

The human rights framework and energy poverty: a case study of Zambia

by

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Declaration of originality

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Declaration

1. I understand what plagiarism entails and I am aware of the University's policy in this regard.
2. I declare that this dissertation is my original work. Where other people's work has been used (either from a printed source, the internet or any other source), this has been properly acknowledged and referenced in accordance with departmental requirements.
3. I have not used work previously produced by another student or any other student to hand in as my own.
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Chapter 1: Introduction

1.1 Background of study

The predominant source of energy in Zambia is wood fuel.¹ About 70 percent of Zambians rely on this traditional fuel.² Modern energy is only available to approximately 39.8 percent of the population.³ Of this percentage, 37.7 percent get their electricity from the national grid and the remaining 2.1 percent rely on micro hydro dams and solar home solutions.⁴

The low access rate is further compounded by insecure supply on account of generation deficit.⁵ In 2019, Zambia's electricity deficit stood at 425 Mw.⁶

Increase in demand for electricity due to economic growth and a rising population have been said to be at the root of this deficit.⁷ Poor rainfall patterns in most parts of the country has also contributed significantly to the deficit as over 80 percent of Zambia's electricity is generated from hydro sources. The remainder is a mix of coal (10.06 percent), diesel (2.80 percent) and renewable sources accounting for just over 8 percent.⁸

The increasing power deficit has led the main power supplier – Zambia Electricity Supply Corporation Limited (ZESCO) – to undertake load management programmes by withdrawing power supply from consumers for a number of hours so as to lessen the load on the national grid.⁹ This invariably results in more households falling back on a readily available source of energy, wood fuel.¹⁰ This is more so that

¹Government of the Republic of Zambia 'National energy policy' (2019) 8 <https://www.moe.gov.zm/> (accessed on 20 May 2020).

² As above.

³ World Bank Access to electricity (% of population)- Zambia <https://data.worldbank.org/indicator/EG.ELC.ACCS.ZS> (accessed on 10 May 2020).

⁴L Luzi et al. 'Zambia-beyond connections: energy access diagnostic report based on the multi-tier framework' (2019) ix <https://openknowledge.worldbank.org> (accessed on 27 December 2020).

⁵ C Mukumba & B Mukuka 'The energy crisis and its impact on the economy' (2016) 3 https://www.cuts-lusaka.org/pdf/Briefing_Paper-The_energy_crisis_and_its_impact_on_the_economy.pdf (accessed on 6 May 2020).

⁶ Energy Regulation Board 'Energy Sector Report' (2019) 38.

⁷ Makumba & Mukuka (n 5 above) 3.

⁸ Energy Regulation Board (n 6 above) 37.

⁹Ministry of Energy 'Ministerial statement on electricity situation in Zambia by the Hon. Minister of Energy Mr Nkhuwa' 8 September 2019 <https://www.parliament.gov.zm> (accessed on 10 May 2020).

¹⁰ J Kapembwa 'Zambia's power crisis worsens' 25 October 2019 <https://southern-timesafrica.com/site/news/zambias-power-crisis-worsens> (accessed on 20 May 2020).

there has been a very slow uptake of renewable energy sources and technologies amongst Zambians.¹¹

Affordability of electricity is yet another factor that has contributed to lack of access to electricity for a good proportion of Zambians. In the past two years electricity tariffs have gone up by more than 300 percent.¹² In a country where more than 60 percent of the population have constrained resources, such a hike is bound to prevent a good number of vulnerable households from accessing electricity and opting for a cheaper source of energy, wood fuel.¹³

Wood fuel, however, is a toxic and wasteful source of energy.¹⁴ It has detrimental effects on the health of users and the environment.¹⁵ Its low combustion levels results in high emissions of greenhouse gases and falls short of satisfying the different energy needs of its users.¹⁶ This state of affairs is undesirable because modern energy is a necessity for the decent wellbeing of human beings.¹⁷

It is for this reason that the Zambian government has sought universal access to modern energy through the Seventh National Development Plan 2017-2021¹⁸ — a policy statement formulated in line with Sustainable Development Goals (SDGs).¹⁹ The plan expresses intentions of adopting renewable and alternative sources of energy as well as advancing access to electricity in unserved areas.²⁰

Although the plan has been running for four years, there has not been significant change in the energy sector. World Bank statistics indicate that the percentage of the Zambian population without access to electricity has been on the

¹¹ P Kachapulula-Mudenda et al. 'Review of renewable energy technologies in zambian households: capacities and barriers affecting successful deployment.' (2018) 1 <https://www.mdpi.com> (accessed on 2 January 2021).

¹² CUTs International 'Targeting residential electricity subsidies in Zambia' (2020) 5.

¹³ As above, 2.

¹⁴ K Smith 'Healthy impacts of household fuelwood use in developing countries' (2006) 57 *Unasylva* 42.

¹⁵ Y Wei & H Liao *Energy economics: understanding and interpreting energy poverty in china* (2019) 7 <https://www.web.b.ebscohost.com.uplib.idm.oclc.org> (accessed on 18 May 2020).

¹⁶ As above, 7.

¹⁷ L Guruswamy & N Doman 'Energy poverty' (2011) 36 *Annual Reviews Environment Resource* 141.

¹⁸ Government of the Republic of Zambia 'Seventh National Development Plan 2017- 2021' (2017) 73 <https://www.mndp.gov.zm> (accessed on 25 April 2020) (2017-2021 Plan).

¹⁹ UN General Assembly 'Transforming our world: the 2030 Agenda for Sustainable Development' (2015) A/RES/70/1 <https://www.refworld.org/docid/57b6e3e44.html> (accessed 14 May 2020) (Agenda 2030).

²⁰ 2017-2021 Plan (n 18 above) 74.

rise.²¹ Apart from reducing the electricity deficit by 88 Mw through the launch of two solar plants at Bangweulu and Ngonye,²² more than 50 percent of Zambian households make do without electricity access.

1.2 Problem statement and research objectives

This study seeks to explore complimentary solutions to energy poverty from a human rights perspective. Using ‘Access to electricity’ which is inferred in a series of international human rights norms to which Zambia is a party, this study will interrogate state obligations arising under respective human rights and assess how access to electricity has transcended the domain of policy commitments to that of legal entitlement.

The international human right norms that the study mainly draws from are the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples’ Rights (ACHPR).

While Zambia has ratified these three instruments, it has only domesticated CEDAW.²³ This however does not excuse Zambia from its obligations arising from the other two instruments. Sustainable development is one of the anchoring principles of the Constitution of Zambia.²⁴ Therefore, socio-economic rights recognised in the three instruments are inferred in the Constitution of Zambia and by extension create a legal claim to ‘access to electricity’ much like the three instruments.

This study also assesses how Civil Society Organisations (CSOs) can wield such legal entitlements to spur the Zambian government towards concerted action against energy poverty.

Appeal to the human rights framework is premised on the proven notion that human rights are a worthy tool in transforming society and that they carry with them a moral force which has helped turn the tide against a series of inequalities.²⁵ Energy

²¹ World Bank (n 3 above).

²² Energy Regulation Board (n 6 above) 3.

²³ Office of the High Commissioner for Human Rights *ratification status for Zambia* https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=194&Lang=EN (accessed on 13 June 2020).

²⁴ 1991 constitution of Zambia as amended by Act 2 of 2016 art 8(f).

²⁵ M Ignatieff *Human rights as politics and idolatory* (2001) 6.

poverty perpetuates inequality²⁶ and thus the human rights framework is an appropriate mechanism to look to.²⁷ Its linkage with sustainable development made evident in the SDGs also compounds the appropriateness of the human rights framework to lend a voice to overcoming one of the key challenges to development in Zambia.²⁸

1.3 Research questions

This research seeks to answer one main question:

How can access to electricity, as incorporated in international human rights norms, be employed as an additional solution to energy poverty in Zambia?

Accompanying the main question are the following sub-questions-

1. How does energy poverty manifest itself in Zambia?
2. How has access to electricity been incorporated in CEDAW, ICESCR and ACHPR?
3. What specific state obligations arise under CEDAW, ICESCR and ACHPR following the incorporation of access to electricity?
4. To what extent can these state obligations be used to push for more governmental effort against energy poverty?

1.4 Preliminary literature review

This literature review highlights the existing body of knowledge on energy poverty and access to electricity. For purposes of coherence, respective works on energy poverty and access to electricity will be laid out separately. After laying these out, the point of departure of this proposed study from previous works will be indicated as well as how the proposed study would add to the existing body of knowledge on energy poverty and access to electricity.

²⁶ Guruswamy (n 17 above) 143.

²⁷ Ignatieff (n 25 above) 7.

²⁸ Agenda 2030 (n 19 above) preamble.

1.4.1 Energy poverty

The main source of energy poverty in developing countries is lack of access to electricity.²⁹ This forces people to rely on solid fuels which have been proved to be inefficient in meeting energy needs and are disproportionately harmful to the health of women and children.³⁰ Some of the consequences of using inefficient energy sources are extensive and permanent. The internal air pollution that users of solid fuels are exposed to as well as the negative implication it has on the environment are glaring examples.³¹

The levels of energy poverty are worse in rural areas where for a long time, biomass has been the predominant source of energy.³² This situation has been worsened by the growing population which has led to high demand on limited biomass resources.³³ The lack of access to clean energy results in social inequalities such as endemic poverty, limited possibilities for improving livelihood and rural-urban migration.³⁴

Energy poverty has excluded a significant portion of developing countries from taking advantage of improved technologies in their production processes.³⁵ Bearing in mind the central role that electricity has played in civilization, there is a desperate need to solve energy poverty.

There are complexities involved in addressing energy poverty. High costs of electricity generation imply high pricing for the commodity and therefore even when such a commodity is available to low-income populations a significant portion will be unable to pay for it.³⁶ To remedy this, a call has been made for 'welfare-oriented development doctrines' focused on supplying the needed commodity to low-income populations rather than on recouping investment costs.³⁷

²⁹ Wei & Liao (n 15 above) 26.

³⁰ Wei & Liao (n 15 above) 28.

³¹ Wei & Liao (n 15 above) 7.

³² K Kaygusuz 'Energy services and energy poverty for sustainable rural development' (2011) 15 *Renewable and Sustainable Energy Reviews* 937 <https://doi.org/10.1016/j.rser.2010.11.003> (accessed on 10 May 2020).

³³ As above, 937.

³⁴ Kaygusuz (n 32 above) 938.

³⁵ Guruswamy & Doman (n 17 above) 142.

³⁶ Kaygusuz (n 32 above) 940.

³⁷ Kaygusuz (n 32 above) 942.

