Revue québécoise de droit international
Quebec Journal of International Law
Revista quebequense de derecho internacional

STATEMENT ON HUMAN RIGHTS, HUMAN DIGNITY AND THE INFORMATION SOCIETY

Citer ce document

STATEMENT ON HUMAN RIGHTS, HUMAN DIGNITY AND THE INFORMATION SOCIETY[1]

1. In the middle of the 20th century, the world community agreed to human rights as the common normative framework at the same time as incredible advances began to be made in digital and genetic information. By the beginning of the 21st century an invaluable regime of human rights norms and mechanisms had been established and, through human rights education and learning broadly understood, a "human rights culture" had begun to take root in many parts of the world. At the same time, important advances in information and communication technologies had created the "Information Society" and large segments of the population, primarily in developed countries, altered the way they communicate and live. These two trends of a human rights culture and the Information Society are intimately related and hold the potential for enhancing each other.

Human Rights Obligations of States in the WSIS Context

2. The development of the Information Society and, in particular, the vision of it articulated by the World Summit on the Information Society (WSIS), must be built on the reaffirmation of the *1993 Vienna Declaration and Programme of Action* adopted by the World Conference on Human Rights which stated that human rights are universal, indivisible, interrelated and interdependent, and that their protection is the primary responsibility of governments. The human rights obligations States have committed themselves to in the *United Nations Charter*, the *Universal Declaration of Human Rights*, the *International Covenants on Human Rights* and all other U.N. and regional human rights instruments require them to ensure that the Information and Communication Society does not result in any discrimination or deprivation of human rights resulting from the acts or omissions of their agents or of non-State actors under their jurisdiction. They also have human rights commitments arising out of other international conferences and summits. The WSIS provides a critical opportunity to reaffirm human rights in the context of information and communication policy. There is a growing awareness among WSIS leadership of the importance of human rights in this context and welcome steps have been taken to include the voice and concerns of civil society in the WSIS process. Greater commitment to human rights and enhanced participation and transparency will be necessary for the Summit to achieve its full potential.

---

[1] This statement was elaborated and adopted by consensus by a group of independent experts from all regions of the world representing a diversity of backgrounds, expertise, nationalities and perspectives, meeting at the Palais des Nations in Geneva on 3-4 November 2003, convened by the People's Movement for Human Rights Education (PDHRE), with the support of the Swiss Agency for Development and Cooperation (SDC), the European Commission, the Office of the High Commissioner for Human Rights, and the Government of Mali, Chair of the Human Security Network.

3.   The host country for the WSIS in 2005 must fully respect the human rights that are essential to the Information and Communication Society - in particular, freedom of expression, association and information for its own civil society and visiting NGOs - and respond positively to the concerns of the international community over its human rights performance. Failure to do so would justify reconsidering holding the summit in that country.

4.   Consistent with these responsibilities, governments participating in the WSIS should not only foster the Information and Communication Society as well as poverty reduction as means of promoting the *Millennium Development Goals*, but they should also ensure that it contributes to the promotion of and respect for all human rights - civil, cultural, economic, political, and social. Such a human rights framework for the Information and Communication Society can promote the liberation of all human beings from fear and want, contribute to human security, advance human and sustainable development, and support gender equality.

5.   The human rights of particular importance to the Information and Communication Society are: freedom of expression and information; freedom from discrimination; gender equality; the right to privacy; the right to a fair administration of justice; the right to the protection of moral and material rights over intellectual creations; the right to participate in cultural life; minority rights; the right to education; and the right to an adequate standard of living, including the right to health, the right to adequate food, and the right to adequate housing. All of these rights belong to the corpus of internationally recognized human rights and should be furthered through the Information and Communication Society.

Challenges to Human Rights from the Information and Communication Society

6.   Several trends that characterize information and communication in most of the world today constitute challenges to and, in many cases, serious dangers for a human rights-based Information Society. Central to these challenges is the exclusion of most people in developing countries from the advantages of advances in digital and genetic information, the commoditization of information and knowledge, and the growing concentration of ownership and control of the means of producing and disseminating information and knowledge. Equally important are limitations, surveillance and censorship by the State or private parties, especially in the post-September 11th, 2001 environment.

