

The Advocate

The Advocate Magazine

Vol 1 Issue 16 - Annual Conference Edition 2024

PRESIDENT'S DISPATCH

Champion of Justice:

LSK President

Faith Odhiambo, Steering
the Legal Community
Forward



EMPOWERING LEGAL EXCELLENCE:

Good Governance and the
Rule of Law for Sustainable
Development



CURRENT AFFAIRS:

Taxation in a corrupt soci-
ety, who benefits?



AI IN LAW:

Navigating the Future of
Legal Practice



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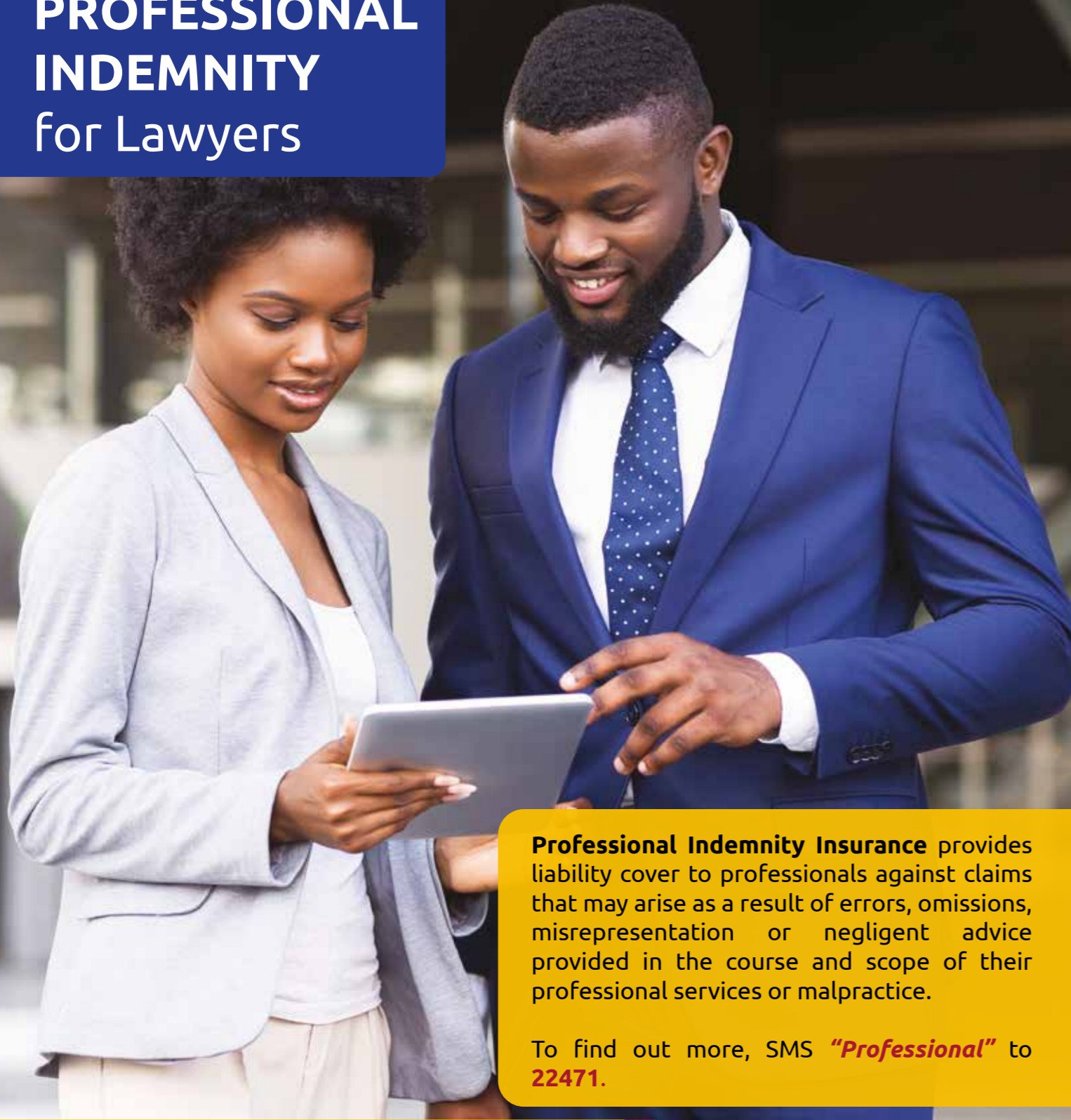
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We keep our word

VOX POP



“Our Transformative Constitution mandates that the law enforcement operates strictly within the confines of the Bill of Rights and the law. Article 49 specifies the right of arrested persons, including the right to be informed of the reason for the arrest, to communicate with an advocate and others whose assistance is necessary and to be presented before a court as soon as reasonably possible- **but no later than twenty-four hours after the arrest.** Furthermore, Article 51 addresses the rights of persons detained or held in custody, including their entitlement to **petition for an order of habeas corpus - Justice Martha Koome, EGH Chief Justice of the Republic of Kenya on the statement of allegations of abductions of protesters and the rights of arrested persons.**”



The Law Society of Kenya has taken note of Gazette Notice No. 8261 of 204, forming a Presidential Taskforce on Forensic Audit of Public Debt. The said taskforce is required to audit the public debt within 90 days and report back to the President... The Council of the Law Society of Kenya has thus resolved that neither our president nor any of our members shall take up appointment or participate in the said taskforce...” - **LSK Secretary/ CEO Florence W. Muturi in a statement on the LSK position on the Presidential Taskforce on Forensic Audit of Public Debt.**



“LSK stands as the final bastion for the protection of human rights, the promotion of access to justice, and the upholding of the rule of law. In an era where public interest is continually challenged by constitutional usurpations, the LSK remains vigilant and proactive. At the heart of our efforts is a dedicated team of pro bono lawyers, operating under the Pro Bono Guidelines, who tirelessly advocate for the public through strategic public interest litigation and provide essential legal aid to the indigent. Our advocacy spans a broad spectrum of thematic areas including political lobbying, drafting of critical position papers on various critical legal and constitutional issues and protection of indigenous species.”

Mr. Were Bonface, Advocate. Public Interest & Advocacy officer, LSK, during The Justice and the Rule of Law Global Forum 2024 and Law Societies Compact Forum for SDG 16 by the World Bank Group, Washington DC, USA.



I speak to you on this black Tuesday not just as an Advocate of the High Court of Kenya but equally as a peace-loving patriot. Apart from being the LSK President, I am a mother, an aunt, a sister, a daughter and a wife. Like all mothers whose children have been killed, injured, tortured or abducted in the hands of cops, I feel the pain of my countrymen.

The Gen Z who you call children are out in the streets fighting for you fellow parents in

National Police Service, Parliament, Cabinet and air-conditioned government offices. Just imagine, your child is out there seeking justice when you are comfortably enjoying life - **LSK President Faith Odhiambo in a statement, on killing of protesters during Finance Bill Demonstrations in Nairobi and across the Country.**

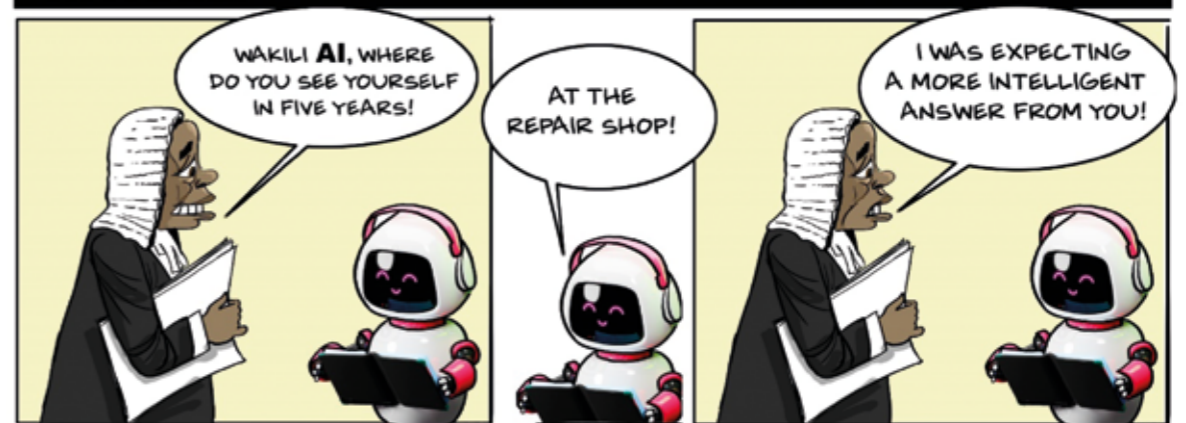


“There is also a clear link between the freedom of expression and democracy. Keeping in mind the pivotal role freedom of expression plays in a democratic society, Article 24(1) requires a proportionality analysis that inter alia takes into account the nature of the right or fundamental freedom; the importance of the purpose of the limitation; the nature and extent of the limitation; the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.”

Bosire Bonyi, PIL Committee Member, Counsel for LSK in Nakuru High Court Petition No. E016 of 2023

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Message from the CEO

Dear Colleagues and Esteemed Members of the Law Society of Kenya,

Welcome to this year's Annual Conference, the Advocates Annual Migration 2024. This year, our theme is **"Empowering Legal Excellence: Good Governance and the Rule of Law for Sustainable Development,"** with a sub-theme on "AI in Law: Navigating the Future of Legal Practice."

It is an honor to address such a distinguished gathering of legal minds dedicated to advancing the pillars of justice and integrity that underpin our society.

Recently, the rule of law has been put to great test and with the rapidly evolving world, it is important that good governance and the rule of law be maintained at all times as they are the bedrock upon which sustainable development is built, ensuring that economic, social and environmental progress is inclusive and equitable. As advocates of the High Court of Kenya, our collective commitment to these principles fosters a just society where every individual's rights are protected, and opportunities are available to all.

As we delve into the critical sub-theme of **"AI in Law: Navigating the Future of Legal Practice,"** let's remember that Artificial Intelligence is not a threat but a tool that can transform our profession. It offers unprecedented efficiencies and innovative ways to enhance our practice. However, this also presents unique challenges and ethical considerations that we, as advocates, must address keenly. As we integrate AI into our legal frameworks, we must ensure that these technologies are used to enhance our abilities, uphold justice, and maintain the highest standards of professional conduct.

As we kick off the conference and



throughout the various discussions led by our knowledgeable and highly qualified practitioners, I urge you to engage meaningfully, participate in insightful discussions, and gain valuable knowledge on both traditional and emerging areas of legal practice. I encourage you to exchange ideas, build networks, and collaborate on solutions that will shape the future of our profession.

As we explore these pivotal topics, let us remember that our ultimate goal is to maintain excellence within the legal practice. By upholding good governance, embracing technological advancements, and adhering to the rule of law, we can contribute to a sustainable and just future for all.

Your participation and dedication

In this rapidly evolving world, the importance of good governance and the rule of law cannot be overstated.

to our shared mission are invaluable. Thank you all for your commitment, and I wish you a productive and inspiring conference.

Florence W. Muturi,
Secretary/ CEO, LSK

President's Dispatch

Champion of Justice:

LSK President Faith Odhiambo, Steering the Legal Community Forward

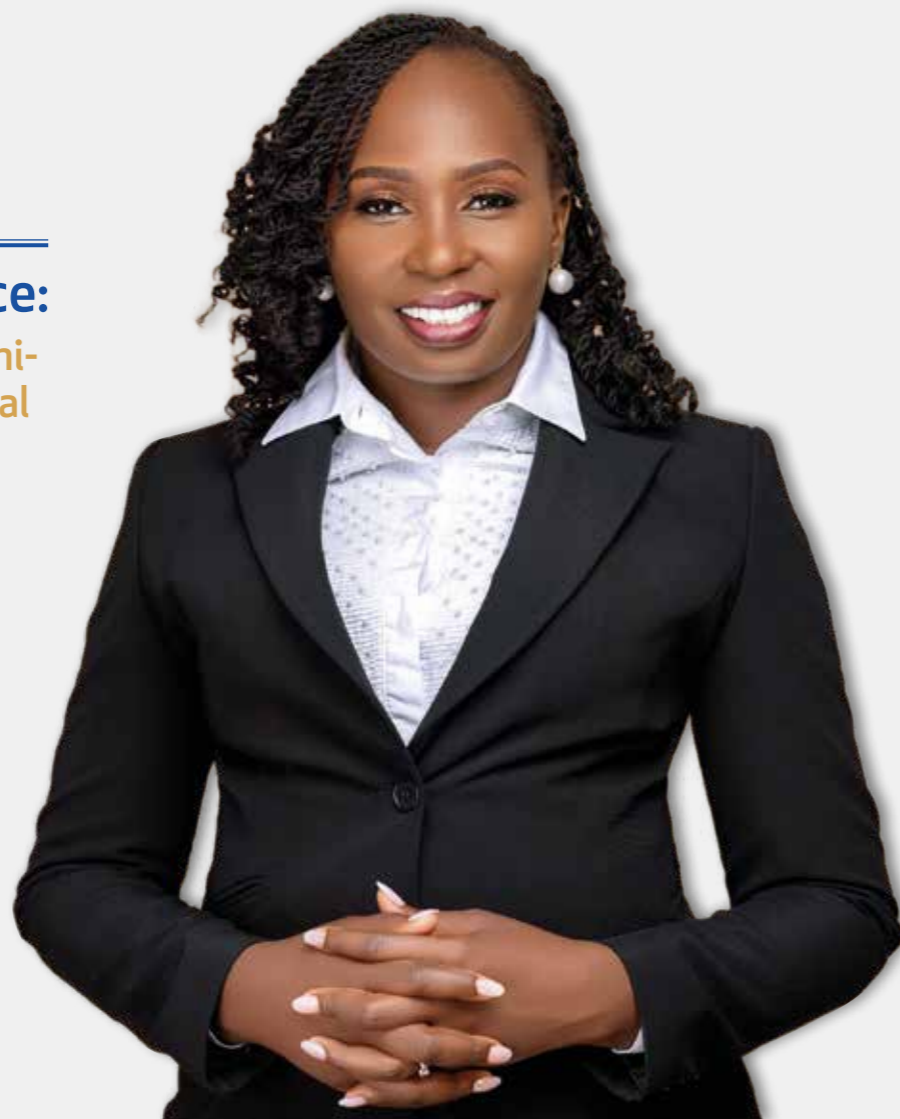
What motivated you to vie for this leadership position of the Society?

My greatest motivation for running for LSK leadership came from my parents, who, since childhood, always encouraged me to be of service to others. My dad would always tell me that I have to be impactful wherever I go, while my mother always told me to set an example of excellence in everything that I do. Having served society as the Nairobi Representative and the Vice President, it was logical that I offered myself for the top seat. I must also admit that the thought and chance of becoming the second female president were alluring to me.

What are your top three priorities for the society during your term?

When I decided to run for the presidency of the society, I was fully cognizant of the situation that the law society was in. I strongly felt that the society was at a critical point in its history. We had weathered storms, and calm returned to society, even though a lot of work still needed to be done. I had a conviction that any move forward required that we do not lose what we had but instead build upon it.

I ran for office because I wanted to see a law society that was both stable, dynamic, forward-thinking, rooted in the rich legacy of our past, and eager to embrace the possibilities of our future. That is why, my top three priorities for



society were and still are:

- Protection of the rule of law and administration of justice
- Stability of the bar
- Progress of the bar, our practice, and our welfare.

How do you envision the Society evolving under your leadership?

My vision for the LSK is clear: to lead a society that sets the gold standard for excellence, integrity, and positive change in the practice of law and the defense of the rule of law in Kenya and beyond. A society that is not only responsive to the changes in our legal landscape but also anticipates and shapes those changes. A society where every member, regardless of their stage in their career, finds support, opportunity, and a sense of belonging.

I am committed to seeing the society evolve towards that vision under my leadership. But to achieve that vision, we must work together as advocates to achieve our collective vision as a society.

What specific strategies do you plan to implement to address the most pressing issues facing the legal profession today?

It is true the society faces many challenges and while all of them need attention, we have to be strategic to create impact for the members. At the moment the top five challenges that we face as a profession include:

- Inefficient land and court registries which means advocates cannot render efficient legal services to their clients and are unable to earn their bread on a timely basis.

b. Masquerading by people not qualified to practice as advocates. The pain here is that the rob advocates of work.

c. Corruption in the justice system which increases the cost of doing business and makes the justice system unpredictable.

d. Shrinking practice opportunities for advocates

e. Lack of Adequate medical cover

As the council, we have initiated a raft of measures to address the challenges that we face. To address the challenge of inefficient land and court registries, we have initiated conversations with the judiciary and the ministry of lands with the view mapping out the most critical pain points and finding solutions that work. Sector committees for judiciary and lands ministry have been set up to oversee resolution of existing challenges. Efficient and predictable courts and registries is important in the practice of law as advocates invoice their clients based on services rendered. Any bottleneck in the courts and land registries impacts the timeliness of advocates income and that is why we are deliberate in engaging the two institutions to find lasting solutions.

To address the masqueraders issue, we have made budgetary provisions to support branches in the fight against masqueraders. Our compliance directorate has been resourced to provide more tactical support to branches in the identification and prosecution of masqueraders. We are also exploring the idea of Smart Digital IDs for advocates that will be used to aid in the identification of genuine advocates and to authenticate legal documents with a view of ridding our profession with masqueraders.

On corruption, we have set up a committee to conduct a countrywide survey, through branches, to document corrupt practices among judicial officers,

court clerks, lands registry officers and other important players in the justice system. Once launched, the committee will document corruption cases within the justice system, then prepare a memorandum which shall be presented to the Judiciary Commission for further action.

To create more opportunities for young advocates, we have initiated conversations with government agencies such as ODPP, IPOA, State Law office and County Governments to increase their intake of Legal Interns to provide practice experience for our advocates and also to get them ready for employment within the government.

We also plan to host mentorship sessions focused enhancing business knowledge and skills with the aim of helping advocates to build thriving law firms. We recognize that there is a big difference between the practice of law and the business of law. By equipping advocates with business skills for running profitable law firms, we not only increase their survival rate by also increase their ability to create opportunities for other advocates.

Finally, we are also pursuing the review of the remuneration orders to reflect the current realities.

To address the issue of medical cover, we have already received proposals from medical insurance providers and are in the process of evaluating medical insurance proposals with a view of finding the most relevant and affordable cover for advocates. Once selected, we will subject the best proposal for public participation for bringing them on board.

How do you plan to enhance the Society's role in advocating for legal reforms and justice?

Legal reforms are an important function of the law society. We have seen bills coming out of parliament that are clearly not progressive. As the council of the Law Society of Kenya, we

recognize that going to court to challenge every new law is not sustainable and cannot bring the desired change to the country. We have already established a legislative tracking framework, in collaboration with legislative committees of parliament and the senate, to track pending legislations in order for LSK to intervene with recommendations at an earlier stage. By being proactive and not reactive, we can contribute positively to legal reforms. We are also in the process of mapping out laws that have implementation challenges and need reforms. We will then undertake review and reforms of the identified laws to plug the existing gaps in those laws through our law reform committee.

What steps will you take to increase member engagement and participation in the Society's activities?

Members engagement and participation in the activities of the society is what gives the society life. What we would like to see is the society becoming vibrant and responsive to members professional and social needs. While we already have some activities set in our calendars we desire to create more events for members. Professionally, we will revamp the CPD program to have more niche trainings and seminars. Socially, we plan to add more events to allow members to interact and connect more with colleagues with the view of bringing all advocates together.

How do you intend to address the concerns and needs of both Young, Mid Bar and seasoned members of the legal profession?

While LSK the professional home for all advocates, I must admit like in any normal home, sometimes tensions exist between siblings. On one hand the seniors feel that young advocates are not respectful while the younger bar feels that the seniors treat them unfairly.

Our plan is to bring the different bars together through networking events and mentorship seminars. Through our PIL programs, we have been deliberate to pair young members of the society with senior members on briefs as part of mentorship. The added benefit is that working together breaks down engagement barriers between the senior and younger bar.

How do you plan to foster and strengthen partnerships with other organizations such as government bodies, international bodies and civil society groups?

The role of the law society is so diverse and without the support of partners, our impact as the law society on the members and the nation is minimal. Our goal is to deepen our relationship with strategic partners. That is why, we will be deliberate in engaging with our partners. Over the years, partners have been very important to the success of LSK programs and that is why the council is keen to establish new partnerships and deepen existing partnerships.

Can you share any plans you have for international collaborations or exchanges?

We live in a globalized world and this means we have to interact with the world in order to cross pollinate our ideas and create global networks that we can leverage to grow our practice. To facilitate international collaborations and exchanges for members and the society, we are now in the process of planning to co-host an event that brings together all the bar associations in Africa.

What initiatives will you introduce to support continuous professional development and education for the membership?

Professional development and education are important in not only ensuring members maintain cutting edge professional skills

but also ensure that they grow as individuals. One of our dreams is to set up structured industry clusters to help young advocates to interact with industry thought leaders and opinion shapers in their industries of interest.

To further enhance knowledge acquisition we are also looking at expanding the scope and breath of Inua Wakili Series to make it more relevant to advocates' needs.

As part of giving our young advocates practical experience, we will encourage and support the inclusion and active participation of young advocates in PIL Matters.

We also have plans to transform CPD into a training and certification center to cover inter alia Legal Audit, Environmental Justice, ADR, Business and Human Rights, Legal Drafting, Anti Money Laundering, Corporate Governance, Data Protection and Artificial Intelligence. This move will open more opportunities for LSK and advocates specializing in the areas mentioned.

How will you ensure that the organization remains at the forefront of legal education and practice innovations?

As the world changes very first, the Law Society of Kenya, can not afford to be left behind. One of the committees that we have is mandated monitor changes in the profession including the impact of technology on the practice of law. This committee has the mandate of ensuring that the profession stays updated on the technological changes that affect the legal sector and to recommend the best ways for members to embrace changes. In addition, part of our CPD calendar includes trainings that target emerging issues such as climate justice, artificial intelligence and among others. The objective is to ensure that no advocate is left behind with practice innovations.

What measures will you take to promote diversity and inclusion within the Society and the legal profession at large?

Luckily, inclusivity is not a major problem within the society. In fact, while other professions are struggling to get more women into the doors, for the law society, in the last 3-5years, we have admitted more female advocates than men. Our job as the council is to ensure that advocates in general thrive in their practice.

How will you ensure that the organization's activities and policies reflect a commitment to equity, rule of law and administration of justice?

The mandate of the law society on the rule of law is enshrined in the Law Society of Kenya Act, No. 21 of 2014, Section 4. Our goal is to amplify our interventions, as the law society of Kenya, in checking on the government's excesses, supporting improvements service delivery in the judiciary and the lands registries, and being on the frontline of law reforms and advocacy. We recognize that if the wheels of justice don't move or move slowly the justice is denied.

The Society has been vocal on rule of law breaches and made interventions on law reforms through the parliament and the senate. To keep the government in check we will continue to boldly challenge government decisions in court when they act outside the provisions of the rule of law. It is important that the country continues to be governed on the basis of the rule of law and that is why the Law society of Kenya will continue to play its role in championing the rule of law and the administration of justice.

In what ways do you plan to leverage technology to improve the Society's operations and member services?

We are cognizant of the fact that technology can really improve our productivity and service delivery to our members. As a result, we commissioned a review of our ICT infrastructure to identify gaps and areas of improvement, floated a call for expression of interest

and we are now in the process of reviewing the proposals received before selecting a service provider to undertake the upgrade of our ICT infrastructures. Our goal as the council is have in place a modern ICT infrastructure that allows us to serve our members efficiently and securely. We are also looking at going paperless in the next 2years.

How do you see emerging technologies influencing the legal profession, and how will the organization adapt to these changes?

Emerging technologies are going to change our practice and how we function as advocates. Some technology is going to threaten our work but I do not believe technology will replace an advocate, but I do believe an advocate who embraces technology will replace an advocate that refuses to embrace technology.

As the Law Society, we will ensure that advocates are updated on technological innovations affecting the profession and recommend ways of adopting the technologies in their practice. We must be ready to embrace technological advances that can transform our practice.

How will you manage conflicts of interest and ensure ethical standards are upheld within the Society?

At the society level, functions that used to overlap between the secretariat and the council have been separated. We also now have a procurement policy to guide all procurement of products and services.

At the professional level, we have the LSK Code Standards of Professional Practice and Ethical Conduct (SOPPECC) which regulates the professional conduct of advocates including conflict of interest. In the event of professional misconduct, we have the Advocates Complaints

Commission and Advocates Disciplinary Tribunal to uphold the standards under SOPPECC.

How would you describe your leadership style, and how do you think it will benefit the Society?

As a leader, I am a pragmatist who believes in others. I derive a lot of joy in seeing people around me excel and grow. As a result, I always give others opportunities to express their abilities on tasks.

Furthermore, I also lead from the front because I feel it is the best way to inspire confidence and action in others.

I believe my style of leadership is able create cohesion within the council while also allowing council members to exploit their talents in serving members and the nation.

What past experiences have prepared you for this leadership role, and what lessons have you learned from them?

