

GLOBAL PARTNERS DIGITAL

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INTERNET GOVERNANCE

Towards Greater Understanding of Global South Perspectives

EDITED BY **GLOBAL PARTNERS** DIGITAL

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CONTENTS

Introduction: the emerging politics of internet governance.....	06
Country chapters: overview.....	08
01 Brazil.....	09
02 India.....	14
03 Indonesia.....	21
04 Kenya.....	24
05 South Africa.....	28

INTRODUCTION

THE EMERGING POLITICS OF INTERNET GOVERNANCE

The current model of internet governance is coming under pressure from governments who are rapidly bringing the internet to their policy agendas. This is a new environment that is emerging from the policy vacuum in which the internet has largely developed and flourished.

The early creators and advocates of the internet imagined it as a stateless space, outside government control. They paid little attention to its governance, or which public policies should shape its development. Indeed, many saw the notion of governance as destroying its very character.¹ Development was based on two principles: there would be no central ownership or control and networks should not favour any particular application (known popularly as net neutrality). At this stage, governance was confined to managing the internet's functionality with a simple mission – 'to make the internet work better'.² In an effort to reach better technical solutions, internet governance developed as a decentralised decision-making process with input from protocol designers, software developers, civil society, academics, and the private sector.

And while other stakeholders quickly adapted to the new online space, governments and regulators lagged behind. Part of the explanation lies with features intrinsic to the medium, including its lack of centrality, global reach and jurisdictional complexity, and multi-stakeholder user-led structure, all of which resist central control and complicate application of traditional state-based regulatory systems. The more a medium becomes formally organised, however, regulatory intervention becomes more likely. Another reason lies with the fact that, more often than not, government policy tends to be reactive rather than proactive about societal change. Eventually, though, as social and economic implications of technological innovations emerge, policy-makers catch up.

In recent years, particularly since the Arab Spring, the scale of the internet's economic and social implications has accelerated internet policy and regulation being put on the policy-makers' agendas. Governments around the world are now alert to the potential disruption caused by access to digital communications, whether from text messaging using mobile phones, the creative use of social platforms like Facebook or Twitter, the streaming of video direct to the web, or the use of the internet to bypass censorship. But an unregulated online space presents a challenge to authoritarian and democratic governments alike, albeit for different reasons. Having to deal with a complex space that cuts across policy-areas – including security, freedom of expression, development, privacy, intellectual property, etc. – many democratic states, particularly in the developing world, support demands for this environment to be brought under greater government control as much as undemocratic governments.

Behind some of the Global South countries' efforts to reform internet governance lies the fact that the current model tends to favour early adopters in the Global North, and does not adequately address developing countries' legitimate concerns regarding access and affordability. The international push for reform comes from different states with diverse motives, many of which reflect genuine frustration with the current model where roles and responsibilities for governments are unclear.

Apart from a shrinking group of hard-line cyber-libertarians, most now agree that there is a necessary role for governments in a genuine multi-stakeholder

model of internet governance. However, the discussion is still dominated by an inflammatory, negative agenda focused around what governments should not do, rather than outlining what they should and how they should relate to other stakeholders. This debate is only likely to intensify in the run up to the World Summit on the Information Society (WSIS) in 2015.

The task for those who see that there is a legitimate role for governments is two-fold. On the one hand, there is a conceptual challenge of moving from a negative to a positive agenda which outlines what the 'respective' role of governments is and where the limits and safeguards of that role lie – nationally and internationally. Ideally, this discussion would take place in a multi-stakeholder framework and it would reflect Global North and Global South perspectives in equal measure. The other challenge is a strategic and political one of how to build an international alliance around this positive agenda between swing states in the developing world and progressive governments in the developed world.

While these two strands of work require further thinking about particular strategies, operations and tactics, in the interim, there is need for information-sharing and learning. Governments such as the US and the UK, which have opposed the intrusion of inter-governmental institutions such as the United Nations International Telecommunications Union (ITU) into internet governance, will need to calibrate their policy to take account of the concerns of developing world countries. The following analysis is meant to serve as a basis for greater understanding of motivations behind governmental efforts to reform the current regime. The report includes position-mapping of five countries (Brazil, India, Indonesia, Kenya and South Africa) in the developing world that are likely to be key players in upcoming regional and global discussions. This should be seen as a starting point for a more comprehensive picture and should be complemented by analyses of positions of other key players, including countries in the developed world (US, UK, EU) and other swing state governments in Africa, Asia, and Latin America.

Lea Kaspar
London, May 2013

NOTES

1. Malcolm, J., 2008. Multi-Stakeholder Governance and the Internet Governance Forum
2. RFC 3233 Defining the IETF and 3935 A Mission Statement for the IETF

COUNTRY CHAPTERS

OVERVIEW

Brazil: Brazil is an important regional and global player in the international internet governance field. In the field of internet policies, it has been praised for implementing a multi-stakeholder model of decision-making at the national level through its Internet Steering Committee (CGI.br), and for trying to implement progressive internet governance principles enshrined in the draft bill of the Civil Rights Framework for the Internet (Marco Civil da Internet). However, there are persisting institutional challenges to implement a positive agenda for internet policies in the country and to extend it as the country's position in the international forums.

India: India is an emerging global power, and the world's most populous democracy. The current regime is fostering a special relationship with the US, and simultaneously strengthening its South-South alliances – BRICS and IBSA. In its international internet policies, it is committed to a global internet, and an open and inclusive approach to internet governance based on equitable global engagement. In the past, it has argued for reform of the current system of internet governance with the aim of democratising the institutional architecture of global internet governance.

Indonesia: Since its transition to democracy, Indonesia has declared its commitment to human rights and international peace and security. In its international internet policies, it prioritises cyber-security and development. The government sees the internet as a tool for economic growth, similar to other developing countries. However, it views the international regulatory framework primarily as an enabler of state sovereignty, which it sees as necessary in fostering growth through ICTs. It sympathises with the views of China and Russia in terms of security and sovereignty, and supports internet governance within traditional inter-governmental forums. In 2013, Indonesia will host the annual global Internet Governance Forum, and has expressed commitment to improve local multi-stakeholder processes.

Kenya: Kenya is one of the more progressive developing countries in terms of internet policy and practice. Internationally, it is an avid supporter of the multi-stakeholder model of internet governance, a position rooted in its own domestic decision-making processes. Its progressive digital agenda, while exemplary in global terms, also presents a challenge for Kenya in regional negotiations, where many African countries find its example too advanced to be applied to their circumstances. Nevertheless, creating an international normative framework that promotes access to internet infrastructure remains one of its priorities, a position shared among developing countries. A potential spoiler in this overall positive picture were the March elections, the outcomes of which (that is a change in leadership) may pose a need for concentrated effort by local civil society to ensure continuity of progress in this field made thus far.

South Africa: South Africa is an important voice in the region and in the Global South more generally. Its position on international internet policy is a balance of international and national considerations that are based on an historic tension in its foreign policy arising from its history between three concerns: human rights, multilateralism, and concerns with South-South solidarity and Pan-Africanism. These tensions have run deep in South Africa's foreign policy since 1994, with mixed results. Given South Africa's history of destabilising the region under apartheid, and its economic position as a hegemon, it is always very careful not to stray from unified African positions. Pan-Africanism and a 'Southern' anti-colonial stance seemed to have trumped substantive issues during the WCIT.

01

BRAZIL

BY JOANA VARON FERRAZ
CTS/FGV

BACKGROUND: THE IMPORTANCE OF DOMESTIC FACTORS IN BRAZILIAN INTERNATIONAL INTERNET POLICIES

The most innovative initiative in the Brazilian internet-related policies has been the development of the national Civil Rights Framework for the Internet – Marco Civil da Internet, or simply Marco Civil. Although primarily a domestic process, it has been used internationally as an example of setting a positive agenda for internet policies and processes. The debate over the draft bill has been spearheaded by the Brazilian multi-stakeholder Internet Steering Committee (CGI.br), which was established in 1995, and consolidated in its current form in 2003.¹ Composed of representatives from the government, business sector, civil society and academic community, CGI.br has been acknowledged as a model arrangement for a multi-stakeholder approach to internet governance. As a result of this institutional arrangement, a progressive set of ten principles for governance and use of the internet in Brazil – including free expression, privacy and human rights; innovation; universal access; stability, safety and functionality of the web; and net neutrality² – was drafted and approved. These principles became the basis for the Marco Civil, a progressive draft bill on principles for national internet policy and governance. The Marco Civil proposal, which was initially a way of pushing back against a worrying cybercrime bill proposal, evolved into an opportunity to develop a positive agenda for internet policies in the country. The draft bill was an initiative developed by the Ministry of Justice and the Center for Technology and Society (CTS/FGV)³ and it has since reached worldwide acknowledgement both in terms of its content and the process by which it came about.

