

JNC Comments on the June 2014 WSIS+10 High Level Event

The Just Net Coalition (JNC)¹ comments here on some aspects of the WSIS+10 “High-Level Event”(HLE)², offering some comparisons to NetMundial³.

The purpose of the HLE was to review progress achieved 10 years after the adoption of the WSIS outcomes. In this context, it must be recalled that Internet governance is explicitly covered in the Tunis Agenda and that action items such as “enhanced cooperation” and the mandate of the Internet Governance Forum were agreed in that document. While it was agreed that the HLE would not consider these specific issues (because they are being considered in other forums), the HLE did touch upon certain Internet governance issues. In some cases there was no agreement (see for example Annex 1 below), but there was agreement regarding the proper role of governments, in the sense that the HLE reaffirmed the roles and responsibilities outline in the Tunis Agenda.

Just Net Coalition agrees with the spirit of paragraph of Tunis Agenda that governments have specific public policy roles and responsibilities, and other stakeholders cannot claim a similar position as governments in this regard. However, we consider that the description of role given to civil society in this section is inadequate. While the text does speak of an important role that civil society should continue to play, this is inadequate because the exclusive mention of 'community level' and not 'policy level' gives an unbalanced view of civil society's role. While community level work and linkages constitute the key legitimising factors of civil society, civil society also has a strong role to play at the policy level in terms of [deepening democracy](#)⁴ whereby it brings to the policy table representation of otherwise under-represented voices.

Indeed, for the Just Net Coalition, a particularly important aspect of the HLE outcome document is the endorsement of the development of a *democratic* multistakeholder model as a “priority area” to be addressed in the implementation of Geneva Plan of Action Beyond 2015. Specifically, item 3 of the Priorities Areas (part B) of the Vision states:

“Strengthening open, democratic, transparent and inclusive WSIS multistakeholder approach, enabling all stakeholders to participate according to their respective roles and responsibilities, in the implementation of the Geneva Plan of Action.”

We consider this to be particularly important because there have recently been calls to accept undemocratic models of multi-stakeholderism, see for example the discussion in our response⁵ to NetMundial. We are developing a separate document that will present some elements that, in our view, should be considered when developing democratic multi-stakeholder processes. In particular, the outcomes of processes such as Netmundial and the HLE must be considered only as one set of views, contributed by a cross-section of groups, and not any kind of authoritative normative or policy statements. Such processes must be embedded in a democratic decision-making context, by which we mean that decisions affecting public policy would be made only by freely elected representatives of the people. It is important to note in this context that failure to make a decision is in itself a decision (for example, failure to prohibit mass surveillance is in effect a decision to allow mass surveillance).

¹ <http://justnetcoalition.org>

² <http://www.itu.int/wsisis/implementation/2014/forum/>

³ <http://netmundial.br/>

⁴ http://hdr.undp.org/sites/default/files/reports/263/hdr_2002_en_complete.pdf

⁵ <http://justnetcoalition.org/jnc-response-netmundial-outcome-document>

We also strongly welcome the progress on identifying action line items that supplement the agreed action line items of the 2003 Geneva Plan of Action and reflect a partial recognition of the degree to which there have been highly significant developments in a variety of areas impacting on the WSIS Action Lines as with other outcomes of the WSIS process. Indeed, the world has changed since 2003 and consequently the action lines need to be revisited and supplemented, in some cases more than what is reflected in the outcomes of the HLE outcome documents (see in this respect the APIG comments in Annex 1).

