



SOUTHERN AND EASTERN AFRICA CHIEF JUSTICES' FORUM CONFERENCE AND ANNUAL GENERAL MEETING 2023

THE ROLE OF NATIONAL JUDICIARIES IN DISPUTE
RESOLUTION UNDER THE AFRICAN CONTINENTAL FREE
TRADE AREA (AfCFTA): APPLICATION OF MODERN
TECHNOLOGIES FOR HIGH EFFICIENCY IN JUSTICE
DISPENSATION



SOUTHERN AND EASTERN AFRICA CHIEF JUSTICES' FORUM CONFERENCE AND ANNUAL GENERAL MEETING 2023

THEME: THE ROLE OF NATIONAL JUDICIARIES IN DISPUTE RESOLUTION UNDER THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA): APPLICATION OF MODERN TECHNOLOGIES FOR HIGH EFFICIENCY IN JUSTICE DISPENSATION

DATE: 22nd to 27th October 2023

HOST: Chief Justice of the United Republic of Tanzania, Prof. Ibrahim Hamis Juma and the Judiciary of Tanzania

PARTICIPANTS: 15 Chief Justices of SEACJF member jurisdictions, other Supreme Court Justices, High Court Justices, court administrators and other support personnel

NAMIBIA REPRESENTATIVES:

His Lordship, Peter S. Shivute : Chief Justice of Namibia
Justice Eileen Rakow : Judge of the High Court
Justice David Munsu : Judge of the High Court
Mr. Benhardt Kukuri : Executive Director: Office of the Judiciary
Secretary General: SEAJAA
Ms. Linea Kamati : Director: Administration (OOJ)
Mr. Salmon Isaaks : Acting Deputy Director: Lower Courts (OOJ)
Ms. Vikitoria Hango : Deputy Director: Public Relations (OOJ)
Ms. Susan Kaapehi : Deputy Registrar: High Court (Main Division)
Coordinator: SEAJAA
Ms. Alapeje Nambira : Special Assistant to Chief Justice
Mr. David Mbeha : Personal Assistant to Executive Director

CONTENTS

ACCRONYMS AND ABBREVIATIONS.....	5
INTRODUCTION.....	6
SESSION 1: OFFICIAL OPENING CEREMONY.....	8
SESSION 2: DIALOGUE WITH FORMER CHIEF JUSTICES ON THE PAST, PRESENT AND FUTURE OUTLOOK OF SOUTHERN AND EASTERN AFRICA REGION JUDICIARIES.....	9
SESSION 3: AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA): AGREEMENT AND DISPUTE RESOLUTION.....	12
SESSION 4: THE NEED FOR LINKAGE BETWEEN THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA) AND NATIONAL JURISDICTIONS: DO THE NATIONAL JUDICIARIES HAVE ANY ROLE?.....	15
SESSION 5: ARTIFICIAL INTELLIGENCE IN THE DISPENSATION OF JUSTICE – ELECTRONIC TRANSCRIPTION AND TRANSLATION SYSTEM AND SERVICES IN TANZANIA’S JUDICIARY.....	15
The leverage of artificial & business intelligence in the dispensation of justice.....	18
Strengthening the rule of law through technology: The role of development partners.....	20
Keeping pace with ICT developments: The case for translation and transcription services.....	25

SESSION 6: THE ROLE OF MODERN TECHNOLOGIES IN DISPUTE RESOLUTION IN NATIONAL COURTS, TRIBUNALS AND OTHER REGIONAL COURTS.....	28
SESSION 7: AFRICAN'S DIGITAL INNOVATION: SHOULD AFRICA INVEST IN CREATING ITS OWN CUSTOM BASED SOLUTION OR CONTINUE IMPORTING TECHNOLOGY FOR IMMEDIATE USE?.....	47
SESSION 8: EMERGING ISSUES IN AFRICA.....	49
Efficient dispensation of justice: A prerequisite for correctional reforms.....	49
Perspectives of a judge on threats to judicial independence associated with judicial election dispute resolution.....	42
CONTACTS TO REMEMBER.....	63

ACRONYMS AND ABBREVIATIONS

ABA	American Bar Association
AI	Artificial Intelligence
AfCFTA	African Continental Free Trade Area
COMESA	Common Market for Eastern and Southern Africa
CTI	Confederation of Tanzania Industries
DRM	Dispute Resolution Mechanism
EABC	East African Business Council
EALS	East African Law Society
ECOWAS	Economic Community of West African States
ICJ	International Commission of Jurists
ICT	Information and Communication Technology
JOT	Judiciary of Tanzania
MISA	Media Institute of Southern Africa
ODR	Online Dispute Resolution
OOJ	Office of the Judiciary Namibia
PALU	Pan African Lawyers Union
TAR	Technology Assisted Review
TCRA	Tanzania Communication Regulatory Authority
TPA	Tanzania Ports Authority
SEACJF	Southern and Eastern Africa Chief Justices' Forum
SEAJAA	Southern and Eastern Africa Judicial Administrators Association

INTRODUCTION

The Southern and Eastern Africa Chief Justices' Forum (SEACJF) was founded in 2003 with the primary objectives of upholding the rule of law, promoting democracy, safeguarding the independence of the courts, and fostering communication and collaboration among courts in its region of operation

As of 2023, SEACJF boasts 16 member states, including Angola, Botswana, Eswatini, Lesotho, Mozambique, Malawi, Zambia, Seychelles, Namibia, Zimbabwe, South Africa, Tanzania, Zanzibar, Kenya, Mauritius, and Uganda.

Notably, Namibia stands as one of the forum's founding members. The Honourable Peter S. Shivute, Chief Justice of Namibia, has been a key figure in SEACJF's leadership, serving as the Chairperson for the periods of 2016-2018 and 2021-2023.

Since its inception, the Forum has held conferences nearly every year, with exceptions for those years disrupted by the pandemic. These conferences provide a valuable platform for member states and other stakeholders to engage in discussions on critical topics, share unique challenges, and work collaboratively to develop solutions that strengthen the legal systems of the region. Past conference themes have included *"Strengthening Judicial Independence: Towards a shared vision of judicial selection and appointment"* and *"Constitutionalism: The key to democracy, human rights, and the rule of law."*

The 2023 conference held special significance as it commemorated the 20th anniversary of the Forum's establishment. The conference was hosted by His Lordship, Professor Ibrahim Hamis Juma, Chief Justice of the United Republic of Tanzania and the Judiciary of Tanzania, in the city of Arusha, located in the eastern part of Tanzania.

The conference was well attended with representatives from all member jurisdictions, except for one. It spanned two days and featured sessions covering various sub-topics under the theme *"The Role of National Judiciaries in Dispute Resolution under the African Continental*

Free Trade Area (AfCFTA): Application of Modern Technologies for High Efficiency in Justice Dispensation."

The roster of presenters and discussants included former and current Chief Justices and other judicial officers from member jurisdictions, as well as representatives from various organisations such as the World Bank, the Media Institute of Southern Africa, and the AfCFTA.

The Namibian delegation was well-represented and included the Honorable Chief Justice, Peter S. Shivute, the Honorable Justices Eileen Rakow and David Munsu, both Judges of the High Court, and Ms. Alapeje Nambira, Special Assistant to the Chief Justice.

In addition to the main conference, the Office of the Judiciary sent officials to attend the Southern and Eastern Africa Judicial Administrators Association (SEAJAA) Fourth Annual General Meeting, which was held on the sidelines of the Forum's Conference. SEAJAA, an association of judicial administrators within SEACJF's covered regions, was established in 2017 with an aim to provide a common platform for promoting the rule of law, constitutionalism, and good governance by ensuring independent judicial administration. In 2023 the association has 13 member jurisdictions and has its headquarters in Namibia.

Mr. Benhardt Kukuri and Ms. Susan Kaapehi currently hold the positions of Secretary-General and Coordinator of SEAJAA, respectively.

At the end of the Conference the Forum held its Annual General Meeting, during which members reviewed the Forum's programs and activities. The election of a new Management Committee was also conducted, with Chief Justice Bhekie Maphalala of the Kingdom of Eswatini assuming the role of Chairperson, and Chief Justice Martha Koome of Kenya being elected as Vice-Chairperson. Chief Justice Mumba Malila of Zambia and Chief Justice Alfonse Chigamoy Owiny-Dollo of Uganda were also appointed as members of the Management Committee. Chief Justice Peter S. Shivute, the immediate past Chairperson, retained his position as a member of the Management Committee in accordance with the Forum's Constitution.

SESSSION 1:

OFFICIAL OPENING CEREMONY

The Conference commenced with an official opening ceremony. Professor Ibrahim Hamis Juma, Chief Justice of the United Republic of Tanzania, delivered the welcoming remarks, followed by a speech from Peter Shivute, the Chief Justice of Namibia, in his capacity as the Chairperson of the Forum.

The ceremony was attended by Her Excellency, Samia Suluhu Hassan, President of the United Republic of Tanzania, who delivered the keynote address. In her speech, the President advocated for the creation and use of homegrown technologies, emphasizing the transformative potential of technologies like Artificial Intelligence (AI) in unlocking Africa's potential. She shared the example of Tanzania's shift towards digital solutions during the Covid-19 pandemic, which ensured the continuity of trials and court proceedings.

In an effort to modernise its court system, Tanzania's judiciary has implemented multi-faceted reforms to increase transparency and improve efficiency and expedite the delivery of justice. Leveraging modern technology, the country has introduced digital tools such as virtual court sessions and e-filing systems to bolster transparency and improve citizens' access to justice.

The opening ceremony concluded with a vote of thanks from Raymond Zondo, the Chief Justice of South Africa, who praised Tanzania for the substantial progress achieved within its judiciary.



SESSION 2:

DIALOGUE WITH FORMER CHIEF JUSTICES ON THE PAST, PRESENT, AND FUTURE OUTLOOK OF THE SOUTHERN AND EASTERN AFRICA REGION JUDICIARIES.

Moderator: Ms Madeline Kimei, MCIArb, FTIArb, Founder and Principal Director of iResolve.

Discussants: Hon. Justice Dr. Willy M. Mutunga, former Chief Justice of Kenya (via Zoom)
Hon. Justice Ernest Sakala, former Chief Justice of Zambia
Hon. Justice Dr. Mario Fumo Bartolomeu Mangaze, former Chief Justice of Mozambique

The discussion centered on the past, present and future outlook of the judiciaries of Southern and Eastern Africa. The discussants shared their views on different areas that have an impact on the judiciary. Due to the limited time allocated for the session, the discussants did not go in detail about many of the views they expressed.

Justice Mutunga stated that the transformation of the judiciary is a difficult task. He made reference to Kenya's difficult but transformative journey. He highlighted that the challenges were mainly political.

Justice Mutunga further spoke about the significance of technology in the judiciary. He stated that digital evolution is new to the judiciary and that the courts are moving towards having proceedings conducted in a paperless form.

Justice Mangaze spoke about access to justice in the context of Mozambique. He stated that at independence in 1975, there were no qualified Mozambican lawyers. A significant number of judges and lawyers were lay people. On his appointment as Chief Justice, he gave judicial

training top priority. He emphasised that Mozambique still faced challenges in the area of traditional justice, where the bulk of rulings made by traditional courts violate the law. He also said that the majority of Mozambicans now have access to the justice system.

Justice Mangaze warned about corruption in the judiciary. He stated that Mozambique has put in place measures to shield judges from outside pressure and influence.

Justice Sakala pointed out that better conditions of service for judges not only draw more experienced legal practitioners to the bench but also aid in the fight against corruption.

According to Justice Mutunga, Kenya's constitution contains a framework on corruption. He stated that the process begins with public participation during the recruitment process of judges where the public are allowed to testify against judges. According to him, every two years, judges also declare their wealth, and a forensic audit is conducted. Those who are unable to explain their wealth may be removed from office. Furthermore, judges who travel outside the country are required to inform the Chief Justice of the reason for the travel. This extends to family matters, such as declaring whether the judge has children outside the country.

