FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

March 5, 2013

Dr. Bitange Ndemo
Permanent Secretary
Ministry Of Information and Communications
Republic of Kenya
Teleposta Towers, Kenyatta Avenue/Koinange Street
P.O. Box 30025
Nairobi, Kenya 00100

Dear Dr. Ndemo:

Thank you for appearing at the joint hearing with the Subcommittee on Communications and Technology, Subcommittee on Terrorism, Nonproliferation, and Trade and the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations entitled "Fighting for Internet Freedom: Dubai and Beyond" on February 5, 2013.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Charlotte.Savercool@mail.house.gov by the close of business on Tuesday, March 19, 2013.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachment

The Honorable Greg Walden

1. Kenya was one of the 55 nations – including the United States – that left Dubai without signing the new treaty. What aspects of the treaty led you to conclude that Kenya could not sign? What can we do to expand the coalition to more African nations? What about nations in other continents?

2. What are the benefits of the multi-stakeholder model that flow to Kenya and other nations? What are the harms that you believe will come if we subject the Internet to international regulation?

3. What do you think are the greatest challenges that supporters of the current Internet governance model will face in Geneva at the WTPF and in Buson at the Plenipotentiary conference?

The Honorable Anna Eshoo

1. How will Kenya seek to harmonize the different position adopted by the African block?

The Honorable Greg Walden

What aspects of the treaty led us to conclude that Kenya could not sign?

- **The unprecedented expansion of "human rights" language** in the treaty's Preamble is inconsistent with international human rights standards, and the encroachment of the treaty into regulation of the Internet that could endanger Kenya's efforts to grow its Internet-based industries. In addition it is a dilution of human rights as applied to the individual and a shift towards towards collective, state rights. This new language appears to recognize a unique international human right that is inconsistent with established human rights precedents. Regardless of whether Kenya agrees with the underlying sentiment of the provision, the ITU and telecoms sector are not appropriate venues for the creation and recognition of new human rights. Kenya remains committed to upholding human rights obligations and to the values of freedom of expression and the free flows of information and ideas on the Internet.
- **Recognized operating agencies versus operating agencies** "authorized operating agencies," this is a category that could include a large number of new entities such as Internet access service providers (ISPs). To the extent regulatory solutions are required in these areas, they can be implemented on the national level without this revised treaty. Ultimately, Kenya – with vibrant and growing ICT and Internet content industries – we view this expansion of international regulation as adverse to our national economic interests.
- **Article 3.7 "Implementation of regional telecommunication exchange points":** This new introduction to the ITRs has no definition of "Regional telecommunication exchange points" in the telecommunications sector or ITRs. As such, this may imply "regional Internet exchange points". The growth of regional "Internet" exchange points is driven by social economic factors and Kenya has strategically managed to develop these factors in its favour hence the growth of the Kenya Internet Exchange Point (KIXP) and Mombasa Internet Exchange Point (IXP). The unintended consequence of this article will be eliciting discussions on the location of the regional telecommunications exchange point, at regional level, since each country cannot have one. Such a process is likely to hamper national efforts, growth or emergence of a regional exchange point driven by the fundamentals.
- **Article 5A "Security and robustness of networks"**: This would have significant implications for issues of privacy and freedom of information. Kenyan stakeholders have made significant progress in addressing security concerns through collaboration and setup of industry specific CSIRTs coordinated by the CCK. We therefore encourage national, regional and international collaboration and cooperation to further enhance the effectiveness of the efforts made thus far. Kenya is an active and committed participant in such efforts, for example the multi stakeholder commonwealth Cyber crime (CCI) Initiative among others.
- **Article 5B: "Unsolicited bulk electronic communications"** is a new introduction to regulating spam, which is a form of content and inevitably opens the door to regulation of other forms of content, including cultural and political speech. This article introduces regulatory scope of the treaty into Internet issues and invites governments to take content-based action and moves the treaty into the realm of regulating speech on the Internet. Similar concerns are relevant to the security language adopted in Article 5A.

