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NETMUNDIAL: REFLECTIONS FROM BRAZIL, INDIA AND KENYA

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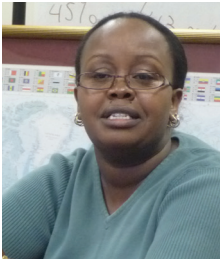Authors: Anja Kovacs, Grace Githaiga and Joana Varon;
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INTRODUCTION

LEA KASPAR, LONDON, SEPTEMBER 2014

The NETmundial conference was a seminal event in the 2014 internet governance landscape. The multistakeholder meeting, convened by the Brazilian government on the back of the post-Snowden frenzy, momentarily turned São Paulo into a Mecca of decade-old internet governance debates; simultaneously, a beacon of hope for reformists and revolutionaries, and a source of anxiety for supporters of the status quo. NETmundial generated a remarkable buy-in from all the stakeholder groups, gathering together 1229 participants from 97 countries, including a large number of government representatives who, much to their discomfort, dared to venture out beyond existing multilateral decision-making frameworks. As an experiment in global governance unconstrained by conventional rules of decision-making, NETmundial and its outcomes offered a unique insight into the evolving geopolitical environment of internet governance, its underlying narratives and actors, and their motivations. As internet governance debates migrate towards more traditional inter-governmental forums – namely the International Telecommunication Union (ITU) and the UN General Assembly –, understanding the underlying motivations of key actors will be essential in developing an effective civil society strategy for engagement. In order to contribute to this goal, this publication takes NETmundial, as the key internet governance event in 2014, and explores the positions towards the conference taken by three global South governments – Brazil, India and Kenya. What motivated the Brazilians to organise the meeting? What lay behind the conflicted position that India took? Why did the Kenyan government stay largely silent?

In *NETmundial: A collaborative global brainstorming on internet governance challenges*, Joana Varon Ferraz, who participated in NETmundial as a member of its Logistics and Organizational Committee, summarises the main proceedings and outcomes of the conference, highlighting how these stacked up against the main substantive demands made by civil society groups. In chapter two, she goes on to analyse the position of the Brazilian government and the impact of NETmundial on the country's position in other relevant forums and processes. In chapter three, Anja Kovacs outlines and examines India's participation in NETmundial, focusing on the tension between multistakeholderism and multilateralism in India's contributions. In the final chapter, Grace Githaiga provides a perspective from Kenya, in which she explores the reasons for the government's lack of participation in the conference and makes the case for Kenya's greater engagement in internet governance debates in the future.

NETMUNDIAL: A COLLABORATIVE GLOBAL BRAINSTORMING ON INTERNET GOVERNANCE CHALLENGES

BY JOANA VARON

BACKGROUND RATIONALE

On 23–24 April 2014, São Paulo hosted the *Global Multistakeholder Meeting on the Future of Internet Governance*, or the so-called NETmundial, an event with the goal to "pursue consensus about universally accepted governance principles and to improve their institutional framework".[1]

The meeting was announced to the world at the beginning of October 2013 by Brazilian president Dilma Rousseff, after a meeting with the CEO of ICANN, Fadi Chehadé, just a few days after her speech on 24 September at the 68th session of the UN General Assembly and after representatives from the technical community, including ICANN, IETF, W3C and many Internet Registries, had published the *Montevideo Statement on the Future of Internet Cooperation*.[2] Both announcements happened in the aftermath of Snowden's revelations as a way to address them.

The Montevideo Statement stressed the '"concern over the undermining of the trust and confidence of Internet users globally due to recent revelations of pervasive monitoring and surveillance" and "warned against Internet fragmentation at a national level." It also recognised the need "to address Internet Governance challenges (...) towards the evolution of global multistakeholder Internet cooperation" and for "accelerating the globalisation of ICANN and IANA functions, towards an environment in which all stakeholders, including all governments, participate on an equal footing."[3]

President Dilma's speech was also strong in affirming that NSA surveillance practices are "a breach of international law and an affront of the principles that

1. www.nic.br/imprensa/releases/2013/rl-2013-62.htm

2. www.icann.org/news/announcement-2013-10-07-en

3. www.icann.org/news/announcement-2013-10-07-en

must guide the relations among them, especially among friendly nations".[4] Dilma also cautioned that the information and communication technologies (ICTs) could become "a new battleground between States", as "in the absence of the respect for sovereignty, there is no basis for the relationship among nations". Therefore, she stated that the "problem affects the [whole] international community and it requires a response," pointing that the "UN must play a leading role in the effort to regulate the conduct of States with regard to these technologies."[5]

In the search for a solution, she stressed that Brazil was going to "present proposals for the establishment of a civilian multilateral framework for the governance and use of the internet and to ensure the effective protection of data", but not only this, she also stressed the "need to create a multilateral mechanism for the worldwide network"[6] capable of ensuring the following principles:

1. "Freedom of expression, privacy of the individual and respect for human rights.
2. Open, multilateral and democratic governance, carried out with transparency by stimulating collective creativity and the participation of society, Governments and the private sector.
3. Universality that ensures the social and human development and the construction of inclusive and non-discriminatory societies.
4. Cultural diversity, without the imposition of beliefs, customs and values.
5. Neutrality of the network, guided only by technical and ethical criteria, rendering it inadmissible to restrict it for political, commercial, religious or any other purposes."[7]

Therefore, the idea for NETmundial emerged on the back of revelations of monitoring and surveillance practices as a single event outside of the domain of the traditional UN or internet governance forums in order to pursue consensus for improving the institutional ecosystem to enable a multistakeholder internet governance capable of protecting fundamental human rights and the open and end-to-end nature of the internet.

The idea was well received and was followed with a mix of scepticism, excitement and some concerns from different stakeholder groups. Moreover, Brazil had two significant experiences to foster hope and trust in the international community and which actually served as a starting point for the innovative processes developed for NETmundial: (1) the multistakeholder experience of the Brazilian Internet Steering Committee (CGI.br), and (2) experience from the whole process of drafting the *Marco Civil da Internet*, the Brazilian Civil Rights-Based Framework for the Internet.

ONLINE CONSULTATIONS: ENGAGEMENT AND PARTICIPATION PRIOR TO THE MEETING

Inspired by the participatory experiences of the Marco Civil, in preparation for the event, the secretariat organised two phases of online consultations.

In the first phase, contributors from all the stakeholder groups could submit ideas and references on the two main tracks of the meeting, namely the principles and the roadmap. In total, the organisers received 180 content contributions[8] from 46 different countries, sent by representatives of civil society, the private sector, academy and the global technical community. According to the organisers, civil society organisations were responsible for 31% of the contributions, private companies for 23%, government institutions for 15%, academic community for 11% and the technical community for 8%.[9]

In terms of the contributions received by country, the United States submitted 31 contributions, Brazil sent 16, the United Kingdom and India sent 7 each, Switzerland, France and Argentina sent 6, and Japan and Sudan, 4. Tunisia, Spain, Russia, Nigeria, New Zealand and Germany all sent 3 contributions each. Yemen,

4. http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf

5. http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf

6. http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf

7. http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf

8. http://content.NETmundial.br/contributions-pdf.zip

9. http://NETmundial.br/blog/2014/03/25/received-content-contributions-will-sustain-discussions-on-internet-governance-at-NETmundial/

South Korea, South Africa, Senegal, Poland, Mexico, Kenya, Italy, Iran, China, Canada, Belgium and Australia each sent 2, while Zimbabwe, Uruguay, Ukraine, Trinidad and Tobago, Sweden, Portugal, Norway, Mauritius, Malta, Malaysia, Kuwait, Côte d'Ivoire, Denmark, Republic of Congo, Colombia, Bulgaria and Austria were accountable for 1 contribution each.

All these contributions served as the basis for the elaboration of the NETmundial draft outcome document,[10] which, after being leaked by Wikileaks,[11] was submitted for comments in the second round of consultations on the NETmundial platform,[12] The document received 1370 comments between 15 and 21 April 2014, as per the following breakdown:

Section of document	N/A	Academia	Technical Community	Government	Private Sector	Civil Society	Total
Introduction	1	3	1	10	2	23	40
Principles	59	55	78	62	221	357	832
Roadmap	20	39	41	75	119	204	498
Total	80	97	120	147	342	584	1370

Source: NETmundial Draft Outcome Document Public Consultation: final report on comments,[13] with a note that all commenters' sectors are self-declared; and there was no validation system to verify the authenticity.

Civil society and the private sector were the most active contributors in both phases of the preparation process. In the section on the principles, the most commented paragraph was paragraph 13 about 'Enabling environment for innovation and creativity', where the discussions focused on whether or not to address intellectual property rights in the text. Besides that, the header of the Human Rights principles as central for internet governance principles was highly commented on (83 comments), followed by paragraph 15 about the concept of multistakeholderism, with 55 comments, and paragraph 5 on privacy, with 53 comments.[14]

In the roadmap section, paragraph 35 on internet surveillance, was the most commented on (32 comments) and garnered contributions from all the stakeholder groups. This was followed by paragraph 32, which with 29 comments focused on the controversial debates about whether or not there is a need to continue pursuing international agreements on jurisdiction and law enforcement assistance to promote cybersecurity, or whether another instrument, which involves multistakeholder participation, would be more appropriate.[15]

Other topics with substantive comments were: the possible need for mechanisms to consider emerging topics and issues that are currently not adequately addressed by existing internet governance arrangements (paragraph 16, with 26 comments); the roles and responsibilities of the stakeholders (paragraph 6, with 26 comments; paragraph 2, with 24 comments and paragraph 8, with 19); on IANA transition (paragraph 27, with 25 comments) and on enhanced cooperation (paragraph 7, with 19 comments).[16]

PLENARY SESSIONS: KEY POINTS FROM CIVIL SOCIETY

Representatives from the civil society organisations that attended NETmundial addressed similar points in their interventions during the plenary sessions. Most interventions reflected a list of joint demands for amendments to the NETmundial draft outcome document formulated by civil society representatives in a pre-NETmundial coordination meeting (see Annex I). The coordination meeting, organised by a number of civil society organisations and coalitions,[17]

10. http://document.NETmundial.br/net-content/uploads/2014/04/NETmundial-draft-outcome-document_April_14.pdf

11. https://wikileaks.org/NETmundial-outcome/

12. http://document.NETmundial.br/

13. http://NETmundial.br/wp-content/uploads/2014/04/NETmundialPublicConsultation-FinalReport20140421.pdf

14. http://NETmundial.br/wp-content/uploads/2014/04/NETmundialPublicConsultation-FinalReport20140421.pdf

15. http://NETmundial.br/wp-content/uploads/2014/04/NETmundialPublicConsultation-FinalReport20140421.pdf

16. http://NETmundial.br/wp-content/uploads/2014/04/NETmundialPublicConsultation-FinalReport20140421.pdf

took place on 22 April at Arena NETmundial and convened over 100 civil society representatives from developed and developing countries. In order to reach consensus on a common set of requests for amendments to the draft outcome document, a list of the main concerns was elaborated in advance of the meeting. This list took into account all the contributions and comments submitted from civil society to the NETmundial platform and also considered the paragraphs that raised heated debates during the second phase of the consultations. The list was used as a basis for debate in the civil society pre-event and was edited on the spot in order to comprise a common ground for interventions at the plenary floor of NETmundial (these points should be seen as consensual only in the context of proposing amendments for the draft outcome document of NETmundial, not as civil society demands in the overall picture of internet governance).[18] In the debate on principles, civil society focused on providing comments and proposals on privacy, freedom of expression, net neutrality, security, stability and resilience of the internet, innovation and creativity, multistakeholder approach, open standards, and internet as a global common resource. Proposals on the roadmap focused on surveillance, IANA transition and and WSIS+10 review. These points were co-ordinately delivered on the floor of NETmundial with explicit mention that they were part of a coordinated position constructed as an outcome of the civil society coordination meeting.

NETMUNDIAL OUTCOME DOCUMENT AND FINAL CONSIDERATIONS

A comparison of the substantial changes from the draft outcome document to the final version of the NETmundial Multistakeholder Statement (see Annex II) highlights the most controversial topics under debate. These included surveillance, net neutrality and copyright, among others. Much of the final language on these issues got watered down in the process of trying to reach a compromise, and many civil society groups remain critical of the final outcome and the process that led to it.

