Good Practices
for the implementation of technological solutions in justice administration

Preliminary conclusions[1]

incorporating the debates among the participants, identifying areas of consensus –particularly as regards the problems encountered -- and also highlighting the diversity of approaches and opinions. Consequently, this document is a proposal to the judicial and academic community intended to generate a profound debate and recognition of the need for further specific research.

GENERAL ASPECTS

1. The importance of technology for the improvement of judicial systems is evident.[2] Nevertheless, these technological transformations should respond to the identification of concrete needs, have defined purposes, be subjected to planning and continual assessment and should be driven by the goal of improving services for citizens.

2. The use of technology should contribute to the improvement of the judicial governance systems.

3. The development and implementation of technological solutions should be shaped respecting contextual and local features and differences.

4. The implementation of technology should contribute to guaranteed rights, seeking equilibrium between the needs of the judicial system and such essential values as the publicity of the process, the presumption of innocence, the right to defence, transparency and access to information.

5. The implementation of new technologies within justice systems should be designed in such a manner as to ensure the right of citizens to the protection of their personal data.

I. JUDICIAL GOVERNANCE

6. As regards the region's judicial governance, the use of ICT confronts two challenges:[3]

- The underdevelopment of the concept of judicial governance, especially as regards its role in directing and monitoring the improvement and modernization of judicial systems;
- The limited importance given to the use of empirical information as a fundamental input for this task.[4]

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[1] Results of the "*Seminar on Recent Trends and Good Practices in the Application of Electronic Technology to Judicial Processes*" held in Mexico City on the 5-6 of April, 2011. One of the seminar's conclusions was that there are several topics related to the application of information technology to the justice sector for which the impacts and implications remain unclear and which therefore merit further research.

[2] The concept "judicial system" will be used to designate the independent organization responsible for imparting justice at the national, federal, state, or regional level, regardless of the specific nomenclature used in each country.

[3] The term ICT (Information and Communication Technology) as applied to justice systems, will be used interchangeably with such concepts as, e-justice, electronic justice, and digital justice

[4] Recent experience in the region demonstrates the risk of reducing technology to "word processing," but also cautions against a haphazard, unplanned adoption of further applications which can lead to a dispersion of efforts, fragmented proposals, and incompatible systems that cannot be used to further governance needs.

II. THE USE OF ICT IN JUDICIAL MANAGEMENT SYSTEMS

7. The design of a management system should start with the identification of the needs that technology will address. This task should focus on the primary needs at two levels: the governance organization and the judicial office. It should also take into account the requirements of other state institutions, the contents of international agreements and the private sector.

8. In the implementation of judicial management systems, the development of "databases" capable of producing information for decision-makers within the governance body is fundamental.

9. The immediate goals of this process should be increasing access to justice, and enhancing the quality and efficiency of services delivered to all citizens. To this end designers might also consider the integration of information with other justice institutions (prosecutors, prisons, public defence, etc.), the use of ICT in the presentation of evidence, and the introduction of standardized forms for the parties and for judicial decision drafting for simple, routine cases.

10. The implementation of an ICT program should be preceded by an assessment of the potential, costs, benefits and related implications.

11. Some of the issues that should be addressed so as not to miscalculate the costs, benefits, and necessity of the ICT applications are:[5]

- Whether, how, and to what extent the use of ICT to connect individual courts or other actors will accelerate case processing and whether the use of e-filing and similar techniques will reduce procedural delay;
- Whether, how, and to what extent the adoption of e-filing will reduce errors in entering information into electronic databases;
- Whether, how, and to what extent the planned ICT applications will reduce costs for processing and resolving disputes;
- Whether, how, and to what extent ICT applications will improve the performance of personnel and will reduce corrupt practices;
- Whether, how, and to what extent audiovisual recordings will speed up hearings and facilitate review of the proceedings by the judges, lawyers and other actors;
- Whether, how, and to what extent service of summons and similar communications will the parties will be easier and agile with the use of ICT;
- Whether, how, and to what extent ICT contributes to minimizing a reliance on paper documents in judicial offices.

12. The implementation of technological solutions should be evolutionary and modular. Future solutions should be built on existing modules, and this requires forward vision to ensure system compatibility and a potential for data migration. [6]

13. Some technological solutions are developed totally or partially by one external provider; when this occurs, the judicial client should ensure the contract includes the hand-over of all the resources needed for future self-

[5] See Barry Walsh, *E-Justice Projects – Distinguishing Myths from Realities.*

[6] From the start ICT systems should incorporate a "unique number" to identify cases and this should be introduced with an eye to the future expansion of databases across the judiciary and even across institutions.

management. The client should also ensure it develops its internal capability to introduce changes and resolve emergencies without having to depend upon the provider.

