

THE DEVELOPMENT OF DIGITAL NOTARY PRODUCTION AS A NEW OPPORTUNITY FOR TRANSPARENCY OF THE JUDICIAL PROCESS AND CIVIL TURNOVER IN AFRICAN COUNTRIES: USING THE EXAMPLE OF NIGERIA

EKATERINA RUSAKOVA ¹, TATYANA CHERNYSHEVA ²

Doctor of Legal Science, Associate Professor, Professor of the Department of Civil Law and Procedure and International Private Law of the Law Institute, Patrice Lumumba Peoples' Friendship University of Russia., 6 Miklukho-Maklaya St., Moscow, 117198, Russian Federation.

Vladivostok State University, N.S., Russian Federation, 690014, Far Eastern Federal District, Primorsky Krai, Vladivostok, Gogol str., 41¹

Graduate Student of the Department of Civil Law and Procedure and Private International Law, at the Law Institute of the People's Friendship University of Russia, 6 Miklukho-Maklaya St., Moscow, Russian Federation, 117198²

rusakova-ep@rudn.ru¹

Abstract - *The global process of digital transformation of various spheres of society is being carried out in all countries of the world, and especially on the African continent. In the new geopolitical situation, African countries have become leaders in attracting investments, including Russian ones, which requires ensuring legal certainty of these relations. The transformation of most communication links into an electronic format has increased the importance and importance of such an institution as the notary office, which ensures legality and law and order. The article examines the positive experience of African countries in the development of digital notary and its impact on the administration of justice. In Nigeria, there has been a transformation not only of the judicial process, but also the process of becoming a digital notary is actively underway, which has solved certain problems related to the formation of an evidence base in litigation. The paper pays special attention to the transparency of legal proceedings, in the context of the relationship with the formation of a digital notary and presents ways to deepen these processes based on the experience of the BRICS countries.*

Keywords: *digital notary, legal proceedings, evidence, certification, blockchain, framework, Nigeria.*

INTRODUCTION

Throughout the entire existence of mankind, global crises and their consequences have become the starting point in the transformation of society and the state. So, in the 1940s, after the Second World War, the first computers appeared, the development of which eventually served as a technological basis in the formation of the digital economy. It was she who became the starting point for the digitalization of legal processes that are currently developing [9]. Of course, the main influence on the transformation of the legislative framework, judicial proceedings and legal activities was influenced by the so-called "digital powers", which today are China, the United States, Great Britain, South Korea, Japan, Russia, etc. Their influence on the spheres of economics, health, education, and public administration has expanded to a global level, within which the countries of the African continent have also begun to introduce new electronic ways of interaction both at the domestic and international levels.

In the current geopolitical situation, most African countries are new strategic partners for Russia, interaction with which can lead to a new paradigm of cooperation based on parity of interests. At the same time, it is worth noting that the revival of partnership relations is also commonly associated with the interstate association of the BRICS countries, within the framework of which digital processes of interaction between countries are also developing. Thus, in 2016, an Agreement on cooperation between the Notaries of the Russian Federation and the People's Republic of China was signed between Russia and the People's Republic of China.

It should be noted that the BRICS digital agenda includes such primary goals as bridging the digital divide, cybersecurity and the development of common standards. Based on these goals, not only the member countries of this association, but also the countries interested in joining the BRICS, begin their



technological transformation and form a new regulatory framework that would meet new challenges and ensure the safety and security of civil turnover.

Many business processes, mechanisms of social interaction between society and the state in African countries began their path of digitalization with the development of an electronic document format. At the same time, this transformation of document flow leads to difficulties in ensuring the reliability, inclusiveness and security of information reflected in various agreements, certificates and other documents.

In addition, the countries of the African continent face the familiar problem of digitalization, which has affected all "digital powers", since, among other things, there are difficulties with reflecting and identifying the true will of the person or business entity in respect of which a particular document was generated.

Materials and Methods:

The article uses works devoted to the transformation of various forms of rights protection into digital: Frolova E.E., Rusakova E.P. [17]; Jacobs Edo.[11]; Jock Aliu, Dindam Killy [12]; Begichev A.V.[3]; Bork A.Yu.[5]; Markova T.I.[6]; Rusakova E.P., Frolova E.E. [16]; Aidonoji Atagamen Paul, Wakili Saminu Abacha, Ayuba David [11].

