

Silicosis rampant in South Africa's mines

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South Africa's miners are among the workers worst affected by silicosis in the world.

Silicosis is a painful and debilitating disease that causes shortness of breath, a persistent cough and severe chest pains. Sufferers are more susceptible to tuberculosis. The risks of silicosis and of HIV exposure exponentially increase the risk of tuberculosis in mine workers.

According to the Department of Health's Tuberculosis Strategic Plan for South Africa 2007–2011, the gold mining industry may have the highest incidence of tuberculosis in the world, with prevalence ranging from 3,000 to 7,000 per 100,000 miners per year. Nationally, the prevalence of tuberculosis was 920 per 100,000 in 2008. The World Health Organisation considers an incidence of 250 per 100,000 per year to be a "health emergency."

Silicosis is one of the most prevalent occupational hazards internationally, with the potential to cause progressive and permanent physical disability, and, in some instances, death. Silicosis and other silica-related diseases, including accelerated silicosis, acute silicosis, silicotuberculosis, silica-associated lung cancer, systemic sclerosis, silica related nephropathy and chronic airflow obstruction, are caused by the inhalation of dust that contains free crystalline silica.

Any activity that entails the crushing, disturbance or processing of silica-containing rock carries the risk of silicosis. Small particles of silica, once inhaled, penetrate to the lower regions of the respiratory tract. Here they cause acute toxicity to macrophages as well as damage to other cells, particularly those lining the lungs.

Silica particles are extremely toxic, more so if freshly crushed. Research has determined that "fresh" silica particles "are much more potent in inducing inflammation and killing cells than silica particles that have aged in air for a time."

The aetiology of the disease indicates that certain categories of mine workers, particularly rock drillers, are most at risk of developing silicosis and related pathologies.

In 1994, a commission of inquiry into safety and health in the mining industry acknowledged that research into occupational lung disease extended back over the past 60 years. Most of this research was on in-service miners and biased towards white miners. The last research on black former miners took place in the 1930s.

In fact, the dangers of silicosis have been well known for more than a century. The use of ventilation technology, proper equipment for underground workers, the constant monitoring of dust levels, regular health testing of workers, and general education and information dissemination can eliminate cases of silicosis in mines altogether.

Studies in the 1990s established that the prevalence of silicosis and related diseases was more than 30 percent amongst former miners, while 24 percent of employed miners had silicosis. Most workers did not know that they had the disease.

A lawyer representing South African gold miners in a lawsuit against the big mining houses says that as many as 500,000 mine workers may have contracted lung diseases in recent decades.

In 2003, the mining sector launched a campaign to eliminate silicosis and developed targets for silica dust reduction. However, Professor Gavin Churchyard of the Aurum Institute pointed out that the elimination of silicosis would require dust levels to be at least 50 percent lower than the targets set by the sector.

Silicosis is governed by the 1973 Occupational Diseases in Mines and Works Act, which, since 1993, has been applied equally to black miners. Under the terms of this legislation, miners who develop lung disease sign away their right to sue employers in exchange for statutory compensation. Compensation is a lump sum, with an upper limit of R84,000 (approximately \$10,000). The processing of compensation sums is slow and bureaucratic.

In 2005, auditors found that the Compensation Fund was insolvent and that mining companies' levies would need to be substantially increased to cover the deficit. The

Department of Health's compensation commissioner for occupational diseases proposed incrementally raising levies paid by the mining industry from an average of 32 cents (approximately 4 US cents) a risk shift up to R9.38 (approximately \$1.17) a risk shift. The Chamber of Mines sought a declaratory order from the North Gauteng High Court to overturn the proposed levy hikes.

Eric Gcilitshana, the National Union of Mineworkers' national secretary for health and safety, stated that the union would not support legal action against the mining houses because experience has shown that "litigation does not benefit the ex-mine worker, as all the funds go to the lawyers' fees."

In 2004, a mineworker, Thembekile Mankayi, received R16,320 (approximately \$2,000) for contracting silicosis and pulmonary tuberculosis. In 2008, he sued AngloGold Ashanti for R2.6 million (approximately \$325,000). The mining house invoked the Occupational Diseases in Mines and Works Act, arguing that he was not entitled to sue his employer. The High Court upheld the company's exception and the Supreme Court of Appeal dismissed Mankayi's appeal.

Mankayi sought recourse before the Constitutional Court. In March 2011, the Constitutional Court ruled that the Occupational Diseases in Mines and Works Act did not preclude Mankayi from suing AngloGold Ashanti. Several days before the ruling, Mankayi, 53, passed away from lung disease. Nevertheless, this landmark ruling allowed for mine workers to sue their employers and former employers.

RBC Capital Markets' equity research unit noted that the Constitutional Court ruling in favour of Mankayi opens the door to thousands of other silicosis sufferers suing mining companies. "The implied damage to the gold industry could be \$100 billion," it said.

In September 2011, 450 South African gold miners, represented by Leigh Day & Co, launched legal action against Anglo American in the UK for proper compensation and access to health care. This number has now climbed to about 1,200. They allege that their excessive exposure to dangerous levels of dust was caused by the negligence of Anglo American South Africa (AASA), a subsidiary of the UK industry giant.

A spokesman from AASA said that the company will argue that "the claimants were employed by South African gold mining companies in which AASA had an interest of less than 25 percent... these companies were responsible for the health and safety of their employees and took reasonable steps to protect them."

Anglo American denies any liability for workers who contracted silicosis and tuberculosilicosis while employed in mines where AASA had a stake.

Richard Meeran, a partner at Leigh Day and Co, noted similarities with the case of South African asbestos miners who successfully sued the British asbestos company Cape: "First, the similarity in the nature and causes of these diseases and the measures required to prevent them, namely dust control; secondly, industry knowledge of the hazard having existed for more than 100 years, and, thirdly, what we allege is the disregard of the industry, in its drive for profit, for miners' health."

In a separate action, 18 ex-gold miners from the President Steyn gold mine in Free State province who contracted lung diseases while employed as underground workers have sought to sue AASA.

An arbitration hearing will start on 2 September 2013, presided over by the former chief justice of South Africa, Judge Sandile Ngcobo, and two former judges of the Supreme Court of Appeal. Three out of the 18 claimants have already died from lung disease. Anglo examined the other 15, and five were hospitalised immediately.

On 21 August, Charles Abrahams, a lawyer representing 3,000 mostly former miners, filed papers at a regional Johannesburg court against AngloGold Ashanti, Gold Fields and Harmony.

The mendacity of the mining giant beggars belief. Black miners for decades were not provided any protective respiratory equipment. They worked in dangerous circumstances and were often sent into areas minutes after blasting operations. Affected miners were allowed to continue working even though the companies knew they had silicosis. When no longer able to work, they were sent back to the Apartheid Bantustans to die.

The anger of the Marikana strikers and strikers from other mines is understandable and justifiable. They are confronted with a merciless and relentless foe that over the decades has condemned many of their comrades to death, and who now, with the active assistance of the state and the unions, has attempted to drown their protests in blood.



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