EMPLOYMENT INJURY BENEFITS: AN ANTIDOTE TO SUSTAINABLE SOCIETY IN EMERGING ECONOMIES

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GENTY, Kabiru Ishola (PhD)
Lagos State University, Ojo
Faculty of Management Sciences
Dept. Industrial Relations & Human Resource Management
ishola.genty@lasu.edu.ng

AIYEOLA, Waliyu Abiola (PhD)
Administrative Staff College of Nigeria (ASCON)
Leadership and Development Studies
abiolaayieola@yahoo.com

and

SOVOHUNU, Jeliliat
Administrative Staff College of Nigeria (ASCON)
abolore2002@yahoo.com

Abstract
The increasing global employee mortality rate has called for concern among organisations stakeholders, particularly the trade unions. This is because of high employee’s mortality rate caused by work-related accidents with resultant effect on death, injury and sometimes permanent occupational diseases. These developments have led to the creation of a compensation packages known as ‘Employment Injury Benefits’ for those employees’ that suffer fatal accident, but the administration and implementation of this schemes were erroneously carried out in some countries especially developing economies such as Nigeria. This paper examines administration and implementation of the Employment Injury Benefits (EIB) in Nigeria. It also seeks to find out objectives of the EIB viz-a-viz its main scope as a compensation mechanism for employees with injuries, diseases and even death. Descriptive research method is employed to review Employees’ Compensation Act of 2010 and its relationship with ILO Convention 121 of 1964. This approach helps to achieve employee protection, promote sustainable employee security, wellbeing and development. The paper concludes by discussing the procedure for laying claims and the challenges facing the EIB as well as suggesting solutions in order to achieve sustainable society in Nigeria context.

Keywords: Employee Compensation Act, Employment Injury Benefits, ILO, Mortality, Nigeria, Sustainable Society.

Introduction
In recent years, there have been growing concerns about the high number of employment related injuries sustained by employees in their various workplaces. These have had a devastating effect on the health, family, and social life of these affected individuals. The level of workplace incidents in Nigeria (accident rates, fatality rates, accident causal factors and available remedies) is vital to developing effective strategies for improving the problematic state of workplace safety and health
A major challenge facing researchers and regulatory agencies on workplace safety and health is that workplace accidents are under-reported; the regulatory and enforcement systems are grossly ineffective and dysfunctional, accident and injury rates are incremental. The first most study conducted in Nigeria on work related injuries, diseases and death was carried out in Nigerian factories from 1987 to 1996 by Ezenwa (2001). The study indicated that, 3183 injuries were reported of which 71 or 2.2% were fatal; the highest annual case fatality rate of 5.41 in 1994; the lowest case fatality rate of 0.94 in 1990.

A similar study was conducted by Umeokafor, Umedi and Isaac (2014). Their findings discovered massive under-reporting of accidents, and for the 11-year (2002-2012) period, where 40 accidents were reported. Distribution of injuries, deaths, near misses, case fatality rates and number of accidents reported during the 11-year study period. For the entire 11 years, a total of ninety (90) accidents were reported out of which there were 50 injuries. Forty-six representing 49.5% of these injuries were fatal and 4 near misses were reported (Umeokafor et al, 2014). The annual case of fatality rates of these injuries does not show a definite range of increase or decline as it indicates case fatality rates of 58% in 2002, 100% in 2003, no fatality in 2004, 25% in 2007, 75% in 2008, 66.7% in 2009, 20% in 2010, 25% in 2011 and 28.6% in 2012.

