

PROVISIONS OF THE IMMIGRATION ACT ON PORT/SHIP CLEARANCE, OFFENCES AND PUNISHMENTS

SECTION 40 IMM ACT 2015; (Examination of Crew)

40. (1) An Immigration Officer may examine any person who arrived at a port in Nigeria as a member of the crew of a ship or water vessel, aircraft, motor vehicle, or means of transportation whether or not he lands or seeks to land in Nigeria or comes overland into Nigeria; and the provisions of this Act shall apply to any such person accordingly.

(2) The Minister may, by order, make provision for requiring masters of ships and captains of aircrafts or operators of other means of transportation arriving at ports in Nigeria to the immigration officer particulars of the members of the crew of those ships or water vessels, aircraft, motor vehicles, or other means of transportation and for enabling the immigration officer to dispense with the furnishing of such particulars.

42. (1) If a person arrives at a port in Nigeria as a stowaway in a ship or aircraft, he shall, subject to the provisions of sub-section (2) of this Section be treated for the purpose of this Act as if he were a prohibited immigrant and be refused admission into Nigeria accordingly.

(2) Section 19 (1) of this Act shall apply in relation to any such person refused admission as it applies in relation to any person who has landed or remained in Nigeria as mentioned in Section 19 (2).

SECTION 43 IMM ACT 2015; (Discharge of Crew)

43.- (1) Notwithstanding the provisions of any other Act or enactment, no member of the crew of any ship or water vessel, aircraft, motor vehicle, or other means of transportation who is not a citizen of Nigeria shall be discharged in Nigeria without the approval of the Comptroller-General of Immigration given on such terms as he may think fit.

(2) The provisions of this section shall extend and apply to the crew of any ship or water vessel, aircraft, motor vehicle or other means of transportation which operates solely or mainly within the territorial waters of Nigeria.

Section 51 IMM ACT 2015, (Deportation offences)

51.-(1) if a person in respect of whom a deportation order is in force -

- (a) having left Nigeria after notice of the making of the order has been given to him on behalf of the Minister, subsequently returns to Nigeria, or
- (b) having been placed on board a ship or aircraft under this Act, lands from that ship or water vessel, aircraft, motor vehicle or other means of transportation before it has left Nigeria, commits an offence and is liable on conviction to the penalty provided for in sub-section (8) of this Section:

Provided that any offence under this section shall be deemed to continue throughout any period during which the offender is in Nigeria after its commission.

- (2) If a person, upon whom any restriction or requirement is imposed under this Act, fails to comply with that restriction or requirement, he commits an offence and is liable on conviction to the penalty provided for in sub-section (8) of this Section.
- (3) Where a person in respect of whom a deportation order is in force is convicted of any offence under sub-section (1) of this Section, the operation of the deportation order shall not be suspended but shall cease to have effect.
- (4) If any person knowingly harbours any person whom he knows has reasonable grounds for believing to have committed an offence under sub-section (1) of this Section, commits an offence and is liable on conviction to penalty provided for in sub-section (8) of this section.
- (5) Any person who knowingly harbours any person who he knows is to be deported or has reasonable grounds to believe has acted in contravention of this Act, commits an offence and is liable on conviction to the penalty provided for in subsection (8) of this section.
- (6) Any person who knowingly permits or assists the escape from any ship or water vessel, aircraft, motor vehicle or any other means of transportation in Nigeria of any person to be deported, commits an offence and is liable on conviction to the penalty provided for in sub-section (8) of this Section.

- (7) Any person who willfully and without lawful excuse hinders or obstructs any deportation being effected under this Act, commits an offence and is liable on conviction to the penalty provided for in sub-section (8) of this Section.
- (8) Any person convicted of an offence under this section shall be liable to imprisonment for ten years or to a fine of Two Million Naira or both.

SECTION 54 IMM ACT 2015 (CARRIERS' LIABILITY)

- 54.(1) Where a prohibited immigrant disembarks from any ship or water vessel, aircraft, motor vehicle or other means of transportation in Nigeria, the master, owner, operator and the agent of such ship or water vessel, aircraft, motor vehicle or other means of transportation shall be jointly and severally liable to pay to the service all expenses incurred by the service in connection with the transport and maintenance of the prohibited immigrant and of his deportation from Nigeria.
- (2) The amount of any expenses incurred shall be recoverable by action brought In the name of the Attorney-General of the Federation.
- (3) When an action, be it civil or criminal, has been brought against master of a ship or captain of an aircraft, driver of a vehicle or any operator of any other means of transportation under the provisions of this Act, the clearance outwards of the ship or water vessel, aircraft, motor vehicle, or other means of transportation may be refused until the case has been determined upon and such master, captain, driver, or other operator has complied with whatever order the court may issue in respect of the case.
- (4) When an action, be it civil or criminal, has been brought against a master of a ship or captain or driver of a vehicle or operator of other means of transportation under the provisions of this Act, the clearance outwards of the vessel or aircraft or vehicle or other means of transportation may be refused until the case has been determined, and until such master, captain or driver or operator has complied with whatever order the Court may issue in respect of the case.

