



The right to (sustainable) energy: new frontiers for economic, social, and environmental rights?

Virtual Workshop

6 September 2024 – 14:00 CEST

Introduction

Energy is the backbone of all productive activities and a condition to social and economic well-being. Energy systems are not only essential to power industries, food production, employment, and public services, such as education, health, water, and sanitation, but also to ensure access to information, communication, and digital technologies. In this context, where energy is increasingly becoming a critical resource to ensure basic conditions of a life in dignity and the realization of rights, the lack of energy or restricted access to this service is identified as a cause and consequence of multiple forms of poverty and marginalisation.

Energy is also necessary to achieving economic prosperity, countries without access to energy have restricted opportunities to develop critical economic activities. A study conducted in Brazil, for example, showed that electricity can be a decisive factor in children's learning outcomes.¹ Evidence also demonstrates that households lacking adequate access to energy significantly increase the time and effort required to perform unpaid care and domestic work which contributes to cycles of gender inequality.² Inefficient, unsafe, fossil-fuel based and unsustainable energy hinders possibilities of providing adequate standards of living generally, as well as realise a number of other economic, social, cultural, and environmental rights.

In addition, the escalating climate emergency has made it imperative to rapidly shift from fossil fuel-based energy systems to clean, renewable, and efficient energy technologies. This implies wide-ranging measures to mobilise resources and a profound transformation of energy consumption and production patterns across all sectors of the economy. From the outset, authorities must provide adequate information, access to meaningful and effective means of participation, and the possibility to redress human rights violations produced in this context as indispensable conditions to move forward with transforming global energy systems.

Against this backdrop, the provision of sustainable energy arises as a fundamental human right. Issues such as how energy is produced, for which purposes, who bears the costs and who benefits by its production and distribution must be addressed from a human rights perspective. Similarly, how can it

¹ Novaes Mejdalani, Alexandre et.al. Light for Rural Education: More Energy to Reduce School Dropout, InterAmerican Development Bank, 2019, last accessed 15 August 2023, available at: <https://blogs.iadb.org/energia/en/light-for-rural-education-energy-to-reduce-school-dropout/>

² European Economic and Social Committee, Energy Poverty: Women More Likely to be Affected than Men, last accessed 15 August 2023, available at: <https://www.eesc.europa.eu/en/news-media/news/energypoverty-women-more-likely-be-affected-men>



be delivered without discrimination and ensuring planetary and socioeconomic wellbeing. Yet, these fundamental discussions have remained in the margins of the Human Rights Council's concerns and it is not commonly addressed by United Nations Human Rights Treaty monitoring bodies.

To bridge this gap in legal protection, this workshop will bring together activists and experts working on the energy, human rights, gender equality, and environmental sectors to take stock of the current development of human rights standards and explore the potential of bringing the issue of energy at the centre of human rights discussions at the UN Geneva level. It will furthermore identify opportunities to push the frontiers of the human rights framework to address these issues, including the risks and opportunities of advancing on the international recognition of a right to (sustainable) energy and the main normative elements that this new right could entail. This will be an opportunity to pose questions and reimagine new frontiers for the development of economic, social, cultural and environmental rights.

Background information

The right to energy: a new social, economic or environmental right?

Considering the relevance of energy in all possibilities to ensure adequate socio-economic living standards and a clean, healthy and sustainable environment, there is a wide breadth of legal instruments that recognise the human right to energy. There are significant variations in its formulations and associated entitlements and obligations, but recently there has been growing interest and support to push for the recognition of this right.

At the international level, the only binding international law instrument that enshrines this right is the International Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). In its article 14, the CEDAW enshrines the rights of rural women, which includes their right to enjoy adequate living conditions concerning access to *electricity*. In the General Recommendation No. 34 the CEDAW Committee goes further to recognise that beyond electricity women may have other energy needs, for example, for cooking, heating, lighting and transport.³ It also highlighted that women are likely to be more directly affected by energy cost increases or energy resource scarcity underscoring the several differentiated gender impacts of energy poverty.⁴ The Committee in this sense clarified that States have an obligation to provide access to essential public services and goods, which include “sustainable and renewable sources of energy, extending on-grid services to rural areas and developing solar energy and other sustainable energy sources with low-cost technology.” It must be noted that the Committee refers to *energy services or energy sources* which is more comprehensive than the language focused only on electricity used in article 14 of the Convention.

An additional basis for this right can be found in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) on the right to an adequate standard of living through an extended interpretation of the sub-rights contained in this provision. This article does not explicitly mention “energy” or “electricity”, but the proposition that it does in fact incorporate this right can be supported in the numerous pronouncements by the Committee considering that energy is often enlisted among

³ CEDAW, General Recommendation No. 34 on the rights of rural women, CEDAW/C/GC/34, 2016, paras. 54 (d), 61, 84 and 85 (c).

⁴ Ibid.



several other public services that are essential for the realisation of rights. The Committee on Economic, Social and Cultural Rights (CESCR) has for instance recommended that countries adopt effective measures to ensure all households meet their basic electricity needs⁵ and to expand the coverage for beneficiaries of social tariffs by mobilising more resources for the provisioning of energy services.⁶ Moreover, the CESCR's General Comment No. 4 enlist access to energy among the facilities and services that adequate housing must contain to be in line with the Covenant.⁷

Concerning the participation of private actors, the CESCR recognised in its General Comment No. 24 that private providers should be subject to strict regulations that impose on them so-called “public service obligations”. In the provision of water or electricity, this may include requirements concerning the universality of coverage and continuity of service, pricing policies, quality requirements, and user participation.⁸ Other human rights mechanisms have recognised the provision of electricity as being necessary for the protection of the right to life⁹, the right to benefit from scientific progress¹⁰, and as an underlying determinant of the right to health.¹¹ Access to sustainable energy is also in the 2030 Agenda for Sustainable Development enshrined in SDG7.¹²

