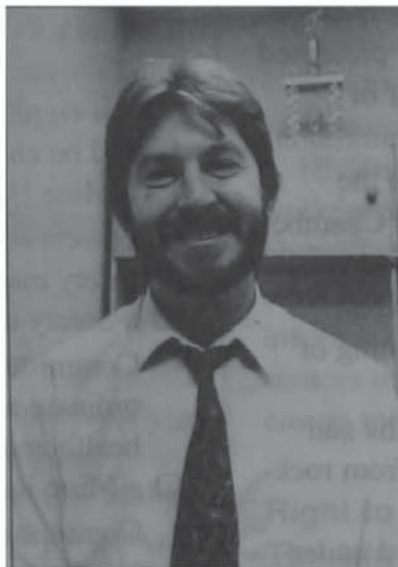


Shifting the balance:

the Leon Commission of Enquiry into health and safety in the mining industry

The loss of life and injuries resulting from mining operations in South Africa is staggering. Since the turn of the century, over 69 000 mineworkers have died and over a million have been seriously injured. In 1993 alone, 578 mineworkers died in accidents while 8 532 were seriously injured. Mineworkers have been treated as cheap, replaceable commodities.



The Leon Commission was appointed after several years of sustained pressure by the National Union of Mineworkers (NUM). Its broad terms of reference made it the most wide ranging inquiry into health and safety in South Africa to date. It offered the NUM a golden opportunity to publicly challenge the ongoing carnage on the mines. The public hearings of the Commission forced mine employers from the rarefied atmosphere of their boardrooms to confront the enormous human and social cost of their operations. It also forced a complacent Department of Mineral and Energy Affairs to confront its failure to effectively regulate and enforce health and safety in the industry.

Historically, a central feature of the mining industry has been the stark imbalance in power between employers, workers and the state. Employer interests have dominated the

The findings of the Leon Commission are a watershed for the mining industry and a victory for the NUM. **BRENDAN BARRY*** outlines the main recommendations.

industry's approach to health and safety. The government inspectorate responsible for regulating health and safety has been under-resourced and unable to stamp its authority on the industry. Until recently, it was hostile to the NUM. Over the last decade, it has increasingly accepted the self-regulation of health and safety by employers. The *Minerals Act* and its predecessor, the *Mines and Works Act*, effectively excluded mineworkers and their unions from playing any meaningful role in determining health and safety priorities. While the NUM has forced health and safety concerns onto the industry's collective bargaining agenda, mineworkers' statutory rights have lagged

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significantly behind those in other industries. This article will look at some of the important recommendations of the Commission.

The NUM submitted that the health and safety of mineworkers could only be improved by confronting the power imbalance in the mining industry. It is to the Commission's credit that it tackled the power imbalance in the industry head on. Should its recommendations be adopted, the resources and authority of the government inspectorate will be greatly enhanced and mineworkers will be significantly empowered in the regulation of health and safety in the industry.

The NUM argued strenuously against the self-regulation of health and safety presented by the Chamber of Mines on behalf of employers in the industry. The Commission stated bluntly that self-regulation in the industry had failed. In rejecting the Chamber of Mine's argument, the Commission emphasised mine employers' failure to:

- provide proper and effective training of employees;
- combat the alarming rate of deaths and reportable injuries, particularly from rockbursts and rockfalls;
- deal with the polyurethane hazard underground, a failure which resulted in repeated tragedies claiming the lives of hundreds of mineworkers; and
- deal with the serious underground radiation hazard.

A new Act

Rather than amending the existing Minerals Act or making the Occupational Health and Safety Act applicable to mines, the Commission has recommended the immediate drafting of a Health and Safety in Mines Act devoted to the regulation of health and safety in the mining industry. This recommendation recognises the scale of health and safety problems in the industry and the industry's significance in relation to occupational health and safety in South Africa. It also recognises the need to separate the regulation of health and safety from the mineral exploitation functions of the Department of

Mineral and Energy Affairs. Ideally, all workers in South Africa should fall under a single umbrella health and safety statute. However, the Commission was of the opinion that to remedy the enormous health and safety problems confronting the mining industry, a separate Act was required at this stage. It envisaged the possibility of mining health and safety being regulated by a common umbrella statute in the future.