Many experiences have shaped by many experiences. But the ones that I feel did the most to prepare me for my current role include: my leadership roles at Hazina Housing Society where I served as a board member and later, chair of the board; at FIDA, where I served as the secretary of the board. Becoming the Nairobi Representative at the LSK Council would prove a proper induction and orientation into LSK leadership. I would then get elected as the Vice President of the society which gave me a front row seat in leading the society. Throughout my leadership journey, I have learnt that as a leader you have the power to change things and that power must be exercised for the benefit of the people and organizations that you lead.

Where do envision the Society to be at, at the end of your term and what legacy do you hope to leave behind?

When my term comes to an end, I hope to leave behind a law society that sets the gold standards in championing the rule of law and administration of justice; a vibrant LSK that members are proud of, and a profession that commands respect and admiration from Kenyans.

What's your mantra?

Grit. Hustle and Grind but most importantly keep the Faith.



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EMPOWERING LEGAL EXCELLENCE:

“Good Governance and the Rule of Law for Sustainable Development”

The Assembly and Demonstrations Bill, 2024 is Dead on Arrival. Let the Attorney General do a better job at it.



By Otieno Aluoka

The National Assembly is due to discuss draft law - The Assembly and Demonstrations Bill, 2024 - a private member's motion sponsored by Hon. Geoffrey Ruku, MP Mbeere North. But what kind of law is it? In light of the recent demonstrations in the country, maybe it is an opportune moment to discuss the draft law on this crucial issue of the right to assembly and demonstrations. The fundamental right is pledged from Article 37 of the Constitution 2010 in the following words;

“Every person has a right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.”

The implementation of this bundle of rights has always been very contentious. After the series of the occupy parliament and mpigs

demonstrations in 2013 against alleged greed of legislators doodling up privileges and perquisites for themselves at the expense of the country's poor economy, activists taking part in the demonstrations were arrested and arraigned in court. In **Republic v William Omondi and 16 Others [Criminal Case No. 685 of 2013]**, they faced a myriad of charges including that of taking part in a riot, breach of peace and cruelty to animals for using pigs in the demonstrations. In refusing to take plea, the suspects contended that they had notified the police of the demonstrations and were only exercising their constitutional rights, among others, of the right to assembly and demonstrations. They later sought to stop the intended prosecution through a reference of the questions to the constitutional court.

Thus far, it is the Public Order Act (Cap 56) that is the framework for the implementation of the rights to assembly, demonstrations as well as picketing in the country, but the law is quite a rigmarole. It grew up from the antithetical oppressive colonial British statute used against the Mau Mau freedom fighters in the early 1950s when the country was fighting the British imperialists. Since then, the law has hardly been overhauled in tandem with the modern democratic reality. The law still places demonstrators in the mercies of the State and the police. Practically, it has muzzled civil life in multiple initiatives around the country.

In the ensuing constitutional peti-

tion that went all the way to the Supreme Court, **Hussein Khalid and 16 others v Attorney General & 2 others [2019] eKLR**, the learned Supreme Court bench was of the opinion that any offence that is defined by its elements and particulars in law is good law, and as such it would not delve into a 'blanket condemnation of the statutory provisions' complained about.

Above all, this draft law is an express limitation to the constitutional guarantee for the freedom of assembly and demonstrations in the bill of rights. This is constitutionally permitted though. The right to assembly, demonstrations, picketing and petition under Article 37 of the constitution is not amongst the non-derogable rights recognized under Article 24 and 25 of the Constitution. Nevertheless, where any limitations occur, the Constitution has provided for a criterion that must be followed, amongst which is the fact that the limitation must only be to the extent that is reasonable and justified in an open and democratic society based on human dignity, equality and freedom.

The architecture of the Bill is bound to be fatal to its operations. It is the police who will still permit an assembly or a demonstration yet they are the same persons that will evaluate the conduct of the assembled and demonstrators and decide whether to bring it to a stop or not. A more simple and transparent process of notification for assemblies would be required

to revamp the law. For example, a Registrar of the Notices would have domiciled with an independent body such as the Kenya National Commission for Human Rights (KNCHR) or the Ombudsman's office. This would probably work better than notifying policemen who literally must look over their shoulders for approval.

In fact, the process of providing assembly notifications is a labyrinth of impossibilities. A police station may decline service, or the authorized officer can flee from the station when they are required to take the notices. There have been no registers of notices, as too any prescribed forms that would simplify the procedure. Such modifications could be made through subsidiary regulations in such a law.

Police authorities trash notifications for meetings every so often, especially during tense national debates or the general elections. Conferring appeals to police prohibitions in applications for meetings to the very precious and busy High Court judicial time as suggested by the bill would just not hack it. It is impractical, prohibitive in time and purpose. Magistrates' courts have certain levels of jurisdiction on the enforcement of the Bill of Rights. The magistrate's courts are accessible country wide. Probably the jurisdictional scope of the magistrate's courts could have been expanded instead of conjuring up the strange appeal system proposed under section 8 of the draft law. This pathway is self-strangling and portend nothing but cheap drama for the future users.

Provisions of the Bill in several other areas build the charade of tranquility in public causes. Admittedly public assemblies and demonstrations should be peaceful. However, in several instances, the Bill removes the burden of maintaining law and order from the State to citizens who chose to exercise the right to assembly and

demonstrations. This is a contradiction of sorts. The State is not happy with dissent. Parallel views to state opinion will most likely face hamstrings that the new law can easily fabricate.

In the view of the draft law, organizations and persons taking part in an assembly or a demonstration would be severally and jointly liable for incidents of damage to property during the incident. The sad but familiar attitude in section 12 of the Bill containing the proposals must have greatly drawn inspiration from the philosophy espoused in the undefended constitutional petition of **Ngunjiri Wambugu v Inspector General of Police, & 2 others [2019] eKLR**. In the stated judgement, the court relied on the South African Public Gathering Act, yet, the history of the two countries is quite parallel. In the South African experience, the scare crow liability provision was certainly the input of wealthy white folks protecting their private enterprises from interferences by the black freedom fighters.

The liability noose is a hoopla. It means on one side that the police can look the other way during street chaos, only to arrive to effect the clause; it is the kind of open cheque for infiltrators, saboteurs and conmen who can fake protests and damages; it would be fodder for state blackmail and the classic claw back to the right itself. Simply put, if protestors owe due care to the unknown people and property in the world, you simultaneously have them in the corner at both civil and criminal law.

This bill is therefore; rush, short tempered, reactionary and impractical. It ends up not just Not only does it criminalize the right to assembly and demonstrations, but also, keeps protestors in the leash of the non-demonstrators, whichever manner its described. The draft law creates several vague offences and penalties for conveners of demonstrations. Section 14 of the proposed law declares that a

person shall not convene a public assembly with no or adequate notice (entirely redundant), and further that he shall not knowingly contravene or fail to comply with a condition of the notice to which an assembly or the demonstration is subject to.

Also, under the proposed law, a person shall not hinder, interfere with, obstruct or resist a police officer, a convenor, a marshal or any other person in the exercise of his powers or the performance of his duties. Possession of a weapon or any object unlawfully during a protest is not allowed. For the offences, upon conviction, a fine not exceeding 100,000/= or imprisonment of not more than a year is attached. The Bill does not purport to repeal or amend the Penal Code but recreates the offence of unlawful assembly that is defined and punished by the former. This is confounding.

The latter is an unnecessary import from the Penal Code as it is not clear any more what the offence would be or its punishment under the law. According to Section 7 (10) of the bill, the offence is punishable by imprisonment for a year. Still, a whole lot of key terms have been left without definitions in the proposed law, and many issues are left in the vacuum. What notice for a Public Assembly is adequate? Who is any other person for the purposes of the offence of interference under section 14? What is an unlawful object during an assembly or a demonstration? What hours of demonstrations and meetings are allowable; days of the week; places of pickets etc.

All said and done, Article 37 of the Constitution is in the tempest. Hundreds of Kenyans have been in the court corridors on the charge of unlawful assembly amongst other commonly preferred offences that the prosecution normally bring on people arrested during street demonstrations and meetings. Others can be rioting and breach of peace. The

situation is untenable for a constitutional democracy that Kenya declares itself to be. The law-and-order apparatus enjoy too much leverage in deciding how this fundamental human right is operated in the country and the suggested law does not even scratch it on the surface. As a lawyer, I know that the police turn tables on demonstrators wherever they can add trumped up charges on them during arraignments. It is often things like damage to property or refusing to obey lawful orders.

Law enforcement agencies despise public protests and assemblies in spite of the common democratic good that as a country, we have drawn from the bloodied history. Too many innocent people are killed and harmed during protests which goes unpunished so long as the epithet of law and order is drawn. During high profile protests, DCI officers for instance, largely a plain clothe secret personnel, scary away suspects across several police stations with little opportunity for accountability. It is by God's luck that some of them are ever found after that. What roles do what police unit play in lawful protests?

Assemblies are still manned or crushed with loads of armory and poisonous tear gas. In recent days, hi-tech surveillances are also used against demonstrators and their organizations. There is a problem but the suggested law does not address the situation at all. It is time that the Attorney General made a bold step to take over this Bill and revamp it into a more sensible law that would encompass Kenya's responsibility within the international human rights compass on the right to peaceful assembly and equally address the local nuances on such a law, ensuring that it gives effect to the fundamental freedom and relevant provisions of the bill of rights.

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Empowering Legal Excellence: Good governance and the rule of law for sustainable development.



By Paula Gatheru

"The rule of law, defended by an independent judiciary, plays a critical function by ensuring that civil and political rights and civil liberties are safe and that the equality and dignity of all citizens are not at risk" (an excerpt from the UN Chronicle on the rule of law and democracy). At the heart of democracy, there is the critical issue of governance which is fueled by the rule of law. Without it, a nation is plunged into anarchy, autocracy, corruption and social ills and therefore necessary for every developmental goal, according to findings by a USAID report.

The foundation for governance and the rule of law

"The Constitution contains the fundamental and most often the supreme law and the rule of law dictates the enforcement of those principles above all others", lifted from the UN Chronicle on the rule of law and democracy.

The Constitution provides for the principles of governance in Article 10 that are binding to all, and to attain sustainable development. The said principles also apply in the interpretation and application

of the law so as to sustain legal excellence. The Constitution further seeks to promote good governance and advance the rule of law in its application and interpretation as per Article 259. The same is the basis for other statutes that advance legal excellence through governance and proper application of the rule of law as shall further be discussed herein. The rule of law and governance is premised on the following principles:

- ▶ Policy formulation processes
- ▶ Interpretation and application of the law through court decisions and precedents
- ▶ Fair democratic practices
- ▶ Public participation in decision making
- ▶ Initiatives in affirmative action (protecting the marginalized and vulnerable groups- as per article 56 of the constitution)
- ▶ Economic inclusion and accountability in managing public resources

According to a report by Foresight Africa, good governance and strong institutions are essential for sustainable development. Legal professionals are empowered to serve and strengthen the governance institutions such as the Judiciary, Uraia, Ministry of Interior and Coordination, Senate, State Departments for Planning and Devolution, concerned commissions such as Commission on Ad-

utilization aimed towards sustainable development. A report by USAID lists key program areas that aid in governance to include; safeguarding the democratic space, promoting peace and performance, participation, accountability and transparency. Locally, the same is premised on Article 232 of the Constitution that provides for accountability in administrative acts, equitable provision of services and resources, public participation in policy making, transparency and providing accurate information.

The said statutes, among others, include the Access to Information Act (to enhance transparency and accountability), Fair Administrative Act (to contain abuse of power and safeguard fundamental freedoms), The Elections Offences Act, The Elections Act, The Anti-Corruption and Economic Crimes Act, The Leadership and Integrity Act (for accountability in public service and transparency in administrative actions), The Public Officer Ethics Act, The Inter-Governmental Relations Act (for inclusive and participatory governance), The National Cohesion and Integration Act, The Probation of Offenders Act (to give effect to the Nelson Mandela rules on the rights of offenders) and The Judiciary Sentencing Guidelines (which advance the rule of law).

The aforementioned statutes culminate into the Governance, Justice, Law and Order Sector Plan that provides for policy, legal and institutional reforms which consequently align with legal excellence and lays a platform for sustainable development in line with the African Political and Economic Transformation Agenda of 2063.

The Rule of Law and Fundamental Freedoms in the Bill of Rights

The afore-mentioned African transformation agenda 2063 provides that for aspirations to be achieved, citizens must feel that the rule of law is respected and democratic principles and human rights are upheld. Democracy and fundamental human rights are intertwined according to a report by IDEA. It further points out the hallmarks of the rule of law as separation of powers in the arms of government, regular and fair elections, autonomy in the judiciary, non interference in media coverage and citizen equality before the law.

Citizen equality is enshrined in the fundamental freedoms contained in Chapter Four of the Constitution as the Bill of Rights. They are applicable to all citizens in equal measure and can only be limited under exceptional circumstances in Article 24. They are inherent to every Kenyan as per Article 19 which also paves way for international conventions such as the ICCPR and ICESR which support policy, legal and institutional reforms to ensure adherence to universally acceptable standards. Such standards include; Access to Justice (provided in Article 48; and most recently legal professionals have come together to offer representation to those arrested in the protests against the Finance Bill), the right to a fair hearing (which is non derogable), economic, social and civic rights, which are safeguarded in the National Governance Sector Plan and the Bill of Rights.

The said standards are achieved through institutional and legal reforms, strengthening the justice

system, legal awareness through civic education which locally is achieved through the Legal Aid Act, implementing the Bill of Rights and safeguarding economic rights, according to a report on the Vision 2030 sector plan.

Conclusion

Good Governance through safeguarding the Bill of Rights and citizen participation are non derogable in the legislative framework and policy implementation. The recent protests against punitive taxation to safeguard the economic rights in Article 43 are a testament to this and equally affirm the sovereignty of the people (which is a pillar in governance, safeguarded in Article 1 of the Constitution). Enhancing the rule of law and proper governance is a building block to Vision 2030 sector plan. Kenya has come a long way in governance from the days of the one political party state rule to the multi-party reforms introduced in 1992, to the NARC government in 2002. Additionally, Kenyans have displayed immense commitment in joining hands to reject the Finance Bill 2024 and this is a huge step towards economic inclusion. On the other hand, legal professionals have undertaken to sustain excellence through safeguarding the rule of law and democracy geared towards sustainable development.

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MARKET GAP

- There is a scarcity of very crucial usually non-structured data produced by government and private sector in the form of notices, adverts and official publications.
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SO YOU DON'T FORGET**

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- User Sign up or sign in
- Navigate to Database and select a category
- Search for a record
- Select the record you chose and complete the payment process

National Values and Principles of Governance: Good Governance and the Rule of Law

By Christine Mududa

Article 10 of the Constitution of Kenya, 2010 provides for national values and principles of governance. The rule of law, good governance and sustainable development are amongst the values stated in the Article. It provides an impetus for Kenyans to ensure that our institutions are run in a transparent, accountable and sustainable manner through ubiquitous development paradigm.

According to Dicey, the rule of law consists of three elements. The first one is that no one should be subjected to punishment except, when it is established by a court that a breach of law has occurred. The second is everyone is equal in the eyes of the law and the third one is that the rule of law flows from individual rights being recognized by the judiciary. This therefore means that for a government to flourish, the rule of law and good governance have to be the backbone of that government which automatically spurs sustainable development.

State officers and public officers should be held accountable for their administrative acts pursuant to Article 232 (1) (e) of the Constitution. A Government is consequently expected to function within the confines of the law. Chapter Six of the Constitution provides for Leadership and Integrity that forms a basis on how the State officers and Public Officers are expected to conduct their affairs including their work. Individuals are protected from arbitrary actions taken by the government through State Officers and Public Officers. The courts are put in place to be the custodians of the rule of law and safeguard the individuals.

Governance in State Corporations

The former president of Kenya,

H.E Uhuru Kenyatta put in place the Presidential Taskforce on Parastatal Reforms in 2013 and later the Implementation Committee to oversee the implementation of the reforms that were recommended. The Implementation Committee worked alongside State Corporations Advisory Committee and Institute of Certified Secretaries of Kenya in consultation with World Bank that came up with the Mwongozo Code of Governance for State Corporations in January 2015. This is the document that has been used by State Corporations since 2015 that provides a solid basis for good governance.

This was a game changer for State Corporations given that the Code addresses matters of effectiveness of Boards, accountability, transparency and disclosure, internal control, risk management, good corporate citizenship and ethical leadership which are components of good governance. This came at a time where a majority of the State Corporations had diverted from their regulatory functions, which led to wastage and confusion among State Corporations, given that a danger was posed by the production processes being over politicized and distribution via too many State Corporations.

Despite having a Constitution that provides for good governance as a national value and principle, Statutes like the State Corporations Act, Cap 446 and the Mwongozo Code of Governance for State Corporations, Kenya is still faced with poor governance practices like poor accountability, lack of transparency and disclosure, poor internal controls and lack of suitable financing and poor policies. Some State Corporations collapsed due to corruption, misdirection on policy and political interference. Further, poor financing of some State Corporations

makes it difficult to adhere to the provisions of Mwongozo. Board induction, continuous training for the Board members, annual governance audit and the legal compliance audit are activities that need financial resources yet some State Corporations cannot afford to undertake them.

Financial Responsibility of Government Entities

However, as we address the inadequate financial provision to some State Corporations, we also have to address the issue of efficiency and accountability in the use of public funds. Article 201 of the Constitution provides for the principles of public finance which include openness and accountability and prudence and responsibility in the use of public money. The Public Finance Management Act, 2012 was enacted for the effective management of public finances by the National and County Governments. All Government entities are expected to spend public money prudently in order to provide value for the people of Kenya.

When good governance is practiced, sustainable development comes inevitably given that;

- a. Public institutions spend public resources accountably which means that consideration of the current and future generations come into play.
- b. State Corporations and other Government entities are currently considering Environmental, Social and Governance as a tool to measure sustainability and ethical impact of investments and business practices in the businesses they conduct.

Despite the legal safeguards that may be adopted to provide a comprehensive system of checks and balances on governmental abuse, a State's Constitutional framework should not be seen to operate in a cultural or societal void. The Government therefore needs to come up with ways to have the provisions in the Constitution implemented to the letter

in order to practice and uphold the rule of law and good governance.

Mwongozo should be issued as a Regulation under section 30 as intended by the former President in his Forward in the Mwongozo, to make it a legal requirement for State Corporations to adhere to it. Currently, it is just a policy frame-

work for good governance principles which State Corporations can choose to apply or otherwise.

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An Algorithmic Judiciary: A Kenyan Perspective



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The concept of ‘Justice’ encompasses various interpretations, but, for the scope of this discussion, we narrow our focus to ‘Legal Justice,’ encapsulating equality under the law. In Kenya, the belief in legal justice is deeply ingrained, evident in our National Anthem’s call for justice as our protector. Amidst debates about the judiciary’s current effectiveness, there arises a discussion about its future, particularly concerning Artificial Intelligence (AI) integration.

Globally, AI’s role in judicial systems is expanding, aiding in legal data analysis, streamlining court procedures, and even assisting in decision-making. Countries like China and the United States have already implemented AI-driven systems, known as Algorithmic Decision Making, in their courts. However, Kenya’s journey toward such advancements is still in its early stages, despite previous efforts to modernize through initiatives like virtual courts and e-filing.

Challenges persist within Kenya’s judiciary, including corruption, case backlogs, inadequate resources, and inefficiencies in case management. To address these issues,

the adoption of Blockchain and AI technologies could be a promising solution. This fusion holds the potential to enhance efficiency, transparency, and access to legal justice.

The Vision of an Algorithmic Judiciary

An envisioned Algorithmic Judiciary in Kenya would utilize Blockchain’s decentralized platform for transparency and AI’s capabilities for data analysis and task automation. The benefits include; increased efficiency, prevention of systemic failures, improved organizational processes, reduced bureaucracy, and enhanced oversight to combat corruption. Additionally, AI and smart contracts could autonomously manage certain judicial tasks, allocate cases impartially, improve case management, and find application in specialized courts, such as those dealing with environmental and land disputes. Ultimately, integrating Blockchain and AI offers the potential for a transformative judiciary in Kenya, ensuring efficiency, transparency, and fairness for all citizens.

Challenges of Implementing an Algorithmic Judiciary in Kenya

While the potential implementation of an Algorithmic Judiciary in Kenya remains largely theoretical, several significant challenges specific to Kenya must be addressed:

- a. **Power Struggles:** The introduction of new algorithmic systems may lead to conflicts and resistance from existing judicial participants, such as judges, court clerks, and lawyers, who may feel threatened by these new systems.
- b. **Implicit Bias:** Developers of algorithmic technologies may inadvertently embed their own values and biases into the systems, potentially exacerbating existing biases in the judicial process. Cathy O’Neil’s book *Weapons of Math Destruction*,” highlights how algorithmic models can perpetuate biases and inequalities, particularly in areas like predictive recidivism models. These models often rely on opaque data and flawed statistical assumptions, leading to disproportionate outcomes, especially for marginalized communities.
- c. **Corruption:** Previous technological advancements, such as e-filing and eCitizen platforms, have shown vulnerabilities to corrupt practices, including the creation of backdoor access. Similar risks may arise with the implementation of an Algorithmic Judiciary.
- d. **Infrastructure Challenges:** Kenya continues to struggle with inadequate physical and IT infrastructure, which could impede the timely development and distribution of technologies necessary for implementing an Algorithmic Judiciary.

Broader Challenges of Applying Algorithms through Blockchain and AI Fusion

- a. **Bias and Discrimination:** AI systems in the legal system may perpetuate biases present in the data they rely on, leading to unfair outcomes and eroding trust in the judicial process.
- b. **Lack of Human Judgment:** Algorithmic Judicial Officers may lack the flexibility and depth of understanding of human judges, potentially undermining the legitimacy of their decisions.
- c. **Judicial Accountability:** The opaque nature of AI systems could hinder judicial accountability, making it difficult to challenge or review decisions made by Algorithmic Judicial Officers.
- d. **Explainability:** Many AI algorithms, particularly those using deep learning methods, lack transparency, raising concerns about the fairness and validity of their decisions.
- e. **Vulnerabilities in Smart Contracts:** The use of smart contracts in an Algorithmic

Judiciary introduces vulnerabilities that could undermine trust in the system and compromise fairness.

Way Forward

Given these challenges, comprehensive discourse and collaboration among stakeholders are needed to address the complexities of implementing an Algorithmic Judiciary. Resistance to algorithms is not the solution; instead, stakeholders should work towards accommodating these technologies while preserving human judgment and accountability. Several measures can be taken to overcome these challenges:

- a. **Pilot Testing:** Begin with low-stakes cases, such as those in Small Claims Courts, to test the effectiveness of algorithmic systems.
- b. **Stakeholder Involvement:** Involve retired judges, legal experts, and professional organizations in the development and oversight of algorithmic systems.
- c. **Human Oversight:** Maintain a human element in the decision-making process, with

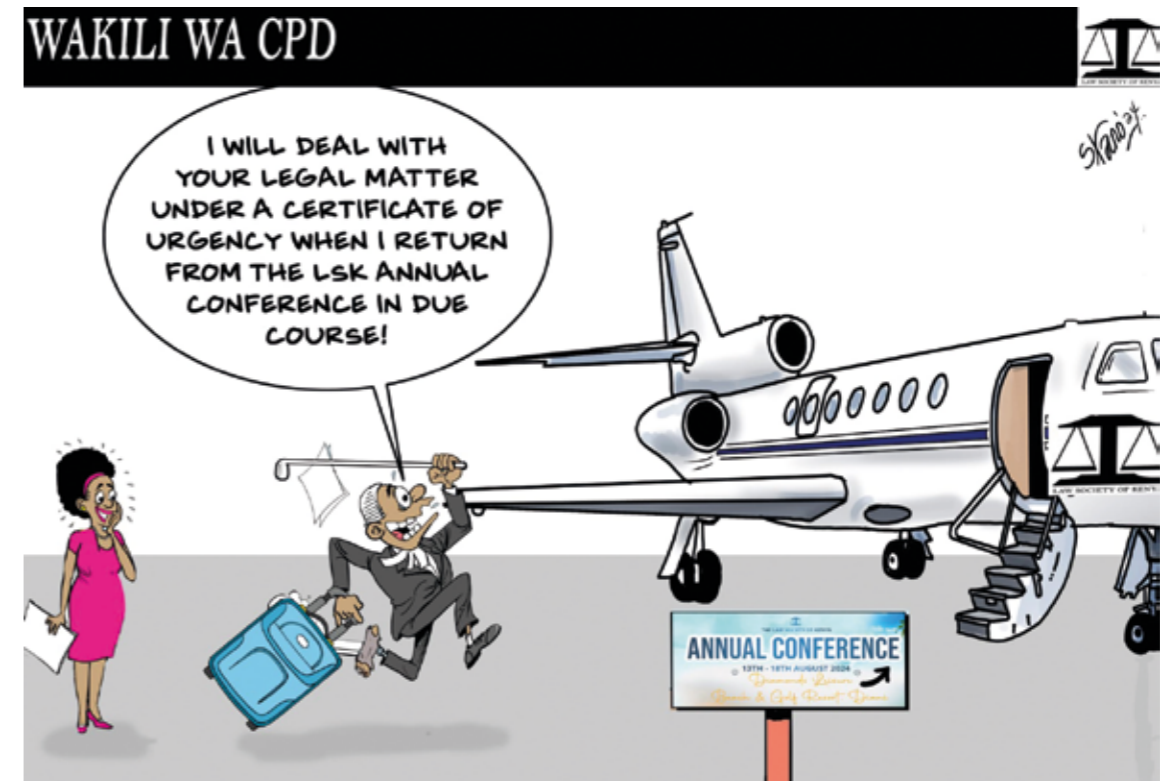
algorithms flagging cases that require human judgment.