Justice Sakala spoke about Zambia's judicial code of conduct which has helped in curbing corruption.

Justice Mangaze spoke about the universality of the Bangalore Principles of Judicial Conduct. He went on to say that Mozambique is putting in place guidelines on judicial misconduct. According to him, the codes of conduct alone are insufficient.

Justice Sakala spoke about the independence of the judiciary, including financial independence. He underlined that it is perilous for politicians to undermine the independence of the judiciary. It was pointed out that the judiciary is often attacked during presidential petitions.

The discussion also touched on the role of mediation in troubled judiciaries. The panel members were in agreement that such efforts yielded good results. The moderator specifically

referred to the role played by Namibia's Chief Justice, the Hon. Peter S. Shivute in the challenges that confronted the judiciary in Seychelles.

Justice Sakala also mentioned about the role he played in Lesotho where the Chief Justice was under heavy attack from the executive branch of government. According to him, he intervened together with others from the region, by engaging the executive to ensure that the Chief Justice left honourably. According to Justice Sakala, the concern was that if the Chief Justice was to be removed from the office in a dishonourable manner, the new Chief Justice might try to appease the Executive in the execution of his or her duties. Justice Sakala observed that the situation is often worsened by the fact that the Chief Justice may not always enjoy the support of other judges.

The lesson, according to Justice Sakala is that the Chief Justice must encourage unity and harmony within the judiciary. He also mentioned that the greatest enemy of the judiciary are the judges themselves, when it comes to late judgments. He called for a concerted effort from all judges as the Chief Justice cannot write judgments for all the judges.

SESSION 3:

AFRICAN CONTINENTAL FREE TRADE AREA: AGREEMENT AND DISPUTE RESOLUTION

Moderator: Hon Justice Rizine R Mzikamanda SC, Chief Justice of Malawi

Presentations by: Mrs Kabo Balkissou Alfa Hassan Sido, Head of dispute Settlement, AfCFTA

Mr Donald Deya, Advocate and Chief Executive Officer, PALU

Jon. Judge Dr. Fauz A Twaib President of EALS

Introduction

The African Continental Free Trade Area (AfCFTA) is a free trade area encompassing most of Africa. It was established in 2018 by the African Continental Free Trade Agreement, which has 43 parties and another 11 signatories, making it the largest free-trade area by number of member states, after the World Trade Organization, and the largest in population and geographic size, spanning 1.3 billion people across the world's second largest continent.

Under the agreement, AfCFTA members are committed to eliminating tariffs on most goods and services over a period of 5, 10 or 13 years, depending on the country's level of development or the nature of the products. General long-term objectives include creating a single, liberalised market; reducing barriers to capital and labor to facilitate investment; developing regional infrastructure; and establishing a continental customs union. The overall aims of AfCFTA are to increase socioeconomic development, reduce poverty, and make Africa more competitive in the global economy.

Discussions - Mr Donald Deya

The legal infrastructure of AfCFTA has a base agreement and eight protocols. Phase two will see the dispute resolution protocol which will have a discussion, mediation, dispute resolution

and arbitration or appellant body. The protocol will dispute resolution through consultation and arbitrations. It will have timelines which is usually not seen in ordinary protocols.

It however shut out the people of Africa as there is no evidence that the judiciaries of Africa were consulted. This left a number of gaps. The system borrowed a lot for the World Trade System and there was no checking to determine whether it fit our circumstances. The protocol provided only for states to engage each other and not for businessmen and men that will need to enforce their trade agreements.

There is further no court created to enforce these agreements which results in no jurisprudence nor for any *stare decisis*. There is further no money for the implementation of AfCFTA nor the Dispute Resolution Mechanism. For example, the East African region has not met as there is no funds for such a meeting. Implementation at national level will remain a problem as it remains a problem to formulate legislation in line with the Dispute Resolution Mechanism. Local systems will also not be able to in force international decisions. The suggestion was to think about a court to implement this mechanism or to add to the jurisdiction of the African Court for Human Rights.

Dr. Fauz A Twaib

The creation of AfCFTA was a bold and ambitious move of the African Union. It however has certain shortcomings as by nature with international treaties allowing for forum shopping although article 19 of the protocol indicates that state parties cannot file in another forum but it is possible to file in COMESA or ECOWAS and still to use the Dispute Resolution Mechanism. It therefore allows state parties to file in more than one court. There is further no role for national bodies in the FTA. Again the question of enforcement came up.

It is basically an issue of mindset and as such Judicial Africanism should allow regional and international mechanisms to be enforceable. Also pointed out that there is no space for private persons or companies to use the mechanism and that only states can take action which raise the question as to how you enforce a judgement against a state in a foreign jurisdiction.

Ministries negotiate the implementation of these agreements and therefore the Ministry of Justice is also filled with experts in international trade but these people were not utilized in the negotiations only the persons in the Ministry of Trade. Eventually the decision however lies with the Head of State.

There is further no indication as where the “home” of the Dispute Resolution Mechanism will be. The secretariat is housed in Accra, Ghana. Another criticism is that non-members cannot use the court only members of which there are currently 47. There are also no permanent organs, only when there is a case would the mechanism kick in and a body convened.

SESSION 4:

THE NEED FOR LINKAGE BETWEEN THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA) AND NATIONAL JURISDICTIONS: DO THE NATIONAL JUDICIARIES HAVE ANY ROLE?

Moderator: Hon. Justice Luke Malaba, Chief Justice of Zimbabwe

Presentation by: Hon. Justice Richard Wejuli Wabwire, East African Court of Justice

Discussants: Mr. David Sigano, Chief Executive Officer: East African Law Society (EALS)

Mr. Theobald Sabi, Chairman: Tanzania Bankers Association (TBA)

Mr. John Kalisa, Chief Executive Officer: The East African Business Council

Mr. Jacob Arnold Luoga, Legal Representative: Confederation of Tanzania Industries (CTI)

Mr. Plasduce M. Mbossa, Director General: Tanzania Ports Authority (TPA)

Ms. Mwanahamisi Hussein, Acting Executive Director: Tanzania Chamber of Commerce, Industry and Agriculture

Discussion

AfCFTA will bring together 55 countries in a single unit, 2,5 billion people which will make it the largest single market. It will boost African and cross border trade. But it will surely lead to disputes. The current DRM is not sufficient to handle all trade disputes and national courts are better equipped to deal with these which can be disputes about payment or specific performance etc. This subject matter is national disputes and they must be governed by national laws. Cross border disputes can further be disputes over labour laws – these are governed by labour laws and are not trade disputes. The same goes for environmental

disputes. National jurisdictions are optimum for these disputes. DRM further does not have the force of law and enforcement may require the use of national courts.

It is further possible that a judicial overlapping can happen as disputes could be in terms of AfCFTA as well as national laws. This overlapping can be mitigated by establishing guidelines which can create a more strenuous dispute resolution process. National jurisdictions can develop regional trade arguments, should provide for the enforcing of trade agreements, consistently provide information, the protection of property rights are crucial and allow for unilateral compliance.

How to achieve the linkage?

It needs a clear legal framework and consistency of decision. AfCFTA must be domesticated and national judiciary has to develop the necessary skills of dispute resolution that allows for the handling of trade disputes. This in turn will create the necessary expertise. States should further share information and experiences. The rule of law should further be respected in this process.

David Sigano

AfCFTA is a game changer for development and a tool to transform Africa and it came up with its own dispute settlement mechanism. Regional courts have developed sufficient trade instruments but it should be done at national level also. National laws must be aligned to continental laws. Currently national laws are silent when it comes to cross border issues. These are usually people and market centered agreements. Continental laws should speak to national courts and there should be sufficient resources to allow for national consultation.

Teobald Sabi

According to the banking perspective, the role of the national courts is a central role. This is because of the nature of the international trade agreements and trade is usually between non-state actors. These contracts can involve so many parties. National courts are therefore to take the leading roll. Courts are also able to take into account the original intention of players. National courts make the free trade area work. It is also true that international trade is very complex.

The problem comes with enforcement as national players might not have the financial muscle to go to another jurisdiction to enforce. It must therefore be possible to enforce your rights without being costly in the national courts. Trade will be certain if traders are certain their disputes will be dealt with. It is very important that dispute resolution must work. What is also important is to provide more capacity to create a clear understanding what this common market entails. National courts have been playing a significant role in resolving these disputes.

SESSION 5:

ARTIFICIAL INTELLIGENCE IN THE DISPENSATION OF JUSTICE – ELECTRONIC TRANSCRIPTION AND TRANSLATION SYSTEM AND SERVICES IN TANZANIA’S JUDICIARY

Moderator: Hon. Lady Justice Martha Koome, Chief Justice of Kenya

The Leverage of Artificial & Business Intelligence in the Dispensation of Justice

Presented by: Mr. Enock Kalege, Director of Information and Communication Technology, Judiciary of Tanzania

Tanzania’s ICT journey thus far

The ICT initiative of the Tanzanian Judiciary began strategically in 2016 with the inception of their first strategic plan. The initiative was spearheaded by the leadership of the JOT, aimed at delineating their current position and future direction. Within this framework, they recognized the need to develop both physical and soft ICT infrastructure.

In 2016, an assessment was conducted to gauge their progress and the challenges ahead. The assessment revealed that judiciary staff had limited knowledge of ICT. To address this, basic training was introduced, initially focusing on internet usage and email communication among staff across the judiciary. At that time, various courts operated independently with different service providers. This training effort spanned from 2016 to 2017.

In 2018, they launched a basic case management system primarily for capturing fundamental data from different courts. Concurrently, they embarked on the task of interconnecting the various courts by establishing a court network. Tanzania boasts more than 900 primary courts, over 90 district courts, 28 resident magistrates' courts, 19 high courts, and 1 court of appeal.

The network's creation was a critical step in preparation for the eventual rollout of an e-service platform.

The Tanzanian Judiciary's early adoption of virtual courts proved advantageous during the COVID-19 pandemic. In 2019, the initiative expanded its scope by engaging stakeholders, recognizing that entities like prisons required support. Consequently, the focus shifted towards acquiring equipment to bolster the overall ICT infrastructure.

The Tanzanian Judiciary further had to introduce business process re-engineering as the use of technology because a lot of requirements came up. They had to document all their processes. The process to get a matter from the District Court to the Supreme Court contained about 700 steps which was reduced after BPR to 300 steps. This means that the process was 41% more efficient which as a result means that justice delivery is more efficient.

Another advance was that case management created an e-court which is paperless. No more files in the courts and cases can be created by a legal practitioner at his home. Case management also allows the heads of courts to look at the workload and assignment of cases. It also reduce or eliminate biasness. The system will pick up where parties in cases are the same and as such will eliminate “window shopping”.

AI will be used in the translating and transcribing processes. Eventually all documents will be scanned and placed on the system.

Management will be able to use different data sets to draw reports to improve the over-all management of the courts.

The implementation should however be done gradually. This should also be coupled with ongoing training and the continuous development of new technology. There will also be a need to train legal experts with the necessary skills to continue with this development.

Strengthening the Rule of Law through Technology: The Role of the Development Partners

Presented by: Ms. Christine A. Owur, Senior Public Sector Specialist, Governance Global Practice, the World Bank

Introduction

The World Bank, established in 1944 with its initial mission to aid the post-World War II reconstruction of Europe and Japan, has evolved into a global institution. Presently, it comprises 189 member countries and operates in 130 locations spanning six regions, working towards ending extreme poverty and promoting shared prosperity. The World Bank Group (WBG) is committed to addressing multifaceted development challenges through a diverse range of financial products and technical assistance, spanning various sectors. Additionally, the WBG has a substantial track record of over 25 years, supporting the strengthening of justice institutions worldwide through more than 800 projects.

In pursuit of its mission, the World Bank's Global Program and Rule of Law encompasses activities such as knowledge production, data and analytics, operational initiatives, and convening stakeholders to collaborate and achieve its development objectives.

