ASSESSING EMPLOYMENT RESPONSIBILITIES OF MINING COMPANIES AS THE PIVOT FOR INVESTMENT DECISION AND THE DEVELOPMENT OF NIGERIA'S MINING SECTOR

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ABSTRACT

The Nigerian mining sector is in a developmental phase, with the Federal Government actively working to attract foreign investment in the sector as a means of diversifying from the petroleum industry while also enhancing local capacity and expertise. To structure this sector effectively, the government has implemented legal and policy frameworks to regulate local employment, a common strategy among developing nations to foster knowledge transfer and address skills shortage. These regulatory policies aim to build the capacity of the national labour force, thereby boosting the productivity and competitiveness of the mining sector. As Nigeria seeks to diversify its economy away from petroleum dependency, the mining sector's growth is critical. This study examines the adequacy of Nigeria's labour policies and legal frameworks in regulating mining activities for both local and foreign employees. It analyses restrictions on foreign workers, eligibility for expatriate quotas and visa requirements, while underscoring training programmes to develop local expertise. This work further analyses the expectations of prospective investors to determine the suitability of the minerals and mining legal and regulatory environment as a precursor to making investment decisions. This approach is built on prospective mining companies and other investors in the sectors' usual investigative inquiry as documented by the Minerals Law in Africa[1] project.

INTRODUCTION

The mining sector in Nigeria is at its developmental stage. The Federal Government in this regard is building a system that will attract foreign investments and technology to develop its local capacity and expertise in this area. To adequately organise this sector, the Federal Government has further established legal and policy frameworks to regulate local employment in the mining sector. This is common practice among developing countries as a way of developing local expertise by facilitating knowledge transfer to the national labour force and guarding against skill shortage. Developing countries rich in minerals usually set in place regulatory policies aimed at building the capacity of the national labour force as it presents the potential for improving the productivity and competitiveness of the mining sector.[2] Nigeria is an emerging minerals and mining producing state is set to diversify its economy by reducing its dependence on revenue from the petroleum industry. This has necessitated the study of the

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[1] Mineral Law in Africa is an arm of the South African Research Chairs Initiative (SARChI) set up by the country's Department of Science and Technology, and the National Research Foundation. See the University of Cape Town, "Faculty of Law," <https://law.uct.ac.za/mineral-law> accessed 3 August 2024.
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[2] G. T. Square, 'Circle, Local Content Policies in the Mining Sector: Stimulating Direct Employment' (Institute for Sustainable Development, 2018) 6.

mining sector, including its policy and legal frameworks to determine its adequacy in regulating mining activities both for the local employees and the foreigners who are employed in this sector.

This work, therefore, examines Nigeria's labour policy and legal frameworks as they relate to the minerals and mining sector. It reflects on the restrictions placed on foreigners (expatriates) to work in Nigeria, through the lens of legal and policy requirements; for instance, expatriate quota, procuring appropriate visa types, and programmes for the training of Nigerians in the specific area where local expertise is in short supply. This article also examines issues relating to Nigeria's commitment to the protection of the rights of workers, especially concerning the freedom of association with other employees, the enforceability of collective agreements, protection of foreign workers, and prohibition of child labour, among others guaranteed under the 1999 Constitution[3] the Labour Act[4], International Labour Organization (ILO) regime and allied international legal instruments, among others. This research is guided by the questions framed by the Mineral Law in Africa project.

Is there a legal requirement to give preference for local employment?

The principal legislation on minerals and mining in Nigeria is the Nigerian Minerals and Mining Act.[5] It makes general provisions restricting the employment of foreigners in favour of local employment. The Act makes provision in general terms on the role of the Minister, and the rights and obligations of minerals licence holders, among others. For instance, section 4 subsections (e), (g), (j), (q), and (r) of the Act provide concerning the functions of the Minister in charge of Minerals and Mining thus:

(a) He shall see to an equitable balance between foreign and indigenous interests;
(b) Accelerate the development of technology and proficient manpower needed in the mining sector;
(c) Ensure the safety and welfare of workers are protected;
(d) Introduce investment-friendly local content measures for the industry; and
(e) Ensure the development of local manpower for the industry.[6]

The above provisions, particularly subsections (a), (b), (d), and (e), themselves present a clear indication of the policy goal of the government towards the mining sector – the primacy of local contents, including the development of desired skills in the mining sector to build local capacity and retain jobs in the industry locally. This does not mean the prohibition of foreign workers in the sector. The Act requires holders of any mining licence who have secured an expatriate quota to engage and bring in the number of expatriates approved under the quota to live and work in the country and also benefit from waiver on "personal remittance quota for expatriate personnel, free from any tax imposed by any enactment for the transfer of external currency out of Nigeria ."[7]

Furthermore, the Minister is required to grant a mining lease on the precondition that the mining company is a body corporate, duly registered under the Company and Allied Matters Act, or other legal entity that has demonstrated under the requisite conditions that a commercial quantity of mineral resources exists in the area in respect of which the application is made;[8] and has fulfilled all conditions attached to the exploration license.[9] By implication, a mining lease is granted only to a Nigerian citizen with legal capacity, and who has not been convicted

