

DIGITAL RIGHTS AND ACCESS TO INFORMATION SERIES **7**

DIGITAL SPACES, RIGHTS AND RESPONSIBILITIES

Towards a duty of care model in
Southern Africa

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January, 2023



Digitisation is no longer something in the distant future but an everyday reality, even in Africa, which is still struggling to modernise its ageing telecommunications infrastructure. Although digitisation as a transformative social process has been in full swing globally for a long time, it accelerated at a frantic pace during the COVID-19 pandemic.



During the past three years, almost everyone across the world has become increasingly dependent on digital technologies for financial transactions, socialisation, education, political engagement, news and information, remote working, and religious meetings. This is not to ignore the persistence of digital inequalities and divide in Africa.



In this article, the intersection between digital spaces, rights, and responsibilities in an interconnected platformising world is highlighted. Besides unpacking structural harms and unfreedoms accompanying this platformisation, it also proposes a duty of care model rooted in the African philosophy of Ubuntu.

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ABSTRACT

Digitisation is no longer something in the distant future but an everyday reality, even in Africa, which is still struggling to modernise its ageing telecommunications infrastructure. Although digitisation as a transformative social process has been in full swing globally for a long time, it accelerated at a frantic pace during the COVID-19 pandemic.

During the past three years, almost everyone across the world has become increasingly dependent on digital technologies for financial transactions, socialisation, education, political engagement, news and information, remote working, and religious meetings. This is not to ignore the persistence of digital inequalities and divide in Africa.

Digitisation has not only reconfigured the taken-for-granted forms of social interaction and networking but has also contributed to the creation of diverse forms of digital spaces. These digital platforms or spaces include Facebook, Twitter, YouTube, TikTok, Instagram, WeChat, Snapchat, and WhatsApp. Whilst the emergence of these digital spaces can be celebrated as an extension of the already existing 'invited spaces of participation',¹ it is also possible to welcome the evolution of these new sites as signalling the birth of 'invented

spaces of participation'.² The emergence of these magnetic digital spaces has extended public spheres in ways that were unthinkable 30 years ago.

As far as political participation and engagement are concerned, some of these digital spaces have allowed activists and citizens to circumvent the shrinking democratic space. On the one hand, citizens have used available digital technologies in innovative ways to expand civic space. On the other, a few authoritarian governments in Southern Africa have employed the same technologies to survey citizens and implement state-ordered internet shutdowns. These egregious measures have been used to deflate and demobilise digital activism. In this article, I highlight the intersection between digital spaces, rights, and responsibilities in an interconnected platformising world. Besides unpacking structural harms and unfreedoms accompanying this platformisation, I also propose a duty of care model rooted in the African philosophy of Ubuntu. I demonstrate the importance of the duty of care on the part of Big Tech companies, governments, telecommunication operators, and ordinary users in this interconnected digital world.

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1. Cornwall, A. 2002. 'Making Spaces, Changing Spaces: Situating Participation in Development.' IDS Working Paper. Brighton: Institute of Development Studies.
 2. Cornwall, A. 2002. 'Making Spaces, Changing Spaces: Situating Participation in Development.' IDS Working Paper. Brighton: Institute of Development Studies.

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INTRODUCTION

There is no denying that social media platforms play a crucial role in providing a space for public debates. These platforms have created a wide array of forums for public communication, citizen engagement, news consumption and sentiment analysis. Digital platforms can be conceptualised as marketplaces, public spheres, infrastructures, and online civic spaces. I use concepts such as 'digital spaces' and 'digital platforms' interchangeably in this article.

Besides acting as matchmakers between buyers and sellers, these digital platforms allow end-users to socialise, communicate, date, engage in robust political debates, and network across space and time. In countries where the public sphere has been restricted, colonised or captured, digital places have emerged as alternative spaces for enjoying and exercising freedom of expression and access to information.

Like physical spaces, digital spaces have their own modes of operation, netiquette frameworks, languages, cultural standards, and normative expectations. These spaces are increasingly becoming appropriated for a wide variety of purposes. Platforms like WhatsApp have become synonymous with the internet, given their reach and utility in the lives of ordinary people. Despite the reach and popularity of social media platforms in Southern Africans' everyday lives, there is a deep-seated concern that critical media literacy skills are not evenly distributed. There is no disaggregated data on the number of Africans with specific digital literacy skills.

Using the Southern African context as a locus of enunciation, this article proposes a duty of care model that can be implemented to promote progressive and constructive digital citizenship. Southern Africa is the southernmost subregion of the African continent, south of the Congo and Tanzania. It is an umbrella term for countries within this region: Angola, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, Zambia, and Zimbabwe. I conceptualise digital rights as human rights and legal rights that allow individuals to access, use, create, and publish digital media or to access and use computers, other digital technologies, and telecommunications networks. Central to my argument is the idea that digital rights are extensions of human rights, like freedom of expression and the right to privacy.

By duty of care, I denote the legal and moral obligation imposed on an individual, requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others. In a way, this article highlights ways to reduce the harms inherent in the digitisation of societal processes. Some of these harms are structural, systemic and platform-centric. Building on Fraser's works of social justice, I advocate for a framework of duty of care that prioritises redistribution, recognition, reparation, and representation. I also map various recognitive, redistributive, reparative, and representative injustices associated with digital spaces in Southern Africa. I offer preliminary thoughts on what needs to be done to engender the designs and operations of responsible and healthy digital spaces.

3

DEFINING DIGITAL SPACES/PLATFORMS

This article defines digital spaces/platforms as planetary infrastructures (networks, systems, technologies) with distinctive affordances, cultures, operational logics, and socio-technical features. Digital spaces such as YouTube, Facebook, MySpace, WhatsApp and Twitter are compatible planetary infrastructures characterised by 'a convergence of different systems, protocols, and networks.'³

Because of their socio-technical makeup, digital spaces as cyber-physical structures⁴ allow for a pleasant exchange between producers, content creators, marketers, and their intended audiences. As platforms, digital spaces '...offer the opportunity to act, connect, or speak in ways that are powerful and effective[...]'.⁵ In this regard, digital spaces enable users to organise their activities around proprietary and not-for-profit platforms.