In the work of Bezbakh V.V., Frolova E.E. [9], the Digital technologies are swiftly getting into the material relations area, inflating it with innovative means of doing business. However, due to the high rates of digital technologies development, its legal regulation remains behind, so the use of selected digital technologies causes unpredictable business flow and diverse law enforcement policies. One such sphere originated from digitalization development is augmented, virtual, and mixed reality.

In the works of Rusakova E.P., Frolova E.E. [16] it is proved that the quality of the protection of rights and legitimate interests depends on the ongoing process of digitalization of such areas as economics, public administration and others.


This article, using the comparative legal method, examines the provisions of the laws of African countries on the joint competence of the notary and the court, and the impact of digitalization on this process, in order to ensure legal order and their compliance with generally recognized international standards in the field of protection of rights. The general methodological idea of the article is that the active implementation of digital technologies in notarial and judicial activities makes them the most effective and attractive for citizens and companies.

RESULTS

The impact of digitalization on the role of notaries in legal proceedings

All the problems come from technology fixing only the information that was presented to them. Industry 4.0 products, at the moment, are not able to fully go beyond the limits that were programmed for them with special codes, and therefore fully evaluate the entire process from creating a document to its presentation in government agencies. A way out of this problem of integrating Industry 4.0 products. It is seen in the appeal to a digital notary, which helps to ensure the legal certainty of technological processes associated with the reliability of electronic document management, in order to reduce the number of court proceedings related to the invalidity of transactions [3]. Most African countries are just beginning to implement electronic signatures as a confirmation of their intentions. For example, in Botswana, on the basis of the Electronic Transactions and Communications Act, no one can doubt the legal force of a document that has been verified with an electronic signature. At the same time, within the framework of this law, the grounds for signing an agreement or other document using an electronic signature are considered: 1) there is a way to identify and indicate the consent of the signatory; 2) in the circumstances, the electronic signature used is as reliable as it was appropriate for the intended purposes.

In addition, Botswana's legislation also provides for 2 types of signatures: an electronic signature and a secure electronic signature. The first signature is data in electronic form attached to an electronic message or a logically related signature. The encoded signature data can be used to identify the signatory (authentication method) and express consent to the information contained in the specified



message. The second is authenticated and recognized by products or services accredited by the Botswana Communications Regulatory Authority. Similar regulation is seen in most other African sovereigns (Egypt, Morocco, etc.). However, despite the legislative consolidation of the possibility to certify the will of the person in respect of whom the document is being created using an electronic signature, other difficulties associated with notarial proceedings are also seen. So, in most of these countries, even in the case of signing a document using an electronic signature, general rules continue to apply, which are aimed at regulating notarization. For example, a notary may present a requirement for mandatory attendance to persons who signed the document using an electronic signature.

Interesting experience of Nigeria in notary

The experience of Nigeria is also interesting, in which a serious reform of the notary was carried out with the adoption of the new Law on Notarial Proceedings of 2023 (hereinafter - the Law on Notaries of 2023). This law not only abolished the previous law on notarial proceedings (the Law on Notaries of 2004), but also marked its digital transformation^[12]. In comparison with the Notary Act of 2004, both the functions of the notary and his duties were clearly defined. It should be noted that earlier the Law of 2004 was based on historical origins and completely repeated the provisions on the notary of England. The law itself contained a direct reference to English law. Now, the Law on Notaries of 2023 clearly outlines the functions and duties of notaries, which are reflected in section two.

In addition, the very rejection of the direct dependence of English law is seen in the fact that the Law on Notarization also clearly lists documents that are subject to notarization. These include a birth certificate, a school certificate, a certificate of non-conviction, a page with the bio-data of a foreign passport, a marriage certificate, a driver's license, foreign documents required for notarization in Nigeria, and affidavits.

However, the Notary Act of 2023 is not just a step towards the formation of an independent legislative framework, but also an example in regulating innovative aspects of digital and remote document certification. Please note that, of course, the technologies used for electronic notarization usually have to meet certain security requirements and document authenticity verification.