Indeed the main content of the event was the approval of the outcome document⁶. It is expected that this document will be fed into an overall WSIS Review in 2015, the format of which has not yet been decided. We stress that the overall WSIS review must, in our view, take place using a democratic multi-stakeholder process (as stated before, we expect to publish shortly a document on such processes). The preparatory process for the overall WSIS review must not consist solely of an open multi-stakeholder process, because such a process cannot be truly democratic. Multi-stakeholder processes can be useful inputs, and can inform formal preparatory processes, but they cannot replace them. In particular, we do not consider that documents which have achieved some level of consensus (or even unanimity) in informal processes such as Netmundial or the HLE should just be rubber-stamped by formal processes. Neither Netmundial nor the HLE had clear rules of procedure, both were open to all participants, neither had transparency requirements regarding the participants, and both treated all participants equally (that is, representatives of private companies had the same influence as did democratically elected representatives of the people). Such processes cannot be considered democratic and thus their outputs should not be legitimised without further discussions by appropriate democratic institutions

In particular, as noted in Annex 1 below and in our comments on Netmundial, rather weak compromise language tends to be agreed in an effort to achieve consensus. Such weak compromise language masks the reality that difficult issues exist and must continue to be discussed. In our view, it would be more appropriate if open processes were used to generate a range of options and differing views that would then be considered and debated within appropriate democratic institutions .

In addition to the agreed outcome documents, the HLE also featured a large number of policy statements, including a call⁷ by the Just Net Coalition for vigorous analysis and action to solve the various major problems of systemic injustices. APIG, a JNC member, also made a policy statement⁸.

While we consider that the preparatory process for the WSIS+10 High-Level Event, and the Event itself, exhibited certain process evolutions and improvements compared to other recent multi-stakeholder events such as Netmundial, it cannot be said that the Event embodied what we would consider to be a democratic multistakeholder process. Future discussions regarding WSIS (which should be organized along the lines that we will outline in our forthcoming document on democratic multi-stakeholder processes) should address some of the contentious issues that were not resolved at the WSIS+10 High Level Event (in this respect, see the comments by APIG in Annex 1).

We highlight here what we consider to be the main evolutions and improvements achieved in the WSIS+10 High Level event and its preparatory process with respect to Netmundial:

1. Contrary to Netmundial, approval of the outcome document was achieved with unanimous consensus after the proposed outcome document had been circulated by email to all participants of the meeting about five hours in advance of the adoption ceremony (and that document was substantively identical to a compromise proposal that had been presented two days earlier, but

⁶ <http://www.itu.int/wsis/implementation/2014/forum/dam/documents.html>

⁷ <http://justnetcoalition.org/policy-statement-wsis10-high-level-event-0>

⁸ http://www.itu.int/wsis/implementation/2014/forum/inc/ps/doc/PolicyStatementsSessionOne-B/Dr.Richard.Hill_APIG.doc

had failed to attract unanimous support at that time). Before the outcome document was adopted by acclamation, all participants were given the opportunity to voice an objection. However, the only statement that was made in response to this invitation consisted in the explicit withdrawal of a previous objection.

2. The event's Multi-stakeholder Preparatory Process (MPP) was fully transparent in terms of process, although, regrettably, it did not require full transparency of the participating organizations; the MPP was conducted with integrity within that context. All documents were made public, all drafts for approval were published with a call for comments, all written comments were published, and all participants were able to contribute, with equal rights, to both the discussions and the negotiations of the final texts; the negotiations were webcast and the archives are publicly available. We note that other recent multi-stakeholders meetings such as Netmundial were less transparent, with final drafts negotiated by a restricted number of people and no formal record of those negotiations.
3. A great deal of time was allowed for the MPP and adequate secretariat resources were made available to support the MPP. The management team (chairman, vice-chairman and secretariat) showed skill and neutrality. Other recent multi-stakeholder meetings did not, in our view, devote sufficient time for the preparatory process.

In this context JNC wishes to recognize the significant efforts that the ITU and its Secretariat, in their capacity as facilitators of the WSIS+10 High Level Event, put into organizing the event and its preparatory process. The negotiation process was at times difficult, and in fact until the very last day there were serious doubts about whether it would be possible to fulfil the very stringent requirement of unanimity which had been adopted for this process.

We particularly commend the tremendous efforts made by the leadership of the preparatory process, and by the ITU Secretary-General to achieve unanimous agreement of all participants for all parts of the outcome document. This was not an easy task and it was courageous to undertake it in light of the discussions at Netmundial and during the MPP.

In light of the outcome, the frustrations which were experienced during the preparatory process are of relatively minor importance. We present in Annex 1 below, for information, some notes prepared by one of our member organizations, APIG.