These planetary infrastructures encourage collaboration, transnational communication and networking, and seamless information and knowledge sharing. In many ways, these digital spaces resemble what some scholars call the 'transnational public sphere'.⁶ This entails new discursive spheres of connectivity and co-creation of citizens across different societies, which are predominantly enabled by digital technologies.⁷

The definition I have adopted for digital spaces/platforms in this article emphasises the interactive forms of participation associated with web 2.0 technologies. Through their social

and technical affordances, digital spaces foster new forms of connectivity, dialogic communication, political engagement, economic transactions, and cultural production.

This definition does not include government service provision websites where the communication is primarily unidirectional. Dialogic communication is the bedrock of digital spaces I discuss in this article. These spaces, through solicited and unsolicited forms of participation, invite users and content creators to collaborate, discuss, and share information across space and time.

These digital spaces have complemented physical spaces in ways that have nourished political, economic, and cultural participation in most parts of Southern Africa. For instance, digital platforms like Twitter, Facebook, WhatsApp, and YouTube have been creatively used in the region to organise protests, engage in electoral campaigns, broadcast content censored by the mainstream media, and whistleblowing in cases where corruption and other social vices are concerned.

A number of hashtag movements have sprouted in the last ten years. These include #RhodesMustFall, #FeesMustFall, #ZimbabweanLivesMatter, #ShutItAllDown, #MswatiMustFall and #MugabeMustGo in Eswatini, Namibia, South Africa, and Zimbabwe.

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 4. Sidorenko, E.L. (2022). Definition of 'Digital Platforms'. In: Inozemtsev, M.I., Sidorenko, E.L., Khisamova, Z.I. (eds) *The Platform Economy*. Palgrave Macmillan, Singapore. https://doi.org/10.1007/978-981-19-3242-7_6
 5. Gillespie (2017)
 6. Loader, B. D. (2014). A Transnational Public Sphere for a Digital Generation? Retrieved from <https://www.e-ir.info/2014/08/15/a-transnational-public-sphere-for-a-digital-generation/>
 7. Volkmer, I. (2019). The Transnationalization of Public Spheres and Global Policy. In Stone, D. and Moloney, K. (eds). *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford: Oxford University Press. Pp: 240–256

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A BRIEF HISTORY OF DIGITAL SPACES /PLATFORMS

The internet and its ancillary digital technologies only became a major technological organising force towards the mid-1990s and early 2000s. At that time, the internet was seen as an enabler for commerce and business operations. During its formative years, the cost of accessing the internet was extremely high throughout Africa. State-owned telecommunication operators predominantly monopolised the industry. The internet as a service was treated as a luxury for the rich and famous.

The situation changed significantly with the liberalisation of the telecommunications industry in the late 1990s. This coincided with the mass permeation of the internet and mobile telephony into Africans' everyday lives. Lethargic state-owned internet and mobile service providers found it difficult to compete with agile and innovative privately-owned telecommunication operators. Slowly but surely, the telecommunications industry was reconfigured.

Instead of relying on letters, telegrams, faxes and fixed telephone lines, new and better channels of communication began to take shape. These new communication channels (such as emails, blogs and readers' comment sections) allowed previously passive information consumers to communicate back to the sender. Thus, 'people formerly known as audience'⁸ were presented with an opportunity to express their voice.

In this case, 'voice' is conceptualised in line with Couldry's definition,⁹ which foregrounds the opportunity for people to speak and be heard on issues that affect their lives. Although this kind of effective and influential voice has not yet been realised in most Southern African countries, there is a general feeling that horizontal and vertical voice^{10, 11} is being realised.

Horizontal voice is the utterance and exchange of opinion, concern, and criticism among citizens.¹² Vertical voice manifests itself through protest action, disengagement and making demands on rulers.

In Southern Africa, the coming of the mobile phone was celebrated as 'revolutionary' and 'transformational'. It allowed the region to leapfrog into higher stages of development in line with the modernisation theory. Besides allowing voice calls, the mobile phone came with short-service messaging applications. This opened up what has been termed the 'parallel market of information'¹³ in some authoritarian and monarchical regimes in Southern Africa. These regimes deploy repressive and ideological state apparatuses to suppress voices.

The coming in of web 2.0 applications in the mid-2000s led to the mushrooming of various digital platforms. These included platforms like Myspace, Facebook, Twitter, and YouTube. Prior to these, older versions of social media, such as Six Degrees and Friendster, were in use. These rudimentary platforms attracted millions of users and enabled email address registration and basic online networking. In Southern Africa, weblogs (also known as blogs) were another early form of social media platforms, gaining traction with the launch of the LiveJournal publishing site in 1999. This coincided with the launch of the Blogger publishing platform by Pyra Labs, which was sold to Google in 2003.

In South Africa, Mxit¹⁴ and Viber made significant inroads into the lives of mostly young people. This was followed by platforms such as Google+, Instagram, WhatsApp, and Pinterest. Besides the role played by web 2.0 technologies, it is important to acknowledge that third-generation (3G) wireless

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8. Rosen, J. 2006. 'The people formerly known as the audience. Accessed 6 June 2020 http://archive.pressthink.org/2006/06/27/ppl_frmr.html
 9. Couldry, N. (2010). *Why Voice Matters Culture and Politics After Neoliberalism*, London: Sage.
 10. O'Donnell, G. 1986. On the convergences of Hirschman's exit, voice and loyalty and shifting involvements. In *Development, democracy and the art of trespassing: Essays in honor of A.O. Hirschman*, ed. A. Foxley et al. Notre Dame: University of Notre Dame Press.
 11. Hirschman, A.O. 1970. *Exit, voice, and loyalty: Responses to decline in firms, organizations, and states*. Cambridge, MA: Harvard University Press.
 12. Hirschman, A.O. (2018). Exit and Voice. In: *The New Palgrave Dictionary of Economics*. Palgrave Macmillan, London. https://doi.org/10.1057/978-1-349-95189-5_621
 13. Moyo, D. 2009. Citizen Journalism and the parallel market of information in Zimbabwe's 2008 Election, *Journalism Studies*, 10:4, 551-567, DOI: 10.1080/14616700902797291
 14. Mxit was a free instant messaging application developed by Mxit Ltd. in South Africa that ran on over 8,000 devices, including feature phones.

mobile telecommunications technology also facilitated the adoption of faster internet in Southern Africa.

