FROM RIGHT TO LIGHT: A HUMAN RIGHTS-BASED APPROACH TO UNIVERSAL ACCESS TO MODERN ENERGY SERVICES

MANUEL PETER SAMONTE SOLIS
MEL (Sydney) MSc (Distinction) (Carnegie Mellon)
LLB, BA (Cum Laude) (UP)

A THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

ADELAIDE LAW SCHOOL
UNIVERSITY OF ADELAIDE

28 NOVEMBER 2014
‘FOR IF ONE SUFFERS, WE ALL SUFFER’.

1 CORINTHIANS 12:26
ABSTRACT

The thesis re-introduces the human rights-based approach to achieve universal access to modern energy services to offer an integrated and coherent legal strategy and implementation framework that brings renewable energy technology and rural electrification under the common logic and language of human rights. Although access to modern energy services is indispensable to providing basic needs, eradicating poverty and meeting sustainable development goals, 1.3 billion people remain without access to electricity and 2.6 billion people are still without access to clean cooking facilities. Essentially, the challenge lies in how to enhance access to modern energy services, particularly for those who are in impoverished rural areas of the developing world, while achieving universal coverage and sustainable development at the same time. In response, the United Nations called the world’s attention to this challenge and launched the ‘Sustainable Energy for All’ initiative that focuses on three interlinked objectives: 1) enhancing universal access to modern energy services; 2) improving the rate of energy efficiency; and 3) increasing renewable energy use. Beyond catalysing global awareness, however, the critical stage of turning the vision into reality with concrete commitments to action beckons.

The imperative of developing a coherent and appropriate legal response is vital to advancing international and national development agenda and goals. For this reason, it is strongly posited that there is a need to embody the notion of basic needs such as access to modern energy services in clear, preferably legally binding standards. However, the legal response to the lack of access to modern energy services is not clearly articulated, particularly from a developing country perspective. In the meantime, the lack of universal access to modern energy services continues to drive the widening gap between the ‘haves’ and ‘have-nots’ resulting in marginalisation especially of the rural energy poor. With this marginalisation, the human rights dimension of energy poverty due to lack of access to modern energy services comes into the fore as such a situation amounts to deprivation of basic needs, entails disempowerment, and gives rise to serious equity considerations. Intuitively, these typically fall within the purview of human rights conversations prompting some scholars to suggest a human rights-based approach to achieve universal access to modern energy services. Yet the human rights perspective does not figure prominently in such a global initiative.

From the foregoing, the thesis contextually describes human rights, including the challenge of definitions, associated with such a term. Also, the thesis revisits the conceptual and historical underpinnings of human rights and how these evolved in the modern context. Next, it examines the merits and limits of the language of human needs compared to the language of human rights in terms of enhancing universal access to modern energy services. The thesis then analyses the plausibility of integrating needs-talk into rights-talk, which lays the basis for subsequent discussions on renewable energy technology and rural electrification as integral components of the human rights-based approach. Finally, it looks into the practical significance of adopting such an approach to addressing the energy poverty challenge in a developing country setting such as the Philippines where no similar study has yet to be undertaken.
DECLARATION

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name, in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name, for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint-award of this degree.

I give consent to this copy of my thesis when deposited in the University Library, being made available for loan and photocopying, subject to the provisions of the Copyright Act 1968.

The author acknowledges that copyright of published works contained within this thesis resides with the copyright holder(s) of those works.

I also give permission for the digital version of my thesis to be made available on the web, via the University’s digital research repository, the Library Search and also through web search engines, unless permission has been granted by the University to restrict access for a period of time.

Signed: Manuel Peter Samonte Solis

Date: 28 November 2014
ACKNOWLEDGMENTS

More than an academic pursuit, my doctoral program has largely been a journey of faith, love, hope, and transformation for the last three years. I am, therefore, eternally thankful and grateful for the love and support I received while on this journey.

Foremost, I give praise and glorify the Heavenly Father for the answered prayers and showing me great and unsearchable things I would never know and find on my own. So many times I was in a quandary to fill the gaps in my research and to search for answers to the difficult questions that arose in the process. I learned to be patient and to enjoy the small victories every time I discovered a book, an article, or any material that helped me move forward. I thank Him for his indescribable gifts and for lifting my head high especially when I am engulfed by fear, worry, and doubt.

