



Health and safety under Nigerian laws: A comparative analysis

Brian FI Anyatang¹, BE Kooffreh²

¹ B. A. (Hons), LL. B (Hons.), BL. LL.M. Ph. D Candidate Faculty of Law, University of Calabar, Calabar, Nigeria

² LL. B (Hons.), BL. LL.M. Ph. D Candidate & Lecturer Faculty of Law, University of Calabar, Calabar, Nigeria

Abstract

The aim of the research paper is to provide a legal perspective with regards to Health and Safety under Nigerian Laws. The paper further provides a comparative analysis of extant health and safety practices in Nigeria with other climes notably the United States and European Union noting that Nigeria, USA and EU adopt the civil and criminal approaches of adjudication. The only problem is the provision of penalties for non-compliance and contraventions which are not deterrent enough for violators in Nigeria and USA, even though they have clearly defined structure and system. Furthermore, useful findings are observable with respect to occupational safety and health scheme, in Nigeria for instance, the scheme is ineffective because of myriads of challenges such as ineffective enforcement machinery, etc. In the United States of America, the problem is with adoption of standards and non-deterrent penalties while in the EU jurisdiction, the challenges are difficulties in implementing the EU legislation, emerging risks and technologies and demographic change. In the concluding section, recommendations are made for improved Occupational Safety and Health practices and management in Nigeria, EU and USA.

Keywords: health, safety, occupational, workplace

1. Introduction

Health and safety in the work situation plays a crucial role in the effective, efficient and competent performance of employees in the private and public sector organizations and government, and also contributes to the success of governments and organizations. Some countries, for instance, Nigeria have enshrined it in their Constitutions. Besides, employers in both common and civil jurisdictions have from time immemorial been imposed with a duty to take reasonable care of their employees. It is apposite to state that:

"The employee's safety at work is generally guaranteed by the imposition of certain duties on the employer. These duties may be fixed by the contract itself expressly or impliedly by, and, or, imposed by statutes as the case may be ^[1].

At Common Law, the employer is imposed with an implied contractual obligation to take evenhanded care of the worker most especially protecting him from injury. The primary elements of protection of the employee by the employer include provision of a secure working environments (Work structures must be in good conditions, maintenance of buildings and equipment), good lighting, design of workstations and seating must fit the employee and his job, environmental cleanliness, hygiene precautions and welfare, and comfortable working conditions. This duty at Common Law can be summarized as the employers duty to provide proper and safe plants and appliances for work, provision of safe system of work with adequate supervision and instructions and provision of safe premises for work ^[2]. The test for the reasonability of the employers duty of care is objective and is premised on the likelihood of the injury, the

seriousness of injury, obviousness of the danger, the cost of safety and the inherent risk factor in the work process ^[3].

It need be emphasized that because of the socio-economic significance of health and safety at the place of work, the International Labour Organization (ILO) has since its establishment in 1919 promoted occupational safety and health through its Conventions (treaties), International Labour Standards, Codes of Practice, the Provision of Technical Advice, Recommendations, and the Dissemination of Information. However, these treaties create specific binding obligations on member states who ratify the conventions whereas standards and codes are mere non-binding regulations on International and Municipal Labour Practices.

2. Health and Safety Laws in Nigeria

The 1999 Constitution of the Federal Republic of Nigeria (as amended) in Section 17(3)(c) promotes Nigerian Social Order by stipulating thus:

"The health, safety and welfare of all persons in employment are safeguarded and not endangered or abused" The foregoing provision falls under Chapter II of the Constitution dealing with the Fundamental Objectives and Directive Principles of State Policy. The problem with this Proviso is that it is not justiciable, as it was merely built into the Constitution to promote Nigerian social order. Put differently, this Proviso promotes and reinforces Nigerian employees' Fundamental Right to life as contained in Section 33(1) of the same Constitution. Nigeria has also enacted some legislations to enhance health and safety within the Nigerian place of work, namely: the Factories Act ^[4] and its Regulations and the Employees'

¹ Worugji, I. N. E., Introduction to Individual Employment Law in Nigeria, Adorable Press, Calabar, 1st Edition, 1999

