Human Rights and Access to Information and Communication Technologies

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ABSTRACT

The world is going through a profound change where advances in Information and Communications Technologies (ICTs) have tied nation states into an increasingly complex web of development, [1]thus prompting the extreme importance of access to ICTs.[2] Article 27 of the Universal Declaration on Human Rights (UDHR)[3] provides that 'everyone has the right to participate, enjoy and share in scientific advancement and its benefits'. Though, billions of people the world over are presently excluded from access to ICTs necessitating the submission yet those who lack access to ICTs are extremely marginalised from present day development. This article critically weighs the immense importance of ICTs to everyday living and global development, the relationship between access to ICTs, law and human rights and recommends the adoption of a human rights-based approach towards bridging the ICTs or digital divide.
Keywords: *Human Right, ICT, scientific advancement, digital divide*

INTRODUCTION

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance[4]. ICTs are the engines that drive modern development and have been regarded as the electricity of the present age[5], thus, access to them has become a yardstick for measuring development and underdevelopment. ICTs are so important that they can save lives, create jobs and introduce radical societal benefits. The international community and national governments are presently engaged in various efforts to ensure universal ICTs access and the issue of the ICT divide has been put on all agendas, whether public, political or scholarly.[6] This has prompted the argument that implicit in the right to development[7] and in the provisions of Article 27 UDHR is the right to ICT access and that without the right to ICT access, there might be an emergence of the 'Fourth World' inhabited by countries of people who lack ICT access, resources and infrastructure.[8] The question is, are ICTs that crucial to present day living and development to have become a necessary amenity for all and thus a human right or a derivate of human right?

IMPORTANCE OF INFORMATION AND COMMUNICATION TECHNOLOGIES IN DEVELOPMENT

The term commonly used to cover the range of technologies relevant to the transfer of information and communications, in particular to computers, digital electronics, and telecommunications is ICTs[9]. Gunton[10] described ICTs as electronic technologies for collecting, storing, processing and communicating information. These technologies according to Gunton can be separated into two main categories: those which process information, such as computer systems and those which disseminate information, such as telecommunication systems.

Generally, the term ICTs relates to information and communication devices and technologies. These devices store, retrieve, transmit, manipulate or receive information electronically. They include computers and network hardware and software, satellite systems, televisions, phones, radios, pagers, audio visual equipment, the information contentS of these technical systems as well as the various services and applications associated with them, such as the internet. These technologies enable electronic production and consumption of increasingly vast quantities of information[11] and are relevant to the transfer of information and communications.

At present, the applications of ICTs are at all spheres of life such as industry, commerce, administration, medicine, law, science, education, profession and domestic affairs. ICTs are used by States to enhance national security. It is used to aid the protection of lives, crime prevention, evidential purposes, monitoring of airspace, and other mode of transportation. In fact, the last few decades have seen an increasingly rapid development of ICTs which has 'permitted the diffusion of these technologies into almost all aspects of daily life and an intermingling of its various branches'[12].

Every discussion of development will be inconclusive without the mention of the impact of modern technologies to development[13], especially ICTs. ICT is a *sine qua non* for development in today's global world. The UN has reaffirmed that ICTs are powerful tools to foster development[14]. Central to the present day development is the United Nations Millennium Development Goals (MDGs)[15] and the General Assembly of the UN notes that ICTs are powerful contributory tools to the realization of the MDGs, based on which the Assembly endorsed the Declaration of Principle and the plan of Action adopted at the first phase of the world summit on the Information Society in 2003[16]. In the past few decades, ICTs have transformed the world. It is true that its potential for reducing poverty and fostering growth in developing countries has increased rapidly as mobile telephones now provide market links for farmers and entrepreneurs, the internet delivers vital knowledge to schools and hospitals, computers improve public and private services, and increase

productivity and participation by connecting governments, people and places, ICTs have played a vital role in national, regional, and global development, and holds enormous promise for the future.[17] ICTs are central to everything. The process of governance and democracy has become digitalised; the health systems, judiciary, educational systems, and economy have also been digitalised. In fact, ICTs like the Internet, mobile phones and satellite networks seem to have shrunk space and time,[18] considering the manner in which information is now disseminated and activities are carried out. Data about individuals can be dug up globally in seconds and world information can be transmitted in seconds. The process of buying and selling is now advanced and ICTs are central to today's market, both nationally and internationally.

