



APC Reflections on the Sixth Internet Governance Forum Nairobi, Kenya September 27-30 2011

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Preamble

The sixth annual global meeting of the Internet Governance Forum (IGF) which took place in Nairobi in September 2011 was the first global IGF in Africa. The location of the global IGF in Africa meant that for the first time ever over half of attendees were from the Africa region.¹

¹ Chair’s Summary <http://www.intgovforum.org/cms/2011/summaries/2011.IGF.Nairobi.Chairs.summary.v.F1.pdf>

The large number of participants from African countries meant that issues of importance to the global south pertaining to all the themes in the IGF agenda had greater prominence than in previous events. The high incidence of African panelists brought new perspectives to a discussion that had lacked immediacy in previous IGFs.

The main theme of the IGF was **Internet as a catalyst for change: Access, development, freedoms and innovation**. APC strongly supported the focus on access, development and freedom, viewing all three as critical issues if the internet is to fulfill its potential to contribute to social justice and development. The Nairobi IGF demonstrated that this forum remains a creative and influential space for policy dialogue.

Prior to the IGF, APC released a briefing paper outlining our priorities for the IGF². In this report, we reflect on those priorities and on the Sixth Forum in general. We also renew our proposal to have human rights be the central theme for the next IGF.

Internet governance for development

In Nairobi, a concrete proposal to create a global internet governance body was put on the table by governments from developing countries (the IBSA proposal)³, which resulted in exactly the kind of intense and diverse debate that the IGF was created for. APC applauds this kind of active agenda-setting of developing countries as a positive step to counteract exclusion and the predominance of developed country agendas as the typical starting points for discussion.

However as we see it the question about the best way to discuss development in relation to internet governance remains unanswered.

Discussion so far has focused on the global dimensions of internet governance for development. It is important to explore ways to balance IG4D with addressing development-focused ICT *policy* issues in general, and not just internet *governance* issues. There is still much to discuss regarding factors that limit people's internet access and use, and how the internet can be used to reach development goals.

For APC one of our most successful workshops at the IGF was organised by Electronic Information for Libraries (EIFL). "Do policy makers understand the role of libraries in mobilising the internet as a catalyst for development, innovation and freedom?"⁴ illustrated the need to consider ICT4D policy issues as part of the IGF agenda and produced a proposal to form a dynamic coalition that will advocate for the public access in public libraries.

Emerging issues

APC's priorities were conflict minerals, affordability, openness and network neutrality in the mobile internet, network neutrality more generally, and human rights as a unifying theme.

Network neutrality

One of the principle problems identified at this year's IGF was how to balance technical necessity and economic incentives. While some services like VoIP and video streaming require some measure of data prioritisation, regulators must ensure such discrimination does not affect competition. If governments hope to foster real competition, then the rules must be clear and predictable and telecoms companies must not be subjected to arbitrary legal and policy changes.

The need for clearly-defined rules within which to operate, and an appropriate level of transparency was also highlighted.

² <http://www.apc.org/en/system/files/APCIGFBrief2011.pdf>

³ <http://observatoriodainternet.br/discussions-and-recommendations-from-the-ibsa-seminar-on-internet-governance>

⁴ <http://www.intgovforum.org/cms/component/chronocontact/?chronoformname=Workshops2011View&wspid=185>

Mobile internet

Since many users especially in the developing world are increasingly accessing the internet through their mobile phones, it is critical that any discussion of net neutrality be applied to the mobile internet.

This year's IGF made progress in this regard. IGF participants recognise that there are clear and tangible differences between mobile and fixed internet services and that some key network neutrality challenges are associated with the use of mobile internet.

For instance given the comparatively small bandwidth presently available for mobile devices, operators are very likely to prioritise certain types of traffic out of technical and economic necessity. However if data discrimination for mobile internet is a technical necessity, then policy-makers must define and clearly outline the principles for governing such practices.

Many participants, especially from the developing world, consider mobile internet -- coupled with the growing market of cloud services -- as an important opportunity for leap-frogging. As the cost of fixed connections is often prohibitively expensive, they argue that mobile internet is the best, if not the only, option.

However, high prices remain a problem. Electricity is still widely unavailable and mobile phones are often prohibitively expensive for the poorest in society, and prices for mobile subscriptions are artificially high due to licensing fees and competition issues. There is an urgent need for these critical barriers to universal mobile internet to be addressed through communications policy and strategy.

These issues will resurface in next year's IGF where we expect the policy and regulatory challenges to be addressed more comprehensively.

Conflict minerals

A discussion on the ways to bring accountability and governance to ICT production was conspicuously absent at the IGF. This is a costly oversight as conflict minerals are increasingly part of the manufacture of ICTs.

