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## Electricity and the Constitution in South Africa (/full-blog/2010/10/electricity-and-constitution-in-south.html)



([http://bluntoject.files.wordpress.com/2010/01/coal\\_fired\\_power\\_plant.jpg](http://bluntoject.files.wordpress.com/2010/01/coal_fired_power_plant.jpg))

By **Brad Larkin**, Staff Member

Following the fall of apartheid, South Africa's consumption of energy has steadily grown as electricity has been extended to more areas of the country, putting a great strain on the electrical grid. In 2008, this increase in demand coupled with a lack of attention to energy producing facilities resulted in widespread power outages. Chris McGreal, *Gold Mines Shut as South Africa Forced to Ration Power Supply*, THE GUARDIAN, January 26, 2008, available at <http://www.guardian.co.uk/world/2008/jan/26/southafrica.international>. In response to these capacity problems, earlier this year South Africa applied and eventually received a loan from the World Bank for over three billion dollars to build a coal-firing plant that will produce more carbon dioxide in a year than 115 countries, causing an international uproar. John Vidal, *Britain Has the Key Vote on World Bank Loan to Medupi Power Station*, THE GUARDIAN, April 1, 2010 available at

<http://www.guardian.co.uk/environment/2010/apr/01/medupi-world-bank-loan-vote>. Opposition party members even sought help from the United States and the United Kingdom to block the loan. *Zille Lobbies Against Eskom Loan*, MAIL AND GUARDIAN, April 8, 2010, *available at* <http://www.mg.co.za/article/2010-04-08-zille-lobbies-against-eskom-loan>.

In challenging the loan, the main focus for the opposition was potential corruption, not the environment. *Id.* Residents of the region, however, were naturally more concerned about the potential for environmental harm petitioned the World Bank. *Residents Complain to World Bank about Eskom Loan*, MAIL AND GUARDIAN, April 7, 2010 *available at* <http://www.mg.co.za/article/2010-04-07-residents-complain-to-world-bank-about-eskom-loan>. Residents could also have used a domestic legal argument, as the Constitution provides that “everyone has the right to ... an environment that is not harmful to their health or well-being.” S.Afr. Const. ch. 2, §24, 1996.

And yet, in the last few days, despite the approval of the loan, several plans for more environmentally friendly energy sources have appeared. Plans are underway to build a solar power park in the Northern Cape Province, which could provide a substantial amount of energy. *S. Africa Looks to Solar, Nuclear Power*, UPI, September 29, 2010, *available at* [http://www.upi.com/Science\\_News/2010/09/29/S-Africa-looks-to-solar-nuclear-power/UPI-93711285807222/](http://www.upi.com/Science_News/2010/09/29/S-Africa-looks-to-solar-nuclear-power/UPI-93711285807222/). Furthermore, South Africa is investigating increasing its nuclear energy capacity as well. *Id.*

It certainly appears that the South African government is concerned about the environmental impacts of energy production. However, if the government does indeed follow through with these plans to build green sources of energy it will be interesting to see how quickly the government is willing to shift the burden of electrical production. The new plant has significantly raised the debt burden of South Africa, so it is unlikely that a quick shut down will occur. How will environmental groups react? Will they continue to utilize political action to encourage a quicker transition to the greener production facilities, or will they begin to seek assistance in the courts through Section 24 of the Constitution? While there are important caveats within the text of Section 24 regarding reasonableness and economic development, the fact that the coal-firing plant is located in Limpopo, one of South Africa’s poorest regions close to the border with Botswana, certainly raises questions. How South Africa deals with the shift from traditional sources of electrical generation to more green solutions will have important impacts not only on South Africa but the entire Southern African region.

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