

## TOWARDS BRIDGING THE DIGITAL DIVIDE IN AFRICA: A CALL FOR LEGISLATION ON RIGHTS TO ACCESS OF INFORMATION AND COMMUNICATIONS TECHNOLOGY AS FUNDAMENTAL HUMAN RIGHTS\*

### Abstract

One of the rights to Information and Communications Technology (ICT) is that everyone must be able to communicate and access the modern communications and internet in order to exercise and enjoy one's right to freedom of expression and opinion and no one should be denied of such rights by way of location, illiteracy or poverty. The United Nations specialised agency; the International Telecommunication Union spearheads this reform globally. This is aimed at ensuring that communication services get to all especially the unserved, underserved areas and underserve groups. The ICT sector has gone through a lot of reforms in Africa and Government has made policies and enacted laws in other to bridge the divide. In Nigeria Universal Service Fund is one of government response to digital inclusion through legislation.. However, there still exists unequal access to ICT in the rural and underserved communities. The aim of this study is to create the awareness for the need to legislate rights of access to ICT to law and for its interpretation as fundamental human rights. This paper employed the doctrinal method where primary and secondary sources of law were examined. It is found that right ICT is not part of the fundamental human rights contained in Chapter 4 of the Constitution. The paper among others advocates for the legislation of such right into law in other to effectively bridge the access divide.

**Keywords:** Digital divide, Information and Communications Technology, Human Rights, Universal Access.

### 1. Introduction

Access, availability and affordability are important concepts in the Information and Communication Technology (ICT). The ability of individuals and groups to access and use information and communications technology (ICT) is no longer a luxury but a necessity and a right.<sup>1</sup> ICT is the engine that drives modern development. Access to ICT is used as a yardstick to measure a developed and underdeveloped country. The right to ICT also known as freedom to connect, is the view that everyone must be able to communicate and access the internet in order to exercise and enjoy one's right to freedom of expression and opinion and other fundamental human rights enshrined in the constitution and that such right should be made available, affordable and accessible. Access to communication services, information and the influence of ICTs are not identified as a specific human right. Nnenna Ifeanyi-Ajufo asserted that there may be uneven development if basic needs like ICT is not accessible, affordability and available especially to the rural communities.<sup>2</sup> Infact Aitken, M. and Quiroz-Onate emphatically stated 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'.<sup>3</sup> Cell phones and other devices allow for personal communication. Access to cell/smart phone is now seen as a right so that there can be uninterrupted and unhindered personal communication at all times.<sup>4</sup> The universal access of ICT has brought to the fore a new set of right known as right to development in which some jurisdiction<sup>5</sup> have equated as a fundamental human rights.<sup>6</sup>

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<sup>1</sup> M.N Warschauer, *Technology and Social Inclusion: Rethinking the Digital Divide* (Massachusetts Institute of Technology, Massachusetts 2003) p. 6. He argues that ICT is becoming the electricity of the informational era, that is, an essential medium that supports other forms of production, participation and development.

<sup>2</sup> See Nnenna Ifeanyi-Ajufo, Human Rights and Access to Information and Communications Technologies. Available at [https://www.icidr.org/ijalsg\\_vol4no2\\_august2013/Human%20Rights%20and%20Access%20to%20Information%20and%20Communication%20Technologies.pdf](https://www.icidr.org/ijalsg_vol4no2_august2013/Human%20Rights%20and%20Access%20to%20Information%20and%20Communication%20Technologies.pdf). Accessed on 22 January 2022

<sup>3</sup> M Aitken., and D. Quiroz-Onate, 'ICT and the Emerging 'Fourth World': Where Does the Responsibility Lie?' (2008) 1(1/2) *International Journal of Private Law* 14 -21.

<sup>4</sup> M.N Warschauer, *Technology and Social Inclusion: Rethinking the Digital Divide* Op cit. p. 6.

<sup>5</sup> In India Work is on to provide a 'legislative framework' to convert the UN convention's non-legally binding declaration into something that will have the force of law. The India Law Institute is exploring whether the right can be included in the existing human rights framework in other to hold government accountable for delivering good governance and that way make government more responsible to the citizens. See Raghav Ohri India Law Institute Exploring Ways to Give Right To Development to Citizens. Available at [https://economictimes.indiatimes.com/news/politics-and-nation/indian-law-institute-exploring-ways-to-give-right-to-development-to-citizens/articleshow/47548409.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/indian-law-institute-exploring-ways-to-give-right-to-development-to-citizens/articleshow/47548409.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst). Accessed on 14 February 2022.

