



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

Official Form for Comments on the zero-draft

A. Your Information

Title: Comments on the Zero Draft of the UN General Assembly’s Overall Review of the Implementation of WSIS Outcomes (WSIS+10)

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B. Formal Input

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COMMENTS ON THE ZERO DRAFT

1. The Zero Draft of the UN General Assembly’s Overall Review of the Implementation of WSIS Outcomes (“Zero Draft”) is divided into three sections: (A) ICT for Development; (B) Internet Governance; (C) Implementation and Follow-up. CIS’ comments follow the same structure.

2. The Zero Draft is a commendable document, covering crucial areas of growth and challenges surrounding the WSIS. The Zero Draft makes detailed references to development-related challenges, noting the persistent digital divide, the importance of universal access, innovation and investment, and of enabling legal and regulatory

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

environments conducive to the same. It also takes note of financial mechanisms, without which principles would remain toothless. Issues surrounding Internet governance, particularly net neutrality, privacy and the continuation of the IGF are included in the Zero Draft.

3. However, we believe that references to these issues are inadequate to make progress on existing challenges. Issues surrounding ICT for Development and Internet Governance have scarcely changed in the past ten years. Though we may laud the progress so far achieved, universal access and connectivity, the digital divide, insufficient funding, diverse and conflicting legal systems surrounding the Internet, the gender divide and online harassment persist. Moreover, the working of the IGF and the process of Enhanced Cooperation, both laid down with great anticipation in the Tunis Agenda, have been found wanting.

4. These need to be addressed more clearly and strongly in the Zero Draft. In light of these shortcomings, we suggest the following changes to the Zero Draft, in the hope that they are accepted.

A. ICT for Development

5. Paragraphs 16-21 elaborate upon the digital divide – both the progresses made and challenges. While the Zero Draft recognizes the disparities in access to the Internet among countries, between men and women, and of the languages of Internet content, it fails to attend to two issues.

6. **First, accessibility for persons with disabilities continues to be an immense challenge.** Since the mandate of the WSIS involves universal access and the bridging of the digital divide, it is necessary that the Zero Draft take note of this continuing challenge.

7. We suggest the insertion of **Para 20A** after Para 20:

“20A. We draw attention also to the digital divide adversely affecting the accessibility of persons with disabilities. We call on all stakeholders to take immediate measures to ensure accessibility for persons with disabilities by 2020, and to enhance their capacity and access to ICTs.”

8. **Second, while the digital divide among the consumers of ICTs has decreased since 2003-2005, the digital production divide goes unmentioned.** The developing world continues to have fewer producers of technology compared to their sheer concentration in the developed world – so much so that countries like India are currently pushing for foreign investment through missions like ‘Digital India’. Of course, the Zero Draft refers to the importance of private sector investment (Para 31). But it fails to point out that currently, such investment originates from corporations in the developed world. For this digital production divide to disappear, restrictions on innovation – restrictive patent or copyright regimes, for instance – should be removed, among other measures. **Equitable development is the key.**

9. *Ongoing negotiations of plurilateral agreements such as the Trans-Pacific Partnership (TPP) go unmentioned in the Zero Draft.* This is shocking. The TPP has been criticized for its excessive leeway and support for IP rightsholders, while incorporating non-binding commitments involving the rights of users (see Clause QQ.G.17 on copyright exceptions and limitations, QQ.H.4 on damages and QQ.C. 12 on ccTLD WHOIS, <https://wikileaks.org/tpp-ip3/WikiLeaks-TPP-IP-Chapter/WikiLeaks-TPP-IP-Chapter-051015.pdf>). Plaudits for progress made on the digital divide would be lip service if such agreements were not denounced.

10. Therefore, we propose the addition of **Para 20B** after Para 20:

“20B. We draw attention also to the digital production divide among countries, recognizing that domestic innovation and production are instrumental in achieving universal connectivity. Taking note of recent negotiations surrounding restrictive and unbalanced plurilateral trade agreements, we call on stakeholders to adopt policies to ensure globally equitable development, removing restrictions on innovation and conducive to fostering domestic and local production.”

11. Paragraph 22 of the Zero Draft acknowledges that “school curriculum requirements for ICT, open access to data and free flow of information, fostering of competition, access to finance”, etc. have “in many countries, facilitated significant gains in connectivity and sustainable development”.

