

TOWARDS A HUMAN RIGHTS APPROACH FOR THE TREATMENT OF MIGRANTS IN NIGERIA*

Abstract

Migration starts when a migrant crosses the frontiers of his own country into another country. In international law, rights are provided irrespective of legal status but in a local situation, rights are defined according to legality of status. This poses many difficulties for the illegal or undocumented migrants in most parts of the world. While International, regional and municipal legal instruments provide rights for the legal or documented migrants to enjoy almost equal rights as nationals, the undocumented migrants have no rights. They are faced with xenophobic actions, lack access to the courts, denied medical care etc. However, this article tries to establish that of a truth, all international instruments are non-discriminatory and applies to each human being irrespective of status. Besides, there are fundamental rights due each human being by the mere reason of his humanity, which also applies to the undocumented migrants. It concludes by saying that Nigeria should set the pace by ratifying and implementing the International Convention on the Rights of All Migrants Workers and their Families (ICRMWF), which specifically provides for the rights of all migrants without recourse to their status. Certain recommendations were made which include that more advocacy is required for the ratification and domestication of that Convention among other things. This will hopefully, improve the lots of all migrants to internationally acceptable standard in Nigeria.

Keywords: Documented, undocumented, regular, irregular, migrants, international instruments, regional instruments, xenophobia

1. Introduction

Human survival and world unity, peace and development are dependent largely on the law of interdependence and indivisibility. No man is an island, so also no nation. It is an internationally acceptable right for anyone to move from his original country to another country.¹ However, international law has no obligation on any country to allow people into their territorial boundaries. Visas are easy to come by to leave a country but not so easy to gain entrance into that same country as a result of various internal restrictions. Migration issues are decided by national sovereignty. Individual states decide and regulate who comes into their state. From the inception of humanity until date, necessity has always justified man to leave his expected arena of operation to another entirely new one in order to survive and satisfy his wants. In the spirit of making the world a global village indeed, migration is inevitable and must be encouraged. According to Kofi Annan,² *Today's real restrictions are not between States but between the powerful and the powerless, the free and fettered, honoured and humiliated...no barriers can divide human rights challenges from one part of the globe to another or from the national security challenges in the other.* This statement represents largely the experience of migrants today in almost all every parts of the globe. With the world as a global village, and with the accent of international law, people are free to cross borders. The issue is that the powerful, the free and privileged tends to subject the powerless, fettered and already humiliated to a further inhuman and non-dignifying experience for exercising an natural right and freedom. Presently, it is an international concern to make migration a safe, empowering and positive experience for all migrants. Migration could be a sweet and rewarding experience for both the migrants and their host countries. This will come about ideally, if migrants get a hand of fellowship, and accorded full integration into their host communities. With this background, this article shall x-ray migration in Nigeria with a view to identifying areas of reform to conform to the internationally laid down standard for migrants. The ever-increasing population explosion in Nigeria is an indication that the country is attracting migrants continuously. The 2006 census showed that there are

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¹ Article 13(2) Universal Declaration of Human Right (UDHR) (December 1948).

² Kofi Annan, UN Secretary-General, in his acceptance speech upon winning the Nobel Peace Prize in 2001.

nearly 1 million foreigners in Nigeria, 51.4% of who are from the Economic Community of West African States (ECOWAS).³ Two thirds of the entire population of migrants in Nigeria are from Africa. Only one third of the population are from non-African countries. The expansion rate of migrants in Nigeria has continued to increase steadily by about 5% annually from the 1990s until date and the numeral of female migrants is nearly equalizing with the males.⁴ Besides this number are the unregistered migrants who come in illegally largely due to ineffective border management. There is an estimate of 1,497 irregular migrants in Nigeria.⁵ Efforts of government to protect the borders against such illegal movements have continued to be thwarted due to corruption, which has grown to be an epidemic in Nigeria. The continuous influx of immigrant into the country is an indication that Nigeria has a conducive environment with economically viable prospects to attract other nationals. Some of the causes of migration into Nigeria include political conflicts, environmental disasters, wars, epidemics, employment prospects, education, food shortages due to famine, droughts etc. and general quest for a enhanced living and economic and social satisfaction.

