Mapping multistakeholderism in Internet governance:

Implications for Africa

by

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1. An African perspective on Internet governance

From an African perspective, Internet governance requires not only an understanding of the unevenness in access to and use of the Internet, but also of the disparities between developed and developing countries' abilities to effectively participate in global Internet governance debates. Few developing countries participate in this debate, and less still in agenda setting for Internet governance.

The reasons for these asymmetries in access, participation and decision-making are complex. Besides the more fundamental, and perhaps obvious challenges, of low income and education levels in most African countries, they are at least partially explained by the evolving ICT ecosystem in Africa. This includes often the absence of an enabling environment for sector reform and development often resulting in poor market structuring with limited competition and ineffectual regulation, resulting in limited network investment, and high wholesale and retail prices. The sector as a result is characterised in Africa often by backbone provisioning by weak former fixed line incumbents; the dominance of regional mobile operators that have come to characterise the ubiquitous mobile sector across the continent who have also become entrenched operators in many markets, able to exploit their dominance and weak regulatory environment, which have limited the competitive benefits in liberalised markets.

Driven by social networking, mobile operators are now also the primary means Internet access. The Research ICT Africa household and individual ICT survey (2011/12) found that in 11 of the 12 participating sub-Saharan African countries (the exception being South Africa), less than 16 per cent of the population has ever used the Internet. Moreover, internet users are concentrated in urban areas, while rural and marginalised areas are almost untouched by the Internet; and of those using the Internet, the majority gains access to it through mobile devices (Research ICT Africa, 2011/2012)[2].

In most countries the dearth of fixed and mobile competition, with the associated high prices has limited access to the Internet and resulted suboptimal use. As more bandwidth intensive services become available this is further compounded by the poor quality of service, rendering certain services unfeasible.

Another significant cause for the low level of connectivity is also the ineffective participation of the private sector in the development of the Internet, in most African

[1] Research ICT Africa is non-governmental, public interest think tank that conducts research on ICT policy and regulation, facilitating evidence-based and informed policy making for improved access, use and application of ICT for social development and economic growth.

[2] These findings are backed up by the broader study conducted by the United Nations in 2011, according to which only 26 per cent of the population in developing countries uses the Internet, compared with 74 per cent in developed countries (UN General Assembly, 2011).

markets. Hindered by ineffective ICT policies and regulations[3] coupled with the uneven distribution of Internet resources - such as Tier1 networks and Internet Exchange Points and intermediaries[4], which are concentrated in the global North.

Yet despite these pressing, an African agenda on Internet governance is far from being defined. Although some local initiatives have sought to develop a local Internet governance agenda based on multistakeholderism[5]. Some of the reasons for this include the absence or nascent nature of the Internet industry and civil society organisations, and their exclusion from formal meetings with, or delegations of, national governments to international meetings. Even where international meetings are open to non-governmental entities, they tend to take place in venues requiring resources for travel, to which such bodies seldom have access.. As a result, they are unable to advocate at national, regional and inter-governmental organisational levels.

Furthermore, African regional economic communities and national governments lack capacity and resources to address relevant regional problems related to the Internet. Often they default into adopting inter-governmental organisation agendas. While sometimes these have assisted with the development of necessary technical and regulatory frameworks to enable the Internet, often what is considered 'best practice' is developed for more mature markets and better-resourced institutions. Such institutions, most obviously the International Telecommunications Union (ITU) have become the preferred bodies to solve issues related not only to the physical infrastructure and to the definition of technical standards and services but increasingly to issues relating to the Internet. As a UN body the ITU is required to engage with all nation states as their members and it is better placed to extend its influence in Africa than bodies such as ICANN, with which only few African governments engage directly. This recognition of the importance of the Internet with the UN is evident in the high-level commissions on the subject. Similarly, other UN bodies and multilateral agencies have been trying to stimulate Internet access and use through donor-based support of projects and programmes.

Arising institutional arrangements and policy processes at the national, regional and continental level in Africa mean there has been little attempt to develop a local Internet governance agenda based on multistakeholderism and in so far as an African agenda on Internet governance exists it has not been defined through deliberative democratic processes.

The cost of not creating the conditions through effective governance for the expansion of an open and ubiquitous Internet is high. Affordable and reasonable quality access to Internet by all is required for effective participation in a modern economy and society. The negative consequences of missing this opportunity for economic growth and development are clear. Investment in ICT is linked to

[3] By contrast, in the global North, business associations substantially contributed to the development of the concept of multistakeholderism: : examples are the role played by the International Chamber of Commerce as coordinating advocacy lobby for business in WSIS, ICANN, OECD, IGF, etc., as well as the significant investment of time, resources and energy into multistakeholder dialogue by individual tech companies like Cisco, Microsoft, Nokia-Siemens, Verizon etc.

[4] According to the OECD (2010), Internet intermediaries are Internet service providers (ISPs), hosting providers, search engines, e-commerce intermediaries, Internet payment systems and participative Web platforms.

[5] For instance, domestic Internet issues in Kenya have been identified and developed through the Kenya ICT Action Network (KICTANet). KICTANet "is a multi-stakeholder platform for people and institutions interested and involved in ICT policy and regulation" (KICTANet, 2013). The model is based on a multistakeholder debate both off-line and on-line. The recommendations of KICTANet are then taken to the East African IGF and subsequently to the IGF (Global Partners Digital, 2013).

economic growth in light of ICT's role as enabler of market performance, including its network effects and externalities. Similarly, the use of mobile phones and the Internet to organise social protests and for purposes of political mobilisation demonstrate that access to the Internet by an active citizenry improves social and political participation.

Accordingly, for purposes of this background paper, access is understood not only as a measurement of physical access to the Internet, but from a rights-oriented perspective - as the capability to retrieve, produce and distribute information (text, visual, audio and video) over the Internet. The extent to which such capability can be attained and exercised is determined by the interaction between ~~of~~ national and international regulatory frameworks, which establish the rights and obligations of those involved in such communications - including nation states, carriers and other intermediaries.

Based on this broader understanding of access, the following gaps for user access to be tackled under an African Internet governance agenda include:

- lack of autonomy, expertise, resources and transparency for policy and regulatory formulation
- absence or uncertainty of the applicable regulatory framework;
- poor conditions for investment and constraints on the creation of competitive markets;
- lack of broadband networks, particularly backhaul networks to carry increasing amounts of mobile data;
- unaffordability of the services; and
- poor quality of service, in particular broadband performance.

This discussion paper seeks to understand how these factors transect with the notion of multistakeholderism as a form of deliberative democracy for Internet governance which is often informed by assumptions from more mature markets and Western democracies. It does so by exploring the evolution of multistakeholderism through the mapping of the main international and regional instruments of Internet governance. This paper assesses the ability of current multistakeholder initiatives to provide Africans with a compass to guide them through the miasma of cybercrime, political surveillance, censorship and profiteering that threaten the openness of the Internet. The paper also highlights the participatory and accountability gaps in the current status quo and ultimately asks what solutions can be devised ~~for the~~ to enhance the participation of African stakeholders.

The considers how an open and decentralised governance process might be devised in order to facilitate Internet development in ways that respond to African conditions and citizen needs, and so poses the following questions:

- What should a decentralised and open governance process look like from an African perspective?
- What are the critical, non-specific Internet governance factors that determine Internet governance outcomes?
- What are the preconditions for the successful expansion of an open Internet?
- What ICT policies at a national level enable the Internet sector to flourish and expand?
- How can we build enabling states that will create the conditions for an African private sector and civil society to grow?

- What are the necessary conditions for the emergence of an African Internet industry that will eventually fully participate in and shape an African Internet governance agenda?

2. Multistakeholderism and consensus-based decision-making

Before proceeding, it is worth defining multistakeholderism for the purposes of this paper. Lawrence E. Stickling, U.S. Assistant Secretary for Communications and Information and National Telecommunications and Information Administration (NTIA) Administrator, describes the multistakeholder process as involving "the full involvement of all stakeholders, consensus-based decision-making and operating in an open, transparent and accountable manner." A stakeholder refers to an individual, group, or organisation that has a direct or indirect interest or stake in a particular organization, these may be businesses, civil society, governments, research institutions, and non-government organisations (Stickling, 2012).

One might think that with all the reference to multistakeholderism in the institutions and *fora* of Internet governance, there would be a clear definition or set of guidelines or practices on multistakeholderism. However, as Michael Gurstein (reference?) points out, this is not the case. Multistakeholderism, he says: "…is based on the overall notion that those most impacted by a change or an issue or a circumstance should be involved in the management and governance and ultimately the resolution of that issue or circumstance. Thus for example, in the area of Internet governance the stakeholders identified as being appropriate for inclusion in associated decision making are governments, the private sector, the technical and academic community and civil society." This, he points out, worked in the early days of Internet governance when the Internet itself was relatively limited and certainly the complexity of issues faced today was far less. "As the Internet has matured technically and increased dramatically in its scope and impact; and as the associated policy issues in such areas as privacy, security, access and others have grown apace in complexity and significance there has been the inevitable trend to extend (multistakeholderism) as a governance model and strategy into these latter additional areas among others.

From there, Gurstein takes one step further to argue that, "…certainly the development and operations of the Internet attests to a successful set of inter-organizational, inter-individual processes which are perhaps exemplary in their management and coordination of a highly complex, global system with multiple organizational and institutional involvements and stakeholders. Whether or how such a model could be transferred beyond this relatively contained domain is I think something to be discussed, researched, even piloted — certainly it would need to be adapted and re-created to fit specific circumstances — whether that model could become a basic governance framework for the modern world with applications in multiple domains and as a substitute for representative democracy is I think something that should be considered extremely carefully and some specific lessons should be learned from the extremely flawed implementation in what should have been its most directly applicable sphere." (Gurstein 2013).

Besides the controversy regarding the scope of multistakeholderism, it is unclear whether the term refers simply to a process, or to the more institutional concept of form of representation. Certainly a set of minimum principles can be agreed upon roughly corresponding to the elements of the definition provided above (Kummer 2013). Nevertheless, it should be noted that the definition does not specify a

procedure by which decisions are taken, other than it being based on consensus and being open, transparent and accountable. As a result, organizations involved in Internet governance retain a certain degree of discretion concerning the mechanism by which the inputs of different stakeholders are assessed and factored into decisions.

In order to avoid the subjugation of minority to majoritarian interests, a recent contribution from Malcom (2008) concluded that an appropriate structure for a transnational network for Internet governance should consist of an open and transparent forum within which members of all stakeholder groups deliberate with the aim of reaching consensus, led by a meritocratic executive council to which each group appoints its representatives (Malcom, 2008). The same contribution warned that for the principle of merit to prevail over the "law of the jungle" of oligarchy, it is necessary for the rules by which merit is assessed to be either agreed upon by consensus, or be settled by some other objective means.

This can be done with reference to the five requisites that were identified by Dahl (1989) as for the existence of a democratic polity (Dahl, 1989):

- effective participation (that all citizens are equally empowered to participate in the political process);
- enlightened understanding (that these citizens are provided with adequate information to allow them to contribute meaningfully);
- control over the agenda (that citizens should be empowered to decide which issues should be placed on the public agenda);
- voting equality at decisive stages (that all citizens should have a vote of equal weight at every point when a decision is made); and
- inclusiveness (that the rights of citizenship should be available to all besides transients and the mentally deficient).

Thus, only a system that incorporates safeguards to ensure the fulfillment of all the requirements above can be entrusted with multistakeholder decision-making. A model, in this respect, can be the operation of the Internet Engineering Task Force (IETF), where consensus can be determined by balloting, humming, or "any other means on which the Working Group agree" (IETF, 1998). The flexibility of this procedure has the undeniable advantage of enabling these groups to achieve concrete outcomes, even in the face of substantial divergences among its members. However, as Doria points out, the success of the "rough consensus" procedure of the IETF is inextricably linked to the existence, on the one hand, of someone with the responsibility to determine when rough consensus is reached; and on the other, of someone to whom such decision can be appealed (Doria, 2006). In fact, while the working group (WG) chair is the only one responsible for calling rough consensus, anyone who disagrees can appeal to him/her, and in the case that the appeal is rejected, the decision can be appealed to the hierachical superior, the Area Director (AD). Were the appeal ~~not~~ to be unsuccessful, the same decision can be appealed to the full Internet Engineering Steering Group (IESG), and if that ~~one~~ is also rejected, to the Internet Architecture board (IAB). Moreover, if the claim relates to a matter of procedure and is not based on a technical argument, it can be appealed to the Internet Society Board of Trustees. In other words, these different layers of appeal ensure that any neglect of interest in the deliberation process can be made up for by a strong and independent system of review.

However, it should be clear at this point that this "rough consensus" is not the only

way by which consensus can be reached. As pointed out by Johnson and Crawford (2000), some processes for decision-making by consensus do not even require all those amongst whom a consensus is declared to have expressed their views on the issue in question, provided that the organisation has at least gathered and documented some evidence that consensus existed, by engaging in dialogue with its members. (Johnson & Crawford, 2000). Echoing the suggestions of a topical essay by David Post (1999), they argued that this obligation translates, in the context of ICANN, into the requirement to table a report demonstrating that such dialogue, in fact, occurred.

The existence of these alternative scenarios, with a multistakeholder approach operating more prominently either at the upstream or at the downstream level, indicates that regardless of whether an open and comprehensive dialogue occurs in the initial steps of the process, or at the last decision-making stage, it must be embedded in the system for it to be categorized as multistakeholderism.

