JUDICIAL INTERPRETATION OF INJURY, EMPLOYER'S LIABILITY AND EMPLOYEE'S ENTITLEMNENTS UNDER THE EMPLOYEES' COMPENSATION ACT: DOCTRINAL BOUNDARIES, SCOPE AND EMERGING TRENDS[1]

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Courtesies

The enablers of this lofty programme – the *National Judicial Institute* [***NJI***] and the *Nigeria Social Insurance Trust Fund* [***NSITF***] are commended for organizing this workshop to facilitate cognate intellectual interactions amongst stakeholders for better understanding of the legal regime of social insurance for workers who sustained injuries or contracted industrial diseases in the course of employment in Nigeria. The biblical adage goes: "*My people perish for lack of knowledge*[2]." To avoid retardation and atrophy, people and institutions must continue to seek knowledge in fora like this. That is the only way for sustainable development. I equally commend the *Hon. President of the National Industrial Court* [***HPNIC***] for nominating me to write and present this paper. I hope my humble efforts shall justify the confidence reposed in me. I also commend all the participants for attending this workshop for robust interactions on the subject.

Introduction

Decent work and sustainable development are the twin-agenda of the *ILO*. Nation-members of the *ILO* are expected to key into these in their labour/employment policies. In fact, the *Employees' Compensation Act*[3] [***ECA***] is Nigeria's direct response to her longstanding obligation to domesticate *ILO* policy on social security for employee-victims of industrial accidents under Art 3 of the *ILO C019 – Equality of Treatment (Accident Compensation) Convention, 1925*[4]. Nigeria ratified this Convention Oct 17, 1960. By virtue of its Art 1(2), it is envisaged that the local legislation must be international in outlook because, it is expected to equally take care of foreign workers from the *ILO* member-countries in Nigeria. Thus, by necessity, the policy statute must imbibe international best practices, to accommodate foreign labour in Nigeria. In fulfilment of the foregoing obligation, the *ECA* is essentially a direct domestication of *ILO C121 – Employment Injury Benefits Convention, 1964*, though, without ratification. Though, the *ECA* bested it in several respects and only falls behind in the absence of provision to automatically review compensations in line with inflationary trends.

Hence, it is not surprising that the very first *Workmen Compensation Act* [***WCA***] was enacted in Nigeria Apr 1, 1942. It was comprehensively revised and updated in the *WCA*, No. 17 of 1987, now repealed by the *ECA*, as its provisions had become moribund; increasingly

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*The views expressed in this paper are my personal views, except as otherwise stated.

[1] Being text of a paper presented at the *Legal Stakeholders' Engagement* held at the Johnwood Hotel by Bolton, 6, Sokode Crescent, Wuse Zone 5, Abuja, Oct 29-30, 2026.

[2] Hosea 4:6.

[3] Enacted Dec 17, 2010.

[4] A host of other cognate *ILO* conventions, place further obligations on Nigeria, which by her ratification of them, she was obliged to implement. See *ILO C187 – Promotional Framework for Occupational Safety and Health Convention, 2006*, ratified by Nigeria Nov 8, 2022; *C190 – Violence and Harassment Convention, 2019*, ratified by Nigeria Nov 8, 2022; and C019 – *Equality of Treatment (Accident Compensation) Convention, 1925*, ratified by Nigeria Oct 17, 1960.

unworkable, and in dissonance with modern realities[5]. The *ECA* is now the new policy-book and the principal regulating statute, while the *Nigerian Social Insurance Trust Fund Act*[6] [***NSITFA***] plays a secondary role to the extents as validated by the *ECA* to also regulate the management of the *Fund*. Thus, Nigeria has two statutes[7] that simultaneously regulate compensations for victims of industrial accidents and occupational diseases. And these statutes apply to all employers and workers [public and private] alike without distinction, except military personnel[8]. An essential part of the decent work agenda of the *ILO*, is the need to take care of workers who sustained injuries at work or contracted occupational diseases so that, they are not left in the lurch in their time of grave haplessness and need. This is considered an integral part of sustainable industrial relations and economic development. As employers are historically not willingly responsive to the needs of these unfortunate workers, who sustained industrial injuries and occupational diseases, the intervention of the states, through legislations creating social insurance pool of funds taxed from employers, from which pool of funds, money could be readily accessed to take care of these, became a public necessity. The primary idea is to assist the unfortunate workers to get well and thereafter continued to be useful workforce, and where this is impossible, secondarily, to assist them to live a decent live to the extent possible thereafter, or in case of death, to assuage the dependants[9]. The economy gains on the one hand and the morale of the workforce is boosted on the other hand.

Hence, *ILO* member-states have fashioned policies to take care of the welfare of workers in this regard. Nigeria first responded via the enactment of the *Workmen Compensation Act*. Arising from the severe inadequacies of the *WCA* over time, especially as it relates to the compensation mechanism under it, the need for its total abrogation and replacement with a brand new one, in tune with international best practices, became compelling. Consequently, Nigeria abrogated[10] the *WCA,* and in its stead, enacted the *ECA* in 2010, as the policy statement on the health and safety of workers in tune with the *ILO* desires. Thus, the need for stakeholders to constantly reassess the *ECA* to gauge its performance in actual practice, discuss challenges and proffer suggestions for improvement. And the place of the *NIC* in this is very poignant, as it is the appellate Court to the *Board* validated under SS. 2(2) & 57 of the *ECA*, that primarily decides complaints about compensation for victim-workers, who take the route of seeking compensation under *ECA*. The *NIC* also simultaneously remains a primary trial court for cases of workplace injuries and occupational diseases, for workers who take the option of common law to seek for reliefs for their industrial injuries[11]. Thus, the *NIC* has a dual-mandate[12] under *ECA*. Though, the paper is mainly concerned with the mandate controlled by the *Board*. As the title goes, the work

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[5] Under the repealed *WCA*, the scheme was fault-based, each employer was responsible for insuring their workers, which was often observed in the breach, and the compensations were too meagre, and failed to take care of the long-term interests of the victims and their dependants etc. All these and more have changed under the *ECA*.

[6] No. 73 of 1993, enacted Jan 1, 1992.

[7] S. 2(2) *ECA* and the preamble to the *NSITFA* and its SS. 1 & 2.

[8] SS. 2(1) & 3 *ECA*.

[9] S. 1 ECA.

[10] Long title and S. 72 *ECA*.

[11] S. 12(1) & (3) *ECA*. See also *Agbobi v. Siat Nig. Ltd.* Suit No. NICN/PHC/112/2021 – delivered Feb 04, 2025 at https://nicnadr.gov.ng/nicnweb/details.php?id=9755&p=AMADI%20AMBROSE%20AGBOBI%20-VS-%20SIAT%20NIGERIA%20LIMITED [accessed Oct 24, 2026]. See also Yussuf Akinola Oyebanjo etal, "*Understanding the Employees' Compensation Act and Tortious Claims for Workplace Injuries in Nigeria*" SSK Notes, Sep 2025 at https://sskohn.com/understanding-the-employees'-compensation-act-and-tortious-claims-for-workplace-injuries-in-nigeria/ [accessed Oct 23, 2026].

[12] SS. 254C-(1)(a) of the *Constitution*, 12(1) & (3) & 55(4) *ECA*.

utilises a doctrinal approach. And it is divided into the segments as outlined in the instruction for the paper.

Definition and Analyses of Key Terms

Under this head, two interrelated concepts would be construed. They are the concepts of: "*injury*" and "*injury arising out of and in the course of employment*". Interpretation of statues is one of the major functions of courts and in doing this, courts are guided by a basic principle that the words of statutes must be given their natural and plain meanings, unless there is ambiguity leading to absurdity[13]. Only then would courts resort to other principles of interpretation of statutes. This primary rule of interpretation is called the *literal rule of rule*[14]. It shall primarily guide us in this discussion. Therefore, we must first understand what the meanings of these primary terms are within the context of the *ECA*, the *NSITFA*, and other related statutes, *ILO* conventions and international best practices.

The injury envisaged in the *ECA* covers all bodily or personal injuries under torts[15]; worsened preexisting conditions[16] and; occupational diseases[17], arising in the scope of employment or proximate to employment or in the workplace[18]. Thus, it would appear that the *ECA* also covers compensations for injuries covered by the *Factory Act*[19] to the extent that employment relationship is established. Where the accident resulting in the injury happens to a third-party non-employee in the premises of a factory, it may escape the *ECA's* purview, as employment relationship is the mainstay. It would appear too, that under *ECA*, neither the negligence of the employee nor his contributory negligence, nor that of the employer, is a factor to be considered to be entitled to compensation[20]. It would appear to be strict liability. That appears to be a major distinction between victims claiming under the *ECA* and under common law, where causation, duty of the employer and its negligence in that duty, are factors to sustain actions under torts. It would also appear, looking cursorily at S. 73 alone, that under the *ECA*, mental illness, psychological trauma and psychiatric problems, arising from stress leading to depression or traumatic experience at workplace is not covered, as disease and bodily injury are morphologically different from illness, which depression and psychological trauma are.

