

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 48226/12

In the application for admission as *amici curiae* of –

**TREATMENT ACTION CAMPAIGN NPC**

First Applicant

**SONKE GENDER JUSTICE NPC**

Second Applicant

*In re:* the matter between –

**BONGANI NKALA AND FIFTY-FIVE OTHERS**

Applicants

and

**HARMONY GOLD MINING COMPANY LIMITED  
AND THIRTY-ONE OTHERS**

Respondents

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**AFFIDAVIT**

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I, the undersigned

**DEAN JOHN PEACOCK**

do hereby make oath and state that:

1 I am an adult male citizen of South Africa residing at 239 High Level

Road, Sea Point, Cape Town, South Africa.

- 2 I am a co-founder and the current executive director of Sonke Gender Justice NPC (“Sonke”), the second applicant in this application brought in terms of rule 16A(5) of the Uniform Rules of Court.
- 3 I am duly authorised to depose to this affidavit and to bring this application on Sonke’s behalf. A copy of the relevant resolution in this regard dated 8 December 2014 is attached as annexure “**DP1**”.
- 4 Unless the context indicates otherwise, the facts contained in this affidavit are within my own personal knowledge, and are to the best of my knowledge and belief both true and correct.
- 5 Where I make legal submissions, I do so on the advice of the applicants’ legal representatives. To the extent that I rely on information published by others, I believe such information to be both true and correct.
- 6 I have read the founding affidavit of Anele Boyce Yawa, including the annexures attached thereto, and confirm the contents therein insofar as they relate both to me and Sonke. Amongst the annexures is an expert affidavit by Francis Aylmer Hunter Wilson (“Wilson”), on which I rely.
- 7 I have also read and rely upon the affidavit of Jaine Roberts (“Roberts”), which is listed as item 173 in the index to the application for certification,

and runs from pages 925 – 940 of the record in that application.

## **PURPOSE AND STRUCTURE OF THIS AFFIDAVIT**

- 8 The main purpose of this affidavit is to consider the impact of illness and unemployment on the children and families of former mineworkers, with a particular focus on the gendered implications of occupational lung disease in areas that provide labour to the mines.
- 9 I begin this affidavit by setting out my qualifications, experience and expertise. I submit that I am by my training and experience duly qualified to express the views and opinions that I do in this affidavit.
- 10 I then consider the gendered implications of occupational lung disease, with a particular focus on the disproportionate burden of care carried by women. I do so mindful of the evidence in Roberts’s affidavit.

## **MY QUALIFICATIONS, EXPERIENCE AND EXPERTISE**

- 11 I have a Bachelor of Arts degree (with honours) in development studies from the University of California at Berkeley, and a Master of Social Welfare degree from San Francisco State University. I am currently enrolled for a PhD in politics at the University of Stellenbosch. A copy of my *curriculum vitae* is attached as annexure “**DP2**”.

- 12 My work and activism over the past twenty five years has focused on issues of gender equality, men and constructions of masculinities, HIV and AIDS, and social justice. In addition to being one of Sonke's founders, I was also the co-founder – and the current chairperson – of the MenEngage Alliance, a global alliance of men for gender equality in nearly fifty countries.
- 13 I am an honorary senior lecturer in the University of Cape Town's School of Public Health, and an Ashoka Fellow. I have served as a part-time member in the University of California at Los Angeles Program in Global Health, and a part-time member of faculty at the London School of Hygiene and Tropical Medicine.
- 14 Over the years I have acted as a consultant to various United Nations agencies, as well as civil society organisations in South Africa and abroad. I am currently a member of the United Nations Secretary-General's Network of Men Leaders formed to advise him on gender-based violence prevention, as well as a member of the Nobel Women's Advisory Committee on ending sexual violence in conflict settings.
- 15 I have been published in numerous books and peer-reviewed journals, including *The Lancet*, *The Journal of AIDS*, the *American Journal of Public Health*, the *Journal of Men and Masculinities*, and the *Journal of Gender and Society*. A list of my publications is included in my *curriculum vitae*.

