

The Appetite for E-Justice is a Chance to Advance Sustainable Development Goals and Entrench Rights Protection

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Accelerated, rights-centred digital transformation offers a window to strengthen trust in justice institutions and deliver more equitable, development-focused legal services; however, the window may be narrow. Action needs to be taken quickly.

While education, health care, financial services, media and commerce have all experienced a transformation in recent decades, justice systems have continued to rely on in-person appearances, physical record-keeping and analog processes. COVID-19 lockdowns provided the disruption that this slow-to-adapt sector needed, setting in motion digital transformation in the justice system.

The trust between Governments and the people they serve relies on effective, transparent and accountable dispute resolution. Justice system responses to the COVID-19 lockdowns strengthened that trust in some cases—and broke it in others. Courts and legal services shut down across the globe in 2020. Some adapted quickly, resuming operations using digital solutions to maintain the administration of justice, while others are still struggling to return to previous operations, facing extensive backlogs and many unmet legal needs.

The lockdowns revealed the vulnerability of justice systems heavily dependent on paper and in-person filing and appearances. The lack of interoperability between courts, police, lawyers, prosecutors and judges constituted a critical barrier rather than simply an inconvenience. Judges, lawyers, and human rights advocates faced steep learning curves as they scrambled to move their services online.

The global pandemic also revealed the extent to which a healthy, efficient and reliable justice system is critical for the day-to-day well-being of society. Fair and effective dispute resolution protects jobs, prevents unreasonable evictions, and provides emergency benefits and access to critical services, including health care. During the pandemic, people who were already vulnerable to rights infringements—whether because of their status as refugees, undocumented workers or prisoners or because of the increased reliance on complex data collection and surveillance—looked to justice mechanisms for protection. In some countries, the courthouse doors remained closed.

Viewed optimistically, the crisis-driven adaptation that has taken place over the past few years has effectively provided a test case for new ways of delivering justice services and has forced people and institutions to experiment with new technologies. As public institutions shift from temporary service modifications to sustained modes of operating, there are new opportunities

System vulnerability + disruption + attitudinal change = justice sector appetite and urgency for change

for digital transformation. Governments and citizens have a new appreciation of how a trusted, effective justice system underpins progress on many of the Sustainable Development Goals (including SDGs 1, 2, 3, 5, 9, 10, 11 and 16). The COVID-19 pandemic disrupted established patterns, creating the conditions for rights-centred, rule-of-law-focused e-justice adoption. This is the opportunity for digital transformation of justice. The subsections below highlight critical starting points, providing a closer look at the emergence and evolution of digital justice services.

Appearing virtually

The use of video appearances to bridge periods of lockdown during the pandemic proved to be a viable, though not perfect, alternative to in-court appearances. As courts have reopened and people have eagerly returned to familiar ways of operating, institutions have had to assess the efficacy of temporary fixes and retain practices that incorporate the advantages of remote appearances. The possibility of testifying by video dramatically increases access to justice in rural and remote regions, making it possible for people in underserved areas to access higher courts or specialized lawyers and experts. Vulnerable witnesses, including children, women experiencing violence, or witnesses under protection, can opt to testify from safe locations without the cost, difficulty, fear or intimidation associated with coming to the courthouse. These gains must not be lost in favour of the convenience of the court or the lawyers.

Updating archaic legislation

Rules and legislation relating to technology, types of evidence, prisoner transport, records storage and many other seemingly mundane aspects of the administration of formal justice systems

have long been seen as barriers to technology-facilitated justice services. Some of these barriers to modern operations are found in centuries-old legislation or rules. During the pandemic, many countries made quick, temporary changes to allow electronic signatures, virtual appearances, electronic filings, or judge-alone trials.² These legislative changes allowed courts to try out new technologies, refine their approaches and bring greater experience to discussions about permanent changes to court operations. Not only can these experiments be retained, but they can also serve as the basis for broader justice sector innovations such as mobile courts.³

