



## **Expanding the Frontiers of the Right to Work through Migration: An Evolving Regime**

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**Abstract:** *This paper explores the strategic interest in promoting the right to work through migration. Ideally, migrant workers whether under contract or other formal arrangements, or simply setting off on their own initiative should be given a basic understanding of the language, culture, legal, social, and political structures of the states to which they are going. This paper therefore set out to examine why most migrant workers experience challenges in securing employment, while some have to surmount far more barriers either before their departure, or at the time of their admission to the state of employment of all conditions applicable to their admission, as well as of the requirements they must satisfy in the state of employment and the authority to which they must satisfy in the state of employment and the authority to which they must address themselves for any modifications of those conditions. The methodology underpinning the research is essentially descriptive, thus, deductive logical “content analysis” is employed. This paper argues that the consequences of migration and the situation of vulnerability in which migrant workers and members of their families frequently find themselves cannot only be solved by having a functional fundamental human rights approach on the complexity of social, economics, and cultural issues prevalent in the migration regime. It concludes that with due respect to the author and to his concern for the protection and promotion of the right to work through migration, is to say the least, is a first step towards a sustainable promotion of the right to work through migration.*

**Keywords:** *right to work; migration; regime; promotion; migrant workers.*

### **I. INTRODUCTION**

This paper arose out of the compelling need to examine the existing laws on migration and institutional discourses relating to the practicability of promoting the right to work through migration which is increasingly relevant both from the practical

point of view or philosophical. It sets out principles, standards and norms that states need to consider when amending or drafting legislation relating to the promotion of the right to work through migration. However, given the vulnerability of migrant workers, and members of their households, it has

become necessary to examine the level of violations of the right of Migrant workers globally since it has remained an issue of concern. Moreover, the numbers of states that ratified or sign international regulation regarding Migrant Worker also low.<sup>1</sup>

However, the essence of adopting these measures is to ensure that states parties undertake, in accordance with the international instruments concerning human rights. To respect and to ensure that all migrant workers and members of their families within their territory or subject to their jurisdiction are not subject to any form of discrimination.<sup>2</sup> More so, this paper adopts a Human Rights based approach in ascertaining the practicability of promoting the right to work through migration. In other words, it must be noted that at the international level operation, several efforts are made by human rights practitioners to ensure the full accomplishment of international human rights documents that will guarantee the protection of migrant's workers' rights in their place of residence.

It uses International and regional human rights instruments, and particularly, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,<sup>3</sup> Universal Declaration of Human Rights,<sup>4</sup> International Covenant on Economic Social and Cultural Rights,<sup>5</sup> international Covenant on Civil and Political Rights,<sup>6</sup> International

convention on the Elimination of All Forms of Racial Discrimination,<sup>7</sup> Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>8</sup> and convention on the Right of the Child,<sup>9</sup> as the basic frameworks that addresses the right to work. Notwithstanding the foregoing broad powers of the above international legal frameworks, it is a considered view of this paper that the Migrant workers Bills of Rights is yet to grapple with the incessant violations of Migrant workers' rights across the globe which has raised several important theoretical questions bothering on their occupational status.

In light of the human rights challenges of the right to work through migration that affects migrant workers and members of their households, the realities of global migration have forced the writer to rethink not only on the policies of migrant admission, but also their allocation of rights, burdens, and benefits, that needs to be addressed through a multi-dimensional approach. In the circumstance, it must be stated that the inability of the various conventions to address this intractable human rights Problems has led to several Debates on the compelling need to promote the right to work through migration wherein migrant's rights will be adequately protected through global and municipal legislations. To meet this purpose also requires examining those policies that have unwittingly or not most

<sup>1</sup> Boucher, A., 'Measuring Migrant Worker Rights Violations in Practice: The Example of Temporary Skilled Visas in Australia' (2019) 61(2), *Journal of Industrial Relations*, p. 278

<sup>2</sup> Article 7, the international convention on the protection of the rights of all migrant workers and members of their families (1990).

