AN APPRAISAL OF THE RIGHTS AND PROTECTION OF MIGRANT WORKERS UNDER NIGERIAN LAW*

Abstract

This paper examines the rights and protection of migrant workers and members of their family within the context of Nigeria legislations and under other regulatory guides made in pursuance of protection of rights and its enforcement. The paper further examines the salient provision of some international instruments and protocols specifically made to meet the needs of migrant workers and in particular the protection and enforcement of their rights and those of the members of their families. In an attempt to expand the scope of knowledge and provide answers to some legal issues confronting the wellbeing of migrant workers in their host countries, this paper takes a foray into the law and practice in some countries, particularly the United Kingdom and the United States of America and further exhibits how the courts in the said countries have been able to handle some immigration matters bordering on the rights and protection of migrant workers and members of their families. Finally, the paper dwells much on the reasons why it is always difficult to give full protection to the rights of migrant workers in Nigeria and therefore advocates in its conclusion the need for all countries of the world to have a uniform law and policy that would be universally applicable on the protection of migrant workers' rights and the enforcement of those rights. The recommendations made in the paper are with the view of placing before the United Nations authorities and the Nigerian law and policy makers, sufficient materials to consider and guide their future deliberation on law review as appertaining to the protection and enforcement of migrant workers' rights.

Keywords: Migrant workers, prohibited immigrant, right of entry, expulsion and resident permit.

1. Introduction

The migrant worker's choice of preference in having to chose anywhere to live and work outside his home State or country could be informed by various reasons. The most copious of those reasons are herein stated as follows;

(a) Quest for seeking greener pastures and other opportunities that may not be available in migrant worker's home country or place of abode.
(b) Fear of poverty or wretchedness owing to the worker's inability to secure any good job that can sustain him and his family.
(c) Love of adventure which could easily be provoked by the need to build self awareness, confidence and purposeful life.
(d) Civil war, strife, internecine, insecurity, persecution or fear of persecution as a result of religious or political belief and racial discrimination.
(e) Dearth or lack of expertise on a particular field of human endeavour and the need to seek assistance or aids from other country or countries.
(f) Inalienable rights of every individual to exercise his freedom of movement within and outside his country and which rights are adequately recognised, preserved and protected by international instruments.[1]

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[1] See Article 13 of the United Nation (UN) Universal Declaration of Human Right, 1948.

Besides the aforementioned reasons, it would appear that as of recent, the unprecedented migration of workers from one country to the other all over the world can be traced back to the downturn in the world's economy and the impact of which has been more felt by the less developed countries who continue to lose their best of hands to other developed countries of the world.[2]

However, whatever is the reason which prompted any migrant worker in taking the decision to live and work in any country of his or her choice, such decision can never come with all bed of roses. This is because the migrant worker is giving up many comforts that are not easy to part with only to now begin a new journey in a different environment that its culture, language and way of life for instance, are quite different to that of the migrant worker. Aside from trading off his comfort, most of the problems often encountered by any migrant worker in the host country may be ranging from his inability to understand the laws that guides his entry, stay, movement and his working career. As it is always the case, most of the international instruments or conventions that the migrant worker may be relying upon for protection of his rights or certain aspects thereof may be conflicting or incompatible with the national laws of the host country even though such country is a party to those instruments or conventions. In the likely event of any untoward activities in the host country which will affect the preserved rights of such migrant worker, what would then be the available remedies open to him?

Given the foregoing background, the aim of this paper is to examine the rights and protections of migrant workers not only under Nigerian law but also within the context of various instruments and protocols that are applicable to Nigeria by virtue of having signed and ratified same. The paper will further examine how the courts in Nigeria and some States of the world, particularly United Kingdom and United States of America, have interpreted various provisions of the laws that are having to do with any issue thrown up by the rights and protection of migrant workers. It is expected that this exercise will not only contribute to knowledge and expansion of the scope of legal jurisprudence but will also provide materials that will guide the policy makers in their future deliberations on law review and making of a new legislation that will regulate the rights and protection of migrant workers in Nigeria.

2. Historical Development of Rights Protection

Migrant worker is an ancient concept which transcends many centuries and it is as old as the world itself because people have been moving from one area to the other in search of what to do to earn a living, even if where they choose to ply their trade is not their homestead or country.[3] The rights of every individual and not just a migrant worker, to visit, reside and work in any part of the world is an inalienable right embedded in freedom of movement and this right is protected and preserved under the international instrument.[4] The Universal Declaration of Human Rights (UDHR), 1948 established some classes of rights for the human race but because this instrument is not legally binding, two other treaties were several years later proclaimed and adopted. The said two treaties aside from being legally binding incorporates almost all the rights provided under the UDHR, 1948. The first is the International

[2] . Florence Nightingale, Nigeria: An Assessment of The International Labour Migration Situation; The Case of Female Labour
Migrants. Genpron Working Paper, 2002 Edition, No.7 @ page x paras 1. Accessed on line on the 4/06/2020 vide https://www.ilo.org> langu-en.

[3] See page 3 paragraph 4 of the Human Rights Fact sheet No 24 of 1994. Accessed online on the 4/06/2020.

[4] Article 13 of the United Nations Universal Declaration of Human Rights, 1984 Adopted and proclaimed by the United Nations General Assembly (UNGA) Resolution 217A (iii) of 10th December, 1948 @ Paris, France.

Covenant on Economic, Social and Cultural Rights (ICESCR), 1966[5] and the second is the International Covenant on Civil and Political Rights, (ICCPR), 1966.[6] The summary of ICESCR, 1966 in so far as migrant worker is concerned is to ensure that he or she does suffer any discrimination on whatever grounds, be it political, religion, race, colour, employment and other privileges attaching to employment like membership of trade unions, protection and assistance to his or her family.[7] In the case of ICCPR, 1966, and central to its provisions as far as protection of migrant worker is concerned are the rights to preservation of life and dignity, not to be deprived of his liberty and security, and that his life must not be brought to an abrupt end without due process and lawful justification. The migrant worker must not to be tortured or made to suffer any form of cruelty, inhuman and degrading treatment, not to be held in slavery or servitude nor asked to perform forced or compulsory labour. The migrant worker is also by this treaty given rights to move freely and choose an abode that suits him or her, he or she is not to be detained or imprisoned as a result of failed contract or inability to fulfill a contractual obligation and not to be expelled from his or her host country without any compelling and sufficient reasons for doing so. He or she must be given an adequate room to defend himself or herself on why he or she should not be expelled from the host country.[8]

There are other treaties specifically made for the protection of human rights which of course are in tandem with the protection of migrant workers. These treaties in addition to the aforementioned ICESCR and ICCPR are commonly referred to as the six core human rights treaties of the United Nation Organisations, (U.N.O)[9] and they are simply stated as follows:

(a) International Convention on the Elimination of All Forms of Racial discrimination, 1965 (ICERD).[10] The essence of this convention going by its preamble, is to seek zero tolerance of any form of discrimination or evil practices of segregation as a result of race, colour, religion and sex etc. The convention is also out to ensure that there is total and universal performance and observance of all the rights ceded to human race.

