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Beneficial Visibility: Agency and Inclusion in the Digital Public

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Contents

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Abstract

Digital inequality in Africa is profoundly gendered, with women facing particular exclusions and risks from the emerging datafication systems. This paper examines the digitalization of social grants in South Africa as a critical case study, revealing how women's participation in datafied social protection systems occurs without meaningful agency or consent. Drawing on South African constitutional jurisprudence, the analysis critiques Western, individualistic notions of privacy, centered on the 'right to be let alone', as insufficient for addressing the collective dimensions of data subjugation experienced by South African women. It argues for a more relational understanding of data privacy that acknowledges how women's digital inclusion is essential for accessing vital services, but also inherently risky, given structural inequalities. The paper introduces 'beneficial visibility' as a feminist framework for reimagining women's control over their datafication in contexts of digital and data inequalities. Moving beyond the binary approaches to privacy as either complete exposure or total concealment, beneficial visibility emphasizes the ability to negotiate the terms and extent of digital presence based on actual benefits received and informed assessments of risks. This paper argues that current legal mechanisms, including data protection laws, inadequately address the power imbalances inherent in state-driven digitalization projects. It proposes a framework for data governance based on beneficial visibility, arguing that such approaches might transform datafication from a tool of subjugation into an instrument of collective empowerment for African women.

1. Introduction

Data plays a foundational role in shaping women's inclusion or exclusion from digital systems and policy. The absence of a gender perspective in data governance weakens our ability to productively envision a truly inclusive and beneficial data future.

Digital inequality is both intersectional and significantly gendered. As Criado-Perez warns us, "Given the existent varying levels of gendered inequality, women and gender diverse people may be the last to capture the benefits of the Fourth Industrial Revolution."[1] These inequalities intersect in a variety of ways, marring women's participation in digitalization even as efforts to render them visible within the digital public accelerate. Consequently, their agency and ability to derive meaningful benefits from participation in datafication are compromised.

Growing research highlights the (in)visibility of women in dominant datasets and their consequent exclusion from the digital realm.[2] This paper contributes to that discourse by examining the digitalization of social grants in South Africa, and using that as a lens to unpack the legal foundations of data privacy. It then juxtaposes legal frameworks with lived experiences of privacy to assess whether a reimagining of privacy through the notion of 'beneficial visibility' might offer a more grounded understanding. Beneficial visibility refers to the ability of individuals and communities to control and shape their digital visibility from the bottom up, rendering themselves visible only to the extent necessary to access benefits while retaining agency.

Social grants are a critical site for this inquiry, not only because they are central to the everyday lives of South African women, but also due to the specific challenges they pose to women's digital agency.

Building the narrative tools through which we describe and structure the digital realm, and recognizing how inclusion and exclusion are central to autonomy and dignity, are both essential to reframing the data and artificial intelligence (AI) futures we want to see. Beneficial visibility can be a useful tool to this end, as it allows us to resist women's exclusion from the digital public and imagine a form of inclusion that is responsible, collective, empowered, and justly negotiated.

2. Methodology and Context

South Africa's social protection landscape is undergoing rapid datafication and digitalization, but these processes do not necessarily center women's experiences or imagining.

To address this gap, this paper examines the country's social protection systems through a qualitative case study[3] that foregrounds the lived experiences of the digital subjects, particularly women.[4]

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1 Caroline Criado-Perez, Invisible Women (Vintage, 2020).

2 Chenai Chair, "My Data Rights: A Feminist Reading of the Right to Privacy and Data Protection in the Age of AI," Mozilla Foundation, https://mydatarights.africa/wp-content/uploads/2020/12/mydatarights_policy-paper-2020.pdf

3 Robert Yin, Case Study Research and Applications: Design & Methods, 6th ed. (Los Angeles, Calif.: Sage Publications, 2018).

4 Yin.

More specifically, it explores the intersections of gender, data privacy, and digital identity through the lens of social grants distribution. To support its arguments, the paper draws on theoretical contributions from legal, feminist, and other socio-technical interdisciplinary approaches.

The data for this case study has been collected from multiple sources. Initial research was conducted in 2023 through storytelling exercises with four precarious South African workers, reflecting on their Covid-19 experiences. The participants included two working women, a sex worker, and a domestic worker. Their narratives helped highlight the concept of beneficial visibility and laid the foundation for its first academic formulation.[5] This data was supplemented with secondary research on grants processes in South Africa.[6]

3. The Development Context: Social Protection in South Africa for Women

According to the Department of Social Development's latest Annual Report to the Parliament, approximately 45% of South Africa's population benefits from social assistance transfers.[7] For many, these transfers are a vital source of income. Understanding the gender dynamics of the grant system is, therefore, critically important.

Across the African continent, social safety nets have had demonstrably beneficial impacts on women's lived experiences, contributing to reductions in intimate partner violence, improving psychological wellbeing, and making modest gains in dietary diversity and economic standing.[8]

Prioritizing cash transfers to women through social protection schemes have also resulted in better outcomes for households overall, enhancing the productive impacts of such transfers.[9] However, given the structural nature of gender dynamics resulting from traditional roles, cash transfers can also exacerbate the pressures and care burdens women already face.[10] In addition, gender inequality in South Africa has significant economic consequences: women participate less in the labor force and earn only 70% of what men do.[11]

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5 Gabriella Razzano, 'Working in the Shadows When the Light Is Nothing But a Torch.' (London School of Economics, 2023), https://afsee.atlanticfellows.lse.ac.uk/projects/covid-19-rapid-response-fund/rapid-responses-for-south-african-labour-law-in-the-post-corona-labour-market.

6 Stealing Grant Beneficiary Data (Pre-Release Version), Grant Grab Series, 2018; "New Documentary: In South Africa, an Algorithm Stands in the Way of Social Security", Mozilla Foundation, 11 June 2024, https://foundation.mozilla.org/en/blog/new-documentary-in-south-africa-an-algorithm-stands-in-the-way-of-social-security/ ; Michael de Jongh, "No Fixed Abode: The Poorest of the Poor and Elusive Identities in Rural South Africa", Journal of Southern African Studies 28, no. 2 (2002): 441–60.

