



# Conference Report

High-level Consultative Meeting on  
Unclaimed Benefits in the  
SADC Region

16th – 17th March 2022

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## Introduction and Overview

The issue of unclaimed benefits is a serious issue facing migrant workers throughout the world. At the end of their employment contracts, migrant workers often struggle to access their social security benefits.

In Southern Africa, the situation is far more acute because of the movement of people from Southern Africa Development Community (SADC) countries such as Botswana, Lesotho, Malawi, Mozambique, Eswatini, Zimbabwe, and to some extent Zambia who migrated to South Africa to work in the mines, and especially the goldmines. For generations, these migrant mineworkers have contributed to the socio-economic development of South Africa. The circular migration in Southern Africa is not likely to come to an end any time soon. Many of these migrant mineworkers have not been paid their social security benefits which remain with social security funds and investment schemes. Sometimes they lack adequate documentation to claim what is due to them.

For years now, the question of social security benefits of migrant workers and their portability has been on the table for discussion between SADC countries, but no sustainable solution has been found. Millions of unclaimed social security benefits are reported each year by social security funds and schemes in South Africa. Unclaimed benefits are benefits that cannot be paid. Recent changes to the Pension Funds Act in South Africa have made it possible for these benefits to be transferred from the employer fund to an unclaimed benefits fund. Unclaimed benefits are currently housed in registered active funds or unclaimed benefit funds and there has been increased awareness at national, regional and continental levels of the challenges posed by unclaimed benefits. Despite positive developments, cross-border portability arrangements remain limited or (in most cases) absent.

To contribute to finding solutions, SARW organised, in partnership with the Business and Human Rights Resource Centre and the Southern Africa Miners Association (SAMA), a high-level consultative meeting with the objective of unlocking the social benefits due to migrant mineworkers in the SADC region. The consultative meeting focused on the highly sensitive issue of unclaimed social security benefits owed to former mineworkers and their dependents across the Southern African Development Community (SADC). Currently, there is an estimated R42.8 billion in unclaimed benefits, of which 11% is directly linked to former mineworkers. The meeting sought to understand the context of the unclaimed benefits and to identify ways of speeding up the process of paying mineworkers or their beneficiaries their much-needed funds.

Participants ranged from government representatives to the families of former mineworkers, and from organisations acting on behalf of the ex-miners to research and policy bodies from across the SADC region.



### **Day 1: Wednesday 16 March 2022**

Fittingly, the meeting began with a moment of silence and a prayer for all the ex-mine workers who have passed away without seeing the benefits of their hard work. It was also an opportunity to reflect on the task ahead and the importance of the meeting's discussions.

#### **Welcome Opening Remarks - Dr Claude Kabemba SARW**

Speaking on behalf of the Southern Africa Resource Watch (SARW), the Business and Human Rights Resource Centre (BHRRC), and the Southern Africa Mine Workers Association (SAMWA), Dr Claude Kabemba welcomed delegates to the High-Level Consultative Meeting on Unclaimed Benefits in The SADC Region.

In his opening, Dr Kabemba highlighted that the meeting was special to all the attendees as they shared a common interest in seeing all around them benefit, particularly the marginalised and the poor.

Dr Kabemba gave a brief overview of SARW, noting that SARW is a non-governmental organisation that has been investing in promoting good governance in the natural resource sector in Southern Africa for 14 years, though it has only been functional in South Africa since last year. SARW's key objective is to monitor corporate and state conduct in the extraction and beneficiation of natural resources in Southern Africa and to assess how these activities uplift the economic conditions of the region's communities.

Dr Kabemba shared that SARW is involved in research, advocacy, and capacity building of different stakeholders including parliament's labour, media, civil society, and communities

He also listed the following other roles:

- Creating a platform for action coordination and organisation for communities, activist researchers, policymakers, corporates, and regional and global government bodies involved in the watching and strengthening of corporate and state accountability in the extractive industries
- Advocating and promoting human rights and environmental protection in the resources sector
- Supporting efforts to legislate mandatory and public disclosure

He emphasised the importance of the meeting, particularly because of the sums of unclaimed funds and the need for these funds to find their way back to the communities. He noted that the current unclaimed funds represent 11% of the approximately R42,3billion in unclaimed retirement funds benefits.

He asked the delegates why it is so difficult for the funders to pay the people the money that belongs to them and for which they have worked hard. In most cases, these people are poor and marginalised. Some have died and their widows and the children are trying to access their money in vain. The funders, after all, have the necessary tools, capacity and manpower to make those payments.

He expressed hope that the meeting might be a step in the right direction as most of the attendees understood the challenges and the obstacle and were in the process of working on a solution to speeding up the paying process.

He was concerned that the problems will also extend to new workers who are not accessing their social security benefits. He challenged the delegates, asking at which legislative level changes should be introduced to ensure that we speed up this process for these people.

In closing, he noted the need for the two-day meeting to culminate in practical steps that will promote progress and speed up payments to the communities.

### **Keynote Addresses - Commissioner Magwabane Mdluli**

Delivering the keynote address on behalf of Hon. Phila W. Buthelezi, Minister of Labour and Social security, Kingdom of Eswatini, Commissioner Magwabane Mdluli started by noting that the issue of ex-miners not receiving their benefits is a touchy and volatile matter and that it is a common challenge within the SADAC region. Ex-miners don't get their benefits on time and some end up passing away without receiving their benefits and then their beneficiaries will further experience delays in accessing the money due to not meeting the necessary requirements.

#### **Key points**

- Portability of social benefits is very key because it creates systems of paying social security benefits.
- The difficulty in paying ex-mine workers lies in the lack of systems. All stakeholders in the SADC region are called upon to create systems for payment of social security benefits to the ex-mine workers, and for repatriation of the migrant workers' social benefits.
- There is a need for collaboration and engagement with organisations such as the International Labour Organisation (ILO) on how systems can be created for people to access social security benefits.

## Mr SJ Xaba, Chairperson, Southern African Miners Association, SAMA

Mr Xaba identified three critical areas to be addressed by the consultative meeting: the context; the need for continued global advocacy; and the mechanics required to unlock the unclaimed benefits for the mineworkers. All of this needed to be done with the understanding that any actions had to be done in partnership with the beneficiaries and their families.

### Challenges

The first critical area, Mr Xaba noted, was to put the matter into context. He emphasised the importance of including the ex-mineworkers on the ground in whatever processes were undertaken. His message to the meeting was that “we are here representing that community. Whatever we seek to do, you have got to do it with them”. Whatever structure or social commitment that comes out of the meeting has to be informed by that underlying principle.

While much had been said about the consolidation of appropriate systems to enable payment to be made to the ex-mineworkers, it must never be forgotten that the process is about human beings first and foremost. Mr Xaba explained that certain factors characterised the communities concerned.

For example, a serious impediment was the issue of illiteracy. While the organisations representing the ex-mineworkers might be doing a sterling job in putting programmes into place, critical to the whole process was the human element: there had to be direct interaction and engagement.

Whatever was put together through the consultative meeting, whichever mechanics were put into place, whatever structures were created, whatever funds were identified, it is important to the elders that they want to be seen. “We can talk about what is happening behind the scenes in boardrooms and so forth, but they want to connect face-to-face with the process,” Mr Xaba said. Such action would legitimise whatever was being done.

Mr Xaba highlighted the need to **build a social partnership** – to remove any concept of an “us and them” environment. SAMA urged everyone involved to create a social compact of an equal partnership, from the various SADC governments to the particular institutions dealing with unclaimed social benefits for ex-mineworkers. SAMA viewed the gathering as a coming together of social partners to thrash out possible means and mechanisms to address political issues characterising unclaimed benefits, dealing with service delivery, social issues and portability of benefits.

All those involved need to remember that unclaimed benefits affected ex-mineworkers at the household level – the issues included the families, the community, and the village. It was important to structure the meeting’s framework on this.

### Recommendations

There is a need to use different platforms for a continued global advocacy spectrum of initiatives. He raised a number of concerns noting that those driving the unclaimed benefits directly were the key population – the ex-mineworkers. While others may be involved in the process, they were the key drivers. While researchers, experts, various departments or

ministers of labour can share their information and knowledge, technical and intellectual, it was important to ensure SAMA and the ex-mineworkers they represent were central to the whole endeavour of trying to persuade the South African state to come to the party.

Mr Xaba said there were ongoing processes within the space of open advocacy for legislative and policy changes to ensure a better regime to address the issue of unclaimed social benefits. He explained that SAMA had held interactions with South Africa's Minister of Labour, the political head of the Department of Labour, as well as with the director-general, who had assured him they would meet SAMA on Day Two of the consultative meeting.

SAMA expected the platform created by the consultative meeting would see the partners in the room providing support and expertise to the organisation. For instance, if SAMA interacted with South Africa's parliament on current legislation regarding unclaimed social benefits, SAMA would like to be able to call on those present, where applicable, based on their strategic role, to support the organisation.

The third critical issue was the mechanics of unlocking the unclaimed social benefits. Portability of the benefits was essential. It was not fair that institutions based in South Africa could not pay out the benefits due in other counties and that the South African state was allowing this to continue. There has to be a seamless, systematic mechanism created to ensure that what is benefitting a South African ex-mineworker must apply equally to one in Lesotho, Eswatini, Mozambique and elsewhere.

Mr Xaba concluded his remarks by outlining SAMA's key expectations:

- Assisting SAMA to ensure the realisation of restorative justice for the ex-mineworkers to access their social benefits, and crystallise and enrich the intellectual content of the organisation's open advocacy work
- Setting up the parameters and implementation framework to push for restorative justice
- Sharing lessons from one another and being included in partnership initiatives.

He called on the consultative meeting to use the platform to learn lessons and share best practices – to solve the problem rather than to further problematise it.

### **Key points raised**

- Unclaimed benefits are a sensitive issue. It is important in deciding on the process to put in place and the actions to take to remember why such work is important – it directly affects people who may have lost their lives, people who have been waiting for a very long time for payments, with families broken and dependents left destitute.
- While many of the issues linked to unclaimed benefits are driven by political factors, the solutions investigated cannot simply be undertaken as a tick-box exercise. Again, it comes back to the fact that the issue impacts human beings.
- Specific barriers as to why people are not receiving their benefits have to be identified. Once this has been done, solutions need to be found to remove these barriers. This process is critical in ensuring that restorative justice is the result. Dignity and respect must be given to all those whose lives have been impacted.



### **Session 1: Challenges and Hindrances Faced by Families in Claiming Social Benefits**

**Panellists:** Ms Elizabeth Maseko, Ms Sonto Simelane, Mr Zwelethu Dlamini, Investigative Journalist. Mr Litha Klaas, Eastern Cape Ex-Miners program

**Moderator: Mr Vama Jele**

#### **Ms Elizabeth Maseko, Widow of ex-mine worker, eSwatini**

Ms Maseko started the discussion by detailing her living conditions. She explained that her husband had worked at Impala Platinum mine and had passed away in 1989. She received social benefits for two years (an amount of R552). She was given a proof of life form that she could not complete as she was illiterate, and the social benefit pay-outs stopped. Since then, she has raised her children alone and she hopes to receive the benefits so that she can earn a living and keep on assisting her children even though they are now adults. Her oldest child is now 31.

#### **Ms Sonto Simelane, Widow of ex-mine worker, eSwatini**

Ms Sonto Simelane 's husband worked at the Beatrice mine, but he died in 2019. She had to borrow funds to bury him. Now she does not have access to her late husband's funds to repay the debt. She needs a letter of authority from UBank to transfer the money to her late husband's estate. Her funds are still locked at UBank, while she is accumulating debt. She has travelled to South Africa twice to try to secure a letter of authority since they do not recognise the letter issued in Eswatini. Because she is illiterate, she has to engage lawyers to help her access the letter, but the challenge is that they charge exorbitant rates.

