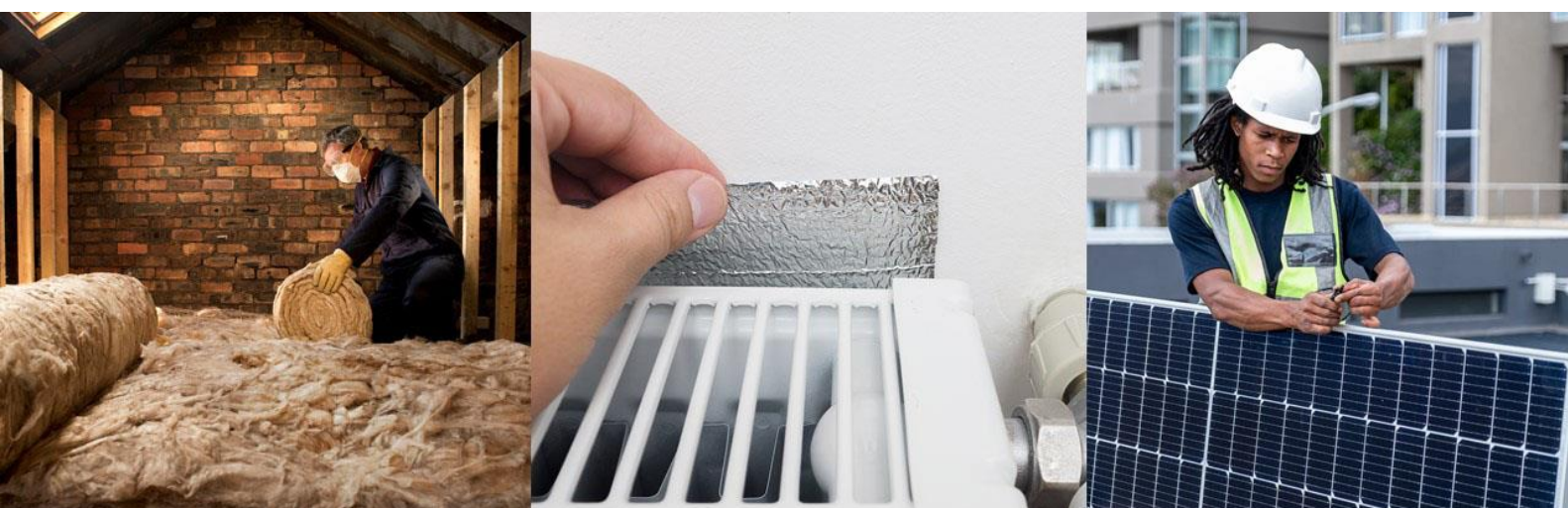


## European Energy Poverty

Agenda Co-Creation and Knowledge Innovation  
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# Moving forward on the right to energy in the EU

## Engagement Toolkit



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# Tackling energy poverty: why the right to energy?



UN Sustainable Development Goal 7 (SDG7) sets a target for achieving **universal access** to sufficient, reliable, affordable and sustainable energy by 2030.

At present, **759 million people** lack access to electricity and **2.8 billion** still rely on traditional fuels (e.g. firewood, dung and charcoal) for cooking and heating.

In Europe, **tens of millions** struggle daily to satisfy their domestic energy needs, keeping their homes warm in winter or cool in summer, and paying energy bills on time.

**Energy is a critical enabler for most other SDGs; as such, it should be a priority area.**



**Education and water are upheld as basic human rights; to date, energy is not.**

Energy is often treated as a commodity, with supply and demand heavily influenced by market forces.

Drawing on recent developments in the EU context, this document aims to help relevant actors make a **stronger case for the right to energy to support a dignified life, at affordable cost and with a right to participate in democratic energy sector decision making.**

The interests and well-being of persons – individually and collectively – must hold a central place in the energy sector.

## A changing policy reality for energy access in the EU

Achieving a ‘just, clean energy transition’ is central to the European Green Deal (EGD), which sets the target of achieving a carbon-neutral economy by 2050. The deal promises to provide extra support for Member States that face the greatest challenges while also ‘leaving no one behind’. In this regard, the EGD upholds the [EU Pillar of Social Rights](#) (2017). While not legally binding, this charter includes energy among essential services, stating that:



**Principle 20 • EU Pillar of Social Rights**

Everyone has the right to access essential services of good quality, including water, sanitation, **energy**, transport, financial services and digital communications. Support for access to such services shall be available for those in need.

Recognising that energy poverty affects 50 to 80 million EU citizens, the EGD goes a step further. In relevant EU Directives, it places obligations on Member States to develop national definitions of energy poverty and to set objectives, time frames and policies to address it. Policies may relate to payment of electricity bills, investments in decarbonisation, buildings performance and energy efficiency, community energy projects, or social policy measures. The Electricity Directive states that it must be implemented in line with human rights principles.