SECTION 56-60 OF IMM ACT 2015 (IMMIGRATION OFFENCES)

56.- (1) A person who –

- (a) Aids or assists any person to enter Nigeria in contravention of this Act;
 - (b) While refusal of admission is in force in relation to him enters or remains within Nigeria otherwise than in accordance with the directives or under the authority of an immigration officer;
 - (c) Contravenes or fails to comply with any condition imposed on him under this Act;
 - (d) Restricts or obstructs any immigration officer in the lawful execution of his duty, commits an offence and any offence under this subsection being an offence committed by entering or remaining in Nigeria shall be deemed to continue throughout any period during which the offender is in Nigeria thereafter.
- (2) If a person knowingly harbours any person whom he knows or has reasonable ground for believing to have committed an offence under sub-section (1) of this Section, being an offence committed by entering or remaining within Nigeria he commits an offence.
- (3) If a person –
- (a) Makes or causes to be made any immigration officer any return, statement, or representation which he knows to be false or does not believe to be true.
 - (b) Refuses or fails to produce or furnish to any such officer any document or information which he is required to produce or furnish to that officer under this Act or otherwise obstructs any such officer In the exercise of his function there under, or
 - (c) without lawful authority, alters any document issued or made under or for the purpose of this Act or has in his possession any forged or altered passport or other travel document, or produces or reproduces any travel document without lawful authority, commits an offence.
- (4) Any person who commits any of the offences prescribed under subsection (1) and (2) of this Section is liable to imprisonment for a term of ten years or a fine of Two Million Naira or both.

- (5) Any person who commits any of the offences prescribed under section (3) of this Section is liable to imprisonment for a term of five years or a fine of One Million Naira, or both.
 - (6) Where a person is charged with any of the offences under this Act and the evidence establishes an attempt to commit that offence, he may be convicted of having attempted to commit that offence and shall be liable on conviction to half of the penalty provided for that offence in this Act.
 - (7) Where a person is charged with attempt to commit any of the offences under this Act and the evidence establishes the commission of the full offence, the offender shall not be entitled to acquittal but shall be convicted of the offence as prescribed by this Act.
- 60.-(1) A person [who] commits an offence under this Act, where no specific penalty is provided, shall be liable on conviction to imprisonment for a term of one year or a fine of one hundred thousand Naira or both and the court may if it thinks fit, recommend the deportation of the offender.
- (2) An agent, who is not a body corporate and who commits an offence under this Act, shall where no specific penalty is provided be liable on conviction to imprisonment for a term of ten years or a fine of two million Naira or both.
 - (3) For the purpose of the trial of a person for any offence under this Act, the offence shall be deemed to have been committed either at the place at which it was committed, or at any place at which the offender may be.
 - (4) An immigration officer may arrest without warrant any person who he has reasonable grounds to believe has committed an offence under this Act.
 - (5) A power exercisable under this Act in the case of any person may be exercised notwithstanding that proceedings for an offence under this Act have been taken against him.

**SECTION 64-75 IMM ACT 2015 (SMUGGLING OF MIGRANTS
OFFENCES)**

64. No person shall, for purposes of financial or any other material benefit, by means of a fraudulent travel or identity document, procure the illegal entry of a person into or the illegal stay of a person in a country of which that person is not a national or permanent resident.
65. (1) Any person who intentionally or knowingly in order to obtain directly or indirectly, a financial or other material benefit procures the illegal entry of a person into a county of which the person is not a national or permanent resident commits an offence and is liable on conviction to imprisonment for a term of ten years or a fine of not less than One million Naira or both and is in addition, liable to refund to the migrant all monies obtained from him in the course of the commission of the offence.
- (2) Where the offence in sub-section (1) of this Section is committed in circumstances which endanger the life or safety of the smuggled immigrant concerned or entails the subjection of the smuggled person to torture, cruel, inhuman or degrading treatment, or exploitation, or is committed by a member of criminal group, the offender is liable on conviction to imprisonment for a term of fourteen years or a fine of not less than two million Naira or both, and is also liable to refund to the smuggled migrant all monies obtained from him in the course of the commission of the offence, is in addition liable to pay compensation to the smuggled migrant as may be determined by the Court.
- (3) Where any person who is the object of the smuggling in subsection (1) of this Section is a citizen of a member State of the Economic Community of West African States and the receiving country is also a member State of the Economic Community of West African States, the offender is liable to a penalty of imprisonment for a term of three years or a fine of three hundred thousand Naira or both;
- Provided however that where the offence is committed in any of the circumstances specified in sub-section (2) of this Section, the offender is liable to the penalty or penalties provided for in subsection (2) of this section.
- (4) For the purpose of subsection (1) of this section, "illegal entry" means crossing borders without complying with the necessary