[3] Cap C24, Laws of the Federation of Nigeria, 2004.
[4] Labour Act, Cap L1, Laws of the Federation of Nigeria, 2004.
[5] Nigerian Minerals and Mining Act, Act No. 20, 2007.
[6] See sections 4 (e), (g), (j), (q), and (r) of the Minerals and Mining Act No. 20 of 2007.
[7] Section 25(b) and (c) of the Minerals and Mining Act No. 20 of 2007
[8] Section 50 (a) of the Minerals and Mining Act No. 20 of 2007
[9] Section 50 (b) of the Minerals and Mining Act No. 20 of 2007

for any criminal offence; or a body corporate, registered under the Companies and Allied Matters Act (2020); or a Mining Cooperative.[10]

The Nigerian Minerals and Mining Regulations further provide that applicant companies for mineral title must provide details of experts (whether indigenous or expatriate) already employed by them as one of the requirements for the consideration of their applications.[11] In addition, concerning applications for all mineral titles, except quarry leases and small-scale mining leases, the applicants (mining companies) are required to present a qualified and experienced person who is registered with the Nigerian Council of Mining Engineers and Geologists (COMEG) and any other relevant professional body[12] who should supervise the works or serve as a manager of the mining operations.[13] The implication of this on expatriate employees is that asides from their employers' procurement of expatriate quota and work permit and visa for them, they have to register with COMEG to work in Nigeria. As a monitoring device for compliance with the requirement for the employment of the right experts in mining operations, their appointments and termination are to be filed with the Mines Inspectorate Department of the Mining Cadastre Office, whenever applicable.[14] The above provisions allow for the employment of expatriate personnel with the required technical expertise that have also registered with the COMEG and who are covered by an expatriate quota obtained by the employer.

In addition, section 29(2) of the Mining and Minerals Act makes the provisions of the NIPC Act[15] applicable to any minerals title granted, which is a subject of foreign investment. In the light of this, section 17 of the NIPC Act permits a non-Nigerian investor to invest and participate in the operations of any enterprise in Nigeria. The nature of "operations" in this Act speaks of a contract of employment or services with such an enterprise. This entails such an investor/expatriate employee must comply with other requirements of relevant laws like the Immigration Act, especially its provisions of expatriate quota, approval of the Comptroller General of the service to work in Nigeria, among others.

Despite the semipermeable space for foreign experts to work in the sector, the policy directive of the government strongly encourages local content development and indigenous labour protection. It is in the light of the development of the local content on labour that section 116(a) of the Nigerian Minerals and Mining Act[16] requires that a Community Development Agreement to be made between the mining company and the host community which should address "employment opportunities for the indigenes of the communities." Regulation 13(4) of the Nigerian Minerals and Mining Regulations[17] made under the Act further underscores the social responsibility of a holder of a mineral title to mainstream the benefit of job creation in deepening the beneficiation system in a mining operation. This has the potential of engendering the cooperation of the host community by way of a social licence to operate.

Asides from the provisions of the mining industry-specific legal framework restricting the employment of expatriates, the Immigration Act also prohibits the employment of foreigners working in Nigeria, whether in the mining industry or elsewhere. For instance,

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[10] Section 50 of the Act provides for Mining Lease. However, Mining Lease is only given to persons or companies who qualify to obtain a Reconnaissance Permit as provided in sections 47 (a) (b) and (c) of the Act. See also section 56 of the Mineral Mines Regulation (2011)

[11] In line with section 7 of the Regulation, this by implication means that the Minister gets a regular update on the mining sector following the duties stipulated especially in section 4(e) of the Act in keeping the balance between foreign and indigenous interests.

[12] Regulation 26(1), Nigerian Minerals and Mining Regulations 2011.

[13] Regulations 26(1), 112(4), 139(a) and (b)

[14] Regulation 139(c) (ii) and (iii).

[15] Nigeria Investment Promotion Act, CAP N117, LFN 2004

[16] Act No. 20 of 2007.

[17] Nigerian Minerals and Mining Regulations 2011.

section 36 of the Immigration Act[18] prohibits non-Nigerian from accepting an offer of employment or to take up employment in Nigeria without the written consent of the Director of Nigerian Immigration Service. The only exception to this is where such work is with any of the three tiers of government. The implication of this is that for all sectors of the economy, including the mining sector, the written consent of the Comptroller General of Immigration is a precondition for the employment of foreigners, thereby granting an advantage or protection for local jobs.

In furtherance of the federal government's policy directive on preference for local employment, it has issued an Executive Order emphasising that objective. This policy objective and direction have been captured in Order 1(7) of the Presidential Executive Order No. 5 thus: "The Ministry of Interior shall desist from giving visas to foreign workers whose skills are readily available in Nigeria."[19] This policy applies to several sectors of the economy, including energy and natural resources to which mining belongs. The policy framework accords more importance to local employment and aligns with established global best practices on local employment. The International Bar Association, for instance, advocates that "In selecting employees to carry out its Mining Operations... [preference shall be given] to qualified and competent the (sic) State executives, officers, engineers, consultants, technicians, and skilled and semi-skilled labour."[20]

Nigeria has utilised this local content requirement on labour and employment effectively in the oil and gas industries. It is currently poised towards replicating this feat in the mining sector, considering the potential for local content development, local skill development and utilization and contribution to the economy.

