

Digitalization, Fragmentation, and Justice in Nigeria

Olufunmilayo B. Arewa, Ayodeji O. Fakolade

A. Introduction: Digitalization and Fragmentation in African Legal Systems

Countries in Africa are experiencing a digital revolution that has expanded access to technological devices, including mobile phones, and a broad range of software applications and services. New and existing technologies are evident across a broad range of sectors, including in agriculture, healthcare, education, financial services, and entertainment, for example. It is likely that this digital revolution is being accelerated by Africa's large population of young people who are relatively quick learners and adopters of technology.¹ Digitalization in African contexts occurs in contexts shaped by a legacy of colonialism, exclusion, and societal divides.² Language is also a critical factor shaping both technology access and participation,³ as well as effective participation in varied legal contexts.⁴

Since the last half of the twentieth century, a shift to the digital has occurred and shaped the business, economic, social, and cultural landscape in much of the world. For businesses, the digital economy has led to a paradigm shift in sources of value. During this digital era, intangibles such as intellectual property have become a core source of economic growth and business value on a global scale.

¹ The United Nations has stated that Africa has the youngest population in the world and that 70 % of people in Sub-Saharan Africa are under 30 years old. *United Nations*, Young People's Potential, the Key to Africa's Sustainable Development, available at <https://www.un.org/ohrrls/news/young-people%E2%80%99S-potential-key-africa%E2%80%99s-sustainable-development>. The last access for all web addresses referenced in this chapter was on 27 October 2022. *Egboboh*, Why investment in tech, innovation should matter to Nigeria, available at <https://businessday.ng/amp/business-economy/article/why-investment-in-tech-innovation-should-matter-to-nigeria/>.

² *Arewa*, *Disrupting Africa: Technology, Law, and Development*, 2021.

³ *Schelenz/Schopp*, *IJDS* 2018, Vol. 9 (4), 1412 (1417).

⁴ *Arewa* (Fn. 2).

Although the use of such resources in business contexts is certainly not new, their exploitation in the digital era is remarkable both in scope and intensity.

The shift to the digital in law has long been evident, with uneven movement in different areas. Digitalization has fundamentally impacted life, leading to new types of evidence and activities and new causes of action.⁵ The advent of the digital has led at times to a mismatch between laws and regulations that must now apply to activities and technologies that were not contemplated or perhaps even conceivable at the time of adoption of such laws and regulations. This chapter will focus on the impact of digitalization of the law, particularly as digitalization relates to the administration of justice and access to justice in Nigeria and other countries in Africa.

Fragmentation has been a key feature of the digitalization of law and is evident in uneven implementation of legal digitalization initiatives. This fragmentation is apparent in varied areas of the law, legal practice, and legal administration that may be targets of digitalization efforts. Fragmentation has also had an impact on users of law and legal resources in an increasingly digitized legal universe. Fragmentation may also have a temporal element, which has meant that past design choices may have implications for future configurations. The reality of fragmentation may also have implications for users, particularly non-professional ones, who typically must confront a digitized legal world with potentially multiple interfaces and applications required for access. In many cases, these applications and interfaces may not have developed under an overarching plan but rather were developed sequentially and not always with significant attention to questions of interoperability and useability.

Fragmentation is a key issue in post-colonial legal contexts in Nigeria and other countries in Africa. Colonial legal frameworks were implemented in an uneven manner, often with inadequate conflict of law principles.⁶ Patterns of cut-and-paste borrowing, which have been prominent during and after the formal end of colonialism, have contributed to fragmentation of African legal systems.⁷ Existing patterns of fragmentation must be considered in digitalization design processes in African legal systems.

Digitalization of legal information (including legal cases, scholarship, laws and regulations, and secondary sources), court administration, court proceedings, legislation and legislative activities, advocacy and training, and access to legal resources has been varied and uneven. Digitalization came first in the legal information sphere, well before the widespread availability of the Internet. In the

⁵ *Hilgendorf*, in: *Hilgendorf/Feldle* (eds.), *Digitization and the Law*, 2018, p. 9.

⁶ *Arewa* (Fn. 2), pp. 28-35.

⁷ *Arewa* (Fn. 2), pp. 28-35.

United States, for example, Mead Data Central launched its Lexis service, the first broadly available full-text commercial legal information service, in 1973.⁸ Commercial legal information services available through subscriptions based on the Lexis model became a norm in early digitalization efforts, at least in parts of the developed world. The expense of subscriptions makes the commercial model a less feasible option in developing countries,⁹ as well as for some types of users in developed countries.

From the mid-1990s, the Internet has facilitated free access to legal information, which has been important in African contexts. Beginning in 1992, legal information institutes (LIIs) have provided free access to legal information from varied sources and have generally collaborated with one another through the free access to law movement (FALM).¹⁰ LIIs have been developed in several areas of the world, including Australasia,¹¹ Britain and Ireland,¹² Canada,¹³ Nigeria,¹⁴ United States,¹⁵ and several other countries in Africa.¹⁶

The digitalization of legal information in African contexts may offer lessons for future digitalization efforts. The Indigo Trust, a philanthropic foundation based in the United Kingdom, has been a financial supporter of a few African LIIs since 2013.¹⁷ The LIIs and other early digitalization efforts in Africa and elsewhere have been targeted at legal professionals. Such digitalization efforts have had an impact beyond their intended audience. A 2019 study suggests that LIIs in Africa have been “well used resources for those interested in the law and acted as significant tools for social and legal change in sub-Saharan Africa, rather than as mere information repositories for professionals.”¹⁸ The broader impact of LIIs

⁸ Lexis, together with the Nexis news and information service, which was launched in 1979, now operates as LexisNexis, the global legal publishing arm of British multinational information and analytics company RELX (formerly Reed Elsevier). *Arewa*, *Lewis & Clark L Rev* 2006, 797 (816).

⁹ *Arewa*, *Lewis & Clark L Rev* 2006, 797 (829-832).

¹⁰ *Greenleaf/Chung/Mowbray*, UPDATE: Legal Information Institutes and the Free Access to Law Movement, 2018, available at https://www.nyulawglobal.org/globalex/Legal_Information_Institutes1.html.

¹¹ *Australasian Legal Information Institute*, available at <http://www.austlii.edu.au/>.

¹² *British and Irish Legal Information Institute*, available at <https://www.bailii.org/>.

¹³ *Canadian Legal Information Institute*, available at <https://www.canlii.org/en/>.

¹⁴ *Nigeria Legal Information Institute*, available at <https://nigerialii.org/home>.

¹⁵ *Legal Information Institute*, available at <https://www.law.cornell.edu/>.

¹⁶ *African Legal Information Institute*, available at <https://africanlii.org/>; an explanatory video about the African Legal Information Institute is available at https://www.youtube.com/watch?v=og2YO8e_Dmc.

