Internet Governance Forum Substantive Agenda Setting
WSIS Civil Society Human Rights Caucus Contribution
March 31, 2006

Introduction

The WSIS Civil Society Human Rights Caucus (HR Caucus) has been active in the WSIS framework since its creation in 2002. Its more than 65 members, international and national civil society organizations from all around the world, have decided **to remain involved, as a caucus, in post-WSIS developments**. The Caucus involvement in WSIS follow-up concerns both the Internet Governance Forum (IGF) activities and the post-WSIS Action lines developments.

The Caucus contributions to post-WSIS phase will build on its activities and positions elaborated during the Geneva and Tunis phases, with the same baseline: **any information society policy must respect and protect human rights and the rule of law.** The Caucus wishes to put in practice, in the information society context, **the interrelation and interdependence of all human rights, civil and political rights as well as economic, social and cultural rights, and the right to development**.

This HR Caucus contribution to the substantive agenda of the Internet Governance Forum follows this baseline.

General Guideline Proposal

The U.N. Secretary-General's Special Adviser for WSIS has asked all stakeholders to contribute to the agenda setting of the first IGF's meeting by sending their respective top three choices of public policy issues to be discussed during this meeting. The HR Caucus considers that, given the interrelation between the many issues that an Internet governance arena should address, such a methodological approach raises some concerns, if only in terms of efficiency and coherence. The IGF should be open, starting from its first year of activities, to potential discussions on all issues that need coordinated governance, through an ongoing process organized around thematic working groups and the holding of dedicated workshops. However, the HR Caucus understands that, speaking of the IGF global annual meeting per se, limiting the discussion topics to a reasonable number may be a wise approach.

Different stakeholders have different legitimate priorities, including within a given group of stakeholders. This applies to civil society as well as to governments. We understand that many issues have already been, and will be proposed to the IGF agenda. A short preliminary synthesis of these issues is already available on the IGF web site. These are issues of high concern, including for the HR Caucus. However, we consider that many of them would be better advanced either at the regional or even the national level (e.g. "Multilingualism"), or in other, more

specialized arenas (e.g. "Spam", "Security of infrastructure and equipments"). Fighting crimes, and other criminal issues (e.g. "Cybercrime") is not a matter of Internet governance, but a matter of general penal legislation. We even consider that issues of first concern to the HR Caucus ("Freedom of Expression", "Privacy and Data Protection") should not be addressed by the IGF as a public policy theme among many others, since they are cross-cutting issues that are at stake when discussing any other public policy theme.

The HR Caucus considers that the major added value of the IGF existence and work relies, as stated in paragraph 72 of the *Tunis Agenda*, in its capacity to create the conditions for all these issues to be addressed adequately in the relevant arenas and in good coordination between them. **Without prejudging how any issue would be addressed and decided upon, the Caucus then believes that a World Internet Governance Forum should deal, first and foremost, with issues that absolutely need central governance. These issues are those that, without central governance, either:**
   a. **The network operation itself would simply stop or be highly threatened, or**
   b. **The information society development as a whole would be oriented towards the sole interests of some parties, depriving a large part of the world from their rights to benefit from an "Information Society for All".**

The remaining part of this HR Caucus contribution develops its three priorities for the IGF agenda, according to this guideline.

In this contribution, we do not elaborate on **item a**, i.e. the need to address Domain Name System management and IP address allocation, in other words the ways to enhance cooperation for coordination and management of critical Internet resources. This is the core mandate of the IGF and the obvious condition "to foster the sustainability, robustness, security, stability and development of the Internet", as stated in paragraph 72(a) of the *Tunis Agenda*. We take as a premise that this issue will be addressed by the IGF.

The HR Caucus is rather concerned that the issues developed in the following section, falling under **item b**, also find the attention they require from the IGF.

WSIS CS HR Caucus Priority Issues for IGF Discussions

1. *Establishing an IGF Task Force on Human Rights and Internet Governance*

This proposal is not a discussion theme per se, but both a substantive and operational issue at the same time.

Whatever the final IGF agenda will be, for its first and subsequent years of activity, the IGF must ensure that its discussions take into account the respect for human right standards and that its decisions are taken in view of protecting and promoting these standards. In addition, there is a need to identify and assess, with the same objective, Internet governance processes, modalities and mechanisms that are already in place.

