

**UNIVERSITY OF NAIROBI**

**FACULTY OF LAW**

**TECHNOLOGY IN THE COURTS: ADMINISTRATION OF CRIMINAL JUSTICE IN  
THE CONTEXT OF THE COVID-19 PANDEMIC IN MOMBASA COUNTY**

A PROJECT PAPER SUBMITTED TO THE UNIVERSITY OF NAIROBI, FACULTY OF  
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THE DEGREE OF MASTER OF LAWS (LL.M)

BY

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**G62/37824/2020**

## DECLARATION

I, **Esther Wanjiku Mundia**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other University for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed..... *E.W.M.* .....

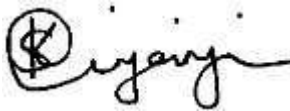
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This paper has been submitted for examination with my approval as University Supervisor.

Signed



**Dated 16<sup>th</sup> November 2022**

**Dr. Sarah Kinyanjui**

## **DEDICATION**

I dedicate this work to my loving and supportive parents, Ben and Mary Mundia who have provided me with immense moral support and encouragement throughout my studies. To My loving husband and my two wonderful children, you are my reason for being.

## **ACKNOWLEDGEMENT**

I would like to extend my gratitude to the many individuals who have made the writing of this Thesis a success. Firstly, I would like to thank the Almighty God for granting me life, good health and the strength to complete my school work.

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Finally, I would like to thank all of my family members who cheered me on to complete my thesis.

## **ABSTRACT**

There has been a marked increase in technological innovations globally which has played a great role in the justice system. The Kenyan courts have been undergoing a gradual digital transformation in their dispensation of justice. This study focuses on the role of technology in the administration of criminal justice in Mombasa courts in context of the COVID-19 pandemic. COVID-19 pandemic disrupted the justice system and the courts had to respond by transitioning from traditional face-to-face to online court proceedings. The pandemic pushed Kenya's justice system into the 21<sup>st</sup> century and accelerated digitization because until then, it was very low tech.

To answer the research questions, this study carried out both field and desk research. The study interrogated the effect of COVID-19 in the courts, the technology that is currently being used, the challenges faced with the use of technology and the reasons for a slow uptake of technology.

The study revealed that the courts are already embracing the use of technology in their dispensation of justice, but there exists greater potential for enhanced utilisation of technology. This study discusses the challenges experienced by court users and the bottlenecks impacting the use of technology in courts. It concludes with recommendations towards enhanced uptake of technology in courts.

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## **ABBREVIATIONS**

AI- Artificial Intelligence

ACHPR- African Charter on Human and Peoples' Rights

CEDAW- Convention on the Elimination of all Forms of Discrimination

CMS- Case Management System

CRMS- Court Records Management System

CRPD- Convention on the Rights of Persons with Disabilities

CUC- Court Users' Committee

CTS- Case Tracking System

DAR- Digital Audio Recording

ICT- Information and Communication Technology

IT- Information Technology

ICCPR- International Convention on Civil and Political Rights

ICMS- Integrated Court Management System

ISMS- Information Security Management System

JATS- Judiciary Automated Transcription System

JICT- Judiciary Information Technology Committee

KEMSA- Kenya Medical Supply Agency

LAN- Local Area Network

NERC- National Emergency Response Committee

PRSP- Poverty Reduction Strategy Paper

PWD- People with Disabilities

SDG- Sustainable Development Goals

SJT- Sustaining Judiciary Transformation

SMS- Short Message System

SOJAR- State of the Judiciary and Administration of Justice Annual Report

UNDP- United Nations Development Programme

WAN-Wider Area Network

## **LIST OF CASES**

Dry Associates Limited v Capital Markets Authority & Another [2012] eKLR

Ecobank Ghana Limited v Triton Petroleum Co Limited & 5 Others [2018] eKLR

Farah Abdinor Ahmed v National Land Commission & 2 Others [2014] eKLR

Famy care Limited v Public Procurement Administrative Review Board & Another [2012] eKLR

Joseph K. Nderitu & 23 Others v Hon. Attorney-General & Others [2014] eKLR

Kahindi Lekalhaile and Others v Inspector General National Police Service & Others [2013] eKLR

Kenya Bus Service & Another v Minister of Transport & 2 Others [2012] eKLR

Martha Wangari Karua v The Attorney General of the Republic of Kenya [2017] eKLR

Mwangi S. Kimenyi v Attorney General & Another [2014] eKLR

Rashid Salim Adiy & 39,999 Others v The Attorney General of the Revolutionary Government of Zanzibar & 2 others. No.9 of 2016

## **LISTS OF STATUTES**

Advocates Act Chapter 16, Laws of Kenya

Business Laws (Amendment) Act, No. 1 of 2020,

Data Protection Act No. 24 of 2019,

Kenya Information Communications Act No.2 of 1998

Judicial Service Act No. 1 of 2011

Law of Contract Act Chapter 23 of the Laws of Kenya

Magistrates Act No. 26 of 2015

National Council for Law Reporting Act No. 11 of 1994

The Constitution of Kenya, 2010

## **LISTS OF INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS**

African Charter on Human and Peoples' Rights

African Declaration on Internet Rights and Freedoms

African Union Convention on Cyber Security and Personal Data Protection

African Union Declaration on Internet Governance

Convention on the Rights of Persons with Disabilities

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

United Nations Convention against Corruption

## CHAPTER ONE

### 1.1 Introduction

The Judiciary in Kenya is organically modernizing through digitisation of its processes. This modernization, particularly through investment in e-justice, has been largely driven by the quest for cost-effectiveness and the need for greater efficiency.<sup>1</sup> The digitisation of courts around the world was heightened by the COVID-19 pandemic which forced courts to transition to online proceedings. This thrust has resulted in gradual cultural shift in the profession. There is enhanced use of technology in courts, that is, using technological knowledge in the court processes.<sup>2</sup> Court technologies range from the use of audio and visual presentation to the computer systems that store caseload data, produce management reports and court records.<sup>3</sup> These equip the court to deal with huge and complex caseloads.

Now more than ever before there is a great demand for court decisions and justice owing to not only increased public awareness of judicial services but also the influence of globalization which places a premium on functional judicial processes.<sup>4</sup> For instance, one of the conditions for countries wishing to join the World Trade Organization is to have a properly working Judiciary.<sup>5</sup> It is therefore important to enhance judicial services and the use of technology is considered a panacea to some of the challenges that undermine the efficiency of the Judiciary. Thus, an

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<sup>1</sup> Cordella A and Contini F, 'Digital Technologies for Better Justice: A Toolkit for Action | Publications' <<https://publications.iadb.org/publications/english/document/Digital-Technologies-for-Better-Justice-A-Toolkit-for-Action.pdf>> accessed 27 January 2021.

<sup>2</sup> Charles W Nihan and Russell R Wheeler, 'Using Technology to Improve the Administration of Justice in the Federal Courts' [1981] *BYU L. Rev.* 659 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/byulr1981&div=39&id=&page=>> accessed 27 January 2021.

<sup>3</sup> *Ibid.*

<sup>4</sup> Dory Reiling, *Technology for Justice: How Information Technology Can Support Judicial Reform* (Leiden University Press 2009) 15. <https://scholarlypublications.universiteitleiden.nl/access/item%3A2729886/view> accessed 27 January 2021.

<sup>5</sup> *Ibid* 16.

understanding of how the Judiciary can leverage on technology to solve some of its challenges is useful.

On 12<sup>th</sup> March 2020, the government announced the first coronavirus case in Kenya.<sup>6</sup> The government introduced lockdown measures in the same month which meant restrictions on movement for the people. This also meant that all court sittings were suspended save for urgent matters to limit the spread of COVID-19. On 20<sup>th</sup> March 2020, the Chief Justice gazetted the Electronic Case Management Practice Directions, 2020.<sup>7</sup> Accessing justice through technology by the Mombasa law courts was therefore embraced as a matter of necessity.<sup>8</sup> The courts had to rely on technology for electronic filing, video conferencing and the use of electronics to deliver rulings and judgements.<sup>9</sup> During the crises, the rapid shift from the traditional physical court processes to the online platforms presented diverse benefits such as enabling the court users to attend court remotely, maintaining paperless work processes for courts and cutting down on costs together with increased safety associated with the reduced number of individuals from custody attending court sessions.

Despite some of the benefits, some challenges were also experienced by the Kenyan court system due to the use of technology during the pandemic. Most of the staff had to be trained on how to use the technology which was difficult as well as costly. The funding for the new technology was not adequate as some centres were still not able to have the required technology needed, for example, lack of access to proper computers. On the other hand, some courts that had the benefit of having the necessary equipment had to deal with the issue of poor internet connectivity or

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<sup>6</sup> 'First Case of Coronavirus Disease Confirmed in Kenya- Ministry of Health' <<https://www.health.go.ke/first-case-of-coronavirus-disease-confirmed-in-kenya/>> accessed 16 September 2021.

<sup>7</sup> Kenya Gazette Notice No. 2357 dated 4 March 2020.

<sup>8</sup> Kariuki Muigua, 'Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice' 44 <[https://kmco.co.ke/?page\\_id=1464](https://kmco.co.ke/?page_id=1464)> accessed 23 April 2021.

<sup>9</sup> 'Rule of Law in the Time of COVID-19: Kenya' (*IDLO - International Development Law Organization*, 30 July 2020) <<https://www.idlo.int/news/notes-from-the-field/rule-law-time-covid-19-kenya>> accessed 23 April 2021.

disruption of electricity supply. Due to the emergency conditions of the pandemic that forced the Mombasa law courts to adopt technology, some undesirable practices were adopted but it was also a period that revealed how technology could enhance service delivery in the courts.

In light of these realities, the role played by technology in the courts, and its potential to enhance access to justice cannot be ignored. Technological innovations in the future are only bound to increase but also improve. The importance of technology in the courts is that it allows the courts to have a better and faster way to deal with the growing scale and complexity of cases.<sup>10</sup> It has also increased accuracy, increased the efficiency of the courts' processes<sup>11</sup> as well made information more readily available.<sup>12</sup> Technology improves the quality of justice through the provision of information to the courts, distribution of information within the courts and the access of the courts' information to the public.<sup>13</sup> Soft copy records of the courts instead of hard copies ease storage problems and improve public access to these records.<sup>14</sup> Digitisation is, therefore, able to improve the organization of the courts' records and at the same time produce the records expeditiously.

Despite its convenience and efficacy, the use of technology in the courts suffers major drawbacks. This may be attributed to the high costs of installation and the high risks of technical problems such as dropped online calls.<sup>15</sup> There has also been a natural state of resistance to the use of technology in the Judiciary and this can be as a result of various explanations. The cultural trait of the Judiciary staff especially the judges as well as the magistrates place a lot of importance on

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<sup>10</sup> Nihan and Wheeler (n 2).

<sup>11</sup> Ivaylo Valchev, 'Can You See and Hear Us, Ms. Smith?: Protecting Defendants' Right to Effective Assistance of Counsel When Using Audio and Video Conferencing in Judicial Proceedings' (2020) 110 *The Journal of Criminal Law & Criminology* 655 <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7677&context=jclc>> accessed 9 July 2021.

<sup>12</sup> Dory Reiling, *Technology for Justice : How Information Technology Can Support Judicial Reform* (Amsterdam University Press 2010) 16 <<http://dare.uva.nl/aup/nl/record/341193>> accessed 9 July 2021.

<sup>13</sup> Brain A. Jackson and others, 'Fostering Innovation in the U.S. Court System' [2016] RAND Corporation 27.45.

<sup>14</sup> Nihan and Wheeler (n 2).

<sup>15</sup> Valchev (n 11) 658.



administration methods that have stood the test of time.<sup>16</sup> The other reason for such resistance is the classic cost-benefit equation<sup>17</sup>. This simply means trying to understand how technology serves the ultimate goal of the Judiciary which is to carry out justice. Additionally, there is also scepticism about the ability of technology to produce measurable results<sup>18</sup>.

The increased use of technology in courts is a global phenomenon and disparities are found with respect to how much of the technology is used and how it is used. Many courts around the world had to also adapt to the changes that were brought about by the COVID-19 pandemic in response to the guidelines of the World Health Organization.<sup>19</sup> Various efforts have been made by the Kenyan government to digitise the Kenyan court system. On 15<sup>th</sup> February 2011, the Chief Magistrates Court in Eldoret undertook a pilot project to have the case management system installed in their court's system<sup>20</sup>. The court was in a position to electronically manage a case from filing to the final disposition of the case. A pilot program for videoconferencing technology was also launched between the High Court station in Nairobi and Mombasa.<sup>21</sup> Most of the other courts in the country were still grappling with manual processes before the pandemic hit the country. Even post the COVID-19 pandemic, we are still having some courts that are still facing the same issues.

The study, therefore, seeks to interrogate the role of technology in enhancing the administration of criminal justice using the Mombasa law courts as a case study. With a focus on the COVID-19

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<sup>16</sup> Nihan and Wheeler (n 2).

<sup>17</sup> *ibid* 664.

<sup>18</sup> *ibid*.

<sup>19</sup> 'Coronavirus Disease (COVID-19) – World Health Organization' <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>> accessed 24 July 2021.

<sup>20</sup> USAID/ Kenya supporting Government of Kenya Reform Efforts through the Kenya Transition Initiative (2008-2013) [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_KTI\\_Factsheet\\_Reform.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_KTI_Factsheet_Reform.pdf) accessed 9 September 2021

<sup>21</sup> 'High Court Authorizes Taking of Evidence By Video Conference. | Kenya Law' <<http://kenyalaw.org/kenyalawblog/high-court-taking-of-evidence-by-video-conference-2/>> accessed 11 September 2021.

pandemic period in which the use of technology was accelerated, the study further examines the challenges experienced in the use of technology in Mombasa law courts.

## 1.2 Statement of the Problem

The court system in Kenya has been largely analogue characterized by physical court appearances and paper-based procedures.<sup>22</sup> This has resulted in a myriad of problems such as missing files at the registries, difficulty in tracking pending cases, delays in conclusion of cases and illegible court case records.<sup>23</sup> This problem has negatively impacted the court users who complain about delays in the court processes, lack of access to the courts and lack of transparency in the court's processes.<sup>24</sup> Technology is fronted as a panacea to some of the challenges posed. More importantly, it has increased efficiency in court operations and enabled unfettered usage and access to digital information.<sup>25</sup>

Technology innovations has greatly advanced with some jurisdictions such as United Kingdom, United States of America, Australia have progressed in digitisation of courts and record advantages of this process.<sup>26</sup> However digitisation of courts has been slow in Kenya in spite of projections on

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<sup>22</sup> 'Embracing Electronic Court Case Management Systems: Lessons from the Kenyan Experience during COVID-19 | Insights | DLA Piper Global Law Firm' (*DLA Piper*) <<https://www.dlapiper.com/en/africa/insights/publications/2020/11/africa-connected-issue-5/embracing-electronic-court-case-management-systems/>> accessed 22 April 2021.

<sup>23</sup> Martin M Mbui, 'Transforming Legal Process Through Technology: The Reality, The Possibility, The Promise' 7 <<http://www.kenyalaw.org/LVI2014/docs/LegalProcessThroughTechnology.pdf>> accessed 22 April 2021.

<sup>24</sup> Coalition on Violence Against Women (COVAW), *Delayed. Denied: Legal and Administrative Bottlenecks to Effective and Efficient Delivery of Justice for Survivors of SGBV in Kenya* (2022) <<https://covaw.or.ke/download/delayed-denied-legal-and-administrative-bottlenecks-to-effective-and-efficient-delivery-of-justice-for-survivors-of-sgbv-in-kenya/>> accessed 25 September 2022.

<sup>25</sup> Karen Eltis, 'The Judicial System in the Digital Age: Revisiting the Relationship between Privacy and Accessibility in the Cyber Context'(2011) 56' 2 McGill Law Journal 306, 289 <<https://www.erudit.org/en/journals/mlj/2011-v56-n2-mlj1517315/1002368ar.pdf>> accessed 12 September 2021.

<sup>26</sup> Peter Cashman & Eliza Ginnivan, 'Digital Justice: Online Resolution of Minor Civil Disputes and the Use of Digital Technology in Complex Litigation and Class Actions' (2019) 19 Macquarie LJ 39 <<https://heinonline.org/HOL/Page?handle=hein.journals/macq19&collection=journals&id=45&startid=&end=86>> accessed 25 September 2022.

uptake of technology.<sup>27</sup> The Judiciary has had an ICT committee and, there has been talk of digitisation of courts for a long time and even pilot projects such as the Eldoret and Milimani courts.<sup>28</sup> Nevertheless, the COVID-19 pandemic provided the much needed thrust that forced the Judiciary to embrace technology to facilitate virtual hearings and e-filing. The uptake of technology in Kenya was fast-tracked by COVID-19 but is still in the nascent stage. It is against this backdrop that this research focuses on the use of technology in the courts amidst the COVID-19 pandemic.

A study that investigates the relationship between technology and the courts' processes could have a significant influence on the formalisation and scaling of the use of technology in the Judiciary. There is therefore the need to evaluate it with a view of informing long-term use of technology.

This paper, therefore, seeks to assess the current use of technology in the Kenyan courts particularly following the COVID-19 thrust. It then interrogates how technology can enhance administration of criminal justice with the view of informing further digitisation of courts in Kenya. It also assesses the gains and challenges experienced as the courts launched virtual hearings during the COVID-19 pandemic, thus providing lessons that would inform the courts as digitisation is scaled up.

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<sup>27</sup> Kariuki Muigua, 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' 30 <<http://kmco.co.ke/wp-content/uploads/2021/04/Embracing-Science-and-Technology-in-legal-education-for-Efficiency-and-Enhanced-Access-to-Justice-Kariuki-Muigua-April-2021.pdf>> accessed 2 August 2022.

<sup>28</sup> United States Agency for International Development for International Development (USAID), Case Management Assessment- Kenyan Judiciary, (2016) <[https://pdf.usaid.gov/pdf\\_docs/PA00X5P4.pdf](https://pdf.usaid.gov/pdf_docs/PA00X5P4.pdf)> accessed 25 September 2022.

### **1.3 Objectives of the Study**

The general objective of this study is to determine the role played by technology in the administration of criminal justice in the courts in Kenya, particularly in the context of the COVID-19 pandemic with a view of informing long-term digitisation of courts.

The specific objectives of the study are:

1. To assess the nature and the extent of the use of technology in Mombasa courts.
2. To assess the role played by technology in addressing delaying cases in Mombasa courts.
3. To assess the extent to which technology is enhancing access to justice in Mombasa courts.
4. To determine the impact of technology in facilitating transparency in Mombasa courts.
5. To explore the future of technological potential for greater digitisation at the Mombasa courts.

### **1.4 Research Questions**

1. What is the nature and extent of the use of technology in Mombasa courts?
2. What is the role played by technology in addressing the delaying of cases in Mombasa courts?
3. What is the extent to which technology has enhanced access to justice in Mombasa courts?
4. What is the impact of technology in facilitating transparency in Mombasa courts?
5. What is the future of technological potential for greater digitisation at the Mombasa courts?

### **1.5 Hypothesis**

The paper is, firstly, premised on the hypothesis that:

1. There is significant use of technology in Mombasa courts.
2. There is a significant relationship between technology and reducing delaying of cases in Mombasa courts.
3. There is a significant relationship between technology and enhancing access to justice in Mombasa courts.

4. There is a significant relationship between technology and facilitating transparency in Mombasa courts.
5. The future of technological potential is necessary for enhancing greater digitisation at the Mombasa courts.

## **1.6 Literature Review**

Literature was reviewed with a focus on the context of the administration of criminal justice in Kenya and the uptake of technology in the administration of criminal justice with a focus on the three themes of the study which are case delay, access to justice and transparency.

The administration of justice in Kenya was observed by the Kwach Committee as being generally inefficient.<sup>29</sup> The inefficiency in the administration of justice resulted due to the failure to harness and deploy ICT which has led to poor service delivery.<sup>30</sup> There have been several reform measures that have targeted reform measures in the justice sector to enhance the Judiciary's ability to administer justice in a manner that is fair and efficient.<sup>31</sup> One of the strategies adopted in the Judicial Transformation Framework (JTF) 2012-2016 is the harnessing of technology which has been framed as an enabler of justice.<sup>32</sup>

The use of technology is considered one of the ways to improve the administration of criminal justice in the courts. Technology has been developing rapidly which means new opportunities are constantly being presented to improve how we do things. This also means new possibilities for integration and automation of court procedures and processes. In recent years, there has been an

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<sup>29</sup> The Committee on the Administration of Justice (The Kwach Committee) see Kenya, in the US Department of State, Country. Reports on Human Rights Practices 1999.

<sup>30</sup> National Council on the Administration of Justice. *Criminal Justice System in Kenya: An Audit* (2016).[http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal\\_Justice\\_Report.pdf](http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal_Justice_Report.pdf) accessed 19 September 2021.

<sup>31</sup> Ibid 35.

<sup>32</sup> Ibid 68.

increasing amount of literature on the growing use of technology in the courts.<sup>33</sup> A relationship exists between technology and its ability to improve the courts' administration of justice.

In 1996, Richard Susskind in, *The Future of Law*<sup>34</sup> claimed that law would be transformed by information technology. He had predicted that lawyers and clients would communicate with each other through the use of electronic mail. During this period such a concept seemed improbable to many and as a result, he received a lot of scepticism. The book sparked legal tech debate on how the noble legal profession could be replaced one day by intelligent machines. In 2000, Richard Susskind authored a different book in which he pointed out that electronic mail, video conferencing, computers and television would be commonplace.<sup>35</sup> He addressed the fact that technology will irreversibly change the justice system, help people understand their rights better and that it will result in better access to justice. He failed however to address and analyse the issues of vulnerability of systems to outages, privacy, online security and liability. The other major issue of overreliance on the internet was also not examined explicitly. This study builds on the visionary words of Professor Susskind on the need for the courts to embrace on the major changes that information technology will bring with it in the administration of justice.

Author Eltis Karen in her book<sup>36</sup> provides an overview of the issues that emerge from the use of technology in the justice system and the key issues affecting different parties. According to the author privacy, security and publicity brought about by technology and the internet have consequences for the legal system because justice can either be served or undermined. She gives

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<sup>33</sup> Dory Reiling, *Technology for Justice : How Information Technology Can Support Judicial Reform* (Amsterdam University Press 2010) <<http://dare.uva.nl/aup/nl/record/341193>> accessed 9 May 2021; Richard Susskind, *Transforming the Law: Essays on Technology, Justice and the Legal Marketplace* (Oxford University Press, Inc 2000); Richard E Susskind, *The Future of Law: Facing the Challenges of Information Technology* (Clarendon Press ; Oxford University Press 1996).

<sup>34</sup> Susskind, *The Future of Law* (n 46).

<sup>35</sup> Susskind, *Transforming the Law* (n 46) 127.

<sup>36</sup> Karen Eltis, *Courts, Litigants, and the Digital Age: Law, Ethics, and Practice* (1st Edition, Irwin Law 2012).

an example of whether judges should do an online background check on the facts related to the case or when they give their reasons for their decisions whether their source of authority possesses a danger of being improperly vetted. The author suggests that technology will only become manageable if practitioners and academics continually try to understand technological issues from a legal ethics perspective. This view is also supported in an article that focuses on the implications of the use of technology to administer justice.<sup>37</sup> The authors suggest that carrying out a systematic analysis of the legal risks associated with the cyber justice<sup>38</sup> system allows us to better identify the effects of introducing technology into the justice system. This study is designed to understand ramifications of court technology through close examination of the issues that the court users face. Delaying of court cases has been attempted to be explained by numerous studies on how it is an important problem that needs to be addressed by the Judiciary.<sup>39</sup> Courts that have timelines with respect to the duration of the cases produce great performance and boost economic growth.<sup>40</sup> Authors Professor Kameri Mbote and Professor Migai Aketch maintain that case delay is one of the reasons for the inefficient administration of justice.<sup>41</sup> They emphasize that litigants access the courts for justice because of the certainty that the dispute between the parties will be determined without undue delay.<sup>42</sup> They point out that the situation of case delays and backlogs in Kenya has still not improved much. They mention the use of technology to improve the efficiency of

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<sup>37</sup> Francois Senecal and Karim Benyekhlef, 'Groundwork for Assessing the Legal Risks of Cyberjustice' 16 <<https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1101&context=cjlt>> accessed 17 September 2021.

<sup>38</sup> The authors define cyber justice systems as those management systems that are concerned with the computerization of the courts processes such as E-filing and case management systems.

<sup>39</sup> Jeffrey A Butts, *Delays in Youth Justice* (DIANE Publishing 2010); Keith O Boyum, 'A Perspective on Civil Delay in Trial Courts' [1979] *The Justice System Journal* 170; Maurice Rosenberg, 'The Literature on Court Delay' (1965) 114 *University of Pennsylvania Law Review* 323.

<sup>40</sup> Ben van Velthoven and M Ter Voert, *The Value of the Judicial Infrastructure for the Dutch Economy* (Netherlands Council for the Judiciary 2005).

<sup>41</sup> Patricia Kameri-Mbote and JM Migai Akech, *Kenya: Justice Sector and the Rule of Law: A Review by AfriMAP and the Open Society Initiative for Eastern Africa* (Open Society Initiativer for Eastern Africa 2011).

<sup>42</sup> *ibid* 86.

operations however, they do not discuss in detail how ICT can be used. This paper builds on this appreciation of the need for enhanced use of ICT and how it facilitates improved efficiency in courts' operations.

Access to justice is opined by author SP De Souza who draws our attention to how the changes in technology impact the end-user from the judges, lawyers, policymakers and clients.<sup>43</sup> He points out that digitisation of the courts holds a great promise to make state administration more effective, accessible and transparent. SP De Souza does not take into account how to improve access to justice to marginalized groups or communities. He mentions the challenges of access to justice to include costs, distance and lack of knowledge of rights. However, the author overlooks the fact that technology requires the user to have basic knowledge so that the user can be in a position to interpret and apply the information he or she receives. The study would have been far more persuasive if the author considered how to improve access to justice for marginalized groups or communities taking into account their literacy levels. This study will look into the different technologies in courts and how they can be used to improve access to justice for the people.

Transparency increases public scrutiny which results in more pressure to have the courts make impartial decisions. In the report, *Digital Technologies for Better Justice*<sup>44</sup>, the writers opine that justice sectors that have been affected by low public confidence due to allegations of lack of integrity or corruption can use the benefits of digital justice to generate legitimacy. The report points out that judicial institutions require a high degree of transparency and accountability. This is in respect to their performance, the procedure flows and also their decision-making process. It

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<sup>43</sup> Siddharth Peter de Souza and Maximilian Spohr, *Technology, Innovation and Access to Justice* (1st Edition, Edinburgh University Press 2021).

<sup>44</sup> 'Digital Technologies for Better Justice: A Toolkit for Action | Publications' (n 1).



highlights that transparency can be increased by facilitating access to information through technology.

Based on the studies that have been mentioned, it is clear that the use of technology does improve the courts' processes in terms of speed, efficiency and accuracy which in turn makes justice accessible, transparent and reduces case delays. Numerous studies have however attempted to show that the results that have been achieved in the integration of the use of technology in the courts do not often coincide with the anticipated results.<sup>45</sup> More research is needed to understand how technology innovations in the courts can be used to improve the administration of justice. A more systematic study would identify how technology interacts with the variables that are believed to be linked with the administration of justice. This study identifies the glaring gaps which will form the basis of this study.

### **1.7 Justification of the Study**

Various factors undermine the administration of justice in Kenya. Of particular concern are three crucial issues that the court faces which are the delaying of cases, limited access to justice and lack of transparency in the court processes and procedures.

The use of technology can contribute to addressing these challenges. Existing literature has failed to assert the importance of technology and therefore there is a need to understand the strengths and the limitations of technological innovations in the justice system taking into account the effects of the COVID-19 pandemic. The use of technology in the courts in Kenya is in its nascent stages and

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<sup>45</sup> Claudio U Ciborra and Giovan Francesco Lanzara, 'Formative Contexts and Information Technology: Understanding the Dynamics of Innovation in Organizations. Accounting, Management and Information Technologies' (1994) 4 61 <<https://www.sciencedirect.com/science/article/pii/0959802294900051>> accessed 18 September 2021; Francesco Contini and Antonio Cordella, 'Information System and Information Infrastructure Deployment: The Challenge of the Italian EJustice Approach' <<https://aisel.aisnet.org/ecis2004/40/>> accessed 18 September 2021.

was escalated by the COVID-19 pandemic hence the need to access its operation with a view of information scaling up.

It will contribute to the knowledge of the use of technology in the courts. Judiciaries in different jurisdictions can learn from each other when it comes to the use of technology in the courts. This will help build a better understanding of how technology can improve courts' performance. Those involved in judicial reform will greatly benefit from the study so that they can come up with statutory reforms to allow the use of and the exchange of electronic data and documents within the judicial systems.

This study could also be helpful to other researchers who might need the information on their research. It will add to the existing theoretical body of knowledge with regard to the use of technology in the administration of criminal justice in the courts.

## **1.8 Theoretical Framework and Conceptual Framework**

### **1.8.1 Theoretical Framework**

This study is grounded in, first, the procedural justice theory, secondly, the law and development theory and thirdly, the institutionalist theory. As already stated, the overall aim of the study is to determine the role played by technology in the administration of justice in the courts in Kenya with a view of informing the long-term digitisation of courts. The theories adopted provide a lens through which the administration of criminal justice using technology is interrogated.

#### **1.8.1.1 Procedural Justice Theory**

The procedural justice theory is premised on the idea of fairness and transparency in the procedures of the processes that revolve around disputes and allocation of resources, especially by the people in authority.<sup>46</sup> It deals with the perception of fairness regarding outcomes. When people perceive

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<sup>46</sup> Laura Kunard and Charlene Moe, 'Procedural Justice for Law Enforcement: An Overview' [2015] Washington: Office of Community Oriented Policing Services  
<[https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=5983&context=fss\\_papers](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=5983&context=fss_papers)> accessed 15 September 2021.

a procedure to be fair then they become satisfied with the outcome of the procedure.<sup>47</sup> Justice gives us a strong reason to reject individual actions, laws and public policies if we think that they are unjust.<sup>48</sup> The theory explains that in the absence of a just procedure, we cannot have an impartial decision and in its presence, it secures the legitimacy of the court's decision. Where there is an exercise of fair procedures and the outcome delivered is favourable then perceived legitimacy is enhanced.<sup>49</sup> An increase in legitimacy has the effect of increasing compliance and cooperation from the public.<sup>50</sup> One of the ways of improving the public's experience of justice is through the development of procedural justice.<sup>51</sup>

The main proponent for this theory is John Rawls who according to him, the government who in this case acts as the citizens' agents must satisfy the citizens' public perception of justice. In his book, John Rawls<sup>52</sup> elaborates on three ideas of the concept of justice which are perfect procedural justice, imperfect procedural justice and pure procedural justice. The reason he makes the three distinctions, he argues that, by contrasting perfect and imperfect procedural justice, the idea of pure procedural justice is better understood.<sup>53</sup> There are two features of perfect procedural justice: an independent criterion for what constitutes a fair outcome of the

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<sup>47</sup> G Alexander Nunn, 'Law, Fact, and Procedural Justice' (2020) 70 Emory LJ 1273, 1273 <<https://heinonline.org/HOL/Page?handle=hein.journals/emlj70&collection=usjournals&id=1306&startid=&end=1357>> accessed 5 August 2022.

