ESKOM AS A VEHICLE FOR REDISTRIBUTIVE JUSTICE IN SOUTH AFRICA

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DECLARATION

I hereby declare that all the material incorporated into this research report is my own work except where specific reference is made by name. The work contained herein has not been submitted for any other degree or examination at any other university.

Nhlanhla Mackeed Zondo

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Siyabonga – Zondo, Mthiyane, Sokhulu, Mnguni kaManekwane.

ABSTRACT

This report explores the benefits and moral justification of the current redistributive justice initiatives that have been implemented at Eskom in an attempt to redress past socio-economic inequalities to achieve a just society in South Africa.

It begins by taking a snapshot of Eskom, the main utility that produces and distributes the important electricity commodity in South Africa, in the early years of the post-democratic era, recognising how Eskom was the most efficient and model state-owned entity in the country in the provision of its core services. However, a decade later, the organisation became a shadow of its former self, with rampant corruption, financial mismanagement and constant electricity blackouts that increased poverty and socio-economic inequalities in the country. This paper argues that some of the redistributive justice initiatives currently implemented at Eskom do not cohere with the philosophical accounts of Rawls's Difference Principle and Kant's Formulations of moral law. Some of these redistributive justice initiatives only benefit a few individuals as opposed to the majority of the poor and economically marginalised people, suggesting that some of these initiatives have become the main drivers of corruption in South Africa, which aggravate the socio-economic inequalities in South Africa.

Based on the three main arguments that are discussed in this paper, it is concluded that it is morally unjustifiable to continue with some of the redistributive justice initiatives at Eskom. The majority of poor South Africans will be best served by a cost-effective and efficient Eskom that focusses on the provision of cheap and quality electricity to the country.

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LIST OF ACRONYMS

AA	- Affirmative Action
ABET	- Adult Basic Education and Training
ANC	- African National Congress
BEE	- Black Economic Empowerment
CEO	- Chief Executive Officer
COSATU	- Congress of South African Trade Unions
DPE	- Department of Public Enterprises
EFC	- Eskom Finance Company
FBE	- Free basic electricity
GEAR	- Growth, Employment and Redistribution
IMF	- International Monetary Fund
IPP	- Independent Power Producer
NDP	- National Development Plan
RDP	- Reconstruction and Development Programme
PetroSA	- Petroleum Oil and Gas Corporation of South Africa
PFMA	- Public Finance Management Act
PRASA	- Passenger Rail Agency of South Africa
SACP	- South African Communist Party
SADC	- Southern Africa Development Community
SIS	- Strategic intent statement
SMME	- Small, medium and micro-enterprise
SOC	- State-owned corporation
SOE	- State-owned enterprise

CHAPTER ONE – INTRODUCTION

“The word ‘power’ has various connotations – and in South Africa, it was used to galvanise support against Apartheid, usually in the phrase ‘Power to the people’, or ‘Amandla awethu’.” – Eskom 1990 to 1999 African Renaissance

1.1 Introduction and Background

On 6 December 2001, Thulani Gcabashe, the then first black chief executive officer (CEO) of the South African electricity utility, Eskom, received the prestigious international award at the *Financial Times* Global Energy Awards ceremony in New York after Eskom was named the *2001 Global Power Company of the year*. At the time, Eskom was the darling of the South African government and global investors and a shining example of how the government’s strategies and programmes on redistributive justice were bearing fruit for the country.

Eskom is South Africa’s main electricity utility, established in 1923, and producing almost 95% of the electricity consumed in the country. Eskom plays a vital role in the socio-economic development of the country and its citizens. When Eskom received the *Financial Times* global award in 2001, it was a repository of excellence, ticking all the boxes for adhering to and excelling in implementing the transformation and developmental programmes that the new South African government had, justifiably, put in place for redressing the past socio-economic imbalances and improving the lives of South Africans, largely the poor black population. At the time, Eskom was led by its first black chairman, the very competent Reuel Khoza. Gcabashe was the first black CEO of Eskom. Eskom was aggressively recruiting and employing black professionals and managers in support of the government’s Affirmative Action (AA) policy. Eskom was increasingly procuring goods and services from black-owned enterprises in support of the government's Broad-Based Black Economic Empowerment (BEE) policy. Eskom was executing the herculean task of bringing power to the people by aggressively electrifying millions of homes in the rural and previously black urban areas as part of its Electricity for All Programme.

In 2001 Eskom was the fifth largest electricity utility in the world in terms of generation capacity and sales. Eskom was generating about 45% of all electricity used in the whole African continent and, as a model corporate citizen, it assisted in the economic development of the neighbouring countries in the Southern African Development Community (SADC) region by exporting surplus electricity to them. Eskom's electricity tariff price was one of the cheapest in the world and this was an important engine in accelerating economic growth in our country, which was needed to redress past inequalities. Global debt capital markets preferred lending funds to Eskom as it had a better credit rating than the South African government. Eskom was a globally respected power producer and won many top awards and international accolades. In short, Eskom was a model State-Owned Entity (SOE) and leader in driving the government's socio-economic developmental objectives that were mainly aimed at addressing the inequalities that were caused and occurred during the apartheid era. Eskom was an important vehicle for redistributive justice in the country.

However, things started changing for the worse at Eskom and the organisation's performance started spiralling downwards. Today Eskom is a shadow of its former self. This is manifested by constant power outages, financial mismanagement, and massive corruption in the organisation. In January 2008, Eskom's debilitating load shedding programme was first introduced to the country. Load shedding is the deliberate curtailment of electricity to all end users under emergency conditions because Eskom is unable to meet the electricity demand in the country. Since the first load shedding occurrence, Eskom has been in the news for all the wrong reasons in the past 12 years. It is notorious for rampant corruption, a massive financial debt that is crippling the country, and poor technical performance that is causing great damage to the country's economy. Eskom's current situation has largely contributed to the country's downgrading by global investor organisations, such as Moody's and Standard & Poor's, to the extent that during 2019 both the South African government and the International Monetary Fund (IMF) have recognised and declared Eskom as the biggest financial risk that is facing South Africa. It is very likely that some of the transformation and redistributive initiatives implemented at Eskom could have contributed to the current state of affairs at Eskom that resulted in negative and unintended consequences for the country.

1.2 Problem Statement – The Moral Question

If Eskom's redistributive justice initiatives are a contributing factor to its poor performance and the resultant damage to the country, then a review of these initiatives is necessary. An investigation into the long-term benefits and moral justification of these redistribution justice initiatives is required. Given the facts of Eskom as an important SOE in the country, and an institution that is currently used by the government to drive redistributive justice (at the time of this research paper March 2021), is it morally justifiable to *continue* using Eskom as a vehicle for redistributive justice in South Africa? This is the question that this paper will be exploring and attempting to answer.

The initial working assumption is that the inequalities that were caused by the apartheid policies are abhorrent and unjust, therefore the government of the day must use state instruments at its disposal to redress past socio-economic imbalances. The government has a duty to take actions to reduce or eliminate these inequalities, and it has a moral duty to do so. The present democratic government has opted to use various mechanisms such as legislation and state institutions such as SOEs to address past inequalities to achieve stability and social justice. This paper will examine these mechanisms and explore the moral appropriateness or inappropriateness of using Eskom to achieve these goals.

This paper will not interrogate nor question the legal correctness of the laws and policies set by the South African government to redress the socio-economic injustices and inequalities of the past. While recognising that the exploration of the research question and subsequent discussions will focus on Eskom and the particular facts about it at the time, the features of social justice redress requirements found could equally be relevant in other SOEs such as Transnet, PRASA and PetroSA; and if so, the conclusions could equally hold for them as well. My discussion will be limited to Eskom. It cannot be debated that every socially responsive organisation in the world has to conduct its business in a manner that is oblivious to and promoting the general needs of society. Equally so, every conscientious South African organisation has a moral duty to undertake transformation and redress programmes to achieve social cohesion. It is worth distinguishing the research question from tangential debates over the moral legitimacy of redistributive justice programmes such as AA. In this paper, I will assume the moral legitimacy of these redistributive justice programmes.

To answer the moral question above, the paper will focus on the moral justifiability of specific state interventions and management practices at Eskom that are aimed at addressing redistributive justice in South Africa including appointments to the Board, the appointment of senior executive staff members, and procurement practices.

1.3 Importance of Eskom as State-Owned Enterprise

Eskom is arguably the most important SOE in South Africa because it is the main entity that is responsible for generating and distributing electricity. Electricity plays a vital role in the socio-economic growth and development of our country. Almost every aspect of our livelihoods and economy requires electricity, as load shedding has brought home to ordinary South Africans.

Almost every aspect of our lives is affected by the presence or absence of electricity – from food production, powering health and safety equipment, manufacturing at factories, to heating, and lighting, etc. Electricity is at the core of sustainable economic development. If Eskom fails, then potentially 12 million jobs in our formal economy are at risk. If Eskom fails, then our country will come to a standstill and the lives of many people, particularly the poor and vulnerable, will be at risk. Other SOEs in South Africa can collapse with little impact on most citizens, as has been proven by the collapse of South African Airways (SAA), an airline that has been grounded since the start of 2020. However, the collapse of Eskom is too ghastly to contemplate. Thus, the government has a moral duty to ensure that Eskom, as our main supplier of electricity, should never be allowed to collapse.