### EU Electricity Directive 2019/944

“Energy services are fundamental to safeguarding the well-being of the Union citizens. Adequate warmth, cooling and lighting, and energy to power appliances are essential services to guarantee a decent standard of living and citizens' health. Furthermore, access to those energy services enables Union citizens to fulfil their potential and enhances social inclusion.”

### EU Governance Regulation 2018/1999

“Member States shall assess the number of households in energy poverty taking 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.”

While much of this document is specific to the EU context, **where energy is largely accessible but often unaffordable**, this toolkit aims to provide an overview of principles, arguments and practical examples to **engage on energy poverty alleviation through the right to energy**.

# What do we mean by the 'right to energy'?

The right to energy means that all individual humans enjoy certain rights and entitlements to be able to enjoy access to energy services necessary for health, well-being, social inclusion and full participation. Energy is vital for a dignified human life.

Having a right also implies that others, especially the State, have duties to ensure rights for everyone, equally and without discrimination. A myriad of related concerns can be identified, which largely fall under three overarching themes.



## ACCESS TO

- Energy – access to specific resources or supplies.
- Energy services – to meet daily needs for health, well-being, safety and participation in society.
- Guaranteed minimum levels of services and supplies.
- Guaranteed reliable supply, meaning zero risk of disconnection: disconnecting for inability to pay is a violation of rights.



## AFFORDABILITY

- Relative to people's income and their actual needs.
- Energy efficient dwellings, equipment and appliances.
- Free of discriminatory billing practices.

POLICY

GUIDELINES

PRACTISES

STANDARDS

RULES

## ENERGY DEMOCRACY

- Right to participate in decision making about energy and energy policy.
- Right to participate in energy communities.
- Right to information about energy and energy rights.
- Access to justice.

## Putting the **right to energy** in practice

*Recognition of basic rights and entitlements implies corresponding duties to **respect, protect and fulfil** such rights.*

*Typically, ensuring such rights requires actions and efforts by **many different actors**, at different levels of society and across different sectors.*

*To be effective, **policies must target the root causes of energy poverty**, not simply alleviate its symptoms*

**The State**, from a perspective of human rights, holds primary responsibility to create enabling conditions for the full realisation of rights. Public authorities must therefore design coherent policy frameworks that contribute to progressive realisation of the right according to maximum available public and private resources. They must also address and remedy any discrimination or disadvantage, and guarantee monitoring and oversight and access to justice.

Policies to ensure the **right to energy** need to be specific and assertive, targeted, yet flexible enough to reflect the complexities of energy supply and demand, including diversity of available resources and vastly personal needs.

As demonstrated in the following pages, the roll-out of such policies may be regional, national or local in scope and must fully consider the ways in which different actors contribute to or alleviate energy injustice.

Besides the State, other **public entities** (e.g. regulators, Ombudspersons or social housing providers) and **businesses** (e.g. utilities, appliance manufacturers, banks) have responsibilities for the effective realisation of the right to energy. **Civil society**, such as energy and climate activists or consumer organisations, play a major role in calling for the right, engaging decision-making and responsible actors, and overseeing its implementation.



# Understanding the fundamentals of a **rights-based approach**

## The right(s) to energy in law

While the concept of ‘human rights’ has been articulated in many societies for many centuries. Establishing a ‘human rights law’, with the express aim of charging governments with legal obligations and responsibility to fulfil, protect and respect such rights, is linked to the Universal Declaration of Human Rights (adopted in 1948) and the adoption of many legally binding regional and international human rights treaties that derive from it.

The idea that all people everywhere should equally enjoy human rights, without discrimination or disadvantage, has become a core principle of democratic societies.

Although energy services access is already protected by other existing human rights, a self-standing right helps to specify and make visible people’s rights and interests in energy and draws attention to the importance of implementing measures to support its realisation.

## 9 RECOGNISED RIGHTS

At present, the following rights relevant to energy poverty are backed by human rights law, including the right to:

- life with dignity
- adequate standards of living, including the right to adequate housing
- physical and mental health
- access to information and freedom of expression
  - education
- rest, leisure and play, especially for children
- social security, and social and economic protection of the family
- a healthy living environment
- public participation, the right to participate in social life

In human rights monitoring practice, all nine rights have, in some way, been linked to energy poverty.<sup>1</sup> Moreover, a right to energy would both derive from and support enjoyment of other rights.

### Right to life with dignity

The right to life implies that States implement measures to protect against “**unnatural or premature death, as well as to enjoy a life with dignity.**” States have duties to “take appropriate measures to **address the general conditions in society** that [...] prevent individuals from enjoying their right to life with dignity”, including “**where necessary, measures designed to ensure access without delay by individuals to essential goods and services** such as food, water, shelter, health care, **electricity** and sanitation.”