Further, 'small-scale renewable energy technologies' have been offered as a viable solution to the complex problem of energy poverty.³⁸ Small-scale renewable energy technologies include solar systems, wind turbines, gasifiers, bio digesters, micro-hydro dams and improved cookstoves. They are considered to serve two purposes, providing 'green power' to cater for the energy needs of the users while safeguarding the well-being of the environment.³⁹

Renewable energy technologies have been lauded as the most practical and cost-effective way of delivering clean energy to the energy poor.⁴⁰ This is premised on the fact that there has been tremendous improvements in the performance of these energy sources and as they mostly operate as mini-grids or personal home systems they can be tailor-made to meet the needs of the end users.⁴¹ Over time, renewable energy technologies have also become affordable and are deemed as better options to traditional grid expansions which prove costly in far flung areas.

1.4.2 Access to electricity

Electricity plays an essential role in development as it enables people to use improved technology which in turn improves their production and quality of goods and services.⁴² This leads to increased income generation and a better livelihood.

It is for this very reason that most developing countries have prioritised electrification in keeping with inter-governmental policies enumerated in SDGs and the African Union Agenda 2063.⁴³ These international policies emphasise access to modern energy services as a driving force of sustainable development. There is undeniable consensus that access to modern energy services is now a prerequisite to overcoming poverty.⁴⁴ Not only is lack of electricity a product of poverty, it is also a

³⁸ B Sovacool et.al *Energy access, poverty and development: the governance of small-scale renewable energy in developing Asia* (2012) 1.

³⁹ A Chambers *Renewable energy in a non-technical language* (2004) 1.

⁴⁰ D Kammen 'Defeating Energy poverty: invest in scalable solutions for the poor' in W. Al-Delaimy et.al(eds) *Health of people, health of planet and our responsibility climate change, air pollution and health* (2020) 339.

⁴¹ As above, 345.

⁴² P Lucas et.al 'Towards universal electricity access in Sub-Saharan Africa: A qualitative analysis of technology and investment requirements: policy report' (2017)12.

⁴³ As above, 14.

⁴⁴ S Karekezi 'Expanding access to cleaner and modern energy options for the rural poor in East Africa: priority technical and policy options for East Africa's CSOs' (2012) 8 <https://www.bibalex.org> (accessed on 9 April 2020).

facilitator of poverty.⁴⁵ Lack of electricity denies people an opportunity of increasing their income, enhancing their skills and improving services such as health and education delivery.⁴⁶

If access to electricity is to be actualized, there is need to go beyond development plans that are based on 'cost recovery and enhancing operational efficiency'.⁴⁷ There is a call for new ways of confronting lack of access to electricity which would provide tangible improvements in the livelihood of the many with limited or no access to electricity.⁴⁸

One new way of thinking is what the human rights perspective brings to the fore. Bradbrook and Gardam writing generally on access to energy services are of the view that it would be a valuable strategy to examine access to energy services through the human rights lens as the ills flowing from lack of access have already been tackled in the international human rights framework.⁴⁹

They highlight how most of the rights recognised in international human rights norms cannot be realised without access to energy services. That this makes access to energy services an implied imperative in the realisation of such rights.⁵⁰

Bradbrook and Gardam are of the opinion that decisions of the South African Constitutional Court and the African Commission which have inferred access to electricity in the right to housing and the right to health respectively, validate the central role that access to electricity plays in the fulfilment of socio-economic rights.⁵¹ The two scholars go on to argue that since essential rights such as access to water depend on access to electricity, the right to electricity has stronger justification.⁵² Further that the human rights framework has a solution to lack of access to energy

⁴⁵ As above, 8.

⁴⁶ Karekezi (n 44 above) 10.

⁴⁷ Y Sokona et.al 'widening energy access in Africa: towards energy transition' (2012) 47 *Energy Policy* 4.

⁴⁸ As above, 8.

⁴⁹ A Bradbrook & J Gardam 'Placing access to energy services with a human rights framework' (2006) 28 *Human Rights Quarterly* 392.

⁵⁰ Bradbrook & Gardam (n 49 above) 405.

⁵¹ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 1 SA 46 (CC) para 37 & *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah vs. Zaire* (2000) AHRLR 74 para 47.

⁵² Bradbrook & Gardam (n 49 above) 408.

services as it comes with a well-developed mechanism which can be employed to effectively address the lack of access to energy services.⁵³

Tully has written more specifically on access to electricity. On his part access to electricity is expressly and impliedly incorporated in the human rights framework.⁵⁴ He notes the express reference to electricity under CEDAW and the effect that lack of access to electricity has on the realisation of socio-economic rights under the ICESCR. He suggests a right to access electricity and goes further to articulate the scope of such a right.⁵⁵ The right to access electricity in his view entitles all people to have 'reliable, adequate and affordable electricity supply of sufficient quality.'⁵⁶ It also connotes universal accessibility to electrical facilities without discrimination. He reasons that the right should be framed as right to access electricity rather than right to electricity because access speaks to equal opportunity for everyone and calls for the removal of impediments for marginalized populations.

Tully offers that such a framing of the right will empower deprived communities to demand for access to electricity and hold their governments accountable. He observes that regardless of financial incapacity, governments are expected to meet the 'basic human needs' of individuals falling under their jurisdiction.⁵⁷ Another advantage he notes is the gender mainstreaming aspect.⁵⁸ He observes that viewing energy access through the human rights framework would prove significant for women as they are disproportionately affected by lack of electricity.

In pointing out the benefits of deeming access to electricity as a right, Tully has not shied away from noting the arguments against such a move. Some of the weaknesses he highlights are the lack of resources and challenges in picking up non-compliance of state parties on the part of treaty bodies.⁵⁹

Notwithstanding the limitations, Tully is optimistic that the human rights framework offers solid foundation for attainment of universal access to electricity. He

⁵³ Bradbrook & Gardam (n 49 above) 413.

⁵⁴ S Tully 'The human right to access electricity' (2006) 19 *Electricity Journal* 30.

⁵⁵ As above, 32.

⁵⁶ Tully (n 54 above) 32.

⁵⁷ Tully (n 54 above) 32.

⁵⁸ S Tully 'The contribution of human rights to universal energy access' (2006) 4 *Northwestern Journal of International Human Rights* 540.

⁵⁹ Tully (n 58 above) 547.

proposes a series of measures so as to enhance the effectiveness of the human rights framework. He calls on treaty bodies to not only generate general comments on the right to electricity, but to encourage international dialogue on the issue.⁶⁰ He also encourages CSOs to push for access to electricity in national legislation as well as international law.⁶¹

Other studies have looked outside CEDAW and ICESCR in locating access to electricity in the human rights framework. One such scholar is Karlsson who links access to energy with the right to development.⁶² He calls for a shift from viewing energy access from the point of view of technology and engineering to that of human rights.⁶³ That this approach will highlight the link between access to energy, poverty and gender inequality.

Ozoemena is another author who has tied access to electricity to the right to development. She states that lack of access to electricity adversely affects equality and dignity, therefore there ought to be 'an urgent human rights intervention anchored in a development model that is specific to the African continent.'⁶⁴

Lofquist appears to be a lone wolf among these scholars as he questions the need to push for the recognition of access to electricity as a right. While he agrees with the other scholars on the importance of access to electricity in the realisation of several socio-economic rights, he is of the view that electricity is not a universal basic need. It is not necessary for human survival and cannot be considered as a universal imperative for all human beings.⁶⁵

He argues that considering access to electricity as a right dilutes the essence of human rights as electricity does not always offer solutions to human needs. It is just 'a means to an end.'⁶⁶ He notes that to accept access to electricity as a right would lead to a clash with environmental sustainability. This is because every person will have the liberty to generate electricity even in circumstances which may not be friendly

⁶⁰ Tully (n 58 above) 548.

⁶¹ Tully (n 58 above) 549.

⁶² G Karlsson 'A human rights approach to energy, poverty and gender inequality' in C Holder & D Reidy (eds) *Human rights: the hard questions* (2013) 231.

⁶³ As above, 232.

⁶⁴ R Ozoemena 'Right to development shining the light on Africa' (2017) 47 *Africa Insight* 30.

⁶⁵ L Lofquist 'Is there a universal human right to electricity' (2019) *International Journal of Human Rights* 5 <https://www.tandfonline-com.uplib.idm.oclc.org> (accessed 21 April 2020).

⁶⁶ Lofquist (n 65 above) 10.

to the environment.⁶⁷ This view is in direct contrast with Karlsson's view that a right to energy access would positively affect climate change responses and environmental sustainability.⁶⁸ Karlsson reasons that with an existing right to energy, policy makers would be conscious of broader human rights aspects such as environmental sustainability. Tully is also in agreement with Karlsson on this issue.⁶⁹

From the exposition above, scholarly works on energy poverty have predominantly been done from the perspective of sustainable development programmes. This study brings in a new perspective of seeking solutions from a human rights framework. It specifically addresses energy poverty through access to electricity as incorporated in the human rights framework. In doing this, it steps away from the scholarly debate on access to electricity being a human right. It instead argues that it does not matter what label is given to access to electricity, the very fact that it has been incorporated in a series of human rights under the international human rights framework implies that the state obligations arising under such instruments apply to access to electricity as well. A departure from the debate on access to electricity being a right averts the technicalities of what would constitute the content and scope of such a right. More so that there is no human rights instrument that has proclaimed access to electricity as a right and any further discussion on the subject would be anchored on conjecture. This study focuses on already enumerated rights and their defined imperatives.

The study further brings in a pragmatic aspect to the discourse on access to electricity by specifically concentrating on Zambia and how state obligations arising under the three instruments can be used to advocate for governmental action on energy poverty. Put differently, this study assesses the practical viability of Tully's proposed measure of using the human rights mechanism to advance access to electricity in domestic settings.

With that point of departure, this study poses to be an invaluable addition to the body of knowledge on energy poverty and access to electricity. While it is undertaken

⁶⁷ Lofquist (n 65 above) 11.

⁶⁸ Karlsson (n 62 above) 241.

⁶⁹ Tully (n 58 above) 546.

from the perspective of Zambia, its findings are relevant and applicable in a good number of African countries.

1.5 Proposed theoretical approach and methodology

The study adopts a multidisciplinary approach by drawing from three different disciplines. Economics, development studies and law. The premise of this study is that while most of the solutions to energy poverty are founded in economics and development studies, an additional solution lies in the international human rights framework.

In terms of methodology, the study is desk-based. It critically analyses international human rights norms, cases and scholarly works touching on the topic of research.

1.6 Structure of work

The dissertation has five distinct chapters, with chapters one and five serving as introduction and conclusion, respectively.