It has plausibly been claimed earlier in this paper that Eskom has been used as a vehicle to address redistributive justice in the country. Apartheid played a huge role in creating social and economic inequalities along racial lines. The post-apartheid democratic government employed various SOEs such as Eskom to address the prevailing inequalities and achieve social justice. To this extent, several policies and programmes have been implemented at Eskom to redress past injustices. These programmes, for example, included the appointments of black people on the company Board, and the implementation of AA employment practices and black economic empowerment (BEE) programmes. These policies and programmes gave scope for discretion to be exercised by some political heads and executive managers at Eskom. In most cases, the criteria that favoured redistributive justice and developmental objectives were preferred over merit and price. In practice, these policies have given rise to rampant corruption, malfeasance and political interference, under the guise of pushing the transformation agenda at Eskom. Most of these programmes have benefitted a few corrupt individuals and exacerbated the inequalities that should have been eliminated in the first place. In answering the research question from an ethical point of view, I have sought to provide possible suggestions that might influence policy makers to reconsider the appropriateness and moral justification of using Eskom to address past social injustices in the country.

1.4 Thesis and Structure of the Paper

In this paper, I argue that given the importance of Eskom in the lives of citizens and the economy of South Africa, and the major challenges currently facing Eskom in an unethical organisational environment, and the acute lack of electricity delivery in the country that is exacerbating levels of poverty and economic inequalities, there is a moral claim to be made that it is not justifiable to continue with some of the redistributive justice initiatives at Eskom.

I will start, in Chapter 2, by outlining a literature review of key philosophical and ethical theories that will be discussed in this paper. Chapter 3 will follow with the history and the evolution of Eskom and a discussion of the various South African macroeconomic policies that have an impact on Eskom. Chapter 4 will present the main discussion on the redistributive justice practices and their overall efficacy to the country. Chapter 5 will present objections to my claim, and I will offer some rebuttals, and lastly, Chapter 6 will present conclusions to this paper.

CHAPTER TWO – LITERATURE REVIEW

Chapter 2 reviews the key philosophical theories and approaches that will form the foundation of the main discussions of this paper. I highlight the key features of these philosophical approaches and their applicability which will be further accentuated in later sections.

2.1 Theories of Social Justice

Theories of **social justice** are about managing the relations and balance between the needs of an individual and society. Social justice is about ensuring that individuals fulfil their societal roles and receive what is due to them from society. Social justice encompasses the distribution of both benefits and burdens, using morally correct principles, to ensure social cooperation. John Rawls summarises a prominent theory on the key aspects and principles of social justice as follows: "The principles of social justice; they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation" (Rawls, 1971:4).

In the above passage, Rawls's institutions of society include establishments such as governments, schools, clinics, and tax collection entities. Benefits and burdens include objects such as wealth, opportunities, welfare, and utility, as proposed by Smith (2005:46) that "social justice becomes a matter of maximising society's 'welfare' as the sum total of 'utility' enjoyed by individuals". Society's welfare is maximised by transferring, for example, wealth from the rich to the poor members of society. The morally correct principles of redistribution form an essential part of the conception of social justice. An individual human being has natural self-interests that he tends to promote first before advancing the interests of others. For the good of society, we therefore require correct distribution principles to ensure a just societal structure.

Social justice is linked to the concept of fairness or impartiality. Impartiality is the necessary condition for modern morality; social injustice can therefore be equated to immorality. Social justice attempts to prevent human rights abuses as it recognises that everyone is equal before the law and deserves equal opportunities in any given society. Unjust policies such as the apartheid laws in South Africa were not aligned to the principles of social justice. The centrality of *society* in social justice is emphasised by De Coninck *et al.* when they state: “First the term *social* focuses attention on the society-wide concerns rather than concerns related only to individual well-being. The second dimension to *social* is that it refers to more than one form of injustice” (De Coninck *et al.*, 2013:17).

The concept of social justice is not new; it can be traced back to the *Ethical Theory* writings of Aristotle. Rawls asserts:

> The more specific sense that Aristotle gives to justice, and from which the most familiar formulations derive, is that of refraining from *pleonexia*, that is, from gaining some advantage for oneself by seizing what belongs to another, his property, his reward, his office, and the like, or by denying a person that which is due to him, the fulfilment of a promise, the repayment of debt, the showing of proper respect, and so on (1971:9).

Furthermore, John Rawls draws from the original works of philosophers such as Locke, Rousseau and Kant, who developed the theory of the **social contract** to present his theory of social justice. In this regard, Rawls aptly states that “those who engage in social cooperation choose together, in one joint act, the principles which assign basic rights and duties and to determine the divisions of social benefits” (1971:10). He refers to the conception of justice connecting this social contract with the *original position* of equality as “justice as fairness” (Rawls, 1971:12). Bhandari (1998:47), reflecting Plato’s concept of justice, concurs: “Plato says that justice is not mere strength, but it is a harmonious strength. Justice is not the right of the stronger but the effective harmony of the whole. All moral conceptions revolve about the good of the whole individual as well as social.”

The work of the two well known moral philosophers, Immanuel Kant and John Rawls, will be used later in this paper when analysing the redistribution justice initiatives at Eskom. Both these moral philosophers are contractarians, that is their political theories that justify moral principles and political choices derive their normative forces from the idea of a social contracts or mutual agreements. These mutual agreements will set out a political system or state born out of rational interests of all individuals who are voluntarily involved in the formulation of these moral principles and political choices and thus recognise the legitimacy of the state. Contractarians normally commences from a state of nature where an individual or a small community is isolated and their rights are sterile, Rawls refer to this as an *original position*, and move to a position where the individual/small community is expected to sign a hypothetical agreement (social contract) where their rights are protected in a larger community or society. Rawls defines this societal arrangement as "justice as fairness" when free and equal rational beings would choose this institutional structure.

To arrive at this cooperative choice, Rawls introduces the concept of "veil of ignorance" as a scheme where all personal information (e.g., race, sex, economic position, etc) of the person who must choose a just institution is hidden to ensure that all agents are equal. Under these conditions, rational agents will choose principles of governance from a shared moral and neutral point of view. Again, under these conditions, economic rational choices are not taken based on personal preference but where the good of others is considered. Rawls' framework here suggests that an agent would reject a society based on the principles of utilitarianism because utilitarians seek to maximise their overall sum of happiness/goodness and do not respect the agents' rights. Rawls' approach of rejecting utilitarianism is similarly adopted by Kant and this will be discussed further below. Just as Rawls, Kant is also a strong advocate of justice and fairness in his moral principles as can be garnered from his criteria of the universalisation of maxims which serves as a real test whether one is being consistent and fair.

2.2 Rawls's Principles of Redistributive Justice

We began, in the previous section, by citing the work of John Rawls, *A Theory of Justice* (Rawls, 1971), in which Rawls formulates his two principles of redistributive justice:

a) First Principle: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar scheme of liberty for all" (Rawls, 1971:266).

b) Second Principle: "Social and economic inequalities are to be arranged so that they are both:

   i) to the greatest benefit of the least advantaged [members of society], consistent with the just savings principle, and

   ii) attached to offices and positions open to all under the conditions of fair equality of opportunity" (Rawls, 1971:266).

Rawls's first principle, also known as the *Liberty Principle,* asserts that all members of a society should enjoy and be guaranteed equal basic freedom in line with any democratic government practices. In the context of a country, all citizens should be guaranteed equal basic sociopolitical rights and resources so that they are able to advance the "conception of their own good" (Rawls, 1971:11). In a constitutional democracy such as South Africa, Rawls's liberty principle is factored into the Bill of Rights. It must be observed that basic rights and liberties trump everything else and therefore Rawls's first principle has lexical priority over the second principle.

Turning to Rawls's second principle, Clause 2bi is known as the *Difference Principle*, and Clause 2bii as the *Equal Opportunity Principle*. The Difference Principle regulates conditions under which socio-economic inequalities are permitted, and also how the distribution of social primary goods has to be governed if the inequalities will benefit the worst-off members of society. In this context, Rawls describes social primary goods as economic powers and opportunities, income, and wealth. These social primary goods are distinct from natural primary goods such as intelligence and health, and this will become more relevant when we discuss BEE at Eskom later in this paper.

Lastly, Rawls contends that his two principles are underpinned by humanity's moral power to accept and act on the principle of justice and the human virtue of self-respect that allows people to pursue and foster the conception of the good.

2.3 Kant's Moral Theory

Another moral theory that will feature in the discussion on Eskom's redistributive justice initiatives, in Chapter 4, is based on the moral principles that were formulated by Immanuel Kant in his *Groundwork of the Metaphysics of Morals* (1785) and *Metaphysics of Morals* (1797). These principles will be briefly discussed below.