In contrast, the study by Ezenwa (2001) shows an increase in annual fatality rate from 0.9% in 1992 to 5.4% in 1994. However, this may be due to the decline in reported accidents in Nigeria at that time. The study shows an annual distribution of death, near misses and reported accidents in the year 2002 which recorded 29 deaths (63%), which is the highest number of deaths, 1 (2.5%) near miss and 1 (2.5%) accident report for the year. This was followed by 6 deaths (13%), no near miss and 2 (5%) accidents reports in the year 2008. (Umeokafor et al, 2014). The accidents which led to the highest and second to the highest number of lives lost in these years occurred as a result of a fire accident in a rubber factory, and claimed 29 lives in 2002, as well as the fall of a storage tank, which trapped 6 workers in 2008. It is worthy of note that for the year 2005 and 2006 there were no record of reported accidents found.

Studies carried out in Nigeria by Ezenwa (2001) and Umeokafor et al, (2014), did not discuss the compensation available to those employees that suffered injuries. It is against this backdrop that this study intends to explore provisions for compensation to various degrees of injuries, diseases and death. In view of this, the Employment Injury Benefit (EIB) scheme enforceable through (Employees Compensation Act 2010) is design to ensure that workers’ and their families have access to a certain level of income in the case of disability or incapacity for work due to work related injuries, diseases or death. The Employees Compensation Act, 2010 provides procedures for compensation and the types of compensation that should be giving to employees that sustain injuries. The Nigerian Social Insurance Trust Fund and Management Board are empowered to enforce the Act or by the Court as the Act has provided.

Review of Literature

Employment Injury Benefits: Apart from the common law duty which makes the employer responsible for the safety of his employees, there are protective legislations principal and subsidiaries
enacted to regulate the industrial activities of corporate organisations, firms by imposing additional liability on the employers for the safety of his servants (Longe, 2003).

Therefore, to ensure the safety of workers at the factory there is need for safety consciousness. The law makes it compulsory for employers to do certain things in event of an accident happening in their premises. Employment safety was serious embedded in International Labour Organisation (ILO) proposal on Social Protection Floor Initiative (SPF-I) launched in the year 2009, where the heads of UN agencies agreed to use joint initiative to cope with the effects of economic crisis (Somavia, 2011). ILO Article 40 Annex III (g) stipulated that each member states should provide adequate protection for the life and health of workers in all occupations (ILO Constitution, 2004).

Nigeria constitution too did not take the safety of her citizens with levity, it was entrenched in Chapter II section 17c, d & g under the social objective that;

…. the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused, while there are adequate medical and health facilities for all persons; provision is made for public assistance in deserving cases or other conditions of need…. (Nigeria constitution, 1999)

Similarly, the part II of the constitution under concurrent legislative list also empowered the National Assembly to make laws for the Federation or any part thereof with respect to the health, safety and welfare of person employed to work in factories, offices or other premises or in inter-State transportation and commerce including the training, supervision and qualification of such persons. The outcome of such law led to the emergence of Workmen’s Compensation Act of 1987 as amended in the year 2010 which deals with employers’ liability for the death or incapacity resulting from accident and other allied matters (Ogunyomi& Kolawole, 2003). The Employee’s Compensation Act is the law promulgated to address and regulate the compensation payable to injured employee whose injuries resulted from the course of performing his duties.

Compensation for injuries sustained under the Act depends largely on the nature of the injury sustained. Therefore, part IV of the said Act makes provisions for the scale of compensation payable sustained. The essence of EIB scheme is to ensure that employees and their families are entitled to certain income or compensation in the case of disability or incapacity for work due to injuries, diseases and death related to work. This form of compensation is essential and fundamental labour right.

**Sustainable Society:** The concept of ‘Sustainable Development’ appeared in mainstream discourse in 1987 during the report of Brundtland Commission. It implies ‘growth that encounters the requirements of the current without compromising the capability of forthcoming generations to meet their own desires’ (D’Silva, 2014). International Law Association (ILA, 2002:3), define the aim of Sustainable society as “an inclusive and combined tactic to economic and socio-political procedures, which points at the sustainable usage of natural assets of the world and the security of the environment on which nature and individual life in addition to socio-economic growth depend”

Sustainability focuses on the human-to-human relations at the present time rather than the human-to-nature with the future. Therefore, sustainable society is the degree that stems from publics’
selections, respects variety and multiplicity, **attains fairness and equity**, and adopts participating approaches and styles.

