Magistrate to act as notary public *ex-officio* do not extend to private affairs, but are exercisable only within the public ramifications of his office as a magistrate and with respect to official, governmental and public matters. The second group of notaries public *ex-officio* is created under s. 17(1) of the Notaries Public Act, and these are the collectors of customs and excise duties. They are appointed notaries public and strictly limited to exercise their powers and duties in respect of minuting or noting or extending ships' protests. Two further limitations are that these powers shall only be exercised at the ports, and only at ports where a general notary public appointed by the Chief Justice of Nigeria is not available. S. 12 of the Oaths Act, 1963 creates a third class of notaries public *ex-officio*. This section authorizes any Nigerian official of the rank of Secretary or above in a Nigeria Embassy or Legation to, in the country where he exercises his functions, do any notarial act which a notary public can do within Nigeria, and that the same shall be as effectual as if duly sworn or done by or before any lawful authority in any part of Nigeria.[9] One distinction of fundamental importance to the competence of the notary is the jurisdictional limitations of their powers. The general notary is competent to act everywhere within the political boundary of his appointment as a notary

[6] For example, *see* ss. 8 & 13(a)(v) of Magistrates Courts Law of Lagos State

[7] S. 13(a) vi of Magistrates Courts Law of Lagos State; *see* generally ss. 20 and 21 of Magistrates Courts Law of Lagos State

[8] S. 8(1) Land Instruments Registration Law of Lagos State

[9] Under s. 6 of the Commissioners for Oaths Act, 1889, which is a statute of general application in Nigeria: *Every British ambassador, envoy, minister, chargé d'affaires, and secretary of embassy or legation exercising his functions in any foreign country, and every British consul-general, consul, vice-consul, acting consul, pro-consul, and consular agent exercising his functions in any foreign place may, in that country or place, administer any oath and take any affidavit, and also do any notarial act which any notary public can do within the United Kingdom; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in any part of the United Kingdom. Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any person authorised by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken, or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.*

public. He has jurisdiction throughout the entire country. His power and authority to act as a notary public is with respect to all matters customarily dealt with by notaries public. A magistrate can act as a notary only within the political boundary of his appointment as a magistrate. In other words, he is competent only within the local state wherein he is appointed. Unless if expressly authorized by statute, he may exercise his powers as a notary only with respect to acts and actions pertaining to government departments and related to running the instrument of state and administration of justice. The collector of customs and excise can act as notary only at a port. He is further limited that it must be only at a port where there is no general notary. He is further limited that he can only notarize with respect to minuting or noting or extending ships' protests. The consular officer can only perform the functions of a notary in the country of his posting, and he must be of the rank of Secretary or above. The Consular officer, until he is posted and has resumed duty in the country of his posting is not competent to act as a notary. Any notarial function undertaken while in the home country, or *en-route* the country of his posting is void.

4. Appointment of Notaries in Nigeria

In Nigeria, the office of the notary public is a creation of statute.[10] The Chief Justice of the Federation is authorized to appoint any fit and proper person being a legal practitioner to be a notary public for Nigeria. A notary public for Nigeria appointed by the Chief Justice of Nigeria is empowered to perform the same duties and exercise the same functions as a notary public in England. The laws regulating the appointment, functions, revocation, discipline, remuneration and other matters relating to the office of notary public are contained in the Notaries Public Act.[11] There has not been any subsidiary legislation to the principal legislation. Regulation of Notaries Public falls within item 49 of the Exclusive Legislative List of the 1999 Constitution. The powers of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter in the Exclusive Legislative List is to the exclusion of the State legislatures.[12] The burden is on any one asserting the authority of a notary public, to show that he was legally appointed.[13] This burden may be discharged by producing the Certificate of Appointment to the office of notary public issued by the Chief Justice of Nigeria pursuant to s. 4(2) of the Notaries Public Act; or by producing the Certificate issued under the hand of the Chief Registrar of the Supreme Court confirming the registration of the person as a notary. The burden may also be discharged by producing a certified true copy[14] of the extract from the Register of Notaries Public maintained by the Chief Registrar of the Supreme Court pursuant to s. 4(1) of the Notaries Public Act. The production of any of these documents would be conclusive proof of the appointment, and the authority of the appointee.[15] When properly appointed under the laws of the State or country in which he acts, a notary is everywhere and to all intents and purposes to be regarded as such an officer.

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[10] Notaries Public Act, Act number 41 of October 1, 1936; its short title is: *An Ordinance to provide for the appointment of Notaries Public, for the registration of Notaries authorized to act as such by the Master of Faculties and to regulate the duties of the office of Notary Public*.

[11] Legal Notice number 107 of 1955

[12] S. 4 of the 1999 Constitution

[13] s. 140 of the Evidence Act

[14] See *ss*. 102, 89(e), and 90(1)c of the Evidence Act.

[15] s. 168(1) & (2) of the Evidence Act

The Chief Justice of the Federation makes the appointment. There is no requirement for him to seek the consent of any Council or body. There is no provision in the Notaries Public Act authorizing the Chief Justice to delegate either to anybody or any group of persons, the power of appointing a notary public, though he may delegate the function of administering the oath of office. In the absence of any such authorization, the power of appointment cannot be delegated and cannot be exercised conjunctively with any council or body of persons but must be exercised personally by the Chief Justice. When power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally, unless he has been expressly empowered to delegate it to another.[16] Accordingly, where there is no express clause in a law, which enables a person to delegate authority given to him no such delegation could be done or permitted.[17] The Chief Justice is required to satisfy himself that, any candidate for appointment is a fit and proper person. The method he will employ in satisfying himself on the fitness of any candidate is not stated. It is discretionary as to the person who shall be appointed, no matter how meritorious the application may be.[18] The discretion is entirely that of the Chief Justice, and is unfettered. This though, does not empower the Chief Justice, to do what he likes, because he is minded so to do. He must in the exercise of this discretion, do not what he likes, but what he ought to do. A proper exercise of discretion should be according to law. It is not arbitrary, vague or fanciful, but legal and regular.[19] S. 2 of the Notaries Public Act confers the power of appointment on the Chief Justice in the following words - *"he Chief Justice of Nigeria may appoint…"*. Without doubt the Chief Justice of Nigeria has full statutory discretion whether or not to make an appointment. This discretion to appoint or refuse to appoint is however a discretion to be exercised within the law. In this context, '*may'* does not mean '*must'* and that use of the word '*may'* gives discretion *–discretio legalis decernere per legem quid sit justum* meaning legal discretion to do what is just, what is judicious, and what is judicial. Discretion does not empower a man to do what he likes, because he is minded to do so, he must in the exercise of his discretion, do not what he likes, but what he must.[20] Clearly, in exercise of his powers of appointment, the Chief Justice must of necessity exercise his discretion, to refrain from appointing unqualified persons, the same way, he must exercise discretion to assure appointment of qualified persons.

To qualify for appointment as a general notary public in Nigeria, the applicant must be a legal

[16] de Smith's *Judicial Review of Administrative Action*, 298''

[17] *Onyeukwu v. State*, [2000] 12 NWLR Part 681, 256, here appellant was convicted by a General Court Martial (GCM) convened by a certain Air Commodore F. O. Njobena. About fourteen days after the GCM was convened the Chief of Air Staff had in writing confirmed that he had authorized the said Air Commodore to convene the said GCM and sign all the necessary papers. S. 131(2) of the Armed Forces Decree No 105 of 1993 pursuant to which the GCM was convened provides that a court martial may be convened by:- The President, or Chief of Defence Staff, or Service Chiefs, or a GOC or corresponding commands, or a Brigade Commander or corresponding commands. On appeal, the Court of Appeal held that in the absence of an express clause permitting the delegation of authority, such delegation was not permissible. *See also Awobotu v. State* (1976) 5 SC 49. However in *NAF v. James*, [2003] FWLR Part 143, 257 the Supreme Court, faced with facts similar to the Onyeukwu case, held that the statute had provided for delegation of the powers of the Chief of Air Staff, and that the letter written by him, confirming his verbal authority to Air Commodore Njobena to convene the said GCM, constituted a valid instrument of delegation so as to confirm and preserve what was done earlier. The court thus held the convening order issued by the said Air Commodore F. O. Njobena and the subsequent proceedings as valid.

[18] s. 2(1) of the Notaries Public Act.

[19] *Harding v. Pinchet*, 66 CJS 611.

[20] *Egbuo v. Chukwu*, [1998] 10 NWLR Part 570, 499

practitioner.[21] The term *Legal Practitioner* is defined in s. 18 of the Interpretation Act as having the same meaning given it by the Legal Practitioners Act. S. 24 of the Legal Practitioners Act defines *'legal Practitioner'* to mean a person entitled in accordance with the provisions of the Act to practice as a barrister or as a barrister and solicitor, either generally, of for the purposes of any particular office or proceedings.[22] To be entitled to be called to the Bar, and have his name entered on the Roll of Legal Practitioners, the person shall be a Nigerian citizen, and must produce a qualifying certificate to the Body of Benchers, and must satisfy them, he is of good character.[23] The person who does not satisfy the requirements of being called to the Bar, may still be permitted to practice as a barrister and solicitor where, upon an application made by him, or on his behalf to the Chief Justice, he establishes to the satisfaction of the Chief Justice, that he comes from a country where the legal system is similar to that of Nigeria, and that he is entitled in his country to practice as an advocate. Upon the Chief Justice being satisfied on these, he issues a warrant under this hand authorizing that person, upon payment of any fees specified in that warrant, to practice as a barrister, for the purposes of particular proceedings, and in connection with any appeal brought in connection with those proceedings.[24] A person who does not fall into any of the two categories above, may also be authorized by virtue of grace and permission to practice locally as a barrister and solicitor. In this regard, the Attorney-General of the Federation may, after consultation with the Bar Council, by regulations provide for the enrolment of the names of persons who are authorized by law to practice as members of the legal profession in any country where, in his opinion, persons whose names are on the roll are afforded special facilities for practising as members of that profession. Without prejudice to the generality of the power conferred by this provision, the regulations may: require persons seeking enrolment by virtue of the regulations to pass such examinations and to pay such fees as may be specified by or under the regulations; and provide for the cancellation of enrolments having effect by virtue of the regulations where, in the opinion of the Attorney-General of the Federation, the facilities aforesaid are altered or withdrawn.[25] The statutory provision permits the admission with or without examination, of persons who are licensed to practice as counsel in any country or jurisdiction where members of the Nigerian bar are granted special dispensation to practice as counsel. The operative factor in this instance appears to be reciprocity of privileges. As we pointed out previously, the primary requirement for appointment as a general notary public in Nigeria is that the applicant must be a legal practitioner.[26] In this regard, the definition of *legal practitioner* is not limited to persons entitled to practice generally as a barrister or as a barrister and solicitor, but includes persons entitled in accordance with the provisions of the Act to practice as a barrister or as a barrister and solicitor, for the purposes of any particular proceedings.[27] Consequently, any persons authorised by the warrant of the Chief Justice to practice in Nigeria as a barrister or as a barrister and solicitor, for purposes of particular proceedings; or any person admitted to practice of law in Nigeria pursuant to any exemption or facility granted by the Attorney-General may competently apply for appointment as a notary public for Nigeria.

[21] s. 2(1) of the Notaries Public Act.
[22] s. 23(1) of the Legal Practitioners Act, 1975
[23] s. 4(1) of the Legal Practitioners Act, 1975
[24] s. 2(1) of the Legal Practitioners Act, 1975
[25] s. 7(2) of Legal Practitioners Act, 1975
[26] s. 2(1) of the Notaries Public Act.
[27] s. 23(1) of the Legal Practitioners Act, 1975

5. When a Migrant Notary may be Generally be Permitted to Practise his Office in Nigeria

Any person who by virtue of a faculty granted by the Master of Faculties of England is authorised to act a notary public in Nigeria may act as a notary public in any part of Nigeria.[28] To be thus entitled to act, he must first make an application in writing to the Chief Registrar of the Supreme Court of Nigeria. His application must either be accompanied by, or he will subsequently produce to the Chief Registrar, his notarial faculty granted by the Master of Faculties of England and duly registered and subscribed by the Clerk of the Crown in Chancery. Upon being satisfied as to these, the Chief Registrar, shall enter his name in a separate part of the Register of Notaries Public maintained by him pursuant to s.4 of the Notaries Public Act. S. 20 (1) of the Notaries Public Act exempts such a notary practising in Nigeria by virtue of a faculty from the Master of Faculties of England from the provisions of ss. 2 to 12 and 16 to 19 of the Act. These sections deal with appointment, oath of office, fees, revocation, suspension, discipline, offences, conflicting interest, etc.[29] This provision which permits persons granted a faculty to act as notaries public in Nigeria by the Master of Faculties of England to so act, etc has become redundant. At the time when the current Notaries Public Act was enacted in 1936, Nigeria was still a colony of Great Britain, and the Master of Faculties of England had powers to issue a faculty to any person to practice as a notary in the British Dominions or Colonies, Any faculty thus issued, was effectual both in England and the colonies. With independence, the Master of Faculties ceased granting faculties to notaries to practice as notaries in Nigeria. However, this provision may still find application in respect of Nigerian citizens granted faculties by the Master of Faculties of England to practice as notaries in England. Pursuant to this provision, they may be authorised to act as notary public in Nigeria.

6. Right of Community Citizen to Practice his Notarial Office Pursuant to ECOWAS Treaty

The Community aims of ECOWAS are to promote co-operation and integration, leading to the establishment of an economic union in West Africa.[30] In order to achieve these aims, the Community shall, amongst other things, by stages, ensure the removal, between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment.[31] Article 2(1)) of the 1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment highlights the right of Community citizens to enter, reside and establish in territory of

[28] s. 20 of the Notaries Public Act.
[29] s. 3 of the Australian Notaries Public Act, 1984 contains a similar provision. It provides that: (i) A person who, immediately before the commencement of this Act, held an appointment by the Court of Faculties of His Grace, the Lord Archbishop of Canterbury to act as a notary public in the Australian Commonwealth Territory may, at any time during the period of 6 months beginning on the date of commencement of this Act, apply in writing to the registrar for enrolment as a notary public for the Australian Commonwealth Territory. (i) If, on an application made in accordance with subsection (1) the registrar is satisfied that the Applicant held, immediately before the commencement of this Act, an appointment by the Court of Faculties of His Grace, the Lord Archbishop of Canterbury to act as a notary public in the Australian Commonwealth Territory, the registrar shall enter on the roll the name of the applicant and the date when the entry is made. (iii) A person whose name is entered on the roll under subsection (2) shall be deemed to have been appointed under this Act as a notary public for the Australian Commonwealth Territory on the date when the entry was made. The fact the Australian legislation was made in 1984 while the analogous section of the Nigerian legislation was made in 1938 as an amendment to the 1936 Nigerian Notaries Public Act is probably the reason why the Australian provision accords more with common sense than the Nigerian provision.
[30] Article 1 of ECOWAS Revised Treaty, <http://www.ecowas.int>
[31] Article 2(d)(iii) of ECOWAS Revised Treaty, <http://www.ecowas.int>

member states.[32] Article 2 of the 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) obliges states to grant right of residence in its territory for purpose of seeking and carrying out income earning employment to Community citizens who are nationals of other member states; while article 23 demands equal treatment with nationals for migrant workers complying with the rules and regulations governing their residence in certain areas of economic, social and cultural life. Articles 2-4 of the 1989 Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right to Establishment) underlines non-discriminatory treatment of nationals and companies of other member states except as justified by exigencies of public order, security or health; while article 7 forbids discriminatory confiscation or expropriation of assets or capital and stipulates fair and equitable compensation upon confiscation or expropriation. In these regards, "*Right of Residence*" means the right of a citizen who is a national of one Member State to reside in a Member State other than this State of origin which issues him with a residence card or permit that may or may not allow him to hold employment; while "*Right of Establishment*" means the right granted to a citizen who is a national of the Member State to settle or establish in another Member State other than his State of Origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals.[33] The second phase of the Community integration was outlined in the Supplementary Protocol of 1985. Under this phase, it was projected that residency, together with the right to income-earning employment would be available to Community citizens in host ECOWAS states. This phase was expected to last for five years. Establishment of businesses vide right of Community citizens to establish enterprises in member states other than their states of origin comprised the third phase of the community integration timetable. This was to be attained in the final five-year period. Unfortunately, up to the current, of the three phases projected by the Protocol, the only one that has been fully realised by all the members of the Community is visa-free entry for up to 90 days. Neither complete freedom of movement in the sub-region nor the right of establishment has been realized or

[32] *See generally*, Bola A. Akinterinwa, 'ECOWAS Protocols and Regional Insecurity: Right of Establishment versus Armed Banditry in Nigeria' <https://www.thisdaylive.com/index.php/2021/02/28/ecowas-protocols-and-regional-insecurity-right-of-establishment-versus-armed-banditry-in-nigeria/> Accessed on June 18, 2021 [Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment, in consonance with paragraph 1 of Article 27 of ECOWAS Treaty that confers the status of Community citizenship on the citizens of Member States and which also enjoins Member States to abolish all obstacles to freedom of movement and residence within the Community, has it in its Article 2 that 'the Community citizens have the right to enter, reside and establish in the territory of Member States]; Michael Okom & Rose Ugbe, 'The right of Establishment under the ECOWAS Protocol', (2016) *International Journal of Law,* Vol. 2 Iss. 5 [40-46] [The Right of Establishment as enshrined in the 1990 Supplementary Protocol on the implementation of the Third Phase of the ECOWAS Protocol on Free Movement of Persons, Goods and Services, entitles nationals of member states to settle or establish in ECOWAS states and carry out business activities under the same conditions that apply to nationals of the host state.]

