

MULTISTAKEHOLDERISM IN ACTION



Analysing Indian Engagement at
Global Internet Governance Institutions

2011-2015

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SCOPE

The purpose of this study is to analyse the participation and substantive engagement of Indian stakeholders at international Internet Governance (IG) institutions over the last five years (2011-2015). The scope of this report is limited to three Internet governance institutions viz. Ten Year Review of the Overall Outcomes of the World Summit on Information Society (WSIS+10 Review), Internet Corporation for Assigned Names and Numbers (ICANN) and the Multistakeholder Advisory Group of the Internet Governance Forum (IGF MAG).¹

Our analysis aims to throw light on the number of Indian stakeholders engaging with a particular institution, the methods adopted by them to engage with these institutions and Indian participation across stakeholder groups. We also look at the substantive issues on which Indian stakeholders engage with IG institutions. In this context, we identify themes that have been the focus of debate at the institutions under study and track the views of Indian stakeholders over the last five years. This is an effort to try and understand the positions taken by Indian stakeholders and their contribution to discussions within international institutions. Finally, we evaluate Indian engagement with Internet governance institutions across stakeholder groups. This will allow us to answer broader questions about India's position in global Internet governance, and particularly in the 'multistakeholderism' debate.

¹ It must be noted that unlike the IGF and ICANN, the WSIS+10 Review was one-time process under the aegis of the UN General Assembly and concluded in December, 2015.

1.1 Methodology

The analysis described above is based on primary data on Indian participation at the three Internet governance institutions. The bulk of this data is publicly available through the archives of meetings, mailing lists and submissions to the institutions under study. Surveys and interviews inform our analysis on broader questions of engagement and participation.

Archives of ICANN, IGF MAG and the WSIS+10 Review allowed us to identify and analyse Indian participation at these institutions over the last five years. While analysing the substantive questions, we relied on meeting transcripts, official submissions and mailing lists to identify themes that were relevant to each institution. These themes range from issues like institutional accountability to transparency and human rights to cybersecurity, to name a few. For each of these themes, we identified the Indian contribution and indexed such submissions for each meeting/process.

We collated this information across stakeholder groups over the last five years. The data collection allowed us to analyse Indian engagement and participation at the institutions. But the data does not us address questions regarding funding, process related barriers and institutional priorities of each stakeholder group. To help answer these questions, we circulated a short survey (14 questions) among Indian representatives from the last five years. The survey had 17 respondents, which is roughly 28% of all Indian stakeholders who engaged with Internet governance institutions over the last five years. Given that very few Indians have consistently engaged with Internet governance institutions, the survey provides us with a fair representation of stakeholder views.

To add context to the data gathered from the archives and through the survey, we carried out interviews with four prominent Indian stakeholder representatives, who have engaged with one or all the three institutions. We were able to identify such individuals as both the authors have engaged with international Internet governance institutions in the recent past.

2

INDIAN ENGAGEMENT WITH THE WSIS+10 REVIEW PROCESS

After weeks of frantic negotiations, the endorsement of the Outcome Document by the 70th Session of the United Nations (UN) General Assembly brought to a close the WSIS+10 Review. The WSIS+10 Review was criticised by stakeholder groups for being a largely multilateral process,¹ as most of the decision making on the Outcome Document occurred in closed door negotiations between government delegations.

Negotiations for the WSIS+10 Review started in June 2015 and ended in December 2015, although the review within the UN system began in 2013. This timeline coincided with the Indian government's unequivocal endorsement of multistakeholderism at ICANN 52 in June, 2015.² The Review process that followed saw the participation of Indian stakeholders at different levels and through different means. By participating in domestic, regional and international meetings, and making submissions when comments were invited on drafts, representatives from across stakeholder groups helped highlight Indian priorities during the WSIS+10 Review.

This chapter analyses Indian participation and engagement with the WSIS+10 Review.³ To accomplish this, we map the network of Indian

¹ Marilia Maciel, "Creating a Global Internet Public Policy Space: Is There a Way Forward?" in William Drake and Monroe Price (eds), *Beyond Netmundial: The Roadmap For Institutional Improvements To The Global Internet Governance Ecosystem*, (2014)pp. 101-102; *Infra*, Pohle, note 11.

² *Indian Government Declares Support for Multistakeholder Model of Internet Governance at ICANN53*, ICANN Press Release 22nd June 2015, available at <<https://www.icann.org/resources/press-material/release-2015-06-22-en>> (last accessed on 13th August, 2016); Neha Ahlawadi, *India supports multistakeholder model of Internet governance, says Ravi Shankar Prasad*, The Economic Times 22nd June 2015, available at <http://articles.economictimes.indiatimes.com/2015-06-22/news/63708985_1_Internet-governance-multistakeholder-model-the-icann> (last accessed on 13th August, 2016).

³ This chapter discusses the role played by Indian actors in the negotiation of the Outcome Document of the WSIS+10 Review. For an understanding of Indian inputs to the Review in the run up to the negotiations and its early stages, see Anja Kovacs, "The road to WSIS+10: Key perspectives from India" in Lea Kaspar (ed), *The Road to WSIS+10: Key Country Perspectives in the Ten-Year Review of the World Summit on the Information Society*, Global Partners Digital (2015), available at <<http://Internetdemocracy.in/wp-content/uploads/2015/09/WSIS+10-Country-Mapping-FINAL1.pdf>> (last accessed 13th August, 2016).

stakeholders that participated in the WSIS+10 Review. We then identify the methods through which they engaged with the WSIS+10 Review. Following this, we delineate the priorities of each stakeholder group by examining their substantive inputs into the process through statements or submissions. Finally, we turn a critical eye to Indian engagement with the WSIS+10 Review.

2.1 Background

The WSIS process first took shape as the UN's response to the growing digital divide in the last decade of the 20th century.⁴ In 1996, the United Nations Educational, Scientific and Cultural Organization (UNESCO) launched discussions with the intention to organize a 'Conference on Information and Communication for Development'.⁵ But the International Telecommunications Union (ITU) was more successful in organizing an event that dealt with the digital divide among other issues. In 1998, the ITU passed a resolution to organize a summit on the information society with the government of Tunisia offering to host.⁶ A summit was chosen over a conference keeping with the UN's practice of organizing Summits in the 90s and early 2000s on key issues to involve a wider group of actors in UN processes.⁷

⁴ For a discussion on the history of the WSIS, see Sean O Siochru, "Will the Real WSIS Please Stand-up? The Historic Encounter of the 'Information Society' and the 'Communication Society'", 66 Gazette- The International Journal for Communication Studies No. 3/4 June-July (2004), 203-224; also see Puneeth Nagaraj, "Civil Society Participation in the Negotiations of the Ten Year Overall Review of WSIS Outcomes", Global Partners Digital June 2016, available at <<http://www.gp-digital.org/publication/civil-society-participation-in-the-negotiations-of-the-ten-year-overall-review-of-wsis-outcomes/>>, at 8-10 (last accessed 12th August, 2016).

⁵ Arne Hintz, "Civil Society Media and Global Governance: Intervening into the World Summit on the Information Society" (2009), at p. 103

⁶ *Supra*, Siochru, note 4.

⁷ Hans Klein, "Understanding WSIS: An Institutional Analysis of the UN World Summit on the Information Society", 1 Information Technologies and International Development No. 3-4 Spring Summer (2004), 3-13, at 3.

The UN General Assembly passed Resolution 56/183 in 2001 to hold the Summit over two phases in Geneva (2003) and Tunis (2005). This resolution was important as it called for the involvement of non-governmental stakeholders.⁸ With this in mind, the Geneva and Tunis phases of the WSIS (the Summit) were supported by a Tripartite Secretariat that facilitated the participation of government, civil society and business stakeholders.⁹ Despite the involvement of a large number of non-governmental stakeholders, it has been argued that the actual negotiations and decision making was limited to government representatives.¹⁰ The references to multistakeholder and multilateral models of governance in the Tunis Agenda, (the consensus document of the Tunis phase of the WSIS) sparked off a debate on the character of the WSIS process.¹¹ This debate is yet to be resolved and was a central talking point for many non-governmental stakeholders during the WSIS+10 Review.

Unlike the Summit, the WSIS+10 Review was conducted by the UN General Assembly (UNGA) in New York. There were limited windows of participation for stakeholders through comments windows and public consultations, but the final negotiations over the Outcome

⁸ See UNGA Resolution 56/183, available at https://www.itu.int/net/wsisc/docs/background/resolutions/56_183_unga_2002.pdf (last accessed 25th August, 2016).

⁹ Bart Cammaerts, “Through the Looking Glass: Civil Society Participation in the WSIS and the Dynamics Between Online/Offline Interaction”, Communications & Strategies 58 (2 – Special Issue WSIS, Tunis 2005). pp. 151-174, at p. 154.

¹⁰ David Souter, *The World Summit on the Information Society: The end of an era or the start of something new?*, in “Global Information Society Watch 2007: Focus on Participation” (2007), pp. 11-15, at p. 12.

¹¹ Singh argues that the WSIS process and the Tunis Agenda resulted in a ‘networked multilateralism’. See, JP Singh, “Multilateral Approaches to Deliberating Internet Governance”, Policy & Internet Vol 1 [2009] Issue 1 art. 4, pp. 91-111. Couldry et al argue that the first two phases of the WSIS were designed to support a multistakeholder form of governance. Pohle makes similar arguments with respect to the WSIS+10 Review. See Nick Couldry et al, “The Unbearable Lightness of Full Participation in a Global Context: WSIS and Civil Society Participation”, Media@LSE Working Paper No. 8 (2005); Julia Pohle, “Internet Governance and WSIS+10: Deliberate Exclusion or Strategic Neglect”, Giganet Annual Symposium Working Paper (November 2015).

Document were held between government representatives behind closed doors. The Outcome Document alluded to both multilateral and multistakeholder forms of governance,¹² underlining the contentious debate over multistakeholderism in the WSIS process.

Indian stakeholders were similarly divided on the shape that the WSIS+10 Review should have taken. Some pointed to India's recent support of multistakeholderism and the emerging global consensus on multistakeholderism.¹³ Others argued that the WSIS process was a multilateral process conceived and organised by the UNGA.¹⁴ Despite limited opportunities, a number of Indian stakeholders participated in the WSIS process and engaged on many key issues. The following section looks at the ways in which Indian stakeholders were able to participate in the WSIS process.

2.2 Indian Participation in the WSIS+10 Review

In this section, we first look at the kind of actors that participated in the WSIS+10 Review across stakeholder groups. We then turn to the methods adopted by Indian actors to engage with a process that was criticised for not being open to non-governmental stakeholders. We finally turn to a brief discussion on the means through which Indian actors were able to participate in the WSIS+10 Review.

¹² See <http://workspace.unpan.org/sites/Internet/Documents/UNPAN96078.pdf>, at para 57 (last accessed 12th August, 2016).

¹³ The Internet Democracy Project in their comment called for a multistakeholder processes in Internet governance. See, Internet Democracy Project Comment on Written Submissions for the Non-Paper, at p. 3, available at <<http://workspace.unpan.org/sites/Internet/Documents/UNPAN95005.pdf>>, (last accessed 13th August, 2016). Some commentators on the WSIS process, cite India's support of multistakeholderism at ICANN 53 as an important turning point. *Supra* Kovacs, note 3.

¹⁴ Intervention by Indian stakeholder at a WSIS+10 physical meeting. On file with the authors.

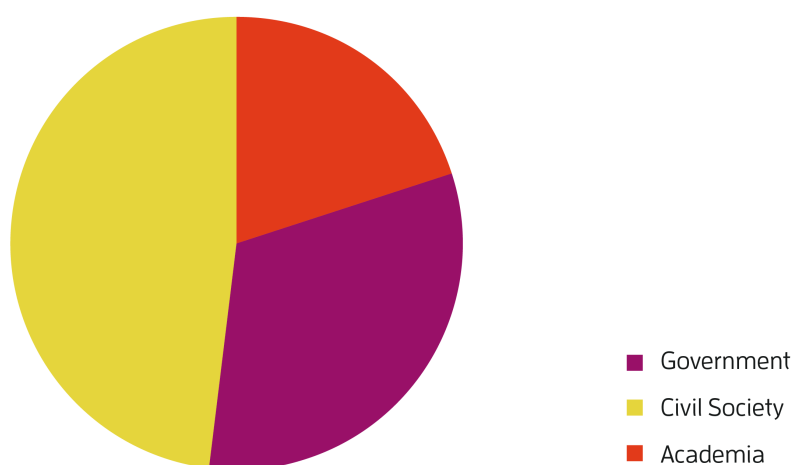
2.2.1 Actors

There were two broad avenues through which stakeholders could engage with the WSIS+10 Review, 1) by attending WSIS or WSIS related meetings or 2) by submitting written comments on the Outcome Document during specific comments windows.¹⁵ In total, there were 19 Indian stakeholders (see Annex I) who attended WSIS or WSIS-related meetings and 18 organizations and individuals (see Annex II) that submitted or endorsed comments that were submitted to the UNGA. A breakdown of these figures can be seen below.

2.2.2.1 Stakeholder Representation in Meetings

Civil society and government representatives accounted for most of the Indian participants in WSIS or WSIS related meetings. Figure 1 below represents the proportion of participants by stakeholder group.

Figure I: Indian Stakeholder Participation in WSIS Meetings



¹⁵ For a timeline of the official WSIS meetings and comments windows, see <https://publicadministration.un.org/ws10/roadmap> (last accessed 13th August, 2016).

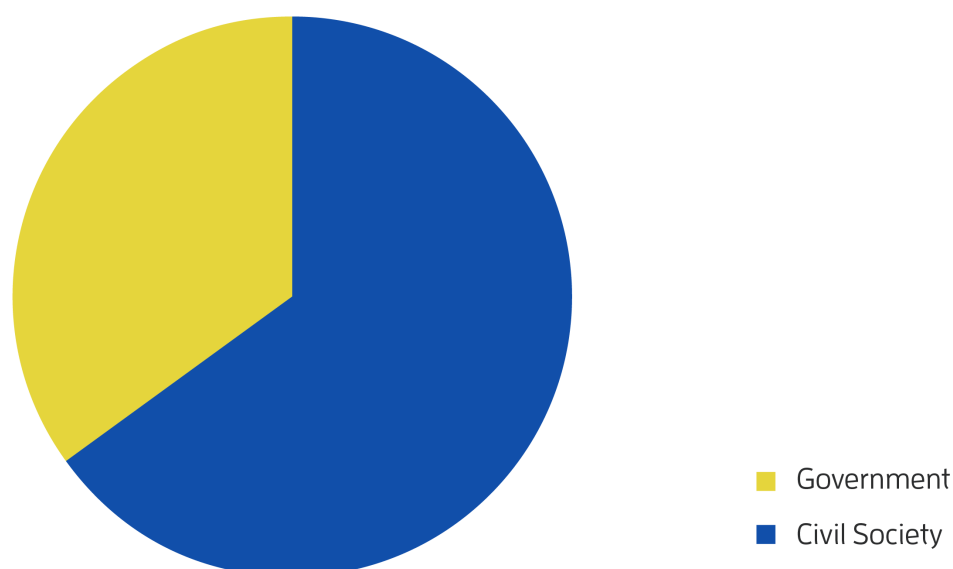
Two caveats apply to the chart above. First, while no Indian private sector groups participated in the review, they did participate in government-led domestic consultations on the WSIS process.¹⁶ However, the information on participation in these Indian government consultations is not publicly available. Second, there is some debate over the classification of non-technical academics as a stakeholder category. Under the WSIS classification, they are grouped together with the technical community. Comments submitted by non-technical academics are classified under this head. However, in attending physical meetings and engaging with the process, many non-technical academics choose to participate as part of civil society. This was not unique to the Review as non-technical academics participated as civil society in the first two phases of the WSIS.¹⁷

Since there were a significant number of representatives from this group, they are listed separately in the chart above. However, if non-technical academics are considered as part of civil society the number of civil society actors increase significantly. The chart below represents the number of Indian participants across the two categories (government and civil society).

¹⁶ One of the authors of this report participated in the government consultations and personally observed private sector members participating.

¹⁷ For a discussion on the constitution of civil society in the WSIS process, see Milton Mueller, “Global Civil Societies and WSIS : Actors, Visions, Methods and Strategies... Towards What Governance?”, available at <http://www.institut-gouvernance.org/en/analyse/fiche-analyse-497.html> (last accessed 14th August, 2016).

Figure 2: Indian Stakeholder Participation in WSIS Meetings



2.2.2.2 Comments Submissions

Across three comments windows, 19 Indian organizations and individuals submitted formal comments on the Outcome Document to the co-facilitators of the WSIS+10 Review.¹⁸ Of these, nine organizations submitted individual comments and 15 submitted comments as part of a network.¹⁹ As with the meetings, there were no submissions from private sector organizations.²⁰ Submissions were largely made by civil society, academia, international organizations (based in India) and the government.²¹ A majority of comments were submitted or endorsed by civil society groups or

¹⁸ Analysis based on information publicly available on the WSIS+10 website, *supra*, note 15. On file with the author. For a list, see Annexes I and II.

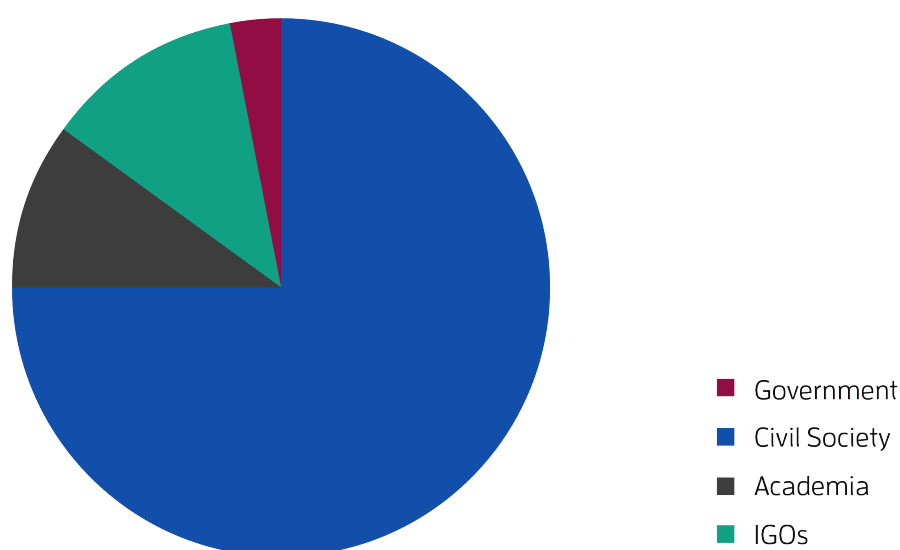
¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

representatives.²² A breakdown by stakeholder groups is represented in Figure 3 below.

Figure 3: Comments Submitted by Stakeholder Groups



2.2.4 Modes of Participation

Stakeholders participated in the WSIS+10 Review through four different avenues viz., 1) Written Inputs into the UNGA Review, 2) Attending Physical WSIS-related Meetings, 3) Participating in Regional or Domestic Meetings and by 4) Coordinating with Global Networks. Examining these four methods of participation together, will paint a fuller picture of Indian participation in the WSIS+10 Review.

²²*Id.*

2.2.4.1 Written Submissions

In the preparatory process, the UNGA through the co-facilitators created formal avenues for stakeholder engagement. One such avenue was through written submissions on drafts of the Outcome Document. There were three windows in which stakeholders could submit comments on versions of the document produced by the co-facilitators in consultation with stakeholder groups. This started off as an open process with all views taken on board.²³ As the negotiations drew to a close, the scope for comments also narrowed.²⁴ The last few rounds of negotiations happened behind closed doors with little to no input from non-governmental stakeholders.

Indian stakeholder groups, particularly civil society took advantage of this opportunity with as many as 19 organizations submitting comments on the Outcome Document. These submissions included individual submissions by organizations like the Centre for Communication Governance at National Law University, Delhi, Centre for Internet and Society and the Internet Democracy Project or through joint efforts based on region- like the Pattaya Key Messages,²⁵ existing coalitions like the Just Net Coalition²⁶ and some creative, cross-cutting submissions like the BRICS Civil Society submission²⁷ and ISOC cross-community joint statement.

²³ The first call for submissions were worded very broadly, inviting submissions on 5 questions for the non-paper. See, Guidelines for Written Submissions for the Non-paper, available at <<https://publicadministration.un.org/ws10/submissionguidelines>> (last accessed 13th August, 2016).

²⁴ The last call for submissions were not publicly circulated. Some civil society organizations were able to submit their comments based on information they received from the negotiators/UN DESA. Email from Deniz D Aydin, dated 10th December, 2015 to the WSIS10 Mailing List.

²⁵ Available at <<http://wsis10.asia/index.php/outcomes>> (last accessed 13th July, 2016).

²⁶ See under “WSIS+10 Review”, available at <<http://justnetcoalition.org/statements>> (last accessed 13th July, 2016).

²⁷ Available at <<http://ccgdelhi.org/doc/BRICS%20Comment.pdf>> (last accessed 13th August, 2016).

A significant number of Indian representatives were also part of a coalition of civil society groups that loosely formed around the WSIS negotiations. This coalition consisted of around 15 organizations that submitted joint comments on the zero draft.²⁸

2.2.4.2 Attending Physical Meetings

Negotiations for the WSIS+10 Review happened over a six-month period. All the meetings took place at the UNGA in New York. Of these, only a few were open to non-governmental stakeholders. There were two such informal meetings held in July and October 2015. In addition, the co-facilitators of the WSIS+10 Review attended the 2015 Internet Governance Forum (IGF) where stakeholders had the opportunity to engage with them.²⁹ Non-governmental stakeholders also had the chance to observe the Preparatory Meetings in July³⁰ and October.³¹ An Indian civil society representative addressed the High Level Meeting of the UNGA in December.³² A few other Indian representatives were invited as expert panellists to Side Events during the High Level Meeting and the Preparatory Meetings in New York.

However, the fact that the meetings were held in New York and at times conflicted with other international meetings (like ICANN 54)

²⁸ Available at <<http://workspace.unpan.org/sites/Internet/Documents/UNPAN95473.pdf>> (last accessed 13th August, 2016).

²⁹ Available at <<https://igf2015.sched.org/event/4b2t/ws10-consultations?iframe=no&w=&sidebar=yes&bg=no>> (last accessed 15th July, 2016).

