

# UN watchdog joins SA air pollution case

The government is facing a court battle about big industry's emissions and their link to poor health. This is a public health concern and government must take action to save lives.



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Photographer: John Hogg

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News



8 May 2020: eMalahleni resident Mandla Thani makes his way to Khutala Colliery near Kendal Power Station to drop off his CV. Mpumalanga has the highest levels of air pollution in the world.

Senior government ministers have gone to great lengths in recent months defending South Africa's globally unique ban on smoking cigarettes during the Covid-19 pandemic. The same government and its cabinet has for years ignored calls to do something about power plants' voluminous and toxic clouds of soot, smoke and poisons inhaled daily by many people on the Mpumalanga highveld.

Cooperative Governance and Traditional Affairs Minister Nkosazana Dlamini Zuma has been particularly vociferous in championing the tobacco ban, arguing that the state has a constitutional duty to safeguard public health.

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According to a government [air quality management plan for the area](#), annual air pollution volumes in the region include at least 1 633 655 tonnes of sulphur dioxide (SO<sub>2</sub>), 279 630 tonnes of fine particulate matter (PM10) and 978 781 tonnes of nitrogen oxides (NO<sub>x</sub>), emanating from Eskom power stations, metal factories, coal mines, brick makers, the petrochemical industry and several other heavy industrial operations.

On 29 June, however, legal pressure on the government to tackle one of “the deadliest environmental problems in the world today” will mount when a senior United Nations human rights watchdog lodges an unopposed application in the Pretoria High Court.



5 May 2020: Vincent Mahlangu earns money by guarding trucks against theft while the drivers buy food in Ogies. He hasn't noticed a decline in truck traffic as the mines continue to deliver coal to Eskom power stations.

groundWork and the Vukani Environmental Justice Alliance.

Boyd, who is based at the University of British Columbia, is also one of Canada's leading experts in environmental law and policy and an internationally renowned authority on the relationship between human rights and environmental degradation.

He has acted as a special advisor on sustainability to Canadian Prime Minister Paul Martin; is a member of the World Commission on Environmental Law; an expert advisor for the UN's Harmony with Nature Initiative and a member of ELAW, the Environmental Law Alliance Worldwide.

In his role as Special Rapporteur, he has a duty to advocate for the protection of human rights and the right to breathe clean air, he says.

"I seek to intervene as *amicus curiae* in these proceedings to assist the Court in its interpretation of the right to an environment that is not harmful to health or wellbeing, and the obligations of the state under international law," he says, noting that a significant body of scientific literature shows that the burden of poor air quality falls disproportionately on the shoulders of marginalised and vulnerable communities.



5 May 2020: Sabelo Msuya is the receptionist at Dr Van Tonder's surgery in Ogies. For them, it is business as usual. The doctor, however, does fear what might happen to those with underlying health problems caused by the pollution.

Daggakraal.

In court papers submitted through Lawyers for Human Rights, Boyd argues that pollution levels in parts of Mpumalanga are “among the highest in the world”, rendering this court case a human rights issue of global importance.

He will also [cite evidence](#) that as many as 19 410 people were estimated to have died in South Africa in 2017 due to outdoor air pollution – a death rate that is roughly 8 times higher than the current number of deaths from Covid-19 in South Africa.

Boyd argues that poor people, young people and the elderly are especially vulnerable to the deadly impacts of air pollution.

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Citing a World Health Organization report [on children’s health and the environment](#), Boyd says air pollution can cause a range of devastating health damage such as heart disease, lung cancer, premature birth, childhood obesity, reduced intelligence and a variety of neurological disorders in children and adults.

“Air pollution that exceeds acceptable standards affects everyone, causing widespread violations of the right to live in a healthy environment. Yet the burden of disease caused by air pollution is inequitably distributed, with certain vulnerable populations bearing a disproportionate share of the impacts.

“Among the most severely harmed are children, people living in poverty, women, elderly persons and people with pre-existing health conditions such as respiratory conditions or heart disease.”

“The overwhelming majority of illnesses and premature deaths caused by air pollution affect people in low and middle income countries,” says Boyd, pointing to power plants, factories, incinerators or busy roads in impoverished communities

“Poverty also exacerbates the impacts of air pollution through lack of access to information, limited access to affordable health care and a lack of political power to demand remedial action.”

He describes very fine particulate air pollution (PM) as one of the single largest risks to human health, because such tiny particles of soot, black carbon, nitrates and heavy metals can be inhaled deep into the lungs and then pass into the bloodstream.



5 May 2020: Residents walk to the shops in Sundra, Mpumalanga, during level four of the Covid-19 pandemic lockdown.

### Loss of healthy life

Boyd says a study published by the independent [Boston-based Health Effects Institute](#) calculates that air pollution causes the loss of 617 500 disability adjusted life years (DALYs) each year in South Africa. A DALY is a metric that measures the years of healthy life lost and is widely used to identify the magnitude of illness caused by a particular risk factor.

Based on separate evidence to be presented by international air pollution experts, Peter Orris and Mike Holland, the UN Special Rapporteur believes it is likely that a substantial proportion of these health losses occur in the Highveld Priority Area (HPA). Declared officially in 2007, the boundaries of the HPA spans an area of 31 106km<sup>2</sup> and includes parts of Gauteng and Mpumalanga.

Not all air pollution, he says, violates the right to a healthy environment.

“The right does not entitle rights-holders to pristine air quality. However, if air quality fails to meet established air quality standards, it is a *prima facie* violation of the right to a healthy environment.”



8 May 2020. A 5km-long queue of coal trucks wait to deliver coal to Kendal Power Station in Ogies in the early morning.

### People's right to breathe

Boyd says states have several obligations under international law and they cannot violate people's right to breathe clean air and, therefore, have a duty to ensure that this right is not violated by big industries.

In the application, Boyd sets out seven key steps he believes every country should take to ensure healthy air. South Africa falls short in most.

"There is no doubt," he concludes, "that air pollution is the deadliest environmental problem in the world today, causing millions of deaths annually . . . The longstanding failure of a government to improve air quality, especially when it has failed to act with the requisite urgency in the face of long-term exceedances of national air quality standards, is a violation of the right to health environment."

As part of the main application, groundWork director Sven "Bobby" Peek argues that the levels of outdoor air pollution in the HPA are harmful to human health and that current and former government ministers responsible for environmental affairs have failed to prescribe regulations to reverse poor air quality in this area.

Peek argues that there has been a history of broken promises by national and local governments in addressing air pollution in the affected areas.

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Also, without properly functioning and credible monitoring stations, groundWork said it was possible that air quality was actually far worse than it appeared. There were only nine monitoring stations generating data out of the 23 stations monitoring government and non-government sites when the initial court papers were filed last year.

Timothy Lloyd, an attorney at the Centre for Environmental Rights, says groundWork and government are still in the process of exchanging court affidavits. So, a hearing date for the main application has yet to be set down.

Perhaps, after the hearing, government will take action and treat this matter as urgently as the cigarette ban was enforced. It has a duty to safeguard public health.



5 May 2020: A road sign in Ogies, Mpumalanga, covered in many layers of dust. The province has the highest levels of air pollution in the world, according to Greenpeace.