3. Historical background of Internet governance

In the past, global telecommunications relationships consisted mostly of bilateral agreements between national incumbent operators, that were owned or controlled by governments, and the International Telecommunication Union (ITU), which was mostly in charge of regulating issues related to interconnection[6].

Starting in the 1990s, the traditional telecommunications industry gradually changed undermining the centrality of the governing role played by the ITU. Global telecommunications networks changed as a result of privatization, the introduction of competition, the negotiation of regional and international agreements liberalising trade in services, the emergence of the Internet and technological convergence The changes brought new issues, players and fora into the global governance game challenging and bypassing many of the ITU's main governance functions (MacLean, 2008). At the same time, the lack of central authority over these new players and fora brought the problem of governance to the fore, calling for the identification of a mechanism for coordination of rules and policy-making affecting the Internet.

As a result of these pressures, the UN convened the Working Group on Internet Governance (WGIG), a gathering of 40 members including representatives from governments, civil society and the private sector. In terms of the emergence of the discourse of global Internet governance, WGIG represented a critical moment. This is the point at which multistakeholderism in Internet governance emerged both as the primary recommendation as a space for dialogue and in the composition of the WGIG itself. As a matter of fact, the creation of the Internet Governance Forum as a deliberative multistakeholder space on Internet governance can be largely attributed to the participation of civil society actors in the WGIG. After four meetings over the span of two years, the WGIG agreed upon the following definition of Internet governance:

"Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet" (WGIG 2005, p. 43).

[6] The ITU is a specialised UN agency which defines and adopts telecommunications standards. It is an inter-governmental body comprised of 193 Member states. See http://www.itu.int/.

This definition, remarkably focused on the interaction between different stakeholders for the development of an appropriate normative framework, can be taken as a point of departure for any analysis in the field. However, a distinction needs to be made between two activities that fall within this definition of governance: management of the resource infrastructures, and content regulation. It is also worth noting that "management of resource infrastructures" is meant here to include not only network infrastructures, but also Internet Protocol (IP) addresses, numbers and domain names. By the same token, "content regulation" is not limited to a literal understanding of "content" based on its inherent characteristics of quality and semantic but includes all those regulations that are designed to protect the viability of Internet communications, for example, concerning intellectual property, competition, taxation, privacy, e-commerce and cyber-crime.

Against this backdrop, the following paragraphs illustrate the main actors in Internet governance and the mechanisms by which they incorporate various stakeholders in their decision-making process.

3. Main institutional actors

International organisations

A number of international organisations are both directly and tangentially responsible for aspects related to Internet governance. The description of them below start with those more directly involved and moves to those less so.

The International Telecommunications Union (ITU)

The ITU, founded in 1865 through the International Telegraph Convention, remains arguably the most important player in infrastructure management, constituting the only international organisation that is empowered to make binding decisions squarely on Internet governance issues. In particular, the ITU can do so by amending (by unanimity) its basic texts (Constitution and Convention), thus making any modified rule directly applicable to its signatories. This can be done only once every four years when the Plenipotentiary Conference takes place to consider such amendments, approve strategic and financial plans, adopt general or sectorial policies and elect a number of high-level management positions. The amendment of the International Telecommunication Regulations (ITRs) through the World Conference on International Telecommunications (WCIT) is an alternative avenue that can be pursued to obtain similar binding effects[7], provided that the treaty is implemented by Member states. However, it requires a more comprehensive approach and probably a longer process of negotiation. In addition to these hard legislative powers, the ITU can have normative value through the Plenipotentiary resolutions, just like any other UN resolution.[8]

[7] The signing of an ITU treaty is the adoption and the authentication of the text of the treaty, but does not imply, for the ITRs, consent to be bound by the Member State concerned. To be bound by the new treaty, a signatory Member State has to formally notify its consent to be bound by depositing with the ITU Secretary-General an instrument of ratification, acceptance or approval (depending on the national procedure applicable). The accession is the procedure by which a non-signatory Member State notifies the ITU Secretary-General of its consent to be bound by the treaty (ITU, 2013b).

[8] The work of the ITU is divided into three areas: telecommunication standardization (ITU-T); radio spectrum and satellite orbits allocation (ITU-R); and facilitating telecommunications access and operation in developing regions (ITU-D). The ITU membership is divided into a three-tiered structure: at the top layer, there are 193 Member States, which enjoy the right to vote as well as to participate in all the activities of the Union; in the middle, the 637 sector members have the right to take part in the

In terms of its core technical areas - standardisation and radio spectrum – the activities of ITU are executed at the infrastructure and services level, as opposed to content regulation. It has been noted that developing countries' participation in this domain, which is largely driven by sector members, is hindered by the lack of technical and financial capabilities (MacLean et al., 2003). For instance, there are no ITU-T and ITU-R sector members in as many as 110 of the 191 member states, all of which can be classified as developing countries (MacLean, 2007). For this reason, the Antalya Plenipotentiary Conference adopted Resolution 123 on "bridging the standardisation gap between developed and developing countries", acknowledging this problem of capacity and inviting member states and sector members to endow the ITU with a specific fund for that purpose.

Despite the technical nature of these activities, it should be noted that recent proposals to amend the ITU's Administrative Regulations (ITRs), which were advanced but not approved at the Dubai conference in December 2012, would have assigned the organisation with the task of regulating cybersecurity, including preventing unsolicited mail, which would have marked an extension of the ITU's domain into content regulation. In addition, it has been observed that if the new ITRs proposed by telecom operator associations with the support of the majority of African governments had been approved, they would have legitimated efforts to apply states' pressure on Over-the-top content providers (OTTs) to make payment to telecommunications operators. In developing countries, where the number of Internet users is still negligible, this scenario translates into a slowdown of Internet take-up as the cost of Internet content use is transferred to end users (Samarajiva, 2013).

Internet Corporation for Assigned Names and Numbers (ICANN)

Regarding the critical resources of Internet, ICANN has Internet governance as its core mandate. ICANN is a private, California-based, non-profit entity that was formed in 1998 following a public proceeding invoked by the U.S. Department of Commerce to take over the work of the Internet Assigned Numbers Authority (IANA), then administered by Jon Postel at the Information Sciences Institute (ISI) of the University of Southern California (USC) under a contract with the United States Department of Defence. Since 1998, ICANN operates under a Memorandum of Understanding with the U.S. Department of Commerce and has the authority to set policy for and manage the allocation and assignment of Internet protocol addresses (United States Department of Commerce, 1998). This includes adding new names to the top level of the Internet domain name hierarchy as well as maintaining responsibility for operating root servers that distribute information about the content of the top level of the domain name space (Mueller, 2002). However, to the extent that ICANN is engaged in managing these critical resources, it is also involved in policy-making related to them, by establishing a system of rules rooted in contracts to order the global supply of domain names (Mueller et al., 2004). For example, policies currently under consideration at ICANN include: Internet Assigned Numbers Authority (IANA) Policy For Allocation of IPv6 Blocks to Regional Internet Registries (Criteria governing the allocation of IPv6 address space from the IANA to the RIRs);

activities of their respective sector(s); further down line are the 143 associates, that have the right to participate in some activities of the sector(s) with which they are associated; and finally, the bottom is represented by the 60 academic institutional members, the participation of which was authorized under Resolution 169 of the 2010 Plenipotentiary Conference 'even' (not sure what is trying to be said here but the 'even' can probably be removed) for ITU-T activities (differently from associate members) under rules that are yet to be specified.

Internet Assigned Numbers Authority (IANA) Policy for Allocation of ASN Blocks to Regional Internet Registries (Criteria governing the allocation of ASN Blocks from IANA to RIRs); Global Policy for Post Exhaustion IPv4 Allocation Mechanisms by the IANA (Criteria governing the allocation of IPv4 address space from the IANA to the RIRs); and Criteria for Establishment of New Regional Internet Registries (Criteria governing the creation of new RIRs)[9].

Another example of policy-making involvement is seen in the area of cybersecurity, with the establishment of three hardened facilities with five levels of physical security in Singapore, Zurich, and San Jose (California) in June 2011, They were designed to provide secure digital signatures for country-code top-level domains. Presumably, the recently launched program of implementation of the new generic top-level domain names (gTLDs)[10] will lead to an increased need for this type of assistance, among other things to ensure that gTLDs owners maintain a secure and reliable technical infrastructure and a long-term ability to administer and enforce policy for the domain. Fresh evidence of ICANN's role with regard to cybersecurity issues is the Registrar Accreditation Agreement (RAA) approved by the ICANN Board on 27 June 2013 and the requesting of domain name applicants to satisfy a number of identification requirements (such as phone number, email address, credit card details and upon request also IP address) that are designed to make them traceable and accountable for the information hosted or distributed from their website (ICANN Board, 2013).

Regional Internet Registries (RIRs)

A similar management function is executed by the Regional Internet Registries (RIRs), which are not-for-profit private entities responsible for distribution of Internet number resources at a regional level, including Autonomous System Numbers and IPv4 and IPv6 addresses. There are now five RIRs, whose membership is composed primarily of Internet Service Providers, telephone companies and Internet hosting services:

- ARIN (encompassing North America and parts of the Caribbean);
- RIPE-NCC (Western and Eastern Europe, parts of Africa, parts of the Middle East);
- ARIN (Asia, Far East);
- LACNIC (Latin America);
- AfriNIC (Africa).

The five RIRs together formed the Number Resource Organisation (NRO), which together with ICANN has established the Address Supporting Organisation (ASO) to coordinate global IP addressing policies. The NRO Number Council operates under a Memorandum of Understanding (MoU) signed in October 2004 with ICANN and now performs as the Address Supporting Organization Address Council (ASO AC). It is important to distinguish between the RIRs, which in carrying out their mandate, formulate policies related to Internet addresses and numbers and the bodies of the

[9] For an up to date list of the policies under consideration, visit http://aso.icann.org/global-policies/

[10] In June 2011, the ICANN board authorized the launch of the New generic top-level domain names (gTLD) Program. The program, which is aimed to promote competition, innovation and consumer choice without undermining stability in the Domain Name System (DNS), allows companies and organisations to choose their own customized top-level Internet domains, such as .music, .sport, .office, .hobby, .gay, as well as geographical gTLDs such as .africa, .europe, .joburg. See http://newgtlds.icann.org/en/about/program.

Address Supporting Organisation (ASO) and ICANN (namely the ASO Address Council and the ICANN Board of Directors) that are merely called upon to verify that the appropriate procedure has been followed to that end. However, the ratification of both the ICANN Board and the ASO Address Council is necessary in order for a policy to become operational.

In contrast, other organisations that deal exclusively with infrastructure management are the Internet Systems Consortium, which manages a globalised root server and issues software that implements the Internet's domain name server (DNS) protocol; and the Internet Engineering Task Force (IETF)[11], which oversees the standards development process for the Internet. However, all these organisations only operate at a technical level, and do not have competence over the substantive rules and policies that may be affected by the standardisation process.

Internet Governance Forum

The Internet Governance Forum (IGF) is a non-technical outcome of the recommendation of the WGIG to create a "space or forum for dialogue [that] should allow for the participation of all stakeholders from developing and developed countries on equal footing". But it was only in its second phase in 2006 that the World Summit of the Information Society (WSIS) laid down the mandate for this Forum, geared predominantly towards identifying issues and facilitating discussion among stakeholders. From the outset, it was clear that the wording utilised in the mandate envisaged a limited role and set of responsibilities (McGannon, 2008). That vision was the result of the deliberations of the 2005 Tunis Agenda for the Information Society, according to which "The IGF would have no oversight function and would not replace existing arrangements, mechanisms, institutions or organizations, but would involve them and take advantage of their expertise. It would be constituted as a neutral, non-duplicative and non-binding process. It would have no involvement in the day-to-day or technical operations of the Internet" (WSIS, p.18). As a result of the lack of binding effects in the output of the IGF, its agenda is fairly flexible and touches upon a vast array of areas related to Internet governance – both at the infrastructure and at the content level.

At the content level, there are a number of international organisations that are tangentially involved with Internet governance, in the sense that they are concerned with issues which cannot be tackled effectively without determining the extent to which certain rules and standards are to be applied in the context of Internet. By doing so, these organisations inevitably become important players in defining the legal framework of global networked communications.

World Trade Organisation

Having as its main objective trade liberalisation, the WTO is concerned with Internet governance issues in at least two respects: first, it has jurisdiction over the respect of a minimum standard for the protection for Intellectual Property rights (established by the "TRIPs Agreement"), which applies with equal force in the Internet context. Second, it features a special agreement on Basic Telecommunication Services,

[11] IETF's decision making processes are based on `rough consensus and running code' and on the predominant role of its chairperson. IETF working groups make decisions without the need for all participants to agree, although it would be preferred. In general, the dominant view of the working group should prevail. 'Dominance' in IETF's decision-making process is not based on volume or persistence, but rather on a general sense of agreement. The chairperson of the IEFT determines whether rough consensus has been reached (IETF, 1998).

which sets forth a specific schedule of commitments for liberalization of this sector in the states that have adhered to it. In particular, 108 WTO members have made commitments to facilitate trade in telecommunications services, including the establishment of new telecoms companies, foreign direct investment in existing companies and cross-border transmission of telecoms services. Out of this total, 99 members have committed to extend competition in basic telecommunications (for example, fixed and mobile telephony, real-time data transmission, and the sale of leased-circuit capacity) and 82 have committed to the regulatory "best practices" spelled out in the "Reference Paper" (WTO Secretariat, 2013).

More generally, the WTO comes into play if a national regulatory scheme unjustifiably treats certain products or services less favourably than their foreign or domestic equivalents - an issue which can be particularly sensitive when it comes to the provision or the financing of a critical infrastructure, as in the case of telecommunications. It is also important to bear in mind that the WTO includes a specific and exclusive system for dispute settlement, which has in at least two instances adjudicated specifically on crucial issues of Internet governance (in particular, issues of competition in telecommunications and of censorship in audio-visual products)[12].

