



NATIONAL UNIVERSITY OF LESOTHO

**The Realization of the Right to Compensation for Occupational Accidents in Lesotho: A
Comparative Legal Analysis with South Africa**

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DECLARATION

I **Nthabiseng Claudia Letsie**, solemnly declare that this mini-dissertation has not been submitted for a qualification in any other institution of higher learning, nor published in any journal, textbook or other media. The contents of this dissertation entirely reflect my own original research, save for where the work or contributions of others has been accordingly acknowledged.

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Place: Maseru, Lesotho

Date: June 2025

DEDICATION

This mini dissertation is dedicated to my late parents ntate Makhabane Sylvester Letsie and 'm'e 'Maneo Evodia Letsie. It is also dedicated to my late daughter Hopolang Grace Rats'ele. May their souls continue to rest in peace.

This dissertation is also dedicated to the Government of Lesotho, Ministry of Labour and Employment. The Ministry's ongoing commitment to promoting the fundamental rights of workers and safeguarding the attainment of social justice is the very foundation upon which this research is built. It is my sincere hope that the findings contained herein serve as a valuable resource in strengthening the legal frameworks for compensation and the pursuit of just compensation system for every worker in Lesotho.

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CHAPTER ONE

BACKGROUND AND INTRODUCTION

1.1 General Background

Occupational accidents constitute a persistent global concern, as they often lead to injuries, fatalities, loss of production, or damage to property and assets.¹ While numerous theoretical models have been proposed to explain the underlying causes of such occurrences, the complexity and unpredictability of such incidents have precluded the adoption of a universally accepted framework.² So over decades, researchers have proposed various theories from early probabilistic models to more complex systems approaches to explain why accidents occur and how they may be prevented.³ Despite these extensive efforts, no single theory has gained universal acceptance, which demonstrates the inherent unpredictability and multifaceted nature of workplace accidents.⁴ This essentially means that accidents are inherently unpredictable and can have serious consequences, including injuries, fatalities, loss of productivity, and property damage. This unpredictability adds a layer of complexity to workplace safety and compensation systems.

In 1931, W. H. Heinrich introduced the concept known as the Domino Theory to determine the causes of accidents.⁵ Heinrich's theory posits that accidents follow a sequential chain of events.⁶ He argued that 88% of all accidents stem from unsafe acts by individuals, 10% arise from unsafe conditions, and a mere 2% stem from *force majeure* or *vis major* circumstances.⁷ Heinrich delineated a five-factor accident sequence, wherein each element triggers the subsequent one, much like a row of dominoes toppling one another.⁸ These factors include

¹ International Labour Organization [2011] Building Modern and Effective Labour Inspection Systems <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@americas/@ro-lima/@sro-port_of_spain/documents/genericdocument/wcms_633607.pdf> accessed 10th December 2024.

² W. H. Heinrich, *Industrial Accident Prevention* (John Wiley & Sons 1931) 25.

³ *Ibid.*

⁴ R. Du Plessis, *Workplace Safety and Legal Challenges* (Oxford University Press 2015) 4; Smith J. *Near Misses and the Iceberg Theory in Industrial Safety* (Palgrave Macmillan 2005) 33.

⁵ The Encyclopedia of Occupational Health and Safety, "Theory of Accident Causes" (4th edn, 1998 Geneva) <https://www.ilo.org/safework_bookshelf/English> accessed 4th December 2024.

⁶ *Ibid.*

⁷ See n2, Heinrich p. 27.

⁸ *Ibid.*

ancestry and social environment, worker fault, unsafe acts combined with mechanical and physical hazards, accidents, and ultimately damage or injury.⁹ Therefore, Heinrich's theory highlights the significant role of human behaviour in accident causation, suggesting that most accidents are preventable if unsafe acts are mitigated.¹⁰ It also emphasizes the critical importance of understanding and modifying human behaviour and environmental conditions to prevent workplace accidents.¹¹ Although, the domino theory was considered innovative for its time, later developments in accident analysis revealed its limitations.¹² In particular, the theory does not adequately account for the interplay of multiple contributing factors and has been critiqued for its linearity and failure to account for systemic and organizational factors.¹³

Responding to such limitations, the Theory of Multiple Causation introduced a more nuanced perspective, postulating that accidents are not a result of a single unsafe act or condition.¹⁴ In other words, it proposes that accidents result from a complex myriad of interrelated factors, both behavioural and environmental, instead of a single linear chain of events.¹⁵ For example, while an unsafe act might be the immediate cause of an accident. There are also contributing factors such as inadequate training, poor equipment maintenance, and ineffective safety culture, which may all play significant roles. In this expanded model, both individual errors and systemic failures are considered integral to understanding accident causation.¹⁶

The theory of multiple causation suggests that accidents are not a result of a single unsafe act or condition.¹⁷ Instead, it posits that they stem from a multitude of contributory factors, causes, and sub-causes that, when combined lead to accidents.¹⁸ This theory categorizes contributory

⁹ *Ibid.*

¹⁰ E. Scott Geller, *The Psychology of Safety Handbook* (2nd edn, Lewis Publishers 2001) 68.

¹¹ Nicholas Bahr, *System Safety Engineering and Risk Assessment: A Practical Approach* (2nd edn, Taylor & Francis 1997) 90.

¹² *Ibid.*

¹³ M. L. Will, "The Loss Control Approach to Industrial Safety" (Master thesis, University of Cape Town 1979) 49.

¹⁴ *Ibid.*

¹⁵ J. Farrell, *Theories of Accident Causation* (Cambridge University Press 1998) 55.

¹⁶ J. Neethling & Potgieter L. *Employer Liability in Occupational Accidents* (Juta Law Books 2020) 78.

¹⁷ See n2.

¹⁸ *Ibid.*

factors into two primary groups namely; behavioural and environmental.¹⁹ Behavioural factors include issues related to the worker, such as improper attitude, lack of knowledge and skills, and inadequate physical or mental conditions.²⁰ Environmental factors encompass improper guarding of hazardous elements, equipment degradation, and unsafe procedures.²¹ The core contribution of this theory is its assertion that accidents are seldomly caused by a single proximate cause, emphasizing the complexity of accident causation.²² In other words, the theory of multiple causation provides a comprehensive framework for understanding the multifaceted nature of accidents in the workplace. Therefore, this dissertation contends that workplace accidents should be understood not as a result of a single cause, but through a holistic framework that recognizes the interplay of multiple contributing factors. This is because holistic approach remains influential in legislative and policy design globally.²³

Nonetheless, the theory of multiple causation was also replaced by the iceberg theory which posits that there exists a proportional relationship among the various types of incidents occurring within an enterprise, including fatal accidents, minor injuries, incidents, and near misses.²⁴ It suggests that these different occurrences share common underlying causes.²⁵ By investigating and analyzing these near misses, it becomes possible to identify the potential causes of more serious accidents and implement necessary precautions.²⁶ Additionally, the theory implies that the likelihood of an event escalating from a near miss to an incident or an accident with injuries is a matter of probability.²⁷ The Iceberg theory accentuates that while serious accidents are visible and documented, they represent only a small portion of the actual hazards present within an organization.²⁸ The larger, often unseen base of the iceberg includes

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ See n7.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ See n11.

²⁷ G. Papadakis, "Major Hazard Pipelines: A Comparative Study of Onshore Transmission Accidents" (1999) 12 (1) *Journal of Loss Prevention* <<https://publications.jrc.ec.europa.eu/repository/handle/JRC16931>> accessed 27th July 2025.

²⁸ *Ibid.*

numerous minor incidents and near misses that, if addressed, can prevent more severe accidents²⁹. In essence, the theory highlights the importance of a proactive approach to workplace safety, focusing on the early identification and mitigation of risks.

In the early 1970s, a Systems Model Theory was developed and presented a different perspective from the Iceberg theory.³⁰ A systems model theory denotes that instead of viewing the environment as inherently hazardous and people as prone to errors, a balanced interaction among humans, machines, and their surroundings should be envisioned.³¹ Under normal conditions, the likelihood of an accident is minimal.³² However, when this equilibrium is disturbed by altering any component or the interactions between them, the risk of an accident significantly rises.³³ In other words, the systems model theory illuminates the importance of maintaining a harmonious relationship between humans, machines, and the environment to minimize accidents. In my view this approach shifts the focus from blaming individual errors or environmental hazards to understanding the dynamics of the entire system. It also highlights that accidents are often the result of disruption in the intricate balance between various elements rather than isolated faults.

These theoretical developments have significantly influenced the enactment of legislative frameworks designed to protect workers. In Lesotho, this influence is reflected in the *Workmen's Compensation Act No.13, 1977* (hereinafter referred to as the *WKMC Act*) and the *Occupational Safety and Health Act No.4, 2024* (hereinafter referred to as the *OSH Act*). While the *OSH Act* focuses on prevention through mandated safety practices, it imposes explicit duties on employers to provide safe working environments, obligates employers to conduct regular safety audits, and ensure timely reporting of accidents. The *WKMC Act* establishes

²⁹ *Ibid.*

³⁰ R. Raman, "Accounting for Dynamic Processes in Process Emergency Response Using Event Tree Modelling" (19th CCPS International Conference, Florida June 29-1 July).

³¹ Whitney DeCamp & Herskovitz Kevin, "The Theories of Accident Causation" *Security Supervision and Management* (2015) pp 71-78
<https://www.researchgate.net/publication/286168094_The_Theories_of_Accident_Causation> accessed 10th December 2024.

³² *Ibid.*

³³ *Ibid.*

compensation mechanisms that ensure workers receive financial and medical support if they suffer work-related injuries or fatalities.³⁴ These statutes are designed to function in tandem, with one aiming to prevent accidents and the other to mitigate consequences.

To reiterate the aim to promote and guarantee a safer working environment the government of Lesotho has promulgated the *OSH Act* intending to ensure a progressive improvement of the safety and health of persons at work.³⁵ In particular, section 15 of the *OSH Act* mandates both an employer and self-employed individuals to report any accidents, diseases, hazardous incidents, or cases of occupational poisoning that occur within their workplaces to the Director of Occupational Safety and Health (DOSH).³⁶ In situations where an accident results in the death of an individual, the employer is required to notify an occupational safety and health officer within a 24-hour timeframe of the occurrence of the accident.³⁷

This requirement illuminates the critical importance of timely reporting in maintaining workplace safety and ensuring swift responses to occupational hazards. Timely notification does not only facilitate immediate interventions and investigations but also supports the broader goal of preventing future occurrences by identifying root causes and implementing corrective measures.³⁸ However, this dissertation submits that the effectiveness of section 15 of the *OSH Act* relies heavily on the employer's adherence and the enforcement capacity of the OSH Directorate. In practice, there can be significant challenges, such as underreporting due to fear of repercussions, lack of awareness among employers, or insufficient resources within the OSH Directorate to follow up on reported cases comprehensively.³⁹ Nonetheless, this provision raises questions about the adequacy of the support system for employers to comply promptly without disrupting their operations. However, despite these legislative measures, practical challenges persist. These include issues of underreporting, narrow scope of coverage

³⁴ *WKMC Act* [1977] section 5; *OSH Act* [2024] section 15.

³⁵ *OSH Act* No.4 [2024].

³⁶ *Ibid*, section 15.

³⁷ *Ibid*.

³⁸ See n31.

³⁹ Ministry of Labour and Employment, *Annual Labour Inspections Report 2017/18* (Government of Lesotho 2018).

on definition of accidents, cumbersome claim procedures that hinder timely access to compensation and the nature of the compensation scheme.⁴⁰

In response to some of these legislative and policy gaps, the promulgation of the *Workmen's Compensation Regulations, 2024* alongside the 2021 *Lesotho National Social Security Policy* represents a significant development, recommending a monetary ceiling of M 240,000 for compensation claims.⁴¹ However, this ceiling has sparked debate among scholars, with some questioning its adequacy for severe injuries or long-term occupational diseases.⁴² Critics argue that the ceiling may inadequately reflect the actual economic loss suffered by victims, particularly in cases involving permanent disability, prolonged medical care, or loss of earning capacity.⁴³ Others point out that without a flexible mechanism to adjust the ceiling in line with inflation and changing economic realities, the Regulations risk becoming outdated and obsolete overtime.⁴⁴

In contrast, South Africa's system, governed by the *Compensation for Occupational Injuries and Diseases Act (COIDA) of 1993*, offers a more comprehensive approach-based social insurance model for employment injury compensation. It covers medical expenses, temporary and permanent disability benefits, and death benefits without a specific monetary ceiling.⁴⁵ Therefore, *COIDA* plays a crucial role in ensuring that workers receive the support they need when injured or ill due to their employment. This contributes to the overall effective realization of the right to compensation for occupational accidents and diseases, promoting workplace safety and worker well-being.

⁴⁰ D. Masoebe, *Contemporary Challenges in Occupational Safety and Health Standards in Lesotho* (University Press 2023) 50.

⁴¹ L. Ntoi, "Analyzing the 2021 Lesotho National Social Security Policy: Implications for Worker Protection" (2022) 19(3) *Journal of Social Policy in Africa* 278-295.

⁴² T. Lebusa, "Evaluating the Adequacy of Compensation Ceilings: A Case Study of Lesotho's Social Security Policy" (2023) 31(1) *Lesotho Law Journal* 56-78.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ P. Myburgh, Smit, N., & Van der Nest, D. "Social Security Law: General Principles" (2020) *LexisNexis South Africa*.

Research suggests that South Africa's Compensation Fund operates more efficiently than Lesotho's decentralized compensation system.⁴⁶ Additionally, South Africa's compensation system covers a broader range of workers, including: self-employed individuals, domestic workers, and makes provisions that enable compensation for permanent disablement.⁴⁷ It also provides for medical care and rehabilitation services to restore as far as possible the earning capacity of injured workers, while Lesotho's coverage is more limited in relation to the scope and nature of compensation mechanisms in place.⁴⁸ The lack of a comprehensive framework to ensure rehabilitation and adaptive employment practices can lead to disparities in how compensation claims are handled, affecting the overall attainment of the right to compensation. The contrast between Lesotho's limited services and South Africa's approach has been highlighted as a significant factor affecting the realization of the right to compensation, potentially leaving workers at a disadvantage in severe cases.⁴⁹

Even with the advent of the *OSH Act* and *WKMC Act*, researchers have noted that the *WKMC Act* in particular may not fully address contemporary labour market realities and occupational health risks.⁵⁰ Contemporary labour market realities, such as creating a structured system for addressing all ancillary matters connected to workplace injuries, such as rehabilitation services, support for return-to-work programs, and ensuring compliance with safety standards remain insufficiently addressed by the two legislations.

The recent Labour Force Survey (LFS) illuminates these legislative inadequacies by revealing persistently high rates of workplace injuries, especially within the construction and

⁴⁶L. Ramutloa, "Institutional Frameworks for Worker Compensation: A Comparative Study of Lesotho and South Africa" (2021) 42(3) *Comparative Labor Law & Policy Journal* 567-589.

⁴⁷ S. Machida, *Strengthening the Role of Employment Injury Schemes to Help Prevent Occupational Accidents and Diseases* (International Labour Organization 2013) 16.

⁴⁸M. Lebohang, "Comparative Analysis of Worker Compensation Systems in Southern Africa: Focus on Lesotho and South Africa" (2022) 66(2) *Journal of African Law* 245-267.

⁴⁹ K. Mosito, "Comparative Effectiveness of Occupational Disease Compensation in Lesotho and South Africa" (2023) 24(1) *Southern African Journal of Social and Economic Policy* 89-105.

⁵⁰ M. Motsoari, "The Need for Reform: Analyzing Lesotho's Workmen's Compensation Act of 1977" (2018) 26(2) *Lesotho Law Journal* 123-145.

manufacturing sectors counting for 17.0% and 15.2% of affected individuals respectively.⁵¹ The 2024 LFS reveals that 6,607 workers reported occupational injuries or diseases in the preceding 12 months, of whom 4217 were males and 2,390 were females.⁵² A gendered disaggregation of this data demonstrates that males workers in the construction sector are disproportionately affected, with 23.0% reporting work-related harm, followed closely by those in the mining and quarrying sector at 19.5%.⁵³ In contrast, among the female workers, the manufacturing sector emerges as the most hazardous occupation counting for 27.6% of reported occupational injuries or illnesses followed by domestic work sector or undifferentiated goods producing activities at 19.5%.⁵⁴ Notwithstanding, the magnitude of occupational injuries or illnesses reported, the LFS indicates that only 4.1% of affected workers pursued compensation claims.⁵⁵ This analysis highlights a potentially significant gap between the incidence of occupational injuries and the realization of the right to compensation raising concerns about accessibility, awareness, or functionality of existing compensation mechanisms under Lesotho's legal and institutional landscape.

As a result, this dissertation contends that bridging theoretical frameworks of accidents causation with compensation mechanisms is critical for legal reform. The theories, particularly the Systems and Multiple Causation models, support a holistic approach that can inform both the design and implementation of occupational safety and compensation laws. Without such integration, compensation frameworks risk becoming reactive and fragmented, failing to address root causes or to ensure timely redress for affected workers.

⁵¹ Ministry of Finance and Development Planning, *Lesotho Labour Force Survey Report 2024* (Government of Lesotho 2025); For the origin of the Labour Force Concept, see Theo Sparreboom, "An Assessment of Labour Market Information Systems in Southern Africa" (2001) XXVI (3) *Africa Development*, pg 149-181. The Labour Force survey is the source of key labour market indicators such as employment, unemployment, economic activity and hours worked, as well as numerous related measures. The origin of the Labour Force dates back to the period directly following the establishment of the ILO in 1919. The labour force concept exclusively divides the population into two broad classes: those who are considered economically active and those who are considered economically inactive.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ See n47.

1.2 Statement of the Research Problem

Despite the existence of legal frameworks in both Lesotho and South Africa guaranteeing the right to compensation for occupational accidents, workers especially in Lesotho face persistent barriers in realizing this right effectively. Lesotho's system, governed by the *WKMC Act, 1977* remains outdated, narrowly focused, and administratively fragmented with limited coverage, low compensation ceilings, and slow claims process. In contrast, South Africa's *Compensation for Occupational Injuries and Diseases Act (COIDA)* offers a more inclusive, centralized and no-fault based model. This research addresses whether Lesotho's current compensation framework adequately protects workers' rights in light of modern labour market realities and how the realization of the right to compensation compares with South Africa's more evolved system. It seeks to identify the structural, legislative, and practical shortcomings that hinder access to timely and fair compensation for occupational injuries and accidents in Lesotho and to explore reform options informed by a comparative legal analysis.

1.3 Research Question

To what extent does the practical, and legislative gaps and opportunities in Lesotho affect the realization of the right to compensation for occupational accidents and how does it compare with South Africa's legal frameworks and practices to inform effective protection and possible reforms?

1.4 Significance of the study

The significance of this study lies in its potential to influence legislative reform and administrative changes for governance of the right to compensation in Lesotho. Workplace injuries, accidents, and diseases impose heavy burden, not only on affected workers and their families. But also, on the national economy due to unpredictable job security, lost productivity and increased healthcare costs. By identifying the gaps between legal provisions and actual practice, this research provides a critical evidence base for reforming compensation system in Lesotho. A reformed system could improve the welfare of workers, contribute to better

industrial relations, and enhance overall economic stability.⁵⁶ Furthermore, by drawing comparison with South Africa's employment injury compensation system, notwithstanding its challenge, which has been lauded for its comprehensive and efficient compensation mechanism under *COIDA*, the study highlights potential avenues for policy transfer and improvements in Lesotho.⁵⁷

1.5 Aims of the Study

The primary aim of this study is to identify the gaps between legal provisions and practical implementation, barriers to realizing the right to compensation for occupational accidents, and potential solutions to improve the attainment of this right in Lesotho with possible lessons from South Africa. The study will also be guided by the following secondary aims:

- i. To enhance understanding of the prevention of work-related accidents and establishment of fair compensation mechanisms in alignment with international labour standards.
- ii. To critically analyze the statutory and regulatory frameworks governing compensation for occupational diseases, accidents, and injuries in Lesotho, and compare these with the more expansive South African frameworks.
- iii. To evaluate the institutional mechanisms and administrative processes that underpin the practical implementation of compensation schemes in both countries.
- iv. To assess the practical challenges faced by workers in accessing compensation and the barriers to effective implementation of compensation laws in Lesotho.
- v. To compare the realization to the right compensation for occupational accidents in Lesotho and South Africa, identifying strengths and weaknesses in each country's approach.
- vi. Recommend actionable reforms based on comparative analysis and international best practices that can improve the attainment, inclusivity, and efficiency of the right to compensation in Lesotho.

⁵⁶ See n3, Du Plessis pg 67.

⁵⁷ See n46.

1.6 The Scope of the Study

This study focuses on the realization of the right to compensation for occupational injuries and accidents in Lesotho, with particular emphasis on employees and employers operating within the private sector. It examines the international the international labour standards, statutory instruments, and regulatory frameworks that govern occupational health and safety, as well as compensation for work-related injuries and accidents in both Lesotho and South Africa. The comparative analysis will extend beyond the legal texts to include implementation practices, institutional capacity, and stakeholder perspectives. By identifying best practices and systemic strengths within the South African framework, the study also extricates practical and normative lessons that may inform legal and policy reforms in Lesotho.