Besides highlighting the greatest controversies, the comparison also demonstrates that the core of the text proposed as the initial draft submitted for public consultation had not changed too much in terms of the amount of text redrafted, but there were significant changes in terms of content. As it is a product of a public consultation process, it is inevitable to ask: were the changes compatible with all the contributions received during both the second round of consultations and the plenary sessions? Does this attempt to use ICTs to facilitate political debates enable more concrete and objective parameters for incorporating comments? If they are achieved, do we get closer to approving such a document by consensus, instead of public acclamation? Would it have more political power in the way forward? Did people that provided comments represent the rights of internet users? What is the reach of the internet governance community that participated in NETmundial in the global scenario? A more complete and accurate exercise to answer such questions would require, for instance, a detailed analysis of the records from transcriptions of all the statements delivered in the plenary session, as well as of the contributions produced for the second round of consultations, which could be done using technologies such as software for natural language processing[19] (NPL) methodologies.

These are all unsolved, but positive questions when we think about possible paths to evolve an innovative process for democratic debate. These are also questions that could only be highlighted because the NETmundial process was creative enough to submit everything under an online consultation, collection and processing of all the data concerning the event, and by maintaining all the records available to the public. Of course, traditional lobby and diplomatic interactions (will) always remain at the core of political negotiations, but attempts to use technology as a possible tool to promote ideas, transparency and accountability regarding decision-making processes, as seen in NETmundial, should be taken as an inspiration and evolution in future processes and debates surrounding internet governance.

17. Association for Progressive Communications – APC , Global; Article 19, Brazil; Best Bits, Global; Center for Studies on Freedom of Expression – CELE, Argentina; Center for Technology and Society (CTS/FGV), Brazil; Derechos Digitales, Chile; Global Partners Digital, UK; Institutito de Defesa do Consumidor – IDEC, Brazil; Instituto de Tecnologia e Sociedade – ITS, Brazil; ICANN's Non-Commercial Users Constituency (NCUC) and the Web We Want, Global.

18. As a matter of disclosure, we should note that the author of this text was one of the organisers of the civil society pre-meeting and was deeply involved in the methodology to achieve the key points for interventions in the plenary sessions.

19. http://en.wikipedia.org/wiki/Natural_language_processing

BRAZIL

AN ANALYSIS OF THE POSITIONS OF THE BRAZILIAN GOVERNMENT AT NETMUNDIAL

BY JOANA VARON

As the usages of the internet evolve and permeate all our daily activities, technical and political challenges arise to maintain its openness and innovative nature. In order to address such challenges, international debates on internet-related public policies and internet governance arrangements have been gradually spreading and reaching different forums for international policy and/or standard-setting. Just to mention some, besides technical forums such as the Internet Engineering Task Force (IETF) and the Internet Corporation for Assigned Names and Numbers (ICANN), internet governance debates are currently taking place in the United Nations General Assembly (UNGA), the International Telecommunication Union (ITU), the World Summit on the Information Society (WSIS) review process, the Internet Governance Forum (IGF), not to mention other forums with regional reach.[1]

Even though each forum has its particular mandate, it is not uncommon that they address some of the same issues. And, in each of these environments, the dynamics, goals and decision-making processes are different, sometimes led by the technical community, at other times by Member States or even framed as an attempt to have a multistakeholder approach, including in the debates civil society, the private sector, the technical community, academia and governments. As a result, the internet governance ecosystem is becoming more complex and difficult to map and follow.

Even though all these processes were already underway, the Brazilian Government nevertheless felt the need to run another process, a single but ambitious meeting, independent from the UN system or from technical bodies.

[1.] For a bigger picture of the internet governance ecosystem, access the interactive visualisation: netgovmap.org

Deciding to host a diplomatic event to address universal principles for internet governance and to discuss the evolution of that ecosystem was not an easy decision to make. Why did the Brazilian Government decide to do it? What did it push for during the meeting? What were the results? Based on the analysis of the Brazilian positions on internet governance in the NETmundial process, what might be the way forward? These are the main questions that this text aims to address.

WHY HOST THE MEETING? A FAVOURABLE POLITICAL CONTEXT

The idea to convene NETmundial emerged in response to a series of events that shaped a favourable global conjuncture for the Brazilian Government to propose to host it.

The Snowden revelations had a particular effect in Brazil, mainly due to the fact that Glenn Greenwald, journalist and contributor to *The Guardian* and recipient of US classified documents from former NSA contractor Edward Snowden, lives in Rio de Janeiro and started to reveal surveillance practices by the US Government in major Brazilian news outlets.[2] These revelations made it clear that the practices were extended to contexts that go way beyond US national security matters, including surveillance of the Brazilian National Oil Company, Petrobrás, and tapping communications of the Brazilian President herself.[3]

Such outrageous conduct created public pressure on the Government to respond, and caused tension in bilateral relations between Brazil and the US. After demanding clarification directly from President Obama, the first strong reaction of President Rousseff was to cancel an official visit to Washington.[4] The Brazilian National Congress set up a Parliamentary Commission of Inquiry over surveillance practices, collecting testimonials from representatives of American ICT companies, Glenn Greenwald, etc.[5] The topic was also brought to the fore in the President's speech at the UN General Assembly in September 2013, in which she condemned such practices and demanded a solution from the international community. She affirmed that the "UN must play a leading role in the effort to regulate the conduct of States with regard to these technologies."[6] Further pursuing this agenda, Brazil, in partnership with Germany, sponsored the resolution entitled "Right to Privacy in the Digital Age", which was approved by consensus in the Third Committee of the UNGA in December of the same year.[7]

But support for change on the international scene went much further. Shortly after the Snowden revelations, the technical community drafted a response in which they pledged to rebuild trust and confidence among internet users. In their Montevideo Statement on the Future of Internet Cooperation,[8] the 'I-star' organisations recognised the need to evolve the internet governance architecture towards global multistakeholder internet cooperation. Having both developed countries and the technical community demanding changes on the international scene represented a political shift that made those defending the *status quo* increasingly isolated.

At the same time, at the national level, Brazil was in the process of approving the draft Marco Civil da Internet bill, whose core principles President Rousseff highlighted in her speech. Notably, in response to the NSA surveillance scheme, the Government proposed changes to the substance of Marco Civil, causing international uproar particularly in the US, as some of the proposed changes would have potentially obliged some ICT companies to nationalise their data centers – a provision seen by some as a first step to fragmenting the network. Though causing international concern, this proposal did not become part of the final text, but the text did become stronger and more extensive in its privacy provisions. Following these developments, the President expedited the congressional deliberations on the draft bill.

2. https://antivigilancia.wiki.br/boletim_antivigilancia/inicio

3. http://politica.estadao.com.br/noticias/geral,dilma-cobra-tudo-sobre-espionagem-e-obama-ve-grande-tensao-na-relacao,1072103

4. http://politica.estadao.com.br/noticias/geral,dilma-cancela-viagem-aos-eua,1075730

5. www.senado.gov.br/atividade/comissoes/comissao.asp?origem=&com=1682

6. http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf

7. www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx

8. www.icann.org/news/announcement-2013-10-07-en

The chance to properly address surveillance revelations in the international arena, the remarkable and unlikely sympathy from some developed countries and from the technical community to evolve the internet governance architecture, the opportunity to put international pressure on approving Marco Civil and the local experience of developing a set of principles in a multistakeholder process (the CGI. br Principles for the Governance and Use of the Internet[9] and the experience of CGI.br), in conjunction, formed a favourable scenario for action. This situation can, to a large extent, explain why the Brazilian President, once prompted by the CEO and President of ICANN, Fadi Chehadé, to consider the idea of hosting a diplomatic meeting, found this an interesting and feasible possibility. The next step was to schedule it quickly, before the upcoming World Cup and the political come down for the 2014 elections.

The idea was well received by the international community, though some concerns were raised within civil society about the President's understanding of the terms "multilateral", "sovereignty" and the "role of UN" in her speech at the UNGA. These concepts, otherwise a natural part of the traditional diplomatic vocabulary, can cause particular concerns in internet governance debates. Clarification of the intended meaning of these terms was addressed shortly after, in interactions and speeches of Brazilian Government representatives at the Internet Governance Forum (IGF) 2013 in Bali and, ultimately, by President Rousseff herself, during the opening of NETmundial.

KEY POINTS FROM THE BRAZILIAN GOVERNMENT

At the opening of NETmundial, President Rousseff proudly endorsed the Brazilian civil framework for the internet – Marco Civil – which was approved in the Brazilian Senate just a day before and pointed to by the President and many other as a remarkable legal achievement and an example for the international community.

After the official endorsement of the bill, her speech highlighted the outrage caused by the revelations of practices of mass surveillance, emphasising that Brazilian citizens, companies, embassies and even herself have had their communications intercepted, which, according to her, represented an "unacceptable situation" that "undermines the very nature of the internet: free, open and plural".[10]

Reminiscent of her speech at the 68th UNGA Session the previous year, she highlighted her previous proposal to combat these practices through a "discussion for the establishment of a global civil framework for internet governance in order to ensure fundamental human rights, especially the right to privacy".

Finally, she explained the Brazilian position regarding some topics that were on the NETmundial agenda and formed part of the draft outcome document:

On #netprinciples

Privacy rights and freedom of expression: The President mentioned the success of approving the "Right to Privacy in the Digital Age" resolution, after a draft initially sponsored by Brazil and Germany, and envisioned NETmundial as a second step to address a "global desire for change in the current situation and the systematic strengthening of freedom of expression on the internet and the protection of basic human rights such as the right to privacy", highlighting that "any kind of data collection or processing must have the consent of the involved parties or legal basis".[11]

Net neutrality: Rousseff also stressed the importance to guarantee universal access for social development and the need to protect net neutrality, making references to the Brazilian experience with Marco Civil.

9. http://cgi.br/en_us/resolucoes/
    documento/2009/003

10. NETMundial, April 23, 2014, Dilma
    Rousseff Opening Speech, available at
    www.netmundial.org/references/

11. Idem.

Developing issues: Finally, she mentioned the need to establish mechanisms that enable greater participation of developing countries in all sectors of internet governance, which includes addressing issues of connectivity, accessibility and respect for diversity as central to the international agenda.

On #netgovecosystem

Model for internet governance: On the second NETmundial thematic pillar – the internet governance ecosystem – the President argued for a model of internet governance that is "multistakeholder, multilateral, democratic and transparent". To support this suggestion, she highlighted the 20 years of operation of CGI.br in Brazil where representatives of civil society, academics, the private sector and government work side by side to provide guidelines for internet governance, reaffirming that the "multistakeholder model is the best form to exercise internet governance". But she completed by saying that the "multilateral perspective is also important, according to which the participation of governments should occur on an equal footing without a country having more weight than the others". With this assumption, she tried to counter the idea that there is an opposition between "multilateralism and multistakeholderism", framing only unilateralism as the opposite.[12]

IANA transition: She welcomed the announcement of the US Government on the Internet Assigned Numbers Authority (IANA) transition towards global management and noted that the new institutional and legal arrangements of the Domain Name System of the internet, which is the responsibility of IANA and ICANN, should be built with the broad participation of all interested sectors – beyond traditional actors.

Roles and responsibilities of each stakeholder: Her opening speech further recognised that each stakeholder group plays a different role and has different responsibilities. As such, she stressed that the "operational management of the internet should continue to be led by the technical community, while issues related to sovereignty – such as cybercrime, rights violations, transnational economic issues and threats of cyber attacks – are the primary responsibility of States" which have the "responsibility to guarantee fundamental rights to their citizens".[13]

Participation at the various internet governance forums: She finally noted that various internet governance forums should not only be open, but needed to "identify and remove the visible and invisible barriers to the participation of the entire population of each country, without restricting the democratic, social and cultural role of the internet".[14] She also referred to the fact that this effort required the strengthening of the Internet Governance Forum as a body for dialogue that is able to "produce results and recommendations"; an extensive 10-year review of the World Summit on the Information Society; and the deepening of discussions about "ethics and privacy at UNESCO level".[15]

FINAL RESULTS

Analyzing the main concerns highlighted by President Rousseff and the outcome document of NETmundial, it is clear that some of her concerns have been addressed in the NETmundial Multistakeholder Statement of Sao Paulo, particularly regarding the session on principles.