- d. **Ethical Considerations:** Ensure that algorithmic systems are developed with ethical considerations in mind, and provide ongoing education and awareness for those involved in their development and operation.

While the implementation of an Algorithmic Judiciary in Kenya presents significant challenges, it also offers opportunities for enhancing efficiency and fairness in the legal system. By addressing these challenges through collaboration, transparency, and ethical considerations, Kenya can pave the way for a more just and effective judicial process in the digital age.

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Grounded in Governance: Good Climate Adaptation Governance for Africa's Sustainable Development



Colleta Kihumba



Afshin Nazir

“The environment and the economy are really two sides of the same coin. If we cannot sustain the environment, we cannot sustain ourselves.”
~ Wangari Maathai

Climate action, whether aimed at mitigating or adapting to the changing climatic conditions, is increasingly being integrated within national, regional and global development agendas. The emphasis on aligning climate action and development planning is recognized in the 2030 Agenda for Sustainable Development (SDG 13), various Multilateral Environmental Agreements including the Paris Agreement, and the AU Agenda 2063. The latter contains the Seven Aspirations of the African people that serve as the principal framework guiding the region's development objectives. Crucial is the need to create climate resilient economies, that the same serves as a building block of Aspiration 1 of the Agenda, that is, 'A prosperous Africa based on inclusive growth and sustainable development.'

Given the severity and permanence of some climate change effects, it is generally understood that adaptation and mitigation activities must be implemented simultaneously and vigorously to manage the crisis. These include activities to reduce greenhouse-gas emissions as in the case of mitigation, or adjusting systems to moderate harm caused by climate change as a means of adaptation. However, the 2023 United Nations Environment Programme Adaptation

Gap Report reveals that there is a large adaptation finance gap, with the estimated costs being 10-18 times higher than the actual finance flows. Conversely, mitigation finance is steadily increasing. This is especially detrimental given that Africa is a low emitter of GHG and the focus is placed on improving our human and social systems' capacity to withstand or exploit climate change effects. Notably, this requires a good climate adaptation governance system.

Climate adaptation governance encompasses institutions, processes, policies, plans and measures established to address climate adaptation. It relates to the way entities at national and international levels address climate adaptation, including honoring their obligations, decision-making and accountability. The primary elements of good governance include public participation, transparency, accountability, inclusiveness, responsiveness, rule of law and effectiveness. Good climate adaptation governance should similarly embody these elements, but it remains marred with challenges, inter alia, lack of financing, public participation and transparency, as well as fragmentation.

Financing remains a paramount challenge, especially considering

the state of debt in Africa. As of February 2024, six low-income countries in Africa were in debt distress, with thirteen others at a high risk of debt distress. The UNEP estimates annual adaptation costs in developing countries at USD 160 to 340 billion by 2030, a cost which budgets alone cannot carry. Additionally, research demonstrates that over 70% of climate finance in Africa is a product of borrowing, with only a fifth of climate finance flows directed towards adaptation. This increases already high debt levels and places great pressure on national budgets to cater for adaptation costs. Indeed, national budget surveys have confirmed that developing countries commit significant sums from their budget towards adaptation. The result is nations' inability to respond adequately to other needs including social protection, financing of socio-economic rights, and development in general. Moreover, access to climate finance, such as the Green Climate Fund, remains administratively cumbersome and limited. Borrowing for climate finance therefore is an unsustainable option and African countries can instead opt for climate finance in the form of grants.

Lack of effective public participation is another challenge which is

in some aspects connected to the financing problem above. Principle 10 of the Rio Declaration underscores the need for participation at relevant levels, which cannot be effectively achieved without transparency. Despite this, public participation and transparency remain wanting at national and international levels. For instance, Transparency International reports that, while information disclosure is required on national stakeholder engagement under the Clean Development Mechanism and the Adaptation Fund, criteria for such engagement are missing. Facilitating meaningful public participation in climate adaptation is hindered by political factors, limited government capacity, resource limitations, among others. Moreover, at national level, expenditure on climate adaptation is often unreported or difficult to estimate. Loans taken to provide for climate finance are also shrouded in secrecy, with the citizenry's access to terms limited. Public participation can be improved through involvement of local communities in adaptation projects, development of laws and policies around adaptation, and decentralization of climate governance. Further, publication of financial information on climate finance is vital to ensure transparency and accountability.

Fragmented governance systems within Africa, also act as a major hindrance to good climate adaptation governance. Climate change affects multiple domains such as the environment, agriculture, water and health simultaneously, thereby necessitating collective action. In addition, multiple actors including states, sub-state and non-state actors are crucial for implementing adaptation activities at multiple levels. Notably, it is an immensely arduous task to reconcile all these factors, as evidenced by the governance gaps. For instance, the Global Center on Adaptation published a paper analyzing climate adaptation plans

from various African countries. They reported that a number of climate-sensitive sectors such as tourism, coastal zones and the built environment, as well as the actors therein such as indigenous communities, have not been sufficiently prioritized during adaptation planning. On the other hand, ineffective coordination and misalignment across prioritized sectors such as agriculture/livestock, water and health, mean that specific vulnerabilities are often overlooked. Given the plurality of actors, sectors and levels involved in climate change adaptation, targeted adaptation strategies that can be applied across sectors, and by state as well as non-state agencies, must be implemented. This would ensure that specific vulnerabilities

are addressed, while ensuring that the limited resources are utilized effectively.

Realizing Africa's development goals is undoubtedly predicated, in part, on the region's ability to increase its resilience to climate change. This is as much a governance issue as it is a scientific issue. Good governance is the golden thread that runs through any efforts to achieve sustainable development. A climate adaptation governance system that champions transparency, participation, and coordination ensures that development is achieved effectively, equitably and sustainably.

The Authors are Advocates of the High Court of Kenya

Legal Compliance Audits: A Good Governance Tool



By Samuel Akhwale

Definition

Legal Compliance Audits is a process of assessing compliance against all legislation that applies to an organisation and identifying any actions and areas for improvement, according to the UK based organisation "The Compliance People".

Framework in Kenya

In Kenya, Legal compliance audits especially for private corporations are a self-driven process, to manage legal risks, and to enhance its image among its stakeholders. However, for public institutions,

the Mwongozo Code of Governance of State Corporations requires that the Board of a State Corporation ensure:

- That a legal compliance audit is carried out at least annually, with the objective of establishing the level of adherence to applicable laws, rules, regulations and standards.
- That the recommendations in the Legal Compliance audit report are implemented.
- That a comprehensive and independent legal audit is carried out, at least once every two years.

Under the code, the Board is required to file compliance reports on all statutory obligations in each quarter to the responsible Cabinet Secretary and the State Corporations Advisory Committee.

The Capital Markets Act Cap. 485A establishes the Capital Markets Authority for the purpose of promoting, regulating and fa-

cilitating the development of an orderly, fair and efficient capital market in Kenya and for connected purposes. The Act in Section 24A provides that the Authority, in determining suitability for grant of a licence, will take into account if the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements.

Steps

Whereas there is no standard procedure for conduct of a Legal Compliance Audit, the steps; in many ways, adopt the format of other audit processes.

The first step in a Legal Compliance Audit will be determining the Terms of Reference and scope of that Audit. Here, the organisation requiring the audit maps out the parameters to be covered by the audit. This may be dictated by the resources that the organisation has. If it is a State Corporation, the scope will have to ensure that the audit is done within the timelines specified in the annual Performance Contract of that Corporation.

The second step will be identifying the consultant to carry out the Audit. Being a Legal Audit, the auditor ought to be an Advocate of the High Court of Kenya in right standing with the Law Society of Kenya. If the organisation is large, the auditors may need to be more than one and have the requisite competence and experience.

After the audit team is constituted and the contract between the Auditee and auditor signed, next is the inception meeting between its management and the auditors, at which the auditors explain to the management the whole process and get the buy-in of the process-owners. The outputs from the inception meeting are an inception report, a work plan and an audit schedule that is shared with the auditees.

After the inception meeting, the auditors retreat for a document and literature review of the organization's policies, standard operating procedures, manuals, reports and other internal documents. The purpose is to help the auditors develop the data collection instruments and the compliance matrix. The documents are made available either through an access link to the organization's portal, or hard copies shipped to the auditors, or as scanned copies on a portable drive that is sent to the auditors. This is done on the strength of a commitment to confidentiality by the auditors not to disclose any internal information about the organisation to a third party without the organization's consent and this commitment forms part of the Consultancy Contract. This is also the stage at which the auditors identify all the laws and regulations that apply to the organisation.

After the document and literature review, the auditors develop data collection instruments; being questionnaires or interview guides, that are shared with the auditees to fill out in advance. The Auditors schedule the audit weeks, to visit various department heads and conduct face to face interviews for clarification of the responses in the data collection instruments, and also to sample documentary evidence in support of the responses in the data collection instruments. In certain circumstances, the face to face interviews can be done through virtual meetings.

After the data collection, the Auditors again retreat to write the report, in two parts: The first is a report in prose that outlines as per department the findings on audit, the areas of good performance and the areas for improvement. The second is a compliance matrix in tabular form, identifying the legal obligation, the findings regarding that obligation and whether on that obligation the organisation is compliant, partially

compliant or non-compliant. The interim report is shared with the auditees, for clarification of the findings. Once this is done, the auditors liaise with the management of the auditee for presentation of the interim report. Any feedback from this presentation is incorporated in the final report which is sent to the auditees along with the invoice for settlement.

Benefits

Matt Green of Skillcast lists the main benefits of a Legal Compliance audit being the mitigation of a legal risk. He also lists the other benefits as:

- a. Providing a safe working environment and promoting a secure and stress-free workspace.
- b. Preventing penalties and avoiding any legal issues and consequences.
- c. Establishing a good reputation and gaining public trust, and dominating your industry by staying aligned with industry protocols.
- d. Ensuring continuous operation and avoiding disruptions or cessation of operations.

Future of Legal Compliance Audits

According to Illumeo, a California-based strategic professional development partner for Accounting and Corporate Finance Organizations, the future of auditing is likely to see an increased use of artificial intelligence and automation, more reporting on ESG (Environmental Social and Governance) issues, more use of cloud based tools but with the attendant caution on privacy and data security and also greater use of Big data analytics to help auditors analyze large volumes of data and identify trends and patterns. Of increasing importance will also be ethics and professional standards, and commitment to ongoing professional development and training.

In conclusion, Legal compliance audits is increasing in importance as an area of ensuring good governance in organisations as well as a growing area of opportunity for legal practitioners.

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Access to information as an enabler for good governance and the rule of law



Joyce Wandia Kihara

Introduction

The Kenya Constitution is heavy on the quest for good governance and respect for the rule of law from the preamble to the Bill of rights and the values and principles of Public Service. These are because they are key hallmarks of a democratic society. Governance generally refers to the processes and practices of governing through which issues of common concern are decided upon and regulated. Therefore, good governance is whereby, institutions charged with the responsibility of governing ensure that public affairs and public resources are utilized in accordance with the law and guarantee the realization of human rights. Good governance structures provide for transparency, accountability, participation, responsiveness and responsibility which creates an enabling environment for sustainable development due to proper utilization of

resources and achieving societal needs.

Rule of law on the other hand, dictates that all persons, institutions and entities, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards. It underscores the principles of equality before the law, supremacy of the law and equal application of the law to avoid arbitrariness. Rule of law is strongly interlinked with development as it lays out common standards for action, which are clearly defined by law and enforced in practice through procedures and accountability mechanisms for predictability, reliability and administration through law. It further establishes law and order, an independent and effective justice system and, advocates for clear demarcation of roles by the three arms of Government to ensure proper checks and balances.

The role of information in good governance and respect of the rule of law

Access to accurate and timely information is the common denominator in reinforcing good governance and the rule of law. Without information, the public become ignorant of their rights, distrustful

of the Government and ultimately, incapable of determining their own destinies. The United Nations have also hailed the right to access to information as a fundamental human right and the touchstone of all freedoms to which the United Nations is consecrated. It further espouses the importance of information as an essential factor in promoting peace and progress in the world. Access to information plays an integral role in promoting good governance and the rule of law in the following ways;

1. Building strong and democratic institutions

The free flow of information about matters of public interest is essential to a healthy democracy. A core characteristic of democracy is that individuals have the ability to participate effectively in decision-making about issues that affect them. Informed citizens are able to scrutinize the actions and decisions of duty bearers thereby promoting the principles of good governance. This ultimately engenders open government, efficient delivery of services and the rule of law. It further strengthens public trust in public institutions thereby, building strong institutions for the public good and sustainable development. This is further buttressed under SDG 16.10.2 on the implementation of public access to information to build effective, accountable and inclusive institutions.

2. Measures to combat corruption

Access to information is an essential tool in the fight against corruption. It increases accountability and transparency and allows identification and uncovering of corrupt practices. Different social actors; including

investigative journalists, civil society and opposition politicians can use the right to information law to obtain information which would not otherwise be available to them to use it to expose wrongdoing. Agencies may also adopt anti-corruption measures such as information sharing and monitoring to strengthen the fight against corruption.

3. Sustainable development

Participation promoted by the right to information laws also extends to development initiatives which can lead to greater local ownership over these initiatives. This in turn, improve the decision-making processes around development projects and also improve implementation of those projects by fostering the involvement of beneficiaries.

4. Respect for human rights

Human rights violations, like corruption, flourish in a climate of secrecy. Access to information also assists in the exercise of other rights enshrined in the Constitution; including the freedom of expression and the freedom of the press, which are key tenets of good governance and the rule of law. Human rights standards and principles provide a set of values to guide the work of governments and other political and social actors and can further be infused in legislative frameworks, policy programs and budgeting allocations initiatives.

5. Improved relations with citizens

When governments become more open and share information, this can help control rumors and build a more solid basis for the information that circulates in society. This in turn helps build better overall relations between citizens and the Government. Leveraging on the internet can further enhance government relations with the public and prevent the damage brought about by misinforma-

tion, disinformation and propaganda. It can also augment citizen engagement resulting to humanizing government services and making the citizenry feel like the government cares.

6. Enhanced public participation

Access to information equips citizens with requisite knowledge about government policies, procedures and decisions thereby enabling them to have meaningful participation. It is a necessity for effective participation in public life and a tool to redress the imbalance between people and the powerful institutions that govern them. Access to information further ensures that there is both quantitative and qualitative public participation creating citizens who feel they belong and have trust in the government. Public participation is hinged on access to information and provides a platform for greater diversity of citizens to contribute to public

debate and decision making.

Conclusion

The importance of access to information to a country's citizenry is premised on the fact that all sovereign power belongs to the people and all the information held by public entities is held in trust for the people. However, the realization of the right to information is dependent on all the critical players having a hand in the process. The public are required to play their oversight role as envisaged by the Constitution and hold their leaders to account through requesting for information and taking part in public participation forums while the Government and public entities to proactively provide information to the public and respond to the requests for information from the public.

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Punitive Laws not the Only Solution to the Perennial Illicit Brew Problem



Ouma Kizito Ajuong'

Quite a good number of people equate enforcement of the law to punishment. This is based on a belief that law is only effective when backed by threats and

sanctions. While this may be true, it might not apply to all cases as punitive laws primarily serve as a deterrence. This is perhaps the case with regard to the perennial twin problems of illicit brews and alcoholism that have broken the family units, moral fabric, economic strength, and morals of the habitual consumers of the brew. Illicit brews have also resulted in loss of lives and instances of partial or permanent blindness. The Kenyan government has in recent times stepped up in dealing with this issue through the enactment of punitive regulations and laws. It is perhaps important to ask why things have remained the same over time with little signs of change despite the punitive

measures. Could the solutions to this problem be somewhere other than in the tough punitive laws and regulations concerning alcohol consumption?

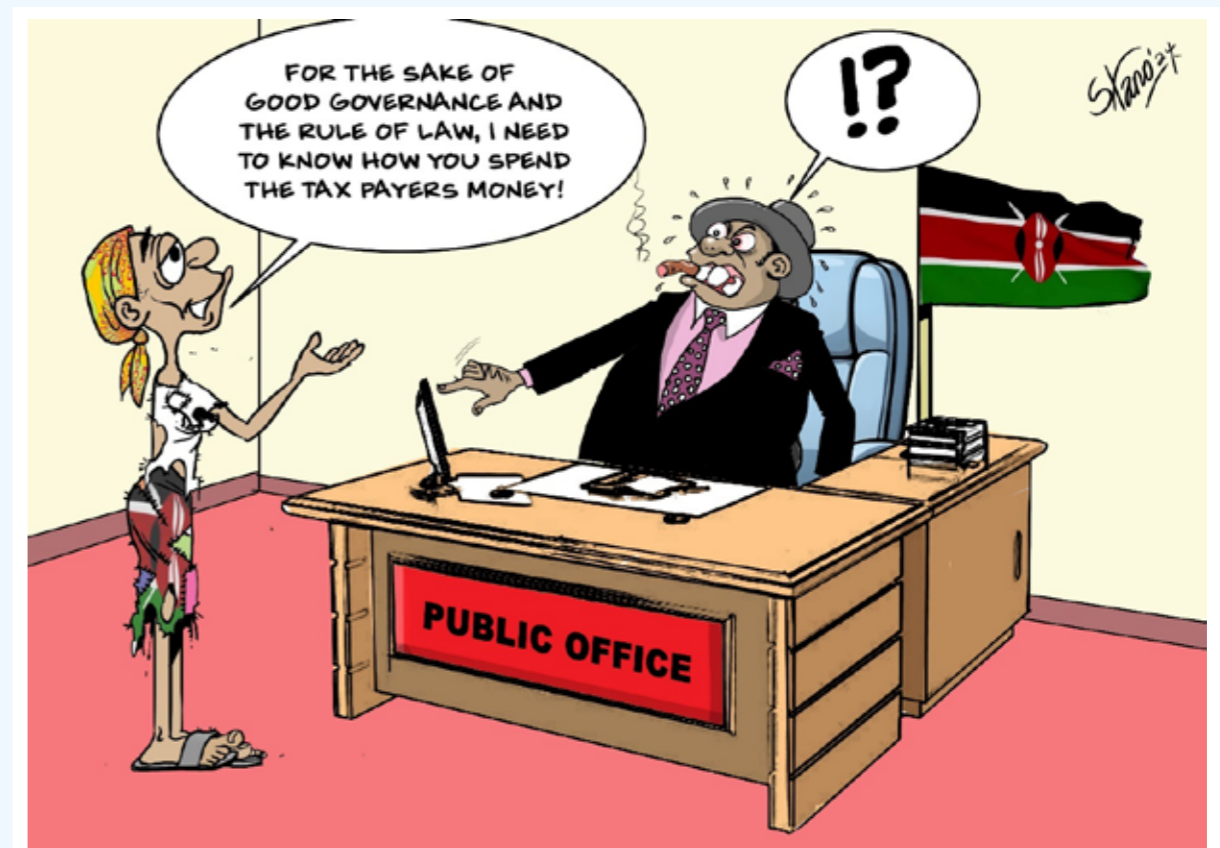
Think about the drinking culture? Through the years, many African cultures restricted consumption of alcoholic drinks. The restrictions were broken down to age, gender; occasions, the amount of alcohol that one could take and the time of indulging. This culture was embedded into the people and formed part of the value system. However, this is not the case today. Unlike in the past, there are very few restrictions on when one may indulge in alcohol. While the practice in the past may have been a bottle or two after work, for a lot of people in today's generation, drinking is the work. If you listen to young people in the streets of Nairobi, they would tell you *aluta continua*, adopted from the Portuguese slogan of the FRELIMO party but this time meaning some sought of "back to back" alcohol imbibing. When people, more so young people, get used to a life of alcohol yet they have

very little money, they often fall into the trap of illicit brews which are cheaper and accessible. Changing the drinking culture has more to do with values as opposed to punitive laws that look to only impose sanctions. In traditional African culture, there was some kind of basic education concerning drinking liquor; could that help today? Isn't that the role of the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA)? How can drinking responsibly be taught as a value?

Joblessness and idleness are the other factors contributing to the increase of persons who indulge in illicit brew. As much as those in authority may not want to see the connection, the truth is when young people are jobless, they are also idle most of the time and with very little money to spare. This often drives them to cheap alcohol, which is frequently illicit. While there is need to develop a responsible drinking culture, there is also need to consistently try and engage people of productive age. The hard economic times and the

challenges of finding or creating jobs for young people and the active generation create a market for illicit brew. Therefore, there is need to try and create opportunities for young people. Those in power must understand that joblessness for the active population in Kenya can lead to an unintended consequence. Another related cause of the rise of or increased imbibing of illicit brew is social-cultural. In many Kenyan communities afflicted by this problem, women are often the bread-winners and the ones expected to hold their families together. This often leaves the men free to drink, and with little money in their pockets, the destination is illicit brew. Again, punitive law cannot change these social-cultural patterns. This is cultural and may be changed through progressive education within the communities.

The other major cause of the rise of illicit brew is expensive liquor. Genuine alcohol is quite expensive and with time, has become unbearable for those in the lower income households and some-



times even the middle-income households to afford. This leaves the illicit brews that are not only dangerous but cheaper as an alternative for a lot of people. As much as the industry is a fertile area for taxes both for the local governments and the national government, it is important that genuine products remain affordable. Looking at the tax laws and striking a balance as opposed to punitive laws and stringent measures may be another solution. The thinking that high taxation and subsequent high prices of alcoholic drinks limit the amount of alcohol that people take, may be a misnomer. Some also argue that the State should consider working with alcohol manufacturers to produce cheaper brands that are affordable to those who may want to imbibe but have lower incomes.

The other issue is corruption. Corruption and bribery play a big part in the thriving of the illicit brew industry. Where officials tasked with maintaining certain regulations with regards to genuine alcohol sale and consumption are compromised, then eradicating illicit brews through the law alone becomes a difficult task. Corruption in itself is a cultural issue that needs to be assessed. Closer to this, there may be also a need to broaden the scope of what is referred to as illicit brew and try to regulate and give them certain standards, perhaps with the help of the Kenya Bureau of Standards (KEBS). This will keep the industry cleaner and protect the persons who continuously consume these illicit alcoholic brews.

In conclusion, the fight against illicit brews in Kenya is necessary. While there is need to try and put a stop to this problem, there is a greater need to look at the issue in an all-inclusive and encompassing manner. Reliance on the use of punitive law may not be enough.

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Empowering legal excellence: Good Governance and the Rule of Law for Sustainable Development; Examining the Effectiveness of Development Control in Addressing the Illegal and Irregular Commercial-Cum-Residential Apartments in Nairobi City County and Beyond.

By Daniel Mavisi

Good governance and the rule of law are inseparable concepts in any open and democratic society, and they are pivotal for securing sustainable development. In sustainable development, good governance entails, without more, the strict and unrestrained adherence to the laws, rules and regulations governing the province of physical and land use planning.

In recent years, Nairobi City County and other counties mandated with development control within their areas of jurisdiction have continued to grapple with the upsurge of illegal and irregular development of commercial-cum-residential apartments.

Development control is a crucial mandate of the county planning authority, entrusted to the County Executive Committee Member responsible for physical and land use planning matters. The planning authority executes development control by regulating and prohibiting the use and development of land and buildings, ensuring proper and orderly growth. This is achieved by reviewing and approving development applications and granting permission to the developer.

The power to undertake development control is however not a preserve of the county planning authority singularly. There are national government agencies and authorities in the development control chain that complement the

objectives of development control to ensure the suitability and sustainability of the proposed developments on any given parcel of land within the jurisdiction of the planning authority. These agencies and authorities include but are not limited to the National Environment Management Authority, National Construction Authority, Kenya Civil Aviation, Energy and Petroleum Regulation Authority, Water Resources Authority, Kenya Urban Roads Authority, Kenya National Highways Authority and Kenya Wildlife Services based on the nature and location of the proposed development.

The Physical and Land Use Planning Act envisages land use planning to entail the processes of designating, regulating, evaluating, zoning and organizing the present and future use and development of land in all areas to secure the physical, economic and social efficiency, health and well-being of urban and rural communities. It is imperative to note that one of the objectives of development control lies with protection and conservation of the environment. In line with this objective, the need to ensure proper execution and implementation of approved physical and land use development plans remains an integral part of good governance for sustainable development. Additionally, adhering to the approved local physical and land use development plans strengthens and nourishes the fundamental aspect of the Rule of Law.

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SCAN TO CREATE
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The unprecedented upsurge of illegal and irregular development of residential apartments in Nairobi and its environs and beyond is characterized by the failure of the county planning authority to adhere to the excellent order established under the law. Instances of buildings erected without proper and regular approvals, permits and licences are rising despite the already palpable dangers associated with such developments. Most of these buildings have been found to have flouted the approval process, and in some cases, they still need to meet the application for development permission. Investigation and research findings on a majority of development projects of commercial-cum-residential apartments in the Parklands area, Westlands Sub-County, and Kilimani area, Dagoretti

North Sub-County indicate that developers are employing falsified or irregular documents as development permission when indeed the application for development permission has not been approved or if approved, it is based on false and inaccurate information including but not limited to title documents, joint venture agreements, lack of proof of payment for rates, change of user among others.

