A COMPARATIVE ANALYSIS OF THE HEALTH AND SAFETY LAWS IN NIGERIA AND OTHER SELECTED JURISDICTIONS[1]

Abstract

The purpose of this paper is to provide legal perspectives on health and safety standards vis-à-vis Nigerian laws. The paper also compares the current health and safety practices in Nigeria with other selected countries who have established legislations on health and safety measures within their jurisdictions, especially the United States of America, the United Kingdom and the European Union (EU). The research finds that although Nigeria and the United States of America have well-defined and established laws including the systems for the protection and the safety of the employees, however, the enforcement mechanisms of both countries do not serve as a sufficient deterrence for those who violate the laws. The significance of this study is hinged on its ability to provide valid recommendations that are relevant to occupational safety and health standards in Nigeria. This remains a necessity given the observations that occupational safety and health measures are inadequate due to a variety of structural issues such as weak enforcement mechanisms, lack of skilled manpower including ineffective penalties among others. While non-deterrent fines and standard adoption are problematic in the United States, in the EU, implementing the law has been a challenge due to issue on work-related diseases. This is further compounded by emerging risks, issues related to technologies including demographic changes. The paper concludes with suggestions and recommendations for better occupational safety and health management practices in the Nigeria and other selected jurisdictions. The paper adopts a doctrinal research methodology in the analysis.

Key Words: Health and Safety, Laws, Comparative analysis, Nigeria, Selected jurisdictions

1. Introduction

The success of governments or organizations depends on employees' ability to perform effectively, efficiently, and competently at work. This is true for both the private and public sector organizations as well as for the government. Within its *corpus juris*, certain countries, such as Nigeria, have included provisions for the safety and protection of workers. In addition, businesses have always been required to provide for their workers in a reasonable manner in both common and civil jurisdictions. It is crucial to note that:

> The employee's safety at work is generally guaranteed by the imposition of certain duties on the employer. These duties may be

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> fixed by the contract itself expressly or implied by, and, or, imposed by statutes as the case may be.[2]

The common law requires the employer to treat the employee fairly and to take reasonable steps to keep such a person safe from harm.[3] The fundamental mechanisms of the employees' protection from harm as provided by the employer are:

i. Safe working conditions in the place of employment (work structures must be in good condition, maintenance of buildings, and equipment);
ii. Good lightning, workstation, and seating arrangement that are specifically designed for the comfort and safety of the employee;
iii. Environmental cleanliness;
iv. Adherence to hygienic practices; and
v. Working conditions supported by safety practices and provisions of at least basic levels of comforts. [4]

This aforementioned legal obligation under the common law can be summed up as the employer's responsibility to provide suitable and safe workplace equipment, a safe work environment with sufficient supervision and guidance, and a safe working environment.[5] The objective standard for determining whether an employer's duty of care is reasonable is based on the probability of an injury, the severity of the injury, the obviousness of the hazard, the cost of safety, and the inherent risk element in the work process.[6]

It must be noted that the International Labour Organization (ILO) has worked to promote occupational safety and health since its inception in 1919 through its conventions (treaties), international labour standards and codes of practice, provision of technical advice, recommendations, and information dissemination.[7] This is especially due to the socio-economic importance of health and safety at the workplace.[8] While standards and codes are only non-binding provisions on international and municipal labour practices, however, treaties put specific legal responsibilities on member nations that sign the conventions.[9]

2 I Worugji, Introduction to Individual Employment Law in Nigeria (Calabar: Adorable Press 1999) 5.
3 B Anyatang and BE Kooffreh, 'Health and safety under Nigerian laws: A comparative analysis' (2020 6(4) *International Journal of Law* 246-252
4 *Ibid*
5 *Wilson Clyde Coal Co. Ltd v. English* (1938) AC 57.
6 *Paris v. Stepney Borough Council* (1951) 1 All ER 42.
7ILO, *Workmen Compensation (Accidents) Convention*, (1925) Available at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO ::P12100_ILO_CODE:C017> Accessed 4 August 2024.
8 *Ibid*
9 G Idoro, 'Comparing Occupational Health and Safety (OHS) Management Efforts and Performance of Nigerian Construction Contractors' (2011) 16(2) *Journal of Construction in Developing Countries* 151 – 173.

Beyond this introduction, part two clarifies the conceptual framework. Part three reviews the occupational safety and health laws in Nigeria. It further discusses the challenges militating against the OSH laws in Nigeria where enforcement limitations are clearly identified. Part four examines the global instruments on the OSH laws. Part five reviews the OSH legal regimes in selected jurisdictions of the US, the UK and the EU in comparison with the Nigerian regimes. The last part is the conclusion which provides the ways forward.