<sup>6</sup> The right to development was proclaimed in the Declaration on the Right to Development, adopted in 1986 by the United Nations General Assembly (GA) in its resolution 41/128 in Article 1.

The Global System for Mobile communication (GSM) is largely used in Africa. In Nigeria it connects over 60% of Nigeria's population and deliver widespread social and economic benefits. With fixed line penetration only at 0.2%, mobile is best placed to extend access to connectivity in the future. GSM promotes digital inclusion, enabling more than 83 million Nigerians to benefit from the exchange of information for improved access to information thereby bridging the access gap. The Policy and Law are one of the major drivers of digital inclusion in the ICT sector.<sup>7</sup> Nigeria is Africa's most populous country with over 200 million people and sporting an urban vs. rural distribution of 48.3% to 51.7% respectively. The telecommunication sector is the fastest growing in Africa and there are various laws that regulate the sector. This study focuses on Nigeria telecommunications sub-sector and its various laws aimed at bridging access divide.

## **2. Conceptual Clarification**

### **Digital Divide**

Nigeria's digital divide refers to the inequality of Nigerian individuals, groups, or organizations with regards to access to ICT infrastructure or to the internet for municipal use within the Nigerian community. Education, lack of electrical infrastructure, income, and urban drift and a variety of other social and political factors contribute to the growing digital divide. This unequal access to information and technology is a multifaceted issue that hinders human productivity and stifles macroeconomic growth. The division that ensues as a result of this inequality of access requires unique policymaking and strategic government intervention to bridge it.<sup>8</sup>

### **Universal Access**

Universal access is often considered as the policy objective to provide or make available, affordable communications access to the whole population. Universal access is the forerunner to universal service. Universal Service is the objective of making facilities available individually, to every household at a reasonable price. Universal Access refers to the availability of the telecommunication networks to every citizen within a defined location. The defined location could be a country, province, local area or even a continent depending on the terms of reference.<sup>9</sup>

### **Human Rights**

Human rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. The concept of human rights is based on the belief that every human being is entitled to enjoy her/his rights without discrimination. Article 1 of the UN Charter declared that *all human beings are born free and equal in dignity and rights*. The entry into force of the UN Charter on 24 October 1945 marked the formal recognition of human rights as a universal principle, and compliance with human rights was mentioned in the Preamble and in Articles 55 and 56 as a principle to be upheld by all states.<sup>10</sup> In 1948, it was followed by the adoption of the UDHR, and in 1966 by the ICESCR and the ICCPR and its First Optional Protocol.<sup>11</sup>

### **Information and Communications Technology**

Information and Communications Technology is technology that is used to handle communications processes such as telecommunications, broadcast media, intelligent building management systems, audiovisual processing, transmission systems, and network-based control and monitoring functions.<sup>12</sup> It refers to technologies that provide access to information through telecommunications. It is similar to Information Technology, but focuses primarily on communication technologies. This includes the Internet, wireless networks, cell phones, and other communication mediums.

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<sup>7</sup> See Organisation for Economic Co-operation and Development (OECD). Learning to Bridge the Digital Divide. Education and Skills (Centre for Educational Research and Innovation, 2000) p. 3 2.

<sup>8</sup> The term has been around since the late 20th century, when it labeled the difference between people with cellphones and those without them. Today, it refers to the difference between those who have Internet access (as well as access to other forms of digital communication) and those who do not.

<sup>9</sup> M O JudeDavid . Nigeria: Imposing Universal Service Obligation On A Telecom Operator In A Developing Country: Challenges.(2014 )Available at <https://www.mondaq.com/nigeria/telecoms-mobile-cable-communications/295520/imposing-universal-service-obligation-on-a-telecom-operator-in-a-developing-country-challenges>. Accessed on 10th May 2022.

<sup>10</sup> Nigeria is a member of the United Nations and signatory to the declaration

<sup>11</sup>Universal Declaration of Human Rights. Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Accessed on 30th May, 2022.

<sup>12</sup>Techopedia Dictionary. available at <https://www.techopedia.com/definition/24152/information-and-communications-technology-ict>. accessed on 1st June 2022.

