Cybersecurity and Multi-stakeholder Internet Governance – the case of AU Convention on Cybersecurity

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Internet Governance

• “....the development and application by governments, the private sector, and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.”

• WSIS Tunis Agenda
Multi-stakeholder processes

• “We encourage the development of multi-stakeholder processes at the national, regional and international levels to discuss and collaborate on the expansion and diffusion of the Internet as a means to support development efforts to achieve internationally agreed development goals and objectives, including the Millennium Development Goals”

– WSIS Tunis Agenda
Stakeholders

- Tunis Agenda: sovereign states (governments), private sector, inter-governmental organisations, international organisations, academic and technical communities.
- 4 key groups emerging as “stakeholders: government, private sector, civil society, technical
  - academia, media, inter-governmental or international organisations have no defined place
Stakeholders

• no universal agreement on the means of interaction and engagement between the various stakeholder groupings.

• discourse occurs both online and offline
  – pros and cons in terms of participation and reach
media, private sector, academia and the technical community are “not visible”
Multi-stakeholder processes

• “The use of various means including networks, platforms, partnerships, collaborations, processes, dialogues to bring together diverse stakeholder groupings representative of society at large for the purpose of discussion, consensus-building, decision-making or action on matters of common interest”

  — Towela Nyirenda-Jere, MA (IG) dissertation
Multi-stakeholder processes

• “No cohesion amongst all these groups” (Private sector)
• “….processes are not substantiated by facts, data ” (Academia)
• “…no coordinated approach nationally …” (Government)
• “… not an issue that has really been brought out properly in a structured manner in Africa…..” (NGO)
Multi-stakeholder processes

• “State/governments are better placed to tackle cyber-crime issues. But cooperation is needed among them” (Academic)

• “…more players need to come in to support this process, working with national governments” (NGO)

• “…multi-stakeholder engagement unfeasible or impossible at the national level..”

• “…a few select groups making assumptions for a whole many”
The Road to the AUCC

• **2009** O R Tambo Declaration
• **2010** – AU Summit endorsement
  – Abuja Declaration
• **2011** First Draft: “AU Convention on the Confidence and Security in Cyberspace”
• **2012** – endorsement of draft by AU STC
• **2012-2013** Stakeholder consultations
  – 2013 online petition against the Convention
• **2014** Adoption: “AU Convention on Cybersecurity and Protection of Personal Data”
AUCC at a glance

• objectives - harmonize e-legislation, protect personal data, promote cyber security, fight cybercrime
  – *Define key cyber terminologies in legislation*
  – *Develop general principles and specific provisions related to cyber legislation*
  – *Outline cyber legislative measures required at Member State level*
  – *Develop general principles and specific provision on international cooperation*
AUCC at a glance

- Electronic transactions,
- Personal data protection,
- Cyber security and cybercrime

Requires member states to:
- develop national cyber security policy
- develop legislation on cybercrime
- ensure the protection of critical information infrastructure
- enact personal data protection laws
Reaction to the AUCC

- good guideline (benchmark/health-check)
- adherence to national constitutions and international human rights law
- emphasis on the African Charter on Human and Peoples’ Rights
- limited stakeholder engagement
- Vague/broad provisions that may cause misuse by governments
Reaction to AUCC

• No clear minimum thresholds - governments could opt not to implement some aspects
• inconsistency - racism and xenophobia outlawed, discrimination on sexual orientation or gender not
• Impact of leaked data on journalists and sources
• No safeguards on information-sharing between private sector and government
Current status and Way Forward

• 15 Ratifications required for entry into force
• Signatures: Benin, Cape Verde, Comoros, Congo, Guinea Bissau, Mauritania, Sierra Leone, Sao Tome and Principe, and Zambia have signed the convention
• No ratifications
## Most ratified instruments

<table>
<thead>
<tr>
<th>Instruments</th>
<th>Year of Adoption</th>
<th>Number of Ratifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutive Act of the African Union</td>
<td>2000</td>
<td>54</td>
</tr>
<tr>
<td>African Charter on Human and Peoples' Rights</td>
<td>1981</td>
<td>53</td>
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<tr>
<td>Treaty Establishing the African Economic Community,</td>
<td>1991</td>
<td>49</td>
</tr>
<tr>
<td>Protocol Relating to the Establishment of the Peace and Security Council</td>
<td>2002</td>
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<tr>
<td>of the African Union</td>
<td></td>
<td></td>
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<tr>
<td>Protocol to the Treaty Establishing the African Economic Community</td>
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<td>48</td>
</tr>
<tr>
<td>Relating to the Pan-African Parliament</td>
<td></td>
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<tr>
<td>OAU Convention Governing the Specific Aspects of Refugee Problems in Africa</td>
<td>1969</td>
<td>45</td>
</tr>
<tr>
<td>African Civil Aviation Commission Constitution</td>
<td>1969</td>
<td>44</td>
</tr>
<tr>
<td>OAU Convention on the Prevention and Combating of Terrorism</td>
<td>1999</td>
<td>41</td>
</tr>
<tr>
<td>Privileges and Immunities</td>
<td>1965</td>
<td>40</td>
</tr>
<tr>
<td>Nuclear-Weapon-Free Zone</td>
<td>1996</td>
<td>40</td>
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# Least Ratified Instruments

