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Digitisation of Legal Processes and Its Impact on the Right of Access to Justice in Zimbabwe

TATENDA MUSHANGURI[1] AND NOAH MARINGE[2]

Abstract

Like many jurisdictions, Zimbabwe has adopted digitisation of legal processes. While the concept is progressive and modern, it limits the right of access to justice that is protected by Section 69 of the Zimbabwean Constitution. This article explains the concept of access to justice and its origins. It then brings to light various aspects of digitisation that limit the right of access to justice in Zimbabwe. The article also examines different international instruments ratified by Zimbabwe that promote the right of access to justice. Furthermore, it shows the developments that have been made by jurisdictions such as South Africa, Kenya, Russia, and China pertaining to digitisation of their legal processes. The main aim of showing the developments that have been made by the aforementioned jurisdictions is to look at opportunities that Zimbabwe has by drawing lessons from their different electronic case management systems. Also, regardless of the strides that the selected jurisdictions have made in accessing justice through digitisation of legal processes, they still face challenges that Zimbabwe is facing or might potentially face. Therefore, in the final part, recommendations are made on how the right of access to justice may be realised in Zimbabwe considering digitisation of legal processes.

Keywords: information communication technology; electronic case management system; case management; constitutional framework; Kenya; China; Russia

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INTRODUCTION

All persons in a society ought to receive justice and equal protection of the law. It has been argued time and again that the law is not an end but a means to an end-the end being justice (Von Jhering, 1913). Justice can be defined as fairness, not in the abstract, but that that can be seen. Human beings, by virtue of their rational nature, expect a certain standard of treatment in society regardless of their standing. People have an expectation of the best treatment when it comes to the law (Malaba, 2022). The best treatment in this regard would be to access justice. The right of access to justice, like any other right, implies that there is a party that must ensure that the right is realised. Justice is perpetual in nature and should be accessed at any point. However, not everyone is able to always access justice due to the advent of the digitisation of legal processes in Zimbabwe. Digitisation of legal processes is twofold. Firstly, it involves virtual court sittings in that all or any of the parties to a civil suit may (by mutual agreement) participate in sittings of the Court by electronic means. It also extends to criminal matters whereby accused persons may not be required to physically attend court proceedings but may do so from their places of incarceration. The communication during the virtual sittings is using any electronic or other means of communication by that all the parties to the proceedings at the sitting can hear and be heard at the same time without being physically present together. The second aspect of digitisation of legal processes is that it allows for electronic filing of court processes, electronic authentication of documents and electronic access to documents that are filed with the Registrars of the superior courts or the clerks of the inferior courts. While digitisation of legal processes has been welcomed for its own perks, it undoubtedly infringes on the right of access to justice in some instances. The gist of this article is to illuminate the impact that digitisation of legal processes in Zimbabwe has had on the right of access to justice. Furthermore, the paper then makes recommendations on how the challenges may be addressed to ensure an interrupted enjoyment of the right.

THE CONCEPT OF ACCESS TO JUSTICE

The Justinians defined justice as a constant and perpetual quality or disposition to render to each his or her due (Parnami, 2019). This view shows that justice has to do with how individuals treat each other and that justice is a matter of claim from another. Access to justice is a basic

principle of the rule of law. In the absence of access to justice, people are unable to have their voices heard, exercise their rights, challenge discrimination or hold decision-makers accountable (United Nations, 2019). One might regard it as the crux of human existence and hence the need for every aspect of their livelihoods to be regulated by the law.

INTERNATIONAL AND REGIONAL STANDARDS

Access to justice is enshrined in international instruments that have been signed and ratified by Zimbabwe. Such instruments include the Universal Declaration of Human Rights (UDHR) (1948), the International Covenant on Civil and Political Rights (ICCPR) (1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) that are usually collectively referred to as the 'International Bill of Rights' (IBR). Just like the Constitution of the Republic of Zimbabwe Amendment (No.20) 2013 hereinafter referred to as "the Constitution" , there is no use of the phrase 'access to justice' in the IBR. However, the wording of the articles shows the characteristics of the concept that include equality before the law and equal protection of the law (UDHR, art 7), the right not to be subjected to arbitrary arrest, detention or exile (UDHR, art 9; ICESCR, art 9, 14 & 15), access to courts and the right to a fair trial (UDHR, art 10; ICESCR, art 2) and the right to an effective remedy (UDHR, art 8). In this section, regional instruments and guidelines that provide for access to justice are outlined.