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Annex 1
(to the Just Net Coalition Comments on the WSIS+10 High Level Event)
Notes by APIG on the preparatory process

Introduction

This annex supplements the response of the Just Net Coalition (JNC) to the WSIS+10 High Level Event (HLE) and its outcome document by providing some additional notes about specifics of the Multi-stakeholder Preparatory Process (MPP) through which this outcome document was negotiated. JNC's explicit participation was limited to the last session of the preparatory process. However the Association for Proper Internet Governance (APIG)⁹, a member of JNC, has actively participated throughout the process.

The representative of APIG has actively made constructive suggestions in order to help achieve consensus and APIG has withdrawn various proposals that it considered important when they were challenged by other participants, and this in order to find consensus. Some examples of such compromises made by APIG are presented below.

We are pleased that full consensus was reached during the preparatory process regarding the Statement and parts A and B of the Vision, and that consensus was reached regarding most of part C of the Vision. However, JNC was disappointed that the rigid positions taken during the MPP by some participants prevented full consensus from being reached regarding Action Lines C5 (Building confidence and security in the use of ICTs) and C9 (Media) in part C. The final objections that blocked consensus in these areas were only dispelled through personal interventions of the ITU Secretary-General after the MPP had ended.

It must be recalled that the purpose of the discussions regarding part C was to identify action line items that would supplement the agreed action line items of the 2003 Geneva Plan of Action. The world has changed since 2003 and indeed the action lines need to be revisited and supplemented.

Agreement was reached on many supplements to the action lines. Action line C9 is related to the media, which has undergone dramatic changes since 2003. Many supplements to this action line are surely needed, but, given the complexity of the discussions, in particular regarding freedom of speech, it was not possible to reach unanimity, which was the interpretation of consensus that was used in this process. Some participants took the view that, absent consensus on C9, none of the other supplements to the action lines could be considered to have been approved by consensus.

This is correct from a procedural point of view: nothing is agreed until everything is agreed. However, APIG is of the view that the supplements to all action lines except C9 and one item in C5 are acceptable as agreed and can be considered independently of C9 and the unresolved item in C5, while recognizing that important issues regarding C5 and C9 remain open and must continue to be discussed.

In the end, the leadership team of the preparatory process presented a compromise proposal for the outstanding items, and the ITU Secretary-General used his good offices to obtain full, unanimous, support for this compromise proposal, which was approved by acclamation, but only after having allowed time for all participants to express dissent, if they so wished. We note with appreciation that an opportunity was given to express dissent prior to the approval by acclamation, which was not the case in other recent multi-stakeholder events.

In the interests of helping to facilitate discussions at future multi-stakeholder events, we present here the following:

1. Considerations on the multi-stakeholder process used during these preparatory meeting

⁹ <http://www.apig.ch>

2. Compromises made by APIG
3. Proposals for C5 and C9

1. Considerations on the multi-stakeholder process used during MPP meetings

The Multistakeholder Preparatory Platform (MPP) meetings were conducted on the basis of equal rights for all stakeholders and no restrictions on participation (except for registration). This allowed a wide variety of views to be heard and resulted in many valuable and diverse proposals being presented for consideration.

The leadership team (chairman and vice-chairmen) was very experienced and skilled, as was the secretariat.

Given the volume and diversity of the submitted inputs, it is our view that the leadership team should have been requested, already after the first MPP meeting, to propose compromise text. It is to be regretted that many participants objected to this, and that the leadership team was tasked with proposing compromise text only at a very late state. This is particularly to be regretted because all participants agreed that the compromise text that was presented by the leadership at the end was excellent and formed an appropriate basis for further discussion and refinement. It is likely that progress would have been more rapid, and that full consensus would have been achieved earlier, if the compromise proposals prepared by the leadership had been presented at the earlier meetings of the MPP.

