Critical Issues for the Internet Governance Forum

IT for Change
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This paper was written prior to the IGF-Rio in 2007, on four critical issues for the IGF from a Southern perspective. These issues continue to hold relevance for the IGF-Hyderabad in 2008 as well.

Four Critical Issues for the IGF, Rio, from a Southern Perspective

We provide our brief inputs as listed below in four areas which we understand would be key issues, especially from a Southern perspective, for the United Nation's Internet Governance Forum's (IGF) second meeting in Rio, in November, 2007. These are:

1.   Development Agenda in Internet Governance

2.   Public Domain and the Internet

3.   Governance of Critical Internet Resources

4.   Role of the IGF

Development Agenda in Internet Governance

During Internet Governance debates at the World Summit on the Information Society (WSIS), as well as in the first meeting of the IGF, 'development' has been projected as the key focus. The program outlines for IGF, Rio, also mention development orientation as the organising principle for the meeting. However, there has been little discussion on what really constitutes a 'development agenda' in Internet Governance, a term that has been borrowed from two other international policy forums, WTO and WIPO[1], where this agenda has recently gained much prominence. Without developing a good framework for clearly understanding and articulating developmental priorities in the Internet Governance arena, efforts in the area of policy as well as practice may only scratch the surface without touching deeper, more important, structural issues.

Under the circumstances, given the absence of efforts at addressing structural issues, presenting a capacity building approach as the development agenda tends towards paternalism. Such an exclusive emphasis on capacity building appears to sanctify existing Internet Governance arrangements, with a refusal to admit the need for any change or evolution in response to the imperatives of development, as if their understanding by developing countries and proper adoption remains the only issue.

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[1]   World Trade Organisation and World Intellectual Property Organisation

It is hoped that the proposed workshop, 'Towards a Development Agenda for Internet Governance'[2] as well other workshops and main sessions will examine the development aspects of Internet Governance thoroughly and come up with options of policy and practice that can enable a more purposive use of the Internet for development.

Here we suggest the outlines of a possible framework for building the 'development agenda in Internet Governance'.[3]

1. The first aspect of such an agenda, building on the principal manner in which it is anchored in the WTO, is the need for 'special and differential' treatment for developing countries because of their economic and institutional conditions. In this formulation, the basic 'soundness' of the mainstream arrangement – of taking countries as close to a regime of open and free trade as possible – is admitted by the involved parties. Only compliance requirements need to be calibrated to the unique conditions of each country to ensure equitable gains for all. These requirements also change over a time scale with expected institutional maturation. In Internet Governance such 'special and differential' treatment is required in inter-connection regimes, and can also be considered in other areas, such as the allocation of TLDs,[4] and other Critical Internet Resources.

2. Another aspect of a development agenda in Internet Governance involves examining and possibly challenging the dominant assumptions in Internet Governance propagated by vested interests. This approach parallels that of the 'development agenda' in the WIPO process, which has increasingly tended to question the basic premises of Intellectual Property Rights (IPR) regimes, and push alternative conceptions like access to knowledge, public domain and collaborative production, in an arena which till very recently never looked beyond strengthening IP protections. A similar examination of the dominant values and assumptions of the current Internet Governance dispensation is required as a part of evolving the 'development agenda in Internet Governance'. This will include an examination of the specific meanings that the complex socio-technical phenomenon that the Internet is holds for different people, groups and countries, and of its governance appropriate to such meanings. The workshop, 'Governance Frameworks for Critical Internet Resources'[5] as a part of IGF, Rio, proposes to explore these issues.

3. A development agenda also has its basis in the right to development, which *inter alia*, establishes collective rights of groups and nations as being as important as individual rights. Present Internet Governance dispensations, following a neo-liberal tradition, have tended towards individualisation of its stakeholdership and constituency. Such a perspective draws its legitimacy from the

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[2]   http://info.intgovforum.org/yoppy.php?poj=56

[3]   Our comments on various workshops at the IGC may not be taken to be the official versions of their purpose and structure, which have been outlined by the sponsors in the workshop proposals. We have provided links to the original proposals at all places where we discuss our own hopes and expectations from these workshops.

