

Chuku Princess Adaeze

## Safety, Health and Welfare of Nigerian Workers as Entrenched under the Factories Act of 2004

### Abstract

The Factories Act of 2004, the Employee Compensation Act of 2010, the Minerals Oil Safety Regulation of 1999 and the Harmful Waste Act of 2004 are pieces of legislation that included provisions for the safety, health and welfare of Nigerian workers beyond the Constitution of the Federal Republic of Nigeria 1999, and the Labour Act of 2004. This paper critically examined the extent to which these laws, with more emphases on the Factories Act of 2004 which made provisions for the safety, health and welfare of Nigerian workers and how the tenet of these laws has been enforced to reduce occurrence of accidents at workplace. This paper examined Part III of the Act, dealing with the training and guidance of naive workers, in that, no person shall be employed at any machine or in any process that is likely to cause injury, unless he has been trained by a more knowledgeable person about the dangers involved. Part III further states that factories shall provide a means of escape in case of fire, and all escape routes shall not be obstructed. Part IV addresses the welfare of persons employed, which includes the supply of clean drinking water, made available in containers, renewed daily, and suitable clean washing facilities.

The findings showed that, in spite of the provisions in the Factories Act as well as other extant laws stipulating how workers safety, health and welfare is to be catered for, the rate of accidents at workplaces is increasing. Meanwhile, the examined laws will still require further review to include some of the observations and suggestions made in this work. Also, the major challenges found to be associated with the effectiveness of the Factories Act in ensuring safety, health and workers was perceived to be that the institutional agencies were not doing enough to regularly engage firms by enforcing corrective and punitive measures to erring firms. Therefore, the study recommends a special task force be setup to ensure daily compliance, the Ministry should be called to order for failure of exerting corrective measures when necessary. Finally, labour unions, human right organizations and other non-governmental agencies should sensitize workers of their rights, privileges and protection stipulated by the law.

### Introduction

The Nigeria's Factories Act of 2004, the Employee Compensation Act of 2010, the Minerals Oil Safety Regulation of 1999 and the Harmful Waste Act of 1990 are pieces of legislation that included provisions for the safety, health and welfare of Nigerian workers beyond the Constitution of the Federal Republic of Nigeria 1999, and the Labour Act of 2004. Unfortunately, despite having this robust legal code, one still wonders why the rate of accidents in factories operating in Nigeria is on the rise.

Part V of the Act enumerates the measures to be taken to protect persons against the inhalation of the dust, fume or other impurities, and to prevent its accumulation in workrooms. Exhaust appliances are provided very close to where the dust, fume or other impurities originate from. This prevents it from polluting the air in

workrooms. Additionally, protective cloths and appliances such as gloves, footwear, goggles and head coverings are provided for workers who are exposed to wet, injurious substances.

Notwithstanding the above listed provisions of the law, there is still a consensus by various scholars that occupational health and safety is poor in Nigeria. For instance, a study of the extent of fatal injuries, and fatality rates from 1987 to 1996 of Nigerian factories by Ezenwa indicates that 3,183 injuries were reported of which 71 or 2.2% were fatal; the highest annual fatality rate of 5.41 in 1994; the lowest fatality rate of 0.94 in 1990 (Ezenwa, 2001).

Similarly, in another study carried out by Umeokafor, Allen and Umeadi (2014) on the pattern of occupational accidents, injuries, accidents causal factors and intervention in Nigerian factories between the period of 2002–2012, it was discovered that 80% of accidents occurred at night, manufacturers of rubber products accounted for the highest number of injuries at 53.8% and 63% for death, the total fatality rate was 49.5. Furthermore, fire resulted in 53% of the deaths, while management factors accounted for 91.3% of the remote accidents and 90% was due to deficiency in training.

The provisions stipulated in the Constitution and other acts regarding health, safety and welfare of workers in Nigeria do not capture every aspect relating to the protection of workers engaged by an employer or the regulatory agencies with the mandate of delivering oversight function and assigning punishment to defaulter are lacking greatly in the dispatch of their responsibilities.

Incidents of occupational health and safety at workplace should be supervised and documented by the regulating authorities so as to know how to make policies that will help to prevent further occurrence of accidents. All factories are expected to provide report of occupational accidents to the Federal Ministry of Labour and Productivity Inspectorate Division (FMLPID), which will enable the Ministry to enforce the Act, supervise and intervene whenever matters relating to occupational health, safety and welfare matters arises.