Notably, development control remains a crucial cog in the quest for sustainable development. To achieve this, there must be adherence to the set down legal order and the rule of law. The lapses in the administration of the rule of law in the construction and development space spell a myriad of challenges to different entities involved, including unsustainable

city buildings, which is a tragedy for urban infrastructure, degradation of the environment and the loss of the right to a clean and healthy environment, loss of lives and property among others. Good governance and the rule of law are the glue that holds together sustainable development in principle and practice for the more significant benefit of society. In *M.C. Mehta v Union of India & Others*, Civil Writ Petition No. 12739 of 1985 cited in *Kibos Distillers Limited & Others v Benson Ambuti Adegga & Others* (2020) eKLR, the Court stated thus, “we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people.”

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practices. Only through such comprehensive measures can the sector overcome its current challenges and secure a resilient future.

These persistent problems underscore the urgent need for heightened vigilance and scrutiny regarding the responsibilities of professionals in upholding building standards. Furthermore, upon closer examination of the aforementioned challenges, it becomes evident that there is a failure to uphold good governance and adhere to the rule of law within the built environment sector.

Actions to Enforce Existing Planning Laws

The Physical and Land Use Planning Act in Kenya is a robust framework designed to guide development and ensure sustainable land use. It empowers authorities to enforce regulations effectively, with provisions for penalties, including the cessation of construction and demolition of unauthorised structures. The Act also encourages public engagement and transparency through technology, enabling citizens to easily

report violations and participate in planning processes. Inter-agency collaboration between the national and county government is significant for the enforcement of these laws, necessitating coordination across various government levels and departments. Continuous training for officials and swift legal proceedings against violations are essential to maintain the integrity of planning laws and deter non-compliance. Further, more needs to be done to enforce existing planning laws by imposing penalties on violators, advocate for transparency in land transactions and ownership records, and bolster judicial capacities to effectively handle disputes related to the built environment.

Role of Legal Professionals in Ensuring Adherence

By providing expert advice on legal compliance, legal professionals help prevent the use of substandard materials and poor workmanship, which are significant contributors to construction crises. Their involvement is crucial in drafting and reviewing contracts that stipulate adherence to safety norms and ethical practices, thus holding all parties accountable. Moreover, they guide developers through the complex legal landscape surrounding construction in environmentally sensitive areas, such as riparian reserves, ensuring that development projects do not compromise these critical ecosystems.

The National Construction Authority’s Code of Conduct outlines the minimum acceptable standards for industry players, emphasising the role of legal professionals in upholding these standards. They are responsible for ensuring that construction projects comply with the national values and principles of governance as highlighted in the Constitution of Kenya. This includes advocating for the rights of workers, communities, and the environment. Legal experts also play a role in monitoring breaches

of the Code of Conduct and taking appropriate legal action when necessary. They are also involved in risk management, advising clients on their legal and contractual obligations, and managing contracts with key service providers.

Additionally, legal professionals contribute to good governance by advocating for transparency and accountability in the construction process. They encourage the implementation of comprehensive health and safety policies and procedures, conduct regular site inspections, and lead safety training sessions to ensure compliance with safety standards. Their role extends to influencing policy development, providing input on legislation that affects the con-

struction industry, and working towards the harmonisation of construction laws and regulations.

In conclusion, several initiatives have been proposed to address the challenges faced by Kenya’s built environment sector. It is important to review codes of conduct from time to time to be in line with the applicable laws and regulations of Kenya. Additionally, whistle-blowing practices should be encouraged to hold individuals accountable for misconduct, providing a further step towards change. Ultimately, the built environment sector in Kenya will significantly improve if there is a strict observance of regulations and the implementation of construction standards is enforced.

Ensuring Adherence to the Rule of Law in The Built Environment Sector: The Crisis in the Built Environment Sector

By Kenneth Wyne Mutuma, PhD

The built environment sector in Kenya is currently in a crisis, and the recent floods have further exacerbated this issue, with numerous reported incidents of buildings collapsing. The sector faces significant challenges, including the use of substandard materials. This practice compromises the structural integrity of buildings and can lead to catastrophic failures, endangering lives and leading to economic losses. Additionally, the prevalence of unskilled workmanship exacerbates the problem, as it often results in poor construction quality that fails to meet safety standards. This is compounded by the developers’ insistence on constructing in riparian reserves, which are protected areas due to their ecological importance. Such

construction not only violates environmental laws but also poses risks of flooding and water pollution. These factors collectively contribute to a crisis in the built environment sector, undermining efforts to provide safe and sustainable infrastructure.

The Kenyan government has recognized these issues and is taking steps to address them through the development of green building policies and the enforcement of construction standards. However, the implementation of these measures is crucial to ensure a resilient and compliant built environment. It is imperative that the government, industry professionals, and developers collaborate to enforce regulations, enhance workforce training, and promote public awareness about the importance of sustainable construction prac-

Kenya’s Capital Markets Tribunal affirms the enforceability of the Corporate Governance Code



Cheruiyot Hillary Biwott

The enforceability of the Code of Corporate Governance Practices for Issuers of Securities to the Public has been the subject of contestation since its enactment in 2015. The label ‘Code’ used in the legal instrument could create uncertainty about its enforceability. Even with this, issuers’ implementation and application of the Code have been commendable, improving

from 55% in 2018 to 75.71% in 2023. Despite the steadfast adoption of the Code, there have been lingering questions about the extent to which the Capital Markets Authority can take enforcement action against issuers for failure to adhere to its provisions.

However, a decision of Kenya’s Capital Markets Tribunal delivered on 5th June 2024 has reaffirmed the enforceability of the Code. In *Dr Norman Ambunya & 4 Others vs Capital Markets Authority* (Capital Markets Tribunal Appeal No. 3 of 2021), the Tribunal found that “the Code does provide mandatory legal obligations which are enforceable.” It further found that the Code is a statutory instrument, a subsidiary legislation with the force of law.

The Tribunal went further to find that even though the Code does not state specific sanctions, the ap-

plicable sanctions can be inferred from the relevant provisions of the Capital Markets Act. The sanctions set out under Section 25A of the Act and any other applicable sanctions are particularly noteworthy. Some of the sanctions set out in the Act include:–

- a. Public reprimand
- b. Suspension in the trading of an issuer's securities
- c. Suspension of licensed person from trading
- d. Restriction on the use of the license
- e. Recovery of benefit accrued from a breach
- f. Levying of financial penalties not exceeding Kshs 10M
- g. Requiring a licensed or approved person to take disciplinary action against employees
- h. Disqualification of employees from employment or directors from directorship, among other sanctions.

The Tribunal also inferred the language of the Code in determining its enforceability. The Tribunal stated that “the language used does show the mandatory nature. Both recommendations use the term ‘shall’.” The Tribunal went further to note that some of the key provisions of the Code had been replicated in the Public Offers Regulations. A section of the capital market stakeholders had taken the view that the Code was a non-binding instrument, which issuers had the flexibility and option to adopt or apply depending on how it suited them. Given that CMA had not taken active enforcement action, this view gained traction and acceptance in the market. The Tribunal has now settled the question on the enforceability of the Code and maintained that it is a mandatory document, enforceable as any other instrument issued by CMA.

Notably, the recently published Capital Markets (Public Offers, Listing and Disclosures) Regulations, 2023 (POLD Regulations) recognize and affirm the Code as part of the capital markets regulatory framework. Some practitioners have pronounced that the 2023 POLD Regulations had revoked the Code, but that is not the position. The Code is now firmly entrenched in the capital markets legal framework, with a responsibility of compliance required of issuers, including an annual declaration on the state of implementation of the Code.

Clause 8 of the 13th Schedule of POLD Regulations provides that every issuer shall comply with the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 issued by the Authority. It goes further to say that issuers shall disclose a statement on whether the issuer is implementing the corporate governance practices stipulated in the Code in their annual reports. On 13th June 2024, CMA issued Circular No. 06/2024, clarifying the 2023 POLD Regulations and reiterating its enforceability. CMA further noted that there should be revisions to the Code to harmonize it with the 2023 POLD Regulations to ensure consistency and coherence between the two frameworks. Harmonization is expected to facilitate smoother implementation, reduce potential regulatory conflicts and enhance the clarity and effectiveness of governance practices for issuers.

Given the determination on the enforceability of the Code, it is evident that the matter is now settled, at least for the time being, as this could become a subject of appeal at the High Court, and other superior courts. The substratum of the Code is its flexibility for Issuers to apply it. However, that flexibility has the force of law, and the Capital Markets Authority can take action for issuers' non-application of the Code.

The next battleground will be whether the Capital Markets Authority provides issuers with flexibility regarding the Code's application. The flexibility is based on the Code's provision that “the issuer shall disclose to the Capital Markets Authority the reasons for non-application, and clearly indicate the time frame required and the strategies to be out in place towards full application.”

The actions taken by CMA to enforce the Code, backed by the resounding determination by the Capital Markets Tribunal, are likely to catalyze the adoption of the Code and strengthen corporate governance in the capital market. For this to be fully realized, CMA must undertake sensitization for the market on the 2023 POLD Regulations.

The Author is an Advocate of the High Court of Kenya, a Certified Secretary, Arbitrator and Drafter. He has an LLB and LLM in Law and is a PhD Candidate in Environmental Law at the University of Nairobi



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Diary of a Courthouse Lawyer During Arrests

By Otieno Aluoka

In the shadow of the countrywide demonstrations that met the national budget, Kenya remains at the crossroads. For a while, no doubt. The legal burden in repairing the dents of law and order experienced during the time that has been transferred to the criminal justice system is going to clog the court diaries for some time. Look at it; some of the cases relating to the 'cost-of-living demonstrations' of last year are yet to be determined by the justices.

Cases of this nature stride between the criminal law framework and the constitutional beacons that regulates public administration. The Generation Zee demonstrations have put the country to the edge, and with it, the law courts too. The layout of legal representation in the series of the arrests may be an inspiration of history, lent to the young generation by lawyers such as John Khaminwa, James Orenge, Paul Muite, Gitobu Imanyara, Prof. Kivutha Kibwana, Martha Karua, Nancy Baraza, CJ Emeritus Willy Mutunga among others who preyed police cells in the 1990s to free human rights activists and political dissidents of their generation involved in the agitation for political and democratic reforms in the country. The lesson here is that seeds of justice may take time to sprout but surely, they do.

As a result, hundreds of young lawyers led by the Law Society of Kenya (LSK) have in recent weeks been in the fray of justice to negotiate police bonds and arraignments of the arrested protesters in court. This is formidable in the context of access to justice for the demonstrators. Invariably, the multitude of deaths aside, it has been a glaring relief to families who have been lucky to rejoin

with relatives after police arrests or related abductions.

However, in the world of a courthouse lawyer pursuing justice for the protesters, the diary can be stunningly rocky. As the saying goes, the cost of justice is neither free or lax. The lawyer maybe responding to a distress alert. In the prevailing environment, the lawyer may receive a request to respond to certain arrests directing them to a particular police station or situation. Often, the lawyer may ask for reinforcements of learned friends for parity of authority in visits to the police authorities.

The relationship between the police and lawyers in this country is nuance and mixed. The lawyer as soon as he/she is in the station targets senior officers to bargain the justice of his clients in accordance with the law. For one, article 49 of the Constitution assures arrested persons of the right to communicate with an advocate for necessary legal assistance. If the lawyer arrives with a court order, he/she would need to serve the Officer Commanding the Station (OCS) for compliance. But the responsible officers may slither away to avoid service, or officers in the station may spar and parry all efforts to see the inmates in custody, or as happens on occasions, deny that the person(s) is held in the particular station. An arrested person, particularly a person of interest, may not be booked in the station where the lawyer is told he/she is held well against the black law regulations on booking of arrested persons.

More delicately, there may be scenarios of an order to process arrested persons ahead of being escorted to a law court to take plea. The cat and mouse game

in the corridors of justice can be horrendous. The running after a client being taken to a particular court can turn raucous as sometimes the police may divert to a different law court in the middle of the chase. The temperament, time and resources of the lawyer becomes ruthlessly tested.

There is also the situation where an advocate can examine notes in the Occurrence book (OB) and focus on a particular line of alleged offences and investigations only for the person to be taken to court and charged with a totally different offence (s). In the example of the protests whereby there are mass arrests, the victims are diverse in social background and economic abilities. It can be a nightmare harmonizing the legal strategy to take for their pleas in court even at the primary stage of bond/bail applications.

The lawyer equally goes through trauma just as the client. The arrested person may be aware of the lawyer responding to his situation ahead of time, whether the lawyer is family appointed or sourced differently. They may exchange communications well before time. This can be a tense moment in practice.

Sometimes on route to offer legal assistance, the lawyer would get a message such as "they are taking my phone now. I don't know what to do." Others would be something like "We are getting into the cell now" or "We are a number and person X has fallen ill or is badly hurt". The lawyer must balance his/her options; delicately craft the approaches and weigh the environment before deploying the cause of action to support the just interest of the client, severally, people who they are meeting for the first time. The next moments may only be an opportunity to feed them and lobby for extra-legal interventions for their liberty.

But the law is a fair equalizer. Well trained police officers with

the predisposition and allegiance to the rule of law becomes very helpful in realizing remedies of arrested persons. The victims can be released altogether, unconditionally. On occasions, they can be bonded for further investigations. Where they are consequently taken to answer to the alleged offenses in court, the Office of the Director of Public Prosecutor (ODPP) must be consulted to validate the charges for court action. The initiation of the court's diary is a different frenzy.

But this pathway can be tainted with bad faith and prosecutorial opportunism. I have witnessed people arrested in demonstrations charged with possession of banned drug substances like marijuana; or say assault of police officers; or threatening to kill; or incitement to violence; or cyber harassments, destruction of property, etc. It doesn't take studies in Greek law to know that this regularly happen wherever law enforcement officers are not making advances with charges such as participating in unlawful assembly, ordinarily a choice offence against the arrested demonstrators. The latter is indeed a contested penal code offence in times of a notorious mass public protest such as seen recently.

Lawyers are often misunderstood in the communities. Yet they are only doing their duty to advance the rule of law and protect constitutional rights. They are not in war with the police or the state. The call to the bar for many public interest practitioners can keep the diary of a lawyer pathetically fluid and distressful. In the challenge for constitutionalism, let all the justice providers do their bit faithfully and dutifully. Afterall, the constitutional call to create a multi-party democratic state founded on national values and principles of governance requires just that.

The Author is an Advocate of the High Court of Kenya

Legal Excellence: Rule of Law and Good Governance for Sustainable Development

By Caroline Khasoa

Legal excellence relates to innovative lawyering, which refers to a lawyer with unique personality traits, skill sets, passions, and priorities. This requires exposure to learning, unlearning, relearning, and fusing with relevant expertise. From our Kenyan perspective, the constitution gives us a good foundation under articles 2, 10, and 73 on the rule of law, national values, and integrity, respectively.

An innovative lawyer is fit for the purpose. C. Khasoa and Juma. D. MBA thesis outline fit for purpose approach as 'starting by identifying and analyzing the purpose(s) that the systems are intended to serve and then deciding on the adequate means to be applied for meeting the purpose(s)'. To meet the client's and society's needs, an advocate must be equipped with relevant information to qualify as a legal expert in a manner that fits into efficient, affordable and accessible business processes. Business legal services that can be outsourced like consulting, drafting, risk management, e-discovery, document reviews, summaries, regulatory updates, technology, research, registry support, virtual and video conferencing and a host of other repetitive legal tasks that support service lawyers or consultants can perform under different arrangements.

The changing role of the current lawyer needs to leverage excellence and innovation in a manner that focuses on professional judgment. This will reduce delivery costs and free up the advocate's time from repetitive tasks that legal service providers can do.

The legal practitioner

Advocates are social engineers tasked with shaping a just, transparent and sustainable society. Under the United Nations, Human Rights Declarations on the Basic Principles on the Roles of Lawyers;

Role 12: Lawyers shall always maintain the honour and dignity of their profession as essential agents of the administration of justice.

Role 13(a): Advising clients as to their legal rights and obligations and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

Role 14: Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently by the law and recognized standards and ethics of the legal profession.

Back home, we can see the revolutionary moment where 'GEN Zs' demanded accountability from the government and all duty-bearers. The X spaces have emerged as an essential citizen assembly on governance and the rule of law matters. This ties up with the principles above, the SDGs, and our laws regarding the role of lawyers. This requirement applies to legal professionals at the Bar, barchbenchouin-housesecution, legislative, community, state counsel and consulting levels.

The 'GEN Z revolution' in Kenya drives good governance, as evidenced by their demands for transparency, accountability, rule of law, inclusivity, and sustainable use of national resources.

In this respect, the courts have continued to push for the rule of law, as seen in the recent case of *Gikenyi B v Mwaura & 2 others; Ethics and Anti-Corruption Commission & 2 others*. The court quashed the appointment of the KRA Board chairman as he was facing corruption and economic crimes at the time of appointment.

Collaborations

Collaboration with universities, ministries, state corporations, professional institutions, Non-Governmental Organizations, community organizations, and other citizen fora is needed to ensure legal compliance in all facets of governance and decision-making.

Recommendations

LSK will review the Advocates Act and align it with the COK 2010, Vision 2030, UN SDGs, African Union Agenda 2063 on Africa we want, UN Human Rights Declaration, and other progressive, sustainable justice instruments.

Capacity building that focuses on practice both at the bar and in-house leverages legal compliance and professional judgement as the value-based legal product of the 21st century, which aligns with innovative lawyering to produce a fit-for-purpose lawyer. (Khasoa C and Juma D on Fit for Purpose Approach in Justice Delivery)

Conclusion

In conclusion, legal excellence, rooted in the rule of law and good governance, is indispensable for achieving sustainable development in Kenya. Advocates as social engineers must take a proactive role in advocacy, advisory

services, capacity building and collaborating and partnering with diverse stakeholders to shape a just, transparent and sustainable society. While at it, advocates must always uphold high ethical standards, maintain competence, exercise diligence and communicate effectively with all stakeholders, including clients.

"You can not go back and change the beginning, but you can begin where you are and change the ending"

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Persons in Custody:

The Rights of an Arrested Person Reality or an Illusion?

By Ouma Kizito Ajuong'

A good number of legal concepts are viewed as the preserve of lawyers; however, the concept of "arrest" is as civic as it is legal education. This is to say, it is commonplace for the police or those in authority to make arrests, yet it is not so common for citizens to understand their rights when they find themselves on the other side of the law. While these rights may be crystalized in law and very clear, they could still be an illusion. Many of those who get arrested in Kenya usually do not know their rights, hence, they may end up suffering substantial injustices along the way. There are instances that have been spotlighted where a person was arrested by the police or any other rele-

vant authority yet the arresting authority was not even sure of the charge to prefer. This article attempts to analyze and discuss the rights of an arrested person with the legal pitfalls and precedence in mind.

In Kenya, a person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or fundamental freedom is incompatible with the fact that the person is detained, held in custody or imprisoned.

The Constitution of Kenya, 2010 states that when someone is arrested, they have a right to be informed promptly; the reasons

for the arrest, the right to remain silent and the consequences of remaining silent. This is similar to the seminal *Miranda Rights* in the case of *Miranda v Arizona* with the distinction of the right to seek out an attorney. According to the *Miranda* case, the Supreme Court in the U.S. concluded that interrogation of a suspect without adequate information during the arrest amount to coercion. This right emernagetes from the maxim *nulum cremen, nulla poena sine lege* which means that for an offence to attract arrest it ought to be prescribed by law.

An arrested person has a right to remain silent. Remaining silent does not in any way portray guilt as a lot of people may think. This right is to protect a suspect from self-incrimination. Refusal to answer questions from law enforcers has unfortunately been portrayed as rudeness and consequently, an avenue for injustice to thrive. The other right is the right to be in

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contact with or communicate with an advocate or any other person who may assist. This is interpreted as “a one phone call” rule. However, it is very unclear as to whether it is a single call or multiple phone calls.

The rationale for this provision is that a person who has been arrested still needs legal and non-legal assistance. Where a person is unable to pay for legal assistance, the State has programmes that provide *probono* legal services through the National Legal Aid Services (NLAS). However, this is still being implemented progressively.

The other right of an arrested person is the right not to be forced into making confessions. It is illegal for law enforcers to force a suspect into confession. The Evidence Act speaks on the confession of an accused person, stating that it can only be admissible in court where the confession takes place before a police officer who is above the rank of an inspector and before a third party. The Act also provides for rules on confessions by *inter alia* the National Commission of Human Rights.

A person under arrest also has a right to be placed in custody but separate from persons convicted and sentenced. The rationale for this may be to separate the wheat from the chaff. It is said that if not separated, there is a possibility that those who are convicted and sentenced may influence those who are only suspects. There is a great need, however, to look at the conditions of police custody – is it not said innocent until proven guilty?

The other right of an arrested person is the right to be taken to court. An arrested person is to be presented before a competent court within twenty-four hours from the time of arrest. The Constitution of Kenya, 2010 uses the word “reasonable time” when taking an arrested person to court.

When one is arrested on a weekend it means that they can only be taken to court on the subsequent Monday. This principle was fortified in the case of *Lucas Omoto Wamare v The Attorney General & Another (High Court of Nairobi Petition No. 294 of 2012)*. However, there are circumstances under the law that may require a person arrested to be detained in custody for more than 24 hours. The Enforcement officers under the Prevention of Terrorist Act (POTA, 2012) may with the leave of the court seek to detain a suspect for more than 24 hours. The law further provides the police with 360 days as the number of days that they may detain a suspect. Where an arrested person is not taken to court in time, it attracts the writ of *habeas corpus*.

On the day of the first appearance in court, the suspect has to be accused thus, they have a right to take plea. Plea-taking is simply where the accused is informed of the charges against them, in a language they understand. If the suspect does not clearly understand the official language, the courts

are required to provide interpreters including sign language interpreters to implement this right.

The courts have further stated that the language in use must not necessarily mean a language that one prefers. Where one is not charged on the first court appearance, the law provides for the alternative of release.

Release on bail and bond pending trial is also another right that accrues to the arrested person. Release on bail and bond is, however, not an automatic right as there may be compelling reasons to deny bail. In Kenya, bail and bond are guided by the Constitution of Kenya, 2010; the Criminal Procedure Code and the Bond and Bail Policy, 2015. It is important to note further that a suspect in Kenya is not to be remanded in custody for an offence that is punishable by a fine only or imprisonment of less than 6 months. In conclusion, these rights ought to be implemented as they are part of the supreme law.

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Justice Unbound:

Addressing the impediments to access to justice for victims of intimate partner violence



Jane A. Onyango.

Article 2 (5) and (6) of the Kenyan Constitution, 2010 provides that all international and regional legislative and policy frameworks adopted and ratified by Kenya became part of the domesticated laws in the fight against Gender Based Violence. In this spirit, Kenya has adopted treaties and conventions that address gender-based violence to wit; UN Convention on Elimination of all Forms of Discrimination against Women (CEDAW), Universal Declaration of Human Rights and the African Charter on Human and People’s Rights etc.

Locally, the Constitution of Kenya, 2010, the Sexual Offences Act and the Protection Against Domestic Violence Act, the Penal Code, the Children Act, the Prohibition of Female Genital Mutilation Act, the HIV Prevention and Control Act, as well as, The National policy on Prevention and Response to Gender Based Violence are but amongst the many robust laws and policies seeking to ensure a coordinated approach in addressing GBV hence ensuring prevention and elimination of the vice.

However, despite the efforts, we have recently been treated with news of femicide killings and intimate partner violence across the country. According to the recently released Kenya Demographic Health Survey 2022, it was reported that the experience of violence among women increases with age and that marital status is linked to experiences of violence among women.

The perpetrators of physical violence, commonly reported among women who have been married or ever had an intimate partner was their current husband or intimate partner at 34% whilst the most common perpetrators of physical violence among men who have ever been married or ever had an intimate partner were teachers (28%) followed by current wives/intimate partners (20%) and former wives/intimate partners (19%).

As for sexual violence, the most common perpetrators amongst women who have ever been married or ever had an intimate partner were current husbands or intimate partners at 19%. Similarly amongst men who have ever been married or had an intimate partner, the perpetrators were current wives or intimate partners (63%) and former wives or intimate partners (32%).

Femicide which is defined as the intentional murder of women or girls primarily because of their gen-

der and usually by their partners has been on the rise and mostly perpetrated by intimate partners. Many of these deaths occur in private spaces be it at home or in Airbnbs. Whilst women in general face a higher risk of experiencing Intimate Partner Violence (IPV) and femicide, the trends in the data show that women aged 18 to 40 form the largest demographic victims of femicide in Kenya.

This therefore begs the question; what are the drivers of IPV and Femicide and, how can we combat the vices? Firstly, victim blaming, has created a deep seated “misogynistic” culture that sees women as objects to be “owned” and that focuses on shaming them for being victims. In the two recent killings that of Wahu and Waeni, social media commenters blamed the women questioning everything from why they were meeting up and entering those private spaces with the men, society must shun victim blaming as this can have dire effects on reporting and handling of the vice; it can further discourage a victim from speaking out, cause traumatic stress promote rape myths and make the public be seen to be in support of abusers hence not holding them accountable.