Nigeria is a receiving country as regards to migration. Intra African movement in pre-colonial Nigeria was merely for trade, labour and asylum. These were without any formalities or legal restrictions or documentations. There were no monitoring of who comes into the country especially among African states. It was independence that necessitated the control of the borders through proper documentation.⁶ Nigeria as a sovereign nation enacted the first immigration law in 1963. For the reason of the economic boom in the 1970s, there was an influx of migrants into the country. Many African countries preferred to migrate to Nigeria because they saw expansive opportunities and prospects in Nigeria. More so, tight immigration laws in developed countries, makes it knotty or near impossible for foreigners to migrate into such countries. In addition, the ECOWAS came into existence to establish stronger sub regional ties to foster easier movement inside the West African sub region. This period also, recorded some wars in some countries of Africa.⁷ Truly speaking the large migration of people has posed a severe challenge in the area of planning, crime control, security, socio-cultural and environment development in Nigeria. Nigeria has experienced an analogous increase in emigration in the preceding few decades, as many Nigerians feel dissatisfied of military rule, dwindling economy, poor governance, insecurity, lack of job fulfilment and general economic and socio-political unrest. Many Nigerians especially the highly educated emigrate to the developed nations where there services will be most recognized and valued.⁸ Many Nigerians emigrate to South Africa, Europe, North America and the Middle East. This has resulted in the brain drain experienced in recent past especially among Nigerian health practitioners. The country is noticeably losing brilliant and highly skilled medical doctors on daily bases. This has not been of much help in the health care and the economic sectors.

There are two groups of migrants in Nigeria. These are the documented/regular/ legal migrant while the other is the undocumented/ irregular / illegal migrants. The law guiding migrations in Nigeria is the Nigerian Immigration Act of 1963, which was recently amended in 2017, the Constitution of the federal Republic of Nigeria, some basic international human rights laws and the ECOWAS treaties and protocols, which Nigeria has ratified as a member state. However, these laws protect the rights of the documented migrants. This group is well-treated and shown much hospitality and encounter no problem of integration among the people. Not much is said of the illegal, undocumented or irregular migrants and their dependants who constitute the majority of migrants. This is for the reason that the law is obviously interested in those who came in through

³From the executive summary of ‘‘Migration in Nigeria: A country profile of the International Organization for Migration (IOM). Available www.iom.int

⁴ Ibid.

⁵The National Immigration Services (NIS) Report of 2012.

⁶O. A. Adedokun, ‘the Rights of Migrants Workers and Members of their Families: Nigeria’ International Migration and Multicultural Policies Section, *UNESCO Series of Country Reports on the Ratification of the UN Convention on Migrants*.

⁷ Countries like Liberia, Sierra Leone and Cote d’Ivoire experienced some wars and political instability, which increased the pressure on Nigeria.

⁸ Supra, note 4.

lawfully provided means. This group of migrants are referred as aliens and treated as such. The rights of these unlawful migrants are not protected. While the Immigration Act provides the right of entry and sojourn, residency, right to economic, social and cultural attainments, it does not actually cover the interest of the irregular migrants. This might be an evidence to show that they are not recognized in the country owing to their unlawful status, aimed to *deter* would be migrants who may want to come in through same irregular and unofficial means. This makes them vulnerable and subject to different abuses, exploitations and extortions despite the constitutional and human rights provisions. The rights of this group of migrants from every indication are inferior to that of the documented migrants. The regular and lawful migrants can be employed to work, send and receive money legally, own property, allowed access to justice through the Public Complaints Commission and the courts. But the irregular migrants have no such rights, they live in dread of deportation, submit to demeaning and low paid jobs especially in the hands of private sector, too afraid to ask for medical help when ill or sue for their rights when hurt or abused.⁹ Meanwhile, the irregular or undocumented migrants far exceed the regular or documented migrants in Nigeria. The Nigerian law like in most other parts of the globe does not protect these ones, largely because of their illegal status. They are seen as unwanted and uninvited nuisances. They are inferior when compared to the regular migrants and as such have no recognized rights in the country.

Presently, Nigeria has not ratified the ICRMWF. This may be because of its internal challenges in the area of governance, economic constraints, unemployment, fight against corruption, insecurity, increase in criminality, terrorist attacks, insurgency etc. It may in addition be that Nigeria is not sufficiently convinced that such a norm will be of any use to the country. It may look too trivial in the face of serious challenges confronting the country at present. These challenges are linked to some political, economic and other legal reasons. The legal aspect of it is most likely to be the truth that the state may desire to carefully study the instrument to ensure that it does not conflict with existing internal laws. More so, the financial implications of such law on the country could be enormous as regards training and work force, construction of Ports etc. Its political implication could be that it may perhaps not be good for any government to ratify such instrument when Nigerian workers through the Nigeria Labour Congress are agitating for increase in salaries and improve working conditions¹⁰

