“Ensuring affordable electricity as a vital socio-economic right in South Africa”

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ENSURING AFFORDABLE ELECTRICITY AS A VITAL SOCIO-ECONOMIC RIGHT IN SOUTH AFRICA

Abstract

This article examines the socio-economic impacts and effects of unlawful electricity tariff increase in South Africa. Access to electricity is a vital socio-economic right in South Africa because of its intrinsic role in the fulfilment of other social economic rights. The availability and accessibility of electricity guarantees the success of many businesses and the survival of many households, particularly the rural poor. Eskom, a governmental parastatal, generates, transmits and distributes electricity for the people, and charges for these services are rendered based on the tariff approved by the National Energy Regulator of South Africa (NERSA). Recently, NERSA decided to approve tariff increase requested by Eskom which was against the Electricity Regulation Act 4 of 2006 and the Constitution of the Republic of South Africa 1996. This increase was contested and nullified in court. If this tariff increase had not been challenged in the court, it would have had a devastating impact on the well-being of the people, particularly the poor. Using literature relevant to socio-economic rights to modern energy, particularly electricity, this article accentuates that electricity is a basic socio-economic right in South Africa that must be accessible and affordable to all. It explains the importance of judicial intervention in ensuring that socio-economic rights are made available and accessible to the people. It points out that the court will not hesitate in using its judicial power to extend any opportunity which allows poor people to access and enjoy right to modern energy and electricity and other socio-economic rights in South Africa.

Keywords electricity, electricity tariff hike, judicial power, separation of powers, socio-economic rights, underprivileged

JEL Classification N57, K14, O13

INTRODUCTION

South Africa has a history of past oppression which was perpetuated by the system of apartheid. Black townships where the black majority were living were denied access to various basic socio-economic rights, goods, amenities and services one of which is access to modern energy and electricity (Tinto, 2001). In order to correct these deprivations, denials and injustices deliberately inflicted on the black majority during the apartheid regime, one of the steps taken by the unbanned African National Congress (ANC) and their affiliates was to organize a National Electrification Conference which was held in Johannesburg in September 1992 and this led to the formation of a National Electrification Forum in 1993 (Lloyd et al., 2004). The Forum discovered many challenges in the electricity supply industry such as inefficient distribution of electricity, substantial cross-subsidized services using electricity revenues, failure to collect revenues properly, failure to maintain infrastructure and so on. In order to proffer sustainable solution to these problems, the Forum recommended the establishment of the National Energy Regulator which tasked with the

responsibility to regulate the electricity industry (Lloyd et al., 2004). One of the critical problems that was urgently singled out for immediate solution by the newly democratically elected black majority in 1994 was the provision of modern energy to the previously deprived black South Africans (Møller, 2007).

The National Energy Regulator Act 2004 (NERSA) was established in terms of the Electricity Act of 1995. The Act gave NERSA power to issue licences, generate and transmit or distribute electricity (Gaunt, 2008). NERSA is tasked with the mandate to regulate the electricity industry in South Africa in terms of the Electricity Regulation Act 4 of 2006 (ERA). This makes NERSA the prime custodian and enforcer of the regulatory framework provided for in ERA. Eskom is a public company which is responsible for generating, distributing and transmitting electricity and receives directives from NERSA in terms of electricity pricing and other electricity related matters (Montmasson-Clair & Ryan, 2014).