1.7 Justification for a Comparative Study with the Republic of South Africa

A fundamental consideration in any comparative legal study is the need for caution against assuming direct equivalence between legal systems, particularly those that differ in substance, structure and context.⁵⁸ However, O'Regan in *K v Minister of Safety and Security* has observed that examining how other legal systems approach similar legal challenges remains valuable.⁵⁹ He emphasized that it would be unnecessarily insular to dismiss the potential insights, whether in agreement or contrast that can be gained from other jurisdictions facing comparable legal issues.⁶⁰ He further stated that learning from the experience and approaches of other legal systems can enhance understanding of one's legal framework and contribute to its development.⁶¹ Thus, the selection of South Africa as a comparator in this study is underpinned by several factors such as a shared legal heritage and geographic proximity.⁶² Lesotho and South Africa share a common legal heritage rooted in Roman-Dutch law⁶³ On this regard, Poulter (1999) asserts that the modern common law of Lesotho stems from the historical lineage and continuing influence of the South African common law as administered in the Cape

⁵⁸ Otto Kahn-Freund, "On the Uses and Misuses of Comparative Law" (1974) 37 *Modern Law Review*.

⁵⁹ *K v Minister of Safety and Security* (CCT52/04) [2005] ZACC 3:2005 (6) SA 419 (CC); 2005 (9) BCLR 835 (CC); [2005] 8 BLLR 749 (CC); (2005) 26 ILJ 1205 (CC) (13 June 2005), para 34.

⁶⁰ *Ibid*, para 35.

⁶¹ *Ibid*.

⁶² Sebastian Poulter, "The Common Law in Lesotho" (1969) 13 (3) *Journal of African Law*, pg 127-144.

⁶³ *Ibid*.

Province.⁶⁴ Hence, this historical nexus means that the precedents and principles emanating from the Cape's jurisprudence have played, and continue to play, a critical role in shaping Lesotho's uncodified legal landscape. While the geographic proximity has facilitated significant labour migration mainly from Lesotho to South Africa, particularly in sectors like mining where occupational hazards are prevalent.⁶⁵ Furthermore, South Africa's compensation laws are constantly evolving and *COIDA* offers a broader scope of application and the broader nature of the compensation scheme that includes medical care and rehabilitation services, aligning more closely with international labour standards. Therefore, a comparative analysis with South Africa provides valuable insights into best practices and potential reforms that could enhance Lesotho's compensation laws, making it more responsive to workers' rights to employment injury compensation.

1.8 Literature Review

The right to compensation for occupational accidents lies at the heart of labour protection systems and forms an integral part of the broader right to social security.⁶⁶ For emphasis, Olivier et al (2003) contend that workers' compensation is a vital pillar of social protection, intricately linked to constitutional guarantees on access to social security and just administrative action.⁶⁷ Ison (1994) has aptly observed that workers' compensation systems emerged as a response to the socio-economic consequences of industrial injuries and occupational diseases, offering a legal and moral remedy where common law once failed to protect vulnerable workers.⁶⁸ His historical analysis positions compensation not merely as a statutory right, but as a social contract balancing the needs of workers, employers and the state

⁶⁴ Sebastian Poulter, *Legal Dualism in Lesotho* (Moriya Sesuto Books 1999) 3.

⁶⁵ Sephooko Motelle, "Labour Migration from Lesotho to South Africa: Changing Patterns and Policy Implications" (2012) 5 (1) *Prabandhan Indian Journal of Management* <<https://www.researchgate.net>> accessed 21st May 2025.

⁶⁶ Michael Dworky & Nicholas Broten, "How can Workers' Compensation System Promote Occupational Safety and Health?" (Stakeholders View on Policy and Research Priorities, 2018) <www.rand.org/t/RR2566> accessed 28th July 2025; Jean-Michel Servais, *International Labour Law* (2nd edn, Kluwer Law International 2009) 143 defines social security in its doctrinal conception as a legally guaranteed system of public measures established by statute to protect individuals from income loss or insufficient access to essential services arising from socially recognized contingencies such as old age, employment injury, sickness, maternity, unemployment, disability, or survivorship.

⁶⁷ M. P. Olivier, N. Smit & E. Kalula (eds), *Social Security: A Legal Analysis* (LexisNexis 2003) 35.

⁶⁸ Terence G. Ison, "A Historical Perspective on Contemporary Challenges in Workers' Compensation" (1996) 34 (4) *Osgoode Hall Law Journal* <<https://canlii.ca/t/7nhij0>> accessed 28th July 2025.

within the principles of no-fault and collective responsibility.⁶⁹ This normative framing is further echoed in the South African legal scholarship, particularly by Jansen Van Vuuren, who maintains that the South African's *COIDA* was heavily influenced by the Ontario model pioneered by Chief Justice Meredith grounded on fairness, administrative efficiency and universality.⁷⁰

Accordingly, this dissertation submits that occupational accident compensation must be situated within the broader social protection matrix and understood not as an ancillary mechanism but as a constitutional and rights-based entitlement. In agreement with Olivier et al., this study contends that the realization of this right is not merely remedial in nature but a proactive expression of the legal and moral obligation to shield workers from the vulnerabilities inherent in industrial employment. They situate this right within a rights-based paradigm of social protection that recognizes dignity, equity and access to justice as central organizing principles. In agreeing with these renowned scholars, this study affirms that the realization of compensation is inseparable from the broader imperative to construct inclusive and responsive social protection systems, where structural inequalities render large segments of the workforce acutely exposed to occupational hazards.

While Ison's normative conceptualization is persuasive in highlighting the rationale espoused in social justice for compensation systems, it arguably presumes a level of institutional functionality and policy coherence that is often absent in developing jurisdictions.⁷¹ This suggests that the theoretical elegance of the social contract model must be measured against the realities of systemic fragmentation and limited access to justice, especially for low-income workers⁷². Based on the assertions of Ison in the context of Lesotho, to a lesser extent South Africa, the realization of this right is often undermined by weak enforcement mechanisms, administrative deficiencies, and outdated monetary compensation thresholds. Therefore, it is proposed that Ison's theory must be critically augmented by empirical assessment of how the

⁶⁹ *Ibid.*

⁷⁰ Jansen Van Vuuren, "A legal Comparison Between South African, Canadian and Australian Workmen's Compensation Law" (LLM thesis, University of South Africa 2013) 3.

⁷¹ See n64.

⁷² *Ibid.*

right is operationalized within Southern African labour markets. While the theory of collective responsibility remains normatively appealing, its practicality in Lesotho remains tenuous raising fundamental concerns regarding institutional capacity, state commitment, and equitable implementation.

A vivid judicial illustration of these operational gaps is found in the case of *Nakalebe v Kholoane*, a seminal decision within the Lesotho legal context that shows the gap between legislative intent and practical enforcement.⁷³ In this case the applicant was engaged by the respondent sometime in 2008 as a bus driver and generally transported passengers between Maseru and Thaba-Tseka.⁷⁴ The applicant encountered an accident on or around 6th August 2011 while conveying passengers from Paray in the Thaba-Tseka district to Mazenod on a special trip for music competitions wherein he sustained an accident culminating in the amputation of his left leg below the knee.⁷⁵ In this case, the main issue was whether the defendant was liable for the injuries sustained by the plaintiff due to unsafe working conditions and whether the plaintiff was entitled to compensation under the *WKMC Act*.⁷⁶ The court examined the evidence presented by both parties including the working conditions and circumstances leading to the injury and remarked as follows:⁷⁷

Even assuming that the applicant acted without authorization as pleaded by the respondent, he is still entitled to compensation under Section 5 (2) of the Act. Incidental to the payment of workman's compensation, the employer is also liable to pay medical as well as transport costs in terms of Section 33 of the Act which renders the employer liable for medical, surgical, hospital treatment, skilled nursing services, and the supply of medicines. The Section further entitles the workman to reasonable transport charges in respect of travel for medical treatment. Medical expenses are also payable under Section 15 (2).⁷⁸

The aforementioned case serves as a critical example of how Lesotho's legal framework protects the right to compensation for workplace injuries. It emphasizes the importance of a

⁷³ *Paul Nakalebe v Thabang Edmund Kholoane* [2014] (LC 61/11) LSLC 19.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, para 9.

comprehensive and employee-focused approach to occupational safety and health, ensuring that workers are adequately supported in the event of an accident or injury. It also reinforces the principle that employers have a non-negotiable duty to provide a safe working environment. Even if an employee deviates from authorized duties or incidentally related, the employer bears a non-derogable duty of care and remains liable for injuries sustained within the scope of employment. While this decision of the court reflects judicial willingness to uphold statutory rights expansively, it also illuminates the fragility of the right to compensation in the absence of consistent enforcement and institutional support. As such, *Nakalebe v Kholoane* serves as both a validation of the foundational principles articulated by Ison and Olivier et al., and a poignant reminder of the operational challenges that inhibit the realization of the right to compensation in Lesotho. Moreover, it demonstrates that the existence of a right does not guarantee its enforceability in practice, especially where legal awareness, institutional support, and monitoring capacity are weak.

In this regard, it becomes imperative to examine the statutory prerequisites for compensation eligibility, as these legal thresholds critically shape access to justice. Leading scholarship consistently affirms that the right to compensation for occupational accidents is not absolute, rather it is contingent upon the fulfillment of specific statutory conditions.⁷⁹ Resultantly, it is of paramount importance to note that to qualify for compensation, an employment relationship must exist, an accident must have caused the injuries or death, and the accident must have occurred out of and in the course of employment.⁸⁰ As Fouché rightly affirms, the realization of the statutory right to compensation for occupational injuries is legally predicated upon the satisfaction of three interrelated conditions.⁸¹ This means that there must be a formal or informal agreement establishing that the injured or deceased individual was employed by the entity or person from whom compensation is sought. This ensures that the employer-employee relationship is recognized and that the employer's liability for workplace accidents is clear. The requirement that an accident must have caused the injuries, or death simply implies that the event leading to the injury or death was sudden, unexpected, and unintentional. This is

⁷⁹ See n59.

⁸⁰J. V. Du Plessis, & M. A. Fouché, *Practical Guide to Labour Law* (8th edn, Lexis Nexis 2014).

⁸¹ *Ibid.*

because compensable accidents typically exclude situations where harm is self-inflicted or results from an individual's intentional misconduct.⁸² The final requirement is that the accident must have occurred during the course of employment while the employee was performing their work duties or engaging in activities related to their employment.⁸³ This includes incidents that happen on the employer's premises, or away from the employer's premises while the employee is performing tasks that fall within their responsibilities.⁸⁴ This requirement ensures that the employer's liability is limited to work-related activities and does not extend to personal activities conducted during work hours.

This dissertation posits that while these legal thresholds though seemingly procedural play a pivotal role in shaping access to justice in occupational injury claims. They serve not only as mechanisms for employer accountability but also as filters through which workers' claims are either enabled or excluded. In contexts like Lesotho, where informal employment remains prevalent and statutory frameworks are outdated, these requirements often function more as barriers than facilitators of the right.⁸⁵ It is the considered position of this research that a deeper and more nuanced understanding of compensation, situated within a rights-based social protection paradigm, is essential to fully apprehend its normative and practical significance.

The international legal landscape further reinforces the recognition of occupational injury compensation as a fundamental socio-economic right.⁸⁶ Consequently, the right to compensation for occupational injuries, accidents, and diseases is a cornerstone of international labour standards enshrined in instruments such as the *International Labour Organization (ILO) Convention No. 102 Concerning Social Security (Minimum Standards), 1952* and *ILO Convention No. 121 Concerning Employment Injury Benefits, 1964*.⁸⁷ This right recognizes the

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ Ministry of Finance and Development, *Bureau of Statistics Labour Force Survey 2024 Report* (Government of Lesotho 2025).

⁸⁶ See n68.

⁸⁷ E. Fultz, & Bodhi P. "Compensation for Employment Injuries in Southern Africa: An overview of Schemes and Proposals for Reform" (1999) 2 (138) *International Labour Review*.

shared responsibility of employers and governments to protect workers from the financial and social consequences of work-related harm.⁸⁸ Compensation for employment injury is the only one of the nine branches of social security defined by the ILO which exists throughout Southern Africa and it is a term used to refer to schemes that provide benefits in the case of death and incapacity due to accidents at work and prescribed occupational diseases.⁸⁹ The other branches of social security are old age, disability, sickness, maternity, unemployment, death, and subsidies for medical care and families of victims of employment-related fatalities.⁹⁰ The emphasis on the right to compensation reflects a deep-seated recognition of the vulnerabilities faced by workers and to fully realize the protective intent behind this right, it is crucial to develop and maintain effective, fair, and accessible compensation systems. Furthermore, integrating this right with broader social security measures can create a more resilient and supportive safety net for workers. Therefore, while the foundation laid by instruments like the *ILO Convention No.121* is robust, continuous effort is required to adapt and enhance these systems to meet evolving needs and challenges as Lesotho does not have a comprehensive social security framework.

Moreover, Du Plessis and other legal commentators also highlighted the inadequacy of common law in safeguarding injured workers and benefits provided to employees who sustain injuries while on duty.⁹¹ They assert that under common law, there is no inherent obligation for employers to continue paying wages to employees who are incapacitated by illness or injury.⁹² As such, the sole remedy available to the injured worker is a delictual claim instituted against the employer for compensation.⁹³ However, it has been established that this legal route is an onerous route for the employee to follow, as the onus of proof rests heavily upon them.⁹⁴

⁸⁸ *Ibid.*

⁸⁹ P. Myburgh, Smit, N., & Van der Nest, D. "Social Security Law: General Principles" (2020) *LexisNexis South Africa*.

⁹⁰ T. Molapo, "Challenges in Implementing Occupational Health and Safety Regulations in Lesotho" (2019) 23(3) *African Journal of Labor Studies* 412-428.

⁹¹ J. V. Du Plessis and M. A. Fouché, *Practical Guide to Labour Law* (8th edn, LexisNexis 2014) 161.

⁹² *Ibid.*

⁹³ Leigh James, "Workers' Compensation and Common Law: How the Civil Legal System Discourages Occupational Injury Prevention" in Anne-Marie Feyer and Ann Williamson (eds), *Occupational Injury Risk, Prevention and Intervention* (Taylor & Francis 1998).

⁹⁴ *Ibid.*

This is so because for an employee to succeed in their claim, they must demonstrate that the employer's intentional act of negligence directly caused their injuries.⁹⁵ Therefore, this requirement places a substantial burden on the injured party, making the pursuit of justice and compensation a daunting task.

The view of Du Plessis essentially denotes that the absence of the common law obligation wage continuation exacerbates the financial vulnerability of injured employees, who may already be facing significant physical and emotional distress. The necessity to prove employer faults adds a layer of complexity to the legal process, often deterring employees from pursuing valid claims due to the daunting nature of evidentiary requirements. Moreover, this does not account for the myriads of scenarios where workplace injuries may occur without clear-cut evidence of employer negligence, thereby, leaving many injured workers without recourse. The reliance on delictual actions to secure compensation reflects a fundamental gap in common law, highlighting the need for more robust statutory interventions that can provide a safety net for all employees, regardless of the circumstances surrounding their injuries. By addressing these gaps, legal frameworks can better ensure that injured workers receive timely and adequate support, mitigating prejudicial consequences of workplace injuries specifically on capacity to earn a living.

The case of *Pristley v Fowler* gives a clear jurisprudential illustration to the absence of the employer's obligation, under common law, to compensate employees for injuries incurred during their service, unless such injuries are demonstrably attributable to the employer's negligence or breach of duty.⁹⁶ Wherein Charles Priestley was an employee of Thomas Fowler engaged as a butcher. Priestley got injured when a wagon overloaded by fellow employees collapsed.⁹⁷ Priestley was tasked with delivering mutton to the market.⁹⁸ While en route, the wagon's front axle fractured, resulting in the vehicle overturning leading to Priestley sustaining

⁹⁵ *Ibid.*

⁹⁶ [1837] 150 ER 1030.

⁹⁷ Malone, *Plant & Little Workers' Compensation and Employment Rights: Cases and Materials* (2ed, 1982) 2, in reference to the case of *Pristley v Fowler* (1837) 150 ER 1030.

⁹⁸ *Ibid.*

multiple injuries.⁹⁹ In this case, the main issue of contention was whether Fowler as the employer bears legal responsibility for the occupational injuries sustained, arising from the negligent conduct of his workers in overloading the wagon.¹⁰⁰ Judgement was rendered in favour of Fowler establishing the legal doctrine of common employment alternatively termed as the fellow servant rule.¹⁰¹ This principle dictated that an employer was not legally responsible for occupational injuries caused to one employee by another employee acting to further the employer's business and within the extent of their employment duties.¹⁰² It was found by the court that Fowler had no direct responsibility for the actions of his employees and therefore was not liable for Priestley's injuries.¹⁰³ In other words, the *Priestley v Fowler* decision entrenched the common law doctrine of common employment, holding that an employer is not vicariously liable for injuries caused by fellow employees acting in the course of duty. This jurisprudential principle excluded large classes of injuries from compensation and showed the deficiencies of the pre-statutory legal regime.

In contrast the rule of vicarious liability as recognized in the case of *Mkize v Martens*, which in its elementary articulation means the liability of an employer, takes effect when an employee's wrongful conduct occurs within the ambit of employment.¹⁰⁴ This rule is codified under Lesotho's *WKMC Act* in section 5, which provides that the employer is liable to compensate a worker in the event of death or incapacity resulting from an injurious incident that occurs during the term and scope of employment.¹⁰⁵ Section 25 of the *WKCM Act* also broadens the parameters of liability so as to encompass workmen engaged by independent contractors.¹⁰⁶ Neethling & Potgieter (2020) argue, by contrast, that vicarious liability for wrongful acts by the employee can only be attributed to the employer if a three cumulative criteria is satisfied: firstly, there must exist a valid relationship of employment at the time the delict was committed; secondly, the wrongful act must have been committed by the employee

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Mkize v Martens* [1914] AD 382 at 390.

¹⁰⁵ *Workmen's Compensation Act* No.13 [1977] section 5.

¹⁰⁶ *Ibid.*, section 25.

in question; and thirdly, such an act must have occurred within the range and extent of the employee's employment.¹⁰⁷

The first criterion stipulates that a legally recognized employment contract must subsist at the time when the incident giving rise to the delict occurred. This requirement is fundamental in delineating the scope of vicarious liability, as it confines the employer's responsibility to the conduct of individuals who, in law, qualify as employees. It thereby excludes liability for acts committed by independent contractors or third parties not falling within the ambit of the employment relationship. This criterion underscores the importance of a clearly defined employment relationship within legal and contractual frameworks. It also highlights the need for proper documentation and employment records to substantiate claims of vicarious liability. The second criterion requires that the employee must have caused the accident. This illustrates the necessary nexus between the wrongful act committed by the employee and the harm suffered. The third criterion specifies that the employees' conduct falls within the course and scope of their employment when the wrongful act occurred. In other words, the wrongful act must have been committed in the course and scope of the employee's duties, as opposed to wrongful act committed during the pursuit of personal or unauthorized endeavors unconnected to the employment relationship. Thus, these criteria as outlined by Neethling and Potgieter are fundamental in determining the vicarious liability of the employer for workplace accidents and injuries. They highlight the balance between protecting employees' rights to compensation and ensuring that employers are held accountable for maintaining safe work environments.

To maintain equilibrium between employees' entitlement to compensation and the corresponding financial obligations imposed on employer. The International Labour Organization has established two overarching schemes for employment injuries, and these include, inter alia, the individual employer liability approach and, alternatively, a social insurance-based approach.¹⁰⁸ The individual employer liability model obliges employers, as

¹⁰⁷ J. Neethling & J. Potgieter, *Law of Delict* (7th edn, LexisNexis 2001) 447.

¹⁰⁸ Elaine Fultz & Bodhi Pieris, "Compensation for Employment Injuries in Southern Africa: An Overview of Schemes and Proposals for Reform," *International Labour Review* 138, No. 2 (1999) pp 171-194.

mandated by the government, to provide compensation for industrial accidents and occupational affecting their workers, commonly achieved through the procurement of insurance policies or the placement of a government administered security deposit.¹⁰⁹ Conversely, the social insurance approach is predicated on the creation of a centralized employment injury fund, designed to distribute risk across by applying the principles of social solidarity and mutual responsibility.¹¹⁰ Employers make regular contributions on behalf of their employees, and the government administers the fund, collects contributions, determines eligibility, makes payments, and assesses the scheme's financial stability.¹¹¹ In both frameworks, employer contribution can be experience-rated, meaning that payment obligations are calibrated according to the employer's past record of workplace injuries and associated claims.¹¹² The two models also guarantee that employees are supported and compensated in case of occupational injuries, reflecting the effectiveness of employment injury compensation systems in providing robust social protection systems and mitigating the financial impact of workplace accidents and diseases¹¹³. This dissertation argues that while both models have theoretical and practical merits, the social insurance model is inherently more responsive to the challenges faced by high-risk and informal labour market, such as Lesotho. As it allows for pooled risk, which enhances sustainability, and reduces the adversarial burden on employees seeking redress.