United Nations

Another inter-governmental organisation with considerable influence on Internet governance, over and above its dedicated agency, the ITU, is the United Nations (UN), which is the body with the highest density of tangential points with Internet governance. This is so mainly because of the wide range of specialized agencies forming part of the UN, many of which with substantial involvement in Internet-related issues. The World Intellectual Property Organisation (WIPO) is arguably the UN agency that is most directly concerned with creating the basis for a particular kind of content regulation in its member states - intellectual property or "IP"- by enshrining basic principles in treaties among its member states. WIPO was established through the WIPO Convention in 1967 with the core mandate to promote the development of measures designed to facilitate the efficient protection of intellectual property (IP) throughout the world and to harmonize national legislation in this field, as well as, *inter alia*, to administer international agreements designed to promote the protection of IP.

Although WIPO was originally conceived as an independent agency devoted specifically to the mandate of promoting IP protection, it became part of the UN in 1974. To make that possible, the agreement establishing a relationship between the WIPO and the UN expanded WIPO's mandate to incorporate a more public-interest and developmental perspective, identifying the WIPO's goals as "promoting creative intellectual activity *and* […] facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development" (WIPO 1974, emphasis added). Nonetheless, a number of actors of civil society and developing countries recently voiced the concern that developmental interests are not sufficiently taken into account throughout WIPO's activities. The discontent with the orientation of WIPO's work became apparent in 2004 when a long list of individuals - including scientists and academics from a range of disciplines – authored the "Geneva Declaration on the Future of WIPO",

[12] See WTO cases "Mexico-Measures Affecting Telecommunications Services" (DS204); and "China-Publications and Audiovisual Products" (DS 363), the Reports for which are available for download at www.wto.org.

demanding reform to the "culture of creating and expanding monopoly privileges, often without regard to consequences".

Lamenting that the "continuous expansion of these privileges and their enforcement mechanisms has led to grave social and economic costs, and has hampered and threatened other important systems of creativity and innovation", the Declaration urged WIPO to set a development agenda and to take into account the different developmental needs of member states as opposed to a "one-size fits all" approach.[13] In fact, the failure to embrace this broader public-interest orientation can to a great extent be explained by a number of participatory flaws in WIPO's governance structure, such as its lack of financial accountability to the values of the UN (given its dependence on fees from trademark and patent applications and registrations); the rigidness and severe limitations of the process for participation of non-governmental organisations (NGOs);[14] the incentive for WIPO arbitrators to rule in favour of trademark owners (impacting on the likelihood of being appointed further); the extensive influence that WIPO Secretariat plays in setting the agenda for its members; the one-sidedness of its technical assistance activities (not adequately addressing exceptions and limitations to exclusive rights); and more generally, the lack of transparency in much of WIPO's work (GIS Watch, 2007).

In December 1996, WIPO concluded two treaties updating copyright and related rights for digital media, also known as "the WIPO Internet treaties." In 2005, following seven years of negotiations over a treaty creating new forms of protection for broadcast content, the United States proposed a treaty which would empower creators of any combination of "sound and images" through a web server with an exclusive right to the retransmission of their work. Consequent to the widespread objections with the expansion of the draft treaty to any form of "internet transmission media", the scope of the proposed new form of protection was curtailed with the intent to prevent rejection of the treaty. However, serious criticism remains concerning the breadth of the protection, including the unprecedented right to use technological protection measures, which risk undermining the freedom of expression and follow-on innovation if not accompanied by adequate exceptions and limitations (the provision of which remains at the discretion of WIPO's Contracting Parties) [15] (Knowledge Economy International, 2012; American Association of Law Libraries et al., 2006). Negotiations are still under way and particularly in light of the strong criticism, it is not clear whether the process will culminate in the adoption of a treaty in this domain.

Since 1999, WIPO cooperates with ICANN in the development of domain name - trademark dispute resolution policies, both by offering technical advice to the ICANN drafting committee charged with finalizing the Uniform Domain Name

[13] In that same year, Brazil and Argentina submitted before the General Assembly a similar proposal to establish a Development Agenda and were joined in 2005 by twelve other WIPO developing countries members in a group called "the Group of Friends of Development". The various proposals advanced in this context were discussed in seven intersessional meetings throughout 2005, 2006 and 2007, but were never adopted due to the opposition of more developed countries members.

[14] For example, according to GSI Watch (2009), only 24 of the 193 NGOs eligible to attend WIPO's Development Agenda summit work explicitly on improving conditions in developing countries.

[15] Like previous WIPO Treaties, the Broadcast Treaty contains obligations for Member States to implement particular norms or policies, thus leaving states some discretion on the exact modality of implementation. Therefore, the main criticism to the exclusive rights granted by this treaty is that they are not accompanied by adequate safeguards for exceptions and limitations, which are an integral part of the copyright system to maintain the balance between exclusivity and other important societal values, such as the freedom of expression.

Dispute Resolution (UDRP) Policy and Rules, and by providing its mediation services for the resolution of such disputes.

Other UN agencies have a less formal, but comparable level of output. The United Nations Educational, Scientific and Cultural Organization (UNESCO) operates under the mandate to work on behalf of "the free flow of ideas by word and image," and to "maintain, increase and spread knowledge". Few would contend that the Internet represents today one of the (if not the) most powerful means to enable such free flow. As a result, UNESCO has issued over the last few years a number of studies and reports such as the Declaration of Sofia on Promoting Independent and Pluralistic Media (1997); the Draft charter on the preservation of the digital heritage (2003); the Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (2003); the Position Statement at the UN ICT Task Force Global Forum on Internet Governance; (2004); the UNESCO's contribution to the World Summit on the Information Society (Geneva 2003 and Tunis 2005); the First consolidated report to the General Conference on the measures taken by member states for the implementation of the Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (2007); the UNESCO Report on Freedom of Connection and Freedom of Expression (2011); the EURid/UNESCO World Report on Internationalised Domain Names (IDN) Deployment (2012) and the Global survey on Internet privacy and freedom of expression (2012). Similar to UNESCO, the UN Commission on International Trade Law (UNCITRAL) has been quite active in its mandate to "further progressive harmonization and unification of the law of international trade" and, among other things, adopting a model e-commerce law (1996) and more recently a Convention on the Use of Electronic Communications in International Contracts (2005), which has been adhered to by 18 signatories and three states (the Dominican Republic, Honduras and Singapore), for whom it entered into force on 1 March 2013.

As stressed in the introduction, development is another area with strong linkages to Internet governance in light of the pivotal role of Internet communication for enabling social and economic development. Accordingly, pertinent actions of the United Nations Industrial Development Organisation (UNIDO), the United Nations Conference for Trade and Development (UNCTAD) and the United Nations Development Programme (UNDP), as well as of the UN affiliate entities of the World Bank Group and the various regional development banks (all with distinct legal personality, but with institutional, administrative, and operational links with the UN) cannot be neglected in a comprehensive analysis of Internet governance processes.

Internet-related initiatives of significance from a developmental perspective include:

- the establishment in 2006 of the UN Global Alliance for Information and Communication Technologies and Development (GAIDA), a multistakeholder group of members which furthers the mandate of the UN Information and Communication Technologies Task Force (UNICTTF) to contribute to transforming the spirit and vision of WSIS into action promoting the use of ICT for the achievement of internationally agreed development goals, including the Millennium Development Goals;
- the UN Secretary General's Report on Enhanced Cooperation on Public Policy issues pertaining to the Internet, which was the result of a consultation process inviting comments of all member states of the United Nations, Permanent Observers, United Nations system agencies, non-governmental

organizations in consultative status with the Economic and Social Council, Sector members of the ITU and entities accredited to the World Summit on the Information Society not otherwise included in one of those groups, as well as approved academic and business entities participating in the work of the Commission on Science and Technology for Development of the UN Economic and Social Council.

- the UN General Assembly issued a Resolution on Information and communications technologies for development (December 2011), which among other things emphasized the need to overcome the digital divide and noted how such divide is changing in character "from one based on whether access is available to one based on the quality of access, the information and skills that users can obtain and the value they can derive from it".

An equally important node of Internet governance is the need to ensure respect for human rights; in this respect, the work of UNESCO is complemented by that of the Human Rights Council, the Office of the UN High Commissioner on Human Rights, the United Nations International Children's Fund (UNICEF) and the International Labour Organization (ILO), all of which have repercussions and significance for Internet communications. Two landmark instruments in this area are:

- the Annual Reports to the General Assembly of the UN Special Rapporteur to the Human Rights Council on Freedom of Expression on the Internet -and in particular the Report on the right to freedom of opinion and expression exercised through the Internet (2011), which for the first time defined internet access as a precondition for the enjoyment of basic human rights[16];
- the UN Human Rights Council's Resolution on The Promotion, Protection and Enjoyment of Human Rights on the Internet, adopted by consensus of all its 47 members on Thursday, 6 July 2012, and affirming that the same rights that people have offline must also be protected online, with particular emphasis on freedom of expression.

A strategic organ of the UN is another Council, specifically the UN Economic and Social Council (ECOSOC), which is responsible for coordinating the work of 14 UN specialised agencies, and is therefore routinely concerned with Internet governance and ICT issues more generally. For these purposes, it is advised by a Commission on Science and Technology for Development (CSTD), which reports to it on an annual basis. In contrast with this periodical and type of collaboration between UN policy-makers and technology experts, one UN agency, the Office on Drugs and Crime (UNODC), has institutionalised its collaboration within the ITU's structure, through a specific Memorandum of Understanding, which from 2011 allows continuous resource pooling and streamlined cooperation on cybersecurity issues.

The role of the Organisation for Cooperation and Economic Development (OECD) should also be acknowledged with regards to influencing norms and standard of the

[16] The resonance of the 2011 Report was reinforced by the Joint Declaration on Freedom of Expression and the Internet by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. In this declaration, the four rapporteurs maintain that States have the obligation to promote universal access to the Internet, and cannot justify for any reason the prior interruption of that service to the public, not even for public safety or national security reasons: any measure that limits access to the network is unlawful, unless it meets the strict requirements established by international standards for such actions.

Internet. Despite its membership (34) being drawn from the most industrialised economies in the world, it has conducted regular research on developing countries and collaborated with agencies such as the African Development Bank and the African Union on developing policy and regulatory frameworks for ICTs and the Internet[17].

Finally, this survey of international *fora* cannot be complete without an account of what has represented perhaps the most criticised attempt to decide regulatory Internet issues in a non-multistakeholder setting, that is with the G8 summit in Deauville (France) on 26 and 27 May 2011. The G8, originally born in its archetypal form of "Group of Six" (G6), is an unofficial forum where the heads of State of the richest industrialised countries meet to discuss key policy issues. In response to the criticism for its lack of representativeness, national leaders from some (typically the richer) less developed countries are normally invited to participate in some (but not all) G8 summit activities[18]. In an important domain such as Internet governance, where both governments and international organisations have emphasised the crucial role of multistakeholderism, it is striking that this non-transparent forum maintains a complete lack of openness to the contribution of civil society, the private sector and even of other public entities such as national Parliaments or specialised multilateral agencies.

In light of the important global implications of the crucial issues discussed at the summit (such as regulatory mechanisms of the Internet designed to foster growth, but also network neutrality, and an appropriate level of IP, privacy and antitrust protection), social movements mobilised people to protest decisions being taken in such fora. One example is the campaign called "Protect the Net" launched to criticise the primacy of the corporate agenda at the G8, and to call for a commitment to expanding Internet access for all, combating online censorship and surveillance, limiting online intermediary liability, and upholding principles of net neutrality[19]. Another example is the coalition formed by a number of individuals and organisations (including the Free Culture Forum, La Quadrature du Net, and Boing Boing) calling on their "G8 vs. Internet" website for creative action to protect a free Internet, pointing among other threats to the sweeping powers of censorship of the

[17] Some relevant guidelines for Internet governance purposes are the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980), the OECD Recommendation Concerning Guidelines for Cryptography Policy (1997), the OECD Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security (2002), the OECD Policy Guidance on Convergence and Next Generation Networks (2008), the OECD Policy Guidance for Protecting and Empowering Consumers in Communication Services (2008), the OECD Policy Guidance on Radio Frequency Identification (2008), the OECD Principles and Guidelines for Access to Research Data from Public Funding (2006), the OECD Policy Guidance for Digital Content (2008), the Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information (2008), the Recommendation of the Council on the Protection of Critical Information Infrastructures (2008), the OECD Policy Guidance on Online Identity Theft (2008), the OECD Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce (2008).

[18] In 2011, African representatives included Algerian President Abdelaziz Bouteflika, Egyptian Prime Minister Essam Sharaf, Ethiopian Prime Minister Meles Zenawi, Equatorial Guinean President Teodoro Obiang Nguema Mbasogo, Senegalese President Abdoulaye Wade, South African President Jacob Zuma, Tunisian President and Prime Minister Beji Caid el Sebsi.

[19] The campaign, launched by Access (an international human rights organization advocating for internet access as instrumental to the protection of human rights) features signatories from 35 organizations including the Association for Progressive Communications, Electronic Frontier Foundation, Reporters Sans Frontières the Citizen Lab, May First/People Link, the Open Source Initiative, and Instituto Nupef. For more details see https://www.accessnow.org/page/s/g8-protect-the-net.

