

Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice

Kariuki Muigua

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Kariuki Muigua*

Abstract

The COVID-19 pandemic has destabilized the traditional ways through which many professions operated. As a way of ensuring that the World Health Organization's directives on social distancing are observed, many professions as well as learning institutions have had to resort to virtual platforms for either learning or working remotely from home. One of the sectors that have seen rapid changes than it has ever experienced before is the legal profession where the use of technology in accessing justice has been embraced as a matter of necessity. This notably affects the provision of legal services as well as provision of legal education. This may also arguably mark the beginning of a trend worldwide where businesses and learning institutions will embrace science and technology in their activities, a trend that may be taken up at a faster rate even post the pandemic. Technology is revolutionizing the way businesses and various sectors operate and although it comes with its advantages and disadvantages, this paper argues that the legal profession, both in provision of services and legal education, has more to gain if they can embrace science and technology. It explores the various ways in which the legal sector can utilise technology to not only enhance access to justice but also improve the efficiency in the legal sector. Arguably, law schools, law firms, and even the Judiciary must embrace science and technology in the face of globalization, in order to achieve efficiency and enhanced access to justice.

1. Introduction

The Coronavirus Disease (COVID-19) pandemic effect has not only been felt on the global economy but also in many professions which have had to adapt to stay afloat during the pandemic.¹

* *PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. In Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; Advocate of the High Court of Kenya; Senior Lecturer at the University of Nairobi, School of Law; CASELAP [April, 2021].*

¹ See United Nations Conference on Trade and Development, *Impact Of The Covid-19 Pandemic On Trade And Development: Transitioning to a New Normal*. (United Nations 2021); Lenzen, M., Li, M., Malik, A., Pomponi, F., Sun, Y. Y., & Wiedmann, T., 'Global Socio-Economic Losses and Environmental Gains from the Coronavirus Pandemic' (2020) 15 PLoS ONE e0235654; Barua S, 'Understanding Coronanomics: The Economic Implications of the Coronavirus (COVID-19) Pandemic'; Siddiqui K, 'The Impact of Covid-19 on the Global Economy' [2020]

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Due to the preventive measures recommended by the World Health Organisation which include social distancing among others, it has become almost impossible for professionals to operate from their traditional physical offices.² The legal profession has not been spared either. The legal practice in many parts of the world including the African continent has been by way of physical attendance in courtrooms where the judges and magistrates, advocates and witnesses physically present their cases.³ The physical presence of employees in law firms has also become difficult.⁴ Court hearings are being conducted virtually via online platforms. Arguably, this has disrupted the profession in a way never experienced before.⁵

Apart from effects of the pandemic, the changes in the legal sector have also been largely attributed to the ascendancy of information technology, the globalization of economic activity, the blurring of differences between professions and sectors, and the increasing integration of knowledge.⁶ Technology has greatly impacted the way law and law firms are operating in this era as far as enhancing efficiency is concerned.⁷

World; Nicola M and others, 'The Socio-Economic Implications of the Coronavirus and COVID-19 Pandemic: A Review' [2020] *International journal of surgery*.

² 'Advice for the Public' <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>> accessed 4 April 2021.

³ 'Could the Pandemic Be Grinding Justice to a Halt?' (*ALN Kenya*) <<https://www.africalegalnetwork.com/kenya/news/coronavirus-pandemic-grinding-justice-halt/>> accessed 4 April 2021; 'IBA - The Global Impact of the Covid-19 Pandemic on Commercial Dispute Resolution in the First Seven Months' <<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=bd404ce3-3886-48a8-98f6-38eaaccd5f53>> accessed 4 April 2021.

⁴ Meganne Tillay | February 28 and 2020 at 03:39 AM, 'Baker McKenzie Shuts down London Office Following Coronavirus Scare' (*Law.com International*) <<https://www.law.com/international-edition/2020/02/28/baker-mckenzie-shuts-down-london-office-following-coronavirus-scare/>> accessed 3 June 2020.

⁵ Journal ABA, 'Courts Attempt to Balance Innovation with Access in Remote Proceedings' (*ABA Journal*) <<https://www.abajournal.com/magazine/article/courts-attempt-to-balance-innovation-with-access-in-remote-proceedings>> accessed 4 April 2021; Puddister K and Small TA, 'Trial by Zoom? The Response to COVID-19 by Canada's Courts' (2020) 53 *Canadian Journal of Political Science/Revue canadienne de science politique* 373; Chandra G, Gupta R and Agarwal N, 'Role of Artificial Intelligence in Transforming the Justice Delivery System in Covid-19 Pandemic' [2020] Chandra, G., Gupta, R. and Agarwal 344; Rossner M, Tait D and McCurdy M, 'Justice Reimagined: Challenges and Opportunities with Implementing Virtual Courts' [2021] *Current Issues in Criminal Justice* 1; Legg M, 'The COVID-19 Pandemic, the Courts and Online Hearings: Maintaining Open Justice, Procedural Fairness and Impartiality' (*Social Science Research Network* 2021) SSRN Scholarly Paper ID 3681165 <<https://papers.ssrn.com/abstract=3681165>> accessed 4 April 2021.

⁶ Kellogg Sarah, 'Cover Story: The Transformation of Legal Education' *From Washington Lawyer, May 2011* <<https://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/may-2011-legal-education.cfm>> accessed 4 June 2020.

⁷ Abigail Hess, 'Experts Say 23% of Lawyers' Work Can Be Automated—Law Schools Are Trying to Stay Ahead of the Curve' (*CNBC*, 7 February 2020) <<https://www.cnbc.com/2020/02/06/technology-is-changing-the-legal-profession-and-law-schools.html>> accessed 5 June 2020; Alej, ro Miyar | February 06 and 2020 at 09:46 AM, 'Technology Trends That Will Affect the Legal Profession in 2020' (*Daily Business Review*) <<https://www.law.com/dailybusinessreview/2020/02/06/technology-trends-that-will-affect-the-legal-profession-in->

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This paper offers a critical discussion on how science and technology can be used in not only enhancing provision of legal education in Kenya but also improving service delivery in legal practice.

In this paper, ‘legal technology’ (Legal Tech) is used to mean the use of technology and software to provide and aid legal services.⁸ Legal Technology applies technology and software to assist Law Firms in practice management, billing, big data, e-discoveries, predictive analytics, knowledge management and document storage.⁹

While Legal Tech is meant to enable the bigger firms improve overall efficiency in order to adapt to a progressively popular agile working environment, it also allows smaller firms and sole practitioners to compete with the leading names in the field, giving them access to powerful research tools.¹⁰

This paper discusses these new developments and proceeds on the hypothesis that even though the profession may resume its normal traditional mode of operation, it is now time for the legal practitioners to consider adopting this way of doing things.

The paper specifically looks at legal practice in Kenya and explores recommendations on how best the legal practitioners in the country as well as the Judiciary can tap into technology to sustain virtual attendance of courts albeit alongside the traditional court attendance. The paper however approaches the subject of legal practice generally and does not make any attempt to look at the various disciplines of practice. It adopts a generalized approach to the term ‘legal practice’.

2020/> accessed 5 June 2020; Singapore Academy of Law, ‘Deep Thinking: The Future Of The Legal Profession In An Age Of Technology’ (*Medium*, 19 July 2019) <<https://medium.com/@singaporeacademyoflaw/deep-thinking-the-future-of-the-legal-profession-in-an-age-of-technology-6b77e9ddb1e9>> accessed 5 June 2020; ‘Disruptive Technology in the Legal Profession’ (*Deloitte United Kingdom*) <<https://www2.deloitte.com/uk/en/pages/financial-advisory/articles/the-case-for-disruptive-technology-in-the-legal-profession.html>> accessed 5 June 2020; ‘New Technologies and the Legal Profession’ (*nyujlb*) <<https://www.nyujlb.org/single-post/2019/04/08/New-Technologies-and-the-Legal-Profession>> accessed 5 June 2020; Tanya Du Plessis, ‘Competitive Legal Professionals’ Use of Technology in Legal Practice and Legal Research’ (2008) 11 *Potchefstroom Electronic Law Journal*.

⁸ ‘What Is Legal Technology And How Is It Changing Our Industry?’ (*The Lawyer Portal*, 29 January 2019) <<https://www.thelawyerportal.com/blog/what-is-legal-tech-and-how-is-it-changing-industry/>> accessed 3 June 2020.

⁹ ‘Business Models for Law Firms - p.Xel Marketing Agency’ <<https://www.p-xel.co/business-models-for-digital-disruption-in-the-legal-industry/>> accessed 5 June 2020.

¹⁰ ‘What Is Legal Technology And How Is It Changing Our Industry?’ <<https://www.thelawyerportal.com/blog/what-is-legal-tech-and-how-is-it-changing-industry/>> accessed 5 June 2020.

2. Growth and Development of Legal Education and Training in Kenya: Looking into the Future

Most legal systems as well as legal education and training frameworks in Africa were influenced by their colonial masters. Kenya was a British colony from around 1895 when it was declared British Protectorate until its independence in 1963.¹¹ It has been documented that higher education, which included formal legal education, had hardly been introduced in many parts of the British colonial Empire by the end of the first part of the twentieth century.¹²

In most of the earliest jurisdictions around the world such as the United States of America, law students in law schools during the first century of legal education received a very broad education based on the understanding that legal education in an academic setting should be broad based, including study of government generally in order to be of importance to students not intending to be lawyers as well as to future practitioners.¹³ This was well captured in an 1870 report in the American Law Review which quoted the President of Northwestern University in a letter to his Board of Trustees as follows:

*The object of a law department is not precisely and only to educate young men [and women] to be practicing lawyers, though it will be largely used for that purpose. It is to furnish all students who desire it the same facilities to investigate the science of human law, theoretically, historically, and thoroughly, as they have to investigate mathematics, natural sciences, or any other branch of thought.*¹⁴

It is thus arguable that the development of legal education and legal profession in general across the world was informed by not only the desire to meet the day-to-day needs for access to justice in a particular society but also the need to ensure that the legal experts can adopt and solve the problems of tomorrow. It is for this reason that legal education becomes an important pillar in building a legal profession that will be dynamic and alive to the current needs of the society that it seeks to serve. To buttress the importance of legal and education and law in general in any society, it has been pointed out that ‘as a foundation of the society or a nation law is considered to be the

¹¹ Larsen L, ‘Re-Placing Imperial Landscapes: Colonial Monuments and the Transition to Independence in Kenya’ (2012) 38 Journal of historical Geography 45.

