

The Delaying of Workmen's Compensation in Ghana: Review Article

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Abstract

Background: There are many bottlenecks in the administration of claims for compensation by injured employees. These include delays in processing claims, getting physicians to conduct examination of claimant's injuries and to attest that the injury occurred in the course of employment. This could be further delayed by legal challenges to degree of disability provided by the examining physician.

Objective: We investigated whether the design of workmen's compensation legislation is defective because it places a burden on the physician to determine the degree of disability. We also investigated whether administrative modalities for the settlement of disability claims, contribute to delays. We considered the ethical and legal issues in the role of the physician as a healer and a claims adjuster.

Method: This study consisted of literature and documentary review of the national and international legislation on workmen's compensation legislation and disability claims. We also conducted Key Informant Interviews as collaborating data to the literature review. We also reviewed both public and private sector claims in three consecutive years from 2008 through 2010 as the basis of analysis.

Result: The study identified many problems in the Physician-claimant relationship, such as the administration and management of compensations and benefits. The 1987 law provides little guidelines to the physician on how to assess disability. This contributes to low claims settlement and backlog of cases of injured employees due to legal challenges.

Conclusion: There is the need to harmonize current safety legislation such as the Factories, Offices and Shops Act, 1970, (ACT 328), the Mining Regulations, 1970, (LI 665), the Radiation Protection Instrument, 1993, (LI 1559), and the Workmen's Compensation Act 1987 (PNDC 187). These should be administered by one entity for efficiency and scaling.

Keywords: Legislation; Physician; Compensation; Disability; Claims settlement; Disability case backlog; Ghana

Introduction

This paper focuses on current practices and challenges in the administration of the workers compensation system in Ghana. We investigated the design of workmen's compensation legislation to assess if it places a burden on the physician to determine the degree of disability in job related injuries or diseases. We also investigated whether administrative modalities for the settlement of disability claims contribute to delays. We considered the ethical and legal issues in the role of the physician as a healer and a claims adjuster. In settling claims by injured workers, it is noticed, there are delays and concomitant problems of settlement of disability claims, which is widely acknowledged as part of the problem set. The delays in the compensation system of Ghana pertain to those in the formal sector only. They tend to enjoy coverage under the compensation regime through employee enrolment scheme and contribution to the payment

of premiums. Such employees include salaried workers whether on hourly wage schedule or not as provided for in the 1987 Workmen's Compensation Law 187 (WCL 187), [1-6]. In this paper, we have identified some of the problems in the Workmen's Compensation Law of Ghana, which includes the problem of workers' lack of awareness about their rights and responsibilities under the compensation law [7-8].

We started with the argumentation that legislated reliance on the medical doctor to assess and estimate the degree of compensable disability of an injured worker was probably the core issue in delays in compensation payment. However, the research has helped to broaden the discussion to other inherent challenges that exist in the legal framework for compensation. We commence this review with the Workmen's Compensation Regime in Ghana by looking at the various agencies and ministries that have been vested with competing mandate through competing legislation to administer compensation regime arising out of their areas of work or industry.

The workmen's compensation regime in Ghana

The Constitutional provisions for occupational health and safety of persons employed at workplaces in Ghana are guaranteed by Article 24(1) of the 1992 Constitution of Ghana. Article 24(1) provides, among others that ... "every person has the right to work under satisfactory, safe and healthy conditions ..." It covers those who are engaged in both the formal and informal sectors, as well as those who are self-employed. The aim is to ensure that all workers work under safe conditions devoid of significant adverse effects on their health. The Constitutional protections are broader than the Workmen's Compensation Law 187. The constitution places the burden on the government to ensure that the safety, health and welfare of persons at work are safeguarded. This is additionally provided for under Article 36(10), that: The State shall safeguard the health, safety and welfare of all persons in employment, and shall establish the basis for the full deployment of the creative potential of all Ghanaians.

