

Exploring Access to Energy as a Human Right

LIEN - 2018

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Applying a human rights lens to the issue of energy affordability & access

- Brief summary of the origins and substance of the right to energy as a human right
 - Apply a human rights lens to the circumstances of rural electricity customers in Ontario
- Many of the key principles and concepts will resonate with stakeholders involved in tackling energy poverty
- Discuss how a human rights framework is a potent means to ground/support LIEN's advocacy to address energy poverty

Background – right to energy

- There is no recognized stand-alone right to energy
- Services like electricity and other form of energy are integral to other rights
 - the right to an adequate standard of living
 - the right to health and even the right to life
 - In a rural context there are also connections with the right to safe drinking water

What does energy have to do with human rights?

- Human rights are entitlements that are held by individuals – States have a responsibility to respect, protect and fulfill the human rights of individuals
- Human rights – examples: civil and political rights
 - The right to freedom of expression & assembly
 - The right to vote
 - The right to freedom of thought, conscience and religion
 - Criminal justice context / freedom from interference by the State
- The reach of international human rights law and human rights protections afforded to individuals goes beyond civil and political rights

Other Key Human Rights – Economic, Social and Cultural rights

- Post World War II Era – effort at the international level to codify and legally recognize human rights entitlements
- 1948 – Universal Declaration of Human Rights recognized various civil and political rights but also recognized that human rights entitlements included the basic needs and supports that people require in order to sustain life and live a dignified and secure existence
- These included the right to a standard of living adequate for health and well-being including “ food, clothing, housing and medical care...” and other rights such as the right to an education, the right to work

Other Key Human Rights – Economic, Social and Cultural rights

- Economic, social and cultural rights are now protected under various international and regional treaties.
- International Covenant on Economic, Social and Cultural Rights is the most comprehensive treaty which provides protection of these rights at the international level –
- The Covenant came into force in 1976. Canada is a party to this international treaty.

The right of access to energy

- While there is no stand-alone human right to energy per se, services like electricity are integral to and underpin several recognized rights including the right to an adequate standard of living.
- Various international human rights treaties that contain guarantees to an adequate standard of living. They share a common a focus -- ensuring the basic necessities of life.
 - The International Covenant (ICESCR) recognizes the right to an adequate standard of living “including adequate food, clothing and **housing** and to the continuous improvement of living conditions.” (Article 11)
 - There are similar protections in other international human rights treaties that focus on the rights of particular vulnerable groups such as the disabled, children and women.

Right to energy as part of the right to housing

- What is the right to adequate housing?
- Not just a roof over one's head – the right to live somewhere in security, peace and dignity. Key requirements include:
- Security of tenure
- Accessible
- **Habitable**
- **Access to essential services, facilities and infrastructure**
- **Affordable**

The right to adequate housing

Housing Must be Habitable – fundamental to health and well-being

- what is not habitable is living in a home that is structurally unsound, in a state of disrepair or without adequate warmth in the winter months
- **There must be access to essential services, facilities and infrastructure**
 - includes sustainable access to safe drinking water, energy for cooking, lighting and heating, sanitation and washing facilities, food storage and waste disposal
 - all are essential pre-requisites for adequate housing and necessary for health, security and comfort

Access – availability of energy services

- Physical access = availability
- An essential need – however access is not something that can be taken for granted in other parts of the world
- States that do not provide vital service is such as electricity and water to their population are arguably in violation of international human rights law as set out under several international HR treaties
- In most of Canada, physical access is not an issue (exception, remote northern communities often lack a reliable supply)

Economic access to essential services like electricity

- Human rights framework does not rule out tariffs and fees for essential services. There is a recognition that revenues need to be raised in order to ensure universal access to services.
- However, States must ensure economic accessibility
- Electricity services must be affordable –
 - costs must not compromise or threaten the realization of other rights such as the right to health (disproportionate energy burden)

Economic Access – Non-discrimination / equality of access

- Energy services, as an essential need, must be affordable to everyone including the most vulnerable, without discrimination
- Equal access without discrimination based upon:
 - place of residence, age, health status and economic and social situation, disability or gender
- One of the exceptions to notion of progressive realization of economic, social and cultural rights

Costs should not jeopardize access (excessive energy burden)

- IHRL stipulates that housing-related costs (of which energy is a part) should not jeopardize:
 - household access to these services
 - enjoyment of other basic needs (e.g heat vs. eat)
 - Right to health and the right to life – turning the thermostat down
- **Costs should be kept to a reasonable proportion of household income**

State obligations -- ensuring affordability

- IHRL contemplates specific measures to regulate costs of shelter-related services like energy

“Measures and mechanisms must be put in place “to mitigate the impact of high costs in the standard of living on economically vulnerable households.”