Tripartism

One of the NUM's principal submissions to the Commission was the need to promote worker participation on health and safety matters at all levels of the industry. The Commission endorsed this and recommended the following industry-wide structures on which employers, workers and the state would be entitled to equal representation:

- a Mine Health and Safety Council with powers relating to a wide range health and safety matters in the industry;
- a Safety in Mines Research Advisory Committee (SIMRAC) to prioritise, co-ordinate and facilitate research regarding health and safety in the industry;
- a Mine Regulations Advisory Commission (MRAC) to commence drafting the new Act, to review and update health and safety legislation on a regular basis and to co-ordinate the drafting of codes of practice for the industry;
- a Mines Occupational Health Advisory Committee (MOHAC) with responsibility for the monitoring and control of occupational disease in the industry; and
- a Mining Qualifications Authority (MQA) with responsibility for the certification of training in the industry.

Basic rights

The NUM's submission that the internationally recognised basic health and safety rights of workers had to be entrenched in the mining industry was endorsed by the Commission. It is an indictment on both employers and the state that these rights have not been entrenched in mining legislation to date.

Photo: Michael Lewis/Southlight



Participation

In addition to the industry-wide structures referred to above, the Commission has specifically recommended a system of health and safety representatives, elected by workers with at least one representative per 100 employees. These representatives would have significant statutory duties and rights, including rights of inspection, training and information on all mine health and safety matters.

The Commission also recommends the establishment of one or more mine health and safety committees on each mine, consisting of equal numbers of representatives of management and elected safety representatives. These committees will also have significant statutory duties.

These recommendations will bring the mining industry in line with some of the important features of the Occupational Health and Safety Act.

Information

The Commission has recommended that workers' right to information be entrenched in legislation. Its report states that:

- workers should be entitled to all information relevant to health and safety in the workplace;
- workers should be entitled to examine any records or documents relating to health and safety at the mine;
- mining companies should be required to publish an annual health and safety report. In addition, mining companies should be required to publish their health and safety statistics in annual reports required by the Companies Act; and
- employers should be required to list hazardous substances used or produced in any part of the mining process and set out in writing protocols for controlling exposure to these substances and monitoring workers' health in this regard.

Historically, mine employers have denied workers access to such information or obstructed their access. These recommendations recognise that the transparent flow of information on hazards and hazardous substances in the workplace is essential to ensure meaningful worker participation.

Right to refuse dangerous work

The right to refuse dangerous work has been a key battle for NUM. The Commission has now recommended that workers should have the right to remove themselves from areas where they have reasonable cause to believe that their health and safety is endangered. Further recommendations in this regard include that:

- safety representatives should have the right to direct workers to remove themselves from a place of danger,
- workers should be granted explicit legal protection against victimisation or retaliation by employers when exercising their rights.

Historically, workers have faced the prospect of dismissal when leaving a place of danger without the authority of line management. The inclusion of this right will force employers to give priority attention to the health and safety grievances of workers at the workplace.

Training

Another principal concern submitted to the Commission was the inadequacy of health and safety training in the industry. Evidence presented to the Commission suggested that little improvement in health and safety could be expected without a fundamental shift in the industry's approach to training. Specific recommendations of the Commission in this regard include that:

- ❑ Fanagalo be replaced as the common medium of communication in the mining industry;
- ❑ mines be encouraged to advance the cause of adult basic education and training amongst workers;
- ❑ regulations governing health and safety training be drafted as a matter of urgency to deal with the current inadequacies;
- ❑ existing training schemes at all levels in the industry be reconsidered and revamped, and phased retraining and retesting of the existing workforce take place;
- ❑ induction (orientation) training be redesigned and extended.

Strengthening the Inspectorate

The NUM argued that good health and safety legislation must be complimented by an adequate enforcement agency in order to be effective. Of the R1,3 billion which the mining industry paid in taxes to the state in 1993/4, only R22 million was returned in the form of the inspectorate's budget. The Commission found that the historical under-resourcing and under-funding of the government inspectorate was a critical factor contributing to the poor performance of the industry in health and safety terms. Its recommendations in this regard included:

- ❑ the inspectorate should be renamed the Mine Health and Safety Inspectorate and restructured as a separate administrative agency within the Department of Mineral and Energy Affairs. (This recommendation is aimed at preventing the subordination of health and safety interests to the mineral exploitation interests of the Department);

- ❑ the improved training and remuneration of inspectors and the acquisition of modern equipment for the inspectorate;
- ❑ the inspectorate should focus on the most pressing hazards and the mines and sectors of mining with the worst health and safety performance.

