

**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

SUPPORTING AFFIDAVIT

I, the undersigned

FRANCIS AYLMEER HUNTER WILSON

do hereby make oath and state that:

1 I am an adult male citizen of South Africa, ordinarily residing at 23

Rouwkoop Road, Rondebosh, Cape Town. I am currently residing at 265 College Street, New Haven, Connecticut, USA. I intend to return to Cape Town in late December 2014.

- 2 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.
- 3 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.

PURPOSE AND STRUCTURE OF THIS AFFIDAVIT

- 4 I have been advised about the nature and purpose of both applications: this application, in which the Treatment Action Campaign ("the TAC") and Sonke Gender Justice ("Sonke") seek this Court's leave to be admitted as *amici curiae* ("*amici*"); and the main application to which it relates, for certification of the class. I am both familiar with and am supportive of the relief sought in both applications.
- 5 This affidavit provides a focus on the socio-economic conditions of former mineworkers and their families living in the Eastern Cape, with a particular focus on the area of the former Transkei. In particular, it contains evidence that I have been advised is relevant to a consideration

of two legal issues in respect of which the TAC and Sonke – if admitted as *amici* – intend to make written and oral submissions:

5.1 First, whether certification should be granted; and

5.2 Second, whether the transmissibility of damages question should be decided at the same time as the certification issue.

6 I have been advised that in the event the applicants are admitted as *amici*, and my evidence becomes part of the record in the main application, counsel will rely on my evidence – at least in part – to advance argument in support of certification and the early hearing of the transmissibility of damages question.

7 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.

8 I then consider the following five issues:

8.1 First, the migrant labour system;

8.2 Second, the geographic sources of labour for the gold mining industry in South Africa;

- 8.3 Third, an overview of the socio-economic conditions in labour-providing areas, with a particular focus on the former Transkei;
- 8.4 Fourth, the socio-economic conditions of former underground gold mineworkers in the Alfred Nzo district in the Eastern Cape; and
- 8.5 Fifth, access to compensation for occupational illness and social security benefits for former mineworkers and their families.

MY QUALIFICATIONS, EXPERIENCE AND EXPERTISE

- 9 I hold a Bachelor of Science (BSc) in physics from the University of Cape Town (“UCT”), as well as a Master of Arts (MA) in economics and a Doctor of Philosophy (PhD) from the University of Cambridge. I am an emeritus professor of economics at UCT, and am currently a visiting professor at the Jackson Institute for Global Affairs at Yale University. A copy of my *curriculum vitae* is attached as annexure “**FW1**”.
- 10 I have been researching and lecturing on economics, migrant labour, mining and poverty in South Africa since 1967. I have lectured in these subjects as a professor or visiting fellow at the following universities: UCT, the University of Fort Hare, Jawaharlal Nehru University in New Delhi, the University of Sussex in Brighton, the University of Oxford, Harvard University, Princeton University, the University of Bergen in

Norway, and Yale University.

11 Amongst others, I have held the following positions:

11.1 From 1975 to 2001, I was the founding director of the Southern Africa Labour and Development Research Unit (“Saldru”) at UCT’s School of Economics. Saldru carries out research in applied empirical microeconomics, with an emphasis on labour markets, human capital, poverty, inequality and social policy.

11.2 From 1982 to 1989, I was the director of the Second Carnegie Inquiry into Poverty and Development in Southern Africa.

11.3 From 1984 to 1986, I was the head of UCT’s School of Economics.

11.4 From 1990 to 1999, I was chairperson of the Council of the University of Fort Hare.

11.5 From 1992 to 1995, I was the chairperson of the steering committee coordinating the Project for Statistics on Living Standards and Development, the first scientifically-sampled integrated national household survey in South Africa (including the former “homelands”).