## IMPACT OF ILLNESS AND UNEMPLOYMENT

- 16 In his expert affidavit, Wilson discusses the economic conditions that affect the families of former mineworkers. In short, he submits that the families of former mineworkers are likely to find themselves with the highest levels of poverty and deprivation in the country, and are largely unable to access the compensation and social security benefits that might ameliorate their condition. In addition, illness and unemployment make matters worse.
- 17 In wealthier countries, or even urban centres with greater access to formal healthcare, health systems may provide much of the care required by patients who have serious illnesses like silicosis. But in the labour-providing areas from where most mineworkers come, those who are seriously ill are likely to be largely dependent on home- and community-based care. Such care is ordinarily provided on an unpaid basis, usually by women.<sup>1</sup>
- 18 This type of care is aptly termed “*care work*” or “*care labour*”. Research conducted on the care economy in the context of HIV/AIDS in South Africa has found that it creates great stresses on the carer’s body, mind and finances. Caregiving is demanding and includes efforts such as carrying, lifting and bathing patients, monitoring medication, and staying

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<sup>1</sup> D Budlender and F Lund, “South Africa: A Legacy of Family Disruption”, (2011) 42(4) *Development & Change* 925

up at night to attend to patients.<sup>2</sup> Caregivers are often anxious about the physical deterioration of their loved ones that they cannot stop or reverse. They have reported experiencing tearfulness, nightmares, insomnia, worry, anxiety, fear, despair and despondency, as well as trauma.<sup>3</sup>

19 Caregivers are sometimes the only breadwinners and may have to relinquish jobs to provide care, while having increased expenditure from providing the sick with the right food and medicines, as well as paying for transport to health facilities. Caregivers report headaches, body aches and physical exhaustion, and caregivers who are elderly women report deteriorating health due to stress.<sup>4</sup>

20 Where a patient with silicosis is co-morbid with TB and/or HIV, caregivers may come into close contact with the patient's body fluids, or even risk exposure to infection from coughing.<sup>5</sup> Without proper training, caregivers may take few precautionary measures, and thereby inadvertently place their own health at risk.

21 The frequency and nature of caregiving ordinarily places a disproportionate share of the risks on women.<sup>6</sup> A study conducted in two semi-rural South African communities, which collected and analysed

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<sup>2</sup> O Akintola, "Policy Brief: The Gendered Burden of Home-Based Care", Health Economics and HIV/AIDS Research Division, University of KwaZulu-Natal, August 2004

<sup>3</sup> O Akintola, "Gendered home-based care in South Africa: more trouble for the troubled" (2006) 5(3) *African Journal of AIDS Research* 237

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

data on the gendered nature and consequences of home-based care, found that by creating a disproportionate burden on women, home-based care is exacerbating existing gender inequities.<sup>7</sup>

- 22 Care work is regarded as the exclusive domain of women, with many men believing that it is subordinate work, and that their own traditional roles as breadwinners exclude them from sharing this burden.<sup>8</sup> The assumption that care is a woman's role exacerbates the exploitation of women, who are strained by having to juggle caregiving for the sick on top of existing work, child rearing, elder care and/or domestic chores.<sup>9</sup>
- 23 This enormous time-tax limits women's ability to engage socially in other activities, and reduces their time for self-care.<sup>10</sup> The lack of daily assistance from males (partners, sons and other relatives) is compounded by the lack of employment and abject poverty that is a common feature in the communities that provide mining labour.<sup>11</sup>
- 24 There is a growing body of literature that recognises that women, girls and older women pensioners disproportionately undertake care work in South Africa.<sup>12</sup> As of 2010, women across all race categories spent

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<sup>7</sup> Ibid

<sup>8</sup> D Peacock and M Weston "Men and care in the context of HIV and AIDS: Structure, political will and greater male involvement" (2008) United Nations Division for the Advancement of Women EGM/ESOR/2008/EP

<sup>9</sup> S Urdang "The Care Economy: Gender and the silent AIDS crisis in Southern Africa" (2006) 32:1 *Journal of Southern African Studies* 165

