

Portability of Social Security Benefits in Mining Sector

Challenges Experienced By Former Mineworkers in Accessing Social Security Benefits in Selected Southern African Countries



Picture courtesy of the Chamber of Mines South Africa

A Scoping Study

21 October 2013
LG Mpedi & M Nyenti

Table of Contents

	<i>Page</i>
ABBREVIATIONS AND ACCRONYMS	i
Executive Summary.....	ii
ACKNOWLEDGMENTS.....	vi
1. Introduction	7
2. PROFILE OF MIGRANT WORKERS FROM BOTSWANA, LESOTHO, MOZAMBIQUE AND SWAZILAND IN SOUTH AFRICA	8
2.1. Historical profile.....	8
2.2. Current profile	11
2.3. Impact of migration profiles on access to social security	13
3. MODALITIES OF EMPLOYMENT OF MIGRANT MINeworkERS.....	15
3.1. The ‘two-way’ approach	15
3.2. Bilateral agreements concluded between South Africa and its neighbouring countries	15
3.3. Immigration laws	17
4. IMPACT OF LABOUR AND SOCIAL SECURITY AGREEMENTS.....	19
5. Eligibility of Migrant Mineworkers to South African Social Security Benefits	21
6. SCOPE OF ‘UNCLAIMED’ OR UNREACHABLE SOCIAL SECURITY BENEFITS	25
6.1. Mineworkers Provident Fund benefits.....	25
6.2. Living Hands Umbrella Trust benefits	27
6.3. Mines 1970’s Pension and Provident Funds benefits	28
6.4. Sentinel Mining Industry Retirement Fund benefits.....	29
6.5. Benefits by the Compensation Commissioner for Occupational Diseases... ..	29
6.6. Compensation Fund benefits	30
6.7. 1970 Long Service Award Fund benefits	30
6.8. Rand Mutual Assurance Company Limited (Rand Mutual).....	31
7. Obstacles Restricting Access to South African Social Security Benefits By Former Mineworkers, Their Dependants And /Or Organisations.....	34
7.1. Reluctance of South African government and social security administration institutions	34
7.2. Lack of information by migrants or dependants to assess and access rights, and on procedures and administrative formalities.....	36
7.3. Impact of South African immigration law	39
7.4. Absence of portability provisions or limited portability arrangements in South African social security laws	40
7.5. Administrative and institutional challenges (e.g. administrative and institutional capacity; lack of administrative cooperation between schemes; delays in payment of social security benefits etc.)	40
7.6. Inaccessibility of professional occupational health services.....	47
7.7. Inaccessibility of certification and compensation institutions.....	49
7.8. Cumbersome documentary requirements for social security benefit applications.....	50
7.9. Restrictions arising from difficulties in establishing causal link between illness and employment.....	50
7.10. Restrictions arising from the classification of diseases and from the certification appeal process	51
7.11. Difficulties in determining how benefits are computed	52

7.12.	Reluctance due to inadequacy of compensation benefits	53
7.13.	Differences in national banking systems.....	54
7.14.	Weak SADC regional framework for occupational injury and disease protection	55
7.15.	Limited application of international standards relevant countries	56
8.	Social, Economic and Health Impact of Lack of Social Security Benefits	58
9.	Initiatives Assisting Former Migrant Mine Workers (Also In Accessing South African Social Security Benefits).....	66
9.1.	Mineworkers Provident Fund	66
9.2.	Chamber of Mines	67
9.3.	Mines 1970s Pension and Provident Funds	68
9.4.	South African Government.....	68
9.5.	Government of Lesotho.....	70
9.6.	Government of Swaziland	71
9.7.	National Union of Mineworkers	71
9.8.	Rand Mutual Assurance Company Limited	72
9.9.	The Employment Bureau of Africa	75
9.10.	Southern African Miners Association	77
9.11.	Association of Mozambican Mineworkers	78
9.12.	Swaziland Migrant Mine Workers Association.....	79
9.13.	Swaziland National Ex-Mineworkers Association.....	80
9.14.	Ex-Miners Association of the Mountain Kingdom (Lesotho)	81
9.15.	The Voluntary Service Overseas'Regional AIDS Initiative of Southern Africa (VSO-RAISA)	82
9.16.	Mineworkers Development Agency (MDA)	82
10.	Comparative Labour and Social Security Agreements	85
10.1.	Zambia/Malawi Social Security Agreement	85
10.2.	Mauritius/United Kingdom Social Security Agreement	87
10.3.	Some observations	87
11.	Conclusions	89
12.	Recommendations	92
	97	
13.	Selected Bibliography.....	98
13.1.	Publications.....	98
13.2.	Legislation	105
13.3.	International instruments.....	105
13.4.	Caselaw	107
14.	Annexure 1: List Of Institutions Protecting The Rights Of, And Representing, Former Mineworkers	108
15.	Annexure 2: List of National Organisations Established By Former Migrant Workers to Represent Them	112

Abbreviations and Accronyms

AMIMO	Associcao de MineirosMocambicanos (Association of Mozambican Mineworkers)
ARASA	AIDS and Rights Alliance for Southern Africa
CCOD	Compensation Commissioner for Occupational Diseases
COIDA	Compensation for Occupational Injuries and Diseases Act
COPD	Chronic Obstructive Pulmonary Disease
GDP	Gross Domestic Product
ILO	International Labour Organisation
IOM	International Organisation for Migration
MBE	Medical Benefit Examination
MBOD	Medical Bureau for Occupational Diseases
MDA	Mineworkers Development Agency
NGO	Non-Governmental Organisation
NUM	National Union of Mineworkers
ODMWA	Occupational Diseases in Mines and Works Act
RMA/Rand Mutual	Rand Mutual Assurance Company Limited
SADC	Southern Africa Development Community
SAMA	Southern African Miners Association
SNEMA	Swaziland National Ex-mineworkers Association
SWAMIWA	Swaziland Migrant Mine Workers Association
TB	Tuberculosis
TEBA	The Employment Bureau of Africa
UN	United Nations (Organisation)

Executive Summary

South Africa has always attracted and continues to attract a vast majority of migrants from these countries and throughout the SADC region. Historically, the largest number of labour migrants has been concentrated in the mining industry. In the 1950s, the number of black labourers in the mines averaged 327 000 per annum. Although the foreign component of the total labour force reduced in the 1960s and 1970s (from 37 per cent in 1966 to 16 per cent by 1979, with only about 16 000 men employed in 1977), their numbers rose to 183000 (42 per cent) in 1984 and 147 000 (49 per cent) in 1994. However, by 2006 foreign migrants made up only 38 per cent of the total workforce. In addition, increasing casualization of their employment (through sub-contracting) led to increased poverty and oppression (due to its temporary and non-unionised nature and its exemption from negotiated wage rates; and its exclusion from social security).

A large proportion (86 per cent) of migrants from Botswana, Lesotho, Mozambique and Swaziland (as well as Zimbabwe) is currently working in South Africa. A majority of these are males working in the mining sector (about 60 per cent of workers in the mining sector are mainly from Botswana, Lesotho, Mozambique and Swaziland).

The significant gender-based differences in migrant demographics have a profound impact on access to social security; as females are less likely to be in formal employment (and more likely to be engaged in informal economic activity with no social security provision).

In the 1980s, migrants from neighbouring states were mostly legal migrants employed under corporate work permits in terms of bilateral labour agreements signed with South Africa. Therefore, they were/are eligible for and should receive employment-related social security benefits. This is not the case for mineworkers currently employed illegally or as contractors/ sub-contractors.

Eligibility for South African social security by non-citizens and the portability of these depend on the migrants' mode of recruitment and employment status, their immigration status, the sector of employment and (to some extent) the provisions of any labour agreement entered into between South Africa and the relevant country. Since a vast majority of former migrant mineworkers worked on contract in terms of corporate work permits, they are eligible for compensation for occupational injuries and diseases; and private social security benefits from their employers (such as housing, medical care, life and retirement insurance (provident fund) and long service awards).

However, reports indicate that former mineworkers from neighbouring countries who contributed to South African social security schemes or their dependants often face huge constraints regarding the portability of social security benefits when they return to their countries of origin; and in getting access to follow-up services (such as medical benefit examinations) required by South African legislation. This has led to an estimated R5.7 billion in 'unclaimed' or unreachable benefits in various social security schemes that have lapsed (i.e. benefits that had not been claimed for two years or more). This includes the following:

Social security institution	Amount	Number of beneficiaries
Mineworkers Provident Fund	R3 008 289 913	106 419
Living Hands Umbrella Trust	R1 200 000 000	12 500
Mines 1970's Pension and Provident Funds	R 200 000 000	59 702
Sentinel Mining Industry Retirement Fund	R 101 000 000	unknown
Compensation Commissioner for Occupational Diseases		18 000 (claims backlog) 274 400 (still to be compensated)
Compensation Fund		12 000 (still to be compensated)

In addition, Rand Mutual Assurance Company Limited makes a yearly provision on its annual report for outstanding claims, which was R180 790 000 in 2012.

The daunting obstacles restricting former mineworkers from neighbouring countries or their dependants from accessing South African social security benefits, which have been classified as social, structural, policy/ regulatory, administrative and/or institutional obstacles, include the following:

- Reluctance of South African government and social security administration institutions;
- Lack of information by migrants or dependants to assess and access rights, and on procedures and administrative formalities;
- Impact of South African immigration law; the absence of portability provisions or limited portability arrangements in South African social security laws; administrative and institutional challenges (such as administrative and institutional capacity);
- Lack of administrative cooperation between schemes; delays in payment of social security benefits etc.);
- Inaccessibility of professional occupational health services; the inaccessibility of certification and compensation institutions;
- Cumbersome documentary requirements for social security benefit applications;
- Restrictions arising from difficulties in establishing causal link between illness and employment;
- Restrictions arising from the classification of diseases and from the certification appeal process;
- Difficulties in determining how compensation benefits are computed; reluctance due to inadequacy of compensation benefits;
- Differences in national banking systems;
- Weak SADC regional framework for occupational injury and disease protection; and
- Limited application of international standards relevant countries.

These obstacles have adverse economic, social and health consequences on large numbers of persons and communities. The suffering of (former) mineworkers is further worsened by their particular socio-economic conditions and that of their areas of origin; and by South Africa's poor occupational health and safety record, especially in the mining context (with 21.9 per cent of an estimated 1 million people leaving employment between 1986 and 2006 due to illness and 5.8 per cent due to injury).

Although various initiatives have been undertaken in assisting former migrant mineworkers (also in accessing South African social security benefits), more still needs to be done by all role players in eliminating the obstacles faced by former mine workers and in facilitating their access to South African social security benefits due to them. These include:

- A will by the South African government (and the governments of neighbouring countries) and social security administration institutions in developing a proper approach to trace and compensate former mineworkers (such as the establishment of a Task Team in August 2002 by the Premier of the Eastern

Cape to facilitate cooperation between various government agencies (provincial and national) in resolving the issue of outstanding benefits); and by the South African Parliament of an Ad Hoc Committee between 2007 and 2008 to facilitate the payment of social security benefits to members of the Ex-mineworkers Union in the Eastern Cape);

- Development of an integrated and comprehensive approach (e.g. establishment of a multi-role player forum) to address the plight of ex-migrant mineworkers;
- Compilation and publication of lists of lapsed beneficiaries by relevant social security institutions;
- Setting up of joint (mobile) clinics to provide medical examinations for mineworkers in the migrant-sending areas or contracting of Rand Mutual;
- Provision of facilities that are geographically-accessible to former miners by governments in neighbouring countries and associations of former migrant mineworkers for the processing of claims;
- Identification and implementation of appropriate payment modalities by social security administration institutions (i.e. social security payment processes that are convenient for former mine workers, taking into account their personal circumstances); and
- Investment of a portion of the unclaimed benefits in social and economic programmes in migrant-sending areas if all ex-miners cannot be identified or traced.

Acknowledgments

While we are solely responsible for the views expressed in this study, we wish to express our gratitude to the Southern Africa Trust for the opportunity to conduct this research on its behalf. We wish to thank Dr Thembinkosi Mhlongo, Ms Christabel Phiri, Mr Ashley Green-Thompson and Ms Taziona Situmulaho for their constructive comments as well as kind support and patience throughout the project. We would like to convey our heartfelt gratitude to the following organisations and persons: *Associação de Mineiros Mocambicanos* (Association of Mozambican Mineworkers), particularly Mr Moises Jamusse; ex-miners and widows as well as dependants of ex-miners residing at Moamba District (Mozambique) and Ha Lenononyane, Ha Makintane and Kolo (Lesotho); the Ministry of Labour (Mozambique); The Employment Bureau of Africa (Maputo Office); OTM-CS National Trade Union; Swaziland Migrant Mineworkers Association (SWAMMIWA), particularly Mr Vama Jele; Ex-Miners Association of the Mountain Kingdom (Lesotho), particularly Mr Rantso Mantsi; the country representative of the Voluntary Service Overseas' Regional AIDS Initiative of Southern Africa (VSO-RAISA) in Maseru; and all those who participated at the national dialogues held in Swaziland (30 August 2013) and Lesotho (5 September 2013).

LG Mpedi and MAT Nyenti

Johannesburg, 21 October 2013

1. Introduction

The primary aim of the scoping study was to achieve the following objectives:

- Evaluate existing mechanisms that enable non-citizen mineworkers to claim their social security benefits when they have returned to their home countries and possible portability of social security benefits by former migrant workers, especially from Botswana, Lesotho, Mozambique and Swaziland (issues to be considered include social security schemes (including health-related benefits) accessible to these former mineworkers, their eligibility criteria, the regulatory framework and payment mechanisms and institutions).
- Document the experiences of former mineworkers, their dependants and/or organisations (such as recruitment procedures, conditions of employment, retrenchment/retirement procedures and access to post-employment services (such as health care services)).
- Investigate the difficulties in accessing social security benefits and/or savings from the Chamber of Mines, The Employment Bureau of Africa (TEBA) and UBank (present case studies of difficulties faced by former miners or their beneficiaries in accessing benefits and/or savings); produce case studies in each country: Botswana, Lesotho, Mozambique and Swaziland (this must include health related benefits).
- Examine existing bilateral agreements between South Africa and neighbouring countries like Botswana, Lesotho, Mozambique and Swaziland concerning recruitment of mineworkers and payment of their social security benefits. Compare these bilateral agreements with agreements between other Southern African countries (such as Mauritius) on the portability of social security and other benefits. Propose mechanisms/recommendations for the payment of ex-mineworkers' outstanding social security and other benefits in South Africa including full portability of social security benefits for migrant miners.
- Identify institutions involved in employment of miners and institutional frameworks used and how these impact on access to social security benefits and investigate organisations involved in the protection of the rights of, and representing, former mineworkers. These may include governmental bodies, private sector institutions including financial institutions, international organisations and non-governmental organisations (a comprehensive database).
- Identify national organisations established by former migrant mineworkers to represent them, including those that are not necessarily members of the Southern African Miners Association (SAMA). Investigate such organisations' relations with SAMA and members of SAMA in terms of potential for collaboration and verify membership sizes of each organisation identified.
- Make recommendations to empower former miner workers (and organisations representing them) to contribute to the development of policies affecting them in relation to their social security benefits from their employment in the mining industry in South Africa.

2. Profile of Migrant Workers from Botswana, Lesotho, Mozambique and Swaziland in South Africa

It is impossible to make a breakdown of the number of migrant workers from Botswana, Lesotho, Mozambique and Swaziland that have worked or are working in South Africa.¹ This is because the exact number of non-citizens in South Africa has never been clear. However, statistics from government sources, employment organisations and statistical surveys provide an idea of the numbers of non-citizens from these countries (both in the past and at present). What is clear from these is that South Africa has always attracted and continues to attract a vast majority of migrants from the Southern African Development Community (SADC) region (especially from Botswana, Lesotho, Mozambique and Swaziland).

2.1. Historical profile

It has been stated that in the past, the largest number of labour migrants in South Africa was concentrated in the mining industry.² As far back as 1955, the number of black labourers in the mines averaged 327 000 per annum.³ However, in the 1960s and 1970s the foreign component of the total labour force reduced, especially when the Chamber of Mines launched a drive for South African blacks to replace foreigners. As a result, the proportion of foreign migrant workers fell from 37 per cent in 1966 to 16 per cent by 1979 (with only about 16 000 men employed in 1977).⁴

In 1984 the black labour force stood at 437 000 men, of which South Africa itself contributed 254 000 (58 per cent).⁵ By 1985, the mining industry (gold, platinum, uranium and other minerals) employed people 700 000 (with the gold mines employing some 480 000 black workers per annum over 1987 to 1988).⁶ By 1994, the total black force was 303 000, of which 156 000 (51 per cent) were South African (in total the gold mining industry reduced its black worker numbers from 477 000 in 1986 to 303 000 in 1994).⁷

South Africa's neighbours bore the brunt of the reduction in mine employment. For example, the proportion of miners from Lesotho employed in the gold mining industry fell 105 000 in 1987 to 80 000 in 1994.⁸ In the case of Mozambique, this was also due to the

¹ Those who are considered to be foreign-born migrant workers in South Africa are permanent residents (or immigrants), temporary residents (on work permits) or as contract workers (for instance mineworkers). See Department of Labour *Labour Migration and South Africa: Towards a fairer deal for Migrants in the South African Economy Labour Market Review* (2007) 7.

² See Crush J, Jeeves A and Yudelman D *South Africa's Labor Empire: A History of Black Migrancy to the Gold Mines* (1991); and Wilmot J *Our Precious Metal: African Labour in South Africa's Gold Industry* (1992).

³ Harington JS, McGlashan ND and Chelkowska EZ "A century of migrant labour in the gold mines of South Africa" *The Journal of The South African Institute of Mining and Metallurgy* (March 2004) 67.

⁴ Harington JS, McGlashan ND and Chelkowska EZ "A century of migrant labour in the gold mines of South Africa" *The Journal of The South African Institute of Mining and Metallurgy* (March 2004) 67.

⁵ Chamber of Mines of South Africa *Statistical Tables* (1994) 16.

⁶ Harington JS, McGlashan ND and Chelkowska EZ "A century of migrant labour in the gold mines of South Africa" *The Journal of The South African Institute of Mining and Metallurgy* (March 2004) 68.

⁷ Chamber of Mines of South Africa *Statistical Tables* (1994) 16.

⁸ Harington JS, McGlashan ND and Chelkowska EZ "A century of migrant labour in the gold mines of South Africa" *The Journal of The South African Institute of Mining and Metallurgy* (March 2004) 69.

order by the South African government in 1986 for mines to stop recruiting novices and renewing contracts from Mozambique.⁹

By 1998 the total stood at 255 000, a drop of 42 per cent from its peak of 534 000 in 1986.¹⁰ In 2000, there was an expansion in the gold mining sector, with employment rising by over 60 000 between 2001 and 2006.¹¹ However, there was also a reversal of the ‘externalisation’ of employment on the gold mines as South Africans were the main beneficiaries of the rising employment. The employment of foreign migrants fell, making up only 38 per cent by 2006 from peaks of nearly 60 per cent in 1997 and 57 per cent in 2000. Mineworkers from Mozambique and Lesotho were still the highest victims of this reduction.¹²

The total labour force numbers, sources and percentages of black gold miners working in South Africa between 1911 and 1993 were as follows:¹³

Year	Total Labour Force	South Africa (mainly from Transkei and Cape Province)	Former High Commission Countries (Botswana, Lesotho and Swaziland)	Foreign (Angola, Mozambique, Tanzania, Zambia and Zimbabwe)
1911	174 000	40.5%	6.4%	53.1%
1941	364 000	53.8%	19.9%	26.3%
1960	376 000	41.3%	20.5%	38.2%
1966	363 000	39.1%	23.9%	37%
1979	399 000	54%	30.1%	15.9%
1993	305 000	51.8%	34.4%	13.8%

Details of foreign labour migration to the South African gold mines at intervals between 1920 and 1990 were as follows:¹⁴

Year	Angola	Botswana	Lesotho	Malawi	Mozambique	Swaziland	Tanzania	Zambia	Zimbabwe	Other	Total
1920	0	2112	10439	354	77921	3449	0	12	179	5484	99950
1925	0	2547	14256	136	73210	3999	0	4	68	14	94234
1930	0	3151	22306	0	77828	4345	183	0	44	5	99355
1935	0	7505	34788	49	62576	6865	109	570	27	9	112498
1940	698	14427	52044	8037	74693	7125	0	2725	8112	70	168058
1945	8711	10102	36414	4973	78588	5688	1 461	27	8303	4732	158967
1950	9767	12390	34467	7831	86246	6619	5 495	3102	2073	4826	172816
1955	8801	14195	36332	12407	99449	6682	8 758	3849	162	2299	192934
1960	12364	21404	48842	21934	101733	6623	14 025	5292	747	844	233808
1965	11169	23630	54819	38580	89191	5580	404	5898	653	2686	232610
1970	4125	20461	63988	78492	93203	6269	0	0	3	972	265143
1975	3431	20291	78114	27904	97216	8391	0	0	2485	12	220293
1980	5	17763	96309	13569	39539	8090	0	0	5770	1404	182449
1985		18079	97369	16849	50126	12365	0	0	0	4	196068
1990	0	15720	108780	72	50104	17816	0	0	2	0	192044

⁹ Kanyenze G “African migrant labour situation in Southern Africa” Paper presented at the ICFTU-Afro Conference on ‘migrant labour’ Nairobi (15-17 March 2004) 4.

¹⁰ Chamber of Mines of South Africa *Statistical Tables* (1998) 10.

¹¹ Department of Labour *Labour Migration and South Africa: Towards a fairer deal for Migrants in the South African Economy* Labour Market Review 2007 11.

¹² *Ibid.*

¹³ Harington JS, McGlashan ND and Chelkowska EZ “A century of migrant labour in the gold mines of South Africa” *The Journal of The South African Institute of Mining and Metallurgy* (March 2004) 67.

¹⁴ The Employment Bureau of Africa (TEBA) sources, as presented in Department of Labour *Labour Migration and South Africa: Towards a fairer deal for Migrants in the South African Economy* Labour Market Review 2.

Between 1990 and 2006, the total mine labour recruitment (including South Africans) was as follows:¹⁵

Year	South Africa	Botswana	Lesotho	Mozambique	Swaziland	% Foreign	Total
1990	199 810	14 609	99 707	44 590	17 757	47	376 473
1991	182 226	14 028	93 897	47 105	17 393	49	354 649
1992	166 261	12 781	93 519	50 651	16 273	51	339 485
1993	149 148	11 904	89 940	50 311	16 153	53	317 456
1994	142 839	11 099	89 237	56 197	15 892	55	315 264
1995	122 562	10 961	87 935	55 140	15 304	58	291 902
1996	122 104	10 477	81 357	55 741	14 371	58	284 050
1997	108 163	9 385	76 361	55 879	12 960	59	262 748
1998	97 620	7 752	60 450	51 913	10 336	57	228 071
1999	99 387	6 413	52 188	46 537	9 307	54	213 832
2000	99 575	6 494	58 224	57 034	9 360	57	230 687
2001	99 560	4 763	49 483	45 900	7 841	52	207 547
2002	116 554	4 227	54 157	51 355	8 698	50	234 991
2003	113 545	4 204	54 479	53 829	7 970	51	234 027
2004	121 369	3 924	48 962	48 918	7 598	47	230 771
2005	133 178	3 264	46 049	46 975	6 993	43	236 459
2006	164 989	2 992	46 082	46 707	7 124	38	267 894

The declining numbers of foreign migrant mineworkers has also been accompanied by the increasing casualization of their employment (through sub-contracting). Whereas contractors accounted for only 3 per cent of the workforce in gold mines in the 1980s, this rose to 10 per cent by 1994. In addition, while contractors employed just 5 per cent of the workforce in coal mines in 1987, by 1994 they employed 16 per cent.¹⁶ It is argued that subcontracting represents a new path to poverty and oppression.¹⁷ This is because contract labour is temporary, generally not unionised and exempted from wage rates negotiated between the National Union Mineworkers (NUM) and the Chamber of Mines. In addition, employees do not belong to mine death and benefit schemes and retirement savings schemes.¹⁸ As it has been remarked:

“Trade union gains for migrants in the mining industry in the 1980s were systematically rolled back in the 1990s through sub-contracting. Once dominated by a handful of powerful, centralised mining groups, the mining companies began to out-source non-production and production functions to a growing number of sub-contracting companies. These companies tended to hire more vulnerable non-South African workers, particularly from Mozambique and Lesotho. Research shows that the rise of sub-contracting has had a marked impact on trade union strength in the mining industry and led to a marked deterioration in wages, working conditions and underground safety.”¹⁹

¹⁵ TEBA sources, as presented in Department of Labour *Labour Migration and South Africa: Towards a fairer deal for Migrants in the South African Economy* Labour Market Review 2007 11.

¹⁶ Kanyenze G “African migrant labour situation in Southern Africa” Paper presented at the ICFTU-Afro Conference on ‘migrant labour’ Nairobi (15-17 March 2004) 8. See also Segal N *A Perspective on the South African Mining Industry in the 21st Century* (An independent report prepared for the Chamber of Mines of South Africa by the Graduate School of Business of the University of Cape Town in association with Genesis Analytics) (August 2000) 30.

¹⁷ Crush J “Contract migration to South Africa: Past, present and future” - accessed at <http://www.queensu.ca/samp/transform/Crush.htm>.

¹⁸ *Ibid.*

¹⁹ Crush J, Ulicki T, Tseane T and Van Veuren E, “Undermining Labour: The Rise of Sub-Contracting in South African Gold Mines” *Journal of Southern African Studies* 27(1) (2001): 5-31 as quoted in Department of Labour *Labour Migration and South Africa: Towards a fairer deal for migrants in the South African Economy* Labour Market Review 2007, 11. Standing, G *et al* state that by 1994 10% of the total workforce in the gold mines already consisted of contractors (as opposed to 3% in 1987); in the coal mines the figure was 16% (as opposed to 5% in 1987). Apart from specialist services rendered by some of the contractors in the mining industry, several non-core activities, such

The story of 'Chauke' and 'Alfred', two Mozambican miners living in the Nkaneng informal settlement and working for Lonmin, presents some of the difficulties faced by current and former miners.²⁰ Referring to the adverse conditions in the mining communities, Chauke says: "since 1994, I am still in this place – a squatter camp like this.... There is no water, no electricity, no toilet."

Alfred, a supervisor in charge of rock drill operators, is not entitled to any benefits at all because he is employed through a labour broker. Chauke says he makes no pension fund contribution.

2.2. Current profile

More recent studies reveal that 86 per cent of migrants from Botswana, Lesotho, Mozambique and Swaziland (as well as Zimbabwe) work in South Africa.²¹ In the case of Lesotho, there are conflicting estimates of the number of citizens in South Africa. While the South African Department of Labour suggests that there are about 300 000 Lesotho nationals employed in South Africa, mostly in the mining industry,²² the Government of Lesotho estimates that there are 54 419 legal migrant workers working in the mines and farms in South Africa.²³ The discrepancy may be as a result of the fact that the Government of Lesotho refers only to migrants who are lawfully working in South Africa. This view is reinforced by estimates that about 240 000 Lesotho citizens are outside the country.²⁴ In addition, studies confirm that Lesotho contributes more than 50 000 migrant workers to the South African mining industry.²⁵

The International Organisation for Migration (IOM) estimates that about 60 per cent of workers in the mining sector in South Africa are from neighbouring countries, mainly from Botswana, Lesotho, Mozambique and Swaziland.²⁶ It further reports that South African mining industries have been the traditional destination of male Mozambican labour migrants. The number of male migrant workers to the South African mines was relatively consistent by the year 2000 despite major downsizing in the industry as a whole. Available

as cleaning and catering, have also been contracted out since the 1980's - Standing G, Sender J and Weeks J *Restructuring the Labour Market: The South African Challenge* An ILO Country Review (1996) 302.

²⁰ Smallhorne M "Southern Africa Trust: Social security without borders" in Mail & Guardian of 30 August 2013.

²¹ Pendleton W, Crush J, Campbell E, Green T, Simelane H, Tevera D and de Vletter F *Migration, Remittances and Development in Southern Africa* Southern African Migration Project (SAMP) Migration Policy Series No. 44 (2006) 3.

²² Department of Labour "Government to settle compensation claims of Lesotho ex-migrant workers" GCIS News of 19 January 2006 – accessed at <http://www.labour.gov.za/> on 29 May 2013.

²³ Government of Lesotho "2010/2011 budget for labour inadequate-minister" – accessed at www.gov.ls on 29 March 2010. The Government of Lesotho also reported that there were 52 735 Lesotho migrants working in South African mines as of March 2008. See Central Bank of Lesotho *Quarterly Review* Vol. XXIX, No. 1 (March 2008).

²⁴ UN-INSTRAW and UNDP *Migration, Remittances and Gender-Responsive Development: The Case of Lesotho* (2010) 2.

²⁵ ARASA *The Mining Sector, Tuberculosis and Migrant Labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008) 2.

²⁶ International Organization for Migration (IOM) *Regional Assessment on HIV-prevention needs of Migrants and Mobile Populations in Southern Africa: Mining Sector Report* (February 2010) 9.

statistical data show that Mozambicans made up 25 per cent of the gold mine workforce in that year (up from 10 per cent in 1990).²⁷

For migrants from Lesotho and Swaziland, the main destination is South Africa. Migration by Lesotho citizens is almost entirely to South Africa (99 per cent of them), as is that of Swazi men.²⁸ Swaziland nationals in South Africa consist of both migrant workers and cross-border traders. However, studies indicate that Swaziland's market share of the foreign migrant labour force fell from 10 per cent in 1990 to 7 per cent in 2000.²⁹ This is mostly due to retrenchments and downsizing of mines, as Swazi migrant workers were mostly males employed in the mining sector. Traditionally there were only male Swazi miners, but from around 2001, women also started to work in the mines.³⁰ In the year 2000, an estimated 9 360 Swazi men were employed in the mines.³¹ By 2006 Swaziland only supplied 6 878 mineworkers to South Africa,³² although this figure had risen to 8 000 Swazis working in South African mines by 2010.³³

South Africa was also the preferred destination for Botswana mineworkers. It has been remarked that:

"...according to the 1991 Census, the vast majority of Batswana abroad were men working on legal contracts in the South African mines. This amounted to 18,200 people or 47.1 per cent of the Batswana living abroad in 1991. The downsizing of mines in South Africa and the consequent retrenchment of mineworkers in the 1990s witnessed the return home of a significant proportion of Batswana miners. While local mineworkers in South Africa were laid off at a much faster rate than foreign mineworkers, many Botswana returned home and were able to obtain employment in the mining industries in Botswana."³⁴

However, there are currently only about 3000 Batswana migrant workers in South African mines.³⁵ This is because Batswana miners who were retrenched from South African mines in the 1980 and 1990s were immediately absorbed into the Botswana mining industry. Mining (especially diamond mining) is the dominant economic activity in the country, accounting for 36 per cent of Gross Domestic Product (GDP) (with Debswana Diamond Company, a

²⁷ IOM *Briefing note on HIV and Labour Migration in Mozambique* 2. Crush *et al* also state that the proportion of foreign workers in contract labour, especially on the mines, rose from 40 per cent in the late 1980s to close to 60 per cent in 2005. During this period, the share of Mozambican workers in contract labour in South Africa rose from 10 per cent to 25 per cent. See Crush, J, Williams, V and Peberdy, S *Migration in Southern Africa* (A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration) (Global Commission on International Migration (2005)) 7.

²⁸ Dodson B *et al Gender, Migration and Remittances in Southern Africa* Southern Africa Migration Project (Migration Policy Series No. 49, 2008) 2. See UN-INSTRAW and UNDP *Migration, Remittances and Gender-responsive Development: The Case of Lesotho* (2010) 2.

²⁹ Simelane HS and Crush J *Swaziland Moves; Perceptions and Patterns of Migration* (Southern African Migration Project (SAMP) 2004) 12.

³⁰ International Organization for Migration (IOM) *Regional Assessment on HIV-prevention Needs of Migrants and Mobile Populations in Southern Africa: Mining Sector Report* (February 2010) 9.

³¹ Simelane HS and Crush J *Swaziland Moves; Perceptions and Patterns of Migration* (Southern African Migration Project (SAMP) 2004) 12.

³² See IOM *Briefing note on HIV and Labour Migration in Swaziland* 2.

³³ IOM *Regional Assessment on HIV-prevention Needs of Migrants and Mobile Populations in Southern Africa: Mining Sector Report* (February 2010) 9.

³⁴ International Organization for Migration (IOM) *Briefing Note on HIV and Labour Migration in Botswana* 5, quoting South African Migration Project (SAMP) *Botswana: Migration Perspectives and Prospects* (2000) 16-18.

³⁵ Tsimane E "Batswana migrants could lose their SA mine jobs" in Palapye.com News Blog of 7 January 2009.

partnership between the Government of Botswana and De Beers, being the largest private sector employer).³⁶ The total labour force in the mining industry in 2003 was 13 236 in 2003 and 14 264 in 2004, mostly Botswana citizens (the proportion of foreign workers was 6.48 per cent in 2003 and 6.57 per cent in 2004).³⁷

In terms of work activity, mine work is still the predominant form of employment for male migrants from Lesotho and Swaziland. Almost 80 per cent of male migrants from Lesotho and two-thirds from Swaziland work in South African mines.³⁸ However, due to the decline in employment in the mining industry, there has been a rise in the number of migrants employed in other sectors. Trading is a significant economic activity for female migrants from these countries.³⁹ Domestic work is the most prevalent form of employment for women from Lesotho and Swaziland. Informal sector production is another important occupation for female migrants. Agricultural, manual and 'other service' work occupy a small but significant number of migrant women from these countries. Among more skilled women, professional and office occupations are common.⁴⁰ Although it is difficult to estimate absolute numbers, estimates suggest that about 9 per cent of Lesotho's migrants are domestic workers and 6 per cent are skilled manual labourers. Mozambicans are employed in a vast array of professions. Mining (at 30.5 per cent) is followed by unskilled manual work (9 per cent), skilled manual work (8 per cent) and trading and hawking (6 per cent).⁴¹

2.3. Impact of migration profiles on access to social security

Research indicates significant gender-based differences in migrant demographics, including divergent patterns and trends between male and female migrants in terms of their age and marital status. Migration from Botswana, Lesotho, Mozambique and Swaziland has always been dominated by men, with just over 15 per cent of the migrants being women.⁴² In addition, most migrants from these countries are older, married and heads of households.⁴³

³⁶ International Organization for Migration (IOM) *Briefing Note on HIV and Labour Migration in Botswana* 4.

³⁷ Department of Mines (Botswana) *Annual Report 2004* (2005) 15 (accessed at <http://www.gov.bw/government/dom/DoM%202004%20Annual%20Report.pdf>).

³⁸ *Ibid.*, 4.

³⁹ Dodson B et al *Gender, Migration and Remittances in Southern Africa* (Southern Africa Migration Project (SAMP) Migration Policy Series No. 49, 2008) 2.

⁴⁰ *Ibid.*

⁴¹ Department of Labour *Labour Migration and South Africa: Towards a Fairer deal for Migrants in the South African Economy* Labour Market Review (2007) 12

⁴² Dodson B et al *Gender, Migration and Remittances in Southern Africa* (Southern Africa Migration Project (SAMP) Migration Policy Series No. 49, 2008) 2. The proportion of women amongst migrants varies between the three countries. In terms of individual country statistics, Swaziland has 92.4 per cent of males and 7.6 per cent females, while males comprise 83.6 per cent of Lesotho migrants and females comprise 16.4 per cent. There are also age and family responsibility differences with both male and female migrants. Female migrants are younger, with the proportion of female migrants in the 15-24 age group significantly higher than the equivalent proportion for males in Lesotho and Swaziland. Males are over-represented in the older, 40-59 age group compared to women. There is an increase in the migration of older, married heads of household. About 76 per cent of male migrants from Lesotho and 61 per cent of those from Swaziland are household heads.

⁴³ Only 7 per cent of migrants are under the age of 25; while, 41 per cent are over the age of 40. Up to 62 per cent are married; and just over 50 per cent are household heads – see Pendleton, W, Crush, J, Campbell, E, Green, T, Simelane, H, Tevera, D and de Vletter, F *Migration, Remittances and Development in Southern Africa* Southern African Migration Project (SAMP) Migration Policy Series No. 44 (2006) 2-3; and Crush, J, Williams, V and

Gender disparities have a profound impact on access to social security as, relative to male migrants, female migrants are less likely to be in formal employment (and more likely to be engaged in informal economic activity with no social security provision). This implies that for male migrant workers who are the breadwinners in their families, any failure to access social security benefits results in destitution not only for themselves but also their dependants.