In alignment with her speech, human rights were at the core of that session, understood as central to underpin internet governance principles, among them the right to privacy. The role of the internet to "achieve the full realisation of internationally agreed sustainable development goals" was also highlighted, as was the need to "promote universal, equal opportunity, affordable and high quality internet access". Technical principles protecting "security", "stability", "resilience" and the "open and distributed architecture of the internet" were ensured, pretty

12. Idem.
13. Idem.
14. Idem.
15. Idem.

much in accordance with the 10 principles from Brazilian CGI.br that enshrined Marco Civil, the Brazilian civil rights framework for the internet. Finally, also in accordance with CGI.br principles and experiences, multistakeholder processes were set as core to build a democratic internet governance ecosystem and the text also highlights that "respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion", which is in accord with the perception of the Brazilian Government regarding the existence of two processes: "multilateral" and "multistakeholder". The "open", "participative", "transparent" and "collaborative" nature that inspired NETmundial were also set as internet governance process principles.[16]

Therefore, it might be fair to say that, besides the principle of net neutrality, which was unlike previous versions of the draft outcome and was included only as a point for further discussion, the session on principles ended up pretty much in agreement with the positions promoted by the Brazilian Government, particularly by the speech of President Rousseff.

The second part of the NETmundial outcome document, the "roadmap for the future evolution of internet governance", was also compatible with President Rousseff's speech. Though less concrete than the initial ambitions of the meeting, it evolved somewhat in the interpretations of the Tunis Agenda regarding the meaning of multistakeholder participation in the internet governance ecosystem. It considered the need to further "strengthen", "improve" and "evolve" the multistakeholder approach, which must be "inclusive", "transparent" and "accountable", "ensuring the full participation of all interested parties". It recognised the "different roles played by different stakeholders in different issues", though specifics regarding what are these roles were envisioned as points to be further discussed. And it also added developmental concerns by mentioning that participation should "reflect geographic diversity", "include stakeholders from developing, least developed countries" and consider "gender balance".

While dealing specifically with institutional improvements, also in alignment with the vision of the Brazilian Government, it recognised the need to straighten out the IGF, mentioning the recommendations produced by the UN CSTD working group on IGF improvements. It also addressed the topic of the accountability of the different organisations, and forums that perform the IANA functions transition were also included. There was a particular concern that "any adopted mechanism should protect the bottom-up, open and participatory nature of those policy development processes and ensure the stability and resilience of the internet" and a reaffirmation that the "transition should be completed by September 2015".

The issue of mass surveillance, one of the reasons that drove the meeting, was also included, but only in one paragraph, as a compromise. The language repeats text from the UNGA resolution "Privacy in the Digital Age", but with a call for more dialogue on the Human Rights Council and IGF – a weak statement that failed to reflect the arguments and consensus that emerged on the floor regarding the need for reforming practices of surveillance.

Finally, it would not be an exaggeration to say that the NETmundial process had a very significant result for the national scenario of internet policies: the approval of Marco Civil. The bill had been on the political agenda since 2009, including years of public consultations and, even though after the Snowden revelations it was declared by the President to be an urgent priority, it was still facing several postponed voting sessions at the Chamber of Deputies. Therefore, the pressure for bringing a positive example to NETmundial can be seen as an important driver. As a result, Marco Civil was finally successfully voted on at the Chamber of Deputies on March 25 and quickly approved by the Senate, to be sanctioned by President Rousseff on April 23, 2014, at the opening session of NETmundial, becoming Law No. 12.965.

16. NETmundial Multistakeholder Statement of Sao Paulo.

Not only the final results in the outcome document, but also the innovative processes and procedures that were developed to allow public participation in a diplomatic meeting of this sort,[17] lead the Brazilian Government to see NETmundial as a remarkable and inspiring experiment towards an open, transparent and participative multistakeholder mechanism.

But it was, indeed, just a first step on a long road. As such, its final session ended with a call to "all the organisations, forums and processes of the internet governance ecosystem to take into account the outcomes of NETmundial". Indeed, as the document is non-binding and approved by acclamation, that is the only way it can have an impact. Therefore, when thinking of the way forward after NETmundial, Brazilian Government representatives will have to, and intend to, take into account all these forums or processes that are under way.

LOOKING AHEAD AFTER NETMUNDIAL

NETmundial was meant to be a single event, but the results do influence existing processes and will require an exercise of coordination with governments and other stakeholders to enforce every recommendation in all these different forums. After NETmundial, it will be necessary to look at all the possible forums for moving the agenda forward and implementing the recommendations of the outcome document. The Brazilian Government has been active and taking a stake in the following processes – the challenges and importance of which are described here – in a non-exhaustive manner, as they are evolving at a rapid pace and with increased complexity:

CSTD Working Group on enhanced cooperation (WGEC)

Meant to finalise in February, unable to find a consensus and hopeful of the outcomes of NETmundial, the working group had an extra meeting scheduled right after it, between April 30 and May 2 2015. Nevertheless, consensus was still not reached, the group had no outcome besides the chair's report and it was prohibited to mention the NETmundial outcome document. The main issue was the fundamental disagreement regarding the democratic aspect of any multistakeholder model and the role of stakeholders in the internet governance ecosystem.

Nevertheless, Brazil has supported the idea of extending the mandate of the small working group that was already mapping international public policy issues pertaining to the internet and the status of existing mechanisms addressing such issues. The understanding is that there is a need to analyze models for IG according to a specific topic; in that sense, it is essential to identify gaps in order to ascertain what type of recommendations may be required. A recommendation for the continuation of such work under the CSTD Secretariat to be presented at the CSTD inter-sessional meeting was included as a recommendation in the CSTD resolution, which was submitted for approval of ECOSOC.

WSIS+10

Starting last year and currently underway, the WSIS+10 review has two different processes underway: one being held under the coordination of ITU and focused on the Geneva documents regarding the responsibilities and goals of UN agencies for the information society; and another underway in New York, about WSIS modalities, closely related to the implementation of the Tunis Agenda. During NETmundial, the process in New York was interrupted on the expectation that some guidelines affecting the modalities of WSIS review could be developed there. Nonetheless this remained unresolved.

The Brazilian Government has been following this debate with the goal to make WSIS documents more meaningful, which would not mean rewriting the documents, but evaluating and reiterating the agreements – as far as possible

17. For more details on the innovative process of the meeting, see: Varon, J. The NETMundial: An Innovative First Step on a Long Road. In, Drake and Monroe Price, eds, Beyond NETmundial: The Roadmap for Institutional Improvements to the Global Internet Governance Ecosystem (Philadelphia: Internet Policy Observatory, August, 2014).

within a multistakeholder environment. Nevertheless, the lack of a decision about the modalities is a problem. As time goes by, there is also less time for the preparatory process, which might mean a lost opportunity, for instance, to evaluate the process of enhanced cooperation and to promote a new emphasis in development issues. As the country takes participation of diverse stakeholder groups as a central aspect, there is a need for clear rules and procedures. How to create something between NETmundial and ONU procedures remains a question for government representatives more used to the multistakeholder approach.

UNESCO

Brazil is also trying to address concerns about privacy rights in the internet governance debates at UNESCO. Currently the agency is developing a comprehensive study on internet-related issues, specifically around the areas of access to information and knowledge, freedom of expression, privacy and ethical dimensions of the information society, containing possible options for future actions.[18] The idea of the study was foreseen in the *Resolution on Internet-related issues*[19] adopted by UNESCO General Conference at its 37th session, approved last year as a result of the discussions on the document submitted by Brazil, which originally focused on privacy, but lately, as co-sponsored by other countries, got its scope extended. That extension became a challenge considering resources and tasks to be performed; the study is currently receiving inputs from the international community.

As a result of the resolution sponsored by Brazil at the UN General Assembly, the UN High Commissioner for Human Rights released in July a report entitled "The Right to Privacy in the Digital Age".[20] Focused on surveillance, the report has prompted a panel discussion on the right to privacy, which might lead to a draft resolution on the matter.

IANA transition

To maintain the spirit of the NETmundial outcome document regarding the transparency and accountability of the IANA transition, there is a need to follow up ICANN meetings and working groups entrusted with this task. In line with proposals from the European Union, the Brazilian Government understands that there is a need for a multistakeholder group to steer the process in order to ensure goals are reached in time and that the open and distributed architecture of the web is maintained while the juridical relation regarding some of the IANA functions changes towards making them accountable to the global community.

Indeed, the US delegation has stated that the announcement on the ICANN transition was inspired by the fact that NETmundial was on the agenda – which was really evident in the contributions, as around 60% were about IANA. The goal now must be that this transition is accountable, transparent and does not get extended for many years.

IGF

In the IGF Turkey there was a day 0 focused on NETmundial, about lessons learned and process.

But, as highlighted in the NETmundial outcome document, Brazilian Government representatives have restated that it is also important to think of concrete steps for straightening out IGF, for instance following the recommendations of the Working Group on Strengthening the IGF. That could be the start of the preparation process for the next meeting, which was announced in Istanbul and will be held in João Pessoa, northeast of Brazil, November 9–13, 2015.

NETmundial Initiative

Launched on August 28, under the auspices of the World Economic Forum (WEF) under the leadership of ICANN CEO Fadi Chehadé, this initiative has been the

18. www.unesco.org/new/internetstudy

19. www.unesco.org/new/fileadmin/ MULTIMEDIA/HQ/CI/CI/pdf/news/37gc_ resolution_internet.pdf

20. www.asil.org/blogs/unhchr-releases-report-privacy-digital-age-july-18-2014

forum for a lot of controversies. Though using the "NETmundial" brand, it has been evolving in an opposite direction to the NETmundial attempt to develop an open and transparent process and, even worse, far away from the basic procedural principles envisioned in the outcome document of NETmundial, which includes ensuring a balance in representation of the different stakeholder groups, regional diversity among participants, etc. Such tension was particularly heightened after a platform entitled IG transparency leaked the list of participants for the event in Geneva.[21] In order to clarify such controversies, Fadi was invited to remotely attend a CGI.br counselors meeting.[22] On that occasion, Fadi explained that WEF will only be a facilitator, and that any process from such initiative will be open and multistakeholder. He has also set February 2015 as a deadline for presenting a study on six points from the NETmundial outcome document. Nevertheless, Virgilio de Almeida, chair of NETmundial, attended the launch of the initiative in Geneva and expressed such concerns. Civil society representatives who were invited to attend the meeting have also addressed such concerns in several blog posts.[23]

ITU Plenipotentiary Conference
This is the most important event of this UN agency, as Member States are able to decide on the future role of the organisation. As such, just as during the World Congress on Information Technologies (WCIT), there is a fear from part of the internet governance community that ITU roles get expanded beyond the infrastructure layer of the internet. This would, ultimately, also mean a threat to the multistakeholder approach, as the decision-making process in this forum, such as those taken for the Plenipotentiary Conference, tend to be closed and exclusive for Member States, only with the participation of sector members. Addressing such concerns, in preparation for the conference, civil society representatives have already delivered a letter on the transparency of the organisation.[24]

In the case of Brazil, Anatel, the national telecommunications regulatory agency, has led the process for developing Brazilian and regional proposals (within CITEL).[25] While addressing this forum, Brazil has been reinforcing the option for multistakeholderism with multilateralism, considering that there is a need to think about the areas in which it is legitimate for the ITU to take decisions. Once again, in the Brazilian proposals related to internet policies, issues such as access, interconnection costs, cybersecurity (and privacy) will also be addressed in this forum.

Human Rights Council
Following one of the recommendations in the resolution co-sponsored by Brazil and Germany in the UN General Assembly, the UN High Commissioner for Human Rights released in July a report entitled "The Right to Privacy in the Digital Age".[26] Focused on surveillance, the report has prompted a panel discussion on the right to privacy, which might lead to a draft resolution on the matter.