Does the labour regime set immigration quota on the number of expatriate personnel to be recruited?

There is no limit to the number of expatriates that can be recruited. However, the approved expatriate quota determines the number of expatriate personnel employable under the quota. It is the duty of the mining company, not the employee, to apply for the expatriate quota.[21] Even though there is no legally prescribed specification for the number of expatriate personnel to be recruited to work in Nigeria, the Comptroller General of Immigration considers two critical issues before determining the number to be approved in the quota: the size of the applying company and the fact that the required skilled workforce is lacking or in short supply in Nigeria. The approval or consent for the number of expatriate personnel is specified in the expatriate quota, allowing companies to engage expatriates in specific job designations and stipulating the duration of such employment.[22] The quota is granted for an initial period of three (3) years; renewable for further period of two (2) years each, subject to a maximum of ten years. The quota is usually granted for a few positions – the Permanent until Reviewed (PUR) is granted for top executive positions such as the Chief Executive, Managing Director, or General Manager. This application for expatriate quota positions is processed by the Citizenship and Business Department of the Federal Ministry of Interior – the Ministry's desk may also

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[18] Immigration Act, Act No. 8 2015. Section 38 of this Act also requires an intended employer (being a company or an association) of a non-Nigerian to work in Nigeria to apply to the Comptroller-General of Immigration for permission on terms, including information on repatriation of such employee.

[19] Presidential Executive Order No. of February 2018 in Gazette No. 5, vol. 105 – Presidential Executive Order (for Planning and Execution of Projects, Promotion of Nigerian Content in Contracts, Science, Engineering and Technology) of 2018.

[20] International Bar Association, "Model Mine Development Agreement: A Template for Negotiation and Drafting" (MMDA 1.0, 4 April 2011) para. 24.0.

[21] See *Oilfields Supply Center Ltd. v. Johnson (No.2)* [1987] 2 NWLR 625.

[22] Nigerian Investment Promotion Council (NIPC), "Guide to Investing in Nigeria: Labour" <https://nipc.gov.ng/iguide/labour/> 24 April 2020

facilitate the process at the One-Stop Investment Centre (OSIC)[23] situated within the premises of the Nigerian Investment Promotion Commission (NIPC) in Maitama, Abuja. To underscore the importance of regulation of the number of expatriates permitted to work in Nigeria, the employer must make monthly returns on the immigrant workforce to the Nigerian Immigration Service and renew the quota immediately on its expiration. Failure in each case is an offence for which the employer is liable for a fine of three million Naira.[24]

Is there a criterion for allowing migrant labour?

The critical consideration for allowing the migrant workforce to work in Nigeria is the non-availability of such skilled workers or experts in Nigeria or where they are available, such a number of experts is in short supply. Therefore, where there are no available experts in the area, the company or association applying for the expatriate quota is required to present a plan for training Nigerians in that field. This is done to improve local technology. The expatriate to be brought in to work in the specialised area, would transfer his knowledge and expertise to the Nigerian personnel who should understudy him and take over afterward. A mining company desirous of employing expatriate workers is under obligation to engage Nigerians to understudy such foreigners and not allow the abuse of the utilisation of the quota by any other company,[25] failing which amounts to a criminal offence for which the mining company would be liable to a monthly fine of three million Naira and the affected expatriate employees are liable for deportation.[26]

In addition to the above, the Labour Act[27] stipulates that any person recruited to work in Nigeria shall not be employed except if they have been medically examined and declared fit to perform the work they have been engaged to do in Nigeria after having been certified by an authorised labour officer as having been duly recruited.[28]

Is there a requirement placed on mining companies to engage in skill building of the local population?

A company seeking to employ foreign nationals in Nigeria must obtain expatriate quota approval in respect of such a position. It must justify the requirement for using expatriates for the specified functions. Otherwise, the application could be refused because competent Nigerians with the right skill set are available to fill the relevant positions. In addition, there is a requirement to disclose plans for the employment and training of Nigerians who will understudy the foreign experts for the eventual take-over of the expatriate quota positions.[29] On the obligation of mining companies desirous of engaging the services of expatriate employees, the Immigration Regulations provide thus:

> A body corporate shall –
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> (a) engage Nigerian employees who shall understudy expatriate employees; and
> (b) not allow the unauthorised utilization of its expatriate quota positions by any other organisation.[30]

The Regulations further impose a penal sanction for failure to comply with the above legal

[23] Ibid.
[24] Regulation 52(6), Immigration Regulations 2017.
[25] Regulation 52(7), ibid. see also section 116(3)(a) of the Mining Act
[26] Regulation 52(8), ibid.
[27] Cap L1, Laws of the Federation of Nigeria, 2004.
[28] Ibid, section 33(1)(a) and (b), and section 33(2)(f).
[29] Banwo and Ighodalo, "Doing Business in Nigeria" <https://banwo-ighodalo.com/assets/grey-matter/4b8386b642ac43d8f2c778e243864266.pdf> accessed 29 April 2020.
[30] Regulation 52(7), Immigration Regulations 2017.

requirement – a company that breaches this is liable to a fine of three million Naira for each month such company is in breach, and the affected foreign workforce is liable to deportation.[31]

The application for expatriate quota approval can be made together with the one for the Business Permit.

