



SACJF

SOUTHERN AFRICAN CHIEF JUSTICES' FORUM



REPORT

ON

THE 2022 SOUTHERN AFRICAN CHIEF JUSTICES' FORUM JUDICIAL SYMPOSIUM AND ANNUAL GENERAL MANAGEMENT COMMITTEE MEETING

HELD AT SAFARI PARK HOTEL IN NAIROBI, KENYA

20TH -23RD OCTOBER, 2022

THEME:

"DIGITISATION AND INTERNET GOVERNANCE"

BY:

THE KENYA JUDICIARY ACADEMY





L-R) Chief Justices Hon. Mr. Justice Rizine R. Mzikamanda, SC (Malawi), Hon. Mr. Justice Luke Malaba (Zimbabwe), Hon. Mr. Justice Ronny Govinden (Seychelles), Hon. Mr. Justice Mbheki Maphalala (Eswatini), Honourable Justice Martha K. Koome, EGH (Kenya), Hon. Mr. Justice Peter Shivute (Namibia), Hon. Prof. Justice Ibrahim Hamis Juma (Tanzania), Hon. Mr. Justice Adelino Manuel Muchanga (Mozambique), Hon. Mr. Justice Terence Rannowane (Botswana), Mr. Justice Khamis Ramadhan Abdalla (Ag. CJ, Zanzibar) and Honourable Justice Philomena Mbete Mwilu, MGH (DCJ, Kenya) during The Southern Africa Chief Justices' Forum (SACJF) in Nairobi.

Contents

1.0	INTRODUCTION	7
1.1	CONVENING OF THE MEETING AND SYPOSIUM.....	7
1.2	PARTICIPATION	7
1.3	PURPOSE OF THE JUDICIAL SYMPOSIUM	7
2.0	SESSION ONE:.....	9
2.1	The Opening Ceremony.....	9
2.1.1	Welcome Remarks by the Director Kenya Judiciary Academy	9
2.1.2	Remarks by Collaborating Partners.....	9
2.1.3	Remarks by the Deputy Chief Justice Philomena M. Mwilu, MGH	11
2.1.4	Official Opening Address by the Hon. Chief Justice Martha K. Koome EGH.....	12
2.1.5	Keynote Address by Hon. Chief Justice Peter Shivute.....	13
3.0	SESSION TWO:	16
3.1	High Level Panel Segment, Digital Transformation of Judiciaries in Africa and Experiences in the Face of the Covid-19 Pandemic.....	16
3.1.1	Justice Terence T. Ronnowane, Chief Justice of the Republic of Botswana	16
3.1.2	Hon. Justice Bheki Maphalala, Chief Justice of the Kingdom of Eswatini	17
3.1.3	Hon. Justice Rizine Mzikamanda, SC, Chief Justice of the Republic of Malawi.....	18
3.1.4	Hon. Justice (Dr.) Adelino M. Muchanga, Chief Justice of the Republic of Mozambique.....	19
3.1.5	Hon. Justice Ronny James Govinden, Chief Justice of the Republic of Seychelles.....	19
3.1.6	Hon. Chief Justice (Prof.) Ibrahim Juma, Chief Justice of the United Republic of Tanzania	20
3.1.7	Hon. Justice (Dr.) Mumba Malila, SC, Chief Justice of the Republic of Zambia	22
3.1.8	Hon. Justice Luke Malaba, Chief Justice of the Republic of Zimbabwe	23
3.1.9	Hon. Justice Khamis Ramadhan Abdalla, Chief Justice of the Republic of Zanzibar	24
3.1.10	Hon. Justice Martha K. Koome, EGH, Chief Justice of the Republic of Kenya	25
3.1.11	Hon. Justice Peter Shivute, Chief Justice of the Republic of Namibia and Chairperson, SACJF	26
3.2	Interactive Plenary and Reactions to Plenary	27
4.0	SESSION THREE:	28
4.1	Internet Freedoms	28
4.1.1	Regional and International Standards on the Protection of Internet Freedoms.....	28
4.2	Interactive Plenary.....	32
5.0	SESSION FOUR:	34
5.1	Internet Shutdowns and Impact on Access to Justice	34
5.1.1	Internet Shutdowns and their Impact on Human Rights and Civic Space by Ms. Tiseke Kasambala.....	34
5.1.3	Access to Justice and Technology; an African Experience During and After the Covid-19 Pandemic by Mr. Arnold Tsunga	35
5.1.4	Trends in the Development of African Jurisprudence on Internet Freedoms by Mr. Donald Deya	37
5.1.5	ICJ Guidelines on Internet Shutdowns by Dr Justice Alfred Mavedzenge	40
5.2	Interactive Plenary.....	41
6.0	SESSION FIVE:	43
6.1	Threat to Digital Access	43
6.1.1	Threat to Digital Access: Cyber Crimes Surveillance and data protection by Ms. Hlengiwe Dube	43
6.2	Interactive Plenary.....	47
7.0	OFFICIAL CLOSING REMARKS.....	48
7.1	The Closing Remarks.....	48
7.1.1	Remarks by Hon. Justice (Dr.) Smokin Wanjala, Supreme Court of Kenya and Director Kenya Judiciary Academy	48
7.1.2	Remarks by Hon. Justice Peter Shivute Chief Justice of Namibia and Chairperson SACJF	48
7.1.3	Remarks by Hon. Justice Martha Koome, Chief Justice of Kenya and President of the Supreme Court of Kenya	48
8.0	RECOMMENDATIONS, WAY FORWARD AND CONCLUSIONS.....	50
8.1	Recommendations.....	50
8.2	Way Forward and Action Points.....	52

1.0 INTRODUCTION

The Southern Africa Chief Justices' Forum (SACJF) is an association of incumbent Chief Justices or equivalent officers including acting Chief Justices, in their capacity as such, from countries designated in the Forum's Constitution and any other country designated by the members of the Forum. Amongst the membership of the Forum, a Management Committee (*the Management Committee*), which is the principle executive organ of the Forum is elected by the members.

1.1 CONVENING OF THE MEETING AND SYPOSIUM

SACJF convened its 2022 Annual General Management Committee Meeting and Judicial Symposium on Digitisation and Internet Governance (*the Conference*), at Nairobi, Kenya from 20th to 23rd April, 2022. The Symposium was held under the theme "*Digitisation and Internet Governance*".

The Conference was hosted by the Kenyan Judiciary, in conjunction with the Kenya Judiciary Academy, the International Commission of Jurists (ICJ), the International Commission of Jurists Kenya (ICJ-K), the Media Institute of Southern Africa (MISA), Advancing Rights in Southern Africa (ARISA) and the American Bar Association.

1.2 PARTICIPATION

In attendance were Chief Justices and Senior Judges from the Republic of Kenya, the Republic of Namibia, the Republic of Botswana, the Republic of Malawi, the Republic of Mozambique, the Republic of Seychelles, the United Republic of Tanzania, the Republic of Uganda, the Republic of Zambia, the Republic of Zimbabwe and Island of Zanzibar respectively. The Conference was also attended by the SACJF Secretariat, Kenya Judiciary Academy staff, Kenya Judiciary Staff, staff from the various judiciaries represented and collaborating partners, whose names and particulars are attached hereto as **Annex 1**.

1.3 PURPOSE OF THE JUDICIAL SYMPOSIUM

The objective of the Symposium was to provide a platform for judiciaries within the SACJF member states, to share best practices, successes and challenges relating to judicial digitization and internet governance. The aim was to discuss and adopt common practice, principles and guidelines that would assist member jurisdictions in the development of legislation, policy and practice on digitisation and internet governance.

The Forum allowed representatives to deliberate and share experiences on:

- a. *Digital Transformation of Judiciaries in Africa and Experiences in the Face of the COVID-19 Pandemic;*
- b. *Regional and International Standards on the Protection of Internet Freedoms;*
- c. *Internet Shutdowns and Impact on Access to Justice; and*
- d. *Threats to Digital Access: Cybercrimes, Surveillance, and Data Protection.*

2.0 SESSION ONE:

2.1 The Opening Ceremony

The official programme started with a word of prayer, the reciting of the Kenyan National and the East African Community Anthems. This was followed by welcome remark by the Director Kenya Judiciary Academy; remarks by Collaborating Partners; the Deputy Chief Justice of the Republic of Kenya & Vice President Supreme Court of Kenya; official opening address by the Chief Justice of the Republic of Kenya and President Supreme Court of Kenya; and keynote address by Hon. Justice Peter Shivute, Chief Justice of the Republic of Namibia and Chairperson, SACJF.

2.1.1 Welcome Remarks by the Director Kenya Judiciary Academy

Justice (Dr.) Smokin C. Wanjala, the Director Kenya Judiciary Academy (KJA) and Judge of the Supreme Court of Kenya, in his remarks welcomed the delegates and expressed his delight in hosting the 2022 SCAJF AGM and Judicial Symposium. He thanked the Chief Justices, Judges and delegates for honoring the Judiciary of Kenya's invitation and for creating times from their busy schedule to attend the momentous Conference.

The Justice acclaimed the Conference as a forum to strengthen contact and cooperation among the Courts in the Region; promote and deepen the rule of law and independence of Courts in the region; foster access to quality justice to all; enhance good governance and shared values; promote transparency, independence, impartiality, integrity, accountability; promote a culture of human rights, freedom, tolerance and peaceful co-existence; promote and protect the welfare and dignity of judges in the member countries.

He proudly highlighted training collaborations between the KJA and the Judicial Institute for Africa (JIFA), one of SCAJF's affiliate institutions, through judicial exchange programs conducted in Cape Town South Africa and Judgment writing clinics scheduled in the year 2022/2023.

In conclusion, the Judge invited the delegates to engage in insightful and fruitful deliberations, to enjoy Kenya's warm weather, hospitality and stunning tourist destinations. The Justice's Welcome Remarks are attached herein as **Annex 2**.

2.1.2 Remarks by Collaborating Partners

Five collaborating partners participated in the Conference, however their remarks were

delivered by their two representatives. ICJ, Kenyan Section Chairman, Mr. Protas Saende gave ICJ's remarks and its affiliate organizations and partners represented, namely; the Media Institute of Southern Africa (MISA), the Advancing Rights in Southern Africa (ARISA) and the America Bar Association (ABA). The ICJ, Kenya Chairman noted that he was honored to be part of the remarkable assembling, bringing together heads of Judiciaries from across the region to network, share experience, exchange ideas, and discuss internet governance.

He noted that with the advent of technology, the internet has become an interconnecting factor to access justice. Furthermore, he acknowledged that it is one of the most powerful tools facilitating reception of information and ideas, though creation of instant information mediums across borders and enabling interpersonal engagement of diverse views and perspectives.

Notably, it was highlighted that in 2016, the UN General Assembly declared internet access a human right, underpinning the right to access information, freedom of expression, and opinion. However, noted the Chairman ICJ Kenya, the Resolution did not address governments' responsibility to provide access to all. But instead, focused on stopping governments from violating the right. Similarly, it was illustrated that in 2019, the African Commission on Human and Peoples' Rights adopted the "*Declaration of Principles on Freedom of Expression in Africa*", further asserting or affirming the principles for anchoring the rights to freedom of expression and access to information in conformance with Article 9 of the African Charter (which guarantees individuals the right to receive information, express, and disseminate the information).

The Chairperson posited that internet shutdowns have far-reaching consequences on the people's fundamental human rights, and judicial intervention to safeguard the right to the Internet was emergent. Despite this realization, he frowned against the rampant and exponential increase of internet shutdowns and other threats to internet freedoms in the region.

Specifically, it was emphasized that: in 2019, at least 25 incidents of internet shutdown by governments were recorded in 14 African countries including Benin, Gabon, Eritrea, Liberia, Malawi, Mauritania, and Zimbabwe, while in Chad, the government suspended access to social media platforms for 472 days; in 2021, the government of Zambia shutdown access to Internet in the run-up to the general election; and between May 2020 and February 2021, the Burundi, Tanzania, and Uganda governments occasioned internet shutdowns during their general elections.

In conclusion, the Commission of Jurists, called on the Judiciaries to remain steadfast to their Constitutions, particularly in the high-stress environments such as elections and civil wars, and to be the salvo to governments that curtail the fundamental right to the internet. The

Commission of Jurists committed its unyielding support to ring-fence the independence of the Judiciaries and support continuous capacity building of Judges and Magistrates in emerging thematic areas.

The Chair, ICJ Kenya Remarks are attached herein as **Annex 3**.

Ms. Tiseke Kasambala, the Chief of Party for ARISA in her remarks agreed with the statements and expression by the Chair, ICJ Kenya. In addition, she noted that the judicial symposium was timely in view of recent technological advancement. She appreciated that the digital space was unequal especially for Africa and its citizens. The Chief of Party postulated that internet shuts downs amount to violation of the right to information and expression, guaranteed in national Constitutions, regional and international legal frameworks. Member state judiciaries were tasked and called upon to provide legal recourse to such violations and to review government decision and policies that encroach on the right to online access.

