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“Using Technology to Improve Court Performance”

Title: Embracing Information Technology in the Superior Courts in PNG

Introduction

Papua New Guinea is a country of diverse cultures comprising well over 800 different languages covering 19 Provinces with 6.5 million people, the bulk of the population lives in the rural areas. There are 25 judges in the superior courts and approximately 125 magistrates dealing large volumes of summary cases in the District Courts.

Court businesses are conducted in the Supreme and National Courts as the superior courts and the lower courts the highest of which is the District Court and the lowest is the village courts.

The language of the courts is English although in the lower courts proceedings are conducted in either pidgin or motu, depending on which part of the country it is. Pidgin and Motu are used in the village courts or the informal courts where the proceedings are generally not recorded in any form. But they do issue formal written orders which are served on the parties affected by the action for purposes of enforcement of the decisions made by such courts.

This paper only concentrates on the use of technology in the superior courts which consist of the Supreme Court and the National Court and to an extent, by way of comparison, the practice in the District Courts.

The Supreme Court is the highest Court of Appeal with original jurisdiction on constitutional matters. The National Court is the court of first instance with unlimited jurisdiction that deals with all trial matters in all disciplines of the law. This court exercised criminal jurisdiction on indictable cases and all civil matters that are divided into different tracks namely commercial, civil

trials, motions, judicial review and listings and directions hearings tracks. There is also special court for election related disputes.

Management of these courts is dependent on the use of technology to some extent but not entirely.

Technology aiding delivering of justice in the Courts

This paper gives a very generic view or an overview of the technological advantage brought to the courts by the introduction of information technology enhancing access to justice for all, prompt and timely disposition of cases including delivery of judgments through new means and methods of delivering service in the courts in accordance with their core functions of hearing and determining cases filed in the courts for disposition.

Using information technology to deliver justice or to improve performance of the courts in delivering justice to the people has been the envy of all stakeholders involved in judicial administration throughout the world.

There is a marked difference in this race of having the best practice or method and the most efficient system to process and manage cases and flow of cases in different courts in different jurisdictions all over the world. Papua New Guinea has had its share of engaging consultants and experts in various areas of information technology and case management specialists over the last 10 or 15 years but we have never been quite able to get on top of it in now being in comparative position with some of the more advanced and bigger developing nations in the region. Do we need such competition at all?

In the District Courts, like in the Supreme and National Courts, improvements have been made in the recording of individual cases through a central database system maintained by a central or regional registry. While the recording system is not entirely efficient, fool-proof and reliable in the lower court more often than in the higher courts, there is huge improvement in this respect through computer hard disk servers and drives.

With this advantage, file retrieval process on request or demand, is comparably faster than before. But the conduct of proceedings in the court is

not recorded for preservation of data and information except the hand-written notes of the presiding magistrate. Therefore in the event of appeal from the District Court to the National Court, transcripts of proceedings from the District Court are typed from the Magistrates hand-written notes. The disadvantages are enormous no doubt and need no enumeration. This system prevails to this day.

Pre- 1995: IT driven Courts

By way of comparative analysis, given my limited understanding of the practice in other jurisdictions, I provided what prevailed in the District Courts as an example of what is in the Supreme Court and the National Court. Judges took notes of the proceedings by hand in their notebooks which were then made available to the secretaries to type the transcripts where there were appeals, a very laborious process.

The advent of small portable recording devices managed or controlled by the judges eventually obviated the secretaries' reliance on the judges' handwritten notes for typing the transcripts. Transcribing machines replaced the judges' note-books when the secretaries listened to the audio-recording through head-phones and then typed the recordings using their computers.

While technology was advancing at very fast pace in other professions and industries in the delivery of services including government services, judicial services continued to progress at snail pace for all sorts of reasons apart from the more traditional one of exercising caution.

The higher judiciary then had a fairly evenly balanced composition of both indigenous and non-indigenous judges with a total of twelve judges and a national chief justice. By mid nineties the expatriate number of judges had diminished by almost seventy percent forced upon by government policy of localization of the bench which saw few more indigenous lawyers being elevated to the bench.