However, it seems arguable that mental problems and psychological traumas arising from conditions at workplace are covered, if we look at the traditional legal meaning of *personal injury* to elucidate the usage of *injury* in S. 73 of the *ECA*. The *Black's Law Dictionary*[21] says "*personal injury*" is:

> "**1**. In negligence action, any harm caused to a person, such as broken bone, a cut, or a bruise; **bodily injury**. **2**. Any invasion of a *personal right*, including mental suffering and false imprisonment. – Also termed private injury. **3**. *For*

[13] *Abacha v. FRN* (2006) 4 NWLR (Pt. 970) 239 (SC) 309, F-G and, *NDIC v. Okem Ent. Ltd*. (2004) 10 NWLR (Pt. 880) 107 (SC) 184-185, A-E and 196, D-E.
[14] Ibid.
[15] *Black's Law Dictionary*, Deluxe Ninth Ed. p. 856 at bodily injury. See also S. 44 *NSITFA*, which defines *injury* as meaning "*personal injury*…".
[16] Ibid.
[17] S. 73 *ECA* and S. 44 *NSITFA* supra, which defines injury to mean: "*personal injury and includes contraction of disease*."
[18] By virtue of S. 254C-(1)(a) of the *Constitution*, the *NIC* has jurisdiction on matters arising from workplace so far it caused injury to an employee.
[19] SS. 51 & 88, at "*bodily injury*" of the *Factories Act*.
[20] SS. 1(a) & 7 *ECA*.
[21] *Black's Law Dictionary*, Ibid, p. 857.

purposes of workers' compensation, any harm (including a worsened preexisting condition) that arises in the scope of employment."

It is necessary to state that S. 44 of the *NSITFA* employs the same language as S. 73 of the *ECA* in its definition of injury and therefore, enjoins the same construction[22]. *Bodily injury* is synonymous with *personal injury*, as depicted in the *Black's Law Dictionary* [supra]. That is the sense in which S. 12(3) of the *Labour Act* defines "*personal injuries"* as including: "*any disease and any impairment of a person's physical or mental condition arising out of his employment, and "injury" and cognate expressions shall be construed accordingly*." The *ECA* also covers workers for which the *Labour Act* provides, hence, the meaning of injury in the *ECA* must be read accommodatively. Since the *ECA* employs the term "*bodily injury*" in its definition of injury in S. 73, and did not limit the ambit of the term, but used it in all-embracing manner, it would be absurd to suggest that mental stress, psychological traumas and psychiatric problems resulting from "*conditions of work"*, a term employed by S. 73 of the *ECA* in defining injury, are not covered by the general term, which, as we have seen, traditionally includes mental stress in the jurisprudence of injury claims arising from workplace[23].

Anyway, S. 8 of the *ECA* partly solves this problem by providing for compensation for mental stress, which is not already covered by the other provisions of the *ECA*. Under S. 8 of the *ECA*, the term "*mental stress*" encompasses psychological traumas. Hoverer, the snag in S. 8 of the *ECA* is that, these mental injuries are limited to sudden traumatic experiences related to work[24], and where the mental stress is caused by an employer's suddenly changing the employee-victim's schedule at work or changing of the victim's working condition without minding the victim's capability for the new radical change of schedule or the implication of the changed conditions of work on the health of the victim-employee[25]. Medical reviews and certifications are necessary for claims under these heads[26]. Art 1 of the Nigerian ratified *ILO C019* uses the term *personal injury*, though, in relation to accident alone, while Art 3 of *ILO C155* says: "*the term health, in relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work*." Nigeria is bound by these broad coverages of the terms under *ILO* standards by virtue of S. 254C-(2) of the *Constitution*, to which the *ECA* is subservient and must therefore, be accommodatively interpreted. And what is more, the *ECA* actually used "*personal injury*" in S. 12(8) instead of "*bodily injury*" it used in S. 73, the definition section, and it has frequently used; meaning that, the conception of injury is all encompassing under *ECA*, regardless of what terminology is used at any point or in the definition section.

The decisive factor is that the injury or occupational disease or illness or aliment or health issue occurred in the course of employment and proximate to the employment. Hence, pure accident for which no fault is traceable to neither the employer nor the employee would appear to be covered under *ECA*, once it occurs in the course of work[27]. Issues such as eye-problems arising from long time on the computer screen induced by the nature of the employment-duty are covered. Likewise, sudden change of schedules of an employee without minding the capability and

[22] *Heritage Bank Ltd. V. Means (Nig.) Ltd*. (2025) 9 NWLR (Pt. 1994) 321 (SC).
[23] *Black's Law Dictionary* p. 857 at *personal injury* [supra].
[24] S. 8(1)(a) *ECA*.
[25] S. 8(2) *ECA*.
[26] S. 8(1)(b) & (3) *ECA*.
[27] SS. 1(1) & 7 *ECA*.

suitability of the employee for the new task is covered, if it leads to depression – S. 8(2) of the *ECA*. It is necessary to state in respect of S. 8(2)-(3) of the *ECA* that sudden change of work schedules without discussion with the employee to be affected is itself generally frowned at in labour relations and can ground a cause of action independently of *ECA* under common law, as it amounts to breach of contract[28]. While it is recognised that employers may change schedules or alter the contract midcourse due to industrial exigencies, a change that is so radical as to totally affect the fulcrum of the contract, is impermissible, and this becomes more so, where it is done without prior consultation with the employee[29]. S. 8(2)-(3) of the *ECA* is therefore in tune with international best practices and clearly recognises the danger of employer's radical alteration of work schedules.

Done with the scope of the term "*injury*", this takes us to the scope of the term: "*injury arising out of or in the course of employment*." Comparative jurisprudence from other nations suggests that, where sudden and traumatic injury sustained by a third party, who is relative or colleague of an employee, in the presence of the employee in the course of work, is the cause of the mental injury to an employee, it is within the compass of "*injury arising out of and in the course of employment*[30]". S. 8(1)(a) of the *ECA* seems to fully cover this too. Luckily, the *ECA* broadly defines *workplace* to include: "*any premises or place where a person performs work or needs to be or is required to be in the course of employment*[31]." This would appear to cover a hotel room assigned to or rented by an employee during seminars and workshops and also, vehicles boarded in the course of transport to and from workplace and the like[32].

The provisos in SS. 7(2)(c) & 11(a)-(c) of the *ECA* that the employer needs to be aware of this in advance, would appear to be of no moment, once such detour is necessitated by the exigencies of work, because, a contrary view is not in consonance with the *ILO* standard duly ratified by Nigeria[33]. Any accident or occupational disease that occurs therein becomes compensable under the *ECA*. This is particularly so, in virtue of *NIC's* mandate to eschew unfair labour practices and leverage international labour standards/best practices in the adjudication of labour/employment cases, pursuant to S. 254C-(1)(f), (h) & (2) of the *Constitution*, Art 3 of *ILO C019*; and the definition of workplace under *ILO* standards, which includes places outside the main and primary workplace, which an employee goes by dint of the exigencies of his/her employment or that, are proximate, as distinct from pure frolics[34].

This will appear to cover workplaces under the platform economy[35] that is currently the rave. Therefore, cyberspaces and work from home in remote work and platform economy, would be so covered. Jamiu Akinpelu, in his brilliant article [supra], argued that the *ECA* does not seem to accommodate injuries arising from harassment at workplace and from disability discrimination. This observation does not seem to cognisance the definition of *conditions of service* in S. 254C-(1)(a) of the *Constitution* and "*conditions in a workplace*" in the definition of *injury* in S. 73 of the *ECA*. When a concept is contained in a statute and the *Constitution*, the definition in the

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[28] *Elizabeth v. Alex Ekwueme Federal University*: Suit No. NICN/ABK/02/2021 – delivered Dec 15, 2021
[29] Ibid.
[30] See Jamiu Adekunle Akinpelu, "*An Expose of Employee's Psychiatric Harm Claim in the UK, Call for Advocacy on Work Place Psychological Injuries in Nigeria*" in *Employment and Labour Law Journal*, Vol 1, Issue 1, 2025, p. 1-13.
[31] S. 73 *ECA* at "*workplace*".
[32] Art 3 of the Nigerian ratified *ILO C190* and Art 3(c) of the *ILO C155*.
[33] Arts 3 of the ILO C190 & 3(c) of *ILO C155* [supra]. See also para 5(c)(i) of *ILO Recommendation No. 22*.
[34] Art 3(c) of the *ILO C155* and Art 3 of *ILO C190*.
[35] Art 3(d) of the *ILO C190*.

Constitution, takes precedence. S. 254C-(1)(a) of the *Constitution* says *NIC* has exclusive jurisdiction in civil causes and matters arising from "…*conditions of service, including* health, safety, welfare of labour, employee, worker…" and thus, defines the *conditions of service* over which the *NIC* has jurisdiction to encompass, health, safety, and welfare of labour. The term *health* is all-encompassing and includes mental, psychological and physical bodily health. The *Oxford Advanced Learners' Dictionary*[36] defines health as "*the condition of a person's body or mind; the state of being physically and mentally healthy*".

Conditions of service embrace practices at workplace from which injuries, physical, mental or psychological or psychiatric or anything significantly displeasing to human nature, could arise and thus, disability discrimination, when read in the contexts of subsection (g) of S. 254C-(1) of the *Constitution* and *ILO C111*, which both forbid discrimination in a broad sense, encompasses disability discrimination. Safety also includes absence of violence and harassment and thus, encompasses stressors from harassment at workplace. Thus, the term, *conditions in a workplace* incorporated in S. 73 of the *ECA* in relation to the breadth of injuries covered by the *ECA,* is synonymous with *conditions of service* used in S. 254C-(1)(a) of the *Constitution*, and takes the constitutional definition in S. 254C-(1)(a) of the *Constitution*; more particularly so, that the term "*conditions in a workplace*" is not defined in the *ECA*. And it would appear that there cannot be any argument that *conditions of service* and *conditions in a workplace* mean one and the same thing. Language, not being an instrument of mathematical precision; variations in words used in expressing the same concept, are bound to occur. But these slight variations of words do not change the meaning.