2.1.3 Remarks by the Deputy Chief Justice Philomena M. Mwilu, MGH

Hon. Lady Justice Philomena Mbete Mwilu, MGH, the Deputy Chief Justice of the Republic of Kenya & Vice President Supreme Court of Kenya thanked the Chief Justice of the Republic of Kenya hosting and the Lord Chief Justices, delegates and presenters for graciously attending the Conference. She noted that the Conference was a clear signal of SACJF's collective commitment to protecting and promoting democracy, justice, the rule of law, and fundamental human rights and advancing access to justice for the peoples in the region and across Africa as a whole.

The Deputy Chief Justice referenced to the Chief Justice of Kenya strategic vision for the Judiciary of Kenya, '**Social Transformation Through Access to Justice (STAJ)**', launched in September 2021 noting that one of its key objectives, '*deepening partnerships that enhance co-ordination in the administration of justice*', advocated for not only municipal, but also regional and international partnerships and cooperation. To this end it was celebrated that the SACJF provides an invaluable platform for learning, experience sharing, collective troubleshooting and ultimately bettering regional judiciaries.

Moreover, the Deputy Chief Justice posited that SACJF provides a formal structure and framework through which the Chief Justices of Eastern and Southern Africa collectively reflect on critical issues on the rule of law and adopt and implement action plans to address those issues in a systematic and sustainable way, with a view to strengthen justice delivery in the region. Furthermore, it was joined that the Judiciary of Kenya was eager to utilize and exploit

the vast knowledge and experiences across member state jurisdictions within the SACJF to inform realization of its objectives under the STAJ blueprint.

She highlighted challenges faced by member Judiciaries in promoting access to justice, especially in the wake of the Covid-19 pandemic, and the role played by technology in improving efficiency and efficacy in access to justice in the region. The Deputy Chief Justice further stressed the need to scrupulously interrogate and appreciate the full spectrum of challenges and opportunities that come along with technology and digitisation processes. In her closing remark, she welcomed the delegates to Kenya and wished them robust and constructive engagements.

The Deputy Chief Justice's Remarks are attached herein as **Annex 4**.

2.1.4 Official Opening Address by the Hon. Chief Justice Martha K. Koome EGH

The Hon. Justice Martha K. Koome, EGH, the Chief Justice of the Republic of Kenya and President of the Supreme Court of Kenya, on behalf of the Judiciary of Kenya warmly welcomed the Chief Justices from participating republics, Judges and Judicial Officers and all guests, to the Conference. She quoted the Cameroonian philosopher and political theorist *Achille Mbembe*: "No African is a Foreigner in Africa." The Chief Justice noted that the Kenyan Judiciary was honored to host the 2022 SACJF Management Committee Meeting and Judicial Symposium.

The importance of digitisation and the internet was emphasised as; a key ingredient for modernisation of public and private sector processes; crucial for enhancing efficiency in service delivery; and central for the realisation of the goal of agile government processes that are expeditious, efficient, flexible and responsive. The Chief Justice indicated that to achieve these benefits, courts across the region have embraced virtual courts, e-filing and electronic case management systems. It was further appreciated that various sectors of the society and economy have incorporated integration of the Internet, software, social media platforms, algorithms, and digital devices.

It was reinforced that even as the region and their respective judiciaries embrace technology and digitization, it was paramount to acknowledge the reality that digital technologies and the internet also have a "dark face/or dark side", with significant risks. The dark side was highlighted to include, first, internet shutdowns by governments. Second, the reality that big technology companies (private technology platforms such as Amazon, Google, Facebook, Apple, Uber, Twitter, YouTube, Microsoft, and Airbnb) have amassed significant power due to reliance on these technologies, hence enjoy unchecked and unregulated monopoly, setting unchecked parameters of access to markets and freedom of expression through their proprietary algorithms. Third, the use of technology or social platforms to divide societies and polarize

political systems. Lastly, was the abuse of digital technologies and the internet to exploit children through child pornography and child trafficking and other vulnerable group in the society.

In this context, the Chief Justice augmented the imperative to oversight and regulate the use of digital technologies and the internet through, governance mechanisms that are democratic, participatory, deliberative and inclusive. As a result, the obligation to develop a framework for governing digitisation, the internet and the impact of digital technologies and their relationship between citizens, private enterprises, and the state, was strongly advocated for.

It was the Chief Justice's argument that the digital world should be approached as a global common or public good (that is essentially, a common or shared commodity, asset or resource). Under such a concept, it was expounded, the problems associated with digitisation and the internet such as cybercrimes, misinformation, political propaganda, and the propagation of hate speech, are polluters of the common/shared resources. She equated this concept to the influential and widely known concept by Garret Hardin, "*The Tragedy of the Commons*", whose import is that ungoverned consumption or exploitation of a shared resource by individuals seeking to maximize their individual gain often has the consequence of running or destroying the common resource.

Additionally, it was the Chief Justice's call to the judiciaries in the region to enforce formulated standards in disputes regarding the justification, legality and proportionality of state measures. Consequently, it was noted that judicial intervention in disputes over the governance of the digital world ought to take into account and promote human rights, social justice and the imperative of public participation and input.

In conclusion, the Chief Justice challenged the delegates to think through how to design regulatory frameworks and adopt approaches to judicial intervention in disputes over digitisation and internet governance that ensure digital technologies and the internet work for the greatest benefit of the society.

The Chief Justice's Official Opening Remarks are attached herein as **Annex 5**.

2.1.5 Keynote Address by Hon. Chief Justice Peter Shivute

The Hon. Justice Peter Shivute, Chief Justice Republic of Namibia and Chairperson, Southern Africa Chief Justices Forum, expressed on behalf of SACJF, unreserved gratitude to the Judiciary of Kenya for graciously hosting the Conference, for the warm welcome and hospitality

in true authentic African tradition. The Chairperson similarly gave special appreciations to collaborating partners for their technical and financial support in hosting the two-day long judicial Symposium.

He shared a brief description of SACJF, its management Committee and its objectives, including to promote contacts and mutual co-operation among the judiciaries in the East and Southern African sub-regions, promote the rule of law, democracy and the independence of the courts in the sub-regions, promote and protect the welfare and dignity of judges in the Member States, as well as to promote the interests of the judiciaries of Member States.

On the theme of the symposium, it was the Chairperson's note that the same was informed by global growing concerns, over unjustified restrictions of access and use of internet services. On this note, it was urged that access to information, freedom of opinion and expression lies at the core of the very notion of democracy and good governance, and is crucial to effective respect for human rights.

Consequently, the Chairperson traced the right to freedom of expression and information back to; Article 19 of the UN General Assembly of the Universal Declaration of Human Rights in 1948, which provides that *'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'*; to Article 19 of the International Covenant on Civil and Political Rights; Article 9 of the African (BANJUL) Charter on Human and Peoples' Rights; Declaration of Principles on Freedom of Expression and Access to Information in Africa, which is in conformity with the BANJUL Charter.

He noted that these rights have further been reaffirmed in human rights instruments safeguarding promotion of access to information in the African continent and internationally. The following instrument were highlighted: the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Report of May 2011, which released 88 recommendations on the promotion and protection of the right to freedom of expression online, including several to secure access to the internet for all; the United Nations non-binding resolution condemning States that intentionally disrupt an individual's internet access; and the UN Resolution 38/7 on the promotion, protection and enjoyment of human rights on the internet, adopted during the 38th session of the Human Rights Council held in 2018.

He also emphasized that the link between human rights and constitutional order led to the adoption of constitutions, in many parts of the world, containing a Bill of Rights giving effect to the fundamental rights as articulated by international and regional human rights instruments.

Thereafter, the Chief Justice of Namibia stated that in any democracy, the rule of law and respect for human rights are essential components for a stable and democratic State. Similarly, that Human rights are at the heart of the constitutional order of a modern State, not only determining relationships between the individual, groups and the State, but also permeating State structures, and decision-making and oversight processes.

Consequently, it was maintained, the Judiciary, as one of the organs of the State, is entrusted with the onerous task of to act as arbiters of disputes and interpreters of the law, in the process maintaining the rule of law and promoting and protecting fundamental human rights of the people.

Closing his remarks, the Chairperson was certain that the Conference was an invaluable platform for its delegates and resource persons to deliberate on the role of the judiciary in protecting and maintaining online (internet) freedoms in line with regional and international standards.

The Chief Justice's Key Note Address is attached herein as **Annex 6**.

3.0 SESSION TWO:

3.1 High Level Panel Segment, Digital Transformation of Judiciaries in Africa and Experiences in the Face of the Covid-19 Pandemic

In this session, the Chief Justices in attendance gave brief interventions on digital transformation of their judiciaries as well as their experiences in the face of the Covid-19 pandemic. The respective Chief Justices brief interventions was as follows:

3.1.1 Justice Terence T. Ronnowane, Chief Justice of the Republic of Botswana

To set this discussion into context, the session moderator Hon Justice Terence Ronnowane, defined the term Digitisation as the conversion of information from analog data into digital format which is computer-readable.

The Chief Justice highlighted the Judiciary of Botswana's digitisation journey. He noted that the Judiciary initiated several projects to fully digitise its processes with a view to expedite service delivery and access to justice. Such projects were noted to include real-time court reporting and virtual court hearings through the Webinar Technology, installed in courtrooms in Gaborone, Lobatse and Francistown High Court Divisions among others. It was stated that the real-time reporting and adoption of new technologies made court proceedings available within hours of conclusion of court hearings greatly improving access to justice through reduced the court proceedings transcription backlog. It was noted that as a result, it expedited hearing and adjudication of any emanating appeals.

Other highlighted digitisation approaches in Botswana included; digital signatures for court records; digital registration of court cases and filing of court cases; upgrading of WIFI facilities in all High Court Divisions; usage of the e-filing platform underway upon consultation with stakeholders in the justice system; court records implementation management systems; court records management system (CRMS) implemented in 2005, for easy retrieving of court files as per Practice Directive 2 and 3 of 2020 (informed by the covid-19 pandemic), Courts can inform parties of hearings via email and Courts can conduct case management meetings, utilize video conferencing such as WebEx for hearings where possible and deliver judgments through live streaming and video conferencing services.

The following challenges were highlighted: unavailability of scanned documents to the public, which could only be availed upon application and request thereof. It was also decreed that to fully implement digitisation, the Botswana's Judiciary has incurred high financial outlay in

information technology hardware and software throughout the courts. Finally, lack of proper digitisation regulatory framework including lack of robust privacy laws in Botswana, as well as internet inaccessibility and non-inclusiveness was addressed. To this end, it was regretted that only 30% of the people of Botswana have access to the internet and access justice through the evolving digital space.

3.1.2 Hon. Justice Bheki Maphalala, Chief Justice of the Kingdom of Eswatini

While opening his interventions, the Chief Justice appreciated the humanitarian support extended to other continents, but observed that the same treatment has not be extended to African countries suffering the same fate of wars, poverty and economic collapse. In the same breath, he highlighted the discriminate treatment and lack of protection of African students trapped in Ukraine, who have been unlawfully detained and denied the right of safe return to Africa, in the wake of Russia's invasion to Ukraine. He regretted that the world is not treating humanitarian equally.

As pertains digitisation, the Chief Justice noted that it provides a digital infrastructure and online platforms for delivering access to justice, improving efficiency, effectiveness and accountability of the judiciaries. The Chief Justice underpinned that electronic case management was one such intervention in the Kingdom of Eswatini, which enabled electronic filing of documents and pleadings, exchange of pleadings between litigants, allocation of cases to judges and delivery of judgments. However, he noted that due to financial constraints, the projects were still at an elementary stage.

Remote access of criminal remands for court proceedings was also underscored. It was noted that the Eswatini judiciary was working with Non-governmental Organisations, to establish and install necessary remote remand project infrastructure. Once completed, it was stated, access to justice by inmates would be greatly enabled. The Chief Justice also noted that virtual hearings were ongoing, mostly at the High Court and the Supreme Court. It was stated that even if this development was entirely necessitated by the pandemic, it was greatly effective.

As regards challenges, it was observed that to achieve digitisation, judiciaries must address the issue of hardware, software and security components; access to digital platforms to stakeholders in the justice sector; data organisation and governance; database and information security legislation; and legislative framework governing digital spaces and information technology.

The Chief Justice shared that in May 2022, a full bench of the Kingdom of Eswatini had

determined that the Constitution of 2005 (the Kingdom of Eswatini) under sections 24 and 25 guaranteed the right to process of thought, conscious and freedom of expression and that the rights of individuals guaranteed by the constitution are continually protected by the courts. In conclusion, he noted that the decision would go a long way in protecting the people of the Kingdom of Eswatini from government instigated internet shutdowns and interruptions.

3.1.3 Hon. Justice Rizine Mzikamanda, SC, Chief Justice of the Republic of Malawi

The Chief Justice agreed that the symposium was particularly relevant, more so because the judiciary of Malawi had a long way to go in terms of digitisation. It was the Chief Justice's intervention that Malawi had in place an E-management system, instituted in collaboration with the of Europe Union, on a pilot basis at the Supreme Court and its registries.

