

# JUSTICE FOR MINERS CAMPAIGN NPC

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**PRESS STATEMENT — FOR IMMEDIATE RELEASE**

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## **TSHIAMISO TRUST MOVES TO STRIP THOUSANDS OF SICK AND DYING MINERS OF THEIR ONLY ROUTE TO COMPENSATION**

*Justice for Miners demands the Master of the South Gauteng High Court reject Amendment No. 9 to the Tshiamiso Trust Deed — and calls on the whole of SADC to intervene on behalf of its citizens*

JOHANNESBURG — Thousands of former gold mineworkers — many of them elderly, gravely ill, or already dead — face being cut off from the only compensation they were ever promised, after the trustees of the Tshiamiso Trust quietly resolved to strip a critical category of medical certificates of their legal standing. Justice for Miners (JFM), the campaign organisation representing these miners and their dependants, today declared the proposed change unlawful, immoral, and a betrayal of the very purpose for which the Trust was created.

The Tshiamiso Trust was established by South Africa's gold mining industry as a legal settlement to compensate mineworkers who contracted silicosis or tuberculosis as a direct result of working underground in the country's gold mines. Its beneficiaries are among the most vulnerable people in Southern Africa — men who gave their lungs, and in many cases their lives, to an industry that generated enormous wealth while destroying their health. Many are Basotho citizens who migrated to work on the mines and returned home with occupational diseases and little else.

### **THE ATTACK ON ODMWA CERTIFICATES**

At the heart of the dispute is Amendment No. 9 to the Tshiamiso Trust Deed. The amendment, which the trustees have resolved to adopt and which requires approval from the Master of the South Gauteng High Court to take effect, would remove the right of claimants to rely on ODMWA certificates — officially known as Occupational Diseases in Mines and Works Act certificates, issued by the Medical Bureau for Occupational Diseases (MBOD) — as valid grounds for a compensation claim.

These are not informal documents. They are statutory certificates issued by the South African government that formally certify the presence of silicosis or tuberculosis in a miner. For decades, an MBOD certificate was legally sufficient to have a miner declared unfit for work and retrenched — often returned to the SADC labour sending areas of the gold mines with no income and a disease in his lungs. Under the proposed amendment, that same certificate would no longer be sufficient to secure the compensation he was owed.

"How can an MBOD certificate be good enough to end a man's livelihood — to send him home to die — but not good enough to pay him what he is owed?" said Bishop Jo Seoka, Chairperson of Justice for Miners. "This is not an administrative adjustment. It is a profound injustice dressed up as a procedural change."

### **THE HUMAN COST: LIVING CLAIMANTS**

For the miners who are still alive, Amendment No. 9 does not merely change a procedure. It constructs a wall. Where an ODMWA certificate once served as sufficient, lawful proof of disease and entitlement, the amendment would force every living claimant to submit to a new Benefit Medical Examination (BME) — requiring them to travel, often over long distances, to designated examination centres. For men who are elderly, seriously ill, and in many cases living in remote villages in South Africa, Lesotho, Botswana, Malawi, Eswatini, Zimbabwe or Mozambique, this severely compromises their access to compensation.

The burden does not end there. Experience has shown that BMEs, when conducted under the Trust's own framework, have repeatedly produced findings which result in lower awards paid out than what their ODMWA certificates already certify. In other words, a miner who has been officially certified by the state as having, for example, second-degree silicosis may, after a new BME, be reclassified downward and paid less than he is legally owed. The ODMWA certificate is not merely being made redundant, for living claimants, it is being replaced with a process that has demonstrably been used to undervalue their suffering.

### **THE HUMAN COST: WIDOWS AND DEPENDANTS OF DECEASED MINERS**

For the dependants of miners who have already died, the situation is, if anything, even more catastrophic. A dead man cannot undergo a Benefit Medical Examination. He cannot present himself at a clinic or answer a call centre's questions. The ODMWA certificate issued in his name is, in many cases, the only credible evidence that survives him — evidence that he was examined, certified, and found to have a qualifying disease. It is the document on which his widow's entire claim depends.

Remove that certificate from the equation, and widows and dependants are left to reconstruct a medical history from scratch. They are expected to produce a constellation of documents — unabridged death certificates, mine medical records, employment histories — that are near impossible to find by people with scarce resources. In addition, poor record keeping by mines and hospitals have created a situation where these documents simply do not exist. Death certificates alone are routinely rejected by the Trust if they do not conform to its specific requirements.

With one amendment, the trustees would sweep away the one document that gave these women and their families a fighting chance. The ODMWA certificate was never a loophole. It was the floor. Amendment No. 9 removes that floor entirely, and the people who fall are the most vulnerable — older women, children of dead miners, families who have already waited years for justice and who now face the very real prospect of receiving nothing at all.

The result, if Amendment No. 9 is allowed to stand, is not a procedural adjustment. It is the quiet mass exclusion of thousands of legitimate claimants from a compensation scheme that was established specifically for them.

## THE LEGAL POSITION

JFM's position is that the proposed amendment is unlawful on its face. The Trust Deed currently and expressly recognises ODMWA certificates as a valid and operative mechanism for claims processing across multiple clauses. Section 20.2 of the Trust Deed explicitly prohibits any amendment that adversely affects the rights of eligible claimants — which is precisely what Amendment No. 9 does.

JFM has this week written to Ms Beatrice Desiree van Wyk, Master of the South Gauteng High Court in Johannesburg, requesting that she exercise her supervisory jurisdiction under the Trust Property Control Act 57 of 1988 to reject Amendment No. 9, call the trustees to account, and if appropriate investigate potential maladministration of the Trust.

## A CALL TO THE GOVERNMENTS OF SOUTH AFRICA, LESOTHO, BOTSWANA, MOZAMBIQUE, MALAWI AND ESWATINI

In a separate but related letters, JFM has formally appealed to the Ministers of Health, Mining, compensation authorities and provincial governments in South Africa and Lesotho and Botswana to write to the Master of the High Court and request that Amendment No. 9 be rejected. A substantial proportion of the Trust's beneficiaries are citizens from the Eastern Cape, Free State, Botswana, Lesotho, Mozambique and Eswatini and these governments have both a moral obligation and a direct interest in ensuring they receive the compensation they are owed.

JFM has requested in-person meetings with government officials in these countries to present its case and to coordinate a joint intervention before the Master makes any decision on the amendment.

*"The Tshiamiso Trust was established to make right a profound historical injustice. The men who built South Africa's gold mining industry with their bodies deserve the compensation they were promised — not new bureaucratic obstacles designed to frustrate their claims. Justice for Miners will not stand by and watch that promise be broken."*

**— Bishop Jo Seoka, Chairperson, Justice for Miners Campaign**

**— END OF PRESS STATEMENT —**

### ABOUT JUSTICE FOR MINERS

Justice for Miners Campaign NPC (Reg. 2022/345271/08 | NPO: 273-494 | PBO: 930078429) is a South African non-profit organisation representing mineworkers and their dependants who are beneficiaries of the Tshiamiso Trust. Its board includes Bishop Jo Seoka (Chairperson), Ziyanda Manjati, Booi Mohapi, Sinegugu Zukulu, and Catherine Meyburgh.

### MEDIA ENQUIRIES

Catherine Meyburgh – JFM advocacy +2783 2993009  
[jfmadvocacy@justiceforminers.org](mailto:jfmadvocacy@justiceforminers.org)

Web: [www.justiceforminers.org](http://www.justiceforminers.org)