**The Pentagon Model of Sustainable Society**

![Diagram of the Pentagon Model of Sustainable Society]

Source: Adopted from Yassin and Shaffril, 2014.

The above model was introduced by the Department for International Development (DFID) in United Kingdom as a framework to clarify the concept of sustainable livelihood that might promote sustainable society. The framework stresses that a single physical asset is not enough to promote sustainable society rather combinations of multiple capitals that revolve around themselves on prevailing cultural practices and the types of structures and processes that transform assets into sustainable outcomes such as society (Yassin & Shaffril, 2014: 32).

**Human capital** refers to the amount and quality of labour available that develop sustainable society while **social capital** on the other hand is the social resources such as networking, connectedness that promotes associations. Meanwhile, **natural capital** is free gift within the living environment that enhances flows and services in the nutrient cycling that are useful for sustainable society. Similarly, **physical capital** refers to the basic infrastructure required for the production of goods and services that strengthen livelihood in the society such as affordable transport, secure shelter and adequate supply of water among others, while **financial capital** are the available inflows of money that are dependent of fulfilling livelihood objective in the society.

**Human Capital as a common Sustainable Factor**

Human Capital covers the qualifications, skills, knowledge, ability to labour with **good health** and having one of these or combination will assist to meet livelihood and sustainability objectives. Human Capital refers to the amount and quality of labour available and this is impinged by the skill levels, leadership potential, health status, etc. Human capital in the generic framework that can be considered as a livelihood asset that a person can pose in order to help society attain
sustainable outcomes. However, injuries resulted from accident on a worker can be an impediment towards achieving a sustainable society. Therefore, reduction in number of accidents recorded in factories will promote sustainable society in emerging economies.

**Emerging Economies:** Emerging economies are countries that have low market development as compare to developed nations of the world. Empirically, it is believed that some of these counties will break the barriers of economics challenges and compete with developed nation. It is however expedient to note that human capacity development and sustaining workers welfare is a sine qua non towards this goal. Although, there is no agreed parameters among economist on parameters that must be used to determine nation economies development but it is generally accepted norms that human capital is an important aspect. The concept was originally coined in 1981 by then World Bank economist named Antoine Van Agtmael (Wikipedia).

Based on investment growth, Nigeria and the other three countries were categories as an emerging economy under MINT namely Mexico, Indonesia and Turkey. Therefore, Nigeria can be referred to as an economy that is progressing toward becoming advanced, as shown by some liquidity in local debt and equity. Thus, effective workmen’s compensation Act courtesy of Employment Injury Benefits (EIB) might be a determinant of sustainable society that can graduate Nigeria to the league of developed economies. This assertion shall be interrogated further in subsequent part of this study.

**Workmen Compensation:** In workmen compensation Act, sections 4, 5 & 24 provides that where a workman has given notice of an accident the employer shall as soon as reasonably possible after the date on which notice has been given arrange to have him medically examined free of charge by medical practitioner named by the employer or medical practitioner named by the workman with the employer’s approval and such approval shall not be unreasonably withheld.

However, the Act also provides for the payment of compensation to employee for injuries suffered in the course of their employment. The compensation is payable to or for the benefits of the employee or where death results from the injury to or for the benefits of the dependent. That is where death results from the injury of an employee, compensation shall be paid to the dependent of the deceased. The modalities for compensation in the context of Nigeria work space shall be extensively ponder upon as well as the critical challenges to the Employment Injury Benefits (EIB) administration and implementation.