Similarly, he indicated that upon his recent appointment as the Chief Justice of Malawi, he had instituted an E-justice Committee, headed by one of the Supreme Court justices, who had prior to his appointment, showed a lot of interest in judicial digitisation. It was his hope that this Committee would steer and help forge way for the Malawian judiciary in implementing a working and efficient E-Justice platform for its citizens.

It was posited that the first main challenge to judicial digitisation in Malawi had been the lack of interest in the process especially by traditionalist judicial officers, who view technology as an inconvenience. He noted that to persuade the traditionalist to adopt and embrace technology was an uphill task yet in its laws of procedure, Malawi has stipulated the requirement to move towards E-justice. He added that the Malawian judiciary was making concerted effort despite the challenge of resistance.

The second challenge was financial restrains especially in the Covid-19 wake, and third was unreliable internet connectivity. Therefore, the Chief Justice appreciated the necessity of crafting extensive ways for launching and maintaining an E-justice platform in Malawi. He stated that the judicial symposium was very timely and he hoped to learn from his counterparts who had enough experience and working e-justice and court digitisation processes.

As regards internet shutdown and abuse by the government, the Chief Justice stated that the same had not occurred in Malawi. However, he singled out internet shutdowns as a digitisation pollutant especially within Africa, at the same time appreciating the depravity of improper internet use by non-government and private individual.

In conclusion, he congratulated all the judiciaries in attendance, especially those that had

made enviable strides in launching and maintaining working E-justice platforms, and had in place sound legal frameworks for digitisation. He noted that he had learnt instrumental lessons and experiences and hoped to apply the same to his jurisdiction. Furthermore, the Chief Justice advocated for formulation of legal frameworks, regulatory procedures and policies, guaranteeing the right of internet access, right to information and expression, ensuring protection of digitisation as a tool for social transformation, and at the same time guarding it against abuse.

3.1.4 Hon. Justice (Dr.) Adelino M. Muchanga, Chief Justice of the Republic of Mozambique

The Chief Justice of Mozambique stated that his country had in the recent times experienced raising case backlog and digitisation was of great importance in ensuring improved access to justice. It was highlighted that in 2007, Mozambique introduced its E-Case Management, which was under improvement, to support e-filing as an additional feature. The Chief Justice noted that with support from the EU and other partners, Mozambique was in the process of implementing a system capable of recording and managing court proceedings, expected to pilot in 2022.

It was the Chief Justice's presentation that just like Malawi, Mozambique had in place a digitisation Committee, led by Justice Simbini, a judge of the Supreme Court and comprised of specialists in Information Technology and other corollary disciplines. He invited other Judiciaries to set up similar committees, to regulate digitisation. It was communicated that first, the Committee had come up with proposals for special laws and regulations specially to regulate recording of proceedings. Second that it was formulating a Code of Conduct to regulate social media engagement by judges, judicial officers and other court officials.

The Chief Justice with the permission of the Chairperson SACJF made a proposal/recommendation, to develop a regional approach to digitisation and internet governance, and to establish Digitisation Committees within the judiciaries in the region, to act as networks for exchange of information, discussion of challenges, wins and experiences, to share ideas and develop together as a region in the digitisation journey. He concluded by noting that such a proposal could be in line with other regional jurisdictions that have set out boards for dealing with judicial digitisation and other auxiliary themes on access to justice.

3.1.5 Hon. Justice Ronny James Govinden, Chief Justice of the Republic of Seychelles

The Chief Justice of Seychelles started his intervention by noting that Seychelles' small jurisdiction and size was both an advantage and disadvantage, when it came to its digitisation

of the judiciary. He stated that Seychelles had kick started the digitisation journey, prior to the advent of the Covid-19 pandemic through video conferencing and virtual court hearing.

It was however noted that as a result of the pandemic, this tool/infrastructure was used more extensively especially with: virtual hearings where witnesses were out of the jurisdiction; remanding of prisoners who had been detained was also conducted virtually, especially on matters of extension of time; and jury virtual hearings when dictated by circumstances. The Chief Justice further highlighted that Seychelles' judicial meetings and pre-trial conferencing were held virtually; the court's interpretation, especially by interpreters who were overseas was virtual; digital access of court records documents to the public and participants in the case; and implementation of the digital case management system. He noted that Seychelles was contemplating making provisions for online assessment and payment of court fees or fines at the Supreme Court's Accounts section.

The Chief Justice commended that with the Covid-19 pandemic, these platforms had been instrumental in facilitating access justice, providing court statistics and had received support from judges, advocates and litigants.

However, it was underscored that challenges to digitisation remain, including: taking away the capacity of judicial officers' appreciation of witness weight or import in criminal or even civil matters, especially evaluation of their demeanor, more so when proceedings were virtual; increased possibility of interference and security of the system; unstable internet systems connectivity; technological failures and challenges; and occasional delays and interruption of the justice system or access to justice.

In conclusion it was the Chief Justice's intervention that digitisation and technology should not take away human rights and freedoms, but instead should complement them. He therefore advocated for necessary adjustments to ensure these rights are upheld at any given time.

3.1.6 Hon. Chief Justice (Prof.) Ibrahim Juma, Chief Justice of the United Republic of Tanzania

The Chief Justice in his opening summary commended the Chief Justice of the Republic of Kenya on the STAJ and noted that the same contextualised the role of digital transformation as a key to facilitate access to justice. In his interventions, the Chief Justice stated that the High Court of Tanzania had celebrated 100 years in 2021 since the establishment of its legal system.

Looking back to early 20th century, in the colonial times, the Chief Justice noted that the system of justice was inaccessible to Africans. He compared this situation to the current times and

appreciated that there existed various avenues for access to justice. He specifically noted that technology and digitisation had contributed to the 21st Century success in accessing justice.

The Chief Justice stated that digitisation in Tanzania began in 2015, in its Strategic planning when it was agreed that in an expansive country as was the case, digitisation was a crucial judicial reform in ensuring access to justice. He noted that it had been his country's intention that digitisation would be a fundamental tool for access to justice, even before Covid-19 pandemic.

The Chief Justice also highlighted the area of Judiciary funding, which he noted was crucial. On this note, he stated that in Tanzania, access to justice, rule of law and good governance was engraved in its national vision and development plans. He detailed that the Tanzanian judiciary had made a strong case for funding from the National Government. He added that his judiciary had made it a routine to keenly survey the national government's actions geared towards implementing the country's vision or five-year plan, always advocating and making its case for inclusion in all national funding projects. It was noted that as a result, the judiciary of Tanzania had been included in Tanzania's national digitisation project such as the fiber optical cables project which was its main internet highway.

Moreover, the Chief Justice illustrated that in collaboration with the World Bank, he projected to ensure internet connectivity of 50% of Tanzania Courts in June 2026. It was also noted that as at the time of the Conference, all District Court were 98% connected, Magistrates Courts were 90%, High Court was 99% and Court of appeal was 100% connected to the national internet broadband project. Unfortunately, it was regretted that the primary courts/people's court, which forms the bulk of the matters was only 1% connected.

The Chief Justice recommended the five-year development of home-grown solutions by supporting software developed by local developers in African Judiciaries, such as the Kenyan and Tanzanian ICT Departments, to help curb the expense of purchasing software from the big technology companies that have unchecked monopoly such as Microsoft and google. The Chief Justices strongly agreed with the recommendation by the Chief Justice of Mozambique that at the regional level, judiciaries should create linkages, to share experiences, success and even failures as part of a regional approach to digitisation.

Second, the Chief Justice proposed the development of technology and digitisation skills within the region's judiciaries by training users of the digitisation market or resources including judges, magistrates, lawyers and litigants, in various skills including; basic skills in order to navigate through the digital space; standard skills, which are more advance such as using arithmetic

formula skills; and advanced skills, which include computer programming for lawyers. This, he noted was informed by the International Telecommunication Union (ITU) Reports which issued periodic review of digitisation process in Africa

In conclusion, the Chief Justice noted that there was the need to re-engineer court process that had been primarily paper based to digital based approaches, to access to justice at all times.

3.1.7 Hon. Justice (Dr.) Mumba Malila, SC, Chief Justice of the Republic of Zambia

The Chief Justice expressed that the symposium was timely as it was scheduled after the disruptions occasioned by the Covid-19 pandemic. He noted that it was an opportunity for regional judiciaries to share digitisation experiences and identify good practices to emulate. It was noted that there was increased digitisation by judiciaries and governments during the pandemic, such as rolling out e-government services; paperless process and procedures; e-procurement; e-registries; the use of smart based Web-office applications and operation; mobile money interoperability.

He explained that with these digital developments, arose accompanying challenges such as human right and governance issues. First it was noted that digitisation had expanded the menu of court disputes including breach of data, issues on cyber-security challenges. In reaction it was noted that some jurisdictions had put in place cyber-security and data protection laws and regulation.

The region judiciaries were challenged to embrace and use the internet and digitisation to ensure access to justice, improve efficiency and effectiveness by nurturing E-justice E-filing platform and the management of filing, documents and virtual hearings.

Challenges in Zambia were underscored, first, internet illiteracy, especially in the rural areas and by some lawyers, judges and judicial officers who have resisted digitisation. Second, lack of internet accessibility and inclusiveness was expounded. Third, limited court spaces and infrastructure. Fourth was lack of adequate funding and competing high costs of implementation, for example, exorbitant and colossal software costs required to fully implement digitisation.

Therefore, the Chief Justice supported the recommendation by the Chief Justice of Tanzania, to make it a prerequisite to empower regional information Communications Technology companies, departments within regional judiciaries and personalities who would in effect create avenues for cheaper software options to support regional digitisation journey.

In conclusion, the Chief Justice underlined the following, that, first Judiciaries in the region had a vital role to play in digitisation that is effective, efficient and advance access to justice. To this end, it was recommended that judiciaries in the region must understand the legal regime, both national, regional and international to ensure compliance to enhance access to justice rather than override it.

Two key action points were emphasised by the Chief Justice, first was the approach for setting up Digitisation Committees, as was the case in Malawi and Botswana. He supported the recommendation by the Chief Justice of Mozambique that as a region, it would be prudent to grow such committees to regional frontiers for purposes of creating a network to share and exchange information, as well as to move and grow together as a region.

A second take away was the proposal by the Chief Justice of the United Republic of Tanzania to prioritize training of judicial officers and staff, at least at the basic level.

3.1.8 Hon. Justice Luke Malaba, Chief Justice of the Republic of Zimbabwe

The Chief Justice agreed with previous interpositions that digitisation was a fundamental aspect in access to justice and emphasized the role of the judiciary in promoting access to justice.

In giving his interventions, he noted that Zimbabwe, was guided by four philosophical approaches to justice. First, the importance of an effective efficient judiciary. Under this philosophy, it was noted the fundamental principle embraced not just the systematic institution efficiency, but also the people as effective beneficiaries of the judicial process. Judicial members were therefore challenged to move with the digital changes which, move was not discretionary, but mandatory by virtue of occupation of the office of a judge. Second, was the principle of the right to access quality, efficient and effective justice. In this respect, it was noted that there was a symbiotic relation between occupation of the office of a judge or judicial officer and access to justice.

Consequently, it was expressed that the judiciary of Zimbabwe had adopted a number of approaches to achieve these principles. Foremost, it was explained that there was an institutional responsibility to ensure judges and judicial officers are effective in the discharge of their mandate. Accordingly, it was expounded that the Zimbabwe Judicial Commission comprised of a number of professionals, lawyers, judges was established to give guidance on the administration of justice in the country.

For example, it was emphasized that there was continuous judicial training through the Zimbabwe Institute of Judicial Training, where Judges are sensitized and trained on areas of digitisation and technological development. The Chief Justice esteemed that to ensure efficiency, his judiciary had put in place a Continuous Performance and Evaluation tool of judges and judicial officers, borrowed from a bench marking exercise in Kenya.

It was indicated that digitisation in Zimbabwe was an obligatory process, which dictates constant change with technological demands. The Chief Justice thereafter specified that the Zimbabwean judiciary had implemented an independent commercial court, which was deliberately targeted for the implementation of a paperless judicial system.

Moreover, it was indicated that there was in place an integrated electronic case management system, which was a web-based system integrating all the courts in the country. The Chief Justice noted that due to its massive size, implementation was in phases. The first phase was to be commission on 6th May, 2022 at the Commercial Court, Supreme Court and the Constitutional Courts and soon thereafter, a second phase targeting all the other court in the country, that is other divisions of High Court, Labor courts, Administrative Courts, etc.

The Chief Justice illustrated that the system further integrates all justice system stakeholders, such as lawyers, prisons, prosecutions, the Attorney General and the public through the use of the electronics gadget once registered as a user.

For users without internet access or who lacked skills, it was celebrated that there was in place e-filing centers at all magistrates' courts with personnel designated to give assistance on how to use the system. It was also noted that the Zimbabwean judiciary had embarked on massive training of stakeholders and mandatory training for judges and judicial officers either in the morning, afternoon or evening, depending on their availability, to ensure efficiency in the system.