[33] Economic Community of West African States (ECOWAS), *Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*, 29 May 1990, A/SP 2/5/90, <https://www.refworld.org/docid/49219d5b2.html> Accessed June, 18 2021

been meaningfully implemented in the Community.[34] Consequently, the right of establishment envisioned by the Treaty and Protocols for Community citizens has not yet been attained. They are still treated as foreigners across the entire divide of the community.[35] In effect, the envisaged national treatment of community citizens remains chimerical. With respect to both the taking up of employment or establishment of businesses, institutional discrimination continues to subsist in the treatment meted community citizens as opposed to national. This discrimination is both regulatory and structural, and spans both Nigeria and every other State member of the community. If the right of establishment, as envisaged under the applicable protocol had been attained, a notary public, member of any of the ECOWAS states, would, as a community citizen, be entitled as of right, to take up residence in Nigeria, and practice the office of a notary with the same rights, privileges and obligations as a Nigeria-appointed notary. However, in the absence of attainment of the Community right of establishment, the procedure for a legal practitioner or notary public from an ECOWAS country to practice the office of a notary in Nigeria is rather complicated. There are two alternative courses for him take. The first one is for him to seek a warrant under the hand of the Chief Justice authorising him to practice as a barrister for the purposes of particular proceedings and of any appeal brought in connection with those proceedings.[36] Ordinarily, under the Notaries Public Act, to qualify for appointment as a general notary public in Nigeria, the applicant must be a legal practitioner.[37] In this regard, under the Legal Practitioners Act the definition of *'egal practitioner'* includes a person entitled in accordance with the provisions of the Act to practice as a Barrister or as a Barrister and Solicitor, for the purposes of particular proceedings. The warrant issued by the Chief Justice of the Federation to a community citizen authorising him to practise as a barrister for the purposes of particular proceedings provides sufficient validation for an application by the community citizen to apply for appointment as a notary public. The same situation is also replicated where upon an application by a community citizen to the Attorney-General of the federation, the Attorney-General, after consultation with the Bar Council, permits his enrolment to practice as a member of the legal profession in Nigeria, provided Nigerians legal practitioners are afforded reciprocal facilities for practising as members of that profession in his country. This enrolment admits the community citizen into all the rights and privileges of a Nigeria attorney, and this includes the privilege, upon an appropriate application, of being appointed a notary public for Nigeria.

7. Conclusion

In Nigeria, in order to be appointed into the office of a general notary public, the candidate is required to be a legal practitioner. Citizenship is a crucial requirement for admission to legal practice in Nigeria. There is however, a window of privilege for non-citizens to be permitted to practice law locally. The first is pursuant to a special dispensation granted by the Chief Justice to a non-citizen legal practitioner to

[34] Aderanti Adepoju, Alistair Boulton and Mariah Levin, 'Promoting integration through mobility: Free movement under ECOWAS', <https://www.unhcr.org/49e479c811.pdf> Accessed June 9, 2021*; see also* John Agyei & Ezekiel Clottey, 'Operationalizing ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-Regional Integration' <https://www. migrationinstitute.org/files/events/clottey.pdf> Accessed June 9, 2021

[35] Michael Okom & Rose Ugbe, 'The right of Establishment under the ECOWAS Protocol', (2016) *International Journal of Law,* Vol. 2 Iss. 5 [40-46]

[36] S. 2(2) of Legal Practitioners Act, 1975

[37] s. 2(1) of the Notaries Public Act.

practice as a barrister for the purposes of particular proceedings and of any appeal brought in connection with those proceedings, provided his native country shares a similar law background with Nigeria. The second is pursuant to a permission granted by the Attorney-General, after consultation with the Bar Council, to permits the enrolment of a non-citizen legal practitioner to practice as a member of the legal profession in Nigeria, provided Nigerian legal practitioners are afforded reciprocal facilities for practising as members of that profession in his country. Since the definition of legal practitioner includes persons authorised to practice pursuant to the warrant of the Chief Justice or pursuant to the facility of the Attorney-General, such persons qualify for appointment as notaries public. Nevertheless, the effect of the ECOWAS right of establishment protocol which grants to community citizens the right to settle or establish in another Member State, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, under the same conditions as defined by the legislation of the host Member State for its own nationals is to render redundant, admission to the Nigerian (local) bar requirement in appointment as a notary public for Nigeria. Full implementation of the establishment clause would have entitled community citizens in Nigeria to be appointed notaries public in Nigeria, based on their membership of the bar in their countries of origin. However, up till the present, the right of establishment has not been implemented or realized. Consequently, Community citizens are still treated as foreigners and subject to regulatory and structural discrimination in the different countries of the ECOWAS community. Accordingly, with respect to the subject area of performing the notarial office, other than the two windows of privilege available to both community citizens and non-community citizens, migrants and non-citizens of Nigeria remain prohibited from practicing the office of a notary public in Nigeria.

ASSESSING THE HUMAN RIGHTS COMPONENT OF ECONOMIC MIGRATION: THE 'JAPA' SYNDROME IN NIGERIA

Uwakwe, Roland Chukwudi

ABSTRACT

Economic migration is an age-long global phenomenon that occasionally results in infringements of the human rights of migrants. The rule of law and universal notions of human rights are essential foundations for a democratic world order and social peace. Conversely, evidence reveals that violations of migrants' human rights are widespread and that they are a defining feature of international migration in the age of globalisation. This exercise, therefore, examined the human rights component of economic migration using Nigeria as a point of departure. It highlighted the push and pull factors that motivate migrants to exit Nigeria to unknown societies in search of better well-being. The work adopted the doctrinal method of academic research which comprises both primary and secondary sources. The work revealed that migration could advance the economy of Nigeria, particularly with the huge external remittances that flow through Nigeria economic migrants and citizens will most likely exit a disorganised society, even when they are not sure of the human rights conditions across the borders because the quest for survival is an existential crisis The work recommended that economic migration cannot be tamed until the Nigeria government takes the issues of governance seriously by revamping the bedridden internal economy.

Keywords: Economic Migration, Human Rights, Global Inequality, Globalisation

1.0 Introduction

The history of mankind revolves around man' search for a better environment for settlement and habitation; this is as migration has remained a regular feature of human existence. The prehistoric man was nomadic in nature, as he went from one end of the earth to another in search of food, a good climate, better welfare, and where he could fulfill his potential. As man moved, wherever he found a good and habitable environment, prehistoric man would settle, as no one or nation laid claim to any territory. However, when men began to settle permanently, they started developing such areas and claimed ownership of such territories. Part of that development was also the introduction of leadership which saw the development and expansion of kingdoms, empires, and the modern State systems which was introduced by the Treaty of Westphalia.

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The Treaty of Westphalia was introduced after the Thirty Years Roman Empire War, the Treaty as it were, introduced, the principle of sovereignty, which set the foundation for the modern international system. This principle holds that each State (Nation-State) has sovereignty over its territory and domestic affairs, to the

exclusion of external powers. The Peace of Westphalia is often cited as the beginning of the modern state system and ownership of occupied territories.[1]

States subsequently generated the rights of permanent sovereignty over the natural resources in their domains, as was mentioned by Chile in the United Nations Commission on Human Rights[2] in 1952. The principle was subsequently enhanced through various resolutions and declarations.[3] On 21 December 1952, the United Nations General Assembly by Resolution 626 (VII) laid a solid foundation of the principle. The Resolution for the first time recognised that countries had a right to determine the use of their natural resources to ensure the realisation of their economic development.[4] In 1958, through UN General Assembly Resolution 1314, the principle would be recognised as a basic element of the right to self-determination.

States began to utilise their natural and human resources to develop their domains and territories, against the olds of both the First and Second World Wars, Europe emerged from the frontiers of a shattered economy, prior before the Second World War, America had overcome the Great Depression of 1929 to be able to assist the damaged European and Japanese Economies that were ravaged by the horrors of the war through the introduction of the Marshal Plan. Thus, Africa and parts of Asia Economies were left to be exploited by the advanced economies through the use of their natural resources. As this exploitation continued, the industrialised countries were developing while others were under-developing, a process referred to as the "development of underdevelopment"by dependency theorists.

The citizens of the underdeveloped countries began to move from place to place in search of better opportunities. Therefore, an economic migrant is someone who emigrates from one country to another, including crossing intercontinental borders, seeking an improved standard of living, because the conditions or job opportunities in the migrant's own country are insufficient.[5]

Unfortunately, as these migrants move across the borders, they are constantly denied certain fundamental human rights. The rights which are recognised by the different international legal instruments such as the Universal Declaration of Human Rights,[6] International Covenant on Civil and Political Rights,[7] International Covenant on Economic, Social, and Cultural Rights,[8] as inherent in every human being irrespective of race, class, or nationality. The idea of human rights, is essentially driven by the inherent dignity of the man, human dignity is thus, the precursor, ancestor, or forerunner of human rights.[9]

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[1] Wikipedia Free Encyclopedia, https://en.wikipedia.org/wiki/Peace_of_Westphalia ,accessed 9/08/2024
[2] Hereinafter abbreviated and referred to as "UNCHR"
[3] Hyde, J.N, '*Permanent Sovereignty Over Natural Wealth And Resources*', 50 American Journal of International Law (1956), 854–867, at p. 855.
[4] Ibid.
[5] Wikipedia Free Encyclopedia, <https://en.wikipedia.org/wiki/Economic_migrant>, accessed 8/05/2024.
[6] Hereinafter abbreviated and referred to as "UDHR"
[7] Hereinafter abbreviated and referred to as "ICCPR)
[8] Hereinafter abbreviated and referred to as "ICESCR"
[9] Obiaraeri, N.O, *Fundamental Themes on International Human Rights*, Owerri,(Zubic Infinity Concept, 2015).

This analysis, therefore, explores the factors that contribute to the mass movement of Nigerians out of the country and the human rights violations that unsurprisingly emanate from such movements. This is because human rights issues have become universal and these are rights that are "inhere" in all humans by the mere fact that they belong to the class of humans and, no other qualification.

Conceivably, as a result of the marginalisation of economic migrants, nations of the world were encouraged to rapidly develop their natural resources to enhance the well being of their citizens, thus the right to development became attractive that was it first recognised in 1981 in Article 22 of the African Charter on Human and Peoples' Rights as an absolute individual right. The Charter provides that:

> 'All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in **the equal enjoyment of the common heritage of mankind'**[10]

The right to development was subsequently adopted as an immutable right in the Declaration on the Right to Development, 1986 by the UN General Assembly resolution.[11] The right to development is an all-inclusive right which includes self-determination, full sovereignty over natural resources, popular participation in development, equality of opportunity and the creation of conditions for the enjoyment of all the other forms of human rights.[12]

2.0 The 'Japa' Syndrome in Nigeria

'Japa' a colloquial term in Yoruba which means "o run, flee or escape" has seemingly taken hold of the Nigerian consciousness like wide fire even as the economy of the State is declining. A survey from the Nigeria Social Cohesion Survey revealed that seven out of 10 Nigerians (particularly the Youths) are willing to relocate to other countries for various reasons, with a good number of them recording success.[13] In the recent past, the Nigerian Association of Resident Doctors revealed that about 50 percent of Nigerian doctors had already found their way out of the country. The University College Hospital, Ibadan, Oyo State, also noted that more than 600 of its clinical workers have resigned from their appointments, while the Lagos State University Teaching Hospital disclosed that more than 150 nurses resigned from their appointments with the tertiary hospital.[14] According to the Pew Research Center,[15] 45% of Nigerians want to leave the country without knowing the condition of where they are going, the number of skilled-work and study visas issued by the UK to Nigerians rose from 19,000 in 2019 to 59,000 in 2021.[16]

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[10] See *Article 22(1),* African Charter on Human and Peoples' Rights, 1981.
[11] See Resolution 41/128 of 4 December 1986 by UN General Assembly.
[12] Obiaraeri, N.O., *Fundamental Themes on International Human Rights*, (Owerri, Zubic Infinity Concept, 2015), 299.
[13] Ogungbile, O., *Nigerians and the Japa syndrome*, <https://punchng.com/nigerians-and-the-japa-syndrome/>, accessed on 9/05/2024
[14] Ibid.
[15] Osaremen I., *Japa' Syndrome: Legitimacy Crisis, Emigration and Public Discontent in Nigeria*, <https://oxfordpoliticalreview.com/2023/05/08/japa-syndrome-legitimacy-crisis-emigration-and-public-discontent-in-nigeria/> , accessed on 9/05/2024
[16] Ibid.

3.0 Push and Pull Factors of Economic Migration

As a result of the changed and changing realities of the international social-political system, people from developing countries like Nigeria are forced to leave their home state in search of better places to improve their economic life and well being, thus economic migrants essentially leave due to the economic conditions in their countries. The term economic migrant may be confused with refugee, the former leave their country essentially due to harsh economic conditions, rather than fear of persecution based on race, religion, nationality, political opinion, or membership of a particular social group. Economic migrants are generally not eligible for asylum, except if the economic conditions they may face are severe enough to have caused indiscriminate violence.[17] Migration can bring economic pressure in the countries they leave behind –as working-age people exit the State, the elderly and aging population remains but with less support.[18] Conversely, migration has been seen to improve the economic life of the relatives of the migrants, and the economy of the state of origin of the migrant through remittances, and supports.

Given the above, therefore, the following are the push and pull factors that encourage most persons from developing countries to move outside their states of origin in search of a better situation across the borders:

3.1 Global Inequality

The world today is sharply divided between the rich and poor, 'haves' and 'have not', developed and underdeveloped, Bourgeoisie and the proletariat, etc. These classifications denote man's ability to manipulate and adjust to his environment not just for economic benefits but for the overall well-being of humankind. The classification places Europe, North America, and a few other countries in the developed category, while Africa, Asia, and Latin American countries are classified as either developing or underdeveloped.[19] The level of growth and development is best appreciated when the Gross Natural Product (GNP) of such a country is further analysed.[20]

As once observed by Senator Leahy,[21] America has less than 5 percent of the World's population but Americans use more than 50 percent of the world's resources. The world has enough resources to go around, but several factors sustain poverty, one such factor is that certain countries claim more of their fair share.[22] Inequality is synonymous with poverty, particularly relative poverty, which is situation where a people compare themselves with their mates across the world to determine their circumstances. There are instances where certain individuals with good-paying jobs in Nigeria resign to travel abroad for an unknown job.

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[17] Wikipedia Free Encyclopedia, <https://en.wikipedia.org/wiki/Economic_migrant> , accessed 8/05/2024.
[18] Ibid.
[19] Abia, R.P, *Sociology of the Third World: A Conceptual Approach*, Uyo, (2002, Kingsize Publications),2.
[20] Ibid,
[21] Offiong, D.A, Globalization: Post-Neo-dependency and Poverty in Africa, Enugu,(Fourth Dimension, 2001),98.
[22] Ibid.

Globalisation has also heightened the rate of economic migration across the world; this is because certain professional bodies train and recruit people online. More so, through print, electronic, and social media, poor people across developing countries are inundated with the lifestyles of people living miles away from them, these were things unimaginable in the past. Globalisation has, therefore, birthed a politically, culturally, and economically interconnected world, whereby distant events influence individuals' local lives, actions, and perceptions.[23]

In an unequal world, it makes sense for those in poorer countries with limited options to follow the money to a more developed country, find a low-skilled job, work hard, and then send some money back home.

3.2 Poverty

The World Bank defines poverty simply as "the inability to attain a minimal standard of living,[24] it implies a level of income that imposes real physical suffering on people in hunger, disease, and all forms of deprivation which breeds violence in different forms.

Poverty is a malaise without physical boundaries as it is present or manifest in varying degrees in different climes.[25] Poverty can manifest in the form of lack, shortage, indigence, impecuniosity, hardship, destitution, deprivation, or penury. The United Nations World Summit on Social Development[26] described poverty as a condition characterised by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education, and information.

Poverty creates a disadvantageous position in interstate affairs and economic negotiations, as poverty benefits the rich countries, developing countries like Nigeria provide a ready pool of low-wage labourers who are available to perform dirty work that people in rich countries are unwilling to perform. Poor countries purchase goods and services that would otherwise be destroyed. Poverty forces poor countries to allow rich countries to dump toxic and hazardous wastes in their countries for very little amount of money, most foreign loans are designed to improve those sectors for which foreign firms or corporations will benefit, while the loan is repaid from the sweat of the indigenous people.[27] Nigeria is a poor country from all economic indicators particularly when development indices are measured by the per capita income of the people.

3.3 Insecurity and the Politics of 'Tribe'

Political instability is a major factor that pushes a lot of people out of the country for better conditions

[23] Okunade, K., & Oladotun, E. A., *The Japa Syndrome And The Migration Of Nigerians To The United Kingdom: An Empirical Analysis*, Institute for Future Knowledge, University of Johannesburg, South Africa, 2023.
[24] Thomas, A., *The Study of Development*, Paper presented at the DSA Annual Conference, 6 November, Church House, London, (2004).
[25] Obiaraeri, N., O, *Human Rights, Poverty and Pandemics in Africa,* Owerri, Zubic Infinity Concept, (2021),222
[26] Copenhagen Declaration, 1995.
[27] Uwakwe, R.C, *Foreign Aid in Nigeria's Economic Development: A Legal Critique*, (LLM Dissertation, Faculty of Law Imo State University, Owerri, 2024).

elsewhere. Nigeria is an unstable country as insecurity ranging from kidnaping; banditry, terrorism, etc have become the other of the day. These security situations also drive investors out of investing in the country, thereby creating a situation where it is difficult to pull people out of poverty, this is as unemployment, rural-urban migration, and overpopulation have become the order of the day, thereby pushing a lot of Nigerians away from the country.

More so, the issue of tribe/tribalism has remained a cankerworm in the Nigeria social-political landscape that elections in the country are determined by tribes, thus any tribe that her son or daughter wins, means better attraction of government facilities. This, therefore, results in the neglect of the other tribes, hence the reasons for their economic migration for a better future outside the country.