- **Resolution Plen/3 "To foster an enabling environment for the greater growth of the Internet"** represents a direct extension of ITUs role and scope into the Internet despite earlier assertions from ITU that the WCIT would not address Internet issues. While the resolution is not on the body of the ITRs, and is nonbinding, it is still in the Final Acts and will therefore give the ITU the scope to assert its intergovernmental role in Internet governance processes. For Kenya, which has a growing ICT sector and is a regional leader in terms of connectivity and innovation, these new Internet provisions risk undermining successful multi-stakeholder mechanisms and proven strategies for growth. The Resolution, also presents an unbalanced view of Internet governance that is inconsistent with the principles underlying the Internet Governance Forum (successfully hosted by Kenya in 2011) and many of the provisions agreed to at the United Nations World Summit on the Information Society (WSIS) in 2003 and 2005. This Resolution focuses heavily on government involvement in the management and development of the Internet, as opposed to establish, successful multi-stakeholder processes.

Our decision to not sign at WCIT-12 is reinforced by the fact that, to the extent there are positive aspects to the treaty, Kenya and its businesses will still enjoy many of their benefits in the global international telecommunications ecosystem.

What can we do to expand the coalition to more African countries and other countries in other continents?

Promoting the multistakeholder model and enabling all countries and stakeholders to participate meaningfully in Internet governance policy processes.

What are the benefits of the Multistakeholder model that flow to Kenya and other nations

Kenya has a long-standing position that ICT and Internet policy must be multi-stakeholder driven and should not be determined by governments, rather by broader society, citizens and communities. This multi stakeholder model of policy making is now enshrined in Kenya's 2010 Constitution where article 10 provides for the participation of citizens as one of the national values and principles of governance. It provides inter alia that: -

10. (1) the national values and principles of governance in this
Article binds all State organs, State officers, public officers and all persons
Whenever any of them--
(a) Applies or interprets this Constitution;
(b) Enacts, applies or interprets any law; or
(c) Makes or implements public policy decisions.

(2) The national values and principles of governance include--
(a) Patriotism, national unity, sharing and devolution of power,
The rule of law, democracy and participation of the people

This model has helped us build and foster trust among various stakeholders over time and has contributed to enabling policy and regulatory environments that encourage innovation and responsiveness to our development plans and citizens needs. E.g. TEAMs, KIXP, MIXP, etc.

What are the harms that could come to the Internet if subjected to international regulation?

Kenya has seen great socio-economic, political, cultural and individual benefits of mobile and Internet. Recognizing these benefits, Kenya has a goal of 100% Internet penetration by 2017 and is well on its way. Our mobile phone usage jumped to19%. our Internet Exchange Point (KIXP) localizes more than 1Gbit/s of peak traffic and we have established a National Computer Security and Incident Response Team (CSIRT) that deals with potential security threats and vulnerabilities to its members. Regulation should be approached from the perspective of creating an enabling environment to encourage growth and innovation.

What do you think are the greatest challenges that supporters of the current Internet governance model will face in Geneva at the WTPF and the 2014 plenipotentiary?

Kenya is committed to remaining engaged in global dialogue on the role of governments and other stakeholders in the growth, development and evolution of international telecommunications and the Internet sectors as we expect these discussions will continue at the WTPT and 2014 Plenipotentiary.

The agenda for WTPF is broad, encompassing a range of Internet governance and policy topics, these issues are important for Kenya. We therefore hope that the WTPF will explore ways and means for greater collaboration and coordination in the development of and the future of the Internet economy in these areas.

Kenya will continue to work with various organisations including the ITU, ICANN and others in supporting multistakeholderism in Internet Governance processes.

The Honorable Anna Eshoo

How will Kenya seek to harmonise the different positions adopted by the African block

Kenya has a similar environment and similar challenges (cybercrime, spam, interconnection, etc) with other African countries. We have several regional organisations/institutions and regional economic blocks (e.g EAC, COMESSA, etc) working to address some of the challenges we face including cross border interconnection, cyber crime, among others, we hope that these regional discussions will support the development of common guidelines to address some the new areas.