In short, the combination of web 2.0 applications and 3G technology led to a further reconfiguration of digital spaces in Africa. It unleashed an army of bloggers, social media users and vloggers with a considerable appetite to share their own stories and narratives. It nurtured a unique digital environment for political discussions, cultural exchange, and economic transactions.

Digital platforms like Facebook, WhatsApp, Instagram, YouTube, Twitter, and Google+ have provided an immense playground for socialisation, communication, collaboration, and social interaction. These platforms have allowed users across the globe to what some scholars have called 'digital citizenship'.¹⁵

Various academic definitions of digital citizenship have surfaced in recent years. Scholars such as Ioanna Noula,¹⁶ Mike Ribble and Gerald Bailey have been at the forefront of problematising the concept of digital citizenship. For instance, Papacharissi (2010: 103) defines it as the 'civic responsibility enabled by digital technologies'.¹⁷ Isin and Ruppert (2015) focus on how the digital citizen emerges through a performative process of rights claims in cyberspace.¹⁸ Couldry et al.¹⁹ (2014: 1) postulate that '[d]igital media and digital infrastructures provide the means to recognise people in new ways as active narrators of their individual lives and the issues they share with others'.

Ribble and Bailey (2007: 7) define digital citizenship as the ability of users to competently use digital technologies; interpret and understand digital content and assess its credibility; create, research, and communicate with appropriate tools.²⁰ It also entails the ability to think critically about the ethical opportunities and challenges of the digital world; and to make safe, responsible, and respectful choices online.

Besides foregrounding the importance of critical digital literacy skills, digital citizenship is concerned with digital rights and responsibilities. It presupposes that online users should be able to manage their online relationships, provide personal protection from online attacks, and show accountability for posted online viewpoints and opinions. In

its narrow conceptualisation, digital citizenship tends to focus heavily on what users should and should not do. Therefore, it pays lip service to the rights and responsibilities of national governments, platform companies, telecommunications service providers, and other internet intermediaries in the ever-evolving digital ecosystem.

Digital citizens²¹ are expected to understand human, cultural, technical, and social issues associated with the deployment of digital technologies. Furthermore, digital citizens are supposed to adhere to legal and ethical behaviour, as well as advocate and practice safe, legal, and responsible use of digital technologies. These digital citizens are also expected to exhibit civic responsibilities for their online activities.

Digital citizenship is thus a crucial component in a society where digitisation and platformisation are more pronounced than ever before. As stated, the transition from analogue to digital forms of communication in Southern Africa has been a long and winding road. Rates of internet and social media penetration are on an upward trajectory. However, structural barriers are associated with underdeveloped telecommunications infrastructure, slow pace of rural and peri-urban electrification, high costs of data bundles and a general unwillingness amongst service providers to share telecommunication infrastructures.

Statistics from Internet Worlds Stats²² show that as of January 2022, Southern Africa had the highest internet penetration rate in Africa. Its internet penetration rate²³ stood at 40.5 per cent. This contrasts with Eastern and Middle Africa, which recorded 26 per cent and 24 per cent, respectively. With regards to national statistics on internet penetration, I present a summarised table on the next page based on data from Internet World Stats.

It is noteworthy that most of the web traffic in Southern Africa emanates from mobile devices. This is not unique to Southern Africa. Similar conclusions have been reached by the Global System for Mobile Communications Association (GSMA).²⁴ Mobile internet access is the route through which most inhabitants of Southern Africa connect to the information superhighway. Relatively cheaper smartphones from the Asian market have enabled previously unconnected populations to access the internet. Social media bundles²⁵ have also enabled citizens to access the internet, albeit without access to the

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15. Lynn, T., Rosati, P., Conway, E., Curran, D., Fox, G., O'Gorman, C. 2022. The Digital Citizen. In: Digital Towns. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-91247-5_2
16. Noula, I. (2019). Digital Citizenship; Citizenship with A Twist? Discussing Citizenship at the Digital Education Turn. Working Paper. Media@LSE Working Paper Series. ISSN 1474-1938. <https://eprints.whiterose.ac.uk/146554/>
17. Papacharissi, Z. (2010). A private sphere: democracy in a digital age, Cambridge, UK; Malden, MA: Polity.
18. Isin, E.F., & Ruppert, E. (2015). Being digital citizens. London, UK; New York: Rowman & Littlefield.
19. Couldry, N., Stephansen, H., Fotopoulou, A., MacDonald, R., Clark, W., & Dickens, L. (2014). Digital citizenship? Narrative exchange and the changing terms of civic culture. *Citizenship Studies*, 18(6–7): 615–629.
20. Ribble, M., & Bailey, G.D. (2007). *Digital citizenship in schools* (1st ed). Eugene, Or: International Society for Technology in Education.
21. Ribble, M. 2015. *Digital citizenship in schools: Nine elements all students should know* (3rd ed.). International Society for Technology in Education.
22. <https://www.internetworldstats.com/stats1.htm>
23. This refers to the percentage of the total population of a given country or region that uses the internet.
24. <https://www.internetworldstats.com/stats1.htm>
25. <https://www.gsma.com/r/wp-content/uploads/2022/10/State-of-Mobile-Internet-Connectivity-2022-Sub-Saharan-Africa.pdf>

