

Proposal for Ph.D. Research (*work in progress*)

Title:

Human rights and access to energy

Abstract (max. 100 words)

Over the past decade 'access to modern energy services' has increasingly been put forward as a prerequisite for the full enjoyment of human rights, even a human right in itself. In April 2010 a UN expert group of the UN Secretary General called for 'the realization of universal access to modern energy services by 2030'.¹

However, despite the increased affirmation of the link between human rights and access to energy, the basis of human rights law for, and the role of human rights in guaranteeing access to energy for each and every individual has been underexplored. This research aims to fill that gap in legal research, and seeks to analyse and clarify the concept of 'access to energy' as a human rights issue, as well as any implications of such a conceptualization for the rights and obligations of various actors in the regulation of energy markets.

Description of the proposed research (max. 4000 words)

Problem statement

Today, still 1.4 billion people around the world lack access to electricity, amounting to over 15 % of the world's population. Worldwide, approximately 3 billion people still rely on traditional biomass for cooking and heating. While in the Western World, access to energy is considered a normal part of every day life, it has been estimated that by 2030 lack of access to (modern) energy (services) results in 1.5 million premature deaths per year, over 4 000 per day. This is greater than the estimates for premature deaths from malaria, tuberculosis or HIV/AIDS. Another challenge is presented in the fact that 85% of those living in 'energy poverty', live in rural areas.

These impressive and worrying figures, in combination with the unjustifiable disparities in energy access world wide, regionally and locally, has led to the situation that access to energy is increasingly recognized as a basic human need, as prerequisite for a life in dignity and the full enjoyment of human rights, even as a claim from human rights protection in itself.

However, access to energy as a human rights concern, or as a right of individuals as such is only a recent concept. It is only since a decade that access to energy has been increasingly recognized as a prerequisite combatting poverty, and that access to energy is a matter of universal concern.

The increased calls for universal access to energy culminated in April 2010, when the UN Secretary General's Advisory Group on Energy and Climate Change, finally called for the international community to ensure 'universal access to modern energy services' by 2030, more or less as the newest Millennium Development Goal.

However, despite the fact that access to energy and human development are increasingly and undisputedly linked, and human rights terminology is more often being employed in the context of international and national energy regulations (consider for example the terms 'universal access', 'energy poverty', 'right of access', 'non-discrimination' and 'protection of

¹ 'Energy for a sustainable future'. The UN Secretary General's Advisory Group on Energy and Climate Change (ACECC), Summary Report and Recommendations. 28 April 2010, New York, p. 7, on 'the importance of energy', available from: <http://www.undp.org/energy/>

vulnerable groups' in the 2009 European Union Directive on harmonization of electricity markets in the EU²), there is still relatively little clarity as to question whether access to energy is a true human rights value, and whether individuals can actually stake a claim of access to energy as a human right. There is only one human rights treaty which explicitly accords a right of access to energy, in the form of access to electricity, which is the 1979 UN Convention on the Elimination of all forms of Discrimination against Women. It states that:³

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: [...] To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

However, while no other human rights treaty seems to explicitly recognize the right, other human rights supervisory bodies have also commented in their monitoring work that access to electricity should be improved.

It is worthwhile to further scrutinize the role of human rights law in the regulation of access to energy for all, and the role of human rights law in moving toward universal access to (modern) energy (services) as called for by the UN expert group. The strong links with human rights law, as professed by many, and as increasingly apparent from both human rights law, as well as various regulations for energy markets warrant asking the question: Do individuals (or other actors) have an actual human right of access to (modern) energy (services) according to international (human rights) law, and if so, what implications will such a right have for the regulation of energy markets nationally and internationally? If there is no clear right of access to energy discernible, what kind of obligations emanate from existing rights? Or should such a right be (more firmly) recognized?

There is no doubt that energy is also an economic commodity, and that big private players have an interest. How does this relate to the call for universal access to energy, and what is the position of individuals vis-à-vis private companies? Again, what is the role of, and what are the implications of human rights law in this regard, if any? What would be the consequences of positing/affirming access to (modern) energy (services) as a firm human right of individuals?

This research seeks to build on the momentum of increased awareness of the link between access to energy and human rights (concerns), and seeks to explore the role of human rights law, and the obligations already flowing from it, for the regulation of international and national energy markets? What is expected of various actors on the energy markets, and what can individuals expect in terms of being provided with access to energy? What are gaps of protection still lacking towards the realization of universal energy access, and how to achieve this? What role for human rights law, e.g. in terms of international agreements on access to energy?