<sup>48</sup> David Miller, 'Justice' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Fall 2021, Metaphysics Research Lab, Stanford University 2021) <<https://plato.stanford.edu/archives/fall2021/entries/justice/>> accessed 15 September 2021.

<sup>49</sup> Diarmaid Harkin, 'Police Legitimacy, Ideology and Qualitative Methods: A Critique of Procedural Justice Theory' (2015) 15 *Criminology & Criminal Justice* 594, 599 <<https://heinonline.org/HOL/Page?handle=hein.journals/crmcj15&collection=journals&id=581&startid=&end=599>> accessed 5 August 2022.

<sup>50</sup> *ibid* 596.

<sup>51</sup> Carolyn Hoyle and Diana Batchelor, 'Making Room for Procedural Justice in Restorative Justice Theory' 178 <<https://heinonline.org/HOL/Page?handle=hein.journals/ijrestore1&collection=journals&id=181&startid=&end=192>>.

<sup>52</sup> John Rawls, *A Theory of Justice: Revised Edition* (The Belknap Press of Harvard University Press Cambridge, Massachusetts 1999).

<sup>53</sup> *ibid* 74.

procedure and a procedure that ensures that the fair outcome is guaranteed. The imperfect criterion is where the law is followed and the proceedings properly conducted but the outcome reached is wrong.<sup>54</sup> This scenario brings about a miscarriage of justice where an innocent man may be found guilty and the guilty one is set free. There is no standard as to what constitutes a fair result in pure procedural justice but that the process has been properly and duly followed.<sup>55</sup>

The theory of procedural justice has four principles or pillars. The first is the fairness of procedures. This means utilization of accurate resources, authorities treating people with dignity and respect, lack of personal bias as well as representation of the affected parties.<sup>56</sup> The second is transparency in actions. This means that for people to trust or regard a decision as being fair, then the decision-making authority must be able to explain and account for their decision.<sup>57</sup> The third is impartiality in decision-making.<sup>58</sup> Lastly is providing an opportunity for voice whereby when people are allowed to voice their opinions they perceive the procedure to be fair.<sup>59</sup>

This concept is relevant to the study because the theory focuses on courts' processes which is the primary factor that determines the public willingness to accept court decisions.<sup>60</sup> This means that the theory asserts that the public perception of justice arises from how they felt they were treated during the process rather than from how the outcome of their dispute.<sup>61</sup> The study recognizes the fact that despite the benefits highlighted through literature, there has been less

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<sup>54</sup> *ibid* 75.

<sup>55</sup> *ibid*.

<sup>56</sup> *ibid* 93.

<sup>57</sup> Kunard and Moe (n 59) 7.

<sup>58</sup> *ibid* 9.

<sup>59</sup> *ibid* 6.

<sup>60</sup> Nunn (n 60) 1299.

<sup>61</sup> Stephen M McLoughlin, 'Stewards of Justice in a Business World: How Lawyers Can Use the Theory of Procedural Justice to Keep Their Clients Happy and Protect the Integrity of Alternative Dispute Resolution Forums' (2011) 16 *Trinity L. Rev.* 71, 76  
<<https://heinonline.org/HOL/Page?handle=hein.journals/trinlr16&collection=usjournals&id=71&startid=&end=106>> accessed 5 August 2022.

focus on how to develop and deliver procedural justice. It is for this reason that the study explores the framework to cultivate procedural justice in the courts through the use of technology.

### **1.8.1.2 Human Rights Approach**

One of the benefits of courtroom technology is that it has the potential to contribute to the realization of the human rights agenda in the justice system, especially fair trial rights.<sup>62</sup> A human rights perspective provides a lens through which technology within the context of criminal justice is interrogated.

A human rights approach provides the foundation for recognizing, understanding and observing.<sup>63</sup> Within the criminal justice system, human rights instruments provide a minimum standard for the treatment of offenders and victims thus ensuring fairness and the delivery of justice.

Karl Marx, a proponent of the classic human rights theory, opined that freedom which is the common pursuit of man is an inherent right of man.<sup>64</sup> Second, he stressed out that citizens should pursue freedom and equality regardless of their class and interest.<sup>65</sup> Third, he emphasized on the role of the state in safeguarding the human rights of citizens.<sup>66</sup> Lastly, he called for press freedom which in turn reflected the confidence of the people.<sup>67</sup>

This classic human rights approach resonates with this paper, which links technology to enhancing justice for all. Further, human rights theorists such as John Locke opine that all human beings are

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<sup>62</sup> The way forward for expertise: a human rights perspective-Africanfactscheckers, 'The Future of Technology: A Human Rights Perspective' (*AfricLaw*, 2 December 2020) <<https://africlaw.com/2020/12/02/the-future-of-technology-a-human-rights-perspective/>> accessed 13 November 2022.

<sup>63</sup> Kailin Xian, 'In-Depth Understanding of Classic Marxist Human Rights Theory' (2018) 17 J. Hum. Rts. 252 <<https://heinonline.org/HOL/Page?handle=hein.journals/jrnIhmch17&collection=journals&id=252&startid=&end=262>> accessed 13 November 2022.

<sup>64</sup> *ibid.*

<sup>65</sup> *ibid.*

<sup>66</sup> *ibid.*

<sup>67</sup> *ibid.*

entitled to human rights.<sup>68</sup> This is particularly important in the context of criminal justice where accused persons are often not prioritized in the implementation of human rights.

Fair trials such as the right to expeditious trial and information are well established and are not only recognized in international legal instruments but in the Constitution of Kenya as well. Robert Nozick, asserts that a just society is one where everyone is entitled to a fair trial and it does not matter if they cannot afford legal representation.<sup>69</sup> In Nozick's *Entitlement Theory of Justice*, a state which is a protective agency must fairly fulfil its aspiration and be the controller of actors who seek to engage in its protecting force.<sup>70</sup> This paper uses a fair trial lens to interrogate how technology can enhance access to justice.

### **1.8.1.3 Law and Development Theory**

The law and development movement began after the second world war and it gained significance after a group of scholars, practitioners and aid agencies made efforts to adopt laws and legal practices from developed countries in a bid to assist the economic progress of the less developed countries.<sup>71</sup> The theory focuses on how the law can be used as an instrument to advance a country's economic and social development. According to Marx Weber, the key to development lays in a rational and modern legal system.<sup>72</sup>

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<sup>68</sup> 'What Are Human Rights?' (*Manual for Human Rights Education with Young people*) <<https://www.coe.int/en/web/compass/what-are-human-rights->> accessed 14 November 2022.

<sup>69</sup> Denise Meyerson, *Understanding Jurisprudence* (Routledge-Cavendish 2009).

<sup>70</sup> Eric Mack, 'Robert Nozick's Political Philosophy' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Summer 2022, Metaphysics Research Lab, Stanford University 2022) <<https://plato.stanford.edu/archives/sum2022/entries/nozick-political/>> accessed 15 November 2022.

<sup>71</sup> Yong-Shik Lee, 'General Theory of Law and Development' 50 58, 421 <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1906&context=cilj>> accessed 16 September 2021.

<sup>72</sup> Lan Cao, 'Law and Economic Development: A New Beginning?' [1997] Faculty Publications 548 <<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1350&context=facpubs>> accessed 18 September 2021.

One of the characteristics of modern man as psychologist Alex Inkeles asserts is the belief in the efficacy of science.<sup>73</sup> Modernization scholars under this school of thought believe that law reform is not only about economic development but also about helping countries develop a modern legal system which is believed to be the ultimate stage in the universal process of societal evolution.<sup>74</sup> A country's policy choices in reference to technology are viewed as one of the factors that are relevant to how an economy performs.<sup>75</sup> This, therefore, means transplanting regulatory laws from advanced states in order to strengthen the legal capacities of state agencies as well as modernize the legal profession.<sup>76</sup>

The law is also dynamic which means that law in development demands that the law develops to support technological advancement. A state must have the capacity to implement laws that are relevant to development. Developing countries often than not lack financial, technological and administrative resources that are sufficient to implement all their laws effectively.<sup>77</sup> These are viewed as obstacles to legal modernity.

The courts have to adapt to the advancement in technology. A good example is the fact that with cyberspace-related matters evidence has to be tendered to a tech-savvy court or that it is now possible through the use of technology to have remote hearings. Relevant laws and regulations will have to be developed by countries to allow for the successful implementation of technology in the courts.

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<sup>73</sup> John Ohnesorge, 'Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience' (2007) 28 *University of Pennsylvania Journal of International Economic Law* 219, 233  
<<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1177&context=jil>> accessed 16 September 2021.

<sup>74</sup> *ibid* 235.

<sup>75</sup> *ibid* 226.

<sup>76</sup> David M Trubek and Alvaro Santos, 'The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice (Introduction)' [2006] Cambridge University Press 2006 5  
<<https://scholarship.law.georgetown.edu/facpub/2105/>> accessed 18 September 2021.

<sup>77</sup> Lee (n 75) 452.

The law and development discourse puts the state of digitisation in criminal justice in sharp focus. From this lens, the persistence in analogue delivery of criminal justice is interrogated. It also raises concerns about the extent to which the justice system is in tandem with technological advancement. However, the technological advancement of the justice system is not an end in itself. The paper analyses how criminal justice may be enhanced by the increased use of ICT.

#### **1.8.1.4 Institutional Theory**

This theory seeks to explain how institutional processes affect institutional change. The theory inquires about how rules, norms and routines are created, adopted and adapted over time in an institution. The theory also looks at what are the drivers of institutional change, the factors that influence how an organization respond to the changes in terms of whether they accept or resist the changes and lastly deinstitutionalization which is how institutions weaken and disappear.<sup>78</sup> Drivers of change for example environmental changes such as the onset of the pandemic causes an institution to question the legitimacy of a given practice which is a condition where other alternatives are seen as less desirable or viable.<sup>79</sup>

Reforms to change the status quo may fail if they threaten to alter deeply held organizational values or if depending on the outcome of the reform, competing government agencies may stand to win or lose.<sup>80</sup> Even though there have been numerous reforms that have been made to bring modernization in the legal systems in Kenya, there has been the persistence of old routines, natural resistance to change as well as cultural obstacles that run deep.

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<sup>78</sup> WR Scott, 'Institutions and Organizations: Ideas and Interests' [2001] Thousand Oaks, CA.[etc.]: Sage 182 <[https://digitalcommons.usu.edu/unf\\_research/55/](https://digitalcommons.usu.edu/unf_research/55/)> accessed 18 September 2021.

<sup>79</sup> M Tina Dacin, Jerry Goodstein and W Richard Scott, 'Institutional Theory and Institutional Change: Introduction to the Special Research Forum' (2002) 45 Academy of management journal 45, 47 <<https://www.jstor.org/stable/3069284>> accessed 18 September 2021.

<sup>80</sup> Amy B Zegart, 'September 11 and the Adaptation Failure of U.S. Intelligence Agencies' (2005) 29 International Security 78, 94 <<https://direct.mit.edu/isec/article/29/4/78-111/11833>> accessed 16 August 2021.



John Meyer is one of the pioneers of the neo-institutionalism theory. He highlighted the fact that formal organizations have rules that are often violated, decisions that are often unimplemented and technologies that are of problematic efficiency.<sup>81</sup> Organizations use technologies to produce output and increase efficiency. Efficiency often determines the success of the organization. The theory suggests that most organizations resist change due to the strong pressures that they face. That even when market forces, technology and the competitive environment change, most organizations do not make a shift that corresponds with the changes happening. In the private sector through the process of natural selection, newer and fitter firms replace those that are dated and outdated.<sup>82</sup> However, in the public sector, as many scholars have observed, government agencies are harder to eliminate because there are groups that have vested interests in them so that they receive powerful means of protection.<sup>83</sup>

The study considers the institutional theory in a bid to explore the factors that have contributed to the level of technological advancement in the courts. The essence of the institutional theory is the transformation of institutions which in this case is through the use of technology and the consequences that arise thereafter.<sup>84</sup> One major drawback with the theory is the fact that technology is often associated with rapid and at times disruptive organizational changes while

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<sup>81</sup> John W Meyer and Brian Rowan, 'Institutionalized Organizations: Formal Structure as Myth and Ceremony' (1977) 83 *American Journal of Sociology* 340, 343 <[https://security.ufpb.br/gets/contents/documentos/meyer\\_rowan\\_teoria\\_institucional.pdf](https://security.ufpb.br/gets/contents/documentos/meyer_rowan_teoria_institucional.pdf)> accessed 18 September 2021.

<sup>82</sup> Michael T Hannan and John Freeman, 'Structural Inertia and Organizational Change' [1984] *American Sociological Review* 149 <<https://www.jstor.org/stable/2095567>> accessed 18 September 2021; Michael T Hannan and John Freeman, 'The Population Ecology of Organizations' (1977) 82 *American Journal of Sociology* 929 <<https://www.jstor.org/stable/2777807>> accessed 18 September 2021.

<sup>83</sup> Anthony Downs, 'Inside Bureaucracy'; Herbert Kaufman, *Are Government Organizations Immortal?* (Washington: Brookings Institution 1976); Tom Holyoke, 'Theodore J. Lowi, The End of Liberalism: The Second Republic of the United States', *The Oxford Handbook of Classics in Public Policy and Administration* (2015).

<sup>84</sup> Jan Klabbers, 'Transforming Institutions: Autonomous International Organisations in Institutional Theory' (2017) 6 *Cambridge International Law Journal* 105 <<https://heinonline.org/HOL/Page?handle=hein.journals/cajoincla6&collection=journals&id=104&startid=&endid=120>> accessed 8 April 2022.

the theory focuses on stability within organizations. This study highlights the reason well-defined organizations such as the courts view change as unimportant.

### **1.8.2 Conceptual Underpinnings**

The criminal justice in Kenya has in the recent past been mostly traditional as a result of paper-based procedures and physical court appearances. Technology has a significant relationship with the performance of the Judiciary where the quality and the delivery of justice are improved.<sup>85</sup> The use of technology in this research is interrogated against efficiency in the administration of justice.

Case delays result in courts having a backlog of cases when the courts do not process cases at the same rate that they are filed. The parties that appear before the courts must be afforded a fair and expeditious trial. Every person under the Constitution is entitled to have their trial begin and conclude without unreasonable delay.<sup>86</sup> Cases in the Mombasa law courts have been piling up leading to delays and eventual backlog despite the fact that we have an established judicial system and a democratic government that believes in the rule of law. Having systems that show the statistical records for the entire trajectory of the case allows for easy and accurate calculation of the time frame of cases. Technology allows for greater effectiveness in case management by expediting the processing time.<sup>87</sup>

Access to justice is considered a universal human right which means that everyone is entitled to a fair and free public hearing by an independent tribunal.<sup>88</sup> Technology when properly designed and

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<sup>85</sup> Eric Mokwaro Bosire, Douglas Kivoi and Steve Nduvi, 'Effects of Judicial Transformation Framework (2012-2016) on the Performance of the Judiciary in Kenya' (2018) 5 Archives of Business Research <[https://www.academia.edu/36474377/Effects\\_Of\\_Judicial\\_Transformation\\_Framework\\_2012\\_2016\\_On\\_The\\_Performance\\_Of\\_The\\_Judiciary\\_In\\_Kenya](https://www.academia.edu/36474377/Effects_Of_Judicial_Transformation_Framework_2012_2016_On_The_Performance_Of_The_Judiciary_In_Kenya)> accessed 5 August 2022.

<sup>86</sup> Ibid, Article 50 2 (e)

<sup>87</sup> 'Digital Technologies for Better Justice: A Toolkit for Action | Publications' <<https://publications.iadb.org/publications/english/document/Digital-Technologies-for-Better-Justice-A-Toolkit-for-Action.pdf>> accessed 29 January 2021.

<sup>88</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR) art 10.

deployed allows better access to justice services through the use of online tools such as virtual hearings and digital processes.<sup>89</sup> This allows the courts to achieve access to justice which is a key judicial value. A well-functioning justice system affords everyone the opportunity to protest violations of their rights by invoking the protection of the law. The situation in Kenya is that there are still barriers to accessing justice, particularly through the courts. These barriers may range from distance to the courts, language barriers, physical challenges of the court users such as hearing, costs of the courts as well as lack of familiarity with the courts' processes.

Transparency is a precondition for effectiveness in public sectors.<sup>90</sup> The public trusts in the courts and their processes and this is made possible through procedural fairness which is recognized under Kenyan law.<sup>91</sup> The Constitution under Article 10 (2) (c) demands transparency and accountability of all persons including State organs, State officers, and public officers. Accountability for administrative acts<sup>92</sup> and transparency are considered as one of the values and principles of public service.<sup>93</sup> The courts are therefore required to take the necessary measures to enhance transparency in their public administration. When the courts decide in a transparent and accountable manner it reduces the likelihood of corruption. One of the key challenges when it comes to highly corrupt settings is the absence of individuals who promote and enforce transparency.<sup>94</sup> Technology introduces a more impersonal way of working which reduces the chances of corruption and biases.

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<sup>89</sup> 'Digital Technologies for Better Justice: A Toolkit for Action | Publications' (n 91).

<sup>90</sup> S Schütte, Paavani Reddy and Liviana Zorzi, 'A Transparent and Accountable Judiciary to Deliver Justice for All' [2016] New York, NY: United Nations Development Programme <<https://anti-corruption.org/wp-content/uploads/2017/05/RBAP-DG-2016-Transparent-n-Accountable-Judiciary.pdf>> accessed 7 August 2022.

<sup>91</sup> The Constitution of Kenya, Article 47 (1) provides that every person has the right to administrative action that is procedurally fair.

<sup>92</sup> Ibid, Article 232 (1) (e)

<sup>93</sup> Ibid, Article 232 (1) (f)

<sup>94</sup> 'Procedural Fairness for Curbing Corruption' (*U4 Anti-Corruption Resource Centre*) <<https://www.u4.no/publications/procedural-fairness>> accessed 23 July 2021.

## **1.9 Research Methodology**

The research methodology was informed by the objectives of the research. Both desk and field research were conducted to obtain data. This necessitated an interrogation of the existing legal framework, relevant theories and inquiry into the courts.

### ***Population and sample size selection***

The scope of the research is limited to Mombasa. The choice was informed by the history of Mombasa, being one of the first counties in Kenya where technology was being rolled out as a pilot project into the courts together with Nairobi and Eldoret counties. Secondly, Mombasa is considered a city hence a large human settlement. This means that there is a high number of court services required by the population.

Mombasa county has an estimated population of about 1,208,333.<sup>95</sup> The target population for this study were the court users within Mombasa county which included the judges, advocates and clerks.

### ***Sampling and Sample Design***

Field research was undertaken to complement desk research. Purposive sampling was undertaken whereby key informants who are considered to have outstanding knowledge and experience in the use of technology in the administration of justice were targeted.

Stratified random sampling was adopted. The population was divided into homogenous subgroups from which respondents were identified. The subgroups in this study were the magistrates, clerks, lawyers and prison officers.

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<sup>95</sup> Kenya National Bureau of Statistics. (2019), '2019 Kenya Population and Housing Census Volume 1: Population by County and Sub-County' < <https://vpn.uonbi.ac.ke/proxy/11e0c7df/https/www.knbs.or.ke/download/2019-kenya-population-and-housing-census-volume-i-population-by-county-and-sub-county/>> accessed 4 August 2022

### **1.9.1 Data Collection**

The data collection process involved the use of a semi-structured questionnaire. It contained close-ended questions and some open ended questionnaire that enabled the respondents to provide more information that they considered relevant. This method was suitable for the study because it is systematic which means that it is easy to compare the answers of the other respondents. The advantage of this method is that it covered large samples in a shorter time. Phone interviews were also conducted to get an in-depth analysis as it provided the freedom to get additional information that might not have been available in the questionnaire.

### **1.9.2 Data Analysis**

The data obtained was both quantitative and qualitative in nature. It was organized systematically in a manner that facilitated analysis in order to make inferences and deductions. Qualitative data analysis used the case study method to get a deep holistic understanding of the Mombasa law courts through different data sources. Quantitative data analysis used data in the form of numbers, derived from the questionnaires, where the mathematic calculations were used and tabulated to make data inferences.

### **1.9.3 Ethical Considerations**

All the respondents were assured of the confidentiality and anonymity of the information that they had provided. Pseudonyms have therefore been used in this study. They were also advised that the answering of the questionnaire was voluntary which means that they could withdraw from participation at any time. The participants were also informed that the questions would only assess relevant components of the study.

### **1.10 Limitations**

Challenges were experienced in mobilizing respondents to fill in questionnaires. The questionnaires that were sent out were partially filled while others remained blank. The interviews

that were carried out, in some cases, elicited guarded responses amongst the respondents which in turn hindered in-depth discussions.

Limited data is available as the use of technology in the administration of justice is still at its nascent stages. This was overcome through reviewing secondary sources of information in other jurisdictions where more research has been carried out on technology in the courts.

### **1.11 Chapter Breakdown**

Chapter one is the introduction to the research topic and it gives an overview of the research. It provides the background, the statement of the problem, highlights the research questions sought to be answered as well as the hypothesis and provides a chapter breakdown. Research methodology is also introduced in summary as well as the theoretical and conceptual framework of the research. This chapter provides the structure of how the research will be conducted.

Chapter two focuses on the legal framework supporting the use of technology in the administration of criminal justice.

Chapter three discusses on the administration of justice in the Kenyan context and the uptake in the use of technology. This chapter discusses what entails the administration of justice and the challenges that arise when access to justice is impeded. It also looks at how technology has affected access to justice in light of the COVID-19 pandemic. The benefits and shortcomings that have been brought about through the adoption of technology in the Mombasa law courts are explored.

Chapter four looks at the best practices in different countries and compare them to the Mombasa law courts. These practices provide baseline standards for Kenyan courts to emulate in order to improve the productivity and performance of the courts in the administration of criminal justice.

Chapter five presents the data collected. The data is then analyzed and the findings interpreted in response to research questions. Overall, the use of technology in the Mombasa courts in enhancing the administration of criminal justice is examined.

Chapter six concludes with a summary of the major problems facing the use of technology in the Mombasa law courts and provides recommendations on how they can be resolved. It also identifies potential areas for further research.

## CHAPTER TWO

### LEGAL FRAMEWORK FACILITATING THE USE OF TECHNOLOGY IN THE ADMINISTRATION OF CRIMINAL JUSTICE

#### 2.1 Introduction

Information Communication Technology was identified as a key area in the 2012-2016 Judiciary Transformation Framework (JTF) that would facilitate expeditious trials and enhance administrative efficiency.<sup>96</sup> The Framework recognized that the Judiciary had low adoption and utilisation of ICT which led to poor service delivery and contributed to the inefficiency and ineffectiveness in the administration of justice.<sup>97</sup> It is anchored on four pillars which are transformative leadership, adequate financial resources and infrastructure, people-focused delivery of justice and the harnessing of technology as an enabler of justice. The Judicial Information Technology Committee (JITC) was established on 15<sup>th</sup> October 2008<sup>98</sup> in line with the fourth pillar of the Framework. The role of the JITC is to oversee the digitisation of the courts, development of ICT policy and report on the ICT system in regard to the successes, challenges and areas that required improvement to ensure that the system met its purpose.

The Service Delivery Agenda (SJT) 2017-2021<sup>99</sup> outlined the digital strategy that would be used in the adoption of the technologies. The strategy provides for ICT solutions that are citizen-centric, ease access to judicial services and make citizen directed services online and mobile-friendly. The use of technology in the courts is enhanced where some laws and policies are in place to govern

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<sup>96</sup> Judiciary of Kenya, Judiciary Transformation Framework 2012-2016, Laying the Foundations for the Transformation of the Kenyan Judiciary <http://kenyalaw.org/kl/fileadmin/pdfdownloads/JudiciaryTransformationFramework.pdf> accessed 27 September, 2021.

<sup>97</sup> National Council on the Administration of Justice, Criminal Justice System in Kenya: An Audit, 2016, 68 < [http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal\\_Justice\\_Report.pdf](http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal_Justice_Report.pdf)> accessed 14 October 2021.

<sup>98</sup> Priti Jain and Nathan Mnjama, *Managing Knowledge Resources and Records in Modern Organizations* (IGI Global 2016) 173.

<sup>99</sup> Judiciary of Kenya, Sustaining Judiciary Transformation 2017-2021, A Service Delivery Agenda, [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Strategic\\_BluePrint.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Strategic_BluePrint.pdf) accessed 28 September 2021.



the implementation of technology and its enforcement. They ensure the regulation and governing of the use of ICT in the Judiciary to meet the objectives of the institution. This chapter examines existing laws and policies that justify and facilitate the use of technology in the administration of criminal justice in the country.

## **2.2 The Criminal Justice System in Kenya**

The key players in the criminal justice system of Kenya include the Judiciary, the National Police Service, Office of the Director of Public Prosecutions, the Prison Service and the probation and After Care Service.<sup>100</sup> The arresting, investigations, prosecution, the final adjudication of the case and implementation of the resulting order are the primary processes involved. The youth, indigent and uneducated represent the majority of those who go through the criminal justice system.<sup>101</sup> The criminal justice system is aimed at ensuring that both the accused persons as well as the victim of the crime receive effective and efficient delivery of justice.<sup>102</sup>

Criminal justice requires ultimately just determination of innocence or guilt coupled with compliance with the guaranteed trial rights. The system must guarantee a fair, just and impartial process for the suspects and the victims. The use of technology in criminal trials resonates with these overall objectives. For instance, the use of technology may result in expeditious trials and may also facilitate the presentation of evidence thus contributing to a just determination of cases. The legal and policy framework in this chapter is thus designed from this approach. That is, firstly,

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<sup>100</sup> L Onyango, 'Overview of the Kenyan Criminal Justice System (Corrections)', *153rd International Senior Seminar Participants' Papers* (2005) <[https://www.unafei.or.jp/publications/pdf/RS\\_No90/No90\\_20PA\\_Onyango-Israel.pdf](https://www.unafei.or.jp/publications/pdf/RS_No90/No90_20PA_Onyango-Israel.pdf)> accessed 14 October 2021.

<sup>101</sup> Gilbert Mitullah Omware, 'Kenya: Finding Kafka in the Criminal Justice System | World Prison Brief' <<https://www.prisonstudies.org/news/kenya-finding-kafka-criminal-justice-system>> accessed 8 March 2022.

<sup>102</sup> Daren Palmer, Willem de Lint and Derek Dalton, *Crime and Justice: A Guide to Criminology* (Pyrmont, NSW: Thomson Reuters/Lawbook Co 2017).

the laws and policies that justify the use of technology as a facilitator of criminal justice. Secondly, the actual policies and laws that govern the use of technology in criminal cases.

### **2.2.1 Legal and Policy Framework Justifying the Use of Technology in Criminal Cases**

There have been several statutory reforms around the world that have been introduced to allow the use of technology within the judicial system.<sup>103</sup> These statutory reforms have begun in many countries in order to accommodate the use of technology to reinforce democratic ideals and promote the rule of law.<sup>104</sup> The special role of the courts in ensuring human rights protection and the rule of law was emphasized by the ICJ in their general guidance on the courts and the COVID-19 pandemic.<sup>105</sup> They highlighted the importance of ensuring that judicial institutions continue to function at all times especially in situations of emergencies to guarantee the right to justice.<sup>106</sup> This ensured that even with the surge of COVID-19 cases around the world, people still enjoyed their right to a fair trial by an impartial court.<sup>107</sup> This part will highlight the legal framework that justifies the use of technology in the courts.

#### **2.2.1.1 International and Regional Legal Framework**

The international and regional legal frameworks are a set of laws and principles that govern how international actors interact.<sup>108</sup> The laws have a role to regulate the growth and development of technological advancement to protect the international community from the risks that are posed by

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<sup>103</sup> Marco Velicogna, 'Justice Systems and ICT What Can Be Learned From Europe?' (2007) 3 Utrecht Law Review 129 <<https://www.utrechtlawreview.org/article/10.18352/ulr.41/>> accessed 5 April 2022.

<sup>104</sup> Chineze Sophia Ibekwe and Chiugo Onwuatuegwu, 'ICT in the Administration of Justice: Challenges and Prospects for Labour and Productivity' (2021) 8 9 <[file:///C:/Users/esther/Downloads/ICT+in+the+Administration+of+Justice\\_+Challenges+and+Prospects+for+Labour+and+Productivity.pdf](file:///C:/Users/esther/Downloads/ICT+in+the+Administration+of+Justice_+Challenges+and+Prospects+for+Labour+and+Productivity.pdf)> accessed 6 April 2022.

<sup>105</sup> 'ICJ Guidance on the Courts and COVID-19' (*International Commission of Jurists*, 7 April 2020) <<https://www.icj.org/icj-guidance-on-the-courts-and-covid-19/>> accessed 25 March 2022.

<sup>106</sup> *ibid.*

<sup>107</sup> Article 14 ICCPR

<sup>108</sup> Emmy Latifah and Moch Najib Imanullah, 'The Roles of International Law on Technological Advances' 105 <<https://lawjournal.ub.ac.id/index.php/law/article/view/139>> accessed 22 May 2022.

technology.<sup>109</sup> In the criminal justice system, the guilty should be convicted and those that are found innocent should be acquitted, to ensure fairness for all. Technology in this context facilitates the production of evidence in a criminal trial, which would have otherwise been impossible. It also automates routine tasks which means that it frees up time that is needed for high-value work. The international and regional laws should therefore anticipate, access and mitigate the risks caused by emerging technologies as well as accentuate the strengths of technology.<sup>110</sup>

The International Covenant on Civil and Political Rights (ICCPR) under Article 6 provides that the States have an obligation to protect the right to life of their people. Given the degree of spread of the COVID-19 virus and the severity of its infection, States had to adopt necessary measures to ensure that they saved as many lives as possible by reducing the risk of transmission.<sup>111</sup> To facilitate this, certain human rights contained in treaty provisions were restricted in the context of the COVID-19 pandemic such as the freedom of movement<sup>112</sup> and association.<sup>113</sup> The courts in turn had to also take into account the heightened inherent risks that judicial officers and other court staff members would be exposed to if they did not adhere to restrictions to protect their life.<sup>114</sup> The same is supported in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides that the States must ensure that their people enjoy the highest attainable standard of health both mental and physical.<sup>115</sup> States had to look for other alternatives such as the use of technology to ensure that access to court services was guaranteed.