[4]   TLD - Top Level Domains, like .com, .net, .org

[5]   http://info.intgovforum.org/yoppy.php?poj=37

transnational nature of the Internet - which tends to transcend many other collective identities as well. However, it is well-established in development theory that especially for people in disadvantaged contexts, collective rights, representation, identities and actions are very important. The present Internet Governance dispensations consider the undifferentiated unit of an 'Internet-user' as its constituency, which is an insufficient and unrealistic mapping of the political terrain of Internet Governance, and leads to an adverse impact on meeting developmental objectives.

4. Development is about significant structural changes in societal institutions over a relatively short period. Traditionally, the public sector has had a strong role in facilitating such structural changes. The institutional conditions of developing countries are markedly different from those of counties with a well-developed and relatively stable institutional ecology, as in the North. Internet Governance in a developmental context, therefore, will require an important and pro-active role for the public sector, and for public finance, to create conditions of use of the Internet for all-round development involving every citizen. However, this role has to be constructed in a manner that civil society is able to resist statist tendencies to use the Internet and Internet Governance as instruments of control and self-aggrandisement.

5. 'Development agenda', broadly, is also seen as representing the interests of all disadvantaged people and groups, in general, and not only those of developing countries. This, in fact, is the most important and basic constituent of such an agenda. In this respect, it needs to

represent the special interests of disadvantaged groups everywhere, not just the poor, but also other groups like women, indigenous people, aged and the disabled. Issues of gender in Internet Governance, and the special needs of the disabled, would also be a part of the development agenda, in this sense.

These different aspects of a 'development agenda in Internet Governance' actually have sufficient theoretical and practical convergence to be treated under a single canopy. Together, they not only provide a framework for assessing the development aspects and agenda in Internet Governance, but also give important leads for evolving development- friendly Internet Governance principles and structures, as well as policies and practices. Understandably, the evolution towards incorporation of such an agenda in Internet Governance will be slow, but it is important to get its directions right in the early stages. At the broadest level, it is expected to begin moderating the exclusively market-led Internet Governance structures towards greater social and political considerations. Development theory has well-developed critiques of the limits of the markets in ensuring equitable development. Incorporating a development agenda in the existing Internet Governance structures will also attract development actors to the Internet Governance arena and thus enhance the richness as well as the legitimacy of its discourse.

Public Domain and the Internet

A recent set of recommendations of the WIPO's committee on 'development

agenda'[6] has called for international efforts at promoting a rich, robust and accessible public domain. The WSIS Declaration of Principles states that "a rich public domain is an essential element for the growth of the Information Society…" The WSIS Plan of Action further calls for developing "policy guidelines for the development and promotion of public domain information as an important international instrument promoting public access to information."

The Internet is fast emerging as the main platform for organising and sharing knowledge. It is therefore important to examine how Internet Governance can promote a rich, robust and accessible public domain. There is a general impression that the present Internet Governance system disproportionately favours private and intellectual property interests. It is useful to examine ways in which – as the WIPO document cited above states – a "fair balance between IP protection and the public interest" can be restored in Internet Governance.

Such possibilities exist in various areas of Internet Governance, and should be explored and leveraged for public interest in right earnest. To take one example, the designation and distribution of the domain name space is entirely organised on a marketplace principle, with policy considerations focused almost exclusively on protecting IPR rights, like trademarks. To take the oft cited equivalent of distribution of real estate, it would mean that no efforts are taken to designate, safeguard and promote necessary public spaces – like parks, libraries, community

halls etc. in the 'real' world – on the Internet, in addition to carving out private plots as per market principles. Demarcating such 'public spaces' through appropriate domain name allocation can give a strong impetus to the development of a rich and accessible public domain on the Internet, promotion of which is called for by the WIPO's mentioned committee.

It is also important to note that, unlike private spaces, such an exclusive public domain space on the Internet, demarcated by technical boundaries put up through the domain name allocation system, cannot be expected to come up via private efforts, neither will it be desirable. It is the concerned public body in charge of domain name space allocation that needs to use the revenue earned from allocating private spaces (which collections, in pursuance of a monopolistic public interest function, are equivalent to taxes) for promoting such public spaces on the Internet.