Web granted to governments and intellectual property owners through the US Stop Online Piracy Act, the US Protect IP Act (PIPA), certain national implementations of the European copyright directive and the multilateral Anti-Counterfeiting Trade Agreement (Infowar Monitor, 2011).

More generally, the concern that came out most visibly from the attempt to impose top-down solutions in a non-multistakeholder fashion through the G8 was one of excessive reliance on "Internet intermediaries" for the policing the Web. In fact, each of the legislations, legislative bills and international treaty mentioned above stand by themselves as remarkable examples of the recent trend of enforcing content regulation by focusing on neuralgic nodes of infrastructure, most frequently by way of governmental mandate over private companies (De Nardis 2010, 2012; Musiani 2013). This general discontent with a scenario of increased responsibility for Internet intermediaries appeared clear on 18 January 2012, (this date formula was the first to be used in this paper so it is a matter of consistency) when in reaction to the overly restrictive antipiracy SOPA and PIPA bills being discussed by Congress, more than 115,000 Web sites blacked out in sign of protest, and three million people e-mailed Congress to voice their opposition to the bills (Wortham, 2012). The anxieties over an "infrastructure turn for Internet governance" appear confirmed not only with the filtering and censorship in what are widely regarded as authoritarian regimes such as China and most recently Syria, but even in the supposed bastions of democracy and freedom of expression, most recently the United States of America regarding surveillance[20] (De Nardis, 2012). The implications of this for citizens around the world, not only in the US, are considerable, not to speak about the negative consequences for multinational companies offering IP-based services located in the US. The significance of this for Africa is that there is significant "policy laundering" of post-911 U.S. security legislation across the globe through global security agencies and to which African countries, in the absence of nationally developed regulations, are susceptible.

Regional organisations

Finally, a significant impact on Internet governance derives from the work of regional institutions.. In this sector, the EU has adopted landmark legislative instruments, for example, with the "Electronic Commerce Directive" (2000/31), the "Data Protection Directive" (95/46/EC), the Copyright Directive (2001/29), and the so-called "Telecom package", constituted by the Framework Directive (2002/21/EC), the E-Privacy Directive (2002/58), the "Authorisation Directive"(2002/20), the "Access Directive" (2002/19) and the "Universal Service Directive" (2002/22). The EU Treaties and complementary legislation in the field of fundamental rights, in particular the Charter for Fundamental Rights signed in Niece in 2000, add up to the CoE's Convention of Human Rights and a number of related initiatives to protect human rights which place particular emphasis on the online world -among the most notable ones, the CoE's Draft Convention on Cybercrime (2000), the Declaration on Freedom of Communication on the Internet (2003) and the Code of Good Practice on Information, Participation and Transparency in Internet Governance (2009). Similar

[20] The 6th of June 2013, the U.S. National Security Agency (NSA) contractor Edward Snowden disclosed the existence of the PRISM surveillance programme operated by the United States. The top-secret programme allows the U.S. intelligence community to gain access from nine Internet companies (Microsoft, Yahoo, Google, Facebook, PalTalk, YouTube, Skype, AOL, and Apple) to real-time as well as stored digital data and information on specified foreign targets operating outside the U.S. at the time of collection of data. The programme is court-approved andit does not require individual warrants (The Washington Post, 2013).

to the CoE but more specifically concerned with security, terrorism and freedom and development of the media, is the Organisation for Security and Cooperation in Europe (OSCE) is another regional organisation which impacts tangentially on internet governance issues.

While these are only binding in the European countries, their laws and regulations provide a touchstone for policy and legislation developments on these issues in Africa, often supported by EU-UN funded programmes, for example the Harmonisation of the ICT Policies in Sub-Sahara Africa (HIPSSA)[21].

3.1 Internet Governance in Africa

In Africa, a number of regional organisations are entrusted with competencies in areas affecting Internet governance. As a preliminary comment, it should be noted as striking that despite their emphasis on the importance of ICT and internet communication, the Internet presence of these organisations is extremely low, the information on their official pages often being outdated or momentarily unavailable due to broken links or sites under construction.

But before plunging into the aspects of their work that is relevant to Internet governance, it is important to bear in mind that, as indicated *supra*, their agenda is in a great deal shaped by international institutions, both through specific aid programmes and technical assistance. In fact, international organisations normally have a specific department or specialised agency for Africa. One important example of an institution functioning as a bridge between international organizations and the regional community is the United Nations Economic Commission for Africa. The UN ECOSOC established this institution in 1958 as one of the UN's five regional commissions and with the specific mandate to promote the economic and social development of its member states, foster intra-regional integration, and promote international cooperation for Africa's development. UNECA places a special focus on collecting up to date and original regional statistics of its 54 member states in order to ground its policy research and advocacy on clear objective evidence; promoting policy consensus; providing meaningful capacity development and providing advisory services in key thematic fields (UNECA, 2006). However, the organization seems to have lagged over the last 15 years in producing concrete output. The only measurement of performance has been done by UNECA itself with respect to one of its biggest projects, the African Information Society Initiative (AISI), launched in 1996 to constitute a high-level work group to develop an action plan on ICTs to accelerate socio-economic development in Africa. Not surprisingly, a 10-year review of UNECA's execution of the project confirmed its success, as evidenced by the existence in three quarters of UNECA's member states of national e-strategies complementing their development efforts (UNECA, 2006). However, the objective of the programme was to realise a sustainable information society in Africa by 2010 where "every man and woman, school child, village, government office and business can access information knowledge resources through computers and telecommunications" (Soul Beat Africa, 2004) and this is far from being met. Just recently, the Conference of African Ministers of Communication and Information Technology (CITMC) has called for the cooperation of the African Union (AU)

[21] The so called HIPSSA project has been completed and the following documents have been produced: (a) SADC policy guidelines on convergence; (b) a revised TCM protocol; (c) SADC Telecommunications Model Bill; and (d) SADC Guidelines on Universal Access and Service (UA/S) and Toolkit of Best Practices using UA/S Funds (ITU, 2011). However, the revised SADC TCM protocol has not been ratified yet.

Commission and UNECA's AISI project for the finalization of the draft Convention on Cyber Legislation and for the support of its implementation in member states on or before December 2012. Yet, this objective has not been accomplished to date (AU 2012).

African Union

The African Union is a continental organisation grouping eight Regional Economic Communities[22] (RECs). The RECs are strategic sub-regions for the implementation of the New Partnership for Africa's Development (NEPAD), which was adopted by the Assembly of Heads of State and Government in July 2011 in Zambia. The programme was set up to accelerate economic cooperation and integration among African countries.

The 1991 Abuja Treaty established the African Economic Community which proposed the creation of RECs as the building blocks of African integration. It was only in 2007 that the AU assembly adopted a Protocol on Relations between the AU and the RECs to improve structural problems, such as overlapping memberships, through their rationalisation. The main objective of the protocol is to bolster harmonisation of policies between member states at a regional level and therefore between RECs at a continental level.

The complex structure of African RECs is also complicated by additional regional economic cooperation bodies which are not recognised by the AU[23]. Multiple and overlapping membership creates confusion and sometimes competition in policy development and implementation especially at a national level. It also creates financial and human resource burdens in a resource-strapped environment.

At a continental level, the African Union (AU) leads the process of harmonising the ICT policy and regulatory framework. The Reference Framework for Harmonisation of Telecommunication and ICT policies and regulations in Africa was adopted in May 2008 and endorsed by the Summit in July of the same year. During the AU assembly in Addis Ababa on February 2010, the commitment to intensify activities to implement the Reference Framework were once again renewed. The Reference Framework is implemented through the International Telecommunications Union (ITU)/European Commission (EC) HIPSSA project, which is understandably strongly influenced by EU policies and agenda, led by EU consultants and EU based capacity building programmes, and contains limited requirements to work with local expertise and institutions.

By contrast, a good level of engagement of the AU with the African governments is observable in the assignment of new generic Top-Level Domain (gTLD) names, particularly in the process that led to the application for the ".africa" (dotAfrica) gTLD. The process dates back to 2000 when non-African companies expressed the desire to apply for it during ICANN's first gTLD open application round. In response to their expression of interest, a few African professionals opposed that bid as it was considered that it would have not benefited the entire continent and the public

[22] The AU recognises the following RECs: Arab Maghreb Union (UMA), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Community of Central African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), and the Southern Africa Development Community (SADC).

[23] The non-recognised regional bodies include the Economic and Monetary Community of Central Africa (CEMAC), the West African Economic and Monetary Union (UEMOA, WAEMU), the Economic Community of the Great Lakes Countries (CEPGL), the Indian Ocean Commission (IOC), the Mano River Union (MRU0, and the Southern African Customs Union (SACU).

interest of the African community. In 2002, this group drafted a concept paper proposing possible alternatives and community-based operational models for dotAfrica (AU, 2011).

In 2007, Dot Connect Africa (DCA) Trust - an independent, non-profit and non-partisan organisation[24] - declared its intention to set up, own and manage the dotAfrica gTLD name. In response to this application, the African Union Commission (AUC) made a stand calling for an open process to set up the dotAfrica geographic TLD name (AU, 2011). In 2009, the Extraordinary Session of the African Union Conference of Ministers in charge of Communications and Information Technologies (CITMC) adopted a resolution in the Oliver Tambo Declaration to establish dotAfrica as a continental Top-Level Domain name[25]. In January 2010, the Oliver Tambo Declaration was endorsed by the Head of States and Governments Summit (AU, 2011), and in August 2010 the African Union Conference of Ministers in charge of Communication and Information Technologies met in Abuja and requested the AU Commission to "set up the structure and modalities for the implementation of the dotAfrica project". In order to implement the AU Commission's request, a specialised task force was set up. The task force recommended that dotAfrica should have been applied for as a geographic TLD name and that the AU Commission should have launched an open tender to select a technical body able to operate dotAfrica. In addition, the AU Commission also set up a steering committee to oversee the implementation of dotAfrica and supported the AU Commission launching the dotAfrica tender process to select a registry operator. The tender process was launched by the AUC in October 2011, and UniForum SA (the ZA Central Registry Operator or ZACR[26]) was selected to manage, administer and operate dotAfrica geographic TLD name on behalf of the African community (AU, updated) and to apply to ICANN for dotAfrica by April 2012. In March 2012, during the ICANN 43rd meeting held in Costa Rica, the AU Commission and ZACR formally concluded the dotAfrica agreement to regulate the relation between the AUC and the ZACR for the application and operation of dotAFrica.

Eventually, the AUC process for the management of DotAfrica received formal support by 43 African Governments which issued letters of support to the ICANN and to the Governmental Advisory Committee (GAC). By contrast, in response to the DocConnectAfrica application, 17 African countries issued a GAC early warning in November 2012 on the DotConnectAfrica application, which was supplemented by the objection of three other GAC representatives in February 2013. Two months thereafter, during the ICANN46 in Beijing, the GAC issued unanimous advice to the ICANN board that DCA's application for dotAfrica should have been dropped. In June 2013, an evaluation committee for new gTLDs expressed its agreement with the GAC advice and dropped the DCA's application (Katiti, 2013).

However, it should be noted that, as claimed by DCA, the ICANN's guidebook to apply for a geographic name does not require any community support. In addition, the DCA had acted in reliance of a resolution of the Conference of African Ministers in Charge of Communications Information Technologies allowing competition from any African organisation or entity that would be interested in bidding for the domain

[24] Dot Connect Africa (DCA) Trust is based in Nairobi Kenya with its head office in Mauritius. See http://www.dotconnectafrica.org/ for further information.

[25] Although official documents by the AU claims that a resolution of the OT Declaration states: "Establish dotAfrica as a continental Top-Level Domain for use by organizations, businesses and individuals with guidance from African Internet agencies", this statement is not present in the 2009 Declaration.

[26] UniForum SA, trading as the ZA Central Registry, is a non-for profit organisation. In 1995, it was assigned the responsibility of administering the co.za domain name space.

name on behalf of and for the use of the African organisations and citizens at large, without specifying the need for governmental support. Nonetheless, support was specifically requested from/by the African Union, which decided not to grant it and refer the matter to member states, which in turn called the AUC to "set up the structure and modalities for the implementation of the Dot Africa project" (African Union, 2011).

Thus, the dotAfrica saga is an illustrative example of how inconsistent and unclear policies in Africa can be detrimental to private investment in ICT. On the other hand, this saga also shows the important role of leadership that the AU can play to defend African interests. Admittedly, the AU can stimulate and spearhead discussions on important policy domains; however, it appears that such a role has been less effective in areas requiring greater coordination and a more proactive engagement from national governments. For example, the open access principles laid down in the AU Reference Framework for Harmonization of Telecom/ICT Policies & Regulations in Africa, which would open up competition in national telecommunications market and thus provide consumers with better and more affordable Internet access, have not been yet fully implemented anywhere in the continent. In this area, the implementation lag is due not only to the complexity of establishing the rules determining the appropriate measures of costs and prices, but also to large the resource capacity necessary to set up an effective monitoring system that would ensure compliance with such rules.

At least to some extent, this burden can be alleviated by the action of Regional Economic Communities, which group neighboring countries together and should have a better understanding of national issues as well as a geo-political predisposition to tackle regionally common socio-economic problems. Although legally, regional organisations are in charge of coordination, harmonisation and integration of national policy and regulatory frameworks. RECs thus face many challenges in fulfilling their role of effective engagement with national governments. These challenges include the lack of financial and human resources which often result in ineffective coordination of regional actions. Additionally, even where policy and regulatory frameworks are formally integrated and harmonised at a regional level, for instance through ICT model laws, the nature of these legal frameworks do not bind national states to adopt the updated law. For instance, in the case of new regional frameworks aiming at updating telecommunications policy and regulation in Sub-Saharan Africa (i.e. HIPSSA project) the updated and harmonised policy and regional frameworks are based on best practices and the revision of regional regulatory documents have been done only from a legal perspective. Therefore, ICT challenges and evidence-based regulatory interventions in these countries are not embedded in the updated model laws. Through the mechanism of transposition, regional frameworks are expected to be customised at a national level and translated into national laws, however, regional frameworks are not easily transposed at a national level without the technical support of international organisations such as the ITU. This form of technical collaboration might undermine the sustainability of these kinds of interventions.