It seems clear that the issue of conflict minerals needs to be on the agenda for the next IGF. Policy-makers must establish clear guidelines and legislation that address issues of traceability, accountability and responsibility in the mineral procurement chain.

Security, privacy and openness

APC's priorities were internet intermediary liability, the impact of restrictions on freedom of expression and association, and responding to violence against women online.

There was little consideration of women's experiences, needs and rights in relation to security and privacy, especially in regards to violence against women, on and offline. Our work with women's rights defenders has demonstrated that many live and work under constant threat of retaliation or censorship and that the internet is a critical resource for their advocacy and organising.

APC insists that there must be a clearer sense of the roles, duties, responsibilities and liabilities of governmental and other actors regarding online security, privacy and openness and that the IGF should make this issue more visible in its agenda.

We deduce from the Chair's summary notes that freedom of association online needs to be assigned the same level of importance as freedom of expression has in IGF debates. Indeed the two are inextricably linked and interdependent.

Access and diversity

APC's priorities were to initiate awareness and discussion of the use of spectrum to expand affordable access to internet infrastructure. It is an area we have been studying in a number of countries in Asia, Latin America and Africa.

Spectrum use and management particularly in relation to the use of spectrum for wireless communications was an issue present in workshops and interventions at the IGF.

APC hosted a workshop on open spectrum⁵ where participants explored how new, and more dynamic approaches to spectrum regulation have been able to improve access to the internet. Participants analysed the context of spectrum regulation in African and Latin American countries, how it is changing in light of digital migration and the opportunities for multistakeholder collaboration around spectrum use and regulation.

The workshop made a number of recommendations:

- Regulators and other stakeholders should prepare for digital migration and actively ensure that the digital dividend is utilised for increasing access and reducing prices.
- There is no need to wait for digital migration to make use of television white space spectrum. TV spectrum licensing for secondary use should be implemented, so that technologies like TV white spaces equipment can start taking advantage of unused TV spectrum through dynamic spectrum sensing and use of unused TV channels immediately.
- Spectrum is a critical resource to any country and it should be managed in the national strategic interest and not just in the interests of the incumbent operators. This naturally implies a multistakeholder discussion about how best to benefit everyone.
- The spectrum "auction" model may raise initial revenues but encourages squatting.

Access to knowledge

The question of affordable and universal access drove much of the debate; not just around human rights, but also development. Access to knowledge in particular is seen as a means to bridging development gaps in a wide range of areas, especially education.

Consumers International lobbied for an approach to access to knowledge⁶ based on the UN Charter of Consumer Rights.⁷ While this idea may have some merit, the charter predates widespread use of the internet and does not deal with internet issues directly. The proposal involved updating consumer rights and infusing the new document with an appropriate balance between intellectual property rights and access to knowledge.

Cross-cutting issues

Human rights and internet governance

Human rights as the main theme in 2012

We are convinced that a human rights-based approach to internet governance is the best way to ensure universal, affordable access⁸. The promise of the internet as a tool for development and empowerment continues to be unrealised by large segments of the population. Disparities in access between rich and poor, urban and rural areas serve to exacerbate existing social inequalities.

⁵ <http://www.apc.org/en/node/13074/>

⁶ <http://a2knetwork.org>

⁷ www.un.org/esa/sustdev/publications/consumption_en.pdf

⁸ <http://www.apc.org/en/press/governance/can-we-have-internet-governance-without-internet-r>

A rights-based approach to internet governance will also ensure citizens have access at a time when many governments are restricting internet access in different ways. In light of the increasingly complex issues facing internet policy-makers, there is a real need for a clear set of guiding principles for internet regulation.

Such a set of principles already exist. They are on paper in existing international human rights declarations. The international internet community needs to learn more about them and start to apply them in their own policies and regulation.

APC proposed that human rights be the main theme of IGF in 2012⁹ and received a good deal of support for the proposal. The governments of Brazil and Sweden publicly supported the APC proposal as did ISOC in a statement¹⁰. A variety of workshops raised the proposal and it was highlighted in two main sessions (on Access and Diversity; and Security, Openness and Privacy). The Gender Dynamic Coalition supported the proposal and recommended that the next IGF "pay equal attention to women's rights in a way that emphasises a rights-based approach in place of protectionist solutions."¹¹

Increasing prominence of human rights issues

In addition to the main sessions, there were 122 workshops, best practise forums, dynamic coalition meetings and open forums held around the main themes of the forum and the broad mandate of the IGF. Of the 92 workshops and open forums, more than thirty were clearly about rights i.e. on human rights, privacy, security, political participation, development or clearly related by nature of topic.