With the innovations introduced into labour/employment jurisprudence in Nigeria by the *Third Alteration Act*, there seems to be no doubt that, the common law is amended to those extends, such that some common law defences hitherto available to employers under common law, would no longer be available, while burden of proof is inverted in some instances, and new heads of torts created in others[37]. A lot of statutes have also modified the law of torts relating to personal injuries arising from workplace or in the course of employment in Nigeria[38]. Thus, ordinary civil suits could be filed to alternatively litigate mental/psychological trauma injuries arising from harassment and disability discrimination. But in doing this, the litigant must prove the ingredients of the new torts: causation and foreseeability. This is easily proved where the victim had formally reported to the management and they failed to act to positively address the complaint. That is, it. We move to examine causation, nexus and scope of employment.

Causation, Nexus, and Scope of Employment

As the research has cursorily observed before now, the causative aspect of the injury is essentially not important under *ECA*, but the nexus to employment is, except under S. 8(1) of the *ECA*, dealing with mental illness resulting from sudden traumatic incident that occurs in the course

[36] International Student's ed. 8th ed. p. 693.

[37] S. 254C-(1) & (2) of the *Constitution* and, *Danjuma v. Royal Salt Ltd*: NICN/EN/40/2016 – delivered Sep 29, 2020 at https://www.nicnadr.gov.ng/judgement/details.php?id=5032&party=Josiah%20Danjuma%20-VS-%Royal%20Salt%20Ltd%20&%20ORS [accessed Oct 23, 2026]. See also Michael Dugeri, "*The Employee's Compensation Act, 2010: Issues, Prospects and Challenges*" at https://download.ssrn.com/19/12/24/ssrn_id3509243_code2 [accessed Oct 23, 2026]. The author brilliantly discussed the changes wrought on common law by statutory interventions and international labour law instruments.

[38] S. 12(1) of the *Labour Act*, which has abolished the defence of common employment. The defence of voluntary assumption of risk is also severely whittled down, where there is proof of negligence on the part of the employer or failure to provide safety gadgets – *Smith v. Bakar* (1891) AC 325 H.L. quoted from Michael Dugeri [supra].

of work and leads to depression and the likes and; the medical examination and certification requirement to be to be financed by the *NSITF* itself take off the employee's duty to prove causation. It is the same thing with S. 8(2) of the *ECA* in relation to mental illness induced by the employer's sudden alteration of work schedule. The medical review and certification to be sponsored by the *NSITF* also solved the employee's need to prove causation. It needs not be stressed that, where the common law route is taken, it becomes the duty of the employee to prove causation, nexus, the duty of care on the part of the employer, failure in that regard, the actual injury suffered, the employer's liability and that, the injury occurred in the course of work or in the workplace. It is also necessary to say that, where the victim-employee or his representative disputes the result of the medical review under S. 8(1)(b) & (3) of the *ECA*, and not satisfied with the *Board's* first decision, he might need to seek alternative medical opinion, independent of the *Board*, for his appeal to the *Board* to self-review its earlier decision.

Under this situation, the employee-victim would need to prove causation, nexus, scope of employment, the employer's liability and his entitlement under the *ECA*, since he is disputing the *NSITF's* medical reports, which would form the ground for his second appeal to the *NIC* against the *Board's* appellate decision. This is so, as the victim-appellant cannot adduce fresh evidence at the *NIC* level, where the appeal is treated purely on the basis of the record of proceedings on the *Board's* decisions[39].

Note that, because it is an appeal against the appellate decision of the *Board*, the employee-victim, having originally claimed under the *ECA*, is not allowed to revert back to the common law hence, the compensation claimable in the suit at *NIC* to judicially review the *Board's* appellate decision, can only be limited primarily to the compensation payable under the *ECA*. But under that situation, the employee-victim might be entitled to cost, and additionally, damages or compensation, where there is proof of highhandedness or deliberate misdeed against the *NSITF*, which must form part of the grounds of appeal and verifiable from the records transmitted pursuant to Or. 50 of the *NIC Rules*. These damages are claimable by virtue of S. 254C-(1)(f) of the *Constitution* and SS. 14 & 19(d) of the *National Industrial Court Act* [***NICA***]. The employee-victim might also be able to claim pre-judgment interest[40], especially when skillfully claimed under S. 254C-(1)(f) of the *Constitution*; and post-judgment interest, under Or. 47, R. 7 of the *NIC Rules* on the withheld compensation, from the date it was withheld and post-judgment interest, from the date of *NIC's* judgment, till the orders are complied with. SS. 14 & 19(d) of the *NICA* cover such reliefs in addition to the *NIC's* power under S. 254D-(1) of the *Constitution*, which enables it, like the *High Court*, to award punitive and aggravated damages in cases of egregious breach of statutory rights. Thus, in situations like this, the *Board* loses more money than actually paying the compensation. The lesson in this for the *Board*, is that, it must be above board in its assessments and be meticulous in arriving at a no-decision. For this reason, it is better for it to seek alternative medical opinion, where its first decision has been challenged on appeal to the *Board*. And the lesson to employees is that, avenues abound to tackle any illegality of the *NSITF*.

The procedure for appeal against the appellate decision of the *Board* to the *NIC* under S. 55(4) of the *ECA* is under Or. 50 of the *NIC Rules*. It appears the appeal is treated exactly as in the normal civil appeals against the decisions of the trial superior courts to the *Court of Appeal*, where only the records of proceedings at the trial courts and the technical grounds of appeal with the

[39] Or. 50 of the *NIC Rules*.
[40] *UES Ltd. v. RMA&FC* (2022) 10 NWLR (Pt. 1837) 133 (SC) 162, F-G & 171, A-D and *NPA v. Aminu Ibrahim and Co.* (2018) 11 NWLR (Pt. 1632) 62 (SC) 87-88, F-A & 97-98, F-A.

technical issues generated therefrom, are entertained[41]. The lesson in this for the employee is that, if he has external evidence against the initial decision of the *Board*, he must make them available to form part of the record that go goes to the *Board* in its appellate jurisdiction. This might be so in cases where the employee disputes the medical reports and for that reason, obtained another medical report with contradictory results, or where he has allegations against any member of the *Board*. This is particularly rife in that, the initial investigation, assessment and decision of the *Board* are essentially self-sponsored[42] by the *Board* without much opportunity for the employee-victim to query the process. Otherwise, there is no basis for the right to appeal against the initial *Board's* decision. The time limit for the appeal from the *Board's* appellate decision to the *NIC* is 30 days.

Of importance is the observation that the 30 days given by the *NIC* appears too short, going by the fact that the employee-appellant was given 180 days in S. 55(3) of the *ECA*. Why not the same 180 or its half, 90 days, by the *NIC*? This observation becomes poignant in that, the employee-appellant is facing an entirely different scenario that may be unfamiliar to him, and which demands highly technical knowledge of lawyers. Thus, he needs more time to consult a lawyer and his lawyer too, needs ample time to research the highly technical subject covered by the *ECA*. The 30 days, in comparison to the 180 days granted by the *ECA* in its internal appeal, appears unfair. But the gratifying fact is that, the employee-appellant can always apply for leave and extension of time, which would be granted, if cogent reasons are given. But it is not the same as of right.

So far, this research has not unearthed an instance where the appellate jurisdiction of the *NIC* under S. 55(4) of the *ECA* has been activated against the *Board's* appellate decision. The nearest to this was *Oka Charles Edet v. SCC Nigeria Limited*[43]. The basic gist, is that, the employee had an accident that caused him injury and he was eventually discharged by the employer without compensation for the injury therefore, the suit for compensation and damages for the injury against the employer alone. Part of the defence was that the defendant-employer had applied to the *NSITF* for compensation for the claimant since 2018 and the *NSITF* did not pay because, the claimant's medical report did not state that the claimant had incurred any disability therefrom. The case was first dismissed for being statute-barred and in the alternative, the *NIC* declined jurisdiction on issue 1 relating to compensation, on the ground that a claim for the claimant had been submitted to the *NSITF* by the defendant-employer, hence, the door of civil suit in tort was shut. One may assume that the claimant filled the requisite form before it was submitted, since that is a condition precedent. But one is not sure the *NSITF*/the defendant-employer actually notified the claimant of the reason for not granting the application, as the defendant-employer only tendered the application to the *NSITF* and not the reply from the *NSITF*.

But as the defendant-employer stated the reason for not paying the claimant compensation, as the failure of the medical report to state any disability, one may conclude that, the defendant-employer likely received the reply from *NSITF*. And if that is so, it truly raised a question of S. 55(4) of the *ECA*, that the claimant could only have appealed to the *NIC* and not file a new suit under common law. But these facts were not explicitly stated in the decision. However, the following statement in the decision throws a lot of doubt into the foregoing assumption, in that, it says:

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[41] Or. 50, Rs. 1(1) & (2) of the *NIC Rules*.
[42] E.G. SS. 4-6 & 8(3) *ECA*.
[43] Suit No. NICN/ABJ/329/2022 delivered Jun 20, 2025 at https://www.nicnadr.gov.ng/nicnweb/display2.php?id=10082 [accessed Oct 25, 2026].