² Wilson Clyde Coal Co. Ltd. v. English (1938) AC 57

³ Paris v. Stepney Borough Council (1951) 1 ALL ER 42

⁴ CAP. F. LFN 2004

Compensation Act ^[5] (enacted in 2010) which repealed the Workmen's Compensation Act ^[6] etc. The enactments were made with a view to promoting and enforcing the ILO Occupational Safety and Health (OSH) Principles which include, all workers have rights, obligations on governments and organizations to establish work-related safety and health guidelines, nationwide system for work-related safety and health, formulation of a nationwide programme on work-related safety and health, as work-related safety and health must both be preventive and protective, provision of work-related health services for all workers, constant availability of damages, remedy and therapeutic care for employees who suffer work-related injuries, industrial accident and occupational ailment, schooling and workshops on safety, healthy working environments for workers, and enforcement of health and safety polices and laws and other labour legislations.

The Factories Act has eleven parts with 89 sections. Part I (Sections 1-6) deals with Registration of Factories while Part II (Sections 7-13), III (Sections 14-39), IV (Sections 41-44), V(Sections 45-50) and VI (Sections 51-53) deal with health, safety (general provisions), welfare, health safety and welfare and notification and investigation of accidents and industrial diseases. The Act makes it mandatory for owners of existing and new factories to register them with the Director of Factories within one month after the commencement of the Act for existing factories and at least 6 months prior to the beginning of concrete erection of a house or structures proposed to be used as an industrial unit or new factories ^[7]. Penalty for non-compliance is N2000 or twelve months imprisonment. Part II – V prescribe cleanliness, prohibits overcrowding, prescribes adequate ventilation, sufficient and suitable lighting, drainage of wet floors, provision of sufficient and suitable sanitary conveniences, role of sanitary inspectors, safe prime movers, fencing of transmission machinery and construction and maintenance of other machinery and appliances, vessels containing dangerous liquids, training and supervision of inexperienced workers, safe means of access and secure place of service, safety measures against hazardous smoke, fire and explosion, First Aid, notification and accidents and industrial diseases.

The Act stipulates, for instance, that "every factory shall be kept in a clean state, and free from effluvia arising from any drain, sanitary convenience or nuisance and ..." ^[8], "accumulations of dirt and refuse should be removed daily by a suitable method from the floors and benches of workrooms, and from the staircases and passages" ^[9]. Overcrowding is prohibited by the Act ^[10], because it causes risk or harm to the wellbeing of the personnel in employment at the factory. Every workroom in the factory must not be of a reduced altitude of nine (9) ft calculated from the base to the lowest end of the roof material ^[11]. Each room and part of a factory must be provided with adequate ventilation ^[12] and sufficient and suitable lighting whether natural or artificial ^[13]. To provide safety for

employees all prime movers ^[14] and transmission machinery must be securely fenced ^[15]. The secure means of entrance and safe place of employment ^[16] requirement makes it mandatory for occupiers of factories to properly maintain all flooring, staircases, walkways, and other areas of their buildings occupied as factories as well as constructing them soundly. The Act further stipulates that "building plans and such other documents as the Director of Factories may require shall be submitted to him for approval not less than six (6) months before the commencement of construction of the factories" ^[17]. Every factory shall provide and maintain a first-aid box or cupboard of the prescribed standard for each 150 employees ^[18]. The occupier of each factory in Nigeria must notify the nearest Inspector all industrial accidents occasioning loss of lives of persons employed in his factory ^[19] and industrial diseases ^[20], if he suspects or believes or has logical reasons for believing or supposing that an incident of work-related disease has taken place in the industrial unit. This proviso gives the occupier of factory too wide a latitude that he can decide to hide some cases of occupational diseases. The penalty for failing to report industrial accidents is a fine not exceeding N1,000. Inspector have the Statutory Powers to arrest and prosecute defaulting occupiers of factories with the aid of a Police Officer ^[21] before a Magistrate's Court ^[22]. The Employee's Compensation Act (ECA) contains mainly compensatory provisions for victims of industrial accidents and occupational diseases. It has eleven parts. The most relevant parts to health and safety are parts III (Sections 7-16 on Compensation for Death, Injury or Disease and IV (Section 17-30) on Scale of Compensation. The ECA pertain to all employers and employees of the Public and Private Sectors in the Federal Republic of Nigeria ^[23], and excludes Nigerian Armed Forces personnel's ^[24] but Civilians working with the Armed Forces are exempted.

