



DEADLY AIR



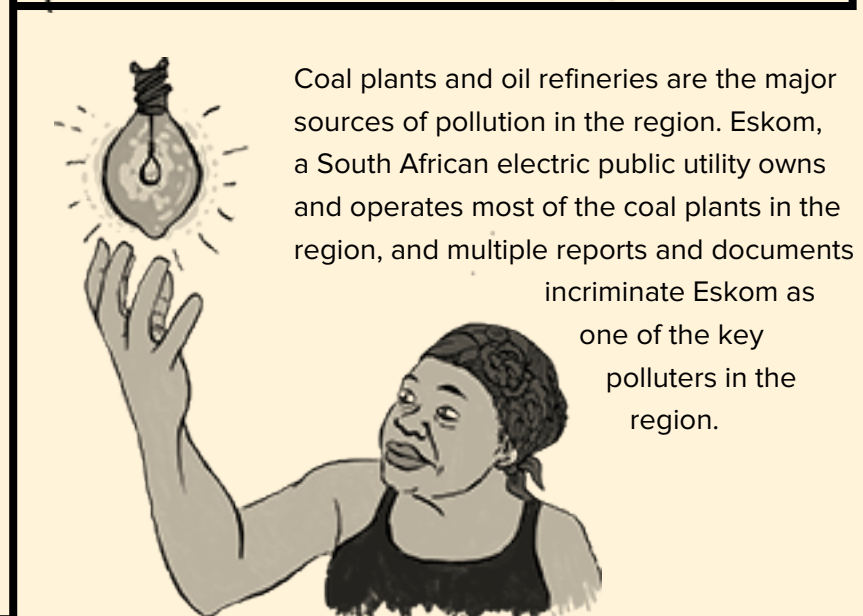
In March 2022, environmental justice groups in South Africa secured a landmark judgment in a case pertaining to air pollution that has far-reaching consequences for human rights and for air pollution management in South Africa.

The High Court of South Africa recognized the poor air quality in South Africa’s Mpumalanga Highveld region as a breach of residents’ constitutional right to an environment that is not harmful to their health and well-being. The case, referred to as the “Deadly Air” case, was brought against the government by two Environmental Justice (EJ) groups — groundWork and the Vukani Environmental Justice Movement in Action. They are represented by the Center for Environmental Rights.

The case concerned air pollution in Mpumalanga and East Gauteng provinces, also known as the Highveld Priority Area, which by own admission of the South African government is a major coal region and also is one of the worst air pollution hotspots in the world. This region is home to mostly socio-economically marginalized communities.



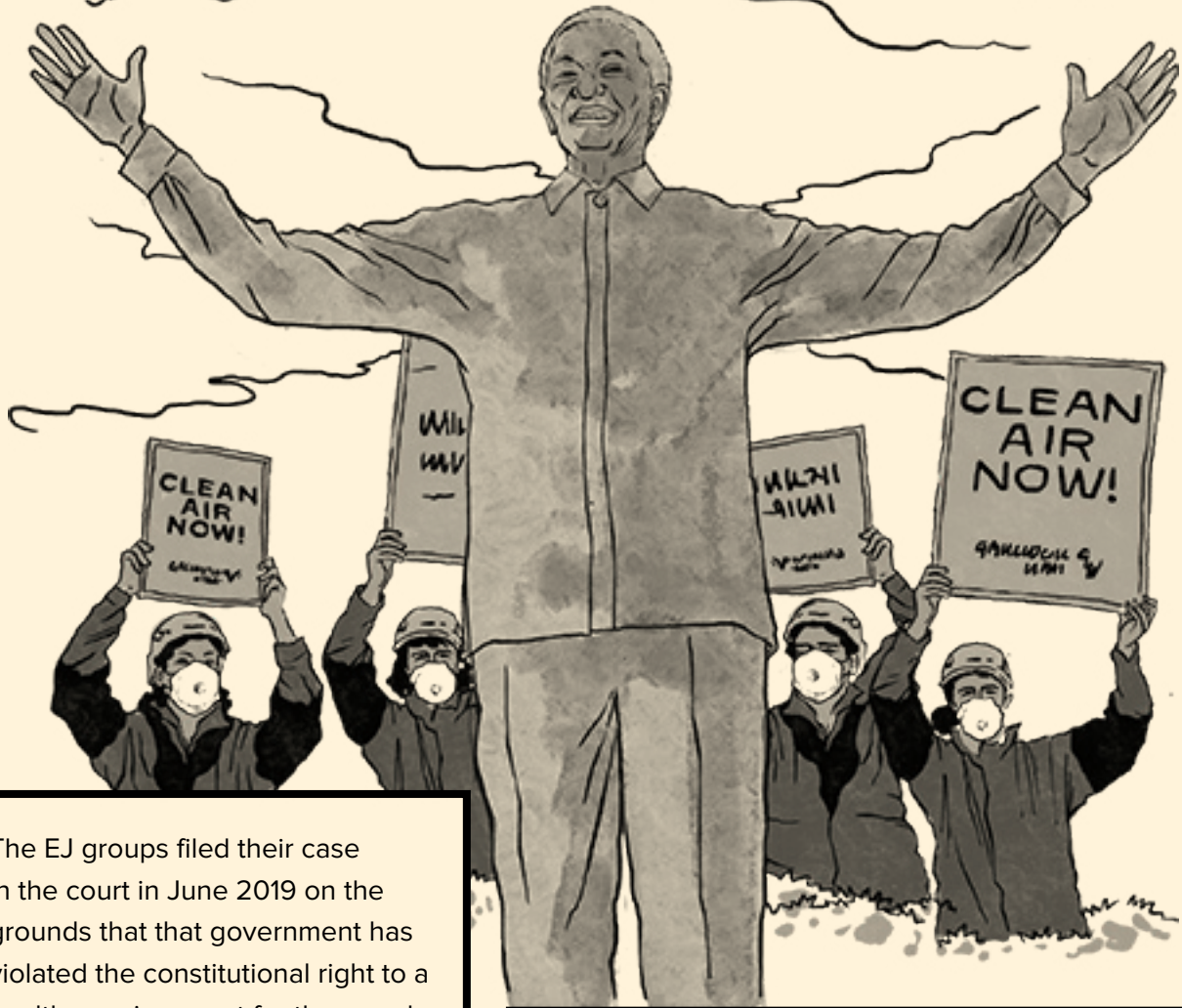
The problem of air pollution in the region is not new; in 2007, South Africa designated the Highveld a “Priority Area”, requiring urgent government action because ambient air quality standards were being exceeded, and “there is little doubt that people living and working in these areas do not enjoy air quality that is not harmful to their health and well-being”. However, despite this declaration, little was done in improving the situation and protecting public health in the region.



