

**OCCUPATIONAL HEALTH AND SAFETY AND INDUSTRIAL RELATIONS IN
THE SOUTH AFRICAN CONSTRUCTION INDUSTRY: CASE STUDIES OF
SELECTED CONSTRUCTION FIRMS IN GRAHAMSTOWN**

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ABSTRACT

The construction industry is one of the most dangerous industries in the world, with many workplace fatalities every day. The existence of legislation that governs Occupational Health and Safety (OHS) is an intervention to ensure that all governments, employers and employees play their part in establishing and implementing policies that will help secure healthy and safe working environments. The study is qualitative and with the help of an interview guide, semi-structured interviews were used to collect the data. The respondents were selected using purposive and snowball sampling methods. Ten managers from ten (five small, five large) construction firms, two employees from each firm, and the OHS inspector from the Department of Labour in Grahamstown were interviewed. Having explored management's practices, communication methods, training and distribution of information, employee representation and participation, and industrial relations, several conclusions were reached. During the study it was found that there are a number of obstacles that are hampering effective OHS in the construction industry. Some of these include; management's lack of commitment to a participatory approach in OHS decision-making, limited resources to invest adequately in OHS, and the lack of sufficient trade union involvement. In addition, we know very little about OHS in the construction industry, and the mere existence of OHS legislation does not help reduce the risks associated with construction work, especially when there is a shortage of skilled personnel to enforce the legislation and regulations.

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In Loving Memory of:

My Grandmother

Mrs M.G. Nene

27 July 1932 - 29 June 2014

And my best friend

Ms S.B. Khumalo

14 September 1992 - 8 December 2014

DECLARATION STATEMENT

I declare that this work is my own and that all the sources that I have drawn from to aid in the development of my argument in this research study are accurately acknowledged. It is being submitted for the Master of Social Science degree at Rhodes University, Grahamstown. It has not previously in its entirety or in part been submitted at any university in order to obtain an academic qualification.

Sinenhlanhla Sindisiwe Nene

16 February 2015

ACRONYMS

BCAWU	Building Construction and Allied Workers Union
COSATU	Congress of South African Trade Unions
COIDA	Compensation for Occupational Injuries and Diseases Act
DSTI	Daily Safety Task Instruction
ECMBA	East Cape Master Builder Association
GDP	Gross Domestic Product
ILO	International Labour Organisation
IR	Industrial Relations
LRA	Labour Relations Act Safety
MOSA	Machinery and Occupational Act
NUMSA	National Union of Metalworkers of South Africa
OHS	Occupational Health and Safety
OHSA	Occupational Health and Safety Act
PPE	Personal Protective Equipment
PWC	PricewaterhouseCoopers
STATS SA	Statistics South Africa

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1

INTRODUCTION

1.1 Field of Research

The study is about occupational health and safety (OHS) and industrial relations in the South African construction industry. Case studies of selected construction firms in Grahamstown were used. Having found that the mere existence of OHS legislation is not helping with the reduction of risks or accidents in the workplace, the study investigated the problems that prevent or hinder the advancement of OHS implementation. One of the most important things that were looked at was management practices as required by the law; to provide a safe and healthy working environment. Other things that were looked at were the industrial relations practices, as well as employment methods, the impact of OHS legislation on profits, and informality as a coping strategy to either absorb or avoid certain aspects of the legislation. Seeing that this is a joint effort between employers and employees, it is also their (employees) duty to ensure that they do not do things that would jeopardise their health and safety. Hence, the study also looked at whether their behaviour reflects what the law requires of them. In addition, to promote a culture of prevention and co-operation amongst workers, representation and participation in OHS decision-making is essential.

1.2 Context of the Research

Every year there are millions of people that get ill, are disabled and even die because of being exposed to workplace risks and hazards (Alli, 2001: 7). The limited availability of accurate and reliable statistics leads to two problems: (1) We cannot know the real extent of the problem because in many cases, workplace incidents are not reported for reasons that will be elaborated up on in chapter 2 (2) (Department of Labour, 2003: 5; Chhokar, 1987: 169). (2) There is also limited and up-to-date research on OHS, particularly in the construction industry. The severities and the ripple effect of workplace incidents cannot be over simplified

because not only are the costs to the employer potentially enormous and may dent the organisation's profits, but there are also costs to the employee (Alli (2001: 7), Department for Works and Pensions (2006: 5), Lewis and Thornbory (2010: 1); McGuire (2012: 1), Sutherland (2000: 2-3), Roughton and Mercurio, (2002: 9). The employee may lose their working capacity and the effect on the families of those who lose their breadwinners due to workplace incidents, is terrible. The existence of good legislation has proven that it means nothing if there is no joint effort between the state, employers and employees to solve this deadly problem.

1.3 Construction Industry

The construction industry is one of the most dangerous sectors in the world, at the same time; it is one of the most financially lucrative. According to a report released by professional services network PricewaterhouseCoopers, in South Africa, it is a multi-billion Rand industry and it is an integral part of government's attempt to improve the country's infrastructure for future investment (PricewaterhouseCoopers, 2013: 8). This was evident with the 2010 FIFA World Cup (PricewaterhouseCoopers, 2013: 8). In addition, according to Statistics South Africa in their quarterly labour force survey, the construction industry is also one of the biggest employers, after Community and Social services and Trade industries (2013: viii). The South African construction industry is one of the largest, having employed 59 000 people by the end of 2013 (2013: viii). By the third quarter of 2014, it was one of the biggest employers, having employed 99 000 people (Statistics South Africa, 2014). The size of the construction industry is the reason why its records show that "work-related deaths, occupational diseases and injuries claims absorb a significant portion of the Gross National Product (GNP)" (Windapo and Oladapo, 2012: 433-434).

Construction is important no matter how big or small. We have to understand why such an important industry continues to be in the headlines for injuries and fatalities.

1.4 Research Setting

The research was conducted in Grahamstown, Eastern Cape, South Africa. Plagued by issues such as poor infrastructure, a high number of unemployed people and maladministration in the municipality, Grahamstown can be seen as an odd place to conduct research. However, considering the fact that there is always a need for construction work to be done, this location was identified as having a fairly healthy construction industry, with several developments taking place. Regarded as a student town, the demand for safe and decent accommodation is always there, some of the buildings are old and need to be revamped, some need to be partially or completely demolished, and more establishments are being introduced to the small town.

1.5 Research Objectives

The primary objective of this research is to understand occupational health and safety and industrial relations in the South African construction industry through case studies of selected construction firms in Grahamstown. The secondary objectives are:

- a) Evaluating the practices of management regarding their role in OHS matters (in the context of the provisions of OHSA) and how this affects the industrial relations procedures and practices of the enterprise.
- b) Comparing employees' understanding of their role in OHS matters with the duties of employees contained in OHSA.
- c) Identifying the challenges faced by management when implementing an OHS policy.
- d) Assessing the role of trade unions in OHS matters in the company by assessing how well they represent their members' interests with regard to the health and safety policy.
- e) Establishing whether management and workers agree that there are positive aspects to implementing an effective OHS policy at the company.

1.6 Methodology

The research is qualitative and the philosophical assumption underpinning it is an interpretive approach. It was appropriate for the study because the study is concerned with "stories and accounts, including subjective understandings, feelings, opinions and beliefs" (Matthews and Ross, 2010: 142). These are of employers' and employees' perceptions, understanding and

experiences of OHS legislation. The respondents were selected using two types of sampling. Firstly, purposive sampling, allowed for the selection of participants on the basis of their knowledge of the research topic (Matthews and Ross, 2010: 225-226). The subjects for purposive sampling will be representatives from the Department of Labour in Grahamstown and the Eastern Cape Master Builders' Association.

The second type that was used was snowball sampling, whereby the researcher is referred by respondents to others that may be familiar with the research topic (Matthews and Ross, 2010: 162). This was the case with the managers and employees on construction sites, who had knowledge of other sites and other managers and employees who could assist with the research. Semi-structured interviews were used, which allowed the researcher to "introduce topics or questions in different ways or orders as appropriate for each interview" (Matthews and Ross, 2010: 221; see also Tracy, 2013: 139). The respondents were also encouraged to answer the questions in their own way, as opposed to having their answers conform to pre-existing categories (Matthews and Ross, 2010: 221).

1.7 Summary of the Chapters

Chapter 1 is the foundation and the introduction to the research topic. This chapter will be looking at the following; the context, the field of the research, the methodology, the research objectives and the justification of why the construction industry, and the research setting. By looking at the fore-mentioned, this chapter aims to give an overview of the discussion in the study that aims to answer the research question.

Chapter 2 which is divided into three sections, is the review of the literature that was consulted to analyse the current state of OHS. Firstly this chapter looks at the severity of workplace incidents and how they have a negative effect on profits, the economy and the livelihoods of workers and their families. By narrowing the discussion down to South Africa, the history of OHS is briefly looked and then current OHS legislation is analysed in the second section. Finally, the chapter then looks at the construction industry in general and then in South Africa. By looking at the current state of OHS (which is poor) in the South African construction industry, the third and final section of the chapter aims to answer the main research question.

Chapter 3 is the methodology chapter, whereby the methods and procedures that were used for the research are explained in detail. Firstly, this chapter looks at the methodological orientation of the research that was appropriate for this study. Secondly, the methods of choosing the appropriate respondents for the study are identified and the respondents are listed. Thirdly, the obstacles that were encountered during the study were listed and how they were overcome.

Chapter 4 is a discussion of the findings of the study. Having found that even though there are no reports of serious or deadly accidents in the Grahamstown construction industry, there are a number of problems that plague the effectiveness of OHS legislation. From management's side; the limited resources to invest adequately on OHS, the limited knowledge of OHS legislation and the unwillingness to adopt a more participatory approach with their employees, are some of those problems. From the employees' end, it was the lack of commitment to their obligations as required by the law, very limited knowledge about OHS legislation, and the lack of trade union participation, were identified as being a problem. From the state's side, it was clear that there is a very serious shortage of qualified staff (inspectors) to ensure that legislation is adhered to. Because of this, amongst other things it was found that there was a lack of effective monitoring of firms. This also means that there were firms that were getting away with not adhering to OHS legislation.

Chapter 5 is the concluding chapter, whereby the findings are summarized and recommendations are given. Some of the findings as mentioned in chapter 4, included the fact that there are very few qualified people to man the enforcement of OHS legislation. This makes it even harder to monitor everyone. Not only is it an administrative burden for employers to adhere to legislation, but financially it is also a problem, especially because no serious accidents were reported, thus making investing in OHS, "unnecessary". Some of the recommendations included that government should make means to make it easier for firms, especially the small ones, to be able to afford to adequately invest in OHS measures.

2

AN OVERVIEW OF THE STATE OF OCCUPATIONAL HEALTH AND SAFETY

2.1 Introduction

Drawing on the relevant literature, this chapter provides an overview and an analysis of several aspects regarding the state of OHS globally and in the South African construction industry. The chapter is divided into three sections: the first will expand on why OHS needs attention by looking at the statistics and the severity of workplace accidents and diseases, as well as the negative impact they have on employers, employees, families of those affected, and the economy. The second part is a review of the legislative framework that governs OHS in South Africa and the various statutory frameworks before and after 1994, highlighting the main provisions. Lastly, this chapter looks at the construction industry in general as one of the most dangerous sectors and analysing the various OHS aspects that affect the industry.

2.2 Key Features of Occupational Health and Safety

Annually, there are millions of people world-wide that are affected by workplace hazards. As a result, they are either permanently disabled or they are left chronically ill from diseases that are contracted while at work and, in some cases, die as a result of being continuously exposed to hazards in the workplace (Alli, 2001: 7). According to figures from the International Labour Organisation (ILO) (2014), “every 15 seconds, a worker dies from a work-related accident or disease”, and “every 15 seconds, 160 workers have a work-related accident”. With 317 million accidents at the workplace every year and 2.3 million deaths annually from accidents and diseases, these sobering statistics are a clear indication that occupational health and safety (OHS) should be a matter of grave concern (International Labour Organisation, 2014).

However, the above mentioned statistics are likely to be inaccurate because many workplace accidents are not reported by both workers and management; this makes it even harder to estimate the real extent of occupational incidents (Department of Labour, 2003: 5; Chhokar, 1987: 169). According to Sutherland et al (2000: 9-10), the culture of non-reporting of accidents is prevalent in many organizations. This is because there is pressure on the employee to take full responsibility for the accident and many would rather not report, for fear of losing their jobs (2000: 9-10). This makes it easier for the employer because if they can prove that the employee was negligent, they do not have to be held accountable (Sutherland et al, 2000: 9-10).

In some organizations, injured employees are encouraged to take full responsibility and accept the small immediate insurance pay-out rather than “a possibly larger sum at some indefinite time in the future” (Sutherland et al, 2000: 9). Secondly, the organizational culture and the management style play a major role in whether workers report accidents or not (Sutherland et al, 2000: 10). For example, in “tough”, “macho” working environments or “heavy” industries where the workforce is predominantly male, silence and cover ups are very common (Sutherland et al, 2000: 10). Thirdly, it is the hassle of completing the paperwork when reporting an incident (in particular the minor ones). This is reported by management and employees as something that puts them off from formally reporting an accident in the hope that “nothing more serious develops” (Sutherland, et al, 2000: 10).

Other problems with the validity of the above-mentioned statistics, according to Leger and Macun (1990: 198) include the following: “A particular vexed issue is the use of accident statistics for international comparison because of differences in the laws of individual countries, classifications of economic activity, and in the collection and representation of data”. In addition, many people are injured or die in car accidents during the course of their work, but these accidents are reported as road accidents and not work-related deaths (Alli, 2001: 11; Leigh, 1995: 14). With regards to reliable statistics on diseases, it is more difficult to find accurate statistics for occupational diseases than it is for injuries (Leigh, 1995: 4). According to Leigh (1995: 4), the reason for this is that “occupational disease deaths are difficult to count, given the problems in pinpointing an exposure that caused or exacerbated, for example, a cancer or heart disease”.

It is for the above-mentioned reasons that workplace incident statistics are often seen as “controversial” when it comes to analysing health and safety trends (Leger and Macun, 1990: 197). This contributes to the problem of inadequate research on OHS. According to Leigh (1995: 7):

Information on job-related deaths is inadequate. While some employers are negligent, a greater villain may be the lack of widespread knowledge about working conditions, chemicals, occupations, and industries that are associated with injuries, illnesses, and deaths.

With everything being reduced to numbers and statistics, it is rarely about the complexities of the loss of human life. In addition, there is not a lot of information about the ripple effect workplace incidents have on families, companies, and economies. Institutions such as the International Labour Organisation (ILO) encourage the protection of workers from workplace hazards, but the number of people being affected by workplace hazards continues to rise at an alarming rate (Alli, 2001: 1). In addition, the ILO sets the legislative framework and the standards that govern OHS globally, but there seems to be a problem with implementation and enforcement. OHS is routinely overlooked because insufficient emphasis is placed on the fact that “apart from benefitting the health of the worker, occupational health contributes to productivity, product quality, work motivation and job satisfaction” (Allender et al, 2006: 76; Deljoy and Wilson, 1995: 4).

2.2.1 Principles of Occupational Health and Safety

As mentioned before, the International Labour Organisation (ILO) is an institution that is there to (among other things) promote workplace safety by laying down the OHS legislative framework. This legislation may be adopted and incorporated into labour laws by governments and employers. The basic principles of OHS according to (the ILO 1984 Section 1, cited in Alli, 2001: 17-23) are:

Every worker has rights and these rights include:

- The right to work in a safe and healthy environment that is conducive for work to take place.

- The working conditions should be consistent with the workers' wellbeing and human dignity.
- Work should offer real possibilities for personal achievement, self fulfilment and service to society.

For the above mentioned to be achieved, the following must be done:

- OHS policies must be established and implemented by both governments and employers.
- Protection and prevention must be the main aim of the OHS policies and programmes that will be established. In addition, the workplace design must be healthy and safe.
- All workers must be informed about present hazards, hazardous materials, and the monitoring of compliance.
- Workers must be educated on the importance of establishing a preventative culture and workplace health and safety procedures. Training must also be provided by someone who specializes in specific OHS needs for a specific industry.
- Efforts must be made to enhance the mental, physical and social wellbeing of employees.
- In the interest of minimizing the effects of workplace incidents, compensation and rehabilitation must be provided (cited in Alli, 2001: 17-23).

2.2.2 Defining Occupational Health and Safety

The above mentioned principles emphasize the importance of workplace safety and the measures that can be taken by governments and employers to ensure that every worker is protected, trained and informed. But what is 'health' and what is 'safety'? This section speaks to the definitional aspect of analysing workplace safety. According to Hopwood and Thompson (2006: 9-10), being able to define and differentiate between the two is one of the ways forward in the identification and prevention of workplace hazards. In this context, health is related to illness, while safety is related to injury (Hopwood and Thompson, 2006: 9-10).

In addition, “the recognition of hazards and their control is directly related to the harm they may cause if a worker is exposed to a particular hazard” (Hopwood and Thompson, 2006: 9-10). Illness is the result of “chronic exposure” to something and the effects of such are seen and felt over a longer period of time, be it over a few hours, days, months, or years (Hopwood and Thompson, 2006: 9-10). For example, exposure to dust levels and other chemicals whilst working in a mine, the effect is possibly felt months or even years later (Roberts, 2009: 48-49). This was found to be true with mine workers in the 1920’s, “the rate of tuberculosis was proportionate to the length of time exposed to silica” (Roberts, 2009: 46). The impact of injuries on the other hand is immediate, a worker who is working with a chainsaw who’s finger gets amputated, is most likely to lose that finger immediately, not several months later (Hopwood and Thompson, 2006: 10).