3.1.9 Hon. Justice Khamis Ramadhan Abdalla, Chief Justice of the Republic of Zanzibar

The Chief Justice pointed out that Zanzibar is an autonomous island with its judiciary independent from that of the United Republic of Tanzania. He noted that Zanzibar was at an informative stage of digitisation under the mentorship of the Chief Justice of Tanzania. He stated that his judiciary was making policies and laws to govern digitisation. It was also articulated that Zanzibar had conducted a need evaluation assessment and user evaluation with a view to move towards digitisation and align the judiciary with Zanzibar's national blue economy projects. It was noted that the digitisation process was expected to roll out in July 2022.

To this end he noted that the symposium was timely and provided a forum to learn from experiences, wins and challenges of the region's Judiciaries.

3.1.10 Hon. Justice Martha K. Koome, EGH, Chief Justice of the Republic of Kenya

Speaking of the Kenya Judiciary, the Chief Justice of Kenya and the President of the Supreme Court of Kenya noted that the pandemic accelerated Kenya's Judiciary Digitisation Agenda. The Chief Justice discussed measures and strategies adopted by the Kenyan Judiciary to ensure access to justice during the pandemic. First it was expounded that the judiciary; rapidly rolled out virtual courts through on-line meeting platforms, such as Microsoft Teams, Cisco WebEx, Zoom and Go-to-Meet to keep courts operational in the intermitted physical lockdown

Second was the introduction of the electronic-filing of court pleadings, through a homegrown solution developed by the Judiciary ICT department team and piloted in May 2020 at the Commercial Division of the High Court and later rolled out to all other courts and tribunals. It was noted that the system allowed court users to submit court documents electronically through an online portal.

Third was the case tracking system, an automated system that helped court executives keep case processing on track by identifying delays in individual cases and bringing to light any bottlenecks in the system. Like e-filing, it was noted that the Case Tracking System was internally developed and piloted at the High Court Commercial and Tax Division of the High Court at Nairobi in 2017.

Fourth was the court services automation services, through the Judiciary Financial Management Information System (JFMIS), a revenue collection and disbursement system that, to a large extent, had eradicated fraud, and reduced human error. It was noted that the system had been rolled out in all Court Stations in Kenya.

The Chief Justice further highlighted digitisation challenges in Kenya. Digital exclusion was discussed as one of the main challenges. To curb this challenge, the Chief Justice noted that the Kenyan judiciary had: introduced the use of Huduma Centers (the Government's decentralized "service" centers) to facilitate access to internet for e-filing and virtual courts; introduced the use of Constituency Innovation Hubs (CIH) that had internet connectivity; ensured services offered were in formats accessible through mobile-friendly formats; leveraged on mobile devices in bridging access gaps, hence litigant notification on court dates and proceedings were SMS based; undertaken phased roll out of online services depending on regional accessibility

to reliable internet bandwidth and electricity supply; involved an Inter-Agency Virtual Booths/ centers in Prisons to enable remandees to attend court proceedings virtually with guaranteed access to computers and internet; and ensured all court websites (including e-filing platforms) were designed with mobile-friendly interfaces

In conclusion, the Chief Justice emphasized that leveraging on technology had been the main mechanism and strategy deployed by the Kenyan Judiciary to mitigate and respond to the effects of the Covid-19 pandemic. Nevertheless, it was noted that the judiciaries must take into account the potential of digital exclusion that might hamper access to justice by the indigent and vulnerable members of the society.

The future was underpinned that digitisation in Kenya would continue to be a central focus in judicial processes and in the administration of justice, considering that leveraging technology in the delivery of justice was a key anchor of the 'Social Transformation through Access to Justice (STAJ)

The Chief Justice of Kenya Interventions are attached herein as **Annex 7**.

3.1.11 Hon. Justice Peter Shivute, Chief Justice of the Republic of Namibia and Chairperson, SACJF

In brief, the Chief Justice stated that Namibia introduced a filing system, known as the E-justice in 2016, in collaboration with a company based in Singapore. The project was undertaken on purely commercial basis and was up and running. It was explained that using this system, lawyers were not required to appear in court unless when called to in special circumstances. Moreover, that parties would file documents online and conference online. For the public or litigants appearing in person, it was noted that there was a customer care office at the court premises which allowed them to access the system at a fee.

The Chief Justice detailed that the e-justice project was piloted in the High Court, was working exceptionally well, with plans to deploy it to the lower courts. It was also noted that the Namibian Judiciary had signed a consortium, with the Center of Federal Courts in the USA and a court appointed, to evaluate the working of the system before deploying it to the lower courts.

The Chief Justice concluded by adding that virtual hearings were introduced with the onset the covid-19, and had been rolled out at the High Court and Supreme Court.

3.2 Interactive Plenary and Reactions to Plenary

The presentations and interventions on judiciary digitisation by the Chief Justices were appreciated as invaluable resource material, and a request was made to have the same shared for future reference.

Various common issues as far as judicial digitisation was concerned were addressed. The prerequisite to promote digital literacy of the judiciary and stakeholders in the justice sector was reaffirmed as an important component of digitisation.

The duty and obligation to pave way for legislation and regulations that ensured access to justice, data protection and right to privacy in the wake of judiciary digitisation was advocated.

Moreover, judiciaries were urged to take into perspective the vulnerability of the digital world and technology and the issue of cyber-security. To curb inequality in digitisation and access to digital infrastructure, a proposal was floated to involve the private actors, international actors and states or civil societies in the digital world to as ensure digital equality.

The conduct of criminal trials in the digitisation era was identified as an area that required attention to ensure human rights are not negated in the process of court digitisation. This was identified as a rich area for collaboration and partnership with the national government and private sector to ensure the process on digitisation is effective, efficient and protects the right to fair hearing and access to justice.

Finally, there was a proposal to amend rules of procedure to make room and accommodate digitisation at all-time ensuring that the rule of law and respective constitutions are upheld.

4.0 SESSION THREE:

4.1 Internet Freedoms

This session incorporated a presentation by Mr. Tabani Moyo of the Media Institute of Southern Africa, on internet freedoms, highlighting the regional and international standards on the protection of internet freedoms. It further included contributions by Ms. Hlengiwe Dhubé and Dr. Justice Alfred Mavedzengé as discussants. The panelists' Bio was as per the annexed programme. The session was moderated by **Hon. Chief Justice (Prof.) Ibrahim Juma**, Chief Justice of the United Republic of Tanzania.

4.1.1 Regional and International Standards on the Protection of Internet Freedoms

Mr. Tabani Moyo defined internet freedoms as human and legal rights that allow people to access digital media, electronic devices and telecommunication networks; or the protection of the right to privacy, access to information and freedom of online expression, with key developments including freedom of association, freedom of assembly, freedom to demonstrate and petition-reference to online movements.

Digital freedoms were underscored to include digital rights, rights to internet access, internet neutrality online rights, freedom to connect, digital freedom, and freedom from internet censorship, use of digital tools and platforms, digital literacy and access to information.

Moreover, the international and regional legal framework on internet freedoms was underlined to name a few: the UN General Assembly Resolution of 2013 on the right to privacy in the digital right age; the African Union Convention on Cyber-security and Personal Data Protection 2014; the Model Law on Access to Information in Africa 2013, especially on judicial oversight; Banjul Declaration; the African Charter on Human and People's Rights; Windhoek Declaration on independent and diverse media 1991; the 41st session of the UNESCO General Conference (2021) which endorsed the principles of the Windhoek Declaration on Information as a Public Good; and the Revised ACHPR Declaration on Principles of Access to Information and Expression of 2002, 2012, 2016 and 2020- which were amended to capture internet rights as rights that must be protected. The presenter noted that as a result of the legal framework discussed, there was no legal demarcation between traditional and modern media rights.

He further elucidated regional and international standards guarding against internet's threats. On this note, it was explained that the U.N. Human Rights Committee, General Comment No. 34 and the UNHRC Resolution on the promotion, protection and enjoyment of human rights on

the internet (A/HRC/Res/32/13), affirm the importance of applying a rights-based approach in providing and expanding access to the internet and requires that restrictions on online speech must be strictly necessary and proportionate to achieve a legitimate purpose. It was clarified that disproportionate shutdowns, by contrast, unreasonably impact all users, and unnecessarily restrict access to information and emergency services communications during critical moments.

Furthermore, it was recognized that first, the United Nations (UN) General Assembly Resolution on the right to privacy in the digital age, adopted by consensus on 18th December 2014, called on all states *“to review their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law.”*

Second, the Principle 2 of the African Declaration on Internet Rights and Freedoms Access to the internet requires that everyone should enjoy unrestricted access to the internet, and that any shutting down – or blocking – of access to social networking platforms and in fact, the internet in general, constitutes a direct interference with this right. Lastly, that Article 19(2) of the International Covenant on Civil and Political Rights, guarantees that the right to freedom of expression applies regardless of frontiers and through any media of one’s choice.

On jurisprudence affirming the protection of the right to internet, the decisions of ***Kalda v Estonia, European Court of Human Rights*** (application no. 17429/10); ***Bhasin v Union of India and Others AIR 2020 SC 1308 [1]s, Supreme Court of India*** and ***Azad v Union of India and Others, 1996 AIR 845, 1995 SCC Supl. (3) 426 Supreme Court of India*** were highlighted.

However, despite the existence of adequate definitions, international, regional legal frameworks, clearly settled regional and international standards and jurisprudence as discoursed, it was regretted that internet freedom threats were rampant in the region. The following breaches and key threats were noted: Internet shutdowns and throttling of the internet; Censorship; Surveillance; Internet access and affordability; application of existing criminal laws to online expression; and the creation of new laws specifically designed to criminalise expression on the internet under the guise of protecting individual reputation, national security or countering terrorism; and illegal spyware as was the case in South Africa and Zimbabwe.

Therefore, Judiciaries in the region were tasked to hand down judgements that addressed internet freedom issues on merits, to provide oversight on issuance of warrants for interception or deployment of any surveillance tools and to enforce three-pronged test on any limitation of

rights, to wit, legality, legitimacy, proportionality and necessity.

In conclusion, the following recommendations were offered:

1. Domestication, continuous monitoring and adherence to the letter and spirit of international frameworks that protect and promote the enjoyment of rights related to telecommunications;
2. Uphold regional and international frameworks in handling cases of digital rights;
3. Participation in budgeting processes and advocating for resources allocation towards infrastructure development;
4. Resilience of the judiciary as pressure mounts from deferent interest that undermine digital rights;
5. Progressive rulings on enjoyment of human and internet rights to allow active citizen participation in national processes;
6. Safeguard the internet as a cost-effective communication platform for safe and secure use by the citizens; and
7. Prioritize litigation cases to promote internet freedoms especially as countries in southern Africa enact claw back laws that threatens internet freedoms.

This presentation is attached herein as **Annex 8**.

Consequently, **Ms. Hlengiwe Dube** agreed with the presentation and only highlighted a few other features of internet threats, internet governance, access to justice, and creation of pathways to poverty reduction and political participation. She noted that there was a requirement for disclosure as a drive to access to information.

It was discussed that Principle 30 of the UN Declaration of Human and People's Rights underscores the prerequisite to organize and present information in a manner accessible to its consumers. Therefore, the requirement to process, create and keep information and records in a manner that facilitates access and takes into consideration unique requirement of different people in the society was underscored.

Meaningful, equitable and affordable access to information was considered critical. It was noted that the cost of data in Africa was extremely prohibitive requiring measures to ensure affordability. The children and the internet were identified as another fundamental area. It was noted that as a region, there was a duty to formulate regulation and laws that strike a balance between child protection, internet restrictions and children's rights to privacy.

Lastly, the right of people living with disability was discussed. She underlined that people with disability make 15 % of the world population with 80% of this population residing in Africa and other developing countries. Therefore, the region was called upon to come up regulations to ensure that they too are able to access the internet, to promote inclusivity and accessibility for all.

The America case of ***National Association for the Deaf v. Netflix, Inc, the U.S. District Court for the District of Massachusetts***, claiming their right to access the content on Netflix was discussed. It was noted that the District Court granted prayers sought which was the genesis of live streaming of the Netflix content. It held that Netflix's Internet video-streaming service, known as "Watch Instantly," constituted a place of public accommodation that must ensure accessibility for the disabled.

Similarly, ***Dr. Justice Alfred Mavedzenge*** agreed with the presentation by the two presenters especially on what internet freedom entail. He only addressed the following issues.

First, the significance of internet rights and freedoms, from a practical and philosophical discussion and conversation. He noted these entails the enjoyment of all the rights that are enshrined in the regions' constitutional dispensation such as access to information, freedom of expression, social economic rights and the like. It is was explained that internet rights and freedoms are intertwined with all the basic rights and for example the right to health care could not be guaranteed without access to the internet, to book an appointment, or call emergency helplines.

Second, duties of the court in the protection of internet right and freedoms was discussed as entailing all the duties that accrue to all the other human rights and freedoms, to respect, promote and fulfill. On the right to fulfill, the duty and obligation on the state to ensure access to internet was emphasised. Noting that in Africa 78% of the population is not able to access internet.

Third, the challenges or restrictions of the internet rights was underlined, including internet shutdowns, throttling of internet speed, interference with the right to digital privacy through spywares and partial interruptions. Moreover, the government's duty to protect and promote accessible and availability of internet was further detailed.