> "Thus, ***even*** *if the NSITF Management Board had concluded on the application*, as stated by the defendant, the appropriate action is to appeal and not bring a fresh action before this Court for compensation."

The italicised portion shows that the *NIC* did not find that the *NSITF* had actually treated the application and replied the defendant-employer. The decision was rendered Jun 20, 2025 and the employer filed claim with the *Board* Nov 2018. That is 7 years after the claim was filed with the *Board*. Assuming the *Board* simply did not make its decision known, as the hard facts of this case suggests. Barring the application of limitation law, this research is of the opinion that such situation of neglecting to formally inform the victim-employee of the fate of his application, warrants a proper case for mandamus to compel the *NSITF* to act[44]. It is therefore humbly submitted that, in a situation like that, the *NSITF* may be suable in a fresh suit, not by way of appeal under S. 55(4) of the *ECA*, but by way of judicial review via mandamus, as there would be no first instance *Board's* decision to appeal against to the *Board* for the victim-employee to exercise its right of appeal to the *NIC* over the *Board's* second decision, as provided by S. 55(1) & (4) of the *ECA*. Such scenario may establish a strong case of unconstitutionality and illegality against the *NSITF* for illegally refusing to act.

The right of the victim-employee to sue the *NSITF* in such instance comes from administrative/constitutional law, as buttressed by SS. 6(6)(b) & 36(2) of the *Constitution* pursuant to the rule law, and not from S. 55(4) of the *ECA*. To hold otherwise, is to turn the *NSITF* into an ogre to ride roughshod over the right of citizen-employees to have their grievances ventilated. The *ECA* is not a blank cheque for the *Board* to act at its whims and caprices, but to act in line with due diligence under the rule of law. This research will come anon to another aspect of this issue. This marks off the causation of injuries and occupational diseases/illnesses and nexus to the scope of employment and the doctrinal boundaries. We shall now examine employer's liability and employee's entitlements under the *ECA*.

Employer's Liability and Employee's Entitlements Under the *ECA*

As we have seen already, the aim of the *ECA* is to create a social insurance scheme to cater for victims of workplace accidents and occupational diseases. Hence, the social security tax is placed on all employers[45] within the national economy, except military employer with regard to military personnel. The term employer and employee are broadly defined in S. 73 of the *ECA*. Employer encompasses both private and govt employers, corporate and non-corporate, and individual persons too. And employee is defined to accommodate apprentices. They have the obligatory duty under the *ECA* to make, at least, 1% monthly contribution benchmarked on the salaries of the total staff in their nominal roll to the *Fund*[46]. And this is to be sourced independent of the staff salaries, so that the *Fund* is wholly funded by employers[47] while compensation is not attachable or assignable[48] or waivable[49]. Thus, the mandatory contribution is a form of social tax on the employers of labour in Nigeria. This money is an investible[50] fund managed by the *Board* for the sole aim of financing the exigencies of workers that sustained industrial accidents or

[44] *ADH Ltd. V. Min., FCT* (2013) 8 NWLR (Pt. 1357) 493 (SC) 509, B-D.
[45] S. 33 *ECA*.
[46] S. 33(1) *ECA*.
[47] S. 14 *ECA*.
[48] S. 15 *ECA*.
[49] S. 13 *ECA*.
[50] SS. 31(b) & 32(e) *ECA*.

contracted occupational diseases/illnesses and payment of the salaries and allowances of the *Board* and staff of the *NSITF*[51]. It has been observed that, in spite of the fact that the law criminalises[52] failing in the employers' obligation, employers are still reluctant to make this contribution, for which reason, the *Board* has frequently resorted to actions in the *NIC* to force them to comply. Several of these cases are currently rife in all *NIC's Divisions* across Nigeria.

Understanding the nature of employers and their inclination to sharp practices, employers are mandated to furnish the *Board* with their nominal rolls and other relevant documents to enable the *Board* to ascertain the correctness of their contributions[53]. The *ECA* also imbued the *Board* with ample powers to access the employers' premises to investigate documents and data for the purposes of benchmarking individual employer to appropriate percentage of contribution based on the level of risks inherent in their individual line of business[54]. The decisive factors for the *Board* to exercise its powers thereto is the establishment of actual employment of staff by the alleged employer. Where it fails to do this, the *NIC* will most likely decline to assist it to enforce the contribution[55].

The lesson for the *Board* is to articulate good strategy in gathering facts that would enable it prove the employment of staff against recalcitrant entity. The argument of its lawyers must be tailored to the specific demands of each and every case, by guiding against standard form argument, which they may be prone to by the blank assumption that all cases are similar for the enforcement of the provisions of the *ECA*. Slight factual nuances might produce great negative legal effects against the *NSITF*, if not carefully articulated. Nevertheless, because of the broad definition of employer under S. 73 of the *ECA*, and the need to disallow dishonest employers from escaping their social responsibility, the *NIC* has held in a case[56] that, where the alleged employer refuses to cooperate with the *Board* in giving access to the *Board* to enter its premises and also refused to furnish the *Board* with the necessary documents demanded, to ascertain the alleged employer's activities, to determine its status as an employer, its bank accounts could be held to be a privy, and hence, a bank account, even though, not a juristic personality, is attachable as privy, in order to ascertain its use in paying salaries in determining the true status of an entity as an employer.

The *NIC* leveraged the concepts of garnishment and lifting the veil of incorporation in this regard to prevent the use of artifice to escape statutory obligation[57]. This is in accord with the doctrine that a person must not be allowed to benefit from his wrongs[58]. The *NIC* held thus:

> "As regards the 2nd and 3rd defendants: since only a juristic person could own and operate bank accounts, failure to attach statements of accounts of these accounts by the defendants for the court to ascertain the true ownership and the purpose they are used for, is fatal. It creates the impression that there is suppression of evidence and therefore, takes the legal disadvantage that such evidence would be unfavourable to the defendants, which is why it was suppressed – **Bakari v.**

[51] SS. 31 & 32 *ECA*.
[52] S. 71 *ECA*.
[53] S. 39-40 *ECA*.
[54] SS. 32(a)-(b) & 33(2) *ECA*.
[55] *NSITF v. St. Andrews International School* – Suit No. NICN/MN/06/2024 – delivered Dec 10, 2024 in which the *NIC* held that the *Board* failed to prove that the defendant was an employer and dismissed the case.
[56] *NSITF v. Annunciation Specialist Hospital* – NICN/EN/35/2023 – delivered Dec 2, 2025 at https://www.nicnadr.gov.ng/nicnweb/display2.php?id=10619 [accessed Oct 23, 2026].
[57] Ibid.
[58] *Agbareh v. Mimra* (2008) 2 NWLR (Pt. 1071) 378 (SC) 424, F-H.

Ogundipe (2021) 5 NWLR (Pt. 1768) 1 (SC) 63, C-D. I therefore hold that the status of these 2nd and 3rd defendants vis-à-vis the 1st defendant could not be resolved and therefore, the claimant is entitled to have access to the documents relating to the opening and operation of the accounts. It is by this means alone that the claimant can ascertain the juristic personality behind them and whether such juristic person employed workers and therefore liable to make remittances or whether these so-called non-juristic accounts are smokescreens to evade the dictates of the *ECA* and the *NSITF Act*. It is similar to garnishee proceedings whereby accounts are proceeded against. Labour law is *sui generis* like garnishee proceedings.

For this reason, I do not share the position of the learned defence counsel that S. 73 of the *ECA* does not cover the 2nd and 3rd defendants as employers or that incorporation is the litmus test. It is my considered view that the meaning of employer in S. 73 of the *ECA* is tied to the incidence of employing staff: whether body corporate or not, individual or not. Once the entity employs or suffers the deficit of being used as lever to pay salaries to workers but refusal to make the necessary contribution to the Fund, the accounts would be suable for the purposes of *lifting the veil* to enable the Court make appropriate orders against it. It is for this reason that the law gave the claimant ample powers to arrive at the true position of things in order to eschew employers' sharp practices and mere form or technicality cannot foil these lofty statutory objectives."

That is a lesson for employers that they may not have a place to hide to dodge their responsibility to contribute under the *ECA*. Be that as it may, it is pertinent to observe that the compulsory contribution of at least 1% of the total salaries on the nominal roll of staff by employers, is ultimately far more beneficial to employers than succumbing to the liability of being sued under common law, where individual employer would solely bear the burden of a successful litigation in torts and the consequential damages and cost against it. They also additionally and solely bear the huge cost of hiring lawyers.

Such individual employers also bear the other consequential expenses relating to logistics to ferry witnesses to courts etc. In addition, the damages awarded by courts are often huge because, being once-and-for-all, which for this reason, often have the tendency to significantly negatively affect the fortune of the employer, whereas, under *ECA*, because the funds with the *Board* are invested, which profits are sunk back into the capital and because, the funds are in a pool to meet exigencies as they occur, like in insurance practice, and the funds are scientifically managed by experts, which include actuaries, and are not always paid out in huge lump sums at once, unlike damages awarded by courts, the particular employer cannot be crippled by the little monthly contributions, and yet, they are saved the troubles of the exigencies of catering to the accidents and occupational diseases of their staff, which troubles are taken over by the *NSITF*.

Hence, it would be pennywise-pound-foolish for employers to seek to dodge their obligations under the *ECA*. The lesson for employers is that, it is beneficial to key-in into the scheme. It also seems good economics for them to promptly inform their staff that suffered industrial injuries in the course of employment or incurred occupational diseases, about their rights under *ECA*, and promptly assist them to make the necessary applications.