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) (1948)

This instrument is very key in that it was the first international human rights document to be agreed on and adopted by nations. It provides that everyone has the right as a person before the law (UDHR, art 6). It further provides that all are equal before the law and entitled without any discrimination to equal protection of the law (*ibid.*). The UDHR goes on to guarantee access to courts by stating that everyone is entitled in full equality to a 'fair and public hearing by an independent and impartial tribunal.' All these articles are aimed at promoting the right of access to justice. It is evident in Section 69 of the Zimbabwean Constitution that these provisions of the UDHR have been adopted and incorporated therein.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) (1966)

The ICCPR, although drawn from the UDHR, is a highly treasured instrument as it provides for the first generation of rights that are individualistic in nature and are an essential component of democracy. Furthermore, it is the main instrument that provides for all known civil and political rights as of date. It is the instrument that may be used to fill in the gaps where other instruments providing for civil and political rights may fall short. Regarding access to justice, Article 2(1) of the ICCPR stipulates that:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The provisions of Article 2 (1), clearly show that equality before the law that is a component of access to justice may not be denied under any circumstance. The use of the phrase, "…or other status" points to the fact that when it comes to the issue of access to justice, the concept of 'fair discrimination' (that is sometimes used to justify a limitation of certain rights) cannot be applied. It further shows that access to justice is a first generation right and therefore perpetual in nature.

According to its Article 14(1), every person is guaranteed of equality before the law, to be presumed innocent, a fair and public hearing by a competent, independent and impartial tribunal established by law, trial without delay, time to prepare his case, to be informed of the right to legal representation, a free interpreter, and the right not to testify against one's self, or plead guilty. All these essential elements of what constitutes a fair trial promote the right of access to justice.

AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS (ACHPR) (1961)

Article 7 secures the right to be presumed innocent, the right to defence, and the right to be tried within a reasonable time. However, scholars have observed that it seems to be vague as it does not state what counts as a reasonable time, or what circumstances to take into account when

determining a reasonable time (Nkomo and Maziwisa, 2022). However, the African Charter has been criticised for failing to properly protect the right to access to justice in particular with reference to the right to a fair trial (*ibid*.). One may agree with this view, though it must be observed that this instrument is much older than the ICCPR that only came into existence in 1966. It might be possible that the African states overlooked the right to a fair trial that is an essential component of access to justice. It may be further stated that with regard to digitisation of legal processes, it fails to fully protect persons when it comes to the right to a fair trial.

DECLARATIONS AND GUIDELINES

Declarations and guidelines are not legally binding and are only reflective of the moral commitment of the state parties and provide a direction for future commitments. This is contrary to treaties that create obligations for state parties to abide by them.

DECLARATION OF THE HIGH-LEVEL MEETING OF THE GENERAL ASSEMBLY ON THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS, 2012

The Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels hereinafter referred to as the "Declaration on the Rule of Law" was passed in 2012 through a United Nations Resolution (United Nations, 2012). Its article 14 is worded as follows:

> We emphasise the right of equal *access to justice for all*, including members of vulnerable groups, and the *importance of awareness-raising concerning legal rights*, and in this regard, we commit to *taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all*, including legal aid. (emphasis added).

One would argue that the aforementioned provision has three important dimensions regarding access to justice. These include equality, legal rights education and the obligation of Member States to take non-discriminatory measures required towards the realisation of the right. It can be noted that when discussing the concept of access to justice, the dimension of legal rights education is often overlooked. Firstly, a person

who is entitled to a right cannot enforce it unless they are aware of its existence. Secondly, the person who has an entitlement to a right ought to know how to seek enforcement against another. It is therefore important that persons within the Zimbabwean jurisdiction should be educated on how to use digital legal processes to access justice.