<sup>3</sup> Arguably, protected migrant the most, see : Ian M. Kysel, 'Promoting the Recognition and Protection of The Rights of All Migrants Using a Soft-Law International Migrants Bill of Rights' (2016) 4(2), *Journal on Migration and Human Security*, p.31

<sup>4</sup> Universal Declaration of Humans, (1948)

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights (1966)

<sup>6</sup> International Covenant on Civil and Political rights (1966)

<sup>7</sup> International Convention on the Elimination of All Forms of Racial Discrimination (1965)

<sup>8</sup> Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

<sup>9</sup> Child Rights Convention (1989)

fostered the marginalized and exclusion of migrant workers and members of their households within their place of residence.

This article is structured into three sections. The first section will succinctly discuss the general notion of migrant workers and their right to work, and secondly, there is an elaboration on the basic concepts of this paper, this is followed by a detailed overview of the findings. Subsequently, this paper examines the right to work under international law with reference to relevant international and regional laws. This paper concludes with a review of their implications on migrant workers and members of their families and to underline the overall relevance of promoting the right to work through migration. These views are justified considering the human rights index on arbitrary expulsion of migrant workers.

## II. METHODS AND LEGAL MATERIALS

The research methodology of this study was a descriptive survey wherein the paper adopted an analytical and qualitative approach. It built its arguments on existing literature works which is achieved by a synthesis of ideas. On the other hand, this approach was considered more appropriate because of the compelling need to overhaul the legal frameworks on the right of Migrant workers to work outside their place of origin which has been an intractable problem given their vulnerability to all forms of discriminations.

## III. RESULT AND DISCUSSIONS

### Definitions and Contextual Issues

### *Who is a Migrant?*

Recent challenges and developments have made the writer to examine the conceptual interpretations and meanings of the above concept in order to ascertain whether migrant workers and members of their families have the right to enter and remain in their host states. Also much has been said or written about the concept “migrant”, but more importantly, International Organization for Migration (IOM) perceives it from the common lay understanding of “*a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons*”.<sup>10</sup> By way of extension, the term includes a number of well-defined legal categories of people, such as migrant workers, person whose particular type of movement are legally defined, such as smuggled migrants, as well as those whose status or means of movement are not specifically defined under international law. However, there is no universally accepted definition of the concept “migrant”.

In this sense, it should be noted that several human rights organizations have defined migrant “as any person or individual who is domiciled in a state other than his or place of origin or stateless persons outside his or her place of origin<sup>11</sup> to seek protection or opportunities for a better means of survival.<sup>12</sup> More so, taking into account various conception on migrant, this paper noted that “migrant workers” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state

<sup>10</sup> See International Organization for Migration, ‘Glossary on Migration’, 2<sup>nd</sup> ed, in *International Migration Law*, No. 25 Geneva, (2011), pp. 61-62.

<sup>11</sup> See Recommended Principles and Guidelines on Human Rights at International Borders, OHCHR, Geneva, (2014), Para 10.

<sup>12</sup> International Federation of Red Cross and Red Crescent Societies “policy on migration”, (2009)

of which he or she is not an origin.<sup>13</sup> Thus, the above provision of the convention is applicable except as otherwise provided hereinafter to all migrant workers and members of their households without distinction of any kind such as sex, race, color, language, religion, conviction, ethnic or social origin, nationality, marital status, birth or other-related issues.<sup>14</sup> This perspective, however, takes into account specific legal categories such as stateless persons and refugee on whether special protection is to be accorded to them both under international human rights law or humanitarian law.

In other words, and in all contexts, there seemed to be no definite definition of a migrant, but however, these can be achieved by examining who is a migrant worker? While this trend is broadly true, Article 2, paragraph 1 of the International Convention on the Protection of the Rights of all Migrants Workers and Members of their Families<sup>15</sup> defines a “migrant worker” as 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. In contrast, it should be noted that Article 3 of the convention<sup>16</sup> excludes the application of the term to persons sent or employed by international organizations and agencies; persons sent or employed by a state outside its territory to perform official duties, persons taking up residence as investor in a state other than that of which they are nationals, refugees or stateless persons, students and trainees and seafarers and workers on offshore installations who have not been admitted to take up residence and engage in

a remunerated activity in the state of employment.

