MANAGING FREE ACCESS OF INFORMATION IN DIGITAL ENVIRONMENT; CHALLENGES FOR ADMINISTRATION OF JUSTICE IN NIGERIA

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ABSTRACT

The purpose of this article is to provide an account for strategic ICT innovation strategies utilized and on the uses of ICT within the court and judicial data interchange. The rapid development of Information and Communication Technology (ICT) has opened up new opportunity to significantly improve the administration of Justice. The availability of web services, the use of electronic filing, the exchange of legal document electronically, the possibility of law and jurisprudence on-line are only some example spurring the judicial administration around the world to rethink their current functions and activities. ICT can be used to enhance efficiency, access, timeliness, transparency and accountability helping the judiciary to provide adequate services. However, as many empirical examples show, this is not always the case. The interaction between technology and highly regulated organizations, such as courts, may lead to unexpected negative results. Nigeria, with it different institutional setting allows the exploration of wide range solutions that can be implemented to support the administration of Justice. Most importantly, it also provides opportunities for a unique insight into the dynamics and that may characterize the setting.

INTRODUCTION

The use of information and communication technology (ICT) is considered one of the key elements to significantly improve the administration of justice.[2]Reducing delay, improving economy, efficiency and effectiveness and the more general objective of promoting confidence

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[2]Confronted with the inability of managing the constantly increasing caseload, Ministries of Justice have typically adopted three mainstrategies: (1) the increase of administrative personnel and judges, (2) a change of norms and procedures and (3) the investment in information and communication technologies. M. Fabri, 'Gliaffannidell'amministrazionedellagiustiziaitaliana', 1998 *Politica e Organizzazione*1, pp. 47-60.

in the justice system through the use of new technologies 'are laudable aims and are unlikely to generate much dissention.[3] However, given the nature and importance of the judiciary as the third pillar of the State authority, and compared to other public services, due process, impartiality and independence should also be carefully taken into account. This is especially so when structural and procedural changes, such as the ones driven by the introduction of the new technologies, take place.

The rapid development of technology opens up new opportunities that were unthinkable only a few years ago. Around the world, several statutory reforms have been introduced to allow the use and the exchange of electronic data and documents within national judicial systems, but also between them and with supranational courts. The availability of web services, the possibility of consulting on-line legislation and case law, the use of electronic filing, the electronic exchange of legal documents, are only some examples that are spurring the judicial administrations around the world to rethink their current functions and activities. ICT can be used to enhance efficiency, access, timeliness, transparency and accountability, helping the judiciaries to provide adequate services. New possibilities are emerging for the integration and automation of court procedures and practices.

However, many empirical studies show that the results achieved do not often coincide with the anticipated ones.[4] High failure rate is a result of the fact that 'the complexity of ICT solutions

[3]B. Loveday, 'Address to EGPA Conference, Cape Sounion, Greece', in M. Fabri*et al.* (eds.), *The Challenge of Change for Judicial Systems*,2000 p. 23.

[4]F. Contini*et al.*, *Information System and Information Infrastructure Deployment: The Challenge of the Italian E-Justice Approach*', Twelfth European Conference on Information Systems, Turku, 14-16 June 2004; F. Contini, 'Processi di innovazione e context making: l'adozionedellatecnologiadell'informazionenegliufficigiudiziari', in C. Ciborra*et al.* (eds.), *Labirintidell'innovazione*, 1999; G. Di Federico *et al.*, *Office automation e organizzazionedegliufficigiudiziaripenali. Studio di trecasi*, 1995; C. Ciborra*et al.*, 'Formative Contexts and

have grown rapidly and that existing Software Engineering and Information Systems Design methodologies do not tackle this adequately'.[5] More research is needed to better comprehend such phenomena and to improve ICT innovation methodologies in courts.

Accordingly, this article contends that in developing countries like Nigeria the law is often discriminatory and legal processes are expensive, slow and complex. The result is that people, and particularly poor and disadvantaged people, have inadequate and unequal access to justice through the formal legal system. For these reasons they tend to rely much more on Customary Justice Systems, but these can be discriminatory. Improving access to justice requires that both formal and customary systems be made to work justly and equitably. It also means more than reforming legal procedures. It can also mean law reform, making courts more user friendly, improving Customary Systems and improving the treatment of offenders.[6]

It is against this background that this article seeks to provide overview of managing free access of information in digital environment; challenges for administration of justice in Nigeria. It also seeks to realize the following objectives;

1. To underscore the importance of enhancing managing free access of information in digital environment.
2. To critically appraise the significance of access to justice in administration of justice in Nigeria;

Information technology: Understanding the Dynamics of Innovation in Organizations', 1994 *Accounting, Management and InformationTechnology* 2, pp. 3 27

[5]O. Hanseth, 'Integration – Complexity – Risk: The Making of Information Systems out-of-control', in C. Ciborra*et al.* (eds.), *Risk, complexity and ICT,* forthcoming, p. 3.