Current legislations for the safety, health and wellbeing of persons are scattered in a number of public laws and policies such as the Factories, Offices and Shops Act, 1970, (ACT 328), the Mining Regulations, 1970, (LI 665), the Radiation Protection Instrument, 1993, (LI 1559), and the Workmen's Compensation Act 1987 (PNDC 187) [1, 9] The day to day administration of these laws and policy are all under different Ministries and Agencies. The Factories, Offices and Shops Act (FOSA) is administered by the Department of Factories Inspectorate of the Ministry of Employment and Social Welfare but the provisions of the Mining Regulations, are enforced by the Mines Department, the enforcement wing of the Minerals Commission. The Radiation Protection Instrument, 1993 (LI 1559) is administered by the Radiation Protection Board, under the Ghana Atomic Energy Commission. The Workmen's Compensation Act is under the Labour Department of the Ministry of Employment and Social Welfare [10,14-16,1].

The primary legal authority for Workmen's Compensation regime and administration in Ghana is the Workmen's Compensation Law of 1987. Section 1 and 2 of Law 187 provides:

(1) This law shall apply to workmen employed by the Republic as well as by private persons, except in the case of persons in the Armed Services of the Republic.

(2) An injured workman shall not suffer any diminution in his earnings while he undergoes treatment for injuries he has sustained through an accident arising out of, and in the course of, his employment [1,7].

The law appears to be addressing those engaged in the formal (public-private) sector, although those in the informal sector probably need such protection the most due to their limited bargaining power [1, 9]. This gap is incongruent to the goals of the WCL 187. The goals of WCL187, apart from its formal sector employee poverty reduction intent, are: to provide workers with insurance coverage against injury. It also seeks to lessen or eliminate wasteful litigation for benefits for such injuries, and to provide policies that promote occupational health and safety as stated in the explanatory notes to WCL 187. Even before the promulgation of WCL187, employers had a general duty of care even if there were no specific performance or legal standards. They were still obligated to protect workers, where there was a recognizable hazard against health & safety, where employees were likely to be exposed to risk, or where the work posed risk of death or serious injury. The overall goal of the WCL 187 is no different from the net effect of the labor act on the rights of workers

Human rights protection under the Labor Act

The Labor Act, 2003 (Act 651), Section 118 states, *inter alia*, that:

It is the duty of an employer to ensure that every worker employed by him or her works under satisfactory, safe and health conditions.

(d) Takes steps to prevent contamination of the workplaces by, and protect the workers from, toxic gases, noxious substances, vapors, dust, fumes, mists, and other substances or materials likely to cause risk to safety or health.

(h) Prevent accidents and injury to health arising out of, connected with, or occurring in the course of, work by minimizing the causes of hazards inherent in the working environment [10]

Today, compliance with existing national occupational safety and health specific standards require the control of ventilation, air contaminants, noise as well as emergency exits, fire protection, sprinklers and evacuation plans, medical & first aid treatment. It also includes the handling and storage of explosives, hazardous waste, and toxic material [7]. It provides for improved general working conditions such as waste disposal, toilets, showers, dressing rooms, ventilation, and food handling [11-12]. The employer is duty bound to conduct examination of the workplace to ensure it is in conformity with health and safety standards, provide proper warnings to employees of potential hazards, provide training in hazard handling and maintain records concerning injuries, illness and fatalities [12]

Despite the progressive intent of the Labor Act or the WCL 187, in the formal sector in Ghana, less than a fifth of all companies offer their workers with protection under either the WCL 187. This is not an optional choice but due to the lack of enforcement of the legal provisions for the protection of workers under both legislation the defaulting employers are not punished. Most of the workers do not even know that they are entitled to, for example, workmen's liability insurance and compensation in the event of an injury [8-9,13].

Although compliance is sparse, under the Ghana Workmen's Compensation law, all fatalities and injuries are to be reported to WC officials. The abatement of violations is allowed and job safety and health protection posters are encouraged as positive contribution towards worker education. As additional preventive measure, risk assessment is demanded of employers that are in hazardous activities. They are required to conduct periodic testing if there is exposure to hazardous materials such as asbestos, vinyl chloride, or lead to determine presence and contamination and medical treatment [11, 7]. Despite the seemingly broad and progressive approaches of the national legislation, namely WCL 187, the bulk of the working population of Ghana are left unprotected, according to the Ghana Association of Occupational and Environmental Health.