7.   The massive disparities in access to information and to the means of communication, known as "the digital divide," are a result of the unequal distribution of wealth among and within countries. The digital divide is, at the same time, a cause

and a consequence of the unequal distribution of wealth in the world and within countries. Poverty, with which it is closely connected, severely diminishes the capabilities of people to enjoy their human rights. Information and communication technologies (ICTs) enable and empower individuals and groups, particularly those who are exposed, marginalized and vulnerable. Unless ICTs are made available on a vast scale to those who are at the losing end of the digital divide, the Information and Communication Society will remain a force of relative impoverishment for large swaths of the world's population and, consequently, a source of instability and deprivation.

8.   The digital divide results in unequal access to information and to the means of communication and information, thus producing massive exclusion. All avenues must be explored to ensure to all equal and affordable access to information, means of communication, and the necessary technology and infrastructure. Public authorities, the private sector, and civil society in developed countries have a special responsibility to share the benefits of the Information and Communication Society with peoples in developing countries.

9.   The Information and Communication Society offers unprecedented opportunities to advance shared knowledge in areas critical for human development. In particular, ICTs are invaluable to the realization of the rights to health, education and adequate food through a wide range of technologies. Special attention must be paid to using the Information and Communication Society to advance gender equality, consistent with the principle affirmed in the *Vienna Declaration and Programme of Action* that women's rights are human rights. The human rights of traditional cultures in the emerging Information Society require special measures of conservation and protection of their traditional knowledge and culture. Special measures are also required to improve the situation of those who are vulnerable, exposed or excluded, in particular, children, the elderly, people with disabilities, minorities, refugees, and asylum seekers.

Human Rights Education and Learning

10.   The Information and Communication Society benefits from new technologies which can serve critical functions for human rights education and learning, and more generally contribute to social change through the realization of human rights.

11.   ICTs must be put to the service of education and lifelong learning for all. In particular, as privileged instruments of human rights education and learning, they should help to enable and empower humans across the world and across generations

and cultures to know, claim and own their human rights and to respect and promote those of others in a spirit of solidarity. ICTs will make a major contribution to societal development on the basis of a commonly shared culture of human rights.

Freedom of Expression and Information

12.   Full respect for freedom of expression and information by State and non-State actors is an essential precondition for the building of a free and inclusive Information and Communication Society. ICTs must not be used to curtail this fundamental freedom. There must be no censorship and no arbitrary controls or constraints imposed on participants in the information process, that is, on the content of information, its transmission, or its dissemination. Pluralism of sources of information and media must be safeguarded and promoted. Any restrictions on the freedom of expression and information must pursue a legitimate aim under international law, must be prescribed by law, be strictly proportionate to such an aim, and be necessary in a democratic society for the respect the rights or reputation of others, or for the protection of national security and public order, or of public health or morals. National security legislation to combat terrorism must respect freedom of expression and information standards and be subject to judicial review, as well as international scrutiny.

13.   Article 19 of the *Universal Declaration of Human Rights* and of the *International Covenant on Civil and Political Rights* is of fundamental importance to a human rights-based Information and Communication Society, not only by requiring that everyone have the right to freedom of opinion and expression and the right to seek, receive and impart information and ideas through any media source, regardless of frontiers, but also because it implies the free flow of information, free circulation of ideas, freedom of the press, and availability of the tools to access information and share knowledge.

14.   The trend to provide public access to the information produced or maintained by governments and protected under "freedom of information" legislation should be extended to all countries that do not have such legislation, ensuring that government-controlled information is timely, complete, and accessible in a format and language the public can understand.

15.   Freedom of expression should be protected through the Internet in the same way it is protected offline and Internet service providers should be guided by this freedom rather than by codes of conduct that are not based on human rights.