Fourth, was the discussion on standards and guidelines on internet restriction and limitation, where it was acknowledged that internet rights are not absolute but limited. However, it was noted that any limitation or restrictions must be legitimate (lawful because without the laws

you cannot implement any restrictions), must be strictly necessary to achieve a legitimate purpose and must be proportional to the legitimate expectations of the imitation.

It was concluded that in any case, shutdowns are neither necessary nor effective at achieving a legitimate aim, as they block the spread of information, contribute to confusion and disorder, and obstruct public safety.

4.2 Interactive Plenary

In plenary, digital inclusivity, accessibility and affordability was re-emphasized as wanting in the region. In comparison it was noted that in the UK internet connectivity was 95% and in Netherlands 95%. Similarly, illiteracy, high level of poverty, unavailability of internet hardware and software and lack of stakeholders' awareness were highlighted as fundamental areas that must be addressed to promote internet rights and access to justice. Conversely, a section of the delegates queried whether universal access to internet was an ideal possibility or a lofty proposal. In the end, judiciaries in the region were challenged to promote digital inclusivity, internet literacy, accessibility and affordability within their judiciaries to uphold access to justice for all, while taking into consideration other human rights. It was noted that this would entail ensuring the content consumed in Africa was accessible to the citizens, including in their local languages.

The 'dark side' or 'pollutants' of the internet was also discussed, especially instances where the same was used to divide and polarize societies through misinformation, fake and false news, or misuse of the internet through cyber-crimes terrorism child abuse and pornography. It was pointed out that the governments must put in place proper guidelines on who is responsible for internet breaches and establish ensuing sanctions. It was noted that such government implementation could be within existing independent offices such as communications commission, which must play a critical role in ensuring legislation of laws to curb violation of the right to internet.

The Judiciaries were urged to address the issue of internet abuse, with a view to regulate and balance internet use without compromising any other citizen rights.

A concern was raised whether there exists universal regulation or international conventions regulating the right to internet as a human right. Additionally, whether there was universal accepted standard on the regulation and protection of this rights.

It was clarified that there exists international standards and universal acceptable of internet rights, imperatively interlinked to internationally recognized and protected right of access to

information and to expression. It was further explained that internet rights do not compete with other human rights, curtail or defeat other rights but are drivers for other human rights. Consequently, it was emphasised that to protect and fulfil internet right ensures the protection or attainment of other human rights.

The issue of internet standardisation especially in Africa was addressed. It was noted that there were unethical double standards, extreme internet interdependence and lack of consumer protection with regard to online products available to Africans. An analogy was drawn of the 4G internet connectivity available in Africa, compared to the 5G connectivity available in developed countries. To add to the statistics, it was also stated that the control of digital platforms, digital content and information was domiciled in the USA and Japan which resulted in difficulty in the enforcement of internet breaches and crimes in Africa.

In conclusion, it was appreciated that first, under the region constitutions it was the duty of the state to fulfil and to put in place regulatory policies. It was also noted that the role of the judiciary was to enforce non-compliance with the policies. Second that while the state must implement these policies, the private sector must work with the government to improve on the infrastructure. Third, the government must ensure accessibility, regulate exorbitant internet fees, for it was the main driver of the protection of the right to internet. Finally, that it must ensure accessibility and inclusivity in the protection of this right.

5.0 SESSION FOUR:

5.1 Internet Shutdowns and Impact on Access to Justice

This session encompassed expert panel presentations on internet shutdowns and their impact on human rights and civic space; trends in the development of African jurisprudence on internet freedoms, access to justice and technology; an African experience during and after the covid-19 pandemic; and ICJ guidelines on internet shutdowns. The expert panelists' Bio is as per the annexed programme. The session was moderated by **Hon. Justice Luke Malaba**, the Chief Justice of the Republic of Zimbabwe.

To contextualize the topic of presentation, the Chief Justice observed that the presentation could not have been more relevant and timely. He highlighted a number of fundamental principles to bear in mind. He noted that the right to internet is part and parcel of the right to freedom and expression.

Additionally, he noted that there existed limitation of most of the human rights save for the absolute rights. In any case, it was noted that such limitation must be within established principles. The Chief Justice noted that there was a right and a remedy, there was the judiciary to ensure compliance with the rights and any limitation as provided. The region judiciaries were invited to sharpen their consciousness and evaluate to what extent internet shutdowns fail within and without the limits of limitation of these rights.

5.1.1 Internet Shutdowns and their Impact on Human Rights and Civic Space by Ms. Tiseke Kasambala

As an introduction to the presentation, Ms Kasambala quoted the UK Guardian, wherein the former USA President Baraka Obama had expressed that technological institutions must be roped-in to address weakening aspects of democracy through technology. It was empirically noted that Internet shutdowns had become a blunt instrument for governments to control the flow of information in the continent, more so in recent years. This, it was noted was a result of the role extensive digital tools play in political and social life. Internet shutdowns were noted to mean technical restrictions of connectivity, distinct from other forms of censorship like blocks on social media platforms and online content removal.

Various categories of shutdowns were discussed. Foremost, it was expounded that shutdowns or blackouts, occurred where there was little to no network connectivity and halt of all systems of communication that rely on the internet, as was the case in: Ethiopia in 2019 where up to 98%

of the country internet blackout was imposed following an alleged coup attempt; Cameroon's anglophone regions which suffered a 93-day network shutdown in 2017; or Gabon's regionalized shutdown in 2019.

The second, was internet throttling by artificially slowing down the internet speed as we the case in: Zimbabwe's in July 2020, when state officials throttled internet speeds on the state-owned network TelOne for two days; and in the Democratic Republic of Congo in August 2017.

Lastly, was internet blocking which unlike shutdowns and throttling specifically targeted access to certain platforms or content as was the case in: Nigeria where the government blocked twitter for seven months; Chad's block on social media and messaging platforms for sixteen months; and Liberia's restriction of twitter, Facebook, WhatsApp, Instagram and snapchat for less than a day on 7th June, 2019

The reasons for such shutdowns were underscored to include to tamp down popular mobilization, by limiting communication; prevent the spread of news about a state's human rights violations; during elections; in the wake of unfavorable reform movements; to restrict information; to prevent cheating during exams; or the desire of governments to suppress opposition parties, protests or voters.

In conclusion it was urged that the court had a role to play in the wake of internet shutdowns; through the enforcement of digital rights and freedoms including on access to information by way of strategic determination of cases concerning internet shutdowns, within international, regional, and national legal framework and its limits.

The presentation is annexed herein as **Annex 9**.

5.1.3 Access to Justice and Technology; an African Experience During and After the Covid-19 Pandemic by Mr. Arnold Tsunga

The development of technology especially in Africa and within the judicial process was outlined. It was underlined that the digitisation trajectory was longer than the Covid-19 pandemic as most digital development had happened in the previous 20 years. In addition, the presenter noted that the pandemic only led to the realisation and general acceptance by people that drastic strong central government intervention was needed and accelerated technological development within the judiciaries in Africa.

He noted that after this realization, financial systems, the health systems, the accounting

systems, the air travel systems, the migration systems all experienced the new opportunity offered by the digital revolution and took advantage of it at varying degrees of pace and interest. Therefore, Covid-19 was commended as a good shocker to the digitisation process and an avenue for fast tracking the digitisation revolution as a constitutionally entrenched infrastructure for the society. The Covid-19 pandemic was renowned as the biggest disrupter of the 21st century that changed the world and its realities.

Despite the global technological development, it was decried that legal systems in the region had not taken full advantage of the digital revolution to transform the justice administration system for the public's benefit. This was attributed to concept of resistance to change, which required a 'change management needs approach' in the legal system to curtail resistance. To achieve such a revolution, it was explained that lawyers, judges and judicial administrators must be at the forefront of providing leadership so as to give consumers of justices a new experience and appreciation of justice.

Moreover, lack of adequate hardware and software was noted as an impediment to judicial system digitisation. To overcome this challenged, it was suggested that the provision of digital infrastructure must adopt a governmental developmental agenda. It was emphasized that judiciary digitisation must be part of SDGs implementation, in particular SDG 16 and the Africa 2063 Agenda so that no judiciary was left behind and access to justice was availed to all. It was noted that the approach must be inbuilt into the national focus and policy priorities as it may be too expensive and prohibitive for the judiciary to do it by itself.

Consequently, the following recommendations were made as regards judicial digitisation: To,

1. Hold wide consultations with court users on their experiences, including with unrepresented voices which are often overlooked, for example unrepresented litigants, witnesses and victims;
2. Train judges, magistrates and other court staff in digital skills to enable them meaningfully interact with digital assets and to be comfortable with digital transformation of court processes;
3. Create of public court information centers or partner with public libraries, schools or community centers to allow virtual interactions with court users through digital assets that might already be available in the community.
4. Conduct security and privacy audits of current digital assets and digitized court records, to ensure that information already in digital format is secure;
5. Create of a privacy strategy and detailed privacy policies for court user data, to be applied in the case of virtual courts, case management systems and e-filing systems;

6. Implement alternative technology solutions like the use of dial-in options and USSD for virtual courts, case management systems, court e-filing systems and general court inquiries by court users;
7. Establish open data policies to court data to enable deployment of algorithms by citizens and private companies that can help citizens understand the law and navigate through the court system;
8. Develop regulatory sandboxes for court innovations, allowing private entrepreneurs to deploy their skill, capital and time to test court innovations in the real world without having to wait for regulatory alignment;
9. Create long-term strategy on how computational law and Natural Language Processing (NLP) can be deployed to court data to aid research by judicial officers, to understand trends in cases and to find new ways to speed up dispute resolution.

For the Legislature and the Executive, the following was recommended:

1. The Executive to mandatorily provide the judiciary with technology infrastructure required to enable digital interactions, e.g., computers, internet connectivity and digital skills training for judges, magistrates and court staff;
2. The Executive must facilitate collaborations between government departments with digital assets such as schools and municipalities and the judiciary, so as to facilitate that digital court interactions can occur within the community, regardless of the existing digital inequality; and
3. The Legislature to t enact laws that regularize use of digital technologies such as virtual courts and electronic filing of court documents.

The presentation is annexed herein as **Annex 10**.

5.1.4 Trends in the Development of African Jurisprudence on Internet Freedoms by Mr. Donald Deya

The corpus of rights referred to as digital rights was discussed to mean rights of individuals as pertains to computer access and the ability to use, create and publish digital media. It was noted that these rights are extensions of human rights, whose scope included access to information (and digital space), freedom of expression, privacy and copyright in the digital space.

The international framework as pertains digital rights was underlined. To this end, it was deliberated that, the UN General Assembly (UNGA) has passed several resolutions touching on different aspects in the broad scope of digital rights. These include: Right to information (for journalists) 2013; Right to privacy in the digital age- 2013; Promotion of the declaration on the right and responsibility of individuals, groups, and organs of society, to promote and

protect universally recognized human rights and fundamental freedoms: protecting women and human rights defending (on creating free space for full expression of digital rights) – 2013; and Information and telecommunications in the context of international security- 2013.

Similarly, it was enlightened that the UN Human Rights Council (UNHRC) had passed several resolutions on different aspects of digital rights and had had panel discussions on the safety of journalists and right to privacy in the digital age. These resolutions were listed to include: Resolution on the protection and enjoyment of human rights on the internet- 2012; Resolution on the safety of journalists on all forms of media (rights to information)- 2012; Resolutions on the freedom of assembly and association, including online- 2012 and 2013; Resolution on protecting human rights defenders (rights to information)-2013; Resolution on the role of freedom of opinion and expression (freedom of expression online) – 2013; and Resolution on protecting civic space-2013

The U.N Special Rapporteurs on the right to privacy and on freedom of expression and opinion were noted as additional UN special mechanisms on digital rights protection.

Moreover, the regional framework was underlined. It was urged that the African Union Convention on Cyber Security and Personal Data Protection, at: Article 8 obligates member states to establish a legal framework aimed at strengthening fundamental rights and public freedoms, particularly the protection of physical data, and punish any violation of privacy without prejudice to the principle of free flow of personal data; Article 11 gives a framework on protection of personal data and starts by stating that “*each State Party shall establish an authority in charge of protecting personal data*”; and Article 24 obligates member states to ensure any policies or measures so adopted does not infringe on the rights of citizens guaranteed under the national constitution and internal laws, and protected by international conventions, particularly the African Charter on Human and Peoples

Furthermore, the jurisprudence on the protection and enforcement of internet rights from sub-regional courts was elucidated. It was noted that African Court On Human & Peoples Rights (AFCHPR) had not issued any decision on digital rights, save for ongoing litigation challenging the State’s infringement on the freedom of speech and denial of the right to access information during elections in **Seif Sharif Hamad & 6 Others vs The United Republic of Tanzania** Application No. 46 of 2020.

From the ECOWAS Court of Justice, it was noted that in the case of **Amnesty International Togo & 7 Others**, the Court recognized internet access as a human right with legal obligations, especially for governments of member states. Before the East African Court of Justice (EACJ)

two pending cases were highlighted as addressing the issue at hand, the **East Africa Law Society (EALS) vs The Attorney General of the Republic of Uganda and The Secretary-General of the EAC**, Ref. No. 12 of 2021 and **Dr. Lina Zedriga & Others v. The Attorney General of the Republic of Uganda and the Secretary-General of the EAC**, Ref. No. 13 of 2021.