To my beautiful wife, Dina, I am forever grateful and indebted for her love, support, patience, inspiration, and understanding. She carried the entire family and me on her shoulders especially on occasions where I was physically present but mentally absent, although in most instances missing in both, as I was wont to be in the last three years. Aside from this, Dina is my confidant, critic, motivator, and editor and her generous heart and inputs gave warmth to my otherwise drab ‘technical’ writing approach.

To our children, Niko, Nayde, Micah, Marithe, Marga, and Rej, thank you for all your love, understanding and support, particularly when I could not join family and school affairs or I was simply not available to be with, or for, you. Yet the maturity all of you demonstrated while I was ‘away’ belied your relatively young age, which made me so proud and feel blessed.

I am thankful and grateful to my mom, Corazon Samonte Solis, whose love, warm embrace, prayers and reminders I will always cherish. Also, I remember and give thanks to my dad, the late Ricardo Acopio Solis, for telling me to never stop dreaming and for inspiring me to complete a doctoral degree. It was spoken to me almost three decades ago as a teenager, and I wish that he is smiling in heaven together with granddad, ‘Lolo’ Lorenzo Jose Samonte, who motivated me to study abroad, widen my horizons, and be adventurous like him.

Finally, to my supervisors, Adrian Bradbrook and Paul Babie, thank you for the precious time reading, critiquing, reviewing, and supporting my thesis. Both of you showed how fortunate and privileged I was to have such wonderful supervisors and exemplars. Your invaluable support, friendship, direction, and guidance made possible what was once a distant dream become a reality. Special thanks also for the support and resources I received from the International Postgraduate Research Scholarship, Australian Postgraduate Award, and Adelaide Law School, Peter Burdon for his friendship and encouragement, Laura Grenfell for providing comments to my early chapters on human rights, and to my adopted family in Adelaide, colleagues and friends, who became a part of my journey.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>3</td>
</tr>
<tr>
<td>DECLARATION</td>
<td>4</td>
</tr>
<tr>
<td>ACKNOWLEDGMENTS</td>
<td>5</td>
</tr>
<tr>
<td>TABLE OF CONTENTS</td>
<td>6</td>
</tr>
<tr>
<td><strong>CHAPTER 1 – INTRODUCTION</strong></td>
<td>10</td>
</tr>
<tr>
<td>I. ENERGY POVERTY AND LACK OF ACCESS TO MODERN ENERGY SERVICES</td>
<td>10</td>
</tr>
<tr>
<td>II. THE INTERNATIONAL PERSPECTIVE ON UNIVERSAL ACCESS TO MODERN ENERGY SERVICES</td>
<td>13</td>
</tr>
<tr>
<td>A. From Brundtland to the Millennium Development Goals</td>
<td>13</td>
</tr>
<tr>
<td>B. From 2001 to Pre-Sustainable Energy for All Initiative</td>
<td>14</td>
</tr>
<tr>
<td>C. The Sustainable Energy for All Initiative</td>
<td>15</td>
</tr>
<tr>
<td>III. THE DISCONNECT FROM HUMAN RIGHTS</td>
<td>18</td>
</tr>
<tr>
<td>IV. THE LITERATURE AND GAP</td>
<td>19</td>
</tr>
<tr>
<td>V. SCOPE, METHODOLOGY, AND STRUCTURE</td>
<td>22</td>
</tr>
<tr>
<td><strong>CHAPTER 2 - THE (HUMAN) ‘RIGHT’ WORDS AND THE CHALLENGE OF DEFINITIONS</strong></td>
<td>26</td>
</tr>
<tr>
<td>I. WHAT ARE HUMAN RIGHTS?</td>
<td>26</td>
</tr>
<tr>
<td>II. THE DEFINITIONAL INDETERMINACY OF THE INTERNATIONAL HUMAN RIGHTS LEGAL REGIME</td>
<td>29</td>
</tr>
<tr>
<td>A. Human Dignity and Human Rights</td>
<td>29</td>
</tr>
<tr>
<td>B. Universality versus Cultural Relativism</td>
<td>33</td>
</tr>
<tr>
<td>C. Indivisibility, Interdependence and Interrelatedness</td>
<td>36</td>
</tr>
<tr>
<td>1. Interdependency</td>
<td>37</td>
</tr>
<tr>
<td>2. Interrelatedness</td>
<td>38</td>
</tr>
<tr>
<td>3. Indivisibility</td>
<td>39</td>
</tr>
<tr>
<td>III. THE DISTINCTION BETWEEN ‘HUMAN RIGHTS-BASED’ AND ‘RIGHTS-BASED’ APPROACHES</td>
<td>40</td>
</tr>
<tr>
<td>IV. A HUMAN RIGHTS-BASED APPROACH: CONTEXT AND USE</td>
<td>43</td>
</tr>
<tr>
<td>V. CONCLUSION</td>
<td>46</td>
</tr>
<tr>
<td><strong>CHAPTER 3 - UNIVERSAL ACCESS TO MODERN ENERGY SERVICES AND SOCIOECONOMIC RIGHTS: IS IT REALLY IMPRACTICAL TO BE ‘POSITIVE’?</strong></td>
<td>48</td>
</tr>
<tr>
<td>I. WHAT ARE ECONOMIC, SOCIAL AND CULTURAL RIGHTS?</td>
<td>48</td>
</tr>
<tr>
<td>II. SOCIOECONOMIC RIGHTS AS HUMAN RIGHTS</td>
<td>50</td>
</tr>
<tr>
<td>A. A Critique of Socioeconomic Rights</td>
<td>50</td>
</tr>
<tr>
<td>B. Responses to Critiques</td>
<td>52</td>
</tr>
<tr>
<td>III. THE LOCUS OF UNIVERSAL ACCESS TO MODERN ENERGY SERVICES IN THE INTERNATIONAL HUMAN RIGHTS REALM</td>
<td>54</td>
</tr>
<tr>
<td>A. UDHR, ICESCR and Other Regional Legal Instruments</td>
<td>54</td>
</tr>
<tr>
<td>B. Right to Adequate Standard of Living</td>
<td>55</td>
</tr>
</tbody>
</table>
C. Right to Adequate Housing
   1. Legal Security Tenure
   2. Sustainable Access to Natural and Common Resources
   3. Affordability
   4. Habitability