2.1 Conceptual clarifications

Occupational health refers to preventive and curative medicine that addresses all facets of health as well as workplace safety with the primary goal of preventing hazards.[10] Occupational health in the workplace aims to prevent impairments, promote health, identify problems early, treat them specifically, and facilitate rehabilitation through the use of epidemiological methods, health screening, statistical analyses, and health education.[11] The goal is to maintain the highest level of physical, mental, and social well-being for workers in all occupations.[12] Maintaining a healthy workplace is always necessary to support employees' overall health and well-being.[13] Compensation and remuneration affect employees' performance regardless of workplace risks and hazards. Rather than focusing on treating symptoms, occupational health emphasizes prevention to create safe and healthy work environments in businesses, which promotes the health and happiness of the workforce.[14]

Numerous theories have been proposed to explain occupational health in industrial environments. Understanding the ideas of how and why labour remains vital in solving various problems is aided by the labour exploitation hypothesis on occupational health.[15] The notion of compensating salary differences (CWDs) clarifies the subtleties of salary on an individual's occupational health in a comparable setting.[16] Moreover, the idea of how risk is distributed in labour markets is explained by the type of work and variables affecting workplace conditions for occupational safety.[17]

2:1:1 ***Labour exploitation theory on occupational health***

Karl Marx conceptualized the notion of unequal distribution of income among workers as the root cause of labour exploitation.[18] The exploitation stems from the unequal power dynamics that

[10] P Dehury and A Kumar, 'Reciprocal Relations between Work and Health: A Theoretical Understanding from the History of Occupational Health and Behaviour' (2019) 13(8) *Journal of Clinical and Diagnostic Research*
[11] *Ibid*
[12] B Alli, *Fundamental principles of occupational health and safety* (2nd edn: Geneva: ILO 2008) Chapt 1
[13] *Ibid*
[14] *Ibid*
[15] AK Mandal, 'Strategies and policies deteriorate occupational health situation in India: A review based on social determinant framework' (2009) 13 (3) *Indian Journal of Occupational and Environmental Medicine* 1
[16] *Ibid*
[17] *Ibid*
[18] MJ Smith and DB Beringer, 'Human factors in occupational injury evaluation and control' in G. Salvendy (Ed.) *Handbook on human factors* (Oxford, England: John Wiley & Sons, 1987) pp. 767-789

exist between the employer and an employee.[19]Thus, employers exploit their position to take undue advantage of their workers in an unethical and unjust way.[20]Given the employer's authority and the employee's lesser status, the power dynamic is more prominent.[21] Additionally, employers belong to the upper strata of society with the ownership of productive assets which dominate on the working class. This theory argues that workers cannot transfer wealth or enjoy the fruits of their labour. This theoretical perception demonstrates how the working class is utilised as labour force, regardless of benefits to their health and safety. In the contemporary context, there is a significant degree of exploitation experienced by workers.[22] The whole idea of this theory is that workplace health risks among the working-class people are largely caused by labour exploitation.

2.1.2 *Theory of Compensating Wage Differences (CWDs)*

Adam Smith advanced a theory linking CWDs to the occupational health of workers.[23] This theory holds that there is an unequal wage distribution in the labour market because the market offers wage premiums to the working population.[24] Thus, the greatest compensation package draws in workers, who then repress their choice for a job without any safety precautions at work.[25] Inadequate work environments and limited multitasking skills lead to higher workplace health expenses. Under this theory, the value of life has not received much attention because workers are just thinking about their salaries.[26] In view of this, employment with a greater risk of both fatal and non-fatal workplace accidents is more likely to be accepted as long as there is money.[27] Numerous studies revealed that among those receiving greater wages within the same occupation were those with jobs linked to hazardous working conditions and a higher risk of death.[28] CWD has been shown in numerous studies to have a positive and statistically significant correlation with fatal injuries.[29] Even though they are employed in the same industry or have similar jobs, people who multi-task at work are more likely to face health risks related to their professions.[30] Evidence has shown that income is a significant factor influencing the occupational health of those in the higher risk category for occupational health hazards, and this theory can be used to identify these individuals.

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[19] *Ibid*
[20] GA Cohen, 'The labour theory of value and the concept of exploitation' (1979) *Philosophy & Public Affairs* 338-60
[21] *Ibid*
[22] *Ibid*
[23] Adams Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776)
[24] *Ibid*
[25] *Ibid*
[26] *Ibid*
[27] A Marin and G Psacharopoulos, 'The reward for risk in the labor market: evidence from the United Kingdom and reconciliation with other studies' (1982) 90(4) *Journal of Political Economy* 827-53.
[28] R McNabb, 'Compensating wage differentials: Some evidence for Britain' (1989) 41(1) *Oxford Economic Papers* 327-38.
[29] VK Viscusi, 'The value of risks to life and health' (1999) 31(4) *Journal of Economic Literature* 1875-911.
[30] *Ibid*

2.1.3 *Distribution of risk in job markets*

This theory describes the distribution of occupational risk using social stratification of workers as a basis.[31] Without receiving any safety training, workers from lower socio-economic classes and with less education are assigned to handle hazardous jobs.[32] This method also supports the occupational group that bears the same risk when it comes to the allocation of public benefits and compensation.[33]As a result, these employees have a greater rate of workplace accidents and illnesses.[34]

2.1.4 *Contextual and Environmental Model*

This model demonstrates how a person's beliefs, attitude, and expectations are influenced by different health risks and hazards.[35]For improvement, consideration is given to the social or environmental aspects.[36] According to this postulation, the primary element influencing employees' health-related behaviour is their environment.[37]

The theories examined above provide a reasonable knowledge of occupational health in the context of vulnerable industrial workers, where factors like salary, work conditions, position, human behaviour, environment, and access to healthcare are significant determining factors.[38]Evidence and opportunities for investigating occupational health in various industrial settings are offered by the theories.[39] Analyzing the hazard at workplace environment has become less problematic given the various theoretical postulations of occupational health. Each theory offers suggestions for aiding in the study of different areas. This domain is necessarily vast, encompassing a large number of disciplines and numerous workplace including environmental hazards.[40]A wide range of structures, skills, knowledge and analytical capacities are needed to co-ordinate and implement all of the 'building blocks' that make up national OSH systems so that protection is extended to both workers and the environment.[41]