3.4 Education, the Desire to Acquire International Qualification and Dependents' Future 'Security

The drive to study in the country by most economic migrants is stirred by the desire to advance their careers, which the Nigerian space currently denies them. Many believe the overseas, offers a better space for realising their visions and aspirations. Notably, however, although an average Nigerian youth is naturally career-driven with a flair for formal education, the educational system in Nigeria is currently failing due to non-payment of lecturers' salaries/arrears, and poor educational facilities, among others. The Academic Staff Union of Universities, ASUU is constantly on industrial actions year in, year out, usually these regular industrial actions, all academic activities ceased in public universities, thereby disrupting the academic calendar in all public universities

More so, several economic migrants, left the country apparently because they wanted a better future for their kids, they wanted them to grow up in a sane environment, which Nigeria currently deprives the majority of her citizens. The Nigerian government has no system to secure children' futures, hence, the quest to migrate to a more functional country where the children' education, health, and career are guaranteed. Most of the migrants, who went for additional qualifications or education, had no intention of staying back after their studies initially, but given the quality of education that they see their children exposed to, in comparison with the mess that happens in Nigeria, decided to change their minds

3.5 Currency Difference

In comparison to the currency notes and or legal tenders of other nations in the world; the naira is currently, glaringly depreciating, when pegged in value to the other currency notes of other nations., financial facts and statistics as of the last quarter of the year, 2022; the exchange rate of the Nigerian naira to the South African Rand, that of the Canadian Dollar, and the Swiss Franc, has more monetary value than the Nigerian naira.[28]

The pathetic, and abysmal "low" to which the value of the Nigerian naira, has 'tumbled down', in

[28] Ogbe, P., *The Nigerian Naira Versus Other Currency Notes*,< https://businessday.ng/opinion/article/the-nigerian-naira-versus-other-currency-notes/ >accessed 23/05/2024.

comparison to the currency notes of other nations in the present world, is alarming and calls for immense concern in the economic and monetary circles in the country. Ironically part of the reasons for the high rate of foreign currencies in Nigeria is because of the massive exodus of Nigerian students that are travelling abroad to study, some for the sole purpose of "scholarly tourism."[29]

However, while the country suffers as a result of the declining currency, Nigerian economic migrants are happy that they can use the little resource they get from their hard-earned labour to invest in the country by investing in real properties and other tangible investments. Most Nigerian youths are, therefore, motivated to travel to countries where the exchange rate is higher compared to the naira.

4.0 Human Rights Issues

States in the global economic system are entitled to regulate movement across their borders in line with the principles of sovereignty and territory integrity of the State's system, they must do so by their obligations under international law, including international human rights law, however, the obedience to this principle have continuously been observed in breach, particularly by states that lack basic democratic tenets.

The issue of the violation of the human rights of migration is particularly more identified with illegal migrants, States, often, have addressed irregular migration solely through the planks of sovereignty, border security, or law enforcement, sometimes driven by hostile domestic constituencies, as was observed by High Commissioner for Human Rights Navi Pillay and Chair of the Global Migration Group (GMG).[30] The number of irregular migrants is unknown but is estimated to be in the tens of millions worldwide. The GMG is usually deeply concerned about the human rights of these children, women, and men who are "more likely to face discrimination, exclusion, exploitation and abuse. Most of these migrants face prolonged detention or ill-treatment and in some cases enslavement, rape, or even murder. They are more likely to be targeted by xenophobes and racists, victimised by unscrupulous employers and sexual predators, and could easily fall prey to criminal traffickers and smugglers.[31]

Human rights are universal –they apply everywhere; indivisible –in the sense that political and civil rights cannot be separated from social and cultural rights; and, inalienable –they cannot be denied to any human being. This is the basis of the concept of "human rights for all" articulated in the Universal Declaration of Human Rights under the auspices of the United Nations.[32]

4.1 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Two major covenants covering the broad definitions of political and civil rights, and economic, social, and cultural rights were adopted in the mid-1960s. Together with the Universal Declaration of Human

[29] Ibid.
[30] United Nations, *Landmark Statement on Protecting the Human Rights of Irregular Migrants*, <https://www.ohchr.org/en/stories/2010/09/landmark-statement-protecting-human-rights-irregular-migrants>, accessed 20/5/2024.
[31] Ibid.
[32] Reginald A., *The Human Rights of Migrants,* Offprint of International Migration Vol. 38 (6) Special Issue 3/2000,

Rights, these three critical instruments are often referred to as the "International Bill of Human Rights" universally applicable to all human beings. However, in practice, it became evident that the principles elaborated in the "ill of Rights"instruments were not applied to several important groups such as women, children, migrants, etc. The convention on migrants made elaborate seven points for the acceptance of the 1990 Convention to wit:[33]

1. Migrant workers are viewed as more than labourers or economic entities. They are social entities with families and, accordingly, have rights, including that of family reunification.
2. The Convention recognises that migrant workers and members of their families, being non-nationals residing in states of employment or transit, are unprotected. Their rights are often not addressed by the national legislation of receiving states or by their states of origin.
3. It provides, for the first time, an international definition of migrant workers, categories of migrant workers, and members of their families. It also establishes international standards of treatment through the elaboration of the particular human rights of migrant workers and members of their families.
4. Fundamental human rights are extended to all migrant workers, both documented and undocumented, with additional rights being recognised for documented migrant workers and their families, notably equality of treatment with nationals of states of employment in several legal, political, economic, social, and cultural areas.
5. The Convention seeks to play a role in preventing and eliminating the exploitation of all migrants, including an end to their illegal or clandestine movements and to irregular or undocumented situations.
6. It attempts to establish minimum standards of protection for migrant workers and members of their families that are universally acknowledged. It serves as a tool to encourage those States lacking national standards to bring their legislation in closer harmony with recognized international standards.
7. While the Convention specifically addresses migrant workers and members of their families, implementation of its provisions would provide a significant measure of protection for the basic rights of nearly all other migrants in vulnerable situations, notably those who are in irregular situations.

For the benefit of hindsight, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a United Nations multilateral treaty governing the protection of migrant workers and families. Signed on 18 December 1990, it entered into force on 1 July 2003 after the threshold of 20 ratifying States was reached in March 2003.[34] The main objective of this instrument is to foster respect for migrants' human rights. Migrants are not only workers; they are also human beings who have inherent powers like any other human being. Technically, the Convention does not create new rights for migrants but aims at guaranteeing equality of treatment, and the same working conditions, including in case of temporary work, for migrants and nationals.[35]

[33] Ibid.

[34] Wikipedia, the free encyclopedia, *Migrant Workers Convention,* <https://en.wikipedia.org/wiki/Migrant_Workers_Convention>, accessed 20/05/2024

[35] Ibid.

Even with this very important instrument, together with the International Bill of Rights, the human rights of economic migrants have persisted in international political and economic relations, particularly in the following areas:

4.2 Denial of Civil, Political, and Legal rights

Most jurisdictions have delimited certain political rights to different categories of citizenship, for instance in most developed countries including the United States of America, the right to contest for certain offices is the exclusive preserve of citizens by birth, hence economic migrants are completely removed from the equation, this situation plays out even in cases not just the right to be voted for but the right to vote. More so, international law does not expressly criminalise illegal migrants as they are granted rights as a humans, however, they are instances where national states, take the issues of illegal migration as criminal offenses instead of simple of offenses as recognised by the general notion of international law.

In addition, Economic migrants are arbitrarily arrested and kept in detention facilities where basic rights are thrown away or kept in abeyance, most of them tortured, or a lack of due process. For instance, *Article 36* of the Vienna Convention on Consular Relations[36] providers that the consular officer shall be free to communicate with nationals of the sending State and to have access to them. Foreign nationals who are arrested or detained be given notice without delay of their right to their embassy or consulate notified of that arrest and consular officers shall have the right to visit a national of the sending state who is in prison, custody, or detention, to converse and correspond with him and to arrange for his legal representation. This section of the VCCR is constantly kept aside in the treatment of foreign nationals, the host citing security issues and the protection of national sovereignty as above human rights of migrants.

In Avena and Other Mexican Nationals,[37] a case brought by Mexico against the United States seeking relief for Mexicans who were under sentence of death for murder in various U.S States who had not been informed at the time of arrest about access to the consul of Mexico. The ICJ said that the United States was required to grant review and consideration in the cases of these nationals. In this case, the government of Mexico supported its argument for the restoration of the status quo ante by characterizing consular access as a human rights issue. The ICJ responded by questioning whether VCCR identified consular access as a human right, the court said: "Whether or not the Vienna Convention rights are human rights is not a matter this court needs to decide. The court would, however, observe that neither the text nor the object and purpose of the Convention, nor any indication in *travaus preparatories* supports the conclusion that Mexico draws from its contention in that regard.

[36] Hereinafter referred to as the VCCR

[37] (MEx v US) 2014 I.C.J 12,60.

Whether the VCCR itself takes consular access as a human right in addition to being a treaty right, other authorities do regard consular access as a human right. A commission constituted by the government of Turkey that investigated the *Gaza Flotilla* matter characterised the denial of consular access to the passengers of the vessels as a due process violation. The rationale is that, for a foreign national, consular access is necessary to ensure the fairness of the proceedings. The Inter-American Court of Human Rights[38] addressed consular access not simply as a treaty issue under the VCCR but as a matter of due process. The IACHR was acting on a request for an advisory opinion, filled by the government of Mexico. IACHR thus concluded, from its analysis of consular access as an aspect of due process, that consular participation is necessary to ensure fairness. That means that prejudice of some specific type need not be found before a remedy is required; consular participation is presumed to enhance a foreign national's ability to present an adequate defense to a criminal charge.

4.3 Economic, Social and Cultural Rights

All forms of discrimination are prohibited by the International Covenant on Economic, Social, and Cultural Rights under all circumstances, including cases of illegal migration. Under the Covenant, States have an obligation in this matter. However, even though this principle is firmly established in international human rights law, misconceptions about its application to non-nationals obstruct the full implementation of economic, social, and cultural rights. Irregular migrants in particular often face discrimination, even when this is specifically prohibited under the relevant legislation or regulations.[39]

By law or administrative regulation, many are denied access to public health care, adequate housing and accommodation, education, and essential social security. Economic migrant children may be unable in law or practice to attend school. Migrants, particularly the irregular ones are frequently ineligible to receive adequate health care or decent accommodation, and may not be allowed to exercise their right to freedom of association. Many feel unable to inform the police when they are victims of crime or do not send their children to school, because they are afraid of being deported.[40]

Several migrants face mental health issues that come as a result of the social isolation they experience as a result of being separated from family and social networks, as well as job insecurity, difficult living conditions, and exploitative treatment. Many economic migrants whose documents have expired or are not in existence may experience sexual and gender-based violence, become vulnerable to illness, or lose access to essential health documentation in the course of the often long and precarious journeys they make to reach their countries of destination.[41]

[38] Hereinafter abbreviated and referred to as "IACHR)
[39] Navi, P, The Economic, Social and Cultural Rights Of Migrants in an Irregular Situation, Geneva, United Nations Human Rights 2014, https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-14-1_en.pdf, accessed 21/05/2024.
[40] Ibid.
[41] Ibid.

4.4 Prejudice or xenophobia

Economic migrants are constantly discriminated against based on race and the situation of their country of origin, they are subjected to prejudices not just by the state but by the citizens of the host communities, hence amounting to an affront or infringement of their rights as humans who should be treated with some degree of dignity.

Nigerian economic migrants across the world are subjected to these prejudices not only in developing Western societies but even within Africa, for instance, in 2015, there was a clash between the middle-class citizens of Nigeria and South Africa in what is generally referred to as xenophobia attacks.[42] The incident led to the destruction of lives and properties of Nigerians living in South Africa. The reason for the attack which has become a constant occurrence in South-Africa-Nigeria relations is that patriotic citizens are quick to assert, nationalistically, that the aliens have come to take over their country, their resources, their jobs, their culture, and their women.[43] The Socialist Party of Great Britain puts it thus:

> 'Africans living in another country which is not their country of origin are grimly accustomed to invectives like "fucking foreigner" "parasite" "alien" "refugee" etc. But it appears matters have been getting out of hand in recent years. Xenophobia is on the rise, making nonsense of the catching phrase "Africa for Africans."[44]

5.0 Recommendations

There is a huge responsibility on the side of Nigerian leaders to revamp the ailing economy to create an enabling environment for businesses and investors to come, thereby reducing the rate of economic migrants. It is no doubt, that development may not necessarily stop migration; however, an improved economy will substantially reduce the rate of escapees.

The Developed Western Societies should sincerely aid the developing countries to move away from this situation of despondency and want. The global resource is enough to go around if not for the greed of many capitalists and nations who use Multinational and Transactional Corporations to control global wealth.

Nigeria cannot retain her sovereignty and dignity while entirely allowing her youthful and skilled citizens to build other countries, while the country remain underdeveloped; the idea of Nigeria' economic advancement is not attainable without the reliance on Nigerian intellectuals, resources, products, and the thoughts of Nigerians themselves.

6.0 Conclusion

It is fortunate that the leadership of the country with the largest number of black people on the planet earth cannot manage her enormous natural resources for the well-being of her citizens, thus reneging

[42] Uwakwe, R.C., *The Influence of Personality on Foreign Policy: The Nigeria Experience,* Owerri, Shack Publishers, (2017), 161.
[43] Ibid.
[44] Cited in Uwakwe, Op cit, 162.

from the social contract that exists between the people of Nigeria and the government. This condition has resulted in the mass movement of her citizens across borders in search of greener pastures with the catching colloquial 'Japa' a term that resonates a feeling of disappointment for one' nation for the inability to provide basic needs of human existence. A situation that has exposed a lot of economic migrants to certain human rights deprivations due to their weak status in the countries they migrated to for better opportunities irrespective of the weak status of economic migrants however, the Universal Declaration of Human Rights succinctly and unequivocally espoused that all human beings are born free and equal in dignity and rights, thus the situation in which economic migrants may find themselves should not deprive them either of their humanity or their rights as humans.

LEGAL OVERVIEW OF THE CAUSES AND EFFECTS OF INTERNAL DISPLACEMENT IN NIGERIA

Eric Chigozie Ibe, LLM & Eyyazo Daniel Moses

ABSTRACT

Nigeria has been facing the challenge of internal displacement since its first occurrence in 1967 as a result of the civil war. Internal displacement involves the forced movement of people from one part of the country to another. This situation in most cases exposes the displaced people to some vulnerabilities. Thus, this article examined the causes and effects of internal displacement in Nigeria. In examining the subject matter, the doctrinal research method was adopted, and the data collected were both primary and secondary comprising of both hard copies and online source materials. It was discovered that insurgency, ethno-religious conflicts, natural and man-made disasters, resource struggle, and developmental projects among others cause internal displacement in Nigeria. Internal displacement has negative impact on security, health, housing and infrastructure, social life, livelihoods, education, and the environment. It was recommended that there should a synergy among the governments at all levels, civil societies and individuals in order to support the safe, voluntary, dignified return and resettlement of displaced populations through specific and targeted programming and local integration through projects targeted at the strengthening of resilience of communities and expansion of basic services, such as water, sanitation, education, and health facilities.

Keywords: Internal Displacement, Internally Displaced Persons, Armed Groups, Forced Displacement, Protection, Resettlement

1.0 Introduction

Internal displacement describes the situation of people who have been forced to leave their homes but have not left their country.[1] Internal displacement has been a challenge to Nigeria with insurgency displacing about 2.4 million Nigerians in the Lake Chad Basin.[2] The Nigerian Civil War (1967-1970) and the ceding of Bakassi Peninsula to Cameroon in 2008 led to displacement of persons within the affected regions.[3] Other factors that cause displacement in Nigeria include farmers-herders conflict, armed banditry, inter-communal wars and boundary disputes, amongst others. With the continuance of these security challenges with little or no efforts from the government to curb them, Nigeria' displaced population continue to increase.

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Internal displacement affects the lives of displaced people, their host communities and those they leave behind in many ways. Internally Displaced Persons (IDPs)

[1] Fact Sheet on Internal Displacement.
[2] Nextier SPD, Nigeria's Displacement Dilemma (Relief Web, 2020) 1 <https://reliefweb.int/report/nigeria/nigerias-displacement-dilemma> Accessed on 25th September 2021.
[3] Ibid.

then become vulnerable, without means of livelihood; their physical safety, well being and human rights become threaten; and it can also have significant and long-lasting effects on socioeconomic development.[4] Considering this problems, this article shall analyse the causes and effects of internal displacement in Nigeria taking into account the development of internal displacement in Nigeria, the legal and institutional frameworks introduced to tackle internal displacement, the rights and obligations of the internally displaced persons and the challenges of addressing internal displacement in Nigeria.

2.0 Overview of the Development of Internal Displacement in Nigeria

Forced migration and internal displacement in and into Nigeria is not a new phenomenon. In the last 50 years of independence, the highest recorded numbers of incidences of Internal Displacement have been triggered by violent conflict. The first incidence can be traced back to the civil war, also known as the Biafran War, from 1967- 1970.[5] In 1989, following the Liberian civil war, thousands of Liberian refugees were found stranded at the shores of the Nigerian sea port in Apapa Lagos. In 1993 the Federal Government witnessed yet another influx of thousands of Sierra-Leonean refugees at the Apapa sea port when the civil unrest escalated into a full-scale civil war.[6]

In 1991, the seat of government moved from Lagos to Abuja, following Decree No. 6 of 1976. The Federal Capital Territory was carved out of the states of present-day Nasarawa, Niger, and Kogi. The indigenous inhabitants, the Gbagis, lost their land and livelihoods to the development projects. Most inter-communal/inter-ethnic clashes that have led to displacement have taken place in Taraba, Plateau, Kaduna, Nasarawa, and Benue states between 2000 and 2002 and have centred on the issues of land, boundaries, and indigenes/settlers.[7] Between 2003 and 2008, the National Commission for Refugees estimated at least 3.2 million people were displaced due to ethnic and religious conflict, from and within various states in the country.[8]

The ceding of Bakassi Peninsula to the Republic of Cameroon in 2008 forced an estimated 400,000-755,000 people to move across the border to Cross Rivers and Akwa-Ibom states.[9] Many were left homeless, landless and cut off from their source of livelihood. In 2010 alone the Nigerian Red Cross Society in a vulnerability analysis identified about 5,000 vulnerable families that were most affected by the floods in specific parts of the country. From 2010 to 2011, NEMA registered over 80 IDP settlements in 26 states across the six geopolitical zones. Over 350, 000 people were displaced due to Natural disasters, communal and ethno-religious clashes, and electoral violence.[10]

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[4] Internal Displacement Monitoring Centre, The Ripple Effect: Multidimensional Impacts of Internal Displacement (Internal Displacement Monitoring Centre, 2018) <www.internal-displacement.org> Accessed on 25th September 2021.
[5] FK Mohammed, The Causes and Consequences of Internal Displacement in Nigeria and Related Governance Challenges (German Institute for International and Security Affairs, 2017) 9.
[6] Ibid.
[7] AS Adesola and PA Ola, A Historical Analysis of Violence and Internal Population Displacement in Nigeria's Fourth Republic, 1999-2011 (2015).
[8] BU Mberu and R Pongou, Nigeria: Multiple Forms of Mobility in Africa's Demographic Giant (2010).
[9] Ibid.
[10] FK Mohammed (n-5) at 11.

