

■ AIR QUALITY

# Eskom, Sasol in pollution court challenge



SMOKE rises from the Duvha coal-based power station owned by state power utility Eskom, in Mpumalanga. | REUTERS

*UN human rights expert wants to bolster case aimed at forcing government to curb emissions*

KAILENE PILLAY and REUTERS

A UN HUMAN rights expert wants to submit evidence in a lawsuit against the South African government over its alleged failure to address long-term air pollution linked to burning coal, court papers show.

If the High Court allows David Boyd, the UN's special rapporteur on human rights and the environment, to do so at a hearing later this month, it could bolster a case aiming to force the government to curb emissions.

Environmental activists groundWork and Vukani Environmental Justice Movement in Action filed the lawsuit last year to try to improve air quality in an area with a dozen coal power stations run by state utility Eskom, as well as plants operated by petrochemicals firm Sasol.

A founding affidavit submitted by groundWork director Sven Eaton Patrick Peek – known as Bobby – stated that dangerous levels of ambient air pollution in the Highveld Priority Area were concerning, and that the reality was that people living and working in these areas were breathing ambient air that was harmful to their health and well-being.

According to Peek, major towns such as eMalahleni, Middelburg, Secunda, Standerton, Edenvale, Boksburg and

Benoni, in particular, were well known for their poor air quality.

He said the poor air quality had significant and direct impacts on human health and well-being, causing premature deaths and chronic respiratory and other illnesses. Children and the elderly were particularly vulnerable to the health impacts caused by air pollution, Peek said in his affidavit.

Speaking to The Mercury yesterday, Peek said that Boyd's request to join the case as *amicus curiae* – a friend of the court – was greatly welcomed.

In a written request to join the case, Lawyers for Human Rights representing Boyd said his submissions would focus on international human rights law and the comparative constitutional law as it related to the enjoyment of a safe, clean, healthy and sustainable environment.

"In so doing, the court will have the benefit of considering all relevant sources of state obligations holistically, so as to properly understand the nature and extent of such obligations."

It added that the case raised an important issue relating to the state's obligations to protect the enjoyment of human rights from environmental harm.

The special rapporteur's global expertise and perspective may assist the court in its interpretation of section 24 of the

Constitution of the Republic of South Africa, as well as other constitutional and legislative provisions, the letter stated.

"There is no doubt that air pollution is the deadliest environmental problem in the world today, causing millions of deaths annually," Boyd said in his affidavit, filed with the High Court in Pretoria and seen by Reuters.

"States have clear obligations under international human rights law to protect the enjoyment of human rights from environmental harm."

Africa's most industrialised economy was a major emitter of pollutants that could cause illnesses from asthma to cancer.

Boyd asked the court to accept submissions on South Africa's international obligations to promote a healthy environment and on the impact of air pollution on human rights.

He cited evidence showing air pollution disproportionately harmed poor communities.

The environment ministry acknowledged a request for comment but did not immediately respond. It said last year that there were "air quality challenges" in the so-called Highveld Priority Area, which covers about 30 000 square kilometres east of Johannesburg, which it was trying to address.

Eskom spokesperson Sikonathi Mantshantsha declined to comment as the matter was before the court.

Sasol, which makes liquid fuel from coal, among other activities, said it disputed the activists' claim that its emissions caused deaths.

Eskom, which is roughly R450 billion in debt partly owing to overspending on two massive coal-fired stations, has said it could take two decades to install all the technology needed to meet stricter emissions rules that were due to come into force in April. It has asked to postpone compliance.

The papers filed last year cite Barbara Creecy, the minister of Forestry and Fisheries and Environmental Affairs; National Air Quality Officer Dr Thuli Khumalo; and President Cyril Ramaphosa as the first three respondents.

The environmentalists' case rests on two propositions.

"First, the levels of ambient air pollution in the Highveld Priority Area are in breach of section 24(a), the right to an environment that is not harmful to health or well-being.

"Second, the minister of Environmental Affairs' refusal to prescribe regulations to address the poor air quality in this area is in breach of the minister's statutory and constitutional obligations."