



General Assembly's overall review of the implementation of WSIS outcomes

Official Form for Comments on the Non-paper

A. Your Information

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B. Formal Input



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Comment on the WSIS Non-Paper

The Centre for Communication Governance appreciates the efforts of the WSIS facilitators in the preparation of this non-paper and the multi-stakeholder consultations that are part of the WSIS+10 Review process.

As a research centre at a university based in India, our comments focus on issues that affect developing countries. From a developing country perspective, it is difficult to consider the issues in

¹ When specifying your stakeholder type, please indicate one of the following: Government, Civil Society, Private Sector, Academia, and Technical Sector.

the non-paper in isolation. For instance, it is impossible to speak of ICT4D without addressing issues of access. We are therefore treating human rights as interdependent in our comment, drawing from International Human Right law (especially economic and social rights) which tends to treat rights as indivisible and interdependent.² The idea that the implementation of one category of rights contributes to the effective enforcement of another category of rights³ is consistent with the goals of a process as encompassing in its scope as the WSIS+10 process. Rights and obligations in the information society are interdependent. Therefore the non-paper needs to move from addressing issues such as access, development and human rights separately, albeit in a fairly detailed manner, to acknowledging the linkages between these heads. This will enable stakeholders to work more effectively at providing these rights.

Our comments below will discuss this in further detail.

A) Whether the structure and the elements covered in the document are suitable?

While the non-paper has a clear structure and contains commendable elements, there are areas that would benefit from further clarification and special mention. These are discussed as follows:

Linkages with SDGs.

In paragraph 2, the non-paper recognizes that information and Communication Technology (ICT) is an integral and key part of the 2030 Agenda for Sustainable Development, both as a means of implementation and a target of the Sustainable Development Goals⁴. The linkages between specific SDGs and WSIS action lines are important for the realization of SDGs. This has been extensively done in the mapping exercise by the UN Action line facilitators⁵. Linking the non-paper text to specific SDGs along these action lines will help furthering the notion that these goals are interdependent. It will also provide actionable measures and tangible goals that are relatively lacking in the non-paper.

² See for instance, The Vienna Declaration and Programme of Action (1993).

³ See for a discussion, Helen Quane, “A Further Dimension to the Interdependence and Indivisibility of Human Rights?: Recent Developments Concerning the Rights of Indigenous Peoples”, 25 Harvard Human Rights Journal (2002) 49-83.

⁴ http://www.un.org/ga/search/view_doc.asp?symbol=A/69/L.85&Lang=E.

⁵ http://www.itu.int/net4/wsis/sdg/Content/wsis-sdg_matrix_document.pdf.

The Digital Economy and ICT for Development

The term ‘digital economy’ in paragraph 3 can have a wide scope unless restrictively defined in the text therein. It must also be noted that the digital economy does not exist in isolation and is often inseparable from the traditional economies of developing countries. This raises concerns of the widening inequality caused by lack of access and anti-competitive practices by corporations.

We would like to note that the language in paragraph 17 confines the goals of ICT for development as the integration of developing countries and least developed countries to the global economy and do not makes any reference to supporting local industry or developing domestic capacity to develop and use ICTs.

While environmental concerns are addressed in paragraphs 18 and 19 through leveraging ICT use in resource management, the use of clean energy and ICT waste management, neither paragraphs mention financial assistance or technology transfer to aid these measures. Without financial support or technical assistance developing countries would find it immensely difficult to implement the recommendations indicated in paragraphs 18 and 19. Further, the language of paragraph 18 unwarrantedly seems to confine sustainability to ‘urban’ development.

The Digital Divide

We appreciate the reference to the digital divide both ‘between and within countries’ in paragraphs 5 and 10. However discussions under the category of digital divide require a more nuanced approach. The following are some of our concerns with the text of the non-paper.

- Inequalities and development

Paragraph 5 suggests that new challenges have arisen due to result of rapid changes in technology. But the challenges mentioned here are not purely products of technological changes. Often, they are manifestations of existing social, economic and political inequalities that are exacerbated by technological changes. This digital divide (an amplification of social divisions) can also serve to impede development goals mentioned throughout the document.⁶ Identifying the connection between societal inequalities and development at an early stage like the non-paper will help to develop

⁶ This comment is based on inputs received during the preparation of the BRICS Civil Society Comment on the WSIS non-paper of which CCG was a part.

additional norms which will enable developing countries to provide digital access in an effective, equitable and human-rights friendly manner. The commitment to bridge the digital divide in paragraphs 12 to 15 is commendable and we are happy to report that the Indian Government is already working towards this as a part of its Digital India Initiative, for which it has set aside Rs. 1.13 lakh crores (\$171.5 billion).⁷ The success of this initiative much like the WSIS process rests on working on interdependent issues rather than looking at them in isolation.

