



The Judicial Responses to COVID-19 in Africa:

Mapping & analysing the accessibility of justice and the use of technology in court systems during the 2020 global pandemic

Report

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About Us

The ALT Network is a pan-African, inclusive community at the intersection of technology and legal services in Africa.

Our mission is to provide a one-stop shop for information, advice and collaboration to bridge the legal and regulatory gaps required to support the growth of digital and tech innovation across the continent and to contribute to the growth of the African legal sector. We produce our own and commissioned research and policy reports on a range of issues relating to the development of the African digital economy and the regulatory and legal framework required to underpin it effectively.

Our community includes tech companies, regulators, legal services providers, policymakers and investors. Our members are lawyers, law firms and civil society organisations with expertise and knowledge of issues arising at the intersection of law and the tech sector in Africa.

Find out more about our work and join the conversation.



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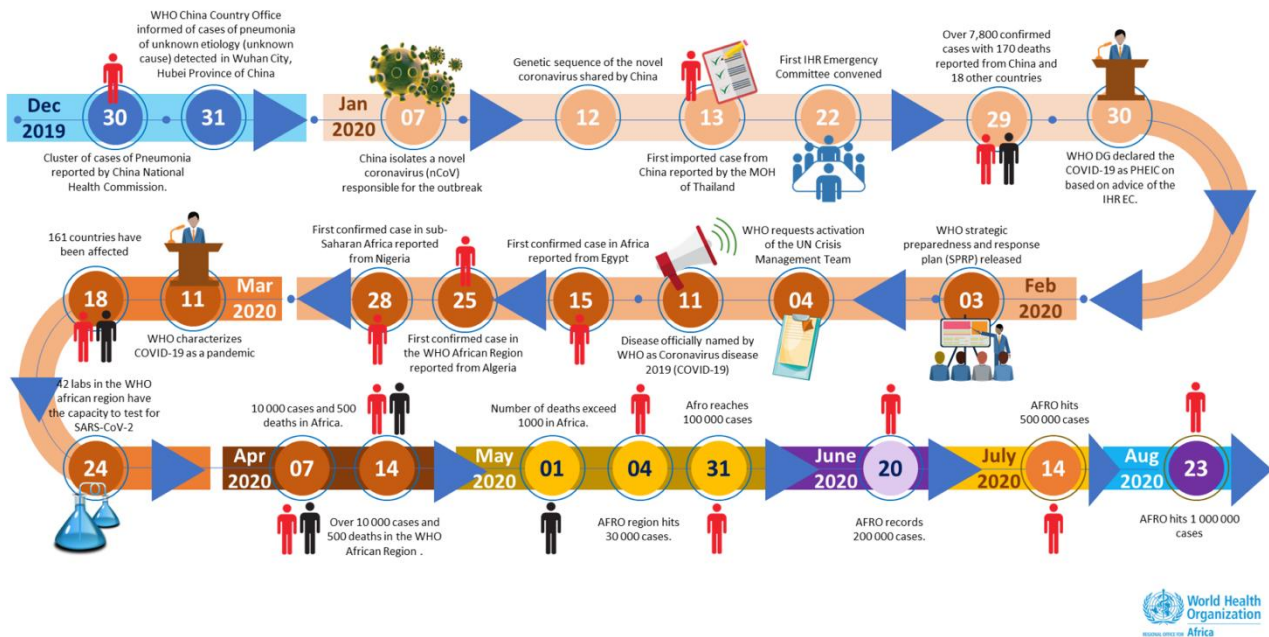
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WHO: Global and Regional time-line for COVID-19 as of 23 August 2020¹



Table 1: Overview of Findings – selected jurisdictions

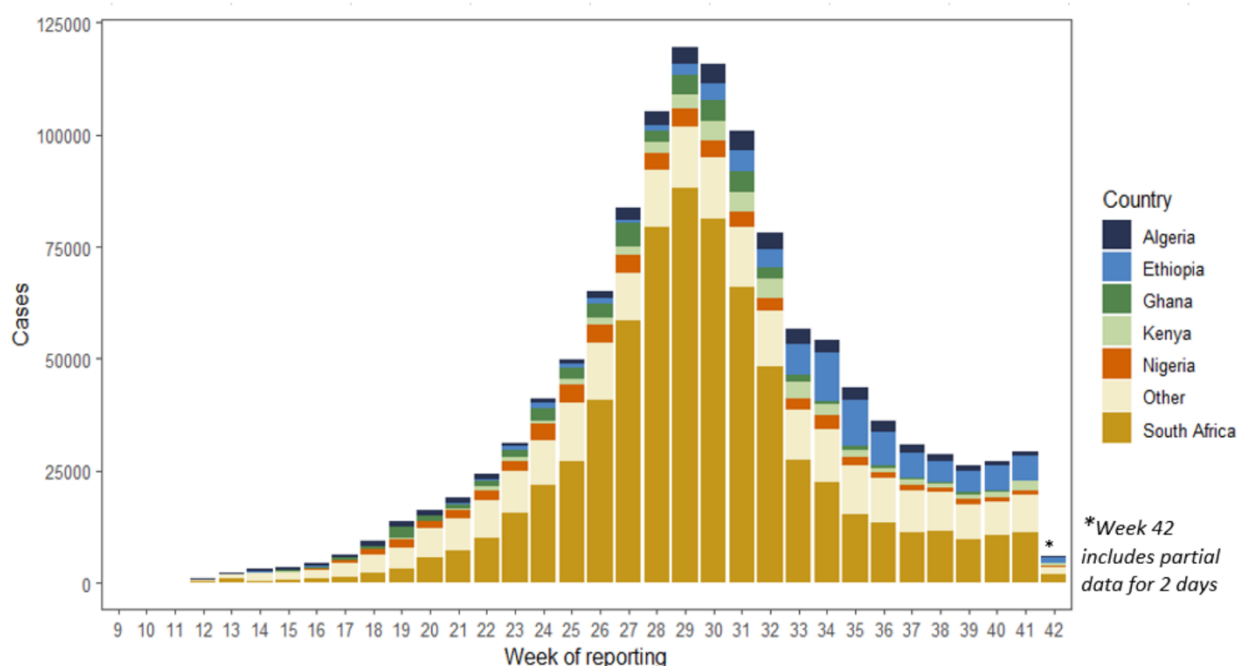
Icon					
Country	Use of Video-Conferencing	Electronic court system/case management	Existing legislation supporting technology	New legislation/regulations created during COVID-19*	ICT and Infrastructure Conditions
Algeria	Yes	Yes	Limited	Yes	Positive, growing
Angola	No	No	No	No	Severely limited
Egypt	Yes	Economic Court only	Yes	Yes	Positive
Ethiopia	No	No	No	No	Severely limited
Ghana	Yes	Yes	Yes	No	Positive, expensive
Kenya	Yes	Select courts	Yes	No	Limited
Morocco	Yes	Yes	No	No	Positive
Mozambique	Limited	No	No	No	Severely limited
Nigeria	Yes	Select courts	No	No	Positive, growing
Rwanda	Limited	Yes	No	No	Limited, growing
South Africa	Yes	Yes	Yes	Yes	Positive
Uganda	Yes	Yes	Yes	Yes	Positive, growing
East African Court	Yes	Yes	Yes	Yes	N/A