¹⁷ *Rumbul/Moulder/Parsons*, The State of African Legal Information Institutes – How free access to law online is shaping justice in sub-Saharan Africa, 2019, available at https://research.mysociety.org/media/outputs/state-african-legal-information-institutes_OeQNYhG.pdf.

¹⁸ *Rumbul/Moulder/Parsons* (Fn. 17), p. 8.

in Africa has meant that “LIIs were confirmed to be universally positive and progressive elements of developing and maturing legal systems in sub-Saharan Africa.”¹⁹

The experience of the LIIs suggests that design choices in future digitalization efforts should be flexible and should periodically evaluate uses and outcomes of digitized legal resources. This is particularly true because digitalization efforts today may involve varied audiences and legal spheres. This moves digitalization efforts today beyond targeting professionals involved in the business and administration of law itself who were the primary intended beneficiaries of early legal information digitalization efforts. Notably, navigating legal systems has long been difficult for everyday people in pre-digitalization contexts, particularly when not represented by lawyers. Digitalization design choices must take account of this existing reality and the impact of digitalization for a broader range of intended users.

Outside events may also play an important role in accelerating digitalization in legal spheres. The COVID-19 pandemic has had a significant impact on digitalization in several legal spheres. In just a few short weeks beginning in 2020, varied public services were forced to rapidly migrate online. In the United States, courts had long been called upon to improve processes for those accessing court systems.²⁰ As a result of the coronavirus pandemic

just months after the pandemic began, states throughout the country moved to adopt a range of technological tools to keep their court systems available to the public, quickly shifting from requiring people to submit paper documents and appear in person before judges to widespread use of electronic filing (e-filing) systems, virtual hearing platforms, and other tools.²¹

In many contexts, the pandemic has exacerbated existing inequalities and access to resources, particularly ones necessary for effective digital participation generally, including in the legal arena. The digital divide, which separates the information rich from the information poor,²² has proven to be enduring and significant in the context of technology adoption in contexts of COVID-19. The COVID-19 pandemic underscores challenges of access and usability in contexts of technology deployed in law. These challenges raise continuing questions about

¹⁹ *Rumbul/Moulder/Parsons* (Fn. 17), p. 8.

²⁰ *The Pew Charitable Trusts*, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations*, 2021, available at <https://www.pewtrusts.org/-/media/assets/2021/12/how-courts-embraced-technology.pdf>.

²¹ *The Pew Charitable Trusts* (Fn. 20).

²² *Leggon*, in: *Fox/Johnson/Rosser* (eds.), *Women, Gender and Technology*, 2006, p. 98.

technology and other design choices and the implications of such choices for legal participation and access to justice.

B. Administration of Justice in Nigeria

Nigeria and other African countries exemplify the opportunities that might be provided by digitalization. African contexts also highlight the continuing challenges evident in broader societal contexts that also shape access to and participation in legal systems. Technology initiatives in the administration of justice in Nigeria are best considered within a broader context of ongoing legal reform.

Nigeria is a federation that includes the federal government, 36 state governments, and the federal capital territory (FCT).²³ Nigeria also has 768 local government areas in the states,²⁴ and six area councils in the FCT.²⁵ Nigeria's justice system consequently comprises distinct, fragmented and, interrelated justice systems at the federal, state, and local government levels.²⁶

This chapter, however, focuses on only some aspects of the federal government's justice system and Lagos State's justice system, as a representative of the justice system in the states. Our choice of both the federal government and Lagos State's justice systems is influenced by the fact that these systems are the most active justice systems in Nigeria. This is because of the scale of the federal government's responsibilities and Lagos State's large population and status as Nigeria's economic capital. Furthermore, both the federal government and Lagos State's justice systems are also likely the most fragmented and digitized justice systems in Nigeria.²⁷

I. Federal Government's Administration of Justice System

The administration of justice is a crucial issue in every society. It is a major way for people and other legal persons to have access to justice for the enforcement of their rights, obligations, and the law. As Nigeria's Vice-President *Yemi*

²³ Constitution of the Federal Republic of Nigeria (CFRN) (as amended), Sec. 2.

²⁴ CFRN (as amended), Sec. 3 (6).

²⁵ The area councils in the FCT are the equivalents of the local governments in the states.

²⁶ CFRN (as amended), Sec. 3 (4), 297 and First Schedule, Part II.

²⁷ For a discussion of legal fragmentation in Nigeria, see *Arewa* (Fn. 2), pp. 16-19 and 28-35.

Osinbajo, Senior Advocate of Nigeria (SAN),²⁸ said: “the administration of justice is the foundation of law and order.”²⁹ The initial design and operation of Nigeria’s current legal system, including the administration of justice, occurred during Nigeria’s precolonial and colonial periods.³⁰ This template for administration of the justice system has also been retained in largely the same design since Nigeria’s independence.³¹ This system is a fragmented one comprising both superior courts of records and customary courts that administer received English law and statutory law and customary law and Islamic personal law, respectively.³² The administration of justice in Nigeria can also be broadly divided into the criminal justice system and the civil justice system.³³

The major participants in the administration of the justice system are law enforcement agencies,³⁴ defendants, litigants, lawyers, lawmakers, and courts. Although some efforts have been undertaken to reform the administration of justice in Nigeria,³⁵ the current system is ineffective and inefficient. Pervasive and severe delays in the administration of justice illustrate the justice system’s ineffectiveness and inefficiency.³⁶ For instance, the former chief registrar of the

²⁸ SAN is a designation given to senior and distinguished lawyers in Nigeria: “Senior Advocate of Nigeria (SAN) is a privilege that is awarded as a mark of excellence to members of the legal profession who are in full time legal practice, who have distinguished themselves as advocates and have made significant contribution to the development of the legal profession in Nigeria.” (*Ikimi*, NAUJILJ 2019, Vol. 10 (1), 69).

²⁹ *Osinbajo* made this statement during his keynote address at The Bankole Olumide Aluko, SAN, 20th Year Memorial Symposium with the theme “Administration of Justice: The Ideal Standard, The Nigerian Reality and Our Potential” on 18 February 2022, available at <https://www.yemiosinbajo.ng/20th-year-memorial-symposium-in-honour-of-bankole-aluko-san/>.

³⁰ *Arewa* (Fn. 2), p. 11.

³¹ *Arewa* (Fn. 2), p. 11.

³² *Arewa* (Fn. 2), pp. 28-35; CFRN (as amended), Sec. 6, Sec. 251, Sec. 272, Sec. 277, and Sec. 282.

³³ CFRN (as amended), Sec. 251 (1), Sec. 251 (3), Sec. 272 (1), Sec. 277, and Sec. 282.