7 Social Development Committee, "SASSA & NDA 2023/24 Annual Report; with Minister". Parliamentary Monitoring Group. 11 October 2024, https://pmg.org.za/committee-meeting/39610/.

8 Amber Peterman et al., "Towards Gender Equality: A Review of Evidence on Social Safety Nets in Africa." SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, 1 December 2019. https://papers.ssrn.com/abstract=3516279.

9 Jessica Hagen-Zanker and et al., "The Impact of Cash Transfers on Women and Girls: A Summary of the Evidence Policy Brief". Overseas Development Institute, March 2017. https://odi.org/documents/5509/11374.pdf.

10 Hagen-Zanker and et al. "Impact of Cash Transfers on Women and Girls."

11 Chair, "My Data Rights: Feminist Reading of the Right to Privacy and Data Protection in the Age of AI".

It is not surprising then that women are the principal data subjects within South Africa's social grants system. In a review of the National Statistics Agency's figures for January 2024, the Department of Performance Monitoring and Evaluation reported that 97% of the beneficiaries receiving traditional grant forms were women.[12] This figure does not take into account the total number of beneficiaries — it excludes, for instance, the Special Covid-19 Social Relief of Distress (Covid-19 SRD) grant, which, in August 2024, had 8.1 million recipients — but nevertheless reveals that the social protection landscape is fundamentally a women's policy issue.[13]

This is especially crucial given the precarious nature of women's labor participation. According to Statistics South Africa (StatsSA), 20% of the country's working population is in the informal economy.[14] While men make up a larger proportion of this sector, women are overrepresented in forms of household labor, such as domestic work, that may be formal by definition but remain precarious in practice. Surveys conducted during the Covid-19 pandemic showed that women were more negatively impacted by job losses and less likely to return to the workforce. As one survey noted:

> "The fact that a large female penalty [exists] suggests that a significant factor in who lost and who gained jobs over the period is likely the type of job men and women initially held, and the type of job that became available over the period. Women were more likely to be in sectors that were hardest hit by the crisis, and perhaps also less likely to be able to take up the new opportunities available.
>
> Although we were unable to show this with the NIDS-CRAM [National Income Dynamics Study – Coronavirus Rapid Mobile Survey] data, even within sectors, women might be in more precarious employment relationships than men, making it easier for employers to reduce their employment when lockdown restrictions are imposed."[15]

12 Department of Performance, Monitoring and Evaluation, "Tenth Statistical Report 2023/4: Social Assistance", 2024, https://www.sassa.gov.za/statistical-reports/Documents/social%20assistance%20%20report%20%20January%202024.pdf.

13 Isobel Frye, "SA's Poor Urgently Need a Decent Universal Basic Income Grant," Mail & Guardian (blog), October 9, 2024, https://mg.co.za/thought-leader/opinion/2024-10-09-sas-poor-urgently-need-a-decent-universal-basic-income-grant/.

14 Statistics Agency of South Africa, 'Quarterly Labour Force Survey - Quarter 3: 2024', Statistical Release, 2024, https://www.statssa.gov.za/publications/P0211/P02113rdQuarter2024.pdf.

15 Daniela Casal and Debra Shepherd, "The Gendered Effects of the COVID-19 Crisis and Ongoing Lockdown in South Africa: Evidence from NIDS-CRAM Waves 1–5," CRAM Survey, July 8, 2021, https://cramsurvey.org/reports/.

These conditions make women particularly vulnerable to policy changes, as was demonstrated by the implementation of the Covid-19 SRD grant. During the pandemic, two in every three recipients of the grant were male, even though two-thirds of those who lost employment between February and April 2020 were women.[16] This disparity stemmed largely from provisions that prohibited recipients of other grants from applying for the Covid-19 SRD. Women, for instance, were primary beneficiaries of the Child Support Grant — one of the largest social assistance programs in South Africa — and also received additional relief through a Child Support Top-Up.[17] As such, they were left out of the ambit of the Covid-19 SRD grant. Experiences like this highlight why the digitization of social protection must consider how such reforms will impact women.

Digitization has been a core ambition of South Africa's social protection regime since the Chikane Commission of 1996. Its recommendations included the centralization of grant distribution and the outsourcing of payment functions to the private sector to 'shift security risks'.[18] The same report was, however, sceptical about using biometric data for verification, citing the lack of centralization at the time.[19] The devolution of payment responsibilities made 'machines and technologies of grant payment' integral to the social protection system,[20] and touched upon several areas of administration:

> "[It was] a move from poorly scrutinized or verified grant applications towards interoperable databases, in order to remove those deemed undeserving, and a move from street-level bureaucrats towards electronic cash dispensers".[21]

This ushered in a large-scale state effort to collect biometric information of citizens:

> "Beginning in March 2012 and continuing for about a year and a half, 18.9 million predominantly low-income South African residents queued at government facilities to be photographed and to submit their personal details, including a full set of fingerprints and a voice recording."[22]

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16 Razzano, "Working in the Shadows When the Light Is Nothing But a Torch."

17 Department of Performance, Monitoring and Evaluation, 'Tenth Statistical Report 2023/4: Social Assistance'.

18 Department of Social Welfare, 'White Paper for Social Welfare', 1997, https://www.gov.za/sites/default/files/gcis_document/201409/whitepaperonsocialwelfare0.pdf.

19 Committee for the Restructuring of Social Security, "Report of the Committee on the Restructuring of the Social Security System", 1997, https://pmg.org.za/committee-meeting/2551/.

20 Natasha Vally, "Insecurity in South African Social Security: An Examination of Social Grant Deductions, Cancellations, and Waiting", ResearchGate, 2016, https://www.researchgate.net/publication/308955644_Insecurity_in_South_African_Social_Security_An_Examination_of_Social_Grant_Deductions_Cancellations_and_Waiting.

21 Kevin P. Donovan, "The Biometric Imaginary: Bureaucratic Technopolitics in Post-Apartheid Welfare", Journal of Southern African Studies 41, no. 4 (4 July 2015): 815–33, https://doi.org/10.1080/03057070.2015.1049485.