The scope of occupational safety and health has evolved gradually and continuously in response to social, political, technological and economic changes.[42]In recent years, globalization of the world's economies and its repercussions have been perceived as the greatest force for change in the world of work, and consequently in the scope of occupational safety and health, in both positive and negative ways. Similarly, significant advancements in communication and transportation, as well as the deregulation of global trade, have changed job patterns and

[31] J Henderson, 'What should be done about occupational accidents and diseases?'(1983) 12(1) *International Journal of Epidemiology* 77-83
[32] *Ibid*
[33] ND Weinstein, 'Testing four competing theories of health-protective behaviour' (1993) 12(4) *Health Psychology* 324
[34] *Ibid*
[35] *Ibid*
[36] *Ibid*
[37] RW Rogers, 'Cognitive and psychological processes in fear appeals and attitude change: A revised theory of protection motivation' (1983*) Social Psychophysiology* 153-76
[38] *Ibid*
[39] *Ibid*
[40] *Ibid*
[41] De Joy and DJ Southern, 'An integrative perspective on work-site health promotion' (1993) 35(12) *Journal of Occupational Medicine* 1221-30
[42] *Ibid*

organizational practices. The different employment patterns of men and women, and the size, structure and life cycles of enterprises including new technologies can all generate new types and patterns of hazards, exposures and risks.[43] Demographic changes and population movements, including the consequent pressures on the global environment, can also affect safety and health in the world of work.

3.1 Regimes for Occupational Safety and Health in Nigeria

3.1.1 *Constitution of Federal Republic of Nigeria 1999*

Section 17(3) (c) of the 1999 Constitution (as amended) provides that 'the health, safety, and welfare of all persons in employment are safeguarded and not endangered or abused.' The clause is included on Chapter II of the Constitution, which is dedicated to outlining the fundamental objectives and guiding principles of State policy. However, the issue with the proviso is that it lacks legal justiciability because it was only incorporated into the Constitution to support Nigeria's social order. Nevertheless, this proviso supports and upholds the fundamental right to life of Nigerian employees as stated in Section 33(1) of the 1999 Constitution.

3.1.2 *Factory Act 2004*

The Factories Act[44] and its Regulations, the Employees' Compensation Act,[45] and other laws have all been passed by Nigeria to improve health and safety of employees and workmen at work. The laws were passed with the intention of promoting and enforcing the ILO Occupational Safety and Health (OSH) Principles, which state that all workers have rights, that governments and organizations are responsible for establishing work-related safety and health standards.[46] It further stipulates that preventative as well as protective measures for work-related safety and health must be part of the national system, and that such measures should be available across the country.[47] There are 89 sections and eleven parts that constitute the Factories Act.[48]The Act mandates owners of both new and existing factories to register them with the Director of Factories within one month of the Act's implementation for new factories.[49] It also requires at least six months before the start of the concrete erection of a building or other structure intended to be used as an industrial unit.[50] Non-compliance carries a fine of N2000 or a twelve-month jail sentence.[51]Parts II to V of the Act address issues affecting cleanliness, prohibiting overcrowding, prescribing adequate ventilation, sufficient and suitable lighting, drainage of wet floors,

[43] *Ibid*
[44] Cap F. LFN 2004.
[45] Cap W6 LFN 2004.
[46] ILO, *Factories (Woodwork Machinery) Regulations* (1987) at: <https://www.ilo.org> (Accessed 4 September 2024 2024.)
[47] P. Kalejaiye, 'Occupational Health and Safety: Issues, Challenges and Compensation in Nigeria' (2013) 1 (2) *Peak Journal of Public Health and Management* 16 – 23.
[48] Part I (Sections 1-6) governs the registration of factories, while Parts II (Sections 7-13), III (Sections 14-39), IV (Sections 41-44), V (Sections 45-50), and VI (Sections 51-53) govern health, safety (general provisions), welfare, and notification and investigation of accidents and industrial diseases.
[49] Sections 2(1) and 3(1) and (2) of the Factories Act.
[50] *Ibid*
[51] *Ibid*

providing sufficient and suitable conveniences.[52]Others include the activities of sanitary inspectors, safe prime movers, fencing of transmission machinery, building and maintaining other machinery and appliances, vessels containing dangerous liquids, training and supervising inexperienced workers, safe means of access, and among others. [53]

According to the Act, 'every factory shall be kept in a clean state, and free from effluvia arising from any drain, sanitary convenience or nuisance…'.[54] The accumulations of dirt and refuse should be removed daily by a suitable method from the floors and benches of workrooms including the staircases and passages.[55] The Act prohibits overcrowding because it jeopardises the safety of those working in the factory.[56] No workroom in the plant may be lower than nine feet, measured from the base to the bottom of the roof material.[57] A factory must have sufficient and appropriate natural or artificial lighting,[58] as well as proper ventilation in every room in the area.[59]All prime movers[60] and transmission equipment must be securely gated to ensure employee safety.[61]Occupants of factories are required to properly maintain all flooring, staircases, walkways, and other parts of their buildings used as factories.[62] Moreover, 'building plans and such other documents as the Director of Factories may require shall be submitted to him for approval not less than six months before the commencement of construction of the factories.' [63] For every 150 workers, a factory must provide and maintain a first-aid box or closet that meets the required level.[64] This is necessary to occupational health and safety of the workers.

