Online Dispute Resolution, E-Government and Overcoming the Digital Divide

Susan Schiavetta
Norwegian Research Centre for Computers and Law
University of Oslo

1. Introduction

Electronic-government (e-government) involves “[t]he use of technology to enhance the access to and delivery of government services to benefit citizens, business partners and employees”.[1] One government service in particular that has much to gain from e-government is the court service, because courts in most jurisdictions have experienced and continue to experience problems with backlogs and delays. With the injection of information and communications technology (ICT) into the administration of justice the delivery of court services can be far more efficient. Whereas this can mean streamlining and improving the delivery of court services, for example, automating and information practices such as the distribution of court documents, the performance of court procedures and the management of the court in general, it can also refer to reengineering the delivery of justice, i.e. finding new and more efficient ways of resolving disputes. In particular dispute resolution methods such as litigation or Alternative Dispute Resolution (ADR) can be carried out online.

This paper focuses on the use of such online dispute resolution (ODR) methods by governments to improve access to justice and in particular by governments in developing countries. Unfortunately whilst the use of ODR by governments holds a lot of promise in terms of reducing court backlogs and giving disputants access to faster and cheaper methods for resolving disputes there is a ‘digital divide’ existing between developed and developing nations in relation to their opportunities to access ICT, which limits the ability of citizens in developing countries to utilise ODR.[2] So long as citizens in developed countries can benefit from ODR and citizens in developing countries cannot this only serves to exasperate the digital divide in that a justice divide is also created. Specifically, only those with access to technology are able to enjoy better access to justice.[3] Accordingly this paper looks at different ways in which governments in developing countries can bridge the digital divide so that their citizens can also reap the benefits of ODR.

2. e-Government

One of the many buzzwords to emerge during the digital revolution has been ‘e-Government’. Referring to the delivery of government services beyond the traditional brick and mortar by exploiting ICTs, e-government has the potential to revolutionise the way that governments interact with the governed. This exploitation of ICT is not limited to using internet-enabled applications but rather includes all digital ICTs, and as such a variety of options exist for governments to integrate ICTs. Moreover such integration can take place in relation to all public sector activities, and thus the activities of internal management and administration and the government’s interaction with businesses, citizens, and partners, such as ministries and agencies will all be affected.[4]
Accordingly, e-Government can be viewed as covering three domains:

- **e-Administration** - covers improving government processes, by cutting process costs, managing process performance;
- **e-Citizens and e-Services** - deals with increasing public participation in public sector activities, decisions and actions, and improving public services in relation to quality, cost and convenience; and
- **e-Society** - relates to the relationship between public agencies and other institutions. 

### 2.1 e-Government Strategies

Most if not all developed nations now consider e-government to be an essential strategy to both modernising government and creating an information society. In particular e-government promotes efficiency, transparency, accountability and public participation. Consequently, an array of diverse e-government policies have been introduced, which aim to transform internal management and administrative programs, use a variety of electronic channels to deliver customer centred services, transform the relationship government has with its partners by, for example, changing how business is done across ministries, providing new informational links that drive fundamental shifts in the way public services are delivered, establishing a two way communication between government and citizens, and supporting e-business by leading by example.

### 2.2 Incorporating ODR into e-Government strategies

Of all the government services that need to be modernised the court service is one that could benefit immensely by being incorporated into an e-government strategy. In particular many people are being deprived of access to justice as a consequence of delays and court backlogs caused by protracted litigation. Although there can be a number of factors that contribute to litigation being unnecessarily prolonged, such as lawyers abusing procedural rules, one factor that has a particular role to play is the inefficiency of the court service itself. For example tasks carried out by administrative staff and judges are often wasteful because they are repetitive, demanding and time-consuming. Consequently governments need to find ways to increase access to justice by making the litigation process more efficient. The knock on effect of this is that disputants and courts will use less time resolving disputes. As a corollary of this the money that needs to be invested in the resolution process is also reduced.

To reduce delays court procedures and courtrooms can be revolutionised with ICTs. Judges for instance can be equipped with supporting technologies that will allow them to access to information quickly, make notes during trials, and prepare their judgments, as this will reduce the time spent processing the case. Likewise, court procedures and more futuristically court hearings can be carried out entirely online. This latter approach will make courts more accessible and faster in general because users, which include the legal profession and disputants, will be able to have access 24 hours a day, 7 days a week, from anywhere in the world. Moreover, processes, such as making lodgements for civil claims or default judgments, can be carried out much faster. In a similar vein, components of the justice system, such as court annexed ADR procedures and ADR carried out by administrative agencies in place of judges, can also utilise the Internet.