It is probably best to table Kant's theory by contrasting it with the Utilitarian philosophical approach. It is worth noting that from the Utilitarian perspective, the rightness or wrongness of an action is dependent on the value of the consequences of that action. If the action results in maximum happiness or a state of good affairs, then, according to Shafer-Landau (2012:149), "an action is morally right just because it is required by an optimific social rule". The Utilitarian consequences of an action are all that matters, and an agent is acting morally correctly if his actions maximise the overall sum of welfare (pleasure, interests, happiness, etc.) and does not care for neither its distribution nor the rights of the agents. However, in the real world, most people do not have time to weigh their consequences and generally do not have the foresight or future knowledge of what the outcome of their actions will be. Invariably, the consequences of their actions are out of people's control. Similarly, focussing only on utility maximisation gives people no way of judging the means they take to achieve good end and therefore permits morally problematic actions to be taken in service of the so-called greater good. Why, then, should we always place the moral correctness of our actions **only** on the consequences that are produced? The moral correctness of an action should not be weighed by consequences only – what about the motivation behind the action or the goodwill? This question now leads us to Immanual Kant's moral theory.

Kant contended that morality should be grounded on a person's autonomous and rational nature. For Kant, the moral correctness of any action is not about promoting the state of goodness, but it should be about free, rational people acting on principles. Rationality is the key marker of our morality because we respect and value principles that guide our moral actions. Acting on principles is key, because those principles contain values that should never be violated. Kant's view is that people who act from a *sense of duty* because of what moral obligations demand of them and who are also commanded by their reason, obey the supreme principles of morality which he called *Categorical Imperatives*. These principles ought to be obeyed in all situations and under all circumstances by rational agents. Kant formulated the following moral imperatives:

a) Principle/Formula of Universalizability – dictates that "an act is morally acceptable if, and only if, its maxim is universalizable" (Shafer-Landau, 2012:157). In this regard, a maxim is a principle upon which one acts and the reason for one's action. When we act on a maxim that another agent in a similar position cannot follow, then we are inconsistent and thus irrational. Kant gives two criteria for assessing the permissibility or impermissibility of our actions. An action is only morally acceptable if the universalization of the maxim that underlies the action does not result in a logical contradiction or in the action becoming self-defeating. This will mean the action is irrational and thus impermissible. Irrational behaviour is immoral, and this feature of this Kantian principle will be revisited later when we discuss some of the problematic redistributive justice initiatives, such as procurement practices, at Eskom. This principle suggests that the morality of our actions is within our control, and this affirms Kant's view that "the morality of our actions has nothing to do with results. It has everything to do with our intentions and reasons for action" (Shafer-Landau, 2012:158). The Kantian view contradicts the principle of Utilitarianism.

b) Principle/Formula of the End in Itself – dictates that one should "always treat human beings (yourself included) as an end, and never as a means" (Shafer-Landau, 2012:169). This principle recognises the dignity of human beings and all living creatures that must be respected because of their absolute worth. Through this principle, the reasons and intentions of our actions are tested. Do we respect and value people by themselves or are we merely coercing and manipulating them to achieve a particular outcome?

c) Principle/Formula of Autonomy – dictates that "so act as if your maxims should serve at the same time as the universal law". This formulation recognises that we are all members of the universe, and we need to live by the universal code of conduct as we freely give law to ourselves as autonomous human beings.

All the above formulations highlight the concept of *Goodwill*. If one acts out of goodwill, then one acts out of duty with a sense of moral obligation. Acting out of goodwill depicts a person's sense of moral worth, it is our duty to do so as moral agents.

These two moral philosophical approaches to justice, namely the Rawlsian principles on justice and Kantian formulations of moral laws, will be revisited in Chapter 4 when we address the moral justification of the current redistributive justice initiatives in place at Eskom.

CHAPTER THREE – ESKOM AND THE MACROECONOMIC POLICY FRAMEWORK IN SOUTH AFRICA

The history of Eskom from its inception to date together with government's policies that have an impact on Eskom's transformation and developmental roles are discussed in Chapter 3.

3.1 The Evolution of Eskom as an SOE

Eskom was established in 1923, through the Electricity Act of 1922 by the government of South Africa primarily for the purpose of developing and growing the economy of the country which was largely based on the mining and exporting of gold and diamonds. Shortly after the end of World War II, South Africa entered a period of rapid industrialisation which required Eskom to increase its installed electricity generation capacity; by 1990, Eskom had 40 000 MW of installed capacity. As a state-owned corporation (SOC), Eskom was permitted to sell electricity at cost and forbidden from making a profit. The establishment and expansion capital came from the government and all operational practices of SOCs were dictated by the government. As early as 1986, Eskom began with racial transformative initiatives. An Equal Opportunity Committee was established to investigate and remove discrimination at Eskom. The same committee was mandated to drive the upliftment and training programmes for Eskom's workforce. Thus, Eskom was at the forefront of redistributive justice issues.

Soon after the new democratic government came to power in 1994, most SOCs in South Africa, including Eskom, were commercialised, and renamed SOEs. In 1998, the Eskom Amendment Act 126 of 1998 was passed and the government's powers to influence company policy and investment decisions were greatly expanded. In the early years of the democracy following 1994, Eskom quickly enhanced its outstanding reputation among many stakeholders, including the government, due to the way it was excelling in its business performance in several areas, including transformation and development areas. Amongst the noteworthy performance areas was Eskom's electrification programme which was pivotal in improving the quality of lives of poor people and further economic development in our country. By 1999, Eskom had electrified more than 1,75 million homes of previously disadvantaged poor people. Another noteworthy achievement was the implementing of AA; by the end of 1999, almost half of Eskom's managerial, supervisory, and professional staff came from the previously disadvantaged black population. In its main area of business, Eskom was doing well in measures such as productivity per employee, the real price of electricity (still amongst the cheapest in the world), network performance, and its energy availability factor (EAF), which was around 90%. Eskom also had surplus electricity and began exporting electricity to neighbouring countries as a good corporate citizen.

In the late 1990s, when Thabo Mbeki was the second democratic president of South Africa, the government decided to change the strategic direction of SOEs in line with the macroeconomic policies that will be discussed in the next section. The government mandated the Department of Public Enterprises (DPE) to examine the restructuring and privatisation of key SOEs, including Eskom. The effect of this privatisation project was that key redistributive and developmental goals became a low focus area in most SOEs. To close this gap, in 1998 the Eskom Development Foundation was established as a separate division within Eskom. The purpose of the Eskom Development Foundation was to address redistributive justice and corporate social investment initiatives, including small business development and the electrification of schools and clinics.

In 1998, the government released the White Paper on Energy Policy (1998) that addressed, amongst others, the strategic direction of Eskom, questions about Eskom ownership, whether Eskom should pay taxes and dividends, and whether Eskom should build new generation capacity. The outcome of the White Paper on Energy Policy was that, through the Eskom Conversion Act 13 of 2001, the organisation was transformed into a limited liability company falling under the Companies Act. Eskom was not a public enterprise, but a public company with a Board of Directors and the government remained its sole shareholder. This corporate structure of Eskom affected the efficacy of Eskom's redistributive justice measures. Because Eskom was a public company, government expected it to pay taxes in line with legislation and declare maximum dividends to the shareholder. This new structural arrangement posed an enormous dilemma to Eskom's leadership – should they undertake maximum redistributive justice measures at Eskom, or should they discontinue some of these developmental roles and run the ship tightly and declare maximum profit returns to the shareholder?

In 2004, the government changed its state assets privatisation policy and decided to retain ownership of key SOEs, including Eskom. The new government strategic direction required SOEs to be optimised, managed cost-effectively, and become the engine drivers of the economic development in the country. The government then instructed Eskom to raise expansion capital in the markets and build new electricity generation plants. However, the damage had already been done because Eskom had started experiencing huge energy shortages and a financial crisis. The phenomenon of load shedding started in January 2008 and Eskom's financial woes and governance failures soon kicked in and continued for the next decade. Eskom has been one of the victims of the so-called state capture. State capture can be defined as the way in which a state's formal procedures (such as laws) and government processes are manipulated by government officials, SOEs, private companies and/or private individuals, to influence state policies and laws in their favour. The energy crisis, governance failures, and financial crises at Eskom had a serious negative impact on developmental and transformation goals.

Presently, Eskom is run as a company, under the Companies Act and the DPE is the designated shareholder. The mandate of Eskom as described in its 2021 company internet website page is:

> To provide electricity in an efficient und sustainable manner, including its generation, transmission, and distribution and retail. The company also has a developmental role and will promote transformation, economic development, and broad-based black economic empowerment.
>
> (http://www.eskom.co.za/OurCompany/CompanyInformation/Pages/Business_Vision.aspx)

Eskom has entered into a shareholder agreement with DPE called the Strategic Intent Statement (SIS). The SIS outlines the government's objectives over the short, medium and long term for Eskom. The SIS (Figure 3.1) has seven objectives to ensure that Eskom remains a critical and strategic contributor to the government's goal of ensuring a secure energy supply to the country and enabling economic growth and prosperity. Up to now, Eskom has been structured as one vertically integrated organisation; however, in 2019 the government took a strategic decision to unbundle Eskom into three different companies to house the Generation, Transmission, and Distribution businesses.