Statistical trends indicate that a substantial number of persons from Botswana, Lesotho, Mozambique and Swaziland have worked or are currently working in South Africa, mostly in the mines. AngloGold Ashanti estimates that some 1 million people have left the mining industry over the past 20 years, whether because of downscaling and closure of operations or retirement and ill health.⁴⁴

In the 1980s migrants from Botswana, Lesotho, Mozambique and Swaziland (South Africa's suppliers of mine migrant labour) were mostly legal migrants.⁴⁵ They were employed under corporate work permits in terms of bilateral labour agreements signed between South Africa and its neighbours. Legal migrants who worked or work in the mining industry (including those under a corporate work permit in terms of bilateral labour agreements) were/are eligible for and should receive employment-related social security benefits. However, the decrease in the employment of migrant workers due to the restructuring of the gold mines resulted in the fall of immigration from neighbouring states between 1983 and 1985.⁴⁶ The fall in mine recruitments and in the issuing of work permits led to a growth in illegal or irregular migration. In addition, there was an increase in sub-contracting (the fall in the legal employment of migrant workers from neighbouring countries due to downsizing and restructuring led to mining companies employing them illegally or as contractors or sub-contractors). Therefore, most migrants currently employed in the mining industry are employed as contractors. This has a negative impact on the social security position of these workers, as workers who are employed by subcontractors (and not by the mining companies) will not be entitled to any social security benefits. They do not benefit from medical schemes, sick leave, pension, severance pay and death benefits.⁴⁷

Peberdy, S *Migration in Southern Africa* (Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration) (Global Commission on International Migration 2005) 21-23.

⁴⁴ AngloGold Ashanti *Report to Society 2006* (2006) 119.

⁴⁵ See Sibanda N *The Impact of Immigration on the Labour Market: Evidence from South Africa* Unpublished University of Fort Hare MCom Dissertation (November 2008) 14.

⁴⁶ *Ibid.*

⁴⁷ Sibanda N *The Impact of Immigration on the Labour Market: Evidence from South Africa* (Unpublished University of Fort Hare MCom Dissertation, November 2008) 28-29.

3. Modalities of Employment of Migrant Mineworkers

3.1. The 'two-way' approach

In principle there are two ways in which migrant workers can legally be employed in South Africa. The first route is built around South Africa's enduring history of using its neighbours in southern Africa as labour reserves. This route is underpinned by bilateral labour agreements. The second modality is premised on the immigration laws of the country. It should be mentioned that in some instances migrants can, and in reality do, enter South Africa illegally or as refugees. Illegal entry into South Africa is regulated and dealt with in accordance with the Immigration Act 13 of 2002 (as amended). The situation of refugees is provided for in the Refugees Act 130 of 1998. The two modalities of employment of migrant workers, namely bilateral agreements and immigration laws, will now be discussed separately.

3.2. Bilateral agreements concluded between South Africa and its neighbouring countries

South Africa has a long history of using its neighbouring countries as a source of manpower to support its mining industry. Almost every Member State of the Southern African Development Community had at some point in history sent its nationals to work in South African mines.⁴⁸ The recruitment of mineworkers in neighbouring countries was facilitated through recruitment organisations. The most notable of such organisations is the Witwatersrand Labour Organisation (WNLA also known as Wanela) and the Native Recruiting Corporation (NRC).⁴⁹ The WNLA and NRC were amalgamated in 1977 to form The Employment Bureau of Africa (TEBA). TEBA is still actively involved in the recruitment of mineworkers from southern Africa.

The Government of the Republic South Africa has concluded a number of bilateral labour agreements with several of its neighbours. These agreements include the following:

⁴⁸ Crush J "Contract Migration to South Africa: Past, present and future" – accessed at <http://www.queensu.ca/samp/transform/Crush.htm>.

⁴⁹ See Harington JS *et al* "A century of migrant labour in gold mines of South Africa" (2004) *The Journal of the South African Institute of Mining and Metallurgy* 65 at 65 and Milazi D "The migratory labour system and the social conditions of BLS migrant workers on the South African mines: Main aspects of issues involved with special reference to unionisation prospects" (1980) 2 *Pula: Botswana Journal of African Studies* 37 at 39-40.

	<i>Republic of South Africa Treaty Series No.</i>	<i>Place and date of signature</i>	<i>Date of entry in force</i>
<i>Agreement between the Republic of South Africa and the Government of the Republic of Portugal regulating the employment of Portuguese workers from the Province of Mozambique on certain mines in the Republic of South Africa.</i>	11/1964	Lisbon, 13 October 1964 (amended by exchange of notes: 24 February 1971 and 11 May 1971).	1 January 1965
<i>Agreement between the Governments of the Republic of South Africa and Malawi relating to the employment and documentation of Malawi nationals in South Africa.</i>	10/1967	Pretoria and Blantyre, 1 August 1967.	1 August 1967
<i>Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho relating to the establishment of an office for a Lesotho government Labour Representative in the Republic of South Africa, Lesotho citizens in the Republic of South Africa and the movement of such persons across the international border.</i>	1/1973	Pretoria and Maseru, 24 August 1973.	24 August 1973
<i>Agreement between the Government of the Republic of South Africa and Government of the Republic of Botswana relating to the establishment of an office for a Botswana Government Labour Representative in the Republic of South Africa, Botswana citizens in the Republic of South Africa and the movement of such persons across the international border.</i>	3/1973	Pretoria and Gaborone, 24 December 1973.	24 December 1973
<i>Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland relating to the establishment of an office for a Swaziland government Labour Representative in the Republic of South Africa, certain Swaziland citizens in the Republic of South Africa, the movement of such persons across the common border and the movement of certain South African citizens across the common border, and addendum thereto.</i>	3/1986	Pretoria, 22 August 1975.	22 August 1975

These agreements regulate the flow of migrant labour from the contracting States to South Africa.⁵⁰ Secondly, the agreements focus on the payment of taxes to the government of the sending country, as well as deferred pay to be paid to the foreign national in the sending country upon return to that country; allowances payable to family members; and monies to be paid into a welfare fund which may be set up by the government of the sending country for the purpose of supporting such citizens during periods of their disablement upon return

⁵⁰ See the preambles of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Botswana, Agreement between the Government of the Republic of South Africa and the Kingdom of Lesotho, Agreement between the Governments of the Republic of South Africa and Malawi, Agreement between the Government of the Republic of South Africa and the Government of the Republic of Portugal, and Agreement between the Government of South Africa and the Government of the Kingdom of Swaziland.

to the sending country.⁵¹ Furthermore, the agreements specify conditions and obligations on the part of both South Africa and the source countries.⁵²

3.3. Immigration laws

Apart from using the bilateral labour agreements between the Government of South Africa and Governments of Mozambique, Botswana, Lesotho, Swaziland and Malawi, migrant workers (including those from the southern African countries) can rely on the options provided by the immigration laws to gain entry into the South African labour market. The Immigration Act 13 of 2002 (as amended) is a key component of the South African immigration laws. It, among others, regulates the admission of foreigners to, their residence in, and their departure from South Africa.⁵³ The Immigration Act makes provision for temporary and permanent residence in South Africa. According to Statistics South Africa a total of 141 550 temporary residence permits were issued in South Africa in 2012.⁵⁴ Furthermore, 1 283 permanent residence permits were processed by South Africa in 2012. The top eight countries whose nationals received the temporary residence permits were as follows: Zimbabwe (17,2%), Nigeria (10,0%), India (7,7%), China (6,7%), Pakistan (5,3%), United Kingdom (4,2%), Democratic Republic of the Congo (2,8%), (Lesotho (2,7%).⁵⁵ The top eight countries for the 2012 permanent residence permits comprised of the following: Zimbabwe (19,6%), United Kingdom (11,0%), Congo (7,0%), China (6,9%), India (5,9%), Germany (5,1%), Nigeria (4,7%) and Democratic Republic of the Congo (3,4%).⁵⁶ The Immigration Act caters for different permits that a foreigner can apply for to gain entry into the country. These permits include the treaty permit⁵⁷ and work permit.⁵⁸ Furthermore, the Immigration Act imposes duties and obligations in respect of 'employment'⁵⁹ as well as specific obligations to foreigners.⁶⁰

⁵¹ See article IV of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Botswana, article IV of the Agreement between the Government of the Republic of South Africa and the Kingdom of Lesotho, article 17 of the Agreement between the Governments of the Republic of South Africa and Malawi, article IV and XXIV of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Portugal, and article IV of the Agreement between the Government of South Africa and the Government of the Kingdom of Swaziland.

⁵² These include the privileges and immunities enjoyed by Labour Representatives while employed in the Labour Office as full-time Government Officials and functions of the Labour Representative and his or her staff.

⁵³ Preamble of the Immigration Act 13 of 2002 (as amended).

⁵⁴ Statistics South Africa *Documented Immigrants in South Africa, 2012* (Statistics South Africa (2013)) 14.

⁵⁵ *Ibid* at 29.

⁵⁶ *Ibid*.

⁵⁷ Section 14 of the Immigration Act. A 'treaty permit' is defined as "an official document that gives foreigners permission to enter South Africa to participate in programmes that have been agreed upon by South Africa and their respective countries" (Statistic South Africa *Documented Immigrants in South Africa, 2012* (Statistics South Africa (2013) 45).

⁵⁸ Section 19 of the Immigration Act. There are different types of work permits and they are as follows: (a) a quota work permit, (b) a general work permit, (c) an exceptional skills work permit, and (d) an intra-company transfer permit (Statistics South Africa *Documented Immigrants in South Africa, 2012* (Statistics South Africa (2013) 46).

⁵⁹ For instance, section 38(1) of the Immigration Act provides that: "No person shall employ (a) an illegal foreigner;(b) a foreigner whose status does not authorise him or her to be employed by such person; or(c) a foreigner on terms, conditions or in a capacity different from those contemplated in such foreigner's status".

⁶⁰ Section 43 of Immigration Act imposes an obligation on a foreigner to: "(a) abide by the terms and conditions of his or her status, including any terms and conditions attached to the relevant permit by the Director-General upon its issuance, extension or renewal, and that status shall expire upon the violation of those conditions;(b) depart upon expiry of his or her status".

The mode of recruitment and employment status of migrant workers from Botswana, Lesotho, Mozambique and Swaziland also affects their eligibility to social security. While some miners were employed directly by the mines (full-time employees), others were employed by an intermediary company that the mine contracted to provide labour for a fixed period of time (contract employees).⁶¹ Generally, contract employees were not entitled to the health benefits that may be provided for fulltime employees. This compromises non-citizens' access to benefits and services (such as retirement insurance and health services) as they are less likely to be employed as full-time employees than citizens.⁶² In addition, although South African immigration law prohibits the employment of non-citizen novices on mines, they are still employed on mines through contractors due to the demand for mineworkers. This implies that there are a significant number of undocumented migrant miners who had no access to social security and other employment benefits.⁶³

⁶¹ In the 1990s, mining companies started out-sourcing non-production and production functions to sub-contractor, which hired more vulnerable non-South African workers, particularly from Mozambique and Lesotho. This led to a marked deterioration in wages, working conditions and underground safety – see Department of Labour *Labour Migration and South Africa: Towards a fairer deal for Migrants in the South African Economy* (Labour Market Review, 2007) 11.

⁶² ARASA *The Mining Sector, Tuberculosis and Migrant Labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008) 14.

⁶³ *Ibid.*

4. Impact of Labour and Social Security Agreements

Apart from a few social security agreements by SADC Member States (such as that between Malawi and Zambia as well as Mauritius and the United Kingdom) and the bilateral labour agreements concluded by South Africa and some of its neighbouring countries, it is indeed tragic to remark that there is a serious shortage of agreements in southern Africa despite a rich history of labour movement in the region. The bilateral labour agreements are mainly aimed at the flow of migrant labour from certain southern African countries to South Africa. Therefore, it is hardly surprising that provisions contained in some of these agreements regulating social security are merely ancillary to other arrangements. Such provisions include those dealing with deferred pay, allowances payable to family members and monies to be paid into a welfare fund.⁶⁴ The agreement between South Africa and Portugal regarding Mozambican migrant workers makes provision for the payment of workers compensation benefits to former migrant workers in Mozambique. It must be mentioned that this system does not function as well as it could.⁶⁵

The bilateral agreements have both advantages and disadvantages. The importance and the positive impact of the monies remitted on economies of migrants sending countries have been cited on numerous occasions.⁶⁶ However, on a negative note deferred pay system has been severely criticised. For instance, it was once reported that:

“...the deferred pay system is not popular. Its abolition was indeed part of the wage negotiations in 1994, although in the end no change was made. The union’s main problem is the obligatory and inflexible nature of the system. The scheme is also felt to be discriminatory in the sense that South Africa nationals are not subject to the same kind of regulations. The unpopularity of deferred pay may be underlined by the fact that the participation rate in the voluntary schemes in Botswana and Swaziland is significantly lower than in the obligatory schemes in Lesotho and Mozambique.”⁶⁷

Another challenge highlighted as regards the deferred pay system in Lesotho is that:

“Miners do not know what the deferred pay is actually used for. This is a consequence of lack of communication between them and the government...Also, the accountability of the DPF [Deferred Pay Fund] organs is not clear. Nor are the revenues and costs involved known. The deferred pay account is collective and therefore not very transparent. Some senior miners find loopholes to avoid participation in the scheme, while illegal mineworkers are of course excluded as well. Mining companies try to avoid participation in the scheme, and some of those who do participate are always late when it comes to making payments to the Fund.”⁶⁸

⁶⁴ See article IV of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Botswana, article IV of the Agreement between the Government of the Republic of South Africa and the Kingdom of Lesotho, article 17 of the Agreement between the Governments of the Republic of South Africa and Malawi, article IV and XXIV of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Portugal, and article IV of the Agreement between the Government of South Africa and the Government of the Kingdom of Swaziland.

⁶⁵ See, for example, Fultz E and Pieries B *The Social Protection of Migrant Workers in South Africa* (International Labour Organisation (1997)) 11-12.

⁶⁶ See, for example, Sparreboom T and Sparrenboom-Burger P *Migrant worker Remittances in Lesotho: A Review of the Deferred Pay Scheme* (International Labour Office (1996)) and Milazi D “The migratory labour system and the social conditions of BLS migrant workers on the South African mines: Main aspects of issues involved with special reference to unionisation prospects” (1980) 2 *Pula: Botswana Journal of African Studies* 37 at 43.

⁶⁷ Sparreboom T and Sparrenboom-Burger P *Migrant worker Remittances in Lesotho: A Review of the Deferred Pay Scheme* (International Labour Office (1996)) 4.

⁶⁸ *Ibid.*

To address some of the challenges associated with the deferred pay system, the government of Mozambique has concluded an agreement with one of its largest banks, namely the Commercial and Investment (BCI) in 2011 for BCI to serve as an institution through which the deferred pay will be paid to Mozambican Workers upon their return after working in South African mines.⁶⁹ The agreement is aimed at averting some of the challenges that miners had to contend with such as being robbed after being paid in cash by TEBA.⁷⁰ However, the agreement is not yet in force.

A further difficulty arising from the labour migrant system is that migrant workers risk being ineligible for social security benefits at home due to periods of absence while working in South Africa. To address these problems, Fultz and Pieries have advanced a few suggestions as long ago as 1997 which are still relevant today. These include the improvement of social security benefits through intergovernmental agreements (covering issues such as reciprocity, political linkages and regional integration) and benefits improvements through unilateral government action.⁷¹

⁶⁹ “Mozambique: Agreement on migrant workers’ wages signed” – accessed at <http://allafrica.com/stories/201109052631.html>.

⁷⁰ *Ibid.*

⁷¹ Fultz E and Pieries B *The Social Protection of Migrant Workers in South Africa* (International Labour Organisation (1997)) 15-19.

5. Eligibility of Migrant Mineworkers to South African Social Security Benefits

Eligibility for South African social security by migrants from Botswana, Lesotho, Mozambique and Swaziland; and the portability of these benefits depend on the migrants' mode of recruitment and employment status, their immigration status, the sector of employment and (to some extent) the provisions of any labour agreement entered into between South Africa and the relevant country.

Social assistance (made up of the payment of social grants and the provision of various kinds of social services) is provided only to permanent residents and refugees.⁷² This implies that migrant mineworkers who were granted permanent residence through amnesties in the 1990s are now eligible for social assistance. However, social grants are not paid to a beneficiary residing outside South Africa.⁷³

Since a vast majority of former migrant mineworkers worked on contract in terms of corporate work permits, they were not eligible for unemployment insurance.⁷⁴ This is by virtue of bilateral labour agreements signed between South Africa and neighbouring countries and the Unemployment Insurance Act which exclude workers who are required to return to their country of origin at the end of their contract of service, apprenticeship or learnership in South Africa.⁷⁵ In addition, the Unemployment Insurance Fund does not provide benefits to beneficiaries who are out of the country.⁷⁶

Migrant mineworkers are eligible for compensation for occupational injuries and diseases. Compensation of occupational injuries and diseases in South Africa are regulated by two

⁷² Social Assistance Act 13 of 2004.

⁷³ Section 16(1) of the Social Assistance Act 13 of 2004 states that "if a beneficiary intends to be absent from the Republic for a period exceeding 90 days, he or she must inform the Agency thereof before leaving the Republic and the [South African Social Security] Agency must, subject to subsections (2) and (3), suspend payment of a grant until that beneficiary or procurator, as the case may be, appears in person before the Agency and informs the Agency that the beneficiary has returned permanently to the Republic." In terms of section 16(2), the Agency may upon written request by a beneficiary or a procurator, in circumstances prescribed by the Minister by notice in the *Gazette*, continue payment of a grant or a portion thereof to that beneficiary or procurator subject to such conditions and for such a period as the Agency may determine.

⁷⁴ Migrants were recruited on a temporary basis on fixed-term contract and their employment was governed by bilateral treaties between South Africa and the supplier states. Most mineworkers were recruited to work in South Africa on a one-year renewable contract. At the end of a contract, migrants had to return home to renew. See Department of Labour *Labour Migration and South Africa: Towards a fairer deal for migrants in the South African Economy* (Labour Market Review 2007) 2; and International Organization for Migration *Regional Assessment on HIV-prevention Needs of Migrants and Mobile Populations in Southern Africa: Mining Sector Report* (February 2010) 8.

⁷⁵ Bilateral labour agreements exclude designated employees from unemployment insurance in South Africa. As a result, the Unemployment Insurance Act excludes non-citizen fixed-term contract workers who enter the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership, if there is a legal or a contractual requirement or any other agreement or undertaking that such persons must leave the Republic, or that such person be repatriated upon termination of the contract – section 3(1)(d) of the Unemployment Insurance Act 63 of 2001; and section 4(1)(d) of the Unemployment Insurance Contributions Act 4 of 2002. Non-citizen workers employed in terms of a labour agreement are thus not regarded as contributors to, and therefore cannot benefit from the Unemployment Insurance Fund.

⁷⁶ Olivier M "Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (Part I)" (2011) 1 *SADC Law Journal* 121 at 131.

separate sets of legislation – the Compensation for Occupational Injuries and Diseases Act (COIDA) and the Occupational Diseases in Mines and Works Act (ODMWA).⁷⁷ ODMWA regulates the compensation of occupational lung diseases in mines and works; while COIDA regulates the compensation of non-mine-related occupational injuries (and deaths) as well as mine-related occupational diseases not covered by ODMWA.

COIDA is administered by the Department of Labour through the Compensation Fund, with the Rand Mutual Assurance Company Limited undertaking occupational injury and disease compensation insurance in the mining industry (under a licence granted to it in terms of the provisions of the Act). COIDA provides cash payments temporary and permanent disability. These are paid either in the form of lump sum or as a pension, depending on the degree of disability (although the Act empowers the Compensation Commissioner to pay a lump sum in lieu of pension under certain circumstances).⁷⁸ For example, section 60 provides that an employee (or his or her dependant) who receives a pension and who is resident outside the Republic or is absent from the same for a period or periods totalling more than six months may be awarded a lump sum in lieu of a pension. A non-citizen who is due compensation will opt for a lump-sum as his/her work or residence permit would be deemed to have expired, and as a result will need to leave the country. COIDA also provides medical benefits.

ODMWA is administered by the Department of Health through the Medical Bureau for Occupational Diseases (MBOD) (which does the certification of occupational lung diseases) and the Compensation Commissioner for Occupational Diseases (CCOD)(which pays out the benefits). Compensation provided in terms of ODMWA is in the form of lump sum cash payments by the Compensation Commissioner for Occupational Diseases and medical benefits. In addition, ODMWA requires the evaluation of (former) miners for compensable occupational lung disease and for the monitoring and surveillance of former miners. All miners are entitled to medical benefit examinations, which must be done within 12 months of leaving mine to determine eligibility for compensation if the miner has been treated for tuberculosis before. They must also undergo 2-yearly medical benefit examinations for rest of life to detect delayed emergence of occupational lung disease. The lifelong eligibility for benefit medical examinations is imperative in diseases that have long latency periods.

Mineworkers also receive private social security benefits from their employers, such as housing, medical care, life and retirement insurance and long service awards.⁷⁹ Therefore, former mineworkers had access to provident funds, which were the preferred mechanism for retirement insurance protection (such as the Mines 1970s Provident and Pension Fund, the Mineworkers Provident Fund the Mine Employees' Pension Fund and the Sentinel Mining Industry Retirement Fund). However, some mineworkers belong to pension funds (such as senior-level officials) which pay out monthly benefits. Where private benefits were available, they were not provided in the

⁷⁷ Compensation for Occupational Injuries and Diseases Act (COIDA) 130 of 1993 and Occupational Diseases in Mines and Works Act (ODMWA) 78 of 1973.

⁷⁸ See section 52 of COIDA.

⁷⁹ See UN-INSTRAW and UNDP *Migration, Remittances and Gender-responsive Development: The Case of Lesotho* (2010) 19, where it is stated that outside the mining and commercial farming sectors, it is hard for female migrants to obtain work permits, since these have to be applied for by employers and justified in terms of there not being a South African who could fill the position.

contract of employment. This implies that it is up to the employer to provide these and do not cover the worker beyond employment.⁸⁰

Statistics of former migrant workers from these countries, read together with their mode of employment and their immigration status reveal that most migrants from these countries (who were mostly males) were eligible for some social security benefits, particularly compensation for occupational injury and disease benefits in terms of ODMWA (by virtue of employment in the mines) and of COIDA; and for retirement insurance.

Since the most common mechanism chosen for retirement insurance is provident funds which pay out a lump sum at retirement, migrants were entitled to receive their retirement benefits in full upon departure from South Africa; or survivors' benefits paid out to the former workers' dependants. However, some migrant workers who had worked in South Africa and have returned home are receiving social security benefits in the form of a monthly pension.

In providing benefits to former migrant mineworkers, South African social security institutions utilise a variety of payment modalities. Benefits provided by the Compensation Commissioner for Occupational Diseases are paid directly into the bank accounts of beneficiaries, if these are available. Where bank accounts are not available, alternative arrangements are made, such as the case of Lesotho where payments are made through the Office of the Master of the High Court in Lesotho.⁸¹

Rand Mutual benefits are paid through the services of private service providers such as TEBA, while the Compensation Fund utilises a variety of payment methods. It makes payments into beneficiaries' bank accounts. For beneficiaries in Lesotho who do not have bank accounts, benefits are paid through the

"I was born in 1936 and I am living at Hashelile. I started working in 1980 at Kusasalethu and end at Western deep level in 1996. I have four children, they are all married. My wife is not working and even myself I am not employed at all. The other thing is that I have the injury on my right leg and I also have TB. The biggest problem I have, is that I need to go to hospital and get the treatment for TB. The transport is another problem to go to the hospital. Raising children without any income is an issue for me too.:"

"I am living at Ha-Mojalefa Semonkong. My husband was born on 1978. We have three children and he started working in 2003 to 2012 at Harmony mine. After the death of my husband I did not receive any money from the mines he worked at. He died having TB and no compensation was given to me. The three children are being supported by me for their daily needs. Even the school fees are paid by me and their school uniforms, so life for me as the widow is very difficult and I am not working. I only get help from friends and close relatives if they have something to provide me with. I do some gardening at home and at times I sell some of those things so that I can buy some few items."

*Matsibiso Lejakane, widow of Samuel Lejakane (Lesotho).
Kosasa Soso (Lesotho).*

⁸⁰ Kanyenze G "African migrant labour situation in Southern Africa" Paper presented at the ICFTU-Afro Conference on 'migrant labour' Nairobi (15-17 March 2004) 17.

⁸¹ Olivier M "Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (Part I)" (2011) 1 *SADC Law Journal* 121 at 133.

Workmen's Compensation Trust Fund; while those in Mozambique are paid into the bank account of the Mozambican Department of Labour.⁸²

Despite their eligibility for South African social security benefits and the various benefit payment modalities utilised by South African social security institutions/schemes, reports indicate that former mineworkers from neighbouring countries who contributed to South African social security schemes or their dependants often face huge constraints regarding the portability of social security benefits when they return to their countries of origin.⁸³

It is estimated that the 'unclaimed' or unreachable benefits in various social security schemes amounts to R5.7 billion.⁸⁴ Although it is not clear what proportion of the unclaimed benefits belongs to former migrant mineworkers (including those from Botswana, Lesotho, Mozambique and Swaziland); "...it is evident that the host of problems...experienced by these [former migrant] workers and their survivors in accessing retirement or survivor benefits have contributed to this state of affairs."⁸⁵

In addition, former miners who return home also face extreme difficulties in getting access to follow-up services required by South African legislation, such as medical benefit examinations required by ODMWA. These medical examinations are necessary to determine eligibility of former mineworkers eligible for some social security benefits.

⁸² *Ibid.*

⁸³ ILO *Republic of South Africa Decent Work Country Programme 2010 to 2014* (launched by the Government of the Republic of South Africa, the International Labour Organization, Representative Employers' and Workers' Organizations and the Community Constituency) (29 September 2010) 9.

⁸⁴ See Jansson E "Migrant workers owed billions in 'unclaimed' social security funds" in the *Mail & Guardian* Newspaper of 22 Feb 2013, quoting a confidential report submitted to the International Labour Office in late 2010. Representatives of the governments of neighbouring countries and those of former mineworkers also confirmed at the Public Dialogue on Cross-border Migration and Portability of Social Security Benefits for Migrant Workers (held in Pretoria on 25 March 2011) that approximately R5 billion of unclaimed benefits are held by former employers and financial institutions in South Africa.

⁸⁵ *Ibid.*

6. Scope of 'Unclaimed', Unreachable or Outstanding Social Security Benefits

Social security benefits that most mine migrant mineworkers have/had access to are retirement insurance (particularly provident and pension fund benefits administered by employer-sponsored schemes such as the Mineworkers Provident Fund, Mines 1970's Pension and Provident Funds, Sentinel Mining Industry Retirement Fund and 1970 Long Service Award Fund) and occupational injury and disease compensation (especially compensation for occupational lung disease provided by the Compensation Commissioner for Occupational Diseases in terms of ODMWA and by the Compensation Fund/Rand Mutual Assurance Company Limited in terms of COIDA).

6.1. Mineworkers Provident Fund benefits

The Mineworkers Provident Fund was established in June 1989 by the National Union of Mineworkers and the Chamber of Mines as a retirement scheme for unskilled (mostly black) workers. This was due to the differentiation of mineworkers into skilled, semi-skilled and non-skilled and exclusion of the unskilled from the Mines 1970s Pension and Provident Funds).⁸⁶

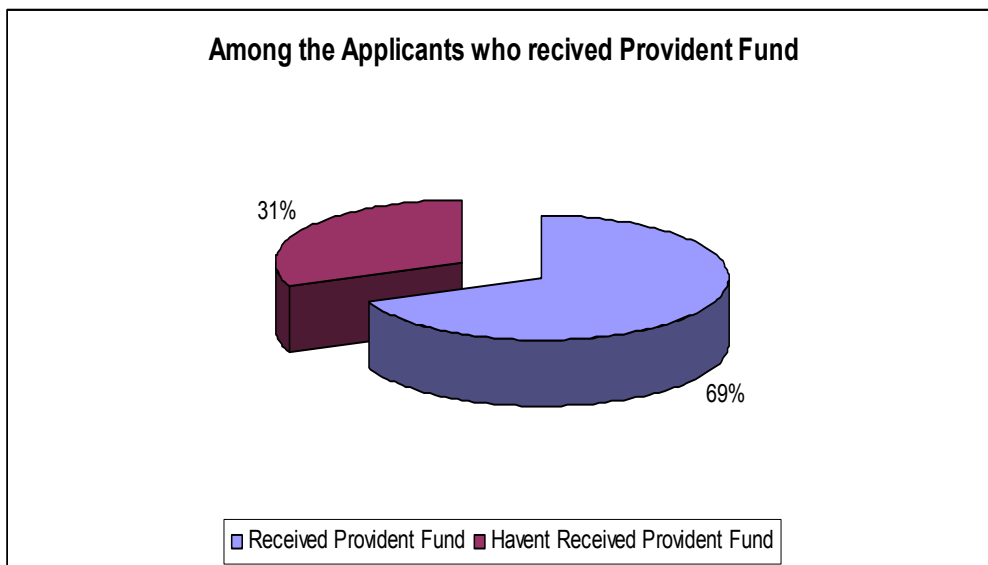
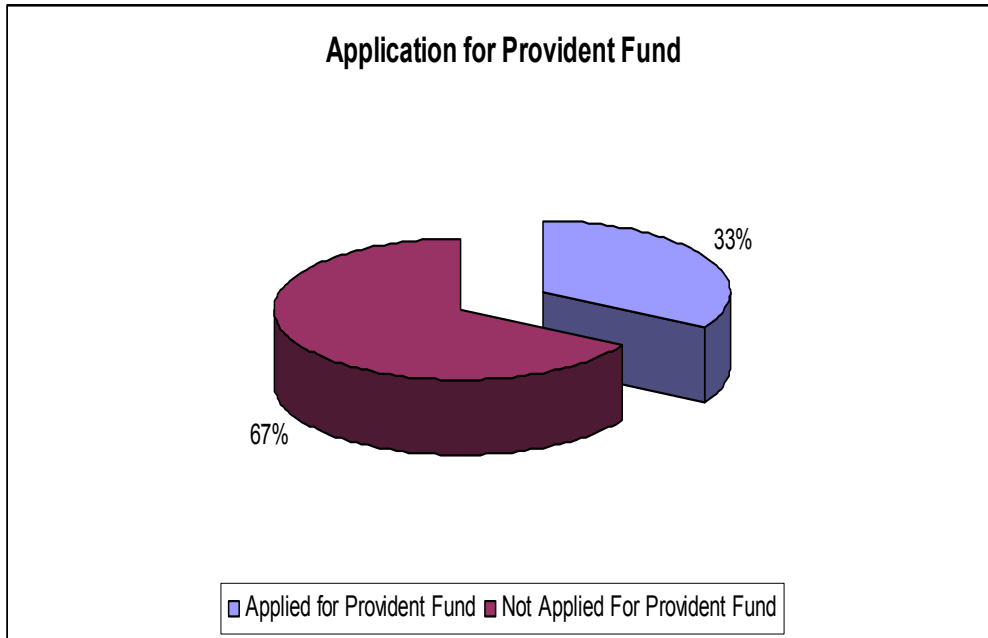
Due to the large number of members and participating employers in the Mineworkers Provident Fund and the wide scope of benefits provided;⁸⁷ the Fund has a high number of lapsed beneficiaries and a vast amount of unclaimed benefits. Its annual financial report for 2012 indicates that on 31 December 2012, there were 106 419 lapsed beneficiaries and unclaimed benefits (i.e. benefits that had not been claimed for two years or more) to the value of R3 008 289 913 (up from R2 634 259 040 on 31 December 2011).⁸⁸

⁸⁶ Mineworkers Provident Fund "Our history" – accessed at http://www.mineworkers.co.za/Our_History_and_Benefits/ (08 July 2013).

⁸⁷ Current participating employers in the Mineworkers Provident Fund are Affiliated Org, African Rainbow Minerals, Anglo Coal, AngloGold Ashanti, Avmin, BHP Billiton Energy Coal South Africa Limited, Consolidated Murchison Mine, Exxaro, Gold Fields Mines, Harmony Gold Mine, Ingwe Collieries, JCI, Kangra, Koornfontein, Midvaal Water Company, Northam Platinum, Rand Uranium, Riversdale Group Holdings, Simmer and Jack Mines, Tendele Mine, Umusa Mining and Xstrata Coal. See Mineworkers Provident Fund "Membership" – accessed at <http://www.mineworkers.co.za/Membership/> (08 July 2013). The Mineworkers Provident Fund provides retirement benefits, ill health benefits, death benefits, terminally ill benefits, retrenchment benefits, dismissal benefits, funeral benefits for the member and the member's immediate family and standing surety for housing loans workers. See Mineworkers Provident Fund "Our history" – accessed at http://www.mineworkers.co.za/Our_History_and_Benefits/ (08 July 2013). Withdrawal benefits are paid when a worker is dismissed or resigns. However, there is a six-month waiting period before benefits can be paid (except where the six-month waiting requirement is waived, as was the case between 1 February 2008 and 31 July 2008 when it was waived in order to settle as many cases as possible and reduce the claims backlog. See Mine Workers Provident Fund *Waiving of the six months waiting period for resignations and dismissals* (Notice to all participating employers and NUM) (18 February 2008). Benefits were paid immediately in case of retrenchments. Retirement benefit was payable for early retirement (50-53 years of age), normal retirement (60-63 years) and late retirement (as agreed with the employer). Survivors' (death) benefits amount to three times the annual earnings. The funeral benefits include benefits for spouses and children. The terminally ill and ill health benefits are paid when early retirement is taken for reasons of ill health and where there is repatriation on medical grounds. See Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Mineworker's Provident Fund and Mines 1970's Provident Fund briefings* (15 February 2008) – accessed at <http://www.pmg.org.za/report/20080215-mineworker%E2%80%99s-provident-fund-mines-1970%E2%80%99s-provident-fund-briefings> (8 July 2013).

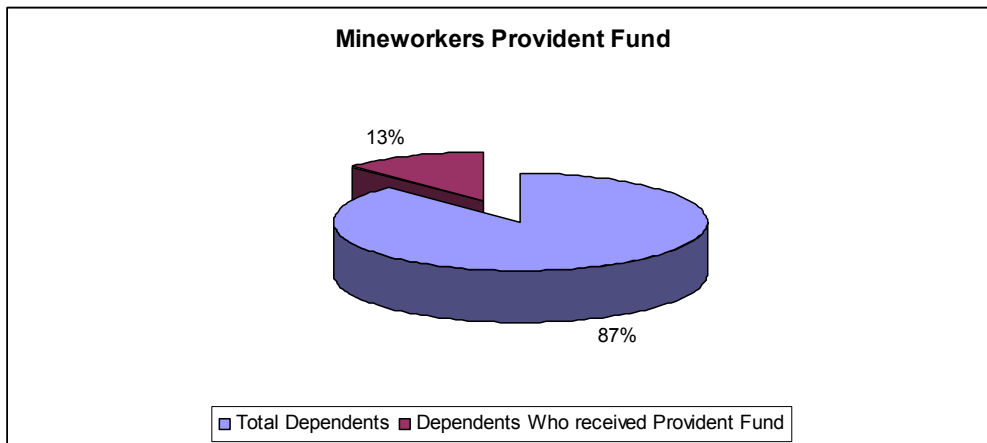
⁸⁸ See Mineworkers Provident Fund *Annual Financial Statement for the Period 1 January 2012 to 31 December 2012*, 18 and 22. However, during a presentation at the Swaziland National Dialogue on Portability of Social Benefits "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries"

The proportion of ex-miners still to apply for and/or receive Mineworkers Provident Fund benefits is illustrated by the diagrams below on the application for the benefit by ex-miners or dependants in Lesotho.⁸⁹



(Manzini, 30-31 July 2013), Mkhusele Mbomvu (CEO of the Mineworkers Provident Fund) revealed that as at 31 December 2012, the Fund had 110 681 members and 69 000 unclaimed benefits.

⁸⁹ Ex-miners Association of the Mountain Kingdom of Lesotho *Report on Sample Study on Ex-miners Members and their Families* (Report to the Southern Africa Trust) (September 2013) 10.



6.2. Living Hands Umbrella Trust benefits

Survivors of former mineworker are also owed benefits by the Living Hands Umbrella Trust, into which benefits were paid by the Mineworkers Provident Fund. Living Hands Umbrella Trust currently has a list of close to 12500 beneficiaries;⁹⁰ many of whom the Trust cannot trace.⁹¹ The Trust has stated that it previously employed an administration company (Transact) which kept a database of 38 000 beneficiaries for whom various trusts were established, ensuring payment of monthly stipends and ad hoc payments. The Trust says that when the contract with Transact expired in 2008 the trustees at the time did not renew it. The database of beneficiaries was handed over to the trustees, who appointed another administration company. However, the mandate of the new administration company was also subsequently terminated.⁹² According to the Trust;

“Since 2007, some beneficiaries have died, some are in Botswana, Lesotho, Swaziland...We had to have a database where the beneficiaries were verified...We have used some of the distribution (from the curators) to try to embark on the process of verification.”⁹³

About 15 200 beneficiaries were traced after the verification process. The Trust then obtained a court order to pay out some of the money paid over by the curators of Fidentia, which amounted to almost R18 million.⁹⁴ The Trust has decided that if it cannot find the rest of the beneficiaries within 24 months of the High Court order, it will invest the rest of the funds in an unclaimed beneficiary fund. The Trust is in the process of claiming R1.2 billion from the former shareholders, directors and trustees (funds lost in the Fidentia scandal).⁹⁵

⁹⁰ See Living Hands Umbrella Trust *Deceased List* available at www.mineworkers.co.za/Downloads/ (accessed on 24 July 2013).

