

Full story: Nuke deal court ruling

After more than a year and a half of court preparation, Earthlife Africa, Johannesburg (ELA-JHB) and the Southern African Faith Communities' Environment Institute (SAFCEI) have blocked the unlawful and unconstitutional actions of the South African government in its nuclear deal.



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The judges ruled that the secret tabling of the intergovernmental agreements (IGA) with Russia, USA and Korean are unconstitutional and unlawful and that they be set aside. They also ruled that the decisions made (section 34 determinations) to procure nuclear are unlawful and unconstitutional and that they be set aside. The government and Eskom's proposed procurement of nuclear energy was ruled unlawful and unconstitutional and was set aside, and any existing requests for proposals from nuclear energy providers have also been set aside, meaning they are made null and void.

Unlawful and unconstitutional

“The judgement means that there is no decision in terms of the relevant empowering statute that new nuclear generation capacity is needed and should be procured. The Russian agreement has been declared unlawful and unconstitutional for its tabling.

“Before any nuclear procurement can proceed, the minister of energy (in concurrence with Nersa) will be required to make a new determination in accordance with a lawful process that is transparent and includes public participation. This will necessarily require disclosure of relevant information that to date has been kept from the public, including critical information on costs and affordability,” says Adrian Pole, legal representative for ELA-JHB and Safcei.

Government to pay costs

The government has to pay the costs of the court case as well as the other legal costs incurred by Safcei and ELA-JHB. And the judges declared that the government's decision (section 34 determination) must have public participation as a part of its procurement process, and that Eskom as the procurer has been set aside, which means Eskom cannot go ahead with the nuclear procurement.

In future the minister and/or the national energy regulator (Nersa) would be required to conduct public participation before

making any new decisions.

Holding the government to account

“Safcei and ELA-JHB based their case on the South African Constitution, which states that when it comes to far-reaching decisions, such as the nuclear deal, which would alter the future of our country, government is legally required to debate in parliament and do a thorough, transparent and meaningful public consultation,” says Safcei spokesperson, Liz McDaid.

“The organisations and citizens who are motivated by a demand for a just energy transition to sustainable energy are planning to launch an even bigger campaign soon to ensure this judgement is only the start of people holding the government to account on its energy deals,” adds Makoma Lekalakala of ELA-JHB.

A lot has happened in the two months since the final arguments were heard in the nuclear court case in February 2017. The President’s late-night cabinet reshuffle at the end of March has spurred countrywide marches and a vote of no confidence is looming. Many more discrepancies have since been reported, with the nuclear deal being in the spotlight in the latest crises in political leadership.

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