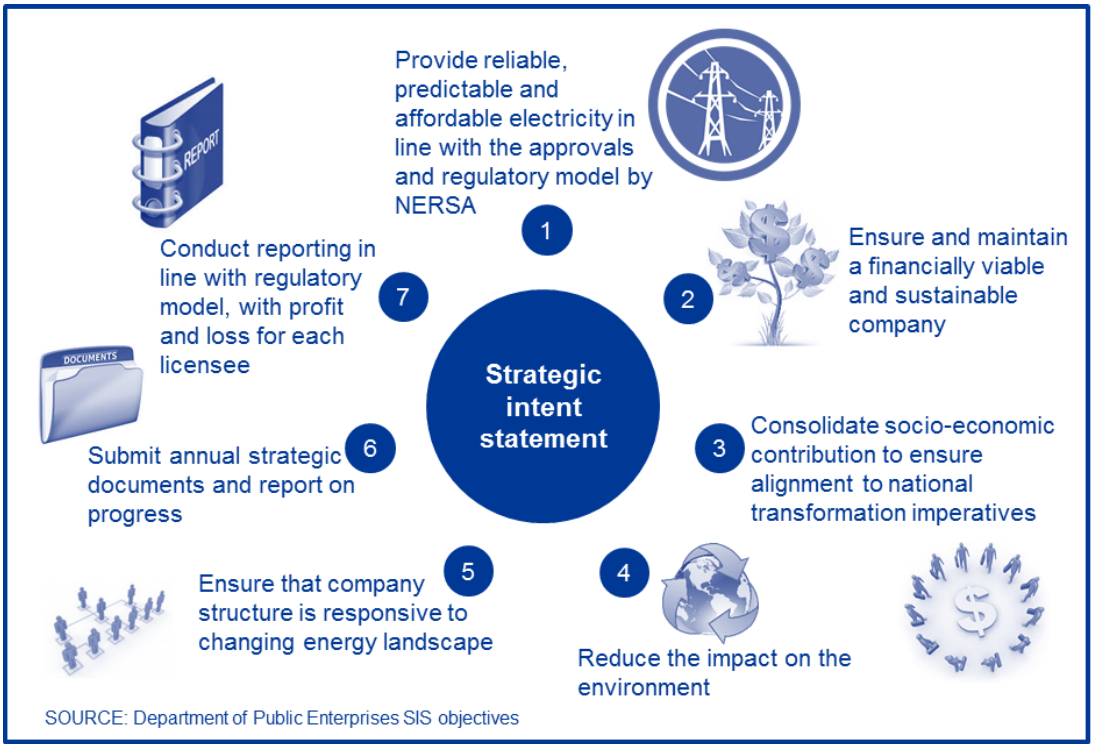

Figure 3.1: Strategic Intent Statement objectives

It is worth noting that the requirements for transformation and redistributive justice are expressed in both the Eskom Mandate Statement and SIS.

3.2 Macroeconomic Policy Framework

Eskom, like all other SOEs, was directed to align its businesses and comply with the government's macroeconomic policies. In most cases, the policies were constantly being amended and this, subsequently, affected the strategic business direction and key focus areas of Eskom. The following macroeconomic policy frameworks had different impacts on Eskom's business, particularly in their transformation and socio-economic development areas.

3.2.1 Reconstruction and Development Programme

The Reconstruction and Development Programme (RDP) is the policy document that was developed by the ANC before it came into power in 1994 and it was implemented as soon as the new democratic government came into power. The White Paper on Reconstruction and

Development (1994) describes the RDP as “a policy framework for integrated and coherent socio-economic progress. It seeks to mobilise all our people and our country's resources toward the final eradication of the results of apartheid” (RDP White Paper, 1994:7). As part of the RDP commitment of meeting the basic needs of people, Eskom began setting priority business objectives, including plans to electrify 2,5 million new homes, embarking on an aggressive AA programme at managerial and professional levels, upgrading the training and skills of lower-level black staff, and implementing the new small, medium and micro-enterprises (SMME) supplier development programmes. The RDP policy with its emphasis on meeting the basic human needs of all South Africans was an important intervention to address past injustices in the country. Smith (2005;52) concurs, stating that in the RDP policy “there was a Rawlsian ring to the commitment to improve the quality of life of all South Africans and in particular the most poor and marginalised”.

3.2.2 Growth, Employment and Redistribution

The Growth, Employment and Redistribution (GEAR) programme was a new macroeconomic policy adopted by the South African government in June 1996 to replace the RDP policy. Whereas the RDP was focussed on state-led development to uplift the poor, GEAR was focussed on private sector-led neoliberal ideologies to enhance economic growth and redistribution. Neoliberalism and the private sector seek to promote the interests of capitalists and profit-maximising agendas. Under the GEAR policy, the government sought to increase our country’s global competitiveness through strategies such as wage constraints, labour market flexibility, reducing public sector spending, increasing private investment incentives, privatisation of SOEs, reducing the size of the public sector, and outsourcing of public services to promote SMME empowerment.

Even though GEAR managed to stabilise the economy (through attaining low inflation and interest rates), it failed to attract sufficient levels of private capital investment. The failure of GEAR increased socio-economic ills such as job losses, high unemployment, increased poverty, exploitation of workers through low wages, commercialisation of basic municipal services, and poor delivery of social services. Many stakeholders, including the main labour union federation, COSATU, have heavily criticised the government for the failures of GEAR – including GEAR's failure to redress past injustices. GEAR increased economic inequalities that led to the emergence of small BEE elites who were linked to the governing ANC party. Similarly, when Eskom's load shedding started in 2008, the South African Communist Party (SACP) criticised GEAR. The SACP issued a statement pointing out that "this [load shedding] is a direct outcome of the GEAR policies adopted by the government in 1996, driving a macroeconomic policy that did not only shy away from developmental investments but also, earlier had planned to privatise key parastatals including Eskom" (SACP Press statement, 22 January 2008).

3.2.3 National Development Plan 2030

When President Jacob Zuma took over the administration from President Mbeki in 2009, he immediately moved to scrap the GEAR policy. The National Planning Commission, led by the former Finance Minister, Trevor Manuel, developed a new macroeconomic policy known as the National Development Plan 2030 (NDP 2030). The main aim of NDP 2030 is to eliminate poverty and reduce inequality in South Africa by 2030. The NDP 2030 plans to achieve its goals by "develop[ing] public interest mandates for the SOEs. Improve coordination between policy and shareholder ministries by making them jointly responsible for appointing the Board. Ensure appointment processes are credible and that there is greater stability in appointments" (National Planning Commission, 2012:65). NDP 2030 planned to create a capable and developmental state through SOEs, which were expected to play a key enabling role. In June 2020, the National Planning Commission assessed SOEs' performance and contribution to achieving the NDP 2030 vision and concluded that there was poor alignment between NDP

2030, the shareholder compact, and Eskom's performance in several critical areas (National Planning Commission Position Paper, 2020:11). Some of these critical areas included the continuous Eskom load shedding that was expected to be eliminated by year 2018, and additional 800 MW generation capacity added to the grid by 2018 (zero added by then), and primary cost of energy to reduce to 37,56 c/kWh by 2018 (actual was 45,44 c/kWh).

Now that we have conducted a review of the prevailing macroeconomic policies of government since the advent of democracy, we will explore the impact of these macroeconomic policies concerning redistributive justice programmes at Eskom in Chapter 4.

CHAPTER FOUR – EMERGING REALITIES: A CASE TO REVIEW REDISTRIBUTIVE JUSTICE AT ESKOM

The preceding chapters reviewed a few theories that deal with the subject of justice and also the mandate of Eskom as an SOE operating within a changing and contradictory macroeconomic policy environment in the country. Chapter 4 now turns to the critical subject of the moral justifiability of using Eskom as a vehicle for redistributive justice in South Africa. I aver that if either Rawls's Difference Principle or Kant's conception of moral theory is correct, then Eskom as an institution is not morally justified to be dispensing redistributive justice. I base my claim on three main arguments, the first argument pertaining to Rawls's account, and the last two pertaining to Kant's account.

4.1 Redistribution Justice Practices Benefit a Few Individuals rather than Larger Numbers in Society

In line with the government's drive to implement redistributive justice initiatives in the country using several state-owned institutions, Eskom started in the early 1990s to implement redistributive justice initiatives. These initiatives included implementing electrification programmes to connect the homes of black people in the townships and deep rural areas to the electricity grid. Eskom had set a target of electrifying 1,75 million homes by 2000. Furthermore, Eskom began to actively promote an AA human resources policy. AA has been defined as "the laws, programmes or activities designed to redress past imbalances and to meliorate the conditions of individuals and groups who have been disadvantaged on the grounds of race, gender and disability" (White Paper on Affirmative Action in the Public Services, 1998:1). In line with this definition, Eskom began with the AA programme much earlier, in 1993, with a specific focus on redressing the racial and gender composition of its staff, which at that stage still consisted predominantly of white males at senior levels and black males at lower unskilled general worker levels. Several black professionals, supervisors, and managers were recruited to the organisation and specific training programmes put in place to upgrade the skills of black employees. The Adult Basic Education and Training (ABET) programme was implemented in 1995 to improve the reading and writing skills of illiterate black general workers in the organisation. The composition of Eskom's leadership was also changed when black people were recruited and appointed to the Eskom Board and executive management levels. Dawn Makhobo was the first black person to be appointed to the executive management team in 1993. Reuel Khoza was the first black person to be appointed as the Chairman of the Eskom Board in 1997. Eskom's commitment to creating a better South Africa not only focussed on the country's socio-economic challenges in general, but also had a particular focus on improving the lives of its employees. In this regard, Eskom assisted its employees to buy their own homes by creating its in-house Eskom Finance Company (EFC), which gave home loans to Eskom employees as part of its social upliftment programmes.

