



DIGITAL TRANSFORMATION OF COURT PROCESSES IN SOUTHERN AFRICA:

A HUMAN RIGHTS APPROACH

Africa Judges and Jurists Forum

A POLICY BRIEF

The Africa Judges & Jurists Forum (AJJF)

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EXECUTIVE SUMMARY

In the 11th century, it is said that a popular method of determining criminal cases concerning witchcraft was to tie up the accused and throw them into a lake. If they were innocent, they would sink. If they survived, they would be guilty because only some unseen hand would have saved them. Back then, a person who wanted to bring a case against another also had to master the strength to travel a great distance, often on foot or using medieval forms of transport. Today, justice looks very different. Yet it continues to change and is continuously being improved. Whilst justice looks vastly different today, it is by no means perfect. That is why court systems across the world are constantly seeking to improve by introducing new ways of doing justice. In recent decades, technology has taken centre stage in our society, with every aspect of our life being fundamentally transformed. The courts have not been spared.

Currently, a digital transformation is well and truly underway within court systems across the world. This transformation has the potential to create broader access to court data, laying deep foundations for wider access to justice. Yet, we have learnt that this pursuit of transformation has not been entirely flawless, with many people being left behind the train of court digital transformation. In Southern Africa specifically, digital transformation has perpetuated the digital inequality that already exists between the rich and the poor, between men and women, between minorities and other groups as well as within society generally.¹ In addition to this growing inequality, there is also a growing concern on privacy and data protection for those who interact and share personal information with the courts.

In this policy brief, we focus on key issues relating to the digital transformation of courts and present a human rights approach to court digitization in Southern Africa. Specifically, we focus on the following:

- We provide recommendations on applying a human rights approach to court digital transformation.
- We explain the meaning and scope of court digitization, including an introduction of the court digital transformation pyramid.
- We analyze of the current state of court digitization in 13 countries within the Southern Africa region, specifically highlighting progress, benefits and challenges
- We provide insights into a human rights approach to court digital transformation, offering potential human rights friendly solutions to the problems faced by judiciaries in Africa

¹ Beyond Access, Addressing Digital Inequality in Africa, Allisson Gillwald, Global Commission on Internet Governance, Paper Series No. 14, March 2017 – Published at https://media.africaportal.org/documents/GCIG_no.48_0.pdf

TERM	DEFINITIONS
<i>Algorithm</i>	A process or set of rules to be followed in calculations or other problem-solving operations, especially by a computer.
<i>Automation</i>	The use or introduction of automatic equipment in a manufacturing or other process or facility.
<i>Broadband</i>	The term broadband commonly refers to high-speed Internet access that is always on and faster than the traditional dial-up access.
<i>Case Management Software</i>	Case management software refers to a computer system that allows an organization to have one central location to store and track all case data. This includes things like filed documents, case notes, court dates, names and personal information of parties, communications and other case related information.
<i>Computational Law</i>	Computational law is the area of legal informatics focusing on the automation of formerly manual processes and the integration of legal information with other applications and systems.
Court Processes	All the procedures and steps within a court system, including filing, setting down cases for hearings, hearings, communication of outcomes, appeals and such other procedures (to be distinguished from court process, being documents filed in court)
<i>Cookies</i>	Cookies are text files with small pieces of data — like a username and password — that are used to identify your computer as you use a computer network
<i>Digitization</i>	The conversion of text, pictures, or sound into a digital form that can be processed by a computer
<i>Digitalization</i>	The adoption or increase in use of digital or computer technology by. an organization, industry, country, etc.
<i>Hardware</i>	The machines, wiring, and other physical components of a computer or other electronic system.
<i>Meta Data</i>	Metadata is defined as the data providing information about one or more aspects of the data; it is used to summarize basic information about data which can make tracking and working with specific data easier. The various components of meta data are called meta tags, e.g a case number for a document in digital format.
<i>Natural Language Processing</i>	Natural language processing (NLP) is a branch of artificial intelligence that helps computers understand, interpret and manipulate human language.
<i>Software</i>	The programs and other operating information used by a computer.
<i>USSD</i>	A communications service controlled by mobile network operators, is a critical piece of infrastructure used to provide mobile services on most phones, at low cost, and without requiring access to the internet.
<i>Virtual Courts</i>	Virtual court is a concept aimed at eliminating the physical presence of litigants or lawyers in the court and adjudication of cases online.
<i>VOIP</i>	Voice over Internet Protocol (VoIP), is a technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line.

1. KEY RECOMMENDATIONS

1.1 *Judiciary*

- A. Consult widely with court users on their experiences, including with unrepresented voices which are often overlooked, for example unrepresented litigants, witnesses and victims.
- B. Train judges, magistrates and other court staff in digital skills to enable them to meaningfully interact with digital assets and to be comfortable with the digital transformation of court processes.
- C. Create public court information centers or partner with public libraries, schools or community centers to allow virtual interactions with court users through digital assets that might already be available in the community.
- D. Conduct security and privacy audits of current digital assets and digitized court records, to ensure that information already in digital format is secure.
- E. Create a privacy strategy and detailed privacy policies for court user data, to be applied in the case of virtual courts, case management systems and e-filing systems.
- F. Implement alternative technology solutions like the use of dial-in options and USSD for virtual courts, case management systems, court e-filing systems and general court inquiries by court users.
- G. Have an open data policy to court data to enable deployment of algorithms by citizens and private companies that can help citizens understand the law and navigate through the court system.
- H. Create a regulatory sandbox for court innovations, allowing private entrepreneurs to deploy their skill, capital and time to test court innovations in the real world without having to wait for regulatory alignment.
- I. Create a long-term strategy on how computational law and Natural Language Processing (NLP) can be deployed to court data to aid research by judicial officers, to understand trends in cases and to find new ways to speed up dispute resolution.

1.2 *Legislature & Executive*

- J. The Executive must provide the judiciary with the technology infrastructure required to enable digital interactions, e.g. computers, internet connectivity and digital skills training for judges, magistrates and court staff.
- K. The Executive must facilitate the collaboration between government departments with digital assets such as schools and municipalities and the judiciary, ensuring

that digital court interactions can occur within the community, regardless of the digital inequality that exists.

- L. The Legislature must enact laws to regularize use of digital technologies such as virtual courts and electronic filing of court documents.

2. INTRODUCTION

Every year, there are close to 1.5 billion new legal disputes that arise across the world. Of all these disputes, only 17% ever reach the courts.² Yet courts across Southern Africa are already overwhelmed and failing to cope under the pressure of disputes currently before them. In South Africa, it has been reported that based on current backlogs, it will take a staggering 200 years and R600 billion to determine existing land disputes.³ With the current COVID-19 pandemic, experts have also predicted an increase in disputes that are directly arising from the global economic depression, including business problems, debt, and employment disputes.⁴ Experts also predict that the current crisis and COVID-19 restrictions will place severe pressure on families and societies, leading to major increases in family disputes and domestic violence cases. These disruptions will only create further backlogs within the justice system and the pressure on courts will be enormous over the next few years.

