Symposium on the Economic Impacts of Data Localisation in Africa: The Impact of Data Localisation on South Africa's Project of Sustainable Development

By:

Shanelle Van Der Berg

May 16, 2022

Data is a key driver of the global digital economy, with data flows and connectivity increasingly fuelling the global economy as a whole. The so-called data revolution has resulted in the creation of tremendous wealth and value in a short period of time. Enormous amounts of data are being generated, with global Internet Protocol traffic predicted to reach 150,700 GB per second by 2022. The digital economy, with data as its key driver, has also catalysed tremendous innovation across the world, while almost half of cross-border trade is catalysed by digital connectivity. According to some estimates, the digital

economy is equivalent to the gross domestic product (GDP) of a G7 country, and is growing at a much faster rate than emerging markets.

However, the advantages of development in the context of the digital economy have not been equitably distributed. Instead, benefits are concentrated in a small number of countries and companies, with the United States and China standing out as leaders in the digital economy. Africa in general, and South Africa in particular, must therefore devise innovative strategies to benefit from the digital economy, and capitalise on the value that data potentially holds. At the same time, South Africa must ensure that its data protection regime is adequate for the protection of human rights guaranteed in international, regional and domestic law, such as the right to privacy.

South Africa must therefore carefully craft policies aimed at creating a sufficient data protection regime, without jeopardising its project of sustainable development, as reflected through its commitments under Agenda 2030; Agenda 2063 and its National Development Plan. One policy issue that has led to vociferous policy debate both locally and globally, is whether and to what extent nation states must introduce data localisation measures to assert its data sovereignty over locally generated data, while protecting the safety and security of personal data. Data localisation refers to the collection, processing and storage of data within the borders of the country in which the data was generated, and can be contrasted with the free and unencumbered flow of data across borders. Whereas South Africa's Protection of Personal Information Act, 2013 (POPIA) currently regulates personal data so as to create a conditional flow regime that is partially comparable to the EU General Data Protection Regulation, the publication of the draft National Data and Cloud Policy in April 2021 hints at a more state-centric and protectionist stance towards the regulation of the data economy in South Africa.

Many of the purported objectives of restricting the free flow of data across borders are in fact compelling: It seems both fair and logical that countries should be able to reap the socio-economic benefits of data generated within their borders. Governments are also justified in wishing to ensure that their peoples' data are safe, secure, and not subjected to foreign surveillance. Crucially, South Africa must ensure that it is not 'left behind' in the global drive for sustainable development due to the skewed concentration of wealth and

power in the digital economy, with a few countries and digital giant firms reaping disproportionate benefits from data revolution. Some call the global political economy in respect of the datasphere a form of digital colonialism, while others point out that to sustain an unjust status quo is fundamentally anti-development.

The debate about data localisation versus the free flow of data across sectors and borders is highly polarised. There is an urgent need to move away from an exclusive focus on where data is stored and processed, and to instead work towards finding local, regional and global solutions towards interoperability of data protection regulations, while simultaneously investing in the skill sets required for South Africa to reap the socio-economic benefits that data potentially holds. As a first step, policy makers must ensure that they properly understand the digital economy and the nature and role of data as a key driver thereof. For example, data in itself holds no value. It is only through its manipulation and use that social and economic value is created, added and captured. Much work therefore needs to be done to invest in digital literacy, data analytics and other skills necessary to capitalise from the Fourth Industrial Revolution, while upgrading basic ICT infrastructure. By pursuing a drive for local data centres, South Africa may find itself in a position where its unstable energy grid eradicates any advantages it could have derived from storing data locally. Even if essential infrastructure was more developed, the costs of data centres are outweighed by the relatively small number of jobs created and energy input it necessitates.

The following policy recommendations can accordingly be made in the current regulatory landscape in South Africa: First, government should ensure that processing standards and the conditional flow of data as set out in POPIA, are complied with and enforced domestically. Second, government should carefully revise the draft National Data and Cloud Policy in consultation with state and non-state stakeholders, and based on public input on the draft policy. Third, South Africa should assume a leading role in advocating for interoperability and policy coherence in Africa and globally. Finally, all relevant stakeholders should participate and cooperate in striking a balance between data protection and economic development through the adoption of a ‘whole society approach’ to the regulation of the data ecosystem.

A holistic and collaborative approach to data protection and inclusive economic growth is capable of spurring sustainable development, and reducing new patterns of inequalities occurring within South Africa and between South Africa and other nations in the context of the digital economy.

Shanelle van der Berg

Research Fellow 2021-2024, Stellenbosch University, Department of Public Law

Research conducted for the Mandela Institute, University of the Witwatersrand, School of Law

View online: Symposium on the Economic Impacts of Data Localisation in Africa: The Impact of Data Localisation on South Africa's Project of Sustainable Development

Provided by Afronomicslaw