In 2012, a survey on youth in the country, the NBS reported forced migration within the country as being on the rise with people, particularly the youth, moving in response to inequitable distribution of resources, services, and opportunities or to escape violence, natural disasters, or increasing occurrences of extreme weather conditions.[11] The highest recorded number in the last decade, however, has been due to the insurgency in the northeast part of the country, where a spate of violent attacks since 2009 has left well over two million people displaced within and across the borders to neighbouring countries.[12] The country is also host to a number of refugees and asylum seekers - in 2015, a total of 828 refugees and 1325 asylum seekers were registered by the Refugee Status Determination (RSD) Unit under the Department of Refugee and Migrant Affairs, NCFRMI. Countries of origin include Central African Republic, Democratic Republic of Congo, Ghana, Guinea, Ivory Coast, Lebanon, Mali, Palestine, Syria, Sudan, and Togo.[13]

3.0 Legal, Policy and Institutional Frameworks of Internal Displacement in Nigeria

There are several legal, policy and institutional frameworks put in place to address issues arising from internal displacement. This shall be discussed at four levels to wit: international, regional/subregional, national, and state/local government.

3.1 International Frameworks

At the international level, the laws regulating internal displacement include the Geneva Conventions, 1949 and their Additional Protocols 1- 2 of 1977 and The United Nations Guiding Principles on Internal Displacement, 1998. The International Committee of the Red Cross is a good example of international institutional framework on internal displacement.

3.2 Regional/Sub-Regional Frameworks

At the regional level, we have the African Charter on Human and Peoples' Rights and the African Union Convention for the Protection and Assistance of IDPs in Africa, 2009 (the Kampala Convention).

3.3 National Frameworks

The frameworks at the national level are the Constitution of the Federal Republic of Nigeria, 1999, as amended; The Nigerian Red Cross Society (NRCS), Act 1960; the National Emergency Management Agency (NEMA) Act, 1999; the National Human Rights Commission established by the National Human Rights Commission Act 1995, and the National Human Rights Commission Amendment Act 2010; the National Commission for Refugees, Migrants and Internally Displaced Persons, established by Decree 52 of 1989 now Cap N21, Laws of the Federation of Nigeria, 2004 (NCFRMI Act); National Policy on Internally Displaced Persons (IDPs) in Nigeria, 2012; National Migration Policy 201 adopted 13 May 2015; National Disaster Management Framework (NDMF); the National Contingency Plan; Search & Rescue and Epidemic Evacuation Plan; and Emergency Response Standard Operating Procedures.[14]

[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] FK Mohammed (n-5) at 16.

3.4 State/Local Government Frameworks

The State/Local Governments are not left out in the formulation of policies and establishment of institutions to tackle issues arising from internal displacement. These frameworks are the Ministry of Reconstruction, Rehabilitation and Resettlement (MRRR) established in 2015 (in Borno State only); the National Human Rights Commission state level focal points; the National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI) state level focal points; NEMA Zonal Bureaus; State Emergency Management Agencies (SEMA), and 37 states' branches and divisions in local government areas. The broad institutional arrangements specific to the northeast include the Presidential Committee on North East Initiative, North East Development Commission, Victims Support Fund, Safe Schools Initiative, and the Presidential Initiative for the North East.[15]

4.0 Causes of Internal Displacement in Nigeria

Internal displacement takes place in a wide range of contexts, with multiple and sometimes overlapping drivers. Some of the drivers are as discussed below.

4.1 Ethno-Religious Conflicts

In Nigeria there are over 250 ethnic groups this has led to clashes between them sometimes leading to arms struggle resulting in displacement of persons. In Nigeria there exist Christianity and Islam and both are the most populous religions in Nigeria. Since, the enactment of Sharia laws in the twelve northern states in 2000 it has been recorded that there have been more conflicts among Muslims and Christians which led to thousands of IDPs in Nigeria.[16]

4.2 Natural and Man-made Disasters

Natural disasters, desertification and drought are case in point that forces people out of their homes in Nigeria. In recent times the overflow of River Niger along its banks in Nigeria produced thousands of IDPs. In the North flood, in the East erosion and spilling of crude oil in the Southern region.[17]

4.3 Resource Struggle

The struggle for resources and the extraction of oil is another reason for IDPs in Nigeria. Oil spillage could contaminate drinking water and the destruction of farmlands which have led to people fleeing their homes and lands for safer places.[18] The issue of resource control in the Niger Delta region has brought about violence involving forces of government and the militants known as the Movement for the Emancipation of the Niger Delta (MEND) which was created with various coming together in 2005.

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[15] Ibid.

[16] A Ahmad, 'Forced Displacement and the Plight of Internally Displaced Persons in Northeast Nigeria', *Humanities and Social Science Research* [2018] (1) 46-52.

[17] N Theresa, A Okoli and F Uroko, 'Self-acclaimed Religious Terrorism, Refugee Crisis, and the Plight of Internally Displaced Persons in Nigeria', *Mediterranean Journal of Social Sciences* [2018] (8) 189-196.

[18] IDMC, What Does Development Caused Displacement Look Like in Africa? (Internal Displacement Organisation, 2016) <https//www.internaldisplacement-org/expert-opinion/what-does-development-caused-displacement-look-like-in-africa> Accessed on 26th September 2021.

4.4 Developmental Projects

Displacement regards to developmental projects is the forceful evacuation, movement of people, removal, or uprooting of communities from their habitual residence to create way for developmental projects. This can only be orchestrated by a private actor or state[19] it occurs when there is construction of roads, railways, dams, hydroelectric power projects, natural resource extraction, agricultural investment and so on. A project of this nature requires the local population to vacate their homes and exposes the affected people to some vulnerability.

4.5 Armed Conflict and Insurgency

Internal displacement occurs in Nigeria often as a result of terrorism, insurgency, genocide, wars, persecution and political instability. Assaults conceded by Boko Haram insurgency in Nigeria has brought about the destruction of properties amounting to billions of naira, loss of lives, income to mention, loss of investment, and infrastructural damage among others.[20]

4.6 Human Rights Violations

Human rights violations happen when the state or non-state actors infringe on the fundamental rights of some targeted people. The targeting could be on account of race, religion, political reasons, economic rights, and others. the victims of human rights violation usually flee in search of protection and respite.[21]

5.0 Rights and Obligations of Internally Displaced Persons

The Guiding Principles on Internal Displacement do not seek to create a privileged category of people or a separate legal status. Rather, they are based on the principle that IDPs have the same human rights and freedoms as any other person in the country in which they are located. In situations of armed conflict, IDPs have the same rights as other civilians to the protection provided by international humanitarian law. Some of these rights include:

1. All rights contained in the Constitution of Nigeria, statutes and domesticated sub-regional, regional and international human rights and humanitarian instruments which all citizens of Nigeria are entitled to. However, non-citizens may not be eligible to vote and be voted for in local elections unless the law expressly entitles them to.[22]
2. Rights to protection from displacement.
3. Rights to protection and assistance during and after displacement.
4. Rights of IDPs to voluntary return, local integration and relocation.[23]

Like all citizens, IDPs have an obligation to be law abiding citizens. IDPs shall take responsibility for the commission of individual and group crimes during the events leading to displacement and thereafter.

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[19] A Ahmad (n-16).

[20] EA Oghuvbu and UC Okolie, 'Responsibility to Protect and the Challenges of Displaced Men in Nigeria', *Journal of Danubian Studies and Research* [2020] (10) (1) 369.

[21] NM Gwadabe et al, 'Forced Displacement and the Plight of Internally Displaced Persons in Northeast Nigeria', *Humanities and Social Science Research* [2018] (1) (1) 47.

[22] National Policy on Internally Displaced Persons (IDPs) in Nigeria 2012.

[23] Ibid.

Specifically, IDPs shall be responsible for the following:

1. Individual criminal responsibility under national and international law.
2. Individual criminal responsibility for genocide, war crimes and crimes against humanity.
3. Individual and group crimes of a very serious nature as defined under national and state laws.
4. Respect the culture and norms of host communities.
5. Abide by rules and regulations in collective settlements.[24]

6.0 Effects of Internal Displacement in Nigeria

The devastating effects of internal displacement in Nigeria cannot be overemphasized. Internal displacement has negative impact on security, health, housing and infrastructure, social life, livelihoods, education, and the environment.

6.1 Security

IDPs unable to find decent work have little choice but to resort to other less secure and sometimes dangerous income-generating activities. Some displaced children are obliged to earn an income, putting them in danger in unsafe work and reducing their chances of more secure employment through education.[25]

6.2 Health

IDPs do not leave healthy lives due to lack of hospital or a standby clinic to cater for sick persons. Even the environment in which IDPs leave in are not healthy and could lead to contraction and spread of diseases. The living condition in the camps is a disaster from the outbreak of communicable diseases. Pregnant women in the camps have no access to proper ante-natal services and as such most childbirth occur in the camp. Health issues faced by displaced persons could be malaria, mental health such as anxiety, measles, malnutrition, depression, post traumatic disorders; reproduction health, for instance sexual harassment, rape, unwanted pregnancies and abortions, and cerebrospinal meningitis.[26]

6.3 Housing and Infrastructure

IDPs may find themselves living in a makeshift tent on the street in front of their damaged home, a hotel room in a nearby city, a government-run camp, a friend' home or a rented apartment. Housing solutions are numerous, their quality varies greatly, and each has different benefits and costs borne by different stakeholders. The majority of IDPs live in host families who take them in free of charge or in exchange for a financial contribution. Many others end up renting accommodation, often sharing with other displaced families. Those living in displacement camps tend to be the minority.[27]

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[24] Ibid.

[25] Internal Displacement Monitoring Centre (n-4) at 8.

[26] EA Oghuvbu and UC Okolie (n-20) at 389.

[27] Awosusi, Aftermath of Boko Haram Violence in the Lake Chad Basin: A Neglected Global Health Threat (OCHA, 2010).

6.4 Social Life

Internal displacement has a direct impact on social life by breaking up communities and sometimes even families. When it endures, it may permanently damage relationships that existed in areas of origin but also create new networks in the places that IDPs move to. These relationships are important for stability, business and wellbeing. Their disruption may have repercussions for mental health, livelihood opportunities and security. Reduced access to education can also harm social life in the short and longer term, with ripple effects on livelihoods, mental health and security.[28]

6.5 Livelihoods

Internal displacement separates people from their land, assets, belongings, workplace, social networks, service providers and consumers. In their host areas, IDPs often compete with local workers for employment, and their arrival also increases demand for goods and services, which may push up prices. These consequences, which all have an economic as well as human cost, are relatively well documented and have a direct impact on IDPs' economic status and ability to sustain dignified livelihoods.[29]

6.6 Education

Human displacement in Nigeria also has a contributory factor to the poor record of school enrolment of children in schools. About 10.5 million children between the ages of 5 to 14 years are not enrolled in schools and about 61% of children aged 6-11 years enrolled in primary school education. Most children of IDPs stay out of schools as a result of displacement that their parents or guardian experienced. The destabilized household settings as a result of forced movement of people do hinder the enrolment of children into schools.[30]

6.7 Environment

The practice of open defecation and other environmental degradation practices are highly prevalent in IDPs camps. The passing of these solid wastes often finds their ways to water sources present in these camps which most of them equally find useful for drinking and other domestic activities. This poor sanitation portrays a high risk to public health of IDPs and serves as a hotbed for ill-health conditions thus endangering their health.[31]

Mass population movements have visible effects on the environment as demand for natural resources increases in destination areas and decreases in areas of origin. Such effects have been documented for large inflows of refugees or international migrants, but much less so in the case of IDPs. Relationships have, however, been identified between IDPs' often poor housing conditions and the degradation of nearby natural resources. Large influxes may also lead to overexploitation and increased pollution, with ripple effects on health and food security. The loss of livelihoods also has indirect consequences, forcing people to engage in unsustainable income-generating activities that harm the environment and in turn

[28] Internal Displacement Monitoring Centre (n-4) at 47.
[29] Ibid at 23.
[30] İlker Etikan and Ogunjesa Babatope, 'Health and Social Assessment of Internally Displaced People (IDP) in Nigeria', *Annal Biostat & Biomed Applications* [2019] (2) (3) 4.
[31] Ibid.

reduce future livelihood opportunities. All these issues may heighten tensions between displaced people and their hosts, affecting security and social life.[32]

7.0 Challenges of Managing Internal Displacement in Nigeria

Various challenges relate to internally displaced person' management in Nigeria. These challenges as discussed below include poor introduction and implementation of policy frameworks, corruption, lack of focus on long-term humanitarian solutions, poor methods of comprehensive data collection, lack of funding, negligence of responsibility, lack of adequate protection, and cultural challenge.

7.1 Absence of and Poor Implementation of Policy Frameworks on Internal Displacement

Despite Nigeria being a signatory to the Kampala Convention and other international instruments, this has not been adequately reflected in national policy and strategies because most of these policies and strategies have either not been adopted into national legislation and/ or suffer from poor implementation. In the absence of a policy framework on internal displacement in Nigeria, the response to the plight of IDPs has remained largely fragmented and uncoordinated; and the response to the root causes of internal displacement has been very poor and ineffective.[33] The lack of a clear policy or legal framework has also created tense relationships between government agencies with a weak system of accountability, particularly at the state level.

7.2 Lack of Focus on Long-Term Humanitarian Solutions

The approach towards addressing displacement so far appears to be heavily focused on short-term humanitarian aid and less on development-oriented, longer-term solutions, which could have serious implications for stability and security. This is of particular concern for the current situation in Nigeria, as most of the displacement in the country is caused by conflict, mostly violent, which has socio-political and socio-economic implications. Displaced populations are, first, highly vulnerable, but can also post a potential threat to the host communities: both the host population and the environment.[34]

7.3 Poor Methods of Comprehensive Data Collection on IDPs in Dispersed Settings

The biased notion from officials could be one of the strategies used to dodge the responsibility and not consider them as real displaced persons. This could be based on their dispersed nature and lack of effective institutional mechanisms to collect credible data and information on the number of IDPs, their locations, demographic characteristics, and the conditions they face, which are very essential in effectively managing displacement crisis. For more than 15 years since the displacement started, Nigeria is yet to have accurate data on IDPs outside camps because of poor methodology on accurate data collection procedure. Thus, adequate planning, funding, and social service delivery cannot be

[32] Internal Displacement Monitoring Centre (n-4) at 44.

[33] MT Ladan, Overview of International and Regional Frameworks on International Displacement: A Case Study of Nigeria (A Paper Presented at a 2-Days Multi-Stakeholders Conference on International Displacement in Nigeria organised by the Civil Society Legislative Advocacy Centre, Abuja in Collaboration with IDMC and the Norwegian Refugee Council, Geneva, held on November 21-23, 2011, at Bolton White Hotels, Abuja, Nigeria).

[34] FK Mohammed (n-5) at 33.

implemented. The lack of effective mechanisms to identify displaced persons is also hinged on the lack of trust in persons who have identified themselves with the status of displacement.[35]

7.4 Poor Funding

Limited funding is another major challenge affecting the management of displacement. For national agencies such as NEMA, shortage of funds is attributed to low budgeting for emergencies. For instance, NEMA does not get funds from the yearly national budget for the management of IDPs. Funds for the management of IDPs are derived from the allocation from disaster management. Due to limited funds, humanitarian activities toward IDPs are limited to mostly IDPs in formal camps, leaving out IDPs in dispersed areas in host communities.[36]

7.5 Negligence of Responsibility

Closely related to the challenge of funding is the deliberate neglect of responsibility by state actors. Very significantly, this affects the length of time it takes for IDPs to receive necessary care needed for their survival. Negligence of the government is a major problem camp coordinators are confronted with in the management of IDP camps.[37] It is evident that the government at various levels is guilty of this.

7.6 Lack of Adequate Protection

The unsafe condition of the IDPs in northeast exposed them to many protection issues, ranging from exploitations, child and gender-based violence, human trafficking, family separation and detention with no consideration of the rule of law. Moreover, the IDPs are sheltered under the most inhumane condition: overcrowded camps; with few overstretched infrastructural facilities and defective or inadequate non-food items such as blankets, buckets, mosquito nets and others.[38]

7.7 Corruption

Corruption is another essential challenge hindering effective management of IDPs in Nigeria. It is on record that management agencies and office holders in government who ought to care for the needs of displaced persons on various occasions have been found diverting relief materials and funds meant for displaced persons for their own benefits. A situation that reduces the efficiency in managing displaced persons in Nigeria.[39] Camp officials and leaders of IDPs have been seen as corrupt as they are also involved in selling items meant for IDPs thereby violating principle 24(2) of the United Nations 'Guiding Principles' on IDP.[40]

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[35] FO Olanrewaju et al, Insurgency and the Invisible Displaced Population in Nigeria: A Situational Analysis (SAGE Open 2019) 8.
[36] Ibid at 9.
[37] Ibid.
[38] NM Gwadabe et al (n-21) at 49.
[39] G Akuto, 'Challenges of Internally Displaced Persons (IDPs) in Nigeria: Implications for Counselling and the Role of Key Stakeholders', *International Journal of Innovative Psychology and Social Development* [2017] (5) (2) 21-27.
[40] Z Lomo, 'The Struggle for Protection of the Rights of Refugees and Internally Displaced Persons in Africa: Making the Existing International Legal Regime Work', *Berkeley Journal of International Law* [2000] (18) (2).

7.8 Cultural Challenge

Cultural challenge is related to internally displaced persons themselves and their host community. There are cases where displaced persons refuse to relocate from their place of residence due to their cultural attachment to that place and when they eventually agree to relocate, they may not want to remain idle but may want to be active.[41] For instance, someone who likes fishing culture is going to depart the camp to where he can search for a river where they can continue their fishing. This is a challenge for agencies that are responsible for the management of IDPs.

8.0 Recommendations

In view of the inter alia identified challenges, the following recommendations are proffered to serve as a panacea.