As highlighted in the preceding paragraph, one of the dimensions of access to justice as identified in Article 14 of the Declaration on the Rule of Law is to take non-discriminatory measures towards realising access to justice. While digitisation of legal processes might be seemingly effective, it might be discriminatory to an extent. Questions of accessibility, affordability, cooperation of prison officers and digital literacy might bring to light that digitisation of legal processes infringes on the right of access to justice and negatively impacts on the rule of law.

PRINCIPLES AND GUIDELINES ON THE RIGHT TO A FAIR TRIAL AND LEGAL ASSISTANCE IN AFRICA, 2003

These are also referred to as the "African Principles". In short, they provide for general principles and guidelines on the right to a fair trial and legal assistance under the African Charter. They cover a number of issues that affect the right to access to justice such as the rights applicable to all legal proceedings, judicial training, right to an effective remedy, court record and public access, amongst other issues (African Principles, parts a-d). These principles are important as the preamble is clear that they ought to be adopted by all State Parties and incorporated into their domestic legislation.

THE CONSTITUTIONAL FRAMEWORK IN ZIMBABWE

The right of access to justice is enshrined under Section 69 of the Constitution. Scholars have observed that the right of access to courts is constitutionally protected as part of the broad right to a fair hearing or trial that is entrenched in Section 69 of the Constitution (Moyo, 2018). It denotes that all persons should have inherent access to the courts and tribunals, including access to effective remedies and reparations (*ibid.*). Access to justice, though, not specifically stated using that phrase, is a

concept entrenched in the Zimbabwean Declaration of Rights (Chapter 4 of the Constitution). The elements that form access to justice such as the right to a fair and public trial, the right to a speedy and fair trial before and impartial court, the right of access to courts and the right to legal representation are all evident in Section 69 of the Constitution.

DIGITISATION OF LEGAL PROCESSES IN ZIMBABWE

Regardless of the recent implementation of digitisation in Zimbabwe, it was first considered in 2016 when the Judicial Laws Amendment (Ease of Settling Commercial and Other Disputes) Bill, 2016 was gazetted and subsequently passed into law in 2017 as an Act of Parliament. This Act amended Section 47 of the High Court Act, inserted a new Section in the Magistrates Court Act, and the Small Claims Courts Act. Although digitisation of legal processes had already been adopted, its utilisation was frowned upon. However, the advent of the Covid-19 pandemic has been a catalyst in the use of digital legal processes in Zimbabwe. Covid-19 has undeniably brought about numerous changes in that human beings interact. It is well known that one of the precautions against the spread of Covid-19 is the minimisation of face-to-face interactions. One may argue that had it not been for the Covid-19 pandemic the digitisation of legal processes would have been used at a much later stage. It was during the peak of the Covid-19 pandemic that the Zimbabwean government made regulations that restricted the public from physically attending court proceedings and limited court attendance to the litigants only. Subsequently, as the Covid-19 regulations remained in place, the Zimbabwean government then saw the need to digitise both criminal and civil legal processes.

DIGITISATION OF LEGAL PROCESSES IN SELECTED JURISDICTIONS

This part examines the effect of digitisation of legal processes in Kenya, South Africa, China and Russia. The use of technology is pervasive and knows no borders. Thus, these selected countries have been considered on the basis that they embraced technology in their justice delivery systems ahead of Zimbabwe. Experiences in these jurisdictions can help in shaping the use of technology in the justice delivery system in Zimbabwe.