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<tr>
<td>Revised Constitution of the African Civil Aviation Commission</td>
<td>2009</td>
<td>5</td>
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<tr>
<td>Protocol on the Statute of the African Court of Justice and Human Right</td>
<td>2008</td>
<td>5</td>
</tr>
<tr>
<td>Protocol on the African Investment Bank</td>
<td>2009</td>
<td>2</td>
</tr>
<tr>
<td>African Union Convention on Cross-Border Cooperation (Niamey Convention)</td>
<td>2014</td>
<td>1</td>
</tr>
<tr>
<td>Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament</td>
<td>2014</td>
<td>1</td>
</tr>
<tr>
<td>African Union Convention on Cyber Security and Personal Data Protection</td>
<td>2014</td>
<td>0</td>
</tr>
<tr>
<td>African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development</td>
<td>2014</td>
<td>0</td>
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<tr>
<td>Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights</td>
<td>2014</td>
<td>0</td>
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<tr>
<td>Protocol on the Establishment on the African Monetary Fund and the Statute of the African Monetary Fund</td>
<td>2014</td>
<td>0</td>
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<tr>
<td>Agreement for the Establishment of the African Risk Capacity (ARC) Agency</td>
<td>2012</td>
<td>0</td>
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Effectiveness of MS Processes

• to what extent are objectives met
  – Outputs - immediate results
  – Outcomes - results over a longer time-frame
  – Impact - longer term sustained changes

• Determinants of effectiveness
  – Architectural : how established
  – Procedural : how run
  – Operational : how maintained and sustained
## Effectiveness of AUCC process

<table>
<thead>
<tr>
<th>Determinant</th>
<th>Observations</th>
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| Architectural | - Declaration at Ministerial level  
- Endorsement by Heads of State                                                                                                               |
| Procedural    | Stakeholder consultations  
- Expert meetings convened by AUC, UNECA  
- Online consultations convened by civil society                                                                                           |
| Operational   | - Advocacy through technical meetings and dialogues at regional and continental level  
- Declarations at Ministerial level  
- Limited activities at national level                                                                                                       |

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| Outputs     | - The Convention  
- State of Cybersecurity and Cybercrime in Africa report                                                                                                                                 |
| Outcomes    | - Ratification  
- Legislation and policy initiatives                                                                                                                                 |
| Impact      | - More time needed to assess                                                                                                                                                                                                 |
AUCC – What is at Stake?

- *Countries with legislation*
- **Electronic Transactions**: 28 (51%)
- **Consumer Protection**: 18 (33%)
- **Privacy and Data Protection**: 22 (40%)
- **Cybercrime**: 27 (49%)

- (Source: UNCTAD)
E-Legislation

Summary of Adoption of E-Commerce Legislation Worldwide

Source: UNCTAD
E-transactions

Source: UNCTAD
Data Protection & Privacy

Data Protection and Privacy Legislation Worldwide

Source: UNCTAD

Source: UNCTAD, 01/12
Cybercrime

Cybercrime Legislation Worldwide

Source: UNCTAD, 01/12/2016

Source: UNCTAD
Consumer Protection

Online Consumer Protection Legislation Worldwide

Source: UNCTAD
Recommendations

• Coordination between the AUC and member states
• Awareness among stakeholders
• Coordination and communication at national and regional level
• Inclusiveness - need for all stakeholders (civil society, government, private sector, academic) to be involved in national and regional processes.
Recommendations

• Strengthening the role of Pan Africa Parliament
• Examine ad streamline ratification processes
• Financial resources – setting up of institutions, capacity building, monitoring and enforcement
• Technical and institutional capacity building
Questions for Reflection

- What are the limits of MS approaches?
- Are MS approaches really feasible/practical?
- What are the roles and responsibilities of the various actors and stakeholders?
  – Who needs to do what, when, how and why?
- How long should the process take? Can we afford lengthy ratification processes?
THANK YOU

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