"Ghana with a population of over 24 million has agricultural employment taking up the largest share of total employment (55.8%), followed by trading (15.2%) and then manufacturing (10.9%). Informal employment makes up 91.3% of total employment, with the majority of informal workers in SMEs and 53.9% of this informal labor force working in the agricultural sector. As is generally acknowledged, most informal workers are exposed to a substantial level of risks to their health and safety. This is because the work environment in which many of them operate is rife with various hazards, coupled with inadequate labor protections. Though there is very little OHS data available nationwide, occupational injuries and diseases are common

as it appears among the list of top 10 causes of out-patient attendance almost every year” [8,17].

The enactment of WCL 187

Prior to the enactment of WCL187, injured workers had to fend for themselves, sometimes suing the employer for damages. Employer liability was based on negligence due to the general duty of care, proof of which was by circumstantial evidence to show that a breach had occurred, or there was notice of the possibility of the breach. The standard of proof was purposeful, knowing, reckless or negligence. In a purposeful act, it is not required that the employer should have had prior notice of the danger in order to prove negligence, and the same applies to reckless act. A reckless act presumes that the perpetrator had knowledge of the gravity of the consequences of his conduct on others but disregarded the duty of care he owed to his employees [1, 18]. In negligent cases, the notice requirement can be met with evidence through expert testimony or circumstantial evidence or both or through ‘res ipsa loquitur’ (the thing speaks for itself) doctrine. The burden is on the defendant to disprove the presumption of negligence [18-19]. Employers’ first defense to the employee’s claim of negligence was contributory negligence on the part of the employee. That is to say

the worker’s own negligence contributed to his injury. The employer could also raise the fellow-servant doctrine. This meant that the accident was caused by the negligence of a fellow worker. There was also available to the employers the defense of the assumption of risk. That is to say the employee knew or should have known of the inherent risks involved in the job he was hired to perform [18-19].

The ‘no fault’ doctrine was promoted by central government in hopes of reducing litigation by workers against their employers so as to focus more on productivity and nation building. The ‘no fault’ approach was widely adopted in Workmen’s Compensation legislation in Ghana and other jurisdictions to preclude litigation and advance national development. Table 1 below provides an interesting snapshot of how the compensation law in Ghana has developed over the years. Different legal systems elsewhere responded to similar socio-economic problems with legal mechanisms which may look different, although they each served the same or similar purpose [1-4].

The Historical Development of the Compensation Laws in Ghana

Jurisdiction	The Compensation Law	What it provided	What it did not provide
Ghana	1940, Workers Compensation Ordinance, 1940 (No. 52) came into force [20]. 1942, Workers Compensation Ordinance (Cap. 94) [21].	Limited coverage	Did not cover persons earning more than ₵600.00 per year. Since those earning more than that were assumed to have the means to sue in their own behalf. Those in the informal sector were not covered. No compulsory registration of workers
	1954, Workmen’s Compensation (Amend) Ordinance [22].	Provided for those earning between ₵600.00 and ₵1,200 per year but not those above. Death benefits increased from ₵1,200 to ₵2,000 to the dependents of the deceased Permanent Incapacity received ₵1,500	Employer was to bear the cost of artificial limbs. Occupational diseases were not included. No compulsory registration of workers
	1961, Workmen’s Compensation (Amendment) Act, 1961 (Act 53), [23].	It provided coverage to include disfigurement and social injuries to workmen such as the functional loss of genital organs	Still had artificial ceilings rather than use actual earnings as the basis for calculation of benefits.
	1963, Workmen’s Compensation Act, 1963 (Act 174), [24].	Removed all ceiling figures in respect of Workmen’s earnings in the calculation of compensation. Payment to be determined on the basis of the actual earnings Deal with the growing problem of occupational diseases.	Still did not include workers in the informal sector, or those that were illiterate. No compulsory registration of workers
	1965, Workmen’s Compensation (Amendment) Act, 1965 (Act 295), [25].	Addressed worker illiteracy and inability	Did not cover those in the informal sector. No compulsory registration of workers.
	Workmen’s Compensation Law, 1987 [26].	Liability of employers for wage comps for job-related injuries. Simpler method for calculation of benefits. Comps allowed despite duration of injury. Previously incapacitation had to last longer than 5 days. Compensation allowed despite serious and willful misconduct of the workman.	Minimum requirements for registration by employers absent. No enforcement mechanism. Site inspection and review is scattered and occasional. Ceilings for compensation still relied on for determination abrogated. No “super fund” for worker protection in case of employer non-compliance.