(b) Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW).[11]

(c) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (CAT), 1984.[12] The importance of this convention is its novel provision to the effect that migrant worker should be protected against expulsion from the host State to his home country or elsewhere when it would appear that doing so may expose the person being extradited to torture.[13]

(d) Convention on the Rights of the Child 1989, (CRC).[14]

[5] Adopted by U.N.G.A Resolution 2200A (xxi) of 16th December, 1966 and which entered into force on the 3rd January, 1976 in accordance with its Article 27.

[6] Adopted by U.N.G.A. Resolution 2200A (xxi) of 16th December 1966 and which entered into force on the 23rd March, 1976 in accordance with its Article 49.

[7] Articles 2, 3, 6, 7 and 9 of the ICESCR, 1966.

[8] Articles 6, 7, 8, 9, 10, 11, 12 and 13 of ICCPR, 1966. 5

[9] Marielle Grange – Strengthening Protection of Migrant Workers And Their Families with International Human Rights Treaties (2006) International Catholic Migration Commission (ICMC) Publication page 17 paras 2-3. Assessed online on the 5/06/2020 vide https://www.iom int.

[10] Adopted by U.N.G.A Resolution 2106 (xx) of 21st December, 1965 and which entered into force on 4th of January, 1969 in accordance with its Article 19.

[11] Adopted by UNGA. Resolution 34/180 of the 18th December, 1979 and it entered into force on the 3rd September, 1981 in accordance with its Article 27.

[12] Adopted by UNGA Resolution 39/46 of 10th December, 1984 and it entered into force on the 26th June, 1987.

[13] Article 3 of the CAT, 1984

[14] Adopted by the UNGA Resolution 44/25 of the 20th November, 1989 and it entered into force on the 2nd September, 1990 in accordance with its Article 49. 6

Although the International Labour Organisation (ILO) had before most of these core treaties made series of conventions on labour matters but it can be said that some of these conventions so made by ILO do not adequately address the plights of migrant workers but sort of providing regulatory guides on what shall be the minimum standard expected on labour matters. The most closely connected or appropriate to the migrant workers of all the initial conventions made by the ILO are Migration for Employment Convention (Revised), 1949[15] and Migrant Workers (Supplementary Provisions) Convention, 1975.[16] The Migration For Employment Convention provides or place emphasis on equal treatment of both migrant and local workers in any place of employment and that migrant worker should not suffer any discrimination of sort.[17] The Migrant Workers (supplementary provisions) Convention in its provisions seeks eradication of illegal migration of prospective workers and thereby provide guidelines on how to regularize the illegal status of migrant workers as well as holding the employers of any migrant worker with illegal status liable.[18]

The feat of making of an instrument which for the first time addresses the rights and protection of migrant workers along with the members of their families was attained when the United Nations Organisation adopted the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, 1990 (ICRMW).[19] This convention has thus put paid to the idea of having to look through various instrument and treaties that are specifically made to address a particular right or few of the rights of migrant worker. It has created a sort of compendium where all aspects of rights and protection of not only migrant workers but also members of their families are now codified in a single instrument and not in disjointed form it used to be. Although ILO has since taken some steps to fill the vacuum created in the ICRMW through its recent Domestic Workers Convention, 2011 which makes a case for the recognition of certain class of migrant workers under domestic employment.[20]

At the regional and national level the treaties and legislations in force in Nigeria in addition to the international instruments so far mentioned and by which the rights and protection of migrant workers can be examined are respectively the African Charter of Human and Peoples Rights[21] and Economic Community of West African States (ECOWAS)

Treaty, 1975 (As Revised)[22] while the national legislations and policies made to regulate and control the affairs of immigrant are briefly stated as follows:

(a) Immigration Act, 2015.[23]
(b) Immigration Regulation, 2017 which is made for the implementation of the Immigration Act, 2015's provisions.[24]

[15] . Convention CO97 adopted by The General Conference of the International Labour Organisation at Geneva on the 1st July,
1949 at its 32nd session. Accessed online on the 9/06/2020 vide https://www.ilo.org.
[16] Convention C143 adopted by General Conference of the International Labour Organisation at Geneva on the 24th June, 1975 at its 60th session. Accessed online on the 9/06/2020 vide https://www.un.org> docs.
[17] Article 6 of Migration for Employment Convention, 1949.
[18] Article 2, 3, 4 and 9 of the Migrant Workers (supplementary provisions) Convention, 1975.
[19] Adopted by the UNGA Resolution 45/158 of 18th December, 1990 and which entered into force on the 1st July, 2003 in accordance with its Article 87.
[20] See Article 2 of the ICRMW, 1990.
[21] Cap A9, Laws of the Federation of Nigeria, 2004
[22] ECOWAS Treaty of 28th May, 1975 (Revised on 20th July, 1993)
[23] Immigration Act, 2015 (No 8) made on the 8th June, 2015.
[24] Immigration Regulations 2017 (Regulation No. 3) made on the 1st of March, 2017.

(c) Labour Act, 2004, which regulates the relationship between Employers and Employees.[25]
(d) National Policy on Labour Migration, 2014.[26]

3. Who is a Migrant Worker And Members of His Family

(a) Migrant Worker: There is no definition of who a migrant worker is in any of the Nigerian Legislations. What is given a place in its legislative provisions and policies is the word "immigrant" and this has been defined to mean someone that is not a Nigerian citizen but who has sought to enter or has already entered into Nigeria in any capacity that is not within the contemplation of those that enjoys immunity or diplomatic waivers.[27] The immigration Act, also defines 'work permit' to mean the licence given to a non citizen of Nigeria to live and work in the country within the length of time reserved in that licence.[28] In the absence of a clear and concise definition of who is a migrant worker under the Nigerian legislations, it is proper to rely on the definition provided by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (hereinafter ICRMW). By this Convention, a migrant worker is taken to mean "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national".[29] Looking at this definition provided by the ICRMW, it would be proper, with profound respect to the drafters, to submit that "a person who is to be engaged" cannot in the strict sense of the word be described as a worker let alone a migrant worker. This is because a person can only be engaged as a worker if he or she has been truly employed in any of the manners specified under the common law contract of employment. Once the elements of contract of employment is lacking then there is nothing like trying to be engaged worker under the law.[30] The implication of this definition therefore is that person intending to be engaged cannot be called or referred to as migrant worker and neither can he or she benefits from any of the rights that would have been accorded a migrant worker under any law or instruments applicable to Nigeria. The definition would have made the deserved meaning if it is read without the words "who is to be engaged".