Given the above scenario, the preamble to the International Convention on the Protection of the Rights of all Migrants Workers and Members of their Households reaffirms the universality of the principles and standards of human rights embodied in the International Bill of Human Rights and other human rights treaties or instruments. Also, recognizing that state has the primary responsibility for guaranteeing compliance with international standards on the necessary respect for and protection of migrant workers and members of their families, international action since the early steps of the International Labour Organization confirmed the vulnerability of migrant workers and their families to exclusion from the enjoyment of human rights and revealed the scope of this problem all over the world.

It is important to highlight that the operational reality in today’s status of migrant workers and members of their households has shown that these concerns remain of timely relevance, as insecurity and exploitation of workers from some African states many of them were kept in very bad conditions similar to slavery, servitude and forced labour which of course, have a major impact on their general wellbeing. On the other hand, the question arises as to where international human rights law has an added value to the protection of the rights of migrant workers and members of their households with regard to the provisions of adequate protection of their human rights outside their place of domicile. It is argued here that international human rights law may

<sup>13</sup> See Article 1 of the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families (1999)

<sup>14</sup> Article 2 (1) of the International Convention on the Protection of and Members of their families (1990)

<sup>15</sup> Ibid, Article 3

<sup>16</sup> See The Universal Declaration of Human Rights (1948)

compliment national laws in relation to the more indirect effects of insecurity or arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his honor or reputation. In furtherance of the efforts to guarantee adequate protection of Migrant outside his place of origin, it must be acknowledged that a key argument behind the issue of migrant's rights protection outside his place of origin has been that some of these Migrants are undocumented which explains their vulnerability in their place of residence.

International Human Rights Law, drawing from the foundations laid in the Universal Declaration of Human Rights (UDHR) and Article 7 and 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), also enshrines the right of everyone to the enjoyment of just and favorable conditions for work and as well the right of everyone to social security and social insurance. Undoubtedly, the articulation of human rights standards under international law has moved the applicability to human rights beyond "rights of citizens". In this sense, this paper submitted that this right like Economic Social and Cultural Rights, must be seen in a long-term perspective which is evident from the general obligation. Moreover, under Article 7 of the Universal Declaration of Human Rights said that:

*"All are equal before the law and entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination"*

Consequently, every labour has the same rights even under the national law.

Similarly, with regards to the core obligations relating to the employment situation of migrant workers, Article 25, 40, 54 and 55 of the International Convention on the Protection of the Rights of Migrant and Members of their households respectively interpreted in great details the nature of the general obligations on the state. It must be emphasized that the International Convention on the Protection of the Rights of Migrant and Members of their households has of course, provided new grounds in articulating group rights for migrant workers and their families. In particular, notwithstanding these important advances in terms of protection, it must be acknowledged that Article 22 protects migrant workers and their households from "measures of collective exploitation" by requiring that issues of expulsion be re-examined and treated personally. Also, current mainstream approaches to migrant's protection, as provided in Article 31<sup>17</sup> clearly shows that it imposes obligations on host countries to ensure respect for the cultural identity of migrant workers and members of their households. For the purposes of this paper, it is significant to note that Article 26 affirms the rights to take part in meetings and activities of trade unions and any other associations established in accordance with the law, with a view to protecting their economic, social, cultural and other benefits<sup>18</sup>.