*For this study, time period is defined as February – November 2020.

Introduction

Beginning in early 2020, a novel coronavirus originating in Wuhan, China systematically swept the planet. The highly globalized and interconnected nature of the modern world drove the COVID-19 virus to proliferate at a rapid rate ultimately affecting every nation on the planet. Local, regional, and international economies have been devastated. This report seeks to evaluate the response and efforts made by judiciaries across the African continent to maintain access to justice and judicial proceedings. This report covers policies and actions taken since the first cases on the continent in February, through to November 2020, the end date of this study.

As of February 2021, the WHO has reported 47 African countries have been affected by the spread of the novel coronavirus, with 2,821,047 reported cases and 72,027 reported deaths.² The majority of the continent's nations have at some point issued lockdown and quarantine orders, implementing a range of state of emergency-type measures. In October 2020, it was established that South Africa, Algeria, Ethiopia, Nigeria, and Kenya accounted for 83% of the total deaths reported on the continent, with South Africa being the hardest hit.³ As of February 2021, South Africa continues to be the hardest hit, accounting for 53.65% of the region's cases, and is also where a new variant of the virus was first discovered, now referred to as the "South African strain".



WHO: Weekly number of confirmed COVID-19 cases in the WHO African Region by country⁴

Lockdown measures have compromised the operations of justice systems globally. Judiciaries and court services have grappled with decisions over whether to close courts, and if so which courts and services should take precedent in operating, all while contending with an ever-growing backlog of cases. In some countries, governments initially decided not to include the judiciary and the courts in their essential service/entity list, forcing them to close completely (e.g. Nigeria).

Criminal justice investigations and proceedings have also been postponed or delayed, with many unjustly detained for longer periods in already overcrowded prisons. Some countries have issued early prisoner release policies to relieve overcrowding and curb risks of COVID-19 outbreaks in their

prison systems. The United Nations Development Program has also warned that “*Certain groups, including women and children at risk of violence, undocumented migrants, refugees, and asylum seekers, and those in migrant detention centres are acutely affected by these changes.*”⁵

Ultimately, while attempting to implement public health and containment measures, the conditions created by COVID-19 measures have compromised the ability of judiciaries to uphold the rule of law, protect and respect international human right standards, guarantee equality before the courts, access to a fair trial. This report has found that, on the whole, those countries already utilizing information and communication technologies (ICT) systems within their judiciaries, or whose officials gave explicit guidance on the use of ICT tools, were able to better maintain access to justice and judicial proceedings under these new conditions. Many of these systems, however, are unable to provide equitable access to justice, as many jurisdictions are constrained by insufficient infrastructure or access to technology to makes these services universally available to all citizens.

Prior to COVID-19, the adoption and utilization of legal and virtual technologies was rising across African judiciaries. Access to justice and the rule of law have long been cornerstones of international development efforts and attract a substantial amount of investment each year. The World Justice Project estimates that globally there are 5 billion people with unmet justice needs. New technological platforms and innovations in the use of ICT tools have sought to bridge the justice gap. In 2017, the biennial meeting of the Third African Justice Dialogue exclusively focused on “Improving Judicial Efficiency in Africa,” with delegates sharing their countries’ experiences with integrating ICT services and solutions into judicial processes and proceedings. While this integration of technology by many industries in Africa and abroad has consistently risen over the past decade, the legal sector has been marked by a distinct hesitation and reticence towards integrating tech platforms, services, and solutions. This trend is not specific to Africa. Adoption of ICT systems in other sectors, such as finance and healthcare, occurs at more rapid rate than in the judiciary and the legal sector. This is generally because these sectors have a stronger business and budgetary case to make for investing in ICT and also because government funded services like the administration of justice are rarely prioritised in budgetary allocations.



Global Access to Justice Project (2020). *Impacts of Covid-19 on Global Justice Systems*⁶

In Africa, most tech adoption in the legal sector is being led by the private sector, specifically larger firms. This is unsurprising, and a common trend across many regions, as private sector firms typically have greater financial motivations to seek out ICT tools that can increase productivity and speed, as well as to offer more competitive services to their client base.⁷ Across the board, however, strong public-private partnerships have helped to propel investment and adoption of these ICT services and solution in the public sector, such as in public legal aid initiatives, prosecution services, and the courts. There have also been significant contributions made from outside the legal sector to help accelerate tech adoption. Tech companies are working to create new legal database platforms to digitize laws and law reports, communication and collaboration platforms, as well as process automation and artificial intelligence tools to increase efficiency and productivity in case filings and law firm management.⁸ The initial lockdowns across the continent forced legal services providers onto technology-based platforms to communicate and provide services to their clients, a trend that is only set to grow as the benefits and value-add to clients are realised.