**Administration and Implementation of Payment of Compensation**
One of the major flaws of the Workmen's Compensation Act was the lapses in the administrative framework for payment of compensation to injured employees and the non-establishment of a specific fund from which employees' compensation would be paid. By leaving the administration of compensation in the hands of employers and their private insurers, the Act left the fate of employees to the whims and caprices of employers, a situation which is against all known international labour standards. The Employees Compensation Act sought primarily to rectify this lapse by empowering a statutory body, the Nigerian Social Insurance Trust Fund Management Board (“the Board”) with the administration and management of employee's compensation and the implementation of the Act and the Fund established under the Act.
The Nigeria Social Insurance Trust Fund Management Board (the “Board”) is statutorily empowered to implement the provisions of the Act and to manage the solvent compensation fund created thereunder.

Powers/Function of the Board

The Board is empowered to formulate policies and strategies for assessment of compensation, rehabilitation and welfare of employees who sustain injuries or contact occupational diseases at the workplace or in the course of employment. It approves investment of any money in the Fund on the advice of the Investment Committee established under the Act. The Board in its wisdom can do such other things which, in the opinion of the Board, are necessary to ensure the efficient performance of the Board under the Act. To acquire, hold and alienate property, real or personal. The board can enter into any contract or other transactions. The Employee Compensation Act 2010, provide to the statutory establishment of the Board, primarily to coordinate and administer the compensation process of employees that sustain injuries, diseases and death.

The key functions and responsibilities of the Board is the formulation of policies for the effective administration of the Employees' Compensation Fund (“the Compensation Fund”). In addition, the Board shall;

- Carry out assessment of the amounts to be paid into the Fund by employers under the Act.
- The payment of the various benefits provided under this Act to persons entitled to the benefit.
- Undertake regular actuarial valuation of industries, sectors and workplaces and determine the rates of contributions by employers into the Fund by such industry, sector or workplace.
- Receive and credit into its account all moneys payable into the Fund under the Act.
- The administration of the Fund and the investment of sums forming part of the Fund.

Objectives of Employment Injury Benefits (EIB)

To provide for an open and a fair system that guaranteed an 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 this Act; Provide for fair and adequate assessments for employers; Provide an appeal procedure that is simple, fair and accessible, with minimal delays; and Combine efforts and resources of relevant stakeholders for prevention of workplace disabilities, including the enforcement of occupational safety and health standards.

Scope of Employment Injury Benefits Under Employees’ Compensation Act 2010

The basic aim of the Employees' Compensation Act is the provision of compensation for employees injured in the course of their employment. Compensation under the Act covers the following key areas:

- Death
- Injury
- Occupational Diseases
Death
The Employees Compensation Act 2010, Part IV section (17), subsection (1) In the case of death resulting from injury to an employee in the course of employment, the compensation to be paid to the dependents of the deceased shall be:

a. Where the deceased employee leaves dependents wholly dependent on his earnings, a widow or widower:
   (i) and two or more children, a monthly payment of a sum equal to 90 percent of the total monthly remuneration of the employee as at the date of death,
   (ii) and one child, a monthly payment of a sum equal to 85 percent of the total monthly remuneration of the deceased employee as at the date of death,
   (iii) without a child who, at the date of death of the employee, is 50 years of age or above, or is an invalid spouse, a monthly payment of a sum equal to 60 percent of the total monthly remuneration of the deceased employee, and
   (iv) who, at the date of the death of the employee is not an invalid spouse, is under the age of 50 years and has no dependent children, a monthly payment of a sum that is equal to the product of the percentage determined by subtracting 1 percent from 60 percent for each year for which the age of the dependant, at the date of death of the employee, is under the age of 50 years?

b. Where there is no surviving spouse eligible for monthly payments under this section, and the:
   (i) dependant is a child, a monthly payment of a sum equal to 40 percent of the total monthly rate of compensation under the Act that would have been payable if the deceased had, at the date of death, sustained a permanent total disability,
   (ii) dependants are 2 children, a monthly payment of a sum equal to 60 percent of the monthly rate or compensation under the Act that would have been payable if the deceased had, at the date of the death, sustained a permanent total disability.