That said, this scope of positive obligations under the convention, of course, does not require states to ensure equality of treatment between the nationals and the

<sup>17</sup> International Convention on the Protection of the Rights of Migrant and Members of their households, Article 17

<sup>18</sup> International Convention on the Protection of the Rights of Migrant and Members of their households, Article 45 (1),(2),(3),(4)

migrant worker in relation to access to participation in the cultural life of his host Country of residence but, it rather created an obligation on the host country of residence to pursue a policy that will facilitating the integration of children of migrant workers in the local school system of their residence, particularly with respect to teaching them the language they will understand, and enjoined them to be more proactive on the issue of teaching migrant worker's children in their native dialect as well as their general way of living.<sup>19</sup> While undoubtedly important, it should be borne in mind that the expression of human rights instrument will to a large extent guarantees protection as provided in the convention, and has presented a remarkable development of international human rights law around the globe.

In general terms, it should be noted that the above assertion has been an object of contention on the definition of human rights and who interprets it and of course, the challenges the position that human rights is essentially the weapon of the powerful to retain power over the powerless.

### **The Philosophy of Human Rights.**

In highlighting the links between human rights norms and migrant workers, this brings to the fore the states responsibility, the nature of rights, migrants and protection in a manner that unfortunately has been lacking<sup>20</sup> in most of the actions and concerns on migrant's rights protection around the globe. Usually, migrant workers are invisible population until problems surrounding them arise and their status

cannot be ignored by the government anymore,<sup>21</sup> just the state recognized them.

However, in a broader Perspectives on migrant's rights, there is a phenomenon in human rights law which is quiet strange to humanitarian law namely, the concurrent existence of both universal and regional treaties, and also the fact that most of these make a difference between "Civil and Political Rights" and "Economic, Social and Cultural Rights" respectively. In this sense, there is perhaps a clear difference between this treaties ie. "civil and political", **firstly**, this requires acknowledging respect for the rights provided therein, and **secondly**, the "Economic Social and Cultural", this of course, imposes an obligation on the state to take reasonable steps in order to achieve a fruitful actualization of these rights. In view of this broad understanding of the scope of these rights, a conceptual question of importance is whether human rights law is applicable at all times thus, given that the philosophical basis of human rights is that by virtue of the fact that people are human, they always possess them.

It would be crucial, for example, to State that human rights is not negotiable whether one is at his home country or at his country of residence. However, the answer in one sense is that human rights continue to be applicable at all times. It is however submitted that any other conclusion would be unacceptable in view of the context and in light of the object and purpose as provided under the convention. As shown above, it is likely also that the convention does not create new rights for migrants but aims at

<sup>19</sup> International Convention on the Protection of the Rights of Migrant and Members of their households, Articles 16, 20-22

<sup>20</sup> Liliana Lyra Jubilit, and Rachel de Oliveira Lopes, 'Strategies for the Protection of Migrants

through International Law', (2017) 5(1), *Groningen Journal of International Law*, p.42

<sup>21</sup> William Gois and Karen Campbell, 'Stranded Migrants: A Call to Rethink The Current Labour Migration Paradigm', (2013) 2(2), *Migration and Development*, p.170

guaranteeing equality of relationship as well as the same working conditions for all migrants and citizens of that country as the case may be.<sup>22</sup>

### The Concept of Migration

It is argued here that the emerging norms of the international law on development imply that all state should as a matter of fact co-operate for development. This is the logical and necessary corollary of the right to work through migration. These norms are incompatible with classical notions of sovereignty and the associated doctrines of territorial exclusivity and integrity. However, as migration issues has remained intractable problems and challenging, the reason for understanding this relatively new area under international law has become more daunting. It is, however, worthy to note, for the purpose of clarity that not only can this particular approach encourages right to work through migration but, it also frequently encourages development.

From an operational point of view, and, in literal terms, the concept “migration” simply means “movement of people or an individual or group of individuals from one location to another which could either be in permanent or temporary nature”. Similarly, migration according to Webster Dictionary is implied defined as “*the act or an instance of moving from one country or region to settle in another*”<sup>23</sup>. It should be pointed out that in as much as the concept “migration” has various meaning, it would be interesting to note that the meaning of migration is changing simultaneously with the passage of

time. Recently, the scope and definition of migration have become more complicated. Moreover, such an understanding would also illuminate the conditions under which migrant men and women found themselves in their place of residence.