FINAL OBSERVATIONS
NETmundial started as a single event in the wide and diverse ecosystem of internet governance processes as an initiative of the Brazilian Government, but with growing support from the international community. Every innovation has some failures, but both the innovative processes for convening that meeting and the substance of the outcome document represent a remarkable attempt to experiment with the multistakeholder approach and have lead to positive lessons and statements/agreements to be taken forward in other forums of the internet governance ecosystem. The Brazilian Government seems to be committed to continue the legacy of NETmundial through the interactions of CGI.br, the Ministry of Foreign Affairs and Anatel in the international arena. Nevertheless, the success of such attempts to take it further and evolve it will depend also on the commitment of the stakeholder groups, including Member States, who participated in NETmundial.

21. k52lcjc5fws3jbqf.onion.lt

22. www.cgi.br/reunioes/ata/2014/08

23. https://webfoundation.org/2014/08/how-can-businesses-help-us-build-the-web-we-want/; www.eff.org/deeplinks/2014/08/internet-governance-and-netmundial-initiative-flawed-attempt-turning-words-action; www.accessnow.org/blog/2014/08/27/why-im-going-to-geneva-for-the-netmundial-initiative; www.apc.org/en/news/remarks-apc-netmundial-initiative-nmi-initial-scop;www.internetgovernance.org/2014/08/29/the-not-mundial-initiative-governance-and-ungovernance-in-istanbul/

24. http://bestbits.net/busan-transparency/

25. http://tinyurl.com/nw9sv6p

26. www.asil.org/blogs/unhchr-releases-report-privacy-digital-age-july-18-2014

IS A RECONCILIATION OF MULTISTAKEHOLDERISM AND MULTILATERALISM IN INTERNET GOVERNANCE POSSIBLE? INDIA AT NETMUNDIAL

BY DR ANJA KOVACS – INTERNET DEMOCRACY PROJECT

Over the past two years, as the debate about who should govern the internet picked up speed, internet governance has received increasing attention across the world. For the next year and a half, three processes in particular are likely to attract considerable interest: the International Telecommunication Union (ITU) Plenipotentiary in November 2014; the UN CSTD Working Group on Enhanced Cooperation (WGEC) over the course of fall 2014 and spring 2015; and the ten-year overall review of the World Summit on the Information Society (WSIS) as soon as the modalities governments agreed to in July 2014 are operationalised and throughout 2015. In all three forums, the question of what role different stakeholders should play in internet governance will be at the heart of debates.

India's stances in these debates will be closely watched. As the Government of India itself has argued, "With over 200 million internet users soon going to cross about half a billion in the coming couple of years, over 900 million mobile telephone subscribers and a thriving and robust internet ecosystem, India is well-poised and willing to play an important and constructive role in the global internet governance ecosystem."[1] Even more, in the eyes of many observers, India is in fact one of a handful of countries that is in a position to swing the outcome of the internet governance debates, as it is a well-informed, respected and trusted developing country and emerging economy that has often played a leadership role among the nations of the Global South.

1. Opening statement by Mr Vinay Kwatra, Government of India (Ministry of External Affairs), at NETmundial – Global Multistakeholder Meeting on the Future of Internet Governance, Sao Paulo, April 23, 2014. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Welcome-Remarks-en.pdf, p. 62.

In this context, it is of importance, therefore, to understand in greater depth the stances that the Government of India is likely to take in these upcoming meetings and events, and how they can be engaged constructively. This short paper will outline and examine these positions, taking as its starting point India's participation in NETmundial – Global Multistakeholder Meeting on the Future of Internet Governance, which took place in São Paulo, Brazil, on April 23 and 24, 2014.

The NETmundial process was not the first occasion on which the Government of India put its positions on public record. In fact, as early as October 2011, and following a joint statement with the other IBSA governments (though without their support), India made a proposal for a United Nations Committee for Internet-Related Policies (UN CIRP) at the UN General Assembly. But NETmundial forms a particularly useful basis for this analysis, both because it is the most recent enunciation of India's position, but also because it was at NETmundial that India for the first time got the opportunity to state its positions, and to defend them repeatedly and rigorously, in a large, public, open and outcome-oriented multistakeholder gathering.

Indeed, though the Government of India, represented at NETmundial by officials of the Ministry of External Affairs, explicitly stated on record at the end of the meeting that it could not join the consensus on the NETmundial outcome document for a variety of reasons,[2] it did participate actively both in the preparations of the event and in the proceedings themselves, as did representatives from civil society, business and the technical community from India. It is the wealth of written and oral government contributions that this participation generated (the latter during the opening and closing sessions, as well as in four substantive sessions, two each on internet governance principles and on the roadmap respectively) that we draw on first and foremost in what follows below.

OUTLINING INDIA'S STANCES ON THE FUTURE OF INTERNET GOVERNANCE AT NETMUNDIAL

What then were the defining features of India's position on the future of internet governance at NETmundial? In both its written and oral submissions, the Government of India stressed two overarching points time and again.

The first is that for it to be globally acceptable and credible, the internet governance ecosystem, rather than being managed by a few, has to be "representative, democratic, transparent and accountable, involving governments and other stakeholders as per the Tunis Agenda".[3] Such a reform would include broad-basing and internationalising the institutions that manage and regulate the internet.

The second is that "given its profound importance, there is also a need for the various facets of the [sic] internet governance, including the core internet infrastructure, to be anchored in [an] appropriate international legal framework".[4] At other times during the meeting, this was phrased as the need to anchor internet governance in an appropriate international and legal authority. The Indian Government explicitly clarified during the meeting that this means that all structures that regulate and manage the internet should be anchored in this framework.[5]

The first point is of course not a new one. But with the second suggestion, India seemed to have moved beyond its earlier proposal for a new UN body that would be responsible for the development of international internet-related public policy and related globally-applicable principles, to a demand that new international law be formulated to deal with the challenges that the internet poses. It is true

2. Closing statement by Mr Vinay Kwatra, Government of India (Ministry of External Affairs), at NETmundial – Global Multistakeholder Meeting on the Future of Internet Governance, Sao Paulo, April 24, 2014. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Closing-Session-en.pdf

3. Intervention by Government of India (Ministry of External Affairs) representative at NETmundial – Global Multistakeholder Meeting on the Future of Internet Governance, second session on the roadmap, Sao Paulo, April 24, 2014. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Roadmap-Part-2-en.pdf, p. 5.

4. Kwatra, April 23, 2014. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Welcome-Remarks-en.pdf, p. 63.

5. Government of India representative, second session on the roadmap, April 24, 2014. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Roadmap-Part-2-en.pdf, pp. 5–6.

that India had included the facilitation of "negotiation of treaties, conventions and agreements on internet-related public policies" in the mandate of the UN CIRP that it proposed, unsuccessfully, to the UN General Assembly in 2011.[6] And in its submission to the WGEC in 2013, too, the Government of India explicitly reconfirmed, among other things, "Development and adoption of laws, regulations and standards" and "Treaty-making" as part of governments' role, though without linking these explicitly to the functions of the new multilateral mechanism it proposed in the context of that submission.[7] However, NETmundial seems to have been the first occasion on which the Government of India made concrete what use governments' treaty-making powers might be put to in internet governance.

It is also the first time that these powers, rather than the establishment of a multilateral body for the formulation of international internet-related public policy more broadly, take centre-stage. Although India did not expand on this, as the proposed legal framework is quite encompassing in nature, it is likely that its establishment would require the emergence of institutions of its own, including to review its implementation and provide for its further development where needed. Seeing existing conventions around treaty processes and their implementation, it is foreseeable that both would be multilateral in nature, with other stakeholders in an advisory role at most.

Through these twin, interconnected measures, the Indian Government hopes to address a series of important "strategic and policy challenges", and thus to make the global internet governance ecosystem more credible. It explicitly lists the following concerns:

- "lack of truly representative and democratic nature of the existing systems of internet governance including the management of critical internet resources leading to a trust deficit in the system;
- need for the internet governance ecosystem to be sensitive to the cultures and national interests of all nations, not just of a select set of stakeholders;
- apparent inability of the current structures of internet governance to respond to some of the core and strategic concerns of the member states;
- need to broad base and internationalise the institutions that are invested with authority to management [*sic*] and regulate the internet;
- need to ensure security of the cyberspace and institutionalise safeguards against misuse of the protection of internet users and at the same time also ensure the free flow and access to information essential to a democratic society. In this regard, perhaps need to frame a new cyber jurisprudence."[8]

Most of these criticisms about the *status quo* are of course neither new nor specific to India. The uneven distribution of geopolitical power in the internet governance ecosystem has rightfully been a bone of contention for India and other developing countries since the Tunis phase of the WSIS. Questions regarding security in cyberspace, too, have a long history, though they have perhaps gained particular currency over the past five years or so.

The only aspect in the above list that has not yet gained widespread attention is the claim that the internet governance ecosystem is insufficiently sensitive to cultural diversity. In processes such as the WSIS+10 Multistakeholder Preparatory Platform (MPP), the need for cultural sensitivity, while an important goal in itself, was mostly referred to by nations who wanted to restrict content on this ground. It is not clear what the Government of India had in mind when it included this issue in its list of challenges for internet governance at NETmundial.

DRIVING FORCES OF INDIA'S STANCES

To better understand India's stances on internet governance, it is worthwhile to investigate further the forces that shape them. Examining the entire web

6. India's proposal for a United Nations Committee for Internet-Related Policies (CIRP). Statement by Mr Dushyant Singh, Member of Parliament, India, on agenda item 16: Information and Communications Technologies for Development, Sixty Sixth Session of the UN General Assembly, New York, October 26, 2011. http://internetdemocracy.in/wp-content/uploads/2014/07/India-UN-CIRP-Proposal-at-UNGA-2011.pdf

7. Submission by the Permanent Mission of India to the United Nations Office to the UN CSTD Working Group on Enhanced Cooperation, Geneva, September 10, 2013. http://unctad.org/Sections/un_cstd/docs/WGEC_IndiaMission.pdf

8. Kwatra, April 23, 2014. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Welcome-Remarks-en.pdf, pp. 62–63.

of internal and external motivations informing India's position on internet governance is beyond the scope of this paper. However, two concrete sets of concerns in particular seemed to underpin India's position at NETmundial and are also key to understanding the country's stance on internet governance more broadly.

The first set, which was already touched on above, is related to the unequal distribution of geopolitical power. Since its earliest explicit enunciations on this topic in 2011, if not before, it has been clear that India seeks a more equal distribution of power among the community of nations in the internet governance ecosystem, generally with great and widespread domestic support for this principle (though not necessarily for its concrete proposals). This set of concerns was again central to the Government of India's contributions at NETmundial, and will likely continue to take pride of place going forward.

Increasingly, however, it is evident that there is a second important driving force behind India's global internet governance policy – concerns around cybersecurity. While various comments by the Government of India made during the NETmundial meeting made explicit that the international legal framework it proposed would not be limited to addressing cybersecurity alone, the references it made to the possible need for a new cyber jurisprudence indicate that this is indeed a significant concern for the country. In addition, security-related issues and concerns take up a large part of India's written submission to NETmundial, including in the subsection on capacity-building. Moreover, when India introduced its positions in the meeting's opening session, it explicitly contextualised its arguments in part within a security-based framing: "The internet is used for transactions of both economic, civil and defense assets at the national level and in the process, countries are placing their core national security interests in this medium."[9]

We have argued elsewhere[10] that a shift in power to governments and the replacement of a dispersed, multistakeholder approach to internet governance with a centralised, government-led model is ultimately not beneficial for users, including users in developing countries. At the same time, however, it cannot be denied that the above twin driving forces of India's global internet governance policy are indeed legitimate. If India is to adapt its position on these important issues, it is thus likely that the global community will need to invest greater effort into addressing these concerns adequately and appropriately in alternative ways – ways that can avoid the negative impact on the internet and its empowering potential that a centralised government-led approach would entail.