It is therefore suggested that the Internet Corporation for Assigned Names and Numbers (ICANN), the public body[7] in-charge of allocating Internet domain name spaces, should carve out one or more TLDs exclusively for public domain content, say, .pd. Such a domain name space should be run by ICANN itself, directly or through a separate non-profit entity funded by ICANN, and its governance principle should not be to maximise revenue or to efficiently provide private domains on the Internet, but solely to ensure a rich and accessible public domain.

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6   WIPO's PCDA's (Provisional Committee on Proposals Related to a WIPO Development Agenda) recommendations to its General Assembly, see http://www.wipo.int/ip-development/en/agenda/pcda07_session4.html

7   There is an important vocabulary issue here in use of the term 'public'. We use it not as in public authorities, but as in a public interest body, especially one like ICANN that does not pursue public interest as a voluntary activity, but has increasingly been presented as a body that is legitimised by, and accountable to, the Internet-user constituency.

The advantage of such a TLD would be the creation of a default public domain space on the Internet. This is especially significant in the context where, due to ideologically-driven changes in IPR laws in most countries over the last few decades, all 'content' is by default fully copyright protected. This contrasts with the earlier situation where content had to be specifically declared as protected, for legal enforcement. The current situation, however, is reverse, whereby any surrender or dilution of rights has to be mentioned specifically in order to be meaningful.

The process of domain space allocation for the Internet gives a unique chance to create two separate worlds in the digital space where the respective default regimes could be copyright, for one, and public domain, for the other. This can be done by a building a .pd like TLD (where pd stands for public domain) where the domain registration and use condition can be the acceptance of a clause stating that 'all content is in the public domain unless stated otherwise'.

Apart from giving out an important normative signal for promotion of a 'rich and accessible public domain' in the digital space, such a TLD has the great practical utility of providing a common space on the Internet where all/ most public domain content can be placed. **Such content includes government content in many countries, most publicly funded content,[8] the world's common cultural and intellectual heritage and critical technical and scientific information (like the genome database), also including traditional knowledge of**

communities (which is increasingly sought to be commercially usurped), as well as a good part of user-generated content upon which the creator seeks no rights. The last one is especially important as, increasingly, a major proportion of the total content on the Internet is user-generated. Some of this content is such that users may want to retain various levels of rights (creative options in domain name space for this can be explored as well[9]), but much of people's online interactions are in the nature of normal social interactions, upon which the 'creators' may not seek propriety rights, no more so than they may seek on interactions they have in a public square.

An important benefit of having all such social interactions – text, audio or visual – in a public domain space on the Internet is that not only will the interactions *per se* be in the public domain but also the digital platforms on which they are conducted will be in the public domain. This will prevent abuse of power through 'owning' of these 'commons' platforms[10] by private, mostly corporate, interests that are progressively establishing greater rent-seeking positions on these platforms without providing any significant value addition - which could not actually be done by alternative collaborative methods themselves. The quoted WIPO committee recommendations also seek promotion of 'collaborative projects' in the knowledge space. A '.pd' like domain can provide just the right space for such collaborative projects.

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8   The Development Agenda proposal put forward by a few countries at WIPO seeks a treaty whereby all publicly funded content worldwide should be in the public domain, accessible to, and usable by, all.

9   For instance, a .nc TLD, standing for non-commercial, counter-balancing the hold of .com as the major TLD, which was fine for the earlier avatar of a largely commercial Internet, but not so now when Internet is mostly made up of non-commercial social interactions.

10   Examples of such platforms are various social software for sharing and interacting through text, audio, images, and videos.

It is admittedly difficult to foresee with any degree of certainty how things will unfold as the Internet continues its largely unpredictable evolution. However, creation of such public domain spaces through public efforts (for the present context, preferably ICANN's support and financing) in addition to existing default copyright ones will provide a significant basis for possible alternative systems of knowledge organising and sharing, leading to great overall benefit to all, as envisaged in the 'WSIS Declaration of Principles'.[11]

It is therefore important that the present Internet Governance mechanisms undergo a thorough review, in collaboration with all stakeholders and constituencies, of their normative basis, policies and practices in terms of the extent to which they promote a rich and accessible public domain. This imperative, along with a rigorous examination and inclusion of a development agenda, are the two biggest priorities for Internet Governance from a Southern point of view.

