Rationale for a Study on EI in Southern and Eastern Africa

EMPLOYMENT INJURY COMPENSATION: INTERNATIONAL TRENDS, CHALLENGES
SUMMARY

- What is Employment Injury Social Insurance
- Trends and challenges of EI in the world
- Study on EI in Southern and Eastern Africa: motivation and approach
THE PURPOSES OF THE EII

- first, it is to **compensate** employees for their industrial accidents rapidly and fairly.

- secondly, it is to **protect** injured employees and their family by establishing and operating insurance providing health care and carrying out activities relevant to the EII.

- finally, it is also for employers to **mitigate economical undue burden** and to help them operate their companies.

- Link with prevention, integration/rehabilitation..
EMPLOYER LIABILITY AND PRIVATE INSURANCE

- Direct compensation by employers
  - Adversarial legal relation between employer and employee -> deteriorates the labour-management relations in workplaces
  - Not guaranteeing right of injured workers in case of employers’ insolvency
  - From the employers’ point of view, employee injuries causing large-scale compensation may undermine the sustain ability of their business

- Risk-pooling by insurance mechanism

- Established by a legal contract enforceable in the courts
- Competition in the market prevents bureaucratic inefficiency
- Private insurance company put a very high rate premium or does not contract with high-risk companies based on pursuing profit -> It is against the principle of risk-pooling
- Some nations implement compulsory private insurance scheme for workers’ compensation
INSUFFICIENCY OF EMPLOYER LIABILITY SYSTEM

- if employers are insolvent or there are disputes on level of compensation for employment injury or occupational disease, the injured workers cannot be compensated for their work-related injuries;

- it may be time-consuming until the disputes are settled, which leads them or their dependents to be vulnerable in case of severe injury or fatal.

- in small and medium size companies, fatal accidents and a number of industrial injuries made their employers stop their business because of the liability burden.

- Therefore, employer liability scheme is insufficient as a social security and needs to be transformed into social insurance type or supplemented with other guarantee service.
The payment of the EII benefits excludes employers from the process of civil trials. Employees are compensated by the EII on the condition that they give up legal procedures and employers are required to pay the EII benefits to employees who suffer from industrial injuries or diseases whether they are negligent or not.

The non-fault liability under the EII is much more efficient in time and cost than the judicial system which focuses on who is responsible for the accidents.

Industrial accidents are inevitable and should be compensated regardless of who is responsible for the accidents. Thus the expenditure for industrial accidents should be considered as a part of production cost.
3 KEY PRINCIPLES OF SOCIAL INSURANCE - EI

(a) “no fault” (a worker who is injured should qualify for benefits without any necessity to prove “fault” on behalf of the employer),

(b) collective sharing of liability

(c) neutral governance (the right to benefit can be established outside the contractual relationship between a worker and her/his employer).
EMPLOYMENT INJURY PROTECTION: DISTRIBUTION BY TYPE OF PROGRAMME, 2012/13
Swaziland requires employers to purchase insurance.

Malawi adopted a new Law which it has not yet implemented. It currently imposes no requirement as to how the employer meets the legal obligation to provide compensation;

Lesotho has a draft Law instituting comprehensive social security, approved by cabinet but not yet adopted.

Botswana allows employers to do so either by purchasing insurance or placing a deposit with the government.
EMPLOYMENT INJURY PROTECTION: LEGAL AND EFFECTIVE COVERAGE, LATEST AVAILABLE YEAR (PERCENTAGE OF LABOUR FORCE)

Source: For legal coverage, see figure 3.13. For effective coverage: ILO Social Security Inquiry database.
# Disability Non Contributory Benefits

Disability benefit schemes anchored in national legislation providing periodic cash benefits: 168 countries (92%)

- **Contributory**
  - Scheme only
    - 81 countries (44%)
  - Scheme and non-contributory universal scheme
    - 20 countries (11%)
  - Scheme and non-contributory means-tested scheme
    - 54 countries (30%)

- **Non-contributory**
  - Means-tested scheme only
    - 6 countries (3%)
  - Universal scheme only
    - 7 countries (4%)

No cash periodic disability benefit programme anchored in national legislation: 15 countries (8%)
  - Of which lump-sum benefits
    - 11 countries
Health-care needs of victims of occupational injury or disease may go beyond or differ from those of the majority of the people protected under general health-care schemes.

Contributory disability schemes which cover loss of earning capacity due to non-work-related disablements usually require the completion of a qualifying period before the person covered becomes entitled to a benefit. This requirement serves as a safeguard against abuse.

By contrast, the qualifying conditions of employment injury benefit schemes should be designed in such a way that workers are protected against the consequences of employment injury from their first day at work, and do not bear the health and financial risks of an unsafe or unhealthy work environment. The occupational disease may be more difficult.
Employment injury benefits in case of permanent disability are long-term periodic payments, similar to other pensions, hence the need for an integrated approach within national systems.

Complex issues may arise in the treatment of occupational diseases with long latency periods.

Such problems can be even more difficult to manage in the circumstances of developing countries where relevant regulations, relating for example to protective clothing and other safeguarding measures, may be poorly enforced.
In those countries which have put in place employment injury insurance and workers’ compensation schemes to address these needs, it is important that the schemes be administered on a fair and consistent basis.

- Medical examinations, diagnostics and assessments must be rigorous, and based on a national list of occupational diseases.

- Providing protection in cases of employment injury is an area of social security in which effective administration, and equitable treatment of claimants, plays a particularly crucial role.
The role of administrators may be very wide, and closely interrelated with that of labour inspectors responsible for checking workplace safety as well as the whole range of measures to help prevent accidents at work, occupational injury and work-related diseases.
An integrated framework comprising

- comprehensive occupational safety and health measures,
- strong inspection services and enforcement measures, as well as
- adequate cash and health-care benefits in the event of employment injury,
- appropriate rehabilitation services,

remains the best way to ensure that workers and their family dependants are effectively protected against the risks of employment injury.
STUDY IN SOUTHERN AND EASTERN AFRICA: REASONS

- No up to date information available
- Long time since last regional study
- Processes of conversion taking long
- Non implementation of existing legislation
- Good wealth of experience from a few schemes in the region
- Some new emerging themes
Questionnaires sent out to respondents
Preliminary descriptive study
Review by peers
Comparative analytical study (including quantitative data)
Incorporation of critical themes
Final study
Dissemination
The global trend towards coverage under social insurance is encouraging. Such a framework helps to promote the rights- and solidarity-based perspective. EI has few specific challenges of which administration is critical one.

Research, exchange of information and capacity building must be accompanied by communication, sensitization/ education on EI within social security framework to raise awareness on key principles underpinning social insurance.