

# Managing Records in an Electronic Environment: A Review of Records and Archives Management Laws in Esarbica Countries

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## Abstract

*The purpose of this paper is to review the records and archives management laws in Esarbica countries in an electronic environment. Specifically, the study aimed at examining the current status of laws on management of records in electronic environment in Esarbica Countries; assessing the management of records in electronic environment in Esarbica Countries; indicating the implications of current records management practices in Esarbica Countries for future direction in laws for electronic era. Data were collected from a systematic review of secondary sources such as reports, journal articles, online resources and various legislations relating to records and archives management. The findings indicate that, the growing influence of digital technologies on most organizational functions including recordkeeping has created a new impetus for archival agencies to re-examine their archival legislations so as to re-align them with the current realities. The findings indicate further that, the management of records in new media has become a major concern for most governments and recordkeeping professionals worldwide. This comes at a time when governments and agencies are increasingly transacting businesses online and documenting official transactions using new technologies. This has culminated in the creation, capture, retention, use and disposal of records in electronic form. The study has established that, most archival laws in the region do not pay much attention to electronic recordkeeping issues especially those pertaining to systems, standards, and best practices, among others. It is recommended that, most governments in the region need to embark on a comprehensive review of their record keeping laws to ensure that records are fully utilized as valuable information resources for governments and citizens.*

**Keywords:** Records Management Laws, Digital Technologies, Electronic Environment, and Best Practices.

## 1.0 Introduction

Little research has been carried out in the area of records and archives laws in East and Southern African Regional Branch of ICA (Esbica). Although some researchers (Parer, 2002; Okello-Obura, 2011; Maseh, 2015) have paid attention to regulatory frameworks for records and archives, little has been done on the electronic context. Good business practice demands that organizations manage their records properly. To achieve proper management of records, member states ought to establish laws and regulations on how to manage records and archives in their territories. As observed by Suderman *et al* (2005). laws and regulations for records and archives exist in many countries in the form of National Archives

Acts. The authors further explained that legislations can make a significant contribution to the objectives of records and archives services. A similar observation is made by Parer (2002) that Legislation provides the essential framework that enables archives services to operate with authority in managing records and archives for institutions in the public and private sectors. They ensure that information is managed properly and made available for decision making and protection of the rights of the state and of individuals.

According to Adomi *et al* (2010), Information and Communication Technologies (ICTS) have revolutionized recordkeeping practices in public and private organizations worldwide. The change from the traditional paper to electronic records has created a new environment of recordkeeping leading to accountability, transparency, and sustenance of the rule of law.

However, African countries face several challenges as they strive to manage electronic records. Mutiti (2002) for instance, is of the opinion that the responsibility of managing electronic records is not well defined in countries such as Mozambique, Seychelles, Tanzania, and Zambia due to inadequacy of policy document. Moreover, the World Bank (2005) observed that in many countries in the developing world, laws, legislation, and policies are inadequate for the protection of electronic records.

On the other hand, countries such as Australia, Canada, and Scotland have enacted records and archives legislation devoted to the management of electronic transactions. One example is the Australia's Electronic Transactions Act of 1999. The Act ensures that electronic records are reliable and are stored in a manner that the information contained in the document has integrity (ETA, 12 &13). The United States of America enacted the E-government Act of 2002 whose aim was to improve the methods by which the Government and other organisations preserve and maintain electronic records and how they are made accessible to the public.

## **1.1 Objectives of the Study**

This study is guided by the following general and specific objectives.

### **1.1.1. General objective**

The study aimed at reviewing the records and archives management laws in electronic environment in Esarbica countries.

### **1.1.2. Specific objectives**

Specifically, the study aimed to:

- i. Examine the current status of records and archives management laws in an electronic environment in Esarbica Countries.
- ii. Assess the management of records and archives in an electronic environment in Esarbica Countries.

## **2.0 Literature Review**

### **2.1. Current status of records and archives management laws in Esarbica countries**

This paper reviewed records and archives legislation related to records management for the selected Esarbica countries. These are Botswana, Uganda, Namibia, South Africa, Zambia, Tanzania, Malawi, Kenya, Zimbabwe, and Mozambique. These countries were selected randomly to represent the countries in two African blocs, that is, the East Africa Community (EAC) and Southern African Development Community (SADC).