THE RELATION BETWEEN MULTISTAKEHOLDERISM AND MULTILATERALISM IN INDIA'S CONTRIBUTIONS

One way to take that conversation forward might be by investing greater attention in the potential of the relation between multistakeholderism and multilateralism. As was evident during NETmundial, though ideas on details of such possible arrangements remain scanty, a growing number of stakeholders is recognising explicitly that there is, and should be, a place for both. The Brazilian Government, for example, is one proponent of this dual-track approach – its credibility on this issue augmented by the fact that the country already has in place a well-developed multistakeholder arrangement for internet governance at the domestic level.

To be honest, India has also been referring to both multistakeholderism and multilateralism in many of its recent interventions on internet governance, including at NETmundial. But the opening for further debate that this creates remains minimal for now, as the Government continues to draw on a very narrow reading of the Tunis Agenda and does not take into account the many evolutions and experiences that have taken place in the internet governance ecosystem over

9. Kwatra, April 23, 2013. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Welcome-Remarks-en.pdf, p. 64.

10. Kovacs, Anja (2013). A third way? Proposal for a decentralised, multistakeholder global internet governance model. New Delhi, Internet Democracy Project. http://internetdemocracy.in/reports/a-third-way-proposal-for-a-decentralised-democratic-internet-governance-involving-all-stakeholders/

the past ten years or so. These include the further fine-tuning of multistakeholder organisations such as ICANN, for example through improvements in accountability, but also the introduction of multistakeholderism in the UN, for example through the Multistakeholder Preparatory Platform for the WSIS+10 High Level Event in June 2014. In each of these instances, there is not merely a recognition that non-government stakeholder groups have a wide range of contributions to make, and that these go well beyond the roles that the Tunis Agenda had in mind for them, but also a growing institutionalisation of this understanding.

Yet such changes seem not to have impacted India's stance in a substantial way. Thus, for example, India noted during its interventions at NETmundial, while commenting on the draft outcome document:

"There are no references to Geneva principles as well as the Tunis Agenda which form the bedrock for the ongoing global discourse on internet governance. Despite a clear recognition in the Tunis Agenda to a multilateral process apart from the multistakeholder approach in the evolution of the future roadmap on internet governance, we find no reference to it in this initial draft outcome document which you are considering now."

"In our view, it is, therefore, a very unbalanced one. We believe that the future of internet governance framework should *also* be multilateral, democratic, and representative as these aspects have been provided for in the Tunis Agenda. Hence, we seek inclusion and suitable reflection of this sentiment in paragraph 1 of the text that we have – which we are considering now."[11] (emphasis mine)

The inclusion of the word "also" here can be read as significant, and India had indeed noted elsewhere during the proceedings that it believed that the simultaneous existence of multistakeholder and multilateral platforms "is not a zero-sum game".[12]

But whatever promise such a framing holds, its potential is limited by the fact that whenever the Government of India made the case for the internet governance ecosystem to have the "full involvement of governments and all other stakeholders" – or, in other words, for some form of multistakeholderism – it also did so merely with reference to the Tunis Agenda. As a document over which governments had the final say, the Tunis Agenda unfortunately defines the role of civil society in particular in an extremely limited way, highlighting only its contributions "at community level"[13] while remaining silent on the role it can and has played in policy-making. Moreover, the Government of India also requested, unsuccessfully, inclusion in the NETmundial outcome document of a reference that, again drawing on the Tunis Agenda, would recognise international policy authority for internet-related public policy issues as a sovereign right of governments. This language, too, is widely feared to reduce other stakeholders to an advisory role at best by default.

While India may seem to be leaving an opening for multistakeholderism at times, it thus does so without taking into account the substantial evolutions this approach has gone through in multiple forums over the past ten years. In fact, in combination, restricting definitions of civil society's role and asserting state sovereignty over international internet-related public policy issues could arguably spell the death of multistakeholder approaches to international internet-related public policy-making, such as those we are familiar with, for example in the ongoing experiment that is ICANN or in the context of the Multistakeholder Preparatory Platform for the WSIS+10 High Level Event.

It is important to point out here that this position is problematic not merely because it would likely change the way the internet is governed: indeed, as mentioned before, a range of criticisms of the existing internet governance ecosystem are legitimate and where improvements to the existing internet

11. Intervention by Government of India (Ministry of External Affairs) representative at NETmundial – Global Multistakeholder Meeting on the Future of Internet Governance, second session on the principles, Sao Paulo, April 24, 2014. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Principles-Part-2-en.pdf, p. 6.

12. Intervention by Government of India (Ministry of External Affairs) representative at NETmundial – Global Multistakeholder Meeting on the Future of Internet Governance, first session on the roadmap, Sao Paulo, April 23, 2014. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Roadmap-Part-1-en.pdf, p. 12.

13. See para. 35 of the Tunis Agenda for the Information Society, 2005. www.itu.int/wsis/docs2/tunis/off/6rev1.html

governance ecosystem are proposed, these should therefore be welcomed, whether they are of a multistakeholder or a multilateral nature.

Instead, it is problematic because existing multilateral policy processes are among the most opaque ones in the democratic world. An effective interplay between multistakeholderism and multilateralism could significantly increase the extent to which the latter is in practice, rather than merely in theory, representative, democratic, transparent and accountable – thus in turn ensuring that the contributions made by multilateral efforts would benefit the internet ecosystem as a whole. The rigid and narrow reading of the Tunis Agenda that the Indian Government continues to stand by unfortunately leaves very little space for such an improvement of both approaches and their interplay. If the aim of its contributions is not merely to assert the primacy of multilateralism, it is important that the Government of India goes beyond the text of the Tunis Agenda, which was agreed almost ten years ago, and builds a vision of the future of internet governance that genuinely allows all stakeholders to effectively contribute to the best of their abilities, rather than merely in name.

DEFINING STAKEHOLDERS AND THEIR LEGITIMACY

If India's engagement with multistakeholderism in its contributions at NETmundial seems to have been mostly nominal, one aspect of multistakeholder participation did, however, get its substantive attention repeatedly: that non-government stakeholders participating in deliberative and decision-making processes should have legitimacy. In fact, this is the one respect in which the Indian Government's comments on multistakeholder participation repeatedly went beyond the Tunis Agenda in its interventions. Seeing India's broader position at NETmundial, what to, finally, make of such comments?

For example, the Government of India noted that:

> "Given the important role that non-government stakeholders play, there should also be a clear delineation of principles governing their participation, including their accountability, representativeness, transparency, and inclusiveness."[14]

Elsewhere, it further argued:

> "We seek involvement of all legitimate stakeholders in the deliberations as part of the decision-making process. The principles of democratic representation can alone offer representative credentials to participants who seek to represent various sections and interests.

Just as we in governments are responsible and accountable to our people, stakeholders also need to be accountable to an oversight mechanism that is rooted in appropriate international legal authority."[15]

The question of legitimacy is of course a valid one, and civil society organisations active at various levels and in a wide variety of fields of governance in particular have had to face it for long. This is true for civil society active in internet governance as well.[16] Yet where a government formulates stances such as these in international forums without prior consultation with the people and groups concerned, it is difficult to see this intervention as a constructive one, no matter how valid the issue raised might be. All too often, the question of legitimacy is used to control people's participation in democracy. As long as the Indian Government doesn't adopt a more inclusive domestic approach to its formulation of policy stances on global internet governance issues, it is difficult to take its gesture at face value. Open and inclusive consultation by the Government of India on internet governance issues has unfortunately been lacking to date.

14. Kwatra, April 23, 2014. http://netmundial.br/ wp-content/uploads/2014/04/NETMundial-23April2014-Welcome-Remarks-en.pdf, p. 64.

15. Government of India representative, second session on the roadmap, April 24, 2014. http://netmundial.br/wp-content/ uploads/2014/04/NETMundial-23April2014-Roadmap-Part-2-en.pdf, p. 6.

16. In fact, a broad coalition of civil society initiatives from India active in internet governance had raised precisely such concerns in the context of processes surrounding the NETmundial. See http:// internetdemocracy.in/2014/02/open-letter-by-indian-civil-society-organisations-to-the-chair-of-the-multistakeholder-meeting-on-the-future-of-internet-governance-to-be-held-in-brazil-in-april-2014/

There is further cause for concern as the Indian Government has also implied in its interventions at NETmundial that any possible redefinition of stakeholders' roles and responsibilities should be the prerogative of governments only:

> "With regard to the issues of roles and responsibilities of the stakeholders, I think it is best that we do not touch upon these particular responsibilities and roles in this format. It ought to be done – these responsibilities were defined at a certain level in the WSIS process and we would like the same platforms to redefine if there is any change in the responsibilities and roles of various stakeholders."[17]

Seeing that India has been arguing for a government-led WSIS+10 Overall Review, this would mean that, once again, governments would have the final say in deciding what roles and responsibilities other stakeholders can take up. Again, the absence of open and inclusive domestic consultations on these issues is a cause for concern.

If India's comments on the possibility for multistakeholderism and multilateralism to co-exist in a mutually productive way are to be taken seriously, it is important that it takes urgent steps to develop a more open, inclusive and collaborative engagement with other stakeholders on issues that concern them, including at the domestic level. In the absence of such an engagement, while its comments on manners in which to strengthen multistakeholderism may be well-intended, it is difficult not to see in them strategies that are ultimately intended to merely strengthen government-control over internet governance, rather than improving the internet governance ecosystem as a whole.

GOING FORWARD INTO 2015: WHAT DOES THE FUTURE HOLD?

In order to take its agenda forward, it is clear that the Indian Government will attempt to make full use of the WSIS+10 overall review scheduled to take place in 2015 (and so it is not surprising that in the negotiations around the modalities for that process, India has been reported to have argued strongly in favor of a full-fledged summit to conduct the review). Indeed, during NETmundial, India stated explicitly that it believes that:

> "The Tunis Agenda has not been fully implemented. This highlights the urgent need for identification of gaps in its implementation at the upcoming WSIS+10 Review in 2015 and by establishing new mechanisms, as well as strengthening the existing ones, if any."[18]

India's own analysis of the gaps was amply evident from its NETmundial interventions, as discussed above.

Neither in its stances nor in its strategies does India stand alone. It has important allies among the Group of 77 (G-77), with which it is reported to be working closely. Thus, for example, in the WSIS+10 High Level Event that took place in Geneva from June 10–13, 2014, a representative from Iran made a statement on behalf of the Non-Aligned Movement (NAM), which noted that "The NAM reaffirms the centrality of the role of the General Assembly in the overall review of the implementation of the outcomes of the World Summit on the Information Society, to be held in 2015."[19] India explicitly endorsed this statement in its own intervention.

However, with several of its core allies, India has important differences as well. Apart from India, the states that perhaps have been most active in internet governance while propagating a government-led model are Iran, Saudi Arabia, Cuba and the Russian Federation. Several among these countries have repeatedly, during various UN negotiation processes, tried to scuttle the strong language

17. Government of India representative, first session on the roadmap, April 23, 2013. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Roadmap-Part-1-en.pdf, pp. 12–13.

18. Government of India representative, second session on the roadmap, April 24, 2014. http://netmundial.br/wp-content/uploads/2014/04/NETMundial-23April2014-Roadmap-Part-2-en.pdf, p. 6.

19. Both the statement made by Iran on behalf of the NAM, on June 10, 2014, and the statement made by India, on June 11, 2014, are available here: www.itu.int/wsis/implementation/2014/forum/dam/policy-statements.html

used to support human rights in the internet age – with varying levels of success. Several also continue to face questions regarding their commitment to democracy at home. These differences should give the Government of India food for thought as to the potential wider ramifications of its current stances on the future of global internet governance.