[6] M. T. Ladan, *Enhancing Access to Justice In Criminal Matters: - Possible Areas for Reform In Nigeria* A Paper Presented At A 2 Day National Workshop On Law Development (12-13 January 2010)

3. To examine the wider challenges of incomprehensible and inaccessible legal regimes and dispensation of justice systems and how various reform initiatives seek to address some of these challenges;
4. To conclude with viable options for Nigeria.

This paper is therefore divided into Six broad parts: - 1. Conceptual clarification of key terms: - free access ofinformation, digital environment, justice sector, and enhancing access to justice; 2. Information Communication Technology and theCourts; 3. Benefit of managing free access to information in digital environment; 4. The impact of digitalization of information on courts, tribunal and legal profession in Nigeria; 5. The risks and challenges in a digitized environment6. Recommendations and Conclusion.

1.1 CONCEPTUAL CLARIFICATION OF KEY TERMS: - FREE ACCESS TO INFORMATION, DIGITAL ENVIRONMENT, JUSTICE SECTOR, AND ENHANCING ACCESS TO JUSTICE

The term “free access to information”Access to information is the ability to access what information you want whenever you want it (without rigor in the course of accessing it).[7]

Access to information is therefore closely related to both governmental transparency and freedom of expression. Access to information includes governmental transparency as we need access to the huge quantities of information that government holds and creates. Obtaining

[7]Digital Freedom Project, *Access to Information* (15 July 2015) <http://digitalfreedoms.idebate.org/digitalfreedoms/access-to-information>

transparency in the information government has is necessary if we are to have full access to information. Access to information is also one side of the coin whose other face is freedom of expression as we need information in order to be able to express ourselves, and we need others to be able to access our words in order for those words to have any impact.[8]

Article 19 of the Universal declaration of Human Rights states "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"[9]

The term"digital environment" is a simulated "place" made through the use of one or more computers. Records or evidence of an individual's interaction with a digital environment constitute their digital footprint.[10]

The term "justice sector"

The term "Enhancing Access to Justice"[11] is used here to refer to initiatives that seek to improve on the protection and promotion of the legal rights of all persons, especially, those suspected and accused of crime, vulnerable groups who often experience all forms of discrimination, marginalization, exclusion or are disadvantaged or victims of crime and abuse of power. The

[8]Ibid
[9]United Nations, The Universal Declaration of Human Rights, 10 December 1948, (4 July 2015) <http://www.un.org/en/documents/udhr/index.shtml>
[10]Wikipedia, the free Encyclopedia (15 July 2015) <https://en.wikipedia.org/wiki/Digital_environment>
[11] See Ladan M.T.; Access to Justice and Justice Sector Reform in Nigeria (2009). A Paper Submitted as a book chapter contribution to Nigerian Law Reform Commission's 30th Anniversary Publication, Abuja. See also Ladan M.T.; Access to Justice and Justice Sector Reform in Nigeria. A Paper Presented at the First International Conference on the State of Affairs of Africa. Organized by The International Institute for Justice and Development (IIJD), Boston, MA, USA. Date: - 26-28TH October, 2006. Venue: - Boston Quincy Marriott Hotel, Boston, MA, USA.

term refers also to initiatives that seek to improve on access to court for justice, access to law and information about legal rights and duties through a just or equitable, responsive, affordable and accessible legal regime for the administration of criminal justice.[12]

The term 'access to justice' refers to judicial and administrative remedies and procedures available to a person (natural or juristic) aggrieved or likely to be aggrieved by an issue. It refers also to a fair and equitable legal framework that protects human rights and ensures delivery of justice.

Without effective access to justice there is no effective legal protection of human rights. That is why the legislatures or parliaments, governments and courts of every country have a positive duty to translate the ideal of effective access to justice into practical reality. Effective access is not just an optional extra or a luxury of affluent and economically advanced societies. Everyone, everywhere, should enjoy the equal protection of the law if there is to be justice for all.[13]

In his recent report on the English civil justice system, the Master of the Rolls, Lord Woolf, identified a number of principles which the system should meet in order to ensure access to justice. The justice system should, he wrote, "(a) be just in the result it delivers; (b) be fair in the way it treats litigants; (c) offer appropriate procedures at a reasonable cost; (d) deal with cases with reasonable speed; (e) understandable to those who use it; (f) be responsive to the needs of

12 See the Proceedings of the 11th United Nations Congress on Crime Prevention and Criminal Justice Synergies and Responses: Strategies Alliances in Crime Prevention and Criminal Justice. Bangkok, Thailand April 18-25, 2005. Also see The Attorney-General's Justice Statement, 27th May 2004, Department of Justice, Victoria, Canada: Enhancing Access to Justice: New Directions for the Victorian Justice System 2004-2014, Pp 1-25. Further see, Jiang Huiling, (January 2009): Enhancing Access to Justice through Judicial Reform in China. www.apjrf.com/papers/Huiling.pdf, pp 1-13.