#### **2.1.1 Botswana Records and Archives Act (No. 37) of 1978**

The Botswana records and archives legislation was enacted in 1978. This Act was amended in 2007 with the aim to strengthen the management of active records including records in electronic formats. The Act emphasises on developing records management in the public service. According to IRMT (2008), the Botswana National Archives and Records Services (BNARS) had undertaken a survey of the state of records management in the government with the aim of playing a more active advisory role. This led to the broadening of the archives work programme to include the development records management policies and regulation.

#### **2.1.2 Uganda National Records and Archives Act of 2001**

According to Okello-Obura (2011), Uganda had no law relating directly to records until 2001 when the National Archives Act was enacted. The Act was enacted to provide for the rationalized management of all Government and other public records and archives containing information in all media or formats. It also includes information in electronic form under one single authority, for the preservation, utilization and disposal of such records and archives (the National Records and Archives Act, 2001:3). All records, according to the Act, with historical, administrative, legal, fiscal, informational, research and educational value must be deposited with the National Archives.

#### **2.1.3 Namibia Records and Archives Act (No. 12) of 1992**

Prior to independence, the National Archives of Namibia functioned under the Archives Act of South Africa. Namibia got independence in 1990. The newly established government of Namibia recognized the importance of records as a viable means of accountability, good governance, and protection of human rights. It further recognized that records were the memory of the nation. It is for this reason that the government enacted the National Archives Act of 1992, which entrusts the custody and care of records to the National Archives of Namibia, a division in the Ministry of Education. The custody and care of records include all documents in any medium, created or received in any office in the Ministry, Regional Council, Local Authority, or Parastatals throughout the entire lifecycle of a document, from its creation or receipt, to its eventual authorization for destruction or transfer to the National Archives.

The legal and regulatory framework of records and archives in Namibia is fairly comprehensive; however, it has not kept up with the emerging trends that emphasise on

electronic records. There is no legal provision in the Act for electronic records including their admissibility in the courts of law. According to the Archives Act section 12 (b), the Head of Archives may in any manner he or she deems appropriate issue a directive regarding computing or microfilm projects in respect of archives. There is no manual to translate procedures of managing electronic records under the act. This shows that the archives code is out of date and requires revision to consider changes in the use of information technology.

#### **2.1.4 South Africa Records and Archives Act (No. 43) of 1996**

The Records and Archives legislation of South Africa was enacted in 1996 (Act No. 43 of 1996). The Act entrusts the National Archives and Records Service custody and care of the records of governmental bodies. The Act was amended by the Cultural law (Amendment) Act 36 of 2001 with the aim to strengthen the management of records, including records in electronic formats. The Archives Act section 13 (b) (i) (ii) and (iii) stipulates that the National Archivist shall determine the classification systems to be applied by governmental bodies; the conditions subject to which records may be microfilmed or electronically reproduced; and the conditions under which electronic records systems should be managed.

The National Archives and Records Service of South Africa realized that the successful management of electronic records requires close co-operation and support between the National Archives and government bodies. It is for this reason that the National Archives and Record Service launched an electronic records management programme through which it strives to fulfil the obligations defined by the Act. According to the Act, government bodies are required to establish policies and procedures to ensure that electronic records are retained as long as needed for official use. The National Archives' electronic records management programme is built on the following strategies; archival involvement in the design and maintenance of electronic records systems; the earliest possible transfer into archival custody of electronic records with enduring value; the identification of archival electronic records which should remain in the custody of the creating body.

The policies and procedures established by government bodies have to include the provision for; the application to the National Archives for the approval of records classification system used in electronic systems; the National Archives provides guidance on the compilation of classification system; the application to the National Archives for appraisal of electronic records, as well as related documentation and indexes. The information in the electronic record system, including those operated for the public service by a contractor has to be scheduled regarding its ultimate disposal as soon as possible, preferably before the implementation of the system.

In addition, the policies and procedures have to include the provision for transfer of a copy of the electronic records and any related documentation and indexes into archival custody at the time specified by the disposal authority. Transfer may take place at an earlier date if convenient; the establishment of procedures for regular recopying, reformatting and other necessary maintenance to ensure the retention and accessibility of electronic records throughout their authorized lifecycle; and the deletion of electronic records is in accordance with a disposal authority issued by the National Archivist. This should be done in a manner that ensures protection of any sensitive, proprietary or National Security information.