The meeting was conducted on the basis of unanimity. That is, no text was considered to have achieved consensus unless no participant objected to it. While this appears appealing at first sight, it can result in a small minority blocking progress towards a compromise text. And indeed this happened for some portions of the text of part C of the Vision. In the end, unanimity was achieved thanks to the good offices of the ITU Secretary-General, but, in our view, it would be preferable if the rules for multi-stakeholder were such that such extraordinary efforts are not required.

If meetings are fully open, and all stakeholders have equal decision-making rights, then any stakeholder can oppose any proposal that, in its view, threatens its interests. Thus it will be difficult or impossible to reach unanimity on delicate issues at such meetings, and this is indeed what happened at the MPP. Allowing private companies (which are stakeholders) to have the same power as other stakeholders with respect to public policy issues is problematic¹⁰. It is also problematic to allow a small number of participants, even if they are governments, to block progress.

Thus, it should be recognized that multi-stakeholder meetings in which public policy decisions are made by unanimity are not appropriate if the goal is to reach consensus on difficult issues. In particular, states should recognize that traditional processes based on unanimity are not suitable for all issues, in particular when the outcomes of a discussion are of a non-binding nature. Thus, we would encourage states to adopt working methods that allow approval of documents even in the absence of unanimity.

An alternative would be to apply “rough consensus” processes as practiced for example in the Internet Engineering Task Force (IETF). But this gives a great deal of power to the leadership team, and thus makes the selection of the leadership team a very delicate matter, in particular so as to ensure that decisions are democratic. For example, in a “rough consensus” process there must be an appropriate organizational framework (which absolutely must provide a last call process and an appeals process) and organizational culture (of open communication and fact-oriented evaluation of proposals).

It is our view that it will be difficult (or at least time-consuming) to conduct democratic rough

¹⁰ See the Preamble of <http://www.itu.int/en/Lists/CWGContributionmar2014/Attachments/25//CWG-March.pdf>

consensus processes in broad-topic or open-topic international public policy contexts, for the simple reason that in such contexts, if the group of participants is appropriately diverse, there won't be enough underlying agreement on what constitutes facts. Allowing ample time for discussions and exchanges of views, including regarding the underlying facts, can help, and indeed the discussion in the MPP regarding E-environment was an example of such a situation.

JNC notes that some of the States that have most vociferously insisted that UN processes are not open and inclusive enough for Internet governance decision-making themselves conducted secret negotiations to agree on a letter sent to the ITU Secretar-General on 6 June 2014, and that that letter was presented for endorsement to some, but not all, concerned stakeholders. The JNC member most closely involved in the proces, APIG, would have expected greater transparency and full and inclusive consultations, given that the letter touched upon process issues of interest to all active participants and the interpretation of various statements made during the discussions.

2. Compromises made by APIG

APIG would have preferred that paragraph 2 of the Preambles of both the Statement and the Vision read as follows in order to recognize recent UN Resolutions that highlight the relevance of specific human rights in the context of the evolution of ICTs since 2005, recognizing the well-known legal principle that offline rights apply equally online (our additions are shown as revision marks):

We reaffirm the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights and relevant international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; and we also reaffirm paragraphs 3, 4, 5 and 18 of the Geneva Declaration; and we reaffirm the human rights mentioned in relevant UN Resolutions, including, but not limited to:

- [A/RES/68/147. Rights of the child](#)
- [A/RES/68/163. The safety of journalists and the issue of impunity](#)
- [A/RES/68/167. The right to privacy in the digital age](#)
- [A/RES/68/227. Women in development](#)
- [A/HRC/20/8. The promotion, protection and enjoyment of human rights on the Internet](#)
- [A/HRC/RES/21/24. Human rights and indigenous People](#)
- [A/HRC/RES/22/6. Protecting human rights defenders](#)
- [A/HRC/RES/23/2. The role of freedom of opinion and expression in women's empowerment](#)
- [A/HRC/RES/23/3. Enhancement of international cooperation in the field of human rights](#)
- [A/HRC/RES /23/10. Cultural rights and cultural diversity](#)
- [A/HRC/RES/24/5. The rights to freedom of peaceful assembly and of association](#)
- [A/HRC/RES/25/11. Question of the realization in all countries of economic, social and cultural rights](#)

It should be noted with disappointment that one participant (representing business) objected to inclusion in Action Line C2 (Information and Communication Infrastructure) of the following item, which is based on text agreed at the G20 St. Petersburg meeting¹¹:

e) There is a need to identify the main difficulties that the digital economy poses for the

¹¹ G20 Leaders, "Tax Annex to the St. Petersburg Declaration", G20 (6 September 2013), Annex, Action 1 <http://www.g20.org/news/20130906/782776427.html>

application of existing international tax rules and develop detailed options to address these difficulties.