As mentioned before, being able to separate between health and safety-assists in being able to identify workplace hazards and prevent accidents and diseases. This kind of information does not completely eliminate the risk or the likelihood of workplace accidents, nor will it dramatically decrease their numbers. However, it does assist with ensuring that both employers and employees take on the task of being aware of the risks associated with the hazards that can potentially jeopardise health and safety, and apply the necessary measures required to reduce them (Hopwood and Thompson, 2006: 10).

2.2.3 Joint Responsibility for Occupational Health and Safety

According to Alli (2001: 7), the Department for Works and Pensions (2006: 5), Lewis and Thornbory (2010: 1); McGuire (2012: 1), Sutherland (2000: 2-3) and Roughton and Mercurio (2002: 9), workplace incidents have a negative impact on an organization’s finances and these are some of the direct and indirect costs that can severely affect an organization’s competitiveness. According to Roughton and Mercurio (2002: 8-9), supported by Sutherland et al, (2000:2-3),

Some costs are obvious, while other costs are transparent. Your workers’ compensation claims cover medical costs and indemnity payments for an injured employee. These are the direct costs of incidents...to train and compensate a

replacement employee, repair damaged property...Those are some of the indirect costs.

Likewise, employees are also negatively affected by workplace incidents; therefore, it is in both management and the employees' interest to take OHS matters seriously.

Costs to the employer:

- Legal costs
- Working days that are lost
- The cost of training and retraining new staff to replace an injured employee
- Interruptions to production
- Absenteeism
- Medical expenses
- Compensation and rehabilitation of an injured employee
- Damage to property and repairing the damaged property
- This also has an impact on the other employees who have to carry the strain of the reduced manpower
- The loss of investment in employee development when the employee is forced to retire early
- Media attention
- Bad publicity
- Poor public relations

(Alli, 2001: 7; Department for Works and Pensions, 2006: 5; Lewis and Thornbory, 2010: 1; McGuire, 2012: 1; Sutherland, 2000: 2-3; Roughton and Mercurio, 2002: 9).

Costs to the employees

- Pain and suffering to the injured employee
- Impact on dependents, especially if the employee is the bread winner
- Loss of income (overtime, bonuses)
- Forced early retirement
- Change in lifestyle (leisure, interests and hobbies)
- Long term physical and psychological health problems

(Alli, 2001: 7; Department for Works and Pensions, 2006: 5; Lewis and Thornbory, 2010: 1; McGuire, 2012: 1; Sutherland, 2000: 2-3; Roughton and Mercurio, 2002: 9).

The above-mentioned costs are a clear indication of the toll that is placed on employers, employees, the economy, and the families of deceased or permanently disabled employees, by work related incidents. As mentioned before, these costs have the potential to dent the finances of an organization, especially the smaller ones, most that are not in a position to invest in OHS. The above-mentioned costs ultimately have a negative impact on the economy as a whole (Alli, 2001: 8; Amuedo-Dorantes, 2002: 262). This is why there should be a joint effort by both employers and employees to ensure that OHS is a priority and part of the organizational culture.

2.2.4 OHS and the Size of the Organization

According to Hopwood and Thompson (2006: 2), “Very few have recognized the distinction in the size of a business or, more specifically, the differences in available managerial and economic resources as well as the technical capabilities within a company or those assigned to manage workplace safety”. As much as it is beneficial to spend money on OHS, not every firm can afford to and this can lead to many problems, especially for smaller firms. It is reported that work-related accidents are more prevalent in small and medium enterprises (SMEs) (where there are less than 50 workers) (Department of Labour, 2003: 5; Kheni et al, 2010: 1105; Nossar et al, 2003: 2; see also Vickers et al, 2003: 1).

The characteristics of many SMEs do not allow them to invest adequately on OHS. Most of the workforce is unskilled and non-standard forms of employment practices such as subcontracting, temporary, and seasonal employment are common (Department of Labour, 2003: 5; Kheni et al, 2010: 1105; Nossar et al, 2003: 2; see also Vickers et al, 2003: 1). This is supported by Loewenson (2000: 333), who states that “While their resilience lies in their small size, lower overheads and greater adaptability to changing environments, it also implies that they provide semi- and unskilled low quality jobs with low and insecure incomes”.

In addition, when an accident occurs or it is found that somebody has contracted a disease at work, instead of receiving medical treatment or compensation, many employers in some of the SMEs send workers home and replace them with others (Department of Labour, 2003: 4). This is particularly common with work that requires little skill or training, meaning that the workforce is easily replaceable (Department of Labour, 2003: 4).

This is done to avoid the costs (medical and rehabilitation) that come with compensating an injured or ill worker (Department of Labour, 2003: 4). For instance according to (Roberts, 2009: 47),

Despite the extensive early evidence of the intertwining of dusty work and tuberculosis, the migrant labour system driven forward and relied upon by the mining industry in South Africa saw ill miners simply repatriated to their areas of origin.

According to Zwi et al (1988: 696):

Not all employers accord the same importance to OHS. Large companies are in a much better financial position to employ 'loss control' officers, full-time personnel officers and consultants, as well as to set up health services. Furthermore, big capital is better able to withstand the stresses and strains of a recessionary period.

This is why sometimes one finds that the "management, ownership, organization and social relations" in smaller firms is informal and they only have one person in charge of everything at the same time, because they cannot afford to employ more people to take on these roles (Hasle and Limborg, 2005: 8). Because the implementation and enforcement of OHS legislation is costly for most SMEs, they are less likely than bigger corporations to invest adequately in OHS measures (Department of Labour, 2003: 4; Hasle and Limborg, 2005: 6-8; Barnetson, 2010: 2).

There are other factors beyond the employer's control such as, "consumer preferences, the national or regional economy, and reductions in employee productivity due to illness or medical problems" (Bray, 2009: 5). This means that these costs and those of implementation eventually affect their (SMEs) competitiveness (Bray, 2009: 5). It is for this reason that many SMEs end up using short cuts and other informal methods in order to avoid the costs of investing in OHS. Ultimately, employees in smaller firms are most likely to be exposed to a

greater health and safety risk than those in bigger firms because smaller firms “have difficulty controlling risk” (Hasle and Limborg, 2005: 6; Vickers et al, 2003: 1).

2.2.5 Informality and OHS

Informality is a characteristic of the way in which most SMEs deal with or absorb OHS legislation. Informal industrial relations practices are prevalent because “most SMEs can be described as organisations which have to fight for survival” (Hasle and Limborg, 2005: 8) and whose employees are not members of trade unions. In addition, Loewenson (2000: 333), states:

Most informal sector workers have not undergone any training, gaining their knowledge and skills in service. The terms and conditions of work are generally flexible, often below legal standards in terms of labour relations law and generally without formal written contracts. Sometimes this opens them (employees) up to exploitation, poor and unsafe working conditions.

However, it must be noted that not all forms of informality have to do with illegality (Santiago, 2008: 34). According to Guha-Khasnobis, Kanbur and Ostrom (cited in Santiago, 2008: 34-35), informality is “activity that occurs outside the reach of different levels and mechanisms of official governance and activity that “lacks structure” or is “simple” or even at times “disorganised”. For instance, many SMEs have an “ad hoc approach to health and safety as a problem to be solved when it occurs” (Hasle and Limborg, 2005: 8). Even though it may seem like it is only SMEs that are familiar with informal industrial relations, this is not to say that bigger corporations do not use “unwritten customs and the tacit understandings that arise out of the interactions of parties at work” to absorb or cope with legislation (Ram et al, 2001: 846).

2.2.6 Workplace Incidents and National Development

This section looks at the impact that the level of development in a country has on OHS. With regards to the level of development of countries, according to the ILO, developed countries have fewer incidents of workplace injuries than developing countries (Alli, 2001: 9). According to Alli (2001: 9), “a factory worker in Pakistan is eight times more likely to be

killed at work than a factory worker in France”. This is because most of the population in developing countries is heavily involved in dangerous working activities such as mining, fishing, and agriculture, for survival (ILO, 2014). With social groups, it is the poor, women, children and immigrants are affected the most by this (ILO, 2014). It is not difficult to note that there are occupations that pose a threat to health and safety more than others, for example working in an office space poses less of a threat than working in a mine or a construction site (Mischke and Garbers, 1994: 1).

2.2.7 Sectors that Carry a Greater Risk

As mentioned before, there are sectors with professions that pose a greater threat to health and safety than others. It is reported that sectors such as forestry, mining, agriculture, and construction, have the highest rate of work-related accidents than any other sectors (ILO, 2011: 9; Leigh, 1995: 2). In addition, occupations such as mining and the packaging of meat have the highest prevalence of work-related diseases (ILO, 2011: 9). However, at the same time, we have to take into consideration that anything can happen that can jeopardise one's health and safety, regardless of where a person works. This is even more common as we are now constantly being exposed to new technology, and the efficiency of the work relies heavily on the use of machinery (Mischke and Garbers, 1994: 169).

2.2.8 OHS and Unemployment

There is also a link between high rates of unemployment and high numbers of workplace incidents, because “large labour surpluses weaken workers' capacity to oppose unsafe conditions” (Chhokar, 1987: 169). This means that many people that are desperate for work are more likely take whatever is available to them at the time, regardless of how dangerous the work may seem. This kind of exposure to exploitation and unsafe work conditions, is as mentioned before, linked to insecure forms of employment. As mentioned before, this has a link to the level of development within a country.

2.2.9 OHS and the Community

There needs to be greater emphasis placed on the fact that OHS is not limited to the workplace only, adhering to legislation benefits the surrounding community. This is because accidents have the potential to negatively affect people surrounding a particular establishment. Two examples stick out: An example of a very bad industrial accident was the Bhopal gas leak in New Delhi in 1984. The accident has been described as “one of the worst industrial disasters of the world” (Kaur, 2013). The accident which left nearly 25 000 people dead and scores with serious and permanent injuries was said to be the result of the leak of a very toxic chemical, methyl isocyanate (Kaur, 2013). It is reported that this tragic accident could have been avoided had the appropriate maintenance and safety measures been adhered to (Kaur, 2013). The people that were most affected were those that lived in the surrounding slums, many whom, 29 years later still suffer from the serious effects of the toxins (Kaur, 2013). Many of them were left with permanent injuries and many children that were born after that had birth defects that were linked to their parents’ exposure to the toxins (Kaur, 2013).

In South Africa, there was the Merriespruit disaster in the Free State in 1994, where “a slimes-dam on a gold mine collapsed causing death and extensive damage in a nearby town” (Benjamin and Barry, 2006: 29; News24: 2012). The Bhopal tragedy and the Merriespruit disasters are a reminder of the tremendous impact industrial accidents have on surrounding communities, not just the employers and employees of a particular establishment (Benjamin and Barry, 2006: 29).

The discussion above has outlined the context of the research as well as the current state of OHS. From this, it is clear that there are a variety of factors that influence industrial incidents and the analysis of OHS. The availability of current and reliable statistics on workplace safety and the lack of research on OHS has made it harder for there to be a detailed analysis and to assess the full extent of workplace incidents. However, from the above mentioned statistics and the various direct and indirect costs of workplace incidents, those are compelling reasons why employers and employees should take full and joint responsibility for OHS matters, and so should governments.

2.3 LEGISLATION THAT GOVERNS OHS IN SOUTH AFRICA

With reference to South Africa, there have been some significant changes with regard to the promotion of OHS as well as the legislation. This started with the replacement of South Africa's "first comprehensive health and safety law", the Machinery and Occupational Safety Act 6 of 1983 which came into effect on the 5th of October 1984 (MOSA). It was then replaced by the Occupational Health and Safety Act 85 of 1993 (OHSA) (Benjamin and Barry, 2006: 1).

MOSA was introduced by the then Department of Manpower and was essentially a revised version of the Factories Machinery and Building Work Act 22 of 1941, which only covered particular workers (Benjamin and Barry, 2006:1). In addition, the Compensation for Occupational Diseases and Injuries Act 130 of 1993 was put into effect replacing the Workmen's Compensation Act 30 of 1941 (Benjamin and Barry, 2006: 1). The long history of OHS in South Africa, coupled with the many changes, is an indication that "merely developing procedures does not set the stage for safety culture. This takes many years of hard work to accomplish" (Roughton and Mercurio, 2002: xxi).

This section will be expanding on OHS in South Africa, as well as the legislation that governs it. Firstly, this part will be looking at the long and complicated history of the country, whereby the political climate played a major role in the various stages and changes of the establishment of OHS legislation. Secondly, this section will be looking at the current legislation and the changes that came from previous legislation.

2.3.1 History of OHS in South Africa

It is important to mention that the history of South Africa had a major impact on occupational health and safety legislation, because there were oppressive structures that contributed to the limitations and changes in legislation. South African workplace history is very unique, in the sense that much of the debate is centred on structures and regimes that perpetuated racial and class divisions (Finnemore, 1996: 22). This in turn spilled over to the establishment of legislation and its implementation (Finnemore, 1996: 22).

According to Finnemore (1996: 9),

Racial divisions were seen to be encouraged and exploited to help white capitalists extract the maximum surplus value from black labour. This was achieved by co-opting white workers on the one hand, while controlling the rights and mobility of black workers and denying black unions legal status on the other.

This is the reason why the South African political economy was for a long time under apartheid structures, described using the term “racial capitalism” (Finnemore, 1996: 9). The above mentioned is an indication that the political climate had a lot to do with the establishment of legislation and that was the deciding factor of who benefitted the most from state intervention. The journey to the establishment of OHS in South Africa came along with industrialization.

Much of the industrialization in South Africa came after the discovery of diamonds and gold in the late 1800's and early 1900's in the interior (Finnemore, 1996: 22; Zwi et al, 1988: 691). The rapid expansion of the gold mining industry meant that competition between mining companies increased (Zwi et al, 1988: 691). This made the mining process more intensive for longer periods of time for the majority black unskilled labour force, in an attempt to produce at the shortest period of time (Zwi et al, 1988: 691). The dust levels were high and the living conditions were bad, and this made it easier for diseases such as tuberculosis and silicosis to spread among the workers (Zwi et al, 1988: 691).

The white workers had been brought from Europe and Australia were considered to be the skilled minority, as they had brought with them skills that were considered to be scarce in South Africa (Finnemore, 1996: 22). They were paid better wages and were unionised under “one of the first documented trade unions in South Africa”, the Carpenters’ and Joiners’ Union that was founded in 1881 (Finnemore, 1996: 22). The union secured their interests and ensured that white workers remained in their elite positions (Finnemore, 1996: 22).

The health concerns from the state started when a lot of the workers (especially the skilled white workers from Europe) were dying from tuberculosis and silicosis, at an alarming rate in a short space of time (Zwi et al, 1988: 691). The state was under pressure from white unions to make plans to ensure that this stops (Zwi et al, 1988: 691). In 1910, the Chamber of Mines (the body that represents most mining companies) started paying attention to the miners’ diet, ergonomics, working hours, and working conditions (Zwi et al, 1988: 692). This was to

ensure that all mine workers were living and eating correctly, and that the working conditions at the mines were conducive for productivity and not harmful to workers (Zwi et al, 1988: 692).

Legislation was then introduced, with the first being the Miners Phthisis Act and the Mines and Works Act in 1911, which was legislation that governed OHS in the mining sector (Zwi et al, 1988: 691). The Phthisis Act also introduced compensation, which in the beginning only extended to white workers, then later to black workers (Zwi et al, 1988: 691). However, there was a compensation disparity, with white workers getting more than black workers (Zwi, 1988: 691).

The new legislation however did not cover all sectors, such as domestic workers, self-employed people and those that worked in the agricultural sector, which also falls under types of dangerous work (Zwi et al, 1988: 692). In 1941 that changed with the introduction of the Factories, Machinery and Building Work Act, alongside the Workman's Compensation Act (Zwi et al, 1988: 692). This however was limiting because there were not many benefits to this and secondly, "the Act also removed from workers the common law right to sue employers for failing to ensure a safe and healthy workplace" (Zwi et al, 1988: 692). The logic behind this was that it decreased the possibility of conflict between workers and their employers (Zwi et al, 1988: 692).

This can be seen as defeating the purpose of having employers held accountable for the health and safety of their workers, should workers feel that that they are not working in a safe environment. In addition, it would seem like the focus was on reducing conflict between employers and employees rather than reducing the levels of accidents and diseases, as well as securing the well-being of workers.

Another problem here is that not many workers knew of or understood the legislation, secondly the penalties for the contravention of the law were low and there was little co-operation from employers (Zwi et a, 1988: 692). This in a way made the legislation ineffective in dealing with the underlying problem, which was the never ending problem of workplace accidents and diseases. In addition, "payment (compensation) was related to the degree of physical damage rather than the effects of that damage on a particular worker's ability to find alternative employment" (Zwi et al, 1988: 692).

Seeing that a variety of problems, including the economic and political climate of South Africa at the time were having a negative impact on OHS plans, the Erasmus Commission of Enquiry into Occupational Health was launched in 1974 (Zwi et al, 1988: 693). The commission was set up after “spontaneous mass strikes by over 100,000 workers in Durban in 1973, an unprecedented expression of African working class militancy” (Zwi et al, 1988: 693). The intention was to do an investigation into the state of OHS in the country and come up with recommendations on what to do.