Figure 1: National statistics on internet penetration rates in some Southern Africa Development Community (SADC) countries

Country	Internet penetration rate (%)	Facebook subscribers 30 April 22
Angola	26%	2,875,600
Botswana	51.3%	1,191,300
Eswatini	56.4%	421,500
Lesotho	31.5%	553,900
Malawi	13.8%	637,600
Mozambique	20.3%	2,756,000
South Africa	57.5%	24,600,000
Zambia	52.2%	2,543,000
Zimbabwe	55.7%	1,303,000

Source: *Internet Worlds Stats*,²⁶ 2022.

full bouquet of the internet. This practice has been critiqued by data and digital rights activists for violating net neutrality principles on the internet. This is precisely because, according to the internet neutrality principle, service providers are duty-bound to ensure universal and equitable access to all content and applications regardless of the source, and without favouring or blocking particular products or websites. In a way, the implementation of data bundles transgresses the provisions of the 2019 African Declaration on Internet Rights and Freedoms and pronouncements made by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression in 2019.

The mobile phone has been described as the 'medium of the people' in similar ways that the radio was once viewed across the region. It has provided citizens with a gadget that enables them to access the internet and participate in various digital spaces. This is partly because mobile phones are relatively cheap compared to traditional desktop computers. Mobile phones are also cheaper to maintain.

Given the significant permeation of digital technologies into our everyday lives, concepts like digital rights and responsibilities have surfaced to the centre of policy and scholarly debates. In the following sections, I outline the parameters of these digital rights and responsibilities.

5

WHY DIGITAL RIGHTS?

Digital spaces complement and supplant traditional physical spaces in unprecedented ways. Political campaigns are mediated mainly by digital platforms. Digital intermediaries generally power economic transactions. Socialisation takes place online. Dating has also migrated online, with face-to-face meetings relegated to secondary status. All these societal transformations highlight the need to acknowledge the importance of digital rights in an environment where 'the digital' is now the gateway through which life is experienced, performed, memorialised, and mediated.

Although internet access is recognised as an inalienable right in other jurisdictions, digital rights are increasingly protected, even according to constitutional standards through legislative and judicial interpretation.

Globally, very few countries have made legislative provisions to respect and enjoy digital rights. In Southern Africa, no country has legislated for digital rights.

26. Data bundles are basically packages for internet access through a mobile device with a limit of bytes. The data bundles values change depending on the end-users payment: the more the users pay, the more bytes they get.

6

WHAT ARE DIGITAL RIGHTS AND RESPONSIBILITIES?

Digital rights refer to a set of universal human rights that ensures everybody – regardless of their gender, age, race, sexuality, and other social stratification variables – has equal access to an open internet that is governed in an inclusive, accountable, and transparent manner to ensure peoples' fundamental freedoms and rights.

In short, digital rights are simply human rights in the digital space. They are concerned with ensuring citizens have access to information and freedom of expression in a safe space that respects privacy and security. Digital rights are not only concerned about privacy and security.²⁷

Besides some examples of digital rights such as privacy and security, it is equally relevant to talk of universal and equal access, freedom of expression, information and communication, data protection, right to anonymity, right to be forgotten, protection of minors, intellectual property rights, and cybersecurity as constitutive of a broader bundle of rights in the digital age.²⁸ Violations of these digital rights are more pronounced in the platformed world, where platform companies regularly share personal and confidential data with third parties, including advertisers and national governments.

For the purposes of this article, digital rights are treated as encompassing privacy, cyber-security, freedom of expression, data protection, right to anonymity, right to be forgotten, protection of minors, intellectual property, and universal and equitable access to the internet.

This is particularly crucial in an era where platform companies, state parties and telecommunication operators wantonly violate privacy and security. In spite of guarantees through the implementation of encryption technologies, acceptable use policies and community standards, anecdotal evidence suggests that privacy and security are often breached.

Digital rights ensure that citizens are protected from structural and systemic harms and unfreedoms associated

with the digital world. The call is meant to ensure control, autonomy, and agency of humans while protecting them against the privatisation, monopolisation, commodification, and monetisation of their personal data and digital footprints.

Digital rights are crucial for safeguarding free expression online. They are also invaluable for enabling citizens to freely associate, assemble, and access various services online. Unfortunately, these rights are also curtailed by draconian laws and regulations. Digital authoritarianism²⁹ has started to rear its ugly head in both democratic and autocratic governments in Southern Africa. Some of these governments have targeted digital spaces as the next frontier to exert control and censorship, mute dissent and engage in digital surveillance.

These rights are for end-users and non-users of digital technologies. In their various manifestations, digital rights emphasise access, participation, data security, and privacy, with the human-centred values of dignity, respect, equality, justice, responsibility, consent, and environmental sustainability. Whilst the discourse of rights often gets over-amplified, the corresponding issue of digital responsibilities is rarely given the same attention.

Digital rights also invoke notions such as 'digital will' which determines what to do with the digital presence of the deceased; 'digital disconnection' which limits the use of digital communications outside working hours; and digital rights management (DRM), where authors' remuneration and free access to artistic works, whose rights have already expired, come into conflict. All these are important in the platformised communication ecology, where end-users and content creators often receive the short end of the stick.

Closely aligned with digital rights is the issue of digital responsibilities. Rights without responsibilities often lead to abuse and transgressions. The concept of digital responsibilities denotes the usage of digital technologies

27. <https://advox.globalvoices.org/special/unfreedom-monitor/>

28. <https://www.iberdrola.com/innovation/what-are-digital-rights>

29. Mare, A. 2020. Internet Shutdowns in Africal State-Ordered Internet Shutdowns and Digital Authoritarianism in Zimbabwe. *International Journal of Communication*, 14, 4244–4263.

appropriately and constructively for oneself and others. It entails putting personal and social responsibility at the heart of digital citizenship.