³⁴ Major law enforcement agencies in Nigeria include the Police, the Ministry of Justice, and the Correctional Service.

³⁵ Reform efforts have included the enactment of new laws including the Evidence Act 2011, the Administration of Criminal Justice Act 2015, the Nigerian Correctional Service Act, 2019, and the Nigeria Police Act 2020. Reform efforts have also included modifications of practice directions and procedure rules by some courts.

³⁶ *Ilminska/Schoenteich*, Raising the Profile of Pretrial Detention in Africa, 2016, available at www.justiceinitiative.org/voices/raising-profile-pretrial-detention-africa; *Osigwe/Amali*, Enforcing Contracts and Business Survival in Nigeria: Calling Legislative Attention to World Bank 2018 Findings, NILDS Research Issue Brief 2019, Issue 4 (3), available at <https://ir.nilds.gov.ng/bitstream/handle/123456789/368/Enforcing%20Contracts%20and%20Business%20Survival%20in%20Nigeria%20Calling%20Legislative%20Attention%20to%20World%20Bank%202018%20Findings%20Issue%204%20No%203%20April%202019.pdf>;

Supreme Court of Nigeria, *Hadizatu Uwani Mustapaha*, noted in August 2021 that the Supreme Court had some 10,000 cases pending between 2017 to 2019.³⁷

The federal government's current regulatory approach to digitalization of the administration of justice has been influenced by its general approach to the development of a digital economy. In 2022, President *Muhammadu Buhari* inaugurated the Presidential Council on Digital Economy and E-Government and said that "his administration will continue to take advantage of digital technologies to transform every sector of the economy."³⁸ The Nigerian National Information Technology Development Agency (NITDA) has engaged in capacity building as part of its execution of its mandate.³⁹ NITDA programs have included a training program on digital economy for justices of the court of appeal.⁴⁰ NITDA executed the program along with the court of appeal's committee on information communication technology. This training program seeks to ensure that justices of the court of appeal understand the relevant issues connected with different aspects of technology. The goal of the training program is for judges to apply knowledge from this technology training in the adjudication of cases in their courts.

II. Federal Legislation and Policy

Nigeria's constitution provides that a person is entitled to a fair hearing within a reasonable time by a court or tribunal.⁴¹ This provision is aimed at ensuring that a person's rights or obligations are determined promptly in a fair manner. Per-

World Bank Group, Doing Business 2020 - Economy Profile Nigeria, available at <https://www.doingbusiness.org/content/dam/doingBusiness/country/n/nigeria/NGA.pdf>.

³⁷ *This Day*, With 10,000 Pending Appeals, The Supreme Court is Overworked, 2021, available at <https://www.thisdaylive.com/index.php/2021/08/17/with-10000-pending-appeals-the-supreme-court-is-overworked/>.

³⁸ *Adesina*, E-Government: President Buhari Inaugurates Presidential Council, Tasks Members on Improving Nigeria's Ranking in Ease of Doing Business, available at <https://statehouse.gov.ng/news/e-government-president-buhari-inaugurates-presidential-council-tasks-members-on-improving-nigerias-ranking-on-ease-of-doing-business/>.

³⁹ The NITDA was created in April 2001 to implement the Nigerian Information Technology Policy and co-ordinate general IT development in Nigeria, see *Nigerian Government*, NITDA - Background, accessible via <https://nitda.gov.ng/background/>.

⁴⁰ *Okeowo*, NITDA begins capacity building for court judges on digitization, 2022, available at <https://techeconomy.ng/2022/01/nitda-begins-capacity-building-for-court-judges-on-digitization/>.

⁴¹ CFRN (as amended), Sec. 36 in Chapter IV "Fundamental Rights".

vative delays in the administration of justice, however, mean that most people do not benefit from the right to a speedy trial.⁴²

The federal government has enacted significant laws within the last decade aimed at improving the administration of justice. Some of these laws include provisions for the digitalization of some aspects of the administration of justice. The reform of the evidence law⁴³ for instance includes provisions for the admissibility of evidence from new technologies in the administration of justice.⁴⁴ The Nigerian Correctional Service Act also provides for the Nigerian Correctional Services' establishment of a centralised database management system for its operations.⁴⁵

The Administration of Criminal Justice Act (ACJ Act) was also enacted as a major reform of the administration of criminal justice. The purpose of the ACJ Act is to

... ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interest of the suspect, the defendant, and the victim.⁴⁶

Provisions in the ACJ Act address a number of issues, including timelines for the commencement and determination of cases and the electronic recording of confessional statements.⁴⁷ The ACJ Act also established the Administration of Criminal Justice Monitoring Committee (Committee).⁴⁸ This Committee consists of the Chief Judge of the Federal Capital Territory who is the Chairman and the Attorney General of the Federation.⁴⁹ It also includes a judge of the Federal High Court, the Inspector-General of Police and the Comptroller General of the Nigerian Correctional Service. The Executive Secretary of the National Human Rights Commission and the chairman of a branch of the Nigerian Bar Association in the FCT are also members of the Committee. The Committee also includes the Director General of the Legal Aid Council of Nigeria and a representa-

⁴² *Ilminska/Schoenteich* (Fn. 36).

⁴³ Nigeria Evidence Act 2011, Sec. 84.

⁴⁴ *Arewa/Fakolade*, in: Ndulo/Emeziem (eds.), *The Routledge Handbook of African Law*, 2021, p. 297.

⁴⁵ Nigerian Correctional Service Act 2019, Sec. 13 (2).

⁴⁶ ACJ Act, Sec. 1.

⁴⁷ ACJ Act, Sec. 110 and 396 (timelines) and Sec. 15(4) (electronic recording of confessions). Sec. 44 (4) of the Nigeria Police Act 2020 also has a similar provision.

⁴⁸ ACJ Act, Sec. 469 (1).

⁴⁹ ACJ Act, Sec. 469 (2).

tive of civil society working on human rights and access to justice or women's rights issues.