The Chair's Summary revealed that human rights were mentioned in each of the main sessions and across the range of feeder workshops¹² and that three areas of rights were predominant: internet access as a human right¹³, freedom of expression and freedom of association.

Human rights topics which became visible for the first time at the IGF included:

- a human rights approach to mobile
- remedies for internet rights violations
- human rights and corporate responsibility
- the rights of disabled people and young people.

In relation to the Charter of Internet Rights and Principles, the IGF marked a new stage in its development, with the launch of a beta version of the Charter together with a commentary.

We conclude --and this viewpoint was shared by a number of government representatives-- that there is an increasing emphasis on human rights in the IGF compared to the first five years.

Women's human rights

APC organised a Women's Rights and Internet Governance Workshop on November 24-25 with twenty women from different countries to identify relevant issues for women and to strategise around putting women's rights on the internet governance agenda.

The main concerns raised by participants included concerns that cybercrime laws have become a vehicle to control freedom of expression, information and association. These laws enforce repression and censorship and withhold access to information on issues such as sexual and

⁹ <http://www.apc.org/en/pubs/governance/apc039s-closing-statement-sixth-internet-governanc>

¹⁰ <http://isoc.org/wp/newsletter/?p=4666>

¹¹ www.genderit.org/resources/6th-un-igf-statement-gender-dynamic-coalition-gender-equality-and-womens-rights

¹² Ibid, at pages 4, 5, 7-8, and 9.

¹³ Views on access as a right were diverse and no clear consensus emerged although the Chair noted there was consensus on some issues.

reproductive health rights, especially sensitive information about abortion, sexuality and LGBTI organising. The women were convinced of the importance of strengthening women's participation in internet policy processes to ensure women's rights perspectives are included in deliberations.¹⁴

The Gender Dynamic Coalition also met during the IGF and issued a strong statement calling for the participation of women's rights groups in the deliberations and decision-making of the national, regional and the global IGF processes and adopt a gender audit for planning sessions at the next IGF.¹⁵ For the first time, a separate session on "Women and Internet Governance" was organised and attended by eighty participants who overwhelmingly endorsed the recommendation that this should become a regular event at the IGF¹⁶.

Other issues

ICANN reform

Our focus is on reforming internet governance institutions to ensure greater accountability, participation and transparency. The ICANN reform process⁸ was unfortunately not discussed at the IGF, being in part overshadowed by the IBSA proposal (see section on IG4D above).

As the ICANN reform process is just beginning, APC believes it important that the progress made in the reform be discussed openly at IGF meetings. ICANN is an essential internet governance player, one of a handful of global multistakeholder internet governance institutions and changes made there set a precedent. Besides, it is clear that ICANN has taken comments emerging from the IGF in the past very seriously.

APC feels that the internet governance community and ICANN in its stewardship role will benefit greatly if main session time in the next IGF is allocated to a discussion of the reform. At the very least a full workshop session should be devoted to an ongoing discussion of progress and other realities facing ICANN in the process of improvement. The IGF is also the appropriate forum for critics of the ICANN reform process to voice their concerns.

Need for multi-stakeholder discussions

APC, the Dynamic Coalition on Internet Rights Principles, IT4Change and the Swedish Foreign Ministry hosted the workshop "Human rights: a unifying approach to development, freedom, access, and diversity?".¹⁷ Workshop participants discussed examples of current internet related human rights violations and considered implications for development, freedom, access and diversity, and shared strategies for remedies. A large number of diverse strategies for remedies and forms of accountability for human rights violations emerged.

Participants remarked on the importance of including law enforcement personnel, police, prosecutors and judiciary in future workshops focussing on remedies and human rights, rather than keeping law enforcement issues separately. This kind of dialogue is crucial, since law enforcement agencies are at the forefront of the human rights debate. As civil society we are an ally, not a hindrance, of the law. Consensus emerged that multi-stakeholder discussions of human rights is key to unlocking difficult issues and working through these to multi-stakeholder options and solutions.

Gender Report Cards

For the first time, APC conducted a gender audit of a small sample of main and parallel sessions at the IGF through the use of a gender report card.¹⁸ Although this was a trial

¹⁴ <http://www.genderit.org/node/3483>

¹⁵ Reflections from APC Women: <http://www.genderit.org/articles/stripping-igf-bare-where-are-women-s-rights>

¹⁶ The notes of the meeting is in <http://bit.ly/vgfXsb>

¹⁷ <http://www.intgovforum.org/cms/component/chronocontact/?chronoformname=Workshops2011View&wspid=155>

¹⁸ <http://www.genderit.org/feminist-talk/igf-gender-report-cards>

initiative, preliminary analysis showed that while women made up at least half, and sometimes even a majority of participants in 50% of the monitored sessions, and there is a relatively small gender gap between male and female presenters, this did not translate into actual inclusion of gendered perspectives and analysis in the content of the discussion or presentations. APC concludes that no direct link can be made between actual numbers of women present and the inclusion of a gender perspective. This is an important learning for the organisers of the IGF and IGF workshops.

