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The Role of Information Technology in Modernising the Courts

By

Fredrick Egonda-Ntende[1]

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Introduction

It is a singular honour and privilege to me to be offered this opportunity to address so distinguished an assembly, an assembly of the most eminent legal minds in Southern Central and East Africa on a subject that is so relevant to the courts in the region as they strive to deliver a service to the communities they serve, in a world that is undergoing immense technological change, whilst our region continues to suffer an absence of adequate resources. Courts are being called upon to deliver services against a backdrop of an increasing caseload on a declining resource base.

Your lordships, honourables, ladies and gentlemen, you have the unenviable task of leading the judiciaries in the region during this period of both immense challenges and ground breaking opportunities. It is my hope this morning that we shall explore with you the opportunities and challenges created by a new age, the information age.

Information Technology

We are half way through the first decade of the twenty first century. We have well and truly entered the new millennium. At the same time, the Industrial Revolution that began three centuries or so ago, has given way, for the Industrialised world, to the Information Age. The birth of the information age is as earth shaking as the Industrial Revolution in terms of how we work, transmit, store and retrieve information. And yet it appears to be still in its infancy! Jean-Francois Rischard put it this way.

"...the plummeting costs of communicating and computing present enormous opportunities for developing and developed countries alike, to do things, cheaper, differently. This is the heart of the information revolution, a tectonic shift that differs from previous economic breakpoints because it is not about transforming energy or matter, but about manipulating, transporting and storing information and knowledge."[2]

Martin Bangeman has stated,

"Throughout the world, information and communication technologies are generating a new industrial revolution already as significant and far-reaching as those of the past. It is a revolution, itself the expression of human knowledge. Technological progress now enables us to process, store, retrieve and communicate information in whatever form it may take, unconstrained by distance, time and volume. This revolution adds huge new capacities to human intelligence and constitutes a resource which changes the way we work together and the way we live together."[3]

What does this information age involve? The information age is revolving around the advances so far made in Telecommunications and Information technology. These consist of hardware, software, and media for collection, storage, processing, transmission, and presentation of information. We are talking of communication and computing equipment and programmes, which include satellites, switches (phone exchanges), transmission lines, computers, modems, operating systems and applications.

Of what relevance is this revolution to a judicial system? If the way people work, live, and play is changing this would no doubt affect the administration of justice as it is part of this changing world. The Judiciary ought to take advantage of the new developments that may enhance the delivery of its own services.

The changes that come with the availing of information to all, or rather the potential availability of information to all, within the information age, will no doubt affect how part of our population relates to the courts. At the same time, since information technology serves people, issues that arise due to the new way of working, living and playing will become matters for those involved in the administration of justice to deal with, as crime and civil disputes take new forms and actions. As noted by Natalia Schiffrin,

"But while the internet enhances freedom of expression by allowing for free and effectively unregulated communication, it has also facilitated a great deal of crime. The dissemination of child pornography, not to mention fraud, gambling, blackmail, and cyber stalking are all on the rise. Even incitement to murder is occurring over the internet...."[4]

It is the duty of any judicial system to prepare and meet these challenges. And at the same time it is the duty of the Judiciary to take advantage of the new opportunities offered by information technology to offer a professionally excellent service to the community. Nothing less is expected of us.

There is, however, a word of caution from the very outset for societies that fall on the disadvantaged side of the digital divide, 'the information have not societies', in which the vast majority of their communities live outside of this information revolution, somewhat akin to living on the fringes of the industrial society. For societies where penetration of electricity and telephone is less than ten percent of the population, it is clear that there are challenges in regard to the majority of the population who have no access to such amenities to the possibility of access to information age developments. For just as there is the information divide between nations, so is there a divide in the information disadvantaged societies, between a

very tiny class of those who have access and the majority who have little hope of access to the information age developments.

Modernising the Judiciary

The main business of the judiciary is to hear and determine cases in a fair and timely manner at reasonable cost. In doing so there are processes that lead to the conclusion of the cases before the courts. These processes must be efficient, effective, and equitable.