Chapter two descriptively tackles the notion of energy poverty and how it is founded in inequality. It specifically highlights the different ways it manifests in Zambia.

Chapter three analyses the concept of access to electricity and how it has been incorporated in CEDAW, ICESCR and ACHPR.

Chapter four analyses the state obligations flowing from such incorporation and how they can practically be employed to overcome energy poverty in Zambia. This chapter also assesses how Zambia lives up to her international obligations.

Chapter 2: Energy poverty in Zambia

2.1 Introduction

This chapter discusses energy poverty from Zambia's perspective. It starts off by looking generally at the complex nature of energy poverty and how it perpetuates inequality. The chapter then focuses on Zambia and how energy poverty is driven by a series of factors. Where necessary, the discussion points out the disparities between urban and rural parts of the country so as to bring out an accurate picture of energy poverty in Zambia. The chapter closes off with an analysis of some of the measures that have been put in place to curb energy poverty in Zambia.

2.2 Energy poverty and its complexities

While it is seemingly easy to understand the import of the term 'energy poverty'— a standard definition has proved elusive. This is because there are many facets to it.⁷⁰ From the perspective of developed countries, energy poverty is deemed as consumers' inability to pay for their energy requirements.⁷¹ A substantial number of households have their energy supply cut off due to unpaid bills. To them, energy poverty is steeped in affordability.⁷²

In developing countries on the other hand, energy poverty generally involves lack of access to electricity due to limited infrastructure in the energy sector.⁷³ Many people are not connected to national power grids and are left to fend for their energy needs. Where the infrastructure has been availed, issues of unreliable supply and generation deficits take centre stage.⁷⁴ The corollary then becomes, reliance on available inefficient fuels such as biomass. In these parts of the world energy poverty is steeped in unavailability of clean energy and unreliable supply of the commodity.

The different ways in which energy poverty manifests itself in different parts of the world speaks to its complexity.⁷⁵ Any standard definition would have to capture all the different features. A definition that comes close to doing this is the one offered by

⁷⁰ N Simcock et al. 'Introduction' in N Simcock et.al (eds) *Energy poverty and vulnerability: a global perspective* (2018) 1.

⁷¹ R Filcak & L Zivcic 'Energy poverty and multi-dimensional perspectives of social inequalities and policy challenges' (2017) 26 *International Issues and Slovak Foreign Policy Affairs* 41.

⁷² B Christman & H Russell 'Readjusting the political thermostat: fuel poverty and human rights in the UK' 2 *Journal of Human Rights in the Commonwealth* (2015) 1.

⁷³ Wei & Liao (n 15 above) 26.

⁷⁴ L Odarno 'Closing Sub-Saharan Africa's electricity access gap: why cities must be part of the solution' posted on 14 August 2019 <https://www.wri.org/blog/2019/08> (accessed on 9 April 2020)

⁷⁵ Filcak & Zivcic (n 71 above) 41.

the United Nations Development Programme (UNDP). Energy poverty is defined as ‘the absence of sufficient choice in accessing adequate, affordable, reliable, high-quality, safe, and environmentally benign energy services to support economic and human developments.’⁷⁶

Other organisations such as the World Bank and the International Energy Agency have gone for a simpler but broad definition which basically points to ‘lack of access to modern energy services.’⁷⁷ Modern energy services are understood to include electricity connection and clean cooking fuels such as liquified petroleum gas (LPG) and natural gas, unlike open wood fires, charcoal and animal waste.

Despite, there being no consensus on the definition of energy poverty, it is agreed that it denotes a lack of access to clean and efficient energy.⁷⁸ The reasons behind the lack of access are varied from one location to another. However, the effect of lack of access is uniform, given the central role that energy plays in everyday life.

Around 3 billion people worldwide fall in the category of what has become known as the ‘energy poor’—persons with no access to modern energy.⁷⁹ More than 600 million of these hail from Sub-Saharan Africa.⁸⁰ The energy poor rely on inefficient energy sources which only serve a limited purpose of heating and cooking. Leaving the many energy requirements such as lighting and powering of appliances unmet.⁸¹ While a myriad number of projects have been launched to provide off-grid energy solutions to the energy poor, a good number are yet to benefit.⁸²

In a technologically advancing world, this situation leaves the energy poor at a backfoot to the rest of the world who have access to modern energy and can easily put to use innovations to enhance their lives.⁸³ For the energy poor however, their capabilities are hampered by lack of access to modern energy. They can quite easily be excluded from benefiting from innovations that require electricity as a source of

⁷⁶ UNDP ‘World energy assessment: energy and the challenge of sustainability’ (2000) 44.

⁷⁷ International Energy Agency et al. ‘Energy poverty: how to make modern energy access universal’ (2010) 8.

⁷⁸ Wei & Liao (n 15 above) 7.

⁷⁹ Guruswamy & Doman (n 17 above) 139.

⁸⁰ Lucas et al. (n 42 above) 6.

⁸¹ Guruswamy & Doman (n 17 above) 141.

⁸² M Hafner et al. *Energy in Africa: challenges and opportunities* (2018) 7.

⁸³ Guruswamy & Doman (n 17 above) 144.

power.⁸⁴ The ‘digital economy’—driven by information communication and technology systems— is dependent on electricity and anyone who has no access to electricity is pretty much excluded.⁸⁵

In the face of soaring inequality, this is deeply concerning. It is no wonder that research indicates that while there has been tremendous economic growth worldwide, inequality levels are still soaring on account of unequal opportunities.⁸⁶ Energy poverty is one of the social factors that stands in the way of affording equal opportunities to all individuals.⁸⁷

Inability to make use of innovative solutions in diverse areas of life has far reaching consequences and hampers improvements in not only social service delivery such as education and health but extends to economic productivity as well.⁸⁸ The energy poor cannot compete on equal footing with the rest of the world. This makes energy poverty a direct affront to not only SDG 7 which speaks to ‘affordable, reliable, sustainable and modern energy for all’ but also SDG 10 whose aim is to reduce inequality within and among countries by 2030.⁸⁹

The current statistics on energy poverty show that the global mantra of ‘leaving no one behind’⁹⁰ risks being just that. As it promises to be an unattainable aspiration for the many energy poor.

2.3 Incidence of energy poverty in Zambia

About 10 million Zambians are amongst those at risk of being left behind in the global journey towards sustainable development. According to the Multidimensional Energy Poverty Index (MEPI) — one of the many tools developed to measure energy poverty and its extent in countries across the world⁹¹ — Zambia suffers from acute

⁸⁴ A Knox et al. ‘Post-apartheid spatial inequalities and built environment: drivers of energy vulnerability for the urban poor in South Africa’ in Neil Simcock et al. (eds) *Energy poverty and vulnerability: a global perspective* (2018) 62.

⁸⁵ C Mudenda et al. ‘Power instability in rural Zambia, case Macha’ (2013) 9.

⁸⁶ World Social Report (2020) foreword.

⁸⁷ K Grobmann & A Kahlh-eber ‘Energy poverty in an intersectional perspective’ in Neil Simcock et al. (eds) *Energy poverty and vulnerability: a global perspective* (2018) 14.

⁸⁸ Knox (n 84 above) 62.

⁸⁹ UN General Assembly (n 19 above) goals 7 & 10.

⁹⁰ UN General Assembly (n 19 above) preamble.

⁹¹ P Nussbauma et al. ‘Global insights based on the multidimensional energy poverty index (MEPI)’ (2013) 5 *Sustainability* 2062.

energy poverty. In 2015, Zambia's ranking on MEPI stood at 0.74 with 1.0 representing absolute energy poverty.⁹²

This degree of energy poverty is not unique to Zambia. It is a marked reflection of energy poverty levels in most Sub-Saharan Africa countries. With some countries such as the Democratic Republic of Congo, Tanzania and Mozambique having even more severe energy poverty.⁹³ The rank of these countries on MEPI was reported to be above 0.9 in 2015.⁹⁴

Research on energy poverty in Zambia shows that there are several factors that exacerbate energy poverty. This work will limit itself to three main factors.

First, low electricity access. Zambia's electrification rates are lower than the average electrification rate of Sub-Saharan Africa which stands at 43 percent.⁹⁵ An analysis of data on electricity access in Zambia indicates that the highest electrification rates the country has ever recorded was 40.3 percent of its entire population in 2017.⁹⁶ This percentage has since gone down due to population growth. As of 2018, only 39.8 percent of the population had access to electricity.⁹⁷ Of that percentage, 77.3 percent were urban dwellers,⁹⁸ with only about 12.7 percent being rural based.⁹⁹ In terms of households, 67.3 percent of urban households have access to electricity and only about 4.4 percent of rural households can boast of the same.¹⁰⁰ Considering that the rural parts of the country are more populated than the urban areas, these electrification rates are paltry to say the least.

The reason behind the low electrification rates has been lack of investment in the energy sector.¹⁰¹ Which has also spelled lack of expansion of the national power

⁹² B Tembo et.al 'Energy poverty in Zambia' (2020) 14.

⁹³ Nussbauma et al. (n 91 above) 2066.

⁹⁴ Nussbauma et al. (n 91 above) 2062.

⁹⁵ V Nalule *Energy poverty and access challenges in Sub-Saharan Africa: the role of regionalism* (2020) 23.

⁹⁶ World Bank (n 3 above) [Access to electricity \(% of population\) - Zambia | Data \(worldbank.org\)](https://data.worldbank.org/SD/EG.PS.ZS) (accessed on 3 March 2021).

⁹⁷ World Bank (n 3 above) [Access to electricity \(% of population\) - Zambia | Data \(worldbank.org\)](https://data.worldbank.org/SD/EG.PS.ZS) (accessed on 3 March 2021).

⁹⁸ World Bank 'Access to electricity, urban (% of urban population)- Zambia' [Access to electricity, urban \(% of urban population\) - Zambia | Data \(worldbank.org\)](https://data.worldbank.org/SD/EG.PS.ZS) (accessed on 3 March 2021).

⁹⁹ World Bank 'Access to electricity, rural (% of rural population)- Zambia' [Access to electricity, rural \(% of rural population\) - Zambia | Data \(worldbank.org\)](https://data.worldbank.org/SD/EG.PS.ZS) (accessed on 3 March 2021).

¹⁰⁰ Government of the Republic of Zambia (n 1 above) 12.

¹⁰¹ Mukumba & Mukuka (n 5 above) 1.

grid. The stagnancy is evident from the fact that there has been reliance on one energy source, water. This is so despite the country being well endowed with various renewable energy sources such as wind and solar.