The overall objectives of ECA consist of *"provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependents for any death, injury, disease or disability arising out of or in the course of employment, provide rehabilitation to employees with work-related disabilities as provided in the Act, provide for fair and adequate assessment for the employees, provide for an Appeal Procedure that is simple, fair and accessible with minimal delays, establish and maintain a solvent compensation fund managed in the interest of employers and employees, combine efforts and resources of relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards"* ^[25].

The ECA establishes the Nigeria Social Insurance Trust Fund Management Board ^[26] to implement the Act and the

⁵ CAP W6 LFN 2004

⁶ Ibid

⁷ Sections 2(1) and 3(1) and (2)

⁸ Section 7(1)

⁹ Section 7(1)(a)

¹⁰ Section 8(1)

¹¹ Section 8(1)(3)

¹² Section 9

¹³ Section 10

¹⁴ Section 14

¹⁵ Section 15

¹⁶ Section 28

¹⁷ Section 28(1)

¹⁸ Section 43(1) and (2)

¹⁹ Section 51

²⁰ Section 53

²¹ Section 65

²² Section 66

²³ Section 2(1)

²⁴ Section 3

²⁵ Section 1(a-f)

²⁶ Section 31

Fund also establish under the ECA ^[27]. The procedures for making claims for industrial accidents and occupational diseases include notification within 14 days to Managers, Supervisors, First-Aid Attendants, Agents-in-Charge of the work where the harm happened or of the occupational disease by employee ^[28]. The employee's notification of his injury or occupational disease shall contain his name, the point in time and location of the incidence and in Ordinary words, the situation surrounding the ailment or harm, if known ^[29]. Failure by the employee to provide information about the injury or occupational disease constitutes a bar to his claim for compensation ^[30], except if the employer or his representative had knowledge of the information or the employer has not been prejudiced or the Board considers that the interest of justice requires that the claim be allowed ^[31]. The employer is statutory required to report the information of his employee's injury or an occupational disease to the Board within 7 days of the occurrence of the employee's injury or occupational disease arising out of and in the course of employment ^[32]. The Board is empowered by the Act to make rules and regulations for procedures for making claims for compensation under the Act ^[33]. Compensation is computed and paid for accidental injuries, occupational diseases, death and even mental stress resulting from the employer's change of employee's work, organizational working conditions which unfairly exceeds the workability and competence of the worker thereby leading to psychological strain in the worker ^[34].

The employee involved in accidental injury, occupational disease, disability or death is either personally entitled or through a dependent (if the employee is deceased) to legal redress ^[35] or claim compensation for the injury, disability, disease or death within 6 months ^[36]. Scale of compensation which is graduated as contained in Section 17 of the Act, is to be paid only to immediate family members ^[37]. Compensation is made in the form of monthly payments for the life of the beneficiary as specified by the Act ^[38], for death of the employee and periodic payment for permanent, total or partial disabilities or impairment, and is 90 percent of the salary of the worker, etc. who is less than 55 years of age at the date of harm, bereavement or disability ^[39].

All appeals by aggrieved parties lie to the Board and ultimately to the National Industrial Court (NIC) ^[40]. Contravention of any terms of the Act for which no explicit punishment is provided, shall attract liability on conviction to a fine of N20,000 for the first case of nonconformity or incarceration for a term not more than 1 year or N100,000 for every subsequent case of nonconformity or to both such incarceration and fine ^[41].

The major legislations on Occupational Safety and Health

(OSH) are Factories Act ^[42] its regulations, Employee's Compensation Act 2010 (ECA) which we have already discussed, the Nigerian Minerals and Mining Act, 2011 and the Nuclear Safety and Radiation Protection Act ^[43]. Other related Occupational Safety and Health Laws include the Lagos State Safety Commission Law, 2011 (which regulates Occupational Safety and Health in Lagos State only), the Nigerian Basic Ionising Radiation Regulations, 2003, Nigerian Radiation Safety in Nuclear medicine Regulations, 2006 (which relates to medical practice in Nigeria, more or less). There are also Radiation Safety Laws which include mineral oils (safety) Regulations, 1962, Petroleum (Drilling and Petroleum) Regulations, 1969 and National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 which are mainly environmental protection – driven.