#### **Mr Zwelethu Dlamini, Investigative Journalist**

Mr Zweli shared several stories of widowed women who are not able to access the social responsibility benefits of their late husbands. He noted that the widows are faced with many challenges in accessing their husbands' social security benefits. Reissuing of letters of authority, travelling costs, PCR tests, lawyer's fees and the fact that some of them are illiterate makes the whole process worse

**The following points were made:**

- Letters of authority issued in different countries should be accepted, as this will make things easier for the beneficiaries. Many of the beneficiaries, especially widows, are illiterate.
- Lawyers take advantage of the vulnerable widows and charge exorbitant rates to get the letters of authority for them.

### **Mr Litha Klaas, Eastern Cape Ex-Miners Programme**

Mr Klaas started by giving an overview of the situation in the Eastern Cape ex-miners programme. He noted that the programme was endorsed by the Eastern Cape government through the office of the premier. It is characterised by the following

- A five-year strategic plan execution of community-based.
- An occupational health care program.
- Comprehensive health cases in the committee of ex mineworkers.

He revealed that the Eastern Cape, through the National Department of Health, initiated in 2016 a track and tracing project that resulted in a ground-breaking model of community based occupational health services implemented through services on wheels - an outreach model that was also rolled out in other countries.

In 2008/2019 the Eastern Cape Government in partnership with the community of Eastern Cape-based ex-mineworkers initiated a comprehensive intervention program through an intergovernmental initiative.

The Eastern Cape government worked with the ex-mine workers' council to find long-lasting solutions, which resulted in the development of a five-year intervention plan and the establishment of a premier's provincial steering committee, planning with the community and the Department of Health for the ex-mine workers.

The Nelson Mandela Metropolitan University submitted a proposal on behalf of the premier's provincial steering committee and the Eastern Cape Department of Health to the national Department of Health. National health insurance to the value of R413 million was needed to ensure that intervention objectives on behalf of the ex-mineworkers are realised and that the related challenges are addressed in totality.

The project management office (PMO) will be working closely with the Nelson Mandela Metropolitan University and other sister universities within the province to exert pressure so that the proposal and the proposed interventions are realised.

Thus, universities take the responsibility to build the occupational healthcare centres and services on wheels facilities, operate them for three years and then transfer them to the Eastern Cape Department of Health.

The PMO will be a strategic unit to ensure that upon the end of the Nelson Mandela Metropolitan University Project, the Department of Health takes over to sustain the ex-mineworkers' intervention.

The former acting head of department (AHOD), Dr S Zungu, convened an ex-miners management briefing meeting on 24 February 2021 and amongst others, it was resolved that the DDG: HR and Corporate service create and establish an ex-mineworkers programme PMO.

The brief was also that the DDG: HR and CS should propose the location of the PMO within the organisational structure of the department to:

- Develop terms of reference for the PMO determining roles and responsibility
- Align the PMO activity scope with the department's core programmes and
- Identify PMO team members.

Consequently, the proposed approach was presented to and approved by the Premier's provincial steering committee in March 2021 and was incorporated into the Annual Activity plan of the Eastern Cape Department of Health, and submitted to the Premier's steering committee.

Mr Litha noted that the project aimed to coordinate the integrated departmental response to the effective programme management of the Eastern Cape ex-mineworkers programme.

The objectives of the programme are as follows:

- Providing targeted primary healthcare and a continuum of care services to the community of ex mineworkers through community-based programmes focused on communicable and non-communicable diseases.
- Enable a compensation regime for occupational diseases and injuries through the roll-out of functional occupational health centres and service on wheels outreaches for ex-mineworkers in the province.
- Develop the Eastern Cape Department of Health Occupational Health services policy for purpose of providing operational norms and guidelines in offering OHC (initially targeting ex-mineworkers and generally all vulnerable, labour-intensive workers).
- Facilitate partnership with the Tshiamiso Trust on a R5 billion class-action rollout in line with the Eastern Cape ex-mineworker intervention programme.
- Compile, retrieve and consolidate a comprehensive database of ex-mineworkers including medical history, work history, and beneficiary and personal records
- Ensure urgent prioritisation of projects to retrieve, collect and consolidate ex-miners TB records.
- Facilitate partnerships at local, national, and international levels for programme resourcing from the mining sector, health sector, and various other sectors.
- Strengthen project management, governance and advocacy capacity of PMU, including the establishment of innovation knowledge management systems.
- Prioritise research on the burden of occupational injuries and diseases (BOID) for the diverse community of ex-mineworkers.

In conclusion, Mr Litha noted that the Eastern Cape province believes in making a difference in the lives of the community through collaborations and partnerships, hence they put in more effort to walk the last mile with the project National Department of Health and beyond.

## Mr Jose Carimo, TEBA

Mr Jose Carimo listed some of the challenges that the families and fund stakeholders, face to unlocking the benefits.

- SARS tax numbers – some of the requirements of beneficiaries applying for benefits is that the beneficiary must have a South African SARS number. Many beneficiaries face challenges with that. For instance, Mozambican nationals are exempted from paying tax in South Africa because of a bilateral treaty that exists between the two countries
- Letters of authority – a letter of authority (written in a foreign language) is a challenge that is faced by most beneficiaries. The letters have to be reissued in South Africa since they are issued in their home countries in foreign languages
- Lack of documentation – most of the beneficiaries are undocumented
- Lack of access to technology (e-mail, scanning devices) to apply for the benefits. Some of the beneficiaries have little or no access to technology to access or send the documents
- Data quality (contact information of the mineworkers and beneficiaries) – the challenge affects all the stakeholders including the fundholders
- Family disputes – (e.g. multiple households) are barriers to finalising unclaimed benefits.
- Understanding the requirements – each fund has its requirements for necessary information. It is difficult for the beneficiaries to understand the information required in the forms that they must complete, given that most of them are illiterate
- Unscrupulous agencies trying to expedite the claim process often defraud the beneficiaries.

## Q&A session

**The moderator opened the floor to a question-and-answer segment and the following arose**

**Question: Mr Moises Uamusse Mozambique:** The challenges that have been raised in the forum are not only from Swaziland but are all over. The TEBA representative listed several barriers that block the beneficiaries from accessing the funds, and one of them was SARS tax numbers. Mozambican mineworkers are exempted from tax in writing, so they don't have tax numbers. These ex-miners are suffering.

**Comment: Mr Sonwabile Xaba:** The first point is directed to the programme director and the chairperson to find ways and means to afford us time to be able to come up with the solutions to these problems. The panel discussion should give us time to reflect and experience. We cannot come here to reflect and experience only but must be guided by their reflections to come up with clear results.

- It is important to take the Eastern Cape experience as a reflector and draw lessons from it.  
As ex-mineworkers we are the same. We are borderless, were made to work together and stay together we don't recognise nationalities. It's artificial, we are just one community of ex-mineworkers, hence it is not fair to adjudicate the process to

give the South African miners money. That adjudication process will only be biased towards South Africans, that is why we have contradictions.

- When it comes to the issue of requirements for accessing the social security benefits, somehow this forum must be able to unlock this bias.

**Question: Prof Maibvise**– He appreciated the widows sharing their experiences.

Is there a way that employers can be brought to task? Obligations must be placed on the employers. As long as people are ex-mineworkers they are on their own. But their expertise and experience has helped the employers. The mines should have robust systems in place to guide the families through some of these processes. How much are we taking the employers to task, they are the primary reasons why we are discussing these issues.

When we talk about unclaimed benefits we must ask, is the problem the claims, or is the problem the payments? I'm hearing that there are some claims which are not paid but we have framed our discussion in terms of unclaimed benefits. Can we broaden the discussion because there are also claims made which are not being paid? We talk of the R42 billion sitting there as unclaimed benefits but are we talking to the real issue?

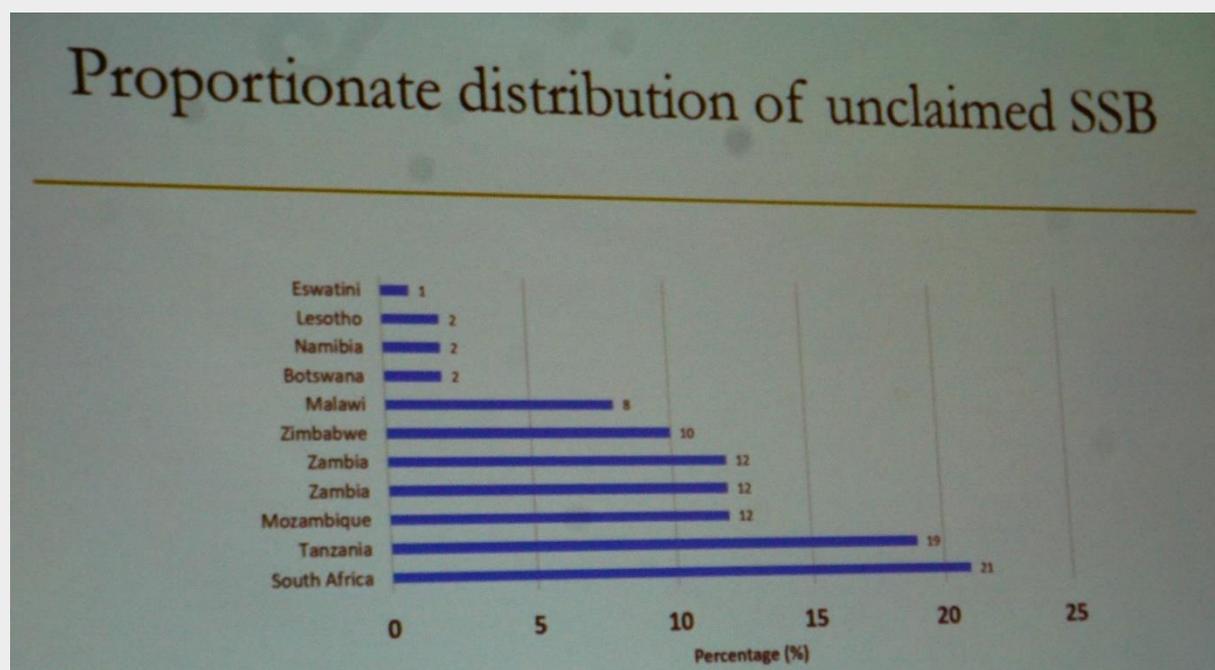
**Question: Mr Wiseman Mkhawana ABSA Trust** – One thing that I have picked up is that black people do not know anything about the administration of estates. This is a problem that is common in Southern Africa. What are the systems that are there to simplify the process so that people can get the money paid to them?

### Key points

Careful attention needs to be paid to looking at how collaboration can be expanded, where lasting networks can be fostered to resolve the problem

Delegates were challenged to come up with ideas for creative partnerships and sustainable changes, to ensure that in years to come social security can be portable.

There is a need to transform systems and inspire new thinking and action on critical issues.



## **Session 2: Presentation of the draft mapping of social security funds in SADC, by Dr Charles Maibvise, University of Eswatini**

The Draft Mapping of Social Security Funds in SADC is a brief hybrid study to try to create a snapshot of the unclaimed benefits, their distribution and the role players who are in the whole scenario. Dr Maibvise noted that the issue of benefits has been a complex and perennial problem, and yet seems to remain unresolved after a long time.

He also introduced new terms as he was delivering his presentation:

- Some people qualify for the unclaimed benefits, it is advisable to use the term mining community so that it covers mineworkers, their relatives, and current and ex-mineworkers
- Unclaimed benefits should rather be referred to as unpaid benefits since most of them have been claimed and no payment has been processed.