In as much as hydroelectricity dominates Zambia's energy mix, it has also not been exploited to its fullest potential. Of the 6000 Mw hydro potential that the country possesses, only 2354 Mw has been exploited.¹⁰² With such a scenario, there has been minimal grid extension to unserved areas of the country.

Flowing from the underexploited energy sector is the second factor— low generation capacity.¹⁰³ Heavy reliance on hydroelectricity has left the energy sector susceptible to climate change effects and Zambia has had serious droughts for several years.¹⁰⁴ Just between 2018 to 2019, there was a 1000 Gwh reduction in generation due to poor rainfall.¹⁰⁵ The water levels in the main hydro dams had gone down by more than 70 percent.¹⁰⁶ The respective dams could not produce power to their optimum. This reduction in generation has proved debilitating for an energy sector that is experiencing a hike in demand of 200 Mw per year.¹⁰⁷

The third factor is predominant use of wood fuel. This is not just restricted to the portion of the population without electricity connection. It extends to households with electricity, who find themselves falling back on wood fuel for their cooking and heating needs due to unreliable supply of electricity.¹⁰⁸

Wood fuel is the main source of cooking and heating energy in both urban and rural Zambia. Rural Zambia use firewood in its original form while urban areas make use of a wood derivative, charcoal.¹⁰⁹ This makes wood fuel the most utilised energy source as more than 70 percent of the population rely on it for their energy needs.¹¹⁰

Wood fuel is inferior to modern forms of energy in terms of efficiency.¹¹¹ It also comes at a great cost to the country's environment. Zambia's vast forest area is

¹⁰² Government of the Republic of Zambia (n 1 above)7.

¹⁰³ Government of the Republic of Zambia (n 1 above) 8.

¹⁰⁴ Energy Regulation Board (n 6 above) 1.

¹⁰⁵ Energy Regulation Board (n 6 above) 3.

¹⁰⁶ Energy Regulation Board (n 6 above) 38.

¹⁰⁷ Mukumba & Mukuka (n 5 above)1.

¹⁰⁸ S Tembo et al. 'cooking fuel choice in urban Zambia: implications on forest cover' (2015) 9.

¹⁰⁹ As above, 1.

¹¹⁰ Government of the Republic of Zambia (n 1 above) 8.

¹¹¹ B Sovacool et al. (n 38 above) 6.

reported to be under immense stress as thousands of trees are harvested annually for several uses and energy use is one of the main purposes.¹¹² This level of deforestation is a threat to continued existence of biodiversity and could also deplete the essential carbon sink that forest cover provides.¹¹³ Forest-based carbon sinks have been identified as one of the useful tools in mitigating climate change effects.¹¹⁴ Scientific research indicates that carbon sinks absorb one of the core causes of global warming, greenhouse gases.¹¹⁵ Without substantial carbon sinks, increasing greenhouse gases in the atmosphere would exacerbate global warming and with this, attendant environmental consequences of extreme weather patterns such as droughts and floods.¹¹⁶

This grave cost extends to human health as well. When in use, wood fuel emits high levels of pollutants which cause respiratory health challenges in users.¹¹⁷

Notwithstanding the apparent danger flowing from the use of wood fuel, most Zambian households still rely on this source of energy. For most of them, it is because of lack of energy options.¹¹⁸

2.4 Measures being taken to counter energy poverty

The government has expressed strong policy intentions to address the lack of electricity access that plagues many Zambian households.¹¹⁹ The guiding aspiration is to achieve 'universal access to clean, reliable and affordable energy at the lowest total economic, financial, social and environmental cost consistent with national development goals by 2030.'¹²⁰ In line with this aspiration, the government has rolled out a series of programmes aimed at increasing access to modern energy.

2.4.1 Rural electrification

To bring access to electricity in rural areas at par with urban access, rural electrification has been high on the agenda from 2003 when the policy intention was

¹¹² G Elsie et al. 'Zambia UN-REDD programme info brief' (2015) 1.

¹¹³ B Tembo 'Strategic investment decisions in Zambia's mining sector under a constrained energy system' (2018) 147

¹¹⁴ Royal Society 'The role of land carbon sinks in mitigating global climate change' (2001) 1.

¹¹⁵ As above, 5.

¹¹⁶ E Mathez & J Smerdon *Climate change the science of global warming and our energy future* (2018) 6.

¹¹⁷ S Milonova 'Reducing energy poverty beyond the grid fund for Zambia (2021)5.

¹¹⁸ Tembo et al. (n 108 above) 15.

¹¹⁹ Government of the Republic of Zambia (n 1 above) iii.

¹²⁰ Government of the Republic of Zambia (n 1 above) 17.

codified into law.¹²¹ The Rural Electrification Act establishes the Rural Electrification Authority (REA), an autonomous body given the mandate to spearhead rural electrification.¹²² The Act also establishes a rural electrification fund which constitutes of monies specifically meant for electrification projects in rural areas.¹²³

Executing its mandate, REA has formulated the Rural Electrification Master Plan (REMP), which lays down the road map on how rural electrification can be improved in the country.¹²⁴ REMP takes a two-pronged approach. It proposes extending the national grid to not so far off rural areas and making use of renewable energy technologies in far flung areas.¹²⁵ To limit the costs involved with rural electrification projects, the plan prioritises electrification of rural growth centres which are economic hubs in rural areas.¹²⁶

The electrification of rural areas is therefore not targeted at household consumers but rather areas that will drive economic growth. The reason behind this is that business enterprises are more capable of meeting the electricity costs as opposed to most rural household consumers who are not in a financial position to pay for the connection fees and the monthly service charges.¹²⁷ This measure therefore does not hold much promise for rural households.

2.4.2 Diversifying the energy sector

Recognising the vulnerability of a hydro-dependent energy sector, the Zambian government has sought to diversify the sector by exploring renewable energy technologies.¹²⁸ It has done this in several ways.

One way is by sourcing funds for ZESCO to build solar powered plants in certain locations so as to add to the national grid.¹²⁹ Another way has been by welcoming partnerships with international donors and private enterprises to provide off-grid

¹²¹ Rural Electrification Act 20 of 2003.

¹²² As above, secs 3 & 4.

¹²³ Act 20 (n 121 above) sec 18.

¹²⁴ REA 'Rural electrification master plan for Zambia 2008-2030' (2009) foreword.

¹²⁵ As above, para 9-1.

¹²⁶ REA (n 124 above) para 4-2.

¹²⁷ REA (n 124 above) para 4-13.

¹²⁸ Energy Regulation Board (n 6 above) xii.

¹²⁹ Energy Regulation Board (n 6 above) 3.

renewable energy solutions in remote areas of the country.¹³⁰ An example of such a partnership is the Beyond the Grid Fund for Zambia programme funded by the Swedish government and managed by a local enterprise which works in conjunction with the energy department to extend access to clean off-grid electricity in certain rural parts of the country.¹³¹

The government has also encouraged the uptake of renewable energy technologies among the Zambian populace through tax exemptions. Certain renewable energy-based products such as solar batteries, solar panels and solar geysers are tax free.¹³² The tax exemptions are meant to act as an incentive. The effect is to lower the importation costs of these products thereby encouraging their uptake in the country.

Currently there is no data indicating that these measures have yielded the desired results. What is clear from research is that renewable energy technology is still a new phenomenon in Zambia.¹³³ Renewable energy products are not readily available on the Zambian market and the general populace is still unaware of their benefits.¹³⁴ Therefore, households without access to electricity end up relying on the familiar traditional fuels for their energy needs.

2.4.3 Attracting more investment in the energy sector

Lack of investment has been bemoaned as the greatest challenge that the Zambian energy sector faces.¹³⁵ Over the years, this has been attributed to the non-lucrative nature of the sector on account of low electricity prices and the heavy untargeted consumer subsidies.¹³⁶ Recognising this, the Zambian government has sought ways to make the energy sector more lucrative to attract investors.

Electricity reforms aimed at increasing cost recovery in the sector have been employed. One topical reform has been the upward adjustment of residential electricity

¹³⁰ Renewable Energy and Energy Efficiency Partnership '100000 Zambian households gain clean energy access through beyond the grid fund' posted on 10 April 2019 <https://www.reeep.org/news/press-release-> (access on 15 January 2021)

¹³¹ As above.

¹³² Zambia Revenue Authority 'VAT liability guidance' (2020) 26.

¹³³ Kachapulula-Mudenda et al. (n 11 above) 77.

¹³⁴ Kachapulula-Mudenda et al. (n 11 above) 80.

¹³⁵ M Maboche 'Targeting Residential electricity subsidies in Zambia' (2020) 3.

¹³⁶ As above, 3.

tariffs by more than 300% in the last two years.¹³⁷ Changes have also been effected on subsidies by lowering the threshold amount of electricity units subject to subsidies from an initial 300 Kwh to 200 Kwh.¹³⁸ This means that consumption of more than 200 Kwh per month, attracts a non-subsidised price.

These reforms hold potential of improving the electricity sub-sector as the much-needed capital ingestion would facilitate increased power generation and extension of services to unserved areas. However, it has an inherent contradictory outcome. Investors would want to recoup their investment and would invariably push for cost reflective tariffs which tend to be high. The effect of this will be to disadvantage vulnerable consumers who, despite having access to electricity, may well be unable to afford the commodity.¹³⁹

2.5 Conclusion

A series of factors have contributed to the incidence of energy poverty in Zambia. Chief among them are low electrification rates, electricity generation deficits and a poorly funded energy sector. Measures have been taken to address these factors. Electrification rates have sought to be improved by pushing for rural electrification and use of renewable energy technologies. Energy sector reforms have been implemented to make the sector more lucrative and attractive to private investment.

The measures taken have potential of reversing the high energy poverty incidence in Zambia. However, as is clear from the draw backs, there is still more to be done to tackle the complex phenomenon of energy poverty.

¹³⁷ Zesco Limited 'Revision of Electricity tariffs' posted on 29 December 2019 <https://www.zesco.co.zm> (accessed on 18 December 2020)

¹³⁸ Maboshe (n 135 above) 3.

¹³⁹ Sokona et al. (n 47 above) 4.

Chapter 3: Access to electricity and the human rights discourse

3.1 Introduction

This chapter highlights how the human rights discourse has already incorporated access to electricity in three human rights instruments, namely, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural rights (ICESCR) and the African Charter on Human and Peoples' Rights (African Charter).