- **Digital Architecture and Human rights**

Conversations about access tend to take place between governments and industry. The equitable access referred to in paragraph 12 must include the embedding of human rights in digital infrastructure. Users in countries with widespread digital access are able to take advantage of that access to receive and disseminate information without fear owing to the human rights frameworks that are a part of the architecture providing digital access. All citizens of the information society should have digital access in a manner that respects their human rights regardless of where they might be resident. All efforts at bridging the digital divide must take this into account, and discuss access only in terms that include protection of freedom of expression, privacy and other human rights of the individuals to whom access is provided.

In this context, the WSIS+10 process also needs acknowledge the extent to which privacy rights of individuals around the world, including Indian citizens, are violated by companies and governments of other nations. This is the other reason that it becomes necessary in the context of equitable access, to emphasise the fact that all digital access shall be provided in a manner that respects the international human rights of citizens of the world, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which India has signed and ratified.

- **Access and Connectivity**

In Paragraph 9, the discussion on ICT connectivity highlights the importance of mobile phone subscriptions as a significant component of the increase in ICT connectivity. However, it fails to

⁷ Press Information Bureau, 'Digital India – A programme to transform India into digital empowered society and knowledge economy', 20 August 2014, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=108926>. Also see, 'Bridging Digital Divide with Focus on Rural India: Ravi Shankar Prasad', Economic Times, February 5, 2015, available at http://articles.economictimes.indiatimes.com/2015-02-05/news/58838257_1_digital-india-digital-literacy-rs-sharma.

mention the importance of penetration of fixed and wireless broadband which would be a significant avenue for community engagement in utilization of ICT, this is especially useful for not merely connecting rural and marginalised communities but also enabling them to use and create ICTs.

While addressing access and ICT connectivity in the context of digital divide it is also imperative that people must be given full access to an open, and safe network where information is treated in a non-discriminatory manner.

- **Gender**

We are happy to see the intersectional problems arising from gender and the digital divide acknowledged in Paragraph 11. We do believe however that measures taken to provide internet access to women and the LGBT community need to acknowledge existing social hierarchies and norms, and work to digitally empower women despite them⁸. Several women in India who participated in Google's Women & Technology survey reported a reluctance to use shared home computers to access the Internet on account of privacy concerns. It also appears from news-reports that other powerful social structures like patriarchy can influence the degree to which women are allowed digital access. For example, a village level local governance body once banned women from using mobile phones. Providing women and members of the LGBT community with digital access in an effective manner will need to account for these obstacles and will need to find a way to ensure their safety, privacy and other human rights are supported and not undermined as they cross the digital divide.

Internet Governance, Multi-stakeholder Approach and Review

We note with interest the recognition of 'multi-stakeholder cooperation and engagement' as an essential element in realization of the WSIS vision in paragraph 7. However, it is important to note that models of 'multi-stakeholder cooperation and engagement' are varied and in a state of flux. This also lends a certain lack of clarity to the multi-stakeholder approach to internet governance. Thus, support for the multi-stakeholder approach should be contingent upon its development in an open, transparent and inclusive manner.

As stated in paragraph 26 of the non-paper, the IGF (Internet Governance Forum) is a unique multi-stakeholder platform. Both the platform and the multi-stakeholder approach have evolved over time. The renewal of the mandate of the IGF must be on clearly articulated terms that allow for the growth

⁸ This comment is based on inputs received during the preparation of the BRICS Civil Society Comment on the WSIS non-paper of which CCG was a part.

of the platform and the multi-stakeholder approach it adopts, in the most open, transparent and inclusive manner. It must address issues of representation and meaningful participation across stakeholders, particularly from developing countries. It is also worth evaluating whether the renewed mandate of the IGF can change the role of the IGF in the internet landscape.

A global IGF can be an effective forum for policy dialogue only if it is supported with strong regional and national IGFs. Institutionalising the local and regional IGFs can significantly alleviate the problems of representation and meaningful participation.