Research questions and challenges to be addressed in the research

Researching the link between access to energy and human rights, and the existence and consequences of a 'right of access to (modern) energy (services)' as such for various actors and markets concerned, is likely to present number of distinct legal, conceptual, and practical questions for further research. This part of the proposal will identify some of the main questions that are likely to be concerned and gives some indications as to the questions that can be included in the research.

² Directive 2009/72/EC, 2009 OJ L 211/55 of the European Union, on common rules for the internal market in electricity.

³ Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979, United Nations, *Treaty Series*, vol. 1249, p. 13, Article 14(h).

First, the question of particular links between access to energy and human rights may raise the following questions:

Which human rights are implicated by a lack of access to (modern) energy (services)? What have various (or selected) human rights supervisory bodies said about access to energy as part of existing rights?⁴ To what extent have human rights concerns been taken into account in regulation of energy markets, at the national and international level? Are human rights terminology and concepts employed? If so, what terminology and concepts are employed? How has access to energy been treated in major international fora and at major international conferences?

Second, as the second main part of the research, which is to focus on an analysis of the existence of or desirability and feasibility of recognizing a separate explicit right of access to energy in international, the following questions could be addressed:

Is there a difference between an explicit right of access to energy and an implicit right of access to energy, i.e. embedded in existing rights? What is the added value of recognizing such a separate right? What has the CEDAW Committee determined about the relevant right in CEDAW and what can be learned from this? When does something constitute a separate human rights value? Why would/should the right to of access to energy be a separate human rights concern? Does the right of access to energy constitute a separate human rights concern?

After having clarified the status of access to energy as a human rights issue, as a cause for human rights complaint, giving rise to an actionable right with a possible particular content, some particular problems related to claims of universal access to energy that can be closer discussed, and further analyzed for their impact on the content of the right, or its desirability and feasibility all together.

These concerns are:

- a) First of all, how would human rights law deal with the provision of energy to individuals by largely private markets. Often energy markets have been privatized, and the state does not play a direct role in the generation and delivery of energy services to house holds. What is the role and place of human rights law in such cases? Can human rights law guarantee that every person indeed gets access to (modern) energy (services) where private companies are in charge of delivering energy?
- b) Second, is it realistic to expect that all states will be able, based on their own economic and natural resources, to fulfil the right of access to energy for all its citizens? What is the role of international (human rights) law in this regard? Is the right of access to energy an economic, social and cultural right? And if so, what does this mean for the realization of such a right in terms of the progressive nature of obligations involved for states, the setting of a minimum core content, and/or obligations of international cooperation?
- c) Third, what about environmental and economic sustainability concerns of providing access to energy for all? Is there a valid concern that access to energy for all is not environmentally or economically viable/sustainable in the future, taking into account environmental impact of energy generation and delivery and the depletion of particular natural resources? How does this play into the content and feasibility of a universal human right of access to (modern) energy (services), and

⁴ At least those supervisory bodies which are supervising human rights treaties which contain human rights related to access to energy (to be determined later). Also the work of Special Rapporteurs may be included.

what does this mean in terms of particular obligations for states in moving towards the realization of universal access to energy services?

Limitations on scope: personal scope

A research on the role of human rights law in the field of guaranteeing universal access to energy, and the rights and obligations that may flow from human rights law possibly includes the position of many different actors. As such it may need to be limited in terms of 'personal scope', i.e. in terms of examining the implication for various actors.

Right bearers

First of all one can wonder about the *right holders* of the right? Are they individuals, households, communities? Are they also companies for example, wishing to achieve economic development, and in need of access to energy to grow? What about access to energy for public entities such as hospitals, schools? Who can claim such access?

Duty holders

Second of all, one can wonder about the *duty bearers* of such a right? While the State would certainly be a duty holder, as the State is the traditional duty holder of human rights obligations, one could wonder whether access to energy as a human rights value also creates obligations for private companies (i.e. energy service providers) or individual human beings (i.e. landlords)? Or are such actors outside the realm of human rights law?

Limiting the personal scope

Narrowing down the scope of this proposal, taking into account the still difficult situation of the establishment of obligations for non-state actors under human rights law, but the clear development of human right obligations for states in terms of protecting individuals from harm by third parties by regulating the behaviour of third private parties, it is proposed that this research will first focus on the obligations of states towards the rights bearers of the rights.