13 See Ladan M.T., "Towards an effective African System for Access to Justice on Environmental matters", in: -Ahmadu Bello University Law Journal, Vols. 23-24, (2005-06), Faculty of Law, A.B.U., Zaria, Nigeria, at p.10.

those who use it; (g) provide as much certainty as the nature of the particular case allows; and (h) be effective, adequately resourced and organized.[14]

1.2 INFORMATION COMMUNICATION TECHNOLOGY (ICT) AND THE COURTS

The world has seen an unprecedented wind of change with the emergence of ICT and its constant innovations and improvements. ICT seems to have pervaded and permeated every facet and layer of life in today's world. These days, there is hardly any layer of human interaction, relationship or endeavour that ICT is not in one way or the other involved. In commercial transactions, banking, health, transport and education, ICT now plays an integral and important role in these sectors. Given this assertion above, it then follows that the law and the development of every nation's legal system must as a matter of urgency and necessity adapt to these realities brought to the fore by the ICT revolution. The law needs to respond and adapt to the ICT revolution. It is with this background that we commend the recent passage of Nigeria's new Evidence Act in 2011.[15]

The inestimable benefits of the various advancements in ICT have until the enactment of the new Evidence Act in 2011 remained a matter of much debate and judicial uncertainty. Tendering of electronic mails (emails) for example are usually as contentious and acrimonious as the litigation itself, with the opposite party usually relying on the hearsay rule, among other forms of objections under the old Evidence Act 1945, to prevent the admission of such electronically

[14]Ibid
[15] A. Echono, *ICT and the Advancement of Legal Studies and Practice in Nigeria* The Lawyers' Chronicle, (18 July 2015)<http://thelawyerschronicle.com/>

generated evidence. The enactment of the Evidence Act, 2011 has attempted to correct some of the difficulties that the admissibility of electronically generated evidence do encounter in Nigerian Courts.

It is important to point out here that the law must adapt itself to contemporary realities in any society. It then means that nations, legislatures and legal practitioners that ignore the realities of the ICT revolution would be doing this at the expense and peril of their nations or societies. The laws of any nation must respond to the realities of the ICT revolution if the nation and its structures can be relevant in today's world; this is particularly true with the proliferation of cybercrimes and legally binding online commercial transactions going on in today's world.

This section analyzes the technology developed to improve working practices and to provide better court services. The increasing prevalence of information technology in the justice domain has brought about significant changes in the way court information is structured, captured, stored, accessed, maintained, distributed, secured and preserved. These changes are challenging traditional information management policies and practices that are intrinsically based on a paper paradigm.

As this level, justice can be conceived as product of combined effort of a plurality of actors. Some of these actors, such as administrative personnel and judges operate within the court organization, while others such as Lawyers, litigant and witnesses, but also the community and public institutions constitute the environment within which the court traditionally operates. Firstly, the application within the courts will be considered, then the focus will shift to ICT and communication exchange between courts parties and general public. A useful element to take

into account in the analysis is the kind of adoption the different technologies need: individual, organizational and inter-organizational.[16] The individual technologies are thought to improve the work of single users. If other people around the organization do not adopt it, the performer of the user is not affected. A typical example of this is the use of word processing application for composition, editing, formatting and printing of standard correspondence. A court clerk or judge with the use of pre-formatted document may reduce the time dedicated to this task.