*UN HRC General Comment No. 36 on Right to Life in Article 6 of the International Covenant on Civil and Political Rights (2018).*

### Right to adequate housing

The right to housing states that “**an adequate house must contain certain facilities essential for health, security, comfort and nutrition.**” This includes “**sustainable access** to natural and common resources, safe drinking water, **energy for cooking, heating and lighting, sanitation and washing facilities.**” [...] Adequate housing must be habitable and physically safe, ‘in terms of providing the inhabitants with adequate space and **protecting them from cold, damp, heat, rain, wind or other threats to health** [...]’

*UN CESCR General Comment No. 4 on the Right to Adequate Housing in Article 11 of the International of the Covenant on Economic Social and Cultural Rights (1991).*

<sup>1</sup> Human rights treaty supervisory bodies, such as the European Committee of Social Rights, the UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights, or the UN Committees on the Rights of the Child and Women’s Rights, have affirmed that all such rights are implicated by energy poverty (Hesselman, 2021).

## Energy in human rights law: present but not protected

To date, the right to energy is not explicitly recognised in law in a broad sense. Progress is evident, however, in that several international, regional and national legal instruments now embed this right through law.

Nationally, several constitutions, courts and lower-level laws also recognise rights to energy, including in Spain, France, Greece, Colombia, South Africa, India, Pakistan and the Philippines (Hesselman 2021; Hesselman, Varo and Laakso, 2019).

These rights have a mutual aspect: they represent both specific entitlements for individuals and obligations for States to ensure energy access as a human right.

### The right to energy in existing legal instruments

- **Article 14(2)h of the UN Women's Rights Convention** formulates a **right to adequate living standards** for rural women, including their **right to electricity** specifically.
- **Article 11 of the San Salvador Protocol on Economic, Social and Cultural Rights of the Organization of American States** similarly recognises a **human right to basic services**, which encompasses energy access.
- **Article 36 of the EU Charter of Fundamental Rights** states that the European Union must **respect access to services of general economic interest** as already provided in national law or in EU law, including electricity and gas provision.

Following sections of this document highlight pertinent examples such as measures to guarantee that every person can enjoy access to safe, warm, healthy and habitable housing and basic amenities, as well as obligations to protect against energy disconnections due to inability to pay (Hesselman 2021; Tully 2006).



# The right to energy: practical aspects and contextual considerations

A right to energy, while universally applicable in principle, recognises the need for flexibility in practice. This is true of the rights perspective in general, as needs differ according to context, which include **geographic, climate and socio-economic factors** as well as the **personal situations of diverse individuals**.

Since the 1980s, human rights have often been linked to the ‘**capabilities approach**’ put forth by Amartya Sen and Martha Nussbaum, which argues the aim should be to give people the freedom to achieve what they value doing and being, and to create conditions that enable them to reach and conserve human dignity.

The right to energy, under this approach, implies several vital elements, including **access to socially and materially necessary**:

- **minimum energy supply** that is sufficient, of high quality, reliable and continuous;
- **energy sources and supplies** that meet certain standards of sustainability, health, safety and cleanliness;
- **energy appliances** that efficiently convert such energy for day-to-day needs;
- **affordable supply** to ensure that related costs do not constrain a person’s ability to meet other basic needs.

In turn, the capabilities approach recognises that people’s ‘starting positions’ in relation to attaining such a right may be largely different. Factors that should be considered as **sources of vulnerability** – either because they limit access to energy supply or influence ability to pay for energy services – that warrant special protection.

To achieve greater equality, a rights-based approach demands that decision-makers not only consider such disparities but prioritise targeted action for those who need more support to reduce vulnerability or address any form of discrimination. As regards the right to energy, this may apply across energy services, how they are supplied and mechanisms to ensure affordability (among others).

## Sources of vulnerability

### • Physical conditions

such as age, illness or disability that may require extra energy-consuming equipment.

### • Socio-economic differences

due to ethnicity, gender, class, income, citizenship or housing tenure status.

### • Contextual considerations

such as geographic location, climate, characteristics of the built environment, lifestyles and cultural heritage.



## Upholding the right to access energy and energy services

Linking the right to energy to stated goals for health, well-being, education, inclusion and participation, as is done for other universal rights, implies that all people should be entitled to some level of energy. Increasingly, this is translated into the concept of a minimum set of energy services.

This raises questions regarding who decides what services at what level, and whether 'affordable' will imply, at least for some groups, at very low or no cost.

### Fundamental energy services

- Heating/cooling
- Water heating
- Lighting
- Appliances & electronics
- Cooking
- Cleaning
- Personal hygiene
- Home health care

### Minimums in quantity and quality, relevant to need and context

#### Indicators for minimum energy needs

- a minimum set of energy services
- a list of relevant appliances
- a minimum level of energy efficiency,
- a minimum level of quality of supply (i.e. regular)
- minimum levels of kilowatt hours and/or cubic meters of gas or other fuel.