<sup>10</sup> R Antonopoulos "The Unpaid Care Work – Paid Work Connection" (2009) Policy Integration and Statistics Department, International Labour Organisation, Working Paper No. 86

<sup>11</sup> Akintola, above note 3

<sup>12</sup> See, for example, D Budlender and F Lund, above note 1

significantly more time than men providing unpaid housework, including care work, with black African women spending the most time (266 minutes per day), more than double the time spent by black African men (105 minutes per day).<sup>13</sup>

25 The burden of providing care weakens women and girls economically, and makes families poorer and more vulnerable. For example, care work can be a full-time unpaid job, effectively compelling many women and girls to forego income-generating, educational, and other opportunities.<sup>14</sup> The loss of income resulting from providing full-time care reduces income for the whole family.

26 Research conducted globally indicates that withdrawal from school diminishes girls' chances of obtaining jobs in adulthood, and is a risk factor for HIV infection, gender-based violence, and being in inequitable relationships later in life.<sup>15</sup> Furthermore, caring for the sick is especially difficult for girls who are ill-equipped mentally, emotionally and physically to cope with burden.<sup>16</sup>

27 Moreover, women in South Africa are increasingly expected to fulfil the role of both caregiver and breadwinner.<sup>17</sup> And yet unemployment amongst women in South Africa is 2.9% higher than the national

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<sup>13</sup> Statistics SA, "Gender Statistics in South Africa", 2011

<sup>14</sup> Urdang, above note 9

<sup>15</sup> Peacock and Weston, above note 8

<sup>16</sup> Akintola, above note 2

<sup>17</sup> Budlender and Lund, above note 1

average of 24%. For black women, it sits at 32.5%.<sup>18</sup> Moreover, women are more likely than men to be found in the lower-earning categories, with just over twice as many women as men earning R1,000 or less per month (20,5% to 9,5%).<sup>19</sup> In contrast, the proportion of men who earn R16,000 or more per month is twice that of women (5.4% to 11.0%).<sup>20</sup>

28 Even though unpaid care work effectively subsidises the provision of health care services and the mining economy, it is not accounted for in the wider market and remains invisible. The true cost of unpaid care work is hidden and deflected into impoverished households where this takes place. This transferred burden undermines the sustainability of care provision, and creates hardships that drive an even thicker wedge between the privileged and the deprived.<sup>21</sup>

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<sup>18</sup> Statistics SA, above note 13

<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> Antonopoulos, above note 10

## CONCLUSION

- 29 Impoverished and deprived families of former mine workers have shouldered the burden of caring for those with silicosis, TB and/or HIV, with this burden having fallen disproportionately on women and girls. The law of delict, as it currently stands, does not vest them with any claims in their own right for the unpaid work that they perform in undertaking this burden of caring.
- 30 Given the uncompensated burden that is carried by family members of mineworkers with silicosis, TB and/or HIV, I respectfully submit that the law should be developed so as not to deprive them of the indirect compensation that they will receive by virtue of damages award in favour of the primary victims. In particular, I respectfully submit that common law principles relating to the transmission of damages ought to be developed to advance the interests of substantive equality by adopting a more generous approach to the transmissibility of damages. In this regard, I point out that the existing rules of transmissibility were developed in a time when class actions were unknown and when there was no risk of a lengthy delay between institution of action and close of pleadings due to disputes over certification of a class.
- 31 Finally, I submit that the interests of justice demand that the transmissibility issue be separately determined in advance, because any delay in this regard is likely to result in the need for individualized claims

to be instituted and prosecuted at least to close of pleadings to protect the transmissibility of the damages question, thereby undermining the very purpose of the class action. In addition, it would require vulnerable families to wait for many years to understand the nature and extent of the impact that the death of a family member would have on claims against any of the respondents.

**DEAN JOHN PEACOCK**

Signed and sworn to before me at Johannesburg on this the \_\_\_\_ day of \_\_\_\_\_ 2014, the deponent having acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath, and that he considers the same as binding on his conscience.

**COMMISSIONER OF OATHS**