³⁰ Available at <<https://publicadministration.un.org/ws10/1julypreparatorymeeting>> (last accessed 15th July, 2016).

³¹ Available at <<https://publicadministration.un.org/ws10/Events/2nd-Preparatory-Meeting>> (last accessed 15th July, 2016).

³² Parminder Jeet Singh from IT for Change addressed the UNGA on 16th December. See, http://www.itforchange.net/UNGA_WSIS10 (last accessed 13th August, 2016).

created obstacles for many Indian representatives to participate in these meetings. A number of Indian - particularly civil society- representatives who managed to secure funding to attend these meetings participated in a loose coalition of global civil society organizations.³³ This coalition was involved in disseminating information to the wider civil society network and also engaged with negotiators.

2.2.4.3 Regional/National Level Meetings

Attending physical meetings at the UNGA was not the only avenue for Indian participation. There was one regional and two domestic meetings that aimed to feed into the WSIS+10 Review. However, these meetings were not officially part of the WSIS+10 Review. In the Asia-Pacific Region, a meeting of civil society representatives was organised in Pattaya. In addition, the Indian government convened two roundtable meetings of all stakeholders in September³⁴ and October³⁵ in an effort to gather views on India's official submissions on the non-paper and zero draft respectively.

Regional and national level meetings were avenues for Indian stakeholders to discuss issues related to the Review. They allowed stakeholders who did not have the resources to travel to New York to engage with the process. Both the Pattaya Key Messages and Indian government consultations gathered the views of participating stakeholders to make submissions to different drafts of the Outcome Document.

³³ This coalition was formed after the Civil Society Coordination Meeting held in October, 2015 and coordinated their efforts online and at subsequent Internet Governance Meetings.

³⁴ Available at <<http://indiaig.in/ws10-review/>> (last accessed 13th July, 2016).

³⁵ Available at <<http://indiaig.in/ws10-zero-draft/>> (last accessed 13th July, 2016).

2.2.4.4 Participating through Online Networks

Indian stakeholders were able to highlight their concerns by participating in joint efforts through global networks. The Internet played a big role in enabling this level of coordination. Mailing lists were used for knowledge sharing and to discuss substantive issues during the Summit.³⁶ They continued to play an important role in the WSIS+10 Review.³⁷ This included a special ‘wsis10’ mailing list that was operated on the bestbits platform.³⁸ The mailing lists were a source of valuable information as they were also used to share process related information to inform the larger community of the schedule and opportunities for engagement with the Review process.³⁹

Mailing lists were also a platform for knowledge dissemination and capacity building. The Internet Society⁴⁰ and Global Partners Digital (GPD)⁴¹ organised webinars to build capacity within their networks to enable representatives to play a better part in the WSIS+10 negotiations. These webinars shared information on the Review process itself, and provided an opportunity for Indians to engage with international experts.

In some situations, mailing lists also afforded subscribers an opportunity to engage with issues being discussed in the Review. Some joint submissions to the Review-like the BRICS Civil Society

³⁶ *Supra*, note 9, at p. 166.

³⁷ See for instance, *infra* note 41.

³⁸ For a list of bestbits mailing lists, see <<http://lists.bestbits.net/>> (last accessed 15th March, 2016).

³⁹ *Supra*, note 24.

⁴⁰ ISOC Q4 Community forum, October 2015, available at <<http://giplatform.org/events/isoc-q4-community-forum>> (last accessed 13th August, 2016).

⁴¹ WSIS +10 Webinar Series organised by GPD, available at <<http://www.gp-digital.org/publication/wsis10-webinar-series-2/>> (last accessed 13th August, 2016).

comment- was born out of discussions on the mailing lists.⁴² Others used the lists to canvas for support in favour of joint submissions.⁴³

2.2.5 Means

As mentioned in the previous section, many Indian stakeholders could not participate in the WSIS+10 Review given the costs of travelling to New York. The Indian stakeholders that did participate in WSIS meetings were funded by different sources. A few civil society representatives were funded by Global Partners Digital to attend the October meetings in New York.⁴⁴ Some surveyed participants were funded by their own organizations. But it is worth noting that civil society organisations are typically non-profit organisations that receive grants from donors, which they are able to use to engage with Internet governance processes. Unlike ICANN or the IGF, there were no institutional funding opportunities or fellowships that Indian stakeholders could apply to.

2.3 Substantive Engagement with the WSIS+10 Review

Having looked at the ways in which Indian actors participated in the WSIS+10 Review, we now turn to the issues that were highlighted by them in the process. We have identified six broad themes on which such interventions were made. Based on verbal interventions and on written submissions made, we highlight the main concerns of each stakeholder group. As mentioned earlier, there was negligible private sector engagement with the WSIS+10 Review. As a result,

⁴² Email from Chinmayi Arun to the wsis10 mailing list dated 11th September, 2015.

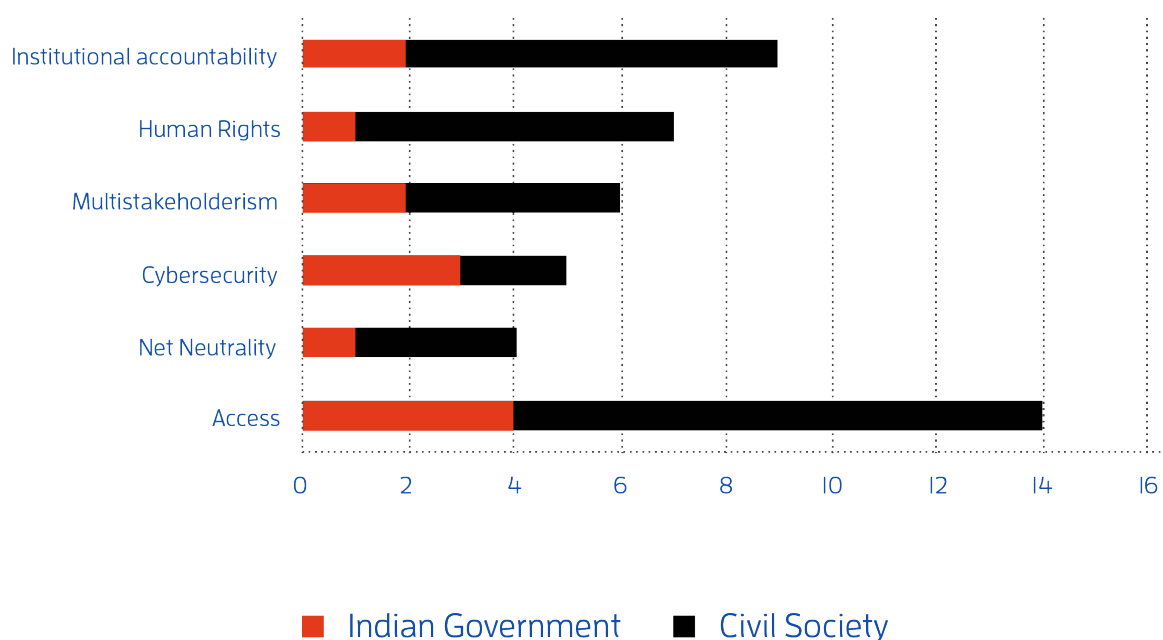
⁴³ See for instance Email from Carolina Rossini to the wsis10 mailing list dated 17th September, 2015.

⁴⁴ Email from Lea Kaspar dated 9th October, 2015.

our analysis below is limited to government and civil society interventions.⁴⁵

The chart below indicates priority issues for Indian stakeholders based on the number of interventions that focussed on a particular topic. It must be noted that this is based on publicly available data and is only indicative of broad trends in the articulation of Indian stakeholder priorities.

Figure 4: Indian Interventions in WSIS+10 Meetings



⁴⁵ Academia, as described earlier is grouped under civil society.

2.3.1 Access

Access was a high priority issue for Indian representatives across stakeholder groups. Government representatives highlighted the link between the WSIS process, Sustainable Development Goals and the ambitious Digital India programme.⁴⁶ Both civil society and government actors highlighted the need for a financial mechanism to support access initiatives, calling for a re-examination of the Digital Solidarity Fund.⁴⁷

In their intervention at the High Level Meeting in December, the government representative pointed to India's diversity and the need for access initiatives to address regional and language barriers. In a similar vein, civil society representatives in their submissions stressed on the need for Internet connectivity to reach the most marginalized sections of society.⁴⁸ Indian representatives also helped introduce language on human rights based access to the Internet in a joint civil society submission.⁴⁹

In domestic and regional WSIS meetings, Indian stakeholders focused on the consequences of 'digital exclusion'. Some argued that as Internet penetration increases, those on the wrong side of the

⁴⁶ The Indian government had supported the linkage of the WSIS process with both the MDG and SDG processes even before the negotiations for the Outcome Document began. See for instance, "WSIS +10 High Level Policy Statement of India" 10th June, 2014 Geneva, available at <<http://pmindiaun.org/pages.php?id=942>> (last accessed 13th August, 2016).

⁴⁷ See for instance, Internet Democracy Project Comment on the Zero Draft, p. 2, available at <<http://workspace.unpan.org/sites/Internet/Documents/UNPAN95487.pdf>> (last accessed 13th August, 2016).

⁴⁸ Centre for Communication Governance at National Law University, Delhi Comment on the Non-paper, pp. 3-4, available at <<http://workspace.unpan.org/sites/Internet/Documents/UNPAN95332.pdf>> (last accessed 13th August, 2016); Chinmayi Arun and Siddharth Manohar, "Empowering the Marginalized: Tales of the Digital Good Life" in *The Good Life in Asia's Digital 21st Century*, Digital Asia Hub (2016), available at <<https://www.digitaliasiahub.org/thegoodlife/>> (last accessed 13th August, 2016).

⁴⁹ BRICS Civil Society Comment on the Non-Paper, p. 4, available at <<http://workspace.unpan.org/sites/Internet/Documents/UNPAN95331.pdf>> (last accessed 13th August, 2016).

digital divide are further marginalised.⁵⁰ Based on this, Indian civil society groups stressed on the need to recognize socio-economic divides based on gender, caste, religion, ethnicity etc in designing access based programmes.⁵¹

In terms of solutions, civil society groups advocated for community broadband built on public backbones.⁵² There was some unanimity on access programmes being prioritized, rather than waiting for solutions in other areas to materialise. Finally, some advocated for treating the Internet as a public good and making access to the Internet universal.

2.3.2 Net Neutrality

The WSIS+10 Review negotiations coincided with the public debate over net neutrality in India. As a result, Indian stakeholders along with a few global civil society groups raised the issue of net neutrality in the context of the WSIS.⁵³ They echoed the case against zero rating that was being made within India at the time. One representative argued that zero rating provided access mediated through corporations. They also argued that this was against the idea of an

⁵⁰ *Supra* Centre for Communication Governance at National Law University, Delhi, note 48. For a broader discussion on the socio-economic dimensions and barriers to access, see *supra* Chinmayi Arun and Siddharth Manohar, note 48.

⁵¹ *Id.*, Centre for Communication Governance at National Law University, Delhi.

⁵² JustNet Coalition Comment on Non-Paper, p. 2, available at <http://workspace.unpan.org/sites/Internet/Documents/UNPAN95333.pdf> (last accessed 13th August, 2016); Just Net Coalition Comment on Zero Draft, p. 3, available at <http://workspace.unpan.org/sites/Internet/Documents/UNPAN95426.pdf> (last accessed 13th August, 2016).

⁵³ Centre for Communication Governance at National Law University, Delhi Comment on the Zero Draft, p. 4, available at <http://workspace.unpan.org/sites/Internet/Documents/UNPAN95431.pdf> (last accessed 13th August, 2016); SFLC in comments on the Non-Paper, available at <http://workspace.unpan.org/sites/Internet/Documents/UNPAN95336.pdf> (last accessed 13th August, 2016); Joint Civil Society Submission on the Zero Draft, available at <http://workspace.unpan.org/sites/Internet/Documents/UNPAN95473.pdf> (last accessed 13th August, 2016).

open Internet and that full access included access beyond mobile phones.⁵⁴

Another representative contended that the zero rating debate was framed falsely as a binary between no access and limited access through gatekeepers⁵⁵. They argued that access to the Internet cannot be limited on the grounds that other rights are being limited.⁵⁶ Although net neutrality was not mentioned in the Outcome Document, Indian representatives helped bring attention to the issue at the international level.⁵⁷

2.3.3 Institutional Accountability

The WSIS+10 Review had a mandate to decide if the IGF should be extended. Most Indian stakeholders, including the government, supported the extension of the IGF. But they called for greater inclusiveness and accountability in the extension of the IGF.⁵⁸ Some even argued that the extending the IGF should be contingent on implementing accountability measures.⁵⁹ The Indian government highlighted the need for greater inclusiveness, openness, transparency and accountability in the functioning of Internet governance institutions.⁶⁰

⁵⁴ Intervention by Indian stakeholder at a WSIS+10 physical meeting. On file with the authors.

⁵⁵ Intervention by Indian stakeholder at a WSIS+10 physical meeting. On file with the authors.

⁵⁶ Intervention by Indian stakeholder at a WSIS+10 physical meeting. On file with the authors.

⁵⁷ The Indian government voiced its support for net neutrality at the First Informal Consultations for the WSIS+10 Review. Available at

<<https://www.pminewyork.org/adminpart/uploadpdf/74416WSIS%20stmnt%20on%20July%201,%202015.pdf>>, (last accessed 13th August, 2016).

⁵⁸ See for instance, Indian Government Comment on the Zero Draft, available at

<<http://workspace.unpan.org/sites/Internet/Documents/UNPAN95470.pdf>> (last accessed 13th August, 2016).

⁵⁹ *Supra*, note 48, at p. 3.

⁶⁰ *Supra*, note 46.

The need for greater diversity in Internet governance decision-making was a common thread across stakeholder groups.⁶¹ Some called for the inclusion of Internet users' views in Internet governance discussions.⁶² Others called for greater participation from the developing world. Regional meetings on the WSIS highlighted the need for regional and national Internet governance processes that feed into global processes.

2.3.4 Cybersecurity

The Indian government highlighted the need for governments to play a leading role in cybersecurity discussions.⁶³ Representatives from the government also called for setting up an intergovernmental platform to discuss cybersecurity issues and supported calls for capacity building efforts on cybersecurity issues.⁶⁴ They also pointed out the importance of cybersecurity measures in supporting development and access programmes like Digital India.⁶⁵ Civil society groups called for a human rights compatible approach to cybersecurity. They stressed on the need for rights like privacy and speech to be respected while implementing cybersecurity measures.⁶⁶

⁶¹ Intervention by Indian stakeholder at a WSIS+10 physical meeting. On file with the authors.

⁶² Intervention by Indian stakeholder at a WSIS+10 physical meeting. On file with the authors.

⁶³ Indian Government Comment on the Non-Paper, available at <http://workspace.unpan.org/sites/Internet/Documents/UNPAN95307.pdf>, (last accessed on 13th August, 2016).

⁶⁴ Intervention by Indian Government Representative at the 2nd Preparatory Meeting, October 20-22, 2015. On file with the authors.

⁶⁵ *Id.*

⁶⁶ Intervention by Indian stakeholder at a WSIS+10 physical meeting. On file with the authors

2.3.5 Multistakeholderism

There were some divisions of opinion on the issue of multistakeholderism among Indian stakeholders. The government continued to voice its support for multistakeholderism following the statement of the Minister for Communications and Information Technology at ICANN 52. Government representatives underscored the need for greater diversity and representation in multistakeholder settings like the IGF.⁶⁷

Some civil society representatives expressed a similar sentiment supporting multistakeholderism, but called for reforms in the multistakeholder governance of the Internet.⁶⁸ They called for greater transparency and accountability at multistakeholder fora.⁶⁹ Others expressed their support for multilateralism and extending existing forms of governance at the international level to the Internet.⁷⁰ They cited examples of climate change to call for governance of the Internet within the UN system.⁷¹

Academic groups pointed out that there is no consistent understanding of what multistakeholderism means across stakeholders.⁷² They called for open, transparent and accountable systems of governance.⁷³

⁶⁷ Intervention by Indian Government Representative at the High Level Meeting, 16th December, 2015. On file with the authors.

⁶⁸ Centre for Internet and Society Comment on the Written Submissions for the Non-Paper, available at <<http://workspace.unpan.org/sites/Internet/Documents/UNPAN95011.pdf>>, (last accessed 13th August, 2016).

⁶⁹ *Supra*, note 47, at p. 3.

⁷⁰ Intervention by Indian stakeholder at a WSIS+10 physical meeting. On file with the authors.

⁷¹ *Id.*

⁷² *Supra*, note 48 at p. 5.

⁷³ *Id.*

2.3.6 Human Rights

Civil society and academic groups pushed for the inclusion of a separate section on human rights in the Outcome Document. They particularly called attention to the right to privacy⁷⁴ which was left out of earlier versions of the draft Outcome Document. Some representatives highlighted specific rights issues such as freedom of expression online, safeguards against mass surveillance and securing human rights based access to the Internet.

One representative highlighted the fact that most human rights discussions related to the Internet focus on civil and political rights. Instead, they called for increased attention to economic, social and cultural rights. They argued that economic, social and cultural rights are important for securing development and increased access through Information Communication Technologies (ICTs), calling for a study on ICTs and economic, social and cultural rights.

Academic groups called for a distinct framework of human rights online. They argued that human rights as they relate to the Internet are interdependent and indivisible.⁷⁵ With this in mind, they argued that human rights could not be fully guaranteed without supporting related rights.

⁷⁴*Id.*

⁷⁵*Supra*, note 48. For a larger discussion on the WSIS Process and the interdependence of human rights online, see, Puneeth Nagaraj, “Human Rights in the WSIS Process: The Notion of Interdependence and Indivisibility as a Way Forward”, CCG Working Paper Series (2015-16) Number 1, available at <http://ccgdelhi.org/doc/WSIS_Human_Rights_and_Interdependence_working_paper.pdf> (last accessed 13th July, 2016).

2.4 Evaluating Indian Engagement with the WSIS+10 Review

As described above, a small number of Indian stakeholders engaged with the WSIS+10 Review. This was due to a number of reasons ranging from the nature of the process and funding, to the capacity and awareness of Indian stakeholders about the WSIS process. Nevertheless, Indian stakeholders made important contributions to the final shape of the Outcome Document of the WSIS+10 Review. The Indian government was successful in highlighting its priorities, especially with respect to Digital India (and access in general),⁷⁶ cybersecurity⁷⁷ and the need for greater diversity in Internet governance processes.⁷⁸

Indian civil society and academia played an important role in advocating for greater recognition of human rights in the Outcome Document. Pressure from Indian and global civil society groups contributed to the effort to retain a separate section on human rights in the Outcome Document.⁷⁹ Through their submissions and interventions during meetings, Indian civil society brought attention to a number of issues such as net neutrality,⁸⁰ community broadband,⁸¹ the perils of mass surveillance and the right to privacy.⁸²

⁷⁶*Supra*, note 46.

⁷⁷*Supra*, note 63.

⁷⁸*Supra*, note 67.

⁷⁹*Supra*, Nagaraj note 4, at pp. 19-20.

⁸⁰*Supra*, note 47.

⁸¹*Supra*, note 53.

⁸²*Supra*, Centre for Communication Governance at National Law University, Delhi, note 48.

Shared priorities across stakeholder groups such as access,⁸³ extension to the IGF⁸⁴ and diversity in Internet governance⁸⁵ were included in the Outcome Document. Despite limited engagement from Indian stakeholders, the WSIS+10 Review highlighted a lot of Indian priorities.

⁸³ Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society, A/Res/70/125, paras 21-24.

⁸⁴ *Id.*, para 63.

⁸⁵ *Id.*, para 61.

3

**INDIAN ENGAGEMENT
WITH ICANN (2011-15)**

The Internet Corporation for Assigned Names and Numbers (ICANN) is a private not-for-profit corporation based in Los Angeles, California. Established in 1998, it is responsible for the management of the Domain Name System (DNS). ICANN operates through a unique multistakeholder model. This chapter attempts to document and analyse the role played by Indian stakeholders in ICANN over the last 5 years (2011-2015). This chapter is divided into four sections.

First, we present an overview of the ICANN's model of multistakeholderism and its internal structures. This includes critiques of the model from a transparency and accountability standpoint. Second, we analyse Indian stakeholder participation at ICANN over the last 5 years. We looked at the ways through which stakeholders can participate within ICANN's various structures. This entailed a survey of available transcripts of all open ICANN physical meetings, public comment submissions and the available mailing list archives of each Supporting Organization (SO) and Advisory committee (AC).¹ Following this, we looked at the avenues through which Indian stakeholders have participated in the different SOs and ACs in ICANN. We then looked at the means available to Indian stakeholders to participate in ICANN meetings through its fellowships programmes over the last five years.

Third, we examine the substantive issues on which Indians have engaged with ICANN. In our study, we have tracked stakeholder engagement on four broad issues viz., institutional legitimacy, diversity, capacity building and accountability. Across these four

¹ Generally, most ICANN meetings, held every quarter are open. This is also the case with public comments processes. Mailing lists are open or closed based on their memberships. Similarly, there is varying levels of access to transcripts of meetings. This is discussed in greater detail in the Section 3.2.2 on Modes of Participation.

categories, we outline and examine the major points of concern that have been raised by Indians over the last 5 years. It must be noted that Indian stakeholder interventions at ICANN are qualitatively different from their interventions at other Internet governance institutions. This is because of ICANN's design as a purely multistakeholder organization ² and its internal participatory processes. As a consequence, many of the objections Indian stakeholders raise on the issue of multistakeholderism are framed differently from the WSIS+10 Review or the IGF. Within ICANN, these objections take the form of questioning ICANN's legitimacy to function as the manager of the Domain Name System (DNS). One of our categories- on institutional legitimacy- addresses this question in greater detail.³

In the fourth and final section, we evaluate Indian stakeholder engagement with ICANN over the last 5 years.