This ability to integrate various dispute resolution techniques and procedures with the Internet, thereby creating cybercourts and electronic ADR (e-ADR), has led to the evolution of a new generation of dispute resolution procedures and processes that come under the heading of ODR.

### 2.2.1 Cybercourts

Numerous governments have modernised their court services by first and foremost introducing ICT into their courtrooms. This has involved integrating things like case management systems, electronic
databases, personal computers, network connections, electronic data interchange, and video and audio conferencing equipment. Additionally websites have been established which are either static and create one-way communication between the courts and users or are interactive and hence allow courts and judges to exchange information and services and carry out financial transactions with users.[9]

Realising that e-government does not just happen because a website has been established some governments have went that little bit further and tailored court resolution services to be carried out online. For example, ‘MoneyClaim Online’ is a service offered by the English and Welsh Court service for claimants located anywhere that wish to claim payment of a due debt of up to £100,000 GBP via the Internet from a person located in England or Wales.[10] When a claimant files the claim the court in charge will process the claim on the next day the court is open that is unless they file the claim before 9.00am, which allocates the court to process the claim the same day. Once served the respondent has 14 days to respond during which they can pay the claim in full, counterclaim, make a full or part admission, or defend the claim.[11] In the event that the claimant and respondent cannot agree on the case the case will be transferred to the relevant court.[12] Everything related to the process is carried out online, in that users cannot send hard copies, entering a name on an online form is equivalent to signing a document and payments can be made by debit or credit card. The service has proven to be very successful with ‘MoneyClaim’ now dealing with more claims than local courts.[13]

A similar advanced online court service is offered by the Singaporean Subordinate Courts. Going by the name of e@dr this service deals with small claim disputes up to $10,000 SD or $20,000 SD by consent of the parties. This service is offered by the small claims courts which is fully equipped to deal with disputes that arise out of a contract for sale of goods or the provision of services, claims in tort arising from damage caused to property, save for motor vehicles, and intellectual property or domain name disputes. Thus most disputes arising either directly or indirectly out of e-commerce transactions can be dealt with by this service.[14] The costs associated with using the service are proportionate and the process is speedy.

2.2.2 e-ADR

In comparison to the level of activity in relation to introducing ICT into courtrooms and court services the level of government interest in using e-ADR is still in its infancy stages. This is disappointing given that there has already been much activity and success with it in the private sector.[15] Indeed, governments can promote the use of e-ADR for both private and public disputes and hence free up courts to deal with more meritorious disputes.

As far as public sector disputes are concerned many governmental agencies, such as tax offices and environmental protection agencies, could utilise e-ADR systems quite effectively to resolve disputes. [16] Specifically, many administrative appeals, such as appealing a parking ticket and various other types of disputes with government entities are regularly dealt with remotely using snail mail and so dealing with them remotely via the Internet is just as feasible.[17] Furthermore, given the enforcement role that government plays in society e-ADR procedures utilised by government agencies can be constructed in such a way that they maximise their integration with criminal systems, for instance, ensuring that information is fed in both directions and hence reducing waste and duplication.[18] In relation to private sector disputes governments could have court-annexed e-ADR, where the disputants are directed to try e-ADR first, or promote mandatory e-ADR clauses for insertion in certain contracts, such as business-to-business.[19]

More recently governments have begun to show more interest in the use of e-ADR and are currently investigating the potential benefits of e-ADR with a view to adding e-ADR to their existing services. [20] Likewise, research has commenced at an international and supranational level. For example the Information Society Directorate of the European Commission is exploring the use of e-ADR in the e-government sector and a Communication on the promotion of e-ADR is expected.[21]
Some governments, such as the Singaporean government have actually introduced an e-ADR service. The Singaporean government’s service - e@dr - discussed above also provides online mediation where the dispute does not fall within the small claims tribunal’s jurisdiction. This court-annexed service allows the disputants to work out their disagreements online using a court mediator. If the claim is complex or involves a substantial claim the dispute will be channelled to the Court Dispute Resolution International Service (CDRIS) to be settled using a settlement conference that is co-conducted by a Singaporean judge-mediator and a judge from a foreign jurisdiction. Although this service can be carried out offline there is also an electronic version of the service (e-CDRIS).