Another impediment is the laxity in the system and the traumatic experiences. Regrettably, the Kenyan security systems exhibit laxity in protecting women from stalkers and IPV. Survivors of IPV are advised by the police to return home and deal with the matter as a family in utter disregard of their safety. Male IPV victims often face ridicule and mockery at police stations thereby compounding their trauma and making them shy away from reporting. There is, therefore, need to train more police officers and, specifically, those manning the gender desks on the ethical considerations while handling survivors of IPV and re-vamping privacy at the stations, more so the gender desks.

There is need to equip and enhance capacity at the government chemists for proper preservation, analysis and presentation of the forensic evidence. Forensic evidence if properly managed improves access to justice for survivors and boosts their confidence in the justice system. There equally exists a need to regulate the short-term rental spaces and seal the loopholes used by perpetrators in carrying out the vice.

The challenges in the legal system reveals that once a perpetrator is arrested and brought to court, it takes an average 5 years and 2 months to have the cases concluded and the sentence entered, this excludes appeals that might be preferred.

Witness unavailability, non-appearance of expert witnesses, missing police files, compromise of witnesses, poor investigations and transfer of key personnel involved in criminal trial; including judicial officers, prosecutors and investigating officers further cause delays in the pursuit of justice.

The Judiciary is however to be applauded for setting up the specialized Sexual and Gender based Violence Courts across the counties, this is a clear demonstration of the judiciary’s unwavering commitment to eradicate such atrocities in the society and prioritize access to justice for the victims in a manner that takes care of their status and dignity.

In conclusion, eradication of IPV and Femicide is a concerted effort that involves all stakeholders; be it Government, CSO’s, the community and the private sectors. Strengthened multi-sectorial approach leads to a more productive approach to the vice.

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Law and Morality: A Case for legalizing prostitution

By Ouma Kizito Ajuong'

The relationship between law and morality has always occupied a seminal position in legal philosophy. Therefore, it percolates into the laws and policies to which individuals; families, communities, and even nations subscribe. The law on prostitution or sex work is one such area that is caught in a tango between law and morality. While many are of the view that prostitution is immoral and therefore illegal, many equally opine that while it is immoral, it need not be illegal. Many others also do not care whether prostitution is illegal or immoral as it happens anyway. This article, however, proposes why prostitution ought to be legalized. These reasons range from rational, moral, economic, constitutional, and human rights considerations. Prostitution takes place anyway.

As stated before, many people, both sex workers and clients; disregard both morality and legality to practice it anyway. The paradox of this immorality or illegality is that even where prostitution is illegal, it does not take much for one to find an area known for prostitution. Every city or town in the world always has places known for that purpose. While prostitution has in effect been criminalized in Kenya for so many years, mention of Koinange Street in Nairobi or the coastal town of Mtwapa always makes the mice squeak. Therefore, prostitution continues to occur and has never been deterred by criminal law since the days of King Solomon. In addition to this, the advent of the internet and the World Wide Web and the activities therein emphasize the

position that prostitution exists and the hands of the law may not be wide enough to engulf it.

Prostitution is also a human rights issue. When prostitution is criminalized, the government is in essence dictating to the kind of relations two consenting adults may have. This closely borders abuse of the right of association, privacy and human dignity.

The other side of the coin is the abuse and harassment that commercial sex workers go through when the practice is illegal. This often endangers the right to life.

Closer to this, if prostitution was legal, it could then be regulated. This protects both the sex workers and their clients. Regulation would protect commercial sex workers from exploitation by the clients or even external players such as law enforcement officers. There are always cases of rape, assault; stigma and laxity by the persons in authority. It further protects both commercial sex workers

and their clients from STIs and even HIV/AIDS. Regulations have the advantage of taking children off the trade. When it is criminalized, prostitution remains unregulated as it happens in the dark side. A lot of children, more so young girls, are often driven into the trade. Regulation, therefore, would seek to significantly reduce cases of exploitation and protect children.

Also, when prostitution is illegal, it provides a platform or a conduit for other criminal activities such as organized crime. These include; human trafficking, child trafficking and drug trafficking. As stated before, prostitution is already a big industry that flourishes in the dark so to speak. There are other incidental vices. Therefore, regulating the industry would open it up and help fight crime. This is to say that even when commercial sex workers witness a crime or they are victims of the crime, they find it difficult to report or to come forward to the persons in authority. This creates an environment where crime flourishes. Legalizing prostitution may perhaps help in deterring crime.

The other reason why prostitution should be legalized is because of moral reasons. While morality may be the umbrella reason for criminalizing prostitution, ques-

tions arise as to whose morality is applicable. Upon reflection and study, morality may not be one of those things set in stone. In addition to this, there is a feeling that there is an unwarranted bias when looking at prostitution from a moral point of view.

There is a significant burden placed on the sex worker as opposed to the client. Think of this: what do you say when the major clients are the very lawmakers who insist that prostitution should be illegal?

The other reason for decriminalizing prostitution is the difficulty in enforcement. While mens rea and circumstances may lead one to conclude prostitution, proving the act comes with its own difficulty as all these happen clandestinely. Therefore, it is futile to have laws tucked in books that are not enforceable.

Prostitution is a vast industry. It is an economic activity. It is a business that can be regularized and taxed. This may give the government more than when it is resisted. As much as prostitution is not a profession per se; looking at it as an economic activity may also protect the players economically. Many of those who indulge in prostitution do so out of the need for financial gain. Regulation may therefore be an answer. Safe working conditions and work benefits as dictated by employment laws could also be something to think about.

Lastly, the law is often described as a living tree. This is to say that law evolves with time. It may have made sense to criminalize prostitution in the days of yore. However, there is a need to take cognizance of the evolved world. There are more reasons to legalize prostitution as opposed to preemptorily criminalizing the activity.

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CURRENT AFFAIRS:

Taxation in a Corrupt Society – Who Benefits?



By Mercy W Buku

The primary goal of a national tax system is to generate revenues to pay for government expenditures at all levels. Taxes finance public spending and local government services, including building roads, schools, and hospitals.

Citizens of a country have a social and statutory responsibility to pay their taxes; hence, tax evasion is a criminal offence punishable under the law. They, in turn, expect to reap the benefits of their hard-earned taxes through the provision of basic services subsidized by the Government—food, shelter, water and other utilities, health care, roads and public transport, and education—at prices that citizens at the grassroots level can afford.

Citizens also expect and are entitled to do so that the Government will be a responsible steward and custodian of the funds entrusted to them by their citizens and shall utilize taxpayers' money for the common good and development of the country.

However, in most of Sub-Saharan Africa, this has yet to be the case, mainly due to poor governance and grand corruption in public office in the concerned countries.

In East Africa, for example, endemic corruption is a significant facilitator for organized crime, with grand-scale corruption and state capture infiltrating political, economic and social systems, thereby reducing governments' ability to collect revenue, which in turn affects the Government's capacity to provide essential social services and security to its citizens. Grand and complex corruption in the region transcends government departments, law enforcement, and private Institutions and impacts all spheres of life in the public and private sectors. This has led to state resources and public funds being plundered with impunity by the political elite and siphoned to offshore accounts, leaving millions of people with no access to essential services and resources.

Under the Corruption Perception Index (CPI) 2023, Rwanda was the only East African country that scored above the global average of 43%, at 53 %, ranking 49 out of 180 countries. The other countries in the region had an average score of 26% and an average ranking of 138 out of 180 countries.

Kenya is a primary example of the negative consequences of corruption. It scored 31% on the CPI, ranking 126 out of 180 countries. It was adversely mentioned in the Pandora papers, which exposed the complex mechanisms used by politicians and public officials in 91 countries (including Kenya) to shield their ill-gotten wealth from public scrutiny by acquiring



offshore assets worth billions of dollars.

According to Global Financial Integrity fact sheets, Kenya has also been ranked among significant money laundering jurisdictions across the globe, with a sum of Ksh 384.3 billion (US\$3.5 billion) estimated as having been laundered through the Kenyan economy in 2020 alone. Corruption is a significant predicate offence for money laundering in Kenya, with bribery, public procurement fraud, tax evasion, and

embezzlement of public funds being among the top corruption offences.

Kenya is currently on the Financial Action Task Force (FATF) grey list because it fails to deal effectively with economic crimes such as corruption and money laundering, among other factors.

Kenyans are currently groaning under the yoke of taxes (with no tangible benefits), exorbitant prices for food and other commodities, increased utility and fuel bills, water shortages, poor roads, inefficient government services, and rampant corruption in every aspect of Government.

Against this backdrop, the Kenyan Government continues to levy punitive taxes on the hard-working and working-class citizens of Kenya, who trustingly voted for leaders who promised them miracles only to renege on their promises to deliver a better Kenya.

In the meantime, billions of shillings in taxpayers' money continue to end up in politicians' pockets through theft and corrupt practices; public expenditure on non-priority and luxury items continues to rise, and the poor get poorer as their interests are sacrificed on the altar of their leaders' selfishness and greed.

What is the solution? While the Government has a perennial budget deficit, the solution is not to

increase taxes or borrow and beg for handouts from the West. Excessive taxation cannot work if the money collected is not used to benefit citizens.

If the Govt were to repatriate just a fraction of the billions that have been looted through corruption and tax evasion by public officers and corrupt businesses, there would be no need for additional taxes, essential services would be free, and the current massive gap between the rich and the poor would be proportionately reduced. This money could also be utilized to fund the Government's hustler agenda. It would ensure surplus tax revenue is used towards government projects and essential services for Kenyans.

This can be achieved through the equitable and impartial enforcement of Kenya's anti-money laundering and anti-corruption laws to prosecute and convict corruption and money laundering suspects, recover stolen billions in local and offshore accounts and procure the seizure of assets bought with those billions, including the freezing of bank accounts of politicians and tycoons, many of whom are in the current Government, who have stolen billions of taxpayers money in the past and gone scot-free.

The Kenyan Government also needs to take a hard look at reducing public expenditure on non-priority items and fully commit to combatting corruption in all levels of public office; dealing with corruption through the enforcement of applicable anti-corruption and anti-money laundering laws must become a significant policy initiative towards removing Kenya from the FATF grey list,

The Government should also seal tax evasion loopholes; for example, the country is full of foreigners from neighbouring countries who own properties and are doing business in Kenya, yet they do not pay taxes. Stringent public

procurement mechanisms should also be enforced to prevent public procurement fraud, such as the infamous National Youth Service, Afya, and other scams.

Finally, good governance, political goodwill, and commitment to fighting corruption are crucial for effectively enforcing the law. Ironically, the current leadership prides itself on its religious values. However, good governance is a critical aspect of godly leadership, which must be evidenced in a change in the leadership's commitment to combatting corruption and other vices and to uplifting the commoner instead of enriching themselves at every opportunity.

The Author is an Advocate of the High Court of Kenya and AML/CFT Regulatory Consultant in the Digital Financial Services and Banking Sector.



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AI IN LAW

Navigating the Future of Legal Practice:

The Impact of Artificial Intelligence in the Legal Practice



By Gladys Wanjiru

The term Artificial Intelligence or AI is a commonly used phrase in the technology sector. In layman terms, AI refers to computer software and systems that do not just do tasks they have been programmed to do, but they learn as they go, improving their performance through feedback.

For ages the legal sector has been a strict adherer to laid down procedures and rules and resistant to technology. However, AI has begun to make inroads into the legal sector. Several Judicial systems and law firms have begun integrating and building on their AI capabilities. Some of the main areas in which AI is being applied in the legal practice, so far, include the review of documents, undertaking legal research, contract and legal document analysis, proofreading,

error correction and document organization. AI has its merits and demerits; which we will explore both sides of the coin.

There are various merits of using AI. For instance:

- AI saves on time. The global access to internet has resulted in a massive store of legal data which takes up time to analyze and review. This task can be painstakingly monotonous and tiresome on the lawyer undertaking it. AI is able to analyze more information, more thoroughly than humans can, in a tiny fraction of the time. This is time saving.
- AI produces higher-quality work. Work produced by an intelligent software which is not susceptible to being tired, bored or distracted can be truly error-free compared to work that is produced by a natural person. AI can ensure that the language used on documents is consistent and accurate.
- AI improves data security and confidentiality. Law firms handle numerous sensitive and legal information which is confidential. AI systems can be designed to ensure data encryption, advanced access controls, and monitoring mechanisms, safeguarding sensitive client data from unauthorized access or breaches.



- AI leads to increased efficiency and productivity. - Integration of the use of AI to review documents and proofread documents can lead to increased efficiency and productivity of the lawyers. By spending less time on mundane tasks, lawyers can increase their creative energy and focus on tasks that need their input, such as improving client relations.
- AI allows more accurate risk assessment. AI can be used to review information in real time. This allows lawyers to identify potential risks earlier, advise clients wisely about their exposure and head off legal problems before they even occur.

On the contrast, the use of AI has demerits which need to be addressed. One of the main challenges of using AI is the hacking of business systems. This has led to the disruption of business operations and unauthorized persons gaining access to confidential information. Cyber-attacks are continuously evolving to a great extent, faster than cyber defenses thus, resulting in an ever-increasing frequency of attacks.

AI may result in job displacement as automation of specific legal tasks raises concerns over employee redundancy. Noting that AI will be used to undertake routine and repetitive tasks, the lawyers or legal assistants required to perform those activities may not be required hence leading to job displacement.

There have been instances where AI has provided false information. This was witnessed in a case where a lawyer submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT. The lawyer had been performing research for their upcoming case and used AI to prepare one of the briefs, unaware that ChatGPT could produce false information. Based on this, the human element and human due diligence are still very important in the legal field.

AI can also have a bias in algorithms since it can inherit biases from its training data subsequently effecting the results that it produces. Therefore, legal professionals need to be vigilant in identifying and mitigating such biases to ensure fairness.

It is indisputable that AI has limited contextual understanding of the facts in case. Therefore, AI systems may not be able to review contracts and legal documents in context. Due to the limited contextual understanding, the results produced by AI would be incomplete. Despite AI analytical skills, AI systems need more understanding like human lawyers. Therefore, legal professionals must balance AI insights with their expertise and judgment. Lastly, the installation of AI software systems can be expensive and costly to law firms to implement hence small firms may not be able to integrate AI.

Overall, the advantages of using AI far outweigh the disadvantages. The law firms and legal practitioners that will embrace AI will become more competitive compared to those that do not adopt AI into their business. The world is constantly changing, and the legal sector cannot be left behind, it needs to adopt and utilize technology.

The Author is an Advocate of the High Court of Kenya

The Rule of Law or the Rule of Robots?

Nationally Representative Survey Evidence from Kenya

By Angela Gitahi

Introduction

The increasing use of artificial intelligence (A.I.) technology is expanding its possibilities in various sectors, including the legal system. Recent advancements in A.I. technology, like GPT-4 excelling in legal exams, have sparked conversations about their potential impact on legal research and decision-making. This article discusses the real-life and ethical results of implementing A.I., specifically as legal aids, in the Kenyan Judicial System, which faces significant delays and inefficiencies.

A.I. as a Co-pilot

Initially, A.I. systems focused on replicating human propositional legal knowledge through expert systems in legal interpretation. These systems employed complex decision trees to mirror the logical information in statutes and legal texts. However, they faced challenges such as needing a lot of human effort to establish legal rules thoroughly and the issue of defeasibility, where a legal agreement may only address some possible situations that excuse someone's actions, leading to unexpected outcomes.

The next step in A.I.'s progress in the legal sector introduced self-learning algorithms that can identify patterns in legal rul-

ings and predict outcomes based on the data given. Although these specialized machine learning systems can tackle specific challenges, they need help when confronted with new situations not seen by A.I. before.

The rise of large language models (LLMs) like GPT-4 indicates a significant advancement. Trained on general language data sets, these models have proven their proficiency in legal tasks by passing the U.S. Uniform Bar Exam. LLMs frequently prioritize the law's underlying purpose over its precise language, much like human judges consider the law's intent in challenging circumstances.

Legal researchers help judges with legal research and writing opinions to address the increasing number of cases in courts worldwide. In Kenya, with the Judiciary dealing with more than 500,000 pending cases, artificial intelligence could offer human researchers a cost-effective and efficient co-pilot. A.I. has been tested in a few places for legal research and drafting opinions, showing great potential in reducing the time needed for these activities.

In Kenya, a survey experiment representative of the entire nation



examined the societal acceptance of A.I. law clerks. The research showed that using AI-generated legal research was considered just as legitimate as using human-generated research by the Judiciary. This indicates that AI could be incorporated into the Kenyan court system without compromising the public's confidence in the legal system.

Ethical Concerns

To comply with the rule of law, legal systems must follow principles like consistency, enforceability, intelligibility, and stability. The incorporation of AI in legal research is by these principles, as long as the AI's interpretation of the law stays in line with its objectives and functions. The survey findings show that Kenyans need more legitimacy in A.I. judicial decisions as long as human judges still hold the final interpretive power.

Nevertheless, worries regarding the lack of transparency in A.I. AI decision-making procedures continue. Critics contend that the absence of transparency in A.I.'s decision-making could compromise judicial rulings' perceived fairness and accountability. Although human judges' thinking processes are not always transparent, they are held to accountability standards that A.I. AI does not have to adhere to.

Final thoughts

Incorporating AIAI as a co-pilot for legal research in the Kenyan Judiciary shows a hopeful remedy for the major case backlog and inefficiencies currently affecting the system. AI's AI's capability to aid in legal research and drafting opinions may improve the Judiciary's ability to provide prompt justice in accordance with the principles of the law.

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Navigating the Future of Legal Practice: Artificial Intelligence and the lawyer



Kay Ndeto

What then is AI about?

According to IBM Artificial intelligence, or AI, is technology that enables computers and machines to simulate human intelligence and problem-solving capabilities.

Artificial intelligence (AI) also refers to the ability and capability of computer systems of performing complex tasks that historically only a human could do, such as reasoning, making decisions, or solving problems.

In simple terms, Artificial intelligence (AI) is the development of computer systems capable of performing tasks that historically required human intelligence, such as recognizing speech, making decisions, and identifying patterns.

AI can also be understood as a general term encompassing to numerous complex computer systems and technologies including machine learning, deep learning, natural language processing (NLP), reasoning, processing language, problem solving and perception among others.

Applying use of AI in legal practice

1. Legal Research

AI has stood out the most in Legal research to the benefit of legal practitioners. AI tools are revolutionizing legal research by enabling quicker access to large volumes of case law, statutes, and other legal documents. Machines can quickly process great volumes of information quickly and offer a conclusive summary that maybe helpful for the legal researcher. This not only saves time but also enhances the quality and accuracy of research results. However, it is paramount that lawyers review the infor-

mation summary as machines maybe prone to error and or some misrepresentations and or inaccuracies.

2. Predictive Analysis in Litigation

In some areas AI is being used to analyze past case outcomes and predict the likely result of current litigation. This helps lawyers make more informed decisions and develop winning strategies for their clients.

3. Contract Review and Due Diligence

AI is being deployed to streamline contract review processes and conduct due diligence more efficiently. Machine learning algorithms can quickly identify key provisions, potential risks, and compliance issues in contracts which will be beneficial to lawyers as they prepare for case and or complex commercial or other transactions

4. Virtual Legal Assistants

Law firms are increasingly using AI-powered virtual assistants to handle routine tasks such as scheduling, research, and client communication. This allows lawyers to focus on more complex and high-value work.

The Future of Legal Practice

As AI continues to advance, it is expected to have a significant impact on the future of legal practice. Some potential developments include:

- Increased efficiency and cost-effectiveness
- Enhanced accuracy and precision in legal tasks
- Creation of new legal service delivery models
- Changes in the skills and roles required for legal professionals

Overall, AI is reshaping the legal landscape and challenging traditional notions of legal practice.

By embracing these technological advancements, legal professionals can enhance their productivity, improve client service, and stay competitive in a rapidly evolving industry.

From an ethical point of view, lawyers still have to exercise a duty of care to their clients over the information generated and processed via AI tools. It is also critical that client confidentiality is preserved during the processing of client information via AI tools to avoid legal implications and repercussion.

In conclusion, the future of legal practice looks bright and exciting in light of the technological advancements that AI presents today. Lawyers who use AI tools are likely to benefit more as we move into the future of legal practice. It is therefore incumbent on all of us to learn how we will apply AI for the benefit of our firms and legal practice in the long run.

The Author is the Team Leader At Ndeto Kay Advocates and the Team Lead at Ip Garage Initiative where she works with start ups in the areas of legal compliance, business management and use of technology.

Internet Shutdown

By Mutua Mutuku

Life migrated online in 2020 as governments enforced stringent restrictions to combat COVID-19. For millions of people worldwide, the internet became the sole way of carrying on with many aspects of their existence. Hence, the internet became a valuable instrument for exercising other human rights.

Accordingly, many of our vital functions are completely dependent on the internet, including: the judiciary, KRA, banks, schools, the Ministry of Lands; adhisasa, E-citizen platform, voting, etc. Therefore, this is reason enough to argue that "access to the internet" is morphing into a fundamental right. Unsurprisingly, an addition was made to Article 19 of the Universal Declaration of Human Rights (UDHR) to read:

Everyone has the right to freedom of opinion and expression; this right includes freedom to... seek, receive and impart information and ideas through any media and regardless of frontiers.

While it lacks the enforcement mechanisms of a "hard" law and is thus seen as a "soft" legislation, it does have some significance for nations that are actively attempting to combat corruption and increase their standing with the public.



Hence, social media and the internet have grown to be significant parts of the civic space and, arguably they are more open and accessible than actual physical civic space, especially in countries where the ability to demonstrate, organize, and speak freely is limited. For this reason, internet usage is occasionally censored. It is hardly surprising that Kenyans endured interrupted and slower internet connections on Tuesday, 25th June, 2024 when #Reject-FinanceBill2024 protests erupted throughout the nation, despite assurances from Communications Authority of Kenya Director-General that there would be no internet outage.

Internet throttling

Internet shutdowns are actions made by states to purposefully restrict, confine, or interrupt internet or electronic communications within a specified geographic area or population, in order to exert control over the transmission of information within a time frame. They range from total blackouts to throttling to slowing down connections.

They frequently happen at two levels: either at the national level, where all incoming and outgoing traffic is subject to content blocking, or at the carrier and Internet Service Provider (ISP) level, where specific telecoms, both traditional and mobile, are told to restrict or block specific content or services or internet connectivity.

On 25th June, 2024, Kenya’s internet communication speed was suddenly limited, affecting both in-bound (received) and out-bound (sent) data on network devices like as PCs and mobile phones.; This is known as internet throttling. It was done with the intention of weakening the protest movement and exchange of information. This may be novel for Kenya, but it has been experienced in Ethiopia (Tigray area), Russia, India, Iran, Uganda, Myanmar, Jordan, Iraq, and Algeria.

Throttling is highly popular with governments since it is difficult to detect and allows users to access sites, albeit at considerably slower speeds, unlike other shutdown techniques, which are sometimes high profile and controversial because specific websites are blocked and/or physical infrastructure is dismantled. As a result, it might be misinterpreted as an accident or the Internet just “having a bad day,” particularly in nations with limited telecommunications infrastructure networks and slower speeds.

As predicted, state-owned organizations are at the forefront of internet limitation.. Nonetheless, we have seen commercial internet service providers be complicit. This is due to their unholy alliance with state agencies. For example, they frequently rely on state agencies to get operating licenses. It is a convoluted process that necessitates strong connections with the current administration, thus, it explains how much control the government possess over ISPs.

Working Tools

Now, if you find yourself in the aforementioned circumstance, what can you do to rapidly restore connectivity? Floating Wi-Fi balloons and beaming the internet from satellites have caught politicians’ imaginations, but, in reality, they are expensive and ineffective solutions.