According to Organisation for Economic Co-operation and Development (OECD), at the heart of the present changes being witnessed in terms of development, are the innovations made possible by ICT[19]. ICT has become one of the main drivers of growth, and the importance of ICT to both economic and social development explains the priority of bridging the ICT divide[20]. Warschauer[21] argues that some individuals would suggest that ICT is a luxury for the poor, especially in the developing world, yet it is in effect becoming the electricity of the informational era, that is, an essential medium that supports other forms of production, participation and development.

In fact, development without ICT will be the equivalent of industralisation without electricity in the industrial area.[22] That is why Castells[23] argues, that, often heard statements relating to prioritizing health, education and electricity before coming to ICT reveals a profound misunderstanding of the current issues in development because without an ICT based economy there is little chance for any country to generate the resources necessary to cover its developmental needs. Based on Van Dijk[24] analysis, governments presently think ICTs are the crucial innovation of the current and future wave of economic development, thus Northern America, Europe and East Asia fight for leadership in the ICT driven development while developing countries are attempting to catch up in order to create access to ICTs for at least part of their populations.

In a world which seems governed by ICTs, exclusion from its access will be the equivalent of exclusion from growth, advancement or development. With regards to the importance of ICT to development, United Nations Development Programme (UNDP),[25] states that 'the ICT industry could provide entry points for developing countries into producing for the knowledge-intensive economy.' One thing is certain; that ICTs are pivotal to development and access to them are a fundamental necessity.

THE DIGITAL DIVIDE

The term which is usually used to define the divide in access to ICTs is Digital Divide. The digital divide refers to situations in which there is a marked gap in access to or use of ICT devices[26]. Often the digital divide is regarded as primarily a technological problem referring to the physical access of having computers, knowing how to operate and use them; however, it goes beyond that. It is considered as both a social and economic problem[27]. Compaine[28] defines the divide as the gap, or 'perceived gap,' between those who have and do not have access to 'information tools' and between those who have and do not have the ability to use those tools. Based on Tavani's[29] conclusion, merely having access to ICTs is not sufficient; one must possess the knowledge and ability to use those technologies. According to the OECD,[30] the divide is not just about computers per se but about access to the world of information and communication.

The ICT divide has created separate segments of society as well as whole nations into those who are able to take advantage of the new ICT opportunities and those who are not. In fact, it seems a new form of society has been created in the world with the increase in emergence of new ICTs. There is always a general tendency to measure ICT divide with the economic and development gap between the more industralised nations and the developing countries and the traditional measurement of ICT access still does not monitor the variation in the amounts and function of ICT resources by different people[31]. Although the developing nations are behind in terms of ICT access, there is still ICT or digital divide even in industralised countries. ICTs development and use are affected by social and cultural contexts[32], including inequality in the lines of gender, age, income, race, disability or education[33].

The digital divide is an integral part of a much broader and more intractable development divide. The likelihood that people in low-income countries can improve their life chances is often sharply limited by their lack of access to modern means of information and communication technologies. Towards the beginning of the 21st century, the issue of the ICT divide became an agenda of public, political, and educational debate, it started from the United States, spread to Europe and then to the rest of the world.[34] The issue was also put on the agenda of international deliberations, public opinions, political discussions, and mass media attention. According to Van Dijk,[35] statistics on ICT access reveals such unequal distributions that they could not be ignored, and the inequality in access was acknowledged as a problem of the future.

DEVELOPMENT AND THE RIGHT TO DEVELOPMENT

Development is a relative term which could be used descriptively or normatively. What may be regarded as development for a particular group may not be

same for another group. Development has been recognised by the General Assembly (GA)[36] as 'a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from. Development in any given society affects every member of that society. It is not economic growth alone or achievement of democracy, it includes the terms technological advancements, industrialization, education, social inclusion and other terms.

The Right to Development (RTD) is defined as the right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development.[37] Although the RTD is a relatively new addition to the international human rights framework, the right is rooted in the provisions of the Charter of the United Nations[38], the Universal Declaration on Human Rights (UDHR)[39] and the two International Human Rights Covenants.[40] It was first proclaimed by the Organisation of African Unity (OAU) and included in 1981 in the African Charter on Human and Peoples' Rights (ACHPR).[41] In 1986, the General Assembly adopted the Declaration on the Right to Development (DRTD) [42]after many years of negotiation. The RTD is considered to form part of the category of economic, social and cultural human rights[43] and links with numerous other rights vital to the society and its development.