First of all, this remark concerns digital signatures. A digital signature in Nigeria refers to an electronic sound, symbol, or process attached to or logically linked to an electronic document and executed and accepted by a person with the intention of signing an electronic document or making a record (Article 28 of the Notary Act 2023). This definition is standard for the countries of the African continent. It was with this innovation that the transformation of the notary office in Nigeria began.

Note that digital signatures issued by notaries can serve to confirm the authenticity of electronic documents and ensure that they have been certified accordingly. These seals usually have special characteristics related to the identification of a notary or notary office.

In addition, the new legislation opens the way for digital and remote online notarization of documents using electronic means, including audiovisual communication. However, in order for a notary to electronically certify documents, it is necessary to register this right with the Chief Registrar - the Chief Justice of Nigeria (Article 3 of the Notary Act 2023).

Now notaries in Nigeria have the right, as mentioned above, to certify documents using digital methods. At the same time, digital notarization of documents is carried out using special means (digital signature and digital seal).

This legal innovation makes it possible to recognize in all courts of Nigeria any documents that have been certified electronically.

However, it also seems unique that digital notarization continues to require registration of this right with a notary at the Chief Clerk of the Supreme Court of Nigeria.

At the same time, not only this right is registered, but also the notary's digital (electronic) signature itself, as well as the technology with which this certification will be carried out. After registration of these means of certification, an electronic signature and a digital seal are issued to the notary. This



signature and seal may be used by a notary only for the purposes of digital notarization. After registration, the notary acquires the status of a notary with electronic access.

This registration procedure also imposes certain rights and obligations on the Chief Clerk of the Supreme Court of Nigeria. Thus, this registrar, in accordance with the Nigerian Data Protection Act (NDPA) of 2023, is obliged to comply not only with the provisions on personal data protection, but also to ensure the protection of digital signatures and seals of notaries, acting as the controller of digital data of notaries of Nigeria.

In accordance with the Law on Notaries of 2023, the chief registrar is also obliged to enter all data into the electronic register of notaries in addition to the existing physical one. Unlike a physical registry, an electronic one contains more extensive information. So, in addition to the name, address, date of appointment and admission of the notary, the phone numbers and e-mail addresses of each notary are also included in the digital register.

The Law on the Notary in 2023 also provides for another procedure - the certification of electronic documents.

Unlike digital notarization, electronic notarization of notarial documents is characterized by the fact that the notary performs the actions themselves using audiovisual communication with persons located in the same or other states, and outside Nigeria. Audio communication itself is a special electronic means of communication that allow you to broadcast videos, pictures, and sound. All these components together are aimed at forming a connection between a notary and another person in real time.

In addition, a special feature of the procedure is the obligation of the notary, in addition to the notarial document, to provide an electronic notarial certificate, which is a part of a notarized electronic document filled out by a notary. At the same time, this part of the document contains the electronic signature and the official seal of the notary, the official name, as well as information about the date and place of the electronic notarization.

Note that both digital and electronic certification of documents requires a special electronic system. This electronic notarization system must have the following characteristics:


- it must have sufficiently clear audio and video quality so that the notary and an individual can see, hear and talk to each other in real time through a live broadcast;
- should include authentication tools that reasonably ensure that only the appropriate parties have access to audio-visual communication;
- must provide the notary with the opportunity to confirm the identity of an individual using two-factor identification methods;
- must be able to record, store and access electronic recordings and documents of audiovisual communication (clause 3 of Article 6 of the Law on Notaries of 2023).

Please note that a notarized electronic document is acceptable evidence in courts throughout the country, if it is not refuted - prima facie.

However, this provision concerning electronic notarization does not deprive the right to challenge it in court. A party who considers a notarized document to be unlawful may refer to its intention, which did not imply authentication of the document, record, or transaction, when challenging.

In addition, this party has the right to refer to the incapacity or inadmissibility of the actions of the individual who sent the documents for notarization, as well as fraud, forgery, error, distortion of facts, impersonation of another person, coercion, undue influence or other reasons provided for by the laws of Nigeria to invalidate the transaction.