Generally, the energy community has agreed on **five indicators** as useful in capturing people's minimum energy needs. Based on such indicators, it becomes possible to determine relevant minimum bands of energy services to fulfil capabilities and rights, as well as other relevant minimums and standards per region or country, with due consideration to personal and

household needs and options for energy efficiency. Minimums can be decided through **deliberative processes** and based on **empirical standards** for well-being (Walker et al 2016; Hesselman et al 2021).

To avoid adverse health impacts, the World Health Organization (WHO) defines a minimum indoor temperature for thermal comfort as 18°-24°C, depending on the level of vulnerability of occupants. The WHO also sets guidelines for damp, mould and indoor air quality linked to cooking or heating energy sources and methods (WHO 2009; WHO 2014; WHO 2018). Another standard is a minimum level of lumens for lighting to avoid harm to eyesight or enable various tasks in safety. This is reflected in a number of light bulbs or wattage per room or person, along with convenience of use or required hours of operation.

### Defining a rights-based minimum: realising capabilities

**On a global scale**, large differences exist across nations in terms of their per-capita annual energy use that also correspond with unequal levels of human development and wellbeing levels. **In European societies**, a relatively high tier of universal energy services is typically seen to support health and well-being, in line with national or regional living standards (Walker, Simcock and Day, 2016). In Central Europe, for example, recent research suggests a range of 80-150 giga-joules per year and capita (considering all energy uses) as an appropriate amount of energy input required to maintain current levels of needed to support health and well-being (Frigo et al., 2021).

While it is not yet common practice, such calculations could be used to establish a minimum level of universal energy services to be offered free of charge – either to everyone or only to vulnerable households. Household level data could then be used to establish fair pricing schemes for consumption beyond the minimum level (progressive block tariffs).

As an example, it has been estimated that an average Spanish household would require between 2 112 kWh (for a one-person household) to 4 232 kWh (for a household with four or more people) annually to satisfy its cooking, indoor lighting and powering appliances needs (Arenas Pinilla et al., 2020). In comparison, the currently applicable social electricity tariff in Spain supports a minimum annual consumption level in the range of 1 380 kWh (for a household with no children) to 4 140 kWh (for a household with three or more children). In the case of ‘consumers at risk of social exclusion’ with very low income and supported by social services, households are eligible to those amounts of electricity for free.

### Defining minimums for developing countries

In the developing countries in the **Global South**, the International Energy Agency (IEA 2020) suggests that a minimum electricity supply of 1 250 kWh annually could power an average household with basic necessary services. Remarkably, with more efficient appliances, the same level of service could be met with only 420 kWh annually.

Appliance	Operational time/day
1 small refrigerator	24 hours
1 fan	6 hours
4 lightbulbs	5 hours
1 television	4 hours
1 mobile phone	Intermittently, 24 hrs

Finding the IEA definition too minimal, particularly since people’s energy needs extend beyond the home, the Energy for Growth Hub however recently proposed supply of 1 000 kWh per year *per person* as more appropriate. Of this, the Hub estimates 300 kWh would reflect household demand, allowing 700 kWh of consumption for broader social and economic participation (Moss et al. 2021).

To track progress towards universal access to modern, affordable and reliable energy services (SDG7), the UN has developed a multi-tiered framework that covers energy for services such as cooking and/or electric cooking, lighting, heating/cooling, refrigeration, TV/radio, and clothes washing and ironing. Under this system, minimum annual domestic electricity consumption, per household per year, ranges up to 3 000 kWh.



Alternatively, minimum service levels can be defined as way to implement the right to energy. In the Basque Country (Spain), the public social housing provider ALOKABIDE is working to guarantee a minimum level of thermal comfort (measured in degrees centigrade of indoor temperatures) for all low-income tenants living in its properties.

Other guidelines are also available such as ISO standards; quality and performance standards for cooking and heating stoves, and other appliances; or use of specific fuels from the Clean Cooking Alliance. The WHO has set indoor air quality guidelines for combustion of (solid) fuels (WHO 2014). It effectively proposes bans for and discourages household use of (unprocessed) coal and kerosene and sets indoor emission limits for certain substances. This is important, because use of solid fuels (e.g. firewood or coal) is still common in many European households but can have serious negative health effects through air pollution.

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### **Safe, reliable, uninterrupted access: banning disconnections**

To protect the right to energy services for essential needs, a rights-based approach strictly prohibits disconnections or cuts of basic supplies – even when consumers are unable to pay their energy bills. It requires that companies continue to supply services, taking account of people's 'capacity to pay' (UN, 2003).

This prohibition recognises that non-payment of bills is a manifestation of more serious problems, which a disconnection would only exacerbate. As such, disconnections should never be left to the discretion of a commercial provider but should be strictly controlled by clear regulations.

**At present, there is no EU-wide ban on disconnections.** In the context of Europe's liberalised energy markets, this leaves vulnerable households at risk.

### **Precarious access: pre-payment meters and self-disconnection**

Pre-payment meters for gas and electricity have been promoted as a mechanism by which people can self-manage their energy consumption and costs to avoid disconnection. Often, they are suggested as a way to give more control to people in energy poverty.