Wallace,[44] states that 'the right to development tends to suggest the presence of certain conditions conducive to the realization of human rights'. The RTD insists that development of the individual is the ultimate objective of all development projects and associates human rights with the issue of greatest concern for developing countries development.[45] Although the RTD is the subject of controversial discussions; there is a growing acceptance of the linkages between development and human rights.[46] There is the argument that the obligations imposed by the DRTD are too vague to be justiciable.

Hestermeyer[47] argues that such argument is wrong because it over looms the fact that vague legal obligations are rather common as some other rights like the civil and political rights, too, are formulated in very imprecise manners and yet international and national judicial bodies are regularly called upon to apply such vague notions as 'goodfaith'. Hestermeyer[48]further rejects the argument that the notion of progressive realization of rights does not imply that there are no immediate state obligations, according to him, such basis of argument of non-justiciability on reasons of progressive realization of rights will ultimately fail because this obligation is regarded as an obligation to take concrete steps within a reasonable time, as well as a duty to use reasonable

care in trying to achieve goals[49] of development. Judicial cases in which economic, social and cultural rights in general and indeed the RTD were used as a basis for judicial review, even by mere definition, constitutes a rebuttal of the point of view alleging its non-justiciability. It does not matter whether or not a violation of such rights was actually found because the criterion for its justiciability or otherwise is not whether that right has been violated , but only whether or not that right provided the basis on which the judicial or quasi-judicial body concerned was conducted.[50] The International Court of Justice (ICJ) invoked the right to development (sustainable) in order to reconcile environmental protection and the need for economic development in the case concerning the *Gabcikovo-Nagymaros Dam (Hungary/Slovakia)*.[51] The African Commission on Human and Peoples' Rights has applied social and economic rights granted under the ACHPR (Banjul Charter), in Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria.[52] It found that Nigeria had violated the right to health and the right to clean environment.

In Columbia, Argentina and South Africa, India, Philippines, Hungary and Spain[53], socio-economic rights are not only recognised as justiciable rights, but are regularly dealt with as such by courts for which individuals can be granted remedies.[54] As Eide[55] submits, human rights that aim at the protection of the basic necessities of life deserve protection by judicial means and that presently, a consensus has emerged that it lacks sense to deny any one human right or category of rights the status of justiciability, thus preventing individuals of their right to remedies for rights violated. It is clearly stated in Article 1 of DRTD that 'the right to development is an inalienable human right.' The Vienna Declaration and Programme of Action has reaffirmed the RTD as 'a universal and inalienable human right and an integral part of fundamental human rights.[56]

Weeramantry,[57] agrees that human rights would be profoundly lacking in depth and realism if the intimate inter-relationship between human rights and development is neglected. Further, underdevelopment is one of the acutest of human rights problems and that the future of developing countries depends heavily on a better international understanding of the RTD as a human right and especially for the reason that on the human right to development, depend many other human rights.[58] In the words of Weeramantry[59] "development is a human right, there is no longer any reason to deny it" Bedjaoui[60] concludes that "...the right to development is a fundamental right, the precondition of liberty, progress, justice and creativity. It is the alpha and omega of human rights, the first and last human right, the beginning and the end, the means and the goal of human rights, in short it is the core right from which all the others stem…"

HUMAN RIGHTS AND ACCESS TO INFORMATION AND COMMUNICATIONS TECHNOLOGY

Human rights are those rights which accrue to every individual by virtue of the fact that they are of the human race. These rights are universally endorsed and enshrined in the provisions of the United Nations Charter, The UDHR and related treaties and covenants. Human rights are premised on three fundamental principles as; all human rights are universal, inalienable and indivisible.[61] Universal means that every human right applies to everyone, inalienable means that they are based on individuals and their humanity and thus cannot be alienated and indivisible means that all rights are equally important and no right is more important than the other.