Similarly, jurisprudence from other jurisdictions was deliberated. From the European Court of Human Rights, the case of **Ahmet Yildirim v. Turkey**, Application no. 3111/10; from the Supreme Court of Canada, the case of **Society of Composers, Authors and Music Publishers of Canada v. Canadian Association of Internet Providers** (2004); and from the Grand Chamber of the Court of Justice of the European Union (CJEU), the case of **Digital Rights Ireland v Minister for Communications and Others**, all upholding the right to internet or auxiliary and correlated rights.

Jurisprudence from national case law including Kenya in **Nubian Rights & 20 Others v The Attorney General & 7 Others Petition No. 56, 58 & 59 of 2019 (Consolidated)** challenging the rolling out of National Integrated Management System (NIMS) commonly known as *Huduma* Number. The Court applied the proportionality test and found a law that affects a fundamental right or freedom should be clear and unambiguous. It was noted that this principle was reapplied in case of **Andrew Mujuni Mwenda vs Attorney General** and was echoed in the case of **Geoffrey Andare vs Attorney General**.

From Uganda, the case of **Cyber Law Initiative (U) Limited & 5 others vs A.G of Uganda & 2 Others** was discussed and from Zimbabwe, the case of **ZLHR and MISA Zimbabwe v Minister of State for National Security and Others (unreported)**

In conclusion, it was noted that national cases were not prevalent, in the sense that they expounded on the three-part test, rather than applying a trickle-down effect from regional and international court decisions that set the three-part test. For example, taking the approaches of the regional courts, to protecting certain elements of digital rights, such as freedom of speech, as would otherwise be limited by defamation laws.

This trend, it was emphasised, was solitarily applied in Burkina Faso in the case of **Konate v Burkina faso**, where the African Court seating on appeal from the High Court in Burkina Faso decision found Burkina Faso's criminal defamation sanctions incompatible with the African Charter and International law.

It was noted that this decision had a ripple effect to various other courts in Africa, including in 2017, when the High Court of Kenya found criminal defamation to be unconstitutional in the

case of **Jacqueline Okuta and Another v Attorney General and two others**, adding that criminal sanctions are disproportionate and undesirable in any democratic society.

In February 2018, in the case of **FAJ and others v The Gambia**, the Court of the Economic Community of West African States (ECOWAS Court) found the criminal laws of the Gambia and the sanctions imposed on the applicant journalists to be disproportionate and unnecessary in a democratic society. In May 2018, the Gambian Supreme Court decriminalized defamation, in the case of **Gambia Press Union & 2 others v. AG** finding it unconstitutional. While in May 2018, the Constitutional Court of Lesotho, ruled that the crime of defamation is not reasonable and demonstrably justified in a free and democratic society and has no place in the current Constitutional dispensation, due to its deleterious and chilling effect on expression, stating that civil remedies for reputational encroachment are more suited to redressing such reputational harm.

The presentation is annexed herein as **Annex 11**.

5.1.5 ICJ Guidelines on Internet Shutdowns by Dr Justice Alfred Mavedzenge

It was explained that the ICJ had come up with guidelines and regulations to address the limitation of the rights to expression, information, internet and correlated rights, based on jurisprudence and international guidelines. It was also noted that the ICJ would launch the guidelines and regulations under development and share the same with the participating Chief Justices and all the participants.

To highlight the ICJ Guidelines under development, various thematic areas were identified, first whether there were laws in place regulating imposition of restrictions, second whether the laws (if any) identified the person upon whom the authority to limit vested, and third whether the law mandatorily set out regulations for such restrictions or limitation.

It was emphasised that in the case of shutdown of a wide nature there was the duty to consult on the consequences of such shutdown. There was also the requirement to ensure non-discrimination in the implementation of restriction, to ensure that restrictions could not be imposed to target certain persons on any ground including culture, nationality race, or any grouping. It was noted that to better address this issue the impact of the shutdown must be assessed and if the result was to affect a certain grouping of people, then it would be discriminatory.

The prerequisite of necessity was also discussed. It was emphasised that restrictions must

be strictly unavoidable. It was clarified that any restriction however necessary must and could only be on grounds enumerated in law and mostly the constitution. It was urged that where other means for attaining the same result were available, then such a retraction would fail the test of necessity.

The condition of proportionality was also noted. It was commended that the question to ask was whether it was necessary to shut down the entire country when the intended areas of target was only a portion of the state. It was explained that the party imposing any restriction had the duty to demonstrate to the court that the intended restriction did not have prolonged and unnecessary hardship.

In conclusion, it was insisted that all restrictions must be subject to regulation checks and balances through judicial review. It was re-emphasized that the court must look at the laws and guidelines in place and apply them to the cases before it and where appropriate, grant affected person, in instances where it finds that there was breach, effective remedies such as restoration of the right and award of damages.

5.2 Interactive Plenary

The presenters were commended for enlightening presentations and synopsis of the legal position from the international, regional and national legal instruments and court jurisprudence. It was also esteemed that the international, regional and national outline of the legal framework and jurisprudence was a tool accessible to the judges in delivering well thought and robust judgments on issues of internet rights. However, it was regretted that the region lacked proper and binding legal framework for the protection of internet and auxiliary rights.

On internet regulation, two questions were posed, that is, who owned the interest, or who had the proprietary interest on the internet, and whether it was national governments or international body. It was clarified that from a human rights perspective, the internet as a concept was owned by everybody but controlled by the big techs. In addition, it was illustrated that the internet infrastructure could be privately owned by corporations such as google, YouTube, but the service was a public good that must be regulated by the government. At the same time, alternatives to the monopoly enjoyed by global big-tech telco bodies was proposed. The Region was tasked to explore and support African technological corporation, to defeat the monopoly enjoyed by the international big-tech companies.

Despite the definition or answer accorded to the questions raised, it was recognized that the internet was no longer an equal space, and it called for regulation, policies and frameworks to ensure equality.

To achieve the balance between internet evils such as child abuse, bullying and pornography, fake news or propaganda that affects the outcome or fairness of an election and internet goods, each and every country was urged to implement a robust governance structure in line with existing internationally available framework such as the AU Cyber-legislation. It was noted that the starting point would be formulating right based policies, which over time could be drafted into legal frameworks.

In conclusion, it was explained that the limitations of internet rights and the jurisprudence alluded was an area that needed a lot of research and reference by court when determining similar issue. The existing guidelines were to be applied on a case-by-case basis, and reference made to constitutional provisions on limitation of traditional human rights as a tool to guide the interpretation and application of limitation and regulation of internet rights.

6.0 SESSION FIVE:

6.1 Threat to Digital Access

This session comprised expert presentations on threat to digital access, cybercrimes surveillance and data protection by **Ms. Hlengiwe Dube** with Ms. Elsie Sainna and Mr. Christopher as discussants. The expert panelists' Bio data was as per the annexed programme. The session was moderated by **Hon. Justice Ronny James Govinden**, Chief Justice of the Republic of Seychelles.

6.1.1 Threat to Digital Access: Cyber Crimes Surveillance and data protection by Ms. Hlengiwe Dube

Ms Dube underscored that technological dispensation brought both benefits and challenges in the political, social & economic spectrum. She discussed three broad topics, cybercrimes, surveillance and privacy and protection of personal Information.

As regards cybercrimes, it was defined as the use of technology for criminal activities or organized crimes, for example child exploitation, human trafficking, terrorism, cyberstalking, cyberbullying and cyber fraud. It was noted that responses to cybercrimes must be specialized.

The AU Convention on Cybersecurity and Protection of Personal Information (2014) also known as the Malabo Convention, adopted by the Assembly of Heads of States and Governments in 2014 was discussed as a standard for prevention of computer and cybercrimes.

It was noted that this legal framework seeks to address continental needs on e-commerce, cyber security, and personal data protection, established rules for a favourable digital environment (cyber space) on the continent. Further that it addressed the need for harmonised cyber legislation and establishes common approaches to cyber security; tackled gaps in the regulation of electronic communications and electronic signatures. Unfortunately, it was lamented that this convention was yet to become operational as its set ratification conditions had not been achieved.

The Convention on Cybercrime of the Council of Europe (Budapest Convention) was also highlighted. It was stated that it was a legal framework (open for ratification by African states) designed to tackle cybercrime by providing elaborate guidance in the development of cybercrime legislation and the basis for international cooperation and harmonised strategy against cybercrime

The Budapest Convention, it was noted, was an omnibus legal framework, that established offences under the following categories: offences against confidentiality, integrity and availability of computer data systems; computer related offences such as fraud and forgery; content related offences – child pornography; and criminal copyright infringement.

Moreover it was urged that it also created a lists offences such as identity theft, grooming of children, unsolicited emails or spam and cyberterrorism; under computer offences, prohibits data interference which it defines as ‘intentionally damaging, deletion, deterioration, alteration or suppression of computer data without right; prohibits system interference, which is ‘intentional, serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data’.

In addition, the presenter explained that it provided for international cooperation against cybercrime; and provided the procedure and legal basis for extradition particularly in circumstances where there is no extradition treaty.

The Model Law on Computer Crime and Cybercrime was also discussed. It was highlighted as a guide for SADAC member states on what cybercrime law would entail, and offences that could be incorporated into national laws, to wit illegal access, interception, data interference, espionage, forgery, fraud, pornography, xenophobic material and disclosure of details of an investigation of cybercrimes

However, this model law was criticized on several grounds, such as: for lacking *essential provisions, defective language, disjointed nature, infusion of unique, poor quality, peculiar and unsafe offences and divergence away from and inconsistency with international best practice*; over-simplifying and disproportionately criminalising spam, a complex commercial activity that could even warrant a stand-alone regulation; lacking clarity on what constituted consent or solicitation of the message,; failing to include the offence of copyright and corporate liability as provided for under articles 10 and 12 of the Convention on Cybercrime; disproportionately focusing on content regulation and criminal investigations without adequate safeguards for human rights protection; and lack of clarity of the definitions of racism and xenophobia so that legitimate speech is not unfairly included under this category.

The relevant national legal framework was also discussed, noting that the level of commitment was not encouraging as compared to cybercrime challenges and prevalence. It was appreciated that African countries were at different stages of addressing cybercrimes, with about 12 states having comprehensive laws and a considerable number in the process of legislating via bills

pending in parliaments, or were working on amendments to existing frameworks.

Therefore, the need for robust national frameworks, implementation policies and law enforcement capacity building within the judiciaries was given emphasis. It was noted that such regulations and legal framework would promote confidentiality, maintain the integrity of information; protect network systems; protect privacy rights & other rights whose enjoyment was anchored on the realisation of the right to privacy; protect national security; and promote safe operations of electronic activities.

Additionally, judicial training in cybercrime and electronic evidence; training of law enforcement sector; and creation of awareness were the few recommendations suggested to curb the iniquity of cybercrimes.

Surveillance was the second topic of discussion. It was defined as the interception or collection of personal information without consent and sharing the same within and between institutions and departments. It was stated that the advent of technologies such as the computer and other tracking technologies like mobile phones intensified surveillance, with many African countries requiring mandatory integration of surveillance systems capable of interception of communications by its service providers as well as registration of Subscriber Identity Module (SIM) card.

She described the legal framework currently in place, starting with the ACHPR 2019 Declaration which prohibit untargeted collection, storage, and analysis or sharing of a person's communications and require states to ensure any law authorising targeted communication surveillance to provide adequate safeguards of the right to privacy. For jurisprudence, the South African Case of the ***AmaBhungane Centre for Investigative Journalism v Minister of Justice and Correctional Services*** was highlighted.

Privacy and protection of personal information was the last sub-topic of discussion. It was noted that technological development intensified the collection and access of personal information and consequently gave raise to regulations on the right to privacy. It was underscored that the United Nations Resolution on the Right to Privacy in the Digital Age, the UDHR, ICCPR, and African Children's Charter were such regulatory frameworks. The EU General Data Protection Regulation (GDPR); the AU Convention on Cybersecurity and Personal Data Protection; the SADC Model Law on Data Protection; the ECOWAS Supplementary Act; African constitutions which refer to personal data or information privacy and comprehensive national data protection laws were also highlighted.

The states' duty to protect the right to privacy was emphasised to include, to; protect personal information; ensure control over personal data; establish and maintain social boundaries (physical and informational); protect freedom of speech and thought; provide the freedom to engage freely in politics; protect reputations, to enable individuals the ability to evolve and to ensure respect for individuals; protect financial assets and guard against cybercrimes; protect information from manipulation; limit power and protect sensitive information.

It was noted that the introduction of end-to-end inscription which was not readable or penetrable unless by the sender of a message on one end and the receipt on another end, created enforcement difficulties since accessibility of such information for court purposes was impossible. This, it was appreciated, impeded cyber-crime prosecution.

It was also explained that the big tech companies have monopoly and access to personal and private most information in their platform creating challenges of confidentiality within the court processes including in judgment writing processes.

