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Shaping the data governance debate to maximize the development potential of data

anita gurumurthy,
IT for Change,
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The main thesis of the [background note by UNCTAD](#) - How to make data work for the 2030 Agenda for Sustainable Development posits a key question - How can we shape data governance to maximize the development potential of data? Integral to this question is the issue of equity or rather, the lack thereof, in the digital economy.

Para 8 highlights the imperative to consider both how to govern data at the global level and how to enable developing countries to strengthen domestic capabilities to create and capture value, instead of remaining predominantly users and consumers of digital platforms.

I would like to use this diagnostic to make my points for global and national data governance imperatives.

The discourse of equal benefits for developing countries enjoys easy currency today. However, we need to make a distinction between substantive participation and adverse incorporation. To benefit truly is to reset the terms of data value generation and distribution. This cannot be addressed through data for good initiatives into which big tech companies are invited to pool their data. It matters who owns and controls the data.

The ideas of the bridging the digital divide or technology gap do not capture the inequality in the data economy. What we are talking about is the propensity or affordances of centralisation in platformised commerce – and a brutal decapacitation of local economies, depletion of local capabilities and destruction of innovation potential.

Developing countries face a Catch 22 – they need the platform infrastructures of today to be economically relevant, and yet, these infrastructures create dependencies for tomorrow.

Benefits can begin to accrue only if we stop the bleeding of the economy (as the African scholars say), and move from an ideological absolutism of free data flows towards a new economics of platformization – in which data flows is not a dogma but an important element along with other elements.

1. Understanding data flows as a necessity-proportionality issue in development

[UNCTAD's Report of the survey undertaken with G20](#) and some other countries on regulation of cross border data flows reflects divergences in national definitions of data and sectoral data regulation. While differences in approaches do undermine the ease of interoperability for data access and sharing, including across borders, the reality is that data governance is entangled with the institutional histories, formal rights and socio-cultural values of a given society or community. For eg. the survey shows that credit and location data are sensitive personal information in one country and not others, biometric information is seen as sensitive personal information in some jurisdictions, while there is no consensus on whether political association membership or genetic information is sensitive personal information.

This points to the need for a dialogic basis to understand a diversity of worldviews in order to evolve the international principles and norms – a global data constitutionalism – that can serve as a basis for global and national public policies on data governance. This is crucial especially as sectoral data governance frameworks are rapidly taking shape in the multilateral and other regional systems.

The UNCTAD G20 survey responses also illustrate that data flows are not equal to trade nor are the laws and regulations confined to trade contexts. Nevertheless, at the international level, cross-border data flows are currently discussed predominantly in the context of trade agreements. Furthermore, the report points to how current international agreements, particularly trade agreements but also discussions within the OECD, the Council of Europe and regional initiatives, tend to be too limited geographically, and low-income countries are often not parties to these agreements. It concludes that cross-border data flows thus fail to deliver equitable sharing of economic development gains or properly address possible risks, as things stand.

UN policy discourses on global data flows (including [UNCTAD's background note](#) for this meeting) are also – perhaps justifiably – geared to emphasize the role of data to address 'global' development challenges. While global data public goods are indeed important for our common futures, the development of national public goods is key and is often left to market access routes for infrastructure creation. Aggregating data globally for particular exigencies is indeed valuable as para 14 of the background document states, but the public and social value of data is also needed to be framed in terms of small data, local data, community data, all of which can lend themselves to contextual actions, local agency, local ownership and control, so critical to the right to development.

Global data pools to address global challenges are also sites of [corporate opportunism](#). Private entities are also known to have [exploited community-based data stewardship initiatives](#) to establish a pipeline to the community's raw data resources that they can then deploy towards patented commercial products. While the transformation of data into insights and technology solutions – as underscored by para 14 is important, we need to ask like the Digital Economy Report 2021 did - for whom the data flows?