¹² Likhovski A, ‘Colonialism, Nationalism and Legal Education: The Case of Mandatory Palestine’ (1917) 1967 The History of Law in a Multicultural Society: Israel 75, 76.

¹³ Stein RA, ‘The Future of Legal Education’ (1991) 75 Minnesota Law Review 945, 947.

¹⁴ Ibid, 948.

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means for social progress and economic growth.¹⁵ This is because, ‘law education is considered as a multidisciplinary subject, which involves basic knowledge of science, philosophy, arts, humanities and social sciences’ thus making it an important component of many sectors in any given society.¹⁶ Indeed, some of the earliest commentators on the subject of legal education in Kenya and Africa in general have pointed out “that the very future of the law in Africa depends on a proper system of legal education being established”.¹⁷

It has been pointed out that ‘due to the unique immunity of the legal industry, the impact of previous industrial and scientific and technological revolutions on the legal profession has always been relatively small whether on training of lawyers, selection of judges or the mode of operation of the legal profession system is still almost the same as that before modern times, especially in western countries.’¹⁸

However, the modern legal system and legal training must be alive to the developments and challenges of the 21st Century. One of the most important developments of this century is science and technology which has impacted on almost all spheres of everyday life and all professions, including the legal profession and training. As pointed out by some authors, ‘technological changes have profound impact on all the existing system and surroundings where digitalization has brought the transformation in all the routine activities and the way to earn, learn, shop and play thus changing in a collective way production and contours of work, vis a vis social and political actions, in the forms of rules, regulations and policies, are determined to unfold the future’.¹⁹ In other words, the legal profession and training of lawyers must take care of ‘the needs of new brands of legal consumer’ if it is to remain relevant.²⁰

¹⁵ Raizada S and Mittal JK, ‘Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education’ (2020) 20 *Medico Legal Update* 188, 189.

¹⁶ *Ibid*, 189.

¹⁷ Lord Denning (1960) (as quoted in Ojwang JB and Salter DR, ‘Legal Education in Kenya’ [1989] *Journal of African Law* 78, 78.)

¹⁸ Hu T and Lu H, ‘Study on the Influence of Artificial Intelligence on Legal Profession’, *5th International Conference on Economics, Management, Law and Education (EMLE 2019)* (Atlantis Press 2020), 964.

¹⁹ Raizada S and Mittal JK, ‘Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education’ (2020) 20 *Medico Legal Update* 188, 188.

²⁰ *Ibid*, 188.

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3.1. Use of Legal Technology within the Legal Profession in Kenya: Progressive or Conservative Profession?

A broad approach to the term “Legal profession” may be used to refer to all those who are in some capacity engaged in the working of the legal system, including judges, advocates, government lawyers, prosecutors, academics, paralegals and law reformers.²¹ All these persons play a crucial role in administration of justice and offering legal training for capacity building in the sector. They are therefore all relevant in the context of this paper as it deals with how all the stakeholders in the legal sector can embrace technology as a tool for enhancing accessing to justice for all.

With the Colonial incursion in Africa came the introduction of the formal justice systems that before then were non-existent and even unknown.²² In Kenya especially, this was necessitated by the emergence of private ownership of property by the colonialists particularly the settlers, and there arose the need for protection of their rights to the property and also enforcing the same against others, especially the Africans who had been rendered landless.²³ However, even after the colonialists left, there was no turning back as far as formal justice system was concerned.

The Government of Kenya continued to invest, albeit at an unsatisfactory pace, in ensuring that courts were put up across the country as the main system of access to justice. The legal profession has since played a major role in facilitating access to justice. However, it is not always easy for Kenyans to access justice due to a myriad of challenges. Some of the documented challenges facing access to justice over the years include but are not limited to: legal, institutional and structural challenges; Institutional and procedural obstacles; Social barriers; and Practical and economic challenges.²⁴ Closely related to these are high court fees, geographical location, complexity of

²¹ Ghai, Y.P. and Cottrell, J. eds., *The legal profession and the new constitutional order in Kenya*. Strathmore University Press, 2014 < https://www.kas.de/c/document_library/get_file?uuid=56ba9291-7c05-98d5-96b1-8161785ff854&groupId=252038> 30 May 2020, p. 16.

²² See Muigua, K., *Alternative Dispute Resolution and Access to Justice in Kenya*, Glenwood Publishers, Nairobi, 2015, p.61.

²³ *Ibid*, p.61.

²⁴ Access to Justice–Concept Note for Half Day General Discussion Endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd Session, p. 9. Available at <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ConceptNoteAccessToJustice.pdf>> 30 May 2020.

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rules and procedure and the use of legalese.²⁵ These are challenges that directly impact on the general public's ability to seek and access justice.

These domestic challenges are compounded by economic turbulence due to societal and economic changes; adaption to new technology; compliance and ethical issues; and continuing professional development which directly impact on the legal profession especially the lawyers.²⁶ The changing times and the above listed challenges have made clients to continue to demand efficiency and responsiveness from their lawyers for less cost. Clients expect their lawyers to focus more on the outcome and less on time spent on a legal matter.²⁷ The legal profession is also facing competitive pressures from accountants, realtors, financial advisors, and others – enabled by the Internet which is making it easier for them to compete.²⁸ The lawyers also face competition from global legal service providers, as the doors to transnational practice by lawyers widen by the World Trade Organization's General Agreement on Trade in Services (GATS) and regional integration.²⁹

While lawyers have long been characterized as technology antagonists who are slow to change and wary of innovation³⁰, law practice has slowly but surely moved from an era of using desktop phones, filing cabinets, and yellow legal pads to a period when all these have been replaced by laptops, tablets, cell phones, and other mobile devices and often virtual or cloud-based platforms.³¹ In addition, majority of clients' documents are stored on hard drives or in the cloud, while layers of difficult-to-access "metadata" contain hidden information that could influence lawyers' decisions.³² This development in technology has come with tremendous improvement in not only efficiency but has also enhanced the security of clients' data. While this has been the trend

²⁵*Strengthening Judicial Reform in Kenya: Public Perceptions and Proposals on the Judiciary in the new Constitution*, ICJ Kenya, Vol. III, May, 2002; See also Kariuki Muigua, *Avoiding Litigation through the Employment of Alternative Dispute Resolution*, pp 6-7, a Paper presented by the author at the In-House Legal Counsel, Marcus Evans Conference at the Tribe Village Market Hotel, Kenya on 8th& 9th March, 2012.

Available at <http://www.chuitech.com/kmco/attachments/article/101/Avoiding.pdf> > 30 May 2020.

²⁶ Mboya, Apollo, 'The Bar: Challenges and Opportunities', in Ghai, Y.P. and Cottrell, J. eds., *The legal profession and the new constitutional order in Kenya*. Strathmore University Press, 2014, p. 242.

²⁷ Ibid, p. 242.

²⁸ Ibid, p. 242.

²⁹ Ibid, p. 242.

³⁰ 'Ready or not: artificial intelligence and corporate legal departments' <<https://legal.thomsonreuters.com/en/insights/articles/artificial-intelligence-ai-report>> accessed 5 June 2020.

³¹ Gaffney Nick, 'Law Practice Management: Transforming a Law Practice with Technology' <https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2017/september-october/law-practice-management-transforming-law-practice-technology/> accessed 3 June 2020.

³² Ibid.

worldwide, it is not difficult to find Kenyan law firms still struggling with the ‘outdated’ way of doing things around the office. Indeed, it is only recently that digital signatures and service of pleadings started taking root in the country.

It is still a concern on whether the Kenyan lawyers are ready to embrace technology to enhance efficiency and cut down on costs of doing business for the general public. In 2018³³, the Law Society of Kenya (LSK) went to court to oppose a decision by the Ministry of Lands and Physical Planning to digitize the land transactions processes at the land registry through the National Land Information Management System (NLIMS) arguing that the ministry had failed to consult the relevant stakeholders as required.³⁴ The LSK also argued that the regulations establishing the legal framework for electronic conveyancing are pending before Parliament.³⁵ In addition, The LSK further argued that rural Kenya still faces huge electricity and power challenges and that many Kenyans with no access to internet and online portal and risk being dispossessed of their lands.³⁶ While these arguments are certainly valid, and ones that may not be strictly interpreted to mean that LSK is opposed to the process, LSK must realise that the future of practice lies in embracing technology. The general public has been advocating for the digitization of land records to cut costs and for efficiency purposes.³⁷ The need for digitization has been demonstrated by the COVID-19 pandemic which at one point necessitated the closure of all registries following an advisory by the National Emergency Response Committee on the management of Covid-19.³⁸ The continued closure of registries negatively affected businesses with pending and anticipated land

³³ Sunday, March 18 and 2018 15:36, ‘Land Ministry in Fresh Bid to Digitise Records’ (*Business Daily*) <<https://www.businessdailyafrica.com/economy/Land-ministry-in-fresh-bid-to-digitise-records/3946234-4347056-go3sg/index.html>> accessed 3 June 2020.

³⁴ ‘Lands Ministry Wants Orders Stopping Digitisation Lifted’ (*Daily Nation*) <<https://www.nation.co.kehttps://www.nation.co.ke/dailynation/news/lands-ministry-wants-orders-stopping-digitisation-lifted--38664>> accessed 3 June 2020; Kamau Muthoni, ‘LSK Sues Ministry over Online Land Transactions’ (*The Standard*) <<https://www.standardmedia.co.ke/article/2001277226/lsk-sues-ministry-over-online-land-transactions>> accessed 3 June 2020.

³⁵ *Ibid.*

³⁶ Wednesday, April 18 and 2018 10:25, ‘Lawyers Reject Automation of Land Deals in Court Suit’ (*Business Daily*) <<https://www.businessdailyafrica.com/economy/Lawyers-reject-automation-of-land-deals-in-court-suit/3946234-4421556-p3kd3g/index.html>> accessed 3 June 2020.

³⁷ Monday, March 19 and 2018 18:19, ‘EDITORIAL: Fulfil Digitisation Promise’ (*Business Daily*) <<https://www.businessdailyafrica.com/analysis/editorials/Fulfil-digitisation-promise/4259378-4348512-ayf632z/index.html>> accessed 3 June 2020.