Furthermore, every factory owner in Nigeria is required to report any industrial accidents that may result in worker's fatalities[65] and industrial diseases[66] to the closest inspector if he has reasonable grounds for suspecting or believing that a work-related disease incident occurred in the industrial unit. Arguably, this proviso provides the owner of a factory too much discretion to decide to conceal some incidences of occupational illnesses. A fine of up to ₦1, 000 is imposed for failure to notify workplace accidents. With the assistance of a Police Officer[67] and in front of a Magistrate's Court,[68] an Inspector has the legal authority to detain and prosecute defaulting factory occupiers.

[52] *Ibid, ss 7-53*
[53] *Ibid*
[54] Ibid, Section 7(1).
[55] Section 7(1)(a).
[56] Section 8(1).
[57] Section 8(1)(3).
[58] Section 10.
[59] Section 9.
[60] Section 14.
[61] Section 15.
[62] Section 28.
[63] Section 28(1).
[64] Section 43(1) and (2).
[65] Section 51.
[66] Section 53.
[67] Section 65.
[68] Section 66.

3.1.3 *Employees Compensation Act (ECA) 2010*

The Act primarily comprises compensating provisions for those harmed in workplace accidents and illnesses. The Act contains eleven components that address issues on compensation.[69]It applies to all employers and employees in the public and private sectors,[70] with the exception of members of the Nigerian Armed Forces and civilians who work for the Armed Forces. [71]
The main aims of the ECA are to:

> provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants 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 of 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.[72]

The Nigeria Social Insurance Trust Fund Management Board is established by the ECA.[73] The Board administers the Act and makes other regulations regarding occupational injuries and scale of compensation therewith.[74]As part of the procedures for submitting claims for industrial accidents and occupational diseases, employee notice of the workplace where the harm happened or the occupational illness occurred must be given to managers, supervisors, first-aiders, and agents-in-charge within 14 days.[75] The employee's reporting of his/her accident or occupational injury must include his/her name, the date and place of the incident, as well as, if known, the ordinary terms used to describe the condition or harm.[76]

Unless the employer or his/her representative had knowledge of the information, the employer has not been prejudiced, or the Board considers that the interest of justice requires that the claim be allowed.[77] The employee's failure to disclose information about the injury or occupational

[69] Part III of ECA 2010 (Sections 7-16) are on compensation for death, injury, or disease while the scale of compensation in Part IV (Sections 17-30) are on health and safety
[70] Section 2(1).
[71] Section 3.
[72] Section 1(a-f).
[73] Section 31.
[74] Section 56.
[75] Section 4(1).
[76] Section 4(1) (a-c).
[77] Section 4(4) (a-c).

illness constitutes a bar to his claim for compensation.[78] The Act provides that the employer is required to notify the Board of any occupational disease or injury that affects an employee while they are working within seven days of the emergence of the condition.[79] The Board has the authority to establish guidelines for filing claims for compensation under the Act.[80] Compensation is calculated and paid for accidents, occupational illnesses, death, and even mental stress brought on by the employer changing the employee's job.[81] Others include organizational working conditions that unfairly exceed the workability and competence of the worker which result in psychological stress to the worker.[82]

The employee is entitled to legal recourse[83] or to make a claim for compensation for the injury, disability, disease, or death within six months whether personally or through a dependant (if the employee is deceased).[84]Only immediate family members are eligible for the graduated compensation scale outlined in Section 17 of the Act.[85] Compensations are made in the form of periodic payments equal to 90% of the worker's salary who is under fifty-five years old at the time of harm, bereavement, or disability, as well as monthly payments for the beneficiary's lifetime as specified by the Act.[86] Similarly, compensation in the case of a worker's death and payments in the event of a worker's permanent impairment or disability, whether entire or partial can further be made.[87] The affected parties must appeal any decision made by the Board to the National Industrial Court (NIC) in the end.[88] Any violation of the provision of the Act for which there is no specific punishment will result in a fine of ₦20,000 or, in the case of a first violation, a term of imprisonment of no more than a year and ₦100,000 in the case of a second violation, or both of these penalties.[89]

The main legal regimes on occupational safety and health (OSH) in Nigeria are the Nigerian Factories Act,[90] including its regulations and the Employees Compensation Act 2010 (ECA) and the accompanying regulations which have been discussed. Other regimes on safety and environmental protections generally are outside the scope of this paper.[91]

[78] Section 4(4).
[79] Section 5(1) and (2).
[80] Section 5(8).
[81] *Ibid*
[82] Section 8(1) and (2).
[83] Section 12(1).
[84] Section 12(3).
[85] Section 17(1)(f)(ii).
[86] Section 19.
[87] Section 23.
[88] Section 55(1) and (4).
[89] Section 71(1).
[90] Cap, F.I. L.F.N., 2004.
[91]These include: laws relating to the Lagos State Safety Commission Law, 2011; the Nigerian Basic Ionising Radiation Regulations, 2003; and the Nigerian Radiation Safety in Nuclear Medicine Regulations, 2006 (which, to a certain extent, governs medical practice in Nigeria). Additionally, there are laws pertaining to radiation safety, primarily focused on environmental protection, such as the Mineral Oils (Safety) Regulations of 1962, the Petroleum (Drilling and Petroleum) Regulations of 1969, and the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act of 2007.

