Human rights and the role of Civil Society in WSIS, WGIG and Beyond

Internet governance and Human Rights

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Background

When the UN Secretary General engaged the nations of the world, the private sector and civil society in the dialog for solutions toward the elimination of the Digital Divide it was because of a basic human need for information and communications technology (ICT). Beyond the need for ICT itself, and acting as its foundation, are the human rights that pertain to all human beings regardless of the particulars of their lives or whether they are engaged in ICT practices

Human rights are defined in the Universal Declaration of Human Rights[1] (UDHR) the International Covenant on Civil and Political Rights[2], and the International Covenant on Economic, Social and Cultural Rights[3]. Taken collectively, these agreements, as well as other international conventions, can be understood to define the civil, political, economic, cultural and social rights of all the world's people, regardless of nationality or other status, identity or other factors.

The World Summit on the Information Society[4] (WSIS), which was initiated by the ITU in response to a UN General Assembly call for a solution to the problem of the digital divide[5], made specific mention of human rights in the WSIS

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[1]   http://www.un.org/Overview/rights.html
[2]   http://www.unhchr.ch/html/menu3/b/a_ccpr.htm
[3]   http://www.unhchr.ch/html/menu3/b/a_cescr.htm
[4]   http://www.itu.int/wsis/index.html
[5]   In support for the UN Millenium Development goals (http://www.un.org/millenniumgoals/)
       specifically MDG Targget 18: "In co-operations with the private sector, make available the
       benefits of new technologies, especially information and communication". The specific goal is

Declaration of Principles[6] issue in Geneva in 2003:

> 4. *We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that 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. Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers.*

> 5. *We further reaffirm our commitment to the provisions of Article 29 of the Universal Declaration of Human Rights, that everyone has duties to the community in which alone the free and full development of their personality is possible, and that, in the exercise of their rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. In this way, we shall promote an Information Society where human dignity is respected.*

This paper looks at the role of human rights in the WSIS and Working Group on Internet Governance[7] (WGIG) process. It also looks at civil societies role in the process. In this analysis, not only will the words from the texts of the WSIS outcome be discussed, but some of the activities involved in the second phase of WSIS leading up to and including the Tunis summit will be discussed as well. The analysis will show, that while there was a modicum of lip service paid to human rights, in fact human rights were transgressed more then they were upheld and that these transgression were treated with acquiescence by those responsible for the WSIS.

The Declaration of Human Rights and its escape clause

Paragraph (4) of the WSIS Declaration of Principles (DOP) as quoted above, builds on the basic right of freedom of opinion and expression as defined in article 19 of the UNDHR. This article states:

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to reduce the have not section of the divide from 80% to 50% by 2015.

[6] http://www.itu.int/wsis/docs/geneva/official/dop.html

[7] http://www.wgig.org/

Article 19.
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 (4) of the WSIS DOP includes:

Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society.

This is an important addition to the UNDHR because it clearly links the right of freedom of expression and opinion to communications technology and to the Information society. By extension of the requirement, i.e. that this right applies everywhere and to everyone at all times, it also extend the right to the Internet and its virtual space. This is important in that it uses language that all the signatories to the UNHDR have agreed to, a crucial ingredient in extending the scope of human rights.

As strong and important as the UNDHR is, it also contains a weakness in the inclusion of Article 29, an article that has unfortunately been frequently used as an escape clause by many signatories to the declarations from the agreement of the UNDHR. Article 10 states:

Article 29.
(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
 (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
(3)These rights and freedoms may in no case be exercised contrary to the   purposes and principles of the United Nations.

By including reference to UNDHR Article 29 in Paragraph 5 of the the WSIS DOP,
We further reaffirm our commitment to the provisions of Article 29 of the Universal Declaration of Human Rights, that everyone has duties to the

community ...

the nations of WSIS have imported this liability to freedom of expression into the outcome of WSIS. Given the rampant abuse of the rights of the freedom of expression by governments such as People's Republic of China and Tunisia[8], instances of which will be discussed in this paper, and by other nations in their zeal to fight pedophilia and terrorism, the carry over of the UNDHR human rights escape clause is unfortunate. It is also representative of much of the WSIS and WGIG attitude to freedom of expression and other human rights.