The approach the World Bank has used in reducing poverty and promoting shared prosperity is to promote accessible, efficient and fair justice institutions.

WHY DOES JUSTICE MATTER FOR DEVELOPMENT?



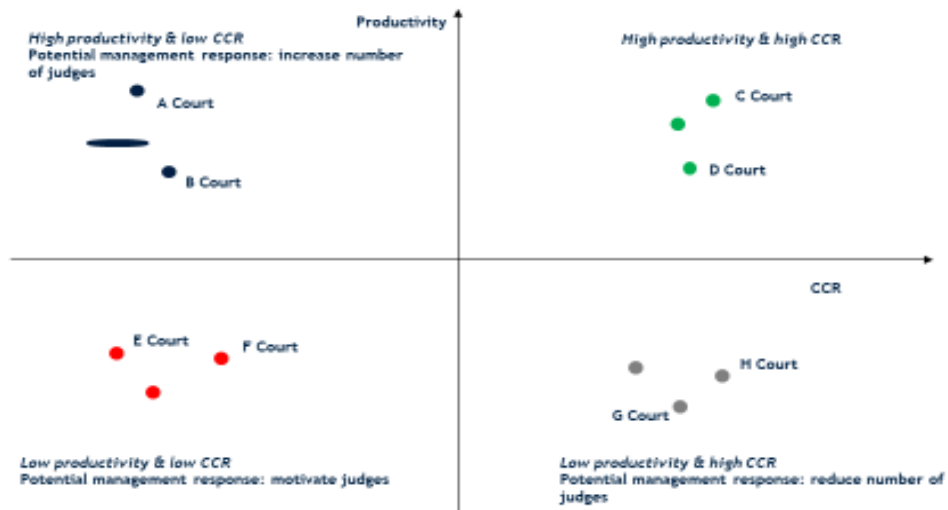
Kenya

The World Bank conducted a Judicial Performance Improvement Project in Kenya from 2012 to 2021.

The project yielded the following results:

- Publishing of legal information: More than 1,700,000 Kenyans regularly access real time court information cheaply (www.kenyalaw.org).
- Improvements in revenue collection through e-filing: Within Nairobi alone, revenue collection increased to USD 15 million per year.
- Establishment of a case tracking system
- 98% of all cases (1.3. million)* are now in the case tracking system and can be monitored
- All courts provide monthly data on performance and Performance Contracting has been fully rolled out.
- User satisfaction with court facilities has improved.
- Key decisions can be made using accurate data .e.g. recruitment, deployment, court construction etc.

Below is a visual representation illustrating how the accurate capture of data, such as through the implementation of a case tracking system as done in Kenya, enables judiciaries to monitor judges' productivity and case clearance rates and in turn identifying potential challenges and devising potential solutions.



5

Tanzania

In Tanzania, the World Bank initiated the Citizen-Centric Judicial Modernization Project in 2016, with plans for its continuation until 2025.

The project's objectives are as follows:

- Digitization of court records
- Archiving of files-over 225,000 files to National Archives
- E-Judicial Open Performance Review and Appraisal System (JOPRAS)
- E Learning Platform-sustainable means of continuous training and professional development
- Judiciary Mapping System (JMAP)- covering physical infrastructure of the judiciary.
- End to end e-case management system – 8 modules including interface for advocates (E-wakili) and Judicial Services Portal.

- Integrated E-Judiciary system including e-filing, e-fees, e-records management, e-case management, e-monitoring and evaluation, e-decision publication, and e-enforcement.
- Judiciary Situation Room - one-stop-data shop equipped with dashboards and databases to visually display information real-time. Data will be analysed at court and individual judge level.



- Ms. Owur concluded her presentation by briefly setting out the lessons learned in implementing technology improvement projects in judicial institutions:
- ICT is not necessarily the panacea: Need to get–manual process right first; Can disenfranchise the poor and vulnerable; Often not not fully deployed to achieve their potential
- Use of ICT and technology are only tools to facilitate policy objectives prioritized by governments

- Digitization agenda works best with a whole of government approach is deployed e.g. Tanzania, Croatia, Kenya
- Conducting assessments and analytics to understand bottlenecks to judicial service delivery before you automate
- Continuous feedback from the public to identify challenges and improve processes
- “Best Fit” vs “Best Practice” – What may be the best practice in one country may not necessarily be the best fit for another.
- Needs to be accompanied by an aggressive capacity building and change management agenda
- Must be accompanied by timely amendments to procedural and e-governance laws
- Takes time to fully deploy systems and must be rolled out gradually e.g. e-filing case management system rolled out over a period of 15 years in Croatia, 13 years in Azerbaijan, 10 years in Tanzania and 10 years in Kenya.

Keeping Pace with ICT Developments: The Case for Translation and Transcription Services

Presented by: Mr. Paolo Paravento Global VP Sales: Almwave S.P.A. and Mr. Franco Martino, EMCA Sales Director: Almwave S.P.A., Via di Cassal Bocoone, Rome, Italy



Almwave is an Italian-based AI and data company. It has been in operation for 16 years and is one of the biggest ICT groups in Italy. The services they offer include data governance and data science.

Almwave operates internationally and are experts in e-government digitization. They have worked with the European Parliament as well as the Ministry of Justice in Italy. What sets Almwave apart from other AI companies is their ability to tailor solutions to their clients' specific needs.

For example, in working with JOT they have been able to develop transcription programmes which detect "Swahili languages" (Swahili and Swahili-English). The programme has up to a 95% accuracy rate, which also translates from Swahili to English and vice versa.

In building their products, Almwave works very closely with their clients. Officials from JOT spent several weeks in Almwave labs to develop the transcription product.

The primary challenge JOT faced revolved around the management of substantial case loads, compounded by issues of poor quality reporting and low accuracy in transcribing records.

The Judiciary Use Case

Judiciary's Workload 2020 Statistics*

*PUBLIC DATA FROM
COMPREHENSIVE PERFORMANCE REPORT OF JUDICIAL FUNCTIONS 2020

<https://wvsl.org>

These statistics illustrate the significant caseload that the Tanzanian judicial system manages, emphasizing the need for modernization and efficiency improvements, which the "Citizen-Centric Judicial Modernization and Justice Service Delivery" project aims to address.



Issues



Shortage of resources for handling a significant caseload



Poor quality of reporting services and delays and high number of appeals due to formal errors (e.g., in manual transcription)



Language Barriers
Swahili - English



High cost in terms of \$ and time to deliver

What Almawave has done is to create a programme that automatically acquires audio from court proceedings and transcribes it in both English and Swahili at the same time. Almawave developed a function called "spoken-word identification" which is able to distinguish when either Swahili or English is being spoken. The transcription is then sent to a human that is able to guarantee the consistency and accuracy of the transcription.

Almawave Court reporting Solution



Verbalizing the court sessions by a faithful transcription with Spoken Language Identification in Swahili and English



Transcription revision by a certified officer



Machine Translation: full Kiswahili and full English reports added



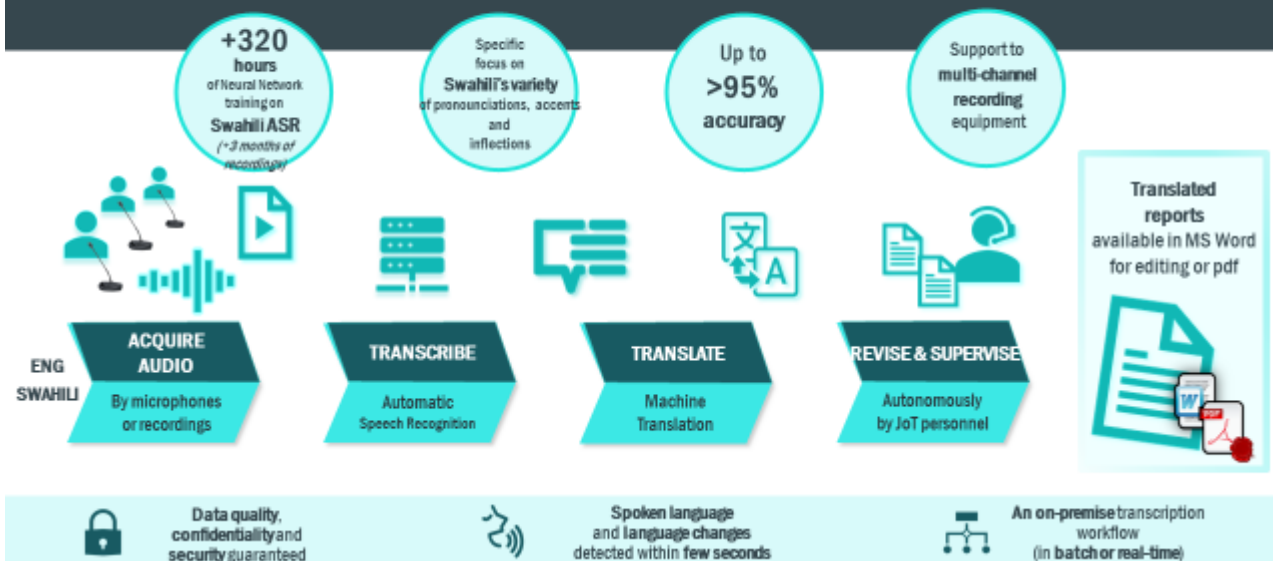
An on-premise automatic workflow to produce the reporting in batch or real-time



Almawave technology provides advanced measures for data security to make it reliable, consistent and confidential

The E2E Process

30 



The audio and transcribed report are kept in a file on a database that can be accessed by the judge and on the case management platform.

Almawave began its project with JOT in 2022 and plans to expand its services to cover all courts in Tanzania by 2026.

SESSION 6:

THE ROLE OF MODERN TECHNOLOGIES IN DISPUTE RESOLUTION IN NATIONAL COURTS, TRIBUNALS AND OTHER REGIONAL COURTS

Moderator: Hon. Justice Adelino Manuel Muchanga, Chief Justice of Mozambique

Presentation by: Hon. Justice Said M. Kalunde, Judge of High Court of Tanzania

Discussants: Dr. Tabani Moyo, Regional Director (South Africa) for the Media Institute of Southern Africa (MISA)

Dr. Makanatsa Makonese, American Bar Association

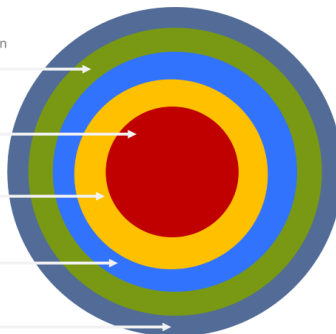
Dr. Justice Alfred Mavedzenge, Law Lecturer at University of Cape Town and Senior Legal Advisor at Africa Judges and Jurists Forum

Presentation by Hon. Justice Said M. Kalunde, Judge of High Court of Tanzania

Justice Kalunde's presentation was focused on highlighting the advantageous of using AI on dispute resolutions from a global perspective. (Some of the slides used during his presentation have been reproduced below).

AI BASIC CONCEPTS

- 1 Artificial Intelligence (AI)**
Any technique that enable a machine to solve a task in a way like humans do
- 2 Machine Learning (ML)**
Algorithms that allow machines to learn from examples without being explicitly programmed
- 3 Artificial Neural Networks (ANN)**
Brain inspired machine learning models
- 4 Deep Learning (DL)**
Subset of ML which uses deep learning ANN as models and automatically builds a hierarchy of data representations
- 5 AI Applications**
Write your paragraph here



2.0. THE APPLICATION OF AI IN DISPUTE RESOLUTION



Technology assisted review (TAR) is the process of prioritizing or coding a collection of documents using a system that harnesses human judgments of one or more subject matter experts on a smaller set of documents and then extrapolates those judgments to the remaining document collection. TAR uses machine learning's capacity to identify patterns in textual data.