The ICT revolution has generated serious problems for those marginalised from the networked society. Considering the importance of ICTs to development and the fact that every individual has a RTD, solving the problems associated with the divide will be better dealt with by adopting a human rights-based approach (HRBA) to ensuring universal ICT access. The United Nations independent expert on the right to development defines a HRBA as 'a manner that follows the procedures and norms of human rights laws, and which is transparent, accountable, participatory, and non-discriminatory, with equity in decision-making and sharing of the fruits or outcomes of the process'.[62] There is no single, universally agreed HRBA although there may be an emerging consensus on what should constitute the elements of a HRBA [63]. The Working Group on the Right to Development states that 'The right to development is more than development itself; it implies a human rights approach to development, which is something new'.[64]

According to Kracht[65], a HRBA emphasizes rights and responsibilities. Simply put a HRBA requires the identification of the category of people who hold rights and others who have the obligation to fulfil these rights. This approach identifies the right-holders and duty-holders, an assessment of whether the duty holders (whether the state or other duty holders) have fulfilled or are fulfilling their obligations and whether the procedures being followed to fulfil such obligations are consistent with laid down human rights principles. HRBA should apart from identifying specific duty bearers also focus on accountabilities,[66] equality and making people the central purpose of human rights accruing to them.

In terms of development, HRBA links the human development approach to the idea that there are people or parties who have specific duty to enhance human development[67], integrates the norms, standards and principles of human rights system into the plans, policies and processes of development and is directed to promoting and protecting human rights.[68]

There is a growing acceptance of the relevance of human rights-based approaches to development. This growing acceptance is enhancing an increase in the empowerment and active participation in the development process by beneficiaries, giving legitimacy to their developmental claims, requiring greater accountability of all actors in the development process and enabling individuals as right-holders to make claims on the conduct of duty holders for not meeting their obligations. Has access to ICT become a human right as has been proposed by some authors?[69] Is it a derivative of human rights? 'The concept of human rights is always progressing' [70] and 'the list of internationally recognized human rights is by no means immutable.'[71]

Human rights are not static or absolute, what was not regarded as human right yesterday might emerge as a human right today. Vasak's[72] list of solidarity rights included the right to development, the right o peace, the right to environment, the right to common heritage of mankind, and even the right to communication. Since the adoption of the UDHR in 1948, there has been an explosion in recognized human rights, new rights are being proposed and rights are developing in many areas.[73] What should be conceived as human rights should relate to the general view of the relationship between the individual, the group, society and nature. A debate on what includes human rights should be and reflect part and parcel of global history, past and present and in particular take into account contemporary situations, developments and advancements.[74] The fact is, every individual has a RTD and it has been argued that access to ICTs is vital to the realization of this right.[75]

The right to access of ICTs can arguably be said to be written in the provisions of Article 27 of the UDHR, which provides that everyone has the right to participate, enjoy and share in scientific advancement and its benefits and Article 15 of the ICESCR, which provides that State Parties to the ICESCR recognize the right of everyone to enjoy the benefits of scientific progress and its applications. The Vienna Declaration says it all by stating that;

> *'Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern.'*

Human rights speak of fundamentality; the question might be is access to ICT fundamental? What is fundamental is a question of reason and the term fundamental is a relative term. One can argue that the only reason why access

to ICT was never codified under human rights laws just as right to education and housing is because when rights like that were codified, nobody envisaged the emergence of ICTs and its fundamentality to development. Considering that it has been opined that ICTs are also essential to the realization of human rights,[76]and pivotal to development, access to ICTs can be argued to have become fundamental and thus, a derivative of human rights. It has become extremely important to adopt a HRBA to ensuring universal ICT access. If we recognise that ICTs are fundamental and central to development, we would then treat access to ICTs as a derivative of the right to development and if we appreciate the relationship between development and human right and recognise that the RTD is an inalienable human right,[77] then everyone will work towards adopting a HRBA to ensuring ICT access for everyone. A HRBA would use the human rights framework[78] to guide ICT development and access agendas that lead to better and more sustainable outcomes by analyzing and addressing the ICT inequalities, while putting the international human rights entitlements of individuals and the corresponding obligations of the State at the centre of the international and national development debate.[79]

The essence of linking human rights to development objectives is because both aim to promote well-being and freedom, based on the economic and social equality of all people and the human rights framework introduces the important idea that certain actors have duties to facilitate and foster development. The importance of adopting a HRBA to ICT access is because of its significant positive implications for the manner in which development priorities and objectives are identified and both international and national policies and outcomes are formulated. Charity is not enough to accomplish ICT access from a human rights perspective.[80] Under a HRBA, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law which helps to promote the sustainability of development work, and empowerment of people themselves to participate in policy formulation and hold accountable those who have obligations or a duty to act.[81]

In adopting a HRBA to ensuring ICT access, there is an obligation not to discriminate between different groups of people in the realization of universal ICT access.[82] There is an obligation to take steps targeted towards the full realization of the right to have access to ICTs and an obligation to monitor progress in the realization of ICT access for everyone. The practical value of a HRBA to ensuring ICT access will lie in identifying who the right holders are, making use of international and national human rights instruments, involving a participatory process, while adopting transparent and accountable measures.