³⁸ ‘Lands CS Karoney Extends Land Registries Lockdown’ (*People Daily*, 15 April 2020) <<https://www.pd.co.ke/business/economy-and-policy/lands-cs-karoney-extends-land-registries-lockdown-32930/>> accessed 3 June 2020.

transactions.³⁹ With the use of technology, such challenges may be overcome. Rwanda is considered to be one of the few African nations that have managed to move all their land records online and is considering introducing blockchain.⁴⁰

In the sections below, this paper explores the various technological developments that the legal profession in Kenya can embrace and use to not only enhance access to justice but also enhance efficiency and productivity for increased business opportunities.

3.2. Legal Practice in the 21st Century: Challenges and Prospects

The COVID-19 pandemic has notably created an unprecedented state of affairs where lawyers and other law firm staff have left their offices and forced to work from their homes, where they now juggle their legal work with child care, household management and plenty of other obligations.⁴¹ This has not only changed the way lawyers view their approach to legal work but has also created an opportunity for them to weigh and reconsider how law firms will operate in the near future.

Some commentators in the legal field have reported that as law firms embrace the idea of working remotely due to the COVID-19 pandemic, there has been a growing likelihood that physical offices will look very different in the future compared to what they are now.⁴² These are some of the expected and unexpected effects of the COVID-19 pandemic on law firms where remote working is expected to take off as never before and firms will operate with more prudent and flexible financial models.⁴³

It has been observed that young lawyers are the set of lawyers that came into practice within the 21st century, so they face a unique set of challenges which older lawyers of the earlier generations

³⁹ Ibid.

⁴⁰ ‘Kenyan Lawyers Wrangle with Government over Land Registry Digitization’ *Reuters* (7 May 2018) <<https://www.reuters.com/article/us-kenya-landrights-idUSKBN1I81K1>> accessed 3 June 2020.

⁴¹ Samantha Stokes | April 27 and 2020 at 06:59 PM | The original version of this story was published on The American Lawyer, ‘The Coronavirus Will Change the Legal Industry’s Approach to Remote Work—But How?’ (*Law.com International*) <<https://www.law.com/international-edition/2020/04/27/the-coronavirus-will-change-the-legal-industrys-approach-to-remote-work-but-how-378-140355/>> accessed 3 June 2020.

⁴² Paul Hodkinson | May 05 and 2020 at 01:00 AM | The original version of this story was published on The American Lawyer, ‘Welcome to the Law Firm Office of the Future: Smaller, Higher-Tech and One-Way’ (*Law.com International*) <<https://www.law.com/international-edition/2020/05/05/smaller-higher-tech-and-one-way-welcome-to-the-law-firm-office-of-the-future/>> accessed 3 June 2020.

⁴³ Ibid.

never had to face.⁴⁴ Some of the highlighted challenges facing them include: lack of job opportunities; lack of mentorship from older lawyers; lack of funding; lack of a firm structure; location; personal branding; exposure; career projectory; resources; difficulty in getting new work; and limited networking.⁴⁵ Despite this, the 21st century lawyer is considered as one with ‘staggering prospects which has the potential to pay off mightily’.⁴⁶ It has been argued that the strength of the 21st century young lawyer lies in the understanding and use of Technology as a practice tool and area of core competence.⁴⁷ This is because, it has been acknowledged, the current world has become tech-driven and information-powered, such that the entire spectrum of communications is available at the click of a button.⁴⁸ The world is becoming more interconnected and smaller with the click of a button, and as such, the 21st century lawyer who is analytical savvy and business-smart enough to navigate through the technology maze is considered lucky as they have the capacity to cast their law practice net across a huge spread of the population.⁴⁹ With increased knowledge and specialization as a result of the many areas that come with the growth and development of technology, the 21st century lawyer can use all this to shape the course of their practice. Client demands have become primary drivers of change within the legal profession.⁵⁰

The next section looks at some of these opportunities and how modern lawyers can exploit them to their advantage in order to remain relevant in a fast changing world.

⁴⁴ Kingsley Ugochukwu Ani, ‘The 21st Century Lawyer: Challenges and Prospects’ (Social Science Research Network 2018) SSRN Scholarly Paper ID 3270279 <<https://papers.ssrn.com/abstract=3270279>> accessed 5 June 2020.

⁴⁵ Ibid.

⁴⁶ Ibid, p. 9.

⁴⁷ Ibid, p.9; See also ‘Tech Competence a Must | Canadian Lawyer’ <<https://www.canadianlawyermag.com/news/opinion/tech-competence-a-must/274463>> accessed 5 June 2020; ‘Shaping the 21st-Century Lawyer - IE Law Hub’ <<https://lawahead.ie.edu/shaping-the-21st-century-lawyer/>> accessed 5 June 2020; Alyson Carrel, ‘Legal Intelligence Through Artificial Intelligence Requires Emotional Intelligence: A New Competency Model for the 21st Century Legal Professional’ (2019) 35.

⁴⁸ Ibid, p.10; See also ‘Eight Ways Technology Is Changing Business’ <<https://www.gomodus.com/blog/eight-ways-technology-changing-business>> accessed 5 June 2020.

⁴⁹ Ibid, p. 10; See also Moore, Thomas R. "The Upgraded Lawyer: Modern Technology and Its Impact on the Legal Profession." *UDC/DCSL L. Rev.* 21 (2019): 27; Anyim, Wisdom Okereke. "E-Lawyering and Virtual Law Practice: A Paradigm Shift for Law Library System." *Library Philosophy and Practice* (2019): 0_1-16.

⁵⁰ ‘Future Law Office 2020: Redefining the Practice of Law | Robert Half’ <<https://www.roberthalf.com/research-and-insights/workplace-research/future-law-office-2020-redefining-the-practice-of-law>> accessed 5 June 2020.

4. Enhancing Access to Justice through Embracing Technology in the Legal Practice and Legal Education and Training

4.1 Artificial Intelligence for Enhanced Productivity and Outreach

While the dream of Artificial Intelligence (AI) has been around for several decades, it has been pointed out that it is only recently that AI been commercialized and industrialized at scale where it affects many sectors of human lives, because arguably, fusing statistics, computer science and cognitive psychology, these complex digital systems, whether physical robots or software-enabled services, can reproduce and often surpass human-level intelligence in areas like reasoning, visual processing, pattern recognition and autonomous action.⁵¹ It has also been rightly pointed out that ‘as technology is fast growing, tasks that conventionally have been going to professionals would be transferring to computers and in future case might be resolved by computers working with logarithms so that outcomes may be predicted through artificial intelligence, creating the need for legal professionals to upgrade their knowledge and to develop skills to be able to match and to redefine professional ethics’.⁵² Law schools are expected to step in and contribute to ensuring that students are well prepared for the tasks and challenges that will arise in future.⁵³

Artificial intelligence (AI) defined as “the science and engineering of making intelligent machines” that employ “cognitive computing” (enabling computers to learn, reason, perceive, infer, communicate, and make decisions like humans do), and it encompasses many branches such as machine learning (ML) including deep learning and predictive analytics, and natural language processing (NLP).⁵⁴

It has been observed that while AI has made a transformative impact on every industry and profession, its potential for use in the legal profession has not been tapped adequately.⁵⁵ This is

⁵¹ ‘AI and the Law’ (*University of Birmingham*) <<https://www.birmingham.ac.uk/research/quest/emerging-frontiers/ai-and-the-law.aspx>> accessed 7 April 2021; Turner J, *Robot Rules: Regulating Artificial Intelligence* (Springer 2018).

⁵² Raizada S and Mittal JK, ‘Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education’ (2020) 20 *Medico Legal Update* 188, 190.

⁵³ *Ibid*, 190.

⁵⁴ Duggal Vishal, ‘Role of AI in Legal Practice’ (*Engineers Garage*, 23 January 2020) <<https://www.engineersgarage.com/featured/role-of-ai-in-legal-practice/>> accessed 5 June 2020.

⁵⁵ Brooks C, Gherhes C and Vorley T, ‘Artificial Intelligence in the Legal Sector: Pressures and Challenges of Transformation’ (2020) 13 *Cambridge Journal of Regions, Economy and Society* 135.

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because the legal services market remains ‘profoundly under digitized, tradition-bound, and slow to embrace novel technologies and tools’.⁵⁶

However, Artificial Intelligence (AI) companies have continually developed and used technology that helps manage laborious tasks in different industries for better speed and accuracy, and the legal profession is no different as AI has already found its way into supporting lawyers and clients alike.⁵⁷ Basically, AI can and has indeed been used to: perform due diligence – litigators carry out due diligence with the help of AI tools to uncover background information; prediction technology – An AI software generates results that forecast litigation outcome; legal analytics – lawyers can use data points from past case law, win/loss rates and a judge’s history to be used for trends and patterns; document automation – law firms use software templates to create filled out documents based on data input; intellectual property – AI tools guide lawyers in analyzing large Intellectual Property (IP) portfolios and drawing insights from the content; and electronic billing – lawyers’ billable hours are computed automatically.⁵⁸ In addition to the foregoing, AI can and has been applied to save lawyers enormous amount of time while achieving efficiency in legal contracts review.⁵⁹ These are just examples of where AI technology may be used in enhancing legal practice in modern times going forward. As a result of these developments, ‘clients may expect and actually demand from their Lawyers the predictions of the outcome of the case and to assess the success rate, probability of the witness’s truthfulness and certainly of case judgment, and if lawyers are not yet trained to calculate these complex and multidiscipline components and the aspects of legal dispensaries, lawyers will run into problems with their clients who expect much more from them’.⁶⁰ As a result, ‘lawyers must learn to use the technological power well with the application based knowledge of technology, and as such, legal education should be provided in such manner

⁵⁶ Duggal Vishal, ‘Role of AI in Legal Practice’ (*Engineers Garage*, 23 January 2020) <<https://www.engineersgarage.com/featured/role-of-ai-in-legal-practice/>> accessed 5 June 2020.

⁵⁷ Daniel Faggella, ‘AI in Law and Legal Practice – A Comprehensive View of 35 Current Applications’ (*Emerj*) <<https://emerj.com/ai-sector-overviews/ai-in-law-legal-practice-current-applications/>> accessed 5 June 2020.

⁵⁸ Daniel Faggella, ‘AI in Law and Legal Practice – A Comprehensive View of 35 Current Applications’ (*Emerj*) <<https://emerj.com/ai-sector-overviews/ai-in-law-legal-practice-current-applications/>> accessed 5 June 2020; Law Technology Today, ‘Three Ways Law Firms Can Use Artificial Intelligence’ (*Law Technology Today*, 19 February 2019) <<https://www.lawtechnologytoday.org/2019/02/three-ways-law-firms-can-use-artificial-intelligence/>> accessed 5 June 2020; Duggal Vishal, ‘Role of AI in Legal Practice’ (*Engineers Garage*, 23 January 2020) <<https://www.engineersgarage.com/featured/role-of-ai-in-legal-practice/>> accessed 5 June 2020.