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<sup>109</sup> Latifah and Imanullah (n 112).

<sup>110</sup> *ibid.*

<sup>111</sup> ‘ICJ Guidance on the Courts and COVID-19’ (n 109).

<sup>112</sup> *Ibid*, Article 12

<sup>113</sup> *Ibid*, Article 22

<sup>114</sup> ‘ICJ Guidance on the Courts and COVID-19’ (n 109).

<sup>115</sup> ‘International Covenant on Economic, Social and Cultural Rights’ (*OHCHR*)

<<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> accessed 25 March 2022.

The right to a trial without undue delay is enshrined in Article 14 (3) (c) of ICCPR which means that States have an obligation to address undue postponing of court operations. The consequences of postponing the trials as a result of the pandemic would mean an overwhelming backlog of cases and ultimately denying people justice. The issue of undue delay is also echoed under Article 9 (3) of the ICCPR which provides that those who have been detained pre-trial, should be released if they are not tried within a reasonable time. The Mombasa law courts, therefore, had to carry on with their operations with the help of technology, despite the increase in the COVID-19 mortality rates.<sup>116</sup>

The physical presence of a detainee is required as provided for by Article 9 of the ICCPR to allow the judge the opportunity to inquire about the kind of treatment they received while in custody. It is unlikely that the drafters of Article 9 conceived the impact of technology in the digital age we live in currently.<sup>117</sup> However, States submitted to the UN Human Rights Committee that Article 9 should be interpreted to allow video-conferencing as a substitute for physical presence.<sup>118</sup> The Committee in their General Comment No. 34 paragraph 15 stated that State parties should take into the advances in ICT including the internet and mobiles that have significantly altered communication practices and take the necessary steps to ensure access of individuals.<sup>119</sup>

The right to a public hearing is incorporated in the International Covenant on Civil and Political Rights (ICCPR) when it comes to determinations of criminal cases.<sup>120</sup> The UN Human Rights

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<sup>116</sup> ICJ Guidance on the Courts and COVID-19' (*International Commission of Jurists*, 7 April 2020) <<https://www.icj.org/icj-guidance-on-the-courts-and-covid-19/>> accessed 25 March 2022.

<sup>117</sup> Avani Singh, *Legal Standards on Freedom of Expression: Toolkit for the Judiciary in Africa* (UNESCO Publishing 2018) 37.

<sup>118</sup> 'Videoconferencing, Courts and COVID-19, Recommendations Based on International Standards' (2020) <[https://www.unodc.org/res/ji/import/guide/icj\\_videoconferencing/icj\\_videoconferencing.pdf](https://www.unodc.org/res/ji/import/guide/icj_videoconferencing/icj_videoconferencing.pdf)> accessed 26 March 2022

<sup>119</sup> 'UN Human Rights Committee: General Comment No. 34' <<https://www.justiceinitiative.org/publications/un-human-rights-committee-general-comment-no-34>> accessed 26 March 2022.

<sup>120</sup> ICCPR, Article 14 (1)

Committee general comment no 32 under paragraph 29, commented that a hearing must be in the open except under exceptional circumstances.<sup>121</sup> It is without a doubt that the COVID-19 pandemic was an exceptional circumstance globally. The publicity of the hearings was made possible through video and audio broadcasting. The courts must provide adequate facilities as well information on time and venue for the oral hearings to be made available to the public.<sup>122</sup> This allows for transparency of the proceedings for interested members of the public.

The African Union's Digital Transformation Strategy for Africa (2020-2030) has set its objective to include building digital skills in the Judiciary.<sup>123</sup> It was adopted by the African Union in its strategic vision for the Smart Africa Initiative.<sup>124</sup> It recognizes that digitisation facilitates the delivery of government services which then contributes to the achievement of the Sustainable Development Goals.<sup>125</sup>

The Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) provides guidelines on digital-rights protection in Africa. The Declaration was adopted by the African Commission and it recognizes the role of new digital technologies in the realization of access to information and how it fosters transparency, efficiency and innovation through government data that is open to its people.<sup>126</sup> Court users require access to information which is a

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<sup>121</sup> 'Human Rights Committee/ General Comment No. 32'

<<https://undocs.org/Home/Mobile?FinalSymbol=CCPR%2FC%2FGC%2F32&Language=E&DeviceType=Desktop&LangRequested=False>> accessed 25 March 2022.

<sup>122</sup> 'United Nations: International Covenant on Civil and Political Rights' (1967) 61 American Journal of International Law 870

<[https://www.cambridge.org/core/product/identifier/S0002930000101204/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S0002930000101204/type/journal_article)> accessed 21 March 2022.

<sup>123</sup> The Digital Transformation Strategy for Africa (2020-2030) <<https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf>> accessed 8 April 2022

<sup>124</sup> 'Futurium | Digital 4 Development Hub Forum - The Digital Transformation Strategy for Africa 2020-2030' <<https://futurium.ec.europa.eu/en/Digital4Development/library/digital-transformation-strategy-africa-2020-2030>> accessed 8 April 2022.

<sup>125</sup> Ibid

<sup>126</sup> 'African Commission on Human and Peoples' Rights Legal Instruments' <<https://www.achpr.org/legalinstruments/detail?id=69>> accessed 8 April 2022.

right stipulated under Article 9 of the African Charter.<sup>127</sup> The States have a responsibility to ensure that people can access information online or provide the information through other necessary means.<sup>128</sup>

African Declaration on Internet Rights and Freedoms (2014) promotes that all African States have the responsibility to protect internet rights and freedoms. The Declaration supports that, internet that is accessible and locally relevant is a tool for successful development in the African society.<sup>129</sup> It also calls upon African governments to come up with policies and practices that are related to the internet.<sup>130</sup>

The African Union Convention on Cyber Security and Personal Data Protection (The Malabo Convention) together with the African Union Declaration on Internet Governance provides the regional framework for online data protection across Africa.<sup>131</sup>

### **2.2.1.2 Domestic Legal Framework**

The criminal justice system in Kenya has also undergone a lot of reforms but the greatest reform was brought about by the Constitution of Kenya 2010. Article 48 provides that the State should ensure access to justice for all persons which means that the use of technology was justified to ensure that justice was not denied. Article 47 also provides for expeditious administrative action since the other concern was about the growing backlogs of cases that were a result of limiting the

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<sup>127</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981) entered into force 21 October 1986 (1982) 21 ILM (African Charter)

<sup>128</sup> Declaration of Principles on Freedom of Expression, 2019, Principle 37  
<file:///C:/Users/esther/Downloads/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression\_EN\_G\_2019.pdf> accessed 8 April 2022

<sup>129</sup> 'African Declaration on Internet Rights and Freedoms' <<https://africaninternetrights.org/>> accessed 8 April 2022.

<sup>130</sup> Tom Orrell, 'The African Declaration on Internet Rights and Freedoms: A Positive Agenda For Human Rights Online'. <<https://www.gp-digital.org/wp-content/uploads/pubs/african-declaration-a-positive-agenda-for-rights-online.pdf>> accessed 8 April 2022.

<sup>131</sup> 'Tech Policy in Africa: Emerging Trends in Internet Law and Policy' (*Institute for Global Change*) <<https://institute.global/policy/tech-policy-africa-emerging-trends-internet-law-and-policy>> accessed 8 April 2022.

matters before the courts to urgent matters.<sup>132</sup> The Mombasa law courts had to respond quickly through the utilization of technology as the courts are required under the Constitution to begin and conclude the trial of an accused person without unreasonable delay.<sup>133</sup>

Court Records Management System (CRMS) and Digital Audio Recording (DAR) were identified as key technologies in improving service delivery in the administration of justice in the *Judiciary Strategic Plan 2005-2008*.<sup>134</sup> The *Judicial Transformation Framework 2012-2016* identified one of the pillars for judicial transformation as using digital technology to speed up the delivery of justice. *ICT Master Plan 2017-2022* was developed in 2014 to establish the Integrated Court Management System Committee (ICMS). Currently, we have the *Sustaining Judiciary Transformation for Service Delivery 2017-2021* which strives to provide high-quality service in the Judiciary through automation and digitisation.

## **2.2.2 Legal and Policy Framework Governing Use of Technology in Criminal Cases**

### **2.2.2.1 ICT Policy Framework**

The Constitution under Article 159 states that judicial authority comes from the people. This means that the Judiciary has to provide quality service to the people in order to meet the high public expectation. In response to this, the Judiciary Strategic Plan (JSP) 2014-2018 was developed which underscored the need for an ICT policy guide.<sup>135</sup> A policy acts as a guideline on development and

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<sup>132</sup> ‘Rule of Law in the Time of COVID-19: Kenya’ (*IDLO - International Development Law Organization*, 30 July 2020) <<https://www.idlo.int/news/notes-from-the-field/rule-law-time-covid-19-kenya>> accessed 29 September 2021.

<sup>133</sup> The Constitution of Kenya 2010, Article 50 (2) (e) <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010> accessed 29 September 2021.

<sup>134</sup> ‘Leveraging on Digital Technology in Administration of Justice – KIPPRA’ <<https://kippra.or.ke/leveraging-on-digital-technology-in-administration-of-justice/>> accessed 19 March 2022.

<sup>135</sup> Judiciary of Kenya, Strategic Plan 2014-2018, Building on the Foundations of Judiciary Transformation, <https://www.judiciary.go.ke/download/strategic-plan-2014-2018/> accessed 29 September 2021.

related issues in a country.<sup>136</sup> Participatory policy process and visible role of the government are recommended to have successful development and implementation of a national ICT policy.<sup>137</sup>

The National Information Communication (ICT) Policy Guidelines of 2020 have been published through the Kenya Gazette under Notice No. 5472. The development of the national ICT Policy was triggered by the growth of information technology which lacked direction and regulation.<sup>138</sup>

The policy governs national ICT issues in Kenya and the vision of the mission is to ‘*facilitate universal access to ICT infrastructure and services all over the country.*’<sup>139</sup> The Policy is however generic in that the action plan for implementation is ignored. It also overlooks other sectors of the economy such as the Judiciary yet it is not possible to look at it in isolation without looking at other sectors of the economy.<sup>140</sup>

The Judiciary ICT Policy was developed in 2018 and it is guided by the National ICT Policy, Judiciary Policy documents, National ICT Master Plan and the ICT Authority Standards.<sup>141</sup> The overall objective of the Policy is to provide a framework for the ‘*...acquisition, use and disposal of ICT in the Judiciary*’.<sup>142</sup> Under the Policy extracts from 2.3.4, the Integrated Court Management System (ICMS) Committee which was established on 10<sup>th</sup> October 2014, is mandated to coordinate

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<sup>136</sup> Florence Ebam Etta and Laurent Elder, *At the Crossroads: ICT Policy Making in East Africa* (East African Educational Publishers 2005) 7.

<sup>137</sup> *ibid* 41.

<sup>138</sup> *ibid* 25.

<sup>139</sup> Kenya Gazette Notice No. 5472 dated the 7 August 2020. <<https://www.ca.go.ke/wp-content/uploads/2020/10/National-ICT-Policy-Guidelines-2020.pdf>> accessed 28 September 2021.

<sup>140</sup> JM Kandiri, ‘ICT Policy in Kenya and Ways of Improving the Existing ICT Policy.’ (2006) 6 Management Science Students Association (MASSA), University of Nairobi, Kenya. Retrieved October 2011, 22 <<https://su-plus.strathmore.edu/bitstream/handle/11071/3638/ICT%20policy%20in%20Kenya.pdf?sequence=1&isAllowed=y>> accessed 9 October 2021.

<sup>141</sup> Judiciary ICT Policy 2018 The Judiciary of Kenya <<https://www.judiciary.go.ke/download/judiciary-ict-policy-2018/>> accessed 28 September 2021.

<sup>142</sup> *Ibid*.



the implementation of ICT for the Judiciary as well as undertake comparative analysis that will enable the Judiciary in the adoption of ICT to come up with the best practices.

#### **2.2.2.2 ICT Legal Framework**

The Convention on the Rights of Persons with Disabilities (CRPD) under Article 21 provides that State Parties shall provide general public information in a timely manner and at no additional cost to people with disabilities using technology that is appropriate for the different types of disabilities. This means that courts should provide technology that is tailor-made to match the disability to ensure the enjoyment of the right to legal capacity to persons in need of assistance.<sup>143</sup>

The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 under Rule 5 (d) provides that in the handling of all matters the court shall use appropriate technology. The overriding objective of these rules as provided for under Rule 3 (2) is to facilitate access to justice for all persons which is also echoed under Article 48 which provides for the same.

The Judicial Service Act<sup>144</sup> provides that modern technology is applied in the Judiciary and the Judiciary Service Commission's operations. The Act further requires that the Commission and the Judiciary, have technical competence in their exercise of powers and the performance of their functions.<sup>145</sup>

The Magistrates Court Act<sup>146</sup> requires the Chief Justice to make Rules that provide for the use of information communication technology for the effective administration of the Magistrates'

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<sup>143</sup> 'Who gets to Decide? Right to Legal Capacity for Persons with Intellectual and Psychosocial Disabilities' (2012) <https://rm.coe.int/who-gets-to-decide-right-to-legal-capacity-for-persons-with-intellectu/16807bb0f9> accessed 26 March 2022

<sup>144</sup> Judicial Service Act, No. 1 of 2011, S 3 (1), Government Printer, Nairobi.

<sup>145</sup> Ibid, Section 4 (a)

<sup>146</sup> The Magistrates' Courts Act. No. 26 of 2015, Government Printer, Nairobi.

courts.<sup>147</sup> The rules provide for the automation of court records, use of information communication technology, protection and sharing of court information and case management.<sup>148</sup>

The Law of Contract Act<sup>149</sup> was recently amended to recognize the use of advanced electronic signatures.<sup>150</sup> This is also recognized in the Information Communications Act, 1998 under section 83P which means that they are admissible in a court of law.

### **2.3 Conclusion**

There are laws that justify and govern the use of ICT at the international, regional and domestic levels. However, a very strong and robust legal framework is needed to accommodate the growing nature and advancement of ICT and control the extremes of technology. The court system is still challenged by laws despite the substantial technology that exists.<sup>151</sup> This is because there are gaps in the current laws that apply to the administration of justice and the judicial process in that the legal framework that is supposed to govern emerging technologies has not evolved as rapidly.<sup>152</sup> The legislative process is slow and hence the laws fail in their capacity to adjust to changing technologies. The regulatory process has slowed down while the rate at which technology is advancing is speeding up which ultimately leads to ineffective and outdated regulations.<sup>153</sup> The

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<sup>147</sup> Ibid, Section 20 (2) (d)

<sup>148</sup> Ibid.

<sup>149</sup> The Law of Contract Act, Chapter 23 of the Laws of Kenya, Revised Edition 2012 [2002], National Council for Law Reporting  
<http://ir.kabarak.ac.ke/bitstream/handle/123456789/508/Law%20of%20Contract%20Act%2043%20of%201960.pdf?sequence=1&isAllowed=y> accessed 8 April 2022

<sup>150</sup> Vide Business Laws (Amendment) Act, No. 1 of 2020, (18 March 2020)

<sup>151</sup> Brian A Jackson and others, *Fostering Innovation in Community and Institutional Corrections: Identifying High-Priority Technology and Other Needs for the US Corrections Sector* (Rand Corporation 2015) 43  
<<https://www.jstor.org/stable/10.7249/j.ctt1d41ddx.10?seq=25>> accessed 7 April 2022.

<sup>152</sup> Gary E Marchant, 'The Growing Gap between Emerging Technologies and the Law', *The growing gap between emerging technologies and legal-ethical oversight* (Springer 2011)  
<[https://www.researchgate.net/publication/226523376\\_The\\_Growing\\_Gap\\_Between\\_Emerging\\_Technologies\\_and\\_the\\_Law](https://www.researchgate.net/publication/226523376_The_Growing_Gap_Between_Emerging_Technologies_and_the_Law)> accessed 8 April 2022.

<sup>153</sup> *ibid* 9.

out-of-date regulatory policies and existing laws expose service providers as well as the users to numerous online risks such as cyberattacks.<sup>154</sup>

They are however relevant to the operation because they address issues such as data privacy as contained in the Data Protection Act.<sup>155</sup> There must be statutory backing that oversees and regulates the digital justice platform. The laws will provide for well-defined principles for the planning, implementation and redressing of data breaches or any harm caused through the misuse of the online platform.<sup>156</sup> Regulation and serious enforcement in the use of technology in the courts are required to ensure the rule of law as well as guide our behaviour.

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<sup>154</sup> ‘Tech Policy in Africa: Emerging Trends in Internet Law and Policy’ (n 135).

<sup>155</sup> Data Protection Act No. 24 of 2019, Section 25 (a), Government Printer, Nairobi  
[http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct\\_No24of2019.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct_No24of2019.pdf) accessed 7 April 2022

<sup>156</sup> Surya Prakash, ‘Whitepaper Series on Next Generation Justice Platform, Paper 3: The Legal Framework’ <[https://dakshindia.org/wp-content/uploads/2020/02/Paper-3\\_Legal-Framework.pdf](https://dakshindia.org/wp-content/uploads/2020/02/Paper-3_Legal-Framework.pdf)> accessed 7 April 2022.

## CHAPTER THREE

### ICT AND THE ADMINISTRATION OF CRIMINAL JUSTICE

#### 3.1 Introduction

Judiciaries with their institutional independence and monopoly over decisions risk not being in touch with the people who use their services.<sup>157</sup> According to Article 159 of the Constitution, judicial authority comes from the people. This means that whatever authority is vested in the Judiciary must be exercised taking into account the aspirations of the people.<sup>158</sup> Public institutions must adjust their core activities to such changes to be relevant in today's world, which is characterized by frequent environmental volatility.<sup>159</sup> There is an increase towards digitisation as well as technological solutions in most parts of the world by those responsible for administering justice systems.<sup>160</sup>

The Sustaining Judiciary Transformation (SJT) report noted that despite the heavy investment of ICT in the Judiciary, it has not produced commensurate results as the success rate has been low.<sup>161</sup> However, it is important not to ignore the fact that some of the Kenyan courts that were technologically starved from the beginning are now reeling from the onslaught of technological innovations.

There have been other transformation agendas formulated such as the Judicial Transformation Framework to try and attract public confidence through the harnessing of technology. An efficient

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<sup>157</sup> Dory Reiling, *Technology for Justice : How Information Technology Can Support Judicial Reform* (Amsterdam University Press 2010) 17 <<http://dare.uva.nl/aup/nl/record/341193>> accessed 28 January 2021.

<sup>158</sup> 'Judiciary Transformation Framework(JTF) 2012-2016 – The Judiciary of Kenya' <<https://www.judiciary.go.ke/judiciary-transformation-frameworkjtf-2012-2016/>> accessed 30 January 2021.

<sup>159</sup> Gerry Johnson, Kevan Scholes and Richard Whittington, *Exploring Corporate Strategy: Text and Cases* (Pearson education 2008).

<sup>160</sup> JB Giampiero Lupo, 'Designing and Implementing E-Justice Systems: Some Lessons Learned from EU and Canadian Examples. Laws' <<https://heinonline.org/HOL/Page?handle=hein.journals/laws3&collection=journals&id=353&startid=&endid=387>> accessed 19 July 2022.

<sup>161</sup> The Judiciary of Kenya, "Sustaining Judiciary Transformation (SJT): A service Delivery Agenda 2017-2021," The Judiciary of Kenya, Nairobi, Kenya, 2017

and accessible administration of justice has been regarded as a vital component to creating a favourable investment climate.<sup>162</sup> According to the Poverty Reduction Strategy Paper (PRSP) 2001-2004 corruption, case delays and lack of access to courts are some of the causes of an inefficient administration of justice.<sup>163</sup>

This chapter interrogates the issues raised. Part one discusses Kenyan court processes, problematises delays in criminal cases and what causes these inordinate delays. It also sheds light on how technology can be leveraged on to reduce delay. The second part addresses the relevance of access to justice and looks at the barriers to access to justice. It also looks at how information technology, especially how the internet improves access to justice. Part three discusses transparency and how technology can improve transparency within the Mombasa law courts. The challenges impeding the adoption of technology in the Kenyan courts are analysed in part four, followed by a discussion on how to enhance the adoption of technology in the courts. Part five focuses on the consequences of COVID-19 in the courts and the role played by technology. In part six the future of technology in the courts is interrogated.

### **3.1.1 Background**

All advanced technologies utilised in altering and disseminating information are commonly referred to as ‘Information and Communication Technology’ (ICT).<sup>164</sup> The Judiciary and the Judicial Service Commission are required to apply modern technology in their operations.<sup>165</sup> The

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<sup>162</sup> Patricia Kameri-Mbote and JM Migai Akech, *Kenya: Justice Sector and the Rule of Law: A Review by AfriMAP and the Open Society Initiative for Eastern Africa* (Open Society Initiative for Eastern Africa 2011) 75.

<sup>163</sup> Republic of Kenya, Poverty Reduction Strategy Paper for the Period 2001-2004 <<https://www.imf.org/external/pubs/ft/scr/2010/cr10224.pdf>> accessed 9 October 2021

<sup>164</sup> Rasheed Sulaiman V and others, ‘Necessary, but Not Sufficient: Critiquing the Role of Information and Communication Technology in Putting Knowledge into Use’ (2012) 18 *The Journal of Agricultural Education and Extension* 331 <<https://www.tandfonline.com/doi/abs/10.1080/1389224X.2012.691782>> accessed 11 July 2022.

<sup>165</sup> Judicial Service Act, No. 1 of 2011. S 3 (1), Government Printers, Nairobi

Judicial Service Act<sup>166</sup> also requires the Judiciary to have technical competence in the exercise of its functions and powers to ensure that the requirements of the judicial process are fulfilled.<sup>167</sup>

The court case management system piloted in Eldoret Law courts and later rolled out in Nairobi and Mombasa in 2011 by the National Council for Law Reporting (Kenya Law) was not effective. Inadequate digital technology infrastructure such as lack of adequate computers, low internet connections and frequent power cuts hindered the integration process. On 10<sup>th</sup> October 2014, the former Chief Justice, Dr. Willy Mutunga set up an ICT Committee whose mandate was to oversee ICT investments and projects in the creation of an Integrated Justice Management Information System.<sup>168</sup>

In 2015, there was the Daily Court Returns Template which was rolled out to evaluate job performance.<sup>169</sup> It was meant to monitor performance through case tracking, distribution of caseload and processing times. The template however did not allow document sharing and verifying of the data submitted by the court station which was a challenge.<sup>170</sup> In 2016, Judiciary Automated Transcription System was piloted to make digital audio and video recordings of court proceedings and transcript production.<sup>171</sup> Currently, the project is still ongoing with plans to roll out the electronic case management system in Mombasa and Kisumu and the establishment of a Judicial data centre.

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<sup>166</sup> Ibid

<sup>167</sup> Ibid, S 4 (a)

<sup>168</sup> 'Integrated Court Management System Committee – The Judiciary of Kenya'

<<https://www.judiciary.go.ke/about-us/our-programmes/icms/>> accessed 1 August 2021.

<sup>169</sup> Maya Gainer, 'Transforming the Courts: Judicial Sector Reforms in Kenya, 2011–2015' (2015) 7 2017, 12

<[https://successfultsocieties.princeton.edu/sites/successfultsocieties/files/MG\\_OGP\\_Kenya.pdf](https://successfultsocieties.princeton.edu/sites/successfultsocieties/files/MG_OGP_Kenya.pdf)> accessed 7 February 2021.

<sup>170</sup> Gainer (n 173).

<sup>171</sup> The Judiciary of Kenya, "Sustaining Judiciary Transformation (SJT): A service Delivery Agenda 2017-2021," The Judiciary of Kenya, Nairobi, Kenya, 2017

In the wake of the COVID-19 pandemic, certain measures such as scaling down of the courts' activities were introduced in the courts following the advisory by the National Emergency Response Committee (NERC) on the management of COVID-19.<sup>172</sup> The use of digital technology was a vital innovative approach for ensuring service delivery within the courts and will be covered later in this chapter. The legal industry has been a latecomer in the adoption of technology.<sup>173</sup> The COVID-19 pandemic has led the courts to majorly adopt technology in their operations, however, there is still a need for continued use of the technology post-COVID-19 pandemic.

### **3.2 Challenges in the Criminal Justice System**

An inefficient criminal justice system weakens the rule of law and damages the credibility of the justice system.<sup>174</sup> Inordinate delays, access to justice and transparency are the most common problems that the courts' users face in the criminal justice system.<sup>175</sup> These problems were clearly highlighted during the COVID-19 outbreak due to the fact that pre-COVID, the use of technology was limited and often not very effective.<sup>176</sup> Technological use was boosted during the pandemic<sup>177</sup> where greater strides were made towards accelerating digitisation of the courts' processes and communication.<sup>178</sup> This chapter gives a brief overview of the challenges that the courts have been

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<sup>172</sup> 'Press Statement: Administrative and Contingency Management Plan to Mitigate COVID-19 In Kenya's Justice Sector – The Judiciary of Kenya' <<https://www.judiciary.go.ke/press-statement-administrative-and-contingency-management-plan-to-mitigate-covid-19-in-kenyas-justice-sector/>> accessed 29 July 2021.

<sup>173</sup> de Souza and Spohr (n 56).

<sup>174</sup> Yvon Dandurand, 'Criminal Justice Reform and the System's Efficiency' (2014) 25 Criminal Law Forum 383 <<https://heinonline.org/HOL/Page?handle=hein.journals/crimlfm25&collection=journals&id=383&startid=&end=440>> accessed 21 July 2022.

<sup>175</sup> Reiling, *Technology for Justice* (n 161) 17.

<sup>176</sup> Marco Fabri, 'Will COVID-19 Accelerate Implementation of ICT in Courts?' (2021) 12 IJCA 1 <<https://heinonline.org/HOL/Page?handle=hein.journals/ijca12&collection=usjournals&id=111&startid=&end=123>> accessed 19 July 2022.

<sup>177</sup> Dory Reiling and Francesco Contini, 'E-Justice Platforms: Challenges for Judicial Governance' (2022) 13 International Journal for Court Administration <<https://www.iacajournal.org/articles/10.36745/ijca.445/>> accessed 18 July 2022.

<sup>178</sup> Fabri (n 180).

facing in the administration of criminal justice. It then looks into how technology has affected the courts' processes in light of the COVID-19 pandemic.

### **3.2.1 Inordinate Delays in Criminal Cases**

Case delay has emerged as an urgent problem in the administration of criminal justice.<sup>179</sup> The Financial year of 2018/19 had 569,859 pending cases in the Judiciary which was a three per cent increase from the previous financial year.<sup>180</sup> In the case of *Ecobank Ghana Limited v Triton Petroleum Co Limited & 5 Others*,<sup>181</sup> it was held by the court that in deciding whether to dismiss a suit for want of prosecution the court considers whether the delay caused is inordinate, is excusable and whether either of the party is likely to be prejudiced as a result of the delay.

Undue delay in the administration of criminal justice is a human rights violation.<sup>182</sup> Article 14 of the International Covenant on Civil and Political Rights (ICCPR) provides that cases must be disposed of without undue delay by the courts in the case of criminal charges. Article 7 (d) of the African Charter on Human and Peoples' Rights (ACHPR) provides that every individual has the right to have their cause heard by an impartial court or tribunal within a reasonable time. The same is provided for under Article 159 (2) of the Constitution which provides that justice should not be delayed by the courts in exercising their judicial authority.

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<sup>179</sup> Maurice Rosenberg, 'The Literature on Court Delay' (1965) 114 *University of Pennsylvania Law Review* 323, 323 <<https://www.jstor.org/stable/3310902?origin=crossref>> accessed 30 July 2021.

<sup>180</sup> The Judiciary of Kenya, "Judiciary Strategic Plan 2019-2023: Towards Excellence in Service Delivery" The Judiciary of Kenya, Nairobi, Kenya, 2019 < <https://www.judiciary.go.ke/download/judiciary-strategic-plan-2019-2023/> > accessed 9 October 2021.

<sup>181</sup> [2018] eKLR

<sup>182</sup> Christian C Ezeibe and others, 'From Protection to Repression: State Containment of Covid-19 Pandemic and Human Rights Violations in Nigeria' [2022] *Victims & Offenders* 1 <<https://www.tandfonline.com/doi/full/10.1080/15564886.2022.2077494>> accessed 21 July 2022.



### **3.2.2 The Litmus Test in Inordinate Case Delay**

In the case of *Mwangi S. Kimenyi v Attorney General & Another*<sup>183</sup>, the court held that the inordinate delay of a case differs depending on the circumstances of the case, subject matter, nature of the case and the explanation given for the delay of the case. However, once delay occurs it should not be difficult to ascertain. The litmus test should be that the delay is inordinate and therefore inexcusable.

### **3.2.3 Understanding Courts Processes and what Causes Delay**

To come up with ways of reducing disposal times of cases, it is important to identify the causes or sources of delays. One possible explanation is the size of the court's caseload in relation to the resources available to dispose of the cases.<sup>184</sup> The complexity of procedures is also another factor to consider. This could be linked to the procedural procedures that deal with the steps required to be taken or the substantive complexity of the case which is basically the number of issues to be resolved.<sup>185</sup> Delays are also caused by adjournment if, at a given point in time, one of the parties to the case is not in a position to continue with the case.<sup>186</sup> Transfer of magistrates or judges and misplacement of files also causes delays.<sup>187</sup> Underfunding of the Judiciary is also a factor that leads to case delays for example due to understaffing.<sup>188</sup> It is very important to look at the possible interventions that have been utilized to minimize disposition times and how effective those interventions have been.

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<sup>183</sup> [2004] eKLR

<sup>184</sup> Reiling, *Technology for Justice* (n 46) 102.

<sup>185</sup> *ibid* 103.

<sup>186</sup> Dinesh Kumar and Ram Manohar Singh, 'Exploring Court Performance and Developing Its Scale' (2022) 13 *International Journal for Court Administration* <<https://heinonline.org/HOL/Page?handle=hein.journals/ijca13&collection=usjournals&id=51&startid=&end=70>> accessed 18 July 2022.

<sup>187</sup> *ibid*.