Nigeria has ratified some ILO conventions on Occupational Safety and Health, such as Convention 155 ^[44], Convention 032 ^[45]. Convention 019 ^[46]. She has also ratified some ILO Conventions that relate to working conditions which include Convention 081 ^[47]. Convention 144 ^[48], Convention 011 (right of Association Agriculture) 1981, Convention 026 (Minimum Wage – Fixing Machinery) 1921, Convention 045 (Underground Work (women) 1935, convention 088 (Employment Service) 1948, Convention 095 (Protection of Wages), 1949, Convention 123 (Minimum Age (Underground Work)), 1965, Convention 159 (Vocational Rehabilitation and Employment (Disabled Persons), 1983, Convention 185 (Sea Farers Identity Documents) – Revised, 2003 and Maritime Labour Convention (MLC), 2006.

It can be rightly be asserted that the major OSH legislations and other related laws as mentioned in the foregoing paragraphs are implied or express domestication of these conventions. Nigeria has also domesticated ILO Technical Standards under the various regulations, but she has not approved codes of practice on OSH except those that are sectorial-based, no OSH guidelines and management system as required by ILO guidelines to member states.

The statutory scenario on Occupational Safety and Health (OSH) in Nigeria is encouraging as it is inundated with a plethora of legislation, but the sad tale is that the enforcement of these legislations is woeful. The enforcement challenges have rendered the Nigerian OSH scheme abysmally dysfunctional and unenforceable, hence OSH development has remained stagnant in the country. The clarion call in this paper for OSH enhancement in Nigeria on the government, the educational establishment, association and Industrial union is for them to wake up from their slumber.

It is pertinent to point out that the enforcement of OSH scheme in Nigeria has become and is still fraught with the following challenges: too many legislations with the attendant overlap of institutional functions, the ineffective influence of the enforcement authority, for instance, the Federal Ministry of Labour and Employment, method of enforcement (reactive instead of the proactive and collective participatory approach), lack of skilled manpower, lack of

²⁷ Section 56

²⁸ Section 4(1)

²⁹ Section 4(1) (a-c)

³⁰ Section 4(4)

³¹ Section 4(4) (a-c)

³² Section 5(1) & (2)

³³ Section 5(8)

³⁴ Section 8(1) & (2)

³⁵ Section 12(1)

³⁶ Section 12(3)

³⁷ Section 17(1)(f)(ii)

³⁸ Section 19

³⁹ Section 23

⁴⁰ Section 55(1) and (4)

⁴¹ Section 71(1)

⁴² CAP F.I LFN, 2004

⁴³ CAP N142, LFN, 2004

⁴⁴ Occupational Safety and Health, 1981, Ratified in 1994

⁴⁵ Protection Against Accidents (Dockers), 1932

⁴⁶ Equality of Treatment (Accidents Compensation), 1925

⁴⁷ Labour Inspection Convention, 1947

⁴⁸ Tripartite Consultation (International Labour)

political will and political influence, ineffective penalties, bribery and corruption, financial constraints, the judicial system, insecurity, lack of awareness and enlightenment of Nigerian workers, technological changes and economic growth and cultural influences.

There are too many OSH legislations in Nigeria, some of which are even outdated. The functions of enforcement authorities established under the various legislations overlap, hence friction can ensue amongst the authorities. The reactive approach is reactionary because factory occupiers always wait for the time fixed by inspectors to visit their factory premises and identify their contraventions before they can take the necessary steps to comply with the relevant laws. This approach is merely corrective but not participatory, hence it can lead to delays that usually occasion injuries, disease and even death of organizational workers. It therefore defeats the objectives of Nigerian OSH Laws which aim at preventing accidents, injuries or death.

The enforcement authorities that are established by OSH legislations in Nigeria have inadequate skilled personnel to enforce the legislations. There are inadequate enforcement officers in NAFDAC, competent occupational health service experts, etc. The Federal Government lacks the political will to ensure the enforcement of OSH legislations and powerful politician also exert negative influence on the enforcement of the laws when contraventions affect them or their relatives and friends. The statutory penalties are nominal and not deterrent enough. For instance, the Employee's Compensation Act 2010, stipulates a penalty of N100,000 and N1,000,000 for contraventions of the Act by persons and bodies corporate^[49], while the alternative option of imprisonment is 1 year. These penalties are weak and ineffective. Enforcement authorities are not properly and well-funded to purchase technical equipment to carry out regular inspections.