Nigeria is facing challenges of over population.¹¹ From reports, the country experiences an annual growth rate of 2.9%.¹² Besides its enormous population, Nigerian is a multi-ethnic nation with over 354 languages and 774 Local Government Areas. The people are tightly bound by their culture, language, and family ties. It is rich in both natural and human resources. Nevertheless, despite these nature's blessings, Nigeria is experiencing great economic difficulty as reflected by the standard of living in the country.¹³ An average Nigerian finds it thorny to afford two meals per day. The worst hit are the Nigerian workers whose salaries have been constant for almost a decade while the economy has more than doubled in a decade.¹⁴ The country has experienced a down turn in the economic sector with only a minor development in 2000.¹⁵ This is chiefly owing to the over dependence on the petroleum, coupled with massive corruption and massive looting. Agriculture and commerce have been much neglected. The country depends seriously on importation of

⁹ Supra, note 4.

¹⁰ Salaries were reviewed last in 2009. Subsequent review in 2014 was for stalled by the economic recession the country was experiencing at the time. In addition, the federal government seems helpless to the situation.

¹¹ National population commission (Nigeria) 2000 Nigeria population census 1991 Analysis: *Gender and Sustainable Development*, Abuja.

¹² Population Reference Bureau, 2001, Population Data Sheet (Demographic Data and Estimates for the Countries of the World). Washington.

¹³ United Nations System (2001) Nigeria Common Country Assessment U.N

¹⁴ For instance, ten years ago, a litre of Petrol was N65.00 but presently a litre of Petrol is N145.00. and this is a country where Petroleum is one of the determinants of the economy.

¹⁵ Supra, note 13.

goods and services, technology and industry are not considered, and a characteristic heavy spending among Nigerians.

Despite all these challenges, Nigeria plays an imperative position in Africa and West Africa in particular. Along with South Africa and Egypt, Nigeria is an economic power of Africa. These three countries¹⁶ as a result continue to attract migrants from the rest part of Africa. Nigeria is a kingpin in ECOWAS and coupled with its dying glory of the oil boom of the 70s 80s and 90s, her large size, relatively better economy when compared to neighbouring states, diversity, hospitality, stronger currency, political instability in neighbouring countries, wars in Sierra Leone, Liberia and Cote d'Ivoire in the 80s and 90s, growing poverty in nearby states, etc. all make Nigeria a centre of attraction to many neighbouring countries. With the formation of ECOWAS in 1975, it is agreed that there should be a unhindered movement among member states. This has encouraged both regular and irregular migration into Nigeria. Nigeria is very hospitable and welcoming to migrants. The large population of the irregular migrants who perhaps faces some slight racism, xenophobia, minor threats to basic rights, social exclusion and intimidation¹⁷ however, thwarts this. This is together with the fact that Nigeria has been facing a growing threat to internal unrest through militant actions¹⁸ and terrorist attacks.¹⁹ Moreover, Nigeria, like many other countries of the world, may be finding the integration of the economic, social, political and cultural rights of migrants and all its attendant obligations too much to cope with now. The most common reason for migration is employment and the need to have improved living conditions generally. For a state like Nigeria, this may be challenging due to political, economic and environmental instabilities facing the country at present. Migration will only compound the internal crisis and may likely worsen economic planning, unemployment, high rate of crime, political instability as well as environmental and socio-cultural unrests.

There has been a corresponding increase in emigration in the last decade in Nigeria. This is not unconnected to the hardships Nigerians have faced as a result of prolonged military rule since its independence and the selfishness of politicians in the democratic dispensation since 1999 the military finally handed over power to the civilians. The last three decades have experienced an economic downturn, increased rate of unemployment, terrorism and various crimes. Many Nigerians are leaving the shores of their fatherland to the developed countries of the world in search for a better life. There are national, regional and international laws guiding the rights of migrants in Nigeria. The Nigerian Immigration Act of 1963, as well as the 1999 Constitution of the Federal Republic of Nigeria are the two main internal laws, which guarantee the rights of migrants in Nigeria. While the ECOWAS Treaty, Protocols and various other agreements as ratified by the member states constitute the regional laws for the protection of migrants. Some basic international human rights instruments as will be considered later seem to back up these laws for migrants. These laws particularly apply to the documented migrants while the undocumented migrants who characterise the larger group of Nigerian aliens are not adequately covered. The laws and instruments recognise the economic, social as well as cultural rights of migrants, which all member states are under obligation to observe and to respect. However, the greatest challenge is not in having appropriate laws but that of the real observation of all laws. In reality, the rights of undocumented migrants are not recognized. Although, going by the fact that international instruments are non-discriminatory and apply to all humans irrespective of status and circumstance, the case of irregular migrants may be considered in this regard. Due to their illegal status, irregular migrants are vulnerable to xenophobic attacks, exploitation and abuse. Unlike the regular migrants, the irregular migrants are not free to seek employment, or protected under the different labour laws, get

¹⁶ Nigeria, Egypt and South Africa

¹⁷ United Nations Treaty Collection (2002) Declaration and Reservations, Multilateral Treaties deposited with the Secretary General.