The Committee is responsible for the "efficient and effective application" of the ACJ Act by relevant law enforcement agencies.⁵⁰ The Committee's functions include ensuring the speedy trial of criminal cases and reduction of the backlog of criminal cases in courts.⁵¹ Reducing congestion in prisons and facilitating maximum cooperation among the agencies responsible for administration of justice are part of the Committee's functions. The Committee is also responsible for the collation, analysis, and publication of information on the administration of criminal justice. The Committee is empowered to "carry out any such activities as are necessary for the effective and efficient administration of criminal justice."⁵²

The Committee's composition is commendable and inclusive, including key stakeholders such as a member of civil society focused on access to justice. This inclusive approach could harmonize some of the fragmented approaches to administration of justice in Nigeria. Moreover, the effective implementation of the Committee's functions also has the potential to significantly improve the administration of criminal justice. The Committee can also use its omnibus function to advocate for the use of technology in all aspects of the administration of justice in Nigeria.⁵³

The ACJ Act applies in federal courts in Nigeria and in cases where offences are stated in federal laws except for court martials.⁵⁴ The executive secretary of the Committee noted that 32 out of the 36 states in Nigeria had adopted the ACJ Act as the states' Administration of Criminal Justice Law as at December 2021.⁵⁵ The executive secretary, however, also stated that only some of the states that had adopted the ACJ Act have started implementing the provisions of the law.⁵⁶ The Body of Attorneys General of the 36 states in Nigeria has also recommended "inter-state collaboration on facilitating virtual hearings for police officers and

⁵⁰ ACJ Act, Sec. 470 (1).

⁵¹ ACJ Act, Sec. 470 (2).

⁵² ACJ Act, Sec. 470 (2) (h).

⁵³ ACJ Act, Sec. 470 (2) (h). The laws governing other aspects of law enforcement also contain similar omnibus function provisions that can also be used to promote the deployment of technology in the administration of justice. An example is Sec. 9 (1) (g) of the Nigeria Police Act 2020.

⁵⁴ ACJ Act, Sec. 2.

⁵⁵ *Ibunge*, FG Partners Rivers to Strengthen the Administration of Criminal Justice System, 2021, available at <https://www.thisdaylive.com/index.php/2021/12/15/fg-partners-rivers-to-strengthen-the-administration-of-criminal-justice-system/>.

⁵⁶ *Ibunge* (Fn. 55).

witnesses outside the jurisdiction of the adjudication court.”⁵⁷ Such inter-state collaboration for participants in virtual court hearings, who are outside a state and are in another state, can contribute to the success of such virtual hearings.

The Attorney General of the Federation (AGF) also established the Presidential Committee on Correctional Service Reforms and Decongestion in October 2017.⁵⁸ The Committee’s functions include the development of a road map for the decongestion of prisons.⁵⁹ It also has the mandate to deploy technology and implement a virtual automated case management system for the decongestion of prisons. The committee submitted its report to the AGF in July 2020, and the chairman of the committee stated that it visited 39 prisons in 18 states. The chairman also stated that 7,813 inmates were released from the correctional centers because of the Committee’s activities. The released inmates also included 3,789 persons who were released during the outbreak of COVID-19 in 2020. The AGF also subsequently said that over 10,000 inmates were freed as a result of the Committee’s activities as at August 2021.⁶⁰

Technology initiatives have been a notable aspect of the Committee’s efforts. The Committee launched a pilot virtual court proceeding at the Kuje correctional center, FCT, in December 2021 as one of its efforts to decongest correctional centers.⁶¹ The pilot program was launched in collaboration with the United Nations Development Program and the Japanese government. Virtual court proceedings have also been endorsed by others in Nigeria. The Nigerian Bar Association and the Justice Research Institute also organised a justice sector summit in January 2022. The summit was organised in collaboration with the National Judicial Council (NJC) and the Justice Reform Project. (JRP).⁶² The summit’s communique also recommended “... the enhanced use of virtual hearings ...” as part of

⁵⁷ *Igbintade*, State Govts Not Subservient to FG, Says Body of Attorneys-General, available at <https://www.thisdaylive.com/index.php/2022/06/21/state-govts-not-subservient-to-fg-says-body-of-attorneys-general/>.

⁵⁸ *Malami*, Presidential Committee on Correctional Service Reform Submits Report, 2020, available at <https://www.thisdaylive.com/index.php/2020/07/14/presidential-committee-on-correctional-service-reform-submits-report/>.

⁵⁹ *Malami* (Fn. 58).

⁶⁰ *Nnochiri*, Prison decongestion: Over 10,000 inmates freed in 4 years, 2021, available at <https://www.vanguardngr.com/2021/08/prison-decongestion-over-10-000-inmates-freed-in-4-years-malami/>.

⁶¹ *Channels Television*, FG Launches Virtual Court Sitting at Correctional Centres, 2021, available at <https://www.channelstv.com/2021/12/07/fg-launches-virtual-court-sitting-at-correctional-centres/>.

⁶² The Konrad Adenauer Foundation and the United Nations Office on Drugs and Crime also collaborated with the other organisations to organise the summit. The Justice Reform Project, available at <https://www.facebook.com/TheJRPNG/> and https://twitter.com/jrp_ng.

actions to accelerate the speed of justice delivery.⁶³ The Police also recently launched a case management system for the digitalization of all criminal cases handled by the legal department of the Police from the commencement to the determination of the cases.⁶⁴

Technology and legal reform initiatives have also been undertaken in the administration of civil justice in Nigeria. The JRP and the AGF have also advocated for the enactment of an administration of civil justice law as part of actions to also reform the administration of civil justice.⁶⁵ Ekiti State has enacted the Ekiti State Administration of Civil Justice Law in 2019 (ECJ Law).⁶⁶ The main objectives of the ECJ Law includes the reform of the law and procedure for the resolution of civil disputes in the high court of Ekiti State.⁶⁷ This law also aims to "... facilitate the just, efficient, timely and cost-effective resolution ..." of disputes.⁶⁸ The ECJ Law also provides for electronic filing, service, certification of court processes and recording of court proceedings.⁶⁹ Governor *Kayode Fayemi* of Ekiti State also recently stated that Ekiti State is likely the only state in Nigeria that has enacted an administration of civil justice law.⁷⁰

The COVID-19 pandemic has also accelerated the use of technology in the justice sector, reflecting *Osinbajo's* view that "technology should be deployed at all phases of the administration of justice".⁷¹ For example, because of the COVID-19 pandemic, the JRP asked the Chief Justice of Nigeria to "consider the urgent digitalization of court procedure".⁷² As a result of the COVID-19 pandemic, the AGF also called for the extensive use of technology in the

⁶³ Communique issued by *Olumide Akpata*, president, Nigerian Bar Association, on behalf of all the organizers of the summit, available at https://barristerng.com/wp-content/uploads/2022/03/JSS-Communique_NBA-pres-sign1.pdf.

⁶⁴ *Punch*, Police Gets Digital System for Case File, Others Storage, available at <https://punchng.com/police-get-digital-system-for-case-file-others-storage/>.

⁶⁵ *Adekoya*, SAN, the chairman of the JRP's governing board advocated for this during the, Bankole Olumide Aluko, SAN, 20th Year Memorial Symposium; press statement issued by *Ogundoro*, Malami Rolls Out Plans for Post COVID-19 Justice System, 20 April 2020, available at <https://fmic.gov.ng/malami-rolls-out-plans-for-post-covid-19-justice-system/>.