1. Interventions should be addressed in such a way that it is not prolonged and in situations where return is not possible due to extreme insecurity or environmental destruction, alternative solutions should be found.
2. Humanitarian needs, including food and non-food items, shelter, and primary health care, need to be addressed and supported.
3. Ensuring security and stability of the environments that populations are displaced from is the first step towards facilitating return and resettlement. This is a prerequisite whether populations are displaced due to conflict or natural disasters.[42]
4. The government at all levels need to work with civil society organisations, particularly those working in the area of peace building, early warning, and advocacy, particularly of human rights, and collaborate with regional bodies, such as ECOWAS and the Lake Chad Basin Commission, to ensure continuity and stability could be explored for a broader perspective.[43]
5. There must be support for the safe, voluntary, dignified return and resettlement of displaced populations through specific and targeted programming and local integration through projects targeted at the strengthening of resilience of communities and expansion of basic services, such as water, sanitation, education, and health facilities.
6. Those affected need, in addition to the provision of basic human rights, a framework that enable them to address other issues, particularly where displacement due to conflict is concerned. The existence of international policy documents, such as the UN guiding principles and the Kampala Convention, should be leveraged upon. The elaboration on the draft of the National Policy Framework on IDPs is also a step in the right direction.
7. There should be national policy backed up by legislation that would cater for the prevention, management and to address long-term issues associated with the displacement such as return, resettlement and the integration of IDPs. Furthermore, the legislation should include punitive measures for corrupt camp and military officials that syphon relief materials and other resources for personal gain at the expense of the victims or take advantage of their vulnerability to abuse

[41] E Osagioduwa and O Oluwakorede, 'Management of Internally Displaced Persons in Africa: Comparing Nigeria and Cameroon', *African Research Review* [2016] (10) (1) 193-210.
[42] FK Mohammed (n-5) at 33.
[43] Ibid.

them. Mostly, female and children fall victims in this case.[44]

8. Interventions should support the provision of specialized services to vulnerable groups — both IDPs and those in host communities —through the development of strategies to protect and promote the psycho-social well being of internally displaced and other affected populations.[45]
9. Support for enhancing quality education for all will assist in improving the social and economic wellbeing of communities. Efforts, such as the Safe Schools Initiative (SSI), already supported by Germany and the EU, and similar type initiatives, especially linked to education in emergency and promoting peace education, are a fundamental part of humanitarian assistance.[46]

9.0 Conclusion

Internal displacement has many impacts on the lives of IDPs, their hosts and the communities they leave behind. Consequences are felt in the dimensions of health, livelihoods, education, housing and infrastructure, security, the environment and social life. Aside from their number and range, the close and complex links between them and their mutually reinforcing effects are striking. The challenges of Internal Displacement remain a pressing issue in Nigeria. while some significant displacement crises have subsided due to the cessation of hostilities and tens of thousands of IDPs have been able to return to their original place of residence, over a million more in the country remain in a precarious situations and new situations of internal displacement continues to occur. A great deal therefore remains to be done to address IDPs Protection and Assistance needs, to find durable solutions to their plight and to prevent further displacement from taking place. This article demonstrates not only the importance of assessing the economic impacts of internal displacement comprehensively, but also the need for inclusive solutions that address all aspects of the phenomenon simultaneously. Without holistic approaches, the causes of internal displacement and the risks and vulnerabilities it entails will endure.

[44] NM Gwadabe (n-21) at 50.
[45] FK Mohammed (n-5) at 35.
[46] Ibid.

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<https://reliefweb.int/report/nigeria/nigerias-displacement-dilemma> Accessed on 25th September 2021

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APPRAISAL OF NIGERIA'S LEGAL FRAMEWORK ON IMMIGRATION LAWS: REFORMS IN VISA REGULATIONS, DEPORTATION PROCEDURES, AND REFUGEE RIGHTS

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ABSTRACT

This research critically appraises Nigeria's legal framework on immigration laws, focusing on reforms in visa regulations, deportation procedures, and refugee rights. Nigeria, a significant migration hub in West Africa, faces complex challenges in managing its diverse immigrant population, which includes tourists, business professionals, students, and refugees. The study examines the current visa categories, highlighting bureaucratic obstacles, lengthy processing times, and high costs that applicants encounter. Recent reforms, such as the introduction of e-visas and visa-on-arrival policies, are evaluated for their effectiveness and user-friendliness. A comparative analysis with other countries reveals that while Nigeria has made progress, further improvements are needed to reduce bureaucratic red tape and enhance transparency. Deportation procedures, governed by the Immigration Act of 2015, are scrutinized for their adherence to human rights standards, with recommendations for clearer guidelines and legal safeguards to protect individuals from arbitrary deportation. The research also explores the challenges faced by refugees in Nigeria, despite the country's commitments to international conventions, and suggests reforms to improve their access to essential services and legal protection. The study concludes that comprehensive reforms in Nigeria's immigration laws are crucial for national security, economic development, and the protection of human rights, emphasizing the need for collaboration among government agencies, civil society, and international partners to promote a more efficient and humane immigration system.

Keywords: Nigeria immigration laws, Visa regulations, Deportation procedures, Refugee rights

1. Introduction

Nigeria, with its strategic geographical position and robust economy, stands as a significant hub for migration in West Africa. The country witnesses a substantial influx of immigrants, including tourists, business professionals, students, and refugees. According to the World Bank, Nigeria is one of the top destinations for migrants in Sub-Saharan Africa, with an estimated 1.3 million international migrants residing in the country as of 2020.[1] This diverse immigrant population contributes to Nigeria' socio-economic fabric but also poses complex challenges in terms of governance and policy.

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The dynamic nature of migration patterns necessitates a robust and adaptive legal framework. Nigeria's immigration laws, primarily governed by the Immigration

[1] Li, Q., & Samimi, C. (2022). Sub-Saharan Africa's international migration constrains its sustainable development under climate change. *Sustainability Science*, *17*(5), 1873-1897.

Act of 2015, aim to regulate the entry, stay, and exit of foreigners. However, these laws face significant criticism for being outdated and inefficient in addressing contemporary migration issues. Effective immigration policies are essential for national security, economic development, and the protection of human rights. Evaluating and reforming these laws is crucial to ensuring they meet international standards and effectively manage the migration challenges of the 21st century.[2]

The history of immigration laws in Nigeria dates back to colonial times, with the first formal regulations established under British rule. Post-independence, Nigeria developed its own set of immigration policies, culminating in the enactment of the Immigration Act of 1963, which was subsequently replaced by the current Immigration Act of 2015.[3] This Act aims to modernize immigration control and facilitate the lawful entry and exit of individuals, reflecting Nigeria's commitment to international migration standards.

Despite these efforts, Nigeria' immigration framework has often been criticized for its inefficiencies and lack of comprehensive protection for immigrants and refugees. For instance, visa regulations have been notorious for bureaucratic delays and high processing costs, which can deter potential investors and tourists.[4] Deportation procedures, while necessary for maintaining national security, have raised human rights concerns, particularly regarding the treatment of deportees and the adherence to due process. Moreover, Nigeria's approach to refugee rights, although guided by international conventions such as the 1951 Refugee Convention, has struggled with implementation issues, leading to inadequate protection and integration of refuge.[5]

Recent reforms have sought to address these challenges. The introduction of e-visas and visa-on-arrival policies represents significant strides towards simplifying visa acquisition processes. However, these reforms require continuous assessment to ensure they achieve the desired outcomes.

Similarly, efforts to humanize deportation procedures and enhance the rights and living conditions of refugees indicate progress but also highlight the need for ongoing improvements and resource allocation.

This article appraises Nigeria' legal framework on immigration laws, focusing on three critical areas: visa regulations, deportation procedures, and refugee rights. It examines recent reforms, identifies existing challenges, and proposes further improvements to enhance the efficiency and humaneness of Nigeria' immigration system.

[2] Nanda, V. P. (2016). Migrants and Refugees Are Routinely Denied the Protection of International Human Rights: What Does the Future Hold. *Denv. J. Int'l L. & Pol'y*, *45*, 303.
[3] Ojukwu, U. (2024). Ethnic Politics and Democratic Governance in Nigeria (2015-2023). *Available at SSRN 4801981*.
[4] Roy, M., Azad, F., & Quaderi, N. (2022). Legislations and Technology Applications for Passport, Visa, and Immigration for Tourists in Bangladesh. *Handbook of Technology Application in Tourism in Asia*, 977.
[5] Granlund, A. (2022). *Ciminalizing Migration, Rejecting Rights* (Master's thesis, University of South-Eastern Norway).

2. Visa Regulations

Current Visa Regulations in Nigeria

Nigeria' visa system is structured to accommodate various categories of visitors, including tourists, business professionals, students, and temporary workers. The primary types of visas available are:

- Tourist Visa: For individuals visiting for leisure or tourism purposes.
- Business Visa: For business-related activities such as meetings, conferences, and contract negotiations.
- Temporary Work Permit (TWP): For short-term employment.
- Subject to Regularization (STR) Visa: For long-term employment, usually followed by a residency permit.[6]

These visas are typically issued by Nigerian embassies and consulates abroad, and applicants must meet specific criteria, including providing necessary documentation and paying the applicable fees.

Challenges Faced by Applicants

Despite the structured visa categories, applicants face several significant challenges:

- Bureaucratic Hurdles: The application process is often marred by excessive paperwork and bureaucratic red tape, leading to delays and frustration for applicants.[7]
- Processing Times: The processing times for visa applications can be lengthy, with some applicants waiting weeks or even months to receive a decision.[8]
- Costs: Visa fees can be prohibitively high, especially for multiple-entry visas and long-term permits, deterring potential visitors and investors.
- Corruption and Inefficiency: There have been reports of corruption within the visa issuance process, including demands for bribes and preferential treatment, which undermines the integrity of the system.[9]

Recent Reforms and Their Impacts

In response to these challenges, the Nigerian government has introduced several reforms aimed at streamlining the visa process and making it more user-friendly:

- E-Visa System: The introduction of an electronic visa application system allows applicants to apply for visas online, reducing the need for in-person visits to consulates and embassies.[10]
- Visa-On-Arrival: To attract more business travelers and tourists, Nigeria has implemented a visa-on-arrival policy for citizens of African Union countries and select others, enabling eligible travelers to obtain their visas upon entering the country.[11]

[6] Omeh, G. O. (2022). Thematic Examination of the Regulatory Framework Governing Foreign Investments in Nigeria. *AJLHR*, *6*, 84

[7] Kadzomba, S. (2019). *An Exploration of the Lived Experiences of Women Accompanying Their Migrant Spouses in South Africa* (Doctoral dissertation).

[8] Osuofa, F. (2021). *The lived experiences of Nigerian immigrant single parents raising their children in the United States* (Doctoral dissertation, Texas Woman's University).

[9] Moiseienko, A. (2019). *Corruption and targeted sanctions: law and policy of anti-corruption entry bans*. Brill Nijhoff.

[10] Hill, D., Ahmadi, M., & Rigg, J. (2020). Virtual embassy portal: the future of travel. *International Business Research*, *13*(7), 199.

[11] Hill, D., Ahmadi, M., & Rigg, J. (2020). Virtual embassy portal: the future of travel. *International Business Research*, *13*(7), 199.

- Simplified Documentation: Efforts have been made to simplify the documentation requirements for certain visa categories, although challenges remain in ensuring these reforms are uniformly implemented.[12]

Comparative Analysis with Other Countries

When compared to other countries, Nigeria' visa regulations exhibit both strengths and weaknesses:

- Ease of Access: Countries like Rwanda and Kenya have implemented highly efficient e-visa systems and visa-on-arrival policies, which have significantly boosted tourism and business travel. Nigeria's recent reforms are a step in this direction but still lag behind these benchmarks.[13]
- Processing Times: European Union countries typically offer streamlined visa processes with clear timelines and robust support systems, ensuring faster processing times. Nigeria's processing times, although improved, still fall short of these international standards.
- Costs: Visa fees in Nigeria are relatively high compared to other African nations such as Ghana and South Africa, which offer more competitive pricing to attract foreign visitors and investors.

By learning from these comparative experiences, Nigeria can further refine its visa policies to enhance accessibility, efficiency, and cost-effectiveness, thereby fostering greater economic growth and international engagement.

3. Deportation Procedures

Deportation procedures in Nigeria are governed by various laws, including the Immigration Act. These procedures are intended to manage the lawful removal of individuals who violate immigration laws while balancing legal enforcement with respect for human rights. However, there have been instances where deportation practices have drawn criticism for being harsh and inhumane. Reports have highlighted cases where deportees were subjected to poor treatment and lacked access to legal representation.[14]

Legal safeguards need to be strengthened to protect individuals from arbitrary deportation and ensure due process. One significant issue is the lack of clear guidelines, which can lead to inconsistent application of the law and potential abuses of power by immigration official.[15] Providing adequate legal representation for individuals facing deportation is another crucial area for reform. Many deportees are not afforded the opportunity to consult with a lawyer or receive proper legal advice, which undermines their ability to contest their removal and defend their rights effectively.[16] Ensuring access to legal counsel would enhance the fairness of deportation proceedings and help safeguard against unjust deportations.

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[12] Altes, C. (2018). Analysis of tourism value chain in Ethiopia. *Center for the Promotion of Imports (CBI Ministry of Foreign Affairs of the Netherlands)*.

[13] Buckinx, B., & Filindra, A. (2015). The case against removal: Jus noci and harm in deportation practice. *Migration Studies*, *3*(3), 393-416.

[14] Mugadza, H. T., Mujeyi, B., Stout, B., Wali, N., & Renzaho, A. M. (2019). Childrearing practices among Sub-Saharan African migrants in Australia: A systematic review. *Journal of Child and Family Studies*, *28*, 2927-2941.

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[16] Ibrahim, A. (2018). Bridging the international gap: the role of national human rights institutions in the implementation of human rights treaties in Africa. *Obiter*, *39*(3), 701-726.

Furthermore, it is essential to ensure that all deportation actions comply with international human rights standards. Nigeria is a signatory to several international conventions that protect the rights of migrants and refugees, including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights.[17] Aligning national deportation procedures with these international obligations would help protect the dignity and rights of individuals facing deportation and promote a more humane immigration enforcement system.

Suggested Reforms

- Establish Clearer Guidelines: Developing comprehensive and clear guidelines for deportation procedures would help ensure consistency and fairness in the application of the law.
- Provide Legal Representation: Guaranteeing that individuals facing deportation have access to adequate legal representation would improve the fairness and transparency of deportation processes.[18]
- Compliance with International Standards: Ensuring that deportation actions comply with international human rights standards would protect the rights of deportees and align Nigeria's practices with its international obligations.

Refugee Rights

Nigeria hosts a significant number of refugees, primarily from neighboring countries affected by conflict, such as Cameroon and Chad. The country's legal framework for refugee rights is grounded in international conventions, including the 1951 Refugee Convention and its 1967 Protocol, which Nigeria has ratified. These international agreements obligate Nigeria to provide protection and support for refugees, ensuring their rights to safety, non-refoulment, and access to basic services.

Despite these commitments, refugees in Nigeria often face considerable challenges in accessing essential services, legal protection, and opportunities for integration. Many refugees live in camps or settlements with inadequate access to healthcare, education, and employment opportunities. Legal protection for refugees is also insufficient, with many facing difficulties in obtaining legal documentation and protection from exploitation and abuse.[19]

Recent reforms have aimed at improving conditions for refugees. For instance, the Nigerian government, in collaboration with the United Nations High Commissioner for Refugees (UNHCR), has initiated programs to enhance the registration and documentation process for refugees, providing them with identity cards that facilitate access to services and protection. However, these efforts need to be expanded and sustained to ensure comprehensive protection and support for all refugees in Nigeria.

[17] Ogundiwin, A. O., & Adewumi, E. (2021). SECTION E: INTERNATIONAL ISSUES. *BOOK OF READINGS ON NIGERIA'S FOURTH REPUBLIC*, 151.

[18] Chiarenza, A., Dauvrin, M., Chiesa, V., Baatout, S., & Verrept, H. (2019). Supporting access to healthcare for refugees and migrants in European countries under particular migratory pressure. *BMC health services research*, *19*, 1-14.

[19] Opon, D. (2021). *The Impact of Migration Governance on National Security in Africa: a Case of Kenya* (Doctoral dissertation, University of Nairobi).

Better Implementation of Existing Laws: Ensuring that national laws and policies align with international standards and are effectively implemented is crucial. This includes training for government officials and law enforcement on refugee rights and protections.[20]

Increased Funding for Refugee Programs: Adequate funding is essential to improve living conditions in refugee camps, provide access to education and healthcare, and support livelihood programs. Increased financial resources from both the Nigerian government and international donors can significantly enhance the quality of support provided to refugees.

Stronger Collaboration with International Organizations: Strengthening partnerships with international organizations such as the UNHCR and non-governmental organizations (NGOs) can help leverage expertise, resources, and best practices in refugee protection and integration. Collaborative efforts can also facilitate the development of comprehensive strategies to address the complex needs of refugees (UNHCR, 2021).

4. Conclusion

The appraisal of Nigeria's legal framework on immigration laws reveals both progress and areas in need of further reform. Addressing the challenges in visa regulations, deportation procedures, and refugee rights is essential for developing a more efficient and humane immigration system. By streamlining visa processes, providing clear and fair deportation guidelines, and enhancing protections for refugees, Nigeria can create a more just and welcoming environment for all.

It is crucial for stakeholders, including government agencies, civil society, and international partners, to collaborate in promoting comprehensive reforms that uphold the dignity and rights of all individuals involved. Ensuring that immigration policies are both effective and compassionate will not only benefit those directly affected but also contribute to Nigeria' social and economic development. By working together, these stakeholders can help build a stronger, more inclusive Nigeria that respects and values the contributions of migrants, refugees, and all residents.

[20] Pascucci, E. (2021). More logistics, less aid: Humanitarian-business partnerships and sustainability in the refugee camp. *World Development*, *142*, 105424.