If, going forward, India is to propagate a more nuanced position than its current allies, one that is more closely aligned to its values, the keys to developing such a position lie, however, as always, at home. Although there may be agreement among key ministries in the Indian Government about the broad outlines of India's current position on global internet governance, disagreement about the finer details seems to persist. This possibly opens the door to more nuanced positions at forums where multiple ministries are involved, such as the ITU's Plenipotentiary in November 2014, and maybe even beyond. For example, a close reading of India's February 2014 submission on internet-related public policy to the ITU's Council Working Group on that topic was prepared by the Department of Telecommunications, Ministry of Communications and Information Technology (rather than the Ministry of External Affairs), and reveals considerably greater emphasis on the need for broad stakeholder consultation, in particular at the national level, than we have witnessed in India's contributions to NETmundial.[20] With this, the Department of Telecommunications remains more closely aligned to the vision first outlined by former Minister for Communications and Information Technology, Mr Kapil Sibal, at the Baku IGF in 2012. Sibal had advocated an internet governance system that would be collaborative, consultative, inclusive and consensual. Interestingly, according to media reports, there was no consultation between the Ministries of External Affairs and Communications and Information Technology respectively in the run-up to NETmundial.[21]

The greatest potential for success of any approach India seeks to adopt may well lie, however, in broad and open consultations, not just with stakeholders within the government, but with all stakeholders within the country who are interested in commenting. It is through such gestures that the Government of India can not only tap into the wealth of knowledge and experience that already exists on internet governance within India, but also make credible its stated support for multistakeholderism, transparency and accountability. Ultimately, it is also through such gestures, then, that it can create the openness and goodwill that will be crucial to the success of any proposals it will make, as it gains a multitude of ambassadors for its approach in the process.

20. Government of India, Ministry of Communications & IT, Department of Telecommunications (2014). Internet-Related Public Policy: An Indian Perspective. Information Document submitted to the Fourth Meeting of the ITU Council Working Group on International Internet-related Public Policy Issues, New Delhi, Government of India, Ministry of Communications & IT, Department of Telecommunications, February 17. www.itu.int/md/meetingdoc.asp?lang=en&parent=S14-RCLINTPOL4-INF&source=India%20(Republic%20of

21. See Bagchi, Indrani (2014). India for inclusive internet governance. Times of India, New Delhi, April 25. http://timesofindia.indiatimes.com/india/India-for-inclusive-internet-governance/articleshow/34170534.cms

PERSPECTIVES ON NETMUNDIAL: A VIEW FROM KENYA

BY GRACE GITHAIGA

The internet has become an essential tool for citizens around the world to exercise freedoms. On the converse, it has also provided a platform for invasion of privacy, spying, and attacks on freedom of expression. Recently, trust in digital communications has been severely shaken by revelations of mass surveillance. These revelations, based on documents leaked by whistle-blower Edward Snowden, exposed how surveillance programmes carried out by the US and its allies went beyond collecting personal data of citizens, and encompassed snooping on information of corporates considered of economic and strategic value, as well as monitoring of communications of various world leaders, including those of Brazil's President Dilma Rousseff.[1] In Kenya, the US National Security Agency (NSA) has been accused of eavesdropping on Kenya's President Uhuru Kenyatta and senior state officials' phone calls.[2] This has upset the Kenyan Government, which indicated it would not tolerate the snooping, and termed it as an intrusion and abuse. Kenya's Information and Communication Technology Cabinet Secretary Fred Matiang'i expressed it as "shameful and bad manners",[3] but indicated that the matter would be dealt with at diplomatic level. The revelations also raised concerns among ordinary Kenyan citizens in light of the absence of a national data protection act.

It was on the back of these developments that Brazilian President Rousseff called for a discussion on new rules of governance and use of the internet at the UN General Assembly towards the end of 2013, initiating a process towards convening NETmundial.

NETmundial – the Global Multistakeholder Conference on the Future of Internet Governance – organised in partnership between the Government of Brazil and the Internet Corporation for Assigned Names and Numbers (ICANN), took place in April 2014 in Sao Paulo, Brazil, and gathered close to 1,500 stakeholders from over 97 countries.[4] Participants were drawn from governments, the technical community, business, academia, civil society, and international organisations. The theme of the internet as a common good that should endeavour to protect fundamental human rights was echoed throughout the conference. The conclusion

1. Brazilian President: US surveillance a "breach of international law". www.theguardian.com/world/2013/sep/24/brazil-president-un-speech-nsa-surveillance (accessed May 31, 2014).

2. Kenya Says US Tapping Uhuru's Phone Calls. http://mwakilishi.com/content/articles/2014/05/30/video-kenya-says-us-tapping-uhurus-phone-calls.html

3. Idem.

4. http://netmundial.br/list-of-participants/

of NETmundial was contained in the outcome document,[5] which encompasses internet governance principles and the roadmap for its future evolution. The conference was seen as a significant process in starting to revise the principles that guide how the internet is governed.

In the run-up to the conference, the NETmundial Executive Committee requested content contributions from different stakeholders on its two substantive pillars: internet governance principles and the roadmap for future evolution of internet governance.[6] There were over 180 submissions/expressions of interest submitted,[7] with Africa submitting 19[8] and Kenya putting forward two, one from civil society and one from academia, and none from the Government. The submissions outlined views on areas such as security, freedom of expression, human rights, globalisation of ICANN and the IANA transition, affordable access, role of governments etc.[9] The high number of submissions indicated that various stakeholders wanted to be heard on matters of internet governance. Consequently, a committee was put in place to look at the submissions and synthesise them into a draft conference document.[10]

NETMUNDIAL AND ITS RELEVANCE FOR KENYA

The issues that motivated the Brazilian leadership to convene NETmundial were also some of the key internet concerns that Kenya has been dealing with in recent years. Similar to Brazil, Kenya has been recognised as having embraced multistakeholderism at the national level as far as ICT policy and regulation is concerned, and for nurturing a culture of stakeholder consultation on different internet policy concerns.[11] This echoes the NETmundial outcome document, which, in its section on the evolution of the internet governance ecosystem, called for the development of national multistakeholder processes and legislation such as the Brazilian Marco Civil[12] – consistent with Kenya's Constitution's article 10, which enshrines a multistakeholder approach in policy-making processes, and the Kenyan Bill of Rights.

In more general terms, NETmundial discussions about the evolution of the ecosystem addressed some decade-old questions such as who should manage the unique identifiers of the internet, and how different stakeholders can work together respectfully without patronage. In this context, NETmundial was a unique opportunity to tackle these issues head on and at a high political level. The NETmundial outcome document endorsed a model of internet governance that facilitates meaningful participation of all stakeholders "including governments, the private sector, civil society, the technical community, the academic community and users"[13] and suggested that internet governance ought to be grounded in "democratic, multistakeholder" practices that guarantee significant and accountable involvement of all stakeholders, and that roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion.

In contextualising NETmundial in the broader internet governance ecosystem, Fadi Chehadé, the CEO of ICANN, noted before the conference that "NETmudial should give those who went to WCIT and came out empty-handed a hope in multistakeholderism".[14] Bitange Ndemo, the former Permanent Secretary in the Ministry of ICT,[15] similarly noted that the conference "formed part of a series of ICT meetings this year that include the Internet Governance Forum which will take place in Istanbul, ICANN meetings, and later the ITU Plenipotentiary […]. We are at a critical period when [the] internet is under attack from governments and any mistake will set us back many years. We therefore need to be vigilant in all these meetings." The implications of NETmundial outcomes for global internet governance remain to be seen, but, at its minimum, its processes and outputs produced an array of valuable practical lessons as well as substantive precedents for stakeholders to take forward and build on in other forums.

5. http://netmundial.br/wpcontent/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf

6. http://content.netmundial.br/docs/contribs

7. http://content.netmundial.br/docs/contribs

8. www.accessnow.org/blog/2014/04/14/spotlight-on-african-contributions-to-internet-governance-discussions-netmu

9. Idem.

10. http://netmundial.br/wp-content/uploads/2014/04/NETmundialPublicConsultation-FinalReport20140421.pdf

11. Usually spearheaded by the sector's regulator – the Communications Authority of Kenya (CAK).

12. http://en.wikipedia.org/wiki/Brazilian_Civil_Rights_Framework_for_the_Internet.

13. http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf

14. Opening Remarks by Fadi Chehadé, CEO of ICANN at the Opening ceremony of ICANN 49, Singapore March 24, 2014.

15. Interview with Bitange Ndemo, Former Permanent Secretary in the Ministry of ICT.

NETmundial participants also deliberated on a number of substantive issues affecting user rights, including freedom of expression, privacy, access, as well as net neutrality. Mass surveillance was another fundamental concern driving NETmundial discussions, bolstered by the fact that the NSA's surveillance of President Rousseff's communications was one of the principle reasons for convening the meeting. According to Mwendwa Kivuva, an ICT administrator at the University of Nairobi, mass surveillance is a violation of human rights and civil liberties and it can destroy trust in the internet.[16] Reflecting this view were a number of NETmundial content submissions that proposed the need for protection from mass surveillance that takes into consideration the "necessary and proportionate principles".[17]

Also on the agenda were topics such as intermediary liability protections and network security – issues that continue to find relevance in Kenya's context in light of the terrorist attacks that have occurred sporadically. The question of whether surveillance is necessary to avert such attacks and other criminal activities has arisen. The Government of Kenya has in recent times enlisted the help of an intermediary – the Safaricom mobile service provider – in order to help the police force pick out terror suspects and track their movements.[18] Additionally, Safaricom has been contracted by the Government to build a security communications system that will connect all security agencies, and allow for sharing of information and direct operations. This system will be connected to computers that will analyze faces and other data useful in identifying and tracking suspects. "Safaricom will be required to develop a system for surveillance, analytics, command and control for police…"[19] in the next 24 months. However, there have been setbacks in implementation, as the National Assembly Committee suspended the tender awarded to Safaricom citing irregularities in the project on the basis that it was single-sourced contrary to procurement laws.[20] Moreover, the Government, in its efforts to address security issues and identification of non-Kenyans with false papers, intends to register afresh all Kenyans aged 12 years and above in a new digital database.[21] This proposed database will include biometric details of Kenyans, an issue that has raised concerns over its transparency and the suggestion for Parliament to discuss the matter.[22] As emphasised by Beryl Aidi of the Kenya Human Rights Commission, "Kenya does not have a data protection law and this registration process raises the issue of misuse of data."

From a regional perspective, Adiel Akplogan, the Chief Executive of AFRINIC and a member of 1Net,[23] noted that Africa needed to bring the African perspective at this turning point of the evolution of the internet ecosystem. "These are changes that the community has been asking for and therefore there is need to be prepared to show the world that we indeed know what it is that we have been asking for." In an effort to contribute to this endeavor, the 1Net forum gathered various stakeholders involved with internet governance and partnered with the Brazilian Internet Steering Committee (CGI.br) in organising the conference.[24]

KENYA'S POSITION ON NETMUNDIAL?

Kenya's previous engagement in internet governance policy discourses is one that can only be described as dynamic. Apart from being one of the first countries in the world to establish a national Internet Governance Forum (IGF) following the creation of the global IGF in 2007,[25] it hosted the sixth annual IGF in Nairobi in 2011.[26] Earlier on in 2010, the country hosted ICANN 37,[27] and it was one of the founding members of the Freedom Online Coalition in 2011.[28] It was also one of the few African countries that had a multistakeholder delegation during the World Conference on International Telecommunications (WCIT) in 2012.

With this background then, what was Kenya's position on NETmundial? Surprisingly, even as NETmundial drew attention, in particular internationally, the event did not attract a lot of interest in Kenya. There were discussions among a few civil society

16. Interview with Mwenda Kivuva. May 2, 2014.

17. https://en.necessaryandproportionate.org/text

18. Charles Wokabi "Sh14bn Safaricom deal to boost war on terror". May 13, 2012. http://mobile.nation.co.ke/news/Sh14bn-Safaricom-deal-to-boost-war-on-terror/-/1950946/2313684/-/format/xhtml/-/13jpvbf/-/index.html

19. Idem.

20. Evelyne Musambi. "MPs suspend Sh14bn Safaricom security tender". June 6, 2014. www.nation.co.ke/news/MPs-suspend-Sh14bn-Safaricom-security-tender/-/1056/2338274/-/o5g8wl/-/index.html

21. DPPS, "Government to register all Kenyans afresh in digital database" April 14, 2014. http://mobile.nation.co.ke/news/Digital-database-for-all-kenyans/-/1950946/2279712/-/format/xhtml/-/uityfn/-/index.html

22. Rajab Ramah. "Kenya's biometric registration campaign sparks concerns over transparency". April 24, 2014. http://sabahionline.com/en_GB/articles/hoa/articles/features/2014/04/24/feature-02

23. http://1net.org/about

24. NETmundial, the beginning of a process. http://netmundial.br/about/

25. David Souter and Monica Kerretts-Makau. 2012. Internet Governance in Kenya – An Assessment. ISOC . www.internetsociety.org/sites/default/files/ISOC%20study%20of%20IG%20in%20Kenya%20-%20D%20Souter%20%26%20M%20Kerretts-Makau%20-%20final.pdf (p. 7).