- 11.6 From 1997 to 2006, I was a member of the scientific committee of the International Social Science Council's Comparative Research Programme on Poverty. I was the chairperson of this committee from 2001 to 2006.
- 11.7 From 2001 to 2004, I was the founding director of UCT's Data First Resource Unit, a service dedicated to making African survey and administrative socio-economic data available to researchers and policy analysts.
- 12 I have authored four books on migrant labour, economics, mining and poverty in South Africa. I have also co-edited five such books, and contributed chapters to over 20 such books. I have published numerous academic articles in my areas of expertise, in peer-reviewed publications as well as in popular journals and newspapers. A list of my publications is part of my attached *curriculum vitae*.
- 13 In 1994, I provided expert evidence at the Leon Commission of Inquiry into Safety and Health in the Mining Industry. On the invitation of the Marikana Commission of Inquiry, I made a presentation at a seminar on mining and migrancy on 9 April 2014. My presentation, a copy of which is attached as annexure "**FW2**", considered the social and economic consequences of the migrant labour system in the mining industry.

THE MIGRANT LABOUR SYSTEM

- 14 The history of collusion between the state and the mining industry in the establishment and maintenance of apartheid is well documented. The state supported the mining industry through the provision of infrastructure to the mines, and by introducing and enforcing a legislative framework that ensured a cheap, racialised labour supply to the mines. In turn, the revenue from the mining industry funded the racialised apartheid society to the benefit of white South Africans.¹
- 15 A necessary condition of this symbiosis was the maintenance of the migrant labour system, one of apartheid's central pillars.
- 16 By 1912, the Chamber of Mines had organised the recruitment of a black labour force. It monopolised all hiring, and was thereby able to keep wages artificially low. This ensured, for example, that wages in 1969 were no higher – in real terms – than they were in 1911.
- 17 The state's imposition of a "colour bar" prevented black mineworkers from moving into more skilled jobs and earning higher wages, thus limiting the amount of money that could be sent home as remittances.² In addition, gold mines housed their workers in single-sex compounds,

¹ See, for example, Jock McCulloch, *South Africa's Gold Mines and the Politics of Silicosis* (Johannesburg: Jacana Media, 2013)

² See, for example, Ross Harvey, "Minefields of Marikana: Prospects for Forging a New Social Compact" (2014) South African Institute of International Affairs Occasional Paper No. 183 (April 2014)

and issued limited-time contracts. This meant that men had to return home – to rural, labour-sending areas – on a regular basis.³

18 This system of oscillating migration was institutionalised through a combination of legal mechanisms. The most important of these were the pass laws, which sought to prevent the permanence of black migration from rural to urban areas. These laws were originally introduced, before 1900, at the behest of the Chamber of Mines. They made it impossible for mineworkers to stay with their families at the mines to which they were contracted, even if they so chose. In this way, the South African migrant labour system can be easily distinguished from similar systems elsewhere in the world.⁴

19 The second of these mechanisms was the Natives Land Act 27 of 1913, which made it unlawful for black Africans to buy and own land outside of the land allocated as their “reserves”. After 1936, after the law had been amended by the Native Trust and Land Act 18 of 1936, these reserves comprised approximately 14% of the land in the country, with the other 86% being reserved primarily for white ownership.

20 As much of the labour for the mines and other urban industry was drawn from these areas, they were often referred to as the “labour reserves”. Under apartheid 's evolving policy, these same areas then became the

³ Ibid at 16

⁴ Ibid at 16

“*Bantustans*”, the “*homelands*”, and the “*Black National States*”, until they were merged into the nine new provinces of South Africa in 1994.

- 21 The prohibition against buying and owning land outside of these areas effectively forced people who were once farmers to become migrant labourers with a tenuous link to the land.⁵ Resistance to these working conditions and the status imposed by these laws was dealt with brutally, as evidenced by the state’s response to the black mineworkers’ strikes of 1914, 1920 and 1946.

THE GEOGRAPHIC SOURCES OF LABOUR FOR THE GOLD MINING INDUSTRY IN SOUTH AFRICA

- 22 I have been advised that the application for certification pertains to mineworkers who were employed on or after 12 March 1956. In what follows below, I therefore only deal with the period starting in 1956.
- 23 Following the discovery of gold in the then Orange Free State in April 1946, the total number of black mineworkers rose steadily to an average of 336,000 per annum by 1956.⁶ This coincided with the succession of Prime Minister D.F. Malan by J.G. Strijdom in 1954, the institution of residential apartheid, and the tightening of the pass laws.