<sup>188</sup> Florence Ogonjo, Joseph Theuri Gitonga and Dr Angeline Wairegi, 'Utilizing AI to Improve Efficiency of the Environment and Land Court in the Kenyan Judiciary' 10 <<http://ceur-ws.org/Vol-2888/paper9.pdf>> accessed 2 August 2021.

### **3.2.4 Effects of Delays in Disposal of Cases**

Case backlog in Kenya has resulted in low public confidence as well as a lack of effective administration of justice especially among the poor, vulnerable and marginalized. It is not an abstract right to have the guarantee of timely justice because there are always risks that when proceedings drag on then justice will be denied.<sup>189</sup> Cases that drag on in Mombasa law courts cause a greater risk of justice being denied and this causes a major problem in the administration of justice. This is because legitimate interests may be adversely affected. The different impacts that delay has is that; values of an award will be reduced, further costs are uncured, a party to a claim may not survive, evidence can disappear, corruption is encouraged and it can obstruct justice to those who cannot afford to pay the increased cost caused by the delay.<sup>190</sup> It is therefore clear that delay of cases adversely affects parties to the case, the administration of justice itself and in a wider sense, it also affects the society.

### **3.2.5 How Technology supports the Reduction of Case Delays**

Implementation of technology in the courts provides for case registrations and management systems to produce case processing statistics.<sup>191</sup> The Case Tracking System (CTS) allows for tracking and managing case-related activities.<sup>192</sup> The data produced is used to facilitate measuring actual disposition times as well as developing standards that help determine if there is evidence of case delay or not.<sup>193</sup>

Installation of an automated Case Management System (CMS) allows for the following functions:

Online filing of cases which is the E-case registration, automated fee assessment which assesses the fees and produces the required invoice, e-payment which is a platform that allows payment

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<sup>189</sup> Reiling, *Technology for Justice* (n 46) 83.

<sup>190</sup> Ibid 84.

<sup>191</sup> Reiling, *Technology for Justice* (n 46) 108.

<sup>192</sup> Dandurand (n 178) 406.

<sup>193</sup> Dandurand (n 178).

using different methods such as Mpesa, Visa, RTGS and the E-service notification in which service notifications are received electronically.<sup>194</sup> All these services allow litigants to quicken the courts' process as these services can be received anywhere and carried out at any time.

Technology allows for the easy structuring of complex information which increases efficiency.<sup>195</sup> Therefore, time is saved as redundant or irrelevant documents do not have to be read during a hearing. Ogonja et al reported that this is because the technology uses Artificial Intelligence (AI) which allows the system to have the ability to refine searches and outputs of the information.<sup>196</sup>

One of the advantages of video conferencing is that courts can maintain the video recordings and speech-to-text transcripts of the court proceedings for future reference. The digital information in the recordings is easily tracked, stored and reproduced. This improves the court's records management.

It is not always easy to access the original court file and even if it is available all the participants cannot gain access simultaneously. This means that a lot of time is saved because an electronic file on the court network can give access to all the participants at the same time. It also reduces the possibility of losing court files. By reducing the possibility of court files being misplaced or lost, court automation has the potential to boost public confidence in the judicial process.

The Ajira Digital Platform had been introduced in 2019 with the aim of digitising all audio court records.<sup>197</sup> The endeavour was however very slow. During the pandemic, courts were forced to

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<sup>194</sup> DLA Piper-Gilbert Juma, 'Embracing Electronic Court Case Management Systems: Lessons from the Kenyan Experience during COVID-19.' (*Lexology*, 4 November 2020) <<https://www.lexology.com/library/detail.aspx?g=6ba35bfa-5993-4d1f-8912-530a14dbec4c>> accessed 20 July 2022.

<sup>195</sup> Dandurand (n 178).

<sup>196</sup> Ogonjo, Gitonga and Wairegi (n 192).

<sup>197</sup> Florence Ogonjo and others, 'Utilizing AI to Improve Efficiency of the Environment and Land Court in the Kenyan Judiciary' <<http://ceur-ws.org/Vol-2888/paper9.pdf>> accessed 30 March 2022.

adapt to real-time transcripts devices.<sup>198</sup> This process increases brevity and is less laborious. Digital files also increase the accuracy of information since it is possible to attach video and audio recordings as well as still images to the information.

### **3.3 Access to Justice**

Access to justice is a crucial element of development as envisaged through the Millennium Development Goals. Goal 16 of the Sustainable Development Goals (SDG) ensures that everyone has access to justice.<sup>199</sup> Article 14 of ICCPR provides that all persons are entitled to a fair and public hearing before an independent tribunal established by law. The African Charter on Human and Peoples' Rights under Article 7, provides that every individual shall have the right to have his cause heard by a competent court or a tribunal. This also includes the right to appeal to a competent national organ. Article 3 goes further to provide that every individual shall be entitled to the full protection of the law.

The Convention on the Elimination of all Forms of Discrimination against Women<sup>200</sup>, CEDAW provides for the right to access to justice. The Committee identified six essential components of access to justice. They are Justiciability, availability of courts and other quasi-judicial bodies, accessibility of all justice systems, provisions of viable and meaningful remedies, good quality in regards to competence, impartiality, timeliness and efficiency and lastly, accountability of the justice system.<sup>201</sup>

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<sup>198</sup> Kariuki Muigua, 'Embracing Technology for Enhanced Efficiency and Access to Justice in the Legal Profession' <<http://kmco.co.ke/wp-content/uploads/2022/06/Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-in-the-Legal-Profession-Dr.-Kariuki-Muigua.pdf>> accessed 20 July 2022.

<sup>199</sup> 'The 17 Goals | Sustainable Development' <<https://sdgs.un.org/goals>> accessed 29 July 2021.

<sup>200</sup> United Nations, Treaty Series, vol. 1249, p. 13

<sup>201</sup> Teresa Marchiori, 'A Framework for Measuring Access to Justice Including Specific Challenges Facing Women' <<https://bangladesh.justiceaudit.org/wp-content/uploads/2018/07/A-framework-for-measuring-access-to-justice-including-specific-challenges-facing-women.pdf>> accessed 29 July 2021.

Access to justice is a right under the Constitution of Kenya and it mandates the states to ensure that this right is enjoyed by all persons.<sup>202</sup> Article 48 requires the State to ensure that access to justice is guaranteed to all persons and if any fees are required, they should be reasonable and not impede justice. Article 50 (1) stipulates the right of every person to that has a legal dispute is entitled to a fair and public hearing before a court or an independent and impartial tribunal. This ensures that there is equality in accessing legal services. Article 159 (2) of the Constitution goes further to provide that the courts in exercising their judicial authority should be guided on the principle that justice shall be afforded to all persons irrespective of their status.

### **3.3.1 Concept of Access to Justice**

Access to justice is defined as the people's ability to seek and get redress through formal or informal justice mechanisms, in accordance with human rights standards.<sup>203</sup> People without access to justice, according to the United Nations Development Programme (UNDP), are unable to have their voices heard, exercise their rights, challenge discrimination or hold decision-makers responsible.<sup>204</sup> Teresa Marchiori defines the term access to justice as all of the conditions required for citizens to seek redress for their legal issues and to demand that their rights be respected.<sup>205</sup> The elements that she mentions in her article<sup>206</sup> include legal frameworks, quality legal advice and representation, dispute resolution mechanisms that are affordable, accessible, efficient, and impartial and lastly the availability of mechanisms that facilitate the enforcement of judicial decisions.

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<sup>202</sup>Constitution of Kenya, 2010, Article 48

<sup>203</sup> HDR UNDP, 'Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice' [2005] Bangkok, Thailand: UNDP  
<[https://www.un.org/ruleoflaw/files/Justice\\_Guides\\_ProgrammingForJustice-AccessForAll.pdf](https://www.un.org/ruleoflaw/files/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf)> accessed 29 July 2021.

<sup>204</sup> *ibid.*

<sup>205</sup> Marchiori (n 205) 5.

<sup>206</sup> *ibid.*

In the case of *Martha Wangari Karua v. The Attorney General of the Republic of Kenya*,<sup>207</sup> the applicant was claiming that the Supreme Court of Kenya violated her right of access to justice after she was displeased with the results of the 2017 General elections. The Supreme Court had dismissed her appeal on grounds that it lacked jurisdiction and that the petition was time-barred. In awarding her damages, the East Africa Court of Justice held that the Supreme Court did indeed have jurisdiction since the Constitution did not provide a particular time frame for hearing matters on remission. There was therefore a duty of the Supreme Court to redress the gap in the law which means that it did have the jurisdiction to hear the appeal.

Justice Majanja in the case of *Dry Associates Limited v Capital Markets Authority & Another*<sup>208</sup> provided the elements that are included in access to justice. He provided for, understanding of the law, availability of information regarding one's rights, easy access to the justice system, affordability of legal services, enforcement of judicial decisions without delay and availability of physical legal infrastructure. Article 22 of the Constitution obligates the Chief Justice to make rules to facilitate access to justice through the courts. In June 2013, the Protection of Rights and Fundamental Freedoms Practice and Procedure Rules became effective through Legal Notice no.17. It was facilitated by the then Chief Justice Dr. Willy Mutunga. The main purpose of this legislation was to facilitate access to justice for all persons by providing rules for court proceedings. Access to justice is vital for the ideal rule of law to be realized.<sup>209</sup>

### **3.3.2 Challenges that Arise when Access to Justice is Impeded**

Many people fail to pursue legal and justice services either because they are not aware of them or unable to access these services. This has a disproportionate impact on disadvantaged groups which

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<sup>207</sup> Reference no. 20 of 2019 East African Court of Justice

<sup>208</sup> Petition No. 358 of 2011 (2012) e KLR

<sup>209</sup> Kameri-Mbote and Akech (n 166) 15.

includes people such as the youth, single parents, people living with disability, mental illness and the unemployed, mainly because of their lack of individual income.<sup>210</sup> Legal needs surveys have indicated that disadvantaged groups are the most vulnerable to legal problems.<sup>211</sup> The consequence of having unresolved legal problems is the recurrence of the violation of the rights of the affected party<sup>212</sup>. The most frequent adverse consequences are stress-related physical and mental health problems, loss of confidence, relationship breakdown, loss of income and loss of employment.<sup>213</sup> On a larger scale, inaccessible justice has a detrimental impact on development, contributes to rising poverty and social isolation, and threatens economic growth and democracy.<sup>214</sup>

### 3.3.3 Barriers to Access to Justice

In the case of *Kenya Bus Service & Another v Minister of Transport & 2 Others*<sup>215</sup>, Justice Majanja held that the right of access to justice is protection from legal formalism and dogmatism and without access to justice, rule of law, dignity, social justice and democracy which are the objects of the Constitution cannot be realised. The barriers to access to justice are:

- (a) Distance is one of the factors that impede access to justice. In Kenya, most of the courts are located in urban centres as compared to sparsely populated areas. The geographical location of the Mombasa law courts makes it difficult to cover the long distances to the

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<sup>210</sup> Understanding Effective Access to Justice, Workshop 2016 Paper, OECD Conference Centre, Paris. <<https://www.oecd.org/gov/Understanding-effective-access-justice-workshop-paper-final.pdf>> accessed 9 October 2021

<sup>211</sup> PT Pleasence, Nigel J Balmer and Rebecca L Sandefur, 'Paths to Justice: A Past, Present and Future Roadmap' <<https://discovery.ucl.ac.uk/id/eprint/1432348/2/PTJ%20Roadmap%20NUFFIELD%20Published.pdf>> accessed 9 October 2021; Christine Coumarelos and others, *Legal Australia-Wide Survey: Legal Need in New South Wales* (Law and Justice Foundation of New South Wales 2012) <[http://www.lawfoundation.net.au/ljf/site/templates/LAW\\_NSW/\\$file/Chapter1.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_NSW/$file/Chapter1.pdf)> accessed 9 October 2021.

<sup>212</sup> Justice Needs and Satisfaction in Kenya 2017, Legal Problems in Daily Life. [https://www.hiil.org/wp-content/uploads/2018/07/hiil-report\\_Kenya-JNS-web.pdf](https://www.hiil.org/wp-content/uploads/2018/07/hiil-report_Kenya-JNS-web.pdf) accessed 9 October 2021.

<sup>213</sup> Coumarelos and others (n 215) 27.

<sup>214</sup> Understanding Effective Access to Justice (n 35)

<sup>215</sup> [2012] e KLR

courts as well as the consequent costs associated with travel for the parties involved in the case.

- (b) The language barrier and the use of legalese. Immigrants or people who are not familiar with the official language of the courts are at risk of failing to access justice. Even in the cases where a translator is used, there is also the risk that the information is lost in translation which may lead to an injustice. Legalese also makes it difficult for the litigants who don't understand the law, to follow the proceedings adequately.
- (c) Physical challenges are also another barrier to access to justice, this is with respect to impaired sight, full or partial loss of hearing as well as motor and cognitive impairments.<sup>216</sup>
- (d) Legal and court fees costs are also a challenge that creates barriers to access to justice as there are people who are not able to afford the fees. There are rules under the Advocates Act<sup>217</sup> (Advocates Remuneration Order, 2009) that prohibits Kenyan advocates from charging below the amounts stipulated to prevent undercutting. Most Kenyans cannot afford a lawyer to represent them during litigation as the legal fees are too high for them.
- (e) The complexity of rules and procedure- Some litigants choose to represent themselves especially if they cannot afford the legal fees. However, the rules and the procedures can be complicated in a way that they cannot easily understand or if they are not able to adequately represent themselves due to adversarial proceedings and excessive formality.<sup>218</sup>

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<sup>216</sup> Reiling, *Technology for Justice* (n 46) 168.

<sup>217</sup> Advocates Act, Chapter 16, Laws of Kenya

<sup>218</sup> Kariuki Muigua, 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' <<http://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-and-New-Frontiers-Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-Muigua-Ph.D-June-2020.pdf>> accessed 20 July 2022.



### 3.3.4 Access to Constitutional Courts

Article 22 of the Constitution provides for the right to institute court proceedings if the person's right or freedom had been denied, violated, threatened or infringed. The Chief Justice is mandated to come up with procedural rules that regulate court proceedings.<sup>219</sup> However, the absence of the rules does not limit access to the courts by individuals to seek redress.<sup>220</sup> In the case of *Rashid Salim Adiy*,<sup>221</sup> the court was of the opinion that justice institutions should work effectively to provide fair solutions to citizens' legal issues.

During the COVID-19 pandemic, one of the major issues experienced was the fact that the e-filing platform required one to register a case using a law firm or a lawyer into the system. This meant that self-litigants were not able to access the court's services. However, the interface has since been upgraded to allow individuals to file.<sup>222</sup>

### 3.3.5 Access to Information

Some of the disputes never actually make it to the courts. People are reluctant to become involved in legal proceedings due to time, costs, emotional investment and the complexity of court procedure.<sup>223</sup> In addition, some Kenyans are not aware of their rights, especially among the poor, vulnerable and uneducated. People take a course of non-action for their justiciable problem due to a lack of knowledge that something can be done about it. There is a lack of sufficient programmes providing legal education that ensure that the public is constantly aware of their rights.<sup>224</sup>

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<sup>219</sup> Article 22 (3) of the Constitution

<sup>220</sup> Ibid, Article 22 (4)

<sup>221</sup> *Rashid Salim Adiy & 39,999 Others v The Attorney General of the Revolutionary Government of Zanzibar & 2 others*, Reference No. 9 of 2016

<sup>222</sup> 'Leveraging on Digital Technology in Administration of Justice – KIPPRA' <<https://kippra.or.ke/leveraging-on-digital-technology-in-administration-of-justice/>> accessed 20 July 2022.

<sup>223</sup> Kumar and Singh (n 190) 11.

<sup>224</sup> Ibid

For the courts to improve access to justice, they must provide information that helps the court users to have a realistic understanding as well as an expectation of the courts' processes. The litigants should be in a position to know what to expect when they come to the courts and how to prepare for their cases. It is the responsibility of the courts to provide such information to enhance public trust.

Information needs to be effective and as such must meet certain requirements. These are: The recipient can easily understand the information, it must be correct, the recipient can act on the information and be in a position to know what to do next and lastly, the recipient should be able to feel confident that the action he or she takes will achieve the desired results.<sup>225</sup>

### **3.3.6 Digitisation of the Court's Processes as a means to Improve Access to Justice** Electronic Case Management

During the COVID-19 pandemic, the former Chief Justice, David Maraga had gazetted Practice Directions on Electronic Case Management which provided for the electronic filing of cases that came on or after the gazettelement. Parties to the cases were expected to use technology for the exchange of information. This allowed for filling, case search, case tracking, payment and receipting, signing and stamping, exchange of documents as well as digital recording of the cases which were all done electronically.

Video conferencing allows a litigant to appear before a judge or magistrate through a live video session. Since access to the Mombasa law courts was limited during the pandemic, virtual hearings were used to reduce the danger of transmission. This enhances access to justice since the

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<sup>225</sup> Reiling, *Technology for Justice* (n 46) 194.

geographical distance that is between the court station and the litigant is eliminated. It also reduces the overall cost associated with travelling and reduces the cost of litigation.

Using technology for simultaneous interpretation so that what is spoken is translated nearly at the same time. This means that time is saved for the hearing of the case. Interpretation technology uses microphones and earphones for simultaneous interpretation. This technology is commonly used in international law courts where the litigants speak different languages.

Case law that is published electronically makes it easy to search for relevant case laws on the internet. It can be used to facilitate out-of-court dispute resolution, especially in the form of precedents. It also makes deciding cases much more consistent as well as transparent which increases integrity. The internet also provides the relevant information required by the parties to navigate the courts as well as allows the court users to have familiarity with the processes involved in the courts.

### **3.4 Transparency**

Transparency is one of the principles of good governance.<sup>226</sup> The United Nations Convention against Corruption (UNCAC) under Article 5 provides that each party State implement anti-corruption policies that reflect the principles of integrity, transparency and accountability. Accountability is the checking of potential abuse of power by public officials. Accountability requires that certain objectives are set and assigned to certain people, having a reliable way that

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<sup>226</sup> Edwin O Abuya, 'Promoting Transparency: Courts and Operationalization of the Right of Access to Information in Kenya' (2017) 46 *Common Law World Review* 112  
<<http://journals.sagepub.com/doi/10.1177/1473779517694534>> accessed 26 July 2021.

allows one to know if those standards have been met and lastly the consequences that arise out of failing to meet the set standards.<sup>227</sup>

The Constitution guarantees everyone a fair and public hearing by an impartial tribunal.<sup>228</sup> Impartiality means to make decisions without bias, favour or prejudice. There was the establishment of the Court Users' Committee (CUC) in court stations. The CUC's committees help the Judiciary and the court users to have a more efficient and well-coordinated flow of useful data and feedback back to the Judiciary. This has increased accountability and transparency as the court users are in a better position to report issues relating to integrity.

Corruption in the context of judiciaries can be defined as the improper use of judicial power for private gain which results in decisions that are not impartial. Kiltgaard<sup>229</sup> lists three reasons for the likelihood of judges being corrupted. These are the monopoly a judge has over a legal dispute in instances where there are no viable alternatives such as mediation; broad discretion where the judges are independent of review and limited accountability such as unpublished decisions. He comes up with a formula to assess the likelihood of judges being corrupted.

Corruption=Monopoly + Discretion- Accountability<sup>230</sup>

### **3.4.1 Transparency and the Right to Information**

Transparency includes the right to information that is limited to citizens and it is provided for under Article 35 of the Constitution.<sup>231</sup> Article 9 of the African Charter on Human and Peoples' Right

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<sup>227</sup> Joseph E Stiglitz, 'Democratizing the International Monetary Fund and the World Bank: Governance and Accountability' (2003) 16 *Governance* 111 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-0491.00207>> accessed 30 July 2021.

<sup>228</sup> Article 14, ICCPR

<sup>229</sup> Robert Klitgaard, *Controlling Corruption* (University of California press 1988) 75.

<sup>230</sup> *ibid.*

<sup>231</sup> Article 35 (1) provides that, every citizen has the right to information required for the exercise or protection of any right or freedom held by the state or another person.

also provides for the right to information. In the case of *Famy care Limited v Public Procurement Administrative Review Board & Another*<sup>232</sup>, there was an application from the petitioner before the High Court seeking evaluation and technical reports from KEMSA. This is because they were aggrieved by the tendering process alleging certain fundamental rights and freedoms had been breached. KEMSA raised a preliminary objection to the fact that the petitioner was a foreign company incorporated in India. The court agreed with the objection and dismissed the application.

In the case of *Farah Abdinor Ahmed v National Land Commission and 2 Others*,<sup>233</sup> it was noted by Justice Mbaru that Article 35 creates a right to request or acquire information that does not compromise the rights of third parties. The application to request for information must be lodged with the person who holds the information and it must specify the data that they require. In the case of *Kahindi Lekalhaile and Others v Inspector General National Police Service and Others*<sup>234</sup>, Justice Mumbi opined that enforcement of the right to information cannot be said to have crystallized until a request for information is made and the information sought must be specific.

Article 33 (1) of the Constitution provides that every person has the freedom of expression which includes the right to seek or receive information. If the request for the information is declined or denied without any justification being provided, then a petitioner can move to court to enforce access to that information. In Kenya, the right to information is not absolute.<sup>235</sup> An information holder can invoke the provisions of Article 24 of the Constitution to refuse to release any information that they hold. The articles provide that the Bill of Rights' fundamental freedoms can be limited only to the degree that that limitation is reasonable and justifiable. The information

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<sup>232</sup> [2012] eKLR

<sup>233</sup> [2014] eKLR

<sup>234</sup> [2013] eKLR

<sup>235</sup> Abuya (n 230) 124.

holder however has the burden to demonstrate on a balance of probabilities to the court that justifies withholding of the information as provided for under Article 24 (3). This was the opinion held in the case of *Joseph K. Nderitu and 23 Others v Hon. Attorney-General and Others*.<sup>236</sup> Judge Anyara held that the burden lies on the person who wants to limit the access to information right to show reason as to why access should be limited.

Due process in the courts requires that decision-makers communicate their decisions in writing as well as written reasons for their decisions.<sup>237</sup> Lack of written decisions means that since it is not on record, then it cannot be challenged in higher courts which is a disservice to the applicants.<sup>238</sup>

The information holder must also give reasons for his/her decision and the reason must demonstrate that the information holder has applied legal principles.<sup>239</sup> This means that a decision must be shown or indicate the source of information such as statutory laws or case laws on which the findings are based.

The information maker must hand down their decisions to the requestor expeditiously or within the desired timelines. There are risks where the information holder takes too long to reply to a request for information due to the fact they might not want to disclose the information. Timeframe for decision-making is important because justice delayed is justice denied. Article 47 provided every person with the right to expeditious administrative action. The requestor of the information must also file his/her application within the time limits set by statutes. The timeframe provided must balance the interest of the information holder and the requestor.

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<sup>236</sup> Petition No. 209 of 2012

<sup>237</sup> Article 47 (2) of the Constitution

<sup>238</sup> Abuya (n 230) 128.

<sup>239</sup> Edwin Odhiambo Abuya and George Mukundi Wachira, 'Assessing Asylum Claims in Africa: Missing or Meeting Standards?' (2006) 53 *Netherlands International Law Review* 171, 171

<<https://www.cambridge.org/core/journals/netherlands-international-law-review/article/assessing-asylum-claims-in-africa-missing-or-meeting-standards/312737126423D940A81AE06A431A61C2>> accessed 31 July 2021.

It is the right of the public to examine the conduct of the affairs of the decision-maker as overall this promotes transparency. One of the principles of public service under Article 232 (1) (f) is transparency and the provision to the public of timely and accurate information. The right to know is argued by the International Commission of Jurists as a useful tool to reduce the waste of public resources as well as fight corruption.<sup>240</sup> Indicators of corruption include: delay in the execution of court orders, lack of public access to court proceedings, delays in delivery of judgement, disappearances of files, conflict of interest, prejudices for or against a party to the litigation, unusual variations in sentencing and frequent socializing with particular litigant (s).<sup>241</sup> Low salaries, poor working conditions and scarce resources are seen to be the incentives to taking bribes.

### **3.4.2 Using Technology to Increase Transparency**

Publishing court decisions and uploading them through the internet makes the decision readily accessible to the public. This empowers citizens to hold the Judiciary accountable so as to combat corruption.<sup>242</sup> Judicial transparency fosters consistency in decision-making and increases public confidence. Network technology allows for effective means of communication between the court and its users.

Broadcasting court proceedings on the internet since the digital age provides an audience of incalculable numbers with indiscriminate access.<sup>243</sup> This is especially so with court cases that have a high public interest in them. The trend that we are seeing now in the Kenyan courts is that a case

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<sup>240</sup> International Commission of Jurists (2006) *Freedom of Information Survey: An Audit of Laws Hindering Access to Information in Kenya* (International Commission of Jurists: Nairobi)

<sup>241</sup> 'Strengthening Judicial Integrity Against Corruption, Global Programme against Corruption' 20, 6 <[https://www.unodc.org/documents/nigeria/publications/Otherpublications/Strengthening\\_Judicial\\_Integrity\\_Against\\_Corruption\\_2001.pdf](https://www.unodc.org/documents/nigeria/publications/Otherpublications/Strengthening_Judicial_Integrity_Against_Corruption_2001.pdf)> accessed 29 July 2021.

<sup>242</sup> 'Enhancing Judicial Transparency and Promoting Public Trust' (*IDLO - International Development Law Organization*, 28 June 2018) <<https://www.idlo.int/news/speeches-and-advocacy/enhancing-judicial-transparency-and-promoting-public-trust>> accessed 3 August 2021.

<sup>243</sup> *Eltis* (n 38) 295.

especially involving a high-profile public official takes too long in the courts to a point where the majority of the public loses interest. The few that do remain interested do not get sufficient information because only the court's decision is publicized and not the full court proceedings. This means that the public is not able to access all the details of the proceedings to be in a better position to judge if the proceedings were done under due process or not. Blogs are the ones that mainly relay information about the court's proceedings which may be inaccurate if not misleading.

To ensure file storage and management integrity the registry services to go undergo full computerization. Filing paperwork becomes a laborious task in the registries which leads to a loss of space and inefficiencies caused when a file is lost or misplaced. Since the perusal of files is such a cumbersome process, the culture of taking bribes is enhanced to make the process smoother for the litigants.<sup>244</sup> Computerizing the process means easier record keeping and enhanced access to information.

### **3.5 Challenges Facing Adoption of Technology in the Kenyan Courts**

It is a far more complex endeavour than expected to try and digitise our chronologically overburdened courts. The adoption and use of information technology in the courts has been fairly restricted resulting in poor service delivery. As a result, the administration of justice has become inefficient and ineffectual.<sup>245</sup>

#### **(a) Information Security Concerns**

Data privacy is one of the most difficult issues to deal with when it comes to technology. Malpractices such as hacking and virus attacks can undermine the integrity of information or even

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<sup>244</sup> Kameri-Mbote and Akech (n 166) 89.

<sup>245</sup> Criminal Justice System in Kenya: An Audit (2016) National Council on Administration of Justice (NCAJ) <[http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal\\_Justice\\_Report.pdf](http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal_Justice_Report.pdf)> Accessed 21 July 2022



erase it from the IT system. Third parties can also use log-in credentials to gain unauthorized access to the proceedings.<sup>246</sup> This problem is exacerbated when it comes to legal processes or documents that necessitate more caution to avoid data breaches.<sup>247</sup> Litigants can also hack the system to either destroy court records concerning their cases in future. The court system must invest in data protection infrastructure to protect court users' data.

#### (b) Technology Failure

Poor internet connectivity, failure of video links and faulty equipment may hinder the success of the process. Technical issues also arise especially if the litigants are in a different location from technicians which leads to the disruption of the services being offered.

#### (c) Credibility concerns

Physical hearings have the advantage of allowing the courts to assess a witness' credibility by seeing his or her demeanour, body language, facial expression and tone. There is also the risk of coaching a witness where a witness could be reading from a script that cannot be seen by the tribunal.<sup>248</sup> Virtual hearings do not allow for in-person observation to allow one to assess credibility, especially in the cross-examination stage.

#### (d) Inadequate Financial Capacity to Acquire and Maintain IT Infrastructure.

One of the main issues that have grappled with the Judiciary is inadequate financing. The budget allocation to the Judiciary is received from the Treasury. The Constitution establishes a

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<sup>246</sup> Kariuki Muigua, 'Virtual Arbitration Amidst Covid-19: Efficacy and Checklist for Best Practices' (A Discussion Paper for the Chartered Institute of Arbitrators Kenya Branch ... 2020) <<http://kmco.co.ke/wp-content/uploads/2020/05/Virtual-Arbitration-Proceedings-Amidst-COVID-19-Efficacy-and-Checklist-for-Best-Practices69523-Revised.pdf>> accessed 2 August 2021.

<sup>247</sup> Muigua, 'Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice' (n 8).

<sup>248</sup> Muigua, 'Virtual Arbitration Amidst Covid-19' (n 250).

Consolidated Fund<sup>249</sup> as well as a Judiciary Fund<sup>250</sup> used for administrative expenses. The Chief Registrar has the duty to make annual estimates of the Judiciary expenditure and then submit them to Parliament directly for consideration.<sup>251</sup> However, the financial allocation to the Judiciary has not been adequate for it to overcome the challenges they face. The Ministry of Finance also controls the budget of the Judiciary which means that it does not have financial autonomy. Most IT projects have failed due to a lack of adequate funds as the cost involved in purchasing hardware and software and training personnel is relatively high.<sup>252</sup>

(e) Internet Networks

Technology companies find it difficult to set up internet networks as most of the rural areas in Kenya lack reliable electricity. There is also low demand for internet in rural areas, mostly related to the high cost of the internet, which make corporations hesitant to invest in the digital infrastructure required for internet connectivity. Therefore, in areas that lack strong internet connections, litigants are not able to access justice through online courts.

### **3.5.1 Enhancing the Adoption of Technology in the Courts**

Before the onset of the pandemic the ICT committee had: drawn up an ICT policy for its mission and vision, converted court files belonging to the Court of Appeal and the High Court into electronic format, established a Local Area Network (LAN) in the High Court stations and wider area Network (WAN) to link different court stations, relaunched the Judiciary website, purchased ICT hardware for the courts, established video conferencing for the Court of Appeal in Nairobi and Mombasa and lastly, short message system (SMS) was developed for cause list alerts.<sup>253</sup>

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<sup>249</sup> Ibid, Article 160 (3)

<sup>250</sup> Ibid, Article 173 (1)

<sup>251</sup> Ibid, Article 173 (3)

<sup>252</sup> Muigua, 'Embracing Technology for Enhanced Efficiency and Access to Justice in the Legal Profession' (n 202).