However, the consultations were done with employer bodies and white unionised workers only, leaving out the majority, which was the black workforce (Zwi et al, 1988: 693). This speaks to the problem of the lack of representation with regards to having everyone have a say in OHS matters, especially if the black workers were the majority. During these investigations, it was found that many employers and worker organisations were not doing their part in promoting OHS (Zwi et al, 1988: 694). In addition, there was little research and statistics on OHS incidents, little reporting on accidents, low numbers of adequately trained staff to enforce OHS and monitor compliance, and “little attention had been devoted to rehabilitation of workers affected by occupational diseases” (Zwi et al, 1988: 694).

Fast forward to 1983, there were too many loopholes in the existing legislation and increasing uprisings, especially from black workers many of whom were beginning to become members of unions. In 1983, the Department of Manpower introduced the Machinery and Occupational Safety Act (MOSA) (Zwi et al, 1988: 697). MOSA was based largely on the Health and Safety at Work Act of the United Kingdom (Zwi et al, 1988: 697). The legislative framework had to change to properly address and deal with the problem of declining health and safety standards. Some of the new changes included, placing the emphasis on worker participation by making it mandatory for safety committees to be set up and health and safety representatives were to be appointed, by management (Zwi et al, 1988: 697).

2.3.2 Employee Participation and Effective OHS

Seeing the importance of worker participation in OHS matters, the ILO in Convention 55 lays down the framework that should govern workplace participation in OHS (Walters and Nichols, 2009: 2-3). According to Walters and Nichols (2009: 2),

Workers' representation' refers to the situation in which workers represent their interests through the normal channels of labour relations. While the predominant approach to achieve this is through a regulatory framework that legitimises workplace institutions that give workers a voice on matters of their health and safety, the process of effective representation always occurs through channels of workplace labour relations, is supported by organised labour and is subject to many of the same influences on the nature and extent of these wider relations.

This is in the interest of promoting a preventative and co-operative culture by including workers in OHS matters. This was not the case with MOSA because in addition to other problems, the exclusion of workers in OHS means that power was given to managers alone and this had a severe impact on the success of MOSA (Pringle, 2006: 29).

Apart from being seen as still not covering all sectors thus leaving some employers to not be held accountable for OHS, it was criticised "by labour because it allowed no role for the involvement of unions and by capital for demanding too many potentially expensive innovations" (Zwi et al, 1988: 697). In addition, as much as MOSA was an attempt to fix the wrongs of previous legislation, it was still plagued by the very same problems that are mentioned above, such as not enough trained staff to facilitate enforcement (Zwi et al, 1988: 698). Also, the state's minimal involvement in OHS matters was interpreted as it giving into the interests of "capital" and when they did "intervene" it was to address conflict, not health and safety. (Zwi et al, 1988: 698).

2.3.3 Introduction of the Occupational Health and Safety Act 85 of 1993

Having briefly looked at the history of OHS in South Africa, this section looks at the introduction of the Occupational Health and Safety Act (OHSA) 85 of 1993. It will be focusing on the changes that were made to the Machinery and Occupational Safety Act (MOSA) 6 of 1984, more especially when it comes to carefully defining the roles of management and employees, in ensuring that legislation is successfully enforced.

In an attempt to modernise South African health and safety legislation, the Occupational Health and Safety Act 85 of 1993 replaced MOSA (Benjamin and Barry, 2006: 1-2). That

same year, the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) was introduced, replacing the Workmen's Compensation Act 30 of 1941 (Benjamin and Barry, 2006: 1). Three years later legislation that governed OHS in the mining sector, the Mine Health and safety Act 29 of 1996 was introduced (Roberts, 2009: 16).

OHSA legislation is divided into two categories, "preventative and compensatory" (Benjamin and Barry, 2006: 3). Preventative category laws are those that fall under OHSA and the Mine Health and safety Act 29 of 1996, these are laws that "are designed to prevent the occurrence of accidents" (Benjamin and Barry, 2006: 3). Compensatory laws fall under the Compensation for Occupational Injuries and Diseases Act 130 of 1993; these laws "are designed to compensate the victims of industrial accidents" (Benjamin, 2006: 3).

As mentioned before, one of the issues that plagued and thus made MOSA ineffective, was that the enforcement of the legislation was at the prerogative of management, leaving employees with little or no say. "OHS structures were established solely by management with the result that employees had little or no influence over the decision-making surrounding health and safety matters" (Pringle, 2006: 4).

According to Hoogervorst (cited in Pringle, 2006: 4-5), in order for OHS legislation to work, it has come from an effort made by both management and employees to make it work. "A system is only as good as the people who work within it. The best system in the world will fail if the people working in it are not informed, motivated, trained and committed to making that system work" (cited in Pringle, 2006: 5). By completely changing the structures and rules that governed the existence of health and safety committees and the election of safety representatives, OHSA was attempting to ensure greater participation from employees. The inclusion of "trade union participation in the election of representatives, enhanced rights and functions of for representatives and a requirement for consultation between employers and health and safety committees on a wide range of safety matters" (Benjamin and Barry, 2006: 2). Previously under MOSA, the designation of safety representatives was the decision that was made by management alone (Zwi et al, 1988: 699).

Under OHSA some of the other changes revolved around the provision of training and information about dangers and hazards that are present in the workplace, this according to legislation falls under the employers' general duties scope (Benjamin and Berry, 2006: 2).

Previously, under MOSA the provision of information and training “requires the employer to provide information where this IS ‘reasonable’” (Zwi et al, 1988: 699). This means that under MOSA the employer could do the above mentioned where this “IS reasonable”, and at the time, “reasonable” was subjective as there was no clear definition like there are now with OHSA.

According to OHSA, under the common-law duty of care, it is the employer’s responsibility to ensure, “as far as is reasonably practicable”, that there is a safe and healthy environment for all workers, to provide training and information, and to remove or control workplace hazards (Section 8 (1)), 2003: 35; Rosskam, 2011: 265; Department of Labour, 2012). OHSA establishes three primary institutions: the tripartite Advisory Council on Occupational Health and Safety, the inspectorate, safety committees and safety representatives (Benjamin and Barry, 2006: 4). In trying to establish a culture of prevention and co-operation with existing legislation, the election of safety representatives is done to ensure that employees have a say in OHS matters (Department of Labour, 2003: 36). When workers participate in decision-making regarding OHS, they are more likely to co-operate (Daltuva et al, 2004: 191; Granzow and Theberge, 2009: 83; Gunningham, 2008: 336; Kramer, et al, 2004: 319, see also Roughton and Mercurio, 2002: 117).

As mentioned before, OHS is not the sole responsibility of management as employees also have duties under OHSA. Employees have a statutory duty to ensure that their actions do not endanger themselves and others (Section 14 (a)). In addition, they too have to ensure that they adhere to OHS instructions from the employer and co-operate with legislation.

As mentioned above, there are Compensatory laws that fall under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (Benjamin, 2006: 3). This Act ensures that victims of occupational injuries and diseases and or their dependents are compensated. The Act also states clearly certain definitions under the interpretation of the Act, for example “accident”-“an accident arising out of and in the course of an employee’s employment and resulting in personal injury, illness or the death of the employee” (xxiv). But one of the problems here would be the “adequate” compensation of victims and their dependents. In addition, as mentioned above, the reporting of accidents is low, this system is not very efficient, and the lack of trained staff has a negative impact on COIDA.

While the parties have made some progress regarding OHS in the workplace, many obstacles and shortcomings remain. As Mpolokeng (2002) pointed out more than a decade ago: “[w]e

are emerging from the legacy of apartheid labour market, under which apartheid management cared little about the health and safety of their employees. Since the advent of democracy, there has been progress with new legislation on health and safety at work. While we have made important strides at the level of legislative reform, the sad reality is that health and safety at work is still not regarded as a priority”.

South Africa has well-developed OHS laws, but there seems to be considerable difficulty in putting them into practice effectively. One of the major problems with OHSA is that many employers try to evade legislation and get away with the bare minimum (Department of Labour, 2003: 35). As mentioned above, this is because there are financial implications associated with the implementation of OHS, health and safety issues are not generally regarded as core business concerns, and employers are increasingly concerned with cost-cutting (Department of Labour, 2003: 35; Windapo and Oladapo, 2012: 435).

This is why it is recommended that “legislation must define their (employers’) responsibility with greater certainty and hold company boards and senior management accountable for OHS performance” (Department of Labour, 2003: 35). Other problems include, the shortage of skilled inspectors (who are crucial in the enforcement of OHS legislation and monitoring compliance), insufficient funding, the development of an efficient reporting system and data base for workplace accidents and diseases, and the lack of research done on OHS (Department of Labour, 2003: 8-10; 20; Winter, cited in Ngoepe, 2010: 3). These are more or less the same problems that hampered the effect of MOSA and previous legislation. The question would be, since we have identified some of the problems that have existed for years, why have there been no changes or attempts to fix them?

This section of this chapter briefly looked at the history of OHS legislation in South Africa where the beginning was traced back to the introduction of industrialization in the 1800’s and the 1900’s. It was evident during the time that the political climate under the apartheid regime influenced the establishment, the enforcement, as well as who would benefit from of OHS legislation. For example, black workers were at the losing end for a very long time because they were not allowed to have anyone (unions) to represent their workplace interests, while white workers did. Previous legislation gave management all the power and very little room for employee participation in OHS matters. It also focused on reducing conflict between management and employees, rather than addressing the bad state of OHS. When MOSA was introduced it seemed as if this legislation would do better than that, but it did not.

To improve on MOSA and keep abreast of international standards, OHSA was introduced. The new provisions under OHSA placed greater emphasis on clearly defining employer and employee roles and greater employee participation. However, even though there were various changes and additions that produced the current legislation, it is evident that the same problems (non-compliance, lack of trained staff and so on) that were encountered under MOSA for example, are still there and they are hampering the effect of OHSA.

2.4 Construction Industry

The previous sections gave an overview of OHS at various levels of analysis and one of the things that were looked at were the sectors that were most dangerous to work in, and construction was identified as one of those sectors. Having looked at the legislative framework that governs OHS in South Africa, this section will be focusing on the construction industry as one of the sectors that need to adhere to this legislation the most. To establish what the current state of OHS is in the South African construction industry, this section will be briefly looking at legislation that governs OHS in the construction industry. In addition, the section will be expanding on the problems that plague the South African construction industry and that make the OHS record very poor.

Globally as well as locally, the construction industry's record in OHS is poor and not improving (CIBD, 2009: 1; Windapo and Oladapo, 2012: 433-434). "The South African construction industry needs a 'shift in mind-set' to become more health and safety conscious – and improve a situation where at least two workers die in site accidents every week" (Phumudzo Maphaha, Manager of Construction Health and Safety within the Department of Labour, cited in CIBD, 2009: 2).

Most injuries and fatalities occur in the construction sector and it is for this reason that it is listed as a "high risk" sector by the South African Department of Labour (Department of Labour, 2014: 1; CIBD, 2009: ii). Chronic and excessive exposure to hazards that are chemical and physical are some of the things that make construction work such a dangerous profession (Department of Labour, 2014: 2). According to Statistics South Africa in their quarterly labour force survey, after Community and Social services and Trade industries, the South African construction industry is one of the largest sectors, having employed 59 000

people by the end of 2013 (2013: viii). By the third quarter of 2014, the construction industry had employed 99 000 people and this makes the sector one of the biggest employers in the country (Statistics South Africa, 2014).

The size of the construction industry is the reason why “construction industry records show that work-related deaths, occupational diseases and injuries claims absorb a significant portion of the Gross National Product (GNP)” (Windapo and Oladapo, 2012: 433-434). In addition, the South African construction industry is a multi-billion Rand industry, and it is an integral part of the improvement of the country’s infrastructure and economic growth plan (PricewaterhouseCoopers, 2013: 8). An example of this is the FIFA 2010 World Cup. This is why it is crucial for legislation to be adhered to.

2.4.1 Construction Work

What exactly is construction work? The Department of Labour defines construction work as any work in connection with:

- The construction, erection, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure.
- The construction, erection, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system; or the moving of earth, clearing of land, the making of excavation, piling, or any similar civil engineering structure or type of work.
- Construction site means a work place where construction work is being performed.

Construction contractor means an employer who performs construction work.

(Department of Labour, 2014: 1).

In addition to describing what construction work entails, the Department of Labour has also compiled a list of the “stressors”, exposure to which make construction work dangerous. These are chemical (dust, smoke, gases), physical (temperature, noise, radiation), ergonomics (heavy lifting, work that is repetitive physically), psychological and biological (poor hygiene) (Department of Labour, 2014: 2).

2.4.2 State Intervention

The Construction Regulations established in 2003 was an attempt to ensure that the construction industry had rules to abide by. According to the CIBD (2009: 10), it places “emphasis on the identification of construction hazards and the assessment of risks to eliminate, avoid or, at the very least, reduce perceived risks”. The regulations also place HS responsibility on not just the contractor alone, but on all those that are involved in the construction process, and this includes the client (CIBD, 2009: 10). However, there was growing concern from the government and trade unions about the sad state of OHS in the construction sector, thus the South African Construction Health and Safety Accord was signed in 2012. According to Furter (2012: 1),

It is an agreement between government, labour and business to improve the status of health and safety in building. This agreement, signed on 24 in August 2012, acknowledges that the South African construction sector “contributes immensely to alleviation of unemployment and economic growth, and as such all necessary interventions are taken to ensure that health and safety objectives are attained, concurrently with infrastructure development... employment creation and positive economic growth”

The aim is to ensure that all employers and other stakeholders (Department of Labour, DOL Compensation Fund, Department of Public Works, Construction Industry Development Board (CIDB), Council for the Built Environment (CBE), Council for Project and Construction Management Professions (SACPCMP), commit themselves to ensuring the risks and hazards are reduced from construction work (Furter, 2012: 2).

Employers are also encouraged to be part of employers’ associations such as Master Builder Associations (CIBD, 2009: 25). Some of the roles of MBAs include;

- Informing members of new OH&S legislation;
- Providing OH&S advice and guidance to their members;
- Help contractors to improve their OH&S;
- Programmes and procedures;
- Conducting site OH&S surveys and audits;
- arranging forums and workshops on informative

OH&S topics;

- coordinating OH&S training courses

(CIBD, 2009: 25)

In an attempt to reduce workplace incidents in the construction sector, as mentioned before, the Health and Safety accord was signed “between Government, organised business and organised Labour organisations” in 2012 (Department of Labour, 2014: 1). In addition, the OHS Act, COIDA, the Labour Relations Act (LRA), the Basic Conditions of Employment Act (BCEA), and the Construction Regulations (2003) are an indication that South Africa is not lacking when it comes to comprehensive OHS legislative framework (CIBD, 2009: 37). Considering this, the question would be: why is the South African construction industry still underperforming when it comes to OHS?

2.4.3 Main Problems

There are a number of problems that hamper the development and improvement of OHS in the South African construction industry. Some of them are; the lack of management’s commitment to adhering to OHS legislation, limited funds to invest adequately on OHS (especially for smaller firms), limited trade union involvement to secure the interests of employees, limited knowledge of OHS legislation and the main provisions (managers and employees), and the shortage of qualified staff to monitor compliance. Other problems include informal or insecure methods of employment being very common, and the lack of employee participation and representation in the workplaces.

On the one hand, construction companies are responsible for the health and safety of their employees, and occupational injuries have a direct impact on the overall costs of a project, which include medical, and compensation costs as well as bad publicity (Ahmed and Othman, 2012: 187). On the other hand, during the tender process, contractors fear that they may lose a tender to somebody who has not incurred the costs of adequate provision for OHS (Ahmed and Othman, 2012: 181).

This act of balancing adequate OHS and cost-cutting measures explain why contractors may choose to neglect OHS issues in favour of prioritising deadlines and ensuring maximum productivity (Ahmed and Othman, 2012: 189; Reyburn, 2004: 15). On-site incidents are

invariably the result of management not being committed enough to OHS, limited or no supervision, and inadequate training and information on OHS procedures, as well as a poor understanding of the regulations (Ahmed and Othman, 2012: 186; Leigh, 1995: 2; Chambers, 2011: vii). According to CIBD (2009: 1), not enough attention is being given to small and upcoming contractors, “who typically have limited resources to provide for OHS and whose processes will be typically less structured” (see also Hasle, 2005: 8). Also, informality plays a major role in how smaller firms cope with or absorb OHS legislation (Hasle, 2005: 8).

The following two stories are examples of how the above-mentioned problems can lead to very serious problems.

‘Construction worker dies in horrific accident’ (2007)

“A 45 year old male worker was killed whilst driving a construction vehicle at Okahlamba [sic] District, Bergville. The worker seemed to have lost control of the vehicle whilst approaching a gravel road and was flung out of the cab, crushing his skull. His left leg and hand were also severed in the accident”. Upon investigation, it was revealed in an audit on Occupational Health and Safety requirements that;

- No health and safety plans were in place
- No proof of health and safety induction for the deceased was available
- When the incident occurred there was no construction supervisor on site
- The construction company had not conducted a risk assessment prior to commencing work (Department of Labour cited in CIBD, 2009: 3).