¹⁸ Example is the Niger Delta Avengers who were agitating against government oil exploitations and neglect. They took to frustrate oil and construction companies by kidnapping notable Nigerians and holding many (including expatriates) to ransom.

¹⁹ *Boko Haram* terrorist group has killed many and has destabilized many homes in Nigeria.

access to justice, and access free Medicare etc. They can only be employed in private sectors not public sector. We shall however compare these legal instruments below with the Nigerian experience so far for migrants.

2. Migrants' Rights at the International Scene

The major international human rights instrument that specially provides for migrants is the United Nations Instrument on the Rights of Migrant Workers and Members of their Families. This instrument stemmed from the need to improve the working conditions, respect and shield of migrant workers and their families outside their state of origin. This was actually started by the International Labour Organization (ILO) in early 19th century and since then; many international instruments were formed to endorse the safety of migrants and their families wherever they go. One of such instruments is the *International Convention on the Inspection of Emigrants (ICIE)*.²⁰ This saw some increase in migration especially to the European countries, as many people for diverse reasons ranging from survival and better living standards to epidemics, political unrests and Wars among others had to exit their fatherland to other lands. The intention of the ILO as stated in its Constitution is to guard the interests of migrant workers and their families in their state of destination.²¹ Closely following this instrument, the ILO adopted the *Convention No. 97 and Recommendation No. 86 of Migrants for Employment of 1949*; and *Convention No. 143 and Recommendation No. 151 of Migrant Workers Convention of 1975*. These are all universal instruments that recognize the fundamental rights of migrant workers globally. These instruments, similar to all other fundamental rights instruments affect every human irrespective of nationality or colour. For example, the *Universal Declaration of Human Rights (UDHR)* of 1948 which is made up of the *International Covenants on Economic, Social, Cultural and Political Rights (ICESCR)* and the *International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* and the *Convention on the Rights of the Child (CRC)*. These are all general instruments, which affect all including migrants' women and children respectively. Notwithstanding these well-couched international instruments, the UN General Assembly noted in 1990 that the natural rights of migrants' workers and their families are not appreciated worldwide. All other international instruments could not adequately shield the rights of all groups of migrants; this resulted to the adoption of the *International Convention on the Protection of the Rights of All Migrants and Members of their Families (ICRMW)* by the UN.²² This was later ratified by all state members of the UN and Nigeria is one of them.

The ICRMW was drafted with the joint efforts of the UN and the ILO. The Convention specifically defined a migrant worker as one who is occupied in a paid employment outside his home state.²³ It in addition includes all categories of migrant workers.²⁴ All UN instruments placed no discrimination on rights. These instruments including the ICRMW promote human right to freedom from slavery, cruel and inhuman treatment, degrading treatments, etc. Migrant workers and their families are protected from forced labour, forced religion and any restrictions on thoughts and expression. According to the Convention, Migrant Workers also have freedom from unauthorized intrusion with privacy, freedom of expression, freedom to own property etc. The Convention entitles migrant workers and their families to adequate protection by the government and they should be treated with human dignity whether they are regular or irregular migrants. They ought to be given fair hearing at all times. They have the right to join trade unions, access justice, get

²⁰G. Fonteau, *The Rights of Migrants Refugees and Asylum Seekers under International Migration* Vol. xxx 1992 pp 57-68.

²¹K. Tomaserski, *AIDS, Travel and Migration: Legal and Human Rights Aspects*, *International Migration* Vol. xxix, no1 March 1991 33-50

²² United Nations Treaty Collection (2002) Declaration and Reservations, Multilateral Treaties deposited with the Secretary General.

²³ Part 1, Article 1 of the International Convention on the Protection of the Rights of All Migrants and members of their families

²⁴ Ibid, Part 1, Articles 2-6.

free education, and observe their religion and culture. Migrant workers and their families merit to be treated as human beings, allowed free human associations, form trade unions, seek redress in a court of law or other tribunals, get medical attention when ill, send their children to school, relate with their countries of birth and retain their language. They also have right to send money back home without extraneous taxations and protocols. This international instrument has been the authentic instrument that has safeguard migrants and their families since 2003 and has been ratified by some member states, although rather reluctantly. Examples of African countries that have ratified this instrument include Ghana, Mali, Egypt, Uganda, Senegal, Guinea Bissau and Cape Verde. These countries are under obligation to include it in their internal laws. The problem with ratification however, is that it does not guarantee implementation. The UN should go an extra mile to monitor the appliance of such instruments locally after ratification.