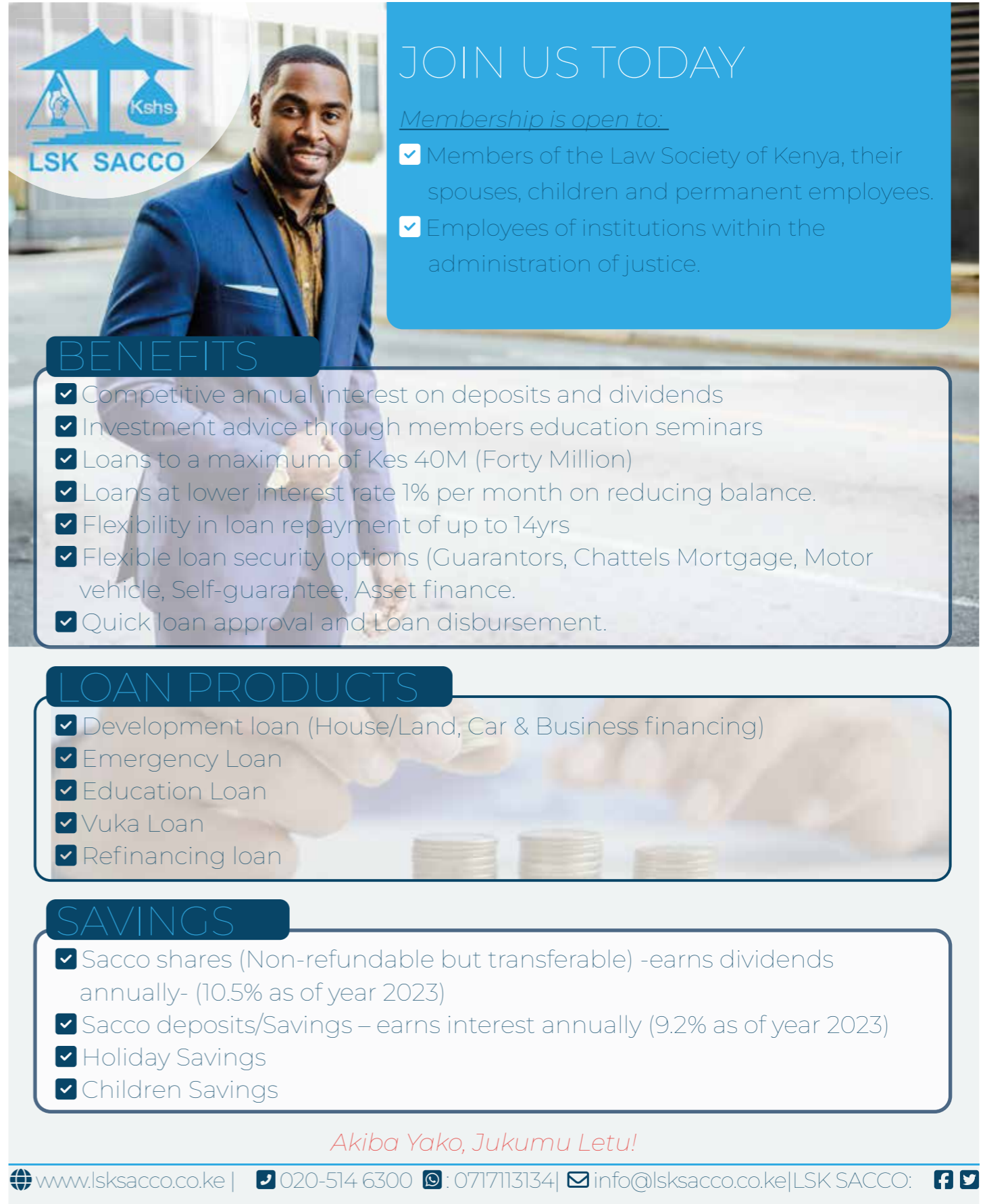
Consequently, during targeted internet shutdowns, when the government restricts certain websites (such as X) while maintaining overall network availability, as occurred on 25th June, virtual private networks (VPNs) tend to be extremely successful. These are unique addresses that allow Kenyans to access numerous banned websites by delivering internet connectivity from a location outside of the censored country via a proxy server. Kenyans were able to download and utilize popular free VPNs to access the internet.

Furthermore, private servers are also a good substitute for VPNs. As VPNs are publicly available, the government may prohibit them. Therefore, private servers allow Kenyans to create secure servers anywhere in the world and share them with others. Its decentralized model ensures that there is no single internet protocol (IP) address that the government may block.

The auxiliary option includes the usage of mesh networks. Mesh networks enable users to communicate with one another without relying on the internet or short message services (SMS). Instead, they employ Bluetooth or Wi-Fi technology to form a network of devices that can communicate with one another in close proximity. Activists in Hong Kong used mesh networks to communicate during protests. While mesh networks do not provide internet connectivity, they are one of the few digital communication options available during a total shutdown.

That stated, over to you techies, please ensure that we never have another internet outage in Kenya.

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Algorithmic Advocacy: Shaping the future of legal practice with AI

By Roselyne Keya

Introduction

It is an undisputed finding that Artificial intelligence (AI) is reforming legal practice by enhancing accuracy and efficiency in legal work. From the outset, it is imperative to note that AI is classified into two categories: Soft AI, which obeys commands without learning to improve, and hard AI, which learns and improves over time. The search engine that reformed legal research is an example of soft AI. We are currently witnessing the possibility of using AI to create original content.

As AI technology penetrates the law practice, lawyers are concerned about its challenges and ethical considerations. Experts have further predicted that come the year 2029, AI will reshape legal practice since it will have reached the human intellectual level.

In this article, we will explore Algorithmic advocacy, which is a method that uses AI and advanced computational techniques to enable advocates to perform their legal work efficiently and improve the quality of the legal work.

Algorithmic lawyer

An algorithmic lawyer incorporates technology to improve their effectiveness, accuracy, and efficiency to focus on more complicated and higher levels of their practice.

Legal tasks that can be performed by algorithms.

1. Legal Research

While AI cannot entirely replace a lawyer's role in legal research, it can significantly speed up and streamline the process. An AI-centred legal software,

such as CoCounsel by Casetext, Vincent by vLex, Kira Systems, Leverton, and eBrevia, enables legal professionals to retrieve information easily from large databases. Additionally, tools like chat pdf can extract important information and summarize legal documents, making it easier for lawyers to find relevant information efficiently.

2. Document review

Lawyers can use AI to review legal documents and to identify risks, inconsistencies, or deviations from their usual terms and conditions thus saving time and reducing errors. Vincent by vLex, Relativity, and Chatpdf are tools that can review legal documents.

3. Predictive Outcome

AI can analyze large volumes of historical data to identify patterns and relationships to predict the outcome of a case before filing it. This helps lawyers make informed decisions and accurately advise their clients. Lex Machina is an example of a legal analytics platform which enables lawyers to predict the behaviour of judges, Advocates, and parties. Premonition AI uses predictive analytics to determine the success rates of lawyers and law firms in various cases. Blue J AI can predict legal outcomes in different legal fields.

4. Drafting

If AI is used responsibly, it can assist lawyers in significantly streamlining the drafting process. AI can generate a rough draft of a legal document that a lawyer can then review and perfect. Examples of AI tools used in legal drafting include Vincent by vLex and CoCounsel by Casetext. While ChatGPT is not specifically designed for legal work, it can help lawyers

brainstorm ideas for drafting. Grammarly, which uses AI, can help lawyers perfect the grammar and style of their writing.

5. Billing

AI tools can assist lawyers with billing by tracking time spent on tasks, and ensuring clients are charged fairly for the work done. Legal billing software like Clio and TimeSolv incorporate AI to track time spent and generate invoices.

Historical parallels, modern lessons and ethical consideration.

The entrance of AI into the legal profession is a reminder of the industrial revolution of the late 18th century which was opposed by those who feared losing their job. The Luddites' protest against mechanization did not stop the introduction of technologies that increased production, economic growth and new job opportunities. History teaches us that those who embrace changes always thrive while those who reject always lag behind.

The legal profession should integrate AI while acknowledging that although it might disrupt the established practice, it will open new opportunities. It is also important to recognize that the presence of AI in the legal profession raises ethical issues that need addressing. AI systems can be biased, lack transparency, raise the issue of accountability and may lead to the loss of jobs. It is up to the legal professions to ensure that AI is used responsibly to enhance and not undermine the integrity of the legal profession.

Future directions and recommendations

Lawyers should invest in updating their skills on AI and foster collaboration between technologists, legal experts and policymakers. They can take specific steps to update their AI skills through online courses, workshops, and certifica-

tions.

When using AI for legal research it is important to check and ensure that the data used is reliable, up-to-date and unbiased. This is crucial for obtaining accurate results.

Lawyers must understand that AI lacks human empathy, expertise and judgment thus, limiting its roles in certain areas of the legal practice. AI should only be used to complement lawyers' tasks, focusing on higher-level tasks that require critical thinking and deep legal knowledge.

When using AI, there should be strong data protection measures and continuous measurement of the performance of the tools.

Regulatory frameworks and ethical guidelines should be developed to help ensure that AI enhances the integrity of the legal profession without undermining it.

Conclusion

Algorithmic advocacy provides a significant opportunity to use Artificial intelligence (AI) to transform legal practice. Currently, several AI technologies in the market can perform various legal tasks such as legal research, document review, predictive analysis, document review, legal drafting, billing and more. Nevertheless, while using these technologies, lawyers should always understand the ethical considerations involved and select the one that best works for them. These technologies should not replace human expertise but supplement it.

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15 Key Clauses to have in a Cloud Services Agreement



Mwende Stardust

A 'cloud services Agreement' becomes crucial when an organization is procuring cloud services from the cloud services provider (For instance; Microsoft, AWS) or from authorized third parties who provide the cloud services for and on behalf of the service provider. In this case, other than the normal considerations for a valid Agreement for example date of the Agreement, names and descriptions of the parties and signature by authorized personnel, certain clauses must be keenly considered in this type of Agreement. Here are several clauses you will want to pay attention to while drafting a Cloud Services Agreement:

"Confidential Information" be clear on what amounts to confidential information, since by nature, cloud services Agreement will relate to information which is solely owned and used for the benefit of the cloud services purchaser. ensure to make a provision that confidential information will include any data or information, including Trade Secrets, that is of value to either party (especially the purchaser because they are the disclosing party). Confidential Information shall include, but is not limited to, lists of current or potential customers, the identity

of various suppliers, information about company executives and employees, financial information, price lists, pricing policies, and business methods. Confidential Information shall also include information of the type which the company holds as and treats as confidential.

"Trade Secrets" Trade secrets are created under Common Law, and are a form of Intellectual property which a company protects through secrecy due to its value to the affairs and operation of the business. Have a clause protecting Trade Secrets. A possible definition could be as follows: Trade secrets shall mean any technical or scientific information, design, process, procedure, formula or improvement or any portion or phase thereof, whether or not patentable, that is of value to the Company. Trade Secrets shall include, but are not limited to, unpatented information relating to the development, manufacture or servicing of the Company or its products or services, information concerning proposed new products, market feasibility studies, proposed or existing marketing techniques or plans. Trade Secrets also include any information of the type described which the company treats as a trade secret, whether or not owned or developed by the Company.

"Intellectual Property Rights" creations of the human mind are protected as Intellectual property rights, on the basis that the creator/owner of them ought to gain financial benefit from them and at certain times, moral rights in the case of Copyrights. Include a clause that defines intellectual property as follows: All intellectual property rights and industrial property rights (anywhere in the world, in

all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights) arising under statutory or common law, contract, or otherwise, and whether or not perfected or fixated, including, without limitation, whether registered or not, patent rights, copyrights, designs, trade secret rights, and trademark rights. This clause should state the Purchaser's rights to its intellectual property and require the other party to ensure all reasonable steps are taken to protect them.

Define the extent of the Cloud services. These usually mean subscription to software as a service to be supplied to the Company. Name the particular software service being subscribed to, eg, by AkiliAfrica, which services are detailed in this Agreement and include Microsoft Dynamics NAV Software, Microsoft Enhancement Plan, SharePoint etc.

Include the subscription period for which the company has purchased the right to receive Cloud Services.

Include any global service terms which a corporation may from time to time apply to its purchasers. For instance, AWS cloud services normally come with Terms and Conditions which an individual company/ purchaser is supposed to have read and understood before engaging a third party for installation of the metered service by the third party. Another example is the Microsoft Corporation's License Terms published by Microsoft Corporation and which are subject to amendments and updates by Microsoft

Corporation. Read through such Licenses or Terms and Conditions, for a purchaser is deemed to be aware of all requirements, terms, and conditions therein.

Prohibited use: as a purchaser, the owner/ subcontractor will set the limits and level of access, and usually will normally restrict access or use Cloud Services for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without its express written permission. Unauthorized access is a breach of contract as well as using the Cloud Services to initiate or propagate Malware or for any purpose that violates applicable law or regulation, infringes on the rights of any person or entity. Check the access limitations as well as prohibited use clauses to ensure that the restrictions go towards protecting the company.

Suspension of Service Clauses: Under what circumstances can the cloud services provider suspend the service? What happens to data during downtime? Is the data safe during suspension. Are the reasons for suspension fair? A fair reason for suspension would be in instances where it necessary to prevent or terminate any actual or suspected Prohibited Use; or if there is a material breach of the Agreement.

Data Protection: Consider whether the cloud services provider employs applications and tools to collect Data that includes one or more data elements that can be used to identify a natural person ("Personal Data"). Identify whether the Cloud Services Provider is a Data Controller or a Data Processor, and whether they are registered as such. Have clauses where the Cloud Services Provider undertakes to secure and protect personal data and comply with statute.

Identify a Project Manager who will be in charge of the project, management decisions, personnel, information, approvals, and acceptances. This information creates seamless adaptation of the service and ensures that change management is embraced across the organization.

Support and Response Time: Ensure that Resolution Time and escalation procedures for support is provided in the Agreement.

Training: make provision for hands-on end-user training on Cloud Services. Training topics will be selected by the Company.

Updates and Upgrades: Consider an enhancement plan within the Agreement to ensure that the Company receives updates and upgrades to Cloud Services which are meant to advance Cloud Services to the next version.

Cloud Services Subscription Payments: Have the subscription period and provide for Full User or Limited User as well as the amounts payable and at what point. The Full User has full access to all the functionality of Cloud Services including write capabilities, while the Limited User has restricted access including full read capabilities but limited write capabilities. Ensure that permissions to specific functionality can be adjusted for both Full User and Limited User based on Cloud Services role centres. Clarify as to whether the payments vary as per the number of users or whether the amounts are regardless of number of users.

Have the Term, Termination and Renewal Clauses as well. Cloud services Agreement can be terminated for convenience, at the effluxion of time or for breach.

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The Practice of Law in the AI Space

By Sophie Kaibiria

The practice of law in Kenya has recently been drawn into the discussions on the place of Artificial Intelligence (AI) in legal practice and the parameters towards its utilisation. This discussion can only be unfolded by looking at its impact on access to justice, which is our primary goal for legal practice from a human rights point of view. To scope into access to justice during the AI timeframe, it is essential to have an overview of the waves of digital technological development across the years.

Digital technology has led to AI development and has been developing every decade since the 1940s. It all began in 1948 when Claude Shannon revolutionised communication by introducing the information theory that led to the modern information age. Scientists explored and improved the theory each decade to match what we currently have in our technosphere. The theoretical analysis morphed into analogy connectivity to digital connectivity in the 1950s. This led to decades of computer development and connectivity to the World Wide Web. This was between 1960s and 1980s. The late 1990s to 2000s saw the technological wave enter the digital revolution, which has gained high speed into artificial intelligence, which the world is currently discussing.

In this century, analogue connectivity was done away with in most countries. It was in the 2010s that the digitisation of existing analogy and manual systems was nearly completed to pave the way for the next revolution, which was the digital transformation. It was also during this time (between 2003 and 2010) that Kenya's telecommunication expanded with

major telephone connectivity, and the internet network exponentially grew due to rapid growth in the laying of the undersea cable. Broadband internet connectivity revolutionised technological development in Kenya with the increased use of technology and advanced communication in the social and economic setup. This has resulted in a high level of business cycles as emergent phenomena linked to the technological paradigms that modernised the modus operandi of Kenyan society, including its economic, social, cultural, and political organisation. Stark examples include the recent Gen Z-led demonstrations that utilised access to technological, social media platforms such as the X space and TikTok to pass information and mobilise for the movement.

Another transformative technology product for Kenya is mobile money, further revolutionised by entering the Mpesa market. This expounded mobile phone technology and internet connectivity across the country, making services and products accessible to individuals with mobile phones and internet connectivity. It also drove the telcos to upgrade the connectivity from 2G to 5 G communication, making information access faster and improving access. All this has been a success story for the government of Kenya, which, according to Vision 2030, has projected the attainment of Kenya's Vision 2030 development goals and objectives by providing local and international connectivity across the country and region and developing in-country solutions. The second quarter sector statistics released by the Communications Authority (CA) further confirm this factor where, for the period 1st October – 31st Decem-

ber 2022, mobile data/internet subscriptions were 47.76 million, of which 66.8 per cent were on mobile broadband.

Additionally, it was highlighted that the penetration of smartphones stood at 60.2%, against a total population of 49.4 million at the end of 2022. These statistics, therefore, show that digital technological growth was inevitable for every sector of the economy, including the legal industry. This was particularly pronounced during the COVID-19 pandemic when technology came in to ensure access to justice is not limited due to the circumstances surrounding the pandemic. The courts, advocates, and litigants had to be able to access the court through the various online platforms, and the justice institutions involved had to upgrade their technology to sustain the difficulties that came with this new paradigm. The paperless and faceless approach to using technology in the practice of law has consequentially come into sharp focus with the advancement of AI technology.

AI technology is in the legal landscape, and advocates have to deal with the place of chatbots in the practice of law. Therefore, pertinent questions include: How can chatbots be used to advance some of the legal services, including drafting agreements and contracts? How far can a chatbot link advocates to clients, and how can a chatbot advise clients? These questions are compounded by the fact that access to AI is individualised, which then makes it possible for any prospective client who is tech-savvy to first access the services of AI chatbots before invoking a human advocate. This reality then behoves us to develop modalities of integrating AI into our everyday business approaches, including legal practice. It is about time that the conversation through law reform should move with the times to cater to the emerging opportunities for advocates and



the general public. Importantly, as we explore the technological paradigms in law, Access to Justice should be in the background. The law reform agenda should equally align with the purpose of technological advancement, which has been coined into 4:

Its cost-effectiveness is perceived to be low and descending; for instance, we now have virtual court appearances over the historical physical ones.

It is unlimited in supply. Today's technology is different from what it will be tomorrow, and its broad-based access keeps expanding.

Potential pervasive due to the similarities in various programs make it familiar to the population.

The capacity to reduce the cost of capital, labour and product and change them qualitatively.

Notably, most technological scientists agree that technological diffusion closely followed the process of booming technological innovation. This is where data overload in the internet space occurs due to the world's advanced technology penetrating the socio-economic sphere. In most instances, diffusion of the new paradigm could be more organised but takes place over social networks over time, inevitably creating a divide between the haves and have-nots. Access to information, as juxtaposed with access to justice, co-relates with income inequity, which is notoriously persistent in Kenya. So which way #Wakilis?

The Author is an Advocate of the High Court of Kenya and Director- Practice Standards and Ethics at the LSK.

Advocate-Client Confidentiality Concerns in an Era of AI Integration: Opportunities and Challenges for the Legal Profession in Kenya

By Eugene Otieno Owade

Advocate-client privilege is one of the fundamental pillars of the legal profession, the rule of law, access to justice, and service delivery generally. In the age of modern technology, including Artificial Intelligence (AI), clients require the guarantee that their personal information will not be disclosed without their consent to third parties, even while advocates pursue efficiency in case management and predictability of legal outcomes. The opportunities and challenges posed by integrating AI into the legal profession are cross-cutting and increasingly eliciting debate domestically and internationally.

Some debates, including whether or not to regulate AI, are still nascent in Kenya and Africa compared to the Global North. While these debates are progressive, AI, including Machine Learning, Natural Language Processing, and Generative AI like Chat-GPT, are already in application within the legal profession. They have improved decision-making, efficiency, and due diligence. These AI systems rely on large datasets, or what is termed Big Data, for automated processing of information through text and content extraction, data analysis, and question-answering.

The datasets are then subjected to prediction, analytics, and computing algorithms to generate output in terms of drafts of legal documents, templates, and commercial agreements, which are fed into computer systems by lawyers, legal researchers, and other stakeholders. Remarkably, the input of raw client data by a user contrib-

utes to building the global data repository of AI, which AI taps into to generate computation output and processing through machine learning.

There's a growing concern that advocates are increasingly relying on AI for legal research, drafting, and related tasks. It's crucial, both legally and ethically, that they exercise due diligence in verifying the accuracy and completeness of AI outputs. Challenges such as the lack of interpretability for AI output and the absence of clear sector-specific guidelines and regulations on AI integration need to be addressed. It's essential to recognize the legal, ethical, and professional concerns and risks posed by AI, particularly in terms of data privacy, security, and confidentiality, and to develop strategies for addressing these concerns in Kenya.

Kenya can adopt best practices from the New York State Bar Association's Taskforce recommendations on Artificial Intelligence. The Report addresses various components of AI within the legal profession, including the need for advocacy and awareness of AI risks, broad-based legislation to address the identified risks, leveraging existing strengths and expertise, and promoting access to justice through accessible AI systems.

Some measures that can be implemented to safeguard client data include anonymizing and encrypting client data by deleting any personal information that may identify the Client—second, express consent must be obtained from the Client for using their data on AI systems. They should

also be informed about the risks and opportunities of using AI to address their cases. These require the enactment of AI-specific legislation to address liability issues, redress mechanisms, requirements, processes and procedures for guaranteeing client confidentiality; intellectual property concerns, including copyright ownership over computer-generated works; and the roles, duties and obligations of various parties that apply AI in Kenya. The legal profession should be at the forefront of advocating for AI legislation, relevant policies, and sector-specific guidelines and prioritizing the education of the Bar, Bench, Academia and other stakeholders.

Third, Advocates must ensure data minimization by providing minimal data appropriate for specific tasks. This ensures that Advocates limit the amount of data and sensitive information available to AI in line with data privacy regu-

lations. Lawyers are also expected to assess the privacy risks and regulatory gaps in the existing legislation to identify the intersection between ethics and AI and to inform legislative reforms. Periodic monitoring and evaluation of the AI systems is also necessary to identify any emerging risks or confidentiality concerns.

There's a pressing need for education and awareness of AI systems and their risks and benefits. This is crucial for the public, the Bar, the Bench, and other stakeholders, including the media. It's essential to promote understanding, knowledge, adoption, and responsible usage of closed-access AI systems to limit the exposure of client data to the public. The CPD programme can play a significant role in this, especially in addressing the procedural and technical components of AI systems, focusing on the affordability of the training, data privacy, and confidentiality.

The prevalence of AI presents new risks and opportunities for lawyers, which the legal profession must understand and address any privacy and confidentiality concerns. Automation should be an enabler of access to justice rather than an alternative to Advocates' obligation to uphold professionalism, competence, ethics and the public interest. Also, AI is not a replacement for the role of Advocates but should be a complementary mechanism. In the future, since the laws and policies on AI are still developing in Kenya, there are existing ethical obligations on client confidentiality within the Advocates Act and Rules, which should guide lawyers on how to address moral concerns in an age of increased integration of technology and innovation.

The Author is an Advocate of the High Court of Kenya

Artificial Intelligence in the Service of the Future of Law

By Martin Wagah and Lucas Mwangi Kimani

The illustrious practitioner Kevin D. McCourt stated, "[Legal] practice will evolve as it is driven by forces not always in our control." This statement has proved prophetic through the advent of COVID-19 and the changes it wrought to legal practice in Kenya. It will prove even more so with the advent of what some claim to be the most promising innovation in human history: Artificial Intelligence (AI).

Technology Revolutions

First, let us examine what happens when human ingenuity spurs a new technology of transformative potential. In every epoch, the emergence of ground-breaking technology stirs hopes of a lumi-

nous future or fears of displacement, obsolescence, destruction, or worse. However, history tells a tale of human adaptation, development, and advancement in the face of new technology; as the mercurial Thomas Sowell states, "The cavemen had the same natural resources at their disposal as we have today...the difference between their standard of living and ours is a difference between the knowledge (read technology) they could bring to bear on those resources and the knowledge used today."

The 20th Century is an apt example; at its dawn, it was a bustling era of innovation and change. The nascent automotive industry, spearheaded by innovators like Karl Benz and Henry Ford, was on the brink of revolutionizing trans-

portation—Ford's assembly line spelt doom for the horse-drawn carriage industry. Within two decades, the blacksmiths, carriage makers, and others linked to the equine transport economy found their crafts waning in relevance as the oil-powered locomotives took over.

However, this disruption was better than the blacksmiths imagined. Not only did it democratize the means of transportation so that the blacksmith who could not afford a carriage could now afford a car, but it also gave rise to new industries in which the blacksmith could be employed for much more than his previous wages. He no longer hammered horseshoes individually and only needed a little re-training. He could now engage in automobile manufacturing, road construction, and oil refining at an industrial scale.

Today, we stand on the brink of another transformative era; AI is

here! As expected, similar hopes and fears echo through society and the economy, including the offices of legal practitioners. AI poses a challenge to the traditional practice of law, creating doubts in the minds of many about the continuity of the past ways of working. This scenario mirrors the transition from carriages to cars. Will legal practitioners cling to their horse-drawn carriages and risk extinction, or will they adapt and acquire a vehicle, the AI, opening themselves to broader horizons?

The Promise of AI

Although AI can perform many tasks that lawyers do, this does not herald the obsolescence of legal practitioners but rather a redefinition of their roles. When legal practitioners incorporate AI into their routine tasks, they will be freed from tedium, allowing them to focus on more complex legal matters, such as managing interpersonal client relations, developing strategies, pursuing research directions, and engaging in other facets of the profession that are profoundly human and are near-irreplaceable by machines. As one erudite sage said, "Lawyers are in the business of selling judgment," therefore, any tool that helps them make more precise, more reliable, and more accurate judgements is to be embraced and not scorned.

For instance, consider the emerging capabilities of AI in legal research. Many researchers have found that an AI can do this in minutes rather than spending weeks sifting through thousands of documents to assess whether a few would be relevant to their work. The AI can read, draw patterns, and form conclusions from the entire corpus with great depth and precision, giving the researcher more time to hone in on the technical aspects of their research. For a legal practitioner or academic, this saving of time that would be wasted on routine research tasks such as scrolling the endless

pages of KenyaLaw looking for a specific case enables them to deploy their valuable time on the task of interpreting the data produced within the nuanced context of legislation, legal precedents, policy and ethical considerations, where their expertise truly lies.

The most valuable resource is the human resource as they possess the caput, the head, the store of knowledge. This is seen in the legal profession, where the most learned and experienced practitioners are usually respected and often command the highest remuneration. Though AI cannot claim to be a mind *senso stricto*, it does perform tasks that augment and amplify the productivity of human minds. Ren Zhengfei, founder of Huawei, stated, "With the help of AI, one person will be able to do the work that is done by ten people today...A small group of people will likely generate huge wealth in the future." This statement shows the luminous future ahead for all who incorporate AI into their workflows, including small firms and solo practitioners, as they can do more work quickly and efficiently while incurring minimal costs.