⁵ Ibid

⁶ Francis Wilson, *Labour in the South African Gold Mines 1911–1969*, (Cambridge, Cambridge University Press, 1972)

- 24 The total number of black mineworkers continued to rise through the 1950s, plateauing at an average of 380,000 per annum through the 1960s. The labour force experienced a small dip in the 1970s, standing at an average of 330,000 per annum by 1976. It then surged upward again, peaking at 534,000 in 1986. Thereafter, it began a decline that continues today.⁷
- 25 In 1994, the last year in which black mineworkers were classified apart from white mineworkers, the total black labour force on the mines averaged 303,000, just over half of which – 156,000 – were South African.⁸ In 2006, the black labour force on the mines stood at 268,000.⁹
- 26 Throughout the period from 1977 to 1994, and continuing today, the vast majority of mineworkers came from three main areas: the Eastern Cape (predominantly the former Transkei), Lesotho and Mozambique. Malawi was also a major provider of mineworkers between 1939 and 1974.¹⁰
- 27 From 1989 to 1996, Lesotho provided 26.8% of black gold mineworkers, the former Transkei provided 21.5%, and Mozambique provided 15%. The balance was made up of workers from the former homelands and

⁷ JS Harington *et al*, “A century of migrant labour in the gold mines of South Africa” (2004) *Journal of the South African Institute of Mining and Metallurgy* 67 (March 2004)

⁸ *Ibid* at 10

⁹ Francis Wilson, “South Africa’s Migrant Labour System”, in Haroon Borat *et al* (eds), *Oxford Companion to the South African Economy* (Oxford: Oxford University Press, 2014)

¹⁰ *Ibid* at 12

the labour reserves.¹¹

SOCIO-ECONOMIC CONDITIONS IN LABOUR-PROVIDING AREAS

28 While gold mining brought great wealth to whites in Johannesburg, elsewhere in South Africa, and abroad, it was also accompanied by a deliberate lack of investment in labour-providing areas such as the former Transkei. Put simply, people experienced the economic impact of gold mining in very different ways, based largely on race and geographic location. In what follows below, I consider the socio-economic conditions of black people living in labour-providing areas.

Labour-providing areas in general

29 A critical factor in these different experiences of growth has been the location of productive investment, which for migrant labourers was not in their home areas. The importance of the location of productive investment can be demonstrated by the decline of agricultural production since the rise of migrant labour, as labour-sending areas were left without men of working age.

30 As shown in Table 1 below,¹² the productivity of the land in the South

¹¹ ND McGlashan *et al.* "Changes in the geographical and temporal patterns of cancer incidence among black gold miners working in South Africa, 1964–1996" (2003) 88 *British Journal of Cancer* 361

¹² Colin Murray, *Families Divided: The Impact of Migrant Labour in Lesotho*, (Johannesburg, Cambridge University Press, 1981) at 8.

African labour reserves and Lesotho halved between 1950 and 1970, whilst the productivity of commercial farms in South Africa rose by 60%. The evidence suggests that agricultural production has continued to decline in the former homelands and labour reserves since 1994.

Table 1: Maize yields: 1950 – 1970 (100kg bags per hectare)

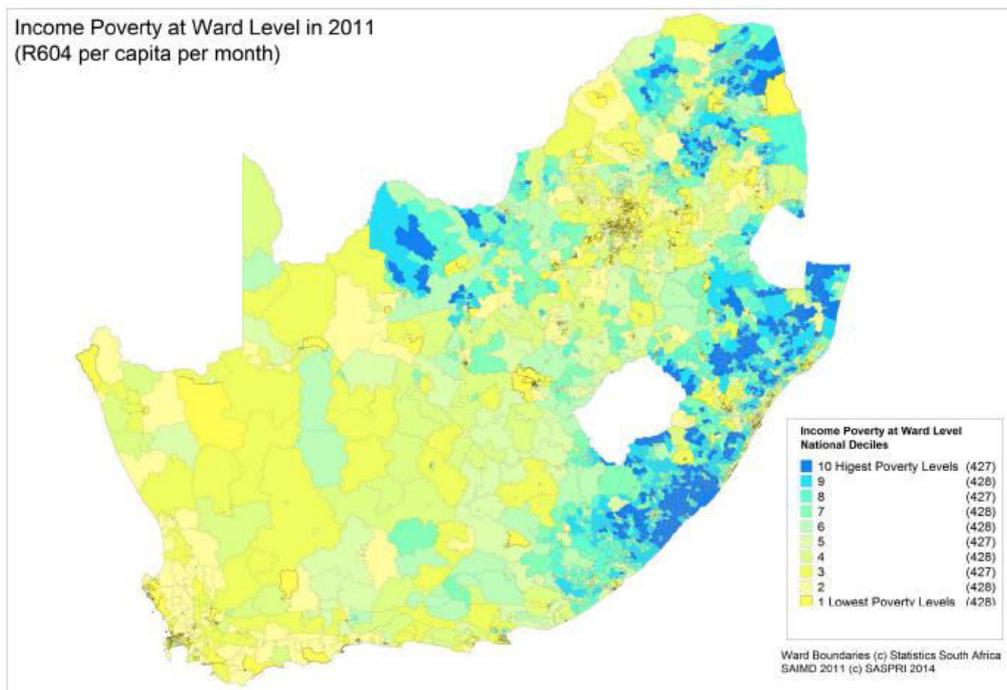
Year	Commercial farms	Reserves	Lesotho
1950	7.4	5.7	11.9
1960	9.1	2.1	7.4
1970	11.9	2.3	5.1