3.1 Background

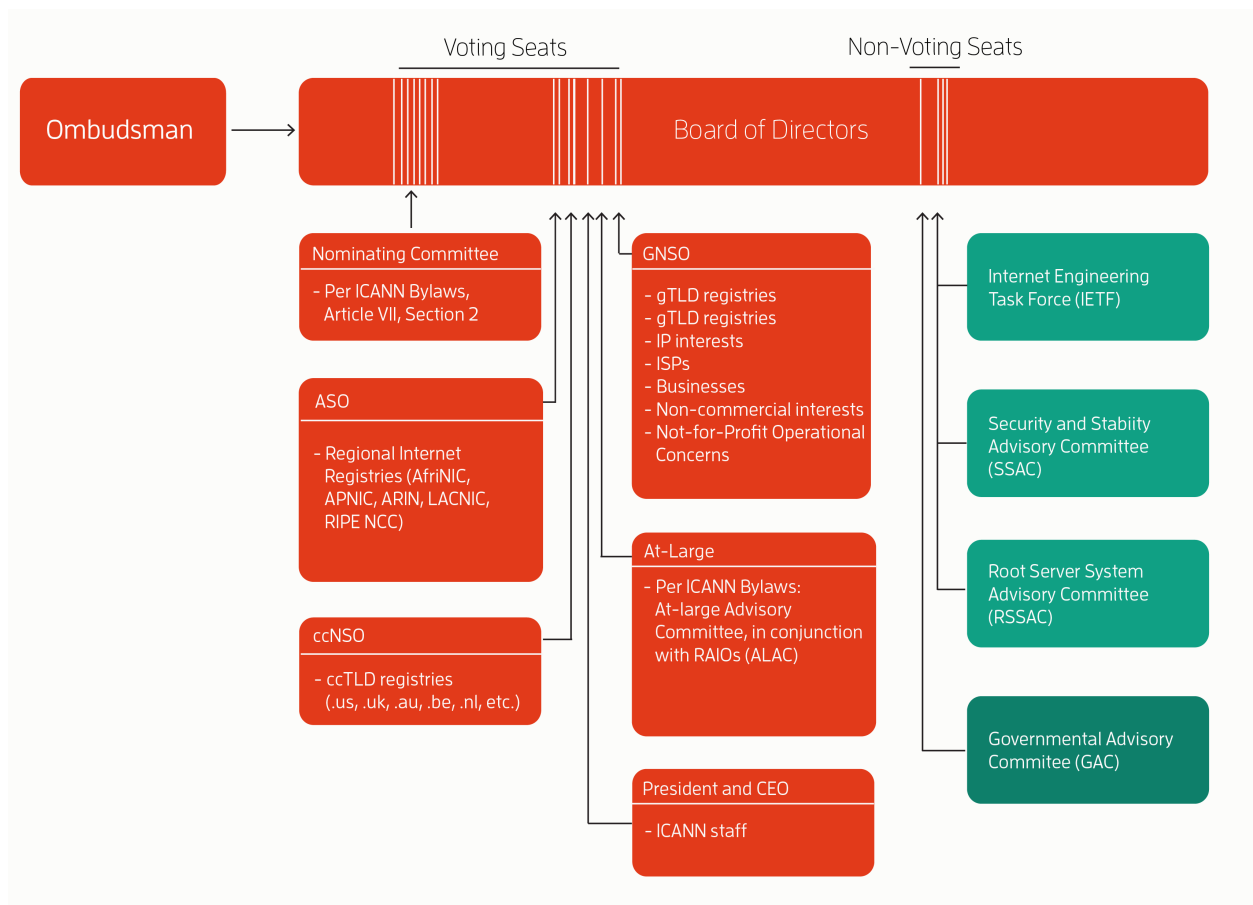
Policy making at ICANN takes place through a unique multistakeholder model. To better understand policy making within ICANN, we briefly examine its multistakeholder model.

² There are debates on whether ICANN is purely multistakeholder. These critiques are addressed in the next section.

³ See discussion on Institutional Legitimacy, Section 3.3.2.

3.1.1 ICANN's Organizational Structure

Within ICANN, formal authorities take the shape of three SOs and four ACs.⁴ The SOs and ACs are responsible for most of the policy making in ICANN.⁵ The chart below represents the organizational structure of ICANN.⁶



⁴ For a brief overview of ICANN's internal structure, see <<https://www.icann.org/resources/pages/groups-2012-02-06-en>> (last accessed, 21st August, 2016).

⁵ For a short introduction to how ICANN functions, see ICANN, "Beginner's Guide to Participating in ICANN", available at <<https://www.icann.org/en/system/files/files/participating-08nov13-en.pdf>> (last accessed 21st August, 2016).

⁶ ICANN Organization Chart Available at <<https://www.icann.org/sites/default/files/assets/org-chart-1800x1000-04mar14-en.png>>

SOs develop and recommend policies related to the technical management of the Internet, such as addresses (Address Supporting Organisation-ASO),⁷ country code top level domains (Country Code Names Supporting Organisation- ccNSO)⁸ and generic top level domains (Generic Names Supporting Organisation-GNSO).⁹

ACs formally advise the ICANN Board on issues concerning the constituencies they represent. The At-Large Advisory Committee (ALAC)¹⁰ represents the interests of the individual end users; the Government Advisory Committee (GAC)¹¹ represents governments and international organisations; Root Server System Advisory Committee (RSSAC)¹² represents the 13 root zone administrators; and the Security and Stability Advisory Committee (SSAC)¹³ consists of technical experts. Of the three ACs, GAC occupies a particularly prominent and oft-criticised position.¹⁴

Advice on public policy matters given by the GAC must be considered by the ICANN Board before it takes any action.¹⁵ If the Board should

⁷ For more information on the ASO, see the ASO website at <<https://aso.icann.org/>> (last accessed 21st August, 2016).

⁸ For more information on the ccNSO, see the ccNSO website at <<http://ccnso.icann.org/>> (last accessed 21st August, 2016).

⁹ For more information on the GNSO, see the GNSO website at <<https://gnso.icann.org/en/index.htm>> (last accessed 21st August, 2016).

¹⁰ For more information on the ALAC, see the ALAC website at <<https://atlarge.icann.org/>> (last accessed 21st August, 2016).

¹¹ For more information on the GAC, see the GAC website at <<https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>> (last accessed 21st August, 2016).

¹² For more information on the RSSAC, see the RSSAC website at <<https://www.icann.org/resources/pages/rssac-4c-2012-02-25-en>> (last accessed 21st August, 2016).

¹³ For more information on the SSAC, see the SSAC website at <<https://www.icann.org/groups/ssac>> (last accessed 21st August, 2016).

¹⁴ *Infra*, Kleinwachter, note 21.

¹⁵ Principle 48, Article XII, GAC Operating Principles, available at <<https://gacweb.icann.org/display/gacweb/GAC+Operating+Principle>> (last accessed 31st August, 2016).

choose not to follow this advice, it must justify this in writing.¹⁶ Following this, GAC and the Board must try to find a mutually acceptable solution.¹⁷ This special advisory status is not available to any other AC, giving GAC a greater degree of influence over ICANN's policies.¹⁸ As we will see in the next section, GAC's role in ICANN has been a source of much criticism.

3.1.2 Critique of ICANN's Multistakeholder Model

De Nardis and Raymond describe ICANN as a heterogeneous polyarchy, where authority is distributed among a number of actors in a manner where different actors possess different formal powers.¹⁹ This runs contrary to the notion of ICANN as a decentralised policymaking body which puts individuals, industry, non-commercial interests and governments on an equal footing.²⁰ Several criticisms of ICANN can be traced back to its heterogeneous polyarchic structure. In this section, we deal with two such critiques which deal with 1) the power imbalance within ICANN and 2) a lack of transparency and accountability.

3.1.2.1 Power Imbalance Across Stakeholder Groups

Weinberg describes the policy making process in ICANN as being based on a 'bargaining' model of governance, where those who wield

¹⁶ See Article XI (2) (1) (j), ICANN bylaws, available at <https://www.icann.org/resources/pages/governance/bylaws-en#XI> (last accessed 31st August, 2016).

¹⁷ *Id.*

¹⁸ Laura DeNardis and Mark Raymond, "Thinking Clearly About Multistakeholder Governance", 8th Annual Giganet Symposium (2013), available at <http://www.phibetaiota.net/wp-content/uploads/2013/11/Multistakeholder-Internet-Governance.pdf>, at p. 11 (last accessed 15th August, 2016).

¹⁹ *Id.*

²⁰ *Supra*, note 5, at p. 2.

greater influence and power get results.²¹ He argues that the power to bargain is possessed by a limited set of individuals with discussion mechanisms that ‘privilege some participants over others’.²² Stakeholders have also stated that many important discussions take place behind closed-doors, ignoring public input.²³ This is in contrast to the notion that ICANN operates through an open, bottom-up multistakeholder fashion.²⁴

According to Mueller the ICANN Board of Directors is a good example of power being concentrated in the hands of a few.²⁵ He argues out that the Board has ‘practically untrammelled authority to dispose of the recommendations and policies handed to it by its various ACs and SOs’.²⁶ Similarly, the GAC has attracted criticism for its privileged position within ICANN.²⁷ Critics argue that GAC’s position goes against the idea of a pure multistakeholder institution,

²¹ Jonathan Weinberg, “Governments, Privatization, and “Privatization”: ICANN and the GAC”, 18 Mich. Telecomm. Tech. L. Rev. 189 (2011), available at <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1028&context=mttlr>, at p 217, (last accessed 15th August, 2016).

²² *Id.*

²³ See Monika Ermhert, *Is ICANN Policymaking Around Its Bottom-Up Multistakeholder Process?*, Intellectual Property Watch (12th April 2013), available at <http://www.ip-watch.org/2013/04/12/is-icann-policymaking-around-its-bottom-up-multistakeholder-process/> (last accessed 27th August, 2016); Damien Cake in an interview with John Gilmore, *It’s Time for ICANN to go*, Salon Magazine (3rd July, 2002) available at https://www.salon.com/2002/07/02/gilmore_2/ (last accessed 27th August, 2016).

²⁴ See, “Welcome to ICANN”, available at <https://www.icann.org/resources/pages/welcome-2012-02-25-en> (last accessed 26th August, 2016).

²⁵ *Infra*, Mueller, note 32.

²⁶ *Id.*

²⁷ Wolfgang Kleinwachter, “From Self-Governance to Public-Private Partnership: The Changing Role of Governments in the Management of the Internet’s Core Resources”, 36 Loy. L.A. L. Rev. 1103 (2003), at pp. 1115-1118 and pp. 1120-1123 available at <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2370&context=llr> (last accessed 15th August, 2016). Also see Milton Mueller, “GAC as ‘First among equals’: The Danger in the Accountability Plan”, Internet Governance Project Blog (29th August, 2015), available at <http://www.Internetgovernance.org/2015/08/29/gac-as-first-among-equals-the-danger-in-the-accountability-plan/> (last accessed 15th August, 2016).

as it replicates the hierarchy of multilateral settings by according governments a privileged status.²⁸

On the other hand, a sizeable community of stakeholders have expressed belief that reforms being introduced through the CCWG-Accountability recommendations will benefit this bottom-up community driven multistakeholderism.²⁹

3.1.2.2 Transparency and Accountability

The other criticism that is often directed at ICANN is the lack of transparency and accountability in its functioning.³⁰ The Berkman Klein Center for Internet and Society at Harvard University in their 2010 in their 2010 Review of ICANN's accountability and transparency noted that there is a deficit in active, passive and participatory transparency.³¹ Mueller notes that accountability measures normally seen in private corporations, standards bodies and government agencies are absent in the case of ICANN.³²

²⁸ See Konstantinos Komaitis, "ICANN 42- The Fight over Multistakeholderism", (29th October, 2011) available at <<http://www.komaitis.org/blog/icann-41-the-fight-over-multistakeholderism>> (last accessed 15th August, 2016). For a discussion on the role of the GAC and its likely change post the IANA transition, see Aarti Bhavana, *Legacy of Government Influence Looms as Internet Gears Up For Ownership Switch*, The Wire 6th March, 2016, available at <<http://thewire.in/24000/legacy-of-government-influence-looms-as-Internet-gears-up-for-ownership-switch/>> (last accessed 15th August, 2016).

²⁹ See ICANN- Statements in Support of the IANA Stewardship Transition, available at <<https://www.icann.org/en/system/files/files/iana-stewardship-transition-supportive-statements-21mar16-en.pdf>>, (last accessed 27th August, 2016).

³⁰ For a more detailed study on ICANN's Accountability, see Jonathan GS Koppell, "Pathologies of Accountability: ICANN and the Challenge of "Multiple Accountabilities Disorder"", Public Administration Review, Vol. 65, No. 1 (Jan- Feb, 2005), available at <<http://www.jstor.org/stable/3542585>> at pp. 94-108 (last accessed 23rd August 2016). See also The Berkman Centre for Internet and Society, "Accountability and Transparency at ICANN: An Independent Review", (2010) available at <<https://www.icann.org/en/system/files/files/review-berkman-final-report-20oct10-en.pdf>> (last accessed on 15th August, 2016)>.

³¹ *Id.*, Berkman Centre at p. 15.

³² Milton Mueller, "ICANN, Inc.: Accountability and participation in the governance of critical Internet resources" Internet Governance Project, Paper IGP09-002, available at <<http://Internetgovernance.org/pdf/ICANNInc.pdf>> at p. 2 (last accessed 31st August, 2017).

Similarly, the ICANN Board of Directors has been criticised by the Berkman Centre among others for conducting closed door deliberations.³³ This is problematic as ICANN's bylaws do not provide rules for conducting these meetings in multistakeholder settings.³⁴ Mueller points out that the Board can operate in a non-transparent way as the critical details of many policies are usually contained in the Board's contracts with private parties, and are not subject to the bottom up policy process.³⁵

Similar concerns over a lack of transparency have also been raised with respect to the Nominating Committee (NomCom). The NomCom is a body that elects 8 of the 16 members on the ICANN Board (the highest decision making body in ICANN), as well as members of other SOs and ACs.³⁶ However, there are no clear rules or procedures for the way the NomCom conducts itself as the NomCom does not publish its selection procedures.³⁷ ICANN's bylaws are also silent on this point.³⁸

³³ *House subcommittee to hear criticism of ICANN*, NSI (22nd January, 2002) available at <<http://www.cnet.com/news/house-subcommittee-to-hear-criticism-of-icann-nsi/>>; and public comments submitted by IP Justice to ICANN Accountability and Transparency Review Team (20th July, 2010), available at <<https://forum.icann.org/lists/atrt-public-input/msg00014.html>> (last accessed 15th August, 2016). This issue has also been addressed by The Berkman Centre for Internet and Society, "Accountability and Transparency at ICANN: An Independent Review", (2010) p. 15 available at <<https://www.icann.org/en/system/files/files/review-berkman-final-report-20oct10-en.pdf>> (last accessed on 15th August, 2016).

³⁴ Article VI, ICANN Bylaws, available at <<https://www.icann.org/resources/pages/governance/bylaws-en#VI>>, (last accessed 15th August, 2016). See also,

³⁵ *Supra*, note 32, at p. 2.

³⁶ For an explanation of the NomCom and its composition, see Article VII, ICANN Bylaws, available at <<https://www.icann.org/resources/pages/governance/bylaws-en#VII>> (last accessed 15th August, 2016).

³⁷ John E. Savage & Bruce W. McConnell, "Exploring Multi-stakeholder Internet Governance", East West Institute (2015), available at <<https://cybersummit.info/sites/cybersummit.info/files/Exploring%20Multi-Stakeholder%20Internet%20Governance.pdf>>, at p. 7 (last accessed 15th August, 2016). A lack of rules on how NomCom operates can have serious consequences. One of the stakeholders at our consultation referred to an instance where they were the only candidate to stand for an election for ALAC, but someone else was ultimately appointed. Further, they claimed that the ombudsman only responded to their complaint after the election was completed

³⁸ *Id.*

John Palfrey has suggested that ICANN's problem stems from its "complex hybrid structure".³⁹ Being a private corporation performing global governance functions, ICANN is often called on to perform many public functions. However, as a private corporation, stakeholders have pointed to ICANN's inability to shoulder such responsibilities. Palfrey's argument is supported by others like Robin Gross,⁴⁰ who argues that ICANN's corporate structure is ill-suited to create adequate safeguards for human rights, privacy and due process.⁴¹

In the wake of these criticisms, ICANN has implemented multiple accountability and transparency mechanisms.⁴² During the ongoing IANA transition, there was pressure on ICANN to address accountability concerns before US governmental oversight could be withdrawn and transferred to a global multistakeholder body.⁴³ With this in mind, the CCWG-Accountability process was initiated to enhance ICANN's accountability and increase transparency.⁴⁴

3.2 Indian Participation in ICANN

In this section we study the different ways in which Indian actors have participated in ICANN. We first look at the kinds of Indian stakeholders that have engaged with ICANN over the last 5 years.

³⁹ John Palfrey, "The end of the experiment: How ICANN's foray into global Internet democracy failed", Harvard Journal of Law & Technology 2004, 17(2) 409-473, available at <<http://jolt.law.harvard.edu/articles/pdf/v17/17HarvJLTech409.pdf>> at p 425 (last accessed 15th August, 2016).

⁴⁰ Member and former chair of the Non Commercial Users Constituency (NCUC), see <<http://www.ipjustice.org/ipj-people/>> (last accessed 15th August, 2016).

⁴¹ *Supra*, note 18, at p. 8.

⁴² For more details, see "Accountability", available at <<https://www.icann.org/resources/accountability>> last accessed 23rd August, 2016).

⁴³ Charter of the Cross-Community Working Group on Enhancing ICANN's Accountability (CCWG-Accountability), available at <<https://community.icann.org/display/acctcrosscomm/Charter>> (last accessed 17th August, 2016).

⁴⁴ *Id.*

Next, we look at the modes through which they have participated in ICANN's SOs, ACs and policy processes. Finally, we briefly look at the means or the funding opportunities that were available to Indians over the last 5 years.

3.2.1 Actors

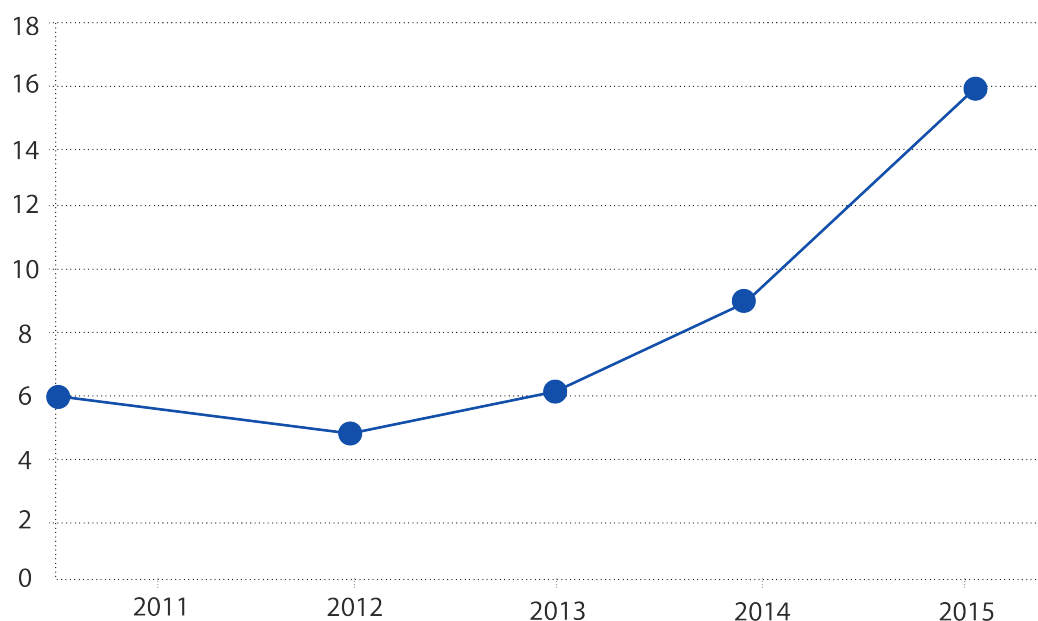
There are two broad avenues through which stakeholders can engage with policy making at ICANN, 1) by attending physical meetings or 2) by submitting written comments to public comments processes. In total, there were 42 Indian stakeholders who actively participated in ICANN meetings (Annex III) and 37 organizations and individuals that submitted comments to ICANN (Annex IV).⁴⁵ A breakdown of these figures is described below.

3.2.1.1 Physical Meetings

A small number of Indians have participated in physical meetings from ICANN40 to ICANN54. From 2012 onwards, there has been an increase in participation at meetings, as depicted in the figure below.

⁴⁵ Analysis based on information publicly available on the ICANN website. On file with the author. For a list, see Annexes III and IV

Figure 6: Number of Active Indian Participants at ICANN Meetings (2011-2015)

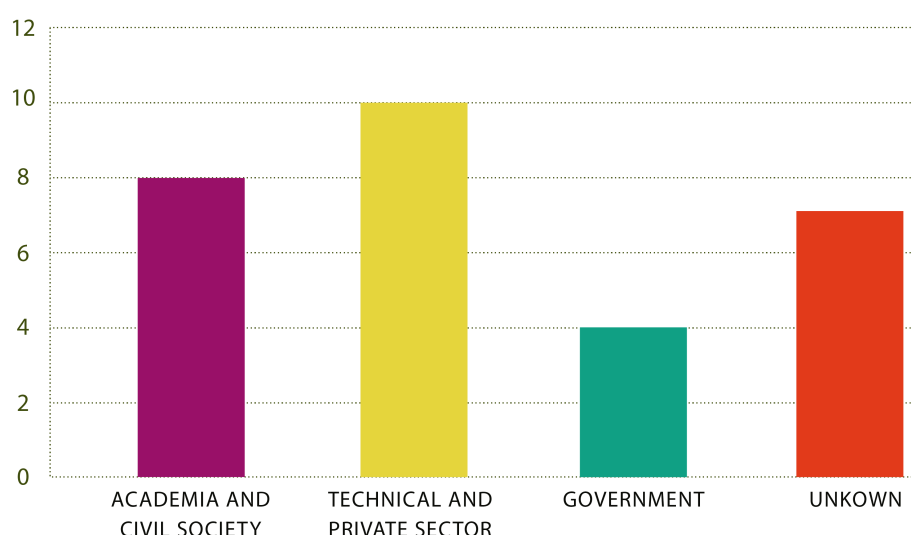


It must be noted that the above chart does not map every Indian stakeholder who participated in an ICANN meeting. Unlike the WSIS+10 Review and the IGF, ICANN does not publish a list of all participants who attended or registered for every meeting. To address this information gap, we have defined every individual who makes an intervention as an 'active participant'.⁴⁶ Since we are studying participation and engagement, this is a more useful measure.

