REPORT OF THE 2012 KENYA IGF ONLINE DISCUSSIONS

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By Barrack Otieno and Grace Mutung'u (Bomu)

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The Kenya ICT Action Network (KICTANet) is a multi-stakeholder platform for people and institutions interested and involved in ICT policy and regulation. The network aims to act as a catalyst for reform in the ICT sector in support of the national aim of ICT enabled growth and development.

Kenya IGF 2012 online debate report

Introduction

The Internet Governance Forum (IGF) is an open global forum for policy dialogue on the Internet, bringing together stakeholders from various sectors including private sector, civil society, governments, technical and academic communities. The discussions, under the ambit of the United Nations, are held throughout the year with stakeholders converging annually in a different host country.

The IGF was first held in Athens in 2006. Since then, it has developed in various ways. For instance, various regions convene mini IGFs that feed into the main IGF meeting. The East African IGF, bringing together players from the East African Community, is such an example. Further to that Kenya holds a local IGF (KIGF) to discuss issues of Internet governance that are relevant in the country. Prior to KIGF, KICTANet organizes online discussions on topical issues. This year, the discussions which run from June 14-22, 2012, were held on three local list serves, namely KICTANet, ISOC-Ke and Skunkworks which are host for ICT policy, Internet governance and technical discussions respectively. The discussion topics were as follows:

Day One: 14th June 2012	International Telecommunications Regulations (ITRs)
Day Two: 15th June 2012	Intermediary Liability
Day Three 18th June 2012	Technology and Violence against Women
Day Four: 19th June 2012	Open Data/E-government

Day Five: 20th June 2012	Infrastructure
Day Six :21st June 2012	Data Protection and Freedom of Information Bills
Day Seven: 22nd June 2012	Winding up

During the period of the discussions, ICANN had just revealed the applications it had received for its new generic top-level domain (gTLDs). This elicited interest in the lists and there was a conversation on the same, with listers raising concern about the very low intake of gTLDs by Africans. The issue of ITRs also brought forth quite a debate and it was hoped these issues would further be thrashed out during the face to face Kenya IGF that would be held after the online discussions.

This report is in tabular format, showing the issues of concern in each topic and the recommendations given by discussants as well as issues for further discussion.

Topic	Issues of Concern	Recommendation/Issues for further discussion
International Telecommunications Regulations (ITR's)	International Telecommunication regulations are general principles related to international telecommunication services and its transport means. The ITR treaty was adopted in the *World Administrative Telegraph and Telephone Conference* (WATTC) held in Melbourne, 1988. It however came into force on July 1, 1990 and since then no updates have been made to the ITR provisions which leads to the following questions: 1. As countries prepare for the World Congress on International Telecommunications to be held in Dubai in December 2012, what should Kenya's priorities be? 2. Should Kenya make its stand as a country or should we bargain through the Africa Telecommunications Union. What are the implications of taking a stand as a country or as a regional block?	Telecommunication environment has changed drastically since 1988, and there is therefore need for more equitable rules as well as net neutrality The ITR is heavily skewed against developing countries and Africans need to have a common position and strategy to protect our interests For Kenya to participate through the ATU, there should be discussions from the local level among various stakeholders such as TESPOK, KITOS and KICTANet, so that Kenya's position is informed by wide participation It is noted that there are no national consultations in regard to ITRs and ATU position seems solidified. Ways must be sought to have national consultations. Various organizations such as CCK, Computer Society of Kenya, KENIC, TESPOK should develop their positions on the issue. There are many myths surrounding ITRs and ITU. There is need for dissemination of facts on the issue so that debate on the same can be informed

		Further Issues
		Considering that CCK is the regulator and other stakeholders are players on the field, is it reasonable to expect CCK to consult players before taking positions? How can consultation by CCK be ensured?
		Should ITRs be expanded to include the Internet? In which case, how do we incorporate the multistakeholderism that is typical of Internet discussions?
New gTLDs	Of the new gTLDs revealed by ICANN, only 17 out of 1930 applications are from Africa. 1. What are the implications? 2. What strings are controversial/sensitive from a national perspective?	The reasons for gTLD applications are not just financial. Brand identity and category protection are also motivations for the same. It is of concern that Africa did not feature in applying for geographical names. Going by past experience where cyber squatting led to names such as Kenya dot com being registered to non Kenyans, we should take more interest in the issue. In future, the new gTLDS may be of great importance commercially and in terms of national pride, just like domains have over time. Our government should therefore facilitate reclaiming of our "lost" domains as well as being part of the new

		ones
Intermediary liability	Intermediary liability arises where governments or private litigants hold Internet intermediaries liable for unlawful or harmful content created by users of their services. The power and influence of Internet intermediaries, as well as their limitations in enabling communication and facilitating information flows is now attracting more attention in Internet governance discussions. Questions: 1. What are the laws that govern intermediary liability in Kenya? 2. What sort of content would be deemed a liability by intermediaries and therefore justify removal? 3. Has Kenya had instances where intermediaries have been asked to take down content or block services e.g. text messages? 4. Any other concern?	It is not explicit in Kenyan law on the liability of intermediaries. One can refer to the Sale of Goods Act and Consumer Protection Bill (2011) on the quality of services that intermediaries should offer. There is a thin line between creative journalism and defamatory/ offensive content. Intermediary liability also goes to the issue of net neutrality in the sense that intermediaries may decide on how to allocate bandwidth under "fair usage." Intermediary liability and cyber security: This became quite an issue when CCK proposed to install network monitoring equipment. It is important that laws are put in place to clarify situations where the State should act as well as how intermediaries should deal with take down requests. There is emerging practice where intermediaries make known their policies beforehand so that in case of breach of their conditions, the intermediary can pull down such content. Examples of cases of intermediary liability include those where domains have been pulled down because of trade mark issues. Most of these cases

		are not officially reported and so were not widely discussed.