3.2 Convention on the Elimination of all forms of Discrimination Against Women

Adopted in 1979, CEDAW is a specialised human rights instrument whose main aim is to combat discrimination against women in all spheres of life so that they can fully enjoy all their human rights without any limitations.¹⁴⁰ It emphasises equality of sexes in a bid to improve the plight of women who have long suffered discriminatory treatment and thus been subjected to an impaired quality of life.¹⁴¹

For our purposes, Article 14 of the Convention concentrates on rural women. It calls on states to adopt the necessary measures to stop discrimination against rural women and assures specific rights to them. Relevant to our discussion is the right 'to enjoy adequate living conditions particularly in relation to housing, sanitation, electricity and water supply, transport and communications.'¹⁴²

Lack of access to electricity heavily impacts women who spend long hours in search of alternative energy sources. The long hours spent in search of firewood robs them of time to engage in income making and self-development ventures thereby sentencing them to a stagnated standard of living.¹⁴³ They face all manner of risks when they walk long distances in search of firewood. Rape and bodily harm are top

¹⁴⁰ UN General Assembly CEDAW preamble.

¹⁴¹ A Hellum & H Aasen 'Introduction' in A Hellum & H Aasen (eds) *Women human rights: CEDAW in international, regional and national law* (2013) 2.

¹⁴² UN General Assembly (n 140 above) art 14 (2)(h).

¹⁴³ Tully (n 58 above) 539.

on the list.¹⁴⁴ Further, due to the inefficient way that firewood combusts, women are on the receiving end of poisonous fumes, a grave risk to their health.¹⁴⁵

There is therefore every justification for CEDAW to expressly obligate states to assure access to electricity for rural women if at all substantive equality is to be achieved.¹⁴⁶ The Convention recognises access to electricity as a cardinal element to a reasonable standard of living and wellbeing for women in rural areas.¹⁴⁷

In general recommendation number 34, the CEDAW committee echoes the importance of electricity to the well being of rural women and calls on states to assure access to sustainable, clean and renewable energy sources.¹⁴⁸ The committee specifically mentions extension of grid services to rural areas so as to alleviate the widespread lack of electricity.

Access to electricity as recognised in CEDAW is not interpreted in a constricted manner. It is broadly taken to be an underlying factor to good health and furthers health service delivery.¹⁴⁹

3.3 International Covenant on Economic, Social and Cultural Rights

The ICESCR on the other hand does not expressly incorporate access to electricity under any of the recognised rights. It has taken the innovative interpretation on the part of the monitoring body, the Committee on Economic, Social and Cultural Rights (Committee on ESCR) to factor in the concept. This has been done in the generous interpretation of the right to housing as recognised under the right to 'adequate standard of living, adequate food, clothing and housing and to the continuous improvement of living conditions.'¹⁵⁰

The right to housing has been interpreted by the Committee in General Comment 4 in a manner that upholds an underlying principle of human rights.¹⁵¹ Every human being is entitled to a 'life of dignity, peace and security'.¹⁵² Therefore, reference

¹⁴⁴ Tully (n 58 above) 539.

¹⁴⁵ Karekezi (n 44 above) 8.

¹⁴⁶ Ozoemena (n 64 above) 29.

¹⁴⁷ M Zapeda & J Zapeda 'Energy and human rights: a perspective from Mexico' (2017) 35 *Journal of Energy & Natural Resources* 380.

¹⁴⁸ 'General recommendation no 34 on the rights of rural women' (2016) paras 84-85.

¹⁴⁹ CEDAW committee 'General recommendation no. 24: Article 12 of the Convention (Women and health)' (1999) para 28.

¹⁵⁰ UN General Assembly ICESCR art 11.

¹⁵¹ Committee on ESCR 'General comment no-4 on the right to housing' para 7.

¹⁵² UN General Assembly Universal Declaration of Human Rights preamble.

to housing is not limited to mere shelter but extends to factors that will enable the inhabitant of such shelter to live a life that assures the three overarching foundational tenets.¹⁵³ This invariably requires a consideration of factors such as availability of basic essential services. Energy is amongst the services expressly highlighted as informing the adequacy of housing.¹⁵⁴

The Committee on ESCR has gone on to guide state parties to ICESCR to furnish data on the progress made in attaining adequate housing by specifically requiring information on the number of citizens without access to essential amenities.¹⁵⁵ In one marked concluding observation relating to periodic reports tendered by the Democratic Republic of Congo, the Committee on ESCR expressed concern at the low levels of electricity access—data collated indicated that only one percent of the population had access to electricity.¹⁵⁶ The Committee called on the State to commit international development aid to priority areas such as electrification programmes highlighted in the country's Poverty Reduction Strategy.¹⁵⁷

Recommendations rendered by special rapporteurs on the right to housing in respect of specific countries equally highlight how access to basic services such as electricity is an essential factor in assessing adequate housing.¹⁵⁸ There is a common lament on the failure of states to assure adequate housing to their inhabitants through provision of electricity and other essential services. It is observed that such failure attenuates the core of the right to housing.¹⁵⁹

Apart from this implied incorporation of access to electricity in the right to housing, access to efficient and clean energy, as opposed to traditional and inefficient energy, is implied in other socio-economic rights recognised in the Convention.¹⁶⁰ For

¹⁵³ Committee on ESCR (n 153 above) para 7.

¹⁵⁴ Committee on ESCR (n 153 above) para 8 (b).

¹⁵⁵ Committee on ESCR 'Guidelines on treaty specific documents to be submitted by state parties under articles 16 and 17 of the international covenant on economic, social and cultural rights' E/C.12/2008/ 2 para 50.

¹⁵⁶ UN Committee on ESCR 'Concluding observations by the committee on economic, social and cultural rights: Democratic Republic of Congo (2009) para 29.

¹⁵⁷ As above, para 29.

¹⁵⁸ A/HRC/31/54/Add.2 (SR housing 2016) para 95; A/HRC/34/51/Add.2(SR housing 2017) para 86; A/HRC/37/53/Add.1 (SR Housing 2018) para 86 & A/HRC/43/43/Add.2 (SR Housing 2020) para 80 <https://www.uhri.ohchr.org> (accessed on 15 June 2020).

¹⁵⁹ United Nations Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia and Kosovo A/HRC/31/54/Add.2 (SR housing 2016) para 95.

¹⁶⁰ Bradbrook & Gardam (n 49 above) 398.

instance the right to work under fair and satisfactory conditions cannot be attained in this digital age without a source of efficient energy. Electricity is of central importance to the operations of any enterprise and a necessary aid to employees' output in any industry.¹⁶¹ The right to education currently rides on modern energy to offer services such as e-learning, a tool that has proved invaluable in times when physical learning has not been possible.

3.4 The African Charter

The African Charter is silent on access to electricity. It has taken the interpretation of the African Commission on Human and Peoples' Rights (African Commission) to factor it in.

The Commission upheld a communication brought by a consortium of civil society organisations in Zaire (now the Democratic Republic of Congo) alleging failure human rights violations on the part of the government of Zaire for its failure to provide basic essential services to its citizens.¹⁶² . The Commission decided that the State's failure to provide essential services such as water and electricity was an affront to article 16 of the African Charter which recognises every person's right to health.¹⁶³

This pronouncement by the Commission linked access to electricity to the right to health recognised under article 16 of the African Charter. It was an affirmation of the important role that electricity access plays in health care,¹⁶⁴ from storage of medicines and vaccines to powering vital equipment for medical procedures.

Access to electricity has also been implicitly incorporated in the right to 'economic, social and cultural development.'¹⁶⁵ The provision requires state parties to afford all citizenry the opportunity to 'exercise' the right.¹⁶⁶ The African Charter does not elaborate much on this duty. However, the African Commission has interpreted this right in line with the right to development recognised in the United Nations Declaration on the Right to Development.¹⁶⁷

¹⁶¹ Karekezi (n 44 above) 9.

¹⁶² Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah vs. Zaire (2000) AHRLR 74.

¹⁶³ As above para 47.

¹⁶⁴ Wei & Liao (n 15 above) 7.

¹⁶⁵ African Union African Charter art 22(1).

¹⁶⁶ As above art 22 (2).

¹⁶⁷ UN General Assembly Declaration on the Right to Development art 3.

In *Open Society Justice Initiative v Cote d'Ivoire* the Commission opined that state parties have an 'immediate obligation to at least create the opportunities and environment conducive' for the full enjoyment of the right to development.¹⁶⁸ Every citizen has the right to participate in the development process of their country and any unwarranted barriers must be removed so as to ensure the gradual realisation of the right.¹⁶⁹

While there is no marked definition of what an enabling environment constitutes, access to clean and efficient energy such as electricity is definitely one of the hurdles that a state has to cross to facilitate such an environment. In most cases, access to electricity in Africa is equated to development and therefore, it is hard to foresee development without this all-important resource.¹⁷⁰

3.5 Conclusion

Although access to electricity has not generally been viewed from a human rights perspective, it is firmly embedded in a series of socio-economic rights. This has not always been clear because of the limited express reference in human rights norms. However, monitoring bodies have taken great strides in making the link between access to electricity and human rights clear. The link cannot be denied and should instead be seen as part of the solution to energy poverty. The next chapter discusses the complimentary solutions that Zambia can draw from this nexus.

¹⁶⁸ Communication 318/06 (2015) 17th Extraordinary Session 19-28 February 2015 para 183.

¹⁶⁹ As above, para 183.

¹⁷⁰ Ozoemena (n 64 above)32.

Chapter 4: Implications for Zambia

4.1 Introduction

This chapter discusses the general obligations flowing from CEDAW, ICESCR and the African Charter. In so doing, it assesses how the ensuing entitlements can be utilised to push for improved access to electricity in Zambia. The chapter also briefly assesses the role that CSOs can play in holding the Zambian government to its obligation of ensuring electricity access to the citizens of Zambia.

4.2 State obligations

While there are a series of obligations flowing from CEDAW, ICESCR and the African Charter, the starting point are the general obligations to respect, protect and fulfil the rights recognised in the instruments.

The obligation to respect the rights mandates states to refrain from any acts or measures that prevent the realisation of the rights recognised in the three instruments.¹⁷¹ The obligation to protect requires governments to prevent third parties from violating the recognised rights.¹⁷² The obligation to fulfil obligates states to ensure full realisation and enjoyment of the rights assured.¹⁷³

These are the general obligations that Zambia has taken on by being party to CEDAW, ICESCR and the African Charter. Zambia is mandated to respect, protect and fulfil the rights guaranteed under these instruments.

As access to electricity is incorporated in recognised rights, Zambia's obligation to respect, protect and fulfil the recognised rights extends to access to electricity as well. The obligation to respect requires the State to refrain from any acts or measures that would stand in the way of access to electricity. For example, adopting high electricity tariffs which cannot be afforded by a significant portion of the population would amount to a failure by the State to respect people's access to electricity. While it is justifiable to recoup the cost of power generation, service delivery ought to be the

¹⁷¹ Office of the High Commissioner for human rights 'Human rights handbook for parliamentarians' (2016) 32.