While some successes have been reported in realizing such outcomes, and in protecting people from debt and disconnections, pre-payment meters also risk end up creating a 'second-class' of energy users, who are more likely to self-ration and self-disconnect. This could lead to new forms of discrimination, disadvantage and energy poverty.

**Pre-payment meters may be considered incompatible with a rights-based approach as they place the burden of payment exclusively on the pre-payment consumer,** typically a low-income household. The supplier does not directly disconnect because of unpaid bills, but people themselves may stop using the energy they need when they cannot top-up the balance. This is called 'self-disconnection' (Shaver 2018).

The use such meters should therefore be considered acceptable only where regular systems are not possible or preferred by people that use them, with a just reason. In such cases, pre-payment schemes should be coupled to generous guarantees for basic supply.

### UN prompts Belgium and Germany to act on basic electricity and energy needs

In 2018, the **UN Committee on Economic, Social and Cultural Rights (UN CESCR)** was concerned that a large number of households in Germany, particularly those on basic social benefits, experience energy poverty. Additionally, in 2016, ~328 000 households were affected by disconnections owing to unpaid bills. The Committee recommended that Germany **adopt effective measures to ensure all households can meet their basic electricity needs**, thus avoiding disconnections for households unable to pay for their minimum needs.

More recently (2020), the **UN CESCR** expressed concern about the impact of energy costs on household budgets, especially of low-income households in Belgium, and about the practice of cutting off gas and electricity for non-payment of bills. The government was recommended **to take the measures necessary to ensure a minimum supply of energy, even when a budget meter is installed.**

UN CESCR, Concluding Observations: Germany (2018) E/C.12/DEU/CO/6; Belgium (2020) E/C.12/BEL/CO/5.



## Recognising and addressing discriminatory practices

The principle of non-discrimination is a well-established core principle of international human right law: it must also be upheld in the right to energy.

**Non-discrimination is closely tied to equality, equity and vulnerability,** and implies efforts to identify which individuals or groups, because of particular characteristics, are left out or being treated in a discriminatory manner, whether in law or in practice, either directly or indirectly.

Persistent gender inequalities are particularly evident in the context of energy poverty, often reflecting differences in income levels but also different personal needs, interests, choices and contextual factors. Some people are affected by **multiple discriminations**, when their disadvantages are intersectionally compounded across several inequality axes (Council of Europe, 2021).

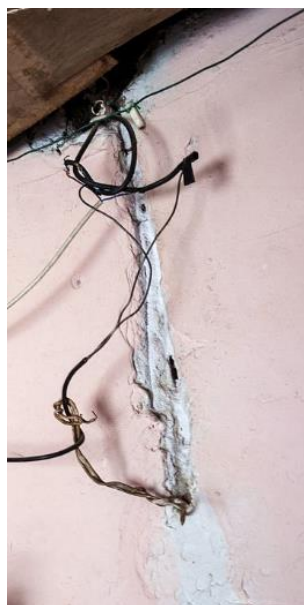
### Recognised grounds for non-discrimination in human rights law include:

- ethnicity • sex • language • religion • political or other opinion • national or social origin • property
- birth or other status, such as disability, age, marital and family status • sexual orientation and gender identity • health

### It also considers:

- place of residence • economic and social situation, including a person's tenure status as tenant, homeowner or informal dweller – aspects of particular relevance to energy access

### Energy and socio-economic discrimination: Roma in Central and Eastern Europe



Specific groups or communities in Europe remain in highly precarious conditions in terms of access to energy services. The Roma stand out as their situation of poor access to basic services, including energy, often attracts attention in international human rights monitoring (OHCHR 2016; OHCHR 2020; European Social Committee 2012).

Across Europe, Roma communities have lived for decades as a severely deprived and excluded minority, often in areas exposed to environmental pollution and with poor access to water, sewerage and energy. In segregated rural settlements, poor Roma families often struggle to meet their basic energy needs and resort to foraging firewood, burning low-quality solid fuels or relying on informal connections to the electricity grid.

Such conditions reflect structural inequalities and discrimination in access to energy. The inability to achieve basic energy capabilities, such as doing homework or operating a computer, are immediate disadvantages with long-term impacts. Energy-deprived Roma have lower access to education and information, which represents an obstacle to exiting the cycle of extreme poverty.

### Information as a tool against discrimination

Collecting disaggregated data on discriminatory access and on people's energy use, income, quality of housing, etc. is vital to combatting discrimination under a rights-based approach. Data support better understanding of unique needs or challenges faced by certain groups, such as women and single mothers of diverse ethnic minorities; pensioners with low incomes living in rural areas; families caring for children with disabilities; or young adults. Importantly, data enables development of tailored action whereas generic policy instruments may exacerbate the intersectionality of discrimination.