The broadly inclusive process behind the draft bill was an achievement in itself and continues to be a point of reference in international discussions on using online tools to foster democracy. It was the first time that a draft bill was written through an open online public consultation process, where internet users were allowed to comment on the draft, paragraph by paragraph, directly on the website. Over 2,000 contributions from individual users and governmental and non-governmental entities were received through the online platform. Blog posts, tweets, articles published in mainstream media, and institutional and individual contributions sent by email (and then made available to the public online) were also taken into consideration. During the consultation process, there were heated debates on the appropriate balance between users' rights to privacy and governmental interests to increase security, and between users' rights and private sector ambitions to expand profit to the detriment of net neutrality, freedom of speech or the right to access content. Diversity of opinions and the abundance of high quality information and expert advice contributed to the development of a balanced draft that protected users' rights and relied on general principles for internet regulation, such as respect for privacy, while dealing with requests for

the preservation of connection logs; respecting freedom of speech and innovation while establishing secondary liability for ISPs; and protecting net neutrality. Once the text reached National Congress, Deputy Alessandro Molon – rapporteur for a Special Commission analysing the draft bill – engaged in another set of country-wide public consultations.

The national experience of developing the Marco Civil and the set of principles established by CGI.br have provided basic guidelines for Brazilian government representatives in international meetings about internet governance, such as the Internet Governance Forum (IGF), Commission on Science and Technology for Development (CSTD) and a number of regional events.⁴ This approach has gathered wide support from international civil society representatives, who have seen it as an innovative and positive example for internet-related foreign policy.

However, political shifts at the national level, alongside the existing institutional gaps in the global internet governance regime, have posed new challenges for setting Brazilian Internet policies and priorities. With the end of President Lula's administration, the infrastructure and construction industries became main priorities in the more conservative left-wing development policies of President Dilma Rousseff. Even though ICT remained a strategic priority, the wide support for initiatives such as online open consultations, free software initiatives, and other innovative projects and progressive policies on internet and digital culture, has withered. This situation opened the doors for vested interests to compromise the positive developments achieved during Lula's creative administration, particularly with major shifts happening in the Ministry of Culture.

Besides the internal change of priorities, the logic of the old politics based on the power of lobbies instead of democratic procedures started to play a bigger role in the development of the Marco Civil. The telecom sector and intermediaries from the content industry, unwilling to rethink their business models, started to advance their case through the National Congress and the federal government. Provisions from the Marco Civil draft bill dealing with intermediary liability and net neutrality were the first to come under attack. Disagreements arose when a text revision presented by Deputy Molon, a result of multiple consultations, included CGI.br as the institution to be consulted for drafting further regulation on net neutrality. Though welcomed by defenders of net neutrality, this revision was highly criticised by telecom companies and has caused a major dissent among supporters of the draft bill in the federal government, mostly from the Ministry of Communications, who claimed that this should be the role of the Brazilian Telecommunications Regulatory Agency – Anatel. According to the latest revisions of the Marco Civil, Deputy Molon's proposal of CGI.br's role in regulating net neutrality will not to be included in the draft bill going forward.

This is particularly relevant in international debates on internet governance happening at the level of the ITU, where the discussion about the role of different stakeholders resembles the Brazilian polemic about the appropriate role for the regulator versus the multi-stakeholder CGI.br. Anatel, representing the Brazilian position at the ITU, has openly supported a greater role of the ITU in the international internet governance ecosystem. It is possible that this stems from Anatel's ambition to extend its own role in internet governance at the national level.

The discussion on the draft bill in Congress has taken another turn for the worse around new provisions on intermediary liability. This is owed largely to the copyright industry lobby, influenced by pressures from the US (USTR), and a request from the Ministry of Culture to exempt copyright enforcement from the safe harbour that Marco Civil brings to intermediaries when dealing with ISP liability. Brazilian civil society representatives have criticised this change as a major threat to freedom of expression and access to knowledge.

In addition to the telecom sector and the copyright industry, the bill is also facing pressure from the media companies, who are in favour of net neutrality provisions. Media companies and other content providers have an interest in approving these provisions, as their content may suffer consequences of a web that is not neutral. This could make them important allies in approving the bill. A potential civil society strategy could be to align themselves with the media sector, and aim to approve the bill that protects net neutrality, while compromising on copyright provisions by leaving that debate to the separate process of reforming the copyright law. At the moment, there is no civil society consensus about such strategy, as many are disappointed with the losses the text has suffered over time.

The government is under pressure to move forward with decisions on the Marco Civil in Congress. A set of three seminars were recently organised in Brasilia, one in partnership with the Brazilian Broadcasters Association – Abert, and another with the Brazilian Association of Internet Providers – Abranet. Both convenors were pushing for the approval of the bill, with the restriction on copyright protection in case of Abert. As a result, the Ministry of Communications has already been quoted by media outlets supporting the immediate voting and approval of the draft bill.⁵ But, at this point, the question remains: which version of the draft bill? Is it a Marco Civil compromised with copyright restrictions? Is it a Marco Civil with extended protection for net neutrality? A multi-stakeholder approach to net neutrality has already been compromised with CGI.br's exclusion from the draft, but whether other rights and principles will be protected by the bill remains to be seen.

Overall, Brazil is facing a challenging political scenario for setting its internet-related policies, both in terms of substance and processes, which is directly affecting its national and international agendas. Whether Brazil approves its Marco Civil or not – and what kind of Marco Civil – remains to be seen, but the outcome of this debate will certainly affect the discourse of the Brazilian Ministry of Foreign Relations, of CGI.br, and Anatel at the international level.

ACTORS AND DECISION-MAKING PROCESSES

The most important actors in setting the international internet policy agenda are the office of the President, the Division on Information Society at the Ministry of Foreign Affairs (MFA), the Brazilian Steering Committee on Internet Governance – CGI.br – traditionally in charge of following up on international internet governance issues, and the Brazilian Telecommunications Regulatory Agency (Anatel) – in charge of Brazil's international telecommunications policies.

These bodies have different priorities and structures, which leads to tension in cases where their mandates overlap. This is seen by some as the case in the relationship between Anatel and CGI.br, and the overlay between telecommunications regulations and Internet governance. Anatel is an independent agency under legal supervision of the Ministry of Communications whose role is to promote the development of telecommunications and issue rules and standards for its services, manage radiofrequencies spectrum, and represent the country at international telecommunications organisations (e.g. the ITU).⁶ The CGI.br, on its side, has a mandate to, among other things, establish strategic guidelines regarding use and development of internet in Brazil, establish guidelines for distribution of IP addresses, registry of domain names and management of the ccTLD 'br', to study and recommend norms, standards and procedures regarding regulation of the internet, to attend technical internet forums, to adopt administrative and operational procedures in order to assure that Brazilian internet grows according to international standards, etc.⁷

And while CGI.br's focus should be 'internet policies', and Anatel's 'telecommunication policies', when it comes to internet issues related to infrastructure, such as net neutrality, there is an obvious tension between

interests, roles, and political ambitions of these two institutions. Given that many political decisions from the Ministry of Communications, particularly regarding the Brazilian National Broadband Plan, have insinuated a close relationship with, or at least a sympathetic understanding of, Minicom and telecom companies in the country, many fear that side-lining CGI.br in these decisions might work to the detriment of protecting users' rights and net neutrality. On the other hand, CGI.br is a *sui generis* organisation, established more like a committee, which makes it fragile in institutional clashes with a more robust organisation like Anatel. A similar dilemma around the extent to which telecommunications regulations can/will interfere with issues of internet governance, is beginning to dominate the international debate, with the WCIT being a case in point.

Brazil's international position towards the reform of the current internet governance system reflects this national-level policy incoherence. The Ministry of Foreign Affairs, backed by CGI.br, actively supports multi-stakeholder arrangements and regularly participates in IGFs and other international multi-stakeholder spaces, and is known for making the case for multi-stakeholder governance at the regional India/Brazil/South Africa (IBSA) Dialogue Forum meeting on internet governance. At the same time, representatives from the Ministry of Communications and Anatel, who were representing Brazil at the WCIT, were making the case for giving more power over internet governance to state-led UN bodies such as the ITU.

WHAT HAPPENED AT THE WCIT

Contrary to some assumptions, the fact that Brazil signed the new ITRs and had no reservations to the Resolution n° 3 ('To Foster an Enabling Environment for the Greater Growth of the Internet') had little to do with an intentional alignment with repressive regimes or developing countries more generally. Nor was it a deliberate sign of disrespect for human rights or the Brazilian Constitution. The decision was largely a result of the composition of the Brazilian national delegation at the WCIT fronted by Anatel. The delegation lacked representation from the Ministry of Foreign Affairs and relevant participation of CGI.br members and civil society. As a result, what prevailed was Anatel's sympathy towards ITU's aspirations to become a legitimate institution to address internet governance issues, such as spam and cybercrime, and for approving technical standards with clear implication on users rights (e.g. standard for Deep Packet Inspection). This position can be understood in the context of what is seen as a critical institutional gap in the ecosystem of internet governance – a lack of advance on the debates for creating a mechanism for enhanced cooperation, as foreseen at the Tunis Agenda.