14. Other aspects that should be considered in the implementation of technological solutions are:

- The potential for technology to advance the transformation of judicial practices, especially as regards "rituals" rules and procedures that may no longer be needed;
- Ensuring that ICT adoption is shaped through the participation of all relevant actors; the technicians should be at their service and not vice versa.

III. TRANSPARENCY AND ACCESS TO INFORMATION

15. The policies for disclosure and access to judicial information should be based on the principle of "maximum publicity" and a clearly identified public interest.

16. In applying these principles, a distinction should be made among the different information types that are produced and generated by the justice system.

17. It is also important to recognize the different implications arising in the medium through which the information is given or disclosed. The publication of data on Internet is very different from the publication of data on paper. This implies that content may have to be adjusted according to both the medium through and the purposes for which the information is being made public.

18. Access to judicial information should be the result of a judicial policy reflected at two levels:

- The first is the statement of guidelines to orient decision making;
- The second involves judges' discretion in applying these guidelines to individual cases. In addition to the general principles and the type of information, judges will consider the specific characteristics of each situation and the opinions of other actors involved in it.

In any case, any restrictions on public access should be fully supported and should not be applied without a cause.

IV. JUDICIAL INFORMATION AND INTERNET

19. Judiciaries have a duty to publish their judicial and administrative resolutions and to do this in a fashion that facilitates information retrieval by outside parties.

20. The protection of victims, witnesses and other sensitive groups must always be respected when information is made public, especially on internet. The principle of a clearly identified public interest should be applied in a concrete manner to each case.

21. Judgments and other judicial decisions contained in databases should be made accessible to all citizens free of charge. Privacy should be protected by ensuring the anonymity of vulnerable individuals (victims of sexual offences, children and adolescents) and when the identity of the parties is not of public interest. Publication of such details should be based on international standards of human rights protection, considering the implications of internet release as opposed to other means of disclosure.

22. It would be advisable to revisit certain new uses of technology in the justice sector (for example, registries of child support defaulters, the selective disclosure of convicted sexual offenders), so as to weigh their benefits against the possible damages involved.

23. Judicial websites should be designed to advance the following objectives:

- To ensure transparency and accountability of justice sector operations;
- To ensure that Information is clear and easily accessible to citizens; and
- To respect the right to privacy as expressed in the relevant international standards of human rights protection.

24. At a minimum these websites should also aim at the following:

- To maximize the use of electronic services thereby decreasing the need for citizens to physically access the courts;
- To increase interactive services, favouring dynamic information and participatory functions;
- To optimize service delivery by prioritizing speed, access, unified applications, security and efficiency;
- To improve the quality of information and to index it by user profiles.

25. In the countries where video technology is used to film/record and publicize judicial proceedings, the potential advantages and disadvantages of its use and disclosure should be assessed.

26. The justice system should assume with appropriate responsibility its role as a repository and disseminator of information. It should establish protocols to avoid the misuse of information and also to ensure adequate security.

27. Judicial websites are the most suitable spaces to disclose judgments and other judicial decisions.

28. The website publication of complete texts of judgments reinforces juridical certainty and transparency. Where decisions are not published, the selection criteria should be explicit. At a minimum, all judgments of the last instance courts resolving core legal issues, as well as those of the courts of appeal, should be made public (with the necessary anonymity of the parties, where applicable).[7]

29. Information on scheduled public hearings and legal notices should be publicly available only for the time needed to inform interested parties. They should be removed from the web once they have served their primary purpose, especially when they contain the names of the accused and other vulnerable people. In no case should the names of the victims be published.

V. *AD HOC* SYSTEMS TO SUPPORT JUDICIAL DECISIONS

30. Information technology offers the potential to generate high quality information and analysis which can be used by judges in making their decisions. It is recommended that opportunities for this type of study and its applications be identified and promoted.[8]

[7] The publication of judgments of first instance courts is important to maximize transparency and also because of parties' ability to use them to predict how they would fare in a future legal action whether of an economic or other nature.

[8] This paragraph refers to the use of judicial statistics and other data to analyze specific issues and so provide judges with additional information in making their decisions. The example used in the seminar was the Project "Presumption of Innocence" as applied in the State of Morelos, Mexico by the Open Society Justice Initiative. The project sought to improve

VI. STATISTICS AND JUDICIAL INDICATORS

31. The use of statistics within the courts should be promoted with the aim of improving their management, helping them assess their performance, and strengthening judicial governance and accountability.[9]

32. A distinction should be made between judicial information (data) and judicial statistics (systematized data). It follows that it is necessary to promote the systematization of basic information to produce statistics that can be used to evaluate judicial processes.[10]

33. Actions and policies are needed to promote the production, diffusion, and use of judicial statistics.[11]

34. To these ends, both the quality and the comparability of the statistical data produced by the courts should be improved.