Working together

The pandemic lockdowns also revealed the siloed nature of the justice sector, with each institution maintaining separate records on incompatible systems. This approach to the handling of sector data wastes time and is susceptible to human error, loss or damage. More importantly, the lack of accessible data about people's legal issues and use of services prevents justice systems from truly understanding public needs or identifying opportunities to improve the system. Without integrated data systems, it is difficult to provide evidence-based legal training, make data-driven hiring or scheduling decisions, or focus improvements where they will have the greatest positive impact for the public. Building interoperability across institutions—the police, prosecutors, defence counsel, courts, prisons, financial institutions, family counsellors, workplace investigators, civil registries and social services—creates a people-centred approach to justice services in terms of both access and privacy. By addressing the gaps and dependencies revealed in the past few years, Governments have the opportunity to strengthen public trust in the justice system.

Wary but not risk-averse

Converting from analog to digital systems or integrating justice data with those of other public services involves potentially serious risks, but these can be managed. In addition to the privacy and data security concerns that come with any digital tool, e-justice initiatives require extra vigilance to ensure that case data are fully segregated from government data, with strict prohibitions against government access. In criminal cases, when citizens challenge government decisions or fight for a right or benefit, they argue against the Government in the courtroom. Public trust in the courts will erode if political and bureaucratic actors are able to access the details of court files. The independence of the judicial system is key to maintaining public trust.

The increasingly significant role of artificial intelligence (AI) in digital operations presents a difficult challenge for the justice system. AI evolves by learning from the data it is fed.

When those data sets include past decisions of judges and government officials, the AI embeds the bias of those historical decisions into its algorithms—but the resulting decisions have the appearance of digital neutrality. Not only must the data foundation of legal AI be scrutinized for bias, but judges will increasingly be expected to adjudicate on cases where public services rely on AI. The role of judges as experts in protecting rights and detecting bias is critical to public trust in digital tools.

Addressing the risks that come with digitalization is critical to ensure not only that privacy rights are protected, but also that those experiencing literacy, geographic, economic or demographic barriers are not excluded. Ensuring that digitalization aims to leave no one behind will mitigate against the harms of the digital divide and improves access to justice for those who need it most.

Future-proofing

E-justice is primarily focused on modernizing the justice system and bringing it up to speed with other public services, but e-justice also represents a strategy for future resilience. Adopting robust digital tools, designed around the lessons of the COVID-19 pandemic, will help make justice systems resilient to future disruptions. Against the backdrop of increasingly frequent climate events, political and civil conflicts, and future public health emergencies, continuity of justice services will be required regardless of physical, geographical or logistical challenges. Maintaining access to independent, stable and trusted dispute resolution mechanisms in such periods of uncertainty will minimize political instability and support civic well-being in times of crisis. This is already evident in Ukraine, where e-justice systems developed in 2018/19 to provide access to courts for people living in regions occupied by the Russian Federation were quickly expanded during COVID-19 lockdowns to extend access to dispute resolution across the country. Now, during the war, these e-justice tools are helping maintain the rule of law and security of records as individuals displaced by the conflict struggle to prove eligibility for benefits or ownership of property.⁴ The e-justice initiatives adopted in Ukraine have already been tested twice, demonstrating the system's relevance and resilience.

In Myanmar, where political turmoil has created opportunities for land grabbing and made it difficult to prove property rights,⁵ apps are being used to map existing and historical claims to property to create a reliable, publicly accessible record. Used now to help mediate neighbour disputes through informal justice mechanisms, this digital tool may be used as an evidentiary record in future for more formal determinations of property and political rights.

Digital technology is being used by the justice sector in Morocco to address discrete challenges. A new app is being

developed to facilitate the timely payment of child and spousal support to women after the courts recognized that they were not collecting the payments owed to them. Women may be able to use the app to provide proof of economic stability when registering a small business or applying for a loan. This is part of a larger initiative to support the digital transformation of the country's justice system that includes a digital strategy and new communication technologies and tools that allow instant access to justice services.⁶

Recommendations for exploiting this window of opportunity

- Organize transformation efforts around people's experience of conflicts or injustice rather than adhering to conventional categorizations of legal disputes or current jobs within the system.
- Involve judges and human rights defenders—as guardians of rights—in the design of digital solutions.
- Embrace legal processes that incorporate preventive, early resolution and informal approaches to dispute resolution, integrated through e-justice tools for consistent, seamless results.