The processes must be efficient in the sense that they provide value for money. The resources so employed must be utilised in a non-wasteful manner leading to the most optimum allocation and utilisation of the same. The system can not be engaged in an abstract search for the truth alone, oblivious of all other factors, like cost, efficacy, and equity. The modern approach calls for balancing of various objectives of the justice systems, given the scarcity of resources, and the competing demands for the limited resource envelope available, particularly in the resource strapped societies, as in our region.

Secondly the processes must be effective in the sense that they are able to achieve that which is sought. For instance is the system able to ensure accountability for the wrongs committed against the society. Or is the relief sought and obtained able to compensate the injury complained of? Going to court is not simply an academic exercise, though in some instances, the nature of matter at hand may be somewhat academic, but nevertheless necessary to be addressed.

The process must be equitable in that all those who ought to have access to the justice system and seek access to it do have access to it. The process must not lock out sections of the community. Neither should it be discriminatory, or show partiality to a class of litigants or some areas of subject matter.

How does IT then enable the courts to be modern that is efficient, effective and equitable?

IT can be a useful tool in the following areas: (1) text creation, storage and retrieval; (2) Improved Access to the Law; (3) Recording of Court

Proceedings; (4) Case Management and producing data for administrative purposes; (5) Continuing Education; (6) Communication

Text Creation, Storage and Retrieval

Apart from the hearing function, judges have to produce written judgements, rulings, and reasons for the decisions that they continuously make. After the advent of the typewriter, the judge often wrote decisions in long hand, and the secretaries or typists would then type the same out in typescript. It is now possible for the judge to type out the decision directly on the computer. And there are many reasons now why the judge should be familiar with word processing skills. A judge is able to produce a decision much faster that way. And because of the ability to manipulate different documents through copy, cut and or paste, or working from templates, or using micros, it is now much easier to produce a document with the information you want included into to. On the same computer or other storage medium, it is possible to store the document, and retrieve it very fast, call up other documents, without having to move from your work station. In the result judgements, decisions and or rulings can be produced much faster in final form for release to the parties. Simultaneously the said decisions, judgements or rulings can go into a court system database to which judges and other people may have access should they need to use the same for whatever purpose. IT definitely makes production and release of decisions much more efficient than was previously the case.

Most of the documents in our case files be they from advocates or the court, are generated on computers. This means that copies of the same are available electronically as they are produced digitally. And even if they have been produced manually, and only hard copies are available it is possible to scan them and convert them into digital format. This creates an opportunity of creating and maintaining an electronic copy of case file that would eliminate problems of loss of the physical file which plagued our courts in Uganda for quite sometime in the past. The courts have the capacity to acquire the necessary hardware for this purpose. If an electronic version of the court file was maintained it would speed the cost of preparing a record for appeal purposes, thus eliminating one of the bottlenecks to the speedy delivery of justice.

Improved Access to the Law

In many jurisdictions the law applicable is often found in different sources. These include Statute Books for legislation; Law Reports for case law and Oral Tradition for Customary Law. The medium for storage of the legislation and case law was, previous to the advent of the current information technology, only available through hard copy in book form or printed or typescript. The traditional approach in some jurisdictions was regularly to produce an up-to-date version in the form of one edition of the laws in force at a particular time. In Uganda, in particular, the situation got out of hand with the 1964 Edition of the Laws of Uganda remaining unrevised until recently. And even then the revision so far is partial, limited to the principal legislation only. The edition got out of print. It was out of date to a significant part. Determining the applicable law was often quite cumbersome. Law Reporting collapsed thirty years back, and efforts to revive the same are on going without being successful to-date.

It is now possible to keep both legislation and law reports, not only in hard copy and book form, but also in digital format, on CDs and other storage media, online (Internet/Intranet), or on stand alone machines making it much easier for a judge or member of the public to search and obtain the provisions of the law or previous court decision that one desires. With the use of the Internet, it is possible to seek for and obtain comparative and persuasive jurisprudence from other jurisdictions while seated at one's work station.