### 3. Legal Framework

#### **Nigerian Communications Act 2003**

The Nigerian Communications Act, 2003 is the principal legislation that provides for the telecommunications sector in Nigeria. The Act establishes the Nigerian Communications Commission in section 3 of the Act as the sector specific regulator. The primary object of the Act, is to create and provide a regulatory framework for the Nigerian communications industry and all matters related thereto.<sup>13</sup> It primarily aims at providing a regulatory framework for the Nigerian Communication Industry. Specifically, S. 1(c) thereof stated the relevant objective with regards to universal access and service as to ‘promote the provision of modern, universal, efficient reliable, affordable and easily accessible communications service and the widest range thereof throughout Nigeria’. This objective is understood by the need to promote social, greater equity and inclusion for the people of Nigeria and also to facilitate the country’s economic, social and cultural development.<sup>14</sup> Among the Act’s overriding objectives is to protect rights and interest of service providers and consumers within Nigeria.<sup>15</sup> To safeguard the basic ends of the Act, the courts are expected to review decisions by the regulatory authority on appeal by an aggrieved person. Section 4 generally and in particular, Section 4(1)(w) of the NCA, vests regulation of the communications industry in the Nigerian Communications Commission. Thus, the major regulator is the Nigerian Communications Commission. The NCA purposefully strengthened the regulatory authority by ensuring its independence.<sup>16</sup> Section 112 Part IV of the Act, provides – for the universal service provision. The Communications Act, 2003 has addressed universal service provision in a more structured and comprehensive manner. It places on the Commission the responsibility of designing and determining a system that will promote widespread availability and usage of network services and application services in the country by encouraging the installation of network facilities and the provision of services to institutions, in unserved and underserved area as well as for underserved groups within a community. The Act authorizes the Commission to make regulations for the implementation of universal service provision, and to define ‘institutions’ ‘unserved’ and ‘underserved’ areas, and ‘underserved groups’ within a community. This particularly lends support to the reasoning that basic telephone services, such as publicly available telephone services, should be available to everybody upon reasonable request.<sup>17</sup> The Act provides for the Universal Service Provision Fund (USPF) in section 114 of the Act to be funded mainly from annual operating levies paid by operating companies.<sup>18</sup> The Act requires that the obligatory contributions to the Universal Service by telecoms operators be administered in a transparent, non – discriminatory and competitively neutral manner. Section 115 provides for the establishment of Universal Service Provision Board that shall supervise and provide broad policy directions for the management of the USP fund. The USP secretariat shall serve as the USP Board Secretariat. The USP secretariat shall reside in the commission and shall be responsible for the day – to – day administration of the Universal Service provision.<sup>19</sup> The Act also provides for the USP Fund managers which shall be an independent and competent investment management firm.<sup>20</sup> The Universal Service and Universal Fund represent a framework and basic communications services funding mechanism through which the government intends to realize the universal service for all with the existence of a Universal Service Fund.<sup>21</sup> The NCA 2003 empowers the Commission to make Guidelines and Regulations. Pursuant to its powers under section 70 and 120 of the NCA 2003, the Nigerian Communications Commission in 2007 published the Universal Access and Universal Service Regulation. The Commission has determined that the crucial requirement for successful implementation of universal access and service provision in Nigeria is the installation of an extensive transmission backbone.

#### **Constitution of the Federal Republic of Nigeria (CFRN) 1999 (As Amended)**

The Constitution vest exclusive powers on the National Assembly to make laws on telegraph, telephones,<sup>22</sup> wireless, broadcasting and television other than broadcasting and television provided by a government of a state;

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<sup>13</sup> S 1 (g) Nigerian Communications Act 2003(NCA)

<sup>14</sup> See section 1(2) of Universal Access and Universal Service Regulations 2007

<sup>15</sup> S. 88 NCA 2003

<sup>16</sup> 16 S. 1 (t) NCA

<sup>17</sup> P.C. Obutte, Universal obligation in Nigeria Telecommunications Sector. Paper presented at the International Conference in Electronic Commerce and Telecommunications in Nigeria: Maximizing the Benefits of the Digital Economy. Golden Gate Res. Ikoyi Lagos, Nigeria on September 26, 2002.

<sup>18</sup> It can also get fund from the National Assembly; loans; gifts and aids.