CHINA

According to Tashea (2021), no country has done more to digitalize its justice system than China. Through its Smart Courts Initiative (SPC) and the creation of fully virtual "internet courts", China's Supreme People's Court has overseen the development of a central data centre that powers the justice system. It collects extensive court data to track consistency in sentencing and judgment outcomes and stores recordings of hearings. The SPC also brought to the courts a chatbot to assist judges, facial recognition and verification of litigants' identity and a blockchain-based system to authenticate evidence. The "judge e-assistant" platform is defined as an "intelligent auxiliary case handling platform based on the actual conditions of courts in Jiangxi Province" (*ibid.*). Its primary purpose is to help judges to prepare and adjudicate cases. It has been indicated that this system helps to reduce the workload of judges, empowers them and improves the quality and efficiency of trials (Papagianneas, 2021**).** The "judge e-assistant" platform uses text recognition, image recognition and analysis to automatically index and organize scanned litigation materials. The system can also cross-reference and analyse the plaintiffs and defendants' key information with other databases to check for overlapping or serial litigation (Tashea, 2021).

Furthermore, it can generate relevant legal documents through text recognition, semantic analysis, and summary of other materials, such as trial hearing transcripts, first-instance judgments, and allows judges to generate procedural documents with one click, that are then automatically generated and stamped (Papagianneas, 2021). The platform also has a similar-case push system. It can analyse case information in-depth and actively suggest laws, regulations, guiding cases, similar cases, and books and periodicals to judges to provide in-depth guidance (*ibid.*). Finally, it records all decisions made at each procedural step of the case proceedings. This can then be used for management and supervision purposes (*ibid.*).

Seemingly, the most successful and promising part of China's recent move towards e-justice are internet courts, that conduct their

proceedings online and focus on online civil disputes. They ensure justice and efficiency by improving judicial credibility through the use of the internet, cloud computing, big data and artificial intelligence (Guo, 2021). Internet courts are designed to handle online contractual disputes over sale of goods, services, and financial loans; online copyright disputes; disputes over internet domain names; disputes over the use of the internet to infringe on others' personal or property rights; disputes over product liability as a result of online shopping; internet-related public interest lawsuits brought by prosecutors; and administrative litigations arising out of internet management by the government (Tashea, 2021).

As a rule, the entire litigation process in internet courts is conducted online, including the service of legal documents, the presentation of evidence and the actual trial (Guo, 2021). Most of the evidence in these cases is electronic data and stored on the internet (Papagianneas, 2021). Notably, people may be less inclined to truthfulness in the online environment, where a cross-examination feels more like an online quarrel with 'netizens'. The online format also hinders the judge's ability to prove the authenticity of certain evidence (Wang, 2021). Trial judges behind a screen naturally have much less control over their proceedings (Papagianneas, 2021).

The Supreme People's Court in China established a multifunctional, inter-court, online platform that connects every courtroom in China. A total of 3,520 courts and 9,238 courtrooms are connected (Wang, 2021). This inter-court network allows all judges in China to handle cases, work, study, and communicate on the same online platform in real time and it facilitates supervision of lower courts by higher courts (*ibid.*). With a simple click of a mouse, courts can live stream their proceedings and more than two million trials have been live streamed (Xinuanet, 2018). In addition to the inter-court network, the SPC has also launched several gateway websites for the public. The websites offer the parties and their lawyers online access to information on the trial process (for example, transcripts, recordings, case files, and legal documents); broadcasts live trials from across the country for viewing by the public; and "publishes

enforcement procedures and a list of individuals who have defaulted on their obligations (Tashea, 2021). These websites are viewed by the SPC as an important means for judicial transparency and as vital for the general public's access to the judiciary (*ibid.*).

The automatic notification system for similar cases was launched in January 2018 in response to what the Supreme People's Court regarded as a longstanding problem, that is, lawsuits with similar case facts being judged in different ways (Wang, 2021). Although previous cases lack a binding effect on future judicial rulings because China is not a case law-based country, the Supreme People's Court recognized a need for standardization (*ibid.*). In a 2017 opinion, the court called for a mechanism that could ensure more consistency across judgments "on the basis of improving the mechanism of referring to similar cases and judging guidance, the People's Courts at all levels shall establish a mandatory search mechanism for similar and related cases, to make sure similar cases are judged by the same standard and the law applied uniformly" (Papagianneas, 2021). This notification system allows for both manual searches and auto-notifications of similar cases (*ibid.*). The Supreme People's Court anticipates that it will help Chinese judges make judgments, standardize their rulings, foster the uniform application of the law and further improve the quality of trials (*ibid.*).

