Internet Governance: Global South Perspectives Paper Series

UNLOCKING ENHANCED COOPERATION

Authors: Lea Kaspar with Grace Githaiga, Anja Kovacs, and Joana Varon Ferraz

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AUTHORS

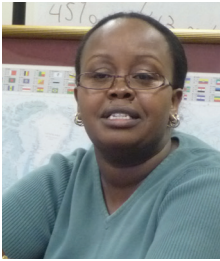## GRACE GITHAIGA

Grace Githaiga is an Associate of the Kenya ICT Action Network (KICTANet) where she coordinates many of the Network's events that touch on policy and regulation in internet governance matters. Currently she is the Africa's Civil Society Representative to the Working Group on Enhanced Cooperation on the Commission on Science and Technology for Development (CSTD). She has vast experience in civil society engagement in both ICTs and media.

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INTRODUCTION

Debates about 'enhanced cooperation' are, at their heart, debates about how internet-related public policy is made, and what role different stakeholders have in developing those policies. Frustrations at the current internet governance regime are revealing themselves in a range of processes that have been recently instituted and which could result in significant changes to the regime over the next few years, such as the WSIS +10 review process, the Global Multistakeholder Meeting on the Future of Internet Governance hosted by Brazil, and – the focus of this paper – the CSTD Working Group on Enhanced Cooperation. The outcomes that emerge from these processes will likely shape future internet challenges, where they are situated, how they are framed, and how they must be addressed (for example, will civil society be in the room or not). In an effort to understand the concerns about the current internet governance regime and the proposed solutions that are on the table, this paper analyses the concept of enhanced cooperation and arguments around it. It goes on to suggest a way towards formalising a distributed model of internet governance.

Who governs the internet? What are the roles and responsibilities of different actors in its management? How do governments fit in and what is their relationship to other stakeholder groups?

An early attempt to answer these questions was made during the World Summit of the Information Society (WSIS) – a mastodon international undertaking which involved over 11,000 and 20,000 participants in its respective two phases (Geneva in 2003 and Tunis in 2005). The Summit tackled a number of topics, but it was the debate around internet governance that nearly destroyed the negotiation process.

During WSIS, a number of stakeholders, particularly from the developing world, expressed frustration with the existing governance mechanisms, claiming that they did not allow public policy issues relating to the internet to be adequately dealt with at the global level. Many developing country governments pointed to the difficulties in participating in policy-making processes 'on an equal footing' with governments from the developed world, something they linked to the fragmented nature and structure of the system that did not sufficiently take into account geographic balance and linguistic diversity. During negotiations, they favoured a proposal for reform that would establish a central intergovernmental body for global internet policy-making. Others, civil society in particular, argued for more inclusive policy-making processes for all stakeholders, not just governments – an

approach that has since become more widely known as 'multistakeholderism'. On their side, the US, Australia, Japan and to an extent the EU, urged caution in advocating for any changes to the status quo. In a last minute political compromise to break the stalemate, the consensus text in form of the Tunis Agenda was drafted, calling for two processes to be put in motion: (1) the Internet Governance Forum (IGF), and (2) the enhanced cooperation process. In tandem, these two provisions, while failing to indicate any explicit consensus on substance, successfully appeased the opposing camps and allowed the Summit organisers to call the conference a success.

Out of the two processes called for by the Tunis Agenda, the IGF has since been established and rolled out through eight subsequent annual conferences. While marketed by many as an example of putting the multistakeholder approach into practice and a step towards instituting enhanced cooperation in internet policy-making, the Forum – lacking formal decision-making power – has only managed to partially address the case for internet governance reform that was made during WSIS. And as the WSIS 10 year anniversary approaches, questions that were left unresolved by the establishment of the IGF are now re-emerging under the guise of enhanced cooperation.

In a formal follow-up to the WSIS, a multistakeholder working group – the Working Group on Enhanced Cooperation (WGEC) – was set up in 2013 by the United Nations under the auspices of the Commission on Science and Technology for Development (CSTD) to examine the WSIS mandate regarding enhanced cooperation and to make recommendations on how to fully implement it. Halfway through its mandate, the group is facing some of the same questions that faced the WSIS participants, namely – if cooperation in internet-related public policy-making is not adequate and should be enhanced – who should be involved, in what capacity, and what global mechanisms should be put in place to achieve this?

But while the questions and the disagreements remain largely the same, the social, economic and political environment today is very different. In answering the above questions, there is a lot more at stake today than there was in 2005. Over 2.5 billion people are now online, the ICT industry is booming, and the use of ICTs has been directly linked with destabilisation of political regimes during the Arab Spring. In this evolving socio-political environment, many governments, democratic and authoritarian alike, are fervently trying to get a handle on things and assert their control over this eco-system. Furthermore, the NSA/Snowden revelations have significantly undermined the negotiating position of the US and its allies in the field of digital rights, leaving room for emerging and developing economies to further assert their views and interests. In this new context, the positions of states like Brazil, India, Russia or Mexico can become crucial in upcoming debates on the future of the global internet governance system.