requirements for legal entry into the receiving State and includes any crossing of a border at an irregular border point.

(5) For the purpose of sub-section (1) of the Section, "an irregular border point" means any point on any border of a country which is not an officially designated entry or exit point into or out of that country.

(6) For the purpose of sub-section (2) of this Section, "receiving country" means the country into which the migrant is smuggled.

(7) Any person who intentionally, in order to obtain a financial or material benefit from another person, engages in fraudulent acts or conducts purportedly for the purpose of procuring, facilitating or promoting the actual or intended entry or transit by another person into or across a country of which that other person is not a national or a permanent resident, commits an offence, and is liable on conviction to imprisonment for a term of ten years or a fine of not less than One Million Naira or both, and is in addition liable to refund to the smuggled person all monies fraudulently obtained from him:

Provided however that where the offence is committed in any of the circumstances specified in subsection (2) of this Section, the penalty or penalties shall be as specified in sub-section (2) of this section:

Provided further that where the offence was committed against a citizen of the Economic Community of West African State, in circumstances specified in sub-section (3) of this Section, the offender is liable on conviction to imprisonment for a term of five years or a fine of not less than five hundred thousand Naira or both, and is also liable to refund to the smuggled migrant all monies obtained from him in the course of the commission of the offence, and is in addition liable to pay compensation to the smuggled migrant as may be determined by the Court.

70. Any person who-

- (a) Organizes or directs any other person to commit an offence under this Act or under any other relevant law;
- (b) Participates as an accomplice in the commission of an offence under this Act or under any other relevant law;
- (c) Procures any other person by any means whatsoever to commit an offence under this Act or under any other relevant law;

- (d) Aids, abets or counsels any other person to commit or is an accessory to any act or offence under this Act or under any other relevant law; or
- (e) Does any act preparatory to or in furtherance of the commission of an offence under this Act or under any other relevant law;

Commits an offence and is liable on conviction to the same penalty as is provided for the offence itself under this Act or under any other relevant law, and where no penalty is provided for such an offence under this Act, to twice the penalty provided under any such other law.

Provided that the penalties provided under such law is not the equivalent to or higher than the punishments provided under this Act.

71. Any person who conspires with another to commit an offence under this Act or any other relevant law commits an offence, and is liable –

- (a) where the offence is committed, to the punishment provided for the commission of that offence under this Act or any other such relevant law;

Provided that where the offence is committed for the purpose of enabling the smuggling of a migrant, notwithstanding any penalty provided for that offence in any such law, the offender is liable on conviction to imprisonment for a term of ten years and a fine of One Million Naira or both.

Provided also that if the penalties provided for such offences under that relevant law is higher than the penalties provided for under this Act, those penalties shall apply: and

- (b) Where the offence is not committed, to a penalty which is half of the punishment provided for the offence under paragraph (a) of this section.

72. (1) Any person who attempts to commits any offence under this Act or any other relevant law is liable on conviction to a penalty which is not less than half of the penalty provided for the offence under this Act or any other relevant law.

(2) Where a person is charged with any of the offences under this Act or any other law and the evidence establishes an attempt to commit that

offence, he may be convicted of having attempted to commit the offence and is liable on conviction to the penalty provided for in sub-section (1) of this Section.

(3) Where a person is charged with an attempt to commit an offence under this Act or any other relevant law, but the evidence establishes the commission of the full offence, the offender shall not be entitled to acquittal but shall be convicted for the commission of the offence and is liable to the penalty provided for the offence under this Act.