APIG would have preferred that the WSIS+10 recognize the dysfunctional nature of the current copyright regime for what concerns online issues and that an explicit call be included to reform that unworkable regime¹². In particular, APIG would have preferred that item (f) of action line C6 (Enabling Environment) read as follows (changes with respect to the agreed version are shown as revision marks):

f) Foster an intellectual property rights framework that balances the interests of creators, implementers and users, by drastically reducing the length of copyright, by legalizing non-commercial downloads of copyright material, and by restricting what can be patented.

APIG would have preferred that the WSIS+10 explicitly call for the globalization of the IANA function, by adding the following:

In section B (Priority areas) of the Vision, adding 37:

37) Accelerating the globalization of ICANN and IANA functions.

In action line C1 of the Vision, adding (f):

(f) Agree a formal framework that provides for all governments to participate, on an equal footing, in the governance and supervision of the ICANN and IANA functions, and that provides for effective supervision and accountability of these functions in accordance with paragraphs 29, 35, 36, 61 and 69 of the Tunis Agenda.

APIG would have preferred that (b) and (d) of C10 (Ethical Dimensions of the Information Society) read as follows (changes with respect to the agreed version are shown as revision marks):

(b) Promote respect of the fundamental ethical values in the use of ICTs and prevent their abusive usage, and in particular prevent mass surveillance.

(d) Continue to enhance the protection of privacy and personal data. Recognize that, in the absence of the right to privacy, there can be no true freedom of expression and opinion, and therefore no effective democracy. Any violations of privacy and any restrictions on the protection of personal data must be held to be necessary and proportionate by an independent and impartial judge.

See 11 of APIG's submission¹³ to the open consultation conducted by the ITU Council Working Group on International Internet-related Public Policy Issues (CWG-Internet) and recall that, as stated by the President of Brazil, Dilma Rousseff, in her speech at the UN General Assembly on 24 September 2013:

“In the absence of the right to privacy, there can be no true freedom of expression and opinion, and therefore no effective democracy.”

3. Proposals for C5 and C9

APIG would prefer the following texts for (a) of C5 (in addition to the finally-agreed (a), not as a replacement for it) and for C9.

C5. Building confidence and security in the use of ICTs

a) Continue to promote cooperation among governments at the United Nations and other appropriate intergovernmental forums, and with all stakeholders at other appropriate forums, to

¹² In this context, see 7.3 of <http://www.itu.int/en/Lists/CWGContributionmar2014/Attachments/25//CWG-March.pdf> and its references.

¹³ <http://www.itu.int/en/Lists/CWGContributionmar2014/Attachments/25//CWG-March.pdf>

enhance user confidence, build trust, and protect both data and network integrity; consider existing and potential threats to ICTs, in particular threats created by weakening or compromising encryption standards; and address other information security (this being understood as defending information from unauthorized access, use, disclosure, disruption, modification, perusal, inspection, recording or destruction) and network security issues, in particular mass surveillance.

a^{bis}) Address cybersecurity and cybercrime in appropriate forums.

It should be noted that the text in parenthesis after “information security” was not present in the 2003 version of this text, found in 12(a) of the Geneva Plan of Action. It has been added in order to make it clear that the term “information security” is used in its ordinary sense¹⁴, and not in other senses.

C9. Media

Media will benefit from the broader and expanded role of ICTs that can enhance media’s contribution to the development goals of the post-2015 Sustainable Development Agenda.