The foregoing literature illustrates that the normative foundations of compensation for occupational injuries are well established in both domestic and international labour standards. However, effective realization is contingent upon institutional design, enforcement capabilities, and legislative adaptation to evolving labour market realities. Particularly, in Lesotho the absence of a unified social security system, coupled with outdated compensation structures and limited administrative capacity, continues to impede the fulfilment of this fundamental right. Consequently, the compensation legal system must undergo deliberate reform to align with contemporary standards of social protection and social justice.**1.9**

¹⁰⁹ *Ibid*, pg 2.

¹¹⁰ *Ibid*, pg 2.

¹¹¹ *Ibid*, pg 2.

¹¹² *Ibid*.

¹¹³ *Ibid*.

Hypothesis

It is challenging to report and access compensation mechanisms for occupational accidents in Lesotho. The workmen's compensation law in Lesotho needs to be reformed for workers to effectively access compensation for accidents. The centralized and structured compensation system for occupational accidents in the Republic of South Africa is more effective in delivering timely and equitable compensation to workers compared to the decentralized and inconsistently implemented system in Lesotho.

1.10 Research Methodology and Design

This study employs a doctrinal legal research methodology, which is defined as a research methodology that entails structured and critical engagement with legal norms, statutes, and judicial decisions aimed at extracting, interpreting, and systematizing legal rules and principles.¹¹⁴ This method places emphasis on analyzing substantive legal doctrines and their development through judicial interpretation and legislative articulation.¹¹⁵ This implies that it does not only involve a rigorous internal critique of law as it stands, but may also incorporate a comparative dimension to assess the consistency and efficacy of legal propositions across jurisdiction.

More importantly, this research is designed as a comparative legal analysis. The primary jurisdiction of focus is Lesotho, while South Africa is used as a comparator jurisdiction. The comparative approach serves as both an analytical and exploratory tool to evaluate the adequacy of Lesotho's legal framework in light of South Africa's regime under *COIDA*. Through this comparative lens, the study investigates strengths, weaknesses, differences, similarities and normative gaps between the two countries, with a view to identify best practices, transferable legal principles, and policy options that could strengthen the realization of the right to compensation in Lesotho.

¹¹⁴ Terry Hutchinson & N. Duncan, "Defining and Describing What We Do: Doctrinal Legal Research" (2012) 17 (1) *Deakin Law Review* <<https://ojs.deakin.edu.au/index.php/dlr/article/view/70>> accessed 27th July 2025.

¹¹⁵ Khushal Vibhute & Filipos Aynale, "Legal Research Methods Teaching Material" (Justice and Legal System Research Institute, 2009) <<https://www.chilot.wordpress.com>> accessed 27th July 2021.

This research relies on desktop-based legal analysis, encompassing an in-depth examination of primary sources, including international labour standards, national legislation, regulations, case law and policy documents relevant to occupational accidents compensation in both jurisdictions. To provide context, critique, and scholarly interpretation the study also incorporates secondary sources are also drawn upon. Encompassing peer-reviewed journal articles, authoritative textbooks, legal reports, official government and institutional publications, and credible internet-based sources.

1.11 Synopsis of Chapters

Chapter One: Introduction

This chapter offers nature and causes of occupational injuries and accidents on a global scale, with a focused analysis on their manifestation in Lesotho. It identifies key issues about the attainment of the right to compensation systems. It also outlines the specific aims of the research, literature review, the hypothesis guiding the study, and a brief description of the research methods and approaches to be used.

Chapter Two: International Labour Standards Concerning Prevention of Occupational Accidents, and Injury Compensation Instruments

This chapter critically discusses in detail relevant ratified international labour standards on preventative measures for occupational injuries, accidents and diseases. It also discusses relevant international labour standards on workers' health and safety, employment injury benefits and member states' obligations thereof on the workers' right to compensation for occupational accidents.

Chapter Three: The Right to Employment Injury Compensation in Lesotho: A Comparative Analysis with South Africa

This chapter undertakes a critical examination of the relevant legislative frameworks in both jurisdictions, with a view to elucidating the practical implementation of compensation laws. It

further provides an analytical assessment of legal data concerning the effectiveness of the respective compensation systems, addressing key elements such as scope of application, coverage rates, monetary caps, employer liability and the administration of the right to worker compensation.

Chapter Four: Conclusions and Recommendations

This chapter presents a recapitulation of the key findings derived from the research. It provides and evaluation of the effectiveness or inadequacy of the compensation systems in Lesotho as compared with the South African compensation system based on the key findings of the research. It further provides recommendations for improving the compensation systems in Lesotho and how disparities in the effectiveness of compensation system can be addressed.

CHAPTER TWO

INTERNATIONAL LABOUR STANDARDS CONCERNING PREVENTION OF OCCUPATIONAL ACCIDENTS AND INJURY COMPENSATION

2.1 Introduction

This chapter critically examines relevant international labour standards (ILS) that underpin both the preventative measures against workplace incidents and the entitlement to compensation for work-related accidents. It provides a summary on the history surrounding the founding of the Organization. Moreover, it discusses how the Organization has developed and promoted standards aimed at safeguarding workers' health and ensuring a fair and effective compensation regime. This analysis situates these standards within a broader context of social justice and industrial peace, arguing that robust ILS form the foundation for national legislation aimed at preventing accidents and mitigating their consequences.¹¹⁶

Furthermore, this chapter delves into pertinent ILS that espouse benefits for employment injuries and the obligations of member states regarding the workers' right to compensation for occupational accidents. This section highlights the critical role of these labour standards that member states have in providing medical care, financial support and employment injury schemes accessible to workers who suffer from work-related injuries and illnesses. This will be done by analyzing the extent to which both Lesotho and South Africa have adopted and implemented these labour standards.

2.2 Background of the International Labour Organization

Pursuant to the *Treaty of Versailles*, the ILO was created in 1919 as a specialized organization under the auspice of the League of Nations.¹¹⁷ At the core of the ILO's mandate lies a pivotal function of crafting ILS, which are developed with an overarching objective of fostering industrial peace, promoting social justice, and eradicating inequitable competition arising from

¹¹⁶ See *Constitution of the International Labour Organization* (1919) pg 15; see also *ILO Declaration of Philadelphia* (1944) pg 20.

¹¹⁷ Stefan V. E. et al. "The International Labour Organization and its Standards-Related Activities: A Century of Achievements and Challenges" in Corinne Vargha (ed), *Celebrating the 100 Year on Reflections on Labour Law from a Southern African Perspective* (Juta and Company LTD Cape Town 2020) 4.

exploitative and inhumane labour practices.¹¹⁸ These standards are drafted at the International Labour Conference by the ILO constituents comprising of states, representatives of employers and trade unions, in the form of Conventions, Protocols and Recommendations.¹¹⁹

To achieve its mandate on promotion and enforcement of workers' rights, the mandate of the ILO is rooted upon a robust and multifaceted system of supervision imposed upon member states, primarily articulated through the ILO's supervisory mechanisms.¹²⁰ These supervisory structures are not merely procedural or administrative tools, rather they constitute the normative and institutional backbone for enforcement of ILS.¹²¹ Central to the ILO's supervisory architecture, there are two primary mechanisms, namely: the supervisory bodies, consisting of the reporting and examination of state compliance with ratified conventions and the special supervisory procedures which include representations under Article 24 and Article 26 of the *ILO Constitution*.¹²² The supervisory mechanisms obligate governments to periodically submit detailed reports outlining the legal and practical measures taken to implement conventions.¹²³ Upon the receipt of submitted reports the Committee of Experts on the Application of Conventions and Recommendations (CEARC) which is an independent body composed of legal and labour law specialist, the Committee scrutinizes them and issue out observations and direct requests addressed to each member state.¹²⁴

In my considered view, the interpretative function performed by CEARC, though formally non-binding, has proven to be an indispensable element in shaping the authoritative understanding of the ILO conventions. Through its rigorous and sustained engagement with state reports, the Committee has contributed meaningfully towards the establishment of a cohesive and evolving

¹¹⁸ *Ibid*, pg 4.

¹¹⁹ *Ibid*, pg 5.

¹²⁰ Harold Ruhukya, "The Role of International Labour Standards in Decision-Making on the Rights of Vulnerable Groups in Botswana" < <https://www.southernafricanlitigationcentre.org> > accessed 20th March 2025.

¹²¹ *Ibid*.

¹²² *Constitution of the International Labour Organization* (2010) Article 24 concerns representations of non-observance of Conventions and Article 26 relates to complaints of non-observance.

¹²³ Clarence Tshoose, "Appraisal of Selected Themes on the Impact of International Standards on Labour and Social Security in South Africa" (2021) 24 *PELJ* <<https://www.saflii.org/za/journals/PER/2020/59.pdf>> Accessed 15th April 2025.

¹²⁴ *Ibid*, pg 4.

jurisprudential scheme that not only informs national implementation but also underpins the normative consistency of the international labour norms. Furthermore, this study contends that the quasi-judicial enforcement mechanisms embedded within the *ILO Constitution*, particularly the procedure outlined under Article 26, serve as a vital function in addressing serious or recurrent failures by governments to fulfil their responsibilities. The capacity to establish a Commission of Inquiry under this provision reflects a necessary and deliberate escalation within the supervisory system. It conveys the gravity with which the ILO regards violations of fundamental labour standards and affirms the Organization's commitment. Although distinct from traditional judicial remedies, these supervisory tools are essential to the credibility and effectiveness of the ILO's normative framework and to the realization of social justice.

Equally, the ILO's Constitution clearly stipulates that "the protection of the worker against sickness, disease and injury arising out of his employment constitutes a core tenet of social justice."¹²⁵ The ILO's foundational commitment to fostering safe working environments has been consistently reaffirmed through its seminal declarations, notably the *Philadelphia Declaration*.¹²⁶ The *Philadelphia Declaration* emphasizes the ILO's obligation to advance programmes that guarantee comprehensive safeguards for the life, safety, and health of workers irrespective of their occupational field.¹²⁷ The commitment was further cemented in the *Social Justice for Fair Globalization Declaration* which explicitly reaffirms the indispensable role of healthy and safe working conditions as a fundamental element within the comprehensive decent work agenda.¹²⁸ The *Sustainable Development Agenda 2030* also turns spotlight on occupational safety and health. In particular, the Sustainable Development Goal (SDG) 8 of the *2030 Agenda* compels State Parties to pursue policies that foster sustained, inclusive and sustainable economic development.¹²⁹ Hence, it is critical that member states to the ILO and state parties to UN treaties align their compensation schemes with international labour standards and SDGs to improve workplace safety, thus reducing injuries, accidents and

¹²⁵ Benjamin Mason Mever & Lawrence O. Gostin (eds), "Human Rights in Occupational Safety and Health" *Human Rights in Global Health, Rights- Based Governance for a Globalizing World* (Oxford University Press 2018); also see *Constitution of the International Labour Organization* (2010) Preamble.

¹²⁶ *Ibid.*

¹²⁷ *International Labour Organization Declaration of Philadelphia* [1944], Article III (g).

¹²⁸ *International Labour Organization Declaration on Social Justice for Fair Globalization* [2008] pg 8.

¹²⁹ *United Nations Sustainable Development Goals* [2016] Goal 8 (target 8.5).

illnesses. This in turn contributes to productive employment and economic growth by reducing lost workdays and health costs.

This research seeks to establish that despite ILO's significant contributions to the development of ILS, the efficacy of these standards in shaping domestic policy remains inconsistent and subject to a variety of structural and political constraints. The ILO's normative framework, though comprehensive in scope and grounded in a tripartite consensus, relies heavily on non-coercive mechanisms such as reporting, dialogue and technical cooperation. As a result, its influence is often more normative than operational with the implementation of ILS largely dependent on the willingness and capacity of national governments to incorporate them into domestic legislation. Thus, from a research perspective this implementation gap poses a significant question pertaining to the role of the ILS especially where political priorities, economic pressures, and institutional limitations undermine the pursuit of social justice. In particular, labour protection is related to prevention of accidents and by extension compensation schemes for workplace injuries.

2.2.1 The Nature of the International Labour Standards

International labour standards are encapsulated within international treaties, which from the international law perspective are referred to by various designations, inclusive of statutes, conventions and declarations among others.¹³⁰ The *Vienna Convention on the Law of Treaties* defines a treaty as “an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”¹³¹ This means ILO conventions function in a similar manner as multilateral agreements, and they are open to voluntary endorsement by member states, however, upon ratification, they confer binding obligations.¹³² These Conventions are divided into three categories namely: fundamental Conventions, technical conventions and governance Conventions. Therefore, a ratifying state is required to

¹³⁰ J. Dugard, *International Law: A South African Perspective* (3rd edn, Juta and Company LTD 2005) 28.

¹³¹ [1969] Article 2 (1) (a).

¹³² See n96.

implement the provisions of a convention through a legislation or other appropriate means as specified within the Convention's text.¹³³ To cement this obligation, section 5 (d) of the *Labour Act* stipulates that in cases where there is ambiguity in the Act's provisions or any related regulations, the interpretation should conform closely to the ILS.¹³⁴ This provision strengthens the overall legal framework by bridging gaps between national legislation and international commitments. It promotes a uniform interpretation of labour laws, reducing discrepancies and enhancing the credibility and reliability of the legal system in protecting workers' rights. However, the effective implementation of this provision requires ongoing efforts to stay updated with international standards.

Additionally, there are Protocols, which are separate treaties that enhance or supplement an ILO Convention.¹³⁵ These Protocols are also subject to ratification by governments that have endorsed or are in the process of ratifying the associated convention.¹³⁶ By contrast, Recommendations are advisory in nature and do not create legally binding commitments for member states.¹³⁷ They often elaborate on and provide additional details and guidelines for implementing the ILO Conventions.¹³⁸ Recommendations may also serve to further elucidate Conventions or stand independently, offering guidance to member states.¹³⁹ In essence, Conventions establish fundamental principles for ratifying countries, often supported by Recommendations that provide more comprehensive guidelines for application. The interplay between Conventions, Recommendations and Protocols forms a robust framework for advancing international labour standards and safeguarding workers' rights globally. In the same vein, the right to life and workplace safety is a core labour standard, requiring that workers be effectively protected from exposure to occupational risks and hazardous conditions.¹⁴⁰ Therefore, the effective implementation of these international labour standards is essential not only for promoting decent work but also for ensuring that all workers, regardless

¹³³ *Ibid*, pg 406.

¹³⁴ *Labour Act* No.3 [2024] section 5 (d).

¹³⁵ International Labour Organization <<http://www.ilo.org/normlex> > accessed 18th January 2025.

¹³⁶ *Ibid*.

¹³⁷ *Ibid*.

¹³⁸ *Ibid*.

¹³⁹ *Ibid*.

¹⁴⁰ Shengli Niu, "Ergonomics and Occupational Safety and Health: An ILO Perspective" (2010) *Journal of Applied Ergonomics* 41 (6) pp 744-753 <<http://doi.org/10.1016/j.apergo.2010.03.004> > accessed 13th January 2025.

of jurisdiction, enjoy the inherent entitlement to a work environment free from health and safety risks.

2.3 International Labour Standards on Prevention of Work-Related Accidents Ratified by the Government of Lesotho

Lesotho's ratification of key international labour standards designed to mitigate the risk of occupational reflects its formal alignment with global efforts to promote safe and healthy working conditions, laying a normative foundation for national policies and legal reforms focused on workplace prevention and protection. Thus, the following ILO Conventions provide minimum standards to prevent work-related injurious incidents, and the administration for employment injury schemes: *ILO Convention No.155 on Occupational Safety and Health* (1981), *ILO Convention No. 167 on Safety and Health in Construction* (1988) as well as the *ILO Convention No.19 on Equality of Treatment (Accident Compensation)* (1925). Hence, the forthcoming part delves into ILS that the government of Lesotho has ratified concerning the prevention of workplace accidents, promotion of safer work environments and compensation for occupational accidents.

2.3.1 International Labour Organization Convention No.155 on Occupational Safety and Health (1981)

The Lesotho government ratified the *ILO Convention No.155* on the 1st November 2001, 20 years later subsequent to its adoption by the International Labour Conference.¹⁴¹ This fundamental convention seeks to advance a healthy and safe work environments by developing structured frameworks obligating member states to develop and implement coherent national occupational safety and health policies.¹⁴² The aforementioned national policies are aimed at preventing occupational incidents.¹⁴³

This obligation illuminates the proactive role of workplace measures and policies. This

¹⁴¹ International Labour Organization <<https://www.ilo.orh/normlex> > accessed 18th January 2025.

¹⁴² *International Labour Organization Convention on Occupational Safety and Health No.155 [1981] Article 4.*

¹⁴³ *Ibid.*

perspective is crucial for ensuring workers' rights for fair compensation for work-related accidents are attained. The policy emphasizes the pillar of prevention through identification and minimizing workplace hazards, in so doing safeguarding employees' well-being. One may submit that effective implementation requires employers to adopt safety measures, conduct regular risk assessments, and promote health and safety culture. Therefore, conformity with the national policy framework not only reduces workplace incidents but also supports the right to fair compensation, as a safer work environment leads to fewer claims for injuries and health issues, ultimately benefiting both employees and employers.

To realize this obligation, the government of Lesotho has formulated and endorsed the *National Occupational Safety and Health Policy, 2020* (*National OSH Policy*). The objective of the Policy is to offer directives for creating and executing initiatives that mitigate workplace hazards, accidents and diseases, in turn safeguarding workers' lives across all economic sectors, including the public service.¹⁴⁴ In addition, the *National OSH Policy* is meant to address the existing fragmented initiatives and the dichotomized labour administration system.¹⁴⁵ Moreover, the *National OSH Policy* integrates a progressive and incentive-based approach to workplace safety.¹⁴⁶ It recognizes the centrality of preventative strategies in mitigating occupational risks and proposes that the OSH performance of an organization be a critical determinant in business transactions and institutional partnerships.¹⁴⁷ A key feature of the *Policy* is its promotion of functional OSH management systems as demonstrable proof of an organization's commitment to safe and ethical business conduct. In this regard, financial and insurance institutions are encouraged to reward organizations with robust OSH systems through preferential terms, thereby reinforcing a culture of proactive risk management. Furthermore, the *Policy* envisages a performance-lined model for calculating premiums payable to the Workers Compensation Insurance Fund, administered by the Ministry of Labour and Employment.¹⁴⁸ Under this model, industries with lower rates of occupational accidents, injuries, and diseases benefit from reduced premiums by creating a financial incentive for

¹⁴⁴ *National Occupational Safety and Health Policy of the Mountain Kingdom of Lesotho* [2020].

¹⁴⁵ *Ibid*, pg 8.

¹⁴⁶ *Ibid*, clause 12.0.

¹⁴⁷ *Ibid*, clause 12.0 (a).

¹⁴⁸ *Ibid*, clause 12.0 (c).

sectors to continuously improve their safety records.¹⁴⁹ This risk-based approach not only reinforces accountability but also encourages sector-wide vigilance in maintaining low-risk profiles. Additionally, the recognition of exemplary OSH performance through national awards at forums such as OSH Conferences is intended to improve a culture of excellence and continual improvement in occupational safety.¹⁵⁰

To reiterate, the *Policy*'s objective demonstrates a commitment towards a holistic approach to worker protection by addressing safety and health across diverse sectors. The inclusion of public service reflects a comprehensive approach ensuring that all workers benefit from these protective measures. Additionally, the focus on eliminating the dichotomized labour administration system suggests a move towards a more integrated and streamlined approach to labour management and safety regulations. Hence, one may conclude that this unified system is likely to improve the effectiveness of safety measures, leading to a more cohesive and efficient administration of occupational safety and health standards. Thus, implementing such a policy can contribute to higher productivity, safe work environments, reduced compensation claims and overall economic growth.

On the other hand, the government of South Africa ratified *Convention No.155* on the 18th February 2003.¹⁵¹ Similarly, by ratifying this convention, RSA committed to implementing measures to prevent workplace incidents, safeguarding workers' safety and health across various sectors.¹⁵² In July 2003 after ratifying this convention the government formulated and endorsed the *National OSH Policy*. The primary objective is intended to decrease occupational accidents and diseases.¹⁵³ Its secondary objective emphasizes the provision of equitable compensation benefits for workers, inclusive of medical aid, financial compensation and access to rehabilitation.¹⁵⁴ Moreover, the secondary objective also expresses that the employer's contributions to this system must reflect their occupational safety and health performance,

¹⁴⁹ *Ibid*, clause 12.0 (d).

¹⁵⁰ *Ibid*, clause 12.0 (e).

¹⁵¹ International Labour Organization <<https://www.ilo.org/normlex>> accessed 18th January 2025.

¹⁵² *Ibid*.

¹⁵³ *Department of Labour National Occupational Health and Safety* [2003].