¹⁷² Office of the High Commissioner for human rights (n169 above) 32.

¹⁷³ Office of the High Commissioner for human rights (n 169 above) 33.

primary priority. The Energy Regulation Board (ERB),¹⁷⁴ a statutory body charged with overseeing the energy sector has to be guided by this consideration as it approves tariff rates proposed by electricity providers.

The obligation to protect requires the State to put up safeguards against third party interference with people's access to electricity. The safeguards could be in the form of legislative provisions protecting the interest of consumers from exploitation by private companies operating in the electricity sector.

The obligation to fulfil requires the State to ensure access to electricity for all Zambians through policies and programmes. The policies have to address the barriers standing in the way of access to electricity for many Zambians. For example, targeted subsidies to allow the vulnerable population afford electricity connection fees and tariffs.

4.3 Nature of obligations

Access to electricity is incorporated in rights that normatively fall under socio-economic rights. This then suggests that the nature of the obligations to respect, protect and fulfil access to electricity is subject to concepts of 'progressive realisation' and 'available resources.'¹⁷⁵

While the State has an obligation to assure access to electricity to all Zambians, it is not obligated to provide it immediately. It is to go about it in a gradual manner subject to the resources at its disposal.¹⁷⁶ This is grounded in the realities of the diverse financial capacities that countries possess. Provision of electricity is an expensive venture which requires colossal investments for its actualisation. While some countries with the necessary financial muscle can manage to attain wide electrification for their citizens within a short while, others with constrained resources might require more time for them to expand service delivery to unserved citizens.

¹⁷⁴ Energy Regulation Act 12 of 2019 secs 3 & 4(j).

¹⁷⁵ L Chenwi 'Unpacking "progressive realisation", its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance' (2013) *De jure* 742.

¹⁷⁶ UN Committee on ESCR General comment 3 para 1.

These qualifications do not in any way take away from the State's obligation to respect, protect and fulfil. A state is obligated to take steps towards access to electricity within reasonable time.¹⁷⁷ This requires putting up measures to overcome the lack of electricity access among citizens. These measures include legislative, policy and tangible projects aimed at providing electricity services to more citizens. Any inaction or measures that tend to plunge more citizenry in energy poverty is contrary to the spirit of CEDAW, ICESCR and the African Charter.

As chapter 2 highlighted, a significant portion of Zambians have no access to electricity and make do with traditional fuels. The number of Zambians who are energy poor in the past three years has been on the rise as is evident from the World Bank database on electricity access.¹⁷⁸ While population increase has aggravated the situation, there lies a possibility that the steps that Zambia has taken to steadily assure access to her citizens are not adequate and are further plunging more numbers into energy poverty. The Zambian citizens — being rights holders under CEDAW, ICESCR and the African Charter — can hold the government accountable for its failure. This can be done both at domestic and international level.

4.4 Accountability at domestic level

The Constitution of Zambia excludes international law from the list of laws applicable in Zambia.¹⁷⁹ This is because Zambia practices a dualist legal system. Ratified international human rights instruments are not automatically considered law in Zambia and are taken to have no legal effect in the domestic setting. To carry the force of law, they have to be domesticated.¹⁸⁰

Of the three instruments subject of this work, only CEDAW has been domesticated in Zambia. Therefore, holding the State accountable for obligations arising under CEDAW takes a different route from the process applicable to obligations arising under ICESCR and the African Charter. By virtue of being domesticated,

¹⁷⁷ UN Committee on ESCR (n 177 above) para 2.

¹⁷⁸ World Bank (n 3 above) [Access to electricity \(% of population\) - Zambia | Data \(worldbank.org\)](https://data.worldbank.org/SD/EG.PS.ZS) (accessed on 10 May 2020).

¹⁷⁹ 1991 Constitution of Zambia as amended in 2016 (n 24 above) art 7.

¹⁸⁰ Ratification of International Agreement Act 34 of 2016.

CEDAW provisions are directly enforceable while those under the other two instruments can only be enforced indirectly.

4.4.1 Accountability in the domestic setting for obligations arising under the Convention on the Elimination of all forms of Discrimination Against Women

CEDAW was domesticated through the enactment of the Gender Equity and Equality Act.¹⁸¹ The purposes of the Act are expressed as seeking to attain gender equity and equality in all aspects of life through the elimination of all manner of discrimination.¹⁸²

Section 26 of the Act focuses on rural women and the peculiar challenges they face in basic service delivery. The section reproduces article 14(2)(h) of CEDAW which recognises the right of rural women to 'enjoy adequate living conditions, including housing, sanitation, electricity, water supply, transport and communication.'¹⁸³ By this provision women in rural areas have a statutory right to electricity access and can enforce it. This promises to be an effective way of fostering policy accountability on the part of the Zambian government.

The Act establishes an autonomous Commission which has been given a wide mandate to advance the purposes of the Act.¹⁸⁴ One marked function is the power to monitor, investigate, carry out research, educate, lobby, advise and report on any issue touching on gender equity and equality. The Commission has also been given jurisdiction to receive complaints alleging violation of any provision of the Act by an individual, private body or public body.¹⁸⁵ On receipt of such complaint and upon satisfying itself that there is merit in the complaint, the Commission is mandated to carry out an investigation by hearing the parties involved and rendering a decision.¹⁸⁶

It is worth noting that while the Commission has been given wide powers to make any order in furtherance of ongoing investigations, the power to grant remedies is limited by a statutory instrument issued by the minister in charge of gender and

¹⁸¹ Act 22 of 2015.

¹⁸² As above, preamble.

¹⁸³ Act 22 (n 177 above) sec 26 (2)(h).

¹⁸⁴ Act 22 (n 177 above) secs 7 & 8.

¹⁸⁵ Act 22 (n 177 above) sec 41 (1).

¹⁸⁶ Act 22 (n 177 above) sec 42 (4) & (5).

equity.¹⁸⁷ This takes away from the autonomous nature of the Commission which is supposed to be free from the 'control and direction of any person or authority' in carrying out its mandate.¹⁸⁸ More importantly, it goes against a constitutional provision and any statutory instrument so issued would be void.¹⁸⁹ At the time of this work, the Commission was not operational and hence no statutory instrument had been promulgated to tabulate the sort of remedies that the Commission will be able to grant once operational. Notwithstanding, the creation of the Commission is a progressive move which the rural women can use to administratively hold the government accountable to its obligations of providing electricity services.

Further, although the Act is silent on what happens when a complainant is dissatisfied with a decision rendered by the Commission, the constitution is clear that such a decision is subject to judicial review.¹⁹⁰ The courts of law have jurisdiction to review the legality and reasonableness of the decision rendered by the Commission. This affords further accountability routes which women in rural areas can invoke to hold the Zambian government accountable for its obligations arising under CEDAW.

4.4.2 Accountability in the domestic setting for obligations arising under the International Covenant on Economic, Social and Cultural Rights and the African Charter.

Socio-economic rights recognised in ICESCR, and the African Charter have not been incorporated as full-fledged rights in Zambian law. Historically, socio-economic rights were expressed as 'directive principles of state policy.'¹⁹¹ They were non-justiciable despite being referred to as rights and were merely meant as a guide in the formulation of policies.¹⁹² Budgetary constraints were mostly cited as the justification for this position.¹⁹³ However, with time and the appreciation of interdependency of rights, the tide of opinion changed and subsequent constitutional review commissions

¹⁸⁷ Act 22 (n 177 above) sec 42 (4) & (5).

¹⁸⁸ Act 22 (n 177 above) sec 8(1).

¹⁸⁹ 1991 Constitution of Zambia as amended in 2016 (n 24 above) art 216 (b).

¹⁹⁰ 1991 Constitution of Zambia as amended in 2016 (n 24 above) art 267 (4).

¹⁹¹ 1991 Constitution of Zambia as amended by Act 18 of 1996 art 112.

¹⁹² As above, art 111.

¹⁹³ Mung'omba Constitutional Review Commission 'Report of the constitutional review commission' (2005) 102.

advised that socio-economic rights should be included as enforceable rights under the bill of rights so as to secure the socio-economic welfare of Zambian citizens.¹⁹⁴

Socio-economic rights were accordingly included in the 2016 draft constitutional amendments.¹⁹⁵ Seeing as the bill of rights contained in part III of the 1991 Constitution of Zambia is an entrenched portion, any alterations required a national referendum where fifty-percent of Zambians eligible to be registered as voters would decide whether to accept the alterations or not.¹⁹⁶ When the draft bill of rights was subjected to a national referendum, the threshold percentage could not be met and any amendments to the bill of rights fell through.

This meant that while other portions of the Constitution, directive principles of state policy under part ix included, were repealed, the bill of rights retained its former state of only recognising civil and political rights. The end result being that the current Constitution of Zambia makes no mention of socio-economic rights.

Notwithstanding this, governance policies ought to have regard to socio-economic rights enunciated in human rights instruments that Zambia has ratified.

The Constitution cites sustainable development as one of the economic principles guiding state policy formulation.¹⁹⁷ The intricate link between socio-economic rights and sustainable development has long been accepted and therefore, reference to sustainable development extends to socio-economic rights as well.

Zambia subscribes to a series of inter-governmental policies that speak to the need to respect all human rights in the quest for national development.¹⁹⁸ Zambia's seventh national development plan equally makes it clear that development policies have to have regard to socio-economic rights.¹⁹⁹

Socio-economic rights, though not recognised as justiciable rights under the Zambian Constitution are indirectly enforceable in the Zambian Courts if they are

¹⁹⁴ Technical committee 'Draft Constitution of Zambia' (2013) art 52 (1) & Mung'omba Commission (n 27 above) 102.

¹⁹⁵ Technical committee 'Draft bill of rights' (2016) art 39.

¹⁹⁶ 1991 Constitution as amended in 1996 (n 187 above) art 79 (3).

¹⁹⁷ 1991 Constitution as amended in 2016 (n 24 above) arts 8 (f) & 9.

¹⁹⁸ UN General Assembly Agenda 2030 & African Union Agenda 2063: The Africa we want (2015).

¹⁹⁹ 2017-2021 plan (n 18 above) 48.

anchored on one of the justiciable civil and political rights enshrined in the Zambian bill of rights. This was the decision of the Supreme Court of Zambia in *Mwanza and Another v Attorney General*.²⁰⁰

The Supreme Court upheld an argument advanced by two prisoners to the effect that nutritional compromised meals were an affront to their right to adequate food as recognised in ICESCR which in turn threatened their right to life as recognised in the Zambian bill of rights.²⁰¹

The Court ordered the State to increase funding to the correctional facility concerned so as to enable the prison authorities meet the dietary needs of prisoners with health challenges.²⁰² As a way of ensuring compliance, the State was instructed to render an annual report indicating how the dietary needs of the prisoners were being met.