<sup>19</sup>Section 118 (1) NCA

<sup>20</sup> P. C Obutte & Mgbeokwere, C.J ‘Reforms in the Nigeria Telecommunications Sector: Locating the Role of the Universal Service Provision Fund.’ (2012) Vol. 1. No. *Igbinedion University, Journal of Business and Contemporary Issues*. 76 - 107.

<sup>21</sup>Peter C Obutte, *Theory and Practice of Telecommunications Regulation in Nigeria through the Development Question* (VDM Publishers, 2008) P. 164.

<sup>22</sup> CFRN 4(2) and 3 and Item 46 of the Exclusive Legislative List

allocation of wave-lengths for wireless, broadcasting and television transmission.<sup>23</sup> Section 37 of the Constitution provides for the right to privacy. The section provides: ‘The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected’. It allows a citizen to assert his privacy including his home and correspondence.<sup>24</sup> Chapter IV, Section 39(1) of the Constitution of Nigeria 1999, guarantees freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference from anyone. In section 39(2) it provides that ‘no person, other than the government of the Federation or of a state or any other person or body authorized by the President on the fulfillment of conditions laid down by an act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever’. Furthermore, subsection 39 (3) (a) lays the constitutional basis for the regulation of communications in general. It provides that ‘nothing in this section shall invalidate any law that is reasonably justified in a democratic society – For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films’.

Chapter II of the Constitution deals with the Fundamental Objectives and Directive Principles of State Policy. These are listed in detail in sections 13 to 21 and range from the overarching goal to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity, to ensuring that all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.<sup>25</sup> Section 22 refers specifically to the role of the communications sector in regard to these objectives and principles of state policy: The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the Government to the people. This Chapter of the Constitution has been held to be non justiciable<sup>26</sup> although the court has held that in some instances it can be *justiciable*. In *Adebisi Olafisoye v. Federal Republic of Nigeria*<sup>27</sup> the Supreme Court held that the non-justiciability of section 6(6)(c) of the Constitution is neither total nor sacrosanct as the sub section provides a leeway by the use of the words, ‘except as otherwise provided by this Constitution’. The ECOWAS court in *SERAP v. Nigeria*,<sup>28</sup> held that it has jurisdiction and that Chapter 11 of the Constitution is *justiciable* when it declared education a part of social economic right as justiciable and enforceable despite the non *justiciable* provision in the constitution.<sup>29</sup>

#### **4. Sectoral Policies and Regulation**

##### **National Telecommunications Policy 2000 (NTP)**

The National Telecommunications Policy came into force in 2000 to guide the development of the telecommunications industry in Nigeria. This was followed by the enactment of the Nigerian Communications Act, 2003 to give legal effect to the NTP. The National Telecommunications Policy (NTP) captures the government’s objectives and plan of action as an initial response to the unfolding challenges and innovations in the sector. The government has stated the object of the National Policy on Telecommunications to include: ‘Modernization and rapid expansion of the telecommunication network and services. This will enhance national economic and social development and integrate Nigeria internally as well as into the global telecommunication environment’.<sup>30</sup> The overriding objective of the policy is geared towards achieving rapid expansion and modernization of telecom network and services. This has integrated Nigeria into the global communication Village and enhances national socio-economic development.<sup>31</sup> Thus telecomm services are expected to be efficient, affordable, reliable and accessible to the general public. In the preamble, the NTP Committee had noted, ‘the availability of an efficient, reliable and affordable telecommunications system is a key ingredient for promoting rapid socio-economic and political development of any nations’. While stressing that such a system

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<sup>23</sup> CFRN 4(2) and 3 and Item 66 of the Exclusive Legislative List

<sup>24</sup> J.A Yakubu, *Constitutional Law in Nigeria*. (Ibadan:Demyaxs Law Books.2003) p. 384.

<sup>25</sup> M. Uwais, ‘Fundamental Objectives and Directives Principles of State Policy: Possibilities and Prospects. In Nweze,C.C (ed) *Justice in the Judicial Process (Essay in Honour of Honourable Justice Eugene Ubaezonu, JSC)*. (Fourth Dimension Publishing Company Limited, Enugu.) P166-192.

<sup>26</sup> *Uzoukwu v Ezeonu* [1991] 6 NWLR (pt 200) 708 761-762. Where the court held that there are other rights which may pertain to a person which are neither fundamental nor justiciable in the court. These may include rights given by the constitution under the Fundamental Objectives and Directive Principles of State Policy under Chapter 2 of the Constitution.