The dream of data as a global public good enabling a just, equitable, and inclusive socio-economic order cannot materialize unless the IP regime that enables data processors (particular companies adopting the platform business model) to enclose data and data-based intelligence in perpetuity is overturned. Without a concrete challenge to the IP rights of companies on the digital value chains, a public goods approach is only likely to entrench existing inequalities by furthering data extractivism. In global health policy debates, developed countries [have pushed](#) for the idea that “WHO should develop a mechanism for State Parties to automatically share real-time emergency information, including genomic sequencing, needed by WHO for risk assessment, that builds on relevant regional and global digital systems”. But this call for free flows of health data across borders is not accompanied by concomitant attention to equitable distribution of the value of the resultant data-based innovation (which will be unfree and propertized by Big Pharma).

As legal scholar, Tomasso Fia, [argues](#), trade secret protection of data aggregations needs to be counterbalanced effectively against social considerations; for instance, fundamental rights of freedom of information or freedom to conduct a business in order to prevent data enclosure.

It is also instructive that free data flows in the communicative spheres controlled by social media giants points to a deep irony; [a European Union research](#) found that targetted advertising is

economically ineffective but all those flows of personal data and profiling have ended up violating fundamental rights and consumer rights and causing so much negative societal impact.

Also, and especially in the context of the Global Digital Compact (GDC) discussions, while the focus on individual control over data is important, a fair and just platform economy needs any individual right to be encoded not as a private contract, left to the whims of platform firms, but as a social contract outside of market considerations. Data cannot flow with trust (as the idea of public trust) if the burdens of its ethical and rights-respecting character are individualized. Emerging insights including about the EU GDPR is telling us is that trust requires institutional commitment to reflexivity – as we see new risks – deanonymisation and group profiling, inadequacy of ‘consent’ in secondary uses in downstream data markets, and more. Any global institutional mechanism for a digital compact must deal with the incredible ingenuity of the all-powerful digital corporation.

What this discussion tells us is that data must indeed flow, but as is *necessary* (and I reiterate the submission made by the Secretary General of UNCTAD at the opening session), and data cannot flow, unless there are equal rights.

The trust we want with data flows is not an end. It is a means to the vision of development we seek. A necessity-proportionality framework for data flows should therefore guide policy discussions – a) what is the value proposition of the data flow for development in objective terms, and b) whether that is justifiable for the balance we seek in terms of economic, social and public value creation in society.

As the UNCTAD report on the G20 survey underlines, we need to support global development goals – but also allow sufficient policy space for countries at varying levels of digital capabilities to secure national priorities and development objectives.

2. The key pegs for national governance of data

A three-pronged national approach is necessary to democratise data value.

a) A new social contract for the platform age b) Public platform infrastructures and other digital public goods and c) Institutional arrangements to ensure the health of the platform economy and prevent private capture of public goods.

a) Countries need a data governance regime that accounts for civic political and privacy rights, as well as economic rights of individuals, small enterprises, groups and collectives. This involves setting boundaries for the data market – and deciding how constitutional rights and principles and public interest concerns – can be read holistically into data rights.

b) Countries need digital public goods – protocols, standards, cloud infrastructure, public AI, and new public-private and public-community platforms models – that can stimulate domestic data infrastructural capacity.

c) National policies also need to create new institutional arrangements, giving due consideration to how social and public value can be enabled alongside private value; how guardrails can be set for personal and public data use (including to prevent capture of digital public goods (see Box 1)), how data reciprocity can be encouraged (as proposed by EU health data commons), what kind of considerations warrant data sharing for public (policy) purposes and so on.

Box 1

Preventing private capture of digital public goods is an important policy issue for national digital economies. For example, [the public digital payments interface that Brazil has developed to boost digital financial transactions – Pix](#) – has a differentiated transaction fee structure: end users are not charged in order to incentivise digital financial inclusion, but private payment service providers are charged a minimal fee to help the central bank recover the cost of maintaining this infrastructure. The Pix case illustrates an ecosystem model built on [semi-commons approach](#), where the base infrastructure layer is provisioned publicly, and the innovation layer then runs on top. Rule-based guardrails (differentiated pricing, in this case) can create virtuous cycles between public investment, private enterprise and human capability in the digital economy.