In order to meet the increased demand for justice, courts across Southern Africa have started to implement new, effective, faster and scalable ways to manage cases and resolve disputes. One approach that has taken centre stage is digitization, which involves the conversion of many paper-based court processes into a computer readable format. There has also been a strong move towards automation of court processes, which involves implementing pre-programmed workflows such as tracking key case milestones and dates from the filing of a summons to judgment, allowing automation of routine tasks such as case scheduling. Digitalization has also been placed on the table, primarily focusing on improving manual court processes into a digital format, such as sending notices of court hearings through an automated mobile phone short message system instead of using a paper-based system. Other countries such as South Africa, Kenya, Rwanda and India have also sought to utilize online communications and technologies in the areas of filing documents, signing court documents, conducting court hearings and transmitting court outcomes.

Research has indeed shown that the implementation of an electronic case management system in Malawi has impacted positively on the security of court files by easing the tracking and retrieval of case files, leading to efficiency in justice delivery.⁵ We have also seen that the implementation of virtual courts in South Africa throughout the

² Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World - World Justice Project, 2019 – Published at https://worldjusticeproject.org/sites/default/files/documents/WJP_Measuring%20the%20Justice%20Gap_final_20Jun2019.pdf

³ Peter Delius, “It could take 200 years and R600bn to finalize new land claims,” City Press, April 25, 2018 - published at <https://www.news24.com/citypress/Voices/it-could-take-200-years-and-r600bn-to-finalise-new-land-claims-20180425>

⁴ Covid-19 Survey: Delivering Justice In The Covid-19 Crisis – Hague Institute for Innovation of Law (HiIL), 2020 – Published at <https://www.hiil.org/projects/deliver-justice-in-the-covid-19-crisis/>

⁵ Towards e-judicial services in Malawi: Implications for justice delivery, 2019, W. Chawinga, C. Chawinga, S. Kapondera & G. Chipeta – Published at https://www.researchgate.net/publication/337909233_Towards_e-judicial_services_in_Malawi_Implications_for_justice_delivery

COVID-19 pandemic has ensured that courts do not further the problem of backlog of cases, which would have inevitably affected dispute resolution times even in the years ahead.⁶ In Botswana, digitization has led to “improvements in case file management at the Gaborone Magisterial District...retrieval of case files became easier; and incidents of lost and misplaced case files went down significantly.”⁷

There are also many other success stories of court digitization, digitalization and automation beyond Southern Africa and Africa. In Singapore, the judiciary has conceptualized and begun to implement a total of 15 key IT initiatives, which include use of tele-conference and video-conference facilities and “electronic filing service platforms (complete with SMS alerts); advanced litigation technology, including evidence and trial management systems with the potential to give evidence through video-conferencing; and digital transcription services, such as audio recordings and the preparation of real-time transcripts.”⁸ Overall, there has also been a broader expectation that digitization will lead to centralization of court data, allowing greater searchability and integration with other digital technologies. All these strategies will hopefully place courts in a position to deal with an ever-increasing volume of cases.

While there are certainly many positives to digital transformation within courts, the broad drive to pursue digital transformation has come with its own challenges. One of the main problems in Southern Africa has been that the necessary ingredients for successful digital interaction such as computers, mobile phones and internet access are not widely available to the population. Specifically, research has shown that only 7.7% of the population of Africa has access to a computer within their household.⁹ In addition to that, 80% of countries in Southern Africa rank in the bottom 20 for smartphone penetration rates globally, meaning the devices needed for successful digital interactions are in short supply.¹⁰

With regards to internet connectivity, only 46% of people in Sub-Saharan Africa have access to reliable mobile internet connection, and only 30% of people can afford the cheapest internet device.¹¹ This makes it clear that whilst many justice systems in Southern Africa are pursuing digital transformation, the majority of court users may be unable to keep up with these changes. In this respect, pursuing digital transformation without implementing clear strategies that take into account the digital

⁶ <https://www.lexisnexis.co.za/news-and-insights/virtual-working/covid-19-pushes-courts-to-new-era>

⁷ Implementation of the Court Records Management System in the delivery of justice at the Gaborone Magisterial District, Botswana, 2018, T.L. Mosweu, L. Kenoi – Published at <https://www.emerald.com/insight/content/doi/10.1108/RMJ-11-2017-0033/full/html?skipTracking=true>

⁸ What we can learn from Asia’s courts of the future, World Economic Forum, 2018 – Published at <https://www.weforum.org/agenda/2018/11/what-we-can-learn-from-asia-s-courts-of-the-future/>

⁹ <https://www.statista.com/statistics/748549/africa-households-with-computer/>

¹⁰ Newzoo Global Mobile Market Report, 2019 – Published at <https://newzoo.com/insights/trend-reports/newzoo-global-mobile-market-report-2019-light-version/>

¹¹ Mobile Internet Penetration Fact-sheet – Sub Saharan Africa, 2020 - Groupe Speciale Mobile (GSMA) – Published at <https://www.gsma.com/r/wp-content/uploads/2020/09/Mobile-Internet-Connectivity-SSA-Fact-Sheet.pdf>

divide in Southern Africa will have a drastic impact on the right to access justice and various other fundamental human rights as detailed below. In the pages that follow, we assess the concept of court digitization, explaining what it entails. The Brief explores the progress, benefits and challenges that have arisen from various court digitization processes within Southern Africa.

Further, current digitization efforts are measured against various human rights standards on the domestic, regional and international level. For the purposes of this brief, we focus on access to justice, the rights of accused persons in criminal proceedings, the right to access information, the right to a trial within a reasonable time, the right to privacy, the right to access the internet and the right to equality and non-discrimination. While these rights are expressed in different constitutional and legislative provisions in various jurisdictions across the region, they are generally accepted as being fundamental human rights, and are also captured in the African Charter on Human and Peoples' Rights to which all countries in Southern Africa are party.¹² Beyond specific rights, the Brief also focus on the obligation on judiciaries to be transparent and fair in the conduct of their vital work, all encapsulated in various instruments that are either binding or persuasive on judicial branches within Southern Africa. The Brief concludes by offering potential solutions and specific recommendations to ensure that a human rights approach is applied to the digitization of court processes.

¹² See the African Charter on Human and Peoples' Rights

3. METHODOLOGY

This brief was created based on a research study conducted through desk literature review as well as through interviews with nine informants with first-hand knowledge and experience in the area of courts, human rights and technology. In coming up with various findings, various documents were studied, including statutes, subsidiary legislation, practice directives, circulars, speeches by jurists, articles published through the media as well as other research papers from organizations and individuals in the field of human rights, technology and the administration of justice.

