

MAVERICK CITIZEN OP-ED

R5bn TB and silicosis payout: Clock is ticking for 500,000 ex-miners

By Richard Pakleppa • 20 July 2020



📹 While affected ex-miners are dying at an alarming rate the Tshiamiso Trust has to date not paid out any compensation to an estimated 500,000 ex-miners in South Africa, Le...

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For more than 12 years gold miners in southern Africa suffering from TB and silicosis contracted during their work have been waiting for Just Compensation as a precedent-setting class action for damages wound its way through the courts. There is a danger now that Covid-19 and a lack of urgency and commitment by the mining industry will deny them justice and compensation to which they are legally entitled.

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In July 2019 (<https://www.news24.com/fin24/companies/mining/court-to-decide-on-approval-of-historic-silicosis-settlement-case-20190726>) the landmark out-of-court settlement of South Africa's largest class action led to the formation of the Tshiamiso Trust (<https://www.facebook.com/silicosissettlement/>) (see here (<https://www.tshiamisotrust.com/>) for further information) which is tasked to pay R5-billion in compensation to an estimated 500,000 ex-miners in South Africa, Lesotho, Eswatini, Mozambique and Botswana.

Unfortunately, while affected ex-miners are dying at an alarming rate the Tshiamiso Trust has to date not paid out any compensation. Now Covid-19 has made the ex-miners' predicament even worse. Their existing occupational lung diseases put them at greater risk of dying from Covid-19 before being compensated.

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In 2016 in the judgment (<http://www.saflii.org/za/cases/ZAGPJHC/2016/97.html>) that granted ex-miners the right to pursue a class action against mining companies, Deputy Judge President Phineas Mojapelo stated that:

"The mineworkers intend to bring evidence to the class action trial: ... showing that throughout their existence... all the mining companies sacrificed the health and safety of the mineworkers in order to maximise the profits they could extract from mining operations;

"... showing that the mining companies have over a decade been promising to assist former mineworkers in accessing medical examination facilities in the rural areas and towns from where they were recruited and where they returned to since being retrenched, but have to date failed to do so."

It is now upon the Tshiamiso Trust to reverse this shameful legacy of abuse and neglect by carrying out the directives contained in Judge Vally's judgment (<https://www.oidcollab.co.za/downloads/send/10-downloads/57-judgment-bongani-nkala-and-67-other-judge-vally>) approving the terms of the Class Action Settlement that:

"the trustees are required to... ensure that the compensation due to an eligible claimant is paid **without undue delay**. To this end they have a duty of care towards the claimants. It is important that they remain rooted in this duty at all times. It is a duty that must be carried out *uberrimae fidei* (in **utmost good faith**), bearing in mind that they will be acting under the authority of this Court's order."

The Tshiamiso Trust faces a formidable task: tracing up to 500,000 ex-miners who mostly live in remote areas of southern Africa, effectively diagnosing, certifying and paying claimants who have complex lung diseases, aligning these efforts with existing statutory compensation and now the challenges presented by Covid-19.

Lung function tests – which are the key criteria for establishing the presence of silicosis and tuberculosis for compensation claims – can no longer be done due to the highly infectious nature of the coronavirus. In addition, efforts to reach sick ex-miners are severely constrained by Covid-19 travel restrictions and social distancing.

In this context, on 30 June, the Tshiamiso Trust announced (<https://www.tshiamisotrust.com/news/progress-and-challenges-in-the-implementation-of-the-tshiamiso-trust-deed-based-on-the-settlement-agreement/>) that it would implement its task by:

- Finding and paying out ill ex-miners who have already been certified by the statutory compensation system under the Medical Board of Occupational Diseases (MBOD) and the Compensation Commissioner (CCOD);
- Locating sick ex-miners by searching through the Tshiamiso Trust database which was created by amalgamating the employment and medical records of the Medical Bureau of Occupational Diseases (MBOD), the Compensation Commissioner (CCOD), the mining companies, TEBA and the class action law firms; and
- Inviting ex-miners to “self check” whether they are on the trust database, and/or to register their claims on the trust’s online platform by filling out forms and uploading employment and medical records to substantiate their claims.

These measures require careful scrutiny.