What makes the situation even much more promising is that document production now is digital making it easy to copy and distribute information at very little cost. It is now possible therefore for the law to be available in an easier, more convenient and most accessible format. It makes it simpler to research and incorporate the results of the research into new documents being produced. IT has the potential to tremendously improve access to the law, improving the productivity of the consumers of the same, and possibly both the quality and quantity of what they produce, thus increasing both the efficiency and efficacy of the their product.

It may be noted that the judges of the Supreme Court, Court of Appeal, and the High Court in Kampala, or at least the majority of them, do have

computers and are connected to the internet. A number are known to make use of the internet for electronic legal research. A significant number too is known never to switch on these computers too!

Recording of Court Proceedings

For a long time here in Uganda and elsewhere court proceedings were recorded in long hand by the judge/magistrate. In some jurisdictions court reporters recorded the proceedings using stenographic machines using shorthand, and later produced a record of the proceedings. In other jurisdictions recording was by way of tape recorders recording voice and the record later being transcribed into a typed record. There have been new developments. Voice recognition technologies are being tested but are as yet to be perfected. It is now possible to have digital audio recordings of voice on the computer, allowing the judge capacity to annotate this record and listen to whatever portion he may want to listen to later. The record so recorded would have to be transcribed into a hard copy format (for as long as a hard copy file is maintained), of which e-versions would be available too. It is also possible to have instantaneous recording of proceedings by court reporter which can be viewed by the judge and counsel at their respective desks as the proceedings continue. The advantage of the digital format is that it is easy to manoeuvre whether it is text, voice (sound) or images.

With the use of IT the pace of proceedings may be speeded up considerably. The quality of the record is enhanced immensely as it is far more accurate. Cases ought to be resolved faster, both at trial, and on appeal. This would be the result of the easy availability of the record of the trial. With Judges freed from the task of recording proceedings, they can pay more attention to the function for which they are hired. And that is judging.

Case Management

Computing has greatly enhanced our capacity to capture study and manipulate data producing reports and other records that one might be interested in. It is possible using programmes that can be developed to track events and cases with a view to availing the decision maker

information in a timely manner. Computing is able to do so in considerably much less time than if the same were done manually. Equipped with this information, it is possible for the decision maker to take appropriate action, to move a case forward, or to assign it, list it for trial or take whatever action is appropriate. One is able to follow both the large picture in terms of the aggregate of cases and the small picture, in terms of a single case. Productions of forms and other repetitive processes can be automated. In Uganda this has been embraced with the development of CCAS (Computerised Case Administration System) and MIS (Management Information System).

Communication

It is both in the interests of the Judiciary and in the public interest that the public gets to know and understand what is going on the Judiciary in relation to its mandate. The public ought to know what problems the judiciary is having and what it is doing to tackle them. The public ought to know what the judiciary is doing with the resources entrusted to them in carrying out its mandate. The judiciary does not often have the same platforms as other organs of government. It does not control the purse strings of government or the coercive machinery of government in the manner that both the legislature and executive do. The authority of the judiciary ultimately rests on the confidence that the public has in the services it offers to the public. It is therefore important that the judiciary is able to communicate to the public. One of the easier means of doing so is to go online with the requisite information about activities, problems, and solutions taken to tackle the same in the form of timely reports and updates. Because of the limited access of our people to online resources, the audience may be limited. Nevertheless because of the possibility of reuse of that information by media houses, and other people it is possible it would still reach a wider audience than initially anticipated.

In this regard it should be noted that the Judiciary in Uganda has a web site at <http://www.judicature.go.ug> . Unfortunately it is static for most of the time, and not fully developed. For the last three years it has not seriously been attended to. Though, as a rare exception I must point out that in the last three years or so, at least they have temporarily posted to the page at

different occasions three decisions of the Constitutional Court and or Supreme Court on appeal from the Constitutional Court that were of immense public interest.