### **2.1.5 Zambia Records and Archives Act of (1964)**

The National Archives of Zambia functions under the Archives Act enacted in 1964 (revised in 1969 and 1995). The Act entrusts the National Archives with the legal mandate for the custody, care and preservation of public sector records. The Act also mandates the National Archives to provide archival and records management services, including appraisal, and provision of access to records of historical value, and to act as the National library. However, this Act is out dated it makes no reference to the emerging trends which emphasises on electronic records. Furthermore, the National Archives of Zambia is supported by an Advisory Council which meets quarterly. The Council is composed of the Archives Director as the chair; others are representatives from the History Department of the University of Zambia, Ministry of Information, National Museums Board, Cabinet Office, and the Ministry of Justice.

Although the Records and Archives Act does not make reference to electronic records, Act (No. 21 of 2009) of Electronic Communication and Transactions was enacted by the Parliament of Zambia in 2009. The Act aimed at developing a safe, secure, and effective environment for the consumer, business sector and the Government to conduct and use electronic communications; to promote legal certainty and confidence, and encourage investment and innovation, in the electronic communications industry; to facilitate the creation of secure communication systems and networks; to establish the Central Monitoring and Coordination Centre and define its functions; to repeal the Computer Misuse and Crimes Act, 2004; and provide for matters connected with or incidental to the foregoing.

The Act entrusts Zambia Information and Communication Technology Authority (ZICTA) under the Ministry of Transport, Works, Supply and Communication to regulate the ICT sectors in Zambia. Although the legal and regulatory framework is fairly comprehensive, it does not comprehensively cater for electronic records other than defining what electronic records are. Similarly, it does not address electronic records management issues. The other weakness of the authority is seen in the constitution of the Board members whereby records and archives services is not represented. The Board constitutes nine executive members with the expertise in law and enforcement, economics, technical and engineering, information technology and finance.

### **2.1.6 Tanzania National Archives Act No. 33 of 1965**

Records and Archives Act of Tanzania was enacted in 1965 (Act No. 33 of 1965). The Act became ineffective as it did not address the management of records throughout their life cycle. Records which were no longer needed in offices for frequent references were left without sufficient legal framework. The Act was overhauled in 2002 following the enactment of the Records and Archives Management Act No. 3 of 2002. The Act entrusts the National Records and Archives Department (RAMD) with care and custody of the records of the public sector. The functions of the RAMD, as determined by the Act, can broadly be divided into four areas.

The first function being the Records Management section; the Act requires the RAMD to provide professional assistance, advice, and guidance on the establishment and management of records management programmes; establishing and ensuring compliance

with standards for the management of public records; making arrangements for the necessary training of the government's records staff; drawing up general retention and disposal schedules for approval and issue by the Minister; ensuring that the provisions of retention and disposal schedules are implemented; and ensuring that retention and disposal schedules are reviewed and amended periodically (RAMP, 2011).

As noted in the National Records and Archives Management Policy (2011), Act No. 3 of 2002 was enacted to manage records of the public service and ensure that they maintain their authenticity and reliability. However, the National Records and Archives Management Act has not kept up with the emerging trends which emphasises on electronic records. Magaya and Lowry (2012) acknowledge that, the National Archives of Tanzania is facing new challenges in the management of electronic records. The introduction of e-government is changing business operations and so is the way records are created. Today, records are not only created on paper but also electronically. The rate at which paper records are accumulating in government offices is a worrying trend for the National Archives. As a result, the RAMD has issued a circular that is intended to support the management and preservation of these records including those in electronic formats. Another challenge is that government institutions do not have infrastructure to institute an electronic records management programme (ibid: 10).

### **2.1.7 Malawi Records and Archives Act (No. 12) of 1975**

Records and Archives Act of Malawi was enacted in 1975, with the aim to provide for the classification, conservation, custody, control, acquisition and disposal of certain public, judicial, historical and general records. The Act entrusts the National Archives of Malawi with the custody of records; to set-up the National Archives Advisory Council, to advise the Minister on certain stated matters of the policy and administration; for the repeal of the National Archives Act of the Federation of Rhodesia and Nyasaland; and for matters incidental to or connected with the foregoing. The Act was amended by Act 20 and 4 of 1987 and 1989 respectively. The 1989 amendment outlines the powers and duties of the government archivist. However, the Act has weaknesses. The Act is weak because it does not address the issue of electronic records, neither does it elaborate the amendment of 1987.