PAPER

LAW CLINICS AS TOOLS TO TACKLE THE PHENOMENON OF HUMAN TRAFFICKING: THE BAZE UNIVERSITY MIGRATION AND TRAFFICKED PERSONS LAW CLINIC ABUJA, NIGERIA

Maryam Idris Abdulkadir, LL.M

ABSTRACT

In Nigeria, human trafficking is on the rise at an alarming rate. Most experts have attributed this to the economic hardship faced in the country. Therefore, for the trafficker it is a business, for the victim it is a means to get a better standard of living and even provide financially for loved ones at home. Migration is not illegal but human trafficking is illegal. The reason for its illegality can be found in the manner in which the victim starts their journey and the inhumane situation they end up in. There are a lot of rights being violated and the victim is sometimes denied access to justice for violations of those rights. It is against this background that the law clinic in Baze University, Abuja established a specialized unit called the Migration and trafficked persons Law clinic. One of the purposes of establishing this type of clinic is to contribute in curbing the menace, that is, human trafficking in Nigeria. The research methodology used for this paper is teleological methodology, meaning the paper is based on the experience of a supervisor that helped establish and run the Migration and trafficked law clinic at Baze University. The objective of the clinic, expected outcome and activities the students have been doing or about to do were discussed in this paper. The paper highlights that it is possible to run a clinic online and a specialized unit like the Migration and trafficked persons law clinic can be used as a tool to curb the phenomenon of human trafficking through raising awareness and providing access to justice. Therefore, it made bold to recommend other clinics should have specialized units, highlighting its advantages and also recommend that experiential learning helps to bring out students' interest and also create a career path for them in the long run.

Keywords: Human trafficking, Law Clinic, Experiential learning, Migration, Awareness, Access to justice.

1.0 Introduction

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In Nigeria human trafficking thrives, it is the third most common crime in Nigeria after drug trafficking and economic fraud.[1] In 2020 alone, despite the pandemic, the agency mandated to prevent human trafficking in Nigeria, National Agency for the Prohibition of Trafficking in Persons (NAPTIP), received and handled a total number of One Thousand and Thirty-Two (1,032) cases.[2] In 2021, it rescued over 17,000 victims of human trafficking and jailed over 550 traffickers. Its Director-General, disclosed this during a joint briefing in Abuja ahead of the 2021 World

[1] UNESCO Institute for Lifelong Learning (UIL): annual report (2006) <https://unesdoc.unesco.org/ark:/48223/pf0000151102 > accessed 31st July 2021
[2] 2020 Data Analysis <https://www.naptip.gov.ng/resources-new/> accessed 31st July 2021
[3] Extract of the speech of the Director General of NAPTIP < https://www.naptip.gov.ng/naptip-dg-promises-stringent-enforcement-of-tip-laws-scores-the-agency-high/ > accessed 31st July 2021

Day Against Human Trafficking scheduled for July 30, 2021.[3] Nigeria remains a source, transit and destination country when it comes to human trafficking.[4] The general factors that increase vulnerability to trafficking in Nigeria include extreme poverty, lack of economic opportunities, corruption, conflict/insecurity, climate change/resulting migration and western consumerism.[5]

One of the most alarming things, apart from the figures highlighted above, is the situation the victims of trafficking find themselves. The Association for Juridical Studies on Immigration (ASGI)[6] highlighted some of these problems faced by victims as follows:

a) Human Rights violation form the onset of their journey to their destination or even in transit, and this may continue even in the country of destination i.e. they might find themselves being forced into labor, prostitution or any other act that will infringe on their human rights.
b) Lack of sufficient data on returnees to Nigeria
c) Lack access to justice for victims of these violations

Against this background, a specialized unit in the Law clinic at Baze University Abuja was established.

2.0 Background of the Baze University Law Clinic

The Baze Law Clinic is a community-based law school program that provides students with experiential learning, while also providing pro-bono legal services and representation to under-represented and disadvantaged clients.[7] Students provide assistance to members of vulnerable population and unrepresented persons, by working under the supervision of law teachers and other qualified lawyers to interview and advice clients, conduct research, collect evidence, study case law, write letters, and draft court forms and documents and monitor the cases that are filed in court by the Clinic or on behalf of the Clinic.[8]

In a nutshell, students through the Law clinic, address social justice problems in their community and provide access to justice for those who may not ordinarily have access to it. In the spirit of the motto of the clinic; Access to Justice for ALL and the fundamental issues highlighted above that those migrants and trafficked persons face which amounts to social injustice and lack of access to justice, the Baze University Law Clinic can have a special unit known as: Migration and Trafficked Persons Law Clinic which will primarily tackle these issues.

2.1 Objectives of the Clinic

a) The Clinic offers students the opportunity to develop their legal skills especially in Migration Law and International Human Rights Law.

[4] 2021 Trafficking in Persons Report < https://www.state.gov/reports/2021-trafficking-in-persons-report/> accessed 31st July 2021
[5] Nigeria: Human Trafficking Factsheet, September (2020) <https://pathfindersji.org/nigeria-human-trafficking-factsheet/> accessed 31st July 2021
[6]
[7] Baze Law clinic handbook <https://drive.google.com/file/d/113SHpR6syzYs9mh0R4VBz0FOfOeYp9o2/view?usp=sharing >
[8] ibid

b) The Clinic will aid students to develop and practice some of the specialized technical and legal skills needed for Migration Law and Trafficked persons Law cases including effective written and oral communication with clients, parties and organizations, human rights advocacy, detailed legal research and drafting law.

c) The Clinic seeks to provide high-quality and independent legal advice on complex issues in the field of National and International migration law

d) Partner with Government agencies like NAPTIP, Nigerian Immigration, National Commission foe Migrants, Refugees and Internally displaced persons and The Civil Society organizations like ASGI.

e) Act as a bridge between migrants and trafficked persons and pro bono legal services, therefore granting them access to justice in respect to any human rights issue.

2.2 Expected Learning Outcomes

The students will be, while participating in the clinic, are expected to:

a) Demonstrate a critical understanding of the law through placement in a law practice or organization focused on migration, trafficked persons and human rights lawyering.

b) Undertake practical experience with the range of activities in which lawyers engage to promote respect for human rights.

c) Contribute to supporting social justice through assistance to marginalized clients seeking migration advice.

d) Integrate the theory and practice of social justice and human rights lawyering and assist persons seeking asylum through the use of complex research, technical writing and advocacy skills.

e) Critically reflect on the concepts of access to justice, human rights lawyering and professional responsibility.

f) Identify and analyze barriers that disadvantaged persons face when accessing justice and the legal system.

g) Identify and critically analyze issues in legal practice including the importance of pro bono contributions by the legal profession and their promotion of justice and service to the community.

h) Demonstrate high level personal autonomy, expert judgment and accountability in dealing with specialized social justice and human rights issues, principles and concepts.

S/N	Students Activities	Objectives Of Students Activities	Outcome For Students	Outcome For Victims/Clients	Outcome For Partners (Government Agencies and Civil Societies)
1.	Client Interview	· To Learn client interview skills	· Students will be able to demonstrate skills of interviewing Migrants/Asylum seekers and victims of Human Trafficking	· An avenue to tell their story	· To get information/facts about clients
2.	Research And Data Collection	· To research on human rights violation of victims · To collect data that will be used for individual cases	· To learn how to gather data · To learn to focus on what information to gather · To draft questionnaires	· To get registered and documented	· Get sufficient data
3.	Case File Management	· To know case file management · Sensitivity of the case will allow them to know the importance of confidentiality	· Demonstrate how to label and manage clients files	· Having a case file means getting closer to access Justice	· Comprehensive details of each case
4.	Advocacy	· Create awareness of the Rights of Asylum seekers and Migrants as well as those rights of Trafficked persons	· Demonstrate advocacy skills	· have knowledge of their rights and how to access justice when such rights are infringed	· create awareness for their mandate
5.	Mooting	· Expose Students to an ideal opportunity to sharpen their analytical, drafting and pleading skills in International Courts	· Demonstrate skills in International Law Practice	· Students knowledgeable in National and International Law will handle their case; therefore, a level of professionalism is applied in their case.	· Students give them high-quality and independent legal advice on complex issues in the field of National and International migration law and trafficked Persons Law.

2.3 The table above highlights proposed activities to demonstrate how the activities and expected outcomes above can be actualized in the migration and trafficked persons law clinic.

3.0 Activities of the Migration and trafficked persons law clinic of Baze University

This Clinic started functioning in amidst the COVID 19 pandemic. A google classroom was created. The following activities were virtually conducted under this unit:

a) The Classroom is being used for weekly meetings and training. The purpose of the training is for students to be acquainted with the objectives of the clinic, and the concept of Migration and trafficking generally. During training sessions students are given tasks/assignments to do and report back to the clinic at the next session.

b) The clinicians wrote a letter to The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) proposing a partnership and sent it via the clinic' email. NAPTIP replied with a positive response via the same channel. A partnership was formed.

c) Also, clinicians decided to make an awareness video on trafficking.[9] Virtually, they held meetings and decided on the script to use for the awareness video, contents (images and videos) to use and the exact message they intend the video to pass across. As a means of getting content for their awareness video, the students of the clinic virtually interviewed a victim of trafficking. The interview took place on the 10th of December, 2020. The victim, who lives in Italy and now has an NGO to help trafficked victims, was impressed by the students of the clinic and she was ready to form a partnership with the clinic and her NGO. The interview was arranged by Turin University, Against Human Trafficking Law Clinic (AHTLC) Italy. This is a law clinic that has formed a collaboration with this unit of law clinic at Baze university.

d) The students were invited for a virtual Round Table Discussion on Childhood Statelessness in Nigeria in commemoration of the 2020 #IBelong Campaign by the UNHCR. The round table held on the 18th of November, 2020 and it was well attended by students.

e) The students were invited for a virtual meeting by the Turin University (Italy) Against Human Trafficking Law Clinic (AHTLC) and a collaboration was formed between the two clinics. The collaboration will entail the following:

   i. AHTLC would help gather some information about the situation of trafficked Nigerian women in Turin/Italy for the awareness program Baze law clinic wants to embark on. This will also include some Italian NGOs in this conversation. It was decided that a victim of trafficking in Italy will be interviewed by M&TP law clinic of Baze University and AHTLC of Turin university will arrange this interview.

   ii. The M&TP Law Clinic could potentially be involved in gathering country of origin information from Nigeria (mainly on the situation of returned victims of human trafficking) in order to support the cases handled at AHTLC.

   iii. Students/alumni from Abuja/Turin will get connected in order to exchange experience and knowledge in a more informal way. For the purposes of the aforementioned and for purposes of case sharing a 'lack' account was created and students from both universities have been encouraged to use the platform for the purposes for which it was created. A google drive was also created to share materials and other necessary information.

   iv. Presently, the two clinics are handling three cases together of trafficked victims from Nigeria to Italy.

[9] Awareness on Human trafficking in Nigeria <https://www.youtube.com/watch?v=MuyXr6VvQog&pp=sAQA>

After ease of the lockdown the clinicians were able to carry out some field work:

f) The clinicians (students that participate in the law clinic) have decided to achieve this by participating in a walk from Utako market to Jabi park and they did street law in both of these places. This event took place on the Saturday, 10th July, 2021. The theme of the walk and street law is: Youth against human trafficking project.[10] The clinicians partnered with two law clinics from two universities: University of Abuja Law Clinic and Nile University of Nigeria; they also partnered with the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) to aid in actualizing the goal of this activity. Prior to the walk and street law, consent forms were given to the students to give to their parents/guardians to sign and consent to their participation of the walk and street law. The clinic received twenty (21) signed consent forms. On the 2nd of July, 2021, in a bid to prepare for the activity, had a street law training session facilitated by one of the supervisors in the clinic, were they learnt how to draft a lesson plan for the street law.

g) The clinic, together with NAPTIP, United Nations Office on Drugs and Crime (UNODC) and International organization for migration IOM and other stakeholders had an eventful three days to mark the 2021 world day against human trafficking.[11] The events include: An awareness walk, a Conference and a football match.

4.0 Findings

Through this experience, although quite short since the clinic is new, the following have been observed:

a) Any type of clinic can be operated or ran online/virtually

b) It was when this clinic started that a lot of the students knew about the situation of human trafficking in Nigeria and around the world.

c) Getting students or the youth involved in a social problem or global phenomenon like human trafficking can help in the following ways:
   i. Raise awareness which could lead to prevention
   ii. Create a conduit for victims to get access to justice
   iii. They might connect with some victims who are their peers better than officials of some agencies or NGO', therefore more information will be retrieved and victim can have access to justice.

d) With a specialized unit like the Migration and trafficked persons law clinic, students develop interest which could lead to a career path.

5.0 Recommendations

a) Experiential learning is a method of teaching that outweighs any learning in the classroom. Teach students by making them do things. This is ne of the functions of a law clinic.

b) It is recommended that clinics should create specialized units. The advantage is indeed tremendous for both the students and the community. One of such advantages is that the clinics

[10] Youth Against Human trafficking project
<https://drive.google.com/drive/folders/1OWtW6bN9WCwEhhRJHCU4Ksn8qHW5quP_?usp=sharing >
[11] 2021 World day Against Human Trafficking
<https://drive.google.com/drive/folders/1WZE_rqnn7VEGjT5f2EK1L13gAbsjeWhR?usp=sharing >

serve as tools to address or tackle any menace in the society.

c) Allow the students handle projects in the clinic, the teachers should just supervise. The simple reason is that it is their involvement that would make more impact in the society, and it is of great advantage to them.

6.0 Conclusion

Most of the objectives highlighted above that the clinic seeks to achieve are already being realized. For example, in the area of raising awareness and collaborations or partnership with other law clinics and government agencies for the sole purpose of tackling human trafficking is already being done. Having three cases on ground, the clinic has already started paving way for access to justice for victims. In a bid to display humanitarian aid, it will also try to reconnect the victims of the three cases with their families. In its own way, the migration and trafficked persons law clinic, contributes its own quota to prevent and prohibit human trafficking in Nigeria.

CORPORATE IMMIGRATION IN NIGERIA: AN ANALYSIS OF THE REGULATORY FRAMEWORK

Prince Ebere Nwokoro

ABSTRACT

This article provides an in-depth examination of Nigeria's corporate immigration law, highlighting key regulatory considerations, challenges, and opportunities for foreign business entities and individuals. The discussion encompasses the principal legislation, regulatory framework, visa requirements, work permits, expatriate quota approvals, and residence permits. The article identifies implementation gaps, bureaucratic hurdles, and inconsistencies, proposing reforms to streamline procedures, enhance data protection, and align with international best practices. It underscores the need for clarity, guidance, and effective adjudication mechanisms to facilitate foreign investment, promote economic growth, and ensure a conducive business environment.

Keywords: Corporate Immigration Law, Nigeria, Foreign National, Regulatory Framework, Immigration Policy.

1. INTRODUCTION

The rapidly evolving global landscape, characterized by increasing globalization, technological advancements, and shifting socio-economic dynamics, has significantly impacted Nigeria's legal framework. The country's immigration landscape, in particular, has undergone substantial transformations, presenting complex challenges for foreign business entities and individuals seeking to navigate its intricacies. As the world becomes increasingly interconnected, the intersection of business, trade, and immigration law has become more pronounced, necessitating a nuanced understanding of Nigeria's corporate immigration framework.

Immigration law, inherently dynamic and constantly evolving, poses significant hurdles for potential corporate migrants seeking to enter Nigeria for investment, work, or residence. This complexity underscores the need for clarity and guidance on the extant corporate immigration regulations, mechanisms, and procedures. This article provides an overview of some salient corporate-related aspects of Nigerian immigration law, highlighting key legal considerations and hurdles that foreign business persons or corporations must overcome to successfully operate within the Nigerian market. By examining the current framework, this conspectus aims to: introduce the regulatory framework for corporate immigration law in Nigeria; analyze the primary mechanisms and procedures governing corporate migration; identify critical legal challenges and potential pitfalls confronting

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corporate migrants; and offer practical insights for navigating Nigeria's complex immigration landscape.

Through this examination, this article seeks to equip foreign investors, business leaders, and legal practitioners with a deeper understanding of Nigeria's corporate immigration law, facilitating informed decision-making and effective navigation of the country's regulatory environment.

2. REGULATORY FRAMEWORK FOR CORPORATE IMMIGRATION LAW IN NIGERIA

The Immigration Act 2015 (the "Act")[1] serves as the primary legislation governing immigration law in Nigeria, repealing the outdated Immigration Act 1963[2]. The Act is complimented by the Immigration Regulations 2017 (the "regulations")[3],issued by the Ministry of Interior pursuant to section 112(1) of the Act. The Act comprising 116 sections, provides a comprehensive framework that aligns with international best practices and contemporary migration management standards. It offers guidance on requirements for foreign individuals and entities seeking to conduct business and work in Nigeria.

The above regulatory framework is further supported by the Constitution of the Federal Republic of Nigeria 1999 as amended ("CFRN") and other laws, regulations and policies that specifically address entry for business purposes in Nigeria. These include: Companies and Allied Matters Act (CAMA) 2020,[4] Nigerian Investment Promotion Commission (NIPC) Act 1995,[5] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995,[6] The Labour Act 2004,[7] The Mining Act 2007,[8] The Nigerian Content Development Act 2010,[9] Expatriate Quota Approval Guidelines 2022, the Nigeria Visa Policy 2020, the ECOWAS Treaty 1975[10] etcetera.

Immigration is an area of sole federal jurisdiction and multiple federal agencies exercise regulatory functions over immigration matters in Nigeria, notwithstanding the fact that the Act designates the Nigeria Immigration Service (NIS) as the principal body charged with responsibility for administering its provisions. Within the context of corporate immigration other relevant agencies include, but are not limited to the following:

(a) The Federal Ministry of Interior (FMI) whose Minister is charged with responsibility for immigration and assigned specific functions under the Act. As presently constituted, the FMI is responsible for matters related to the granting of expatriate quotas, business permits, inter alia.

(b) The Nigerian Investment Promotion Commission (NIPC) established in 1995 as a Federal

[1] Nigerian Immigration Act, 2015, LFN
[2] Nigerian Immigration Act, 1963 which was re-enacted as CAP 11, LFN, 2004.
[3] Immigration Regulations, 2017
[4] Companies and Allied Matters Act 2020, LFN
[5] Nigerian Investment Promotion Commission (NIPC) Act, 1995 (Act No16)
[6] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995
[7] Labour Act, 2004. CAP 123
[8] Mining Act, 2007
[9] Nigerian Oil and Gas Industry Content Development Act, 2010
[10] ECOWAS Treaty (Lagos, 28 May 1975)

Agency created to promote, coordinate and monitor all investments in Nigeria, as well as to maintain liaison between investors and other authorities concerned with investment.[11] The commission also issues companies with foreign participation with Business Permit.