In the following paragraphs, we provide an overview of the various initiatives within the RECs aimed at Internet development in the context of a broader ICT ecosystem. As such, we cover ICT development initiatives more broadly without limiting our analysis to only Internet-related programmes.

Economic Community of West African States (ECOWAS)

At the infrastructural level, the Economic Community of West African States[27] (ECOWAS) features a Department of Transport and Communications which is assigned the tasks, among others, to develop common Transport and Telecommunications policies, laws and regulations and to encourage the establishment and promotion of joint ventures and the participation of the private sector in the areas of Transport and Telecommunications.

Furthermore, pursuant to the mandate of its Department of Defence and Security, ECOWAS also adopted a Directive on Fighting Cybercrime (2009) that provides a legal framework for the member states, which includes substantive criminal law as well as procedural law. The Directive deals with offences specifically related to ICT, incorporating traditional offences into ICT offences and related sanctions.

In April 2012, the organisation was urged to establish a regional convention on cybercrime by participants at a workshop on cybercrime, convened by the Economic and Financial Commission (EFCC) and the Australian Federal Police (Mutum, 2012; Niel, 2013). However, no further steps have been taken in this respect.

Southern African Development Community

The Southern African Development Community (SADC)[28] has replaced the Southern African Development Co-ordination Conference (SADCC)[29] in August 1992, in Windhoek, Namibia when Heads of State or Government signed the Treaty establishing the SADC.

In the SADC region the process of ICT policy harmonisation began with the SADC Protocol on Transport, Communications and Meteorology (1997). The document represents the first legal and policy framework for harmonising ICT policy at a regional level in Africa. With the support of the ITU, SADC updated the Protocol to align it to industry developments such us the convergence of broadcasting and telecommunications licensing models taking into account technology-neutral licensing, Next Generation Networks (NGN), roaming, interconnection and tariffs (it could just be the jargon but his sentence holds its meaning beyond me). It also aims to create new additional guidelines related to cyber-security, regional digital broadcasting migration plan, model dispute resolution and competition policy.

Infrastructure and services – including telecommunications - and the monitoring and control of the implementation of the Regional Indicative Strategic Development Plan[30] are areas of competence of the Integrated Committee of Ministers. It also has

[27] Fifteen member states constitute the ECOWAS including Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

[28] This regional organisation includes 14 member states: Angola, Botswana, DRC, Lesotho, Malawi, Mauritius, Namibia, Swaziland, Tanzania, Zambia, Zimbabwe, South Africa, Seychelles.

[29] The SADCC was formed in Zambia on April 1980, following the adoption of the Lusaka Declaration.

[30] In 2003, a Regional Indicative Strategic Development Plan (RISDP) was endorsed by the Summit. The plan provides strategic directions for regional programmes and actions. It indicates that "the development of infrastructure and services is critical for promoting and sustaining regional economic development, trade and investment" (Art. 3.3.1, SADC Regional Indicative Strategic Development Plan, 2003). The RISDP also sets as an objective: the development of communications systems in order to catapult the region into an information-based economy.

decision-making powers to ensure rapid implementation of programmes that would otherwise wait for a formal meeting of the Council. The Secretariat, which is the principal executive institution of SADC, is responsible for strategic planning and management of the programmes, to coordinate and harmonise policies and strategies of Member States, to submit harmonised policies and programmes to the Council for consideration and approval and to monitor and evaluate the implementation of regional policies and programmes. It is also responsible for the development of capacity, infrastructure and maintenance of intra-regional information communications technology.

ICT-related issues are not central to the SADC agenda, since the Secretariat has a broader mandate, encompassing developmental and politicalal dimensions. Due to staff constraints, insufficient financial and technical means and absorption capacity anda growing regional agenda, it is very difficult for the SADC Secretariat to contribute significantly to the strengthening of ICT policy and regulatory frameworks in its 14 Member states.

The SADC Protocol on Transport, Communications and Meteorology (TCM, 1996) is a comprehensive legal document which regulates the entirety of the transport, communications and meteorology sectors of each member state and the region, including all policy, legal, regulatory, institutional, operational, logistical, technical, commercial, administrative, financial, human resource and other issues. The Protocol was updated in 2012 with the support of the ITU in order to take into account the converging telecommunications environment.

According to the Protocol, it is the responsibility of member states to engage with all stakeholders in order to integrate regional communications networks, facilitated by the implementation of compatible policies and legislation to restructure state enterprises and public utilities. The protocol also stresses the importance of participating in the regional and international telecommunications *fora* such as ITU in order to achieve global interconnectivity of networks and the inter-operability of services. Furthermore, it suggests that member states may agree to be represented at international telecommunications *fora* by a single member state which should present a coordinated position (on what?). Within the framework of the SADC Protocol on Transport, Communications and Meteorology (1996) the Telecommunications Regulators' Association of Southern Africa (TRASA) now Communications Regulators' Association of Southern Africa (CRASA) was established on September 1997 as a forum of information and communications regulators in Southern Africa.

The efficacy of SADC policy-making and implementation processes has been critised. It has been argued that the Regional Indicative Strategic Development Plan (RISDP) lacks concreteness: it does not prioritise targets, it does not estimate costs and time frames and it has not been followed by a practical implementation plan. There are two main reasons for the failure of the plan. First, SADC follows a decentralised approach whereby each member state is responsible for a particular sector. As a result, projects have national characterisation as opposed to a regional scope; secondly, the relatively powerless Secretariat has not been able to create a common regional identity that contributed to the failure of delivery on targets.

The East African Community (EAC)

According to the EAC's official website, EAC has set four major strategic objectives of projects and programmes in the ICT sector:

- Harmonisation of ICT policies, laws and regulations among the EAC Partner

States.
- Promotion of the establishment of communications infrastructure and services;
- Standardisation of technologies and services to allow internetworking and interoperability;
- Communications markets - Investment strategies, competition management, quality of service and consumer welfare.

In line with this agenda, two reference instruments for the harmonization of ICT policy have been developed: a Regional Framework for Harmonization of National ICT Policies and a Study on the EAC Communications Regime.

Since 2004, EAC countries have hosted three workshops to identify cyberlaws, e-justice and information security as key cross cutting issues that need to be in place for a successful implementation of e-government applications and e- commerce in East Africa. Furthermore, the Regional e-Government Framework adopted by the Council of Ministers in November 2006 emphasized the urgency of this undertaking, identifying the creation of an enabling legal and regulatory environment as a critical enabling factor for effective implementation of e- Government strategies at national and regional levels.

To that end, the EAC secretariat requested capacity-building by UNCTAD for policy and legal experts from the EAC. The first training workshop on "The Legal Aspects of e- Commerce" was jointly organized by the EAC and UNCTAD secretariats (Kenya, December 2006). Following the defined roadmap toward a harmonised legal framework in the EAC, the EAC Partner States appointed members to the Regional Task Force on Cyberlaws formed in December 2007. The Framework for Cyberlaws was prepared in November 2008 by the EAC Task Force on Cyberlaws, comprising representatives from the Partner States and the EAC Secretariat, with the support of UNCTAD. The Framework, which currently awaits consideration and adoption by the Council of Ministers, contains a series of Recommendations made to the governments of the Partner States about reforming national laws to facilitate electronic commerce; to facilitate the use of data security mechanisms; to deter conduct designed to undermine the confidentiality, integrity and availability of information and communication technologies; to protect consumers in an online environment and to protect individual privacy (UNCTAD & EAC, 2008).

In addition, and in line with its stated objectives, EAC has engaged since May 2009 at the infrastructure level with the study of pre-investment analysis and technical design for the creation of a cross-boarder broadband network within the EAC. The aim of this project is to establish and operate a cross-border broadband infrastructure network within the EAC. The Final Report was expected by the end of February 2010, but no further communication has been issued on the official website.

Common Market for Eastern and Southern Africa (COMESA)

The COMESA adopted an ICT policy in 2003, with the aim of providing direction policy on ICT and telecommunications to its Member states[31]. The policy is accompanied by a Model bill and guidelines for harmonising institutions, policy and

[31] COMESA member states are Burundi, Comoros, D.R. Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Seychelles, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.

regulation in the region[32]. Member states were requested to implement the strategies set out in the ICT policy document within a period of five years following the approval by the Council. In order to support the development and monitoring the implementation of ICT policy guidelines and strategies and to monitorthe e–readiness status, the European Union (EU) provided financial support for the development of a Regional Information and Communications Technologies Support Programme (RICTSP). The RICTSP was part of the 2002-2007 joint Regional Strategy Paper (RSP) and the Regional Indicative Programme (RIP). The overall aim of the programme was to contribute to the process of regional integration through the development and the creation of an effective and functioning ICT environment. Although it seems that the programme's specific objectives were achieved (Miller et al., 2011), the main problem for the realisation of an efficient ICT policy development process at a government level in the region is the slowness of government procedures, and therefore, in most countries, guidelines and proposals have not been translated into national legislation. Moreover, the soft form of legislation based on a pure guidelines approach does not have any binding effect and it has been considered ineffective to harmonise regulations at a regional level (ITU, 2009).

Economic Community of Central African States (ECCAS) and Economic and Monetary Community of Central Africa (CEMAC)

In 2009, the ECCAS[33] drafted a regional ICT development policy for Central Africa. However, the implementation of the ICT development policy has some flaws. The ICT development policy is not legally binding because formally it is a regional strategic plan. Moreover, in order to provide guidance to member states, the guidelines need validation by the specialised technical committee on telecommunications, the Consultative Commission of Experts and the Council of Ministers and Heads of State of ECCAS (ITU, 2009), a process that has not been fully completed yet. Also, the regional ICT development policy is accompanied by recommendations for the harmonisation of national policies and regulations with no binding requirements for the member states. Due to late issuing of ECCAS initiatives in ICT and telecommunications and to member overlapping with the CEMAC and the COMESA regions. Member states may grant more importance to the respective initiatives of those regions.

CEMAC was founded as a regional organisation devoted to spurring, developing and maintaining the integration among its six member states[34]. Despite the regional organisation nominating a Commissioner specifically in charge with the Department of Infrastructures and Sustainable Development, the outcomes in the area of ICT policy development appear negligible. A few weak enforcement mechanisms, lack of follow-up and delays to implement strategies have been mentioned as the main obstacles for harmonising ICT policy and regulatory frameworks at a regional level (ITU, 2009). Nevertheless, in December 2008, the regional organisation adopted a regulation on the Harmonisation of Regulations on Electronic Communications of CEMAC member states. The regional regulatory framework was designed with the triple objective to facilitate the completion of the internal market, progressively

[32] In addition to the ICT policy, the regional ICT policy and regulatory frameworks is made up of policy guidelines on Universal service and access (2004), regulatory guidelines on interconnection (2004) and regulatory guidelines on universal service (2004).

[33] ECCAS memberships include the following countries: Angola, Burundi, Cameroon, Central African Republic, Chad, DR Congo, Equatorial Guinea, Gabon, Republic of the Congo, Sao Tome and Principe.

[34] The CEMAC region includes Gabon, Cameroon, the Central African Republic (CAR), Chad, the Republic of the Congo and Equatorial Guinea.

create a competitive market for electronic communications and services and safeguard the public interest fight against poverty (CEMAC 2008, art. 3).

The "Af*": AISI, AfriNIC, ISOC, AFNOG, AfTLD, AfREN, AfPIF, CERT and AFIGF

In accounting for the institutions involved in African Internet governance, one should not underestimate the role played by spontaneous private initiatives, particularly in the development of resources and expertise. In fact, it is by the association of private individuals, more specifically the students of the Networking Technology Workshop, that the African Internet Group (AIG) was originated in 1995 in the context of the 5th Annual Conference of the Internet Society (INET) in Hawaii. In 1998, the AIG organised in Cotonou (Benin) a conference devoted to the theme "Internet governance in Africa" calling for the establishment of key institutions that can support Internet growth in the region.

These institutions are currently known as "Af*" (AfStars), and complement each other in Internet governance by focusing on different areas of specialization. Two of them, AISI and AfriNIC, have already been mentioned alongside the previous paragraphs. While the former has laid down some of the foundations for the development of the ICT ecosystem in Africa in the 1990s, the latter is a more prominent actor since its birth in 2005, not only in the management of addresses but importantly, in the provision of training to engineers and network operators on managing Internet resources and transitioning to the IPV6 Protocol. Recently, AfriNIC has also launched an "Anycast" root server project, which aims to increase the number of instances of root servers in the African region (AfriNIC, 2013c).

A similar mission in building Internet Exchange Points (IXPs) across Africa is currently being pursued by the Internet Society[35] (ISOC), to conduct community mobilisation and technical aspects workshops to support the establishment of Internet Exchange Points in AU Member States. The AXIS project, funded by the Euro-Africa Infrastructure Fund and the Government of Luxembourg, aims at keeping Africa's Internet traffic local to the continent by providing capacity building and technical assistance to facilitate the establishment of National Internet Exchange Points and Regional Internet Exchange Points in Africa (AfriNIC, 2013). Prior to ISOC's involvement in IXPs building, this kind of work was carried out by the African association of Internet service providers (AfrISPA)[36] through its dedicated African Internet Exchange Point Task Force (AFIX-TF).