The classes of migrant workers whose rights are sought to be protected going by the provisions of this convention are hereby listed as follows:[31]

1. Frontier Worker – This is a person who has not given up his residence in the country contiguous to the host country where he works. He therefore returns every day to the country of his residence after work or once in a week.[32] The danger inherent in this definition is that the residential status of this class of migrant worker would be difficult to ascertain in line with the work permit that enable him to seek employment in Nigeria. Section 116 of the immigration Act, 2015 defines work permit to mean a licence which allows a non-Nigerian citizen to live and work in Nigeria. The words "reside and work in Nigeria" as expressed by this section are plain and unambiguous words which needs no further interpretation than to be applied in its ordinary and grammatical meaning. This is the view of Supreme Court in the case of **Buhari vs. Yabo.**[33]

[25] Labour Act (Cap L1) Laws of the Federation of Nigeria, 2004.
[26] Published on behalf of the Federal Government of Nigeria by International Organisation for Migration (2015) First Edition.
Accessed online on the 04/06/2020 vide https://www.ion. Int.
[27] Section 116 of the Immigration Act, 2015.
[28] Ibid.
[29] Article 2(1) of the ICRMW, 1990. 8
[30] See the Case of Ogundipe Vs. Nigeria Telecom Ltd (2016) All FWLR (pt817). 613 @ 630 paras F-G.
[31] Article 2(2) (a-h)
[32] Article 2(2) (a) of ICRMW, 1990
[33] (2019) All FWLR (pt 1007) 855 @ 873 paras A – B.

2. Seasonal Worker[34] – That is a person whose nature of work is wholly predicated upon happening of a seasonal event.
3. Seafarer[35] – That is a person who works on board a ship registered in a State of which he is not a citizen.
4. Offshore installation worker[36] – That is a person who works in a place or location admitted to part of a State of which he is not a citizen.
5. Itinerant worker[37] – This means a person who even though have his or her residence in a particular State but has to travel to one or more States as a result of his or her schedule of work.
6. A worker who has a specific period of time within which to work on a specific project in a State and a worker who has definite period of time to work in a State as a professional or highly skilled professional.[38]
7. Self-employed worker – a person who is not under any contract of employment but carrying on his or her trade alone or together with member of his family and this also includes a worker whose line of business activities will be recognised by the host country's legislation and other treaties applicable to the host State as self-employed migrant worker.[39] The point of argument about this class of migrant worker is what would be his or her employment status when and if he or she is engaged to carry out any job on behalf of another person or organisation even though he or she is not in the employment of that organisation or person. The United Kingdom's Supreme Court (UKSC) has held in the case of **Pimlico Plumbers Ltd & Anor Vs. Smith**,[40] that such worker is qualified to be called a worker with such person or organisation and thus he is entitled to some basic privileges and rights that goes with such employment. The said court further held that such person is qualified to be addressed as an employee of the person or organisation that engaged his service thus enabling him to enjoy primary and basic rights attaching to that employment along with other employees of the person or organisation.

(b) Members of Migrant Worker's Family: The ICRMW has defined members of migrant workers' family to include persons who are married to migrant workers or those that keeps any relationships that would under any applicable law be regarded as marriage and the children or other dependants of that marriage or relationship who shall also be regarded as family members under any applicable law or under any treaty or agreement between the countries concerned. [41] The definition offered by this convention on who are members of migrant workers' families is to say the least and with greatest respect to the drafters, not acceptable because if that definition of the word "persons" is to be taken in prolixity then the meaning attaching to it will certainly lead to confusion. The usage of the words "persons married to migrant workers" can under some countries' laws taken to mean same-sex marriage. In fact Australia for instance has under its laws amended Section 5(1) of the Marriage Act 1961 which had hitherto provided that marriage is the union between a man and a woman to the exclusion of others. It has since substituted that provisional section with the words "the union of 2 persons".[42]

In other words, marriage definition in Australia is no longer between a man and a woman alone but also between a woman and a woman or a man and a man. The danger inherent in the definition offered by

[34] Article 2(2) (b) ICRMW, 1990.
[35] Article 2 (2) (c) ibid
[36] Article 2(2) (d) ibid. 9
[37] Article 2 (2) (c) ibid
[38] Article 2(2) (d-e) ibid.
[39] Article 2(2) (f) ibid.
[40] (2018) UKSC 29. Accessed online on the 8/06/2020 vide https://www.supreme court.uk/cases/docs. 10
[41] Article 4 of the ICRMW, 1990
[42] See Australian's Marriage Amendment (Definition and Religions Freedoms) Act, 2017 (Act No. 129)

the ICRMW, vide its Article 4 on the meaning ascribed to migrant workers family members is that this definition will at all times fail to meet the test of universal acceptability. There are two types of marriages recognised under the Nigerian Laws and these are marriages contracted under the Act (Statutory) between a man and a woman and marriages contracted in line with customs and traditions or under Islamic rites between a man and a woman. The Supreme Court of Nigeria in the case of **Amobi Vs. Nzegwu;** defined the statutory marriage or Act marriage to mean the voluntary union for life of one man and one woman to the exclusion of all others.[43]

What this definition portends is that for a statutory or Act marriage to be valid under Nigerian laws, it has to be between a man and a woman to the exclusion of others and nothing more. The same-sex marriage in Nigeria is an offence that is punishable under Same Sex Marriage (Prohibition) Act, 2013.[44] It is even the provision of this law that any such marriage contracted in a foreign country and to which a certificate of marriage in that behalf is issued shall be null and void in Nigeria and that nothing of benefits accruing to that certificate can be enforced by any of the courts in Nigeria.[45] It is on the stretch of the forgoing that one has to submit, with profound respect, that Article 4 of the ICRMW, 1990 should be reviewed in line with such definitions that will not offend the sovereign rights and powers of some member States that are parties to the convention.

Coming to the second leg of the definition offered by Article 4 of the ICRMW on who are the members of migrant workers families, it is unequivocally submitted here that presumption of marriage can only be read into any relationship between a man and a woman under Nigerian laws and not between a man and another man or a woman and another woman. The Evidence Act provides that if there is any statutory evidence before the court which goes to show that cohabitation between the man and the woman has been carried out like husband and wife then the court shall presume the existence of marriage between them.[46] However, it is the law in Nigeria that presumption of marriage by virtue of cohabitation or intimate relationship between a man and a woman can only be limited to the marriage contracted under customary law or Islamic law but not statutory or Act marriage.

In the case of **Chukwuma Vs Chukwuma** the court held that it would need more than presumption to prove the existence of a valid marriage under the Act as the certificate of marriage may be *sine qua non*.[47] The Court of Appeal in Nigeria has put it more succinctly in the case of **Asere Vs. Asere**, when it held that even if marriage may be presumed from the fact of cohabitation over a long period of time, that presumption can never be extended to determine the type of marriage whether it is under the native law and custom or under the English law.[48] In essence, any migrant worker coming to Nigeria will have to decide if his or her marriage is recognised under the Nigerian law before he or she could claim the benefit of any right along with members of his or her family. The classes of marriage which are therefore recognised as valid and subsisting under the Nigerian law can now be summarised briefly as marriage solemnized under the statutory provisions between a man and a woman and marriage solemnized under the customary or Islamic law between a man and a woman.