26. Internet as a catalyst for change: access, development, freedoms and innovation; The Sixth Internet Governance Forum Nairobi, Kenya. www.intgovforum.org/cms/2012/Book/IGF_2011_Book_Final%20copy.pdf

27. http://nbo.icann.org/

28. www.freedomonlinecoalition.com/about/members/

stakeholders, including hosting a NETmundial hub at ihub.[29] It had been anticipated that civil society and the private sector would play a key role considering there was on-going debate on transitioning some key IANA functions from the US Government to a multistakeholder entity. Further, "the expansion of the generic top level Domain (gTLD) space should have provided impetus for participation of the private sector", pointed out Barrack Otieno of the Africa Top Level Domain Organisation (AFTLD).[30] Sadly, this was not the case – the silence from the Government was deafening. Otieno expressed disappointment at this situation considering Kenya has previously been at the forefront of important internet policy debates: "the Brazilian Government was a key stakeholder in the organising committee and as such I expected governments' participation and the Kenyan Government's participation in particular. […] I remained hopeful that the government would participate in this important global event." The absence of an official position from the Kenyan Government was particularly noticeable in light of the Government's previous engagement in these debates, including through the IGF and the Freedom Online Coalition.[31] John Walubengo, a lecturer in IT at the Multi Media University, in commenting on Kenya's position, stated how "it seems [that] Kenya prefers to stake its position on global internet issues through the ITU. Unfortunately, and with all due respect to the ITU, which has a special and global role on matters of telecommunications, it only enjoys a peripheral, if not ceremonial role, on matters pertaining to the internet.[32] […] So looking for internet solutions in the ITU is quite misplaced and the best place to seek a stake is through the ICANN ecosystem while pursuing other internet governance related processes. NETmundial may not (officially) be within the ICANN framework, but ICANN is a strong stakeholder there."[33]

Furthermore, there were no national-level public consultations on Kenya's position, despite this having been a standard practice when it came to internet policy in the past. As Paul Muchene of ihub noted, "this issue shouldn't be circumscribed to the traditional stakeholders such as the private sector, government, civil society and the tech community. Even the ordinary digitally challenged end user has a stake in what is going on and how the outcomes of such a meeting will impact his/her life."[34] Apart from facilitating engagement at NETmundial, a joint effort at developing the national position on issues discussed in Sao Paulo could have served as a build-up to the IGF in Istanbul and the upcoming International Telecommunication Union (ITU) Plenipotentiary conference.

What has caused this shift? One of the main drivers of Kenya's active engagement in this space before 2013 has been the political will and vision within the existing governing structures. The 2013 national elections brought about a change in leadership accompanied by a number of internal reforms, which are still underway. For instance, the three bodies that have traditionally advised the government on ICT matters – the Government Information Technology Services (GITs), the Directorate of e-Government, and the ICT board – have recently been merged,[35] in an effort to get rid of repetition of roles and increase effectiveness. Notably, the Communications Authority of Kenya (CAK)[36] continues to take a lead role in ICT matters, though it appears that its main focus internationally is the ITU. A source from the Ministry of ICT has called on stakeholders to be patient and allow the new leadership at the ministry to adjust, quoting internal changes and restructuring. "One year is too early to judge their performance. People need to accept that different leaders have different leadership styles. Let us therefore not compare the previous leadership with the current one. The leadership is working hard and stakeholders should expect to see changes soon. This leadership is still alive to stakeholder engagement."[37]

WAY FORWARD FOR KENYA

Over the last year, participation by Kenya in key international internet debates has been minimal. This is probably due to the fact that the new leadership is

29. www.ihub.co.ke/blog/2014/04/netmundial-hub-in-nairobi-meeting-on-the-future-of-internet-governance/

30. Interview with Barrack Otieno, the Manager of Africa Top Level Domain Organisation (AFTLD).

31. www.freedomonlinecoalition.com/annual-conference/nairobi

32. Walubengo, John. "What is the Kenyan position on global internet governance?" April 29, 2014. www.cskonline.org/about-us/kenya-ict-press/548-what-is-the-kenyan-position-on-global-internet-governance

33. Interview with John Walubengo, June 5, 2014.

34. Interview with Paul Muchene of the ihub. May 7, 2014.

35. Charles Wokabi. "300 left jobless in ICT Authority's push to eliminate redundant roles". June 6, 2014. www.nation.co.ke/business/300-left-jobless-in-ICT-Authority/-/996/2339746/-/mav0jtz/-/index.html

36. http://cck.go.ke/index.html

37. The source requested for anonymity since s/he is not allowed to talk officially.

still acclimatising, and partly due to a lack of appreciation of how the changing landscape in internet governance and the outcomes of these debates could affect Kenyan citizens. With the reforms taking place at the different organs associated with the Ministry of ICT, namely the Kenya ICT Authority and the Communications Authority of Kenya, it is unclear whether we are likely to see a more active foreign policy from Kenya in the future in the area of internet or ICT-related activities.

Going forward, the challenge for Kenya will be to reclaim its space in internet policy discourses by getting active and involved. Over the next year or two, internet-related issues will again come to a head at various forums, including at the global IGF in Istanbul, and the ITU Plenipotentiary Conference in November 2014. Some civil society commentators have already suggested that "if Kenya wants to have a say on how the internet is run and managed" it should get strategically involved "within the ICANN ecosystem and other internet policy forums [as] using the ITU route is likely to be very costly, frustrating and ultimately unsuccessful"[38] Apart from these spaces, another key process unravelling in 2015 will be the WSIS+10 Review Process under the auspices of the UN General Assembly. ICT4D, access, cybersecurity, as well as governance-related issues are all likely to be on the agenda. It will be important for developing countries to shape the future direction of this process in order for the next billion users to truly benefit from the "information society". With a strong legacy of engagement at the international level and examples of good practice at the national level, Kenya is well placed to help shape this debate.

In light of uncertainty around the extent of the Government's anticipated engagement in these processes, other Kenyan stakeholders – civil society in particular – will have an important role in nurturing and continuing the Kenyan legacy of inclusive decision-making at the national level. The upcoming national, regional and global IGFs will be important spaces to share the Kenyan lessons in internet policy-making and showcase how a multistakeholder approach can improve decision-making and ultimately benefit end-users. As the NETmundial Conference affirmed, good internet governance starts at home, and Kenya is still an example to follow.

38. Walubengo, John. "What is the Kenyan position on global internet governance?" April 29, 2014. www.cskonline.org/about-us/kenya-ict-press/548-what-is-the-kenyan-position-on-global-internet-governance

ANNEX I

CIVIL SOCIETY CORE JOINT PROPOSALS FOR AMENDMENTS
TO THE NETMUNDIAL OUTCOME DOCUMENT[1]

INTERNET PRINCIPLES

Privacy

Privacy is a fundamental human right, and is central to the maintenance of democratic societies. It is essential to human dignity and it reinforces other rights, such as freedom of expression and information, and freedom of association, and is recognised under international human rights law. Mass surveillance is a direct and imminent threat to privacy, therefore societies must not be placed under surveillance. Individuals should be protected against collection, storage, use and disclosure of their personal data. Similarly, anonymity and encryption should be protected as a prerequisite for privacy and freedom of expression. The International Principles of Application of Human Rights to Communication Surveillance, (Necessary and Proportionate principles) should be the vantage point of this discussion.

Freedom of expression

Text about this right should be strengthened in line with Article 19 of the UDHR, specifically by removing the word "arbitrary" and adding "regardless of frontiers".

Net Neutrality

See a separate item referring to the principle of net neutrality and reinforce this principles in the paragraphs 10 and 23 with the changes as follows: Para 10: Internet should be a globally coherent, interconnected, stable, unfragmented, scalable and accessible network-of-networks, based on a common set of unique identifiers and that allows the free, **non-discriminatory** flow of data packets/ information. Para 23 Accessibility and low barriers internet governance should promote universal, equal opportunity, affordable and high quality internet access, **in accordance with the principle of net neutrality**, so it can be an effective tool for enabling human development and social inclusion. There should be no barriers to entry for new users.

Security, stability and resilience of the internet

Propose the inclusion in paragraph 11: The increasing militarisation of the internet undermines its integrity, security and potential to benefit humanity.

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1. Source: http://bestbits.net/netmundial-proposals/

In addition, suggest the following change: Effectiveness in addressing risks and threats to security and stability of the internet depends on strong **and transparent** cooperation among different stakeholders.

Enabling environment for innovation and creativity

Right to participate in cultural life: everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, and this right extends to the internet. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. This protection must be balanced with the larger public interest and human rights, including the rights to education, freedom of expression and information and the right to privacy.

Balanced democratic multistakeholder approach

Internet governance processes, policy and decisions should respect and support full participation of all affected, current and future, stakeholders and foster democratic bottom-up decision-making. Any multistakeholder approach should particularly enable meaningful participation from developing countries and underrepresented groups. When stakeholder representatives need to be appointed, they should be selected through open, participatory and transparent processes, in which different stakeholder groups should self-manage their processes based on inclusive, publicly known, well-defined, well-documented and accountable mechanisms.

Open standards

Internet governance should promote the **use and production of free and open source software and open public** standards, informed by individual and collective expertise and practical experience and decisions made by open consensus, that allow for an interoperable, resilient, stable, decentralised, secure, and interconnected networks, available to all. Standards must be consistent with human rights and allow development and innovation.

Internet as a global common resource

For all people and all stakeholder groups, not owned or controlled by any single group or entity. Human rights should be a foundation of internet governance, and all internet governance principles and processes should be underpinned by and in line with human rights. This includes the use of the internet to promote peace and avoid cyberwar. Therefore internet governance processes should be democratic, inclusive, open and transparent towards an evolution of the internet as a safe and secure platform for economic, social, political and cultural development.

ROADMAP FOR THE FUTURE EVOLUTION OF INTERNET GOVERNANCE

ICANN and the transition of IANA functions

This transition should be discussed and designed with full deliberative participation of all relevant stakeholders, from all regions, in a variety of forums, extending beyond the ICANN community and its meetings. It is desirable to keep an adequate separation between the policy process and its operational aspects as well as external accountability mechanisms. All stakeholders must be able to meaningfully contribute to the deliberative IANA transition process, whether structural or functional separation is the best way to do this. The DNS is a global resource so everyone has a stake in its future. To safeguard the stability and security of this resource, transparency and accountability of ICANN in general, and of the board specifically, should be improved. The discussion on mechanisms for guaranteeing the transparency and accountability of the IANA functions after the US Government role ends, as well as the improvement of the transparency

and accountability of ICANN, has to take place through an open process with the participation of all stakeholders extending beyond the ICANN community, striving towards a completed transition and improved transparency and accountability by September 2015.

Surveillance

Mass surveillance, which comprises collection, processing and interception of all forms of communication undermines internet security and trust in all personal, business and diplomatic communication. Mass surveillance is fundamental human rights violation. Targeted interception, and collection of personal data should be conducted in accordance with international human rights law. Critical and intermediate infrastructure must not be tampered with in service of targeted interception. Personal computing devices are the core of our lives – their sanctity must not be violated. No system, protocol or standard should be weakened to facilitate interception or decryption of communication or data. Future dialogue requires full disclosure of technical sources and methods for democratic discussion on this topic at the international level using forums like the Human Rights Council and the IGF aiming to develop a common understanding on all the related aspects and their implementation. The Necessary and Proportionate principles should be the vantage point of this discussion.