⁹¹ See Maake M “Custodians ‘cannot trace many beneficiaries’” in Business Day Live (BDlive) of 26 May 2013 which remarked that the custodians of the Living Hands Umbrella Trust at the centre of the Fidentia scandal were sitting on a pile of cash because many beneficiaries cannot be traced.

⁹² See Maake M “Custodians ‘cannot trace many beneficiaries’” in Business Day Live (BDlive) of 26 May 2013.

⁹³ The Trust states that it paid about R350 000 for radio and print advertisements, urging beneficiaries to contact them to verify their banking and contact details. It also requested assistance from the provident funds, but they were unwilling to help. See Maake M “Custodians ‘cannot trace many beneficiaries’” in Business Day Live (BDlive) of 26 May 2013.

⁹⁴ See *In the Ex Parte application of Wilhelmina Jacoba Lubbe N.O. and Xola Stimela N.O. (In their capacities as the Trustees of the Living Hands Umbrella Trust)* North Gauteng High Court Case No. 69413/2012 of 25 January 2012.

⁹⁵ See Maake M “Custodians ‘cannot trace many beneficiaries’” in Business Day Live (BDlive) of 26 May 2013.

6.3. Mines 1970's Pension and Provident Funds benefits

The Mines 1970's Pension and Provident Funds were established in January 1970 for the benefit of miners who were employed by members of the Chamber of Mines.⁹⁶ When the Mines 1970s Provident Fund was formed, the mining industry had divided its workers into skilled, semi-skilled and unskilled; and only the semi-skilled black workers were eligible to be members of the Provident Fund.⁹⁷

With the establishment of the Mineworkers Provident Fund, most of the members of the Mines 1970's Provident Fund moved to the Mineworkers Provident Fund and to other employer funds (such as the Hartebeestfontein Provident Fund, Impala Workers Provident Fund, Lorraine Provident Fund and Masakhane Provident Fund). As a result, the contributing membership of the Mines 1970's Provident Fund dropped from 32 982 at the beginning of 1990 to 23 870 on average for the year (1990), and to 13 789 by the end of 1991.⁹⁸

In October 1994, the Board of Trustees of the Funds proposed that the Funds should be closed to employers. In January 1995, all participating employers agreed that the Funds should be wound up in terms of the rules of the Funds. However, in August 1995, the Board elected to retain the Funds for lapsed members only; with the result that by September 2000 the Funds consisted only of lapsed members (all active members and pensioners had been transferred to other funds). The Funds are currently mainly involved in the on-going tracing of and pay-out to lapsed members who are no longer employed by any of the previously participating employers; and who failed to claim their benefits from the Funds when they left employment.⁹⁹

Although recent statistics of the Funds' financial status are unavailable, as of 31 January 2008, the Fund was still to pay benefits of R200 million to 59 702 lapsed members. However, an analysis of the Fund's database by TEBA indicated that there may be some lapsed members whose names are repeated in the database. This would be in a case where the same member left one employer and then re-joined the Fund under the name of another employer.¹⁰⁰ Considering that the Fund could only trace 951 former members in 2001, 574 in 2002, 543 in 2003, 486 in 2004, 301 in 2005, 238 in 2006 and 268 in 2007;¹⁰¹ it is unlikely that the Fund has been successful in tracing a significant number of the 59 702 lapsed members.

⁹⁶ See *Mines 1970's Provident Fund Report from the Mines 1970's Provident Fund to the Ad Hoc Parliamentary Committee on Matters Related to Ex-mineworkers* (15 February 2008).

⁹⁷ See *Mineworkers Provident Fund "Our history"* – accessed at http://www.mineworkers.co.za/Our_History_and_Benefits/ (08 July 2013).

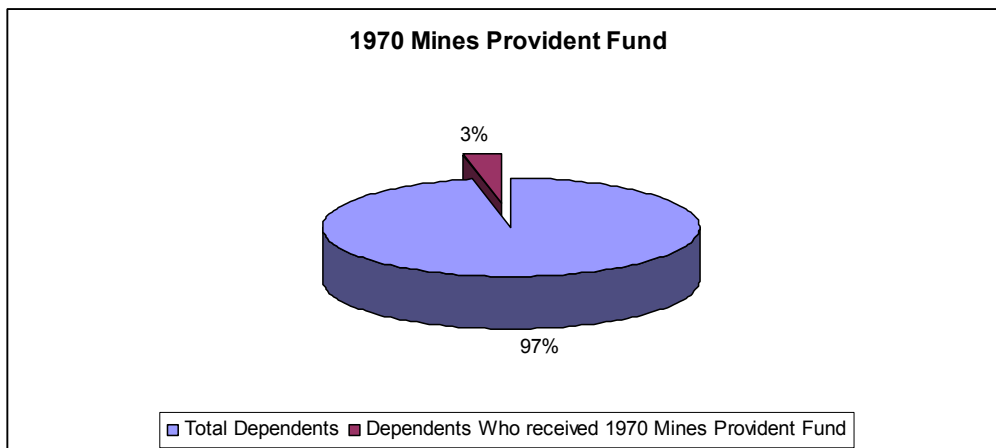
⁹⁸ See *Report from the Mines 1970's Provident Fund to the Ad Hoc Parliamentary Committee on Matters Related to Ex-mineworkers* (15 February 2008).

⁹⁹ See *Report from the Mines 1970's Provident Fund to the Ad Hoc Parliamentary Committee on Matters Related to Ex-mineworkers* (15 February 2008).

¹⁰⁰ *Mines 1970's Provident Fund Report from the Mines 1970's Provident Fund to the Ad Hoc Parliamentary Committee on Matters Related to Ex-mineworkers* (15 February 2008).

¹⁰¹ *Ibid.*

The proportion of ex-miners still to apply for and/or receive Mines 1970's Pension and Provident Funds benefits is illustrated by the diagrams below on the application for the benefit by ex-miners or dependants in Lesotho.¹⁰²



6.4. Sentinel Mining Industry Retirement Fund benefits

The Sentinel Mining Industry Retirement Fund is a defined contribution pension fund that also provides self-insured risk benefit cover (death and disability) and monthly pensions.¹⁰³ The fund currently has 35 141 active and deferred members and 102 participating employers. It pays monthly pensions to 22 267 former members and spouses of deceased members and pensioners.

The Fund's Annual Report for 2012 indicates that unclaimed benefits amount to R101 million (up from R72 million in 2011).¹⁰⁴ Considering that 4.8 per cent of its pensioners come from other countries,¹⁰⁵ it can be assumed that some of the unclaimed benefits belong to former mineworkers from Botswana, Lesotho, Mozambique and/or Swaziland.

6.5. Benefits by the Compensation Commissioner for Occupational Diseases

The MBOD and the CCOD which make up the system for compensation of miners' lung disease are in crisis and needs urgent reform.¹⁰⁶ They are underfunded and understaffed; there is a massive backlog of claims (18 000), with the true number of entitled claimants unknown; and poor access by former miners to medical examinations and claims process.¹⁰⁷ It has thus been claimed that the continued solvency of the CCOD is due to the non-payment of benefits. According to one commentator;

¹⁰² Ex-miners Association of the Mountain Kingdom of Lesotho *Report on sample study on ex-miners members and their families* (Report to the Southern Africa Trust) (September 2013) 10.

¹⁰³ Sentinel Mining Industry Retirement Fund *Annual Report 2012* 7.

¹⁰⁴ *Ibid* 54.

¹⁰⁵ *Ibid* 28.

¹⁰⁶ See generally Ehrlich RI "A century of miners' compensation in South Africa" (2012) 55 *American Journal of Industrial Medicine* 560-569.

¹⁰⁷ Ehrlich RI "A century of miners' compensation in South Africa" (2012) 55 *American Journal of Industrial Medicine* 560-569.

“...if you look at the prevalence studies of these [occupational lung] diseases, then it's abundantly clear that this fund [should be] bankrupt, however, there's never any challenge on its funding because so few people claim what they're due. ...there was little pressure to reform the compensation system because injured workers are invariably unemployed workers, and they are poor and voiceless.”¹⁰⁸

It is estimated that of the 280 000 ex-mineworkers who are eligible for compensation under ODMWA, only 2 per cent (i.e. 5600 former workers) have received their entitled benefits.¹⁰⁹ This means up to 274400 former miners are still to receive compensation. Considering that there were 196068 foreign workers in South African gold mines in 1985 and 192044 in 1990; and that foreign workers were in the majority from 1992-2003, mostly from Botswana, Lesotho, Mozambique and Swaziland, benefits due to former mineworkers from these countries constitute the bulk of the unclaimed.

The Compensation Commissioner for Occupational Diseases agrees that the institution is facing challenges in terms of fulfilling its mandate according to the requirements of ODMWA. These challenges are mainly due to communication not reaching beneficiaries, manual verification of fingerprints, incomplete documentation, information technology systems deficiencies and resource constraints.¹¹⁰

6.6. Compensation Fund benefits

The Compensation Fund currently covers only 2 per cent of workers in the mining industry in terms of COIDA injuries and diseases, with the other 98 per cent covered by Rand Mutual.¹¹¹ The Fund is also facing challenges of poor service, and lengthy backlogs due to maladministration, fraud and outdated systems and processes. These have led to about 600 000 claims remaining unpaid for a number of years.¹¹² However, the impact of these challenges on former mineworkers (including those from South Africa's neighbours) is minimal as due to the relatively small number of its beneficiaries in the mining industry (about 12 000 of the 600 000).

6.7. 1970 Long Service Award Fund benefits

Another benefit due to former miners is the 1970 Long Service Award Fund benefits, which is administered by TEBA on behalf of the Chamber of Mines. For a person to be eligible for the 1970 Long Service Award benefit, he must be at least 55 years of age and have 10 years completed service as an in-service miner or 15 years of service for an out-of-service miner.¹¹³ TEBA has an agreement with the Chamber of Mines to trace members of the Fund;

¹⁰⁸ Mines and Communities (MAC) “Glimmer of justice for sick gold miners” of 2011-03-28 – accessed at <http://www.minesandcommunities.org/article.php?a=10774> (9 July 2013).

¹⁰⁹ Clark A “South African Miners Fight for Justice” in *Think Africa Press* of 18 May 2011. See also Mines and Communities (MAC) “Glimmer of justice for sick gold miners” of 2011-03-28 – accessed at <http://www.minesandcommunities.org/article.php?a=10774> (9 July 2013).

¹¹⁰ Compensation Commissioner for Occupational diseases in Mines and Works *Annual Financial Statements for the Year ended 31 March 2010* 24.

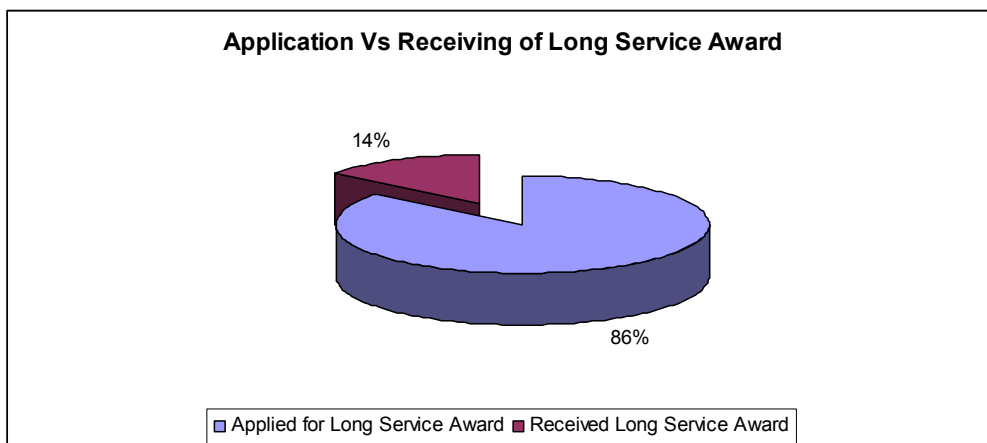
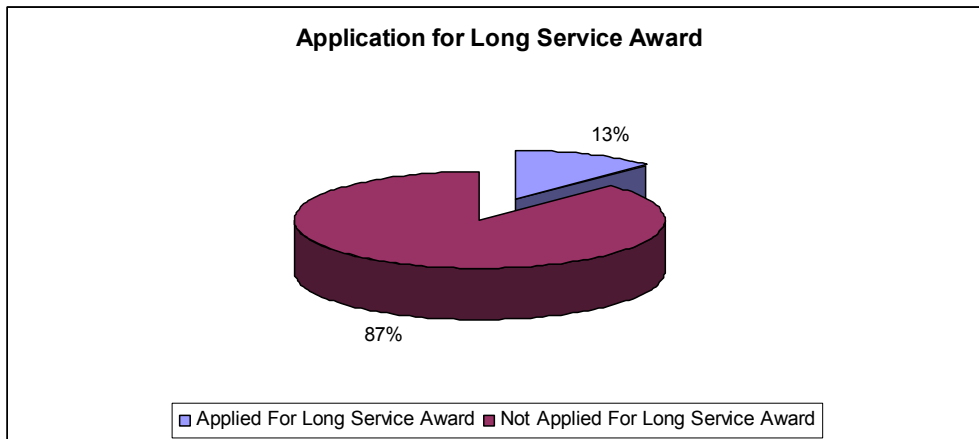
¹¹¹ See National Treasury “The Compensation Fund Preliminary Report” – accessed at <http://www.treasury.gov.za/publications/other/ssrr/Session%20One%20Papers/Compensation%20Fund%20Project%202nd%20draft.pdf> (19 July 2013).

¹¹² Ensor L “Grim picture painted of Compensation Fund” in *Business Day Live (BDLive)* of 13 June 2013.

¹¹³ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *TEBA and Eastern Cape Department of Health: briefing* (29 February 2008).

and (in 2008) expected to reach 5 000 ex-miners and to trace as many of the 12 000 members in total. Members were to be paid out through TEBA Bank.

The proportion of ex-miners still to apply for and/or receive Long Service Award benefits is illustrated by the diagrams below on the application for the Award by ex-miners in Lesotho.¹¹⁴



Out of a 39 Mozambican ex-miners interviewed by AMIMO, only four received their long service award and 16 confirmed that they did not apply for the benefit.¹¹⁵ Most of the ex-miners could not apply for the long service benefit because they were below age of eligibility and/or did not know the procedure to be followed in order to claim.¹¹⁶

6.8. Rand Mutual Assurance Company Limited (Rand Mutual)

The Rand Mutual Assurance Company Limited (Rand Mutual) was founded in 1894 as a non-profit mutual assurance company with the purpose of administering occupational injury compensation in the mining industry. With the enactment of the Workmen's Compensation

¹¹⁴ Ex-miners Association of the Mountain Kingdom of Lesotho *Report on Sample Study on Ex-miners Members and their Families*(Report to the Southern Africa Trust) (September 2013) 9.

¹¹⁵ AMIMO *Mozambique Country Case Study Report on Ex-miners Social Benefits* (Report to the Southern Africa Trust) (27 August 2013) 6.

¹¹⁶ *Ibid.*

Act in 1941, Rand Mutual was given a licence by the state to continue administering workers compensation in the mining industry. Its licence to administer workers compensation in the mining industry was retained when COIDA was adopted in 1993. Rand Mutual thus provides insurance to employers in respect of their liability to employees in terms of COIDA.¹¹⁷ Rand Mutual now insures 98 per cent of the mining industry for injuries covered under COIDA, with the Compensation Fund covering the remaining 2 per cent.¹¹⁸

Rand Mutual administers workers' compensation claims, including the payment of medical costs, once-off disability payments and (in the case of severe disability and death) the on-going payment of pensions.¹¹⁹ Claims for compensation are submitted to Rand Mutual through the branch network where they are adjudicated on. According to the Rand Mutual, provision made for outstanding claims amounted to R180 790 000 in 2012 and R174 299 000 in 2011.¹²⁰ It should be noted that in this context, provision for outstanding claims "is based on the best estimate, using past experience, of the amount that had been reported to the Group by the end of the year but not yet finalised."¹²¹ Outstanding in this context refers to claims where adjudication or payment of some benefits has not been done because a claimant is still undergoing active treatment or liability is undecided due to outstanding supporting documents from employers and/or medical service providers.

The number of outstanding claims as at the end of 2012 was 1 215 which was 19 per cent down on the number of outstanding claims for 2011 (1 503)). However, the number of claims outstanding for more than three months decreased by 16 per cent from 721 in 2011 to 605 in 2012.¹²²

Rand Mutual recognises the need for access to services by beneficiaries but is facing challenges. As it says:

"...the issue of engagement with our beneficiaries and their dependants, especially those who are in rural locations, remains a challenge. It remains difficult to locate and maintain effective communication channels with people who often have limited literacy levels, who may live outside the borders of South Africa and who do not speak one of the official languages. RMA recognises that it remains our obligation to deliver an effective service and we acknowledge an ethical and moral obligation to take reasonable steps to locate all potential beneficiaries and assist them to claim the benefits to which they are entitled. This requires much effort and endeavour on the part of RMA; however, this is a distinguishing feature of the RMA service offering."¹²³

On the tracing and compensation of former mineworkers from neighbouring countries or their survivors, the company has commented that it:

"... remains committed to ensuring that as many legitimate beneficiaries as possible are traced and compensated and thus we continue with our policy of doing everything reasonably within our power to

¹¹⁷ Rand Mutual Assurance Company Limited *Annual Report 2012* 21.

¹¹⁸ See National Treasury "The Compensation Fund Preliminary Report" – accessed at <http://www.treasury.gov.za/publications/other/ssrr/Session%20One%20Papers/Compensation%20Fund%20Project%202nd%20draft.pdf> (19 July 2013).

¹¹⁹ Rand Mutual Assurance Company limited *Annual Report 2012*, 21.

¹²⁰ *Ibid* 182.

¹²¹ *Ibid*, 144.

¹²² *Ibid* 50.

¹²³ *Ibid* 99.

locate all beneficiaries, including resorting to tracing agents. The verification of beneficiary identification, especially for non-South African citizens, can also prove daunting but it is hoped that improved relations with various governmental bodies will enable us to process and dispense with outstanding cases with more speed and accuracy."¹²⁴

¹²⁴ *Ibid* 46.

7. Obstacles Restricting Access to South African Social Security Benefits By Former Mineworkers, Their Dependants And /Or Organisations

As the figures of 'unclaimed' benefits and the number of lapsed beneficiaries reveal, former migrant mineworkers (including those from Botswana, Lesotho, Mozambique and Swaziland who have returned to their countries of origin) are unable to access social security benefits that are due to them. Already in its report of July 2001, the Swaziland Commission of Inquiry into the Compensation of Swazi Ex-Mineworkers in the Republic of South Africa (established in 2000) remarked that (in relation to former Swazi migrant mineworkers in South Africa) more than 50 per cent of deaths and disabilities caused by occupational lung diseases were not compensated.¹²⁵ The daunting obstacles restricting former mineworkers from neighbouring countries or their dependants who wish to access South African social security benefits, which have been classified as social, structural, policy/ regulatory, administrative and/or institutional obstacles,¹²⁶ include the following:

7.1. Reluctance of South African government and social security administration institutions

A major reason for the failure by former mineworkers in neighbouring countries to access South African social security benefits is the reluctance of government and social security administration institutions to trace them. Although the South African government has made some effort in facilitating the provision of benefits to former migrant mineworkers from neighbouring countries (such as the conclusion of a Memorandum of Understanding with Lesotho that provides for the exchange of information and cooperation between the Compensation Fund and Lesotho's Office of the Labour Commissioner in processing and finalising outstanding claims of former mineworkers from Lesotho; and the signing of an agreement by the Compensation Fund with Rand Mutual Assurance Company Limited for the extension of Rand Mutual's mobile clinics and the prosthetic programme to pensioners of the Compensation Fund living outside the borders of South Africa),¹²⁷ concerted effort has not been made to ensure that lapsed beneficiaries in these countries are traced and unclaimed benefits paid to them. On the contrary, initiatives have been undertaken by both Parliament and the Eastern Cape Provincial Government to assist former South African mineworkers in recovering outstanding social security benefits (Parliament established an Ad Hoc Committee between 2007 and 2008 to facilitate the payment of social security benefits to members of the Ex- mineworkers Union in the Eastern Cape; while the Premier of the Eastern Cape established a Task Team in August 2002, to facilitate cooperation between

¹²⁵ See Commission of Inquiry into the Compensation of Swazi Ex-Mineworkers in the Republic of South Africa *Report on the Commission of Inquiry into the Compensation of Swazi Ex-Mineworkers in the Republic of South Africa* (Manzini, 2001) 15-16. The Commission noticed that this was because mine employers argue that lung diseases were not only caused by occupational exposure to extreme conditions but natural causes also play a significant role.

¹²⁶ See, for example, International Labour Organisation/Government of Lesotho *Lesotho Decent Work Country Programme Phase II 2012 to 2017* (29 February 2012) 16; and Jansson E "Migrant workers owed billions in 'unclaimed' social security funds" in the Mail & Guardian Newspaper of 22 February 2013.

¹²⁷ See Paragraph 8 "Initiatives in assisting former migrant mineworkers in accessing social security benefits" below.

various government agencies (provincial and national) in resolving the issue of outstanding benefits). This points to a clear reluctance by (national) government to assist former migrant mineworkers from beyond the borders of the Republic in accessing their social security benefits in South African institutions.

Social security administration institutions have also been accused of reluctance in tracing lapsed members (especially those from neighbouring countries) and paying their benefits. For example, although the Mines 1970 Provident Fund claims to have made various efforts in tracing its lapsed members;¹²⁸ it concedes that efforts to trace lapsed members in Lesotho, Swaziland and Mozambique have been limited (with Botswana included on the list of countries for the tracing of lapsed members only recently).¹²⁹ According to the Funds, this is because: "... it is extremely difficult to trace and then pay such ex-employees once they have left service. In essence these efforts have been confined to advertisements in the local press"¹³⁰

The Fund has advanced the following possible reasons for the failure of former employees to claim their benefits:¹³¹

- The monthly contribution to the Fund was R2.50 per month for employees and R4.00 for employers, totalling R6.50 per month. Since there was no increase in contributions from the inception of the Fund in 1970 up until its closure (for at least 20 years), the deduction from employees' monthly salaries may have seemed increasingly insignificant to members, such that members were perhaps unaware that they could claim from the Fund when they left employment;
- On leaving employment, the member was initially limited to a proportion of the employer's contribution to the Fund according to the number of years he had been in service, ranging from 10 per cent to 100 per cent over a 10 year period (the limited vesting rights fell away with the changes to the Pension Funds Act);
- Many of the lapsed members of the Fund may have been foreign migrant workers recruited outside of South Africa, who may have been illiterate or semi-literate;
- The date of birth of most of the members of the Fund was defined as the 1st of January of the year following that in which the member was deemed to have been born, reflecting the way in which the mine employers' record, and hence the Fund's records, were maintained. This has proved to be a complicating factor in verifying the identity of ex-mineworkers who are now claiming benefits since most of them have South African identity documents. The dates of birth in their identity documents almost always differ from the Fund's recorded date of birth and the date originally allocated by the mine employer, (sometimes by many years) and often also their names.

¹²⁸ Refer to paragraph 5.3 above.

¹²⁹ See *Report from the Mines 1970's Provident Fund to the Ad Hoc Parliamentary Committee on Matters Related to Ex-mineworkers* (15 February 2008).

¹³⁰ *Ibid.*

¹³¹ *Mines 1970's Provident Fund Report from the Mines 1970's Provident Fund to the Ad Hoc Parliamentary Committee on Matters Related to Ex-mineworkers* (15 February 2008).

Therefore, Fund administrators have to rely on other corroborating evidence to match up claimants to Fund records, such as the Miner's work number, and the name of the mine at which he worked.

However, TEBA claims that tracing the 1970 Provident Fund members was difficult only because it is still being administered by the Chamber of Mines.¹³² It indicated that the Chamber of Mines might be reluctant to provide the benefits due to former mineworkers because although it (TEBA) had run the names of former mineworkers with outstanding benefits through their database and were able to identify 12 000 beneficiaries out of a total of 60 000 (although it became evident that many of the 60 000 had duplicate entries); the trustees of the Funds (which are still being administered by the Chamber of Mines) have not taken any action to pay the benefits due to the 12 000 identified beneficiaries.¹³³ TEBA has accused the Chamber of Mines of commercialising the investment; while the Chamber of Mines has accused TEBA of commercialising the tracing process because of the payment required to trace cases. However, it has been asked whether it was better for the Chamber of Mines to keep the money of those who need it (former mineworkers) because TEBA was expensive.¹³⁴

7.2. Lack of information by migrants or dependants to assess and access rights, and on procedures and administrative formalities

The failure of former mineworkers and/or their dependants to receive social security benefits in South Africa has partly been attributed to 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. According to the ILO:

Chauke (a Mozambican miner living in the Nkaneng –informal settlement and working for Lonmin) has confirmed the lack of information by migrants or dependants to assess and access rights, and on procedures and administrative formalities when he is vague about what occupational disease or injury benefits he's entitled to. He says this is because he was not told about them (i.e. social security benefits) when he was recruited. In addition, he said his wife at home in Mozambique, far to the north of Maputo, would not even begin to know how to claim any money due to him and his family, should that task fall to her. In his opinion: "... if she failed to claim those benefits successfully, some of the value of all her family has sacrificed, those long years her husband was away living in poor conditions, the labour that he contributed to building South African industry, would be lost to both her and her daughters."

"...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

¹³² Ad Hoc Committee on Matters Relating to Ex-mineworkers Union TEBA and Eastern Cape Department of Health: *briefing* (29 February 2008).

¹³³ *Ibid.*

¹³⁴ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union TEBA and Eastern Cape Department of Health: *Briefing* (29 February 2008).

*dependants of deceased migrant workers have limited access to South African social security benefits and therefore face utter destitution in Lesotho.*¹³⁵

This has been confirmed by Rantso Mantsi (a former mineworker from Lesotho and president of the Southern Africa Mineworkers' Association) who said many former miners and their dependants are struggling to claim benefits and in some cases do not know where to turn for help.¹³⁶ He also said institutions assisting former mineworkers are unable to make contact with the office where the miners' benefits are kept because they do not know where they are, and former miners only know the mine that they were working at.

Many are also unfamiliar with legislation and the relevant procedures and administrative formalities that are required to realise their rights. Although many former mineworkers report some knowledge of COIDA and its purpose,¹³⁷ workers covered by ODMWA had little knowledge of the Act or of their rights in terms of the Act.¹³⁸ Reports suggest that:

*"...many employees have little or no understanding of the processes that lead to occupational lung disease, their consequences, how to protect themselves from the conditions, the mechanisms of compensation, the Acts that apply, and what their rights and responsibilities are. This coupled with a high level of misinformation and complicated by low education levels amongst miners is a recipe for confusion and frustration."*¹³⁹

It is further alleged that few miners know that before its 2002 amendment, ODMWA, entitled them to annual benefit medical examinations free of charge, and after the amendment free examinations every second year. The examinations include a chest x-ray and lung function tests. A former worker who receives treatment for occupational tuberculosis is also entitled to a medical examination 12 months after completion of treatment, to establish whether any permanent damage to the lungs has taken place. The establishment of permanent lung damage entitles the former worker to compensation.¹⁴⁰ In addition, they are not informed by health officials that the Act

According to one of the widows, her husband died in September 2011. Although she was paid R9 000, she has been unable to receive survivors' benefits (provident fund) and the long service award (R12 000 due by TEBA). She has not been able to receive the survivors' benefits due to differences in surnames with her late husband. She has been advised to change her surname to the late husband's; and to get a new death certificate issued before the outstanding claims can be settled.

Presentation by the widow of an ex-miner at the Lesotho National Dialogue on Portability and Access of Social Benefits for Ex-Mine Workers, Victoria Hotel, Maseru, 5th September 2013.

¹³⁵ International Labour Organisation/Government of Lesotho *Lesotho Decent Work Country Programme Phase II 2012 to 2017* (29 February 2012) 16.

¹³⁶ Jansson E "Migrant workers owed billions in 'unclaimed' social security funds" in the Mail & Guardian Newspaper of 22 February 2013.

¹³⁷ Roberts J *The Hidden Epidemic Amongst Former Miners: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape*, South Africa Health Systems Trust (June 2009) 84.

¹³⁸ See Roberts J "Failed by the system" in Mail & Guardian (3-9 July 2009) 30.

¹³⁹ Calver A "Miners Compensation. Who Cares?" (2008) 32*SA Labour Bulletin* 26-28.

¹⁴⁰ AIDS and Rights Alliance for Southern Africa *The mining sector, tuberculosis and migrant labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008) 8.

guarantees miners not just medical examinations for life, but also compensation for an occupationally related lung disease. They are also not told that an autopsy must be conducted on the bodies of all former miners upon death. Many of the mineworkers who left the employment of a mining company before 2002 may never have received medical checks for an occupational disease.¹⁴¹ This means many miners die without the possibility of being diagnosed with an employment-related disease, thereby precluding either themselves or their dependants from claiming occupational injury and disease benefits. A former worker can only receive such benefits when a medical check is conducted and, if he/she is found to be infected, a report is then forwarded to the certification committee of the Medical Bureau for Occupational Disease for certification and compensation.

It has been noted that some beneficiaries were difficult to trace, as some deceased mineworkers did not want their spouses to know about the benefits due. Therefore, Fund members had not included the names of these spouses in the relevant membership documents;¹⁴² and did not inform their family that there were benefits that could be claimed when they died.¹⁴³ Some former workers also presented themselves as South African citizens; and used different names. These make it difficult to trace them.¹⁴⁴ These may partly explain why South African social security administration institutions have no knowledge on the number of survivors, their identity and place of residence; and of the survivors' lack of knowledge on what benefits are still to be provided and the quantum of benefits still outstanding.¹⁴⁵

I went to Rand Mutual Insurance to claim death benefits. They told me that the benefits cannot be claimed until I have died.

~

Mr Edwardo Mutola; Muamba District, Mozambique

Another challenge undermining efforts to pay benefits to ex-miners and/or their dependants is the lack of the requisite documentation. The problem is rather acute in Mozambique where a sizeable number of prospective beneficiaries report that they are unable to claim their benefits due to the fact they have long lost their identity and related documents during the civil war. Accordingly, it is of utmost importance that governments assist their citizens in replacing the requisite documents that might have been lost by potential beneficiaries.

Furthermore, most Mozambican ex-mine workers are illiterate and/or cannot read and understand documents prepared in English.¹⁴⁶ Thus, social security institutions, employers

¹⁴¹ *Ibid.*

¹⁴² Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Final Committee Report on Ex-Mineworkers: Consideration* (18 March 2008).

¹⁴³ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Mineworker's Provident Fund and Mines 1970's Provident Fund briefings* (15 February 2008) – accessed at <http://www.pmg.org.za/report/20080215-mineworker%E2%80%99s-provident-fund-mines-1970%E2%80%99s-provident-fund-briefings> (8 July 2013).

¹⁴⁴ Presentation by the Ministry of Labour and Social Security at the Swaziland National Dialogue on Portability of Social Benefits “*Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries*” (Manzini, 30-31 July 2013).

¹⁴⁵ Feedback by SWAMIWA and SNEMA at the Swaziland National Dialogue on Portability of Social Benefits “*Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries*” (Manzini, 30-31 July 2013).

¹⁴⁶ AMIMO *Mozambique Country Case Study Report on Ex-miners Social Benefits* (Report to the Southern Africa Trust) (27 August 2013) 4-5.

and other organisations involved in the payment of benefits should strive to make the information available in the form and language understandable to ex-miners and their dependants. To deal with the problem of illiteracy it is important that the social security institutions work closely with ex-miners' associations representing ex-miners at regional and country level. The main aim of such an exercise should be to identify and educate ex-miners about, among others, the available benefits as well as eligibility requirements. This could play an important role in alleviating perceptions often harboured by ex-miners and their dependants that the system is inherently corrupt or those responsible for the payment of benefits are arrogant and disrespectful.

The point is that there are instances where those responsible for the payment of benefits are constrained by external factors beyond their control. For instance, as pointed out by Mr Ramadane Sumará (Manager: TEBA Mozambique) during a meeting with Dr Mpedi at the TEBA office in Maputo, survivors of deceased mineworkers often submit incomplete documents. In some instance, even if they do submit a full set of required documents the Mine Workers Provident Fund often takes an unreasonable long time (two to four years) to finalise the claim. This gives TEBA a bad image as families do give up hope of ever getting the benefits and when the claim is finally settled it does happen that families have changed their place of residence and are, as a result, untraceable. A lack of understanding of such factors by beneficiaries could invariably serve as a source of mistrust.

7.3. Impact of South African immigration law

South African immigration law employs a means of subsistence test to guarantee that only those who can maintain themselves or are sufficiently supported are given residence permits (both temporary and permanent). In terms of section 9(4) (b) of the Act, a non-citizen may only enter the Republic if issued with a valid temporary or permanent residence permit. Sections 11-23 set out the various types of temporary residence permits granted to non-citizens. A temporary residence permit is issued on condition that the non-citizen is not, or does not become a 'prohibited or undesirable person' as defined in sections 29 and 30.

In addition, temporary residence permits are issued for a particular purpose and for the duration of the purpose. The non-citizen is expected to return to his/her country of origin or country of permanent residence upon completion of the purpose of stay or expiry of the permit. In such instances, failure to leave the country will make the non-citizen an illegal foreigner. Section 32 of the Immigration Act stipulates that an illegal foreigner shall depart, unless authorised by the Department to remain in the Republic pending an application for a status. It is also expressly provided that "any illegal foreigner shall be deported". Migrant workers will be compelled to return home before social security benefit arrangements are finalised. In the absence of cross-border portability arrangements (either at scheme or national level), a former migrant worker will effectively be denied access to social security benefits as a result of the impact of immigration law.

7.4. Absence of portability provisions or limited portability arrangements in South African social security laws

In South Africa, some but incomplete provision is made in the relevant laws for the portability of benefits. Statutes such as the Unemployment Insurance Act, the Pension Funds Act¹⁴⁷ and ODMWA do not make provision for the cross border portability of benefits. This will have an adverse impact on permanent residents (in the case of unemployment insurance) and both permanent and temporary residents (in the case of retirement and motor vehicle accident insurance) to receive benefits once they have return home. They may only be entitled to a lump-sum, if it is provided in the rules of the fund.

Even where some schemes provide for the (ex) portability of benefits, these provisions are limited. This is the case with the workers compensation legislation, which provides for the exportability of compensation in the event of an employee or dependant of an employee leaving the country (where the person is entitled to a pension). However, the compensation so payable is restricted to the awarding of a lump sum, implying that the person affected loses any entitlement to a pension.¹⁴⁸ ODMWA also pays out benefits in the form of a lump-sum.¹⁴⁹ In addition, section 94 of COIDA permits arrangements to be made with other countries regarding compensation. It provides as follows:

“The Minister may, by notice in the Gazette, issue directions to give effect to the provisions of any agreement between the Republic and any other state in which provision is made for reciprocity in matters regarding compensation to employees for accidents resulting in disablement or death, including directions-

- (a) to determine in any case where an employee is entitled to compensation both in terms of this Act and in terms of the law of any such state under the law of which party such employee or his dependants shall be entitled to recover compensation;*
- (b) to authorise the Director-General to allow evidence taken in any such state, and to obtain and take evidence for use in such state or for the facilitation of proceedings for the recovery of compensation in terms of the law of any such state.”*

There is no agreement that has been signed between South Africa and Botswana, or with Lesotho, Mozambique or Swaziland. Hence no directions have been issued pursuant to section 94 of COIDA. Non-citizens eligible for compensation either in terms of COIDA or ODMWA will receive lump-sum payments. In the absence of social assistance in their home countries, the non-citizens will have no other means once the lump-sum payments are depleted. The same is also true of persons who lose their entitlement to benefits due to the lack of portability arrangements in the other schemes.

7.5. Administrative and institutional challenges (e.g. administrative and institutional capacity; lack of administrative cooperation between schemes; delays in payment of social security benefits etc.)

¹⁴⁷ Pension Funds Act 24 of 1956.

¹⁴⁸ Section 60 of the Compensation of Occupational Injuries and Diseases Act 130 of 1993 (COIDA) provides that an employee or dependant of an employee who is resident outside the Republic or is absent from the Republic for a period(s) of more than six months, and to whom a pension is payable, can be awarded a lump sum.