⁵⁹ Raghav Bharadwaj, ‘Applying AI to Legal Contracts – What’s Possible Now’ (*Emerj*) <<https://emerj.com/ai-podcast-interviews/applying-ai-legal-contracts-whats-possible-now/>> accessed 5 June 2020.

⁶⁰ Raizada S and Mittal JK, ‘Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education’ (2020) 20 *Medico Legal Update* 188, 190.

which covers all disciplines, all nations and all geographic boundaries to enable students evaluated problems from multiple and sometimes incompatible perspectives.⁶¹

The legal profession needs to embrace AI, as it has a lot of potential to benefit from this technology in order to work more productively and spend less time on monotonous tasks, thus achieving convenience, freedom from mundane work, and saving more time for other aspects of the job such as analyses, counseling, negotiations, and court visits.⁶²

There is a need for law schools to work with experts and professionals in the areas of Artificial Intelligence in order to equip their students with AI certifications at the law school level as a first step towards preparing them for the future. Deloitte predicts at least 100,000 legal roles will be automated by 2036 and law firms will start using new talent strategies by 2020, a prediction that is already taking shape.⁶³

As for practicing lawyers, it has been argued that ‘the ever-evolving nature of AI technology implies multiple waves of restructuring of legal services workflows and thus, re-skilling is a continuous process, impacting on work organisation and job design, and generating needs for both new entrants and existing workers.’⁶⁴

The initial cost of investment in infrastructure may be very high but it may be worth it to make the learning institutions relevant and competitive. While experts and stakeholders in this area continue to explore the benefits and shortcomings of use of AI in the legal profession and ways of overcoming the same, lawyers will need to get ready to embrace the idea since it has already started being used and this will only increase with time.

⁶¹ Ibid, 190.

⁶² Law Technology Today, ‘Three Ways Law Firms Can Use Artificial Intelligence’ (*Law Technology Today*, 19 February 2019) <<https://www.lawtechnologytoday.org/2019/02/three-ways-law-firms-can-use-artificial-intelligence/>> accessed 5 June 2020.

⁶³ Law Technology Today, ‘Three Ways Law Firms Can Use Artificial Intelligence’ (*Law Technology Today*, 19 February 2019) <<https://www.lawtechnologytoday.org/2019/02/three-ways-law-firms-can-use-artificial-intelligence/>> accessed 5 June 2020; Duggal Vishal, ‘Role of AI in Legal Practice’ (*Engineers Garage*, 23 January 2020) <<https://www.engineersgarage.com/featured/role-of-ai-in-legal-practice/>> accessed 5 June 2020; Lexology-Victoria Arnold, ‘How Your Legal Department Can Benefit from AI Contract Management | Lexology’ <<https://www.lexology.com/library/detail.aspx?g=7fcc7e37-301d-4828-bffd-e525960e0cbb>> accessed 5 June 2020.

⁶⁴ ‘AI for English Law - Work Package Five - Law and Technology Education’ (*Oxford Law Faculty*, 21 December 2018) <<https://www.law.ox.ac.uk/research-and-subject-groups/ai-english-law-work-package-five>> accessed 7 April 2021.

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Just like any new technology, AIs have flaws, vulnerabilities and unintended effects⁶⁵, and as a result some of the structural challenges that have been identified that can hamper the development of a healthy AI ecosystem in Africa which any profession or country must address, include, *inter alia*: quick adaptation and creation of new frameworks for workers and citizens to develop the skills they need to thrive within the education systems; rapid expansion of broadband coverage—specifically in rural areas for all citizens and businesses to reap the benefits of AI; addressing ethical implications regarding the fair, secure, and inclusive use of AI applications through collaboration and engagement to ensure AI systems earn trust.; and ensuring a deeper, broader, and more accessible pool of data is available to enable researchers, developers, and users to drive AI, among others.⁶⁶ It has been suggested that for African governments to reap the potential benefits of AI and address any and/or all challenges, they should create clear roadmaps to guide the adoption of this technology by, *inter alia*, recalibrating their laws and legal frameworks to support data-driven technologies and innovation-driven growth; strengthening the supporting infrastructure for development; and setting the tone of a collaborative approach that allows all stakeholders to share their expertise, insights, and build trust.⁶⁷ Notably, some of the aspects of AI may violate constitutionally guaranteed rights such as the right to privacy.⁶⁸ This must, therefore, be fully addressed before the roll out of use of AI in the legal profession in order to ensure that the collection and processing of personal data respects fundamental rights to data protection.⁶⁹

As for adoption of AI in United Kingdom’s (UK) legal system, it has been argued that ‘successful implementation of AI by lawyers requires complementary changes in their education and skills since practice is also rapidly moving toward the position where such skills may become necessary

⁶⁵ ‘AI and the Law’ (*University of Birmingham*) <<https://www.birmingham.ac.uk/research/quest/emerging-frontiers/ai-and-the-law.aspx>> accessed 7 April 2021; see also Bryson JJ, Diamantis ME and Grant TD, ‘Of, for, and by the People: The Legal Lacuna of Synthetic Persons’ (2017) 25 *Artificial Intelligence and Law* 273.

⁶⁶ Access Partnership, ‘Artificial Intelligence for Africa: An Opportunity for Growth, Development, and Democratisation,’ <https://pic.strathmore.edu/wp-content/uploads/2019/03/PIC_AI_for_Africa_Whitepaper.pdf> accessed on 6 April, 2021, 2.

⁶⁷ *Ibid*, 2.

⁶⁸ See Article 31 of the Constitution of Kenya 2010.

⁶⁹ See ‘AI and the Law’ (*University of Birmingham*) <<https://www.birmingham.ac.uk/research/quest/emerging-frontiers/ai-and-the-law.aspx>> accessed 7 April 2021.

to meet professional standards.⁷⁰ In the UK, the progress in uptake of AI has been much faster especially with the adoption of non-human/robot lawyers such as the DoNotPay which is the world's first robot lawyer.⁷¹ DoNotPay, as a legal advisor is an interactive tool initially aimed at helping members of the general public to appeal parking tickets but the scope of its application has since grown immensely to support 14 different uses cases, including fighting unfair bank, credit card and overdraft fees, getting refunds from Uber and Lyft when a driver takes a wrong turn, and claiming refunds for late package deliveries.⁷² This is an indication that ‘in the high-level application field, artificial intelligence for complex scenes is capable of assisting or even replacing part of the work of legal professionals, through formation of a new human-computer collaborative case processing mode’.⁷³

According to a United Kingdom White Paper on “Regulation for the Fourth Industrial Revolution” presented to UK Parliament by the Secretary of State for Business, Energy and Industrial Strategy by Command of Her Majesty and dated June 2019, ‘technological breakthroughs in areas from artificial intelligence to biotechnologies are now heralding a Fourth Industrial Revolution, with the power to reshape almost every sector in every country’.⁷⁴ The United Kingdom generally seeks to, *inter alia*, accelerate ethical AI-powered innovations, with a focus on legal services for small businesses and consumers where AI and automation can have transformative impact.⁷⁵

There is a need for the East African legal sector players to borrow a leaf from the other pioneer world players such as the UK in this sector to enhance its effectiveness while ensuring that it responds to the unique needs of the East Africans.

4.2 Investing in Virtual Hearings Infrastructure

With the emergence of the COVID-19 pandemic, courts in many countries around the world were forced to rethink their approach to administration of justice both quickly and efficiently in order

⁷⁰ ‘AI for English Law - Work Package Five - Law and Technology Education’ (*Oxford Law Faculty*, 21 December 2018) <<https://www.law.ox.ac.uk/research-and-subject-groups/ai-english-law-work-package-five>> accessed 7 April 2021.

⁷¹ ‘Save Time and Money with DoNotPay!’ <<https://join.donotpay.com>> accessed 7 April 2021.

⁷² Dale R, ‘Law and Word Order: NLP in Legal Tech’ (2019) 25 *Natural Language Engineering* 211.

⁷³ Press A, ‘Advances in Economics, Business and Management Research’, 966.

⁷⁴ Great Britain and Energy & Industrial Strategy Department for Business, *Regulation for the Fourth Industrial Revolution* (2019), 6.

⁷⁵ *Ibid*, 20.

to ensure that, where possible, hearings can proceed.⁷⁶ This has led them to adopt virtual hearings – conducting hearings remotely in order to minimise the risk of transmission of COVID-19 and ensure the health of all parties in attendance is maintained.⁷⁷ While the pandemic will certainly pass, there is a need for both courts and law practitioners to think about investing in virtual hearings post COVID-19. It is commendable that the Judiciary recently embarked on enhancing the use of technology in judicial proceedings in all courts, especially during the COVID-19 pandemic period, including the use of: (a) e-filing; (b) e-service of documents; (c) digital display devices; (d) real time transcript devices; (e) video and audio conferencing; (f) digital import devices; and (g) computers in the court.⁷⁸ All that is required now is for continued use of the same post COVID-19 pandemic period as well as infrastructural investment to ensure that the processes run smoothly and efficiently. This may also call for equipping the courts and all registries with the relevant infrastructure through setting up some permanent virtual courts and tribunals.

This technology will come in handy in not only saving time but also resources, which in many countries especially in Africa, are still limited. As for law firms, investing in virtual hearings infrastructure in their practice may lead to better administration of justice and also help reach out to a wider class of clients both within the country and across borders. It will also work for the benefit of their employees since it offers them the much needed work-life balance.

It has been suggested that while spending more time outside the office may become commonplace as law firms and legal departments adopt collaborative technologies and reduce real estate costs, easier-to-use video technologies similar to FaceTime may actually promote efficiency and job satisfaction by putting the human element back in business communications.⁷⁹

With increased globalisation, lawyers can tap into this infrastructure to serve clients from the comfort of their homes or offices regardless of the geographical location or distance. Lawyers can

⁷⁶ ‘Virtual Hearings: The Way Forward in the UK in Uncertain Times’ <<https://www.dentons.com/en/insights/alerts/2020/march/29/virtual-hearings-the-way-forward-in-the-uk-in-uncertain-times>> accessed 5 June 2020.

⁷⁷ Ibid,

⁷⁸ ‘Kenya Law: Electronic Case Management Practice Directions, 2020’ <<http://kenyalaw.org/kl/index.php?id=10211>> accessed 5 June 2020, Rule 6.