22 Samuel Warren and Louis Brandeis, "The Right to Privacy", Harvard Law Review 4, no. 5 (1980): 193–220.

Under a recent pilot program tied to the post-Covid extension of the SRD grant, this biometric system was expanded to include facial recognition.[23] This revision proved to be especially challenging for those without a preexisting Smart ID Card,[24] even though the older paper barcoded ID is still legally valid. For women, these systems often entail a lack of choice and a simultaneous, significant risk of exclusion.

4. Datafication, Digital Identity, and Subjugation

To be incorporated into a digital system, subjects are both datafied and digitalized. At the core, these are questions of identity and, as in South Africa's social protection digitalization, often linked to the use of identity-related technologies such as biometrics. Biometric systems were a central part of the colonial project in South Africa, and have remained a key feature of the social grant verification process since independence.[25]

It is worth noting that the experience of digital subjugation is marked by intersectional inequalities. This is encapsulated in the term 'marginal users', used to refer to people who engage in online spaces infrequently due to limited internet access and digital capacities.[26] Marginal users typically have little opportunity — or agency — to manage the flow of information about themselves and shape their digital identities.[27] This has ramifications for social protection:

> "As people who have been 'watched by default', low-income populations in particular may be attuned to trading their details for welfare benefits."[28]

The datafication of 'publics' by public administrations is frequently understood as a means of consolidating control rather than enabling agency, and a strategy for cementing political power.[29]

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23 Marcia Damons, "Beneficiaries Are Still Battling with SASSA's New Biometric System". GroundUp, 30 July 2024, https://groundup.org.za/article/social-grant-beneficiaries-are-still-battling-with-the-new-biometric-system/.

24 A Smart ID card in South Africa is a secure, polycarbonate identity document that replaced the old green bar-coded ID book, featuring biometric technology that stores fingerprints and facial recognition data alongside traditional personal information like name, ID number, and date of birth - it replaces the previous paper, barcoded ID (though that ID still constitute valid identification in South Africa).

25 Donovan; Vally, "Insecurity in South African Social Security".

26 Alison Gillwald, Mothobi Onkokame, and Broc Rademan, "After Access: The State of ICT in South Africa", Policy Paper, 5. Research ICT Africa, 30 July 2018, https://researchictafrica.net/publication/state-of-ict-in-south-africa/.

27 Seeta Peña Gangadharan, "The Downside of Digital Inclusion: Expectations and Experiences of Privacy and Surveillance among Marginal Internet Users." 2017, https://journals.sagepub.com/doi/abs/10.1177/1461444815614053.

28 Janaki Srinivasan et al., "Privacy at the Margins| The Poverty of Privacy: Understanding Privacy Trade-Offs from Identity Infrastructure Users in India", International Journal of Communication 12 (2018): 20.

29 Veronica Barassi, "Datafied Citizens in the Age of Coerced Digital Participation", Sociological Research Online 24 (28 June 2019): 136078041985773, https://doi.org/10.1177/1360780419857734.

In this sense, datafication can be an instrument of subjugation. Women, in particular, may be unable to exert agency within social protection systems and are thus more vulnerable to the effects of datafied control.[30]

While the relationship between the 'right to be let alone'[31] and other aspects of privacy will be discussed in subsequent sections, here, it is important to highlight the associations between informational and data privacy, and the development of personal identity:

> "While not an absolute right, the right to privacy is essential to the free development of an individual's personality and identity. It is a right that both derives from and conditions the innate dignity of the person and facilitates the exercise and enjoyment of other human rights. It is a right not restricted to the public sphere."[32]

5. Understanding Datafication: The Public-Private Binary

Rendering women as data subjects in social protection systems helps position them within the 'data public'.[33] Feminist theorists have long grappled with the public-private binary and whether this distinction can be productively employed in feminist legal thought.[34] This is vital to explore because the right to be, or not to be, a subject of datafication affects not only the right to data privacy but also the very definitions of what is considered private and public.

On the subject of data privacy, Higgins notes:

> "These critiques have addressed privacy both as a protected space encompassing home and family and as decisional autonomy. Feminists have criticized both types of privacy rights as, at best, inadequately ensuring privacy for women and, at worst, shielding from public scrutiny private abuse of women."[35]

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30 Mariana Valente and Nathalie Fragoso, 'Data Rights and Collective Needs: A New Framework for Social Protection in a Digitized World – A Digital New Deal', IT for Change (blog), 2020, https://projects.itforchange.net/digital-new-deal/2020/10/29/data-rights-collective-needs-framework-social-protection-digitized-world/.

31 Samuel Warren and Louis Brandeis, "The Right to Privacy", Harvard Law Review 4, no. 5 (1980): 193–220.

32 Special Rapporteur on the Right to Privacy, 'A/HRC/40/63: Privacy and Technology from a Gender Perspective: Report', OHCHR, 27 February 2019, https://www.ohchr.org/en/documents/thematic-reports/ahrc4063-privacy-and-technology-gender-perspective-report.

33 This term references the concept of a public realm or space where data flows, is transferred, and becomes accessible - similar to how we might refer to "cyberspace" or "public space", but specifically for the domain where data transactions and data visibility occur.

34 Tracy E. Higgins, "Reviving the Public/Private Distinction in Feminist Theorizing Symposium on Unfinished Feminist Business", Chicago-Kent Law Review 75, no. 3 (2000 1999): 847–68.

35 Higgins.

Historically, the negotiation of what is considered public or private has often served to undermine female autonomy or shield to patriarchal practices within the domestic sphere from public sanction or accountability. Yet, the alternative, which is to extend the public sphere further into the private and essentially diminish the very notion of privacy, may not advance women's interests either.[36]

Simultaneously, modern feminist literature has challenged the public-private distinction for its limited practical relevance, especially in the face of violent realities.[37] Other scholars have argued that privacy law has historically carved out private space only for a certain *kind* of person, who is generally white and male.[38] These critiques suggest that the practice of privacy has long been a practice of privilege, implicating the role of law in perpetuating social inequalities, including those based on gender.

Nevertheless, the public-private distinction continues to serve as a key analytical and legal tool. It is used, for instance, in determining the applicability of administrative justice provisions under South Africa's Promotion of Administrative Justice Act 2 of 2000 (PAJA).[39] Within South African case law on privacy, the Bernstein decision[40] (addressed in more detail later) conceptualized privacy through a spatial lens, defining it as related to one's 'personal sphere'.