The Human Right to Privacy

16.   Modern technology can and should be used to protect privacy; at the same time, it provides unprecedented possibilities for massive violations of the human right to privacy. The use of increasingly invasive means of surveillance and interception of communications, of intrusive profiling and identification, and of biometric identification technology, the development of communication technologies with built-in surveillance capacities, the collection and misuse of genetic data, genetic testing, the growing invasion of privacy at the workplace and the weakening of data protection regimes give rise to serious concerns from the point of view of respect for human dignity and human rights. New means must be developed to protect the human right to privacy, such as the right to know about one's personal data held by public and private institutions and to have them deleted where not strictly necessary for a legitimate purpose in a democratic society. The development, transfer, and use of technology permitting illegitimate invasion of privacy must be controlled and curbed.

17.   It is fundamental to an understanding of the Information Society to recognize that information is power. Control of personal information and the deprivation of the right of privacy are ways of exercising power over individuals. The protection of personal information and privacy is central to the autonomy of the individual and for the respect of human rights. The considerable experience with the elaboration of laws and national and international case law to protect privacy should be studied and applied in countries where the right to privacy is not adequately protected and best practices should be emulated.

18.   The development of a communications infrastructure and ubiquitous computing threatens privacy in new and intrusive ways. It is nevertheless possible to develop and adopt privacy enhancing behaviours, technologies, and infrastructures consistent with privacy law. These choices must be favoured through national law, deontology codes for developers, and market incentives. Steps to preserve privacy - at the international, regional, national, community, institutional, and individual levels - must start with the establishment of national data protection laws to protect individual rights with respect to the collection, use, and disclosure of personal information, with independent oversight and access to effective redress. Education across all sectors of society with respect to privacy rights and the risks inherent in the technology is vital so that individuals can take the necessary steps to enforce legal rights.

19.   Certain measures taken in combating terrorism and cyber crime have eroded civil liberties and abrogated privacy rights. Cooperation in the field of criminal investigation techniques must be accompanied by adequate enforcement of civil liberties and independent oversight of data collection.

Cultural and Linguistic Rights and Diversity

20. The international community has increasingly come to regard plurality of identities, including cultural diversity, as an asset and a fundamental value to be defended and promoted. Fostering diversity is crucial to respecting cultural rights, promoting tolerance and fighting discrimination at all levels of society. The preservation and promotion of cultural and linguistic diversity and interaction must be hallmarks of a thriving Information Society. ICTs can and must be used to promote diversity and respect for cultural rights and identity, including indigenous knowledge, rather than for their restriction or suppression. This diversity is reflected positively by community radio, indigenous means of communication, and local media.

21. People in the Information Society are more than consumers; they are also providers of information and of creativity. Steps must therefore be taken to give them access to infrastructure under acceptable economic conditions through proactive measures by governments, under cultural and linguistic exceptions to international trade agreements.

The Public Domain and Intellectual Property Rights

22. A rich public domain is an essential element for the growth of the Information Society and provides the reservoir from which new knowledge is derived. Everyone, therefore, should enjoy the right, reaffirmed in Article 27 of the *Universal Declaration of Human Rights*, to freely participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits while at the same time having an equal right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production. International agreements and treaties and national policies concerning the creation, sharing, and trade of intellectual goods and cultural creations must be aligned according to these competing needs. Facilitating meaningful participation by all, in particular by civil society organizations in developing the intellectual property framework, is a fundamental part of an inclusive information society.

23. Initiatives for high-quality open-source and public domain software, technologically neutral platforms, and the development and use of open, interoperable, non-discriminatory and demand-driven standards that take into account needs of users, consumers, and the underprivileged should be promoted. Furthermore, a fixed percentage of spectrum, satellite and other infrastructural bandwidth capacity

should be reserved for educational, humanitarian, community and other non-commercial use.

24.   Concentration of ownership in the hands of a few major corporations limits the opportunities for information and communications technologies to adequately reflect the pluralism of perspectives and diversity of cultures. Legislative and other measures should avoid excessive media concentration and ensure that the media and ICTs respond to the principle of public service and guarantee equal opportunity of access to media ownership for all social sectors. Public service broadcasting is an essential means of counter-balancing the commercial motivation of the media and ensuring the enjoyment of the right of everyone to participate in cultural life and the right of political participation.