In more recent accidents that thwarted occupational health and safety in the South African construction industry into the spotlight, was an accident at the Tongaat Mall in KwaZulu-Natal. The accident in which two people were killed and twenty nine were injured, was the result of badly done and rushed construction work (eNCA, 2014). Rob Young one of the engineers testifying at an inquiry into the Tongaat Mall tragedy, had said that the mall site was “an accident waiting to happen”. Young who was the head designer of the King Shaka International Airport (Formerly known as Durban International Airport) stated that, “two columns in the mall building were grossly under-designed. He says the unsecured columns triggered the November (2013) disaster. He further stated that the accident was avoidable (eNCA, 2014).

2.4.4 Employees and OHS

In some instances, on-site accidents occur as the result of negligence on the part of employees (Ahmed and Othman, 2012: 188; Epstein, 2012: 66; Chhokar, 1987: 170). Accidents occur because of the incorrect use of personal protective equipment, not obeying the necessary safety and work procedures, lapses in concentration while working, and a poor understanding of OHS regulations (Ahmed and Othman, 2012: 186). The most common on site accidents are, “falling from heights, cutting off of limbs due to mishandling of heavy equipment, objects falling from height, electric shocks from cables, personnel being affected by demolition works, caving in of excavations, and those related to cramage and heavy-lifting machinery”. In addition, burns from being electrocuted, heat, and “struck-by” injuries are also common (Government Institutes Research Group, 2007: 8). It is for this reason that employees also have to play their part in reducing on-site accidents.

2.4.4 Trade Union Representation in the Construction Industry

The involvement in OHS by trade unions such as the Building Construction and Allied Workers Union (BCAWU) and the National Union of Metal workers of South Africa (NUMSA) is irregular, and when they do get involved, it is only in big projects (CIBD, 2009: 1). Formed in 1974, BCAWU was one of the “first independent black trade unions” to emerge from the construction industry (South African History Online). Alongside it the Construction Industry Occupational Health & Safety Forum (CIOHSAF) was established in August 1995 and changed to the Construction Occupational Health-Safety-Environment Forum (COHSEF) in 1997 (CIBD, 2009: 28). However, it was disbanded in 2000 (CIBD, 2009: 28). Even though BCAWU claims to be functional, their reach does not seem to be with the smaller projects. The lack of trade union involvement in OHS matters can be attributed to a lack of prioritization of OHS in collective bargaining processes. According to Zwi et al (1988: 700), OHS is not prioritized because “there is generally a low level of expertise in specialised areas like OHS in the labour movement (limited resources and staff to focus on OHS issues)”. Trade unions also tend to focus on improved working conditions and wages, and “dealing with the threat of unemployment” (Zwi et al, 1988: 700). This also

means that workers who are not part of big firms or big projects are on the losing end because their OHS interests are not likely to be addressed by their trade unions.

Worldwide construction contributes a disproportionate number of injuries. However, construction in developing countries, South Africa included, performs worse than construction in developed countries. Furthermore, there is a high level of non-compliance with H&S regulations in South Africa. (CIBD, 2009: 37).

The CIBD adds that, “poor construction H&S performance is attributable to a lack of management commitment, inadequate supervision, and inadequate or a lack of H&S training. A lack of worker’s involvement, personal risk appreciation and work pressures also contribute to poor performance” (CIBD, 2009: 37).

In conclusion with this section, it is clear that the state of occupational health and safety in the South African construction industry is bad and not improving. Some of the problems that have been mentioned are, management not being committed to OHS, limited resources to invest in OHS, lack of understanding of the regulations by both management and employees and the lack of employee representation and participation on OHS matters. In addition, there is a shortage of staff to ensure that there is effective enforcement of OHS legislation and there is enough monitoring. This means that a lot of firms get away with a lot of contraventions that go unnoticed and that could lead to terrible accidents. The South African construction sector is economically crucial and is one of the biggest employers, but it is also a dangerous sector to work in. This is despite the fact that South Africa does not lack when it comes to having a legislative framework that governs OHS in the construction industry.

2.5 Conclusion

As mentioned before, there are a variety of factors to look at when analysing workplace safety. Some of the things that were looked at in this chapter were the fact that the size of the organization can determine whether OHS measures are adhered to. The smaller firms were less likely to adequately invest in OHS due to the fact that many are financially unable to without that having a negative impact on their profits. Therefore, informality is used to survive and absorb existing legislation, for example many do not have the money to take on

more staff (safety officers, site managers and so on) therefore one finds that one person has taken on a variety of roles in the firm.

Also, the level of development in a country has a lot to do with the number and the severity of workplace incidents, with developing countries recording the most. Unemployment is the next factor that is related to workplace incidents, many people are desperate for work and are willing to take whatever is offered. This is regardless of the poor and unsafe working conditions. Legislation that governs OHS exists in ILO standards and it is left to the different countries to adopt that legislation in an effort to ensure that all workers are safe and healthy.

The discussion was brought down to the history of OHS in South Africa as well as the various changes that lead us to having the legislation that exists now. However, even though there have been many strides to secure and promote workplace safety, there still is no change. The South African construction industry is one of the most dangerous sectors to work in but it also has a very poor health and safety record.

3

RESEARCH DESIGN

3.1 Introduction

The purpose of this chapter is to give an in depth account of how the research was conducted by; presenting and describing the philosophical assumption that was appropriate for this study and the research method, describing the sampling methods, and describing the data collection method, as well as the tools that were used to collect the data. In addition, this chapter will also provide an explanation of the procedure that was used to analyse the data, the challenges that were encountered during the study, as well as the ethical considerations.

3.2 Research Objectives

The main thesis objective is to understand occupational health and safety and industrial relations in the South African construction industry through case studies of selected construction firms in Grahamstown. Subsidiary objectives include the following:

- a) Evaluating the practices of management regarding their role in OHS matters (in the context of the provisions of OHSA) and how this affects the industrial relations procedures and practices of the enterprise.
- b) Comparing employees' understanding of their role in OHS matters with the duties of employees contained in OHSA.
- c) Identifying the challenges faced by management when implementing an OHS policy.
- d) Assessing the role of trade unions in OHS matters in the company by assessing how well they represent their members' interests with regard to the health and safety policy.

- e) Establishing whether management and workers agree that there are positive aspects to implementing an effective OHS policy at the company.

3.3 Epistemological Approach: Interpretivism

There are three common approaches when it comes to philosophical assumptions in research; Positivist, Critical, and Interpretive. The philosophical assumption underlying this research is an interpretive approach. An interpretive approach is concerned with “stories and accounts, including subjective understandings, feelings, opinions and beliefs” (Matthews and Ross, 2010: 142; Puttergril, 2000: 36, cited in Pringle, 2006: 15). This approach also attempts to understand the “meanings that people attach to them” (the above mentioned), as well as the complexities that exist in the way in which they make sense of them. The interpretive assumption was appropriate because the researcher wants to know about the chosen participants’ subjective experiences, understanding, and interpretation of OHS legislation in the Grahamstown construction industry. By choosing an interpretive perspective, this has also given the research “greater scope to address issues of influence and impact and to ask questions such as ‘why’ and ‘how’ (Boland, 1985, 1991; Orlikowski and Baroudi, 1991; Deetz, 1996).

3.4 Qualitative Approach

The method that was deemed appropriate for this research was a qualitative approach. According to Patton and Cochran (2001: 3), “qualitative methods aim to answer questions about the ‘what’, ‘how’ or ‘why’ of a phenomenon, rather than ‘how many’ or ‘how much’, which are answered by quantitative methods”. Using a qualitative approach gives the researcher an opportunity to get an in depth understanding of the subject’s own thoughts regarding a topic, this depending on the method of the data collection whether it is through direct observation, narratives, or semi structured interviews (Patton and Cochran, 2002: 2-3).

As mentioned before, the nature of this research has to do with getting an in depth understanding of the subjective interpretations, perspectives and understanding of OHS

legislation and the issues surrounding workplace safety from the chosen subjects. Therefore, a qualitative approach was necessary because much of the data that has been collected cannot be measured or reduced to statistics. “Voice and subjectivity shows how an interest in subjectivity and the authenticity of human experience is a strong feature of qualitative research...this kind of emotionalist model is one of the dominant paradigms within qualitative research” (Holstein and Gubrium, 2012: 6).

3.5 Sampling

According to Bogue (1981: 78), sampling is defined as “using some (instances) to represent the whole”. However, the researcher needs to ensure that the sample has similar characteristics to the whole if it is “to be used to represent what the larger whole is like” (Bogue, 1981: 80). The first type of sampling that was identified as being suitable for this collection of data was purposive sampling. As part of the sampling criteria, this means that the selection of the respondents was based on their knowledge (Matthews and Ross, 2010: 225-226) - in this case, their knowledge of OHS and the legislation governing it.

The subjects for purposive sampling were; a health and safety representative from the Department of Labour in Grahamstown, Mr Zola Bikitshana, and the health and safety officers at construction sites were also interviewed. After numerous attempts and promises to respond to the questions, the Eastern Cape Master Builders’ Association’s (ECMBA) health and safety representative failed to respond.

The second type of sampling that was used was snowball sampling, whereby the researcher is referred by respondents to others that may be familiar with the research topic (Matthews and Ross, 2010: 162). The sampling unit for snowball sampling was ten managers from ten construction firms (five small firms and five big firms). Most respondents, apart from one, were interviewed on site. In addition, two employees from each site were interviewed.

List of Respondents

Name of firm	Year of Establishment	Name of Representative	Position in Firm	Number of Employees	Gender breakdown	Employment	Date of Interview
Dup Meyer Building	1996	Gerrie Els	Owner and	55	Males only	Casual Workers	5 December

Contractors			Manager				2014
CM Heunis Building Contractors	1940	*James Green	Manager	250	Males for Construction Females for cleaning completed building	Casual and Permanent	5 December 2014
CM Heunis Building Contractors	1940	Henson	Health and Safety Officer	N/A	N/A	N/A	5 December 2014
Roy Bowels Construction	1979	*Ron Engels	Manager	250	Males for Construction Females for cleaning completed building	Casual	5 December 2014
T Squared Engineers	2011	Sam Masisi	Owner	12	5 Admin	Casual and Permanent	5 December 2014
ElectProps 42	2014	Andrew Beer	Co-Owner	25	Males only	Permanent and Contract	5 December 2014
Department of Labour	N/A	Zola Bikitshana	OHS Inspector	N/A	N/A	N/A	5 December 2014
WBHO	1987	Edward Schultz	Health and Safety Manager	400>	Males only	Casual	6 December 2014
East Cape Electrical	1998	*Alex Duncan	Owner	15	Males only	Casual and Permanent	6 December 2014
*Roneska Projects	1980	*Steve Kuhn	Co-Owner	200	Males Only	Casual	6 December 2014
*Three Oceans Building Contractors	2011	*Carl Smith	Co-Owner	100	Males Only	Casual	6 December 2014
*Yellow Rose Construction	2008	*Michael Davids	Co-Owner	150	Males Only	Casual	6 December 2014

*Pseudonyms for those who wished to remain anonymous

List of Respondents: Employees

Name of Firm	Name of Employee	Daily Duties	Number of Years as an employee	Date of Interview	Number of working hours
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					per day
Dup Meyer Building Contractors	*Thabo Matlala	General Employee	10	5 December 2014	8
Dup Meyer Building Contractors	Benny Martinus	Masonry	16	5 December 2014	8
CM Heunis Building Contractors	*Mzomhle Titi	General Employee. Training new-comers	22	5 December 2014	8
Roy Bowels Construction	Edward Dada	Overseeing the project in the absence of manager. Tool box talk, brick laying	4	5 December 2014	9
ElectProps 42	Dino Menzeleli	General Employee, Safety Representative	4	5 December 2014	8
ElectProps 42	*Bongani Duma	General Employee	11	5 December 2014	8
*Yellow Rose Construction	Luvuyo Jantjies	General Employee	1	6 December 2014	8
*Yellow Rose Construction	*Xhanti Nodada	Brick layer	5	6 December 2014	9
*Three Oceans Building Contractors	*Mziwamadoda Sodlaka	Excavations	7	6 December 2014	9
*Three Oceans Building Contractors	Thomas Mlambo	General Employee	6	6 December 2014	8
WBHO	*Zolani Dimba	Cement Mixing and brick laying	22	6 December 2014	8
WBHO	Goodman Dlankomo	General Employee, monitors safety from heights	12	6 December 2014	8

*Pseudonyms for those who wished to remain anonymous

3.6 Data Collection Methods

As mentioned before, the research is qualitative and it requires specific methods of collecting data to get an in-depth understanding of participants' perspective of the research topic. This can be done through semi-structured interviews, unstructured interviews, focus groups, direct or indirect observation, the use of documents, and narrative data collection (Mathews and Ross, 2010: 141; Patton and Cochran, 2002). First, interview guides for the different sampling units were designed; questions for the managers (Appendix A), questions for the employees (Appendix B), questions for the Department of Labour (Appendix C), and questions for ECMBA (Appendix D). Considering the fact that the study required in depth and personal accounts of issues surrounding the research topic, using a questionnaire or a survey would not have been appropriate. This is because not only do they lack flexibility, but they also do not allow the researcher to probe or ask for clarification from the participants. The interview guide was there to help guide the interview and "act as an agenda for the interview" (Mathews and Ross, 2010: 227; Patton and Cochran, 2002: 12-13).

Secondly, semi-structured interviews were identified as the most appropriate data collection method, because apart from the above mentioned, semi-structured interviews also allow the researcher to "introduce topics or questions in different ways or orders as appropriate for each interview" (Mathews and Ross, 2010: 221; see also Tracy, 2013: 139). In addition, it allowed the participants to answer and discuss the questions the way they wanted to according to their subjective experiences and the way they understood the research topic. This was opposed to having their answers conform to pre-existing categories. The use of semi-structured interviews is useful when the people or subjects "cannot be directly observed and allows the researcher 'control' over the line of questioning" (Creswell, 1994: 150).

For example, some of questions required the managers and employees to show the extent to which they were familiar with OHS legislation, and find out about hiring practices in the different firms. The questions also explored the extent to which formality and informality affect the implementation or lack thereof of OHS legislation and assess the impact of OHS on profits, especially on smaller firms. This means that the researcher was looking for subjective experiences and perceptions of OHS from the different participants by looking at different things.

With reference to the employees that were interviewed, they were answering from their own personal and practical experience with workplace hazard exposure, as well as employer-employee relations. Because the interview was semi structured, this also allowed the

participants to add anything that they felt may have been left out, this was helpful because there was more information that was relevant to the study. The unstructured or flexible nature of the interviews also allowed for further probing, to ask respondents to elaborate further or expand on what they had said. In addition, this also allowed the respondents to add questions or topics that were not in the interview guide for the next interview on relevant issues that had been raised by a previous participant (Tracey, 2013: 133). The order of the questions and the manner in which they were asked could also be changed to suit the different interviews. For example, with some of the participants (the employees), the questions had to be asked in isiXhosa or Afrikaans because some of them were not fluent and could not articulate themselves in English.

There are some disadvantages to using semi-structured interviews to collect data. Because of the flexible nature of the semi-structured interviews, some respondents went off topic and this meant that they started talking about issues that were not relevant to the study. In addition, the researcher had no way of verifying the validity of the responses. A recorder was used to record the responses, this made it easier to focus on what the respondents were saying, and probe if needed rather than focusing on trying to listen to the respondents and trying to write down their responses at the same time. In addition, recording the responses ensured that the data was raw and the words were accurate coming from the respondents, as opposed to wondering if that is what the respondent really said when transcribing the data for analysis.

3.7 Challenges

There were several challenges while conducting the research. In an ideal situation, the researcher will have limited or no influence at all on the respondents and what they have to do or say. However, according to Creswell (1994: 150), this may not be the case at all times because the presence of the researcher “may bias responses”. This is because the respondents may feel under pressure to give the “correct” or “perfect” answers just because the researcher is there. This was the experience because at some point, some managers and employees were giving responses that they thought the researcher wanted to hear. Or answers that would make it seem like they were abiding by the law, when in actual fact some employees would think otherwise. This affected the quality of the data to a certain extent because those responses were not a true reflection of their subjective experiences. Because of that, the

researcher has to carefully assess “how far do the respondents’ answers to the prepared questions actually reflect their own experiences” (Holstein and Gubrium, 2012: 7).

Where the researcher could tell which parts of the responses were biased, those parts of the interview were disregarded. Other problems that were anticipated and were encountered had to do with issues of transparency of the people that were interviewed. Some were very forthcoming with the required information, but it was those respondents that were abiding by the law. A lot of negotiation had to take place to ensure that respondents were transparent; this was done by ensuring that anonymity would be guaranteed. In addition, according to Brogue (1981: 150), “not all people are equally articulate and perceptive”. This also had an impact in the way in which some of the questions were interpreted by some of the respondents. The researcher had to make sure that the respondents fully understood the questions by carefully explaining what those questions meant.

In the beginning, some managers that were interviewed were not available to be interviewed from their offices when contacted. This means that the interviewer had to negotiate to interview them from their respective construction sites. This was dangerous for someone who is not familiar with on-site safety. Where the managers (Dup Meyer Building Contractors and CM Heunis Building Contractors) offered to give tours of their sites, PPE was provided (Appendix E; Appendix F). The noise levels were high and this could have affected the audibility between the interviewer and the participant, thus affecting the quality of the data. The researcher had to negotiate with the managers to move to a quiet place to conduct the interviews.