Given its wide and continued deployment, valid critiques of the public-private distinction may allow for a more refined and inclusive understanding of the notion of privacy and provide an opportunity for reform.[41] At its core, privacy — and the assertion and recognition of private space — in both legal and social theory may be a mechanism for advancing agency in a disempowered context even as we remain attentive to the ways in which it continues to fail safeguarding the most marginalized.

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36 Higgins.

37 Sreyashi Ghosh, "Beyond Space: Debunking Public/Private Divide in Understanding Violence against Women in India", International Journal of Gender Studies 1, no. 1 (21 November 2017): 76–95.

38 Eden Osucha, "The Whiteness of Privacy: Race, Media, Law", Camera Obscura 24, no. 1 (n.d.): 67–107.

39 PAJA applies to all administrative action and defines administrative action as "any decision taken, or any failure to take a decision, by-
(a) an organ of state, when-
(i) exercising a power in terms of the Constitution or a provincial constitution; or
(ii) exercising a public power or performing a public function in terms of any legislation; or
(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,
which adversely affects the rights of any person and which has a direct, external legal effect..."

40 Bernstein and Others v Bester NO and Others [1996] ZACC 2.

41 Higgins, "Reviving the Public/Private Distinction in Feminist Theorizing Symposium on Unfinished Feminist Business".

6. Human Rights, Legal Theory, and Women's Privacy

Traditional Marxist theory critiques the law for existing as a part of the superstructure,[42] ultimately limited in its capacity to support anti-capitalist struggles and other forms of social resistance, given its embeddedness in the dialectic that reproduces capitalism.[43] At the same time, legal feminist theory argues that the law can be a productive tool to advance women's issues, and potentially even to illuminate issues of data governance. Feminist legal theory offers critical tools to reimagine the right to data privacy and uncover the risks of digital subjugation, while also critiquing more classical liberal legal frameworks. These traditional models, given their restrictive ideas of who is a free person, fail to recognise that women's positioning within the home — or, more broadly, in traditionally private spaces — has not always been voluntary or just.[44]

Early legal scholarship on privacy in the United States framed it as the 'right to be let alone', rooted in ideas of physical space and private property.[45] More modern interpretations, particularly in the realms of information, data, and communication, have then extended privacy into the digital sphere. South African jurisprudence, shaped by both constitutional and common law traditions, offers a rich site for exploring these evolving notions of privacy.

Privacy jurisprudence in South Africa emerged in the 1950s.[46] Over time, central constitutional principles began to impact its conceptualization, with the incorporation of a specific right to privacy within the Constitution of the Republic of South Africa, 1996.[47] In the landmark *Bernstein v Bester case*,[48] the Court held that the notion of privacy exists along a continuum. As Judge Ackermann observed:

> "A very high level of protection is given to the individual's intimate personal sphere of life and the maintenance of its basic preconditions and there is a final untouchable sphere of human freedom that is beyond interference from any public authority. So much so that, in regard to this most intimate core of privacy, no justifiable limitation thereof can take place. But this most intimate core is narrowly construed.

42 Hugh Collins, "The Changing Meaning of Privacy, Identity and Contemporary Feminist Philosophy'Marxist Approach to Law", in Marxism and Law, ed. Hugh Collins (Oxford University Press, 1984), 0, https://doi.org/10.1093/acprof:oso/9780192851444.003.0001.

43 Vinícius Casalino, "Karl Marx's Dialectics and the Marxist Criticism of Law", Revista Direito e Práxis 9, no. 4 (October 2018): 2267–92, https://doi.org/10.1590/2179-8966/2018/29868.

44 Janice Richardson, "The Changing Meaning of Privacy, Identity and Contemporary Feminist Philosophy", Minds and Machines 21, no. 4 (1 November 2011): 517–32, https://doi.org/10.1007/s11023-011-9257-8.

45 Warren and Brandeis, "The Right to Privacy".

46 Jonathan Burchell, "The Legal Protection of Privacy in South Africa: A Transplantable Hybrid", Electronic Journal of Comparative Law 13, no. 1 (March 2009), https://www.ejcl.org/131/art131-2.pdf.

47 Contained in section 14, the right to privacy is framed as: "Everyone has the right to privacy, which includes the right not to have— (a) their person or home searched; (b) their property searched; (c) their possessions seized; or (d) the privacy of their communications infringed".

48 Bernstein and Others v Bester NO and Others [1996] ZACC 2.

> This inviolable core is left behind once an individual enters into relationships with persons outside this closest intimate sphere; the individual's activities then acquire a social dimension and the right of privacy in this context becomes subject to limitation."

As such, the law imagined privacy spatially, as closely tied to the private sphere. But as discussed earlier, the private sphere has not always functioned as a site of agency for women. This spatial framing of privacy also has a very individualistic foundation, mirroring American jurisprudence, and this individualism in fact has been used to explain why it was initially absent as standalone right in the African Charter on Human and People's Rights.[49]

However, South African common law offers an alternative foundation for privacy through the concept of 'dignitas',[50] or 'innate human dignity'.[51] The Constitutional Court has interpreted the right to privacy as the "right of a person to live his or her life as he or she pleases", which bears similarities with Warren and Brandeis' concept of the 'right to be let alone'.[52] This association between privacy and autonomy is important.

While South Africa's Protection of Personal Information Act (POPIA), 2013 continues to reflect this foundation, the law on informational and data privacy has evolved from considering data privacy as a right to not be interfered with (negative liberty) to also taking into account the ability to exert control over one's data. As Neethling notes, privacy is an:

> "...individual condition of life characterised by seclusion from the public and publicity. This condition embraces all those personal facts which the person concerned has himself [or herself] determined to be excluded from the knowledge of outsiders and in respect of which he has the will that they be kept private." [emphasis added][53]

Feminist thinking urges us to imagine the law as a social and normative mechanism, and not merely as an economic one. Data privacy is not only about what is public or private, but also about whether individuals are able to exert control over data about them, in public and social actions. Another way of framing this would be to think of the public and private less as competing domains, within which data exists in one sphere or another, and more as conceptual tools for negotiating how data should be treated in exchanges.