In relation to informants, nine individuals offered their views as part of a data collection exercise, with these informants ranging from court registrars, information technology managers for judicial branches, lawyers and litigants in Zimbabwe, Zambia, South Africa, Malawi, Botswana and Tanzania. As a result of the COVID-19 pandemic and the resulting public health measures in place in many countries in Southern Africa, the study had one major limitation. Specifically, no field research was conducted to assess the actual state of digitization within courts across Southern Africa, as well as widespread informant interviews with court users who may provide insights into their day to day experiences current digitized court processes. The practical experiences of court users are important and will be necessary for future studies on the subject of human rights and court digitization.

4. THE STAGES OF COURT DIGITIZATION

The terms digitization, digitalization and automation are used in many circles, often interchangeably and often erroneously. It is therefore important to set the stage on what these terms mean, and how this applies to the court system generally. Digitization is defined as the conversion of text, pictures, or sound into a digital form that can be processed by a computer.¹³ In the context of a court system, this may mean scanning court documents, taking pictures of exhibits or recording the testimony of a witness in court. Digitalization, on the other hand, refers to the use and processing of digital data through advanced digital technologies.¹⁴ In a court system, this may refer to the use of scanned copies of court filings as part of a case management system that is based on digital files as opposed to physical files. It may also refer to the use of previous court judgments in digital format as part of a software system that predicts future court outcomes with a high degree of certainty.

Automation refers generally to the use of systems that change manual processes into computer or machine operated processes, for example the use of a system that schedules court hearings for all cases in which all documents have been filed. So, as has been shown, while these three terms are often used interchangeably, they are different in their meaning and scope. Fundamentally, it is worth observing that when all these terms are combined, they can be described as digital transformation, or can be viewed as various stages of the digital transformation process. What can be seen in practice is that various organizations are at different stages of the digital transformation process. In the case of courts, we illustrate these various stages below.

¹³ <https://www.lexico.com/definition/digitization>

¹⁴ <https://insights.sap.com/digitization-vs-digitalization/>

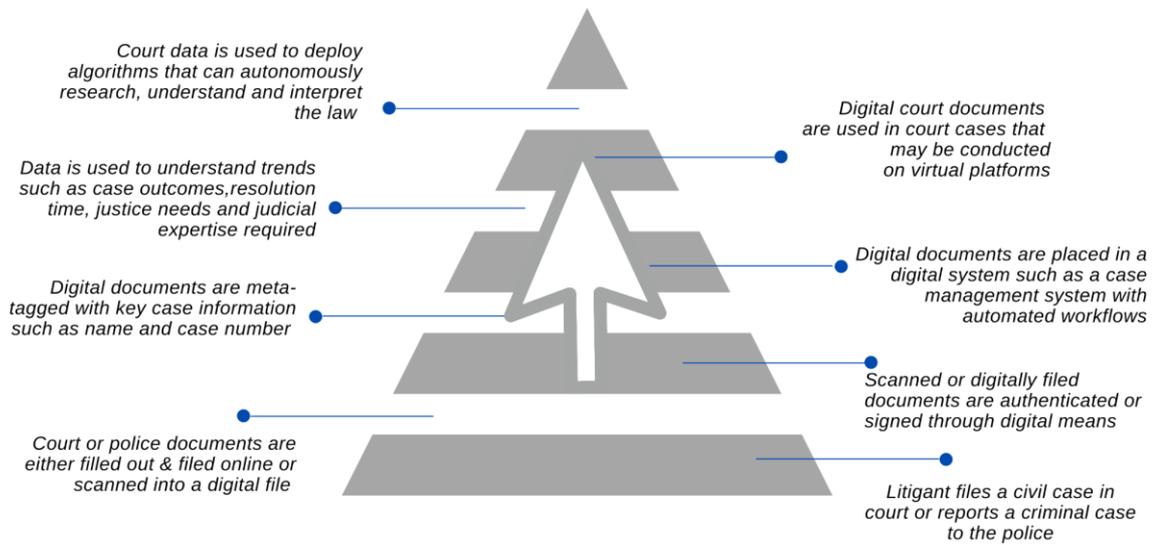


Figure 1: Court Process Digital Journey – Simba Mubvuma 2021

The stages of court digital transformation can be illustrated as a pyramid, with the majority of court systems currently being at the base of that pyramid, as this paper will detail. The first stage, represented at the bottom, involves lower level processes such as scanning of documents filed through the police or directly with the courts, which is what can be strictly referred to as digitization. This stage is often the first step towards broader digital transformation and often sets the stage for any consequent digitalization and automation processes. To undertake this first stage, there is a need for scanners or cameras at the point of document input, for example at a court registry or at a police station. There is also a need for a software program that can ensure that scanned documents or photographed exhibits are ascribed with meta tags, which are digitally generated identifiers which link a digital file to a specific case number or category of cases. There would also be a need for training of key personnel to properly scan the documents and to ensure that the correct meta tags are placed on every digital file. As pointed out above, this first stage is critical because it lays a foundation for future stages. For example, a case management software will need scanned documents to make up digital case files and a virtual court hearing will be impossible to perform without digitized exhibits or witness statements.

The subsequent stages of digital transformation for courts include more specific processes like allowing users of the justice system to file or provide documents through digital means, fully replacing or supplementing the filing of physical documents or providing verbal statements at a court registry. For example, instead of going to a police station to report a crime, users of the justice system can use a platform that can be

accessed on internet enabled devices to report a crime, including providing information that would allow the police to conduct further investigations or to seek additional information. For this type of interaction to work, there would also be a need to ensure that information provided online, including any documents, is properly authenticated and signed by those who provide it. This necessitates systems that allow for documents to be signed electronically, ensuring that all documents filed or presented originate from legitimate users of the justice system.

A further stage of court digital transformation involves virtual court hearings, with various aspects of proceedings being conducted through an audio and video platform. Although virtual hearings have been in existence in many jurisdictions across the globe, they saw a sharp rise due to the disruptions caused by the COVID-19 public health measures as we will detail below. In Kenya, it was reported that close to 5000 inmates with pending matters had their judgments delivered via Skype at the height of the COVID-19 pandemic.¹⁵ Other subsequent stages of court digital transformation include using digital data such as scanned court filings as part of a case management system. A case management system allows a court or police department to have centralized case information as part of an easily searchable and properly indexed digital file. A case management system can also have various aspects of automation, allowing the system to automatically schedule a hearing for all cases where all documents have been filed or to refer a case under investigation by the police to a prosecutor once all relevant investigative processes are recorded as complete. Case management systems can also be used to allow court users to check the progress of a case and view filed documents without needing to physically go to a court registry.