¹⁵⁴ *Ibid*.

acting as an incentive for enhancing safety measures.¹⁵⁵

Given the preceding discussions, evidently both the governments of Lesotho and South Africa have ratified the *ILO Convention No.155 (1981)* but their domestication efforts and approaches exhibit significant disparities.¹⁵⁶ One area of divergence lies in their compliance with Article 4 of the *Convention*, which mandates government to develop and execute national OSH policies.¹⁵⁷ Both countries have developed policies aimed at mitigating occupational hazards and reducing incidents at work. However, the robustness and comprehensiveness of these policies differ significantly. Notably, South Africa has embraced a dual objective approach as it does not only emphasize preventative measures but also ensures robust compensation benefits for workers. Under this approach, employees who incur injuries and diseases must be compensated and be provided with financial relief and support during their recovery. This compensation scheme extends beyond the period of employment, recognizing long-term health consequences and offering assistance to affected workers.

In contrast, Lesotho's efforts reveal notable gaps. While prevention measures have been well established within the *National OSH Policy*, compensation mechanisms remain underdeveloped. Such that the Directorate of OSH focuses primarily on minimizing workplace risks and promoting safety standards. However, the Workmen's Compensation Trust Fund which is intended to administer compensation pay-outs for work-related injuries and diseases, operates independently and lacks coordination with OSH policies. This dichotomy and discordance result in a significant disparity between prevention initiatives and compensation benefits, leaving injured workers inadequately supported. In other words, Lesotho's fragmented system illustrates the need for greater coherence and alignment between OSH policies and compensation mechanisms. Addressing these discrepancies is crucial for creating a safe and just work environment where workers are not only safeguarded against risks but also adequately compensated in the event of accidents or injuries.

¹⁵⁵ *Ibid.*

¹⁵⁶ International Labour Organization <<https://www.ilo.org/normlex>> accessed 18th January 2025.

¹⁵⁷ *International labour Organization Safety and Health Convention No.155 [1981], Article 4.*

Differently put, one of the notable requirements provided for in *Convention* No.155 is that it obligates governments to employ necessary measures to ensure that accidents and occupational diseases are notified to the competent authority, to enable it to investigate them and to take preventative measures.¹⁵⁸ In essence, the *Convention* calls for data collection on workplace incidents, which are instrumental for monitoring trends, identifying high-risk sectors and evaluating the effectiveness of prevention programs.

Conclusively, Lesotho's ratification of *ILO Convention* No.155, while primarily focused on prevention, plays a crucial supporting role in the effectiveness of the right to compensation for occupational accidents and diseases. By mandating the development of national OSH policy and reporting workplace accidents and illnesses, the *Convention* generates vital information that strengthens the foundation for just and fair compensation claims. The data collected helps establish a nexus between work and safety issues, making it easier to prove entitlement to compensation benefits. On the other hand, the development of the national OSH policy places great emphasis on prevention through an improved safe working environment and risk management, which ultimately reduces the incidence of occupational diseases and injuries, lessening the burden on the compensation system.

2.3.2 International Labour Organization Convention No.167 on Safety and Health in Construction (1988)

Construction industry stands as one of the most prominent sectors globally.¹⁵⁹ It plays a crucial role in reconstructing regions impacted by both natural and man-made disasters.¹⁶⁰ Additionally, the industry is instrumental in developing infrastructure, power facilities, housing, commercial buildings and transportation.¹⁶¹ Consequently, it can be posited that the

¹⁵⁸ *International Labour Organization Safety and Health Convention* No.155 [1981], Article 11.

¹⁵⁹ International Labour Organization, *Safety, Health and Welfare on Construction Sites, A Training Manual* (1999) < <https://www.ilo.org> >accessed 20th February 2025.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

construction industry significantly improve the quality of life individuals.¹⁶² Moreover, this sector employs a substantial proportion of the workforce in any given country, ranging between 9 and 20 per cent.¹⁶³ Nevertheless, the expansion of the construction industry is accompanied by adverse effects, particularly the incidence of workplace accidents.¹⁶⁴ Out of 11 accidents that were reported at the Ministry of Labour and Employment in 2022/23 reporting, 7 of those involved workers engaged in the construction sector in Lesotho.¹⁶⁵

To enhance the quality of life for construction workers, and to promote a safer and healthier environments, the ILO formally adopted *Convention No.167* (1988) and its accompanying *Recommendation No.175* (1988).¹⁶⁶ Lesotho ratified the said *Convention* a decade later on the 24th of June 1998.¹⁶⁷ One of the paramount issues espoused is that *Convention No.167* emphasizes the responsibility of member states to develop national laws or regulations that protect workers' rights and duties at any workplace.¹⁶⁸ Article 8 of the *Convention* also highlights the critical importance of planning and coordination in occupational safety and health at construction sites, providing that where multiple undertakings are operating simultaneously on a single site, the principal contractor bears the overarching responsibility for ensuring compliance and coordination.¹⁶⁹ Nonetheless, the provision affirms that each employer retains individual responsibility for implementing safety standards for workers under their direct authority.¹⁷⁰ To date, *Convention No.167* has been ratified by only 35 out of 187 member states including Lesotho and South Africa is one of the countries that are still behind for not ratifying the *Convention*.¹⁷¹

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ Ministry of Labour and Employment, *Annual Labour Inspection Report 2022-2023* (Government of Lesotho 2023).

¹⁶⁶ International Labour Organization Code of Practice, Safety and Health in Construction (2022) <<https://www.ilo.org/publins>> accessed 17th January 2025.

¹⁶⁷ International Labour Organization <<https://www.ilo.org/normlex>> accessed 27th January 2025.

¹⁶⁸ *International Labour Organization Convention on Safety and Health Construction No.167* (1988) Article 10.

¹⁶⁹ *Ibid.*, Article 8.

¹⁷⁰ *Ibid.*

¹⁷¹ International Labour Organization <<https://www.ilo.org/normlex>> accessed 18th January 2025.

Thus, *Convention* No.167 emphasizes the significance of meticulous planning and coordination of safety and health protocols and procedures at construction sites. It delineates the responsibilities of the principal contractor, particularly in scenarios where multiple companies operate concurrently on a single site. This approach ensures a unified and comprehensive safety strategy, minimizing the risk of accidents and health hazards. However, the effectiveness of this provision heavily depends on the principal contractor's competence and commitment to enforcing safety measures. Despite the *Convention's* clear benefits, it has only been ratified by 14 countries including Lesotho. The limited ratification suggests reluctance among many countries to commit to the stringent standards required by this *Convention*. Evidently, South Africa, a major player in the construction industry, has not ratified the *Convention* which shows the challenge of achieving global consensus on construction safety standards.

Although South Africa has not formally adopted *Convention* No.167, its domestic legislative framework nonetheless aligns, in substance, with the provisions of Article 10, through the incorporation of various legal instruments addressing occupational health and safety.¹⁷² These frameworks include the *Constitution*, the *Occupational Health and Safety Act* 85 of 1993 (hereinafter referred to as *OHSA*), the *Construction Regulations* of 2003, and the *Mineral Act* 50 of 1991.¹⁷³ However, a study commissioned by the South African Construction Development Board has revealed a persistent concern. Notwithstanding notable legislative progress, the country continues to experience significant challenges in enhancing safety standards within the construction sector.¹⁷⁴ Resultantly, the non-ratification of *Convention* No.167 underscores a critical gap in South Africa's formal commitment to international occupational safety and health standards.

¹⁷² Masimola Gcinithemba, "Assessment of Stakeholders' Awareness of the Construction Health and Safety Regulations on Construction Sites In South Africa" (Master's dissertation, University of Witwatersrand 2018) 41.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

2.4 Ratified International Labour Standards on Employment Injury by the Government of Lesotho

2.4.1 International Labour Organization Convention No.19 on Equality of Treatment (Accident Compensation) (1925)

Equality of Treatment Convention falls within the purview of technical Convention which the government of Lesotho ratified on the 31st October 1966.¹⁷⁵ This *Convention* aims to safeguard nationals of other member states who sustain personal injuries resulting from accidents occurring within the borders of a contracting state, ensuring that such individuals, along with their dependents are entitled to the same rights and benefits under the workmen's compensation laws as those afforded to the host country's own citizens.¹⁷⁶ Article 2 of the *Convention* further mandates that compensation must also be extended to cover industrial accidents that may occur to workers who are temporarily or intermittently employed outside their home country.¹⁷⁷ Put differently, the Convention places an obligation on member states that workers may sometimes be employed outside their home country for short periods or on an intermittent basis, such as seasonal workers, migrant labourers, or employees sent abroad for specific assignments. It guarantees that these categories of workers are not excluded from the right to compensation simply because the accident occurred while they were working in a different country from where they are ordinarily employed or reside.

In essence, Article 2 aims to protect the rights of such workers by affirming that they remain entitled to compensation under their home country's law or through cooperative mechanisms between countries. Therefore, it promotes continuity of social protection and prevents legal gaps that could otherwise leave cross-border or temporary migrant workers vulnerable and without recourse when an accident has occurred. It also encourages countries to coordinate or harmonize their compensation systems to ensure that workers are not disadvantaged due to the transnational nature of their employment.

¹⁷⁵ International Labour Organization <<https://www.ilo.org/normlex>> accessed 27th January 2025.

¹⁷⁶ *International Labour Organization Equality of Treatment (Accident Compensation) Convention* No. 19 [1925] Article 1.

¹⁷⁷ *Ibid*, Article 2.

Similarly, Article 3 mandates member states to implement a system, whether by insurance or otherwise, of a workmen's compensation for industrial accidents within three years from the date of ratification.¹⁷⁸ The benefits provided under this system include cash payments for temporary incapacity, permanent disability, and death for dependents as well as medical and allied care and constant attendance for the disabled.¹⁷⁹ This provision underscores the importance of timely implementation and adherence to international labour standards, notwithstanding this obligation, the government of Lesotho only promulgated the *WKMC Act* on 10/10/1977, which is 10 years later after its ratification. The provision also allows for flexibility, enabling member states to choose between insurance schemes or alternative methods to provide these benefits. Similarly, on the 30th of March 1926, South Africa ratified the *Equality Treatment Convention*, becoming one of the early adopters of the *Convention*.¹⁸⁰

2.5 Conclusion

This chapter has critically assessed the foundational role of international labour standards (ILS) in promoting the prevention of occupational accidents and ensuring the right to compensation for work-related injuries. It has highlighted how the ILO through its Conventions, Protocols and Recommendations has laid down a comprehensive and dynamic framework that member states, including Lesotho and South Africa, are encouraged to adopt and implement. These standards are not merely aspirational instruments but essential tools for fostering decent work, advancing social justice, and supporting inclusive economic growth. The chapter has revealed that both Lesotho and South Africa have ratified key ILO Conventions, notably Convention No.155 on Occupational Safety and Health which illuminates the primacy of prevention measures for accidents. However, the comparative implementation of this Convention demonstrates stark differences. While South Africa has developed a more integrated and dual-focused framework that combines prevention with a robust compensation system, Lesotho's approach remains largely prevention-oriented, with fragmented and underdeveloped compensation systems. Conversely, South Africa's failure to ratify Convention No.167 on

¹⁷⁸ *Ibid*, Article 3.

¹⁷⁹ Elaine Fultz & Bodhi Pieris "Compensation for Employment Injuries in Southern Africa: An Overview of Schemes and Proposals for Reform" *International Labour Review* 138, No.2 (1999), pp 171-194.

¹⁸⁰ International Labour Organization <<https://www.ilo.org/normlex> > accessed 27th January 2025.

Safety and Health in Construction, despite its legislative efforts, reflects a gap in formal commitment to international safety standards.

Furthermore, the ratification of Convention No.19 on Equality of Treatment (Accident Compensation) affirms Lesotho's legal recognition of equitable compensation rights for both national and foreign workers. However, delayed implementation and ongoing limitations in the national compensation regime highlight the discrepancy between international obligations and domestic realities. These shortcomings, including lack of institutional coordination, inadequate benefit structures, and limited enforcement mechanisms, compromise the effectiveness of Lesotho's current compensation system and diminish the protection offered to injured workers. Additionally, Lesotho's failure to ratify key instruments such as the International Labour Organization Social Security (Minimum Standards) Convention No.121 Concerning Employment Injury Benefits (1952 and the International Labour Organization Convention No.121 Concerning Employment Injury Benefits (1964) suggests a missed opportunity to strengthen its employment injury compensation system incorporating the evolving international labour standards.

CHAPTER THREE

THE RIGHT TO EMPLOYMENT INJURY COMPENSATION IN LESOTHO: A COMPARATIVE ANALYSIS WITH SOUTH AFRICA

3.1. Introduction

To recap, chapter two has laid the foundation by exploring the international labour standards governing workmen's compensation in Lesotho and the Republic of South Africa, highlighting both the ratified and unratified International Labour Standards (ILS) relevant to the prevention of incidents related to work and fair injury benefits. The chapter briefly examined South Africa's comprehensive legislative landscape, including its *National Occupational Safety and Health Policy* while noting the significant gap caused by South Africa's failure to ratify *Convention No. 167*. In the context of Lesotho, the chapter reviewed its ratification of ILO conventions, including *Convention No. 19*, and the country's preventative efforts, particularly the policy direction set out by the *National Occupational Safety and Health Policy, 2020*.

Building on this foundation, the focus of chapter three shifts to a comparative analysis of the workmen's compensation systems in Lesotho and the Republic of South Africa. The chapter further incorporates a comprehensive review of data evaluating the effectiveness of the right to compensation systems across key dimensions, including the employer liability, the scope of coverage, monetary ceilings, and the administration and enforcement of the right to compensation as well as the jurisdictional challenges that affect the overall functionality and accessibility of the employment injury compensation. By comparing the two systems, the chapter seeks to pinpoint potential areas for improvement, especially for Lesotho, and suggest recommendations based on lessons learnt from South Africa, international best practices and standards. The analysis will further explore the impact of legislative frameworks on the protection of workers' rights, in particular focusing on compensation, prevention of occupational diseases, and rehabilitation.

3.2. Evaluating the History of Workmen's Compensation in Lesotho

The evolution of workmen's compensation law in Lesotho reflects a broader narrative of colonial inheritance, post-independence and legal adaptation. Historically, the regulatory structure guides work-related injuries and occupational diseases in Lesotho has been shaped by

its status as a former British protectorate, with early labour legislation heavily influenced by British models.¹⁸¹ In the 1940s the colonial administration in Basutoland (now Lesotho) began to reshape labour relations by statute.¹⁸² In 1942 the *African Labour Proclamation* No.5 codified employment standards for African workers including limits on hour of work, paid leave and lawful dismissal, but explicitly prohibiting strikes and that same year the *Trade Unions and Trade Disputes Proclamation* No.17 of 1942 was issued to legalize trade unions and allow their formal registration.¹⁸³ A *Workmen's Compensation Proclamation* was also introduced in 1948 to insure workers against occupational injuries. These enactments constituted the principal labour statutes of the era.¹⁸⁴

During the 1950s Basutoland saw the gradual growth of organized labour.¹⁸⁵ African workers formed unions for example the Basutoland Workers' Union and others and influenced collective bargaining as rising political consciousness and economic pressures heightened for better wages and conditions.¹⁸⁶ Although strikes remained officially restricted, union membership and labour grievances increased in textile factories and public service.¹⁸⁷ This period of activism culminated in March 1961 where a major general strike by urban workers in Maseru occurred. In response the colonial government appointed a Commission of Inquiry led by Justice F. H. Baker to investigate the grievances.¹⁸⁸ The Baker Commission affirmed that many workers' demands were legitimate, and it recommended the establishment of formal collective-bargaining mechanisms, statutory wage boards, and improved labour standards including minimum wage fixing and regulated hours of work and statutory leave to address the root causes of the unrest.¹⁸⁹

¹⁸¹ Tushar Kanti Saha & Lukman Abdulrauf, "Introductory Note on the 1993 Constitution of Lesotho" (Lesotho Country Report) <<https://www.icla.up.ac.za>> accessed 16th February 2025.

¹⁸² See n1.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ W. Willard Wirtz, "Labour Digests on Countries in Africa: Bulletin of the United States Bureau of Labour Statistics, No.1539" (Fraser Federal Reserve Bank of St. Louis, 1966) <<https://www.fraser.stlouisfed.org>> accessed 25th May 2025.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

The transition to independence in 1966 prompted a thorough codification of labour law, building directly on the colonial framework and the Commission's recommendations. In April 1964 the new Basutoland legislature enacted the *Trade Unions and Trade Disputes Law* of 1964 which repealed the old 1942 Proclamation and provided a formal legal regime for union registration and dispute settlement.¹⁹⁰ This was followed by the *Employment Act* No. 22 of 1967 and a *Regulations of Wages and Conditions of Employment Act* (1969) to create official contracts of service, grievance procedures and joint wages boards.¹⁹¹ Together these statutes institutionalized collective bargaining and minimum wage fixing as statutory process. The legislative expansion continued into the 1970s and the *Workmen's Compensation Act* No.13 of 1977 was enacted for the compensation of workplace injuries.¹⁹²

The position adopted by this research is that the development of workmen's compensation law in Lesotho not as an isolated legal event, but as part of a broader continuum of labour law reform grounded in socio-political change. The historical narrative expounded on suggests clear progression from colonial control towards autonomous legal reform, with early legislation serving as a foundation rather than a fully developed regime.

3.2.1 Workmen's Compensation Trust Fund

The Workmen's Compensation Trust Fund was established under the *Workmen's Compensation Trust Fund Regulations* of 1982¹⁹³ and subsequently amended and repealed by the *Workmen's Compensation Trust Fund Regulations* of 1985.¹⁹⁴ The Fund comprises financial entitlements accumulated by Basotho ex-mine workers during their employment in South African mines, including pensions, estates, compensation benefits, and terminal

¹⁹⁰ W. Willard Wirtz, "Labour Digests on Countries in Africa: Bulletin of the United States Bureau of Labour Statistics, No.1539" (Fraser Federal Reserve Bank of St. Louis, 1966) <<https://www.fraser.stlouisfed.org>>accessed 25th May 2025.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Legal Notice* No.20 [1982].

¹⁹⁴ *Legal Notice* No. 42 [1985]; see also Ministry of Labour and Employment, "Workmen's Compensation Trust Fund and its Financial Situation" (2023 Report).

gratuities.¹⁹⁵

Prior to the early 1980s, monetary entitlements owed to Basotho former mine workers were remitted directly to the beneficiaries by their former employers via postal services, predominately through personal cheques issued in the names of individual ex-miners.¹⁹⁶ In some instances, payments were routed through local administrative authorities such as District Administrators, Magistrates' Offices, and Sub-Accountants, who were tasked with disbursing funds to the rightful recipients.¹⁹⁷ Regrettably, this system proved vulnerable to malpractice, as numerous cheques were intercepted and misappropriated either during postal transit or within the offices designated for payment processing.¹⁹⁸ As a result, many beneficiaries were deprived of their rightful compensation.

To address this systemic flaws, in 1982 the governments of Lesotho and South Africa concluded an agreement stipulating that all financial entitlements owed to Basotho mineworkers, including compensation benefits, estate distributions, and unclaimed wages arising from employment in South Africa, must be transferred to the Labour Commissioner's Office in Maseru for administration and disbursement.¹⁹⁹ This arrangement was intended to facilitate the accurate tracing of beneficiaries and ensure the lawful disbursement of funds. Consequently, a transmittal bank account was established with Standard Bank Pretoria to serve as an intermediary channel for transferring funds to the Labour Commissioner. Despite these improvements, challenges persist in ensuring comprehensive beneficiary identification and the efficient distribution of entitlements. Strengthening the regulatory oversight, enhancing administrative capacity, and leveraging digital solutions could further bolster the integrity of the Fund.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

3.3 Historical Evolution of Workmen's Compensation in South Africa

Employment injury compensation stands as one of the most prevalent and oldest forms of social protection worldwide.²⁰⁰ Its scope extends beyond mere financial relief and encompasses additional benefits to replace lost income. These benefits include medical care, cash benefits, medical care, and other additional services such as vocational rehabilitation, medical transport, and constant attendant care.²⁰¹ In many jurisdictions influenced by Roman law, the principle of responsibility is the foundational concept underpinning the right to compensation.²⁰² The principle determines that liability be contingent upon the demonstration of fault on the part of the employer.²⁰³ The injured party could only secure full compensation for the harm suffered if they successfully established that the employer bore the blame.²⁰⁴ Conversely, under the Anglo-Saxon common law system, the burden of accidents typically rested with the individual who suffered the harm.²⁰⁵ Victims were required to endure the consequences of such incidents unless the injury could be directly attributed to the negligence or fault of another party, which in the context of workplace injuries, would implicate the employer.²⁰⁶ According to Fultz and Pieris:

Compensation for employment injury is the only one of the nine branches of social security defined by the International Labour Organization which exists throughout southern Africa. Employment injury schemes provide medical care and cash benefits to workers who are injured on the job or develop occupational diseases, as well as survivors' benefits to the families of victims of employment-related fatalities.²⁰⁷

South Africa has one of the oldest compensation schemes dating back to 1914.²⁰⁸ In South Africa, workmen's compensation serves as a critical mechanism that provides workers who sustain injuries or contract diseases in the course of their employment with financial relief and

²⁰⁰ See n12.

²⁰¹ *Ibid.*

²⁰² T. Higuchi, "The Special Treatment of Employment Injury in Social Security" (1970) 102 (2) *International Labour Review* 109, pg 110.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ Elaine Fultz, Bodhi Pieris, 'Compensation for employment injuries in southern Africa: An overview of schemes and proposals for reform' (1999) 138 (2) *ILR*, pg. 171.