3. Safety and Health in the United States of America

Foremost legislation on the protection of national workers against injury, illness and death in the workplace was first enacted in 1970. It is called the Occupational Safety and Health Act^[50]. The OSH Act, 1970 was made in reaction and response to the high incidence of employee harm, disease and bereavement in USA. Its provisions include follow a line of investigation, proposal and regulation by the National Institute for Occupational Safety and Health (NIOSH)^[51], embracing and enforcing of National Occupational Safety and Health Standards by the Occupational Safety and Health Administration (OSHA), and review support to employees by both NIOSH and OSHA. The enforcement authority of OSH Act is the Secretary of Labour. Both NIOSH and OSHA are supervised by the secretary of labour.

Occupational Safety and Health Scheme in USA operates as follows: investigation into conventional and up-and-coming place of work dangers in all industries (such as construction, mining, agriculture, and manufacturing – which are most hazardous) is statutorily done by NIOSH. After research, it issues authoritative recommendations on how best workers can be protected from several physical, biological and chemical agents such as crystalline, silica, asbestos, diacetyl

and beryllium to OSHA. Its research function also includes job organization, and trauma, work-related health discrepancy, place of work cruelty and nanotechnology, an emerging hazard.

After research, NIOSH carries out certification of industrial personal protective equipment and carry out individual emission dose reconstructions for existing and previous atomic employees as statutorily required by energy Employees Occupational Illness Compensation Act, 2000. As stipulated by OSH Act, 1970, OSHA^[52] has the statutory responsibility to adopt occupational safety and health standards for the country. Standards adopted for industries by OSHA are on workplace for silica, crystalline, beryllium, communicable diseases, burnable dust; management safety and health on injury and illness prevention. The adoption of these standards by OSHA has been severely criticized by American authors and citizens because of its inherent delays.

Enforcement of Standards by OSHA is effected through its assistance to employers to comply and penalizing them for non-compliance. The standards enforced by OSHA are on contravention of standards on scaffolding, fall safety, risk statement, respiratory defense, lockout/tagout, electrical system methods, powered industrialized trucks, stepladders, all-purpose electrical necessities and device guarding^[53]. Penalties imposed by OSHA on employers have also been criticized by American Public. However, OSHA launched the Severe Violator Enforcement Programme (SVEP) in 2010. Severe violations that are able to cause death or severe bodily injury is \$7000 while maximum punishment for willful violation is \$70,000^[54]. These penalties are considered by Americans not to be deterrent. The USA government assists both employees and employers through NIOSH and OSHA, in evaluating health hazards by NIOSH and consultative assistance by OSHA. NIOSH's recommendations are usually on reduction of hazards and prevention of work-related illnesses.

There is no doubt that OSHA and NIOSH from the time of their establishment adopted the proactive and collective participatory approach to enforce the OSH Act, 1970, hence working conditions in USA have become safer and healthier. Nevertheless, much work needs to be done to re-engineer her standard setting processes, enforcement responsibilities, and new policies like Prevention-through-Design (PtD) and Total Worker Health should be examined and strengthened.

4. European Union (EU)

The EU evolved a tactical agenda on Health and Safety at work for 2014 – 2020. This tenured agenda is aimed at meeting the demands of emerging technologies and occupational risk at the workplace. The framework is drawn from a all-inclusive body of EU legislations which covers the majority of considerable occupational risks and provides universal definitions, structures and set of laws that are tailored by member states to their diverse nationwide peculiarities as well as circumstances. The legislation also provides for a series of multinational actions strategies and

⁵² Section 17 of OSH Act, 1970

⁵³ NIOSH, Draft Current Intelligence Bulletin: Occupational Exposure to Carbon Nanotubes and Nanofibers. <http://www.edc.gov/niosh/review/Deer/HISA/nano-pr.html> Accessed July 2, 2020

⁵⁴ Section 17 of OSH Act, 1970

⁴⁹ Sections 14(2)(a), (3)(a) and 39(4)

⁵⁰ OSH Act, 1970

⁵¹ Section 22 of OSH Act, 1970

programmes from 1978 – 2002, 2002 – 2006, 2007 – 2012, 2014 – 2020. These strategies and programmes aim at providing a platform for the coordination of policies in EU member states as well as the promotion of a holistic culture of prevention of illness, injury and death at the workplace.