Unfolding Horizons

In a recent webinar, the distinguished Professor Githu Muigai remarked on how he had experienced many sleepless nights over the profession's future after garnering unique insights for resolving an Arbitration matter using an AI-powered assistant. As such, the narrative of AI in law is not one of replacement but of empowerment and opportunity. It beckons legal professionals to adapt and evolve, much like the blacksmiths who turned their forging skills towards the automotive industry. Through embracing AI, lawyers, advocates, judges, and academics can enhance their practices and offer more informed and higher-quality solutions.

For the legal practitioner with

an eye on the future, embracing AI remains the most pragmatic approach. This was the case for scientists, artists, writers, and other professionals when GPT-4 was launched, and so is it for you as AI-powered legal assistants emerge (visit haki. Africa). We must all integrate AI into our skill sets just as we integrated computer literacy as personal computers became ubiquitous. The prolific Professor Kariuki Muigua states, "This is the time...to invest wisely in these new technological areas and acquire the relevant skills and knowledge to...remain relevant... law firms can leverage these technologies to develop and add alternative services while reducing overheads and workload." AI is a tool that enhances rather than threatens our roles. AI will reshape the legal landscape and also enrich it, ensuring that those who adopt are not only survivors but pioneers of this new legal frontier.

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- > **Legal Right to Decide:** Individuals have autonomy and agency to make their own decisions related to their sexual and reproductive health.

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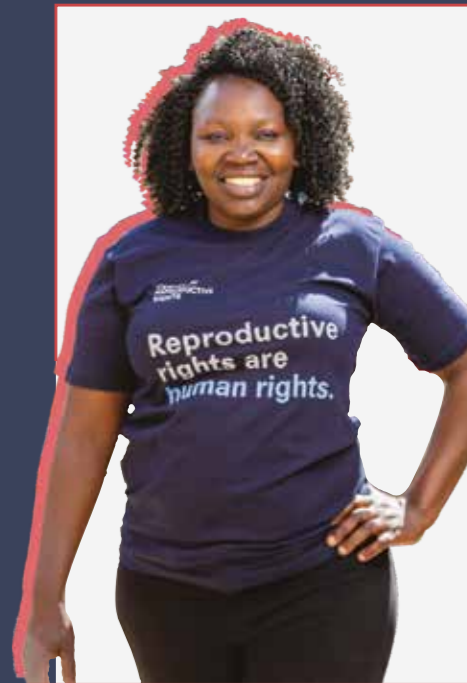
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CENTER for REPRODUCTIVE RIGHTS



AFRICA PROGRAM

Who We Are

The Center for Reproductive Rights (CRR or the Center) is a global legal advocacy organization dedicated to advancing reproductive rights as fundamental human rights. For over 30 years, our game-changing litigation and advocacy have transformed how reproductive rights are understood and applied by courts, governments, and human rights bodies worldwide.

In Africa, the Center opened its regional office in Nairobi in 2011. The Center leverages its local registration in Kenya and partnerships in several countries across the region to litigate court cases, advocate for legal change, and establish new standards for human rights in the region.

The Africa program also works regionally with human rights accountability mechanisms as well as the African Union's regional and sub-regional political organs. The Center's Africa Program has secured numerous legal victories in national courts and regional accountability bodies that have improved women and girls' reproductive rights—including their access to contraceptives, abortion services, and maternal health care.

Our Mission



The Center uses the power of law to advance reproductive rights as fundamental human rights around the world.

Our Vision



We envision a world where every person participates with dignity as an equal member of society, regardless of gender; where every woman is free to decide whether or when to have children and whether to get married; where access to quality reproductive health care is guaranteed; and where every woman can make these decisions free from coercion or discrimination.

What We Do



We use the power of law to advance reproductive rights as fundamental human rights. We seek to create lasting change so that people worldwide can make decisions about their reproductive health and lives and have access to the full range of reproductive health services and information.

Our Areas of Focus

We focus our programmatic efforts on issues of:

- Abortion:** Advocating for protected and expanded access to ensure informed reproductive choices.
- Adolescent Sexual and Reproductive Health and Rights SRHR:** Supporting comprehensive sexual and reproductive health information and services for adolescents.
- Maternal Health:** Promoting equitable access to high-quality prenatal and postnatal care.
- Assisted Reproduction:** Eliminating barriers to assisted reproduction for all individuals and couples.
- Comprehensive Sexual and Reproductive Health and Rights SRHR:** Championing policies and programs that address the full spectrum of sexual and reproductive health and rights.

Navigating the Future of Legal Practice in Kenya

By **Tabitha Kabura Kamau,**
AdvocatE

Introduction

The arrival of AI has borne milestone achievements in fields such as healthcare, finance, and education. In the past few years, AI has encroached on the legal sector, transforming traditional modes of legal practice. The integration of AI in our country, well known for its dynamic legal landscape and fast-evolving technological infrastructure, holds substantial promise. This potential integration presents both opportunities and challenges, which this article sets out to explore.

Evolution of AI in the legal sector

AI in the legal field is highly efficient in performance and accuracy because of the use of machine learning algorithms and natural language processing NLP. With the help of AI, law firms are on the verge of experiencing the premier in contract analysis and predictive analytics by quickly and accurately processing vast amounts of legal data through, for example, IBM's Watson, ROSS Intelligence, and LexisNexis being top-notch tools. Despite AI in the legal sector being just in the new stages of its adoption process in Kenya, the benefits that would come about from it are considerable. Legal research can speed up via AI, document reviews can be done quickly, and lawyers can be released to cope with complex tasks. Thus, it is possible to increase efficiency and decrease costs.

Applications of AI in the Kenyan Legal Practice

AI tools can predict current cases' outcomes by analyzing past case laws and statutes. Such a predic-

tion capability is instrumental, especially in a country where case backlogs have been a problem. For example, legal research platforms like Kenya Law have started incorporating AI features that allow effective searching and analysis of case law.

AI-driven contract review and analysis tools can plough through contracts at incredible speeds to identify potential risks and ensure that the law is complied with. This becomes quite important when businesses regularly engage in complex contractual agreements. Tools like Kira Systems and Luminance can be used to fine-tune their capabilities to accommodate the Kenyan context and help firms manage the due diligence process much more effectively.

Challenges and Ethical Considerations

While AI presents a range of benefits, it is full of challenges regarding its adoption into our legal system. Key concerns include the following:

Ethical Considerations: AI applications in law do not lack ethical considerations of biases and fairness. AI systems are trained on historical data, which may contain biases, thereby propagating existing inequalities. This is critical in a country like ours, where issues related to equity and justice are paramount, and any systems that are introduced, therefore, have to be devoid of any bias.

Data Privacy: The practice of law involves susceptible information, and introducing AI requires stringent measures to ensure data protection. The Data Protection Act 2019 rollout is quite a stride in the right direction, but continuous vigilance is called for in ensuring

compliance and maintaining client confidentiality.

Technological Infrastructure: Where Kenya stands in terms of technological infrastructure is a fast-growing setting still dogged by internet connectivity issues and access to state-of-the-art technologies. Therefore, limitations in these areas can hinder the full deployment of AI tools in legal practice.

Job Displacement: AI's efficiency can also result in fears of job displacement within the legal profession. However, AI should be viewed not as a replacement for human beings but as one of the tools that enhances their abilities. This makes training and reskilling programs imperative for the legal workforce in order to face an augmented future with AI.

Future Trends and Recommendations

The future of AI in Kenyan legal practice is excellent, with several trends likely to shape its trajectory: first and foremost, with the continued development of AI technologies, their ability to understand and interpret complex legal terminology will be enhanced, making them more valuable to legal professionals. Secondly, integrating blockchain technology and AI enables improved contract management and secures transactions, providing a robust framework for legal processes. It will, therefore, be essential to encourage the development of AI solutions for the Kenyan legal context. Local tech start-ups and legal tech incubators can play a leading role herein. Finally, clear regulatory frameworks will be established to control how AI is used in legal practice. This cuts across ensuring data protection, addressing ethical concerns, and setting standards for using AIs in law.

Conclusion

Artificial Intelligence has the potential to change significantly legal practice in Kenya in terms of efficiency, accuracy, and productivity. Such adoption, however, needs to be done carefully on ethical, privacy, and infrastructural grounds. To this end, collaboration from legal practitioners, technologists, and regulators in harnessing AI will significantly help change legal practice's future toward a more efficient and fair system.

The Author is an Advocate of the High Court of Kenya

Navigating the Future of Legal Practice Introduction



Filden Oroni Kenyanjui

Artificial intelligence (AI) is poised to revolutionize the legal profession, offering both opportunities and challenges as the industry navigates the path ahead. As AI capabilities continue to advance, it is crucial for legal practitioners to embrace this transformative technology while upholding the principles of good governance and the rule of law to ensure sustainable development within the legal sector. Artificial Intelligence (AI) technologies are becoming increasingly integrated into various aspects of legal practice. From contract review and document retrieval to predicting legal outcomes and assisting in legal research, AI tools are revolutionizing the way lawyers conduct their work. However, this integration also presents significant challenges and ethical considerations that legal professionals must navigate to maintain their competitive edge in an ever-evolving legal landscape.

Harnessing the Potential of AI

AI should be perceived as a sidekick, not a Superhero. While AI has the potential to enhance the efficiency and effectiveness of legal professionals, it is crucial to understand that AI is a tool, not a replacement for human expertise. AI can assist in tasks such as analyzing large volumes of data, identifying relevant precedents, and predicting potential outcomes, but, it is the lawyer's judgment, strategic thinking, and ability to navigate complex legal issues that ultimately win cases. Legal professionals must ensure that AI complements their expertise and adheres to ethical and regulatory standards to maintain the integrity of the legal profession. AI-powered tools should be used to augment the lawyer's decision-making process, not to replace it entirely. Lawyers must remain the decision-makers, steering AI's analytical power to serve their clients' best interests.

Upskilling and reskilling for an AI-infused legal world is key. As the legal profession evolves rapidly, lawyers must stay sharp and continuously upskill and reskill to navigate an AI-infused legal world. Understanding AI capabilities and limitations, the ethical use of AI in legal decision-making, and data privacy and security are essential skills for legal professionals. Lawyers must be able to critically evaluate the outputs of AI tools, understand the underlying algorithms and data used to train them and ensure that AI is not perpetuating biases or making decisions that violate ethical principles or legal standards. Additionally, lawyers must be proficient in data management and cybersecurity to protect their client's sensitive information and maintain confidentiality.

There should be a collaboration between legal practitioners and AI. The integration of AI into the legal sector presents an opportunity for collaboration between legal practitioners and AI developers. By working together, they can create AI tools tailored to the specific needs of the legal profession while adhering to ethical and regulatory standards. Legal practitioners can provide valuable insights on challenges and pain points of legal practice, thus, helping AI developers create tools that are user-friendly, efficient, and effective. AI developers, in turn, can provide legal professionals with a deeper understanding of AI capabilities and limitations, enabling them to make informed decisions about how to best leverage AI in their practice.

Ethical Considerations in AI Development

As AI becomes prevalent in the legal sector, it is crucial that ethical considerations are prioritized in the development and deployment of these technologies. AI development must prioritize fairness and equity, ensuring that AI decision-making processes are transparent and accountable. Legal professionals must also ensure robust data protection measures are in place to secure individuals' rights and privacy. As AI systems become more sophisticated, they will have access to vast amounts of sensitive data, placing responsibility on legal professionals to ensure that this data is protected and used ethically.

Governance and the Rule of Law and Sustainable Development

The integration of AI in law presents both opportunities and challenges. AI can enhance legal research, document automation, and accessibility of legal services, but, it also raises concerns around data privacy, security, and potential displacement of legal professionals. To navigate this, it is crucial to establish transparent regulatory frameworks that up-

hold good governance and the rule of law. Collaborative efforts between legal professionals, AI experts, and policymakers are needed to develop these frameworks and ensure AI systems adhere to principles of accountability, transparency, and fairness. By embracing AI responsibly, the legal sector can contribute to sustainable development through a more equitable and efficient justice system.

The Future of the Legal Industry

As AI continues to revolutionize the legal industry, it is clear that the role of lawyers will evolve. AI-powered tools will handle increasingly complex tasks such as legal reasoning and decision-making, further augmenting the capabilities of legal professionals. However, the core function of lawyers will remain the same: to provide expert legal advice and representation to their clients. As client expectations continue to evolve, law firms and legal departments will need to leverage technology to meet demands for transparent, personalized, and on-demand legal services.

Conclusion

The integration of AI in law presents both opportunities and challenges as the legal profession navigates the future of legal practice. By embracing AI while upholding the principles of good governance and the rule of law, legal professionals can create a more efficient, accessible, and equitable justice system that contributes to sustainable development within the legal sector and beyond. To achieve this, it is crucial for legal professionals, AI experts, policymakers, and other stakeholders must collaborate in developing transparent regulatory frameworks that ensure the responsible development and deployment of AI systems in law. By working together, we can harness the power of AI to enhance legal practice while safeguarding the rights and privacy of individuals and promoting the rule of law. As the legal profession continues

to evolve, it must remain adaptable, innovative, and committed to good governance and the rule of law. By doing so, the legal sector can create a future where AI and law coexist harmoniously, empowering legal excellence and driving sustainable development.

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Technology in a Changing Practice Space: Opportunities and Challenges for Young Advocates



Wekesa Vance Harouns
Introduction

Carol Mosely-Braun said, "defining myself, as opposed to being defined by others, is one of the most difficult challenges I face." It has also been said that, "Lawyers are caregivers and problem solvers."

They often set aside their personal problems, which many times are bigger than their client's.

Most lawyers take their oath seriously and work to be a solution, and a port in a storm."

As at 2024, with about twenty-five thousand (25,000) advocates in Kenya, a plethora of law firms and legal consultancies, and thriving competition, the legal profession has grown to be one of the most profoundly high-pressure careers. With the advent of technology, particularly AI, this transformation has not only been rapid but also revolutionary to le-

gal service provision with a myriad opportunities and challenges alike. It has presented a rather unique dynamic and impact on the various aspects of advocacy. There are virtual courts, online or e-filing systems, case management, digital meets and improved academia in legal research and writing. All these dynamics can be utilized positively, but, they may equally pose threats to the practice of law. The question is, how can one leverage the most opportunities from technology to optimally benefit and navigate the challenges it may pose?

Technology as a Double-Edged Sword in the Legal Practice

Opportunities

It must be noted that good governance is the cornerstone of successful practice. The advent of AI should be seen as an opportunity to advance good governance and revolutionize the future of legal practice.

Complex as the law may be, technology is crucial in solution-finding, enhancing productivity and output thus streamlining the practice in ways as discussed here.

Firstly, in **maximizing output**. Efficiency is the goal of any corporate institution. The legal work is more streamlined by leveraging on technology particularly in administrative work, office file-management systems and client care. Time is a resource that most advocates do not have the luxury of. Thus, much time is saved on enhanced research by utilizing reliable online research tools.

Secondly, is the **innovation space**. Technology is a constantly evolving field and the law interacts in a rather intriguing manner with it. Fintech, electronic commerce, engineering, and other digital services, the legal spaces of intellectual property, data privacy and even climate change litigation form new frontiers of legal practice. Additionally, the elements of online/ social media presence and campaigns, business development and visibility, data analytics, virtual trainings among others are value additions to the legal service-provision chain.

Thirdly is access to **information and expression**. As constitutional rights, the freedom to access information has proven vital in legal practice. This information stretches beyond the basic information to acquired knowledge and at times, skills. There are paid and free legal resources on the digital platforms including libraries and books that would otherwise be rarely found. There are repositories that transcend continental boundaries, that if properly utilized would enrich and build one's capacity. Also, client engagement has been made easier with the e-meetings, video conferencing, publication of institutional advice or articles and secure communication systems for client satisfaction and enhanced trust.

Last is **Flexibility**. For most young advocates, there may be need to effectively and consequentially impact lives through various engagements within the legal space and also to cut costs with the high and fast rising inflation rates and tough economic times. Remote access to work files, "working from home" modes and online-class modules would relieve the pressure even if minimally.

Challenges

Technological advancements never come devoid challenges.



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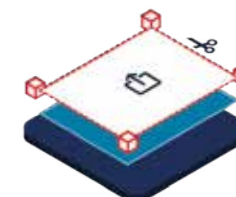
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The challenges may include, firstly, **disparity in resource mobilization and/ or capacity.** Digital literacy and cyber competence has not been a preserve of all. Unfortunately in Kenya, there has yet to be free Wi-Fi connectivity or an equality in the access, and use of cyber services both software and hardware systems. Young advocates, with few years in practice may not have capacity to purchase or subscribe to certain software provision platforms. This may hamper fair competition and capacity building.

Secondly, **Cybersecurity threats.** Over time, there has been an influx in the proliferation of cybersecurity concerns. The Data Commissioner indicates myriad of complaints relating to data breaches, phishing attacks and intellectual property concerns. It is quite challenging to install, maintain or retain the services of cybersecurity experts to ensure the protection of sensitive client information as well as managing one's case files.

Third is **fatigue and addiction.** Young advocates must be keen not to overindulge on the digital

space. The reliance on technology may warrant one a victim of digital content and subject to cybercrime especially where their information is public. Also, if not careful, one may be limited at the critical human thinking, analysis and judgment. Constant use of technology may lead to cognitive fatigue from information overload. This may lower one's concentration and attention to detail, to the detriment of their clients.

Conclusion

Technology/ AI is the new change. Change is inevitable. One has to adopt technology albeit in a balanced manner and to prioritize self-care. As we embrace technology in the workplace, we need to harness its transformative potential whilst protecting against any adverse effects it may have. Ostensibly, we must sparingly employ the technology advancements as well as procure appropriate AI tools that would only propagate good governance while observing the ethical balance.

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been lauded for its long-standing business processes through the use of technology. It includes automation (of current and future processes, for example, installing a contracts management system to handle contracting processes going forward) as well as digitization (scanning and uploading old documents into the Legal Management System). Both automation and digitization ensure a virtual environment from which all documents are secured and teams can collaborate in real time.

Why do you need Digital Transformation?

1. Secure the engine of your Business (The Antifragile Business)

A firm's/legal department's stability is centered around its efficient case management, cashflow and spending, client satisfaction and antifragility. Antifragility for businesses refers to its ability to survive in the midst of chaos. COVID 19 demonstrated what unexpected occurrences can mean for businesses. Embracing digital transformation for your firm secures your core infrastructure, the engine of the business, to ensure its motor still runs even in the most unexpected situations. Digital Transformation enables a law firm to adapt easily to market changes, giving them a competitive edge over slow adapters.

2. Become more Efficient and Client-responsive

Improving customer experience has become a crucial for lawyers, with an increasing demand for speed, accessibility to lawyers and on-the-go support. Gone are the days when your clients waited two hours at the reception to see the partner. The modern law firm adopts technology to remain visible and accessible to the client on a day-to-day basis without compromising on billable hours.

3. Improved Efficiency

Digital Transformation opens up multiple channels for team collaboration and workflow management while automating manual processes, increasing business agility and efficiency. Digital based solutions enable remote working, as well as allowing partner access to files and employee action points from anywhere in the world, at the click of a button.

4. Enhanced Security

Let's face it, most lawyers still operate on physical files, and their most crucial data is in hard copy, which leaves no protection should anything happen to the physical documents. Digital transformation for lawyers obtains secure cloud storage, access authorizations, file action tracking and visibility for all matters and actions within a file. This ensures enhanced security for your files and will set access limits on who accesses, actions of transfers your law firm's important information.

5. Cost Savings

Save on human labor through automation, which also enhances accessibility of files on the go. Digital Transformation and automating your filing system ensures that your processes are streamlined and you optimize each employee's productivity without unnecessary expenditure on labor for tasks that could be automated cheaply.

Why Digital Transformation For Lawyers?

By Mwende Stardust

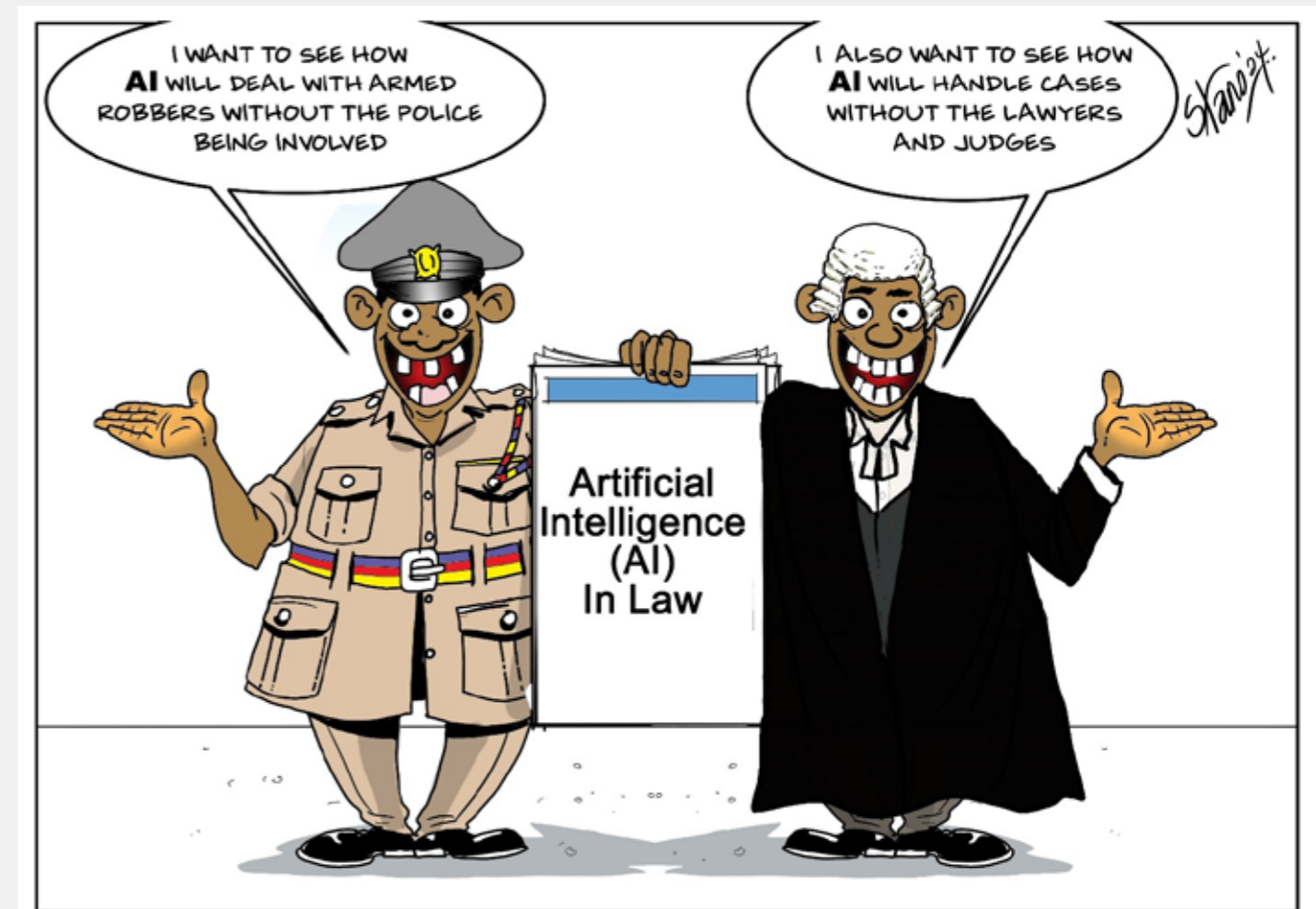
Digital transformation is an over-used phrase, I will give you that. But what exactly does it mean? And will it be worth it for you?

A survey by Progress, a global leader in software development, revealed that 47% of organizations were yet to begin digital transformation. Additionally, 57% of the companies interviewed felt that they were too late, and suffered decision paralysis because they felt the pressure of 'catching up with the world'.

What is Digital Transformation?

Digital Transformation is the integration of digital technology into all areas of a business resulting in fundamental changes to businesses operations and how they deliver value to customers. It is also a cultural shift for law firms or legal departments as it will require them to implement digitized processes for handling office functions such as, document and file management, human resource processing, billing and customer service.

Digital Transformation is a major shift that challenges the status-quo in how lawyers work and has



DOXXING

By Mutua Mutuku

Reading the room is both science and art, and the Office of the Data Protection Commissioner (ODPC) opted to be on the wrong side of history on June 19, 2024 by issuing a warning statement on the sharing of personal data. I'm not saying they're right or wrong, but situational awareness was disregarded, and it was clear in the flood of responses!

In their statement, they urged Kenyans to desist from publishing personal information on specific categories of citizens (read politicians), on social media sites, which is a behavior known as doxxing or doxing. This is the act of disclosing identifying information about another person online, such as their true name, home address, workplace information, personal phone numbers, bank account or credit card information, private correspondence, criminal background, personal images, embarrassing personal details, and so on. That information is then released to the public without the victim's permission. Doxxing can be carried out by simply investigating public databases, hacking, or by social engineering.