²⁰⁸ Elaine Fultz, Bodhi Pieris 'Employment Injury Schemes in Southern Africa: An Overview and Proposals for Future Directions' *International Labour Organization*, pg. 5.

medical care. The primary legal framework governing workmen's compensation is the *COIDA* No. 130 of 1993. This legislation establishes the rights and duties of employers and employees regarding work-related injuries or illnesses. The intention of *COIDA* is well articulated in the case of *MEC for Education, Western Cape Province v Strauss*²⁰⁹ wherein Scott JA explained it as follows:

COIDA came into operation on the 1st March 1994 providing for a system of no-fault compensation for employees who are injured in accidents that arise out of and in the course of their employment or who contract occupational diseases. A compensation fund is established to which employers are required to contribute and from which compensation and other benefits are provided for and prescribed by *COIDA*. *COIDA* supplants the essentially individualistic common-law position, typically represented by civil claims of a plaintiff employee against a negligent defendant employer, by a system which is intended to and does enable employees to obtain limited compensation from a fund to which the employees are obliged to contribute.²¹⁰

Nonetheless, to comprehensively evaluate the advancements achieved under South Africa's *COIDA*, it is essential to first consider the historical evolution of workmen's compensation systems in SA. As aptly summarized by Azubuike and Mgbamoka below, the historical perspective provides valuable insights into the foundational principles and developments that have shaped modern compensation frameworks:

The first *Workmen's Compensation Act (WCA)* in South Africa was passed in 1914. Before the passing of the Act, employees injured at work had to institute a common lawsuit against the employer for negligence. However, the difficulty of proving negligence and the high cost of litigation rendered the worker's common law right minimally. Compensation would only be paid if blame could be laid directly with the employer. While the 1914 *WCA* only recognized injuries, amendments to the act in 1917 extended coverage to provide for specified industrial diseases. In its early form, the *WCA* was ineffective at providing adequate compensation because employers were not compelled to insure their workers against the risk of workplace injuries. At the same time, firms that did not have insurance could face insolvency from a serious incident, while the employees affected could face poverty. As a result, by 1930, workers, industry and government recognized the need for compulsory insurance.²¹¹

²⁰⁹ *MEC for Education, Western Cape Province v Strauss* [2008] (2) SA 366 (SCA) at para 11.

²¹⁰ *Ibid*, para 11.

²¹¹ P. I. Azubuike, A. P. Mgbamoka, 'A Comparative Analysis of the Present State of Employees Compensation Laws in Nigeria with Ghana, South Africa, and India' (2023) 8 *Novena University Law Journal*, pg. 44.

It is apparent that the enactment of South Africa's *WCA* of 1914 represented a pivotal transition from fault-based litigation for work-related injuries to a more structured compensation framework. This marked a departure from the adversarial process of proving employer negligence, which was often an onerous and financially prohibitive burden for injured workers. While the initial 1914 *Act* provided compensation solely for workplace injuries, its 1917 amendments extended coverage to include industrial diseases, acknowledging the broader scope for occupational hazards.

Nevertheless, the significant shortcomings, a major notable flaw was the absence of a statutory obligation of employers to insure their liability which left workers vulnerable and, in many cases, inadequately compensated. This gap necessitated compulsory insurance by 1930. Azubuike et al added:

The 1934 *WCA* made insurance compulsory, through private companies rather than a state fund favoured by workers and trade unions. While the 1934 *WCA* had increased benefits, organized labour was unhappy with the scheme as the premiums were too high. In 1941, a new coalition government was formed which included the Labour Party. The political interest of industry favoured concessions to labour to gain support for the war effort. As a result, the 1941 *WCA* was passed in which all accidents were to be reported to a Workmen's Compensation Commissioner. There were to be no more private compensation agreements between employers and workers. Compensation would be paid from a state fund to which all employers would contribute based on companies' wage budgets. The 1941 Act aimed to institute a state scheme as well as increase benefits. While there have been subsequent amendments to the 1941 Act these amendments have not made significant changes to the fundamentals of the act.²¹²

The above illustrates that the *WCA* of 1934 introduced a groundbreaking shift in South Africa by mandating compulsory insurance for workplace injuries. However, mandatory insurance was implemented through privately owned firms rather than a government managed fund, despite organized labour and trade unions favouring the latter. While the Act enhanced benefits for workers, it attracted criticism from organized labour due to the prohibitively high premiums

²¹²*Ibid.*

associated with the private insurance model. In 1941, amid the changing political landscape marked by the formation of a coalition government that included the Labour Party, the *WCA* was significantly reformed. Notable changes introduced to the compensation framework included that all cases had to be formally submitted to the Workmen's Compensation Commissioner, effectively removing the possibility of private settlement arrangements between employers and workers. Furthermore, the compensation system transitioned to a state-administered fund, funded by employer contributions based on their wage bills. This reform has also set a precedent for South Africa's modern compensation framework, influencing the development of subsequent legislation such as *COIDA*.

3.4 Compensation for Employment Injury in South Africa and Lesotho

Employment injury compensation systems typically fall into two main categories: individual employer liability model and social insurance frameworks model.²¹³ Under the former model, governments impose a legal obligation on employers to compensate workers for workplace accidents and occupational diseases.²¹⁴ Generally, employers are obligated to secure this liability by obtaining insurance policies or, by depositing security funds with the government; which is seldom used.²¹⁵ By contrast, social insurance models establish national employment injury funds as instruments of risk-sharing, rooted in the principle of social solidarity.²¹⁶ Employers contribute regularly in the name of their employees, and the funds are administered by government to ensure that benefits are paid.²¹⁷ This involves responsibilities such as contribution collection, determining the eligibility criteria, disbursing compensation, and maintaining the scheme's financial sustainability.²¹⁸ Thus, with regard to employment injury compensation in Lesotho, the *WKMC Act* mirrors aspects of the individual employer liability framework, requiring employers to provide for their workers' compensation obligations through insurance mechanisms.²¹⁹ Comparatively, South Africa's *COIDA* follows a more

²¹³ See n134.

²¹⁴ Ken Oliphant & Gerhard, "Employers' Liability and Workers' Compensation" (Insurance Law Conference, Vienna, August 2012).

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *WKMC Act* [1977] section 28.

centralized social insurance model, with contributions made to the Compensation Fund for unified administration.

In other words, employment injury compensation remains one of the most established and vital forms of social protection, encompassing a wide array of benefits beyond financial relief, such as medical care, vocational rehabilitation, and attendant services. Historically, jurisdiction influenced by Roman law adhered to a fault-based system, where compensation hinged on proving employer negligence, a standard that frequently left injured workers uncompensated due to the hiccups associated with litigation. Similarly, under Anglo-Saxon common law, victims bore the consequences of workplace accidents unless they could attribute fault to a third party, often their employer. The evolution of employment injury compensation has addressed these inadequacies by developing no-fault systems. Such frameworks, endorsed by the ILO as part of its core social security branches, provide more accessible avenues for injured workers while limiting their legal recourse for damages. South Africa, in particular, has embraced diverse models for employment injury compensation from individual employer liability to centralized social insurance systems. However, in Lesotho, the *WKMC Act*, statutorily obliges to compensate employees for injuries and fatalities arising out of and during the contract of employment. Specifically, Section 5 establishes the liability of the employer for compensation, irrespective of fault, provided the injury is work-related.²²⁰

3.5 A Comparative Analysis of the Right to Compensation Between Lesotho and the Republic of South Africa

3.5.1 Scope of Application

This part discusses people who are protected by the *WKMC Act* and *COIDA* and the monetary cap applicable if any. Therefore, the *WKMC Act* extends protection to “workman,” a term encompassing individuals espoused under a contract of service or apprenticeship, whether implied or explicit, oral or written, and irrespective of whether pay is determined by time or output.²²¹ However, the statutory definition restricts coverage by excluding workers engaged

²²⁰ *Ibid*, section 5 (1).

²²¹ *WKMC Act* [1977] section 2 (1).

in casual employment unrelated to the employer's core business activities, except where such employment pertains to organized recreational events facilitated through a club.²²² Additionally, the *Act* excludes outworkers, domestic servants, individuals whose remuneration is customarily provided in kind, family members residing with the employer, and any other categories that may be designated by ministerial notice.²²³ One may submit that the restrictive scope of coverage under the *WKMC Act* raises concerns about its alignment with modern employment realities and social protection principles. By categorically excluding casual workers, outworkers, and domestic workers, the *Act* fails to provide comprehensive protection for vulnerable groups in precarious employment. Furthermore, the discretionary power granted to the Minister to exclude additional classes of workers under the *WKMC Act* creates legal uncertainty and potential arbitrariness in compensation eligibility.

In stark contrast, *COIDA* defines an employee broadly to encompass all individuals engaged in a formal service contract, regardless of the nature of their contract of employment or how their wages are structured.²²⁴ This definition extends to contingent workers, executive directors operating under employment contracts, curators representing incapacitated workers, and deceased employees' dependents in cases of workplace fatalities.²²⁵ In addition, individuals supplied by labour brokers, that is persons remunerated by a broker but placed with a third-party to perform work, are also included under the statutory definition of *COIDA*.²²⁶ This gives recognition to the complexities of triangular employment relationships in the modern labour market and the labour court of South Africa has ruled that employees' rights are primely protected by a dual employer interpretation.²²⁷

However, despite this broad scope of application, some categories of workers are explicitly not included from the scope of *COIDA*. These exclusions include state employees, members of

²²² *Ibid.*

²²³ *WKMC Act* [1977] section 2 (2).

²²⁴ *COIDA* [1993] section 1 (xix).

²²⁵ *Ibid.*

²²⁶ *Ibid.*, section 1 (xix) (c).

²²⁷ *Assign Services (PTY) Limited v National Union of Metalworkers of South Africa & Others* [2018] ZACC 22 at para 23.

social institutions engaged in national defense services (such as the South African Defence Force (SANDF) and the South African Police Service (SAPS), as well as individuals performing services under independent contractor agreements.²²⁸ Additionally, persons employed within private households (domestic workers) were excluded from the protection within the ambit of *COIDA*.²²⁹ Nonetheless, post 1994 reforms have included domestic workers under the other key pieces of labour legislation such as the *Basic Conditions of Employment Act*²³⁰ and the *Labour Relations Act*²³¹, albeit with certain conditions. However, the continued exclusion of this vulnerable group of workers from *COIDA* appeared to be inconsistent with the South African Constitution, which is transformative in nature, and domestic workers organized movements. As a result, there has been a paradigm shift demonstrated in the constitutional landmark decision of *Mahlangu and SADSAWU v Minister of Labour*.²³² Here, a domestic worker, Maria Mahlangu, died in an accident at her place of employment.²³³ Her daughter Sylvia Bongi Mahlangu attempted to claim compensation under the *COIDA*.²³⁴ Even though, at the time, definition of an employee under *COIDA* did not include domestic workers employed in private dwellings. The main issue was the constitutionality of excluding domestic workers from *COIDA*'s definition of an employee.²³⁵ It was determined by the court that excluding domestic workers from *COIDA* was unconstitutional and was in violation of the right to equality, the right to dignity and the right to social security.²³⁶

The Constitutional Court emphasized that any interpretation of *COIDA*, as a key legislative tool for realizing the constitutional right to social security, should be firmly rooted in the principle of the interdependence of human rights.²³⁷ This perspective is necessary to promote gender equality and securing fair and equitable working conditions for vulnerable groups. Moreover, the court cautioned that failing to acknowledge this interconnection results in

²²⁸ *Ibid.*

²²⁹ See n193, section l(xix)(d)(v).

²³⁰ No.75 [1997].

²³¹ No.66 [1995].

²³² *Mahlangu and Another v Minister of Labour and Others* (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC) (19 November 2020).

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ *Ibid.*

systemic inequalities and injustices, particularly impacting marginalized workers.²³⁸ The court further highlighted that the right to social security is deeply intertwined with the rights to human dignity and equality.²³⁹ When addressing the equality rights of domestic workers, the court adopted an intersectional perspective.²⁴⁰ This approach recognizes that overlapping aspects of identity, particularly race, gender, social status and class, can create unique and compounded disadvantages.²⁴¹

A critical aspect of the decision was the ruling that the exclusion of domestic workers from *COIDA*'s definition of employee infringed on their right to human dignity. It was pointed out by the court that this exclusion perpetuated the entrenched undervaluation of domestic labour, falsely implying that it lacks the defining characteristics of real work in direct contrast to the occupations explicitly covered under *COIDA*.²⁴² This exclusion was identified as a contributing factor to the commodification and objectification of domestic work, effectively reducing domestic workers of labour rather than individuals entitled to fundamental rights.²⁴³ Such treatment, the Court concluded, stands in direct contradiction to the constitutional commitment to human dignity, which firmly opposes any form of human objectification.²⁴⁴ Ultimately, the judgement signalled a significant jurisprudential shift towards addressing systemic inequalities in South African labour law. By mandating the extension of statutory protections to domestic workers, the court reinforced the constitutional principle that all forms of work, irrespective of their historical devaluation, must receive equal recognition and legislative protection within *COIDA* and the broader framework of labour rights.

Another contentious issue raised by the South African courts is whether *COIDA* adequately recognizes extended families and unconventional family structures, including same-sex

²³⁸ *Ibid.*

²³⁹ *Ibid* at para 86.

²⁴⁰ *Ibid* at para 86.

²⁴¹ *Ibid* at para 86-105.

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

partnerships and indigenous unions.²⁴⁵ The *Langemaat v Minister of Safety and Security & Others* case highlights these concerns.²⁴⁶ In this case, a lesbian police officer sought to register her cohabitating partner as a dependent on a state medical aid scheme.²⁴⁷ It was found by the court that the exclusion of de facto dependants from the scheme amounted to unfair discrimination, showing the legal and social consequences of failing to recognize diverse family structures approved by other laws of the land.²⁴⁸ Although this observation may not necessarily be implementable in Lesotho, it evidently proves the necessity for broad scope of application where employment injury compensation particularly provision of medical aid is concerned.

3.5.2 Liability for Payment of Employment Injury Compensation

This part examines liability for payment of workplace injuries in Lesotho and South Africa. With regard to Lesotho, the *WKCM Act* Section 5 sets out the parameters of employer liability for compensation in cases of death or incapacity resulting from accidents at work.²⁴⁹ By establishing that compensation is contingent on the severity of the injury requiring at least three days of incapacity, this provision is intended to balance the protection of workers and the limitation of employer liability. The three-day threshold, however, can be critiqued for its restrictive nature. The requirement for incapacitation to last a minimum of three days raises concerns about workers who may have injuries that, though not immediately disabling, could still lead to longer-term consequences.

Similarly, within South African jurisdiction, section 29 of *COIDA* provides for the liability to pay compensation through shared responsibility to ensure that employees receive their entitled compensation for workplace injuries or illnesses.²⁵⁰ It specifies that liability may fall on the

²⁴⁵ Piet Myburgh, *et al.*, “Social Security Aspects of Accident Compensation: COIDA and RAF as Examples” in M. P. Olivier, M.C. Okpaluba, Nicola Smit and M. Thompson (eds), *Social Security Law- General Principles* (Butterworths 1999) 47.

²⁴⁶ *Langemaat v Minister of Safety and Security & Others* [1998] 19 ILJ 240 (T).

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

²⁴⁹ *WKMC Act* [1977] Section 5.

²⁵⁰ *COIDA* [1993] Section 29.

Director-General, a mutual association or an individually liable employer for payment of compensation. This is illustrated in the case of *Zelolo Daniel Thomas v Anglo American Platinum Mogalakwena Mine*, wherein Thomas was employed as a heavy load truck operator at the mine.²⁵¹ During the course of employment, Thomas sustained injuries on his back, neck, and shoulders due to operating heavy machinery.²⁵² Medical professionals recommended that he be assigned light duties during day shifts.²⁵³ Despite these recommendations, the employer continued to assign him duties involving operating heavy trucks during night shifts, leading to further deterioration of his health.²⁵⁴ He was later declared medically unfit for work.²⁵⁵ The central legal issue was whether the employer was liable for the deterioration of Thomas's health due to failure to follow medical advice and maintain safe working conditions.²⁵⁶ The bone of contention was whether COIDA bars the plaintiff from pursuing additional delictual damages outside its compensation framework.²⁵⁷ The court acknowledged that Anglo American Platinum failed to accommodate Thomas's medical needs, emphasizing that there is a duty of care on employers under the *Occupational Health and Safety Act* to ensure that employees work under safe conditions.²⁵⁸

In essence, this means that under the individual liability model, the employer assumes direct responsibility for compensating the employee, as is the case within the context of Lesotho. This means that employers are specifically required to secure this liability through insurance mechanisms provided in section 28 of the *WKMC Act*.²⁵⁹ The South African multi-tiered liability approach distributes liability across different entities to minimize the risk of non-payment of compensation through an employer, or mutual association and state oversight by Director-General.²⁶⁰ While specific cases in Lesotho where the three-day incapacity requirement has disadvantaged workers are not readily available, the potential for such a

²⁵¹ *Zelolo Daniel Thomas v Anglo American Platinum Mogalakwena Mine* [2025] 9395/2022 ZALMPPHC 72.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

²⁵⁹ *WKMC Act* [1977], Section 28.

²⁶⁰ *COIDA* [1993] section 4.

situation exists. For instance, a worker who has sustained an injury that incapacitates them for two days would not qualify for compensation under the current *WKMC Act*, even if the injury leads to longer-term health issues or requires medical attention.

3.5.3 Vicarious Liability and Liability of Third Parties

Vicarious liability in general terms relates to an action where someone is held responsible for the actions of another person, even if they did not directly do anything wrong.²⁶¹ This liability applies where a particular relationship between two persons, such as between an employer and employee, principal and agent, motor-car owner and state-public school.²⁶² The doctrine of vicarious liability finds its early judicial articulation in the landmark case of *Bartonshill Coal Company v Reid*, which arose from a tragic incident at a colliery.²⁶³ In this case, an engineman James Shearer, negligently caused the overturning of a cage, resulting in the death of William Reid, a miner and the respondent's husband.²⁶⁴ The deceased's widow and children instituted proceedings against Shearer's employers, seeking damages for their loss.²⁶⁵ The contended legal issue was whether vicarious liability could be imposed on the employer for the negligence of its employee under Scottish law and whether the Inner House's decision to impose liability on the appellants was legally sound.²⁶⁶ The House of Lords, in overturning the decision of the Inner House, ruled in favour of the appellants. Lord Cranworth, delivering the judgment, elaborated on the principles underpinning the master-servant relationship.²⁶⁷ He opined that an employer or "master" could be held responsible for acts of negligence committed by their employee when such acts give rise to claims from the general public.²⁶⁸ However, this principle did not extend to claims arising from disputes or injuries occurring solely between employees.²⁶⁹ The court ruled that the negligence in question was attributable to Shearer alone and did not demonstrate a failure on the part of the employer to discharge its supervisory

²⁶¹ J. Neethling and J.M. Potgieter, *Law of Delict* (8th edn, LexisNexis 2020) 444.

²⁶² *Ibid.*

²⁶³ *Bartonshill Coal Company v Reid & United Kingdom House of Lords* [1858] UKHL 3_ Macqueen 266.

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

obligations.²⁷⁰ Consequently, the appellants could not be held liable for damages sought by the respondents.²⁷¹ This case established a critical limitation to the doctrine of vicarious liability, underscoring that employers are not inherently liable for harm caused by one employee to another unless there is an evident breach by the employer, of its duty of care in the management or oversight of its workforce.

With regard to Lesotho, the vicarious liability is espoused in Section 25 of the *WKMC Act* to cater for situations where a workman is employed by a contractor.²⁷² It establishes that in a case where a contractor employs a workman and an injury arises during the subsistence of the employment, the principal employer may also be liable for compensation. This provision ensures that injured workers are not left without recourse, even if the contractor fails to meet their obligations under the *Act*. The section further emphasizes that the liability of the principal employer is contingent upon the contractor's failure to secure adequate compensation for the injured workman. This creates a layered system of accountability, ensuring that workers' rights to compensation are safeguarded while encouraging contractors to comply with their statutory obligations.

The South African *COIDA* also encapsulates the vicarious liability principle regardless of the contractor's compliance.²⁷³ It states that where a mandator, within the scope and subsistence of employment or for the furtherance of their business operations, agrees with a contractor for the execution of the whole or part of any work undertaken by the mandator, it shall be incumbent upon the contractor to register as an employer in conformity with the provisions of the *COIDA* and to discharge the requisite assessment in regard to their employees engaged in the performance of the said work.²⁷⁴ If the contractor defaults to fulfil the obligations of registration or payment of assessments, the employees of the contractor will, for the purposes of *COIDA*, be deemed employees of the mandator.²⁷⁵ Consequently, the mandator shall bear

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *WKMC Act* [1977] Section 25.

²⁷³ *COIDA* [1993] Section 89.