Regarding digital platforms, the argument here is that users and non-users of these technologies have a responsibility

to each other. End-users and non-users are expected to act ethically, responsibly, and civilly towards each other. By underscoring the coexistence of rights and responsibilities, it is noteworthy to highlight that digital citizenship without responsibility creates ungovernable digital spaces.

7

UBUNTU AND DIGITAL RESPONSIBILITIES

The idea of digital responsibilities chimes with the Ubuntu moral philosophy, which is captured by the phrase ‘Ubuntu ngumuntu ngabantu’ (I am because of who we all are). This timeless African moral philosophy puts emphasis on ‘being self through others’. It entails behaving well towards others or acting in ways that benefit the community. This can mean behaving in socially acceptable ways towards others in the world community. In online communities, this suggests that Ubuntu is more about the group than the self.

Most Southern African countries rely on the Ubuntu African moral philosophy. For instance, terms such as Ubuntu, Botho and Hunhu have the same meaning, although they are derived from different linguistic communities. These concepts are part and parcel of the Bantu languages. Amongst the Shona of Zimbabwe, they use concepts like Munhu or Hunhu, the Ndebele of Zimbabwe and the Zulu/Xhosa of South Africa deploy Umuntu, the Tswana of Botswana use Muthu, and the Herero of Namibia refer to Ubuntu as Omundu.³⁰

Unlike the West’s emphasis on individualism and individual digital rights, Ubuntu places importance on group or communal existence. It puts much attention on social harmony and caring for others. Its emphasis on our responsibility for the welfare of our fellow digital citizens acts as a timely antidote not only to the typically self-centred, adversarial, and sometimes toxic forms of participation in digital spaces but also to the sense of anomie so prevalent in contemporary society.

As an ethical framework, it provides the bedrock upon which constructive and civil social engagements can be nurtured in digital spaces. This is particularly poignant in a context where abuse, cyberbullying, online gender-based violence, hate speech, disinformation, fraud, and other forms of negative

participation have been normalised in digital spaces.

Racist slurs and xenophobic utterances have also polluted online conversations. Instead of hosting progressive and rational critical debates, digital spaces are increasingly punctuated by toxicity. The deterioration of digital spaces into toxic environments threatens to undo the liberatory aspects of these platforms.

Being digitally responsible requires citizens to adhere to certain norms and standards of digital citizenship. It also presupposes that everyone who uses digital technologies understands their roles and responsibilities³¹ in a digital society. This is difficult to actualise in practice because most users have no formal education on how to use digital technologies in a responsible and ethical manner. Furthermore, there is no digital literacy curriculum on how one can live up to their roles and responsibilities in this interconnected digital world. Given this knowledge gap on digital responsibilities, users of digital platforms navigate these messy spaces by ‘muddling through’ and ‘wondering about’.

Because users come from different cultural, linguistic, and ethical backgrounds, digital citizenship is largely characterised by a clash of norms and standards of online ethical behaviour. There are no agreed sets of online ethical behaviours despite attempts by platform companies and internet intermediaries to institutionalise community standards and acceptable use policies. Therefore, it is unsurprising that users frequently trespass on these policies.

Navigating this interconnected digital world calls on digital citizens to show the same respect, compassion, and trust for their fellow citizens as they do as citizens in the ‘real’ world. This is where Ubuntu as an ethical framework has the

30. Internet Encyclopedia of Philosophy. <https://iep.utm.edu/hunhu/>

31. Ribble, M. (2015). Digital citizenship in schools: Nine elements all students should know (3rd ed.). International Society for Technology in Education.

potential to chide us to 'being self through others'. However, because of anonymity and other encryption technologies associated with emerging digital technologies, some citizens view their online persona as different from their real lives. This means that they can act irresponsibly online without facing legal consequences.

Digital citizens need to understand and be aware of their online rights and responsibilities in order not to infringe on the rights and responsibilities of others. Just as citizens in a society have certain rights and responsibilities, digital citizens in the online world also have certain rights and responsibilities.

8

ROLE PLAYERS IN THE DIGITAL ECOSYSTEM

Digital rights and responsibilities do not operate in a social vacuum. They must be actualised in different political, social, and economic environments. Some of these environments are permissive, whilst others are restrictive. Politically, Southern Africa consists of a mix of democratic, semi-authoritarian and monarchical regimes.

These types of regimes have enormous influence so far as the realisation and enjoyment of digital rights are concerned. Furthermore, Southern African countries have different permissive and restrictive legislative frameworks, shaping the texture and nature of digital rights, responsibilities, and spaces. For instance, countries such as Angola, Eswatini, Mozambique, and Zimbabwe can be classified as having restrictive legislative frameworks. Botswana, Lesotho, Namibia, Malawi, and South Africa boast of permissive legal instruments, although the situation remains tenuous in some of these countries.

The passage of draconian laws (such as interception of communications, data protection, protection of personal information, cybercrimes, and cybersecurity laws) in countries such as Angola, Eswatini, Mozambique and Zimbabwe have also contributed to the shrinkage of the civic space.

In this article, it is important to focus on surveillance because it has contributed significantly to the erosion of digital rights in Southern Africa. In their book, *Digital Surveillance in Southern Africa: Policies, Politics and Practices*, Munoriyarwa and Mare (2022) aptly show that surveillance has become an embedded part of everyday life.³² Both the state and market actors have been implicated in surveillance. This has brought with it several privacy dilemmas. Privacy concerns with regard to massive data collection have also escalated in the wake of the Covid-19 global pandemic.

Before discussing the structural harms and unfreedoms associated with primarily commercial digital platforms, it is poignant to map the critical role players in the ecosystem. This is particularly important as it provides the context for the duty of care presented later in this article. The main argument here is that these role players are crucial in the realisation and enjoyment of digital rights.

