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IX.58 Energy poverty and household access to energy services in international, regional and national law

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Abstract

Household access to essential energy services such as warmth, cooling, lighting, clean cooking or power for communication and appliances is increasingly considered to be vital to human development. People's decent living standards, health, well-being and social inclusion depend on affordable, reliable and high-quality access to energy, but instead, energy poverty is considered a growing concern globally. This contribution assesses how international law, European Union law and national law has so far responded to questions of universal household energy access and energy poverty. It focuses particularly on how states may regulate in favour of universal access to affordable, continuous and high-quality electricity supply, and pays additional attention to the role of private service providers and trends to recognise energy access as a human rights concern.

Keywords

Energy poverty, electricity access, energy services, household customer, human rights, right to energy, right to electricity, vulnerable customers, energy law, constitutional rights

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IX.58.1 Introduction

It is increasingly accepted that household access to energy services such as 'adequate warmth, cooling and lighting, and energy to power appliances' is vital to human development, and to the safeguarding of people's decent living standards, health, well-being and social inclusion.¹

The European Union (EU) has identified energy poverty as 'a growing concern' amongst EU citizens, especially as a result of high energy prices, low incomes and the

¹ Directive (EU) 2019/944 recital 59; Bhatia and Angelou (2015); Modi and others (2005); Bouzarovski and Petrova (2015).

poor energy efficiency of homes, as well as energy transition.² Since 2018, the EU has recognised that every person has a ‘right to access essential services of good quality’ and that support has to be ‘available for those in need’.³ In 2015, the United Nations (UN) included the aim of achieving ‘universal access to modern, affordable and reliable energy services’ among its 2030 Sustainable Development Goals.⁴ In developing countries especially, there are concerns for the 790 million persons, mostly in rural areas, who still lack access to electricity – while nearly three billion people continue to rely on burning solid fuels, such as dung, coal and wood, to fulfil their most basic daily energy needs.⁵ Also in the EU, the number of persons affected by ‘energy poverty’ are considered to be substantial, with estimates of approximately 10 per cent of the EU population.⁶

This chapter looks at how international, EU and domestic law has responded to questions of energy poverty and household energy access. As it is impossible to discuss all matters related to ‘household energy access’, the chapter focuses on household access to *electricity supply* (as opposed to household access to kerosene, wood, LPG or other fuels for daily energy needs). In examining how legal systems regulate household energy access, the chapter also pays specific attention to the increased recognition of household energy access as a human rights concern.

IX.58.2 International law

In international law, there is just one international treaty that directly refers to household electricity access – the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁷ Article 14(2)h CEDAW protects the rights of women living in rural areas, and specifically mentions their ‘right to electricity’ under the rubric of the right to adequate standards of living.

The CEDAW Committee has found in General Recommendation No. 34 that rural women and girls are particularly vulnerable to the absence of modern household energy supply, as well as increases in energy costs and scarcity of resources, as they are typically primarily responsible for their household’s (solid) fuel use and collection.⁸ As a result, rural women suffer disproportionately from the severe ‘health and safety risks’ associated with solid fuel collection and use, like the collection and burning of wood, biomass, dung, kerosene or coal.⁹ To ensure the adequate enjoyment of rural women’s right to electricity, per Article 14 CEDAW, it is recommended that states extend on-grid services

² Directive 2009/72/EC recital 53; European Commission, EU Guidance on Energy Poverty: Accompanying the Commission Recommendation on Energy Poverty (Commission Staff Working Document) SWD(2020) 960 final.

³ European Parliament Resolution 2016/2095(INI) of 19 January 2017 on a European Pillar of Social Rights [2017] OJ C242/24, Principle 20.

⁴ UNGA Res 70/1 (25 September 2015) SDG 7.1.

⁵ International Energy Agency and others (2020). For updated figures, see: ‘Downloads’ (*Tracking SDG7*) <<https://trackingsdg7.esmap.org/downloads>> accessed 30 December 2020.

⁶ See e.g. Pye and Dobbins (2015).