There is support for Gender Report Cards to be repeated in future IGF processes by the Gender Dynamic Coalition as well as the participants of a separate session on "Women and Internet Governance" organized by Kenya ICT Action Network, the Association for Progressive Communications, Verizon and the International Chamber of Commerce and the Kenya ICT board.

If there is serious commitment to uphold the multistakeholder principles and to ensure diversity of concerns and knowledge, this means critical inclusion of gendered analyses and perspectives. Adapting the IGF Gender Report Card for all IGF sessions would be very useful for ensuring that gender is more systematically monitored and addressed in future IGF processes. Such measures are a critical first step that the IGF secretariat should consider for the next IGF in 2012 and future fora. There is also a need to go beyond numbers and move from gender parity to inclusion. Some recommendations to this end includes specific consideration of the gendered dimension of thematic areas, and identifying speakers who can enrich the dialogue on internet governance by bringing in a women's rights and gendered analysis.

Strengthening the impact of the IGF process

Various proposals related to internet governance --primarily from governments-- were discussed. Civil society groups and other stakeholders do not have sufficient access to multi-lateral processes and APC believes that such proposals must be developed in a multi-stakeholder bottom-up manner.

In addition, it is difficult for civil society to engage meaningfully in these discussions at the IGF if timelines for consideration and discussion take place outside the IGF. The important policy issues of access, development, empowerment and rights (including security openness and privacy) as well as emerging issues, need consideration by all stakeholders together.

We believe the IGF is an appropriate, UN-mandated forum for stakeholders to discuss these issues together. In our final statement to the IGF we called for more in-depth multi-stakeholder dialogue on such proposals nationally, regionally, and at the global IGF before they are presented to the UN General Assembly.

We noted the proliferation of internet governance principles developed by several institutions. Some included at least some aspect of human rights, but others (such as the IBSA proposal) did not at all. The IGF is the ideal forum for the discussion of such principles. We recommend that more space be allocated to this, either in the form of a pre-event, or of a thematic IGF.

IGF Format

Even though the basic format of previous IGFs was maintained in Nairobi, key questions were proposed to structure the main sessions debate. It proved to be a creative and useful innovation which contributed to making the main session's discussion more focused and balanced. It also made identification of feeder workshops easier. The decision to minimise the overlap between workshops, particularly feeder ones, and the main sessions was also a good one.

However we propose that in the future the issue of overlapping of same-issue workshops be addressed. This year the various workshops on human rights issues were scheduled at the

same time. It should be avoided in the future to make sure that participants interested in a particular issue -- especially if it is a relatively new issue on the agenda -- are able to follow the discussion and benefit from diverse perspectives.

We encourage the MAG and the IGF Secretariat to keep building on this year's experience. The multi-stakeholder working groups (formed by MAG members but opened to all interested stakeholders) which worked on the proposals for each main session is a practical way to ensure the inclusion of a diversity of views.

The Chair's summary is a very valuable resource as an overview of the key issues addressed in the main sessions. In addition we would like to propose the IGF Secretariat play an essential role by communicating important news emerging from workshops such as the formation of dynamic coalitions and other action-oriented initiatives.

Conclusion

Human rights is the framework with which we judge the merits of ICT policy. To us internet governance has to assume a rights-based framework. Business and technical decisions do not exist in a vacuum; they must be informed and measured by respect for the rights and well-being of the people who will be using technology.

We need more cross-pollination between business, law enforcement, civil society and the technical communities. Rather than talking *about* each other, we should be speaking *to* each other. The IGF has contributed a great deal to making progress in that regard. However more has to be done when it comes to enhanced cooperation and the way in which the global institutions dealing with internet governance shape and make decisions. Multistakeholder models of participation in internet policy-making have to be deepened. The IGF has an important role to play in making this happen.

In this year's IGF there were very strong human rights themes across the main sessions, particularly around freedom of expression and freedom of association. However we believe that it is time for human rights to be the principal theme of the Seventh IGF.

Acknowledgements

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Our gratitude to the IGF Secretariat, particularly Chengetai Masango and Farzaneh Badii, and to the members of the Multi-Stakeholder Advisory Group who worked hard to make the event a success.

We are proud of our long-time association with Alice Munyua, chair of the Kenya Internet Governance Steering Committee for her role in making the Nairobi IGF a successful one. We are also grateful to our colleagues at Kictanet, especially Alice and Grace Githaiga, for working to hard to ensure APC members, delegates and staff were able to attend.

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