

## Court battle for sick miners

Richard Meeran and Zanele Mbuyisa | 21 November, 2010



**VICTIM:** Alpheos Blom, 49, who lives in Welkom, worked underground at Anglo's President Steyn Mine in the Free State from 1984 to 2001. He contracted a severe form of silicosis and is one of the test-case plaintiffs. His claim commenced in 2004 and is still ongoing

### **Former workers left to fend for themselves, write Richard Meeran and Zanele Mbuyisa**

Despite reassuring statements from the mining industry and government, many former gold miners face a bleak future as their health deteriorates with little help or support offered. The devastating effects of tuberculosis and silicosis are sweeping through many rural communities and the victims of the diseases remain in desperate need of medical assistance and compensation.

Scientific studies over the past decade show that former South African gold miners suffer consistently high rates of TB and silicosis. In an industry that employs hundreds of thousands of miners, experts estimate there are tens of thousands of victims of these diseases.

Those worst affected live in the former bantustans and in neighbouring countries, from where migrant labour was drawn during apartheid.

The cause of the epidemic is the excessive dust to which the miners were exposed. Black miners undertook the dustiest jobs and were at greatest risk.

That dust exposure in gold mines caused silicosis and TB was well understood by the mining industry for more than a century, as were the methods required to protect miners from the dust. Neglect of dust control by the mining houses and government mining departments meant that miners' health was sacrificed.

Also significant was the absence of any practical means through which miners could obtain legal redress and hold the industry to account.

The risk of contracting silicosis and TB from dust inhalation does not end when workers leave the mines, but continues for the rest of their lives.

For those from rural areas, where TB is endemic and where medical facilities are rudimentary or non-existent, TB has frequently not been diagnosed or treated until permanent lung damage, or worse, has occurred. Miners returning from the mines with TB, and susceptible miners who contract TB, may then infect members of their families and communities.

Occupational medicine specialist Professor Tony Davies publicly described the situation as a "river of disease flowing out of South African mines".

Disregard for miners' health was illuminated in evidence given to the Leon Commission in 1994. This led to more stringent health and safety legislation. In 2004, the government and the mining industry signed up to the National Programme for the Elimination of Silicosis, a goal of which is preventing further cases of silicosis beyond 2030.

But what is being done in practice to prevent silicosis and to assist former miners?

Despite their ambitious statements, it is difficult to ascertain from industry or government agencies what specific measures are being implemented on mines to reduce dust and eliminate silicosis. The national programme stated that a dust exposure level of 0.1 milligrams per cubic metre was not protective for silicosis and indicated a "pressing need" to reduce levels below 0.05 or further.

However, the website of Harmony Gold Mining indicates an objective of eliminating silicosis by 2013 by reducing dust levels to below 0.1. How it is feasible to eliminate silicosis 17 years earlier than the national programme, without reducing dust to safe levels, is unclear.

The mining industry has been aware of former miners' ongoing risk of silicosis and TB for decades, but appears to take the view that once miners have left employment they are no longer the responsibility of the industry (even though these health risks are directly attributable to excessive dust exposure on the mines).

The statutory compensation system (administered by the Compensation Commissioner) for sick miners is flawed and difficult to access for many, for example in the Eastern Cape, and inaccessible to those living in Lesotho. Many victims are left without compensation and destitute.

We have personally witnessed the plight of impoverished, sick and dying ex-miners - in the Eastern Cape, Lesotho and the Free State. We are presently involved, together with the Legal Resources Centre, in test-case litigation against Anglo American South Africa Ltd in the Johannesburg High Court. The case is supported by Legal Aid South Africa.

In April, one of the plaintiffs, who suffers from a severe form of silicosis, attended the annual meeting of Anglo American in London and informed the company's board of the predicament of former Anglo miners. He has not yet heard back from the company.

Anglo has recently embarked on a worldwide advertising campaign, including in South Africa, to confirm its commitment to its workers and their communities. Back in 1954, the founder of Anglo, Sir Ernest Oppenheimer, also publicly stated that the aim of the company was "to make profits for our shareholders, but to do it in such a way as to make a lasting contribution to the communities in which we operate". It is hoped that this multinational mining group, which has profited enormously from the labour of its gold miners, will now address their plight.

The stance of the government towards legal action against the gold mining industry has also contrasted sharply with the strong support offered to the Cape PLC asbestos victims a decade ago, when the government intervened on the plaintiffs' behalf when the case reached the UK's House of Lords. In 2004, when we first embarked on the silicosis test litigation against Anglo, it was suggested to us by the government that we should not pursue the case because it could result in the loss of miners' jobs. The industry had apparently indicated that it was operating on the edges of profitability and that litigation would push it over the margin.

Also, in stark contrast to its support of the Cape PLC victims, the National Union of Mineworkers seems to have been remiss in its lack of support for former gold miners with silicosis and TB. In the Eastern Cape and Free State, it has been left to victims' support groups, on their own, to help former miners. So far the union has not provided any assistance in the silicosis litigation.

While one can appreciate concern over jobs, the rights of silicosis and TB victims surely should not be overlooked.

It would be one thing if significant steps were being taken to address the issues of dust, medical surveillance and compensation of former miners. But, as indicated, there is little evidence of any such progress.

An important consequence of legal action would be to deter unsafe working practices, an outcome in the interests of current miners.

In June 2008, the American Journal of Industrial Medicine published a study on silicosis and TB among former miners in Lesotho from the President Steyn mine. The study referred to "high rates of lung disease amongst former gold miners" as being "of national concern".

It recommended a "comprehensive programme for former miners which would include surveillance to detect occupationally associated lung disease as a check on control measures on the mines, and for compensation purposes and for provision of treatment care and support for those diagnosed with these conditions".

South African media were aware of the study but did not cover it.

Meeran & Mbuyisa, lawyers with Leigh Day & Co in London, are working with the Legal Resources Centre in the litigation against Anglo American. They also represented South African asbestos miners in the case against Cape PLC