Unfortunately, only one workshop slated for Rio looks at the issue of IPR from an 'access to knowledge' perspective. This is listed under the 'development/ capacity building' theme and not under the 'openness' theme. The details of the 'openness' theme, as per IGF's 'draft program', recognises openness both as freedom of expression (largely a negative right) as well as freedom of access (which has components of both negative and positive rights). **However there appears to be no workshop in the 'openness' theme on the issue of 'access to knowledge'. It is hoped that as a corrective, a correspondingly larger space will be given to this subject in organising the main session on 'openness'.**

Governance of Critical Internet Resources

Governance of Critical Internet Resources (CIRs) is a crucial part of Internet Governance, and perhaps the most disputed. Since the Internet is emerging as an axis about which a whole lot of institutions and structures – economic, social and political – are getting reorganised, it is not surprising that the governance of its core structure is an intensely political arena. However, what is surprising is that the dispute, as it ostensibly plays out, is not around different political viewpoints and ideologies, but more about whether the governance of CIR is merely a technical issue or a political and public policy issue. This is indeed, in some ways, a strange disputation.

It seems that what is really being defended here is a status quo ideology in the governance of CIRs, masqueraded in assertions like 'it is a technical issue' which were expressed as 'if it aint broke, don't fix it' during the WSIS days, against calls for evolutionary changes or alternatives. The status-quo-ists consider efforts at 'politicisation' of governance of CIRs as a thinly disguised attempt by some governments to gain control over CIRs for political abuse, mostly against internal dissent. This allegation is not without substance, and its implications are very important for the future of the Internet. But, at the same time, an assertion of possible political misuse of CIRs itself makes their governance a political issue, and it is best to recognise it as such.

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[11]   The opening line of the Declaration asserts a "common desire and commitment to build a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilise and share information and knowledge…"

A political battle cannot be fought under a cover of claiming apoliticalness of involved issues.[12] Freedom of expression and right of political dissent are basic rights of people. Claiming these need not be ensconced in technical assertions like of neutrality of technology. Many in the present Internet Governance dispensation go to extreme limits to deny the political basis and importance of the governance of CIRs. This was reflected in various consultations for IGF, Rio, where there was a considerable resistance from many associated with existing Internet Governance structures to a discussion on CIRs at Rio. Firstly, any issue that a good number of stakeholders want discussed cannot be kept out in any democratic forum. Secondly, if one has opposition to an issue, it should be stated in terms that are forthright and tenable. If there is a fear of progressive 'capture' of Internet Governance structures by elements whose control is considered undesirable, it should be stated in as many words, as the real danger. **Defending that the governance of CIRs is not a political issue, nor is it important to discuss, and that access is more important, does not give credibility to what is a (genuine) political position. It also serves to paint all those who seek normative and political review of governance of CIRs with the same brush of 'authoritarian states out to deny due rights to its citizens', something which is obviously not right or true, and harms the common interest of all those who seek real political and civil freedoms.**

Such a position is tantamount to using freedom of expression as an excuse to block the examination of the normative basis of Internet Governance. It serves to obfuscate another issue which is as important, that of balancing of public interest, especially as pertaining to the interests of the disadvantaged sections, vis-à-vis private and corporate interests in governance of the Internet.

It is therefore important, at the first level, to get together in an open, honest and thorough discussion, to establish what the policy issues in Internet Governance, including the governance of CIRs, are. This will require separating technical from the political/ public policy, to the extent it is possible, exploring the appropriate institutional structures for their respective governance, and examining how the two realms should interface. 'Technical' is an issue of methods and processes, and not of objectives. It presumes a basic agreement on objectives. To illustrate the point, security and stability of the Internet are two such objectives on which a complete agreement is presumed, and therefore all activities in their pursuance can be considered 'technical'. But such presumptions can easily become shaky. Concerns of privacy can come in conflict with that of security, and of multi-lingual domain names in conflict with concerns of stability – which then puts these issues in the 'political' and public policy arena.