Examples of cases where TAR was applied

In the American case *Da Silva Moore vs. Publicis Groupe* 287 Frd 182 (Sdny, 2012) the plaintiffs initiated a case alleging a six-year period of systemic against them as compared to their male colleagues. The court was presented with more than 17 million documents and emails. It had to devise a system to find which documents were of relevance to avoid having to traverse all the documents. The judge who heard the matter, Andrew J. Peck, made the following remarks on the use of TAR as highlighted below:

USA: DA SILVA MOORE VS. PUBLICIS GROUPE 287 FRD 182 (SDNY, 2012);

FACTS: In this action, five female named plaintiffs are suing defendant Publicis Groupe, "one of the world's 'big four' advertising conglomerates," and its United States public relations subsidiary, defendant MSL Group. Plaintiffs allege that defendants have a "glass ceiling" that limits women to entry level positions, and that there is "systemic, company-wide gender discrimination against female PR employees like Plaintiffs." Plaintiffs allege that the gender discrimination included: (a) lower pay for female employees; (b) failing to promote or advance female employees; and (c) carrying out systematic discriminatory terminations, demotions and/or job reassignments

ANDREW J. PECK, United States Magistrate Judge:

- ❑ **Defining TAR:** "By computer-assisted coding, I mean tools (different vendors use different names) that use sophisticated algorithms to enable the computer to determine relevance, based on interaction with (i.e., training by) a human reviewer."
- ❑ **Whether there is a need to working of the software:** "[I]f the use of predictive coding is challenged in a case before me, I will want to know what was done and why that produced defensible results. I may be less interested in the science behind the "black box" of the vendor's software than in whether it produced responsive documents with reasonably high recall and high precision."
- ❑ **When and why use TAR:** "The decision to allow computer-assisted review in this case was relatively easy – the parties agreed to its use (although disagreed about how best to implement such review). The Court recognizes that computer-assisted review is not a magic, Staples-Easy-Button, solution appropriate for all cases. The technology exists and should be used where appropriate, but it is not a case of machine replacing humans: it is the process used and the interaction of man and machine that the courts needs to examine."

In the UK case *Pyrrho Investments Ltd vs. Mwb Property Ltd* [2016] EWHC 256 (CH), the court highlighted the factors it would have to consider before it would accept the use of TAR.

UK: PYRRHO INVESTMENTS LTD VS. MWB PROPERTY LTD [2016] EWHC 256 (CH)

FACTS:. E-disclosure or e-discovery was at the centre of the dispute. To give an idea of the scale of the exercise, the total number of electronic files restored from the back-up tapes of the Second Claimant was originally more than 17.6 million. This has since been reduced to some 3.1 million by a process of electronic de-duplication. But it is still a large and costly number to search

Master Matthews stated (at paragraph 33):

The factors in favour of approving the use of predictive coding technology in the disclosure process seemed to me to be these:

- ❑ Experience in other jurisdictions has been that predictive coding software can be useful in appropriate cases.
- ❑ There is no evidence to show that the use of predictive coding software leads to less accurate disclosure being given than, say, manual review alone or keyword searches and manual review combined, and indeed there is some evidence to the contrary.
- ❑ There is nothing in the CPR or Practice Directions to prohibit the use of such software.
- ❑ The number of electronic documents which must be considered for relevance and possible disclosure in the present case is huge, over 3 million.

UK: PYRRHO INVESTMENTS LTD VS. MWB PROPERTY LTD [2016] EWHC 256 (CH)

Master Matthews stated (at paragraph 33):

The factors in favour of approving the use of predictive coding technology in the disclosure process seemed to me to be these:

- ❑ The cost of manually searching these documents would be enormous, amounting to several million pounds at least. In my judgment, therefore, a full manual review of each document would be “unreasonable” within paragraph 25 of Practice Direction B to Part 31, at least where a suitable automated alternative exists at lower cost.
- ❑ The costs of using predictive coding software would depend on various factors, including importantly whether the number of documents is reduced by keyword searches, but the estimates given in this case are far less than the full manual alternative.
- ❑ The ‘value’ of the claims made in this litigation is in the tens of millions of pounds. In my judgment the estimated costs of using the software are proportionate.
- ❑ The trial in the present case is not until June 2017, so there would be plenty of time to consider other disclosure methods if for any reason the predictive software route turned out to be unsatisfactory.
- ❑ The parties have agreed on the use of software, and also how to use it, subject only to the approval of the Court.

There were no factors of any weight pointing in the opposite direction.

Automated Online Dispute Resolution (ODR)

In the context of dispute resolution, human experts determine the questions that a citizen/client needs be asked to generate the information to determine how to proceed when faced with a particular legal problem. The aim is to structure the questions in a logical and user-friendly manner in order to identify the problem and then posit next steps.

The British Columbia's Civil Resolution Tribunal

How it works



EXPLORE AND APPLY

Start with our Solution Explorer. It has free legal information and tools. It will also give you the right CRT application form for your type of dispute



NEGOTIATE

Once your application is accepted, try our secure and confidential negotiation platform. You can talk through your dispute and try to reach an agreement.



REACH AN AGREEMENT

If you can't resolve your dispute by negotiation, a case manager will try to help you reach an agreement. Agreements can be turned into orders, and be enforced like a court order.



GET A DECISION

If you can't reach an agreement by negotiation or facilitation, an independent CRT member will make a decision about your dispute. A CRT decision can be enforced like a court order.

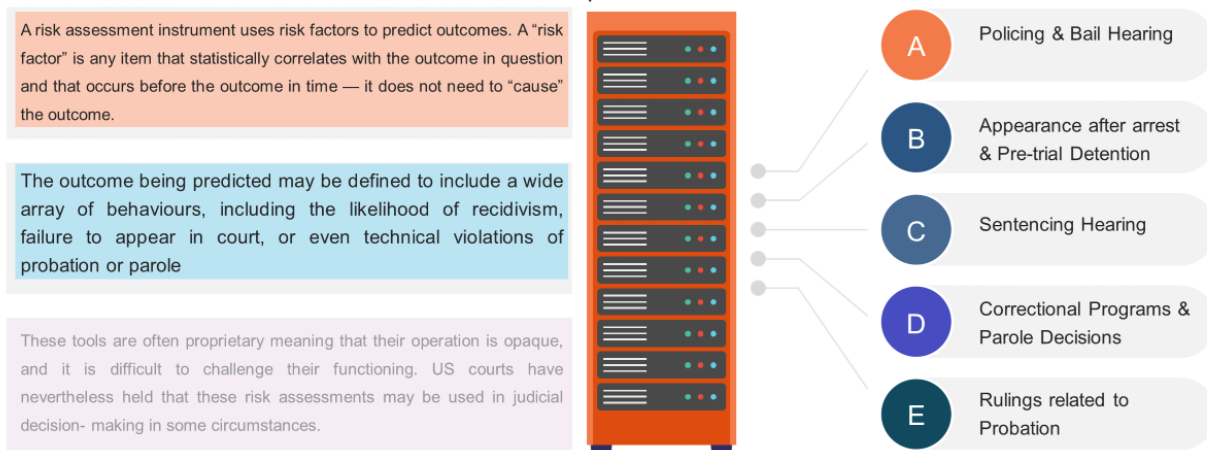
AI predictions of legal outcomes

With sufficient volumes of case law, it is possible to create machine learning models which can ‘predict’ the outcome of legal cases. Using information about cases or even the text of decisions themselves as inputs, machine learning programs can predict case outcomes, some with good accuracy. AI tools can help judges and litigators to predict outcomes of cases by analyzing vast troves of historical judgments, looking at the facts in each particular case and decisions reached by the judge.

Criminal sentencing and risk assessment tools

4. CRIMINAL SENTENCING AND RISK ASSESSMENT TOOLS

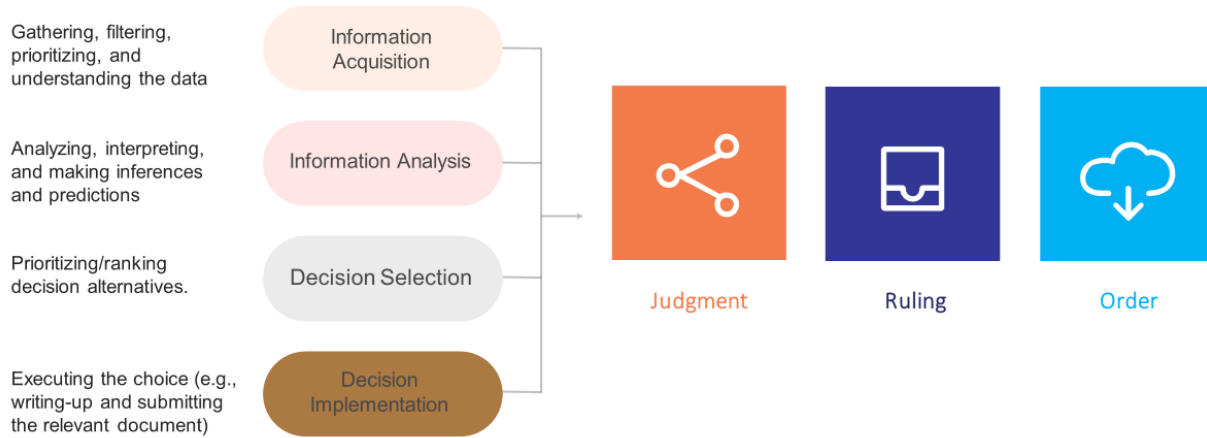
Risk Assessment Tools (Instruments) (RATs & RAIs), are designed to predict an offender’s future risk for misconduct. These predictions inform high-stakes judicial decisions, such as whether to incarcerate an individual before their trial. These tools are used to inform courts’ decisions at different stages of the criminal justice process



The importance of using actuarial risk assessment tools across criminal justice settings and stages is defined by improved consistency, efficiency, and effectiveness.

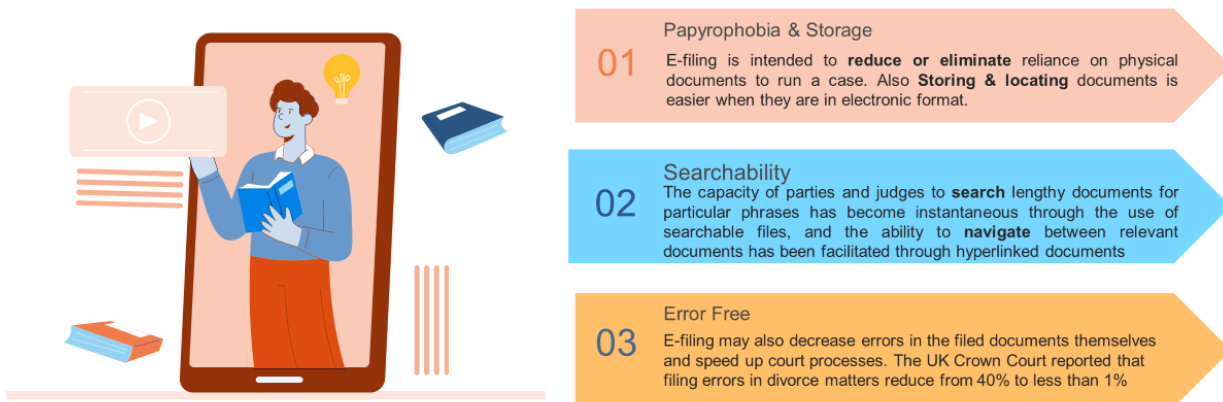
5. AUTOMATED DECISION-SUPPORT & DECISION-MAKING

AI systems can inform, augment or even entirely replace judicial discretion in certain aspects and areas. Depending on the purpose of the system, and the safeguards thought necessary to be built into it, human oversight can range from human (or technology)-in-the-loop to full autonomy.



6. AUTOMATED E-FILING

Electronic filing (e-filing) of documents in court/tribunal proceedings has become ubiquitous in modern court systems. Most standard e-filing systems use expert or rule-based systems but AI may play a role in the future of e-filing.