Caribbean countries are designing comprehensive electronic case management systems that integrate data collection and data sharing protocols across institutions and are building regional information technology expertise to address current backlogs and delays in criminal cases.⁷ Paper-based courts that were already experiencing delays closed during pandemic lockdowns. Police investigations that relied on witness statements rather than forensic or digital evidence collection slowed. Lawyers could not access court or office files. Legislative and infrastructure constraints precluded virtual court hearings in some countries. The delays in case processing resulted in

overcrowding in prisons as people waited even longer for their trials. Having experienced the negative impact of analog systems on access to justice and operational effectiveness, those working across the justice system articulated the need for change. This transformation will facilitate ongoing and future improvement of the legal system while addressing current backlogs and delays in criminal cases.

Each of the e-justice initiatives highlighted above addresses a current development goal, prioritizes the protection of human rights, and increases the relevance and public accountability of legal services while also building future capacity for transformation.

People-centred e-justice

Building or rebuilding public trust in the administration of justice requires thinking about how people experience conflict, the consequences of legal disputes in their lives, and the outcomes that matter most to their health, safety, security and well-being.

E-justice is sometimes viewed as simply moving existing justice processes online. Instead, it can be harnessed as a transformative tool. Rather than focusing on how to modernize the tasks of judges and lawyers, it is time to ask what people expect from their justice systems. The current appetite for change represents an opportunity to design digital tools to transform outdated legal processes by focusing on rights-respecting priorities that build public trust.

This is an unexpected, though welcome, moment where the glacial pace of justice system modernization is accelerating, and there is an openness to cross-institutional cooperation to prioritize development goals and human rights protections. The transformative potential of this moment will be lost if e-justice is treated as an infrastructure upgrade. Consistent, transparent justice is critical to maintaining a stable legal foundation for economic and physical well-being. Increased public expectations of fairness and enforceability of administrative and civil justice decisions requires justice systems not just to modernize but to transform themselves through the integration of people-centred digital tools.

Endnotes

- 1 Sarah McCoubrey is an Access to Justice Strategist at her consultancy, CALIBRATE.
- 2 Antigua News Room, “Antigua’s Lower House approves bill for judge alone trials”, 7 May 2021, available at <https://antiguanewsroom.com/antiguas-lower-house-approves-bill-for-judge-alone-trials/>.
- 3 *Bangladesh Post*, “Judicial service near at hand”, (Dhaka) 12 August 2021 (updated 13 August 2021), available at <https://bangladeshpost.net/posts/judicial-service-near-at-hand-66186>; *Dayak Daily*, “Chief Justice: mobile courts remain vital to provide justice for rural communities and urban poor”, (Kuching) 16 January 2020, available at <https://dayakdaily.com/chief-justice-mobile-courts-remain-vital-to-provide-justice-for-rural-communities-and-urban-poor/>.
- 4 United Nations Development Programme in Ukraine, “Ministry of Justice gains support for the development of IT infrastructure and electronic registers”, press release, 3 August 2022, available at <https://www.undp.org/ukraine/press-releases/ministry-justice-gains-support-development-it-infrastructure-and-electronic-registers>.
- 5 UNDP, “Land grabbing is a major threat”, 22 August 2022, available at <https://stories.undp.org/land-grabbing-is-a-major-threat>.
- 6 UNDP Office in Morocco, available at <https://www.undp.org/fr/morocco>.
- 7 Juliet Solomon, Jason Lacorbiniere and Reyanna Sankar, “Access to justice: the enabler of human rights in the Caribbean”, UNDP Bureau for Latin America and the Caribbean, 15 December 2021, available at <https://www.undp.org/latin-america/blog/access-justice-enabler-human-rights-caribbean>; project example can be accessed at https://digitalx.undp.org/police-records-management-information-system-prmis_1.html.