### **The following key findings arose**

- Coverage of social security benefits is low in the region, as the funds are either lying somewhere, or the beneficiaries are not even listed as beneficiaries.
- For those covered, many benefits remain unclaimed, for various reasons.
- Most of the unclaimed social benefits are in South Africa (21%) and Tanzania (19%), further studies are needed to be able to identify the actual type of funds in each country. The unclaimed benefits distribution gives a clear description of the number of benefits that are unclaimed in the SADCC. What is left is the development of portability systems and structures.
- The main administrators of the funds are the metal industry and the mineworkers' provident funds.
- The number of social benefit administrators - data is showing that the number is going down, it might be attributed to the restructuring of the funds. The ultimate impact in terms of the actual benefits that that are there is not helping much in as far as alleviating the problem is concerned.
- Unclaimed benefits – The benefits were going up, but of late the curve has flattened., which could mean that there has been improvement in terms of issuing the benefits. However, the graph on actual payments is contradicting that, meaning that a lot is happening beyond what is known, and there is a need for further studies to unlock those.

### **Key points**

- Changing talk into action is met with various obstacles, a lot of effort has been put in but notably, this effort is more on the conceptual side. Literature shows that since 2010 people have been holding forums conceptualising and coming up with decisions, but putting them into action is a challenge.
- Until we elect someone who will make this issue of unclaimed benefits their core business this process will continue moving slowly.
- We should move beyond just discussing how difficult the problem is. And let's see how we can unpack and start unpacking the problem and finding solutions to it.

### **Recommendations**

- Enough has been recommended so far (ILO,2021, SASPEN,2015; ILO 2010) What is needed is action
- periodic situational analysis studies need to be commissioned and a strong follow up of resolutions is needed
- Careful attention needs to be paid to the trends in the SSB space; it might be a starting point for a breakthrough
- The 2010 Yaunde Tripartite Declaration on the implementation of the social protection needs consideration at a regional level
- A regional collaborative approach with a decentralised body is recommended
- A participatory approach of people who are on the ground who are affected by these issues of unpaid social benefits was further recommended
- There is a need to involve all stakeholders in forums, for instance, the media should be invited to cover the events

**The moderator opened the floor for discussions and the following questions arose:**

**Question: Mr Phumeza Dayi:** Engagement must not just talk because we are encouraged to talk with nothing being done. This platform must be clear that a huge chunk of the unpaid benefits is in South Africa, South Africa has to take responsibility.

There is a need for the ex-mine workers to act as a united front and have one voice. There is a need to invite representatives of other countries so that the process is not biased. There is a need to capture the narrative of the SADAC ex-miner.

**Answer: Dr Charles Maibvise:** The study was aimed at mapping the social security benefits and understanding where the benefits are, and where they are being held. Some of the points were taken out of context and I would like to apologise for that. The literature reveals that most of the mining activities seem to be in South Africa and there is more migration of labour from other countries and more funds are still held in South Africa. That is not to say that South Africa is the cause of the problem, but that there are more mining activities in South Africa. If we need to address the problem, most of the people we need to engage with are in South Africa. Someone talked about data segregation - that's a limitation of this study we were not able to segregate the data, but what we could pick up were the proportions. I am not using this as a finger-pointing issue, it is a thorny issue for all of us.

**Question: Dr Barry:** Companies should make their employees aware of their social security benefits, it is their responsibility to make the employees understand their benefits when they leave the companies. The problem of unclaimed benefits is not only of legacy, every day new claimants are coming into existence, but the solution to the problems of these different categories of ex-mineworkers is also different. Therefore, the claims should be separated, it is known that the longer a claim is unpaid, the less likely it is that it will ever be paid. There is a need for strategising and finding specific solutions for these different categories of ex-mine workers.

**Question: Mr Manson Gwanyanya:** To what extent did you consider the role of SADC as a regional body? Do you think there is a probability, for example, to override some of these requirements and reach some form of treaty or agreement where the former mineworkers can have easy access to their social security benefits?

**Answer: Dr Charles Maibvise: Involving SADC:** SADC has done its part and it is still doing its part, though they have a broader mandate and they do not focus exclusively on ex-mineworkers. And they are doing it without having contact with the people on the ground who are affected by the challenges of social security benefits. We need structures on the ground to implement the policies that are formed by big organisations like SADC and ILO.

**Mr Moises Uamusse:** We are faced with a legacy problem which is more than 100 years. So, it is our turn now to find the solution to that century's problem. Now is the time to come up with the solution for the problem, the research has been done a lot and you have been sitting with money that belongs to the people who are not here.

### Key points

- The issue of unpaid social security benefits is complex, but at the same time there are people on the ground that are affected by the problem, and they need help in accessing the benefits.
- There is a need to move beyond just talking and start looking for solutions.
- The structure of the engagements should not be about talking, with no action.
- There is a need to invite representatives of other countries so that the process is not biased. There is a need to capture the narrative of the ex-miners.
- There is also a need for media presence or attendance for the widespread the discussions.



### Session 3: Portability of Social Benefits in SADC: Challenges and Opportunities

*Moderator: Ms Victoire Umuhire*

## **Ms Mavis A. Koogotsitse, SATUCC**

Ms Mavis started by giving a brief background of her organisation: Southern Africa Trading and Coordination Council (SATUCC) which is based in Botswana and has been in existence since 1983. It has taken up a high-profile political role since its inception, reporting on economic labour conditions, and human and trade union rights to influence the policies of SADC.

SATUCC is a platform of labour that engages with the SADC governments and business and trade unions regarding issues of workers and making sure that there are minimal labour standards that offer protection for workers, including migrant workers.

SATUCC has been involved in the development of the SADC instrument on portability of social security benefits and has been working together with the other partners to ensure that the members access their accrued benefits, especially the ones who went through the Wenela projects.

### **Challenges at a regional level**

- The challenge that SATUCC faced, as they were dialoguing in a tripartite structure, was harmonising the systems and coordinating them within the region as many governments were suggesting that systems should be coordinated instead of harmonising.
- There is no system that totalises the benefits to make them work for migrant workers if they move from one country to another.
- Currencies – the existence of parallel markets and currency differences. In what currency do beneficiaries receive the funds that are due to them? The currency differences and rates prompt the workers to rather collect their benefits in the country where their services were rendered to get the value of their benefits, instead of moving their funds to their home countries.
- Mechanisms for relatives to access the benefits of an ex-mineworker who has passed away.
- Medical aid - the access to proper medical care, some of the contributions for migrant workers are low. Consequently, they do not have access to proper healthcare, whereas in other SADC countries the same contributions can afford a migrant worker access to decent healthcare.
- Unavailability of a system that recognises the relatives of a worker in cases where they are deceased. It's an expensive and lengthy process for the beneficiaries to be able to claim the benefits.
- Irregular recruitment practices and seasonality of workers - SATUCC is working with migrant associations to educate the migrant workers about migrant rights, they also working on toll-free numbers where migrant workers can be assisted.
- Lack of information and proper record-keeping - there is a need for a database, in generating it, collaboration and information sharing is required.
- Legislative differences between the member states - the differences in the national laws that cover social security benefits.
- Challenges of portability of benefits with qualifying migrant workers.

## Key points

There is a need for a well-developed payment mechanism in SADC, lessons can be drawn from the successful payments of the social benefits at the bilateral level to form a minimum standard throughout the SADC region.

## Ms Takalani Lukhaimane, The Financial Sector Conduct Authority

Ms Takalani continued the conversation from the perspective of the portability of social benefits in SADC, she noted that the employers were not represented in the forum as key stakeholders. She explained that a pension fund is a result of an occupation. It was revealed during the Eastern Cape programme by the mineworker's provident fund that a lot of people that are claiming are not due benefits. The employer is in a better position to tell if claimants don't qualify for benefits since, they are the ones who have been deducting from them and would know whether they had established a provident or a pension fund for them.

Moving on, she noted that the employees tend to confuse the benefits that are due to them, the following recommendations were made:

- Employers should be well represented in future discussions
- There is a need to go into the granular details of these issues, high-level forums have been overdone

Ms Takalani talked about the importance of data, referring to a practice that was undertaken in Malawi where ex-mine workers had their sons working on their behalf, under their names, after they reached retirement age. That is one of the challenges of having data that doesn't add up, she recommended that such matters have to be addressed and that solution has to be mapped.

## Challenges in the portability of benefits

- Data integrity - the quality of the data is questionable, passive data tracing approaches were identified by the Financial Sector Conduct Authority which found that little or no emphasis is placed on the results of the tracing process.
- Letters of authority and access to documentation. Ever since the Financial Sector Conduct Authority started being involved in the issue of unclaimed benefits, they have always been guided by the following qualifying questions to look at the reason for asking for information from people:
  - Is it valuable for you to make payment?
  - Is there any other way for you to confirm what you want to confirm from the documentation without having to ask for the documentation?
- She noted that they have found a lack of empathy from administrators in retirement trustees. There are practical problems that a person has to face to claim. Some people do not have access to e-mails to submit documents, the Financial Sector Conduct Authority has resorted to WhatsApp as a means of document sharing to start the process while they wait for the actual documents via e-mail.

## Key points

- There is a need for the administrators and funds to be more innovative, agile, and flexible in their processes, the processes are already there, and they should be restructured to fit different situations.
- Careful attention needs to be taken to taking out the employer link so that people understand that the benefit is between themselves and the fund. The Financial Sector Conduct Authority is introducing legislation that allows the funds to keep employee details such as tax numbers, e-mail addresses, and phone numbers. This will remove the employer link and also prevent the creation of future unclaimed benefits.
- All stakeholders should be involved in forums like these so that they can be aware of these issues and understand the programmes so that they can be flexible in the way they work. For instance, the Department of Justice needs to be present to engage around the letters of authority and the Department of Home Affairs to discuss the issuing of the death benefit statements and birth certificates.
- Beneficiary education - beneficiaries should be given documents of how the process works and have a way to walk them through it so that they can be well informed
- Funds need to stop doing things the way they have always been doing them, restructuring is needed to find a solution to the tricky situation that the country finds itself in of unclaimed social security benefits.

#### **Mr SJ Xaba, Chairperson, Southern African Miners Association, SAMA**

Mr Sonwabile Xaba approached the topic from the point of view of ex-mineworkers' experience speaking to two specific areas, namely the instruments to guide the management of unclaimed benefits portability and the adoption of a regional policy noting that the regional policy is not legally binding. but there is a need to pick up on specific issues that will be addressed and concretised to establish a binding agreement, without stretching it.

Mr Sonwabile Xaba highlighted the following key factors and highlights:

There is a need for a regional process to be embarked on to address the issue of the policy, particularly an operational policy. Institutions like SAMA must be included., so that there is a platform that is dedicated to dealing with operational, tactical, and operational issues and that will involve pinpointing and analysing bottlenecks and also pinpointing what needs to be done.

Adding on to that, he noted that there is a need to draw lessons from the Eastern Cape exercise to inform a broader regional intervention.

There is a need for a two-pronged approach that addresses the legacy as well as factors that will prevent the legacy issues from recurring in the future. He added that careful attention needs to be taken on not just focusing on legacy issues since that would result in current issues re-emerging 10 years later as legacy issues.

Mr Xaba further noted that there is a need to engage the South African state to empower FISCA to provide the necessary policing instruments. If FISCA is not empowered and given the tools to exercise, the policing part of things there would always be a problem. There is a need to get into the details of what needs to be put in place to strengthen the FISCA institution to ensure that all schemes can do whatever is necessary to ease up the claiming process.

In conclusion, Mr Xaba noted that administrative errors were made in the past on the records and information like dates of birth and even names, meaning that contributions and deductions have been made under wrong identifications. He noted that there has to be an effort to rectify this and that talking about it with no action taken will not help the situation. Further engagement at the ministerial, South African, or even SADC level is needed to address the legacy challenges to close the gaps and maybe reach a consensus on a blanket approach to compensation of the legacy issues. He noted that errors of the past that have a bearing on administrative shortfalls should not be a burden to an ex-mineworker.