The objectives of the EU legislation on OSH are: to prevent risk and promote safer and healthier conditions in EU workplaces with a view to improving job quality, working conditions, promotion of competitiveness, increased productivity and improved sustainable social security systems. The second objective is to promote workers' health throughout their working careers by preventing them from suffering serious accidents or occupational diseases, hence helping them to work longer. The third objective of the EU legislation is to address the long-term effect of demographic ageing through SMART, sustainable and inclusive growth.

The EU 2014 – 2020 framework on occupational safety and health has seven (7) elements, namely "further consolidation of EU member States' national health and safety strategies, provision of practical assistance to small and micro enterprises to enable them comply with health and rules in their various countries, Simplification of existing national laws to preserve workers' health and safety, Addressing the ageing of European workforce through the improvement of the prevention of work-related diseases and emerging risks such as nanotechnologies, green technology, biotechnology, Improvement of statistical data collection for better evidence and development of monitoring tools, Improvement of enforcement of legislations by member states and the evaluation of National Labour Inspectorates' Performance, Reinforcement of co-ordination or synergy with some international organizations such as ILO, WHO, OECD (organization for Economic Cooperation and Development)".

The EU framework does not seek to obliterate the national legislations of member states on OSH. Before the enactment of the legislation by EU parliament, Britain (United Kingdom) had promulgated six sets of health and safety at work regulations in 1993 which apply virtually to all kinds of work activity and place the burden on employers to guard both their workers and other persons including members of the public. These regulations which were introduced partly to implement EU directives cover these scope to include: All-purpose Health and Safety, organization, employment equipment, physical managing of loads, place of work conditions, Personal Protective Equipment (PPE) and Display Screen equipment. They were introduced under the Health and Safety at Work Act (HSW Act). These regulations repealed some 35 pieces of the Old Law on OSH.

Even though the EU framework has been adopted and adapted by EU member states and has been working, it has its challenges which includes the difficulties of implementation of EU OSH legislation, prevention of work-related diseases which is hindered by emerging risks and technologies and demographic change (ageing) of the EU workforce.

5. Comparative Analysis of Nigerian Safety, and Health Laws with Other Jurisdictions Laws

In Nigeria, there is no specific law on Occupational Safety and Health (OSH), yet, but a miscellany of legislations with overlapping functions of competent authorities and stakeholders. The new law titled the Labour, Safety, Health

and Welfare Bill (2012) which has since been passed by the National Assembly has up till date not been assented to by the President. This legislation addresses all occupational safety and health issues, covers the construction of industry and provides stiff penalties for contraventions and non-compliance. The objectives of the bill are enforcement and implementation of OSH procedures in the place of work, promotion and safeguarding of lives and possessions, promotion of OSH consciousness, assessment of place of work to examine conformity of all set of laws, etc. This regulatory position is in contradiction to the EU and the USA where there is a single legal framework that covers the entire membership of EU countries and USA 51 states with adequate OSH measures and strategies.

- Legal framework in Nigeria, USA and EU adopt the civil and criminal approaches of adjudication. The only problem is the provision of penalties for non-compliance and contraventions which are not deterrent enough for violators in Nigeria and USA, even though they have clearly defined structure and system.
- OSH issues are constitutionally provided for in Nigeria under the Exclusive List but not justiciable. For proper and effective implementation of OSH legislations, codes of practice, strategies and measures, OSH laws should involve all tiers of government in a country. In USA, the central government, states and countries are fully involved, in EU, all member states with their regional and county governments are involved. In Nigeria, only the Federal Government through the instrumentality of the Department of Occupational Safety and Health of the Federal Ministry of Labour and Employment (which is the competent Authority of all OSH issues in Nigeria) is in charge of OSH. There are only 60 inspectors in Nigeria who cannot cover the whole country effectively and no National Occupational Safety and Health Board to implement and enforce the National Occupational Safety and Health Policy (2006).
- The EU legislation on OSH is visionary in the sense that it has prepared member states for emerging risks and changes such as nanotechnologies, biotechnology and green technology. The USA Law (OSH Act, 1970) although has not been reviewed, NIOSH has prepared regulation to care for nanotechnology, biotechnology and green technology for workers. "Total Worker Health" is another strategy that is being adopted to integrate traditional work-related safety and health safeguard practices with health support policies, to avert harm and ill health among employees, and also press forward their healthiness and well-being. The observe is the case in Nigeria. Her legislations are not reviewed and updated regularly.
- Enforcement of OSH legislations in Nigeria is bedeviled with many impediments such as using reactive approach which does not suit the prerequisites for enforcing OSH legislations, instead of the proactive and collective participatory approach, which is more suitable and adequate. Other impediments include inadequate inspectors, lack of political will by Nigerian leaders, and negative political influence on competent authority and stakeholders, non-deterrent penalties, bribery and corruption, weak judicial system, inadequate funding and lack of government commitment, insecurity, lack of awareness and information, non-preparedness of legislations for