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49 Patricia, Boshe, "Data Protection Legal Reform in Africa", (Passau University, 2017).

50 A good demonstration of the relation between dignity and privacy can be seen in the case of NM and Others v Smith and Others [2007] ZACC 6, which dealt with the public exposure of a group of women's HIV status.

51 Burchell, "The Legal Protection of Privacy in South Africa: A Transplantable Hybrid".

52 H v W [2013] ZAGPJHC.

53 Naude, A. and Sylvia Papadopoulos, "Data Protection in South Africa: The Protection of Personal Information Act 4 of 2013 in Light of Recent International Developments (1)", THRHR 79 (2016): 51.

This is why data privacy laws are not about confidentiality but rather about how a person's data may or may not be processed. But this social function invites us to go beyond individualistic concerns, and ground privacy in the concept of 'dignitas'.

The value of protecting privacy should (and could) also go beyond the protection of dignity of an individual.[54] The notion of 'ubuntu' – the African concept 'that we are human through others' – informs much contemporary African human rights theory on collective rights, helps demonstrate how the relational aspect of our personhood normatively underpins its value.[55] In turn, the notion of relational value, which emerges from the work of Mhlambi, directly implicates privacy again:

> "Models that aggregate individual data points in order to apply a generalization to a future data subject deny the individuality and autonomy of that future data subject, and the notion that truths, and perhaps all truths, about an individual can be rationally computed destroys the core idea of privacy."[56]

Far from being incompatible with the idea of privacy, 'ubuntu' and other collectivist philosophies can help reshape it.[57] Privacy can be understood as a collective interest because the risks associated with it are collective – our data does not stand in isolation but is enacted as part of datasets, databases, and networks. As Tufekci argues:

> "Data privacy is not like a consumer good, where you click 'I accept' and all is well. Data privacy is more like air quality or safe drinking water, a public good that cannot be effectively regulated by trusting in the wisdom of millions of individual choices. A more collective response is needed."[58]

This is because when one person either sacrifices or is forced to surrender their privacy, the potential consequence is the exposure of collective and not just individual identity.[59] One example of such collective consequence is the extreme vulnerability faced by groups subject to identity programs in refugee and immigration registration.[60] The other example is South Africa's grant registration system.

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54 Naude, A. and Papadopoulos; Burchell, 'The Legal Protection of Privacy in South Africa: A Transplantable Hybrid'.

55 Sabelo Mhlambi, "From Rationality to Relationality: Ubuntu as an Ethical and Human Rights Framework for Artificial Intelligence Governance", 2020, https://carrcenter.hks.harvard.edu/publications/rationality-relationality-ubuntu-ethical-and-human-rights-framework-artificial.

56 Mhlambi

57 Mhlambi.

58 Zeynep Tufekci, "The Latest Data Privacy Debacle", The New York Times, 30 January 2018, Opinion Section, https://www.nytimes.com/2018/01/30/opinion/strava-privacy.html.

59 Daniel Solove, "The Myth of the Privacy Paradox", 1 February 2020, http://scholar.google.co.za/scholar_url?url=https://scholarship.law.gwu.edu/cgi/viewcontent.cgi%3Farticle%3D2738%26context%3Dfaculty_publications&hl=en&sa=X&ei=yfoPYNuQAfGTy9YPt-iH6A4&scisig=AAGBfm3wK8BC eq6t4dsxDd71kYvjYG_wyA&nossl=1&oi=scholarr; Martin Tisne, "The Data Delusion: Protecting Individual Data Isn't Enough When The Harm Is Collective", (Stanford Cyber Policy Center, 2020), https://cyber.fsi.stanford.edu/publication/data-delusion ; Tufekci, "The Latest Data Privacy Debacle".

60 Linnet Taylor, "What Is Data Justice? The Case for Connecting Digital Rights and Freedoms Globally", Big Data & Society 4, no. 2 (1 December 2017): 2053951717736335, https://doi.org/10.1177/2053951717736335.

Such collective stakes also reveal why the value of privacy must extend beyond the economic realm to include its social and political implications. A human rights perspective frames privacy as valuable merely because it is legally protected, and Solove reminds us:

> "The fact that people share data in an age where it is nearly impossible not to do so has little bearing on the value of privacy."[61]

While surrendering their invisibility may have resource value for women, giving them access to grants and services, the accumulation of that data can nevertheless be marked by subjugation. This transactional logic of digitalization projects, in which data is exchanged for services, assumes that women have equal bargaining power in these exchanges. However, in contexts where the service in question is essential, or digital systems are designed in ways that limit understanding or participation (discussed in detail below), such assumptions about equal exchange collapse entirely and any appearance of choice or control is illusory.

7. Visibility as a Feminist Issue

After considering the legal and socio-political dimensions of the public-private dichotomy, data subjugation, and social development, it is worth exploring how visibility — being seen or made visible — is gendered.

In non-digital public spaces, women's visibility is often shaped by patriarchal control.[62] This notion has been addressed, for instance, in the context of gender-based violence and how it impedes women's ability to occupy public spaces.[63]

As Phadke, Ranade, and Khan note:

> "Since conditional protection brings only surveillance and control for women, in order to claim the right to public space women must claim the right to risk. To do this we need to redefine our understanding of violence in relation to public space, to see not sexual assault but the denial of access to public space as the worst possible outcome for women."[64]

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61 Solove, "The Myth of the Privacy Paradox".

62 Shilpa Phadke, Shilpa Ranade, and Sameera Khan, "Invisible Women", Index on Censorship 42, no. 3 (1 September 2013): 40–45, https://doi.org/10.1177/0306422013500738.

63 Phadke, Ranade, and Khan.

64 Phadke, Ranade, and Khan.

This argument can be extended to the digital realm to understand women's forced inclusion in the data public[65] through the digitalization of social protection systems. While there may be specific risks to women's digital subjugation (elaborated later in the paper), expanding the opportunities available to them to access digital spaces and services on their own terms may be the mechanism through which women can claim their rights more meaningfully.