In addition to the above, and as illustrated at the very top of the pyramid, court data can be used for more in-depth purposes, such as deploying systems that sift through court data to establish trends and key insights from that data. For example, a system can sift through court data to determine average matter completion times, understand the categories of crimes reported in any given area during various periods of the year or to explore the consistency of courts in applying substantive or procedural principles of law to relatively similar cases. On the upper end of the court digital transformation pyramid, there is the use of court data in the fields of computational law, which is a more complex but rewarding use of digital court records. It is complex because it requires complex algorithms and natural language processing technology to understand and interpret the law, and rewarding because it has the power to accelerate research for judges (allowing them to determine cases faster) as well as assist the public in understanding court processes even without the need for a lawyer. With

¹⁵ <https://edition.cnn.com/2020/04/02/africa/kenya-courts-on-skype/index.html>

computational law and natural language processing technology, a computer system can autonomously conduct research for a judicial officer, or draft court documents for a litigant based on existing substantive law, current rules of court and prior court decisions. We have already started to see this play out, with countries like China already using online courts that are driven by computational law and natural language processing. These courts are currently being used to resolve financial disputes without the need for a human judicial officer or a physical courtroom.¹⁶

Overall, the stages of court digital transformation begin with scanning court or other justice system documents or physical exhibits. This digital data is often then utilized as part of a digitalization strategy, such as implementing case management systems, deploying algorithms that establish key trends from data or utilizing that data to derive substantive benefits such as autonomous court document drafting, research for judicial officers and implementation of autonomous dispute resolution.

¹⁶ Robot justice: China's use of Internet courts, Tara Vasdany, 2020 – Published at <https://www.lexisnexis.ca/en-ca/ihc/2020-02/robot-justice-chinas-use-of-internet-courts.page>

5. COURT DIGITIZATION IN SOUTHERN AFRICA – JURISDICTIONAL ANALYSIS

The court digitization landscape in Southern Africa is very much varied, with some jurisdictions having made massive strides and others still very much in the formative stages of the digital transformation process detailed above. The table below, details the progress, benefits and challenges of court digital transformation in various countries in Southern Africa. The data used to come up with the tabulated outline has been acquired from annual reports by judiciaries, practice directives, speeches by Chief Justices at various events such as commencement of judicial years, interviews with informants from various jurisdictions as well as studies conducted by various organizations and individuals in the access to justice space. The Policy Brief has also looked at national budgets and reports from the various countries, to assess some recurring budgetary challenges in the digital transformation of court processes.¹⁷

¹⁷ A detailed list of authorities consulted to come up with this tabulated outline is available in the consulted sources at the end of this brief.

COUNTRY	PROGRESS	BENEFITS	CHALLENGES
Botswana	<ul style="list-style-type: none"> - The judiciary scans documents filed in courts - Implemented a court records management system (CRMS) in 2005 - Courts can inform parties of hearings via email - see Practice Directive 3/2020 and Practice Directive 3/2021 - Courts were allowed to conduct case management meetings electronically through Practice Directive 3/2020 - Allowed courts to utilize video conferencing such as WebEx for hearings where possible, through Practice Directive 2/2020 and again through Practice Directive 3/2020 - Allowed courts to deliver judgments through live streaming and video conferencing services, through Practice Directive 3/2020 	<ul style="list-style-type: none"> - Scanning of documents provides digital copies of records, which can be easily searchable and easily distributed to the public - The records management system allows for easier retrieval of cases - Informing parties of hearings through electronic means and transmitting documents electronically is quicker and creates a digital record of hearing notices which cannot be easily lost or destroyed - Conducting hearings using video conferencing tools saves time and costs associated with physical court attendances. It is also in line with COVID-19 public health measures and precautions - Delivering judgments using live streaming platform gives judicial proceedings their public character, even in instances where people cannot physically follow court proceedings 	<ul style="list-style-type: none"> - Scanned court documents are not widely available for public access, expect judgements, meaning that the public still has to request access to court documents, which might be slow and costly - Only 32% of people in Botswana have access to the internet, meaning that 1) even if documents could be uploaded online, only a small section of court users can access them 2) court hearings that are conducted online will only be available to a limited number of court users 3) transmitting documents and communications via email might isolate those without regular access to the internet 4) Live streaming hearings and judgements will isolate those without access to regular and reliable internet - Botswana has no robust privacy laws to guard against personally identifying information being compromised when using the electronic case management system.
Congo (DR)	<ul style="list-style-type: none"> - The judiciary has a website that provides various information about developments in the courts and annual reports. - The judiciary has lamented the lack of the necessary ICT infrastructure to digitize the judicial system 	<ul style="list-style-type: none"> - The existence of a website allows citizens to access digital information about the courts without having to go to the physical court to access that information. - The existence of digital platforms that provide legal information allows citizens to know about the work of the 	<ul style="list-style-type: none"> - The existing legal information platforms are either paid (e.g Leganet) are run by private entities whose long-term sustainability cannot be known. - In a country with an internet penetration rate of 23.2%, sole reliance on digital and online

	<ul style="list-style-type: none"> - Informant interviews revealed that whilst there has been discussion on implementing case management software, publishing judicial information for the public, this has not had any traction. - There are private entities that provide judicial information such as judgements on digital platforms. 	<ul style="list-style-type: none"> - courts, without necessarily having to visit a physical court location to access such information. - It is encouraging that there are discussions about case management and record management systems in DRC, which would be beneficial if implemented. 	<p>information isolates the majority of the population from accessing judicial information.</p>
Lesotho	<ul style="list-style-type: none"> - In April 2020, the judiciary allowed virtual court hearings where strictly necessary in the Court of Appeal in Maseru. - The judiciary announced that where technically possible the Registrar may make court audio audible for public access in the case of remote hearings. - There are independent websites that provide digital legal information such as judgments and legislation - The judiciary has a website where updates about the judiciary are usually posted. 	<ul style="list-style-type: none"> - Allowing virtual court hearings allows court users to participate in court without the costs associated with travel to court or the health hazards that arise from the COVID-19 pandemic. - Allowing for court proceedings to be broadcast through audio only ensures greater access to court proceedings for the public, as audio only requires considerably lower internet bandwidth, and can also be broadcast on phones that might not be necessarily high end and expensive. 	<ul style="list-style-type: none"> - A lack of infrastructure to conduct virtual hearings has meant that virtual court hearings have been limited - Due to technical hurdles, it has been difficult to broadcast audio of virtual court hearings conducted, and it is difficult to know how many such hearings were conducted. - The internet penetration rate in Lesotho is 44%, meaning that the majority of people would be excluded from either participating or listening in on virtual court proceedings.
Malawi	<ul style="list-style-type: none"> - Implemented a case management system to handle matters in the higher courts in 2015 - Malawi planned to publish court judgements on the judiciary website, although the website still does not have these judgments as yet - There are other independent organizations in Malawi that publish digital legal information which the public may access free of charge. - Malawi has a Facebook page where information about the operation of the courts is regularly posted. The judiciary also has an email address to which questions to the judiciary may be addressed. 	<ul style="list-style-type: none"> - The case management system has ensured that court files are securely kept and are easily retrievable for use in future matters or for public consumption - The publishing of court information in a digital format will increase access to court data for the general public - Existence of independent organizations which provide digital legal information for free broadens access to legal information in Malawi - The Facebook page allows the Malawi judiciary allows citizens to learn about key judicial processes and is particularly beneficial because Facebook is one of the most used platforms in Malawi. 	<ul style="list-style-type: none"> - The case management system has not seen widespread use in courts across Malawi, with the Judiciary struggling to scale it to all courts in Malawi. It has also not been updated, and now has regular outages. The links on the Malawi Judiciary to the Electronic Case Management are currently inaccessible. - Only 15% of people in Malawi have access to regular and reliable internet, meaning that the majority of the population will be unable to access case status information using the Electronic Case Management System. - Malawi has no robust privacy laws to guard against personally identifying information being compromised when using the electronic case management system.