The one member of CGI.br who attended the meeting – joined by a few representatives from internet service providers and national broadcasters associations, and one representative from civil society – was the only one actively trying to reinforce the preservation of the CGI.br ten principles for internet governance in the Brazilian position (and mostly the principles of net neutrality and multistakeholderism). Anatel was backed by the Ministry of Communications, which was at the same time aiming to minimise CGI.br's role in the provisions of Marco Civil at the national level, arguing that Anatel alone should take the role of regulating net neutrality.

The decision to sign the Treaty was generally reprimanded by national civil society, concerned with users' rights and the need for a multi-stakeholder approach to internet governance, and by internet service providers concerned with their businesses and space for innovation. Concerns were also raised about whether the sympathy for extending the ITU's mandate to issues of internet governance could set an example for Anatel to do the same at the national level. Supporting the treaty without restrictions was also seen in civil society circles as a representation of President Dilma's ambitions to expand the role of the state. Giving a greater

role to Anatel over CGI.br through national regulation can be seen as a reflection of this trend. *These concerns, however, were not highlighted at the press conference about WCIT outcomes⁸ that Anatel and the Ministry of Communications hosted after the conference. Rather, the presentation was focused on the achievements of the delegation in terms of approving topics previously mentioned in the Brazilian proposal, mostly regarding transparency and quality of roaming services.*

WAY FORWARD

The international debate about which forum is more appropriate for an inclusive, democratic and multi-stakeholder space to adopt internet policies – respecting both fundamental human rights and the innovative nature of the network – remains an open question. In the year ahead, different UN bodies, with different institutional dynamics for participation, will host a number of events where the above issues will resurface, including the World Telecommunication/ICT Policy Forum (WTPF) and the WSIS Forum, both hosted by the ITU.

Brazil has recently submitted its contribution to the WTPF, with draft opinions on three specific topics in the fourth draft of the Secretary-General's report presented in early January.⁹ These opinions touched upon the role of government in the multi-stakeholder framework for internet governance, promoting internet exchange points, and supporting IPv6 deployment. WTPF being an ITU conference, Anatel will again represent the Brazilian position at the forum, despite the fact that the conference agenda reaches well beyond telecommunications regulations. To draft the Brazilian contribution to the WTPF, Anatel had an open consultation process, as they did prior to the WCIT, though meetings were held in Brasilia without proper infrastructure for institutionalised remote participation, so only few civil society representatives could attend. It is worth noting that the Brazilian contribution on multi-stakeholder framework already quotes the controversial Resolution n° 3 from the ITRs which 'is of the view that the ITU, the specialized agency for telecommunications of the United Nations, is uniquely qualified to provide Member States with the necessary and adequate support to ensure broad government participation, within the framework of international Internet Governance, on issues related to telecommunications; that Resolution 3/PLEN of the World Conference on International Telecommunications (Dubai, 2012) clearly indicates a willingness by Member States to further discuss public policy issues relating to the Internet.'

While Anatel is the responsible body to attend and take the lead on all the decision-making process at the ITU, it is unclear what role the CGI.br will play in this forum. It is more likely that the CGI.br role will be restrained to CSTD, IGF and WSIS+10 review, while Anatel will manage Brazilian positions at WTPF, and other ITU meetings, the most important being the Plenipotentiary Conference of 2014. But tensions may resurface during the WSIS+10 review process, which, although dealing specifically with multistakeholderism and topics traditionally the purview of the Ministry of Foreign Affairs with the support of CGI.br, is now facilitated by the ITU and, in the case of Brazil, will be headed by Anatel. The upcoming ITU, CSTD, and WSIS-related events and forums will be important spaces to watch.

NOTES

1. CGI.br was established in 1995 by an Inter-ministerial Regulation n° 147, jointly drafted by the Ministry of Communications and the Ministry of Science and Technology. In 2003, this regulation was amended by Decree 4829/03, issued by President Lula, which established more specific roles for CGI.br and set up formal procedures for electing its representatives.
2. The principles also emphasise the importance of fostering democratic and collaborative governance; respecting cultural diversity; restricting third party liability; promoting open standards and interoperability, and a legal environment that is compatible with the dynamics of the web as a space for collaboration.

3. CTS/FGV is a Brazilian think-tank on internet policies. <http://diretorio.fgv.br/cts/>
4. www.apc.org/en/system/files/NoN_Multistakeholder_InternetGovernance.pdf
5. <http://convergiadigital.uol.com.br/cgi/cgilua.exe/sys/start.htm?infoid=33539&sid=4>
6. General Telecommunications Act (Law 9472/97)
7. Decree 4829/03
8. www.anatel.gov.br/Portal/exibirPortalNoticias.do?acao=carregaNoticia&codigo=27523
9. Since the time of writing, Brazil has played an interesting role at the WTPF in May. It has introduced a controversial contribution document to the Forum on the role of governments within the multi-stakeholder framework, which prompted a debate among delegates. The contribution was not adopted as an official WTPF Opinion, but there are proposals to refer the issue to bodies such as the ITU Council Working Group on international Internet-related public policy issues (CWG-Internet), the IGF, and the CSTD Enhanced Cooperation Working Group. How this debate develops remains to be seen.

02

INDIA

BY PARMINDER JEET SINGH
IT FOR CHANGE

BACKGROUND

In various global governance forums, India has generally taken significant leadership roles on most geo-political issues that are often arranged along a North-South axis. This was true in the heydays of the non-aligned movement, and continues to hold at present; one just needs to look at the role that India has played in recent meetings and conferences on environment, trade and development, intellectual property, and so on. The point of departure for India in terms of global internet governance continues to be the relative interests of developing countries on the global stage, within which larger framework issues of special interest and relevance to India get articulated.

At the same time, four relatively new elements increasingly stand out in shaping India's stances on global internet governance. One is the position and role that India sees for itself as an emerging geo-economic power. The world's major powers have begun a rather intensive bilateral engagement with India on global internet governance issues, especially after India took a strong stand on the global internet governance architecture in the UN General Assembly in 2011. Second, is the increasing cosiness that India has developed with the US, generally, as well as specifically in many strategic areas. The current government is seen to be especially keen on maintaining a special relationship with the US. The third element, more specific to the internet governance area, is the importance that India gives to its information technology industry, and thus the considerable influence that this industry can have over the government's decision-making. It is significant to note that a good part of the IT industry in India is either directly owned by US companies or has close business ties with them. And the fourth new factor influencing India's global internet governance positions, again more specific to internet governance, is a very active and articulate netizen middle class, which has strong libertarian views on internet and regulation. With various internet-enabled instruments in their hands, this class is often able to considerably, and quickly, influence the media and the government towards their viewpoints.

It can therefore certainly be said that India's stances and policies on global internet governance are currently subject to many tensions, and because of this they still lack the required element of internal and external coherence. This may not necessarily be such a bad thing in the short run; if the current tensions are employed creatively towards a resolution, in the form of structural shifts, that best serves the public interest. Internet governance is in many ways a new ball game. Institutional and policy frameworks centred on addressing issues of social and economic rights may at times appear to misalign with those that focus on civil and political rights. Allies in one area may look like adversaries in another. In any case, the issues involved in internet governance span so many different traditional

policy spaces that getting coherent, mutually acceptable frameworks and policy responses will never be easy.

ISSUES

During and since the WSIS, India has been active along with other developing countries in expressing opposition to what it sees as US domination of the global internet governance space. India made many statements during the WSIS in this regard, and was also a leading member of the developing countries group during internet governance related negotiations. At the same time, India has always worked closely with the ICANN and even the Asia Pacific Regional Internet Registry. India also held the secretariat of the Governmental Advisory Committee (GAC) of ICANN for some time. Evidently, overall India supports the existing system of allocating domain names and other internet resources, even while it is opposed to the US's unilateral oversight of this system.

Like all other governments, India is obviously quite concerned about cyber-security issues. India has been active in cyber-security related dialogues, both at bilateral and multilateral (UN) levels. It appears that India seeks to strongly advocate pacifism and restraint in terms of any kind of cyber warfare activity. Also, it seems that it does not wish to include substantive content related issues (of socio-political nature, like censorship) in any cyber-security framework, as some authoritarian countries would like to do.

India lays great store by its global IT industry as well as its use of IT for socio-economic development. Its policies and programs in this regard are very well developed at the national level, many of which are commendable pioneering efforts. However, India has not yet translated either its IT industry policies or ICTs-for-development policies into their implications for global IT and internet related engagements and policies. (Early efforts in this direction can now be seen, which have largely come in response to the quick moving global internet governance scenario.) For instance, India seems to have no clear view at present on the global net neutrality issue, something that impacts both the competitiveness of Indian internet companies, and issues around local content/ applications and empowerment at the peripheries, key concerns for equitable socio-economic development. There are common IBSA positions describing net neutrality as an important global internet governance issue. However, in discussions during the run-up to the World Conference on International Telecommunications, India was seen as leaning on the side of 'sender pays' regime, which goes against net neutrality.

The Indian government, and India as a country, is very proud of its democratic traditions. It has always supported the cause of freedom of expression in global internet spaces. This has been even more so lately with the pressure on the government on 'internet freedom' issues from the India's upsurging cyber public sphere, and the media. India is expected to continue to support this cause, and to that extent keep a safe distance from authoritarian frameworks on global internet governance presented by some countries. However, India has also promulgated some controversial IT laws that have the effect of constraining free speech on the internet. A judicial review of these laws is underway.