35. Judiciaries should promote, facilitate and contribute to the use of their databases by external parties to analyze their operations.[12]

VII. SPECIAL MEASURES FOR PRIVACY PROTECTION AND THE PUBLICATION IN INTERNET OF JUDICIAL DOCUMENTS

36. To promote the adoption of privacy by design,[13] in the case management systems or judicial word-processing programs personal data protection should be included in their initial design. The aim should to minimize the risks to the right to intimacy that the online disclosure of the judgments and judicial documents could carry.

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the judges' decisions on the use of pre-trial detention or alternative mechanisms for youth accused of criminal activity. It used databases managed by the detention centers, prosecution, public defence and youth courts to determine the relationship among characteristics of the accused, pre-trial mechanisms utilized, and the individual's subsequent criminal activities or lack thereof The results are intended to help judges decide on which mechanism (pre-trial detention, conditioned release, etc) is most appropriate for each specific case. It warrants mention that this project uses "privacy by design;" the juvenile justice law in the State of Morelos (Article 126) mandates the destruction of records on young offenders after three years of compliance or the end of the process. To comply with this requirement and to guarantee privacy to adolescents it was decided to discard personal data in the project database and substitute an alphanumeric code for the purpose of tracking future developments in each case.

[9] It is advisable to house this function within the judiciary, with access to basic data and the capacity for information analysis. Permanent training of staff is vital.

[10] The quality and utility of statistics also depend on the development of classification tables (of type of case, process, procedural acts, means of disposition, etc.). Although these tables should respect the legal norms and nomenclature, it may be necessary to structure them using statistical criteria so as not to generate an infinite number of very small categories, but rather start with large groupings that can later be broken down into smaller frequencies..

[11] The continuity over time of statistical data and indicators is vital as it allows observers to appreciate the evolution of the quality of justice. Except when there are significant reasons (legal changes, new jurisdictions) categories and formats should not be altered even when better means of expressing them are identified.

[12] This recommendation includes at least citizen observatories and academic and sector studies.

[13] This is an approach whereby privacy and data protection compliance are designed into information systems right from the start, rather than being added (or ignored) on a case-by-case basis. With the adoption of these mechanisms —as for example the prior selection of those fields in a judgment that should be suppressed or anonymized— the processing of documents prior to disclosure on Internet becomes automatic These technological solutions, integrating the architecture of the system and data protection principles, may have many benefits, including reducing the costs of compliance.

37. Caution should be exercised in the development and operation of technological solutions so as not to unintentional violate rights to privacy and protection of vulnerable groups.[14]

38. To limit the violation of the right to privacy, the starting point should be the need criteria. The text of judgments appearing on internet should only include personal data needed to support the decisions; other superficial and disproportionate personal information should be excluded.

39. The internet disclosure of personal data contained in a judgment or other judicial decisions should respond to a clearly defined public interest.[15]

40. In particular for internet disclosure, the "depersonalized" writing of judicial documents should be promoted, using the initials of the parties and avoiding data or details that may harm the right to intimacy and cause damages, unless they are needed for the legal reasoning of the decision.

41. To protect privacy, courts should consider promoting technological solutions such as: avoiding the use of individuals' names as a web search tool. It is especially recommended that the use of a Robot Exclusion Protocol on websites be adopted, with the aim of blocking searches based on the names of people involved in cases.[16]

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[14] The new technologies may generate as yet unsuspected risks to fundamental rights. For this reason it is convenient to avoid the inclusion in judicial documents of data not strictly necessary. Furthermore, it is well to recognize that it is almost impossible to suppress or prevent the further distribution of information once published on the Internet.

[15] For example, "a public interest in the disclosure of identifying information may include protecting the public from fraud, physical harm or professional misconduct or promoting deterrence. If there is a clearly identified public interest in the electronic disclosure of the identities of parties or witnesses in a particular case, weigh other relevant factors, including: (a) the sensitivity, accuracy and level of detail of the personal information; (b) the context in which the personal information was collected; (c) the specific public policy objectives and mandate of your tribunal; (d) the expectations of any individual who may be affected; (e) the possibility that an individual to whom the information relates may be unfairly exposed to monetary, reputational or other harm as a result of a disclosure; (f) the gravity of any harm that could come to an individual affected as a result of the disclosure of personal information; (g) the public interest in the proceedings and their outcome; (h) the finality of your tribunal's decision and the availability of a right of appeal or review; and (i) any special circumstances or privacy interests specific to individual cases". See, Office of the Privacy Commissioner of Canada, *Electronic Disclosure of Personal Information in the Decisions of Administrative Tribunals, What should administrative tribunals consider when contemplating Internet publication of their decisions?*, February 26, 2010, www.priv.gc.ca/information/pub/gd_trib_201002_f.cfm or www.priv.gc.ca/information/pub/gd_trib_201002_e.cfm

[16] As a way to guarantee the "right to be forgotten" judicial information that contains personal data should not be kept in Internet cemeteries (for example, www.waybackmachine.com)