⁶⁶ Ekiti State Administration of Civil Justice Law (ECJ Law), No. 9 of 2019, available at <https://ekitistate.gov.ng/hoa/2020/No9of2019.pdf>.

⁶⁷ ECJ Law, Sec. 1.

⁶⁸ ECJ Law, Sec. 5 (1).

⁶⁹ ECJ Law, Sec. 39 to 47 and 60.

⁷⁰ *This Day*, We Need an In-Depth Review of Judicial Salaries, 2022, available at <https://www.thisdaylive.com/index.php/2022/05/09/we-need-an-in-depth-review-of-judicial-salaries/>.

⁷¹ *Osinbajo* (Fn. 29).

⁷² *The Justice Reform Project*, Letter to the Chief Justice of Nigeria titled "Remote Court Hearings: A Necessity in the Face of the Covid-19 Pandemic", 2022, available at https://twitter.com/JRP_ng/status/1250332562569846786/photo/1.

administration of justice as part of plans for the justice system after the COVID-19 pandemic.⁷³

One of the objectives of the 2017 Nigerian National Policy on Justice (the Justice Policy) has been to encourage the holistic use of information communication technologies (ICTs) in the justice sector.⁷⁴ The Justice Policy also listed some challenges with the use of ICTs which include inadequate use of existing ICT facilities, shortage of trained persons, and inadequate infrastructure.⁷⁵ The Justice Policy has led to varied uses of ICTs in the administration of justice.

Implementation of technology initiatives in the justice sector has, however, largely been undertaken in a fragmented manner without sufficiently strategic and inclusive approaches. Technology challenges noted in the Justice Policy have also not been adequately addressed. Furthermore, a strategic and inclusive use of technology is only a part of the broader need for comprehensive reform of the law and administration of justice in Nigeria.⁷⁶

III. Federal Judicial Policy, Procedure Rules, and Practice Directions

The federal judiciary has made policies, procedure rules, and practice directions that provide for digitalization of some aspects of the federal judiciary's operations. The National Judicial Council (NJC) made the National Judicial Policy in 2007 (Judicial Policy). The Judicial Policy's objective is to "... promote and ensure the highest possible standard of qualitative justice delivery".⁷⁷ The Judicial Policy includes a judicial education and training policy which states that "judicial education must be holistic, practical and supported by essential tools, ... and use of the latest information technology".⁷⁸ The Judicial Policy also has an access to justice policy which provides that "all courts should promote the use of information communication technology".⁷⁹ The Judicial Policy also provides for the establishment of a working group for the study of the working of judicial sys-

⁷³ *Nnochiri* (Fn. 60).

⁷⁴ National Policy on Justice 2017, p. 4.

⁷⁵ National Policy on Justice 2017, pp. 29-31.

⁷⁶ *Arewa* (Fn. 2).

⁷⁷ *National Judicial Council*, The National Judicial Policy, Sec. 1.9, available at www.njc.gov.ng/national-judicial-policy.

⁷⁸ National Judicial Policy, Sec. 2.4.2.

⁷⁹ National Judicial Policy, Sec. 3.5.

tems.⁸⁰ The working group's functions include the study of methods of access to justice delivery and judicial decision making.

A former Chief Justice of Nigeria Justice *Dahiru Musdapher*, retired, inaugurated a judicial information technology policy formulation and implementation committee in January 2012.⁸¹ The committee's role included the development of a "... comprehensive, pragmatic information technology policy".⁸² The committee's work subsequently resulted in the enactment of the Nigerian Judiciary Information Technology Policy Document in July 2012 (Judiciary Tech Policy). The Judiciary Tech Policy's purpose is to effectively support the administration of justice by the optimal use of ICT by the Nigerian judiciary.⁸³ The Judiciary Tech Policy established the Judiciary Technology Policy Committee (JITPCO) as the regulatory authority for the implementation of the Judiciary Tech Policy.⁸⁴ The Judiciary Tech Policy also provides that every judicial authority should establish an ICT committee or department with the responsibility for implementation of the Judiciary Tech Policy within that judicial authority.⁸⁵

The Judiciary Tech Policy deals with the use of ICT in several parts of the court system. These parts are the central administration, the litigation department, the courtrooms, and the offices of judicial and non-judicial officers.⁸⁶ The Judiciary Tech Policy also provides that judicial institutions need to conduct an adequate feasibility study and network planning before acquiring ICT systems.⁸⁷ The Judiciary Tech Policy also has guidelines on network infrastructure, communication infrastructure, customised software including enterprise resource planning and case management software, hardware, capacity building and security.⁸⁸ The JITPCO has used the Supreme Court of Nigeria as one of its pilot sites for the implementation of the Judiciary Tech Policy.⁸⁹ JITPCO has established a data center with ICTs in the Supreme Court and retrofitted one of the court rooms with ICTs as part of its digitalization of the Supreme Court.⁹⁰ The Nigerian

⁸⁰ *National Judicial Policy* (Fn. 77), Summary of Some Institutions of the Policy.

⁸¹ *Musdapher*, Foreword to the Judicial Information Technology Policy of the Nigerian Judiciary, 2012, p. 5, available at https://nji.gov.ng/images/PDF/JITPO_Policy_Document.pdf.

⁸² *Musdapher* (Fn. 81), p. 5.

⁸³ *National Policy on Justice* 2017, p. 5.

⁸⁴ *National Policy on Justice* 2017, p. 33.

⁸⁵ *National Policy on Justice* 2017, pp. 33-34.

⁸⁶ *National Policy on Justice* 2017, pp. 8-9.

⁸⁷ *National Policy on Justice* 2017, pp. 11-15.

⁸⁸ *National Policy on Justice* 2017, pp. 14-29.

⁸⁹ *Idaeho*, Digitalisation of the Supreme Court: Way Forward for the Nigerian Legal Profession, 2018, available at <https://www.pressreader.com/nigeria/thisday/20180227/282046212589817>; *This Day* (Fn. 37).

⁹⁰ *Idaeho* (Fn. 89); *This Day* (Fn. 37).

Case Management System (NCMS) was also developed under the Judiciary Tech Policy.⁹¹

The Judiciary Tech Policy is a relatively good basis for the comprehensive use of technology in all aspects of the courts' operations. There has been some implementation of the Judiciary Tech Policy, and this implementation was also accelerated because of the COVID-19 pandemic. The implementation, however, has been fragmented and the judiciary and its users have therefore not realized the entire benefits of the Judiciary Tech Policy. Moreover, there needs to be a comprehensive review of both the impact of and the provisions of the Judiciary Tech Policy as it is now about ten years since it was made.