Feminist theory has also studied invisibility in the digital context but largely from the perspective of women's exclusion from data and, consequently, from policy considerations and access to services.[66] Thinking, for instance, of public spaces and infrastructure, Phadke, Ranade and Khan note:

> "Public spaces and infrastructure are usually designed for an abstract 'generic' user. In the context of an ideology that deems women's proper place to be at home, this imagined 'neutral user' of public facilities and infrastructure is invariably male."[67]

Women may be excluded through their absence from data, rendering them invisible to governance and resource allocation systems. What's more is that their absence from datasets has structural roots. In South Africa, it is associated with unequal access to digital infrastructure. Limited access to affordable data, along with insufficient and inefficient digital infrastructure systems, impedes women from productively engaging with technology.[68]

These limitations restrict their ability to benefit from e-services and other digital platforms.[69] Essentially, these conditions mean that "...most people are using services passively, not in the high-speed, always-on environment where studies of causality in relation to penetration and economic growth have been done."[70] This passivity places constraints on people's capacity to engage with any autonomy or agency in digitalization processes.

The context in which technology is deployed matters too. Evidence suggests that discretionary digital interactions between citizens and the South African government are low, with fewer than 20% of internet users reporting that they use e-government services.[71] This means that only a fraction of the population is accustomed to engaging with the government in a digital space with any form of autonomy.

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65 A way of understanding the "data public" refers to citizens collectively seen as both producers and subjects of data who have rights, interests, and responsibilities in how data is governed in a digital society, but also to how we are included into datafied public space.

66 Phadke, Ranade, and Khan; Criado-Perez, Invisible Women.

67 Phadke, Ranade, and Khan, "Invisible Women".

68 Alison Gillwald, "From Digital Divide to Digital Inequality: The Connectivity Paradox" (Law and Development Research Conference, University of Antwerp, 2017), https://researchictafrica.net/2017/09/22/from-digital-divide-to-digital-inequality-the-connectivity-paradox/ ; Gillwald, Onkokame, and Rademan, "After Access".

69 Mmabatho Mongae, "E-Services in South Africa Exacerbate Inequality through Digital Barriers", The Mail & Guardian (blog), 20 October 2024, https://mg.co.za/thought-leader/2024-10-20-e-services-in-south-africa-exacerbate-inequality-through-digital-barriers/

70 Gillwald, "From Digital Divide to Digital Inequality: The Connectivity Paradox".

71 Gillwald, Onkokame, and Rademan, "After Access".

Digital inequalities that impede visibility are exacerbated in colonial contexts by the complex ways in which states include and exclude, or police indigenous populations. For instance:

> "Shack-dwellers in urban informal settlements are more visible than the rural poor, and even though numerous studies have shown that they are better off than many inhabitants of rural areas, most of the state's efforts at alleviating poverty are aimed at them."[72]

State-led projects of "making visible" aspects of the public may be driven by the desire to exert political control, but they also serve as key mechanisms through which vulnerable groups attempt to extract benefits from developmental state policies and programs. As noted by researchers working on colonially invisible rural populations:

> "If the rights and duties of a citizen are assumed to revolve around the conventionally accepted obligations and privileges of owing allegiance to the state and being entitled to its protection, then the dire circumstances and the general vulnerability of such communities are crying out for more serious attention, and effective action, from local, provincial and national government and from non-governmental organisations alike."[73]

At its best, policy can create possibility, but only for those who are visible to it.[74] If people are seen to exist within a space, they may be able to stake a claim to it. This may be as relevant to the digital public as it is to the public square.

Visibility within a digital public is also a matter of digital identity. This is not only because digital identity enables access to such space, but also because, as feminist theory has highlighted, identity is continually created and recreated through interactions and social relations.[75] In this sense, identity is not wholly private and static but rather fluid, and communications, including digital communications, become an essential part of its mediation *if* there is agency to engage with it.[76] As feminist research suggests:

> "Most narratives around data focus on it as if it were an entity that exists outside our personhood, however, data is a part of us and our experiences of data and privacy embody the concept of 'data bodies'."[77]

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72 Michael de Jongh, "No Fixed Abode: The Poorest of the Poor and Elusive Identities in Rural South Africa", Journal of Southern African Studies 28, no. 2 (2002): 441–60.

73 de Jongh.

74 Phadke, Ranade, and Khan, "Invisible Women".

75 Richardson, "The Changing Meaning of Privacy, Identity and Contemporary Feminist Philosophy".

76 Richardson

77 Chair, "My Data Rights: Feminist Reading of the Right to Privacy and Data Protection in the Age of AI".

8. Agency and Autonomy

In the context of data privacy, consent is seen as the primary means of asserting agency.[78] But the focus on individual consent as a mechanism for exercising freedom in relation to data privacy, especially in contexts of dramatic social, political, and economic power imbalances, has one net result:

> "Consent without power leads to inequality."[79]

Moreover, consent cannot be understood as unconditional. As one study points out about consent in the digital context:

> "...consent is most valid when we are asked to choose infrequently, when the potential harms that result are easy to imagine, and when we have the correct incentives to consent consciously and seriously."[80]

In other words, consent must imply choice. It should also be informed, meaning data subjects must be proactively made aware of what they are consenting to.[81] Yet even informed consent may not be sufficiently empowering. The fact that the central principle of data protection assumes something inherently absent — equality — in the relationship between data collectors and lower-income data subjects seeking essential services. It raises an important question: how can the idea of consent be adjusted or redefined to serve as a meaningful proxy for agency? As Richard and Hartzog note, "...predictive analytics are no doubt outstripping most peoples' notions of what is capable with data."[82]

Agency and consent can also be conceptualized through economics. The capabilities approach notes that an individual's rights and freedoms, including the right to privacy, are insufficient without the capability to achieve them.[83] This includes not only the capability to access justice and due process (that is, having a place to act on those freedoms, such as the court), but also having the resources, material and otherwise, and opportunities to enact those freedoms.[84] Information itself can be part of this resourcing.