⁷⁹ Zach Warren | January 15 and 2020 at 03:30 PM | The original version of this story was published on Legaltech News, ‘The Future of Legal Tech Is About Transformation, Not Automation’ (*The American Lawyer*) <<https://www.law.com/americanlawyer/2020/01/15/the-future-of-legal-tech-is-about-transformation-not-automation/>> accessed 3 June 2020.

use the technology to tap into the ever growing international Alternative modes of Dispute Resolution such as international arbitration, mediation and Online Disputes Resolution (ODR) especially in the face of rapidly growing networking and borderless legal practice, with the introduction of diverse social media platforms that allow interconnectivity beyond the national boundaries and enabling cross-border relationships between clients and their lawyers and law firms amongst themselves.⁸⁰ They should tap into the tremendous growth of international trade, interstate deals, bilateral and multilateral treaties, where legal practice is increasingly becoming global and smart practitioners must therefore up their game with international best practices as with the advent of internet, telecommunication systems, clients are no longer limited to lawyers in their regions nor are they limited to the need for legal services within their jurisdiction.⁸¹

As it has rightly been pointed out, ‘the COVID-19 pandemic may prove a catalyst for Courts to embrace technology and reduce their reliance on in-person hearings and hard copy documents, particularly for case management purposes, even after the pandemic. As such, developing good virtual hearing practices now is likely to pay significant dividends in the future’.⁸²

4.3 Safeguarding the Privacy of Data: Transfer, Processing and Storage of Data

Most modern businesses including law firms have increasingly found themselves bound by data privacy laws at the national and international levels, requiring companies to know where they are storing Personally Identifiable Information (PII) and Personal Health Information (PHI) and wrap tight controls around the processing, use, and transfer of such PII and PHI.⁸³ The effect of this will become even more clearer as firms embrace technology due to the high risks and challenges posed by technology as far as such data is concerned.⁸⁴ The challenge is especially great when it comes

⁸⁰ Emmanuel Oluwafemi Olowononi and Ogechukwu Jennifer Ikwuanusi, ‘Recent Developments in 21st Century Global Legal Practice: Emerging Markets, Prospects, Challenges and Solutions for African Lawyers’ (2019) 5 KIU Journal of Social Sciences 31; Samuel Omotoso, ‘Law, Lawyers And The Social Media In The 21st Century: Challenges And Prospects’ Law, Lawyers And The Social Media In The 21st Century: Challenges And Prospects <https://www.academia.edu/40663364/LAW_LAWYERS_AND_THE_SOCIAL_MEDIA_IN_THE_21ST_CENTURY_CHALLENGES_AND_PROSPECTS> accessed 5 June 2020.

⁸¹ Ibid, p. 34.

⁸² ‘The Remote Courtroom: Tips and Tricks for Online Hearings’ <<https://www.ashurst.com/en/news-and-insights/legal-updates/the-remote-courtroom-tips-and-tricks-for-online-hearings/>> accessed 5 June 2020.

⁸³ Katharine Perekslis, ‘Four Strategies to Navigate Data Privacy Obligations for Compliance, Litigation, and E-Discovery Professionals’ (*Law.com*) <<https://www.law.com/native/?mvi=7bd540437dde4b60991f35c257adc521>> accessed 3 June 2020.

⁸⁴ Ibid.

to legal processes that require extraordinary care in the identification and handling of PII and PHI on very tight turnaround times: data breach notification workflows, Data Subject Access Requests (DSARs), and cross-border e-discovery projects.⁸⁵ Notably, law firms have started cross broader practice where firms in different jurisdictions collaborate either directly or through legal organisations to enable them serve clients in different countries.⁸⁶ Data protection laws in one country may not be necessarily as advanced as those in another country hence the need for firms to invest heavily in this area to not only win the trust of clients and partners in another country but also to avoid the legal hurdles that may come with breach of such data privacy.⁸⁷

Lawyers have been called upon to play a greater role in ensuring the safety and accountability of advanced data and analytics technologies.⁸⁸ There is a need for local firms to make a conscious decision to invest in data protection infrastructure that will enable them to work efficiently and protect their clients' data regardless of the status of the local data protection laws. As law firms and corporate legal departments look for cost-effective ways to enhance the delivery of legal services, they should seek paralegals and legal assistants with expertise in technology-driven systems who can help the firm operate more efficiently in order to not only facilitate efficiency but also guarantee privacy of data.⁸⁹

There may be a need for the policymakers to work closely with other stakeholders to relook into the existing laws on data protection in order to enhance their effectiveness.

Relevant law firm, Judiciary staff and students should also be equipped with the necessary skills and knowledge regarding data protection. Such skills and knowledge mainly include Information security management, which is a set of policies and procedural controls that Information

⁸⁵ Ibid.

⁸⁶ International Bar Association, 'What model for cross-border joint practice?' *A handbook for bar associations*, <www.ibanet.org> Document > Default> 5 June 2020; 'Global Law Firms: Globalization and Organizational Spaces of Cross-Border Legal Work by Jonathan Beaverstock, Daniel Muzio, Peter J. Taylor, James Faulconbridge :: SSRN' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1155048> accessed 5 June 2020.

⁸⁷ United Nations Conference On Trade And Development, 'Data protection regulations and international data flows: Implications for trade and development,' UNCTAD/WEB/DTL/STICT/2016/1/iPub, United Nations, 2016 <https://unctad.org/en/PublicationsLibrary/dtlstict2016d1_en.pdf> 5 June 2020; 'How Organizations Can Stay Ahead of Changing Privacy Laws' (*Digital Guardian*, 22 August 2019) <<https://digitalguardian.com/blog/how-organizations-can-stay-ahead-changing-privacy-laws>> accessed 5 June 2020.

⁸⁸ 'AI and the Law' (*University of Birmingham*) <<https://www.birmingham.ac.uk/research/quest/emerging-frontiers/ai-and-the-law.aspx>> accessed 7 April 2021.

⁸⁹ 'Future Law Office 2020: Redefining the Practice of Law | Robert Half' <<https://www.roberthalf.com/research-and-insights/workplace-research/future-law-office-2020-redefining-the-practice-of-law>> accessed 5 June 2020.

Technology (IT) and business organizations implement to secure their informational assets against threats and vulnerabilities-information security.⁹⁰ Such trained personnel would be responsible for managing an institution/firm's Information Security Management System (ISMS). ISMS is necessary for ensuring that any data is guaranteed confidentiality, integrity and it is easily available when required. Notably, whether the data collected is maintained in digital or physical format, the discipline of Information Security Management is still critical to protecting the data from unauthorized access or theft.⁹¹ This is because every technology-driven business process is exposed to security and privacy threats and the legal profession is no different.⁹² The security controls can follow common security standards or be more focused on the industry.⁹³

4.4 Rolling out E-literacy Trainings/Education

In order to meet the needs of the modern legal consumer, it has rightly been pointed out that 'with the emerging concepts of artificial intelligence, Blok chain, Education 4.0, along with digital technology, capabilities and potential must develop and efforts are to be made at school and university level for upgrading the digital skills, running special basic and advanced skill based programs'.⁹⁴ The world of technology is changing really fast and if lawyers are to remain relevant and on top of their game, then law schools must step in to bridge the knowledge and skills gap. In fact, it has rightly been pointed out that 'the competition in the field of law has also increased manifold where it is now a global platform and every student who steps into the shoes of a lawyer is expected to handle different fields'.⁹⁵

As for practicing lawyers, with the expected increase in the uptake and use of technology within the legal profession, there is a need for sustained and enhanced e-literacy training on not only efficient use of technology but also the potential challenges that may come along and how to overcome them. The training should target lawyers, facilitated by LSK, as well as judges and

⁹⁰ 'What Is Information Security Management?' (*Sumo Logic*) <<https://www.sumologic.com/glossary/information-security-management/>> accessed 5 June 2020.

⁹¹ *Ibid.*

⁹² 'Introduction to Information Security Management Systems (ISMS) – BMC Blogs' <<https://www.bmc.com/blogs/introduction-to-information-security-management-systems-isms/>> accessed 5 June 2020.

⁹³ Luke Irwin, 'ISO 27001: The 14 Control Sets of Annex A Explained' (*IT Governance UK Blog*, 18 March 2019) <<https://www.itgovernance.co.uk/blog/iso-27001-the-14-control-sets-of-annex-a-explained>> accessed 5 June 2020.

⁹⁴ Raizada S and Mittal JK, 'Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education' (2020) 20 *Medico Legal Update* 188, 189.

⁹⁵ *Ibid.*, 189.

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magistrates and all their support staff, facilitated by the Judiciary, in collaboration with the experts and professionals in ICT and other related areas.

As for lawyer students, law schools should come up with relevant courses to be included in their curricula in order to arm them with relevant skills.

In order to equip the general public, there is a need for the Government, through the Ministry of Information Communication Technology in collaboration with the other relevant stakeholders to make it easy for the public to acquire the relevant skills in technology through tailored courses at all levels of the school curriculum as well as through other simplified courses available to those already out of school and not likely to benefit from job related trainings in the area. This will also make it easier for the public to interact meaningfully with the justice sector. This is especially important considering that the Judiciary is on course to incorporate the use of technology in dispensation of justice. Empowering the disseminators/facilitators of justice while leaving out the consumers of justice will defeat the need for embracing justice-to facilitate efficient access to justice for all. Leaving them out will instead promote digital apartheid- systematic exclusion of certain communities from digital access and experience through political and business policies and practices.⁹⁶ With the increased digitization of government services through such initiatives as the *Huduma Center service delivery model*- a Government of Kenya initiative aimed at advancing citizen-centred public service delivery through a variety of channels, including deploying digital technology and establishing citizen service centres across the country⁹⁷, there is an urgent need to tackle digital illiteracy in order to enhance access by all. Virtual access to justice will benefit in the process. The Government can work with the Judiciary arm to set up Digital Villages Projects kind of structure across the country to ease access to services related to justice.⁹⁸

⁹⁶ Paula Barnard-Ashton and others, 'Digital Apartheid and the Effect of Mobile Technology during Rural Fieldwork' (2018) 48 South African Journal of Occupational Therapy 20.

