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Introduction

Digital Health Data Regulation in a Neoliberal Era: Lessons from the Global South

Sharifah Sekalala
University of Warwick, United Kingdom
Tatenda Chatikobo
University of Warwick, United Kingdom
Pamela Andanda
University of Witwatersrand, South Africa

Abstract

Data-driven health technologies hold the potential to improve healthcare delivery. Yet they also facilitate the large-scale extraction and commodification of sensitive health data through a phenomenon often described as 'digital health surveillance capitalism.' This model has largely gone unchecked, as prevailing regulatory approaches prioritise privacy and security while neglecting broader societal harms arising from datafication. These societal harms of commodification are exacerbated by neoliberalism, which has led to the growing influence of technology corporations in healthcare and in shaping regulatory responses. The entanglement of data-driven commodification and neoliberalism has deepened inequalities between countries and regions, particularly in times of crisis. This has renewed calls for a decolonial turn in public health and a more deliberate focus on the Global South. Critical analyses of the intersections between regulation, health and surveillance capitalism, particularly in Global South contexts, are therefore of urgent scholarly importance. Drawing on interdisciplinary socio-legal analysis, this symposium collection focuses on case studies from Latin America, Sub-Saharan Africa, the Community of Portuguese-speaking Countries and Asia, to examine how neoliberal pro-innovation agendas have reinforced asymmetrical power relations and regulatory failures, enabling extractive data practices that undermine health equity. The collection's focus on the Global South as a site of decolonial possibilities enables us to critically examine how alternative regulatory governance models could be operationalised to advance equitable health outcomes.

1. Introduction

Data-driven health solutions, including diagnostics and health applications (health apps), ambient voice technologies (AVT), wellness and fitness trackers and system-level solutions such as electronic health records, have the potential to revolutionise healthcare delivery. However, the increasing amount of sensitive health data collected through these digital health innovations raises the risks of data-related harms. These risks may be amplified by the growing use of artificial intelligence (AI) interventions that depend on large datasets, which constantly create stronger incentives to collect more data. AI use for health risk predictions in lifestyle and insurance markets has also blurred the lines between health, wellness and illness[1], rendering the body a flexible object subject to persistent, continuous surveillance.[2] Moreover, the possibility that health data may be

[1] Sekalala, "Digital Health for Shared Value."
[2] Rubeis, "Liquid Health."

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unrepresentative means AI could intensify existing biases in training datasets, disproportionately impacting the most marginalised individuals, groups and communities.[3]

Concerns surrounding health data are compounded by the increasing privatisation of health systems worldwide. With a business model that differs sharply from health care delivery, the growing presence of technology (Tech) companies in health care raises fundamental questions around data control, commercialisation and public accountability. Privacy and security concerns linked to health data, along with the associated regulatory issues, have been the subject of much scholarly debate, particularly in and from the Global North. This reflects a longstanding pattern in global health research, which has been disproportionately oriented toward the Global North.[4] In this symposium collection, we depart from this preoccupation by responding to the growing call to focus also on societal harms arising from market-oriented and market-driven health data practices, and on the regulatory challenges and opportunities this presents, with particular attention to Global South contexts.[5] We acknowledge that the term 'Global South' carries varied meanings, describing more than just geographical place but also a condition of alterity and resistance.[6] The Global South is therefore not homogeneous but is defined by unique contextual complexities of being and belonging. In this collection, we articulate the Global South as a global majority space that has consistently been seen as and pushed to the periphery in socio-economic and socio-political processes and discourses, but also a place of decolonial possibilities and transformative resistance.[7]

2. Surveillance Capitalism

Our analyses in this collection are informed by critical theory on surveillance capitalism, which refers to digital business models in which tech companies extract vast quantities of personal data from everyday interactions and transform it into behavioural predictions and nudges to herd future actions for profit.[8] Within the digital health space, surveillance capitalism enables the capture and commodification of people's data through technologies such as health apps, wearable devices, telemedicine and other data-driven health solutions. Historically, digital health innovations have primarily been developed and deployed in regulatory vacuums, as has been the case with digital financial innovations such as FinTech.[9] Early attempts to regulate digital health focused primarily on the intersection between privacy, security and patient safety.[10] However, there are also broader concerns that regulation needs to keep pace with innovations in the health space to address surveillance capitalism.