<sup>27</sup>[2004] 4 NWLR (pt 864) 580 659.

<sup>28</sup>*Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v Federal Republic of Nigeria & Universal Basic Education Commission* (Suit ECW/CCJ/App/0808) delivered on 27 October 2009.

<sup>29</sup> See also *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt. 600) 228

<sup>30</sup> Generally National Telecommunications Policy Chapter 2.

<sup>31</sup> NTP Paragraph 2.0

must be 'universally accessible and cost effective'.<sup>32</sup> The government policy goals, according to the Committee, favour total liberalization, competition and the private sector-led growth of the telecommunications sector. These are encapsulated in the NTP's short and medium term objectives. It specifically recognizes the ITU recommended minimum teledensity of 1 telephone to 100 inhabitants. In other words,<sup>33</sup> this meant that a target of approximately two million fixed lines and 1,200,000 mobile lines was to be reached and exceeded in two years. One of the medium-term objectives is to provide a new regulatory environment that is sufficiently flexible to take into account new technology development and the international trend towards convergence. The policy went on to state that the rapidly changing nature of technology in telecommunications makes it difficult to set long term policy objectives.<sup>34</sup>

#### **Universal Access and Universal Service Regulation 2007**

The Universal Access and Service Regulation is the sector specific Regulation for the communication sector that guides Universal Access and Service distribution in Nigeria. The Nigerian Communications Act 2003 empowers the commission to make Guidelines and Regulations. Pursuant to its powers under section 70 and 120 of the Communications Act, 2003 the Nigerian Communications Commission's in 2007 published the Universal Access and Universal Service Regulation. Section 1(1) provides that these Regulations are made to provide a framework for the design and objectives implementation of a system of universal access and universal service. Section (1) (2) provides that the ultimate objectives of the system of universal access and universal service provision are to : (a) promote greater social equity and inclusion for the people of Nigeria ; and (b) contribute to national economic, social, and cultural development of Nigeria. In Section 2, it provides that the Regulations apply to the provision of universal access and universal service in the whole or in any part of Nigeria. The ultimate objectives of the system of universal access and universal service provision are to promote greater social equity and inclusion for the people of Nigeria; and contribute to national economic, social and cultural development of Nigeria. Section 3 establishes the USP Fund in line with the provision of Section 115 of the Communications Act. Section 4 generally provides for the overriding functions of the USP Board which include supervising and providing broad policy directions for the management of the USP Fund and the USP Fund Managers. Section 22 of the Regulation provides for the USP secretariat and staffing. It provides that the Commission shall establish the USP Secretariat. In accordance with section 118 (3) of the Act, the Commission shall be responsible for appointment of the staff of the USP Secretariat. Such staff may be seconded from the staff of the commission. Section 27 provides that in consultation with the Commission, the USP Board shall appoint an independent and competent investment management firm as USP Fund Managers. Section 36 mandates that the USP Secretariat shall prepare a strategic management plan for the approval of the USP Board setting out its Vision, Mission and objective and incorporating its long term plans over a five year period. It also mandates the Board to review its strategic management plan from time to time. Section 48 of the Regulation states that the USP Projects shall be award to one or more bidders, using a competitive selection process designed and implemented by the USP Secretariat in accordance with the Regulations.

### **5. International Instruments for Universal Service Provision**

#### **International Telecommunications Union**

The ITU is a United Nations specialised agency for information and communication technologies charged with allocation of global radio spectrum and satellite orbits, development of the technical standards that ensure networks and technologies seamlessly interconnect, and striving to improve access to ICTs to underserved communities worldwide. Nigeria is a member of International Telecommunications Union since 4 November 1961.<sup>35</sup> The International Telecommunications Union is the leading United Nations agency for information and communication technology issues, and the global focal point for governments and the private sector in developing networks and services. The ITU set aside May 17<sup>th</sup> of every year to celebrate World Telecommunication and Information Society Day to focus on the importance of ICT and the wide range of issues related to the Information Society. The purpose of World Telecommunication and Information Society Day (WTISD) is to help raise awareness of the possibilities that the use of the Internet and other information and communication technologies can bring to societies and economies, as well as of ways to bridge the digital divide.