Shameful record

The statutory system (MBOD & CCOD) has a shameful record of dysfunctionality: 200,000 cases of miners who have been certified and are still unpaid, an equal amount of unprocessed claims, and an inability to process recently submitted claims.

Justice for Miners (<http://www.dyingforgold.com/campaign>) members are directly involved with countless cases of years of unresponsiveness by the MBOD and CCOD. Although the Chamber of Mines (now the Minerals Council) has “invested” R20-million in sorting out the MBOD by digitising records, this has not solved the problems bedeviling the MBOD and CCOD.

Gold mining companies, TEBA and the government must do more to sort out and make available existing medical and employment records and resolve the impasse of dysfunctionality and corruption that has choked this system for more than 20 years. For cooperation between the trust and the statutory compensation bodies to work, a high level SA government inquiry and decisive political will is needed to ensure the MBOD and CCOD do what they are supposed to do.

Identifying potential claimants through database analyses will produce names. The persons themselves will have to be located and informed by on-the-ground personnel.

Miners suffering from lung diseases and their families mostly live in remote areas with no access to the internet, let alone the language and literacy skills needed to engage with the Tshiamiso Trust’s online portal. The proposed system can only work if a network of trust offices is established across the region to provide a human interface between ex-miners and the online system. The trust should train staff for this and open such offices across the region without delay.

The ban on lung function tests presents a serious obstacle in seeing compensation payments being done speedily – ie, before many more die uncertified and uncompensated. It is unacceptable to exclude hundreds of thousands of ex-miners from being diagnosed and certified for receiving compensation because we can no longer do lung function tests due to Covid-19.

The truth is that for most of the 500,000 miners the clock is ticking: many will die from their existing conditions and many deaths will be hastened by Covid-19. **All these people and their families will remain uncompensated if we do not find alternatives to the lung function test.** We – civil society, the trust, industry and the government – owe it to these miners and their dependents to come up with alternatives to lung function tests.

When a miner has died the family has the right to send lung tissue to the National Institute of Occupational Health (NIOH) for analysis for the purpose of paying compensation. Urgent efforts should be made by the trust and governments to widely inform communities about this option. Governments and the trust must put in place policies and logistics on a regional level so that local district surgeons are required and resourced to remove the lungs of deceased ex-miners and to send them to the NIOH for analysis.

It is not only the Tshiamiso Trust’s obligation to fulfil its mandate. As beneficiaries of the South African economy it is important that we as a society get this right. It is every South African’s business to ensure that the huge damage done to gold mining communities since the beginnings of gold mining is acknowledged and at the very least ameliorated by paying out compensation to ill ex-gold miners across the region as fast as possible.

It is crucial that now, during the set-up stage of the Tshiamiso Trust, we find effective and workable solutions.

Going forward, commitment to such transparency and accountability from the Tshiamiso Trust is vital for us all to take responsibility and to ensure that the trust, industry, the SA government and regional governments do the right thing. **DM/MC**

Richard Pakleppa is a filmmaker and a member of the Justice for Miners Campaign. The JFM Campaign and Civil Society Forum was created to bring issues related to silicosis and TB compensation into public awareness and to seek constructive inputs and solutions for the challenge of paying just compensation to deserving ex-miners now. For background reporting on the history of the case read [here](https://www.groundup.org.za/topic/silicosis-case/). (<https://www.groundup.org.za/topic/silicosis-case/>)

Game Changers not Game Players

Never one to shy away from controversy, former president Jacob Zuma continues to treat the judicial process **like his personal chess game**. His latest move? Launching an attack on the judiciary with wholly unsubstantiated allegations of unfair treatment against him and **accusations of judicial bias**.

Despite his disgraceful track record, this statement to – and about – the court may be Zuma's **most audacious stab at our democracy yet**: suggesting that the judiciary should not have oversight over the executive. All while stalling the judicial process by changing legal teams as he goes.

Mr Zuma continues to play these games but we're not here to entertain them. We are not game players, **we are game changers**. At *Daily Maverick*, we're in the truth business and a win to us is knowing that every South African is being protected by us exposing and defending the truth.

So far, 17,000 people have answered our appeal for support by joining **Maverick Insider, our community of readers**. A passionate and dedicated group that helps us do our corruption-busting work. It is now, more than ever, necessary for us all to band together so that **justice may be served**. And we cannot do it without you.

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