Unequal economic ties have left the Global South heavily reliant on digital health infrastructure from foreign private corporations and philanthropic organisations, resulting in colonial dependencies due to restrictive intellectual property rights and weak governance regimes.[11] In the collection, we build on this work on coloniality by focusing specifically on the different ways in which law structures the digital health political economy. We critically question whether there are any emancipatory possibilities for challenging surveillance capitalism through regulation.

Our interest in surveillance capitalism as a theory lies not only in analysing the economic disparities it produces, but also in examining the context-specific social harms it generates. Therefore, we focus on the social harms associated with digital health data, such as discrimination, restricted access to essential health care and weakened government-led public health responses. We are also interested in the regulatory effects of digital health surveillance capitalism, given how the processes and mechanisms for data extraction and analysis are closely guarded and treated as intellectual property.[12] This has made it difficult for regulators to enact robust regulatory frameworks in the context of digital health, where regulators do not have access to the inner workings of digital technology tools.

Capitalism continuously evolves as new opportunities for accumulation arise and in response to emerging market threats. From a regulatory perspective, this presents several challenges. First is a temporal challenge: regulatory and innovation timelines are often out of sync, especially in digital health, where apps can be implemented in weeks, whereas traditional medical devices and pharmaceuticals took several years, giving regulators time to respond.[13] Second is an expertise challenge: digital health

[3] Doerr, "Big Health Data Research."
[4] Kumar, "Decolonising Global Health Research."
[5] Couldry, "Health Data and Global Power Inequalities."
[6] Mignolo, "The Global South and World Dis/order."
[7] Kloß, "The Global South as Subversive Practice."
[8] Zuboff, "The Age of Surveillance Capitalism."
[9] Torous, "Regulatory Considerations."
[10] Essén, "Health App Policy."
[11] Sekalala, "Colonialism."
[12] West, "Data Capitalism."
[13] Iqbal, "The Regulatory Gap in Digital Health."

innovations are increasingly complex and black-boxed, making accountability and transparency a complicated undertaking. This has ramifications for how digital health technologies can be effectively regulated, especially when regulators and public institutions often lack technical capacity. Technical capacity has also become a lever for tech companies to gain influence in social domains, especially during public crises, creating 'surveillance exceptionalism.'[14] This was evident during the COVID-19 pandemic, as governments globally implemented policies that promoted large-scale surveillance and relaxed regulations, turning to big tech corporations to implement contact-tracing systems that were usually reserved for health systems.[15] For instance, in Kenya and Uganda, more than nine COVID-19 contact tracing apps were developed mostly by private entities and deployed through public-private partnerships with governments.[16] This marked the establishment of a new socio-technical normative framework in digital health through infrastructural power for social and political action.[17] Third is a spatial challenge: digital health technologies have blurred the boundaries between traditionally distinct domains of lifestyle and health, as well as between users and patients, posing significant regulatory dilemmas.[18] This is compounded by the fact that digital health apps lack highly controlled supply chains for distribution and access, allowing anyone with a mobile device and an internet connection to access them.

The symposium relies on articles from different methodological traditions, such as doctrinal analysis, transnational comparative work, and empirical studies, to critically engage with the state's role in the Global South in shaping digital health regulations in ways that lead to deliberate failure. The diminishing regulatory oversight through 'neoliberal governmentality,'[19] in which policies sympathetic to big tech operations and expansion are implemented, highlights capitalism's endless accumulation process by dismantling safeguards, such as regulatory infrastructures. The symposium explores why capitalism will, for instance, involve taking into account the interests of the public through enacting digital health regulations that protect (some) aspects of privacy and security as a way of constructing the *public* as part of a *common* interest while at the core not disrupting the dominant interest of the surveillance capitalists in continuous data capture for profit within different national contexts.[20]

3. Regulatory Lags and Technological Fixes

Digital health transformations have given a significant opportunity for private corporations to influence and, in some instances, displace the neoliberal state in the provision of health services, including shaping regulatory mechanisms in ways that protect private rather than public interests. This encroachment has also been propelled by the absence of robust digital health data regulations in some contexts. The lack of suitable regulations allows big tech firms to operate in a regulatory vacuum, especially in post-colonial states, posing significant risks to individuals and communities.[21] The state's ability to regulate digital health activities and interests is complicated by limited and overstretched regulatory infrastructures given the multi-sectoral governance responsibilities, ranging from consumer and data protection, competition, financial markets and information and communication regulation[22] with no matching resources for coordinated and collaborative regulation across spheres.