For the purposes of the Act, where two employees in a workplace are married to each other and both are contributing to the support of a common household, each is deemed to be a dependant of the other. By virtue of Section 19 of the Act, the period of payments for compensation under the Act shall be for the life of the person to whom the payment is to be made, unless a shorter period applies under the provisions of the Act, or as the Board may, from time to time by regulations specify. Therefore, the compensation payable where death results from work related injuries is for the life of the dependants or the person entitled to receive the compensation, unless the Board otherwise determines. Under the WCA, the period of compensation was calculated as 42 months earnings of the deceased employee. This compensation was grossly inadequate for dependants who had lost their bread winners, thus necessitating the ECA to make provision for compensation to be paid for the life of the dependant(s).

Injury
The Act provides for compensation for employees, whether or not in the workplace, for any disabling injury suffered in the course of employment or caused by the employment. It also provides for compensation for accidents sustained between the place of work and:
The employee's principal/secondary residence,  
The place where the employee usually takes meals,  
The place where he usually receives remuneration provided that the employer has prior notification of such place.

However, it is imperative that the employer have prior notification of the place where the injury occurred, if such place is not one of the employee's usual place of work. Under Section 7 (4) of the Act, there is a presumption that the injury occurred in the course of employment if the accident in which the injury was sustained was caused by the employment.  
The Act also covers injuries occurring outside the workplace if:  
The nature of the business of the employer extends beyond the usual workplace; or  
The nature of the employment is such that the employee is required to work both in and out of the workplace; or  
The employee has the authority or permission of the employer to work outside the normal workplace.

**Occupational Disease**  
An occupational disease is defined as 'a disease contracted arising out of or in the course of exposure to risk factors at work'. Part III of Section 9 of the Employees’ Compensation 2010 Act provides compensation for occupational diseases which: disable the employee from earning full pay: Result in death: Arise out of the nature of the employment; or is listed in the First Schedule to the Act.

The Section also offers health care benefits for occupational diseases and also makes provisions for uncomplicated diseases or diseases aggravated by other diseases. For the purposes of this section, the date of disability shall be treated as the date of occurrence of the disability. Personal Representatives of a deceased employee who died as a result of a disease under the section will be compensated, subject to conditions.  
Furthermore, where a deceased employee was under the age of 70 when he died, and suffered from a non-traumatic occupational disease impairing his vital organs, the occupational disease is presumed to be the cause of death.

**Challenges of Employment Injury Benefits Under the Act**  
**Non-compliance of Employers**  
The primary challenge facing EIB is the non-compliance and not giving appropriate compensation to employee by their employers, and this is possible because employer can bribe their way through all the process.

**Secrecy and inadequate information**  
Another major challenge of implementing the EIB under the Employee Compensation Act is that, information about labour mortality rate, injuries and diseases are highly classified. There is consensus that Inadequate Information affects the improvement of EIB in Nigeria. To illustrate this, it is noted that availability of data remains a hindrance towards implementation of the Act in developing countries. It has been observed that, the dearth in labour mortality rate information in the Federal Ministry of Labour for the past five years is a major concern.
Lack of synergy
There is lack of synergy between the NSITF, Federal Ministry of Labour and Productivity, and labour unions. There is weak or no implementation of the international health and safety standards in the Nigeria workplace. The endemic nature of corruption, coupled with low concern for human lives (employees) has made employers and the government to relate with the issue of fatal accidents in workplaces nonchalantly.

Poor compensation
The rates of cash benefits payable to an injured employee should be reviewed upwardly following substantial changes in the general level of earnings which results from substantial increase in cost of living. In other words, ECA fails to directly and expressly take into consideration the possible rise in cost of living in our society. The inevitable consequence of this lacuna is that the amount of monthly compensation payable to the dependants of deceased employees or to injured employees will statically remain at the rate of the employees’ wages before the date of death or injury.