To this end, **the IGF should establish a task force on Human Rights and Internet Governance. This task force would particularly address compliance with freedom of expression, privacy, and the rule of law (most notably due process and effective remedy)**.

Composed by stakeholders with a renowned knowledge and competence in the field of human rights, including their translation in the information society context, such a task force would help IGF discussions gaining wide legitimacy and acceptance.

The need for this IGF Task Force on Human Rights and Internet Governance finds its direct grounds in paragraphs 42 and 46 of the *Tunis Agenda*. By its transverse role, it would largely contribute to fulfill IGF mandate, as provided in items (b), (c), (d), (g), (i) and (k) of paragraph 72 of the *Tunis Agenda*. Without it, the first section of the *Geneva Declaration of Principles* ("Our Common Vision of the Information Society"), reiterated in the *Tunis Commitment*, would become rhetorical.

2. *Access to Infrastructure and International Interconnection Costs*

Ensuring access to infrastructure is obviously a prerequisite for bridging the digital divide. Access to infrastructure can take many forms and public policy actions at the national level, taking into account local contexts and cultures. It has also many and larger implications at the regional and international levels, dealt with in other arenas, particularly, though not exclusively, the ITU.

However, on the one hand this issue is seldom, if ever, dealt with from a rights perspective and specially as a need for realizing the right to development; on the other hand the privatization and the globalization of the telecommunication sector have made fair and symmetric tariffs and peering intergovernmental agreements and recommendations largely out of any practical influence. **In a situation where the market is almost alone determining the cost and the geographical coverage of international connections, fulfilling development objectives in terms of access to Internet infrastructure largely becomes a governance issue. The IGF could here bring a decisive added value in order to minimize disparities between regions of the world.**

Issues to be discussed in this framework relate to international interconnection costs, in particular the fundamental North-South inequity of 'paying both ways' for Internet traffic to and from developing countries. The IGF should start discussions on how geographical coverage (routes) as well as peering and transit agreements may be assessed and negotiated towards fairer, more equitable arrangements and costs.

Being an essential element for bridging the digital divide, access to infrastructure realized through equitable international interconnection costs has been one of the very WSIS *raison d'etre*. In addition, paragraphs 49 and 50 of the *Tunis Agenda* explicitly provide that international interconnection costs is one of the issues to be fostered in the Internet governance arrangements. Finally, according to paragraph 72(e) of this document, this issue is an integral part of the IGF mandate.

3. *Access to Education, Culture and Knowledge and Technical Standards Definition*

In a similar way as access to infrastructure, access to education, culture and knowledge, which is a universally recognized fundamental right, translates into many requirements in terms of public policy in various sectors, at the national and international levels. Though far from being the exclusive mean of access to education, culture and knowledge, the Internet is a major chance for its realization.

However, this opportunity may be squandered if artificial, avoidable barriers are added to education efforts and to the legitimate circulation of culture and knowledge. Such a risk may arise from an extensive copyright regime, especially when its implementation through technical standards makes it the *de facto* exclusive regime, making it difficult even for international agreements, like the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, to fully apply. **It is thus a mandatory issue of Internet governance to ensure that technical standards for Internet infrastructure, hardware and software are developed and implemented in a way that does not prevent access to education, culture and knowledge, as well as the effective implementation of international binding instruments providing for their full realization through public policies**

Issues to be discussed by the IGF in this framework relate to how current copyright legislation, market dominance and digital rights management (DRM) technologies prevent rights to education, culture and knowledge. In particular, the IGF should discuss and assess whether technical standards for Internet infrastructure, hardware and software, allow for the legitimate exercise of fair use for non commercial purposes, the contribution to and enjoyment of an extended public domain of knowledge, and the promotion and sustainability of the production and use of free and open source software and content.

The *Geneva Plan of Action* has devoted a whole section to access to information and knowledge. This has been reaffirmed in paragraphs 10, 11 and 29 of the *Tunis Commitment* and in paragraph 90(k) of the *Tunis Agenda*. Finally, as technical standards are part of Internet critical resources, paragraph 72(j) of the *Tunis Agenda* makes this issue part of the IGF mandate.

Information on the WSIS CS HR Caucus and Contact Points

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