These role players include:

- **National governments:** As the duty bearer, the government has both regulatory and legislative power to make things happen in the digital ecosystem. Depending on the nature of the political regime, progressive laws and regulations can be passed to protect citizens and foster a healthy digital environment. The state has a responsibility to create a conducive platform ecosystem through the promotion of exit (enabling greater competition and choice) and voice (enabling greater participation and transparency) options within the digital ecosystem.
- **End-users:** The users of digital spaces have an enormous role in promoting their responsible deployment in everyday life. Users can do this by using these platforms to promote democracy, sustainable development, peace and security and harmonious social coexistence.
- **Platform companies:** As proprietors of digital platforms, these firms have both legal and public service responsibilities to minimise and drastically reduce structural harm. This can be done by adopting business models that respect human rights and safeguard the arbitrary harvesting of user data.

32. Munoriyarwa, A. and Mare, A. (2022). *Digital Surveillance in Southern Africa: Policies, Politics and Practices*. Cham: Springer.

- **Advertisers:** As the main oxygen of platform companies, advertisers have a duty not to exploit personal information sold by these firms to willing buyers. They should disincentivise the commodification of user data and information as part of surveillance capitalism.³³
- **Civil society organisations:** These non-state actors have a role in holding the state and market actors accountable in the digital platform ecosystem. Through advocacy and lobbying, CSOs have the potential to push back against unnecessary and disproportionate measures by both the state and platform companies. They should also invest in media and information literacy campaigns.
- **Internet intermediaries:** As the infrastructural bridge between the platform companies and end-users, internet intermediaries are responsible for ensuring that they are not used as chokepoints by authoritarian regimes. They should adopt progressive and transparent acceptable use policies.

9

DIGITAL PLATFORMS AND STRUCTURAL HARMS

Digital platforms are both proprietary and non-proprietary entities. As business entities, most digital platforms are geared towards profit maximisation, meaning private interests often triumph over public ones. Because of the surveillance capitalism model³⁴ undergirding the operations of proprietary digital platforms, structural harms and unfreedoms are embedded in the system.

Because of the harms and unfreedoms associated with proprietary digital spaces, I argue that these issues cannot be treated as a matter of personal privacy and security but of social justice. I build on studies³⁵ that have examined the relationship between digital rights and freedoms. These studies argue that data justice³⁶ is necessary to determine ethical paths through a datafying world. A new way of (re) distributing resources, opportunities, and privileges within the emerging digital society is possible.

Drawing insights from analytical concepts like 'data justice',³⁷ and 'abnormal justice',³⁸ I propose that a robust and fruitful duty of care model can be implemented. The concept of data justice refers to an 'analysis of data that pays particular attention to structural inequality, highlighting the unevenness of implications and experiences of data across different groups and communities in society'.³⁹

Interestingly, most writings on data justice have focused extensively on surveillance regimes and cultures. Besides work by Pollicy and Access Now Africa on extractive digitisation, little attention has been paid to how extractive, sorting, commodification and monetisation of personal information by digital platforms contribute towards naturalising injustices and unfreedoms. Existing studies show that digitisation has allowed corporate actors to harvest data and information about their users at an unprecedented scale.

Very few scholars have paid as much attention to social and political issues from a critical justice perspective as Nancy Fraser. Her writings seek to jettison the distribution and recognition paradigms in the field of justice studies. Building on Nancy Fraser's theory of social justice, I strongly advocate for the mainstreaming of redistribution, recognition, rehabilitation, reparation, restoration, and representation justice within digital spaces. At the same time, I identify six forms of recognitive, redistributive, rehabilitative, reparative, restorative, and representative injustices associated with digital spaces in Southern Africa. I discuss these in turn.

- Redistribution (in)justices are closely associated with the political-economic structure of digital platforms society, resulting in the stratification of society into digital

33. Zuboff, S., & Schwandt, K. (2019). *The age of surveillance capitalism: the fight for a human future at the new frontier of power*. London: Profile Books.

34. It refers to an economic system centered around the capture and commodification of personal data for the core purpose of profit-making.

35. Taylor, L. (2017). What is data justice? The case for connecting digital rights and freedoms globally. *Big Data & Society*, (July–December): 1–14.

36. This refers to the fairness in the way people are made visible, represented, and treated as a result of their production of digital data.

37. Data justice is an approach that redresses ways of collecting and disseminating data that have invisibilised and harmed historically marginalized communities (Dencik, Jansen and Metcalfe, 2018).

38. Fraser, N. 2008. *Abnormal Justice*. *Critical Inquiry*, 34(3): 393-422.

39. Dencik, L., Jansen, F. & Metcalfe, P. (2018). A conceptual framework for approaching social justice in an age of datafication. <https://datajusticeproject.net/2018/08/30/a-conceptual-framework-for-approaching-social-justice-in-an-age-of-datafication/>

capitalists and proletariats. Through their business model, Western digital platforms create peculiar owners of the means of digital production, which rely on free labourers (proletariats) for the creation of surplus value. These unequal social relations are characterised by exploitation, discrimination, marginalisation, and deprivation. It is also important to note that Chinese platforms like TikTok and WeChat have a different business model from Western digital platforms like Facebook.