While some of these advances in AI or process automation may completely revolutionize the legal services of the future, many more ICT tools are proving to be essential to the operation of businesses and institutions in the modern world. The COVID-19 pandemic has shone a light on the inadequacies of some judicial systems, while providing proof cases for further investment and advancements in others. For better or worse, COVID-19 will certainly force an evolution in the delivery of judicial and legal services for generations to come and the use of technology will play an important role in that development.

Methodology

This research study was undertaken to track the use of virtual, online, or digital methods of resolving disputes and administering justice in Africa during the COVID-19 pandemic. The goal of the report is to provide a comprehensive mapping of the introduction of digital or online justice and dispute resolution activities by justice sectors across the African continent. This report does not seek to rate or rank country responses to the COVID-19 outbreak, nor does it aim to advocate for a “correct” or “appropriate” response. There are a multitude of factors, varying from country to country, which set the conditions, limit options, and guide decision makers in their response. The conclusions drawn at the end of the report highlight both challenges and opportunities presented during this period of tremendous uncertainty, which may serve as lessons for future responses to crises.

When conducting their research, analysts were seeking any available evidence of changes in the delivery and accessibility of justice and dispute resolution since the outbreak of COVID-19 on the African continent, identifying February 2020 as the start of this period. Directives and guidelines provided by executive or judiciary officials have been collected to identify changes to judicial operations, such as whether court proceedings have been suspended, if services had been adapted or limited, or if new technologies had been adopted to allow the continuation of services. The study was concluded in November 2020.

This report currently includes 12 countries and the East African Court of Justice. This list includes the top ten economies on the continent (by GDP), along with some countries tapped by the World Bank to have the fastest growing economies. This sampling does not purport to be representative of the continent as a whole, and merely serves as a starting point in mapping responses for interested outsiders. The African Law and Tech Network encourages the submission of additions and amendments to this report by those active in the legal and judicial sectors across Africa. Where possible, local contacts have contributed their insights into judicial responses. Otherwise, the majority of the evidence provided in this report is a result of open-source methods.

Country Analysis

Algeria

Covid-19 cases: 113,092
Fatality rate: 2.64% (2,983)



Total population: 43,851,044

On 16 March 2020, the Minister of Justice, Belkacem Zeghmami suspended the hearings of all criminal and correctional courts in order to curb the spread of Coronavirus in Algeria.⁹ On 28 July 2020, Algeria's Ministry of Justice in Algiers announced the launch of a new electronic platform that will allow citizens to submit their legal complaints or requests remotely.¹⁰ The Ministry did not directly link the launch of the new service with COVID-19, but instead introduced the program as part of the process of developing and improving the services offered to citizens and members of the national community established abroad.

In order to utilize this system, the complainant must access the new "Electronic Prosecutor's Office" platform, available via the electronic portal of the Ministry of Justice, in order to remotely register a complaint or request.¹¹ Complaints or requests are automatically transferred to the representative of the public prosecutor's office who will take the appropriate measures. The representative will either be a public prosecutor at the tribunal level or the Attorney General at the court level. The complainant will be informed of the progress of his complaint or request and the measures taken or necessary to be taken, via the "Electronic Public Prosecutor's Office" platform, SMS text, and email.

The introduction of such an online platform is part of Algeria's growing investment in ICT developments across the public and private sectors.¹² Dedication to these efforts has also included updates to the country's legal frameworks and introducing a series of new regulations to accompany sectoral growth.

It is worth noting that many organisations have expressed concerns over the government's tightened grip on society and information, invoking the virus to justify crackdowns against dissidents. Similar concerns have been cited in other countries such as Egypt.¹³

Angola

Reported cases: 20,807
Fatality rate: 2.44% (508 deaths)

Total population: 32,866,272

On 25 March 2020, a state of emergency was established by Presidential Decree no. 81/20 and was extended three separate times until it was lifted on 25 May 2020.¹⁴ However, the decree on 25 March did not include coverage of the courts, and the Superior Council of Magistrates ordered the generalized suspension of the judicial courts for a 15-day period only.¹⁵ As of Presidential Decree no. 142/20 dated 25th May, courts have continued work as normal, subject to the adoption of hygiene and safety measures imposed by the presidential decree.

Angola's legal system remains strongly rooted in traditional legal services. On the whole, the country does not heavily invest in public sector technology and is not actively pursuing an ICT-based economy as seen in other jurisdictions.

Egypt



Reported cases: 182,424
Fatality rate: 5.8% (10,688)

Total population: 102,334,404

Promptly following the outbreak of COVID-19 in Egypt, judicial institutions within the country were immediately placed under strict limitations starting 16 March 2020.¹⁶ After an almost 45-day hiatus, during which over 8,000 cases were adjourned, the criminal courts opened up to select cases two days per week for time-sensitive cases starting 1 May 2020.¹⁷ Prior to the COVID-19 outbreak, Egypt had already taken steps to introduce the use of technology within the court system. Some of these systems could mitigate concerns around infection in the courts.

In 2017, the Egyptian Parliament demanded the introduction of teleconferencing services within the criminal courts system as a means to lower costs associated with transferring prisoners to and from courts for hearings.¹⁸ Access to these services in prisoner were also tied to alleged efforts to improve prison conditions after receiving poor ratings from human rights watch groups. There has been limited coverage confirming whether these services are still in use within the COVID-19 environment.

Separately, Egypt's investment activities have been guided by the Egypt Vision 2030 strategy, which involves the reforms of the financial, insurance, and supporting sectors, including the judiciary, to attract greater capital and investment to the country.¹⁹ A strong feature of this plan has been the establishment of the Economic Court, increasing greater efficiency of dispute resolution compared to the backlogged civil and commercial courts.²⁰ The core component improving the speed of the dispute resolution processes in the court is the digitization of processes and the introduction of a new amendment (No. 146 of 2019)²¹ to the Economic Courts Law No. 120 of 2008.²² This new amendment introduces an electronic litigation system that allows not only filling petitions but also

caters for the submission of memorandums, appealing judgements, and notification.²³ However, it is important to note that this electronic platform appears to be limited to the Economic Court for litigation matters. Other civil or criminal courts do not appear to have such a platform or electronic case management services in place.