(c) The Corporate Affairs Commission (NIPC), which administers the provisions of CAMA, the primary legislation that governs the incorporation and regulation of companies in Nigeria;

(d) The Nigerian Content Development and Monitoring Board (NCDMB) established under the NOGIC Act,[12] whose responsibilities include the administration and management of applications for expatriate quota, succession planning and the deployment of expatriates in the oil and gas industry; and

(e) The Federal Ministry of Labour and Productivity (FMLP) which is responsible for promoting employment, regulating the labour market, overseeing labour relations and monitoring employment conditions.

The FMLP has an international Migration Desk (ILMD)which is responsible for ensuring the protection of employment and social rights of foreign migrant workers within the country, and has a mandate, among others, to establish a database on migrants within and outside Nigeria.

3. THE LEGAL GATEWAY: CHANNELS FOR CORPORATE MIGRANTS ENTERING NIGERIA

Foreigners coming on business trips or intending to invest or establish business or work in Nigeria or visit Nigeria for any economic reason whatsoever must, as a threshold issue, obtain a Visa. In ***US vs Vargas***,[13] Justice Neaher hypothesized that "***a visa was traditionally affixed to a passport itself. It continues to be defined as an endorsement made on a passport by the proper authorities (as of the country the bearer wishes to enter) denoting that it has been examined and that the bearer is permitted to proceed.***"In Nigeria, the word Visa is statutorily defined to mean:

> ***"an impress, vignette or endorsement on a travel document purporting to be signed and dated by an officer appointed for that purpose by or on behalf of the government of Nigeria and authorizing entry or transit across Nigeria subject to compliance with any special requirements prescribed by the Immigration Authorities at a port of entry and valid for specified time and for the number of journeys stated therein."***[14]

From the ***ipsisima verba*** of section 20(1), (2) and (3) of the Act, a visa application can be made directly to the Comptroller General of Immigration or the diplomatic mission in the country of nationality of the applicant or the country where the applicant resides. Notably, a new Visa Policy[15] was unveiled by the Federal Government of Nigeria to, inter alia, simplify the visa application process, provide various visa

[11] Note 5
[12] Note 9
[13] 380 F. Supp.1162 (NY, 1974)
[14] Section 116, Immigration Act
[15] Note 11

options for travels, facilitate ease of doing business, and attract Foreign Direct Investment.[16] The policy adopts four (4) visa categories which are further expanded to seventy-nine (79) visa classes/types. The categories are: the Visa Free/Exemption which has four classes; the Short Visit Visas (SVV) which has 24 classes; Temporary Resident Visas (TRV) which has 36 classes; and Permanent Residence Visas (PRV) which has 15 classes.

The Nigeria Visa Policy (NVP) undoubtedly embodies progressive provisions specifically designed to foster a conducive business environment, thereby enhancing the ease of doing business and yielding mutual benefits for both corporate migrants and local enterprises. Among other things, it made provision for: E-Visa issuance for Short Visit Visas, accessible to African Union Member States passport holders and citizens of all countries for business, emergency relief, and other purposes; Permanent Residence Visas for eligible migrants, such as investors ($250,000-$100,000,000), highly skilled individuals, and others, offering 5-year renewable residency up to indefinite periods; Reclassification of Temporary Work Permit (TWP) and Subject to Regularization visas to align with short-term and long-term employment and residence requirements for expatriates.

Despite these positive developments, its implementation has several shortcomings and untapped opportunities. For instance, the policy's expanded visa options, intended to cater to various travel purposes beyond transit, tourism, business, and work, remain largely inaccessible. Currently, applicants for non-work travel purposes are limited to Business or Tourist visas, while work-related purposes are restricted to Subject to Regularization (STR) and Temporary Work Permit (TWP).[17] Even the reclassification of TWP visas, expected to bring significant changes and benefits to businesses utilizing expatriate manpower, has not been implemented.[18] Similarly, the Investors Visa, designed to attract Foreign Direct Investment (FDI) for businesses, remains underutilized.[19] To fully leverage the NVP' benefits, addressing these implementation gaps is crucial.

4. CLEARING THE PATH: REGULATORY & IMMIGRATION REQUIREMENTS FOR FOREIGN BUSINESS & EXPATRIATE WORKERS

It is crucial to emphasis the distinction between visas and permits in the Nigerian context. While visas allow entry into Nigeria, certain permits (approvals) are required to confirm a foreign national' ability to stay and work in the country and do business.[20] In other words foreigners intending to do business and work in Nigeria are subject to regulatory approvals, control, and permits.

For foreign companies coming into Nigeria to carry on business, the law is that they must take all

[16] Olugbenro, Y., Arowolo, O., Nzeh, P., Okunade, T., Ogunbamawo, O., and Oladoke, F. 'Analysis of the Nigeria Visa Policy (NVP) 2020' (Deloitte, 2020) < https://blog.deloitte.com.ng/nigeria-issues-new-visa-policy/> *accessed* 27 February, 2020

[17] Olaniyonu, B., Olanrewaja, A. (2021), 'A Review of the Implementation Status of the Nigerian Visa Policy (NVP) 2020' (KPMG Nigeria, 2021) <https://www.mondaq.com/nigeria/work-visa/1164524/a-review-of-the-implementation-status-of-the-nigeria-visa-policy-nvp-2020> accessed 24 April, 2023.

[18] Ibid

[19] Ibid

[20] Amadi, V., 'An Analysis of Migration Governance Framework in Nigeria'. (Johannessburg: New South Institute, 2024) 17

necessary steps to obtain incorporation as a separate entity in Nigeria for that purpose and until so incorporated the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company; and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than receipt of notices.[21] In tandem with the authoritative precedent set by the Supreme Court in **CITEC Int' Estates Limited vs EDICOMSA Int' Inc & Associates**,[22] Nigerian law unequivocally mandates that foreign corporations obtain domestic incorporation prior to engaging in business activities within the jurisdiction. Contracts executed by non-compliant foreign entities are thus rendered unenforceable and nullified by the illegality of the operations. Notwithstanding the illegality of contracts executed by unregistered foreign entities, it is essential to recognize that this restriction pertains exclusively to contractual enforceability. A foreign company' capacity to litigate, either as plaintiff/defendant, remains unaffected in Nigeria. See the case of **Ritz Pumpen Fabrik GMBH & Co KG vs Techno Continental Engineers Nig. Ltd & anor**[23] wherein the Court of Appeal in allowing the appeal held, *inter alia*, that a foreign company not registered in Nigeria can sue either by itself or through its local Agent in Nigeria, and that does not mean "carrying on Business in Nigeria"contrary to the provisions of CAMA.

In addition, foreign investors seeking to establish a business or engage in self-employed activities in Nigeria must consider section 36(1)b of the Act and Regulations 4 and 12 of the Regulations. These provisions stipulate that non-Nigerian citizens cannot practice a profession, establish or take over any trade or business or register a limited liability company without obtaining Written Consent from the Minister of Interior in the form of a Business Permit. Considering that the NIPC, the Agency responsible for promoting foreign investments already mandates and issues Business Registration Certificates to qualifying companies (the same as Business Permits) it is argued that the requirement for Business Permit under the Immigration Act (and the Regulations) is an overlap.[24]

Elebiju' compelling argument suggests that the Ministry of Interior' (MOI) Business Permit approval requirement has become a regulatory anachronism in Nigeria' statute books, contributes to bureaucracy that slows down the wheels of business, and should be eliminated.[25] One of the primary reasons supporting this argument is the redundant documentation required by the MOI, such as Certified True Copies (CTCs) of incorporation documents.[26] Since companies must already satisfy the Corporate Affairs Commission (CAC) –the agency responsible for overseeing company incorporation, administration, and liquidation –it is logical to assume that the MOI could rely on the CAC' judgment. The incorporation process itself demonstrates that promoters have met the necessary requirements, ensuring their proposed business ventures align with Nigerian laws and regulations. The CAC would not permit illegal or prohibited activities and as such this makes the MOI' additional approval unnecessary.

[21] Section 78(1) CAMA 2020
[22] (2012) 3 NWLR (Pt 1606) 332 at 355 paras C-D; 367 para C-D
[23] [1999] 1 NWLR (Pt 598) 298
[24] Adedeji O., Odekuma O., Akpeme E., Olajubu O., PWC Regulatory Alert: An Overview of the 2022 Revised Handbook on Expatriate Quota Administration in Nigeria.
[25] Elebigu A, 'Nigeria: Musings II: Is Business Permit Under the Immigration Act Still Tenable in Nigeria?' <https://www.modaq.com> accessed April 24, 2023.
[26] Note 10

We therefore, argue that by eliminating MOI' Business Permit approval requirement, Nigeria can create a more business –friendly environment, reducing bureaucratic hurdle' and encouraging foreign investment.

Likewise, where a foreign national wishes to take up employment within the private sector, the proposed employer is required to initiate the application process to obtain consent from the relevant authorities. This is because under section 38(1) of the Act and Regulation 12 (3) of the Regulations, foreign nationals are prohibited from accepting private sector employment without Comptroller-General of Immigration' (CGI) Written Consent. It is of some moment to emphasize that it is the employer' responsibility to initiate this process. See the case of **Oliver vs Dangote Industries Ltd**.[27] To a discussion of this multiphased process, we now turn.

a. SHORT-STAY EMPLOYMENT ENTRY

Employers seeking to engage foreign nationals for specialized or skilled services or short-term projects can utilize the Temporary Work Permit (TWP) in Nigeria.[28] Historically, the TWP, issued as a Single Entry Visa (SEV), allowed foreign nationals invited by corporate bodies entry once for up to 90 days. However, revisions introduced by the NVP (cursorily discussed elsewhere in this article), now offer the TWP as a TRV, enabling multiple entries for six months.[29] This development facilitates repeated visits by foreign nationals within a short time frame.

The authority to issue TWPs is conferred on the CGI under section 37(8) of the Act and Regulation 8 of the Regulations; but both enactments do not offer much about how to get a TWP or what requirements need to be met to make a stay in the country to be legal.[30] Critics may contend that this lacunae imposes additional complexities and uncertainties for individuals seeking short-term employment in Nigeria. Nevertheless, the Nigeria Immigration Service (NIS) provides clarifying guidelines on work permit requirements via its official website, mitigating potential ambiguities.[31] Applications for (TWP) may be submitted by sponsor companies, organizations, or individuals, accompanied by documentation substantiating the specialized services required from the foreign national. Notwithstanding the provisions outlined in the NVP and the anticipated reforms, the TWP is presently obtained from the office of the Comptroller-General of Immigration (CGI) within the Nigeria Immigration Service (NIS). The permit is issued in the form of a letter of approval, which is subsequently transmitted to the relevant Nigerian diplomatic mission.[32]

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[27] [2009] 10 NWLR (Pt 1150) 467

[28] Section 37(8) Immigration Act; Regulation 8, Immigration Regulations

[29] Note 24

[30] Note 30

[31] Temporary Work Visa F8A ,< https://immigration.gov.ng/visa-class/temporary-work-permit-F8a-2/> accessed 14 February, 2024.

[32] Sijuade A., The Corporate Immigration Review: Nigeria, The Corporate Immigration Review, 10th Edition, Law Business Research, Chris Magrath (Editor)

b. LONG-STAY EMPLOYMENT ENTRY

The initial stage in the process for foreign nationals seeking long-term employment in Nigeria involves obtaining Expatriate Quota Approval (EQA). This official permit, granted to the employing company, authorizes the employment of expatriates in designated positions for a specified period.[33] Companies operating in Nigeria' Oil and Gas Sector additionally require Nigerian Content Development and Monitoring Board (NCDMB) approval before submitting applications for Expatriate Quota grants or renewals. It is pertinent to note that the EQA regime in Nigeria has notable exceptions. Specifically automatic expatriate quota and residence permits are granted to approved personnel in the Mining Sector.[34] Additionally, citizens of Economic Community of West African States (ECOWAS) Member States are exempt from the EQA regime, as per the Treaty of Lagos, 1975.[35]

Upon submission of the application, accompanied by requisite supporting documents and additional required information, the EQA application will be processed, if approved, the EQA will be granted for a maximum period of three years, subject to renewal, specifying the positions to be occupied by foreign nationals.[36] A key administrative protocol of the EQA regime requires strict adherence to the principle of understudy.[37] The purpose of the under study scheme is to ensure that Nigerians are given job opportunities in every organization and strategically placed to take advantage of skills and technology transfer.[38] Unfortunately, the EQA scheme has reportedly been subjected to various forms of abuse, the most prevalent being the employment of unskilled foreigners to the detriment of qualified Nigerians. Many observers have noted that the unmitigated influx of unqualified expatriates, and their placement on EQ slots for which there are adequate local manpower resources, has contributed greatly to the rising unemployment figures in Nigeria.[39]

The United Nations Conference on Trade and Development (UNCTAD) World Investment Report 2005 recommends that Nigeria adopt a skills development framework that assesses company – wide training performance. This approach would replace the conventional understudy model, ensuring that expatriate employment is paired with targeted local capacity building initiatives.[40] According to the Report, in this new system, which would be called "Extended EQ Scheme"Nigeria would introduce a "scarce Skills"list to be based on objective research, carried out in collaboration with the private sector.[41] The list would signal to employers where expatriate hire can be fast-tracked. At the same time an investment threshold to qualify for expatriate hire would be retained to ensure that the employer has sufficient substance to cover the upkeep, health where expatriate hire can be fast-tracked. At the same time an investment threshold to qualify for expatriate hire would be retained to ensure that the employer has

[33] See Regulation 12, Immigration Regulations regarding the authority of the Minister to issue EQA
[34] Section 25, Minerals and Mining Act 2007.
[35] Article 3(2) ECOWAS Protocol; Section 37(13) Immigration Act.
[36] Note 10
[37] Ibid
[38] Yomi-Faseun, A; Sada .L., Uzosike D., Ajay A., The Challenges of Expatriate Employment in Nigeria, KPMG. Newsletter, September 2015.
[39] Yomi – Faseun, A., Sada .L, Uzosike D., Ajayi .A., Current Developments on Expatriate Quota (EQ) Policy in Nigeria, KPMG. Newsletter, July 2016.
[40] United Nations World Investment Report 2005
[41] Ibid

sufficient substance to cover the upkeep, health costs and departure costs of expatriate employees.[42] Interestingly, the Revised Handbook on Expatriate Quota Administration (2022) introduces a progressive provision stipulating that EQA will be limited to positions listed on the "Critical Skills List."[43] This list identifies occupations requiring specialized qualifications, experience or skills essential for the country' economic development. Employers must demonstrate that the position cannot be filled by Nigerian national.[44] However, FMI' delay in publishing the critical Skills List hinders effective implementation and creates uncertainty.

Further, a foreign national or expatriate seeking long-term employment in Nigeria is required to obtain a Subject-to-Regularisation Visa (STR VISA) before arriving in Nigeria. The Visa is issued by the Nigerian Mission or Embassy in the expatriate' country of origin and is conditioned on providing the inviting company' EQA amongst other requirements.[45] Where there is no mission in that country; the Visa may be obtained from a Mission in the country nearest to the country of domicile. It is important to note that the STR Visa is not in itself a Work Visa. Upon approval the STR Visa shall remain valid for a 90 days period, facilitating the entry of the proposed employee and their dependents into Nigeria to assume the specified position as authorized by the relevant EQ. Notably, it is anticipated, that the proposed employee' immigration status will be duly regularized through the procurement of a Resident Permit prior to commencing work with the company and before the STR Visa expires. If the foreign national fails to enter the country within the 90 days or departs from the country before the regularization is complete, they will need to apply for another STR Visa.[46]

The final step in the process involves the regularization of the proposed employees immigration status, which is accomplished through the company' submission of an application for the issuance of a Combined Expatriate Residence Permit and Alien Card (CERPAC). The CERPAC validates the foreign national' legal right to reside and work in Nigeria.[47] To acquire this card, an application letter from the Nigerian employer accepting immigration responsibility and requesting that the employee' stay be regularized is required. Additionally, the Applicant must provide a letter of employment and acceptance of the job offer, proof of EQA from the company, three passport photos, the Applicant' Passport with an endorsed TRV in this case a STR Visa, proof of payment of any applicable fee.[48]

Sijuwade'[49] assertion that a proposed employee must apply for both a CERPAC and a multiple entry visa to facilitate unrestricted movement in and out of Nigeria during their residency is misaligned with the current Nigerian Immigration Law.[50] According to section 18(2) of the Act, this requirement ceased to

[42] Ibid
[43] Note 10
[44] Ibid
[45] NIS Visa Application Guidelines < http://surl.li/mcryh accessed September 12> 2023.
[46] Obebe, A., Nigeria Immigration Law & Practice. (2017) First Edition.
[47] Note 30.
[48] NIS "Visa Types",< https://portal.immigration.gov.ng> accessed 12 September, 2023
[49] Sijuwade A., Nigeria: Introduction to the Immigration Framework, The Corporate Immigration Review, Law Business Research Ltd (2011)
[50] Section 18(2) Immigration Act

exist in 2015. To clarify, the CERPAC enables foreign nationals to reside and work in Nigeria, rendering the additional multiple entry visa requirements obsolete. This change simplifies the immigration process and eliminates unnecessary bureaucratic hurdles.

It is equally significant to highlight that the definition of a Work Permit in section 116 of the Act is problematic. It is described therein as " document that allows a Non-Nigeria expert to reside and work in Nigeria for a specified period."This definition in our respectful view has two major flaws. Firstly, it is overly restrictive, limiting Work Permits to "Experts" without clear justification. Secondly, section 36 and 38 of the Act reveal that Work Permits are not exclusively for experts, contradicting the definition. This inconsistency requires clarification.