¹⁴⁹ See section 80 of ODMWA.

Fultz and Pieris reported in 1998 that a major obstacle restricting access to social security for migrants from South Africa is the absence of assistance from social security institutions in the migrant-sending countries.¹⁵⁰ Commenting on the payment of occupational injury benefits in particular, it was stated that:

“... Schemes typically offer little help to migrant workers who return home after being injured on the job or who develop an employment-related occupational disease caused by work in another country. The most developed employment injury payment arrangements exist in South Africa, where benefits may be remitted through government-to-government agreements or through the mines' major recruitment agency, The Employment Bureau of Africa (TEBA), in those countries where it has offices. In the former arrangement, government corruption in the receiving country has sometimes prevented payments from reaching beneficiaries. This has been a particular problem in Mozambique, where a small survey undertaken in 1996 by Rand Mutual, the private firm which administers workers compensation for the mining industry, showed that 70 per cent of compensation payments remitted in this manner had not reached the beneficiary.¹⁵¹ In other countries, some schemes will send benefits overseas and will sometimes transmit an application or medical evidence to a neighbouring scheme on behalf of a worker.¹⁵² In no case, however, will a scheme assist a worker in developing an application for another scheme, advocate on his or her behalf for a decision, help file an appeal, pay a worker on another scheme's behalf, or advance the worker funds while he is awaiting a payment.”

The situation for Swazi migrant miners today is not different to what prevailed in 1998, as

An example of the alleged corruption by TEBA staff is the story of Mr Thabiso Rampepe from Mochale's Hoek (Lesotho). He is suing TEBA for M30 000 (R30 000) which he alleges disappeared from his account held by TEBA in Maseru. He is accusing TEBA of letting one of its employees steal the money, which he had saved over the 17 years he was employed at the Vaal Reeves No. 8 Mine. According to Mr Rampepe, when he was retrenched by his South African employer in 2006, he had M98 000 in an account he held with TEBA as his pension. He says that:

“All in all, I had M98 000 in the Provident Fund I had with TEBA, and out of this amount, I had withdrawn M51 000. Later in 2007, when I went to TEBA to withdraw some money from my account, I was shocked to be told I only has M18 000 left in the account. But I knew that my balance was M47 000 then, so I laid a complaint with TEBA and it was discovered that one of the agency's employees had taken the money for himself. I had no option but to seek the court's intervention because TEBA was shifting the blame to that employee.”

TEBA insists that Mr Rampepe should not have sued it but the employee, who has since been dismissed. Mr Rampepe explained that he was struggling to make ends meet because he had planned to strengthen his livestock farming with the money he had deposited with TEBA. He continued: “That was the money I had saved when I was still at the mines It seems now they are trying by all means to take that money for good”.

still have to contend with non-cooperative local organisations to recover their benefits, in particular TEBA which is responsible for the payment of benefits to former mining

¹⁵⁰ Fultz E and Pieris B *Employment Injury Schemes in Southern Africa: An Overview of Proposals for Future Directions* (ILO/SAMAT Policy Paper No. 7) (ILO Harare, Zimbabwe, 1998) 19-20.

¹⁵¹ See Fultz E *Social Protection of Migrant Workers in South Africa* (ILO/SAMAT Policy Paper No. 3) (ILO Harare, Zimbabwe, 1997).

¹⁵² For example, Zimbabwe remits compensation payments to workers living in Malawi through the Malawi High Commission; to Europeans through the Bank of England; and to residents of South Africa through the South African Standard Bank.

employees in the country. During the Swaziland National Dialogue on Portability of Social Benefits, former mineworkers and survivors complained about the arrogant, disrespectful and undignified treatment they received from TEBA; suspected corruption by TEBA staff in some instances; the reluctance of TEBA to share information on current or former mineworkers with key stakeholders and to cooperate with government and mineworker associations; and lengthy and cumbersome TEBA processes and requirements.¹⁵³

The reluctance of TEBA to share information on current or former mineworkers with them and with key stakeholders and to cooperate with government and mineworker associations was also confirmed. For example, TEBA charges ex-miners and dependants a fee for information of their employment and other records. In one case, Mr Ketane Clement was charged R70 for his record of service.¹⁵⁴ This is an obstacle in the path of impoverished and destitute ex-miners or the dependants who are trying to access the social security benefits. It lends credence to the Chamber of Mines accusation that TEBA is commercialising the process of access to social security benefits by ex-mine workers.¹⁵⁵

The Swaziland Ministry of Labour and Social Security has confirmed the confirmed the administrative and institutional challenges faced by ex-miners and their dependants in

Sometime in 2008, my husband was involved in a horrific bus accident on his way from Swaziland back to work in South Africa. He died in the accident. Despite several attempts, I never received anything from his employer. Only the company provided 10,000 Emalangenzi towards burial costs. Since then, I have only received money from his employer on one occasion. I followed up with TEBA on several occasions but got no help. An employee at TEBA asked me to bring the TEBA book to him, which I did. Then I received a telephone call from South Africa informing me that my TEBA bank account had been closed by a TEBA employee. I never gave anyone the instruction to close that bank account. I later received the book, but there was no money on the account. Every now and again I receive statements showing me how much has been deposited onto this account, but the money never comes to me. Whenever I visit the local TEBA offices to follow-up I am treated in an undignified manner. I cannot travel to Johannesburg, South Africa, because I have young children to look after. I have been suffering for many years and there are many other widows in a similar situation as mine.

Testimony by a widow of a Swazi ex-mineworker.

accessing social security benefits. For example, the Ministry has reported that TEBA is not very supportive in helping ex-mineworkers and their families in times of need; and is at times difficult to deal with and less co-operative on matters affecting ex-mineworkers and beneficiaries.¹⁵⁶

¹⁵³ Swaziland National Dialogue on Portability of Social Benefits on “Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners’ beneficiaries” (Manzini, 30-31 July 2013).

¹⁵⁴ See TEBA Limited Receipt No. 13073.

¹⁵⁵ See paragraph 11 above (Recommendations). See also Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *TEBA and Eastern Cape Department of Health: Briefing* (29 February 2008).

¹⁵⁶ Ms ZodwaDlamini, Labour Officer at the Ministry of Labour and Social Security during a presentation at the Swaziland National Dialogue on Portability of Social Benefits “Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners’ beneficiaries” Manzini, 30-31 July 2013.

Various complaints illustrate the arrogance and lack of respect that TEBA has for ex-mineworkers and their beneficiaries. For example, lengthy delays are experienced in processing the monies for Long Service Awards for ex-mineworkers and denial of total withdrawal of the money to Swaziland Banks. In addition, no supporting documentation is provided by TEBA when funds are transferred to beneficiaries, hence there is no clue how of much has been paid and how much remains.¹⁵⁷

It has also been alleged that TEBA stonewalls payments, while the Swazi Government has refused to assist.¹⁵⁸ Former employers also provide no assistance to ex-employees in the recovery of benefits. During the Swaziland national dialogue, various testimonies were presented by ex-mineworkers and widows of ex-mineworkers to illustrate how the delayed payment of their employment and social security benefits had impacted on their lives. Some of these testimonies are presented below.

The above testimony provided evidence that widows of ex-mineworkers are sometimes denied access to their funds by corrupt TEBA employees. Many other similar examples were provided during the dialogue, including that of a widow who has been denied access to her husband's deceased estate since 2006. SNEMA and SWAMMIWA pledged to take this case further and assist the concerned widows to access and receive their benefits after the dialogue.

The other testimonies that were shared during the national dialogue included the following:

- A widow gave a moving testimony of how her children lost 62,000 Emalangeni in Living Hands Trust. Her husband passed away in 2002 and they were informed that the children are entitled to a benefit of 62,000 Emalangeni. At the beginning of 2004 she received some monthly payments, but these soon stopped and nothing has come through since then. In 2005, she made so many trips to South Africa to follow up on these monies, but was referred from one office to the other. She had no clue where to go and she returned empty handed. Currently, her children are not in school and she has sent them to her mother because she can no longer afford to look after them.
- Mr Richard Sithole spoke about how he was retrenched by his employer, Evander Gold Mine (Harmony Gold Mining Company), after he became sick because of TB. He received treatment at a government hospital in Swaziland for 6 months, and went back to the mine. The doctor at the mine referred him back to Swaziland for further examination, saying the TB was not contracted in the mine. He has since completed his TB treatment, but the mine did not want to take responsibility. Since then, Mr Sithole has not been compensated for the illness he contracted while on duty.
- Another widow briefed the meeting that her husband died of TB in 2006. She went to the mine to claim some benefits, but has not received any help. The only thing that they did was ask for my bank account, which I supplied in 2006, but nothing paid ever since.

¹⁵⁷ Testimonies by ex-miners and dependants during the Swaziland National Dialogue on Portability of Social Benefits "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries" Manzini, 30-31 July 2013.

¹⁵⁸ Rothgiesser S "Social insecurity" Mail & Guardian(19-25 September 2008) 21. See also Roberts J *The Hidden Epidemic Amongst Former Miners: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape*, South Africa Health Systems Trust (June 2009) 82.

- Ms ZandileSikhondze illustrated that after her husband was killed by TB, she went to process claims at Compensation Commissioner for Occupational Diseases (CCOD) at Braamfontein. She was told to go home after opening an account at TEBA. She had been checking at TEBA many times until she met SWAMMIWA to assist. SWAMMIWA wrote a letter to CCOD and they sent the money. But the money returned after finding that the TEBA account was closed. She briefed how she was badly treated by TEBA employee until the intervention of the SWAMMIWA leader (Mr VamaJele) which ultimately resulted on getting the account re-opened but she is still waiting for the compensation from CCOD.

South African institutions involved in the compensation of occupational injuries and diseases in the mining sector are also not cooperative towards claimants. The Mineworkers Provident Fund has been accused of lack of interest, non-cooperation, and shocking administration.¹⁵⁹Rand Mutual Assurance has also been accused of failing to cooperate with ex-miners and the Swazi Government; such as its failure to co-operate with a government representative deployed to South Africa to cater to the welfare of Swazi migrant mineworkers.¹⁶⁰ It was thus proposed that there should be greater co-operation between Rand Mutual Assurance, SNEMA and SWAMMIWA in order to locate the beneficiaries and facilitate the speedy payment of benefits.

Dysfunctionalities in the MBOD lead to medical benefit examinations not speedily nor consistently done.¹⁶¹Referral systems, particularly cross-border, and follow-up mechanisms for care are also extremely poor in many instances.¹⁶²Calver recounts the experience of a young claimant from Lesotho with the MBOD:¹⁶³

"I remember a 15-year old school girl who arrived from Lesotho seeking compensation for her father [a former mineworker] who had died at home. Her mother had died a year earlier; she was the oldest member of the family and was trying to support her two younger brothers and a sister. Someone at MBOD provided her with the letter and sent her to the mine to get information. But if the MBOD staff had taken time to look up the details of the deceased miner they would have seen that he was awarded second degree disability before he left the mine and long before his death, but had not been paid. We placed her in the care of a reliable NUM shop steward...and the process was put in place. A little effort by the MBOD to check the information would have saved her travel costs to South Africa using her last few cents for no reason."

Former mineworkers and/or their dependants also have to contend with difficulties at the Department of Home Affairs. An example is the story of MamohlomiLetlailana of Lesotho, who tried to claim his pension from the mine. Her husband Pitso, to whom she had been married for over 30 years in terms of customary law, died in Welkom where he had worked

¹⁵⁹ Tribunal of the Pension Funds Adjudicator in *Thandiwe Miriam Mntseu v Mineworkers Provident Fund* Case No:PFA/GA/643/02/KM.

¹⁶⁰ Testimonies by ex-miners and dependants during the Swaziland National Dialogue on Portability of Social Benefits "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries" Manzini, 30-31 July 2013.

¹⁶¹ ARASA *The Mining Sector, Tuberculosis and Migrant Labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008) 9.

¹⁶² IOM *Regional Assessment on HIV-prevention Needs of Migrants and Mobile Populations in Southern Africa: Mining Sector Report* (February 2010) 11.

¹⁶³ Calver A "Miners Compensation: Who Cares?"(2008) 32 *South Africa Labour Bulletin* 26-28.

in the mines.¹⁶⁴ When she went to the Department, she was told that Pitso was not her husband, and she would not get the pension until she proves that she was married to Pitso.

She went to the Department of Home Affairs for his Identity Book which he received during an amnesty for mineworkers in the 1990s. It is reported that Letlailana, who is 54, fainted when she was told that she was not married to Pitso; as she had been to several offices both in Lesotho and South Africa seeking help to claim the pension. She has also gone to the Lesotho Ministry of Labour and Employment (responsible for claiming pensions on behalf of migrant workers) and TEBA, but both failed to help.¹⁶⁵ She also went to Welkom where her claim was also rejected by her husband's employer. According to the author;

“Letlailana is one of thousands of Basotho widows of mineworkers who are unable to access pensions and other benefits from South African mines. Her experience mirrors the difficulties the claimants, most of them either illiterate or semi-literate, have to endure when they approach the mines seeking the pensions.”¹⁶⁶

¹⁶⁴ Tlali C “Why it’s hard for ex-miners to get benefits” in Lesotho Sunday Express – accessed at <http://sundayexpress.co.ls/?p=8318> (9 July 2013).

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

In addition to uncooperative local institutions, former employees face delays in the certification and processing of compensation benefits. Currently, certification of an occupational disease for both the Compensation Fund and the Compensation Commissioner for Occupational Diseases can only be done by the MBOD, following a medical examination and in some cases the submission of certain medical samples. The medical examination

Mr Matsooa Elliot Mpakanyane of Kolo Village worked as a driller with Anglogold from 1987 to 2009. He was retrenched from the mine because he was diagnosed with hearing loss. However, he is also suffering from "chest pains". His "Memorandum of Advice of a Medically-Affected Employee" issued on 21st April 2009 and "Exit Medical Certificate" of 30th April 2009 both indicate that he is medically unfit. They state that the "above employee is unable to continue in his current occupation due to medical reasons" and "no occupational disease present". He has not been able to go to hospital to confirm the cause of his chest pains due to his lack of means and of backlogs in the certification of lung diseases in Lesotho because of the absence of pathologists (there is only one pathologist for the whole country (Presentation by Dr Maama (Representative of the Ministry of Health) Lesotho National Dialogue on Portability and Access of Social Benefits for Ex-Mine Workers, Victoria Hotel, Maseru, 5th September 2013)). He was informed that he can only apply for Long Service Award in 2014 (after five years of leaving the mine in 2009).

They face acute poverty and hunger as he and his wife have no source of income of their own. His only form of support is assistance from his father, who provides them with a monthly allowance of M100 (equals to R100) per month from his M450 per month old age pension.

As a result, none of his 4 children attended school. While the first two daughters are married, his 19 year-old son is currently herding cattle for one of the villagers. His 15 year-old daughter also dropped out of school for lack of school fees. She has since left home and her whereabouts are unknown (it is suspected she is engaged in the sex trade in Maseru).

They had the intention of starting a business and had bought a plot of land to build a house for rental. However, he was retrenched from the mine before he could complete the building of the house. They still plan to start a business if they can acquire the necessary capital.

His wife is registered with the Voluntary Service Overseas' Regional AIDS Initiative of Southern Africa (VSO-RAISA) programme for skills training in income-generating activities.

Discussions with Mr Matsooa Elliot Mpakanyane and his wife of Kolo Village during a visit by Dr Nyenti and Mr Mantsi on 06 September 2013.

includes a chest x-ray, lung function test and other medical investigations. Although the MBOD is responsible for reimbursing medical practitioners who conduct medical examinations, this is not done speedily nor consistently.¹⁶⁷ As such, workers who forward their medical reports to the MBOD in Johannesburg for certification and onward forwarding to the Compensation Commissioner for Occupational Diseases for payment have had to wait years for a response and the eventual resolution of their claims.¹⁶⁸ It is claimed that it can take up to three years for an application for certification to be completed, and should an

¹⁶⁷ AIDS and Rights Alliance for Southern Africa *The mining sector, tuberculosis and migrant labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008) 15.

¹⁶⁸ Fultz E and Pieris B *The Social Protection for Migrant Workers in South Africa* (ILO/SAMAT, Harare, 1997) 12. See also Spoor R "Gold miners return to Lesotho to die" in *Mines and Communities (MAC)* of 30 August 2005.

occupational disease be certified, compensation can take months or even years to process,¹⁶⁹ especially if the miner has returned to Botswana, Lesotho, Mozambique or Swaziland and is far away from the necessary medical services.¹⁷⁰ The certification process entails that for each application submitted and evaluated, in addition to the medical examinations, the work period and degree of risk exposure needs to be verified by the mining company. This process may lead to further difficulties for former workers if the administrative burden of the certification and compensation institutions were to rise due to

Ms Moliehi Ramonate, the liaison officer in the migrant section at the Ministry of Labour and Employment in Lesotho, has said as much as 50% of money due to Basotho claimants goes unclaimed or unpaid. According to her, the main problem is the inexplicable length of time it takes to process a claim. She mentioned the recent case was a widow whose husband died of TB, remarking that: "... we received the claim in February 2010; she was only paid the first week of August this year. She has three children and no other income. Most of the mineworkers' wives are not working; they come from very remote mountain areas, they are normally at home taking care of the children, the property, the animals."

more ex-mineworkers being identified and their claims processed. The current certification and compensation system is therefore failing former mineworkers.

7.6. Inaccessibility of professional occupational health services

A major issue in the compensation of former workers is the lack of accessible, professional occupational health services for the diagnosis of occupational diseases. As a result, many former workers are not able to have their respective occupational diseases diagnosed and forwarded for certification and possible compensation.¹⁷¹

¹⁶⁹ AngloGold Ashanti Report to Society Case Studies 2007 – Occupational Safety and Health 3.

¹⁷⁰ AIDS and Rights Alliance for Southern Africa *The mining sector, tuberculosis and migrant labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008) 15.

¹⁷¹ AngloGold Ashanti Report to Society Case Studies 2007 – Occupational Safety and Health (2007) 1.

Workers or former workers who are injured, or whose occupational diseases are covered by COIDA face the burden of having to pay for medical services. Unlike ODMWA which provides for free medical examinations at state hospitals, there is no such provision in COIDA. Potential claimants under COIDA must pay a private doctor for medical examination before any claim submission.

Mr Matsooa Elliot Mpakanyane of Kolo Village worked as a driller with AngloGold from 1987 to 2009. He was retrenched from the mine because he was diagnosed with hearing loss. However, he is also suffering from "chest pains". His "Memorandum of Advice of a Medically-Affected Employee" issued on 21st April 2009 and "Exit Medical Certificate" of 30th April 2009 both indicate that he is medically unfit. They state that the "above employee is unable to continue in his current occupation due to medical reasons" and "no occupational disease present". He has not been able to go to hospital to confirm the cause of his chest pains due to his lack of means and of backlogs in the certification of lung diseases in Lesotho because of the absence of pathologists (there is only one pathologist for the whole country (Presentation by Dr Maama (Representative of the Ministry of Health) Lesotho National Dialogue on Portability and Access of Social Benefits for Ex-Mine Workers, Victoria Hotel, Maseru, 5th September 2013)). He was informed that he can only apply for Long Service Award in 2014 (after five years of leaving the mine in 2009).

They face acute poverty and hunger as he and his wife have no source of income of their own. His only form of support is assistance from his father, who provides them with a monthly allowance of M100 (equals to R100) per month from his M450 per month old age pension.

As a result, none of his 4 children attended school. While the first two daughters are married, his 19 year-old son is currently herding cattle for one of the villagers. His 15 year-old daughter also dropped out of school for lack of school fees. She has since left home and her whereabouts are unknown (it is suspected she is engaged in the sex trade in Maseru).

They had the intention of starting a business and had bought a plot of land to build a house for rental. However, he was retrenched from the mine before he could complete the building of the house. They still plan to start a business if they can acquire the necessary capital.

His wife is registered with the Voluntary Service Overseas' Regional AIDS Initiative of Southern Africa (VSO-RAISA) programme for skills training in income-generating activities.

Discussions with Mr Matsooa Elliot Mpakanyane and his wife of Kolo Village during a visit by Dr Nyenti and Mr Mantsi on 06 September 2013.

It is further alleged that while provision is made in ODMWA for former mineworkers to have access to free medical examination every two years and to apply for compensation should they be certified as having contracted an occupational disease, many former mineworkers are either unable to access these services¹⁷² or choose not to avail themselves of this opportunity for various reasons.¹⁷³ Some of the reasons include insufficient information provided to workers on their legislative rights during their working years; inaccessible and inadequate occupational health facilities at state-owned hospitals, especially in rural areas;

¹⁷² AIDS and Rights Alliance for Southern Africa *The mining sector, tuberculosis and migrant labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008) 9.

¹⁷³ AngloGold Ashanti *Report to Society Case Studies 2007 – Occupational Safety and Health* (2007) 1.

Mr Mofoka Motumi of Ha Makintane is also an example of the destitution and suffering that plagues many ex-miners in Lesotho. He contracted TB while working as a heavy-duty truck driver in Thabong Mine in Rustenburg. He claims that when he was to be transferred to a new mine, the move was blocked due to the refusal to employ foreign workers. Therefore, he fraudulently acquired an identity document as a South African citizen. When he fell ill (with TB) three years later, he was informed that he cannot be compensated because he had a fraudulent ID. He was advised to get a passport of Lesotho. Upon presentation of the passport, he was dismissed for fraud. He now thinks it was a trick to get him out of employment due to his occupational disease. He returned to Lesotho without any form of compensation. He has since received TB medication, but this has cost him the use of his legs as he's partially paralysed. He has also been deserted by his wife and children and now survives on donations from neighbours and other well-wishers. He has been unable to return to South Africa to apply for benefits, but has taken up the matter with the Lesotho High Commission.

significant travelling times and expenses incurred to visit state-owned medical facilities; and mistrust and scepticism of the certification and compensation systems as a result of poor service delivery on the part of the MBOD and CCOD in the past.

7.7. Inaccessibility of certification and compensation institutions

The position of former workers from neighbouring countries is further compounded by the centralised location of the certification and compensation institutions. The offices of the MBOD which certifies mine workers in terms of occupational (lung) disease, the CCOD and many social security administrative institutions are located in Johannesburg. These offices

"I have been to the mine many times and spent about R 1300.00 for travelling only, trying to claim my husband money at Mineworkers Provident Fund and sent to TEBA to open an account. My husband has an RSA ID and Swaziland travel document and I have been using the passport to claim. I was told to check at the TEBA offices until now I have not received my deceased husband's benefits"

Widow of an ex-mineworker during the Swaziland National Dialogue on Portability of Social Benefits "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries" Manzini, 30-31 July 2013.

Discussions with Mr Mofoka Motumi of Ha Makintane Village during a visit by Dr Nyenti and Mr Mantsi on 06 September 2013.

lack regional offices in other areas and in the neighbouring countries. As a result, a former worker who wishes to institute a claim for benefits needs to travel to Johannesburg. For example, Swazi ex-workers who approached the Swazi government for assistance in claiming retirement or occupational injury and disease benefits were told that they have to travel to South Africa.¹⁷⁴ The central location of the office of the MBOD in Johannesburg implies that ex-mineworkers from neighbouring countries may not be able to travel to South Africa due to financial and/or medical reasons.

¹⁷⁴ See Rothgiesser S "Social insecurity" in *Mail & Guardian* (September 19 to 25 2008) 21. See also Spoor R "Gold miners return to Lesotho to die" in *Mines and Communities (MAC)* of 30 August 2005 for similar accounts on the fate of Lesotho's ex-miners.

However, the Rand Mutual , which performs medical assessments for occupational injuries in the mining context, as well as for occupational diseases in the mining context not covered by ODMWA are performed utilising mobile clinics for this purpose (e.g. in Lesotho). The Compensation Fund is also investigating alternative avenues to undertake medical assessments (it is in discussions with the Ministry of Labour and Employment in Lesotho and has requested the Ministry to find Lesotho doctors to do assessments for assistive devices). It is also investigating the possibility of utilising South African doctors to undertake assessments in Lesotho, primarily via the mobile clinic facility of Rand Mutual.

7.8. Cumbersome documentary requirements for social security benefit applications

Retirement schemes require documentation to be submitted by dependants of diseased miners before the payment of benefits. This presents difficulties for dependants in accessing benefits. It has been held that:

“...this could be particularly cumbersome for surviving spouses and their children, as they may live in remote rural areas, may not know which documents to submit, how to procure and fill it out, and may not be able to obtain the required supporting marriage and birth certificates, for example. In addition, continued payments may be subject to the submission of appropriately completed and attested life certificates – which may be beyond the capability of many illiterate beneficiaries.”¹⁷⁵

7.9. Restrictions arising from difficulties in establishing causal link between illness and employment

Many former workers face difficulties in establishing a causal link between their occupational injuries and/or diseases and their former employment. This has an impact on their right of access to compensation benefits as occupational injury and disease compensation is premised on the occurrence of an injury or the contracting of a disease in the course and scope of a person’s employment.¹⁷⁶COIDA lists occupational diseases in Schedule 3 to the Act. An employee is entitled to compensation should he/she contract such a disease. When an employee contracts a disease that is not listed in the Act, other than a scheduled disease, which arose out of and in the course of his/her employment compensation is also payable. Should an employee contract a disease in schedule 3 it is therefore presumed that the disease was caused by the employment, whereas if the disease is unlisted the employee must establish that the disease arose out of and in the course of employment. This may pose problems for former workers whose occupational diseases only manifest after the end of their employment.

In addition, section 1(a) of ODMWA defines those diseases in the mining context that are compensatable. It states that ‘compensatable disease’ means-

- (a) “pneumoconiosis;
- (b) the joint condition of pneumoconiosis and tuberculosis;

¹⁷⁵ Olivier M “Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (Part I)” (2011) 1 *SADC Law Journal* 121 at 135.

¹⁷⁶ See the Compensation for Occupational Injury and Diseases Act and the Occupational Diseases in Mines and Works Act.

- (c) tuberculosis which, in the opinion of the certification committee, was contracted while the person concerned was performing risk work, or with which the person concerned was in the opinion of the certification committee already affected at any time within the twelve months immediately following the date on which that person performed such work for the last time;
- (d) permanent obstruction of the airways which, in the opinion of the certification committee, is attributable to the performance of risk work;
- (e) any other permanent disease of the cardio-respiratory organs which in the opinion of the certification committee is attributable to the performance of risk work; or
- (f) progressive systemic sclerosis which, in the opinion of the certification committee, is attributable to the performance of risk work; or
- (g) any other disease which the Minister, acting on the advice of a committee consisting of the director and not fewer than three other medical practitioners designated by the Minister, has, subject to the provisions of subsection (2), by notice in the Gazette declared to be a compensatable disease and which, in the opinion of the certification committee, is attributable to the performance of risk work at a mine or works.”

In the first place, this requires that there must be a causal connection between the disease or injury suffered by the (ex-)employee and his/her employment, without a break in the chain of causality (i.e. without any *actus novus interveniens*). This poses difficulties for many ex-miners and their representatives, especially as many of the former employees may not have been diagnosed as suffering from an occupational disease at the time they left the industry or later, in retirement, and they may not receive due compensation.¹⁷⁷ It is also the case where the disease gradually worsens over time.¹⁷⁸

Former workers are further restricted from access to benefits due to the legal definition of (some) occupational diseases. For example, ODMWA defines tuberculosis as “tuberculosis of the cardio-respiratory organs of a person who has worked at least 200 shifts in circumstances amounting to a risk and where silica dust or any other injurious dust was present, or any squal, complication or manifestation thereof, but does not include inactive or calcified foci”.¹⁷⁹ Therefore, tuberculosis will only be regarded as an occupational disease if contracted while in mine service or within 12 months of the last shift worked. It is contended that this definition further prohibits compensation for tuberculosis in miners and ex-miners as it fails to take into account the fact that the risk of tuberculosis remains elevated for years after people have ceased mining, even in the absence of radiological silicosis.¹⁸⁰

7.10. Restrictions arising from the classification of diseases and from the certification appeal process

In the mining context, a (former) worker’s compensation depends on the classification of his/her illness by the Medical Certification Committee. ODMWA classifies occupational diseases according to the degree of severity of the disease. Diseases are classified either as first degree or second degree disability.¹⁸¹ First degree disability is defined as not less than

¹⁷⁷ AngloGold Ashanti, *Report to Society 2006* (2006) 119.

¹⁷⁸ Fultz E and Pieris B *The Social Protection for Migrant Workers in South Africa* (ILO/SAMAT, Harare, 1997) 12.

¹⁷⁹ Section 1(a) of ODMWA.

¹⁸⁰ ARASA *The Mining Sector, Tuberculosis and Migrant Labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008) 15.

¹⁸¹ Section 44 of ODMWA

10 per cent and no more than 40 per cent disability caused by one of the scheduled diseases. Second degree is defined as either a single disease disability between 40 per cent and 100 per cent; or as more than one compensatable disease simultaneously (e.g. tuberculosis and another disease such as silicosis).¹⁸² ODMWA also establishes a Review Authority for Occupational Disease for the purpose of appeals in case of dissatisfaction with the decision of the Medical Certification Committee. However, appeals must be lodged no longer than ninety (90) days after the date of the finding of the Medical Certification Committee. The limitation of the appeal time to 90 days is restrictive and unreasonable, considering that many former miners and their families live in neighbouring countries; live in remote rural areas where communication may be limited or non-existent; and when the appeal has to be lodged with the Medical Bureau for Occupational Diseases situated in Johannesburg.¹⁸³ This implies that a former worker living in rural Lesotho, Mozambique or Swaziland who has been wrongfully diagnosed with first degree disability may not be able to receive additional benefits if they are not able to receive notification from the certification committee timeously so as to lodge an appeal.

7.11. Difficulties in determining how benefits are computed

Workers further face difficulties in determining how occupational injury and disease compensation benefits are computed. Many employees have little or no understanding of the processes that lead to occupational disease and the mechanisms of compensation. In relation to the 1 million people have left the mining industry over the past 20 years,¹⁸⁴ it has been pointed out that: "...many of these former employees may not have been diagnosed as suffering from the disease at the time they left the industry or later, in retirement, and they may not have received due compensation from the Compensation Commissioner".¹⁸⁵

"I worked for 22 years at a mine in South Africa and I have never received any disability benefit. All I got was money from the Provident Fund. I was not provided with information on how the amounts I received were calculated"

~

Jose Vilankule, ex-miner from Moamba District, Mozambique.

Due to their low educational levels, workers often do not know how much is supposed to be paid to them as compensation.¹⁸⁶ It is alleged that representatives of former workers devote a large amount of time to intervene on behalf of workers to determine the rationale for particular payments. They also had difficulty in determining the South African social security institutions' methods of calculating benefits.¹⁸⁷

¹⁸² Compensation is calculated at eighteen (18) months' salary if loss of lung function is assessed as being between 10 per cent and 40 per cent, and a lump sum payment equivalent to thirty-six (36) months' salary (up to a maximum of R84 000) if loss of lung function is between 40 per cent and 100 per cent.

¹⁸³ Roberts J *The Hidden Epidemic Amongst Former Miners: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape, South Africa*. Health Systems Trust (June 2009) 27-28.

¹⁸⁴ See AngloGold Ashanti *Report to Society 2006* (2006) 119.

¹⁸⁵ AngloGold Ashanti *Report to Society 2006* (2006) 119.

¹⁸⁶ Rothgiesser S "Social insecurity" *Mail & Guardian* (19-25 September 2008) 21.

¹⁸⁷ Fultz E and Pieris B *The Social Protection for Migrant Workers in South Africa* (ILO/SAMAT, Harare, 1997) 12.

All payments of compensation in terms of COIDA depend upon a calculation of an employee's earnings. Section 53 prescribes rules as to how the Commissioner should calculate the compensation payable. However, the Act states that having due regard to section 63 if the Commissioner does not believe it to be practical to utilise the prescribed method, he may calculate earnings in any manner that he considers equitable. An employee's earnings must be calculated with a view to establish at which rate an employee was remunerated at the time of the accident/disease. In terms of section 63, items that are expressly included within the ambit of remuneration include the value of any food or quarters or both supplied by the employer to the date of the accident; any overtime payment or other special remuneration in cash or in kind of a regular nature or for work ordinarily performed, but excluding - payment for intermittent overtime; payment for non-recurrent occasional services; amounts paid by an employer to an employee to cover any special expenses; and *ex gratia* payments whether by the employer or any other person. The formula for calculating the compensation of employees who suffered temporary or permanent injuries or a serious disfigurement, and compensation payable to dependants of employees, who die as a result of an occupational accident or disease, is contained in schedule 4 of COIDA. However, future loss of the ability to earn is not taken into consideration.

7.12. Reluctance due to inadequacy of compensation benefits

The payment method and quantum of compensation for occupational injuries and diseases also perpetuates destitution for former workers. It is contended the amounts that former workers who manage to apply for compensation eventually receive are insignificant in the context of diseases that often leave them unable to work.¹⁸⁸ Compensation under COIDA does not reflect the full cost of the injury and disease, as no account is taken of the employee's loss of earning capacity or of employment as a result of the disability. Workers who lose their ability to work only receive a fraction of their former earnings.¹⁸⁹ This has led to the conclusion that even though there is some compensation for people who are disabled through accidents at work, the money which they receive is in most cases inadequate to meet their needs and does not compensate for the loss of their job or their poor job prospects for the future.¹⁹⁰

Compensation through ODMWA is a lump sum payment, with no provision for a monthly pension. For a disease such as silicosis, compensation is calculated at 18 months' salary if loss of lung function is assessed as being between 10 per cent and 40 per cent, and a lump sum payment equivalent to 36 months' salary (up to a maximum of R84 000) if loss of lung function is between 40 per cent and 100 per cent.¹⁹¹ Therefore, a sick former mineworker has no source of income after the lump sum payment. There is also no provision for the costs of on-going medical care of former workers, as provision for such costs is only made

¹⁸⁸ Mines and Communities (MAC) "Glimmer of justice for sick gold miners" of 2011-03-28 – accessed at <http://www.minesandcommunities.org/article.php?a=10774> (9 July 2013).

¹⁸⁹ Report of the Committee of Inquiry into a National Health and Safety Council in South Africa (1997) 173.

¹⁹⁰ Green Paper on an Integrated National Disability Strategy (GG 17038 14 March 1996) 44.

¹⁹¹ Roberts J *The Hidden Epidemic Amongst Former Miners: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape, South Africa*. Health Systems Trust (June 2009) 11-12.

for miners diagnosed with a compensable disease while still employed.¹⁹² This leaves former workers with either no medical assistance (especially those in rural areas) or with the burden of travelling to urban centres for medical assistance. This has led to the conclusion that the ODMWA compensation system:

“...is a discriminatory system that is a cheap form of compensation which serves as a subsidy to the mining industry in that it externalizes the costs of occupationally acquired lung disease. The labour sending communities which provide large numbers of migrant mineworkers to the mining industry are likely to have a high prevalence of silicosis and silico-tuberculosis which would have a severe social impact, intensifying deprivation and poverty amongst former mineworkers and their families, as well as within their communities.”¹⁹³

“I am a Mosotho man born 1963 and I started working at the mines in 1988 at Vaal Reefs till I came home. At the present time I am not working but I have six children four married two still with me and my wife. Since I came I have been sick with TB. I still have to provide for this people to survive daily. The two children are not attending school because I cannot manage to pay for their fees and life for them is very difficult ... what makes it difficult is that I still have money from the mine that I worked very hard for so many years but my children are home. The problems of life that are facing me are too much to handle because I am the one who does all the family requirements, I cannot get a job because I am sick now.”

The inadequacy of benefits also relates to private benefits (where available). As mentioned earlier, mine workers also receive private social security benefits from their employers. These include housing, medical care, life insurance and contributions to the Mineworkers Provident Fund. The Fund pays out retirement benefits, death/survivors' benefits and benefits upon resignation or dismissal.¹⁹⁴ However, these benefits are inadequate due to various factors:¹⁹⁵ the benefits are not contractual, which means the employer has a discretion whether to provide such benefits, and what kind of benefit is provided; since it is a provident fund, the retirement benefits are not provided in the form of a monthly pension but as a lump sum; and added to the fact that the benefits can be easily depleted as they are provided for the duration of the workers' period of employment (normally a renewable contract of between 12-24 months) .

7.13. Differences in national banking systems

¹⁹² Section 36A(1) of ODMWA states that the owner of a controlled mine or a controlled works shall from the date of commencement of a compensatable disease pay the legitimate and proven cost incurred by or on behalf of a person in his or her service, or who was in his or her service at the commencement of a compensatable disease, in respect of medical aid necessitated by such disease. In terms of section 36A(2), if, in the opinion of the Commissioner, further medical aid in addition to that referred to in subsection (1) will reduce the disease from which the person is suffering, he or she may pay the cost in respect of such further aid or direct the owner to pay it.