The NJC also made the Guidelines for Court Sittings and Related Matters in the COVID-19 Period (the NJC Guidelines) which became effective in May 2020.⁹² The NJC Guidelines are a complement to the existing rules of court, the electronic filing system, and case management system that had been adopted by some courts.⁹³ The NJC Guidelines provides for electronic filing and service of process, electronic payment of court fees, and virtual court proceedings. The NJC Guidelines apply to all courts in Nigeria, and the JITPCO has the mandate to work with all courts to implement the ICT tools proposed in the NJC Guidelines.⁹⁴ The need for continuous training in virtual court sittings for judicial officers is also emphasised in the NJC Guidelines. The NJC Guidelines also states that courts should consider "... the poor state of our power and communications infrastructure ... particularly in ... underserved or unserved locations ...".⁹⁵

Courts in Nigeria began to conduct proceedings virtually in increasing numbers after the publication of the NJC Guidelines. For instance, the President of the Court of Appeal disclosed that the Court of Appeal delivered 528 judgments virtually using the Zoom video conference application during the 2020 to 2021 legal year.⁹⁶ The Court of Appeal's virtual judgments were 16.97 % of the total number of judgments delivered during the 2020 to 2021 legal year.⁹⁷

Digitalization efforts in Nigeria also illustrate potential legal impediments such efforts may face. For example, in two cases filed by Lagos State and Ekiti

⁹¹ *Idaeho* (Fn. 89); *This Day* (Fn. 37).

⁹² *National Judicial Council*, Guidelines for Court Sittings and Related Matters in the Covid-19 Period, available at <https://www.njc.gov.ng/30/news-details/>.

⁹³ *National Judicial Council* (Fn. 92).

⁹⁴ *National Judicial Council* (Fn. 92).

⁹⁵ *National Judicial Council* (Fn. 92).

⁹⁶ *Abuja*, Appeal Court promises improved performance in new legal year, 2022, available at <https://thenationonlineng.net/appeal-court-promises-improved-performance-in-new-legal-year>.

⁹⁷ *Abuja* (Fn. 96).

State about the constitutionality of virtual court sittings, the Supreme Court of Nigeria held that virtual court sittings are not unconstitutional.⁹⁸ These states had filed the cases at the Supreme Court because of the lack of an express constitutional provision for virtual court sittings. The Supreme Court also stated virtual court proceedings should be conducted within practice directives for virtual proceedings issued by the head of courts.⁹⁹ To clarify the constitutionality of virtual court proceedings, the chairman of the senate committee on judiciary, Senator *Opeyemi Bamidele*, introduced a bill to amend the constitution to support virtual court proceedings.¹⁰⁰

The NJC Guidelines, developed because of the COVID-19 pandemic, accelerated the use of technology and particularly virtual court proceedings in Nigeria's judicial system. The consistent and enhanced use of virtual court proceedings has the potential to both improve access to justice and accelerate the administration of justice. The challenges of ICT infrastructure, accessibility, language, value creation, flexibility, training, legal reform, and finance, however, have the potential to limit the potential gains from use of technology to improve the administration of justice and access to justice. Further, digitalization initiatives in Nigeria highlight the potential for digitalization to further contribute to fragmentation.

IV. Lagos State Government's Administration of Justice System

Since Nigeria's return to democracy in 1999, Lagos State government (LASG) has developed and implemented several significant measures aimed at improving the administration of justice and access to justice in Lagos State.¹⁰¹ These measures include the expansion of the judiciary by the appointment of new judges and the creation of several new courts in different areas of Lagos State.¹⁰² The judiciary has also reviewed its civil procedure rules of court three times.¹⁰³ An electronic

⁹⁸ *Adebusoye*, LegalTech: Nigerian Supreme Court Says Virtual Court Judgments are Binding, 2020 available at <https://technext.ng/2020/07/16/virtual-court-sittings-and-the-evolution-of-virtual-legal-system-in-nigeria/>.

⁹⁹ *Adebusoye* (Fn. 98).

¹⁰⁰ *Iroanusi*, Nigerian Senate introduces bill to legalise virtual court proceedings, 2020, <https://www.premiumtimesng.com/news/headlines/392429-nigeria-senate-introduces-bill-to-legalise-virtual-court-proceedings.html>.

¹⁰¹ *Centre for Public Impact*, Reforming the civil justice system in the state of Lagos, 2016, available at <https://www.centreforpublicimpact.org/case-study/judicial-reform-lagos>.

¹⁰² *Centre for Public Impact* (Fn. 101); the Lagos Judicial Services Commission appointed 26 judges to the High Court on 22 May 2001.

¹⁰³ High Court new civil procedure rules were made in 2004, 2012 and 2019.

case management system called the Court Automation Information System (CAIS) was also developed and implemented to some extent.¹⁰⁴

A new magistrate court law and magistrate court civil procedure rules were also enacted in 2009 to reform the law and practice in the magistrate courts as magistrate courts deal with a significant number of disputes.¹⁰⁵ LASG also established the Office of the Public Defender in 2000 to provide legal aid to residents in Lagos State.¹⁰⁶ The Lagos State Office of the Public Defender Law was also enacted in 2003 and subsequently amended in 2008. LASG established five citizen mediation centers for alternative dispute resolution, as part of its access to justice program, in 2000.¹⁰⁷ The Centre for Public Impact also reported that 17,000 cases had reached a mediated settlement at the citizen mediation centers by 2007.¹⁰⁸ Some of these mediated settlements involved disputes that might have been instituted in the courts and could therefore have contributed to the congestion of cases in the courts.

V. Legislation, Policy, and Digitalization in Lagos State

The Ministry of Justice (MOJ) is a lead agency for the administration of justice in Lagos State.¹⁰⁹ The MOJ has utilised ICTs in the execution of both its internal and external duties. For instance, the MOJ has implemented an internal case management system across all departments in the MOJ which includes the digitalization of documents and approvals.¹¹⁰ This system enables officials in the MOJ to upload and retrieve documents and approvals remotely. The dashboard aspect of the case management system also empowers the Attorney General of Lagos State (AGL) and other relevant officials to track productivity and the status of work items remotely. The success of Lagos State and similar case management

¹⁰⁴ *Centre for Public Impact* (Fn. 101); it appears that the CAIS has been replaced by the Judicial Information System (JIS). The electronic filing system is a major part of the case management system that is being used regularly in the High Court of Lagos State. The other features of the case management system have not yet been used. An official in the MOJ, who prefers to remain anonymous, provided this information on the JIS to the writers of this chapter during an interview in March 2022.

¹⁰⁵ The Magistrate Court Law No. 16 of 2009 and The Magistrate (Civil Procedure) Rules 2009. The jurisdiction of the Magistrate Courts was increased by the Magistrate Court Law.

¹⁰⁶ *Lagos State*, Office of the Public Defender, available at <https://opd.lagosstate.gov.ng>.