More importantly, NERSA is tasked with the responsibility to ensure that electricity is reasonably priced to make it affordable and accessible to all (Gaunt, 2008). In order to ensure that this responsibility is diligently carried out, the Electricity Pricing Policy (EPP) (Government Notice No. 1398 dated 19 Dec 1998) sets out the broad guidelines to NERSA in terms of the approval of electricity tariffs and prices for the electricity supply industry. The extent to which these responsibilities are being properly discharged has been the subject of litigation recently in the South African court as articulated in the case of Borbet v The National Energy Regulator of South Africa and Others (24364/2016) [2016] ZAGPPHC 702 (16 August 2016). The facts of the case showed an unprecedented increase in the price of electricity which was in contravention of the EPP. The crux of the problem is that a multi-year price determination was approved by NERSA on 28 February 2013 which stipulated electricity prices for a period of 5 years. After this, NERSA later approved Eskom's application to credit its Regulatory Clearing Account with an additional price increase of 11.2 billion rand in respect of the 2013–2014 tariff year which was to be recovered in the 2016–2017 tariff year. This represents an additional increase of 5.9% above the amount approved for the 2016–2017 tariff year and was in violation of the Multi-Year Price Determination 3 as specified in the EPP. It is pertinent to point out that the reason why Eskom applied for an increase after the approved MYPD 3 "was for an RCA balance of R 22,789 million for the first financial year of the MYPD 3 cycle, which was from 1 April 2013 to 31 March 2014. If granted, this would have the effect of increasing the average electricity tariff for 2016–2017 by a greater percentage than would have been the case otherwise". Eskom also said that there is an urgent need for an increase in order to recover the short fall in revenue and use the recovered revenue to meet higher energy costs and sustained supply and demand.

Since a 5 year increase had earlier been approved and if there is going to be any other application for an increase, it must also comply with the guidelines as outlined in the methodology that have been put in place to affect this sort of increase. However, this was not done by Eskom and yet NERSA approved the application for an increase. This was vigorously challenged in the court and the court emphatically held that "NERSA did not comply with the MYPD methodology when it approved Eskom's RCA application and therefore the decision was unlawful, irrational and procedurally unfair".

Over and above, the significance of the court's verdict is that the decision taken by NERSA in this case presents a multitude of negative effects. A key effect amongst these being the impact the tariff increase would have on the socio-economic right to affordable modern energy and electricity by the consumers especially those who are poor and may not be able to afford the tariff increase. Undoubtedly, access to affordable modern energy and electricity will "create goods and/or services either directly or indirectly for the production of income or value" (Cabraal, 2005). Therefore, if an exorbitant increase in the price of electricity is allowed, it will have devastating negative impact on other social and economic activities.

The tariff increase would have been sustained but for the intervention of Boubet that promptly instituted a suit in the court to nullify the increase. The case of Boubet clearly showed that although the court is

often reluctant to interfere in the matters of other organs of government due to the doctrine of separation of powers but a general exception to the rule was taken in this case. The court treated the case as a review on the grounds of rationality, lawfulness and fairness and did not involve itself in matters of policy which are controlled by the executive organ represented by NERSA. Therefore the court's intervention was welcome and appropriate in this case, since it protected the rights of all South Africans who were to be subjected to an unlawful electricity tariff increase.

Therefore, the judgement of the court demonstrated that electricity is a basic socio-economic right protected by the Constitution of the Republic of South Africa and other related laws and, as such, the government must ensure the progressive realization of the right through reasonable legislative and other measures. It proved that when taking an executive decision on socio-economic rights, the executive should protect the rights of the poor and not violate them. It also show that by rejecting the application for an increase, the court has judicially protected socio-economic right to affordable electricity. More importantly, the court has reinforced the assertion that socio-economic rights are indeed subject to judicial enforcement (Sunstein, 2001).

1. LITERATURE REVIEW

South Africa is a highly industrialized country in Africa with an electricity capacity of over 39,000 MW serving a population of over 50 million people (Inglesi-Lotz & Blignaut, 2011). In South Africa, Eskom is statutorily tasked with the responsibility of generating and distributing electricity to consumers. The parastatal was established in 1923 in terms of the Electricity Act of 1922 after a consolidation of several private enterprises (Maharaj, 2012). South Africa's long history of oppression, racism and segregation caused by the system of apartheid enabled disparity in the provision and consumption of electricity (Hart, 2002), as many black communities especially in the rural areas were not electrified.

In 1994, the advent of democracy fortunately brought a huge relief to black people and their communities. The newly elected government introduced the Electrification Program which was meant to address social concerns and injustices of the defunct apartheid era through the electrification of rural communities. The main objective was to address the lack of electricity in black townships and communities. The program was a success, since Eskom was able to connect over 3 million new customers to electricity and increased overall extent of electrification from about 36% of households in 1990 to 90% in 2016 (Gaunt, 2011).