5. THE ECOWAS FACTOR: NON-APPLICATION OF WORK AND RESIDENCE PERMIT REQUIRMENTS

The status of corporate migrants from ECOWAS Member States deserves attention. Under the Treaty of Lagos,[51] and the Supplementary Protocol of 1979, the Community Citizens have the right to enter, reside and establish on the territory of member states.[52] Notably, the exercise of these rights are predicated on possession of valid travel documents, including an international health certificate,[53] and applicants must present themselves at any of the official entry points of the member state.

The Supplementary Protocol on the Right to Residence A/SP.1/7/86 further enables the right to residence by providing that this right includes the right to seek and carry out income earning employment in Host ECOWAS States provided they had obtained an ECOWAS residence card or permit.[54] Additionally, by Article 23 thereof, individuals who migrate and comply with rules governing residence should receive equal treatment as the host country' nationals. This includes aspects such as job security, the possibility of re-employment in case of job loss, with community citizens given preference over newly admitted workers, assistance with re-employment and training.[55]

It is important to highlight that in compliance with the ECOWAS protocol on the free movement of persons, the relevant provisions under the Act relating to foreign nationals requiring visas, work permits and residence permits do not apply to nationals of member states of ECOWAS.[56] In other words, they are exempted from requiring entry visas and are allowed to reside, work and undertake commercial activities provided they register with the NIS as nationals of ECOWAS. However, concerns arise regarding security of migrant workers, including community citizens. Current legislation fails to address the ECOWAS Protocol' equality of treatment provisions. By addressing these gaps, Nigeria can promote a more inclusive and secure environment for corporate migrants from ECOWAS member states.

[51] Note 47
[52] Article 2(1) of the Protocol relating to the free movement of persons, residence and establishment A/P.1/5/79
[53] Article 3 of the Protocol relating to the free movement of persons, residence and establishment A/P.1/5/79
[54] Article 2 of the Supplementary Protocol on the Right of Residence A/SP/.1/7/86
[55] Article 23(1) (a)-(f) of the Supplementary Protocol on the Right of Residence A/SP.1/7/86
[56] Section 37(13) Immigration Act, and Regulation 11(4) Immigration Regulations.

6. IMMIGRATION CONTROL MEASURES: REGISTRATION, OFFENCES AND PENALTIES.

Pursuant to statutory requirements, the NIS is entrusted with the responsibility of establishing and maintaining a register of foreign nationals resident in each state;[57] and foreign nationals must notify the NIS office in their state of registration within 7 days of any changes to their residence status or circumstances.[58] This regulatory framework facilitates effective monitoring, tracking and management of foreign nationals' activities within the country, thereby enhancing national security and immigration control.

The foreign national is also obligated to have a copy of the certificate of registration in his possession at all times, in the event an immigration officer demands for it.[59] In addition the Regulations place responsibility on householders who lease or rent their property to foreign nationals to ensure that such foreign nationals comply with these provisions;[60] as well as mandate owners or managers of hotels, boarding houses or any premises where lodging or sleeping accommodation is provided for pay, to keep a register of foreign nationals.

The Regulations provisions for data collection, identification, registration, and control of foreign nationals are, doubtless, commendable. However, a critical oversight is the lack of explicit safeguards for protecting collected data and establishing procedures for addressing complaints related to data misuse, abuse or privacy breaches. To address this gap, it is respectfully argued that supplementary regulations should be issued outlining clear guidelines on data management and imposing sanctions for non-compliance.

Furthermore, the requirement that households ensure immigrant compliance with the Regulations or report non-compliance to immigration authorities raises concerns. This obligation potentially transforms private citizens into defacto immigration officers, exposing them to sanctions for simply renting properties to foreign nationals. This provision may inadvertently deter homeowners from renting to foreign nationals undermining the Regulation' objective of fostering a conducive business environment. Reservation of this requirement is, therefore, necessary to strike a balance between national security and individual right.

The Act and Regulations stipulate various offences and penalties, categorizing them into individual and corporate liabilities. Notably, corporate migrants must be aware of key infractions, including: failure to regularize stay within 3 months;[61] and non- renewal of work visa or residence permit within 30 days of expiry.[62] Upon conviction, foreign nationals face severe penalties - 3 years' imprisonment, a fine of N500,000, or both.

[57] Regulations 22 and 23 Immigration Regulations
[58] Ibid
[59] Regulation 33(1) Immigration Regulations
[60] Regulation 29(1) Immigration Regulations
[61] Section 57(5) (a-c) Immigration Act; Regulation 47 (5) (a-c) Immigration Regulations.
[62] Ibid

We respectfully argue that the inclusion of imprisonment terms raises concerns. This approach diverges from international best practices, where deportation and financial penalties on employers are typical consequences for immigration law breaches. We further argue that the imprisonment term is excessive and potentially counterproductive. Instead, we recommend aligning Nigerian immigration laws with global standards, focusing on deportation and financial penalties to ensure compliance.

Stringent obligations are also imposed on employers regarding foreign nationals' employment. For instance, failure to notify the Comptroller-General of Immigration (CGI) of changes in a foreign national's employment status constitutes an offense and penalties for non-compliance under the Act include - deportation of defaulting non-Nigerian employers, foreign nationals, and their dependents ; and winding up of the employer's business. While under the Regulations it further attracts 5 years' imprisonment or N1 million fine, or both, for defaulting employers.[63] Similarly, corporate entities face stringent penalties for non-compliance. Failure to renew expatriate quota or submit monthly returns, for instance, attracts a fine of N3 million; and failure to employ Nigerian understudies for foreign employees renders the defaulting company liable to N3 million fine per month. Unauthorized utilization of expatriate quota positions also attracts a N3 million fine.[64]

The Regulations' repetitive penal provisions raise concerns. Despite the Act's recent origin, some provisions are unnecessarily restated in the Regulations, encroaching on the National Assembly's constitutional authority to prescribe punishments. Furthermore, the framework confers excessive powers on the Minister and immigration authorities without adequate checks. For instance, arbitrary revocation of business permits without stated reasons or parameters; and unfettered detention powers for suspected immigration offenders. Section 48(1) is particularly contentious, allowing detention for up to 3 months pending deportation orders. Scholars and experts argue this violates fundamental human rights, including freedom of movement. Ozor critiques this provision, labeling it "torturous humiliation" and advocating for specific time frames to curb Ministerial discretion.[65] To address these concerns, reforms should streamline penal provisions to avoid duplication; establish clear parameters for Ministerial powers; introduce time limits for deportation orders; and ensure compliance with international human rights standards. By revising these provisions, Nigeria can strike a balance between effective immigration regulation and protection of human rights.

7. JURISDICTIONAL COMPETENCE IN IMMIGRATION MATTERS

The constitution of the Federal Republic of Nigeria 1999 as amended unequivocally vests exclusive jurisdiction in the Federal High Court.[66] Furthermore, the Act mandates the establishment of a dedicated division within the Federal High court to exclusively handle immigration cases.[67] There is also provision

[63] Regulations 48(1)b, 48(2) Immigration Regulations.
[64] Regulation 52(1)(6-7) Immigration Regulations.
[65] Ozo, C, 'Nigerian Immigration Practice and Procedure Detention of Expatriates and Migrants – Has the Immigration Act crossed the Legal Threshold?' DCSL Corporate Services Limited <https://www.dcsl.com.ng > accessed 24 April, 2023.
[66] Section 251(I)(g) and 3 CFRN 1999
[67] Section 67, Immigration Act

for an immigration case to be dealt with in priority to any other case, civil or criminal, where a person is charged with an offence the conviction for which, would result in deportation.[68]

Regrettably, the provision relating to the establishment of an Immigration Division under the Federal High Court remains unimplemented; and this failure or inaction has significant implications including but not limited to:

- Inefficient Adjudication: The absence of specialized jurisdiction hinders effective and expeditious resolution of immigration disputes.
- Lack of Expertise: Judges without specialized knowledge of immigration law may struggle to navigate complex issues.
- Increased Backlog: Overburdened courts may prioritize other cases delaying immigration proceedings.
- Inconsistent Rulings: Without a dedicated division inconsistent decisions may arise, undermining the rule of law.

It is respectfully opined that the non-establishment of an Immigration Division under the Federal High Court is a missed opportunity for effective immigration adjudication; and urgent attention is required to fulfill the statutory mandate and ensue Nigeria' immigration system operates efficiently and justly.

It is equally noteworthy that the Act provides for the issuance of a pre-action notice before a Claimant can bring an action against the NIS.[69] It has been argued in some learned quarters that the insertion of a provision in an Act mandating pre-action notice usually constitute an obstacle that may erode or impede the right of access to court by aggrieved persons.[70] This school of thought maintains that anachronistic rules such as pre-action notice serve no end of justice and is often a procedural requirement which is employed by defendants to delay or deny an inquiry into the merits of the case.

Notwithstanding this controversy, it has long been laid to rest that the rationale behind the jurisprudence of pre-action notice is to enable the Defendant know in advance the anticipated action and a possible amicable settlement of the matter between the parties without recourse to adjudication by the court.[71] It affords the Defendant a breathing space to decide whether or not to settle or make reparation to the aggrieved party.[72] Accordingly, we posit that a pre-action notice requirement in the Act constitutes a salutary innovation. It heralds a significant advancement in promoting judicial efficiency, encouraging dispute resolution, and fostering a culture of litigation avoidance.

[68] Section 48(1) Immigration Act
[69] Section 109(1) Immigration Act
[70] Nwokoro E, 'The Companies and Allied Matters Act 2020: A Randomized Analysis of the Reforms Introduced by the Act'. *Gregory University Uturu College of Law Journal,* December [2020] (1) 1A
[71] Niger Care Development Co. Ltd v Adamawa State Government & Ors (2008) 9 NWLR (Pt 1093)
[72] Ngelegla v Tribal Authority Nongowa [1953] 13 WACA 325.

8. FINAL THOUGHTS!

In conclusion, Nigeria's corporate immigration framework presents complex challenges for foreign business entities and individuals. The Immigration Act 2015 and subsidiary regulations provide a foundation for navigating these complexities. However, implementation gaps, regulatory overlaps, and outdated requirements hinder the effectiveness of the framework. To enhance the business environment, Nigeria should address these challenges by streamlining regulatory approvals, eliminating redundant documentation, and clarifying guidelines for expatriate quota administration. Additionally, revising penal provisions to align with international standards and establishing a dedicated Immigration Division within the Federal High Court will improve adjudication efficiency. By implementing these reforms, Nigeria can foster a more conducive business environment, attract foreign investment, and promote economic growth. As the global landscape continues to evolve, Nigeria's corporate immigration framework must adapt to meet the needs of a rapidly changing world.

RE-EXAMINING CITIZENSHIP: A CRITICAL ANALYSIS OF FOLAKEMI ADEOSUN VS. ATTORNEY GENERAL OF THE FEDERATION

Prince Ebere Nwokoro

ABSTRACT

*This case review critically examines the landmark judgment of **Folakemi Adeosun vs. Attorney General of the Federation,** which sparked intense debate on Nigerian citizenship law. The case centered on Mrs. Folakemi Adeosun's citizenship status, specifically whether she held Nigerian citizenship as of 1989. While the court's decision that Mrs. Adeosun was not a Nigerian citizen in 1989 is well-founded, her automatic re-acquisition of citizenship under the 1999 Constitution is contestable. This analysis underscores the need for clarity on citizenship principles in Nigeria, highlighting complexities surrounding citizenship acquisition and forfeiture. It argues that Mrs. Adeosun, having forfeited her Nigerian citizenship, cannot regain it without undergoing a formal process, contrary to Justice Taiwo's conclusion. The review calls for future legal developments to address critical concerns, providing clarity on citizenship principles and reacquisition processes.*

Keywords: Citizenship, Nigerian Citizenship Law, Folakemi Adeosun, Attorney General of the Federation, Federal High Court.

1. INTRODUCTION:

On the 7th of July 2021, the Federal High Court delivered a landmark judgment in **Folakemi Adeosun vs. Attorney General of the Federation**,[1] a case that sparked intense debate on the intricacies of Nigerian citizenship law.[2] At its core, the dispute centered on the citizenship status of Mrs. Folakemi Adeosun, the former Minister of Finance, and specifically whether she held Nigerian citizenship as of 1989. The court's decision has significant implications for the understanding and application of citizenship principles in Nigeria.

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This case review undertakes a critical examination of the court's ruling on Mrs. Adeosun's citizenship status, with particular emphasis on its implications for the interpretation of relevant statutory provisions and the broader consequences for Nigerian citizenship law. By interrogating the court's reasoning and conclusions, this analysis aims to contribute to the ongoing discourse on citizenship, nationality, and the rule of law in Nigeria.

[1] Suit Nos: FHC/ABJ/CS/303/2021

[2] See for instance: Unini .C "Adeosun Vs AGF. A Review of the Decision of the Federal High Court, Abuja," available at https://thenigerianlawyer.com accessed on February 14, 2024; Chukkol O.G, "Kemi Adeosun's NYSC Controversy: Where the Federal High Court Got It Right and Wrong." available at Linkedin accessed on February 14, 2024

2. BRIEF FACTS OF THE CASE RELATED TO MRS. KEMI ADEOSUN' CITIZENSHIP.

Kemi Adeosun, born in London to Nigerian parents, served as Nigeria's Finance Minister from 2015 to 2018. She resigned amid allegations of not participating in the National Youth Service Corps (NYSC) scheme. Adeosun argued in court that as a UK citizen by birth, she lost her Nigerian citizenship at 21 (in 1988) under Section 28 of the 1979 Constitution.[3] The court ruled in her favor, stating that as a UK citizen at graduation (1989), she was not eligible for NYSC. Her Nigerian citizenship was reinstated with the 1999 Constitution, which repealed the 1979 Constitution. In the *ipsisima verba* of the court, "***the Plaintiff was born in London, United Kingdom as a result of which she became citizen of the UK. She studied in the UK from primary school up till the University level when she graduated at the age of 22 in 1989 … If she was a citizen of Nigeria and she graduated outside the country at the age of 22 years, she would have been eligible for NYSC. But the facts on ground is that she was a citizen of the United Kingdom".***[4]

3. ANALYSIS OF THE COURT' DECISION

A critical examination of Hon. Justice Taiwo O. Taiwo's judgment in the case reveals that the learned judge's finding that Mrs. Adeosun was a UK citizen at the time of her university graduation in 1989 lacks explicit reasoning. Instead, the decision appears to rely on Chief Olanipekun's argument that Mrs. Adeosun was not a Nigerian citizen due to Section 26 of the 1979 Constitution, which prohibits dual citizenship.

For context, Section 23(1)(c) of the same Constitution[5] states that individuals born outside Nigeria to Nigerian parents are Nigerian citizens by birth. Given Mrs. Adeosun's parents were Nigerians, she automatically acquired Nigerian citizenship. The case of **Ahmed vs Minister of Internal Affairs**[6] supports this interpretation. Section 26(1) of the 1979 Constitution, however, stipulates that acquiring or retaining foreign citizenship results in forfeiture of Nigerian citizenship. Nonetheless, Section 26(3)[7] provides an exception for citizens by birth, allowing renunciation of foreign citizenship within 12 months of the Constitution's enactment or upon reaching 21 years. Since no evidence was presented indicating Mrs. Adeosun renounced her UK citizenship within the specified timeframe, she forfeited her Nigerian citizenship by birth. Therefore, Justice Taiwo's decision that Mrs. Adeosun was not a Nigerian citizen in 1989 is well-founded and defensible.

However, we beg to differ with His Lordship's conclusion that Mrs. Adeosun automatically re-acquired Nigerian citizenship, and respectfully submit an alternative view. The judgment raises critical concerns regarding the reinstatement of Mrs. Adeosun's Nigerian citizenship. His Lordship posits that Section 26 of the 1979 Constitution, which led to Mrs. Adeosun's forfeiture of Nigerian citizenship, was repealed

[3] Note 1
[4] Ibid.
[5] Constitution of the Federal Republic of Nigeria, 1979.
[6] (2017) LPELR – CA/K/199/2014.
[7] Note 5.

and is no longer part of the 1999 Constitution. Consequently, he asserts that Mrs. Adeosun regained her citizenship under Section 25(1)(c) of the 1999 Constitution.[8]

This conclusion is, however, contestable. Section 25 of the 1999 Constitution governs citizenship by birth via descent, stipulating eligibility for individuals born outside Nigeria with Nigerian parents or grandparents. Crucially, this provision does not automatically restore citizenship to those who previously forfeited it. We argue that Mrs. Adeosun, having forfeited her Nigerian citizenship, cannot regain it without undergoing a formal process. The notion of 'dormant citizenship' that can be unilaterally reactivated is unfounded. Justice Taiwo's decision fails to address the specific point at which Mrs. Adeosun regained citizenship and the process she followed to reacquire it.

The Nigeria Visa Policy 2020[9] introduces Permanent Residence Visas (PRV) for Nigerian citizens by birth who renounced their citizenship and their spouses. This policy underscores the necessity of a formal process for reacquiring citizenship. In light of this, Justice Taiwo's conclusion that Mrs. Adeosun automatically regained her citizenship under the 1999 Constitution without undergoing such a process is, with respect, erroneous. We respectfully submit that the judgment overlooks the imperative of a deliberate, formal process for reinstating citizenship, instead implying an automatic reinstatement that finds no basis in the 1999 Constitution or subsequent policies.

4. CONCLUSION:

The **Folakemi Adeosun v. Attorney General of the Federation**[10] case has sparked intense debate on Nigerian citizenship law, highlighting the complexities surrounding citizenship acquisition and forfeiture. While Justice Taiwo's decision that Mrs. Adeosun was not a Nigerian citizen in 1989 is well-founded, his conclusion that she automatically re-acquired citizenship under the 1999 Constitution is contestable. In conclusion, this case analysis underscores the need for clarity on citizenship principles in Nigeria. The judgment's implications on the interpretation of relevant statutory provisions and the broader consequences for Nigerian citizenship law warrant further examination. To advance the discourse on citizenship, nationality, and the rule of law in Nigeria, future legal developments should address these critical concerns, providing clarity on citizenship principles and reacquisition processes.

[8] Constitution of the Federal Republic of Nigeria, 1999

[9] The Policy issued by the Nigeria Immigration Service in 2020 was structured to outline the expectations of the Immigration Act 2015 and the Immigration Regulations 2017 with respect to Visa Administration.

[10] Note 1.