7. TRIAGING & ALLOCATION OF MATTERS

Triage in the legal context is distinctly different than in the medical context. It does not prioritize resources to certain litigants over others to the extent that it leaves some untreated. Rather it is a process of rational distribution of resources based on litigant need and case complexity to assure all litigants have equal access to justice. In other words, triage should be designed to sort resources and people to enable the most just, accurate and efficient result for all.




9. AI-Supported Legal Research

Legal research is one of the most time-consuming and costly tasks for Judges, Magistrates and Legal Professionals. It requires finding, analyzing, and synthesizing relevant information from various sources, such as statutes, case law, regulations, rules, journals, and news articles.




10. RULES AS CODE (RAC) & IMPLICATIONS FOR THE JUDICIARY

RAC is a coded version of rules that can be understood and used by a computer. It can also be understood as: ‘the process of drafting rules in legislation, regulation, and policy in machine-consumable languages (code) so they can be read and used by computers.’ A RaC approach calls for the TRANSFORMATION OF PRESENTLY MACHINE-READABLE RULES TO MACHINE-CONSUMABLE RULES.



Machine-Readable Rules

Machine-readable: Information or data presented in a structured format that can be processed by a computer without (or with minimal) human intervention and without loss of semantic meaning. Digital formats are not automatically machine-readable (e.g. PDF documents that are not Optical Character Recognition (OCR) readable).

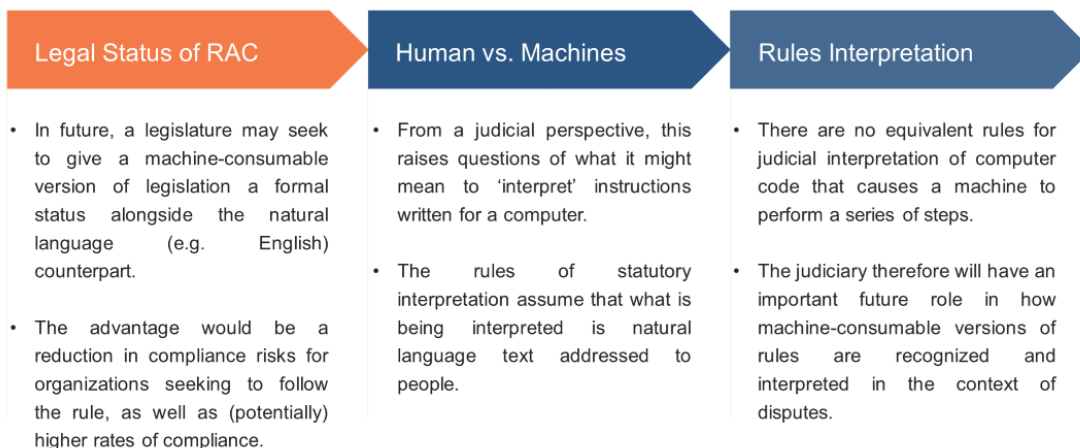


Machine-consumable

Machine-consumable: In order for information, data or a rule to be machine-consumable, it needs to be ‘available in a code or code-like form that software can understand and interact with, such as a calculation, the eligibility criteria for a benefit...or automated financial reporting obligations for compliance’.

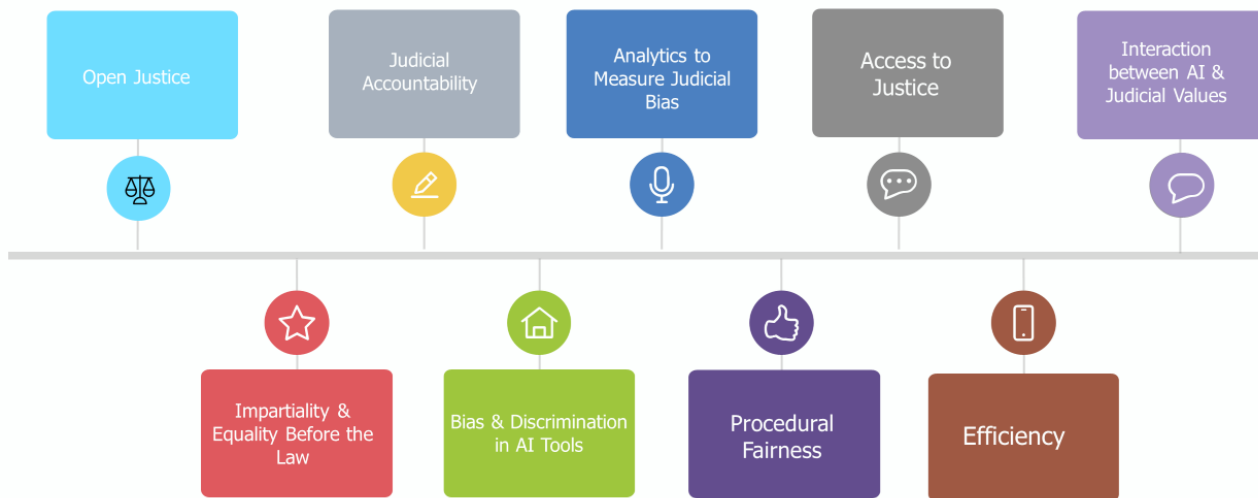
RAC IMPLICATIONS FOR THE JUDICIARY

There are longer-term implications of RaC for Judges and Judicial Officers.



3.0. THE IMPACT OF AI ON CORE JUDICIAL VALUES

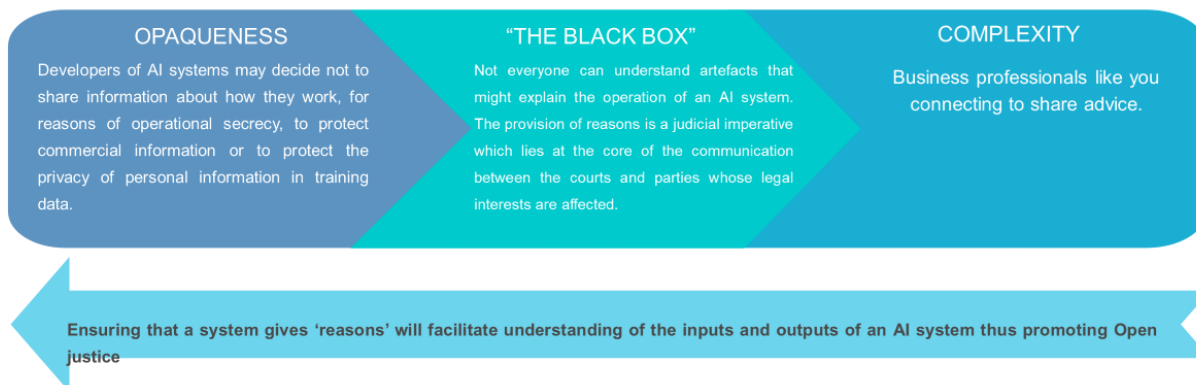
Any transformation brings novelties but also losses. Similarly, introducing algorithms in judicial systems will reshape courts. AI technologies described above have the capacity to both undermine and strengthen judicial values.



3.1. OPEN JUSTICE:

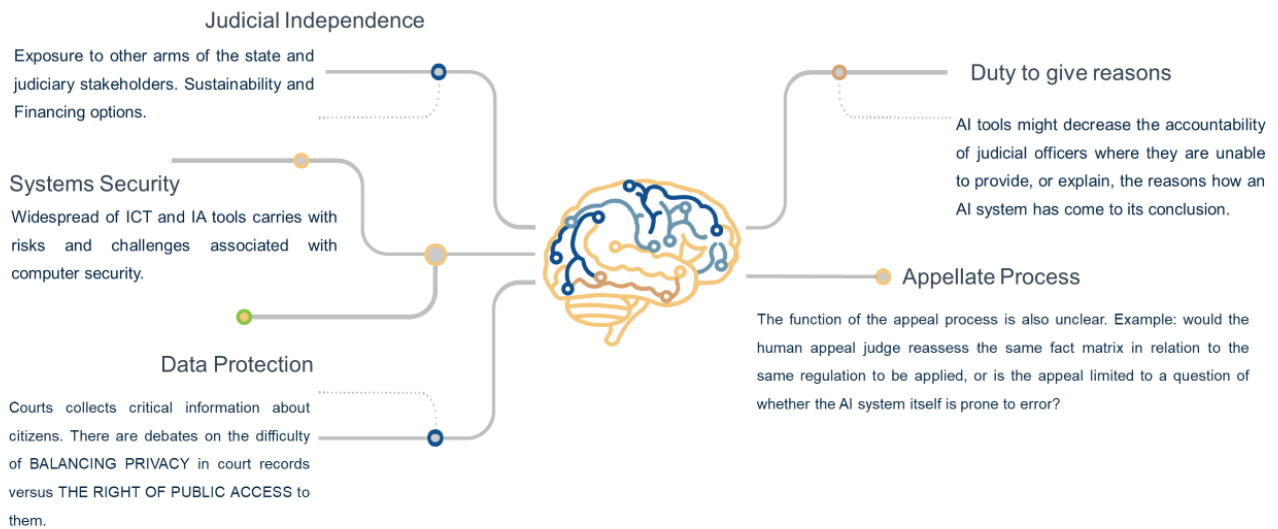
Open justice subjects court proceedings to public and professional scrutiny and is critical to public confidence in the judicial system. Many AI tools can enhance open justice beyond what would have been possible in a traditional courtroom.

AI tools can also undermine open justice, enabled by public and professional scrutiny. There are three significant obstacles to ensuring open justice with AI tools:



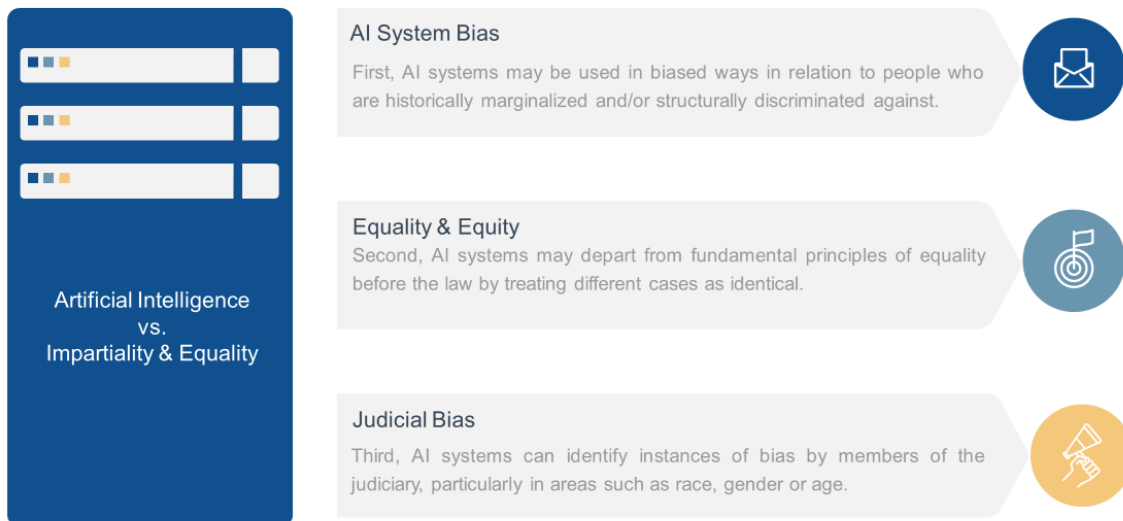
3.2. JUDICIAL TRANSPARENCY & ACCOUNTABILITY:

Traditional accountability mechanisms, including: judicial independence; obligation to give reasons, and the right to appeal may be undermined by the widespread use of AI based technologies and systems.



3.3. IMPARTIALITY AND EQUALITY BEFORE THE LAW

Judicial values of impartiality and equality before the law intersect with AI tools in three discrete ways.