¹⁹³ Roberts J *The Hidden Epidemic Amongst Former Miners: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape, South Africa* (Health Systems Trust (June 2009)) 15.

¹⁹⁴ TEBA “Products and Services – Mineworker benefits – Provident Funds” – accessed at www.teba.co.za (9 July 2013).

¹⁹⁵ Fultz E and Pieris B *The Social Protection for Migrant Workers in South Africa* (ILO/SAMAT, Harare, 1997) 8.

The inability of fund managers to transmit social security benefits to former migrant mine workers once they have left South Africa has further been blamed on the absence of a cohesive banking system across the SADC region. According to the ILO:

“...it's a sophisticated South Africa and unsophisticated neighbouring countries in terms of their financial systems. You can't link the two. If the individual doesn't get the money [when they leave], it's difficult to get it at a later stage.”¹⁹⁶

He also said that a lack of understanding on the part of the recipients about what channels they can use to retrieve their benefits is also contributing to the problem. This is because they are not financially literate, such that even after 30 years of work they are not aware of how to access social security benefits or it is too much trouble for them.¹⁹⁷

7.14. Weak SADC regional framework for occupational injury and disease protection

The regulation of occupational injury and disease protection for migrant mine workers in South Africa in particular and social protection for non-citizens in general is affected by the weak regional framework for such protection in SADC. Some of SADC's objectives are to promote sustainable and equitable economic growth and socio-economic development;¹⁹⁸ to alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa and support the socially disadvantaged through SADC regional integration; and to develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States.¹⁹⁹ SADC has also developed instruments geared towards the promotion of adequate social protection in the region, such as Charter of Fundamental Social Rights; Code of Conduct on HIV/AIDS and Employment in the SADC; Code on Social Security in SADC; and instruments dealing with issues such as occupational health and safety.

The provisions of the SADC Treaty and social protection instruments social protection instruments are to be implemented while taking into account a number of principles, including variable geometry.²⁰⁰ However, SADC member states have been either unable or unwilling to realise SADC regional policies, also in relation to the protection of non-citizens.

Despite recognising the economic importance of mineworkers in the region, the high rate of occupational diseases in the mining industry and the driving factors, the impact of mine work on the health and welfare of the mineworkers, and the challenges experienced by mineworkers and ex-miners, their families and communities (poor or no access to basic

¹⁹⁶ Vic van Vuuren (Regional Director for the International Labour Office in Southern Africa) as quoted in Jansson E “Migrant workers owed billions in 'unclaimed' social security funds” in the Mail & Guardian Newspaper of 22 February 2013.

¹⁹⁷ Vic van Vuuren (Regional Director for the International Labour Office in Southern Africa) as quoted in Jansson E “Migrant workers owed billions in 'unclaimed' social security funds” in the Mail & Guardian Newspaper of 22 February 2013.

¹⁹⁸ Article 5(1) of the SADC Treaty states that some of organisation's objectives are (amongst others) to promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration.

¹⁹⁹ Article 5(2)(d) of the SADC Treaty.

²⁰⁰ Variable geometry implies that the implementation of SADC policies will vary between member states as it depends on the capacity of each state to realise the objectives.

health and social services, absence of effective cross-border medical referral systems, non-harmonised treatment regimes, inadequate or no legal frameworks to protect the rights mineworkers, ex-mineworkers (including occupational disease compensation for TB; Silicosis and other occupational respiratory diseases; inadequate or no mechanisms for financial compensation of mineworkers and ex-mineworkers with TB, Silicosis and other occupational respiratory diseases; lack of or inadequate medical surveillance programmes and systems for post-employment follow-up; and lack of information among mineworkers, ex-mineworkers, employers, trade unions and government about their roles, rights and responsibilities);²⁰¹ SADC is yet to adopt a comprehensive regional framework relating to occupational injury and disease prevention and compensation. The Protocol on Mining and Declaration on Tuberculosis in the Mining Sector merely contain elements of this.

The Protocol on Mining states that SADC Member States are determined to ensure, through co-operation and collaboration, to develop the region's abundant mineral resources to improve the living standards for people throughout the SADC region. Article 2(1) contains one of the general principles of the Protocol and states that for purposes of the Protocol, Member States recognise that a thriving mining sector can contribute to economic development, alleviation of poverty and the improvement of the standard and quality of life throughout the region. Article 2(8) further determines that Member States shall ensure economic empowerment of the historically disadvantaged in the mining industry. Article 2(9) provides for the development and observation of internationally accepted standards of health, mining and environmental protection, while article 9 provides for improved practices and standards of occupational health and safety. No provision is however made for compensation as a social security mechanism where these practices and standards have not been properly applied.

In addition, the Declaration on Tuberculosis in the Mining Sector indicates SADC Member States' commitment to move towards a vision of zero new infections, zero stigma and discrimination, and zero deaths resulting from TB, HIV, Silicosis and other occupational respiratory diseases.²⁰² Member States have identified the strengthening of accountability, coordination and collaboration on these diseases in the mining sector at national and regional levels as priority areas requiring urgent attention and action; promoting a supportive policy and legislative environment for the control of these diseases in the mining sector; strengthening programmatic interventions for the diseases; strengthening disease surveillance systems for them; strengthening programme monitoring and evaluation; and strengthening financing of interventions in the mines.²⁰³

7.15. Limited application of international standards relevant countries

International standards are influential in the development of a legal framework of social security (including social security for non-citizens). South Africa has not ratified the main social security conventions, including conventions relating to migrant workers. South

²⁰¹ See Preamble of the SADC Declaration on Tuberculosis in the Mining Sector (signed in Maputo, Mozambique on 18 August 2012).

²⁰² Section 2 of the SADC Declaration on Tuberculosis in the Mining Sector (signed in Maputo, Mozambique on 18 August 2012).

²⁰³ Section 3 of the SADC Declaration on Tuberculosis in the Mining Sector (signed in Maputo, Mozambique on 18 August 2012).

Africa's social security system is therefore negatively impacted by the limited influence of international standards (especially ILO and UN conventions) in this area. ILO and UN conventions provide social security standards applicable to everyone. In addition, various conventions deal with social security for migrant workers.²⁰⁴ The Conventions on migrant labour call for equality of treatment, that is, for migrants to be subject to the same eligibility rules and receive the same levels of employment injury compensation as the national workforce. They also call for reciprocal agreements among governments to ensure that migrants can receive compensation either at home or abroad.

²⁰⁴ These include the following ILO conventions - the Migration for Employment Convention 97 of 1949; the Equality of Treatment of Nationals and Non-nationals under Social Security Convention 118 of 1962; the Establishment of an International System for the Maintenance of Rights in Social Security Convention 157 of 1982; the Social Security for Seafarers (Revised) Convention 165 of 1987; the Safety and Health in Construction Convention 167 of 1988; and the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.

8. Social, Economic and Health Impact of Lack of Social Security Benefits

The inability of former migrant mine workers and/or their dependants to receive social security benefits has adverse economic, social and health consequences on large numbers of persons and communities. This is in addition to the economic and social impact their departure to work in South African mines has had on these communities. According to the Swazi Government, the non-payment of social security benefits to former mineworkers and/or their survivors has adverse consequences for 250 000 Swazis (a quarter of the country's population).²⁰⁵

The suffering of (former) mine workers is affected by their socio-economic conditions and that of their areas of origin. Commenting on the impact of mine closures on the livelihood of workers, the NUM says remarked about. It stated that:

*"...when there were operational changes workers would consequentially be retrenched, effectively dumped into destitution. Whatever they will be given would not be sustainable given their literacy and numeracy levels. They were deficient in managing money and so on for a long term because of lack of necessary skills. They would not be employed anywhere because they had no alternative training. Eventually remaining unproductive and joining the long queues of the unemployed."*²⁰⁶

I am a Mosotho women [who was] married to Mr. Thabo Makoa who started working at the mines 1978 to 2010 at Styen mine and also Welkom mine. We have four children. Before the death of my husband, he had TB, he had to pay for his medical bills and it was very difficult to survive under the condition of not getting his TB compensation. After his death things started to go very wrong because some of my children were not able to go to school especially the one who had to go to tertiary level. As the widow who is un employed I am not able to pay for all these things that need money ... basic needs is also another problem for my family. Some of my children are not working even though they are married. The reason being that I did not manage to pay for their tertiary level fees. Life for me is very difficult to help other children.

Mabafokeng Makoa (Lesotho)

In addition, mineworkers who are medically retired due to an illness or a disability or who are retrenched from the mines return home to remote rural areas where resources and care are limited.²⁰⁷ This is because:

²⁰⁵ Keynote Address by LuftoDlamini (Minister of Labour and Social Security) at the Swaziland National Dialogue on Portability of Social Benefits *"Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries"* Manzini, 30-31 July 2013.

²⁰⁶ Fafuli M "A rage from the bottom: The Role of NUM in Transforming the Mining Industry in SA" Paper presented at *International Mining History Conference* held at Gold Reef City, Johannesburg (17-20 April 2012) 11.

²⁰⁷ International Organization for Migration *Regional Assessment on HIV-prevention Needs of Migrants and Mobile Populations in Southern Africa: Mining Sector Report* (February 2010) 12.

“...many rural communities in southern Africa send large numbers of men to the mines and rely on remittances for survival. These impoverished communities are often in isolated and inaccessible places, with low levels of education, poor health facilities and little or no social support”²⁰⁸

The example is given of the labour-sending rural communities of Hhohho region, in western Swaziland, where migrants and their spouses lack access to healthcare facilities; and of Jubukweni which is not easily accessible.²⁰⁹

Rantso Mantsi has said in a country such as Lesotho where the majority of those living in rural areas are subsistence farmers, not receiving an insurance pay-out can often mean the difference between survival and starvation.²¹⁰ He remarked that:

“...the people are dying horribly in the villages because of hunger ... This man went to the mines as a young boy. When he is old, he is retrenched without good packages or interviews about what to do when he is home. He is helpless because he does not know how to think for himself.”²¹¹

He continued that mineworkers often face the effects of HIV/AIDSs and starvation; “and when they don't have anything to eat, with this HIV in their body, they die.”

“I was born in 1944 and I am living at Ha Fusi Berea, I started working at Buffelfontein in 1962 and ended at Sasolburg 1994. I have five children, three have their own families but they did not go to school because I was not able to pay for their tertiary [school] fees. ...they are not working because they lack technical skills, two are still at home not working not attending school because I do not have money to take them to school, since I came from the mines my children we not able to attend school. I am not working at the moment because of the age and the TB I have. I am not able to get a job at any place because of my sickness. In order for me to have bread on the table I have [to] plough at the fields and sell some of the products.”

Mokhobo Lefanyane (Lesotho)

The plight of migrants from Lesotho, Mozambique and Swaziland as a result of the failure to provide social security benefits is worsened by South Africa's poor occupational health and safety record, especially in the mining context. The Department of Health estimates that the TB incidence rates on gold mines are probably the highest in the world. It states that:

“...the mining community has long been associated with an exceptionally high prevalence of various lung diseases. TB rates, in particular, are very high partly as a result of the high prevalence of silicosis resulting from prolonged exposure to silica dust in mine shafts – especially on gold mines. High rates of HIV transmission and confined, humid, poorly ventilated working and living conditions further increase the risk of TB among mine workers.”²¹²

A recent of survey of former mine workers reveals that of the estimated 1 million people who have left the South African mining industry between 1986 and 2006, 48.2 per cent left due to

²⁰⁸ *Ibid* 12 and 16.

²⁰⁹ *Ibid*.

²¹⁰ Jansson E “Migrant workers owed billions in 'unclaimed' social security funds” in the Mail & Guardian Newspaper of 22 Feb 2013.

²¹¹ *Ibid*.

²¹² Department of Health *Tuberculosis Strategic Plan for South Africa 2007 – 2011* (2007).

retrenchments, while illness and injury accounted for 21.9 per cent, and 5.8 per cent, respectively. Those who left employment at the normal retirement age were only 6.3 per cent, while 17.5 per cent left the mines voluntarily.²¹³ Worse still, many of the former mine workers may not have been diagnosed as suffering from the disease at the time they left the industry or later, in retirement.

The burden of disease on South African mines has also had an impact on neighbouring countries due to the migrant labour system. Studies in 2008 indicated a heavy burden of silicosis, tuberculosis and chronic obstructive pulmonary disease in former Basotho gold miners. The prevalence rates were silicosis 24.6 per cent, past tuberculosis 26 per cent, current tuberculosis 6.2 per cent, airflow obstruction 13.4 per cent and chronic productive cough 17.7 per cent. Almost 50 per cent of these miners had at least one of these respiratory conditions.²¹⁴

I am living at Ha-Tsolo. My husband was born on 1962 and he died in 2010. I have three children. Two are still at high school level. The other one is supposed to be at tertiary level so I could not send her to school due to the fact that I have no income. I am not working. My husband before he died he was suffering from TB. He started working at Vaal Reefs from 1990 to 2004. After the death of the husband I was not given any benefits from the mines he worked at. The three children are under my control and their daily expenses are covered by me, especially their school fees and general items that are needed. For me to be able to pay for their fees I always have to ask help from money lenders and that money it has huge interest and also from friends.

Manthabiseng Shabole, widow of Mohlalefi Shabole (Lesotho).

The Government of Lesotho has highlighted the problems they currently faced in assisting ex-miners workers. During the Lesotho National Dialogue on Portability and Access of Social Benefits for Ex-Mine Workers, representatives from the Ministries of Foreign Affairs, Health and Labour announced that more and more TB cases are being recorded in Lesotho and South Africa's other neighbouring countries due to the high TB prevalence in South African Mines.²¹⁵ She said it is for this reason that SADC issued a directive that a technical working group be formed to develop the Declaration on TB in the Mines.

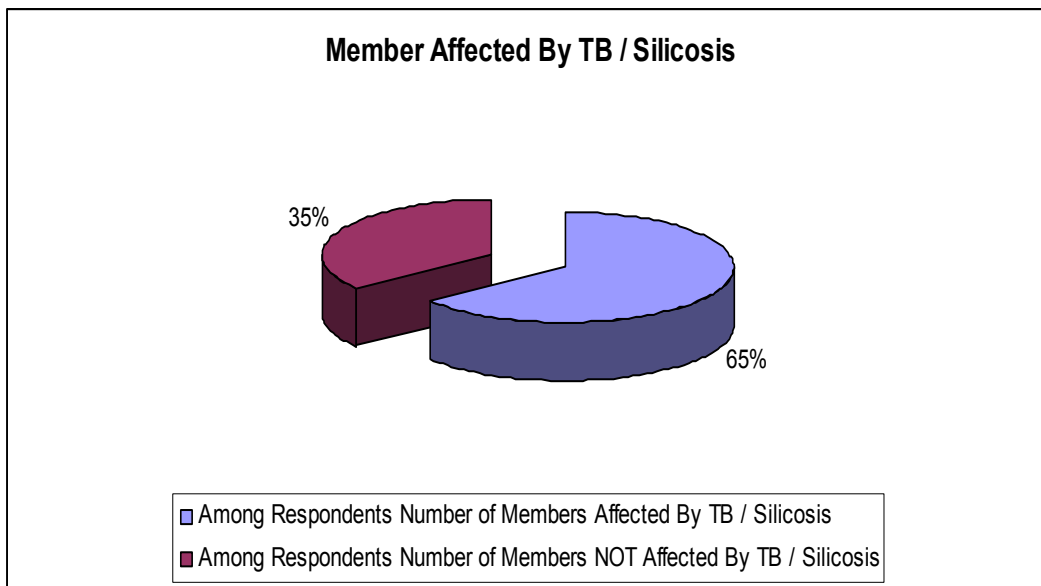
Prevalence of TB and Silicosis among ex-miners in Lesotho:²¹⁶

²¹³ Roberts J *The Hidden Epidemic Amongst Former Miners: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape, South Africa* Health Systems Trust (June 2009) 87.

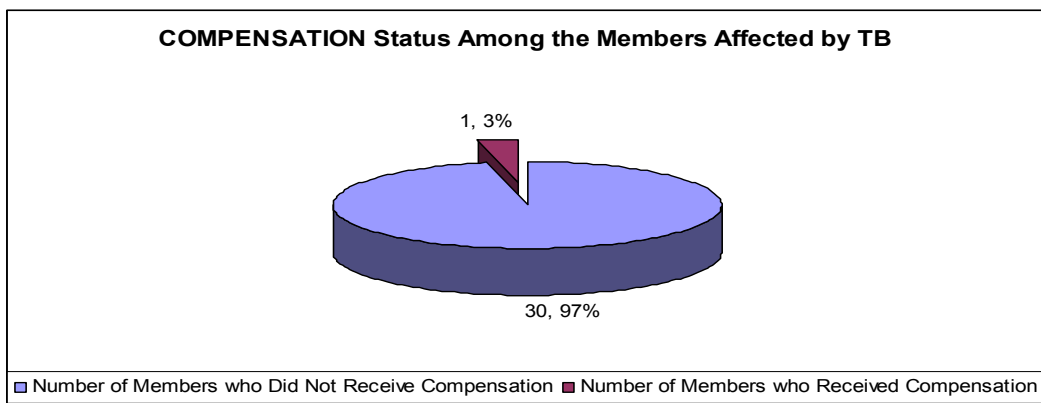
²¹⁴ See, for example, ARASA *The Mining Sector, Tuberculosis and Migrant Labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008) 2; and Girdler-Brown BV, White NW, Ehrlich RI and Churchyard GJ "The Burden of Silicosis, Pulmonary Tuberculosis and COPD Among Former Basotho Goldminers" (2008) 51 *American Journal of Industrial Medicine* 640-647. These also reveal that Lesotho has the fourth highest TB incidence rate in the world, with tuberculosis being responsible for 15 per cent of all deaths in the country. Close to 40 per cent of adult male TB patients in three of Maseru's main hospitals were working, or had formerly worked, on South African mines. In addition, at least 25 per cent of the drug-resistant TB cases treated in Lesotho since August 2007 had a history of mines work or were referred directly from mines in South Africa.

²¹⁵ Presentation by Dr Maama (Representative of the Ministry of Health) Lesotho National Dialogue on Portability and Access of Social Benefits for Ex-Mine Workers, Victoria Hotel, Maseru, 5th September 2013.

²¹⁶ Ex-miners Association of the Mountain Kingdom of Lesotho *Report on Sample Study on Ex-miners Members and their Families*(Report to the Southern Africa Trust)(September 2013) 5.



Compensation status of Lesotho ex-miners affected by TB:²¹⁷



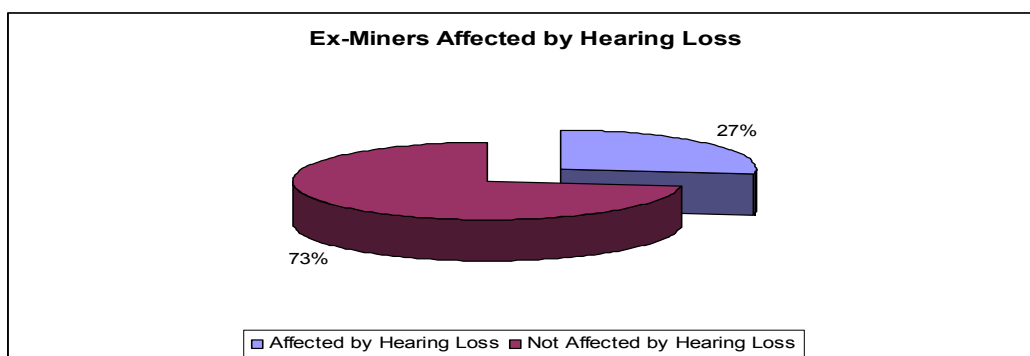
According to the Lesotho Country Case Study Report, “it is a startling revelation that even though 90% of those affected by TB have Certificates to prove that they have been infected by TB / Silicosis, still over 97% of those affected respondents mentioned that they have never been compensated”.²¹⁸

Lesotho ex-miners affected by hearing loss:²¹⁹

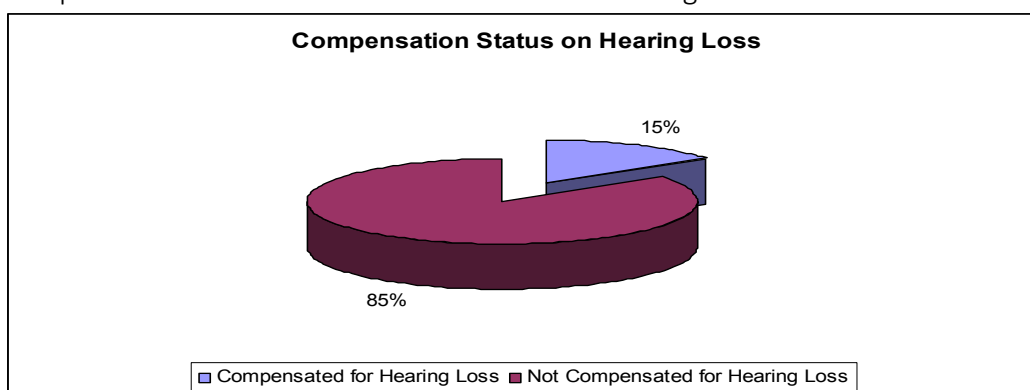
²¹⁷ Ex-miners Association of the Mountain Kingdom of Lesotho *Report on Sample Study on Ex-miners Members and their Families*(Report to the Southern Africa Trust) (September 2013) 5.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*



Compensation status of Lesotho ex-miners for hearing loss:²²⁰



It is a similar situation in the other neighbouring countries, as is the case in Botswana where it has been stated that:

“Former miners in Botswana have a high prevalence of previously unrecognised pneumoconiosis [an occupational lung disease]...because they had no access to surveillance after employment... failure to act on results when employed or when leaving employment at the mines could have contributed Community based studies of former miners are essential to fully evaluate the effects of mining exposures. Our findings indicate a failure of established measures to prevent or identify pneumoconiosis while these miners were in employment and show that few of the social costs of occupational lung diseases are borne by mining companies through the compensation system.”²²¹

The very high prevalence of silicosis, tuberculosis and chronic obstructive pulmonary disease is considered a:

“...huge burden of morbidity and health care need. Access to diagnostic treatment and compensation services is known to be poor in many labour[u]r sending communities, compounding the serious health and economic consequences of lung disease for former miners, their families and communities.”²²²

Despite the high rate of disablement and deaths in the mining sector, occupational injury and illness is not adequately compensated also due to under-recognition and under-detection of occupational illnesses on mines.²²³

²²⁰ *Ibid*6.

²²¹ Steen T *et al* “Prevalence of occupational lung disease among Botswana men formerly employed in the South African mining industry” (1997) 54 *Occupational and Environmental Medicine* 19-26.

²²² Girdler-Brown BV, White NW, Ehrlich RI and Churchyard GJ “The Burden of Silicosis, Pulmonary Tuberculosis and COPD among Former Basotho Goldminers” (2008) 51 *American Journal of Industrial Medicine* 646.

"I was born in 1944 and I am living at Ha Fusi Berea, I started working at Buffelfontein in 1962 and ended at Sasolburg 1994. I have five children, three have their own families but they did not go to school because I was not able to pay for their tertiary [school] fees. ...they are not working because they lack technical skills, two are still at home not working not attending school because I do not have money to take them to school, since I came from the mines my children we not able to attend school. I am not working at the moment because of the age and the TB I have. I am not able to get a job at any place because of my sickness. In order for me to have bread on the table I have [to] plough at the fields and sell some of the products."

Mokhobo Lefanyane (Lesotho)

Mabsia Molaoli of Ha Lenononyane faces an uphill battle in claiming survivors' benefits. Her husband worked at the Hartbeesfontein between 1980 and 1998 when he was retrenched. Upon retrenchment, he received R14 000 in Mineworker Provident Fund benefits. He was diagnosed with TB within six months of returning home after termination at Hartbeesfontein Mine. He was informed that his disease is occupational-related. He returned to the Mine with the TB diagnosis to apply for occupational disease benefits, he was asked to come back in a year since he was on medication. He never went back to Hartbeesfontein Mine as he had 'recovered' and was running a business back at home. However, in 2007 he came back to South Africa to work as a contract worker in the Tsepong Mine in Welkom. Her husband died of TB in 2008. Diagnosed with TB and admitted at Harry Oppenheimer Hospital where he died. Although she used her savings to repatriate her husband's corpse, she never received benefits for his occupational disease. She even went to the mine but was told that she is not entitled to any benefits as her husband was still on probation. She was informed that this was according to the agreement between her husband and his employer (i.e. his employment as a contractor).

It has been noted that, "relatively little is known of the burden of lung disease among former miners owing to a lack of surveillance and poor access to health services."²²⁴ Since some occupational diseases are only detected after the end of employment and when a migrant mine worker has returned home (in some cases it may be up to 20 years between exposure to risk factors on mines and detectable occupational lung disease in mine workers)the burden of ill-health falls on the rural households and public health systems of home countries.²²⁵ Incidence of Accident in Mines amongst Lesotho ex-miners:²²⁶

²²³ Kanyenze G "African migrant labour situation in Southern Africa" Paper presented at the ICFTU-Afro Conference on 'migrant labour' Nairobi (15-17 March 2004) 17.

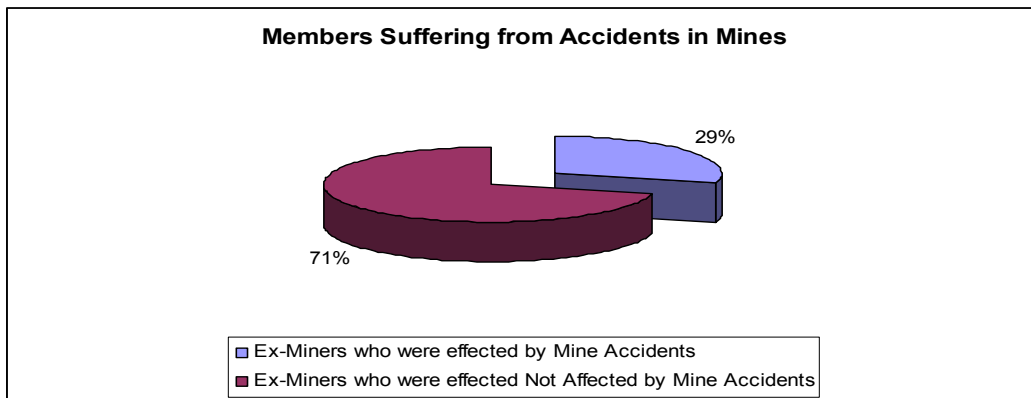
²²⁴ Girdler-Brown BV, White NW, Ehrlich RI and Churchyard GJ "The Burden of Silicosis, Pulmonary Tuberculosis and COPD among Former Basotho Goldminers" (2008) 51 *American Journal of Industrial Medicine* 640.

²²⁵ Kanyenze G "African migrant labour situation in Southern Africa" Paper presented at the ICFTU-Afro Conference on 'migrant labour' Nairobi (15-17 March 2004) 17.

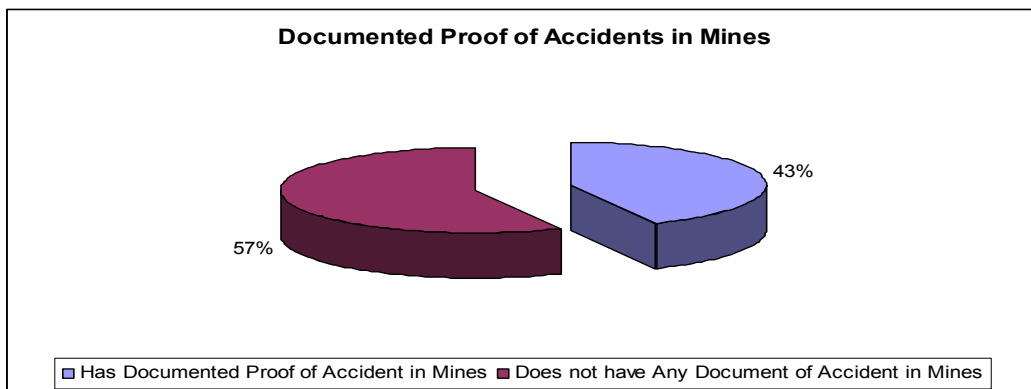
²²⁶ Ex-miners Association of the Mountain Kingdom of Lesotho *Report on Sample Study on Ex-miners Members and their Families*(Report to the Southern Africa Trust)(September 2013) 7.

"I am a Mosotho man who is born in 1957 who lives at Ha-Tsolo, I have four children, one is married the other three are still living with me at home with my wife too. We are both not working at the moment. ... the other thing is I also have TB since I came home from the mine. I have to pay for my medical bills as I am the person who is sick. At the moment my three children are not attending school because I cannot manage to pay for their school fees and life is very difficult for my children. Honesty I cannot let my children[’s] future drown because of the money that is not paid to me by the mine that I have worked at. Now for my family to [put] bread on a table is very stressful for me as the head of the family. I have to go around asking money from different people, even money lender."

Shabanq Letsie (Lesotho).



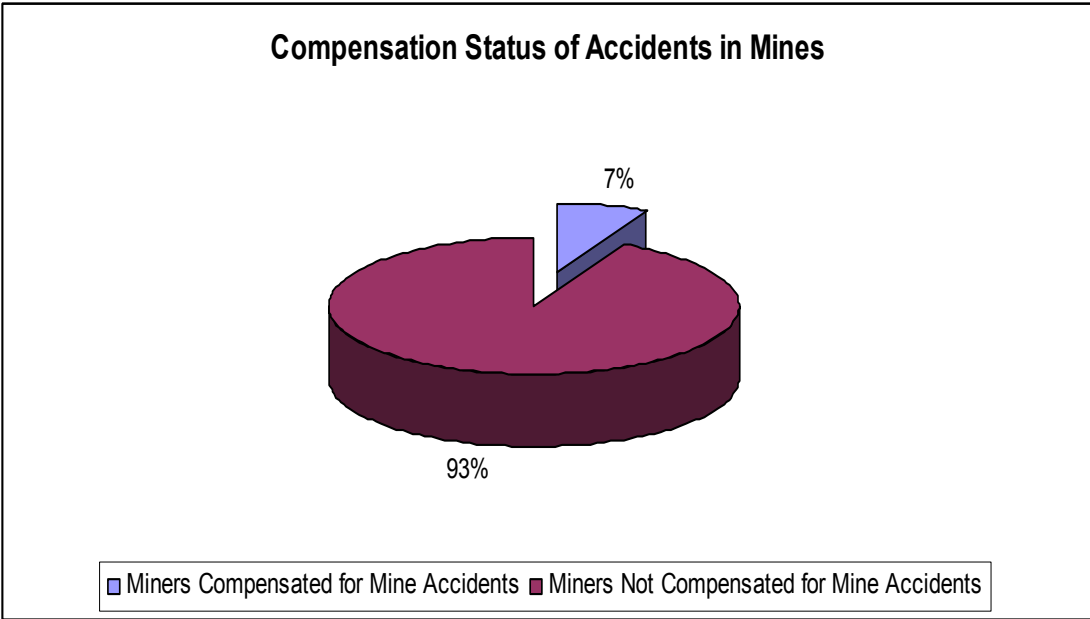
Lesotho ex-miners with documented proof of being affected by accidents in mines:²²⁷



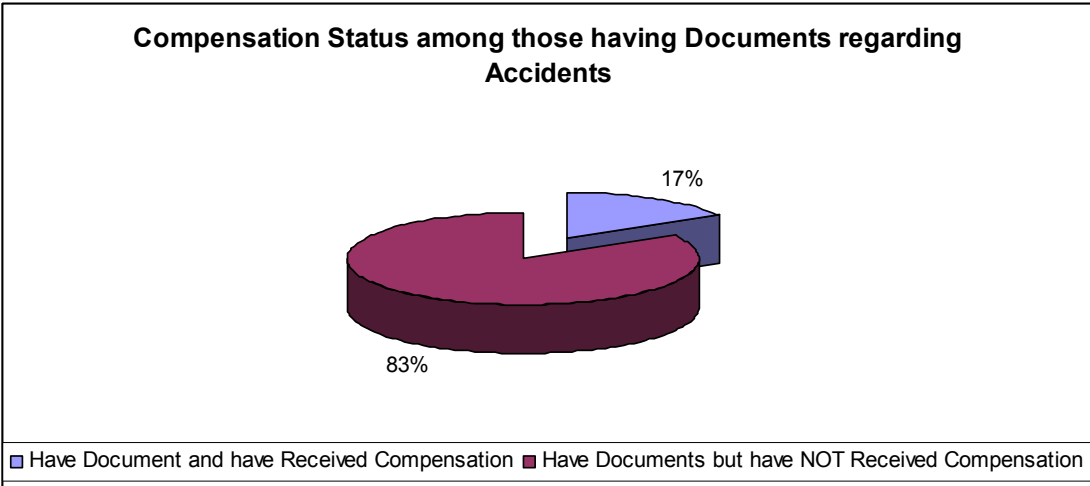
Compensation status of Lesotho ex-miners for accident in mines:²²⁸

²²⁷ Ex-miners Association of the Mountain Kingdom of Lesotho *Report on Sample Study on Ex-miners Members and their Families*(Report to the Southern Africa Trust)(September 2013) 7.

²²⁸ *Ibid*7.



Compensation Status of Lesotho ex-Miners with documentation regarding accidents in mines:²²⁹



²²⁹ *Ibid.*

9. Initiatives Assisting Former Migrant Mine Workers (Also In Accessing South African Social Security Benefits)

9.1. Mineworkers Provident Fund

The Mineworkers Provident Fund conducts yearly road shows to bring services to its members. Road shows for 2013 have been held in Botswana and Swaziland.²³⁰ During a period of two weeks, the Fund was able to reach a total of 6 000 people in Botswana. In Swaziland, although the Fund expected 1205 persons to attend, 1 230 persons turned up. Out of this total, 720 were due benefits (and 810 with no benefits outstanding). The Fund was able to finalise payment to 78 ex-miners or survivors, with 642 beneficiaries still with outstanding documentation. The Fund entered into an agreement with TEBA for its offices in Swaziland to collect the outstanding documents from ex-miners or their survivors for transmission to Johannesburg.²³¹

According to the Fund, road shows present it with an opportunity to understand the plight of ex-miners and their dependants in their areas of residence.²³² It also enables the involvement of government departments (especially departments of labour) and other relevant organisations in the compensation of former mine workers and/or their dependants. The Fund is thus able to organise pre-meetings and sign partnership agreements with these departments and organisations.²³³ Road shows further give the Fund easy access to platforms for dissemination of information about the compensation of former mine workers in the respective countries (such as local radio stations).²³⁴

One of the challenges faced by the Fund is the slow pace of reception of outstanding documentation for the finalisation of payments.²³⁵ In addition, beneficiaries' names in the Fund's database do not correspond with the names provided in their banking details. The Fund also faces a challenge in relation to beneficiaries with dual South African and Swazi citizenship. When of a former mineworker with dual citizenship passes away in Swaziland, South Africa's Department of Home Affairs is not informed, such that the former mineworker is not considered to be deceased. The ex-miner's dependants are thus unable to apply for survivors' benefits.²³⁶

In order to facilitate the payment of benefits to former mine workers or their survivors in Swaziland, the Fund has established relationships with relevant stakeholders (Department of Labour and Social Security, TEBA, SWAMIWA, SNEMA, Fairheads Trust etc.) to determine the

²³⁰ Mkhusele Mbomvu (CEO of the Mineworkers Provident Fund) Presentation at the Swaziland National Dialogue on Portability of Social Benefits "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries" (Manzini, 30-31 July 2013).

²³¹ *Ibid.*

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ *Ibid.*

²³⁶ *Ibid.*

most appropriate process.²³⁷ The Fund has also teamed up with other South African funds and relevant stakeholders (Mines 1970s Provident Fund, Sentinel Mining Industry Retirement Fund, Chamber of Mines, National Union of Mineworkers etc.) to share information on lapsed beneficiaries.²³⁸

9.2. Chamber of Mines

The Chamber of Mines of South Africa is a mining employers' organisation which exists to serve its members and promote their interests in the South African mining industry. It provides strategic support and advisory input to its members. It facilitates interaction among mine employers to examine policy issues and other matters of mutual concern to define desirable industry-level stances.²³⁹ A key activity is the Chamber's representation of the formalised policy position of its membership to various organs of South Africa's national and provincial governments, and to other relevant policy-making and opinion forming entities within the country and internationally. The Chamber operates in areas that include mine health and safety, sustainable development, skills development, legal issues, environmental management, economics, labour relations and communications.²⁴⁰

In relation to the social security position of (former) mineworkers, the Chamber is involved in various ways. In the first instance, as an organisation representing mining companies, the Chamber nominates trustees to the boards of various mining industry retirement funds (funds to which its members are contributors).²⁴¹

As a joint sponsor of the Mineworkers Provident Fund (with the NUM), the Chamber is also involved in promoting the proper administration of the Fund. An investigation into the administration of the Fund on the instruction of the Chamber and the NUM recommended that the Fund should consider the separation of the unclaimed benefits into a separate fund and to outsource this (unclaimed benefits) fund to a specialist service provider. This is to provide specific focus and drive in clearing the backlog of claims in an agreed timeframe based on agreed performance criteria.²⁴² In 2010, the Chamber also assisted the Fund with its initiatives to clear the large claims backlog.²⁴³

In addition, the Chamber, with the boards of trustees and administrators of the mining industry funds, continues to engage with government, trade unions, industry forums and local communities to identify beneficiaries and distribute unclaimed benefits to those who qualify (amongst others).²⁴⁴

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ Chamber of Mines "About the Chamber" – accessed at [http://www.bullion.org.za/content/?pagename=About &pid=4](http://www.bullion.org.za/content/?pagename=About&pid=4) (17 July 2013).