Human rights generally enshrine non-static norms, which evolve in response to global developments and political reality.[83] Human rights are for the benefit of us all for which goals must be achieved. Lawyers and jurists have played their role, drafting norms of rights and codifying a philosophy on the rights of the individual, it is now for the Governments of States and other non-state actors with obligations, to transform the theory into reality, the rights and freedoms into tangible norms enforceable before national courts and subject to international supervision.[84]

CONCLUSION AND RECOMMENDATIONS

Many would say access to ICTs is now a universal human right.[87] Disabled people should have the right to study for a University degree from the comfort of their homes using ICTs, a remanded or incarcerated person should still have access to the happenings of his/her society, listen to news, communicate, learn new skills or even acquire more education through the use of ICTs. A mother in a village in Nkporo, Abia State of Nigeria whose child is sick should have the right to pick up a phone and call the nearest rural hospital, or seek help, thus reducing the percentage of mortality in developing countries contributed by lack of access to ICTs. Poor people should not be excluded from the ICT innovations just because they do not possess adequate resources. They too should be able to shop online, join the networking boom and undertake other activities.

Mere access alone would not solve problems, but is a prerequisite for overcoming inequality in a society whose dominant impact, functions and social groups are increasingly organized around ICT networks[85] and of which, '… not having access to ICTs will substantially diminish the chances of participation in all relevant fields of society.'[86] It is in the light of addressing problems of inequality in relation to ICTs that a human rights framework becomes necessary. Ensuring universal ICTs access based on a human rights approach would place individuals at the centre of modern development and ensure participation, non-discrimination, accountability and transparency.

Every individual should benefit from the excitement of banking from the comfort of their homes and doing business from wherever they choose. Children the world over, are entitled to experience the beauty of ICTs, whether for gaming or for learning, they have a right to be educated in the area of ICTs. A mechanic who works beside the highway to the Nigerian capital city should be able to call his suppliers to ask about availability of a motor part, before spending time and money going across town to look for it. ICTs have become basic amenities for everyone. A human rights-based approach to ensure that

people have access to ICTs is the best way forward. The DRTD enjoins States to formulate appropriate national policies aimed at development and in the fair distribution of the benefits resulting there from;[88] take responsibility for the creation of national and international conditions favourable to the realization of the right to development;"[89] co-operate with each other in ensuring development and eliminating obstacles to development;"[90] and take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development."[91] It is on this basis that the article makes recommendations addressing the role of international law, international policies and cooperation and national policies and strategies, towards adopting a HRBA to ensuring universal ICT access.

The Role of International Law: One problem with the RTD is the absence of a consistent implementation practice through reporting procedures before judicial and quasi-judicial bodies as well as an ensuing lack of conceptual clarity. Definitely, a lack of understanding of the meaning and scope of a right will make it difficult to implement.[92] International law should work towards clarifying the normative content of the RTD and work towards the adoption of an international legislation of ICTs in relation to development and on the importance of everyone having access to ICTs in the same way as food, housing, health and education.

International law should specifically clarify what precisely individuals have a right to on the basis of the right to development under international law and what the resulting obligations of state and non-state actors are. International law should conceptualise an ideal draft of universal access to ICT provision. This is not essentially to draft a law, but to give an indication as to how existing treaties related to the right to development should be interpreted and how national policies all over would be formulated to ensure provision of universal ICT access. A HRBA approach involves monitoring measures and supports the monitoring of State activities and progress through assessments of State performance. International monitoring mechanisms for creation of ICT access should be ensured. This is essential because in many countries, the constitutional protection to rights like the RTD remain underdeveloped when compared to many other rights also covered by International Human Rights Treaties.[93]