3.8 Data Analysis

One of the distinct features of qualitative data analysis is that the data that is being analysed is “text”, text referring to the transcribed material, notes from observations, or images, depending on the data collection method that the researcher chose to use (Schutt, 2012: 321). The text is raw material from the subjects who have responded in their own words. This means that the analysis will have an “emic focus” rather than an etic focus (Schutt, 2012: 322). What does this mean? According to Schutt (2012: 322), “Anthropologists term this an emic focus, which means representing the setting in terms of the participants and their view-

point, rather than an etic focus, in which the setting and its participants are represented in terms that the researcher brings to the study”.

There are usually two different goals that the researcher wants to reach, the first being to understand and make sense of what exactly the participants really felt or thought about a particular topic (Schutt, 2012: 321). Secondly, some researchers adopt an interpretivist perspective (the philosophical perspective underpinning of this research), whereby the analysis of the text is used to “construct a reality with the interpretations of a text provided by the subjects of research; other researchers, with different backgrounds, could come to markedly different conclusions” (Schutt, 2012: 321). Relationships, themes, biases and patterns are identified in the data, as well as the differences in the responses. These contribute in not only making sense of the findings, but also answering the research question.

Contrary to what some might think, the data analysis happens during the data collection, as one is asking the questions and getting the responses. For example, during this time, the researcher reflects on some of the responses as proving right or disputing some of the things that the researcher may have found whilst consulting with the relevant literature for the literature review. In addition, as it was with this research, new relationships and new concepts relating to the construction industry were discovered. This is known as “progressive focusing” (Parlett and Hamilton 1976, cited in Schutt, 2012: 322).

The information that was gathered from the semi-structured interviews was used to gain an understanding of the central research question. Themes and generalizations were identified during the interviews, making it easier for the information to be understood at an in-depth level. To ensure validity, the formulation of questions was based on prior research in the field and important findings within the available literature.

3.9 Ethical Considerations

This section will be looking at what ethics are in the context of research, in essence, it will be expanding on the different dynamics that boil down to the interaction between the researcher and the chosen respondents. Ethics involves “questions about the way in which people who provide data should be treated by researchers” (Oliver, 2003: 3). In addition, it also involves the manner in which the interviewer interacts with those he or she is interviewing because, in

the end, we are dealing with human beings (Oliver, 2003: 9). Because of this “there is a fundamental moral requirement to treat those people in accord with standards and values which affirm their essential humanity” (Oliver, 2003: 12-13). Therefore according to Oliver (2003: 15), “research should avoid causing any harm, distress, anxiety, pain or any other negative feeling to participants”.

Should the respondent(s) start feeling any of the above mentioned, especially when the topic is sensitive (rape, human rights abuse, or illegal activities that may get them into trouble) the researcher has to discontinue with the interview. Or, with the permission of the respondent, stop the interview and continue when the respondent is ready again (Mathews and Ross, 2010: 226). Participants should also be fully and honestly informed of the intentions of the research so that they are fully aware of what the research is about before they consent to be part of the study (Oliver, 2003: 15).

Should the respondents not want to be identified, anonymity must be guaranteed before the interview begins. Since the data was obtained using a recorder and was transcribed, anonymity and confidentiality were maintained by not disclosing the names and the firms of those who wished to remain anonymous. In addition the material was not easily accessible, especially because some of the respondents asked not to be identified because some of them had admitted to not abiding by the laws or making illegal shortcuts, and this is information which could get them into trouble. One respondent (an employee) had to be reassured that the researcher was not going to give the information to the police.

However, as much as this section of ethics is focused on the interviewing process and mainly on the respondents, the researcher also has the duty to ensure that they and their respondents are also safe. This is especially if their research involves “dangerous” topics (gangsterism, prostitution,), and or the data collection is done in a dangerous area. For instance, this research was conducted mainly on construction sites, where the PPE was available (especially because some managers gave the researcher a tour of the site); the researcher was provided with such. Rhodes University’s ethical protocol has been followed whilst doing the research.

3.10 Conclusion

This chapter expanded on the way in which the research was conducted by outlining, describing, and justifying the methods and procedures that were appropriate for the study. The philosophical assumption underpinning this research was an interpretive approach, reason being that the study was looking at finding and making sense of subjective interpretations and understanding of OHS legislation from managers and employers. The method was qualitative, expanding on the interpretive approach, because as mentioned before, the research is looking at the respondents' personal account of their experiences with OHS legislation. Be it with an injury (employee) or its impact on profits (managers). The data collection method also had to be qualitative, with the help of an interview guide, semi-structured interviews were appropriate.

4

OCCUPATIONAL HEALTH AND SAFETY IN THE GRAHAMSTOWN CONSTRUCTION INDUSTRY

4.1 Introduction

The construction industry as mentioned before is a dangerous sector to work in because of the high number of workplace accidents that are reported every year and the record is not improving. In South Africa the record is so bad that the Department of Labour has classified the construction industry as a “high risk” sector. Seeing that this is the case and there was growing concern about the wellbeing of construction workers, the state had to intervene. In addition to the Occupational Health and Safety Act (OHSA), the Basic Conditions of Employment Act (BCEA), the Labour Relations Act (LRA) - the Construction Regulations (2003) and the Health and Safety accord (2012) were put into effect. This means that the construction industry has had to have its own legislation that governs occupational health and safety in an attempt to improve the bad record.

However, even though all of these pieces of legislation exist, the South African construction industry is still doing very poorly when it comes to OHS. With the aim of answering the research question by exploring the current state of OHS in this sector, this chapter will be looking at various themes and generalizations that were found during the data analysis. Having done the study on the Grahamstown construction industry, these themes and generalizations aim to shed light on “how” and “why” the construction industry’s OHS record is poor and not improving.

There are several aspects for analysis here, but this section will be looking at the main ones that link the findings to the research question. The first aspect for analysis that was identified was knowledge about legislation; seeing that in order for the construction industry to do better, management and employees need to be familiar with the existing legislation and the provisions that apply to them. However, as this will be further elaborated upon, the

knowledge about OHS legislation on both the part of employers and employees was very limited. The second aspect for analysis is a major part of how the firms approached and dealt with OHS legislation; informality, from the industrial relations to managerial practices. It is important to analyze informality because it is the foundation for how and why managers choose to deal with and absorb legislation.

The third aspect to be explored was the lack of employee participation and representation with regards to having safety representatives, committees and trade union participation. As mentioned in chapter 2, employee participation and representation are very important if we are to promote a preventative and a co-operative culture in the workplace. The dangers, the costs, and the duties of both employers and employees are mentioned. The chapter also analyses the reasons why employers chose not to adequately invest in OHS and this boils down to the limited resources to do so, especially for the smaller firms. Lastly, analysing information from the Department of Labour's OHS inspector, this section will be looking at the fact that there is a serious shortage of qualified staff to oversee the compliance of OHS legislation.

4.2 Knowledge of Occupational Health and Safety Legislation

As mentioned before, it is essential for employers and employees to know about OHS legislation if we are planning on reducing workplace incidents. Even though there were no serious incidents that were reported from all firms that were approached, the point of having OHS legislation is to ensure that there are measures to prevent the first bad accident from happening (Government Institutes Research Group, 2007: 1). The legislation that is being referred to is the Occupational Health and Safety Act, Construction Regulations, and the Health and Safety Accord

During the study it was found that even though most employers that were interviewed had an idea about OHS measures and procedures, the knowledge about the legislation itself was very vague. This was evident when managers were questioned about specific provisions that they felt affected the construction industry. The question was "please name the provisions that you think affect the construction industry".

Apart from two employers, most of the managers interviewed knew about those provisions.

*Carl Smith stated;

I am not going to lie to you; I'm not sure what your question is about. When you talk about provisions what exactly are you referring to? (Co-Owner of *Three Oceans Building Contractors, 6 December 2014).

When asked if they were familiar with the Health and Safety accord, *Michael Davids stated;

No, I have no idea what you are referring to, can you please tell me what that is. Is it the same as the normal legislation?

(Co-Owner *Yellow Rose Construction, 6 December 2014).

However, even though some managers were not familiar with some aspects of legislation, there were managers that were familiar with legislation and this reflected in their business practices.

Andrew Beer stated;

Because Construction Regulations require me to have a health and safety file for every project that we are part of, I have to have it. Even though I don't compile it myself (A guy called Rudy from Port Alfred does it for us), we have to have one because should the guys from the department of labour ask for one and I don't have it, I'll get into a lot of trouble. (Co-owner ElectProps42, 5 December 2014).

For the managers that were not familiar with the legislation, this brings us to the question, why would employers not know about OHS legislation and who's responsibility is it to educate them? Most employers complained that there was a lot of complicated paperwork to go through (filing reports, the legislation is too long to read, keeping a health and safety file) and that is why they relied on one person to be responsible for that for their projects. This person is from a neighbouring town of Port Alfred. Two firms (*Roneska Projects and Electprops42) confirmed that they pay that person to ensure that their OHS files are up to date for every project. This is despite the fact that for every trip that he makes to Grahamstown it costs them up to R2500 for him to come through at least twice a month.

Even though the East Cape Master Builder Association (ECMBA) offers to provide training and courses on OHS, as mentioned by one employer, it comes at a fee that has to be paid.

This means that those who are not members or those who are members but would rather not pay for the courses, are not likely to get the opportunity to familiarise themselves with the legislation. The same was found with employees. Those who were interviewed knew the basics of their safety, like knowing that they had to use Personal Protective Equipment (PPE) when working, but none of them knew about the legislation and provisions in the legislation that affected them when asked about it. Even though the burden to educate them is on the employer, how will this be possible if their (employer's) knowledge as fore-mentioned is limited too?

In conclusion, it was found that even though both employers and employees were very familiar with some of the OHS measures, neither was familiar with the OHS legislation itself. This includes the various provisions that applied to both parties. This is problematic because it is reported that part of the reason why workplace incidents occur in the first place, is because employers and employees have a poor understanding of the regulations.

4.3 Informality

As one of the themes that have been identified as part of the findings, this section will be expanding on 'informality'. Briefly, 'informality' is a term that is used to describe an informal system of labour relations procedures and management strategies. Informality in the Grahamstown construction industry was found to be a major part of how the firms that were approached coped with or avoided some parts of OHS legislation. After defining informality, the aspects that will be looked at are; legal informality in relation to compliance, informality in relation to industrial relations and managerial practices and the reasons why management uses informality.

4.3.1 Definition of Informality

According to (Oviedo, 2009: 8),

“Informality” means legal economic activity taking place below the radar of government. It takes many forms, from the unregistered small firm, to the street vendor, to the large, registered —formal firm that employs a share of its workers without offering them written contracts with access to benefits and unemployment protection.

This definition was chosen because it embodies some of the findings that will be explored below, with the main finding pointing to the varying degrees of informality. In addition, this definition also looks at the “‘unregulated’ nature of economic activities where labour laws are not really followed” (Owusu, 2012: 16-17). According to (Abdelhamid and Alia El Mahdi, 2003: 6), this can be defined as being “legal informality”, whereby there is non-compliance with the law or legal procedures. This is one of the first strands of informality that was identified during the study and will be explored with regards to compliance to OHS legislation. Then there is another type of informality, according to Guha-Khasnobis, Kanbur and Ostrom (cited in Santiago, 2008: 34-35), it is “activity that occurs outside the reach of different levels and mechanisms of official governance and activity that “lacks structure” or is “simple” or even at times “disorganised””. This seems to be more in line with the informal activities rather than specifically looking at non-compliance with the regulations. This definition can be linked to the informal industrial relations, hiring practices, and so on.

4.3.2 Legal informality: compliance

Labour laws that involve the safe-guarding of employee’s human rights should be adhered to. Employers should not be in a position where they can choose to comply with or not to comply with legislation. However, in reality, it was found that because of various factors that will be looked at further, employers did have the option to decide whether to comply or not and this cannot be oversimplified. According to Hutter (1997: 3 cited in Amodu, 2008: 3), compliance is “the act or an instance of complying; obedience to a request or command”.

In this context (compliance with OHS legislation), Amodu adds that compliance can be seen as the “lens” through which the effectiveness of a regulation is seen and that it has a lot to do with the behaviour of those that are being regulated (2008: 3). However, as found during the study and noted by Amodu (2008: 4), the mere existence of legislation, no matter how well

thought out, does not guarantee total compliance for a number of reasons that will be explored further in this section.

According to Khanbur (2009: 5), employers can either:

- a. Stay within the boundaries of the regulation and comply;
- b. Stay within the boundaries of the regulation but not comply;
- c. Adjust activity to move out of the boundaries of the regulation; or
- d. Not comply at all in the first place, so there is no need to adjust.

During the study, it was found that very few employers actually stayed within the boundaries of OHS legislation and complied, the most common were b and c. The same can be said for employees too. For example, with the use of Personal Protective Equipment (PPE), Sections 14 (a) and 15 state that every employee has the duty to ensure that they follow instructions so that their health and safety is not jeopardised. In addition, they should not abuse any equipment that is meant for OHS. Most employees admitted (some were seen working without any helmets or gloves that were available) that they did not use the PPE as required because sometimes it was uncomfortable and it hindered them in their work.

Other employees were seen using drums to reach heights instead of the scaffolding that is required by law. In addition, one employer (Gerrie Els, owner and manager of Dup Meyer Building Contractors, 5 December 2014) mentioned that some of his employees would arrive on site intoxicated. This is not only unprofessional, but it is also very dangerous for the employees and their colleagues. Another contravention of the law (Section 17 and 18) as mentioned, is the election of health and safety representatives and committees. Of the ten firms approached, only two had safety representatives and none had committees. Legal informality, as mentioned before, is when the informal activities are in contravention of specific provisions in the law. Employers in this study cut corners, which mean that they were in contravention of the legislation, employees also admitted to doing things that were against the law.

4.3.3 Informality, Industrial relations and Managerial Practices

As mentioned above, there are different types of informality and illegal informality has already been looked at. Briefly, it is informality that is linked to activities that are in contravention of the law. This section is an overview of the industrial relations activities that are not illegal, but are informal. Informal industrial relations practices are prevalent because “most SMEs can be described as organisations which have to fight for survival” (Hasle and Limborg, 2005: 8). However, it was found that informal industrial relations were common in larger firms too. Managers relied on the informal relationships that they had with employees to pass down the basic knowledge that they had about OHS. This is because they (apart from one firm whose employers were in the middle of a dispute with the labour force) had a good relationship with their employees. With two being able to speak isiXhosa which is the language that most employees spoke, this made it easier for them to put forward queries and problems.

Gerrie Else stated;

I have a good relationship with my guys. I’m like a father figure to some of them so we work well together and I prefer for us to have an informal relationship. However, this does not mean that they must not take their work seriously (Owner and manager of Dup Meyer Building Contractors, 5 December 2014).

Because Gerrie prefers to have an informal relationship with his employees, this opens up the communication channels because this leaves little room for misunderstanding of instructions, for example.

There was a good understanding of the rules of each site when it came to things like dismissals for contravention of regulations or agreements between employers and employees.

*James Green stated;

If an employee is absent from work without any notice (doctors note/letter from the police), three times, those are grounds for immediate dismissal (Manager at CM Heunis, 5 December 2014).

*James Green also mentioned that he too had an informal relationship with his employees, but they knew that when it came to contraventions on agreements, they have to face the consequences. Some employers dismissed their employees but they went through verbal

warnings, written warnings and then finally, dismissal. From the data, it is evident that all employers, apart from one, had good relations with their employees.

4.3.4 Reasons for informality

As mentioned in the beginning, managers have reasons why their practices are informal. Most of these reasons that are listed were confirmed during the study. According to Oviedo (2009: 16), these are:

- The regulations are burdensome (high entry costs, strict labour regulations, high taxes, complicated procedures)
- Low institutional quality (corruption, weak rule of law, lack of accountability, etc.)
- Low human capital
- High economic inequality
- Low trust in institutions
- Low quality of public services (infrastructure, social protection)
- Lack of access to resources (land, credit, etc.)
- Low monitoring and enforcement (Oviedo, 2009: 16)

Some consequences include:

- Low investment
- The free-rider problem (overuse of public goods, low tax collection)
- Unfair competition
- Low innovation
- A large fraction of poor population uninsured against income shocks
- Workers unprotected by basic safety standards. (Oviedo, 2009: 16)

Concluding, it can be noted that informal activities can be seen as a way of not just avoiding and absorbing parts of legislation, but management used it to have better relationships with their employees. This could be noted with the interaction between management and employees and this made it easier for management to pass down information. We can also see that there are varying degrees and or types of informality, which can help us look at the

levels of non-compliance at the different firms. What was also found was that informality is not only common in smaller firms, but most big firms that were approached also used it as a coping mechanism.

4.4 Employee Participation and Representation

In the interest of establishing and developing safe workplaces, apart from having good OHS legislation, it is essential to promote a participatory and co-operative culture between employees and management. We established in chapter 2 that employee participation is an integral part of OHS success. This section is an overview of the findings concerning workplace representation and participation by looking at the methods through which employers and employees could have their say when it comes to OHS matters. There were different factors that negatively affected the effectiveness of workplace representation such as; the size of an organisation, the methods of employment, and the lack of trade union involvement. In addition, it was found that there was also a lack of access to information and training, as well as the lack of commitment by management to prioritizing a participatory approach to OHS matters.

According to Walters and Nichols (2009: 2),

Workers' representation' refers to the situation in which workers represent their interests through the normal channels of labour relations. While the predominant approach to achieve this is through a regulatory framework that legitimises workplace institutions that give workers a voice on matters of their health and safety, the process of effective representation always occurs through channels of workplace labour relations, is supported by organised labour and is subject to many of the same influences on the nature and extent of these wider relations.