While the declarations serve as a point of reference for all of Information Society and are often incorporated into national law (de jure) they are de facto violated in many countries. The primary areas of violation are:

> Surveillance of those who express positions that are not in keeping with government positions. This surveillance extends to both professional life and to personal life.
> Monitoring of communications by the citizens of a country
> Censorship of writings and Internet sites that contain topics the government disfavors
> Imprisonment and torture when self censorship due to fear of repression is not sufficient

These national attacks on human right are most often excused as necessary to protect a country's culture, its ethics or the national security. Legislative and administrative repression in the name of security and morality are ubiquitous among the signatories to the UNDHR and the WSIS Outcome documents.

Human Rights, WSIS, and WGIG

With the support of only a few nations, civil society was largely alone in arguing for the inclusion of human rights as an important topic for WSIS. This was the case in both the WGIG and the WSIS. The problem with human rights was multi faceted in the WSIS and its preparatory process. Problems occurred not only in the content of the discussions and the final declarations, but in the process itself.

The content issues involved the difficulty of getting the nations, the only ones permitted to make decisions in the WSIS process, to seriously discuss the relation of human rights to the Information Society. To compound the problem, when the nations were forced to take on the issues of human rights, they did so as if human rights were a point topic and not as if it were a cross cutting issue

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[8] The fact that report focuses on the PRC and Tunisia is not meant to single out these two governments as the only transgressors against human rights in ICT, but rather an artifact of activities described in this paper.

that affected all aspects of Internet governance and to both the problems and the solutions involved in the digital divide.

The process issues concerned the activities of civil society in their advisory role. These problems involved the accreditation of individuals from NGOs struggling with repressive regimes, pressure on activists in the host country Tunisia, and harassment of civil society participants in the preparatory process (PrepCom).

Each of these issues is discussed separately below.

Human Rights in the WSIS and WGIG outcome declarations

WSIS did not seriously tackle the issues of human rights. Yes, the principles were declared in the WSIS DOP. As discussed above, however, while declaring the importance of the human right of freedom of expression and opinion, the documents also included the escape clause that allowed most countries to avoid their obligation to defend these rights.

This deficiency was noticed by the WGIG in its discussions and was the subject of a tense discussion that resulted in a minimal statement being included in The Report of the Working Group on Internet Governance[9] published in June 2005. The issue was mentioned twice, once as one of the public policy issues that were relevant to Internet governance and relevant to assessing the adequacy of existing governance arrangement (Paragraph 24 quoted below)and once under the recommendations to address Internet related issues (Paragraph 81 quoted below).

> *24. **Freedom of expression***
> > *Restrictions on freedom of expression.*
> > > *Measures taken in relation to the Internet on grounds of security or to fight crime can lead to violations of the provisions for freedom of expression as contained in the Universal Declaration of Human Rights and in the WSIS Declaration of Principles.*
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> *81. **Freedom of expression***
> > *Ensure that all measures taken in relation to the Internet, in particular those on grounds of security or to fight crime, do not lead to violations of human rights principles.*

The WGIG report statements, though short, add a significant point to the discussion. Paragraph 24 makes a specific mention that abridging human rights for security reasons or in fighting crime has become a problem on the Internet and Paragraph 81 recommends that care should be taken to avoid doing so. This highlights a prevalent practice that is a major risk to human rights, i.e. The

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[9]   http://www.wgig.org/docs/WGIGREPORT.pdf

censoring of Internet content and the frequent arrest and punishment of those who publish or read information that a government disapproves of. This statement is significant in that it went beyond the general statement made in the WSIS DOP applied it specifically to problems in the Internet. Unfortunately, this recommendation was turned on its head the <u>Tunis Commitment</u>[10]:

> *We further recognise the need to effectively confront challenges and threats resulting from use of ICTs for purposes that are inconsistent with objectives of maintaining international stability and security and may adversely affect the integrity of the infrastructure within States, to the detriment of their security. It is necessary to prevent the abuse of information resources and technologies for criminal and terrorist purposes, while respecting human rights.*

Instead of placing the emphasis on the notion that human rights needed to be protected in spite of the need for security, the need for security was emphasized while the need to respect human right was made dependent on security considerations. The pattern of relegating the respect for human rights to a lesser importance, was one of the hallmarks of the WSIS experience and evidence for this was seen time and time again in the discussions and in the process of WSIS.

Human Rights as a cross cutting principle

One of the more important arguments made by civil society in the WSIS process and elsewhere is that human rights is not a point issue that is on a par with other issue, such as Internet names, but rather that it is a cross cutting issue that affects and informs all other issues in Internet Governance. This can be seen again in the <u>Tunis Commitment</u>:

> *2. We reaffirm our desire and commitment to build a people-centred, inclusive and development- oriented Information Society, premised on the purposes and principles of the Charter of the United Nations, international law and multilateralism, and respecting fully and upholding the Universal Declaration of Human Rights, so that people everywhere can create, access, utilise and share information and knowledge, to achieve their full potential and to attain the internationally-agreed development goals and objectives, including the Millennium Development Goals.*
> *3. We reaffirm the universality, indivisibility, interdependence and interrelation of all human rights and fundamental freedoms, including the right to development, as enshrined in the Vienna Declaration. We also reaffirm that democracy, sustainable development, and respect for human rights and fundamental freedoms as well as good governance at all levels are interdependent and mutually*

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10   http://www.itu.int/wsis/documents/doc_multi.asp?lang=en&id=2266|0

> *reinforcing. We further resolve to strengthen respect for the rule of law in international as in national affairs.*

It is important that the assembled nations in Tunis were at least able to acknowledge this. A question that comes up is: Are human rights in ICT separate from issues of development and poverty reduction or are they mutual cause and effect? While the answer in these paragraphs point toward a linkage between the issues of poverty reduction and human rights, the rest of the text that was resolved in Tunis does not build on this theme. It was dealt with by making an introductory declaration, and then was left out of the rest of the discussion.

The text does not go so far as to place economic and social development within a human right framework. Several of the themes that received little or no attention within the WSIS process included:

 Human rights as a normative foundation of ICT and not a secondary issue
 Human rights as not restricted to political and civil expression but to include all forms of human expression.
 That non discrimination needs to be included in all aspects of ICT.

WSIS also gave little or no focus on the privacy threats by invasive procedure to protect intellectual property rights or to fight cybercrime and terrorism. Despite repeated arguments by civil society, the countries involved in the drafting of WSIS outcome documents were unwilling to place any restrictions, or even cautions, on the use of invasion on privacy.

It should be noted that several of the governments participating in WGIG did not want any discussion of human rights in the WGIG reports and certainly did not accept it as a cross-cutting principle.

WSIS, Civil Society and Human Rights

Civil Society(CS) is largely composed of Non Governmental Organizations(NGO) and Academia. During the PrepComs[11], CS would hold extensive meetings that paralleled the meetings held by the governments. The parallel meeting structure was necessary as CS , as well as the private sector, was often excluded from the formal meetings contrary to what might have been expected given the WSIS formal commitment to multi-stakeholder participation. Often the CS meetings would be used to draft the statements that the governments would occasionally allow civil society to make at the beginning and end of their meetings

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[11] PrepCom – preparatory meeting held before the WSIS summits during with the content of outcome documents was discussed.