## Affordability

Affordability underpins adequacy of energy services: people's ability to access a minimum level of access can only be exercised if both energy supplies and efficient appliances are universally affordable. Thus, ensuring that minimum access to energy services is affordable – even to vulnerable people – is another critical aspect of a rights perspective.

**Affordability must be understood as relative to:**

- **a person's means** – what is affordable to one person may not be to another.
- **a household's ability to afford other essential needs** after paying energy bills – i.e. energy costs should not lead to foregoing other essential expenditures.

According to the UN Regulatory Indicators for Sustainable Energy (RISE) attached to SDG 7, affordability of energy services is linked to overall household income. RISE suggests that in warm climates, a 5% share of budget is acceptable, while a maximum 10% is more appropriate in colder climates, where the need for heating drives up consumption. In the context of climate change, cooling may be just as critical to people's health and well-being.

### Rising temperatures will drive up demand for cooling

After visiting Spain, the **UN Rapporteur on Human Rights and Extreme Poverty** noted in 2020 that climate change will dramatically impact people in poverty. The Rapporteur therefore called on Spain to ensure that social protection policies support those already in poverty and those likely to be pushed into it by global warming. As recent heat waves already cause deaths, poor families without access to electricity or air conditioning will be at risk.

HRC, Report of the Rapporteur on Extreme Poverty: Mission to Spain (2020) A/HRC/44/40/ADD.2

**Diverse indicators for the affordability of minimum energy services have been devised**, such as the 10%-indicator, the 2M indicator, or the Low-Income / High Energy Costs (LIHC) indicator. Whichever is used, the aim is to assess whether expenditure for basic energy needs interferes with other essential household spending. This typically requires a wider understanding of household budgeting.

Should costs for basic energy needs be *beyond* the means of some segments of society, regardless of underlying causes, a rights-based perspective implies a need or duty of government or regulators to introduce measures to improve affordability. This is true in both public and private energy markets. Actions may include regulating prices and tariffs for energy services, financial or practical assistance to reduce energy bills (e.g. energy efficiency measures) or various forms of targeted support through social welfare or benefits systems.

### Closing the income gap: a decent living wage

Low income is a contributing factor to people's inability to afford necessary energy services. Here, governments and institutions can act in several ways:

- Ensure minimum wages support decent living standards, including the ability to pay for adequate access to energy services.
- Create better income generation opportunities, by helping people to access suitable workplaces or built up their own (small) businesses.
- Improve social security schemes, with emphasis on (targeted) income supplements or (as necessary) debt waiver or management programmes.
- Implement a 'universal basic income' to ensure that people have sufficient means to acquire their basic needs.

## Principles for putting the right to energy into practice

A rights-based approach requires that policies and strategies underpinning energy transitions are designed to take account of – and even prioritise – vulnerable and energy-poor persons. The right to energy must be based on principles such as **energy democracy** and **public control** over energy resources and supply systems. It is grounded in **rights to public participation in decision-making, access to information** and **access to justice**. This requires robust governance systems and **transparency**: people must be able to contribute, in meaningful way, to energy decision-making, with the help of their elected representatives or bodies existing to protect their rights, like Ombudspersons or regulators.

### Energy democracy for people-centred policy

The existence of a right to energy on paper will fall short of ensuring that people can exert it. Ensuring direct participation of citizens in energy decision-making is the underlying principle of energy democracy, as it gives people affected a voice in determining ‘how’ the right to energy will be respected, protected and fulfilled. This is particularly important as transitions to carbon-neutral societies unfold.

While a principle of universality underpins the right to energy, determining specific needs and rights across EU populations should be pursued through **public engagement and deliberation**, based on local and socio-economic contexts. Definitions of rights, policies to implement them, and mechanisms to protect people must reflect people’s real needs, and the lived experiences of capability deprivation by diverse individuals and groups. Decision-making should be *with and for* people, not *about* people.

Tools to deliver energy democracy can be empowering citizen’s energy assemblies; shifting ownership and control over energy systems to the public, including through decentralisation or re-municipalisation (Kishimoto et al 2017); or establishing strong citizen representative bodies, even within energy companies or housing agencies; or supporting inclusive citizens’ energy communities or energy commons (Caramizaru and Uihlein 2020).



## Consumer protection and advocacy, including to address infringement of rights

Activists, Ombudspersons, consumer groups and the academic community have vital and complementary roles to play in raising awareness and building political momentum:

- **Consumer support and advocacy groups** can engage with affected people to boost their knowledge about energy and the right to it, thereby gaining their trust and building their confidence to take active roles in energy democracy. As representatives, they can also amplify voices and raise awareness.
- **Ombudspersons**, by handling individual complaints and aggregating them, are essential partners in implementing and monitoring of user rights.

Timing is important in consumer protection and advocacy. Ideally, activists and ombuds-persons will engage with people early and often to inform them of their rights and act in the case of violations. Engaging with policy makers in pre-election debates can help shape their platforms; staying engaged post-election helps ensure they keep their commitments.