The information the web page purports to deliver is not there. For instance it has a cause list section but this is mostly blank, at least for all the times I have checked on it. This only frustrates the intended recipients of the information, and does not add public confidence to the image of the judiciary.

IT affords the courts not only an opportunity to communicate with the public through the internet, but also affords an opportunity to allow for internal communication within the organisation through Intranets and electronic mail. There may be information to which the public may not be privy too which could be kept on intranets accessible only to relevant category of officers in the organisations. At the same time paperless communication using email programmes is possible between judges and other judicial personnel in and outside of the judiciary is possible at very little cost, and almost instantaneously. All over the world email lists for judges and other professionals exist on which judges are able to share information of a professional nature or merely only recreational.

The judiciary in Uganda does have email servers and programmes installed for the courts with internet connections. Unfortunately no advantage has been taken of the same to encourage intra organisational communication using these facilities. Of course some officers use the free email programmes on the World Wide Web for communication but this is the result of individual initiative rather than organisational arrangements.

Training

As a tool for training there are several computer based modules that can assist you to develop your computer related skills to functional levels. This will include word processing, typing, use of the internet, and many others. Training modules are available on floppy disks, CDs', and via the internet.

This form of training is convenient because you can consume it at your own pace, at a time of your choosing, and may be available all the time, should you need to consult the module. It is also possible to pursue continuing professional, academic or other programmes through internet based distance education.

Pitfalls in Acquisition and Deployment of IT

After having extolled the virtues of adoption and deployment of IT, it is important that mention is made of some critical factors for the success of adoption of IT. IT acquisition is not an end in itself. It is a tool. The process of acquiring this rather highly sophisticated tool is quite important as it will impact on whether the acquisition of IT meets the goals set and intended benefits.

Research in the US has established that there is a significant failure rate in IT projects both in the private and public sectors. There are many reasons advanced for this failure and these include:

1. Lack of top management commitment
2. Inadequate planning
3. Abandoning the project plan
4. Inadequate user input
5. Inexperienced project managers
6. Flawed technical approach
7. Anticipating advances in technology
8. Failure to satisfy user needs
9. Inadequate documentation
10. Unwieldy procurement processes
11. Burdensome oversight reviews
12. Unrealistic Cost Estimates
13. Imprecise specifications
14. Non-compliance by Vendors[5]

Uganda's Experience

IT acquisition in the judiciary in Uganda started with sporadic purchase of computers for word processing by secretaries. Then in 1994 or thereabouts, there was the law reporting project (the Justice Porter

project), under which 15 computers were bought (with donor support) to assist in the production of case digests. The project did not really survive long after the departure of the person who run it.

The largest IT project in Uganda has been Computerised Case Administration System (CCAS) which was to be followed with the Management Information System (MIS), and was supposed to be subsumed into MIS. The story of CCAS is a long one and if, as an institution we are able to learn from the mistakes suffered in implementing this project, newer IT projects would have a much higher chance of success within the time periods planned. MIS has not come into operation, much as it had been planned that it would be operational by the year 2003. It is not known when MIS will now come into operation.

In 1999, the Chief Justice appointed a Technology Committee to be responsible for advising the judiciary on IT matters, drawing up an automation and technology plan for the adoption of IT in the judiciary. With the help of consultants the first IT strategy for the years 2000 to 2005 was adopted in the year 2000. A second plan has been adopted for the years 2005 to 2008.

The judiciary in Uganda produced The Strategic Plan for the Uganda Judiciary 2002/3 to 2006/07, which is intended to be the blueprint for realisation of the vision and mission of the judiciary in Uganda. The strategic Plan makes no mention of the first IT or Second IT plan/strategy, either to acknowledge the existence of either of them, or to incorporate those plans into the main strategic plan. Is this a strategic omission? The strategic plan for the judiciary gives some mention to CCAS and MIS, overlooking the other sub-components in the first and second IT plan/strategy. By ignoring IT strategy as a whole, in the Strategic Plan for the Judiciary, an impression may be created that those responsible for the drawing and approving the Strategic Plan, have no commitment towards implementation of the IT strategy for the judiciary, and are only concerned with the CCAS and MIS.