India can be expected to take strong positions on issues of cultural and linguistic diversity, as these become increasingly more important in the global internet governance spaces. It is also expected to side with freer flows of information and knowledge as against too stringent intellectual property regimes. These are traditional positions that India has taken in global governance forums and there is not much change on the ground to warrant new stances. India can be expected to come strongly against extra- territorial intellectual property enforcement, as it becomes clearer to policy makers that such enforcement is a key plank of global internet governance agenda of many Northern governments, chiefly the US.

ACTORS AND DECISION-MAKING PROCESSES

As may be expected, the Ministry of External Affairs comes from a more traditional geo-political, pro-South stance. However, they are also quite mindful of the current regime's priority towards a special relationship with the US, and also the status and role of India as an emerging geo-economic power. The latter may work in different ways; while India is being energetically courted by the Northern powers, there is also building of new South-South alliances like the BRICS¹ and IBSA.² The Ministry is also being exposed to a new multi-stakeholder environment in global internet governance, through forums like the UN IGF.

The Department of Information Technology is the central player in the internet governance area, for both national and international issues. Whereas its national IT related policy frameworks are well developed, it is yet to convert these domestic priorities into a coherent framework for global political engagement. Lately, the department seems to have internalised the urgent importance of doing so, and has been taking some very significant steps in this direction. One of the most important steps is the announcement of its intentions to set up an Inter-Ministerial Group on Internet Governance. The department has also been actively engaging with different stakeholders in order to shape international perspectives that best serve India's interests. It is the Department of IT that engages with civil society and business sector stakeholders on internet governance issues and routes their views into policy processes.

internet governance-related civil society in India can be said to be moderately active. There are just two to three civil society organisations that have an on-going interest and participation in internet governance issues. However, any significant internet governance issue, which is yet mostly seem from a 'censorship of the Internet' lens, evokes a quick and strong response from the cyber-chatterati, whose stances tend to then quickly spill over to the media, especially the national English media. The latter holds great power in the India polity, especially in the short term, and when an issue does not face significant contestation from any political constituency, as is in the case of most global internet governance issues. India has a relatively strong civil society engaged with other global governance issues like trade, intellectual property, environment, health etc. However, this civil society component is yet to show an interest in internet governance issues. The same can be said about the otherwise very active free and open source software community, and the ICTs-for-development groups.

The business sector is very active in influencing India's national and global IT positions, and the IT industry is quite close to IT departments at the central and state government levels. Such a close relationship is quite understandable given the importance that India's IT industry has in India's global economic profile, and also its considerable impact on employment generation in India. The views contributed by the industry seem to generally be against any kind of internet regulation. This fact has contributed to the development of a somewhat strategic relationship between the business sector and a good part of civil society focused on civil and political rights issues with regard to the internet (basically, freedom of expression). An industry led International Internet Governance Conference was organised in 2012, with substantial civil society participation. There are plans to continue this event as an annual one.

WHAT HAPPENED AT THE WCIT

The above context can help us now delve into what happened at the WCIT vis-a-vis India. For this purpose, however, another actor has to be introduced into the picture, the Department of Telecommunications. It is this department that has traditionally engaged with the International Telecommunication Union (ITU). Only Department of Telecommunications' nominees had participated in the WCIT preparatory process. The engagement was in the nature of traditional

telecommunications issues and perspectives, and appeared not to be too active, going by the documents of WCIT's preparatory process. However, a little before the WCIT, the meeting seemed to suddenly become about everything other than telecommunications. The Department of Telecommunications was haplessly caught in this sudden onrush of internet governance-related politics, which it had not at all been exposed to till then. It had conducted ITU business in a duly traditional manner, taking infrastructure-centric technical views. There was almost no tradition of wider consultation with other stakeholders, except for telecommunications companies, which always had some kind of stake in and engagement with the ITU.

The Department of Telecommunications' position on WCIT was quite agnostic to the larger internet related global politics; it neither had the interest of a China or Russia to look at avenues to 'control content' through the International Telecommunications Regulations (ITRs), nor any interest in the US-led politics of anti-internet regulation. If the Department of Telecommunications' initial ITRs draft contained language to amend the definition of telecommunication to include IT, it was motivated entirely by the fact that IT systems are nowadays intrinsically involved with basic telecommunication infrastructure. Like any party would do for a treaty process, the department was seeking completeness, and avoiding gaps in language that could compromise the effectiveness of any global treaty on international telecommunications. And if the department's proposal contained a whole new section on security, it was only because India was genuinely concerned about pressing network security issues, especially in terms of their international dimensions. Network security figures strongly in the new telecommunications policy of India, and it was only to be expected that India will project this concern in any international telecommunications treaty that it may negotiate. This had nothing to do with any attempt towards control of content over the internet. Being traditionally close to telecommunications companies, and also as the parent department of the public sector telecommunications company, the department was favourably disposed to the interests of these companies. This showed in the draft ITRs text that spoke of the need to ensure adequate return on investments of network providers. This did not go as far the ill-famed European Telcos' proposal for enforcing 'sender pays regime' but still clearly inclined towards violation of the net neutrality principle.

Internet politics, which was the name of the game at the WCIT, got introduced to the Department of Telecommunications by the Department of IT, which deals with internet governance. Incidentally, the two departments share a common Minister. This Minister had been to IGF Baku just a few weeks earlier, and was somewhat plugged into the larger global politics around internet governance. The Minister called for a pre-WCIT consultation with civil society and business, where officials heard various views and explained the above positions in the draft for the ITRs that India was proposing. Another draft had earlier been shared with the industry but not with civil society, and the new draft seemed to incorporate some of industry's inputs. It appears that India took the same draft ITRs and the attendant positions to Dubai, and there was no significant change after the consultations. However, the Minister agreed to ensure that India would back any language that made it clear that 'content related issues' are to remain out of the ITRs. He was also agreeable to include explicit reference to human rights in the ITRs. (Although India's exact role in Dubai in this respect is not known, both these elements were significant features of the final text of ITRs.)

In the circumstances, it is difficult to understand why India did not sign the ITRs in Dubai and reserved its right to sign later. The final ITRs text was in every way milder than the position that India carried to Dubai. Additionally, it incorporated two elements suggested at the pre-WCIT stakeholders' consultation in New Delhi – 'content issues' were expressly left out, and specific human rights language was brought in. The press statement issued by the government of India reserving its

option to sign the ITRs, makes an interesting reading. It says that it supports the new ITRs as well as resolutions 1, 2, 4 and 5. However, it will have to study the full implications of resolution 3, the famous 'Internet resolution' appended to the ITRs, although it supported the broad thrust of this resolution. First of all, it is important to note that India expressed full support for the core ITR document, which is the real issue. As for the 'Internet resolution' and requiring time to understand its implications, there seems to have been confusion about the role that ITU already plays in the global internet governance space. This appears especially so because India did state support for the broad thrust of this resolution. It is instructive to note that the ITU's highest policy making body, the Plenipotentiary Conference, in 2010, passed numerous internet related resolutions that go much more directly and deeper into internet governance issues than the resolution 3 appended to the ITRs did. This resolution 3 has no more meaning and force than the resolutions of the Plenipotentiary Conference, if anything perhaps less, given the relative status of the WCIT and the Plenipotentiary Conference. One of the 2010 Plenipotentiary Conference resolutions is for the ITU to hold a World Telecommunication/ICT Policy Forum on internet-related public policy issues that will be held in Geneva in May 2013.

There was nothing in India's stance during or even till the very end of the WCIT suggesting any reservation about signing the emerging ITRs text. It appears that the real reason for the eventual non-signing and seeking time to study the full impact of resolution 3 laid in the unresolved contradictions between the ambit and stances of two different departments, which seem not to have worked closely enough together in the run up to the WCIT, or earlier, on global issues related to convergence between traditional telecommunications and the internet. All along, WCIT was supposed to have been about telecommunications, which includes the infrastructural layer of the internet (such an inclusion is also in accordance with the new telecommunications policy of India). Suddenly, however, the whole fight at the WCIT (if a form of shadow-boxing) became about the internet. No one was talking about telecommunications any more. The Indian establishment seemed not to be fully prepared for this, although inputs from other stakeholders in the preceding months had begun to paint a picture of the expected complexity to the government. There exists a rather comfortable separation and respective managing of different IT, internet and telecommunications related issues between the two departments at the domestic levels. The global politics around internet governance, however, ignited some entirely new and unfamiliar issues and battle-lines (with the key issues mostly being proxy for much larger ideological contestations) that were not able to be quickly understood and resolved adequately by the Indian establishment.

The lack of existing deeper understanding and agreement between the Departments of Telecommunications and IT, on convergences and divergences on telecommunications/ internet related global perspectives and policies, was further complicated by the fact that there were rather under-developed perspectives among different stakeholder groups. And here the anti-regulation groups had an early, and somewhat disproportionate, prominence, also having strong backing of the media. It is these confusing and unclear sets of viewpoints and contingent circumstances that seem to have resulted in India reserving its decision on the new ITRs, rather than any well-considered geo-political stance. This is also evident from India's statement at the end of WCIT. However, all indications at present seem to be that India will eventually sign the new ITRs.