This decision of the Court leaped over an enforcement hurdle that has long plagued socio-economic rights protection in the Zambian domestic setting. Indirect enforcement of socio-economic rights side-steps the rigorous domestication process.

Although, indirect enforcement of socio-economic rights will undoubtedly require some ingenuity from litigants to specifically locate their claims within justiciable rights, it is a welcome step towards full protection of rights and opens up another route of holding the state accountable for obligations arising from international instruments.

Indirect enforcement of socio-economic rights is therefore another route that citizens of Zambia can pursue to hold their government accountable to its obligation to assure access to electricity. To be effective, the citizens will have to be aware of their human rights entitlements as well as knowledgeable about the ways in which they can take the State to task. Zambian citizenry has long been associated with docility and general lack of interest in human rights issues.²⁰³ There is need for conscious awareness and consistent human rights education.

²⁰⁰ 2019 ZA selected judgment no. 33 (SC) delivered on 19 December 2019.

²⁰¹ 1991 Constitution as amended in 1996 (n 187 above) art 12.

²⁰² *Mwanza & Another v Attorney General* (n 196 above) paras 16.8.

²⁰³ 2017-2021 plan (n 18 above) 31.

A robust and effective network of local CSOs is cardinal to achieve this.²⁰⁴ In their proper role, CSOs provide a platform for 'independent public expression' which allows citizens to participate in governance and advance their interests.²⁰⁵

Zambia has a plethora of CSOs and of this, a sizeable number are in human rights protection and promotion.²⁰⁶ These CSOs have been instrumental in advancing human rights and social justice in the country. However, in the last decade, research indicates that the Zambian civic space is being stifled.²⁰⁷ In 2009, legislation was introduced to ensure close regulation of CSOs, with a government-controlled board given the mandate to direct thematic areas that CSOs are to engage in.²⁰⁸ CSOs are also required to renew their registration every five years.²⁰⁹ There is a possible risk for organisations considered as too antagonistic from having their registration renewed.

Further research shows that the government is only receptive to service-providing CSOs as opposed to CSOs involved in governance and advocacy.²¹⁰ This has resulted in minimal interaction between the government and CSOs in governance and advocacy. Aside from these external constraints, Zambian CSOs are also plagued by lack of capacity as they often lack grass-root presence and are out of touch with the communities whose interests they are supposed to serve.²¹¹ Most of them are overly dependent on donor funding which tends to dictate the nature of work that the benefiting organisation engages in.²¹² In most cases, the nature of work is not driven by client community interest.

Notwithstanding this unfavourable environment, CSOs have shown resistance and employed different tactics in seeking to engage government. For instance, they have gained ground in challenging the current regulatory role through lobbying parliamentarians and seeking judicial pronouncement on the constitutionality of the

²⁰⁴ CIVICUS 'Status of civil society in Zambia: challenges and future prospects:' (2010) 2.

²⁰⁵ M Kaliba 'Toward an autonomous civil society: rethinking state-civil society relations in Zambia' (2014) 16 *International Journal of not-for-profit-law* 6.

²⁰⁶ CIVICUS (n 200 above) 34.

²⁰⁷ J Baldus et al. 'Preventing civic space restrictions An exploratory study of successful resistance against NGO laws' (2019) 18.

²⁰⁸ The Non-Governmental Organisations' Act 16 of 2009 sec 7.

²⁰⁹ As above, sec 16.

²¹⁰ Kaliba (n 201 above) 7.

²¹¹ USAID 'CSO sustainability index' (2018) 1.

²¹² As above,1.

legislation.²¹³ This ability to adapt leaves a glimmer of hope and speaks of the prospects that these organisations can play in educating the Zambian population on the state's obligation to provide electricity access and their legal entitlement to enforce their claims.

4.5 Accountability at international level

There are a number of ways that a state party can be held accountable for obligations arising under legally binding international human rights instruments. Peer review-based mechanisms have especially been utilised by intergovernmental organisations to assess compliance levels of member states and to offer advice on how to improve compliance.²¹⁴ Noteworthy are the Universal Periodic Review (UPR) under the United Nations and the African Peer Review Mechanism (APRM) under the African Union. For our purposes we will focus on mechanisms flowing from human rights instruments subject of this discussion. That is to say, state reporting process and the communication procedure.

4.5.1 State reporting

Each of the three instruments subject of this discussion has set out a state reporting procedure which mandates state parties to render periodic reports to respective treaty monitoring bodies.²¹⁵ The reports are supposed to highlight the progress that a state party has made towards the full realisation of rights recognised in a particular human rights instrument. This process affords an opportunity for the treaty monitoring body to evaluate the steps a state party has taken towards realising the rights guaranteed under respective instruments.²¹⁶

State parties are required to submit information indicating the progress made in guaranteeing the full enjoyment of each right recognised. The information rendered include a tabulation of policy and legislative measures as well as statistics speaking

²¹³ Baldus et al. (n 203 above) 23.

²¹⁴ E Mc Mahon & M Ascherio 'A step ahead in promoting human rights? The universal periodic review of the UN Human rights Council' (2012) 18 *Global governance* 234.

²¹⁵ CEDAW art 18; ICESCR art 17 (1) & African Charter art 62.

²¹⁶ C Heyns & F Viljoen 'The impact of the united nations human rights treaties on domestic level' (2002) 23 *Human Rights Quarterly* 510.

to the progress made towards the fulfilment of each right recognised.²¹⁷ Thus with respect to rights that incorporate access to electricity, aspects to do with access to electricity will invariably have to be tackled. For instance, the Committee on ESCR requires state parties to expressly indicate thorough information on 'members of society without ready access to basic amenities.'²¹⁸

Once a report is tendered the treaty monitoring body engages the reporting state on issues highlighted in the report.²¹⁹ This ensuing dialogue allows for thorough assessments of measures put in place to assure rights guaranteed under human rights instruments.

Upon conclusion of such engagement, the treaty monitoring body issues 'legal non-binding recommendations' known as concluding observations.²²⁰ Concluding observations mainly recommend ways in which a reporting state can improve on its measures aimed at enabling the full enjoyment of guaranteed rights. These recommendations are quite handy in stimulating policy change and guiding state actors' course of action.²²¹ They are also effective tools in the hands of CSOs in lobbying for change in policies and legislation.²²²

It is however important to note that for state reporting process to serve as an effective way of holding states accountable for obligations arising from international human rights norms, a state has to be consistent with state reporting.²²³ This will ensure a consistent and continuing periodic evaluation of its quest to assure full realisation of guaranteed rights.

²¹⁷ CEDAW Committee 'Compilation of guidelines on the form and content of reports to be submitted by states parties to the international human right treaties' para E2.; Committee on ESCR general comment no. 1 para 5-7 & African Commission 'State party reporting guidelines for economic, social and cultural rights in the african charter on human and peoples' rights (tunis reporting guidelines)' para 2.

²¹⁸ UN Committee on ESCR (n 177 above) para 13.

²¹⁹ J Krommendjik 'The domestic effectiveness of international human rights monitoring in established democracies. The case of the UN human rights treaty bodies' (2015) *10 The Review of international Organisations* 490.

²²⁰ As above, 490.

²²¹ Krommendjik (n 215 above) 492.

²²² Krommendjik (n 215 above) 495.

²²³ Heyns & Viljoen (n 212 above) 488.

Zambia is currently behind in its state reporting. Under CEDAW, Zambia last submitted a state report in 2010.²²⁴ With respect to ICESCR, Zambia last submitted a report in 2003 and is currently ten years behind schedule.²²⁵ This default is mirrored under the African Charter where the country has only submitted an initial report and is yet to render eight state reports.²²⁶

Lack of sufficient content in state reports also affect the state reporting process. With respect to the two reports that Zambia has ever submitted to CEDAW Committee, the country has been cited for providing scanty information.²²⁷ A similar sentiment was expressed by the Committee on ESCR in the last report tendered.²²⁸ It must be mentioned that none of the reports that Zambia has thus far tendered make any reference to statistics on electricity access in the country.

The state delegations sent to engage in dialogue with treaty monitoring bodies also play an important role in making the state reporting process effective. Delegates sent to represent the State should be well acquainted with the contents of the report so as to effectively address questions arising from the report. Zambia records a poor score on this as well.²²⁹

The issues highlighted above weaken the state reporting process as a means of holding the Zambian government accountable. They further affect the quality of concluding observations issued by treaty bodies since insufficient information in a state report equally limits the scope of concluding observations.

These impediments can be ameliorated by local CSOs actively participating in the state reporting process by way of thorough consultations with government or by submitting shadow reports.²³⁰ Zambia has a wide distribution of CSOs whose concern is poverty alleviation.²³¹ Therefore, there is a glimmer of hope that state reporting

²²⁴ UN CEDAW Committee 'Concluding observation of the committee on the elimination of discrimination against women: Zambia' (2011) para 1.

²²⁵ UN Committee on ESCR 'Concluding observations of the committee on economic, social and cultural rights: Zambia' (2005) para 1.

²²⁶ State reports and concluding observations

<https://www.achpr.org/statereportsandconcludingobservations> (accessed on 11 June 2021)

²²⁷ UN CEDAW Committee (n 220 above) para 2.

²²⁸ UN Committee on ESCR (n 225 above) para 2.

²²⁹ UN Committee on ESCR (n 225 above) para 3.

²³⁰ Heyns & Viljoen (n 212 above) 507.

²³¹ Zambia Council for Social Development 'Sectoral and regional distribution of civil society in Zambia case study report' (2010) 14.

process can be an effective accountability tool which can be wielded to push for improved electricity access to its citizens.

4.5.2 Communication procedure

CEDAW, ICESCR and the African Charter all allow for individual communications alleging human rights violations.²³² Ideally, aggrieved citizens or organisations acting on behalf of such citizens can bring communications alleging human rights violations. Subject to the set criteria of being meritorious and exhausting local redress routes, such communications are admissible before treaty monitoring bodies who have the mandate to hear and render decisions. The legal status of decisions rendered by these bodies is still in contention. But the general understanding appears to be that they are non-binding pronouncements as the treaty bodies' main mandate is to monitor the implementation of treaty provisions.²³³ The quasi-judicial role they take on is in furtherance of their supervisory role.²³⁴

This does not take away from the importance of treaty body pronouncements. They serve the purpose of giving guidance to erring states. While there are many misgivings on the lack of implementation mechanisms, a mere pronouncement highlighting a state's mishap comes with international censure which should be enough to have a well-meaning state do something about the human rights violations.²³⁵ Further, such pronouncements serve as invaluable interpretive tools for domestic courts dealing with claims arising from treaty provisions.²³⁶ They have persuasive value before courts and assist states to stir internal policies towards international standards.