On the procurement side, Eskom also began setting stringent targets in procuring goods and services from black-owned companies, in line with the prescripts of the Preferential Procurement Policy Framework Act, No. 5 of 2000, and as part of its BEE programmes. The Black Economic Empowerment Commission offered a broad definition of BEE:

> [as] an integrated and coherent socio-economic process aimed at redressing the imbalances of the past by seeking to substantially and equitably transfer and confer the ownership, management and control of South Africa's financial and economic resources to the majority of its citizens. It seeks to ensure broader and meaningful participation in the economy by black people to achieve sustainable development and prosperity (BEE Commission, 2001:2).

In line with the government's prevailing neoliberal policy objective of outsourcing services, Eskom began farming out services such as the maintenance of electrical networks and advisory services. Several SMMEs were created and supported by Eskom to participate in these outsourced procured services. In 1999 Eskom spent almost R1 billion on black-empowered companies. On this BEE framework, Edigheli (1999:4) aptly defined the empowerment programme as "a process to fundamentally transform structures of a society, especially the social and economic structures. Its central objective is the improvement of life and livelihood of the excluded majority". If the key to the BEE programme is the *equitable* and *sustainable* improvement in the living standards of the previously excluded *majority*, then there lies the challenge in respect of the redistributive justice initiatives as practised at Eskom. The outcomes of the BEE programmes at Eskom did not meet the objectives sought in the above definitions. Have the Eskom BEE initiatives reached far enough and substantially improved the lives of the excluded majority? We will argue negatively.

Turning to John Rawls's Difference Principle that social and economic inequalities are to be arranged so that they are to be the greatest benefit of the least advantaged group in society and exploring the effects of redistributive justice initiatives undertaken at Eskom, I suggest that these initiatives fail to align with Rawls's philosophical account found in his Difference Principle in several areas. First, on the preferential procurement area at Eskom, there was, and arguably still is, a small number of technically competent and well-resourced black-owned suppliers during the period of accelerated black economics empowerment programmes. If one considers the fact that coal procurement accounts for more than 50% of the procurement budget at Eskom and the reality that there are very few black-owned coal suppliers or black holders of coal-mining rights, then the effectiveness of BEE in this area becomes questionable. This accelerated BEE program at Eskom on the demand side and the shortage of genuine black-owned companies on the supply side promoted and resulted in a phenomenon known as "BEE fronting". BEE fronting is the deliberate collusion between a black person(s) and a white-owned entity where the percentage of black ownership in the entity is falsely misrepresented so that the entity gets a higher BEE score that places it in a better position to be awarded tenders, while the true economic benefits do not filter down to the previously excluded majority of black people.

Secondly, the unintended consequence of the accelerated BEE programme was the promotion of a few politically connected individuals (also known as cadre-deployed capitalists). Those politically connected individuals, being closely associated with the ANC ruling party, enjoyed an unfair advantage and entered into agreements to acquire a partial or total shareholding in previously white-owned companies. The same well-connected black individuals concluded multiple similar transactions, resulting in the emergence of a new black elite class. This BEE programme did not attempt to create new industries to grow the economy but focussed on giving slices of existing traditionally white-owned businesses to a small, select group of blacks. The economic benefits of BEE programmes at Eskom, and generally in most SOEs, have resulted in procurement-driven wealth accumulation by a small number of a new black elite (individuals) and a creation of a small black middle class and did not trickle down to the majority of poor, disadvantaged black members of society. Smith (2005:51) correctly observed this phenomenon when he remarked “that inherited patterns of inequality are being restricted rather than removed, with those originally based on race interpenetrated by class, is part of the reality challenging the achievement of social justice after apartheid”. An example of this BEE conundrum is the September 2020 announced BEE deal by a company called Seriti Resources that is owned by politically connected black individuals. Seriti Resources has just acquired a multibillion-rand coal business from the Australian-headquartered South 32’s SA Energy Coal. This BEE transaction was supported by Eskom, as all existing multiyear South 32 Eskom coal contracts will transfer to the new owners. After this transaction, Seriti Resources will become the single largest supplier of coal to Eskom (32% of Eskom’s coal market), potentially making the owners of Seriti Resources multi-millionaires. Will this new BEE transaction result in the greatest benefit of the least advantaged group of our society? I suggest not. Meaningful participation in the economy, as envisaged in the broad definition of BEE, is still a dream for the majority of poor black South Africans. The redistributive economic benefit of this BEE transaction, and other similar ones, does not pass the test of Rawls's Difference Principle in addressing social injustice and has the negative effect of mainly benefitting the politically connected few individuals rather than the majority of poor black South Africans.

The negative consequences of redistributive justice initiatives at Eskom, as discussed above, demonstrate the effect of what is termed a *minimalist approach* to redistributive justice as opposed to a *maximalist approach*. Conceptually, the minimalist approach places at its core the advancement of an individual black person in the career mobility, employment and economic business sector, whilst the majority of black people remain unemployed and economically disengaged. I suggest that this minimalist approach to redistributive justice, as practised at Eskom, does little to redress the socio-economic injustices of the past to benefit the majority of people of society. I am of the view that redistributive justice practices that follow the maximalist approach, which has at its core the upliftment and advancement of both the individual and society that was previously disadvantaged, are better. Edigheji (1999:10) concurs with the maximalist approach when she states that: "Additionally, the maximalists stress the overall democratisation and transformation of institutions and organisational culture, rather than the mere inclusion of a few individuals from previously disadvantaged communities in the ownership and management structure of the economy."

Thirdly, another negative effect of the current redistributive justice initiatives at Eskom is the real and/or perceived lack of economic value-add or the destruction of economic value. In most cases, the selection criteria that favoured redistributive justice and development objectives are preferred over merit, value creation, and price. It is widely reported that there are extensive procurement irregularities performed through price collusion and tender rigging during procurement tender processes. In addition, overpriced goods and services have been acquired at massive mark-ups that did not create any economic value. As an example, I believe there is no moral justification of why an Eskom official should source a litre of bottled water at R30 a unit from an SMME supplier if it can be bought for R9 at a food retailer such as Pick n Pay. Another BEE conundrum was created by the nature of the South African capitalist economy that is concentrated in white-owned hands with high barriers to entry for aspiring black businesspeople. Unable to break these barriers to entry, most of the black bourgeoisie have resorted to becoming intermediaries or facilitators to access state tenders with little economic value added but increased overall cost of the goods which will ultimately be borne by consumers at the end.

Returning to the area of coal procurement at Eskom, most black companies did not have access to the capital required to set up coal mines nor any mining rights and they have likewise resorted to becoming intermediaries or traders. Presently, Eskom procures coal from mining companies with mining rights and black coal traders who are purportedly beneficiating the coal process. The intermediary traders do not have mining rights but buy coal from mining companies and supposedly add value through crushing, screening, blending, and washing coal and selling it on to Eskom. This dual coal acquisition method (from mining companies and intermediaries) has led to Eskom paying different prices (up to double) for the same quality of coal. In the eight years starting in 2007 the average price of coal purchased by Eskom cumulatively increased by over 400% against a cumulative inflation rate of 74%. The rapid increase in the price of coal supplied to Eskom has led to massive electricity tariff hikes with disastrous effects on the economy and livelihoods of poor South Africans – namely increased poverty, unemployment, and income inequality. Again, the redistributive benefit of this preferential procurement practice does not pass the test of Rawls's Difference Principle in addressing social injustice.

Another untenable situation is the unjustifiable number of people employed at Eskom, currently sitting at 47 000. The number of employees has almost doubled since 2008 whereas Eskom is producing less electricity than it did then. This overstaffing could partly have been caused by the redistributive justice measure of AA and the organisation's commitment to playing a role in reducing unemployment in the country. It has been alleged that in some instances, new employments were not based solely on merit, but were in line with the ruling party's cadre deployment policy. Often, new black professionals and managers were employed at exorbitant salaries and bonus structures. In 2016 the World Bank studied utilities in 36 African countries. Looking at staffing data, the study found that Eskom needed a workforce of around 16 000. Although the new black employees benefitted at individual levels, the net effect of such redress practices is that the majority members of society, especially the poor, suffered the effects of the bloated Eskom workforce, which contributed to increased organisational costs and the resultant massive electricity tariff increases that aggravated the socio-economic position of the worse-off members of society.

Organisations are, arguably, morally obliged to undertake redistributive justice measures so that we can achieve social justice. Genuine BEE programmes ought to be about broadening the economic base of the country and further stimulating economic growth that will create much-needed employment and redress economic inequalities. The BEE programmes at Eskom are not working or meeting the objectives set in the conception and definition of BEE. Therefore, I am submitting a moral claim that Eskom should do away with this procurement practice as it does not adhere to Rawls' philosophical account of redistributive justice.