Table 1: The Development of the Workmen’s Compensation Law of Ghana: Scope of Coverage

The role of the compensation physician

In Ghana as in other nations within the common law tradition, the Workers Compensation law is built on the theory that a medical officer should certify claims arising out of injuries sustained in the course of employment [1-12]. The consequence of this requirement is

that there cannot be a valid workmen’s compensation claim without the physician’s estimate of the degree of disability and a statement confirming the work-relatedness of the illness or injury. The physician’s statement should also show the degree of compensable disability and whether it is Permanent Partial Disability or Total Temporary Disability [1-4, 14]. At best, this requirement may cause

delays and backlog of cases, or even scare off would be claimants for fear that he might not be able to pay the physician, although such is not the case.

Data Collection and Evaluation

Method

The methodological approach used in this study consisted of electronic search of academic data bases and the internet. The internet search was first done for laws that addressed all or part of the primary research objective. We interpreted the laws using accepted legal method of statutory interpretation. This exercise covered three areas, namely statutes on workmen's compensation, national policy, executive instruments and administrative regulations, and case law. We conducted the internet and desktop searches on platforms such as the Ghana Law Reports 2000-present, Ghana Medical Journal, American Journal of Public Health and the web sites of the United Kingdom and the Republic of South Africa for laws on compensation. Altogether, more than 50 journal sites with papers published from 2000 through 2013 on challenges in the compensation regime were assessed. We found no published papers that specifically dealt with this topic, except those from South Africa and cited in this paper. We used the following keywords: "worker's compensation assessment", "estimation of permanent partial" or "total temporary disability", "physician training in compensation estimation," "employer/employee contributions to workmen's compensation," "the compensation doctor and benefits determination," "court cases arising out of compensation hearing," "definition of injury arising out of the course of employment", and "calculation of Ghana's workmen's compensation benefits". The historical data of the Department of Labor under the Ministry of Employment and Social Welfare was accessed for this purpose. We also conducted 12 Key Informant Interviews (KII) with representatives from public institutions such as the Ministry of Employment and Social Welfare, the Department of Labor, the Ghana Fire Service, the Ghana Police and the Immigration Service, the Ghana Health Service, University lecturers, and the insurance industry. Several professional nurses that have used the services of the Department of Labor through the Ghana Health Service were also interviewed. The Workman's Compensation Law, Law 187 together with the Labor Law of Ghana was reviewed in relation to modalities for compensation for occupational injuries and diseases. We used Ghana's experience to illustrate the situation of the poor management of workers' rights in the formal sector only in select Sub-Saharan African nations. Table 1 shows the scope of the coverage of the compensation law in Ghana today. We first read and selected the papers that dealt with pertinent national laws and literature that have primary effects on the workmen's compensation regime. We also obtained copies of Ghana's Workmen's Compensation legislation and other published articles, grey literature and abstracts on Workmen's Compensation from the Law School Library to review. Documentary analysis and synthesis of the pertinent literature were done according to the objective of the study.