In an effort to understand the concerns about the current internet governance regime and the proposed solutions that are on the table, this paper examines the concept and arguments around enhanced cooperation with emphasis on perspectives from Brazil, Kenya and India. It captures an online exchange between myself and three internet rights advocates from these countries – Joana Varon Ferraz, Grace Githaiga, and Anja Kovacs, and is divided into two sections: the first section examines the debates around what enhanced cooperation means, to what extent it is being fulfilled, and what role different stakeholder groups (particularly government and civil society) should play in developing internet-related public policies. The second section explores ways to formalise a model of internet governance that would allow the internet to continue developing as a conduit for innovation, free expression, and human rights.

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Lea Kaspar
London, January 2014

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CHAPTER 1
ENHANCED COOPERATION: STATE OF DEBATE

Lea: What is enhanced cooperation?

Grace: Enhanced cooperation is a legacy of the internet governance debates at the World Summit on the Information Society (WSIS) and the outcome agreement known as the Tunis Agenda.[1] Back in 2005, many people argued that the way the internet was run did not address many important policy issues on the internet at the global level. This belief led to calls for new ways to tackle these international public policy issues. A concept of 'enhanced cooperation' was borrowed from the European Union, where it used to cover those areas where countries chose to cooperate over and above the treaty obligations. The Secretary General of the UN was asked to establish an enhanced cooperation process, but the final WSIS outcome documents never said how this process should work in practice. Eight years on, there are still differing interpretations of what the concept means, who should be involved, and on what terms. The most critical disagreement lies in the interpretation of the role of different stakeholders in the process of decision-making, particularly on the role of governments. Should governments be the only decision-makers? Or should businesses and civil society groups also share key decisions?

Joana: Depending on who is reading and with what intentions, different parts of the Tunis Agenda can lead to different interpretations, and people tend to pick and choose those parts that best suit their argument. The debate on enhanced cooperation is one example of this. Article 69 of the Tunis Agenda says there is a need for enhanced cooperation "to enable governments" and also mentions that it refers to "international public policies". Taken out of context, this could be seen as referring to governments alone. But when the Tunis Agenda was drafted, the concept of enhanced cooperation targeted two issues: a) development issues, referring to the need for higher participation of the developing countries in internet policy debates, and b) the need to engage a wide diversity of stakeholders, not just governments, but business, civil society groups, engineers etc.

This broader interpretation of enhanced cooperation is reflected in other parts of the Tunis Agenda, as well as other WSIS outcome documents.[2] So if we take a look at the whole text and WSIS outcomes more broadly, they would imply that while dealing with "international public policy issues pertaining to the internet" all stakeholders should be allowed to contribute. For instance, paragraph 68 talks

1. www.itu.int/wsis/docs2/tunis/off/6rev1.html

2. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2376807

of "the need for development of public policy by governments in consultation with all stakeholders." Paragraphs 61 and 71 say that enhanced cooperation should be carried out "with the participation of governments, private sector, civil society and international organizations, in their respective roles", "involving all relevant organizations" and "involving all stakeholders." So while the Tunis Agenda may suggest contradictory approaches, in the overall context, it seems clear that enhanced cooperation was not meant for governments alone.

Lea: Eight years down the line, the formal process on enhanced cooperation mandated by the Tunis Agenda is now in the spotlight through the Working Group on Enhanced Cooperation (WGEC). Is the group any closer to agreeing on what 'enhanced cooperation' actually means?

Joana: The Chair's summary of Responses to the WGEC Questionnaire[3] identified three different assessments of whether enhanced cooperation has been implemented: that it hasn't, that it has, or that progress has been made but there are still gaps. These assessments largely reflected whether or not the respondents adhered to an inclusive or limited interpretation of enhanced cooperation. Some evaluated the implementation of enhanced cooperation based on whether or not they saw an increase in government participation that was on an equal footing. For instance, Saudi Arabia referred to the ITU Council Working Group on international Internet-related public policy issues (CWG-Internet) as the best example of enhanced cooperation. However the CWG explicitly closed its doors to civil society participation – even after several public demands made through statements to the Secretariat. It is clear that Saudi Arabia does not see participation by other stakeholder groups as essential to enhanced cooperation.

Anja: Unfortunately, the Indian government by and large also falls into this group. In its recent submission to the WGEC, India made it amply clear that it understands enhanced cooperation to be first and foremost a multilateral process. To realise enhanced cooperation, India argues, a "multilateral, transparent and democratic global platform where governments can, on an equal footing, decide the full range of international public policies related to internet, in a holistic manner" is essential. Other stakeholders might be consulted as part of this multilateral process, but they are not centrally involved in the decision-making – their role is only an advisory one. If a broader understanding of enhanced cooperation as involving all stakeholders is gaining currency, it does not seem to have gained much of a foothold with the Indian government.

Joana: But other respondents saw enhanced cooperation as an evolving process rather than one specific mechanism. Countries in this category, like Sweden, Finland, UK and Japan, said that engagement of non-governmental stakeholders was a crucial element and highlighted openness to participation of various stakeholders in forums such as IGF and the Internet Corporation for Assigned Names and Numbers (ICANN) as real progress. They had a far more positive view about the pace of implementation of enhanced cooperation.