25.   The regime of knowledge ownership and management includes patents, copyright, trademarks and other legal and technical monopolies on knowledge granted by society, and public domain, fair use and other instruments to enable access. The primary goal of this regime is to strike a balance that will both maximize access and use of this knowledge and, at the same time, encourage creativity as widely as possible within society. International agreements, treaties, and national policies concerning the creation, sharing and trade of intellectual goods and cultural creations must comply with this principle.

26.   Intellectual property regimes and national and international agreements on patents, copyright and trademarks should not prevail over the right to education and knowledge. This right must indeed be exercised through the concept of fair use, that is, use for non-commercial purposes, especially education and research. Moreover, intellectual work and ideas, including programming methods and algorithms, should not be patentable. The production and use of free and open-source software and content must thus be encouraged and covered by adequate public policy.

27.   Human knowledge is the heritage and property of all humankind and the reservoir from which new knowledge is created. The Information and Communication Society will not contribute to human development and human rights unless and until access to information is considered a public good to be protected by the State and promoted by the market. Information in the public domain should be easily accessible to support the Information Society. Intellectual property rights should not be protected as ends in themselves, but rather as means to an end that promote a rich public domain, shared knowledge, scientific and technical advances, cultural and linguistic diversity and the free flow of information. Public institutions such as libraries and archives, museums, cultural collections and other community-based access points should be strengthened so as to promote the preservation of documentary records and free and equitable access to information. Scientists, universities, academic research

and other institutions have a central role in the development of the information society and the sharing of research results, scientific knowledge, and technical information.

Democratic Governance

28.   Good governance in the Information and Communication Society must be based on the values of participation, transparency, accountability, and the rule of law. These principles apply to the democratic management of international bodies dealing with ICTs. Given the borderless characteristics of ICTs, decision-making bodies should ensure the respect of principles of democracy and openness, as well as of legality and sovereignty. In particular, the management of the core resources of the Internet, which are the Internet protocols, standards, and identifiers - such as domain names and IP addresses - must serve the public interest at the global, national, and local levels. Furthermore, any decision made on protocols, standards, and identifiers should be compatible with international human rights standards, and especially the rights to freedom of expression, privacy, and the principle of non-discrimination. Such decisions should also allow a better-balanced flow of information.

29.   The proper use of ICTs can strengthen democracy by improving the means and access for civil society to participate fully in public affairs. ICTs can improve access to justice and make public services more responsive, transparent and accountable. The rule of law is essential for the Information Society to become a space of confidence, trust and security where human rights are fully respected.

30.   Both State and non-State actors have a duty to respect and promote human dignity and human rights in the building of the Information Society. Any regulation and self-regulation regarding communication and information must be based on a strict respect for human rights and must contribute to their promotion. Private and public services, community media, as well as journalists - whose independence and access to information must be protected - have major responsibilities in the Information and Communication Society as a means to preserve and advance democracy.

Monitoring Mechanisms

31.   In preparation for the WSIS in Tunis in 2005, an Independent Commission on the Information Society and Human Rights, composed of highly qualified experts with a broad geographical representation, should be established to monitor practices and policies and submit recommendations to the Summit. Its mandate could include a

review of national and international ICT regulations and practices to verify their conformity with international human rights standards, the governance of current decision-making bodies in the ICT field, and the potential applications of ICTs for the realization of the right to development and the essential human rights for sustainable human development, including the right to health, the right to adequate food and the right to education.

32. Furthermore, the importance of the issues of human rights of the WSIS justifies the establishment, within the procedures of the Commission on Human Rights or its Sub-Commission, of a position of Special Rapporteur on Human Rights and the Information Society, with a mandate to monitor developments in this area, including threats to privacy, freedom of expression, freedom from surveillance, and applications of ICTs for the realization of economic, social and cultural rights and to human rights education, and recommend measures conducive to advancing human rights in the Information Society.