<sup>253</sup> Kameri-Mbote and Akech (n 166) 79.

To enhance the effectiveness of the laws on data protection, policymakers will have to take a look at the existing laws together with all the relevant stakeholders.<sup>254</sup> Due to the myriad of issues that come as a result of technology, there is a need to be in place an effective regulatory framework that ensures that proceedings are safe from attacks and data breaches.

Increasing funding to the Judiciary will lead to an increase in technological resources. The use of hardware and software, even once it has been purchased will require constant monitoring as well as upgrading which requires financing.

Equipping the court staff with the relevant skills and knowledge about data protection so that they are in a position to secure court users' information. This will include some members of staff, especially in the IT department being responsible for managing the Information Security Management System (ISMS) in the courts. The importance of this system is that it guarantees the protection of data from unauthorized access or theft.<sup>255</sup>

### **3.6 COVID-19 as a Catalyst for Digitisation**

The Mombasa law courts are normally characterized by large crowds of people seeking justice yet the regulations of the WHO required people to stay at home. From the period beginning 16<sup>th</sup> March 2020, the court activities were scaled down to allow for consultative meetings for the National Council on the Administration of Justice (NCAJ) to come up with measures on how to prevent the spread of the pandemic.<sup>256</sup> This disruptive impact forced the Judiciary to ensure that justice was

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<sup>254</sup> Muigwa, 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' (n 40) 13.

<sup>255</sup> *ibid.*

<sup>256</sup> Moses Marang'a, Paul Kimalu and Margaret Ochieng, 'Effect of COVID-19 Pandemic on Resolution of Cases in Courts: The Kenyan Judiciary' [2021] Marang'a, MW, Kimalu, PK, & Ochieng, MA (2021). Effect of COVID-19 pandemic on resolution of cases in courts: The Kenyan Judiciary. Research Paper 7 <<https://www.judiciary.go.ke/download/effects-of-covid-19-pandemic-on-resolution-of-cases-in-courts-the-kenyan-judiciary/>> accessed 14 October 2021.

still accessible through the uptake of ICT<sup>257</sup> which allowed the Mombasa courts to scale down court activities. The matters that the courts handled during the onset of the pandemic were matters filed under a certificate of urgency and plea taking was limited to serious offences.<sup>258</sup> In a bid to decongest the prisons the judges and magistrates were reviewing bail terms for those in remand as well as cases identified by the prisons as deserving.<sup>259</sup> The courts through their interventions during the pandemic were not only trying to scale down the spread of the pandemics in the courts, but they were also aiming at enhancing continuity in access to justice.<sup>260</sup>

### **3.6.1 Virtual Court Sessions**

The use of virtual hearings through audio and video conferencing was one of the digital upscaling that the Mombasa courts adopted.<sup>261</sup> This entailed having the court sessions operated remotely through technology such as zoom, Microsoft Teams and Skype in order to minimize the risk of transmission of the virus.<sup>262</sup> Some of the Mombasa law courts were provided with additional computers to support the use of technology.

One of the challenges that court users have faced as a result of the lockdown, is the physical accessibility of the courts since some of the regions lack physical court buildings. Even in places where the courts are available, some advocates may still be unavailable either due to costs or a general shortage of advocates in those areas. The online courts, therefore, have become such a

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<sup>257</sup> Njuguna James, Adopting Information Technology in the Legal Profession in Kenya as a Tool of Access to Justice. <https://www.journalodcmsd.net/wp-content/uploads/2021/05/Adopting-Information-Technology-in-the-Legal-Profession-in-Kenya-as-a-Tool-of-Access-to-Justice.pdf> accessed, 25 September 2021

<sup>258</sup> Marang'a, Kimalu and Ochieng (n 260) 13.

<sup>259</sup> *ibid* 7.

<sup>260</sup> *ibid* 4.

<sup>261</sup> *Ibid.* p 49.

<sup>262</sup> Jane Croft, 'Courts Test Their Online Future, from Dress-Down Lawyers to Witness Appearance' *Financial Times* (23 April 2020) <<https://www.ft.com/content/936e04b6-7a8c-11ea-bd25-7fd923850377>> accessed 27 September 2021.

great tool for litigants who wish to represent themselves without an advocate, *Pro Se Litigation*.<sup>263</sup>

The ability to have the individuals appear remotely improved access to justice in the sense that it made it more convenient and less costly for individuals to participate.

Virtual connectivity between the Mombasa law courts and the correctional facilities was also implemented to facilitate the hearing of court cases that involved remanded prisoners. This reduced congestion in the courts to minimize the spread of the virus and it also saved them time and the safety risk associated with the transportation of the accused persons from custody to the courts. It also cut costs involved in transportation and security at the courts. This had been a great challenge at the onset of the pandemic as the physical presence of the accused is required yet most of them were either in police custody or in remand prisons.

### **3.6.2 Use of the E-Systems to Access Legal Information**

The National Council for Law Reporting is established by the National Council for Law Reporting Act whose mandate is to make preparations and publication of Kenyan law reports.<sup>264</sup> The Kenyan Law Reports include judgments, rulings and Opinions of the Supreme Courts that are made available to public websites such as the Kenya Law. The website also includes Bills, Acts of Parliaments, Treaties, Legal Notices, Gazette Notices and cause lists.<sup>265</sup> Technology has therefore been a great enabler in enhancing access to legal information to the public which is traditionally the preserve of lawyers. Cause lists and links to court sessions were also posted online for access by the parties at least 24 hours before the court session began.<sup>266</sup>

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<sup>263</sup> Ayelet Sela, 'Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation' (2016) 26 Cornell JL & Pub. Pol'y 331  
<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/cjlp26&div=14&id=&page=>> accessed 27 September 2021.

<sup>264</sup> National Council for Law Reporting Act, No. 11 of 1994, S 3 (a)

<sup>265</sup> 'Kenya Law: Home Page' <<http://kenyalaw.org/kl/>> accessed 27 September 2021.

<sup>266</sup> Marang'a, Kimalu and Ochieng (n 260) 9.

### 3.6.3 Digitisation and Automation of Legal Services

There was also the enhanced use of electronic case filing (e-filing) where documents were served online and the delivery of rulings and judgments was also operated online.<sup>267</sup> Due to the scaling down of court activities, the judges and magistrates were required to finalize all their pending judgements, rulings and orders and they were required to transmit them via email.<sup>268</sup>

The parties on the other hand were required to send copies of submissions through an electronic format. A good example is the Court of Appeal through its President who issued directives on April 1, 2020, during the temporarily scaled-down operations of the Nakuru and Molo Courts.<sup>269</sup>

The practice notes guided the process of how to be served electronically, exchange written submissions electronically, use of video links to hear appeals, delivering of decisions and payment of court fees electronically. The e-filing service which was launched on July 1, 2020,<sup>270</sup> by the former Chief Justice, David Maraga has allowed the courts to save up on financial and storage resources that would be needed for the hard copy documents.<sup>271</sup> In terms of accessibility and review of documents, it has enhanced efficiency as the documents can be accessed anywhere by the parties in the litigation.<sup>272</sup>

The electronic filing (e-filing) system main functionalities are; e-case registration, automated fee assessment, electronic payment of fees and electronic receipting and they are some of the steps

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<sup>267</sup> 'Kenya Law: Practice Directions on Electronic Case Management' <<http://kenyalaw.org/kl/index.php?id=10211>> accessed 25 September 2021.

<sup>268</sup> Marang'a, Kimalu and Ochieng (n 260) 8.

<sup>269</sup> Judiciary of Kenya, 2020. COVID-19 pandemic updates. The Judiciary, <<https://www.judiciary.go.ke/resources/judiciaryke-covid-19/>> accessed 15/10/2021.

<sup>270</sup> Marang'a, Kimalu and Ochieng (n 260) 8.

<sup>271</sup> Kariuki Muigua, 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' 17 <<http://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-and-New-Frontiers-Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-Muigua-Ph.D-June-2020.pdf>> accessed 27 September 2021.

<sup>272</sup> *ibid.*

that were taken towards the digitisation and automation of legal services.<sup>273</sup> This can be done through some web-based platform without the physical presence of the parties. This reduces travel costs and the time that would be required to travel to the registries to make court payments.

### **3.7 Conclusion**

Richard Susskind in his article proposes that governments and judiciaries should in the long term prepare for the future by radically redesigning the court systems by putting in place people, processes and physical spaces that are technology-enabled.<sup>274</sup> There is therefore a need to carry out extensive research, come up with best practices, provide adequate resources and vision-driven leadership to harness technology in the Mombasa law courts. The pandemic radically modified the future of the courts because of the unprecedented nature of the crisis.<sup>275</sup> It not only accelerated digital transformation but also alleviated the resistance to change.<sup>276</sup> The future of the place of technology in the courts is inevitable.

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<sup>273</sup> 'Kenya Law: Practice Directions on Electronic Case Management' (n 271).

<sup>274</sup> 'The Future of Courts' (*The Practice*) <<https://thepractice.law.harvard.edu/article/the-future-of-courts/>> accessed 4 August 2021.

<sup>275</sup> Costas Popotas, 'COVID-19 and the Courts. The Case of the Court of Justice of the European Union (CJEU)' [2020] Access to Just. E. Eur. 160 <<https://heinonline.org/HOL/Page?handle=hein.journals/ajee3&collection=journals&id=162&startid=&endid=173>> accessed 21 July 2022.

<sup>276</sup> *Ibid*

## CHAPTER FOUR

### BEST COURT DIGITISATION PRACTICES: LESSONS FOR MOMBASA LAW COURTS

#### 4.1 Introduction

The shift to automation of court services caused by the pandemic has led to a greater public demand for new and better electronic justice (e-justice) systems. This means a shift from ‘traditional’ technologies to more ‘smart’ technologies to provide court services.<sup>277</sup> This chapter looks at the best practices other jurisdictions have adopted and the lessons we can learn. It analyses the e-justice risks highlighted in chapter four and how selected jurisdictions globally have dealt with them. It is important to understand the risks and opportunities that other jurisdictions face in order to harness the full potential of technology as an enabler of justice.

#### 4.2 Comparative Analysis: China

China in its latest efforts in legal reform has three internet courts, the Guangzhou Internet Court, the Beijing Internet Court and the Hangzhou Internet court that carry out court proceedings largely online.<sup>278</sup> This has allowed the parties involved that can access internet to participate in the trial anywhere they are located. The courts also have e-litigation procedures and systems that operate 24 hours a day allowing the entire litigation process to be carried out online.<sup>279</sup> Litigants therefore have access to 24-hour online self-services which remarkably saves time and costs. This is very helpful particularly to those office workers who do not have time during the day to attend daytime court.

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<sup>277</sup> Marco Velicogna, ‘In Search of Smartness: The EU e-Justice Challenge’, *Informatics* (MDPI 2017) <[https://www.academia.edu/81681686/In\\_Search\\_of\\_Smartness\\_The\\_EU\\_e\\_Justice\\_Challenge?f\\_r=1306](https://www.academia.edu/81681686/In_Search_of_Smartness_The_EU_e_Justice_Challenge?f_r=1306)> accessed 8 November 2022.

<sup>278</sup> ‘How to Litigate Before the Internet Courts in China: Inside China’s Internet Courts Series -02 - China Justice Observer’ <<https://www.chinajusticeobserver.com/a/how-to-litigate-before-the-internet-courts-in-china>> accessed 15 November 2022.

<sup>279</sup> Tania Sourdin, Bin Li and Donna Marie McNamara, ‘Court Innovations and Access to Justice in Times of Crisis’ (2020) 9 *Health Policy and Technology* 447 <<https://linkinghub.elsevier.com/retrieve/pii/S2211883720300927>> accessed 18 July 2021.



In addition, even before the pandemic hit the world, China had already adopted the term ‘smart court’<sup>280</sup> to refer to courts that provide justice to the people through online intelligent court services throughout the entire litigation process.<sup>281</sup> A good example is the court users in Zhejiang High Peoples Court in East China who log in to online hearings using a ‘trial code’ that is presented to them once they file a case in the courts online.<sup>282</sup>

During the COVID-19 pandemic, individuals that did not have access to a computer could appear through ‘WeChat’ which is a leading social media platform used in China that was termed a ‘Mobile Micro Court’.<sup>283</sup> These applications (apps) were developed by the Chinese courts and rolled out to all the courts in the country since August 2018, particularly targeting the youths who use mobile phones for their daily activities.

Transparency is enhanced through the broadcasting of all court proceedings through an online platform that was unveiled in 2016 called ‘China Trials Online’.<sup>284</sup> They also have ‘China Judgements Online’ which contains every court judgement in China.<sup>285</sup> This has increased judicial transparency and accountability which in turn has increased judicial legitimacy in China.<sup>286</sup>

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<sup>280</sup> A smart court is a court that takes place on online portal through the use of web based litigation platforms.

<sup>281</sup> ‘Opinions of the Supreme People’s Court on Accelerating the Construction of Smart Courts-Bulletin of the Supreme People’s Court of the People’s Republic of China’  
<<http://gongbao.court.gov.cn/Details/5dec527431cdc22b72163b49fc0284.html>> accessed 18 July 2021.

<sup>282</sup> Sourdin, Li and McNamara (n 20).

<sup>283</sup> *ibid.*

<sup>284</sup> Clara Wong, ‘E-Justice Reform in China: A Committed Move towards the Rule of Law, or Old Wine in New Bottles?’ (2020) 14 HKJ Legal Stud. 81

<<https://heinonline.org/HOL/Page?handle=hein.journals/hkjs14&collection=journals&id=91&startid=&endid=122>> accessed 11 September 2022.

<sup>285</sup> *ibid.*

<sup>286</sup> *ibid.*

To counter the effects of hacking and data manipulation, China has invested in blockchain technology which means that court data is stored securely.<sup>287</sup> China<sup>288</sup> is known to have already pioneered this kind of technology in its courts. Data stored on a blockchain is data or digital record that has been stored cryptically and chronologically in a chain of digitally signed transactions.<sup>289</sup> In simpler terms, once data has been stored, a hash or a form of a fingerprint is generated which means that that information is final and irreversible.<sup>290</sup> The information is therefore stored securely and easier to authenticate.<sup>291</sup> There is still insufficient research on the use of blockchain technology in courts because not many countries are using it, nonetheless, technology innovation is growing rapidly and so the technologies being used today will one day become obsolete and newer and better methods will be in use.

Mombasa law courts does not have entire litigation processes online however, video conferencing, e-fillings and e-payments are accessed online. It also does not have 24 hours a day court operations instead the court operates from 8 a.m-5 p.m. This means that time allocated to access justice in the courts is limited within those hours. This is disadvantageous especially so to office workers who have to take some time off work to attend court. There are also no mobile apps for those who do not have access to a computer instead the litigants have to physically access the Mombasa courts to have their matters heard. This practice would enhance access to justice in Kenya in that it would reduce the time and costs involved in accessing the courts. The courts in Mombasa cannot be

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<sup>287</sup> Zhuhao Wang, 'China's E-Justice Revolution' (2021) 105 *Judicature* 36  
<<https://heinonline.org/HOL/Page?handle=hein.journals/judica105&collection=usjournals&id=38&startid=&end=49>> accessed 18 July 2022.

<sup>288</sup> Sylvia Polydor, 'Blockchain Evidence in Court Proceedings in China-A Comparative Study of Admissible Evidence in the Digital Age (as of June 4, 2019)' (2020) 3 *Stan. J. Blockchain L. & Pol'y* 96  
<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/sjblp3&div=7&id=&page=>>> accessed 4 August 2021.

<sup>289</sup> *ibid.*

<sup>290</sup> *ibid.*

<sup>291</sup> *ibid.*

termed as ‘smart courts’ because some of the courts such as Kwale and Msambweni, even during the COVID-19 pandemic, failed to adopt the use of video conferencing technology which delayed the hearing of some cases.

When it comes to hacking and data manipulation the court staff in Mombasa have been trained on the use of individual logins and passwords and how to avoid clicking on phishing links to avoid cyber-attacks.<sup>292</sup> To ensure accountability, users’ access is limited by giving people specific access to allow them to perform their role and administrators act as gatekeepers over the data handled by the users.<sup>293</sup>

### **4.3 Comparative Analysis: The European Experience**

Most of the courts in European countries<sup>294</sup> have implemented the use of automated registers, case management systems and also office automation technologies.<sup>295</sup> When it comes to communication between the courts and the public, there is increased use of websites as well as informal data exchange through the use of electronics. The presence, as well as the spread of technology in the European courts, is widely and at the same time, it is not disputed.<sup>296</sup> A good example is the UK Supreme Court uses e-filing, real-time transcription, use of computers by the bench, e-filing, remote evidence and document display.<sup>297</sup>

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<sup>292</sup> Interview with Maria Hamisi , Court Official, (Mombasa, 8<sup>th</sup> July 2022)

<sup>293</sup> ‘ICJ-Kenya Trains Court Clerks on the New Case Tracking System – ICJ Kenya’ <<https://icj-kenya.org/news/icj-kenya-trains-eldoret-court-clerks-on-the-new-case-tracking-system/>> accessed 15 November 2022.

<sup>294</sup> The countries that were considered in the journal article were Austria, Belgium, Croatia, Czech Republic, Denmark, England, Wales, Germany, Hungary, Ireland, Italy, Luxembourg, Finland, Estonia, The Netherlands, Norway, Portugal, Spain, Sweden and Switzerland.

<sup>295</sup> Marco Velicogna, ‘Justice Systems and ICT What Can Be Learned from Europe?’ (2007) 3 Utrecht Law Review 129, 145 <<https://www.utrechtlawreview.org/article/10.18352/ulr.41/>> accessed 21 July 2021.

<sup>296</sup> Velicogna (n 26).

<sup>297</sup> Surja Kanta Baladhikari, ‘Use of Technology in Access to Justice’ (2020) 11 Indian JL & Just. 269 <<https://heinonline.org/HOL/Page?handle=hein.journals/ijlj11&collection=journals&id=763&startid=&end=779>> accessed 11 October 2022.

During the pandemic, all court activities in the Italian Supreme Court had been initially suspended.<sup>298</sup> Later, hearings especially related to high-priority cases were conducted virtually. In July 2020, there was also the implementation of the Cloud Video Platform in the UK Family Court as well as the Family Division of the High Court, which allowed the judges and the parties to the case to access documents filed electronically.<sup>299</sup>

The Mombasa law courts are still low tech when compared to the European countries which slows down the dispensation of justice. More court technologies would increase efficiency in the administration of justice and positively impact organizational performance.<sup>300</sup>

#### **4.4 Comparative analysis: The Canada Experience**

Canadian courts have websites that provide information about the courts including instructional videos for various court services, courts' decisions, links to court hearings as well as other court events. What is interesting about Canada is that they also have websites that are designed specifically for the disabled to maximize their accessibility.<sup>301</sup> Physically disabled persons have other assistive devices such as braille printers, infrared and FM listening devices, text reader technology and teletypewriters.

The courtrooms also have public internet access, although the extent of access varies. For example, in Ontario all courts have internet access which means that the court staff are able to schedule court cases in the courtrooms. Nova Scotia Court's internet access is limited to the bench. During the

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<sup>298</sup> Tania Sourdin, Bin Li and Donna Marie McNamara, 'Court Innovations and Access to Justice in Times of Crisis' (2020) 9 Health policy and technology 447, 449 <<https://linkinghub.elsevier.com/retrieve/pii/S2211883720300927>> accessed 18 July 2021.

<sup>299</sup> Sourdin, Li and McNamara (n 28).

<sup>300</sup> CA Kanyangi and L Gichinga, 'Effect of Innovation Strategy on the Organizational Performance in Mombasa Law Courts, Kenya' (2019) 6 Strategic Journal of Business & Change Management 517 <<https://strategicjournals.com/index.php/journal/article/view/1334>> accessed 15 November 2022.

<sup>301</sup> Maame Efua Addadzi-Koom and Ebenezer Adjei Bediako, 'Implementing an E-Justice System in Ghana: Prospects, Risks, Challenges and Lessons from Best Practices' (2019) 8 KNUST LJ 108 <<https://heinonline.org/HOL/Page?handle=hein.journals/knust8&collection=journals&id=115&startid=&end=149>> accessed 11 September 2022.

court proceedings, live web streaming and video conferencing are used in the Supreme Court of Canada, Nova Scotia, Ontario and in British Columbia.<sup>302</sup>

To reduce the risk of hacking and privacy breach, communications within the courts have been secured by the use of intranets.<sup>303</sup> An example given is the judicial communication network (JUDICOM) which is a communication system that requires the user to send an application to be able to use the system and it also separates judicial information from government information which creates an online environment for its users that is safe and trusted.<sup>304</sup>

Mombasa law courts do not have their own websites, instead they have a webpage that is under the main Judiciary website. The Judiciary website itself is not specifically designed for people with disabilities. This limit does not enhance access to justice. It would be prudent if the same practice is adopted where courts in different counties can create their own websites which also cater to the physically challenged court users.

#### **4.5 Comparative Analysis: The United States of America**

The courts in the United States of America (U.S.A) started implementing the use of technology in Courts much earlier than other judiciaries.<sup>305</sup> Video conferencing, for example, began being used in 1999 in the second circuit courts and the system constantly undergoes upgrades to keep up with technological innovation.<sup>306</sup> The USA courts have technology with the functionality of sound amplification, evidence presentation, annotation<sup>307</sup>, interpretation, transcript production and recording. The attorneys and the court's staff normally have an orientation programme that allows

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<sup>302</sup> *ibid.*

<sup>303</sup> *ibid.*

<sup>304</sup> *ibid.*

<sup>305</sup> Reiling, *Technology for Justice* (n 4) 49.

<sup>306</sup> 'Report of a Survey of Videoconferencing in the Courts of Appeals | Federal Judicial Center' <<https://www.fjc.gov/content/report-survey-videoconferencing-courts-appeals-0>> accessed 17 September 2021.

<sup>307</sup> Annotation equipment is used to mark exhibits on the monitors using notations which can be used for later viewing. For example, counsel may require a witness to identify where a person was standing at the time of an event.

them to familiarize themselves with the different equipment and how they are used. During the pandemic especially in April, May and June, the filling of documents was done electronically. The courts also used conferencing technologies such as zoom and skype to hold court proceedings.

The Mombasa law courts do not have an orientation programme to allow court users to familiarize themselves with the court technology. It is often assumed that the court users will learn as they continuously use the system for a period of time. The practice of orientation is important as it not only saves on the time that is spent trying to figure out a new system but it also boosts the court users' confidence when using it.

#### **4.6 Comparative Analysis: Rwanda**

Rwanda Justice Sector Strategic Plan<sup>308</sup> of 2013 identified case delay as the root cause of prison overcrowding, corruption, high rates of recidivism and loss of confidence in the justice system.<sup>309</sup>

According to the strategic plan, the delays had been caused by poor case management, increased case backlogs and poor communication between the different justice sectors.<sup>310</sup>

In August 2011, electronic filing system (EFS) was introduced to allow litigants to file their claims electronically without having to be physically present within the court's premises.<sup>311</sup> All judicial case information is recorded in the system from the time of the arrest to sentencing.<sup>312</sup> The information is shared among all the relevant sectors to ensure seamless communication and

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<sup>308</sup> The Judiciary of Rwanda, Strategic Plan 2013-2018. <  
[https://www.judiciary.gov.rw/fileadmin/SC\\_Info/Basic\\_info/Strategic\\_Plan\\_2013-18\\_SC.pdf](https://www.judiciary.gov.rw/fileadmin/SC_Info/Basic_info/Strategic_Plan_2013-18_SC.pdf)> accessed 10/11/2022.

<sup>309</sup> Ibid

<sup>310</sup> Ibid

<sup>311</sup> Addadzi-Koom and Bediako (n 34).

<sup>312</sup> Adam Watson, Regis Rukundakuvuga and Khachatur Matevsyan, 'Integrated Justice: An Information Systems Approach to Justice Sector Case Management and Information Sharing Case Study of the Integrated Electronic Case Management System for the Ministry of Justice in Rwanda' (2016) 8 IJCA 31 <<https://heinonline.org/HOL/Page?handle=hein.journals/ijca8&collection=journals&id=157&startid=&end=165>> accessed 11 September 2022.

integration of activities.<sup>313</sup> In 2015, the Integrated Electronic Case Management System (IECMS) was integrated different institutions<sup>314</sup> in the Rwandan Justice Sector to facilitate correspondence with the institutions as well as transmit information to litigants.<sup>315</sup> IESMS sends out regular notifications through SMS and emails to litigants on proceedings and allows for filing, pre-trial, hearing and delivery of judgement.<sup>316</sup>

The implementation of the IESMS was a success in Rwanda because of different factors. One, was the fact that the project was government driven even though Rwanda received international donor assistance and budgetary support no development partners were involved in the project which creates a sense of ownership.<sup>317</sup> Two, it was neither rushed nor did it experience undue delays as it was executed in stages.<sup>318</sup> Three, training was decentralized through training of the technical team with the necessary knowledge to train users across different sectors.<sup>319</sup> Finally, public awareness and education were done through the local internet cafes, radio and television.<sup>320</sup> IESMS was fully launched in every court within Rwanda by June 2017, a few years before the pandemic hit. This means that Rwanda was well advanced in the use of court technology before the pandemic.

The other forms of court technologies that are being used in the courts include; the use of digital court recordings and video links during court hearings; the transfer of case files from one court to another, the use of websites to disseminate judiciary information and finally the use of stenography

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<sup>313</sup> *ibid.*

<sup>314</sup> The Rwandan Judiciary, National Public Prosecution Authority (NPPA), Ministry of Justice, Rwandan Correctional Services (RCS) and the Criminal Investigation Department (Police).

<sup>315</sup> Addadzi-Koom and Bediako (n 34).

<sup>316</sup> *ibid.*

<sup>317</sup> Watson, Rukundakuvuga and Matevsyan (n 45).

<sup>318</sup> *ibid.*

<sup>319</sup> *ibid.*

<sup>320</sup> Addadzi-Koom and Bediako (n 34).

typing machines that are used in real-time court reporting.<sup>321</sup> From 2011 to 2016 Rwandan courts had a 59% decrease in case backlogs. The Rwandan judiciary continues to ensure that technological advancement is incorporated into the court's activities.

#### **4.7 Lessons for the Judiciary in Kenya**

State ownership of any e-justice project is very important just like in Rwanda as this guarantees the continuity and sustainability of the system. It also ensures that the system addresses the peculiar needs of the court users in that particular country.

It is important to develop policies either in anticipation or concurrence with technology implementation.<sup>322</sup> The committees involved in the policy drafting must consult early, widely and often. This is to avoid having to deal with the crises of technology that is either ageing or aged at the time of implementation. Legal reforms must also be amended to meet the demands of ICT. Traditional ways of doing things in the courts are still entrenched in the laws.<sup>323</sup>

One of the problems of digitisation of the courts is the digital divide where access is not equal as some court users have a low-level of digital literacy or they do not have access to technology. One way to tackle this problem is through public digital literacy and awareness programs just like in Rwanda where public education on the various court systems is one through trained facilitators, radio, television and through the use of local internet cafes.<sup>324</sup>

Digitizing all court records solves the issue of lost case files as the data will be stored electronically. The use of technology allows court records to be tracked in terms of changes made

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<sup>321</sup> *ibid.*

<sup>322</sup> *ibid.*

<sup>323</sup> Marco Velicogna, Antoine Errera and Stéphane Derlange, 'Building E-Justice in Continental Europe: The TeleRecours Experience in France' (2013) 9 *Utrecht Law Review* 38 <<https://heinonline.org/HOL/Page?handle=hein.journals/utrecht9&collection=journals&id=38&startid=&end=59>> accessed 11 October 2022.

<sup>324</sup> Addadzi-Koom and Bediako (n 34).



to the document as well as those who accessed the documents. This will safeguard the court records in Mombasa.

Frequent data system updates are important to tighten data security so as to reduce the risk of hacks and viruses. If a system is easily hacked, it means that confidential information can be disclosed or alteration of documents which can make their authenticity questionable.<sup>325</sup> Investments in Blockchain technology as highlighted in China is important to reduce hacking and privacy breach. Alternatively, the judiciary can invest in developing its own fortified and trusted software to avoid reliance on a third-party's software such as zoom that can be hacked.<sup>326</sup>

Technology should be used for the benefit of everyone to bridge the digital divide. Canada's websites also cater for those with disabilities so that they too can access information readily available to the rest of the court users in the country. Mombasa courts can have its own website that accommodates the needs of those with disabilities.

To increase transparency, the transmission of the court proceedings in Mombasa can be televised, or a public link can be included in their own website to allow the public to access the proceedings.

#### **4.8 Future of Technology**

The legal profession will change as a result of technological development as well as innovations.

This also means that legal education will not remain the same as new courses will be offered to include multi-disciplinary skills as well as meet the demands of the market.<sup>327</sup> Law schools and

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<sup>325</sup> *ibid.*

<sup>326</sup> Richa Jain and Sarthak Chaudhary, 'The Renaissance of Virtual Courts: Towards the Digital Age' (2021) 4 Issue 3 Int'l JL Mgmt. & Human. 5722  
<<https://heinonline.org/HOL/Page?handle=hein.journals/ijlmhs11&collection=journals&id=5671&startid=&end=5681>> accessed 11 October 2022.

<sup>327</sup> de Souza and Spohr (n 56) 7.

other judicial institutions will be required to train people within the legal profession to be in a position to efficiently use technology due to its increased use.

The use of Artificial Intelligence (AI) that is used to make automated decisions may be on the rise in the courts which means that some of the judicial decision-making may be taken over by technology.<sup>328</sup> Scholars have begun to examine the prevalence of AI however, few have examined how courts are using AI. Other countries such as France have taken a more conservative approach where in 2019, they outlawed the use of data analytics to identify judicial trends in earlier court decisions.<sup>329</sup> The use of algorithms to predict the outcome of cases remains largely theoretical which creates a new generation of scholarly work set by this insight.<sup>330</sup>

#### **4.9 Conclusion**

Merging technology with the administration of justice has not been a new idea in most jurisdictions, however, its immediate need was felt because of the pandemic. The use of technology in Kenyan courts is still in the infancy stages. The pandemic provided an opportunity for our courts to transform and adapt since technology is here to stay. The best practices discussed in this chapter offer a point of introspection for the Judiciary in Kenya as it seeks to embrace technology and enhance access to justice.

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<sup>328</sup> Reiling and Contini (n 181).

<sup>329</sup> Rachel E Stern, 'Automating Fairness? Artificial Intelligence in the Chinese Courts' 40, 517 <<https://heinonline.org/HOL/Page?handle=hein.journals/cjt159&collection=usjournals&id=529&startid=&end=567>> accessed 21 July 2022.