One useful point emerging out of the end-of-WCIT confusion certainly is that the Indian government is expected to take its lessons for developing greater on-going engagement of different ministries and departments on internet governance issues rather than let its internal confusions affect its standing as an articulate and confident actor at global forums. It will also learn to have more sustained interactions with other stakeholders, which is preferable to being swayed at

crunch time by the most powerful outside actors that have the greatest reach with the government. The confusion over WCIT followed a somewhat similar internal confusion over India's statement to the UN General Assembly in October 2011, seeking the establishment of an UN Committee on Internet-Related Policies.

As mentioned earlier, it seems that the Department of IT, the focal point for internet governance in India, is taking these lessons in full earnest. Apart from announcing the intention of setting up an Inter-Ministrial Group on internet governance, it is also seriously working towards developing a sustained platform for stakeholder consultations on national and global internet governance issues. On the other hand, the Ministry of External Affairs seems to have become quite active with regard to bilateral (mostly with countries of the North) as well as plurilateral (largely South-South) initiatives on global internet governance, in close interaction with the Department of IT. The required institutional setting for developing long-term stances on global internet governance issues seems now to be taking shape. It will be interesting to watch what kind of global internet governance and policy perspectives now emerge out of the establishment. Civil society, as well as business actors, are also becoming better oriented with global internet governance issues, and better organised to be able to influence Indian government. These new institutional developments will also need to take into account the fact that both the internet itself and the profile of internet users in India is transforming rapidly.

WAY FORWARD

It is expected that, in future, India's perspectives on global internet governance will be much better and more deeply considered, with contributions from a range of ministries, and inputs from relatively sustained multi-stakeholder processes. There however remains a great need for internal capacity building at all levels, and therefore the shift may not be sudden but rather gradual. There appear to be some significant moves being made on the part of key governmental actors to improve internal capacities on internet governance issues. The issues that will inform India's positions are also expected to evolve. India is likely to continue to emphasise its strong support for 'Internet freedoms' in global internet governance. However, the views and priorities in this area at the domestic level may begin to see a greater connection to India's global stances than has been the case till now. Indian democracy remains a crucible of deep socio-political contestations along lines of religion and caste, whereby petty identity politics is rampant. Lately, a growing intolerance towards free and diverse views has been witnessed among many quarters, and governments are often over-sensitive to the concerns of the involved groups, lest they find political expression in ways harmful to the ruling dispensation. The situation becomes much more complex as the cyber-sphere offers unrestrained avenues for free expression to more and more people, a trend which is expected to intensify in the near future. How India deals with this emergent situation may have a significant impact on India's future positions in global internet governance forums with regard to the 'content regulation' issue. This is an area of considerable concern, and must be watched and engaged with cautiously by global and domestic actors with the 'Internet freedoms' agenda. At the same time, simplistic 'no regulation' frameworks may not be the best way to proceed in this regard.

India is expected to begin translating its domestic IT and internet related priorities into global positions, with greater institutional depth through input from various ministries in developing global internet governance stances. Important issues that will become increasingly more relevant lie not only in the IT area – whether by supporting Indian IT industry or furthering the cause of using ICTs for development – but also in many other areas like trade and commerce, intellectual property and access to information, information and broadcasting, taxation, and so on. This process of broad-basing internet governance is expected to result in much

more informed, nuanced and deeper global internet governance positions than has been the case. For instance, the Department of IT recently came up with some protectionist measures for its domestic hardware industry – covering equipment with security implications, and public procurement. One may ask: what would such a stance mean for the internet industry? Security considerations are also going to become increasingly more important for India's global engagement.

India's commitment to a global internet, and an open and inclusive approach to internet governance, in a manner that promotes innovation and participation, is expected to continue. It is likely to remain the central plank of its global engagements. Such a viewpoint is rooted in India's democratic social tradition as well as India's perception of global IT/ internet industry as a major area for its economic growth. India's strong commitment to equitable global engagement is also a very relevant point here. It is not expected that India will ever warm up to authoritarian models of global internet governance, even as it employs South-South alliances strategically to push its social and economic priorities for the global governance of the internet, as well as legitimate security related concerns. A leadership role in articulating and advocating the immense variety and depth of socio-economic issues vis-a-vis global governance of the internet is expected to be the major new thrust of India's global internet governance diplomacy. Democratising the institutional architecture of global internet governance is likely to remain a high priority, and India's stances may only get sharper and more focused in this regard.

Meanwhile, a certain reconfiguration of non-governmental actors is also expected to take place. India's strongly political civil society may assert itself, and the issues and engagements will widen beyond, what is largely, a somewhat simplistic 'no regulation' stance of the narrow segment of civil society that is currently engaged with internet governance issues. The most likely new actors may come from groups engaged with global socio-economic issues like trade, access to knowledge, health, environment etc., apart from those generally interested in global governance issues. It is also expected that the very strong techie activism in India, at present largely organised around free and open source software issues, may also become interested in the politics of a networked digital ecology. These are however just early projections and many structural blocks to these new civil society configurations remain. The short, medium and long-term impact of these possible changes is therefore difficult to predict. It is also expected that the domestic IT/ internet industry may also assert itself as being against what appears at present to be US-based industry's domination of the spaces where government consults businesses regarding internet governance matters. Recently, some smaller Indian IT companies set up a new forum to represent their interests, which shows the fissures that may already be developing. These shifts are likely to have significant implications on how India's global internet governance position develops in the future.

NOTES

1. Brazil, Russia, India, China and South Africa.
2. India, Brazil and South Africa

03

INDONESIA

BY DONNY B.U. / ICT WATCH

BACKGROUND AND ISSUES

Since its transition to democracy, Indonesia has declared its commitment to foster human rights globally and to contribute to international peace and security. Its global political aspirations are manifested in its active engagement in a number of multilateral bodies (Organisation of the Islamic Conference, the G20, etc.), while simultaneously exercising its regional clout through the Association of South-East Asian Nations (ASEAN) – one of the country’s strategic priorities. Despite its international commitments, there are doubts about Indonesia’s full adherence to human rights standards domestically.

In its international internet policies, cyber-security and cyber-sovereignty dominate Indonesia’s agenda. These policies are seen as instrumental in protecting citizen data, e-government, and e-banking information, which, in turn, reflects the government’s view of the internet as a tool for development. While government priorities include issues that are common among developing countries, such as infrastructure and access to the internet, these problems are likewise approached from a security angle (e.g. security of networks). This focus on security at the international level reflects the government’s domestic policies. According to government sources, the focus on cyber-security is necessary to protect the public interest in a country where the internet culture, which includes understanding of privacy and intellectual property rights, is not yet up to standard with that of developed countries. And to protect these interests and promote internet’s potential as a catalyst for economic growth, creating an international regulatory framework that complements national regulatory efforts is seen as crucial. In this framework, there is a clear regulatory role for the state, both nationally and internationally.

However, domestic industry and civil society stakeholders are concerned about the abuse of power under the guise of domestic law implementation and fear negative effects on users’ rights and freedoms. Allegedly, the implementation of the Law on Electronic Information and Transaction (ITE Law No. 11 2008) has already been ‘misused’ in order to limit the freedom of speech.¹ Non-governmental stakeholders claim that legitimisation of such behaviour through stricter international regulation of internet use could potentially worsen these abuses at the local level.

During recent negotiations at the ITU, Indonesia aligned itself with a number of repressive regimes, including Iran, China, Russia, and Saudi Arabia, who were arguing for greater state involvement in the governance of internet resources and expanding the ITU’s mandate. With an absence of adequate mechanisms and solutions to balance cyber-security, development and human rights within the current internet governance system, it is likely that Indonesia will continue to resort to traditional inter-governmental forums to address its concerns.

ACTORS AND DECISION-MAKING PROCESS

Within the government, internet governance and regulation are managed by the Ministry of Communication and Information Technology (MCIT). The Ministry of Trade has a say in development issues and e-commerce discussions, but the MCIT represents the government at international forums such as the ITU, and the IGF. In recent years, the main national focus of the Ministry has been cyber-pornography and intellectual property rights (IPR). This focus reflects the background of the Minister, who is not proficient in ICT issues, and was appointed by the President as a result of political compromise. Focus on pornography is seen as a particular reflection of the Minister's religious background. There is internal tension between MCIT and the Ministry of Trade in policy negotiations, especially in regards local regulation such as the ITE Law.

In terms of seeking external input from non-governmental stakeholders, academic input is a procedural requirement for developing government policies. In dealing with international internet-related policies, the government has sought expert advice on particular ICT issues from academics (Law faculty of University of Indonesia and Padjajaran University) and, on occasion, international experts. It is unclear whether the Ministry of Foreign Affairs will become more involved given the growing overlap between internet issues and broader foreign policy matters discussed across various UN bodies.