Section	B/F	Reports/ New claims	Cumulative	Finalized/worked on by Fund	Outstanding/Back log of cases	Amount Paid in GH Cedis
Private	13,154	3,863	17,017	585	16,432	1,120,779.00
Public	238	186		0	424	0

Results and Discussion

Compensation claims payments and balances from 2008-2010

In Table 2, we show the volume of claims from both the private and public sectors. For example, there were only 138 claims made in 2008 by workers in the public sector employment, which coupled with outstanding cases carried forward into 2008 (n=590), amounted to a cumulative total of 728 disability claims. In that year, [490/728] or 67% of the claims were completed by the compensation's office and the claimants received their benefits but the rest did not. That is to say, the adjudication was in their favor but they were not paid. The average amount of compensation received was GH Cedis 1,826 or \$1,756 USD. The study also found that when it comes to public employees, the government does not provide workmen's compensation insurance and there is no fund for workmen's compensation program. Instead, the Government of Ghana finances claims arising out of government employment from national coffers through the Ministry of Finance. This expenditure is treated as a national budgetary item, which is to be requisitioned by the Ministry of Labor and Social Welfare before the end of each fiscal year. This burden then becomes part of the next year's government public expenditure.

In contrast, the private sector insures workers through private insurance companies by insuring their workers. Among private sector workers, there were 1,827 new claims in 2008, which, combined with an existing backlog, brought the total number of active claims to 13,877. Of this number, only 5% were processed, with the average claimant receiving Gh Cedis 1,841 or \$1,770.21 (GH Cedis 1.04= \$1.00).

Section	B/sF	Reports /New claims	Cumulative	Finalized/ worked on by Fund	Outstanding/ Back-log of cases	Amount Paid in GH Cedis
Private	12,050	1,827	13,877	723	13,154	1,331,054.00
Public	590	138	728	490	238	894,763.00
Total	12,640	1,965	14,605	1,213	13,392	2,225,817

Table 2: 2008 Compensation Claims by both Public and Private sector workers

Due to the fact that government annual budget finances the payment of compensation benefits to public sector workers, if the Minister of Social Welfare and Employment were to omit to submit a request for payment, no provision would not be made for that fiscal year. As shown in Table 3 below, in 2009 the government paid no benefits at all.

Total	13,392	4,049		585	16,856	1,120,779.00
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Table 3: 2009 Compensation claims by both Public and Private sector workers

The research found that by 2010, the backlog of claims comprised about 94% of [17,657/18,454] all cases, Table 4. These were cases that needed verification or assessment that the injury occurred during the course of the workers' employment from competent medical and

public health officials. Until such verification is completed, the compensation office may not authorize the payment of the benefits to the affected workers.

Section	B/F	Reports/claims	New	Cumulative	Finalized/worked on by Fund	Outstanding/Back log of cases	Amount Paid in GH Cedis
Private	16,432	1,438		17,870	584	17,286	1,025,243
Public	424	160		584	213	371	996,364
Total	16,856	1,598		18,454	797	17,657	2,021,607

Table 4: 2010 Compensation claims by both private and public sector workers

This outcome does not take into consideration the delays that may be caused at the front end of the process, where employers may delay in reporting the injury or at the back end, where the compensation officials may also delay in processing the claims. Ghana does not have a Compensation Commissioner per se. The function of the compensation commissioner is performed by default by a director at the labor department. While this omission may not in and of itself contribute to delays, it demonstrates the low importance the society attaches to the Workmen's Compensation program.

compensation system and has the skills to make a considered assessment of work-relatedness and the degree of disability.

Physician training on occupational medicine and hygiene

This study also found that the Bachelor of Medicine degree in Ghana is a general medical degree and does not devote much time to the training of Occupational Medicine. There are four medical schools in Ghana (2010) and none of them listed Occupational Medicine as part of their training programs on their websites. Occupational Medicine and Hygiene programs are often offered at the graduate degree level or as a sub-specialty of clinical practice. As of 2010, none of the 19 government universities and professional institutions or 24 private university-colleges in Ghana offered a comprehensive program in Occupational Medicine and Hygiene. It is only at the University of Ghana's School of Public Health that permission has been granted for such a program to commence, perhaps in the 2013-14 academic year. That is to say, except for those physicians who have received post-qualification training overseas or participated in occasional short courses, many of the physicians learn through trial and error on the job, or are flying through the compensation maze blindly.