In this case, the process of proving one's intention seems interesting, since all evidence is transmitted in the form of copies of notarized documents, as well as recordings of audio-visual notarial meetings to the Chief Secretary of the Supreme Court of Nigeria (paragraph 5 of Article 6 of the Notary Act 2023). It seems that in this case, the use of copies will be impossible to challenge in court. The most



acceptable and simplest way to challenge the notary's certification is to prove the incapacity of the individual who provided the documents for electronic certification or to invalidate the certification due to its commission under the influence or significant misconception.

Thus, the technological transformation of the notary imposes an obligation to ensure the authenticity and identity of the physical and electronic records of documents that it notarizes.

In addition, when this Law on Notaries of 2023 was put into effect, notaries were given another important task, which is to constantly monitor changes in legislation in order to adapt their practices in accordance with current legislation, which will also further adapt new mechanisms in the legal field and thereby create other standards in ensuring security and the authenticity of virtual transactions.

At the same time, despite the fact that this innovative approach to notary activity in Nigeria provides an opportunity for participants to conduct official transactions without leaving their home or office, and electronic means such as audiovisual communication become a key element of this process, there are also negative aspects of this process that can affect the rights of citizens.

Thus, the Law on the Notary in 2023 does not provide for cases in which the technical support of a notary may fail. In this case, the provision on summoning a party in person to certify documents seems applicable. However, the party may be located outside Nigeria, in which case, it will need to return, which entails loss of time and money. In addition, the provision on the need for personal certification should clearly provide for the cases of its application. For example, these specifying provisions may include the following cases:

- imperfection of access to notary services;
- technical reasons that lead to the refusal to certify these documents in electronic form (lack of electricity, special work is carried out on servers, etc.);
- the notary is unable to send these documents for reasons of urgent departure to perform a notarial action outside his place of residence;
- imperfection of the system of interaction and exchange of documents due to the unhindered multiple electronic submission of documents.


A more in-depth development of the digitalization of notarial actions can be seen in the case of the introduction into the Notary Act of 2023 of the possibility of remote certification of transactions, if necessary, the participation of two notaries from different states of Nigeria. The absolute practical importance lies not only in the speed of the services provided, but to a greater extent in the convenience for citizens in certifying transactions and documents, since it will reduce the monetary costs of the road.

In addition, such flexibility of notarial action will not only speed up the conclusion of various transactions, but also allow businesses, citizens and the state itself to integrate into the digital economy faster.

In order to implement this proposal, it seems necessary to develop mechanisms and tools to adequately protect the personal data of persons applying for services to a notary. An important aspect here will be the processing, collection and storage of personal data.

One of the main aspects will be the development of a transparent procedure for the collection and storage of personal data, as well as their further processing. This may include the creation of special databases, regular auditing and monitoring of access to personal data, as well as the introduction of security measures to prevent unauthorized access to information.

Of course, the protection of personal data includes two components: technical and organizational measures. So, the technical component can include reliable encryption of algorithms that will avoid leakage of personal data. The organizational component includes regular software updates or data backups. Such measures will ensure adequate protection when introducing the proposed in-depth development of the digital notary in Nigeria.



Since Nigeria's transition to the digital form of notary services, many have also begun to propose the introduction of blockchain technology to implement the powers of a notary. In this assumption, certain conflicts of public and private interests can be traced.

Of course, the use of blockchain platforms and digital public services takes the development of the state to a new level through a new enhanced way of integrating the digital economy, but the question of the applicability of these platforms to the certification of transactions with land and other real estate remains unresolved. These transactions are usually regulated by special laws of a particular state or government. These include the issues of recognizing digital records as legally significant documents and evidence, as well as the loss of access to assets and mechanisms for protecting property rights to the blockchain. Many researchers see the solution to this problem in the development of a unified legal framework, which aims to establish common standards for the communication of physical assets (land and real estate) and blockchain systems, which will allow for the verification of assets of Nigerian citizens with due efficiency.

Blockchain is a guarantor of legality in methods of protecting rights

Thus, Nigeria can follow four ways of implementing blockchain for notary services:

The digital notary is fully managed through decentralized platforms. Thus, the NEM platform is most often proposed for the application of blockchain to notarial actions, since this platform has great functionality for confirming transactions. Including land and real estate transactions. However, in this case, the state provides full control to the platform. These private companies develop their own rules for dealing with the certification of transactions and their own requirements for the processing of personal data.