Mauritius	<ul style="list-style-type: none"> - Implementing the Revenue Collection and Case Management System - Mauritius has revamped and upgraded the Digital Court Recording System (DCRS), with a view to expanding its use to all courts in the country, which is used to record court proceedings and to create transcribed copies of court records. - The judiciary of Mauritius has a functional website that provides current information on upcoming hearings and other court related information. - There also other independent websites that provide digital legal information such as judgments and case law 	<ul style="list-style-type: none"> - The revenue collection system will make it easy for court users to pay for fines and other court payments at any court station, without having to pay at the court where any order was granted. - The Case Management System will ensure easy retrieval of documents and court filings, including giving the public access to court documents online. This is beneficial, especially in Mauritius where there is a 68% internet penetration rate. - The Digital Court Recording System (DCRS) ensures that court records are complete and accurate. 	<ul style="list-style-type: none"> - The case management system envisaged is a cloud-based solution, which means court users without the internet will be excluded from the benefits of easy access to court documents. - The Digital Court Recording System has not been rolled out to all court stations across Mauritius, meaning that some court users are deprived of a complete and accurate court record. - There is still a cost to getting a court record, with the function of transcribing being outsourced to a third party that charges a fee for records.
Mozambique	<ul style="list-style-type: none"> - The Constitutional Council and the Administrative Courts have websites containing relevant information such as legislation and upcoming cases - The Constitutional Council announced on 18 December 2020 that it planned to modernize the court by implementing Information Technology and Communications (ICT) 	<ul style="list-style-type: none"> - The digital information available on the official websites is beneficial to court users, who can be well informed of key information about cases and the operation of the courts. - It is hoped that the use of ICT will ensure that records are more secure, easier to search and widely available to the public. 	<ul style="list-style-type: none"> - Some relevant website pages are currently down, for example the legislation page of the Administrative Court. - Some websites are not secure, placing key information at risk. - The pace of adopting ICTs in the Mozambique justice system has been slow, with the judiciary referring to a lack of funding as one of its major drawbacks.
Namibia	<ul style="list-style-type: none"> - Implemented the Namibia Case Information System (NAMCIS) - Namibia has an e-Justice portal that allows users to track case status, view documents and view court dates. - The Namibia Judiciary has a livestream section on its website, which allows the public to access any publicly streamed court proceedings. - Namibia has a detailed digital publications section on its website, with key information such as frequently asked questions about the judiciary and brochures on key topics like domestic violence, child rights and maintenance claims. 	<ul style="list-style-type: none"> - NAMCIS has ensured that court records are kept safe and secure, reducing loss of records, and also aiding searchability of data. - e - Justice has ensured that court users do not have to physically go to court to find out about case status updates and has also made searchability and retrieval of court cases quicker and less costly. - The digital resources on the Namibia Judiciary website are beneficial to the public who can find all relevant information about the courts on a well-organized and robust website. - Live streaming of court proceedings has ensured that court proceedings maintain their public nature, even with COVID-19 restrictions in place. 	<ul style="list-style-type: none"> - NAMCIS has not been scaled to all courts in Namibia - e-Justice requires the internet to use, which might be a challenge to many people in Namibia, a country with an internet penetration rate of 51%. - Whilst there is a live stream section on the Namibia Judiciary website, there is no schedule of upcoming hearings, meaning that the public or the media cannot adequately anticipate upcoming live streams. - The digital resources available on the Namibia judiciary website require one to have the internet to access them, which is a challenge for 49% of people in Namibia.

<p>Seychelles</p>	<ul style="list-style-type: none"> - Created digital copies of all available Government Gazettes, Bills and Acts have been made and stored - Parties may file written submissions and other documents by email in the High Court (see Practice Directives Numbers 4 and 5 of 2020) - Allowed virtual hearings in 2020 during the COVID-19 pandemic - Announced plans to use technology in human resources management to increase efficiency - The Seychelles judiciary has a functional website that provides up to date information on upcoming cases to the public. 	<ul style="list-style-type: none"> - Creation of digital copies of available resources like government gazettes and legislation ensures that judges have access to easily searchable resources that are useful in preparing judgements. - A total of 44 cases were heard via virtual hearings in 2020 - The ability to file documents through email ensured that parties could file documents without having to physically attend court, which was beneficial during COVID-19 restrictions. 	<ul style="list-style-type: none"> - The digital copies of available resources only appear to be for the benefit of the judiciary through its library, and not necessarily for the benefit of the public. - The use of email to deliver court correspondence excludes those litigants without reliable access to the internet. - Of the 3170 cases filed in 2020 in the Supreme Court and Magistrates Court, only 44 were held using virtual hearings, a measly 1% of all cases
<p>South Africa</p>	<ul style="list-style-type: none"> - Implemented Court Online and Case Lines: These are cloud-based collaboration solutions that also include a Digital Case Management and Evidence Management system. It allows legal practitioners to file documentation electronically online anywhere and anytime without being physically present at court. - Utilizes recording equipment for court proceedings in the Magistrates Court, High Courts, Supreme Courts and Constitutional Court - The courts began to conduct some court hearings through video conferencing, especially during COVID-19 restrictions (Notice 254/2020, Office of the Chief Justice) - The South Africa Judiciary has a robust and comprehensive website that provides relevant and current information on upcoming cases, judgements, filed documents and practice directives. 	<ul style="list-style-type: none"> - Court Online and Case lines enable litigants to file and upload pleadings and other documents electronically and to present their cases and argument during court proceedings, giving judicial officers the opportunity to effectively prepare and review evidence. - Court Online and Case Lines have ensured that documents such as heads of argument and affidavits are available online for public consumption, which is not the norm in other jurisdictions in Southern Africa. These documents are important in as far as providing context for court outcomes. - The widespread use of court recording equipment and transcription has ensured that records of court proceedings are accurate and complete. - Virtual Court hearings ensured that the case backlogs did not dramatically increase during COVID-19 public health measures that disrupted court attendance. 	<ul style="list-style-type: none"> - Court Online is lawyer centric, with access by self-represented litigants very much dependent on many factors such as adequate training and access to the internet. - It has been reported that matters now heard by the High Courts must be presented exclusively on Case Lines, with judges refusing to hear matters that have not been registered with, or documents uploaded, on the system. This may make it difficult for smaller level law firms or self-representing litigants to effectively present their cases because of unreliable and irregular internet connectivity. - Access to virtual court was restricted to those with internet connectivity, meaning that those without internet had to wait longer for cases to be heard in person due to COVID-19 restrictions. Most virtual hearings were also not live streamed, taking away the public nature of court proceedings.
<p>Kingdom of Eswatini</p>	<ul style="list-style-type: none"> - The government portal has a section providing key legal information such as upcoming court cases, cases, judgements and other relevant legal information 	<ul style="list-style-type: none"> - Providing digital legal information allows the public stay abreast with the operations of the court, maintaining its public character 	<ul style="list-style-type: none"> - The majority of people in Eswatini cannot access digital legal resources because the internet penetration rate in Eswatini is currently 47% - Whilst there have been efforts to secure recording equipment for court proceedings, the recording of

