

YOUTH CLIMATE JUSTICE

School of Law, UCC, Ireland

 www.ucc.ie/en/youthclimatejustice/

Case Law Database



GROUNDWORK TRUST AND
OTHERS V. MINISTER OF
ENVIRONMENTAL AFFAIRS AND
OTHERS (#DEADLYAIR)

Child-friendly summary



[Click here to read the full summary.](#)



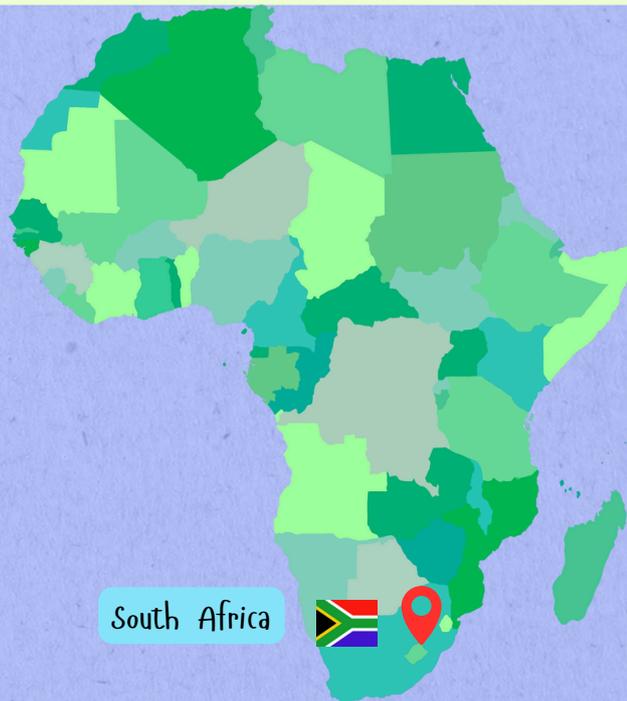
OVERALL SUMMARY

In 2019, two organisations, GroundWork and the Vukani Environmental Movement, brought a case to request the Court to acknowledge that poor air quality in the **Highfeld Priority Area** (HPA) was against the right to an environment that is not harmful to health and well-being. The Minister responsible for Environmental Affairs acknowledged that the air pollution exceeded standards and was damaging for the health and wellbeing of residents and the environment.



THE CASE

In 2012, a plan was published aimed at reducing air pollution to acceptable standards by 2020. However, the air quality in the HPA continued to be above pollution standards. The plan needed to be implemented by **regulations**.



South Africa

*Tricky words in
BOLD explained
at the end!

The HPA in South Africa, known for its poor air quality due to **coal-fired power stations** and coal mining operations, was declared a priority area in 2007.

The key question in this case was whether a Minister can be ordered to introduce regulations to limit **carbon emissions** and pollution in an area where children's health is at risk. And whether a state holds a special duty to children.



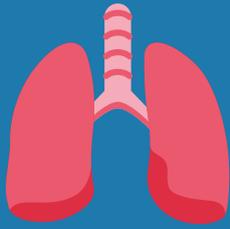
May 2021: Protest outside the Pretoria High Court at the beginning of the Deadly Air hearings regarding the poor air quality in the Highveld Priority Area. Photograph by Daylin Paul

The applicants in this case asked the court to decide whether the right to a healthy environment was violated because of the poor air quality in the area. They also asked the court to decide if the Minister has a legal duty to publish a formal enforcement plan, in the form of a regulation, to make sure the enforcement of the HPA air quality management plan. This plan lists certain goals to be achieved in order to address air pollution and to improve the quality of air in the HPA, and its aims were not being achieved.

WHAT ARTICLES OF SOUTH AFRICA'S CONSTITUTION DID THEY CITE?

- **Art. 24(a):** Right to an environment that is not harmful to health or well-being.
- **Art. 10 and 11:** Right to human dignity and life.
- **Art. 12:** Right to Freedom and Security of the Person
- **Art. 27 and 28:** Right to Health, and Best Interests of the Child.

FOR EXAMPLE:



When the failure to meet air quality standards continues over a long period of time, there is a greater likelihood that the health, well-being, and human rights of the people subjected to that air is being threatened



These harms are being made more serious by coal-fired power, despite the availability of cleaner alternatives



The government recognised the risks posed by climate change to the people of South Africa

WHAT DID THE COURT DECIDE?

The court agreed that poor air quality in the HPA is in breach of the constitutional right to an environment that is not harmful to health and well-being, and the country must take steps to make it possible for the public to rely on their rights right away. The court emphasised that the state has a duty to take action to combat poor air quality in South Africa.

The court also held that the Minister has a legal duty to implement the air quality management plan and that failure to do so amounted to an unreasonable delay. The court directed the Minister to implement and enforce the plan through regulations within 12 months. The court also acknowledged the importance of protecting and preserving the environment for future generations.

WHY IS THIS CASE IMPORTANT?

This case is important because the court confirmed that the right to an environment that is not harmful to health or well-being is an **unqualified right** and does not depend on the state's available resources. A breach of this right necessarily violates other rights under the constitution, including the rights to dignity, life, bodily integrity and the right to have children's interests. The court held that the state owes a duty to future generations.





EXPAND YOUR KNOWLEDGE!

- An **unqualified right** refers to a type of right that is not dependent on available resources. This means that such rights must be enforced immediately and that the state cannot use limited resources as an excuse not to implement the right.
-
- A **coal-fired power station** is a thermal power station that burns coal to generate electricity. There are approximately 2,500 coal-fired power stations worldwide, which collectively provide about 40% of the world's electricity.
-
- **Carbon emissions** are the release of carbon compounds such as carbon dioxide (CO₂) and methane (CH₄) into the atmosphere. Similarly to other greenhouse gases, these carbon compounds trap heat in the atmosphere when released, resulting in global warming.
-
- **The Highveld priority area (HPA)** spans parts of Gauteng and Mpumalanga, was declared a priority area by the former Minister of Environmental Affairs in 2007. The HPA has poor air quality as it is the home to 12 coal-fired power stations, a coal-to-liquid fuels refinery, and large coal-mining operations, which have contributed to particularly poor and dangerous air quality in the region.
-
- **“Future Generations”** are all those generations that do not yet exist, are yet to come and who will eventually inherit this planet. While children and youth are part of present generations and not future generations, their lives extend further into the future than that of adults and they will be more impacted by decisions being made today than the adults making them. Concern for future generations does not mean less of a focus on present generations or efforts to address climate change. Upholding the rights and meeting the needs of present generations is a precondition for a better shared future.