On the whole, these investments in electronic systems and the use of teleconferencing service signal that Egyptian authorities are aware of their value and increased role in the future of the judiciary. The previous institution of these services show that Egypt already had the tools allowing for some judicial processes across the commercial and criminal courts to continue to move forward during the lockdown. Egypt's approach to integrating technology into justice does appear to be reserved for business, particularly in inspiring confidence in the system for foreign business interests.

Ethiopia

Reported cases: 159,072
Fatality rate: 1.49% (2,365)

Total population: 114,963,588

On 18 May 2020, Ethiopia's Supreme Court President Meaza Ashenafi announced the closure of federal courts, except for urgent matters, for an initial two-week period in an effort to contain the COVID-19 spread in the country.²⁴ The closure of courts came on the backdrop of other stringent measures including the closing of schools, limiting religious gatherings, postponing large gatherings and sporting events, as well as punishing businesses for unnecessarily price-hike on consumer goods so as to contain the spread of COVID-19 in the country.²⁵ Federal courts did not re-open until 20 July 2020, and further re-openings were scheduled in stages across July, August and September.²⁶

Ethiopia remains one of the least connected countries in the world, with an internet penetration rate of less than 19% in early 2020.²⁷ Therefore, it remains unsurprising that Ethiopia has taken no significant steps towards introducing electronic and technological mechanisms to increase or improve access to justice.

Ghana

Reported cases: 84,023
Fatality rate: 0.72% (607)



Total population: 31,072,940

The rise in COVID-19 cases prompted the country to put in place measures to restrict the wanton movement of people, resulting in the shutdown of some government departments. Although the President exempted the judiciary from the coronavirus restrictions in Ghana, lawyers, litigants, and other court users were still under lockdown orders in many regions. As a result, in a press release dated 30 March 2020, the Chief Justice designated that registrars of the various courts in the locked-down areas adjourn all cases listed during the lockdown period to May and June 2020.²⁸ The

affected courts were directed to deal only with critical cases such as breaches arising from the restriction orders and other criminal matters. The Supreme Court and Court of Appeal are also available to handle urgent cases as may be determined by the Chief Justice during this period.²⁹

In light of the communication, the Chief Justice advised additional measures to control the spread of coronavirus on court premises, through a statement directing judges and magistrates to practice *“strict case management techniques such that only parties and witnesses in cases listed to be heard on particular dates would be allowed into the courtroom to avoid large gatherings”*.³⁰

The pursuance of integrating digital technologies into the Ghanaian court system dates back 2016. Ghana has the second-highest data penetration rate in sub-Saharan Africa, and ICT represents one of the most dynamic areas of its economy.³¹ Leveraging ICT in the courts systems has been a long-term goal of the Chief Justice’s Office. Ghana has led discussions on the benefits of integration at African Judicial Dialogue Conferences.³² As part of a USAID-funded project, the Ghanaian judiciary introduced a new Case Tracking System (CTS)³³ on 22 May 2018, which collates data from the Attorney-General’s Department, the Ghana Police Service, the Economic and Organised Crime Office (EOCO) and the Ghana Prisons Service as part of moves to efficiently manage cases in the country’s criminal justice system.³⁴ CTS ensures clear and accountable tracking of cases from initiation, right through to judgement. Users of the system are able to assign activities and track the execution of those activities. Its introduction is instrumental in the fight against corrupt practices within the court system.

Ghana’s pre-existing systems and investment in technology has allowed judicial processes to continue during this time. While this use of ICT tools is seen as beneficial, in reality the access to justice and the use of these systems are limited due to the high costs associated with broadband and spectrum usage.³⁵ However, there is a large push by the government and industry to lower costs as part of the country’s larger commitment to an ICT-based economy.

Kenya	
Reported cases: 105,973 Fatality rate: 1.75% (1,856)	Total population: 53,771,296

On 15 March 2020, Kenya’s Judiciary announced the suspension of key operations as part of efforts to mitigate the spread of COVID-19 in the country.³⁶ All court sittings were suspended except for urgent matters, and prisoners would no longer be brought to court for remand hearings. The Chief Justice directed all court houses to close to the public and instructed each court station to operate with three members of the judiciary (a judge/magistrate, a court administrator, and a court assistant to serve as a customer care service desk contact).³⁷

However, many courts across Kenya were in the unique position of being able to increase their use of ICT to enable judges and magistrates to deal with cases, as well as process e-filing of judgments, video conference remand hearings for prisoners in custody, and the deliver court judgments through video conferencing and Skype.³⁸ Prior to the outbreak of COVID-19 in Kenya, the judiciary had made significant commitments to reengineer court processes with the support of information

and communication technologies (ICT) as part of a broader digital strategy.³⁹ In 2017, the 2017-2021 Sustaining the Judiciary Transformation Blueprint was published, with the vision of delivering a fully-fledged e-court.⁴⁰ Kenya's courts have historically been plagued with case backlogs and a lethargic manual processing system. The new digital strategy implemented a dual-stream process in which backlogged cases are digitized and processed, while at the same time new cases continue to be digitally uploaded and processed more rapidly.

The program was initially piloted within the High Court of Nairobi's Commercial and Tax Division. Between mid-2018 to January 2020, the new digital system reviewed and closed 1,487 inactive backlogged cases, in addition to processing an estimated 12,000 new active cases.⁴¹

In addition to increasing speed, the new e-court system promotes better transparency to build public trust. Court users can now e-file their case in four steps: creation of user account, uploading documents, payment, and assignment of case registration details. This has decreased processing times for cases from 40 to seven days.⁴² Users also have access to SMS status updates on their case, along with a new e-diary system that automatically assigns a court date to case files.