- 31 Poverty can be regarded as the lack of resources to obtain material possessions, social and human capital, decent housing and associated services. Despite attempts to adopt one, there is to date no official income poverty line. In the academic literature, however, a commonly-used income poverty line is that developed by Hoogeveen and Özler, which provides a lower income poverty line of R604 per capita/month and an upper income poverty line of R1,113 per capita/month.¹³
- 32 Maps 1 and 2 below demonstrate the spatial distribution of poverty in South Africa in 2011. These maps have been sourced from a 2013 publication of the Southern African Social Policy Research Institute entitled *Multiple Deprivation and Income Poverty at Small Area Level in*

¹³ J Hoogeveen and B Özler, "Poverty and inequality in post-apartheid South Africa", in H Borat & R Kanbur (eds), *Poverty and Policy in Post-Apartheid South Africa* (Pretoria: Human Sciences Research Council Press, 2006)

*South Africa in 2011.*¹⁴ The term “multiple deprivation” is used to mean a combined measure of several dimensions of deprivation.

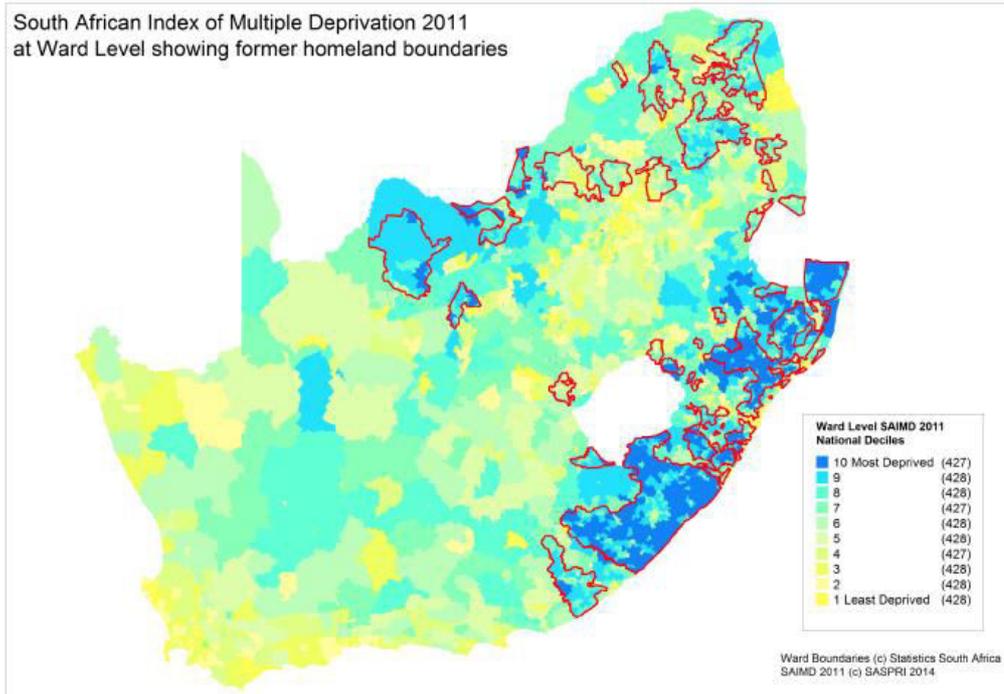
- 33 The first map shows concentrations of income poverty in areas such as the former Transkei, with a focus on the ward level:



Map 1

- 34 The second map is a combined measure of material deprivation, education, employment and living environment. It shows that people living in former homelands, specifically labour-providing areas such as the former Transkei, experience the worst levels of multiple deprivation.