Key informant interviews

From the KII, we learned that there were less than twenty physicians working in Occupational Health practice. Big national service providers like the Ghana Health Service/Ministry of Health for, at least, ten years had one physician specialized in this field. In some critical national institutions, there was only one Occupational Health doctor. Another respondent said, they "often have challenges in estimating the degree of injury". When was asked why, the response was that "the schedule we use is not well developed and allows a great deal of discretion. Also, sometimes the claims are too many". Mining is a major national economic activity and a massive contributor to the nation's GDP but we found that there are less than seven occupational health physicians directly employed in this industry in Ghana. In terms of delays caused by the screening of injuries by the physician, we found that the delays were not due only to the physicians' assessment of the degree of injury, but there were other factors. Some of these factors were attributable to the large number of patients the average physician sees a day in public hospitals, clinics and health centers. In some district hospitals, the average doctors may see as many as one hundred patients in a day, if not more and may attend to emergencies as well. Also from the KII, we learned that the judgment of the treating or evaluating physician of the injured worker on the degree of disability is hardly subjected to challenges and is accepted as is by the injured worker, whether accurate or not. It is at the processing stage by the compensation officer that the mistake may be discovered and thus delay the claims from being processed. In a few instances however, agreement between company and employee physicians can be hard to reach and often end up in litigation [12].

The physician as arbiter of degree of disability

The physician is required to discern, 'injuries arising out of and in the course of employment', thus making the physician's decision about work-related injuries a critical factor in the payment of the quantum of compensation a worker receives. It includes his or her assessment of the percentage rate of disability. Ghana's 1987 WC law compels injured workers to use one of the government doctors working, preferably within the Ghana Health Service group of hospitals, clinics and polyclinics with the assumption that such a physician knows the

Ethical and legal concerns about the role of the physician

A handful of ethical and legal issues are compromised when the physician acts as a bridge between the employer and the compensating agency on one hand and the injured worker on the other hand, particularly with respect to truth-telling, due process, non-maleficence and justice. The moral imperative underpinning the Physician-patient

relationship is the preservation of confidentiality. Under WCL187, the injured worker claiming or receiving workmen's compensation benefits must submit to an examination by a doctor his employer selects. The employer must pay for the examination performed to determine that the injury or disease arose from the course of employment. The employer, as the entity making the payment for the evaluation, is technically the client and not the patient. The employee can, additionally, have a doctor whom he or she selects and pays to observe the examination by the company physician. Where the physician is paid by another interested party to the contest, there is an obvious conflict of interest. In such a situation, ethical values such as confidentiality, truth-telling and justice may not be completely available to the injured worker. The need for guidelines to protect workers' rights to compensation and safety where dual loyalty conflicts threaten traditional physician-patient fidelity has been previously highlighted [18]

Problems of calculation of compensable benefits and conflict of interests

Investigations and discussions at the Labor office, Accra and the Key informants, revealed that many doctors often make mistakes with the percentage disability award, because they are not familiar with the law for the calculation of workers compensation. For instance when a worker loses a thumb, the rate of disability is 35% and for the loss of a middle finger, it is 15% as per WCL187, but this is often disregarded by physicians, and a lower rate is often applied. The labor office routinely returns such files back to the original physician to re-assess the rate of disability. Some of the times, the files are returned with instructions to effect corrections, and other times they do not, all of which contributes to the build-up of the backlog of claims within both the private and public sectors.

Weaknesses of WCL187

The research found that the demerits of the WCL187 include the lack of minimum requirement for the registration of employees by the employers. From the Key Informant Interviews and as a practice or custom within Ghana, we noted that the law does not make it compulsory to register employees, and generally, many employers simply do not enroll their employees in workmen's compensation schemes. From interviews with officers at the Labor Office, there has been no prosecution of any business executive for failure to register the workers of such a company in the last 20 or more years [12]. Enforcement mechanism of whether or not a company has complied with the registration requirement is absent from the law.

Another weakness is that the law allows benefits to be paid to the injured worker even if there was serious and willful misconduct of the part of the workers. Site inspection and review by the Labor office, under the Ministry of Employment and Social Welfare is scattered and occasional, but not specifically mandated by law. Although the employer is liable to the employee for wage compensations for job-related injuries, there are still 3-defenses available to the employer, which are self-infliction of injury, intoxication, and misrepresentation of pre-existing condition. The foregoing is an example of obvious internal inconsistency of WCL 187.