In addition, there are two types of expatriate quota approvals, namely:

(a) Permanent Until Reviewed ("PUR") quotas, which are usually reserved for Chief Executive Officers; and

(b) Ordinary quotas, which are issued to expatriate employees of the company as well as directors.[32]

Building on this block, the 2020 Visa Policy[33] has further made complementary provisions on the taxonomy of visas issuable by the Comptroller General of the Nigerian Immigration Service. Although a policy document ordinarily does not change the existing legal framework, it does provide clear direction on the objective of the government on employment of expatriates in the sector.

The policy creates three categories of visas that are issuable for expatriate personnel employed to work in Nigeria, whether in the mining sector or elsewhere: short visit visa, temporary residence visa, and permanent residence visa. Under these three, the types that are relevant to expatriate personnel engaged in working in Nigeria are:

(a) temporary work permit (F8A) – it is valid for 90 days – is for experts invited by corporate bodies to provide specialised skilled services like machinery repairs and auditing, capacity training of Nigerians, installation of technical equipment, etc.[34];

(b) employment visa (expatriate) (R2A) – is for foreigners permitted to take up employment in Nigeria based on an approved quota system. This is the most suitable visa type for expatriate personnel working in the mining sector in Nigeria.

Does the labour legal regime in Nigeria adhere to international standards, for example, freedom of association and right to collective bargaining, prohibition of forced labour, equality of opportunity and treatment, and prohibition of child labour?

Nigerian labour legal regime adheres to international standards. It guarantees freedom of association. For instance, section 40 of the 1999 Constitution stipulates that: "[e]very person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests". This provision is sacrosanct and the right of every Nigerian citizen. This is because by virtue of section 1(1) of the 1999 Constitution, the Constitution is supreme, and any other law that is inconsistent with its provisions shall to the extent of that inconsistency be null and void.[35] Consequently, Nigeria has complied with international standards vis-à-vis freedom

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[31] Regulation 52(8), ibid.

[32] NIPC (note 21) above.

[33] NIPC, "Nigerian Visa Policy 2020" < https://nipc.gov.ng/wp-content/uploads/2020/02/Nigeria-Visa-Policy-2020-Nigeria-Immigration-Service_compressed.pdf?> accessed 3 September 2020.

[34] See item 23 (Short visit visas), ibid.

[35] The Constitution of the Federal Republic of Nigeria 1999, s. 1(3). In *Lafia Local Government v. Executive Governor of Nasarawa State* [2015] 13 WRN 1 at 47 the Supreme Court held that the courts have appreciated the Constitution as the grundnorm while other legislation take their hierarchy from the provisions of the Constitution. The provisions of the Constitution take precedence over any law enacted by the National Assembly even though the National Assembly has the power to amend the Constitution itself.

of association.

On the right to collective bargaining, the existence of the freedom of association does not necessarily mean that there would automatically be recognition of unions for bargaining purposes.[36] Section 2(1) of the Trade Union Act[37] stipulates that: "A trade union shall not perform any act in furtherance of the purposes for which it has been formed unless it has been registered under this Act". Once the trade union is registered under the Trade Union Act, it is free to enter a collective bargain on behalf of its members. In Nigeria, it must be accentuated that collective bargain is at best a gentleman's agreement, an extra-legal document devoid of sanctions – being a product of trade union pressure.[38] The poser is, how can a collective agreement be made justiciable? On this, Amucheazi and Oji contend that:

> Collective agreements do not have legal significance unless and until the terms are translated into a contractual relationship between the employer and the employee. This is done by incorporating the collective agreement terms into each employee's personal or individual contract of employment. In a dispute, the collective agreement will be cited as binding the parties to the employment. Only by such incorporation will the agreement become relevant.[39]

Therefore, collective bargaining, though a legally recognised agreement in labour and industrial relations in Nigeria, its enforcement is tied to its reproduction in the individual employee's contract of employment with their employer. Anything short of that reduces it to a mere agreement binding in honour only. The Nigerian labour law regime on the collective agreement is compatible with the international standard to the extent that such agreement is incorporated into each employee's terms of employment.