The Federal Mediation and Conciliation Service (FMCS) is an example of an administrative agency that operates a government run e-ADR service. Created with a view to providing a mediation service for collective bargaining disputes and assisting the development of improved workplace relations, the FMCS’s service now includes the TAGS system, which assists FMCS mediators in the mediation process and allows them to conduct mediation remotely. Another example of government run scheme is the e-ADR services offered by National Mediation Board.

Other governments, such as the UK Government, have introduced schemes that can come under the heading of e-ADR because they can be carried out online but were not designed to be e-ADR schemes but rather were traditionally carried out remotely via snail mail and have now been adapted to use e-mail. For instance if a citizen has a complaint about the way in which their affairs have been handled by the Inland Revenue or the Valuation Office Agency they first complain to the Director of the Agency. If there is no success at this level they can then submit a complaint to the Adjudicator’s Office, which can be sent by e-mail. Similar systems have been launched at a municipal level, as is the case with New York City, which offers hearings by both web and mail for parking infractions. In addition there have been some government-sponsored projects, such as ECODIR, which is a European Commission funded project that operates in the private sector but was established with a view to investigating the future possibilities for e-ADR.

Undoubtedly it is essential that e-ADR forms part of any e-government strategy because not only will e-ADR free up court resources but e-ADR is generally cheaper, quicker and less adversarial than litigation, even when the litigation process has been made more efficient as a consequence of the Internet. Above all, the cost savings are particularly relevant for governments given that administrative agencies are subsidised from the national budget. Furthermore, with augmentation of globalisation, which is largely accredited to the Internet this has produced a large quantity of cross border disputes and e-ADR is particularly advantageous here because, for example, jurisdiction issues can be solved.

### 3. Developing Countries and ODR

Whilst developing countries stand to benefit from having an e-government project and in particular one that integrates an ODR strategy in the same way as developed nations, developing countries face greater challenges with the integration of ICT into government services. Specifically, a digital divide has transpired between developed and developing nations and as such the opportunities to access ICTs in developing countries are impaired. Consequently developed countries have been far more equipped to exploit the benefits of, for example, the Internet when modernising their justice systems. If citizens in developing countries are to benefit from ODR in the same way as those in developed countries it is imperative that the digital divide be bridged. To be sure if ODR is not used in developing countries a justice divide will also transpire.

### 3.1 Bridging the Divide for the Benefit of ODR

Undoubtedly the ability to realise the potential gains from e-government and ODR is dependent on a
number of variables such as political support, the existence of an adequate legal framework, available funds and infrastructure and cultural changes.[28] Of them all, the lack of infrastructure is one of the main reasons that ODR has not been as successful in developing countries. Consequently many will require economic assistance to assist them in building up their communications infrastructure. Such support can come from other governments or from supranational, regional or international organisations for example, via European Union sponsored projects. Alternatively commercial investors may be willing to invest. However this latter source of finance is only an option where investors can be guaranteed a return on their investment and safeguards are in place, which help to secure their investment, i.e. political stability or some initial trustworthy infrastructure. [29] Encouraging external investment can also involve having incentives to invest such as tax benefits.[30]

Rather than finding funding to build the infrastructure governments can employ other methods to provide citizens with access without having to produce immediate widespread access of the Internet. One possible solution is to allow citizens to use SMS to access government resources and hence ODR.[31] Indeed, in the Philippines for example there are 22 million mobile phone subscribers.[32] Another solution is to utilise court kiosks to give disputants’ access to both the Internet and the ICT tools needed to support ODR procedures.[33] Such kiosks could be situated at local courts for accessibility and security purposes. Portable government computers could also be taken into rural areas where, for example, there is no local court. Alternatively akin to Egypt Information Technology Clubs could be established so that all citizens can get access to the Internet.[34]

It should also be considered here that for many developing countries access to financial resources is not the main reason for a lack of infrastructure, because they already have the modest financial resources needed to implement the basic infrastructure.[35] Rather the reasons for inaction may be political.[36] For instance many countries do not rely on the separation of powers between different branches of government, do not have the necessary checks and balances between different government actors in place, and are burdened by inefficient and non-functioning institutions. Ultimately these factors affect the success of ODR in such countries, as the implementation of ODR largely depends on parts of the justice system being effective in the first instance. “In this context it is not a question of the have and have-nots in the economic sense but of having efficiency and not having efficiency in political institutions”. [37] Accordingly in order to integrate ODR governments must first deal with these problems.