⁹⁷ Sarah aru and Moses Wafula, 'Factors Influencing the Choice of Huduma Centers' Services (A Case Study of Mombasa Huduma Centre)' (2015) 5 International Journal of Scientific and Research Publications; Amir Ghalib Abdalla and others, 'Effect of Huduma Centers (One Stop Shops) in Service Delivery – A Case Study of Mombasa Huduma Centre' (2015) 5 International Journal of Academic Research in Business and Social Sciences 102; 'Study Heaps Praise on Revolutionary Huduma Centres' (*Daily Nation*) <<https://www.nation.co.kehttps://www.nation.co.ke/dailynation/news/study-heaps-praise-on-revolutionary-huduma-centres-89030>> accessed 5 June 2020.

⁹⁸ 'Broadband in Kenya | Broadband Strategies Toolkit' <<http://ddtoolkits.worldbankgroup.org/broadband-strategies/case-studies/broadband-kenya>> accessed 5 June 2020.

However, such centres would focus on offering digital trainings and education specifically related to access to justice.

In addition, the Government should liaise with tech firms both national and international to roll out internet access services across the country for ease of access to all. They should also work with the local mobile service providers to ensure that mobile data is affordable for the majority of Kenyans. Furthermore, electricity should also be made more affordable for all. It is commendable that the Government of Kenya is already striving to ensure that all Kenyans have access to electricity through the *Last Mile Electricity Connectivity Project*.⁹⁹

4.5 Training, Regulation and Capacity Building: Embracing Science and Technology in Legal Education and Training Institutions

It has rightly been pointed out that ‘the quality of an institute depends upon the incorporation of current changing dynamics and challenges of environment, and if institutions fail to keep pace with these changes, they will be perceived as progressively irrelevant thus failing to add value to the society and shaping and grooming the future leaders who can contribute in accelerating sustainable economic development in creative ways.’¹⁰⁰ Legal institutions charged with education and training of lawyers are expected to cultivate competency in the students to make them effective, ethical and responsible in their profession.¹⁰¹

The recent amendments/enactments to enhance the use of technology in judicial proceedings in Kenyan courts are a step in the right direction.¹⁰² There is a need to ensure that even as we seek to

⁹⁹ ‘Last Mile Connectivity Program Kenya - Inclusive Infrastructure’ <<https://inclusiveinfra.github.org/case-studies/last-mile-connectivity-program-kenya/>> accessed 5 June 2020; ‘Kenya - Last Mile Connectivity Project II’ <<https://projectsportal.afdb.org/dataportal/VProject/show/P-KE-FA0-013>> accessed 5 June 2020; African Development Bank, ‘Kenya - Last Mile Connectivity Project - Project Appraisal Report’ (*African Development Bank - Building today, a better Africa tomorrow*, 24 January 2020) <<https://www.afdb.org/en/documents/kenya-last-mile-connectivity-project-project-appraisal-report>> accessed 5 June 2020; ‘Last Mile Project – Ministry of Energy’ <<https://energy.go.ke/?p=914>> accessed 5 June 2020.

¹⁰⁰ Raizada S and Mittal JK, ‘Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education’ (2020) 20 *Medico Legal Update* 188, 189.

¹⁰¹ *Ibid*, 189.

¹⁰² Civil Procedure (Amendment) Rules, 2020 (26 February 2020); Electronic Case Management Practice Directions, 2020. The Law of Contract Act, Cap 23 of the Laws of Kenya was recently amended vide the Business Laws (Amendment) Act, No. 1 of 2020, (18 March 2020) to recognize use of advanced electronic signatures. Notably, Electronic signatures are not a new concept to Kenyan law, as they are already provided for under the Kenya Information and Communication Act No. 2 of 1998, as amended. The new amendments however sought to align the same with particular laws.

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invest in the physical infrastructure to enhance the use of technology in the administration of justice, legal and institutional frameworks are also put in place to not only facilitate the uptake of technological developments but also to ensure that there is an effective regulatory framework to deal with the myriad of issues that will arise therefrom.

There have been calls for the Kenyan law schools to ensure that in their curriculum they also take into account the changing dynamics in the legal world and design programmes that equip the future lawyers to deal with the changes.¹⁰³ The modern lawyer ought to be well endowed with basic technological knowledge to enable them build on the same to fit in a fast growing globalized world where geographical boundaries and physical offices may no longer matter.

After qualification, lawyers should continually be subjected to technological knowledge and skills through the Continuing Professional Development (CPD) trainings which must be re-looked at to make them more receptive and richer. The CPD committee of the Law Society of Kenya should consider working closely with Information communication technology and other relevant experts and professionals who may not necessarily be lawyers and invite them to CPD events in order to deliver more practical skills and knowledge on the area. It is not enough for lawyers to get theoretical talks on the area from fellow lawyers who are techno-legal savvy; the real professionals in the field must be involved as a way of impacting practical knowledge and skills. There is a need to actively involve the tech firms in and out of the country alongside other stakeholders.

Law schools in the future, like the legal profession itself, have been called to be more collaborative, diverse, international, technologically friendly, and entrepreneurial than they are today.¹⁰⁴ In addition, tomorrow's law school curriculum has been challenged to be more entrepreneurial to respond to the financial pressures on the legal profession and the opportunities wrought by innovation and globalization.¹⁰⁵ This is because, as it has been pointed out by some scholars, 'advancements of technology and impact of globalization have increased the importance of legal studies and law is dealt and connected with other disciplines so it cannot be taught in isolation in

¹⁰³ Mboya, Apollo, 'The Bar: Challenges and Opportunities', in Ghai, Y.P. and Cottrell, J. eds., *The legal profession and the new constitutional order in Kenya*. Strathmore University Press, 2014, p. 245.

¹⁰⁴ Kellogg Sarah, 'Cover Story: The Transformation of Legal Education' *From Washington Lawyer, May 2011* <<https://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/may-2011-legal-education.cfm>> accessed 4 June 2020.

¹⁰⁵ Ibid.

order to ensure that the law schools develop and nurture students in such manner as to make them socially sensitized leaders inculcating in them the intellectual, entrepreneurial and ethical values that can give them enough courage to confront the challenges thrown up by an increasingly industrialized and complex milieu in the society'.¹⁰⁶ Embracing technology will also enable law schools to widen their scope of students since students from abroad can either enroll for legal education in Kenya without the need to travel all the way or even have exchange programs and this would be beneficial to both students and the institutions.

Notably, traditional lectures are still considered the most popular instructional method in the universities and especially in medical and law schools where Socratic Method of teaching is also very popular.¹⁰⁷ However, the covid-19 pandemic which has made it impossible for physical lectures and meetings to go on calls for changes in approaches to teaching. In addition, even before the pandemic, some commentators were already challenging the Socratic method of teaching in law schools in favour of modern and more collaborative approaches, arguing that the former is archaic while the latter ones are more democratic and participatory, core values of modern society.¹⁰⁸ Some commentators, arguing within the context of the American legal system, have pointed out that 'instead of the Socratic approach, some schools are offering more apprentice-style learning in legal clinics and more courses that train students for their multiple future roles as advocates and counselors, negotiators and deal-shapers, and problem-solvers'.¹⁰⁹ In addition, 'with new legal issues arising from the use of computers in business and government to manage information, some schools have introduced teaching studies on software code as well as legal code to solve systemwide problems in order to equip their law students adequately'.¹¹⁰

While the Socratic or case method has been hailed as capable of helping students especially those in their first year of study to sharpen their analytical and critical reading skills and begin to

¹⁰⁶ Raizada S and Mittal JK, 'Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education' (2020) 20 *Medico Legal Update* 188, 189.

¹⁰⁷ Adib-Hajbaghery M and Aghajani M, 'Traditional Lectures, Socratic Method And Student Lectures: Which One Do The Students Prefer?' <<http://www.webmedcentral.com/>> accessed 9 April 2021; Sorvatzioti D, 'The Socratic Method of Teaching in a Multidisciplinary Educational Setting' (2012) *International Journal of Arts & Sciences* 61.

¹⁰⁸ "'Socratic' Teaching Is a Thing of the Past" <<https://www.nytimes.com/roomfordebate/2011/12/15/rethinking-how-the-law-is-taught/socratic-teaching-is-a-thing-of-the-past>> accessed 9 April 2021.

¹⁰⁹ 'Opinion | Legal Education Reform' *The New York Times* (26 November 2011) <<https://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html>> accessed 9 April 2021.

¹¹⁰ *Ibid.*

understand the contingent nature of much legal reasoning¹¹¹, this approach has also been criticized for ‘its over-reliance on excerpts of appellate cases, the tendency of many of its purveyors to give short shrift to issues of fairness and justice, its fostering of passivity on the part of those students not involved in the dialogue, and its privileging of the professor as the sage on the stage’.¹¹² Those against the approach have argued that ‘Socratic teaching should be supplemented by experiential pedagogies, including simulations, role-plays, small-group brainstorming, the problem method and live-client clinical legal education’ in order to ‘facilitate the law student’s ability to learn how to solve legal problems, understand the different real-world contexts in which legal problems arise (including non-adversarial and transactional settings), explore the nature of various lawyer-client relationships, consider social justice implications of law and legal relationships, and develop self-reflectiveness and the ability to learn from experience’.¹¹³ Arguably, due to the cost implications of such alternatives, law schools should consider embracing science and technology at a deeper level for ease of simulating and recreating the above approaches and desired end results as well as enabling students interact more with their law lecturers. This can be achieved through what some commentators have referred to as ‘flipped-classroom model’ defined as ‘any class that assigned any online content (videos, podcasts, PowerPoint presentations and exercises) for students to experience outside the classroom’.¹¹⁴ Arguably, ‘flipping is considered innovative because outside learning expands in-class time thus freeing law professors to work with law students on developing the practice skills they’re expected to have when they graduate from law school’.¹¹⁵ The flipped or inverted classroom has also been referred to as ‘a new and popular instructional model, in which activities traditionally conducted in the classroom (e.g., content presentation) become home activities, and activities normally constituting homework become classroom activities’.¹¹⁶ In

¹¹¹ See Sorvatzioti D, ‘The Socratic Method of Teaching in A Multidisciplinary Educational Setting’ (2012) *International Journal of Arts & Sciences* 61; ‘The Socratic Method Keeps the Student Thinking’ <<https://www.nytimes.com/roomfordebate/2011/12/15/rethinking-how-the-law-is-taught/the-socratice-method-keeps-the-student-thinking>> accessed 9 April 2021.

¹¹² ‘There Are Limitations to the Socratic Method’ <<https://www.nytimes.com/roomfordebate/2011/12/15/rethinking-how-the-law-is-taught/there-are-limitations-to-the-socratic-method>> accessed 9 April 2021.