Thus, any issue whatsoever can become political. The proof of political-ness lies in the disputation of basic objectives, not in any intrinsic quality of the subject. The .xxx TLD issue is one such case in point. There is enough visible proof of disputations about CIR governance, which by the very fact of it, becomes political. Making a distinction between the technical and the political, though admittedly never too clear, is an issue that often comes up

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12   This is often done in many political arenas – for instance, an affluent middle class in a developing country may present some issues as apolitical, while the fact is that the manner in which they are pursued benefit their interests over those of the disadvantaged and the poor.

in many areas of public administration. For instance, there are different opinions on whether gender mainstreaming is more of a technical issue or a political project. Only open and intense analysis and discussion can develop knowledge, and agreement towards moving forward, on such matters. The danger of ignoring the political aspect and sacrificing it to the cause of the technical aspect in any area of social significance is that the imperatives of equity and social justice, necessary for working towards the needs and interests of the marginalised, can be expected to get a short shrift.

It is therefore important that:

1. The very nature of the issues involved in the governance of CIRs is discussed. Such a discussion needs to examine the nature of technical versus public policy issues, the extent of their overlap/ interface, as well as appropriate institutional mechanisms for their governance. Such an examination is expected to be taken up in the workshop on 'Public Policy on the Internet'[13] planned for the Rio meeting.

2. Once, hopefully, the political nature of the governance of CIRs is established, an examination needs to be undertaken of the political assumptions and objectives of existing structures and processes of such governance, including the classical political question of *cuo bono* (for whose benefit) of any objective, assumption or strategy. This also brings up the question of possible alternative normative governance frameworks, like those based more on a 'commons' or public-interest orientation, and correspondingly less

on a 'marketplace' basis. These will be examined in the earlier mentioned workshop on 'Governance Framework for Critical Internet Resources' under the CIRs theme.

In addition, a workshop by 'Dynamic Coalition on Framework of Principles for the Internet' at Rio will also explore views and convergences on what could constitute shared principles for Internet Governance, including governance of CIRs.

Role of the IGF

IGF is one of the most significant gains of the WSIS. It is a bold experiment in multi-stakeholder global governance. And, on its success hinges many a hope for global governance reforms, whereby the diversity of global populations, groups and communities have a chance to be represented by means other than through governments alone. This is expected to 'deepen democracy' globally, in representing and ensuring the political interests – in terms of claims to various forms of rights – of all people equitably. This kind of governance is also appropriate and required for a world that is globalised like never before because of the new ICTs, giving rise to new economic, social and political forms for which a global polity based on national governments and their inter-governmental institutions is not sufficient.

It is therefore necessary that we nurture this new experiment in global governance carefully. This has understandably been the most important concern for many actors involved with the first meeting of the IGF at Athens, and while there is perhaps greater confidence now, it remain a significant concern as we move towards the second meeting of the IGF at Rio, later this year.

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13   http://info.intgovforum.org/yoppy.php?poj=5

Nurturing a new institution against possibly fatal controversies however cannot mean that we dilute it beyond recognition. This will kill the IGF by other means; whereby its shell remains, but it becomes completely ineffectual and meaningless inside. We need to be concerned that many have started to look at the IGF in this manner. While one remains hopeful that the IGF will emerge as a strong and abiding institution with an important global role, it is important to take all required measures in shaping it towards such a future.

First, it needs to be made clear to all parties that this is an open and democratic forum, and any issue, with a fair degree of support from a set of stakeholders, is welcome. Policing what can and cannot be discussed, unless completely *mala fide* intentions are clearly shown, is an authoritarian exercise.

A second, and related, issue is that we must agree that not all Internet Governance issues are matters of 'practical solutions' that can be sorted out by absolute consensus. This would take us towards designating Internet Governance as basically a technical area as discussed earlier. Many of the issues are political and are subjects for public policy. By their very nature they are subject to contestations and negotiations. The primary 'public policy' nature and role of IGF is also clearly affirmed in its Tunis mandate.

Thirdly, it is also clear that IGF is a place for deliberation, interaction and making policy recommendations, and not for *making* policy. Its role therefore is to aid legitimate global public policy structures to make the needed policies. IGF, however, still has to develop due processes and structures that would enable it to perform this role.

Two such processes come to mind, which should be considered at the Rio Meeting:

One is to engage in a thorough self-assessment and examination of the need for reform/change in the light of IGF's mandate, which should be made a regular exercise at IGF meetings. This exercise needs to be conducted in an open and mutually-engaging manner, without foreclosing issues and options. A Civil Society Internet Governance Caucus sponsored workshop on 'Fulfilling the Mandate of IGF'[14] is planned at Rio for this purpose.