Court tested cases of intermediary liability and consumer protection would give a better view on the law in Kenya as regards the same. |
| **Technology and Violence against women** | While cyber space has provided secure tools and spaces where women can enjoy their freedom of expression and privacy of communication, the same benefits of anonymity and privacy also extend to those who use them for criminal activities, and use the internet to commit violence against women

The use of cell phones, social networking and micro-blogging sites remain great tools to stay connected. But they are also easy to misuse. For example women have been intimidated, humiliated or even stalked using these tools

Questions

1.   How can we strengthen participation of women in areas of internet governance, telecommunications, and cyber crime policy regulation? | Violence against women through technology occurs in urban as well as rural areas. It also happens across all social strata

Such violence is an advancement of violence against women in the offline world.

There are few mechanisms of reporting such violence. There are also problems associated with reporting for example, law enforcers do not understand the issue so as to be more helpful to victims.

Technology has been used to improve lives of women for example in helping rape victims in Haiti through Ushahidi.

The same tools being used to propagate violence against women can be used to educate and also strengthen participation of women in areas of internet governance, telecommunications, and cyber |

	2. Do ISPs and Mobile companies have policies on online/virtual violence against women?	crime policy regulation.
		There is need to raise awareness among women and the whole population about the dangers of technology to them.
	3. What actions can be taken to encourage service providers, companies etc. to develop corporate user policies and practices in relation to user rights to freedom of expression and privacy, transparency etc?	More needs to be done at a policy level to ensure that technology and violence against women is acknowledged as a problem.
		ISPs can play a role in curbing violence against women by treating it as cybercrime.
	4. In what ways can various stakeholders contribute to remedies, from a technical/social perspective?	
Open data/ e-government	According to http://www.idea.gov.uk/idk/core/page.do?pageId=18562122 the idea behind open data is that information held by government should be freely available to use and re-mix by the public. Kenya is among the countries that have embraced open data and e-government, It is a movement to make non-personal data: a) open so that it can be turned into useful applications, b) support transparency and accountability, c) make sharing data between public	It is impressive that some states take their role in providing digital services proactively. An example is UK Government's "Digital by Default" and we can emulate this. There are many initiatives undertaken by the Government e.g. the Open Data Initiative. A study needs to be undertaken to assess the success of these initiatives. Key drivers in use of open data are among others: a) Veracity of the data, b) Availability of the right data, c) Awareness,

	sector partners more efficient.	d) Can the data be turned into 'edible' things and
	E-government on the other hand, according to Wikipedia, refers to digital interactions between a government and its citizens	e) Open data champions within government ministries, civil society and academia to ensure open data lives beyond the initial hype and finds sustainability.
	Questions	
	1. What opportunities does the open data initiative present to the nation, and to what extent have they been exploited?	
	2. What challenges does the use of open data present and how can they be mitigated?	
	3. What are the key drivers in the use of open data?	
	4. As a country do we have any form of Licensing that determines the use of open data?	
	5. The government has embarked on a number of e-government initiatives. To what extent has the Citizenry embraced e-government? What steps should the country take to ensure the citizens fully embrace e - government?	
Infrastructure	Kenya is lauded as being a leader in Internet infrastructure in the region. Provision of infrastructure is acknowledged as a driving	CCK has provided some information on projects funded by the Universal Access Fund but with

	factor towards achievement of Vision 2030. In deed in this year's budget speech, Government made proposals to allocate money to expand the same. Migration to digital television as well as a law aimed at curbing communication cables vandalism were also discussed in the budget. Nevertheless questions still remain because infrastructure remains concentrated in major cities and important centres and facilities in rural areas do not have sufficient access to the Internet. a) Are Government's efforts in the right direction towards providing infrastructure that will get us closer to universal access? b) With Kenya's new governance structure, how can Government facilitate efficiency at counties through ICT/Internet? c) Are private citizens/ civil society playing their role in increasing access?	CCK is waiting to be restructured under a new legal framework; it might be a while before the same is implemented. There have previously been disputes involving private sector and Government on allocation of resources. Most have been solved amicably but questions remain on whether there are adequate legal mechanisms that ensure equity in distribution of ICT infrastructure. Some recommendations for improvement: 1. CCK to provide all stakeholders with a quarterly report on the status of coverage and interventions to deal with underserved areas. 2. An interactive map showing access availability and unavailability of infrastructure to be made available. 3. CCK to publish its criteria for distribution of national resources. 4. Setting up of a joint PPP task force to deal with this issue.
Data Protection /Freedom of Information	Kenya is currently in public consultation stage in developing Data Protection and Freedom of Information laws.	The Bills are open for comment through the Constitutional Implementation Commission and all interested parties should comment.

	Questions	CIC can report back to the community on their revisions before the Bill goes to the AG and subsequently to Parliament.
	1. What needs to be done for the Freedom of Information and data protection bills to be implemented and how can stakeholders be involved in the process?	
	2. There is a proposal in the EU law to make it illegal for data to flow to countries that do not have data protection in place. What implications will this move have for our country and how can this be mitigated?	Civil Society should keep vigil and lobby to ensure that the Bill upholds human rights and that it is implemented. Collaborations with Members of Parliament especially those on KICTANet and other networks should be maintained and taken advantage of.
		Private sector should also take keener interest in the Bills as they present real business opportunities for example in Business Process Outsourcing (BPO).