¹⁰⁷ *Centre for Public Impact*, (Fn. 101); *Wheeler*, Directorate for Citizens' Rights, 2022, available at <http://lagosministryofjustice.org/directorate-for-citizens-rights/>.

¹⁰⁸ *Centre for Public Impact*, (Fn. 101); *Wheeler* (Fn. 107).

¹⁰⁹ *Lagos Ministry of Justice*, available at <http://lagosministryofjustice.org/>.

¹¹⁰ Interview with MOJ official (Fn. 104).

systems in Nigeria would, however, depend on several factors. These factors include the quality of software and hardware, training, resources, and overcoming officials' resistance to the use of ICTs.¹¹¹

The Directorate of Advisory Services and Judicial Liaison, which is part of the MOJ, also provides legal advice, in response to civil petitions received by members of the public or government agencies by electronic mail.¹¹² A legal advice is an opinion by the Directorate on a civil petition submitted to the MOJ by members of the public or government agencies. This approach dispenses with the use of intermediaries for the issuance of a legal advice, and it has the potential to improve both the ease and pace of administration of justice. Furthermore, a person can track the status of a legal advice on the MOJ's website, and such person therefore does not necessarily have to physically go to the MOJ's office for the status of a legal advice.¹¹³

LASG also enacted the Lagos State Administration of Criminal Justice Law (ACJ Law) in 2007. The ACJ Law, which was enacted before the federal ACJ Act of 2015, was subsequently amended in 2011 and 2021.¹¹⁴ Provisions in the ACJ Law address several issues, including the video or electronic recording of confessional statements.¹¹⁵ The ACJ Law provides for the conduct of court proceedings by audio, virtual, video conference or another technological platform.¹¹⁶ The ACLJ Law also provides for the establishment of an electronic crime data management system for suspects and criminals called the Lagos State Criminal Information System (LCIS).¹¹⁷ The LCIS includes the relevant details of all persons in the criminal justice system and tracks all related activities from the arrest of such persons until the adjudication of their cases.¹¹⁸ The ACJ Law also has a measure for the protection of victims or witnesses by providing that such persons may be masked and give their evidence by video link.¹¹⁹ There are, however, inadequate or no facilities in some police stations for video recording of confessional

¹¹¹ Interview with MOJ official (Fn. 104).

¹¹² *Wheeler*, Directorate of Advisory Services and Judicial Liaison, 2022, available at <http://lagosministryofjustice.org/directorate-of-advisory-services-and-judicial-liason/>; Interview with MOJ official (Fn. 104).

¹¹³ *Wheeler* (Fn. 112); Interview with MOJ official (Fn. 104).

¹¹⁴ *British Council*, Implementation of the Administration of Justice Law in Lagos, 2016, available at <https://www.britishcouncil.org.ng/about/press/implementation-administration-justice-law-lagos>: The Lagos State Administration of Criminal Justice (Amendment) Law No. 14 of 2021's commencement date is September 30, 2011.

¹¹⁵ ACJ Law, Sec. 9 (3).

¹¹⁶ ACJ Law, Sec. 200 (2) and (3).

¹¹⁷ ACJ Law, Sec. 370.

¹¹⁸ *Lagos Criminal Information System*, About US, available at <https://lcis.com.ng/about>.

¹¹⁹ ACJ Law, Sec. 371 (3) and 373.

statements.¹²⁰ There has also been inadequate training of magistrates and police officers who are some of the key persons responsible for the implementation of the ACJ Law.¹²¹

The MOJ also collaborates with other statutory agencies responsible for administration of justice on the use of ICTs. For instance, although the MOJ is responsible for maintaining the LCIS,¹²² the database provides an interface for the Police, the Correctional Service, the Judiciary and the MOJ.¹²³ The MOJ has also collaborated with the High Court of Lagos State on the digitalization of the courts' operations.¹²⁴ The digitalization includes the installation and operation of software, hardware including speech to text transcription and full recording capacity in the courts. The digitalization of the courts' activities is being undertaken in phases. Phase One, of the digitalization of the courts' activities, which involves ten courts, started in 2022.¹²⁵

VI. Lagos State Judicial Policy, Procedure Rules, and Practice Directions

The Lagos State judiciary has also made some policies, procedure rules and practice directions which provide for digitalization of some aspects of the judiciary's operations. The Judicial Information System (JIS) is an electronic filing and payment system which was introduced in December 2010.¹²⁶ A practice direction was also subsequently issued in 2013 which made it mandatory for all cases filed in the High Court to be filed through the JIS.¹²⁷ The JIS, which was developed as a comprehensive case management system, is currently being underutilized. This is because it is currently primarily used for just electronic filings and tracking the status of cases in Court on the Lagos State judiciary website and not as a compre-

¹²⁰ *Access to Justice*, A Report - On the implementation of the Administration of Criminal Justice Law 2011 of Lagos State, 2011, available at <https://www.accesstojustice-ng.org/Research%20Report%20-%20Implementation%20of%20the%20ACJ%20Law.docx>.

¹²¹ *Access to Justice* (Fn. 120).

¹²² ACJ Law, Sec. 370 (7).

¹²³ About LCIS *supra* note 118.

¹²⁴ Interview with MOJ official, (Fn. 104).

¹²⁵ Interview with MOJ official, (Fn. 104).

¹²⁶ *Lagos State Judiciary*, About the High Court of Lagos, available at <https://lagosjudiciary.gov.ng/aboutus.html>; *Centre for Public Impact* (Fn. 101).

¹²⁷ *Lagos State Judiciary* (Fn. 126); *Centre for Public Impact* (Fn. 101).

hensive case management system.¹²⁸ The JIS was nevertheless crucial for the recovery of filings that were filed through the JIS after the High Court was severely vandalized in October 2020.¹²⁹ The High Court's officials were able to retrieve the filings from the JIS database, which helped to recreate copies of the physical filings that were lost as a result of the vandalization of the High Court.¹³⁰ The use of the JIS to retrieve the filings is a great example of the benefits of digitalization of the judiciary's operations.

The Chief Judge of Lagos State, Justice *Kazeem Alaogba* also issued the Lagos State Judiciary, Remote Hearing of Cases (COVID-19 Pandemic Period) Practice Direction (Remote Direction), which became effective on May 4, 2020.¹³¹ One of the objectives of the Remote Direction is to ensure "the use of suitable technology".¹³² The Remote Direction has guidelines for the electronic filing and service of process, electronic payment of court fees, and virtual court proceedings.¹³³ The Remote Direction, however, only applies to urgent and new cases in the High Court of Lagos State (Lagos Court).¹³⁴ It was also reported that the Lagos Court held the first virtual court hearing in Nigeria on May 4, 2020.¹³⁵ The proceeding was conducted on the Zoom video conference application (Zoom), with Justice *Mojisola Dada* in court in Ikeja, Lagos, while the defendant was in the Apapa, Lagos correctional center.¹³⁶ The witnesses and lawyers in the cases were in different locations and also participated on Zoom.¹³⁷

¹²⁸ Interview with MOJ official, (Fn. 104); Online Search/Case Status Information, available at <https://lagosjudiciary.gov.ng/onlinesearch.html#onlinesearch>.