Somewhere in the middle were those who share this broader view of stakeholder engagement, feel some progress has been made, but are also critical of the current status of enhanced cooperation, whether it be in terms of involving governments or other stakeholders. Brazil is a good example. The Brazilian government has mentioned the Tunis Agenda as the primary source for "understanding the proposed significance, purpose and scope of enhanced cooperation", but has also stressed that it cannot be taken out of the larger context of the need to ensure that "the international management of the internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations" as per paragraph 29 and others." The reference to multilateralism may ring similar to the current Indian position that Anja outlined, but calling for the full involvement of other stakeholders in the

3. http://unctad.org/meetings/en/ SessionalDocuments/WGEC_Summary_of_ Responses.pdf

process makes an important distinction. I believe that taking all stakeholders to the negotiation table is the way forward. Grace, what is the position on this among Kenyan stakeholders?

Grace: The Kenyan Government did not respond to the questionnaire and it is not clear what its position is on this question. However, the response to the CSTD questionnaire by Kenyan civil society groups spearheaded by the Kenya ICT Action Network (KICTANet) argued that enhanced cooperation should enable all stakeholders to participate in international internet public policy issues, and to bring to light the many cross-cutting international public policy issues that require attention and which may not be adequately addressed by the current mechanisms.

Internet governance issues are complex and internet governance is challenging due to the borderless nature of the net. Further, the changes in the internet governance sector within a short span of time are enormous. Good governance requires cooperation and sharing of resources or ideas as well as sharing of experiences by countries in how issues are handled.

Many participants in the Kenyan national Internet Governance Forum in 2013 saw enhanced cooperation as ensuring that all deliberations and outcomes of internet governance policy issues are consensus-based and that all stakeholders feel their input has been considered. Civil society groups expressed concerns that governments might be tempted to use mechanisms of enhanced cooperation to enhance their own interest in controlling and regulating the internet control (with some input from other stakeholders). Governmental efforts to take control of the internet are something civil society must stay alert to.

Lea: Are the gaps in the internet governance ecosystem that were identified during WSIS 2003-2005 still relevant? In other words, why is this debate of relevance to stakeholders today?

Anja: Over the last three years or so, we have witnessed a strong drive towards a monopolisation of internet-related public policy-making by governments, both nationally and globally. This is mostly evident at the national level, as a growing number of countries are implementing policies that undermine user rights. This, in turn, has negative effects for global internet governance, as it undermines the credibility of the governments in question when they claim to seek greater government control in internet governance globally.

This gains particular significance as the two camps that are seen to be emerging broadly align with those countries that already have control over the internet (or are closely aligned with those that have), on the one hand, and those that do not, on the other. The resulting situation is increasingly posing an obstacle for the further evolution of multistakeholderism and of enhanced cooperation involving all stakeholders.

It is at times difficult to escape the impression that civil society in particular has become pawns in a governments' game.[4] As a consequence, more or less across the board, governments are not drawing on the input and expertise of global civil society to the extent that the enhanced cooperation mandate requires. This has significant negative consequences for internet users around the world, as greater cooperation among all stakeholders is required to ensure that governments perform their duties in ways that protect the rights of not only their own citizens, but of users worldwide.

Joana: Exactly. The Tunis agenda had already asserted that "there are many cross-cutting international public policy issues that require attention and are not adequately addressed by the current mechanisms". Eight years later, this diagnosis is still true.

4. http://internetdemocracy.in/2013/07/pawns-in-a-governments-game/

And now, on top of the idea that current mechanisms aren't adequate, the reactions to this gap are being intensified due to revelations around practices of State surveillance among nations which relies on using internet infrastructure. This is being manifested in dangerous state-centric responses by governments, like nationalising data centers, or pushing for traditional multilateral solutions through forums such as the International Telecommunications Union (ITU).

Actually, it is almost as if this conceptual debate about defining enhanced cooperation is blurring the most important part of the challenge, which is to develop mechanisms to address cross-cutting international public policy issues and change the status quo. I would dare to say that using such a vague term in such an ambiguous framework was a conceptual mistake and that we should stop using this term and just move forward and focus on how to promote inclusion of all interested stakeholders while developing internet policies. We need to bring the debate down from the skies, look at it from a more practical perspective, and take it from there. In the end, the goal is implementation.

Grace: This isn't an easy task though. Even if there is an overwhelming support for multistakeholderism, there are also different understandings of how to implement such a model. How do you select representatives from each stakeholder group? How do you allow their participation on an equal footing? In which steps of the decision-making process should they participate? What are their 'respective roles'? What are 'the relevant organizations'? There have been some examples of shared decision-making at the national level, like in Brazil and Kenya,[5] as well as in some more technical environments, but the trend still hasn't caught up with the rest of international public policy-making.