As mentioned before, worker representation is very important for establishing a preventative and co-operative culture in the workplace. According to Gunningham (2008: 336), "Worker participation in occupational health and safety (OHS) generally achieves better outcomes than unilateral management initiatives". This is very important because employees know much more about the workplace risks and hazards than anyone else (Gunningham, 2008: 336). Some of the roles of health and safety representatives and committees include

“reviewing the effect of health and safety measures”, conducting inspections, taking complaints from employees, making recommendations to management, and maintaining records of accidents, meetings and investigations (O’Grady, 2000: 10; Sections 18, 19 and 20).

4.4.1 Employee Participation and Representation as an Integral Part of Occupational Health and Safety Success

As mentioned in chapter 2, under MOSA the appointment of safety representatives and committees was left to management and this was one of the major problems that stifled the success of the legislation (Zwi et al, 1988: 699). South Africa’s new OHS legislation aimed to change this by ensuring that employees were the ones who are responsible for the election of safety representatives and the members of safety committees (Benjamin and Barry, 2006: 2).

According to Walters and Nichols (2009: 21), there are four different methods of participation and representations: “single or multi-issue joint committees, free-standing worker representatives, direct methods or no arrangements”. A joint committee involves the responsibility to prevent workplace incidents being placed on both management and OHS representatives (O’Grady, 2000: 1). Free-standing means that there is one person representing the whole workforce. Direct methods involve the information being given by management at staff meetings, through newsletters, emails and notice boards (Walters and Nichols, 2009: 19-31). “No arrangement” means that there is no formal arrangement as to whom or how the representation will be taking place.

During the study it was found that when it came to employee representation, there was a combination of free-standing representation, direct methods and no arrangements in all the firms that were approached. Managers were asked about their methods of communicating to their employees about workplace hazards and other relevant OHS information. Most of the firms relied on the direct method, whereby the manager was responsible for giving out health and safety information (Dup Meyer Building Contractors, Roy Bowels Construction, *Roneska Projects, *Three Oceans Building Contractors). The job of distributing health and safety information and handling complaints was left to management during tool box talks, and most sites had notice boards about OHS (APPENDIX G; APPENDIX H). One firm had

no arrangement at all (*Yellow Rose Construction), whilst another firm (ElectProps42) relied on one employee for all health and safety complaints (which only included lost or damaged PPE that needed to be replaced). Two of the firms (WHBO and CM Heunis) had health and safety officers, who also played the role of safety representatives.

Not having a safety representative is in contravention of OHSA (Section 17 (1)), which states that an employer that has more than twenty workers “at any workplace” has to have safety representatives. In addition, none of the firms that were studied had health and safety committees. This is also in contravention of OHSA (Section 19 (1)), which states that where there are representatives, there have to be committees as well. It was also established during the study that the information that was being given by management on OHS was very limited.

The reason why it would be considered to be limited was because the information that was given during toolbox talks was only in relation to what tools to use for what and a reminder to the employees to use the PPE. In addition, we can conclude that since most of the employees could not be identified as representatives, this means that management was not fully committed to a participatory approach. Having a participatory approach gives employees autonomy to have a say in OHS matters and because of that, they are more likely to co-operate. Methods of representation have a lot to do with the size of the organization and according to Walters and Nichols (2009: 21) direct methods are more common in smaller firms, especially in those firms where there is a lack of union representation. However, this can be disputed because direct methods were found to be prevalent in both big and small firms.

4.4.2 Trade Union Representation

Where management allows for there to be trade union involvement, having trade union representation is crucial because workers should have their interests represented. With regards to OHS, the role of trade unions would be to ensure that employees are well represented on OHS matters. This is supported by Pringle (2006: 118) who states that the role of trade unions is to ensure,

That their members’ pursuit of safe working conditions is achieved through their support. Trade union interest in the issue of health and safety reflects concern that

safety hazards be removed as far as is possible from the workplace. The extent to which the union is able to provide this support is determined by the degree to which management shapes their involvement in OHS matters.

During the study it was found that trade union representation, where it was allowed (erratic as it was), was limited to discussing wages only. No OHS issues were discussed with members or management at all. In fact where there was trade union involvement, management and the trade union had an antagonistic relationship (Dup Meyer Building Contractors, *Roneska Projects). As pointed out in chapter 2, the construction industry does have unions, the Building Construction and Allied Workers Union (BCAWU) and the National Union of Metal Workers of South Africa (NUMSA). However, when asked about whether they knew about BCAWU none of the respondents (employers and employees) knew about it.

The union that was mentioned the most was NUMSA. Even with the union representation, many managers complained that the union representatives were taking advantage of the employees by taking a fee from their salaries but not doing anything for them. One employer Gerrie Els stated;

I had a guy from NUMSA who ripped off my guys. First he came here accusing me of not giving my guys PPE (which is not true) so that it seemed like he was doing his job. Secondly, he took the money saying that he will use it to send them to school. To this day, none of my guys have ever been to school as promised by him. I realized that he is a trouble maker and I suggested to my guys that they leave this guy and we work things out on our own. Since then, everything has been smooth sailing (Owner and manager of Dup Meyer Building Contractors, 5 December 2014)

*Thabo Matlala stated;

We belonged to NUMSA but those people took advantage of us. A certain amount went towards the trade union but this guy did nothing for us. He also promised us that the money he was taking was going towards a fund to educate us, but nothing has come from that (General employee at Dup Meyer Building Contractors, 5 December 2014).

*Steven Kuhn stated;

My wife and I have been in the game for 30 years now and most of the staff that we have now, are people that we started off with. We've been supporting all of our staff. We had a very good relationship with them. All of a sudden these okes from NUMSA have turned our staff against us. Out of nowhere they're told to make all of these outrageous demands. For example, they want us to fetch every one of them from their homes for work. We're strongly considering retiring because the atmosphere at work has become very toxic and our relationship with the staff has become irreconcilable (Co-Owner at *Roneska Projects, 6 December 2014).

*Sally Kuhn added;

We have done more for our staff than that guy from NUMSA ever has. He promised our guys that he would use the monthly fee that they pay to the union to educate them. I asked him to date, how many of our staff he has educated, he said three. Three only? He doesn't even know how to do his job, what makes you think that he'd know anything about occupational health and safety? All he does is cause trouble, I don't even greet the staff anymore when I arrive at work because as my husband has mentioned, our relationship with the staff has become irreconcilable. (Co-Owner at *Roneska Projects, 6 December 2014).

It is clear that trade union representation was very erratic and when it did exist, it did not represent the interests of employees on OHS matters, among other things. This could be attributed to the fact that more emphasis is placed on wages, and that the union leaders that are mentioned are not very familiar with OHS matters themselves. In addition, there is a shortage of skills with regards to having union members who are qualified to help with OHS. Again, from the above-mentioned experiences with union leaders, it can be concluded that the relationship between employers and trade unions is antagonistic.

Also, the relationship between the said trade union leaders and the employees is not beneficial to them in any way. The antagonistic nature of these relationships is problematic because it means that employees are missing out on having their interests secured by another party, other than management.

4.4.3 How Non-Standard Employment Affects Employee Representation and Participation

There are two different types of employees, according to Martinez et al (2010: 62), the “core (or primary) group and the peripheral (or secondary) group”. The core employees are those employees that are permanently employed or those that have a “Standard Employment Relationship” (SER) (Martinez et al, 2010: 62). This employment relationship, according to De Cuyper et al., 2008; Kalleberg, 2000 (cited in Martinez et al, 2010: 62), “offers continuity of employment, which gives the workers a certain level of security regarding their working situation; the employees work in the employer’s workplace and receive employer’s supervision. In many countries workers also receive benefits and insurance”.

The second group are peripheral employees, those that have a non-standard employment relationship (Martinez et al, 2010: 62). These employees usually work as casual, temporary or seasonal workers, and there are very limited benefits for them. According to Martinez et al (2010, 62), “Most of the companies have a certain number of temporary workers as a way to deal with periods of decreased productivity or lower demand”. During the study it was found that non-standard employment was very common. Apart from the following firms; CM Heunis Building Contractors, T Squared Engineers, ElectProps 42, East Cape Electrical, which had a mix of casual, contract and permanent workers, most firms had employed their workers as casual workers. This is regardless of the fact that many of the employees that were interviewed stated that they had worked for their respective firms for longer than ten years.

Benny Martinus stated;

I have been working for Mr Dup Meyer before Gerrie took over in 2010, which means that I have worked for this company for 16 years now (General employee at Dup Meyer Building Contractors, 5 December 2014).

Many others like Benny Martinus, are employed for a long time in their respective firms without employment contracts.

Non-standard employment opens up employees to much vulnerability. As Loewenson (2000: 333) puts it:

Most informal sector workers have not undergone any training, gaining their knowledge and skills in service. The terms and conditions of work are generally flexible, often below legal standards in terms of labour relations law and generally without formal written contracts.

Sometimes this opens them (employees) up to exploitation, poor and unsafe working conditions, little pay and very little job security (Loewenson, 2002: 333). In addition, according to Walter and Nichols (2009: 122), “These findings raise questions about the ability of workers in less permanent relationships to take time off to recover from the more demanding working conditions they face”.

According to Walters and Nichols (2009: 109-110), “non-standard employment, self-employment and other forms of less permanent employment have all grown in relative importance”. This is because these types of temporary or precarious employment undermine the effectiveness of health and safety representation and make it difficult to represent and organize workers (Walters and Nichols, 2009: 110). This also means that none of the employees according to OHSA are eligible to be safety representatives because Section 17 (4) of the Act states: “Only those employees employed in a full-time capacity at a specific workplace and who are acquainted with workplace activities at that workplace or section thereof, as the case may be, shall be eligible for designation as health and safety representatives for that workplace or section”.

However, this is a bit of a grey area because even though none of the employees are employed in a full-time capacity as required by the Act for them to qualify as representatives, many stated that they had been employed for more than ten years at their respective firms. This means that they are well acquainted with the workplace activities as required by the Act, but may not be eligible because they do not have permanent employment status secured in the form of an employment contract.

Having mentioned the obstacles that were found during the study, we can conclude that representation and participation and as required by the law, is close to non-existent. This is because the job of giving information about hazards and PPE amongst other things is left to the managers. Workers have limited autonomy and training to be “reviewing the effect of

health and safety measures”, conducting inspections, taking complaints from employees, making recommendations to management, and maintaining records of accidents, meetings and investigations. Managers are not really trained to be representatives and this means that workers do not have the full advantage of benefitting from having safety representatives and committees. According to Walters and Nichols (2009: 127), “Given the importance of worker participation for the effective functioning of the system, the limited ability to raise safety concerns or participate in a meaningful way in health and safety discussions certainly raises questions about the effectiveness of the entire system”.

4.5 Employer Representation

The above-mentioned section focused on employee representation and participation in OHS matters. This meant that employees according to the OHSA have the right to be represented by some of their colleagues as representatives and be members of health and safety committees. This is in order for there to be a fair balance of decision-making and input regarding OHS matters. As mentioned in chapter 2, employers in the construction industry have representation, Master Builder Associations (MBAs). They play a huge role in providing health and safety advice, training and information amongst other things to employers. According to the Department of Labour (2008), “employers’ organisations are necessary for effective collective bargaining- an important way of regulating industrial relations and of determining employees’ wages and benefits”. Under Section 8 of the Labour Relations Act (LRA), employers have the right to form and be part of organisations that represent their interests.

It was found that the East Cape Master Builder Association (ECMBA) is the body that represents employers in the construction industry in the Eastern Cape. However, this service was only available to employers that had paid a membership fee and registered as members of the association. Services offered by the association include bargaining for wages and disputes, site inspections, as well as OHS training courses for employers and their employees. Even though the association exists, the perception is that only bigger firms benefitted from being members of the association while the smaller firms were neglected. Employers were asked whether they think institutions such as the ECMBA have an impact (negative or positive) on the Grahamstown construction industry.

*John Green stated;

The MBA are really good at what they do and that is why we have never had any problems with them. They come in here once a month to do site inspections and give us advice on what to do and what not to do. They have been here more than the department of labour has. In fact, the first and the last time we saw anyone from the department of labour was at the beginning of this project. I want them (the department of labour) to do the site inspections so that our bases are covered in case something bad happens. (Manager at CM Heunis Building Contractors, 5 December 2014).

*Ron Engels shared the same sentiments and stated;

We at Roy Bowels have no complaints about the MBA. They do an exceptional job and we work very well with them. Therefore, I believe that they do have a positive impact on the Grahamstown construction industry (Manager at Roy Bowels Construction, 5 December 2014)

However, as mentioned before, smaller firms had a different experience with the ECMBA. Sam Masisi stated:

I do not think that they are playing the role that is required, that role being the overseer of this particular industry. I'll tell you what, you end up with them after you have applied for registration, they give you a registration number and they give you stickers to put on your vehicles to show that you are a member. But from there, they are never around to stress their code of conduct and policies to their members. So I think they need to get more involved in projects where their members are, get involved in the audits and play a more active role in assisting their members.

When asked if he thought that the ECMBA only looks out for bigger firms and neglects the smaller ones, Sam Masisi stated;

Maybe they do. What I do know is that sometimes when bigger firms use smaller firms as subcontractors on big projects, they tend to take advantage of them. That is why I feel that part of the ECMBA's job is to protect smaller firms. I cannot say that I have benefitted or that they have a positive impact on the Grahamstown construction industry, but that is my opinion (Owner and manager at TSquared Engineers, 5 December 2014).

Gerrie Els shared similar views, he stated;

Mr Meyer (the founder) is a very interesting character. He never belonged to the MBA and I joined the MBA thinking that I will see what it is. They have done nothing for me. They do send you a newsletter via email where they say that they've got these training workshops that you have to pay for which is I suppose, great. But they haven't done anything for me; you don't need them for anything really (Owner and manager at Dup Meyer Building Contractors, 5 December 2014).

As mentioned in chapter 3, attempts to draw comments from the ECMBA's health and safety officer were not successful. In conclusion it can be noted that the ECMBA is recognised as an employers' representative body for the construction industry in the Eastern Cape. As the employers' representative, part of the duties (mentioned in chapter 2) are to equip employers with the necessary skills and information pertaining to OHS by having training workshops and courses for employers. However, it must be noted that these benefits are only available to registered members who on top of the registration fee, have to pay another fee for the training and workshops. In addition, the views of managers from big and small firms differed because whilst the managers in bigger firms had no complaints and were satisfied with the ECMBA, the managers from smaller firms had a different experience.

4.6 Dangers, Risks and Costs Associated with Occupational Health and Safety in the Construction Industry

Ideally, because OHS is very important, every workplace would be able to adequately invest in all OHS measures as required by the law. Investing in OHS is essential, especially in the construction industry where the daily activities have the potential to harm and even kill the people doing them. But in reality, investing in OHS measures needs a lot of funding; funding that may not be available. From the training of staff, to the purchasing of different kinds of PPE required for every job, the costs are a burden for the employer. According to the Department of Labour (2003: 29), "OHS prevention activities are inadequately funded. There is no consistent pattern of funding OHS activities". This was very evident in the findings. In addition, the perceptions of employers had a huge impact on why most of them chose not to invest adequately in OHS. While many employers that were interviewed felt that investing in OHS was costly, very few mentioned that it was even more costly not to invest in it should something bad happen to an employee.

4.6.1 The Employer's Duty to Inform Employees of the Dangers of Construction Work

OHSA clearly states that it is the duty of the employer to ensure that all employees are safe and healthy, whereby hazards are identified and the risk eliminated or reduced as much as possible (Section 8 (1)[2003: 35; Roskam, 2011: 265; Department of Labour, 2012, Kramer et al, 2004: 316). It is also the duty of the employer to provide information, training and supervision to all employees, especially those that are considered to be at a greater risk of being injured or sick. Considering the fact that the construction industry is one of the most dangerous industries, worldwide, the following job categories and risks were identified during the study:

- Casting concrete
- Mixing of mortar
- Laying and transporting of bricks
- Painting
- Electricians
- Plumbing
- Earth works/excavations
- Elevated work
- Masonry

The risks associated with the above-mentioned jobs:

- Noise levels may affect hearing
- Falling from heights
- Inhalation of dust and other chemicals, such as paint
- Electrocution
- Being stricken by objects
- Limbs being cut off
- The reliance on heavy machinery increases the risk of being injured
- Heat
- Objects getting into the eyes
- Fire

All but one (*Yellow Rose Construction) employers approached said their employees were always notified and were aware of the risks that are associated with the work that they did. This information is given to them during weekly toolbox talks. Two firms (CM Heunis and WBHO) did a Daily Safety Task Instruction (DSTI) every morning done by their health and safety officers, who also play the role of the safety representative. The DSTI is similar to a toolbox talk, the difference is that unlike a toolbox talk, the DSTI takes place every day. The employees were encouraged to bring up any on site issues by reporting dangerous situations or situations that had the potential to be dangerous. Employees were also encouraged to report any problems with the PPE, or come up with suggestions that can make doing their work easier or better. This is then communicated to the employer or the manager who has to ensure that these matters are dealt with urgently. However, one employer, *Steven Kuhn, did not see the need to conduct toolbox talks every week. He stated;

I have worked with most of these people for so many years now and by now they know what they have to do. Toolbox talks are a waste of time and I doubt that every employer actually does these every week. If they said that they do, they were lying to you. I mean, does it sound realistic to you to keep repeating the same thing to the same people every week? (Co-Owner at *Roneska Projects, 6 December 2014).