The empowerment of local and regional efforts should also be reflected review of the WSIS outcomes. Annual and periodical reviews provided for in paragraph 37 of the WSIS outcomes should happen at national, regional and international levels.

Human Rights and Cyber-security

Human rights and cyber-security are often perceived in adversarial terms. We believe that such an approach would be detrimental to the information society and the WSIS vision. The interest of cyber security should be balanced by human rights concerns.

Paragraph 21 affirms that the same rights that people have offline should be protected online. The provision however, failed to articulate the nuances of digital rights and how certain rights are more easily violated online and require greater protection. The right to privacy and the freedom of expression being some examples. New frameworks for Internet specific violations of human rights, extending existing international human rights provisions to new challenges faced online are needed.

Further the instances of blanket internet/communications shutdowns and blackouts that have taken place in the recent past in India⁹ are eye-opening incidents that reiterate the need for laying down clear legal grounds and procedure to limit rights online in times of emergency.

It is also unfortunate that the non-paper failed to revive the ‘Ethical dimensions of the Information society’ detailed in paragraphs 56 to 59 of the Geneva Declaration of Principles¹⁰, which is an outcome document for the Geneva phase of the WSIS. These are essential for the full realization of human rights and fundamental freedoms in the information society.

⁹ See for instance, the recent ban in Gujarat, “Mobile Internet Ban Hits Life in Gujarat”, Indian Express, 29 August, 2015, available at <http://indianexpress.com/article/cities/ahmedabad/mobile-internet-ban-hits-life-in-gujarat/>.

¹⁰ WSIS, “Declaration of Principles-Building the Information Society: A Global Challenge in the New Millennium”, Geneva (2003) at p. 8.

In this context of human rights, cyberspace and security should have a complementary focus. The word ‘cyberspace’ has been used in Paragraph 27. However it is unclear as to what cyberspace means in this paper. According to the Tallinn Manual, cyberspace is an umbrella term that refers to “The environment formed by physical and nonphysical components, characterized by the use of computers and electro-magnetic spectrum, to store, modify and exchange data using computer networks”.

Consequently, the references to cyber security that follow also are not clear. This is because the space which is being protected has not been defined. There is also insufficient discussion of safeguards of individual freedoms in the context of cyber security. The Snowden leaks have made the world alive to the dangers of not having checks and balances on security measures in cyberspace. An analysis of cyber security and human rights from an interdependent framework requires resolving the two challenges contemporaneously. This would go some way in ensuring safeguards against abuse of human rights.

B) How should they be treated in the zero-draft?

Generally, the zero draft must include more specific measures and efforts that go beyond ‘noting’ and ‘recognizing’ for actions that are critical to information society. We hope to see the use of more categorical language to reflect that we ‘call for’ and ‘urge’ the setting up of follow-up mechanisms, institutional structures at national and regional levels in addition to existing international institutions.¹¹

The Zero draft must specifically address the aspects raised in response to Question A. It should utilise the interdependency of rights framework introduced in the introduction to this comment. So it would follow from our discussion in the answer to Question A, that while discussing development, issues of connectivity and digital divide must be given due consideration. Similarly, while discussing Internet Governance, having clear-cut review mechanisms and possible multi-stakeholder approaches is a must. Finally, the cybersecurity framework cannot be discussed independent of human rights concerns.

C) Stakeholder may also wish to provide specific text proposals.

The following changes should be made to the text.

- Paragraph 3: must define the term or scope of the term ‘digital economy’

¹¹ This comment is based on inputs received during the preparation of the BRICS Civil Society Comment on the WSIS non-paper of which CCG was a part.

- Paragraph 11: language on privacy and safety of women must be included.
- Paragraph 16: ICT for development and Sustainable Development goals must be linked to overcoming the digital divide and increasing access.
- Paragraph 17: should mention supporting local industry or developing domestic capacity to develop ICT tools and content in the context of development
- Paragraph 21: should include language on rights that are especially susceptible online like freedom of speech and privacy.
- Paragraphs 22 to 25: make no mention of multi-stakeholder approaches though the same has been referred to in the Preamble
- Paragraph 26: 'participation' should be replaced with 'meaningful participation'.
- Paragraph 27: the meaning of 'cyberspace' should be clarified
- Paragraph 32: language must include specific support to develop domestic/local capacity in developing countries
- Paragraph 37: language must include review of the implementation of WSIS outcomes at national, regional and international levels.