Given the increasing importance of migration, efforts should be made to adopt treaties on international migration that will protect international migrants in their place of residence. In this sense, international migrant is simply defined as “*a person who migrates from his place of residence to another place of residence outside that of his or her usual residence for a period of at least one calendar year*”.<sup>24</sup> Apart from this significant definition developed for clarification purposes, it must be noted that the development on the concept migration as well as on the definition of migrant would further highlight on the categories of migrant as well as the complexities of the concept of migration. Thus, it should be fairly uncontroversial that the idea espoused in this paper is situated within the context of different understanding of migration. However, this paper noted that the proposed Agenda tagged “2030” has its primary concern in addressing some of the intractable problems of international migration by incorporating explicitly some of the migration-related targets provided in the Sustainable Development Goals that will encouraged both developed and developing countries in promoting orderly, safely, friendly and responsible migration as well as to execute a proactive migration policies in light of the international migration issues. It is instructive to note that the wording of the

<sup>22</sup> See United Nations Demographic and Social statistics, Population Division, New York

<sup>23</sup> Merriam-webster dictionary online, <https://www.merriam-webster.com/dictionary/migration>

<sup>24</sup> IOM, *International Migration Law: Glossary on Migration*, Geneva, IOM, 2019, p. 112; See also: migration and the 2030 Agenda for Sustainable Development (2018)

proposed agenda has conceived the issue of migration as one that promotes international collaboration in the world today. In this regard, it is clear from the above that the impact of migration on the right to work cannot be overemphasized.

On the other hand, it must be emphasized that it has immensely contributed to all spheres of human development ranging from economic and social transformation around the globe, and more so, has significantly remained the only tool used in achieving the proposed 2030 Development Goals Agenda. Indeed, a close examination of the two concepts "migration and development" has shown that there is a relationship between migration and development which is an evolving globally recognized concepts, but interestingly, it has remained undeveloped. In this respect, this paper submitted that the immediate challenges that the above has posed is that the conceptual definitions of "simply", "orderly", "recognized" and "acceptable" definition of migration was reasonably provided as it is applicable at the global level. In a similar fashion, it is significant to note that while the two concepts are commonly applicable in all spheres of life; the categorization of these types of population mobility has remained unclear, thus, leaving much room for further clarification. On the other hand, it may be argued that there are conceptual challenges in the definition of the migration. However, this brings to fore that there is no generally

accepted definition of the term "migration" globally.

### ***The Principle of Non-Discrimination***

According to the provisions of Article 7 of the Convention,<sup>25</sup> it should also be noted that states parties should all promote and or ensure that all the rights provided in the convention are respected without any distinction of sort. Also, in the same vein, Article 1 also provides that the convention applies to all migrant workers and members of their households without distinction of any sort. This is evidence by the fact that there is a clear limit to this approach. However, while the pronouncement of the restricted instances of distinction is illustrative and not exhaustive, it is worth noting that the list as provided in the convention is more elaborate than those provided in other human rights treaties such as the International Covenant on Economic Social and Cultural Rights<sup>26</sup> as well as those provided under the International Covenant on Civil and Political Rights respectively.<sup>27</sup>

Significantly, the above dominant view suggests that both Articles 2 and 7 of the Universal Declaration of Human Rights also provided same.<sup>28</sup> Interestingly, Articles 2(2), 2(3) and 3 of the International Covenant on Economic Social and Cultural Rights,<sup>29</sup> Articles 2(1), 3 and 26 of the International Covenant on Civil and Political Rights,<sup>30</sup> Articles 2(1) and 5 of the International Convention on the Elimination of All Forms

<sup>25</sup> International Convention on the Protection of the Rights of Migrant and Members of their households, Article 7

<sup>26</sup> International Covenant on Economic and Political Rights (1966)

<sup>27</sup> International Covenant on Economic and Political Rights (1966); see also: Chantal Thomas, 'Convergences and Divergences in International Legal Norm on Migrant Labour', (2011) 32,

*Comparative Labour & Policy Journal*, 405, P. 415-418

<sup>28</sup> Articles 2 and 7 of The Universal Declaration of Human Rights (1948)

<sup>29</sup> Articles 2(2), 2(3) and 3 of the International Covenant on Economic, Social and Cultural Rights (1966).