Bias and Discrimination in AI Tools

Equality before the law suits uncomfortably with data-driven decision-making, such as that used in machine learning. Differential treatment based on who someone is as opposed to simply what that person did is almost universal. Bias in human systems can be duplicated or enhanced in automated systems in different ways as follows:

First: In the context of machine learning, what training data was used? Might this be skewed because of:

- ❑ Bias in historic decisions that impact on the data? EG: when police target particular populations, this can lead to skewed data in crime databases.
- ❑ Bias in historic 'facts'?
- ❑ Overrepresentation or underrepresentation of particular populations? This can occur due to historic marginalization.

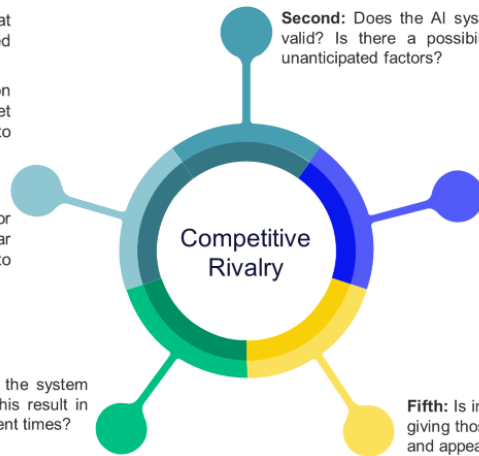
Second: Does the AI system make assumptions that may be no longer be valid? Is there a possibility of overriding the AI system in the event of unanticipated factors?

Third: Are those using the system aware of its limitations and trained to avoid overreliance?

Replacing or supplementing discretion with AI systems is delegating 'some of our moral responsibility', and yet the decisions of AI systems may be perceived as more 'reliable' and 'trustworthy'.

Fourth: In the context of machine learning, does the system change over time (continuous learning) and will this result in unfair differences between decisions made at different times?

Fifth: Is information about an AI system made available to all, giving those affected an equal ability to understand its outputs and appeal as required?



3.4. PROCEDURAL FAIRNESS

Procedural fairness (natural justice) is 'central to the rule of law and includes **RECEIVING NOTICE OF A CLAIM** and the **OPPORTUNITY TO BE HEARD**. Procedural fairness may also include the parties being given an opportunity to call their own witnesses and to cross-examine the opposing witnesses

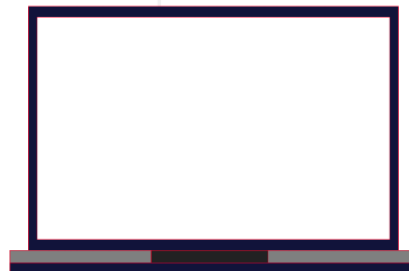
In particular:

- ❑ Is there a register of all systems in use?
- ❑ Are the dates of and reasons for version changes retained?
- ❑ Are historic versions of systems archived?.

What are the real and perceived impacts on procedural fairness if a particular AI system is deployed?

- ❑ Are litigants given a real opportunity to have their case and evidence heard and considered, or do limitations on system inputs and operations affect this?
- ❑ Will litigants feel that they have been heard, so as to feel satisfied (if not happy) with the outcome and retain trust in the justice system?

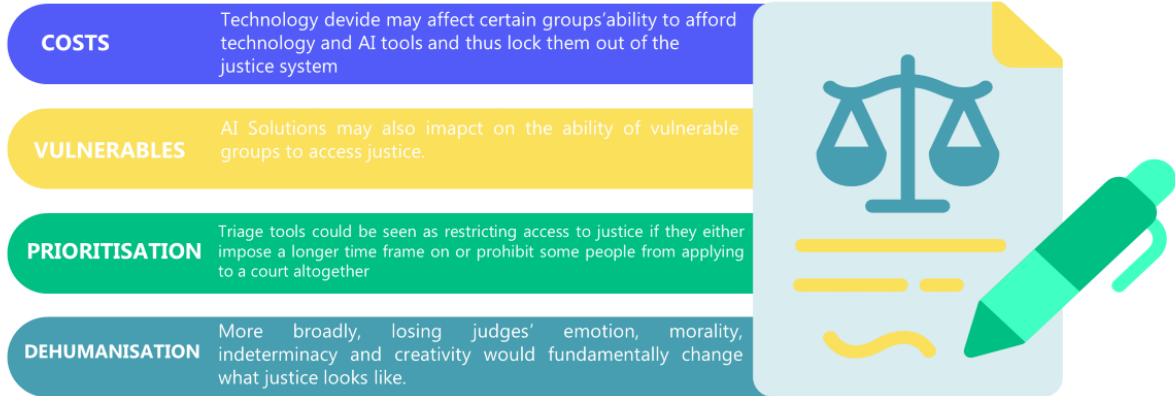
Are courts retaining and making available sufficient information on systems in use to ensure that rights to appeal against decisions made or influenced by such systems are preserved.



3.5. ACCESS TO JUSTICE

Access to justice refers to citizens' ability learn about legal issues and seek redress for legal problems. AI systems may be used to drive down the time and costs of legal services thus making them more accessible.

However, while AI promises to enhance access to justice in so many ways it must be noted that 'ACCESS TO JUSTICE' IS NOT ONLY ABOUT 'ACCESS' BUT ALSO ABOUT 'JUSTICE'



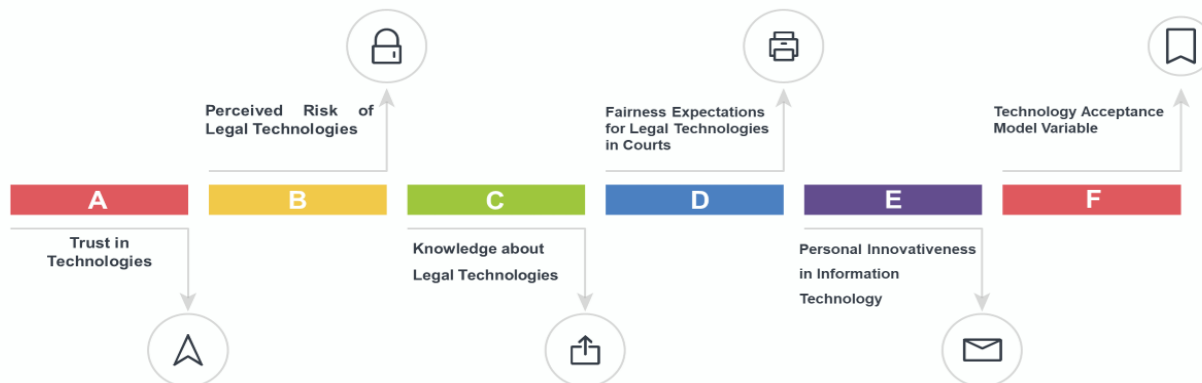
3.6. EFFICIENCY

Efficiency – the saving of cost and time – is perhaps the most compelling reason for the use of AI tools in justice systems and courts. Most technology projects are aimed at increasing efficiency and minimizing expense – usually by saving judges, registrars, officers and litigants cost and time.



5.0. PEOPLE’S ATTITUDES TOWARDS COURTS TECHNOLOGIES

The rate and character of adoption of any new technology may mean displacement of traditional ways of working and the accompanying shift of mind-set needed to fully embrace the potential opportunities that a new technology may offer. It is, therefore, essential to explore people’s attitudes towards legal technologies before their implementation.



PEOPLE’S ATTITUDES TOWARDS COURTS TECHNOLOGIES

Perceived Risk of Legal Technologies

New technologies, in general, are associated with many risks, such as confidentiality, uncertainty, and unpredictability. A critical question regarding legal technologies in courts is what people expect from the technologies concerning fairness.

Trust in Technologies

Trust in legal technologies affects how much people would support legal technologies in courts, how they see the usefulness, and the perceived ease of use of legal technologies.

Personal Innovativeness in Information Technology

Personal innovativeness in information technology positively affects the perceived ease of use of legal technologies in courts. Thus, the more innovative a person is, the easier it seems for them to use legal technologies in courts.

Fairness Expectations for Legal Techs. in Courts

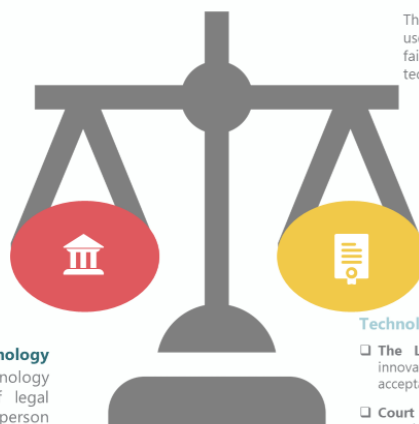
The fairness expectations directly influence the perceived usefulness of legal technologies in courts. That is, the more fairness that is expected of the processes involving legal technologies, the more useful they seem

Knowledge about Legal Technologies

People usually lack the legal and practical knowledge about how courts work and how to measure their performance. Thus, it is expected that people would not be very knowledgeable in the legal technology field either.

Technology Acceptance Model Variable

- ❑ **The Legal Profession:** As lawyers are generally skeptical of any innovations, the legal profession might play a role in legal technology acceptance.
- ❑ **Court Experience:** Most people do not understand how courts operate, nor what to expect in a court hearing.
- ❑ **Age:** Age might influence the attitude toward implementing and using legal technologies in courts.



Dr. Tabani Moyo, Regional Director (South Africa) for the Media Institute of Southern Africa (MISA)

The main challenge for judiciaries when migrating to digital services is whether the technology is moving at a pace that allows for a holistic approach to the dispensation of justice. As technology evolves, the augmented reality is bound to create new scenes and context. The question is, is justice going to be dispensed in a way that factors in indigenous knowledge systems and languages.

Challenges

Most society members in Africa do not have access to the internet. If they do, they do not have access to meaningful internet. In instances where mobile operators dominate the internet market and prioritize profits, they are hesitant to invest in infrastructure expansion where profitability is uncertain. Consequently, many members of society are limited to internet access provided through bundled packages, such as WhatsApp or Facebook bundles. This restricted access confines them to social media, while impeding their ability to avail themselves of essential justice services.

According to the World Bank, as of 2022 only 36% of Africans have access to internet, but this statistic does not distinguish whether such access is meaningful or not.

What does advanced technology of judicial case management mean to an ordinary person in a marginalized community? Is it possible to offer zero rated services by judicial institutions?

During the COVID-19 pandemic, there was access to zero-rated services in the education sector. Ensuring the uninterrupted education of children during the pandemic was deemed a top priority. As mandated by the law, mobile network operators were obligated to adhere to zero-rating requirements. Can the same be applied to access to justice?

Do our judiciaries have qualified IT personnel in judicial services to scrutinise how we procure technologically driven services?

The veil of secrecy surrounding judicial services gives one confidence in the system. But if the technology does not give back-end full control of an important service – where for example while a judgment is being drafted it can be read elsewhere before it has been pronounced – it comprises one's confidence in the judicial service. Do our judiciaries have the capabilities to guard against the theft and misappropriation of information in our custody?

With AI improvements, is the safety and security of our data guaranteed? Can AI itself not lie? What if an AI system makes a pronouncement based on a misinformed system? How do we procure services that are alive to our realities and context as Africans, so that such services do not use the footprint from where they are created to come to a different conclusion based on a different context?

Proposals

- A responsive communication strategy for our judicial services ie. a judicial service which is self-aware.
- Structural migration to AI to ensure no one is left behind.
- Support pressure groups that approach courts with requests for a transparent universal services fund. The creation of universal service operators so that they invest heavily towards ensuring that everyone has universal access to technology.
- Build capacity of our judicial services to communicate outward-looking, rather than to only communicate within itself to increase the state of awareness of service users.
- Localisation of technology to make it useful to African indigenous knowledge systems.

Dr. Makanatsa Makonese, American Bar Association

Dr. Makonese focused her discussion on the negative consequences of digitizing the work of the judiciary, especially in marginalized communities. For example, in the context of gender justice, it is imperative to ensure that there is equality when it comes to justice in the age of technology between men and women.