The digital notary office is jointly managed by government agencies and private companies. In this case, most often, together with a specific state (subject) of the state or with the state itself, an agreement is concluded with ChromaWay. As a rule, this agreement distinguishes the subjects of influence of the two entities on the development of digital notary activity.


The digital notary is completely under the control of the state. This area of work with a digital notary is used in China[16]. The network itself is created initially for a specific city, subject, state, which ensures full control by the state over transactions and notaries' certifications, and therefore full compliance with the Law on Personal Data Protection.

The most applicable model for the African continent is the digital notary, which combines the control and work of decentralized autonomous organizations and the state[11]. Jacobs Edo sees the Bitland project as applicable, which allows you to own land rights (equity) in your ecosystem, using online technologies to include satellite images, GPS coordinates, landmarks, geodetic information (heights, radii of curvature and other terrain parameters) and other data that facilitate independent verification of the accuracy of any piece of land. The assignment of ownership of a land plot to a specific person takes into account the time stamp and the data obtained on the ownership and location of the plot.

Thus, the system is aimed at legalizing the transparency of the process of certifying real estate and establishing ownership of it, as well as preventing possible corrupt schemes. At the same time, this project was developed in Africa and is already being implemented in Ghana. The global goal is to cooperate with the government and administrations of states with the intermediary purpose of Bitland, which implements large-scale and important work on the certification of ownership of real estate, contributing to the transparency of civil turnover.

However, the use of this path, as well as the use of other methods proposed above for introducing blockchain platforms into the digital notary, still largely depends on the state itself and its willingness to recognize the legitimacy of actions on blockchain platforms.

It should be noted that Nigeria's digital path began not only with the development of the digital notary, but also with the digitalization of justice. Of course, Nigeria, like many African countries, previously adhered to a more conservative approach to the administration of justice, but the need for transformation within the digital economy has also led to a departure from the usual and well-established trials in favor of more technologically and digitally advanced ones [15].



Remote court proceedings, as in many countries, were introduced due to restrictions imposed due to the COVID-19 pandemic. The purpose of the introduction of this procedure was both to respect the rights of citizens to legal proceedings and to preserve the continuity of the judicial system, which also contributes to ensuring development and transparency. The directive on this method of legal proceedings was issued by the National Judicial Council and the Prosecutor General of the Federation, Abubakar Malami [8]. On the basis of this directive, local state practice guidelines have been adopted. Thus, on May 4, 2020, the Lagos State adopted a "Practical instruction on remote consideration of cases in the judicial system of Lagos State" (hereinafter referred to as the Guidelines), in which it provided for the possibility of conducting virtual trials[14].

We note that this type of litigation in Nigeria, "digital virtual litigation", refers to a court session that is held in an online format using Zoom, Google meeting, Skype and similar computer/Internet devices[10].

Please note that the applicability of these platforms in court proceedings is ambiguous from the point of view of the administration of justice in Nigeria. So, in 2023, an error was discovered in Skype mobile applications, in which any user could find out the IP address of the second party when sending one message, which directly violates the fundamental principles of legal proceedings.

The use of the Zoom system is also not particularly secure, since the data received inside the system is automatically transmitted to Facebook, which can safely use data about your region, device model and time zone in the process of targeting ads [1]. In addition, based on the encryption method (TLS encryption), it is also possible to decrypt it and listen to the trial directly. The most dangerous thing in this system is the inability to establish two-factor protection, which is available only in the browser, which may lead to the inability to verify the identification of the person on the other side of the screen.

The Google meeting system, in turn, depends on an Internet connection, which may not always be stable enough. In addition, this platform is also vulnerable to privacy issues.

The shortcomings of the platforms mentioned above suggest a conflict on the issue of the admissibility of virtual trials between section 21 (1) of the 1999 Constitution of Nigeria, which provides for the administration of justice on a fair basis, and sections 36 (1), (3) and (4) of the 1999 Constitution of Nigeria, which provide for the administration of justice in public, except with some exceptions[13].

