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SUSTAINABILITY NEWSLETTER

DECEMBER 2024

For a copy of the Safety, Health and Environmental (SHE) Legislation Update, please go to:

<https://imbewu.co.za/wp-content/uploads/2025/01/Monthly-SHE-leg-update-Dec2024.pdf>

For copies of the last three Safety, Health and Environmental (SHE) Legislation Updates, please go to:

<https://imbewu.co.za/publications/>

NATIONAL

CANCEL COAL CASE CELEBRATES A WIN IN THE PRETORIA HIGH COURT - On Wednesday, December 4, the High Court of South Africa delivered a landmark judgment declaring the Minister of Mineral Resources and Petroleum and the National Electricity Regulator of South Africa's (NERSA) plan to add 1,500 MW of new coal-fired power to the national grid as unconstitutional, unlawful, and invalid. Judge Cornelius van der Westhuizen found that both the Minister and NERSA failed to consider the impact that new coal power would have on the constitutional rights of South Africans, particularly those of children.

The Cancel Coal case is the first youth-led climate change litigation case in South Africa. It was initiated in 2021 in the Gauteng Division of the High Court of South Africa in Pretoria and concluded in October 2024. After three (3) years of litigation, environmental and climate justice groups—including the African Climate Alliance, the Vukani Environmental Justice Movement, and groundWork—represented by the Centre for Environmental Rights (CER), can finally celebrate this significant victory delivered on 4 December 2024.

Several key points were raised in Judge Van der Westhuizen's judgment. He highlighted that the Minister and NERSA failed to provide any evidence proving that they had considered the human rights impacts of the new coal-fired power. Furthermore, they did not assess the environmental impacts of their plans,

which directly affect public health. The Judge criticized them for neglecting to report on their decision-making process, which they are legally obliged to do. Judge Van der Westhuizen also condemned Minister Mantashe and NERSA for not complying with their legal obligations, emphasizing that the decision-making process lacked transparency, violating sections 24 and 28 of the Constitution. Consequently, the judgment was handed down in favour of the Applicants, with the costs of the application to be shared jointly by the Minister and NERSA, including the costs of two counsel. This judgment serves as a landmark decision, setting a precedent for future legal challenges that could pose significant environmental and social threats. The Cancel Coal case underscores the country's commitment to becoming more climate-resilient and fulfilling its environmental obligations.

Source: <https://www.dailymaverick.co.za/article/2024-12-05-cancel-coal-case-victory-mantashes-plans-ruled-unconstitutional/>

MARINE CONSERVATION STRENGTHENS AS ILLEGAL FISHERS FACE HEFTY FINES - The first conviction for environmental degradation linked to illegal fishing within a Marine Protected Area (MPA) was delivered on 27 November 2024 in the Bredasdorp Regional Court, located in the Western Cape province. The Unathi-Wena fishing company (the "company") was found guilty of illegal fishing within the MPA and for causing environmental damage. As a result, the company has been ordered to pay a fine of R1 million, marking the first penalty of its kind within the realm of marine conservation. This case sets a precedent for imposing stricter penalties, ensuring that illegal fishers are held accountable.

In May 2019, one of the company's vessels was caught fishing illegally within the De Hoop MPA, which is designated as a "no-take zone." This means that all forms of fishing are strictly prohibited. Any individual or company caught fishing in this region is guilty of an offence and will be liable to the payment of fines, imprisonment, or both. The company continued its illegal fishing activities, catching several endangered species, including sharks and rays. Consequently, the company faced legal proceedings, during which the State argued that its actions violated fishing laws and threatened the marine ecosystem. The court called upon expert witnesses, including marine biologists and fisheries researchers, who confirmed the court's findings. They stated that the company's actions in removing protected species such as sharks could have a detrimental effect on the ecological structure of the environment.

Ultimately, the company pleaded guilty. Following the conviction, the State pursued an additional fine for the actions that were likely to negatively impact the environment. On 27 November 2024, the court handed down its judgment, confirming that the company is liable to pay a R1 million penalty. This case establishes an important precedent for marine conservation, highlighting the significance of protecting South Africa's marine resources. It serves as evidence that safeguarding the country's ecosystems is vital and requires strict regulatory measures and enforcement to ensure their preservation.

Source: <https://www.dailymaverick.co.za/article/2024-12-03-de-hoop-marine-protected-area-conviction/>

AFRIFORUM'S GREEN AND BLUE DROP REPORTS MONITOR THE DECLINE OF WATER QUALITY IN SOUTH AFRICA - AfriForum's annual Blue Drop (municipal drinking water) and Green Drop (processed sewage water) reports, based on sample testing conducted in August across its 160 branches nationwide, highlight serious concerns about the management of South Africa's water supply and sewage treatment systems. The 2024 results reveal little progress over the past five years, with the ongoing mismanagement of these critical systems jeopardizing the availability of clean drinking water and worsening pollution of natural water sources. Without immediate and substantial intervention, access to safe water will become increasingly difficult in the future.

According to the 2024 Blue Drop report, 87% of municipal drinking water is deemed safe for human consumption and meets minimum standards. However, this represents a 9% decline from the 96% safety rate reported in 2023. While the provinces of Mpumalanga, Free State, and KwaZulu-Natal were most affected by unsafe drinking water last year, the 2024 findings reveal that 28 towns across nine (9) provinces are now impacted by substandard water quality.