[43] (2014) All FWLR(pt730) 1284 @ 1321 paras G – H
[44] Sections 1(1) and 5 of the Same Sex Marriage (Prohibition) Act, 2013.
[45] Sections 1(2) and 2(2) ibid. 11
[46] Section 166 of the Evidence Act, 2011.
[47] (1996) 1 NWLR (pt426) 543 @ 568
[48] (1991) 6 NWLR (pt197) 316 @ 329

4. Right of Entry.

The right of any migrant worker and members of his family to enter into Nigeria is largely controlled by the Nigerian legislation and not by any convention or instrument. In addition to the national legislation, the law or any regulation that is in force in the migrant worker's home country can also determine if the migrant worker can leave his home country at any particular time or not.[49] However under the Nigerian legislation, the power to refuse entry or to admit any person, including the migrant worker, into Nigeria is within the prerogative of the Minister in charge of Immigration matters and Comptroller-General of Immigration.[50] The Immigration Act, 2015, hereinafter the Act, expressed some reasons why entry may be refused any immigrant as follows;

(a) if the person is a prohibited immigrant.
(b) lack of valid visa.
(c) lack of a resident permit or other types of permit.
(d) When it is undesirable on medical ground to allow such person an entry.

The provided reasons as to why an immigrant or any person may be refused entry into Nigeria according to this Act is explicit enough save that the words "prohibited immigrant" going by the provisions of section 19(6) (a) of the Act needs to be examined to know who is a prohibited immigrant. The Act in its interpretation section states or defines prohibited immigrant as that person who is predisposed to being denied entry or who is liable to be deported under the Act.[51] This definition presupposes that such a person must have either been allowed into the country before and must have been deported owing to some certain reasons that are strictly considered unlawful or contrary to the country's law. This emphasis becomes necessary because a person that has not visited the country could not be considered a prohibited immigrant when there is nothing in the country's record to show that he is one. Some of the reasons provided by the Act which can influence the deportation of any immigrant are expressed as follows:[52]

(a) If such immigrant or person is without any visible means of livelihood or will likely be seeking support or aids from the government.
(b) Person suffering from mental illness or a deranged person.
(c) A trafficker of persons or migrants.
(d) If the person has committed a crime anywhere and the crime is one that comes within the purview of extradition laws.
(e) A person who in the opinion of the minister stands the risk of compromising the state's interest or security if admitted into the country.
(f) Any person in respect of whom there is a deportation order to leave Nigeria.
(g) Any person without a valid passport or any person who is not above 18 years and who could not account for a valid passport or any accompanied adult on whose passport the under aged person's particular could be verified.
(h) A prostitute who has been convicted of any of the sexual offences and a brothel keeper aiding or abetting the commission of sexual crime against a child or young person either in his premises or any other premises within his control.

It is also the provision of the Act that the Minister can by notice issued to that effect exercise his discretionary powers in extending the scope of the definition or even add to or amend the categories of

[49] Article 8 of the ICRMW, 1990.
[50] Sections 18 and 19 of the Immigration Act, 2015
[51] Section 116 of the Act
[52] Section 44(1) of the Immigration Act, 2015.

prohibited immigrants.[53] In summary, the right of entry to Nigeria by any migrant worker and members of his family is primarily controlled by the Immigration Act which provides that the Comptroller-General of Immigration shall upon receipt of application made by the migrant worker and having provided such satisfactory evidence to back up his application may be issued appropriate visa.[54] In the case of migrant workers whose States are State parties to any treaty or treaties signed with Nigeria, the right of entry into Nigeria may be controlled by the terms of such treaties or terms of the arrangement between the migrant worker's State and Nigeria.[55] In fact, the Immigrant Act, 2015 specifically provides that nationals of Economic Community of West African States (ECOWAS) are free to enter into Nigeria without any visa, work permit and other documents as regards residency but on a condition that they must register their status with the Nigerian Immigration Service as nationals of ECOWAS.[56]

5. Work And Residence Permit.

The Immigration Act, 2015 provides that any person coming to engage in any business activities or coming for employment purposes and residence would not be allowed to do so except he first obtain the written consent of the Comptroller-General of Immigration.[57] The exception to this provision is when the migrant worker is coming to take up employment with either of the three tiers of government in Nigeria and that is, the federal, state or the local governments.[58] The problem that often goes with the obtainment of work and residence permit is the question of whose duty it is to obtain these documents or permits? In the case of **Nico Oliver Vs. Dangote Ind. Ltd**, the Court of Appeal in Nigeria while interpreting the provisions of Section 34 of the old Immigration Act, (Cap11), Laws of the Federation of Nigeria which is in *pari materia* or *ipssisma verbis* of Section 38 of the current Immigration Act, 2015 held that it is the employer of an immigrant that has a duty to apply on behalf of the employee for the work permit.[59]

The court further held that the duty of an immigrant going by the provisions of that section is to tender his entry visa, work and residence permit to the immigration officers while entering to the country.[60] One of the distinguishing remarks of the ICRMW is that it is unlawful for just anybody or organisation to provide employment for an immigrant without having recourse to any laid down procedure. In this wise, certain classes of employers are mentioned by this convention as having such rights to employ migrant workers and they are briefly listed as follows:[61]

(i) Government of the State or any of its parastatals where the migrant worker is to be employed.
(ii) Government of the State or any of the parastatals where the migrant worker is to be employed based on the performance and observance of any agreement between the government of the State or any of its parastatals and the migrant worker's State of origin.
(iii) A special organisation created for the purpose of recruitment and which organisation is acting in pursuance of any special agreement between the State of employment and the State of the migrant worker.
(iv) Any approved private agencies or employers and their representatives who must be supervised by the governments of the two States of the employers and the employees.

[53] Section 44(3) of the Immigration Act, 2015.
[54] Section 20(4) (d) and (e) of the Immigration Act, 2015.
[55] Regulation 11(1) of the Immigration Regulations, 2017.
[56] Section 37(13) of the Immigration Act, 2015.
[57] Sections 36 & 37 (1) of the Immigration Act, 2015.
[58] Section 36(1) (a) ibid.
[59] (2010) AII FWLR (p1-506) 1858 @ 1875-1876 paras H-B.
[60] ibid @ pp 1875 – 1876 paras D – D
[61] Section 66, ICRMW, 1999.

It is evident that a migrant worker going by the provisions of the Immigration Act and subject to the consent of the Minister in charge of Immigration matters can establish any business of his own in Nigeria or be in partnership with any other person for the purpose of such business and/or even practice any profession of his choice.[62] The prescribed form under which such business permit shall be issued is as provided by the Immigration Regulations, 2017.[63] The question to ask, going by the communal reading of the provisions of the Act and the Regulations made in that behalf is, whether the migrant worker is allowed to practice all manners of profession in Nigeria? It is beyond cavil for instance, that before a person is allowed to engage in practice as solicitor and Advocate in Nigeria, he must have been called to the Nigerian Bar and enrolled at the Supreme Court of Nigeria.[64] It is submitted with profound respect to the drafters of the Immigration Act and its Regulations, that the sections enabling any foreigners, albeit, migrant workers to engage in practice of any profession in Nigeria ought to have been carefully worded or framed in a manner that will suggest to the foreigner or migrant worker that engaging in practice of any profession in the country is subject to the rules and regulations put in place by the respective professional bodies.

