

Groundbreaking win for Zambia's farmers against British mining giant

Thursday 16 May 2019, by [Africa is a Country](#), [ELDRIDGE Louise](#) (Date first published: 23 April 2019).

A Supreme Court ruling in the UK could set a precedent for multinational corporations to more vigorously account for the human and environmental impacts of their operations.

In a [historic ruling](#) on April 10, the UK Supreme Court has allowed 1,826 Zambian villagers to pursue their case against UK-based mining giant Vedanta in the UK courts. Farmers in Chingola have been [fighting for more than a decade for compensation](#) after serious pollution from a mine owned by Vedanta's Zambian subsidiary, Konkola Copper Mines poisoned their land and waterways.

The ruling is a significant step forward. Although it doesn't mean that a positive outcome is certain—the company has vowed to “defend itself against any such claims at the appropriate time”—for now, it means that the door to justice is still open. It's also helpful to others adversely affected by corporate operations, because it clarifies the parameters of a company's legal “duty of care.”

At the same time, it creates a risk that companies might start to adopt a hands-off approach to managing human rights and environmental risks in the corporate group. Legislation is urgently needed to clarify companies' responsibilities and make it easier for communities in Zambia, and other countries, to access justice in the UK.

‘Duty of care’

Until now, courts have relied on factors outlined in a previous ruling ([Chandler v Cape Plc](#)), which limited a UK parent company's duty of care to *employees* of its subsidiaries. In the Vedanta case, the Court ruled that a UK parent company can arguably owe a duty of care to *other people* affected by its subsidiaries' operations, on the grounds that they could be impacted by the degree of control exercised by a parent company over its subsidiary.

The judges gave some examples of what constitutes “control.” A parent company might establish policy and guidelines for its corporate group and take active steps to make sure these are implemented, or make public commitments relating to its responsibility to communities and the environment, which it then fails to put into practice.

In this case, the judges cited Vedanta's own public policy commitments, which stated that the company had control over the Zambian mine and was responsible for its subsidiaries' operating standards. This shows that a company's commitments are worth more than the glossy pages that they're printed on—companies must be held accountable for them.

A concern about the ruling is that it might deter companies from making public commitments to protect human rights and environmental standards, for fear of being held liable. But the reality is that while taking a hands-off approach might reduce the theoretical probability of one legal risk, it would expose companies to a host of other risks that could cause greater damage. Companies are

also under a great deal of pressure from journalists, NGOs and others to be seen to be acting responsibly and transparently, so backing off from public commitments risks reputational damage.

UK's responsibility

A disappointing aspect of the ruling was the judges' finding that the proper place for the case to be heard was in Zambia. The case was only allowed to proceed in the UK because the claimants would have faced significant barriers to justice in Zambia, including lack of funding to bring their claims in a Zambian court.

That could mean that in future, to bring a case against a UK company in a UK court, claimants might have to prove that there are significant obstacles to justice in their own country, *as well as* proving that the company owed them a duty of care.

The Court should have recognized that such a case should be heard in the UK by virtue of the fact that it concerns a UK parent company. It is the UK's responsibility to regulate its multinationals and their operations. They shouldn't be allowed to reap financial rewards running operations in countries such as Zambia, while palming off the cost of their social and environmental risks on to local communities.

What next?

Now, the Zambian farmers' case will either be settled or will go to trial in the High Court at a date to be determined.

The case also makes it clear that we need legislation to clarify multinationals' responsibilities to prevent human rights abuses and environmental damage, to ensure that communities do not have to fight so long and so hard to get justice.

The Corporate Responsibility Coalition (CORE) and more than 20 organizations have launched a [call for a new law](#) to make companies take action to prevent negative impacts from their operations (including their subsidiaries) and supply chains, and to make it easier to hold them to account when they fail to do so.

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