It was also noted that such companies store and have access to users' online activities and search history such as GOOGLE, where a search of www.google.com/history reveals all the users search history going back to when the google account was created.

The aspect of hacking and accessing conversations through the telco services and the mailing system was noted. Hence the requirement to have in place mechanisms that are meant to protect data stored by the judiciary and judicial officers as well as communication between judicial officers especially involving judgment/opinion writing. The challenge of internet and cellphone service providers profiling users' bio data and activities for purposes of marketing or other uses was also emphasised.

In conclusion, it was noted that since judiciaries in the region processes personal information in court and tribunal proceedings to carry out their constitutional function, they must adopt measures for protecting personal information; protect the information infrastructure; establish mechanisms of lawful access to information; and training of judges on protection of personal information.

The following recommendations were proposed: To,

1. Ratify the Malaba Convention especially on admissibility of electronic evidence, as a guide to enforce cybercrimes;
2. Apply uniform standards in the enforcement and protection against cyber-crimes by judiciaries in the region;

3. Develop checks and balances to curb and control the spread of fake news by criminalizing the publication of fake news;
4. Develop a culture for prosecuting cyber-security;
5. Develop legal requirements and allow courts to take an oversight role in the enforcement of cybercrimes through the issuance of warrants for enforcement;
6. Develop or push for the development of legal frameworks geared towards enforcement of cyber-crimes; and
7. Ensure inclusivity and protection of marginalised groups, to wit, women, children and people living with disability, online domestic violence, children cyber- grooming.

The presentation is annexed herein as **Annex 12**.

6.2 Interactive Plenary

Various challenges in the enforcement of cyber-crime were re-addressed. There was the recommendation to create public awareness, train investigators and prosecutors on cybercrime evidence collection and presentation, train judicial officers to better understand the evidence presented in court. The need for the judiciaries to work with other government institution to implement and prosecute the aspects of cyber-crime was underscored.

The danger of hacking and circulation of judges' judgment was discussed. To defeat this challenge, the requirement to implement data protection and ensure secure storage and access of judicial sensitive was re-emphasized. The prerequisite to have strong passwords and to protect the passwords and electronic gadgets from access by unauthorized persons or hackers was encouraged.

7.0 OFFICIAL CLOSING REMARKS

7.1 The Closing Remarks

The following closing remarks were given:

7.1.1 Remarks by Hon. Justice (Dr.) Smokin Wanjala, Supreme Court of Kenya and Director Kenya Judiciary Academy

In his closing remarks, the Director KJA expressed his gratitude for the wonderful symposium and indelible discussions. He thanked the Chief Justices in attendance and all the delegates, noting that the Conference was a success as a result of their invaluable contribution. He took the opportunity to thank the Chief Justice of Kenya for appointing and allowing the Kenya Judiciary Academy, under his direction to take the planning lead.

On behalf of the Kenya Judiciary, Hon Justice (Dr.) Wanjala thanked the chairperson SACJF and the Chief Justices for giving the Kenyan Judiciary the opportunity to host the 2022 SACJF Conference. He thanked staff from the office of the Chief Justice of Kenya, the Kenya Judiciary Academy, the SACJF Secretariat and all the protocol officers for the splendid work that had made the Conference a success. He welcomed the delegates to the Gala Dinner hosted by the Chief Justice of Kenya in their honor. The Hon Justice (Dr.) Wanjala welcomed the Chairperson of SACJF, the Hon. Mr. Justice Peter S. Shivute, Chief Justice of Namibia to give his remarks.

7.1.2 Remarks by Hon. Justice Peter Shivute Chief Justice of Namibia and Chairperson SACJF

In his remarks, the Hon. Chief Justice Shivute noted that the Conference had achieved so much and was a success, owing to everyone's contribution and participation. After highlighting the recommendations and the take away arising from the Conference, he thanks the attending Chief Justices who had travelled from far and wide to attend the Conference. He also thanked the Chief Justice of Kenya for hosting the Conference and for the superb hospitality accorded to all the delegates. The Chief Justice thanked the national secretariat and the SACJF Secretariat for organizing the Conference and tirelessly ensuring its success. Chief Justice Shivute welcomed the Chief Justice of Kenya to give her closing remarks.

7.1.3 Remarks by Hon. Justice Martha Koome, Chief Justice of Kenya and President of the Supreme Court of Kenya

The Chief Justice of Kenya and President of the Supreme Court of Kenya expressed her great

pleasure to have had the opportunity to host the 2022 Conference. She thanked the Chief Justices and delegates for honoring the invitation to the symposium and the Management Committee. The Chief Justice noted that it was the first and an historical event for the Kenyan Judiciary to host a delegation of over twelve Chief Justices. She noted that indeed it was a momentous event.

All in all, the Chief Justice noted that both the Judicial Symposium and the Management Committee were a remarkable success. She expressed her pleasure for the opportunity to share time, experiences and challenges and also keep each other company as the work of a Chief Justice can sometimes be lonely.

She thanked the delegates for the invaluable discussions, discourse and contributions. She Joined the Director KJA and invited the Chief Justices and all the delegates to a Gala Diner planned in their honor and to be hosted in the true African spirit. Chief Justice Martha Koome officially closed the Conference and bade farewell and safe travels to the attending Chief Justices and delegates.

8.0 RECOMMENDATIONS, WAY FORWARD AND CONCLUSIONS

8.1 Recommendations

The following recommendations and proposals were made:

1. Member state judiciaries were called upon to provide legal recourse for internet rights violations and to review government decision and policies that encroach on the right to online access;
2. Therefore, judiciaries in the region were called upon to make judgements that addressed internet freedom issues on merits, to provide oversight on issuance of warrants for interception or deployment of any surveillance tools and to enforce the three-pronged test on any limitation of rights, to wit, legality, legitimacy, proportionality and necessity.
3. Judiciaries in the region were tasked to understand the legal regime, (national, regional and international) to ensure compliance at all times and to enhance access to justice rather than to override it;
4. To advocate for the development of robust national frameworks, implementation policies and law enforcement capacity building within the judiciaries, to govern digitisation, the internet and the impact of digital technologies and its relationship between the citizens, private enterprises, and the state;
5. Such regulations and legal framework should promote confidentiality, maintain the integrity of information; protect network systems; protect personal information; establish mechanisms of lawful access to information; protect privacy rights & other rights whose enjoyment is anchored on the realization of the right to privacy; protect national security; and promote safe operations of electronic activities.;
6. To advocate for amendment of rules of procedure to make room and accommodate digitisation;
7. To develop a regional approach to digitisation and internet governance;
8. As part of the regional approach to judiciary digitisation, to establish Digitisation Committees within the judiciaries in the region, to act as networks and linkages for exchange of information, to share ideas, challenges, success, experiences and failures;
9. Judicial intervention in disputes over the governance of the digital world to take into account and promote human rights, social justice and the imperative of public participation and input;
10. Digitisation and technology to uphold and complement other human rights and freedoms;
11. To development home grown solutions to digitisation by empowering and supporting local software developers within regional Information Communications Technology companies, departments within the region's Judiciaries and Africa at large, to curb the expense of purchasing software from big-tech companies that have unchecked

monopoly;

12. To prioritize, promote and develop digital literacy within the region's judiciaries by training users of the digitisation market or resources including judges, magistrates, lawyers and litigants, in various skills including; basic skills in order to navigate through the digital space; standard skills, which are more advance such as using arithmetic formula skills; and advanced skills, which include computer programming for lawyers;
13. To prioritize digital inclusivity, accessibility, affordability and equality by safeguarding the internet as a cost-effective communication platform for safe and secure use by all, to uphold access to justice for all, while taking into consideration other human rights. Ensure inclusivity and protection of marginalised groups, to wit, women, children and people living with disability;
14. To at all-time address the issue of internet abuse, with a view to regulate and balance internet use without compromising any other citizen rights.
15. Judiciaries to implement robust governance structure in line with existing internationally available framework such as the AU Cyber-legislation, to achieve a balance between internet evils such as child abuse, bullying and pornography, fake news or propaganda that affects the outcome or fairness of an election and internet goods.
16. Courts to enforce digital rights and freedoms including access to information by way of strategic determination of cases concerning internet shutdowns, within international, regional, and national legal framework and it limits;
17. Limitations of internet rights and the jurisprudence in place to be applied on a case-by-case basis, and reference made to constitutional provisions on limitation of traditional human rights as a tool to guide the interpretation and application of limitation and regulation of internet right
18. Judiciaries to conduct security and privacy audits of current digital assets and digitised court records, to ensure that information already in digital format is secure;
19. Judiciaries to create privacy strategies and detailed privacy policies for court user data, to be applied in the case of virtual courts, case management systems and e-filing systems;
20. Judiciaries to implement alternative technology solutions such as the use of dial-in options and USSD for virtual courts, case management systems, court e-filing systems and general court inquiries by court users;
21. To create public awareness, train investigators and prosecutors on cybercrime evidence collection and presentation, train judicial officers to better understand the evidence presented in court.
22. The Executive to mandatorily provide the judiciary with technological infrastructure required to enable digital interactions, e.g., computers, internet connectivity and digital skills training for judges, magistrates and court staff;

23. The Executive to facilitate collaboration between government departments with digital assets such as schools and municipalities and the judiciary, ensuring that digital court interactions can occur within the community, regardless of the digital inequality that exists;
24. The Legislature must enact laws to regularize use of digital technologies such as virtual courts and electronic filing of court documents, on cybercrimes prosecution and cybercrimes regulations and on limitations of the rights to internet.

8.2 Way Forward and Action Points

1. To develop a regional approach to digitisation and internet governance;
2. To establish Digitisation Committees within the judiciaries in the region, to act as networks and linkages for exchange of information, to share ideas, challenges, success, experiences and failures;
3. To development home grown solutions to digitisation by empowering and supporting local software developers within regional information Communications Technology companies, departments within the region's Judiciaries and Africa at large, to curb the expense of purchasing software from big-tech companies that have unchecked monopoly;
4. To prioritise, promote and develop digital literacy within the region's judiciaries by training users of the digitisation market or resources including judges, magistrates, lawyers and litigants, in various skills including; basic skills in order to navigate through the digital space; standard skills, which are more advance such as using arithmetic formula skills; and advanced skills, which include computer programming for lawyers;
5. To prioritise digital inclusivity, accessibility, affordability and equality by safeguarding the internet as a cost-effective communication platform for safe and secure use by all, to uphold access to justice for all, while taking into consideration other human rights, and protect the marginalised groups, women, children and people living with disability;
6. Address the issue of internet abuse, with a view to regulate and balance internet use without compromising any other citizen rights;
7. Judiciaries to conduct security and privacy audits of current digital assets and digitised court records, to ensure that information in digital format is secure; and
8. Judiciaries to create privacy strategies and detailed privacy policies for court user data, to be applied in the case of virtual courts, case management systems and e-filing systems.



SACJF

SOUTHERN AFRICAN CHIEF JUSTICES' FORUM



PROGRAMME

***Southern African
Chief Justices' Forum
Management Committee Meeting***



***Judicial Symposium on
Digitisation and
Internet Governance***

**20TH-23RD APRIL, 2022
SAFARI PARK HOTEL, NAIROBI**



JUDICIAL SYMPOSIUM ON DIGITISATION & INTERNET GOVERNANCE

20th – 23rd April 2022 | NAIROBI, KENYA

Day one: Wednesday 20th April 2022

Arrival of Guests and Check in Assisted by Secretariat and Protocol Teams

Day two: Thursday 21st April 2022

Session Moderator: Hon. Anne A. Amadi, CBS, Chief Registrar of the Judiciary, Republic of Kenya

08:30-09:00hrs Registration, Opening Prayer and National Anthem

09:00-10:30hrs

Session 1 - Opening Ceremony

Welcome Remarks by

Hon. Justice (Dr.) Smokin Wanjala, CBS, Justice of the Supreme Court of Kenya and Director, Kenya Judiciary Academy

Remarks from Collaborating Partners

- International Commission of Jurists (ICJ), Dr Justice Alfred Mavedzenge
- International Commission of Jurists Kenya (ICJ-K), Mr Protas Saende
- Media Institute of Southern Africa (MISA), Mr Tabani Moyo
- Advancing Rights in Southern Africa (ARISA), Ms Tiseke Kasambala
- American Bar Association, Ms Makanatsa Makonese

Remarks by **Hon. Justice Philomena Mbeti Mwilu, MGH** - Deputy Chief Justice & Vice President of the Supreme Court of Kenya

Official Opening Address by **Hon. Justice Martha K. Koome, EGH**, Chief Justice and President of the Supreme Court of Kenya

Keynote Address by **Hon. Justice Peter Shivute**, Chief Justice Republic of Namibia and Chairperson, Southern Africa Chief Justices Forum