Lack of awareness
There is no gainsaying that a great number of employees in Nigeria are not aware of the existence of the Act; and consequently, ignorant of their rights to compensation therein. This is not to say that industrial injuries do not occur in Nigeria like in other jurisdictions, but because employees in Nigeria consider going to court to enforce their rights against their employers as a last resort. There is this belief among employees that one cannot make claims for compensation against one's employer and succeed.

Methodology
This study is explorative in nature. The research is a conceptual study that leans heavily on the interpretivist philosophy. The data used for the study were derived from textbooks, journal articles, published materials on the internet, newspaper and gazettes as well as public lectures. The gathered information was then subjected to a rigorous discourse content analysis and a comprehensive conclusion reached.

Suggested Solutions/Recommendations
ReformoftheNigeriaSocial Insurance Trust Fund (NSITF)
The Nigeria Social Insurance Trust Fund (NSITF) need to be repositioned for effective discharge of its mandate through proper welfare and compensation packages that is commensurate with employee’s jobs. This will discourage the official of NSITF from unethical dealings, such as bribery, collection of kickbacks etc. It is equally suggested that the powers of the Board under the Act be reduced and partly given to the National Insurance Commission to avoid abuse.

Periodical Review of the Employment Compensation Act
The Employment Compensation Act should be strengthened to cover workers, who lost their lives in terror-related violence as well as prompt compensation to employees and their families in case of death. Furthermore, future amendment to the Act should incorporate payment of funeral benefits to dependants of a deceased employee in addition to the amount of compensation payable in fatal cases.
This will bring the scheme in line with what is obtainable in Ghana, India and the standard prescribed by the International Labour Organization. Similarly, the Act should be spread to workers in informal sector that are also vulnerable to industrial or domestic accidents.

**Synergy**

There should be synergy among “The Board”, Trade Unions, National Orientation Agency (NOA), the Ministry of Labour and Productivity, the Factories Inspectorate Division and the Ministry of Health. The MDAs should be made to combine and work together, while adequate effort arrangement should be given towards proper publicity. Again, the Act need to educate employees and the general public on the key provisions of the Act. The key provisions of the Act should be further summarized in bulletins for easy guidance of employees and the general public, which will be of greater good to all.

**Proper Enforcement**

With respect to the poor attitude in observing and enforcing laws in this country, government agencies and labour unions have sacred duties to ensure that provisions of the Act do not end up as “paper promises” or a “Kangaroo provision”. The unions should set up committees to monitor and ensure adequate compliance by employers. The committees, should work closely with the Nigerian Social Insurance Trust Fund and the National Council on Occupational Safety and Health to ensure that the Federal Government adequately staff the agencies charged with the responsibilities of monitoring compliance with the Act, as well as provide them with adequate facilities necessary for carrying out their duties.

**Increase in Compensation packages**

It is equally propounded that the provisions of the Act relating to scale of compensation be revisited to include provisions for upwards review of the monthly payable compensation to an employee or his dependants to match with the ever-rising cost of living in the country. This becomes important at this critical period of economic recession where the prices of commodities are at higher inflationary trend. Therefore, proportional increase in the compensation package should be in tandem with percentage increase in the inflation. This will bring scale of compensation under the Act to international best practices standard and what is obtainable in other developed and advanced legal provisions as regards employee injury benefits.

**Conclusion**

It can be concluded therefore that, for an employee to benefit extensively from the provisions of the Employees Compensation Act using the scheme of Employment Injury Benefits (EIB) for sustainable society. Government should put in place the appropriate measures needed such as enforcement unit that will promote prompt payment of compensation. The enforcement agencies should also be empowered to give heavy sanctions on erring employers. The employer must ensure that they adherence to the legal provisions that are due to an employee that sustain varying injuries in workplace. By so doing, developing countries will metaphasis to sustainable society, particularly in an emerging economy such as Nigeria where the issue of international best practices is absent.
Reference


Employees’ Compensation Act, 2010.