²⁴⁰ *Ibid.*

²⁴¹ In addition to the Mineworkers Provident Fund and the Mines 1970s Pension and Provident Funds, the Chamber nominates trustees to the boards of various other mining industry retirement funds, including the Sentinel Mining Industry Retirement Fund, Mine Employees' Pension Fund and the Chamber of Mines Retirement Fund. See Chamber of Mines of South Africa *Annual Report 2009–2010* 120.

²⁴² Chamber of Mines of South Africa *Labour Policy Digest* (December 2010) 4-5.

²⁴³ Chamber of Mines of South Africa *Annual Report 2011* 66.

²⁴⁴ Chamber of Mines of South Africa *Annual Report 2009–2010* 120.

9.3. Mines 1970s Pension and Provident Funds

The Mines 1970s Pension and Provident Funds have made various efforts in tracing lapsed members. These include the use of tracing agents (including TEBA, trade unions and private organisations); writing of letters and visits to mines; visits to mining communities; use of community centres; the use of Community Radio Stations and word of mouth (hopefully in the mining areas and migrant labour-sending regions); matching the member lists of the Fund with those of the Mineworkers Provident Fund, the Mine Employees' Pension Fund and the Sentinel Mining Industry Retirement Fund; making contact with industry hospitals to ascertain whether members of the Fund had been admitted as patients in the recent past so that contact could be made with them (or their dependants); placing advertisements in major newspapers (e.g. Daily Sun on 31/03/2005, Sowetan on 31/03/2005, Sunday Times on 03/04/2005, Sowetan on 05/04/2005, Daily Sun on 05/04/2005, Times of Swaziland on 26/08/2005, Lesotho Today from 8-14/8/2005 and Notices (Mozambique) on 26/08/2005) and publication of a list of untraced members on the FSB website.²⁴⁵

The Mines 1970s Pension and Provident Funds were converted to unclaimed benefits funds in 2009 because none of the funds has active members. The Chamber of Mines, which administers the funds, is currently continuing with tracing initiatives in a bid to find and pay members and beneficiaries the unclaimed benefits and surpluses due to them, both in South Africa and its neighbouring countries (i.e. Lesotho, Malawi, Mozambique and Swaziland). A new tracing agreement was entered into in 2012 and new tracing agents appointed to find members to whom unclaimed benefits and surpluses are owed. The funds' trustees are hopeful that these initiatives will yield better results and more beneficiaries will be traced.²⁴⁶

9.4. South African Government

The South African Government's initiatives in assisting former mine workers from neighbouring countries to receive their social security benefits has been through the Department of Health (under which the Compensation Commissioner for Occupational Diseases falls) and the Department of Labour (responsible for the Compensation Fund).

The Compensation Fund has signed an agreement with Rand Mutual to extend its mobile clinics and the prosthetic programme to pensioners of the Compensation Fund living outside the borders of South Africa. This will ensure the provision of quality care to Compensation Fund beneficiaries.²⁴⁷

A Memorandum of Understanding signed by Lesotho and South Africa provides for the exchange of information and cooperation between the Compensation Fund and Lesotho's Office of the Labour Commissioner in processing and finalising outstanding claims of former

²⁴⁵ See *Report from the Mines 1970's Provident Fund to the Ad Hoc Parliamentary Committee on Matters Related to Ex-mineworkers* (15 February 2008).

²⁴⁶ See Chamber of Mines of South Africa Annual Report 2009 – 2010 at 120, Chamber of Mines of South Africa Annual Report 2011 at 66 and Chamber of Mines of South Africa *Annual Report 2012* at 53.

²⁴⁷ Rand Mutual Assurance Company Limited *Annual Report 2012* 50.

mine workers from Lesotho.²⁴⁸ The Department of Health is investigating the possibility of undertaking medical assessments for occupational injuries and diseases in terms of ODMWA in Lesotho.²⁴⁹

Parliament and the Eastern Cape Provincial Government have also made efforts to facilitate the provision of benefits to former South African mine workers. Parliament established an Ad Hoc Committee between 2007 and 2008 to facilitate the payment of social security benefits to members of the Ex- mineworkers Union in the Eastern Cape. The Ad Hoc Committee received submissions from the Office of the Speaker of Parliament, the Ex Mine Workers Union, the Eastern Cape Department of Health, the Eastern Cape Premier's Office, the Department of Labour, the Chamber of Mines, the National Union of Mine Workers, the Mine Workers' Provident Fund, the Mines 1970s Provident Fund, TEBA and Fidentia Curators.²⁵⁰

The Committee was of the view that if the relevant information on unclaimed benefits and missing beneficiaries was gathered, beneficiaries could be traced and compensated. The Committee recommended that a joint departmental ad hoc committee should be set up to process its findings and make recommendations; and that the available money should be taken and invested in the communities from where ex-miners had come.²⁵¹

In August 2002, the Premier established a Task Team to facilitate cooperation between various government agencies (provincial and national) in resolving the issue of outstanding benefits.²⁵² The Task Team was composed of Office of the Premier, National and Provincial Departments of Health, Compensation Commission for Occupational Diseases, Chamber of Mines, Department of Labour, Ex-mineworker's Representatives, House of Traditional Leaders and the National Union of Mine Workers.

The task team compiled database of beneficiaries and developed an implementation strategy to ensure that all possible beneficiaries were reached. In order to achieve these tasks the following action was undertaken:²⁵³

- Central to this exercise was to compile a database of all beneficiaries. As a result, an extensive research at the Department of Health (CCOD) archives was conducted and a verified list of 18 563 beneficiaries was compiled according to magisterial towns and cities;
- The list was printed and published in all areas where the beneficiaries were last known to be residing. Occupational health and safety coordinators in hospitals received the lists

²⁴⁸ See article 3(5) of the Memorandum of Understanding between The Government of the Kingdom of Lesotho through its Ministry of Employment and Labour and The Government of the Republic of South Africa through its Department of Labour on Cooperation in the Field of Labour (signed in Maseru on 30 October 2006).

²⁴⁹ Olivier M "Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (Part I)" (2011) 1 *SADC Law Journal* 121 at 133.

²⁵⁰ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Final Committee Report on Ex-Mineworkers: Consideration* (18 March 2008).

²⁵¹ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Final Committee Report on Ex-Mineworkers: consideration* (18 March 2008).

²⁵² See Eastern Cape Department of Health *et al* Report to Ad Hoc Committee on Matters Related to Ex-mineworkers union (29 February 2008) 1.

²⁵³ *Ibid* 2.

from the provincial office and posted them in areas accessible to the public (e.g. out-hospital patient departments/ casualty wards, municipal offices, banks etc.;

- Posters with names of eligible claimants were posted at several public service delivery points for people to check their names and prepare the necessary documentation as directed in the posters;
- An approval for the equitable share of the R54 million amongst the beneficiaries was sought and granted by the Minister of Health;and
- Standard Bank was identified as a social partner in the project and they agreed to make their services available during the pay-out period, especially with regards to electronic payment and infrastructure. Staff of the Compensation Commission for Occupational Diseases was stationed at various branches to process the applications. The application forms were then sent to CCOD for approval and payment of benefits to deserving.

In implementing the plan, the various migrant-sending areas were divided into three blocks with a month spent in each block. In addition, the communication section of the Office of the Premier embarked on a vigorous publicity drive through print (Daily Dispatch, EP Herald) and electronic media (UmhloboWeneneandUnitra Community Radio). In addition:²⁵⁴

- A questionnaire was developed by the occupational health and safety unit and MBOD in order to assess institution's readiness in implementing the ex-mine worker's programme effectively;
- Work stations to be used for tracing ex-mine workers were identified in consultations with mine worker's representatives;
- Occupational health and safety coordinators were trained by MBOD on the processing of claims for compensation of ex-mine workers according to Mine Health and Safety Act and ODMWA; and
- Space was requested at institutions to accommodate CCOD staff to process claims at institutions geographically accessible to ex-mine worker's places of residence, assisted by Occupational Health and Safety.

The project also ensured routine medical benefit examinations as occupational health and safety coordinators in the Eastern Cape were trained by the MBOD. The procedure was such that mine workers went to institutions that were geographically accessible to them; the occupational health and safety coordinator filled in the relevant form(s) and took the ex-miner for a chest x-ray; the medical practitioner performed a physical examination; and the form(s) together with the x-ray were then sent by the institution concerned to MBOD.²⁵⁵

9.5. Government of Lesotho

The Government of Lesotho has announced that it has held national consultative meetings to discuss issues of TB surveillance, hospital referrals and to provide information on accessing social security benefits. However, she said there was a need to collate information on the number of ex-miners in Lesotho; and for collaboration in assisting ex-mine

²⁵⁴ *Ibid* 3.

²⁵⁵ *Ibid*.

workers/dependants in accessing benefits. Lesotho currently faces the lack of pathologists (with only one pathologist for the whole country). This creates a backlog in the diagnosis of TB, silicosis and other lung diseases affecting ex-miners. The problem experienced in the diagnosis of ex-miners is further aggravated by the lack of proper arrangements for the transfer of medical samples to South Africa for testing (absence of proper documentation and of the capacity for coordination).

9.6. Government of Swaziland

Since 2012, Swaziland government officials, together with representatives of SWAMIWA and SNEMA have visited South Africa for consultations with the Departments of Labour and Health, Chamber of Mines, Compensation Fund and other institutions administering social security for mineworkers.²⁵⁶This was to follow up on the delays in processing benefits for ex-mineworkers and their families.²⁵⁷

Swaziland is also currently negotiating a Memorandum of Understanding (MoU) and Joint Bilateral Agreement on Employment and Labour with South Africa. The proposed MoU will contain (amongst others) an Occupational Health and Workmen's Compensation Joint Bilateral Technical Cooperation Agreement. This agreement seeks to facilitate the access to social security benefits by migrants even after returning home, and without the need to travel back to South Africa.²⁵⁸According to the Ministry of Labour and Social Security: "the signing of the MOU on employment and labour and the three technical co-operation agreements on (i) labour migration, (ii) employment and employment benefits and (iii) workmen's compensation and occupational health benefits between South Africa and Swaziland will be a historic moment for many Swazis. It will go a long way in alleviating the difficulties in accessing and receiving employment and social benefits for migrant workers".²⁵⁹

9.7. National Union of Mineworkers

The National Union of Mineworkers is a trade union representing mineworkers (including mine workers from South Africa neighbours). However, as a trade union, NUM is only representing current (migrant) workers and not ex-miners. For example, when it was proposed that NUM should be able to ensure or inform their members that they were liable for benefits since it was represented throughout the country and should have a database

²⁵⁶ Swazi Observer "Countries to jointly tackle mineworkers' diseases – Lutfo" (25 July 2013) 19.

²⁵⁷ Ms ZodwaDlamini, Labour Officer at the Ministry of Labour and Social Security during a presentation at the Swaziland National Dialogue on Portability of Social Benefits "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries" Manzini, 30-31 July 2013.

²⁵⁸ Swazi Observer "Countries to jointly tackle mineworkers' diseases – Lutfo" (25 July 2013) 19.

²⁵⁹ Dr CleopasSibanda, Occupational Health Specialist, the Head of the Workmen's Compensation Unit, the Acting Head of the Department of Social Security, the Chairman of the National Social Security Technical Working Group, Ministry of Labour and Social Security during a presentation at the Swaziland National Dialogue on Portability of Social Benefits "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries" Manzini, 30-31 July 2013.

with all of its members NUM indicated that it did not want to get involved with ex-mineworkers, as they did not consider themselves representative of this group.²⁶⁰

Despite its refusal to represent and assist ex-miners directly, NUM is undertaking various initiatives aimed at supporting them (ex-miners).

NUM has also proposed the adoption of a 'Social Plan' by mining companies, trade unions, the Department of Labour, Regional Training Centres, and development agencies to examine options for counselling, retraining, severance pay, self-employment for retrenched workers, savings plans, and regional development strategies in the area the mine is located.²⁶¹

NUM has also established the JB Marks Education Trust Fund to create institutional support for access to primary education and tertiary opportunities for dependents of its members.²⁶² The Trust provides funding for dependents of South African and migrant workers in pursuing tertiary education.

NUM is further involved in a joint project launched in 2007 with the Chamber of Mines and the Department of Health to set up clinics with the sole purpose of providing medical examinations for mineworkers in migrant-sending areas.²⁶³ However, by 2011 only two clinics have opened, one in KwaZulu-Natal Province and one in Eastern Cape.²⁶⁴ The project also allocated R42 million in funding to the MBOD to help address delays in the payment of compensation. However, the funds have not been used because the Department of Health has not agreed what the funding should be used for.²⁶⁵

9.8. Rand Mutual Assurance Company Limited

In order to address the problem of incomplete and/or incorrect medical information, Rand Mutual has engaged with employers and medical service providers to explain the rationale behind the information requests so as to ensure that the reporting requirements are fully understood and supported. It has also undertaken regular engagements with medical personnel in this regard and documentation has been developed to assist with the reporting on the critical assessment elements.²⁶⁶

The interface between the medical department and the claims department has also been streamlined in order to ensure enhanced service delivery with the emphasis on the medical aspects of claims which have remained outstanding for periods in excess of three months. This is in recognition of the internal challenges and the need for enhanced communication

²⁶⁰ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Mineworker's Provident Fund and Mines 1970's Provident Fund briefings* (15 Feb 2008) – accessed at <http://www.pmg.org.za/report/20080215-mineworker%E2%80%99s-provident-fund-mines-1970%E2%80%99s-provident-fund-briefings> (8 July 2013).

²⁶¹ Kanyenze G “African migrant labour situation in Southern Africa” Paper presented at the ICFTU-Afro Conference on ‘migrant labour’ Nairobi (15-17 March 2004) 18.

²⁶² Fafuli M “Rage from the bottom: The Role of NUM in Transforming the Mining Industry in SA” Paper presented at the International Mining History Conference held at Gold Reef City, Johannesburg (17-20 April 2012) 14.

²⁶³ Mines and Communities (MAC) “Glimmer of justice for sick gold miners” of 2011-03-28 – accessed at <http://www.minesandcommunities.org/article.php?a=10774> (9 July 2013).

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ Rand Mutual Assurance Company Limited *Annual Report 2012* 49.

and cooperation between the two departments.²⁶⁷ Such developments seem to have aimed at reducing the number of outstanding claims and unclaimed benefits.

To cater for the on-going medical needs of its beneficiaries who are pensioners, Rand Mutual has developed the pensioner medical plan “as a means of ensuring proactive intervention with high risk patients through early interventions including home visits and urological and prosthetic reviews.”²⁶⁸ There is also a prosthetics programme through which Rand Mutual supplies and maintains artificial limbs and orthopaedic devices (in collaboration with a third party service provider).

Rand Mutual implements the monthly payment of a pension in the case of permanent disability in excess of 30 per cent, with less severe disability being compensated by a once off payment. The Company is of the opinion that it is necessary to have a service delivery network in the areas where the mine workers originally came from and where the pensioners and dependants are located. It has therefore established a network of satellite offices primarily located in the ‘worker sending areas’, which are Lesotho, Mozambique, Swaziland and the Eastern Cape.²⁶⁹

As a result, the number of outstanding claims at the end of 2012 was lower than the number of outstanding claims for 2011. Initiatives implemented during 2012 to reduce the number of claims outstanding for more than three months also resulted in a decrease by 16 per cent from 721 in 2011 to 605 in 2012.²⁷⁰

Due to its understanding that a pension is payable in the most dire of circumstances (such as permanent and serious disability and death), Rand Mutual has committed itself to the payment of disability pensions within 30 days of the receipt of the final medical assessment (with the target for the finalisation of survivors’ benefits being six weeks). However it agrees that this remains a challenge, due mainly (in the case of disability claims) to the delay in the stabilisation of individual injuries and failure to submit final medical reports. In the case of pension payments, this is due to the challenges in the identification and location of beneficiaries as well as the securing of the necessary original pension documentation (e.g. death, birth and marriage certificates etc.).²⁷¹

However, Rand Mutual has concluded an agreement with the South African Department of Home Affairs to enable it to have access to Home Affairs’ database for purposes of identity verification; and hopes to implement a similar arrangement with neighbouring countries. Rand Mutual also uses the services of TEBA Limited to assist with the beneficiary tracing and verification processes.²⁷²

Medical services to pensioners are provided through the mobile medical clinics, which are scheduled across Southern Africa.²⁷³ The clinics allow access to patients living in remote

²⁶⁷ Rand Mutual Assurance Company Limited *Annual Report 2012* 49.

²⁶⁸ *Ibid* 49.

²⁶⁹ *Ibid* 50.

²⁷⁰ *Ibid*.

²⁷¹ *Ibid* 46.

²⁷² *Ibid*.

²⁷³ *Ibid* 49.

geographic locations and who have reduced mobility as a result of their injuries. The relevant patients are identified and appointment scheduled for them to attend the mobile clinic when it is in their area. Pensioners are assessed and serviced by a full medical team, including the onsite repair and replacement of prosthetics.²⁷⁴ Rand Mutual has also established a medical clinic in Xai-Xai, Mozambique,²⁷⁵ and plans to establish a dedicated care facility to provide custodial care, reskilling and medical support to its pension beneficiaries.²⁷⁶

In addition, mobile clinic staff also deals with administrative issues.²⁷⁷ Therefore, people in areas with a low-population density are able to access Rand Mutual non-medical services, including pension and benefit queries, requests for commutations, extension of child benefits and the submission of required documentation such as confirmatory educational results to enable the extension of child benefits past 18 years of age.²⁷⁸

In 2012, mobile clinics and interventions by Rand Mutual staff were held at the following locations (locations outside South Africa in bold):²⁷⁹

Month	Date	Area
January	23rd of January	Mafeteng
February	22nd of February	Butha-Buthe
	23rd of February	Umzimkhulu
	20th - 23rd of February	Kwazulu-Natal
March	22nd of March	Leribi
	23rd of March	Teyatyaneng
April	22nd - 23rd of March	Flagstaff, Lusikisiki, Bizana
	23rd - 26th of April	Maseru
	23rd of April	Butterworth, Idutywa
May	22nd - 23rd of May	Mthata
June	19th - 23rd of June	Malawi
	22nd of June	Mount Frere, Ntabankhulu
July	23rd of July	Mohaleshoek
	23rd of July	King Williams Town
August	20th - 24th of August	Mozambique
	22nd of August	Egnobo
	22nd of August	Quiting
September	24th - 26th of September	Maseru
	24th of September	Matatiele, Mount Fletcher
October	22nd - 25th of October	Swaziland
	22nd of October	Queenstown
November	22nd of November	Mokhoklong
	22nd of November	Northern Cape

Rand Mutual is also involved in the development and support of food security projects in areas with a high density of beneficiaries through the establishment of food gardens and the supply of basic gardening equipment and seeds. Staff at local offices provide assistance through education and training to the food gardeners (including pensioners and their

²⁷⁴ *Ibid* 49.

²⁷⁵ Olivier M “Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (Part I)” (2011) 1 *SADC Law Journal* 121at 133.

²⁷⁶ Rand Mutual Assurance Company Limited *Annual Report 2012* 52.

²⁷⁷ *Ibid* 49-50.

²⁷⁸ *Ibid* 106.

²⁷⁹ *Ibid* 106.

dependants) as well as training and employment opportunity to members of the wider local community (through mentoring, training and support).²⁸⁰

9.9. The Employment Bureau of Africa

TEBA Limited's website states that it was formally established in 1902, with the objective of assisting the growing Witwatersrand mining industry in sourcing and engaging workers to work on various mines.²⁸¹ TEBA was originally set up to recruit 'native labour' for gold mines in the Transvaal and Free State. In the mid-eighties, it recruited 500 000 mineworkers through 300 rural offices in Botswana, Lesotho, Malawi, Mozambique, Swaziland (and South African homelands).²⁸²

TEBA currently has offices in southern Mozambique, Lesotho, Swaziland, Botswana and South Africa. In addition to labour procurement, services now offered by TEBA include cash transmission, social support (compensation and other industry monetary benefits), communication services between migrant workers and their families, community support (such as the construction of roads, bridges and clinics through TEBA Development) and tracing and document collation.²⁸³

With regards to tracing and document collation, TEBA traces and assists individuals with document collation for a wide variety of industry related benefits, including pension funds, provident funds, industry awards and Employee Share Ownership Schemes and unclaimed benefits.²⁸⁴ The tracing of ex-mineworkers is facilitated by TEBA's vast database of mineworkers (both former and current), as well as its footprint throughout traditional labour sending areas situated both within and outside the Republic of South Africa. Their offices, based in these communities, enable them to assist individuals with the completion and collating of documents, without them having to travel vast distances.²⁸⁵ TEBA collates and audits documents before sending them to its clients or their nominated administration company for approval (a process which is tracked step by step by a dedicated in-house document tracking system). TEBA is also able to open accounts for un-banked individuals into which all monies may be deposited. The submission and payment clearance processes are separate functions which limits the possibility of fraud and collusion.

A partnership with a third party data mining company also enables TEBA to do traces outside the mining industry by utilising its network of offices, skills, knowledge, and experience, gained from years of service to the Mineworkers Provident Fund and Anglo Shares Scheme (amongst others).²⁸⁶

²⁸⁰ Rand Mutual Assurance Company Limited *Annual Report 2012* 50.

²⁸¹ See TEBA "History" – accessed at <http://www.teba.co.za/> (16 July 2013).

²⁸² Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *TEBA and Eastern Cape Department of Health: briefing* (29 February 2008) (accessed <http://www.pmg.org.za/report/20080229-teba-and-department-health-eastern-cape-briefing>) (8 July 2013).

²⁸³ See TEBA "History" – accessed at <http://www.teba.co.za/> (16 July 2013).

²⁸⁴ See TEBA "Tracing and Document Collation" – accessed at <http://www.teba.co.za/> (16 July 2013).

²⁸⁵ See TEBA "Tracing and Document Collation" – accessed at <http://www.teba.co.za/> (16 July 2013).

²⁸⁶ See TEBA "Tracing and Document Collation" – accessed at <http://www.teba.co.za/> (16 July 2013).

TEBA keeps detailed electronic records are kept for every mineworker dating back to 1980.²⁸⁷ TEBA provides support services to rural families. It acts as an agent for U-Bank (previously TEBA Bank) and the Rand Mutual Assurance Company; and provides administrative support to many provident and pension funds (in the form of pension and disability payments). For example, TEBA administers the 1970 Long Service Award Fund on behalf of the Chamber of Mines. TEBA also has an agreement with the Chamber of Mines to trace members of the Fund and to pay out any benefits due through its bank (U-Bank (formerly TEBA Bank)).²⁸⁸ TEBA is able to do this because of its accurate records, its ability to trace and identify rural beneficiaries, and its administrative capability in collating documentation leading to the payment of benefits. Therefore, it can play the leading role in following-up on all outstanding mining industry claims.²⁸⁹

TEBA operates HIV awareness programmes in its Swaziland offices, targeting miners who have come home for contract renewal. It also conducts community visits to all mineworker-sending communities in Swaziland through its home-based care unit and teaches the communities about HIV prevention, treatment and care, family planning, condom use, prevention of mother-to-child transmission and sexually-transmitted infections. To prevent infection and re-infection TEBA also provides communities with condoms supplied by the government. However, community visits and training sessions are limited as they are provided through one healthcare worker for all mineworker-sending communities in Swaziland.²⁹⁰ TEBA also has a home-based care programme for former mineworkers in Lesotho who are 'repatriated' from South African mines due to illness.²⁹¹

U-Bank (formerly TEBA Bank) is a niche bank that provides basic financial and micro-financial services to mineworkers on gold and platinum mines and other under-banked populations in nonmetropolitan South Africa. Initially it operated as a voluntary deferred pay system through TEBA Branches in Lesotho, and later introduced savings account facilities, which allowed for the voluntary depositing of earnings at savings outlets on the mines. All mineworkers can withdraw cash at TEBA Bank offices on the mines or at TEBA offices in Lesotho.

TEBA Development is a not-for-profit NGO, established as part of a rural development initiative of TEBA in 2001, to play a leading role in a collective endeavour to improve living conditions and livelihoods of communities that have provided labour to the mining industry.²⁹² TEBA Development has identified the areas from which the employees of the various mining houses in South Africa originate as priority areas for development intervention. The Eastern Cape and Northern KwaZulu-Natal in South Africa, Lesotho, the

²⁸⁷ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Overview of TEBA* (29 February 2008) (accessed at <http://www.pmg.org.za/report/20080229-teba-and-department-health-eastern-cape-briefing>) (8 July 2013).

²⁸⁸ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *TEBA and Eastern Cape Department of Health: Briefing* (29 February 2008).

²⁸⁹ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Overview of TEBA* (29 February 2008) (accessed at <http://www.pmg.org.za/report/20080229-teba-and-department-health-eastern-cape-briefing>) (8 July 2013).

²⁹⁰ International Organization for Migration (IOM) *Regional Assessment on HIV-prevention Needs of Migrants and Mobile Populations in Southern Africa: Mining Sector Report* (February 2010) 20.

²⁹¹ Akugizibwe P "Mines, TB and Migration in Southern Africa" presentation at the SA AIDS Conference (April 1 2009).

²⁹² TEBA "About TEBA Development" – accessed at http://www.teba.co.za/beta/tebadev/about_overview.asp (16 July 2013).

Gaza Province in Mozambique and Swaziland have been identified as the highest density areas and targeted.²⁹³

Between 1998 and 2001, TEBA Development conducted a Participatory Rural Appraisal in Lesotho (and the Eastern Cape and North West Provinces of South Africa) in order to determine the priority needs of these communities. Based on the findings of the Appraisal, it decided that development assistance should consist of a combination of initiatives: to improve rural health, alleviate poverty and create improved employment and livelihood opportunities.²⁹⁴

9.10. Southern African Miners Association

The Southern African Miners Association is a regional association of national ex-miners associations. Its members are the Ex-Miners Association of the Mountain Kingdom (Lesotho), the Association of Mozambican Mineworkers (AMIMO)/*Associação de Mineiros Mocambicanos (AMIMO)* and the Swaziland Migrant Mine Workers Association).

Some of the objectives of SAMA are to establish wealth among Southern Africa national, active and former miners association through social reinsertion and job creation after retrenchment; to provide capacity building to national active and former miners associations to encourage self-employment and mobilize funds for project promotion of the communities development; to create database for research, communication and documentation of ex-miners, widows and orphan children; to advocate and lobby for full participation and decision-making in regional and international mineworkers organisations, including International Labour Organization; to provide technical support to national miners associations to work on occupational health and miners' professional diseases; to strengthen alliance and partnerships, unity and solidarity with relevant bodies and agencies working on HIV and AIDS nationally, regionally and internationally; to advocate to African Governments to protect the basic human rights of all former miners, including right to occupational health care and insurance death; and to encourage formation of national organizations and support groups where they are non-existent and strengthen existing ones.²⁹⁵

SAMA was formed due to challenges faced by individual national ex-miners' associations in defending the rights of their members. Examples include the struggle by national associations to get information from organisations such as NUM, the MDA, and the Mineworkers' Provident Fund; and the failure of some mining companies to cooperate with national associations such as AMIMO on how to access beneficiary and benefits data, instead preferring to deal directly with beneficiaries.²⁹⁶

²⁹³ TEBA "About TEBA Development" – accessed at http://www.teba.co.za/beta/tebadev/about_overview.asp 16 July 2013).

²⁹⁴ TEBA Development sought to identify development opportunities that relied on existing community initiatives or that built on the strengths of existing entrepreneurs. This is because it is of the opinion that only through such an approach that lasting capacity building can be achieved, especially when limited resources are available. See TEBA "About TEBA Development" accessed at http://www.teba.co.za/beta/tebadev/about_overview.asp 16 July 2013).

²⁹⁵ See Mundeta B "Cross Border Project, report on workshops with the Association of Mozambican Mineworkers (AMIMO), and other partners" (29th April 2011) 1.

²⁹⁶ See Mundeta B "Cross Border Project, report on workshops with The Association of Mozambican Mineworkers (AMIMO), and other partners" (29th April 2011) 1.

However, it is doubtful whether SAMA and its national member associations will be recognised by the South African government and social security institutions as legitimate representatives of former mineworkers in the respective countries. This is due to the non-recognition of a similar organisation representing ex-miners in South Africa - the 'Ex-Mineworkers Union'.²⁹⁷

9.11. Association of Mozambican Mineworkers

AMIMO represents and defends the rights of the Mozambican mineworkers and helps Mozambican Miners to cope with adverse socio-economic conditions both in Mozambique and South Africa.²⁹⁸ It has its head office in Maputo as well as provincial branches in the migrant-sending provinces of Gaza and Inhambane. Its South African office provides support to the miners employed in the country, who are estimated to be over 46 000 employed in gold, platinum and coal mines.²⁹⁹

AMIMO is undertaking various activities aimed at protecting the rights and welfare of mineworkers. For example, it has entered into a partnership with the Voluntary Service Overseas' Regional AIDS Initiative of Southern Africa (VSO-RAISA)³⁰⁰(in Mozambique) and the

²⁹⁷ The Ex-miners' Union is a union formed by a group of ex-mineworkers in the Eastern Cape to claim outstanding social security benefits. It has undertaken various efforts securing the compensation of its ex-miners. For example, the Union approached the Premier of the Eastern Cape in August 2002 claiming R54 million in social security benefits with the Compensation Commissioner for Occupational Diseases which were outstanding since before 1994. The request led to the establishment of a Task Team to facilitate cooperation between various provincial and national government agencies. See Eastern Cape Department of Health *et al* Report to Ad Hoc Committee on Matters Related to Ex-mineworkers union (29 February 2008) 1. However, the Union has not been successful in securing the benefits from other institutions (such as the Chamber of Mines and social security institutions in the mining industry). This is because the Chamber of Mines refuses to recognise the 'Ex-Mineworkers Union' as an authority to speak on behalf of mining employees or ex-employees. See Ad Hoc Committee on Matters Relating to Ex-mineworkers *Presentation by the Chamber of Mines (chamber) on the Ex-mineworkers' Union* (12 November 2007) – accessed at <http://www.pmg.org.za/docs/2007/071113cmsa.htm> (08 July 2013). The Department of Labour also confirmed that the 'Ex-Mineworkers Union' is not a union as it is not registered with the Department and has never applied to be registered. The Department stated that should the Union apply to be registered, it would not be successful in its application as a union can only represent employees, not ex-employees. It also does not meet the requirements to be a union (which in terms of the Labour Relations Act (LRA 66 of 1995) is defined as an association of employees whose principal purpose is to regulate relations between employees and employers, including employers' organisations. It also needs to be registered with the Department of Labour before it would be entitled to the organisational rights provided to unions by the LRA. To be registered, a union needs to have a constitution that meets the requirements of the LRA (association not for gain, qualifications for membership, membership fees and the method for determining such fees, establish the manner in which decisions are made; provide for banking and investing its money, establish the purpose for which its money is used); have an address in South Africa; and be independent (Ad Hoc Committee on Matters Relating to Ex-mineworkers *Presentation by the Chamber of Mines (chamber) on the Ex-mineworkers' Union* (12 November 2007) (accessed at <http://www.pmg.org.za/docs/2007/071113cmsa.htm> 08 July 2013)). This led to the establishment of the Ad Hoc Committee on Matters Relating to Ex-mineworkers Union by Parliament during 2007 and 2008.

²⁹⁸ Some of these include the harsh employment conditions in the mines, arbitrary dismissal from the mines, separation from families (due to current legislation in South Africa that permits employment on long-term contracts with no provision for the worker to return home in the course of the contract or visitation by spouses/partners) which has led to high HIV prevalence and death rates. See Mundeta B "Cross Border Project, report on workshops with the Association of Mozambican Mineworkers (AMIMO), and other partners" (29 April 2011) 1.

²⁹⁹ See Mundeta B "Cross Border Project, report on workshops with the Association of Mozambican Mineworkers (AMIMO), and other partners" (29th April 2011) 1.

³⁰⁰ VSO's Regional AIDS Initiative of Southern Africa (RAISA) is a comprehensive programme that addresses the HIV and AIDS epidemic in the Southern Africa region. VSO-RAISA consists of projects across seven southern African

organisation Persevere Until Something Happens (PUSH)(in South Africa) to provide mineworkers with HIV prevention and other health related education before leaving to work in South Africa.³⁰¹ The HIV prevention and health education, which is provided from TEBA centre in Maputo and Gaza, aims to prepare the mineworkers for the time to be spent away from home. It focuses on safe sex, condom use, encouraging voluntary HIV/AIDS counselling and testing before departure, advice against multiple and concurrent sexual relationships. While in South Africa, AMIMO, VSO RAISA and PUSH provide follow up support to mineworkers and continue to provide HIV prevention education.³⁰²

AMIMO has also succeeded (together with VSO RAISA) in lobbying for the Chamber of Mines to supply anti-retroviral therapy to returning mineworkers have contracted HIV for at least a year they source for alternative suppliers in Mozambique.³⁰³ AMIMO has also been able to get the Chamber of Mines to support income-generating activities (e.g. food production, sewing etc.) for survivors of former mineworkers in Mozambique.

9.12. Swaziland Migrant Mine Workers Association

The Swaziland Migrant Mineworkers Association is an organisation of migrant mineworkers, ex-migrant mineworkers and their dependants. It aims to improve the quality of life of migrant mineworkers and their beneficiaries in Swaziland through capacity building for better healthcare, access to social security benefits and income generation through its impact mitigations programmes.³⁰⁴

SWAMIWA is currently organising former mineworkers and beneficiaries and collating documentation towards a class action suit against former and present mining companies. The suit is to be launched jointly by Abraham Kiewitz Attorneys (Cape Town) and Haysfeldand Co LLP (London). SWAMIWA expects to sign up to 700 persons, although others would not be signed up due to missing employment and other documentation.³⁰⁵

countries – Malawi, Mozambique, Namibia, South Africa, Zambia, Zimbabwe and Lesotho – and includes a strong regional element. See Voluntary Service Overseas “What is VSO-RAISA” accessed at <http://www.vsointernational.org/what-we-do/raisa/> (08 September 2013). VSO-RAISA strengthens the capacity of organisations to deal more effectively with the HIV and AIDS pandemic and to realise the rights of people living with and affected by HIV and AIDS. This is achieved primarily through working alongside highly skilled and experienced international volunteers and with partner organisations. VSO organises a range of complementary activities, such as workshops, publications, exchanges and advocacy to enhance the capacity development efforts of its volunteers.

³⁰¹ See Mundeta B “Cross Border Project, report on workshops with the Association of Mozambican Mineworkers (AMIMO), and other partners” (29th April 2011) 1. PUSH is a non-profit organisation established in May 2001 and based in Eldorado Park. It was created with the aim of initiating “within reach” treatment, support centres and services to meet the needs of the community, to fight the AIDS pandemic. It undertakes community-based AIDS projects to build capacity within the community to educate, build awareness, train, treat and monitor interventions to combat the epidemic - see PUSH “About us” accessed at <http://www.push.org.za/about.html> (19 October 2013).

³⁰² See Mundeta B “Cross Border Project, report on workshops with the Association of Mozambican Mineworkers (AMIMO), and other partners” (29th April 2011) 1.

³⁰³ See Mundeta B “Cross Border Project, report on workshops with the Association of Mozambican Mineworkers (AMIMO), and other partners” (29th April 2011) 1.

³⁰⁴ Swaziland Migrant Mineworkers Association “About” – accessed at <https://www.facebook.com/SwazilandMigrantMineworkersAssociation/info>

³⁰⁵ Information gathered during an onsite visit by Dr Nyenti to the offices of SWAMIWA in Nhlngano on 1st August 2013.