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78 Gabriella Razzano, "Working in the Shadows When the Light Is Nothing But a Torch.'Understanding the Theory of Collective Rights: Redefining the Privacy Paradox", (Research ICT Africa, 28 February 2021), https://researchictafrica.net/research/concept-note-understanding-the-theory-of-collective-rights-redefining-the-privacy-paradox/ ; Emily Taylor, "The Privatization of Human Rights: Illusions of Consent, Automation and Neutrality", accessed 2 October 2020, https://www.academia.edu/35815616/The_Privatization_of_Human_Rights_Illusions_of_Consent_Automation_and_Neutrality ; Helen Nissenbaum, Privacy in Context (Stanford University Press, 2009); Neil Richards and Woodrow Hartzog, "The Pathologies of Digital Consent", Washington University Law Review 96, no. 2019 (n.d.).

79 Mhlambi, "From Rationality to Relationality: Ubuntu as an Ethical and Human Rights Framework for Artificial Intelligence Governance".

80 Richards and Hartzog, "The Pathologies of Digital Consent."

81 POPIA itself requires that data subjects be explicitly informed of the purposes of the processing in section 13.

82 Richards and Hartzog.

83 Amartya Sen, "Human Rights and Capabilities", Journal of Human Development 6, no. 2 (2005): 151–66.

84 Sen.

It is also worth considering how agency and autonomy intersect with digital identity and privacy. As the Special Rapporteur on the right to privacy notes:

> "Shorn of the cloak of privacy that protects [her], an individual becomes transparent and therefore manipulable. A manipulable individual is at the mercy of those who control the information held about [her], and [her] freedom, which is often relative at best, shrinks in direct proportion to the extent of the nature of the options and alternatives which are left open to [her] by those who control the information.
>
> That is why privacy is so closely linked to meaningful personal autonomy. Infringement of privacy is often part of a system which threatens other liberties. It is often carried out by State actors to secure and retain power, but also by non-State actors, such as individuals or corporations wishing to continue to control others. That is why, in many cases, the Special Rapporteur must consider how violations of the right to privacy are linked to other violations."[85]

Vital then to a feminist understanding of data subjugation is a recognition of how central the holding and control of data is to the exertion of power, both state and private.

9. Lived Experiences of Women and Data Privacy

It is important now to center the lived experiences of women in relation to data privacy and state visibility. This means focusing on the risk environment for women in South Africa as it relates to their inclusion in, or exclusion from, the digital public.[86]

Women have expressed a lack of agency, often stemming from the absence of data and information transparency within South Africa's social grants system. As one recipient noted about the status of her Covid-19 SRD grant,

> "I wasn't happy because sometimes you get the grant and sometimes you do not get it. So you won't know if the problem is on your side or SASSA's [South African Social Security Agency] side. You won't know what's going on."[87]

85 Special Rapporteur on the Right to Privacy, 'A/HRC/40/63'.

86 Gabriella Razzano, AI and Exclusion in Public Digital Systems (African Observatory on Responsible Artificial Intelligence, March 31, 2024), https://www.africanobservatory.ai/ai4d-resources/ai-and-exclusion-in-public-digital-systems.

87 Mozilla, Mind the People: SASSA's Algorithm Fails South Africa's Poorest, 2024, https://www.youtube.com/watch?v=vVyTodRhJPg.

This precarity is exacerbated by the various ways in which women feel disempowered in rights spaces. As a recent quantitative study in South Africa points out:

> "The significant differences among gender groups in this study show that the female participants in South Africa had significant[ly] higher expectations for privacy and significant[ly] lower confidence that privacy was met in practice than their male counterparts…South African females are more concerned about their privacy protection as well as protection from government than their male counterparts" [emphasis added]."[88]

The digital public also poses particular risks for women, highlighting the need for agency in digitalization. As the Special Rapporteur notes, "Digital technology and smart devices provide almost limitless ways to harass and control others."[89] One study found that 63% of its women respondents had been exposed to violence via video sharing, 63% had received unsolicited pornographic material, and 40% had experienced a personal data leak.[90] These risks are felt not only by women in general, but also by activists working on gender and women's issues. The same study shows that 81% of participants were concerned about how technology could be used to invade their privacy.[91]

In this context, it is not necessary to determine whether women are more or less vulnerable to digital threats — it is only necessary to recognize that they *are*.

Access to space, including digital space, will be increasingly central to political participation, and trust in that space is essential.[92] Women's disenfranchisement in the digital sphere, marked by a lack of agency and a lack of trust, is therefore political in both the big "P" and small "p" sense.

10. Beneficial Visibility

The case studies, lived experiences, and background literature concerning women's data subjugation under social grant programs and other digital systems, recounted in this paper, demonstrate that current data privacy mechanisms do not necessarily address the lack of agency that mars women's digital inclusion. This highlights the need to create new fields and sites of resistance that account for both the benefits and risks of inclusion and exclusion.

The centrality of data to creating one's digital identity — one's kernel of digital 'dignitas' within the public — helps demonstrate the feminist significance of data governance as both a potential mechanism for key struggles and an instrument for facilitating control over one's own data. How can we imagine more about what this control might look like, or what it might necessarily consist of, in the context of social grants?

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88 Yolanda Jordaan, "Information Privacy Concerns of Different South African Socio-Demographic Groups," Southern African Business Review 11, no. 2 (August 2007): 19–38, https://repository.up.ac.za/items/320baf3a-f59d-45f4-9585-e7626a5a790e.

89 Special Rapporteur on the Right to Privacy, 'A/HRC/40/63'.

90 Olayinka Adeniyi, "Engendering Women Data Use, Privacy, and Protection in Africa: Focus on Data Laws in South Africa and Kenya," Queen Mary Law Journal 2022 (2022): 52.

91 Chair, 'My Data Rights: Feminist Reading of the Right to Privacy and Data Protection in the Age of AI'.

92 Special Rapporteur on the Right to Privacy, 'A/HRC/40/63'.

Women's surrender of their own data should be matched by real and proportional benefits that they can derive from this act. To be brought under the umbrella of social protection requires visibility, which, along with exposure, is a prerequisite for accessing services. This visibility offers pragmatic benefits, including control over how resources or services are distributed and avoiding duplication (this idea is replicated for instance within the 'once-only' principle in data governance).[93] Yet it also comes with risks, many of which are specific to women and associated with their personal data, their disenfranchisement, and broader harms tied to participation in the digital public, such as harassment.