3.2 Enforcement Challenges on Nigerian Safety and Health Regimes

While the statutory environment for occupational safety and health matter in Nigeria seems reassuring due to the avalanche of legislations governing the area, nevertheless, the area is still handicapped by the little or non-enforcement of these laws.[92] The Nigerian occupational safety and health mechanisms are utterly broken and scarcely enforced due to the drawbacks in the enforcement regimes.[93] Essentially, the development and growth of occupational safety and health environment have been hampered.[94] It is important to note that the implementation of the occupational safety and health scheme in Nigeria has become and continues to be fraught with the following issues:

a. Excessive number of laws with the resulting overlap of institutional responsibilities;
b. The enforcement authority's ineffective influence, such as the Federal Ministry of Labour and Employment;
c. The method of implementation (reactive rather than the proactive and collective participatory approach);
d. A lack of skilled manpower; and
e. A lack of political will.[95]

Nigeria is plagued by an excessive number of occupational safety and health laws, with a sizeable number of these laws being outdated and need to be reviewed. There remain conflicts among the enforcement agencies due to the overlap in the duties that they perform under the various laws.[96] The reactive strategy of these employers is akin to reactionary measure given that factory owners always wait until the appointed time for inspectors to visit their production sites and find their infractions before they take the required actions to abide by the applicable laws and regulations.[97] Arguably, this strategy is just remedial in nature given that it does not involve participation; as a result, it can result in delays, which frequently cause harm, illness, and even fatalities among the employees in the organizations. As a result, it defies the goals of Nigeria's occupational safety and health laws, which are designed to reduce the risk of accidents, injuries, and fatalities.

Furthermore, the laws governing occupational safety and health matters in Nigeria are bereft of enforcement agencies with adequate powers, functions, and skilled staff. For instance, the National Agency for Food and Drug Administration (NAFDAC), the agency statutorily saddled with the responsibility of enforcing the occupational safety and health laws in Nigeria is not statutorily empowered with adequate enforcement personnel or specialists in occupational health

[92] N Umeokafor, 'Why Copied or Transposed Safety, Health and Well-being Legislation and Standards are Impracticable and Irrelevant' in Qudus Olawepo, Mariam Seedat-Kahn & Stanley Ehiane, *Developing Economies* (Policy and Practice in Health and Safety, 2020) 18,
[93] *Ibid*
[94] *Ibid*
[95] Brian, Anyatang and BE Kooffreh, 'Health and Safety under Nigerian Laws: A Comparative Analysis' (2020) 6(4) *International Journal of Law* 249.
[96] *Ibid*
[97] *Ibid.*

services.[98] Also, precedents have indicated that the government of Nigeria lacks the political will to ensure that occupational safety and health laws including regulations are enforced.[99] Influential politicians also have negative impacts on law enforcement agents when violations affect their family members, or friends. It is also observed that the legal sanctions as provided by the Nigerian laws are minimal and dismissive. For example, the Employee's Compensation Act 2010 specifies a penalty of ₦100, 000 and ₦1, 000,000 for violations of the Act by natural individuals and legal entities,[100] with the option of a one-year prison sentence as a substitute.[101]

These sanctions are ineffective and feeble. The funding and resources available to the enforcement agencies prevent them from acquiring the specialised tools needed to conduct routine inspections. Similarly, Nigeria does not have an online, nationally integrated OSH reporting system in place.[102] Although the Factories Act makes reporting of accidents mandatory, however, evidence indicates that the provision is disregarded, as a result, industrial accident data are mostly under-reported at various sub-national level.[103]

4.1 Global Instruments on Safety and Health Laws

As a member of international community, Nigeria has been engaged in domesticating ILO Conventions on occupational safety and health, including:

- Conventions 155,[104]
- Convention 032,[105] ; and
- Convention 019.[106]

The country has also domesticated a number of ILO Conventions that deal with working conditions, including:

- Convention 081,[107]
- Convention 144,[108]
- Convention 011 Right of Association (Agriculture) 1921,

[98] VV Kakwagh, 'Occupational Health Hazards of Women Farmers in Ankpa Local Government Area of Kogi State – Nigeria' (2020) 17(1) *Bangladesh Sociological Society* 197 – 208.
[99] *Ibid*
[100] ECA 2010, Sections 14(2)(a), 3(a) and 39(4).
[101] The two central bodies that enforce OSH regulations in Nigeria are the factory inspectorate in the Ministry of Labour and Employment and the Nigeria Social Insurance Trust Fund (NSITF). The factors that contribute to weak regulation of OSH include: 'social-cultural, socio-economic, institutional/legal and organisational issues. Other issues that contribute to weak enforcement of OSH regulations in Nigeria include inadequate factory inspectors, political interference in OSH regulations, slow judicial processes, prevalent corruption and bribery in the country, insufficient government funding, inadequate legislation, insufficient government commitment, general insecurity in the country, lack of a national OSH information system, rapid technological and economic growth, and a culture of poor safety. See U Abubakar, 'An Overview of the Occupational Safety and Health Systems of Nigeria, UK, USA, Australia and China: Nigeria being the Reference Case study' (2015) 3 (11) *American Journal of Education Research* 1350 – 1358.
[102] *Ibid*
[103] *Ibid*
[104] Occupational Safety and Health, 1981, ratified in 1994.
[105] Protection against Accidents (Dockers), 1932.
106 Equality of Treatment (Accidents Compensation), 1925.
107 Labour Inspection Convention, 1947.
108 Tripartite Consultation (International Labour).