4.2 Failure of Corporate Governance Systems at Eskom

In this subsection, I am appealing to Kant's second formulation of moral law, which I will assume to be correct, and test its applicability within Eskom. On Kant's account, there is a moral duty on Eskom leadership, as rational human beings, to always treat everyone as a valuable person and not as a mere tool to some means to foster an ethical culture within the organisation. Is Eskom's moral house indeed in order?

As stated in the introduction to this paper, in the late 1990s Eskom was recognised as the model SOE in terms of delivering on its core mandate and implementing the government's developmental and redistributive justice programmes. Eskom was an organisation envied by many of its peers both in the private and public sector, locally and abroad. On its core delivery mandate, Eskom was successfully generating and distributing electricity to all its customers. Eskom was the fifth largest electricity utility in the world, and its electricity price was amongst the lowest in the world. As regards its transformation and development mandate, Eskom had also achieved and exceeded its own targets: By the end of 1999, almost half of all management, supervisory, and professional staff were black. By the end of 1999, Eskom had electrified 1,75 million homes of poor people. By the end of 1999, Eskom was spending almost R1 billion annually on black-empowered companies. Almost everyone valued and adored Eskom, and in 2004 the company was named as South Africa's most admired brand in the Markinor/Sunday Times Top Brand survey. Considering the measure of goodness and value derived from Eskom's performance and applying the conception of consequentialism, it could be stated without doubt that Eskom was on a moral high ground due to the maximum utility resulting from its actions. This is in line with Shaw's (2006:5) view that "standard consequentialism asserts that the morally right action for an agent to perform is the action or those actions that the agent could perform at the time, that has the best consequences or results in the most good".

However, Eskom's high moral ground has crumbled away in the last 15 years. If you asked an ordinary South African to paint a picture of the situation at Eskom, then the result is invariably not rosy at all. Stories of massive prevailing fraud, corruption and malfeasance practices are constantly narrated. How is it possible for an organisation to move from the top to the bottom of the excellence and moral ladder in a space of 12 years? I suggest that it became possible because there was a systematic breakdown in corporate governance systems at Eskom over the past 12 years. What is Corporate Governance? The widely used classical definition of Corporate Governance is “the system of rules, practices and processes by which a company is directed and controlled”. Corporate Governance essentially involves balancing the interests of a company’s many stakeholders, such as shareholders, management, employees, customers, suppliers, financiers, government, and the community. The key word is *balance*; it is about balancing the interest of individuals, the organisation and the community in all socio-economic matters. According to the King IV Code (2016), corporate governance is “the exercise of ethical and effective leadership by the governing body…” towards the achievement of the following governance outcomes:

- An ethical culture;
- Sustainable performance and value creation;
- Adequate and effective control by the governing body, and
- Protecting and building trust in the organisation, its reputation and legitimacy.

(King IV Code, 2016)

The above four governance outcomes have been noticeably absent at Eskom in the past 12 years as per the evidence presented in several reports and forums, such as the Public Protector’s report on state capture (2016), the parliamentary enquiry into Eskom (2018), the Zondo Commission’s hearings on state capture, and numerous criminal cases pending in the courts. The common thread emanating from these reports is the collapse of corporate governance systems and the absence of an ethical culture at Eskom. According to Vorster *et al.* (2020:1), “almost all these SOEs have been embroiled in ethical failures, usually from a governance of ethics standpoint and have been implicated in state capture; wasteful expenditure; employee intimidation; procurement fraud; employee and leadership incompetence; and the inability to meet the core mandates for which they were initially formed".

On the evidence placed before the parliamentary inquiry into Eskom, the committee reported that:

> Evidence was placed before the Committee that various Eskom directors and senior employees acted inconsistently with their responsibilities in terms of various legislation, including the PFMA. It appears that such persons abused their power and may have exploited confidential information for personal gain or to benefit other persons improperly. As set out above, the key Eskom personnel failed to act with fidelity, honesty, integrity and in the best interest of Eskom (Parliamentary Inquiry into Eskom, 2018:122).

Based on the results of the investigation into the alleged capturing of the state, the then Public Protector Advocate Thuli Madonsela, stated:

> It appears that the Board at Eskom was improperly appointed and not in line with the spirit of the King III report on good Corporate Governance. Even though certain conflicts may have arisen after the Board was appointed, there should have been a mechanism in place to deal with the conflicts as they arose and managed (Public Protector, 2016:347).

The notorious Gupta family was alleged to be involved in several state capture projects at Eskom. The above evidence points to a complete collapse of corporate governance systems starting from the top and filtering down in the organisation. Evidence suggested that a few the Eskom Board members, including the Board Chairperson, Dr Ben Ngubane, had links to companies owned by the Gupta family. The Eskom Board members alleged to be linked to the

Gupta family are Romeo Khumalo, Nazia Carrim, Mark Pamesky, Mariam Cassim, and Viroshni Naidoo. There were various allegations, and tested evidence, that several Eskom executive managers, including past CEOs and a chief financial officer, flaunted the company rules and policies to corruptly award tenders to companies linked to their family members and in particular to the Gupta family. The Parliamentary Committee concurred, stating:

> The Committee is gravely concerned, based on witness testimony to the Inquiry, that the policy of transforming Eskom and using its considerable procurement budget to empower emerging black businesses was used as a pretext to corrupt the procurement processes at Eskom to serve the interests of a network of companies and individuals linked to the Gupta family in particular (Parliamentary Inquiry into Eskom, 2018:127).

The above findings suggest that Eskom's moral house is not in order. Given that some of Kant's moral ideas, such as respect for persons and impartiality, have near universal acceptance, an idea such as this is suitable as a standard of assessment for organisational behaviour which organisations should pass. Some members of Eskom leadership (Board members and executive management) were neither impartial when making decisions on procurement matters at Eskom nor upholding respect for junior staff. There was favouritism and unfairness in the awarding of major Eskom tenders. Impartiality, one of the executive virtues linked to justice, is a necessary condition to the conception of morality. Morality and ethics are interchangeable. Cullity (2013:2560) has rightly pointed out that "impartiality is the primary feature of normative or evaluative deliberation – deliberation about what ought to be done or about something's goodness or badness". The conduct and decisions taken by Eskom's leadership were irrational and, in most cases, unexplained. As an example, it was irrational for Eskom leaders to approve a prepayment of R659 million to Tegeta, a Gupta-owned company, for it to acquire a coal mine and then for Eskom to enter into a supply agreement with the same company. It was irrational for Eskom to pay millions of rands to the Gupta-linked company Trillian when Eskom had no commercial contract with Trillian. On the conception of Kant’s moral theory, rationality is the key marker of our morality. Irrational decisions are morally impermissible.

The biggest incidents of malfeasance at Eskom occurred in projects that had to do with the building of the three new-generation power stations, namely Kusile, Medupi, and Ingula. The massive corruption, or “looting” as it has commonly been called, occurred under the watch of the Eskom Board and executive leadership who did little to abate this. This looting under the guise of advancing the development agenda in the country, resulted in huge opportunity costs and caused setbacks to redistributive justice initiatives that were meant to be addressed by the Eskom leadership. Instead of benefitting from redistributive justice measures that sought to redress past socio-economic inequalities, the majority of black South Africans experienced more electricity blackouts from the debilitating load shedding and electricity tariff hikes that resulted in increased suffering of the poor, unemployment, and discontentment in general.

Eskom, as a whole, has suffered immensely from reputation damage and low moral legitimacy as observed by many stakeholders in South Africa and abroad. The deterioration of Eskom over the past 12 years has resulted in an acute skills and capacity erosion both at the governance and technical levels. Who ought to take accountability for this resultant sad state of affairs? I suggest the Eskom leadership in the form of the Board and executive management because they have failed to exercise ethical and effective leadership as illustrated above. To date, no Eskom leader has admitted culpability, legally or ethically, for the situation at Eskom. Leadership behaviour sets the moral tone of how most members of any organisation generally behave and there is a clear link between ethical leadership and the ethical culture within Eskom. The reported evidence of staff intimidation, coercion and victimisation by senior management who were forcing them to commit unethical practices resulted in the exodus of some key staff members from Eskom.

I submit that the ill-treatment of junior staff by senior management was inhumane and immoral as it did not show respect for nor recognise their dignity. Kant's Principle of Humanity (second formulation of moral law) requires one to always treat human beings as an end and never as mere means; it is one of the supreme principles of morality that should never be violated by rational people. According to Kant's conception of morality, if we do not obey the categorical imperative principles as autonomous people, then we are being irrational and thus immoral. Some junior staff members also resorted to committing unethical practices because generally they were not seeing or observing good ethical standard exhibited by their leaders. The unethical culture was widespread and is still prevailing. That the absence of ethical leadership at Eskom has eroded the organisation performance and led to value destruction in the organisation. Ethical leadership matters.

