

Research Agenda

The (academic) researcher and their right, ability and capacity to access, use, re-use, produce and share information and knowledge to contribute to science and culture is central to actualization of fundamental rights in relation to the conduct of research. But scientific and research uses of locally held information could in specific contexts result in creating and/or exacerbating the imbalances in the global knowledge economy and further unjust extractive practices that can aggravate inequitable market structures. An emerging body of work refers to this as 'data colonialism'. In addition, African researchers and policy makers promote the protection of traditional knowledge. Here, a central concern is about protecting the ability to protect indigenous data and information as part of an existing locally governed cultural heritage.

We seek a research agenda that is in part devoted to exploring whether these positions, these ideas and the policies they animate are in conflict, or whether there are frames and principles that can help us and policy makers see their connections to achieve convergence.

1. Conceptualising purposes, uses (and re-uses) and the user:

- What purposes should the right to research promote and what purposes should it exclude?
- What uses should the right to research protect and what uses should it prohibit?
- Who or what body should grant permission over access by the potential user?
- Who are the rights holders and who are the corresponding duty bearers flowing from the right to research?
- What are the consequences that flow from the above recognition?
- What are the external factors that condition the exercise of the right to research (eg., funding priorities, relationship with communities, interests)?

These questions indicate areas that can build upon existing research but centering African and global South perspectives.

2. Dealing with researchers (in the context of Africa) and the Global South: Focus should shift from computational research as an activity to the people who do computational research and the rules and practices around those people. This shift comes in recognition of the significant position and status of the researcher in the computational research processes/pipeline: the ones who are directly 'mining', 'processing', 'extracting' and possibly openly sharing research outputs are researchers; they are also the ones interacting with and in some cases, are members of traditional knowledge communities; there are increasingly inequitable benefit sharing arrangements between researchers and their funders and their contributors - etc.

In addition there is a need to look for the best ways to describe the activity of analysing and conducting research across a large corpus of data. Previously this has been called "Text and Data Mining" which implies extraction, invoking critiques similar to critiques of

mineral extraction in Africa. Preferred terminology might include computational research, pattern recognition, data analysis and so on.

With this unique positionality of the researcher, this theme/aspect asks - do existing laws help, support or hinder them? How far do contractual rules and policies override or are allowed to override researcher/right-to-research-centric legislation? Do we need a (more) holistic, contextual approach to defining the “researcher” as the subject/beneficiary/holder of a right to research? This could involve unearthing the ‘hidden’ or previously invisible researchers of our world including persons who may not regard themselves as researchers – the data annotators, the data labellers, creators, skitmakers, etc.

3. Regime interaction for knowledge governance: What are the elements of the knowledge governance systems (Copyright, competition, contractual rules/doctrines, traditional knowledge systems) that we need to protect the values that promote global justice, sustainable development, cultural integrity and self-determination?
 - How do we first, identify inter-regime conflicts between IP (copyright) and other applicable frameworks, and second, address these conflicts so that the IP (copyright) framework does not dominate discourse around access to data/information?
 - How do we reconcile the contradiction(s) between consent-based FPIC regimes and the non-consent-based L&Es in theory and practice? Bearing in mind that the fact that indigenous data or information is outside copyright protection does not necessarily place such data in the public domain.
 - How do we ensure that national knowledge governance regimes align with the principles, and contribute to achieving the objectives, of the AfCFTA IP protocol?
4. Balance: how do we tailor and utilize knowledge governance frameworks (copyright, human rights, competition, contract laws and traditional knowledge systems) to promote access to data, while also empowering data creators socially and economically through such access.

This question flows from the recognition that the line between public and private interests is blurring and the need to see the knowledge governance regimes as a system that caters equally and equitably to public as well as private concerns.

5. Methodology: What qualitative, anecdotal, empirical, doctrinal, socio-legal or other research frames and methods could help develop, guide and implement principles on the right to research in Africa that eschews data colonialism?
 - For instance, participatory research, a community centric approach that ensures agency and data sovereignty and integrity

- critical epistemology studies, problematising knowledge generation
- disability studies, focusing on equality and mainstreaming accessibility
- business and human rights frameworks, considering juristic persons, their regulation, the extent to which their activities give effect to human rights and the extent to which their activities impede human rights
- communication and media studies, considering the communications and media ecosystems
- culture studies, considering research beyond textual means and understanding the dynamics of contemporary culture
- international human rights, considering the rights and duties and international institutions that interpret the right to research
- distributive justice, drawing on Rawlsian and post Rawlsian approaches
- law and political economy approaches, analysing the central role of capital in understanding the foundations of IP and its interaction with research
- critical legal geography approaches, understanding the spatialities and migration of IP ideas across borders (eg., fair use)

6. Equitable openness: How do we problematise openness in light of global and local inequalities in access to and the capacity to process data?

- How do we ensure that openness practices are equitable, inclusive, and promote social justice and sustainable development?
- How do we define personal and non-personal data for the purposes of research? Who owns, controls and can use non-personal data and who owns, controls and can use personal data?
- Openness is not enough. We need to ask: Open for who? How can openness benefit everyone equitably and guard against exploitation of those people, countries, communities who are excluded at present?