The breakthrough by Eskom to provide electricity to many households was on its own a milestone, however, many South Africans living in the rural remote areas still live in abject poverty, earning meagre incomes just enough to purchase food for survival. With regard to the majority poor black who still reside in the rural areas, taking care of hunger is much more important and critically imperative than expending their meagre incomes on paying for electricity bills even where it has been provided. In 2003, the government came up with a plan to address this problem by introducing the free basic electricity. The program was indeed a political success, but it came with its own challenges. Once the beneficiary exhausted his/her allowance, the full tariff was applied automatically (Gaunt, 2005).

There is no likelihood that the beneficiary would be able to afford to buy units to continue having access, but has to wait until the month ends in order to be entitled to another circle of free electricity. This is a dilemma because even when given access to electricity, it became evident that many people were too poor to benefit substantially from it because when they exhaust the allowance, they would not be able to afford to buy in order to continue access because of the price (Gaunt, 2005). In other words, even though the free basic electricity is good, it is not sufficient for an average family even when used for only necessary, thus once they have exhausted it, they become incapacitated to buy electricity due to inadequate fund. Against this backdrop, free basic electricity was not sufficient and it leaves many households without modern energy and electricity. This hinders the ability of the poor to engage in viable socio-economic ac-

tivities considering that electricity is a socio-economic driver that is used to achieve other basic socio-economics goods, services and development. Notably, electrification supports development by contributing to improved health, education, and other services that eventually bring consumers into the formal economy (Gaunt, 2005). If it is unɵ affordable many people will suffer and small businesses might close down thereby increasing the unemployment rate, poverty and destitution.

While many, especially the poor, are still struggling with being able to pay for electricity needed for domestic and small scale enterprises, it is disheartening to see that ESKOM continues to pursue strategy to increase electricity tariff. Undoubtedly, this will create problems because the increase would mean that the average South African would not be able to afford electricity. What triggered an unlawful and arbitrary increase as revealed in Borbet's case is that the National Energy Regulator in 2016 approved an increase on the electricity tariff requested by Eskom to recover revenue from the 2013–2014 tariff year for R11.2 billion which was to be recovered in the 2016–2017 tariff year, an amount added on top of the 8% lawful increase for that year. The Statistics South Africa clearly show that the proposed increase in the electricity tariff by Eskom to recover revenue for the 2013–2014 tariff year will widen the gap between the rich and the poor. Many South Africans would be forced to survive without electricity and the inflation rate would also result in an increase in food prices, as well as others basic social amenities. Mabaso and Karodia (2014) have warned that if NERSA increases electricity tariffs, it will destroy businesses, especially small businesses because it will be too expensive to produce goods and services locally. Therefore, NERSA is supposed to weigh and assess its decisions before implementing them, especially if the decision would have adverse effects and impact on people's socio-economic rights. Instead of heeding these suggestions, Eskom decided to increase electricity price which triggered immediate institution of a suit in the court against the government agencies.

More importantly, in South Africa, socio-economic rights are enshrined in the Constitution (Kende, 2003). The Preamble to the Constitution explicitly states the main purpose of the Constitution as follows: to "improve the quality of life of all citizens and free the potential of each person". According to Khosa (2007), "socio-economic rights are those rights that give people access to certain basic needs necessary for human beings to lead a dignified life. Government and, in certain circumstances, private individuals and bodies, can be held accountable if they do not respect, protect, promote and fulfil these rights. Socio-economic rights are especially relevant for vulnerable and disadvantaged groups in society. They are important tools for these groups who are often most affected by poverty and who experience a number of barriers that block their access to resources, opportunities and services in society". Therefore, the justification of socio-economic rights and well-being of the people is especially evident in the entrenchment of a wide range of justiciable socio-economic rights in the Bill of Rights in the Constitution of South Africa (Liebenberg, 2002). Socio-economic rights were included as justiciable rights in the Bill of Rights primarily to assist the poor to protect and advance their fundamental socio-economic needs and interests (Liebenberg, 2002). However, if the state fails to provide these rights as mandated by the constitution, the court has inherent power to enforce them through judicial pronouncements.