The way forward

The WSIS+10 overall review should be informed by the process and outcome of NETmundial. The modalities for the overall WSIS review should embrace an inclusive approach to agenda-setting, participation, and development of its outcome.

ANNEX II

COMPARISON OF SUBSTANTIVE CHANGES BETWEEN THE
DRAFT OUTCOME AND THE FINAL NETMUNDIAL STATEMENT
(CHANGES UNDERLINED)

INTERNET GOVERNANCE PRINCIPLES

NETmundial draft outcome document April 14[1]	NETmundial Multistakeholder Statement April 24[1]
NETmundial identified a set of common principles and important values that may contribute for an inclusive, multistakeholder, effective, legitimate, and evolving internet governance framework.	NETmundial identified a set of common principles and important values that contribute for an inclusive, multistakeholder, effective, legitimate, and evolving internet governance framework and recognised that the internet is a global resource which should be managed in the public interest.
Human rights are central values and universal as reflected in the Universal Declaration of Human Rights and that should underpin internet governance principles. Rights that people have offline must also be protected online, in accordance with international human rights legal obligations, including the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights.	**Human rights** are universal as reflected in the Universal Declaration of Human Rights and that should underpin internet governance principles. Rights that people have offline must also be protected online, in accordance with international human rights legal obligations, including the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, and the Convention on the Rights of Persons with Disabilities.

1. http://document.netmundial.br/net-content/
    uploads/2014/04/NETmundial-draft-
    outcome-document_April_14.pdf

2. http://netmundial.br/wp-content/
    uploads/2014/04/NETmundial-
    Multistakeholder-Document.pdf

Privacy: the same rights that people have offline must also be protected online, including the right to privacy, avoiding arbitrary or unlawful collection of personal data and surveillance and the right to the protection of the law against such interference.	**Privacy:** The right to privacy must be protected. This includes not being subject to arbitrary or unlawful surveillance, collection, treatment and use of personal data. The right to the protection of the law against such interference should be ensured. Procedures, practices and legislation regarding the surveillance of communications, their interception and collection of personal data, including mass surveillance, interception and collection, should be reviewed, with a view to upholding the right to privacy by ensuring the full and effective implementation of all obligations under international human rights law.
Freedom of information and access to information: Everyone should have the right to access, share, create and distribute information on the internet.	**Freedom of information and access to information:** Everyone should have the right to access, share, create and distribute information on the internet, consistent with the rights of authors and creators as established in law.
Provision non existent in this version	**Protection of intermediaries:** Intermediary liability limitations should be implemented in a way that respects and promotes economic growth, innovation, creativity and free flow of information. In this regard, cooperation among all stakeholders should be encouraged to address and deter illegal activity, consistent with fair process.
Unified and unfragmented space: Internet should continue to be a globally coherent, interconnected, stable, unfragmented, scalable and accessible network-of-networks, based on a common set of unique identifiers and that allows the free flow of data packets/information.	**Unified and unfragmented space:** Internet should continue to be a globally coherent, interconnected, stable, unfragmented, scalable and accessible network-of-networks, based on a common set of unique identifiers and that allows data packets/information to flow freely end-to-end regardless of the lawful content.
Open and distributed architecture: The internet should be preserved as a fertile and innovative environment based on an open system architecture, with voluntary collaboration, collective stewardship and participation, recognising technical management principles for efficient and improved network operation and preserving the end-to-end nature of the network, equal technical treatment of all protocols and data, delivered by the underlying communications and seeking to resolve technical issues at a level closest to their origin.	**Open and distributed architecture:** The internet should be preserved as a fertile and innovative environment based on an open system architecture, with voluntary collaboration, collective stewardship and participation, and upholds the end-to-end nature of the open internet, and seeks for technical experts to resolve technical issues in the appropriate venue in a manner consistent with this open, collaborative approach.

Multistakeholder: with the full participation of governments, the private sector, civil society, the technical community, academia and the users in their respective roles and responsibilities.

Multistakeholder: Internet governance should be built on democratic, multistakeholder processes, ensuring the meaningful and accountable participation of all stakeholders, including governments, the private sector, civil society, the technical community, the academic community and users.

The respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion.

Open, participative, consensus driven governance: The development of international internet-related public policies and internet governance arrangements should enable the full and balanced participation of all stakeholders from around the globe, and made by consensus.

Open, participative, consensus driven governance: The development of international internet-related public policies and internet governance arrangements should enable the full and balanced participation of all stakeholders from around the globe, and made by consensus, to the extent possible.

Accountable: Mechanisms for checks and balances as well as for review should exist.

Accountable: Mechanisms for independent checks and balances as well as for review and redress should exist. Governments have primary, legal and political accountability for the protection of human rights.

Inclusive and equitable: Internet governance institutions and processes should be inclusive and open to all interested stakeholders. Processes should be bottom-up, enabling the full involvement of all stakeholders, in a way that does not disadvantage any category of stakeholder.

Inclusive and equitable: Internet governance institutions and processes should be inclusive and open to all interested stakeholders. Processes, including decision making, should be bottom-up, enabling the full involvement of all stakeholders, in a way that does not disadvantage any category of stakeholder.

Distributed: Governance characterised by distributed and multistakeholder mechanisms and organisations.

Distributed: Internet governance should be carried out through a distributed, decentralised and multistakeholder ecosystem.

Open Standards: Internet governance should promote open standards, informed by individual and collective expertise and practical experience and decisions made by open consensus, that allow for a unique, interoperable, resilient, stable, decentralised, secure, and interconnected network, available to all. Standards must be consistent with human rights and allow development and innovation.

Open Standards: Internet governance should promote open standards, informed by individual and collective expertise and decisions made by rough consensus, that allow for a global, interoperable, resilient, stable, decentralised, secure, and interconnected network, available to all. Standards must be consistent with human rights and allow development and innovation.

ROADMAP FOR THE FUTURE EVOLUTION OF INTERNET GOVERNANCE

NETmundial draft outcome document April 14[3]	NETmundial Multistakeholder Statement April 24[4]
The **objective** of this proposed roadmap for the future evolution of internet governance is to outline possible steps forward in the process of continuously improving the existing internet governance framework ensuring the full involvement of all stakeholders.	The **objective** of this proposed roadmap for the future evolution of internet governance is to outline possible steps forward in the process of continuously improving the existing internet governance framework ensuring the full involvement of all stakeholders in their respective roles and responsibilities.
The **internet governance framework is** a distributed and coordinated ecosystem involving various organisations and fora. It must be inclusive, transparent and accountable, and its structures and operations must follow an approach that enables the participation of all stakeholders in order to address the interests of all those who benefit from the internet.	The **internet governance framework is** a distributed and coordinated ecosystem involving various organisations and fora. It must be inclusive, transparent and accountable, and its structures and operations must follow an approach that enables the participation of all stakeholders in order to address the interests of all those who use the internet as well as those who are not yet online.
Enhanced cooperation to address international public policy issues pertaining to the internet must be implemented on a priority and consensual basis. It is important that all stakeholders commit to advancing this discussion in a multistakeholder fashion.	**Enhanced cooperation** as referred to in the Tunis Agenda to address international public policy issues pertaining to the internet must be implemented on a priority and consensual basis. Taking into consideration the efforts of the CSTD working group on enhanced cooperation, it is important that all stakeholders commit to advancing this discussion in a multistakeholder fashion.
Stakeholder representatives appointed to multistakeholder internet governance processes should be selected through open and transparent processes. Different stakeholder groups should self-manage their processes based on inclusive, publicly known, well defined and accountable mechanisms.	**Stakeholder representatives** appointed to multistakeholder internet governance processes should be selected through open, democratic and transparent processes. Different stakeholder groups should self-manage their processes based on inclusive, publicly known, well defined and accountable mechanisms.

3. http://document.netmundial.br/net-content/ uploads/2014/04/NETmundial-draft-outcome-document_April_14.pdf

4. http://netmundial.br/wp-content/ uploads/2014/04/NETmundial-Multistakeholder-Document.pdf

There is a need for a **strengthened Internet Governance Forum (IGF)**. Important recommendations to that end were made by the UN CSTD working group on IGF improvements.

Improvements should include inter-alia:

a. Improved outcomes: Improvements can be implemented including creative ways of providing outcomes/recommendations and the analysis of policy options;

b. Extending the IGF mandate beyond five-year terms;

c. Ensuring guaranteed stable and predictable funding for the IGF is essential;

d. The IGF should adopt mechanisms to promote worldwide discussions between meetings through intersessional dialogues.

There is a need for a **strengthened Internet Governance Forum (IGF).** Important recommendations to that end were made by the UN CSTD working group on IGF improvements. It is suggested that these recommendations will be implemented by the end of 2015.

Improvements should include inter-alia:

a. Improved outcomes: Improvements can be implemented including creative ways of providing outcomes/recommendations and the analysis of policy options;

b. Extending the IGF mandate beyond five-year terms;

c. Ensuring guaranteed stable and predictable funding for the IGF, including through a broadened donor base, is essential;

d. The IGF should adopt mechanisms to promote worldwide discussions between meetings through intersessional dialogues.

The **IANA functions** are currently performed under policies developed in processes hosted by several organisations and forums. Any adopted mechanism should protect the bottom up, open and participatory nature of those policy development processes and ensure the stability and resilience of the internet.

(…) It is expected that the process of globalisation of ICANN speeds up leading to a truly international and global organisation serving the public interest with an independent status and clear accountability mechanisms that satisfy requirements from both internal stakeholders and the global community.

The **IANA functions** are currently performed under policies developed in processes hosted by several organisations and forums. Any adopted mechanism should protect the bottom up, open and participatory nature of those policy development processes and ensure the stability and resilience of the internet. It is desirable to discuss the adequate relation between the policy and operational aspects.

(…) It is expected that the process of globalisation of ICANN speeds up leading to a truly international and global organisation serving the public interest with clearly implementable and verifiable accountability and transparency mechanisms that satisfy requirements from both internal stakeholders and the global community.

Internet surveillance: Mass and arbitrary surveillance undermines trust in the internet and trust in the internet governance ecosystem. <u>Surveillance of communications, their interception, and the collection of personal data, including mass surveillance, interception and collection should be conducted in accordance with states' obligations under international human rights law</u>. More dialogue is needed on this topic at the international level using forums like IGF and the Human Rights Council aiming to develop a common understanding on all the related aspects.	**Mass and arbitrary surveillance** undermines trust in the internet and trust in the internet governance ecosystem. Collection <u>and processing</u> of personal data <u>by state and non-state actors</u> should be conducted in accordance with international human rights law. More dialogue is needed on this topic at the international level using forums like the Human Rights Council and IGF aiming to develop a common understanding on all the related aspects.
Provisions on **net neutrality** were originally allocated in the session of internet principles, particularly in the item regarding the Open and distributed architecture of the internet: "The internet should be preserved as a fertile and innovative environment based on an open system architecture, with voluntary collaboration, collective stewardship and participation, <u>recognising technical management principles for efficient and improved network operation and preserving the end-to-end nature of the network, equal technical treatment of all protocols and data, delivered by the underlying communications and seeking to resolve technical issues at a level closest to their origin.</u>	**Net neutrality:** there were very productive and important discussions about the issue of net neutrality at NETmundial, with diverging views as to whether or not to include the specific term as a principle in the outcomes. The principles do include concepts of an Open Internet and individual rights to freedom of expression and information. It is important that we continue the discussion of the Open Internet including how to enable freedom of expression, competition, consumer choice, meaningful transparency and appropriate network management and recommend that this be addressed at forums such as the next IGF.
Provision non-existent in this version	**Benchmarking systems and related indicators regarding the application of** internet governance principles.
It is expected that the NETmundial findings and outcomes will feed into other processes and forums, such as WSIS+10, IGF, and all internet governance discussions held in different organisations and bodies at all levels.	It is expected that the NETmundial findings and outcomes will feed into other processes and forums, such <u>as the post 2015 development agenda process</u>, WSIS+10, IGF, and all internet governance discussions held in different organisations and bodies at all levels.
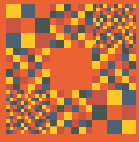
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Human rights in a connected world