Safeguarding Sovereignty and Digital Transformation in Africa

By:

Kimberley Nyajeka

December 8, 2022

The concept of sovereignty is the foundation of decolonisation in Africa. Sovereignty is the most tangible fruit of the wars for independence and self-determination across the continent. The maintenance of this independence is a recurring value that echoes through the constituting documents of the African Union (AU) as well as the regional economic communities (RECs). Even the efforts towards economic integration on both continental and regional levels are driven by the appreciation that political independence would not lead to a better life for African people unless consummated with economic independence from former colonial rulers.

Endeavours towards economic development through regional and continental integration in Africa must be viewed in light of the justifiably high value placed on maintaining sovereignty. In this context, sovereignty shall be defined as the right to exercise, to the exclusion of any other state, the functions of a state-allowing a country to have authority over its own affairs. Jackson notes that state sovereignty is a question not of power, but of freedom from legal

subordination to any authority. In other words, as a legal regime or status, international external sovereignty entails the rights that can guarantee independence.

With this definition in mind, how the concept of sovereignty will translate in the on-going pursuit and evolution of digital transformation and data protection in Africa is of great interest. Digital sovereignty has been described as the ability of both individuals and of society to share the digital transformation in a self-determined way.

This article aims to consider the concept of digital and data sovereignty in Africa. It will consider how the development of the digital economy can be effectively established in the African context, in light of Africa's reliance on partnerships with third countries for internet access, and reliance on multinational service providers for access to consumer services with the digital economy.

Digital Colonialism

Colonial power is understood as a group of people, or an entire state, exerting control of the social, economic and political sphere, by reordering and reinventing social order in a manner that so benefits it. Birhane notes that while traditional colonialism is often "spearheaded by political and government forces, digital colonialism is driven by corporate tech monopolies- both of which are in search for wealth accumulation". Many of the digital platforms used in Africa daily for basic consumer communication needs are created and owned by companies based in China and the United States of America (USA). The entry and operations of these platforms are subject to various regulatory standards in different countries and parts of the world. Despite the invaluable services they provide, multinational software providers like Google and Meta, and telecommunications innovators like Apple and Samsung are consistently under scrutiny for questionable data protection policies. The lack of control governments have over digital innovation, including how data is collected stored and possibly shared, has been a matter of global concern over the last decade. Discussions around this issue have been centred around regulating digital transformation to ensure the ethical use of data regardless of its origin. In the African context, the consideration of sovereignty remains relevant in all

aspects of development- including and especially when considering digital transformation and establishment of the digital economy.

While sovereignty has traditionally been in the purview of nation states, the emergence of digital technologies is deconstructing the notion by including civil society and public interest groups, individuals and in some instances private entities in directing how and when sovereign power by a state is exerted. Through social media platforms, individuals have been able to engage in social justice movements that have reshaped how countries function. Through information exchange platforms and video conferencing, Africans have been able to actively participate in discussions and research initiatives that would otherwise have excluded them due to lack of funding or other geo-political barriers. Most notably, the evolution of e-commerce platforms such as M-Pesa in Kenya and Ecocash in Zimbabwe have allowed the 'unbanked' citizens in these and other countries take up income generating activities in the informal sector. Tech start-ups have also taken root in Cape Town, Cairo, Lagos and Nairobi touting the notion of the "African Silicone Savannah". However, when considering the impact of digital innovation in Africa more holistically, there are negative impacts that are ultimately rooted in digital colonialism.

The continent has not been spared from the elitist technological domination of the West, that as resulted in the global digital divide- where African states have limited access to essential technological advances that are readily available in developed countries. Despite the noted innovations and embrace of mobile payment platforms and social media, it is estimated that only 22% of the continent has internet access. As such, technological development in Africa is subject to the standards created by bodies outside of the continent- limiting the exertion of sovereignty over these digital entities by African states. The intrinsic positive value placed on innovation comes into disrepute as the sovereignty of African states (and in many respects that of individuals) becomes subject to intellectual property embargos, financial regulations, and data collection and distribution standards created and influenced by third countries and the multinational entities housed in them. States are dependent on the technological advances of other countries, and therefore cannot exert control or power in line with the overall Pan-African vision of economic independence.

