

Empowering Judiciaries to Bring RoLHR Leadership to Decisions About Court Technology

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Technology is transforming justice services. People relying on courts expect greater transparency, faster data processing and access to court documents and decisions. Technology is also changing the administration of justice, streamlining case management, facilitating electronic evidence and virtual hearings and other data-driven possibilities.

Transformation from a paper-based, analogue system to a digital, integrated system has been somewhat slower than disruptions evident in other sectors. However, the pace of technological change in justice accelerated considerably because of the wide-spread lockdowns during the COVID-19 pandemic. In some courts judges and court staff scrambled to run virtual trials, using software previously designed for meetings or academic institutions. Other courts invested in purpose-built video platforms. As temporary solutions to keep courts functioning transition into permanent changes in justice services, courts and legal professionals are addressing long-standing knowledge and capacity deficits when it comes to technology. The historic reluctance or refusal of justice systems to adopt automated or digital services has given way to a new recognition of the vulnerability of analogue, paper-based, justice systems. There is a new appetite for digitalization and e-justice. New technologies are now being seen as tools not just for efficient operations but also as strategies for resilient and secure administration of justice.

Human rights scrutiny and rule of law protections remain critical as courts navigate these changes, both planned and crisis-based. Judges are the independent, neutral guardians of fundamental rights. Their leadership is necessary to maintain fair trials and cultivate public confidence in digital court processes. Situations of crisis and fragility, whether caused by climate crises, war and violence, or political instability, make judicial involvement in new technologies essential for stable, healthy democracies.

In the Asia Pacific region there is wide variation in the adoption of court technologies. Some courts have adopted robust plans for digital transformation responsive to data security needs while others made ad hoc adaptations to the pandemic-era lockdowns. Judges, court staff and lawyers have participated in training, hired external IT support and looked into best practices in court technology to accelerate the digital transformation in justice.

Usage as reported by judges in the ASEAN region:
Video appearances for lawyers 69%
Video appearances for the public 41%
Video appearances for expert witnesses 42%

~ JIN ASEAN, UNDP, *Emerging Technologies and Judicial Integrity*, 2021.

Not only does technology make it easier to maintain court files or store evidence, it also results in improved outcomes for the public. Digital case management reduces human errors, speeds up court process and allows people to monitor the progress of their case, resulting in faster processes that are easier to understand. Technology can be used to track the pace of cases, streamline scheduling, assign human resources and reduce the opportunities for corruption. Adaptive technologies make it easier for people with disabilities to participate in court processes. Virtual appearances can protect vulnerable victims, child witnesses and allow

people in rural and remote areas to attend court. Technologies like these allow for increased access to justice, cultivate public confidence and allow for media and public scrutiny of justice institutions. Any discussion that treats technology as simply an efficiency tool while confining judicial leadership to the courtroom misses a critical opportunity to integrate justice outcomes with administrative priorities.

To ensure a meaningful judicial voice in the technological evolution of courts, individual judges and judiciaries need to be empowered to fully participate. Judges are not simply users of court technologies but are also experts in the range of rights issues that arise in the courtroom, the impact of the digital divide on litigants, and the rigorous, rights-based scrutiny required of emerging court technologies. Yet too often, digital technology projects are planned by IT departments, technology providers and court administrators without the expertise of judges in the design of digital transformation. Sidelining judicial perspectives runs the risk of wholesale denial of rights, increasing the vulnerability of minority communities and exposing people to data and privacy risks. Integrating judicial leadership in the implementation of new technologies can embed critical rights protections in the evolution of digital justice services.

Changing Justice Needs

The COVID-19 pandemic revealed the vulnerability of justice systems across the globe as courthouses closed, files were inaccessible, prisons and police restricted access and judges and lawyers had to use personal devices to connect. It also revealed the extent of inequality and injustice.¹ Beyond the initial health crisis, economic instability and disruptions in global trade have resulted recession, protracted conflicts and a rise in authoritarianism. Climate emergencies have put pressure on local communities and national and regional decision-makers² Justice and injustice are threads that weave through each of these crises. In times of instability and transition, people rely on stable democratic structures to protect rights, guarantee stability and uphold the rule of law. A strong functioning justice system is more important than ever - and gaps in the administration of justice have more dramatic impacts than ever.