Additionally, we note that based on the position of the Nigerian courts, it is not necessary to include the courtroom itself in a public court session, it is enough to provide public access to the trial (Kosebinu & Ors V Alimi (2005) LPELR 11442 (CA))[2].


Thus, it seems constitutionally permissible to hold virtual court sessions in Nigeria.

It seems interesting that virtual justice in the country takes place in two ways: hybrid and electronic. So, at the beginning of the trial, you can submit documents either independently or through special e-mail addresses or WhatsApp (section 4 (1) and section 4 (2) of the Guidelines).

It is with these processes that the problem of forming an evidence base is connected. So, when transmitting information by e-mail, there is a risk that it will get to hackers or intruders who were hired by the opposing party. Any mail works on symmetric and asymmetric encryption algorithms. At the same time, for secure exchange with symmetric encryption, it is necessary to exchange the encryption key with the recipient of the message. The key sent by e-mail requires it to have the status "not encrypted" [6]. Obviously, in this case, an attacker can intercept it and then use it for decryption, and therefore obtain important evidence for the case in advance.

The use of WhatsApp for data exchange is also not suitable for sharing evidence with the court. Thus, data received from this platform, according to the Privacy Policy of 2016, is combined in the Facebook data system. In addition, WhatsApp often performs backups that are not encrypted [5].

Thus, the problem of leakage of information about evidence when using this platform is also obvious, which can certainly affect the provision of a fair trial in the country[4].



In the development of the pillars of justice in the formation of the evidence base and the administration of justice in Nigeria, it is seen in the use of blockchain technology by analogy with China or in digital notarization.

So, the problem of forgery of a PDF file format provided via WhatsApp or e-mail is resolved by itself. Because backup copies of notarized documents appear in courts across the country as prima facie evidence. In addition, with regard to the refutation of notarization, the State has established a certain procedure in which this action is seen as very problematic (copies of notarized documents, as well as recordings of audio-visual notarial meetings to the Chief Secretary of the Supreme Court of Nigeria).

This mechanism is certainly effective, since the court can obtain some of the evidence directly from the Supreme Court of Nigeria, which will prevent forgery or replacement of proper evidence with improper evidence.

At the same time, this will solve the problem of providing evidence in the usual manner. Thus, articles 86 and 90 of the Law on Evidence provide for the presentation of evidence in its physical form.

Given the fact that copies of notarized documents were submitted to the court as evidence through the Supreme Court of Nigeria, it seems to be a solution to the problem of comparing and verifying authenticity with evidence that was obtained by traditional methods (direct transfer to the court). Thus, the transparency of the judicial process is developing.

CONCLUSION

The most applicable way to integrate blockchain technology into the process of forming the evidence base of Nigeria is seen in referring to the experience of China[16].

In China, each Internet court creates its own blockchain platform, in which the plaintiff and the defendant exchange evidence directly with the court. At the same time, after downloading the information, the party will receive the "hash function value" reflected in the certificate number, which will indicate that the evidence of the party is reliable. In addition, identification takes place on such judicial blockchain platforms, which download the information necessary for the court when forming the evidence base[7].

It cannot be denied that the introduction of a digital notary contributes to the unique promotion of new opportunities for Nigerian citizens, allowing the state to transform itself within the digital economy. However, it still seems necessary to improve the mechanism of implementation of the digital notary in terms of clarifying cases in which a notary will not be able to carry out his actions for objective reasons, as well as the development of a new direction that will allow notaries to exchange data with different states of Nigeria.

It should be noted that Nigeria's transition to a digital notary contributed to the resolution of certain problems in the formation of the evidence base.

At the same time, there is still a need to introduce a blockchain depository based on the principle of decentralization, which will contribute to a faster and more accurate formation of the evidence base in the administration of justice in the country, since the blockchain depository allows the court and the parties to access documents and evidence at any time and from any place, which will significantly simplify the process of formation evidence base.

However, the above-mentioned transition also indicates openness to global digital processes, as well as cooperation between countries. It seems possible to exchange experience in the transformation of the notary between Nigeria, China and Russia.

ACKNOWLEDGEMENT

The research was supported by Russian Science Foundation grant No. 24-28-01022, <https://rscf.ru/project/24-28-01022/>

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