<sup>330</sup> Ibid

## CHAPTER FIVE

### USE OF TECHNOLOGY IN THE ADMINISTRATION OF CRIMINAL JUSTICE: RESEARCH FINDINGS FROM THE MOMBASA LAW COURTS

#### 5.1 Introduction

During the COVID-19 pandemic, different studies found that technology was an enabler of court functions with noted increased efficiency.<sup>331</sup> Research was conducted in Mombasa County to assess the role played by technology in the administration of criminal justice in the courts within the context of the COVID-19 pandemic, with a view of informing long-term digitisation.

This chapter presents the findings of the field research. The findings were analyzed and interpreted. The key areas of focus in this paper, that is, delays in court cases, access to justice, transparency and greater digitisation of the Mombasa law courts are interrogated within the context of administration of criminal justice. The data sheds light on the current use and the potential of technology to enhance the administration of criminal justice.

#### 5.2 Research Design

Data was collected in Mombasa County through questionnaires and interviews. The use of pseudo names was adopted to protect the identity of respondent's. The questionnaires contained both open-ended and closed-ended questions. The open-ended questions were included to allow respondents to answer without restrictions thus providing information that may not have been anticipated by the researcher but which was relevant to the study. Field research was conducted to affirm as well as build the desk research undertaken.

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<sup>331</sup> Alan Uzelac and others, 'Access to Justice in Eastern Europe' <[http://ajee-journal.com/upload/attaches/att\\_1614532599.pdf](http://ajee-journal.com/upload/attaches/att_1614532599.pdf)> accessed 19 September 2022; Tania Sourdin and others, 'COVID-19, Technology and Family Dispute Resolution' [2020] Forthcoming) Australasian Dispute Resolution Journal <<https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=3672995>> accessed 19 September 2022; Kate Puddister and Tamara A Small, 'Trial by Zoom? The Response to COVID-19 by Canada's Courts' (2020) 53 Canadian Journal of Political Science/Revue canadienne de science politique 373 <[https://www.cambridge.org/core/services/aop-cambridge-core/content/view/671036313E3ED47DAC9442D661C23858/S0008423920000505a.pdf/trial\\_by\\_zoom\\_the\\_response\\_to\\_covid19\\_by\\_canadas\\_courts.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/671036313E3ED47DAC9442D661C23858/S0008423920000505a.pdf/trial_by_zoom_the_response_to_covid19_by_canadas_courts.pdf)> accessed 19 September 2022.

Stratified random sampling method was used thus grouping respondents based on the role they played in the Mombasa courts. Purposive sampling was also used and key informants were interviewed based on their outstanding knowledge and experience in the administration of justice.

The raw data collected was processed before carrying out the analysis. The study adopted a case study design, thus offering a deeper understanding of the experiences faced by the court users. A total of sixty-one (61) respondents participated. However, some of the respondents did not fill in the questionnaires fully hence the discrepancy in the total number of respondents in each category.

Part one presents the background information of the respondents. Part two presents the findings on inordinate case delays in the Mombasa Courts. Part three presents the findings on the factors that hinder access to justice in the Mombasa Law Courts and the use of technology in enhancing access to justice. Part four presents the findings on the factors that contribute to transparency in the courts' processes and the role played by technology. Part five focuses on the use of technology in courts.

### **5.3 Research Results and Analysis**

The overall objective of this research was to determine the role played by technology in the administration of criminal justice in the courts in Kenya, particularly during the COVID-19 pandemic with a view of informing long-term digitisation of courts. In line with this objective, the findings of the research are presented in this chapter.

#### **5.3.1 Background Information of the Respondents**

Questionnaires were circulated amongst Magistrates, Advocates, Prison Officers and Court Assistants (Clerks). Respondents provided information on their gender, age, occupation and years of experience. The study focused on respondents working within Mombasa County with the main focus being the law courts, prisons and law firms located within the County.

Table 5.1 presents the background information of the respondents.

**Table 5.1: Background Information**

<b>VARIABLE</b>	<b>INDICATOR</b>	<b>FREQUENCY</b>	<b>PERCENTAGE</b>
<b>Gender</b>	Male	35	57%
	Female	26	43%
	<b>Total</b>	<b>61</b>	<b>100%</b>
<b>Age</b>	18-25 years	8	13%
	26-35 years	27	44%
	35-45 years	15	25%
	45-55 years	10	16%
	Above 56	1	2%
	<b>Total</b>	<b>61</b>	<b>100%</b>
<b>Occupation</b>	Advocates	13	21%
	Clerks	15	25%
	Magistrates	10	16%
	Prison Officers	23	38%
	<b>Total</b>	<b>61</b>	<b>100%</b>
<b>Years of Experience</b>	1-5 years	20	33%

	5-10 years	10	16%
	11-15 years	15	25%
	16-20 years	6	10%
	21-25 years	4	7%
	Above 26 years	6	10%
	<b>Total</b>	<b>61</b>	<b>100%</b>

The selection of the respondents from the different agencies sought diverse experiences and a holistic view on the use of technology in the Mombasa law courts. Table 5.1 shows that the gender of the respondents is not equally distributed with the male gender number being higher than that of the women. This can be attributed to the fact that the Prison Officers were more male than female as three out of the four of the prisons that were visited were men’s prisons. Table 5.1 shows that majority of the respondents have attained the age of 26-35 years which means that they are youthful and have a greater appreciation for the use of technology. Table 5.1 also indicates that the majority of the respondents have between one (1) and five (5) years of working experience and therefore still have an understanding of how the courts’ system has changed before the COVID-19 pandemic and after the pandemic. A significant number of respondents also had eleven (11) to (15) years of experience with the court system which means that they were in a position to evaluate the progress that has been made in the courts when it comes to the administration of criminal justice.

## 5.4 The Use of Technology in Addressing Delays in Criminal Cases

This section sought to gather information from the respondents about case delays in the Mombasa courts. To provide the context in which the research is conducted, the questionnaires first sought to gather information on the factors that cause the delay of cases in courts. The research then examined the use of technology to address delays in criminal cases. It also set out to determine how the use of technology during the COVID-19 impacted the administration of cases in Mombasa Courts.

### 5.4.1 Unreasonable Case Delays in the Courts

The respondents rated the extent to which they believed that there are unreasonable case delays in the Mombasa courts.

Table 5.2 presents the degree of unreasonable delays in courts

**Table 5.2: Unreasonable delays in courts**

<b>Response</b>	<b>Frequency</b>	<b>Percentage</b>
Strongly Agree	22	36%
Agree	23	38%
Neutral	6	10%
Disagree	9	15%
Strongly Disagree	1	2%
<b>Total</b>	<b>61</b>	<b>100%</b>

Table 5.2 shows that 74% of the respondents strongly agree/agree that there are unreasonable delays in the Mombasa courts. With the respondents being the main players in the justice system hence aware of the court processes, from the findings, it can be concluded that there are delays in

the conclusion of criminal cases. As mentioned in Chapter Three, inordinate delays are a major challenge experienced by court users. It was reported in the State of the Judiciary and the Administration of Justice (SOJAR) Annual Report of 2020/2021, that Mombasa County had the second highest number of pending cases with 74,664 cases.<sup>332</sup> This indicates that there is need to address the issue of case delay as it affects judicial performance.

79% of the respondents strongly agree/agree that shortage of judicial officers contribute to case delays. These findings resonate with the earlier analysis on justice systems which link shortage of judicial shortage to the delay in the dispensation of justice.<sup>333</sup> The results of this study indicate that the need for recruitment of more judicial officers to lessen the caseload per judicial officer.

The respondents indicated the extent they agreed or disagreed on the inefficiency of case management in courts which contributed to the backlog of cases. With 63% of the respondents expressing the view that courts are inefficient in the management of court cases, it is evident that there is need to explore ways in which efficiency can be enhanced. These findings match previous analyses against which the Active Case Management Guidelines in Criminal Case were gazetted.<sup>334</sup> The Judiciary further launched a Manual on Active Case Management in Criminal Cases in Kenya with a view to equipping Judges and Magistrates to manage cases efficiently.<sup>335</sup>

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<sup>332</sup> State of the Judiciary and the Administration of Justice (SOJAR), Annual Report 2020/2021, The Judiciary of Kenya (2021) [https://www.judiciary.go.ke/?page\\_id=4592](https://www.judiciary.go.ke/?page_id=4592) accessed 21 September 2022.

<sup>333</sup> Grace Wangui, 'Factors Influencing Performance of the Judicial System in Kenya, The Case of Delayed Court Rulings' (2017) 1 International Journal of Law and Policy 64  
<<https://www.iprjb.org/journals/index.php/IJLP/article/view/331>> accessed 30 August 2022.

<sup>334</sup> Guidelines Relating to Active Case Management of Criminal Cases in Magistrate's Courts and the High Court of Kenya, Gazette Notice No. 1340.

<sup>335</sup> National Council on the Administration of Justice, Manual on Active Case Management (ACM) in Criminal Cases in Kenya (2019) [https://www.unodc.org/documents/easternafrika/Criminal%20Justice/Active\\_Case\\_Management\\_Guidelines\\_Kenya.pdf](https://www.unodc.org/documents/easternafrika/Criminal%20Justice/Active_Case_Management_Guidelines_Kenya.pdf) accessed 15 September 2022.



Authors such as Pinaki et al opine that the lack of awareness on effective case management leads to delay in the disposal of cases and recommended the creation of the post of Court Managers.<sup>336</sup>

75% strongly agreed/agreed that case adjournment is a factor contributing to the delay of the cases in courts. This resonates with the earlier analysis as noted in Chapter Three which concluded that one of the contributing factors to delays is adjournments. These findings signal the need for courts to limit unnecessary adjournments to avoid unreasonable delays in the criminal cases. The respondents opined that some of the adjournments were used as a delay tactic and therefore should be kept to a bare minimum.<sup>337</sup> Prison officers felt that a lot of the time was wasted in shuffling of the prisoners to and from the courts only to have the case adjourned.<sup>338</sup>

The respondents rated the extent to which they believed that court staff lacked job contentment. 25% of the respondents disagreed with that followed closely by 23% who strongly disagreed. This indicates that the judicial officers and the staff are content with their jobs and therefore are committed to serving members of the public. In their case study Khadija and Thomas, maintain that lack of job motivation can lead to suboptimal performance.<sup>339</sup> It is therefore important to keep the staff motivated where they enjoy work-life balance and also job security.

38% strongly agree/agree that the courts lack adequate technology. The findings resonate with McGinley's findings that Kenyan courts lack adequate as well as current technology which results

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<sup>336</sup> Pinaki Nandan Pattnaik, Satyendra C Pandey and Mahendra Kumar Shukla, 'Mapping Critical Success Factors in Efficient Court Management: Two Case Studies from India' [2018] International Journal of Law and Management <<https://heinonline.org/HOL/Page?handle=hein.journals/ijlm60&collection=journals&id=698&startid=&end=710>> accessed 28 August 2022.

<sup>337</sup> Questionnaire, Respondents number 6,10,15.

<sup>338</sup> Questionnaire, Respondents 2 and 10.

<sup>339</sup> Khadija V White-Thomas, 'Judiciary Employees Engagement and Motivation: The Impact on Employee and Organizational Success: An Evaluation Study' (PhD Thesis, University of Southern California 2019) <<https://search.proquest.com/openview/49b6ecf8c1cbc1ef40143f71ee5edcf0/1?pq-origsite=gscholar&cbl=51922&diss=y>> accessed 30 August 2022.

to delay in resolving cases.<sup>340</sup> The 49% of respondents who disagreed/strongly disagreed that the court lacks technology speak to the improvements in equipping of courts with technology in the recent years. However, the remaining percentage of the respondents reveal that there is still need to continue equipping courts with more technology for them to manage cases optimally. It is noted, according to the SOJAR Annual Report 2020/2021, that establishment of three Data Centers was underway. Data centers are used to host equipment required by the Judiciary in their operations.<sup>341</sup>

The respondents rated the extent to which they believed that courts are underfunded which is a factor that leads to delaying court cases. Majority of the respondents which is 58% strongly agree/agree that courts are underfunded. This finding corroborates with the SOJAR report that reported there was need to enhance funding for the coordinated growth of ICT uptake.<sup>342</sup> This indicates that more financial resources are required by the courts to help solve the issue of delay of cases in courts. Prior studies have shown that underfunding diminishes the quality of justice as a result of large backlogs, understaffing and cancelled programs.<sup>343</sup> Funding is also necessary in the procurement of efficient and relevant technology as well advanced and continuous training of the Judiciary and other stakeholders to better equip them with the skills required to handle technology in courts.

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<sup>340</sup> Sean Patrick McGinley, 'I Wanna Design for Somebody (Who Needs Me): The Intersection of Humanitarian Engineering, Choice-of-Law, and Technology Transfer in Kenya' (2018) 59 Boston College Law Review 2983 <<https://heinonline.org/HOL/Page?handle=hein.journals/bclr59&collection=usjournals&id=3025&startid=&end=3066>> accessed 29 August 2022.

<sup>341</sup> <sup>341</sup> State of the Judiciary and the Administration of Justice, Annual Report (SOJAR) 2020/2021, The Judiciary of Kenya (2021) [https://www.judiciary.go.ke/?page\\_id=4592](https://www.judiciary.go.ke/?page_id=4592) accessed 21 September 2022.

<sup>342</sup> SOJAR Report, Financial year 2020/2021.

<sup>343</sup> John K Hudzik, 'Judicial Independence, Funding the Courts, and Interbranch Relations' (2004) 43 Judges J. 1 <<https://heinonline.org/HOL/Page?handle=hein.journals/judgej43&collection=usjournals&id=97&startid=&end=106>> accessed 29 August 2022; James W Douglas and Roger E Hartley, 'Making the Case for Court Funding: The Important Role of Lobbying' (2004) 43 Judges J. 35 <<https://heinonline.org/HOL/Page?handle=hein.journals/judgej43&collection=usjournals&id=131&startid=&end=133>> accessed 29 August 2022.

### 5.4.2 Effectiveness of the Use of Technology in Addressing Case Delays

The respondents gave their opinion on whether the use of technology in courts has been effective.

Table 5.3 presents respondents' responses.

**Table 5.3: Use of Technology in Addressing Case Delays**

<b>Response</b>	<b>Frequency</b>	<b>Percentage</b>
Very High	18	30%
High	20	33%
Poor	7	12%
Very Poor	10	16%
Not Able to Rate	5	9%
<b>Total</b>	<b>60</b>	<b>100%</b>

Table 5.3 shows that 63% of the respondents strongly agree/agree that the use of technology in courts has been effective. These findings are consistent with the ideas of Anastacia who suggested that automation of court processes increases efficiencies as well as reduces procedural delays.<sup>344</sup>

One of the ways in which technology has dealt with the issue of case delay is the introduction of Active Case Management (ACM) whose overriding objective is to deal with criminal cases justly and expeditiously from the beginning of a case to its disposal.<sup>345</sup> The judge/magistrate is required to manage timelines in the case and ensure that the prosecution and the defence follow any

<sup>344</sup> Anastasia Konina, 'Technology-Driven Changes in an Organizational Structure: The Case of Canada's Courts Administration Service', *IJCA* (HeinOnline 2020) <<https://heinonline.org/HOL/Page?handle=hein.journals/ijca11&collection=usjournals&id=159&startid=&end=171>> accessed 28 August 2022.

<sup>345</sup> National Council on the Administration of Justice, Manual on Active Case Management (ACM) in Criminal Cases in Kenya (2019) [https://www.unodc.org/documents/easternafrika/Criminal%20Justice/Active\\_Case\\_Management\\_Guidelines\\_Kenya.pdf](https://www.unodc.org/documents/easternafrika/Criminal%20Justice/Active_Case_Management_Guidelines_Kenya.pdf) accessed 19 September 2022.

directions issued.<sup>346</sup> ACM operates optimally through an effective information management system that provides access to adequate information that is readily available.<sup>347</sup> The courts should therefore be in a position to record, store and disseminate information electronically through the use of technology in order to manage the progress of a case.<sup>348</sup>

The evidence also shows that most courts are embracing the use of technology in their operations. However, the 28% who opine that the use of technology has not been effective suggests that there are aspects in the use of technology that need to be addressed. Some of the respondents opined that they felt frustrated when they had issues such as e-filing or online payment and there was delayed support and response from the technical team.<sup>349</sup> Respondents (Advocates) shared their frustration with the e-filing system citing system failure. This forces them to re-upload documents after the system fails to process their payments which can affect any set deadlines that they have to meet.<sup>350</sup> This indicates that the e-filing system should be made user friendly and maintained on a regular basis with an aim at improving efficiency.

### **5.5 Access to Justice in Courts**

This section interrogates access to justice, the factors that enhance it and how technology impacted access to justice, especially during the COVID-19 pandemic. The respondents were asked to give their opinion on what access to justice entailed. The majority of the respondents indicated that it is being able to access and exercise their legal rights through judicial proceedings. Based on the kind of responses that were received through the questionnaires, it is evident that most of the respondents are aware of what it means to access justice in courts.

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<sup>346</sup> Ibid.

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

<sup>349</sup> Questionnaire, Respondent number 18 and 23.

<sup>350</sup> Interview with Ben Njire, Advocate (Mombasa 22 September 2022)

The respondents rated the extent to which they agreed or disagreed on the cost of litigation and court fees as one of the factors that affect access to justice. 75% of the respondents strongly agreed/agreed that costs can be a hindrance to accessing justice in courts. On the question of costs, one of the respondents felt that poverty is a great hindrance in access to justice as it results in exclusion to courts' access, inequality of treatment during trial and non-uniformity during sentencing.<sup>351</sup> This suggests the need to revisit fees levied by courts so as to enhance access to justice particularly for the economically disadvantaged individuals.

The respondents rated the extent to which they believed that the communities in the remote areas do not have the same access to digital devices when compared to the rest of the communities found in the urban areas. 63% strongly agreed/agreed that there is a digital divide, especially for the communities found in remote areas. This indicates that the people in remote communities do not have the same digital access when compared to those in urban areas. The respondents opined that some of the courts were more technologically advanced than others. During the COVID-19 pandemic, in the hearing of children's matters, Kwale and Msambweni did not have online court sessions while those in Tononoka and Mariakani were able to have the children's matters conducted online.<sup>352</sup> This meant that children matters delayed in Kwale and Msambweni for a long time due to the COVID-19 restrictions.<sup>353</sup> The Judiciary should endeavor to ensure that all courts have, at the very least, minimum standards for ICT resources. The other issue of concern is there are court users that are disadvantaged when technology is used in courts. The courts need to be flexible and allow technologically illiterate litigants to attend court in person or file physical documents.

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<sup>351</sup> Interview with Mariana Khamisi, Advocate of the High Court (Mombasa, 30/8/2022)

<sup>352</sup> Interview with Lei Sanga, Remand Home Manager (Mombasa, 22 September 2022)

<sup>353</sup> Ibid.

75% strongly agree/agree that the further the distance of the courts the less access to justice the people have. This indicates that more court facilities should be constructed in all parts of the countries and not only in major town centres to ensure that even those in remote areas are in a position to access justice in courts. Virtual court sessions are one of the ways that allow more people the convenience of accessing court services online instead of having to be physically present in courts.

The respondents rated the extent to which they believed that the physical challenge of the court user could hinder him or her from accessing justice in courts. 63% strongly agree/agree that physical challenges of a person could affect him or her from accessing access to justice. One of the respondent opinion was that some of the courts did not take into consideration in their design court users with disability.<sup>354</sup> This indicates that courts should be constructed in a way to ensure that those with physical challenges have special devices or equipment to allow them the same comfort as the person who has no physical challenges while in the court stations. Architectural barriers can be eliminated through the use of lifts or elevators.<sup>355</sup>

Another important finding was that the stakeholders in the criminal justice system are not equipped to identify the needs of people with disabilities to ensure the effective participation of people with disabilities.<sup>356</sup> It is important for courts to be aware of the physical challenges a litigant has in order to make prior arrangements to have the litigant access justice without much strain. Assistive technologies should be accessible to compensate for the physical limitations inherent in some disabilities.<sup>357</sup> These technologies eliminate the barriers that may preclude a person with disability

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<sup>354</sup> Interview with Wambui Kinyanjui, Advocate of the High Court (Mombasa, 29 August 2022)

<sup>355</sup> Interview with Kate Njoki, Court Official (Clerk), Mombasa Law Courts (Mombasa, 25 August 2022)

<sup>356</sup> Interview with Rose Maua, Court Official, Mombasa Law Courts (Mombasa, 24 August 2022)

<sup>357</sup> Peter Blanck, Ann Wilichowski and James Schmeling, 'Disability Civil Rights Law and Policy: Accessible Courtroom Technology' (2003) 12 Wm. & Mary Bill Rts. J. 825

to have meaningful and equal participation in the proceedings.<sup>358</sup> Assistive technologies can include, real-time transcription display, monitors, projectors or touch sensitive TV.<sup>359</sup> A good example is people that have limited vision through the use of video and computer technologies are in a position to view the evidence clearly since the images or videos can be magnified. An amplifier or real time transcription display can be used for those with limited hearing.

### 5.5.1 The Use of Technology in Enhancing Access to Justice

The respondents rated the extent to which they believed that the use of technology enhances access to justice.

Table 5.4 presents respondents' responses on the use of technology in courts.

**Table 5.4: Does the use of technology enhance access to justice**

<b>Response</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	47	89%
No	6	11%
<b>Total</b>	<b>53</b>	<b>100%</b>

Table 5.4 shows that 89% believe that technology does indeed enhance access to justice. These findings are consistent with research that found that technology has the potential of reducing costs (physical, economical and psychological) that are involved in accessing courts which in turn

<https://heinonline.org/HOL/Page?handle=hein.journals/wmbrts12&collection=usjournals&id=837&startid=&end=854> accessed 22 September 2022.

<sup>358</sup> *ibid.*

<sup>359</sup> *ibid.*

increases access to justice.<sup>360</sup> This indicates that more technological resources should be invested in courts so that they are more accessible and efficient.

### **5.5.2 Technology as an Impediment to Access to Justice**

The respondents were asked to give their opinion on how technology impedes access to justice.<sup>361</sup>

First, the respondents highlighted that internet and power disruptions impede access to justice. Secondly, they noted that internet is not most affordable to most people. Thirdly, technological illiteracy is a hindrance to access to justice when technology is used in the justice system. Fourthly many court users do not have access to necessary ICT hardware such as laptops or mobile phones.

## **5.6 Transparency**

The respondents gave their opinion on the factors that contribute to transparency in courts' processes and how the use of technology has played a role in the contribution of transparency in the courts, especially in the context of the COVID-19 pandemic. The use of technology to increase transparency enhances public scrutiny, which increases pressure to have more impartial decision making as the risk of detection is higher.<sup>362</sup>

### **5.6.1 Factors that Contribute Transparency in Court Processes**

The respondents rated the extent to which they believed that public participation increases the transparency of the courts' processes. 81% of the respondents strongly agree/agree that public participation and engagement increase the transparency of courts. The findings support the previous research which indicates that public participation enhances the quality of the court's

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<sup>360</sup> James J Prescott, 'Improving Access to Justice in State Courts with Platform Technology' (2017) 70 Vand. L. Rev. 1993

<<https://heinonline.org/HOL/Page?handle=hein.journals/vanlr70&collection=usjournals&id=2056&startid=&endid=2113>> accessed 29 August 2022.

<sup>361</sup> Questionnaire, Respondent number 2,9,26,30, 49, 50, 58.

<sup>362</sup> Reiling, *Technology for Justice* (n 161).



decision.<sup>363</sup> This indicates that the courts' process should enhance public participation in an effort to increase transparency in the courts' processes through the publication of their decisions and due processes.

77% of the respondents strongly agree/agree with the automation of the courts' system to increase transparency in courts. This is in agreement with Lynn's research where she stated that through automation of data-enabled forms the courts will not only be transparent but it would also improve the courts' administration.<sup>364</sup> This indicates that the automated court system plays a role in the transparency of courts through ways such as using digital devices to upload courts' decisions.

The respondents rated the extent to which publication of the courts' decisions and records contributes to the transparency of courts' process. 88% of the respondents strongly agree/agree that court decisions and records should be published in an effort to increase transparency in courts. This finding further supports the idea of James who maintains that making judgements available to the public increases the court's transparency which is required to raise public understanding of the legal system and boost confidence in courts.<sup>365</sup> This indicates that court users will be in a position to gain any information that they would require whenever they need it through online platforms.

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<sup>363</sup> Jane Donoghue, 'The Rise of Digital Justice: Courtroom Technology, Public Participation and Access to Justice' <<https://heinonline.org/HOL/Page?handle=hein.journals/modlr80&collection=journals&id=1013&startid=&end=1043>> accessed 29 August 2022.

<sup>364</sup> Lynn M LoPucki, 'Court System Transparency' (2008) 94 Iowa L. Rev. 481 <<https://heinonline.org/HOL/Page?handle=hein.journals/ilr94&collection=usjournals&id=485&startid=&end=542>> accessed 30 August 2022.

<sup>365</sup> James Munby, 'Transparency in the Court of Protection: Publication of Judgments: Practice Guidance' [2014] Elder LJ 113 <<https://heinonline.org/HOL/Page?handle=hein.journals/eldlj2014&collection=journals&id=113&startid=&end=116>> accessed 30 August 2022.

### **5.6.2 Enhanced Transparency in Courts through the use of Technology**

This section outlines the benefits of having increased transparency in the courts through the use of technology. 64% of the respondents strongly agree/agree that technology enhances transparency which in turn reduces corruption in courts. According to Elizabeth, technology allows for court operations and performance accessible to the public (Transparency) and therefore exposes and reduces corruption since the nature of transactions is publicly held information.<sup>366</sup> A few respondents opined that with the deployment of the automation of payments in the Judiciary there was increased transparency in the management of court revenue which reduced the chances of embezzlement.<sup>367</sup> Technology can also be used as a tool to fight corruption where it can be used as a channel to report abuses and cases of corruption through the internet and mobile technologies.

The respondents rated the extent to which they believed that enhanced access to information contributes to increased transparency. 75% of the respondents strongly agree/agree that the use of technology enhances access to information in courts. As mentioned in Chapter Two, digital technology fosters transparency in courts through the realization of access to information. This indicates that technology is used as a tool to make information readily available to court users to help them navigate the courts' processes and procedures. Litigants have to be guided on how to access case information which will in turn not only increase access to justice but reduce overcrowding at the registries.<sup>368</sup>

The respondents rated the extent to which they believed that the use of technology improves the public's confidence in courts. 58% of the respondents strongly agreed/agreed. Providing court

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<sup>366</sup> Elizabeth Figueroa, 'Transparency in Administrative Courts: From the Outside Looking In' 60 <<https://heinonline.org/HOL/Page?handle=hein.journals/jnaa35&collection=usjournals&id=1&startid=&endid=59>> accessed 30 August 2022.

<sup>367</sup> Questionnaire, Respondent number 8 and 15.

<sup>368</sup> Interview with Njeri Kimani, Customer Care Officer, Mombasa Law Courts (Mombasa, 29 August, 2022)

information through online platforms increases the public's understanding of the law and the court processes thereby fostering open justice and closeness to the communities.<sup>369</sup>

The respondents rated the extent to which they believed that technology increases the effectiveness of communication between courts and its users. 83% of the respondents strongly agree/agree that technology increases the effectiveness of communication between the courts and their users. These statistics reveal the premium placed on technology in enhancing communication between courts and their users. Communication is critical in the administration of cases as when done effectively, delays out of miscommunication are reduced. It also plays a big role in building public confidence which is important in the delivery of justice.<sup>370</sup> The Judiciary is increasingly making use of technology. For instance, the Judiciary website is routinely updated and contains key policy guidelines as well as reports. There is need however, to enhance communication between the court and litigants at a micro level. For instance, there are cases when courts do not sit and litigants are not advised in good time. Effective use of technology, for instance emails, sending out of mobile messages, would ensure that advocates are advised in good time. The Judiciary should therefore enhance the use of technology in communication.

The respondents rated the extent to which they believed that consistency in the decisions made in the courts increased transparency. 58% of the respondents strongly agreed/agreed that the courts should be consistent in their decision making especially in regard to the outcome of the case. Consistency in decision-making allows for more predictability in the outcome of a case with

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<sup>369</sup> United Nations Office on Drugs and Crime (UNODC), Non-Binding Guidelines on the Use of Social Media by Judges (2015) <[https://www.unodc.org/documents/ji/social\\_media/Draft\\_Non-binding\\_Guidelines\\_on\\_the\\_Use\\_of\\_Social\\_Media\\_by\\_Judges\\_-\\_for\\_circulation.pdf](https://www.unodc.org/documents/ji/social_media/Draft_Non-binding_Guidelines_on_the_Use_of_Social_Media_by_Judges_-_for_circulation.pdf)> accessed 22 September 2022.

<sup>370</sup> S Schütte, Paavani Reddy and Liviana Zorzi, 'A Transparent and Accountable Judiciary to Deliver Justice for All' [2016] New York, NY: United Nations Development Programme <<https://www.u4.no/publications/a-transparent-and-accountable-judiciary-to-deliver-justice-for-all/pdf>> accessed 18 September 2022.

similar facts. Parties are able to access this information through published court decisions. This will allow the parties to either be in a position to prepare for the case adequately or decide to do an out-of-court settlement which will also lead to a reduction in the number of cases in courts.

The respondents rated the effect of broadcasting court proceedings to the public in increasing transparency. 77% of the respondents strongly agreed/agreed that the effect of broadcasting court proceedings to the public was high in increasing transparency in courts. This indicates that courts should make an effort to try and televise or allow for cases made in the open court to be streamed so that the public can be in a position to follow up on cases as it is conducive to regulating trial conduct.

### **5.6.3 The Use of Technology in courts in Enhancing Transparency**

The respondents rated the extent to which they believed that the use of technology during the COVID-19 pandemic in courts increased transparency. This was an open-ended question and the response rate was that 54% of the respondents answered yes while 46% opted for the negative. Approximately half of those surveyed did not comment on why they had selected the yes option. However, the majority of those that commented indicated that since the online hearings were accessible to the public, it increased transparency. Others felt that there was a reduction in physical engagement with the court staff which greatly reduced the chances of bribery. The results show that the use of technology in courts does increase transparency.

### **5.7 Technology in the Courts**

The respondents provided information on the kind of technology was used by the courts during the COVID-19 pandemic. The majority of the respondents listed the use of skype, google meet and zoom for the virtual hearings, the use of microphones and speakers for sound amplification

and e-payment of court fees.<sup>371</sup> The respondents were also asked to give their opinion on what technologies the courts can adopt for greater digitisation. These are video conferencing, e-filing, e-financial systems and other alternatives for court users who cannot access the internet.<sup>372</sup> This section assesses the background against which the use of technology in courts can be enhanced.