While the practice of disclosing personal information without authorization predates the internet, the term "doxxing" first appeared in the realm of online hackers in the 1990s. Feuds between competing hackers would occasionally lead to someone deciding to "drop docs" on someone else, who was previously only known by a username or alias. "Docs" evolved into "dox" and finally became a verb in its own right.

Doxxing is commonly used to penalize, intimidate, humiliate, and, more lately, attack users who have opposing views. However, doxers may consider their acts as a means of righting perceived wrongs, bringing someone to jus-

tice in public, or revealing a previously unknown motive. This was demonstrated in Hong Kong when supporters of the Hong Kong government recognized masked protestors at protests, while the demonstrators revealed sensitive information about police personnel and their families online (relatable?).

With that in mind, doxing is classified into three types based on the type of information exposed and the motive for doing so: deanonymizing, targeting, and delegitimizing. Deanonymization reveals precise information about an individual's anonymous or pseudonymous identity and their genuine identity. Targeting discloses information about an individual that may be used to physically locate them, such as their home address or place of employment. Delegitimization reveals potentially unpleasant or humiliating information about a person.

Lawfulness, fairness and transparency

Although ethically problematic, doxxing is not illegal because it is within a person's legal rights to get someone's publicly available data and republish it online. Nonetheless, it crosses the boundary into illegality when the information is not gathered legitimately, honestly, and transparently.

Thus, doxxing is inextricably linked to data protection since it entails gathering or capturing someone's personal data and distributing or publishing it online, which invokes data protection legislation rules that must be observed.

There is the argument that doxxing is not unlawful since the material used for doxxing, such as names, photographs, or phone numbers, has already been made public by the data subject on the Internet. Our Data Protection Act 2019 (DPA) backs up this assertion in section 28 (2) by allowing per-

sonal data to be processed without explicit consent if it is manifestly made public by the data subject or is contained in a public record.

Subsequently, our politicians are great at disclosing their own phone numbers as they find methods to bombard voters with campaign information during elections. They also share their numbers in Harambees and/or on CDF letterheads, etc. consequently making their personally identifying information public. However, even if the data is publicly available, data protection applies.

Public interest

Furthermore, there is the issue of substantial public interest, which encompasses a broad spectrum of ideals and concepts linked to the public good, or what is best for society as a whole. As a general guideline, for the public interest, one should first assess if it's possible to provide data subject a choice and only handle their data with their explicit consent.

Nonetheless, there may be circumstances where data subjects could be denied the upfront choice of consent. In such situations where you may not be able to obtain valid consent, public interest becomes too strong of a justification for processing. For instance, you might not want to request consent if you were investigating someone as telling them about it could jeopardize your investigation, or the posting of public service officers' phone numbers in an effort to hold them accountable for their misbehavior.

To throw a spanner in the works, our lawmakers are public personalities who serve as representatives of the broader public. In their official function as lawmakers, they are not private citizens. It would be fascinating to see how the ODPC would adjudicate if a legislator filed a complaint, since I find it difficult to believe that they

are 'a person' under the definition of DPA; the jury is already out in the BBI case.

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Unmasking Kenya's Data Dilemma: AI's Battle With Privacy Laws in Kenya



Juliana Njiriri



Mwalimu Xixtus

Introduction

Kenya's technological progress has been nothing short of astounding over the past two decades. The widespread availability of mobile phones and affordable internet has unlocked a new era of connection and immense potential. This digital boom has fueled economic growth, improved access to education and healthcare, and fostered a thriving environment for entrepreneurs. The engine driving this transformation is data. This valuable resource fuels innovation and powers AI systems that are rapidly transforming everything; from finance and healthcare to agriculture and transportation.

Artificial Intelligence (AI) is undoubtedly one of the greatest technological engineering in the world. The advancement of AI brings along a critical issue of protection of personal privacy. This article shall demonstrate how this is so by using Kenya as a quint-

essential example. Kenya is one of the market leaders in Africa's digital revolution and has been forced to strike a delicate balance between fostering innovation and protecting individual rights. The collection, storage, and analysis of personal data present a host of ethical, legal, and societal questions. This calls for the formulation of a well-crafted framework that promotes technological progress while simultaneously ensuring the preservation of privacy rights.

The Privacy Predicament

The rise of AI technologies like facial recognition and predictive analytics raises significant concerns such as mass surveillance and the erosion of privacy. Kenyans are left at the mercy of complex algorithms and potentially biased corporate interests. This article proposes that if these AI systems are left unchecked, they can lead to intrusive monitoring of citizens,

targeting of marginalized communities, and unwarranted profiling, exacerbating social inequalities.

Whereas AI offers significant benefits in the healthcare sector, it is worth noting that the use of AI in the health sector involves handling sensitive medical data, such as predictive diagnostics and personalized treatment plans, which, if mismanaged, could result in privacy breaches. Similarly, in agriculture, AI-driven data collection can optimize yields and reduce waste. However, the aggregation of farmers' data without proper consent and security measures can lead to exploitation.

The financial services sector is yet another area ripe for AI integration. AI can be used to enhance fraud detection and streamline services. However, it also brings risks of data breaches and misuse of financial information. The lack of stringent regulations may allow corporations to exploit consumer data, leading to issues like unauthorized data sharing and identity theft.

AI's influence extends to the job market as well. The automation of tasks previously performed by humans raises questions about data handling, especially when employees' activities are monitored and analyzed. This can lead to concerns over workplace surveillance and the potential misuse of employee data.

Although AI holds immense potential for Kenya's development, it simultaneously poses significant risks to individual privacy. The rapid technological advancements outpacing legal protections create a complex landscape where the benefits of AI must be carefully weighed against the potential for misuse and privacy invasion.

Legal and Regulatory Challenges

In order to address these challenges, Kenya needs to strengthen its legal and regulatory framework.

While the Data Protection Act (DPA) of 2019 represents a positive step toward protecting privacy, its enforcement and compliance remain significant hurdles. A notable limitation of the DPA is its narrow geographical scope, which leaves Kenyans vulnerable to potential privacy violations from foreign businesses handling their personal data. The DPA has not provided adequate regulations to safeguard cross border data flows and data processing.

It goes without saying that clear and stringent regulations are essential to govern data collection, consent, storage, and sharing practices. Additionally, robust mechanisms for oversight and accountability are crucial to ensure that AI systems operate ethically and responsibly.

Fostering a Culture of Privacy

Fostering a culture of privacy can greatly supplement legal measures in the protection of personal data. This includes educating the public about their rights and the risks that AI as well as other data-driven technologies may pose. This could be through public awareness campaigns, workshops, and school programs. This will equip the masses with a thorough un-

derstanding of the impact of AI on their data.

Secondly, organizations must adopt privacy-by-design principles, communicate transparently about data practices, and respect user consent to build trust and encourage privacy awareness.

Additionally, technology developers ought to incorporate user-friendly privacy settings, clear data policies and simple consent forms that enable individuals to make informed choices. It is also paramount for the organizations to employ community engagement through forums and platforms to discuss privacy concerns and sharing best practices. This would in turn foster collective responsibility and innovation. It also means empowering individuals to control their information.

In a nutshell, a culture of privacy relies on the combined efforts of individuals, educators, organizations, and policymakers. Together, these stakeholders can create an environment where people are informed, empowered, and in control of their digital lives.

Additionally, safeguarding privacy in the AI era also requires a collective effort from governments, businesses, civil society, and academia. This collaboration is es-

sential to set best practices, ethical guidelines, and forums for continuous discussion and evaluation.

Conclusion: Charting a Course Forward

AI has brought along numerous benefits. AI-powered solutions have the potential of enhancing healthcare delivery, optimizing agricultural practices and, revolutionizing financial services, among others. However, this newfound power comes with a weighty responsibility: safeguarding the privacy of individuals in a rapidly evolving digital landscape.

To counter the risks that come along with the use of AI, it is paramount that the government formulates legal regulations aimed at mitigating these dangers. It is also worth noting that Kenya's struggle with AI, data, and privacy highlights a global issue. Kenya can leverage AI's potential while safeguarding privacy through thoughtful regulations, public awareness, and collaboration. As Kenya navigates this complex landscape, its choices will shape a future where technology serves humanity, setting a global precedent for responsible AI use.

The Authors are Advocates of the High Court of Kenya.



Steps Towards Technology Adoption for Your Firm/Legal Department

By Mwende Stardust

Each organization's cloud journey is unique; therefore, to succeed in your digital transformation journey, you will need to envision that journey and be clear about your desired outcomes. You will also need to assess your digital readiness and ensure an incremental but steady adoption of technology. This will enable you to check for gaps, assess the benefits of the process as you go, calculate the return on investment (ROI) as well as transform your firm's/ legal department's culture towards technology adoption.

The Digital Transformation Journey

1. Envision

The 'Envision' phase focuses on demonstrating how digital transformation will help accelerate your business outcomes. It does so by identifying and prioritizing transformation opportunities across each of the firm's departments in line with your strategic business objectives. Setting out tasks in your transformation initiatives with senior individuals capable of influencing and driving change in the firm/department and setting out clear, measurable business outcomes will help you demonstrate value as you progress through your transformation journey.

2. Align

Digital Transformation is a major project in introducing and managing change. Bring the entire team on board and obtain buy-in. Have your technology provider conduct trainings on what will be expected of each team member, and how digital transformation will affect how

they do their work. Identify capacity, strengths and gaps, and address concerns arising. Doing so will help ensure stakeholder and employee alignment, as well as facilitate relevant organizational change management activities.

3. Launch

Launch phase focuses on delivering pilot initiatives in production and on demonstrating incremental business value. Pilots should be highly impactful and if/when successful they will help influence future direction. Learning from pilots will help you adjust your approach before scaling to full production.

4. Scale

Scale phase focuses on expanding the digital transformation activities and scaling them to all departments and all activities of the firm. This is the point of maturity for a Firm in its technology adoption journey. This point is marked with full automation of processes, digitized file and data management, automated billing and expenses management as well as seamless team collaboration.

Topical Key Considerations in Digital Transformation

1. Business:

What does the business need right now? What will increase efficiency as well as competitive advantage for the firm/department?

2. People:

What is your firm's/department's culture towards learning and change? Do you have the relevant capacity for technology adoption? And if not, what are you and your technology service provider doing about it?

3. Governance:

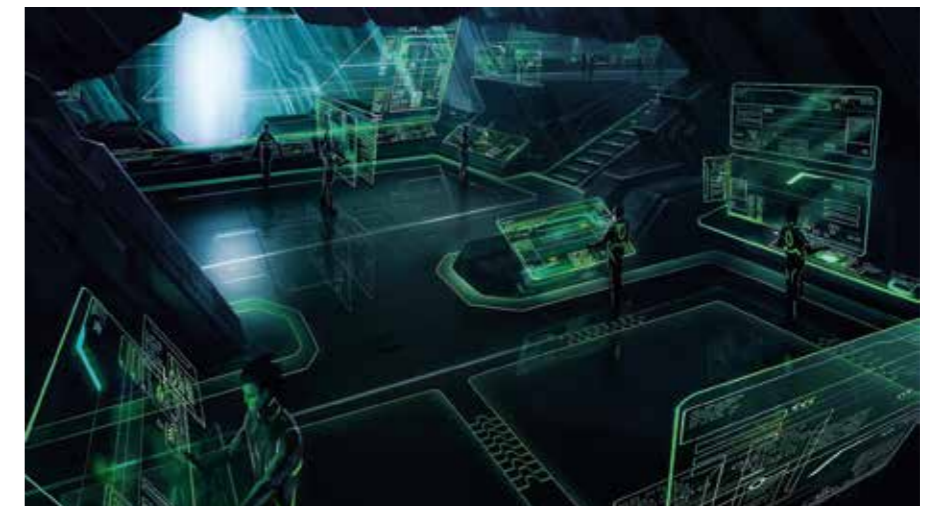
Is the top management (partners/legal director) spearheading the digital transformation journey? Do you have their full support?

4. Platform:

What are the key tools/ modules/ features required to handle workloads in the firm? What are the expected benefits and outcomes of the digital transformation tools you intend to acquire?

5. Security:

Discuss security features with your technology provider. Consider confidentiality, integrity, and availability of your data and how it will be secured and protected.



Key Pointers before starting on Digital Transformation

Start small

Before starting the journey to digital transformation, you need to keep in mind that it is a complex and multifaceted process. Here are a few pointers to check: Start small, and consider your key objectives.

1. Define clear goals and objectives.

What do you want to achieve with your digital transformation? What are your priorities? Document clear objectives, prioritizing them as per your firm's department needs. For instance, if you are looking to improve Legal department's visibility across the company, set that as a priority module in the systems you choose. (In a later article, I will take you through the various systems and modules you should look out for in your digital transformation journey).

2. Conduct an assessment of existing infrastructure, processes and all systems.

What have you so far invested on as far as an IT infrastructure is concerned? For instance, do you have internal storage serves, and how can they complement digital storage such as cloud? This will help you save time and valuable resources.

3. Ask your IT partner, if you are working with one, for a timeline of steps you will need to complete in your journey.

Lex Centre LLP optimizes your digital Transformation journey by creating a project work map with minimal interruption to daily operations.

4. Focus on the technologies

you really need.

Invest in the right technology solutions to support your efforts. This could be cloud-based solutions, file digitization and indexing or automation tools, etc.

5. Bring your team/ employees on board.

Your digital transformation is essentially introduction of change to your team, and change management must carry along everyone in the organization, from partners to the support staff. For legal departments, it must flow from the legal director to the clerks. Organize training for the employees if your transformation requires some additional skills from them. This

can help build a more resilient and adaptable workforce.

6. Measure and monitor progress.

Establish your own metrics and Key Performance Indicators (KPIs) to track progress and measure the impact of digital transformation efforts. Has client feedback improved in cases where you invested on a client management module? Have billable hours increased? Are you making savings on file expenses as a result of investing in a billing and time-tracking module? Stay on top of your metrics.

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If Law be Art, Legal Art is Mine to Do: What Should AI Do in Law?



Lydia Mwalimu Adude

Humans are moving so fast in terms of technological innovations and advancements to make life easy but complex at the same time. Such is the quest for innovations and advancements in artificial intelligence (AI). Humans work so hard to be lazy; instead, they are in a zealous pursuit of existence while doing nothing.

AI innovations and advancements cut across various disciplines and every aspect of human life, from the mundane to the more severe aspects of life. Nothing has escaped the curiosity around AI's capability to make processes and things self-sufficient and less de-

serving human intervention and interactions.

The AI 'craze' has yet to spare law and the various aspects of its practice. Lots of questions linger, though. Does mentioning AI and law in one sentence excite or scare the legal practitioner? Is AI the monster, the saviour, or the needed helper within the law and its practice? Is AI a threat to the legal mind and its creative tendencies independent of AI and dependent on the humans who have dedicated themselves to learning and practising law?

As if in outcry against the AI takeover, one netizen remarked, "I want AI to do my laundry and dishes so that I can do art and writing." So, if law is art, legal art

is mine to do and not the concern of AI.

If legal art is mine to do, what business has AI in law, and what is its practice? No legal practitioner would be intellectually fulfilled to recline and languish in a state of laze and nothingness while AI does the nitty-gritty of their legal art. The law's thrill is putting the legal mind to work to produce meticulous and awe-inspiring legal art pieces, be it in legal education, writing or even litigation. There is an undeniable thrill in me doing my legal art instead of surrendering to the takeover ways of AI.

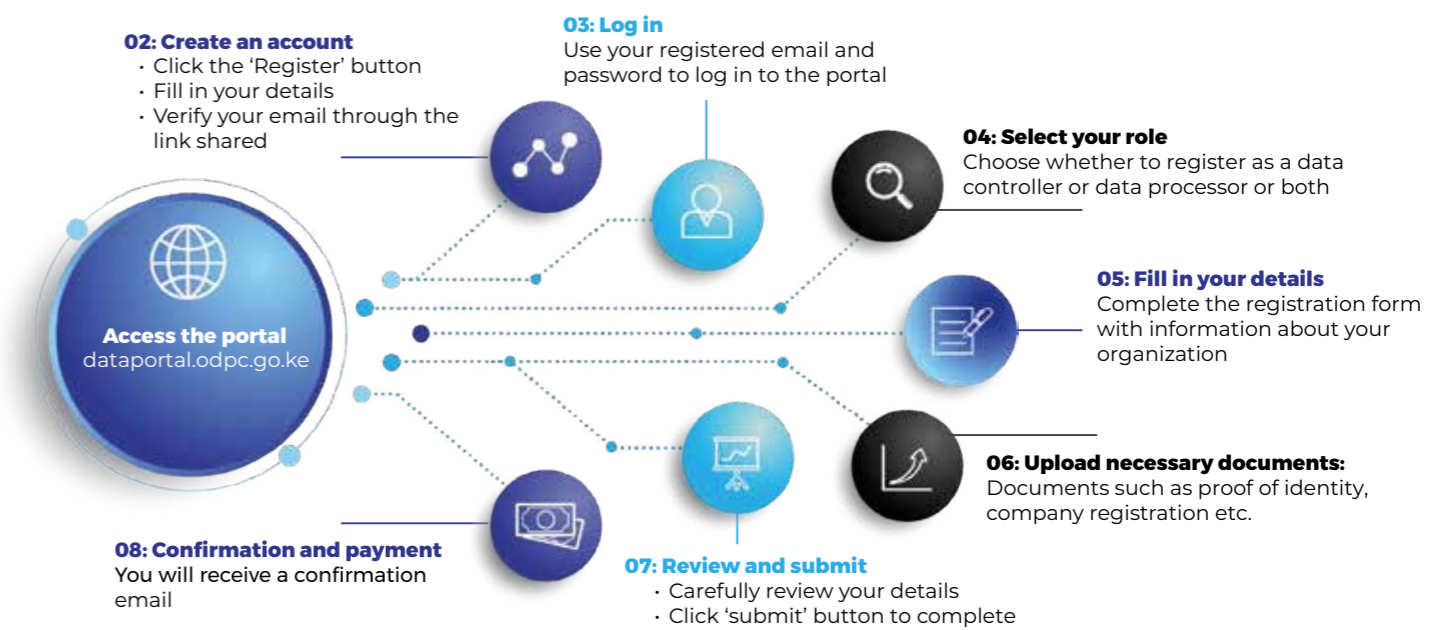
I want AI to do every other thing that distracts me from focusing on my legal art. AI can launder my legal attire while my legal mind is

buried in my legal art. The other way round was different. I, the legal practitioner, must lead. Not AI. The legal practitioner must engage my clients towards the needed and attainable legal solutions. AI can help print and bind the innovations of my legal mind. AI can help work my schedule and the administration of the law business, but AI should keep the magic that only my legal mind can bring into law and its practice.

AI must be the helper in law rather than replacing the human legal practitioner. I must do my legal art.

The Author is an Advocate of the High Court of Kenya

ARE YOU REGISTERED AS A DATA CONTROLLER OR PROCESSOR?



For more information visit our website www.odpc.go.ke

Let My People Go!

By Paul Ngotho, A Chartered Arbitrator.

Always begins with murmurs
Then becomes open talk
Then loud shouts
Raring for a fight

Let my people go!
Let my people go!

Then the pain
Screams and groans
Above cracking whips

Let my people go!
Let my people go!

In songs,
Poems and books
Demos
Solitary cells

Let my people go!
Let my people go!

Then finally
As always
They're free



LAW SOCIETY OF KENYA

APPLICATION FOR LETTERS OF NO OBJECTION

1. INDIVIDUAL ADVOCATE APPLICATIONS TO ESTABLISH A SOLE PROPRIETORSHIP



Preferred Name for registration

Note that the word 'advocates' must appear in the name. The name should be as it appears on the Roll of Advocates. Sole proprietors cannot use initials only.



The statement of particulars or proof of reservation certificate (BN)

as obtained from the business registrar. (can be the screenshot of the name reservation page)



The name of the partner(s)

to the outfit you are about to register.



The current PC (s) /receipt of payment

2. REQUIREMENT FOR REGISTERING LIMITED LIABILITY PARTNERSHIPS (LLPs)



Preferred Name for registration.

Note that the word 'advocates' must appear in the name.



Duly filled statement of particulars

statement of particulars as per the LLP Act



Proof of the reservation certificate (BN)

as obtained from the business registrar



The name of the partners

to the outfit you are about to register



The current PC (s) /receipt of payment for all partners



Advocates can send the requests by mail or email to compliance@lsk.or.ke for further processing.

Note: The letters of no objection do not attract any charges from the LSK.



FREQUENTLY ASKED QUESTIONS (FAQS) ON MEMBER SERVICES DEPARTMENT

1. How do I log into my portal for the first time and set my password



A:

Search (online.lsk.or.ke) on your browser. Click on the login button on the top right corner, enter your admission number and click on "Proceed", click on "Forgot Password / Activate Account" feature. An OTP will be sent to the email address/ phone number registered with LSK.

In case you don't receive the OTP in your inbox, check in the spam/junk folder. Always use the most recent OTP in case you have tried severally and received multiple links.

Note:

- Always use the most recent OTP.
- Avoid requesting for the OTP too many times to avoid being locked out of your account.
- When you request for an OTP, there may be delays, please be patient, check your email/phone before requesting for another.

2. How do I apply for my Practising Certificate?



A:

Log into your portal and press the 'click to apply for my 2024 Practising Certificate' prompt on your dashboard. Proceed to fill in your declaration form then download and print it. Depending on what you have declared as your nature of engagement, the documents to be uploaded are as follows: -

For members practicing as Sole proprietors/Partners:

- A fully signed and witnessed declaration to accompany the application for PC.
- A valid professional indemnity cover.
- The accountant's certificate whereby the accounting period should be for the previous year e.g. 01-01-2023 to 31-12-2023 for PC application 2024.
- Certificate of registration of the firm.

For members practicing as Associates/In-house Counsel/Legal Officers/Company Secretaries/State Counsel/Academic:

- A fully signed and witnessed declaration to accompany the application for PC.
 - A duly filled, signed and commissioned statutory declaration form.
- NB The receipt shall only be issued once all the requisite documents have been uploaded on the portal.

3. How do I change or update my physical address?



A:

Attach a signed letter requesting to change or update your physical address. The letter should be addressed to:

**The Secretary/CEO
Law Society of Kenya
Lavington, opp Valley Arcade, Gitanga Road
P.O Box 72219 - 00200 | Nairobi, Kenya**

Attach a copy of your national ID. Please, note to include your P.105. Share the documents via memberservices@lsk.or.ke or drop them at our offices.



FREQUENTLY ASKED QUESTIONS (FAQS) ON MEMBER SERVICES DEPARTMENT

4. How do I change or update my email address?



A:

Attach a signed letter requesting to update or change your email address. Attach a copy of your national Identity Card and a copy of your Certificate of Admission. The signed letter to be addressed to:

**The Secretary/CEO
Law Society of Kenya
Lavington, opp Valley Arcade, Gitanga Road
P.O Box 72219 - 00200 | Nairobi, Kenya**

Share the documents via memberservices@lsk.or.ke or drop them at our offices.

5. How do I update or change my profile photo on the search engine?



A:

Share the photo to be uploaded, attach a copy of your Certificate of Admission and a copy of your national Identity Card to memberservices@lsk.or.ke

6. How do I apply for a Certificate of Good Standing as an individual?



A:

The Certificate of Good Standing for individuals is done online. Follow the following steps to access/activate your portal account. To set up your LSK Account password, search for online.lsk.or.ke on your browser. Click the login button on the top right corner, enter your admission number and click on "Proceed", click on "Forgot Password / Activate Account" feature. An OTP will be sent to the email address/ phone number registered with LSK. In case you do not receive the OTP in your inbox kindly check in the spam/junk folder. Always use the most recent OTP in case you have tried severally and have received multiple links.

Note:

- Always use the most recent OTP
 - Avoid requesting the OTP too many times to avoid being locked out of your account.
 - When you request for an OTP, there may be a delay so please be patient, check your email/phone before requesting for another one.
- After login click on [click here](#) to apply for Certificate of Good Standing, click proceed, submit and print the certificate.

For more enquiries, reach out to LSK Member Services via memberservices@lsk.or.ke or call 0111 671458.

ADVOCATES' PRACTICE STANDARDS CAMPAIGN ALERT:



LAW SOCIETY OF KENYA

Masqueraders, Quacks, Impersonators and Unauthorized/Unqualified Persons

A D V O C A T E



Who is an Advocate of the High Court of Kenya?

01

A person duly entered to roll of Advocates and has a practicing certificate for the current year.

You can check the practice status of such an advocate on online.lsk.or.ke by clicking on **Search Advocate** and entering the name of the advocate. If the Advocate has a valid practicing certificate(PC), it will be **Active**. If not, it will be **Inactive**.

In case an advocate is practicing without a PC, please report to the Director Practice Standards by email to practicestandards@lsk.or.ke or send a letter to LSK Secretariat.

Practicing without a valid Practicing Certificate is professional misconduct tantamount to disciplinary proceedings.



Who is a quack or Masquarader?

02

This is a person who pretends to be an advocate.

They can equally be identified by the above process. If a person is not entered in the LSK Portal, the person is a masquerader and criminal proceedings should ensue.

● 0110 459 555 || ✉ practicestandards@lsk.or.ke

PLEASE NOTE THAT THE SEARCH ENGINE IS ACCESSIBLE ON <https://online.lsk.or.ke/>

Law Society of Kenya Council 2024- 2026



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