⁷ Convention on the Elimination of All Forms of Discrimination against Women (opened for signature 1 March 1980, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

⁸ CEDAW Committee (2016) para 84.

⁹ *ibid.*

to rural areas, improve access to sustainable and renewable sources of energy, and develop 'solar energy and other sustainable energy sources with low-cost technology'.¹⁰

While General Recommendations of UN human rights treaty monitoring bodies (or 'General Comments') are not legally binding as such, they are typically understood to offer authoritative interpretative guidance on the content of UN human rights treaties.

Although the CEDAW is alone in explicitly referring to household electricity access, other international human rights treaties include human rights provisions that have been found to be applicable to household energy access.¹¹ Examples include the right to adequate housing,¹² the right to life,¹³ the right to education,¹⁴ the right to health,¹⁵ and the right to benefit from scientific progress.¹⁶ These rights can be found in treaties such as the International Covenant on Economic Social and Cultural Rights (ICESCR),¹⁷ the Convention on the Rights of Child (CRC)¹⁸ and the Convention on the Rights of Persons with Disabilities (CRPD).¹⁹

The UN Special Procedures of the Human Rights Council – independent human rights experts mandated by the UN Human Rights Council to supervise human rights implementation in a specific country or on a specific theme – have addressed the rights to adequate housing and health on several occasions in some detail, for example in the context of electricity supply disconnections, tariff increases, poor metering, unfair billing and corruption.²⁰ With regard to the right to housing, they affirmed earlier interpretations by the UN Committee on Economic, Social and Cultural Rights, stating that this right entails a 'right to live somewhere in security, peace and dignity' with access to 'facilities essential for health, security, comfort and nutrition'.²¹ The latter also includes access to 'energy for cooking, heating and lighting'.²² Additionally, the right to health was reaffirmed as giving weight to claims that electricity access is an important 'underlying determinant of health'.²³

Equally noteworthy is their detailed discussion of how different 'vulnerable persons' have been at risk of being disproportionately affected by disconnections or price

¹⁰ *ibid* para 85(c).

¹¹ Tully (2006); Bradbrook and Gardam (2006).

¹² ICESCR Committee (1991) para 8(b).

¹³ Human Rights Committee (2018) para 26.

¹⁴ CRC Committee (2014) paras 55(d), 56(d).

¹⁵ OHCHR (2013) 4–6; OHCHR (2016) 5; ICESCR Committee (2009) para 28.

¹⁶ See: ICESCR Committee (2013) para 38, which refers to access to electricity, including solar, and the internet.

¹⁷ International Covenant on Economic, Social and Cultural Rights (opened for signature 19 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

¹⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

¹⁹ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

²⁰ OHCHR (2013); OHCHR (2016); for more information on the role and activities of the UN Special Procedures, see: UN, 'OHCHR | Special Procedures' (UN) <<https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx>> accessed 19 December 2019.

²¹ OHCHR (2013) 4 and OHCHR (2016) 5, referring to ICESCR Committee (1991) para 8(b).

²² *ibid*.

²³ OHCHR (2013) 4–6; OHCHR (2016) 5; ICESCR Committee (2009) para 28.

increases. The Special Procedures for example commented on children's inability to play or study in safety after dark, or the health and physical safety risks to women, especially women who are pregnant, the elderly, and persons in poor health, or persons living with disabilities.²⁴ Again, such findings are non-binding, but they offer insightful and often detailed interpretative guidance on specific human rights issues, including household energy access.