But going back to the question of why this debate is still relevant – there are various concerns regarding the slow path of implementation of enhanced cooperation from the perspective of civil society in Kenya. These include the fact that current internet governance processes like the IGF are not binding and lack implementation mechanisms, that governments wield a lot of power when implementing policies at the national level, and that some stakeholders see themselves as outsiders and would rather participate from the sidelines. Further, in regards to foreign policy, people feel that policies emanating from elsewhere get concluded before the local community even has a chance to discuss them. As such, local input is often superficial and policies aren't able to reflect or achieve what Kenyans would want them to.

And of course, ongoing issues such as user connectivity, accessibility and diversity, access to infrastructure – in this case connectivity of marginalized groups – all create barriers to effective multistakeholder participation. Another barrier is that of cultural diversity. Many feel that use of the internet is generational and negatively affects the older generation. There is also a need to create content in different languages in order to enhance the richness and value of the internet for all – as was suggested at the IGF in Vilnius 2010. A multilingual internet would be a relevant and useful world resource.

Lea: It is worth bearing in mind that we are dealing with a policy area that is both new and at the same time incredibly complex. And yes, there are many unanswered questions on how to adequately address internet-related public policy, but we have also moved forward in a number of ways. The enhanced cooperation process had been deadlocked until 2012, but hasn't the Internet Governance Forum (IGF) in a way side-tracked it and inadvertently demonstrated the value of bringing a diversity of actors and views to the table?

Grace: It does feel that enhanced co-operation has become a distant memory of WSIS 2005 Tunis Agenda rather than something that makes steady progress like the IGF.

5. See Appendix

On the other hand, while the IGF is genuinely multistakeholder many people do not take it seriously given that the IGF discussions are often unfocused and that it doesn't have real or binding outcomes. As a result, many groups do not participate in the IGF with the seriousness and intensity they would in more binding forums like the UN General Assembly where members sometimes take very tough positions. Enhanced cooperation has not found formal processes mandating stakeholders to participate. This leads people to feel that enhanced cooperation has not really been implemented, and that there is no serious effort to encourage stakeholders to come together. Others feel that enhanced cooperation has been implemented directly and indirectly by the different stakeholders at the national level. However, stakeholders should define who they are and prove their legitimacy, as well as be accountable to the group they purport to represent.

Anja: Also, it is important to remember that when the discussions about IGF renewal were taking place a few years ago, many developing countries in particular insisted that the enhanced cooperation mandate would now be operationalised in parallel and in fact made that a precondition for IGF renewal. I agree that the delay in fully operationalising enhanced cooperation might have brought into perspective the value of multistakeholderism, as exemplified by the IGF, more clearly, but as Grace's comments also highlighted, the need for enhanced cooperation has continued to be felt throughout – and more strongly so as it became clear that the IGF would likely not fulfil that need, which is crucially one of decision-making, not just of dialogue.

Lea: So, what other barriers to enhanced cooperation are there at the international level?

Anja: For civil society, especially from the global South, there are two particularly significant barriers to effective participation. The first one concerns process matters: avenues for participation often remain either extremely limited or absent, and where they are made available, their exact nature, modalities, and significance often remain unclear until the very last moment. The Independent Experts Group that was put together in preparation for the ITU's World Telecommunications Policy Forum (WTPF), while a welcome initiative as such, provides a good recent illustration of such shortcomings. For developing country civil society, which frequently has to manage limited resources both in terms of money and people, ill-defined and/or last-minute processes make effective planning and, thus, participation impossible (we believe that the same is true of many developing country governments).

The issue is exacerbated by the fact that most internet governance meetings take place in the developed world, as a consequence of which the financial investment to attend is indeed considerable, and this brings us to a second issue: that of funding to enable participation. Unless more funding is made available to enable participation in at least key events in a process, multistakeholderism – be it under the mantle of enhanced cooperation or otherwise – will be stillborn. Remote participation, while valuable, cannot replace all in-person attendance at key meetings in an internet governance processes for those who aim to follow such processes closely.

While a wide-range of governments and international institutions now pay extensive lip service to multistakeholderism, until the above issues are resolved, effective participation of global civil society will remain impossible.

Lea: What official positions on enhanced cooperation can we expect from the governments of Brazil, India and Kenya?

Grace: The Kenyan position is difficult to predict at the moment since the government is still new with new officials who are still 'settling in' and taking time to learn the operations of the sector.

Anja: It is not yet clear what position the Indian government will be taking, either. Over the past one year, it seemed that the Indian government had dropped the UN Committee for Internet-Related Policies (CIRP) proposal which it had first put forward in October 2011, after Kapil Sibal, the Minister for Communications and Information Technology, implicitly distanced the country from it at the 2012 Baku IGF. In his speech at the IGF, he no longer referred to the CIRP proposal or the need for a multilateral body, but instead talked about the need to develop a system that is collaborative, consultative, inclusive and consensual. Instead, Sibal proposed that a Working Group on Enhanced Cooperation be set up under the aegis of the UN to "deliberate on the approaches to the design and establishment of such a cyber-paradigm".[6]

This followed a public meeting in Delhi where the UN CIRP proposal was, for the first time, introduced and explained in detail by a civil servant of the Indian government to the public. While this effort was appreciated as such, opinion in the room across stakeholders was overwhelmingly against the proposal in its existing form.