Setting minimum recoverable ceiling for benefits

The 1987 law in Ghana removed or abrogated monetary ceilings for compensation without regard to the employee's income one month

immediately preceding the injury. However, we found that this practice is still relied on for benefits determination. Government and its officials at the Labor Department estimate that in each year, about 80% of the claims by injured workers are made by those whose incomes on the average are low and below the value of the ceiling. On the basis of this assumption or belief, the government sets a maximum ceiling by which all claims are limited. However, the ministerial rule applies only to those classes of workers within the Civil Service, despite the fact that the ceiling was removed by the 1987 law! The government uses as a basis for calculating compensable benefits by the salary of a high executive officer on the government pay-roll as a guide. This is rather arbitrary and not provided for in WCL 187.

In the private sector, however, companies have arranged with private insurance companies as to what the compensation should be and tend to disregard the protocols provided in the schedules to the law. This kind of arrangement suggests anti-trust issues with respect to price fixing against the pecuniary substantive interests of injured workers. At any rate, the compensation ceiling set for the public sector is authorized by the Minister of Employment and Social Welfare, under which the Labor Department falls. The Minister achieved this goal through an Executive Instrument. This approach suggests judiciary activism on the part of the Minister, since the Minister is not authorized to unilaterally change substantive rights of the people without a parliamentary approval. The Workmen's Compensation Law, 1987 (PNDCL 187) is a substantive law of Ghana promulgated in consonance with the 1992 Constitution of Ghana, which guarantees the right of workers to a decent wage and that no entity shall deprive the citizens of their property without due process or compensation. The law does not permit the Minister to disinherit the people of their substantive right to higher compensation, nor to compel injured workers to abide by a fixed ceiling inconsistent with the Workmen's Compensation Law of 1987. All that Section 5 of WCL187 says is that for Permanent Partial Disability, compensation would be based on 96 months (or 8 years) as the basis for payment of benefits on the monthly salary of the injured worker of the month immediately preceding the injury. Thus, if salary is GH¢757.73 and disability benefit is calculated at 40% for example, then: GH¢757.73 multiplied by 40% and divided by 96 and the product divided by 12 months, GH¢2,425.00 (Law 187, Sect. 5). In fatal cases, Section 3 subsection (a) of WCL187 says compensation would be calculated on 66 months. The law does not speak of ceilings since removal of ceilings in awards was one of the justifications why the 1965 Act was amended by the 1987 law [7].

Challenges in the legislative framework

The legislative framework for Workmen's Compensation in Ghana is fraught with challenges and gaps. The challenges include the confusion within which the Workmen's Compensation Law of 1987 (PNDCL 187) was borne. The constitution places the burden on the government to ensure that the safety, health and welfare of persons at work are safeguarded as stated in Article 36(10) and previously quoted. It could have placed this burden as the collective or shared responsibility between the public-private partnerships engaged in job creation and retention. Instead, the obligation as stated in the constitution of 1992 is very general and does not have the specificity of demand for occupational risk assessment. There have been no serious efforts at the level of the Ministry of Social Welfare and Employment to develop the policy framework for occupational safety. Due to this lapse there are many workers in both the formal and informal sectors that are not protected under the law.

Ghana appeared not to have seriously considered the essential elements it wanted included in the law. This shortcoming is evidenced in the various attempts of the nation to carve a new law on compensation, as it moved from one amendment to the next. Instead of taking an all-encompassing approach to re-drafting the law on compensation, it was done in a checkered and haphazard manner without addressing the major issues in occupational health and safety, occupational diseases and mitigation, injury prevention and compensation. Coupled with the confusion of WCL187 is the fact that Ghana does not have Occupational Health and Safety legislation for the prevention of work-related illness and injury. Although there is the labor law and the constitution, they seem to provide somewhat theoretical approximation of the rights of workers rather than actual modalities for claims estimation and adjustment.