ICT supports the judges' work in many areas: organizing their tasks, information management and retrieval, document production and decision-making; to name a few. One aspect of the judge's activity which has generally been most affected by the use of ICT is legal research. Cds, local intranets, internet access to constitutional material, laws, appellate decisions, rules, statutes, local ordinances along with other technological support tools are responsible for the changes in conducting legal research. A greater portion of judges' daily time is spent conducting online research. The use of search engines and text mining techniques has permitted legal research to reach new levels of excellence both in terms of quality and efficiency.[17]

1.3 THE BENEFIT OF MANAGING FREE ACCESS TO INFORMATION IN DIGITAL ENVIRONMENT

[16]Contini., F.,(2006). *Li infrastruttura dell informerzioneneisistemiguidiziari In: Carneverli, D., Contini, F., and Fabri M., (eds) tecnologie per la guistizia, Milano Guffire*

[17]In Ireland, for example, the „Electronic Bench book is a Lotus Notes application, updated on an ongoing basis, with various rules, statutes and regulations." Through this system „Judges have on line access a number of sources of electronic legal information services, Butterworths, Lexis-Nexis and Justis.Com". In England and Wales „eLIS (electronic Library and Information Services) provides legal information for the judiciary, the DCA and the Her Majesty"s Courts Service. It also provides a portal service to key legal information on the Internet." It provides information in the following areas of law: United Kingdom, Human Rights, European, International; subject areas: Current Awareness, Legislation and Treaties, Case Law, Commentary, Organisations (http://www.hmcourts-service.gov.uk/elis/35.htm). The Italian Centre of Documentation of the Supreme Court provides free on-line access to the database of the jurisprudence of the Supreme Court, of the Consiglio di Stato, of the Corte dei Conti and of the sentences of the Constitutional Court and the European Court of Justice to the judges.

One of the most significant societal changes promoted by the Internet is not only the open and free access to information, but also the access to new channels of dissemination. Social media, blogs, podcasts have become impactful media tools, empowering users to produce and share their perspective on public affairs and to disseminate news in real time as they unfold on the ground.[18]

Journalists, citizen-journalists, bloggers and social networks have come to play a fundamental role for democratic participation and are gradually becoming embedded as relevant sources of information for their audiences. At the same time, however, the freedom and even the personal safety of these authors can be threatened by excessive or undue restrictions.[19]

Media freedom is fragile -- journalists are being harassed or killed for doing their work, publications are being censored or shut down, and laws are being passed which criminalize free speech. This reality doesn't change on the Internet. Along with the opportunities offered by the network, new obstacles emerge: content filtering, monitoring and suspension of Internet access, often without due regard to individuals' fundamental rights.[20]

Another question that readily comes to mind is; what are the main objectives of ICT within the context of practice? It is considered that ICT should among other objectives:

[18]Press freedom, *Media Freedom Helping to Transform Societies* (15 July 2015)http://www.internetsociety.org/humanrights/pressfreedom?gclid=CjwKEAjwiZitBRCy0pb3rIbG9XwSJACmuvvzu2ilwmpSf-DZ8x58ii5OYM7uB9q32YRsbzspdWAUbxoCtcTw_wcB
[19] Ibid
[20]Ibid

1. Facilitate the storage, retrieval and dissemination of vital legal information for the successful pursuit of legal research and study.
2. Facilitate the performance of routine processes like the amendment of law, indexing and abstracting services.
3. Serve as a link among the various courts, law firm and legal institutions; as well as foster necessary cooperation and working relationship among them. This would also facilitate intellectual resource garnering and sharing.
4. Support learning and teaching in specialized areas of video conferencing, teleconferencing, group discussions, question and answer sessions and pre-trial conference.
5. Assist in the publication of research findings, law books, law reports, law journals and other valuable technical reports.
6. Generally allow or permit instant access to current information on an extensive scale.
7. Enable large number of students and researchers to have ready access "to case law and other legal materials more efficiently than having them queue up for access to a limited number of books in the library.

Constraints of the Optimization of ICT

A lot of obstacles face the attainment of the maximum goal of Information Communication Technology in developing countries like Nigeria. Some of the problems or constraints with the optimization of ICT include among others:

1. **Lack of Infrastructure**: There are the universally acknowledged problems of infrastructures like electricity and telephone facilities.
2. **Lack of Interest and Awareness**: There is generally a lack of interest in ICT, coupled with the low level of awareness and education ICT.
3. **Computer Literacy**: Computer literacy is still essentially at its rudimentary stage. It is also urban-oriented, very elitist and highly restricted in scope.
4. **Lack of Priority**: Priority is given to commercial and profit-yielding ventures over educational and other public-oriented social programmes.
5. **Lack of Funding**: Funding is the crux of the matter. The bulk of resources available to legal education and the judicial institutions are from the various tiers of government. The effect is that legal training institutions and the entire spectrum of the judiciary have to scramble for available meager resources with other departments of the government. The legal education institutions and the judiciary are the worst for it since they are not designed as revenue-generating units. There have been spirited clamor for improved funding for legal education and training institutions and this would foster a sustainable ICT environment for better performance. In this regard, it is important to note that alternative sources of funding to complement subvention from governments is advocated to solve this problem.