<sup>30</sup> Articles 2(1) 3 and 26 of the International Covenant on civil and Political Rights (1966)



Racial Discrimination,<sup>31</sup> Articles 2, 9-16 of the Convention on the Elimination of All Forms of Discrimination against women,<sup>32</sup> and of course, Articles 2(1) (2) of the Convention on the Rights of the Child,<sup>33</sup> however, contained non-discrimination and equality in their various provisions. This threshold is understood to mean applicable international instruments and hence imposes significant restrictions against discrimination.

Interestingly, it is widely accepted that the principle of non-discrimination as provided under the international covenant on the protection of the rights of migrant workers and members of their households are broader than those in the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, and also in the International Covenant on Civil and Political Rights. Policies and strategies to support both of the covenants are needed<sup>34</sup> such as “equal protection under labour laws, antidiscrimination laws, and family laws”<sup>35</sup>. This is in keeping with the notion that new instruments should build upon existing ones and if necessary, expand to reflect changing contexts. It should be acknowledged that new grounds in the migrants workers convention

has emerged which includes conviction, nationality, age, and economic position.

### **Understanding the Right to Work Under International Law**

The philosophical underpinning of the right to work has been discussed at length, and this paper will not provide an exhaustive treatment. In understanding the human right to work under international law, it should be pointed out that this human right to work is fully recognized in both international and regional frameworks. In the light of the adoption of the universal declaration of human rights (UDHR) by the General Assembly in 1948,<sup>36</sup> it must be acknowledged that the right to work was codified in a broad range of legal frameworks at the regional and international levels of operations. In other words, there are also several other provisions in within international law which have a specific relevance to the actualization of the right to work in all the several conventions within the International Labour Organization, particularly, on the rules bothering on migration for Employment (No. 97), United Nations Refugee Convention as well as the Migrant Workers Convention amongst many others.<sup>37</sup> More so, it is instructive to note that all efforts made to gain an accurate insight

<sup>31</sup> Articles 2(1) and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965)

<sup>32</sup> Articles 2, 9 -16 of the Convention on the Elimination of All Forms of Discrimination against Women (1979).

<sup>33</sup> Articles 2(1) and 2 of the convention on the rights of the child (1989).

<sup>34</sup> IOM, International Dialogue on Migration, Migrants and The Host Society: Partnership for Success, No 11, IOM and Australian Government, 2008, P.85

<sup>35</sup> Martin Ruhs, ‘Rethinking International Standards for the Protection Migrants Workers: The Case for a ‘Core Rights Approach’ (2017) 111, *American Journal of International Law*, p.173

<sup>36</sup> Chilokwu, I.D.O, Olise, M.C., Ewuim., N.C, ‘Protecting Human Rights of Nigerian Migrants: The Case of Migrants’ Remittances Enterprise For Sustainable Development in Nigeria’, (2011) 1(1) *Kuwait Chapter of Arabian Journal of Business and Management Review*, P. 41

<sup>37</sup> Fudge, J, ‘The Precarious Migrant Status and Precarious Employment: The Paradox of International Rights For Migrant Workers’ (2011) 34 *Comparative Labor Law and Policy Journal*, 95-132.

<https://www.wiego.org/publications/precarius-migrant-status-and-precarius-employment-paradox-international-rights-migran> P. 35

into the concept the “Right to work” has of course, led to the conception that the “Right to work” is the concept that gave the impression that people have a human right to work, or engage in a productive employment, and may not be prevented from doing so.