The Minister's speech in Baku thus seemed to signal an important, and many argued welcome, change in direction. But India's submission to the WGEC gives the impression that perhaps not as much has changed as we had liked to believe. In the submission, India makes it clear that it sees enhanced cooperation as requiring a transparent and democratic new mechanism that is essentially multilateral, although it will consult other stakeholder groups. Though India has remained very sparse in its recommendations on the specifics for this mechanism this time round (it submitted these in a separate document to the WGEC), this means that in its central characteristics, India's views on enhanced cooperation continue to follow the outlines first established in the CIRP proposal. Despite India's support for multistakeholderism in the context of the IGF, the word 'multistakeholderism' is not mentioned even once in its submission to the WGEC. And despite the recent establishment of a Multistakeholder Advisory Group (MAG) in India, no national consultation on this proposal was conducted either.

Joana: This is exactly why I think we need to drop the conceptual debate about what enhanced cooperation means and focus on implementing multistakeholder participation. Happily, apart from some not properly briefed interventions at ITU, I think Brazil is moving towards this approach. When assessing the remaining barriers to enhanced cooperation in its WGEC submission, the Brazilian government identified three gaps:

1. There is no locus for decision-making on some important issues requiring international public policies including emerging issues such as the debate between security and privacy;
2. There is no global platform where governments can, on an equal footing, address the full range of international public policies related to the internet in a holistic and cross-cutting manner; and
3. There is no mechanism at the international level with a mandate to oversee the work of organizations dealing with critical internet resources.

It is important to highlight these three gaps, because they are the ones that have motivated Brazil to host the Global Multistakeholder Meeting on the Future of Internet Governance in April 2014. In the context of the WGEC, Brazil has suggested that the group should engage in a mapping exercise compiling activities, initiatives and processes that are already being undertaken by existing institutions, fora and organizations, to develop a clear assessment of enhanced cooperation and any gaps. The Brazilian government's submission to the WGEC also reinforces the idea of creating an appropriate "framework to ensure that the roles and responsibilities of other stakeholders are fully exercised in offering their strengths, voicing their demands and providing relevant inputs and expertise for policy development".

6. www.intgovforum.org/cms/component/content/article/1249

Hopefully, the Brazilian national experience of building a multistakeholder model, its weakness and strengths, will be taken into account both in the organization of the Global Multistakeholder Meeting on the Future of Internet Governance and in the positions of the Brazilian Government in the enhanced cooperation debate.

CHAPTER II
TOWARDS A DISTRIBUTED MODEL OF INTERNET GOVERNANCE

Lea: How do we address the concerns about the current system while allowing the internet to continue developing as a conduit for innovation, free expression, and human rights? Should we come up with completely new mechanisms or should we work to improve the existing structures?

Anja: Current debates give the impression that there are only two options where internet governance arrangements are concerned: the status quo and a more centralised form of governance, which is often (though not always) imagined as involving greater government control. This is, however, a fallacy. While it is clear that a more inclusive system of internet governance needs to be developed – and the status quo is not an option – centralisation is not a good alternative.

This is because it mistakes the internet for an issue, rather than understanding it as a space. This is important for two reasons. Firstly, the internet's boundaries are different from those in the offline world (they do not coincide with geographical boundaries nor are they of the same nature), which has implications for the ways in which its governance should be structured. Secondly, it is a mistake to think that one body, and one set of experts, could possibly be responsible for effective policy-making on all internet-related matters. High-quality international public policies that address the concerns of all users is unlikely to emerge from a top-down process that is led by and vests decision-making power in one single body. Such a centralised process will accommodate only a very limited range of experts (and will likely also frequently consult the same small circle of people).

What we therefore require is a form of a distributed governance model. This will ensure that a far wider range of actors and a far more substantive amount of expertise is drawn on when making international internet-related public policy.

Grace: Also, not all issues will require the same processes or same type of stakeholder engagement at all stages in the decision-making process. In their responses to the WGEC questionnaire, stakeholders have identified over 200 public policy issues that are internet-related. Even if this list gets consolidated, which is what the WGEC is trying to do at the moment, it is still likely going to be as broad as the barn door covering everything from management of critical resources, through privacy and data protection, to intellectual property.

Anja: I agree. While a large range of issues are relevant to international internet-related public policy, they do not all depend in equal measure on policy-making at the global level for their resolution or implementation oversight.

Grace: Different issues might also require different expertise or different institutions to get involved. For example, expertise required to tackle the issue of spam would differ considerably from that for tackling intermediary liability. This goes back to Anja's point about the internet not being an issue, but a space in which various different issues manifest themselves.

Lea: How would an issue-based distributed model address the lack of capacity to follow and participate in various internet governance processes that a number of developing country stakeholders have raised?

Anja: If the participation of developing country stakeholders in internet governance is to be increased, they need to be offered ways of participating that have immediate and clear value. In the current system, it is not clear how participation can benefit their priorities. So the real issue is not limited resources, but the difficulty in deciding how these resources would be best allocated. To help further such efforts and assist in making connections between issues and networks where necessary, one global body could function as a clearinghouse for all such efforts, but this body should not function as a decision-making body per se.