#### **Session 4: Exploring country legislation and experiences in accessing and claiming social security benefits**

Panellists: Mr John Dick, Malawi Ex Miners Association, Mr Lungelwe Ngcamphalala, Ex Miners Wenela Zimbabwe. Mr Sithembele Bernad Tholi, South Africa Ex miner; Dr Christofer Nshimbi, director & DST/NRF.

This session aimed to look at the contributions of migrant workers to economies and societies in both destination countries and countries of origin, examining the different laws, policies and labour agreements relating to social security benefits. It also aimed to propose reform where the law, policies and labour agreements do not facilitate access to social security benefits, particularly in labour sending and labour receiving countries.

#### **Introduction by the moderator Ms Shumirai Zizhou**

This session took a question-and-answer approach, providing insight into the impact of the different legislation, policies and labour agreements at the grassroots level. Ex-mineworkers Mr John Dick of the Malawi Ex-Miners Association and Mr Lungelwe Ngcamphalala of the Ex-Miners Association of Zimbabwe spoke of their experiences while Dr Chris Nshimbi, director and research fellow at GovInn provided the theoretical background.

Shumirai posed several questions to the former mineworkers:

- When were you contractually recruited to work in the mines in South Africa?
- Were you informed of your social security benefits?
- Currently, are the majority of migrant mineworkers aware of these benefits and the policies?
- Do you think that these policies have been honoured?
- Do you think that they have been just and fairly applied to you?
- What challenges have mineworkers faced on the ground when claiming their benefits in your countries?
- What has been the government's response to this, both nationally and in South Africa?

Translation services were provided for the panellists.

### **Mr John Dick of the Malawi Ex-Miners Association and Mr Lungelwe Mkhwananzi of the Ex-Miners Association Zimbabwe**

The ex-mineworkers noted that everyone, except for the employers, were represented at the consultative meeting.

#### **Challenges**

They noted that the primary challenge on the ground was for ex-mineworkers or their dependents to make and receive their claims. They reflected on earlier comments made about how people in Eswatini may have retired at the age of 60 but died in their 70s never having received their pensions or benefits because no systems had been put in place to ensure the payouts. When systems were put in place people would receive their payments shortly after retiring, or even before they leave work.

The two noted that lessons should be drawn from this example and from the previous systems. And that a system should be introduced when ex-mineworkers were working to make sure benefit claims would be done easily and correctly – that would have impacted workers today too.

Mr Mkhwananzi spoke of **using the past to mould the future**. He gave the example of how a certain Mr Smith, a former magistrate in Zimbabwe, managed funds for Alexander Forbes, pointing out that this was indicative of a systemic challenge the ex-mineworkers and their widows and children faced. It was important to **change the policies through legislation crafted to benefit the ordinary**, affected citizens within SADC. These people, who suffered from not receiving their due, had contributed to the economic success of their countries of origin as well as of South Africa by coming to South Africa to work.

Mr Mkhwananzi also spoke of the **bilateral agreements** between the various countries and South Africa and referred to an agreement set up between the then Rhodesia and South Africa that was in place until 1983, three years after Zimbabwe gained its independence. Under the agreement, the Zimbabwean mineworkers in South Africa had to complete their contracts. High-level political decisions, he pointed out, impacted the mineworkers.

The ex-mineworkers told the gathering that people going to the mines were required to sign contracts stipulating those workers could not go on leave for at least 12 months. If workers decided not to continue working without completing the 12 months, they were deemed to have violated the arrangement and sent home.

An important aspect for the ex-mineworkers was the **lack of information about government-level** actions. This created a challenge, they noted, adding that people could not argue their cases if they do not have the full picture.

They explained that TEBA was the company that recruited on behalf of all the mining companies and should have all the worker's records, including personal details and work records. This should have made it easier for claims to be tracked and paid.

### **Possible solutions**

They recommended to the meeting that their issues should be dealt with a sense of **humanity**. They suggested TEBA **make available the service records** of those who worked at the participating mines. In addition, they wanted **clarity on the status of the** Tshiamiso Trust, which dealt with the claims of those not covered by TEBA.

They proposed the gathering come up with **a declaration** that the claimants' information, such as their records of service, be made available to assist claimants; and that the benefits be paid out speedily.

Lastly, the ex-mineworkers spoke about **restorative justice**. They noted that certain things – human rights violations – had happened in the past, before democracy, that should be corrected. They told the gathering they needed to know about what happened during the medical examinations within the recruiting process.

### **Dr Chris Nshimbi, director and research fellow at the Centre for the Study of Governance Innovation (GovInn)**

The questions posed to Dr Nshimbi were:

- We acknowledge that South Africa has a history of recruiting regional workers to feed its mining sector. In this regard, bilateral agreements were put into place with rights and obligations on both ends. Do you think these have been honoured?
- Do you think they were fair? In light of your response to that question, we are all aware that migrant workers who were granted permanent residence in the 1990s were eligible to claim social assistance. However, in light of the current government, which allows for the continued degrading of migrants and hardens employment, work and residence options for them. How do we, as key stakeholders, navigate this and ensure miners can access the money owed to them?
- Can civil action be taken against South Africa for dereliction of duties with regard to bilateral agreements?
- South Africa has a great, progressive Constitution. But it is one thing to have things in place, it is another to implement them. Would you say that regionally and nationally, the judicial system has failed? How can we create systems that will ensure that the dignity of the ex-miners is restored?

Dr Nsimbi noted that just a couple of days ago the President of South Africa had a bilateral engagement with the President of Mozambique, stating he was going to make sure that a mechanism to monitor and follow up on what was agreed on be put in place and implemented.

### **Challenges**

Most bilateral agreements – not only between South Africa and Mozambique, but across Southern Africa, have historical roots going back to colonial times, and usually include issues relating to labour migration. What the countries do is, each time they meet, normally every five years, they renew these agreements. But the **foundations of the agreements are based on colonial times**.

That speaks to whether the agreements are fair or not. What is seen across the region, not only about migration to South Africa, is that the country that imports labour generally tends have the upper hand over the country that exports the labour. In that sense, the agreements are not fair, especially on the country exporting the labour. This filters down to the worker or migrant labourer when they work in the other country.

### **Possible solutions**

Responding to the question of creating a just and fair system, Dr Nsimbi suggests it would be better to have a **framework that governed the exchange of labour** at a regional level, where everyone brings their labour needs to the table and then create an exchange based on parity so that no one particular country has the upper hand over another.

## Comments

### Eastern Cape representative

To an ex-mineworker on the ground, the nitty-gritty of putting together, with immediate effect, the processes, strategies and systems, while important, are up to the social partnerships at the regional and country levels. The ex-mineworkers are clear, they want to be paid what they are due. If the processes include ex-mineworkers, well and good, but **their concern is on the outcome**. Every effort must translate into the ex-mineworkers getting their money.

The situation for the ex-miners on the ground is that the mining sector, led by South Africa, got away scot-free. Now, if the state is to now take responsibility, there must be measures put in place with immediate effect to close that unclaimed benefits gap.

The significance is on the outcome, given the fact that it reflects what has happened in the region since 1912. There have been reflections and talks and sharing of information. But it is now 2022 – 110 years later. The meeting can talk and talk, can pull everything the ex-mineworkers seek together. But that must translate into getting their money.

The council representative spoke with sadness about how what the ex-mineworkers are experiencing also has **racial undercurrents**. When working in the mines the black workers also had white colleagues. But they are not the ones here talking about outstanding benefits. If what has happened to the black ex-mineworkers had happened to the white workers in South Africa, the process would have been fast-tracked. Why is this not the case for the African child?



## Q&A session

### Isaac from Botswana

Isaac explained that his organisation, *Bolama*, worked in helping ex-mineworkers across the country, gathering data and information and helping with queries and problems. A particular challenge was the lack of financial support, given the vast distances the organisation needed

to travel because Botswana is an open country it could involve a 1 000km trip to reach some of those mineworkers.

Another problem the organisation encountered in gathering data. The office had about 70% of all leads. Some of the ex-mineworkers then explain that some of the TEBA data is incorrect. For example, they may say they worked in the mines in the late 1960s when things were particularly bad. People shouted at the workers, used racial slurs and made tax deductions in both South Africa and the country of origin. And then the workers did not receive their payouts. The organisation also ensures clarity of communication by speaking to the ex-mineworkers in their mother tongue.

#### **Dr Charles Maibvise from the University of Eswatini**

Dr Maibvise emphasised the numerous forums that had previously been held on the topic, although the current meeting seemed to involve many more stakeholders. He noted, however, that what was missing and of critical importance were the **solutions and specific actions for the way forward**. He asked if the problems being raised were being noted, including the specific action points from each discussion so that by the time everyone dispersed from here there is a set problem, a solution and an action plan. This is the forum to create solutions.

#### **Chairperson of the Eastern Cape Ex-Mineworkers Council Mr Phumzile Dayi**

Mr Dayi told the gathering to appreciate the reality; the discussions must consider both unclaimed and unpaid benefits, not focus only on the unclaimed benefits. The names of those who have claimed but not been paid are known. Instead of simply sitting with a list of 50 000 names in Johannesburg, send that list to the villages where the elders, ex-mineworkers, will identify the people. One problem that keeps being raised is that of the Protection of Personal Information Act (POPI Act). And now there is the process of advertising. The same arguments have been taking place since 2010 about how the funds are being held back, yet the ex-mineworkers can be identified and traced. There has to be a concerted effort to find the people and give them their money.

While research and so on are relevant, a **distinction must be drawn between unclaimed benefits and those that have been identified but not paid**.

In closing, Mr Dayi noted there were fundamental issues that needed to be researched such as around mining-related diseases, the extent of these illnesses, and quantifying how payments should be paid based on the level of illness. Extensive research is required to fill those gaps.

But as far as ex-mineworkers waiting for their payments are concerned, there was nothing to be researched, nothing to be talked about except to say this is the mechanism to be followed and this data is needed.

*During discussions, participants were urged to ensure that the meeting concluded with clear recommendations and a list of responsibilities as to who should take forward recommendations.*

#### **Mr Xaba**

SAMA highlighted the pilot process taking place in the Eastern Cape, allowing for an intervention mechanism involving direct engagement with the state at all levels, high-level and low level, including at the grassroots level.

However, that was not being replicated at the SADC level. What was required was a way to have what was happening in the Eastern Cape done at the SADC level. Mr Xaba called on the **SACD Secretariat to find a way to elevate and coordinate the practical essence of the pilot project** to a regional level.

The last comment Mr Xaba made was that the pilot project saw all the role players necessary to implement policy changes were included in the forum, from the Minister of Labour to the Premier of the Eastern Cape to the financial decision-makers. That way all the policy changes required to get factored into the process. However, this has been informed by a specific Eastern Cape experience. What was **now required was that this became a wider scale experience**, so that when the regional reforms are necessary, a Mozambican experience can be drawn from. How best is such a gap closed?

### **Key points raised**

- Clearly articulated solutions and an action plan must be put in place, with identified deliverables, including who will undertake what tasks
- While there is a passion to ensure that unclaimed benefits reach the ex-mineworkers there must be a clear undertaking with a set of defined actions put in place to ensure that all beneficiaries, including those that have already been identified, receive their funds. Partnerships are essential in ensuring delivery. Together, everyone at the forum has a duty to help the ex-mineworkers get their money
- A clear distinction must be made between those who have put in their claims but have not been paid and the unclaimed benefits
- Clear and transparent information needs to be provided to all the ex-mineworkers and their dependents, including the status of their claims. The correct records must be made available to the claimants and to the funds to ensure ease of payment
- The historical context of the bilateral agreements is important in understanding why these agreements need to be redefined and amended. The structural systems of the past from the legal system to the contractual system to the regional system were put together in a bygone era. However, going forward, new redefined bilateral agreements should be drawn up in an open process. The promises made in the agreements must be implemented in any action plans
- A framework needs to be put in place to ensure an equitable exchange of labour at a regional level.