As for employees, their entitlements are scientifically structured to cater for the peculiar needs of every and all imaginable exigencies[59]. Dead victims are specially treated with their children' education and spouses' needs etc. carefully figured into the compensation regime[60]. The compensation regime for dependants of dead victims, like spouses etc., are monthly stipends, based on a percentage of the deceased's salaries at death, for life[61]. The same is applicable to those who sustained permanent total incapacities. Their compensation is based on percentage of their wage at the point of the accident calculated on the basis of degree of the loss capacity to earn by dint of the accident, and it is for life too[62]. Victims are rehabilitated and assisted to purchase gadgets that aid their continued useful existence in deserving cases[63]. The compensations payable under SS. 21-22 & 24-25 of the *ECA* are payable till the victim reaches 55 years of age when he retires[64]. Where the injury occurs when the employee had actually reached 55 but had not retired, the compensation is payable for two years[65].

Allowance is made for adjustment where there is proof that the employee would retire later than 55[66]. This is commendable in that, it figured 60 years as the normal retirement age in the public service and in some cases, 65 and 70. Apart from paying the monthly stipends to victims of partial or total incapacities that meet the basic requirements, their welfare is continually monitored and attended to[67]. They therefore continue to have easy access to humanity. Thus, these victims escape the danger of wasting the once-and-for-all huge damages obtained in common law route and the relapse to abject poverty that increases their suffering and hasten their death. Lump sums are paid the victims of disfigurement, which disfigurement the *Board* figures may interfere with their earning capacities, but who in the meantime, have not actually suffered any diminution of earning capacity in their places of work.

Like lump sums are payable to those who suffered temporary disabilities[68]. This is partly akin to damages, as in common law[69] and compensatory as in S. 19(d) of the *National Industrial Court Act* [***NICA***]. S. 27 of the *ECA* deals with the duties of the medical personnel that treat the injuries covered by the *ECA* and make claims under the *ECA*, the procedures they must follow and the length of time within which to make the claims before they are statute-barred under S. 27(3) of the *ECA*. These are to guide against sharp practices that might deplete the *Fund* without adding value. The punishment of disbarment from further participation in the scheme is provided against the medical personnel who contravene the provisions, while S. 28 of the *ECA* preserves the pension rights of the victims receiving monthly stipends for temporary disabilities pursuant to S. 21-22 of the *ECA*.

The *ECA* did a commendable job: enabling a biological-parent-like attention to the sustenance of the health and wellbeing of workers who suffered workplace accidents and diseases;

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[59] See the whole of *Part IV – Scale of Compensation* of the *ECA*, starting from the long S. 17, which deals with dead victims and their dependants; and SS. 18-26, & 28-29, which deal with the other categories of victims. See particularly S. 17(13) of the *ECA*, which provides for how to handle and accommodate exigencies not anticipated in the compensations designed for dead victims in S. 17.
[60] S. 17(1)(a) & (C) *ECA*.
[61] S. 19 *ECA*.
[62] S. 22 *ECA*.
[63] S. 26 *ECA*.
[64] S. 23(a) *ECA*.
[65] S. 23(b) *ECA*.
[66] S. 23(a)(ii) & 23(b)(ii) *ECA*.
[67] Ibid.
[68] SS. 24 & 25 *ECA*.
[69] *BB. Apugo Ltd. v. OHMB* (2016) 13 NWLR (Pt. 1529) 206 (SC) 256-257, H-B.

and taking good care of the dependants of those who unfortunately died or became invalid. Workers never had it so good in Nigeria. Nevertheless, there is a snag with these lofty compensatory ideals contained in the *ECA*. This is in relation to the fact that the benefits are tied to a percentage of the salaries earned by the victim-employee at the point of the accident or occupational disease or illness. And it would seem that there is no allowance to review the base salary in line with inflationary exigencies or in line with the review of the salary of the workforce to augment the inflation-induced dwindling value of the compensations. If this is correct, as the exit base salaries remain stagnant, the *ECA*-percentage compensations granted to the victims might pale into acute insignificance and make the ideals aimed at, atrophy. Preventing this is easily achievable, as the percentage contributions by employers to the *Fund* automatically increase by the margin by which workers' salaries are increased: the compensations payable should automatically increase too, as that is fair and just labour practice[70].

S. 30 of the *ECA* that gives the *Board* the power to review the compensations payable under the scheme is not an answer, as it is not automatic with the review of workers' salaries pursuant to inflation. The research suggests that the issue should be figured into later amendment. These are some of the issues actuaries should look into in the preparation of mathematical models and actuarial accident tables or personal injury tables[71] for the scheme. *ECA's* provision[72] to surcharge employers whose employees' injury-compensations exceed their total contribution is a thoughtful provision, which would put the employers in check against reckless attitude to the issue of safety and health in industries and the propensity for lackadaisical attitude towards the *Fund*, in the belief that the *Fund* would cater for any injury.

Now, it is necessary to make one or two observations that come to mind on the nature of limitation of action against the victim-employees provided under 6(2)-(5) of the *ECA*, ranging from one-year, three-year, if special circumstances delaying the application is established, and beyond three-year, in S. 6(5), if new scientific evidence establishes the illness as a product of occupational disease. These limitation timeframes, which all go beyond the three-month of S. 2(a) of the *Public Officers' Protection Act* [***POPA***], must be construed vis-à-vis the place of the *POPA*, in relation to public servants, who claim for compensation via *ECA*, even though, outside the iron-cast three months limitation provided in S. 2(a) of the *POPA*. It seems safe to suggest that, being the product of a special legislation on a special subject, these provisions override the general provisions of the *POPA*, even where the applications are brought outside the three months provided by the *POPA*[73]. And since S. 12 of the *ECA* also gives the victim the right to institute action straight at the *NIC* under common law in lieu of seeking compensation under *ECA*, without applying through the *Board*, it would appear plausible to argue too, that *POPA* would no longer be applicable to actions filed for damages in torts by public servants against public officers or institutions, because of the *ECA*-assured right of election, which subdues the *POPA*.

To hold otherwise, would amount to discrimination under S. 254C-(1)(f)-(g) of the *Constitution* and Art 2 of the *ILO C111* in the inequality of access to labour justice engendered by the *POPA* in this instance, between those who take the *ECA* route and those who take the common law route; bearing in mind that the *POPA* is not part of the common law as preserved by S. 12(1)-

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[70] Art 21(1) of the *ILO C121* as example of international labour standard/best practice pursuant to S. 254C-(1)(f) – (h) of the *Constitution*.

[71] Government Actuary's Department, "*Personal Injury and Fatal Accident Cases*" (7th ed.) at https://assets.publishing.service.gov.uk/media/5f998a6de90e074f4c4eb768/ogden_tables_7th_edition.pdf [accessed Oct 26, 2026].

[72] SS. 41 & 42 *ECA*.

[73] *Independent Television Radio v. ESBIR* (2015) 12 NWLR (Pt. 1474) 442 (CA).

(4) of the *ECA*, but a statutory intervention, like S. 6 of the *ECA*. It would also contradict Art 3 of *ILO C019*, which enjoins similarity of rights and protections for foreign-workers who sustained industrial injuries in Nigeria, by which this research has earlier argued that, international best practices are an inherent part of the ratification done of the *ILO C019*. The plausibility of the above objection against *POPA*, is made more certain, if we consider S. 12(4) of the *ECA*, which provides thus:

> "Where the Board is satisfied that, *due to physical or mental disability, an employee is unable to exercise his or her right of election* under sub-section (3) of this section, and an undue hardship results, the Board may pay the compensation under this Act *until the employee is able to make an election* and if the employee then elects not to claim compensation, no further compensation may be paid, but *the compensation so paid shall be a first charge against any sum recovered*."

Inherent in this subsection, when construed with subsection (3) thereof, is that the victim-employee's right of election, either to claim compensation under the *ECA* or to sue under common law, is preserved till s/he gets well enough to exercise this right, notwithstanding the timeframe contained in any limitation law, which includes the *POPA*. This question the inflexibility and opacity of the *POPA*. This is particularly so, when it is understood that this right of election is tied with public interest in securing the recouping of the compensation paid by the public under *ECA*, if the victim wins with excess damages in his common law suit. The accommodation of peculiar circumstances as exceptions, appears to be in fulfilment of S. 17(2)(a)-(c) & (3)(b)-(c) of the *Constitution* and Art 15 of the *ACHPRA*. Thus, S. 12(4) of the *ECA* is inherently incompatible with S. 2(a) of the *POPA*, and being later in time, and contained in a special legislation for a special subject, S. 2(a) of the *POPA* is impliedly invalidated by it[74]. It would now seem, with utmost respect, the *Supreme Court's* decision in *Adigun v. Ayinde*[75], which upheld *POPA* against a public servant fatally injured in the course of official journey, for which the negligence of another public servant [the driver] was responsible, and who was rendered invalid beyond the three-month *POPA* limitation period, to the knowledge of the govt department/officials, who had been taking him from one hospital to the other within Nigeria and abroad under intensive cares in the interval before the suit was filed against the head of the govt department and others, may need to be re-examined in the light of this new statutory reality[76], because, the facts now fall directly under the *ECA*.