emerging risks and technologies, cultures, absence of formal OSH management system based on ILO-OSH 2001 for use in the workplace, statutory non-involvement of trade unions in OSH issues. The observe is the case in EU and USA which use the proactive and collective participatory approach to enforce their OSH legislations. All tiers of their governments are fully committed to enforce their OSH legislations as well as penalizing violations by enforcement officers. Besides, using the reactive approach to enforce OSH laws in Nigeria, there is no coordination amongst stakeholders for OSH true practice and programmes, no detailed and extant national OSH Law, restricted coverage of place of work by existing OSH legislations, no research on OSH, insufficient information management on OSH (data collection, collation and dissemination), no countrywide accepted OSH code of practice, under-reporting of work-related mishaps and illness.

- Nigerian OSH legislations are generally framed to the extent that they do not cover workplaces well. Essentials of safe and health at work are not properly covered. The EU and USA legislations are specifically designed and structured to cover in details the essentials of safety and health at work.

6. Observations/Findings: It is observed that

- The occupational safety and health scheme is difficult to manage. For instance, in Nigeria the scheme is ineffective because of myriads of challenges such as ineffective enforcement machinery, etc. In the United States of America, the problem is with adoption of standards and non-deterrent penalties while in the EU jurisdiction, the challenges are difficulties in implementing the EU legislation, emerging risks and technologies and demographic change.
- The problems of occupational safety and health are enormous. Even though 85% ^[55] of the EU workers have shown satisfaction with the health and safety conditions in their place of work as a result of the EU all-inclusive legislation and guiding principle actions executed by the Union, states parties and collective partners, some challenges are inherent in the EU framework. For instance, about 4000 employees pass away from industrial accident at work, 3 million constitute sufferers of grave work accidents, 160000 die annually due to work-related diseases; 95000 are caused by occupational cancer ^[56]. These challenges have increased the cost of work-related diseases and accidents as well as the burden on competitive and social security budget of EU and member states.
- The ILO, in its recent report quantified the individual, societal and fiscal expenses of work-related mishap, harm, illness and major disasters and came to grips with the fact that they are unacceptable. The statement projected that 2 million work-related deaths occur around the globe yearly, the premier proportion of these fatality are caused by job-related cancer, circulatory and vascular diseases and also infectious diseases ^[57]. Latest figures collated by WHO and ILO show that taken as a

whole, work-related accident and illness rates are gradually waning in most developed countries, but are on the rise in developing and industrializing countries ^[58]. The organizational, national and global economic costs of occupational injuries, diseases and deaths are enormous. These costs are borne through compensation, loss of man/working hours, interruption of production, education or training and retraining of employers and employees and other stakeholders, medical expenses, etc. Global estimation of these fatalities have been roughly put at 4 percent of universal GNP every year ^[59].

- These occupational accidents could be prevented through the strict implementation and enforcement of ILO Guidelines and Conventions, National Legislations, Polices and Codes of Practice, and Preventive Strategies, which have significant human and economic advantages
- Enforcement of national laws, codes and regulations in developing countries, and industrializing nations is lax. Policy coordination and education and training are poor. Dissemination of OSH information is zero.
- Noninvolvement of trade unions – OSH is tripartite in organization and implementation – (Government, Employer and Unions.)