Furthermore, the Nigerian legal regime prohibits forced labour. Section 34(1)(c) of the 1999 Constitution provides that: "Every individual is entitled to respect for the dignity of his person, and accordingly no person shall be required to perform forced or compulsory labour". However, this does not include any labour required in consequence of the sentence or order of a court; any labour required of members of the armed forces of the federation or the Nigeria Police in pursuance of their duties as such. Where a person is required to serve in the armed forces of the Federation and any labour is required over such service, or any labour is required necessarily to address any emergency or calamity threatening the life or well-being of the community; or any work or service that forms part of –

i. normal communal or other civic obligations for the well-being of the community,
ii. Such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly or,
iii. Such compulsory national service forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.[40]

The 1999 Constitution provides against discrimination against any Nigerian. This entails equal treatment of Nigerians of diverse ethnicity and religious inclinations.[41] No citizen of Nigeria shall be subjected to any disability or deprivation merely because of the

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[36] O. D. Amucheazi and E. A. Oji, "Collective Bargaining as a Panacea for Industrial Harmony in Nigeria", [2009] 2 NJPL, pp. 77 – 91 at 81.
[37] Cap. T14, *Laws of the Federation of Nigeria* 2004.
[38] See the Supreme Court decision in *Shuaibu v. Nigerian Arab Bank Ltd.* [1998] 4 SCNJ 109 at 129.
[39] Amucheazi and Oji, (note 35) p. 85.
[40] The Constitution of the Federal Republic of Nigeria 1999, s. 34(2).
[41] Ibid., s. 42(1).

circumstance of his birth.[42] It is this demand of equality of treatment that buttresses the aptness of the provision that the composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that Government or any of its agencies.[43]
Section 28 of the Child's Right Act 2003 emphatically prohibits child labour. It demands that no child shall be subjected to any forced or exploitative labour; or employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character; or required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development; or employed as a domestic help outside his own home or family environment. No child shall be employed or work in an industrial undertaking and nothing in this aspect shall apply to work done by children in technical schools or similar approved institutions if the work is supervised by the appropriate authority. Any person who contravenes any of the foregoing provisions on child labour commits an offence and is liable on conviction to a fine not exceeding fifty thousand Naira or imprisonment for five years or to both fine and imprisonment. Where a body corporate uses child labour, any person who at the time of the commission of the offence was a proprietor, a director, general manager, or other similar officers, servant, or agent of the body corporate shall be deemed to have jointly and severally committed the offence and may be produced against and liable on conviction to a fine of two hundred and fifty thousand Naira.

Furthermore, under the National Policy on Labour and Migration, special attention is given to some vulnerable groups, such as women, domestic workers, temporary migrants, and migrant workers in irregular status, who are likely to suffer abuses and misconduct at the hands of employers, government officials and the people in receiving countries.[44] Support is being provided to empower migrant workers, particularly through community-based organisations, to ensure they are considered in policy development and community life. Paragraph 3.2 of the Policy further provides that the migrant workers will be entitled to the following trade union rights:

(i) Belonging voluntarily to unions of their choice;
(ii) Negotiating by collective bargaining;
(iii) Equality of wages and conditions with citizens;
(iv) Freedom of movement;
(v) Freedom to earn, spend and remit their incomes;
(vi) Formal contracts and conditions of service, written in a language the migrant worker understands.[45]

Inequalities and discrimination based on sex, race, ethnic origin, nationality, or other grounds are unacceptable because they contribute to the vulnerability of some groups being abused, exploited, and/or trafficked. [46] In all spheres of illustration in this work, it is glaring that the labour law regime in Nigeria adheres extensively to international standards on issues relating

[42] Ibid., s. 42(2).
[43] Ibid., s. 14(3). Even at the state level, the composition of the Government of a State, a local government council, or any of the agencies of such Government or council or such agencies shall be carried out in such manner as to recognise and the conduct of the affairs of the Government or Council the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation. Ibid., s. 14(4).
[44] S.3.2 National Policy on Labour and Migration (2014)
[45] S. 3.2 National Policy on Labour and Migration (2014)
[46] 3.3 National Policy on Labour and Migration (2014)

to the rights, protection, and wellbeing of the employee.

Is Nigeria, a member of the International Labour Organisation?

Yes, Nigeria is a member of the International Labour Organization (ILO). Nigeria became a member state of ILO on 17th October 1960[47] and since then has ratified 40 fundamental conventions. Out of this number, 26 are in force, 9 have been denounced, and the remaining 5 have been abrogated.[48] Key among the fundamental conventions Nigeria has ratified are: Forced Labour Convention[49], Freedom of Association and Protection of the Right to Organize Convention,[50] Right to Organize and Collective Bargaining Convention,[51] and the Worst Forms of Child Labour Convention,[52] among others.

How does Nigeria regulate and enforce acceptable conditions of employment and basic protection of migrant labourers?