⁴⁶ This is also the most accurate measure we could arrive at based on publicly available information.

When broken down according to the stakeholder groups they represent,⁴⁷ we found that the technical and private sector had the highest number of active participants, followed closely by academia and civil society.

Figure 7: Number of Active Indian Participants at ICANN Meetings by Stakeholder Group (2011-2015)



3.2.1.2 Public Comments

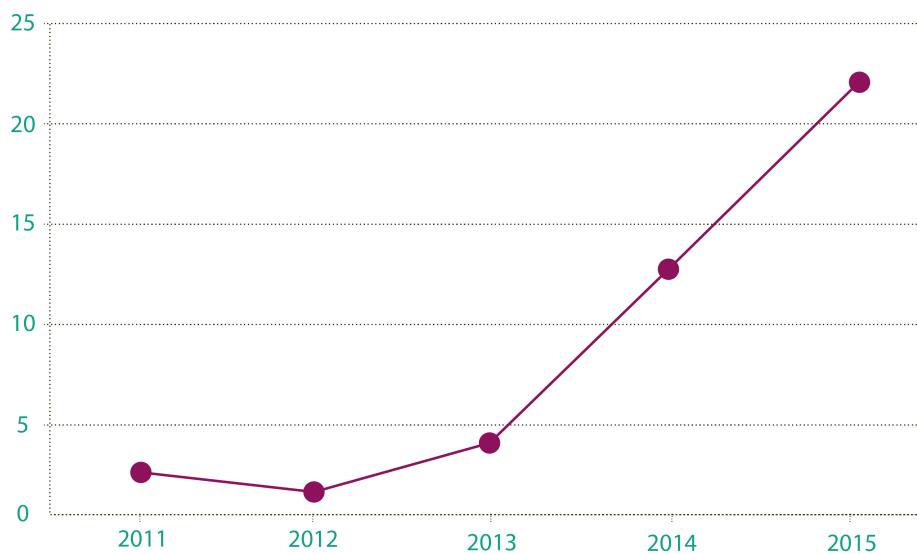
There was a marginal annual increase in the number of comments submitted by Indian stakeholders over the last five years.⁴⁸ However, there was a drastic increase in 2015, when there was a total of 402 comments submitted by Indians for various public comment

⁴⁷ ICANN does not have a formal division of stakeholder categories. However, in some of ICANN's announcements and transcripts, participants are identified by their affiliation to stakeholder categories. In some cases participants also self-identify as belonging to a particular stakeholder group. The classification in this chapter is based on a collation of such publicly available information. The authors have applied their discretion in some cases where it was difficult to classify a stakeholder strictly in one category. In such cases, we combine certain categories, such as 'academic and civil society', and 'technical and private sector'.

⁴⁸ See Annex IV.

processes. However, a closer examination revealed that 381 of these comments were submitted to the GNSO Privacy & Proxy Services Accreditation Issues Working Group Initial Report.⁴⁹ Nearly all of these were identical statements submitted by individuals who normally do not participate in ICANN processes. Therefore, we treated the 381 comments in 2012 as outliers. Figure 8 below excludes the outliers in 2012 and represents the number of comments submitted by Indian stakeholders to ICANN over the last 5 years.

Figure 8: Number of Indians Participating in Public Comment processes (2011-2015)



⁴⁹A chronological index of these comments is available at <<https://forum.icann.org/lists/comments-ppsai-initial-05may15/>> (last accessed 23rd August, 2016).

3.2.2 Modes of Participation

Participation at ICANN can be viewed through two lenses viz., 1) the methods (meetings, comments) through which stakeholders can engage with ICANN and 2) the avenues (SOs and ACs) within which a stakeholder can engage with their 'community'.⁵⁰ Over the next two sections, we examine the methods used by Indian stakeholders and the avenues through which they have engaged with their communities.

3.2.2.1 Methods

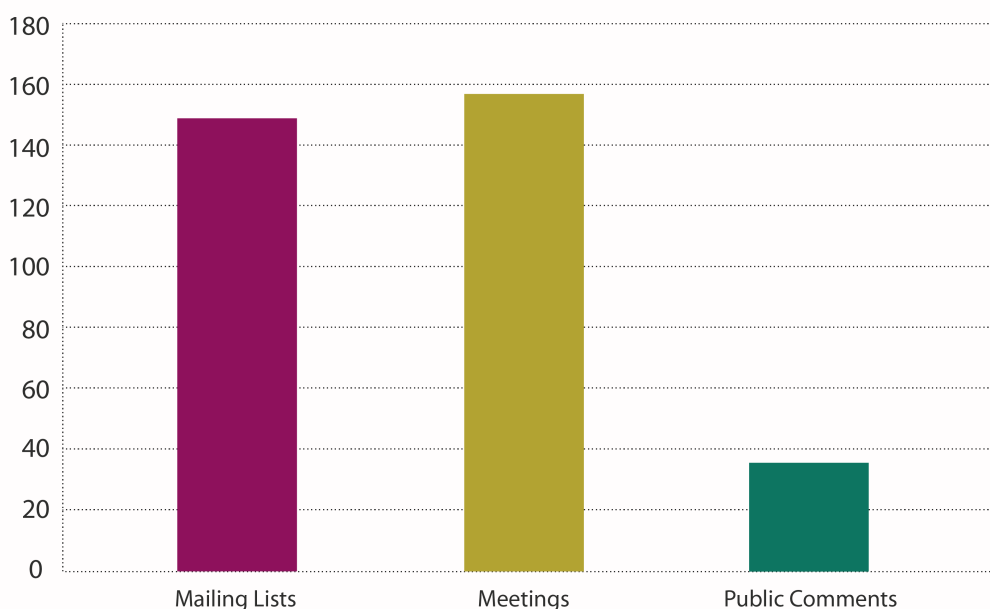
There are three methods through which a stakeholder can participate in ICANN processes- 1) mailing lists, 2) physical meetings (held thrice a year), and 3) public comment processes.

Physical meetings and public comment processes are avenues through which stakeholders can engage with the wider ICANN universe.⁵¹ Mailing lists on the other hand, are limited to a particular SO/AC or a constituency or a particular issue. Over the last five years, we found meetings to be the most popular method of participation for Indian stakeholders, as depicted in the chart below.

⁵⁰ Civil society actors for instance would engage with the Non-Commercial Constituency within ICANN or end users would engage with the ALAC.

⁵¹ *Supra*, note 5, at p. 2.

Figure 9: Number of Interventions



Public comments which require a lot of time investment⁵² is the least popular method of participation. Participants in our closed door consultations identified a number of reasons for why public meetings were the most popular method of engagement. One participant noted that both government and private sector representatives preferred to deal directly with the most influential individuals within an organization.⁵³ Hence, the stakeholder argued that such participants were more likely to attend physical meetings.⁵⁴ On the topic of mailing lists, one stakeholder pointed out that cultural barriers and a resistance to discussing controversial topics explained the limited amount of Indian participation.⁵⁵

⁵² Intervention by an Indian stakeholder during a consultation held for a draft version of this report.

⁵³ *Id.*

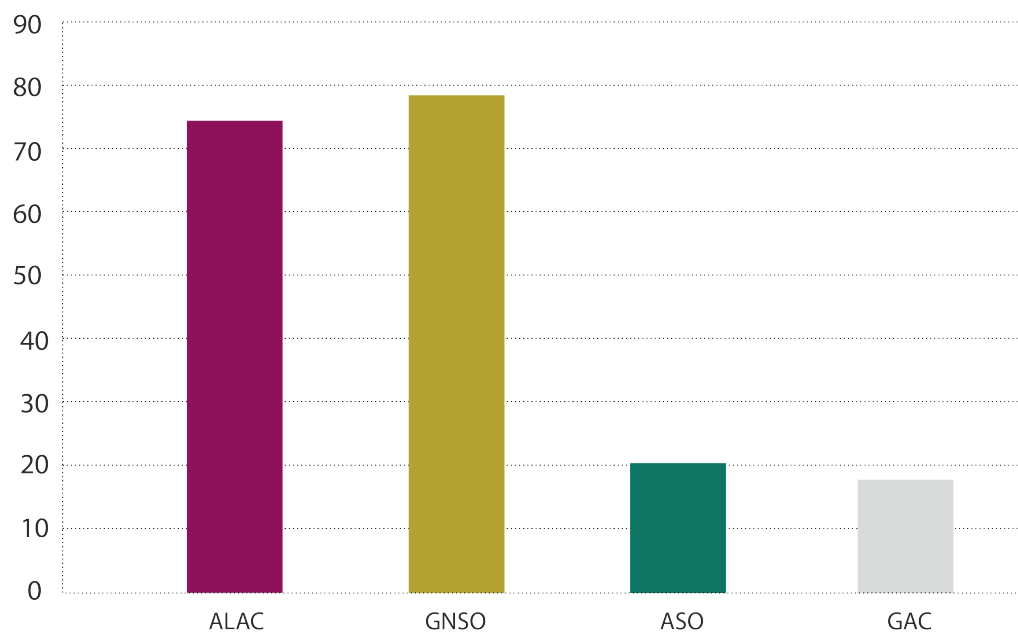
⁵⁴ *Id.*

⁵⁵ *Id.*

3.2.2.2 Avenues

In this section, we attempt to map the SOs and ACs in which Indian stakeholders have been the most active. We accomplish this by analysing the mailing lists and meeting transcripts of each SO and AC. The participation of Indian stakeholders across the various SOs and ACs over the last 5 years is represented in the chart below.

Figure 10: Participation per SO/AC



Of the 7 SOs and ACs, we have found that Indian stakeholders have only participated in the GAC, ALAC, GNSO, and ASO. Other SOs and ACs either did not have any Indian members from 2011-2015, or had closed mailing lists which did not allow access to archives. GNSO had the highest participation of Indian stakeholders followed by the ALAC. Within the GNSO, the Non-commercial Stakeholders Group

(NCSG and the NCUC within it) was the most active, while the Commercial, Registrars and Registries Groups had limited Indian participation.

ASO had very limited Indian participation through two listed Indian members, as gathered from minutes of the ASO virtual meetings. NCUC-Discuss, the mailing list of the Non-Commercial Users Constituency (NCUC) had the highest amount of Indian participation. This was followed by APAC-Discuss, which is the ALAC mailing list for the Asia-Pacific region.

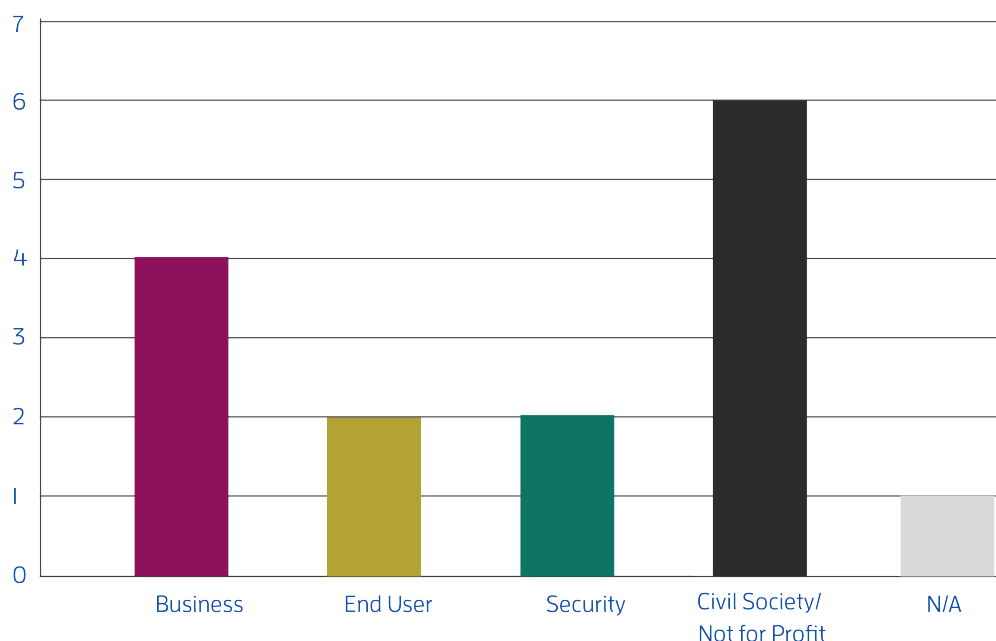
3.2.3 Means

ICANN offers funding to participants who are interested in attending their meetings. They are usually in the form of fellowships. In addition to ICANN Meeting Fellowships,⁵⁶ SOs and ACs sometimes fund their constituents to attend ICANN meetings. NCUC, a user's group within GNSO is one such body.

From 2011-15, 16 ICANN fellowships have been awarded to Indian stakeholders across five self-identified groups. The figure below represents the breakdown of Fellowships awarded across stakeholder categories.

⁵⁶ For a description of how these fellowships are awarded, see <<https://www.icann.org/fellowshipprogram>> (last accessed 31st August, 2016).

Figure II: Indian ICANN Fellows by Stakeholder Groups (2011-15)



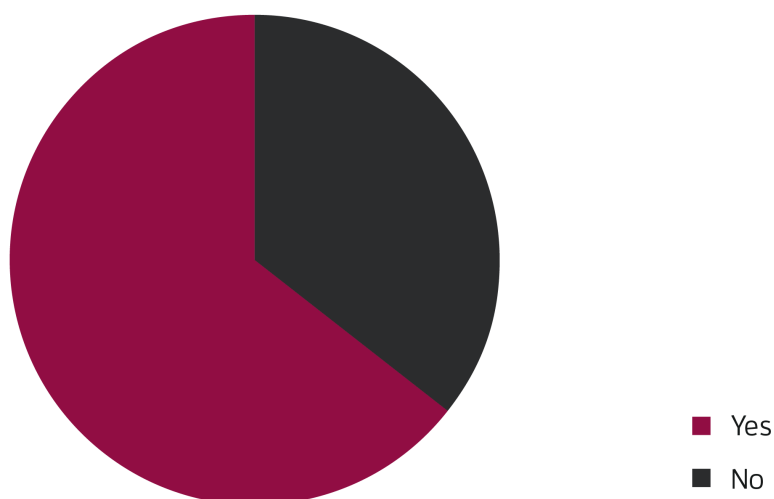
Civil society (6) received the highest number of fellowships in this period followed by business (4). However, it is interesting to note that most ICANN fellows in this period received the fellowship more than once. The 16 fellowships were offered to 10 recipients. Of these 10, six fellows received the fellowship more than once. This is interesting because it encourages continued participation from stakeholders who may not have the means to attend ICANN meetings. On the other hand, it might serve to act as a barrier to first time applicants.

External funding is an important resource for Indian stakeholders who engage with ICANN. In our survey, we found that a majority of respondents who engaged with ICANN had been awarded external funding at some point. The chart below represents our finding- 9 out

of 14 respondents had received external funding. It is likely that the other participants were self-funded or funded by their organizations. However, our survey did not address this question directly.

Figure I2: External Funding of ICANN Participants

Have you ever been funded by an external agency (including ICANN fellowship) to attend ICANN meetings?



In addition to the regular ICANN Fellowship, ICANN also runs a NextGen programme aimed at increasing awareness and interest among young participants (18-30 years).⁵⁷ The NextGen programme was instituted at ICANN50 (London). This programme is aimed at engaging youth participation in the region where the meeting is being conducted. Unlike the ICANN Fellowship, the NextGen fellowship is limited by geography. Only participants residing in the geographical region of an ICANN meeting can apply to it. This limits the number of ICANN meetings for which Indians are eligible for the

⁵⁷ See, for more information on the NextGen Fellowship <<https://www.icann.org/development-and-public-responsibility/nextgen>> (last accessed 31st August, 2016).

NextGen fellowship. The NextGen fellowship has been awarded six times to 105 NextGen fellows, none of whom are Indians. However, it must be noted that since this programme began, only one meeting (ICANN52 - Singapore) was held in the Asia Pacific region, and no NextGen fellowships were awarded for that meeting. Since it has very specific selection criteria with a geographic focus, there has never been an opportunity for Indians to apply to the NextGen programme.

3.3 Substantive Engagement with ICANN

Indian engagement on substantive issues at ICANN is classified according to four broad categories. These are 1) Institutional Legitimacy, 2) Accountability, 3) Diversity and 4) Capacity Building. The meanings of these categories as they relate to ICANN and our study are described below. The definitions of the categories draw from previous literature on ICANN and other international organizations. This is followed by a descriptive analysis of the range of issues raised by Indian stakeholders at ICANN over the last five years.

3.3.1 Defining the Categories

Legitimacy commonly refers to the right (of an institution) to govern.⁵⁸ Trust in an institution and its right to govern has a direct correlation with how well new policies are received.⁵⁹ When an

⁵⁸ Legitimacy, The Princeton Encyclopedia of Self-Determination, available at <https://pesd.princeton.edu/?q=node/255> (last accessed 31st August, 2016).

⁵⁹ Yahua Wang & Leong Ching “Institutional legitimacy: an exegesis of normative incentives”, International Journal of Water Resources Development, (2013) 29:4, 514-525, available at <http://www.tandfonline.com/doi/pdf/10.1080/07900627.2013.787831> > at p. 515 (last accessed 31st August, 2016).

institution's legitimacy or credibility is questioned, policy changes are less likely to succeed.⁶⁰ Being a private U.S. corporation, ICANN's legitimacy to perform global governance functions has been questioned since its inception.⁶¹ Criticisms of ICANN's legitimacy by Indian stakeholders stem from two features inherent to its structure: its corporate identity, and its physical location (or jurisdiction).⁶²

It is difficult to accord any one definition of accountability in the context of ICANN because of its hybrid nature.⁶³ Palfrey states that ICANN's structure consists of three institutional models: a private corporation, standards setting body and a governmental regulatory body.⁶⁴ Mueller builds on this by studying this hybrid structure through the lens of four modes of accountability: direct accountability (the ability to vote for decision makers and hold them accountable), exit accountability (the ability to escape the services of the entity if its policies are unacceptable), external accountability (existence of an independent oversight entity that can overturn decisions or impose sanctions) and voice accountability (the ability to directly participate in processes and voice opinions).⁶⁵ He found that

⁶⁰ *Id.*

⁶¹ See for instance Jonathan Weinberg, "ICANN and the problem of legitimacy", available at <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1088&context=dlj>> (last accessed 31st August, 2016); and Susan Crawford, "The ICANN Experiment", 12 Cardozo J. Of Int'l & Comp Law 409-448; David R Johnson, David Post and Susan Crawford, "A Commentary on the ICANN Blueprint for Evolution and Reform", 36 Loyola of Los Angeles Law Review, available at <<http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2371&context=llr>> at pp1127-1148 (last accessed 27th August, 2016).

⁶² *Infra*, note 97.

⁶³ *Supra*, Berkman Centre, note 30, at pp. 12-13.

⁶⁴ *Supra*, note 39 at p. 425 (last accessed 15th August, 2016).

⁶⁵ Milton Mueller, "ICANN, Inc.: Accountability and participation in the governance of critical Internet resources" Internet Governance Project, Paper IGP09-002, available at <<http://Internetgovernance.org/pdf/ICANNInc.pdf>> at pp. 4-8 (last accessed 31st August, 2016).

while voice accountability was strong, there was little to no direct or exit accountability, and weak external accountability.⁶⁶

Further, there are no working definitions of accountability despite the fact that several ICANN documents make a reference to the term.⁶⁷ However, as highlighted by the Berkman Report,⁶⁸ ICANN's Accountability and Transparency Frameworks and Principles⁶⁹ list three types of accountability- public sphere accountability (to its stakeholders), corporate and legal accountability (according to bylaws and applicable legal frameworks) and participating community accountability (to the ICANN community). Other dimensions of accountability applicable in the ICANN context are: transparency, responsibility to adhere to best practices, responsiveness to the needs of its constituencies and liability for wrongful actions.⁷⁰ Indian stakeholders usually focus on participating community accountability⁷¹ and public sphere accountability.⁷² Some interventions touch upon corporate and legal accountability.⁷³

When describing diversity, the UN Studies Association highlights the dual factors of acceptance and respect of individual differences.⁷⁴ These differences include race, gender, ethnicity, socio-economic status and sexual orientation.⁷⁵ This notion of diversity is equally

⁶⁶ *Id.* at p. 7.

⁶⁷ For example, ICANN bylaws, available at <https://www.icann.org/resources/pages/governance/bylaws-en#IV>. Also see, <https://www.icann.org/resources/accountability> (last accessed 31st August, 2016).

⁶⁸ *Supra*, Berkman Centre, note 30, at p. 13.

⁶⁹ ICANN Accountability and Transparency Frameworks and Principles (January 2008), available at <https://www.icann.org/en/system/files/files/acct-trans-frameworks-principles-10jan08-en.pdf> (last accessed 31st August, 2016).

⁷⁰ *Supra*, Koppell, note 30, at pp. 94-108.

⁷¹ *Infra*, note 116.

⁷² *Infra*, note 122.

⁷³ *Infra*, note 91.

⁷⁴ UNSA, "Background: Why does diversity matter?", available at <http://unstudied.org/content/background-why-does-diversity-matter> (last accessed 31st August, 2016).

⁷⁵ *Id.*

applicable to the ICANN context.⁷⁶ A recent study has shown that most leadership positions in ICANN are occupied by North Americans, native English-speakers and men.⁷⁷ Indian stakeholders have repeatedly highlighted the lack of diversity in ICANN, be it geographic, linguistic, cultural, or of opinion. Some stakeholders have also drawn a link between increased diversity and better policy making.⁷⁸

The term capacity building is a variation of the United Nations Development Programme's 'capacity development', which refers to transformations that empower organizations and individuals.⁷⁹ In the context of ICANN, this takes on the form of initiatives that aim to help actors participate more efficiently, such as increasing awareness and knowledge of ICANN policies and process.⁸⁰ ICANN's capacity building efforts have focused primarily on its NextGen Programme⁸¹ and the ICANN Fellowship.⁸² Some outreach and capacity building initiatives are carried out through individual SO/ACs.⁸³

Below, we discuss the major issues highlighted under each theme by Indian stakeholders.

⁷⁶ A recent study conducted by Afnic on diversity in ICANN community leaders, available at <https://www.afnic.fr/en/about-afnic/news/general-news/9954/show/afnic-reveals-figures-on-diversity-within-icann.html> (last accessed 23rd August, 2016).