Courts are being asked to address individual rights and to protect citizens and consumers against the increasing, globalized power of corporations. They are navigating competing and overlapping pluralistic rights protection mechanisms. The global economy and accumulation of wealth by a small proportion of society is increasing disparities. When combatting these challenges, technology can be an effective tool for defending human rights, enabling access to justice, and increasing the transparency and accountability of institutions.

However not everyone has had equal access to justice. In 2019 it was estimated that 5.1 billion people globally have unmet legal needs.³ The promise to Leave No One Behind⁴ creates an overarching obligation to continually raise questions about how to close this justice gap.

¹ World Justice Project, *The COVID-19 Pandemic and the Global Justice Gap*. (October 2020). Available at <https://worldjusticeproject.org/our-work/publications/policy-briefs/covid-19-pandemic-and-global-justice-gap>.

² Aditi Mukherji, Abdul Wajid Rana and Devesh Roy, International Food Policy Research Institute, *The Pakistan floods, COP27, and prospects for recovery and climate justice*, November 4, 2022. Accessed at: <https://www.ifpri.org/blog/pakistan-floods-cop27-and-prospects-recovery-and-climate-justice>

³ Task Force on Justice Innovating Working Group, *Innovating Justice: Needed and Possible*, 2019, p. 5 Available at <https://www.hiil.org/wp-content/uploads/2019/02/Task-Force-on-Justice-Innovating-Working-Group-Report.pdf>

⁴ UNDP, *What Does it Mean to Leave No One Behind?*, 2022. Accessed at: https://www.undp.org/sites/g/files/zskgke326/files/publications/Brochure_LNOB_web.pdf

Women and minority communities have less access to justice and feel the impacts of economic and political inequities more dramatically. When excluded from decision-making, systems miss the opportunity to build on women’s perspectives or address their needs. This is even more evident in conflict situations where women and girls are disproportionately impacted. Gender injustices must not be treated as less urgent or less significant than wider human rights issues.⁵ There are corresponding opportunities to promote women’s leadership and access to justice when emerging from periods of conflict and crisis.

The Bangalore Principles of Judicial Conduct set out six values that make up the basis of judicial excellence. These values -independence, impartiality, integrity, propriety, equality and competence and diligence - all have gender implications. As judges embody these values, both individually and as a court, attention to gender discrimination and gendered threats is essential.
~ JIN ASEAN, UNDP, Gender and Judicial Integrity, 2022

In 2020, when Dr. Ngozi Okonjo-Iweala assumed the role of director general of the World Trade Organization (WTO) she noted that, “women face a glass cliff: they are given leadership roles only when things are going really badly.”⁶ Justice sector reform has the opportunity to proactively engage with women leaders before reaching that metaphorical cliff and invite women’s leadership in meaningful, sustainable solutions.

Failing to meaningfully address gender inequality as we transform fundamental democratic systems misses the opportunity to address these inequalities. Ignoring gender equality and treating justice sector reform as a neutral, administrative task will further entrench gender biases that heighten grievances, destabilize societies, and contribute to conflict and violence.

When introducing justice reforms and new technologies, there is a risk of perpetuating and reinforcing the power imbalances and inequalities that have both caused discrimination and led to conflict.⁷ If digital processes require expensive devices, data or infrastructure, these system improvements will only be available to those with financial resources. Without attention to linguistic and literacy barriers, technology will further exclude people. Artificial intelligence can entrench discrimination if not designed to eliminate, rather than replicate bias and assumptions evident in past decisions.⁸ Justice reform must be based on an examination of the power imbalances entrenched in the system. As we enter a period of accelerated

⁵ UNDP, Beyond the Pandemic: The Justice Emergency Paper, 2022 Accessed at: <https://www.undp.org/publications/beyond-pandemic-justice-emergency>

⁶ Larry Elliott, “‘It can’t be business as usual’: the Nigerian frontrunner to be next WTO head”, *The Guardian*, (London), 10 September 2020. Available at https://www.theguardian.com/world/2020/sep/10/nigerian-frontrunner-to-be-next-wto-head-ngozi-okonjo-iweala-trade-covid-19?CMP=Share_AndroidApp_Other.