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

responsibility for payment of the assessment relating to those employees.²⁷⁶ Furthermore, should the mandator incur liabilities in respect of assessments or compensation payments that would otherwise have been the responsibility of the contractor, the mandator is entitled to recover such amounts from the contractor.²⁷⁷

The case *Rand Mutual Assurance Company Ltd v Road Accident Fund* case illustrates the issue of the principal being liable for payment of compensation and entitled to indemnification by any person who would have been liable to compensate the workman.²⁷⁸ The matter arose when an employee of Harmony Gold Mining Company, wherein Mr. Young sustained injuries in a motor vehicle accident caused by the negligence of a third-party driver.²⁷⁹ The accident occurred during the subsistence of Mr Young's employment, entitling him to compensation under the *COIDA*.²⁸⁰ The Rand Mutual Assurance Company Ltd, as the mutual association insuring Harmony Gold Mining under *COIDA*, compensated Mr. Young per the Act.²⁸¹ Subsequently, Rand Mutual sought to recover the compensation amount from the Road Accident Fund (RAF), which was liable to pay for the damages caused by the negligent third-party driver.²⁸² The legal question before the court was whether Rand Mutual, as the insurer, could initiate proceedings in its name to recover the compensation paid, or whether it was required to claim in the name of the insured employer Harmony Gold Mining.²⁸³ The court examined the doctrine of subrogation, which allows an insurer to step into the shoes of the insured to recover amounts paid out to indemnify an insured under an insurance policy.²⁸⁴ The court considered whether South African law required the insurer to sue in the name of the insured or whether it could proceed in its own name.²⁸⁵ The court ultimately upheld the principle that an insurer must sue in the name of the insured, emphasizing that this requirement

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ *Rand Mutual Assurance Company Ltd v Road Accident Fund* (484/2007) [2008] ZASCA 114 (25 September 2008).

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

forms part of South African law.²⁸⁶ As Rand Mutual had not obtained a cession of rights from Harmony Gold Mining, its claim against the RAF was dismissed.²⁸⁷ This case underscores the importance of adhering to procedural requirements in subrogation claims and highlights the interplay between *COIDA* and third-party liability frameworks. It also reinforces the principle that insurers must carefully navigate the legal mechanisms available to recover compensation from third parties.

Notwithstanding, the protection of employees for employment injury compensation, that employers and principals bear liability, the *WKMC Act* vitiates liability where the workman's injury may be attributed to the serious and wilful misconduct of that particular workman.²⁸⁸ This provision, while safeguarding employers from fraudulent or careless claims, may inadvertently leave workers vulnerable in instances where their misconduct is not truly egregious, but rather a result of unsafe working conditions or systemic issues within the workplace. In such cases, the strict application of this provision could be seen as violating the principles of fairness embedded in international labour standards, particularly the International Labour Organization (ILO) *Convention No. 121 on Employment Injury Benefits Convention No.121*. The *Employment Injury Benefits Convention No.121*, which many countries have ratified and domesticated but Lesotho has not ratified, recommends that workers should be compensated without requiring them to prove fault, as the purpose is to ensure that workers are not financially penalized for workplace accidents.²⁸⁹ As such, the workman should not be left uncompensated due to minor faults or errors on their part, especially when working conditions might have contributed to such accidents. The *WKMC Act's* provisions could be seen as being inconsistent with the spirit of this *Convention* in certain circumstances, particularly regarding the exclusion of compensation for minor misconduct.

3.5.4 Monetary Ceiling

Concerning the monetary ceiling in Lesotho, it was initially governed by section 7 of the

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *WKMC* [1977] section 5 (1) (a).

²⁸⁹ *International Labour Organization Employment Injury Benefits Convention No.121* (1964).

WKMC Act which laid the foundation for compensation rates for cases of permanent total incapacity.²⁹⁰ Here, the law prescribed a fixed sum based on 54 months' earnings, subject to minimum and maximum thresholds.²⁹¹ While this provides clear guidelines, the use of fixed sums is problematic in terms of ensuring that workers are adequately compensated. The fixed cap on the compensation payable (M13,500.00) and the lower limit of M1,800.00 may not accurately reflect the differing impacts of injuries on workers across various industries or economic classes.²⁹² Under the *COIDA* employees who are injured on duty or develop diseases related to their work are entitled to compensation. Put differently, compensation is payable in three categories. The first is compensation for temporary partial or total disablement, the second; is compensation for permanent disability, and the third, is compensation for the death of a worker.²⁹³ The compensation includes medical expenses, temporary or permanent disability benefits (rehabilitation benefits), and, in extreme cases, death benefits for the dependents of workers who die due to work-related incidents.

The *ILO Convention No. 121* calls for proportionality in relation to the compensation that is for the injury and loss of earning capacity, a principle that seems at odds with the more rigid compensation formula set out in the *WKMC Act*.²⁹⁴ Such that where the injury results into permanent incapacity the workman shall be compensated an amount equal to fifty-four month's earnings.²⁹⁵ Furthermore, the provision for additional compensation if the injured worker requires constant care is a welcome provision but raises the question of whether the amount specified (one-quarter of the compensation sum) is truly sufficient to cover the costs of such care, especially in contexts where care needs may extend beyond the basic threshold. Contrary, to the standard established by section 33 outlines the employer's obligation to cover medical expenses, including treatment, artificial limbs, and transport charges, for workmen who suffer work-related injuries at a reasonable cost.²⁹⁶ However, this flexibility does not necessarily

²⁹⁰ *WKMC Act*[1977] section 7.

²⁹¹ *Ibid.*

²⁹² *Ibid.*

²⁹³ Ighsan Schroeder, "Workmen's Compensation in South Africa: A Brief Overview" (Carnegie Conference Paper, 1984).

²⁹⁴ *International Labour Organization Convention No.121 on Employment Injury Benefits* (1964).

²⁹⁵ *WKMC Act* [1977] section 7.

²⁹⁶ See n209, section 33.

guarantee fairness, as the amounts prescribed may be subject to changing government priorities rather than the genuine medical needs of the workman.

Given the realities of today vis-à-vis the 1977 era when the *WKMC Act* was promulgated, under the 2024 *Regulations*, Lesotho's compensation system imposes a monetary ceiling of M240,500.00 for a workman who dies due to an injury arising during the subsistence of their employment.²⁹⁷ However, this figure has drawn significant criticism for its inadequacy in addressing severe injuries or long-term incapacitation.²⁹⁸ The compensation ceiling, although an improvement, may fail to fully address the financial needs of dependents in the event of the death of a worker or the long-term needs of those suffering from permanent incapacity.²⁹⁹ This limitation could perpetuate financial hardship, undermining the very purpose of the compensation system, which is to provide reasonable financial support to workers and their families in the aftermath of work-related injuries.³⁰⁰

A critical issue raised by the *Regulations* is the potential exclusion of certain categories of workers, particularly informal sector employees, domestic workers, and casual labourers, from the coverage of the workmen's compensation system.³⁰¹ The *Regulations* outline compensation amounts for specific injury categories but do not provide sufficient clarity on whether all workers, regardless of their employment status, are covered.³⁰² This research submits that, if significant groups of workers remain unprotected, the *Regulations* would have failed to provide the intended safety net, leaving vulnerable individuals without compensation in the event of injury. This could exacerbate social inequality, particularly for those in informal or low-wage sectors who are most at risk of workplace accidents. While the *Regulations* have introduced higher ceilings for compensation, penalties for non-compliance must be strong enough to deter potential violators. If the penalties for failing to comply are not significant enough, employers may choose to disregard the regulations, thereby reducing the overall effectiveness of the

²⁹⁷ *Workmen's Compensation Regulations* No.5 [2024] section 2 (1).

²⁹⁸ See n42.

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.*

³⁰² *Ibid.*

compensation system. The lack of a sufficient deterrent penalty system could continue to allow non-compliance, ultimately harming the workers who rely on these protections.

Legal scholars argue that the identified limitations restrict fair compensation, particularly when compared to South Africa's *COIDA*, which follows an income replacement model.³⁰³ Additionally, the Compensation Fund operates with a risk-based premium system that adjusts employer contributions based on industry-specific risk levels; a mechanism not catered for in Lesotho's legal framework.³⁰⁴ Thus, *COIDA* ensures compensation proportional to the worker's pre-injury earnings, covering medical expenses, temporary and permanent disability benefits, and death benefits without a fixed monetary cap.³⁰⁵ This approach allows for a more equitable system where compensation is tailored to the individual's loss of earning capacity, as affirmed in the *Department of Labour: The Compensation Commissioner v Botha* case.³⁰⁶ In this case, the Supreme Court of Appeal (SCA) addressed the issue of establishing a causal link between a workplace injury and subsequent permanent disability, emphasizing the need for compensation to reflect the individual's actual loss of earning capacity. The respondent, Botha, suffered a whiplash injury while on duty, which aggravated a pre-existing neck condition.³⁰⁷ Medical professionals confirmed that the workplace accident exacerbated his prior injuries, leading to permanent disablement. The Compensation Commissioner disputed the extent to which the workplace injury contributed to Botha's current disability, considering his pre-existing condition.³⁰⁸

The central issue was whether a causal connection existed between the on-duty injury and Botha's permanent disability, and to what extent the pre-existing condition influenced his current impairment.³⁰⁹ The court determined that the whiplash injury sustained during

³⁰³ *COIDA* [1993].

³⁰⁴ See n245.

³⁰⁵ *Ibid.*, schedule 4.

³⁰⁶ *Department of Labour: The Compensation Commissioner v Botha* (Case No. 326/2020) [2022] ZASCA 38 (4 April 2022).

³⁰⁷ *Ibid.*

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

employment exacerbated Botha's pre-existing neck condition.³¹⁰ Medical evidence supported that the workplace accident aggravated his prior injuries, establishing a causal link between the on-duty injury and the permanent disability.³¹¹ The court found it challenging to precisely determine how much the pre-existing condition contributed to Botha's current disability based on the available medical records.³¹² Recognizing the complexity of this case, the SCA remitted the case back to the tribunal, instructing Botha to get detailed medical reports outlining the extent to which his pre-existing injuries contributed to his permanent disability.³¹³ The tribunal was directed to reassess the compensation amount, considering this comprehensive medical evidence, within a six-month timeframe.

In a nutshell, this case underscores the importance of tailoring compensation to an individual's specific loss of earning capacity. By requiring a thorough medical assessment to distinguish the impact of pre-existing conditions from workplace injuries, the court ensured that compensation accurately reflects the actual impairment resulting from the work-related incident. This approach promotes a more equitable compensation system that is appropriate to the individual's loss of earning capacity due to workplace injuries, aligning benefits with the true extent of disability attributable to workplace injuries.

3.5.5 The Administration of Employment Injury Compensation

The administration of employment injury compensation in Lesotho involves multiple offices within the labour department including the office of the Labour Commissioner, the Workmen's Compensation Trust Fund and the Director of Occupational Safety and Health.³¹⁴ The Workmen's Compensation Trust Fund is established by *Legal Notice* No.41 of 1985 to administer all workmen's compensation funds remitted from the Republic of South Africa, due and payable to Basotho in respect of injuries sustained by them in the course of employment in the Republic of South Africa territory.³¹⁵ However, over the years the WKMC Trust Fund

³¹⁰ *Ibid.*

³¹¹ *Ibid.*

³¹² *Ibid.*

³¹³ *Ibid.*

³¹⁴ Ministry of Labour and Employment, *Annual Labour Inspections Report 2018/19* (Government, 2019).

³¹⁵ *Workmen's Compensation Trust Fund Regulation* [1985], section 5 (a).

began serving all workers even those who incur and contract diseases during the course of employment in Lesotho.³¹⁶ The Fund is administered by a small and resource constrained team comprising of the Labour Commissioner, Fund Administrator which is currently vacant, Claims Manager, three Fund Accountants, one Finance Assistant posted as headquarters in Maseru, five Assistant Finance Officer posted at district level, a Trust Fund Manager, and a driver with one vehicle serving headquarters and nine other districts.³¹⁷ It is the view of this research, that while this structure ensures the legal and fiduciary management of cross-border and national compensation flows, its limited human resource capacity poses significant challenges to timely processing, systemic efficiency, and broader enforcement of occupational injury rights within Lesotho's jurisdiction.

Whereas in South Africa section 15 of *COIDA* establishes the continuation of the Compensation Fund to compensate workers who are injured or become ill in the course of their employment and are unable to work because of such injury or illness.³¹⁸ Its mandate includes registering employees, collecting contributions, assessing claims, and disbursing compensation to workers injured in the course of employment or diagnosed with diseases.³¹⁹ The Director-General of the Department of Labour administers the Fund, and as such it is administered by the public authority.³²⁰ As of the 2023/24 reporting year, the Compensation Fund employed a total of 1,074 staff members across its administrative units.³²¹ This includes permanent and contract staff supporting various functions such as claims processing, finance, medical adjudication, legal compliance, information technology, and stakeholder liaison.³²² This robust human capital base supports the Fund's national operations, enabling it to process over 300,000 claims annually and disburse more than R5.2 billion in compensation benefits.³²³ The

³¹⁶ Ministry of Labour and Employment, *Annual Labour Inspections Report 2018/19* (Government of Lesotho 2019).

³¹⁷ *Ibid.*

³¹⁸ Yvette Basson, "The Compliance of the South African Social Security System with the International Covenant on Economics, Social and Cultural Rights" (2024) 45 (4) <<https://journals.co.za/doi/abs/10.10520>> accessed 25th May 2025.

³¹⁹ Department of Employment and Labour, *Compensation Fund Annual Report 2023/24* (Republic of South, 2024) <<https://www.labour.gov.za>> accessed 5th August 2025.

³²⁰ *COIDA* [1993] section 2.

³²¹ See n308.

³²² *Ibid.*

³²³ *Ibid.*

Compensation Fund has also invested in digital platforms such as CompEasy, which enhances the efficiency, transparency, and accessibility of the compensation process.³²⁴

Thus, while both systems are grounded in statutory obligations to protect injured workers, the comparative analysis reveals a stark disparity in administrative capacity, technological integration, and institutional reach. These differences have direct implications for the realization of the right to compensation, particularly in Lesotho, where institutional limitations constrain the accessibility, responsiveness and sustainability of the compensation framework.

3.5.6 Workmen’s Compensation Medical Board

The Workmen’s Compensation Medical Board plays a critical role in assessing, evaluating, and determining medical claims related to workplace injuries and occupational diseases.³²⁵

This board serves as an independent body responsible for ensuring that injured workers receive appropriate medical care, assessing the degree of impairment, advising on compensation entitlements, and to resolve disputes arising from medical evaluations.³²⁶ In Lesotho the Workmen’s Compensation Medical Board is constituted under section 17 of the *WKMC Act* serving as a statutory mechanism for reviewing medical reports, determining the extent of impairment, and resolving disputes related to medical assessments.³²⁷ Lesotho’s Medical Board is notably compact in structure, consisting of three members appointed by the Minister. These members include a government-employed medical practitioner, a private-practice medical practitioner, and a legal practitioner.³²⁸ This composition, while streamlined, reflects an attempt to balance medical and legal perspective. However, the limited stakeholder representation necessary for nuanced adjudication in complex cases of occupational injuries.

In contrast, SA *COIDA* governs the establishment of the Compensation Board to oversee

³²⁴ *Ibid.*

³²⁵ Kassim Puteri M. “No-Fault Compensation for Medical Injuries: Trends and Challenges” (2014) 33 (4) *Medicine and Law* 4, pg 21-54.

³²⁶ *Ibid.*

³²⁷ *WKMC* [1977] section 17.

³²⁸ *Ibid* section 17 (2).

medical evaluations.³²⁹ Specifically, sections 10 and 11 establish the Compensation Board and define its structure.³³⁰ The Board's composition involves diverse representation, including the Director-General, Chief Inspector of Occupational Health and Safety, members appointed by the Minister from employer and employee organizations, as well as health professionals.³³¹ This structure ensures that decisions are made with a broad understanding of both employer and employee interests which allows for comprehensive and impartial advice on medical claims. The key distinction between Lesotho's and South Africa's systems lies in their governance and representation breadth. Lesotho's Medical Board is smaller focusing on a limited membership to carry out its functions, whereas South Africa's Compensation Board embodies a more expansive and inclusive framework.

The juxtaposition of these two systems reveals a fundamental divergence in governance model. Lesotho's model favours a minimalistic structure that emphasizes efficiency, whereas South Africa's approach foregrounds inclusivity, transparency, and promotion of social dialogue. The broader representational base of the South African compensation board arguably enhances the legitimacy and responsiveness of medical assessments, reinforcing the right to compensation as a core component of labour protection.

3.5.7 Jurisdiction Governing Workmen's Compensation

The jurisdiction governing workmen's compensation delineates the legal boundaries within which claims for occupational accidents and diseases are adjudicated. In Lesotho, *WKMC Act* section 22 (1) vests all the powers and jurisdiction upon a Subordinate Court of the Resident Magistrate.³³² However, jurisdictional issues often emerge due to overlapping responsibilities between the courts and administrative bodies. For instance, in the case of *Ramohafa v Labour Commissioner*, the Labour Appeal Court ruled that it lacked jurisdiction to review medical assessment under the *WKMC Act*.³³³ The appellant, Ramohafa had sustained a workplace injury

³²⁹ *COIDA* [1993] section 10.

³³⁰ *Ibid.*

³³¹ *Ibid.*, sections 10 & 11.

³³² *WKMC Act* [1977] section 22

³³³ *Ramohafa v Labour Commissioner* [2022] C of A (CIV) No.17/2022 LAC/REV/05/2020.

resulting in a 16% permanent bodily incapacitation, as assessed by medical professionals.³³⁴ The core issue before the Court of Appeal was whether the initial assessment accurately reflected the extent of Ramohafa’s incapacitation and if the compensation awarded was commensurate with his injury.³³⁵ The court examined the procedures followed in assessing the injury, the evidence presented, and the applicable legal standards under Lesotho’s workmen’s compensation laws. The Court emphasized that such a matter falls within the purview of the Subordinate Court of the Magistrate and consequently, the appellant’s claim for increased compensation was dismissed. However, in terms of the new *Labour Act*, all disputes relating to an employment relationship are under the jurisdiction of the Labour Court.³³⁶ In particular, section 43 of the Labour Act empowers the Labour Court with exclusive jurisdiction to resolve all disputes of rights including those relating to workplace injuries, accidents, illnesses, diseases and deaths.³³⁷

However, in South Africa disputes relating to *COIDA* are primarily determined through the Compensation Commissioner delegated by the Director-General of the Department of Labour as the first point of call for claim assessment and decisions.³³⁸ The Compensation Commissioner or their delegated officials adjudicate claims for compensation including medical expenses, temporary and permanent disability benefits and death benefits.³³⁹ If an employee or employer disagrees with a decision made by the Compensation Commissioner, such a person can lodge an objection or request a review of the decision usually within 90 days of the decision. The Commissioner will then re-evaluate the claim and the reasons for the objection. If the dispute is not resolved by the Compensation Commissioner’s internal review, the matter can be referred to the tribunal established under section 91 (3) of *COIDA*.³⁴⁰

³³⁴ *Ibid.*

³³⁵ *Ibid.*

³³⁶ *Revenue Service of Lesotho v Baile Dube & 7 Others* [2023] LSHC 170.

³³⁷ *Labour Act* No.3 [2024] section 43 (1) (d).

³³⁸ *COIDA* [1993] section 3 (1) “The Minister shall subject to such conditions as he or she may determine, in order to assist the Director-General in the performance of his or her functions in terms of or under this Act and subject to the laws governing the public service, appoint (a) an officer to be called the Compensation Commissioner...”

³³⁹ *Ibid.*, section 90.

³⁴⁰ *Ibid.*, section 91 (3); see *Director-General Department of Labour & Another v Nazeem Mallie & Another* (22684/09) 2013 ZAWCHC 124 wherein the court held that *COIDA* grants the presiding officer the authority, upon reviewing an objection, to either uphold the original decision or substitute it with another decision that is

Decisions of the presiding officer can be further appealed to the Supreme Court, typically focusing on points of law or procedural irregularities.³⁴¹ An appeal process is provided by Section 91 of the *COIDA*, which highlights that the appeal shall be heard by a tribunal and for a limited right of appeal from a decision by a tribunal to the High Court.³⁴² However, if a legal question arises while the Director-General is carrying out their duties, they have the authority, either on their own initiative or at the request of an interested party, to refer the matter to a High Court with the appropriate jurisdiction for a decision.³⁴³ This ensures that complex legal issues are addressed by a judicial authority, providing clarity and resolution. This is clarified by the High Court in the *Venter v Compensation Commissioner* case considering the scope and authority of the tribunal constituted in terms of section 91.³⁴⁴ The tribunal rejected the appellant's claim because he was not an employee at the time of the accident.³⁴⁵ An appeal was lodged to the High Court against this finding, and the High Court explained that the tribunal's only power, duty and jurisdiction was to consider the objection lodged.³⁴⁶ The court held that the tribunal acted ultra vires.³⁴⁷

3.6 Analysis of Potential Overlap Between the *Workmen's Compensation Act* (WKMC) and the *Occupational Safety and Health Act* (OSH)

The OSH Act mandates employers to report accidents, occupational diseases, dangerous occurrences, and occupational poisoning to the Director of Occupational Safety and Health (DOSH).³⁴⁸ Fatal accidents must be reported within 24 hours, followed by a written report within three days, while non-fatal injuries must also be reported within three days.³⁴⁹ Employers are further required to maintain a comprehensive register of workplace accidents,

fair and just, provided that at least one of the assessors, excluding medical assessor concurs with the presiding officer.