1.4 THE IMPACT OF DIGITALIZATION INFORMATION ON COURTS

In general, a number of literatures suggest that the technologies will make the courtrooms geographically accessible anywhere and anytime – omnipresent and available to all in particular to introduce more efficiency into the judiciary, reducing delay, improving the economy, and the

more general objective of promoting confidence in the justice system through the use of technologies. On the same notion, researchers advocate that technologies would lead to a more efficient and effective judicial system, improved transparency of the way the judiciary works, increase in the citizen's level of access to the judiciary and increase in the confidence of the citizens and business in the judicial system. In addition to this, these technologies will contribute towards improving the quality of justice. In this context, it is contended that ICT is used to enhance efficiency, access, timelines, transparency and accountability.[21]

Within the Malaysian context, a number of significant changes have taken place at each of the High Courts of Kuala Lumpur and Sarawak since the adoption of the technologies. In general, the efficiency of the judiciary could be seen and disposal of cases has sped up compared to before the adoption of the technologies. In this respect, the former Chief Justice of the Federal Court of Malaysia TunZakiTunAzmi believes that technology plays an important role in reducing the problem of backlog of cases which has been haunting the Malaysian courts over the years.[22]

The impact of digitalization information on courts when juxtaposed with other Jurisdictions such as Malaysia could yield these results but not limited to the following;

A. **Technology Contributes Greatly to the Better Performance of the Courts**

A respondent specifically attributed the better performance of the courts to the ICT adoption:-

[21] Z. Hamin et al, *Benefits and the achievement of ICT adoption by the High Court Malaysia* Faculty of Law, UniversitiTeknologi MARA, Shah Alam, Malaysia (15 July 2015) <>
[22] Ibid

Ever since we started using the technology, the performance of the courts had improved. We could now hear more witnesses in less time… thus disposing off more cases than before we adopt the technology.[23]

B. Simplification of Work Routine

The Case Management System (CMS) is believed to have simplified the work routine of the users as opposed to prior the adoption of CMS. In this respect, a respondent explains the use of CMS as follows:-

As far as our system is concerned, last time the lawyers have to run to the court just to get the cause list of the hearing for next week. Now no more, they can go to the system and look for the information that they want, they can get it there.[24]

In support of this, another respondent specifies that the CMS system has indeed simplifies his work:-

Yes, CMS simplifies our work. If we want to find a specific court document, we only need to key in the system, and it's there already.[25]

In addition, another respondent agrees that the CMS system promotes the efficiency of the court system:-

ICT makes it easy for the users; we can work on the spot. If the judges want to confirm or check on any court document, we need just to enter into the system. The work becomes more efficient.[26]

[23] Semi-structured interview with the a judge, case study at the High Court of Kuala Lumpur.
[24] Semi-structured interview with the Chief Judge of the High Courts of Sabah and Sarawak, case study at the High Court of Kuching.
[25]Semi-structured interview with the court administrative officer, case study at the High Court of Kuala Lumpur
[26]Semi-structured interview with the Deputy Registrar, case study at the High Court of Kuala Lumpur

C. CMS as a Management Tool

The CMS system can be used as a management tool by the court administrators, specifically to verify information in the system and to keep updated with the progress of the cases tried by the courts within the specified jurisdiction. In this regard, a respondent described the use of CMS in Yang AmatArif's capacity as the Chief Judge of the Sabah and Sarawak as follows:-

I have made use of ICT as a management tool because without it previously, everything had to be done manually, more or less a random check. With ICT applications now, the system helps me to do the monitoring of all the various aspect of the court's functions, so much so that nothing is being overlooked. I can get immediate report just at the click of a button.[27]

In support of this, another respondent confirms the usage of the CMS system as a management tool:-

Well, as humans, we don't really like to be monitored 24 hours a day. But I think it's a good thing that the Chief

Judge can access into the system and extract any specific information that Yang AmatArif requires. In addition, our works will be more transparent.[28]

D. Time Efficiency of the Quality Management S system (QMS)

The QMS is claimed to be beneficial to the lawyers especially the queuing order and the time-efficient factors.