Thus, the Chinese ECMS is quite advanced as indicated above. Digitisation of courts provides technical support for judicial justice and credibility. It also improves judicial efficiency (Peng and Xiang, 2019). On the other hand, discrimination regarding people who can actually file cases has raised challenges with the e-filing system in China. There is also a need to harmonise different Chinese laws to make the ECMS smoother (*ibid.*).

RUSSIA

The Russian e-justice system includes two key units. The first one is a secured videoconference net, connecting all courts of the Russian Federation with direct access to the internet through overt streaming video broadcasting channels, such as popular video hosting. The second one is a group of portals of *GAS "Pravosudie"* on the internet providing

access for any person anywhere in the world with up-to-date information of the work of federal courts (Muravyeva and Gurkov, 2021). The key principle of this portal's functioning is to ensure transparency of justice, both in respect to procedures and access to the judicial courts in controversial cases. The system of commercial arbitration courts also has its own videoconference net and portal—*Moi Arbitr* (My Arbitrator). Both systems have changed ways and practices of administering justice and access to justice in the Russian Federation (*ibid.*).

In terms of administering justice, the e-justice system in Russia allows for effective and cost-efficient notification of the date, time, and place of court hearings to all parties of particular proceedings (Kharitonova, 2021). There is a mailing system through e-mail on the portals of the *GAS "Pravosudie," Moi Arbitr*, and *Gosuslugi* (*ibid.*). One can download mobile applications supporting push notifications for new events and documents (*ibid.*). Experts note that the wide-scale adoption of these information technologies into work practices of the justice system has another advantage, that is, it offers wide opportunities for court statistics to be automated. Hence, there is early detection of court red tape and other procedural violations (Muravyeva and Gurkov, 2021). When every judge in Russia is under restrictions to provide procedural documents in due time and up-to-date information on cases available on servers of the system, the court procedure and administration becomes more responsible and performance discipline sustainable on the proper level (Kharitonova, 2021). With electronic access to courtrooms both in civil and criminal justice, Russian citizens could easily launch an e-complaint via already-existing systems *Gosuslugi* and *GAS "Pravosudie"* (*ibid.*).

The most crucial improvement associated with the introduction of e-justice in the eyes of legal professionals is that an automated process of assigning cases increases judicial independence and transparency (Muravyeva and Gurkov, 2021). However, the consensus is that while artificial intelligence (AI)-based technologies are a positive improvement, they cannot substitute a human legal professional. At the same time, digital economies and legal provisions for online transactions have

demonstrated that in the processes that could be automated using algorithms, the usage of AI-based legal technologies is warranted (Kharitonova, 2021). The Russian government has been quite apt to push for legislation that supports commercial and business digital environments by introducing such notions as "digital rights" into its civil legislation and allowing "smart contracts," that is essentially an automated service for the execution of a legal contract (Muravyeva and Gurkov, 2021).

KENYA

The Constitution of Kenya, 2010 enshrines the right of access to justice and mandates the State to ensure that this right is enjoyed by all persons (Constitution of Kenya, art 48). The use of information technology can enhance the right of access to justice by ensuring that citizens have increased access to information necessary for effective and efficient decision-making on legal issues. The Judicial Service Act requires the Judiciary Service Commission to apply modern technology in their operations (Section 3(1)). The Act further requires the Judiciary in the exercise of the powers, or the performance of the functions conferred by the Act to have the technical competence to ensure that the requirements of the judicial process are fulfilled (*ibid.*). The Magistrates' Courts Act allows the Chief Justice to make rules for the effective organization and administration of the Magistrates' Court (Section 20(1)). Such rules may provide for the automation of court records, case management, protection and sharing of court information and the use of Information Communication Technology (ICT) (*ibid.*). There are also various pieces of legislation that govern the ICT sector in Kenya such as the Kenya Information and Communication Act (1998) that provides for the current framework for regulating the communication sector in Kenya.
For a long time, the Kenyan judiciary system faced various challenges that impeded access to justice, and it included poor case and record management, underdeveloped and insufficient ICT capacity and inadequate research material (Kagucia, 2015). To counter these challenges, the judiciary saw the need to incorporate ICT and the digitisation of court processes to improve access to justice.