Civil society and the wider community do not seem to have a reliable avenue through which they can feed their advice and concerns into government internet policies. There have been efforts to collect public input through surveys, but the process has yet to involve the public in any substantive way. Otherwise, the public tends to be informed of the decisions and policies after they have already been made, rather than in the policy-making phase. With international internet policy and governance issues, another setback is the lack of capacity among local civil society organisations. If civil society aspires to be consulted on these issues, political will to engage them is going to have to be matched by capacity building activities.

The private sector is considered to be more relevant in contributing to government internet policies than civil society. However, it is unclear to what extent the government takes their input into account. Industry has intermittently been involved in consultations with the government, but this practice has not been systematic. And although industry lobbyists have managed to influence some of government's domestic ICT policies, this has not been the case with international internet policy. Some industry representatives consider the IGF as an important forum for international internet policy discussions, supposedly because of its multi-stakeholder setting, and as a counter-balance to the government-led ITU.

WHAT HAPPENED AT THE WCIT

Prior to the WCIT conference, the Indonesian position had not been discussed with the private sector or other stakeholders. In an official release² on December 12th, the MCIT stated regarding WCIT:

- 'Indonesia introduced the concept of the framework agreement on cyber security and wants to perform additional security aspects in the utilisation of information and communication technology as well as aspects of law enforcement against cyber threats, which is not only about the network security issues but also about the protection and security of people in a country.'
- 'Some countries such as Iran, China, Russia, and Saudi Arabia had the same views and efforts with Indonesia who want security issues set out in the ITRs.'

During the conference in Dubai, Indonesia moved closer in its position to Russia, China, and Latin American countries. Some believe that Indonesia sided with these countries because it did not come to the WCIT with a coherent internal position that

it could independently promote. The government's rationale for pushing cyber-security provisions into the new ITRs relied on a perceived lack of sovereignty on the internet, manifested in its inability to protect the data of Indonesian citizens. The Indonesian government's perspective is that a country's sovereignty applies equally to the online and the offline realm, and that it can be regulated in the same way.

After the WCIT, local non-governmental stakeholders raised concerns about the new ITRs opening the door for a state-controlled internet space, which would have negative effects for users' rights online. They also pointed to the emphasis on security in the new ITRs, which is deemed troublesome in the light of misuse of the national ITE Law.

In terms of internet governance, the MCIT supported the ITU as the appropriate place to discuss and regulate internet-related policy issues. It was also seen as important to get involved because of the legally binding status of the ITR Treaty. This is not a position that is shared by civil society and the private sector (although the private sector sees the ITU as a potential space to push development issues because of its position in the UN system). These stakeholders generally prefer the IGF as a forum to address internet policy issues because of its multi-stakeholder setting. However, because the IGF at present does not have decision-making powers, the government prefers to discuss issues in more traditional inter-governmental forums.

WAY FORWARD

Cyber-security and development are likely to remain priority issues for Indonesia in its external internet policies. In terms of processes, recently, there have been efforts to improve multi-stakeholder involvement in internet policy discussions in Indonesia. The first Indonesian IGF (ID-IGF) was held in November 1, 2012,³ and it gathered participants from the government (MCIT, and the National ICT Council (DETIKNAS)), the private sector (Indonesian Internet Service Provider Association (APJII) who is very active in leading the forum, and Indonesian ICT Federation (FTII)), and civil society represented by the Indonesian CSO Network for Internet Governance (ID-CONFIG) and ICT Watch. Agenda items included 'Internet and the Right to Information', 'Cyber Law and Sovereignty', and 'Enabling Environment to Address Development Problems'. The forum, however, did not seem to make reference to the then upcoming WCIT conference, and there seems to remain a practical incongruity between the idea of involving the public in open-ended discussions and involving them in actual policy-making.

Nevertheless, there is room for optimism about Indonesia's commitment to improve its internet governance structures and policies, whether within a domestic, bilateral, or multilateral framework. In October 2013, Indonesia is scheduled to host the 8th Internet Governance Forum (IGF) in Bali. For the successful implementation of the IGF 2013, Indonesia plans to involve various stakeholders. During the closing ceremony at the IGF 2012, representatives of the Indonesian delegation, Djoko Agung Harijadi, the Secretary General of Indonesian MCIT, stated that, 'in this regard the Indonesian internet (multi) stakeholders such as businesses and civil society sector together with Indonesian government looks forward to make the necessary coordination with the UNDESA and the IGF Secretariat in particular of administrative and logistical aspect of the forum.'⁴

NOTES

3. www.elsam.or.id/?id=163&lang=en&act=view&cat=c/503
4. <http://m.kominfo.go.id/berita/detail/3719/Siaran+Pers+No.+94-PIH-KOMINFO-12-2012+tentang+Sidang+World+Conference+on+International+Telecommunication+Tahun+2012+%28WCIT-12%29+di+Dubai%2C+Uni+Emirat+Arab>
5. <http://id-igf.or.id/>
6. www.intgovforum.org/cms/component/content/article/114-preparatory-process/1260-igf-2012-closing-ceremony-

04

KENYA

BY GRACE GITHAIGA
KICTANET

BACKGROUND: PROGRESSIVE DOMESTIC ENVIRONMENT AND PRIORITY ISSUES

The last few years have seen the transformation of internet access in Kenya, making the country an international model for digital development. International fibre-optic capacity is now in abundance, over 17 million Kenyans have access to the internet, and the financial networks of the country have been revolutionised by world class and leading innovative mobile banking services.¹ In parallel, the country has become a champion of multi-stakeholder internet governance at the national level and its avid proponent internationally. It was one of the first countries to establish a national IGF² as a space to discuss internet policy issues in a multi-stakeholder setting. Internet governance debates and processes in Kenya have been characterised by the participation of diverse stakeholder groups drawn from civil society, business industry, academia, government and the telecom sector. This national multi-stakeholder collaboration saw the formulation of Kenya's ICT Policy of 2006, and has continued to inform the domestic internet policy agenda since then. The multi-stakeholder decision-making process has subsequently been enshrined in the Kenyan 2010 Constitution as an appropriate model for dealing with all public policy issues.³

Priority domestic internet issues have varied from year to year. Usually before the national IGF takes place, stakeholders debate on the Kenya ICT Action Network (KICTANet) list⁴ and collectively agree on the respective year's key internet governance issues. These are then discussed through an online debate, the results of which are discussed in a face-to-face meeting. The recommendations are then taken onto the East African IGF and ultimately to the global IGF. KICTANet, a multistakeholder network of people and institutions interested and involved in ICT policy and regulation coordinated these forums from the year the Kenya IGF commenced, until 2012, when it handed over the process to the local chapter of the Internet Society (ISOC).

In 2011, the key domestic internet-related issues and concerns⁵ were: impact of mobile internet in Kenya, cloud computing, cyber-security and privacy, and broadband. In 2012 a range of different issues in both online and plenary sessions were explored. These focused in particular on the government's open data and e-government initiatives, freedom of information legislation, intermediary liability, and two global internet policy issues namely the outcome of ICANN's invitation for proposed new gTLDs and revision of the ITU's ITRs. According to the 2012 draft National ICT Master Plan^{6,7} by the Ministry of Information and Communications, areas of domestic focus for the government in the next five years will include:

- Strengthening of the legal and regulatory framework, including harmonisation with international practice, legislation on freedom of information, data

- protection and child protection, measures to protect consumer rights, and steps to ensure that regulation keeps pace with convergence; and
- The development of applications in ICT4D, including priority for e-government.

Additionally, Kenya has made great strides in the Internet sector. The President launched Konza's Techno City, which is seen as Kenya's Silicon Valley⁸ on January 23, 2013, signalling that the country intends to remain a leader in this field in Africa. The elections of March 2013 produced a change of government and some observers have expressed concern that this could impact on policy. However the new President has also laid claim to the mantle of being a 'digital president' and though many senior officials in the relevant ministries will change, there is confidence among the Kenyan internet community that policy will be broadly consistent with the previous administration.

At the international level, Kenya is likely to continue balancing the needs of the business environment, human rights and multi-stakeholder policy decision-making in matters that affect the international governance of the internet. It is likely to continue supporting a progressive policy agenda and regulatory environment. According to the National ICT Master plan, priority issues at the international level will include:

- Promotion of broadband 'as an instrument of economic development', through greater competition between telecoms operators, the expansion of high-speed broadband to all counties, and 'more affordable Internet connection prices'; and
- Achievement of the WSIS connectivity goals for citizens, communities and public facilities at broadband speeds (which were not envisaged when the WSIS goals were agreed in 2003).

Kenya aims to further its goals through regional and global forums. During 2012 negotiations on the new ITRs, Kenya participated in ITU negotiations through the Africa Telecommunications Union (ATU). However, in the end, it took an individual stance and did not sign the Treaty even though many ATU members did. Further, Kenya has allies in Eastern Africa through the East Africa IGF, the **East African Communications Organisation** (EACO),⁹ and the Association of Regulators of Information and Communications Service of Eastern and Southern Africa (ARICEA).¹⁰

ACTORS AND DECISION-MAKING PROCESS

The Ministry of Information and Communication and the sector regulator Communications Commission of Kenya (CCK) are the relevant bodies that participate in international internet policy negotiations. The Communications Commission of Kenya (CCK) was established in February 1999 by the Kenya Communications Act of 1998, and amended by the Kenya Communications (Amendment) Act of 2008. It represents Kenya at the ITU, IGF, ICANN etc.