	<ul style="list-style-type: none"> - In 2019, the judiciary announced that it had signed a memorandum of understanding with partners to provide technical assistance and digital equipment such as court recording equipment and computers - Eswatini has independent websites which provide digital legal information to the public 	<ul style="list-style-type: none"> - Utilizing court recording equipment and computers will ensure that court records are complete and accurate, and that court filings are backed up onto a secure computer system. - Access to independent legal information in digital format is beneficial to the public 	<p>court proceedings is not available in all courts, meaning that other courts records may not be as accurate and complete.</p>
Tanzania	<ul style="list-style-type: none"> - Developed and deployed the JSDS Case Management Version 2.0 - Implemented the Tanzania Advocates Management System (TAMS) that manages lawyer registrations, training and compliance. - Began to accept court payments through the Government Electronic Payment Gateway (GEPG) - The website of the judiciary has an online library, with digital resources such journals and case law that are available to the public. - The Judiciary installed Video conferencing facilities in all 16 High Court centers, 4 High Court Divisions and 17 Prisons centers 	<ul style="list-style-type: none"> - The case management system has eased case registration, case tracking, retrieval of proceedings and judgments and case information. - Allows the public to have up to date access of registered lawyers, including their current employers and addresses - In 2020, there were 7,968 case sessions conducted through Video Conference. The video conferencing was so helpful during outbreak of Covid -19 pandemic (March – June 2020) - Acceptance of payments through the Government Electronic Payment Gateway has ensured that court users can pay court fees using the methods that they use to make their day to day payments. 	<ul style="list-style-type: none"> - The case management software is not widely used in Tanzania and has not been scaled to all courts across Tanzania. - The Tanzania Advocates Management System, whilst useful for advocates (lawyers), does not automatically feed information on lawyer registration and current addresses to a public facing platform. - Whilst video conferencing has been used to hear criminal cases where the accused are in custody, there is still a challenge of access to suitable devices and reliable internet for the general public.
Zambia	<ul style="list-style-type: none"> - The Judiciary acquired software to be used as an Automated Case Management System - The judiciary has implemented a digital court records management system for some courts. - The judiciary scans documents filed in the High Court and Supreme Court - Chief Justice announced in a circular that judicial officers could utilize virtual courts should this be necessary. - The Zambia judiciary has a robust website with relevant information such as upcoming cases, rules of court and updates on the general operations of the courts. 	<ul style="list-style-type: none"> - In 2019, a total of 16,636 case records were filed in the computerized registries and added to the Electronic Record Management System, the HP Records Manager. As at 31st December 2019, 18 registries had been computerized, and these included registries for superior courts, and the Subordinate Courts and the Small Claims Court at Lusaka. This means that there is a backup of these court records, which are also now easily searchable and retrievable. - Scanning documents will lay the groundwork for use of case management tools and greater access to court records for the public. - The option to conduct virtual hearings has ensured that court users do not risk their health and safety to attend court proceedings 	<ul style="list-style-type: none"> - The computerized registries are not widespread across Zambia, with only a small percentage of the registries having been computerized. - Scanned court filings are not being made widely available to the general public, meaning that those seeking court records still need to formally request them from the court, often at a cost. - There has been a lack of equipment to enable virtual hearings, meaning that whilst they have been authorised, there hasn't been any real progress made in conducting virtual hearings

<p>Zimbabwe</p>	<ul style="list-style-type: none"> - The judiciary scans all documents filed at the High Court, Supreme Court and Constitutional Court - Utilizes court recording and transcription equipment for the High Courts, Supreme Court and Constitutional Court - Announced plans to implement a virtual court management system and a case management system - The Zimbabwe judiciary has a functional website that is up to date with information on upcoming cases, judgments and other publicly relevant information. 	<ul style="list-style-type: none"> - Scanning documents filed in court has created an easily searchable digital backup of all documents filed in the High Courts, Supreme Court and Constitutional Court, and has laid a foundation for use as part of a case management and e-filing system. - Use of court recording software in some courts has ensured that there is a complete and accurate record of proceedings - The virtual court management system and case management system will enable litigants to view case progress online, access key documents and participate or watch court proceedings without needing to travel to a physical court site. 	<ul style="list-style-type: none"> - The documents being scanned by the judiciary are not made publicly available on a public facing platform, and anyone wanting copies needs to request physical copies from the court. - Recording and transcription equipment is not widely available in the Magistrates Court, which hears the majority of court cases in the country. - The implementation of virtual courts and a case management system have been slow, with neither of the systems currently fully operational.
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It must be noted that the analysis of the various stages, benefits and challenges in the digitization process in Southern Africa reveals key trends. The major trend is that most of the countries in Southern Africa have public facing websites providing digital legal information such as court judgements and information on upcoming cases. Another common trend is that most judiciaries have started or have announced that they intend to maintain digital courts records. There is also a common thread when it comes to recording court proceedings, with several jurisdictions implementing court recording systems, albeit on a limited basis. We also see that the COVID-19 pandemic has prompted many courts to allow virtual hearings. There are also common challenges, such as the low levels of internet access on the part of the general public, curtailing full access to digital resources, digital systems and virtual court hearings. Further, there is a general lack of resources to secure and maintain digital assets such as computers on the part of many judiciaries in Southern Africa, as well as a general lack of training of judicial personnel to use digital resources. Another common challenge is the lack of robust privacy laws to ensure that any information shared by court users is kept safe and secure.

6. IMPACT OF COURT DIGITIZATION ON FUNDAMENTAL HUMAN RIGHTS

The stages, benefits and challenges arising from the digital transformation of court processes that we detail above cannot be viewed in isolation. They must be viewed in the context of their impact on the fundamental rights of court users. In that regard, we measure the current digital transformation efforts against various human rights standards on the domestic, regional and international level. For the purpose of this brief, we focus on the right to access the courts, the rights of accused persons in criminal proceedings, the right to access information, the right to a trial within a reasonable time, the right to privacy, the right to access the internet and the right to equality and non-discrimination.