Tech corporations' dominance and political influence are reshaping the policy landscape by establishing themselves as key actors in policy formulation, as illustrated by the aggressive push for contact-tracing apps during the COVID-19 pandemic.[23] The revolving door system between public service and industry has led to regulatory capture, in which tech companies meant to be regulated by state agencies dominate regulatory spaces and water down legislation and policies. The entry of tech companies into the highly regulated healthcare sector has also reshaped power dynamics by granting them access to data held by providers such as hospitals and positioning themselves as key sources of critical, data-driven value.[24] National laws also struggle to effectively govern all emerging digital health tools, especially when they are dual-use technologies. The regulatory lag can increase ethical dilemmas and reduce the quality, safety and trust in healthcare services.[25]

Technological solutions are increasingly seen as the ultimate model for health interventions globally, reinforcing a techno-deterministic discourse that erases contextual factors and other social processes.[26] Nowhere is this more common than in the

[14] Zuboff, "The Age of Surveillance Capitalism." 59
[15] Garrett, "Surveillance Capitalism."
[16] ARTICLE 19, "COVID-19 Surveillance."
[17] Maschewski, "Pandemic Solutionism."
[18] Torous, "Regulatory Considerations."
[19] Bandiera, "Marx, Foucault, and State-Corporate Harm."
[20] Bandiera, "Marx, Foucault, and State-Corporate Harm."
[21] Sekalala, "A Socio-Legal Critique."
[22] Ada Lovelace Institute, Rethinking Data.
[23] Khanal, "Why and How Is the Power of Big Tech."
[24] Ozalp, "Digital Colonization."
[25] AlMeslamani, "Gaps in Digital Health Policies."
[26] Marelli, "COVID-19 and Techno-Solutionism."

Global South, where technological fixes are being mooted as solutions to resource and capacity constraints.[27] For instance, the cyber-optimistic Horizon 1000 project, recently unveiled by the Gates Foundation and OpenAI, promises to address healthcare workforce shortages in African clinics through AI.[28] The techno-solutionist orientation in health has also shifted attention from addressing structural and social determinants of health inequalities to a narrow focus on fixes which have proved wholly inadequate in the face of global health crises. The casual simplification of complex interrelations between technological innovation and social change, and the misrepresentation of benefits, has led to the construction of solutions seeking solvable problems while avoiding addressing substantive and deeply rooted issues.[29] Techno-solutionism in health has given greater legitimacy to tech corporations in the spheres of politics and governance, and in social domains, in ways that reinforce harms such as asymmetrical dependencies, the crowding out of essential health expertise, and the accumulation of both capital and decision-making power across public structures, leading to weakened public health mechanisms and institutions.[30]

In the Global South, big tech corporations' crowding out of spheres of influence extends to the innovation space, including open-source software tools. Due to the global political economy of health and neoliberal logics, techno-solutionism tends to favour powerful, global tech corporations over locally led and grassroots innovations, which are more contextually compatible and may ultimately lead to positive health outcomes.[31] Techno-solutionist logics in health are more durable, given that they're propelled by rhetoric and ideological perspectives from the neoliberal state itself, with significant implications for the development, implementation and policing of normative standards in such contexts, in ways that promote corporate influence in digital health initiatives.

4. Overview of Symposium Contributions

Given that the focus on digital health regulation has primarily been in policy and public health journals, we use socio-legal analysis of regulation and digital health in this collection. As a diverse group of academics, digital health practitioners, and digital rights activists at different career stages and located in different contexts – from Latin America to Sub-Saharan Africa and Asia, we offer a conceptual analysis of surveillance capitalism through regulatory infrastructures. We interrogate how neoliberal governmental policies and the pro-innovation approach affect digital health regulatory outcomes. We also explore the loopholes in existing legal systems across different contexts that lead to extractive practices and examine how these loopholes undermine rights and health outcomes.

Law, Datafication and Coloniality

Examining the potential of AI in digital health in Sub-Saharan Africa, **Beverley Townsend** offers critical insights into AI-related health issues, such as incomplete and non-representative datasets, and connects these to broader issues of algorithmic bias and coloniality. Proposing a 'third-way' approach, implemented in other Global South contexts, to strengthen data governance regimes, address health data harms, and balance data accessibility and privacy rights, the author argues for reimagining current data protection law in Sub-Saharan Africa to enable more multilayered, human-centric AI adoption and evidence-based policy interventions.