The National Policy on Labour and Migration 2014 guides and regulates the employment and protection of migrant Labourers in Nigeria. The Policy aims to promote good governance of labour migration, protect migrant workers and promote their welfare and that of their families, and optimise the benefit of labour migration on development while mitigating its adverse impact. Its commitment to good governance ensures the protection of human rights, promotion, and participation of all stakeholders in migration management processes. This approach encourages participation, transparency, and accountability and assists in resolving problems of irregular migration and promoting the image of Nigeria.[53]

However, the National Policy on Labour and Migration initiatives are driven by the Nigerian Government and its social partners.[54] This means that implementation of the National Policy on Labour Migration is primarily the responsibility of the Ministry, in collaboration with social partners and other stakeholders directly involved in various aspects of the labour migration process.[55] The Policy also provides that All employment activities involving migrant workers will be subject to the Labour Act and subsequent revisions of the Acts.[56]

Nigeria regulates conditions of employment and basic protection of the migrant labour force by providing statutory safeguards for the employment of expatriates by imposing legally enforceable obligations on their employers. These cover areas like health, transportation, right to be accompanied by family, and duration of the contract, among others.

For instance, the Labour Act[57] specifically prescribes these conditions of employment for any company (including mining companies) that employs expatriate personnel:

(a) The right to be accompanied by members of his immediate family, including his spouse (a maximum of two wives and children under the age of sixteen), and no employer or any recruiter is permitted to induce the employee not to require him to be accompanied by members of his family.[58] The clear goal of this policy directive is to protect family ties and companionship. In such a situation where the employee's family accompanies him to his place of employment, the employer shall not separate them except members

[47] International Labour Organization (ILO), "Country Profile" <https://www.ilo.org accessed 11 May 2020.
[48] ILO, "Ratification for Nigeria" <https://www.ilo.orgaccessed 11 May 2020.
[49] No. 29 of 1930. Ratified on the 17th October 1960.
[50] No. 87 of 1948. Ratified on the 17th October 1960.
[51] No. 98 of 1949. Ratified on the 17th October 1960.
[52] No. 182 of 1999. Ratified on the 2nd October 2002.
[53] S. 2.1, National Policy on Labour and Migration (2014)
[54] S. 2.1.3 National Policy on Labour and Migration (2014)
[55] S 2.2.4.1 National Policy on Labour and Migration (2014)
[56] S.3.4 National Policy on Labour and Migration (2014)
[57] Labour Act, Cap. L1, Laws of the Federation of Nigeria 2004.
[58] Section 34 (1) and (2) of the Labour Act, ibid.

expressly request it of the family.[59]

(b) Agreement deferring payment of wages of an expatriate employee shall not be an amount more than one-half of such employee's monthly wages and the payment of the balance to be made on such terms as may be approved by the Minister in charge of labour and allied matters.[60]

(c) The employee has not been subjected to unlawful pressure to accept the offer to work in Nigeria or recruited by misrepresentation or based on a mistake as to certain facts relating to the work.[61]

(d) The employee must also be eighteen years of age or older.

Asides from the expatriate workforce provisions above, there are general provisions on the conditions of employment applicable to all employees in Nigeria (including expatriate personnel employed to work in the mining industry in the country). These include:

(a) Medical examination of recruited workers to ascertain their suitability for the work they are being employed to undertake.[62]

(b) Provision of transportation to the place of work and expenses incurred to the place of work shall be borne by the employer.[63]

(c) No contract of employment is permitted to limit or prohibit the right of the employee to join a trade union or restrict him from withdrawing his membership of a labour union.[64]

(d) Any work above working hours, which should be fixed by mutual agreement, collective bargaining, or an industrial wages board, constitutes overtime work and daily break in the work period to enable the employee to stay off work for an agreed period.[65]

(e) Others are entitled to sick leave for at least 12 working days with pay[66], annual holiday with pay[67], among others.

Any breach of the Act's provisions on transportation, sick leave, and annual leave with pay, among others, section 21(1) of the Act prescribes a penal sanction or liability in terms of a fine not exceeding N800 or N1,500.[68]

Furthermore, Part 3 of the National Policy on Labour Migration provides for the Protection of migrant workers and provides support services. The policy is committed to ensuring that migrant workers get the benefits of labour migration and ensuring the human rights and dignity of all persons.[69] The protection of migrant workers and their welfare are based on the four pillars of the ILO's Decent Work Agenda and align with international labour standards. Forced labour is prohibited, and all migrant workers must have rights to freedom of association and access to engage in collective bargaining.[70]

The Policy is committed to equality of treatment. Sexual discrimination puts women migrant workers at risk of marginalisation, exploitation, and abuse. Discrimination facilitates potentially abusive employment conditions and puts migrant workers in vulnerable situations. This complicates matters for the country because while trying to maintain the integrity of its

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[59] Section 27(8) of the Labour Act, ibid.
[60] Section 35 of the Labour Act, ibid.
[61] Section 33 (2) (a) of the Labour Law
[62] Section 8 and 28 of the Labour Act, ibid. see also section 3 of the Immigration Act 2015
[63] Sections 29 and 30 of the Labour Act, ibid.
[64] Section 9(6) of the Labour Act, ibid.
[65] Section 13 of the Labour Act, ibid.
[66] Section 16 of the Labour act, ibid.
[67] Section 18 of the Labour Act, ibid.
[68] See also sections 45 and 46 of the Act for corporate criminal liability regarding the breach of the law on inducing or fraudulently influencing a worker to enter into a contract of employment.
[69] S 3.1 National Policy on Labour and Migration (2014)
[70] S.3.2 National Policy on Labour and Migration (2014)

immigration laws, it also tries to protect vulnerable groups from discrimination and exploitation. Specific measures need to be taken to[71]