### **Session 5: Pension Funds Schemes: Challenges and Opportunities for Paying out Social Benefits.**

This session focused on the difficulties and challenges faced by different funds and schemes in administering and paying out the various forms of social security benefits and how portability can be achieved. It also considered the proposed solutions on how to ensure speedy and timeous payments to claimants and beneficiaries.

**Panelists:** Mr Jose Carimo, TEBA; Ms Wendy Kraemer, Mines 1970 unclaimed benefits Funds RSA; Mr Ntombizethu Sibisi, Fairheads Benefits Services; Mr Peter Mgcini Shongwe, Likhwane Beneficiary Services; Ms Takalani Lukhaimane, The Financial Sector Conduct Authority.

#### **Mrs Ntombizethu Sibisi, Fairheads Benefits Services**

Mrs Ntombizethu kicked off the discussion by briefly describing Fairheads Benefits Services, which is a fund that deals with beneficiary funds and trusts allocated to children and disabled children that come after the death allocations. She highlighted the challenges of paying out the social benefits as follows:

For some families, it has taken too long for the funds to be approved and be allocated to Fairheads and by the time the process is complete, the families will already be frustrated.

Delays in the termination benefit payout to beneficiaries due to changes of names and surnames. Delays are also caused by missing information some of the beneficiaries do not have IDs and bank accounts.

Change of numbers by the guardians: Some guardians change numbers over time and there are challenges in getting hold of them for their yearly check-ups, and they don't come forward over time.

Guardians pass away: Sometimes the other family members are not aware of the funds such that when the guardian dies, no one comes forward.

## **Recommendations**

There is a need to notify the beneficiaries about the funds so that they will know what to do when the time to claim comes, some of the beneficiaries are not aware of the trust funds that are due to them to further their education.

In conclusion, Mrs Ntonbizethu spoke about opportunities for paying out social benefits. They have ventured into sharing documents via WhatsApp and they are also using Facebook to reach out to the children, she noted that they are still in the process of finding innovative ways to make sure everybody benefits from the funds fairly.

### **Wendy Kraemer, Mines 1970 Unclaimed benefits Funds, SA.**

Wendy Kraemer, approached the topic from the point of view clearly stating what they have achieved as an organisation. A yearly strategic meeting is held, aimed at pinpointing the challenges and problems of the previous year and tailor-making solutions for each challenge.

She highlighted some of the solutions as follows:

In the past Mines 1970 used to insist on original documents coming to Johannesburg- now they no longer insist on that and they now accept scanned or photographed documents, of IDs and birth certificates, etc, via e-mail and WhatsApp.

When they don't have the exact date of birth, Mines 1970 will accept a five-year prior and five years after leeway. For instance, if a beneficiary says he was born in 1965 and Mines 1970's data says 1968, the requirement will be accepted, and they will check the rest of the checklist as well.

**ID** - They accept various forms of proof of identity, like foreign identity documents, passports, and birth certificates.

**Proof of service** - Mines 1970 relies on TEBA for records of service, however keeping in mind that the record of service and the industry number requirements started in 1982 and the fund started in 1970. So, a lot of people who were employed from 1970 to 82 would not have an industry number and they would not necessarily be on the TEBA database. In those cases, the fund also accepts proof of service in form of mine letters, UIF cards, and affidavits. She explained that in the early days some of the mines were not members of TEBA so TEBA will not have the records and that some of the mines closed down in the 1970s and their documents were destroyed, hence the acceptance of affidavits.

**Letters of authority** - The funds accept letters of authority from foreign countries, letters from the chiefs, and from the headmen in rural areas.

Wendy explained that the fund has 69 000 members. of which 31 000 have been traced and 14 500 have been paid. That means that 53% of the people - equivalent to 16 000 - have been traced and have submitted documents and they have not been paid because of missing requirements like a letter of authority or record of service.

Moving on, she noted that the issue of tax numbers is a challenge when it comes to paying out of social benefits as some people are exempted from paying tax because of bilateral agreements.

In conclusion, Wendy Kraemer noted that the solutions that they have implemented have assisted the fund tremendously, as is evidenced by the numbers. She revealed that the fund has managed to find more than 50% of its members either by identifying them as deceased - as the fund is over 50 years old and most of the members are deceased, So, they are looking for spouses or children. In the first few months of 2022, the fund paid out nearly 10 million Rand.

### **Mr Jose Carimo, TEBA**

Mr Jose Carimo started by clearing out issues with the stakeholders present in regard to the role of TEBA clearly stating that TEBA does not administer funds. It was established in 1902, through the Chamber of Mines of South Africa as a recruiting agency for the mining industry and that role has evolved over the years to accommodate new services that the industry was introducing including assisting the stakeholders to help and trace potential benefits of the funds because of TEBA's footprint in SADC. It also channels documents to the funds through TEBA's offices so that families don't have to travel from remote rural areas beyond the borders into South Africa.

On the challenges of paying out social benefit, he noted that TEBA can't help with some of the proposals to overcome the problems that the funds and the industry is facing. The agency itself at the rock face as well, it is no stranger to what is happening in the mining sector.

Moving on, he talked about the renewal of the bilateral treaties that were signed in the 1960s and 1970s by Botswana, Eswatini, Lesotho, and Mozambique, and said that the countries are engaging with South Africa to review the treaties because of fear of a backlash, given the high unemployment rates in South Africa. Mozambique stands to lose a lot of the privileges in terms of their mineworkers, as they will have to pay tax in South Africa in the future.

He also noted that the bilateral treaties of Mozambique and Lesotho enforce deferred payments, meaning that the wages of mine workers are being deferred back to their countries. South Africa is not benefiting from this process. There is an outflow of more than R3 billion per annum to those two countries. Reviewing those treaties might result in the cancellation of the forced remittance.

Mr Carimo noted that the bilateral treaties are working to the advantage of the sending countries more than the receiving country, which is South Africa.

Addressing the opportunities of payments of funds, he noted that there is an institutional arrangement between TEBA and Tshiamiso Trust to the effect that a Tshiamiso member will be exempted from paying R30 to obtain a record of service, TEBA has a similar arrangement with other funds as well.

In conclusion, he noted that there is an opportunity for the South African government (Masters of high court, Minister of Justice) to engage the SADC authorities in terms of the letter of authority given that the review of the Act between 2015 and 2016 caused a massive disruption in the payment systems. Mr Carimo revealed that TEBA has a meeting scheduled with the Masters of the high court in South Africa concerning the letter of authority issue. He also noted that they are also engaging with SARS via the minerals council in terms of the tax numbers.

### **Mr Peter Mgcini Shongwe, Likhwane Beneficiary Services**

Speaking from the perspective of the beneficiary funds administration sector, Mr Songwe identified the challenges the sector faces and made some recommendations for solutions.

#### **Challenges**

The first challenge faced by beneficial funds administrators in Eswatini was that the pension fund holders did not want to cooperate despite the sector being regulated by the Financial Services Regulatory Authority. **Some of the pension funds had a “big brother” mentality towards the beneficiary funds administrators.** In addition, some of the pension funds were subsidiaries of larger companies based outside the country and so may not want to take decisions that may not be approved by their senior partners.

Another challenge faced by administrators of beneficiary funds was the issue of family feuds. When wanting to distribute beneficiary funds, some of the information may be lacking, or family members may be fighting, and they do not want certain children or wife number two to benefit. In addition, the administrators may face **challenges with having proper records**, which then delay the processes of paying out the beneficiaries.

#### **Possible solutions**

Mr Songwe suggested that everyone involved in ensuring ex-mineworkers receive their funds work together to **sort out the red tape** involved. For example, TEBA had suggested that SADC have a single template letter of authority signed in the countries of origin to prevent delays. Mr Shongwe also suggested implementing such simpler systems as a matter of priority.

He also urged that all the stakeholders concerned work together focusing on coordination and collaboration.

A key aspect, Mr Shongwe noted, was to have **beneficiary funds administrators in all the SADC countries** to ensure that the service was brought home and understood by the beneficiaries. He explained that the surname Nxumalo had to be understood within a broader cultural context. “A Nxumalo person is also a Mkhatswa person and a Mkhatswa person is also a Ndwadwe person.” If knowledge such as this was understood beneficiaries would gain from a quicker service and more timely payouts.

For example, Likhwane Beneficiary Services had worked with the Sethaphelo Beneficiary Fund in Lesotho to create an administrator there. The company was also in talks with the insurance and pension commission in Zimbabwe to assist Zimbabweans to access their funds. “We were able to also create an appetite from the Zimbabwe Chamber of Mines,” Mr Shongwe said.

It would be useful to the beneficiary funds held in the countries of the ex-mineworkers’ origin. Perhaps, Mr Shongwe suggested, it would be helpful to have a service level agreement with

those companies that hold the beneficiary funds in South Africa, and to provide a process that will allow the administrators to service the ex-mineworkers in the various countries.

### **Supporting regulations**

It was imperative, Mr Shongwe noted, that those given the responsibility to ensure delivery of payouts to the ex-mineworkers, or those tasked to oversee the process be given the authority to act.

### **Ms Takalani Lukhaimane, The Financial Sector Conduct Authority**

Ms Lukhaimane spoke of the reality of paying out an amount, for example, of R100 000. On the one side, with a “big brother” mentality, the beneficiary funds are concerned that a guardian may not be able to manage that amount and ensure it stretches to cover 11 years and pay school fees, uniforms and other items. On the other side, the company then puts it into a beneficial fund and then no one benefits.

The challenge this raises is **whether there should be legislation to dictate a minimum amount** that should be paid out, or **should people be educated well enough to be able to challenge the decisions** of the company. If someone is putting money into a beneficiary fund, investigations are needed before doing so. For example, one fund pays out a standard R250 a month, regardless of what is paid into the fund. Would that support a family if they lost their breadwinner?

What this pointed to was the need to ensure that the right kind of regulations was put in place to make sure that that kind of vulnerability was not exploited.

Regarding the POPI Act and the protection of people’s information, Ms Lukhaimane noted that people must be aware of the world in which they live, with widescale fraud and the cloning of records. It is important to understand what is required to verify that the correct person is receiving the payments. A retirement fund is not there to make a profit and if they pay the wrong person where would they find the money to pay the correct person? If a mistake is made and the wrong person paid, they then have to claim from insurance to be able to pay the rightful person. Cybercrime is also no longer only targeting big organisations. The FCA has a cybercrime policy. It is important to be careful about who the information is given to. We do not want the very people that need to benefit from this process to be the ones that are left wanting because their information was not kept confidential.

### **Possible solutions**

Partnerships with certain organisations were being investigated to resolve the data integrity issue. The Financial Sector Conduct Authority (FSCA) too has a data analysis department, built up from other retirement funds that have submitted information. Ms Lukhaimane said that the information would be analysed and then the funds would be asked what they are doing to clean up any outstanding issues.

In addition, the FSCA would insist on seeing results. What has been seen is that the funds often say they do not know where to find the information; then they use one or two service providers in the industry that use the same methods and get no results. The funds then come back and say they cannot fix this. In the meantime, the FSCA is approached daily by businesses that say they work with municipalities or with people who trace shares or beneficiaries of shares. This information could be used by the funds to clean up the data.