⁷ Tom Yun, Zoom hearing abruptly ends when court realizes suspect is in same home as victim of alleged assault, CTV News, March 9, 2021. <https://www.ctvnews.ca/world/zoom-hearing-abruptly-ends-when-court-realizes-suspect-is-in-same-home-as-victim-of-alleged-assault-1.5340677>

⁸ Open Government Partnership, Algorithmic Accountability for the Public Sector: Learning From the First Wave of Policy Implementation, AI Now Institute, Ada Lovelace Institute, Open Government Partnership, 2021. <https://www.opengovpartnership.org/stories/algorithmic-accountability-for-the-public-sector-learning-from-the-first-wave-of-policy-implementation/>

change, there is an opportunity to examine and address the range of power relationships reflected in justice situations.

E-Justice as a Transformative Strategy

Often dismissed as simply an infrastructure concern, e-justice has the potential to advance sustainable, rights-respecting development. To meet these goals, it must be planned and implemented with nuanced understanding of the positive and negative implications of these new digital tools.

New court technologies can replicate or entrench sexism, racism and systemic discrimination or they can provide solutions to these systemic issues. They can increase access to justice for those in remote areas or using adaptive technologies, or they can exclude those without reliable internet and access to devices. Digital tools designed to simply replicate existing court process will embed the biases and inequalities of the old system, rather than uprooting them.

Stage in a Legal Process	Technologies in use	Public User Needs	Judicial Needs
Avoid legal issues	Automated contract reviewers Blockchain	Easy access Affordable	
Learning about legal issues	Legal education Apps WhatsApp and other communication platforms	Multi-lingual Free	
Reporting legal issues	Apps to record experiences Police reporting tools Portals	Private Secure Trauma-informed Admissible in court	Secure Admissible in court Compatible with evidentiary standards
Starting a legal case	e-filing Forms wizards Guided pathways	Easy to use Secure	Secure Different levels of access
Progression of the case	Online Dispute Resolutions Case management platforms AI predictions of case progress	Quick Secure Transparent	Secure Transparent Allow for judicial discretion
Disclosure, discovery, evidence submission	Police reporting apps Case management platforms e-filing	Secure Admissible in court Simple	Secure Admissible in court Different levels of access
Hearings	Video platforms Language interpretation Accessibility tools	Secure Free	Secure Free
Decision writing	AI recommendations on decisions Auto-generated decisions	Transparent algorithms	Allow for judicial discretion Transparent algorithms
Delivery of decisions	Video platforms Automated media distribution	Secure Free	Secure Free

	WhatsApp and other direct to public platforms		
Enforcement	Blockchain and e-garnishment tools	Secure Effective	Secure Different levels of access
Appeals	Case Management platforms	Quick Secure Transparent	Secure Transparent Allow for judicial discretion

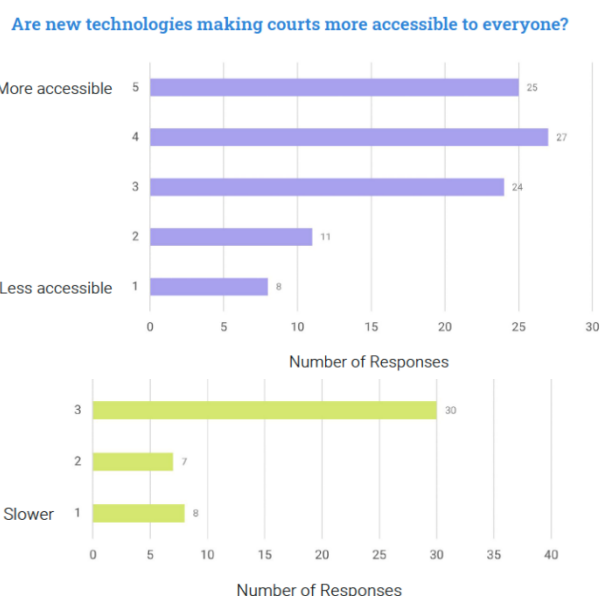
E-justice projects often promise greater efficiency and cost savings, yet primarily benefit the justice system itself and those who can afford lawyers to navigate complex systems. Bringing judicial understandings of inequality into the design of digital solutions offers a chance to introduce reforms that harness technology not just to make the system more efficient, but to make it fundamentally more equitable. The role of judges in this process of transformation is critical.