- Convention 026 (Minimum Wage – Fixing Machinery) 1928,
- 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.

The key Occupational Safety and Health Statutes and other relevant laws and regulations listed in the preceding paragraphs can be argued to expressly permit the domestication of these conventions.[109] In accordance with numerous rules, Nigeria has also adopted ILO Technical

Standards.[110] However, the country has not authorised any occupational safety, and health codes of practice other than those that are sector-based, nor has the country implemented an occupational, safety, and health management system as prescribed by ILO guidelines for member states. These inadequacies in the implementation process continue to negatively affect the overall OSH standard in Nigeria.

4.2 Regimes in Occupational Safety and Health in the United States of America (USA)

4.2.1 *Occupational Safety and Health (OSH) Act 1970*

The first significant piece of law shielding American workers against injury, disease, and death at work is the Occupational Safety and Health (OSH) Act.[111]Thus, the high incidence of employee injury, illness, and bereavement in the USA led to the creation of the OSH Act in 1970. Its provisions include embracing and enforcing National Occupational Safety and Health Administration (OSHA), following a line of investigation, proposal, and regulation by the National Institute for Occupational Safety and Health (NIOSH).[112] The Labour Secretary is saddled with the statutory responsibility for the enforcement of the OSH Act.[113] The Secretary is also responsible for overseeing both NIOSH and OSHA.[114]

The construction, mining, agriculture, and manufacturing industries - which are the most hazardous – are among those covered by the USA's Occupational Safety and Health Scheme. NIOSH is mandated by law to conduct research on both established and emerging workplace hazards in these areas.[115] Following investigation, the agency provides OSHA with authoritative advice on the best ways to safeguard employees from a variety of physical, biological, and chemical hazards, including crystalline, silica, asbestos, diacetyl, and beryllium.[116] In addition to

109 U Umeokafor, K, Evangelinos and A. Windapo, 'Strategies for Improving Complex Construction Health and Safety Regulatory Environments' (2020) 30 *International Journal of Construction Management* 1 – 12.
110 *Ibid*
111 OSH Act, 1970.
112 Section 22 of OSH Act, 1970.
113 *Ibid*
114 Ibid.
115 Umeokafor (n 108)
116 Anyatang and Kooffreh (n 94) at 250.

job organisation, workplace cruelty, and nanotechnology as an emerging danger, it also performs research in these aforementioned areas.[117]

In accordance with the Energy Employees Occupational Illness Compensation Act of 2000, NIOSH certifies industrial personal protective equipment and performs individual emission dose reconstructions for current and former atomic employees. According to the OSH Act of 1970, OSHA is mandated by law to set occupational safety and health standards for the nation.[118] OSHA has enacted standards for several industries, including management safety and health on injury and illness prevention, occupational silica, crystalline, beryllium, communicable illnesses, and burnable dust.[119]

OSHA enforces standards through helping employers adhere to laws and regulations protecting employees and enforcing penalties against them for non-compliance. OSHA enforces rules for scaffolding, fall safety, risk assessments, respiratory protection, risk assessments, lockout/tagout procedures, electrical system techniques, powered industrial trucks, stepladders, all-purpose electrical needs and device guarding.[120] Nevertheless, the robustness and adequacy of the aforementioned is subject of public debate amongst the American public. However, in 2010, OSHA introduced the Severe Violator Enforcement Programme (SVEP) as mechanism for amplifying the penalties against erring employers.[121] The maximum fine for intentional infractions is $70,000, while the penalty for serious violations that can result in death or serious physical harm is $7,000.[122]

Notwithstanding the aforementioned fines, the American public still considers them as being insufficient from deterring the employers' violations.[123] Through NIOSH and OSHA, the US government offers support to both employees and businesses. NIOSH assesses health threats while OSHA offers advisory services. NIOSH's suggestions focus majorly in lowering risks and preventing occupational diseases. While the vantage contribution of NIOSH and OSHA to the safety and health of employees in America is well-acknowledged, the commitment to enforcement and the adequacy of its penalties have been questioned. Such is a direct comparison to the issues that have also plagued the growth and development of this area of law in the Nigerian jurisprudence.

4. 3 The UK Approach on Occupational Safety and Health Laws

The Health and Safety at Work Act 1974 is an Act of Parliament that sets out the framework for managing workplace health and safety in the UK. The Act defines the general duties of everyone including the employers, employees to owners, managers and maintainers of work premises for

[117] *Ibid*
[118] Section 17 of the OSH Act, 1970.
[119] Anyatang and Kooffreh (n 94) at 250
[120] *Ibid*
[121] *Ibid.*
[122] Section 17 of the OSH Act, 1970.
[123] Anyatang and Kooffreh (n 94) at 249.

ensuring health and safety within most workplaces.[124] The Health and Safety at Work Act 1974 is the principal piece of legislation for occupational health and safety standard in the UK. However, there are other regulations which are designed to ensure workplace compliance and safety.[125] For instance, the Health, Safety and Welfare (HSW) Regulations apply to all aspects of the working environment and require employers to provide a workplace that is not only safe but also suitable for the duties that are being carried out within it.[126] This ranges from provisions for the comfort and sanitation of employees which include but not limited to break areas, washing facilities, drinking water, room dimensions, lighting and ventilation. It includes the provisions for safety in the workplace such as appropriate maintenance of equipment, properly maintained walking routes and floor spaces, protection from falling objects, among others.[127]