The second is related to perhaps the single most contentious issue at present - of developing some kind of recommendations by the IGF. This role is clearly mentioned in the Tunis mandate, and such a role for the Forum was also strongly envisioned in the report of the WSIS's Working Group on Internet Governance (WGIG), which, unlike Tunis documents, was of consensual multistakeholder authorship. The sudden position of antipathy among many actors – many of whom were represented in the WGIG – to any recommendation-making role for the IGF is difficult to understand, or logically defend. WGIG also had the exact same role of giving policy recommendations to a legitimate policy-making body, the World Summit, in that instance. In this light, it seems illogical to hold that WGIG was worthwhile but a recommendation-providing-IGF is not.

Attempting to seek the logic behind this turn-around, it appears that for some, the role of WGIG was essentially negative. It served to meet the threat of the WSIS process affecting the status quo in terms of a possible takeover of current Internet Governance dispensations by an inter-governmental system. Now, with the end

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14   http://info.intgovforum.org/yoppy.php?poj=91

of WSIS, it may appear to these actors that such a threat is gone. On the other hand, they also seem to think that the same governments may now try to use the IGF to keep the 'takeover threat' alive.

A problem with this line of thought is that the 'threat' may not have really disappeared and that it lies mostly outside the IGF space. It is still possible that governments may – through a closed enhanced cooperation process, or through the GAC,[15] or some other means – try to grab a bigger, and even an exclusive, role in Internet Governance. A multistake holder recommendation-providing IGF may be the only available resort for non-government actors in that case; which keeps the 'WSIS need' for a WGIG-like multistakeholder body alive.

On a more substantive note, all Internet Governance actors need to engage in WSIS and post-WSIS processes and forums with a belief in the importance of public policy. Many actors in the arena, however, hold a belief close to that of 'no public policy' (which, of course, in reality is status-quo-ism and not apoliticism). Driven by such motivation, the direct or indirect (whether consciously intended or not) effect of their actions at these forums is of blunting the effectiveness of these forums. This, in our view, is not a legitimate manner of engaging in these forums. Everyone has the right to assert her or his political line, but it should be presented and discussed as a public policy stance in relation to other stances, and should not seek to subvert the public policy role of the IGF, presenting it exclusively as a 'best practices' exchange forum.

The Internet is still in its early stages of evolution, and so is Internet Governance. To assert, as many actors do, that we must not open up any new issues, and that WSIS

has closed out all issues on Internet Governance, is obviously not tenable, and displays a general lack of belief in public policy.

We should be able to work towards a multistakeholder 'standing IGF committee' (or working group) along the lines of the WGIG, which gives regular, non-binding recommendations on different Internet Governance issues. This body could follow the useful WGIG model of providing a consensus-based recommen-dations report, and of placing other strong points and proposals that do not get complete consensus into a background paper. WGIG engaged in some solid work, including the provision of a working definition of Internet Governance, and of laying out possible governance structures and the roles of different actors. **The 'standing IGF committee' can make similar useful contributions. Much of the evolution of the Internet and Internet Governance lies ahead of us. It will do great harm to foreclose options for multi-stakeholder input into global Internet policies, facilitated by a platform that has as much legitimacy as the IGF has.**

IGF, as a successor to the WSIS, and as allied to the UN system, was created to provide greater participation to those constituencies that had little access to the current Internet Governance structures – and this chiefly includes developing countries and disadvantaged sections of the world's population. This mandate and role of the IGF cannot be diluted or hijacked through over-selling the fear that the IGF may be another route for a governmental takeover of the Internet. On the contrary, it remains the only truly global and democratic forum for multi-stakeholder participation in Internet Governance, and should therefore be strengthened and made more effective in a manner that it is able to fulfill all parts of the Tunis mandate.

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[15]   Government Advisory Committee of ICANN

IT for Change
Bridging Development Realities and Technological Possibilities

IT for Change (ITfC) is a non-profit organisation located in India. ITfC envisions a society capable of, and comfortable with, innovative and effective use of information and communication technologies (ICT) as a tool, to further goals of progressive social change.

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