12. This is, of course, true. However, as Para 23 also recognises, access to knowledge, data and innovation have come with large costs, particularly for developing countries like India. These costs are heightened by a lack of promotion and adoption of open standards, open access, open educational resources, open data (including open government data), and other free and open source practices. These can help alleviate costs, reduce duplication of efforts, and provide an impetus to innovation and connectivity globally.

13. Not only this, but **the implications of open access to data and knowledge (including open government data), and responsible collection and dissemination of data are much larger in light of the importance of ICTs in today’s world.** As Para 7 of the Zero Draft indicates, ICTs are now becoming an indicator of development itself, as well as being a key facilitator for achieving other developmental goals. As Para 56 of the Zero Draft recognizes, in order to measure the impact of ICTs on the ground – undoubtedly within the mandate of WSIS – it is necessary that there be an enabling environment to collect and analyse reliable data. Efforts towards the same have already been undertaken by the United Nations in the form of “Data Revolution for Sustainable Development”. In this light, the Zero Draft rightly calls for enhancement of regional, national and local capacity to collect and conduct analyses of development and ICT statistics (Para 56). Achieving the central goals of the WSIS process requires that such data is collected and disseminated under open standards and open licenses, leading to creation of global open data on the ICT indicators concerned.

14. As such, we suggest that following clause be inserted as **Para 23A** to the Zero Draft:

“23A. We recognize the importance of access to open, affordable, and reliable technologies and services, open access to knowledge, and open data, including open government data, and encourage all stakeholders to explore concrete options to facilitate the same.”

15. Paragraph 30 of the Zero Draft laments “the lack of progress on the Digital Solidarity Fund”, and calls “for a review of options for its future”.

16. The Digital Solidarity Fund was established with the objective of “transforming the digital divide into digital opportunities for the developing world” through voluntary contributions [Para 28, Tunis Agenda]. It was an innovative financial mechanism to help bridge the digital divide between developed and developing countries. This divide continues to exist, as the Zero Draft itself recognizes in Paragraphs 16-21.

17. Given the persistent digital divide, a “call for review of options” as to the future of the Digital Solidarity Fund is inadequate to enable developing countries to achieve parity with developed countries. A stronger and more definite commitment is required.

18. As such, we suggest the following language in place of the current **Para 30**:

“30. We express concern at the lack of progress on the Digital Solidarity Fund, welcomed in Tunis as an innovative financial mechanism of a voluntary nature, and we *call for voluntary commitments from States to revive and sustain the Digital Solidarity Fund.*”

19. Paragraph 31 of the Zero Draft recognizes the importance of “legal and regulatory frameworks conducive to investment and innovation”. This is eminently laudable. However, a **broader vision is more compatible with paving the way for affordable and widespread access** to devices and technology necessary for universal connectivity.

20. We suggest the following additions to **Para 31**:

“31. We recognise the critical importance of private sector investment in ICT access, content and services, *and of legal and regulatory frameworks conducive to local investment and expansive, permissionless innovation.*”

B. Internet Governance

21. Paragraph 32 of the Zero Draft recognizes the “general agreement that the governance of the Internet should be open, inclusive, and transparent”. Para 37 takes into account “the report of the CSTD Working Group on improvements to the IGF”. Para 37 also affirms the intention of the General Assembly to extend the life of the IGF by (at least) another 5 years, and acknowledges the “unique role of the IGF”.

22. The IGF is, of course, unique and crucial to global Internet governance. In the last 10 years, major strides have been made among diverse stakeholders in beginning and sustaining conversations on issues critical to Internet governance. These include issues such as human rights, inclusiveness and diversity, universal access to connectivity, emerging issues such as net neutrality, the right to be forgotten, and several others. Through its many arms like the Dynamic Coalitions, the Best Practices Forums, Birds-of-a-Feather meetings and Workshops, the IGF has made it possible for stakeholders to connect.

23. However, the constitution and functioning of the IGF have not been without lament and controversy. Foremost among the laments was the IGF’s evident lack of outcome-orientation; this continues to be debatable. Second, the composition and functioning of the MAG, particularly its transparency, have come under the microscope several times. One of the suggestions of the CSTD Working Group on Improvements to the IGF concerned the structure and working methods of the Multistakeholder Advisory Group (MAG). The Working Group recommended that the “process of selection of MAG members should be inclusive, predictable, transparent and fully documented” (Section II.2, Clause 21(a), Page 5 of the Report).