The Bill of Rights entrenches the right of everyone to have access to adequate housing, health care services, including, reproductive health care, sufficient food and water and social security. The jurisprudence on socio-economic rights in South Africa is seen through three leading cases on these rights which, are Soobramoney v Minister of Health, KwaZulu-Natal 1998 1 SA 765 (CC), 1997 (12) BCl, R 16'16 (CC), Government of the Republic of South Africa and Others v Grootboom and Others 2001 1 SA 46 (CC), 2000 (1) BCLR, I 169 (CC), and Minister of Health and Others v Treatment Action Campaign and Others 2002 5 SA 72 I (CC), 2002 (10) BCLR 103'3 (CC). These cases affirmed the justiciability of socio-economic rights wherein the court expanded on the conditions for the rights to be met by stating that the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of each of these rights.

Access to modern energy, in particular access to electricity, qualifies to be a socio-economic right

(Tully, 2005) because the denial of access to electricity will impact on other socio-economic rights, for instance, health, food, right to a clean environment, amongst others. If electricity tariff is unreasonably high, electricity will become inaccessible, unaffordable and unavailable to many poor people who would suffer because they will not be able to cook and heat their homes during winter. Therefore, this would amount to denial of socio-economic rights by the state.

According to Kanagawa and Toshihiki (2008), lack of access to energy has linked to poverty and the decision by NERSA has direct implications on the health of people in the sense that by not having access to electricity, they will resort to using other kinds of energy such as burning firewood for heating and they will be exposed to hazardous pollutants. In terms of education, children would not be able to study at night and make use of Information Technology. There will also be denial of the promotion and engagement in enterprises and development. Another critical concern is that the environment will be harmed and degraded as a result of increase in the use of firewood for cooking and heating which would result in deforestation and emissions of carbon dioxide causing global warming.

Increasing electricity tariffs has negative effect on children's education. Access to electricity reduces the extensive effort required daily to prepare children for school and other educational activities (Zins et al., 2004). Also, due to electrification, rural households obtain sufficient lighting for children to study at night and are able to utilize TV, radio, and Information and Communication Technologies for educational purposes (Anil et al., 2005). Thus, access to electricity and other modern energy creates a child-friendly educational environment where they can be taught and learn. These will add value to them and aid them to become responsible successful citizens (Loertscher, 2002).

Thus, in essence, access to electricity qualifies as a socio-economic right and denial of this vital resource would perpetuate poverty and lead to suffering especially amongst the poor people in the country. The state must also make sure that it takes a stand to ensure the progressive realization and fulfilment of this right by making electricity accessible, available and affordable to all people in South Africa (Khoza, 2007).

2. RATIONALE AND METHODOLOGY

Electricity is a limited resource in South Africa considering the fact that the demand is higher than the supply (Clark, 2000). Many households depend on electricity for various social and economic activities. Because of the significant role it plays in human life, particularly the poor in South Africa, the pricing of electricity must take into account the demographics of the consumers. Majority of people that live in rural areas depend on the government for support and cannot afford to pay for an exorbitant electricity tariff. An increase in electricity tariff will have a severe negative impact on the lives of many, since they might not be able to survive without electricity. Just like water, food and shelter, electricity also qualifies as a socio-economic right and the government must ensure that it is available, accessible and affordable for all people, hence, the price should not, at any point in time, be the reason for the denial of access to electricity. The recent decision by NERSA allowing Eskom to increase the tariff violates the fundamental right of access to electricity, since most of the people, especially the poor in the rural areas, will not be able to afford it. The decision did not take into account South Africans who are living in destitution and poverty. Therefore, the main objective of this article is to highlight the intrinsic role of modern energy and electricity as a socio-economic right and accentuate that unreasonable price hike would deny access and consumption. It also emphasizes the need for NERSA to evaluate the effects of its decision on every South African, particularly those who are living in abject poverty before making it. It uses the decision of the court in the case of Borbet to showcase how the court can judicially intervene on behalf of the people to ensure the realization and enjoyment of socio-economic right to modern energy and electricity by ensuring that access and delivery are not denied as a result of huge increase in the price. This article also highlights the important role of the court in protecting and promoting the right of the citizen to enjoy socio-economic rights and that if the executive transgressed it, the

court should not hesitate to use its judicial power to invalidate decisions that are contrary to the values of the Constitution, especially in instances where they are irrational, unlawful and unfair. This article utilizes the qualitative research style. It relied on literature relevant to socio-economic rights to modern energy, particularly electricity. The literature were derived from statutes, case law, journals, policies, written texts and so on.