This fascination with CCAS and MIS, to the exclusion of other IT projects, is historical and is deserving of a separate study of its own. Nevertheless for the purposes of this paper, it is important to note that the emphasis on

CCAS (producing data for decision making by senior or top management), probably reflects the importance attached to CCAS by (1) the major donor supporting the project and the judiciary, (2) consultants hired to design, supply, and install the same and; (3) top management in the judiciary, in comparison to other IT tools necessary to raise the productivity of a judge/magistrate who hears and determines cases, which CCAS tracks. The consultants that were retained to develop CCAS, and MIS, are the same ones that were retained to produce the Strategic Plan for the Judiciary. Familiarity with the former led to their exclusive treatment in the latter, with no ostensible intervention from the judiciary to correct the anomaly. This raises the question of user input into the Strategic Plan for the Judiciary and the commitment of the judiciary to IT Strategic Plans it developed, or simply put the commitment of the judiciary to the use of IT, automation and innovation.

One of the most recent projects the judiciary has undertaken is a pilot court recording project with the provision of analogue audio recording systems for several magistrates courts located in the different regions of the country, the Court of Appeal and Supreme Court and a digital recording system for the two selected High Court courtrooms in Kampala and Jinja. These projects were implemented in 2003 and 2004. The evaluation reports in respect of this project are very instructional.

“The Court of Appeal received equipment late compared to the other courts. However, the initial attempt to operate the equipment ended in failure as the person who was trained was not deployed to carry out recording. Instead, the trainee who failed the test in the first batch of training was deployed to carry out the recording.

Problems encountered.

- *The Operator carried out recording with the recorder speaker turned on. The recording therefore carried echoes, which made the job of transcribing impossible.*
- The operator also mishandled microphones leading to breaking of one of the signal pins on one microphone.

Solutions offered

- The right operator was deployed to carry out the recording function effective the date of commissioning and she is performing fine.
- The broken microphone has been returned to our workshop for repair.”

“3.3 Kampala High Court

This is one of the pilots using digital recording equipment.

3.3.1 Problems Encountered

- Initially, there was a lot of interference in the recorded sound.
- There is need to customise the recording software interface to match the court system in Uganda

3.3.2 Solution Offered

- The interface was traced to poor or no earth wiring of the electrical supply in the court building. A proper earth wiring was implemented and modifications done to the mixer to improve sound quality.
- We are still awaiting customisation details from the court for us to implement the changes.”

“3.4 Jinja High Court

This is the second pilot using digital recording equipment.

3.4.1 Problems Encountered

- *No problems have been reported in this court. However the resident judge whose court uses the equipment is mainly out of station covering cases in Mukono. So far 4 successful recordings have been made.*

- There is need to customise the recording software interface to match the court system in Uganda as is the case for Kampala.”[6] (*Emphasis is mine.*)

The consultants make some general observations which are relevant to the success of the project.

“4.1 General Observations

Our monitoring team has established that *where there is administrative will, the pilot is showing positive results.* In some sites there is general laxity typical of the civil service in the country.

There is danger that for those sites that have not received their equipment, the trained personnel will soon forget what they learnt and this can frustrate the project.

In addition, there is the danger of transferring trained personnel to other offices, contrary to what was emphasized during selection of trainees. If this is not stopped the project will definitely fail due to lack of trained manpower.”

“4.3 Administrative Issues

The absence of enthusiasm in some pilot sites should be addressed. Senior staff in the judiciary should pay visits to the pilot sites and emphasise the seriousness of the pilot project in the future capacity of the courts in delivering justice.