State obligations

- In the case of economic, social and cultural rights, international human rights law recognizes that the realization of these rights by States does not happen overnight. Fulfillment of these rights requires positive actions by States and often a high level of investment to ensure their full enjoyment.
- The principle of “progressive realization” is embedded in treaties such as the International Covenant on Economic, Social and Cultural rights.

State action to realize human rights obligations – measures and mitigation

- IHRL requires that State action should be “deliberate, concrete, and targeted as clearly as possible toward meeting obligations”
- Vulnerable members of society must be protected by the adoption of targeted programs including cross-subsidies.
- Via these measures, equality of access is realized

Rural households: characteristics that increase vulnerability to energy poverty

- UK: the energy poverty gap is close to 2x higher in rural areas compared with urban areas.
- Socio-economic conditions for rural Ontarians
 - Demographic trends – out-migration
 - Higher rates of unemployment - Little or no upward trend in job growth
 - Average earnings are lower
 - High prevalence of low-income households in certain zones
 - Higher rates of dependency generally
- Rural low-density (R2) customers of Hydro One
 - Pay more
 - Consume more
 - Impacts with disconnection – loss of power and loss of water supply

Rural/urban rate gap : structural inequality embedded in the electricity distribution system in Ontario

- 70 electrical utilities across the province. These utilities, predominately serve urban areas and populated centres.
- Hydro One (formerly Ontario Hydro) is responsible for distribution of electricity to customers in the rest of the province
- Cost of distribution to rural and remote areas :
- Large area & smaller number of customers (low density)
 - = cost of service / customer is higher
- Higher costs passed on to rural customers through higher distribution charges. Customers in “low-density” zone (R2) pay the most.

Rural Rate Assistance in Ontario

- The average rural – urban rate gap in 1980 was roughly 24-32%
- Ontario introduced rural rate assistance in 1981 – monthly credit (reduced rate gap to no more than 15% difference)
- Until roughly 1997, the RRA credit was adjusted annually
- Regulatory changes in the late 90s and early 2000s
 - Stagnation of the RRA credit
 - 1999 - \$28.50 - 2015 - \$31.50
- Meanwhile, rising distribution costs for rural, low-density customers
- Rural – urban rate gap has increased significantly, in particular during the past five year

Rural households consume more electricity

- Electricity consumption – substantially higher for Hydro One rural R2 customers
- The Ontario Energy Board estimates that the average consumption by a residential household in the province is **750 kWh / month**
- Hydro One rural low-density (R2) customers (average / month)
 - **1190 kWh** (Hydro One, 2016)

Higher consumption by rural customers: what accounts for this higher rate of consumption?

- Nothing conclusive in the literature – possible reasons include:
 - Fewer heating options - reliance on electricity for space heating and water heating
 - Condition of rural housing stock – generally older with poor energy efficiency
 - the systems used for water heating and space heating can be significant drivers for energy poverty– households using electricity rather than gas are 2.5 x more likely to be energy poor (UK)

State recognition of human rights obligations

- Principle of “progressive realization” is embedded in treaties such as the International Covenant on Economic, Social and Cultural rights.
- Legally-binding human rights are held by individuals and [in theory] are enforceable in some way against a State
- Human Rights Code does not provide for a right to energy services
- No clear constitutional recognition of economic and social rights in Canada
- Charter protections and remedies reflective of political and civil rights, not ESC rights - some s. 7 jurisprudence holds promise
- Advocacy to stimulate State action at the policy / programmatic level

Mitigation programs

- International human rights law recognizes that States can assure equality of economic access to energy by applying “mitigation programs” including support or subsidy programs
 - the Ontario Electricity Support Program (OESP)
 - Rural Rate Assistance (the Rural and Remote Rate Protection credit (RPPP))
- Generic approach of OESP / RRRP problematic
 - OESP monthly support does not account for high rural consumption
- Energy Poverty Analysis (rural customers, including those on electric heat) – revision required in light of recent changes
- Jury still out with regard to rural customers

Increasing recognition by States of the importance of energy access

- Momentum toward formal recognition of the need for universal energy access has been on the rise.
- 2015 Global Sustainable Development Goals - SDGoal No. 7 –
“Access to affordable, reliable sustainable modern energy for all” (Target year 2030)
- This far-reaching goal seeks to address inequities in access while driving momentum towards more efficient use of energy and clean energy sources.

The right to energy – energy poverty advocacy

- Brief summary of the origins and substance of the right to energy as a human right
 - Applying a human rights lens to the circumstances of rural electricity customers in Ontario
- Many of the key principles and concepts will resonate with stakeholders involved in tackling energy poverty – equal of access; reducing higher burden of energy costs (affordability gap) for low-income, vulnerable individuals and groups
- A rights-based approach can be a potent means to ground/support LIEN's

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Research paper:

Adrienne Scott - "In the Dark: An Exploration of the Human Rights Implications of Energy Poverty in Rural Ontario"

<http://www.cela.ca/publications/human-rights-implications-energy-poverty-rural-ontario>

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