3. DISCUSSION

3.1. Implication of NERSA's decision to hike electricity tariff on the right to access to modern energy and electricity

The decision to increase electricity tariff by NERSA presents a negative impact on the realization to the right to access electricity. Electricity is a socio-economic right and failure by the state to make the right accessible will worsen the already dire conditions of the poor people. Access to modern energy like electricity will drastically improve the quality of life of all people through its diverse uses (Barnes & Floor, 1996). An increase in electricity tariff will therefore mean that people, especially the poor and previously disadvantaged black people, will not be able to afford to pay for electricity services.

The use of electricity also ensures that people who engage in small social enterprises are emancipated through self-help projects in communities. With the increase in tariffs, these people might have to quit their income generating enterprises and become socially dependent on the government. The tariff hikes would also hamper the efforts of the government and other non-governmental organizations towards gender equality and women's empowerment (Duflo, 2012), since access to electricity directly contributes to freeing up women and girls from time-consuming house works such as laundry and cooking by utilizing electricity (Kanagawa & Nakata, 2008). The reduction of time-consuming domestic activities has indirect contributions for empowering women (Kanagawa & Nakata, 2008) by availing them the opportunity to attend schools or educational activities, as well as take part in the labor market or establish small enterprises (Kanagawa & Nakata, 2008).

More importantly, it is pertinent to point out that there is a strong link between access to electricity and advancement in socio-economic conditions in developing countries, particularly in South Africa (Brew-Hammond, 2010). Multi-dimensional aspects of poverty, for example, economy, education, and health, have been increasingly focused on as parts of the major socio-economic problems facing the poor in developing countries (Ravallion, 1996). Access to modern energy such as electricity is one possible solution that can be deployed and utilized to find viable and sustainable solutions to the problems (Van et al., 2012). Therefore, provision of and access to affordable modern energy and electricity needs special attention in order to emancipate the poor from chronic poverty in South Africa.

3.2. The significance of judicial intervention in curbing abuse of power

The debate about judicial involvement in socio-economic rights and the need for the judiciary to make a constructive contribution to contemporary discussions about the appropriate judicial role in a socially just constitutional dispensation was displayed in the recent decision handed down in the Borbet's case. This underscores the backdrop that "post-1996 South African courts constitutionally obliged to give meaning to socio-economic rights through interpretation, to evaluate government compliance with the duties they impose, to pronounce on the validity of legislation and policy in the socio-economic sphere and to remedy state non-compliance with socio-economic obligations" are producing the desired outcomes by ensuring that socio-economic rights are realizable, fulfilled and enjoyed (Pieterse, 2004).

In the case of Borbet, the court demonstrated positive and robust judicial intervention whereby it reviewed, set aside and remitted a decision taken by the executive represented by NERSA for reconsideration since it was against paragraph 14

of MYPD 3. The concept of separation of powers was argued in the case. These two aspects present contrasting views because judicial intervention, on the one hand, entails allowing judges to express their personal views on public policy, among other factors, to guide their decisions. On the other hand, separation of powers would prevent the judiciary from encroaching into the sphere of the legislature and the executive when it comes to matters involving public policy (O'Donnell, 1998). From all indications, there are instances where judges would have to proactively intervene in the affairs of other organs of government in order to ensure that justice is not only seen to be done, but also must be manifestly seen to have been done "in favor of progressive and new social policies which are not always consistent with the restraint expected of appellate judges" (Khosla, 2013). This is known in legal parlance as judicial activism. Black's law dictionary (1999) defines judicial activism as "judicial philosophy which motivates judges to depart from strict adherence to judicial precedent in favor of progressive and new social policies which are not always consistent with the restraint expected of appellate judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in the legislative and executive matters". A judge is judicially active when he or she deviates from the expected norm by not basing his or her decision on precedents (Rodríguez-Garavito, 2010), but interprets the law in order to meet current exigencies in a bid to uphold and protect the rights of individuals against the majority (Labuschagne, 2013). It is an essential tool that may be used for good, since it helps in identifying laws that are inconsistent with the Constitution and the rule of law.