Within this context, one respondent describes the benefits of the QMS system as follows:-

We think it has two advantages, first of course on the queuing system; we can confirm the attendance (of the lawyers) and verify our case. Second, we can check if our case is listed in the

[27] Ibid
[28] Ibid

cause list or not. Unlike the old system, we have to really check the cause list at the notice board, and if our case is not listed we have to check with counter, it will take more time. But now we can just fill in the case number (in the system) and we can find it there. We can know immediately if our case is listed for the day.[29]

E. Time and Cost Efficiency of the AVC System

The AVC proves to save time and cost for the judges and lawyers given the ability of AVC to hold proceedings at difference locations, in this respect, a respondent explains the time and cost savvy features of the

AVC system:-

Yes, this (the AVC system) is very convenient to all the parties. This is because of the long distance in Sarawak, especially by road travel. And then by flight, it wastes a lot of time to the parties. So this video conference actually helps a lot for all the parties. It saves cost and time.[30]

In support of this view, another respondent claims that the

AVC could actually save the lawyer's time and the client's expenses as follows:-

Like the AVC, last time the lawyers used to travel, fly everywhere. Now no more, so if the lawyer is having a case in Miri, he doesn't have to fly to Miri. He can come here (Kuching High Court), calls in the judge in Miri and waits. So he can save time and hundreds of Ringgits (of client's expenses).[31]

1.5 THE RISKS AND CHALLENGES IN A DIGITIZED ENVIRONMENT

[29]Ibid
[30]Ibid
[31]Ibid

In relation to the challenges ICT poses. In fact, several recent studies and researches have shown that the development and introduction of ICT in the justice sector is proving more complex than expected, especially when moving outside the traditional borders of the court.2 The justice administrations, and other public and private institutions dealing with access to justice through – or with the support of – electronic means, are discovering that technology is not a neutral device for the improvement of efficiency and the reduction of costs. More, they are learning that technology cannot be grafted into well established and normatively regulated procedures without unpredictable consequences.[32]

As courts all over the world re-define their roles in an increasingly networked and digitized society, many new challenges, risks and opportunities will be encountered that were not present in the paper based world. New information management policies need to be developed and then implemented in court information systems to embrace such opportunities, address the challenges and mitigate the risks. Some of these are canvassed below.[33]

a. **It is impossible to control information once it's released on the Internet.**

Once electronic court information has been released, particularly via the Internet, it can potentially be accessed, aggregated, collated, mined, repackaged, disseminated and

[32]See for example F. Contini, G. F. Lanzara (eds) (2009), *ICT and Innovation in the Public Sector. EuropeanPerspectives in the making of e-government*, Palgrave, London; A. Cerrillo and P. Fabra (eds) (2009), *Information and Communication Technologies in the Court System*, IGI Global, Hershey PA, USA; M. Velicogna, (2008), *Use of information and communication technologies (ICT) in European judicial systems* – CEPEJ Studies No. 7; M. Fabri (ed), (2007), *Information and Communication Technologies for the Public Prosecutor's Office*, Clueb, Bologna.

[33] J. Sherman, *Court InformationManagement Policy Frameworkto Accommodate the Digital Environment*For the Canadian Judicial Council (16 July 2015) <https://www.cjcccm.gc.ca/cmslib/general/AJC/Policy%20Framework%20to%20Accommodate%20the%20Digital%20Environment%202013-03.pdf >

commercialized by persons or organizations with no authority to do so, nor commitment, contractual or otherwise, to maintain its quality or to ensure it is effectively and accurately represented. This could potentially, over time, erode the integrity of our legal system and may reduce public confidence in the courts.

b. **It is easy for a court to lose control over the quality of its information**

There are often inadequate publication and distribution constraints and quality control checks established in formal or contractual arrangements surrounding bulk access and distribution by third parties (e.g. distributors, publishers, brokers). Some courts have effectively lost control of important data due to exclusive arrangements that have been established with commercial information brokers that involve, for example, external hosting of electronically filed documents without effective data repatriation provisions or quality control checks.

Data mining may facilitate unauthorized bulk-access to court information

It is possible for unauthorized aggregators, data miners and distributors to obtain unauthorized bulk access to electronic court information and to re-package and distribute it for commercial gain without any safeguards to ensure the information is properly presented and its integrity is preserved. This dissemination of unreliable court information could potentially erode confidence in the legal system.

c. **Risks to vulnerable people**

Unlimited access to on-line court information may increase personal safety risks for vulnerable people. This is particularly a concern in criminal and family law cases and in cases involving

juvenile justice. Personal information relating to witnesses, jurors, victims of crime, troubled youths and children at risk will often need to be protected from public access to minimize the potential for them to be exposed to harm. If this consideration is not accommodated in systems that deliver court information on-line, the risks can be greater than they were in the traditional paper based world due to the ease with which the information can be accessed by anyone with Internet access.

Confidentiality in relation to personal information will be a paramount policy consideration that will generally override the public's right to access where there is such a potential increased risk to personal safety. Protection of vulnerable people is a particularly important overriding consideration when weighed up against competing values such as the community's right to access information on court files.