However, access to this ICT-driven justice system has not been universal across the country, primarily due to the fact that Kenya's internet coverage is unevenly distributed. In the rural or upcountry areas, access to both electricity and internet remains a significant problem.⁴³ Greater investment in technology infrastructure is required to increase internet coverage and is paramount to improve access to the judiciary for Kenyans. As a result, the Law Society of Kenya immediately petitioned the court to re-open courts and resume access to dispute resolution and legal services as an essential service.⁴⁴ This permitted those unable to access online e-filings and digital dispute resolution to access in-person services. There have been reports of open-air court hearings, as well as specifically allocated time-slot sessions to limit the number of people within the court at any given time.⁴⁵

Ultimately the vision of universally accessible e-courts envisioned under the Judiciary Transformation Blueprint will not become a reality until investments in technological infrastructure can guarantee affordable and stable access to the internet for Kenyans in all regions of the country. Additionally, access to justice in rural areas will be disproportionately affected by COVID-19 because of the inaccessibility of digital resources available elsewhere in the country, with a rapidly expanding backlog of cases threatening to impact future filings once COVID-19 can be better brought under control.

Morocco

Reported cases: 483,766
Fatality rate: 1.78% (8,637)



Total population: 36,910,560

On 16 March 2020, Morocco's Supreme Judiciary Council, the Public Prosecutor's Office, and the Ministry of Justice announced the suspension of court hearing, except those case hearings involving accused persons in detention, summary proceedings, or investigations.⁴⁶ For these exceptions, the Minister of Justice sent a note to its administrative officials ordering the adoption of a rotating

presence system, without prejudice to the proper functioning of the establishment, to avoid overcrowding and limit meetings except in cases of extreme necessity.

To mitigate the country's quarantine orders, the Ministry of Justice announced that there would be an immediate push for the improvement of online judicial and dispute resolution services, with the first stage of implementing remote trials entering into play 27 April 2020.⁴⁷

Between 27 April and 24 July 2020 alone, Morocco's Superior Council of the Judiciary reported that the courts carried out 4,403 remote trials and scheduled 75,203 cases, with approximately 87,893 detainees benefiting from remote trials.⁴⁸ Moroccan Minister of Justice Mohammed Bandler reported on May 27, one month after the launch of remote trials, that the virtual performance of justice respects all fairness prerequisites, in accordance with Morocco's Code of Penal Procedure and international conventions. The successful implementation of the Remote Administrative and Judicial Services portal⁴⁹ has been attributed to the multi-institutional coordination⁵⁰ between the Superior Council of the Judicial Power (CSPJ), the Presidency of the Public Prosecutor's Office, the bar association, and the General Delegation for Prison Administration and Re-integration (DGAPR).

In a bid to further increase access, in June the Ministry of Justice signed an agreement with the Royal Institute of Amazigh Culture to integrate the Tamazight (Berber) language into the country's judicial system and on the digital platform.⁵¹ Members of these communities will now be able to use their mother tongue and communicate in courtrooms, which will eliminate a major barrier for them in judicial proceedings.

Following on from the initial success of the remote trials and digital services, Minister of Justice Mohamed Benabdelkader stated that the lessons learned from remote trials will be extended into pursuing further opportunities for integrating remote communication and artificial intelligence into various stages of the justice system.⁵² Minister Benabdelkader also noted the need for the revision of the Code of Civil Procedure and the Code of Criminal Procedure.⁵³ Like many other jurisdictions, Morocco still lacks the legislative and regulatory legal texts to support and structure these remote trials and online services. Therefore, in order to protect participants' will and preserve all constitutional human rights as they are constitutionalized in Article 23 of the Moroccan Constitution, and other legal depositions such as the Criminal Procedure, Moroccan judges have taken to asking all litigants and lawyers before the start of trial proceedings if they want to use remote trial services or not.⁵⁴ Those who choose not to will have cases postponed.

Mozambique

Reported cases: 59,350
Fatality rate: 1.08% (641)

Total Population: 31,255,435

In Mozambique, on 1 April 2020 a state of emergency was put into effect. Presidential Decree 14/2020 declared a judicial holiday break from procedural acts and proceedings, allowing only urgent acts to be carried-out, namely precautionary measures and others related to minors at risk.⁵⁵ Law no. 1/2020, of 31 March 2020 determined that the court's procedural deadlines and limitation periods are suspended for the duration of the State of Emergency.⁵⁶

Additionally, the Supreme Court established a set of individual and collective prevention measures to be observed by the Judicial Courts to limit the spread of COVID-19. The Supreme Court also issued recommendations that hearings be held only in the presence of parties, lawyers, witnesses, declarants and/or other essential procedural actors.⁵⁷ In addition, it was ordered that the mediation services of the Judicial Court of the City of Maputo be suspended and that the recommendations and instructions given by the health entities be strictly complied with. While urgent cases remaining ongoing, anyone summoned to attend is expected to appear, although many expect that absences will have to be tolerated for health reasons or any other pertinent ones, subject to acceptance of same justification by the judge.

Under the terms of Article 19 of Decree 79/2020, public institutions should give preference to the use of electronic tools of voice and data while dealing with the public.⁵⁸ As the courts are public institutions, these measures, although general in their nature, will be applied to them. Regarding the use of case management or other ICT tools, a World Bank Doing Business report noted at the end of 2019:

“The use of information and communication technology (ICT) in Mozambique is very limited in the courts due to the scarcity of computers and overall ICT infrastructure — currently, court staff take turns using computers — and to unreliable and uneven internet coverage across provinces. Approaches to electronic or web-based tools vary by economy, depending on the priorities of the judiciary and budget allocation.

[However,] a pilot integrated judicial process management system (SIGAJUS) is already operational in the second commercial division of the Maputo City Court, enabling court officers and judges to search all commercial cases in the database and deal more efficiently with their caseloads. As a medium-term goal, this initiative could be replicated across the country and complemented by implementation of e-filing and e-payment capabilities.”⁵⁹

Nigeria

Reported cases: 155,657
Fatality rate: 1.23% (1,907)



Total population: 206,139,589

On 20 March 2020, the Chief Justice of Nigeria issued a directive that all officers and officials of the court observe the precautions advised by the National Centre for Disease Control (NCDC). On 24 March, the Chief Justice advised the suspension of all court sittings for an initial period of 2 weeks, except in matters deemed urgent, essential or time bound according to extant laws.⁶⁰ The lack of clarity around these conditions led most judges to focus on fundamental rights cases or criminal cases involving the liberty of an individual.⁶¹