The 2024 Green Drop results paint an equally troubling picture, with only 13% of wastewater treatment works meeting the required standards for discharge into water resources. This is a modest improvement from 2023, when 81% of treatment plants failed to meet pollution standards, but still leaves 87% of wastewater treatment facilities out of compliance. Both the Blue and Green Drop reports underscore the mismanagement of South Africa's water resources, which will inevitably lead to higher future costs for water treatment and increased risks of unsafe drinking water. Lamber de Klerk, AfriForum's environmental affairs manager, attributes these issues to the chronic underperformance of municipalities responsible for water and sanitation services. This underperformance is driven by mismanagement of funds, inadequate maintenance of existing infrastructure, and a failure to develop new infrastructure to meet the demands of population growth.

AfriForum believes that the key to solving the water crisis and ensuring the sustainable management of South Africa's water resources lies in cooperation across all levels of government, as well as with the private sector and community organizations.

Source: <https://www.engineeringnews.co.za/article/independent-blue-green-drops-show-water-quality-decline-2024-12-04>

INTERNATIONAL

GERMANY CONTRIBUTES AN ADDITIONAL R5.2 BILLION IN FUNDING TO SOUTH AFRICA'S ENERGY TRANSITION - At the 2024 Intergovernmental Negotiations on South African – German Development Cooperation, held in Berlin from 25 to 27 November 2024, the German government pledged an additional R5.2 billion to support South Africa's just transition away from coal.

Germany aims to fulfil this commitment before the upcoming G20 meeting in Johannesburg, South Africa, scheduled for November 2025. While announcing South Africa's G20 Presidency, President Cyril Ramaphosa highlighted the country's goals to advance key global issues, including enhancing resilience to climate-induced natural disasters and mobilising financing for a just energy transition. He expressed confidence that G20 leaders would continue to make progress on the priorities established in previous meetings, emphasising that he did not anticipate any dilution of existing agreements. In response to President Ramaphosa's announcement, Germany reaffirmed its dedication to aiding South Africa's transition toward climate neutrality. South Africa plans to utilize the funding to protect livelihoods by reducing its reliance on coal and investing in greener energy alternatives.

Source: <https://www.engineeringnews.co.za/article/germany-commits-r52bn-to-south-africa-and-promises-to-deepen-cooperation-ahead-of-joburg-g20-2024-12-03>

ICJ BEGINS HEARINGS TO REVIEW STATE'S OBLIGATIONS TOWARDS CLIMATE CHANGE - The International Court of Justice (ICJ) has commenced hearings to determine what legal obligations countries worldwide have in contributing to the fight against climate change and supporting vulnerable nations in addressing its devastating effects. The United Nations General Assembly adopted a resolution requesting the ICJ to issue an advisory opinion on how countries should mitigate harmful greenhouse gas emissions and the potential consequences for non-compliance. While the ICJ's advisory opinions are not legally binding, they hold significant legal and political weight.

Vanuatu, a Pacific island nation heavily threatened by climate change, was the primary instigator behind the UN General Assembly's request to the ICJ. Supported by other island states, Vanuatu seeks to raise awareness of the obligations that states have in addressing climate change. In response to rising sea levels, these island nations argue that international law must evolve to confront the climate crisis and tackle its disproportionate impact on Small Island

Developing States (SIDS). These countries have urged the ICJ to recognize the duty of cooperation as a general principle of international environmental law, which includes providing technological and financial assistance.

This marks the first time the ICJ has been asked to address climate change and the responsibilities of nations in combating it. Legal representatives from over one hundred countries and organizations have been invited to submit written comments and present oral statements at the ICJ in The Hague. Following a substantial number of submissions, international organizations have been called to make oral presentations on the issue. The ICJ will now begin deliberations and is expected to issue its advisory opinion in 2025. While the world waits for the judgment, which is anticipated in 2025, it is clear that the ruling will offer important legal guidance on climate action. It will be interesting to see how the ICJ draws upon the Earth Charter to expand states' obligations toward creating a just and peaceful world.

Source: <https://earthcharter.org/the-international-court-of-justices-legal-proceedings-on-the-obligations-of-states-in-respect-of-climate-change/>

IMBEWU'S ONLINE Safety, Health & Environmental (SHE) Legal Registers serve to link environmental and health & safety legal requirements, not only to clients' specific activities, aspects and risks, but also to legislative provisions and legal commentaries. Our state-of-the-art online electronic SHE Legal Registers are cost effective, contemporary and streamlined for easy access with secure passwords, easy navigation, explanations of SHE legislation relevant to specific operations, access to a comprehensive searchable SHE legislation database (which is updated monthly) and include site-specific documentation.

For more information contact admin@imbewu.co.za or visit <https://imbewu.co.za/she-electronic-legal-registers/>

The logo for Warburton Attorneys Inc Sustainability Law Specialists features a green background. On the left, there is a photograph of green grass with water droplets. To the right of the photo is a stylized green tree icon. The text 'Warburton Attorneys Inc' is written in a large, dark green font, with 'Sustainability Law Specialists' in a smaller, lighter green font below it. At the bottom, the contact information '011 447 6848 | admin@warburtons.co.za' and 'www.warburtons.co.za' is displayed in a white font.

26 January 2025- World Clean Energy Day <https://environmentalalliance.org/calendar-environmental-awareness-days/world-clean-energy-day-2025>

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