Personnel who received training in court recording and transcribing should be left to work at their allocated sites, at least for the pilot stage in order that the project gets a fair evaluation.”[7] (*Emphasis is mine.*)

Six months later the consultants issued the second and last evaluation and monitoring report on the project in respect of those sites where the court recording was already installed. Again the comments are quite instructive.

“3.3 Kampala High Court

This is one of the pilots using digital recording equipment. There has been very little progress at this court.

3.3.1 Problems encountered

- The supplier has not yet attended to the problem of customising the software to fit the court requirements.
- In addition, the UPS serving the recording computer failed and has been returned to the supplier for repair.

3.3.2 Solution suggested

- The suppliers of the digital recording software should complete the customisation.
- The suppliers of the UPS should expedite repair work or replace the UPS under warranty.

3.4 Jinja High Court

This is the second pilot using digital recording equipment. There is no progress at this court.

3.4.1 Problems encountered

- *The staff member who was responsible for this project left the Judiciary and the equipment has not been handed to another person.*

3.4.2 Solution suggested

Recruit and train a new person or deploy excess staff from Kampala High Court.”[8]

From the foregoing it is evident that many of the problems recognised in the research carried out in the US on the reasons for the failed IT projects are reflected in the problems encountered with the implementation of the Pilot Court Recording Project. These include lack of management commitment to the project, especially in the High Court, inadequate planning especially with regard to staff deployment; inadequate user input into the requirements of the software interface; inexperienced project

managers; failure to satisfy user needs, imprecise specifications and non-compliance by vendors.

There are other problems that plague the IT sector in the judiciary. One of the most significant of these problems is staffing. In the traditional establishment for the Judiciary, there was, as it was to be expected, no provision for IT staff, as the sector only emerged quite recently. When the judiciary started on IT projects it still had no provision for IT staff. Eventually provision was made for three staff positions on the establishment at the top end of the ladder. Despite some effort to expand this number to seven staff positions, the minimum necessary, given the extensive outlay of IT equipment and services, the judiciary has failed to get the approval of the Ministry of Public Service which is in charge of this function. The result is that the judiciary has an IT infrastructure and services without the number of staff required to maintain and run the same. The result is a very unsatisfactory state of affairs. For instance staff have been appointed as System Administrators who have no qualification or skills whatsoever necessary for that office. This situation is intolerable. End users do not have the support that they ought to have.

Conclusion

I have endeavoured to show that information technology is now a tool essential for modernisation of a judiciary or judicial system. But it is only a tool, and if not handled with skill and commitment, it may instead frustrate efforts at modernisation. The process of adoption of IT is as important, or, probably even more important, than just the purchase and installation of IT hardware and software itself. If the process is flawed, it is unlikely that the expected benefits will flow from the IT acquired. It could easily turn out to be a waste of scarce resources with equipment left to gather dust, as its life comes to an end, for IT equipment does have a short lifespan in terms of obsolescence.

Information Technology creates both opportunities and challenges. These opportunities and challenges need to be fully grasped, and mastered, if the institutions that you lead are to take full benefit of what Information Technology offers.

I thank you for listening to me.

[1] Judge of the High Court of Uganda

[2] Vice President, Finance and Private Sector Development, The World Bank in a foreword to Harnessing Information for Development- A Proposal for a World Bank Group Strategy accessed on 29/07/99 at <http://www.worldbank.org/html/fdp/telecoms/.harnessing/foreword.html>

[3] [Bangeman 1994] Martin Bangeman et al. Europe and the global information society. Unpublished recommendation to the European Council. 26 May 1994, (supra).

[4] Interights Bulletin, Volume 12 No. 3 Page 1.

[5] Acquiring Technology by Christopher Crawford, found at <http://www.ctc8.net/shortarticle.asp?id=91> on 31st January 2005.

[6] 1st Monitoring and Evaluation Report, December 2003 (Pilot Court Recording System Project)

[7] Supra 6

[8] 2nd Monitoring and Evaluation Report, May 2004 (Pilot Court Recording System Project)