By 30 March 2020, President Buhari had ordered a lockdown and movement restrictions, save for essential services, in Lagos State, Abuja Federal Capital Territory and Ogun State.⁶² However, unlike other countries, legal services and the administration of justice were not deemed essential services under the directive. On 6 April 2020, the Chief Justice of Nigeria again addressed to all Heads of Court and Federal and State Judiciaries and extended the suspension of court sittings till further notice, to the exception of matters that are urgent, essential or timebound according to extant laws.⁶³

On 4 May 2020, a gradual easing of the lockdown was announced by the government and new guidelines were set by the National Judicial Council (NJC) to regulate proceedings within COVID-19 conditions.⁶⁴ Part of these new guidelines included the use of new remote proceedings:

“Physical sittings by courts in courtrooms should be avoided as much as possible during this COVID-19 period. Such physical court sittings must be limited only to time bound, extremely urgent and essential matters that may not be heard by the court remotely or virtually... Virtual court sittings (alternatively referred to as “remote court sittings” or “online court sittings”) should be encouraged and promoted by the courts and Counsel. The Courts should insist on such remote hearings for matters that do not require taking any evidence. All judgments, ruling and directions may be delivered and handed down by the courts in and through remote court sittings.”⁶⁵

However, these new “remote court sittings” have brought into question the Constitutionality of the guidelines in regard to Section 36(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which states that proceedings in courts or tribunals for the determination of the civil rights of a person shall be held *in public*.⁶⁶ The NJC Committee did stipulate in the guidelines that the issue of public access and observance of proceedings would be mitigated through three provisions. First, hearing notices must explicitly state that hearings would be conducted virtually, and that counsel and clients are not expected in the courtroom. Second, the hearing notice would detail instructions for parties to join and participate in the online hearing. Third, the hearing notice would provide details on the channel or social media platform through which there would be live streaming of the virtual court proceedings for public viewing.

Some parties, including the Lagos State and Ekiti State, were concerned that any of the rulings handed down in these cases could be overturned by the Supreme Court because of the lack of formal legislation and regulation around these proceedings, and as a result filed actions directly to the Supreme Court to make a ruling on this constitutionality.⁶⁷ On 14 July 2020, the Supreme Court came out with its verdict affirming that conducting virtual proceedings in courts in Nigeria is not unconstitutional.⁶⁸

Nigeria’s judiciary has long been plagued with extreme backlogs of cases, with an estimated 42% of all prisoners in Nigeria still awaiting trial.⁶⁹ The long tedious process of case filing remains completely manual. Attempts were made in 2018 to automate and digitize this process, but that effort eventually fell apart, and most courts reverted to the old, paper-based system.⁷⁰ Nigeria’s Chief Justice issued a statement on 15 May, advocating for speedy trials and the decongestion of custodial centres.⁷¹ Most advocates within the country agree that an online court and dispute resolution is the way forward, but many have remained vocal about their concerns. Many believe a rigorous review of options must be undertaken to ensure these new proceedings afford all the same opportunities for defendants that in-person proceedings would, such as crucial legal options like the plea bargain.⁷² Ultimately, the COVID-19 pandemic may be the impetus that Nigeria, and many other countries, needs to progress in its provision of online court service, but all changes must be made with thorough forethought and collaboration across the many facets of the criminal and civil justice systems.

Rwanda

Reported cases: 18,850
Fatality rate: 1.38% (261)



Total population: 12,952,218

Amongst lockdown orders, Rwanda is one of many countries looking for opportunities to limit the spread of COVID-19 and continue the fair provision of and access to justice. Following a suspension of service, the judiciary resumed court operations on 9 April in some jurisdictions, such as Kigali and a few other courts upcountry, through online videoconferencing platforms.⁷³ Access to such virtual court proceedings are not accessible throughout the whole country due to issues around stable internet access, insufficient bandwidth to maintain video and audio links, and costs.⁷⁴ In May 2020, the judiciary reported that only eight out of a total of 64 would be able to offer video conferencing and trials online.⁷⁵ With an already overcrowded prison system, the country released 1,182 prisoners with sentences below six months on bail terms to ease congestion in prisons and tame the spread of the virus.⁷⁶ Introduction of pre-trial hearings and virtual trials has improved the speed of processing other prisoners, drastically limiting the cost and logistics involved in these processes and will be adopted permanently even after concerns around infection end.

At the beginning of 2016, Rwanda introduced a new Integrated Electronic Case Management System (IECMS)⁷⁷ to integrate five institutions from the judicial sector including the Judiciary, Ministry of Justice, National Public Prosecution Authority, Criminal Investigation Department (Police), and the Rwanda Correctional Services. IECMS helps to provide an interface between Judiciary and Litigants for Electronic Filing and monitoring case progress delivering timely, quality and accessible justice at reduced cost.

Between 16 March and 31 June, an estimated 14,675 cases were lodged through IECMS countrywide, meaning that even during the total the lockdown period judicial services continued being delivered.⁷⁸ Chief Justice Faustin Ntezilyayo said that the use of technology in ICT is constrained by budget shortfalls, attributing the costs associated with the requisite equipment as a contributing factor to why these services have not been rolled out in all courtrooms. The Chief Justice did state that the success during this period will mean great investment in these services in the future.⁷⁹

South Africa

Reported cases: 1,513,393
Fatality rate: 3.3% (49,993)



Total population: 59,308,690

South Africa is currently the country hardest hit in Africa by COVID-19, accounting for 65% (approx. 18,028) of the regions COVID19-related deaths, and ranked 10th globally.⁸⁰ Initially, the country went into lockdown from midnight 26 March to 30 April 2020, declaring the country risk to be an alert level five, and has slowing trended downwards entering level four in May, level three in June, and finally has remained at level two since August.⁸¹

Minister of Justice and Correctional Service Ronald Ozy Lamola has published multiple regulatory government notices in the government gazette to advise each state's judiciary, with the latest regulations coming into effect on 11 September 2020 for risk alert level two.⁸²

However, it is important to note that each province could set its own directives in line with these regulations in regard to how they could continue administering justice during the lockdown period. Initially most President Judges of the provinces opted to have cases postponed and matters adjourned indefinitely with accused persons remanded. However, as the risk alert levels decreased, greater access to services was permitted.⁸³

Limited services under the government regulations include any criminal matters and civil law proceedings "involving a witness from outside the Republic and where the testimony of such witness cannot be obtained through an audiovisual link".⁸⁴ Authorization for the use of such virtual proceedings came under Section 8, "Use of Audiovisual links in judicial proceedings".⁸⁵ The regulations state,

"An audio-visual link or any electronic mode may be used in any proceedings where the presiding officer deems it appropriate and, where to do so, would prevent unreasonable delay, save costs or be convenient and make it unnecessary for the person to appear in person in the court room."

