Evolution of Occupational Health & Safety

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Outline

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Introduction

• Historical OHS legislation developed in a piecemeal fashion
• Without reference to any coherent plan or policy
• Development of OHS is related to industrialization
• Complex, fragmented and conservative legislative framework that was essential reactive
• Reflective of contending political and economic forces, characterised by discrimination
• Racial differentiation in rights and benefits was a feature of this legislative history
• OHS received the attention of the state, employers and workers
• Perspectives were/are different and conflicting
SA Industrial Revolution (1867-1898)

1867- Discovery of diamonds started the process of industrialisation

1886 - Discovery of gold on the Witwatersrand

• Massive expansion of the gold-mining industry; service and manufacturing industries
  • Labour practices followed the existing migratory pattern for domestic and foreign labour in industry

1894 – Rand Mutual Assurance

• Unusual high accident and OD rates
The 20th Century

1902- Government commissions

- Milner Phthisis Commission followed by further commissions in 1905 and 1911.
- Average of life span of Cornish rock drillers was 36.4 years; 4.7 years of employment (Katz 1994)
- 1907 mortality ran at 470 per 100,000 employees per annum (Bullion 1985)

1911- Miner’s Phthisis Act

- An epidemic of lethal lung diseases
- Aimed at protecting the health of mine workers.
- Original requirement that workers contribute to the compensation fund
- Mineworkers were periodically checked for phthisis by a government appointed Dust-inspectorate
- Miner’s Phthisis Principle Act 1919, the contribution by (white) workers to the compensation fund was removed

1916 – Mines and Works Act 12

- Promulgated to regulate mining activities.

1918 – Factories Act (Basic piece of legislation)

- Regulation and control of factories, hours and conditions of work
- Supervision of the use of machinery, and the prevention of accidents
1941 - Workmen’s Compensation Act (WCA) was passed

- Guaranteed compensation for certain statutorily defined diseases as well as for accidents
- No fault system, employers were shielded from litigation
- Removed from workers’ common law right to sue employers for failing to ensure a safe and healthy workplace
  - Workers would reliably receive care and benefits
- 1914-Workmen’s Compensation Act (WCA)
  - Ineffective at providing adequate compensation because it was not mandatory, (Budlender, 1984)
- 1936-Federated Employers Mutual Assurance started

1941 – Machinery and Building Work Act replaced Factories Act

- More substantive, broad ranging piece of legislation
- Prevention of accidents at work
- Providing regulation-and control of factories, regulation of hours and working conditions
- Supervision of the use of machinery
The 20th Century

1956 - Pneumoconiosis Unit
- Forerunner to the NCOH as part of the South African Institute of Medical Research
- Its history of valuable research work
- DoH inherited NCOH in 1979, NIOH

1956 – Mines and Works Act
- Safety of personnel engaged in mining and for protecting the underground and surface works and installations in mines
- Mostly repealed by Minerals Act 50 of 1991

1973 – ODMWA replaced Phthisis Act
- The first Act was succeeded by 18 further Acts
- Applied to all workers who performed risk work at a controlled mines or works
- Compensation system for specific OLD & other diseases
- No employer indemnity
Perspectives: Up to 1960s

• **Capital**
  - Viewed health and safety predominantly in economic and industrial terms
  - Ill-health and accidents as costs not as a safe and health issue
  - Maximization of profits and productivity, rather than the principle of making work safe
  - Aided racially exclusive industrial unions and statutory job reservation

• **State**
  - Inconsistent and varied over time
  - Supported interests of capital, at times specifically pushed capital to make concessions to OHS
  - Prevent potential industrial unrest, productivity reduction and emergence of organised black working class
  - Reduce confrontations between white workers and capital, and to ensure a continual supply of black labour
  - Events in the industrial relations arena, influenced by the needs of the economy and modified by political forces characterised state’s responses

• **Organised Labour**
  - Racial differentiation in rights and benefits wrt amount & pattern of payments was a feature of their struggle
  - OHS was secondary
  - Conservative labour union
Antecedents to Developments after 1980s

**Erasmus Commission**
- Employers did little to promote OHS
- OH services outside of mining industry were limited
- ODs were widespread and highly prevalent in many industries
- Differential treatment of workers based on race; inconsistencies in regulatory framework.
- Maze of legislation, statutory protection of health at work was fragmented, incomplete, and out of date (11 departments)
- Inadequate numbers of appropriately trained OHS personnel
- Uniform industrial health policy and regulatory practice
- Single OHS legislation under control of one department (DoH)
- Single OD database to be established

**Wiehahn Commission**
- Participatory dispensation for all parties and races in the economy;
- Consultation and cooperation should take place between employers, trade unions and employees before changes were made or new developments introduced in the workplace
- Industrial relations should be deracialized.
- Legislation should be deracialized wrt both prevention and compensation.