International Policies and Cooperation: Strong global and national partnerships at all levels, and networking between and among the more industralised countries and developing countries should be established towards ensuring ICT access for all. Where a global network is established among States, the ICT efforts of governments should be coordinated by issuing

guidelines to developing Governments for ICT infrastructure policies and strategies. Presently, UN has adopted a HRBA in considering how the benefits of new technologies especially ICTs could contribute to development and how everyone can gain access to them. This work is being carried out by the United Nations Commission on Science and Technology for Development (UNCSTD). The Commission established the United Nations Information and Communications Technology Task Force (UNICT Task Force) which has continued in its work as a global forum on integrating ICT into development programmes and as a platform for promoting new partnerships of public, private, non-profit, civil society and multilateral stake holders to advance significantly the global effort to bridge the ICT divide and foster ICT opportunity.[94]

National Policies and Strategies: National governments should ensure that their efforts, strategies and policies are effectively focused on actions which accelerate the elimination of the ICT divide. States should therefore take steps towards the adoption of national ICT strategies that ensures access to ICTs based on HRBA. States should look seriously into adopting the RTD in national laws and legal system. This measure will strengthen national parliamentary and legislative mechanisms, NGOs and National Human Rights Institutions,(NHRI) to play a more prominent role in the implementation of development goals.

National Governments should put in place ICT framework legislation and regulations. The most appropriate measure to implement in creating access to ICTs will vary significantly from one State to another, however, it still remains that there is a duty on each State to take whatever steps are necessary to ensure that their citizens have access to ICTs. In adopting frame work legislation for ICTs, States should consider a frame work legislation that would focus on regulation, enhance competition and establish national mechanisms for monitoring implementation of ICT strategies and policies.

Where regulation of the ICT market is already in place, it should be strengthened so that service providers in the ICT sector are required to use part of their revenue to improve access to ICTs for those excluded.[95] For many individuals having access to ICTs is a luxury and an expensive commodity. To help them, ICT providers must also offer cheaper, effective and user-friendly products.[96] National ICT strategies and policies should be based on the principles of accountability and transparency because good governance is essential to the effective implementation of all human right and would greatly influence the realization of equal ICT access and opportunities. To ensure accountability, a HRBA would identify the obstacles that obligation holders face in exercising their obligations. The formulation and implementation of the

national ICT strategies and policies should respect the principle of non-discrimination[97] and people's participation[98]. A HRBA requires that through all stages of decision-making, implementation, monitoring and evaluation, the processes used should not only be transparent but participatory. States have to, irrespective of their available resources; recognise access to ICTs as a basic necessity for everyone. States have to recognise people's needs of ICTs as an important prerequisite for social inclusion and accordingly must have a strong commitment to provision of access to ICTs as a right or basic necessity in their policies and legislations. This implies that in some circumstances availability and access to ICTs can be provided free of charge to their citizens, although this does not mean States always have to provide free services for citizens.

Non-state actors like corporations and ICT providers should look beyond profit and reciprocate by being more socially responsible in the society. Partnership between local and international NGOs and other non-state actors should be encouraged to facilitate financing for ICT programmes. There are increasing opportunities for donors to work with governments in provision of ICTs for the unprivileged citizens. It is important that individuals are made aware of the importance of participation in the use of ICTs and the ICT networked society. One important policy of the EU is the creation of public awareness building programmes and promotion of ICT in general in Europe and a large part of the money devoted generally to ICTs in Europe does not go to technical infrastructures but to information campaigns, model projects and the development of ICT content and applications with a popular appeal. Governments should also ensure user trust by regulation of the ICT world.[99] This is because one barrier to individuals freely accepting use of ICTs is the dangerous and criminal uses of ICTs. People are worried about invasion of privacy, fear identity theft, fraud and many other negative antecedents. In fact, some individuals think ICTs damage health. Thus, governments should as a responsibility ensure user trust and work with ICT providers towards increasing usability and user-friendliness of ICTs.

Governments should undertake substantial investment in ICT education. The use of ICTs involves education and literacy. Governments should ensure that the educational curricular of all levels of education system in the State include the objectives of ICT education, awareness, literacy and access. In undertaking national strategies and policies for ICTs, States should also tackle infrastructural inadequacies. ICTs need basic infrastructures like electricity to function properly. Most developing countries barely have constant electricity and in some parts of those countries, electricity has never functioned for one day. Finally, States should take steps immediately to identify the most

disadvantaged or excluded with respect to the proposed ICT policy measures. Governments should also pay attention to the vulnerable groups in making policies for ICT access, this are the groups more affected by the ICT exclusion; the aged, disabled, women, poor and uneducated citizens. This is because an effective human rights approach to ensuring ICT access for all will be that which is non- discriminatory and socially inclusive. Addressing the inequality in access to ICTs is of utmost importance if we are to succeed in bridging socio-economic inequalities between and within states and across sectors. Ensuring access to ICTs for all at all levels is the world's challenge; everyone has to make it work. 'No one gives us rights. We win them in struggle. They exist in our hearts before they exist on paper… it is through concepts that we link our dreams to the acts of daily life.'[100]