To further buttress the above ratiocination, subsection (6) of S. 12 of the *ECA* comes to focus. It gives the *Board*, a clearly public body, the right to sue in torts by subrogating itself for the victim in its official name or, in the alternative, the victim in his/her own name for it, the party liable for the tort, and therefore, takes advantage of the leeway against any limitation law that might not have forgiven the delay, in order to recover the compensation paid to the employee from the tortfeasor, and turn over the net surplus, if any, to the victim. So, in that instance the *Board* takes advantage of the leeway for the victim and vice versa so that limitation law, including the *POPA* does not affect the suit. Done with the effects of the limitation timeframes in the *ECA* on the rights of the *Board* and the employees, let us now examine how exactly in practice, the procedure for making claims under the *ECA,* works.

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[74] *Akintokun v. LPDC* [supra].
[75] (1993) 8 NWLR (Pt. 313) 516.
[76] *Adisa v. Oyinlola* (2000) 10 NWLR (Pt. 674) 116 (SC) 168, E-G.

What is the procedure of making claims under *ECA*? This is done on a prescribed *ECA*-form[77] and it is the joint responsibility of both the employer and the employee[78]/employee's dependant[79], in the case of death or incapacitation. Various time bars[80] are indicated against broad specific types of injuries and the duties for compliance with the procedures are shared between the employers and employees/employees' dependants in the case of death or total incapacitation. The victim-employee or his dependant, where death occurs, must report within 14 days of industrial injury or occupational disease, first to the employer and must provide some specified pieces of information[81]. Failure to provide this information ordinarily bars the claim[82]. Then, the employer reports to the *Board* and the *National Council for Occupational Safety and Health* in the state within seven days, but when it is death, immediately to the *Board*.

Thereafter, the application for compensation is made on the prescribed form[83]. Allowances are however given for excusable exigencies to extend time, which is capped cumulatively at three years[84]. And where new evidence or new scientific development comes into light to establish hitherto unknown injuries, allowance is given to resuscitate claims that would have been moribund[85]. The *Board* is also given timeline of one year within which to perform its initial[86] duty to approve or not to approve application for compensation, duly submitted to it, pursuant to which the claim would be statute-barred or lapsed if not made within the time[87]. There is a problem there, to which we shall return anon. However, where the victim-employee is fortunate that the *Board* renders its initial [first] decision, and he is dissatisfied, he can apply within a timeframe of 180 days[88] to the same *Board* again, and the *Board* must render its second decision on this appeal within a time lag of 180 days too[89]. Thereafter, the victim-employee is given right without timeframe, to approach the *NIC* for a review of the appellate decision of the *Board*[90]. The *NIC* gives 30 days for him to exercise this right in Or. 50, R. 1 of the *NIC Rules*. The research has earlier observed that the 30 days is too short.

It would appear that the appeal to the *Board* again, after its first decision, to review its decision by itself is abnormal. Though, the concept of exhausting[91] internal dispute resolution mechanism is well-known to law, and the provision of appellate right within the internal dispute resolution mechanisms is also well-known, but the usual practice is that the appeal goes to another body within the organisation or institution to guarantee its independence and impartiality. Strangely, this is not so under S. 55(1) of the *ECA*. The renowned labour law expert, Bimbo Atilola,

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[77] SS. 4-6 *ECA*.
[78] Ibid.
[79] Ibid.
[80] SS. 4-5 & 6(2)-(4) *ECA*, which prescribe one year at first instance, then three-year, if special circumstances are revealed as causing the delay in the application.
[81] S. 4(1) *ECA*.
[82] S. 4(4) *ECA*.
[83] S. 6(1) *ECA* [supra].
[84] SS. 4(4), 5(5), 6(3)-(5) *ECA*.
[85] S. 6(5) *ECA*.
[86] S. 6(2) *ECA*, which gives timeframe of one year for the *Board* to decide on the initial application for compensation.
[87] Ibid.
[88] S. 55(2) *ECA*.
[89] S. 55(3) *ECA*.
[90] S. 55(4) *ECA*.
[91] *Ibiowotisi v. Agbaje* (2026) 1 NWLR (Pt. 2024) 115 (SC) 147-148, F-B.

equally criticised this anomaly, as abnormal and dilatory[92]. That definitely should be a matter to be considered in future amendment for the possibility of creating another body by the *ECA* within the scheme to deal with the initial decision, while appeal is to the *Board*, since the *Board* is the highest authority in the scheme. This can be likened to the relationship between the authorities of the *Senate* and *Council* of universities. With appeal going again to the same *Board* that rendered the initial decision appealed, it is like giving the writer of a manuscript the duty of proofreading and editing it shortly after the completion of the manuscript. The quality of such proofreading and editing is seriously jeopardised from the start. And this militates against the rights of the affected victim-workers.

Another observation relates to the omission in the *ECA* of what right the aggrieved victim-worker can exercise to seek redress where the employer refuses to transmit his application on time to the *Board*, or where the *Board* itself, failed to decide and notify the victim on his application duly submitted to it within the prescribed one year, a point the research earlier noted and promised to revisit. Instead of providing for these, it would seem that in S. 6(2) of the *ECA*, the *Board's* indecision within a year, is a complete bar to the claim of the victim-applicant. It is necessary at this juncture to reproduce S. 6(1)-(2) of the *ECA*:

> "(1) An application for compensation shall be made on the form prescribed by the Board and shall be signed by the employee or the deceased employee's dependant.
>
> (2) Unless an application is filed or **a determination is made** within one year after death, injury or disability arising from an occupational accident or disease, no compensation shall be payable, except as otherwise provided in sub-section (3) of this section."

The itemised circumstances in the subsequent subsection of S. 6(3) of the *ECA* deal with an entirely different scenario. S. 6(3) deals with where the victim is prevented by circumstances beyond human control, from making the application within a year, and not when the *Board* itself failed to determine the application duly made and duly submitted to it within the timeframe of one year. Subsection 6(3) only mentions the application and not its determination, which it earlier mentioned as an alternative liable to the one-year rule. And it seems, it is without disputation that the clause: "*Unless an application is filed or **a determination is made** within one year after death, injury or disability…*" shown in the bold subclause: "**a determination is made…**" that the decision [determination] referred to, is that of the *Board* and it means "*unless… **a determination is made***" by the *Board* within a year, the right of the employee who had duly submitted an application to it becomes statute-barred.

Consequently, it means that the victim-employees have no remedy against the indecision of the *Board*. This informed the hypothetical example of this scenario on a case decided by the *NIC* and already cited in this discourse[93]. Though, this research has suggested a way out in the administrative-constitutional law remedy of mandamus. But it would have been neater and would have put the *Board* more on its feet, had specific provision addressed this gap because, workers' rights would have been better protected therefrom. And it seems an important food-for-thought for

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[92] Bimbo Atilola, "*The Right to Appeal Under the Employees' Compensation Act, 2010*" in Bimbo Atilola ed., *Themes on the Employees' Compensation Act*, Hybrid Consult, 2013, as cited by J.D. Peters, "*Alternative Dispute Resolution Under Employees' Compensation Scheme (ECS)*" presented at the *NJI and NSITF Workshop for NIC Judges* at Bon Hotel, Monrovia Street, Wuse, Abuja Nov 24-25, 2025.

[93] *Oka Charles Edet v. SCC Nigeria Limited* [supra].

future amendment. As for the employer, who fails to transmit the prescribed form to the *Board* or to prove that he did, it seems the solution is that, the victim-employee is free to go the way of common law against the alleged employer, as held by the *NIC* in *Agbobi v. Siat Nigeria Ltd.* [supra]. The victim-employee can also claim additional damages for the breach of his right thereto too, apart from the actual damages for the injury in issue.

This research also finds that, because of the refusal to treat the application and make its decision on it known to the applicant within the prescribed one-year, and which indecision terminates the applicant's right, the refusal to treat the application becomes an implied decision refusing the compensation, and also impliedly makes the decisive-indecision final and conclusive of the application. If this is so, the provision seems contrary to S. 36(2) of the *Constitution*, which forbids the finality of any administrative decision on the rights of citizens. In this case, it is a decision by indecision. The *Board* cannot rely the *POPA* to escape illegality[94]. Besides, it would appear too, that the said S. 6(2) with regard to the subclause in *casu*, is also contrary to S. 55(1) of the *ECA*, which forbids the *Board* from indecision and positively mandates it to make its decision, but still, without specifying a timeframe within which it must be made, when coupled with subsections (2)&(3), which give the applicant timeframe to appeal the *Board's* decision at first instance and equally give the *Board* the timeframe to dispose of the appeal too.

The omission to state a timeframe for the *Board's* first decision in S. 55(1) of the *ECA*, compounds the problem of S. 6(2) of the *ECA,* but nevertheless, shows that, the *ECA's* intendment is that the *Board* must decide on any application for compensation and communicate the decision to the employee-applicant. Hence, the statute-bar proviso in subsection 6(2) of the *ECA* cannot stand, by reason of its internal inconsistency[95]. At the end, a lot depends on the skill and expertise of the victim-employee's lawyer to know the best way to pursue his client's grievances. But the law definitely has answer for every grievance: *ibi jus ubi remedium*. The lesson for the stakeholders is that, it is better to remove the problematic clause when an opportunity comes for amendment.