¹¹³ *Ibid.*

¹¹⁴ ‘Flipped Classrooms in Law School: A Bright Future - LexTalk’ <https://www.lextalk.com/b/lextalk_blog/archive/2017/04/06/flipped-classrooms-in-law-school-a-bright-future.aspx> accessed 9 April 2021.

¹¹⁵ *Ibid.*

¹¹⁶ Akçayır G and Akçayır M, ‘The Flipped Classroom: A Review of Its Advantages and Challenges’ (2018) 126 *Computers & Education* 334, 334.

addition, in this approach ‘the teacher helps the students instead of merely delivering information, while the students become responsible for their own learning process and must govern their own learning pace’.¹¹⁷ Thus, ‘unlike traditional teacher-centered instruction, in which students are treated as empty vessels that passively absorb information, flipped classrooms are centered on the students—not the teacher’.¹¹⁸

Thus, flipping a classroom is associated with two essential components: Prerecording a class lecture in its entirety for students to listen to before they attend class; and in-class activity and discussion, which takes place during normal class meeting times.¹¹⁹ Arguably, the approach allows students to work on group projects during class so that instructors can address any difficulties and questions in person and also allows more time for discussion and debate; students contribute to the conversation instead of listening passively.¹²⁰

It is perhaps the high time that the Kenyan law schools as well as other tertiary institutions offering legal training adopt and implement some changes to enhance or abandon their traditional approaches to students’ instruction for efficiency and keeping up with developments in science and technology.

4.6 Enhanced e-filing and service of Court Pleadings and Documents

The law amendments that allowed for e-filing and service of documents in Kenya could not have come at a better time.¹²¹ As has become the norm during the COVID-19 pandemic period, Kenyan courts should consider fully adopting and shifting to electronic systems for filing documents. This would save both law firms and courts enormous resources in terms of finances and storage facilities for the hardcopy documents. It would also enhance efficiency in terms of accessibility and review

¹¹⁷ Ibid, 334.

¹¹⁸ Ibid, 335.

¹¹⁹ design JTJT is the manager of instructional technology at PUS of LS specializes in instructional and others, ‘Flipping the Law Classroom to Ease Student Anxiety’ (*Technology Solutions That Drive Education*) <<https://edtechmagazine.com/higher/article/2013/12/flipping-law-classroom-ease-student-anxiety>> accessed 9 April 2021.

¹²⁰ Ibid.

¹²¹ ‘Kenya Law: Electronic Case Management Practice Directions, 2020’ *Gazette Notice No. 2357* <<http://kenyalaw.org/kl/index.php?id=10211>> accessed 5 June 2020.

The objectives of the Electronic Case Management Practice Directions are to guide the integration of Information Communication Technology (ICT) in judicial proceedings and in particular to provide for —(a) electronic filing and electronic service of court documents; (b) electronic case search; (c) electronic diary; (d) electronic case tracking system; (e) electronic payment and receipting; (f) electronic signature and electronic stamping; (g) exchange of electronic documents, including pleadings and statements; and (h) use of technology in case registration and digital recording of proceedings for expeditious resolution of cases.

of the documents as both sides can access the documents from anywhere. All that is required is enhancing the security of such data to safeguard privacy. This can be achieved through investing in modern infrastructure as well as offering information management training to the staff charged with such.

4.7 Amendment of Remuneration order to guide on Legal fees payment by clients

It has been argued that one of the biggest differences is how lawyers will practice in the future-how lawyers value and price what they sell.¹²² It is suggested that there is a need to implore members of the Bar to transition away from the traditional billable time and services system to alternative billing strategies by understanding that apart from “legal services” and “time”, lawyers are also selling knowledge, which may include fixed, results based, hourly, graduated, or any such combination.¹²³ This would all be facilitated by technology which allows one to serve clients without physically meeting clients or even attending court physically. This therefore creates a need to reconsider amending/revising the current Remuneration Order so as to accommodate these new possibilities.

4.8 Licensing and Regulation of virtual law firms

Some scholars have rightly argued that competition to the Kenyan firms by global law firms requires a reconsideration of traditional organizational structures of law firms, ethical rules and regulation mechanisms for the legal profession and restructuring of how legal services are delivered.¹²⁴ The argument is that in order for the profession to stay relevant and thrive, lawyers must examine who can invest in firms, models for publicly traded firms, and lawyer partnerships with other professionals.¹²⁵

There is need for the law firms licensing stakeholders in Kenya to consider the idea of allowing virtual law firms, which will largely be conducting technology driven business. As a result of the COVID-19 which has forced many law firms across the world to permit employees to work from

¹²² Mboya, Apollo, ‘The Bar: Challenges and Opportunities’, in Ghai, Y.P. and Cottrell, J. eds., *The legal profession and the new constitutional order in Kenya*. Strathmore University Press, 2014, p. 247.

¹²³ Ibid, p. 247.

¹²⁴ Mboya, Apollo, ‘The Bar: Challenges and Opportunities’, in Ghai, Y.P. and Cottrell, J. eds., *The legal profession and the new constitutional order in Kenya*. Strathmore University Press, 2014, p. 243.

¹²⁵ Ibid, p. 243.

home, some firms abroad have already started reporting final decisions to close their physical offices and turning to virtual firms where their employees will permanently work from home.¹²⁶ Slater and Gordon, a London-based law firm is set to have its staff working from home permanently from September 2020 onwards, after almost three months of working remotely under the COVID-19 lockdown.¹²⁷ All its 200 London employees will work from home most of the time—though the firm is hoping to find a smaller office space which will be used to host meetings. The Staff are to be provided with multiple screens if they are needed and homes fitted with comfortable office equipment.¹²⁸ The firm’s management rightly argued that this approach would improve the well-being and work life balance of their staff and provide flexibility to their customers.¹²⁹

Other United Kingdom based firms such as Baker McKenzie and DLA Piper have also been toying with the idea.¹³⁰

The growth of virtual law firms will inevitably come with the challenge of regulation. The regulators of provision of legal services should adequately prepare to respond to the impact of technology on law practice and lawyer regulation, including the growth in cloud computing, virtual law offices, and outsourcing of legal services.¹³¹

4.9 A Possibility of Online Courts?

The Covid-19 pandemic has unintentionally fast-tracked courts’ adoption of technology since courts around the world have been forced to replace face-to-face hearings with video hearings,

¹²⁶ Meganne Tillay | May 27 and 2020 at 10:13 AM, ‘Slater & Gordon to Close London Office, Staff to Work From Home Permanently’ (*Law.com International*) <https://www.law.com/international-edition/2020/05/27/slater-and-gordon-to-close-london-office-staff-to-work-from-home-permanently/?cmp_share> accessed 3 June 2020; Meganne Tillay, Simon Lock | May 29 and 2020 at 08:38 AM, ‘Slater & Gordon Working From Home: How Will It Work?’ (*Law.com International*) <<https://www.law.com/international-edition/2020/05/29/slater-gordon-working-from-home-how-will-it-work/>> accessed 3 June 2020.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Hannah Roberts | May 07 and 2020 at 05:16 AM, ‘Baker McKenzie Surveys Staff over London Office Return as DLA Also Mulls Reopening Base’ (*Law.com International*) <<https://www.law.com/international-edition/2020/05/07/baker-mckenzie-surveys-staff-over-london-office-return-as-dla-also-mulls-reopening-base/>> accessed 3 June 2020.

¹³¹ Laurel S Terry, Steve Mark and Tahlia Gordon, ‘Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology’ (2011) 80 *Fordham L. Rev.* 2661, p. 2662.

using phonelinks and platforms such as Zoom, Teams and Skype.¹³² Kenyan Judiciary has not been left behind in these latest developments.¹³³

Kenya still suffers from the challenge of physical accessibility to law courts due to geographical distance since some of the farthest regions still do not have physical court buildings. As a result, advocates and witnesses travel long distances in search of justice.¹³⁴ While the Judiciary continues to invest in physical infrastructure, the stakeholders in the justice sector may also consider the idea of embracing online courts to deal with the problem. Considering that even where the Judiciary puts up courts, lawyers may still be unavailable to the litigants either due to costs or general shortage, some scholars have argued that putting online courts may come in handy in overcoming some of the challenges faced by litigants who represent themselves, *Pro Se Litigation*.¹³⁵ They argue that in most jurisdictions, including the United States of America, to date, the use of online technology to support legal self-representation has been confined primarily to the provision of educational and informational materials, such as “how-to” websites and downloadable legal forms, available mostly in the pre-filing stage.¹³⁶ Arguably, the Judiciary can go further in embracing technology through instituting “online courts; judicial online dispute resolution systems, can improve the ability of self-represented litigants to effectively participate in proceedings, as well as the ability of courts to administer them fairly and efficiently.¹³⁷ Where parties are in far-flung areas and they do not have access to legal representation, it has been suggested that they can benefit from self-representation in online courts where they can handle all procedural and substantive aspects of their legal matters, including court appearances, without representation by counsel.¹³⁸ This is because lay people who self-represent in judicial processes typically lack knowledge of

¹³² Jane Croft, ‘Courts Test Their Online Future, from Dress-down Lawyers to Witness Appearance’ (23 April 2020) <<https://www.ft.com/content/936e04b6-7a8c-11ea-bd25-7fd923850377>> accessed 5 June 2020; ‘Remote Courts’ <<https://remotecourts.org/>> accessed 5 June 2020.

¹³³ A experiência dos tribunais mundo afora durante a p and Emia Says, ‘Kenyan Courts Are Using Video Calls To Keep Wheels of Justice Spinning’ (*Gadgets Africa*, 31 March 2020) <<https://gadgets-africa.com/2020/03/31/kenya-courts-video-call-covid-19/>> accessed 5 June 2020.

¹³⁴ Republic of Kenya, *State of the Judiciary and the Administration of Justice Annual Report, 2017 – 2018*, The Judiciary, <<https://www.judiciary.go.ke/wp-content/uploads/sojar20172018.pdf>> 4 June, 2020.

¹³⁵ Ayelet Sela, ‘Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation’ (2016) 26 *Cornell JL & Pub. Pol’y* 331.

¹³⁶ *Ibid*, p. 333.

¹³⁷ *Ibid*, p. 333.