By and large, the Nigerian Immigration Act strictly frowns at any contraventions of the rules and regulations stipulated in respect of work and residence permits and have therefore classified it as an offence punishable under its laws. Thus if any migrant worker for instance refuses to tender the written document conveying the consent of the Comptroller-General of Immigration in allowing him or her to enter into Nigeria in pursuance of any business or employment he or she shall be tried for the offence and on conviction may be sentenced to either the payment of the sum of one million naira fine or deportation or both and the consequence of that sentence shall earn him or her the sobriquet of a prohibited immigrant.[65]

6. Terms of Employment And Status of Migrant Workers

Employment generally under the common law that is applicable to Nigeria is governed by the contract of employment between the employer and employee and thus the terms and conditions of such employment are as provided in the agreement. It is therefore expected that the rules governing contract under the common law are also applicable in the case of contract of employment.[66] One of the cardinal principles of contract of employment is that both employer and the employee that are parties to the contract are bound by the terms embodied in the agreement. Terms that are foreign or extrinsic to the contract agreement can never be imported into it and neither can those terms be varied or subtracted from the agreement.[67] It is within the foregoing context that the rights emanating from the employment of a migrant worker shall be examined to see if the provisions of the various international conventions or instruments on the rights of migrants workers can be read to mean variations, additions or limitations to the terms of migrant workers' contract of employment in Nigeria.

The ICRMW in its provisions has used some terms to describe the status of migrant workers and in this light, migrant workers have been classified as either "documented or in a regular situation" and "non-documented or in an irregular situation".[68] It is the position of this convention that if a migrant worker is documented or in a regular situation, it goes to show that he has been lawfully and legally given

[62] Section 36(1) (b) of the Immigration Act, 2015.
[63] Regulation 4(1) of Immigration Regulation, 2017.
[64] Section 4 of the Legal Practitioners Act (Cap 207) Law of the Federation of Nigeria.
[65] Section 36(2) of the Immigration Act, 2015.
[66] See Ogundipe Vs. Nigeria Telecomm. Ltd (2016) All FWLR (pt 817) 613 @ 630 paras F – G.
[67] See Layade Vs. Panalpina (1996) 6 NWLR (pt 456) 544 @ 558 paras B – C.
[68] Article 5 of the ICRMW, 1990

approval by the host State to enter, reside and engage in any business while opposite would be the case in respect of an irregular or non-documented migrant worker.[69] The question that flows from this classification of status is whether a migrant worker who is non-documented or who is an irregular immigrant can claim or maintain any right or rights under his employment in view of the irregularities of his status and glaring contravention of the immigration Act and other extant laws? The Immigration Act makes it abundantly clear in section 36(2) that if any Immigrant contravenes these provisions, such a person has committed an offence that can earn him deportation, fine and shall also be labeled as a prohibited immigrant. It then means that the provisions of this section in the Immigration Act has created a strict liability offence that must be read and interpreted in accordance with its letters and not in any other way.

Although the ICRMW has provided that whenever there is a case of an irregular situation in the status of a migrant worker and members of his family, the State parties to this convention shall take necessary measures to ensure that such status is not allowed to persist.[70] A careful perusal of this Article or its provisions would mean that one has to distinguish between an irregular status *ab initio* and irregular status consequent upon certain conditions or happening of some events. It is evidently clear that by these distinguishing remarks, an irregular status *ab initio* would be those classes of migrant workers who could not account for any of the requisite permits from the day of entry into the country while those consequent upon certain conditions or happening of events might have been initially regular in status before becoming irregular. This distinction becomes important because the Immigration Act in Section 38(4) provides that if any migrant worker shall for any reasons ceases to be so employed, he shall from the day when his permit expired be taken to be a prohibited immigrant and whoever employed him will have to bear the cost of his repatriation as well as those of his dependants. It is not clear what Article 69(1) of the ICRMW means when it provides that State parties must ensure that an irregular situation should not be allowed to linger on. Can it be that the State parties shall refrain from enforcing its laws on irregular situation and therefore go ahead to regularise the status? This question becomes necessary because Article 69(2) of the ICRMW envisaged that an irregular situation could be regularised while the provisions of the Nigerian Immigration Act specifically states that such irregular situation would constitute an offence which on conviction may earn such offender an imprisonment term of 5 years or a fine of one million naira or both fine and imprisonment.[71]

It would thus appear with much regards to the drafters, that the inconsistent approach of the ICRMW in trying at all cost to protect the rights of an irregular or non-documented migrant workers, will certainly lead to a great confusion if care is not taken. The ICRMW in its Article 35 has explicitly stated that the convention is not out to canvas for the regularisation of an irregular status and neither is it making a case for its legality. Sections 38(4) and (5) of the Nigerian Immigration Act, 2015 has already provided the way to go in the case of any migrant worker whose status is irregular and thus provided the penalty for such contravention of the legislation. The subsequent provisions of the convention in its Article 69(2) suggesting that State parties should reconsider an offence committed with the view of regularising same would seems an inconsistent approach with greatest respect. The Immigration Act, 2015 has already stated in its provisions the classes of immigrants whose status could be regularised and these are the immigrants who have gained entry into Nigeria under exceptional cases. The said immigrants would by this provision after they have ceased to qualify under the exceptional circumstance, report in writing to the Comptroller-General of immigration of their situation and the Comptroller-General shall then forward the case for the Minister's consideration. The Minister may

[69] Article 5 ibid.
[70] Article 69 of the ICRMW, 1990.
[71] Section 38(5) of the Immigration Act, 2015.

then exercise his discretion as to whether to grant the immigrant permits or not. If his discretion is exercised in his or her favour, its goes to show that such immigrant is entering Nigeria as a fresh immigrant with valid permits and if it is otherwise exercised, then the immigrant becomes a prohibited immigrant with such attendant consequences under the law.[72]

It is important however to note that despite this foregoing provision of the Immigration Act on how to treat the case of an immigrant who has ceased to enjoy the exemption status, the Migrant Workers (Supplementary Provisions) Convention, 1975 to which Nigeria is a State party shares a different approach on how such migrant worker's case should be handled. It is the provision of this convention that same privilege equal to the one being enjoyed by the national of the host State like for instance an alternative employment with every emoluments attaching to it shall be provided the irregular status immigrant.[73] The position of this convention will no doubt bring to fore, the ever recurring judicial pronouncements on the effects of international law or instruments in the body of municipal or domestic legislations. In the United Kingdom's case of **Trendtex**

Trading Corporation Ltd Vs. Central Bank of Nigeria,[74] Lord Denning MR (as he then was) while delivering the lead judgment of the U.K's Court of Appeal (Civil Division) posed the question on what is the place or position of international law in the annals of English law? He therefore held that the doctrine of incorporation and the doctrine of transformation as respectively propounded by two schools of thought should be examined to enable the court arrive at a sound judgment. The text of doctrine of incorporation means that the rules of international law are incorporated to English law and automatically considered to be part its laws unless such rules of international law is in conflict with the Act of parliament. On the other hand, the doctrine of transformation denotes that the rules of international laws are not part of the English law unless it has been transformed to be so by the judgment of the courts or by the Acts of parliament, or it has suffered several decades of customary acceptance. He therefore held that the doctrine of incorporation would seem the way to go in view of the fact that the rule of international law do change from time to time and the courts have given judgments based on these changes without any precedent or Acts or parliament before those judgment were made. The learned law lord further held that if the court feels that the rules of international law on a subject has changed from what it used to be some years ago the court can applaud the change and apply it under the English law without hesitation or waiting until there is an Act of parliament to that effect.