This paper posits that the concept of beneficial visibility may be useful in reimagining how women might control their data. To reiterate, beneficial visibility is the idea that individuals and communities, through their ability to shape the data agenda from the bottom up, may gain better control over how visible they are to the world. In doing so, they can create a level of visibility necessary to derive beneficial outcomes for themselves and their communities.[94] While this could be understood as an exchange, it provides substance to a notion of control that is driven by the needs of the individual and community who may be digitally subjugated. It centres women's interests in their datafication and digitalization, acknowledging the centrality of this process to their own personhood. But, it also demands reciprocity - and that the benefits for participation are actually realised, and appropriately measured, to justify participation. In the public space, this will ultimately have implications for system efficiency and service delivery.

The concept of beneficial visibility not only attempts to concretize the fluidity of consent and benefit but also emphasises that the weighing of risks and benefits of a data subject's inclusion may need to be a collective act. It expands upon and adapts many of the principles already present in privacy governance frameworks. For example, South Africa's POPIA prescribes 'minimization' as a core processing condition, mandating that only the information required for the stated purpose can be processed. Yet this is not sufficient. While it imposes obligations on the processor, it does not place the data subject's interests at the center of the data calculus.

Assuming beneficial visibility can help shape this goal, the next step is to identify mechanisms that might enable the data subject to control their visibility in contexts such as grants distribution. The challenge for women's rights advocates, policymakers, and implementers then becomes determining 'how much' and 'when' the data subject is to be rendered visible, the boundaries of which are open to contestation. Against a backdrop of data subjugation, beneficial visibility prescribes the following conditions:

- A mechanism should facilitate both individual and collective interests;
- A mechanism should enable both the granting and the withdrawal of permissions, which may be different;
- A mechanism should provide sufficient, relevant, and accessible information to support informed and empowered participation within the data subjugation process, which includes sufficient understanding of benefits and the realization of benefits; and
- Ideally, the data subject should have a say not only in their participation but also in the system outcomes that result from such participation.

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93 Razzano, 'Working in the Shadows When the Light Is Nothing But a Torch.'

94 Gabriella Razzano, "Data from Women, for Women," OpenUp Blog (June 13, 2023), https://openup.org.za/blog/data-from-women-for-women.

Of course, no single mechanism — legal, technical, or social — may fulfill all these conditions within a process. But at the very least, we should begin to explore and imagine mechanisms that can support these ambitions, particularly as mass data and digitalization projects continue to be rolled out across the continent.

Potential solutions include data trusts and/or data stewardship programs. Data trusts may offer a promising legal instrument, utilizing trust law legal trust mechanisms as a data rights management instrument.[95] Stewardships may also be relevant, with fiduciary responsibility as their defining element.[96] Both mechanisms acknowledge that data holds value not only for individuals but also as a public good.[97] Trusts or stewardships could ensure compliance with data processing requirements while also serving to negotiate benefits, such as intellectual property licensing limitations, on behalf of data subjects. This would support the challenge of negotiation,98 especially when women are interfacing with the state, such as grant beneficiaries in this case study. Data trusts, preceded by education and incorporation of individual license, could offer an additional layer of protection for those whose experience of privacy is profoundly unequal, particularly in the context of a large-scale centralized data collection project.

12. Conclusion

At its core, this paper seeks to reimagine notions of privacy as a tool for advancing feminist resistance to data subjugation, and explores mechanisms that may improve agency in the digital space.

The construction of the digital and data public is advancing rapidly alongside development-driven digitalization in Africa. Yet it must also be understood as a vital space for women to enact agency and autonomy in shaping their own digital personhood. This is especially challenging in the context of grant programs given the essential nature of the services being accessed and women's experiences of profound digital and data exclusion.

This paper has examined how the digitalization of social protection systems in South Africa presents both opportunities and challenges for women's agency in the digital sphere. Through an analysis of the social grants process as a case study, we saw how women's inclusion in digital systems is often premised on a forced surrender of privacy, without meaningful agency or consent. This matters particularly because social protection in South Africa is fundamentally a women's issue.

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95 Sean McDonald, Reclaiming Data Trusts (Centre for International Governance Innovation, March 5, 2019), https://www.cigionline.org/articles/reclaiming-data-trusts.

96 Nokuthula Olorunju and Rachel Adams, African Data Trusts: New Tools Towards Collective Data Governance? (Research ICT Africa), 2022, https://researchictafrica.net/publication/african-data-trusts-new-tools-towards-collective-data-governance/.

97 This paper has not examined in detail the benefits of collective data control, focusing somewhat more on unpacking the risk environment. Yet the value of big data in generating richer insight into communities, particularly for enhancing health outcomes, economic allocations, and more, cannot be gainsaid.

98 Open Data Institute, "Data Trusts in 2020", 2020, https://theodi.org/article/data-trusts-in-2020/.

Current frameworks for understanding data privacy and consent are inadequate in addressing the complex realities faced by women as subjects of digital systems. Traditional legal conceptualizations of privacy, rooted in individualistic notions of the 'right to be let alone', fail to fully capture the collective nature of data privacy and the specific challenges faced by women whose participation in digital systems is effectively mandatory for survival.

Against this backdrop, the concept of beneficial visibility offers a potential framework for reimagining how women's inclusion in digital systems could be structured. Rather than treating visibility as a binary — either complete exposure or total privacy — beneficial visibility suggests a more nuanced approach, where women and their communities can negotiate the terms and extent of their visibility based on actual benefits received and informed perceptions of risks and opportunities.

This framework acknowledges that while visibility to state systems may be necessary to access vital services, it should be bounded and controlled by the data subjects themselves. And it demands that benefits be clear, and ultimately, be realized, forr data justice to exist.

Going forward, implementing beneficial visibility will require both theoretical development and practical mechanisms. Data trusts and stewardship programs offer promising avenues for collective negotiation of data rights but must be designed with women's specific needs and vulnerabilities in mind. These mechanisms must facilitate both individual and collective interests, enable meaningful consent and withdrawal, provide accessible information, and give data subjects a say in system outcomes.

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