National efforts to build data infrastructural capacity cannot materialize without public finance and efforts to streamline global public finance. At the global level, we also need measurement efforts to focus on the generative potential of the local data economy, capturing the pathways for value creation, distribution and democratization.

National policy making is sometimes seen over-critically – as also in the UNCTAD Background Note, and cast as a risk for the fragmentation of the Internet, and consequently, for possible loss of benefits from data-sharing for development.

Truth be told, the original fragmentation of the net goes back to the economic dominance of big platforms who created walled gardens and robbed the web of its potential for real sharing based on mutuality.

Also, national and subnational approaches in data need not be seen as a replacement for global public data goods. They are necessary and legitimate in their own right. Unfortunately, we still don't yet have a measure to track the benefits they bring, and the status quo gains immensely from demonizing local public initiatives to spur data value. At IT for Change we are running a public AI partnership with the govt schools in the state of Kerala, and we believe a community-public data partnership will be far better for children than any state of the art corporate controlled AI model that will shape the future of children through its over confident predictions.

3. What do we mean when we say multistakeholderism?

Para 40 of the Background Note submits that the internationally distributed nature of data collection and storage in multiple locations by public and private entities with users spread across the world implies that a multi-stakeholder approach is best suited to maximizing the benefits for all stakeholders involved in the various stages of the data value chain.

Indeed, public consultations with multiple stakeholders is a sine qua non of public policy processes. However, even participatory policy making, [as the WSIS principles underline](#), presumes well-bounded roles and responsibilities of the different stakeholders. The 'multistakeholder approach' then is to be understood as a methodology of public participation and dialogue, and not as a proxy for the governance process or the institutional mechanisms. Maximization of benefits in the data value chain is a question of distributive justice, and falls squarely on the allocative, distributive and redistributive functions of the state. Watching the state and holding it accountable are part of the role and responsibility of civil society and other actors.

If dislodged from the axiomatic functions of public participation, public accountability and public interest, multistakeholderism can become a facade for legitimizing corporate power and the

collusion among states and corporations. This is why we should be clear about what we mean when we say multistakeholderism.

While multistakeholder consultations – as in the case of Canada – preceded the introduction of its Digital Charter, the Digital Charter Implementation Act is currently being discussed in parliament (and not in a multistakeholder setup)

The government may engage, as in the case of the Data Protection Advisory Committee of Singapore, public and private sector as well as civil society representatives to advise the independent authority – the Personal Data Protection Commission in this case – with respect to reviewing and administering the personal data protection framework.

Similarly, the United Kingdom incorporates multistakeholder feedback through various mechanisms and fora, including the National Data Strategy Forum and the International Data Transfers Expert Council.

The management of the internationally distributed nature of data is an operational issue. The various actors involved in these arrangements require to adhere to principles and norms that are made multilaterally/regionally, by representatives of the people.

The Digital Economy Report 2021 – in fact articulates this rather eloquently and simply - “For the global debates on data and AI governance – as well as the potential creation of an international body or eventual regulatory frameworks resulting from those debates – to be fully inclusive, they should take place under the auspices of the United Nations, which is the most inclusive international forum in terms of country representation. Currently, developing countries are underrepresented in global and regional initiatives, which results in neglecting local knowledge and the cultural context, as well as their interests and needs, in global discussions, and contributes to increasing inequality.”

As we approach the GDC, it would be worthwhile recalling the bounded, albeit vital, political meaning and purpose of multistakeholderism.

4. Conclusion

The universality of oppression and exploitation in the digital economy today is antithetical to the powerful mandate that brought UNCTAD into being – the intent to decolonize. Autonomy and emancipation in the data age for nations and peoples depends not on maximization of private value as represented in the dominant platform model, but the maximization of choices for self-determination, dignity, peace and sustainability that can be harnessed from data – nationally and globally.