³⁴¹ *Ibid*, section 91 (3) (b).

³⁴² *Odayar v Compensation Commissioner* [2006] (6) SA 202 (N) at para 7-11.

³⁴³ *COIDA* [1993] section 92.

³⁴⁴ *Venter v Compensation Commissioner* [2001] (4) SA 753 (T).

³⁴⁵ *Ibid*.

³⁴⁶ *Ibid*.

³⁴⁷ *Ibid*.

³⁴⁸ *OSH Act* No. 4 [2024], section 15.

³⁴⁹ *Ibid*, section 15 (2).

including commuting accidents.³⁵⁰ While the inclusion of commuting accidents³⁵¹ suggests a broad interpretation of employer responsibility, it remains unclear whether such incidents qualify for compensation under the workers' compensation framework within Lesotho's jurisdiction.

By contrast, under *COIDA*, commuting accidents are explicitly compensable especially if the work was deemed to be acting in the course and scope of employment, such as when using employer-provided transport.³⁵² *COIDA* emphasizes that a causal link between employment and the accident must exist.³⁵³ In *Ongevallekommissaris v Santam Versekeringsmaatskappy Bpk*,³⁵⁴ it was held that where a field officer was employed by a company in a certain location and was required to establish a home from which to work, and all travel for purposes of such work was paid for by the employer, then such travel must be considered to be in fulfilment of a term of his employment.³⁵⁵ An accident that occurred in the course of such travel, therefore arose out of and in the course of his employment for the purpose of the Compensation Act.³⁵⁶ Thus, this comparative limitation reflects a stricter standard than that suggested under Lesotho's *OSH Act*, where the obligation to record commuting accidents creates an expectation of employer accountability, even in the absence of direct work-relatedness and does not imply compensation.

There is a notable overlap between the *WKMC Act* and the *OSH Act*, particularly concerning employers' reporting obligations. Both Acts require timely notification of workplace accidents:

³⁵⁰ *Ibid*, section 15 (3).

³⁵¹ International Labour Organization (2023) "Collective Action for a Safe Commute, Action Manual and Checklist for Employers and Workers in the Garment and Footwear Sector to Enhance Workers Commuting Safety" defines commuting accidents as accidents resulting in death or personal injury occurring on the direct way between the place of work and the worker's principal or secondary residence or the place where the worker usually takes a meal, or the place where worker usually receives his or her remuneration. *International Labour Organization Protocol 155 of 2002 to Occupational Safety and Health Convention No.155 of 1981* defines commuting accidents and treated on par with occupational accidents, occupational diseases, and dangerous occurrences within the framework for recording and notification, however, this equivalence does not extend to the compensation regime.

³⁵² *COIDA*, section 22 (5).

³⁵³ *Ibid*.

³⁵⁴ *Ongevallekommissaris v Santam Versekeringsmaatskappy Bpk* [1965] (2) SA 193 (T).

³⁵⁵ *Ibid*.

³⁵⁶ *Ibid*.

under section 14 of the *WKMC Act*, employers are also required to report accidents resulting in death or injuries to the Labour Commissioner warranting compensation.³⁵⁷ Similarly, section 15 of the *OSH Act* mandates employers to report fatalities within 24 hours and submit a written report within three days to DOSH.³⁵⁸ The overlap between these provisions may lead to administrative data management challenges including loss of documentation especially when everything is done manually. It may also give rise to inspection and investigation fatigue as well as documentation complexity. Employers are likely to face confusion regarding whether an incident is governed by the provisions of the *WKMC Act* or the *OSH Act*, potentially leading to duplicative reports being submitted to both the Labour Commissioner and DOSH. This could result in increased administrative burden and inefficiency, particularly in cases where an incident qualifies for both compensation and safety investigation. Employers must navigate two potentially distinct reporting streams, which could lead to delays or errors in communication between the relevant authorities.

It may be contended that there is also an element of mandate confusion between the role of the Labour Commissioner and DOSH. One of the significant administrative challenges arises from the unclear description of responsibilities between the Labour Commissioner (under the *WKMC Act*) and the DOSH (under the *OSH Act*). Both authorities require reports on the same incidents but with different focuses (compensation versus safety). This overlap can create confusion for employers regarding where to submit their reports, especially when the same incident is relevant to both compensation claims and safety investigations. This ambiguity may result in delays or miscommunication, as employers may be uncertain whether they are complying with the correct authority's requirements, leading to the risk of non-compliance or duplicated reporting.

The stringent timelines for reporting under both Acts, especially the 24-hour fatality report requirement under the *OSH Act* and the three-day reporting window under the *WKMC Act*, may

³⁵⁷ *WKMC Act* [1977] section 14.

³⁵⁸ *OSH Act* [2024] section 15.

be administratively taxing.³⁵⁹ Large organizations with complex reporting structures may find it difficult to gather accurate information within these short time frames, particularly in cases involving multiple injuries or complex incident circumstances. The necessity to report to two different authorities within these tight deadlines can further complicate the situation, especially when the employer is uncertain whether the Labour Commissioner or the Director has priority in receiving the initial report.

Both statutes require comprehensive record-keeping, including detailed documentation of all workplace incidents. For organizations with high turnover rates or large numbers of employees, maintaining accurate registers and ensuring the timely submission of reports may impose significant administrative burdens. If these records are not well maintained, or if reports are delayed, this may result in difficulties for employers when required to provide evidence of compliance. Additionally, the overlap of reporting duties could lead to redundancy in record-keeping, further increasing the administrative load, particularly in large or multi-site organizations.

The overlap between the *WKMC Act* and the *OSH Act* creates multiple administrative challenges for employers, notably due to the duplication of reporting requirements and the ambiguity surrounding the responsibilities of the Labour Commissioner and Director of Occupational Safety and Health. This lack of clarity regarding which authority has the primary mandate to receive and process incident reports can lead to confusion, delays, and inefficiencies in ensuring timely and accurate compliance with both Acts. Employers are left to navigate complex administrative procedures with the risk of non-compliance or miscommunication between the relevant authorities. Addressing these overlaps and clarifying the reporting lines would enhance operational efficiency, reduce administrative burdens, and ensure more effective implementation of both safety and compensation regulations. Whereas in South Africa *COIDA* provides that the Director-General shall investigate all industrial accidents and compile a report on the findings.³⁶⁰ This is illustrated in the *Industrial Health Resource Group*

³⁵⁹ See *WKMC Act* [1977] & *OSH Act* [2024].

³⁶⁰ John Grogan, *Employment Rights* (3rd edn, Juta 2019) 388.

v Minister of Labour case after 13 workers died in a fire at a printing business and thereafter the Department of Labour conducted an investigation.³⁶¹ The affected people, including dependants of the deceased, parents and spouses, asked for a copy of the report.³⁶² But in terms of the department's policy reports cannot be shared with anyone other than the National Prosecuting Authority.³⁶³ However, the court declared that the applicants were entitled, on request to be furnished with a copy of the report.³⁶⁴

Section 6 outlines compensation in the event of a workman's death.³⁶⁵ The compensation amount is calculated based on either 48 months of earnings or a cap of twelve thousand rand, whichever is lesser. However, the provisions in this section could be argued fall short of adequate compensation, particularly when considering the potentially wide-reaching economic impacts on families who lose a breadwinner. The introduction of the *1993 Amendment Act*, which substitutes the amount for compensation with a figure prescribed by the Minister, adds a degree of flexibility to this provision.³⁶⁶

Nevertheless, the fact that the amount payable is still constrained by a ceiling, even after amendments, raises concerns about its adequacy, especially when juxtaposed against the current cost of living. This could lead to a situation where dependants of deceased workers are left with insufficient compensation to meet their needs. On this regard, the *ILO's Convention No. 121* prescribes that compensation for fatal accidents should aim to replace income and offer adequate support to the dependants of the deceased.³⁶⁷ The relatively low cap established under the Act could be seen as a violation of the expectation that compensation should truly restore the financial stability of affected families.

³⁶¹ *Industrial Health Resource Group v Minister of Labour* [2015] 36 ILJ 2547 (GP).

³⁶² *Ibid.*

³⁶³ *Ibid.*

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.*

³⁶⁶ *Workmen's Compensation Amendment Act* [1993].

³⁶⁷ International Labour Organization, *Employment Injury Benefits Convention No 121* [1964].

An inherent issue with the *WKMC Act* lies in the reliance on the Medical Board and Labour Commissioner to resolve disputes related to medical aid. The effectiveness of the Medical Board depends largely on the capacity and competence of its members.³⁶⁸ However, since the Board is constituted primarily by government-appointed members, there are concerns about the objectivity of its decision-making.³⁶⁹ The potential for conflicts of interest given the government's dual role as both the employer and the regulator raises questions about the independence and impartiality of the process.³⁷⁰

The *WKMC Act* stipulates that an employee must notify the employer, or a designated official, for example, foreman, of any work-related injury as soon as practicable, and before leaving employment.³⁷¹ Compensation claims must be pursued within six months from the date of the accident or death. And in cases where the notice is defective or late, proceedings are not barred if the employer knew about the accident from another source or if no prejudice results from the error. Compensation claims may still be accepted up to three years from the date of the incident if the delay was due to reasonable cause.

Employers are obligated to report accidents resulting in a worker's death, absence for three or more days, or injuries warranting compensation to the Labour Commissioner within three days of the employer becoming aware of the incident. In an instance where a worker's death following an accident, the employer must inform the Labour Commissioner.³⁷² The Labour Commissioner is responsible for investigating whether compensation is applicable and identifying the deceased's dependents, informing them of the incident's details, and determining whether they intend to pursue a claim. Failure to comply with these reporting requirements without a valid cause may result in penalties, including fines or imprisonment.

³⁶⁸ See n41.

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*, section 13.

³⁷² *WKMC Act [1977]* section 14.

Section 17 of the *Workmen's Compensation Act*, which establishes a Medical Board for resolving disputes regarding the degree and duration of incapacity, medical treatment adequacy, and assessments conducted under the Act,³⁷³ has significant implications for the protection of employees' rights to compensation. This provision introduces a formalized mechanism to address disputes between employers and employees, ensuring that employees' entitlements to compensation are assessed fairly and transparently.

To sum up, the *Workmen's Compensation Act* aims to address important issues regarding the protection of workers in the event of workplace accidents. However, there are significant gaps in its provisions, particularly in terms of compensation amounts and administrative effectiveness. While the *Act* generally adheres to the objectives outlined in ILO Conventions, its rigidity in determining compensation, the limited flexibility in addressing workers' needs, and potential conflicts of interest in the administrative processes may hinder the full realization of workers' rights to just compensation. Ultimately, to align more closely with international standards and ensure the effective protection of workers' rights, the *Act* would benefit from further reforms, specifically in the areas of compensation caps, dispute resolution mechanisms, the composition of the medical board and broader provisions that better reflect the diverse needs of workers across different industries. The government's role, while crucial, should be balanced with greater transparency and accountability to avoid any conflicts that could undermine the intended purpose of the legislation.

3.7 Conclusion

This chapter was aimed at examining the workmen's compensation systems in both Lesotho and South Africa, highlighting historical developments, current frameworks, and key distinctions in each country. By exploring Lesotho's regulatory complexities and South Africa's comprehensive compensation mechanisms, the chapter sought to provide a nuanced understanding of how these systems function, and the administrative hurdles involved. In Lesotho, the chapter outlined the overlap between the *Workmen's Compensation Act (WKMC*

³⁷³ *Ibid*, section 17.

Act) and the *Occupational Safety and Health Act (OSH Act)*, emphasizing the administrative confusion that arises from the dual reporting requirements. The unclear delineation of responsibilities between the Labour Commissioner and the Director of Occupational Safety and Health leads to delays, compliance risks, and inefficiencies for employers. The stringent reporting deadlines, along with the redundancy in record-keeping, pose significant challenges, particularly for larger organizations. The lack of clarity regarding which authority holds primary responsibility for reporting incidents further complicates the process, requiring urgent attention to streamline procedures and clarify reporting lines. Moreover, there is a need for Lesotho to reassess its statutory cap and consider transitioning towards a dynamic compensation model that accounts for inflation, varying occupational risks, and long-term financial security for injured workers.

Shifting focus to South Africa, the chapter traced the evolution of workmen's compensation, from its early stages in 1914 to the present-day *Compensation for Occupational Injuries and Diseases Act (COIDA)*. The historical overview highlighted key milestones, such as the 1934 Act that made insurance compulsory for employers, and the 1941 revisions that established a state compensation fund. *COIDA*, in its current form, provides comprehensive coverage for workers injured on duty or suffering from occupational diseases, including compensation for temporary and permanent disabilities, medical expenses, and death benefits.

CHAPTER FOUR

CONCLUSIONS AND RECOMMENDATIONS

4.1 Introduction

This chapter presents the conclusions derived from the research undertaken on the realization of the right to compensation for occupational accidents in Lesotho, through a comparative analysis with the Republic of South Africa. It provides a synthesis of the key findings, evaluates the practical implementation of relevant legal frameworks, and identifies institutional, legal, and systemic barriers that hinder the realization of compensation rights. Based on the evidence presented in earlier chapters, the chapter proposes actionable recommendations aimed at improving the effectiveness, inclusivity, and efficiency of the occupational accidents' compensation framework in Lesotho. These recommendations are grounded in international labour standards and comparative best practices drawn from South Africa's more comprehensive compensation regime.

4.2 Overview of Key Findings

The research highlights significant discrepancies in legislative frameworks, administrative efficiency, employer compliance, and worker protections in both countries. Lesotho's compensation system is governed by the *WKMC Act*, which remains largely outdated and fails to provide comprehensive provisions addressing contemporary occupational hazards. This legislative gap has led to numerous deficiencies in ensuring injured workers receive adequate and timely compensation. Its fragmented implementation with the *Occupational Safety and Health Act (OSH Act)* leads to inefficiencies, overlaps, and lack of coordination. Although the *OSH Act* provides a step forward in accident prevention and employer duties, it lacks a strong institutional connection with the compensation regime governed by the *WKMC Act*. These two laws operate in silos, hindering synergy in enforcement and administration. In contrast compensation laws in South Africa is governed by *COIDA*, which offers a more detailed and structured framework aimed at ensuring equitable compensation and medical assistance for employees who suffer work-related injuries or diseases. This is evident that South Africa's approach aligns with international standards including *ILO Convention No.121 on Employment Injury Benefits*, setting a precedent for effective compensation mechanisms.

One of the central challenges identified in Lesotho is the accessibility and efficiency of the claims process. Under the current legal framework, injured workers face procedural delays, bureaucratic hurdles, and limited institutional support, which significantly impede their ability to obtain compensation. The *ILO Recommendation* No. 121 (1964) emphasizes the need for an accessible, well-administered compensation system that ensures prompt benefits to injured workers, yet Lesotho's system falls short of this benchmark. The study finds that in South Africa, the Compensation Fund streamlines claim through digital processing and centralized administration, reducing delays and ensuring injured workers receive financial relief within a reasonable time limit. This efficiency is reinforced by *COIDA*'s statutory provisions, which outline clear procedures for reporting workplace injuries and claiming benefits, preventing unnecessary procedural bottlenecks.

The monetary ceiling established under Lesotho's *WKMC Act* remains severely outdated with compensation amounts fixed at level that fails to account for contemporary economic conditions, inflationary trends, and the rising cost of living. The *Act*, originally designed to provide financial relief for workers injured during the course of employment, has not been sufficiently revised to reflect modern wage structures, medical expenses, nursing care allowances, and the actual economic burden of workplace injuries. As a result, compensation payouts often fall far below what is necessary to ensure injured workers receive adequate medical treatment, rehabilitation, and financial support. Recognizing these deficiencies, the *2024 Workmen's Compensation Regulations* have sought to introduce revised monetary ceilings, addressing some of the inadequacies present in the outdated framework. The aforementioned regulations establish adjusted compensation thresholds aimed at ensuring workers receive more equitable and economically relevant benefits when seeking compensation for occupational injuries. The fixed monetary ceiling of M240,000 for fatal cases and other capped benefits often fall short of adequately compensating victims of severe injuries or long-term occupational diseases. However, the adjustments are considered not to favour high-earning employees, fail to factor inflation projections and rehabilitation costs. These financial limitations undermine the goal of full rehabilitation and socio-economic reintegration.

The study has further revealed that the *WKMC Act* excludes various vulnerable worker groups such as casual workers, domestic workers, outworkers, and family employees. This exclusion leaves a great portion of the workforce lacking access to legal compensation mechanisms. Whereas in South Africa, *COIDA* defines an employee to be workers in formal employment, regardless of the form of the service contract or how remuneration is quantified.³⁷⁴ This also includes casual employees, directors working under a contract of service, curators acting on behalf of disabled employees and dependants of deceased employees in instances of fatalities.³⁷⁵ In particular, inclusion of domestic workers is illustrated by the landmark constitutional case of *Mahlangu & Another v Minister of Labour and Others*, significantly shaped the trajectory of worker protection under *COIDA*.

Lesotho's reliance on the individual employer liability model for workers' compensation places the fiscal responsibility for compensating injured employees solely on individual employers, rather than pooling resources through a centralized compensation fund or insurance-based system. While this model theoretically ensures that employers are held accountable for workplace injuries, in practice, it often creates significant challenges, both for employers and for injured workers seeking financial relief. One of the fundamental issues with this approach is that many employers, particularly small and medium-sized enterprises (SMEs), lack financial capacity to fulfill compensation obligations when workplace accidents occur. Given the absence of a collective or state-backed insurance system, the burden of medical costs, lost wages and rehabilitation expenses falls directly on employers, many of whom operate with limited financial reserves. This leads to a high rate of non-compliance, with many employers either delaying compensation payments or outright denying claims due to financial constraints or reputational cost. South Africa on the other hand, operates a state-managed insurance mechanism, ensuring that affected employees receive compensation without placing the financial burden directly on individual employers. The Compensation Fund, administered by the Department of Employment and Labour, functions as a national insurance system funded through employer contributions. Employers across industries are required to register and pay

³⁷⁴ *COIDA*[1993] section 1.

³⁷⁵ *Ibid.*

annual levies based on a percentage of their payroll, with contributions pooled into a centralized fund that finances compensation payments. The structure ensures that workers receive financial relief without relying on their employer's ability to pay.

One of the most critical shortcomings in Lesotho's employment injury compensation system lies in its failure to comprehensively address post-injury rehabilitation, reintegration, and long-term support for injured workers. The current legal and institutional framework is largely limited to the provision of financial compensation for temporary or permanent disability, without a holistic approach that considers the broader socio-economic and psychological consequences of occupational injuries. This narrow interpretation of employment injury compensation neglects the vital process of medical rehabilitation, vocational retraining, psychosocial support, and structured return-to-work programs, all of which are essential for restoring injured workers to their previous or alternative gainful employment.

In contrast, South Africa demonstrates a progressively inclusive approach to employment injury compensation. Under *COIDA* and associated policy frameworks, there is a growing recognition of the need for vocational rehabilitation and social reintegration services. South Africa has introduced programs that offer re-skilling, workplace adaptations, and counseling support to facilitate the reintegration of injured workers into the workforce. These initiatives reflect an understanding that effective compensation is not only about monetary relief but also about restoring human dignity, productivity, and long-term livelihood security. The disparity between the two jurisdictions underscores a deeper issue wherein, Lesotho's system fails to meet international best practices and standards, which emphasizes the importance of comprehensive rehabilitation and reintegration mechanisms. The absence of these supports in Lesotho exacerbates the vulnerability of injured workers, often relegating them to long-term unemployment, poverty, or social exclusion.