¹⁴ M Noble *et al*, *Multiple Deprivation and Income Poverty at Small Area Level in South Africa in 2011* (Cape Town: SASPRI, 2013)



Map 2

35 Together, maps 1 and 2 demonstrate that the labour-providing areas that were established, maintained and impoverished through legal mechanisms continue to experience levels of poverty and multiple deprivation worse than the rest of South Africa, including most other former homelands.

The former Transkei

36 As the former Transkei has been a predominant labour-sending area throughout the history of gold mining in South Africa, any comparison of economic conditions in the area compared against the rest of South Africa, as well as other former homelands, is instructive. Four indicators have been chosen for this comparison: material deprivation; education;

employment; and living environment. In respect of each of these indicators, the former Transkei fairs the worst.

37 Material deprivation is defined as a household with no refrigerator, or no telephone, or no television or radio:¹⁵

37.1 69% of households in the former Transkei were in material deprivation in 2011;

37.2 46.4% of households in all former homelands were in material deprivation in 2011; and

37.3 33% of households in the rest of South Africa were in material deprivation in 2011.

38 The breakdown of people between the ages of 18 and 64 with no secondary schooling or above is as follows:¹⁶

38.1 58.4% of people between the ages of 18 and 64 in the former Transkei had no secondary schooling or above in 2011;

38.2 53.8% of people between the ages of 18 and 64 in all former homelands had no secondary schooling or above in 2011; and

¹⁵ Ibid at 27
¹⁶ Ibid

- 38.3 30.1% of people between the ages of 18 and 64 in the rest of South Africa had no secondary schooling or above in 2011.
- 39 The percentage of people between the ages of 18 and 64 who were unemployed or discouraged workers is as follows:¹⁷
- 39.1 37.2% of people between the ages of 18 and 64 in the former Transkei were unemployed or discouraged workers in 2011;
- 39.2 28% of people between the ages of 18 and 64 in all former homelands were unemployed or discouraged workers in 2011;
and
- 39.3 17.9% of people between the ages of 18 and 64 in the rest of South Africa were unemployed or discouraged workers in 2011.
- 40 The fourth indicator, which relates to living environment, is the percentage of people living without access to adequate water, sanitation, or electricity (for lighting), or living in a shack:¹⁸
- 40.1 87.28% of people in the former Transkei had this type of living environment in 2011;

¹⁷ Ibid

¹⁸ Ibid

40.2 73.7% of people in all former homelands had this type of living environment in 2011; and

40.3 27.6% of people in the rest of South Africa had this type of living environment in 2011.

41 That communities in the former Transkei provided such a large number of their men to the mines and today fare so much worse in these indicators, as compared to all former homelands and the rest of South Africa, is indicative of the long-term effect of the migrant labour system on the rural areas from which the mines have drawn their labour.

SOCIO-ECONOMIC CONDITIONS OF FORMER UNDERGROUND GOLD MINEWORKERS IN THE ALFRED NZO DISTRICT

42 In the following part of this affidavit, I rely on the findings of a study by Ms Jaine Roberts entitled *The Hidden Epidemic Amongst Former Mineworkers: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape, South Africa*.¹⁹ That study, which was published by the Health Systems Trust in 2009, was conducted with the support of both the Eastern Cape Department of Health and the national Department of Health.