6.1 Digital transformation of courts and the right to access to justice

Article 7 of the African Charter on Human and Peoples' Rights provides that every individual has the right to have his or her cause heard, which generally encapsulates the right to access the courts and to seek redress. In the context of digital transformation, the manner in which courts operate is constantly changing. For example, and as highlighted above in South Africa, while cases in the High Court were ordinarily filed through filing printed copies of documents, the introduction of a new e-filing system means that court users seeking to have their causes heard must contend with a new reality, namely filing their cause using a digital platform. Whilst this transformation is important, the realities of court users may be different. As already indicated, digital interactions require hardware, for example a smartphone to file court documents. In addition to any hardware and software, accessing digital platforms often requires access to the internet.

From this context, the greatest challenge obtaining in Southern Africa is that the ingredients for successful digital interactions described above are often missing. To reiterate, 93% of people in Africa have no access to a computer within their household.¹⁸ In addition to that, only 20% of the countries in Southern Africa have a smartphone penetration rate globally of more than 30%, meaning the devices needed for successful digital interactions are in short supply.¹⁹ With regards to internet connectivity, only 46% of people in Sub-Saharan Africa have access to 4G

¹⁸ <https://www.statista.com/statistics/748549/africa-households-with-computer/>

¹⁹ Newzoo Global Mobile Market Report, 2019 – Published at <https://newzoo.com/insights/trend-reports/newzoo-global-mobile-market-report-2019-light-version/>

mobile internet connection and 70% of people cannot afford the cheapest internet device.²⁰ This means that the majority of the population in Southern Africa lack the fundamental ingredients needed to engage in digital interactions. For these reasons, any court digitization strategy that neglects the reality of court users is unlikely to promote the enjoyment of the right to access justice.

6.2 Digitized Court Documents – Transparency, Access and Privacy

Article 9 of the African Charter on Human and Peoples' Rights provides that every individual shall have the right to receive information. The right to access information is also encapsulated in various other human rights declarations, such as the African Commission on Human and Peoples' Rights Declaration on Principles of Freedom of Expression and Access to Information in Africa.²¹ As noted in the jurisdictional analysis of digital transformation in Southern Africa, the most common step in the digital transformation journey has been converting physical court documents into a digital format. Whilst this process should already be bearing fruit in terms of access to information on court processes and judicial transparency, the results tell a vastly different story.

With regards to the digital case documents being scanned in Zimbabwe, for example, these documents have not been placed on a public facing platform for the public to access freely, meaning that any person seeking to exercise their right to access information in terms of section 62 of the Constitution of Zimbabwe still needs to engage in a lengthy process of seeking the physical records, often being required to pay the cost of making copies. In Zambia, the judiciary has also started to scan court records, however, they remain largely inaccessible. This is the case in at least 7 countries in Southern Africa, meaning that whilst digitized court records may exist, they are not accessible to the public. In the Democratic Republic of Congo, legal information such as court judgments is only available through third party websites, some of them requiring a payment to gain access. All this shows that whilst legal digital records may exist, the failure to provide access to these documents to the general public hinders enjoyment of the right to access information.

In addition to the above challenges, there are also major concerns regarding the impact of digital data and communications on the right to privacy. The right to

²⁰ Mobile Internet Penetration Fact-sheet – Sub Saharan Africa, 2020 - Groupe Speciale Mobile (GSMA) – Published at <https://www.gsma.com/r/wp-content/uploads/2020/09/Mobile-Internet-Connectivity-SSA-Fact-Sheet.pdf>

²¹ <https://www.achpr.org/legalinstruments/detail?id=69>

privacy is guaranteed under Article 12 of the Universal Declaration of Human Rights and many other provisions, including Article 16 of the Convention on the Rights of the Child and Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Further, the United Nations General Assembly the resolution on the right to privacy in the digital age²² which called for countries to take measures to ensure that the right to privacy is protected in the age of digital communications.²³ In this context, it must be noted that while e-filing systems can have benefits in terms of ease of filing documents and general security of court documents, pursuing an e-filing strategy that is not backed up by measures to protect the personal information of users can violate the right to privacy.

Specifically, with judiciaries now scanning documents into a digital format, it is unclear whether they are already implementing redaction software to ensure that sensitive information such as the names of minors in court documents is redacted and not exposed to the public. In the event that no redaction software has been implemented as yet, all the digitized documents are at risk of being publicized, to the detriment of groups that must otherwise be protected by law. This is also a risk that exists with various other digital tools, such as e-filing systems or virtual court systems. These systems require users to sign up, often requesting personally identifying information such as email addresses and phone numbers. In some instances, these computer programs collect other information such as the user's IP address, which is a unique string of characters that identifies each computer using the Internet Protocol to communicate over a network. Many cloud-based systems also utilize cookies²⁴, which might raise concerns regarding use of personally identifying information. In the absence of robust security measures on this data, backed by detailed privacy laws, there is a real risk that this personal data may become compromised to hackers or to other government departments who might use the information for unlawful surveillance purposes. This obviously puts the right to privacy in jeopardy. Judicial policy makers must ensure that there is a clear strategy to fully realize the right to privacy even in the era of court digital transformation.

²² United Nations General Assembly Resolution of 17 December 2018 on the right to privacy in the digital age, (A/RES/73/179)

²⁴ Cookies are text files with small pieces of data — like a username and password — that are used to identify your computer as you use a computer network

6.3 E-filing - Equality before the law, Unequal playing field

Article 3 of the African Charter on Human and Peoples' Rights declares that every person shall be equal before the law. This right is also guaranteed in Article 14 of the International Covenant on Civil and Political Rights which provides that all persons shall be equal before the courts and tribunals. This right is also tied to the right to access the courts and to seek a remedy, which has been detailed above. When we assess the reality of e-filing systems in various jurisdictions across Southern Africa, we begin to see that most of them are cloud based solutions, meaning that anyone wishing to interact with the courts through these systems will require internet connectivity. While some have suggested that maintaining the physical registry will ensure that those without the internet can still file documents by physically going to a court, the reality will be that those with access to the internet will be able to file documents in a much quicker and cheaper fashion than those who have to physically file at the registry. This will mean that the playing field will be tilted in favour of those with access to the internet, making the judicial process unequal and more complex for those without internet access or suitable devices. This has the effect of widening the gap between the poor and the rich, with drastic consequences for access to the courts for all. The limited access to the courts and the inequality presented in e-filing settings also have a major impact on marginalized groups such as minorities and women²⁵ who often have a lower income and are unable to afford the hardware and internet connectivity required to file documents through digital systems. In this respect, an e-filing strategy that does not take into account all these factors have negative implications for the right to access justice.