The principles of freedom of expression and the free flow of information, ideas and knowledge, and the protection of privacy, are essential for the information and knowledge societies and beneficial to development, recognizing that the same rights that people have offline must also be protected online.

1. Develop and update national ICT-Media legislation that guarantees the independence, and plurality of the media according to international standards as well as the domestic needs.
2. Continue to take appropriate measures — consistent with freedom of expression— to combat media content that is both illegal and harmful. Any such measures must be held to be necessary and proportionate by an independent and impartial judge.
3. Continue to encourage traditional media to bridge the knowledge divide and to facilitate the flow of cultural content, particularly in rural areas.
4. Ensure the safety of all journalists and media workers, including social media producers and bloggers, and their sources (in particular whistle-blowers) and facilitate the implementation of the UN Plan of action on the safety of journalists and the issue of impunity.
5. Ensure the privacy of all media and the secrecy all communications, including E-Mail. Any violations of privacy or secrecy shall take place only if they are held to be necessary and proportionate by an independent and impartial judge. The privacy of all media and the secrecy of all communications shall be respected in accordance with the national laws of all concerned parties.

The statement “recognizing that the same rights that people have offline must also be protected online”, is a reaffirmation of a well-known legal principle and it applies to all human rights, which are indivisible.

It should be noted that the text proposed for 2 clarifies the text of 24 (c) of the Geneva Plan of Action. That text could be misunderstood to imply that one could combat content that is harmful but not illegal. But such is not the case, since content can only be restricted if it is illegal, pursuant to article 29(2) of the Universal Declaration of Human Rights and article 19(3) of the International Covenant on Civil and Political Rights. That is, the Geneva Plan of Action already enshrined the principle that there should be fewer restrictions on online freedom of speech than on offline freedom of speech, because the online content can be restricted only if it is “illegal and harmful”. In this respect, see 7.1 of our submission¹⁵

¹⁴ http://en.wikipedia.org/wiki/Information_security

¹⁵ <http://www.itu.int/en/Lists/CWGContributionmar2014/Attachments/25/CWG-March.pdf>

to the open consultation conducted by the ITU Council Working Group on International Internet-related Public Policy Issues (CWG-Internet).

Regarding 5 above, see 11 of the cited submission to CWG-Internet.

In view of objections that were raised on procedural grounds against the proposal to add a new action line on women's empowerment, we suggest as an alternative to add a strong statement regarding gender equality that would apply to all action lines. This statement would appear as a chapeau before action line C1.

APIG proposes the following for this chapeau (the language is that proposed by UN Women for a potential new action line, slightly modified for use as a chapeau, if it is not accepted as an action line):

We commit to promote progress in implementing gender commitments enshrined in the WSIS outcome documents and forward-looking recommendations by pursuing practical and joint measures to advance women's empowerment within the Information Society. The goal is to realize women's meaningful access to ICTs and full integration of women's needs and perspectives, and their equal participation as active agents, innovators and decision-makers. Also critical are connecting and heightening understanding of online and offline realities and addressing underlying factors that hinder women's engagement in the Information society. Finally, we seek to develop more coherent approaches, as well as increase investments, attention and accountability measures.

1. *Gender Analysis*: Promote the use of "gender analysis" and associated tools and methodologies in the development of national, regional and related global frameworks, strategies and policies and their implementation, as well as better connect with women's empowerment communities and frameworks.
2. *Holistic Approaches and Structural Issues*: Address underlying women's empowerment issues in the information society, such as gender stereotypes, specific or pronounced threats to women, such as online violence, as well as provide analysis and actionable recommendations on gender issues that cut across action lines.
3. *Support to Action Lines and Stakeholders*: Work with and across Action Lines and specific stakeholder groups (e.g. private sector) to accelerate integration of gender equality within their remits through identification of overarching issues, programmatic opportunities, requisite investments, policy interventions, case studies and learning, and promote participation of women and gender equality stakeholders.
4. *Data and Monitoring Progress*: Prepare scorecards on Action Line and National level reporting on women's empowerment. Support and promote the work of the Partnership on the Measurement of the Information Society Working Group on Gender.