The Ministry of Information and Communication is in charge of all matters communication. The Ministry as well as the CCK, have nominally embraced multi-stakeholderism in policy making process and work closely with various stakeholders, including the private sector and civil society. However, many find that the telecom companies wield immense power and are usually given priority in consultations, in particular Safaricom, which is seen as the dominant service provider and a great tax payer. For instance, when the regulator (CCK) wanted to increase the mobile interconnection charges in 2011, the State House overruled the CCK in favour of Safaricom and telecom companies.¹¹ Further, prior to WICT, the regulator held separate consultations with the telcos in the absence of other stakeholders. This was revealed much later during the public consultation in November 2012, and still there was no report(s) of the topics of consultations or points of agreement. Other stakeholders interpreted this as preferential treatment of one group, most probably due to their financial clout. Civil society and in

particular the diverse KICTANet membership, is crucial in highlighting these gaps and holding relevant government bodies to account.

In the last five years or so years, it has become important to get the Permanent Secretary of the Ministry of Information on board to understand and support key concerns that require adoption. He has been a champion and a lot of the milestones made can be attributed to the open door policy that has now become associated with his Ministry. CCK is also critical in that it has the mandate of the government in supporting policy and regulation in areas in communication and internet as well as capacity in technical areas in telecom and broadcast. However, CCK still needs to fully adhere to multi-stakeholder practices. If these two arms agree, then it is almost assured that the proposed law will be amended/repealed or drafted. Engaging both actors has been a crucial part of civil society strategy for pushing policy and regulation proposals, suggestions and recommendations.

Civil society engaged in this field in Kenya is very strong. Apart from holding the government to account, civil society has also been a useful contributor to CCK's work in specific research areas where the regulator may not have enough capacity. The Ministry and CCK acknowledge civil society contributions, mostly through KICTANet, since this is a multi-stakeholder platform which has almost all industry represented including media editors who sometimes pick issues generated on the KICTANet list and write articles and op-eds, as well as have their organisations follow up with television footage to amplify issues raised by KICTANet-ers. Further, civil society has contributed to training journalists on how to report on ICT issues.

However, with the results of the March election and a new government, the position of permanent secretary has already been advertised.¹² Although most officials believe that the policies are sufficiently entrenched to survive their own departure, civil society will have to remain vigilant to ensure that gains already made are not eroded. They will have to be proactive and ready to engage with the new office bearers (the cabinet secretary and the permanent secretary).

Whatever the outcomes, civil society will benefit from promoting a clear framework on multi-stakeholder engagement and how the views of various stakeholders are to be taken on board in policy formulation and in the positions that Kenya takes in international negotiations and meetings. Further, the change of government is likely to require civil society to act as source of information on relevant internet laws and regulation to new officials (e.g. on ITRs, WSIS, etc.), to ensure that the momentum that allows Kenya to take a lead in this area continues. It is possible that civil society resorts to litigation to make sure that multi-stakeholderism is embraced.

WHAT HAPPENED AT THE WCIT

Prior to WCIT, the sector regulator CCK engaged in regional consultations through the Africa Telecommunications Union (ATU) where the plan was for African countries to have common proposals¹³ and negotiate as a block. However, this was not made clear during the public consultation on November 13, 2012 and although wide stakeholder consultation took place, their concerns were not taken on board by CCK, which opted to still go with the African common proposals. Stakeholders had reiterated that Kenya needed a national position that captured the aspirations of the people to prevent any adverse effects on the internet. Nonetheless, members of civil society were included in the government delegation, although they had to source their own funding.

Despite CCK's stand, Kenya did not align itself, in the end, with the rest of Africa. It was one of the 55 countries that did not sign the treaty. There were those who felt that Kenya had betrayed the African block by not voting for the ITRs, although Gambia and Malawi also did not sign.

This decision not to sign reflected the view that some of the African common positions may have had far reaching consequences that would have caused damage to the country's economy, and could therefore not be supported by Kenya. Kenya felt the treaty had encroached into regulation of the internet in a way that would endanger Kenya's efforts to grow its internet-based industries. Other sticking points included the definition of operating agencies, which would have potentially caused all communications providers, from mobile operators to ISPs and website providers to be subject to the provisions of the treaty. This would have caused instability in Kenya's communications market, with even the potential for MPESA coming under the provisions of ITRs. Another was the sender party pays model, a proposal for fair compensation for carried traffic. In Kenya's view, this would have translated into higher costs for internet users. A country like Kenya that exports traffic would suffer in the long term through such a provision and could contribute to internet service providers limiting connections with destinations that might be considered expensive.¹⁴

Other problematic issues included articles 5A.3 and 5B.1, which referred to the need to 'take the appropriate measures to combat network fraud'¹⁵ and 'to prevent the propagation of spam including: a) to adopt national legislation to act against spam; b) to cooperate to take actions to counter spam; c) to exchange information on national findings/actions to counter spam.' These articles were found to be too vague with regards to what 'appropriate measures' entail, for example, by failing to require a proportional response. Accordingly, the provisions were deemed as ripe for abuse by member states that would be given nearly unbridled discretion as to the remedial actions they can take. Furthermore, the meaning of 'spam' was undefined in the ITRs, and its meaning critical to determining the scope of this provision.

NOTES

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05

SOUTH AFRICA

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BACKGROUND: ISSUES AND ALLIANCES

Traditionally, the most important internet policy issues in the international arena for South Africa have been reform of internet governance, African and regional cooperation, South-South cooperation, bridging the digital divide through equitable access to ICTs, and harnessing ICTs for development. Internal developmental issues form part of the country's engagement in debates on global internet governance. At the WSIS Tunis Summit in 2005, then president Thabo Mbeki stressed the importance of ICTs in helping 'extricate the poor of Africa and the world from their condition of underdevelopment, marginalisation and social exclusion', and that the mobilising power of ICTs were reflected in 'both in our national initiatives and the priority programmes of NEPAD, the New Partnership for Africa's Development.'

South Africa's position in international internet governance debates reflects these developmental concerns, but it also reflects the country's broader foreign policy strategy which is based on strong regional and South-South links. Alongside Brazil and India, South Africa has been one of the stronger critics of the current model of internet governance and has actively participated in efforts to reform it. In line with the traditional South African foreign policy objective of reforming the UN system and global governance institutions, the government has supported reform of the system in order to develop 'multilateral and multi-stakeholder institutions and systems rooted within the UN system to ensure inclusive and equitable access to ICTs within the context of an Internet Governance system that is legitimate, transparent and accountable'.¹

At the first Summit of the India-Brazil-South Africa Dialogue Forum (IBSA) in September 2006, the IBSA heads of state emphasised the 'importance of working together towards a people-centered, inclusive and development-oriented Information Society'. They also 'emphasized the need to promote and enhance close trilateral cooperation and capacity building between the three countries in the areas of digital inclusion, ICTs for development, as well as E-government and governance as a means of reducing the digital divide in their societies'.²

Although some believe the much discussed UN Committee on Internet-related Policies (CIRP) proposal came out of the IBSA meeting in Rio in 2011, the proposal is now seen as having been largely driven by the Ministry of External Affairs of India. South Africa had a limited role in the CIRP proposal. What is notable however is South Africa's lack of measures to distance itself from the CIRP proposal, with even the Indian government backing away from the proposal in response to the strong civil society and media outrage in October 2012.³ This may be explained by South Africa's desire for South-South solidarity in its internet policy or its politeness arising from its hosting of IBSA and BRICS summits in 2011 and 2013. Interestingly, IBSA did not form any significant bloc at WCIT, and

South Africa sided more strongly with African positions at WCIT-12. India did not sign the final agreement, whereas South Africa did. There are conflicting reports that Brazil either signed, or could not sign, due to non-payment of fees, or other technicalities.⁴

BRICS (Brazil-India-China-and-South Africa) has had less substantive influence on South African internet policy. South Africa joined BRICS in 2010 took part in the 3rd and 4th BRICS summits. Issues of technical cooperation regarding broadband infrastructure have come up at BRICS. In January 2013, BRICS security representatives discussed international terrorism, piracy and cyber-security in New Delhi. This was the first stand-alone security BRICS meeting (security meetings previously accompanied general summits). According to a Russian newspaper:

‘Representatives underlined the necessity to coordinate BRICS security initiatives not just between the five members, but also with other international platforms and organisations (particularly with the UN): for example, leaders of the BRICS countries recognised the need to create mechanisms to work toward preventing terrorist activity and other crimes being propagated on the Internet at an international level.’⁵

Best practices in cyber-security and the possibility of emergency response teams were discussed.⁶ The next BRICS meeting on security issues will happen in South Africa in March 2013, in conjunction with the 5th BRICS summit. Russia’s security secretary stated that the next step could be for BRICS countries to draft statement, which could then possibly turn into an agreement.⁷

While South Africa is generally pro-human rights, they are also pro shifting geopolitical balances/imbances. They would at times support China for example, but they are also quite ambitious in their own right.