SWAMIWA proposes that grants could be provided for income generating equipment such as farming inputs (e.g. tractors) for vegetable and livestock farming.³⁰⁶ Some donor organisations are already assisting former mineworkers and their communities. For example, SAFAIDS has launched a project in the Hhohho region to train volunteers in HIV/AIDS and TB education. A mapping exercise on TB patients is also to be undertaken. A pilot was carried out at Nkwene, which identified 276 patients, who had worked in South African mines.³⁰⁷

SWAMIWA (in partnership with University Research Co., LLC) is carrying out a nationwide registration of ex-mine workers and their families; testing them for tuberculosis and referring them for treatment.³⁰⁸ In addition, it organises conferences and workshops on raising awareness about issues affecting (former) mineworkers and their dependants. It organised a conference (together with IOM, Swaziland's Ministry of Health, University Research Co., LLC and TEBA) on TB in the Mining Sector.³⁰⁹ The conference was attended by participants from Lesotho, Mozambique, South Africa and the four regions of Swaziland; and explored the issue of TB in mines. It was a platform for the exchange of information and the sharing of lessons on the policies and best practices in assisting mineworkers to access healthcare. It was also an opportunity to discuss the operationalization of the SADC Declaration on Tuberculosis in the Mining Sector.

9.13. Swaziland National Ex-Mineworkers Association

SNEMA is a grass root organisation, which mainly consists of ex-mineworkers and their families. Its objective is to safeguard and promote the rights of ex-mineworkers, their families and members of their communities.³¹⁰ SNEMA intends broadening its membership base to also include both current migrant mineworkers in South Africa (and members of their families and members of their communities) and current mineworkers in Swaziland (and members of their families, members of their communities).³¹¹

SNEMA undertakes capacity building projects for ex-mine workers (such as the QubulaZasha Ex-mineworkers Capacity Building Project), which involve rural civil mobilization, outreach educational programmes, branch membership workshops, branch leadership capacity building workshops and national leadership capacity building workshops.³¹² It is also involved in human rights advocacy, such as the victorious litigation against the Government of Swaziland for failure to realise the constitutional right to free education (which is most felt by SNEMA's members as mineworkers and their communities are some of the poorest in

³⁰⁶ Information gathered during an onsite visit by Dr Nyenti to the offices of SWAMIWA in Nhlanguano on 1st August 2013.

³⁰⁷ Information gathered during an onsite visit by Dr Nyenti to the offices of SWAMIWA in Nhlanguano on 1st August 2013.

³⁰⁸ Phakathi M "The Search for Swaziland's TB-Infected Mine Workers" in Inter Press Service News Agency of 9 April 2013.

³⁰⁹ See SWAMIWA "Proceedings of the TB in the Mining Sector Conference: Migrant mineworkers are turning the tide against TB, silicosis HIV and AIDS in Swaziland" The George Hotel, Manzini, Swaziland, 23-24 October 2012.

³¹⁰ Civil Society in Development "Small-scale Development Project (less than DKK 1 million)" – accessed at http://webbase.prngo.dk/PubliceredeDokumenter/%7BA1D065E4-A14C-AF5A-357D-0341FEF69B4A%7D_1607.pdf (16 August 2013).

³¹¹ *Ibid.*

³¹² *Ibid.*

Swaziland).³¹³ This has led to the provision of free education for every Swazi child, which is particularly beneficial to indigent ex-miners.

9.14. Ex-Miners Association of the Mountain Kingdom (Lesotho)

The Ex-Miners Association of the Mountain Kingdom of Lesotho was established in 2004 and registered as a non-governmental and non-profit organisation in 2005.³¹⁴ Its main focus is on the development of ex-miners and their families, by assisting them to be self-sufficient and in claiming the social security and other benefits due. As a result, it operates from the rural areas of Lesotho, where most ex-miners reside. On inception, the Association had 10 103 members. However, membership has since decreased due to the high death rates of ex-miners.³¹⁵

The activities of the Association are in the areas of HIV/AIDS and TB interventions, capacity building, focus group discussions, peer education and skills development, leadership training, life skills education and community development.³¹⁶ So far the Association has undertaken the establishment of district committees in ten districts of Lesotho, the Qopo and Matelile Agricultural Project (2011), training of male caregivers in Leribe (2008), training in the manufacture of organic manure (2006), creation of a mushroom plantation in Ts'iu in Maseru and data collection of number of mineworkers in Leribe, Maseru, ThabaTseka, Mochale's Hoek and Mafeteng.³¹⁷

In a bid to create employment for ex-miners and their dependents so as to eradicate poverty, the Lesotho ex-miners association has created a plantation of potatoes and beans in Matelile Ha Sekhaupane.³¹⁸ The plantation is in a pilot phase but the Association aims to cover ex-miners and their dependants throughout the country. The Association was assisted by the ILO with market research and market diversification. The Lesotho Council of Non-Governmental Organisations (which supports and coordinates activities undertaken by non-governmental organisations) is also assisting the Association by providing technical support and assistance in the implementation of government policy documents.³¹⁹

The Ex-miners Association states that most ex-miners hail from very remote rural areas with high numbers of TB patients.³²⁰ They face the challenge of poor accessibility to health care facilities when they fall ill due to the distance to such facilities. Therefore, the Association proposes that ex-miners should be trained in TB surveillance, referral and support. This will improve the availability of services for ex-miners, their families and community; and facilitate the establishment of accurate statistics of TB patients in the country.

³¹³ *Ibid.*

³¹⁴ Ex-Miners Association of the Mountain Kingdom of Lesotho *Ex-Miners Profile* (undated) 2.

³¹⁵ Ex-Miners Association of the Mountain Kingdom of Lesotho *Ex-Miners Profile* (undated) 2.

³¹⁶ Ex-Miners Association of the Mountain Kingdom of Lesotho *Ex-Miners Profile* (undated) 5-6.

³¹⁷ Ex-Miners Association of the Mountain Kingdom of Lesotho *Ex-Miners Profile* (undated) 6.

³¹⁸ Informative News "Ex-miners association leads pilot project to fight hunger" – accessed at http://www.informativenews.co.ls/index.php?option=com_content&view=article&id=5031:ex-miners-association-leads-pilot-project-to-fight-hunger&catid=34:news&Itemid=27 (23 July 2013).

³¹⁹ Informative News "Ex-miners association leads pilot project to fight hunger" – accessed at http://www.informativenews.co.ls/index.php?option=com_content&view=article&id=5031:ex-miners-association-leads-pilot-project-to-fight-hunger&catid=34:news&Itemid=27 (23 July 2013).

³²⁰ Ex-Miners Association of the Mountain Kingdom of Lesotho *Ex-Miners Profile* (undated) 3.

In collaboration with VSO-RAISA, the Association carried out a baseline survey on the vulnerability of ex-miners and dependants and the feasibility of income-generating activities in 5 districts. It also undertook capacity building for the establishment and management of income-generating activities. There is a need for capacity building at the office level (staff training) and community level.³²¹ At the office level, the Association is currently run by six volunteers without any form of remuneration. These volunteers require training on administrative skills, community outreach and advocacy in promoting the rights of ex-miners or their dependants. Training of the Association's Board on governance is also required. Facilities necessary for carrying out their functions are also lacking. The association operates from cost-free premises provided by the Ministry of Labour. However, they are in need of office equipment and supplies.

At the community level, ex-miners or their dependants need capacity building on commercial farming techniques. The provision of grants to them will also enable the establishment of income-generating ventures for sustainable livelihoods. It should be mentioned that there is also a dearth of information on the exact numbers of ex-miners or their dependants in the country. This points to the need for data collection, which will also provide statistics on their socio-economic and health status and their accessibility to social protection benefits.

9.15. The Voluntary Service Overseas' Regional AIDS Initiative of Southern Africa (VSO-RAISA)

The Ex-Miners Association of Lesotho and ex-miners are currently receiving support from VSO-RAISA Lesotho.³²² This is in the form of skills training as well as support in gardening, animal husbandry, and small business (phone shops). Training is also provided to care givers to assist their communities in the care of persons affected by HIV/AIDS and TB. A pilot of the project targeted the districts of Butha Buthe, Leribe, Maseru, Mafeteng and Thaba Tseka. In total, 15 people were trained in business skills and 20 as caregivers. Those trained in business skills are to be provided a small grant to start a business. Further training is planned in collaboration with the Ministry of Health on the use of home-based healthcare kits to be provided by the Ministry. These health care workers will be attached to community care workers to assist them in carrying out their duties. The health care workers that are trained will further train other members of their communities, with VSO undertaking yearly reviews of the additional training.

9.16. Mineworkers Development Agency (MDA)

The Mineworkers Development Agency (MDA) is the development and job creation wing of the National Union of Mineworkers (NUM). It was formed in 1987 as a unit within NUM to assist the union in designing social labour programmes and skills development in mitigation of negative impacts of retrenchments.³²³ However, in 1997 it became a stand-alone Section

³²¹ Discussion with staff of the Ex-Miners Association of the Mountain Kingdom of Lesotho during a visit to its office in Maseru on 6th September 2013.

³²² Discussion with the country representative of VSO in Maseru on 6th September 2013.

³²³ Fafuli M "Rage from the bottom: The Role of NUM in Transforming the Mining Industry in SA" Paper presented at the International Mining History Conference held at Gold Reef City, Johannesburg (17-20 April 2012) 15.

21 Company. The MDA provides job-creation services to communities affected by mine downscaling through a network of development centres.³²⁴ These centres have also been established beyond South Africa's borders since some of NUM's members are migrant workers from different African countries.

The MDA assists ex-mineworkers, their families and communities in Southern Africa to recognise their socio-economic potential. The objective of the MDA is "to advocate, provide and facilitate the delivery of services to communities affected by restructuring in the target sectors; mining, construction and energy, through partnerships and integrated interventions including; training and skills development, enterprise development and by creating job opportunities that will sustain livelihoods for families in Southern Africa."³²⁵

The MDA undertakes projects and programmes that uplift and improve the quality of life for mine, energy and construction workers, and their dependants, impacting over a million individuals.³²⁶

The MDA currently undertakes skills development, integrated food security, training and capacity building and SMME development and community economic empowerment.³²⁷ Within these four broad elements, the MDA promotes partnerships with NUM and the mining companies in designing and developing Social Labour Plan Programmes for retrenched mine, energy and construction workers; develops and implements project proposals for projects/programmes funded by Social Plan Funds; conducts needs assessments with workers facing retrenchment; recruits and develops accredited service providers; monitoring service delivery and quality assurance; furthers local government LED (Local Economic Development) initiatives by generating and optimising opportunities for mineworkers and their communities; facilitates the design of multi-stakeholder development programmes at local level, in areas affected by job losses; as well as research and project development that enables social delivery.³²⁸

The MDA has programmes in Lesotho, South Africa and Swaziland. MDA programmes in Lesotho include training in household finance management, technical training, permaculture, nutrition and food preservation, and assisting workers who contacted Silicosis. The MDA has set up The Moliko Finance Trust (Lesotho) to inculcate a Basotho savings culture and provide credit facilities to those involved in entrepreneurial activity.³²⁹

The MDA's programmes in Lesotho seek to alleviate the suffering of communities which are struggling to find new livelihoods as the number of local men employed in South African

³²⁴ Barton S Mineworkers Development Agency: Case Study" accessed at <http://www.sed.manchester.ac.uk/research/iarc/ediais/pdf/MDACaseNotes.pdf> (17 October 2013).

³²⁵ MDA "About us" accessed at <http://www.mda.org.za/about.html> (17 October 2013).

³²⁶ MDA "Welcome to the Mineworkers Development Agency" accessed at <http://www.mda.org.za/index.html> (17 October 2013).

³²⁷ MDA "Current Programs" accessed at <http://www.mda.org.za/programs.html> (17 October 2013).

³²⁸ *Ibid.*

³²⁹ See MDA "Regions Where We Are Creating Livelihoods" accessed at <http://www.mda.org.za/programs.html> (17 October 2013).

mines has dwindled.³³⁰ According to the MDA's MalineoNkhasi, "food security in Lesotho has dropped tremendously because the ex-mineworkers were people who were able to hire tractors for ploughing their fields and since they've been retrenched they can't afford to do so."³³¹ The MDA runs programmes in four of Lesotho's 10 districts aimed at helping ex-mineworkers and their families find new ways to make a living. Participants receive skills training and small loans to help them set up businesses.³³² MalineoNkhasi has said "we give people skills which can help them to be employed or self-employed Some of the former mineworkers have opened cafes, mini-supermarkets, or gone into the taxi business."³³³ In addition, there is a food security programme which provides households with seedlings from its nursery that can be used to start a vegetable garden or plant a field;³³⁴ and sandstone sculpturing conducted for both domestic and corporate use in Lesotho.³³⁵

In Swaziland, the MDA is piloting a pension support project that targets up to 100 pensioners. The project, funded by Rand Mutual Assurance, is a partnership with Swaziland's Ministry of Agriculture.³³⁶

³³⁰ IRIN "Lesotho: Ex-mineworkers search for new livelihoods" (IRIN News of 24 February 2011) accessed at <http://www.irinnews.org/report/92027/lesotho-ex-mineworkers-search-for-new-livelihoods> (19 October 2013).

³³¹ IRIN "Lesotho: Ex-mineworkers search for new livelihoods" (IRIN News of 24 February 2011) accessed at <http://www.irinnews.org/report/92027/lesotho-ex-mineworkers-search-for-new-livelihoods> (19 October 2013).

³³² IRIN "Lesotho: Ex-mineworkers search for new livelihoods" (IRIN News of 24 February 2011) accessed at <http://www.irinnews.org/report/92027/lesotho-ex-mineworkers-search-for-new-livelihoods> (19 October 2013).

³³³ IRIN "Lesotho: Ex-mineworkers search for new livelihoods" (IRIN News of 24 February 2011) accessed at <http://www.irinnews.org/report/92027/lesotho-ex-mineworkers-search-for-new-livelihoods> (19 October 2013).

³³⁴ IRIN "Lesotho: Ex-mineworkers search for new livelihoods" (IRIN News of 24 February 2011) accessed at <http://www.irinnews.org/report/92027/lesotho-ex-mineworkers-search-for-new-livelihoods> (19 October 2013).

³³⁵ Fafuli M "Rage from the bottom: The Role of NUM in Transforming the Mining Industry in SA" Paper presented at the International Mining History Conference held at Gold Reef City, Johannesburg (17-20 April 2012) 15.

³³⁶ See MDA "Regions Where We Are Creating Livelihoods" accessed at <http://www.mda.org.za/programs.html> (17 October 2013).

10. Comparative Labour and Social Security Agreements

10.1. Zambia/Malawi Social Security Agreement

The bilateral social security agreement between Malawi and Zambia makes provision for a Joint Permanent Commission of Cooperation between the two countries. The Joint Permanent Commission of Cooperation deals with the challenges experienced by Malawian nationals who had worked in Zambia in accessing their pension and associated benefits.³³⁷ The agreement involves reciprocal visits between the two countries by social security officials. The visits provide an opportunity for officials from both countries to discuss issues that require attention, present status reports and, when the visit is in Malawi, meet with affected persons. Subsequent to a meeting of pensioners in Lilongwe, Mzuzu and Blantyre during a reciprocal visit by the Zambian delegation, the following challenges that required attention were noted:

Pensions scheme	Problems faced by pensioners that had worked in Zambia
Public Service Pension Fund	<ul style="list-style-type: none"> (i) Delays in receiving cheques resulting in cheques turning stale. (ii) Cheques bearing a signature not recognised by the banks in Malawi. (iii) Widows and minors not being paid survivors benefits. (iv) Stoppage of payment due to unexplained reasons. (v) Reduction of pension due to exchanges rate fluctuations. (vi) Failure by the pensioner to cash cheques because they do not have bank accounts.
Mukuba Pension Scheme	<ul style="list-style-type: none"> (i) Submission of uncertified document by the pensioners. (ii) The statement of intent by the former President of Zambia was misconstrued by pensioners, especially miners as promise for immediate action. (iii) Most pensioners commuted their pension. (iv) Some did not qualify for pension because of the period that they worked. (v) Lack of information about eligibility conditions and coverage under the Mukuba Pension Scheme.
National Pension Scheme Authority (NAPSA)	<ul style="list-style-type: none"> (i) There was no communication/information [exchanged between] the beneficiaries and NAPSA on the benefits provided by the scheme. (ii) Some beneficiaries forgot that they had taken their contributions when they were coming home now they were taking chances after it was announced that they should register.
Local Authorities Superannuation Fund	<ul style="list-style-type: none"> (i) Pensioners find it very difficult to go to Zambia to claim their annual benefits.
Workers Compensation Fund	<ul style="list-style-type: none"> (i) Assessment of the pensioners was a problem as it was supposed to be done only in Zambia. (ii) In case of death of pensioner, there is no way to verify their eligibility, (iii) Pensioners were not coming forward to claim their pension.

Source: Agreed Minutes of a Social Security Meeting of the Malawi/Zambia Bilateral Cooperation held in Malawi, April 2003.

³³⁷ Agreed Minutes of a Social Security meeting of the Malawi/Zambia Bilateral Cooperation held in Malawi, April 2013.

A variety of proposals as outlined in the Agreed Minutes of a Social Security Meeting of the Malawi/Zambia Bilateral Cooperation held in Malawi (April 2003) were proposed to deal with the aforementioned challenges and they include the following:

- (a) The National Pension Scheme Authority undertook to draw a report from its database of Malawian nationals who worked in Zambia. The rationale behind such a database is to aid Malawian Labour Officials in dealing with queries from Malawian nationals who are members of the aforementioned Fund.
- (b) As regards the Local Authorities Superannuation Fund, it was decided that data capture forms be distributed to all the Labour Offices in Malawi so as to assist in identifying pensioners in Malawi.
- (c) It was decided that survivors of deceased pensioners be directed to report and complete life certificates to the local labour offices for transmission to the Zambian Authorities. The goal of this exercise is to ensure continued payment of benefits to eligible beneficiaries.
- (d) The Workers Compensation Fund undertook to identify a medical centre practitioner in Malawi to administer medical examination, assessment for pneumoconiosis and silicosis for examiners who worked in Zambia.
- (e) A need was identified to embark on an awareness campaign through radio programmes in Malawi to enlighten the pensioners on the availability of rehabilitation services and procedures for claiming their pensions.

As a way forward, it was resolved among others that:

“(a) The Zambia Public Service Pension Fund should organize workshops to explain to Malawian Labour Officers on the eligibility criteria and assessment procedures for pension beneficiaries under the Public Service Pension Fund act of the Government of Zambia. (b) Pensioner should be encouraged to open accounts with a Bank to be identified in Malawi by the Public Service Pension Fund. (c) A mechanism should also be established to facilitate, where applicable the remittance of monthly pension through the Malawi High Commission in Lusaka. (d) Where legislation permits, pensioners that are presently receiving small amount in pension payment or those that are aged should be encouraged to commute their benefits. The lump sum payment would enable pensioners to maximise the benefits form such payment. (e) Regarding pensioner under the Mukuba Pension Scheme it is proposed that remittance of their pensions be made quarterly or very six months, subject to agreement with the pensioner. (f) Malawian Nationals should be encouraged to go through the status reports that have been handed over to the regional Labour offices in Malawi.”³³⁸

The bilateral arrangement has been rightfully hailed for its contribution in the maintenance of the social security rights by Malawian nationals when they were employed in Zambia.³³⁹ In 2004, it was estimated that there were over 1000 Malawians who receive social security benefits from Zambian social security institutions.³⁴⁰

³³⁸ Agreed Minutes of a Social Security Meeting of the Malawi/Zambia Bilateral Cooperation held in Malawi, April 2003.

³³⁹ Chisupa N “Social protection in SADC: Developing an integrated and inclusive framework – The case Zambia” in Olivier MP and Kalula ER (eds) *Social Protection in SADC: Developing an Integrated and Inclusive Framework* (Centre for International and Comparative Labour and Social Security Law and Institute of Development and Labour Law (2004)) 198 at 204.

³⁴⁰ *Ibid.*

10.2. Mauritius/United Kingdom Social Security Agreement

The Convention on Social Security between Mauritius and United Kingdom (UK) entered into force on the 1st of January 1981.³⁴¹ This instrument makes provision for, among others, the continued payment of contributions by UK employers for their workers who are posted in Mauritius for periods less than 24 months.³⁴² This ensures that social security contributions on behalf of workers posted in Mauritius continue to be paid in the UK and such workers are exempt in the host country. Furthermore, it avoids a situation whereby workers are compelled to contribute double contributions for the same contingency or are not covered at all for a particular risk.

10.3. Some observations

There are indeed a number of lessons to be learnt from the Zambia and Malawi Social Security Agreement and the Mauritius and United Kingdom Social Security Agreement. Firstly, the governments of the Republic of South Africa and of countries whose nationals have worked in South Africa (and whose survivors cannot claim their social security benefits) can conclude bilateral agreement similar to that of Malawi and Zambia. This, through reciprocal visits by relevant social security authorities' representatives and exchange of pertinent information, could be instrumental in ensuring access to benefits by former mineworkers who have now returned to their respective home countries. It is true that the social agreement between Malawi and Zambia is not reciprocal in nature. However, it bodes well with the spirit of neighbourliness and the goals of the Southern African Development Community (SADC) of ensuring the migrant workers and their dependants to gain access to social security. After all, this could be viewed as an acknowledgement by the former host country of migrant workers of the role the affected migrant workers have played in contributing towards the development is economy.

Reciprocal visits, as shown in the case of Malawi and Zambia, assist in the identification of challenges facing (prospective beneficiaries) and their dependants in claiming benefits. In addition, it provides a platform from which possible solutions could be identified and implemented. As apparent from the Malawi and Zambia situation, not all challenges are within the control of the parties to the agreement. A case in point is the fluctuation of the currencies which eventually has an impact on the value of the amount remitted. However, when identified these types of challenges can assist in ensuring that the SADC regional integration efforts (such as the establishment a Monetary Union³⁴³ by 2016 and implementation of a Single Currency³⁴⁴) gain traction.

³⁴¹ Mauritius: Government Gazette, Legal Supplement, 1981-07-01, p. 160; Mauritius: Government Gazette, 1981-07-01, No, 60 and United Kingdom: Statutory Instruments, 1981, No 1542.

³⁴² See for further information, www.dwp.gov.uk.

³⁴³ A Monetary Union, which is one of the definitive goals of the SADC Protocol on Trade, refers to a situation where “two or more countries achieve macroeconomic convergence, stable and harmonise exchange rate systems, liberalise capital and current accounts transactions and adopt market-oriented approaches to the conduct of monetary policy” (South African Development Community “Monetary Union” – accessed at <http://www.sadc.int/about-sadc/integration-milestones/monetary-union/>). One of the challenges facing SADC's objective to establish a Monetary Union is that: “Despite the positive progress in this area, the Committee of Central Bank Governors has experienced human resource capacity and funding challenges, resulting in delays of some of the projects intended to facilitate cooperation and harmonisation in the banking sector in SADC” (South African Development Community

Another point to observe is that the Malawi and Zambia agreement as well as the Mauritius and United Kingdom social agreements do subscribe to (some of the) well-known social security coordination principles which are also embodied in the SADC Code of Social Security (the Code). It should be remembered that the Code requires Member States to work towards the free movement of persons.³⁴⁵ This call is followed by a directive that Member States should extend access to social security to immigrants legally employed in their territories through social security coordination principles³⁴⁶ which should be contained in both national laws of Member States and in bi- or multilateral arrangements between Member States.³⁴⁷ The aforesaid principles are as follows: migrant workers should be able to *participate in the social security schemes* of the host country; migrant workers should enjoy *equal treatment* with citizens within the social security system of the host country and, there should be an *aggregation of insurance periods* and the *maintenance of acquired rights and benefits* between similar schemes in different member states; Member States should ensure the *facilitation of exportability of benefits*, including the payment of benefits in the host country; Member States should *identify the applicable law* for purposes of the implementation of the above principles, and Member States should ensure coverage of self-employed migrant workers on the same basis as employed migrants.³⁴⁸

“Monetary Union” – accessed at <http://www.sadc.int/about-sadc/integration-milestones/monetary-union/>. See, for further reading on the idea of a SADC monetary union and its feasibility, Hangi MA *Is the Southern African Development Community (SADC) suitable for a Monetary Union?* (The Economic and Social Research Foundation (ESRF) (2012)) and Jefferis KR “The process of monetary integration in the SADC region” (2007) 33 *Journal of Southern African Studies* 83 and Belle M “Regional economic integration in SADC: Progress, prospects and statistical issues for monetary union” – accessed at <http://www.bis.org/ifc/publ/ifcb32e.pdf>.

³⁴⁴ Southern African Development Community “Single currency” – accessed at <http://www.sadc.int/about-sadc/integration-milestones/single-currenc/>. Although the target date for the implementation of a Single Currency is 2018, it should be noted that: “...a proposal for a system to facilitate cross-border payment and settlement was developed by the SADC Payment System Steering Committee. This system would allow the settlement of payment transactions in a central location and was based on a single currency. This model system will be tested on the current Common Monetary Area countries that use the South African Rand (South Africa, Lesotho, Namibia and Swaziland) and if successful, will be ready to be rolled out to the rest of the SADC Member States as the region advances its integration process” (Southern African Development Community “Single currency” – accessed at <http://www.sadc.int/about-sadc/integration-milestones/single-currenc/>). The goal of implementing a Single Currency in the region has its own challenges. Key among them is the “lack of clarity surrounding the issue of countries with membership of more than one customs union” (Southern African Development Community “Single currency” – accessed at <http://www.sadc.int/about-sadc/integration-milestones/single-currenc/>).

³⁴⁵ Article 17(1) of the Code on Social Security in the Southern African Development Community (the Code). The Code was approved by the Integrated Committee of Ministers (the ICM) in June 2007 in Windhoek Namibia (see the Post-ICM Media Briefing Statement June 16, 2007 Windhoek, Namibia – accessed at <http://www.sadc.int>). The objectives of the Code are to provide Member States with and (as far as (b) and (c) are concerned) the SADC with: (a) strategic direction and guidelines in the development and improvement of social security schemes, in order to enhance the welfare of the people of the region; (b) a set of general principles and minimum standards of social protection, as well as a framework for monitoring at national and regional levels; and (c) an effective instrument for the coordination, convergence and harmonisation of social security systems in the region (article 3 of the Code).

³⁴⁶ ‘Social security coordination’ has been defined as: “Mechanisms through which the social security schemes of the countries which are party to an agreement can work together to achieve mutually agreed objectives – in particular, ensuring that migrant workers have protection that is as complete and continuous as possible – while, at the same time, maintaining and respecting the separate definitions and rules of each scheme” (McGillivray W *Strengthening Social Security Protection for African Migrant Workers through Social Security Agreements* (International Labour Office (2010)) 3).

³⁴⁷ See, for a general overview on the notion of making social security accessible to migrants, Van Ginneken W “Making social security accessible to migrants”, paper presented at the International Social Security Association World Social Security Forum, 29 November – 4 December 2010, Cape Town, South Africa.

³⁴⁸ Article 17(2) of the Code.

11. Conclusions

Although exact numbers of migrant workers from Botswana, Lesotho, Mozambique and Swaziland who work or have worked in South Africa cannot be ascertained, government sources, employment organisations and statistical surveys indicate that South Africa has always attracted and continues to attract a vast majority of migrants from the SADC region, especially from these countries.

The profiles of workers from these countries have differed over the years. Despite fluctuations in the numbers of foreign migrant workers employed over time, the largest number of labour migrants in South Africa has historically been concentrated in the mining industry. However, downsizing in the mining industry, the drive to replace foreign migrant workers with South Africans from the 1970 to the 1990s and the order by the South African government in 1986 for mines to stop recruiting novices and renewing contracts from Mozambique led to a drastic reduction in the number of foreign migrant workers in South African mines. South Africa's neighbours bore the brunt of this reduction in mine employment. The declining numbers of foreign migrant mineworkers was also accompanied by the increasing casualization of their employment (through sub-contracting).

The gender, age and family responsibility profiles of migrant workers have also changed over the years. Historically, migrant workers have mostly been older, married male household heads employed in mining. However, although mine employment is still a dominant employer of migrants from neighbouring countries, the decline in employment in the mining industry has seen a rise in the number of migrants employed in other sectors (such as trading, domestic work and professional/ office work) and of females.

The employment status and gender of migrant workers has an impact on their eligibility for social security benefits. Since historically migrants from Botswana, Lesotho, Mozambique and Swaziland were legal migrant employed under corporate work permits in terms of bilateral labour agreements signed between South Africa and its neighbours, they were eligible for employment-related social security benefits. However, the decrease in the employment of migrant workers due to the restructuring of the gold mines resulted in the fall of legal and the growth in illegal or irregular migration from neighbouring states. This, coupled with the increase in sub-contracting, means that many migrants currently employed in the mining industry are not entitled to any social security benefits.

Eligibility for South African social security by migrants from Botswana, Lesotho, Mozambique and Swaziland and the portability of these benefits depend on the migrants' mode of recruitment and employment status, their immigration status, the sector of employment and (to some extent) the provisions of any labour agreement entered into between South Africa and the relevant country.

With the exception of those granted permanent residence status in South Africa, migrant mineworkers are not eligible for social assistance. In addition migrant mineworkers are expressly excluded from unemployment insurance by the Unemployment Insurance Act and

Unemployment Insurance Contributions Act as they are amongst the categories of persons required to return to their country of origin at the end of their contract of service (or apprenticeship or learnership) in South Africa. Migrant mineworkers are eligible for compensation for occupational injuries and diseases, administered by the Medical Bureau for Occupational Diseases/ Compensation Commissioner for Occupational Diseases and the Compensation Fund/Rand Mutual Assurance Company Limited. Mineworkers also receive private social security benefits from their employers (such as housing, medical care, life and retirement insurance and long service awards) although it was not a statutory obligation and did not cover the worker beyond employment.

Statistics of former migrant workers from these countries, their mode of employment and their immigration status reveal that most migrants from these countries (who were mostly males) were eligible for occupational injury and disease benefits in terms of the ODMWA (by virtue of employment in the mines) and of the COIDA; and for retirement insurance.

Since the most common mechanism chosen for retirement insurance is provident funds which pay out a lump sum at retirement, migrants were entitled to receive their retirement benefits in full upon departure from South Africa; or survivors' benefits paid out to the former workers' dependants. In providing benefits to former migrant mineworkers, South African social security institutions utilise a variety of payment modalities. These include direct payments into beneficiaries' bank accounts (if available) or through third party institutions (such as TEBA, the Office of the Master of the High Court and the Workmen's Compensation Trust Fund in Lesotho and the Mozambican Department of Labour.

Former mineworkers from neighbouring countries face huge constraints regarding the portability of social security benefits when they return to their countries of origin. This has led to R5.7-billion of 'unclaimed' or unreachable benefits in various social security schemes. Former miners who return home also face extreme difficulties in getting access to follow-up services (such as medical benefit examinations) required by South African legislation.

Institutions administering benefits that most mine migrant mineworkers have/had access to are the institutions with the largest amount of 'unclaimed' or unreachable benefits. These are the Mineworkers Provident Fund (with 106 419 lapsed beneficiaries and unclaimed to the value of R3 008 289 913); the Mineworkers Provident Fund's Living Hands Umbrella Trust (with close to 12500 untraceable beneficiaries and R1.2 billion of funds lost in the Fidentia scandal still to be recovered); the Compensation Commissioner for Occupational Diseases (with an estimated 274 400 former miners or 98 per cent still to receive compensation); the Compensation Fund (with about 600 000 claims remaining unpaid for a number of years, although only about 12 000 or 2 per cent of these are former mineworkers); the Mines 1970's Pension and Provident Funds (which is still to still to pay benefits of R200 million to 59 702 lapsed members); the Sentinel Mining Industry Retirement Fund (with unclaimed benefits amounting to R101 million); and the 1970 Long Service Award Fund (with benefits due to as many as 12 000 members).

The scope of unclaimed benefits and number of lapsed beneficiaries point out that former migrant mineworkers (including those from Botswana, Lesotho, Mozambique and Swaziland who have returned to their countries of origin) were not paid their social security benefits or at

the end of their employment; and have been unable to receive them. The Mines 1970s Provident Fund has conceded that “many of the lapsed members of the Fund may have been foreign migrant workers recruited outside of South Africa, who may have been illiterate or semi-literate.”

In addition, various social, structural, policy/regulatory, administrative and/or institutional obstacles have been advanced as the reason why former migrant mineworkers are unable to access South African social security benefits. These obstacles include (but are not limited to) reluctance of South African government and social security administration institutions; lack of information by migrants or their dependants to assess and access rights, and on procedures and administrative formalities, the impact of South African immigration law; the absence of portability provisions or limited portability arrangements in South African social security laws; administrative and institutional challenges (such as administrative and institutional capacity; lack of administrative cooperation between schemes; delays in payment of social security benefits etc.); inaccessibility of professional occupational health services, and of certification and compensation institutions; cumbersome documentary requirements for social security benefit applications; restrictions arising from difficulties in establishing causal link between illness and employment; restrictions arising from the classification of diseases and from the certification appeal process; difficulties in determining how compensation benefits are computed; reluctance due to the inadequacy of compensation benefits; differences in national banking systems; a weak SADC regional social security framework; the limited application of international standards etc.

The inability of former migrant mineworkers to receive social security benefits further aggravates the adverse social, economic and health consequences of mine work on their communities. Their low literacy and numeracy levels and lack of necessary alternative skills/training means they risk perpetual unemployment once they are retrenched or medically retired.

In addition, their departure to work in the mines has led to the impoverishment of their local communities. These communities, some of which are in remote, isolated and inaccessible rural areas with limited resources, poor health facilities and little or no social support and care, is where former migrant mineworkers return to.

The plight of former migrant mineworkers is further exacerbated by South Africa’s poor occupational health and safety record, especially in the mining context. These miners have an exceptionally high prevalence of various lung diseases (tuberculosis, silicosis, chronic obstructive pulmonary disease and HIV/AIDS) which are not under-recognised, under-detected and not adequately compensated. Due to the long latency periods of some of these illnesses, they are only detected long after the end of employment and when a migrant mineworker has returned home. As a result, the burden of ill-health falls on the rural households and public health systems of home countries.

Institutions involved in the employment of mineworkers and/or the administration of social security in the mining sector are making some effort to alleviate the plight of former migrant mineworkers. These include the Chamber of Mines, Mines 1970s Pension and Provident Funds, the Department of Health (through Compensation Commissioner for Occupational Diseases

falls), the Department of Labour (through the Compensation Fund), National Union of Mineworkers, Rand Mutual Assurance Company Limited, TEBA and associations of former migrant mineworkers (the Southern African Miners Association, Association of Mozambican Mineworkers, Swaziland Migrant Mine Workers Association and Lesotho Ex-miners Association).

Initiatives include the tracing of beneficiaries (also in neighbouring countries); clearing of claims backlogs; engagement with role players to identify beneficiaries and distribute unclaimed benefits to those who qualify; extension of professional occupational health services to beneficiaries living in neighbouring countries; signing of a Memorandum of Understanding on the exchange of information and cooperation between schemes in processing and finalising outstanding claims of former mineworkers; consideration assessments for occupational injuries and diseases in neighbouring countries; the design of social labour programmes and skills development in mitigation of negative impacts of retrenchments; the provision of job-creation services to communities affected by mine downscaling, the establishment of education scholarship schemes for dependents of former migrant workers, conclusion of an agreement with the Department of Home Affairs for access to its database; development and support of income and food security projects; assistance with document collation and auditing; HIV awareness and home-based care programmes; provision of basic financial and micro-financial services; and registration of ex-mineworkers and their families for occupational disease testing and treatment.

12. Recommendations

The publishing of lists of lapsed beneficiaries by institutions administering social security benefits (such as the Mineworkers Provident Fund, Living Hands Umbrella Trust) means that the 'unreachable' claimants to whom the 'unclaimed' benefits are due (including former migrant mineworkers) are not unknown nor is their area of origin unknown. Therefore, the issue is not about the institutions and other relevant role players not knowing who the social security beneficiaries are or where to find them, but about a lack of commitment to find them and effect payment. As one commentator has remarked:

"Employment records exist, and former migrant miners can be found in their home areas - if there is the will to do so. This will has not existed at the Chamber of Mines and its member companies, despite commitment to corporate social responsibility Miners who fall ill are still sent home to rely, in ignorance of their rights, on government-funded rural health services that are stretched to the limit. The conditions that maintain such widespread lack of awareness need to be addressed urgently. There is a need for ongoing medical surveillance of dust-related respiratory disease, with the appropriate compensation paid. Mining companies need to face the evidence and offer redress, even so late in the day, to ensure that former miners are identified, diagnosed and compensated before they die."³⁴⁹

In the case of former migrant mineworkers from the Eastern Cape, Parliament concluded that if the relevant information is put together, beneficiaries could be traced and

³⁴⁹ Roberts J "Gold miners with work-related TB neglected for too long" in SciDev.Net of 25/03/13 (accessed at <http://www.scidev.net/global/tb/opinion/gold-miners-with-work-related-tb-neglected-for-too-long.html> (9 July 2013)).

compensated.³⁵⁰TEBA, the Chamber of Mines and/or mining companies (should) know the areas where miners were recruited. For example, Mozambican mineworkers have traditionally been recruited from the central and southern provinces, including Maputo, Inhambane, Gaza and Manyica. This is the result of the bilateral labour agreement between South Africa and Portugal (regulating the employment of Portuguese workers from the Province of Mozambique) which stipulates the geographical location where mineworkers could be recruited.³⁵¹ Therefore, the tracing of former miners in Mozambique should focus on these areas. In addition, if ex-miners cannot be identified or traced, a portion of the unclaimed benefits could be invested in social and economic programmes in these areas.