24. **Transparency in the structure and working methods of the MAG are critical to the credibility and impact of the IGF.** The functioning of the IGF depends, in a large part, on the MAG. The UN Secretary General established the MAG, and it advises the Secretary General on the programme and schedule of the IGF meetings each year (see <<http://www.intgovforum.org/cms/mag/44-about-the-mag>>). Under its Terms of Reference, the MAG decides the main themes and sub-themes for each IGF, sets or modifies the rules of engagement, organizes the main plenary sessions, coordinates workshop

panels and speakers, and crucially, evaluates the many submissions it receives to choose from amongst them the workshops for each IGF meeting. The content of each IGF, then, is in the hands of the MAG.

25. *But the MAG is not inclusive or transparent.* The MAG itself has lamented its opaque ‘black box approach’ to nomination and selection. Also, CIS’ research has shown that the process of nomination and selection of the MAG continues to be opaque. When CIS sought information on the nominators of the MAG, the IGF Secretariat responded that this information would not be made public (see <http://cis-india.org/internet-governance/blog/mag-analysis>).

26. Further, our analysis of MAG membership shows that since 2006, 26 persons have served for 6 years or more on the MAG. This is astounding, since under the MAG Terms of Reference, MAG members are nominated for a term of 1 year. This 1-year-term is “automatically renewable for 2 more consecutive years”, but such renewal is contingent on an evaluation of the engagement of MAG members in their activities (see <http://www.intgovforum.org/cms/175-igf-2015/2041-mag-terms-of-reference>). MAG members ought not serve for over 3 consecutive years, in accordance with their Terms of Reference. But out of 182 MAG members, around 62 members have served more than the 3-year terms designated by their Terms of Reference (see <http://cis-india.org/internet-governance/blog/mag-analysis>).

27. Not only this, but our research showed 36% of all MAG members since 2006 have hailed from the Western European and Others Group (see <http://cis-india.org/internet-governance/blog/mag-analysis>). This indicates a lack of inclusiveness, though the MAG is certainly more inclusive than the composition and functioning of other I-Star organisations such as ICANN.

28. Tackling these infirmities within the MAG would go a long way in ensuring that the IGF lives up to its purpose. Therefore, we suggest the following additions to **Para 37**:

“37. We acknowledge the unique role of the Internet Governance Forum (IGF) as a multistakeholder platform for discussion of Internet governance issues, *and take note of* the report and recommendations of the CSTD

Working Group on improvements to the IGF, which was approved by the General Assembly in its resolution, and ongoing work to implement the findings of that report. *We reaffirm the principles of openness, inclusiveness and transparency in the constitution, organisation and functioning of the IGF, and in particular, in the nomination and selection of the Multistakeholder Advisory Group (MAG).* We extend the IGF mandate for another five years with its current mandate as set out in paragraph 72 of the Tunis Agenda for the Information Society. We recognize that, at the end of this period, progress must be made on Forum outcomes and participation of relevant stakeholders from developing countries.”

29. Paragraphs 32-37 of the Zero Draft make mention of “open, inclusive, and transparent” governance of the Internet. **It fails to take note of the lack of inclusiveness and diversity in Internet governance organisations – extending across representation, participation and operations of these organisations.** In many cases, mention of inclusiveness and diversity becomes tokenism or formal (but not operational) principle. In substantive terms, the developing world is pitifully represented in standards organisations and in ICANN, and policy discussions in organisations like ISOC occur largely in cities like Geneva and New York. For example, the ‘diversity’ mailing list of IETF has very low traffic. Within ICANN, 307 out of 672 registries listed in ICANN’s registry directory are based in the United States, while 624 of the 1010 ICANN-accredited registrars are US-based. Not only this, but 80% of the responses received by ICANN during the ICG’s call for proposals were male. A truly global and open, inclusive and transparent governance of the Internet must not be so skewed.

30. We propose, therefore, the addition of a **Para 37A** after Para 37:

“37A. We draw attention to the challenges surrounding diversity and inclusiveness in organisations involved in Internet governance, and call upon these organisations to take immediate measures to ensure diversity and inclusiveness in a substantive manner.”