3. Migrants' Rights at the Regional Scene

The main Regional instrument on migrants in Nigeria is the sub-regional treaty of ECOWAS countries with its Protocols and Conventions. These together with the basic UN instruments as discussed above, like the UDHR, ICESCR, CEDAW and the CRC form the basis for the protection of migrants at all levels. All these Nigeria has ratified as a state member of ECOWAS and all of which are reflected in the Immigration Act,²⁵ the Immigration manual of 1991 and the Immigration Regulations of the Nigerian Immigration Services. The ECOWAS agreement encourages free movement among citizens of member states in the West African sub-region. It also promotes community citizenship,²⁶ freedom to seek job and residency, immunity from deportation and legal rights.²⁷ It provides for unrestrictive admission of migrants into host communities of member states. It further provides appropriate conditions for migrants among ECOWAS states. The ECOWAS travel document and a community identity card are the basic requirements for such sub-regional migration in Nigeria. The applicant only needs to fulfil the relevant laws on citizenship by applying for it. According to the Constitution of the Federal Republic of Nigeria (CFRN)²⁸, the applicant must have stayed in Nigeria continuously for 14 years before he can qualify for citizenship.²⁹ The Constitution is the principal Law that regulates citizenship in Nigeria. The Nigerian Immigration Services, the Federal Ministry of Internal Affairs, the Federal Ministry of External Affairs, the Federal Ministry of Justice, the Legal Aid Council, the Federal Ministry of Labour, the Nigeria Labour Congress, the National Commission for Refugees and the Human Rights Commission are main stakeholders in the issue of migration in Nigeria.

4. Migrants Rights at the Local Scene in Nigeria

The term migrant worker has been given an internationally acceptable definition in the ICRMW. In that definition, a migrant worker is *one who is to be engaged, is engaged or has been engaged in a remunerated activity outside his nationality*.³⁰ This definition includes both the legal and illegal migrants because like every other UN Convention, it is general and non-discriminatory. The Convention also encourages host countries to respect the rights of migrants' workers within their nationals. In Nigeria, migrants' rights are recognized. These rights include:

Rights to enter and sojourn

The Immigration Act and the CFRN regulate entry of non-citizens into Nigeria. Much of the immigration policies of Nigeria are embedded in the Immigration Act, which in turn was drafted with the inclusion of the

²⁵ Nigeria Immigration Act of 1963 is the main statute that regulates the rights of migrants in Nigeria

²⁶ Federal Ministry of Internal Affairs (Nigeria) 1991, Nigerian Immigration Services: ECOWAS Residence Card Manual Abuja

²⁷ Supra, note 6

²⁸ The 1999 Constitution of the Federal Republic of Nigeria

²⁹ J. O. Akande, , *The Constitution of the Federal Republic of Nigeria*, 1979, Sweet and Maxwell, 1982, pp. 23-26

³⁰ United Nations (1990) The International Convention on the Protection of the Rights of All Migrant Workers and Members of their families. General Assembly, A/ RES/ 45/ 158.

relevant international laws. Any other way of access into the country aside the provision of the Act is illegal. The Act states that a prospective sojourner must possess a valid passport or any travel document and an entry permit. In addition, such an applicant must enter Nigeria through one of the 147 legally acceptable Ports of ingress if his entry will not be prejudicial to national interest. As soon as the necessary requirements are provided, the migrant is entitled to admission into the country. The immigration officials are expected to impose certain conditions like duration of sojourning, place of residency, place of employment and restriction of movement within Nigeria.³¹ However, ECOWAS citizens are excluded from presenting visas of entry by the Act. Nevertheless, like all other migrants, they are mandated by law to have a valid ECOWAS passport, proper health papers and should enter the country through the approved Ports. Presentation of these requirements will encourage the Nigerian Immigration Services to issue any migrant of Africa origin a resident permit, which qualifies them as migrants with full right to sojourn, be employed, own a property in addition to owning a personal business like Nigerian nationals. This also applies to their families as each member is expected to regularize his or her stay in Nigeria under the Act. The CFRN also provides protection for migrants and their families. They have right to justice and right to work and earn same wages as their Nigerian counterparts of equal level in the job. While non-ECOWAS citizens are required to obtain their *Combined Expatriate Resident Permit and Aliens Card (CERPAC)* with a legal fee of \$350, the ECOWAS citizens are to obtain the *Citizen Resident Card* for a lesser fee of \$200.

