

Legal Issues for E-Government in Developing Countries

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INTRODUCTION

The development of government online should be seen as an evolutionary process (Morison, 2003). The rate of evolution depends on complex factors (Morison, 2003), including perceived incompatibilities between cultures and technologies, an idealistic preference for self-reliance, and a simple lack of economic or human resources to acquire and utilise the technology. Notwithstanding these causes, effective use of ICTs is biased by race, gender, and location. However, the technologies have been developed to a large extent in and for the cultural and social norms of a small number of developed countries. Although there are global flows of knowledge, skills, and artefacts from the epicenters of e-government in the industrialised world to transitional and developing economies, these flows are more unidirectional transfers than bidirectional exchanges (Minogue, 2001). This article attempts to provide a cognitive map of two of the major issues. First, it provides an overview of the legal issues related to e-government from the perspective of developing countries, and second, it critically examines how far technology leapfrogging could serve as an alternative pathway toward development of e-government in developing countries.

DIFFUSION OF E-GOVERNMENT IN DEVELOPING COUNTRIES

“The information revolution should be geared towards enhancing global citizenship and global economic prosperity; a diversity of paths towards the achievements of national information societies should be respected; the evolution of policy for the development of an equitable global information society should be co-ordinated internationally to ensure the sharing of information and resources” (Mandela, 1995). There are many definitions of e-government, and the term itself is not universally used. Definitions of e-government range from “the use of information technology to free movement of information to overcome the physical bounds of traditional paper- and physical-based systems to the use of technology to enhance the access to and delivery of government services to benefit citizens, business partners and employees” (Basu, 2004, p. 110). Similarly, e-governance is more than just a government Web site on the Internet. The strategic objective of e-governance is to support and to simplify governance for all parties: government, citizens, and businesses. Therefore, the objectives of e-governance are similar to the objectives of good governance. Good governance can be seen as an exercise of economic,

Table 1. Factors impeding an enabling e-government environment in developing economies

Intuitional Weakness	<ul style="list-style-type: none"> • Insufficient planning • Lack of clear objectives • Inadequate systems
Human Resources	<ul style="list-style-type: none"> • Shortage of qualified personnel • Lack of professional training
Funding arrangements	<ul style="list-style-type: none"> • Project costs underestimated—cost overruns • Insufficient project funding • Unfinished/incomplete projects • Unsustainable projects
Partnerships	<ul style="list-style-type: none"> • Lack of vendor representation and support
Technology and Information Changes	<ul style="list-style-type: none"> • Inappropriate hardware/software • System incompatibility • Inability to interface to legacy systems

political, and administrative authority in order to better manage affairs of a country at all levels (Backus, 2001).

Most developing countries understand the enormous potential of ICT, not only as a tool for improving governance and creating more jobs, but also more significantly as a means to enhance the standard of living of the people. Although the policy statements differ from country to country, there are some fundamental similarities in the objectives, which can be summarised as follows:

- Establishment of an information infrastructure that comprises a high-speed broadband communication backbone, nodes, access network, distributed data warehouses, and service locations in order to cater to the needs of trade, commerce, industry, and tourism, and also to enhance the delivery of government services to the people.
- Facilitation of the flow of direct investments.
- Development of human resources for ICT through increased use of ICT in educational institutions and through academic and training programmers that improve the employability of educated youths in the ICT sector.
- Facilitation of decentralised administration and empowerment of people through the application of ICT (Basu, 2004).

Behind the hi-tech glamour of these promises, however, lies a dirty reality that the majority of projects are failures (Heeks, 2003). In order to explore this further, we can divide e-government initiatives into three camps:

- **Total Failure:** The initiative was never implemented or was implemented but immediately abandoned.
- **Partial Failure:** Major goals for the initiative were not attained and/or there were significant undesirable outcomes.
- **Success:** Most stakeholder groups attained their major goals and did not experience significant undesirable outcomes (Heeks, 2004).

There is very little data about rates of success and failure of e-government in developing countries. Failure is certainly the dominant motif of multiple-case studies of e-government in such countries, but these studies have produced no statistical data. Hence, I have relied on the research done by Richard Heeks (2004), which produced the following working estimates for e-government projects in developing/transitional countries:

- 35% are total failures.
- 50% are partial failures.
- 15% are successes.

Is the occurrence of failure a problem? It is in a very direct sense because of the economic opportunity costs of resource investment in e-government failure as opposed to success.

E-GOVERNMENT AND LEGAL ISSUES

The success of e-government initiatives and processes are highly dependent on government's role in ensuring a proper legal framework for their operation. A requirement for e-government processes to be introduced and adopted is their formal legal equivalence and standing with the paper process. OECD governments are aware of the need for a framework in which to provide enforceable electronic transactions, both in the e-government sphere and for e-commerce, and have taken action. For example, the legal recognition of digital signatures is necessary, if they are to be used in e-government for the submission of electronic forms containing sensitive personal or financial information. The key concern for developing countries is to identify the legal issues. As explained before in this article, it would not be difficult to provide definitive guidelines for developing countries regarding what type of legal safeguards would be necessary to protect the interests of the government and to create binding and enforceable obligations on the government; however, each of the developing countries is in a different stage or phase of e-government and differs in its political aspirations and structure of government. Hence, the requirements would differ and so would the courses of action.

Developing countries would face few key questions in converting to or adopting electronic processes. Initially, the first question that would arise is the question of legitimacy. Legitimacy may express itself through expressions of authority to act, which is related to but not the same as saying that an action is not illegal. In some settings, the legitimacy of government action would affect the enforceability of the action, either on the part of government against a person subject to that government's rule or on the part of a private citizen against the government. Hence, to provide legitimacy to act electronically can only be conferred by legislative measures and supported by an effective legal framework. This framework should be capable of identifying and addressing legal obstacles to e-government. Legal obstacles may include the differences that exist between traditional data collection requirements (i.e., sharing information collected by and provided to various government agencies) and the ease of collecting and sharing data electronically.

Legitimacy also turns on the standards of appropriateness. What kind of qualities should e-government action



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