UN Special Procedures and UN human rights treaty bodies have also on various occasions discussed the appropriateness of involving private actors in the delivery of essential goods and services, and states' obligations (to regulate) in this respect.²⁵ Although the privatisation of essential goods and services provision was harshly critiqued recently by the UN Rapporteur on Extreme Poverty and Human Rights for its negative effects on human rights enjoyment,²⁶ international human rights law has generally developed from the understanding that human rights can be realised 'within the context of a wide variety of economic and political systems', *i.e.* whether socialist, capitalist, mixed, centrally planned, laissez-faire, or any other approach.²⁷ As a result, human rights law in principle allows states to outsource public tasks to markets and private actors, and to pursue policies of privatisation, liberalisation, competition and the application of user fees. Yet, in such cases, states must closely monitor whether markets indeed deliver on essential services for everyone, and they may never allow the enjoyment of human rights to become conditional on peoples' 'ability to pay'.²⁸

In this respect, various human rights bodies have affirmed that tariffs and connection costs for essential services, such as water and electricity supply, must always 'be designed in such a way as to make them affordable to all people (including through social policies)'. Moreover, the principle of equity demands that 'services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups', and poorer households cannot be 'disproportionately burdened with expenses as compared to richer households'.²⁹ Hence, when private actors are involved in the provision of essential services, states must strictly regulate and monitor their activities, including by imposing 'so-called "public service obligations"' (PSOs).³⁰ These PSOs can be used to enforce standards in relation to universality of coverage, continuity of service, quality, pricing policies, user participation, non-discrimination and access to information.³¹ States are also expected to clearly delineate the scope of public functions delegated to private actors and to ensure that private actors are and can be held accountable for human rights abuses.³²

²⁴ OHCHR (2013) 4; OHCHR (2016) 5–6.

²⁵ Human Rights Council (2018) 2 and paras 65–87; OHCHR (2013) 5–6; ICESCR Committee (2003) paras 2, 12, 23–24, 27, 44; ICESCR Committee (2017). See also: De Feyter and Gómez Isa (2005); Hallo de Wolf (2011); Hesselman, Hallo de Wolf and Toebes (2017).

²⁶ Human Rights Council (2018).

²⁷ ICESCR Committee (1990) para 9.

²⁸ Human Rights Council (2018) 2 and paras 65–87; ICESCR Committee (2017) para 22; OHCHR (2013) 7. In relation to water services, see: ICESCR Committee (2003) para 56.

²⁹ Human Rights Council (2018) 2 and paras 65–87; OHCHR (2013) 5–6 (also referring to the UN Guiding Principles on Business and Human Rights); ICESCR Committee (2003) para 27.

³⁰ ICESCR Committee (2017) paras 20–21.

³¹ *ibid*; OHCHR (2013) 5–6.

³² *ibid*.

IX.58.3 European Union law

The EU serves as an interesting regional example of how successive progressive regulations have changed the position and protection of household electricity customers, especially in view of the drive to realise a single liberalised EU electricity market.³³ EU law recognises in its founding treaties that access to ‘Services of General Economic Interest’, such as electricity, constitutes a ‘shared value’ and needs to be provided in line with ‘a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights’.³⁴ It is also recognised as a human rights objective in Article 36 of the EU Charter of Fundamental Rights,³⁵ along with every person’s ‘right to access essential services of good quality’ in Principle 20 of the new non-binding EU Pillar of Social Rights.³⁶

One of the most important tools for guaranteeing universal access according to EU secondary energy law is the imposition of ‘universal service obligations’, which grant households the ‘right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices’.³⁷ Distribution system operators are also obliged to connect customers under specific terms, conditions and tariffs, and states may appoint suppliers of last resort.³⁸

Importantly, as part of the new electricity market design pursued through the EU’s fourth legal reform package adopted in 2018–2019, households’ right to ‘competitive’ prices superseded their previous right to ‘reasonable’ prices under Directive 2009/72/EC (the 2009 Electricity Directive).³⁹ This appears to be an importance change, as for some poor customers ‘competitive’ market prices may not be necessarily ‘reasonable’ in terms of affordability.⁴⁰ The change in formulation seems to be a manifestation of the EU’s drive to further liberalise and increase competition in the internal electricity market, and in particular the Juncker Commission’s push to phase out direct public interventions on price setting as part of the reform package needs to be seen in this context (e.g. in the form of ‘social tariffs’ for poor and vulnerable customers).⁴¹ The latter objective was however watered down considerably during negotiations: Article 5 of the new Directive (EU) 2019/944 (the 2019 Electricity Directive) does not put any desired end date for phasing out social tariffs, as desired in the Commission’s original proposal. Moreover, Member States can still impose social tariffs under certain general conditions, such as the ‘pursuit of a general economic interest’ and a price intervention being limited and proportionate