Law and Infrastructure and Law as Infrastructure

Using India's National Digital Health Ecosystem (NDHE), **Ramya Chandrasekhar** explores how national public health infrastructure and accompanying principles for 'frictionless' generation and interoperability of health data are reshaping legal regulations in ways that promote commodification while dispossessing individuals and communities of autonomy over health data flows. The author argues that such an approach to frictionless data flows has led to regulatory artefacts, which are, in principle, meant to safeguard citizens, to become enablers of an extractive political economy of health data in the Indian context. Drawing on the experiences of designers and developers working on digital health applications in East Africa using open-source software (OSS), **Tatenda Chatikobo** and **Sharifah Sekalala** provide empirically grounded insights into the challenges of OSS innovation as an emancipatory approach to creating health solutions in low- and middle-income countries. The authors emphasise that the limitations of OSS stem from extractive logics within digital ecosystems, enabled by legal frameworks that have captured software development and other related technical infrastructures such as hardware, datasets and storage. They also contend that achieving the liberty ethos promoted by OSS requires confronting the persistent knowledge hierarchies in software development within LMICs, which uphold an elitist approach to digital health solutions more aligned with the commercial interests of Big Tech than with local needs. Illustrating how existing digital health regulatory frameworks often

[27] Madianou, Technocolonialism.
[28] Nakweya, "$50m Project for AI-Assisted Care in 1000 African Clinics."
[29] Richterich, "Can't Fix This?"
[30] Sharon, "Blind-Sided by Privacy?"
[31] Firmino, "Pandemic Techno-Politics in the Global South."

lag behind rapid digital health innovation in Sub-Saharan Africa, **Johannes Machinya** critically analyses the mHealth apps landscape, with a particular focus on definitional ambiguities in South Africa's regulatory framework that are giving rise to critical gaps. The author argues that with the mHealth regulatory regimes not accounting for the sophistication and evolving functions of some digital health tools from wellness to medical devices, this is leading to such technologies existing outside of regulatory oversight with the potential of increased risks and vulnerabilities to users. Through a critical data justice and solidarity lens, **Amrita Nanda** and **Rattanmeek Kaur** propose an infrastructural transformation of health data governance in the Global South based on collective control, ownership and decision-making using empirical insights from their experiences working with large-scale health databanks and participatory methodologies. The authors argue that digital health governance structures in the Global South should consider the prevailing colonial, epistemic, and societal complexities while centring community participation in decision-making and data practices and articulating the derived value and benefits of health data.

Law, Resistance and Emancipatory Models

With a particular focus on the Latin American context, **Mariana Ramos Pitta Lima** and **Bethânia de Araújo Almeida** illustrate the utility of collecting contextually linked administrative data for social epidemiology using the case of the 100 million Brazilian data cohort. The authors provide insights into how Brazil's social, political and regulatory configurations have shaped the use of big data for social epidemiology science and research as a way of addressing social and health inequalities, demonstrating the transformative possibilities of inclusive socio-technical developments rooted in equity and social justice that can be pursued in other diverse contexts. As a solution to digital health regulatory gaps, **Benedict Mkalama** and **Pamela Andanda** draw from experiences from fintech regulatory sandboxes in Sub-Saharan Africa, coupled with a transnational triple helix model of co-creation, to map out possible approaches to designing and implementing digital health sandboxes across the Sub-Saharan Africa contexts. The authors' proposed principles for a digital health sandbox model involve a critical analysis of social, institutional, power relations and existing legal infrastructures through an Afrocentric paradigm based on individual agency and societal interests. **Luciano Bottini Filho** complements the transformative approach to health access through a rights-based framework to digital health regulation using telemedicine/telehealth in the aftermath of COVID-19 in Brazil, in particular, and the Community of Portuguese-Speaking Countries in general as case studies. The author argues that telehealth regulatory concerns in low-resource contexts should be balanced with the right to health benefits to foster forward-looking digital health policies and strengthen states' obligation to regulate in favour of broader health coverage.

5. Conclusion

The symposium articulates the complex interplay of digital health, legal infrastructures and health transformation, calling for a more deliberate focus on the broader political economy of surveillance capitalism and digital health regulation. By bringing together socio-legal analyses, empirical case studies and normative proposals from across Global South contexts, this collection underscores both the risks and the transformative possibilities of digital health governance in contexts of surveillance capitalism. The contributions highlight how asymmetries of knowledge and power, coupled with neoliberal pro-innovation agendas, have enabled extractive data practices that often outpace and circumvent existing regulatory frameworks. At the same time, the papers also envision digital health regulation as a site of productive contestation where alternative and transformative models of governance, such as those grounded in community participation, data justice, collective ownership and rights-based approaches, can emerge to counter surveillance capitalism.

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