⁷⁷ *Id.* See also Michele Neylon, *How Diverse is ICANN? New Study Explores Organisation's Makeup*, available at http://www.circleid.com/posts/20160622_how_diverse_is_icann_new_study_explores_organisations_makeup (last accessed 23rd August, 2016).

⁷⁸ *Supra*, note 39, at p. 459.

⁷⁹ UNDP primer on Capacity Building, available at http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-development-a-undp-primer/CDG_PrimerReport_final_web.pdf at pp. 5-6 (last accessed 23rd August 2016).

⁸⁰ For example, the ALAC Capacity Building Working Group, available at <https://community.icann.org/display/atlarge/At-Large+Capacity+Building+Working+Group> (last accessed 23rd August 2016).

⁸¹ *Supra*, note 57.

⁸² *Supra*, note 56.

⁸³ For example, the Community Regional Outreach Pilot Program (CROPP), available at <https://community.icann.org/display/croppfy17/Community+Regional+Outreach+Pilot+Program+%28CROPP+%29-FY17+Home> (last accessed 27th August, 2016).

3.3.2 Institutional Legitimacy

ICANN has been criticized for being a private corporation and for being under the oversight of the US government since its inception.⁸⁴ Over the last five years, the issue of ICANN's jurisdiction and its legitimacy as a global governance institution has been very important to Indian stakeholders.⁸⁵ Jurisdiction is among the most controversial issues at ICANN, and some Indian stakeholders have criticised the fact that ICANN is within the United States legal jurisdiction on numerous occasions.⁸⁶

In submissions to public comments, Indian stakeholders have criticised the lack of detailed discussion on the issue of ICANN jurisdiction.⁸⁷ Concerns have also been raised about US policy priorities guiding ICANN's functioning, by virtue of its location.⁸⁸ Accordingly, some Indian stakeholders have proposed that ICANN should be an international body that is not subject to the laws of any single country.⁸⁹

The IANA Transition notwithstanding, some Indians have criticised the apparent extra-territorial reach of US courts through

⁸⁴ *Supra*, note 66.

⁸⁵ See Cyber Cafe Association of India's Report on "Indian Perspectives on the IANA Transition" available at <<http://atlarge-lists.icann.org/pipermail/apac-discuss/2015-May/002851.html>> at pp. 36, 38-39 (last accessed 27th August, 2016).

⁸⁶ For instance, see Parminder Jeet Singh, *Why the Internet isn't just free yet*, The Hindu (23rd March, 2016), available at <<http://www.thehindu.com/opinion/op-ed/why-the-Internet-isnt-just-free-yet/article8386172.ece>> (last accessed 17th August, 2016).

⁸⁷ Public Comment Submission by Cafe Association of India on Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) on Proposed Accountability Enhancements (Work Stream 1), available at <<https://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/msg00053.html>> (last accessed on 17th August, 2016).

⁸⁸ Interventions by an Indian stakeholder on the At-Large World mailing list (3rd February 2011), on file with the authors.

⁸⁹ See Cyber Cafe Association of India's Report on "Indian Perspectives on the IANA Transition" available at <<http://atlarge-lists.icann.org/pipermail/apac-discuss/2015-May/002851.html>> at p.38 (last accessed 27th August, 2016).

ICANN.⁹⁰ One such example is Domain Name seizures by US registrars based on US court orders.⁹¹ Stakeholders have also raised concerns about the manner in which the recent root zone management agreement (RZMA)⁹² was handled. As part of the IANA transition process, the RZMA was handled as a tripartite arrangement between ICANN, Verisign and the NTIA.⁹³ An Indian stakeholder took issue with the lack of community involvement in a decision regarding a critical function such as the RZMA.⁹⁴ They also questioned ICANN's commitment to bottom-up decision-making.⁹⁵

One Indian stakeholder has argued that the most important source of ICANN's legitimacy stems from ALAC representing end users.⁹⁶ They believe that ALAC has failed to adequately represent end users and this serves to weaken ICANN's legitimacy.⁹⁷ In a similar vein, one stakeholder stated that a lack of diversity within ICANN's structures undermines its legitimacy as a global governance organization.⁹⁸ While this issue has not been discussed as often as the others,

⁹⁰ Interventions by an Indian stakeholder on the At-Large Worldwide mailing list (3rd February 2011), on file with the authors.

⁹¹ See David Kravets, *Uncle Sam: If it ends in .com, it's .seizable*, Wired (3rd June, 2012), available at <<https://www.wired.com/2012/03/feds-seize-foreign-sites/>> (last accessed 31st August, 2016).

⁹² For more details on the Root Zone Management Agreement, see <<https://www.icann.org/en/stewardship-implementation/root-zone-maintainer-agreement-rzma>> (last accessed 27th August, 2016).

⁹³ *Id.*

⁹⁴ Question posed by an Indian stakeholder at ICANN54, available at <<https://meetings.icann.org/en/dublin54/schedule/thu-public-forum/transcript-public-forum-22oct15-en>> (last accessed 17th August, 2016).

⁹⁵ *Id.*

⁹⁶ Interventions by an Indian stakeholder on the At-Large Worldwide mailing list (11th October 2015), on file with the authors.

⁹⁷ *Id.*

⁹⁸ Question posed by an Indian stakeholder at ICANN54, available at <<https://meetings.icann.org/en/dublin54/schedule/thu-public-forum/transcript-public-forum-22oct15-en>> (last accessed 17th August, 2016).

institutional legitimacy, and jurisdiction in particular, were of great importance to Indian stakeholders.⁹⁹

3.3.3 Accountability

The perceived lack of accountability has been a strong criticism levelled at ICANN across Indian stakeholder groups.¹⁰⁰ In fact, the Cross-Community Working Group on Accountability (CCWG-Accountability) has been constituted to address this very question.¹⁰¹ Since it is an ongoing process, CCWG-Accountability has not been included in this study.

Most accountability criticisms have been levelled at specific SOs or ACs. ALAC has come in for much criticism from Indian stakeholders for resisting transparency¹⁰² and accountability measures.¹⁰³ In a similar vein, Indian stakeholders have cited difficulties in accessing documents under ICANN's Documentary Information Disclosure Policy (DIDP) to highlight the need for greater transparency.¹⁰⁴ The allocation of funds from gTLD auctions has also been a target of accountability-based criticisms,¹⁰⁵ where stakeholders have questioned the functioning of such a system without oversight or any

⁹⁹ As seen during domestic stakeholder meetings, for e.g. See Cyber Cafe Association of India's Report on "Indian Perspectives on the IANA Transition" available at <<http://atlarge-lists.icann.org/pipermail/apac-discuss/2015-May/002851.html>> at pp. 36, 38-39 (last accessed 27th August, 2016).

¹⁰⁰ See 3.1.2 Critique of ICANN's Multistakeholder Model.

¹⁰¹ Charter of the Cross-Community Working Group on Enhancing ICANN's Accountability (CCWG-Accountability), available at <<https://community.icann.org/display/acctcrosscomm/Charter>> (last accessed 17th August, 2016).

¹⁰² Intervention by an Indian stakeholder on the At-Large Worldwide mailing list (11th October 2015), on file with the authors.

¹⁰³ *Id.*

¹⁰⁴ For an analysis of DIDP requests within ICANN, see Padmini Baruah, *Peering behind the veil of ICANN's DIDP (II)*, CIS-India Blog, available at <<http://cis-india.org/Internet-governance/blog/peering-behind-the-veil-of-icanns-didp-ii>> (last accessed 17th August, 2016).

¹⁰⁵ Public comment submission by Centre for Communication Governance at National Law University, Delhi on the New gTLD Auction Proceeds Discussion Paper, available at <<http://forum.icann.org/lists/comments-new-gtld-auction-proceeds-08sep15/pdfdpj9HDDbXo.pdf>> (last accessed 27th August, 2016).

framework of accountability.¹⁰⁶ Intended for community development activities, one Indian stakeholder called for the incorporation of globally accepted standards of accountability and transparency in spending the proceeds.¹⁰⁷

Indian stakeholders have called for greater accountability in the functioning of ICANN as a whole. One stakeholder called for self-assessment mechanisms within stakeholder groups for greater accountability.¹⁰⁸ Another stated that interactions between ICANN, governments and end users needs to be better documented to make ICANN more accountable.¹⁰⁹ Dispute resolution¹¹⁰ and Board decision-making¹¹¹ are other areas where Indian stakeholders have called for greater accountability.

3.3.4 Diversity

With the next billion Internet users expected to come from emerging economies like India,¹¹² the lack of diversity in ICANN is of significant concern to Indian stakeholders. The meaning of diversity differed across stakeholder groups in ICANN. Stakeholders questioned what

¹⁰⁶ Public comment submission by Government of India on the New gTLD Auction Proceeds Discussion Paper, available at <<https://forum.icann.org/lists/comments-new-gtld-auction-proceeds-08sep15/pdfXVALj8hwRn.pdf>> (last accessed 17th August, 2016).

¹⁰⁷ Public comment submission by Centre for Communication Governance at National Law University, Delhi on the New gTLD Auction Proceeds Discussion Paper, available at <<http://forum.icann.org/lists/comments-new-gtld-auction-proceeds-08sep15/pdfdpj9HDDbXo.pdf>> (last accessed 27th August, 2016).

¹⁰⁸ Intervention by a stakeholder at ICANN52, available at <<https://singapore52.icann.org/en/schedule/tue-apralo/transcript-apralo-meeting-10feb15-en.pdf>> (last accessed 17th August, 2016).

¹⁰⁹ Intervention by a stakeholder at ICANN52, available at <<https://singapore52.icann.org/en/schedule/tue-board-ncsg/transcript-board-ncsg-10feb15-en>> (last accessed 27th August, 2016).

¹¹⁰ Intervention by a stakeholder at ICANN50, available at <<https://london50.icann.org/en/schedule/thu-atlas-ii-plenary/transcript-atlas-ii-plenary-26jun14-en>> (last accessed 27th August, 2016).

¹¹¹ Intervention by a stakeholder at ICANN54, available at <<https://meetings.icann.org/en/dublin54/schedule/thu-public-forum/transcript-public-forum-22oct15-en>> (last accessed 27th August, 2016).

¹¹² See <<http://qz.com/on/the-next-billion/>> (last accessed 17th August, 2016).

would take priority between diversity and merit.¹¹³ While many spoke about the importance of increased diversity of representation, some have cautioned against mere representation, as this kind of token representation does disservice to the cause of diversity.¹¹⁴ Instead, they focused on encouraging a diversity of ideas and views being expressed within ICANN.¹¹⁵

The issue of diversity was brought up in the specific context of the ALAC. Stakeholders argued that ALAC, as a community of end users, should not be dominated by business interests, and must find a way to express the diversity of views and opinions that exist among Internet users.¹¹⁶ Geographic diversity was also raised, to point out that participation in Asia-Pacific mainly comes from Australia and New Zealand.¹¹⁷ One stakeholder recalled an instance when ICANN appointed a former British diplomat to look into the accountability of ALAC, expressing disappointment over the choice of person looking into issues of diversity.¹¹⁸

The issue of diversity was also raised during the gTLD delegation process.¹¹⁹ Several Indian stakeholders have expressed disagreement with gTLD acquisitions by large corporations, especially those in western countries.¹²⁰ They argued that this left

¹¹³ Intervention by a stakeholder at ICANN43, available at http://archive.icann.org/en/meetings/costarica2012/bitcache/Transcript_%20ALAC%20-%20Policy%20Discussion-vid=34255&disposition=attachment&op=download.pdf (last accessed 27th August, 2016).

¹¹⁴ Intervention by a stakeholder on the NCUC mailing list (22nd April, 2014), available at <http://lists.ncuc.org/pipermail/ncuc-discuss/2015-August/017388.html> (last accessed 27th August, 2016).

¹¹⁵ *Id.*

¹¹⁶ Raised by an Indian stakeholder during a consultation held for a draft version of this report.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ For more details about the new gTLD programme, see <https://newgtlds.icann.org/en/about/program> (last accessed 17th August, 2016).

¹²⁰ This issue has been raised multiples times over the years on the At-Large Worldwide mailing list. On file with the authors.

little to no room for new, smaller players to enter the market.¹²¹ This was also raised in the context of closed gTLDs.¹²² Others have spoken out against the delegation of symbolic terms to private entities, which is perceived to compromise common ownership of aspects of cultural heritage.¹²³ While a majority of the diversity concerns were in reference to generic domains, Indians have also brought this up in the context of ccTLDs, expressing the need for these Top Level Domains (TLDs) to be affordable enough for developing countries.¹²⁴

Discussions around Internationalised Domain Names (IDNs) raised interesting questions on diversity.¹²⁵ Diversity was discussed in the context of the importance of the universal acceptance of IDNs, and creating a structure and policies that would support them.¹²⁶ A stakeholder pointed out that this by itself was not enough, as there was a need for internal safeguards against IDN variant TLDs which are equally applicable to Indian scripts, such as protection against homographs.¹²⁷ Indian stakeholders have also elaborated the need for understanding Indian scripts for effective utilization of the IDN

¹²¹ This issue has been raised multiples times over the years on the At-Large Worldwide mailing list. On file with the authors.

¹²² See Parminder Jeet Singh, *Beauty lies in the 'domain' of the highest bidder*, The Hindu, (25th September, 2012), available at <<http://www.thehindu.com/opinion/op-ed/beauty-lies-in-the-domain-of-the-highest-bidder/article3929612.ece>> (last accessed 27th August, 2016).

¹²³ Intervention by a stakeholder on the At-Large Worldwide mailing list (30th January 2014). On file with the authors.

¹²⁴ Intervention by a stakeholder on the At-Large Worldwide mailing list (17th June 2012). On file with the authors.

¹²⁵ For a broader explanation of Internationalised Domain Names (IDNs), see <<https://newgtlds.icann.org/en/about/idns>> (last accessed 17th August, 2016).

¹²⁶ This issue has been raised multiples times over the years on mailing lists and during meetings. On file with the authors.

¹²⁷ Intervention by a stakeholder at ICANN40, available at <<http://archive.icann.org/en/meetings/siliconvalley2011/bitcache/IDN%20Variant%20TLDs%20Transcript-vid=24349&disposition=attachment&op=download.pdf>> (last accessed 17th August, 2016).

system.¹²⁸ It was also pointed out that the different circumstances in emerging countries need to be taken into account for a more holistic perspective in approaching this process.¹²⁹ There was a call for special attention to be paid to the IDN element of new gTLD applications, as a reminder that removal of barriers is insufficient—positive steps must be taken to ensure diversity.¹³⁰ There has been express support amongst Indian stakeholders for linguistic diversity in content, such as multilingualism in brochures, to help increase outreach.¹³¹ This is an idea that has been supported by the Indian government.¹³²

We found that diversity was connected with several other themes of concerns raised by Indian stakeholders (and discussed in this chapter). For example, some Indian stakeholders expressed a belief that ICANN policies favour participants from wealthier nations, which has created a lack of trust in ICANN and its processes, and impedes capacity building.¹³³ They have also questioned ICANN's legitimacy based on the absence of adequate representation of the world's Internet population.¹³⁴

¹²⁸ Intervention by a stakeholder at ICANN41, available at http://archive.icann.org/en/meetings/singapore2011/bitcache/Transcript_%20IDN%20Variant%20TLD-vid=25787&disposition=attachment&op=download.txt (last accessed 27th August, 2016).

¹²⁹ Intervention by a stakeholder at ICANN42, available at http://archive.icann.org/en/meetings/dakar2011/bitcache/Transcript_%20NCUC-vid=29699&disposition=attachment&op=download.pdf (last accessed 27th August, 2016).

¹³⁰ Intervention by a stakeholder at ICANN42, available at http://archive.icann.org/en/meetings/dakar2011/bitcache/Transcript_%20ICANN%20Public%20Forum-vid=29625&disposition=attachment&op=download.txt (last accessed 27th August, 2016).

¹³¹ Intervention by a stakeholder on the NCUC mailing list (22nd April, 2014). On file with the authors.

¹³² Intervention by the Indian government delegation at ICANN53 and ICANN54. On file with the authors.

¹³³ Public comment submission by the Centre for Internet and Society on the Report on Supporting the Domain Name Industry in Underserved Regions, available at <https://forum.icann.org/lists/comments-dns-underserved-14may14/pdfyCZLEZjQQm.pdf> (last accessed 27th August, 2016).

¹³⁴ *Id.*

Diversity has further been linked to accountability when it was stated that accountability alone is not enough and that diversity was also required to make ICANN more open.¹³⁵ The necessity of Indians taking up important positions (including on the ICANN Board) has been raised multiple times over the years, and continues to be a significant concern.¹³⁶ However, Indian stakeholders have been very clear about highlighting how a person being of Indian origin is not necessarily equivalent to them being an Indian stakeholder.¹³⁷

3.3.5 Capacity Building

Given the limited participation of Indians at ICANN, capacity building is an important issue for Indian stakeholders. Our data reveals that Indian stakeholders in general have raised the need to increase awareness about ICANN through capacity building programmes.¹³⁸ They have also used ICANN mailing lists as a platform to share information about capacity building and outreach initiatives.¹³⁹ In some circumstances, stakeholders have also criticised ICANN's processes from a capacity standpoint.¹⁴⁰

¹³⁵ Public comment submission by the Centre for Internet & Society on CCWG-Accountability 2nd Draft Proposal on Work Stream 1 Recommendations, available at <<https://forum.icann.org/lists/comments-ccwg-accountability-03aug15/msg00086.html>> (last accessed 27th August, 2016).

¹³⁶ This has been raised several times in different fora. For e.g., one stakeholder raised this at ICANN45, available at <[http://archive.icann.org/en/meetings/toronto2012/bitcache/Transcript_%20Update%20on%20the%20RAA%20Negotiations%20\(EN\)-vid=43039&disposition=attachment&op=download.pdf](http://archive.icann.org/en/meetings/toronto2012/bitcache/Transcript_%20Update%20on%20the%20RAA%20Negotiations%20(EN)-vid=43039&disposition=attachment&op=download.pdf)> (last accessed 27th August, 2016).

¹³⁷ Raised during the India Stakeholder Meeting at ICANN54, transcripts for this meetings are not publicly available. The author attending this meeting and notes are available on file with the author.

¹³⁸ For example, one stakeholder raised this issue at ICANN41, available at <<https://archive.icann.org/en/meetings/singapore2011/bitcache/New%20gTLD%20Basics-vid=26263&disposition=attachment&op=download.pdf>> (last accessed 27th August, 2016).

¹³⁹ Stakeholders have been sharing information about various capacity building events on the At-Large Worldwideand APAC Discuss-At-Large mailing lists over the years. On record with the authors.

¹⁴⁰ Intervention by a stakeholder at ICANN50, available at <<https://london50.icann.org/en/schedule/wed-apralo/transcript-apralo-25jun14-en>> (last accessed 27th August, 2016).

In highlighting the need to raise awareness and build capacity, Indian stakeholders have made many policy and process based suggestions. They have called for greater travel support to engage with a wider community of Indian participants.¹⁴¹ Stakeholders point to capacity building as a means of making ICANN a more transparent and open organization to first time participants and a wider community of future participants.

Interventions have also focussed on specific capacity building programmes or policies. One stakeholder called for ISOC to partner with ICANN to improve ICANN Academy, an online learning resource.¹⁴² Others have called for the ICANN Academy to be targeted at each SO and AC so as to improve the quality of engagement by informing first time participants of ICANN's processes.¹⁴³ Within the ALAC, participants have called for Regional At- Large Organizations (RALOs) to coordinate and implement capacity building initiatives.¹⁴⁴ One stakeholder also called on the ICANN Board to take a direct interest in capacity building initiatives.¹⁴⁵ Some stakeholders have identified specific issue areas

¹⁴¹ Public comment submission by Guru Acharya on the New gTLD Auction Proceeds Discussion Paper, available at <<https://forum.icann.org/lists/comments-new-gtld-auction-proceeds-08sep15/msg00009.html>> (last accessed 27th August, 2016),

¹⁴² Intervention by a stakeholder at ICANN44, available at <http://archive.icann.org/en/meetings/prague2012/bitcache/Transcript_%20ICANN%20Academy%20WG-vid=38601&disposition=attachment&op=download.pdf> (last accessed 27th August, 2016).

¹⁴³ Intervention by a stakeholder at ICANN43, available at <http://archive.icann.org/en/meetings/costarica2012/bitcache/Transcript_%20ALAC%20&%20Regional%20Leadership%20Wrap-up%20Meeting-vid=34743&disposition=attachment&op=download.pdf> (last accessed 27th August, 2016).

¹⁴⁴ Intervention by a stakeholder at ICANN43, available at <http://archive.icann.org/en/meetings/costarica2012/bitcache/Transcript_%20APRALO%20Monthly%20Meeting-vid=34569&disposition=attachment&op=download.pdf> (last accessed 27th August, 2016).

¹⁴⁵ Intervention by a stakeholder at ICANN44, available at <[http://archive.icann.org/en/meetings/prague2012/bitcache/Transcript_%20Public%20Forum%20\(EN\)-vid=39773&disposition=attachment&op=download.pdf](http://archive.icann.org/en/meetings/prague2012/bitcache/Transcript_%20Public%20Forum%20(EN)-vid=39773&disposition=attachment&op=download.pdf)> (last accessed 27th August, 2016).

like gTLDs and root server administration as themes on which Indian stakeholders should build capacity to engage on.¹⁴⁶

Interventions on capacity also touched upon the issue of inclusion, with stakeholders arguing that capacity building and outreach must be inclusive of disenfranchised users as it serves to build trust in ICANN and its activities.¹⁴⁷ One participant called on NCUC and other user groups to set up regional initiatives to engage with a wider community of actors.¹⁴⁸ Stakeholders have called on ICANN and its various constituencies to be more proactive in reaching out to a wider community of actors.¹⁴⁹ In addition, they argue that ICANN should look to create new constituencies of actors to take into consideration a diversity of views.¹⁵⁰

3.4 Evaluating Indian Engagement with ICANN

The preceding analysis on participation and substantive engagement shows a fair amount of Indian participation in ICANN discussions. However, the number of individuals participating in a meeting or a mailing list is not indicative of the level of engagement on substantive policy issues. We have found that there is a disparity

¹⁴⁶ Intervention during the India Stakeholder Meeting at ICANN54. Since transcripts for this meetings are unavailable, the authors relied on personal notes taken when attending this meeting.