Coalition-building across organisations and constituencies concerned about (energy) poverty, a just (energy) transition and housing crises can foster inclusive and representative rights-based activism. It also acknowledges that, in the lived experience, rights – to housing, energy, water, a clean environment, health, etc. – are often interdependent.

### The Alliance Against Energy Poverty



The Alliance against Energy Poverty (*Aliança contra la Pobresa Energètica* or APE) was launched in Barcelona in February 2014 under the premise of fighting for **access to basic supplies** (i.e. energy and water) as a **fundamental human right**. They build a critical mass for advocacy through coalition-building amongst social and

environmental organizations concerned about energy poverty, housing and evictions. Their mobilization led to adoption of the rights-based Catalan Law 24/2015 on the 'housing and energy poverty emergency' which forbids eviction and disconnection from basic supplies of households defined as vulnerable by local social services.

A key activity of the Alliance includes supporting "collective advisory assemblies" to which people come to share concerns and grievances in a safe and trusted space, but also to gain knowledge and be empowered. Through the meetings knowledge accumulates as new cases arrive and practical solutions are collectively devised. The assemblies have an explicit gender dimension, as they are largely attended by women reporting unpaid bills and utility debt, or at risk of disconnection and/or eviction. The assemblies foster empowerment, access to information, mutual knowledge sharing and support, participation, and dissemination and advocacy of the 'right' to services.



## **Governance and delegation of responsibilities**

States and regulators play the largest role in setting up policy and regulatory frameworks that uphold the right to energy – including determining which other entities must be held accountable, and in what ways. In this regulatory and supervisory role, governments need to ensure coherence across different levels of governance of the energy sector, including private actors (e.g. utilities, energy efficiency sector, building sector) from national to local level, to fiscal and financial stakeholders, and among various public sectors (e.g. housing sector, social welfare sector, health sector).

Critically, under a rights-based approach, governments must commit themselves to inclusive, participatory processes to determine specific details (e.g. minimum energy levels) and develop effective and robust action plans towards tackling energy poverty. Plans must clearly define timelines and different actors' responsibilities, as well as identify and mobilise relevant available resources. States must take on responsibility to ensure that such plans are regularly (re)assessed, updated and monitored. As lower-level government is expected to play a key role in implementing the right to energy, capacity-building may be necessary to empower municipalities, counties and regions.

## **Transparency and accountability in public services and the private sector**

The right to access information is core to the right to energy. People and representatives need easy access to information, prices, contracts, support, and ways of attaining access to justice.

Transparency and accountability on the part of stakeholders is key in this context. To limit systemic abuse and discrimination, data need to be made public, including in terms of prevalence of disconnections, arrears, or payment difficulties. Mechanisms for setting energy prices and negotiations related to sector regulation must be transparent and accessible to all. Essential elements of energy policies should be published in the form of factsheets (as is already the case in EU trade deals).

Energy providers have active responsibilities to ensure access to information and transparency are secured and have direct responsibilities to respect and promote human rights under the UN Guiding Principles on Business and Human Rights. This is a key international framework for setting out relevant responsibilities, and ensuring remedies for rights abuse are in place, including through suitable grievance mechanisms (OHCHR 2011). Accountability can take different forms but must ensure independent oversight.

## Looking ahead: why engage on the right to energy?

### A right to energy perspective

- foregrounds **each person's needs to basic energy**
- **sees all individuals** as ultimate unit of concern of energy poverty policy: it aims to identify and eliminate **injustice, disadvantage and inequality**
- **emphasizes duties, of public authorities and others, and demands rights-based governance of energy poverty**
- Citizens and their representatives **can call upon the right to energy** to demand minimum access to energy services, affordability, protection against disconnection, equality or challenge harmful use of pre-payment meters
- **can empower** and foster **energy democracy**: it entails rights to **participation, information** and to access to **justice, and accountability**.
- can **engage societies, citizens and stakeholders** in a discussion on how best to tackle energy poverty. The right is not only **a rallying call**, but can be a **legal concept**, or a **moral imperative**: human rights belong to everyone, and they lie at the **foundation of deciding how society meets basic needs of all**.