Given the two doctrines as considered by the UK's Court of Appeal in the above cited case, it would thus appear that the Nigerian courts have never shied away in its approach and adoption of the transformation doctrine in consideration of the position or place of international laws in the body of local or domestic legislations. In the case of **Registered Trustees of National Association of Community Health Practitioners of Nigeria & Ors Vs. Medical Health Workers Union of Nigeria & Ors**, the Supreme Court of Nigeria held that the International Labour Organisation Convention relied upon by the appellant as the basis for its relief had not been enacted into law by the National Assembly hence an international treaty entered into by the Government of Nigeria does not become binding until enacted into law by the National Assembly.[75] It is also the position of the Court of Appeal in the case of **British Airways Vs Atoyebi** that if any convention of **British Airways Vs Atoyebi** that if any convention has been accorded statutory force of law in Nigeria it would accordingly be applicable as

[72] Section 38(5) of the Immigration Act, 2015.
[73] Article 8(1) & (2). See also Article 54 of the ICRMW, 1990.
[74] (2004) All FWLR (pt 238) 776 @ 821 – 823 paras H - H
[75] (2008) All FWLR (pt 412) 1013 @ pp 1050 – 1051 paras G – A.

statutory instrument.[76] It is then safe to conclude that the Migrant Workers (Supplementary Provisions) Convention 1975 and its provision cannot override the provisions of Immigration Act, 2015 in so far as it has no force of law or has not been domesticated as part of the Nigerian laws.

7. Equal Treatment, Non-Discrimination And Other Rights of Migrant Workers.

One of the greatest fears often nurtured by any foreigner or migrant is the fear of discrimination and unfair treatment in any host countries which he finds himself. This fear have been so much flogged that it would now mean or seem as if any wrong done to any migrant worker in his place of work or employment is as a result of his status as a foreigner or immigrant. It is therefore important that one should separate the wrong or infraction suffered by any migrant worker in his place of work from his status and the case which best illustrates this distinction is the United Kingdom's Supreme Court (UKSC) case of **Ms. Taiwo Vs. Olaigbe & Anor**.[77] The fact of this case is that the Appellant who is a Nigerian national and domestic worker took out a writ before the Employment Tribunal, (hereinafter court of first instance), seeking redress against the Respondents for the acts of maltreatment, assault, abuse and all manner of depravity which the Employment Appeal Tribunal refer to as "systematic and callous exploitation". Part of the appellant's case before the court of first instance is that she was directly and indirectly discriminated against in view of her immigrant status as a Nigerian. The court of first instance upheld her claims in part but dismissed the latter claim that bordered on racial discrimination. The court held in its judgment and which judgment the Appellate Tribunal and the Supreme Court also upheld, that the Appellant was maltreated by her employers not because she is a Nigerian but because she was a "vulnerable migrant worker" who depended largely without alternatives on the comfort provided by her employer. The court further held that it would not have made any difference if other national were to be employed by the appellant's employers under the same condition of employment that the appellant has undergone.

The position of the ICRMW on issues of equality and non-discrimination in respect of migrant workers and members of their families is that measures to be provided by the parties or host States where the migrant workers who are in regular situation are employed should be equal to those measures provided for the nationals of the host countries.[78] There are other instruments specifically made on equal treatment and non-discrimination of migrant workers and attempt would now be made to examine their salient provisions. The first in the row is the Migration for Employment Convention (Revised), 1949 (No 97) which canvases for equal treatment and non-discrimination of migrant workers who are lawful immigrants in the host States of employment. Some of the areas which this convention also touches in respect of the rights accruing to migrant workers are the areas of remunerations, trade union rights, social security and good standard of living. It is the provisions of this convention that such rights are to be enjoyed on equal basis as the nationals of the host countries in so far as those rights are covered by the rules and regulations of the host countries.[79]

The Migrant Workers (Supplementary Provisions) Convention, 1975 in its own provisions adopted a militant approach in the protection of migrant workers' rights to equal treatment and non-discrimination. It is the position of this convention that even if any migrant worker is in an illegal situation; the host country shall continue to respect his rights as to equal treatment and non-discrimination. The convention takes a step further in its provisions that such migrant worker in an irregular situation shall have the right to protest the non observance of these rights and if the said worker

[76] (2013) All FWLR (pt 658) 866 @ pp 875 - 896 paras H – B
[77] (2016) UKSC 31. Accessed online on the 28/06/2020 vide https://www.suprememcourt.uk
[78] Article 70 of the ICRMW, 1990.
[79] Article 6.

and member of his family faces deportation, the host country shall itself bear the cost of that deportation.[80] This provision in every sense of the word appears defiant to the sensibilities and sovereignties of States parties and their laws. It has earlier been submitted in this paper that no matter how any convention is strongly worded, it must have recourse to the enabling laws of the state asked to enforce it and until that is done, it remains inapplicable.[81]

As it is, the only convention that seems to have provided a sound footing for the solution to all the myriads of problem which enforcement of migrant workers' right may suffer or have been suffering is the recent Domestic Workers Convention 2011 (No. 189). Although the convention is targeted at the migrant domestic workers but then it would have been advisable if other convention can adopt and apply its provision so as to extend its benefits to all classes of migrant workers and not just domestic workers. Before the advent of this convention, what majority of migrant workers worldwide had to contend with was the inapplicability of some of the international instruments made to protect migrant workers' rights in the host countries where they are employed. With the advent of Domestic Workers Convention, it seems this obstacle would now been a thing of the past if its provisions are strictly adhered to and applied. It is the enviable provision of this convention that before a migrant domestic worker leaves his State of origin he must have entered into a written contract with his employer and which contract would stipulate the terms and conditions of his employment and the means of enforcement of those terms and conditions in the State of his employment.[82] It is submitted that the implication of this provision is that a migrant domestic worker would rather prefer to be protected under the terms and conditions of his employment contract which is enforceable in the country of employment as opposed to the provisions of conventions that are strictly not enforceable or even applicable in some States of employment. One aspect of migrant workers' rights which should be carefully examined under the rights of equal treatment and non-discrimination of migrant workers is the right to own property. The ICRMW provides that migrant worker may individually or jointly own property and where such property is taken from the migrant worker under the law of the host State, the migrant worker or member of his family shall be duly compensated.[83] As lofty as this provision is, the law in Nigeria has since settled the fact that aliens and *ipso facto*, migrant workers cannot own any land and whatsoever that is attached thereon in Nigeria. The Supreme Court of Nigeria held in the case of **Gerhard Huebner Vs. Aeronautical Industrial Engineering and Project Management Co Ltd** that it is the extant law that regulates land administration in Nigeria and the law is that aliens has no legal capacity to hold any interest in land.[84]

However, just as it is increasingly becoming impossible to enforce some of the provisions of some instruments on migrant workers' rights in some host countries for various reasons earlier mentioned by this paper, it appears that other possible solution aside from what Article 8 of Domestic Workers Convention, 2011 provides would be to take advantage of certain provisions in other instruments which terms are enforceable even though those instruments are strictly speaking not made in respect of the protection of migrant workers' rights. For example, African Charter on Human and Peoples' Rights is an international instrument that has been domesticated in Nigeria by the Act of parliament.[85] It therefore means that a migrant worker whose State of origin is a party to this convention will be very much in