IV. RIGHTS OF WOMEN, CHILDREN AND INDIGENOUS PEOPLES  60
V. RIGHT TO DEVELOPMENT  61
   A. The Meaning of ‘Development’  61
   B. Emergence of the Right to Development  62
   C. Arguments against and for the Right to Development  65

VI. THE DERIVATIVE AND CENTRALITY APPROACHES AND THE
     RIGHT TO WATER  68
   A. The Derivative Approach  68
   B. The Centrality Argument  68
   C. The Normative Content of the Right to Water  69
   D. Crystallising a Human Right to Access Modern Energy Services  70

VII. CONCLUSION  72

CHAPTER 4 - HUMAN RIGHTS VERSUS HUMAN NEEDS: DEBATING THE
LANGUAGE FOR UNIVERSAL ACCESS TO MODERN ENERGY SERVICES  73
I. INTRODUCTION  73
II. HISTORICAL OVERVIEW OF THE HUMAN RIGHTS DISCOURSE  74
   A. Natural Law  74
   B. Age of Enlightenment and the Natural Rights Theory  75
   C. Declaration of Independence and the Rights of Man  76
   D. Karl Marx and the Critique of the Natural Rights Theory  77
   E. Immanuel Kant and the Categorical Imperative  77
   F. John Rawl’s ‘A Theory of Justice’  78
   G. The Interdependency Theory: Herman Shue and ‘Basic Rights’  81

III. MARK TUSHNET: THE LANGUAGE OF HUMAN NEEDS IN
     LIEU OF HUMAN RIGHTS  83
   A. Instability of Rights  84
   B. Indeterminacy Critique  84
   C. Reification of Rights  85
   D. Pragmatic Disutility of Rights  86

IV. JEREMY WALDRON: IN DEFENCE OF THE LANGUAGE OF
     HUMAN RIGHTS  87
   A. Definitional Determinacy Conundrum  87
   B. Suppliant and Passive Language of Needs  88
   C. Rights-Talk as a Moral System  88
   D. Spirit of Rights-Talk and Shared Political Duty  89
   E. Moral Status of Claimant  90
   F. Needs as Basis of Rights  90
   G. Moral Framework for New Ideas  90