The problem would be to ensure the trustees' act and appoint these people rather than decide to do nothing. A way must be found to launch projects that have no risk to the funds; all they have to do is provide the information and sign an agreement with the people doing the tracing. Let us see what results they get with that information and the data analysis from the FSCA.

### **Supporting regulations**

Legislation has been proposed to **create a centralised unclaimed benefit fund**. Some 90% of the funds are currently in what is called occupational funds. These are funds with active members, so the administrators focus on the day-to-day work of receiving contributions, instead of working with unclaimed benefits. What this means is that most of their time is spent on administering contributions, updating and paying out members' benefits. They do not have staff allocated to follow up calls and track down the beneficiaries of the ex-mineworkers, which is why they farm that task out to tracing agents.

### **Proposed solutions**

The FSCA, Ms Lukhaimane noted, proposed the creation of a single fund with one structure that focuses all its efforts on tracing and paying benefits. That would address the perception that administrators were just keeping the money for administration costs. This would ensure there was one body that could be monitored and held accountable.

Currently, there were 1 200 occupational funds containing unclaimed benefits, and all of them have different ways of tracing people, with different fee structures. They all have different investment strategies with different administrators. It is difficult to get everyone going in the same direction when everyone is addressing the problem in a different way.

The FSCA had identified the top funds and top managers and would be meeting with them on unclaimed benefits: there would be **close monitoring** over the next three years, regular reports, and regular meetings. Such a process would make it easier to track how many people have been paid month by month. Unclaimed benefits were supposed to be a temporary problem and should never have been allowed to reach the current scale.

The process would also provide an **understanding as to why people could not be traced**. Right now it is unknown whether everything that could be done has been done to actually trace the unclaimed beneficiaries. Funds need to find innovative ways of tracing. On a site visit, it was found that 80% of the tracing market was with one agent. Where people were questioning why lists could not be given to them to trace people, there was nothing preventing them from setting up a tracing organisation.

Ms Lukhaimane said it would be useful to move away from the high-level meetings to focus on the outcomes being provided to members. The FSCA could then step away once it has been shown how these funds are managing the process.

### **Q&A Session**

The moderator invited participants to ask questions to the presenters and the following arose:

**Comment (Lesotho):** The Lesotho government is afraid to engage in different ways. In Lesotho, efforts have been made to advocate for a review of the Memorandum of Understanding with TEBA for many years, but the government seemed to be reluctant to engage on that subject. TEBA and Ubank operated but were not regulated and the Central Bank had tried many times to regulate them. Maybe the government was afraid that if they reviewed the whole treaty and agreements, they would lose the deferred payment arrangement.

### **Dr Kabemba from SARW**

SARW's Dr Kabemba posed a number of questions to the panel:

- What legislative reforms should be posed to the South African Parliament? Could the South African Parliament be asked to smooth out the problem of unpaid benefits? Remember that there are several issues under the spotlight: legacy and current problems. The reforms proposed could deal with those problems.
- How can the process be simplified? There were many challenges to the pay-out procedure, so what can be done to streamline the process? There are people with no identification documents or birth certificates. How can they be helped to ensure they get paid?
- The proposition for legislation to establish an unclaimed benefit fund seems reasonable although the multiplicity of reasons and the standards established by the different funds might make it difficult. The issue that was articulated was that not everyone wanted such a fund. What is the justification for not having a unified, regulated fund that has a set standard? What are the reasons for not wanting such a fund? This may be the correct choice, but it needs to be unpacked.

### **Ms Lukhaimane**

On resistance to a unified fund, Ms Lukhaimane noted that it seemed, even as far back as 2007, the industry resisted it because there was a perception that it was a government-led initiative that may not be well-led. There was a fear that it would see money being taken out of private hands and put into government hands.

What is explicit is that a clear structure needs to be created with management that is transparent. All of this would be addressed in how such a structure would be managed.

The FSCA in its site visits, desktop reviews and engagements, asked the beneficiary funds administrators to inform them what was being done by them. Once the findings are released there may be little in the way of resistance to keeping the funds where they are right now. It is about looking at the issues on the ground, not at the top, so that the FSCA is able to talk about what is happening, rather than what should be happening. As a regulator, you do not want to

hear for the first time at a forum like this that there is a huge backlog of payments held up by outstanding documents. We should already know this and be able to focus on building regulations and legislation or changing policies that would actually remove those blockages. The FSCA needed to be able to be more operational.

Regarding the unclaimed benefits timeframe. There is no timeframe and unclaimed benefits will only be paid out when the person has claimed them. Unfortunately, with the passage of time what happens is that administration costs are wiping out some of those benefits so that when people do eventually claim, they will be told there are no benefits to claim from. This is why it is important to have an unclaimed benefit fund to provide leverage from economies of scale and create a bigger pool to ensure better investment returns to be able to pay. The Mines 1970s Provident Fund was a good example of absorbing some of the costs associated with tracing, but not all funds are able to do that. What happens is the individual members end up paying those costs. And there is no legislation to prevent that. Telling the administrators you cannot get paid for doing that is another problem, which is why there is a proposal to move the benefits elsewhere.

Ms Lukhaimane asked participants to send through any complaints so that the FSCA could try and deal with them or direct them to the correct place in an appropriate and transparent timeline.

Investigating benchmarking of a central unclaimed benefit fund, other countries had operated on a 20-30 year timeframe, but the analysis had not been completed so FSCA could not specify the way forward on a central fund.

On the subject of engaging with Parliament on legacy and current issues, there were certainly more pressing things that needed to be done, such as the letters of authority and dealing with the South African Revenue Services. What should come out of the forum was information, even at a granular level, to show Parliament the impact the laws are having on individual members and to craft something specifically for unclaimed benefits, including a time period and data on unclaimed benefits to 2021.

It should be possible to lobby the right people to get the tax issues sorted out on unclaimed benefits, especially if information is presented that identity documents or birth certificates are not going to be available. It would be unreasonable to continue to ask for information that cannot be provided. If proper criteria and conditions were crafted we could find solutions to these problems.

### **Mr Shongwe**

On simplifying the process, Mr Shongwe turned to the examples provided by Eswatini, Lesotho, Mozambique and Botswana, which have rural centres where the people know where to find individuals. Letters of acknowledgement from the chiefs could be provided to say they know these individuals. For those who had moved to the cities, affidavits signed by the Commissioner of Oaths could suffice.

### **Mr Moises Uamusse of the Association of Mozambican Miners**

Mr Uamusse noted that some of the discussions had caused some hiccups, but that it was not necessary to feel guilty for what happened for more than 100 years back. He urged the participants to not transfer colonial and apartheid problems into current solutions. In some cases, in seeking a solution for a particular problem it had created another problem.

The suggestion of a roadshow was a good idea but needed to be made more public and become more directed.

At the end of the day, the meeting was about compensation and unclaimed benefits. Those benefits belong to the ex-mineworkers. They come from the employer who has trusted the fund to pay that money directly to the mineworkers. But what has happened is that a third party collects the money before it gets to the mineworkers. Some of the funds, for example, have been paid for a roadshow in Mozambique at the direction of the government. Most of the ex-miners who were identified as potential claimants were forced to open accounts at a civil commercial bank. However, they were using TEBA. They were told there was money for them only to find the money has not been deposited into those accounts.

He was pleased to hear the proposals coming in for finding solutions, but urged the participants to find the best models to ensure that the money leaves the funds and goes directly to the beneficiary. Then it could not be said, for example, that R100 000 was paid out but 50 people were not paid.

On the subject of timeframes, the money has stayed unclaimed for a long time, even though the names of the beneficiaries are known. He called on all involved to move speedily on tracking and tracing the beneficiaries and suggested drawing public attention to the list of names. He referred to the *Eswatini inkudla*. As a former mineworker, he could easily track and trace processes. If people were given five names to find they could do so quickly. It was about finding creative solutions.

### **Mr Xaba**

Mr Xaba raised the **contradiction of TEBA being part of the banking service space**, where the lines become blurred as an ex-mineworker lodges a claim with TEBA, which then becomes that worker's banker and the source of the disbursements. This was a problem, particularly for those outside South Africa. This was in addition to the close, unregulated, links between TEBA and Ubank in Lesotho. He urged that TEBA be extricated from fund disbursements and focus on what they did best, which was to administer the claims.

### **Key points raised**

Several key points were identified during this session:

- The need to find innovative and creative strategies such as looking at streamlining processes and utilising economies of scale through the implementation of a single beneficiary fund for all the SADC countries.
- The importance of being able to accept forms of identification other than just identity documents and birth certificates, but letters of acknowledgement from chiefs or affidavits signed by Commissioners of Oaths.

- Different ways of conducting track and tracing, using a wider range of possible sources including former mineworkers or local villagers.
- Learning from the lessons of the past and reviewing the existing bilateral agreements.
- There is a need for collaboration between all the agencies involved in the disbursement of beneficiary funds.
- Finally is the importance of the role of the SADC Secretariat in coordinating and streamlining the process across all the regional boundaries.

## **Day 2: Wednesday 17 March 2022**

### **Recap from day one**

#### **Compensation of ex- and current miners in the region affected with occupational lung diseases**

This session focused on compensation for occupational injuries and diseases and looked at the challenges and progress made in ensuring speedy and timeous compensation for mineworkers, particularly migrant mineworkers. Key issues included: the progress on benefit medical examinations (BMEs); financial literacy and payments; and addressing the legacy issues of occupational lung diseases (OLDs) as well as of COVID-19.

Moderator: Mr Litha Klass

**Panelists:** Dr Rodney Elhrich, UCT; Mr Daniel Kotton; Tshiamiso Trust; Dr Judith Cornell, Qhubeka Trust; Mr Nikisi Lusufi, Minerals Council South Africa.



**Dr Barry Kistnasamy: Department of Health South Africa: Medical Bureau for Occupational Diseases/Compensation Commission for Occupational Diseases (MBOD/CCOD)**

Dr Kistnasamy spoke about how a system that had been in place for over a century was finally being reformed. He provided an overview of the history of mining in South Africa, beginning with the discovery of diamonds in Hopetown in 1867, which changed the face of the country and created the second-largest economy in Africa. Unfortunately, he noted, the country's mineral wealth worth of R25 trillion did not form any part of the stories told by the ex-mineworkers at the gathering.

He explained how colonial powers, mining houses and white miners' unions worked together while black mineworkers were excluded and not allowed trade unions, and where Acts set up in 1912 still impact black mineworkers today. Between 1912 and 1973, the Acts covered 80 000 white workers, but did not look after black workers. Now the department looks after 400 000 mineworkers and 1.6 million ex-mineworkers.

He also emphasised the key problem: the fund the department oversees has R1 billion in unpaid claims. While much had been done to clear the backlog, two-thirds of the claims, some 66 000, date back to before 2005. The organisation was going to work with SAMA to try and move forward to track these ex-mineworkers or their families. A major concern was that the people affected had passed on and the families were widely spread across the southern African region.

Over the past five years, R1.1 billion has been paid out on 40 000 claims – 50% of the claims lodged. Benefits were increased, a levy was collected, and the compensation fund grew from

R2.8 billion to R5 billion. An increase in benefits is also being seen in terms of the minimum and maximum amounts paid. But, he noted, it was still not a good benefits package.

In 1920 one in two workers were not from South Africa, now those figures are one in three: 200 000 workers live in Lesotho, 80 000 are in Eswatini and so on.

He also spoke about the length of time it took for the industry to accept the research data into occupational diseases and implement appropriate responses. Besides silicosis, other issues faced by the ex-mineworkers were hearing loss and even misdiagnosis with silicosis being treated as tuberculosis. Referring to silicosis, which may only affect workers decades after first exposure, many of the contracts were short-term ones. Many workers will not have the disease or have a mild disease that is not compensable.