Digital Transformation Limiting Sovereignty

As noted above, the digital divide continues to plague African states. African countries, while still lagging in evolution of the digital economy, have become largely dependent on innovations from third countries. An example of this one-sided relationship, and the encroachment to the concept of sovereignty seen in the agricultural sector. African farmers have, over the years, adopted the practice of precision farming. Put simply, this method of farming makes intensive use of data about specific geographical local locations and crop genetics to enhance production, to increase productivity while reducing the negative environmental effects of certain agricultural activities. This data is collected using technology such as the Azure FarmBeats application being developed by Microsoft in the USA, which utilises the farmer's global positioning system (GPS) location data through a mobile phone, and pairs it with the soil information collected by sensors installed on the land. The software then provides recommendations to the farmer about the right fertilizers and seeds to use based on their individual particular needs. This method results in the harvesting of valuable data provided freely by African farmers- which would not, at face value, appear detrimental in any way. However, in order to access the compilation of the data so freely submitted, farmers are required to pay for this function through the application. Of even greater concern is the terms and conditions for the use of the technology that allow the provider to sell the farmers' data in such a manner that excludes the farmers who have provided the valuable data from benefiting from the profits. Ugwu eloquently highlights that "because of the way most countries data and intellectual property laws are written, it is the company, not the farmer, who owns the data" collected by the technology provider.

In this instance, the African states sovereignty is limited in two distinct ways. Firstly, it cannot ensure participants in a vital industry cannot access data derived from within its borders. Secondly, the state cannot exert control over how the data collected by the company is used- particularly knowledge of whether or not the data will be exploited or used in an ethical manner. As a result Africa continues to remain in the peripheries of the global economy- at lower end of the global value chain. Valuable information relating to the impact of climate change on agricultural activities, or knowledge of the best drought or pest- resistant plant genes becomes largely inaccessible to the farmers who play an integral role in the development of these technological innovations.

Data collected by precision farmers is one of the many examples that can be used to illustrate the limitation of sovereignty in the process of digital transformation. This scenario can be readily applied to a number technology/software providers based outside of Africa, and the omniscient authority it could have over the population in any country- having access to any and all information to the exclusion of effective state control.

Safeguarding Sovereignty in the Digital Age

The question now turns to how best African states can address this encroachment of sovereignty and establish a culture of digital sovereignty in their own right. There are many factors to consider before reaching a conclusion. On one hand, the process of globalisation and the on-going 4th Industrial Revolution digital innovation has provided Africans unprecedented access to information and services. On the other, the current trends of the same have increased the existing gaps in the digital divide. There is a need to strike a balance between noted the positive and negative impacts of digital transformation. Such can best be achieved through creative and innovative regulation on national, regional and continental levels.

Regulation of digital platforms as proved challenging in Africa. This is most notable when considering the regulation of the aforementioned e-commerce mobile banking platforms M-Pesa In Kenya, and Ecocash in Zimbabwe. Both platforms provided convenient mobile banking services for individuals who did not have the necessary documents to open regular bank accounts (e.g. people living in informal urban villages). However, the ease of transacting that the services were initially praised for, also created the risk of fraudulent money exchanges and illicit foreign exchange transactions due to the relaxed know-your-customer (KYC) registration requirements characteristic to the platforms. Regulations introduced to address these risks (increased KYC regulations and capping of daily transaction allowances for individuals) took away from the necessary simplicity and convenience of these services- resulting in the exclusion of the unbanked sectors of the population the platforms were initially created to serve.

Therefore, when thinking about regulating aspects of digital innovation, the need for convenience and inclusion must be balanced with the necessity of

digital sovereignty and data protection. On a national level, only half of the 55 African states have enacted data protection laws. Regionally, the AU recognised RECs have adopted various information and communications technology strategies and protocols aimed primarily at improving telecommunications infrastructure and ensuring increased internet access. On the Continental level, the AU has promulgated the Digital Transformation Strategy for Africa (2020-2030)- a comprehensive plan aimed at increased infrastructural development to enhance internet access, cyber security, data protection and consumer protection.

The European Union's General Data Protection Regulation ushered in a fresh uptake of data protection regulation around the world. While the practice of adopting western laws and standards is generally discouraged, the spirit of state-to-state cooperation can be the springboard from which African states can begin to consider this and other aspects of regulating digital transformation. As countries continue to negotiate the African Continental Free Trade Area protocols on Trade in Services, E-Commerce and Intellectual Property, recognisance must be made of the transformative landscape of the digital economy. In the same breathe, national policies must be enacted to compliment and give effect to the intra-African international laws and regulatory standards, ensuring capacity building for innovation is supported by sufficient consumer awareness and protection. A higher degree of sovereignty in this burgeoning industrial sector can indeed be achieved through forward-thinking regulation on the part of African states.

Kimberley Nyajeka is an experienced international trade and investment law specialist. She holds an LL.B from Rhodes University, and LL.M in International Trade and Investment Law from the World Trade Institute.

View online: Safeguarding Sovereignty and Digital Transformation in Africa

Provided by Afronomicslaw