Joana: While I agree that building on the existing structures is the way to go, it will be important that things don't fall through the cracks. In the current scenario, because the system is so complex, it is difficult to understand what happens where – so one issue is the lack of clarity. The other problem is that a number of issues don't really have a natural home, like issues around jurisdiction and cross-border data flows. So even if we adhere to an issue-based approach and build on existing processes, there should be a way of making sure that everyone's concerns can be addressed in an adequate way. This would require some sort of coordinating function to be developed. It is also not excluded that new institutional frameworks for particular issues would need to be created.

Anja: I completely agree that not all issues that require urgent attention are currently embedded in the existing governance structure. Vexing questions around jurisdiction, as you mentioned, do not have a natural home at the moment, nor does the globalisation of ICANN – and in the future many more issues will likely emerge as a consequence of the evolution of technology, issues that we simply can't foresee right now.

Lea: You mentioned the need for a 'clearing house' function. Where could this function be housed?

Anja: As it already brings together the widest range of actors in the internet governance space, the IGF is ideally suited to fulfil a clearing house role. But this would require that the IGF is restructured to include structured feedback processes on ongoing issue-specific internet governance processes, so that a wider audience can voice its opinions on proposals as they evolve. Some of the proposals of the CSTD Working Group on IGF Improvements provide a helpful starting point for thinking about how to practically channel such feedback at the IGF.

At the same time, having such a role would help to sharpen the mandate of the IGF, and ensure that its contribution to internet governance is enhanced as foreseen by the Working Group on IGF Improvements. It would lead to a more specific agenda for the Forum and thus likely increase its perceived relevance among a range of

actors. Accordingly, while a core group of participants will likely continue to attend the Forum on a yearly basis, a considerable segment of participants will likely shift from year to year, depending on their own expertise and the central issues that are on the agenda at that time. In the long term, internet governance will benefit from such an enlarged, even if shifting, internet governance community, as it will further ensure that it can draw on a great range of expertise.

Grace: I agree with you! As I said during the IGF in the session on 'Who governs the internet' Kenya is one of the countries that has been involved in the IGF locally, regionally, and globally from the early stages. Presently, there seems to be fatigue around the IGF and yet the IGF is a good space for bringing on board issues of concern, debating them in an open and honest manner and coming up with policy suggestions. Communities at the IGF can ask difficult questions and government have an opportunity to react/respond.

The IGF has been all encompassing and has brought different stakeholders together. The question now is how to stop it from just being a talk shop and help it offer practical lessons that can also touch ordinary citizens at the community level who are affected by such concerns as affordability. Kenya has a new government and the new leadership is calling for practical lessons. Improvements can be made without setting the scene for an intergovernmental takeover of the internet by say institutionalizing multistakeholderism. This means that every contribution by any stakeholder group will need to be considered and analysed for its value, deliberations of all stakeholders made transparent in particular when final outcomes are produced and discussions made available to all who are interested.

Joana: There have been several proposals suggesting that this function should be linked to or even housed within the IGF. But there are different ideas about the exact scope and practicalities of it. Some think that the body that performs the clearing function should also perform a coordinating role to direct and guide processes further. Some even suggest that the same body should also engage in the very process of decision-making on particular issues. The latter option goes in the direction of power centralisation, which is problematic as discussed earlier.

Grace: But I think a degree of institutionalisation of the coordination function would still be necessary. Having a map of where issues are and what mechanisms address them is not sufficient – it would need to be complemented by some sort of a process roadmap or a mechanism to establish next steps.

Lea: Who could perform this coordinating function?

Joana: There are various proposals on the table. Some suggest reforming the existing bodies and structures like the IGF to coordinate public policy in this field, others argue that a new mechanism to perform this task should be developed. More discussion is needed to explore these options, but there is broad agreement across civil society working in this field that the makeup of the coordinating body should be multistakeholder in nature.

Anja: The Internet Democracy Project has proposed that the Working Group on Enhanced Cooperation (WGEC) take up the task of deciding on the most appropriate ways to address the remaining issues, at least for now. We argue that the WGEC should map these issues, list them in order of priority and explore the various ways in which they could best be taken forward, including by mapping existing processes and fora that already work in this area. The isolation and detailed definition of the exact aspects of an issue that require global public policy-making should be an intrinsic part of this exercise.

I was obviously thrilled when it became clear at the November 2013 meeting of the WGEC that the Working Group itself also sees at least this initial mapping exercise as an inherent part of its task: it set up a separate Correspondence Group to take up precisely this task. To what extent this mapping exercise will influence its final report of course remains to be seen, but I am hopeful that the WGEC will either come up with concrete suggestions to operationalise a more formalised decentralised internet governance model, or will request an extension of its mandate to do precisely this.

In the longer term, and irrespective of the outcome of this exercise in the WGEC, I agree that it would be good to have a more permanent organ to take up this role wherever required though. Others have proposed that this function could perhaps be housed within a new body attached to the IGF and I think this could work well, although I would prefer if in that case, the IGF MAG would be repurposed to allow it to take up that function – I am not a fan of construction of new bodies unless they are absolutely needed, and I don't think that's the case here.