During the second phase of the WSIS, (2004-2005) the Tunisian GONGO[12] CS participants managed to prevent the CS plenary from ever discussing human rights in Tunisia and prevented all decisions regarding any action that the Tunisian government would disapprove of. Primary among the topics that the Tunisian CS participants would not allow to be discussed were the human rights abuses in Tunisia. The human rights abuses in Tunisa are well documented by the International Freedom of Expression eXchange[13] (IFEX), a group formed in 1992 and composed of many of the world's leading freedom of expression organizations. IFEX created a monitoring group that made several survey trips to Tunisia in the months leading up to the summit, and published two reports on their findings. The final report published in September 2005[14]. Bowing to the pressure from the Tunisian government, the ITU would not allow IFEX to release its report as part of the PrepCom event then underway in Geneva. Rather, IFEX was forced to hold its press release at an external location. The Civil Society Plenary, the collective discussion group for Civil society was also kept from discussing the report by the harassing activities of the Tunisian participants.

The CS human rights group was forced to hold its discussion of the report externally as well, as the Tunisian GONGO representatives disrupted any discussion of the Tunisian rights situation. In fact the CS Human Rights Caucus was prevented from holding any meetings without disruption from Tunisian operatives. Even informal meetings were disrupted by Tunisians entering the rooms with UN security forces to break up the meetings. While these actions were protested to the ITU officials[15] and a letter of protest was sent to the UN Secretary General Kofi Annan[16], little could be done given the entrenched nature of Tunisian representatives in the WSIS structure and given the support they received from the ITU secretariat. In fairness, the ITU cannot be accused of condoning prejudice and harassment so much as wanting to avoid any activity by civil society that might embarrass the WSIS project.

A final example of the Tunisian harassment involved human rights participants from Tunisia who happened to be members of legitimate Tunisian NGOs. These participants were shadowed throughout the process by the GONGO participants making it almost impossible to ever speak with one without a minder being

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[12] A GONGO is a Government Organized Non Governmental Organization. While this may be an anachronism, it is the prevalent form in many countries. They are especially prevalent when governments wish to control the actions of NGO and prevent them from interfering in government policy..
[13] http://www.ifex.org/
[14] http://www.wan-press.org/IMG/doc/TMG_Sept_2005_-_final-en.doc
[15] http://www.worldsummit2003.de/download_en/Letter-Geiger_Complaint.rtf
[16] http://www.worldsummit2003.de/download_en/Letter_Kofi_Annan_Eng.rtf

present.. At one meeting Tunisian television, accredited by the ITU for press coverage, got permission to film a CS plenary meeting. The filming focused on Tunisian human rights representatives and was disruptive of the meeting.

China, WSIS and Human Rights

Human Rights in China[17] (HRIC) was denied accreditation by the WSIS secretariat under pressure from the delegation from the People's Republic of China. The decision was based on allegations of HRIC having anonymous donors and for allegedly having failed to give full disclosure of financial support. The history of HRIC's attempt to get accreditation shows that they gave the most complete filing of any entity seeking accreditation including certification by auditors that no direct government contributions were received. China prevented the opening plenary of WSIS from discussing and possibly approving HRIC accreditation by using a procedural motion[18]. An afternoon of the meeting schedule was lost because of this.

This was not the only example of participating countries interfering with the accreditation of legitimate NGOs, but it was the most obvious display. From this example, it is clear that support for human rights took a back seat to repressive politics. Regimes noted for their repression of freedom of opinion and expression, known for the jailing of journalist and known for rampant censorship were in many cases allowed to control the WSIS process.