- uphold equality of treatment and non-discrimination as universal human and labour rights principles, applicable to migrant workers and national workers alike;
- uphold the labour rights and benefits deriving from engagement in an employment relationship for all migrants working in the country (as also for nationals);
- bring laws and practices, where necessary, in line with the national pension scheme;
- advocate similar equality of treatment and non-discrimination for all Nigerian migrant workers in other countries, in line with international standards; and
- prioritise efforts to obtain full employment in decent conditions – given that the right of citizens to be gainfully employed is provided for in the country's constitution.[72]

How are employment and labour disputes resolved?

The Nigerian constitution provides those conflicts relating to or connected with "any labour, employment, trade unions, industrial relations, and matters arising from the workplace, the conditions of service, including health, safety, welfare or labour, employee, worker, and matter incidental to it or connected in addition to that"[73] shall be resolved in the National Industrial Court. Parties may choose to engage in private arbitration and mediation if the contract of employment contains an arbitration clause,[74] parties are then obligated to resort to arbitration. With the coming into effect of the Third Alteration Act, 2010 and the entrenchment of the National Industrial Court of Nigeria as a superior court of record with specialised and exclusive jurisdiction over labour, employment, and industrial disputes, labour, and industrial relations practice in Nigeria has witnessed a boom, never before experienced in Nigeria.[75] The law is that in determining disputes arising from the determination of the contract of employment, the court must confine itself to the plain words and meaning of the terms of the contract of service between the parties, which provides for their rights and obligations.[76] One of the domineering disputes in industrial relations is the termination of the employment of an employee. Sometimes, this is done in line with the terms and conditions of employment; at other times, it may be done in total breach of the terms of employment. Any aggrieved party is free to seek redress at the National Industrial Court in either of the two situations. In *Agbarakwe v. University Press Plc.*[77], the appellant was employed by the respondent vide a letter of employment of 20/1/87, and his employment was later confirmed on 1/8/87. After that, by a letter dated 5th December 1996, the appellant's employment was terminated. Consequently, the appellant commenced an action to challenge the termination of his employment. The Court of Appeal Owerri held that: An employer has the power to hire and fire any of its staff/workers, at any time, for any reason, or no reason at all and does not owe him any explanation or apology provided it keeps to the terms of the agreement governing their relationship of master/servant in the termination.[78]

[71] S. 3.3 National Policy on Labour and Migration (2014)

[72] S 3.3 National Policy on Labour and Migration (2014)

[73] The Constitution of the Federal Republic of Nigeria 1999, s. 254C(1)(a).

[74] R. Fallah, "Nigeria: Part II", available at http://www.crossborderemployer.com/post/2015/07/24/Nigeria-Part-II.aspx?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original (last accessed 21 January 2016).

[75] B. Atilola, M. Adetunji, and M. Dugeri, "Powers and Jurisdiction of the National Industrial Court of Nigeria under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010: A Case for its Retention", *Labour Law Review*, vol. 6, No. 3, pp. 1 – 37 at 1.

[76] See *Imoloame v. WAEC* [1992] 11 – 12 SCNJ (Pt. 1) 121.

[77] [2015] 26 WRN 67.

[78] Ibid., p. 89. See the cases of *Garba v. Kwara Investment Ltd.* [2005] MJSC 58, *Iwuchukwu v. Naizu* [1994] 7 NWLR (Pt. 357) 379, *Amodu v. Amode* [1990] 5 NWLR (Pt. 150) 352 and *Texaco (Nig.) Plc. v. Kehinde* [2002] FWLR (Pt. 94) 143.

Where the employee alleges wrongful termination of his employment by the employer, the onus is on him to prove the existence of a contract of employment between him and the employer and the terms of the contract his employer breached in bringing the contract to an end.[79] In *Morohunfola v Kwara State College of Technology,*[80] the Supreme Court held that:

The declaration aims to ascertain and determine the right of the applicant to remain an employee of the defendant. The letter of appointment of the appellant is a *sine qua non* of his pleadings. The declaration sought cannot be granted in *vacuo.* It must be given in relation to employment. There can be no termination unless the appointment is made by the person or authority terminating. The letter of appointment is undoubtedly the creator of the right sought to be declared.

The implication of the foregoing is that the letter and terms of employment are the bedrocks on which any of the employees of an employer can lay claim to being an employee of the said employer and without the production of those documents, no employment can be inferred.

However, it must be stressed that there are various classifications of employment with varying consequential effects vis-à-vis the power to hire and fire. In *Salami v. UBN Plc.*[81] it was held that the law is settled that types of employment can be conveniently classified into three namely:

i. Employment is regarded as purely master and servant;
ii. Employment where a servant is said to hold an office at the pleasure of the employer;
iii. Those where the employment is regulated or governed by statute are often referred to as having a statutory flavour.