The respondents rated the extent to which they believed the following factors related to the use of technology in courts. The results in Table 5.10 below, show that 92% strongly agree/agree that the use of technology in the courts has improved. This indicates that more court stations have embraced the use of technology in courts, especially after the COVID-19 pandemic. This is a great milestone that would provide a springboard to greater use of technology. Also, 61% agree that technology has been made available to the judicial officers and the court staff. This indicates that the courts' staff can easily access technological resources to carry out their operations in courts.

The overall opinion of the respondents is that technology has been implemented in the courts, especially after the COVID-19 pandemic. Technology as indicated by the majority of the respondents' has increased public confidence in the courts, guaranteed more transparency in the courts' processes and improved the administration of criminal justice. This indicates that the courts should use technology to provide the support that enables courts to deal better with caseloads and the execution of routine tasks. However, it is also evident that the use of technology in the courts has not been entirely effective taking into account the 8% that strongly disagreed/disagreed that the use of technology in the courts has improved. This means that there is still much-needed room for improvement when it comes to the use of technology in courts, more needs to be done to ensure that most services are fully automated.

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<sup>371</sup> Questionnaire, Respondent number 9,20,22,47,59, 61.

<sup>372</sup> Questionnaire, Respondent number 6, 10,12,19,31.

The respondents rated on the use of technology in courts. 93% strongly agree/agree that the use of technology in the courts has improved. 75% strongly agree/agree that technological resources in courts have been made more accessible. 64% of the respondents strongly agree/agree that members of the public are served using technological resources. 66% of the respondents strongly agree/agree that the court staff have embraced the use of technology in courts. 63% of the respondents strongly agree/agree that the automation of courts has the potential to enhance public confidence. 82% of the respondents strongly agree/agree that technology guarantees more transparency in the court processes. 82% of the respondents strongly agree/agree that technology can facilitate data processing and the archive of information. 78% of the respondents strongly agree/agree that technology has enormous potential to improve the administration of justice. It is evident that the majority of the respondents, opine that the courts have embraced the use of technology in the dispensation of justice.

### 5.7.1 Factors Contributing to the Enhancement of Technology in Courts

The respondents rated the extent to which they believed that the following factors contribute to the enhancement of technology in courts.

**Table 5.5 Factors that Contribute the Enhancement of Technology in Courts**

<b>Response</b>	<b>Indicator</b>	<b>Frequency</b>	<b>Percentage</b>
Effective laws and policies on data protection	Strongly Agree	12	25%
	Agree	32	67%
	Neutral	2	4%
	Disagree	2	4%
	Strongly Disagree	0	0%
	<b>Total</b>		<b>48</b>

Increasing Judiciary's funding	Strongly Agree	22	46%
	Agree	14	29%
	Neutral	9	19%
	Disagree	3	6%
	Strongly Disagree	0	0%
	<b>Total</b>	<b>48</b>	<b>100%</b>
Equipping court staff with relevant skills and knowledge	Strongly Agree	26	54%
	Agree	17	35%
	Neutral	2	4%
	Disagree	3	6%
	Strongly Disagree	0	0%
	<b>Total</b>	<b>48</b>	<b>100%</b>
Strategic leadership	Strongly Agree	17	35%
	Agree	23	48%
	Neutral	3	6%
	Disagree	5	10%
	Strongly Disagree	0	0%
	<b>Total</b>	<b>48</b>	<b>100%</b>

Table 5.5 shows that 92% of the respondents strongly agree/agree that the laws and policies are effective. This indicates that there exist strong legislative frameworks that ensure that the courts' data is protected from hackers who can easily manipulate the important court information once

they have access to it. There needs to be in place safeguards that protect personal information used for judicial automation to not only guarantee a fair trial but also protect the litigants.<sup>373</sup>

The respondents rated the extent to which they believed that increasing Judiciary funding will contribute to the enhancement of technology in courts. Table 5.5 shows that 75% strongly agree/agree that Judiciary funding should be increased. As mentioned in Chapter Three, an increase in funding in the Judiciary will lead to an increase in technological resources as this will increase the buying power of courts. This indicates that the courts will have the financial potential to increase their technological resources which will lead to an improvement in the administration of justice.

The respondents rated the extent to which they believed that training the court staff with technical skills and knowledge will contribute to the enhancement of technology in courts. Table 5.5 shows that 89% strongly agree/agree that the court staff should be equipped with technical skills. This indicates that the staff should be trained effectively on how to use the court technology so that they are in a position to fully embrace the automation of the courts' processes.

The respondents rated the extent to which they believed that strategic leadership contributes to the enhancement of the adoption of technology in courts. Table 5.5 shows that 83% strongly agree/agree that strategic leadership is an important factor that contributes to the enhancement of technology in courts. The leadership of the court will define the strategic direction of the court.<sup>374</sup>

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<sup>373</sup> Eleni Kosta, Ronald Leenes and Irene Kamara (eds), 'Data Protection and Judicial Automation', *Research Handbook on EU Data Protection Law* (Edward Elgar Publishing 2022) <<https://www.elgaronline.com/view/edcoll/9781800371675/9781800371675.00020.xml>> accessed 30 August 2022.

<sup>374</sup> Danielle Fox and Hisashi Yamagata, 'Developing Court Capabilities and Insights through Data Conversion' (2022) 13 *International Journal for Court Administration* 5 <<http://www.iacajournal.org/articles/10.36745/ijca.437/>> accessed 30 August 2022.



This indicates that the leaders of the court stations have to come up with strategies that anticipate the future needs of the courts through the adoption and utilization of technologies.

### **5.7.2 Factors Contributing to Low Adoption and Utilization of Technology**

The respondents rated the extent to which they believed that the following factors have contributed to the low utilization and adoption of technology in courts. 66% of the respondents strongly agree/agree that staff have not been adequately trained on the use of technology. This indicates that the staff requires to be trained thoroughly and continuously so that they are in a situation to confidently handle technology in courts with ease.

The respondents rated the extent to which they believed that concerns about information and security contribute to the low utilization and adoption of technology in courts. 80% of the respondents strongly agree/agree. Strong laws and policies will go hand in hand in the protection of the litigant's personal information and guarantee a fair trial. This indicates that there should be effective laws and policies that regulate breaches of information or security when it comes to the use of technology in courts.

The respondents rated the extent to which they believed that technological failure contributes to the low utilization and adoption of technology in courts. 72% strongly agree/agree that technology failure contributes to the low utilization of technology in courts. This indicates that efforts should be made by the courts to ensure that the technologies in the courts are repaired immediately after they fail and that highly skilled technical expertise is hired to monitor the equipment used to avoid any breakdowns.

The respondents were asked about internet connectivity in the courts, 77% strongly agree /agree that internet connectivity is weak and highly restricted through the use of passwords assigned to very few people. This indicates that courts require to source for a reputable internet provider that

will ensure that the internet connectivity in courts is not disrupted. They also require to ensure that the staff have access to internet connectivity to aid in their court operations. The SOJAR report noted that only 162 stations are connected with internet and therefore it is prudent to ensure that more of the stations are connected.<sup>375</sup>

The respondents rated the extent to which they believed that insufficient finances required to maintain the IT infrastructure in the courts are one of the factors contributing to the low utilization of technology in courts. 72% of the respondents strongly agree/agree on the same. Interestingly, this correlation is related to the Government’s goodwill as most of the respondents felt that the Government was not very supportive of the increment of funding to the Judiciary. This indicates that courts should have an increase in funding regardless of the goodwill of the Government so that they can be in a position to maintain the IT infrastructure in courts.

### 5.7.3 Use of Technology in Courts during COVID-19 Pandemic

The respondents gave their opinion as to whether there was accelerated use of technology during the COVID-19 period.

Table 5.6 presents respondents’ responses.

**Table 5.6: Use of Technology during the COVID-19 Pandemic**

<b>Response</b>	<b>Frequency</b>	<b>Percentage</b>
Very High	16	30%
High	28	51%
Poor	5	7%
Very Poor	2	5%

<sup>375</sup> <sup>375</sup> State of the Judiciary and the Administration of Justice (SOJAR), Annual Report 2020/2021, The Judiciary of Kenya (2021) [https://www.judiciary.go.ke/?page\\_id=4592](https://www.judiciary.go.ke/?page_id=4592) accessed 21 September 2022.

Not Able to Rate	5	7%
<b>Total</b>	<b>56</b>	<b>100%</b>

Table 5.6 shows that 81% of the respondents strongly agree/agree that during the COVID-19 pandemic, there was accelerated use of technology in courts. As mentioned in the literature review failure to deploy ICT resulted in poor service delivery in the administration of criminal justice. The results of these findings indicate that courts do have the capacity and the potential for greater digitisation in the future which in effect will improve service delivery.

### **5.8 Conclusion**

The findings of this study indicate that technology does enhance the administration of criminal justice. However, the justice system is still facing a myriad of challenges, which have been highlighted in this chapter, that reduce or prevent the adoption and utilization of technology in courts. The need to enhance the use of technology to enhance access and delivery of criminal justice has been appreciated over time but not optimally implemented.

The onset of the COVID-19 pandemic, provided the much needed thrust which now provides an opportunity for scaling the use of technology. In particular, the accelerated use of technology during the COVID-19 to a large extent addressed resistance of the unknown. It demonstrated that technology can actually be embraced to access and delivery of justice. However, it also revealed bottlenecks that should be addressed if technology were to be used effectively and without perpetuating digital inequalities.

## CHAPTER SIX

### SUMMARY OF FINDINGS, DISCUSSIONS AND RECOMMENDATIONS

#### 6.1 Introduction

The present study was designed to determine the role played by technology in the Kenyan courts when it comes to the administration of criminal justice particularly as brought to the fore during the COVID-19 pandemic. This analysis was conducted with the intentions of informing long-term digitisation of the courts. To provide the context for digitization in the administration of criminal justice, the paper examined critical components namely, access to justice, inordinate delay of cases and the potential for technology in courts. It then interrogated the link between these components and the use of technology in courts. This chapter presents the summary of findings and recommendations towards enhancing the use of technology in the administration of criminal justice.

#### 6.2 Summary of Findings

The overall objective of the study was to determine the role played by technology in the administration of criminal justice in the courts in Kenya, particularly in the context of the COVID-19 pandemic, with a view of informing long-term digitization of courts. To this end, the study was premised on four specific objectives as stated in chapter one. First, to assess the role played by technology in addressing the delay of cases. Secondly, to assess the extent to which technology enhances access to justice. Thirdly, to determine the impact of technology in facilitating transparency in the courts. Lastly, to explore the technological potential for enhancing greater digitisation at the courts. The findings for each of the objectives are summarized below.

##### 6.2.1 Case Delays

The study established that there are indeed delays in the conclusion of criminal cases in the courts. It further indicated that these delays, which impact negatively on the administration of justice, must be addressed from a holistic approach. Other factors that influence the delays such as shortage

of staff, poor court practices, lack of clear legal frameworks, underfunding of the courts and the lack of technology in the courts must be taken into account. This study resonates with other agrees with authors, who found that to address case delays in the courts, quality technology with the relevant skills to handle the technology must be provided for.<sup>376</sup> Further there is need for increased resource allocation particularly with respect to human resources and the relevant technology, in a bid to enhance the use of ICT in the courts.<sup>377</sup>

The study also revealed that during the COVID-19 pandemic, the use of technology was increased which impacted on the time taken in the disposition of cases. Overall, the implementation of an electronic case management system in the courts has helped the courts to track the rate of disposition of cases which is an important step in addressing delays.

### **6.2.2 Access to Justice**

Access to legal information is identified as a critical component to access to justice. With access information court users can act accordingly when confronted with problems that require legal solutions. However, the findings indicate that information services for court users are not effective. This is caused by the digital divide in the remote areas and the lack of technical know-how by a majority of the court users. This study resonates with earlier views that even though there is a demand for legal information, court users are unable to articulate their demands and most of them that actively require legal information will use the services of a lawyer.<sup>378</sup> Access to justice through access to legal information allows parties to be in a position to predict the outcome of their case or the trends in judicial decisions. This means that the parties are in a position to consider settling

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<sup>376</sup> Douglas Musa Machage and Owuor Datche, 'Strategic Factors Affecting Implementation of ICT in the Judiciary Sector in Kenya: A Case of Mariakani Law Courts' 9 <[https://www.elixirpublishers.com/articles/1462944868\\_94%20\(2016\)%2040190-40198.pdf](https://www.elixirpublishers.com/articles/1462944868_94%20(2016)%2040190-40198.pdf)> accessed 1 May 2022.

<sup>377</sup> *ibid.*

<sup>378</sup> Reiling, *Technology for Justice* (n 46) 191.

their differences out of court which in turn reduces the number of caseloads in the courts. If they decide to litigate, then they are in a position to adequately prepare for their case in court.

A significant finding from this study is that technology does enhance access to justice through improved access to the courts, improved quality of service, access to legal materials and the quick delivery of service. The findings of this study suggest that during the onset of the COVID-19 pandemic when most of the courts resulted to virtual hearings, delivery of the court services were faster and quicker. A great example is the court fee payment which was previously a complex that required the physical presence of the court user has been replaced by e payment platform.<sup>379</sup> Nevertheless, there were challenges experienced where the system was slow and other times it failed to process payments which lead to delays.

### **6.2.3 Transparency**

The relevance of technology is clearly supported by the current findings. The use of effective technology introduces process controls that act to reduce discretion in courts procedures and increase the risk of detection for corruption<sup>380</sup>. This ensures integrity in the courts' processes which in turn increases public trust in the courts' processes and procedures.

The second major finding was that during the COVID-19 pandemic, technology allowed for more transparency in the court procedures and proceedings since the links to the online courts were shared which allowed a wider public privy to the hearings. It also allowed the Judiciary through their website to avail all necessary information and payment of court fees was done electronically and through mobile payment which increased transparency and accountability.

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<sup>379</sup> 'E-Court Processes in Kenya Promote Access to Commercial Justice' (*IDLO - International Development Law Organization*, 31 January 2020) <<https://www.idlo.int/news/story/e-court-processes-kenya-promote-access-commercial-justice>> accessed 6 January 2022.

<sup>380</sup> Reiling, *Technology for Justice* (n 161) 254.

#### **6.2.4 Potential Scaling of the Use of Technology in the Administration of Justice**

The study highlighted the role of technology in improving the administration of criminal justice in courts. However, due to bottlenecks such as lack of well-trained staff, limited funding, the adoption and utilization of technology is undermined.

With regard to the question on the impact of technology in the administration of criminal justice, the study has unpacked the context within which the COVID-19 pandemic impacted the court processes. The research identified the specificities which include: greater accessibility of courts, growing public confidence; increased transparency in the courts' processes; facilitation of data processing and archiving of information and overall improvement in the administration of criminal justice.

The prevailing view when it came to the courts using technology was that the courts were slow to change. However, with the onset of the pandemic, the courts had to undertake big and rapid changes to comply with the COVID-19 protocols. This thrust opens up new possibilities for the future in regards to innovation and reform.<sup>381</sup>

#### **6.3 Conclusions**

This study explains the central importance of technology in the administration of criminal justice in courts. Like any other system, there are teething challenges when it comes to technology in the courts that are inevitable. The study identified key factors that have led to the low utilization and adaption of technology in the court system. First, the online court system is marred with system failures, portal challenges, delays in activation and user inexperience. Second, most people do not understand the technical procedures and processes. Third, the online court system may not be

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<sup>381</sup> Brian A Jackson and others, 'How the Criminal Justice System's COVID-19 Response Has Provided Valuable Lessons for Broader Reform: Looking to the Future' (RAND Corporation 2021) <[https://www.rand.org/pubs/research\\_briefs/RBA108-6.html](https://www.rand.org/pubs/research_briefs/RBA108-6.html)> accessed 7 January 2022.

affordable to most people, especially those representing themselves. Fourth, in the rural regions, the online system may be seen as a disadvantage because of requirements such as access to a computer/laptop, good internet connection and electricity. Lastly, most people are not familiar with the technology that is being used in the courts.

It is evident that the courts have been conservative in their adoption of technology due to the aforesaid factors. However, technology is increasingly taking centre stage in our lives and the courts are already embracing technology in their dispensation of justice but more needs to be done.

The study has found that generally, technology made it possible for courts to continue operating during the pandemic in a bid to comply with COVID-19 prevention protocols. As a result of the pandemic, the court system has been transformed through the provision of digital services in regards to payment, filing, serving documents, online hearings, requesting of the court orders and decisions of the courts.

#### **6.4 Recommendations**

In light of the findings, this study recommends, first that there should be structured judicial reforms and policies that are implemented to support the use of technology in the courts in a manner suitable to fit their purpose. Second, the Judiciary should ensure continuous and advanced technical training of judicial officers and other court staff. This will equip the staff with the knowledge and skills required to be in a position to use technology with ease and confidence. Third, online legal information should be tested for the readability and adequacy of the information. This means that the information should guide the users on what to do in simple and plain language and the readers should be confident that the desired results will be achieved through acting on the information they receive. Fourth, there is a need to carry out awareness campaigns for all the court users to sensitize them on the benefits of adaption and utilization of technology in



the courts. Five, there is a need to understand how the courts actually work through empirical and comparative research. The results of the research will provide a better understanding of the courts which will help fill the information gaps and avoid pitfalls. Implementation of technology in the courts can be problematic if there is a lack of understanding of how the courts work. Six, since digitisation increases the risk of detection for corruption, the laws on corruption should be fully implemented. Judges, magistrates or any other court staff found to have engaged in corrupt conduct should be prosecuted. This will increase the public's trust in the courts' processes. Lastly, the digital divide must be addressed across the entire country to ensure that a majority of the population has ready access to technology as well as the same level of technological proficiency.

### **6.5 Suggestions for Further Studies**

This research was limited in several ways. First, it has focused on the scopes of three issues which are case delay, access to justice and transparency which also had to be limited as well for practical reasons. It was also largely limited relatively to criminal procedures. Due to its scope constraints, the current study has not examined all areas of administration of criminal justice comprehensively, however it can act as a base for future studies.

The study focused on the performance of the courts' system in Kenya only, thus other studies should focus on other countries. This would facilitate comparison between courts in different jurisdictions where other court systems' experience is shared. Different countries came up with different strategies on how to adopt and utilize technology amid the COVID-19 pandemic. There is a need to find out which types of technology was used and how it was used during the pandemic. The third area in need of further investigation and experimentation is concerning the fact that over time, online transactions will be the norm. However, it is important to establish the fact that not all court cases can be covered exclusively by technology. An investigation on the types of cases

that can be conducted with full online proceedings or through the regular process should be looked into with a focus on how it affects all the parties to the case.

Lastly, it would be useful to assess the negative effects of using technology in the courts. A good example is whether online court transactions and proceedings will reduce the monopoly that the legal profession has on representing clients through their litigation process. More people are turning to the internet to try and solve their justiciable issues without necessarily hiring the services of an advocate.

## **REFERENCES**

Abuya EO, 'Promoting Transparency: Courts and Operationalization of the Right of Access to Information in Kenya' (2017) 46 Common Law World Review 112

Abuya EO and Wachira GM, 'Assessing Asylum Claims in Africa: Missing or Meeting Standards?' (2006) 53 Netherlands International Law Review 171

Addadzi-Koom ME and Bediako EA, 'Implementing an E-Justice System in Ghana: Prospects, Risks, Challenges and Lessons from Best Practices' (2019) 8 KNUST LJ 108

Anastasia Konina, 'Technology-Driven Changes in an Organizational Structure: The Case of Canada's Courts Administration Service', *IJCA* (2020)

Avani Singh, 'Legal Standards on Freedom of Expression: Toolkit for the Judiciary in Africa' (UNESCO Publishing 2018) 37.

Ayelet Sela, 'Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation' (2016) 26 Cornell JL & Pub. Pol'y 331

Baladhikari SK, 'Use of Technology in Access to Justice' (2020) 11 Indian JL & Just. 269

Ben van Velthoven and M Ter Voert, *The Value of the Judicial Infrastructure for the Dutch Economy* (Netherlands Council for the Judiciary 2005)

Blanck P, Wilichowski A and Schmeling J, 'Disability Civil Rights Law and Policy: Accessible Courtroom Technology' (2003) 12 Wm. & Mary Bill Rts. J. 825

Bosire EM, Kivoi D and Nduvi S, 'Effects of Judicial Transformation Framework (2012-2016) on the Performance of the Judiciary in Kenya' (2018) 5 Archives of Business Research

Boyum KO, 'A Perspective on Civil Delay in Trial Courts' [1979] *The Justice System Journal* 170

Brain A. Jackson and others, 'Fostering Innovation in the U.S. Court System' [2016] *Rand Corporation* 27

Brian A Jackson and others, *Fostering Innovation in Community and Institutional Corrections: Identifying High-Priority Technology and Other Needs for the US Corrections Sector* (Rand Corporation 2015) 43

Brian A Jackson and others, 'How the Criminal Justice System's COVID-19 Response Has Provided Valuable Lessons for Broader Reform: Looking to the Future' (RAND Corporation 2021)

Butts JA, 'Delays in Youth Justice' (DIANE Publishing 2010)

Cao L, 'Law and Economic Development: A New Beginning?' [1997] *Faculty Publications*

Carolyn Hoyle and Diana Batchelor, 'Making Room for Procedural Justice in Restorative Justice Theory' 178

Charles W Nihan and Russell R Wheeler, 'Using Technology to Improve the Administration of Justice in the Federal Courts' [1981] *BYU L. Rev.* 659

Chineze Sophia Ibekwe and Chiugo Onwuatuegwu, 'ICT in the Administration of Justice: Challenges and Prospects for Labour and Productivity' (2021) 8 9

Ciborra CU and Lanzara GF, 'Formative Contexts and Information Technology: Understanding the Dynamics of Innovation in Organizations. Accounting, Management and Information Technologies' (1994) 4 61

Claudio U Ciborra and Giovan Francesco Lanzara, 'Formative Contexts and Information Technology: Understanding the Dynamics of Innovation in Organizations. Accounting, Management and Information Technologies' (1994) 4 61

Coalition on Violence Against Women (COVAW), Delayed. Denied: Legal and Administrative Bottlenecks to Effective and Efficient Delivery of Justice for Survivors of SGBV in Kenya (2022)

Cordella A and Contini F, 'Digital Technologies for Better Justice: A Toolkit for Action | Publications' 2020

\_\_, 'Information System and Information Infrastructure Deployment: The Challenge of the Italian eJustice Approach' ECIS 2004 Proceedings. 40

Costas Popotas, 'COVID-19 and the Courts. The Case of the Court of Justice of the European Union (CJEU)' [2020] Access to Just. E. Eur. 160

Christian C Ezeibe and others, 'From Protection to Repression: State Containment of Covid-19 Pandemic and Human Rights Violations in Nigeria' [2022] Victims & Offenders 1

Coumarelos C and others, 'Legal Australia-Wide Survey: Legal Need in New South Wales' (Law and Justice Foundation of New South Wales 2012)

Croft J, 'Courts Test Their Online Future, from Dress-Down Lawyers to Witness Appearance' Financial Times (23 April 2020)

Daren Palmer, Willem de Lint and Derek Dalton, 'Crime and Justice: A Guide to Criminology' (Pyrmont, NSW: Thomson Reuters/Lawbook Co 2017).

Danielle Fox and Hisashi Yamagata, 'Developing Court Capabilities and Insights through Data Conversion' (2022) 13 International Journal for Court Administration 5

David M Trubek and Alvaro Santos, 'The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice (Introduction)' [2006] Cambridge University Press 2006 5

David Miller, 'Justice' in Edward N Zalta (ed), The Stanford Encyclopedia of Philosophy' (Fall 2021, Metaphysics Research Lab, Stanford University 2021

Dandurand Y, 'Criminal Justice Reform and the System's Efficiency' (2014) 25 Criminal Law Forum 383

De Souza SP and Spohr M, 'Technology, Innovation and Access to Justice ' (1st Edition, Edinburgh University Press 2021)

Diarmaid Harkin, 'Police Legitimacy, Ideology and Qualitative Methods: A Critique of Procedural Justice Theory' (2015) 15 Criminology & Criminal Justice 594, 599

Dinesh Kumar and Ram Manohar Singh, 'Exploring Court Performance and Developing Its Scale' (2022) 13 International Journal for Court Administration

Dory Reiling, 'Technology for Justice: How Information Technology Can Support Judicial Reform' (Leiden University Press 2009) 15.

Dory Reiling and Francesco Contini, 'E-Justice Platforms: Challenges for Judicial Governance' (2022) 13 International Journal for Court Administration

Douglas JW and Hartley RE, 'Making the Case for Court Funding: The Important Role of Lobbying' (2004) 43 Judges J. 35

Douglas Musa Machage and Owuor Datche, 'Strategic Factors Affecting Implementation of ICT in the Judiciary Sector in Kenya: A Case of Mariakani Law Courts' 9

Eleni Kosta, Ronald Leenes and Irene Kamara (eds), 'Data Protection and Judicial Automation', *Research Handbook on EU Data Protection Law* (Edward Elgar Publishing 2022)

Eltis K, 'Courts, Litigants, and the Digital Age: Law, Ethics, and Practice' (1st Edition, Irwin Law 2012)

Eltis K. 'The Judicial System in the Digital Age: Revisiting the Relationship between Privacy and Accessibility in the Cyber Context'(2011) 56' 2 McGill Law Journal 306

Emmy Latifah and Moch Najib Imanullah, 'The Roles of International Law on Technological Advances' Brawijaya Law Journal (2018) 105

Eric Mokwaro Bosire, Douglas Kivoi and Steve Nduvi, 'Effects of Judicial Transformation Framework (2012-2016) on the Performance of the Judiciary in Kenya' (2018) 5 Archives of Business Research

Etta FE and Elder L, 'At the Crossroads: ICT Policy Making in East Africa' (East African Educational Publishers 2005)

Ezeibe CC and others, 'From Protection to Repression: State Containment of Covid-19 Pandemic and Human Rights Violations in Nigeria' [2022] Victims & Offenders 1

Fabri M, 'Will COVID-19 Accelerate Implementation of ICT in Courts?' (2021) 12 IJCA 1

Florence Ebam Etta and Laurent Elder, 'At the Crossroads: ICT Policy Making in East Africa' (East African Educational Publishers 2005) 7.

Florence Ogonjo, Joseph Theuri Gitonga and Dr Angeline Wairegi, 'Utilizing AI to Improve Efficiency of the Environment and Land Court in the Kenyan Judiciary' (2021) Strathmore University, Nairobi 10

Francesco Contini and Antonio Cordella, 'Information System and Information Infrastructure Deployment: The Challenge of the Italian EJustice Approach'(2004) ECIS 2004 Proceedings. 40.

Francois Senecal and Karim Benyekhlef, 'Groundwork for Assessing the Legal Risks of Cyberjustice' Canadian Journal of Law and Technology 7, (2010)

Figueroa E, 'Transparency in Administrative Courts: From the Outside Looking In' J.Nat'l Ass'n Admin. L. Judiciary 35 (2015): 1

Fox D and Yamagata H, 'Developing Court Capabilities and Insights through Data Conversion' (2022) 13 International Journal for Court Administration 5

G Alexander Nunn, 'Law, Fact, and Procedural Justice' (2020) 70 Emory LJ 1273, 1273

Gainer M, 'Transforming the Courts: Judicial Sector Reforms in Kenya, 2011–2015' (2015) 7 2017

Gary E Marchant, 'The Growing Gap between Emerging Technologies and the Law', The growing gap between emerging technologies and legal-ethical oversight (Springer 2011)



Grace Wangui, 'Factors Influencing Performance of the Judicial System in Kenya, The Case of Delayed Court Rulings' (2017) 1 International Journal of Law and Policy 64

Giampiero Lupo JB, 'Designing and Implementing E-Justice Systems: Some Lessons Learned from EU and Canadian Examples. Laws' (2014)

Gilbert Mitullah Omware, 'Kenya: Finding Kafka in the Criminal Justice System | World Prison Brief' (2021)

Hannan MT and Freeman J, 'The Population Ecology of Organizations' (1977) 82 American Journal of Sociology 929

Hannan MT and Freeman J, 'Structural Inertia and Organizational Change' [1984] American Sociological Review 149

Harkin D, 'Police Legitimacy, Ideology and Qualitative Methods: A Critique of Procedural Justice Theory' (2015) 15 Criminology & Criminal Justice 594

Holyoke T, 'Theodore J. Lowi, The End of Liberalism: The Second Republic of the United States', The Oxford Handbook of Classics in Public Policy and Administration (2015)

Hoyle C and Batchelor D, 'Making Room for Procedural Justice in Restorative Justice Theory' Int'l J. Restorative Just. 1 (2018): 175

Hudzik JK, 'Judicial Independence, Funding the Courts, and Interbranch Relations' (2004) 43 Judges J. 1

Ibekwe CS and Onwuatuegwu C, 'ICT in the Administration of Justice: Challenges and Prospects for Labour and Productivity' (2021) 8 9

International Commission of Jurists *Freedom of Information Survey: An Audit of Laws Hindering Access to Information in Kenya* (2006)(International Commission of Jurists: Nairobi)

Ivaylo Valchev, 'Can You See and Hear Us, Ms. Smith?: Protecting Defendants' Right to Effective Assistance of Counsel When Using Audio and Video Conferencing in Judicial Proceedings' (2020) 110 *The Journal of Criminal Law & Criminology* 655

Jackson BA and others, *Fostering Innovation in Community and Institutional Corrections: Identifying High-Priority Technology and Other Needs for the US Corrections Sector* (Rand Corporation 2015)

Jackson BA and others, 'How the Criminal Justice System's COVID-19 Response Has Provided Valuable Lessons for Broader Reform: Looking to the Future' (RAND Corporation 2021)

Jain R and Chaudhary S, 'The Renaissance of Virtual Courts: Towards the Digital Age' (2021) 4 Issue 3 *Int'l JL Mgmt. & Human.* 5722

Jain P and Mnjama N, 'Managing Knowledge Resources and Records in Modern Organizations' (IGI Global 2016)

James J Prescott, 'Improving Access to Justice in State Courts with Platform Technology' (2017) 70 *Vand. L. Rev.* 1993

James Munby, 'Transparency in the Court of Protection: Publication of Judgments: Practice Guidance' [2014] *Elder LJ* 113

James W Douglas and Roger E Hartley, 'Making the Case for Court Funding: The Important Role of Lobbying' (2004) 43 *Judges J.* 35

Jan Klabbers, 'Transforming Institutions: Autonomous International Organisations in Institutional Theory' (2017) 6 Cambridge International Law Journal 105

Jane Croft, 'Courts Test Their Online Future, from Dress-Down Lawyers to Witness Appearance' *Financial Times* (23 April 2020)

Jane Donoghue, 'The Rise of Digital Justice: Courtroom Technology, Public Participation and Access to Justice' *The Modern Law Review*, 80 (6), (2017)

JB Giampiero Lupo, 'Designing and Implementing E-Justice Systems: Some Lessons Learned from EU and Canadian Examples. Laws' National Research Council of Italy, 26-40126.