¹²⁹ Interview with MOJ official, (Fn. 104).

¹³⁰ Interview with MOJ official, (Fn. 104).

¹³¹ *Lagos State Judiciary, Remote Hearing of Cases (COVID-19 Pandemic Period) - Practice Direction*, 2020, available at <https://www.aalex.com/wp-content/uploads/2020/05/LAGOS-STATE-JUDICIARY-COVID-19-PRACTICE-DIRECTION.pdf>.

¹³² *Lagos State Judiciary* (Fn. 131), Sec. 3 of the Remote Direction.

¹³³ *Lagos State Judiciary* (Fn. 131), Sec. 5 to 20 of the Remote Direction.

¹³⁴ *Lagos State Judiciary* (Fn. 131), Introductory Paragraph of the Remote Direction.

¹³⁵ *Sahara Reporters*, Nigeria Holds First Online Court Sitting in Lagos, Man Sentenced to Death for Murder, 2020, available at <https://saharareporters.com/2020/05/04/nigeria-holds-first-online-court-sitting-lagos-man-sentenced-death-murder>.

¹³⁶ *Sahara Reporters* (Fn. 135).

¹³⁷ *Sahara Reporters* (Fn. 135).

C. Implications of Digitalization for Consumers and Court Administration

Questions about digitalization, law, and access to justice, digitalization mandated by government and other authorities are noteworthy in many contexts in Africa. In addition to questions of access, the digitalization of personally identifiable information (PII) has become prevalent throughout the African continent. The collection of biometric and other PII, as well as data emanating from participation in legal processes, raises continuing questions about privacy, security, and data protection. Privacy, security, and data protection issues represent a continuing challenge in many African contexts where effective privacy, security, and data protection frameworks may be elusive. As is currently the case with biometric and other PII, further digitalization of the Nigerian legal system will require that privacy, security, and protection of PII and other data arising from legal cases and interactions be considered when design choices are made.

Digitalization offers important potential opportunities to increase access to justice and provide for faster administration of justice. The speed of administration of justice is a problem in Nigeria, where pretrial detention levels are among the highest in the world. Nigeria's levels of pretrial detention are high: "[o]f the world's ten prison system[s] with the highest proportion of pretrial detainees, half are in Africa. In places such as ... Benin, DRC, Liberia, Libya and Nigeria, 70 percent or more of all prisoners have not been convicted".¹³⁸ In the commercial law sphere, enforcement of contracts in Nigeria may take an extended period and is often costly.¹³⁹

Digitalization may promote the rule of law by providing a potential opportunity for greater transparency in the administration of justice. New technologies may also "enable the provision of more and better legal assistance".¹⁴⁰ Digitalization will require significant investment in legal and court administration systems in Nigeria that have been persistently underfunded.¹⁴¹ An investment in digitalization may, however, reduce aggregate costs of access to justice. If implemented with care, digitalization may offer the opportunity to increase peoples' familiarity with the administration of justice. Improvements in the administration of justice may also increase confidence in the integrity of courts and legal systems more generally. Participation in digitized legal systems is, however, likely to be costly

¹³⁸ *Ilminska/Schoenteich*, (Fn. 36).

¹³⁹ *Osigwe/Amali*, (Fn. 36).

¹⁴⁰ *Cabral et. al.*, Harv. J. Law Technol. 2012, Vol. 26 (1), 241 (243).

¹⁴¹ *Doma*, J Marshall J Info Tech & Privacy L, 2016, Vol. 32 (2), 89 (104).

to users, who will need devices that permit them to access the digital systems, and Internet access, the latter of which can be costly in African contexts.

Digitalization may pose significant challenges. Digital approaches to law and legal systems will require making choices about the design of technologies and legal systems after digitalization that will require greater flexibility than is present in legal systems in Nigeria and elsewhere in Africa. These choices will determine what type of value creation is to accompany digitalization. Such choices will also mandate decisions about processes and procedures within digitized justice systems.

Development of robust technologies to enable electronic justice systems and facilitate digitalization of court processes in Nigeria and other contexts in Africa may also present challenges related to information technology infrastructure and language and literacy issues,¹⁴² some of which emerge from existing gaps and issues in contexts of digitalization. For example, effective digitalization in Africa will require addressing existing gender divides already evident in access to justice, as well as technology.¹⁴³ Digitalization will also require significant continuing training for lawyers, judges, court administrators, and users, among others. In Nigeria and other countries in Africa, the dominance of languages of former colonising powers in court systems may limit effective access to justice in non-digitized contexts. In Nigeria, for example, English is the language of courts even though most Nigerians do not speak sufficient English to navigate in contexts of legal English.¹⁴⁴ Given the global prominence of English in technology contexts, digitalization is likely to intensify the effects of English language dominance in the Nigerian legal system. As a result, digitalization design in Nigeria and elsewhere in Africa must also be attentive to facilitating ease of use in countries with many different languages spoken that also have varied levels of literacy and language capacity in languages used by courts and in other legal contexts.

Digitalization will require reorienting existing and future legal reform efforts to address existing shortcomings and issues that arise in the transition to digital systems. Legal reform efforts connected to digitalization must also deal with potential regulatory overreach, which is an existing problem with Nigeria. Regulatory overreach has potential to be significantly increased in digitized contexts.

¹⁴² *Drabo*, *The Digitization of Court Processes in African Regional and Subregional Judicial Institutions*, 2021, p. 21.

¹⁴³ *United Nations Women*, *Justice for women amidst COVID-19*, 2020, available at <https://www.unwomen.org/en/digital-library/publications/2020/05/justice-for-women-amidst-covid-19>; *Organisation for Economic Co-operation and Development*, *Bridging the Digital Gender Divide - Include, Upskill, Innovate*, 2018, available at <https://www.oecd.org/digital/bridging-the-digital-gender-divide.pdf>.

¹⁴⁴ *Arewa* (Fn. 2).

Access to tools to enable participation in digitalization in legal systems will likely present a continuing challenge, particularly given the high levels of poverty in Nigeria and many other countries in Africa. Digitalization has the potential to ameliorate existing shortcomings in legal systems in Nigeria and other contexts in Africa. Technology initiatives must address existing challenges related to the administration of justice and access to justice to maximize their potential success.