The doctrine is part of South Africa's constitutional framework. In the case of Glenister v President of the Republic of South Africa (2009 (1) SA 287 (CC) at p. 298), it was held that "the doctrine of separation of powers is part of our constitutional design". This is evident in Chapter 4 to Chapter 8 of the Constitution which provides for the three distinct organs of government namely executive, legislative and judiciary. However, a clear separation of powers is not always achievable. This is because they are interwoven, interdependent but with strong checks and balances. In the case of South African Association of Personal Injury Lawyers v Heath (CCT27/00) 2000 ZACC 22, 2001 (1) SA 883, 2001 (1) BCLR 77), doing a comparative analysis of South Africa, United States and Australia, the court stated that "in all three countries, however, there is a clear though not absolute separation between the legislature and the executive, on the one hand, and the courts, on the other".

Therefore, in the case of Borbet, the court clearly illustrated its reluctance to blur the separation of powers and intrude into the executive sphere. However, at the same time, the right thing needs to be done in order to allow the court to decide the matter though it may seem as if it is encroaching into the executive sphere or the legislative sphere. In the case of Bato Star Fishing Pty Ltd V Minister of Environmental Affairs and Others, it was held that the court should not rubberstamp an unreasonable decision simply because of the complexity of the decision or the identity of the decision maker. In Borbet's case, it was necessary to rule against NERSA because clearly the decision of the NERSA to arbitrarily hike the price was against the policy and therefore was unlawful, irrational and unfair. Even though separation of powers connotes that one organ should not interfere in the affairs of others, the judiciary must, in certain instances, rule against the executive conduct when the executive crossed the red line (Carolan, 2009).

Over and above, the decisions of the court in Borbet's case demonstrated the judiciary's ability despite the separation of powers to nullify certain decisions of the executive where such decisions are unlawful, irrational and unfair. The court clarified that it is well aware that it is not supposed to encroach into the executive or the legislative spheres but when it comes to reviewing certain decisions based on irrationality, unlawfulness and arbitrariness, the court had the necessary power to refer back such a decision for correction to the affected department of the executive or legislature. The court has the inherent power and discretion to safeguard the values of the constitution and of socio-economic rights by ruling against the increase in electricity tariff as it is a violation of the right to access to modern energy and electricity.

CONCLUSION

The article shows that modern energy and in particular electricity is vital to human, hence, the prices chargeable by the service provider Eskom, as tariffs should not be exorbitant to the extent that they become unaffordable and inaccessible. Undoubtedly, the hike in price would have huge negative impact on the predominately poor black people who would not be able to afford to pay for the services. The hike was challenged because it transgressed the right to modern energy and electricity. The court declared the hike unlawful, irrational and unfair in order to protect the vulnerable poor electricity consumers.