Before the research rounds up on this head, it is necessary to point out, yet another snag contained in S. 25(1) of the *NSITFA*. This subsection says any contribution-debt is only recoverable within twelve months of the accrual of the debt. In *NSITF v. Caritas University*[96] the *NIC* had the opportunity to examine a near similar situation. The defendant-university objected, amongst other grounds, in its counter affidavit to the originating summons, that the suit filed by the *NSITF* to recover the debts owed from 2011, to 2023, in which the suit was filed, was statute-barred. That is a period spanning 12 years. Though, the demand for payment was belatedly made after years had passed; but this should not matter, as the *ECA* positively placed the obligation on the employers to seek out the *Fund* and make the monthly contribution. Surprisingly, the defendant-university did not cite the particular statute that barred the social security tax-debt; and so, it was easy for the *NIC* to dismiss the objection, but not until it observed that, such limitation law, if it exists, would amount to unfair labour practice and also contrary to international best practices and public policy, within the jurisprudence regarding tax evasion, which is a crime, the enforcement of which is not normally attended with statute-bar.

And the timeframe of just a year is too short for statute-bar against public debt in the nature of evasion of a social security tax. To hold otherwise, sends a wrong signal to employers to tarry for a year or more, and subsequently raise statute-bar. It might also encourage employers to strive hard to compromise the *NSITF* enforcement officers to look the other way for a year to enable the

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[94] *Chikwe v. Chief Registrar, FHC* (2026) 2 NWLR (Pt. 2027) 1 (SC) 32, A-C.
[95] *Afolayan v. Bamidele* (1999) 3 NWLR (Pt. 595) 454 (CA) 463, C.
[96] At https://www.nicnadr.gov.ng/nicnweb/display2.php?id=9391 [accessed Oct 29, 2026].

criminal evasion to pass. It appears, for some strange reason, that lawyers for employers are not yet aware of this provision. Maybe, because the place of the *NSITFA* in the jurisprudence of enforcement of contributions to the *Fund*, now fully covered by the later and more prominent *ECA*, as the principal statute, is very cloudy, they tend not to bother to read the *NSITFA*.

Nevertheless, the existence of S. 25(1) of the *NSITFA*, has the potentially counterproductive effect of atrophying the funds to cater for the welfare of workers who suffered the misfortunes of industrial accidents and occupational diseases and thus, defeatist of the lofty ideals encapsulated in the *ECA*, the implication, which would amount to unfair labour practice against the workers, contrary to S. 254C-(1)(f), (h) & (2) of the *Constitution*. Furthermore, there appears to be conflict between S. 25(1) of the *NSITFA*, that bars cause of action to enforce contributions that had become due for over a year, and S. 34(2) of the *NSITFA*, which says: "***contributions*** *to the Fund shall be* ***inalienable*** *and shall not be assets for the benefits of creditors in the event of bankruptcy or insolvency of the* ***contributor***."

As could be seen in the foregoing quotation: What then is the purpose of safeguarding the yet-to-be paid contributions for the *Fund* from the employer, free from being attached, if the same debt is capable of being statute-barred? Is it to enable the employer to personally attach the debt and pocket it through the instrumentality of statute-bar and thereby profit from his wrongdoing? Something definitely is not right with S. 25(1) of the *NSITFA*. It is fraught with ambiguity and absurdity, when construed with S. 34(2) of the *NSITFA*, and because, it also goes against the general tenor of the *ECA*[97], which has no limitation provision at all, in favour of employers, against the *Board*, and because, there is self-contradiction between it and S. 34(2) of the *NSITFA* itself, and it has the potential to defeat the lofty objectives of the social insurance, thereby causing injustice to the workers[98], S. 25(1) of the *NSITFA*, must be deemed overridden by S. 34(2) of the *NSITFA*, which is latter[99], and also by the general tenor of the *ECA*, which is a later statute, which actually saved the *NSITFA* by incorporation of specific portions of it, of which the statute-bar S. 25(1) is not part, must also be deemed to have impliedly repealed[100] the limitation law contained in S. 25(1) of the *NSITFA* .

S. 56 of the *ECA* establishes the *Fund* while S. 57 says the *Fund* shall be managed by the *Board*, but subject to the *ECA*. That is what is saved, and not the limitation of the power of the *Board* to recover tax-debts [contributions] by effluxion of time. The whole of SS. 33-36 of the *ECA*, especially 35(1), which makes the assessment a yearly exercise, makes mincemeat of S. 25(1) of the *NSITFA*, which bars payment of default after a year, which is the same period fixed by the *ECA* for the debt to fall due. In furtherance, S. 36(1) of the *ECA* gives the *Board* blanket power to recover assessed contribution-debts without taking note of any limitation law, while subsection (2) gives the *Board* power to make assessment in arrears and enforce it without time limitation. In a nutshell, it is very safe to conclude that S. 25(1) of the *NSITFA* is impliedly repealed.

By this convoluted means, the sanctity of S. 25(1) of the *NSITFA* has been questioned, but it remains an existing provision, with its baggage. Attention of the stakeholders are drawn to the grave dangers it portends for consideration for possible removal in any future amendment to the

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[97] See SS. 13 & 15 *ECA*. If compensations cannot be waived or alienated or attached, would not be illogical that the source from which the compensations came, the employers' contribution-debts, could be statute-barred?
[98] *Abacha v, FRN* [supra].
[99] *Afolayan v. Bamideele* (supra).
[100] *Crownstar Co. Ltd. v. The Vessel MV Vali* (2000) 1 NWLR (Pt. 639) 37 (CA) 62, B-D and, *Akintokun v. LPDC* (2014) 13 NWLR (Pt. 1423) 1 (SC) 85, E-H.

ECA and the *NSITFA*. It is also the view of this research that there is really no practical basis for two different statutes of equal legislative footing on exactly the same subject matter. The *ECA* should have repealed the *NSITFA* completely, and directly incorporate the useful parts of it into itself to make the laws on the social insurance handy. This would have also made it easier to resolve any internal conflict within the *ECA*. Stakeholders should therefore take note of this and advocate for merger of the both statutes [*ECA* and *NSITFA*] on the same subject into one composite whole. The stage is now set for an examination of the next segment of the paper, which is interpretation and application of key provisions of the *ECA*, especially, SS. 6(1), 12, 17 and 21-27.

Interpretation and Application of Key Provisions of the *ECA*

Here, we examine the provisions of SS. 6(1), 12, 17, & 21-27 of the *ECA*. As is evident, in the course of discussion on the rights of employers and employees, we have extensively examined S. 6 of the *ECA*. We need not re-examine it here. We have also extensively analysed S. 12 of the *ECA* hereto before, also in relation to the rights of workers; their dependants, in case of death or incapacitation, and the *Board*'s rights too. This segment will only examine the scanty but significant aspects left out earlier. The first is that, employers can also institute actions to recover damages from other employers or independent contractors based on contracts or indemnities[101]. This suggests that employers can still additionally take insurance on their staff, notwithstanding the *ECA*, but they must still comply with their obligations under the *ECA*, which are mandatory[102]. The *Board* is also allowed to surcharge the actual employer or independent contractor actually responsible for the injury, ostensibly in the premises of another employer[103], otherwise, the scenario looks illogical.

It seems to hint at triangular employment maze but the personal causation requirement nullifies the link, as the concept of injury under *ECA* is not essentially based on causation. But it is S. 44 of the *ECA* that actually covers triangular employment maze and it did it well, in line with international best practices, a position, which the *NIC*[104] had upheld that, in such instance, the doctrine of privity of contract is of no avail, as it would allow a wrongdoer to escape its statutory liabilities to the *Fund* meant to fund workers' security against the exigencies of industrial accidents and occupational diseases. This would amount to unfair labour practice, contrary to S. 254C-(1)(f) of the *Constitution*[105]. The *NIC* further held that, both the principal employer [recruiter/independent contractor] and the service user, the secondary employer, in whose premises the worker actually worked and sustained the injury, are both jointly and severally responsible in the cases of triangular employment maze. Hence, the employee can proceed against them jointly and severally and recover damages from both or either of them, while they go sort out their accounts[106].

The definition of employee in SS. 44 of the *NSITFA* and 73 of the *ECA* which includes employment by implication/conduct, covers triangular employment maze. S. 44 of the *ECA* therefore calls to question the *Court of Appeal's* decision in *Luck Guard Ltd. V. Adariku*[107], which

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[101] S. 12(8) *ECA*.
[102] SS. 5, 33, 35, 36, 39-40 *ECA*.
[103] S. 12(9) *ECA*.
[104] *Catherine Emerenini v. Integrated Corporate Services Ltd*: NICN/ABK/11/2022 – delivered Jan 31, 2025. See also another *NIC's* decision in *Uweja v. Lubrik construction Company* at https://www.nicadr.gov.ng/judgement/judgement.php?id=11069 [accessed Oct 25, 2026.
[105] Ibid.
[106] *Iyere v. BFFM Ltd.* (2008) 18 NWLR (Pt. 1119) 300 (SC) 336, E-G.
[107] Unreported Suit No. CA/A/1061/2020.

appears to uphold the inviolability of privity of contract to defeat succour for employee-victim of triangular employment. To crown the beneficial ambience of the *ECA*, it makes unlawful, any contract whatsoever, to make employees/dependants forgo their rights to compensation[108]. Be that as it may: we move to S. 17-27 of the *ECA*. S. 17-28 of the *ECA* and the related sections have been thoroughly examined in the discussion of the workers', employers' and *Board's* rights earlier. We need not repeat the discussion. That closes the discussion on key provisions. We shall now examine the judicial trends that have emerged since the enactment of the *ECA*.