¹⁴⁷ Public comment submission by the Centre for Internet and Society on the Report on Supporting the Domain Name Industry in Underserved Regions, available at <<https://forum.icann.org/lists/comments-dns-underserved-14may14/pdf/CZLEZjQQm.pdf>> (last accessed 27th August, 2016).

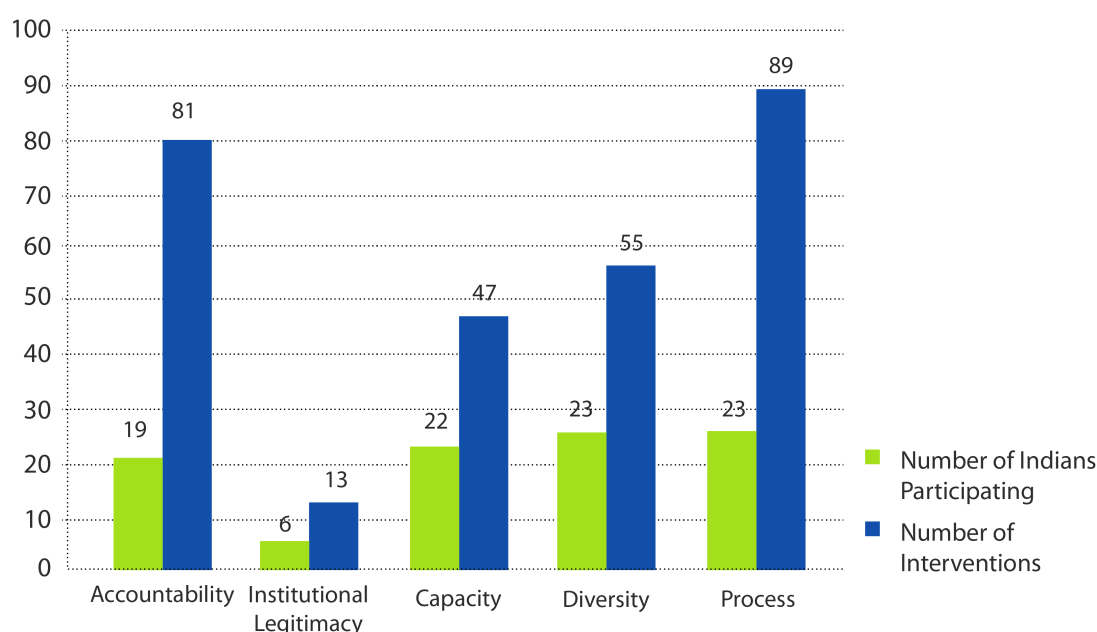
¹⁴⁸ Intervention by a stakeholder at ICANN46, available at <https://archive.icann.org/en/meetings/beijing2013/bitcache/Transcript_%20Joint%20Fellows%20_%20APRALO%20ALs%20Meeting-vid=50547&disposition=attachment&op=download.pdf> (last accessed 27th August, 2016).

¹⁴⁹ Intervention by a stakeholder at ICANN44, available at <[http://archive.icann.org/en/meetings/prague2012/bitcache/Transcript_%20Public%20Forum%20\(EN\)-vid=39773&disposition=attachment&op=download.pdf](http://archive.icann.org/en/meetings/prague2012/bitcache/Transcript_%20Public%20Forum%20(EN)-vid=39773&disposition=attachment&op=download.pdf)> (last accessed 27th August, 2016).

¹⁵⁰ Intervention by a stakeholder at ICANN44, available at <[http://archive.icann.org/en/meetings/prague2012/bitcache/Transcript_%20Public%20Forum%20\(EN\)-vid=39773&disposition=attachment&op=download.pdf](http://archive.icann.org/en/meetings/prague2012/bitcache/Transcript_%20Public%20Forum%20(EN)-vid=39773&disposition=attachment&op=download.pdf)> (last accessed 27th August, 2016).

between the number of interventions made and the number of active participants. Our data shows that a small number of participants make multiple interventions. This has been tabulated theme-wise below.

Figure I3: Number of Interventions versus Number of Active Participants



Similarly, our analysis of public comments shows a very small number of Indian stakeholders responding to substantive policy questions, which is consistent with the trend depicted in the figure above.¹⁵¹

While participation is spread across stakeholder groups, as shown in Figure 7 above, the overall Indian participation is low.¹⁵² Even though there has been an increase in participation over the years, it has

¹⁵¹ Also see Figure 8 above for a year-wise trend in Indian participation in public comment processes

¹⁵² As pointed out by multiple interview respondents, on file with the authors.

been very gradual.¹⁵³ A major reason for this may be that travelling for three meetings annually is prohibitively expensive.¹⁵⁴ Funding opportunities provided by ICANN do help in this regard, and Indians have actively participated in the Fellowship programmes, as we saw in Figure 11. However, ICANN and the Indian government need to make more of an effort to increase overall participation. As we have already noted (in Figure 9) the highest number of interventions from Indian stakeholders are made during these meetings, which signify a greater comfort with this method of participation.

From the small number of Indians who engage regularly with ICANN issues, we have seen a common set of concerns, viz. accountability, legitimacy, diversity and capacity, as detailed in the above section on Substantive Engagement. These concerns are not of concern to Indians alone - they dominate stakeholder engagement within ICANN.¹⁵⁵ However, Indian stakeholders are yet to take the lead on these conversations.¹⁵⁶ Further, there is a marked absence of Indians in leadership roles, such as chairs of working groups or council members of SO/ACs, which has been noticed and flagged by Indians as well.¹⁵⁷

¹⁵³ As depicted in Figures 6 and 8.

¹⁵⁴ As raised by Indian stakeholders in a survey circulated by the authors.

¹⁵⁵ *Supra*, note 65.

¹⁵⁶ Intervention by an Indian stakeholder during a consultation held for a draft version of this report.

¹⁵⁷ This concern has been raised by Indian stakeholders on the mailing lists, as mentioned in the section on Diversity above.

4

**INDIAN ENGAGEMENT
WITH THE IGF MAG
(2011-15)**

The 10th edition of the Internet Governance Forum (IGF) was held in Joao Pessoa in Brazil in 2015. It was a milestone for the IGF, which was founded in 2006. The 10th edition also coincided with the WSIS+10 Review, where the extension of the IGF came up for review. The importance of the IGF as an Internet governance institution was underlined in the near unanimity in extending the IGF for another 10 years.

This chapter looks at Indian participation in the IGF over the last 5 years (2011-2015). But our study is limited to the Multistakeholder Advisory Group (MAG) of the IGF. Comprising of representatives from all stakeholder groups, the MAG assists in the preparations leading up to the IGF. As a governance institution, it is interesting to study as a counterpoint to the WSIS+10 Review and ICANN given its role as a discussion forum.

There has been at least one Indian representative on the MAG from 2011-15. The aim of this chapter is to systematically study Indian engagement over the last five years. Given that the IGF is set to undergo reforms, this could be of relevance for future MAG representatives from India. Our research is based on publicly available records of the MAG Open Consultations and interviews with stakeholders were or are involved in the MAG in different capacities.

In this chapter, we first describe the IGF MAG multistakeholder model in relation to other Internet governance institutions. Then, we map Indian participation in the MAG over the last five years by looking at different categories of Indian actors, the methods through which they have engaged and the means through which they participate in the work of the MAG. We then proceed to examine

substantive issues discussed within MAG meetings by analysing statements and contributions made by Indian representatives. Finally, we evaluate the participation and engagement of Indian representatives in the MAG over the last five years.

4.1 Background

The IGF was established after the first two phases of the WSIS. Its creation can be traced to paragraph 72 of the Tunis Agenda which called for ‘a new forum for multistakeholder policy dialogue’ by 2006.¹ One year after the culmination of the Tunis Phase of the WSIS, the first meeting of the IGF was held in Athens in 2006.²

The organization responsible for giving the IGF its present shape was the Working Group on Internet Governance (WGIG).³ The WGIG was a multistakeholder body set up by the UN Secretary General in accordance to the mandate of the Geneva Action Plan from the first phase of the WSIS.⁴ The WGIG comprised of 40 members from across stakeholder groups. Two Indians were on the WGIG- the chairman, Nitin Desai⁵ and Rajashekar Ramaraj, the Managing Director of Sify, who represented the company on the WGIG.⁶ The WGIG was tasked with tackling three broad issues viz., 1) developing a working definition of Internet governance; 2) identifying public

¹ See Tunis Agenda, available at <<http://www.itu.int/net/wsis/docs2/tunis/off/6rev1.html>> (last accessed 21st August, 2016).

² For more information on the 1st IGF at Athens, see <<http://www.intgovforum.org/cms/athensmeeting>> (last accessed 21st August, 2016).

³ For a discussion on the WGIG’s proposal for the IGF, see Charles Sha’aban, ‘*Proposal for the Establishment of an Internet Governance Forum*’ in William Drake (ed), “Reforming Internet Governance: Perspectives from the Working Group on Internet Governance”, ICT Task Force Series 12 (2005) pp. 235-47.

⁴ WGIG, “Report of the Working Group on Internet Governance”, June 2005, at paras 1 and 5.

⁵ Nitin Desai is a former Under Secretary General of the United Nations and served as the first Chairman of the MAG. For more information on his background, see <<http://webfoundation.org/about/advisory-council/nitin-desai/>> (last accessed 27th August, 2016).

⁶ *Id*, Annex, pp 21-22.

policy issues that were relevant to Internet governance; and 3) developing a common understanding of the respective roles and responsibilities of various stakeholders.⁷

Within this broad mandate, the WGIG also considered the idea of a forum to discuss Internet governance related issues. The WGIG recommended that a space be created for dialogue where all stakeholders could engage with each other on an equal footing.⁸ The idea was that such a space could be used to discuss emerging Internet policy related issues that were ‘cross-cutting and multidimensional’.⁹ The forum was also meant to encourage participation from developing countries, with a special focus on diversity with respect to marginalized and vulnerable groups.¹⁰ The WGIG also recommended that this forum be linked to the UN and serve as a discussion forum to address linkages between ICTs for Development (ICT4D) and the Millennium Development Goals (MDG) process.¹¹

The IGF was set up based on the recommendations of the WGIG. It was created at a time when the global Internet governance regime became more open to multistakeholder participation.¹² Created as a multistakeholder platform, Epstein believes that the IGF eschews the bureaucratic hurdles that are typical to UN processes.¹³ He points out that civil society, private sector and the technical community are

⁷*Id.*, at para 5.

⁸*Id.*, at para 36.

⁹*Id.*, at para 40.

¹⁰*Id.*, at para 42-44.

¹¹*Id.*, at paras 44-45.

¹² Dmitry Epstein, “The Duality of Information Policy Debates: The Case of the Internet Governance Forum”, Phd Thesis (Cornell University, 2012), at pp. 84-85, available at <https://ecommons.cornell.edu/bitstream/handle/1813/29128/de56thesisPDF.pdf?sequence=1>.

¹³*Id.*, at p. 114.

able to participate on an equal footing with governments.¹⁴ The multistakeholder environment is also said to be supported by IGF meetings where many formalised protocols within the UN are not followed strictly.¹⁵

In ten years of its existence, there are differing assessments of the IGF's role as an Internet governance institution. Some argue that it has been successful in bringing different stakeholder groups to the table on an equal footing, thereby fulfilling its original purpose. The IGF has also served as a discursive platform, where ideas and innovative policies can be debated and discussed across a diversity of stakeholder interests.¹⁶ Many critics argue that the IGF does not perform the policy coordination function it was designed to execute (see below). However, some like Hofmann point out that the creation of a communicative space that enables participants to address concrete problems related to Internet governance is a better indication of whether the IGF has served its purpose.¹⁷ Evidence, if any, of the IGF's utility in the Internet governance landscape was seen in discussions around the renewal of the IGF.¹⁸ While there were disagreements on the efficacy of the IGF, there was near unanimity in the need to renew its mandate.¹⁹ Even government stakeholders from across the board have endorsed the need for a discursive forum like the IGF.²⁰

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*

¹⁷ Jeanette Hofmann, "The IGF as a New Approach to Transnational Governance" in Oxford Internet Institute, *Internet Governance for Development: Focussing on the Issues* (2006), at p.20.

¹⁸ There was near unanimous support, across stakeholder groups for extending the IGF for 10 years. For a discussion, see Institutional Accountability in Chapter 2.

¹⁹*Id.*

²⁰ This included the Indian government. *Supra*, Chapter 2, note 62.

Malcolm argues that the question of whether the IGF should be a decision making body arose due to bad terminology.²¹ He points out that decision making can be both a process and an event.²² If IGF is seen as part of a larger decision making process, he argues that it plays an important role in policy setting and coordination.²³ In addition to the criticism of the IGF, the MAG has been criticised for a lack of transparency and accountability in their functioning. Except for the Open Consultations, most MAG meetings are held behind closed doors.²⁴ MAG members also have a separate, closed mailing list.²⁵ The role of the MAG and its criticisms are discussed in the next section.

4.2 The IGF MAG

When the IGF was created, there was debate on the shape the organization will take. One of the recommendations of the WGIG was that the IGF should be supported by a lightweight structure and a multistakeholder coordinating process.²⁶ The WGIG did not clearly define the structure of these bodies.²⁷ The multistakeholder coordinating process is what is today known as the MAG.

But there was debate on the form the secretariat should take. Some had suggested a tripartite secretariat on the lines of the WSIS secretariat to address the needs of all the stakeholders.²⁸ Instead, the structure of the WGIG was adopted, with representatives from all

²¹ *Id.*, at 420.

²² *Id.*

²³ *Id.*

²⁴ *Id.*, at p. 494.

²⁵ It must be pointed out that the archive of the MAG list has been made available since June, 2013.

²⁶ *Supra*, note 4, para 46.

²⁷ *Id.*

²⁸ *Supra*, note 12, at pp. 147-49.

stakeholder groups together constituting an advisory body.²⁹ On the recommendation of the WGIG, the Open Consultations format used by the WGIG has been adopted by the MAG.³⁰ Typically, the MAG holds two (sometimes three) Open Consultations every year which are open to all stakeholders.³¹

By design, the MAG does not take decisions in a top-down manner.³² But, through consultations decisions are made on which panellists should be selected and how sessions must be designed for each IGF.³³ Despite the design of the MAG as a non-hierarchical body, it has been argued that the Chair of the MAG is a de facto ‘authority figure during meetings.’³⁴ Epstein believes that the MAG reinforces many of the UN’s institutional practices.³⁵ He points out that this serves to create hierarchies across stakeholder groups.³⁶

4.2.1 Constitution of the MAG

The MAG is a multistakeholder body that consists of representatives of various stakeholder groups. The selection of MAG members is made by the UN Department of Economic and Social Affairs (DESA)³⁷ under the authority of the UN Secretary General, who retains the power to select members.³⁸ However, this has not been without

²⁹ *Id.*

³⁰ *Supra*, note 4, para 46.

³¹ Details of Open Consultations and MAG Meetings can be found on the IGF website. See, <http://www.intgovforum.org/cms/open-consultations-and-mag-meeting> (last accessed 21st August, 2016).

³² Jeremy Malcolm, “Multi-Stakeholder Governance and the Internet Governance Forum” (2008), at pp. 320-21.

³³ *Id.*

³⁴ *Supra*, note 12, at p. 115.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Report of the Working Group on Improvements to the Internet Governance Forum, A/67/65-E/2012/48, 16th March, 2012 at para 20 (d), available at http://unctad.org/meetings/en/SessionalDocuments/a67d65_en.pdf (last accessed 23rd August, 2016).

controversy, with DESA's pivotal role in the IGF coming under question.³⁹

Nominations to the MAG are made by focal points for each stakeholder groups such as the Internet Society or ISOC (technical community),⁴⁰ Civil Society Coordination Group or CSCG (civil society)⁴¹ and the International Chamber of Commerce Business Action to Support the Information Society or ICC BASIS (private sector). Applicants can also apply to the DESA directly. The DESA has used its discretion to not select members nominated by the various stakeholder focal points in the past.⁴² However, it is not clear as to how the DESA picks MAG members.⁴³ The only available information on DESA's selection criteria are the five 'Selection and Operation Principles' listed on the IGF website.⁴⁴ These criteria include achieving a geographic and gender balance and that representatives should have strong linkages to their stakeholder groups.⁴⁵

As the chart below shows, it is important to understand how DESA makes these decisions. On a cursory survey of the last five years, it appears that a geographic balance may not have been maintained. There have been a disproportionate number of MAG members from

³⁹ Farzaneh Badii, "Will the UN Kill the IGF", May 29th 2016, available at <<http://www.Internetgovernance.org/2016/05/29/will-the-un-kill-the-igf/>> (last accessed 23rd August, 2016).

⁴⁰ See this year's ISOC nominees to the IGF MAF at <<http://www.Internetcollaboration.org/nominations/>> (last accessed 21st August, 2016).

⁴¹ See this year's CSCG nominees to the IGF MAF at <<http://Internetgov-cs.org/2016-02-01>> (last accessed 21st August, 2016).

⁴² Mail from Ian Peter, Chair of the CSCG dated 16th August 2016 in response to question from the author.

⁴³ The 2016 MAG selections were a source of controversy. See, Kieren McCarthy, "Critics Hit Out at 'Black Box' UN Internet Body", The Register 31st March 2016, available at <http://www.theregister.co.uk/2016/03/31/black_box_un_Internet_body/> (last accessed 21st August, 2016)

⁴⁴ MAG Renewal Announcement, 2016, available at <<http://www.intgovforum.org/cms/magabout/mag-renewal-announcement>> (last accessed 31st August, 2016).

⁴⁵ *Id.* These criteria were also separately confirmed by the CSCG Chair and a sitting member of the MAG. However, both responses acknowledged a lack of transparency in how these criteria are weighed.

the US.⁴⁶ On average 8-10% of MAG members from 2011-15 were from the US. The next highest have been countries like China, Egypt and India which have 3-5% representation in these years.

The question of geographic diversity and representation in the MAG is a sensitive one. During consultations conducted with Indian stakeholders on this report, some expressed concern at employees of multinational companies being nominated as Indian representatives on the MAG.⁴⁷ In our analysis we found that out of three private sectors MAG members from 2011-15, only one worked for an Indian headquartered company.⁴⁸ Another MAG member officially represented an Indian industry association, but was employed by a US headquartered company.⁴⁹ We also found that the company in question previously had a representative on the MAG from 2012-14 and the Indian MAG member was nominated to the MAG in 2014.⁵⁰ The third Indian private sector representative works for a US headquartered company that has no previous history of engaging with the MAG and represents the company on the MAG.⁵¹

⁴⁶ Stakeholders' country affiliation has been listed as per the list available on the IGF site. We have noted that in some cases this is affected by the MAG representative moving from one country to the other. We have, however used a uniform method to identify which countries are represented on the MAG.

⁴⁷ Intervention by an Indian stakeholder during a consultation held for a draft version of this report.

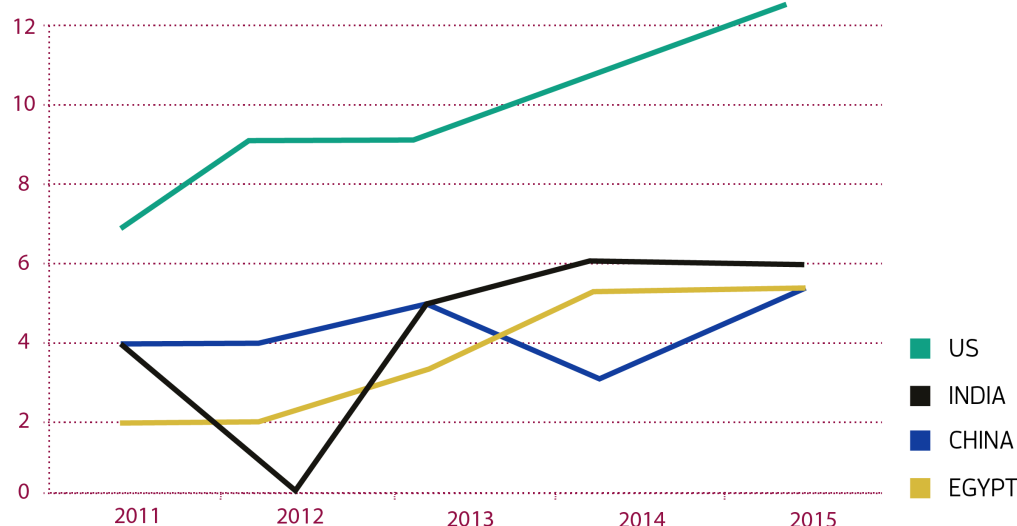
⁴⁸ Analysis based on primary data. On file with the authors.

⁴⁹ Analysis based on primary data. On file with the authors.

⁵⁰ Analysis based on primary data. On file with the authors.

⁵¹ Analysis based on primary data. On file with the authors.

Figure 14: Membership by country as a percentage of total MAG Membership (2011-15)



Besides the question of geographic balance, the MAG selection process has come in for criticism from stakeholder groups.⁵² The CSCG recently wrote to the DESA asking for greater transparency in its selection procedures after some of their nominations were not selected to the MAG.⁵³ They noted in their letter that their nominations to the MAG were based on a transparent and inclusive process and that the DESA did not offer an explanation as to why the CSCG's nominations were not accepted.⁵⁴

This lack of transparency also affects the way Indian stakeholders are selected as MAG representatives. In the past (as confirmed by the CSCG chair), the DESA had used its discretion to select a civil society representative from India who was not nominated by the CSCG.⁵⁵

⁵²*Supra*, note 43.

⁵³Mail from Ian Peter to the IGF Secretariat, dated 4th April, 2016. Available at <<http://Internetgov-cs.org/2016-04-04>> (last accessed 21st August, 2016).

⁵⁴*Id.*

⁵⁵*Supra*, note 42.

Similarly, in 2014 an Indian civil society member nominated by the CSCG was not confirmed by the DESA.⁵⁶

4.3 Indian Participation in the IGF MAG

Indian representatives have been active in the IGF MAG over the last five years. In fact, the first Chairman of the IGF MAG was Nitin Desai, the former UN Under-Secretary General for Economic Affairs.⁵⁷ India also played host to the IGF in 2008. In this section, we look at the different dimensions to Indian participation in the MAG.