¹⁹ Jaine Roberts, *The Hidden Epidemic Amongst Former Mineworkers: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape, South Africa* (Durban: Health Systems Trust, 2009)

- 43 I have been advised that while Roberts has deposed to an expert affidavit in support of the class action applicants, her study is neither addressed by them nor does it form part of their evidence. Because of its length, I have not attached a copy of the study as an annexure to this affidavit. However, it will be made available to this Court upon request.
- 44 Roberts's research focused on the Ntabankulu Local Municipality, which was part of the former Transkei. At the time the study was conducted, it was part of the OR Tambo District Municipality. However, it was transferred to the Alfred Nzo District Municipality after the 2011 municipal election.
- 45 For the purposes of her study, Roberts reached and invited 100% of former gold mineworkers from 10 distinct areas or large settlements in the Ntabankulu Local Municipality to participate. 205 former gold mineworkers took part in the study.
- 46 The research provides unprecedented insight into the socio-economic experiences of former gold mineworkers and their families. Given the time and resources required to conduct research of this nature, Roberts's geographical focus is understandable.
- 47 While 205 participants from one municipality do not necessarily constitute a representative sample of all former gold mineworkers, I can

think of no good reason why the experiences of former gold mineworkers in this district should differ significantly from those of former gold mineworkers elsewhere in the former Transkei.

48 In what follows below, I summarise the findings of Roberts's report under the following eight headings:

48.1 Demographics;

48.2 Occupational labour history;

48.3 Knowledge of the Occupational Diseases in Mines and Works Act 78 of 1973 (ODIMWA);

48.4 Medical surveillance history;

48.5 Tuberculosis ("TB");

48.6 Socio-economic status;

48.7 Hunger and deprivation; and

48.8 Health care services.

49 When considered collectively, these findings show that the former

mineworkers who were the subject of the study are likely to –

- 49.1 be married and have dependant children;
- 49.2 have left mining service due to retrenchment or illness;
- 49.3 have no knowledge of ODIMWA;
- 49.4 have had TB during or since leaving mining service;
- 49.5 be unemployed; and
- 49.6 experience hunger on a monthly basis.

Demographics

Age

50 The former mineworkers who participated in the study ranged from 40 to over 80 years of age. 54.2% were sixty or older. 13.1% were over the age of 70.

Marital status

51 83.9% of the men were married and living with their wives. 10.2% had

been widowed.

Dependant Children

52 As could be expected with so many of the former mineworkers being in older age groups, 32.6% no longer had their own children under the age of 18 living in their households. But the remaining 67.4%, made up of 138 households, were home to 449 school-going children under the age of 18 who were the dependant children of the former mineworkers.

Occupational labour history

Types of underground work

53 All of the former mineworkers had worked underground: 28.7% were machine operators, 26.3% were drillers, 11.7% were stopers, 9.7% were winch operators and 8.2% were team leaders. Other underground positions, such as blasters, mechanics, electricians and loaders, made up the balance.

Years of underground mine service

54 65.9% of the former mineworkers had 11 or more years of underground service. 37.8% of the 205 men had 21 or more years of underground service. Only 15% of the men had less than five years of underground

mine service. In total, the 205 men had given between 3,160 and 3,985 years of service to the mines, an average of between 15 and 19 years of service per miner.

Retention of mine service documentation

55 70.7% of the former mineworkers had retained some documentary proof related to their employment in the mining industry. In other words, almost one in three was not in possession of any documentary proof that they had worked in the mining industry.

Knowledge of the dangers of respirable dust

56 77.5% of former mineworkers reported having ever been informed of the dangers of respirable dust. Yet on closer inspection, it is clear that in answering the relevant question, many miners may have conflated the dangers presented by respirable dust with other dangers associated with underground gold mining. For example, when asked expressly what measures were taken to minimize dust, the answers received included “*we were provided with hard hat and boots*” and “*we were given ear muffs*”. In the result, the percentage reported may well be over-reported.

Means used to minimise dust

57 53.6% of the former mineworkers noted that water was used as a means

of dust alleviation. Shockingly, a mere 0.9% identified ventilation as the primary means of dust control in the mines in which they worked. 20.9% noted dust masks as a measure to address the dangers of dust, with 1.4% noting the use of "*cloths for face*". 14.6% said that no measures at all had been taken to minimize exposure to dust.

Reason for leaving mine service

58 Almost half – some 48.2% – of the former mineworkers recorded retrenchment as the reason they left the mines. About one in five workers – some 21.9% – recorded illness, with 5.8% recording injury. Only 6.3% left because they had reached retirement age. And only 17.5% left of their own choice.