[35] The Internet Society was officially formed in January 1992 and deals with a wide range of issues and activities including policy, governance, technology and development. Since 2006, ISOC also increased its outreach in Africa through the launch of new African chapters, as well as through the establishment of an African Regional Bureau in Ethiopia in 2006. The Bureau is expected not only to drive regional and local recognition of ISOC, its policies and its mission, but also to promote activities and initiatives at regional and sub-regional levels. These activities regards both the identification of the needs and opportunities for both policy and education initiatives. It was recently selected by the African Union as a beneficiary of the African Internet Exchange System (AXIS) project.

[36].AFrISPA was set up in 2001 with the aims to provide industry perspective on policy formulation and regulation as it relates to the Internet industry and to act as an interface with Governmental bodies and the public; to develop policies and positions in the best interest of the members and to protect and to promote these interests in regional and International *fora*; to promote the development of key Internet Infrastructure on the continent; to promote the development of a free and open telecommunications market; to facilitate the establishment of national ISP Associations in Africa and provide common services to them; to provide and promote educational opportunities that will enhance and

The existence of African IXPs is an important step forward for the improvement of both the quality and the cost of connectivity, potentially preventing Internet users from suffering the consequences of routing African traffic through IXPs located at significant distance. This is in line with the strategy recently recommended by the ITU[37] on the basis of a joint study of the OECD, UNESCO and ISOC[38]. However, ISPs submit that the cost of connection to overseas IXPs is still more affordable than access to the local backbone through IXPs due to the lack of competitive pressure in national telecommunication markets (Research ICT Africa 2013 c & d). This confirms the findings of the ITU and UNESCO Broadband Commission Report on State of Broadband 2012, according to which "technology-based developments such as Content Distribution Networks (CDNs) and new Internet Exchange Points (IXPs) have resulted in some economic efficiencies and have generally proven helpful, *where the regulatory environment has been favourable*" (ITU and UNESCO, 2012, emphasis added).

Another significant player in improving the Internet governance ecosystem, particularly by offering advanced training to operators of existing African ISPs, is the Africa Network Operators Group (AfNOG). AfNOG is a forum for the exchange of information to addresses technical challenges in setting up, building and running IP networks on the African continent. It aims to promote discussion of implementation issues that require community cooperation through coordination and cooperation among network service providers to ensure the stability of service to end users (AfRINIC, 2013b). AfNOG does so, among other things, by holding annual meetings in collaboration with AFRINIC in a chosen African country to develop a critical mass of trainers and professionals in network infrastructure and services.

The next "star" of modern African Internet governance is one commonly known as the African Research and Education Network (AfREN), designed to facilitate the sharing of research and higher education across African members. The Research and Educating Networking Unit (RENU) of the African Association of Universities (AAU) attempts to provide a unifying framework by convening an annual meeting devoted to AfREN. However, the reality shows a division within African academic community between a Western and Central African section, an Eastern and Southern African section, and a separate group of Islamic institutions.

UbuntuNet Alliance is a regional association of National Research and Education Networks (NRENs) in Africa created in 2005 by five established and emerging NRENs in Eastern and Southern Africa,[39] with the driving vision of securing high speed and affordable Internet connectivity for the African research and education community in Gb/s rather than in Kb/s[40].

The overarching objectives of the Alliance are, on a non-profit basis, to develop and improve the interconnectivity between Research and Education Networking (REN)

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empower technical and policy understanding of the Internet; and to build, maintain, and publish relevant industry data for Members.

[37] See ITU, Informal Experts Group Draft Opinion 1: Promoting Internet Exchange Points (IXPs) as a long term solution to advance connectivity, fifth World Telecommunication/ICT Policy Forum (Geneva, 2013)

[38] The relationship between local content, Internet development and access prices (OECD, UNESCO, Internet Society) (2011)

[39] Specifically, MAREN (Malawi), MoRENet, (Mozambique), KENET (Kenya), RwEdNet (Rwanda) and TENET (South Africa).

[40] For more info, see http://www.ubuntunet.net/about.

Participants in Africa and with the Internet generally, as well as to develop the knowledge and skills of ICT practitioners in these institutions.

For this purpose, Ubuntunet partners have recently engaged in a 4-year project (2011-2015) funded by the European Commission, AfricaConnect, which purports to establish a high-capacity Internet network for delivery of a range of services across the network for institutions, projects and researchers. Pursuant to this program, an African-led high-speed internet network called “UbuntuNet” has been launched in November 2012 in order to connect academics and researchers throughout Southern and East Africa to peers across the two regions and in Europe.

In the same month, the Sixth Islamic Conference of Ministers of Higher Education and Scientific Research, held under the theme “The Role of Higher Education in the Development of Science and Technology for a Prosperous Future” in Khartoum, Sudan, approved the establishment of the Pan-Islamic Research and Education Network (PIREN) as a platform for improving connectivity for researchers and education networks among 57 Islamic states, including 27 African countries.

Parallel to the creation of the Ubuntunet Alliance, the West and Central African Research and Education Network (WACREN) came about in 2006 following a Regional Workshop on Research and Education Networks organised by the Association of African Universities (AAU) in Accra in November 2006. In its 1st Annual General Meeting on the 3rd July 2013 at the National Universities Commission in Abuja, Nigeria, the Search and Nomination Committee identified a Chairperson for its Board of Directors in the person of Dr. Nii Quaynor, an inductee into the 2013 Internet Hall of Fame who is recognized for having established some of Africa's first Internet connections and having helped set up key organizations, including AfNOG and AfriINIC, as well as for having served in leading global Internet institutions such as the ICANN,the United Nations Secretary General Advisory Group on ICT, and the IGF Multi-Stakeholder Advisory Group (MAG). The high-level character of this appointment is a telling signal of the importance that is being placed on the creation of a superior level of connectivity in order to enable researchers to garner those skills and information that are crucial for competitiveness in the present knowledge economy.

A separate area of Internet Governance is that of management of the Top Level Domain. In light of the multiplicity of challenges faced by Domain Name holders at ICANN, an African Top-Level Domain Name Organization (AfTLD) was established in 2002 to act as a focal point for African Country Code Top Level Domain (ccTLD) managers in coordinating, formulating, developing and presenting a unified approach to issues related to the Domain Name System. AfTLD, which also collaborates with its equivalent Regional Top Level Domain Organizations (RTLDOs) in Asia Pacific (APTLD), Europe (CENTR) and Latin American and Carribean (LACTLD), is organized in several working groups, including a technical working group which offers a technical training program. Additional objectives of AfTLD include the creation and compliance with codes of best practices and the management of a domain name dispute resolution service for its members (AFTLD Constitution, art. 7.3 and 7.4).

Less structured from an institutional perspective are the three fora which are enlisted among the Af*: AfPIF, AFRICERT and IGF. The first, the African Peering and Interconnection Forum (AfPIF) is an annual event organized by ISOC and held since 2010 to addresses the key interconnection, peering and traffic exchange opportunities and challenges on the continent and provides participants with global

and regional insights for maximising opportunities that will help grow Internet infrastructure and services in Africa. The second, AfricaCERT (AfriCERT), is the African forum of computer incident response teams who cooperatively handles computer security incidents and promotes incident prevention programs. It does so by facilitating incident response capabilities among African countries and provides capacity building, access to best practices and tools and trusted communication at the continent level. The third, the African Internet Governance Forum (AfIGF) is a continental IGF, hosted by UNECA and supported by the AUC, which follows the same general principles of the IGF (openness, multistakeholderism, language diversity, remote participation and transparency) and aims to support and promote the consolidation of the five subregional IGFs (i.e., the West Africa Internet Governance Forum (WAIGF); the East Africa Internet Governance Forum (EAIGF); the Forum de Gouvernance de l'Internet en Afrique Centrale (FGI-CA); and the Southern Africa Internet Governance Forum (SAIGF)) and to overcome the participatory gaps of this decentralized structure – where some countries are not actively participating or are not being represented altogether (UNECA, 2013). It is coordinated by an AfIGF Bureau, which is composed of the conveners of the five African sub-regional IGFs and three other stakeholder representatives from each sub-region, and held its first annual meeting in 2012.

Finally, before closing this overview of Af* institutions it is worth noting that all of them support – either through the organisation or by active participation – the recent initiative of the African Internet Summit, which defines itself as a regional multi-stakeholder ICT conference and "the pinnacle educational and business ICT event in Africa where Internet actors interact with the Internet global community" (AIS, 2013) .The AIS is an annual event, currently at its second edition, consisting of seminars, workshops, tutorials, conference sessions, birds-of-a-feather (BOFs) and other forums for sharing ICT knowledge within the African region. The Summit is organized so that the training programmes of AfNOG and AfriNIC take place over the course of two weeks, and brings together under one roof the ICT business and technical community in Africa to discuss ICT issues and challenges[41] (ASI, 2013).

Nigeria Internet Governance Forum

An effort to consolidate Nigeria's position on global Internet governance led to the convening of the Nigeria Internet Governance Forum (NIGF) in the year 2012. The NIGF developed a renewed collaborative effort of Internet stakeholders in the country to help provide a coordinated mechanism for domestic multi-stakeholders participations in regional and global internet governance and to help facilitate partnerships, coalitions and dialogues that redefine Nigeria's position at regional and global IGF meetings (Research ICT Africa, 2013e). The NIGF's main objectives were to advance Internet governance issues in Nigeria through a multi-stakeholder framework as well as facilitating partnerships and coalitions that deliver coordinated domestic response, initiatives and synergy that best promote and protect the nation's position on the global internet ecosystem. The Federal Ministry of Communication Technology is the supervising ministry of all the agencies that make up the NIGF's Local Multi-stakeholders Advisory Group (LMAG)[42]. The ministry has been very supportive of the NIGF vision of consolidating the Nigerian position on the global Internet Governance Forum (Research ICT Africa, 2013e).

[41] See http://internetsummitafrica.org/ais/about

[42] The NIGF's Local multistakeholder Advisory Group (LMAG) of the NIGF comprises officials of the Ministry of Communication Technology (MCT), National Information Technology Development Agency (NITDA), Nigerian Communications Commission (NCC) and Nigeria Internet Registration Association (NIRA) in collaboration with some relevant stakeholders from the private sector.

The NIGF was led by representatives of the collaborating organisations: the Nigerian Internet Registration Association (NIRA); the Nigerian Communications Commission (NCC); the National Information Technology Development Agency (NITDA) and the Federal Ministry of Communication Technology.

The NIGF was well received by all the stakeholders involved in Internet policy issues and most of the organisations involved in the process decided to participate. Backed with the endorsement from the Federal Ministry of Communication Technology, a National Working Committee made up of the under listed organisations was set up and expected to facilitate, coordinate, and supervise multistakeholder participations, contributions and domestic think-tank roles on Internet Governance Issues at the national, regional, continental and global levels. The organisations who participated in the National Working Committee are the Federal Ministry of Communication Technology, the National Information Technology Development Agency (NITDA), the Nigerian Communications Commission (NCC), the Nigeria Internet Registration Association (NIRA) and the Global Network for Cyber solution (GNC) (a Non Governmental Organization) (Research ICT Africa, 2013e).

To a large extent, efforts are being made to have recommendations made to be taken to the Global IGF. The work and output of the LMAG have been positively assessed, however not without some challenges. Financial issues associated with the organisation of events of such magnitude have been a challenge and has made the forum a single-day event limiting the timing for an extensive, impactful and more effective deliberations (Research ICT Africa, 2013e).

However, the National Working Committee has performed creditably well in the past two editions. The level of professionalism and commitment of the officials involved has been impressive in a bid to enhance the internet ecosystem in the country (Research ICT Africa, 2013e).

4. Stakeholder involvement

Mueller (2010) defines multi-stakeholder governance as a process where representatives from different public interest advocacy groups such as business associations and civil society organisations can participate in public policy deliberations in cooperation with governments. Fidler (2013) argues that Internet governance developed via a multistakeholder process in which state and non-state actors collaborated on managing technical and operational tasks, managing resources such as domain names and numerical addresses and setting standard communications protocols[43]. He further illustrates that as economic and political implications of the Internet grew, it became more difficult to separate technical decisions from their social and economic implications. As a result, on the one hand, multistakeholder bodies tasked with governing technical resources of the Internet are becoming more politicised; on the other hand, governmental bodies that previously were not involved in the governance of functional resources – such as naming and addressing – are now interested in extending their reach to these aspects of the Internet governance.

[43] The Internet Engineering Task Force (IETF) is the body that oversees the development and maintenance of Internet standards communications protocols (see http://www.ietf.org for further details). The Internet Corporation for Assigned Names and Numbers (ICANN) manages the Internet's name and number addressing system (see http://www.icann.org).

A stronger involvement of governments, including representatives from developing countries, has been realised through the intergovernmental *fora* mentioned above, which address internet-related policies through an issue-specific perspective – including security, human rights, privacy, copyright, etc. which may well have implications for the direction of broader Internet governance debate. However, being essentially inter-governmental *fora*, avenues for the participation of the civil society and the private sector may be limited in this context.

In contrast, the role of civil society in Internet governance processes is doubtful. According to Weber (2009), civil society only has a restricted influence on the highest bodies of the Internet's "organisation": possibilities for direct influence of civil society on the rule-making processes are virtually non-existent. Although civil society has a role in all these *fora*, it is only in the context of the Internet Governance Forum and of the ICANN that it has been invited into the space of policy making[44].