10:30-11:00hrs	Health Break and Group Photo
Session Moderator: Hon. Justice Terence T. Rannowane, Chief Justice of the Republic of Botswana	
11:00-12:30hrs	<p>Session 2: High Level Panel Segment <i>Digital Transformation of Judiciaries in Africa and Experiences in the Face of the COVID-19 Pandemic</i></p> <p>Brief Interventions by:</p> <ul style="list-style-type: none"> ▪ Hon. Justice Bheki Maphalala, Chief Justice of the Kingdom of Eswatini ▪ Hon. Justice Razine Mzikamanda, SC, Chief Justice of the Republic of Malawi ▪ Hon. Justice (Dr.) Adelino M. Muchanga, Chief Justice of the Republic of Mozambique ▪ Hon. Justice Ronny James Govinden, Chief Justice of the Republic of Seychelles ▪ Hon. Justice (Prof.) Ibrahim Juma, Chief Justice of the United Republic of Tanzania ▪ Hon. Justice Richard Buteera Deputy Chief Justice of the Republic of Uganda ▪ Hon. Justice (Dr.) Mumba Malila, SC, Chief Justice of the Republic of Zambia ▪ Hon. Justice Luke Malaba, Chief Justice of the Republic of Zimbabwe ▪ Hon. Justice Khamis Ramadhan Abdalla, Acting Chief Justice of the Republic of Zanzibar
12:30-13:00hrs	Interactive Plenary
13:00-14:00hrs	Lunch Break
14:00-17:00hrs	Southern African Chief Justices' Forum (SACJF) Management Committee Meeting

Day three: Friday 22nd April 2022

Session Moderator: Hon. Justice (Prof.) Ibrahim Juma, Chief Justice of the United Republic of Tanzania

09:00-10:00hrs

Session 3: Internet Freedoms

Presentation on Regional and International Standards on the Protection of Internet Freedoms by Mr. Tabani Moyo, Media Institute of Southern Africa (30mins)

Discussants

- Ms. Hlengiwe Dube
- Dr. Justice Alfred Mavedzenge

10:00-10:30hrs

Interactive Plenary

10:30-11:00hrs

Health and Tea Break

Session Moderator: Hon. Justice Luke Malaba, Chief Justice of the Republic of Zimbabwe

11:00-12:00hrs

Session 4: Internet Shutdowns and Impact on Access to Justice

Expert Panel Presentations on:

- Internet Shutdowns and Their Impact on Human Rights and Civic Space
Ms. Tiseke Kasambala
- ICJ Guidelines on Internet Shutdowns
Dr Justice Alfred Mavedzenge
- Trends in the Development of African Jurisprudence on Internet Freedoms
Mr. Donald Deya
- Access to Justice and Technology; An African Experience During and After the COVID-19 Pandemic
Mr. Arnold Tsunga

12:00-12:30hrs

Interactive Plenary

12:30-14:00hrs

Lunch Break

Session Moderator: Hon. Justice Ronny James Govinden, Chief Justice of the Republic of Seychelles

14:00-15:00hrs

Session 5: Threats to Digital Access: Cybercrimes, Surveillance, and Data Protection

Presentation on Relevant Standards for the Prevention of Computer Crimes and Cybercrimes by Ms. Hlengiwe Dube (30mins)

Discussants:

- Mr. Tabani Moyo
- Mr. Arnold Tsunga

15:00-15:30hrs

Interactive Plenary

15:30-16:30hrs

Official Closing Remarks

- **Hon. Justice Peter Shivute,**
Chief Justice of the Republic of Namibia and SACJF Chairperson
- **Hon. Justice Martha Koome**
Chief Justice and President of the Supreme Court of Kenya

16:30hrs

Health and Tea Break

19:00-21:00hrs

Gala Dinner

Day Four: Saturday 23rd April 2022

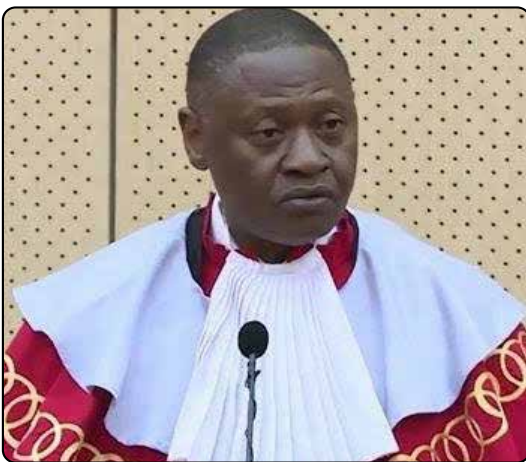
Check out and Departure assisted by the Secretariat and Protocol Team



**Honourable Justice Martha K. Koome, EGH
Chief Justice and
President, Supreme Court of Kenya**



**Hon. Mr. Justice Peter Shivute
Chief Justice of Republic of Namibia**



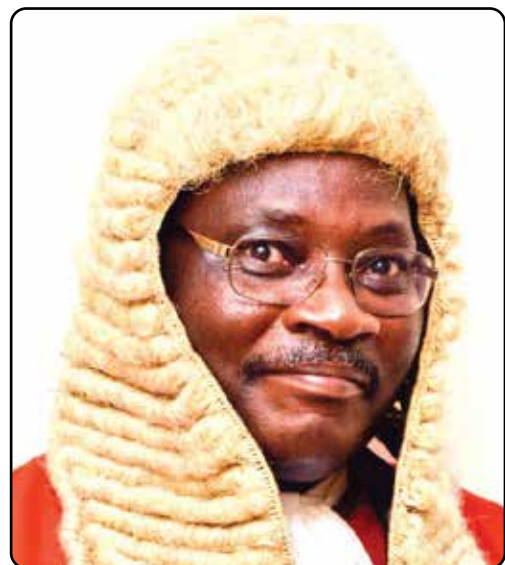
**Hon. Prof. Justice Ibrahim Hamis Juma
Chief Justice of United Republic of Tanzania**



**Hon. Mr. Justice Terence Rannowane
Chief Justice of Republic of Botswana**



**Hon. Mr. Justice Mbheki Maphalala
Chief Justice of Kingdom of Eswatini**



**Hon. Mr. Justice
Rizine R. Mzikamanda, SC
Chief Justice of Republic of Malawi**



Hon. Mr. Justice Adelino Manuel Muchanga
Chief Justice of Republic of Mozambique



Hon. Mr. Justice Ronny Govinden
Chief Justice of Republic of Seychelles



Hon. Dr. Justice Mumba Malila, SC
Chief Justice of Republic of Zambia



Mr. Justice Khamis Ramadhan Abdalla
Acting Chief Justice of Zanzibar



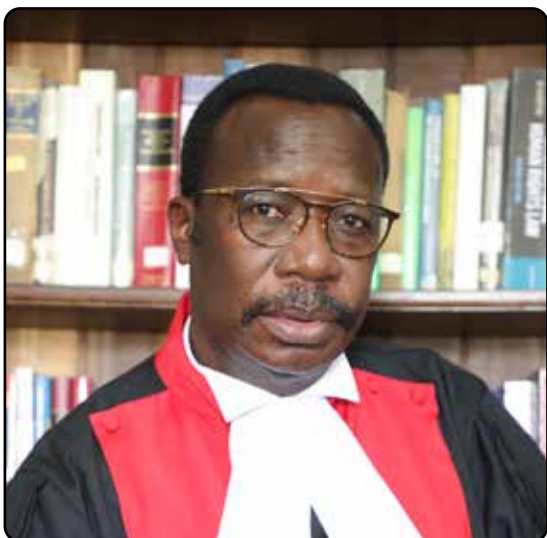
Hon. Mr. Justice Luke Malaba
Chief Justice of Republic of Zimbabwe



**Honourable Justice
Philomena Mbete Mwilu, MGH
Deputy Chief Justice and Vice President,
Supreme Court of Kenya**



**Hon. Mr. Justice Richard Buteera
Deputy Chief Justice of Uganda**



**Hon. Mr. Justice (Dr.) Smokin Wanjala, SCJ
Justice of the Supreme Court of Kenya and
Director, KJA**



**Hon. Anne Amadi, CBS
Chief Registrar of the Judiciary**

PRESENTERS

Dr. Justice Alfred Mavedzenge

A constitutional and international human rights law expert who works as the global coordinator of the independence of judges and lawyers program at the International Commission of Jurists (ICJ). Justice Alfred Mavedzenge is also a Senior Research Fellow at the Law Faculty of the University of Cape Town. He holds a PhD in public law from the University of Cape Town.

Ms. Hlengiwe Dube

Hlengiwe Dube is a PhD candidate and Project Manager at the Centre For Human Rights, University of Pretoria. She manages projects on freedom of expression, access to information, digital rights. She holds a Masters Degree in Human Rights and Democratization in Africa from the Centre for Human Rights, University of Cape Town.

Mr. Tabani Moyo

Tabani Moyo is the Regional Director for the Media Institute of Southern Africa (MISA). MISA is a regional non-governmental organisation with members in 8 of the Southern Africa Development Community (SADC) countries. Officially launched in September 1992, MISA focuses primarily on the need to promote free, independent and pluralistic media, as envisaged in the 1991 Windhoek Declaration. He has more than 15 years of experience in journalism, communications and campaigning for freedom of expression and human rights in Southern Africa. He sits on numerous boards in Southern Africa, Africa, and globally. In 2017, he was appointed a coordinating committee member of the Southern Africa Internet Governance Forum (SAIGF). Tabani is the Vice-Chairperson of the Pan African network on access to information, the Africa Freedom of Information Centre (AFIC). He is a board member of IFEX-a global network for defending freedom of expression- and a board member for the Global Forum for Media Development (GFMD).

Ms. Tiseke Kasambala

Tiseke Kasambala is Chief of Party for the Advancing Rights in Southern Africa Program at Freedom House. She is an analyst and researcher with over twenty years of experience documenting and reporting on human rights issues in East and Southern Africa. Tiseke was formerly the Deputy Director and Head of Programs at the Open Society Initiative for Southern Africa (OSISA). Before that she worked in various capacities at Human Rights Watch as a Senior Researcher, Africa Advocacy Director, and Southern Africa Director. She has also worked at Amnesty International. Tiseke is a published author who has written for academic journals and think tanks. Her opinion pieces have appeared in the Daily Maverick, Mail and Guardian, the Sowetan, the UK Guardian, New Statesman and the LA Times, among others. She holds a master's degree in social science from the University of Amsterdam, the Netherlands.

PRESENTERS

Mr. Don Deya

Don Deya is the Chief Executive Officer (CEO) of the Pan African Lawyers Union (PALU). Among other things, he chairs the Executive Committees of the Pan African Citizens' Network (PACIN, formerly known as the Centre for Citizens' Participation in the African Union [CCP AU]), International Coalition for the Responsibility to Protect (ICRtoP) and the Financial Transparency Coalition (FTC). He is a current Steering Committee member (and former Chair) of the African Court Coalition (ACC), and is also a former Secretary of the African Forum of the International Bar Association (AfrIBA). He is also a former member of the Executive Committee of the International Institute of Law Association Chief Executives (IILACE).

He is an Advocate of the High Court of Kenya, and was previously the CEO of the East Africa Law Society (EALS), and, before that, Acting Executive Director of the Kenyan Section of the International Commission of Jurists (ICJ-Kenya), and, preceding that, Deputy CEO of the Law Society of Kenya (LSK). While at the EALS, he founded the East African Civil Society Organizations' Forum (EACSOF).

He litigates extensively at the African Court on Human and Peoples' Rights (AfCHPR), and the East African Court of Justice (EACJ). He has engaged in advocacy with several organs and institutions of the African Union (AU), African Development Bank (AfDB), African Legal Support Facility (ALSF), Common Market for Eastern and Southern Africa (COMESA), International Conference on the Great Lakes Region (ICGLR), Intergovernmental Authority on Development (IGAD) East African Community (EAC) and the Southern African Development Community (SADC), amongst others. He also engages the United Nations (UN) system, and the International Criminal Court (ICC).

Mr. Arnold Tsunga,

Arnold Tsunga, is the Resident Senior Director and Chief of Party for the National Democratic Institute (NDI) in Zimbabwe. He is a highly skilled lawyer and human rights defender with more than 30 years of experience and expertise in law, politics, public administration and policy, governance, human rights, and the rule of law. Before joining NDI, he served for 13 years as the Africa Director of the International Commission of Jurists (ICJ), responsible for contributing to entrenching the rule of law in Sub-Saharan Africa. Mr. Tsunga was also the founding executive director of Zimbabwe Lawyers for Human Rights (ZLHR) and a past executive secretary of the Law Society of Zimbabwe.

He served as a member of parliament (2013-2015) and on the boards of leading non-profit organizations, such as Crisis Action; Frontline Defenders; Southern Defenders (SAHRDN); Lawyers for Human Rights (LHR) South Africa; and the International Federation for Human Rights (FIDH). Mr. Tsunga has received international recognition for his role in promoting and protecting human rights, including the Martin Ennals Award for Human Rights Defenders, the Human Rights Defender Award bestowed by Human Rights Watch (HRW), and a special USA Congressional Recognition for Contributions to the Community. Mr. Tsunga, a Hubert Humphrey Fellow (University of Minnesota) holds law degrees from the University of Zimbabwe.



SACJF

SOUTHERN AFRICAN CHIEF JUSTICES' FORUM



