

Quito, October 30, 2003

Mr. Adama Samassékou
President of Prepcom
WSIS

Dear Mr. Samassékou,

We appreciate your concern to receive feedback from civil society concerning the non-paper you have produced for the intergovernmental negotiations on the draft Declaration for WSIS.

Despite the difficulties in undertaking consultations in such a short timeframe, we have produced the adjoined document, which is a compilation of proposals received from civil society caucuses on the October 24 version of the non-paper, that reflect the consensus reached among a broad range of civil society organizations on many issues during the WSIS preparatory process. However, given the short time-line, it does not include all the comments civil society may wish to make on the document.

As a general comment on the document, I will summarize here a few of the overriding concerns that have been expressed during the past weeks by a number of civil society caucuses.

We appreciate the inclusion of several civil society proposals into this latest version of the document. In particular we recognize that since July there has been an openness to strengthening references among other things, to human rights, social inclusion, education and sustainable development.

We also welcome your stated commitment to a participative approach and to seek out a satisfactory balance between technological and societal issues. Nonetheless, we are concerned that the declaration as a whole fails to adequately address some fundamental issues of the information society and still has an excessive bias towards technological and market solutions.

Some issues of major concern are:

The "Information Society" on which the World Summit is premised continues to reflect, to a large extent, a narrow understanding in which ICTs are generally taken to mean telecommunications and the Internet. This approach tends to marginalise some key issues relating to the development potential inherent in the combination of knowledge and technology on which the WSIS was premised in UNGA Resolution 56/183.

A commitment to a people-centred, inclusive and development-oriented Information Society based on respect for human rights should be embedded throughout the Declaration of Principles and the Action Plan.

In our view the key challenges of the Information Society are to maintain and extend the global knowledge commons and the public domain and to ensure better access for all to information and communication.

Limitations on free access and fair use of knowledge and communication systems imposed by

legal and technical means must remain the exception, to be applied only where strictly necessary. In this context, free software and open standards in the technical infrastructure are essential components not adequately reflected in this document, which also ignores fundamental differences between intellectual and physical products.

The Declaration mentions the need to address geographical and social divides, but falls short of expressing a strong commitment to creating the mechanisms for redressing them. It also fails to emphasize and express support for the key role of community initiatives and people's involvement in the decisions that control their lives in the information society. There should be much stronger commitment to community driven solutions.

Nor does the draft Declaration give sufficient recognition to the dangers ICTs can pose to civil rights and liberties and the need for a strong international commitment to reaffirming and protecting those rights.

Yours truly,

Sally Burch
Civil Society Content and Themes joint-coordinator

Produced by: the Civil Society Working Group on Content and Themes (drafting group)
October 30, 2003

Note: please note that these comments are based on the draft version of the President non-paper, dated 24 october 2003. This draft version is available on the web at :

http://www.itu.int/wsis/documents/doc_single.asp?lang=en&id=1068

Note: The present document is a compilation of proposals received from civil society caucuses on the non-paper presented by Mr Samassekou on October 24. While it reflects the consensus reached among a broad range of civil society organizations on many issues during the WSIS preparatory process, given the short time-line it does not include all the comments civil society may wish to make on the document.

Paragraph 1

We request a **reference to** the principle of "non-discrimination" in Sections A. We suggest it be included in paragraphs 1 or 2.

Justification: It is crucial that the principle of non-discrimination be affirmed to stress that all (women, young people, people with disabilities, elderly people, minorities etc.) should have equal rights in the information society.

Paragraph 3

We **support** the reference to the *Right to Development*.

Paragraph 4

We **strongly support** the reference to Article 19 of the Universal Declaration of Human Rights.

We suggest that article 19 be quoted in full length: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Paragraph 5

We request **removal** of the second sentence "*and our shared values as well as religious, family, cultural, social, and linguistic interests and ethical principles protected*".

Justification: The concept of shared values, interest and ethical principles is too broad and vague, and opens for possible misuse for instance in terms of censorship.

Paragraph 20

Insert "community centres, libraries" after "*schools*".

Justification: specific attention and support should be given to community-based initiatives.

Paragraph 21

We **strongly support** the affirmation that: "*the ability for all to access and contribute information, ideas and knowledge is essential in an inclusive information society.*"

We propose to **add**: "We recognize that sharing of traditional knowledge of Indigenous Peoples is guided by their own culturally defined procedures.

Paragraph 22

Replace the words "*removing barriers to equitable*" by the words "promoting open access". Replace the words "*facilitating access to public domain information*" by the words "promoting equitable access to information for commercial, economical, industrial and financial activities"

Justification: The word "open access" refers to the free access to information that has been created by authors that do not seek financial compensation. The best example is scientific authors. This information should be freely available and not be resold by publishers at a very high price, therefore creating yet another digital divide. As a conclusion the word "open access" refers to non-commercial and public domain information.

The word "equitable access" refers to the "equitable trade" ("commerce equitable" in French) movement that promotes a fair financial compensation between economical actors with unequal bargaining power. Therefore the word "equitable" seems correct, but as long as it is used within a trade context. This word is fitted for commercial transactions related to commercial information. It should not be used to replace "Open Access" because it would imply that scientific information, public domain information and any other information that is created for free, should be subjected to trade rules.

Paragraph 23

We request **replacement** of the words "*free and equitable access*" in the last sentence by "open access".

Justification: see note on paragraph 22.

We request **replacement** of "*and other community-based access points*" with "and other community-based information centres".

Justification: in this section the issue is about information resources, not Internet access. (In contrast with paragraph 20 which relates to infrastructure).

Paragraph 24

The new version of §24 deviates far from the consensus about different "software models" found at PrepComIII. Most notably, it fails to recognize the role of Free Software as a fundamental building block of all areas of the information society.