In addition, black workers may have had different types of identity documents like passbooks, passports or even birth certificates. In one example raised during the high-level discussion, someone born in 1940 was given a birth certificate with a 1960 date. And these issues, which impacted the ex-mineworkers, were never resolved. This has to happen to resolve dignity and arrange compensation for those affected.

With a sophisticated database put in place, and other physical files being digitised, people should be able to check on unclaimed benefits. However, the various SADC countries were not sharing their databases. The reality on the ground includes having to deal with the POPI Act and other bureaucratic processes.

He referred to the Eastern Cape pilot project, telling the meeting that the database developed could show what had been paid out, to whom it had been paid and who had not received their money. However, more could be done. He called on everyone concerned to work together to make sure this happened. The Eastern Cape project showed the realities on the ground and had allowed for the mapping of where to go and the development of a track and trace programme, which was used as the content station of the different settlement trusts. However, he noted, a parallel system was set up in terms of service delivery. For example, administrative offices were set up in Johannesburg while the ex-mineworkers were based in Kuruman. The questions raised by this were of accountability and governance. It was important to set up the infrastructure in the countries where the ex-mineworkers and their families live.

Linked to this, Dr Kistnasamy said, was the travesty of justice in paying legal fees of some R1 billion to several law firms while the former miners received pay-outs of between R50 000 and R500 000.

## **Challenges**

Dr Kistnasamy identified a number of challenges, including:

- The battle over releasing and sharing information, including the barriers created by the POPI Act. Dr Kistnasamy told the gathering he was prepared to go to court over the sharing of the databases, stating the information had to be shared to trace the beneficiaries.
- Access to different databases was difficult. However, these could become invaluable to tracking and tracing beneficiaries. Matching hospital records could play an important

role. He pointed to the success of the electronic system used in the COVID-19 vaccine rollout. The details captured via this system could also be used to track ex-mineworkers since it captured names, identity numbers and cell phone numbers. Dr Kistnasamy gave the example of matching 10 000 hospital records in the Eastern Cape and finding 913 unpaid claimants. The same could be done in Botswana and elsewhere. People have diabetes or have hypertension and use the public health system so there is hospital information that could be used. There are multiple databases being run in the health sector: vaccination records, chronic disease, registered TB registers and so on which could be consolidated and used to track people.

- The issues over lack of formal identity documents – but that information, while it may be difficult to obtain, is available. He gave an example of using the mineworkers' provident fund to trace 13 beneficiaries who received between R1 million and R2 million, including a disabled child in an informal settlement in Welkom.
- It was important to raise the issue of fraud and corruption. Those involved in ensuring claimants receive their funds must make sure the claimants do receive their money. If the ex-mineworkers or their widows did not get their money, who was stealing it? Infrastructure had to be put in place to ensure that money is not stolen or misused.

### **Solutions**

A number of solutions were also raised in his presentation.

- High-level ministerial meetings to find regulatory solutions
- Good governance, so that huge fees to intermediaries such as lawyers are not necessary
- Setting up an infrastructure to ease payments across the region
- Meeting with specific government departments to find ways to unlock the bureaucratic hindrances. For instance, the department would meet with the Departments of Labour and Finance to find ways to work together
- Undertaking to work together. Partnerships are crucial and must include those with the political power to see to the amendment of regulations where necessary, including the ministers, premiers, members of the executive committees in each of the provinces
- Partnerships to share information, given how electronic data mining could have a significant impact. People can be traced through different methods involving joint partnerships. Matching hospital information records, or COVID-19 vaccination records, could help in tracing claimants.

### **Actions**

Dr Kistnasamy urged those attending the gathering to make sure that before they left, they put in place:

- A governance structure incorporating SADC, the governments of the affected mineworkers' countries, SAMA, the Minerals Council South Africa, and the minerals councils within SADC – to extend the programme beyond South Africa
- The formalising of a database and including data from the various health services.

## Dr Rodney Ehrlich: School of Public Health and Family Medicine at the University of Cape Town

The unclaimed benefits of ex-mineworkers are very different from retirement funds, Dr Ehrlich explained. Retirement funds were individualised payments set up by co-payments between the employer and employee, which remain identified until the person concerned claimed or was paid on disability or death. The ex-mineworkers benefits, on the other hand, were paid into general funds for compensation for occupational diseases based on risk assessments. While the miners were in service, they had access to medical care and other human resources systems. However, once they left the mines, they had no infrastructure to use for their claims. Dr Ehrlich describes the historical processes that had led to ex-mineworkers not receiving their money and the difficulties now faced by the funds. These included how and why no infrastructure was put in place to ensure miners were paid out once they had left employment; the need to increase levies to cover future claims; and how white mineworkers became a powerful political force that did not face the same hardships as their black counterparts.

### Challenges

Dr Ehrlich reflected on his own experience in examining ex-miners at a clinic at Groote Schuur Hospital. The ex-mineworkers would travel to Cape Town because they had family there. They had enormous obstacles in accessing care that on the face of it seemed not that difficult.

- However, for something that may take a middle-class person two days, for the ex-mineworkers the process took months, or was never actually completed. They faced:
  - Having to find a doctor who understood their working conditions and knew to check for silicosis or TB related to mining. In many cases, mineworkers with silicosis were misdiagnosed and treated for tuberculosis.
  - Having to finance trips to Groote Schuur Hospital. It could cost R110 to travel from Khayelitsha, to Observatory to Groot Schuur hospital and back.
  - Tracking down identity documents and other requirements, which included going to a police station and getting a decent set of fingerprints, going to a bank to open an account, and getting hold of a marriage certificate.
  - Issues around communication. Most black mineworkers used the term phthisis, an old term for TB, to describe silicosis, which could cause confusion. In addition, many of the miners had worked in the mines 25 or 30 years ago, so they may not have heard about silicosis or received any information from their unions, or they simply may have forgotten.
- Over the years, the processes requiring medical certification to put in claims became longer and longer. In the 1980s the wait for certification was about six months; by the 2000s it had increased to an average of 14 months, not including the wait to receive the certification committee statement that confirmed that the particular claimant was to receive compensation. On top of this was the wait for the actual payment. By the 2000s that was up to two years, in some cases many more years, and in many cases, never.
- Once miners leave the mines, they lose contact with mine medical services and oversight from the mines is lost. Medical services are being outsourced, so where there was once a *de facto* public health system which held all the records in one system, there are now different systems that have to be tackled. So, mineworkers are really dependent on provincial health services in South Africa and on the national health services in the other SADC countries.

- In addition, a disease like silicosis can appear 20 to 30 years after the ex-miners stopped work. This created difficulties in finding doctors who understood the repercussions of this. Dr Ehrlich referred to this as mineworker exceptionalism – treating mineworkers needed specialist skills and knowledge. In many cases, already overstretched and under-resourced public health facilities treating the ex-mineworkers are unable to support these patients in the broader process. The hospital staff do not understand that the elderly patient in front of them needs certain things in place to help with their claims: they need to be examined; they need an x-ray or a lung function test; forms must be filled in; forms must be sent to the fund; and all of this needs to be followed up. That elderly patient cannot be expected to sit and wait endlessly.
- TB is only compensable if it could be shown that it was caught while on the mine. If the worker, who has silica dust in his lungs, gets TB a year after leaving the mine that is not compensable – it is unjust, but that is the law.
- Miners' families are entitled to be paid out for any diagnosis made post-mortem. The miner can die of heart disease or of an injury; as long as they have sufficient silicosis or TB in their lungs, the family will be paid out. However, the post-mortem system is in decline because post-mortem generally has fallen out of favour.

### **Solutions**

- The system needs to be reformed and people dealing with the issue of compensation payouts need to think more broadly.
- The exceptionalism of mineworkers' health must be understood within the broader healthcare system.

### **Actions**

- Dr Ehrlich suggested that continued attention must be paid to the prevention of silicosis and the management of TB.
- A well-run public health system and compensation system would protect current and future mineworkers.

### **Mr Daniel Kotton: Tshiamiso Trust**

Mr Cotton, in thanking all the partners who helped the trust expedite its work of finding potential eligible claimants, emphasised the importance of working alongside the ex-miners.

He spoke about how it had become apparent that key to everything was the payment of the money to the claimants. So far, the trust in the short time of its existence had paid 2 576 claims totalling R230 million, with between 60% and 70% going to the Eastern Cape, 30% to Lesotho and smaller payments to other provinces and neighbouring countries. The trust's target for 2022 is to pay 10 000 claims amounting to R1 billion.

The trust's information was updated on a daily basis, with all actions transparent. Everybody is able to access the trust's activities and progress – how many lodgements; how many registrations; how many benefits medical examinations. Where this is happening in SADC, the number of claims; the total number of panels held daily; the amounts paid to date.

### **Challenges**

- Mr Kotton echoed what had been said, adding that data collection was particularly important. Because the data is in different formats, it created a challenge. But, he added, this was not insurmountable.

### Solutions

- **On the issue of the data**, if there is an agreement that data can be extracted from any database, it can be transformed into a usable format and can go into a single master database, with various types of information accessible – not just a non-existent identity number, name or date of birth. There can be six or seven or eight parameters that could search all the available data and **pull-out possible claims to be mapped**. It can be done but it is going to take a focused and concerted effort. There must be **resources** for the effort, there must be political will and cooperation and there must be organisational cooperation. This problem that has existed for 100 years can be resolved in two years.
- Efforts to ensure claimants are paid out can be augmented and improved if ways are found for all role players to work together. “It’s a matter of us stepping out of our comfort zones, doing things differently,” Mr Kotton pointed out.

### Actions

- The important story is the people who are sick, the people who are dying, and the people who have billions in unclaimed benefits and unpaid benefits are at the core of the issue under discussion. The sole purpose of the meeting was to make sure that the ex-mineworkers are paid what is owed to them through the strong collaboration of all role players.

Turning to the issue of data, while the fact that data is in different formats could be challenging, it is not insurmountable. Information can be obtained that FSCA’s database, the IEC and SASSA had databases as did the Departments of Home Affairs and Justice. All these different organisations must come together to link the data. If there is an agreement that data can be shared, it can be extracted from any database, it can be transformed into a usable format.

### Dr Judith Cornell: Qhubeka Trust

Dr Cornell noted that setting up the various trusts was a real victory for the workers because it had led to them winning compensation which, in some cases, had been significantly higher than the statutory compensation. Qhubeka Trust’s compensation payouts ranged from between R62 000 to R397 000, with the majority of claims in the upper range of R209 000 to R242 000. The setting up of the trusts came from a legal settlement by the lawyers for a group of 4 365 ex-mineworkers and two gold mining companies.

The trust has, today, paid 2 095 eligible claimants a total of R376.5 million. Since February R23.7 million was paid. As of the morning of Session 6, an additional 64 claims had been put into the payment pipeline. This meant that they are being checked, primarily in terms of verifying the bank account. Many others are close to completion and generally only need letters of authority and bank accounts of either the beneficiary or an estate, sometimes the beneficiary bank account and sometimes an estate late bank account.

Dr Cornell also spoke about the administration of the trust itself. It has a board of trustees with four members and a small staff of five full-time employees and one part-time employee based in two small offices – one in Johannesburg and one in Mthatha. It also has outreach teams on the ground: six people in the Eastern Cape, three in Lesotho, and one in the Free State. Administrative costs are ring-fenced from claims.

The trust provided a brief overview of claims statistics as at that morning:

- 2 300 compensable claimants had been paid in total R376.5 million, with
  - 1 625 compensable claimants paid R275.3 million in the Eastern Cape
  - 55 Lesotho claimants had received R64 million
  - in the Free State province, 175 compensable claimants were paid R30.8 million
  - Gauteng and other areas made up the rest of the payments.

All the figures are available on the trust's website.