DECISION-MAKING PROCESSES

a. Government

The Department of Communications (DoC) and the Department of International Relations and Cooperation (DIRCO) are the most important bodies in terms of decision-making on international internet policy issues in South Africa. The primary actor is the Ministry and Dept. of Communications, which traditionally deals with WSIS and ITU Processes. DoC creates the policy framework that the national regulator, ICASA (Independent Communications Authority of South Africa) has to work with. Currently, the DoC is going through internal reshuffles and is not likely to be able to channel much effort into international internet governance issues (see text box).

DIRCO (previously the Department of Foreign Affairs) is involved with regional organisations that have ICT initiatives, e.g. the African Union and NEPAD. Since 2005, as IBSA and BRICS frameworks emerged as an important factor in South African outward-looking internet policy, DIRCO has become more important. Lack of linkage between South Africa’s WCIT position and the IBSA proposals, could indicate lack of consolidated strategy between these two Ministries.

There are working groups and meetings between them, but these are fairly ad hoc. At times they work well, at other times less so. Usually the DIRCO staff in the Geneva Mission would represent South Africa at the ITU and at IGF meetings (when they attend). They don’t usually participate in IGF open consultations and only sometimes attend the IGF. However, as an extension of their ITU representation they have followed the CSTD very actively and the South African was one of the most influential governments in the CSTD.

Leadership crisis at the Department of Communications

In the last three years, leadership of the DoC has been in flux. In 2010, in a Cabinet reshuffle, Roy Padayachie replaced the previous Minister of Communication Gen Ret. Siphwe Nyanda amidst allegations of corruption. In 2011, Padayachie was replaced by Dina Pule, in another Cabinet reshuffle. Padayachie, moved along with his deputy minister to the Ministry of Public Service and Administration. President Zuma said that he was moving one of his 'strongest executives' to his 'biggest problem areas', and that 'Padayachie has been promoted'. Dina Pule, Deputy Minister under Nyanda then became minister. ANC MP, Stella Tembisa Ndabeni, became the new deputy communications minister. In February 2013, amidst allegations of Nepotism and corruption, it was rumoured that she would be fired and replaced possibly by Lindiwe Zulu, president Zuma's current advisor on international relations. The current Acting Director General of the Department of Communications is Gift Buthelezi, who was a Vice Chair at WCIT. He replaced the Director General, Rosey Sekese, in January 2012, after allegations that she had misled the National Assembly's Communications Committee on her performance contract. He was acting Minister until the 15th of February 2013. It is foreseeable that he may become the new DG. The Department of Communications has an international relations head, Jim Patterson.

Tshihumbudzo Ravhandalala (Zane), who has lead the SA delegation at the ITU in Geneva (not WCIT) and CSTD and WIPO, has either gone back to capital or will soon. There is likely to be an inevitable change in conduct of business, but not necessarily a change in position.

At times, staff from DoC and the Ministry of Science and Technology attend these meetings. But in the last few years since CSTD has had a mandate to review WSIS implementation, it is usually the DIRCO staff that negotiates CSTD resolutions to ECOSOC. These policies are developed based on a South African general foreign policy stance which has been mostly aligned with a pro-ITU and 'non-aligned movement' approach fairly hostile to North American and European positions on internet governance. They have been consistently in support of increased governmental oversight of internet governance, and enhanced cooperation as defined by Brazil and India among others. They do also support multi-stakeholderism, but do not consistently put it in practice. However, South Africa's membership in the CSTD has not been renewed and this will remove an important platform for IBSA to work as a unit in a UN policy form.

The government participates 'fairly' actively in ICANN's GAC. The representative is usually from the DoC, but apparently they don't say very much. Their position on ICANN is extremely critical and they advocate for it to be internationalised or be brought under the oversight of the ITU, or a new body (e.g. CIRP which they supported to some extent).

South Africa has more capacity for human rights and participates much more actively in the Human Rights Council (HRC) than in any internet governance spaces. The government always has a large delegation and human rights specialists in both DIRCO and the Dept. of Justice attend HRC meetings. They are a leader on LBGT rights in the HRC and could potentially be a leader on internet rights, but not without quite a lot of change happening in the current chaotic communications and information policy scene.

From 2009 to 2012 the DoC was working on a National Cyber-security Policy Framework. A draft came out in 2010, and another in 2011, but in 2012, the Ministry of State Security was put in charge of developing the cyber-security strategy. In 2012, this was approved by the Cabinet.⁸ Cyber-security unfortunately no longer remains the responsibility of a civilian Ministry.

b. Private sector

The voice of business is influential at the level of national and international policy. South African internet businesses are very active in ICANN and are leading the bid for Africa that is being supported by the African Union and by the South African government. They do consult on national issues occasionally (e.g. during the national IGF). In national policy, government tends to listen to business more than civil society regarding broadband, although this can be skewed in favour of Telkom – the fixed line operator, Neotel – the new SNO, and Vodacom, in which government had indirect shareholdings through parastatals. The government also listens to think-tanks (Research ICT Africa), as well as research work done by Association for Progressive Communications (APC).

c. Civil society

In South Africa, there is little room for civil society to participate in national-level decision making on global internet governance. During WCIT, there was no civil society consultation. Civil society were left in the dark as to what would happen there, reliant mainly on the international media and social media coverage of the events. As one local commentator noted, ‘The DoC is not well known for its ability to work with stakeholders, nor to take their opinions to heart,’ he said. He said he feared Minister Pule would endorse the Russian and Chinese proposals ‘for no reason other than “fraternal friendship” and without any understanding whatsoever of the consequences.’⁹

Substantive engagement with the government is likely to be more fruitful at the level of national internet policy. There, multi-stakeholder practices are at least formally stronger – with departmental broadband colloquiums, and broadband strategy consultations. In this light, broadband is likely to be the biggest policy hook for the government and for civil society. The government understands it, makes good policies, although implementation is poor and inconsistent. In 2008, the government even had to be taken to court in order to implement broadband policies under the Electronic Communications Act, allowing value added service.

If South African civil society had the resources to initiate consultation and put pressure on their government to consult with them they probably would support the idea of multi-stakeholder participation. But it would be hard work, and it is unlikely that the government would commit to changing their stance based on these consultations. Civil society has generally challenged government when it comes to any suggestions to control content on the internet (e.g. as in the saga related to the painting of President Zuma’s genitalia). But, when it comes to stances against global capital and large internet companies, progressive civil society would support the government. South African organised civil society tends to be both critical of the government and of multinational corporations.

WCIT – A BRIEF ANALYSIS

South Africa was behind the African position at the WCIT, and voted for the final agreement. During the regional preparations for WCIT, the government has consistently supported ITR revisions including some good ones such as cost-based global roaming charges, and some problematic ones such as the broad definition of ‘operating agencies’. This was in part based on not grasping the full consequences of some of the ITRs (e.g. the definitional issue). The government is known to have consulted with South African telcos, and these encouraged them not to support any major ITR revisions, and to keep the ITRs high-level. At the same time, they have been in favour of the ITU having more oversight of the internet, so it is consistent for them to support ITR revisions leaning in that direction.

According to Gift Buthelezi, then Deputy Director General of the Department of the Department Communications and a WCIT Vice-chair, South Africa’s foreign policy objectives are influenced by its broader foreign policy objectives of UN

reform. 'We are siding with Brazil and India in our policies,'¹⁰ he said. 'South Africa supports the provisions of the revised treaty because they are allowing developing nations to participate fully in the review,' said Buthelezi. 'All the countries followed democratic processes, which included negotiations between developing and developed nations to arrive at the treaty. The treaty was arrived at through a vote and developing countries largely voted in a similar way.'

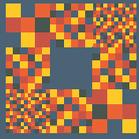
It is likely that the government's stance on WCIT was more related to resisting US dominance and US efforts to clear the way for US companies to operate in an unhindered way in African markets than linked to ICTD issues. Resistance against what they see as bullying behaviour from the US is strong in South African foreign policy. The way the US played WCIT was guaranteed to alienate South Africa. South Africa would view Kenya as not being independent from donor countries and would therefore not really respect Kenya's stance. South Africa has aspirations to be a permanent member of the Security Council of the UN and to be there with the support of countries which are not aligned with the US.

Buthelezi, in an interview for the Chinese newspaper Xinhua, said regarding the WCIT, that the US and its allies 'spoke down to us.' He blamed them for politicising the summit and for refusing to compromise. Buthelezi said that the African group 'compromised' by reducing the terms 'internet, e-content and cyber security' in the new treaty whilst the U.S. showed 'no willingness of finding a consensus at all.' The South African representative (presumably Buthelezi, or Dina Pule, the Minister of Communications) according to a Kenyan blogger, 'lectured Ndemo like ... well ... a small boy (those are Ndemo's words). The South African representative wondered why Kenya had betrayed their trust by going against the Africa position etc and you could tell from the body language that if he had the power he would have kicked Ndemo ... maybe slapped him.'

These accounts support the assumption that concerns with geo-political alignments trumped substantive considerations during WCIT.

NOTES

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