Since the start of the lockdown period, audio visual links have been utilized in cases of persons already in custody, and for hearing unopposed bail applications for charges of the accused persons in question that listed in schedules 1, 5, 6 of Criminal Procedure Act.⁸⁶ Additionally, the courts are usually responsible for sourcing interpreters for cases within every province. However, when this was not possible during the lockdown period, foreign language interpreters from other provinces were provided via video conferencing, a practice expected to continue in future.

Following the national regulations set by Minister Lamola, the Gauteng Directives were initially the sole province directives to expressly cover the use of teleconferencing and videoconferencing as an alternative for handling particularly urgent cases.⁸⁷ The directives issued by President Judge D Mlambo of Gauteng Province advocates for the filing of applications through *CaseLines* or use of email.

After a successful pilot period in 2019, *Caselines* software was fully implemented in the Gauteng Province in January 2020 to eliminate all paper work in regard to civil cases within the whole of South Africa.⁸⁸ This software is designed to help with evidence management and collaboration tools, as well as providing secure video conferencing for virtual hearings. Therefore, legal practitioners do not have to travel from one province to another to view files and evidence, creating efficiency and security around legal proceedings. The utilization of *Caselines* software during the lockdown period was seen as valuable investment and option, allowing access to justice to continue. The specific reference to the software in the President Judge's directive was also a vote of strong confidence in the relatively new system. However, the *Caseline* software seemed to fail the province beginning with a security data breach in September⁸⁹ and contractors and administrators of the software walking off the job in October.⁹⁰


The failure of the *Caselines* system in Gauteng is significant, as the system was to be extended to the Gauteng Division of the High Court, Pretoria and Johannesburg by the South African Judiciary

under a new unified system under the name, “Court Online”.⁹¹ Court Online proffered litigants and law firms within South Africa the capability to digitally file applications through E-filing, with end-to-end filing encryption. This system was also designed to handle evidence management, a key component during the administration of justice. Now the Gauteng’s justice system remains paralyzed, dependent on a broken software-based justice system.

Uganda

Reported cases: 40,357
Fatality rate: 0.83% (14,666)

Total population: 45,741,007



Prior to the outbreak of COVID-19 in Uganda, the country’s judiciary had already taken steps leverage technology in the delivery of legal and judicial services. Uganda already hosts its own Court Case Administration System, which supports administration of justice, record and case management, and adjudication processes in court proceedings.⁹² However, the system faces many bottlenecks in declaring success, such as accessibility and affordability of internet, a high case backlog, low staffing levels, and high rates of pretrial detention amongst other issues.⁹³

On 29 April 2020, former Chief Justice Bart Katureebe published the Issuance of Guidelines for On-Line Hearings in the Judiciary of Uganda, which provided explicit permission and clarity around the use of ICT services in online hearings of cases.⁹⁴ Notification of the use of online hearings by the Judiciary was made public through press release on the Judiciary’s official Twitter account and Facebook pages.⁹⁵ These tools may be used to deliver judgments and rulings, as well as to hear applications for bail, mentions, and interlocutories (Section 2). All online proceedings must be recorded by the ICT Department of the Judiciary, an made available to the parties for official use upon requested (Section 5). The guidelines stipulate that any judgments rendered from proceedings may be transmitted through email, WhatsApp, or as advised by the ICT or the Law Reporting Committee of the Judiciary (Section 6).

Despite the issuance of these guidelines by the Chief Justice and the encouragement to use technology to continue judicial proceedings, some judges and magistrates were hesitant and expressed reservations in handling inmate bail applications on the grounds that the Zoom platform was not specifically referenced anywhere in the law. One such example was businessman Abid Alam, whose bail application was denied via the Zoom technology platform by the Magistrate Ketty Acaa on grounds that this platform was not recognized by the court for bail application.⁹⁶

Stakeholders from the United Nations Development Programme (UNDP), Uganda’s Judiciary, ICT experts, development partners, academia, the private sector and civil society held a conference to discuss the expanded use of e-justice as a means to deepen access to justice in Uganda. They also made a business case for e-justice as one of the innovative and practical measures to respond, sustain, and accelerate the dispensation of justice in Uganda in the wake of the COVID-19 pandemic.⁹⁷ Participants from this UNDP-hosted summit observed that while the COVID-19 pandemic has exacerbated challenges, it has also presented fresh opportunities to harness digital innovations to deliver justice. These sentiments were confirmed by the Minister of Justice and Constitutional Affairs, Hon. Prof. Ephraim Kamuntu, who said that digitization is critical to Uganda’s efforts to achieve its development aspirations as enshrined in both Uganda’s Vision 2040 and the third National Development Plan (NDP III) which seek to mainstream ICT in all aspects of the

country's development.⁹⁸ However, while embracing e-justice may be the way forward, data protection and the prevention of a digital divide must be at the forefront of shaping future digital-based systems.

East African Court of Justice

Burundi, Kenya, Rwanda, Uganda, Tanzania



The East African Court of Justice (EACJ) was established in November 2001 as a judicial organ for the East African Community (EAC), to ensure adherence to law in the interpretation and application of and compliance with the EAC Treaty.⁹⁹ The EAC represents the interests of Burundi, Kenya, Rwanda, Uganda, and Tanzania, where the EACJ is headquartered. In March 2020, the court suspended its sessions due to the Coronavirus pandemic outbreak in the region. After an emergency Plenary session in April, the Court urged the Lawyers/ Litigants to file cases and serve documents online pursuant to the new East African Court of Justice Rules 2019.¹⁰⁰ The Plenary also resolved to roll out online virtual court sessions for delivery of justice on time.