73. (1) Any person who -

- (a) Being in lawful custody, escapes or abetting escape;
- (b) Aids, facilitates or abets the escape of a person in lawful custody of the Service or suspected to have committed an offence under any of the provisions of this Act or any other relevant law;

(2) Where the offender under sub-section (1) of this Section, commits the offence in circumstances which endanger the life or safety of any law enforcement officer, other public official or witness, or which entails the subjection of such officer or official or witness to torture, cruel, inhuman or degrading treatment, or exploitation, or is committed as a member of a criminal group, the offender is liable on conviction to imprisonment for a term, of fifteen years or to a fine of not less than three million Naira or both and is also liable to pay compensation to such officer, official or witness as may be determined by the Court, and in addition, all his assets traceable to have been derived from the commission of an offence under this Act is subject to forfeiture and shall be paid into the Objects of Smuggling of Migrants Trust Fund established under Section 97 of this Act.

74. (1) Any person who uses physical force, threat or intimidation, blackmail or similar acts, or the promise or offering or giving of any material or other benefit, or of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence by a witness in a proceeding in relation to the commission of offences created by this Act or any other relevant law, commits an offence and is liable on conviction to imprisonment for a term of fourteen years or to a fine of not less than Two Million Naira or both.

(2) Any person who tampers with evidence or exhibit by falsification,

conversion, destruction or forgery commits an offence and is liable on conviction to imprisonment for a term of fourteen years or to a fine of not less than Two Million Naira or both.

- (3) Any person who uses physical force, threat or intimidation, blackmail or similar acts, or the promise or offering or giving of any material or benefit, or of undue advantage, to interfere with the exercise of official duties by a judicial officer, law enforcement or other public official commits an offence and is liable on conviction to imprisonment for a term of fifteen years or to a fine of not less than Three Million Naira or both.
- (4) Any person who in any other way not provided for under sub-sections (1) and (2) of this Section obstructs, prevents, perverts, or defeats the course of justice commits an offence and is liable on conviction to imprisonment for a term of fourteen years or a fine of not less than Two Million Naira or both.
- (5) Where the offender under sub-sections (1), (2), (3) and (4) of this Section commits the offence in circumstances which endanger the life or safety of any judicial officer, law enforcement or other public official or witness, or which entails the subjection of such judicial officer, law enforcement or other public official or witness to torture, cruel, inhuman or degrading treatment, or exploitation, or is committed as a member of a criminal group, the offender is liable on conviction to a term of imprisonment for sixteen years or to a fine of not less than Four Million Naira or both and is also liable to pay compensation to the person affected by his offence, and in addition all his assets traceable to have been derived from the commission of an offence under this Act shall be subject to forfeiture and shall be paid into the objects of smuggling of Migrants Trust Fund established under section 97 of this Act.
- (6) In addition to any other penalty provided for any offence under this Section, all the assets of the offender traceable to have been derived from the commission of an offence under this Act shall be subject to forfeiture and shall be paid into the Objects of Smuggling of Migrants Trust Fund established under Section 97 of this Act.

SECTION 106 IMM ACT 2015; (CRIMINAL RESPONSIBILITY OF SHIPS, AND AIRLINE OPERATORS)

106.-(1)Every airline operator, sea or other water vessel operator, or land transportation, or commercial carrier, tour operator, or operator of a travel agency is under obligation not to aid and abet, facilitate and promote—

- (a) Any immigration offence;
- (b) Smuggling of persons; or
- (c) Any exploitation in tourism.

(2) Every airline operator, sea or other water vessel operator, commercial carrier including motor vehicle operator, tour operator or operator of a travel agency shall notify its clients of its obligation under sub-section (1) of this Section,

(3) Every airline operator, sea or other water vessel operator, commercial carrier, tour operator or travel agency is required to—

- (a) Insert in contracts with corresponding suppliers in destination countries, clauses requiring the suppliers to comply with the obligations stated in sub-sections (1) and (2) of this Section;
- (b) Refrain from utilizing messages on printed materials, video or the internet that could suggest or allude to behavior incompatible with the objectives of this Act;
- (c) Inform their staff of their obligations under this Act; and
- (d) Include clauses regarding their obligations under this Act in their conditions of service.

(4) Every airline operator, sea or other water vessel operator, commercial carrier, tour operator or travel agency who violates the provisions of sub-sections (1) and (2) of this Section, commits an offence, and in addition to any other penalty provided in any other law or enactment, is liable on conviction to a fine of two million Naira

Provided that where the offence committed is an offence relating to smuggling of migrants, the commercial carrier, tour operator or travel agency shall be liable to a fine not exceeding ten million Naira, and the Court may issue an order to wind-up the business of the carrier, tour operator or travel agency and its assets and properties transferred to the Objects of Smuggling of Migrants Trust Fund.