4.3.1 Actors

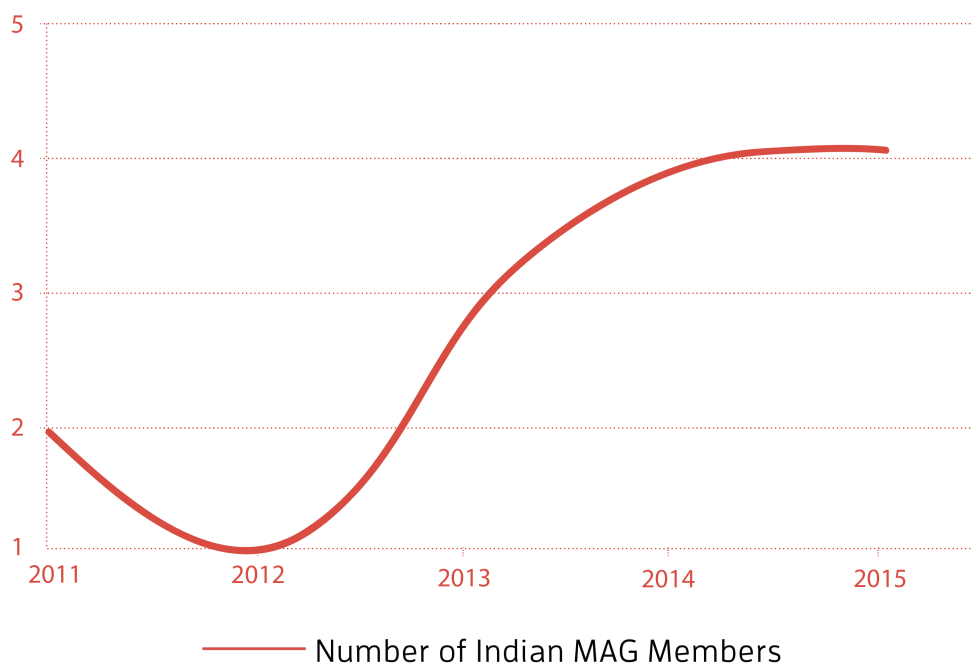
In the period under study (2011-15), there has been at least one Indian MAG Member every year. As a former host country, Indian government representatives are invited to participate in the MAG every year.⁵⁸ However, Indian representation in the MAG is not limited to government representatives. With the exception of 2012, there has been a non-governmental stakeholder in every MAG. The chart below represents the number of Indian MAG members by year.

⁵⁶ *Id.*

⁵⁷ See Nitin Desai's IGF profile at <<http://www.intgovforum.org/cms/index.php/nitin>> (last accessed 21st August, 2016).

⁵⁸ See for instance, this year's MAG list. The Indian government representative is grouped with other former host country representatives. Available at <<http://www.intgovforum.org/cms/mag/45-mag-membership/3030-mag-2016-membership-2>> (last accessed 21st August, 2016).

Figure I5: Indian MAG Representatives 2011-15



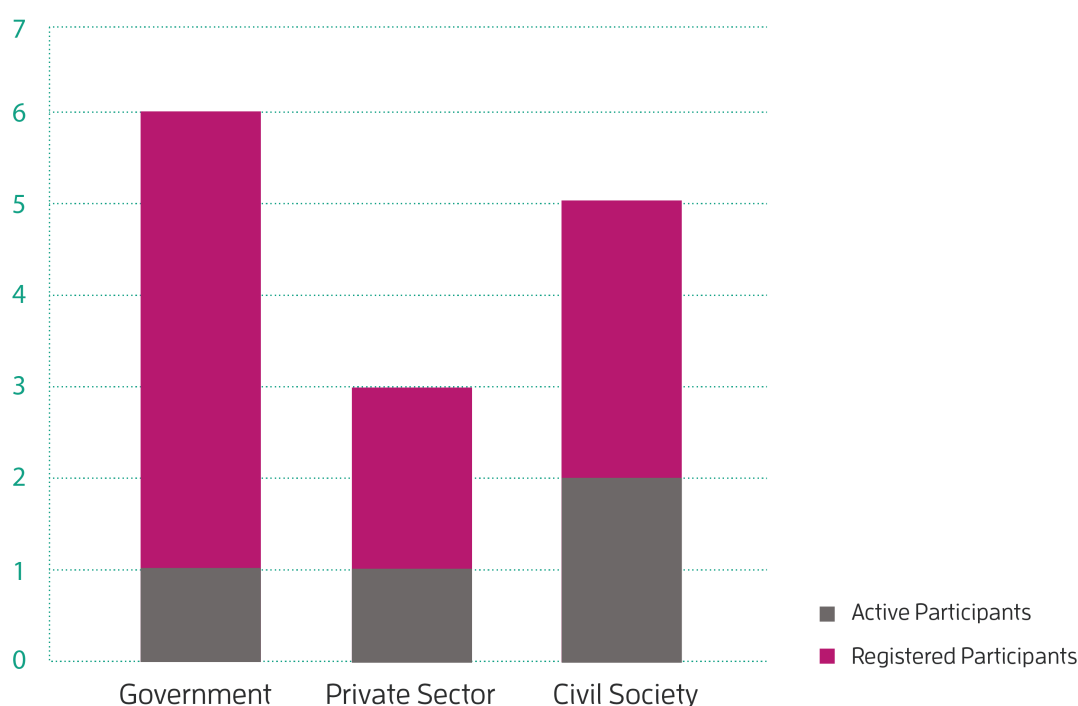
However, participation in MAG meetings is not limited to MAG representatives. Stakeholders can participate in Open Consultations.⁵⁹ These meetings can be attended in person or participants can engage remotely. In the last five years, 13 Indian representatives have participated in various MAG meetings. However, it must be pointed out that this figure does not account fully for remote participation. This is because there is no record of remote participants for most of these meetings. Even if there was, it would be hard to identify Indian stakeholders as there is no way to verify the identity or nationality of remote participants.

Further, it is also not an accurate indication of how many Indian stakeholder representatives actually participated in the open MAG

⁵⁹ As mentioned earlier, the Open Consultations are modelled on the WGIG's Open Consultations, *supra*, note 4, at para 44.

meetings. In many cases, registered participants did not actually make interventions during the meeting. Based on the information at our disposal, we cannot ascertain if they actually participated in the meeting. For this reason, those who made interventions are classified as ‘active participants’.

Figure 16: Indian Participation in MAG Open Consultations



As described earlier, Indian government representatives can attend MAG meetings as a former host country. This explains why the highest participation is from government representatives in Figure 16. But if we look at active participants, we find that the level of participation across stakeholder groups is fairly even.

4.3.2 Modes of Participation

As discussed earlier, the MAG has been criticised for a lack of transparency in its functioning. This is because of the closed nature of its meetings. As a result, there are limited avenues for stakeholders that are not MAG representatives to engage with the MAG or the IGF planning process. There are three kinds of MAG consultations. Of these only one is open to outside stakeholders.

The MAG holds face-to-face meetings every year. There can be two or three meetings each year. These meetings last for three days. Most of the IGF planning happens over these meetings. In addition, there are virtual MAG meetings where MAG member engage remotely. There is no fixed number of virtual meetings and these can vary by year. For instance, there were 14 virtual meetings in 2015 as opposed to just seven in 2014. Both these meetings are closed and not open to non-members of the MAG. However, summary reports of the meetings are published after every meeting. MAG members also interact with each other over a MAG mailing list. This list is for members only and is not open to the public. However, since 2013, the mailing lists have been archived every month.⁶⁰ The mailing lists are used to coordinate MAG meetings and have also been a forum for some substantive discussions.

Open Consultations, held two or three times every year, are open to the public.⁶¹ They are usually organized at the same time as the face

⁶⁰ IGF MAG mailing list archives, available at http://mail.intgovforum.org/pipermail/igfmaglist_intgovforum.org/ (last accessed 21st August, 2016).

⁶¹ This year's MAG met twice in April and July. See, schedule for the April meeting at <http://www.intgovforum.org/cms/open-consultations-and-mag-meeting> and July meeting at <http://www.intgovforum.org/cms/component/jevents/icalrepeat.detail/2016/07/12/753/-/igf-2016-second-open-consultations-and-mag-meeting?Itemid=28> (last accessed 23rd August, 2016).

to face meetings.⁶² Typically, one of the three days of the face to face meetings is reserved for Open Consultations.⁶³ Remote participation is allowed for Open Consultations. Observers are also allowed to attend the MAG meeting. Records of open consultations are the primary source of data for the next section (on substantive engagement).

Indians have largely engaged with the MAG through the Open Consultations and face to face meetings. MAG members can participate in both face to face and virtual meetings. But we have no way of analysing their participation in the latter. Non-members have participated in Open Consultations. As mentioned earlier, it is difficult to get a measure of the number of member engaging remotely given the lack of data on remote participants.

4.3.3 Means

MAG members can apply for funding to attend MAG meetings. Selection for such funding is based on a list of criteria.⁶⁴ However, there is no publicly available information on the grant of such funding opportunities. From our survey, it seems that most Indian MAG members/participants have not used funding to attend MAG meetings.⁶⁵ Out of six MAG participants who responded to our survey, only one had been funded by an external agency.⁶⁶ This

⁶² See for instance, for the schedule for the April 2016 Open Consultations and MAG Meeting at <http://www.intgovforum.org/cms/component/jevents/icalrepeat.detail/2016/04/04/496/-/igf-2016-first-open-consultations-and-mag-meeting#agenda>.

⁶³ *Id.*

⁶⁴ Eligibility Criteria for Funding a Participant, available at <http://www.intgovforum.org/cms/aboutigf/2016-05-10-14-28-13> (last accessed 21st August, 2016).

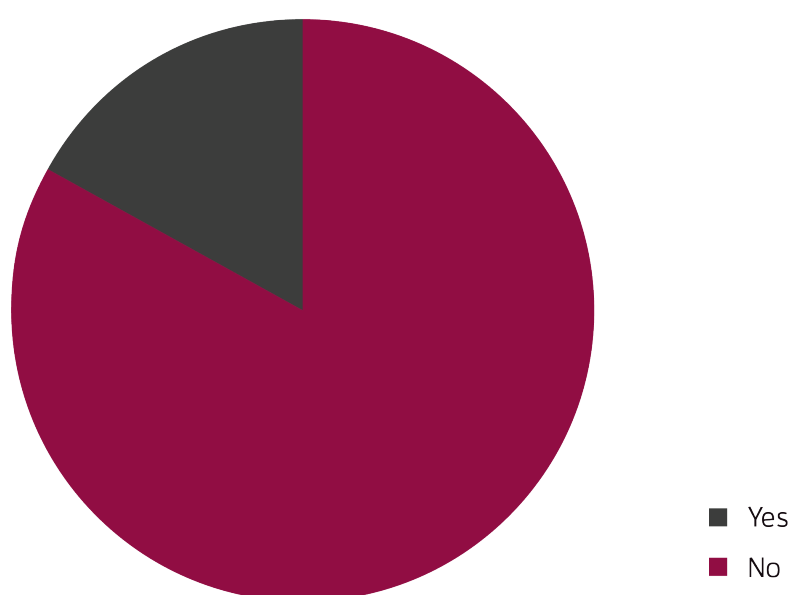
⁶⁵ Analysis based on survey responses. On file with the authors.

⁶⁶ Analysis based on survey responses. On file with the authors.

respondent was funded by the IGF.⁶⁷ The figure below represents the breakdown of MAG funding based on our survey.

Figure I7: MAG Funding

Have you ever been funded by an external agency IGF MAG meetings? (6 responses)



4.4 Substantive Engagement with the IGF MAG

Indian engagement on substantive issues in the IGF MAG is classified according to three broad categories. These are 1) Openness and Transparency, 2) Diversity and 3) Accountability. The meaning of these categories as they relate to the IGF MAG and our study are described below. The definitions of the categories draw from internationally recognised good governance principles. This is followed by a descriptive analysis of the range of issues raised by Indian stakeholders in the MAG.

⁶⁷ Analysis based on survey responses. On file with the authors.

4.4.1 Defining the Categories

Use of the term ‘diversity’ in MAG discussions relates to the representation of a diversity of views at the IGF. Within the MAG, ‘diversity’ is also used in the context of representation of different geographies and stakeholder groups at the IGF. The issue of diversity has been raised by Indian stakeholders across Internet governance institutions and the MAG is no different. However, discussions on diversity at these institutions tend to be ambiguous for the reasons outlined in the beginning of this paragraph, and because different actors tend to associate diversity with different issues, each with their own political undercurrents.⁶⁸ For this reason, it is difficult to define the meaning of diversity in the context of the MAG.

Abbott and Snidal’s description of diversity in policy processes is a good indicator to analyse diversity discussions in a process driven organization like the MAG. In the context of multistakeholder governance regimes, they argue that dominant actor groups would adopt structures of participation and deliberative procedures that further their narrow interest.⁶⁹ This mirrors the charge made by many Indian representatives while discussing the lack of diversity in Internet governance institutions.

Openness is one of the five good governance principles identified by the European Commission in 2001.⁷⁰ Openness and Transparency

⁶⁸ Philip Napoli and Kari Karppinen, “Translating Diversity to Internet Governance”, 18 (12) First Monday (2013), available at <<http://www.ojphi.org/ojs/index.php/fm/article/view/4307/3799>>.

⁶⁹ Abbott and Snidal, *The Governance Triangle: Regulatory Standards Institutions and The Shadow of the State* in Walter Mattli and Ngaire Woods (eds) “The Politics of Global Regulation” (2008) at p. 62.

⁷⁰ European Commission, “European Governance A White Paper”, COM(2001) 428 available at <http://europa.eu/rapid/press-release_DOC-01-10_en.htm>.

are also part of OECD's good governance principles.⁷¹ In the context of international institutions, having access to documents and decisions taken is a central tenet of openness and transparency.⁷² The World Bank recognizes openness and transparency as being linked to better governance outcomes.⁷³ Transparency policies, according to the World Bank must be supported by procedures (like right to information laws) that allow individuals to access information directly. Some organizations, like the UNDP have a full-fledged information disclosure policy, which classifies documents based on the level of confidentiality.⁷⁴ In MAG discussions, comments that relate to openness and transparency usually relate to processes adopted by the MAG. In categorizing these comments, we have looked at whether they discuss the collection and publication of MAG related information for public scrutiny; and if they address issues of transparency in monitoring and evaluating IGF proposals.⁷⁵

Accountability is the third category, where we look at how decisions are taken in the MAG. In the selection of sessions for the IGF, the MAG relies on its members to rate proposals. These rating sheets are not publicly available. However, the process of selecting or rejecting sessions is discussed in MAG meetings. We categorize these

⁷¹ See for instance, <<http://www.oecd.org/corruption/opennessandtransparency-pillarsfordemocracytrustandprogress.htm>> (last accessed 31st August, 2016)

⁷² This has also been codified in EU law. See for a discussion, Friedl Weiss and Silke Steiner, "Transparency as an Element of Good Governance in the Practice of the EU and the WTO: Overview and Comparison" 30(5) Fordham Int. Law Journal (2008) pp. 1545-1586.

⁷³ The World Bank, "Case Studies of Transparency Policies in Public Service Provision", available at <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0,,contentMDK:23265448~pagePK:148956~piPK:216618~theSitePK:286305,00.html>>, (last accessed, 21st August, 2016).

⁷⁴ UNDP, "Information Disclosure Policy", available at <http://www.undp.org/content/undp/en/home/operations/transparency/information_disclosurepolicy.html>, (last accessed 21st August, 2016).

⁷⁵ Alnoor Ebrahim, "The Many Faces of Non-Profit Accountability", Harvard Business School Working Paper 10-069 (2010), at p. 4

discussions under the broad head of accountability. In international organizations, accountability has been described as the readiness or preparedness of an organization to give an explanation and a justification to relevant stakeholders for its judgments, intentions, acts, and omissions.⁷⁶ The World Bank identifies two components of accountability- answerability and enforcement.⁷⁷ The former relates to institutions providing information and justifications for their actions; the latter refers to implementing sanctions against those who breach accountability.⁷⁸ In international bodies that do not follow a top-down hierarchical structure, accountability has a different dimension.⁷⁹ The most important function of such regulatory bodies is the creation of rules and standards.⁸⁰ In the case of the MAG, this relates to its various functions in rating submissions, selecting sessions and speakers. We analyse discussions around these issues to understand the nature of justifications offered in support of the decision making.

4.4.2 Openness and Transparency

Openness and transparency were not priority issues for Indian stakeholders. As we will see below, some of their interventions addressed issues of transparency and openness, albeit not directly. Typically, such interventions called for more information on particular issues or processes. In other cases, they called for

⁷⁶ Andreas Rasche, “Toward a Model to Compare and Analyze Accountability Standards – The Case of the UN Global Compact” 16 Corp SocResponsib Environ Mgmt (2009) at 193.

⁷⁷ World Bank, “Accountability in Governance”, available at <http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf> (last accessed 21st August, 2016).

⁷⁸ *Id.*

⁷⁹ See for a discussion, Martin Lodge, “Accountability and Transparency in Regulation: Critiques, Doctrines and Instruments” in Jacint Jordana and David Levi-Faur (eds), *The Politics of Regulation* (2005), at pp. 124-144.

⁸⁰ *Id* at p. 124.

information about the IGF to be disseminated over the Internet or through social media.

One stakeholder directly addressed the issue of transparency in the context of funding and the structure of the IGF.⁸¹ The stakeholder argued that the IGF is not the bottom-up inclusive process that it is supposed to be.⁸² Other interventions have focussed on the dissemination of information to IGF participants.⁸³ One stakeholder also called for discussions with potential organizers of the main sessions to better understand the requirements to organize such sessions.⁸⁴

Some other interventions called for greater clarity on why certain sessions were selected or dropped.⁸⁵ Without the context of the names of the sessions being discussed, it is difficult to analyse the meaning of such interventions.

4.4.3 Accountability

Interventions under the category of accountability describe how decisions are made within the MAG. There were three kinds of discussions on the functions of the MAG and the decision making within. These were related to the format of the IGF, the criteria to assess proposals and the decisions made with their accompanying justifications. Similar to the openness and transparency category,

⁸¹ Intervention from Indian MAG Member at the MAG Open Consultations held on May 21st 2013. On file with the authors.

⁸² *Id.*

⁸³ Intervention from Indian MAG Member at the MAG Open Consultations held on May 19th 2014. On file with the authors.

⁸⁴ Intervention from Indian MAG Member at the MAG Open Consultations held on February 23rd 2011. On file with the authors.

⁸⁵ Intervention from Indian MAG Member at the MAG meeting held on December 2nd 2014. On file with the authors.

these interventions do not address the issue of accountability of the MAG, but provide a snapshot of how MAG members account for their decision making.

On the format of the IGF, many Indian stakeholder interventions called for restructuring parts of the IGF. Some advocated for different formats for sessions from roundtables to town halls and Best Practice Forums rather than organizing panels.⁸⁶ One stakeholder supported organising feeder workshops that linked to the overall theme and fed into the main sessions of the IGF.⁸⁷ The same stakeholder also called for greater clarity in identifying the overall theme for that year's IGF.⁸⁸ Some of these discussions also revolved around the number of speakers for each session and the time they should be allotted.⁸⁹ One intervention also called on the MAG to review its internal processes.⁹⁰

A topic that speaks more closely to the issue of accountability is the criteria used by MAG members to decide on proposals. One MAG member cited the lack of clarity on what constitutes a newcomer.⁹¹ The same member also wanted the MAG to establish clear criteria according to which proposals would be accorded differential weights.⁹² The criteria that were cited ranged from submissions by newcomers to whether the proposed topic was related to the overall

⁸⁶ Intervention from Indian MAG Member at the MAG Open Consultations held on May 19th 2014. On file with the authors.

⁸⁷ Intervention from Indian civil society member at the MAG Open Consultations held on 23rd February, 2011.

⁸⁸ *Id.*

⁸⁹ Intervention from Indian MAG Member at the MAG meeting held on May 20th 2014. On file with the authors.

⁹⁰ Intervention from Indian MAG Member at the MAG Open Consultations held on May 19th 2014. On file with the authors.

⁹¹ Intervention from Indian MAG Member at the MAG Open Consultations held on May 18th 2011. On file with the authors.

⁹² *Id.*

theme of the IGF.⁹³ Another MAG member was opposed to evaluating proposals by themes.⁹⁴ The member argued that this could work against identifying individual proposals which maybe well written but under a popular theme.⁹⁵ The same member pointed out that the MAG should not stress on sessions that come up with policy recommendations.⁹⁶ Instead, the member argued that there was value in having a conversation on some topics.⁹⁷

Some stakeholders argued that IGF sessions should deal with important issues and not shy away from controversial topics.⁹⁸ They argued that many participants come to the IGF to discuss issues that they may not be able to at other fora.⁹⁹ Similarly, they argued against using strict mathematical cut-offs, pointing out that it would be a very mechanical process and would defeat the purpose of the MAG.¹⁰⁰ In assessing these proposals, one member argued that weightage needs to be given to proposals from developing countries.¹⁰¹ In these discussions, it also emerged that the MAG rated sessions on a scale of 1-5, changing from a 0-2 scale that was used earlier.¹⁰²

⁹³*Id.*

⁹⁴ Intervention from Indian MAG Member at the MAG Open Consultations held on May 21st 2013. On file with the authors.

⁹⁵*Id.*

⁹⁶*Id.*

⁹⁷*Id.*

⁹⁸ Intervention from Indian MAG Member at the MAG meeting held on May 22nd 2014. On file with the authors.

⁹⁹ Intervention from Indian MAG Member at the MAG meeting held on May 20th 2014. On file with the authors.

¹⁰⁰ Intervention from Indian MAG Member at the MAG Open Consultations held on May 21st 2013. On file with the authors.

¹⁰¹ Intervention from Indian MAG Member at the MAG meeting held on December 3rd 2014. On file with the authors.

¹⁰²*Id.*

During MAG discussions, it seems that three kinds of decisions are made- accept, reject and merge.¹⁰³ There were also session for which MAG members suggest changes. Decisions to merge were usually made to bring greater focus to a particular issue or if there were multiple acceptable proposals on one topic.¹⁰⁴ On the other hand, well-structured and clearly thought out sessions were not merged.¹⁰⁵ Sessions were accepted based on a wide range of criteria, this included the quality of speakers, importance of the topic, importance of the stakeholder community proposing the session, format of the session, the level of interaction between speakers and the level of engagement with the audience.¹⁰⁶ Proposals were rejected outright if there were too many similar proposals on a topic or if the session lacked clarity in terms of what it was trying to achieve.¹⁰⁷

4.4.4 Diversity

In their interventions, Indian stakeholders focussed on three facets of diversity viz. diversity in participation, encouraging a diversity of voices at the IGF and selecting sessions on a diversity of issues.