- Recognitive (in)justices result from a situation where institutionalised patterns of cultural and market value constitute some actors 'as inferior, excluded, wholly other, or simply invisible – and hence as less than full partners in social [and digital] interaction'.⁴⁰ Users are not equal, even on digital platforms. Socio-economic and participatory inequalities are reproduced and reconfigured on digital platforms.
- Representative (in)justices encapsulate exclusion, rendering invisible and muting the democratic voice of citizens, civil society organisations and social justice movements from a particular political community. It is about denying an equal democratic voice in matters that impact one's life, specifically digitised electoral processes. This manifests through the systematic de-platforming of voices considered transgressive and reactionary in digital spaces.
- Rehabilitative (in)justices happen when platform companies try to 'fix' harm inflicted on users through implementing half-hearted interventions such as tweaking algorithms, changing security settings, and rebooting the business model. These measures are more concerned with papering the cracks than fixing the broken system. These companies have no economic incentive to fix the problem. Because of their piecemeal nature, they do not go far enough to fix the operational and business model of platform companies. The idea here is that in the process of fixing problematic aspects of the system, the users are empowered to enjoy their freedoms.
- Reparative (in)justices have to do with the reluctance of digital platforms to fairly compensate for the labour expended by content creators and ordinary users. Instead of seeing users and content creators as 'workers', digital

platforms often treat them as 'contractors'. In the end, content creators and ordinary people are unfairly compensated for their work despite the huge role they play in creating surplus value and nourishing the attention economy. Given the invaluable role played by content creators in creating surplus value, platform companies have an obligation to pay decent wages. Reparative justice has the potential to repair specific harms suffered by content creators and ordinary users. Racial and gender sensitivity are essential regarding reparative justice because the consequences of structural harms are often linked with stratification variables such as gender and race.

- Restorative (in)justices occur when platform companies attempt to restore equilibrium in the system. This occurs when 'public shocks' such as the Cambridge Analytica Scandal surfaced and dominated international news headlines. By their very nature, public shocks 'produce moments of attention to the issue of the governance of social and algorithmic media platforms'.⁴¹ In the quest to restore the balance, platform companies often implement stop-gap measures which inadvertently reproduce structural harms and unfreedoms. Platform companies tend to resort to public apology, restitution, and reparation, and restoring relationships between the concerned government and their fanbase.

Jettisoning the now-outdated notion of 'data justice', I recommend the adoption of 'platform justice'. Such a concept helps to problematise and unpack the complex relationship between platforms as planetary infrastructures and social justice, critique the politico-economic architecture of platform companies, and understand how increasing platformisation creates new forms of injustices and unfreedoms.

Platform justice allows us to reimagine and envision different platform futures anchored in the creation of public interest digital platforms (PIDP). By PIDP, I refer to the development of socio-technical infrastructures that put the public interest at the centre of their design, deployment, business model, and operations. These kinds of digital platforms are geared towards the promotion of public good. PIDP aims to design, implement, and advocate for digital platforms that equitably advance the common good.

40. Fraser, N. 2000. Rethinking recognition. *New Left review* 3(3):107-118.

41. Napoli, P. (2017). Bridging the Disconnect Between Digital Media and the Public Interest: Reconciling Motivations and Rationales for Media Regulation and Policy. In *Nordic Political Science Association Conference Workshop on Media Policy and Digitalization*. Helsinki.

10

TOWARDS A DUTY OF CARE MODEL

Research⁴² suggests that there is a wide range of harms that have been spawned by digital platforms. These include deterring women from public life, racial, religious, and sex-based abuse, often illegal, child sexual exploitation and abuse, profound disruption to political processes, threats to national security, economic fraud, and further harm to end-users.

In order to address these harms and unfreedoms associated with digital platforms, I argue that we need to adopt a progressive duty of care model. Duty of care refers to the obligations placed on states, groups, and individuals to act towards others in accordance with certain standards. Although arriving at acceptable standards is no easy task, a bill of rights (as enshrined in national constitutions) and ethical frameworks would provide a useful starting point.

The concept of 'duty of care' has enjoyed much scholarly attention within the context of law and ethics. It is often invoked to remind duty bearers and power holders of their responsibilities. Within the context of law, a duty of care is a legal obligation imposed on states, individuals and groups, exhorting them to adhere to a standard of reasonable care while performing any acts that could foreseeably harm others.

I propose a duty of care model that emphasises dignity, respect, equality, justice, responsibility, and consent. It argues for the implementation of community standards and acceptable-use policies that place a premium on user notification, due process, transparency, public oversight, and safeguards against illegitimate harvesting of user data.

The proposed model argues that instead of selective stakeholder engagement popularised by Meta, Twitter, Google, and other platform companies, end-users need to voice their views and concerns through accessible digital feedback mechanisms. All the platforms have community standards that are nominally developed in partnership with users. However, there is a

need to deepen the level of participation and consultation in drafting community standards.

Given that platform companies are increasingly assuming the role of de facto regulators of online speech, pressure from policymakers and the public has led to a situation where some platforms have begun maintaining public community standards. These written policies address a range of problematic activity like hate speech, violence and influence operations.⁴³

Literature on community standards is slowly growing across the globe. For instance, research has shown that platform companies focus 'primarily on potential human rights violations by governments and pay less attention to areas where the companies' business practices may have a negative impact on their users' rights and freedoms'.⁴⁴ Furthermore, these platform companies retain the freedom to set and enforce their own rules of engagement. Because of the deregulated nature of the sector, this enables them to impose their own standards and policies on the whole world.

Rooted in Ubuntu as public morality, the proposed duty of care model prioritises restorative, and non-retributive forms of platform justice.⁴⁵ This moral philosophy can also be used to guide dispute resolution about platform injustices and violations of community standards.

This model of duty of care imposes legal and ethical obligations on the part of platform companies, third parties and users to ensure that they adhere to set-out standards of reasonable care when engaging in their activities on digital platforms. This calls upon third parties to respect the data of users that they extract, analyse and process on digital platforms.

The model also chides platform companies to be responsible actors when taking down content that violate their acceptable use policies and community standards. It calls for transparency

42. Wodajo, K. (2022). Mapping (in)visibility and structural injustice in the digital space. *Journal of Responsible Technology*, 9, 100024, ISSN 2666-6596, <https://doi.org/10.1016/j.jrt.2022.100024>.