Nigeria is a diverse nation made up of several ethno-linguistic and cultural groups and more than 350 individual languages. This makes it a bit difficult to easily detect illegal migrants. This is coupled with loose supervision and corruption at the Ports. However, some illegal migrants are deported from time to time particularly if they get themselves involved in criminal acts and acts, which are in conflict with national interests. The CFRN gives right of naturalisation to Nigerian migrants. It provides that applicants of full age and capacity should apply through State Governors of their state of interest. They have to be people of good character with genuine intention of domiciliation. They are expected to have sufficiently affiliated and acclimatized with a local community of choice and have made some useful contributions in such a community to qualify as a part of that community. Any act of treachery will disqualify such application. The President or Governor has the right to deny a naturalized citizen of his citizenship rights for any act of disloyalty. For example, dual citizenship within the state or states of the country is not permissible.

Economic Rights of Nigerian Migrants

Besides the above local laws, the Right of Residence (ROR) protects the right of Nigerian migrants of West-African origin. This instrument is particularly for citizens of the ECOWAS states. It gives them the right to reside in any of the ECOWAS states and obtain a resident permit. This permit is in form of a card, which covers a period of five years, renewable after five years and thereafter, is replaceable five yearly. The ROR gives foreigners right to apply for an employment, reside in any ECOWAS state and be recognized under the labour policies applicable to nationals of that state. Nigeria recognizes the ROR. This helps ECOWAS migrants to get employment both at the state and federal establishments.³² This means that professionals and academics of ECOWAS origin are open to connect to the appropriate professional bodies in Nigeria and enjoy all the benefits due a national of Nigeria without bias. For example, a lawyer or medical practitioner from any ECOWAS state can join the Nigerian Bar Association (NBA) or the Nigerian Medical Association (NMA) and get all the privileges and benefits thereof. For an unskilled migrant worker of ECOWAS origin, once he is legally domiciled, has right of employment with normal minimum wage of a national of his status.³³ The economic rights of Nigerian migrants allow them to be able to save and remit money to their country of origin.³⁴

³¹ Supra, note 26

³² Federal Ministry of Internal Affairs (Nigeria) 1991, Nigerian Immigration Services: ECOWAS Residence Card Manual Abuja.

³³ Ibid.

³⁴ Protocol, Article 23 of Right of Residence

From all these laid down provisions for the regular migrants, the irregular migrant workers and their families are not considered along. This group as earlier pointed out, constitute the bulk of migrants in Nigeria but are not to have the same benefits as the legally registered migrants' workers. This is owing to their unlawful status. They are victimized, harassed, maltreated and marginalized. They are not free to be employment in any government establishment except for private job owners who seek cheap labour. The illegal migrants face different exploitations in the hands of their employers and cannot seek redress for dread of deportation if discovered. They are subjected to long work hours with hard labour and little remuneration. They face hazards at work without compensation because the appropriate labour laws do not cover them. They and their families have no right to medical facilities. The labour umbrella that covers the economic and social rights of workers in Nigeria is the Nigerian Labour Congress (NLC). Unfortunately, this vibrant labour group does not recognize the irregular and undocumented migrants. However, the ILO provides for both social and economic rights of workers in its general application. All human rights instruments are non-discriminatory and so apply generally to all including migrant workers and their families in Nigeria.

Socio-Cultural Rights of Nigerian Migrants

The ECOWAS Treaty³⁵ protects migrants from collective and arbitrary expulsion. Migrants' fundamental rights are protected.³⁶ It is also provided in the official policy on migration in Nigeria³⁷ that migrant workers can only be expelled on grounds that impedes on national security, public order and morality.³⁸ Where this is the case, such offending migrant worker should be duly informed to quit. It is only where he falls short to do so that orders could be given for his expulsion. For the documented migrants, they have right to benefit from the equal economic, social, cultural and health rights with nationals.³⁹ It is true that cultural rights are not particularly mentioned, but the fact remains that migrants and their families have right to live anywhere they please as far as they can pay for it. They have right to speak their language, dress in their traditional attire, eat their local foods if available, uphold their religion and attend cultural meetings and associations. African migrants domiciled in Nigeria have no much problem adjusting owing to cultural relativism in terms of foods, dressing, religion etc. among Africans. The incidence of other African countries into Nigeria has contributed to making Nigeria a multi-cultural state where other Africans feel at home.⁴⁰ This is not without its negative consequences on the host state. The presence of foreigners no doubt creates a tense atmosphere in the host community and is most likely to increase criminality and economic strains as observed during the influx of many Ghanaians in Nigeria in the 1970s and early 80s.