[80] Article 9.
[81] See British Airways Vs. Atoyebi (supra).
[82] Article 8(1)
[83] Article 15 of the ICRMW, 1990.
[84] (2017) All AWLR (pt 903) 1000 @ pp 1020 – 1025, paras F – A.
[85] African Charter on Human and People's Rights (Ratification and Enforcement) Act (Cap A9) Law of the Federation of Nigeria, 2004.

order taking advantage of this instrument to enforce some of his rights even though the Act is not specifically made for the protection of migrant workers' rights. The other suggestion that can also be canvassed is that State parties should be pro-active in their approach and ways of protecting the rights of migrant workers notwithstanding the status or class of such migrant worker. For example, the committee set up by the United Nations on the International Convention on Migrant Workers cited in its reports the opinion of the Inter-American Court of Human Rights in the case stated before it by Mexico on the rights that enures to an irregular and non-documented migrant. The said court is reported to have held that the rights of equality and non-discrimination is binding on all States notwithstanding the status of such migrants.[86]

Despite the foregoing, the Nigerian policy papers on labour and migrant workers have suggested that the rights of migrant workers in so far as equality, non-discrimination and welfare of migrant workers in employment are concerned should be provided in the country's constitution and that regulations to ensure the observance and enforcement of those rights should be entrenched in the provisions of the Nigerian Labour Act, and its subsequent amendments.[87]

8. Offences And Deportation

The Immigration Act, 2015 and the Immigration Regulations, 2017 have in their respective provisions indicated instances where flagrant disobedience of the provisions of these legislations would be deemed immigration offences. Furthermore, Nigerian nationals or any other person could be charged and tried along with an immigrant under this Act for having committed immigration offences.[88] One of the distinguishing remarks of this Act is its unique way of ensuring that an offender does not escape justice under the guise of any technicality. It is to this effect that the Act provides that if any person is charged with having committed any offence and at the trial the evidence against him establishes attempt to commit that offence, it is the provision of this Act that the offender should be punished for attempt to commit the offence.[89] On the other hand, if the person is charged with attempt and the evidence at the trial establishes that he actually committed the offence, he must be made to face the penalty for the actual commission of the offence.[90] It is also the provisions of the Immigration Act that even if any person commits immigration offences and there are no specific penalties stipulated as against the offences then the person shall be convicted under the terms respectively provided by Sections 60 (1) and (2) of the Immigration Act, 2015. These provisions with due respect to the drafters of the Act are strictly speaking not tidy enough. The mere fact that penalty is not attached to any offence would have made the offence a non existing one because the maxims that runs through such instance is *nulla poena sine lege*. It is therefore baffling where the punishment provided under sections 60 (1) and (2) of the Act for a non existing offence would have claimed to derive its force from.

The Immigration Act has given an immigration officer the power to arrest without warrant any immigrant or persons found to have committed any offence or suspected to have committed any offence. The power granted an immigration officer is also extended to cover the power to detain the suspect, prosecute and/or conduct a search in the premises suspected to have host the commission of the offence.[91] The ICRMW appears not to be questioning the right of the host State to arrest any migrant

[86] See page 13 paragraphs 4 of the United Nations Fact sheet No. 24 (Rev. 1), 2005 accessed online on 30/06/2020 vide https://www.ohshr.org.
[87] See National Policy on Labour Migration, 2014 page 23; Accessed online on the 15/06/2020 vide https://publications.iom.int.
[88] Section 56 of the Immigration Act, 2015
[89] Section 56 (6) ibid.
[90] Section 56 (7) ibid.
[91] Section 60 (4) of the Immigration Act, 2015 and Regulations 34 and 35 of the Immigration Regulation 2017.

worker found to have committed immigration offence or offences but the only condition is that such arrest should be conducted in the most civil manner and under minimum standard procedure recognised by law.[92] In this wise, the rights to be informed of the nature of offences committed by the migrant worker and the urge to conduct his trial within a reasonable time without delay becomes imperative. Also the consular or diplomatic mission of the offender's State of origin must be informed about the migrant worker's detention or arrest and any other details concerning his arrest and prosecution.[93]

The deportation or expulsion of any immigrant going by the Immigration Act, 2015 is not a matter of course, it depends on whether such a person to be deported is so classified under the immigration law as a prohibited immigrant or not.[94] The Act has laid down in its provisions series of offences that will make any immigrant or alien a prohibited immigrant and the highlight of these provisions is that even if an immigrant committed an offence elsewhere and under different laws not necessarily under the Immigration Act, and he is convicted for such offence, the facts of that conviction has to be examined under the Extradition Act (Modification) Order, 2014 to see if it a case that qualifies for deportation.[95] It is after having been satisfied that the facts of that conviction can earn the person a deportation order that he would now be classified as prohibited immigrant who is liable to be deported after having served his term of imprisonment if any.[96] It will appear that both the Minister in charge of immigration matters and the court can exercise the power of deportation going by the provision of the Act.

In a stretch, the Minister is embedded with such power in pursuance of public interest to deport any immigrant and label the person as prohibited immigrant while on the other hand; the court may after having convicted an immigrant, make recommendation in addition to the conviction that such immigrant shall be deported after having served his sentence.[97] It is open to any person convicted of the offence to challenge on appeal the order making recommendation for his deportation along with the order sentencing him.[98] It is observed that Immigration Act has made no provisions for what is the fate or lot of the immigrant's family members who are wholly dependent on him in the case of his arrest and order for deportation. It would seem that the absence of this provision unlike what is obtainable in some States' legislations would have ended up inflicting harm or danger on the said family members or at least injured their rights.

This in essence is like asking the members of his family to share in an offence they know nothing about. It is in respect of such circumstances that the ICRMW has in its provisions states that migrant workers should be separated from members of their families with the view of treating each case of deportation on its own merits. It is the provision of this convention that principle of fair hearing must be brought into play when the process of deportation is commenced against a migrant worker. In other words the migrant worker must be informed of the reason for deportation and shall also be provided with the opportunity to defend himself and even if the order had been made against him, he must be given the opportunity of stating the reasons why he feels he shouldn't be expelled from the host country until final decision through a judicial panel is exercised on the matter. Finally this convention states

[92] Article 16 of the ICRMW, 1990.
[93] Article 16 (9) of the ICRMW, 1990.
[94] Section 44 of the Immigration Act, 2015.
[95] Section 44 (1) (d) of the Immigration Act, 2015.
[96] Section 44 (2) ibid.
[97] Section 45 (2) ibid.
[98] Section 46 (1) ibid.

specifically that if the migrant worker is eventually expelled he should be allowed to earn all his entitlements or wages and he or member of his family shall not bear the cost of expulsion.[99]