Returning to the claim that this paper is seeking to address, there is a contention that currently Eskom has accumulated a huge deficit in its moral fibre, which has been strangling the organisation for years, resulting in the collapse of corporate governance systems. In this context, the Eskom leadership is a "sinner" and therefore Eskom, as an organisation that has a small moral compass, cannot be the appropriate agent to drive issues that are related to justice. Therefore, Eskom is presently not the appropriate institution to be driving measures of redistributive justice because it first needs to get its moral house in order and correct its own ethical culture. Correct ethical culture is central to matters of justice.

4.3 Dilemma faced by Eskom: Developmental Role and Commercial Efficiency

In this subsection, I am appealing to Kant's first formulation of moral law, which I will assume to be morally justifiable. On Kant's account, a morally acceptable action is based on rationality and whose principles are universalizable. This subsection will test whether Eskom's actions to pursue both developmental and commercial efficiency roles are universalizable.

Leaders in any organisation are the critical players in implementing the vision and business objectives of the organisation as set by the shareholders. These leaders need to possess adequate contextual intelligence required to understand the ever-changing dynamic factors, key challenges, and constraints that may affect the success of the organisation. Some of the factors have to do with the policy direction that gets set by the shareholders. The leaders of Eskom, in the form of the Board and executive management, also operate in ever-changing environments and have had to constantly adapt and ensure alignment to the macroeconomic policy direction set by the government as the owners of Eskom.

In Chapter 3 of this paper, we discussed the various macroeconomic policy frameworks that had been adopted by the ANC-led government since 1994. At the start of the new democratic government era, the RDP was the blueprint document that informed the formulation of the macro- economic policies. The RDP set, as its main aim, a programme to address the core South African challenges such as poverty, unemployment and social inequality, and the satisfaction of basic human needs. This RDP led to the implementation of programmes such as free RDP houses, building more schools and clinics in areas populated by the previously disadvantaged black majority, and the roll-out of social grant schemes. In line with the RDP programme, Eskom also committed to undertaking transformation and development initiatives such as the electrification of houses, schools, and clinics. Eskom also implemented AA and BEE programmes and the roll-out of the free basic electricity (FBE) programme to indigent communities. However, RDP was short-lived because the concept of economics was not well factored into the programme, which was soon revealed as too ambitious and unsustainable.

In 1996, the RDP was replaced by the GEAR policy framework that sought to attain accelerated economic growth and new employment opportunities that were required to redress past inequalities and drive the developmental needs of the country. According to Smith (2005:53), “the emphasis of GEAR on reduced state spending, investment incentives, wage constraint, labour market flexibility and privatisation, strongly resemble the neoliberal development strategy promoted elsewhere by the International Monetary Fund in its structural adjustment programmes”. At the beginning of the GEAR era, Eskom was also expected to align with this new macroeconomic policy framework. The government instructed the Eskom Board to look at partial privatisation of Eskom, especially on the electricity generation side of their business, and other GEAR objectives such as wage constraint and investment incentives that conflicted with redistributive justice practices. Tsheola *et al.* (2013:1217) also rightly observed this conflict when they state that “Eskom presents a typical SOE monopoly where governance and structuring allowed for low electricity rates for multinational and high prices for the owner-publics”. Here Tsheola *et al.* are referring to the long-term contracts that Eskom entered with companies such as the Australian BHP Group who, to attract their investment in South Africa, were offered very cheap electricity tariffs (around R0,25/kWh), whereas the poor communities were charged very high tariffs (R0,80/kWh) at the time; this practice is still prevailing today. This pricing structure is not addressing historical inequalities. This was one of the dilemmas faced by Eskom leadership – should they drive a commercial *and* a developmental agenda as mandated by their shareholder? Should Eskom pay lower wages to encourage the expansion of employment, *and/or* should they remunerate the new black employees at higher wages to address the past and unjust racially biased wage levels commonly known as the apartheid wage? I suggest that it is irrational to expect Eskom’s leadership to successfully pursue both agendas and that this does not cohere with Kant’s account on morality.

In 2011, the ruling party changed the macroeconomic policy and started developing the NDP 2030, where the focus was on creating a capable and developmental state using the SOEs as key enablers. SOEs such as Eskom were expected to restructure and align their mandates to

NDP 2030. The ever-changing macroeconomic policy frameworks have placed Eskom leaders in the unenviable position of having to constantly decide whether to focus on redistributive justice initiatives as part of their development role or on purely commercial business interests. Tshela *et al.* state:

> There is palpable national development dilemma of balancing the interests of SOEs' productivity and their increasing economic power, amidst the decline of the state-sector and encroachment of private-sector into all spheres of life of poor people, as well as the shaping of political masters and public policy, together with the pre-eminence of market efficacy over political deliberation about how widespread poverty, inequality and discriminatory distribution of national resources could be resolved, through common perpetrators (Tsheola *et al*, 2013:1218).

In subsection 2.3, I discussed Kant's first formulation of the Categorical Imperative. It was mentioned that an action is only morally acceptable if the universalization of the maxim that underlies the action does not result in a logical contradiction or in the action/behaviour becoming self-defeating. The constant dilemma faced by Eskom leaders, in a contradicting policy environment, of whether to focus on commercial efficiency and profiteering or economic equity and social redress, is also explored here.

Towards the end of the 1990s, Eskom was faced with a key challenge in that generation capacity was running short; new investment in expanding the generation capacity was required. In line with the SOEs' privatisation plan, the Mbeki government decided that the new electricity generation would come from the private sector to create opportunity for black participation in this sector of the economy. However, few black-owned companies expressed an interest in this area due to the huge capital requirements for this investment. The void and delays in investing in the new generation capacity led to the start of the load shedding phenomenon at Eskom, with disastrous consequences to all sectors of the economy and the people of South Africa. At the time, Eskom was led by black executives and there was an erroneous notion that black people were incapable of leading large state organisations. On the contrary, these black executives could not cope with prevailing political interference and raised pleas for help as they felt the government was constantly setting them up for failure. The then CEO, Thulani Gcabashe, confirmed this political interference when he reported: "It was a tough time in my career, because government was saying one thing and the (Eskom) Board another, but it was time to pull back" (Eskom 1990–1999 in *A Symphony of Power*). It is irrational for government to expect the Eskom leadership to pursue both commercial efficiency agenda and the kind of developmental agenda pursued by Eskom that was misguided, open to corruption and used to benefit the few – on Kant's account, this unattainable expectation is not universalizable and is immoral.

The Mbeki government then reversed the investment policy decision and mandated Eskom to undertake the new generation build program itself. Unlike in the past, the government did not have money to invest in this new electricity generation programme and Eskom was required to go to the commercial market, both locally and abroad, to raise funds for this new build programme. Subsequently, Eskom has accumulated debt of around R450 billion and it also requires additional funds for its electricity network maintenance programmes. The funders, whose primary objective is to maximise profits, have also linked stringent collateral requirements to their loans, which include demands that Eskom should focus on its core mandate and be run efficiently and cost-effectively. The financiers also required Eskom to reduce its workforce by almost a third (about 16 000 employees to be cut) and procure goods and services more efficiently. The net effect of these requirements is that Eskom will have to reverse its employment and AA drive, with a negative impact on the redistributive justice initiatives. These business expectations are inconsistent with the government's policy and irrational. On Kant's account, irrational actions are morally impermissible. Perhaps it could be beneficial if employee numbers at Eskom are reduced so that the organisation is run lean, mean, and optimally to reduce overall costs and pay maximum taxes and dividends to the government, which could in turn address socio-economic inequalities in the country by using different, appropriate institutions. This presents a plausible alternative institutional arrangement to drive developmental and redress issues.

Another change driver at Eskom has been the government's invitation to Independent Power Producers (IPPs) to participate in the electricity generation and increase black economic empowerment in this area. By their capitalist nature, IPPs are investors whose key objective is to maximise profits. In turn, Eskom is required by the government to be globally competitive and reduce the overall price of electricity to ordinary poor South Africans. The government's contradictory requirements from Eskom are at odds with each other and often lead to intrinsic tensions between Eskom's global competitiveness drive and redistributive justice drive. Another tension arises from the requirement to support and promote black SMMEs at Eskom, whilst focussing on global competitiveness. A similar tension has been caused by the change in Eskom's legal structure, ownership, and governance model. The government expects Eskom, which is a public company, to pay maximum dividends and contribute to the fiscus while at the same time expecting Eskom to undertake maximum redistributive justice initiatives. The two requirements are at odds with each other and irrational. On Kant's account, irrational actions are morally impermissible. De Coninck *et al.* (2013:20) concur with this observation: "Tension emerge in the discourses between race and class, between reducing poverty and promoting economic growth, between vertical and horizontal inequalities, among traditional hierarchies and customary laws and democratic practices, and between the needs of the individual and society."

The above issues point out the ever-present misalignment and incoherence between government policies and the business objectives of Eskom. Eskom leaders are constantly faced with the self-defeating dilemma of conflicting business requirements and the contradictory external pressure exerted by the government and other key stakeholders such as financial funders. This dilemma is not universalizable and thus morally impermissible. This misalignment inadvertently compromises some of the redistributive justice initiatives at Eskom. While the government recognises the need to address the past unjust inequalities to achieve economic equity and social stability, it is also driven by powerful free-market forces and capital interests through the SOEs. It is irrational to expect Eskom's leadership to successfully implement conflicting business objectives. This dual expectation fails the test of rationality that is central to Kant's first formulation of moral law (formulation of universalizability). Therefore, a moral claim is made that it is unjustifiable to expect Eskom to fulfil both the misguided transformation and development roles **and** the capitalist business efficiency roles. Eskom should be left alone to focus on the efficient and cost-effective provision of quality electricity which will lead to maximum benefits flowing to the majority the members of society.