Political Rights of Nigerian Migrants

The Constitution controls the political rights of migrant workers and their families. Aliens are not authorized to take up political positions in Nigeria. They are not also permitted to take part in campaigns or voting. It is a privilege exclusively reserved for citizens of Nigerian origin only. In the case of *Shugaba v. Federal Republic of Nigeria*,⁴¹ the Court held that the Plaintiff is not a foreigner and so has the full right to vote and be voted for. However, migrant workers and their families are legal personalities recognized by law. They are treated in accordance with the due process of law and have right of appeal as obtainable by the law of the state. Where expulsion becomes necessary, the right of appeal suspends such expulsion order by the state against that foreigner. Thus, a wrongly expelled immigrant has the right to sue or appeal under the law. Where an expulsion is lawful and not appealed against, or where an appeal failed, the expelled immigrant is entitled to some time to enable him make necessary preparations for his exit and collect his entitlements from his employers and decide where else to go. In addition, his fundamental rights are to be respected all through these proceedings.

³⁵ Protocol, Article 13

³⁶ Protocol, Article 14

³⁷ *Supra*, note 31

³⁸ *Ibid.*

³⁹ Protocol, Article 23

⁴⁰ *Supra*, note 26

⁴¹ (1981) NWLR.

5. Migration Trends in Nigeria

From the early times in Africa, people have always migrated for different reasons bothering on slavery, environmental disasters, economic and social constraints, political instability, banishment, etc.⁴² These have been a global pattern from early times. It is always often owed to hardships from the home countries through transit to the destination country or community. Most often it is as a result of economic, political and environmental instabilities. In the pre-colonial and colonial Africa, migration was largely due to trade, commerce, and religious pilgrimage. A lot of migrants were seamen, farm workers, nomads, traders and evangelists of the gospel. There was no need for legal restrictions, and they cross international borders without harassments. However, as African nations started gaining independence and the need to defend the sovereignty of a state arose, nations began to focus on safeguarding their territorial borders. At independence, Nigeria had to endorse its own immigration laws where it made documentation for migrants.⁴³ Due to inappropriate and inadequate documentation on migrants, Nigeria has been unable to keep effective data of migrants especially the irregular migrants who happens to be in the majority in Nigeria. Previously, migrants were found in large numbers along the coastal borders in Nigeria, but in the 80s, they spread to towns and villages of the country. The main objective of coming to Nigeria was for economic reasons and for employment. The regular migrants have the right of employment but the irregular migrants have no such rights because they lack the necessary work permits. At most, they work under private arrangements mostly as domestic workers and suffer diverse forms of marginalization and victimization. The bulk of migrants are men who left their families behind to seek better living for themselves and their families or came into Nigeria with their family. Nevertheless, most migrants whether registered or unregistered, are poor.⁴⁴ Many came in illegally because of stringent border and ports regulations, and the cost of processing the necessary papers. Many entered Nigeria through illegal ports, bush parts, creeks or other illegal means. The unregistered migrants often get employment in restaurants and *bukas*;⁴⁵ domestic labours, farms, construction sites, etc. More than half of unregistered migrants are young boys, middle-aged men and women.

6. Fundamental Rights of Migrants in Nigeria

Nigeria was not present at the Convention on the Rights of Migrant Workers and Members of their Families. This may be owed to the political instabilities in the country then owing to military rule or the government structure as at then with the executive and legislative fused together under the military and a helpless judiciary. It could also be because of a misconception that ratifying such an instrument may mean a greater commitment on the country, which it was not ready to shoulder. Whatever may have been the case, the fact remains that Nigeria as committed as it were and still is to ECOWAS, could not sign or ratify the Convention. The consequence of ratifying the ICRMW is that it would fully care for the rights of migrant workers within the country. As it stands now, Nigeria may need to review its migration policies to put up with the provisions of the Convention. Once a state signs such an instrument, it is an indication that it is keen to adopt the standards thereof. This is more likely in a civilian government than in a military rule. Therefore, Nigeria is better to adopt such a treaty now than it was in the military era in Nigeria. For Nigeria to ratify this instrument now there will be need for advocacy and serious awareness. It is important to enlighten the legislature and other stakeholders⁴⁶ more on the issues at stake. If this is properly done, perhaps they will appreciate things better. Involving some NGOs in the campaign will make much impact on the need for ratification. They will help to discourage the fears of it being a bigger responsibility on government.