¹³⁸ *Ibid*, p. 133; See also Schäfer, Saskia. "New practices of self-representation: The use of online media by Ahmadiyya and Shia communities in Indonesia and Malaysia." In *New media configurations and socio-cultural dynamics in Asia and the Arab world*, pp. 174-197. Nomos Verlagsgesellschaft mbH & Co. KG, 2015.

legal procedure and substance, an inherent limitation which is consistently found to impede their access to justice and the legal system's ability to deliver justice.¹³⁹ This is a viable idea since representation through legal aid or pro bono programs may not always suffice. While video-conference hearings may require documents to be filed physically and sometimes require physical presence of witnesses or parties, online courts would have every part of the process facilitated through some web-based platform from filing, payments and hearings without requiring any physical presence.¹⁴⁰ The system may be akin to the United Kingdom's Money Claim Online system, which is the online portal for starting simple court claims, allowing individuals and organizations to file online specified money claims for sums of up to GBP £100,000.¹⁴¹ It is a web-based service for issuing money claims and resolving fixed money disputes introduced in the judiciary of England and Wales in February 2002.¹⁴²

The Canadian District of British Columbia also set up the Civil Resolution Tribunal which started working in 2016 and it allows the public to resolve their condominium property and small claims disputes up to \$5,000 fairly, quickly, and affordably where participants use all of negotiation, facilitation and, if necessary, adjudication services from a computer or mobile device at a time that is convenient for them, and for those who are unable or unwilling to use technology to resolve their dispute, the tribunal provides paper-based or telephone-based services.¹⁴³ It has been observed that over 90 percent of parties in British Columbia's Small Claims Court are self-represented, and even if they could finance legal fees, many British Columbians in remote communities must travel great distances to a courthouse, burdening them with further costs. In

¹³⁹ Ibid, p. 333.

¹⁴⁰ Legg, Michael. "The future of dispute resolution: online ADR and online courts." *Forthcoming—Australasian Dispute Resolution Journal* (2016); Dame Hazel Genn, 'Birkenhead Lecture 2017: Online Courts and the Future of Justice Gray's Inn,' 16 October 2017 <

https://www.ucl.ac.uk/laws/sites/laws/files/birkenhead_lecture_2017_professor_dame_hazel_genn_final_version.pdf> accessed 5 June 2020.

¹⁴¹ admin, 'Money Claim Online - Learn What It Is, Where It Is And How To Use It' (*Small Claims Court Genie. Free hints, tips and news*) <<https://www.smallclaimscourtgenie.co.uk/money-claim-online/>> accessed 5 June 2020.

¹⁴² Jannis Kallinikos, 'Institutional Complexity and Functional Simplification: The Case of Money Claim Online Service in England and Wales' in Francesco Contini and Giovan Francesco Lanzara (eds), *ICT and Innovation in the Public Sector: European Studies in the Making of E-Government* (Palgrave Macmillan UK 2009) <https://doi.org/10.1057/9780230227293_8> accessed 5 June 2020.

¹⁴³ Shannon Salter, 'Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal' (2017) 34 Windsor Yearbook of Access to Justice/Recueil annuel de Windsor d'accès à la justice 112, p. 114; Office of Housing and Construction Standards, 'The Civil Resolution Tribunal and Strata Disputes - Province of British Columbia' <<https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/resolving-disputes/the-civil-resolution-tribunal>> accessed 5 June 2020.

addition, no matter where you live or who you are, navigating the civil justice system, even Small Claims Court, can be stressful and overwhelming, and there is little support available to help with the process.¹⁴⁴ Thus, the online tribunal system comes in handy. Effective July 15, 2019, British Columbia's Civil Resolution Tribunal (CRT) expanded its jurisdiction to include claims against societies incorporated under the *Societies Act* (British Columbia), changing the forum for dispute resolution for many types of claims made against a society or its directors.¹⁴⁵

Therefore, even though Kenya is in the process of putting up small claims courts¹⁴⁶, they may suffer the same setbacks. As a result, in future, Kenya may need to benchmark with the above countries, noting the strengths and weaknesses of this system and consider adopting the same. All the Government needs to do to facilitate is to Fast-track internet access across the country and promote setting up advanced computer centres where less fortunate members of the society can access internet. It is also encouraging that the use of smartphones is fast spreading in the country, a development that may enhance the use of online courts. Initially, the Judiciary may begin with smaller claims whose value may not be economically viable to travel long distances, spend too much or even wait in courts due to the huge backlog currently experienced in our courts.

As for the fear of coaching of witnesses, the system can incorporate measures similar to proctoring programs for ensuring witnesses do not get coached, among other quality assurance software and measures. However, where possible, courts may also consider taking written submissions and evidence in proceedings, particularly in courts where affidavit evidence is not the ordinary procedure.¹⁴⁷

4.10 Addressing the Disconnect Between Skills Acquired in Law Schools and Market Needs

Some scholars have rightly pointed out that 'liberalization and globalization of the world economy has led to the transformation in political economy of the countries, resulting in a major shift in trends and culture which in turn has had major impact on the legal system and through a demand

¹⁴⁴ Ibid, p. 119.

¹⁴⁵ Millman, Bryan, 'Society Disputes May Now Be Settled by BC Civil Resolution Tribunal' (<https://www.nortonrosefulbright.com:443/en-za/knowledge/publications/2019>) <<https://www.nortonrosefulbright.com/en-za/knowledge/publications/303e1394/society-disputes-may-now-be-settled-by-bc-civil-resolution-tribunal>> accessed 5 June 2020.

¹⁴⁶ Small Claims Court Act, No. 2 of 2016, Laws of Kenya.

¹⁴⁷ 'The Remote Courtroom: Tips and Tricks for Online Hearings' <<https://www.ashurst.com/en/news-and-insights/legal-updates/the-remote-courtroom-tips-and-tricks-for-online-hearings/>> accessed 5 June 2020.

for new laws, new regulations and new skills to interface with the broader global economic and political environments and social needs'.¹⁴⁸

Arguably, changes in methods of instruction of law students as well as adoption of legal tech in law schools and training centres as discussed in this paper will go a long way in addressing the gaps in skills acquired in law schools and market needs, thus enabling these students to address the societal challenges ably using law as a means to an end and not the end in itself.

4.11 Enhanced collaboration Between International Law Firms and Local Firms/ Globalization of Legal Services

Notably, some Kenyan firms are already ahead in this area by collaborating with East African law firms and some with even international firms beyond the region.¹⁴⁹ Bowmans, a firm with nine offices (Cape Town, Dar es Salaam, Durban, Lilongwe, Lusaka, Johannesburg, Kampala, Moka and Nairobi) in seven African countries and over 400 specialist lawyers, for instance, has been extending its reach across the African continent.¹⁵⁰ In all these countries (Kenya, Malawi, Mauritius, South Africa, Tanzania, Uganda and Zambia), they have alliance firms with which they work closely. They are representatives of Lex Mundi, a global association with more than 160 independent law firms in all the major centres across the globe, which gives them access to firms in each jurisdiction represented.¹⁵¹

There is a need for more local firms to consider the idea and possibly join the bandwagon as it may give them access to a wider clientele.

¹⁴⁸ Raizada S and Mittal JK, 'Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education' (2020) 20 *Medico Legal Update* 188, 189.

¹⁴⁹ Karangizi, S., 'Future Proofing the Legal Profession in East Africa | ALSF' <<https://www.aflsf.org/director-article/future-proofing-legal-profession-east-africa>> accessed 30 May 2020.

¹⁵⁰ 'Company Profile' (*Bowmans*) <<https://www.bowmanslaw.com/our-firm/company-profile/>> accessed 3 June 2020.

¹⁵¹ 'Our African Footprint' (*Bowmans*) <<https://www.bowmanslaw.com/our-firm/our-african-footprint/>> accessed 3 June 2020.

5. Conclusion

It has rightly been pointed out that ‘with the growing economy, boundaries in knowledge are disappearing where legal education is becoming more innovative, flexible and responsive to the business and corporate world in the 21st century by the dictates of the changing environment’.¹⁵²

The COVID-19 has laid bare the direction that legal practice and legal education sector is headed. There is a need for lawyers to reconsider the issues of *law firm structure and billing, law firm marketing, work-life balance and technology vis-à-vis the practice of law, cross border legal practice, educating and training new adaptable lawyers* (Emphasis added).¹⁵³ Law schools and the LSK should take this opportunity to equip lawyers with the requisite skills in order to prepare them for the fast changing legal practice the world over. Law firms should also invest in technological developments if they hope to remain relevant in the face of technological innovations and developments and globalisation. The Judiciary also needs to take up the challenge of adopting technology to facilitate remote access to justice for all.

We are moving into an era where many lawyers may find themselves working from home due to the desire to cut costs using technological investments and following clients’ needs which will lead firms to embrace technology.¹⁵⁴ This is the time for them to invest wisely in these new technological areas and acquire the relevant skills and knowledge to enable them remain relevant. Arguably, automation technologies can make legal services more affordable and easily accessible to their clients. Additionally, law firms can leverage these technologies to develop and add alternative services, while reducing overheads and workload.¹⁵⁵ While clients are putting law firms under intense pressure to deliver a higher level of service by making use of the latest technological advancements, all at a reduced cost, it has been argued that this generational shift in consumer

¹⁵² Raizada S and Mittal JK, ‘Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education’ (2020) 20 *Medico Legal Update* 188, 189.

¹⁵³ Mboya, Apollo, ‘The Bar: Challenges and Opportunities’, in Ghai, Y.P. and Cottrell, J. eds., *The legal profession and the new constitutional order in Kenya*. Strathmore University Press, 2014, p. 252.

¹⁵⁴ Zach Warren | January 15 and 2020 at 03:30 PM | The original version of this story was published on Legaltech News, ‘The Future of Legal Tech Is About Transformation, Not Automation’ (*The American Lawyer*) <<https://www.law.com/americanlawyer/2020/01/15/the-future-of-legal-tech-is-about-transformation-not-automation/>> accessed 3 June 2020.

¹⁵⁵ ‘Business Models for Law Firms - p.Xel Marketing Agency’ <<https://www.p-xel.co/business-models-for-digital-disruption-in-the-legal-industry/>> accessed 5 June 2020.

expectation is an opportunity for legal service providers to implement *innovative digital products* that meet next-generation clients' demands while increasing productivity within their own staff.¹⁵⁶

The future of legal practice and legal education is in embracing technology and the Kenyan legal practitioners and players in the justice sector must take up the challenge or be rendered irrelevant since legal practice is likely to become increasingly virtual. The journey into the future has already begun and there is no turning back. The legal fraternity must venture into new frontiers: Embracing Science and Technology in legal education for Efficiency and Enhanced Access to Justice is an idea whose time has come.

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