

Initial response of Just Net Coalition to the early draft of NetMundial outcome document

11th April, 2014

We commend the NetMundial process for its openness in inviting, receiving and reviewing submissions from the range of public interest actors as well as private interest ones. We thank the Executive Multistakeholder Committee (EMC) for developing the first draft of their report which we had the opportunity to access through wikileaks and on which we would like to comment in advance of the finalized report.

We think that the EMC has made a sincere effort to combine the various inputs into a coherent whole and the resulting draft provides some useful elements. We must observe however that the inputs cannot be viewed as being truly representative of the totality of Internet users, much less of the totality of the world's population which should benefit from the Internet, because there is a great imbalance in terms of groups and constituencies that have contributed inputs.

We especially note positively the mention of the 'necessary and proportionate' principles for surveillance practices and the need for an international treaty to deal with jurisdictional issues, cyber crime and to restrain cyber weapons. We also commend the recommendations on open and inclusive IG processes at all level, particularly the inclusion of participation of all interested actors.

Having said this, we must express our dissatisfaction with the current document as having largely failed to meet the high expectations of a new start that the world community had placed on the NetMundial meeting. That high expectation was not necessarily to achieve full consensus: we know that many issues are contentious. The expectation was that there would be a full and open airing of the issues, with frank and robust discussions.

Reading between the lines, it is clear that the document effectively endorses the current Internet Governance status quo along with suggestions for minor changes. While being able to present substantially new proposals for change may have been difficult at such short notice, sadly we see the document as not even opening up new directions, and in fact perhaps closing down some that are currently being discussed in other places. In our view, the document avoids dealing with contentious issues. We believe that it is essential that the existence of such contentious issues be openly acknowledged, in particular since some of those issues have been under discussion for years and are of fundamental importance.

The document does not contain any forwarding looking proposals for addressing the absence of any means or mechanisms at the global level that could democratically address the urgent and important public policy issues that currently face the global community. Further the document fails even to appropriately frame the problem. In this sense it represents a retreat from the Tunis Agenda – which is surprising, since during the 10 years since the Tunis agenda was written the global importance of public policy issues pertaining to the Internet has only exponentially increased in importance.

It is noteworthy that the Tunis agenda is referred to only once in the whole document, and in that instance as indicating quite incorrectly that the Tunis Agenda has been implemented: “The implementation of the Tunis Agenda has demonstrated the value of the Multistakeholder model in Internet governance.” Such a statement, suggesting closure on Tunis Agenda, is really surprising especially when there is a UN working Group that is currently mandated to develop recommendations

to 'fully implement Tunis Agenda' especially with regard to the key issue of addressing Internet-related public policy issues.

After saying that mechanisms may be needed to address 'emerging' public policy issues (using the unfortunate term 'orphan issues' which gives a kind of 'residual' status to one of the most significant set of global public policy issues) the draft veers towards recommending (1) Internet Governance Forum (IGF) as the principal site for addressing of these issue (although in a bit apologetic and round about language) and (2) improving information flows between existing fora dealing with Internet-related public policy issues.

While some believe that IGF needs to be strengthened as a global policy dialogue space, and that all kinds of information flows between concerned institutions enhanced, this recipe for 'institutional reform' basically just rubber stamps the status quo of global Internet governance. This approach would mean that there would continue to be no global policy mechanisms to respond to the range of issues that have and are emerging globally concerning the impact of the Internet in economic restructuring and in helping to ameliorate the extreme concentrations of economic, social, cultural and geo-political controls that are emerging on and through the global Internet. The current draft completely fails at its central task, which is to give direction for responding to the principal problem facing the world today: how to channel the extremely powerful forces of the Internet into the support of the public good. It is this that we and many others believe to be the central challenge and opportunity for the NetMundial meeting.

The second major issue with the current document is that while it refers repeatedly to "multistakeholderism" and "stakeholders" as providing the frameworks for Internet Governance nowhere does it mention democracy or how multistakeholderism might contribute to or enhance the fundamental elements of democracy on which so much of human rights Internet freedom and social justice are based. This is truly alarming given the stridency with which so many actors are attempting to ensure that those pursuing private interests and the corporate sector have an equal role with those legitimately representing the public interest in the determination of public policy. It must be remembered that the Tunis Agenda repeatedly speaks of 'democratic (processes)' when referring to global Internet governance. Omission of this primary political norm from the NetMndial text is therefore highly objectionable and completely unacceptable.

The document must therefore underline that

- (1) while the formulation of technical standards and technical coordination activities may most effectively be undertaken through an "equal footing of all stakeholders", there is no basis for extending such a formulation or such mechanisms beyond the technical into broader areas of public policy decision making
- (2) whereas all stakeholders should be able to freely input into public policy making processes, and even have a right to know how their inputs were considered, the right to make the final decisions on public policies rests with legitimate public interest actors that hold political responsibilities arising from formal democratic processes (this was also the process followed for the famous 'Marco Civil' legislation, and there can and should be no other kind of process for legitimate public policy making) .

While the draft document mentions the 'respective roles and responsibilities' of stakeholders in two places, these references are mitigated through questionable language in many other places in the document. The document should therefore clearly declare that MSism outside of the technical sphere is

only operative within and as a contributor to the more fundamental democratic framework, and as well the term democratic should in all places be used in conjunction with the multistakeholder terminology. As the document calls for further discussions on 'respective roles and responsibilities' it should also be mentioned that such a discussion should take place within a larger discussion and debate on the relationship between democracy and MSism.

Specifically, one new item should be added to the Human Rights catalog under II on page 3:
“Democracy: everyone shall have the right and opportunity to take part in the conduct of public affairs and public policy decisions, directly or through freely chosen representatives.”

A third issue with the current draft is the almost total neglect of global Internet-related public policy issues of an economic, social and cultural nature. While development and cultural diversity is mentioned in the context of “Internet principles”, there is nothing concerning key global public policy issues of this nature on the operations part, which though, admirably, does talk about global agreements on surveillance and cyber peace. As the Internet increasingly determines the global distribution of economic, social and cultural resources, we need global mechanisms to deal with the emerging distortions in such distribution. It was hoped that with a developing country taking the lead for the first time in steering a global IG discussion, such issues would come to the fore, not only in terms of statements of concerns, but also in terms of actual proposals for addressing them. The draft document needs significant improvement in this regard. (Also, a full mention of the term 'net neutrality' is needed and not just a reference to 'neutrality' which can be interpreted in different ways.)

Recognition of the Internet as a public good and a global commons must be stated as a primary principle underlying various Internet related public policies.

Further, even on issues such as democratization of technical coordination functions and their oversight, the document does not go beyond what has recently been declared by the US government and as is being pursued by ICANN. There is a need to discuss – without any preconditions – what kind of structure is most appropriate for managing the DNS and other critical Internet resources. We must for instance affirm the need for freeing such technical coordination functions from the jurisdiction of any one country, and the simultaneous need for appropriate oversight of these functions by the global community. Specifically, the following should be added at the end of the second paragraph of 4 of III, on page 9, add: “The operational aspects must not be subject to the law of any one country, that is, they must benefit from immunity of jurisdiction.”

Given the limited time to evaluate and study this document, we are of the view that it should not be endorsed or approved at the meeting, it should be noted. It will then provide a useful input for further discussions.