3.1.1 Other Considerations

Over and above putting the relevant infrastructure in place developing countries will also have to consider a number of other issues when seeking to develop an ODR strategy. For instance political leaders will need to integrate a vision of ICT and more specifically ODR into their political agenda. This support is generally determined by whether political leaders believe they have something to gain or lose.[38]

Furthermore, they will need to find ways to reduce the prices to get connected to the Internet in developing countries. The OECD accredits liberalisation of telecommunication services as key to the growth of access lines, price reductions in relation to bandwidth costs, Internet access and use.[39] Computer availability is also an issue again because the cost of having the necessary hardware and software is often too high for many citizens in developing countries. To be sure, despite the fact that prices of computers are continually decreasing issues like the need for continual upgrades and the expense associated with technologies, especially for disabled citizens, can be a huge barrier to access. Where governments in developing countries attempt to provide alternative sources for citizens to gain access to the Internet and computers, such as establishing Information Technology Clubs, this will undoubtedly help improve access and support the use of ODR.

Additionally legal obstacles, such as ensuring that legislation caters for the validity and enforceability of e-arbitration awards, the use of digital signatures, the filing, storing and retrieving
of electronic documents and the admissibility of electronic evidence, data protection and possibly demands that e-ADR systems meet basic procedural guarantees, such as independence and impartiality, due notice, transparency, and reasonable time and cost, as this will also assist the acceptance process, will need to be removed. Indeed, archaic laws and old regulatory regimes can be a major obstacle to the any ODR strategy.

It will also be necessary to run education programs that teach citizens how to use the technology and especially the Internet and associated ODR applications. Such programs will also have to take into consideration variables such as age, gender and previous education. Thus, while schools and colleges seem an obvious outlet for education programs citizens not taking an education also need to be considered. For instance in the Information Technology Clubs in Egypt each club is manned with an instructor to train users to use keyboards and software applications etc.[40]

This cultural adjustment will not only involve training users in how to use the technology but also promoting public awareness of both e-commerce and ODR in general. In respect of ODR public awareness is necessary to generate public confidence in the ability of ODR to deliver justice. In the context of e-commerce Governments will need to promote the use of the Internet as a valuable means to trade and interact. Encouraging both genders and citizens of all ages to get online would have to be an integral part of this promotion.

With respect to e-ADR it will also be important for governments in developing countries to design and realize their own e-ADR systems rather than rely on existing e-ADR systems that have been developed primarily in the Western world, as the main language used in existing procedures is English. Hence governments in developing countries ought to promote e-ADR in languages such as Arabic and Chinese.[41]

In a similar vein, third parties operating existing e-ADR procedures may not know about cultural differences in resolving disputes. For example in Mexico etiquette and manners are seen as measure of breeding and so Mexicans tend to be more formal when they address others. This is in stark contrast to Americans that tend to sacrifice formality for efficiency and so get to the point a lot quicker. Furthermore, truth is also a relative concept in Mexico and so is tempered by the need for diplomacy. By contrast trust is viewed as an absolute value in the US and so yes/no answers are both given and expected.[42] Accordingly it will be important for the success of the resolution process that citizens in developing countries can use e-ADR systems that employ third parties that are aware of the cultural traits in various countries.

### 3.2 The End Result

Some may argue that the need to ensure clean water and provide health and education is more important for developing countries than introducing ICTs and ODR but as Subhajit Basu notes the delay in implementing ICT will only escalate implementation costs. Moreover, as previously discussed, if ODR is not taken more seriously in the developing world a justice divide will also emerge. Additionally the introduction of ODR will also assist in bridging the digital divide in general. For example, having an e-government strategy that includes ODR will reflect a degree of political stability within a developing country. In particular it will reflect that the government’s commitment to e-government and ODR is long-term and not just a flash in the pan. As a result, foreign investors will be more willing to invest in the country and help build the necessary infrastructure.