Another expert interviewed for the purposes of this paper submitted that multistakeholderism can be understood as a response to changes in the governance of a global resource. With ICANN, it drew on the bottom-up approaches of the Internet pioneers like Jan Postel but had to deal with the prominence of the US government as its guarantors. According to this interviewee, "the ITU as a classic intergovernmental institution saw itself as losing the initiative with respect to global regulation of the Internet to institutions like ICANN and the IETF - and over the last 15 years has engaged in a struggle over the issue from WSIS to the recent skirmishes over WCIT. Multistakeholder participation could then be understood as part of what happens when one moves from a relatively closed system of national regulation, co-ordinated by the ITU with the traditional governance structure of the integrated department of post and telecommunications, with government as operator, policy maker and regulator to a more open ecosystem where the stakeholders interact in various ways and where the national-global dynamic is made complicated by the cross-border nature of the Internet itself. However, the development of multistakeholder multi-stakeholder participation does not mean that power relations cease. It appears that we now are faced with the power of large unaccountable multi-national corporations like Google, Facebook, Amazon, Apple and so forth that evade taxation, abuse their consumers' rights to privacy and trap people in their walled gardens. It may be that we are entering a Hobbesian moment in which the full logic of the notion of an ecosystem as a Darwinian environment comes into play in a war of all against all, which seems presaged by the emergence of cyber security issues, mass surveillance and powerful global predators like Google. Multistakeholderism may in the final analysis prove to be a transient experiment in the first decade of the 21st Century" (Research ICT Africa 2013).

Other problems of present Internet governance models are related to accountability, which is affected by weaknesses of transparency with respect to deliberations of the decision-making bodies in Internet governance. Although secrecy clauses are legitimate, there should be more transparency on how decisions are made, i.e. on what grounds, with which objectives. Virtually no judicial review is given in Internet governance matters - governance rules are therefore not accountable to judges.

[44] Since the ITU has perceived that its role of global regulation of telecommunications was eroded by the development of the Internet and by institutions like ICANN, over the last 15 years has engaged in a struggle over the issue of multistakeholderism and civil society involvement from the WSIS to the recent process over the WCIT.

Accordingly, the following survey of the three dominant *fora* for Internet governance will flag accountability and transparency issues for further discussion.

Participatory processes within the ITU

As mentioned earlier, in addition to the primary Members made up of governments[45], the ITU also has around 700 paying sector members, including scientific and industrial companies, public and private operators, broadcasters and regional/international organisations. Nonetheless, civil society is only partially represented in this context by a few organisations dealing with technical issues. Moreover, these organisations have a limited role in the ITU, in particular to engage in formal agenda setting activities or decision making processes. Additionally, the requirement of prior approval by the governments of the countries where these organisations are based is a formality that represents a further obstacle to smooth and effective participation at international level. Last but not least, a key obstacle to civil society participation is the lack of transparency of ITU decision-making processes: negotiations largely take place behind closed doors, while most documents are being kept under password-protected online interfaces, available only by prior payment of a substantial fee (MacLean, 2007).

Additionally, regulatory authorities are formally absent. Their absence has been justified in the light of the recommendations for its member states to preserve the impartiality and independence of regulatory authorities but representatives from regulatory authorities are allowed to participate in ITU meetings as members of national delegations. In particular, this practise is common in the ITU's Radio Regulations activities because the regulators can provide technical expertise on this matter.

As part of its institutional reform process the ITU has in the last decade sought to open its processes to non-nation state participation. A landmark step in this respect was the Antalya Plenipotentiary Conference Resolution entitled "Study on the participation of all relevant stakeholders in the activities of the Union related to the World Summit on the Information Society". This prompted the Council to set up a working group to consider a number of reforms to address crucial aspects of stakeholder participation, including the establishment of criteria for the definition of which stakeholders are relevant, the sphere of competences reserved to states in this area and the review of current participatory mechanisms and financial obligations The Working Group met six times over the span of two years, and issued its Draft Final Report in 2009. Despite the spirit of openness and participation which led to the development and the adoption of the Report, it is striking that the ITU conforms to its previous practice of restricting access to both the document itself and the comments upon it submitted by its member states.

Examples of multistakeholderism are also evident in the World Telecommunications Policy Forum (WTPF) held in 2013. During the WTPF, member states and sector members of the ITU discussed key issues around emerging telecommunications/ICT policy and regulatory matters that impact the development of the Internet. The outputs of the meeting were six opinions drafted by a WTPF Informal Experts Group addressing topics such as capacity building, IP addressing and internet governance. These opinions were discussed among all participants, including ITU member states and sector members, civil society organisations and other key international stakeholders (ISOC, 2013). Although the outcome of these discussions is not

[45] Governments are represented mainly by Ministries of Communications or equivalent (ITU, 2013a).

binding in itself, it is expected that they will eventually feed into the 2014 ITU Plenipotentiary in Busan (Republic of Korea).

Least Developed Countries (LDCs) who seldom participate in any other Internet governance *fora* and whose only recognition and contact with those responsible for global Internet governance is through the ITU, see it as the most appropriate forum for governing the technological and operational aspects of global electronic networks, including the Internet. In part, this is explained by the fact that ITU provides technical support to these countries, particularly relating to integrating and harmonising telecommunications policy and regulatory frameworks at a regional level[46], and technical assistance to translate regional regulation into national legislation. Not only do LDCs see the ITU as the forum to be taking forward the technical governance of the Internet; but the national sovereign state membership of the ITU also is perceived by many governments to be a way of asserting the control of this strategic asset, the governance of which they currently feel excluded from (this sentence is a bit of a jumble).

MacLean (2008) identified some of the main problems around the ITU governance model. He claims that ITU governance structures need to be more representative of different stakeholders who have an interest in Internet policies, including the private sector, civil society organisations, developing countries and other non-state actors. In particular, these actors have not been meaningfully included in decision-making processes, even though there are areas where it does not make sense to reserve this right for representatives of sovereign states only.

ICANN multistakeholderism

In the context of the Internet governance, policy considerations have emerged also in relation to the governance of Internet technical core resources – naming and numbering – managed by the ICANN. The ICANN represents a new form of governance involving the participation of a mix of actors including business, governments, users and civil society in its policy-making process. The goal of its governance model is for all the various impacted parties to be given the opportunity to participate in the policy-making process that determines policies based on consensus. ICANN divides participants based on various interests and assigns different roles to the actors as part of its policy development process. The ICANN multistakeholder model is divided into different specific stakeholder groups and sub-groups and each of them develops policies representing various non-profit and commercial interests.

Governments participate at ICANN in an advisory capacity via the Governmental Advisory Committee (GAC), which includes intergovernmental bodies such as the ITU and WIPO. The GAC can provide advice to the Board with regards to new gTLDs, and objections to specific applications. Consensus of the GAC on whether a particular application should not proceed creates a strong presumption for the ICANN Board that the application should not be approved (GAC, 2013).

However, challenges related to the participation of African governments in the GAC remains. An African representative from the GAC stated during an interview that "although the ICANN is making an effort to involve African governments, in the last four years only the Kenyan government was able to meaningfully participate to the policy-making process. The main challenges for African governments are [the] lack

[46] For an example of technical assistance provided by the ITU to developing countries, see the HIPSSA project, http://www.itu.int/ITU-D/projects/ITU_EC_ACP/hipssa/

of time and lack of both human and economic resources to participate. Further, African leaders perceive that they are not fully included in the decision-making process. Most governments believe that the ICANN manages the Internet, and the fact that it is a US-based private organisation makes it even more suspicious. At every GAC meeting there are at least 20 representatives from Africa but their participation in the debate is poor. However, it needs to be recognised that the advisory process of the GAC is improving. The board is now required to approve GAC advices and when it refuses it has to report on the reasons for rejection." (Research ICT Africa, 2013b)

Additionally, governments are represented in the non-voting liaison on the board of directors, consisting of sixteen voting members and five non-voting liaisons, and in the Country Code Supporting Organisations (ccNSO) which manages policy for the country code domains. Both business community and civil society organisations can participate in the ICANN policy development either through the At-Large Community (ALC), which advises the board on a variety of issues, or through the Generic Names Supporting Organisation (GNSO), which makes policy recommendations specifically related to generic top-level domains. Participatory mechanisms at the ALC are complex and have a pyramidal structure. ALC is a broader group of the At-Large Advisory Committee, which is appointed by the Nominating Committee[47]. The ALAC represents "the interests of individual Internet users", and is composed of 15 people, three representatives from each world region recognised by the ICANN. The ALC includes members from five regional organisations called "At Large Structures" which should represent individual Internet users in a given region. However, these entities are centralised into the Regional At-Large Organisations (RALOs). RALOs have been criticised of not accepting single individual memberships but only that of organisations. By 2009, only 82 organisations were accredited by ICANN, an average of 16 in each region of the world (Mueller, 2009).

Non-commercial interests are represented within the Non-Commercial Stakeholder Group (NCSG) of the Generic Names Supporting Organisation (GNSO). ICANN's GNSO policy development process is supported to work by "consensus", which means that the community participants agree through compromise. This constituency within the NCSG promotes non-commercial interests in policy development and represents more than 200 non-profit organisations and individuals who wish to advance non-commercial policy objectives at ICANN such as human rights, education, access to knowledge, freedom of expression, privacy rights and other non-commercial goals. ICANN's commitment to openness, diversity and multistakeholderism is evident also from the prescription in its bylaws to include "diversity provisions" for international representation, specifying five geographic regions that must be represented by at least one member of the Board, the various councils and the Nominating Committee; the accessibility on the Internet of the documents of most council or task forces, and even of the minutes of the Board meetings (going as far as publishing the votes of Board members in case of crucial decisions); as well as the travel reimbursement policy for Board Members and Nominating Committees appointees enabling participation from developing countries and civil society organisations (Hofmann, 2007).

However, although civil society has the opportunity to participate in shaping ICANN policies, according to Gross (2011), the vast majority of civil society organisations

[47] The Nominating Committee (NomCom) appoints all Board members except 6 who elected by the Supporting Organisations.

and individuals which have an interest in Internet-related policies did not participate in ICANN's governance structures or play a role in the influence of its policies in its early years.[48] In addition, although civil society is well represented in the ICANN, the reality is that it does not have the same power both of other commercial and business stakeholders (including the Commercial Stakeholder Group (CSG), the Registrars Stakeholder Group, and the Registries Stakeholder Group) and of the ICANN staff in the development of policies. Furthermore, because it does not have government powers, its role is perceived as less influential in the policy development process.

Another problem observed with the ICANN is that it is a California non-profit organisation, and therefore it is accountable only to the California Attorney General, state corporation regulations as well as federal rules regarding 501(c)(3) charitable organisations. This means that it is an organisation operating under US government contract(/laws?), and which can be easily subjected to US jurisdiction. An example of the implications of this structure is the organisational reform that took place under the Bush administration in 2002, when individual users' representation through a specific allotment of half of the seats of the Board of Directors was replaced by a single non-voting liaison. To align the interests of this corporation with those of the global community, the ICANN and the US Government signed an Affirmation of Commitments (AoC) agreement in 2009, designed to ensure that ICANN make its decisions in an accountable and transparent manner that promotes the global public interest[49].

Policy-making process at the Regional Internet Registries (RIRs)

In contrast to the other institutions described, RIRs are private regional organisations with no governmental involvement. However, the NRO Number Council operates under a Memorandum of Understanding (MoU) signed in October 2004 with ICANN and now performs as the Address Supporting Organization Address Council (ASO AC). The MoU clarifies the respective roles and responsibilities and defines accessible, open, transparent and documented procedures for the selection of individuals to serve on other ICANN bodies.

As discussed, RIRs do not merely operate at an infrastructural management level, overseeing the registration and use of domain names and numbers, but are also engaged in the formulation of policies that are necessary for the fulfilment of these tasks. Examples of policies currently being discussed are those on abuse of contact information, on post-exhaustion of IPv4 allocation mechanisms, IPv4 soft landing and so on.

The process for the formulation of such policies is clearly explained in the bylaws of each of the RIRs concerned. For example, the principles guiding such process in AfriNic are those of openness, fairness and transparency. The first of these principles is made apparent through the basic rule that anyone can be member of the company and, therefore, anyone can submit a proposal for the adoption of a

[48] In the early years, civil society participation to the ICANN came mostly from academic and educational institutions, which provided technical expertise or experience mostly ontelecommunications regulation (Gross, 2011).

[49] The AoC represents a significant development at ICANN in terms of its accountability. The Affirmation of Commitments (AOC) establishes ongoing reviews of ICANN's Accountability and Transparency. In the AOC, ICANN commits to remain a not for profit corporation and maintain and improve robust mechanisms for public input, accountability and transparency to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders (ICANN, 2013b).

specific policy. The second principle is exemplified by the fact that AfriNIC offers administrative support in the draft, if requested, by providing relevant facts and statistics if requested during the discussion. Finally, the application of the third principle is evident in the fact that these policy proposals, which are submitted to the "Resource Policy Discussion" mailing list, are also made available in their draft version on the AfriNIC website.

Then the Policy Development Working Group (PDWG), which is also open to anyone either in person or through the Internet, discusses the proposal, either through the Resource Policy Discussion mailing list (RPD) or through the Public Policy Meeting (PPM), which is convened after the author of the proposal has had the opportunity to incorporate community feedback. This discussion is open to the public (even remotely) and aims to determine whether there is consensus during open policy discussions. Moreover, and again in the pursuit of transparency, it publishes minutes of the proceedings of public policy meetings, and eventually sends a report on the outcomes of policy discussions at public policy meetings to the Board of Directors.