The need to improve the calibre of the inspectorate is a major test of the government's commitment to worker health and safety, as a dramatic increase in the inspectorate's budget will be needed.

Hostels and housing

The NUM made extensive submissions regarding the damaging impact of the migrant labour and compound systems. The conditions of mineworkers' hostel accommodation in particular had a fundamental impact on the Commission. The Commission's report records the role played by the Chamber of Mines in establishing and maintaining the system of migrant labour and developing the pass laws on which the system relied. It explicitly raised concerns about the hostel system's adverse effect on the health and well-being of workers and its role in contributing to the spread of tuberculosis and HIV-related diseases. Its recommendations in this regard include:

- ❑ the establishment of a tripartite body to investigate the entire question of housing and accommodation for workers and their families at mines;
- ❑ mine employers should move towards family housing and, in the interim, existing hostels should be upgraded;
- ❑ regulations should be promulgated to provide for minimum standards for workers' accommodation and subsistence.

Major hazards

Despite the industry's poor health and safety record, it gave the Commission little evidence of any programme to deal effectively with priority hazards. The Commission criticised the industry for its failure to identify and actively combat the most pressing hazards in a programmatic manner. It has therefore prioritised the following major hazards for urgent and immediate attention:

- ❑ falls of ground — responsible for 61,7% of deaths and 30,8% of serious injuries in gold mines in 1993;
- ❑ mining equipment and transport — responsible for 12,7% of deaths and 21,4% of serious injuries in gold mines in 1993;
- ❑ methane explosions in coal mines — responsible for 58,9% of workers killed in coal mining in 1993;
- ❑ the respirable dust hazard in underground mining.

The Commission's report also highlights the need for action to address other health risks such as noise, radiation and vibration

Risk assessment

To encourage the programmatic reduction of health and safety risks, the Commission has accepted the NUM's submissions and recommended that employers be obliged to adopt a risk assessment approach to dealing with health and safety hazards. This means that employers should be required:

- ❑ to investigate and assess the risks to health and safety of their employees;
- ❑ to endeavour to avoid or remove such hazards or where this is not reasonably practicable, to minimize such hazards;
- ❑ in endeavouring to minimize such hazards, to do so first by means other than the issuing of personal protective equipment to employees.

The essence of this approach is that problems must be tackled at source and eradicated where possible

Occupational diseases

The Commission heard alarming evidence on the scale of occupational disease on the mines. The problem is compounded by factors including the absence of adequate records, a pervasive secrecy regarding occupational diseases and severe shortcomings regarding medical surveillance of workers. Mine health constitutes a major public health problem. Accepting the NUM's submissions, the Commission has concluded that radical steps are required to deal with the serious occupational health problem prevalent in the

industry. It specifically concluded that:

- ❑ there is no evidence to indicate that any occupational disease in the industry has declined in prevalence or severity over the past 20 years;
- ❑ there is no evidence to suggest that current legislation or existing enforcement agencies offer any prospect of control of occupational diseases in the industry.

These conclusions are a terrible indictment of the industry's attitude to mineworkers' health. The Commission was particularly critical of the industry's failure to control dust problems in mines. This has meant that several thousand mine workers contract serious lung diseases each year. The