REFERENCES

1. Barnes, D. F., & Floor, W. M. (1996). Rural energy in developing countries: A challenge for economic development. Retrieved from http://annualreviews.org/doi/abs/10.1146/annurev.energy.21.1.497 (accessed on 4 April, 2017).
2. Brew-Hammond, A. (2010). Energy access in Africa: Challenges ahead. *Energy Policy, 38*(5), 2291-2301.
3. Cabraal, R. A., Barnes, D. F., &. Agarwal, S. G. (2005). Productive uses of energy for rural development. Retrieved from http://annualreviews.org/doi/abs/10.1146/annurev.energy.30.050504.144228 (accessed on 1 April, 2017).
4. Carolan, E. (2009). The new separation of powers: A theory for the modern state. Retrieved from https://books.google.co.za/books?hl=en&lr=&id=F9kM4hSSBQC&oi=fnd&pg=PR17&dq=I0zPy5GY6L&sig=9-CHNbxSg8lroTB-tHbJm-DEhC2E#v=onepage&q&f=false (accessed on 20 December, 2016).
5. Clark, A. (2000). Demand-side management investment in South Africa: barriers and possible solutions for new power sector contexts. *Energy for Sustainable Development, 4*(4), 27-35.
6. Duflo, E. (2012). Women empowerment and economic development. *Journal of Economic Literature, 50*(4), 1051-1079.
7. Gaunt, C. T. (2003). Electrification technology and processes to meet economic and social objectives in Southern Africa. Retrieved from http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.460.5470&rep=rep1&type=pdf (accessed on 1 September-November, 2016).
8. Gaunt, C. T. (2005). Meeting electrification's social objectives in South Africa, and implications for developing countries. *Energy Policy, 33*(10), 1309-1317. Retrieved from http://www.sciencedirect.com/science/journal/03014215
9. Gaunt, C. T. (2008). Electricity distribution industry restructuring in South Africa: A case study. *Energy policy, 36*(9), 3448-3459. Retrieved from http://www.sciencedirect.com/science/journal/03014215/36/9
10. Hart, G. P. (2002). Disabling globalization: Places of power in post-apartheid South Africa. Retrieved from https://books.google.co.za/books?hl=en&lr=&id=4NPaYNxS_LcC&oi=fnd&pg=PR8&dq= ots=yQ6VB0VfsA&sig=lZCY7Uci0DA9TsQVYmp8KYTxGXs#v=onepage&q&f=false (accessed on 11 November, 2016).
11. Inglesi-Lotz, R., & Blignaut, J. N. (2011). Estimating the price elasticity of demand for electricity by sector in South Africa. Retrieved from http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2222-34362011000400007 (accessed on 21 September, 2016).
12. Kanagawa, M., & Toshihiki, N. (2008). Assessment of access to electricity and the socio-economic impacts in rural areas of developing countries. *Energy Policy, 36*(6), 2016-2029.
13. Kende, M. S. (2003). The South African Constitutional Court's Construction of Socio-Economic Rights: A Response to Critics. Retrieved from http://heinonline.org/HOL/LandingPage?handle=hein.journals/conjil19&div=32&id=&page= (accessed on 12 December, 2016).
14. Khosla, S. (2013). Human Rights and Judicial Activism in India. Retrieved from http://s3.amazonaws.com/academia.edu.documents/33112295/suraksha_chintan-2013.pdf?awsaccesskeyid=akiaiwowyygz2y53ul3a&expires=1492167308&signature=fjrlcfxw5flwwvnpkw%2fbzf1pntm%3d&response-content-disposition=inline%3b%20filename%3dan_evaluation_of_civil-military_relation.pdf (accessed on 12 December, 2016).
15. Khoza, S. (2007). Socio-economic rights in South Africa: A resource book. Retrieved from http://repository.uwc.ac.za/handle/10566/254 (accessed on 13 April, 2017).
16. Labuschagne, P. (2013). Legislative Immobility And Judicial Activism: The Impact on the separation of powers in South Africa. Retrieved from https://journals.co.za/content/contemp/38/1/EJC138885 (accessed on 29 December, 2016).
17. Leal, S. T. (2016). Constitutional scapegoat: the dialectic between happiness and apartheid in South Africa. Retrieved from https://journals.co.za/content/funda/22/2/EJC198946 (accessed on 14 March, 2017).

18. Liebenberg, S. (2002). South Africa's evolving jurisprudence on socio-economic rights: An effective tool in challenging poverty. Retrieved from http://heinonline.org/HOL/Page?handle=hein.journals/laacydev6&div=20&g_sent=1 (accessed on 17 December, 2016).

19. Lloyd, P., Cowan, B., & Mohlakoana, N. (2004). Improving access to electricity and stimulation of economic growth and social upliftment. Retrieved from https://www.researchgate.net/profile/Philip_Lloyd/publication/237453756_Improving_access_to_electricity_and_stimulation_of_economic_growth_and_social_upliftment/links/0c96052932d896695c000000.pdf (accessed on 4 March, 2017).

20. Loertscher, D. V. (2002). Building knowledge-rich environments for youth: A world-wide challenge for schools and school librarians. Retrieved from http://search.proquest.com/openview/15f47468a2dac17b4f929a2779a3475b/1?pq-origsite=gscholar&cbl=26551 (accessed on 9 April, 2017).

