

Lead poisoning class action against mining giant Anglo-American South Africa reaches critical certification hearing

- Landmark certification hearing will determine whether around 140,000 lead poisoned women and children in Zambia ([the Children of Kabwe](#)) can bring class action proceedings against Anglo-American South Africa Ltd (Anglo).
- Affected children are at risk of significant brain damage and, for some children, premature death as a result of dangerous blood lead levels after alleged mismanagement of mining operations that took place under Anglo's watch.
- Despite evidence that Anglo knew of the risk to Kabwe residents, and that the claimants have no other means of access to justice, the company is attempting to block the class action.

Johannesburg, 20 January 2023: Today, victims of lead poisoning allegedly caused by Anglo's negligence with regard to the former Anglo-American group's Kabwe mine in Zambia will put their arguments before the High Court of South Africa to push for certification of their landmark class action.

The town of Kabwe and the surrounding area is one of the most polluted places in the world. It was left with extreme levels of lead pollution after nearly fifty years of metal mining and smelting operations that were subject to Anglo's management and/or technical advice and supervision between 1925 – 1974. It is this actual involvement, rather than the precise level of Anglo's investment or shareholding in the mine, that is relevant to legal liability. During this period, Anglo made substantial profits.

The case, which is being brought by 12 representative plaintiffs on behalf of the class, claims that around 140,000 Zambian women and children have suffered lead poisoning which caused and continues to cause brain damage and puts some children at risk of death. Two of the representatives (both aged under 2 at the time of filing the application) had blood lead levels in excess of 100 ug/dl and eight had Blood Lead Levels ("BLLs") in excess of 45ug/dl.

Lead accumulated during childhood is stored in the bones and released during pregnancy, putting the mother at significant risk of adverse health effects such as hypertension and miscarriage. Lead also crosses the placenta, poisoning the foetus.

International standard-setting bodies, including the WHO and the US CDC conclude that there is no safe level of lead. BLLs as low as 3.5µg/dl lead can cause cognitive impairment and behavioural problems. High levels can cause irreparable brain damage, kidney damage and even death. Average BLLs in children in the communities situated closest to the mine have been found to be more than 10 times higher than this limit. At the certification hearing Anglo will be applying to exclude evidence from two eminent US medical professors who have filed evidence on the low level lead exposure.

Studies conducted in the Kabwe area over the past 20 years have found that 80% of young children sampled had BLLs over 5 µg/dL, and that in the villages close to the mine, average BLLs of young children exceed 45 ug/dl, the level at which significant medical treatment is required

The court hearing is scheduled to last for eight days and will consider whether the case should proceed as a class action. Significant evidence of the scale and magnitude of the lead hazard in Kabwe, Anglo's knowledge of this hazard, and the company's legal liability has been submitted to the court in support of these arguments.

Kabwe has been described as the world’s most toxic town by pollution experts due to its severe environmental lead hazard. Anglo claims that this is due to gross negligence on the part of Zambia Consolidated Copper Mines (ZCCM), the Zambian state-owned company that took over the mine in 1974. But this is contradicted by studies by Kabwe mine doctors in the late 1960s and early 1970s, showing that children around the mine were already suffering severe lead poisoning and that the soil in local areas was heavily polluted with lead from the mine. In a letter published in the British Medical Journal (BMJ) in 1972, a Kabwe mine doctor referred to the deaths of five local children from lead poisoning. Despite this, Anglo failed to ensure remediation of the area before the mine was handed over to ZCCM. This was despite recommendations to do so by an eminent international medical expert.

Anglo’s own internal reports indicate that they are aware of, or at best turned a blind eye to, the dangers of lead pollution, ignoring any concern for the well-being of Kabwe residents.

Expert legal evidence has been filed that the claimants would not be able to obtain access to justice in Zambia, where there are no class actions and lawyers are not permitted to act on a contingency fee basis. Anglo has not contested this evidence. Despite this, Anglo argues that the class action should not be allowed to proceed. This has prompted interventions in the case by several United Nations agencies and Amnesty International. They point out that this attempt to deny the claimants access to justice is at odds with human rights commitments that Anglo American has made publicly, and its own policies, to protect human rights including, specifically, the right of access to justice.