Knowledge of ODIMWA

Information on ODIMWA while in mine employment

59 Only two of the former mineworkers had gained some knowledge of ODIMWA while in mine service. Put differently, 99% of the former mineworkers had learned nothing whatsoever of ODIMWA while working in the gold mining industry.

Information on ODIMWA through health facilities

60 Over 97% of the former mineworkers had seen health personnel in their home areas. Yet 96.5% of these former mineworkers learned nothing whatsoever about ODIMWA from their local health services.

61 Of the former mineworkers who had seen health personnel in their home areas, only 1% noted that they had gained knowledge of TB compensation during such visits. However, the information obtained did not include any detail, such as the requirement that eligibility for compensation requires a TB diagnosis within 12 months of leaving mine service.

Knowledge of ODIMWA generally

62 99% of the former mineworkers had never heard of ODIMWA. The knowledge of the remaining 1% was minimal, as they had only heard of it as compensation for lung diseases. They had no detail of ODIMWA's provisions, such as the entitlement to lifelong medical surveillance.

Medical surveillance history

Medical examination upon entering, during and upon leaving mining service

63 88.7% of the former mineworkers reported having a medical examination

when first employed in the mines, as well as an annual medical check-up when returning to work from leave. In contrast, only 14.6% of the former mineworkers reported receiving a medical examination upon leaving mine service.

Interactions with local public health facilities

64 55.6% of the former mineworkers had had an x-ray at some stage through their local health facility. Only 27.8% had had contact with a community health worker.

Use of private sector medical practitioners and traditional healers

65 51.7% of the former mineworkers had paid for a consultation with a private medical practitioner. 19.5% had consulted a traditional healer.

Health status and disability

66 A vast majority of the former mineworkers had symptoms of respiratory diseases: 95.6% had coughing; 83.4% had weight loss; 82.4% had fever; 80.9% had pain; and 71.2% had dyspnoea (difficulty breathing / shortness of breath).

TBTB while in mine employment

67 Only 26.3% of the former mineworkers had been diagnosed and treated for TB while in mine employment.

TB since leaving mine employment

68 51.7% had been diagnosed and treated for TB since leaving the mines. Of the former mineworkers who had been treated for TB since leaving mine service, 62.3% had been hospitalized for TB treatment.

Socio-economic statusReceipt of social security grants: state old age pensions

69 It would be expected that all of the former mineworkers over the age of 65 would receive state old age pensions. 82 of the 205 men were receiving state old age pensions. Only one man over the age of 65 was not receiving a state old age pension.

70 As the age criterion for men had been reduced to 63 by 2008, there was a possibility that some of those under 65 would have been receiving state old age pensions. However, no-one under 65 was in receipt of a

state old age pension, possibly indicating that the change in eligibility criteria had not yet filtered through to this area.

Receipt of social security grants: disability grants

- 71 11.7% of the former mineworkers had accessed disability grants.
- 72 Only 24.5% of the former mineworkers who had been treated for TB since leaving mine employment had received TB disability grants. These are short-term grants for support during the six-month period of standard TB treatment.

Receipt of social security grants: child support grants

- 73 Effectively 26.3% of the households with dependant children under the age of 18 were not in receipt of child support grants.

Other sources of income

- 74 None of the former mineworkers were in formal employment. Only 21.9% reported some other source of income. But this income was marginal. It was derived from activities such as collecting and selling wood, tending cattle, making and repairing ploughs, fencing, house building, and house maintenance.

Hunger and deprivation

- 75 92.2% of the former mineworkers and their households reported that they go without food or experience hunger on a monthly basis.
- 76 Over 30% of the former mineworkers transported themselves to clinics and hospitals on horseback.

Health care services

- 77 For the purposes of this part of the study, researchers interviewed facility managers and nursing staff in nine clinics and one district hospital.

Experiences of health facilities of the presentation of former mineworkers

- 78 Only 50% of the health personnel interviewed said that they enquire about the occupational history of TB patients. This has significant implications for those who left the mines in the preceding 12 months, as they are entitled to compensation in terms of ODIMWA.
- 79 Health personnel were asked to estimate the number of former mineworkers treated monthly for TB. The hospital estimated 80. One clinic estimated 82. Another clinic estimated 25, with a third estimating 20. All of the remaining clinics estimated under 20.