Coal plants and oil refineries are the major sources of pollution in the region. Eskom, a South African electric public utility owns and operates most of the coal plants in the region, and multiple reports and documents incriminate Eskom as one of the key polluters in the region.

A 2019 independent report found Highveld pollution from 12 coal plants, a coal-to-liquid plant, and an oil refinery massively exceeds World Health Organization guidelines.

The 14 facilities are responsible for the lion’s share of air pollution allowed by national air quality limits. In 2016, emissions from the 14 facilities accounted for 92% of the daily ambient SO₂ limit, 85% of the hourly ambient SO₂ limit, 82% of the hourly ambient NO₂ limit, and 68% of the daily ambient PM 2.5 limit... Ambient air quality standards cannot be achieved without reducing pollution from these sources.



The EJ groups filed their case in the court in June 2019 on the grounds that that government has violated the constitutional right to a healthy environment for the people living and working in the Highveld Priority Area, by failing to improve the deadly levels of air pollution in the region. They requested the court to “declare that the poor ambient air quality in the Highveld Priority Area constitutes a violation of the right to an environment not harmful to health or well-being, and to order the government to promulgate regulations to enforce the Highveld Air Quality Management Plan (HPA AQMP)”.

The groups took to the courts as a last resort after years of evidence gathering, campaigning and engaging with the government and policy makers to take note of the situation and bring in mitigative action. Their coalition published various reports and wrote many letters to the various ministers and agencies, who maintained that there were no “compelling reasons” for any additional action in the region.



To support their case, the groups cited a 2017 study, commissioned by groundWork, that estimated 2,239 human deaths per year could be attributable to coal-related air pollution in South Africa, as well as more than 9,500 cases of bronchitis among children aged 6 to 12. The groups also commissioned studies on the health impacts of air pollution especially from coal in the region, from several health experts and medical professionals. These reports provided medical and technical evidence on impacts and lent credibility to their claims.

In another significant move, in November 2020 the United Nations Special Rapporteur on Human Rights and the Environment, Prof David Boyd, was admitted as an amicus curiae (friend of the court) in the case by the High Court. Professor Boyd was represented by public interest law organization Lawyers for Human Rights. His submissions focused on the relationship between a healthy environment and the protection of other basic human rights, as well as the key steps a government should take to address air pollution.



The outcome of the case is important for a number of reasons.

First of all, the judgment highlights the importance of compliance with air quality standards as clean air is confirmed as a constitutional right. Any violation of the standard should result in penalties and legal action as a consequence of this ruling.

The second is that the court's finding that air quality is a constitutional right underscores the urgency with which governmental agencies need to act and protect the public from the ill effects of air pollution.

Finally, this victory highlights the importance of systematic evidence gathering, the education of impacted communities and the general public, and the solidarity from medical and public health professionals in legal struggles.