Lea: Once an issue that requires global policy-making is identified... what next? One would presumably need to develop an appropriate decision-making process for it?

Anja: The seeds for this are frequently already embedded in existing governance arrangements, including the WSIS framework. For instance, the WSIS Action Lines already provide an indication of the institutions that could facilitate the processes for resolving a range of internet-related issues. So this framework could be used as a starting point for deciding which pre-existing institutions have a mandate to cover a specific internet issue, for example governance issues regarding privacy. Those institutions could then collaborate in constituting a multistakeholder process to start taking forward this work.

Lea: What about issues that don't have a natural home already, or emerging issues?

Joana: Following the issue-based model, one can imagine different ad hoc multistakeholder working groups developed to deal with specific issues. That is, if an existing body or mechanism isn't adequate or sufficient. Where or how those working groups should be formed and what decision-making processes they should use requires more discussion. But for instance, the groups could work by consensus with the option to shift to another process where necessary and appropriate (including multilateral processes, e.g. to draft a treaty).

Anja: This is a task the coordinating body that we were discussing earlier should take up – be that body a body under the IGF or the WGEC. But I agree with Joana that the venues and processes to take forward an issue proposed by that body could take a variety of forms. For example, it can well be imagined that some issues would best be addressed by a successor to the WGEC, set up under the CSTD, which could be tasked to develop work around a specific issue in depth. In other cases, existing processes could, however, be leveraged to reach agreement on how to move forward in a specific area of work, such as the work done by the Internet and Jurisdiction Project on jurisdiction issues, including through a multistakeholder consultation process across continents. Indeed, it is important to remember that multistakeholderism can take many forms.

At the very minimum, however, the Internet Democracy Project has proposed that all processes and networks thus initiated should adhere to the following principles:

- They should have participation from all stakeholder groups.
- They should be inclusive, transparent and accountable to the wider internet governance community, with sufficient and timely notice and background being provided to all stakeholders on modalities, aim/purpose and significance.
- They should be global in nature. 'Solutions' developed in fora with a limited geographical reach do not amount to international internet public policy-making as envisioned by the enhanced cooperation agenda. In order to be global, substantial representation across regions is essential.
- They should be arranged in such a way that none of the stakeholders or regions can determine the outcome without the cooperation of all other stakeholder groups and regions. Note that this will still leave space, for example, for governments to be the main decision-makers once a mechanism that all stakeholder groups and regions have agreed on to address a particular issue has been put into place, but the nature of such a mechanism is one that all stakeholders will always need to agree to.

Lea: What would be the next step towards formalising the distributed model? How can the Working Group on Enhanced Cooperation contribute to furthering this vision?

Joana: I think an analysis of the current issues and mechanisms should be the first step. In that sense, I agree with the proposal from the Brazilian government and the decision taken at the last meeting of the WGEC to map current internet governance issues and mechanisms and thus adopt an issue-based approach to identifying gaps in the current system and thinking about ways to address them. I think this should be the first step to build a distributed structure of internet governance with well-defined decision-making processes and mechanisms.

And the current context, after WCIT and post-Snowden, can be a lever to push for reform of the status quo, by setting new priorities and building the political will for change. While the revelations about pervasive monitoring and mass surveillance have already shaken the current order, a new search for trust in the internet governance ecosystem has begun. There is now more political will and consensus around this among the different stakeholder communities than ever before, especially around the need to address gaps in the current institutional framework, the need for multistakeholder mechanisms, and the need to address emerging issues.

Grace: There is definitely a momentum building up. A number of forums are discussing this at the moment including forums within the framework of the WSIS review process led by the ITU, and the broader UN review of the WSIS as mandated by the General Assembly.

Joana: The Global Multistakeholder Meeting on Internet Governance[7] hosted by Brazil in April 2014 is also meant to come up with a roadmap for internet governance reform. It will be important that outcomes of these processes are consistent and support a vision of internet governance that respects, protects, and fulfills human rights.

7. www.netmundial.br

APPENDIX

KICTANET AND CGI.BR: NATIONAL MODELS FOR IMPLEMENTING THE MULTISTAKEHOLDER APPROACH

Kenya and Brazil have both had experiences with instituting multistakeholder models in internet related public policy through the work of the KICTANet and the Brazilian Internet Steering Committee (CGI.br), respectively. Some point to these instances of implementation of the multistakeholder approach as potential guidance for instituting it at the global level.

KENYA: the case of KICTANet

The Kenya ICT Action Network (KICTANet) brings together civil society, industry, technical community, academia, media and Government, and provides a framework for cooperation and collaboration among these various interests. Since 2004, the network has worked to facilitate and enhance the legitimacy and support necessary to build a working relationship between the government and other key stakeholders in ICT policy development processes. KICTANet has made a significant difference on the national ICT landscape by successfully championing improvements in the text of various policies, regulations and legislation. The first major policy the network addressed was Kenya's National ICT Policy (2006), where KICTANet facilitated multistakeholder input from a wide cross-section of Kenyans, provided draft language and a working document for the national ICT multistakeholder workshop that took place in June 2005, as well as organised round table discussions with and for policymakers. KICTANet's advocacy strategy includes providing research and/or analysis of an issue or proposed bill, facilitating mailing list discussions to debate the issue under review, and collecting and collating comments from a wide range of stakeholders, often as preparatory work for more in-depth discussion/analyses. The follow up is then done through face-to-face meetings, round table or focus group discussions with target stakeholder groups – often with policy-makers/the regulator – and finally, presentation of the outcome document/report to the relevant stakeholder group, the Ministry or Attorney General, among others.