Paragraph 25

The question of how to encourage the building of the rich public domain should be strongly addressed. We propose to **add** following sentence:

"Any research, especially those funded by public bodies, should enrich the public domain. This must be ensured by the promotion of efficient models for self-publication, open content contributions and other alternative models for the production, publication and sharing of scientific knowledge and the use of non-proprietary formats".

We propose to **add** the word "free" before "*sharing of research results*" and to **replace** the words: "*universal access with equal opportunities for all to scientific knowledge and the creation and dissemination...*" with the words: "open access to scientific knowledge and promoting the creation, with equal opportunities for all...".

Justification: see note on paragraph 22.

Paragraph 27

We request to **add** "and Indigenous peoples" after "*vulnerable groups*".

Paragraph 32

We request **removal** of the term "*information security*" and to use only "network security".

Justification: Information security implies regulation of content and can be used to legitimize censorship and surveillance measures.

Paragraph 33

We **strongly suggest** deletion of paragraph 33. However, if the paragraph is kept, we demand that the phrase "*consistent with the need to preserve the free flow of information*" **stays** in the sentence. The competing proposal "*in accordance with the legal system of each country*" is **unacceptable**. We also request **deletion** of the bracketed language "[*in both civil and military fields*]".

Justification: The privacy and security discussions have - since the Paris Intersessional - shifted from a focus on the need for infrastructure integrity to a highly politicized agenda, characterized by language referring to the integrity of the military field and the use of information resources for criminal and terrorist purposes. Definitions of criminal and terrorist purposes in existing and emerging policies and legislation are ambiguous and prevent the use of information resources for legitimate purposes. They threaten rights such as the right to privacy, freedom of association, freedom of movement and freedom of expression.

Paragraph 36

We **request that it be stressed** that the rule of law should comply with human right standards.

Paragraph 38

We **strongly recommend the deletion** of this paragraph because it is confusing and contradicts the concepts expressed in paras 21-25.

Justification: This paragraph is legally and historically based on incorrect and contradictory premises. 'Intellectual property rights' (as distinct from its component of copyright, patents, trademarks etc.) is a relatively recent, industry-driven, concept that attempts to assert that the rights to the use of intellectual products is limited to those granted a temporary monopoly by the state. It suggests others have no rights. In fact, this is precisely the opposite of what is intended with these concepts. The right that all people can use intellectual products in

enshrined in the idea of the Public Domain, a legally ancient one and an integral part of all Treaties etc. There are exceptions made to this right, however, the goal of which is to ensure that (while maximum access is maintained for all) mechanisms are also in place to ensure that overall social creativity is also optimised. These exceptions grant a monopoly of use for a period, as a means by which creative effort can be rewarded. It therefore makes no sense to talk of a balance between "intellectual property, on the one hand, and its use, and knowledge sharing, on the other".

The existing paragraph confuses "the protection of intellectual property" with the "granting of temporary monopoly right over the use of intellectual products", resulting in the erroneous suggestion that only such temporary 'owners' have any rights at all.

An alternative would be to **replace** para 38 as follows and insert it in Section 3 "Access to information" :

"Human knowledge is the heritage and property of all humankind and the reservoir from which new knowledge is created. The primary goal of patents, copyright and trademarks, and other legal and technical monopolies on knowledge granted by society, must be to ensure maximum use of this knowledge and to encourage creativity as widely as possible within society. International agreements and treaties, and national policies concerning creation, sharing and trade of intellectual goods and cultural creations should be aligned according to this principle."

Paragraph 40

We request the **inclusion** of the words "freely implementable, publicly documented" after the word "*non-discriminatory*".

Justification: Although §40 recognizes the significance of open standards as "essential building blocks of the Information Society," it ignores the past 10 years of standardization experience. No standard will ever be open or interoperable unless it is freely implementable and publicly documented.

Paragraph 41

We consider it essential to **delete**, in paragraph 41, the words "*of legality, with full observance of national laws and regulation as well as*".

Justification: We **oppose** any statement through which the UN system endorses national laws and regulation given the fact that national laws and regulation have, on numerous occasions, been found to contravene Article 19 of the UDHR.

We request to **add** the following sentence at the end: "It should be ensured that vulnerable groups and Indigenous Peoples have access to radio and TV frequencies."

Paragraph 46

We recommend the **deletion** of this paragraph.

Justification: National policy issues have to comply with international human right standards and other international agreements.

Paragraph 47

We consider it **unacceptable** that none of the options mentions the involvement of Civil Society.

Of the five available options, we would prefer a).

Paragraph 52

We request that the following bracketed texts be **deleted**:

[in accordance with the legal system of each country and]

[particularly on Articles 19 and 29]

[Individuals and media should have access to available information]

Justification: First sentence opens for national legislation that is not in compliance with human right standards. Second sentence should only refer to article 19, which regulates press freedom, or not point to specific articles at all. Third sentence is without meaning, since it only addresses access to “available” information.

The Declaration requires a **much clearer statement** on the media, based on respect for the provisions of Article 19 of the UDHR and recognising the importance of a diverse and pluralist media environment including public service broadcasting and community media. We insist this **include** the statement "Public service broadcasting and community media have a crucial role to play in ensuring participation of all in the Information Society"

At the least the following text should be **included** after the words "*Traditional media*": "including public service broadcasting and community media" instead of "*in all its forms*".

Paragraph 54

We suggest **deletion** of this paragraph, or at least of the sentence "*The widest possible protection should be accorded to the family*".

Justification: It is too broad and imprecise when speaking of ethics and the family. It could be misused to legitimize censorship on content.

We propose the **inclusion** in this or a new paragraph on ethics, of the phrase: "We recognize and respect special ethical obligations that Indigenous Peoples might have towards the sharing and utilization of their knowledge and cultural heritage."