43. Bateman, J., Thompson, N. and Smith, V. (2021, April). How Social Media Platforms' Community Standards Address Influence Operations? Carnegie Endowment. <https://carnegieendowment.org/2021/04/01/how-social-media-platforms-community-standards-address-influence-operations-pub-84201>

44. Jørgensen, R. F. (2017). What Platforms Mean When They Talk About Human Rights. *Policy and Internet*. 280-296. doi: 10.1002/poi3.152

45. Citron, D., and Jurecic, Q. (2018). Platform Justice. Retrieved from <https://www.hoover.org/research/platform-justice>

and accountability on the part of advisory councils put in place by these platform companies. Platform companies have a duty of care to take reasonably practicable steps to prevent people from coming to reasonably foreseeable harm due to the operation of their platforms.

This duty of care calls upon telecommunication operators and internet intermediaries to minimise systemic harms associated with restrictive acceptable use policies, and drastic revisions to algorithms and operational logics. It calls upon them to resist unnecessary and disproportionate calls for state-ordered internet shutdowns.

Platform companies have a duty of care regarding service design decisions, terms of service, the software, enforcement of terms of service and the continuous updating of the software. Actionable targets must be set by supranational and state actors that compel platform companies to reduce online harms associated with their service design decisions. They must show empathy with and minimise the harm done to the end-users whose free labour contributes towards their financial sustainability.

The duty of care also applies to end-users on digital platforms. They have a role in ensuring civility, ethical behaviour and constructive dialogue are respected. They should also play a whistle-blower role by flagging violators of community standards on digital platforms. Platforms should incentivise good behaviour whilst at the same time disincentivising bad behaviour.

As a duty bearer, the state is responsible for creating a conducive environment for the effective realisation and enjoyment of digital rights. This can be done through the passage of progressive legislation, policy making and the creation of independent regulatory bodies for all citizens to exercise their inalienable digital rights.

The duty of care model emphasises the need for the state to promote universal, equitable, affordable, and meaningful access to the internet as a necessary precondition for the realisation of freedom of expression, access to information and the exercise of digital rights. Working in partnership with relevant stakeholders, including telecommunications companies, educational institutions, regulatory bodies and internet intermediaries, the state should put media and digital literacy courses foregrounding themes such as cyber-security, privacy, data protection, netiquette, surveillance, hate speech, cyberbullying, and disinformation. These courses should target students at primary, secondary and tertiary levels.

Cognizant of pronouncements by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression⁴⁶ in January 2019, the proposed model exhorts the state to desist from partial and total internet shutdowns through measures such as the removal, blocking or filtering of content, unless such interference is

justifiable and compatible with international human rights law and standards. In other words, the state should not interfere with the right of individuals to seek, receive, and impart information through any means of communication and digital technologies.

States must take positive measures to promote a diverse and pluralistic digital media ecosystem where monopolistic and oligopolistic tendencies are curbed through fair competition rules and regulations. As a regional body, SADC is responsible for developing progressive soft laws. Whilst the European Union's Digital Services Act⁴⁷ and Digital Markets Act provides the starting point, there is an urgent need to desist from replicating some practices from other countries which do not protect and promote human rights in relation to the internet and digital technologies.

In the recent past, the tendency has been for many African governments to take laws from the Global North and apply them with few or no changes. This is problematic because, without adequate localisation, such laws are often unsuitable. More often than not, contexts and local conditions in the countries where such laws have been adopted are very different from those where the laws were initially developed. SADC should take the lead in developing model digital rights laws that member states can use to regulate all categories of content, products, services, and activities on intermediary services.

Furthermore, states should actively encourage platform companies to publicly disclose all forms of ownership and any subsequent acquisitions or change in ownership. Vertical and horizontal mergers should be scrutinised to avoid monopolistic tendencies.

States should prioritise setting up a converged independent regulatory body to regulate the operations of print, broadcasting, telecommunications, and digital media platforms. This body, such as the Independent Communications Authority of South Africa (ICASA), should have the mandate to create a safer digital space where the fundamental rights of users are protected and to establish a level playing field for businesses.

In line with the 2019 African Declaration on Internet Rights and Freedoms,⁴⁸ the appointment process for members of a converged regulatory body must be independent and adequately protected against interference. The process should be open, transparent and involve the participation of relevant stakeholders.

Lastly, the proposed duty of the model seeks to foster a safer digital ecosystem where corporates, governments, end-users, civil society organisations and platform companies can act responsibly in the digital space. Under this model, the state is only expected to adopt economic measures, including taxes, levies, and duties, on the internet and information and communication technologies and end-users that do not undermine universal, equitable, affordable, and meaningful access to the internet.

46. <https://www.achpr.org/pressrelease/detail?id=8#:~:text=The%20Special%20Rapporteur%20notes%20that,on%20Human%20and%20Peoples'%20Rights.>

47. <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=COM:2020:825:FIN>

48. <https://africaninternetrights.org/>

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ABOUT THIS PROJECT

fesmedia Africa is the regional media project of the Friedrich Ebert-Stiftung (FES) in Africa. Its work promotes a free, open, liberal and democratic media landscape that enables ordinary citizens to actively influence and improve their lives, as well as those of the communities and societies they live in. *fesmedia* Africa believes that in order to participate in public life and decision-making, people need to have the means, skills and

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DIGITAL SPACES, RIGHTS AND RESPONSIBILITIES

Towards a duty of care model in Southern Africa



Digitisation is no longer something in the distant future but an everyday reality, even in Africa, which is still struggling to modernise its ageing telecommunications infrastructure. Although digitisation as a transformative social process has been in full swing globally for a long time, it accelerated at a frantic pace during the COVID-19 pandemic.



During the past three years, almost everyone across the world has become increasingly dependent on digital technologies for financial transactions, socialisation, education, political engagement, news and information, remote working, and religious meetings. This is not to ignore the persistence of digital inequalities and divide in Africa.



In this article, the intersection between digital spaces, rights, and responsibilities in an interconnected platformising world is highlighted. Besides unpacking structural harms and unfreedoms accompanying this platformisation, it also proposes a duty of care model rooted in the African philosophy of Ubuntu.

More information on the subject is available here:

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