KICTANet advocacy has played a direct role in the opening up of Voice over Internet Protocol (VoIP), as well as internet gateways, adoption of an open access

model for the Broadband initiative – and fostered stakeholder contributions to the Freedom of Information bills, the Independent Communications Commission of Kenya bill and the Media Council bill among others. Visionary leadership at the then Ministry of Information (now renamed Ministry of ICT) played a positive role in entrenching this stakeholders model and championed the issues not only nationally but internationally. The regulator has endeavoured to consolidate stakeholder input into any policy document, before it goes to the final process. Moreover, multistakeholderism is now supported by Kenya's 2010 Constitution. Article 10 makes it a requirement for any public policy process to bring on board stakeholders input, making participation of citizens one of the national values and principles of governance.

Stakeholders can therefore push or agitate for the recommendations to be taken on board by the Ministry of ICT. The challenge remains how to operationalise Article 10, i.e. how to ensure that beyond simply collecting stakeholder views, that there are taken in board in government positions. Unfortunately there are examples of the regulator ignoring civil society input on critical issues. This was the case in WICT where stakeholder input was ignored and the Regulator went ahead to align with other African countries in support of an expanded ITU mandate.

BRAZIL: the case of CGI.br

CGI.br was created by an Interministerial Ordinance in 1995, signed by the Ministry of Communications (Minicom) and the Ministry of Science and Technology (today MCTI), in order to promote the participation of all the stakeholders in decisions regarding the "implementation, management and use of the internet". Recently, the ordinance was amended by Presidential Decree[8] in September 2003 which, among other things, set additional procedures about its composition and election processes. Currently, CGI.br is composed of 21 members from government (9), private sector (4), civil society (4), scientific and technological community (3), and one independent expert. Representatives from each stakeholder group are elected among their respective constituencies, and each group nominates its own candidates to participate. The mission of CGI.br involves: "proposing policies and procedures regarding the regulation of internet activities; recommending standards for technical and operational procedures for the internet in Brazil; establishing strategic directives related to the use and development of the internet in Brazil; promoting studies and technical standards for network and service security in the country; coordinating the allocation of internet addresses (IPs) and registration in the <.br> domain; collecting, organizing and disseminating information on internet services, including indicators and statistics." In order to fulfil its mandate, it has created NIC.br – an NGO whose different branches manage the Brazilian top level domain (Registro. br); technical aspects of security (CERT.br); research and production of data, statistics and other indicators about internet development in the country (CETIC); projects related network technologies and operations (CEPTRO.br); and patterns and guidelines to foster the technical potential of the World Wide Web (W3C. br). In parallel, CGI.br has working committees (currently one on anti-spam, one producing indicators on internet access and usage in the country, and another to promote the debate about production of digital content in Portuguese). These activities are mostly funded through the management of <.br>, which by 2013 had a budget of R$19.295.000,00.[9] CGI.br has monthly meetings with all members in which they draft resolutions on a variety of subjects, from setting CGI.br positions on political issues such as the NSA scandals, to formulating strategic plans for the country at ICANN, approving its budget, promoting campaigns (e.g. the campaign against .amazon), and even supporting internet governance events.

8. www.cgi.br/regulamentacao/decr4829.htm
9. www.cgi.br/regulamentacao/ resolucao2013-004.htm

CGI.br is a unique organisation, as it is not part of government, nor a regulator. As such, all its resolutions related to internet public policies are non-binding and only serve as guidelines. Government can then decide whether or not to follow these guidelines. This was the case with the guidelines for spam, as well as with the 10 internet principles, which have inspired the drafting process of the 'Marco Civil' Draft Bill and the recent speech of President Rouseff at the opening of the 68th UN General Assembly. Nevertheless, there have been cases of regulations agreed that are contrary to the guidelines set by CGI.br, particularly when the telecom regulatory agency – Anatel – has been involved. For example, Anatel was recently debating a regulation (regulamento SCM) establishing that ISPs should retain connection logs for three years, despite the fact that the Marco Civil provides for just one year. The same draft regulation aimed to address particulars about net neutrality, an issue that should (according to latest versions of Marco Civil) be decided by the President in consultations with CGI.br. Nevertheless, despite the fact that CGI.br advice is not directly enforceable, members have repeatedly argued that it is better for CGI.br to provide technical and non-biding resolutions developed in a multistakeholder manner, rather than to pass binding regulation. They feel this leads to more balanced and open debates, which are less politicised.
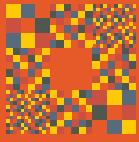
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