### Challenges

- Limitations on the trusts' work are a particular challenge. The Qhubeka Trust settlement took 13 years, during which time many of the claimants died. In addition, the trust has **strict rules** which are binding on the trustees. For example, qualifying the length of service with the participating employer proved problematic – if somebody does not have the two years of qualifying services with one of those employers, even though they may have had 20 years with other employers, the trust is legally not able to compensate them. And this is something that haunts us.
- Deceased claims are a particularly complex issue, with 42% of the claimants having passed on during the settlement period, and others since 2016. Every day outreach workers note that a particular person had died and then a whole new process has to be followed. When faced with what to do about the people who died before they could be medically examined, the trust began to work with local and international specialists to develop a methodology to determine whether a claimant who died may have had silicosis. A **predictive model** was agreed upon. As a result, 453 deceased claimants were diagnosed in this way, which means 453 families will receive compensation. Of these, 293 beneficiaries have been paid a total of R19.2 million. An additional R12.7 million is still to be paid to this group.
- Realities on the ground raise their own challenges:
  - People change cell phone numbers, reception in the rural areas can be difficult, people may run out of airtime or data, addresses may change, rural addresses can be difficult, remote areas are often inaccessible, and accessing statutory documents can be difficult. Strong relations and cooperation with the Departments of Justice and Home Affairs help ease these difficulties, particularly in the Eastern Cape.
  - Banks close accounts if they go below a particular amount or bank holders close their accounts to prevent scams. This means there is a constant process of people opening new accounts.
  - She noted that other issues such as load-shedding or even bad weather complicated the work. Bank systems or government systems may go down while bad weather saw people unable to move out of the area.
  - In addition, COVID-19 had also impacted the processes.
  - Last, but not least, there is also the issue of the frailty, age and illness of the claimants who are still alive. Widows too, tend to be elderly and also frail.

## Solutions

Pragmatic and practical solutions need to be found. Dr Cornell spoke about how the trust assists on the ground with providing transport costs or transport claimants, going to the claimants to help fill in the forms and taking them to the particular offices on their behalf.



### **Mr Nikisi Lesufi from the Minerals Council of South Africa**

Mr Lesufi noted that the historical perspective had been extensively outlined, calling attention to the origin of the topic under discussion.

He referred to a meeting held by President Jacob Zuma with the Board of the Chamber of Mines, which was made up of 32 CEOs, along with government ministers. During the meeting the point was made of how even though the economy of South Africa was built on the backs of the mineworkers, they had received a raw deal in terms of the benefits due to them – wages were low, medical treatment inadequate and the workers had to return to their villages to die. They were in essence treated like slaves.

While the industry was boasting that much progress had been made in cutting the numbers of those dying in the mines, figures were provided showing that in 1993 94 600 mineworkers were dying every year, but in 2009 only 103 mineworkers had died. However, this scenario was challenged by the Minister of Health Dr Aaron Motsoaledi, who said there were thousands and thousands of mineworkers dying in the rural villages as a direct consequence of having worked in the industry and whose deaths were not recorded anywhere.

Some of the issues raised during that meeting included:

- Lack of access to South African Social Security Agency (SASSA) benefits because the ex-mineworkers could not get new identity cards.

- Not providing mineworkers with sufficient data to keep in touch with their families in the rural areas.
- The difficulty of accessing records of service and the costs to TEBA of running its offices, paying staff and maintaining databases.
- That the Chamber of Mines used its arrangements with TEBA to provide the service records.
- That no worker should be prevented from accessing their benefits due to the lack of service records.

Mr Lesufi described that particular meeting as planting the seeds of the progress seen to date, with various independent pension funds being established with both employee and employer representatives; mining companies in a state of flux with some consolidating their business and others deciding to change focus. Some of the older role players with deeper pockets disposed of their marginal assets to untested and sometimes questionable entities.

A centralised strategy was needed to demonstrate that the industry does care. An agreement was reached with the Department of Health to build one-stop centres and enhance the efficiency and capability of the medical bureau and the compensation fund. A year or two later an assessment was done in which it was found that in one year only 31 ex-mineworkers had visited the facilities set up in Umtata and Nongolo, where they were seen by one doctor, two nurses, an administrator and a security guard.

### **Challenges**

The point Mr Lesufi made was that millions have been invested in the process of recovering ex-mineworkers' unclaimed benefits, but only a fraction had actually reached the beneficiaries. He called on the meeting participants to consider the entire spectrum rather than simply their own area and solutions.

### **Solutions**

Mr Lesufi noted that there was no question that the mines had not paid the contributions due. What was holding people back were systemic issues. He suggested a number of solutions, including:

- Strengthening and enhancing the capacity and efficiency of the MBOD/CCOD.
- That a fair and equitable compensation framework be set up, even though it is going to come at a cost to the mining companies. Mr Lesufi said it was a necessary cost and premium to pay.
- The key issue is collaboration.
- He also noted that government has the power to convene a meeting with all the stakeholders to design a programme in which each organisation is given a role and allocated responsibilities.
- It is important to distinguish between those who were active participants in terms of lobbying and ensuring the welfare of ex-mineworkers and the work done by service providers who wanted to derive value from participating in the process.

### **Actions**

- That the meeting agreed to request the convening of a high-level meeting of all stakeholders, from government to affected parties, from employees to employers, from the SADC region to South Africa, to decide on:

- How to resolve items such as the waiving of the costs of COVID-19 PCR tests for widows to travel to South Africa.
- Tackling issues related to the Master of the High Court and letters of authority.
- Identifying the minimum information required to validate a claim.

He summed up by stating that these matters were not as straightforward as they looked; that there were layers upon layers. “We need to travel this road quite carefully.”

## IN SUMMARY

The unclaimed benefits issue is about real people, the ex-mineworkers and their families, who must be central to any discussions, decisions and plans. These people came from all over Southern Africa. It is about people who despite working for years in the South African mines are now unable to access their social benefits which sit with different fund administrators in South Africa. This has affected their futures and that of their dependants. Therefore, the processes towards finding solutions for unlocking access to the social benefits have to be underlined by the involvement of the ex-mineworkers on every level possible.

The former mineworkers and/or their families have raised concerns about not getting the money that is owed to them and the impact this continuously has on their lives. Some have died while waiting for their compensation and have left their families trying to access the funds in vain; others are sick and cannot pay for treatment. The bureaucracy involved in unclaimed benefits is widely seen as complicated and time-consuming. The ex-mineworkers expressed frustrations at the many discussions that have been taking place for years over the issues of unpaid benefits, yet nothing has come out of them. The general feeling was that there has been a lot of talk and little action on this issue. Former mineworkers at the meeting indicated that:

*What they want is to be paid what is rightfully theirs and want the issue of payment to be expedited. Many ex-mineworkers are not able to take care of their families due to non-payment while some are dying as they await payment.*

Widows of ex-mineworkers who have died who attended the meeting described the various difficulties, they face in trying to access the funds which have resulted in some of their children being unable to continue with their studies. Children of the mineworkers have been deprived of the opportunity to get an education, as parents cannot afford to pay fees.

These difficulties affect both ex-mineworkers in and outside the South African borders. The portability of the benefits was identified as imperative in facilitating and fast tracking payment of social security benefits. As it stands the difficulty in paying ex-mine workers lies in the lack of such a system in place. All stakeholders in the SADC region, including labour, parliaments, regional bodies and institutions and ex-mineworkers agreed that they need to work together to create a system for payment of social security benefits to the ex-mineworkers and for repatriation of the migrant workers' social benefits. For such a system to be effective and accessible to all beneficiaries there needs to be a multisectoral collaboration and engagement.

The union representing ex-mineworkers in SADC stressed the importance of ongoing processes within the space of open advocacy for legislative and policy changes to ensure a better regime to address the issue of unclaimed social benefits. There were appeals for leadership from the South African government and labour sending SADC countries such as Lesotho, Mozambique, Eswatini, Malawi and Zimbabwe to put more effort into resolving the many problems that have been consistently identified at various engagements where unclaimed benefits were on the agenda. However, the lack of information and proper record-keeping poses challenges as there is a need for a database, collaboration and information sharing between the various stakeholders involved. While there is no timeframe of how long the benefits can remain with a fund administrator, there are administrative costs associated

with this that could wipe out the monies. This means that by the time a claimant is finally successful in the claim, they could be told there is no money available for them.

Calls were made for engagements with the South African parliament on current legislation regarding unclaimed social benefits. The current systems are complicated and based on gathering information that is not available, such as identity documents and service records. Although in principle ex-miners should not be prevented from accessing their benefits due to the lack of service records, there are some that have not been paid because of this.

Members of the various funds expressed the difficulties in tracking beneficiaries-the former mineworkers and their relatives. The causes for this include; the lack of documentation or documentation in foreign languages, lack of access to technology to send required documents and the quality of data available. The lack of proper documentation and poor data makes it difficult sometimes to comply with various regulations including the tax authorities. This has been the reason on many occasions for lengthy processes and delays in payments. This has meant that some of the claims can not be processed by the fund administrators. This raised the issue to have in place an agreed on and well-developed regional payment mechanism. A key recommendation from the representatives of the ex-mineworkers includes a suggestion for the South African government to work with other countries to address the legacy challenges to close the gaps and maybe reach a consensus on a blanket payment approach to the legacy issues. The SADC Secretariat was identified as a body that can play an important role in coordinating and streamlining the process across all the regional boundaries.

The High-Level Consultative Meeting on Unclaimed Benefits in the SADC Region was well attended by delegates from SADC on both days of the event. Key stakeholders at the meeting included SADC governments (South Africa, Eswatini and Lesotho), Southern Africa Ex-Miners Association (SAMA), mining pension and retirement funds and administrators, Mineral Council of South Africa, International Labour Organisation (ILO), Southern Africa Trade Union Coordination Council (SATUCC), The New Partnership for Africa's Development and ex-miners (from Mozambique, Eswatini, Lesotho, Zimbabwe and Malawi) and widows of deceased ex-mineworkers. Some of the key problems that were raised included: 1) the lack of systems that allow the portability of social security benefits for ex-miners and/or their beneficiaries across the region and 2) the lack of consultation with ex-miners impacted by the issues of unclaimed benefits when decisions are being made.

#### **The meeting's key recommendations include:**

- Practical actions must urgently be put in place to speedily compensate and payout claimants and the talking must come to a stop. There is a need to fast track.
- Ex-mineworkers and their families should form part of the decision-making process and must be a part of any plans being put in place for the administration and processing of claims.
- The following institutions: the SADC Secretariat and the South African government (different ministries such as the Minister of Justice, Minister of Home Affairs in South Africa) must be included in any planning and search for solutions.

- The Eastern Cape Pilot project has been seen as the best practice. There is a need to share experiences and lessons across the region.
- There must be serious considerations to using 'worker numbers' to process claims, as this is the system that was used in the mines and it worked – and the same systems and processes should be used now.
- There is a need to ensure good governance practices across the value chain in processing claims. This will include setting up transparent infrastructure to ease payments across borders and simplify and streamline the claim verification process.
- The role of certain players such as TEBA in the administration of social security benefits needs to be clarified.
- A permanent solution must be found to regulatory barriers working with specific government departments so that it is possible to unlock bureaucratic barriers.
- Strong partnerships with clearly defined roles and responsibilities must be articulated and then put into effect with clear plans, actions, responsibilities and deadlines must be drawn up.
- Allow the use of verification documentation from across borders to be used as part of the verification processes in South Africa to process claims payments.
- We must create a database that can make it easier to trace and track beneficiaries and claims and ensure easy access to data by all.
- Create a framework that governs the exchange of labour in a fair and equitable manner across borders.
- Finalise and implement the SADC portability of the social security benefits framework.
- Advocate and lobby for the adoption and implementation of the SADC social security policy.

**ENDS....**