Migrants are highly volatile for the mere reason that they are aliens in their host communities.⁴⁷ If the registered migrants are still vulnerable despite the rights accorded them by the law, the unregistered migrants are even more vulnerable owing to their prohibited status. Sometimes this vulnerability may not be very pronounced but the fact still remains that they are treated as less important in their host communities and not to be fully allowed the full rights and respect of the law as enjoyed by the citizens. Nevertheless, the Nigerian Constitution in addition to international instruments generalized a legal structure for the safety of the human rights of both nationals and non-nationals of Nigeria. There are basic rights, which undermine every human

⁴²A. Adepoju, 'Undocumented Migration in Africa' *International Migration*. Vol. 21, 1983 pp. 204-217.

⁴³Ibid.

⁴⁴National Population Commission (2001) Nigeria Population Census 1991 Analysis: *Gender and Sustainable Development*, Abuja.

⁴⁵ Local food centres

⁴⁶ Government officials, employers of labour, migrant workers, labour union leaders, etc.

⁴⁷Saal Babacar (2003) Intra-African Migration and Migrants Rights in Africa Conceptual Paper. UNESCO

situation. These must be assured to both the citizens and aliens in a state and need not be compromised. These basic rights have been adopted, inculcated in the Nigerian Constitution, and applicable to aliens. The Constitution only provides for the civil and political rights with the exclusion economic and social rights of citizens.⁴⁸ The unregistered migrants live in fear of deportation, often at the mercy of immigration officials who may extort money from them with threats of expulsion for failure to comply. Private employers exploit their vulnerability to give them less than the approved minimum wage. The documented migrants have access to the various avenues for complaints, through the courts, community chiefs, churches, human rights groups, labour associations, the Public Complaints Commission etc. They also have access to their embassies or High Commissions and their national associations. The national associations are particularly helpful to keep them close to events in their home countries, their cultures and place of origin. They interact with one another to discourage loneliness. However, these opportunities are not open to the unregistered migrants. They are lonely, afraid and yet silent. The case of this group of migrants is calling for a radical review if indeed all humans are equal.

7. Conclusion and Recommendations

All international instruments are non-discriminatory and apply to all humans irrespective of their circumstance. There exist certain basic rights for all humans under international law. Migrants are entitled to these basic rights and protection notwithstanding their legal or illegal status in a bid for them to live well in their state of sojourn.⁴⁹ Majority of migrants in Nigeria are of the West-African origin and scores of them are unregistered. While international, regional and local laws in Nigeria protect the rights of migrants' workers and their families, the unregistered migrants are not recognized. They live in isolation, fear of deportation, are victimized and exploited. All UN state members are under obligation to recognize respect and promote such rights to all people domiciled in the state whether they be citizens or aliens and Nigeria is a state member and plays very important roles in ECOWAS. Nigeria has ratified some ECOWAS Protocols, which mandates her to provide free movement among member states, provide rights of residency, regularize the unregistered migrants etc. However, it has failed to ratify the ICRMW for reasons not yet understood. It calls for a renewed effort to encourage ratification of the ICRMW by creating more awareness through advocacy and sensitization. The ratification of this Convention will encourage a human rights move towards the treatment of all categories of migrants in Nigeria. In order to achieve ratification and uphold the basic rights of migrants, the following recommendations are made:

- Since Nigeria is politically more stable than it was during the military rule when the Convention was made, renewed efforts should be made towards the ratification of the ICRMW.
- Nigeria and other West-African countries need serious advocacy and campaign to educate them on the need for ratification.
- Focus should be on the profit of ratification unconfirmed and not unconfirmed fears likely to stem from it.
- The predicament of migrant workers and their families, and how Nigeria, through its leadership roles in the African Union and ECOWAS can take the initiative towards a human rights perspective for a better migrant experience, should be paramount.
- All the key players in government in relation to federal legislature and the judiciary need to be sensitized on the fundamental rights of migrants and their families.
- Nigeria needs a proper documentation mechanism to tackle effectively the migration flows in the country.
- Migrants should be fully integrated irrespective of status. This will encourage them to contribute their quota to economic growth of the country for their own good and for the well-being of Nigeria.

It is believed that the effective observation and implementation of these recommendations will encourage a human rights perspective in handling the different groups of migrants and their families in Nigeria. Only then can Nigeria be said indeed to be the *economic giant* of Africa.

⁴⁸ O. I. Smith, Constitutional and Legal Framework for the Protection of Human Rights in Nigeria. *The Guardian* 5, August 2003. Pp. 80b

⁴⁹Fonteneau, The Rights of Migrants Refugees and Asylum Seekers under *International Migration Vol xxx*1992 pp. 57-68