31. Paragraphs 36 of the Zero Draft notes that “a number of member states have called for an international legal framework for Internet governance.” **But it makes no reference to ICANN or the importance of the ongoing IANA transition to global Internet governance.** ICANN and its monopoly over several critical Internet resources was one of the key drivers of the WSIS in 2003-2005. Unfortunately, this focus seems to have shifted entirely. Open, inclusive, transparent and *global* Internet are misnomer-principles when ICANN – and in effect, the United States – continues to have monopoly over critical Internet resources. The allocation and administration of these resources should be decentralized and distributed, and should not be within the disproportionate control of any one jurisdiction.

32. Therefore, we suggest the following **Para 37A** after Para 37:

“37A. We affirm that the allocation, administration and policy involving critical Internet resources must be inclusive and decentralized, and call upon all stakeholders and in particular, states and organizations responsible for essential tasks associated with the Internet, to take immediate measures to create an environment that facilitates this development.”

33. Paragraph 43 of the Zero Draft encourages “all stakeholders to ensure respect for privacy and the protection of personal information and data”. **But the Zero Draft inadvertently leaves out the report of the Office of the UN High Commissioner for Human Rights on digital privacy, ‘The right to privacy in the digital age’ (A/HRC/27/37).** This report, adopted by the Human Rights Council in June 2014, affirms the importance of the right to privacy in our increasingly digital age, and offers crucial insight into recent erosions of privacy. It is both fitting and necessary that the General Assembly take note of and affirm the said report in the context of digital privacy.

34. We offer the following suggestion as an addition to **Para 43**:

“43. We emphasise that no person shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, consistent with countries’ applicable obligations under international human rights law. *In this regard, we acknowledge the report of the Office of the UN*

High Commissioner for Human Rights, 'The right to privacy in the digital age' (A/HRC/27/37, 30 June 2014), and take note of its findings. We encourage all stakeholders to ensure respect for privacy and the protection of personal information and data."

35. Paragraphs 40-44 of the Zero Draft state that communication is a fundamental human need, reaffirming Article 19 of the Covenant on Civil and Political Rights, with its attendant narrow limitations. The Zero Draft also underscores the need to respect the independence of the press. Particularly, it reaffirms the principle that the same rights that people enjoy offline must also be protected online.

36. Further, in Para 31, the Zero Draft recognizes the "critical importance of private sector investment in ICT access, content, and services". This is true, of course, but corporations also play a crucial role in facilitating the freedom of speech and expression (and all other related rights) on the Internet. As the Internet is led largely by the private sector in the development and distribution of devices, protocols and content-platforms, corporations play a major role in facilitating – and sometimes, in restricting – human rights online. They are, in sum, intermediaries without whom the Internet cannot function.

37. Given this, it is essential that the outcome document of the WSIS+10 Overall Review recognize and affirm the role of the private sector, and crucially, its responsibilities to respect and protect human rights online.

38. We suggest, therefore, the insertion of the following paragraph **Para 42A**, after Para 42:

"42A. We recognize the critical role played by corporations and the private sector in facilitating human rights online. We affirm, in this regard, the responsibilities of the private sector set out in the Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31 (21 March 2011), and encourage policies and commitments towards respect and remedies for human rights."

C. Implementation and Follow-up

39. Para 57 of the Zero Draft calls for a review of the WSIS Outcomes, and leaves a black space inviting suggestions for the year of the review. How often, then, should the review of implementation of WSIS+10 Outcomes take place?

40. It is true, of course, that reviews of the implementation of WSIS Outcomes are necessary to take stock of progress and challenges. However, we caution against annual, biennial or other such closely-spaced reviews due to concerns surrounding budgetary allocations.

41. Reviews of implementation of outcomes (typically followed by an Outcome Document) come at considerable cost, which are budgeted and achieved through contributions (sometimes voluntary) from states. Were Reviews to be too closely spaced, budgets that ideally ought to be utilized to bridge digital divides and ensure universal connectivity, particularly for developing states, would be misspent in reviews. Moreover, closely-spaced reviews would only provide superficial quantitative assessments of progress, but would not throw light on longer term or qualitative impacts.

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