³³ SWD(2020) 960 final; European Commission, ‘A Quality Framework for Services of General Interest in Europe’ (Communication) COM(2011) 900 final, 3–4; European Commission, ‘Proposal for a Directive of the European Parliament and the Council on common rules for the internal market in energy’ (Communication) COM(2016) 864 final/2, 2, 5–6. See also: ten Oever and Houben (2017) 126–133; Wehlander (2016); Talus (2013) 269; Sokołowski (2016) 270–289; Prosser (2005); Cremona (2011); Szyszczak (2014); Bartl (2010).

³⁴ TFEU art 14; TFEU protocol no. 26.

³⁵ TFEU art 14; CFREU art 36.

³⁶ European Pillar of Social Rights (2017).

³⁷ Directive (EU) 2019/944 art 27; Directive 2009/72/EC art 3(7).

³⁸ Directive (EU) 2019/944 art 27.

³⁹ Cf Directive (EU) 2009/72/EC art 3(7).

⁴⁰ Bartl (2010) 227–229; Diestelmeier and Hesselman (2018).

⁴¹ See draft COM(2016) 864 final/2 draft art 5.

in terms of its beneficiaries.⁴² This is still a rather broad mandate for tariff regulation. The implementation of Article 5 will be reviewed by the European Commission in 2025.⁴³

Further protection for vulnerable customers and energy poor households is provided by Articles 27–28 of the 2019 Electricity Directive, as well as Article 3(3) of Governance Regulation 2018/1999. Article 27 requires Member States (MSs) to nationally define a concept of ‘vulnerable customers’, which, as under Article 3(7) of the previous Electricity Directive 2009/72/EC, may relate to the notion of ‘energy poverty’ and involve the prohibition of disconnection in critical times. It also requires the protection of people in remote areas.⁴⁴ The 2019 Electricity Directive builds on the 2009 Electricity Directive by adding additional vulnerability criteria, such as ‘income levels, the share of energy expenditure of disposable income, the energy efficiency of homes, critical dependence on electrical equipment for health reasons, age or other criteria’.⁴⁵ Essentially, however, definitions of vulnerability are thus left to MSs, and it is well known, and considered problematic, that definitions of vulnerable customers differ widely amongst EU Members.⁴⁶ Moreover, while definitions of vulnerability are generally present in national laws, only a handful of MSs have also put in place specific definitions or measures for ‘energy poverty’.⁴⁷

Therefore, an important new feature of the legal reform package is that MSs are now legally obligated to define and assess the ‘number of households in energy poverty’ as well.⁴⁸ In doing so, they have to:

[take] into account *the necessary domestic energy services* needed to guarantee *basic standards of living in the relevant national context*, existing social policy and other relevant policies, as well as *indicative Commission guidance on relevant indicators* for energy poverty.⁴⁹

As before, MSs have leeway to provide their own national definitions – however the level of discretion is not unlimited.⁵⁰ In particular, it shall be of great interest to see how the notions of ‘necessary domestic energy services’ and ‘basic standards of living’ are defined and taken into account. These terms closely reflect human rights law. In fact, the 2019 Electricity Directive explicitly affirms it must be interpreted and applied in accordance with the EU Charter on Fundamental Rights.⁵¹

In any case, when MSs conclude on the basis of ‘verifiable data’ that they have a ‘significant’ number of households living in energy poverty, they must report a ‘national indicative objective’ to reduce energy poverty, as well as the policies and measures imple-

⁴² Directive (EU) 2019/944 art 5(3).

⁴³ *ibid* art 5(9–10).

⁴⁴ Cf *ibid* art 28 and Directive 2009/72/EC art 3(8).