Health personnel knowledge of silicosis

80 Only 28.6% of health personnel indicated some knowledge of silicosis, further acknowledging limits to what they knew. None of these health personnel had ever diagnosed silicosis.

Health personnel knowledge of ODIMWA

81 92.8% of nurses had no knowledge of ODIMWA. One of the health personnel claimed to have some knowledge of ODIMWA, but this was limited to information about the right to compensation, and appeared somewhat confused with knowledge of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (“COIDA”). None of the staff at the district hospital had heard of ODIMWA.

ACCESS TO COMPENSATION AND SOCIAL SECURITY BENEFITS

82 It is common cause that ODIMWA provides inferior compensation to COIDA. And yet ODIMWA has not been effective in delivering even this inferior compensation to eligible mineworkers with occupational lung disease. For example, a study of former mineworkers in the Libode Municipality of the Eastern Cape showed that only 2.5% of former mineworkers who were certified as eligible for compensation had been

paid in full and were entitled to no further compensation.²⁰

83 In another study, conducted by international consulting firm Deloitte, of 28,161 claims accepted by the Medical Bureau of Occupational Disease over a 21-month period, the Compensation Commissioner for Occupational Diseases only paid out 400 claims. In other words, less than 1.5% of the claims of people certified as eligible were paid.²¹

84 Moreover, there are a variety of schemes established to transfer social security benefits to former mineworkers. However, as Roberts's study suggests, these schemes have likewise not accomplished resounding success, also with large amounts of unclaimed benefits. The apparent inability to access such benefits have adverse economic, social and health consequences for vast numbers of people.

85 A number of legal, administrative and practical barriers contribute to the poor access to compensation and benefits. Amongst others, these include the following:

85.1 The limited success of the South African government and social security administrators in tracing former mineworkers;

²⁰ Anna Trapido *et al*, "Prevalence of occupational lung disease in a random sample of former mineworkers, Libode District, Eastern Cape Province, South Africa" (1998) 34 *American Journal of Industrial Medicine* 305

²¹ Deloitte & Touche, "Report on the Actuarial Valuation as at December 2003 for the Compensation Commissioner for Occupational Diseases in Mines and Works" (2004) at 61

85.2 The focus of efforts to trace former mineworkers being limited to the area within the borders of South Africa, largely neglecting the thousands of eligible former mineworkers living outside South Africa;²² and

85.3 As suggested by Roberts's research, a lack of information by mineworkers and their dependants rendering them unaware of their entitlements.

86 In a report entitled *Lesotho Decent Work Country Programme Phase II 2012 to 2017: Making Decent Work a Reality in Lesotho*,²³ the International Labour Organization and the Government of Lesotho described the interplay of these influences:

“Former migrant workers returning to Lesotho who wish to access South African social security benefits face daunting regulatory, administrative and institutional challenges. The confusion is exacerbated by the fact that most returning migrant workers simply have no or limited knowledge about their social security status in South Africa and the relevant benefits applicable to them. As a result, many widows, orphans and dependants of deceased migrant workers have limited access to South African social security benefits and therefore face utter destitution in Lesotho.”

87 I have been advised that South African law provides, at best, for the limited portability of benefits. Laws such as the Unemployment

²² L Mpedi and M Nyenti, “Portability of Social Security Benefits in the Mining Sector” (2013) Southern Africa Trust

²³ Available at <http://www.ilo.org/public/english/bureau/program/dwcp/download/lesotho.pdf>

Insurance Act 63 of 2001, the Pension Funds Act 24 of 1956 and ODIMWA do not make provision for the cross-border portability of benefits. The absence or restrictive nature of provisions for the portability of benefits makes it difficult – if not impossible – for many migrant mineworkers who return to their countries of origin to access benefits to which they are entitled.

- 88 Because immigration law prevents foreign nationals from entering the country except under limited circumstances, and foreign nationals who enter the country on valid permits are required to leave the country when their permits expire, many mineworkers who are entitled to benefits are compelled to leave the country before their arrangements to access such benefits are finalised.²⁴

FRANCIS AYLMER HUNTER WILSON

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at _____ on this the ____ day of _____ 2014.

COMMISSIONER OF OATHS

²⁴ Mpedi, above note 22