**Unionisation of black workers**
Formation of FOSATU was the first trade union federation that organised mostly black employees that aimed to be a national, non-racial umbrella organisation that could coordinate black trade union movements.

**Nieuwenhuizen Commission**
- Drew attention to disparities between laws (mining vs rest).
- Integration of the two systems
- Tightening of compensation criteria in anticipation of deracialisation of ODMWA and increases in the number of claims filed by black workers
1983- Machinery and Occupational Safety Act (MOSA)

- Notable of this Act was the introduction of
  - Occupational health
  - Occupational safety and hygiene
- substantially extended scope, both in terms of the industries and the employees to be covered

1993- ODMWA, 1973 was amended

- Overtly racial clauses were removed
- Legacy of inequity persisted in the functioning of the system
Developments after 1980s

1993 – Compensation for Occupational Injuries And Diseases Act, No 130 (replaced WCA)

- Covers most employees, regardless of the earnings
- Modernised the approach to the compensation of ODs and extends the list of ILO scheduled diseases
- Employers were obliged to pay loss of income compensation for the first 3 months of any absence due to injury or OD
- Structure of the old Act remain intact

1993 – Occupational Health and Safety Act (OHSA) replaced MOSA

- It improved the system of health and safety representatives by requiring that
  - Elected and by increasing their powers, functions and rights.
  - These include rights to information, to be assisted by technical advisors during workplace inspections
  - Accompany inspectors on inspections
Developments Post Democracy

Leon Commission
- Response to ceaseless campaign by NUM for increased standards of health and safety in the mines
- Spurred by Vaal Reefs Disaster (death 104 mine workers)
- Incumbent regulatory framework for health and safety in mines was inadequate and that the existing laws had been inadequately enforced
- Industry accident record was ‘appalling’ and found that the scale of death, injury and disease was such that remedial action had to be taken urgently enforced
- History of under-resourcing of the Mines Inspectorate allowed
- Industry to disregard key aspects of existing laws without being challenged by the Inspectorate
- Endorsed tripartism as a mechanism to develop participative strategies to deal with workplace hazards

Mine Health and Safety Act (MHSA)
- Primary responsibility for ensuring a healthy and safe working environment in mines rests on the employer (mine owner)
- Tripartite institutions to promote a culture of health and safety, to develop policy, legislation and regulations and to oversee health and safety research.
- Mine Health and Safety Inspectorate (MHSI), headed by the Chief Inspector of Mines (CIM), which has the responsibility to promote and enforce compliance with the MHSA.
- Inspect mines, to investigate and conduct inquiries into accidents and other health and safety incidents, and to enforce compliance with the Act.
- Enforcement powers include the issue of compliance or closure notices in terms of sections 54 and 55 of the Act,
- Imposition of administrative penalties and the recommendation of prosecutions.

MHSC
- The entity comprises a tripartite board under the chairmanship of the CIM
- The main task of the Council is to advise the Minister of Mineral Resources & Energy on occupational health and safety legislation and research outcomes focused on improving and promoting occupational health and safety in South African mines.
The 21\textsuperscript{th} Century

2007 - Social security reform
- National Social Security Fund (NSSF)
- Centrally managed public fund to provide pensions, death and disability benefits and unemployment benefits

2011 - NHI
- Financing model

2016 – Unified compensation system
- Integration of compensation legislation
- Attempts to integrate the two funds fell through in 1999
- Proposal - clean break –up principle

2019 – Tshiamiso trust compensation settlement
- R5 billion silicosis settlement payout by six gold mining companies
- Applied to all mine workers who have performed risk work at a controlled (6) mines
  - Silicosis and TB
Gold Mining

Source: (Hermanus 2007)
Coal Mining

Source: (Hermanus 2007)
Number of fatalities by industry: 2007-2017

Source: Department of Mineral Resources
# Occupational Health & Safety “System”

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Adapted: (Hermanus 1999)
Key Issues and Challenges

• OHS legislative framework is still complex
• Under resourced numerous government departments that have legislative responsibility
• Inconsistencies, incoordination, incoherence, sub-optimal use of inadequate resources represent formidable obstacles to a consistent approach to OHS
• Low prioritisation of OHS
• Lack of understanding of OHS delivery, (mis) interpretation and overreaching of statutes provisions
• Scarcity of resources (properly trained OHS personnel)
• Inadequate research, statistics and notification of the extent of OHS problems to inform current and future intelligible plan or policy
Conclusion

• OHS system needs overhaul
• Well resourced single authoritative institution to oversee the OSH policy applicable to all sectors of the economy
• Strategies to address, non-compliance and enforcement
• National comprehensive OHS database
• One compensation legislation
References


• Zwi, A et al, Occupational Health and Safety in South Africa :The perspectives of Capital , State and Unions ,Department of Community Medicine, University College and Middlesex School of Medicine, London School of Hygiene and Tropical Medicine., London.
Thank you
For Your Attention