NOTES

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[23] Ibid. p. 266

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[27] *Op cit* J Van Dijk, Pg 163

[28]Tavani, H. *Ethics and Technology: Ethical issues in an age of Information and communication Technology* 2nd edn (USA: John Wiley and Sons, 2007) p. 296

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[30] *Op cit* OECD, P. 64

[31]Madhusudan, C. N.' India's "Hole in the wall", Key to Bridging the Digital Divide?' September 2002 Tecknowlogia pg 38-40 < http://info.worldbank.org/etools/docs/library/57469/holeinwall.pdf > accessed 21/03/12

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[33] Op.cit. M Castells p.248

[34] Op. cit. J Van Dijk p.1

[35] Ibid.

[36] United Nations General Assembly. Declaration on the Right to Development. UNGA Res 41/128 (4 December 1986)

[37] Article 1(1) DRTD Italics mine for emphasis

[38] The United Nations Charter (1945) Through the United Nations Charter, Member States undertook to "promote social progress and better standards of life in larger freedom" and 'to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

[39] The Universal Declaration on Human Rights, 1948. Central to the discuss of this

essay is Article 27 of the Declaration. However, as regards to the right to development, the Declaration contains a number of elements that became central to the international community's understanding of the right to development. This includes the provisions related to the promotion of social progress and better standards of life and the recognition of non-discrimination, the right to participate in public affairs and the right to an adequate standard of living. It further contains everyone's entitlement to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.

[40] The International Covenant on Economic, Social and Cultural Rights, 1966 and the International Covenant on Civil and Political Rights, 1966

[41] Organisation of African Unity OAU Doc. CAB/LEG/67/3 rev.5, 21 *ILM* 58 (1982) See Art 22

[42] Op.cit. UNGA Res 41/128 (4 December 1986)

[43] Article 1(1) UNGA Res 41/128 (4 December 1986)

[44] Wallace, R. *International Human Rights Text and Material* 2nd edn (London: Sweet and Maxwell, 2001)

[45] ibid

[46]Ermacora, F. *et al.*,(eds) *International Human Rights Documents and Introductory Notes* (Vienna: Law books in Europe, 1993) p. 81

[47]Hestermeyer, H. *Human Right and the WTO. The Case of Patents and Access to Medicines* (New York: Oxford, University Press, 2007) p. 92

[48] *Op cit* Hestermeyer, H. p. 91

[49] Ibid

[50] Toebs B, *The Right to Health as a Human Right* (Hart: Intersentia, School of Human Rights Research Series, Volume 1, 1999) p. 170

[51] (1997) ICJ Reports,7

[52] Communication No 155/1996, ACHPR/COMM/A044/1(27 MAY 2002) Para 53

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[55] Eide, A. et al.(eds). *Economic, Social and Cultural Rights* 2nd edn (Kluwer law International, Netherlands 2001) p.8

[56] Article 10, Vienna Declaration and Programme of Action UN doc.A/CONF.157/23, Part 1, Para.10.

[57] *Op cit* Weeramantry, C. p.203

[58] Ibid. p. 201

[59] Foreword to the book Cordonier, M. and Khalfan, A. *Sustainable Development .Principles, Practices, and Prospects"*(New York: Oxford University Press, 2004) by H.E. Judge Christopher Weeramantry.

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[61] Article 5, World Conference on Human Rights:Vienna Declaration and Programme of Action UN doc.A/CONF.157/23

[62] *Op cit*. UNDP Human Development Report, p. 31

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(Oxford: Intersentia, 2008)

[66] Engh, I. *Developing Capacity to Realise Socio-Economic Rights. The Right to Food in the Context of HIV/AIDS in South Africa and Uganda*
(Oxford: Intersentia, 2008) p. 4

[67] Ibid p. 23

[68] Office of the United Nations High Commissioner for Human Rights. Human Rights in Development. What is a Rights Based Approach? <http://www.unhchr.ch/development/approaches-04.html> accessed 1/03/12

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[76]*Op cit* Selian, A. p. 20

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