Therefore, this paper seeks to examine the extant laws and the function of institutions dealing with health, safety and welfare of workers in Nigeria in order to understand whether there exist lapses in the laws or the institutional agencies are lagging in their duties, identify their challenges then proffer some valuable recommendations as measures that will help in the reduction of occupational safety accidents.

## **Health, safety and welfare**

Safety is a state of being away from hazards caused by natural forces or human errors randomly (Nas, 2015). Safety is also said to be a state in which danger and conditions leading to physical, psychological or material harm are controlled in order to preserve the health and well-being of individuals and the community. Similarly, occupational safety and health is generally defined as the science of the anticipation, recognition, evaluation and control of hazards arising in the workplace that could impair the health and well-being of workers, taking into account the possible impact on the surrounding communities and the general environment.

In the view of the World Health Organization, the combination of health, safety and wellbeing is explained to be “a state of complete physical, mental and social

well-being and not merely the absence of disease or infirmity". This means that an employee who is employed by an organization should have evidence of wholeness in his health status irrespective of the nature, magnitude of his assigned job.

### **Health and safety at work: A basic right of the workforce**

According to Section 17 (3) (a) of the Constitution of the Federal Republic of Nigeria 1999, it is the right of every Nigerian to be gainfully employed in order to cater for himself. Therefore, the employer should rather see the engagement of an employee from a mutual benefit perspective in order to ensure a healthy employer/employee relationship at the workplace. Furthermore, Section 17 (3) (b) (c) stipulated that the right and work condition in which an employee will be engaged with should be 'just' and 'humane', with the health, safety and welfare of all persons in employment safeguarded.

Falana (2010) therefore opined that fundamental rights are generally regarded as those aspects of human rights which have been recognized and entrenched in the constitution of any country, hence, employers should ensure that, machinery and equipment are safe and without risk to health.

Anyakwe's (1997) assertion was that human rights are founded in a single demand, which is, that respect is shown for human dignity under any circumstance and this is explicitly stipulated in Section 17 (2) (b) of the 1999 Constitution, that the sanctity of an individual shall be acknowledged with the maintenance of human dignity. The ILO (n. d.) acknowledges the dignity of the individual and developed treaties tagged with labour codes based on the respect for the dignity of labour, which is the right to health and safety at workplace and the most paramount to this paper.

In fairness to the legislative arm of the Federation, Nigeria has formulated laws aimed at ensuring the protection of the rights of workers starting with Section 17 (3) (b) (c) of the 1999 Constitution which stipulates that an employer is expected to provide a safe working environment, equipment and procedure that is devoid of risk to the employees' wellbeing. Similarly, where an employee perceives a workplace to be dangerous to his health, he has the right to discontinue with such an engagement.

Furthermore, there are other laws promulgated to provide protection for the workers' health and safety, which include:

#### *Factories Act 2004*

This act is the primary legislation for the protection of the safety, health and welfare of workers. It provides for the health, safety and welfare of the workers exposed to occupational hazards by taking measures to prevent accidents and injuries. The Act includes the following:

- Part II which includes issues such as cleanliness, overcrowding, ventilation, lighting, drainage, sanitary conveniences and the duty of inspectors as to sanitary defects;
- Part III comprises of general safety provisions for workers working with machines and other equipment;
- Part V deals with special provisions and regulations on health, safety and welfare;

- Part VI provides for notification, investigation of accidents and industrial diseases;
- Part X states provisions that deal with offences, penalties and legal proceedings.

Specifically, with reference to Part III of the Factory Act 2004, which comprise Sections 14 – 39, the regulation stipulated safety precautions that must be adhered to regarding the interaction between employees and work facilities. These areas require keen attention in ensuring employer's compliance, because every work process require certain degree of mastery before attaining a given level of efficiency. Additionally, it is worthy of note that attainment of mastery in the use of certain work facility does not guarantee absolute exoneration of injury at work place. So employers should give routine updates of risk prone work facilities to their employees to reduce hazard that might occur by common avoidable mistakes.

Employers should provide fire extinguishers and fire alarms at strategic locations and train personnel on how to fight fire incidents in case of eventuality.

Unfortunately, as good as Part IV of the Factories Act appear, they are insufficient as there is no provision compelling employers to make full medical insurance available to workers. Employers should be made to provide different degrees of HMOs covering workers as this is in accordance with Section 17 (3) (d) of the 1999 Constitution which states that the employer must provide adequate medical and health facilities to her employees.