In terms of rights bearers of the right, it is proposed that the research focuses in full on identifying the (most appropriate) right bearers of the right, and who can bring a claim of access to energy (either based on specific separate right of access to energy, or under an existing right, such as the right to health, food, or education).

Limitations on scope: material scope

After suggesting some limits on the personal scope of the research, it is important to suggest some material limitations on the scope of the research.

These limitations could be found in the consideration of what a right of access to (modern) energy services would actually mean, i.e., what does 'access' mean, what do (modern) energy (services) entail? Does it only include access to electricity for example, or more? Does access to energy include a sustainability component, i.e. in terms of a right of access to renewable sources?

In this respect it is also pointed that other topics on the fault line of energy and human rights violations – such as human rights violations resulting out of energy conflicts, and the protection of individuals against for example the environmentally unfriendly, or hostile conduct of oil extraction companies – will be left fully outside of the scope of this research. The research proposes to focus only on those human rights obligations that are related to ensuring actual delivery and access to energy services for full development and enjoyment of basic human rights. While this may mean that obligations regarding (the regulation of)

generation and transportation of energy will also need to be discussed – i.e. in so far as they are related to guaranteeing the actual availability and accessibility of energy services to the rights bearers – the research will for example not include any human rights violations that may occur out of the process of extracting or generating energy resources itself.

In terms of actual material obligations to be analysed, another approach may be suggested as to the scope of material obligations to be researched, i.e. that the research could focus on an analysis of the so-called 'tripartite typology of human rights obligations' now commonly accepted as inherent in each and every human right. These are: the *obligation to respect* the enjoyment of human rights (meaning that states should abstain from interfering in the enjoyment of the particular right); the *obligation to protect* the enjoyment of human rights (meaning that states should take appropriate measures to ensure that human rights can be enjoyed without interference from private parties – i.e. energy service providers, landlords etc.); the *obligation to fulfil* human rights (meaning that States should take measures to ensure the enjoyment of the right when individuals, for reasons beyond their control, are not able to enjoy the right at a particular moment). In this manner the research could pay attention to the question of state obligations for the regulation of third party behaviour, while the question of actual direct human rights obligations for private actors can be left outside of the scope of the research.

The research can entail an analysis of obligations of guaranteeing access to energy both *under existing rights*, such as the right to an adequate standard of living (including housing, food and water), the right to education, the right to health, the right to property etc, or *under a separate right of access to energy* – by drawing analogies to existing rights and by analysing existing regulatory frameworks for the regulation of energy markets based on considerations of individual's rights.

A limitation as to material scope could be found in the selection of particular human rights instruments and national or regional legislation on regulation of energy markets as the focus of research, although this is may be a matter for further deliberation.

The analysis of material obligations for states in ensuring universal access to energy for all can lastly be narrowed down, if necessary, by focusing only an analysis of states' human rights obligations *nationally* (i.e. obligations of access and regulation towards the rights bearers with the territory of the states), although it is suggested that the research may also include an analysis as to obligations as arising out of international (human rights) law at the *international level* (i.e. obligations of ensuring and regulating access to energy towards the international community and rights bearers nationally and internationally).

Societal and academic relevance

The societal relevance can be found primarily in some of the recent developments as already described above, i.e. the fact that access to energy is more and more posited as a human rights concern; increasing calls for the realization of universal access to energy.

Academically the research will be relevant as to date there is no comprehensive study on the existence of, or the legal underpinnings of a right of access to energy, and the (legal) ramifications of such a right for various actors (states in particular). To date there are only a number articles on the matter specifically, of which three are published in 2006 by a single author, who pushed the matter on the academic agenda. The articles are included in the bibliography.

The topic deserves more attention though as the articles are by no means exhaustive, and this research hopes to provide a more comprehensive analysis, tying in with more recent international efforts, as well as other legal human rights questions that have been gaining more importance over the last decade(s), such as the legal meaning and implications of social and economic human rights (as opposed to civil and political rights), and the implication of privatization for the enjoyment of human rights. The research could moreover be interesting in tying in human rights enjoyment with questions of environmental concerns, as well as global responsibilities for enjoyment of rights.

Approach

To be included.

Literature References (preliminary)

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