CASE MANAGEMENT SYSTEM IN KENYA

The Judiciary adopted an Electronic Case Management System (ECMS) that can be traced back to the Final Report on the Task Force on Judicial Reforms that was released in 2010 (Kagucia, 2015). The introduction of the ECMS was motivated by delays in finalizing cases, corruption and missing court files (*ibid.)*. The ECMS is tailored and built specifically for the Judiciary and is available for use in all the divisions of the court including the Supreme Court, Court of Appeal, High Court and Subordinate Courts (Kenya Law, 2020). The ECMS is an interaction system that allows for any party in litigation to have access to e-filing of documents, digital display devices, real time transcript services, video and audio conferencing, digital import devices and computers in court (*ibid.*).

As a first step, a case-flow management system was introduced with the purpose of maintaining information of cases such as dates, court proceedings and case law. The system provides a powerful search engine that is available on the internet. The public have access to the website and it is able to track cases (Kagucia, 2015). The system was developed for all law enforcement agencies and appellate courts. CMS allows courts to accept filings and provide access to file documents over the Internet CMS is designed to better use, manage, consolidate, share, and protect case-related information with the facility to immediately update dockets and make them available to users, file pleadings electronically with the court, and download documents and print them directly from the court system. The first telepresence link was established between the Court of Appeal in Nairobi and its sub-registry in Mombasa. Video cameras and screens were installed in specially refurbished sound-proofed rooms in Mombasa and Nairobi law courts (*ibid.*). This facility enables parties who are in Mombasa to have their cases heard by the Court of Appeal judges sitting in Nairobi through telepresence (*ibid.*). This reduces the cost of litigation and also facilitates speedy access to justice as parties will not have to travel to Nairobi when the Court of Appeal is not in session in Mombasa. This also reduces the costs incurred in transporting remandees to court daily (Njuguna, 2021).

Another novel introduction was that the text creation, storage and retrieval are done electronically through the use of computers while hard copies of the files are scanned and saved electronically (*ibid.*). The recording of the proceedings is done electronically. This is done through voice recognition technology that would free the judges from the tedious and time-consuming task of manually recording verbatim the evidence and arguments during trial (*ibid.*). In addition, this addresses the perennial problem of disorganized archival and storage paper records.

The ECMS system that was introduced in Kenya has presented a new dimension of challenges. Firstly, there are serious challenges with regard to access to computers, adequate training and internet access (Juma, 2020). In addition, public awareness of the existence and use of the ECMS is still lacking (Maseh and Mutula, 2016). Despite such misgivings, the ECMS has enhanced service delivery in Kenya by eliminating travelling and other costs associated with physical service of documents (Juma, 2020). It has also promoted accountability thereby reducing fraud and corruption. In addition, it has expedited the transmission of judgments from courts to the parties thereby serving the court's time (*ibid.*).

SOUTH AFRICA

The application of the ECMS in South Africa can be derived from the Electronic Communications and Transactions Act 25 of 2002 (ECT Act). South African courts have recognised the application of e-technology in matters. For instance, in the case of *CMC Woodworking Machinery (Pty) Ltd v Odendaal Kitchens* 2012 (5) SA 604 (KZD), the court allowed the service of divorce summons through Facebook. Furthermore, there are ongoing plans by the Department of Justice and Correctional Services to implement an integrated justice system that seeks to augment the efficiency and effectiveness of the criminal justice system by increasing the probability of successful investigation, prosecution, punishment for priority crimes and, ultimately, rehabilitation of offenders (Businesstech, 2022). The integrated justice system focuses on four key digital initiatives that include the Criminal Justice System e-Documents and Forms; Court Audio Visual Solution for case participants (phase two); e-Scheduling and Messaging for Courts; and Integrated Bail Payment