Furthermore, the introduction of e-ADR techniques will help to encourage use of the Internet by citizens and businesses in developing countries in general because e-ADR is also a trust mechanism that helps bring security to online transactions and hence instils confidence in users that the Internet is a safe place to operate.[43] Ultimately users are not only concerned with their personal data being exposed and abused, they are also worried about resolving disputes that arise online, particularly since the Internet gives users the opportunities to interact with others in completely different
jurisdictions. Hence, users need to feel that they will be able to seek redress if they get into a dispute online. E-ADR offers users this guarantee and as such users will be more likely to use the Internet to conduct their business if their activities are supported by an e-ADR system. Likewise, if foreign investors are assured that developing countries have dispute resolution mechanisms in place they will no longer avoid doing business in or with these countries.

The more e-commerce is stimulated the more per capita income developing countries can generate, which in turn gives them more disposable income for expanding their infrastructure and increasing Internet access. Consequently, online activity with and within developing countries can be viewed as giving developing countries the chance to raise their per capita income.

Of course this will not happen overnight but rather it will take years before the combined investment in ICT, organisation and skills delivers the full benefits.[44] This is turn will allow developing countries to reduce the digital divide. What is more, it will be impossible for governments in developing countries to guarantee access for everyone as, for example, many individuals in developing countries have never even made a phone call or interacted with state run dispute resolution procedures in the offline context. Moreover, providing access for all is still a goal that exists in the developed world. To be sure the digital divide is not something that exists between countries but also between individuals, households, businesses and geographic areas within countries.[45] Nonetheless, it is important that developing countries recognise the potential benefits ODR has to offer them by implementing an ODR strategy within their overall e-government plan.

3.3 Current Activity

Some developing countries have already begun to recognise the potential that ODR has to offer. For example, researchers at the Juridical Institute of Intelligence and Systems in Brazil for example have been working with introduction of an e-Court system that could digitalise the entire judicial process. Technologies such as wireless communication tools, videoconferencing, electronic document management, electronic signature and authentication tools and an electronic banking system are examples of innovations that the e-Court project will use.[46] Other developing countries have also started realizing ODR strategies. For instance, with the help of the United States Agency for International Development the Egyptian government has launched a project to improve the administration of justice in Egypt. Amongst other things courts in Egypt now operate with a case management system and judges have personal computers, Internet access and CD-Rom based legal research applications.[47]

Interestingly e-ADR is a form of ODR that has been viewed as vitally important for developing countries by international organisations such as the United Nations (UN). In a recent UN report it was advocated for example that the use of e-ADR by governments in developing countries is necessary to ensure the security and confidence in the use of the Internet in conducting online business transactions.[48] With the support given to e-ADR by the UN it may only be a matter of time before governments in developing countries integrate e-ADR into any e-government strategy they have or will develop in the future. Indeed, a few non-governmental e-ADR projects have sprung up in developing countries, such as the project recently launched by the Cyberspace Policy Center for Asia Pacific (CPCAP), which investigates the use of e-ADR, by the Philippine Government.[49]

4. Conclusion

Without a doubt ODR has huge potential to increase access to justice, not only because courts will have been modernised and thus more efficient but also because faster and cheaper methods of dispute resolution will be on offer. Unfortunately the digital divide that exists between developing and developed countries beclouds this vision. Consequently if citizens in developing countries are to benefit from ODR techniques an e-government strategy that incorporates an ODR policy must be elevated. The success of the ODR policy and indeed the e-government strategy as a whole will
depend on a number of things, such as increasing infrastructure and actual access to the Internet, educating citizens so that access is meaningful, and promoting the benefits of ODR so that citizens have faith in ODR’s ability to give them justice. When the necessary steps have been taken by governments in developing countries to provide their citizens with access to ODR we will be a lot closer to overcoming the digital divide.

[5] Ibid.
[8] It should be noted that while advocating that carrying out hearings completely online seems to be only a future goal at the moment there have been moves to create online courts in the civil context. One such example is the Michigan Cybercourt, which has failed to do get off the ground due to financial issues.
[18] Ibid, page 175.
[22] See further Supra No.14.
[26] See further Supra No. 21.

[31] Parlade, Claro, P., *Supra* No.27.


[35] Khalatbari, Arash., *Supra* No.29, page 7, (accessed 14/03/04) and


[37] *Supra* No. 29, page 1. In this article the author deals mainly with the use of e-ADR in the private arena.


[40] Wahab, Mohamed, *Supra* No.30, page 24

[41] See further Khalatbari, Arash., *Supra* No.29.


[48] See further UNCTAD report, *Supra* No.43.

[49] See further Parlade, Claro, P., *Supra* No.27.