In addition, TEBA agrees that tracing people who had worked in mines has never been a problem; it just needs a social security administration institution to instruct or commission a tracing agency to initiate a trace. This is because a tracing agency must be contracted by a fund to trace members on the institution's behalf.³⁵² It added that even if it were not be able to find an individual, it could certainly find their village and then glean additional information to find the individual or their surviving dependants.

However, it has been proposed that in tracing former mineworkers with unclaimed benefits, the focus should be on the Mineworkers Provident Fund. This is due to the relative size of the benefits due from this Fund in comparison with the other Funds (the Mines 1970 Provident Fund pay-out was R1 200, the pay-out of the 1970 Long Service Award Fund was R1 500 while the Mineworkers Provident Fund pay-out was R150 000).³⁵³ This was also because for the claims of R1 200 to R1 500, it would cost more to trace beneficiaries than to just hand out to claimants and it would be easier.³⁵⁴

In order to address the plight of ex-migrant mineworkers in accessing social security benefits due to them by South African institutions, the following measures are recommended:

Adoption of an integrated and comprehensive approach

As the Eastern Cape Provincial Government has demonstrated (in the case of former migrant mineworkers from the province), where there is will to address the plight of former mine workers and a proper approach, former mineworkers can be traced and compensated. South Africa's neighbours agree that they, as the labour-sending countries and South Africa as the labour-receiving country, have failed to develop proper systems for follow-up and

³⁵⁰ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Final Committee Report on Ex-Mineworkers: consideration* (18 March 2008).

³⁵¹ See article II of Agreement between the Government of the Republic of South Africa and the Government of the Republic of Portugal regulating the employment of Portuguese workers from the Province of Mozambique on certain mines in the Republic of South Africa (SA Treaty Series 11/1964) which states that "the Portuguese Government authorises the recruitment of workers in the Province of Mozambique south of the Save River subject to the terms and conditions contained in the following articles. The recruiting organisation or organisations shall under no circumstances establish permanent or temporary recruiting stations north of latitude 22 degrees South ..."

³⁵² Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *TEBA and Eastern Cape Department of Health: Briefing* (29 February 2008).

³⁵³ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *TEBA and Eastern Cape Department of Health: briefing* (29 February 2008).

³⁵⁴ *Ibid.*

compensation of former mineworkers.³⁵⁵ They thus propose that an integrated and comprehensive approach to address the plight of ex-migrant mineworkers must be developed.³⁵⁶

Therefore, a multi-role player forum should be established to facilitate the tracing, medical examination and ultimate compensation of former mineworkers or their survivors. This forum should involve relevant government ministries/departments and institutions from Botswana, Lesotho, Mozambique, Swaziland (and every other migrant mineworker-sending country). This would include representatives from the governments of Botswana, Lesotho, Mozambique and Swaziland (such as the Ministries of Health and Labour), social security institutions (such as workmen's compensation funds) and former mineworkers (Lesotho Ex-Miners Association, Association of Mozambican Mineworkers, Swaziland Migrant Mine Workers Association and Swaziland National Ex-Mine Workers Association); and representatives from the South African Government (e.g. the Departments of Health (including MBOD and CCOD), Labour (including the Compensation Fund), Home Affairs and National Treasury) and South African institutions concerned with issues relating to (former) migrant mineworkers (Chamber of Mines, National Union of Mineworkers, Rand Mutual Assurance Company, Mineworkers Provident Fund, Mines 1970s Provident Fund, Living Hands Umbrella Trust, Sentinel Mining Industry Retirement Fund, TEBA etc.).

Compilation of comprehensive lists of lapsed beneficiaries by social security administration institutions

Each social security administration institution (e.g. Rand Mutual Assurance Company, Mineworkers Provident Fund, Mines 1970s Provident Fund, Living Hands Umbrella Trust, and Sentinel Mining Industry Retirement Fund) should compile a list of lapsed beneficiaries, which should be handed to TEBA for cross-checking with its database of former mineworkers (according to towns and cities in the migrant-sending areas);

Publication of lists of beneficiaries in the migrant-sending areas

Social security administration institutions should endeavour to publicise the compiled lists of beneficiaries in the migrant-sending areas through all available means (such as publication in last known addresses and surrounding public areas, placing of advertisements in major newspapers).

Contracting of TEBA to trace ex-miners

Social security administration institutions e.g. Rand Mutual Assurance Company, Mineworkers Provident Fund, Mines 1970s Provident Fund, Living Hands Umbrella Trust, and Sentinel Mining Industry Retirement Fund) should contract TEBA, as the prime recruiter of mineworkers, to undertake the tracing of ex-mineworkers or their dependants at a nominal rate.

³⁵⁵ Swazi Observer "Countries to jointly tackle mineworkers' diseases – Lutfo" (25 July 2013) 19.

³⁵⁶ *Ibid.*

Assistance by associations of former migrant mineworkers in informing members and publicising the tracing, medical examination and compensation campaign

Associations of former migrant mineworkers (SAMA, AMIMO, SNEMA, SWAMMIWA and the Ex-Miners Association of the Mountain Kingdom) should assist TEBA and the social security administration institutions in informing their members and publicising the tracing, medical examination and compensation campaign.

Setting up of (mobile) clinics to provide medical examinations

The MBOD, CCOD, Compensation Fund, Rand Mutual and any other social security administration institution involved in medical benefit examinations (should jointly set up (mobile) clinics to provide medical examinations for mineworkers in the migrant-sending areas or contract Rand Mutual to perform this (in order to eliminate the issues of delay in the processing of medical benefit examinations for former mine workers; and of the workers or their dependants having to travel to the MBOD in Johannesburg). This is also the view of Swaziland's Ministry of Labour and Social Security, which has proposed that medical benefit examinations should be carried out in Swaziland to expedite the claims process.³⁵⁷ They should also undertake the processing of claims for compensation of ex-mine workers in the migrant-sending areas or train persons to perform these functions according to the relevant South African legislation;

Provision of facilities accessible to ex-mineworker's places of residence for processing of claims

Governments of neighbouring countries (Botswana, Lesotho, Mozambique, Swaziland and all other migrant sending countries) and associations of former migrant mineworkers (SAMA, AMIMO, SNEMA, SWAMMIWA and the Ex-Miners Association of the Mountain Kingdom) should assist social security administration institutions by providing facilities geographically accessible to ex-mineworker's places of residence for the processing of claims.

Provision of financial and logistical support to associations of former mineworkers

Associations of former mineworkers currently play a pivotal role in attempts to get compensation to former mineworkers and/or their dependants.³⁵⁸ They are associations of former mineworkers and survivors; and operate in communities where former mineworkers and survivors reside. This is useful for information dissemination to and tracing of former mineworkers or their survivors.³⁵⁹ However, their limited capacity limits their ability to achieve these. For example, SWAMIWA and SNEMA list (some of) their challenges as limited funding to

³⁵⁷ Presentation by the Ministry of Labour and Social Security at the Swaziland National Dialogue on Portability of Social Benefits "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries" Manzini, 30-31 July 2013.

³⁵⁸ See the discussion on the Southern African Miners Association (SAMA), Ex-Miners Association of the Mountain Kingdom (Lesotho), Association of Mozambican Mineworkers (AMIMO), Swaziland Migrant Mine Workers Association and Swaziland National Ex-mineworkers Association (SNEMA) in Paragraph 8 (Initiatives assisting former migrant mine workers in accessing South African social security benefits) above.

³⁵⁹ For example, the offices of SWAMIWA are in Nhlengano, in the migrant-sending Shiselweni region. This enables the Association to conduct community outreach to assess the needs of former mineworkers or their survivors – information gathered during an onsite visit by Dr Nyenti to the offices of SWAMIWA in Nhlengano on 1st August 2013.

cover operational costs and to undertake projects for the benefit of former mineworkers and dependants; and limited capacity (e.g. human resource capacity, office space and equipment, transport etc.) to effectively represent and defend the interests of former mineworkers and dependants.³⁶⁰ Support to these Associations will enable them provide the necessary assistance in the tracing and compensation of former mineworkers or their survivors.³⁶¹ This could be more effective than efforts undertaken by social security administration institutions (such as the Living Hands Umbrella Trust which paid about R350 000 for radio and print advertisements, urging beneficiaries to contact them to verify their banking and contact details).³⁶²

Identification of appropriate payment modalities and service providers

Social security administration institutions (e.g. Rand Mutual Assurance Company, Mineworkers Provident Fund, Mines 1970s Provident Fund, Living Hands Umbrella Trust, and Sentinel Mining Industry Retirement Fund) should identify payment modalities (e.g. electronic payment) and (where necessary) select service providers for the payment of benefits (e.g. U-Bank, the Office of the Master of the High Court and the Workmen's Compensation Trust Fund in Lesotho and Mozambique's Department of Labour etc.). Swaziland's Ministry of Labour and Social Security has proposed that the benefits of former Swazi mineworkers to be transmitted through the Ministry.³⁶³ However, given the experience that government corruption in social security benefit receiving countries in the SADC region sometimes prevents payments from reaching beneficiaries,³⁶⁴ it is doubtful if this is the best approach.³⁶⁵

Investment of outstanding funds in migrant-sending communities

It must be noted that even after every effort is made (to inform and trace former mineworkers or their dependants, to examine them and compensate them), some former miners or dependants may never be found and compensated. Therefore, as the South African Parliament recommended in the case of unclaimed benefits belonging to former mineworkers from the

³⁶⁰ Presentation by SWAMIWA and SNEMA at the Swaziland National Dialogue on Portability of Social Benefits on "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries" (Manzini, 30-31 July 2013). SWAMIWA currently operates from a one-room office in Nhlanguano, staffed by five volunteers who are paid a limited stipend provided by donor organisations. The Association is in need of qualified personnel to undertake some of its activities - information gathered during an onsite visit by Dr Nyenti to the offices of SWAMIWA in Nhlanguano on 1st August 2013.

³⁶¹ For example, SNEMA and AfrikaKontakt (AK) applied for DKK 998 927 in financial assistance from the Danish organisation Civil Society in Development (CISU), to promote and safeguard the rights of Swazi ex-mineworkers, current mineworkers and their families - see Civil Society in Development "Small-scale Development Project (less than DKK 1 million)" - accessed at http://webbase.pnngo.dk/PubliceredeDokumenter/%7BA1D065E4-A14C-AF5A-357D-0341FEF69B4A%7D_1607.pdf (16 August 2013).

³⁶² See Maake M "Custodians 'cannot trace many beneficiaries'" in Business Day Live (BDlive) of 26 May 2013.

³⁶³ Presentation by the Ministry of Labour and Social Security at the Swaziland National Dialogue on Portability of Social Benefits "Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries" (Manzini, 30-31 July 2013).

³⁶⁴ A survey undertaken by Rand Mutual in 1996 showed that 70 per cent of compensation payments remitted through the Mozambican Department of Labour did not reach the beneficiary. See Fultz E *Social Protection of Migrant Workers in South Africa* (ILO/SAMAT Policy Paper No. 3) (ILO Harare, Zimbabwe, 1997).

³⁶⁵ See also, for example, Kenworthy P "Cheated Swazi Ex-mineworkers link their poverty to corrupt undemocratic regime" in Newstime Africa of 9 August 2013 – accessed at <http://www.newstimeafrica.com/archives/27664> (15 August 2013) who blames the plight of Swazi ex-miners partly on government corruption.

Eastern Cape,³⁶⁶ after every possible effort is made to trace potential beneficiaries and compensate them, any outstanding funds should be invested in the migrant-sending communities. Possible investments could include income and food-generating activities, the provision of alternative skills/training, educational support programmes, development of healthcare facilities etc.

Where this requires an amendment of the Pension Funds Act or the rules of the relevant social security funds, these will be undertaken by the South African government and Parliament (for the Pension Funds Act) or the funds (for the fund rules).

According to Mduduzi Hlophe, a legal adviser at the Ministry of labour and Social Security in Swaziland, “the question of portability of social security benefits needs to be attended to with extreme urgency, particularly in view of the poverty levels in the region and the strain on social service budgets.”

³⁶⁶ Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Final Committee Report on Ex-Mineworkers: consideration* (18 March 2008).

13. Selected Bibliography

13.1. Publications

Ad Hoc Committee on Matters Relating to Ex-mineworkers *Presentation by the Chamber of Mines (Chamber) on the Ex-mineworkers' Union* (12 November 2007) – accessed at <http://www.pmg.org.za/docs/2007/071113cmsa.htm> (08 July 2013).

Ad Hoc Committee on Matters Relating to Ex-mineworkers *Union Final Committee Report on Ex-Mineworkers: Consideration* (18 Mar 2008).

Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Mineworker's Provident Fund and Mines 1970's Provident Fund briefings* (15 Feb 2008) – accessed at <http://www.pmg.org.za/report/20080215-mineworker%E2%80%99s-provident-fund-mines-1970%E2%80%99s-provident-fund-briefings> (8 July 2013).

Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *Overview of TEBA* (29 February 2008) – accessed at <http://www.pmg.org.za/report/20080229-teba-and-department-health-eastern-cape-briefing> (8 July 2013).

Ad Hoc Committee on Matters Relating to Ex-mineworkers Union *TEBA and Eastern Cape Department of Health: briefing* (29 Feb 2008) (accessed <http://www.pmg.org.za/report/20080229-teba-and-department-health-eastern-cape-briefing>) (8 July 2013).

AIDS and Rights Alliance for Southern Africa (ARASA) *The Mining Sector, Tuberculosis and Migrant Labour in Southern Africa: Policy and Programmatic Interventions for the Cross-Border Control of Tuberculosis between Lesotho and South Africa, Focusing on Miners, Ex-Miners and Their Families* (July 2008).

Akugizibwe P “Mines, TB and Migration in Southern Africa” presentation at the SA AIDS Conference (April 1 2009).

AngloGold Ashanti *Report to Society 2006* (2006).

AngloGold Ashanti *Report to Society Case Studies 2007 – Occupational Safety and Health*.

Calver A “Miners Compensation: Who Cares?” 2008 (32) *South Africa Labour Bulletin* 26-28.

Central Bank of Lesotho *Quarterly review* Vol. XXIX, No. 1 (March 2008).

Chamber of Mines “About the Chamber” – accessed at [http://www.bullion.org.za/content/?pagename=About &pid=4](http://www.bullion.org.za/content/?pagename=About&pid=4) (17 July 2013).

Chamber of Mines of South Africa *Annual Report 2009–2010*.

Chamber of Mines of South Africa *Annual Report 2011*.

Chamber of Mines of South Africa *Annual Report 2012*.

Chamber of Mines of South Africa *Labour Policy Digest* (December 2010).

Chamber of Mines of South Africa *Statistical Tables* (1994).

Chamber of Mines of South Africa *Statistical Tables* (1998).

Chisupa N “Social protection in SADC: Developing an integrated and inclusive framework – The case Zambia” in Olivier MP and Kalula ER (eds) *Social Protection in SADC: Developing an Integrated and Inclusive Framework* (Centre for International and Comparative Labour and Social Security Law and Institute of Development and Labour Law (2004)) 198.

Civil Society in Development “Small-scale Development Project (less than DKK 1 million)” – accessed at http://webbase.prngo.dk/PubliceredeDokumenter/%7BA1D065E4-A14C-AF5A-357D-0341FEF69B4A%7D_1607.pdf (16 August 2013).

Clark A “South African Miners Fight for Justice” in *Think Africa Press* of 18 May 2011.

Commission of Inquiry into the Compensation of Swazi Ex-Mineworkers in the Republic of South Africa *Report on the Commission of Inquiry into the Compensation of Swazi Ex-Mineworkers in the Republic of South Africa* (Manzini(2001)).

Compensation Commissioner for Occupational diseases in Mines and Works *Annual Financial Statements for the Year ended 31 March 2010*.

Crush J “Contract migration to South Africa: Past, present and future” – accessed at <http://www.queensu.ca/samp/transform/Crush.htm>.

Crush J, Jeeves A and Yudelman D *South Africa’s Labor Empire: A History of Black Migrancy to the Gold Mines* (1991).

Crush J, Ulicki T, Tseane T and Van Veuren E, “Undermining Labour: The Rise of Sub-Contracting in South African Gold Mines” (2001) 27 *Journal of Southern African Studies* 5-31.

Crush, J, Williams, V and Peberdy, S *Migration in Southern Africa* (Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration)(Global Commission on International Migration (2005)).

Department of Health *Tuberculosis Strategic Plan for South Africa 2007 – 2011* (2007).

- Department of Labour “Government to settle compensation claims of Lesotho ex-migrant workers” GCIS News of 19 January 2006 – accessed at <http://www.labour.gov.za/> on 29 May 2013.
- Department of Labour *Labour Migration and South Africa: Towards a fairer deal for Migrants in the South African Economy Labour Market Review* (2007).
- Department of Mines (Botswana) *Annual Report 2004* (2005) 15 – accessed at <http://www.gov.bw/government/dom/DoM%202004%20Annual%20Report.pdf>
- Dodson B *et al Gender, Migration and Remittances in Southern Africa* Southern Africa Migration Project (Migration Policy Series No. 49, 2008).
- Eastern Cape Department of Health *et al* Report to Ad Hoc Committee on Matters Related to Ex-mineworkers union (29 February 2008).
- Eastern Cape Department of Health *et al* Report to Ad Hoc Committee on Matters Related to Ex-mineworkers union (29 February 2008) 1.
- Ehrlich RI “A century of miners’ compensation in South Africa” (2012) 55 *American Journal of Industrial Medicine* 560-569.
- Ensor L “Grim picture painted of Compensation Fund” in Business Day Live (BDLive) of 13 June 2013.
- Fafuli M “A rage from the bottom: The Role of NUM in Transforming the Mining Industry in SA” Paper presented at *International Mining History Conference* held at Gold Reef City, Johannesburg (17-20 April 2012).
- Fultz E and Pieris B *Employment Injury Schemes in Southern Africa: An Overview of Proposals for Future Directions* (ILO/SAMAT Policy Paper No. 7) (ILO Harare, Zimbabwe, 1998).
- Fultz E and Pieris B *The Social Protection for Migrant Workers in South Africa* ILO/SAMAT, Harare, 1997.
- Girdler-Brown BV, White NW, Ehrlich RI and Churchyard GJ “The Burden of Silicosis, Pulmonary Tuberculosis and COPD among Former Basotho Goldminers” (2008) 51 *American Journal of Industrial Medicine* 640-647.
- Government of Lesotho “2010/2011 budget for labour inadequate-minister” – accessed at www.gov.ls on 29 March 2010.
- Green Paper on an Integrated National Disability Strategy (GG 17038 14 March 1996).
- Hangi MA *Is the Southern African Development Community (SADC) suitable for a Monetary Union?* (The Economic and Social Research Foundation (ESRF) (2012)).

Harington JS, McGlashan ND and Chelkowska EZ "A century of migrant labour in the gold mines of South Africa" *The Journal of The South African Institute of Mining and Metallurgy* (March 2004).

ILO *Republic of South Africa Decent Work Country Programme 2010 to 2014* Informative News "Ex-miners association leads pilot project to fight hunger" – accessed at http://www.informativenews.co.ls/index.php?option=com_content&view=article&id=5031:ex-miners-association-leads-pilot-project-to-fight-hunger&catid=34:news&Itemid=27 (23 July 2013).

International Labour Organisation/Government of Lesotho *Lesotho Decent Work Country Programme Phase II 2012 to 2017* (29 February 2012).

International Organization for Migration (IOM) *Briefing Note on HIV and Labour Migration in Botswana* – accessed at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/events/docs/Briefing_Notes_HIV_Botswana.pdf.

International Organization for Migration *Regional Assessment on HIV-prevention Needs of Migrants and Mobile Populations in Southern Africa: Mining Sector Report* (February 2010).

IOM *Briefing note on HIV and Labour Migration in Mozambique* – accessed at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/events/docs/Briefing_Notes_HIV_Mozambique.pdf.

IOM *Briefing note on HIV and Labour Migration in Swaziland* – accessed at <http://www.k4health.org/sites/default/files/IOMBriefingNote.pdf>.

Jansson E "Migrant workers owed billions in 'unclaimed' social security funds" in the Mail & Guardian Newspaper of 22 February 2013.

Jefferis KR "The process of monetary integration in the SADC region" (2007) 33 *Journal of Southern African Studies* 83 and Belle M "Regional economic integration in SADC: Progress, prospects and statistical issues for monetary union" – accessed at <http://www.bis.org/ifc/publ/ifcb32e.pdf>.

Kanyenze G "African migrant labour situation in Southern Africa" Paper presented at the ICFTU-Afro Conference on 'migrant labour' Nairobi (15-17 March 2004).

Kenworthy P "Cheated Swazi Ex-mineworkers link their poverty to corrupt undemocratic regime" in Newstime Africa of 9 August 2013 – accessed at <http://www.newstimeafrica.com/archives/27664> (15 August 2013).

Living Hands Umbrella Trust *Deceased List* – available at www.mineworkers.co.za/Downloads/ (accessed 24 July 2013).

- LuftoDlamini (Minister of Labour and Social Security) Keynote Address at the Swaziland National Dialogue on Portability of Social Benefits *"Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries"* Manzini, 30-31 July 2013.
- Maake M "Custodians 'cannot trace many beneficiaries'" in Business Day Live (BDlive) of 26 May 2013.
- McGillivray W *Strengthening Social Security Protection for African Migrant Workers through Social Security Agreements* (International Labour Office (2010)) 3).
- Milazi D "The migratory labour system and the social conditions of BLS migrant workers on the South African mines: Main aspects of issues involved with special reference to unionisation prospects" (1980) *2 Pula: Botswana Journal of African Studies* 37.
- Mine Workers Provident Fund *Waiving of the Six Months Waiting Period for Resignations and Dismissals* (Notice to all participating employers and NUM)(18 February 2008).
- Mines 1970's Provident Fund *Report from the Mines 1970's Provident Fund to the Ad Hoc Parliamentary Committee on Matters Related to Ex-mineworkers* (15 February 2008).
- Mines and Communities (MAC) "Glimmer of justice for sick gold miners" of 2011-03-28 – accessed at <http://www.minesandcommunities.org/article.php?a=10774> (9 July 2013).
- Mineworkers Provident Fund "Our history" – accessed at http://www.mineworkers.co.za/Our_History_and_Benefits/ (accessed on 08 July 2013).
- MineworkersProvident Fund *Annual Financial Statement for the Period 1 January 2012 to 31 December 2012*.
- Ministry of Labour and Social Security (Swaziland) Presentation at the Swaziland National Dialogue on Portability of Social Benefits *"Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries"* (Manzini, 30-31 July 2013).
- MkhuseliMbomvu (CEO of the Mineworkers Provident Fund) Presentation at the Swaziland National Dialogue on Portability of Social Benefits *"Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners' beneficiaries"* (Manzini, 30-31 July 2013)
- Mozambique: Agreement on migrant workers' wages signed – accessed at <http://allafrica.com/stories/201109052631.html>.

Mundeta B “Cross Border Project, report on workshops with The Association of Mozambican Mineworkers (AMIMO), and other partners” (29th April 2011).

National Treasury “The Compensation Fund Preliminary Report” – accessed at <http://www.treasury.gov.za/publications/other/ssrr/Session%20One%20Papers/Compensation%20Fund%20Project%202nd%20draft.pdf> (19 July 2013).

Olivier M “Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (Part I)” (2011) *1SADC Law Journal* 121-148.

Pendleton W, Crush J, Campbell E, Green T, Simelane H, Tevera D and de Vletter F *Migration, Remittances and Development in Southern Africa* Southern African Migration Project (SAMP) Migration Policy Series No. 44 (2006).

Phakathi M “The Search for Swaziland’s TB-Infected Mine Workers” in Inter Press Service News Agency of 9 April 2013.

Rand Mutual Assurance Company Limited *Annual Report 2012*.

Report from the Mines 1970’s Provident Fund to the Ad Hoc Parliamentary Committee on Matters Related to Ex-mineworkers (15 February 2008).

Report of the Committee of Inquiry into a National Health and Safety Council in South Africa (1997).

Roberts J “Failed by the system” in Mail & Guardian(3-9 July 2009).

Roberts J “Gold miners with work-related TB neglected for too long” in SciDev.Net of 25/03/13 (accessed at <http://www.scidev.net/global/tb/opinion/gold-miners-with-work-related-tb-neglected-for-too-long.html>) (9 July 2013).

Roberts J *The Hidden Epidemic Amongst Former Miners: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape, South Africa* Health Systems Trust (June 2009).

Rothgiesser S “Social insecurity” in Mail & Guardian(19-25 September 2008).

Segal N *A Perspective on the South African Mining Industry in the 21st Century* (An independent report prepared for the Chamber of Mines of South Africa by the Graduate School of Business of the University of Cape Town in association with Genesis Analytics)(August 2000).

Sentinel Mining Industry Retirement Fund *Annual Report 2012*.

Sibanda N *The Impact of Immigration on the Labour Market: Evidence from South Africa* Unpublished University of Fort Hare MCom Dissertation (November 2008).

- Simelane HS and Crush J *Swaziland Moves; Perceptions and Patterns of Migration* Southern African Migration Project (SAMP) 2004.
- South African Development Community “Monetary Union” – accessed at <http://www.sadc.int/about-sadc/integration-milestones/monetary-union/>).
- South African Migration Project (SAMP) *Botswana: Migration Perspectives and Prospects* (2000).
- Southern African Development Community “Single currency” – accessed at <http://www.sadc.int/about-sadc/integration-milestones/single-currenc/>.
- Sparreboom T and Sparrenboom-Burger P *Migrant worker Remittances in Lesotho: A Review of the Deferred Pay Scheme* (International Labour Office (1996)).
- Spoor R “Gold miners return to Lesotho to die” in *Mines and Communities* (MAC) of 30 August 2005.
- Standing G, Sender J and Weeks J *Restructuring the Labour Market – The South African Challenge: An ILO Country Review* (1996).
- Statistics South Africa *Documented Immigrants in South Africa, 2012* (Statistics South Africa (2013)).
- Steen T *et al* “Prevalence of occupational lung disease among Botswana men formerly employed in the South African mining industry”(1997)54 *Occupational and Environmental Medicine*19-26.
- SWAMIWA “Proceedings of the TB in the Mining Sector Conference: Migrant mineworkers are turning the tide against TB, silicosis HIV and AIDS in Swaziland” The George Hotel, Manzini, Swaziland, 23-24 October 2012.
- SWAMIWA/ SNEMA Presentation at the Swaziland National Dialogue on Portability of Social Benefits “*Breaking the cycle of vulnerability on social benefits among ex-miners and deceased miners’ beneficiaries*” (Manzini, 30 – 31 July 2013).
- Swazi Observer “Countries to jointly tackle mineworkers’ diseases – Lutfo” (25 July 2013).
- Swaziland Migrant Mineworkers Association “About” –accessed at <https://www.facebook.com/SwazilandMigrantMineworkersAssociation/info>.
- TEBA “About TEBA Development” – accessed at http://www.teba.co.za/beta/tebadev/about_overview.asp 16 July 2013).
- TEBA “Products and Services – Mineworker benefits – Provident Funds” – accessed at www.teba.co.za (9 July 2013).

TEBA “Tracing and Document Collation” – accessed at <http://www.teba.co.za/> (16 July 2013).

Tlali C “Why it’s hard for ex-miners to get benefits” in Lesotho Sunday Express – accessed at <http://sundayexpress.co.ls/?p=8318> (9 July 2013).

Tsimane E “Batswana migrants could lose their SA mine jobs” in Palapye.com News Blog of 7 January 2009.

UN-INSTRAW and UNDP *Migration, Remittances and Gender-responsive Development: The Case of Lesotho* (2010).

Van Ginneken W “Making social security accessible to migrants”, paper presented at the International Social Security Association World Social Security Forum, 29 November – 4 December 2010, Cape Town, South Africa.

Wilmot J *Our Precious Metal: African Labour in South Africa’s Gold Industry* (1992).

13.2. Legislation

Compensation for Occupational Injuries and Diseases Act 130 of 1993.

Immigration Act 13 of 2002.

Labour Relations Act 66 of 1995.

Mauritius: Government Gazette, 1981-07-01, No, 60.

Mauritius: Government Gazette, Legal Supplement, 1981-07-01, p. 160.

Occupational Diseases in Mines and Works Act 78 of 1973.

Pension Funds Act 24 of 1956.

Unemployment Insurance Act 63 of 2001.

United Kingdom: Statutory Instruments, 1981, No 1542.

13.3. International instruments

Agreed Minutes of a Social Security meeting of the Malawi/Zambia Bilateral Cooperation held in Malawi, April 2013.

Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho relating to the establishment of an office for a Lesotho government Labour Representative in the Republic of South Africa, Lesotho citizens in the Republic of South Africa and the movement of such persons across the international border (SA Treaty Series 1/1973).

Agreement between the Government of the Republic of South Africa and Government of the Republic of Botswana relating to the establishment of an office for a Botswana Government Labour Representative in the Republic of South Africa, Botswana citizens in the Republic of South Africa and the movement of such persons across the international border (SA Treaty Series 3/1973).

Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland relating to the establishment of an office for a Swaziland government Labour Representative in the Republic of South Africa, certain Swaziland citizens in the Republic of South Africa, the movement of such persons across the common border and the movement of certain South African citizens across the common border, and addendum thereto (SA Treaty Series 3/1986).

Agreement between the Government of the Republic of South Africa and the Government of the Republic of Portugal regulating the employment of Portuguese workers from the Province of Mozambique on certain mines in the Republic of South Africa (SA Treaty Series 11/1964).

Code on Social Security in the Southern African Development Community (2007).

ILO Equality of Treatment of Nationals and Non-nationals under Social Security Convention 118 of 1962.

ILO Establishment of an International System for the Maintenance of Rights in Social Security Convention 157 of 1982.

ILO Migration for Employment Convention 97 of 1949.

ILO Social Security for Seafarers (Revised) Convention 165 of 1987.

Memorandum of Understanding between the Government of the Kingdom of Lesotho through its Ministry of Employment and Labour and The Government of the Republic of South Africa through its Department of Labour on Cooperation in the Field of Labour (signed in Maseru on 30 October 2006).

SADC Declaration on Tuberculosis in the Mining Sector (signed in Maputo, Mozambique on 18 August 2012).

SADC Treaty (1992).

Safety and Health in Construction Convention 167 of 1988.

UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.

13.4. Caselaw

In the Ex Parte application of Wilhelmina Jacoba Lubbe N.O. and Xola Stimela N.O. (In their capacities as the Trustees of the Living Hands Umbrella Trust) North Gauteng High Court Case No. 69413/2012 of 25 January 2012.

Thandiwe Miriam Mntseu v Mineworkers Provident Fund Case No: PFA/GA/643/02/KM (Tribunal of the Pension Funds Adjudicator).

14. Annexure 1: List of Institutions Protecting The Rights Of, And Representing, Former Mineworkers

African Institute for Migrant Workers (AIMW)

256 Voortreker Road 7500 Parow Cape Town

Tel: (+27) 21 83 92 117

Fax: (+27) 086 65 72 191

Email: info@aimwo.co.za

Chamber of Mines

5 Hollard Street, Marshalltown 2107

Johannesburg, SA

Tel: (011) 4987393

Fax: (011) 8384255

Consortium for Refugees and Migrants in South Africa (CoRMSA)

5th floor, Braamfontein Centre, 23 Jorissen Street

Braamfontein, Johannesburg

Tel: +27 11 403 7560

Fax: +27 11 403 7559

Email: info@cormsa.org.za

Displaced and Migrant Persons Support Programme

7b Waldorf Complex, 168 Rivonia Road

Morningside, Johannesburg

Tel: +27 11 783 2910

E-mail: info@dmpsp.org

Federated Employers' Mutual Assurance Co. Ltd

Building 2, 1st Floor 101 Central Street,

Houghton, Johannesburg, 2198

Tel: +27 11 359-4300

Fax: +27 11 359-4336

Email: hermanen@fema.co.za

Rand Mutual Assurance Company

BDO Building, 1st Floor, 22 Wellington Road

Parktown, 2193

Tel: 0860 222 132

Fax: 0860 222 203

Email: enquiries@randmutual.co.za

Lawyers for Human Rights (LHR)

4th Floor Heerengracht Building,

87 De Korte Street corner Melle Street,

Braamfontein

Tel: (011) 339 1960

Fax: (011) 339 2665

Migrant Workers' Association - South Africa (MWASA)

Tel: 012 752 2811

Fax: 086 725 3859

Email: info@mwasa.org

Mineworkers Development Agency (MDA)

14th Floor Devonshire House

49 Jorissen Street

Braamfontein 2017

Tel: +2711 403 0277

Mineworkers Investment Company (MIC)

4 Eton Road, Parktown

Tel: +27 11 088 1800

Fax: +27 11 088 1842

Email: info@mic.co.za

Mineworkers Investment Trust

2nd Floor Alris Building

No 3 RissikStrCnr Albert Str

Johannesburg 2000

Tel: 011 442 0811

Fax: 011 442 0814

E-Mail: info@mit.org.za

Mineworkers Provident Fund

4th Floor Sage Life Centre

10 Fraser Street Cnr President Street

Johannesburg 2000

Tel: 010 100 3000

Fax: 086 661 9532

Email: mwpfdata@mineworkers.co.za

National Union of Mineworkers

7 Rissik Street, Corner Frederick Street

Johannesburg 2000

Tel: 011 377 2119

Fax: 0866 098 313

Email: tphoko@num.org.za

South African Agricultural Union(SAAU)

SAAU Building

P.O. Box 1508

Pretoria 0001, SA
Tel: (012) 3226980
Fax: (012) 3200557

The Employment Bureau of Africa (TEBA)
The Employment Bureau of Africa Limited (TEBA)
Roger Powett, Managing Director
P.O. Box 62251
Marshalltown 2107
Johannesburg, SA
Tel: (011) 493.3158
Fax: (011) 493.0600

UBank (formerly TEBA Bank)
Sanhill Park, No 1 Eglin Road
Sunninghill, Johannesburg
Tel: 011 518-5000
E-mail: corpcomm@Ubank.co.za

The 1970'S Provident Fund
The Principal Officer
P O Box 61809
MARSHALLTOWN
2107

IOM Regional Office for Southern Africa
P O Box 55391
Arcadia, 0007
Pretoria
South Africa
Tel: +27 12 342 2789
Fax: +27 12 342 0932
Email: pretoriamedia&communication@iom.int

TEBA Development
121 Eloff Street Extension, Selby, Johannesburg
Tel: +27 (0)11 353 6000
Fax: +27 (0)11 353 6138

Medical Bureau of Occupational Diseases (MBOD)
P.O. Box 4584
Johannesburg 2000
Tel: (011) 403 1350

Compensation Commissioner for Occupational Diseases (CCOD)
P O Box 4566
Braamfontein 2001

Tel No is (011) 713-6900
Fax no is (011) 403-8976.

Compensation Fund

P.O. Box 955
Pretoria 0001
Tel: (012) 319 9458
Fax: (012) 325 3932

Lesotho Ministry of Health

Minister: Hon. Dr. Pinkie Rosemary Manamolela
Contact person: Mrs Flora Khoele
Tel: +266 22313601
Fax: +266 22323010
Email: khoelef@yahoo.com

Lesotho Ministry of Labour and Employment

Minister: Hon. LebesaMaloi
Tel: +266 22316576
Fax: +266 22325163
Email: psemployment@leo.gov.ls

Mozambique Ministry of Health

Tel: +258 21 427131

Mozambique Ministry of Labour

Tel: +258 21 428301
Fax: +258 21 421881

Swaziland Ministry of Health

Minister: Hon. Benedict Xaba
Tel: +268 2404 5514 / 2404 2431
Fax: +268 2404 74 20

Swaziland Ministry of Labour & Social security

Minister: Hon. LutfoDlamini (MP)
Tel: +268 24041971

15. Annexure 2: List of National Organisations Established By Former Migrant Workers to Represent Them

Associcao de MineirosMocambicanos(Association of Mozambican Mineworkers)

Moises Uamusse: President

Av. EmíliaDaússe #1887, R/c

Maputo, Moçambique

Tel: +258 405185

Cell: +258 828728370

Email: uamussemoz@gmail.com

Ex-Miners Association of the Mountain Kingdom (Lesotho)

Mr RantsoMantsi: President

Email: exminers51@gmail.com

Swaziland Migrant Mine Workers Association

VamaJele: Projects Officer

P.O. Box 1 Dumako

Swaziland

Tel : +268 2207 7739

Fax : +268 2207 7739

Cell : +268 7625 8705

Email: vamajele@gmail.com

Swaziland National Ex-mineworkers Association

Southern African Miners Association