In all contexts, it is a fact worthy of note that the right to work is incorporated in the Universal Declaration of Human Rights,<sup>38</sup> and further was recognized in several international human rights laws through its inclusion in the International covenant on Economic, Social and cultural Rights,<sup>39</sup> where the right to work is expressly provided with emphasis on economic, social, and cultural development. While this may be desirable in a more peaceful context, Article 23 of the Universal Declaration of Human Rights provides as follows:

*“That everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. More so, everyone without any discrimination, has the right to equal work and equal salary as well as the right to just and favorable remuneration that will guarantee him and members of his households an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. And also, everyone has the right to form and or to join trade unions for the protection of his interests.”*

Another important development in terms of understanding the right to work is thus provided under part III, Article 6 of the International Covenant on Economic, Social and Cultural Rights,<sup>40</sup> provides that:

*“The signatories to the present covenant recognize the right to work, which comprises the right of everyone to the opportunity to earn his or her livelihood by choosing any kind of work he freely desire or accepts, and will ensure that he safeguards this special right.*

*More so, various steps are to be taken by States who are signatories to the present covenant which is gears towards achieving a full realization of these rights which shall consists of technical and vocational guidance as well as training programs, policies, and techniques that will achieve steady economic, social and cultural development, full and productive employment under the condition of safeguarding fundamental, political and economic freedoms respectively.”*

Given the above scenario, and recognizing that the state has the primary duty of guaranteeing maximum compliance with international standards, it is important to understand that the full enjoyment by all and sundry of the principle of equality and non-discrimination wherein the right to work is promoted, respected and protected at all material times. Thus, Article 5 (e) (i) of the International Convention on the Elimination of All Forms of Racial Discrimination, however, provide as follows:<sup>41</sup>

*“That the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal payment, to equal work, and to just and favorable remuneration are all integral part of the above Article.”*

<sup>38</sup> Article 23 of the Universal Declaration of Human Rights (1948)

<sup>39</sup> Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (1966)

<sup>40</sup> Article 23 of the Universal Declaration OF Human Rights (1948)

<sup>41</sup> Article 5 (e)(i) of the international Convention on the Elimination of All Forms of Racial Discrimination (1965)

On the other hand, drawing from the foundations laid in Article 5 of the convention which incorporates the obligation of states parties to prohibit and eliminates all racial discriminations in the enjoyment of civil, political, economic, socio-cultural rights. It is argued here that some of these rights such as the right to participate in the electioneering campaign are only confined to citizens. In this regard, it is submitted that states parties are strictly under obligation to guarantee equality of these rights to the extent recognizable under international laws. Also, it can thus be argued that under Article 1, paragraph 1 of the convention,<sup>42</sup> the differential treatment based on citizenship or immigration status will of course constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. In this sense, it can be most readily understood that differentiation within the scope of article 1, paragraph 4, of the convention relating to special measures is not considered discriminatory.

In view of this broad understanding of the scope of application of the principles of non-discrimination with respect to the right to work, and despite the fact that Article 7 of the International Convention on the Protection of the Rights of All Migrant workers and members of their households,<sup>43</sup> clearly stated it in its provisions that one should not over-emphasized the importance of the fact that Articles 7 and 8 of the said convention expressly provided it, To be fair, one should recognize that even at the regional

level, the right to work is expressly recognized and provided for. Thus, Article 15 of the African Charter on Human and Peoples Rights provides that:<sup>44</sup>

*“Everyone shall have the right to work under equitable, satisfactory and reasonable conditions, and shall receive a corresponding salary with the work done.”*

Despite the relatively express language used in the text of the international and regional instruments bothering on promoting the right to work through migration, it still remains questionable on whether the issue of documented, as well as undocumented migrants has been addressed in the light of the numerous challenges faced by migrant workers.