In terms of participation, Indian stakeholders stressed the need to encourage the participation of newcomers at the IGF.¹⁰⁸ Some stakeholders articulated the need to make IGF sessions more

¹⁰³ Based on analysis of transcripts from the MAG Open Consultations and MAG meetings in 2011, 2013, 2014 and 2015. On file with the authors.

¹⁰⁴ Intervention from Indian MAG Member at the MAG meeting held on May 19th 2011. On file with the authors.

¹⁰⁵ Intervention from Indian MAG Member at the MAG meeting held on May 20th 2014. On file with the authors.

¹⁰⁶ Based on analysis of transcripts from the MAG Open Consultations and MAG meetings in 2011, 2013, 2014 and 2015. On file with the authors.

¹⁰⁷ Based on analysis of transcripts from the MAG Open Consultations and MAG meetings in 2011, 2013, 2014 and 2015. On file with the authors.

¹⁰⁸ Intervention from Indian MAG Member at the MAG Open Consultations held on May 21st 2013. On file with the authors.

accessible to first time participants.¹⁰⁹ Others called for a greater acceptance of proposals from first time applicants.¹¹⁰ To facilitate greater participation from developing countries, Indian stakeholders called for the strengthening of regional and national level IGFs.¹¹¹ In terms of participation within the MAG, one representative cited the lack of funding to attend MAG meetings.¹¹²

Indian stakeholders have also called for a diversity of voices to be represented in IGF sessions.¹¹³ To this end, they have supported sessions that have representation from all stakeholder groups, decrying sessions that are designed as 'silos' for individual stakeholder groups.¹¹⁴ Some stakeholders have also called for greater diversity in selecting speakers for the main sessions.¹¹⁵ They argue that there is a small list of speakers who are invited regularly to speak at these sessions.¹¹⁶ Instead, they called on the MAG to look beyond the usual list of speakers to promote new voices.¹¹⁷

In selecting proposals from newcomers, there was a divergence in the views of Indian stakeholders. One Indian stakeholder opposed the use of quotas to set aside a certain number of sessions for first

¹⁰⁹ Intervention from Indian MAG Member at the MAG Open Consultations held on May 21st 2013. On file with the authors.

¹¹⁰ Intervention from Indian MAG Member at the MAG meeting held on May 20th 2014. On file with the authors.

¹¹¹ Intervention from Indian MAG Member at the MAG Open Consultations held on May 19th 2014. On file with the authors.

¹¹² Intervention from Indian MAG Member at the MAG Open Consultations held on May 21st 2013. On file with the authors.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Intervention from Indian MAG Member at the MAG Open Consultations held on December 1st 2014. On file with the authors.

¹¹⁶ Intervention from Indian MAG Member at the MAG meeting held on May 20th 2014. On file with the authors.

¹¹⁷ *Id.*

time applicants.¹¹⁸ Instead, the stakeholder called for capacity building measures to help such applicants frame better proposals.¹¹⁹

Through their interventions, Indian stakeholders have also supported promoting a diversity of issues through IGF sessions. These include themes that focus on gender and issues like digital divide and network neutrality.¹²⁰ Further, they also argue that encouraging a wider pool of newcomers to participate in the IGF will also lead to a greater diversity in the topics being discussed.¹²¹

4.5 Evaluating Indian Engagement with the IGF MAG

Indian engagement with the MAG is different from other institutions for two reasons. First, strictly speaking, the MAG is not a decision making body.¹²² However, its decisions have a bearing on issues that are given attention on a global stage.¹²³ But as a purely multistakeholder body, the MAG requires a different kind of engagement from Indian stakeholders as opposed to multilateral fora like the ITU.

Second, it is a closed group which allows for very limited external participation.¹²⁴ This means that discussions in the MAG are led by

¹¹⁸ Intervention from Indian MAG Member at the MAG Open Consultations held on May 19th 2014. On file with the authors.

¹¹⁹ *Id.*

¹²⁰ Intervention from Indian civil society member at the MAG Open Consultations held on 23rd February, 2011.

¹²¹ Intervention from Indian MAG Member at the MAG meeting held on May 20th 2014. On file with the authors.

¹²² *Supra*, note 32.

¹²³ *Id.*, at pp. 420-422.

¹²⁴ As discussed earlier, the MAG had two open consultations which are open to all stakeholders. *Supra*, note 35.

the MAG members.¹²⁵ As a result, there is very little external critique of the MAG's processes that is recorded. It is also difficult to assess changes in the MAG's processes given the lack of publicly available information on the MAG.¹²⁶ For instance, from our survey of transcripts, we found out that the MAG used to rate proposals on a scale of 0-2, but now uses a scale of 1-5.¹²⁷ However, the rating sheets are not made public.¹²⁸

However, the MAG did see significant Indian participation over the last five years.¹²⁹ In addition to the government representatives who were invited as past hosts, there have been four MAG members from other stakeholder groups.¹³⁰ As a result, Indian representatives have had a voice in the IGF MAG. As we have seen, Indian MAG members have been vocal on issues of diversity.¹³¹ They have also played a role in shaping IGF sessions and deciding which proposals are accepted.¹³² Their interventions have thrown light on some of the internal dynamics of the MAG as it relates to the selection of proposals.¹³³

¹²⁵ *Supra*, note 12, at p. 115.

¹²⁶ See discussion under Methods.

¹²⁷ See discussion in Accountability in Section 4.4.4.

¹²⁸ Intervention by an Indian stakeholder during a consultation held for a draft version of this report.

¹²⁹ Figure 15.

¹³⁰ Figure 16.

¹³¹ See discussion under Diversity.

¹³² See discussion under Accountability.

¹³³ *Id.*

Post the WSIS+10 Review, the focus has shifted to reforming the IGF.¹³⁴ To better understand the MAG, there has to be greater transparency in its functioning. The MAG has taken some steps in the last few years by making some of their deliberations accessible to the public through open consultations and archiving mailing lists¹³⁵. However, this is far from sufficient.

¹³⁴ The recently concluded IGF Retreat began the process of considering IGF reforms post the WSIS+10 Review. See “IGF Community Consultation – IGF Retreat Proceedings: Ideas and Suggestions”, available at <https://www.intgovforum.org/review/igf-retreat-proceedings-ideas-and-suggestions/> (last accessed 21st August, 2016).

¹³⁵ *Supra*, note 60.

5

CONCLUSION

The WSIS+10 Review, ICANN and the IGF MAG are very different kinds of organizations. However, based on the preceding discussion, we were able to identify some broad trends across the three institutions. We present below our conclusions based on the analysis of Indian engagement with these institutions from 2011-15.

5.1 Participation

Across the three institutions, we have found that there is a similar level of interest amongst Indian stakeholders. Participation has been growing steadily across IGF MAG and ICANN (Figures 15 and 6). However, if we use the metric of active participants (as we did in Chapters 3 and 4) we find that the numbers reduce dramatically (Figures 13 and 16 respectively).

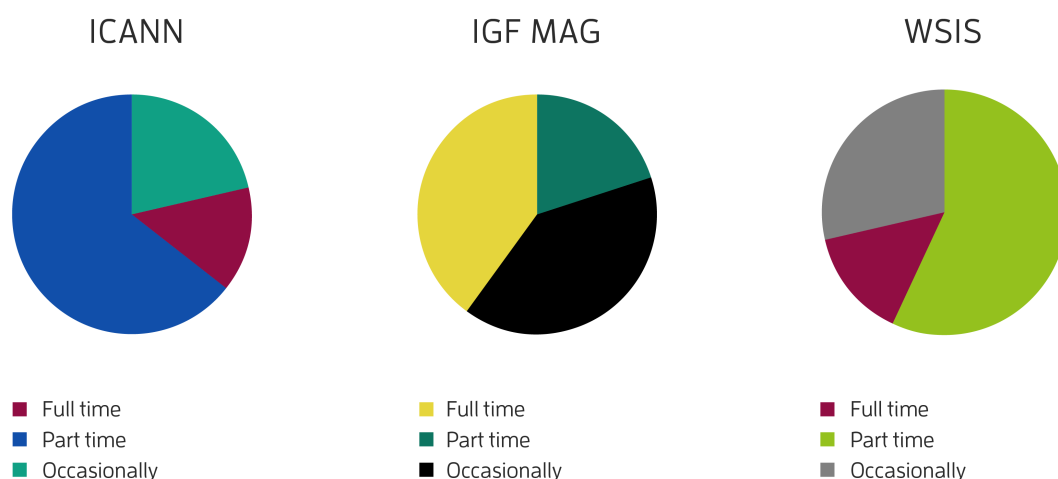
We also found a trend of steadily increasing engagement when it came to public comments at ICANN. A similar number of organizations/individuals submitted comments to the WSIS+10 Review and ICANN (Figures 3 and 8).

5.1.1 Part Time Engagement with Internet Governance

Our surveys and interviews point to limited substantive engagement across WSIS+10 Review¹ and ICANN (Figure 13). This is probably because most Indian actors engage with these institutions on a part time basis (see Figure 18 below). In response to one of our survey questions, we found that a minority of actors follow these institutions on a full time basis. The figure below represents the breakdown across institutions.

¹ See discussion on substantive engagement in [2.4 Evaluating Indian Engagement with the WSIS+10 Review](#).

Figure I8: Time Devoted by Indian Actors by Institution



5.1.2 Lack of Private Sector Participation

A common theme across ICANN, IGF MAG and the WSIS+10 Review has been lack of private sector participation. The WSIS+10 Review had no representation from the Indian private sector at the international level (Figure 1). One of our respondents pointed out that this was because most private sector actors interested in Internet governance are telecom companies and they prefer to engage with the ITU.² The respondent also noted that private sector actors with a background in domestic lobbying lacked the capacity and interest in participating in multistakeholder governance.³ The lack of sustained interest in Internet governance is not entirely limited to the private sector, although it is noticeably worse with the private sector.

² Interview with respondent no 4, on file with the authors.

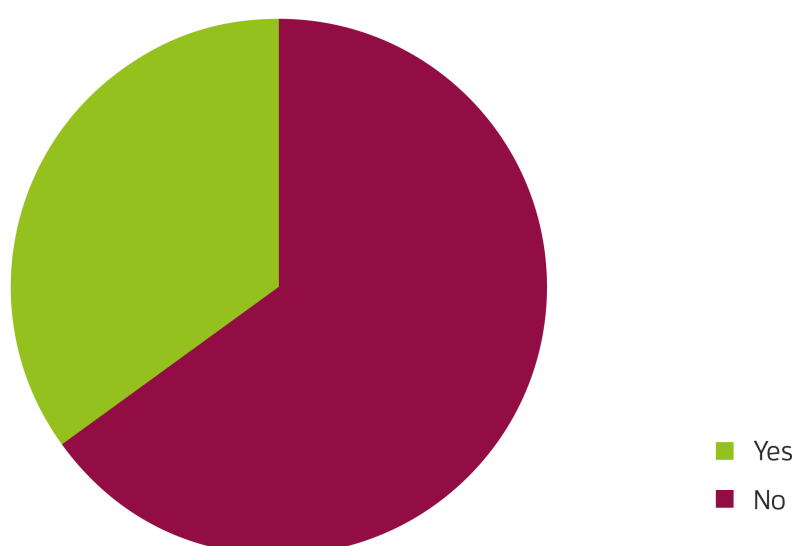
³ *Id.*

5.1.3 Barriers to Participation

Indian stakeholders face significant barriers in engaging with the three institutions. Respondents identified two reasons for the limited Indian engagement viz. funding and a lack of capacity.⁴ Of the three institutions, only ICANN provides a sizeable number of fellowships to every one of its meetings (Figure 11). This translates into limited funding opportunities for Indian stakeholders at Internet governance institutions.

Our survey confirms these results. Out of 26 responses, only eight confirmed that they received funding from an external agency⁵ to attend meetings.

Figure 19: External Funding Received by Indian Stakeholders



⁴ Responses to Question 4 in our survey.

⁵ As per our survey question, this includes the government, international institutions, global civil society, academia and technical communities.

On overcoming the funding barrier, one respondent suggested that the government could

*'...create regular fellowships and funding initiatives to pick candidates to engage with Internet governance institutions and processes'*⁶

Almost all survey and interview respondents cited a lack of 'capacity' among Indian stakeholders as a barrier to participation.⁷ This knowledge gap ranges from a lack of awareness about the issues to a lack of information about the respective institutions.⁸ Some argued that the lack of sustained engagement affects India's long term interests at these institutions.⁹ As with the question of funding, many stakeholders believed that it was up to the government to address the issue. One of the survey respondents (number 8) suggested

'the Government could support other stakeholders to take the initiative to reach out to the Indian IT community and the Indian Civil Society, and the existing participants need to effectively convey the significance, relevance and the ease of participation in the IGF, ICANN and Internet Society as well as in Indian IG events and programs'

5.2 Substantive Engagement

A key takeaway from studying the IGF MAG, ICANN and WSIS+10 Review is that the views of Indian stakeholders seem to vary very little across stakeholder groups. This is more so with respect to

⁶ Survey Respondent no. 16.

⁷ *Id.*

⁸ *Id.*

⁹ Intervention by an Indian stakeholder during a consultation held for a draft version of this report.

ICANN and IGF MAG. During the WSIS+10 Review, there was notable divergence on issues like human rights and cybersecurity between the government and civil society.¹⁰ Nevertheless, we found that issues like diversity and institutional accountability were common across the institutions and stakeholder groups.

5.2.1 Accountability and Transparency

During the WSIS+10 Review, questions of institutional accountability centred on the extension of the IGF. Whereas both ICANN and the IGF MAG, were subject to criticism based on a perceived lack of accountability.

ICANN has for long, been criticised for its corporate structure and lack of transparency in its functioning.¹¹ Respondents in our survey and consultations were quite candid in their critique of ICANN, citing specific incidents where the lack of accountability and transparency affected them directly.¹² However, the CCWG-Accountability process is aimed at overcoming this accountability deficit.

The transparency criticism aimed at the IGF MAG applies equally to its constitution and functioning. There controversy over its constitution relates to the lack of transparency in the way the DESA selects MAG members.¹³ The selection of some Indian MAG members has been called into question by Indian stakeholders.¹⁴

¹⁰*Supra*, note 1.

¹¹*Supra*, Chapter 3, note 34.

¹²*Supra*, Chapter 3, note 40.

¹³ See discussion on the DESA in 4.2.1 Constitution of the MAG.

¹⁴*Id.*

With a lack of transparency in the way the DESA operates, it is hard to conclusively assess the nomination of stakeholders to the MAG.¹⁵

However, it must be pointed out that the MAG has become increasingly transparent in the last few years.¹⁶ Transcripts of MAG meetings are publicly accessible.¹⁷ MAG mailing lists have also been archived since 2013.¹⁸ But in the more substantive work of the MAG, there is need for greater transparency. Rating sheets for selecting sessions being a case in point.¹⁹

5.2.2 Diversity

Diversity was a shared priority for Indian actors across stakeholder groups. However, it was articulated differently in each institution. In the WSIS+10 Review the Outcome Document, acknowledges the need for greater inclusiveness in Internet governance.²⁰ At ICANN, diversity discussions were framed as being essential to ICANN's legitimacy as an institution.²¹ In the IGF MAG, diversity is an essential component of both its constitution²² and in organizing the IGF.²³ It must be noted that ICANN, like the IGF MAG has diversity requirements as part of its internal policies. At both institutions, however, stakeholders made the argument that more needed to be done by way of improving diversity.

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Supra*, Chapter 4, note 31.

¹⁸*Supra*, Chapter 4, note 62.

¹⁹*Supra*, Chapter 4, note 131.

²⁰*Supra*, Chapter 2, note 79, para 63.

²¹*Supra*, Chapter 3, note 131.

²²*Supra*, Chapter 4, note 44.

²³ See discussion on diversity in [4.4.2 Diversity](#).

Annex I List of Indian Stakeholders Who Participated in WSIS+10 Review Physical Meetings

1. Anja Kovacs (Internet Democracy Project)
2. Arjun Jayakumar (SFLC.in)
3. Bishaka Datta (Point of View)
4. Chinmayi Arun (Centre for Communication Governance at National Law University, Delhi)
5. Gangesh Varma (Centre for Communication Governance at National Law University, Delhi)
6. Dr. Gulshan Rai (Indian Government)
7. JS Deepak (Indian Government)
8. Dilip Sinha (Indian Government)
9. Jyoti Panday (Centre for Internet and Society)
10. Osama Manzar (Digital Empowerment Foundation)
11. Parminder Jeet Singh (IT for Change)
12. Puneeth Nagaraj (Centre for Communication Governance at National Law University, Delhi)
13. Shivam Vij (Journalist)
14. Rishab Bailey (Society for Knowledge Commons)

Annex II List of Indian Organizations/Individuals Who Submitted Comments to the WSIS+10 Review

Written Submission Non-paper

1. Centre for Internet and Society
2. Internet Democracy Project
3. Indian Institute of Science

Written Comments Non-Paper

1. Centre for Centre for Communication Governance at National Law University, Delhi
2. Centre for Internet and Society
3. Digital Empowerment Foundation
4. Global Fund / Social Good Summit, India
5. Internet Democracy Project
6. SFLC.in

Network Submissions on Non-Paper

1. Arjun Jayakumar
2. BRICS (Centre for Communication Governance at National Law University, Delhi, Internet Democracy Project)
3. Digital Empowerment Foundation
4. Gangesh Varma
5. Gayatri Khandhadai
6. Internet Democracy Project
7. Jyoti Panday

8. Point of View
9. Shivam Vij

Comments on Zero Draft

1. Centre for Communication Governance at National Law University, Delhi
2. Centre for Internet and Society
3. Cyber Cafe Association of India
4. SFLC.in

Network Submissions for Zero Draft

1. Centre for Communication Governance at National Law University, Delhi
2. Centre for Internet and Society
3. Internet Democracy Project
4. IT for Change
5. SFLC.in
6. Society for Knowledge Commons

Annex III Active Participants at ICANN Meetings by Year

2011

1. Amrita Choudhury
2. Dr. Govind
3. Dr. Mahesh Kulkarni
4. Nira
5. Rajashekhar Ramaraj
6. Sivasubramanian Muthusamy

2012

1. Lalit Mathur
2. Naresh Ajwani
3. Ramaraj
4. Sivasubramanian Muthusamy
5. Suri

2013

1. Anupa Mavral
2. Meta Singril
3. Naresh Ajwani
4. Nirmol Agarwal
5. Satish Babu
6. Sivasubramanian Muthasamy

2014

1. Anupam Agrawal
2. Dr. Govind

3. H.R. Mohan
4. Niro
5. Pranesh Prakash
6. Rajesh Charria
7. Satish Babu
8. Sivasubramanian Muthusamy
9. Subi Chaturvedi

2015

1. Aarti Bhavana
2. Arun Sukumar
3. Dr. Govind
4. Jyoti Panday
5. Krishna Kumar
6. Naresh Ajwani
7. Nirmal Marwah
8. Padmini Baruah
9. Pranesh Prakash
10. Rahul Gosain
11. Rahul Sharma
12. Satish Babu
13. Shiva
14. Sivasubramanian Muthusamy
15. Vinay Kesari

Annex IV Submissions to Public Comments Processes by Indian Stakeholders by Year

2011

1. G.P. Singh (PPED, Semi-Conductor Laboratory, Department of Space)
2. Vijayashree Nidadhavolu (Advocate, AP High Court)

2012

1. Brijendra K Syngal (CMD at VSNL)

2013

1. Balasubramanian GR
2. Harsh Singh (Unknown)
3. KS Raju (unknown)
4. R. Jagannathan (on behalf of TV Sundaram Iyengar and Sons Ltd)

2014

1. Akshat Joshi (on behalf of C-DAC)
2. Amrita (Unknown)
3. Arun Sukumar (on behalf of the Centre for Communication Governance at National Law University, Delhi)
4. Geetha Hariharan (on behalf of the Centre for Internet and Society)
5. Jyoti Panday (on behalf of the Centre for Internet and Society)
6. Neha Gupta (on behalf of C-DAC)
7. Rishabh Dara (Student, IIM-Amedabad)

8. Rohit Thomas (possible member of the ICANN At Large Staff)
9. Sivasubramanian Muthusamy (Proprietor at Nameshop)

2015

1. Aarti Bhavana (on behalf of Centre for Communication Governance at National Law University, Delhi)
2. Aarti Bhavana (on behalf of Centre for Communication Governance at National Law University, Delhi)
3. Aarti Bhavana (on behalf of the Centre for Communication Governance at National Law University, Delhi)
4. Aarti Bhavana and Gangesh Varma (on behalf of Centre for Communication Governance at National Law University, Delhi)
5. Dr. Ajay Kumar (on behalf of the Government of India)
6. Dr. Ajay Kumar (on behalf of the Government of India)
7. Akhil Kumar (on behalf of the Government of India)
8. Amrita Choudhury (on behalf of Cyber Café Association of India)
9. Amrita Choudhury (On behalf of the Cyber Café Association of India)
10. Anupam Agarwal (on behalf of Internet Society- Kolkata Chapter)
11. Arun Sukumar (on behalf of the Centre of Communication Governance at National Law University, Delhi)
12. Arun Sukumar (on behalf of the Centre of Communication Governance at National Law University, Delhi)
13. Guru Acharya (unknown)
14. Pranesh Prakash (on behalf of the Centre for Internet and Society)
15. Puneeth Nagaraj (on behalf of Centre for Communication Governance at National Law University, Delhi)

16. Rashi Arora (unknown)
17. Renu Sirothiya (Policy Researcher, unaffiliated)
18. Sivasubramanian Muthusamy (President, Internet Society India, Chennai)
19. Sivasubramanian Muthusamy (President, Internet Society India, Chennai)
20. Sivasubramanian Muthusamy (President, Internet Society, Chennai)
21. T. Santhosh (on behalf of the Government of India)



॥ न्यायस्तत्र प्रमाणं स्यात् ॥



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