Processing and Release Management. The Criminal Justice System e-Documents and Forms is an initiative that focuses on reviewing processes to eliminate forms that are made redundant by the electronic exchange of information among Criminal Justice System departments and the digitisation of all documents and certificates that remain necessary. The Court Audio Visual Solution for case participants is a videoconferencing and video-ID verification facility that is used for witness/victim interviews and testimony in cases where direct contact is not feasible or very expensive, and in cases where expert witnesses are required in court. In cases where the public cannot afford the cost of data or does not have the smart devices needed to connect to the Court Dial-in facility, these services are made available at local government offices for use based on the arrangement. The E-Scheduling and Messaging for Courts is an information management and sharing system that allows the tracking of court dates, court process start times, and the arrival and checking-in of witnesses, victims, the accused, defence lawyers and prosecutors. This system facilitates the scheduling and communication of court decisions (e.g., postponements and new dates). The Integrated Bail Payment Processing and Release Management enable incarcerated populations through automated pre-trial release services including electronic bail, fine and fees payment. The system assists the incarcerated individual to access his or her own cash accounts and credit, or the cash and credit of friends, family and associates to effectuate a bail payment anywhere (*ibid.*).

As part of the implementation plan, the Judge President of the Gauteng Division of the High Court issued the Practice Directive 1 of 2020 that effectively introduced an electronic case management and litigation system known as the CaseLines (Sedutla, 2020). The system allows for the electronic uploading of documents that include pleadings and the presentation of cases. The Practice Directive bans the filing of physical documents in all cases that require them to be uploaded on the CaseLines. Prior to the introduction of the electronic case management system, the Judge President had noted the disappearance of files and other instances of fraud (*ibid.*).

However, the Gauteng High Court Practice Directive 1 of 2020 has been criticised on the basis that the CaseLines system does not provide for the protection of litigants' personal data that is included in pleadings (Mabeka, 2021). Such a gap has the potential to violate key provisions of the Protection of Personal Information Act 4 of 2013 (*ibid.*). One of the technical issues that have been raised relates to internet accessibility by small law firms and unrepresented litigants. It is difficult for some to access justice under situations where the court insists that proceedings should be conducted online (Africa Judges and Jurists Forum, 2021).

What is clear from the above analysis is that South Africa is still in the process of implementing the electronic case management system. However, the introduction of the system has ensured that court documents are accessible to the general populace. This is because South Africa has a comprehensive website that provides relevant and current information on court processes and products (*ibid.*).

CONCLUSION AND RECOMMENDATIONS

In summation it can be noted that although digitisation of legal processes is a welcome and important development of the Zimbabwe's ECMS, it may limit the right of access to justice if not properly implemented. Zimbabwe may draw some lessons from the strides that have been made in other jurisdictions that have been discussed above. If Zimbabwe implements ideas from other jurisdictions, it would improve the right of access to justice as protected in Section 69 of the Constitution and perhaps the ultimate realisation of the right.

In the light of the above discussion and conclusion, the following recommendations for Zimbabwean judiciary's ECMS are proffered. It is hoped that their adoption will improve its effectiveness in promoting access to justice in Zimbabwe. The recommendations take into account experiences in the other jurisdictions that have been discussed above.

a. There is need for continuous consultations with stakeholders on their wider experiences with regards to the implementation of the ECMS.

b. Zimbabwe should provide adequate training to all court officials and relevant stakeholders so that they have sufficient digital skills to enable them to meaningfully interact with digital assets and to be comfortable with the digital transformation of court processes.
c. There is need to conduct security and privacy audits of current digital assets and digitised court records to ensure that information already in digital format is secure.
d. To avail privacy policies for users of court data, to be applied in the case of virtual courts, case management systems and e-filing systems to ensure that individual persons' right to privacy is always protected.
e. The legislature must continue to update and harmonise laws that regularise the use of digital technologies such as virtual courts and electronic filing of court documents.

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