Tunisia, WSIS and Human Rights

As discussed above, IFEX did an extensive investigation of human right abuses by President Ben Ali;'s government in Tunisia. Among the threats to fundamental freedoms they documented are the following:

> Assaults, including physical, on the Tunisian Bar
> Denial of accreditation to legitimate Tunisian NGOs
> Threats against freedom of assembly
> Police interference with association headquarters and the homes of leaders
> Retaliations against University professors
> Censorship of Newsletters and books, blocking websites
> Use of systematic torture to obtain confessions
> Use of terrorism as a pretext for sentencing guidelines
> Tunisian authorities held more then 600 prisoners of opinion

Another point that was discussed in the the final IFEX report, was that the

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[17]   http://www.hrichina.org/
[18]   http://www.hrichina.org/public/contents/press?revision_id=24927&item_id=24924

situation in Tunisia had deteriorated in the time intervening between the first report and the second report. This was a disappointing result to the activists involved with Tunisia as there had been the expectation, and the hope, that shining a light on the situation would result in some lessening of the abuse. As the report showed, the opposite was the case. As the summit approached, the repression only grew.

There was a concerted movement, that started as early as the 2003, to move the summit away from Tunisia to a country that had greater respect for human freedoms and posed less of a risk to participants. While there was some support for this from the countries around the world, Tunisia's position as the originator of the request that the UN hold a summit on the spread of ICTs to the less developed countries, was too strong to allow for a change.

There were many questions leading up to PrepCom 3 to determine what countries were doing about the Tunisian situation. While Canada made a strong statement relating to Tunisia and its Human rights behavior both during PrepCom 3, in general there were few other public statements from national leaders.

Many questions were raised by civil society on how nations could participate in a summit held in a country with such a human rights record. Civil society continued to push for inclusion of mechanisms to advance human rights agenda, e.g. an Independent Commission on the Information Society and Human rights, but governments did not include any such mechanisms.

Civil society also went though extensive discussions on whether it was appropriate for civil society to attend a summit in Tunisia and thus appear to be supporting a repressive regime, even if in a tacit way. While civil society did decide in the end that it was important to go and give testimony to the situation and that the other topics on the table were too important to be left to nations alone, many NGOs made a principled decision to avoid support for Tunisia and did not attend. Other civil society organizations decided to take an activist approach to the problem, and decided to organize a Citizen's Summit alongside the WSIS, to include the NGO's who had been refused accreditation for the WSIS.

Another activity on the part of civil society involved trying to place a speaker in the opening ceremonies of the summit who would able to address human rights issues and would be able to do so with authority. The CS Human Rights caucus, with the support of the other caucuses, was able to arrange for Shirin Ebadi

the Nobel Peace Prize winner for 2003[19] to speak for civil society in the opening plenary in Tunis.

Human Rights, the Citizen's Summit and WSIS in Tunisia

The summit itself was a very mixed event when it comes to discussion of human rights. While there some very important talks given in the opening plenary of the summit, there were also many disturbing events of the streets of Tunis.

As was hoped, the opening talk[20] by Shirin Ebadi was a powerful attack on "certain governments", generally unelected, that don't respect the desires and hopes of their people, and who deny their people the basic human rights of freedom of expression. She went on to demand that political prisoners everywhere be freed. She followed up this demand with participation in a demonstration in Tunis in support for political prisoners and the hunger strikers.

In his opening remarks[21], Kofi Annan called human rights and freedoms, particularly the freedom of expression, the "lifeblood of information society". Great credit needs to be given to Swiss President Samuel Schmidt who, in his opening speech[22] directly criticized the human rights record of authoritarian governments with indirect, but obvious reference to Tunisia and to the opening remarks of Tunisian President Ben Ali[23]. President Schmidt gave a direct condemnation of the fact that the UN included, in this day and age, many countries that imprisoned their citizens for expressing their opinions and imprisoned them for writing, or even reading, criticisms on websites. He went on to state that "Inside and outside these halls everyone should have the right to express their views freely". To many in civil society his speech was relief given the relative acquiescence of the world's leaders to the human rights abuse rampant among UN member countries. It is important to note, that Tunisian Television, which had been broadcasting the opening of the WSIS, ceased its broadcast of the event during President Schmidt talk.

