EMPLOYMENT INJURY PROTECTION IN EASTERN AND SOUTHERN AFRICAN COUNTRIES

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Outline

• Background and purpose of study
• Conceptual framework
• International and regional standards
• Socio-economic context
• Occupational safety and health
• Employment injury compensation
• Other employment injury-related schemes and initiatives
• Pitfalls and challenges
• Future developments
• Purpose of the study: review the provision of employment injury protection schemes in selected eastern and southern African countries.

• Aim: fill the knowledge gap as regards the situation on employment injury prevention and compensation in the eastern and southern African region:
  – Shed some light on the various approaches to employment injury protection;
  – Promote a situation where countries of the region learn from each other’s experiences;
  – Encourage cooperation with the southern African region in the structuring and delivery of employment injury benefits;
  – Develop recommendations for the reform and future development of employment injury schemes in eastern and southern Africa.
Conceptual framework

• Common law duty of employers to protect employees from occupational injuries and diseases largely codified in occupational health and safety laws in relevant countries.

• Occupational injuries and diseases prevention programmes, compensation schemes and rehabilitative measures interconnected.

• Two types of employment injury schemes:
  – Social insurance
  – Employer liability schemes

• However, both involve the pooling of risks and define the benefits to be disbursed.
International and regional standards

• Employment injury protection guaranteed in several international and regional instruments:

• United Nations:
  – Convention on the Rights of Persons with Disabilities (only Botswana has not confirmed, acceded or ratified)

• International Labour Organisation:
  – Compensation for occupational injuries and diseases:
    o Workmen’s Compensation (Agriculture) Convention 12 of 1921 (only Kenya, Malawi, Tanzania and Zambia ratified);
    o Equality of Treatment (Accident Compensation) Convention 19 of 1925 (only Ethiopia and Namibia not ratified);
International and regional standards (cont’d)

- Social Security (Minimum Standards) Convention 102 of 1952 (no ratifications);
- Employment Injury Benefits Convention 121 of 1964 (no ratifications).

• African Union
  - African (Banjul) Charted on Human and People’ Rights - Article 15.

• SADC
  - Charter of Fundamental Social Rights - Articles 1 (e) and (f), 5 (b) and 12.
Socio-economic context

• Countries mainly middle and low income countries on 2014 HDI:
  o Middle income (Botswana, South Africa, Namibia and Zambia).
  o Low income (Kenya, Swaziland, Zimbabwe, Tanzania, Lesotho, Ethiopia and Malawi).

• Large rural population (e.g. Ethiopia – 82.5%, Kenya – 75.2%, Lesotho – 77%, Malawi – 84%, Swaziland – 78.8%, Tanzania – 72.4% and Zimbabwe – 60.4%).

• High employment to population ratios as well as labour force participation rates.

• However, high informal sector employment (e.g. Ethiopia - 50.6%, Kenya – 61%, Malawi – 90 and Zimbabwe – 84%) and poverty rates.
Occupational safety and health

- Statutes in all countries regulating occupational safety and health.

- Protection limited mostly to employees and apprentices. However, some specific categories of employees excluded from ambit of legislation.

- Statutes make provision for duties of employers/employees (sometimes self-employed persons) and rights of employees.

- Administration of OSH mostly by Ministries of Labour/Employment

- Laws require appointment of inspectors for compliance monitoring and enforcement with wide powers afforded them. Penalties (fine or imprisonment or both) and powers to order remedy of defects also provided.
Employment injury compensation

- Provided through:
  - Social insurance (Ethiopia, Namibia, South Africa, Zambia and Zimbabwe);
  - Employer liability schemes (Botswana, Kenya, Lesotho, Malawi, Swaziland, and Tanzania).

- Social insurance systems administered by social insurance institutions while employer liability systems administered by Ministries of Labour/Employment.

- Benefits provided for temporary or permanent disability, survivorship, medical care (including transportation), funeral and assistive devices.

- Schemes funded by employers through contributions to social insurance schemes or liability insurance with private carriers.
Other employment-injury related schemes/initiatives

- Initiatives available in some countries to support disabled persons. E.g.:
  - Ethiopia’s National Plan of Action of Persons with Disabilities
  - Kenya’s National Council for Persons with Disabilities
  - Disability and old age pensions (Botswana, Lesotho, Namibia, South Africa)
  - Free public health care

- However, few initiatives specifically aimed at reintegrating injured workers into labour market. E.g.:
  - Namibia Development Fund
  - Zimbabwe National Employment Policy Framework
Pitfalls and challenges

• Out-dated laws

• Fragmentation: regulation by several laws and administration by different institutions

• Narrow scope of coverage: formal sector focus, excluding atypically-employed and categories of employees.

• Non-reporting of accidents and diseases

• Lack of coordination and networking

• Institutional and administrative issues
Pitfalls and challenges (cont’d)

- Poor compliance and weak enforcement
- Lack of training
- Focus on compensation
- Inadequacy of benefits
- Lack of awareness and research on occupational safety and health
Future directions

• Review of occupational safety and health legislation
• Extension of coverage
• Replacement of employer liability schemes with social insurance schemes
• Focus on prevention and rehabilitation/reintegration
• Improvement of monitoring and enforcement
• Improvement of occupational accidents and diseases notification systems
• Improvement of benefits