#### **World Trade Organisation**

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<sup>32</sup> NTP Paragraph 2.0

<sup>33</sup> P.C.Obutte, 'Telecommunications and the Regulatory Regime in Nigeria' In: G.P. Krog, & A.B.G. Bekken. (eds.) *Yulex*. (Norwegian Research Centre for Computer and Law University of Oslo, Norway). 2004) P 90-100.

<sup>34</sup> *Ibid.* 23

<sup>35</sup> About International Telecommunications Union. Available at [www.itu.int/en/about/Pages/default.aspx](http://www.itu.int/en/about/Pages/default.aspx). Accessed on 15th May 2022.

The WTO is an international organisation that opens trade for the benefits of its member, by providing a forum for negotiating agreements, reducing obstacles to international trade and ensuring a level playing field for all, thereby contributing to economic growth and development of member nations. The WTO was created in 1994 as a result of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), the World Trade Organisation is a global international trade organization that develops international commerce rules and mediates trade disputes among its members. Nigeria joined the World Trade Organisation in 1 January 1995. The 1997 WTO's Basic Agreement for Telecommunications Services secured commitments from countries to reform their industries. That is, to move from monopoly to liberalisation (privatisation) and competitive market. The WTO's 'Agreement is seen as a definitive moment in the international community's commitment to the structural evolution of the sector from a monopolistic to competitive marketplace.<sup>36</sup>

## **6. The Role and Mandate of the Universal Service Provision Fund**

The Universal Service Provision Fund ('USPF') was established by the Federal Government of Nigeria to facilitate the achievement of national policy goals for universal service and universal access to information and communication technologies (ICTs) in rural, un-served and under-served areas in Nigeria. The USP Secretariat carries out the general statutory mandate of the NCC on Universal Access and Universal Service by: '... promoting the widespread availability and usage of network services and application services throughout Nigeria by encouraging the installation of network facilities and the provision of network services and applications services to institutions and in unserved, underserved areas or for underserved groups within the community'<sup>37</sup> USFs are typically funded via some form of contribution mechanism from telecommunication service providers/operators. In the majority of cases, the operator contributions are in the form of a levy based on a percentage of annual operating revenues. The Mandate of USPF includes Facilitating the widespread availability and usage of ICT services and application services throughout Nigeria by providing funding through subsidy and grant for the provision of network facilities and network services and application services to rural, unserved and underserved areas or to underserved groups within an institution or a community. <sup>38</sup> This is aimed at providing or extending telecommunications services to rural, unserved or underserved areas of the federation, through the use of energy efficient solar power BTS and associated equipment such as mobile switching centres (MSC), Base controller stations (BSC), and transmission equipment.<sup>39</sup>

## **7. Assessment of USPF in Bridging Digital Divide in Nigeria**

The USPF was established in 2003 but became operational in August 2006 with the inauguration of the Board. The USPF was established to achieve universal access, universal coverage and service through a public- private partnership framework that stimulates economic and social development, private sector investment and market based provision of basic affordable and quality ICT infrastructure and services to unserved and underserved areas, communities and populations.<sup>40</sup> In line with the mandate of the Board, The Board of the USPF approved its first Strategic Plan 2007 – 2011 which consists of five (5) broad goals to promote the widespread availability and usage of network and applications services throughout Nigeria (including unserved, underserved areas or for underserved groups within the community). In 2012, following the expiration of the first SMP, the Board and Management of the USPF developed a new 5-year SMP (2013-2017) which leveraged on the experiences and lessons over the past years. The programmes of the Fund were designed and streamlined to focus on two broad areas – Access and Connectivity.

Strategic Plan of 2018-2023 came into force after the expiration of the 2013-2017. It specified key goals for providing universal access to voice and data services across Nigeria within that period. USPF recognises the need to place priority on building the capacity of the USP Secretariat thus ensuring the possession of relevant, up-to-date information on the ICT industry to guide the design and implementation of USP projects. Through the RUBI project, the USPF provides subsidies to operators for the deployment of network to support the establishment of core delivery mechanisms for broadband services in the rural/semi-urban areas of Nigeria. Currently, the pilot wireless mobile broadband hotspots are being constructed across the country<sup>41</sup>. This project provides both wired

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<sup>36</sup> Commitments in telecommunications services were first made during the Uruguay Round (1986-94), mostly in value-added services. In post-Uruguay Round negotiations (1994-97), WTO members negotiated basic telecommunications services. Since then, commitments have been made by new members upon accession to the WTO or unilaterally by governments who have chosen to do so.