Furthermore, Sections 51, 52 and 53 (Part VI) of the Factories Act, stipulate that employers should notify institutional agency of accidents within a period of three days from the day of occurrence. And any employer who fails to report an accident under this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding N1000. This fine is grossly inadequate because it reduces the value of the employee whose life is at the frontline. This implies that a firm with worrisome incident might deliberately flout these laws because the consequence of violation is trivial. This fine should be repealed with a greater penalty capable of discouraging trivial handling of accidents at workplace.

### *Employee Compensation Act 2010*

This Act was enacted to address the patent errors, loopholes and some other area not covered and repeals the Workmen Compensation Act of 2004.

The Act provides a shield and guides the employees who suffer from occupational diseases or sustain injuries arising from accidents at the workplace or in the course of discharging their duties in the workplace or off workplace but sent by the employer. This Act applies to all employers and employees in the public and private sectors in the Federal Republic of Nigeria.

This Act was enacted to equip the employee with a fair and guaranteed compensation for them or their dependent in case of any bad occurrence that may occur during the course of discharging their duties. It also caters for rehabilitation of workers when they encounter work-related disabilities. It establishes and maintains a solvent compensation fund which is done in the employees' interest.

### *Minerals Oil Safety Regulation 1997*

This is another health and safety regulation enacted by the Ministry of Petroleum Resources through the power vested on it by Section 9 of the Petroleum Act. The regulation stipulates that employers in the oil and gas industries are to ensure that safety equipments are provided for workers. The regulation further stated that failure to comply with any aspect of the regulation is guilty and liable of being convicted to a fine of not more than N250,000 or not more than 5 years in imprisonment or both.

### *Harmful Waste Act 2004*

The Law prohibits all transaction of harmful waste, except such transaction is done with a legitimate authority.

## **Issues and challenges**

This work intends to look at the challenges that factories are facing to ensure that the health safety and welfare of their workers are guaranteed. Amongst them are:

1. **Lack of proper supervision.** The Factories Act of 2004 mandated all factories to provide report of occupational accidents to the Federal Ministry of Labour and Productivity Inspectorate Division (FMLPID). According to Umeokafor et al. (2013), records provided to the ministry are not followed up for further analysis which can help to understand work processes in each firm, thereby making it easy for them to take requisite actions that will help forestall such.
2. **Lack of punitive actions on defaulters.** The fact that the occurrence of accidents, according to Ezenwa (2001) and Umeokafor, Allen and Umeadi (2014) findings, is on the increase is an indication that defaulting employers are not punished appropriately to serve as a deterrent to others.
3. **Limited job opportunities.** The labour supply in Nigeria is geometrically greater than the jobs available to absorb them all and this has empowered employers to disregard abiding by the tenet of the laws. On the other hand, because of insufficient jobs, employees compromise demanding for their full rights according to the law in order to secure the job at hand. This has resulted in making workers unable to form or sustain a union within an organization.
4. **Lack of employee's awareness of their rights and privileges.** Most workers are ignorant of the dictates stipulated in the Labour law and are not conversant with the provisions of the constitution of the Federal Republic of Nigeria, let alone the Acts available for safety, health and welfare of workers. This makes employers get away with certain actions that could have been compensated for if brought before a court of competent jurisdiction.

## **Conclusion**

In conclusion, the following recommendations can be made:

- A special task force be enacted to record, investigate, analyze, interpret safety and health accident report from firms, then provide their result and the actions to the company to respond accordingly within a time frame upon which they are expected to either compensate or penalized and correct the error form reoccurring.
- The Ministry of Labour should be called to order if it fails to punish offenders where an accident happens due to negligence or violation of the law by a firm, especially when it leads to injury or loss of life.
- The Federal Government through the Ministry of Labour and Productivity, Ministry of Youth Affairs and other intervention agencies should develop programmes that promote and increase the discovering, harnessing, sponsoring and mentoring of entrepreneurs with innovative ideas to create jobs so as to help workers from being exploited because of the availability of fewer jobs.
- Labour unions, human right organizations and other non-governmental agencies should sensitize workers of their rights, privileges and protection as stipulated by the law.

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Ms. Chuku Princess Adaeze, Lecturer, Rivers State University, Port Harcourt, Nigeria