7. Recommendations

The following recommendations are made for improved OSH practices and management in Nigeria, EU and USA

Nigeria

- The Labour, Safety, Health and Welfare Bill (2012) should as a matter of urgency, be passed into law. If need be, all items on OSH in existing OSH legislations should be removed and transposed into the Bill and repassed by the National Assembly before Presidential Assent to avoid overlap of institutional functions
- OSH scheme should be made a justiciable issue and placed under the Residual list so that the Federal, State and Local governments will be involved in OSH practices and programmes.
- More skilled OSH personnel should be employed by the Federal Government to effectively cover the whole country.
- Trade unions should be actively involved in OSH practices and programmes by the competent authority.
- OSH institutes should be established in all the six geopolitical zones to complement the one currently resident at University of Ibadan.
- Nigeria should adopt an Approved Code of OSH Practice as is done in UK. OSH legislations should be reviewed regularly to meet up with emerging risks and technologies, OSH management system and Board should be established.
- Information management of OSH practices and programmes should be improved to avoid under-reporting of accidents, diseases and deaths in the workplaces.
- Research activities should be incorporated into the new OSH law. Nigeria should peg retirement age in the public and civil service at 65 years to avoid

⁵⁵ EU Strategic Framework on Health and safety at Work, 2014-2020

⁵⁶EU Strategic Framework on Health and safety at Work, 2014-2020

⁵⁷ Alli, B. O. Fundamental Principles of Occupational Health and Safety 2nd Edition, Geneva, International Labour Organization Office, P.4

⁵⁸ Alli, B. O. opt. cit. P.4

⁵⁹ Ibid

demographic ageing.

USA

Even though accidents, diseases and deaths are declining in the USA workplaces, the OSH Act 1970 needs to be reviewed. It was last amended on June 12, 2002 by Congress. The review should take care of penalties, NIOSH and OSHA should be up and doing in research and setting standards. For instance, the last occupational health adopted standard by OSHA was in some 20 years ago

EU

EU member states should find better ways of enforcing the EU legislation on OSH so that emerging risks and technologies can be properly tackled. Demographic ageing of the EU labour force should be frontally handled.

References

1. Worugji INE. Introduction to Individual Employment Law in Nigeria, Adorable Press, Calabar, 1st Edition, 1999.
2. Wilson Clyde Coal Co. Ltd. v. English AC 57, 1938.
3. Paris v. Stepney Borough Council 1 ALL ER 42, 1951.
4. CAP. F. LFN, 2004.
5. CAP W6 LFN, 2004.
6. Ibid
7. Sections 2(1) and 3(1) and (2)
8. Section 7(1)
9. Section 7(1)(a)
10. Section 8(1)
11. Section 8(1)(3)
12. Section 9
13. Section 10
14. Section 14
15. Section 15
16. Section 28
17. Section 28(1)
18. Section 43(1) and (2)
19. Section 51
20. Section 53
21. Section 65
22. Section 66
23. Section 2(1)
24. Section 3
25. Section 1(a-f)
26. Section 31
27. Section 56
28. Section 4(1)
29. Section 4(1) (a-c)
30. Section 4(4)
31. Section 4(4) (a-c)
32. Section 5(1) & (2)
33. Section 5(8)
34. Section 8(1) & (2)
35. Section 12(1)
36. Section 12(3)
37. Section 17(1)(f)(ii)
38. Section 19
39. Section 23
40. Section 55(1) and (4)
41. Section 71(1)
42. CAP F.I LFN, 2004.
43. CAP N142, LFN, 2004.
44. Occupational Safety and Health, 1981, Ratified in 1994
45. Protection Against Accidents (Dockers), 1932.
46. Equality of Treatment (Accidents Compensation), 1925.
47. Labour Inspection Convention, 1947.
48. Tripartite Consultation (International Labour)
49. Sections 14(2)(a), (3)(a) and 39(4)
50. OSH Act, 1970.
51. Section 22 of OSH Act, 1970.
52. Section 17 of OSH Act, 1970.
53. NIOSH, Draft Current Intelligence Bulletin: Occupational Exposure to Carbon Nanotubes and Nanofibers.
<http://www.edc.gov/niosh/review/Deer/HISA/nano-pr.html> Accessed July 2, 2020.
54. Section 17 of OSH Act, 1970
55. EU Strategic Framework on Health and safety at Work, 2014-2020
56. EU Strategic Framework on Health and safety at Work, 2014-2020
57. Alli, B. O. Fundamental Principles of Occupational Health and Safety 2nd Edition, Geneva, International Labour Organization Office, P.4
58. Alli, B. O. opt. cit. P.4
59. Ibid