On 15 May, the EACJ resumed court proceedings utilizing video conferencing while handling all matters that were brought before the court.¹⁰¹ The Registrar of the court published Guidelines on Video Conferencing Proceedings¹⁰² to supplement the provisions of Rules 132 and 133 of the East African Court of Justice Rules of Procedure 2019.¹⁰³ All parties appearing virtually before the court were directed to act in the same accordance with standards and regulations for appearing in-person.

In mid-June, the First Instance Division of the EACJ resumed its regular sessions virtually, signing its rulings and judgments electronically for the first time.¹⁰⁴ This was in itself a milestone in the history of the Court securing its intentions to continue to improve efficiency and effectiveness of the EACJ through digital innovations.

Prior to COVID-19 concerns, the EACJ's 2019 Rules of Procedure already emphasized the use of technology by parties to the treaty. The rules provide for use of technology in case management and record keeping by parties to increase efficacy and efficiency of proceedings. Rule 132 includes systems and tools such as E-filing systems, digital display devices, real-time transcript devices, video and audio-conferencing devices, and any other technology that the court may deem fit and approve.¹⁰⁵ In addition, Rule 133 allows parties to use technology in the exchange of information and documents during the trial, including pleadings and statements, so long as the practice is agreed upon by all parties at the start of proceedings. The EACJ also permits the delivery of judgments electronically, utilizing email, instant messaging, or other widely used electronic methods under Rule 133(5). It is important to underline the fact that these rules and guidelines of the EACJ cut across all five of the East African countries of the EAC.

Conclusion

The judiciary and justice systems play a vital role within societies. Providing oversight and accountability, while giving citizens access to judicial recourse, is essential. As stated earlier, the conditions created by COVID-19 have compromised the ability of judiciaries to uphold the rule of law, protect and respect human rights standards, guarantee equality before the courts, and provide access to a fair trial for all citizens. Closing the courts or restricting access jeopardizes the people's confidence in their judicial system. When people can no longer rely on their access to justice in a timely manner, this can ultimately result in an overall loss of judicial integrity. Individuals may begin to act without fear of judicial recourse, creating a sense of lawlessness that destabilizes an environment.

After reviewing 13 jurisdictions, a few pre-existing conditions seemed to stand out in significantly shaping judicial responses to COVID-19.

1. **Government Investment** – To begin, true commitment to the success of the administration of justice is the strongest determining factor continued in access to justice. This does not necessarily mean large financial investment, but the prioritization of the resources available to ensure access to all elements of justice can be sustained. Some smaller countries with a strong commitment to the system have been able to maintain access to justice with very limited means. In practice this may look like strict scheduling and limited audiences within court rooms, paired with regular cleaning and disinfection schedules. Other countries may have invested in rudimentary video-conferencing services, such as those used in the prison system by many of the countries studied. On the other hand, some countries have gone beyond their commitment to access and are utilizing ICT systems to deliver increased efficiency while decreasing costs and waiting periods. Ideally, along with a dedication to ensuring access comes a commitment to equitable and diverse access. In the case of South Africa, steps were taken by the judiciary to ensure users requiring an interpreter would still be provided one, even over video-conference. In April 2020, all 39 Kenyan high courts used Skype and Zoom to clear a backlog of cases and release 4,800 prisoners on remand or convicted of petty crimes.¹⁰⁶
2. **Infrastructure** – Some of the countries included in this analysis have demonstrated substantial government investment in ICT services. In these cases, citizens have access to virtual video-conferencing services, or online court portals taking users from initial case filings and document submission, through to judgement. Despite heavy investment in these systems, some jurisdictions have systemic problems with accessing the infrastructure upon which they run. For some jurisdictions or in rural areas, access to broadband and internet services or their associated costs prohibit citizens from taking part and utilizing court and judicial services. Therefore, only the middle-upper class citizens, or those located in more urbanized areas can benefit. Oftentimes, those located outside these coverage bubbles are the ones who are in most need of access. Remediating these issues is the responsibility of government. Establishing a successful ICT-enabled economy can only be achieved with an underlying sustainable and secure infrastructure.
3. **Regulatory Reform** – Elements of government investment and infrastructure extend to committing to extensive legislative and regulatory reforms across the administration of civil

and criminal justice. Some of the countries analysed have participated in the requisite regulatory or legislative reforms needed to support the use of ICT tools within the courtroom setting. In some jurisdictions, like Nigeria, a lack of clarification in the law and regulations stalled judicial proceedings utilizing video-conferencing or online document submission software. Following the letter of the law is critical in legal cases, as failure to do so can compromise the legitimacy of rulings. Therefore, some judges and magistrates chose to adjourn court proceedings, rather than proceed using technology services as advised by government or judicial officials.

4. **Adoption of ICT tools** – Ultimately, those countries that were already actively utilizing case management systems and/or video-conferencing tools were more successfully able to pivot to virtual court or “e-justice” services during COVID-19. Remanded prisoners were still able to attend hearings through video-conferencing. Individuals could log cases or submit documents through online court portals. Nevertheless, the efficacy of these ICT tools is only as good as the sustained investment in them. For example, in the case of South Africa, troubles with out-of-date security and poor contract management with software providers led to an expensive system falling off-line, while also compromising the data of countless individuals.

There remains a tremendous amount of diversity when looking at the use of technology across African judiciaries. Part of this is linked to asymmetrical distribution of investment and wealth on the continent. There is a higher proportion of developing countries on the continent than most others, some of which have been included in this report. Technology has been hailed as the way to bridge justice gaps around the world, helping to bring service to remote areas and level the playing field. In reality there are a number of elements that contribute to closing this gap. It is not only the commitment to justice, but also the prioritization of resources and services to guarantee a stable and sustainable pathway to accessing justice for citizens, even when a pandemic strikes. Technology is not the magic ingredient that can fix a broken justice system. It is merely a tool that sits upon infrastructure rooted in integrity and good governance.

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