Jeffrey A Butts, *Delays in Youth Justice* (DIANE Publishing 2010); Keith O Boyum, 'A Perspective on Civil Delay in Trial Courts' [1979] *The Justice System Journal* 170

JM Kandiri, 'ICT Policy in Kenya and Ways of Improving the Existing ICT Policy.' (2006) 6 Management Science Students Association (MASSA), University of Nairobi, Kenya

John K Hudzik, 'Judicial Independence, Funding the Courts, and Interbranch Relations' (2004) 43 *Judges J.* 1

John Ohnesorge, 'Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience'(2007)' 28 *University of Pennsylvania Journal of International Economic Law* 219, 233

John Rawls, *A Theory of Justice: Revised Edition* (The Belknap Press of Harvard University Press Cambridge, Massachusetts 1999).

Joseph E Stiglitz, 'Democratizing the International Monetary Fund and the World Bank: Governance and Accountability' (2003) 16 *Governance* 111

Johnson G, Scholes K and Whittington R, Exploring Corporate Strategy: Text and Cases (Pearson education 2008)

Juma DP-G, 'Embracing Electronic Court Case Management Systems: Lessons from the Kenyan Experience during COVID-19.' (Lexology, 4 November 2020)

Karen Eltis, Courts, Litigants, and the Digital Age: Law, Ethics, and Practice (1st Edition, Irwin Law 2012).

Kameri-Mbote P and Akech JMM, Kenya: Justice Sector and the Rule of Law: A Review by AfriMAP and the Open Society Initiative for Eastern Africa (Open Society Initiative for Eastern Africa 2011)

Kandiri JM, 'ICT Policy in Kenya and Ways of Improving the Existing ICT Policy.' (2006) 6 Management Science Students Association (MASSA), University of Nairobi, Kenya. Retrieved October 2011

Kanyangi CA and Gichinga L, 'Effect of Innovation Strategy on the Organizational Performance in Mombasa Law Courts, Kenya' (2019) 6 Strategic Journal of Business & Change Management 517

Karen Eltis, 'The Judicial System in the Digital Age: Revisiting the Relationship between Privacy and Accessibility in the Cyber Context'(2011) 56' 2 McGill Law Journal 306, 289

Kaufman H, Are Government Organizations Immortal? (Washington: Brookings Institution 1976)

Khadijia V White-Thomas, 'Judiciary Employees Engagement and Motivation: The Impact on Employee and Organizational Success: An Evaluation Study' (PhD Thesis, University of Southern California 2019)

Klabbers J, 'Transforming Institutions: Autonomous International Organisations in Institutional Theory' (2017) 6 Cambridge International Law Journal 105

Klitgaard R, Controlling Corruption (University of California press 1988)

Konina A, 'Technology-Driven Changes in an Organizational Structure: The Case of Canada's Courts Administration Service', IJCA (2020)

Kosta E, Leenes R and Kamara I (eds), 'Data Protection and Judicial Automation', Research Handbook on EU Data Protection Law (Edward Elgar Publishing 2022)

Kumar D and Singh RM, 'Exploring Court Performance and Developing Its Scale' 13 International Journal for Court Administration 13 (1) (2022)

Kunard L and Moe C, 'Procedural Justice for Law Enforcement: An Overview' [2015] Washington: Office of Community Oriented Policing Services

L Onyango, 'Overview of the Kenyan Criminal Justice System (Corrections)', 153rd International Senior Seminar Participants' Papers (2005)

Lan Cao, 'Law and Economic Development: A New Beginning?' [1997] Faculty Publications 548

Latifah E and Imanullah MN, 'The Roles of International Law on Technological Advances'

Laura Kunard and Charlene Moe, 'Procedural Justice for Law Enforcement: An Overview'  
[2015] Washington: Office of Community Oriented Policing Services

Lee Y-S, 'General Theory of Law and Development' *Cornell Int'L J* 50 (2017)

LoPucki LM, 'Court System Transparency' (2008) 94 *Iowa L. Rev.* 481

Machage DM and Datche O, 'Strategic Factors Affecting Implementation of ICT in the Judiciary Sector in Kenya: A Case of Mariakani Law Courts' 9 (2016)

Marang'a M, Kimalu P and Ochieng M, 'Effect of COVID-19 Pandemic on Resolution of Cases in Courts: The Kenyan Judiciary' [2021]. Research Paper

Marchant GE, 'The Growing Gap between Emerging Technologies and the Law', *The growing gap between emerging technologies and legal-ethical oversight* (Springer 2011)

Marchiori T, 'A Framework for Measuring Access to Justice Including Specific Challenges Facing Women' UN Women. Council of Europe (2015)

Marco Velicogna, 'Justice Systems and ICT What Can Be Learned from Europe?' (2007) 3 *Utrecht Law Review* 129, 145

Marco Fabri, 'Will COVID-19 Accelerate Implementation of ICT in Courts?' (2021) 12 *IJCA* 1

Maurice Rosenberg, 'The Literature on Court Delay' (1965) 114 *University of Pennsylvania Law Review* 323.

Maya Gainer, 'Transforming the Courts: Judicial Sector Reforms in Kenya, 2011–2015' (2015)  
Retrieved February 7 2017, 12

McGinley SP, 'I Wanna Design for Somebody (Who Needs Me): The Intersection of Humanitarian Engineering, Choice-of-Law, and Technology Transfer in Kenya' (2018) 59 Boston College Law Review 2983

McLoughlin SM, 'Stewards of Justice in a Business World: How Lawyers Can Use the Theory of Procedural Justice to Keep Their Clients Happy and Protect the Integrity of Alternative Dispute Resolution Forums' (2011) 16 Trinity L. Rev. 71

Meyer JW and Rowan B, 'Institutionalized Organizations: Formal Structure as Myth and Ceremony' (1977) 83 American Journal of Sociology 340

Meyerson D, *Understanding Jurisprudence* (Routledge-Cavendish 2009)

Miller D, 'Justice' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Fall 2021, Metaphysics Research Lab, Stanford University 2021)

Marang'a, MW, Kimalu, PK, & Ochieng, MA, 'Effect of COVID-19 Pandemic on Resolution of Cases in Courts: The Kenyan Judiciary' [2021]

Muigua K, 'Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice' 44

\_\_, 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice'

\_\_, 'Virtual Arbitration Amidst Covid-19: Efficacy and Checklist for Best Practices' (A Discussion Paper for the Chartered Institute of Arbitrators Kenya Branch ... 2020)

Munby J, 'Transparency in the Court of Protection: Publication of Judgments: Practice Guidance' [2014] Elder LJ 113

Nihan CW and Wheeler RR, 'Using Technology to Improve the Administration of Justice in the Federal Courts' [1981] BYU L. Rev. 659

Nunn GA, 'Law, Fact, and Procedural Justice' (2020) 70 Emory LJ 1273

Ogonjo F, Gitonga JT and Wairegi DA, 'Utilizing AI to Improve Efficiency of the Environment and Land Court in the Kenyan Judiciary' (2021) 10

Ohnesorge J, 'Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience'(2007)' 28 University of Pennsylvania Journal of International Economic Law 219

Onyango L, 'Overview of the Kenyan Criminal Justice System (Corrections)', 153rd International Senior Seminar Participants' Papers (2005)

Orrell T, 'The African Declaration on Internet Rights and Freedoms: A Positive Agenda For Human Rights Online' Global Partners Digital (2015)

Palmer D, de Lint W and Dalton D, Crime and Justice: A Guide to Criminology (Pyrmont, NSW: Thomson Reuters/Lawbook Co 2017)

Patricia Kameri-Mbote and JM Migai Akech, Kenya: Justice Sector and the Rule of Law: A Review by AfriMAP and the Open Society Initiative for Eastern Africa (Open Society Initiative for Eastern Africa 2011).



Pattnaik PN, Pandey SC and Shukla MK, 'Mapping Critical Success Factors in Efficient Court Management: Two Case Studies from India' [2018] International Journal of Law and Management

Peter Blanck, Ann Wilichowski and James Schmeling, 'Disability Civil Rights Law and Policy: Accessible Courtroom Technology' (2003) 12 Wm. & Mary Bill Rts. J. 825

Peter Cashman & Eliza Ginnivan, 'Digital Justice: Online Resolution of Minor Civil Disputes and the Use of Digital Technology in Complex Litigation and Class Actions' (2019) 19 Macquarie LJ 39

Pleasence PT, Balmer NJ and Sandefur RL, 'Paths to Justice: A Past, Present and Future Roadmap' (2013)

Polydor S, 'Blockchain Evidence in Court Proceedings in China-A Comparative Study of Admissible Evidence in the Digital Age (as of June 4, 2019)' (2020) 3 Stan. J. Blockchain L. & Pol'y 96

Popotas C, 'COVID-19 and the Courts. The Case of the Court of Justice of the European Union (CJEU)' [2020] Access to Just. E. Eur. 160

Prakash S, 'Whitepaper Series on Next Generation Justice Platform, Paper 3: The Legal Framework' (2019)

Prescott JJ, 'Improving Access to Justice in State Courts with Platform Technology' (2017) 70 Vand. L. Rev. 1993

Pinaki Nandan Pattnaik, Satyendra C Pandey and Mahendra Kumar Shukla, 'Mapping Critical Success Factors in Efficient Court Management: Two Case Studies from India' [2018]

International Journal of Law and Management

Priti Jain and Nathan Mnjama, *Managing Knowledge Resources and Records in Modern Organizations* (IGI Global 2016) 173.

Puddister K and Small TA, 'Trial by Zoom? The Response to COVID-19 by Canada's Courts' (2020) 53 *Canadian Journal of Political Science/Revue canadienne de science politique* 373

Rachel E Stern, 'Automating Fairness? Artificial Intelligence in the Chinese Courts' 40, 517

Rawls J, *A Theory of Justice: Revised Edition* (The Belknap Press of Harvard University Press Cambridge, Massachusetts 1999)

Rasheed Sulaiman V and others, 'Necessary, but Not Sufficient: Critiquing the Role of Information and Communication Technology in Putting Knowledge into Use' (2012) 18 *The Journal of Agricultural Education and Extension* 331

Reiling D, *Technology for Justice: How Information Technology Can Support Judicial Reform* (Leiden University Press 2009)

Reiling D and Contini F, 'E-Justice Platforms: Challenges for Judicial Governance' (2022) 13 *International Journal for Court Administration*

Rosenberg M, 'The Literature on Court Delay' (1965) 114 *University of Pennsylvania Law Review* 323

Schütte S, Reddy P and Zorzi L, 'A Transparent and Accountable Judiciary to Deliver Justice for All' [2016] New York, NY: United Nations Development Programme

Scott WR, 'Institutions and Organizations: Ideas and Interests' Thousand Oaks, CA: Sage (1995)

Sean Patrick McGinley, 'I Wanna Design for Somebody (Who Needs Me): The Intersection of Humanitarian Engineering, Choice-of-Law, and Technology Transfer in Kenya' (2018) 59 Boston College Law Review 2983

Sela A, 'Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation' (2016) 26 Cornell JL & Pub. Pol'y 331

Senecal F and Benyekhlef K, 'Groundwork for Assessing the Legal Risks of Cyberjustice' 16

Siddharth Peter de Souza and Maximilian Spohr, Technology, Innovation and Access to Justice (1st Edition, Edinburgh University Press 2021).

Singh A, Legal Standards on Freedom of Expression: Toolkit for the Judiciary in Africa (UNESCO Publishing 2018)

Sourdin T and others, 'COVID-19, Technology and Family Dispute Resolution' [2020] Forthcoming) Australasian Dispute Resolution Journal

Sourdin T, Li B and McNamara DM, 'Court Innovations and Access to Justice in Times of Crisis' (2020) 9 Health policy and technology 447

Stern RE, 'Automating Fairness? Artificial Intelligence in the Chinese Courts' Colum J. Transnat'l L (2020) 40

Stephen M McLoughlin, 'Stewards of Justice in a Business World: How Lawyers Can Use the Theory of Procedural Justice to Keep Their Clients Happy and Protect the Integrity of Alternative Dispute Resolution Forums' (2011) 16 *Trinity L. Rev.* 71, 76

Stiglitz JE, 'Democratizing the International Monetary Fund and the World Bank: Governance and Accountability' (2003) *Governance* 16

Sulaiman V R and others, 'Necessary, but Not Sufficient: Critiquing the Role of Information and Communication Technology in Putting Knowledge into Use' (2012) 18 *The Journal of Agricultural Education and Extension* 331

Surya Prakash, 'Whitepaper Series on Next Generation Justice Platform, Paper 3: The Legal Framework' (2019 )

Susskind R, *Transforming the Law: Essays on Technology, Justice and the Legal Marketplace*, Oxford University Press, Inc (2000)

Susskind RE, *The Future of Law: Facing the Challenges of Information Technology* (Clarendon Press ; Oxford University Press (1996)

Tania Sourdin, Bin Li and Donna Marie McNamara, 'Court Innovations and Access to Justice in Times of Crisis' (2020) 9 *Health Policy and Technology* 447

Teresa Marchiori, 'A Framework for Measuring Access to Justice Including Specific Challenges Facing Women' UN Women. Council of Europe (2015)

Tina Dacin M, Goodstein J and Richard Scott W, 'Institutional Theory and Institutional Change: Introduction to the Special Research Forum' (2002) 45 *Academy of management journal* 45

Tom Orrell, 'The African Declaration on Internet Rights and Freedoms: A Positive Agenda for Human Rights Online'. (2015)

Trubek DM and Santos A, 'The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice (Introduction)' [2006] Cambridge University Press 2006

Uzelac A and others, 'Access to Justice in Eastern Europe' (2021)

Valchev I, 'Can You See and Hear Us, Ms. Smith?: Protecting Defendants' Right to Effective Assistance of Counsel When Using Audio and Video Conferencing in Judicial Proceedings' (2020) 110 The Journal of Criminal Law & Criminology 655

van Velthoven B and Ter Voert M, The Value of the Judicial Infrastructure for the Dutch Economy (Netherlands Council for the Judiciary 2005)

Velicogna M, 'Justice Systems and ICT What Can Be Learned from Europe?' (2007) 3 Utrecht Law Review 129

Velicogna M, Errera A and Derlange S, 'Building E-Justice in Continental Europe: The TeleRecours Experience in France' (2013) 9 Utrecht Law Review 38

Wang Z, 'China's E-Justice Revolution' (2021) 105 Judicature 36

Wangui G, 'Factors Influencing Performance of the Judicial System in Kenya, The Case of Delayed Court Rulings' (2017) 1 International Journal of Law and Policy 64

Watson A, Rukundakuvuga R and Matevsyan K, 'Integrated Justice: An Information Systems Approach to Justice Sector Case Management and Information Sharing Case Study of the

Integrated Electronic Case Management System for the Ministry of Justice in Rwanda' (2016) 8  
IJCA 31

White-Thomas KV, 'Judiciary Employees Engagement and Motivation: The Impact on  
Employee and Organizational Success: An Evaluation Study' (PhD Thesis, University of  
Southern California 2019)

Wong C, 'E-Justice Reform in China: A Committed Move towards the Rule of Law, or Old  
Wine in New Bottles?' (2020) 14 HKJ Legal Stud. 81

WR Scott, 'Institutions and Organizations: Ideas and Interests' [2001] Thousand Oaks,  
CA.[etc.]: Sage 182

Xian K, 'In-Depth Understanding of Classic Marxist Human Rights Theory' (2018) 17 J. Hum.  
Rts. 252

Yong-Shik Lee, 'General Theory of Law and Development' Cornell Int'l LJ 50 (2017)

Yvon Dandurand, 'Criminal Justice Reform and the System's Efficiency' (2014) 25 Criminal  
Law Forum 383

Zegart AB, 'September 11 and the Adaptation Failure of U.S. Intelligence Agencies' (2005) 29  
International Security 78

Zuhao Wang, 'China's E-Justice Revolution' (2021) 105 Judicature 36

### **Online Sources**

'African Commission on Human and Peoples' Rights Legal Instruments'

<<https://www.achpr.org/legalinstruments/detail?id=69>> accessed 8 April 2022.

‘African Declaration on Internet Rights and Freedoms’ <<https://africaninternetrights.org/>>  
accessed 8 April 2022

Africanfactscheckers T way forward for expertise: a human rights perspective-, ‘The Future of Technology: A Human Rights Perspective’ (*AfricLaw*, 2 December 2020)  
<<https://africlaw.com/2020/12/02/the-future-of-technology-a-human-rights-perspective/>>  
accessed 13 November 2022

‘Coronavirus Disease (COVID-19) – World Health Organization’  
<<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>> accessed 24 July 2021

Criminal Justice System in Kenya: An Audit (2016) National Council on Administration of Justice (NCAJ) <[http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal\\_Justice\\_Report.pdf](http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal_Justice_Report.pdf)> Accessed 21 July 2022

Declaration of Principles on Freedom of Expression, 2019, Principle 37  
<[file:///C:/Users/esther/Downloads/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression\\_ENG\\_2019.pdf](file:///C:/Users/esther/Downloads/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf)> accessed 8 April 2022

‘E-Court Processes in Kenya Promote Access to Commercial Justice’ (*IDLO - International Development Law Organization*, 31 January 2020) <<https://www.idlo.int/news/story/e-court-processes-kenya-promote-access-commercial-justice>> accessed 6 January 2022

‘Embracing Electronic Court Case Management Systems: Lessons from the Kenyan Experience during COVID-19 || Insights | DLA Piper Global Law Firm’ (*DLA Piper*)

<<https://www.dlapiper.com/en/africa/insights/publications/2020/11/africa-connected-issue-5/embracing-electronic-court-case-management-systems/>> accessed 22 April 2021.

‘Enhancing Judicial Transparency and Promoting Public Trust’ (*IDLO - International Development Law Organization*, 28 June 2018) <<https://www.idlo.int/news/speeches-and-advocacy/enhancing-judicial-transparency-and-promoting-public-trust>> accessed 3 August 2021

‘First Case of Coronavirus Disease Confirmed in Kenya- Ministry of Health’ <<https://www.health.go.ke/first-case-of-coronavirus-disease-confirmed-in-kenya/>> accessed 16 September 2021

‘Futurium | Digital 4 Development Hub Forum - The Digital Transformation Strategy for Africa 2020-2030’ <<https://futurium.ec.europa.eu/en/Digital4Development/library/digital-transformation-strategy-africa-2020-2030>> accessed 8 April 2022

‘High Court Authorizes Taking of Evidence By Video Conference. | Kenya Law’ <<http://kenyalaw.org/kenyalawblog/high-court-taking-of-evidence-by-video-conference-2/>> accessed 11 September 2021.

HDR UNDP, ‘Programming for Justice: Access for All. A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice’ [2005] Bangkok, Thailand: UNDP <[https://www.un.org/ruleoflaw/files/Justice\\_Guides\\_ProgrammingForJustice-AccessForAll.pdf](https://www.un.org/ruleoflaw/files/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf)> accessed 29 July 2021.

‘How to Litigate Before the Internet Courts in China: Inside China’s Internet Courts Series -02 - China Justice Observer’ <<https://www.chinajusticeobserver.com/a/how-to-litigate-before-the-internet-courts-in-china>> accessed 15 November 2022



‘Human Rights Committee/ General Comment No. 32’

<<https://undocs.org/Home/Mobile?FinalSymbol=CCPR%2FC%2FGC%2F32&Language=E&DeviceType=Desktop&LangRequested=False>> accessed 25 March 2022.

‘ICJ Guidance on the Courts and COVID-19’ (*International Commission of Jurists*, 7 April 2020) <<https://www.icj.org/icj-guidance-on-the-courts-and-covid-19/>> accessed 25 March 2022.

‘ICJ-Kenya Trains Court Clerks on the New Case Tracking System – ICJ Kenya’ <<https://icj-kenya.org/news/icj-kenya-trains-eldoret-court-clerks-on-the-new-case-tracking-system/>> accessed 15 November 2022

‘Integrated Court Management System Committee – The Judiciary of Kenya’ <<https://www.judiciary.go.ke/about-us/our-programmes/icms/>> accessed 1 August 2021

‘International Covenant on Economic, Social and Cultural Rights’ (*OHCHR*) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> accessed 25 March 2022.

‘Rule of Law in the Time of COVID-19: Kenya’ (*IDLO - International Development Law Organization*, 30 July 2020) <<https://www.idlo.int/news/notes-from-the-field/rule-law-time-covid-19-kenya>> accessed 23 April 2021.

“Sustaining Judiciary Transformation (SJT): A service Delivery Agenda 2017-2021,” The Judiciary of Kenya, Nairobi, Kenya, 2017

‘Judiciary Transformation Framework(JTF) 2012-2016 – The Judiciary of Kenya’ <<https://www.judiciary.go.ke/judiciary-transformation-frameworkjtf-2012-2016/>> accessed 30 January 2021

Judiciary of Kenya, Strategic Plan 2014-2018, Building on the Foundations of Judiciary Transformation, <https://www.judiciary.go.ke/download/strategic-plan-2014-2018/> accessed 29 September 2021.

Judiciary of Kenya, Judiciary Transformation Framework 2012-2016, Laying the Foundations for the Transformation of the Kenyan Judiciary <http://kenyalaw.org/kl/fileadmin/pdfdownloads/JudiciaryTransformationFramework.pdf> accessed 27 September, 2021.

Judiciary of Kenya, Sustaining Judiciary Transformation 2017-2021, A Service Delivery Agenda, [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Strategic\\_BluePrint.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Strategic_BluePrint.pdf) accessed 28 September 2021.

Judiciary of Kenya, “Judiciary Strategic Plan 2019-2023: Towards Excellence in Service Delivery” The Judiciary of Kenya, Nairobi, Kenya, 2019 < <https://www.judiciary.go.ke/download/judiciary-strategic-plan-2019-2023/> > accessed 9 October 2021.

Judiciary ICT Policy 2018 The Judiciary of Kenya <<https://www.judiciary.go.ke/download/judiciary-ict-policy-2018/>> accessed 28 September 2021.

Justice Needs and Satisfaction in Kenya 2017, Legal Problems in Daily Life. [https://www.hiil.org/wp-content/uploads/2018/07/hiil-report\\_Kenya-JNS-web.pdf](https://www.hiil.org/wp-content/uploads/2018/07/hiil-report_Kenya-JNS-web.pdf) accessed 9 October 2021.

‘Kenya Law: Home Page’ <<http://kenyalaw.org/kl/>> accessed 27 September 2021

‘Kenya Law: Practice Directions on Electronic Case Management’

<<http://kenyalaw.org/kl/index.php?id=10211>> accessed 25 September 2021

Kenya National Bureau of Statistics. (2019), ‘2019 Kenya Population and Housing Census  
Volume 1: Population by County and Sub-County’ <

<https://vpn.uonbi.ac.ke/proxy/11e0c7df/https/www.knbs.or.ke/download/2019-kenya-population-and-housing-census-volume-i-population-by-county-and-sub-county/>> accessed 4 August 2022

‘Leveraging on Digital Technology in Administration of Justice – KIPPRA’

<<https://kippra.or.ke/leveraging-on-digital-technology-in-administration-of-justice/>> accessed 19  
March 2022.

Mack E, ‘Robert Nozick’s Political Philosophy’ in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Summer 2022, Metaphysics Research Lab, Stanford University 2022) <<https://plato.stanford.edu/archives/sum2022/entries/nozick-political/>> accessed 15  
November 2022

National Council on the Administration of Justice, Criminal Justice System in Kenya: An Audit, 2016, 68 < [http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal\\_Justice\\_Report.pdf](http://kenyalaw.org/kenyalawblog/wp-content/uploads/2017/01/Criminal_Justice_Report.pdf)> accessed 14 October 2021.

‘Opinions of the Supreme People’s Court on Accelerating the Construction of Smart Courts-  
Bulletin of the Supreme People’s Court of the People’s Republic of China’

<<http://gongbao.court.gov.cn/Details/5dec527431cdc22b72163b49fc0284.html>> accessed 18  
July 2021.

‘Press Statement: Administrative and Contingency Management Plan to Mitigate COVID-19 In Kenya’s Justice Sector – The Judiciary of Kenya’ <<https://www.judiciary.go.ke/press-statement-administrative-and-contingency-management-plan-to-mitigate-covid-19-in-kenyas-justice-sector/>> accessed 29 July 2021

‘Procedural Fairness for Curbing Corruption’ (*U4 Anti-Corruption Resource Centre*) <<https://www.u4.no/publications/procedural-fairness>> accessed 23 July 2021

‘Report of a Survey of Videoconferencing in the Courts of Appeals | Federal Judicial Center’ <<https://www.fjc.gov/content/report-survey-videoconferencing-courts-appeals-0>> accessed 17 September 2021

‘Rule of Law in the Time of COVID-19: Kenya’ (*IDLO - International Development Law Organization*, 30 July 2020) <<https://www.idlo.int/news/notes-from-the-field/rule-law-time-covid-19-kenya>> accessed 29 September 2021.

‘Report of a Survey of Videoconferencing in the Courts of Appeals | Federal Judicial Center’ <<https://www.fjc.gov/content/report-survey-videoconferencing-courts-appeals-0>> accessed 17 September 2021.

State of the Judiciary and the Administration of Justice (SOJAR), Annual Report 2020/2021, The Judiciary of Kenya (2021) [https://www.judiciary.go.ke/?page\\_id=4592](https://www.judiciary.go.ke/?page_id=4592) accessed 21 September 2022.

‘Strengthening Judicial Integrity Against Corruption, Global Programme against Corruption’ 20 <[https://www.unodc.org/documents/nigeria/publications/Otherpublications/Strengthening\\_Judicial\\_Integrity\\_Against\\_Corruption\\_2001.pdf](https://www.unodc.org/documents/nigeria/publications/Otherpublications/Strengthening_Judicial_Integrity_Against_Corruption_2001.pdf)> accessed 29 July 2021

‘Tech Policy in Africa: Emerging Trends in Internet Law and Policy’ (*Institute for Global Change*) <<https://institute.global/policy/tech-policy-africa-emerging-trends-internet-law-and-policy>> accessed 8 April 2022

The Committee on the Administration of Justice (The Kwach Committee) see Kenya, in the US Department of State, Country. Reports on Human Rights Practices 1999.

‘The 17 Goals | Sustainable Development’ <<https://sdgs.un.org/goals>> accessed 29 July 2021

‘The Future of Courts’ (*The Practice*) <<https://thepractice.law.harvard.edu/article/the-future-of-courts/>> accessed 4 August 2021

USAID/ Kenya supporting Government of Kenya Reform Efforts through the Kenya Transition Initiative (2008-2013) [https://www.land-links.org/wp-content/uploads/2016/09/USAID Land Tenure KTI Factsheet Reform.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_KTI_Factsheet_Reform.pdf) accessed 9 September 2021

‘United Nations: International Covenant on Civil and Political Rights’ (1967) 61 *American Journal of International Law* 870  
<[https://www.cambridge.org/core/product/identifier/S0002930000101204/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S0002930000101204/type/journal_article)> accessed 21 March 2022.

United Nations Office on Drugs and Crime (UNODC), Non-Binding Guidelines on the Use of Social Media by Judges (2015) <[https://www.unodc.org/documents/ji/social\\_media/Draft Non-binding Guidelines on the Use of Social Media by Judges - for circulation.pdf](https://www.unodc.org/documents/ji/social_media/Draft_Non-binding_Guidelines_on_the_Use_of_Social_Media_by_Judges_-_for_circulation.pdf)> accessed 22 September 2022.

United States Agency for International Development for International Development (USAID), Case Management Assessment- Kenyan Judiciary, (2016) <[https://pdf.usaid.gov/pdf\\_docs/PA00X5P4.pdf](https://pdf.usaid.gov/pdf_docs/PA00X5P4.pdf)> accessed 25 September 2022.

‘UN Human Rights Committee: General Comment No. 34’ <<https://www.justiceinitiative.org/publications/un-human-rights-committee-general-comment-no-34>> accessed 26 March 2022.

‘Who gets to Decide? Right to Legal Capacity for Persons with Intellectual and Psychosocial Disabilities’ (2012) <https://rm.coe.int/who-gets-to-decide-right-to-legal-capacity-for-persons-with-intellectu/16807bb0f9> accessed 26 March 2022

‘UN Human Rights Committee: General Comment No. 34’ <<https://www.justiceinitiative.org/publications/un-human-rights-committee-general-comment-no-34>> accessed 26 March 2022

UNDP H, ‘Programming for Justice: Access for All. A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice’ [2005] Bangkok, Thailand: UNDP <[https://www.un.org/ruleoflaw/files/Justice\\_Guides\\_ProgrammingForJustice-AccessForAll.pdf](https://www.un.org/ruleoflaw/files/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf)> accessed 29 July 2021

Understanding Effective Access to Justice, Workshop 2016 Paper, OECD Conference Centre, Paris. <<https://www.oecd.org/gov/Understanding-effective-access-justice-workshop-paper-final.pdf>> accessed 9 October 2021

‘United Nations: International Covenant on Civil and Political Rights’ (1967) 61 American Journal of International Law 870

<[https://www.cambridge.org/core/product/identifier/S0002930000101204/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S0002930000101204/type/journal_article)>  
accessed 21 March 2022

USAID/ Kenya supporting Government of Kenya Reform Efforts through the Kenya Transition Initiative (2008-2013) [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_KTI\\_Factsheet\\_Reform.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_KTI_Factsheet_Reform.pdf) accessed 9 September 2021

Velicogna M, 'In Search of Smartness: The EU e-Justice Challenge', *Informatics* (MDPI 2017) <[https://www.academia.edu/81681686/In\\_Search\\_of\\_Smartness\\_The\\_EU\\_e\\_Justice\\_Challenge?f\\_r=1306](https://www.academia.edu/81681686/In_Search_of_Smartness_The_EU_e_Justice_Challenge?f_r=1306)> accessed 8 November 2022

'What Are Human Rights?' (*Manual for Human Rights Education with Young people*) <<https://www.coe.int/en/web/compass/what-are-human-rights->> accessed 14 November 2022