### **Relevance of International Convention on the Rights of All Migrant Workers and Members of Their Families to the Nigerian Municipal Labour Laws and Policies**

It must be emphasized that Nigeria is a signatory to this International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families which came into existence in 1990. Aside from this International Convention, there are other National legislations and National Policy on Labour Migration which also compliment the provisions of the International Convention to a large degree at the municipal levels. Furthermore, it is significant to note that in the light of the provisions of Article 25 of the International Convention on the Right of All Migrant Workers and Members of Their Families bothering on the treatment, conditions of

<sup>42</sup> Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965)

<sup>43</sup> Article 7 of the international convention on the protection of the Rights of All Migrant and members of their families (1990)

<sup>44</sup> Article 15 of the African Charter on Human and Peoples Rights (1979)

work and terms of employment not less than those applicable to nationals, it must be stressed that Section 17(3)<sup>45</sup> utilizes non-restrictive language in directing State Policy towards just and human conditions of work, towards safeguarding health, safety and welfare as well as towards equal pay for equal work for "all person's in employment".

In a similar vein, Part 3(4) of the Labour Migration Policy (Enforcement of Labour Standards and Contracts) further demonstrates intent by government and other stakeholders to promote and enforce non-discrimination in conditions of work and in work place standards through application of Labour inspection activity and law enforcement to "all employment activities involving migrant's workers". However, it must be noted that this is a major step to explicitly extend these protections to Migrant/ foreign workers in Nigeria. That being said, the relevance of International Convention on Right of All Migrant Workers and Members of Their Families to Migrant Workers in Nigeria as well as to Labour Law cannot be overemphasized.

Interestingly, Nigeria has no social security system. But however, the Pension Reform Act of 2014<sup>46</sup> requires employers to contribute to employees' pension remittances and uniquely requires employers to maintain group life insurance for all employees of a value that is at least three times the value of each employee's total annual emoluments. Also, due to the limited scope of application of the Labour Act, non-worker employment falls outside the scope of Act and is governed by the employment contract and common law principles. In this sense, it should be noted that the primary legislation that regulates the

employment of persons in Nigeria is the Labour Act. Others are the Constitution of the Federal Republic of Nigeria 1999(promulgation) Act Chapter C23, Laws of the Federation of Nigeria, 2004 (as amended) and the National Industrial Court of Nigeria Act 2006<sup>47</sup> which prescribes the jurisdiction of the National Industrial Court of Nigeria and numerous others mention. In this respect, it should be noted that other than Labour Act, no specific law sets out what factors would be considered in ascertaining whether an individual is an employee or an independent contractor.<sup>48</sup>

#### IV. CONCLUSION

This paper concludes by stating that re-examination of all the existing legislations on migration will further strengthen the protective Rights of all migrant's workers and members of their families as well as globally promote migrant's Rights to work beyond the shores of their Countries of origin. Moreover, it must be emphasized that while the prohibition of offences against Migrants and members of their families remained sacrosanct under human rights law, it must be acknowledged that the prohibition of discrimination on the right to work against migrants cannot be overemphasized given their vulnerability.

In addition, in spite of the statutory provisions, there is an urgent need to strengthen the implementation of the municipal and International laws prohibiting discrimination against Migrant workers and members of their families as well as the prosecution of the offenders of migrant's Rights violation both at the municipal and International levels of operations. More

<sup>45</sup> of the Constitution of the Federal Republic of Nigeria 1999

<sup>46</sup> (See Pension Reform Act 2014)

<sup>47</sup> See National Industrial Court of Nigeria Act 2006)

<sup>48</sup> See *SS. Co. LTD v. Afropak Nigeria Ltd* (2008)18NWLR 77at P.82.

importantly, what proceeds from the foregoing, therefore, is that expanding the frontiers of the right to work through migration encourages best practices. In this sense, the fact remains that all the existing legal frameworks at the municipal and International levels on migration need to be overhauled.

Conclusively, it should be noted that the questions and challenges that the right to work through migration have risen are not merely rhetorical. One must therefore acknowledge that within the context of the International Labour Organization (ILO), in particular, clear standards exist for the protection of migrant's workers and members of their families. Thus, the respect for the right to work and proper protection of these human rights are essential for sustainable right to work through migration. More so, this paper submitted that access to work should be without discrimination on any of the internationally recognized grounds. Ultimately, this paper concludes that promoting the right to work through migration essentially can be achieved through human rights approach which should include the principles of non-discrimination and equality.

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