Access to justice for the First Peoples of Africa and other marginalized communities

In Southern Africa, the ABA has worked closely with the Khoi-Khoi and Khoisan communities and found that they experience quite a number of challenges when it comes to access to justice.

As already mentioned by Dr. Moyo, in Africa on 36% of the population has access to the internet. However, if one scrutinizes that statistic, one realizes that only 19% of women have access to internet, which exposes the marginalization faced by women in access to technology and justice.

The issue of broader access to justice generally by African communities

At present, the bulk of government-led tech-innovation focuses more on formal justice systems in many African countries, but little effort is made when it comes to customary justice systems. Yet, research shows that up to 80% of cases worldwide are decided on customary or informal justice systems. Therefore, as judiciaries migrate online and are adopting the use of technology, how are we bringing customary legal systems on board, which are so relevant for the access of justice for majority Africans? The inclusion of customary systems is not only important for their intrinsic value but also for their instrumental value in that once lower-level justice delivery systems are integrated in the process of adopting technology, it will be easier to ensure that there will be a bottom-to-top approach when it comes to the adoption of technology.

Triaging of cases

In the process of triaging, it may be necessary at the beginning of the adoption of technology to determine which cases may need to be determined through interaction with a human judge

as well as cases where the parties may not be well-versed with technological systems. These may include cases involving children and gender based violence matters. Family matters are also better dealt with when presented personally before judicial officers.

Dr. Justice Alfred Mavedzenge, Law Lecturer at University of Cape Town and Senior Legal Advisor at Africa Judges and Jurists Forum

The role of technology in judicial systems may be understood in two ways. Firstly, as the automation of court services in the form of, for example, integrated electronic case management systems. This also includes the automation of adjudication of certain matters, assuming that they are straightforward cases.

Secondly, the role of technology in dispute resolution may be considered in the context of online dispute resolution (ODR). Dr. Mavedzenge invited the audience to imagine court-connected alternative dispute resolution by way of an online platform.

Opportunities created by modern technologies for African judiciaries

Online dispute resolution

African judiciaries have already automated certain judicial actions, by way of electronic case management systems. The utilization of electronic case management systems by African judiciaries marks a pivotal step towards embracing technology, presenting an opportunity to develop platforms for ODR, which would assist courts in disposing of straightforward cases, thereby allowing judges to focus on more complex cases requiring human interaction.

Comparative learning

Dr. Mavedzenge to draw insights from both regional and international counterparts that have successfully implemented ODR and other automated judicial actions.

Strategic actions

Enforcing the right to access to internet

The issue of digital exclusion requires particular attention. Referencing a symposium hosted by the Chief Justice of Kenya in 2021, Dr. Mavedzenge underscored the urgent need for African judiciaries to enforce the right to internet access. Without such enforcement, the

broader adoption of judicial technologies remains jeopardized, potentially hindering Africa's progression.

Compliance monitoring

There is a need to develop norms and standards to address issues such as equality, transparency and fairness as technology is integrated into legal systems. Therefore, as our judiciaries leap into this new age of technology, it is necessary to be open minded and to pay attention to aspects that may have been overlooked in designing the technology used in the courts.

Geopolitics

Dr. Mavedzenge urged African judiciaries to be cognizant of the geopolitical landscape, which affects cybersecurity. He warned of the inherent risks in adopting foreign technologies without due diligence and stressed the value of harnessing African expertise when engaging with international technology firms to safeguard against the misuse of technology that may serve external geopolitical interests.

SESSION 7:

AFRICA'S DIGITAL INNOVATION: SHOULD AFRICA INVEST IN CREATING ITS OWN CUSTOM BASED SOLUTIONS OR CONTINUE IMPORTING TECHNOLOGY FOR IMMEDIATE USE?

Moderator: Mr. Gianni Buquicchio, President Emeritus and Special Representative of the Venice Commission

Presentation by: Hon. Justice Prof. Ubena J. Agatho, Judge of the High Court of Tanzania, Commercial Division.

Discussants: Hon. Justice Luka Kimaru, Judge of the Court of Appeal, Kenya,
Dr. Jabir Kuwe Bakari, Chief Executive, Tanzania Communication Regulatory Authority (TCRA).

Introduction

The problems of African judiciaries are delays of court decisions, backlogs, lack of statistics, shortage of skilled staff, etc. The solution is digital technology innovation.

Examples of digital innovations in court technologies: Judiciary of Tanzania.

- JSDS
- TANZLII
- Advanced e-CMS
- AI driven transcription and translations system.

The advantages of home-grown technology solutions, include judicial independence, job creation, and boosts technology innovation to solve Africa's unique problems.

The advantages of importing technology for immediate use from developed countries:

- Quick fixes
- Access to highly advanced and modern technology solutions
- Some technology solutions are non-proprietary e.g. open access.

Dangers of importing technology solutions:

- Technology colonisation
- Threat to independence of the judiciary e.g. leaking/surveillance
- Ownership of IP and high cost of IP licensing
- Technology dependency
- Obsolescence and non-interoperability of technology solutions

Conclusion and way forward

- Invest in home-grown technology solutions
- Invest on staff basic computer skills and artificial intelligence literacy
- Establish digital technology incubators
- Borrow a leaf from SEACJF partner states and exchange of technical know how
- Own the intellectual property rights
- Do away with unnecessary steps in digital innovation to ensure speed justice.
- What is good for one country, may not be good for another.
- Beware that litigants may use the same digital innovation to predict judgments, necessitating forum shopping.
- In the end a successful adoption of court technologies requires a visionary judicial leadership, skilled intellectual technology personnel, computer literate staff, and enabling legal framework.
- Note: Automation of administration of justice means transformation of procedural rules, and judicial processes into computer codes or programmes e.g. when is a pleading said to have been filed? This is a complex problem with serious implications on the rights of people.

SESSION 8: EMERGING ISSUES IN AFRICA

Moderator: Hon. Justice Dr. Mumba Malila SC, Chief Justice of Zambia

Efficient dispensation of Justice: A pre-requisite for correctional reforms

Presented by: Mr. Tim Basong, Country Director (The Gambia), Justice Defenders

Mr. Tim Basong, is an accomplished figure in the field of criminal justice reform and currently serves as the Country Director for Justice Defenders in The Gambia, With over 15 years of experience in prison reform, Mr. Basong has been a consultant in various countries, including Nigeria, Ghana, Senegal, and the United Kingdom.

Mr. Basong began his presentation by providing insights into the organization he represents. Justice Defenders, a non-profit organization dedicated to prison reform, strives to “*engage and equip defenseless persons to become defenders of the defenseless*”. Their approach encompasses legal training, legal practice, and legal education. Justice Defenders equips incarcerated individuals and prison officers to become paralegals and lawyers, enabling them to provide legal services for themselves and others. They also deploy trained legal professionals to supervise the work of paralegals and lawyers within prisons, organizing free legal clinics and facilitating legal education programs. Their collaborations with renowned universities, such as the University of London, enables them to offer legal education through distance learning.

The efficient delivery of justice is undeniably a cornerstone of access to justice and the rule of law.

One significant point Mr. Basong raised was the paradoxical allocation of priorities in national development agendas. While justice and the rule of law are frequently identified as top

priorities, budgetary allocations for judiciaries are often neglected, a fact he found ironic in his consultations across different countries.

Mr. Basong stressed the importance of considering key elements in discussions about the efficient dispensation of justice, including timeliness, affordability, and fairness. He challenged the commonly used phrase "*Justice delayed is justice denied*" suggesting that in some cases "*Justice delayed, in some instances, could be justice denied*". Understanding the reasons behind delays and the constraints faced by judiciaries in ensuring efficient justice delivery is imperative.

To assess the efficiency of justice dispensation, Mr. Basong proposed that jurisdictions must ask several fundamental questions. "*Can the average citizen access the courts? Are court proceedings fair? Is justice affordable at a reasonable cost?*" Addressing these factors is crucial in building trust between the public and the institutions responsible for delivering justice, thereby preventing issues like "street justice."

Mr. Basong highlighted the critical connection between the efficient dispensation of justice and the success of correctional reforms and the alleviation of prison overcrowding. Drawing from his personal experience of being incarcerated for a year and six months under a dictatorship regime, he described the dire conditions he encountered. He was initially placed in a cell designed for 5 inmates but housed 45, lacking proper sanitation. Upon conviction, he was transferred to another overcrowded prison, where inmates were compelled to pay prison officials for a place to sleep, resulting in waiting periods of up to two weeks. Inmates resorted to sleeping in toilets, staying awake all night, and seizing the opportunity to rest during the one-hour daily release from their cells.

Mr. Basong referred to a study conducted by the United Nations Office on Drugs and Crime in February 2012, which identified the root causes of prison overcrowding, including the excessive use of pre-trial detention, case overload in courts, limited access to legal support for accused persons, harsh laws for certain offenses, and the criminalization of civil matters at police stations.

To address inefficiencies in justice dispensation and promote prison reform, Mr. Basong offered the following recommendations, which Namibia and other jurisdictions could consider:

- The implementation of jail delivery exercises, which involve bringing courts closer to prisons. For instance, Zambia has successfully moved its Supreme Court closer to specific jurisdictions to enhance affordability for incarcerated individuals seeking access to the court, leading to reduced prison congestion and case backlogs.
- Strengthening collaboration between judiciaries and civil society organizations to foster comprehensive reform efforts.
- The creation of judicial prison committees tasked with visiting prisons, studying conditions within correctional facilities, and reporting their findings to the Chief Justice. This information could then inform judicial strategies aimed at resolving systemic issues.
- The development of incremental sentencing guidelines and practice directions to ensure consistency and fairness in sentencing.
- The organization of periodic stakeholder roundtables to foster dialogue and cooperation among key actors in the criminal justice system.

In conclusion, Mr. Basong underscored that sustainable correctional reform can only succeed when built upon a foundation of efficient justice dispensation.

Perspectives of a judge on threats to judicial independence associated with judicial election dispute resolution

Presented by: Justice Matia Kawimbe, Constitutional Court Judge of Zambia

(Below is the verbatim presentation delivered by Justice Kawimbe during the session)

Introduction

1. I want to start by thanking the organisers of the conference for giving me an opportunity to share my thoughts with the Hon Chief Justices and the other judges of the superior courts in East and Southern Africa as well as invited. I serve as a judge in the Constitutional Court of Zambia and the views expressed in this presentation are entirely from my own perspective.

2. I have been asked to make a presentation on judicial independence which spoken to and discussed at many forums. It is a highly significant subject because it calls for the absence of external control in any form or restrictions, pressure, interference, or improper control by any person, body of persons, institutions or government agencies or authority on judicial officers in the performance of their adjudicative functions. Independence in this regard encompasses two principles, that is
 - i) The independence of the institution (the Judiciary) as a whole
 - ii) The judge personally.¹

3. Judicial independence is not only enshrined in public international law but in several national constitutions. In this regard, the Bangalore Principles of Judicial Conduct,

¹ Ferejohn, J. (1998). Independent judges, dependent judiciary: explaining judicial independence. *S. Cal. L. Rev.*, 72, 353.

endorsed at the 59th session of the United Nations Human Rights Commission Geneva in April 2003, state among others that:

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

4. A quick view of some of the constitutions in the region shows how the principle of judicial independence has been embodied. For instance: -

a) The Kenyan Constitution states in part that: In the exercise of judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority...

b) Article 9 of the Malawian Constitution provides that:

The judiciary shall have the responsibility of interpreting, protecting and enforcing this Constitution and all laws and in accordance with this Constitution in an independent and impartial manner with regard only to legally relevant facts and the prescriptions of law.

c) The Ugandan Constitution not only proscribes interference with the courts or judicial officers in the exercise of their jurisdiction, but also directs that all organs and agencies of the state should accord the courts the assistance required.²

d) The South Africa Constitution enacts that the judiciary is only answerable to the Constitution and the law. There is a further requirement in the Constitution that assistance should be provided by organs of state to protect the courts and

² Constitution of the Republic of Uganda <https://www.parliament.go.ug/documents/1240/constitution>

ensure impartiality, independence, dignity, accessibility, and effectiveness of the courts³.

e) The Zambian Constitution under Article 122 (1) provides that:

1. In the exercise of the judicial authority, the Judiciary shall be subject only to this Constitution and the law and not to the control or direction of a person or an authority.