The potential that this mechanism comes with can be used to advance access to electricity in Zambia. Citizens without access can well argue that their human rights

²³² Optional protocol CEDAW art 2; Optional protocol ICESCR art 2 & African charter art 55.

²³³ L Borlini & L Crema 'The legal status of decisions by human rights treaty bodies: international supervision, authoritative interpretations or mission educatrice' (2019) *13 Esil conference paper series* 11.

²³⁴ R Murray & E Mottershaw 'Mechanisms for the implementation of decisions of the African commission on human and people's rights' (2014) *36 Human Rights Quarterly* 356.

²³⁵ A D'Amato 'Is international law really law' (2010) Faculty working papers 5.

²³⁶ As above, 21.

are being violated and upon exhausting internal procedures can look to treaty bodies for redress. However, there are certain hurdles to take note of.

Despite Zambia being party to CEDAW, ICESCR and the African Charter, Zambian citizens can only make use of the communication procedure under the African Charter. This is because Zambia has not acceded to the optional protocols granting CEDAW committee and committee on ICESCR mandate to receive individual complaints. This only leaves recourse to the African Commission.²³⁷

CSOs have occasionally made use of the communication procedure to address certain human rights violations in Zambia.²³⁸ One notable case is *Legal Resources Foundation v Zambia*, where the African Commission upheld a communication alleging that constitutional amendments made to the 1991 Constitution were discriminatory and thus violated articles 2, 3, 13, and 19 of the African Charter.²³⁹

It is noteworthy that while this decision was rendered in 2001, it took fifteen years for the necessary amendments to be effected to the Zambian constitution. This does not communicate an encouraging scenario. It highlights a possible laxity on the part of the Zambian government to execute recommendations coming from the African Commission.²⁴⁰ This then raises a strong question mark as to whether this mechanism is even worth considering in the pursuit for access to electricity for the many Zambians.

While the Commission has far-reaching powers and has actually upheld a Communication alleging that failure to provide electricity services to citizens is a violation of their right to health,²⁴¹ the willingness of a member state determines the effectiveness of the Commissions' decisions.²⁴² It remains to be seen whether the

²³⁷ Zambia is yet to accept the jurisdiction of the African Court on Human and Peoples' Rights.

²³⁸ *Amnesty International v Zambia* communication no 212/98 (1999) African commission on human and peoples' rights 25th ordinary session & *Re contre Africaine pur la defensesdes Droits del' Homme v Zambia* communication no 71/92 (1996) African commission on human and peoples' rights 20th ordinary session.

²³⁹ Communication no 211/98 (2001) African commission on human rights 29th ordinary session.

²⁴⁰ F Viljoen & L Louw 'State compliance with the recommendations of the African commission on human and peoples' rights 1994-2004' (2007) *101 American Journal of International Law* 8.

²⁴¹ *Free Legal Assistance Group & others vs. Zaire* (n 163 above) 74.

²⁴² *Murray & Mottershaw* (n 230 above) 364.

follow up procedure introduced in 2010²⁴³ would go a long way in nudging member states to comply with the recommendations of Commission.

Notwithstanding the inertia on the part of a state party, there is no question that recommendations of the Commission would prove quite useful to robust CSOs in lobbying for policy change and state action. It is therefore a worthy route to consider.

4.6 Conclusion

Being party to CEDAW, ICESCR and the African Charter, Zambia has taken on an obligation to progressively provide electricity services to its citizens. The worsening low access rates speaks of its failure to live up to this obligation and Zambians without access have every right to hold the government accountable for its failure.

At domestic level, there are two different ways of holding the government accountable. With respect to CEDAW, women in rural areas can seek enforcement of their statutory right before the Gender Equity and Equality Commission once operationalised. With respect to the ICESCR and African Charter, indirect enforcement before the courts of law is possible if the claim is anchored on justiciable civil and political rights.

At the international level, this can be done through the state reporting process as well as through the communication procedure before the African Commission.

Although the different ways of holding the state accountable come with a series of limitations, they can be surmounted through an active role of the citizens and CSOs. The final chapter will elaborate more on the possible solutions.

²⁴³ African Commission 'Rules of procedure of the commission on human and peoples' rights' rule 112.

Chapter 5 Conclusion

5.1 Summary

The aim of this work is to assess how the human rights framework can be an effective complimentary solution to energy poverty in Zambia. The study reveals that majority of Zambians rely on harmful energy sources. More than half of the Zambian population has no access to electricity. Electricity services accorded to 39.8 percent of the population is also not secure due to generation deficits that the country has been experiencing.

Access to electricity is further hampered by high tariff rates that have been on a rise in the past two years. Renewable energy sources that could ameliorate this energy poverty are yet to be embraced by Zambians. Although a number of developmental measures have been undertaken to improve the electricity sub-sector, the number of people without electricity services has been on the rise.

Access to electricity is a human rights imperative. It features in three key international human rights instruments. Namely, CEDAW, ICESCR and the African Charter. CEDAW has expressly included the right to electricity access for rural women. ICESCR and the African Charter have impliedly incorporated access to electricity in the right to housing and the right to a reasonable standard of health. Based on this, I argued that access to electricity is a legal entitlement which every Zambian is entitled to. The persistent high levels of energy poverty indicate a failure by the Zambian government to live up to its international obligations of assuring electricity access.

The unserved Zambians can marshal the human rights framework to seek answers from the government and to ensure a level of accountability. Accountability avenues lie at both domestic level and at international level. However, with specific reference to Zambia, there are holdbacks that have to be addressed for the human rights framework to prove effective. The identified holdbacks include-

1. Rights flowing from international human rights instruments are not directly enforceable in Zambia. To be directly enforceable, the particular human rights instrument has to be domesticated by way of legislation or in any other enforceable way.

2. Of the three instruments only CEDAW has been domesticated through the Gender Equity and Equality Act. The Act recognises the right of rural women to have access to electricity. This statutory right can be enforced through the Gender Equity and Equality Commission which is yet to be operationalised.
3. Once operational, the remedies that the Commission will have power to grant on conclusion of proceedings will be prescribed by a statutory instrument issued by the Minister in charge of gender issues in Zambia. This will subject the Commission to the control and direction of the Minister. This attenuates the autonomy and independence of the Commission.
4. As regards the ICESCR and the African Charter, Zambians can only enforce their entitlement to electricity services indirectly. Any claim anchored on the rights enumerated in the two instruments will have to have basis on one of the justiciable civil and political rights. This leaves domestic accountability at the mercy of legal dexterity.
5. By virtue of access to electricity being embedded in socio-economic rights, the Zambian courts will most likely adopt a cautious approach in the manner they deal with such claims. The nature of remedies will most likely be declaratory and require a follow up from interested parties and the good will of the government to comply.
6. The bulk of Zambian citizenry are not aware of entitlements flowing from international human rights law and require sensitisation. A role which CSOs engaged in human rights education can carry out save for their own incapacity on account of unfavourable civic space, lack of grass root presence and inability to serve client community interests.
7. While state reporting to treaty monitoring bodies bears great potential in holding the Zambian government answerable for its international obligation to provide electricity services to its citizens, Zambia has not made use of this mechanism. From the few reports tendered before the CEDAW Committee, Committee on ESCR and the African Commission, the reports tend to be scanty on information and do not provide a comprehensive picture.

8. The delegations sent to engage on various aspects arising from the reports tendered lack the competence to constructively engage with the panel of experts and therefore takes away from the process.
9. Irregular reporting also plagues the effectiveness of state reporting as an accountability tool.
10. The communication procedure under the three human rights instruments presupposes a knowledgeable citizenry and an active CSO which are currently in short supply in Zambia. Decisions rendered by treaty bodies are mere recommendations which in the face of non-compliance on the part of the State, will require follow-ups by the complainants or indeed the CSOs involved in the process.

5.2 Recommendations

The human rights framework comes with great potential as a complimentary solution to energy poverty in Zambia. It not only comes with a well-developed enforcement mechanism but carries with it compelling motivation to address the rising energy poverty in Zambia. As a compliment to technical and developmental measures already in place, it promises to comprehensively address the energy poverty of the marginalised. However, to actualise this potential, the limitations highlighted above will have to be addressed.

There is need to domesticate international human rights instruments so as to allow for direct enforcement of rights that have incorporated access to electricity. Including the right to housing and the right to health in the Zambian bill of rights will enable access to electricity acquire the needed constitutional backing in the Zambian setting.

As the bill of rights is an entrenched part of the Constitution, the participation of the Zambian citizenry is pivotal. This then brings in the need for human rights education so that when the citizens are called upon to vote in a referendum, they would make informed decisions that advance human rights protection in the country.

Energy poverty is one of the debilitating factors at the root of poverty and inequality that many Zambians are experiencing. Solutions to energy poverty ought to be one of the priorities of any organisation seeking to advance human rights in Zambia.

CSOs will have to redefine themselves in line with this need. Apart from educating, CSOs will also have to take an active role in ensuring that government upholds the provisions of the bill of rights that speak to access to electricity. This can be done through seeking engagement with the government and litigating where engagements are unyielding.

Domesticating international human rights instruments should be swiftly followed by implementation so as to allow for seamless application of the rights recognised in local legislation. In line with this, for the provisions of the Gender Equity and Equality Act to be fully realised, the Gender Equity and Equality Commission has to be operationalised. As headways are made in operationalising the Commission, legislative amendments to the Gender Equity and Equality Act also ought to be made so as to give the Commission the power to grant any remedy it deems fit on conclusion of proceedings.

There is need for improvements in the state reporting process as well. Zambia should consistently engage in the process and furnish the requisite details. For instance, in terms of the Committee on ESCR this includes statistics on electricity access rates.

This will in turn result in comprehensive Concluding Observations which CSOs can use to engage government on electrification policies. This would foster more accountability on access to electricity.

As regards the communication procedure, Zambia has to accede to the optional protocols granting CEDAW Committee and the UN Committee on ESCR jurisdiction to receive individual complaints. This will open up more accountability routes.

Finally, Zambia should also accept the jurisdiction of the African Court on Human and Peoples' Rights, a forum which the unserved Zambians can approach for legally binding decisions. It will serve as a useful compliment to the mechanism available before the African Commission whose decisions are recommendatory in nature.

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