Young offender records and other sensitive records relating to vulnerable people can inadvertently become inappropriately distributed and accessible in some integrated justice information system programs where there is a loss of control as data flows 'downstream' into other justice agencies. Mitigation of such risks needs to be built into the architecture design of such systems.

In the family law English case of *Director of Child and Family Services v.D.M.P.et al,*[34] a media reporter was banned from attending and reporting upon the proceedings largely because he had been twittering live feeds to the Internet during courtroom proceedings, despite instructions from the bench not to do so. Rivoalen J considered that his actions had caused potential harm to the

[34](2009) MBQB 193 (CanLII)< http://www.canlii.org/en/mb/mbqb/doc/2009/2009mbqb193/2009mbqb193.html>

child and held that the protection and welfare of a child superseded the interests of the media to obtain access to the courtroom.

d. **Personal privacy may be invaded by persons with 'no right to know'**

Broad, unrestricted access to court information can facilitate 'busy-body' enquiries and privacy violations due to the removal of practical obscurity barriers that are prevalent in a physical, paper based world.

The Supreme Court of Canada has long recognized privacy as an interest protected by both the common law and the Canadian Charter of Rights and Freedoms.[35] The US Supreme Court, likewise, has conferred constitutional status on certain aspects of privacy[36] and US federal trial courts have held that a victim's privacy rights are capable of overriding the principle that the judicial system ought to be fully open.[37] In New Zealand, the High Court has reached a similar conclusion[38] and the British Parliament attempted to regulate access to "protected material" on the grounds of privacy protection as early as 1997 in sexual offence proceedings.[39] Perhaps, the Constitution of Federal Republic of Nigeria also guarantees right to privacy[40] and equally established a juvenile court[41] for the purposes of determining issues relating to young persons. This is in a bid of protecting their interest (privacy).

[35]R v Beharriell (1995), 103 C.C.C. (3d) 92 (S.C.C.). per L'Heureux-Dubé J pp 124-125
[36]Roe v Wade 410 U.S. 113 (1973)
[37]In re Application of KSTP Television, 504 F. Supp. 360 (D. Minn. 1980).
[38]Police v. O'Connor, [1992] 1 N.Z.L.R. 87 (H.C.), at p. 98.
[39]"Protected material" including the victim's statement, a photograph of the victim, and the victim's medical report: Sexual Offences (Protected Material) Act 1997.
[40]
[41]

On-line court information systems can permit serious privacy violations where the architects who designed them fail to implement these important rights within the technology security framework.

e. **Increased risk of identity theft, harassment and fraud**

Broad access to court information without adequate protection of personal information may facilitate identity theft, harassment or fraud where personal details are inadvertently or purposefully embedded within the accessible information.

f. **Access to disturbing material may cause distress or harm**

Criminal Case Files often contain disturbing photo or video evidence that can cause distress or even harm to those who become exposed to it whether inadvertently or otherwise. It is easier for casual browsers who have no connection to such a case to either accidentally or purposefully view such material where on-line access arrangements are too liberally applied to information presented in court.

”One concern we had was that if family members were present in court we knew the impact on them would be irrevocable. They would not recover...Many photographs … were not shown in court... they’d be too disturbing for the public to view”[42]

[42]Canadian Lawyer Journal Article by Rob Tripp “Behind the Scenes” – January 2011 page 31. Quote from Michael Edelson, Edelson Clifford D’Angelo Barristers LLP, counsel for the accused in the recent high profile criminal trial of R v Russell Williams before Scott J.

In the case of 'horrific' evidence (for example, contained in videotapes associated with sexual offences), a number of factors may need to be weighed when considering public access rights. These include:[43]

The nature and content of the evidence and, in particular, whether it depicts violent or degrading non-consensual sexual activity involving an identifiable victim.

The use to which the evidence will be put: will it advance a public interest, or is it intended primarily to satisfy prurient curiosity?

This balancing exercise was undertaken by Watt J in *R v. Blencowe*)[44] where his honour endeavored to strike a balance between the accused's right to a fair trial, including disclosure of evidence, and the privacy rights of the child victims depicted in the videotape evidence.

g. **Fair trials are easily compromised**

Fair trials may be compromised where smart phones or laptops are used in the courtroom to instantaneously transmit stories and pictures to the Internet. Orders excluding witnesses from the courtroom to preserve integrity of their evidence, may be circumvented if courtroom events or earlier testimony material are relayed to the Internet, for example, via Twitter or live Blogs.

h. **It's easier to leak sensitive court information and its impact is more damaging**