From what *Steven Kuhn said, we can ask the question of whether doing toolbox talks everyday is realistic? Especially because many firms are under pressure to complete projects and are most likely not to do things that may “eat” at their time. Because we cannot stress the importance of on-site safety enough, it is very important for employers to ensure that employees are always aware of the hazards that exist in the workplace. By doing this, it reduces the risks of on-site accidents because workers are aware of what they must do and how they must do it.

4.6.2 The Duties of the Employee

As mentioned before, under OHSA, workers also have to take responsibility for their own health and safety and that of fellow employees by cooperating with management (OHSA, section 14 (a-e); Epstein, 2012: 62). In order for employee co-operation to be a reality, as

mentioned before, employers have the responsibility of ensuring that employees are aware of all the hazards that exist on site and with their jobs. All employers admitted that much of the training was on-the-job practical experience.

It was found that only through practical experience (some employees have been working in the construction industry for as long as 20 years) and very limited on-the-job training, that employees knew the basics about their own safety, but not much about OHS legislation itself. At the same time, to a certain extent the burden to ensure that OHS measures were adhered to still remains largely with the employees, who were expected to “use their common sense” and if an accident does happen, the employee is to blame for being negligent (Hasle and Limborg, 2005: 8-9).

*Ron Engels stated;

The idea that construction work is dangerous is a myth, because one needs common sense for them to not get injured. We have toolbox talks, and that should give them fairly good knowledge on what has to be done and what is expected of them on site. Accidents happen when people are negligent (Manager at Roy Bowels Construction, 5 December 2014).

*Ron Engel’s statement again, speaks to the idea that when an accident happens, employees are most likely to be blamed because it is seen as negligence on their part.

However, this does not mean that employees are left to completely fend for themselves. According to Hasle and Limborg(2005: 8), in some firms, especially the smaller ones, the management style is often “patriarchal”, “ego-centric” and “action orientated”. However, the employers still “assumes certain responsibility for the employees” (Hasle and Limborg, 2005: 8). This was supported by Gerrie Els, who highlighted the excessive use and abuse of alcohol by employees as one of the major problems that he faced when it came to employees taking responsibility for their own safety:

One of the major problems is the abuse of alcohol by the employees. I have had to send some of my guys home because they were under the influence of alcohol. I have even resorted to getting a breathalyser to check before they start work because it

really is dangerous to do any construction work when you're intoxicated (Owner and Manager of Dup Meyer Building Contractors, 5 December 2014).

In conclusion, as much as management is responsible for the training of employees and notifying them of hazards, employees also have the duty to take care of themselves. Much of the burden to be safe is left to the employee. All employees that were interviewed were familiar with the basics on what they had to. This can be attributed to the fact that most of them had on the job experience and had been working for at their respective companies for many years, some as long as 16 years.

4.6.3 Use of Personal Protective Equipment

The correct use of PPE is an indication of the extent to which workers are responsible for their own health and safety. Most if not all of the employers that were interviewed accepted the responsibility of providing PPE for all of their employees. Scaffolds (APPENDIX I), safety harnesses, catch nets, helmets, barricades are what forms part of PPE on a construction site (Ahmed and Othman, 2012: 185). However, some employees stated that PPE in most cases was not necessary because it hindered them with their work.

*Mziwamadoda Sodlaka, , stated, "I know that I have to wear the PPE because of the nature of my job, but I have to be honest with you, the PPE does get uncomfortable especially on hot days and I do sometimes feel that it is unnecessary" (Part of the excavation/earthworks team at *Three Oceans Building Contractors, 6 December 2014).

Another employee, *Xhanti Nodada, stated: "Sometimes we complain to our boss, why do we have to wear a helmet when we're just standing on level ground? It really does not make sense to me" (Brick layer at *Yellow Rose Construction, 6 December 2014).

Andrew Beer stated;

In the good old days, my guys would take two big drums and put a plank in between to reach heights. But now, because I am slowly becoming aware of legislation, I tell them that legislation requires them use scaffolding at all times. It may seem like an

inconvenience because it takes quite a bit of time to set up the scaffolding, but it really is for their own safety (Co-Owner at Electrops 42, 5 December 2014).

The above-mentioned quotes are an indication that employees can also be at fault when it comes to health and safety Act contraventions. Having given the reasons for why they sometimes feel that they do not need the PPE, it is evident that these habits can cause problems in the long run. This also speaks to the fact that having a poor understanding of the health and safety regulations as mentioned before, workers may not see the need to take care of their on-site health and safety.

4.6.4 Dealing with Injuries

In the interest of ensuring that injuries are dealt with as soon as possible, the employee is responsible for ensuring that they immediately report any incidents that have occurred. They are also encouraged to report as any situations that are dangerous and have the potential to cause harm to themselves and/or fellow employees (OHSA, section 13).

According to Henson,

Employees have to report every incident to me as soon as it happens, or anytime during the shift, before we knock off at 5pm. No matter how small it is. Anytime after that it will be harder to prove that it occurred during the scope of your work. This is because many of the guys go out drinking after work and some get into fights in the township, and sustain injuries. Now you cannot tell whether the injury was sustained at work or after hours if the employee only reports the incident to you the day after it happened. It is for this reason that we encourage the guys to report any injuries anytime between the time they get hurt and 5pm before they knock off (Health and Safety officer at CM Heunis Building Contractors, 5 December 2014).

The above-mentioned quote is important because it once again shows us that reporting of injuries is essential if we are to keep records to monitor the progress of whether the current reporting system is working. As mentioned in chapter 2, unfortunately the reporting of accidents is not very common.

With regards to the responsibility to ensure that their actions do not put them or their co-workers in harm's way, Henson added that,

The guys have to wear PPE, and they are not allowed to throw anything on the basement; particularly those that are working from heights. Apart from constant absenteeism without any written notice, throwing something from a height is grounds for immediate dismissal from work. By throwing a brick for example from a height, you are putting the lives of others at risk because should that brick strike someone else who is unaware of your actions, you could seriously injure that person, or even kill them.

4.6.5 Compensation

One of the costs associated with OHS is that of compensation, and the legislation that governs this in South Africa is the Compensation for Occupational Injuries and Diseases Act COIDA. However, during the study it was found that all employers did not see the need for it. Andrew Beer) stated;

Besides the fact that we have not had any serious injuries, we usually deal with taking care of injuries ourselves. The compensation fund people take forever and you end up wondering why you even pay into the fund at all (Co-Owner of Electrops42, 5 December 2014).

This speaks to that fact that because of the tedious admin that comes with COIDA processes and reporting workplace incidents, employers would rather handle injuries themselves, by either sending the injured employee home or taking them to the hospital or doctor.

4.6.6 Employers' Investment in Occupational Health and Safety

The importance of spending on OHS has been emphasised repeatedly, especially in the construction sector. The jobs and risks that were identified during the study were listed above. Therefore, one would expect for that to act as a motivation or incentive for OHS legislation to be adhered to. Judging from the respondents' responses to the questions, it is important to mention that management's perception of OHS plays a major role in whether they choose to spend money on it or not. As mentioned in Chapter 2, most of the time management sees OHS as something to be dealt with when the need arises, especially when employers take into consideration the financial implications of investing in OHS.

According to Zwi et al (1988: 696) and Hasle and Limborg (2005: 8),

Not all employers accord the same importance to OHS. Large companies are in a much better financial position to employ 'loss control' officers, full-time personnel officers and consultants, as well as to set up health services. Furthermore, big capital is better able to withstand the stresses and strains of a recessionary period.

This then reflects in the business practices of most employers because they do not see the financial benefits of OHS legislation.

Gerrie Els, when asked about his perception of OHS, stated;

Look, I can give you the politically correct answer and I can give you my honest opinion. In my honest opinion, it is a pain for me! I recently had the privilege to work at the wind farm project. And my eyes were opened. My guys had to go for medical check-ups, not from just a doctor, but from a health and safety officer. Every single worker, that is like R400 per person. Then you get breathalysed before you get into the site with a breathalyser and the guys had to be checked every morning before they started work ... They are not allowed to sit at the back of a bakkie. I mean why do you even have a bakkie then? It was absolutely, absolutely anal if I can use that word. But it opened my eyes to the standards that they have overseas (they were working with a German company). Absolutely, to a point it's critical: you have to have the regulations and safety should come first. However, I think there is a point where it's becoming a bit ridiculous especially with the expenses (Owner and Manager at Dup Meyer Building Contractors, 5 December 2014).

Gerrie Els, like many other managers that were interviewed, mentioned how expensive it is to invest in OHS measures.

The expenses of providing PPE was another factor that *Michael Davids complained about:

Adequately providing for PPE is very expensive! You have to take into consideration that not all workers are doing the same things; therefore the PPE should suit the requirements for the different jobs. For example, the people that are working in heights must have helmets, and safety harnesses among other things. Those at excavations must have glasses, earplugs, helmets, and so on. These things are not cheap (Co-Owner of *Yellow Rose Construction, 6 December 2014).

Spending money on OHS was something that was overlooked when allocating money for projects. Because no incidents that required a lot of money (medical expenses, compensation, and rehabilitation) were reported, employers did not spend much on fully adhering to the requirements of the law.

Health and safety is not like other production outcomes such as productivity or quality. If health and safety are going well, nothing happens, and this affects the priority that people place on the importance of safety (Zohar, 2000, cited in Kramer and Leithwood, 2004: 316).

Gerrie Els added;

If company C is spending only R50 000 on OHS, then why must I spend R100 000 or spend any money at all? This is very crucial to take into consideration, especially when this has the potential to affect the tender bidding process (Owner and Manager of Dup Meyer Building Contractors, 5 December 2014).

During the study it was also found that it was not only management from small firms that complained about the costs; many managers from the larger firms shared this sentiment. This is one of the reasons why they were hesitant to spend “too much” on OHS, especially if no serious injuries were reported. As much as we can expect employers to spend on OHS on measures that are required by the law, unfortunately there is not much that is being done to assist employers financially. This is why many would rather not spend on resources for OHS.

4.7 Department of Labour in Grahamstown

The Department of Labour in Grahamstown was approached for the research. Reason being, they are the government organ that is responsible for ensuring that labour laws, including OHS are established and adhered to. Mr Zola Bikitshana was interviewed and he is the department's OHS inspector. Mr Bikitshana admitted that the construction industry is the sector that stood out the most for him, because most of the accidents that he is usually called out to assess happen on construction sites. As someone who does inspections for the Makana Municipality and other surrounding municipalities, as far as Port Alfred, and even in Port Elizabeth, he also admitted that there is a shortage of qualified staff to carry out inspections.

4.7.1 What is an Inspector?

Under the Section 28 of the Act, an inspector is someone who is qualified to perform workplace inspections. Inspectors have been authorised by or on behalf of The Minister and furnished with a certificate to prove that they are qualified to hold that position (Section 28 (1) (2)). Should someone whose premises is being inspected request to see the certificate, the inspector should be able to produce it (Section 28 (3)).

4.7.2 The Functions of an Inspector

Under Section 29 (1) of the Act, some of Mr Bikitshana's functions as an inspector include:

- Entering any place of employment or a place that he suspects to be a place of employment without prior notice, to conduct an inspection (APPENDIX J)
- Check any records/book/notes that exist, pertaining to OHS
- Conduct investigations when there has been an incident
- Make recommendations to employers where there has been a contravention (specific to construction sites) (APPENDIX K)
- Order site closures should during an inspection, he sees that there has been a contravention
- Compile Health and Safety Reports (APPENDIX L)

4.7.3 Findings and Discussion

During the study it was found that there is a severe shortage of skilled inspectors to carry out the inspections. Mr Bikitshana is the only one doing the inspections in Grahamstown. This could be possibly why there was a disparity when it came to inspections. The bigger firms (apart from CM Heunis) had no problem with the Department of Labour because their representatives stated that they had a good relationship with the inspector, who did regular inspections on their sites. The smaller firms however, complained that they never hear from the Department of Labour at all. This means that there is a possibility that smaller firms get away with much more because they are not properly monitored. Bikitshana also mentioned that when it came to trade union representation, there was also a shortage of skilled staff within the unions to deal with and negotiate on behalf of employees when it comes to OHS.

Bikitshana suggested that OHS education should not be limited to the workplace only, but it should extend to peoples' homes and schools too. He feels that the more people are aware of the severity of workplace incidents, the better they will do when it comes to ensuring that they are not exposed to workplace dangers.

Zola Bikitshana stated;

If your son or daughter is educated about OHS, they could even remind you to take your helmet to work with you or be more careful. This is because they know that if mom or dad loses their balance at work and their head is not protected, they could get seriously injured, permanently disabled or even dead.

Zola Bikitshana in this quote touches on the ripple effects that workplace accidents have on injured employees and their families.

4.8 Conclusion

We have established that the jobs and risks associated with the work that is done on construction sites, are the reason why OHS should be taken seriously in the construction industry. There were no serious accidents that were reported by employers and employees

during the study, and that is why most employers in small and large firms did not see the need to fully invest in OHS measures. However, that should not be the reason why OHS is not being fully adhered to. The serious shortage of qualified staff (in the department of labour and trade unions) is also having a negative impact on the enforcement of OHS legislation and consistent monitoring of the adherence to legislation. Another problem that was identified was that both employers' and employees' interests pertaining to OHS, were not being adequately represented by those who were supposed to do so (ECMBA and trade unions). This can cause major problems because at varying degrees they have no autonomy with regards to raising OHS issues and jointly finding solutions.

In addition, funding for investment of OHS is very limited, especially because investing in OHS, according to most employers that were interviewed, it is not very profitable. This is especially if the next firm is not investing that much in OHS and it seems like they are doing fine without it.

5

CONCLUSION

As mentioned in chapter 2, occupational health and safety in the South African construction industry is very poor and the record is not improving at all. This is despite there being several pieces of legislation that govern it worldwide and locally. The findings in the research looked at the variety of the problems that limited the effect of OHS legislation and this is the conclusion.

5.1 Summary of Thesis and Main Findings

Globally, the state of OHS is not looking very good and it keeps getting worse. This is despite there being a legislative framework that governs OHS globally, that can be adopted by all governments. This legislative framework is by the International Labour Organisation (ILO). Thousands of employees are injured and killed every day and because there are no reliable statistics available, we cannot be too sure about the extent of the situation. In addition, some workplace incidents are not reported by employers and employees because not only are reporting processes reportedly tedious to go through, but in many workplaces there is a culture of non-reporting is perpetuated by employers who do not want to be held accountable.

In South Africa, there has been a variety of changes that led to the legislation that currently exists. Much of the legislation was heavily influenced by the socio-political and economic climate, the apartheid era. There were many problems then, that still exist now; which included, the lack of trained staff to monitor and enforce legislation, lack of funding, the erratic enforcement of legislation, and the lack of participation from both employers and employees.

The construction industry as one of the most dangerous sectors in the world, and is the sector that was looked at. In South Africa, as one of the most financially lucrative industries and one of the sectors that employs the most, the construction industry has a bad OHS record. The

findings in the research were as follows: Not all managers adhered to the legislation that governs OHS in South Africa. Those that did, did so because they were part of big, multimillion construction projects, meaning that they had the necessary funding either from government or private clients. This is funding for things such as PPE, which costs approximately R400-500 per employee, R400 per employee for a medical check-up to ensure that all workers are fit to begin with the work, and so on. OHS is very expensive to include in the budget a lot of the time, especially for the smaller companies. Managers complained that they make a loss because approximately 60% of the costs go towards OHS. Most contractors, especially those in smaller firms, felt that they would rather do the bare minimum than “go all out”. In addition, they would rather deal with problem as it arises, hoping that it is nothing serious. Considering the fact that no serious injuries, deaths or illnesses have occurred according to managers interviewed, most managers felt no need to implement OHS policy.

In addition, competition for tenders is tough, and OHS is a major factor on whether someone receives the tender or not. Some felt that another reason why they would not invest in OHS is that if the competitor is not spending on OHS, then they would also not do it.

With regards to employees, some employees felt that PPE hindered their work; it was uncomfortable and unnecessary, especially when they were doing work that did not seem dangerous. This speaks to the fact that employees have a responsibility to ensure that they are not in harm's way. Their poor understanding of OHS legislation itself had a major impact on their perceptions of OHS.

None of the companies interviewed, small and big had, a formal OHS employee representation structure (safety reps and safety committees). Only 3 had safety officers and a safety rep, who was not officially trained to carry out the duties of a health and safety rep.

This means that most of the time (with the exception of 1 company that had regular meetings with their employees whereby safety issues could be raised), that had the legislation was imposed on the employees by management without them having a say in OHS policy.

Employer representation was also a key factor with regards to educating employers about OHS. The ECMBA is the body that represents employers in the Eastern Cape construction industry. The smaller companies complained that the ECMBA was not helpful at all, whilst the bigger companies sang their praises for the work that they did for them.

Another problem that was mentioned by most managers, was that the paperwork required for OHS was time consuming. This is why those companies that were involved in big projects and were required to have a safety file, hired and paid for someone to compile it. This may have contributed to why most employers had very thin and very vague knowledge of OHS legislation or what exactly to do with the legislation.