The Display Screen Equipment Regulations (DSE) 1992 requires that, as well as providing a suitable workstation for the DSE users (which the HSE defines as 'workers who use DSE daily, for an hour or more at a time') employers must also take steps to 'protect workers from the health risks of working with display screen equipment (DSE), such as PCs, laptops, tablets and smart phones'.[128] According to government guidance, to remain compliant with DSE regulations, and to protect the health of DSE users, employers must:

- Carry out a suitable DSE workstation assessment;
- Reduce associated risks, including making sure workers take regular breaks from DSE work and provide ancillary equipment if required;
- Provide an eye and eyesight test (free of charge) upon request from a DSE user;
- Provide relevant training and information for DSE users.[129]

Similarly, the Personal Protective Equipment (PPE) Regulations require the employer to provide their workers with personal protective equipment (PPE) to reduce the potential risk of harm when it cannot be reduced or mitigated by any other means ("last resort" principle).[130] A suitable and sufficient risk assessment must be carried out, prior to providing PPE, to determine that potential risk cannot be mitigated through other control measures.[131]

[124] See Health and Safety at Work Act 1974, sections 2, 7,8
[125] *Ibid*
[126] Workplace (Health, Safety and Welfare) Regulations 1992
[127] *Ibid*
[128] Display Screen Equipment Regulations (DSE) 1992 (amended 2002)
[129] *Ibid*
[130] Personal Protective Equipment Regulations (PPE) 2018
[131] PPE includes, but is not limited to, high-visibility clothing, protective footwear, safety helmets, eye protection, safety harnesses and even respiratory protective equipment (RPE).

The Management Health and Safety at Work Regulations require that an employer must suitably assess work-based activities and implement any appropriate controls to manage potential risks to the health, safety and welfare of employees (and others).[132]It is the employees' responsibility to

ensure that they are working in accordance with the health and safety training that they have been provided. If an employee identifies an unsafe condition, hazard or risk within the workplace, then he/she must notify whoever is responsible for health and safety in that working environment.[133]Health and safety legislation applies to all business sectors, and it is therefore the responsibility of the employer to ensure that health and safety is effectively managed within the workplace. However, the approach taken should be proportionate to the nature and size of the business as well as the risk level of the business activity. For the majority of small businesses with a low-risk environment, managing health and safety in the workplace should be a relatively easy. However, challenges to building a strong occupational safety and health standard at workstations still remain which include but are not limited to:

- Lack of management support
- Inadequate safety training and monitoring
- Insufficient safety resources
- Poor communication
- Resistance to change.

4.4 Laws Governing Occupational Safety and Health in the European Union

In order to improve workplace health and safety from 2014 to 2020, the EU developed a tactical agenda.[134]The objectives of this tenured agenda are to address occupational risk in the workplace and the demands of developing technologies. The framework is based on an extensive body of EU regulations that addresses the bulk of significant occupational risks and offers uniform definitions, frameworks, and a set of laws that are customised by member states to their various national idiosyncrasies and circumstances.[135] Additionally, a number of international action plans and programmes are outlined in the legislation from 1978 to 2002; and from 2002 to 2020.[136] With these plans and initiatives, it is expected that the EU member states' policies will be better co-ordinated, and a more holistic workplace culture will be promoted. In order to improve job quality, working conditions, competitiveness, productivity, and the sustainability of social security systems, the EU's OSH legislation is aimed at reducing risk to promote safer and healthier working environments.[137] The second goal is to increase workers' health over the course of their careers by keeping them safe from serious accidents or occupational illnesses,

[132] Management of Health and Safety at Work Regulations 1999
[133] *Ibid*
[134] Anyatang and Kooffreh (n 94) at 250.
[135] *Ibid.*
[136] *Ibid.*
[137] *Ibid*.

which will enable them to work longer.[138] Through smart, sustainable, and inclusive growth, the EU legislation seeks to address the long-term impact of population ageing.[139]

The EU's framework for occupational safety and health, which runs from 2014 to 2020, consists of seven components, including: "further consolidation of EU member states' national health and safety strategies. It includes the provision of practical assistance to small and micro enterprises to enable them comply with health and rules in their various countries. It further simplifies the existing national laws to preserve workers' health and safety by addressing the ageing of European workforce through the improvement of the prevention of work-related diseases and emerging risks such as nanotechnologies, green technology, and biotechnology. Also, there is improvement on 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, World Health Organization (WHO), and the Organization for Economic Cooperation and Development (OECD)."[140]

The national OSH laws of the member states are not intended to be repealed by the EU framework. Prior to the legislation being passed by the EU parliament, the United Kingdom had issued six sets of health and safety at work regulations in 1993 that essentially applied to all types of work activity and put the onus on employers to protect both their employees and other people, including the general public.[141] The following topics are covered by these regulations, which were put in place in part to meet EU directives: General health and safety; Organization;

Employment equipment; Physical load management; Working conditions; Personal Protective Equipment (PPE), and Display screen equipment.