Lastly, a final review of the draft policy is initiated by the Working Group Chair(s) by sending an announcement to the Resource Policy Discussion mailing list, thereby initiating a so called "Last Call" period of at least two weeks, and eventually evaluating the feedback received to determine whether consensus has been achieved. In the case of positive outcome, it shall recommend the draft policy to the AfriNIC Board of Directors for approval, including a report of the discussions of the draft policy and feedback from the Last Call. In such a case, the draft policy is ratified by the AfriNIC Board of Directors, and the implementation date of the policy is announced on the Resource Policy Discussion mailing list.

AfriNIC believes its commitment to the multi-stakeholderism is ensured also through geographical representation: its operations are overseen by a Board of Directors which is elected by members on a regional representation basis, as defined by Article 11 of its bylaws. While this provides evidence of transparency and regional representativeness, it does not necessarily demonstrate a multistakeholder approach, in that all parties, government, private sector, civil society and technical community are participating in decision-making.

In October 2011, the ministerial meeting held alongside the ICANN Dakar meeting issued a communiqué that called on ICANN to increase its presence in Africa and to be more relevant to the specific needs of the region. The process drew from the acknowledged evidence of the poor participation of Africa in ICANN, which was confirmed by the few number of African Registries and only 17 new gTLD applications[50]. Subsequently, in August 2012, ICANN proposed the so-called ICANN-Africa Strategy Working Group (ASWG) Initiative[51] to support a stronger presence for ICANN in Africa and to increase Africa's participation in ICANN. Also, it wanted to foster the promotion of a multistakeholder model in Africa for a larger involvement at the government, civil society and private sector levels. The African strategy was designed by a committee with representatives from all the African regions (Research ICT Africa, 2013b). This effort has been claimed as a step towards a stronger global engagement for ICANN, with a special focus on

[50] Worldwide applications came from 60 countries. Out of 1930 applications, less than 1% were from Africa (i.e. 17); 1.23% from Latin America and the Caribbean (i.e. 24); 16% were from Asia-Pacific region (I.e. 303); 35% were from Europe (i.e. 675); and 47% from Northern America (i.e. 911).

[51] For more information about the ICANN-ASWG Initiative, see http://www.afrinic.net/en/community/icann-aswg and http://www.africanncommunity.org

developing countries. To contribute to the development of the new strategy, a working group was created and endorsed by the African community members meeting at the 44th ICANN in Prague in June 2012. The core community and the constituency of the African strategy include key players in Internet governance from different regions in Africa.

The implementation of the Africa strategy Financial Year 14 (FY14) started in January 2013. The main objective of the strategy is capacity building in order to increase African awareness on market opportunities around domain names registration. This was in line with the African Minister's declaration and request to ICANN at the ICANN44 in Dakar, Senegal.

However, challenges to implementing the strategy have already been found. "The ICANN wants to show that they are doing something for Africa, but it is different than doing something with Africa" claimed Alice Munyua during an interview with Research ICT Africa (Research ICT Africa, 2013b). "For instance, the initiative on the prizes for African Registrars during ICANN47 in Durban is premature, since at the moment there are only 5 Registrars across the continent". Although there is a need for growing an African domain name space we need to take into account that in Africa there are not enough ISPs. Therefore, a strategy should encourage Africans to apply for the new gTLDs or to be become registrars of ccTLDs. We should stimulate the growth of the sector and then to award it". (Research ICT Africa, 2013b). Difficulties related to the implementation of the strategy might arise also from the lack of African partners including policy makers and the AU. In addition to that, what matters for a good implementation of the strategy is the ability of the population to own the process. At the moment, the ICANN set up a website (on what) and it wishes to push more information about it, and it is seeking to attract members of the community through their own expertise (Dangjinou, 2013). In addition, a Research ICT Africa interviewee stressed that "although the ICANN in the past has had the assumption that one solution fits all, the approach pursued for the African Strategy was different. The call for a change came directly from the GAC where African representatives called for a specific approach tailored to African needs. The new ICANN CEO Fadi Chehadé understood the need for a different approach and the process started" (Research ICT Africa, 2013b). The strategy is perceived and welcomed as a sound strategy for the African continent, but due to the failure of many strategies pursued by international organisations to improve African participation in global policy-making mechanisms, there is a perception that at an implementational level the African strategy has flaws. "In 5 years time, we will assess what has been achieved, and we would like to expect more than organising conferences and ICANN fellows. We would like to see more real African Internet policy issues in the ICANN policy agenda" (Research ICT Africa, 2013b).

In addition to the problem of participation, African countries seem to lack also representativeness. "Africans do not hold leadership positions as chairs of groups and sub-groups within the ICANN structure and there are no Africans at the ICANN Board level". (Research ICT Africa, 2013b).

One reason for this lack of engagement within the ICANN process can be explained as legacy issues. Internet developed in North America and Africa has been marginalised from its development. In addition, African countries have not perceived the Internet as a priority compared to other pressing policy issues affecting the continent. African civil society, industry, and users are totally absent and do not participate in the ICANN process. However, it is expected that with increased access to the Internet, the level of engagement will grow (Research ICT Africa, 2013b).

Another initiative which aims at increasing the participation of individuals from developing countries is the ICANN fellowship programme. The ICANN fellowship programme is an opportunity for participants from developing countries to have a first-hand experience with the ICANN community and hopefully to become a new voice on Internet policy issues in their regions. Recipients of the fellowship programme are now members of the several ICANN constituencies. However, "the ICANN fellowship is too small for the required level of engagement of the African stakeholders" (Research ICT Africa, 2013b).

Absence of decision-making at the IGF

Before the World Summit on the Information Society (WSIS) in 2003 (Geneva) and 2005 (Tunis)[52], governance of the Internet was related to coordinating technical areas such as management and maintenance of its technical resources: domain names, root services, engineering protocols, etc., taking place at specialised bodies such as the ICANN, the ITU, the W3C, and national bodies which administer the national domains (Global Partners and Associates, 2013). Technical governance relied on a decentralised and multi-stakeholder decision-making model with input from civil society, academics, engineers, and the private sector, with little government involvement (Global Partners and Associates, 2013). However, as noted above, issues that were previously seen as the sole purview of technical bodies like naming and addressing are increasingly linked with broader policy considerations.

Failure to find an agreement between proponents of the multistakeholder approach and advocates of more traditional governmental and intergovernmental control at the WSIS in 2003 led the WSIS to ask the UN Secretary-General to establish a Working Group on Internet Governance (WGIG) in 2004. The WGIG recommended the creation of an Internet Governance Forum as a multistakeholder discussion forum with no decision-making authority. The IGF was developed as a space where all stakeholders can come together to discuss internet governance issues and develop 'policy' in a bottom up manner, including the agenda setting process. However, the weakness of the follow-up of the WSIS meeting, in particular related to the implementation of the agenda agreed upon with civil society organisations involvement, can be observed from the outcome of the CRIS campaign[53].

The IGF model through governments in consultation with all stakeholders includes a plethora of bodies with varying decision-making power. Many argue that little coherent policy can emerge from such a morass, that the complexity of engaging in a large number of policy *fora* disadvantages some stakeholders from contributing and that much of the key policy decisions are taken by the private sector with no transparency or accountability (Global Partners and Associates, 2013).

[52] The WSIS is a forum organised by the UN in order to discuss broad implications of ICTs and their link to development. The United Nations Group on the Information Society (UNGIS) acts as the inter-agency mechanism with the main objective being to coordinate substantive and procedural issues facing UN implementation efforts of the WSIS outcomes.

[53] During the WSIS process, civil society organisations mobilised under an initiative called Communications Rights in the Information Society (CRIS) campaign, which directly influenced the outcomes of the summit. Currently, many of the civil society organisations that were involved in that process are focusing on specific areas such as privacy, intellectual property, gender, open source, etc. APC (2013) observes that these organisations have to deal with the immediacy of their own specific thematic areas and therefore very little work has been done to reflect the broader and inclusive communication rights agenda which emerged during the WSIS, building on the work of the CRIS Campaign. To-date, organisations working on communication rights are fragmented and not working together, and the official commitments have remained mostly on paper (APC, 2013).

Although the IGF is the only global, fully open and multistakeholder forum where Internet policy and governance is discussed and developed with spaces for the civil society to engage, it has a purely consultative role since utcomes of individual IGF review events are not legally binding. Ultimately, final outcome documents can only be adopted by member states of the UN[54] (and this is bad because it excludes non-state actors?). Therefore, the model has failed to satisfy those hoping for a global mechanism to tackle internet-related public policy.

Where does Africa fit?

The need to identify appropriate *fora* for African Internet governance participation comes from the fact that in the realm of the Internet, traditional governing bodies and decision-making procedures do not work as effectively as in the telecommunications environment. As described above, the Internet has not fully evolved in the African context. In short, it is the dysfunctional interplay between states and markets in Africa that has not created the conditions for investment, competition and autonomous regulation that are necessary conditions for an affordable, consistent and good quality access to the Internet. Although the current industry-led, bottom-up, voluntary, decentralised and consensus-based governance model has been recognised as one reason why the Internet has been able to expand globally, the efficacy of this model does not fully apply for African countries precisely because these actors[55] either do not exist, have limited resources or capabilities or have a smaller role in international *fora* compared to the influence exerted by developed countries (Global Partners and Associates, 2013).

Although multistakeholderism has been supported by established entities such as the ICANN, reforms within the ITU and the establishment of the IGF, African actors from the public and private sectors, which might have an interest in policy-making processes for the development of the Internet, have not participated effectively. For instance, a significant number of groups from developing countries – including the civil society, small business, minority groups, children and young people and people with disabilities have either been under-represented or not represented at all in the Internet governance regimes at present. Barriers to full participation include costs, expertise, and language, limited access and use of the Internet and a very small internet-based industry compared to the developed world. Although African governments have specific policy-making venues in these Internet governance fora, they perceive that their role is limited both at the ICANN and at the IGF. While at the ICANN they have an advisory function through the Governmental Advisory Committee (GAC), the IGF does not provide a venue for institutional deliberative decision-making (Research ICT Africa, 2013b). As remarked by an interviewee: "Africa needs real solutions, not a talk show. African governments participating in the IGF (both regional and global) perceive that the forum does not provide concrete solutions. At least the ITU provides a concrete space for deliberation. Governments only have an advisory role within the ICANN and therefore they do not have any decision making power. The main concern of African governments is that they are uncomfortable with giving advice to a California based organisation without having any real decision-making power. What African governments want from ICANN is

[54] These issues will be addressed by the WSIS+10 that will be held in 2015. UN Members participating at that assembly will have the possibility of endorsing decisions and, therefore, the WSIS+10 Review is likely to yield soft law outcomes that will have agenda setting value. Further, the WSIS+10 preparatory process involves a number of individual events hosted by different UN bodies with varying level of openness to non-governmental actors.

[55] The actors called for the governance of the Internet specifying that it should consist of the technical community, civil society, governments, the academia and the industry.

that the organisation should be restructured to become more international, inter-governmental and representative of Africans at decision-making level". (Research ICT Africa, 2013b).

With a few notable exceptions such as Kenya, Senegal and Rwanda, sub-Saharan Governments have failed to realise the cultural, social and economic implications of supporting a well-functioning Internet sector or sought to harness its potential for development. Also, the fact that the majority of Internet and telecommunications companies are based in developed countries created concerns among developing countries that the economic benefit of the internet is not equitably shared. Moreover, the industry based in developing countries is not well organised and unable to create critical mass able to shape a public policy agenda for the development of the Internet sector. Last but not least, the lack of a robust base of data, research and analysis related to the Internet sector does not allow for the identification of critical issues for the development of the sector in developing countries and to prioritise on challenges for the Internet sector to grow.

Taking into account the absence or nascent nature of traditional participants to multistakeholders *fora* in the African context and their inability to attend such a wide variety of institutions and meetings, the current model of multistakeholderism is under pressure in particular from African governments. In some African countries, governments are bringing Internet issues onto their government agendas through the Ministry of ICT or regulatory agencies, bypassing the multistakeholder model and approaching Internet issues through ex-ante regulation. This form of Internet regulation is aimed at supporting the development of a sector that is nascent in the African context and at preventing cyber-crime. While conditions have to be created at the national level that are conducive to the expansion of the internet, - from infrastructure and regulation of prices to the quality of service and secure online environments – the Internet is by its very nature global and requires international coordination and cooperation for it to continue to evolve and function as a global communications network.

It is clear from this background paper that some issues related to African Internet governance have not been resolved, despite being well-known. Organisational changes in Internet governance are needed to reflect a diverse distribution of powers, interests and ideologies which is lamentably not well served by the current dynamics of interaction between ITU, ICANN and IGF. An open, decentralised and effective governance process should be embraced throughout these institutions to facilitate Internet development in ways that respond to local African conditions.

For this reason, we would like to echo Jean Jacques Sahel's recent calls for inclusiveness and transparency of all Internet Governance institutions. Specifically, according to Sahel (2013), Internet governance *fora* and institutions should evolve and improve in three aspects:

- to make multistakeholder *fora*, institutions and processes inclusive, when they are not sufficiently so;
- to strive for transparency, because the Internet is a public good;
- to mirror the inherently cross-border, decentralised and global nature of the Internet and of the Information society that it empowers.

However, reforming decision-making bodies and policies in the area of the Internet with an African agenda in mind is not the only African Internet governance issue. It is

equally relevant to support the development of ICT policies at a national level enabling the Internet sector to flourish and expand, encouraging African private and civil society sectors to develop within their own national, regional and international *fora*. Only in this way, will an emerging African Internet industry fully participate and give shape to the Internet governance agenda.

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