COIDA did not feature in many of the responses, with one employer mentioning that it is time consuming to deal with COIDA that is why the compensation process, like other procedures is very informal. This speaks to the fact that employers would rather deal with injuries on their own, than to wait for the long processes and tedious paperwork that is required in order for their employees to be compensated for injuries.

Trade union involvement was almost non-existent when it came to OHS, with most employers preferring not to deal with trade unions. Employers preferred to have a negotiated informal understanding with their employees. Many employers had a turbulent experience with one specific trade union, NUMSA whom they accused of taking advantage of workers by making them pay a fee from their salaries, but not doing anything beneficial for them. As mentioned in chapter 2, the focus is more on wages than on the safety and representation of workers in that regard.

Having listed the findings, it is evident that Occupational Health and Safety in the South African construction industry is very poor and not improving. There are several problems, this is despite the fact that the construction industry has its own legislation that governs OHS. With managers and workers cutting corners, the shortage of qualified staff to enforce legislation, and limited resources to invest adequately in OHS, it is evident why the state of OHS in the South African construction industry would be poor. These are the same problems that are mentioned in chapter 2, that have always existed with previous legislation and continue to exist today.

Recommendations

1. In the effort to get management and employees on board with adhering to OHS legislation, the state might want to consider giving management clear instructions on HOW TO implement and enforce legislation in their respective organisations. The current legislation does not seem to be context specific.

2. The state may also want to come up with a plan on how to make it easier financially especially for SMEs, to adhere to legislation.
3. Seeing that there is a severe skills shortage, there should be more emphasis placed on making it easier for people to get OHS qualifications and more knowledge on OHS procedures, more especially amongst unions.
4. The ECMBA should play a more active role in guiding businesses, in particular the smaller ones, and make it easier for small business owners to also benefit for OHS workshops.

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APPENDIX A

Interview Schedule for Employers/Management

1. Please provide a brief outline of the firm's history and context.
 - a. [Date of establishment? Rising or declining turnover? Customer base? Ownership of the company?]
2. Please provide a breakdown of jobs in the company.
 - a. [Number of workers? Job categories? Gender breakdown? Full-time, part-time and casual workers?]
3. What are your overall impressions of OHS in South Africa?
 - a. [Is the legislation reflected in business practice? Is flexibility restricted by the legislation?]
4. Please outline the extent to which you think OHS legislation has had a direct and/or indirect effect on the firm.
 - a. [Evidence of specific events, such as an injured/ill worker or a case with the Department of Labour, which led to changes in employment relations or a greater awareness of OHS legislation? Compensation?]
5. Please indicate whether the presence of OHS legislation leads to the making of different decisions than would have been taken in its absence?
 - a. [Explore the extent to which employers would have acted differently if this legislation did not exist]
6. What issues have the employers and employees faced which you feel have not been addressed by OHSA?
7. If so, have institutions such as the DoL stepped in to address these issues?
8. How would you describe management-worker relations in the firm: highly formal, fairly formal, fairly informal or highly informal?
 - a. [Explore the extent of 'informality'. Is there a personalised and informal relationship between managers and workers? Does the firm avoid formal

procedures in such areas as discipline and dismissal? Does the firm rely largely on face-to-face understandings with employees? Are explicit statements of rights and duties avoided? Are legal obligations ignored if they do not relate to the established set of informal rules in the workplace? Are the firm's internal procedures largely based on unwritten custom and practice?]

9. Has management been able to absorb legislation? If not, how have you managed to "keep afloat"?
10. Considering the fact that the construction industry is one of the most dangerous industries, are there workshops which offer both managers and employees the knowledge of OHS legislation and ways in which workers can protect themselves from hazards that are present at the workplace?
11. Do you think institutions such as the Eastern Cape Builder Masters Association have an impact (negative and/ positive) on the Grahamstown construction industry?
12. Does your firm have any experience with trade unions with regards to the impact of OHS on employees? If no, why not?
13. Please impact that the enforcement of OHS legislation has on your profits.

APPENDIX B

Interview Schedule for Employees

1. How long have you worked at this particular establishment?
2. What are your daily duties and responsibilities?
3. How many hours in the day do you work for?
4. Do you have any Personal Protective Equipment?
5. Were you ever given instructions on what to do with regards to your safety and that of your co-workers? How often are you reminded of these instructions?
6. Are you familiar with any of the OHS legislation?
7. a) Have there been any injuries or illnesses or death as a result of the nature of the workplace, if yes, please elaborate. b) What was your employer's reaction?

APPENDIX C

Interview Schedule for Official from the Department of Labour

1. From the DoL's perspective, please give me a brief overview of the current state of OHS in South Africa
2. Please give me a brief overview of the DoL's encounters with the different sectors, are there any sectors that stand out?
3. What are the obstacles (if any) do you think that the DoL is facing with regards to the effective enforcement of OHS legislation?
4. How often does your department send out inspectors? [On what occasion]
5. Considering the fact that there is a growing number of SMEs in South Africa, do you think that the government is coping with ensuring that they are catered for with regards to being able to absorb OHS legislation?
6. In relation to Question 3 and 5, since many SMEs are notorious for temporary hiring practices (such as casualization, contract, seasonal work), do you think this makes enforcement harder?
7. With specific reference to the Grahamstown construction industry and the Eastern Cape as a whole, what has been your overall impression with the state of OHS?
8. Please give examples of a time when the DoL had to intervene with a case of OHS contravention in a construction firm
9. Please explain to me the procedures or steps that the department took when dealing with the OHS contravention
10. Does the department liaise with the ECMB? If yes, how often and what issues do you discuss, especially with regards to OHS?
11. What is your experience with trade union involvement in OHS issues
12. Are there any recommendations or amendments that you would personally make to OHS in South Africa if you could?
13. Is there anything that you feel I might have left out that you would like to add?

[Ask for records and reports/paperwork if available]

APPENDIX D

Interview Schedule for the East Cape Master Builder Association

1. Please provide a brief outline of the organisation's history and context.
2. Please provide a broad picture of ECMBA's perspective on OHS in SA and the Eastern Cape as a whole?
3. Seeing that the construction industry is one of the most dangerous industries, please give me an overview as to how the ECMBA is working to try and remedy the problem?
4. Please provide an overview of the challenges (costs, impact on profits, competition) that contractors encounter with the enforcement of OHS legislation
5. What is the process that one has to go through to get contracts?
6. What is your experience with the construction industry in Grahamstown? (if any)
7. What is your relationship like with the department of labour? [Do you liaise often and what issues do you discuss?]
8. Are there any issues that you feel that OHSA does not address and how would you like that to be dealt with and by who?
9. Please tell me what do you think are the key provisions in OHSA and COIDA, which affect the construction industry.
10. Are there any amendments or recommendations that you have with regards to OHS legislation in South Africa that would change or improve its effect on the Eastern Cape Construction industry?
11. Any records or reports/documents that are relevant to this study that are available for me to use?
12. Is there anything that you would like to add that I may have left out?

APPENDIX E: Image of PPE provided to the Researcher by Gerrie Els, Owner and Manager of Dup Meyer Building Contractors



APPENDIX F: Image of PPE provided to the Researcher



APPENDIX G: Image of OHS Notice Board



APPENDIX H: Image of OHS Notice Board



APPENDIX I: Image of Scaffolding (CM Heunis-Life Sciences Building)



APPENDIX J: Construction Regulation Checklist

CONSTRUCTION REGULATION CHECKLIST

CLIENT ----- PHONE NO -----

AGENT - ----- PHONE NO -----

PRINCIPAL CONTRACTOR : ----- PHONE NO -----

SUBCONTRACTORS ON SITE 1)----- PHONE NO ---

2)----- PHONE NO -----

3)----- PHONE NO -----

4)----- PHONE NO -----

SITE ADDRESS -----

HEAD OFFICE -----
 ADDRESS -----

CONTRACT PERIOD -----

CONTACT PERSON ----- SITE SUPERVISOR -----

COIDA REG. NO-----UI REG. NO.-----

TEL NO -----FAX -----TEL NO -----FAX-----

STAFF ----- TYPE OF CONSTRUCTION WORK -----

ADMINISTRATIVE

		YES	NO	N/A
CR 3(1)(a)	Copy of Annexure A, notification of work on site			
CR 4(1)(a)	Health and Safety specification available?			
CR 4(1)(c)	Principal Contractor appointed in writing?			
CR 4 (1)(d)	Is H & S plan audited regularly? (at least monthly)			

CR 5(3)(f)	Is Contractor in good standing with CC?			
CR 5(7)	Is H & S file on site?			
		YES	NO	N/A
CR 5(9)	Does H & S file contain information as prescribed?			
CR 6(1)	Is the following work supervised by an appointed competent person:			
CR 10(a)	Form work and support work			
CR 11(1)	Excavation			
CR 12(1)	Demolition			
CR 14(2)	Scaffolding			
CR 15(1)	Suspended platform			
CR 19(2)(g)(i)	Explosives			
GAR 4	Copy of Act and Regulations (on site or at Office)			
GAR 9	Incident Register (on site or at Office)			
GSR 3(4)	Is a qualified First Aider appointed?			
CR 7(1)	Has a risk assessment been carried out?			
CR 7(4)	Are employees trained regarding work hazards? (ask workers)			
CR 7(8)	Are visitors informed of hazards and provided with PPE?			
CR 7(9)(a)	Have all employees had H & S induction training? (Ask workers + proof)			
CR 8(1)	Is fall protection plan in place?			
CR 8(2)	Does fall protection plan contain prescribed information?			
CR 8(4)(a)	Are all openings in floors etc fenced or guarded?			
CR 8(5)	Are prescribed safety precautions relating to roof work being followed?			
CR 9(3)	Are structural design drawings available on site?			
CR 11(3)(h)	Is there a inspection register on site for excavation, bracing and shoring?			
CR 12	Does Contractor perform demolition work in the manner prescribed in 12(4) to 12(12)?			
CR 13	Is tunneling being performed as prescribed in the Mine Health and Safety Act?			
EIR 5(1)	Is Electrical Contractor registered with ECB of South Africa?			
	SAFETY PRECAUTIONS & EQUIPMENT			
GSR 2(3)	Is PPE issued and used?			
GSR 3(2)	Is first aid box available on site?			
CR 14	Does scaffolding comply?			
CR 15	Does suspended platform comply?			
CR 23	Is flammable liquids used /stored on site?			
CR 27	Are there fire precautions on site?			
AR 10	Does the employer do asbestos work?			
AR 11,15,20	If yes, is Asbestos regulations complied with?			
NIHLR 10 (2) (C)	Is hearing protection provided?			
CR 24	Are safety precautions for work in or close to water (drowning) provided?			
	TOOLS, MACHINES & FACILITIES			
CR 17	Does material hoist comply?			
CR 18	Is a batch plant used on site?			
CR 19	Are explosive powered tools used / stored on site?			
CR 21	Are construction vehicles and mobile plants safe?			
CR 22	Are precautions taken regarding electrical installation and machinery on			

	site?			
CR 26	Is there any stacking and storage area on site?			
CR 28	Does employer have welfare facilities (shower & toilets) as prescribed?			
		YES	NO	N/A
EMR 9	Are portable electric tools used on site?			
DMR 2	Are mixers guarded?			
DMR 3	Are circular saws guarded?			
VUP 13	Pressure vessels (Inspections & Test)			
VUP 14	Logbook			
	SITE AND PROCEDURES			
GSR 2A	Intoxication			
GSR-2C(2)	No admittance			
CR 25(d)	Perimeter fencing			
GSR 2B	Pedestrian warning			
CR 11	Excavation safe			
CR (6)(12)	Waste disposal			
ER W 3(6)	Adequate illumination			
ER 6(2)(g)	Overhead protection			
EMR 6(1)	E/L Relay Test			
	INSPECTOR'S COMMENTS			
NOTE	IF "YES" EMPLOYER COMPLIES: MARK	Y		
	IF "NO" EMPLOYER DOES NOT COMPLY: MARK		N	
	IF NOT APPLICABLE: MARK			X
	NO. OF NOTICES SERVED:			
	(PROHIBITION / CONTRAVENTION)			
	REMINDER (60 DAYS):			
	PHOTOS TAKEN:			
	INSPECTOR: DATE:			

APPENDIX K: Improvement/Contravention Notice

G.P.S. 007-0189

MAN 794

DEPARTEMENT VAN ARBEID
KANTOOR VAN DIE STREEKDIREKTEUR



DEPARTMENT OF LABOUR
OFFICE OF THE REGIONAL DIRECTOR

Telefoon/Telephone.....

Navrae/Enquiries.....

Verw. No.
Ref. No.....

Kantoorstempel
Office stamp

Datum van Inspeksie
Date of inspection.....

Versaai deur
Accompanied by.....

VERBETERINGS-/ OORTREDINGSKENNISGEWING

WET OP BEROEPSGESONDHEID EN VEILIGHEID, 1993

Ek het 'n inspeksie van u perseel ingevolge artikel 29 van die bovermelde Wet uitgevoer.

Ingevolge artikel 30 van die voormelde Wet word u hierby gelas om die stappe wat hieronder uiteengesit word binne 60 dae vanaf datum van hierdie kennisgewing te doen. Indien u nie binne hierdie tydgrens kan bly nie, mag u vertoe aan hierdie kantoor rig waarin u uiteensit wanneer en hoe u van voornemens is om hieraan te voldoen, sodat 'n tydsverlenging oorweeg kan word.

VERSUIM OM AAN DIE BEPALINGS VAN HIERDIE KENNISGEWING TE VOLDOEN, OF AAN DIE BEPALINGS VAN DIE REGULASIES, IS 'N KRIMINELE OORTREDING EN STEL U BLOOT AAN VERVOLGING.

IMPROVEMENT/ CONTRAVENTION NOTICE

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

I have carried out an inspection of your premises in terms of section 29 of the above-mentioned Act.

In terms of section 30 of the aforesaid Act, you are hereby directed to take the steps specified below within 60 days from the date of this notice. Should you be unable to meet this deadline, you may make representations to this office stating when and how you propose to comply herewith, in order that an extension of time may be considered.

FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS NOTICE, OR WITH THE PROVISIONS OF THE REGULATIONS, CONSTITUTES A CRIMINAL OFFENCE AND WILL RENDER YOU LIABLE TO PROSECUTION.

Bladsy van bladsye
Page of pages

APPENDIX L: Inspector's Report

INSPECTOR'S REPORT FORMAT

1. NAME OF THE ENTITY BEING INSPECTED

A correct name of the entity (legal persona): _____

The name of the Chief Executive Officer: _____

2. THE SECTOR THE ENTITY FALLS UNDER

It is important to specify this for statistical purposes _____

3. DEFINE BUSINESS OPERATIONS

This is important as this provides a technical understanding of the process _____

4. DO YOUR OWN RISK ASSESSMENT ON THE ABOVE BUSINESS OPERATIONS

Please do a hazard and operability study (HAZOP) _____

Please do a hazard analysis (HAZAN) _____

5. OBTAIN THE RISK ASSESMENT REPORT OF THE ENTITY

Please compare the two risk assessments: _____

Please indicate the adequacy or inadequacy of the employers risk assessment: _____

6. OVERALL ASSESMENT OF THE HEALTH AND SAFETY SYSTEM

Check whether all the provision of Section 8 have been complied with : yes/ no {_____}

Check whether the structures have been established and functional (health and safety reps and health and safety committees): _____

- Is there proper supervision? GMR 2 etc
- Are the employees trained in line with both Section 8 & 13

Express an opinion on the functionality of the system: _____

7. DO A WALK THROUGH/OBSERVATION

There are several factors necessary for effective health and safety observation. The inspector must:

- **Be selective.** An inspector might look over the factory first for health and safety and second for improvement of operations.: _____

- **Know what to look for.** The more an inspector knows about a job and a worker's responsibilities, the more effectively the inspector can observe.

- **Practice observing.** The more often a person looks with the conscious intention to observe, the more they will see at each fresh look. Like all skills, observation improves with practice.

- **Keep an open mind.** One way to increase open-mindedness is not to prejudge facts. The inspector must accept facts, no matter what conclusion they may find. An inspector must keep an open mind at least until all the facts are in.: _____

- **Do not be satisfied with first impressions.** A clean shop or a careful routine may still contain hidden hazards.: _____

- **Guard against habit and familiarity.** Asking the questions what, where, who, how, when, and (especially) why often will help uncover the real meaning of the situation.: _____

- **Record observations systematically.** Date all notes. Include space for comments on actions taken and on results of the actions taken.

- **Use a checklist.** A systematic check for litter, obstructions, handling of flammables, condition of fire-fighting equipment, and so on, can help uncover tangible problems to correct. But never rely exclusively on a checklist!

- Issue notice (be specific on which equipment is not complying with the regulations): _____

8. DISCUSS YOUR FINDINGS/TECHNICAL REPORT

- Here you pull everything together and your technical understanding must be reflected or come to the fore: _____

- _____

9. RECOMMENDATION

- Your recommendation must be in line with the findings above and the technical discussion: _____

- _____

10. CONCLUSION

- Please state whether you have achieved your objectives and the summary of what you view as being the attitude of the employer towards health and safety.

- _____

11. MAKE SPACE FOR THE INSPECTOR TO SIGN AND THE SUPERVISOR/TEAM LEADER TO ENDORSE THE REPORT

- Signing a report provides a sense of ownership by the author and the confirmation of the facts by the supervisor:

Inspectors signature : _____ date : _____

Supervisor signature : _____ date: _____

Auditors signature : _____ date: _____

Company stamps if available

_____ :