CHAPTER FIVE – OBJECTIONS AND COUNTERARGUMENTS

In Chapter 4, I have argued that some of the redistributive justice initiatives (e.g., procurement) currently implemented at Eskom are inconsistent with the philosophical accounts of either Rawls's Difference Principle or Kant's formulations of moral law. These redistributive justice initiatives only benefit a few individuals as opposed to the majority of the marginalised people. Moreover, some of these initiatives have become the main drivers of corruption in South Africa, which aggravate the socio-economic inequalities in South Africa. There might be other people with points of view that counter my thesis. In the following sections, I offer a critical examination of the main objections to my thesis.

5.1 Entrepreneurs are Capitalist

A counter argument to Rawls's philosophical account of the Difference Principle could be made by some people who hold the view that there is nothing wrong with either the way Eskom is implementing its BEE programme or its outcomes. The proponents of this view also believe that there is nothing wrong with a black entrepreneur who works hard and contributes to Eskom's business objectives even if the outcomes lead to the entrepreneur's individual accumulation of wealth. They further believe that there is nothing wrong if you are "lucky" enough to be closely associated with the ruling party and are leveraging from your political connections to individually accumulate maximum wealth, because that is the nature of capitalism – maximisation of wealth. Proponents of this minimalist approach hold George Orwell's *Animal Farm* view that all people are equal, but some people are more equal than others – hence, not everyone can be a businessperson. These minimalist approach proponents believe in the concept of meritocracy and criticise Rawls's Difference Principle on the basis that, as entrepreneurs, they always look for business opportunities and claim that they rightfully deserve the economic benefits that flow from these opportunities and their actions. Proponents of this minimalist approach believe in what is known as a *Desert Theory*. According to Lamont and Favor (2017:8), “advocates of desert-based principle argue that some may deserve a higher level of material goods because of their hard work or contributions even if their unequal rewards do not also function to improve the position of the least advantaged”.

Similarly, a proponent of this minimalist approach believes in the libertarian principles that see any market as a just acquisition opportunity for their own right. The minimalists argue that, for example, an astute black businessman is at liberty to submit and win coal-supply tenders at Eskom and subsequently become a multi-millionaire regardless of whether this accumulation of wealth exacerbates inequality. I contest this minimalist approach view.

I wish to argue against libertarian principles in favour of the principles of ubuntu. My rebuttal to this libertarian objection is that the massive unjust inequalities of the past were premised on the *Animal Farm* approach that some people are more equal than others. For Africans, the minimalist approach does not resonate with the notion of ubuntu and the Rawlsian social contract account which I aspire to achieve. Many theologians and politicians in South Africa have argued that apartheid was unjust because it did not subscribe to the values and ethics of ubuntu. Furthermore, I wish to argue that the libertarian (Nozickean) position also includes a principle of rectification which would support measures to address past injustices in the acquisition and transfer of holdings, which was the case during apartheid.

The conception of ubuntu places humanity and concern for others in one’s community at its core – I call this humaneness. The moral justification of ubuntu ethics is premised on the centrality of being humaneness and one’s relationality with other human beings. There is an intrinsic good in humanness that warrants one to show respect, compassion, reciprocity, and care for other human beings. A winner takes all mentality (entrepreneurship) is not in line with ubuntu’s moral ethics, which affirm communal and human interdependency and the need to be generous, compassionate and share with others what one has in abundance to reduce inequality.

In the spirit of ubuntu, it is unfair and unjust for one to have plenty of food and not share with a hungry neighbour. Through the conceptions of ubuntu ethics and Rawls's social contract, one has a duty to care about members of one's society to achieve social justice. Letseka (2014:549) concurs with the resonance of ubuntu ethics and the Rawlsian principle of justice when he states: "I alluded to the resonance between Rawls's notion of justice as fairness and the conception of justice in traditional African society as *Ubuntu fairness*. I suggest that while Rawls's conception of *justice as fairness* rest on the notion of *social contract*." Furthermore, he agrees with Keevy that: "Ubuntu embodies not only values and morals, but also justice. Justice is perceived as Ubuntu fairness: doing what is right and moral in the indigenous African society."

I contend that the empowerment procurement practices at Eskom, as supported by libertarians, do not align with Rawls's and ubuntu's principles of justice as fairness.

5.2 Eskom's Ethical Leadership and Dilemma Issues Can be Resolved

Some people object to both arguments presented in subsections 4.2 and 4.3 above, and they do not appeal to Kant's formulation of moral law. These people may argue that the prevailing unethical leadership and environment at Eskom and conflicting business roles are not a good enough reason to discontinue redistributive justice initiatives in the organisation. These opponents hold the Utilitarian view that emphasises the maximum state of happiness. Their objections could be based on the fact that in the past Eskom performed well in redressing inequalities in the country by increasing the state of happiness of its BEE suppliers and the well-remunerated workforce, and increased numbers of staff members from the previously disadvantaged groups in line with the AA policy. Given a different set of ethical leaders and an appropriate environment with good corporate governance systems, Eskom could be returned to its former glory days and be an ethical institution for undertaking issues of justice.

A counter-objection to this line of argument is that, whilst a change in unethical leaders may go a long way towards correcting the moral fibre in the organisation, circumstances have changed drastically at Eskom in respect of the shortage of electricity capacity and the electricity tariffs that have subsequently skyrocketed. The resulting blackouts (load shedding) from electricity shortages and the exorbitant price of electricity leads to increased poverty, unemployment, and inequality levels for the majority of black South Africans. This change in circumstances demands that the Eskom leadership resolve the developmental role vs commercial role dilemma and focus mainly on business efficiency that will result in greater economic benefit and dignity to the majority of South Africans. Overall, load shedding causes more economic pain and suffering in the country. Suffering is bad because it brings indignity and prevents a person from living a full worthy life. According to Kant's conception of morality, our dignity and morality are derived from our rational nature.

By suggesting that Eskom's leaders ought to prioritise the business/commercial role over the developmental role I am not saying let bygones be bygones as far as the redress of past injustice is concerned. As a matter of moral duty, Eskom's leaders are legitimately forced to acknowledge the electricity scarcity problem and be rational about the choices that they must make. Waldron (2002:159) rightly claimed that changing circumstances can affect the timing of injustice redress, notwithstanding the legitimacy of the required redress, stating that "my thesis is not that such resolve has priority over *all* rectificatory actions. I claim only that it has priority over reparation that might carry us in a direction contrary to that indicated by a prospective theory of justice".

There is a moral imperative for Eskom to play a role in redressing past socio-economic injustices, and I am in concurrence with the fact that Eskom did well in their injustice redress initiatives such as their electrification programme leading to the present situation where almost 90% of the households in the country have access to electricity, which enables people to enjoy some of the basic human rights. Similarly, Eskom has done well in the implementation of the AA programme, as presently above 75% of professional, supervisory, and management staff are black.

However, due to changed circumstances, I claim that it is preferable for Eskom to drastically cut its oversized workforce and optimise its procurement processes (especially on coal). The net result would be that the overall lower cost of electricity production and business efficiencies will lead to lower electricity tariffs. Similarly, a lean and cost-efficient Eskom will attract more equity funders and IPPs that will assist Eskom in increasing its electricity generation capacity. It is morally preferable for the country to have cheap and abundant electricity which will lead to more economic investment opportunities, a better quality of living for its people, and overall reduced or eliminated socio-economic inequalities than for Eskom to focus on some of its developmental goals. This is the preferred position for sustainable social justice in the country.

CHAPTER SIX – CONCLUSION

In this essay, I have discussed the benefits and moral justification of using Eskom, a very important state-owned enterprise that supplies the essential electricity in South Africa, as a vehicle to dispense redistributive justice. I have argued that it is morally unjustifiable to continue with some of these redistributive justice initiatives at Eskom. The premises for my claim were drawn from the works of John Rawls and Immanuel Kant. In this paper, I assumed that on the conception of morality and justice, both Rawls's Difference Principle and Kant's formulations of moral law are correct.

I have discussed that Eskom's BEE practices with its huge procurement budget benefit only a few individuals. Furthermore, AA and BEE programmes are contributing to some corrupt practices at Eskom that result in exacerbated socio-economic inequalities in the country and do not appeal to the Rawlsian Difference Principle of justice. I have also discussed the unethical culture currently prevailing at Eskom, and the dilemma that is constantly faced by the Eskom leadership between focussing Eskom as a globally competitive electricity provider and as a vehicle for redistributive justice in the country. Both these factors do not pass the test of rationality and do not appeal to Kant's formulations of moral law. I have discussed two objections to my claim and offered my counterarguments to these. I contend that it is morally wrong to continue with some of the redistributive justice initiatives at Eskom. An investigation into the morally appropriate South African institution to dispense distributive justice is recommended as an area of further research.

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