Analogue court recording system was introduced in the nineties through professional service providers contracted from Australia which saw for the first time proceedings in the two superior courts being tape-recorded by specially trained operators who manually operated the recording devices in

court by placing microphones at strategic locations in the court-room which captured all audio sounds of everything said in court by the judge, counsel and witnesses and specially trained officers would then transcribe all these recordings into type-written paper form.

Since 2000: IT Improvements in the Courts

Without taking credit away from many IT consultants and experts engaged by the judiciary over the last fifteen years to develop an IT system in the courts for administration and management of resources as well as of case management in the two superior courts and sourcing a most efficient and effective method and way of delivering justice in the courts, the system has made limited progress although not as much as we want to see happen.

Moving forward from its present analogue recording system to a digital one has been one that has been in the pipeline for some years. Reasons for this have been numerous including one of resource and financial ability to afford a system and maintaining it with qualified personnel to manage it.

For example, in 2004 a five-year court reporting service roll-out plan for the nineteen Provinces of the country was designed by a privately contracted consultant firm engaged for a fixed term by the Judiciary to oversee this expansion program apart from continuing to render its daily court reporting service to the courts. The aim of this program was that upon successful completion of this program, at the end of the fifth and final year, not only would the judiciary have decentralized this vital court service to the provinces with all the infrastructure and skilled personnel in place to perform this vital service for the courts, the stage would have been now set for the judiciary to move forward from its analogue system to a digital one.

But the implementation of this five-year program had far reaching implications on the overall budget for the judiciary and the program would have cost massive amount of money in terms of manpower planning and resources. Everywhere today governments expectation for service delivery is high but their priorities for committing or investing public funds for public purpose is often influenced by political convenience more than the real felt needs.

Consequently this all program was shelved and the court continues to rely on the digital method of recording with reliance being placed on external assistance for transcription services in civil and commercial cases.

However, there were significant improvements where technology has taken a big leap in the delivery of justice. This is in the area of using technology to work a little smarter and dispensing justice much quicker in the delivery of judgments.

Since the late nineties individual judges were introduced to personal computers and by the early 2000 most judges could at least use a computer. By mid-2000 all judges have been supplied laptops and concentrated training programs were run for those judges who were slow in catching up with the rest particularly for research, use of email and internet service.

Today, most judges, if not all judges, can do research using their laptops/notebooks, type their own judgments, even long judgments, without leaving their desks and computers and going into the library. Some of the more advanced ones are already using the voice recognition software, maximizing the use of their personal notebooks to produce their judgments which is much faster than typing.

By way of overcoming backlog right across the country and adopting the most effective and efficient method of delivering justice in a timely manner pursuant to the judiciary's mission statement, a bi-lateral arrangement was entered into between PNG Judiciary and the Federal Court of Australia to help develop and promote Alternative Dispute Resolution (ADR) as a means of resolving conflicts between parties already registered with the National Court.

A Memorandum of Agreement (MOU) was executed between the two judiciaries towards the end of 2009. A number of approved mediators comprising a couple of judges and lay persons have been certified as such and have already commenced work. A workshop has been scheduled for next month when all judges will be undergoing some form of training and certification for those who want to be mediators.

Also built into the MOU with the Federal Court of Australia (FCR) is for the latter to assist PNG Judiciary in setting up an electronic case management

system (ECMS). Some progress has been made to have this in place soon once file-auditing has been completed but in a very limited scope. Present indications are that the Supreme Court and the Commercial Court will trial the ECMS ahead of other Courts as the physical counts and auditing of files in those jurisdictions have been completed.

Every system in place is only as good as those who are trained and mandated to enforce it and make it work. Our experiences over the last fifteen years have been not only of lack of appropriate technology but moreso of having the right people to manage and operate these new initiatives.

Paradigm shift for way forward

There needs to be greater cooperation and interaction between countries within the region in sharing information and technological know-how in the work of delivery of justice service to the stakeholders. After all, global trade rests on affordable, effective and independent legal system and a robust and impartial judiciary to settle disputes whenever they arise between contracting parties. With so much regional trade cooperation between countries within the Asia Pacific region at stake in recent times, this type of cooperation must be vigorously pursued and embraced for the courts in the region to achieve uniform recognition in their competency level not only of dealing with disputes between parties engaged in bilateral trade arrangements but also in terms of sharing man-power in all aspects of delivering justice through the courts within the region.

by

Justice Nicholas Kirriwom