<sup>37</sup> Section 112(1) NCA. T

<sup>38</sup> the National Rural Telephony Project Scheme; a Federal government initiative started in 2000 with the primary objective of achieving effective telecommunications services in rural areas and digital inclusion for all

<sup>39</sup> The Wire Nigeria Project and State Accelerated Broadband initiative was geared to provide infrastructural connectivity across the country.

<sup>40</sup> Section 112 op cit

<sup>41</sup> RUBI Rural Broadband Initiative. Available at <https://www.uspf.gov.ng/projects/rubi>. Accessed on 1st June 2022.

and wireless internet at high speed in the rural areas at wholesale, and at the same time serves as a catalyst for the uptake of other broadband- In its Accelerated Mobile Phone expansion programme, the objective of the Base Transceiver Stations project is to facilitate the achievement of the AMPE (Accelerated Mobile Phone Expansion) Programme which targets the achievement of full voice coverage by 2017. The board has failed to meet with some of the target due to erratic power supply, late approval of annual budget, security of its communications infrastructures, security of personnel and double/multiple taxation among others. The broadband, bandwidth, mast and other critical telecommunication infrastructure which facilitate voice telephony and internet services have not been deployed in some communities. In Yebu community in Kwali Area Council Abuja FCT for instance, this community is almost disconnected from civilization as they lack access to basic voice telephone, data, electricity and accessible road. For members of the community to have access to voice call, they have to travel a distance of about 4 to 5 kilometers to have minimal access. The situation is not different from Kwakwu village, a community in Kuje Area Council in Abuja FCT as they also lack basic ICT services, accessible road and electricity. These communities and others facing similar situations are disconnected and therefore lack access to basic telephony services.

Nigeria has about 52,160 base stations; of the 52,160 base stations across Nigeria, Lagos State, Ogun State, Rivers State, and the FCT account for around 18 per cent. Yobe, Zamfara, Gombe, Jigawa, and Kebbi account for the lowest number of base stations, at roughly 2.5 per cent. Therefore, it is not surprising that the more densely populated South West region accounted for the greatest number of active voice subscriptions per region in 2018 with the less densely populated North East accounting for the least. Interestingly, as of December 2018, the South West region had the highest number of Internet users per region, accounting for 76 per cent of the total subscriptions while the North East and North West regions jointly accounted for 0.62 per cent. The dispersion of base stations across the country is important because while mobile communication has become ubiquitous in Nigeria, the mediums used to connect Nigerians to the Internet are not efficiently operated and distributed.<sup>42</sup> These infrastructural disparities only reflect Nigeria's urban-rural divide. The development of fibre-optic backbone networks has occurred predominantly within state capitals and on interstate routes with vast expanses of rural areas left out. In December 2018, Nigeria had a fibre optic deployment shortfall of nearly 35,413km.<sup>43</sup>

## 8. Conclusion and Recommendations

Access gap has been identified as one of the reasons that most rural areas lack mobile and internet facilities. The telecommunications sub sector is seen as one of the sectors that can leapfrog African economy including Nigeria to sustainable development leveraging on the mobile communication. Access to these facilities like cell phone, computers, smart phones, lap tops and other modern communications devices will assist to bridge the communication divide. The deployment of broadband, mast and other communication infrastructure to identified rural and economically disadvantage areas will also assist to bridge the divide. Despite national and international laws regulating this sector, Nigeria is yet to have a specific law that provides for access to ICT. Furthermore, rights to access of ICT are yet to be interpreted as fundamental Human Rights. If access to ICT is legislated as a federal law in Nigeria and interpreted as Fundamental Human Rights, it will go a long way to bridge the access and digital divide in Nigeria and by extension Africa. In the light of the foregoing, the following recommendations are made:

### Legislation of Rights to ICTs as Fundamental Human Rights

The National Assembly can exercise its power under Section 4 of the Constitution and legislate Right to ICTs into law by availing itself of the leeway found in section 6 6(c) and Item 60(a) of the Exclusive Legislative List under Part 1 of the Second Schedule of the CFRN 1999 as amended. Item 60 (a) empowers the National Assembly to make laws with respect to 'the establishment and regulations of authorities for the federation or any part thereof...to promote and enforce the observance of the fundamental objectives and directives principle contained in this constitution'. Justice Mohammed Uwais, commented that Item 60(a) of the Exclusive Legislative List under Part 1 of the Second Schedule of the CFRN 1999 empowers the National Assembly to establish and regulate Directive Principles and to prescribe minimum, standards of education at all level among others. The National Assembly with respect to Section 4 and Item 60(a) of the Exclusive Legislative List has legislated some provisions of social economic rights; a non justiciable socioeconomic rights into law which then made it justiciable. Obilade<sup>44</sup> has rightly observed that although section 15(5) is not justiciable, as soon as the National Assembly exercises its power under section 4 of the Constitution and Item 60(a) of the Exclusive Legislative List, the particular

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<sup>42</sup> Nigeria and the Digital Divide. Available at <https://republic.com.ng/october-november-2019/nigeria-and-the-digital-divide/>. Accessed on 1<sup>st</sup> June 2022.

<sup>43</sup> *ibid*

<sup>44</sup>, Akintunde .O. Obilade, *et al* Contemporary Issues in the Administration of Justice. Essay in Honour of Justice Atinuke Ige.(Treasure Hall Konsult2002) P 127.

provisions in chapter 11 of the constitution becomes justiciable. The National Assembly has enacted the Child Rights Act 2003 and the Basic Education Act 2004 into law<sup>45</sup> making the non justiciable right to basic free primary and secondary education in section 6 6 6(c) of the Constitution justiciable. Similarly the National Assembly has enacted the Federal Environmental Protection Agency Act for the protection of the environment, making the non justiciable rights in Section 20 justiciable.<sup>46</sup> Again, the National Assembly enacted the Corrupt Practices and Other Related Offences Act, in relation to S. 15(5) under Chapter II which was upheld in the case of *Attorney General of Ondo State v. Attorney General of the Federation & ors.*<sup>47</sup> The National Health Insurance Scheme makes the non justicable provision to basic health enforceable.

### **Interpretation of Rights to ICT as Fundamental Rights**

Section 13 of the Constitution provides that ‘ it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter’. A literal interpretation of section 13 may mean that all authorities and persons exercising legislative, executive or judicial powers are oblige to observe and apply Chapter II of the Constitution. However, section 13 when read together with section 6 6(c) is to the effect that such mandatory provisions become permissive and subject to interpretation. The socio economic rights that are made non justiciable contains national ideals without which there will be no meaningful national development. However, the court in *Federal Republic of Nigeria v. Anache*<sup>48</sup> held that since S. 6(6)(c) is qualified by the phrase, ‘save as otherwise provided by this Constitution’, the justiciability of Chapter II is not entirely foreclosed. The Indian courts have successfully and creatively made socio-economic rights which only serves as a guide to government in its constitution, enforceable by establishing that the right to life (which is constitutionally enforceable) is meaningless without enforcing socio-economic rights.<sup>49</sup> This decision catalyzed civil society's demands for reform of both social economic rights and the constitution itself. In response, the constitution was amended.<sup>50</sup>

### **Repeal and Enactment of a Converged Communications Act**

The extant law, the Nigerian Communication Act 2003 provides for the Telecommunications sector in Nigeria. The Act is old to engender a proactive digital inclusion for all. Convergence in the sector makes it expedient that the various laws in the sector be harmonized and made a single law for the ICT sector.

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<sup>45</sup> *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v Federal Republic of Nigeria & Universal Basic Education Commission* ( (Suit ECW/CCJ/App/0808) delivered on 27 October 2009.

<sup>46</sup> *AG Lagos State v. AG Federation* (2003) 15 NWLR (Pt. 842) 113, 175.

<sup>47</sup> (2002) FWLR (Part 111) 1972 at 2144. In this case, the Ondo State Government, on Federalism principle, challenged the constitutionality of the enactment of the Corrupt Practices and Other related Offences Act under which the Independent Corrupt Practices and Other Related Offences Commission was established to fight corruption throughout the country, including through prosecution of alleged offenders. The Supreme Court, per Uwaifo, JSC, justified the enactment of the Act on the Fundamental Objectives and Directive Principles of State Policy.

<sup>48</sup> *supra*

<sup>49</sup> *Francis Coralie v. Union Territory of India* (1981),

<sup>50</sup> With the 86th Constitutional amendment on 12<sup>th</sup> December 2002, Article 21A was amended by the Constitution in order to introduce Right to Education as a fundamental right.