21. Mabaso, S., & Karodia, A. M. (2014). An evaluation of factors leading to disequilibrium of electricity demand and supply in gauteng province. Retrieved from http://platform.almanhal.com/Files/?ID=T2-64725-MLA0022716.pdf (accessed on 16 September, 2016).

22. Maharaj, R. O. (2012). Eskom: the making, unmaking and remaking of an institution-a case study. Retrieved from http://www.repository.up.ac.za/handle/2263/26318 (accessed on 21 November, 2016).

23. Malzbender, D. (2005). Domestic electricity provision in the democratic South Africa. Retrieved from http://www.acwr.co.za/pdf_files/01.pdf (accessed on 16 January, 2017).

24. Mojapelo, J. P. M. (2013). Separation of Powers: A South African Perspective. Retrieved from http://www.sabar.co.za/law-journals/2013/april/2013-april-vol026-no1-pp37-46.pdf (accessed on 30 December, 2016).

25. Møller, V. (2007). Quality of life in South Africa–the first ten years of democracy. *Social indicators research, 81*(2), 181-201.

26. Montmasson-Clair, G., & Ryan, G. (2014). Repositioning Electricity Planning at the Core: An Evaluation of South Africa's Integrated Resource Plan. Retrieved from https://ssrn.com/abstract=2747875 (accessed on 24 March, 2017).

27. O'Donnell, G. A. (1998). Horizontal accountability in new democracies. Retrieved from https://muse.jhu.edu/article/16904/summary (accessed on 2 October, 2016).

28. Pieterse, M. (2004). Coming to terms with judicial enforcement of socio-economic rights. Retrieved from https://journals.co.za/content/ju_sajhr/20/3/EJC53156M (accessed on 14 February, 2017).

29. Ravallion, M. (1996). Issues in measuring and modeling poverty. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=636124 (accessed on 6 September, 2016).

30. Rodríguez-Garavito, C. (2010). Beyond the courtroom: The impact of judicial activism on socioeconomic rights in Latin America. Retrieved from http://heinonline.org/HOL/LandingPage?handle=hein.journals/tlr89&div=62&id=&page= (accessed on 23 December, 2016).

31. Sunstein, C. R. (2001). *Social and Economic Rights? Lessons from South Africa (May 2001)* (U of Chicago, Public Law Working Paper No. 12; U Chicago Law & Economics, Olin Working Paper No. 124). Retrieved from http://dx.doi.org/10.2139/ssrn.269657 (accessed on 2 December, 2016).

32. Tinto, E. S. (2001). Restructuring South African electricity supply industry. Retrieved from https://open.uct.ac.za/handle/11427/4969 (accessed on 14 February, 2017).

33. Tully, S. R. (2005). The Contribution of Human Rights to Universal Energy Access. Retrieved from http://heinonline.org/HOL/LandingPage?handle=hein.journals/jihr4&div=29&id=&page= (accessed on 27 December, 2016).

34. van Vuuren, D. P., Nakicenovic, N., Riahi, K., Brew-Hammond, A., Kammen, D., Modi, V., Nilsson, M., & Smith, K. R. (2012). An energy vision: the transformation towards sustainability – interconnected challenges and solutions. Retrieved from http://www.sciencedirect.com/science/article/pii/S187734351200005X (accessed on 26 October, 2016).

35. Van Wyk, D. (2016). Checking the cost of trade: Electricity tariffs in South Africa under judicial scrutiny. Retrieved from https://www.tralac.org/discussions/article/10471-checking-the-cost-of-trade-electricity-tariffs-in-south-africa-under-judicial-scrutiny.html (accessed on 26 January, 2017).

36. Zins, J. E., Bloodworth, M. R., Weissberg, R. P., & Walberg, H. J. (2004). The scientific base linking social and emotional learning to school success. Retrieved from https://books.google.co.za/books?hl=en&lr=&id=mudgdhcb_iwc&oi=fnd&pg=pa3&dq= gesduv&sig=hecbdhymd9paxdawuelpyfkgu0m#v=onepage&q=the%20scientific%2&f=false (accessed on 2 April, 2017).