6.4 Virtual Courts – Restricted Access, Privacy, Transparency

The problem of digital exclusion also shows its ugly face in the area of virtual court proceedings, which are likely to become more widespread in the years ahead. While virtual courts can certainly allow courts to determine more cases (with litigants spending less time and money travelling to courts that might be in a different city or town), many people within Southern Africa do not have access to devices and internet access that will allow them to meaningfully access the courts through virtual means. This obviously strikes at the heart of the right to access justice. The same can be said about systems which allow production of digital evidence, which

²⁵ See the Human Rights Council Resolution 6/30 on the Integration of the human rights of women

might be exclusionary and inaccessible to those without access to devices and internet connectivity. The ability to produce evidence is also further limited by the quality of the internet available, with only broadband²⁶ having the capacity to ensure uninterrupted interaction and evidence production in a virtual setting. With regards to judicial transparency, there is a general obligation on the judiciary to conduct its business in an open and public fashion. This flows from the general principle that the judiciary must be independent, and that it must be seen to be independent in the eyes of the public.²⁷ All this derives from the well-known maxim that “justice must not only be done but must be seen to be done.”²⁸ Transparency within the court system increases public knowledge on the work of the court, promotes a culture of accountability within the judiciary, decreases the potential for judicial corruption and allows the public to challenge decisions they believe to be improper or incorrect.²⁹ With the advent of virtual court hearings, one major drawback has been the lack of transparency in terms of court proceedings. Whilst members of the public or the press can simply walk into any courtroom in the case of in person hearings, this has been difficult in the case of virtual courts because most virtual hearings were set up only in consultation with the parties involved in a specific case, with virtual hearings taking place outside the eye of the public.³⁰ Without a broad strategy to make virtual courts as accessible and as transparent as possible, virtual courts can easily limit the transparency of the judicial process.

²⁶ The term broadband commonly refers to high-speed Internet access that is always on and faster than the traditional dial-up access

²⁷ See Human Rights Council resolution 44/8 of 14 July 2020, the Basic Principles of the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985) and the Bangalore Principles on Judicial Conduct (endorsed by the Economic and Social Council in ECOSOC resolution 2006/23)

²⁸ *Rex v. Sussex Justices*, 1 K.B. 256, 259 (1924).

²⁹ Transparency International, Policy Position 01/2007 on Increasing Judicial Transparency - Published at <https://www.transparency.org/en/publications/policy-position-01-2007-enhancing-judicial-transparency>

³⁰ This was indicated by one of the informants who was interviewed as part of the study

7. INTRODUCING A HUMAN RIGHTS-CENTERED APPROACH

To address the human rights impact of court digital transformation, a human rights approach to this process is critical. This human rights approach should place the rights of court users at the centre of any digitization agenda as we detail below.

7.1 Right to access justice

In order to ensure that the right to access justice is not jeopardized, courts will need to implement a well-rounded strategy in the areas of various court processes such as filing, hearings and communication of key dates or outcomes. Whilst the majority of digital systems being pursued are cloud-based systems, judiciaries must also utilize alternative technologies that might be suited for cheaper devices, or lower internet connectivity. For instance, instead of an entirely cloud based case management system, courts can also implement a USSD³¹ platform that allows users of ordinary non smart phones to inquire about their cases and to know about key upcoming dates.

In addition to internet based virtual hearings, courts can also utilize SIP/VOIP³² technology, which allows a court to dial-out of a video conferencing platform (to call a party who might only have a basic non-smartphone), or for parties without internet access to dial into a court hearing without having the internet or calling credit. In addition to this, and to maintain the public character of judicial proceedings, courts must ensure live streaming of court hearings, including broadcasting audio through traditional channels like community radio stations. There is also a need to ensure that virtual hearings do not become the universal standard for all court proceedings, considering that court proceedings such as trials are dependent on the physical demeanor of witnesses, which might be almost impossible to discern from video and audio interactions. All these are human rights centered strategies which advance access to justice even in areas where there is massive digital inequality.

³¹ A communications service controlled by mobile network operators, is a critical piece of infrastructure used to provide mobile services on most phones, at low cost, and without requiring access to the internet.

³² Voice over Internet Protocol (VoIP), is a technology that allows you to make voice calls to ordinary phone users using a broadband Internet connection instead of a regular (or analog) phone line. VOIP can allow a person with internet (on a video conference, for instance) to call someone without the internet, and to interact with that person in the same video conference, even though only by voice.

7.2 Open access to court data - right to access information

A human-rights centered approach entails that digitization should not only happen for its own sake, for example scanning court records just to keep them for use by the registry. A human rights approach would require that all these documents be uploaded onto a public facing platform, allowing the public to freely access this information in an easily searchable manner. There are also advantages to open access to court data, for example the ability to use that data to deploy algorithms that will give users a deeper understanding of the data, for example likely case outcomes, average dispute resolution times or even autonomous research and interpretation of legal provisions.

7.3 Rights of accused persons in criminal trials

Whilst it is important for the courts and prison systems to implement virtual court systems to connect courts and prisons, enabling virtual court sessions, it is critical to appreciate the limitations of video interactions. Key advantages, like the ability of a judicial officer to assess the physical condition of a prisoner as well as their health and well-being might be jeopardized in virtual settings. This means that for any virtual court setup, judiciaries will need to be meticulous in choosing high quality equipment which allows a high level of realism in virtual court proceedings. Judiciaries might also need to accept that not all court hearings are suited for virtual interaction. Further, a human rights approach will require judiciaries to understand the impact that virtual court proceedings might have on the ability of accused persons to speak and consult with counsel, a right that might be placed in jeopardy if lawyers participate remotely or from anywhere other than the prison. This will mean that judiciaries cannot only talk to lawyers or judges when setting up virtual courts but must speak to prisoners and those that will actually utilize virtual courts.

7.4 Community partnerships to limit impact of the digital divide

In order to limit digital exclusion that presents a challenge to digitization of court processes, judiciaries are going to need to leverage off existing digital assets within the community. For example, a self-representing litigant should be able to use a community library or school to file court documents, or to view public court records. Making this a reality will require deep-rooted partnerships with community organizations, whose officers might require training to assist people to file documents or interact with the courts virtually. Beyond these partnerships,

judicial branches will need to understand the digital reality of those they serve, and tailor their digital journey in line with the realities of court users in their area.

8. CONCLUSIONS

Digital transformation has the potential to transform the way courts serve their users, yet there is a clear risk that without a clear strategy, it can lead to many people being left behind from the justice system, as well as to increased inequality and the violation of fundamental human rights. To harness the power of digital transformation without putting human rights in jeopardy, judiciaries in Southern Africa should adopt a human rights approach, which focuses on the fundamental human rights of court users at every stage of digital interactions. This is the only way to harness the power of digital transformation whilst ensuring protection and promotion of human rights.

9. SOURCES

This is a list of the sources utilized in coming up with the jurisdictional analysis of court digital transformation appearing in the brief. The rest of the sources cited within the brief appear in footnotes.

Botswana

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