[43]Horrific Video Tapes as Evidence: Balancing Open Court and Victim's Privacy – Bruce A. MacFarlane, Q.C. Deputy Minister of Justice Deputy Attorney General for the Province of Manitoba September 25th, 1998 [Originally published in 41 Criminal Law Quarterly 413 (1999)]
http://www.canadiancriminallaw.com/articles/articles%20pdf/Horrific_Video_Tapes_as_Evidence.pdf
[44](1997) 118 CCC (3d) 529 (Ont. Ct. (Gen Div)

The reputation of the judiciary may be compromised and public confidence in the court may be negatively impacted through publication of damaging, sensitive, embarrassing or inaccurate court information. It is now much easier for a disgruntled ex-employee, participant in the justice system, or member of the general public to publish such information instantaneously to millions of people via the Internet, wiki-leaks style.

i. **Commercial litigation may go elsewhere**

Where a court embraces an open access policy, the ease with which court information can potentially be accessed on-line by the media or general public may deter some civil litigants from pursuing resolution of their commercial disputes through the court system, opting instead for the relative privacy and confidentiality of alternative dispute resolution options. If the commercial sector loses confidence in the courts as a viable dispute resolution option, this will have significant social and economic impacts. One major repercussion for example, would be the lack of certainty surrounding commercial arrangements and negotiations due to the reduced body of precedent establishing the legal ground rules within the jurisdiction.

j. **Technology can sometimes drive Policy (when it should be vice versa)**

As courts embrace new information systems and technology opportunities it's important to *ensure that the tail doesn't wag the dog*. While policy needs to be informed by the possibilities and risks associated with the technology of the day, it's important to ensure that policy directs technology solutions and not vice versa.

In the absence of clearly documented information management policies, architects charged with the responsibility to design and implement new information systems will sometimes make incorrect assumptions or may, at times, feel understandably compelled to make important strategic business decisions themselves to fill a policy void.

Policy formulation in relation to court information is much more complex and arguably more important in the electronic domain than it was in the paper based world. Traditional notions of access, security, privacy and preservation need to be recast to accommodate digital realities. It is more important to 'get it right' upfront due to the inherent and significant new risks that we need to be mitigated and in light of the cost of retrofitting information management systems later in the event that we initially 'got it wrong'.

Once information management policies are formulated and aligned with core values, they operate as the *architectural principles* and provide a business context to guide those responsible for the design of future court information systems.

1.6 RECOMMENDATIONS

Having seen the pitfalls which came at the wake of the managing free access of information in digital environment and the challenges in the administration of justice in Nigeria, the following recommendations are hereby proffered;

1. The Nigerian legislature should expedite on the enactment of laws that will regulate the admissibility of electronically generated documents in evidence in furtherance of the provisions of the Evidence Act 2011 as amended.

2. The Nigerian Bar Association should adopt a yardstick on the usefulness of ICT gadgets in the Nigerian legal profession for the purposes of enhancing the administration of justice in Nigeria.
3. On the issues of defamation on the internet, Nigerian legislature should make law which would make internet service providers liable as the publisher of libelous remarks, originated by another person, but published by them in the internet. Surely, this will compel the Internet Service Provider to scrutinize very well any article that comes to them before publishing same for the public in the internet.
4. Law students should not only be taught Introduction or application of computer in the universities, but should be given opportunity to practice what they have been taught under necessary supervision. This will go a long way assisting them on the use of IT techniques with ease after their call to the bar.
5. Judging computer related crimes need players with adequate computer knowledge on the technical side. So judges that have little or no computer education should make due with technology experts when faced with matters on information technology. This is in a bid to ensure administration of justice.
6. Workshops, conferences and seminars should be organized frequently by the Nigerian Bar Association for lawyers and judges on the use of Information Technology in the discharge of their professional obligations.
7. Nigerian legislatures should enact a law specifically regulating internet/computer crimes like, cyber pornography, hacking, planting of computer viruses, etc.

CONCLUSION

In spite the alarming significance of managing free access of information in a digital environment and the challenges in the administration of justice in Nigerian, it has become a forum for the perpetration of various kinds of criminal activities as earlier appraised under the heading “The Risks and Challenges in a Digitized Environment”. However, consequent upon the impact of managing free access of information in a digital environment, the above recommendations were proffered for the purposes of regulating managing free access of information and curbing the menace rooted in managing free access of information in a digital environment which has become a cankerworm that militates against the administration of justice in a digital environment in Nigeria.

Sequel to the foregoing, it is hoped that Nigerian legislature should put into action the recommendations herein enumerated. And the legal practitioners should take bold step towards learning and embracing the culture of discharging their duties with the help of Information Technology gadgets.