⁴⁵ Directive (EU) 2019/944 art 27.

⁴⁶ Pye and Dobbins (2015).

⁴⁷ EU Energy Poverty Observatory (2020).

⁴⁸ Regulation 2018/1999 of the European Parliament and of the Council [2018] OJ L 328, art 3(3)d.

⁴⁹ *ibid*. Emphasis added; SWD(2020) 960 final.

⁵⁰ For opposition to harmonised approaches, see: COM(2016) 864 final/2 6; Directive (EU) 2019/944 art 28, which suggests aspects of high prices, low income and poor energy efficiency of homes as specific criteria.

⁵¹ Directive (EU) 2019/944 recital 91.

mented to achieve the reduction.⁵² The 2019 Electricity Directive starts ‘from the premise that any proportion of households in energy poverty’ may be significant.⁵³

In terms of specific energy poverty alleviation measures, the directive explicitly mentions ‘social or energy policy measures relating to the payment of electricity bills’, ‘investment in the energy efficiency of residential buildings’, consumer protection measures ‘such as disconnection safeguards’, and national action plans and integrated approaches through the framework of energy and social policy as measures to protect energy poor and vulnerable customers.⁵⁴ Household customers equally have a range of consumer-related rights to support their overall participation in markets, including rights of access to information, billing accuracy and transparency, and contractual freedoms to choose and switch suppliers.⁵⁵ The Commission will annually review the directive’s implementation, with a major legislative review planned for 2025.⁵⁶

Finally, it is necessary to evaluate the position of various households in relation to the energy transition foreseen by the new reform package. The EU clearly expects households to play an active role in the transition to renewable energy and greater energy efficiency, for example by signing up for ‘dynamic pricing contracts’ that allow customers, aided by smart technologies and/or storage facilities, to respond to and benefit from peaks in available renewable energy supply, or by encouraging customers to self-generate, self-use, store, sell or share renewable electricity supply, including through (local) ‘citizen energy communities’.⁵⁷

While the new design of the Energy Union is expected to improve household energy efficiency and reduce energy poverty by lowering consumption and tariffs,⁵⁸ it is important to ask whether all households will be able to fully benefit from this new flexibility and from the participation in energy communities. For example, while it seems positive that household customers retain their traditional consumer rights when joining self-generating ‘citizens energy communities’ (and can leave these communities at will), it is still uncertain how (energy) poor households might be able to afford the (non-competitive) ‘fair and cost-reflective terms’ of joining such communities.⁵⁹ In addition, what happens when the investment costs in smart and renewable technologies remain beyond their reach?⁶⁰ Finally, to what extent will ‘citizens energy communities’ tasked with generation, distribution and supply to members have to guarantee any measure of protection afforded to households generally, including those that are vulnerable or energy poor, e.g. through special tariffs or otherwise?⁶¹

⁵² Regulation (EU) 2018/1999 arts 3(3)d and 24, and Annex I paras 2.4.4. and 3.4.4.

⁵³ Directive (EU) 2019/944 art 28.

⁵⁴ *ibid* arts 5(2) and 28(2), and recitals 58–60.

⁵⁵ *ibid* art 3 and Chapter III.

⁵⁶ *ibid* art 69.

⁵⁷ *ibid* recitals 10, 37–38, 42–43, 52–55 and arts 11, 15, 16, 21; SWD(2020) 960 final, p. 6.

⁵⁸ Directive (EU) 2019/944 recital 43.

⁵⁹ *ibid* recital 43, and arts 2(11) and 16.

⁶⁰ *E.g.* *ibid* art 21, access to a smart meter exists under ‘fair, reasonable and cost-effective conditions’. Diestelmeier and Hesselman (2018).