President Schmidt remarks were interpreted by many as a reference to two realities, the fact that many web sites were accessible only inside the WSIS hall but not in the city outside and to the situation that had been going on in the streets of Tunis during the days before the summit. The latter situation related to the attempt by various NGOs from Civil Society and Tunisian NGOs concerned with human rights to hold the Citizen's Summit on the Information Society[24] (CSIS). As is often the case, the CSIS was to be organized as a parallel event to

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19   http://nobelprize.org/peace/laureates/2003/index.html
20   http://www.itu.int/wsis/tunis/statements/docs/cs-opening/1.pdf
21   http://www.itu.int/wsis/tunis/statements/docs/io-un-opening/1.pdf
22   http://www.itu.int/wsis/tunis/statements/docs/g-switzerland-opening/1.pdf
23   http://www.itu.int/wsis/tunis/statements/docs/g-tunisia-opening/1.pdf
24   http://www.citizens-summit.org/

the WSIS.

CSIS' difficulties began with the blocking by Tunisian authorities of all venue arrangements that were made leading up to the summit. Even after contracts were signed and payment made, pressure from the Tunisian government would cause the arrangements to be canceled. As the difficulties continued, the organizers decided to meet at the Goethe Institute to discuss the arrangements and to make a last attempt to find a location for the CSIS. On the morning of this meeting, the Tunisian police blockaded the streets leading up to the Goethe Institute. Not only were Tunisian citizens and NGO activists forcibly prevented , with physical harassment[25],from entering the area, but the head of the German delegation was even prevented from entering the site. To his credit, the German Ambassador attempted to meet with the organizers at a restaurant outside the blockaded zone. Once the Tunisian authorities realized that this meeting was going on, they moved in and broke it up.

Because of the harassment against the CSIS event and the fact that the ITU organizers of WSIS were unwilling to intercede, it was canceled. A press conference was planned in Tunis to announce the cancellation. In order to attempt to forestall further harassment by the Tunisian police, a call was made to the diplomats attending the WSIS. This call was well responded to, and several delegations sent contingents to the press conference. This press conference was well covered by the world's media in attendance at WSIS and was a very successful and exhilarating event. Because the repercussions that would be felt by the Tunisian activists after the world's eyes left Tunis were a concern, both the EU and the UN human rights officials called for continued investigation of the situation to continue after the WSIS ended. It is also worth noting that several national delegations met in response to Tunisian actions and did make protests through diplomatic channels. Additionally many civil society groups canceled one days worth of session in solidarity with the Tunisian activists.

Conclusion

WSIS was organized around the theme that human rights demanded that the digital divide be reduced. Yet, with the exception of some token statements in the WSIS reports, human rights was pushed aside to suit national interests, especially in the case of the host nation Tunisia and the People Republic of China. While human rights were recognized, the important of human rights as a

cross cutting principles, e.g. of non-discrimination, gender equality, and workers' rights, that must inform all interactions in the information society was mostly ignored. While freedom of expression was addressed in some respects it is abridged daily by many of the signatories of the reports and was abridged in the process of the WSIS itself. In many ways, the summit was a failure when it came to human rights as human rights were not furthered and were in fact frequently violated with the acceptance of the summit organizers.

In its closing remarks on the summit, the CS human rights caucus expressed it disappointment with the process. The one bright light is that the WSIS was just the first act in the effort to remedy the digital divide and to foster human rights in ICTs. It is important for civil society to regroup in preparation for the follow on to WSIS.

In closing, I would like to quote the two leaders of the CS Human Rights caucus who put so much effort into making WSIS pay serious attention human rights and who took many personal risks in the process:

> *There is still a long way ahead to harmonize civil society aspirations of building information and communication societies that are people-centered, inclusive and equitable, "where development is framed by fundamental human rights and oriented towards achieving a more equitable distribution of resources", and to have them realized.*[26]

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[26]A Human Rights Assessment of the World Summit on the Information Society Meryem Marzouki and Rikke Frank Joergensen, Coordinators of the Civil Society Human Rights Caucus