At the regional level, there has also been progress in the recognition of the importance of energy for the provision of general conditions of well-being. Although not a binding instrument, the European Union Pillar of Social Rights enshrines the right to essential services of good quality comprising energy and recognises that those in greater need should be supported.¹³ The European Convention on Human Rights and the African Charter on Human and Peoples' Rights had a limited recognition of this specific right. Through case law and subsequent international legal instruments relevant regional human rights standards have been developed. For instance, the European Court of Human Rights found that France violated the rights to non-discrimination and adequate housing, among other things, due to the degrading housing conditions, including energy poverty conditions, of migrant Roma lawfully resident or working regularly in France.¹⁴ In the African human rights system, the right to a healthy and sustainable environment contained in the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) entails the obligation to “*promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control*”.¹⁵ This

⁵ CESCR, Concluding observations on the sixth periodic report of Germany, E/C.12/DEU/CO/6, 2018.

⁶ CESCR, Concluding observations on the fifth periodic report of Belgium, E/C.12/BEL/CO/5, 2020.

⁷ CESCR, General Comment No. 4 on the right to adequate housing, 1991, para. 8 (b).

⁸ CESCR, General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24.

⁹ CCPR, General Comment No. 6 on the right to life, 2018, CCPR/C/GC/36;

¹⁰ CESCR, Concluding observations on the initial and second periodic reports of Djibouti, 2013, E/C.12/DJI/CO/1-2, last accessed 17 August 2023, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/499/93/PDF/G1349993.pdf?OpenElement>

¹¹ UN Special Rapporteurs on Extreme Poverty and Human Rights and on adequate housing as a component of the right to an adequate standard of living, Communication to Nigeria, 2013, NGA 5/2013, last accessed 17 August 2023, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=21073>

¹² United Nations Statistical Division, Goal 7: Ensure Access to affordable, reliable, sustainable and modern energy for all, <https://unstats.un.org/sdgs/report/2016/goal-07/>; See also: Tracking SDG7: The Energy Process Report, <https://trackingsdg7.esmap.org/>

¹³ The European Pillar of Social Rights,

¹⁴ ECHR, *Médecins du Monde International v France*, 2011, paras 154-63.

¹⁵ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), article XVIII 2(b).



reference is particularly relevant as it goes beyond the requirement of accessibility emphasising the role of States in ensuring rights-holders participation in the control of renewable energy sources and their technologies.

At the national level, there have also been significant developments concerning the right to energy. The constitutions of a number of countries, such as the Democratic Republic of Congo, encompass the right to energy or electricity.¹⁶ The constitutions of Nicaragua, Bolivia, and Ecuador recognise the right to energy as part of a broader duty of the State to provide public services.¹⁷ The Colombian Constitutional Court went beyond this initial recognition to consider that even though the right to electricity is not an autonomous right under the Constitution, a “right to receive electricity” can be derived in relation to the right to life, health, and personal integrity.¹⁸ This, in turn, consider energy services should meet, among other things, requirements common to other socio-economic rights such as accessibility, availability, appropriateness, and quality in its delivery.

These experiences at the international, regional, and national levels are evidence that the international recognition of a potential right to energy is moving forward despite its different formulations or the manner in which they have been recognised through treaties, laws, or case law. This has important implications on the standards that the delivery of energy should comply, its priorities, and who has the power to shape its outcomes. It also means that the view of energy as a mere commodity is fundamentally altered to that of a human right that should be protected, respected and fulfilled by the State. This important shift alone can allow for new understandings of energy as a public service and good that should foster measures to ensure it is delivered for all, sustainably, and according to standards of quality that are vital for societies to flourish within planetary boundaries.

Objectives

The workshop will bring together representatives of civil society organizations working in the economic, social, gender, and environmental justice fields to explore the interlinkages between human rights and the provision of sustainable energy aiming to :

- Develop a better understanding of the importance of sustainable energy to overall conditions of economic, social, and environmental well-being.
- Consider different experiences at the national, regional, and international levels on how energy has been addressed as a human rights issue.
- Consider the different entitlements and obligations a potential right to (sustainable) energy could encompass.
- Discuss opportunities to advance at the United Nations and regional human rights fora the recognition of a right to (sustainable) energy.
- Explore the potential implications, risks and opportunities of the international recognition of a right to energy.

Format

¹⁶ Constitution of the Democratic Republic of Congo, 2005, article 48.

¹⁷ Constitution of Nicaragua, art. 105; Constitution of Bolivia, 2009, article 20; Constitution of Ecuador, article 314.

¹⁸ Hesselman, M. (2022). Right to Energy. In C. Binder, M. Nowak, J. Hofbauer, & P. Janig (Eds.), *Elgar Encyclopedia of Human Rights* (pp. 62-69). Edward Elgar Publishing. <https://doi.org/10.4337/9781789903621.energy.right.to>



The workshop will be held online for two hours with a small group of representatives of civil society organisations working across the fields of human rights, energy, environment and social and economic inequality at the international and domestic levels. The workshop will create a friendly, informal, interactive, and safe space for all participants to contribute to the discussions.

In this sense, the workshop will combine a mix of initial presentations to frame the debate and open spaces for collective reflection, mutual learning and sharing that can answer some of the guiding questions to help kick-start the conversation. In the end, the contributions of all participants will be collected in short outcomes brief that will be distributed among all participants. The event will also serve to identify the organisations interested in continuing the conversation and participating in research and advocacy opportunities to advance the human rights standards in relation to sustainable energy.