V. THE SIGNIFICANCE OF COUCHING UNIVERSAL ACCESS TO MODERN
     ENERGY SERVICES IN THE LANGUAGE OF HUMAN RIGHTS  91
   A. Needs Theory Revisited  91
   B. Recasting Need in the Language of Human Rights  93
   C. Claim Not Charity  96
   D. Empowering Language of Human Rights  98
CHAPTER 5 - UNIVERSAL ACCESS TO MODERN ENERGY SERVICES AND RENEWABLE ENERGY: ENVIRONMENTAL LEAPFROGGING TO ACHIEVE SUSTAINABLE DEVELOPMENT

I. INTRODUCTION

II. ENVIRONMENTAL CONCERNS AND LEAPFROGGING

III. THE BIG PICTURE: GLOBAL DEPLOYMENT OF RE TECHNOLOGIES

A. International Legal Framework for Technology Transfer
   1. United Nations Framework Convention on Climate Change
   2. Kyoto Protocol and the Global Environment Facility
   3. Bali Action Plan, Cancun Agreements and Beyond
   4. Concerns with Intellectual Property Rights

B. Global RE Technology Deployment

C. The Arguments: Pros and Cons of RE Technologies

IV. DEPLOYMENT OF RE TECHNOLOGIES IN SOUTHEAST ASIA

A. Access to Modern Energy Services Deficit in ASEAN

B. RE Target and Policy Support in ASEAN

V. DEPLOYMENT OF RE TECHNOLOGIES IN THE PHILIPPINES

A. The Energy Situation

B. Institutional, Regulatory and Policy Framework
   1. The Philippine Environmental Policy and Philippine Environmental Code
   2. The Department of Energy Act 1992
   3. The Electric Power Industry Reform Act 2001
      (a) Renewable Portfolio Standard
      (b) Feed-in-Tariff (FIT)
      (c) Green Energy Option
      (d) Net-Metering
      (e) Fiscal Incentives

C. REA Implementation Challenges
   1. Concerns on a Customer-Based FIT
   2. Issues on FIT Entitlement
   3. FIT Uncertainty upon Full Subscription of Installation Target

VI. CONCLUSION
6. Standardisation and Regulatory Inconsistency
C. Benefits and Opportunities

III. THE DIFFERENT APPROACHES TO RURAL ELECTRIFICATION
A. State-Owned Utilities and the ‘Virtue’ of a Public Monopoly
B. Power Liberalisation and the Private Sector Approach
C. Rural Electric Cooperatives and the Decentralised Approach
   1. Electric Cooperative Experience in Costa Rica
   2. Electric Cooperative Experience in the Philippines
   3. Other Decentralised Approaches

IV. THE CHANGING REGULATORY FACE OF RURAL ELECTRIFICATION
A. The ‘Whys’ of Regulation: Market Failure, Human Rights and Solidarity Rationales
B. Off-Grid Electrification and the Need for ‘Light’ Regulation
C. The Importance of Subsidies

V. CONCLUSION

CHAPTER 7 - FROM THEORY TO PRACTICE: A HUMAN RIGHTS-BASED APPROACH TO UNIVERSAL ACCESS TO MODERN ENERGY SERVICES IN THE PHILIPPINES
I. INTRODUCTION
II. LEGAL, POLICY, AND INSTITUTIONAL FRAMEWORK
   A. The 1987 Philippine Constitution
   B. National Legislation
   C. The Supreme Court
   D. The Commission on Human Rights
III. THE SIGNIFICANCE OF A HUMAN RIGHTS-BASED APPROACH TO ACCESS MODERN ENERGY SERVICES IN THE PHILIPPINES
   A. Operationalising the Concept of Equality and Non-Discrimination
   B. Shifting the Accountability from Private Franchisee/Contractor to the State
   C. Ensuring the Availability of Effective Legal Redress
IV. CONCLUSION

CHAPTER 8 - CONCLUSION
I. SYNOPSIS OF THE ARGUMENT
II. GOING FORWARD: FUTURE RESEARCH DIRECTIONS
III. FINAL REFLECTION

BIBLIOGRAPHY