- In addition, the Constitution prohibits persons from interfering with the performance of a judicial function by a judge or judicial officer. It calls on persons including those holding public office to protect the independence, dignity, and effectiveness of the Judiciary.

5. From the various constitutional provisions, the emphasis is that the independence of the judiciary and judges is sacrosanct. Further, judicial independence is central in enhancing the rule of law and separation of power in any nation. In terms of electoral justice, judicial independence becomes more critical because judges are overwhelmingly involved in highly litigious election disputes and need the protection provided by the principle.

Restatement of the importance of Separation and Balance of Powers

6. As has been shown thus far, an independent and impartial judiciary is a prerequisite in the implementation and protection of the concept of separation and balance of powers (SBOP). Judicial independence is also key for the purposes of providing accountability, checks and balances for the other arms of the government. SBOP is provided for and protected within the AU system and constitutions of most African states. Virtually all AU

³ The Constitution of the Republic of South Africa <https://www.gov.za/documents/constitution-republic-south-africa-1996-chapter-8-courts-and-administration-justice>

member states are parties to international standards⁴ that require the establishment and protection of independent and impartial judiciaries as a requirement to guaranteeing the right to fair trial and the rule of law.

7. If genuinely adhered to, the principle of SBOP can be the bedrock of thriving democracies and the rule of law. The reverse is terribly consequential in instances where adherence to the principle fails. This is because the judiciary in a given state may become “captured” or compromised in its capacity to independently and without fear, favour or prejudice to adjudicate disputes including those on elections, which can be very divisive in societies.

Africa’s progress in Democratisation

8. Moving on to democratization and the principle of judicial independence, the African Union has solid framework governing democratic elections. The framework aims at fostering a culture of good, democratic, and accountable governance on the continent. The AU principles on elections in Africa⁵ also stipulate unequivocally that “democratic elections are the basis of the authority of any representative government.”⁶

⁴ These include the United Nations (UN) Basic Principles on the Independence of the Judiciary," as adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1985. Article 14 of the International Covenant on Civil and Political Rights adopted in 1966 which provides that “All persons shall be equal before the Courts and tribunals. In the determination of any criminal charges against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” Articles 8 and 10 of the UN Universal Declaration on Human Rights adopted in 1948 state that every individual “is entitled to a fair and public hearing by an independent and impartial tribunal.”

⁵ AHG/Decl.1 (XXXVIII), 2002

⁶ Section II (1)

9. It is worth stating that, the AU Constitutive Act⁷ stipulates, as an objective and value of the AU, the need to “promote democratic principles and institutions, popular participation and good governance”⁸ as well as to “promote and protect human and peoples’ rights, according to the African Charter on Human and Peoples’ Rights⁹ and other relevant human rights instruments.”¹⁰ More specifically, the African Charter on Democracy, Elections and Governance¹¹ (ACDEG) sets out international standards of good governance and democracy in such areas as the rule of law¹², free and fair elections¹³, and condemning unconstitutional changes of government¹⁴.

Thus, courts have a duty to develop jurisprudence that upholds the African democratic standards when dealing with election disputes.

10. The context in which judicial election dispute resolution occurs and the threats to judicial independence
- i) Judges are increasingly on the front lines of protecting democracy

⁷ Organization of African Unity (OAU), Constitutive Act of the African Union, 1 July 2000. Entered into force on 26 May 2001.

⁸ Article 3 (g)

⁹ Available at: https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf

¹⁰ Such as the SADC principles and guidelines governing democratic elections.

¹¹ Came into force on February 15 2012. Accessible on: <https://au.int/en/treaties/african-charter-democracy-elections-and-governance>

¹² Chapter 4. Article 4

¹³ Chapter 7. Article 17

¹⁴ Chapter 8. Article 23.

Elections are highly litigious on the African continent and globally, leading to intense disputes over all parts of the electoral process and, in some cases, raising uncertain outcomes and unique challenges for judges. In some cases, lengthy, drawn-out disputes over electoral processes and outcomes raise questions about the credibility of the electoral process and the legitimacy of the winning party and candidates. As a result of this process, judges are increasingly placed on the front lines of protecting democracy. Because of the high level litigation of political disputes in the run up to, during and after elections, it can be said that elections have indeed become a threat multiplier to judicial independence.

ii) Judicialisation of politics

As some have argued, politics have increasingly become judicialised. Disputes that are purely of a political nature requiring political resolution are often referred to courts for judicial resolution. The outcome of judicialising politics is that the judiciary and judges may end up being politicised and this in itself becomes a unique threat multiplier to judicial independence.

iii) Election irregularities and malpractices

In a good number of elections on the continent, citizens and institutions have witnessed violence during election periods. Election campaigns are often fuelled by significant malpractices that include, politically motivated violence, abuse of public resources, disinformation and general information disorder. The main competitors in elections tend to adopt what looks like a notion of power as an end in itself and by any means or cost. This has resulted in high levels of polarisation during elections in Africa and beyond.

With elections being increasingly competitive coupled with tight margins between contestants, the role of the electoral judge is crucial in the pre-election and post election period to deter such violations. This contributes to a peaceful electoral process and increases the prospects for peaceful transfer of power following elections.

iv) Tight deadlines set by the law to resolve election disputes

Judges are expected and must be prepared to resolve these disputes within tight deadlines, consider evidence which may not be easily accessible to petitioners, often in very tense political environments. In some cases, election contestants who lose in elections are not prepared to concede defeat but would rather abuse court process by litigating in weak cases and creating conditions where their supporters place the blame for loss in elections on the judiciary. As a result, the judiciaries and judges have been brought under closer public scrutiny and often get attacked without basis.

v) Disinformation and information disorder

Judges have been subjected to smear campaigns and harassment on social media platforms, all of which make it difficult for them to execute their constitutional mandate during the hearing of election disputes. The attacks are orchestrated by various players, including political participants. As a result, the industry of fake news and significant information disorder is growing and this negatively impacts judicial officers. In addition, with the advent of artificial intelligence (AI) and broad access to it by the public, a new threat multiplier to judges in the digital space has been created. A good example here would be 'Deep Fake' videos and news¹⁵.

This has been acknowledged at a global level and the United Nations Secretary-General launching his policy brief¹⁶ on information integrity on digital platforms, called for guardrails to address the “clear and present global threat” of online hate speech, mis- and disinformation. He also stressed the need for coordinated international action

¹⁵ Deepfakes are synthetic media that have been digitally manipulated to replace one person's likeness convincingly with that of another. They involve manipulation of facial appearance through deep generative methods. See: <https://www.techtarget.com/whatis/definition/deepfake>

¹⁶ Our Common Agenda - Policy Brief 8: Information Integrity on Digital Platforms June 2023. Accessible on: <https://indonesia.un.org/en/236014-our-common-agenda-policy-brief-8-information-integrity-digital-platforms>

to make the digital space safer and more inclusive while vigorously protecting human rights.

The policy brief outlines potential principles for a code of conduct that will help to guide Member States, the digital platforms and other stakeholders in their efforts to make the digital space more inclusive and safe for all. Hopefully, the policy brief will also provide a gold standard for guiding action to strengthen information integrity.

v) Elections must meet Constitutional Standards and Centre the Rights of the Voter

Every democratic society must grant its populace the freedom and mechanisms to participate in the country's governance. As such the jurisprudence developed by courts must be clear at all times and the centrality of the voter in elections should be upheld.

For elections to meet constitutional, national, regional and international standards, they must be judged not only by the open and transparent manner in which they are conducted in. Elections must also be judged by the credibility and independence of the electoral management bodies and the judiciaries. The latter being on the conduct and management of elections and courts on their ability to resolve election disputes.

Focusing more on the judiciaries, there is need to ensure that courts do not substitute themselves with the will of the electorate during the process of resolving election disputes. It must always be clear to the electorate that the candidates who get to be deployed to public office after judicial intervention are those elected by the voters and not necessarily those who are preferred by the judiciary or judges. Hence, a threat to look out for.

vi) Judiciary as custodian of country's constitution

The Judiciary has an essential role in promoting free and fair elections in ones country. As the ultimate custodians of a country's Constitution, courts must always uphold voters' rights. When called upon to adjudicate electoral disputes, judges should be free to act on the law and adjudicate disputes based only on the facts and legal merits, and not on political considerations. This is crucial for fostering judicial independence and impartiality.

viii) Need for improving Conditions of Service and to Avoid Discretionary Allowances

In some jurisdictions there have been complaints about payments to judges by the executive that are not provided for in the statutory conditions of service for judges. While the intention may be good in terms of making judges comfortable, this can be misunderstood, misrepresented or taken advantage of by political actors to accuse the judiciary of being coopted by the executive. It is important therefore, that security of tenure and conditions of service are improved long before elections are held to avoid unnecessary attacks on the judiciary.

ix) What happens when elections are not free and fair in Africa?

Recent coups in Africa have shown the fragility of institutions and important democratic backsliding in some regions. Successful military coups d'état have happened in Gabon, Niger, Mali, Chad, Guinea, Burkina Faso and Sudan, and attempted coups in Madagascar, Central African Republic, Guinea Bissau. This brings into sharp focus the issue whether elections in Africa are meeting the required minimum standards of integrity, fairness and credibility that are prerequisites for key election stakeholders to accept election outcomes. Also, the issue extends to the level of trust that citizens may or not have in the judiciary as an independent arbiter.

11) Conclusion

In concluding, I have attempted to show that courts provide peaceful means in resolving hotly contested election disputes. In so doing, there is need to protect their integrity and dignity throughout the election cycle. Courts and judges equally have a duty to ensure that there is no perception or actual conflict of interest or threats to their impartiality and independence. The duty becomes more prominent where presidential elections are involved because of the tremendous pressure exerted on the courts on account of the challenges that lie at every level of the process, outcome, or any aspect of the election.

Recommendation

I wish to recommend that the Hon. Chief Justices should embrace judicial electoral observation when general elections are held in their jurisdictions. This type of electoral observation is not meant to judge the quality judgments but rather to observe whether the due process of the law has been followed by the national courts. The observation

is also meant to lend credence to the work that would be done by the courts during that period in terms of complying with standards in the national constitutions and international principles on the due process of the law.

So far, a mission of such nature was undertaken by the Africa Judges and Jurists Forum (AJJF) and the ICJ – Kenya during the 2022 Kenya Presidential petition hearing. A high level panel of judicial elders were sent to observe elections as a way of supporting the Kenyan judiciary. I therefore have every belief that this concept can be replicated in the rest of the region as a useful tool for protecting the independence of the judiciary and the integrity of courts during the resolution of election disputes.

NAMIBIA TAKE AWAY

- Continuous training for judicial officers is key.
- Unity among judges must be encouraged.
- Measures should be put in place to curb corruption in the judiciary. The code of conduct alone may not be sufficient.
- Judges tenure of office must be secure in order to shield them from outside influence.
- Late judgements is a threat to judicial independence.
- Digital transformation, although new to the judiciary - is the future.

CONTACTS TO REMEMBER

NAME OF ORGANISATION:	WEBSITE:	EMAIL ADDRESS:
SEACJF	www.sacjforum.org	secretariat@sacjforum.org
Judiciary of Tanzania	www.judiciary.go.tz	info@judiciary.go.tz
Almawave	www.almawave.com	info@almawave.it.
Justice Defenders	Justice-defenders.org	support@justice-defenders.org