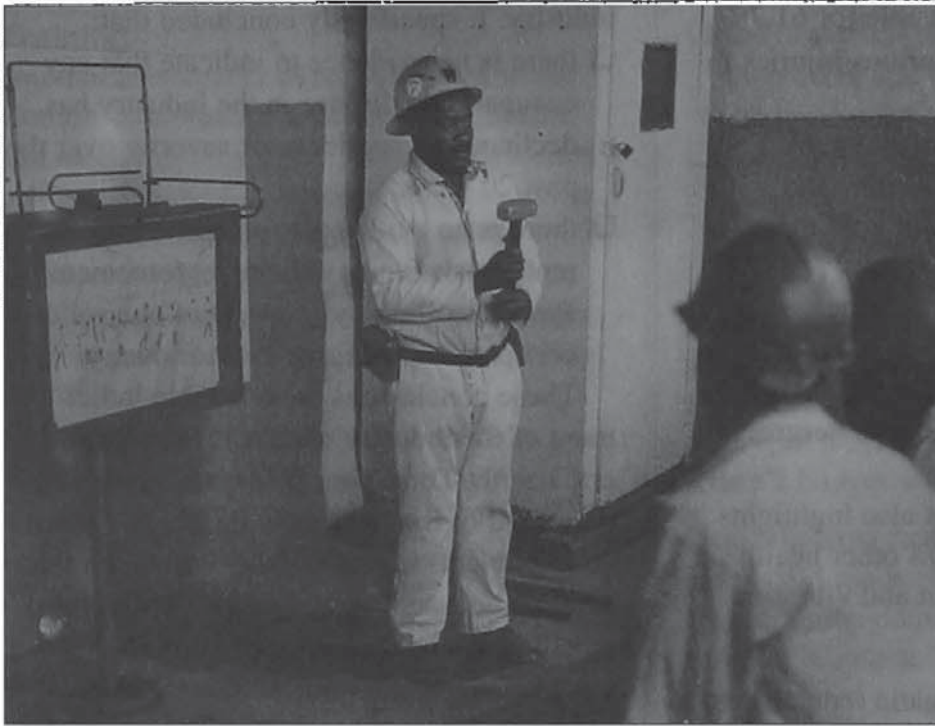
Commission's recommendations include:

- ❑ special effort needs to be made to identify undetected cases of occupational disease amongst former mine workers;
- ❑ occupational health facilities and academic medical centres should offer benefit examinations to former mine workers;
- ❑ occupational disease data collected by mining companies and the state must be standardised and published on an annual basis;
- ❑ the regulation of ventilation requirements must be reviewed as a matter of great urgency;
- ❑ an effective system of medical surveillance for occupational diseases in the mining industry must be implemented.

The exact scale of occupational disease among miners is not known, and the available statistics understate the problem.

Among the reasons for this are that workers do not report diseases because of fear of dismissal. Doctors fail to ascertain that diseases are work-related and many diseases caused by mining only manifest themselves once the worker has returned to his home. Unions and occupational health professionals associated with the industry are convinced that the scale is enormous. The Commission's recommendations provide a basis both to establish the scale of disease and adopt appropriate remedial measures.

photo Paul Wa nberg/South'ght



Workers being taught fanagalo on the mines

injuries in South African mines. In addition, very large disasters continued to occur at mines with high star ratings. The use of the systems was, in the Commission's view, indicative of a broader approach in which mining personnel did not take full responsibility for health and safety but rather "contracted out" their responsibility to organisations like NOSA or in-house safety officers who had no executive authority.

The Commission

NOSA and safety management systems

Recent articles in *SA Labour Bulletin* have focused on NOSA and its five-star system (volume 18 number 6 and volume 19 number 1). The NUM severely criticised management safety rating and audit systems in the industry. A NOSA representative gave evidence at the Commission.

The Commission was highly critical of the NOSA system and of similar safety rating systems operated by the Chamber of Mines. It drew attention to the fact that mines with high star ratings had experienced major disasters in recent years. In 1983, at Hlobane Colliery (a four-star mine), 68 workers died in a disaster. At Kinross (a five-star mine), in 1986, 177 mine workers died in a disaster. At Middlebult Colliery (a five-star mine) in 1993, 53 workers died in a disaster.

The Commission stated that "the comfort of being awarded many stars for excellence in safety could lead to complacency, which was itself a danger". It observed that safety management systems had become largely discredited in the eyes of those employed at the mines and in the public perception. This is because they had an imperceptible impact on the overall level of fatal and major

concluded that there was no basis for encouraging the adoption of these systems. It will be interesting to see what effect the Commission's views will have on the substantial annual grant provided by the Compensation Commissioner to NOSA.

A new foundation

The Commission's recommendations are based on an accurate assessment of the mining industry's appalling health and safety record and succeed in establishing a new foundation for the regulation of health and safety in the industry. Should the Commission's principal recommendations be adopted, a new Health and Safety in Mines Act will extend the basic rights enjoyed by workers under the Occupational Health and Safety Act to mineworkers. In addition, the entrenchment of tripartism in industry-wide forums will provide significant opportunities for workers to ensure the co-determination of health and safety in the industry. The extent to which unions are able to take advantage of these opportunities and shift the balance of power in the industry will depend on the time and energy which they employ in training and providing appropriate resources to their members and officials.