Anglo American’s [Group Human Rights Policy](#) states “Where we have caused or contributed to adverse human rights impacts we will contribute to their remediation as appropriate.”

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Contact:

Mbuyisa Moleele Attorneys: Founding Partner: Zanele Mbuyisa (zanele@mbmlaw.co.za)

Leigh Day - Partner, Head of International Department: Richard Meeran (rmeeran@leighday.co.uk)

Leigh Day – Head of Media Relations - Caroline Ivison - Civison@leighday.co.uk

Background information

Summary of the case

Kabwe (known as “Broken Hill” until 1966) is a town in Zambia. The town, and surrounding environment, is severely poisoned by lead, possibly to the extent it is the worst case in the world.

The source of this poison is the Kabwe Mine (“the Mine”), which operated from 1906 to 1994. From 1925 to 1974 Anglo American South Africa Limited (“Anglo”) oversaw and provided technical and medical advice on the Mine’s operation.

Lead poisoning can have severe, even fatal, effects on children and can severely harm the health of pregnant women and their unborn children.

At this stage, the Court is being asked to certify a class action against Anglo on behalf of two proposed classes:

- Children under the age of 18 who reside in the Kabwe District, Central Province, Zambia and who have suffered injury as a result of exposure to lead. Children under the age of seven must have lived in Kabwe for at least two years; and
- Women over the age of 18 and under the age of 50 who have resided in the Kabwe District for at least two years between the ages of zero and seven and have been pregnant or are capable of falling pregnant; and have suffered injury as a result of exposure to lead

The hearing, due to begin on 20 January 2023, is to determine whether an opt-out class action (where all affected individuals are assumed to be in the class unless, having been informed of the case, they have expressly said otherwise) is the correct mechanism to bring the case.

More information, along with the court filings can be found at: <https://childrenofkabwe.com/>

Levels of lead found in the environment

The Kabwe District is one of the most lead-polluted places on earth. Anglo attempts to argue that the subsequent owners of the mine (Zambia Consolidated Copper Mines (ZCCM)) bear the responsibility for the contamination and poisoning. This, the claimants argue, is not the case. Anglo's involvement at the Mine coincided with the highest levels of lead production. This is substantiated in the evidence submitted to the Court by Dr Clark, Dr Lawrence, and Dr Nicklin.

Dr Lawrence, a doctor at the Mine stated in his affidavit that Anglo knew of widespread severe lead poisoning in Kabwe as early as 1970.

In 1972, another Mine doctor, Dr Nicklin, wrote a letter to the BMJ noting his alarm at the deaths of five children living close to the Kabwe smelter from high BLLs.

<https://www.bmj.com/content/1/5803/807.3>

Despite this knowledge (including about the death of local children) it was considered that implementation of the advice on remediation of the environment would be too costly.

The 1975 Dr A.R.L Clark, a doctor at the Mine, surveyed the BLLs of children in Kabwe between 1971 and 1974. He found that the soil and air in Kabwe was already heavily contaminated before 1975, and that the BLLs of residents of the worst-affected areas of the town reflected this. The thesis proves that atmospheric lead emissions from the mine before 1975 were the primary source of lead pollution and that the elevated levels of lead pollution in these communities correlated with dangerously high BLLs.

Why is the case being heard in South Africa?

Zambian law does not permit opt-out class actions legal representation on a contingency basis. Consequently, the claimants' Zambian legal expert has concluded that "*the vast majority of claimants would not be able to receive effective legal representation*" in Zambia. This has not been challenged by Anglo. Anglo is resident in South Africa and therefore, under well-established parent company law, the claimants argue, within the jurisdiction of the Court.

Anglo is a business with substantial resources at its disposal. Individual class members could not afford to bring claims against Anglo.

The claimants argue that the class action is the only way for affected individuals to obtain redress.