## References

- Arenas Pinilla, E., Barrella, R., Cosín López-Medel, A., Linares Hurtado, J.I., Romero Mora, J.C., Foronda Diez, C., Díez Alzueta, L. (2020) Desarrollo de un modelo de cálculo de gasto eléctrico teórico en los hogares españoles de ECODES-Fundación Ecología y Desarrollo / Cátedra de Energía y Pobreza, Universidad Pontificia de Comillas
- Bradbrook A. and Gardam J. 'Placing Access to Energy Services with a Human Rights Framework'(2006) 28 Human Rights Quarterly 389.
- Council of Europe – Intersectionality and multiple discrimination. [www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination](http://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination)
- Day R, Walker G. and Simcock N. 'Conceptualising Energy Use and Energy Poverty using a Capabilities Framework' (2016) 93 Energy Policy 255-264.
- European Committee of Social Rights, *International Federation for Human Rights (FIDH) v. Ireland* (12 May 2017) Decision on Merits, Complaint No. 110/2014.
- European Committee of Social Rights, *Médecins du Monde – International v. France* (11 September 2012), Decision on Merits, Complaint No. 67/2011.
- Frigo G., Baumann M. and Hillerbrand R., 'Energy and the Good Life: Capabilities as the Foundation of the Right to Access Energy Services' (2021) 22 Journal of Human Rights and Development 218.
- Guyet. R., 'Précarité énergétique et justice énergétique: un droit À l'énergie est-il pensable?' (2015) 378 L'Europe en Formation 126-145
- Hesselman M., 'Energy poverty and household access to electricity services in international, regional and national law' in: M. Roggenkamp et al (eds), Edward Elgar Encyclopedia of Energy and Environmental Law, Cheltenham: Edward Elgar Publishing (2021)
- Hesselman M., 'Right to Energy', in Hofbauer, Philipp, Binder and Nowak (eds) *Elgar Encyclopedia on Human Rights*, Cheltenham: Edward Elgar Publishing (2021) *in press*.
- Hesselman M., Varo A., Guyet R., Thomson H. 'Energy Poverty in the COVID-Era: Mapping Global Responses to the Pandemic in Light of Momentum on the Universal Right to Energy' (2021) 18 *Energy Research and Social Sciences*. <https://doi.org/10.1016/j.erss.2021.10224>
- Hesselman. M. Varo A. and Laakso S., 'The Right to Energy in the European Union' (ENGAGER Policy Brief No. 2, June 2019) via: <http://www.engager-energy.net/policy-brief-on-the-right-to-energy/>.
- Human Rights Council, Report of the UN Special Rapporteur on Extreme Poverty and Human Rights: Mission to Spain (2020) A/HRC/44/40/ADD.2
- Human Rights Council, Report of the UN Special Rapporteur on Extreme Poverty and Human Rights: Just Transition (7 October 2020) UN Doc. A/75/181/Rev.1.
- Kishimoto S., Petitjean O. & Steinfort L. (eds), Reclaiming public services. how cities and citizens are turning back privatization. Amsterdam: Transnational Institute (2017) via: <https://www.tni.org/en/publication/reclaiming-public-services>
- Löfqvist L., 'Is There a Universal Human Right to Electricity?' (2020) 24 The International Journal of Human Rights 711 .
- Office of the High Commissioner for Human Rights (UN OHCHR), Joint communication of UN Special Procedures to Spain (18 December 2020) ESP 6/2020.
- Office of the High Commissioner for Human Rights (UN OHCHR), Joint communication of UN Special Procedures to Serbia (16 November 2016) SRB 3/2016.
- Office of the High Commission for Human Rights (UN OHCHR), Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (UN: Geneva 2011) HR/PUB/11/04.
- Ormandy, D and Ezratty V, Health and Thermal Comfort: From WHO Guidance to Housing Strategies (2012) Energy Policy 49.
- Shove E. and Walker G. 'What is energy for? Social practice and energy demand' (2014) 31 Theory, Culture and Society 5, 41-58.

Simcock N., Thomson T., Petrova S. and Bouzarovski S. (eds) Energy poverty and vulnerability: a global perspective, Abingdon: Routledge (2018).

Szulecki K. and Overland I., Energy democracy as a process, an outcome and a goal: A conceptual review' (2020) 69 Energy Research and Social Science <https://doi.org/10.1016/j.erss.2020.101768>.

Tirado Herrero S., and Hesselman M. (eds) (2020) 'New Narratives and Actors for Citizen-led Energy Poverty Dialogues' (ENGAGER Policy Brief No. 4, September 2020) via: <http://www.engager-energy.net/policy-briefs/>

Tully S., 'Access to electricity as a human right' (2006) 24 Netherlands Quarterly of Human Rights 557-587.

Tully S. 'The human right to access clean energy' (2008) 3 Journal of Green Building 140-148.

Walker G., 'The right to energy: meaning, specification and the politics of definition' (2015) 378 L'Europe en Formation 26-38.

Walker G, Simcock N, Day R, 'Necessary energy uses and a minimum standard of living in the United Kingdom: Energy justice or escalating expectations?' (2016) 18 Energy Research and Social Science 129-138

WHO, 'Health Impact of Low Indoor Temperatures' (WHO Regional Office for Europe, 1987)

WHO, 'Housing, Energy and Thermal Comfort: A Review of 10 Countries Within the WHO European Region' (WHO Regional Office for Europe, 2007)

WHO Regional Office for Europe, 'Guidelines for Indoor Air Quality: Dampness and Mould' (WHO, 2009)

WHO, 'Indoor Air Quality Guidelines: Household Fuel Combustion' (World Health Organization, 2014)