⁶¹ *ibid.*

IX.58.4 National law

A range of interesting legal developments and reforms have also emerged within domestic law, although challenges and approaches may differ considerably around the world according to local needs, priorities and realities. This includes countries' overall levels of development, whether full electrification has been achieved, or whether services provision is mostly in public or private hands.⁶²

In relation to *electrification*, the UN's Sustainable Energy for All Initiative recently found that many developing countries still lack laws to regulate in favour of universal, affordable household energy access. To improve regulatory environments for SDG 7, it developed its 'regulatory indicators for sustainable energy' (RISE). RISE indicators promote 'comprehensive officially approved electrification plans' indicating desired levels and quality of electricity supply, as well as measures and mechanisms addressing consumer affordability and the uptake of connections. The latter could include the subsidisation of connection fees, micro-loans, utility loans or on-bill financing, as well as targeted measures in the form of 'cross-subsidisation or social or life-line tariffs' and setting maximum percentages of household income spent on minimum amounts of kWh.⁶³

In more developed countries, concerns are likely to mostly focus on issues of *affordability*, *reliability* and *quality*, as well as protection against *abuse by (private) providers* or *disconnections of electricity supply*. In Europe, civil society organisations grouped in a 'Right to Energy Coalition' are for example calling for fairer energy pricing, prohibitions on disconnections and (compulsory) pre-paid metering, more public control over energy, and access to clean energy, and just energy transition.⁶⁴

Indeed, a clear recent trend in national legislation has been the increased adoption of 'rights to energy' or 'rights to electricity' in law (*e.g.* France, Spain)⁶⁵ or through case-law (*e.g.* Greece, South Africa, Colombia, the Philippines).⁶⁶ The focus is predominantly on *disconnections*, but issues of overall *price setting* and *quality of basic electricity supply* are also occasionally addressed.⁶⁷ Both in Colombia and in South Africa, constitutional courts derived 'rights to electricity' from their respective constitutions, with Colombia's Constitutional Court deciding that constitutional rights to life, dignity, health and adequate housing could give rise to prohibitions on disconnections for vulnerable persons enjoying constitutional protection. These persons include children, the elderly, pregnant women and those living with disabilities or in poor health. In this context, it has also ordered reconnections of households to (minimum 'subsistence' amounts of) electricity supply on several occasions, whilst typically requiring parties to draft up a

⁶² Graham (2010) 157–177; Waddams Price (2018); Omorogbe and Okoye Odor (2018); Half, Sovacool and Rozhon (2014); Schumacher and others (2015); Pye and Dobbins (2015).

⁶³ Ghosh Banerjee and others (2016) 31–34, 36.

⁶⁴ For a summary of 'right to energy' initiatives, see: Hesselman, Varo and Laakso (2019) 3.

⁶⁵ *ibid* for developments in France and Catalonia.

⁶⁶ See cases listed in the Bibliography. For further discussion, see: Merkouris (2017); Murillo Chávarro (2017).

⁶⁷ Consider for example SACC, *Nokotyana* (on access to basic street lighting) and the Philippine cases below.

payment plan commensurate with the economic realities (of extreme poverty) of the applicants.⁶⁸

In South Africa, the Constitutional Court also decided that ‘electricity is one of the most common and important basic municipal services [and] virtually indispensable, particularly in urban society’; its provision is ‘a cardinal function, if not the most important function, of every municipal government’.⁶⁹ Municipalities have the constitutional duty to develop a service capacity that can ‘meet the basic needs of all inhabitants of South Africa’ and secure access in manner that is:⁷⁰

- (a) equitable and accessible;
- (b) conducive to—
 - (i) the prudent, economic, efficient and effective use of available resources; and
 - (ii) the improvement of standards of quality over time;
- (c) financially sustainable;
- (d) environmentally sustainable; and
- (e) regularly reviewed with a view to upgrading, extension and improvement.

Courts in both countries have also emphasised the need to foster a ‘*culture of payment*’ amongst service beneficiaries, as well as imposed strict duties on public and private providers to *diligently collect dues* and *prevent debt accumulation* amongst poor households.⁷¹ In Colombia, service providers for example can be barred from recovering debts for missed payments if they fail to abide by their statutory duty to disconnect customers after three unpaid instalments.⁷² The Colombian Constitutional Court decided that service providers are not allowed to abuse their contractual positions by entering into payment agreements that do not reflect citizens’ economic situation, nor should they allow unmanageable debts to build up.