4.3 Recommendations

In light of the findings from this comparative analysis of the right to compensation for

occupational accidents in Lesotho and South Africa, it is evident that while Lesotho has made commendable efforts to protect workers through its compensation framework. However, significant gaps remain in legislation, institutional infrastructure, implementation capacity, and social integration mechanisms. To enhance the attainment of the right to compensation in Lesotho, a multi-dimensional and progressive approach is required. The recommendations below are grounded in comparative legal analysis, international labour standards, and socio-economic imperatives.

i. Comprehensive Legislative Reform of the Workers' Compensation Framework

The foundational legislative instrument governing workers' compensation in Lesotho, the *Workers' Compensation Act*, of 1977 has remained largely unchanged for decades and is no longer fit for purpose in a modern labour market. In contrast, South Africa has continuously revised its legal framework, notably through the *Compensation for Occupational Injuries and Diseases Act* (COIDA) and its subsequent amendments. Therefore, Lesotho should undertake a full legislative overhaul to align its laws with international standards and contemporary challenges. The new legislation should incorporate clear definitions of employment injury, and occupational diseases, and cover both formal and informal sector workers. It must also expand the categories of compensable harm to include psychological trauma, cumulative injuries, commutative accidents, and diseases arising from long-term exposure in hazardous environments. The revised law should also introduce mechanisms for vocational rehabilitation, return-to-work policies, and social reintegration services as integral aspects of compensation. Moreover, the legislative reform must ensure the independence and efficiency of the administrative body charged with overseeing compensation claims, while also embedding transparency, accountability, and responsiveness to the needs of injured workers.

ii. Integration of Vocational Rehabilitation and Social Reintegration Programs

An effective compensation system must not only provide financial redress but must also empower injured workers to regain their livelihood and dignity. South Africa has made significant strides in this regard by integrating vocational rehabilitation, workplace reintegration, and psychosocial support into its compensation system. Therefore, Lesotho

should develop a comprehensive national strategy for vocational rehabilitation, tailored to the unique socio-economic context of Lesotho. This strategy should include vocational assessment and counselling to determine suitable re-employment opportunities. Furthermore, it should include workplace modification subsidies to accommodate disabled employees and employer incentives for hiring or re-integrating previously injured workers. These initiatives would not only reduce the long-term economic burden on the state and injured workers but also contribute to greater productivity and social inclusion.

iii. Formal Recognition and Protection of Informal and Precarious Workers

Lesotho's economy is characterized by a large informal sector, which remains outside the protective scope of the current compensation system. This exclusion leaves a substantial portion of the workforce vulnerable to economic destitution following workplace injuries. By contrast, South Africa through judicial decisions has extended the scope of protection to domestic workers, informal sector employees and casual employees. Resultantly, Lesotho must undertake similar reforms to formally recognize and integrate domestic workers and informal workers into the employment injury benefits system. This would entail a graduated contribution scheme for informal enterprises and self-employed workers, simplified registration processes to reduce bureaucratic barriers, public awareness campaigns to inform informal workers of their rights and how to claim them as well as collaboration with cooperatives, informal associations and community-based organizations to act as intermediaries between the workers and the Compensation Trust Fund. Such an expansion of coverage would fulfil Lesotho's Constitutional obligations under section 29 and its international commitment under the ILO Conventions.

iv. Strengthening Monitoring, Evaluation and Legal Recourse Mechanisms

A robust system of monitoring and evaluation (M&E) is essential for assessing the performance and impact of the compensation system. Lesotho should establish clear benchmarks and indicators, such as claim processing time, coverage rates, return-to-work outcomes, and beneficiary satisfaction levels. Regular audits and impact assessments should be conducted by independent bodies, and the findings made public to enhance accountability. In addition, there

should be a provision for periodic policy reviews, taking into account labour market changes, technological developments and lessons learned from implementation. This adaptive governance approach would ensure that the system remains responsive to evolving needs.

Moreover, the legal framework must provide injured workers with accessible, affordable, and timely avenues for challenging Compensation Fund decisions including through labour courts or tribunals such as the Directorate of Dispute Prevention and Resolution (DDPR). To enhance the enforceability and justiciability of the right to compensation for occupational injuries in Lesotho, the dispute resolution architecture must be strengthened in both form and function. To this end, the mandate of DDPR should be expanded by legislative amendment or regulatory directive to explicitly include jurisdiction over employment injury and occupational disease compensation disputes. This jurisdictional clarity must be complemented by a targeted programme of capacity building, designed to equip arbitrators with specialized training in occupational safety and health laws and employment injury compensation laws. Such training should draw on both domestic and international legal frameworks. Furthermore, a clear appellate structure must be embedded within the framework to allow for judicial oversight and the development of precedent, ensuring consistency in decision-making and enhancing legal certainty. Such a structure would also safeguard administrative arbitrariness and foster confidence in the system among workers and employers alike.

v. *Mandatory Insurance Scheme*

Given the systemic shortcomings inherent in Lesotho's current employer liability model, there is a critical need for comprehensive policy reform to ensure the effective realization of workers' right to compensation for occupational accidents. The employer liability system places the burden of compensation directly on individual employers, which often leads to inconsistencies in the enforcement of such rights, delayed payments, and protracted legal disputes. It also disproportionately affects vulnerable workers employed by small or financially unstable employers who may be unable to fulfil their compensation obligations. To address these deficiencies, Lesotho should consider transitioning towards a more sustainable and equitable framework. One viable option is the introduction of a mandatory employment injury scheme,

funded through employer contributions and administered by the Ministry of Labour and Employment's central authority. This approach, as adopted in South Africa through the implementation of *COIDA* has proven to be effective in ensuring timely and uniform compensation while spreading the financial risk across a wider base. Such a scheme would provide a more predictable and reliable safety net for injured workers while reducing the financial burden on individual employers and minimizing adversarial litigation processes.

Alternatively, Lesotho could improve the existing Workmen's Compensation Trust Fund, established by *Legal Notice 41* of 1985. While the Fund was a step in the right direction, it remains underutilized as it was mainly meant to administer compensation monies emanating from the Republic of South Africa, due and payable to Basotho who sustained injuries in South Africa. Strengthening this Fund would involve consistent employer contributions, improved administrative capacity, transparency in Fund management and regular actuarial assessments to ensure sustainability. By shifting towards a collectively funded system, whether through a revamped trust fund or a formal insurance-based model, Lesotho can significantly improve worker protection, reduce the prevalence of compensation related disputes and enhance the overall efficiency and fairness of the employment injury compensation system.

vi. Monetary Ceiling Adjustments

A fundamental determinant of the effectiveness of the right to compensation for occupational accidents lies in the adequacy of benefits provided, which is inextricably linked to the monetary ceilings established under national law or administrative practice. In Lesotho, the current statutory compensation framework prescribes fixed monetary ceilings which, while originally designed to provide financial predictability and fiscal control, have in practice become a barrier to adequate compensation due to inflationary erosion, stagnant wage thresholds, and outdated actuarial assumptions. To ensure the right to compensation is meaningful and reflective of the socio-economic realities faced by injured workers and their dependents, Lesotho must undertake a comprehensive reform of its approach to monetary ceilings, grounded in the principles of adequacy, equity and sustainability. In alignment with the *ILO Convention No.121 on employment Injury Benefits* compensation should be related to the worker's previous

earnings and to ensure income replacement. Therefore, monetary ceilings should be indexed to a percentage of actual earnings, rather than being capped at a fixed amount. Where ceilings are necessary to ensure system sustainability, they must be dynamic and responsive to changes in the national wage structure and cost of living indicators. Moreover, the monetary ceiling structure should be differentiated based on the nature and severity of the injury, leading to the abolishment of lump sum ceilings.

vii. Ratification of Employment Benefits Conventions

In order to align Lesotho's employment injury compensation framework with international best practices and enhance the effectiveness of the right to compensation for occupational accidents, it is imperative that the country commit to the ratification and domestic implementation of core International Labour Organization (ILO) instruments. The absence of ratification of key ILO conventions limits Lesotho's ability to draw upon internationally recognized standards in the design, delivery, and monitoring of employment injury benefits. Ratification would not only signal a commitment to upholding decent work principles but would also serve as a normative and institutional guide for legislative and policy reforms in this critical area of social protection.

Foremost among the conventions requiring urgent ratification is the *Employment Injury Benefits Convention, 1964 (No. 121)*, which outlines comprehensive standards for the protection of workers against the consequences of accidents and occupational diseases suffered during the substance of an employment contract. In particular, Article 26 (1) of the Convention, obligates member states to provide rehabilitation services designed to prepare a disabled person for the resumption of their previous work activity before the accident or if this is not possible, the most suitable alternative work having regard to his aptitudes and capacity and to take measure to further the placement of disabled persons in suitable employment. *Convention No. 121* also obligates ratifying member states to provide a coordinated system of benefits that include medical care, cash benefits for temporary and permanent incapacity, and survivors' benefits, all calibrated to the injured worker's earnings. Its ratification would oblige Lesotho to transition from a limited, lump-sum-based compensation model to a more robust, earnings-related system that ensures adequacy, fairness, and sustainability. Furthermore, *Convention No. 121* encourages the prevention of occupational risks and the promotion of rehabilitation and reintegration, which are essential components of a modern, worker-centric compensation

regime.

In addition, Lesotho should consider ratifying the *Social Security (Minimum Standards) Convention*, 1952 (No. 102). This convention establishes minimum standards across nine branches of social security, including employment injury benefits, and introduces critical principles such as benefit adequacy, periodic adjustment, and the right of appeal. Ratifying *Convention No. 102* would provide Lesotho with a broader framework for embedding employment injury protection within a universal and integrated social security system, thereby promoting coherence between compensation for work-related injuries and the overall social protection floor.

viii. *Leveraging Technology to Enhance the Efficiency of the Compensation System in Lesotho*

This dissertation recommends that the strategic use of technology as a transformative tool to address the operational inefficiencies and limited accessibility of Lesotho's employment injury compensation system. Drawing lessons from South Africa's Compensation Fund and its recent adoption of digital infrastructure, Lesotho can develop a robust and accessible digital ecosystem to improve the realization of the right to compensation for occupational accidents. Central to this recommendation is the establishment of a comprehensive digital claims management system that digitizes the compensation process from claim submission to adjudication and payment. Such a system should mirror South Africa's CompEasy platform introduced under *COIDA*. CompEasy is designed to replace the older manual systems with a user-friendly, end-to-end digital portal. This system can significantly reduce administrative delays, improve data accuracy, and enhance transparency by allowing real-time claim tracking and status updates for both claimants and administrators. To increase accessibility, especially for workers in remote and rural areas, the system should be mobile-responsive and cloud-based, to enable claimants to access services via mobile phones.

ix. *Strengthening Institutional Arrangements for Effective Compensation System in Lesotho*

A fragmented or under-resourced institutional structure fundamentally impedes the

effectiveness, accessibility, and responsiveness of the compensation regime for occupational accidents. Fragmentation not only breeds administrative inefficiencies but also undermines accessibility, legal certainty, and the timely delivery of benefits to injured workers. As such, this dissertation recommends urgent restructuring, professionalization, and decentralization of institutional arrangements to promote a more coherent and responsive compensation system in Lesotho. Specifically, it is recommended that the WKMC Trust Fund be restructured under the leadership of a director, mirroring the organizational design of South Africa's Compensation Fund. The restructured Fund should be governed by a clearly defined institutional hierarchy with specialized units dedicated to claims adjudication, legal compliance, rehabilitation services, medical oversight, and finance. This move towards institutional clarity would not only enhance administrative efficiency but also promote accountability, continuity in policy implementation, professional independence and advance the realization of the right to compensation.

Conclusively, these recommendations aim to transform Lesotho's workers' compensation system from a narrow, reactive model into a dynamic, inclusive, and rights-based framework. Drawing lessons from South Africa, Lesotho must pursue legal reform, institutional strengthening, social reintegration, and broader coverage to ensure that every worker who suffers an occupational injury receives not only compensation but also the opportunity to rebuild their life. Only then can the right to compensation for occupational accidents be truly meaningful, effective, and aligned with constitutional and international labour standards.

x. Harmonizing Prevention and Compensation Frameworks

To address the duplication and mandate ambiguity between WKMC Act and OSH Act, it is recommended that the government of Lesotho should adopt an integrated approach to workplace incident management, under the central oversight of the Director-General responsible for the administration of the labour and employment sector. This would ensure strategic coordination, policy coherence, and accountability across both prevention and compensation functions.

Bibliography

Caselaw

Assign Services (PTY) Ltd v National Union of Metalworkers of South Africa & Others [2018] ZACC 22.

Bartonshill Coal Company v Reid & United Kingdom House of Lords [1858] UKHL 3_ Macqueen 266.

Department of Labour: The Compensation Commissioner v Botha [2022] 326/2020 ZASCA. 38

Director-General Department of Labour and Another v Nazeem Mallie & Another (22684/09) 2013 ZAWCHC 124.

Industrial Health Resource Group v Minister of Labour [2015] 36 ILJ 2547 (GP).

N K v Minister of Safety and Security [2005] (6) SA 419 (cc).

Langemaat v Minister of Safety and Security & Others [1998] 19 ILJ 240 (T).

Mahlangu and Another v Minister of Labour and Others (CCT306/19) [2020] ZACC 24;2021 (1) BCLRI (CC); [2021] 2 BLLR 123 (CC): [2020] 42 ILJ 269 (CC):2021 (2) SA 54 (CC) (19 November 2020).

MEC for Education, Western Cape Province v Strauss [2008] (2) SA 366 (SCA).

Mkize v Martens [1914] AD 382.

Odayar v Compensation Commissioner [2006] (6) SA 202 (N).

Ongevallekomissaris v Santam Versekeringsmaatskappy Bpk [1965] (2) SA 193 (T).

Paul Nakalebe v Thabang Kholoane [2014] (LC 61/11) LSLC 19.

Priestley v Fowler (1837) 150 ER 1030.

Ramohafa v Labour Commissioner [2022] C of A (CIV) No.17/2022 LAC/REV/05/2020.

Rand Mutual Assurance Company Ltd v Road Accident Fund (484/2007) [2008] ZASCA 114 (25 September 2008).

Revenue Service of Lesotho v Baile Dube & 7 Others [2023] LSHC 170.

Venter v Compensation Commissioner [2001] (4) SA 753 (T).

Zelolo v Anglo-American Platinum Mogalakwena Mine [2025] 9395/2022 ZALMPPHC 72.

Statutes

Lesotho Legislation and Policy Framework

Labour Act No.3 [2024]

National Occupational Safety and Health Policy of the Mountain Kingdom of Lesotho [2020]

Occupational Safety and Health Act No.4 [2024]

Workmen's Compensation Act No.13 [1977]

Workmen's Compensation Trust Fund Regulations No.42 [1985]

Workmen's Compensation Amendment Act [1993]

Workmen's Compensation Regulations No.5 [2024]

Republic of South Africa Legislation

National Occupational Health and Safety [2003]

Compensation for Occupational Injuries and Diseases Act 130 [1993]

International Instruments

International Labour Organization Constitution (1919)

International Labour Organization Declaration on Social Justice For Fair Globalization (2008)

International Labour Organization Declaration of Philadelphia (1944)

International Labour Organization Convention No.102 Concerning Social Security (Minimum Standards) [1952]

International Labour Organization Convention No.121 on Employment Injury Benefits (1964)

International Labour Organization Convention No.155 on Occupational Safety and Health (1981)

International Labour Organization Convention No.19 on Equality of Treatment (1925)

International Labour Organization Protocol of 2002 to the Occupational Safety and Health Convention(1981)

United Nations Vienna Convention on the Law of Treaties (1969)

Books

- Benjamin Mason Mever and Lawrence O. Gostin (eds), “Human Rights in Occupational Safety and Health,” *Human Rights in Global Health, Rights-Based Governance for a Globalizing World* (Oxford University Press 2018)
- Collier, D. *Labour Law in South Africa: Context and Principles* (LexisNexis 2020)
- Dugard J. *International Law: A South African Perspective* (3rd edn, Juta and Company Ltd 2005)
- Du Plessis, J.V. & M.A. Fouche, *Practical Guide to Labour Law* (8th edn LexisNexis 2014)
- Du Plessis, J.V. *Workplace Safety and Legal Challenges* (Oxford University Press 2015)
- Farrell, J. *Theories of Accident Causation* (Cambridge University Press 1998)
- Grogan John, *Employment Rights* (3rd edn Juta Company 2019)
- Heinrich, W. H. *Industrial Accident Prevention* (John Wiley & Sons 1931)
- Malone, *Plant & Little Workers' Compensation and Employment Rights: Cases and Materials* (2ed, 1982) 2, in reference to the case of *Priestley v Fowler* (1837) 150 ER 1030
- Neethling, J. & Potgieter, L. *Employer Liability in Occupational Accidents* (Juta Law Books 2020)
- Neethling, J. & J. Potgieter, L. *Law of Delict* (7th edition, Lexis Nexis: 2001)
- Poulter, S. *Legal Dualism in Lesotho* (2nd edn, Morija Sesuto Book Depot 1999)
- Smith J. *Near Misses and the Iceberg Theory in Industrial Safety* (Palgrave Macmillan 2005)
- Van Eck Stefan, Pamhidzai Bamu & Chanda Chungu, “The International Labour Organization and its Standards-Related Activities: A Century of Achievements and Challenges” in Corinne Vargha (ed), *Celebrating the 100 Years on Reflections on Labour Law from a Southern African Perspective* (Juta and Company Ltd, Cape Town 2020)

Journal Articles

- Azubuike, P. I & A.P. Mgbamoka, “A Comparative Analysis of the Present State of Employees Compensation Laws in Nigeria with Ghana, South Africa, and India” (2023) 8 Novena University Law Journal <<https://www.researchgate.net>>

DeCamp, W. & Herskovitz Kevin, “The Theories of Accident Causation” *Security Supervision and Management* (2015) pp 71-78

<https://www.researchgate.net/publication/286168094_The_Theories_of_Accident_Causation>

Falali Meknassi, R. “Extending Social Security in the Developing Countries: Between Universal Entitlement and the Selectiveness of International Standards” (2006) 27 *Comparative Labour Law & Policy Journal* 207 <<https://www.heinonline.org>>

Fultz, E. & Bodhi Pieris, "Compensation for Employment Injuries in Southern Africa: An Overview of Schemes and Proposals for Reform," *International Labour Review* 138, No. 2 (1999) pp 171-194

Fultz R. and Pieris N. *Comparative Labour Law and Social Security* (Routledge 2015) 112

Lebusa, T. “Evaluating the Adequacy of Compensation Ceilings: A Case Study of Lesotho's Social Security Policy” (2023) 31(1) *Lesotho Law Journal* 56-78

Makhele, L. “Comparative Analysis of Worker Compensation Systems in Southern Africa: Focus on Lesotho and South Africa” (2022) 66(2) *Journal of African Law* 245-267

Makhele, L. “The Impact of Monetary Ceilings on Occupational Injury Claims in Lesotho” (2023) 29(2) *International Journal of Occupational Safety and Ergonomics* 321-335

Masoebe, D. *Contemporary Challenges in Occupational Safety and Health in Lesotho* (University Press 2023)

Molapo, T. “Challenges in Implementing Occupational Health and Safety Regulations in Lesotho” (2019) 23(3) *African Journal of Labour Studies* 412-428

Mosito, K. “Comparative Effectiveness of Occupational Disease Compensation in Lesotho and South Africa” (2023) 24(1) *Southern African Journal of Social and Economic Policy* 89-105

Motelle Sephooko, “Labour Migration from Lesotho to South Africa: Changing Patterns and Policy Implications” (2012) 5 (1) *Prabandhan Indian Journal of Management* <<https://www.researchgate.net>>

Motsoari, M. “The Need for Reform: Analyzing Lesotho's Workmen's Compensation Act of 1977” (2018) 26(2) *Lesotho Law Journal* 123-145

Myburgh, P. Smit, N., & Van Der Nest, D. “Social Security Law: General Principles” (2020) *LexisNexis South Africa*

Ntoi, L. “Analyzing the 2021 Lesotho National Social Security Policy: Implications for Worker

Protection” (2022) 19(3) *Journal of Social Policy in Africa* 278-295

Ramutloa, L. “Institutional Frameworks for Worker Compensation: A Comparative Study of Lesotho and South Africa” (2021) 42(3) *Comparative Labor Law & Policy Journal* 567-589

Tshoose C. “Appraisal of Selected Themes on the Impact of International Standards on Labour and Social Security in South Africa” (2021) 24 *Potchefstroom Electronic Law Journal* <<https://www.saflii.org/za/journals/PER/2020/59.pdf>>

Internet Sources

International Labour Organization, “Building Modern and Effective Labour Inspections Systems” (2011) <<https://www.ilo.org>>

International Labour Organization Code of Practice, Safety and Health in Construction (2022) <<https://www.ilo.org>>

International Labour Organization, “Essentials for a Successful Employment Injury Insurance System, a Practical Guide on Policy, Institutional Governance, Legislation, Administration and Sustainable Finance” (2021) <<https://www.ilo.org/publins>>

International Labour Organization, The Encyclopedia of Occupational Health and Safety, “Theory of Accident Causes” (4th edn Geneva 1998) <https://www.ilo.org/safework_bookshelf/English>

Machida, S. “Strengthening the Role of Employment Injury Schemes to Help Prevent Occupational Accidents and Diseases” (International Labour Organization 2013) <<https://www.ilo.org>>

Ruhukya, Harold “The Role of International Labour Standards in Decision-Making on the Rights of Vulnerable Groups in Botswana” <<https://www.southernafricalitigationcentre.org>>

Saha Tushar Kanti & Lukman Abdulrauf, “Introductory Note on the 1993 Constitution of Lesotho” (Lesotho Country Report) <<https://www.icla.up.ac.za>>

Conference Papers

Ken Oliphant & Gerhard Wagner “Employers’ Liability and Workers’ Compensation” (Insurance Law Conference, Vienna, August 2012)

Thesis

Khembo Loness, “Decent Work in Malawi: Social Security: Extension of Social Insurance to all Workers” (Master of Laws Thesis, University of Cape Town 2015)

Masimola Gcinithemba, “Assessment of Stakeholders’ Awareness of the Construction Health and Safety Regulations on Construction Sites In South Africa” (master’s degree dissertation, University of Witwatersrand 2018)

Spoor Alexander, “A Consideration of the Fault Standard in a Claim for Increased Compensation Under S 56(1) of the Compensation for Occupational Injuries and Diseases Act (COIDA)” (Master of laws thesis, University of Cape Town 2016)