Emerging Judicial Trends and Implications for the Stakeholders

While statutes are laws immediately they are assented by the head of state, courts' pronouncements on them are what actually put flesh into the dry bones of statutes by clarifying their ambits, their constitutionality or otherwise, and above all, the circumstances of their practical applications to specific factual situations. Therefore, courts' pronouncements on statutes in the course of adjudicating real-life cases, set down judicial precedents, which bring about trends, by the changes effected on the state of affairs of human conducts. Precedents allow human beings to plan their lives ahead with certainty[109].

The first trend observed with regard to the evolving jurisprudence on the *ECA*, is that, there is dearth of litigation under *ECA,* as this research has not unearthed any case decided by the *NIC* under S. 55(4) of the *ECA*, which deals with right of appeal against the *Board's* second and appellate decision, to the *NIC*. Google search conducted for the existence of the *NIC's* decisions in *casu* and interactions with colleagues, did not yield any. Likewise, search conducted on the *NWLR Online* also did not yield any appellate courts' decision on the *ECA*; more particularly so, on S. 55(4) of the *ECA*. Cases are only being filed under common law stream on industrial injuries and occupational diseases. Nevertheless, the *NSITF* is increasingly filing cases in the *NIC* for enforcement of the employers' contributions to the *Fund*, with the results that, soon, all employers in Nigeria would be forced to key into the scheme.

This will be, because, increasingly, *NIC* is generally enforcing the provisions of the *ECA* and *NSITFA* thus, creating the precedents that employers cannot escape their obligations under the *ECA*. The implication is that, while employers are obeying the *NIC's* decisions and are increasingly making their mandatory contributions, they will continue to be subject at the same time, to liabilities under common law, with the result that, they will be subject to double jeopardy, of making contributions, and not gaining maximally from the contributions, yet, still being liable to huge damages for successful tort litigations against them under common law, and huge cost in hiring lawyers, to defend them in the common law cases.

This research has earlier suggested that the way out for employers is to key into the *ECA*-scheme and subsequently, promptly assist their unlucky staff involved in accidents or occupational diseases to apply for compensations under the *ECA*. By this, avenue to approach the *NIC* under common law, would be nipped in the bud. But if they continue to maintain their antagonistic attitude to the *ECA*, they remain prone to incessant tort litigations against them, and the consequential negative effects on their financial stability. In fact, such suits may actually continue to increase in view of the fact that, due to the *NIC's* enhanced jurisdiction to apply international labour conventions that have been ratified without more, and the possibility of applying even unratified conventions as examples of international best practices/international labour standards,

[108] S. 13 *ECA*.
[109] *FRN v. Nwosu* (2016) 17 NWLR (Pt. 1541) 226 (SC) 286, D-E.

coupled with the duty to eschew unfair labour practices, the gulf between the advantages derivable from *ECA* and under common law is being severely narrowed[110].

The strict burden of proof under common law is being gradually reduced[111] while in some cases, the burden is actually shifted to the employers[112]. For example, in cases of accident arising from non-use of safety gadgets, the modern standard is that, it is the employers' duty to ensure these safety gadgets are provided for employees and are used compulsorily[113] by employees, so that, the burden is reversed for the employers to prove that they complied with their modern obligations[114]. The stage has been narrowed to almost that of strict liability[115] against the employers. And the heads of causes of action have also been widened to include virtually everything covered by the *ECA*[116]. The only clearly visible vestige of the difference between litigation for industrial accidents and occupational diseases under common law and *ECA*, is the opportunities for victims to earn monthly stipends under *ECA,* which has the tendency of guaranteeing stability in infirmity, which is not available under common law; where only lump sums are paid only once, but usually huge; but subject to easy dissipation, and the consequential reversion to abject poverty. But lawyers would naturally prefer the lump sum route for their clients, for a moot reason. And in granting the lump sums, issues of dependants are also taken into consideration too under common law, but only if carefully pleaded and proved.

Another judicial trend noticed is that, where there is proof by the *NSITF* that the alleged employer refused to supply it with the necessary materials to enable it investigate its status as employer with employees in its payroll, and the alleged employer also refused the *NSITF* access to its premises for inspection, for the same purpose, the *NIC* will readily presume that the employer is hiding something and would readily make orders against anything associated with such alleged employer, as privy, even if not juristic[117], in order to get to the bottom of unmasking the true status of the alleged employer. The jurisprudence has also arisen that, where the *NSITF* fails to carefully articulate its facts to prove the status of the defendant as employer with staff on its payroll, the case would be dismissed, especially where access was granted to the documents of the alleged employer. Another trend is that, where there is dispute about whether application has been duly forwarded to the *Fund* by the employer, the employee can make a U-turn and pursue the stream of common law by suing the employer[118], since his application has not been activated, with the dispute over whether it was actually processed.

Another trend is the employment of *ADR* mechanisms to resolve cases of employers' non-compliance with their obligatory contributions. His Lordship, J.D. Peters[119], in his seminal paper on this, in the last edition of this programme last year, gave a good account of the allure. There is increase in the *ADR* approach to the matter. However, as the parties most often voluntarily settle their differences, there is no evidence of reference to the *NIC ADR Centre* that this research unearthed. The above are the trends this research was able to observe. That being the last of the

[110] Michael Dugeri [supra].
[111] Michael Dugeri [supra].
[112] Ibid.
[113] Ibid.
[114] Ibid.
[115] Ibid.
[116] S. 254C-(1)(a)-(h) & (2) of the *Constitution*.
[117] *NSITF v. Annunciation Specialist Hospital*[supra].
[118] *Agbobi v. Siat Nigeria Ltd.*[supra].
[119] J.D. Peters [supra].

items to examine, as digested in the instruction for this paper, the research must move to its conclusion.

Conclusion

Adam Smith, in his seminal book: *An Inquiry into the Nature and Causes of Wealth of Nations*, said the real wealth of a nation is in her workforce and the productivity of the workforce and not in her abundance of mineral resources or in the inactive wealth she stored. He theorized that, for this reason, nations must constantly pay great attention to the education and health of their workforce, and that, the more a nation succeeds in doing this, the wealthier it becomes and the more sustainable her wealth. That exactly is our business here today, educating ourselves about the central place of the health of Nigerian workforce in the pursuit of sustainable creation of wealth for Nigeria and the sustainability of Nigeria's development. We are therefore doing the right thing.

For which reason, this research concludes with the thesis that, for the social insurance created in the *ECA* to achieve optimum results in the preservation and management of the health of our dear workforce, everything related to safety and health at work must work together with the social insurance. Little can be accomplished without the monitoring and prevention of industrial accidents being in top priority to reduce accidents, occupational diseases and mental and psychological problems arising from workplace, to the barest minimal possible. Otherwise, within little time, the social insurance contingency fund will be overwhelmed. Even where it is not overwhelmed, the principal aim of all nations is to prevent accidents and sickness of their workforce, because the economy does not gain from accidents/sickness of the workforce.

Insurance industry thrives on the understanding of these dynamics and plan the premiums charged, in this case, contributions levied, accordingly. And for this reason, actuaries are very central to a robust and thriving social insurance industry[120]. The mathematics for the business of social insurance is that of actuaries. They design the probabilistic and statistical models for the scientific management and operation of social insurance schemes to avoid its being overwhelmed. Therefore, the *Board* of the *NSITF* must have a full-fledged actuarial department headed by a fully qualified professional actuary with specialty in social insurance mathematics, supported by sound graduates in numerical subjects. We can leverage the *UK Govt Actuary Dept*[121] for assistance. And the research notes that the *ECA* recognises this fact by making specific provisions for the use of the expertise of actuaries in the scheme[122]. Actuary is an expensive profession, but countries and institutions that take the issue of social security as very important, pay serious attention to the expertise of fully qualified actuaries for the success of their schemes, for which reason, the *ILO*, the foremost labour institution in the world, commissioned the authorship of a full-length book for its social security pension scheme, by a fully qualified actuary [123]. We could do similar thing.

Then, conditions of work, safety and hygiene at workplace must be in top gear too, because, they preserve the health and mental wellbeing of the workforce than social insurance, which only comes in only after accidents and occupational illnesses have occurred. As the saying goes: '*Prevention is better than cure*.' Prevention, monitoring and enforcement of safety, hygiene at workplace, and the prevention of mentally and psychologically toxic workplace, are the duties of

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[120] *Government Actuary's Department* at https://www.gov.uk/government/organisations/government-actuary's-department/about/about-our-services [accessed Oct 25, 2026].

[121] Ibid.

[122] S. 32(b) *ECA*.

[123] Subramanian Iyer, *Actuarial Mathematics of Social Security Pension: A Joint Technical Publication of the ILO and the International Social Security Association* at https://www.social-proptection.org/gimi/ShowRessource.action?id=778 [accessed Oct 25, 2026].

other govt agencies[124], like the Factory/Labour Inspectorate Department in the Ministry of Labour, etc. Criminal prosecution of breaches of safety and hygiene protocols must be vigorously pursued by the relevant agencies, while workplace rights must be jealously protected to avoid abuses at work. It is only when all hands are on deck that the social insurance engendered in the *ECA* can achieve its full potentials. On the last note, whistleblowers policy must be put in place and vigorously safeguarded to enable people, especially workers, to promptly inform authorities about any breach, without the fear of adverse repercussions. This is an area that should interest all stakeholders because, everybody and the economy gain from a healthy workforce and safe workplace.

Thank you all for your audience.

[124] E.G. *National Environmental Standards and Regulatory Agency* [***NESREA***), which prohibits environmental pollution and the discharge of hazardous substances in dangerous quantities.