This dual situation provides ample opportunity for the confusion and the abuse of the rights to compensation of employees, who suffer injuries on the job. From 1942 when the first Ordinance of Workers' Compensation was passed by the colonial administration, there have been many attempts by the government of Ghana to develop OSH laws, but so far not much has been achieved.

The Minister of Employment and Social Welfare and the Labor Department that are charged with the administration of compensations and benefits, have also added to the confusion. The Ministry has artificially set a maximum ceiling against which no benefits can exceed irrespective of the worker's income level prior to the injury. However, the 1963 National Advisory Committee on Labor was instituted to review the Workmen's Compensation Act and to bring it into social policy of the Government with particular regard to the removal of all ceiling figures in respect of Workmen's earnings in the calculation of the amount of compensation to the injured worker [18]. It was reasoned that payment was to be determined on the basis of the actual earnings. It also charged the administrator to deal with the growing problem of occupational diseases. This was subsequently incorporated in the 1987 law as it stands today. It is therefore incongruent with the expectations of the law, for the Minister of Employment and Social Welfare to unilaterally set ceilings to deprive the citizens of their constitutionally protected equity rights [1].

For those earning a higher income, the ceiling is quite discriminatory. For instance in 2009, the ceiling was GH¢ 2,678 (\$2,678). In 2010, the ceiling was GH¢ 3,633 (\$2, 795). In 2011, the ceiling is GH¢ 4,498 (\$2, 777). If the employee's monthly income exceeds the ceiling provided by the government, then he would be compensated as if his income was originally below the ceiling. This appears to be in opposition to Section 36 of WCL187, which states that if a workman earns up to GH¢ 25,000 (\$15, 203) a year, he shall be paid compensation on his full salary. This clause defeats the intent of the ceiling set for those earning less than GH¢ 25,000.

From this analysis, a valid claim can be made that there appears to be an over-reliance on the physician's recommendations as the ultimate arbiter of what is allowable under the 1987 Workmen's Compensation Law of Ghana in sections 1 through 8, as it is the case in the US and South Africa [3-5] Since, the physician has to decide first if the injury occurred in the course of employment of the employee in order to move the analysis to the level of estimating the degree of disability, the requirement makes the abilities, skills and knowledge of the physician about workmen's compensation issues very critical to the process [15-16]. The training of more doctors in occupational health and safety could help to improve the situation as it currently is. The 'no fault' construct of the law seems to have failed to deliver a true

no fault, non-adversarial system for the management of workmen's compensation due to the persistent failure of the system to compensate workers timely and adequately, and due to the non-responsiveness to requests or inquiries about compensations and benefits [3, 5-6, 4 ,17]. The debate on worker's rights includes ethical and legal issues implicated in the role of the physician as a healer and a claims adjuster and the administration of power and authority of the labor department and the ministry in charge of employment and social welfare. Though the certification of occupational injury or disease by a medical doctor causes delays and backlog in claims administration, it is not the only gap that needs to be addressed by the legal framework on OSH in Ghana [26-30].

Conclusion

The delays in the Workmen's Compensation administration in Ghana and perhaps in the West African sub-region are caused by many actors including:

- i. Ghana does not have an Occupational Health Policy but operates with a draft policy that has been in the drafting stage since 1999. This situation needs to be corrected in order to streamline the administrative modalities of occupational health.
- ii. Ghana needs to delink financing for occupational injuries from annual national budgets produced by the Ministry of Finance and vest it in an insurance based regime financed by employer-employee contributions.
- iii. The employees in the formal sector do not seem to understand the law of compensation, let alone those in the informal sector. It appears there needs to be more effort in public education on occupational health in general.
- iv. The beneficiaries' lack of understanding of the compensation regime is coupled with the general lack of medical specialists in occupational health. This handicap is further worsened by the large physician-to-patient ratio in Ghana in particular and in the West African sub-region in general. Here too, it appears more effort in the education of the physician in occupational health and safety would go a long way to help enhance the human rights of workers.

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Conflict of Interest:

None declared.

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