Informed by the voices of judges in the region and based on its strategic commitment to digital transformation to advance development goals, UNDP is advancing a vision for judicial leadership in digital transformation in Asia Pacific.

JIN ASEAN

The Judicial Integrity Network ASEAN, a UNDP initiative, has been working to amplify judicial leadership in the digital transformation of courts. It connects judges and judiciaries across the ASEAN region to share resources and amplify the discussion about judicial excellence. JIN ASEAN’s model of peer-to-peer support and capacity building is designed to support judges, as an independent voice, able to balance the drive for efficiency with careful attention to human rights and rule of law. JIN ASEAN produced two publications designed to build regional understanding of the impacts of emerging technologies and to support judges participating in e-justice initiatives.

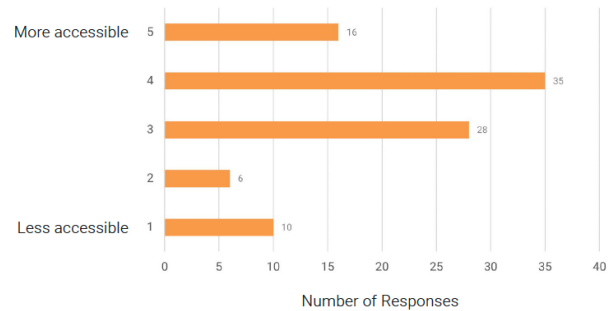
In 2020-2021, JIN ASEAN researched international best practices and emerging trends in court technologies. It then surveyed ASEAN region judges about their own experiences with technology. Gender equality and issues of digital privacy were key concerns, while the use of data collection, algorithmic monitoring and electronic case management all raised questions and opportunities to protect human rights and amplify the needs of vulnerably communities. Technology was cited as making courts more accessible, faster, with particularly benefits for women and people with disabilities.⁹



⁹ JIN ASEAN, UNDP, *Emerging Technologies and Judicial Integrity*, 2021. <https://www.undp.org/asia-pacific/judicial-integrity/publications/emerging-technologies-and-judicial-integrity-asean>

The survey of ASEAN region judges revealed the urgency of judicial participation in decisions about the technologies in use in their courts. Technologies were already in use, or at stages of development in each country. Without active judicial input, these technologies may perpetuate inequality, erode public confidence in the judiciary and obscure critical information that judges require to make independent, transparent decisions.

How are technologies affecting the ability to participate from home or from their communities?



The research also revealed that emerging technologies are often developed by an external technology company, or a ministry department focused on court efficiency, but not led by judges. Judges are not always engaged in the design, selection, or implementation of new technologies. Judges in the region expressed concerns that aspects of the trial process, previously within their control, are now concealed by the technology. They are uncertain about the veracity of documents received electronically or the security of online hearings. Their doubts about machine learning reveal how these complex technologies obscure parts of the decision-making process. Yet despite these concerns, survey respondents expressed optimism about how new technologies will improve transparency, protect against corruption, and improve access to justice.

At the conclusion of the *Emerging Technologies and Judicial Integrity* paper, based on this surveying and sector-wide research, JIN ASEAN made nine recommendations for how individual judges and judiciaries can build their own capacity and engagement in the accelerated pace of technological change in their courts.

Recommendations:

1. Raise rule of law and trial fairness criteria when new technology is proposed
2. Ask questions about the data being used to train the algorithms
3. Identify gender, racial and identity-based bias in machine learning processes
4. Receive detailed briefings about the training of AI systems
5. Prepare litigants & witnesses for virtual court process, decorum & technology use
6. Scrutinize evidence and witness testimony presented through new technologies
7. Promote understanding of the court processes with litigants and witnesses
8. Support judicial colleagues to build the skills & understanding of the new technologies
9. Maintain rigorous attention to avenues for corruption¹⁰

A complementary Toolkit¹¹ was designed to build the capacity of judges and judiciaries to engage in the design of e-justice to address their specific regional needs. It includes a range of tools that can be used by individual judges to better understand the technologies in their courts, or by the judiciary as a whole when designing digital technologies. The toolkit includes:

- Understanding Emerging Technologies
- Understanding Artificial Intelligence / Machine Learning
- Understanding Online Dispute Resolution
- Understanding Blockchain

¹⁰ JIN ASEAN, UNDP, *Emerging Technologies and Judicial Integrity*, 2021. <https://www.undp.org/asia-pacific/judicial-integrity/publications/emerging-technologies-and-judicial-integrity-asean>

¹¹ JIN ASEAN, UNDP, *Emerging Technologies and Judicial Integrity Toolkit for Judges*, 2021 <https://www.undp.org/asia-pacific/judicial-integrity/publications/emerging-technologies-and-judicial-integrity-toolkit-judges>

- Understanding Virtual or Remote Courts
- Understanding Electronic Case Management
- Understanding E-Filing and Online Forms
- Understanding Guided Pathways and Public Education Apps
- Judicial Role in Design and Procurement Criteria
- Judicial Excellence Procurement Checklist
- Evaluating New Technologies
- A2J and the Role of Law Implications of Courtroom Technologies: Judicial Excellence Checklist

The two JIN ASEAN publications have been the basis for virtual training and strategic foresight activities.

JIN ASEAN also supports efforts by judiciaries to conduct self-assessments and adopt action plans to address judicial excellence and strengthen the independence of the judiciary. The Judicial Integrity Checklist, developed by JIN ASEAN, has been integrated into the International Framework for Court Excellence.¹² It outlines key areas of transparency and judicial independence and assesses the level of training and institutional protections within the judiciary. Based on the results, judiciaries develop action plans to address self-identified deficiencies and to protect areas of strength.

Currently four ASEAN countries are using the Emerging Technologies publications as a component of developing Action Plans for assessing and protecting judicial excellence in the ongoing evolution of national courts. Courts in Viet Nam, Thailand, Laos PDR and Indonesia are each engaging with new technologies in different ways, examining gender equality and trial fairness in the process of technological change.¹³

Starting in 2022, Lao PDR started workshops for its judges on the Self-Assessment process and worked with UNDP to develop an action plan focused on public user engagement. Indonesia is strengthening its anti-corruption efforts and protecting whistleblowers through a new online anti-corruption platform that also monitors gender equality and the services provided to people with disabilities. Viet Nam's Supreme People's Court has introduced the Self-Assessment process through a two-day workshop and is implementing the process in the court. Thailand developed a Judicial Service Design workshop and is preparing the court in one region to develop Action Plan.

UNDP is supporting these projects through the JIN ASEAN initiative to cultivate independent, robust judiciaries.

Advocating for an Equitable Future

UNDP's work to empower judiciaries to actively participate in digitalization is premised on the view that the judiciary can work to ensure that digital transformation does not exacerbate the digital divide or further exclude those who are already marginalized. Instead, judges can use their position as protectors of individual rights to actively promote digital transformation that protects the most vulnerable and focuses innovation on the needs of those most excluded.

¹² International Consortium for Court Excellence, Court Excellence Self-Assessment Questionnaire.

¹³ Judicial Integrity Network ASEAN, UNDP. *Country-Specific Projects Building Judicial Excellence Through Self-Assessment and Action Planning*, <https://www.undp.org/judicial-integrity-network-asean-country-specific-projects-building-judicial-excellence-through-self-assessment-and-action-planning>

To do this, gender equality must continue to underpin these reforms. Women's legal rights to property, safety, and autonomy must be protected by legal institutions if women and children are going to benefit from the digitalization of justice systems. Access to justice must not only be maintained in digital platforms but must be expanded to rectify gaps created by geography, economic status and discrimination.

At each stage of digital transformation, privacy rights and the protection of individual data protection is a high priority for judges leading this change. Most people who do not understand how technology operates will rely on decision-makers to protect their interests. Judges are uniquely situated to combine their understanding of people's needs and the impacts of rights violations on the most vulnerable with their justice system expertise. Judges as a community of professionals with shared obligations, can support each other to build capacity and continue to collectively raise concerns about the impact of technologies, while still advocating for digital transformation. This model of independent, principled leadership will set high expectations for other legal professionals to embrace technology as a tool for advancing rights and protecting the rule of law.