The Health and Safety at Work Act (HSW Act) authorised their introduction. The old law on OSH was repealed by these regulations in about 35 different places.[142] Despite the fact that the EU framework has been adopted and modified by member states of the EU, it still faces some challenges, such as those associated with the implementation of EU OSH legislation, the prevention of work-related diseases, which is hampered by emerging risks and technologies, and demographic change (the ageing of the EU workforce).

4.5 Comparative Analysis of the Selected Jurisdictions

Occupational Safety and Health (OSH) laws are not specifically codified in Nigerian laws; instead, there is a patchwork of laws with overlapping responsibilities for the various stakeholders and competent authorities. The executive arm of the government of Nigeria is yet to give its assent to the Labour, Safety, Health and Welfare Bill (2012), which was passed by the National Assembly to cover wider areas in OSH in Nigeria. This bill covers the construction

[138] Anyatang and Kooffreh (n 94) at 250.
[139] *Ibid*
[140] *Ibid at 251.*
[141] *Ibid.*
[142] Anyatang and Kooffreh (n 94) at 251.

industry, handles all workplace safety and health issues, and imposes severe fines for violations and non-compliance. The bill was established to protect lives and property, promote OSH awareness, enforce and implement OSH processes at work, assess the workplace to determine whether it complies with all applicable laws among others.[143]
The regulatory posture of Nigeria on the issue is in conflict with the EU and the USA, where there is a single legal framework that includes suitable OSH measures and plans for the full membership of EU countries and the entirety of USA. However, Nigeria and the USA seem to be similar in the inadequacies of their laws to sufficiently protect the victims and punish erring employees or employers that are in violation of the OSH laws and regulations.

On the other hand, the EU's OSH legislation is forward-thinking in the sense that it equipped member states for new dangers and transformations brought on by nanotechnology, biotechnology, and green technology. In the US, NIOSH has established regulations to protect workers who use nanotechnology, biotechnology, and green technology, even though the USA Law (OSH Act, 1970) is long overdue for review. In order to prevent harm and ill health among employees and to advance their health and well-being, "total worker health" is another technique that is being used to merge traditional work-related safety and health protection practices with health support policies. This is in a complete contrast to the situation in Nigeria where the number of laws governing OSH in the country is not subjected to periodic assessment and review. The use of reactive approaches, which do not meet the requirements for implementing OSH legislations, rather than proactive and collective participatory approaches, which are more appropriate and suited, is one of the numerous obstacles that hinder the enforcement of OSH laws in Nigeria. Inadequate inspectors, a lack of political will on the part of Nigerian leaders, a negative political influence on the relevant authorities and stakeholders are part of the problem.[144]

Further challenges include but are not limited to non-deterrent penalties, bribery and corruption, a weak judicial system, insufficient funding and a lack of government commitment, insecurity, a lack of awareness and information. Similarly, the lack of legislation prepared for emerging risks and technologies, cultural norms, and the absence of a formal OSH management system based on ILO-OSH are additional limitations. In contrast to the Nigerian situation, the UK, EU and the USA regimes to some extent utilize a proactive and inclusive participatory strategy. All levels of their governments are firmly dedicated to upholding their OSH laws and punish enforcement personnels who violate them.

In addition to Nigeria's use of the reactive approach in enforcing OSH laws, there is a lack of co-ordination among stakeholders for effective OSH practice and implementation. There is a further lack of a comprehensive national OSH law, a restriction on the coverage of the workplace by existing OSH laws, a lack of research on OSH, inadequate information management on OSH (data collection, collation, and dissemination). Moreover, a lack of a nationally recognized OSH

[143] Labour, Safety, Health and Welfare Bill 2012.
[144] Anyatang and Kooffreh (n 94) at 250.

code of practice, and near absence of reportage on work-related injuries, harm, and illness continue to be a challenge.

5. Conclusion and Recommendations

While there are laws that govern OSH practices in Nigeria, it is found that these laws are not adequately enforced and suffer from a lack of adequate personnel in appropriate agencies saddled with the responsibility of enforcing these regimes. The protection of employees and other staff in Nigeria is an integral responsibility of the government that is even enshrined in the Constitution of the Federal Republic of Nigeria.[145] Thus, adequate consideration must be given to unify laws governing OSH practices in Nigeria. This requires employing modern practices and systems to the development of the area, training adequate personnel to enforce the provisions of the laws, and creating laws and regulations that are in tandem with modern-day realities of employees in Nigeria. Practices observed from the other jurisdictions reviewed in this study show the possibility of adopting these measures. The paper recommends that:

(a) It is imperative that the Labour, Safety, Health and Welfare Bill 2012 be passed into law and signed by the President. To reduce the overlapping roles of the enforcement institutions, it is suggested that any provision related to occupational safety and health (OSH) in existing regimes should be amended, incorporated into the Bill, and re-passed by the National Assembly prior to Presidential Assent.

(b) OSH schemes should be placed under the concurrent list in the constitution and be made justiciable so that both the Federal and State governments would be involved in OSH practices and programmes.

(c) The Nigerian Government should hire more experienced OSH workers to adequately cover the entire country in OSH schemes. Thus, all six geopolitical zones should have OSH institutes built in addition to the one that is presently housed at the University of Ibadan.

(d) Similar to what obtains in the US, UK and the EU, Nigeria should implement an approved code of OSH practices. It is important to establish an OSH management system and board, and to continually evaluate OSH legislations to keep up with the evolving dangers and technologies.

[145] CFRN 1999 (as amended), s 17