The issue of deportation as handled in order jurisdictions has revealed that it is not whether a migrant worker or any immigrant for that matter has committed an extraditing offence that matters, it is whether his expulsion or extradition will violate his fundamental human rights that should be taken into consideration before making any order of deportation by the court or any authority. In the United Kingdom's case of **AM (Appellant) Vs. Secretary of State for the Home Department (Respondent)**, the Appellant whose criminal records had reached the zenith and who is also an H.I.V. positive was facing deportation charges and the thrust of his reason for resisting deportation was hinged on the fact that his rights to protection against inhuman treatment and torture as preserved under Article 3 of the European Convention on Human Rights (ECHR) would be injured if deportation order is made against him. The Supreme Court allowed his appeal and remitted the case to the trial court for hearing on fresh evidence to examine the extent of violation of his rights under Article 3 of the ECHR.[100]

In another English case of **Akinyemi Vs. Secretary of State for the Home Department (No. 2)**, the court held that the public interest in the case of deportation has "a movable rather than fixed quality".[101] The implication of these judgments on the provisions of Immigration Act, 2015 is that it is not every time that the mantra of public interest, (which the immigration officials or the Minister in charge of immigration matters often touted as the reasons for deportation of an immigrant), should be ranking superior in weight than the need to do justice deserved in the circumstances of any particular case. It is the position of this paper that public interest must not be used as either a sword or a shield to perpetrate injustice or abuse of authority and position. The way some of the provisions of Immigration Act, 2015 are couched or drafted on the matter of public interest appears to be giving a larger than life size of discretion to anybody asked to apply and enforce those provisions. In fact the England and Wales Court of Appeal in the case of **Runa Vs Secretary of State for the Home Department** has held that a "fact finding" method on what is the question of public interest must be adopted by the authority concerned in the issue of deportation.[102] The fact finding approach adopted by the court in this case has gone to show that the interest of the children who are British Citizens are more paramount to the public interest that seeks to remove their mother whose application for leave to remain had been refused by the UK authority.

9. Remedies Available on Rights Violation.

The Immigration Act, 2015, has left no one in doubt that it is an Act simply made to regulate immigration matters in Nigeria and to a large extent an Act made for the punishment of immigration offences. It is the position of this Act that even if immigration offences are partly committed in Nigeria and concluded elsewhere or vice versa the Act would be called in aid to punish the offender.[103] The only court having jurisdiction to try immigration offences according to the provisions of this Act is the

[99] Article 22 (1-9) of the ICRMW, 1990. See also Article 9 (3) of the Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143) which also advocates the same thing or treatment in the event of expelling the migrant worker and members of his family.

[100] (2020) UKSC 17. Judgment delivered by the Supreme Court of UK on the 29th April, 2020. Accessed online on the 4/08/2020 vide www.supremecourt.uk.

[101] (2019) EWCA Civ 2098. Delivered by England and Wates Court of Appeal on the 4th December, 2019. Accessed online on the 4/08/2020 vide https://www.law.ox.ac.uk>law.report.

[102] (2020) ECWACIV 514 delivered on the 8th of April, 2020. Accessed online on the 4/08/2020 vide https://wwwjudiciary.uk

[103] Section 96 (1) of the Immigration Act, 2015.

Federal High Court.[104] It is therefore safe to conclude, with respect to the drafters of this Act, that it is not the protection of the immigrants' rights or remedies available to them on violation of their rights that is so important to this Act but rather it is the punishment of any person or persons, be it immigrant or Nigerian citizens, who run afoul of the immigration laws and regulations.

In the absence of any glaring provisions under the Immigration Act, 2015 laying foundation upon which any immigrant or migrant workers can build upon to seek remedy for the violation of his right or enforcement of same, it would then be appropriate to examine the provisions of the ICRMW for the possible way out. It is the provision of the ICRMW that if there is violation of any migrant worker's right or rights or if any migrant worker suffers any violation of the contract of employment terms, such migrant worker shall approach the court of competent jurisdiction in the host state for redress.[105] The convention further provides that such privilege enjoyed by the nationals of the host State before any court of law as regards fair hearing shall equally be applied to the migrant worker in the course of seeking remedies for the violation of his or her rights or for the enforcement of same.[106] Finally the ICRMW enjoined that whenever any of the migrant workers reports that any of his rights are violated, the host State receiving the complaint shall ensure that the migrant worker is assisted and given the necessary support which would promote justice deserved in the circumstances.[107]

10. Conclusion and Recommendations.

The sovereignty of any nation and what it entails often comes in various dimensions and the most visible area where a nation always loves to assert its authority is in respect of its domestic laws *vis-a-vis* the international laws. It is rightly observed that Nigeria as a nation may not be willing to apply or adopt any international law, treaties or convention if it is not domesticated as part of its laws or even if such treaties or conventions would be foreign to its local and peculiar circumstances. It is even sad that many countries would have adopted and ratified some instruments but to domesticate those instruments as part of their laws is another different issue. This development has greatly affected the universal application of any international instrument by some nations and by extension this would be taken as part of the reasons why it will be difficult to attain total protection of the rights of any migrant worker and members of his family in Nigeria.

The United Nations as a world body has done its bits over the years to ensure that there is world legal order particularly on the protection of migrant workers' rights but then the question must be asked why it has been difficult to achieve this feat. The only irresistible conclusion that may be drawn from this problem is that any international law or instrument, no matter how elegantly drafted, will not achieve its desirable target if it is devoid of the participation and input of any nation asked to apply such international law or instrument.

As it is now there is no how the rights of any migrant worker can fully be protected under the Nigerian laws alone without the full incorporation of those international instruments and treaties made in respect of migrant workers rights and protection into the Nigerian laws.

The following recommendations would then be apt to suggest as possible way forward;

1. There are several international instruments or conventions on the rights and protection of migrant workers who are of various classes and status and which are not contained in a single instrument,

[104] Section 96 (2) ibid.
[105] Article 54 (2) of the ICRMW, 1990.
[106] Article 18(1) of the ICRMW, 1990.
[107] Article 83.

it is submitted that efforts should therefore be made by the United Nations though its several organs like the International Labour Organisation to produce a single instrument that will be suitable to the needs of all classes of migrant workers and members of their families at any where they have found themselves as destination countries.

2. The universal applicability of any instrument on rights and protection of migrant workers should not be taken as a matter of expression alone, efforts should be made by the United Nations as a body to stamp its feet of authority on the desirability of every member nation to domesticate the instrument as part of their laws and not only to adopt, sign and ratify the instrument. Where this directive is failing, the UN should adopt sanction as an effective means of compelling any member nation.
3. The making of any instrument or convention admits the fact that member nations should have input and contributions to make to that instrument. As it is often the case over the years, most of the international instruments ever made to address some universal issues of importance have never addressed the local and peculiar circumstances of some least developed nations hence it is often been difficult to accept such instrument or even abide by its provision. It is the recommendation of this paper that efforts should be made in future to guide against this imbalance in drafting of instruments or conventions. It is of no use making any law that the means of carrying out is provisions by any nation would not be practicable.
4. Immigration matters are *sui generis* and it is not just an adjunct of labour or employment matters. It will be desirable if Nigerian parliament can legislate on laws to establish immigration and human rights tribunal like it has done in the case of the Industrial Court which takes charge of every employment matters.