In this sense, regulatory efforts in the sphere of household energy access will likely always have to reconcile, somehow, the public objectives of universal service access, including for the poor and vulnerable, with the genuine needs for cost recovery and increased investment capacity for improved services provision. These challenges may be compounded by the involvement of private profit-seeking providers with an interest in making additional profits from their activities, along with structural challenges of mismanagement, fraud and corruption in energy supply systems around the world.

In fact, addressing precisely such issues, the Philippines Supreme Court twice struck down requested electricity tariff increases on constitutional grounds. It held that Filipinos are protected by constitutional economic rights and that the ‘public interest should prevail over private profits’. These economic rights include a ‘right to electricity’ and a right ‘to be reasonably charged for their consumption’. The Philippines Supreme Court stated that ‘more worthy of protection than the supra-normal profits of private

⁶⁸ See Colombian Constitutional Court, *Córdoba*, paras 4.1–4.3.

⁶⁹ SACC, *Leon Joseph*, paras 34–39, 47.

⁷⁰ *ibid.*, also reiterating the findings of Justice Yacoob in SACC, *Mkontwana*.

⁷¹ *E.g.* Colombian Constitutional Court, *Córdoba*, paras 4.1–4.3, 5.–5.2; SACC, *Mkontwana*, para 38; SACC, *Leon Joseph*, paras 51–53.

⁷² Colombian Constitutional Court, *Córdoba*, para 4.3.

corporations' are the rights 'of the poor and the powerless'.⁷³ It laid down specific guidance on tariff structures and operating costs that can be reasonably recouped from (poor) consumers.

IX.58.5 Conclusions

This chapter shows that while the exact choices and priorities for publicly or privately arranged household electricity access necessarily depend on local needs, preferences and perceptions, any regulation in favour of universal, high-quality, affordable, modern household electricity supply tends to raise similar questions, such as:⁷⁴

- How can *universality of coverage* for every household be guaranteed – including for those in difficult to reach areas, or for people with difficulties in paying for even basic connections or services?
- How can states ensure that all persons *receive adequate, sufficient, reliable, continuous and high-quality supply* in line with their *personal needs*?
- How can 'the overall financial viability of the supply system' be squared with 'reasonable payment rates for electricity supply for every person'? How can relevant *costs and benefits* be best distributed? In short, how to ensure affordability?
- How can regulations approach the *protection of energy poor and vulnerable persons*, including people needing additional support to enjoy access to services on a par with others, or in light of *specific needs* (e.g. age, health, disability)?
- How can *non-discriminatory* access to energy, *user participation* and access to *information* best be guaranteed?
- How specifically can *disconnections* be protected against?

This chapter has touched upon a range of regulatory instruments that respond to these questions, including (rights-based) universal service obligations, disconnection safeguards, or various forms of targeted support, like social tariffs. Yet, adequate access to household electricity will more likely involve a range of public interventions to achieve the optimum solution – whether, for example, in the sphere of energy market regulation, energy policy, taxation, the social (welfare) system, or otherwise. Not covered in this chapter, but equally important, are the establishment of strong independent regulators and oversight mechanisms, as well as robust access to justice for consumers.⁷⁵

It will be of great interest to see how countries proceed to implement or respond to evolving national, regional and international policy agendas, and to the mounting pressure from civil society movements – invoking their human rights – to ensure better, fairer, cleaner and more affordable access.

⁷³ Supreme Court of Philippines (1997); Supreme Court of Philippines (2002); Supreme Court of Philippines (2019) 12.

⁷⁴ See: Hesselman, Varo and Laakso (2019) 6; Hesselman, Hallo de Wolf and Toebes (2017) 1–19, 299–327.

⁷⁵ Prosser (2010); Hallo de Wolf (2011).

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