Where the employee successfully establishes the existence of a contract of employment with his employer, but that contract of employment has the flavour of a master/servant relationship, the court cannot compel the employer to retain the services of the employee against the employer's will. In *Egesi v Semb & Ors.*[82] it was held that in a contract of employment, where the position is that of a mere master/servant relationship, the master can simply fire his servant for any reason or without any reason, provided he gives the servant the stipulated notice or salary in lieu of the notice.[83]

Therefore, the general principle in the master/servant relationship is that a master who no longer savours the services of his servant can call it quits at any time and does not even owe the servant any explanation or reason to dispense with his servant's services, provided that the master respects the agreed terms of the contracts of employment, which under contract is satisfied once the requisite notice or salary in lieu of notice is given to the party affected. In *Kwara State Polytechnic v. Shittu*[84] the court observed that the simple truth is that, even where the master is mischievous or outrageous in the way he sacks the servant, there is nothing the law can do in the situation that the services of the servant are no longer required by the master, as the court cannot impose or force a servant however willing on an unwilling master.[85]

Where the conditions for appointment or determination of the appointment are governed by the preconditions of an enabling statute so that a valid determination of appointment is predicated on satisfying such statutory provisions that will be a contract with a statutory flavour. In an appointment with a statutory flavour, the contract of employment is not

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[79] See *Organ & Ors. v. Nigerian Liquefied Natural Gas Ltd. & Anor.* [2015] 11 WRN 1.
[80] [1990] 4 NWLR (Pt. 145) 506.
[81] [2011] 8 WRN 130.
[82] (2014) LPELR 24101.
[83] Relevant also are *NBTE v. Anyanwu* [2005] All FWLR (Pt. 256) 1266, *Kwara State Polytechnic, Ilorin v. Shittu* [2013] 17 WRN 78, and *Olaniyan v. University of Lagos* [1985] 2 NWLR (Pt. 9) 599.
[84] (2012) LPELR -9843.
[85] This position is further buttressed by the decision in *Katto v. CBN* [1999] 6 NWLR (Pt. 607) 390 and *Idoniboye Obu v. NNPC* [2003] 1 SCNJ 87.

determinable by the parties, but only by statutory preconditions governing its determination.[86] The right of the parties to approach a court of law in redressing their grievances in the contract of employment is constitutionally sacrosanct. This is because section 36(1) of the 1999 Constitution as amended stipulates that:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

Any attempt by an employer to oust the right of the employee to seek redress in case of any labour dispute will be slammed with the guillotine. In *The Incorporated Trustees of the Nigerian Baptist Convention & Ors. v. Kolawole*[87] section C of article X of the Byelaws of the appellant states imperiously as follows: "No conference, association, church, or individual shall challenge the final decision of the Convention-in-session in any court of law directly or indirectly. The decision of the Convention-in-session shall be final and binding on all concerned." The temerity of the above provisions was held to be unacceptable when viewed against the clear words of section 36 of the 1999 Constitution as amended.[88]

Besides litigation, parties may opt for any of the alternative dispute resolution mechanisms in resolving employment and labour disputes. An alternative dispute resolution mechanism is a basket of procedures outside the traditional process of litigation or strict determination of legal rights.[89] It is a range of procedures that serve as alternatives to litigation through the courts for the resolution of disputes, generally involving the intercession and assistance of a neutral and impartial third party.[90] The good thing about alternative dispute resolution is its ability to give each party the sense of being right. People naturally dislike being told that they are wrong.[91] Above is the position of labour law in Nigeria for all sectors, including the mining sector.

CONCLUSION

Nigeria's policy and legal framework on employment of expatriates in the mining sector is partly liberal and yet semipermeable. While it allows foreigners to work in the country, eligibility is not open-ended; it encourages the use of local workforce except where it is not available or not readily accessible at scale. This in itself does not and should not stifle foreign investment as securing the requisite work permit and associated approvals for investors in the sector or expatriates to work in the mining sector is not needlessly nerve-wracking. Overall, the regulatory environment is liberal as it incentivises foreign investment and foreign employment based on the above conditions, which is a global best practice intended to protect local jobs being taken by foreigners.

[86] See *Joseph & Ors. v. Kwara State Polytechnic & Anor.* [2013] 52 WRN 106.
[87] [2015] 13 WRN 113.
[88] Ibid., p. 137.
[89] O. Agbakoba, "Need for National Arbitration Institution in Nigeria", *Thematic Issues in Nigeria Arbitration Law and Practice*, (Onitsha: Varsity Press Ltd., 2008), pp. 1 – 8 at 2.
[90] P. O. Idornigie, "Alternative Dispute Resolution Mechanisms", in A. F. Afolayan and P. C. Okorie (eds.), *Modern Civil Law Procedure Law*, (Lagos: The Dee-Sage Nigeria Ltd., 2007), pp. 563 – 585 at 563.
[91] E. O. Ezike, "Developing a Statutory Framework for ADR in Nigeria" (2011 – 2012) 10 Nig. J. R., pp. 248 – 266 at 249.