### **2.1.8 Kenya Public Archives and Documentation Service Act (CAP 19) of 1965**

The Public Archives and Documentation Service Act of Kenya was enacted by Parliament in 1965 (Act No. 32 of 1965). The Act was enacted for the preservation of public archives and public records and for connected purposes. The Act has undergone several amendments to make it more up to date and more applicable to the ever-changing conditions in the field of records and archives management. The Act was amended in 1990 and 2003. The Act is fairly comprehensive; however, it has not kept up with the emerging trends which emphasises on electronic records.

However, the government of Kenya enacted the Kenya Information and Communication Act of 1998. The Act through the former Ministry of Information and Communication (presently the Ministry of Information, Communication and Technology) facilitates the development of the information and communication sector (including broadcasting, multimedia, telecommunications, postal services and electronic commerce) to provide for the transfer of the functions, powers, assets and liabilities of the Kenya Posts and Telecommunication

Corporation, the Telcom Kenya limited and the postal corporation of Kenya and for connected purposes. Although this Act deals with electronic records extensively it does not provide for the day to day management and preservation.

This can be seen in both the functions and the constitution of the Communication Commission of Kenya (CCK) which is established by s.3 of this Act. On its Management Board there is no representative from the records and archives sector.

### **2.1.9 Records and Archive Act of Zimbabwe (Act No. 8) of 1986**

After independence in 1980, it took the country six years to eventually enact legislation for records and archives in Zimbabwe. In 1986, the National Archives Act of Zimbabwe was enacted. The National Archives of Zimbabwe Act No. 8 of 1986 declared that public records and archives must be protected against any destruction, defacing, alteration, mutilation or damage. The Records and Archives Act of Zimbabwe has extensive coverage of records issues; however, it has inadequate coverage of electronic records and related matters.

### **2.1.10 Records and Archives Act of Mozambique (Ruling No. 2267) of 1934**

The Mozambique Historical Archive was established by the ruling No. 2267 of June 27<sup>th</sup>, 1934. Its mission is to bring together scattered archives and organize a bibliographic collection on Mozambique. In 1939, the Legislative Charter further spells out its functions, making it the instrument of Historical Culture and Archive of the Colonial Government. In 1957, the then Ministry of Overseas Territories and National Education by means of Decree-law 41.472 put it under the administration of Education Services.

In 1958, Decree 42.030 reaffirms its importance as a General Archive and Legal Depository of the Prefecture. In 1976, Decree-Law 26/26 unites the Mozambique Historical Archives' administration with Eduardo Mondlane University. In 1971, the Legislative Charter 90/71 made the Mozambique Historical Archive a beneficiary of part of the Legislative Charter of the country. In 1992, the October decree 33/92, which instituted the National System of Archives, designated the Mozambique Historical Archive its own central governing body.

The Mozambique Historical Archive has the responsibility of defining policies for the management and preservation of the national heritage not only on the local level, but also from other, external sources of national interest. Within this scope, the current challenges are about the identity of the Mozambique Historical Archive as a true National Archive whose purpose is to carry out technical and regulatory guidance and define national policies for public and private archives. These policies cover document management, special protection of documents produced and received by the executives, legislative and judiciary branches, access to the archive documents, support the government in making political and administrative decisions, and the defence of the rights and privileges of the country's citizens. Mozambique requires a legal and regulatory framework for records and archives management, to ensure that information in all formats is managed properly and made available for decision making and protection of the rights of the state and of individuals.

## **2.2 Management of Records and Archives in an Electronic Environment in Esarbica Countries**

Akussah and Asamoah (2015) are of the opinion that records management in governments has been debated in Africa for many years. African countries have a massive task of improving their records management practices in order to achieve the desired goals. Chaterera (2016), for instance, revealed that in Zimbabwe delays and failure to access services due to missing or misplaced records from public institutions is a common phenomenon. Shortcomings included inadequate storage facilities; haphazard filing and ad hoc records management practices; the lack of records management procedure manuals for both paper and electronic records; and random disposal practices and non-existent disposal and retention schedules. According to Nengomasha (2009), Namibia experienced poor records management practices in the public service as there was a lack of clarity on records management, and an inadequate legal and regulatory environment. Moreover, Keakopa (2013) described the conditions of records management practices in Botswana as poor because recordkeeping practices remain marginally developed in the public sector. Kemoni (2007) reported that recordkeeping in Kenya was not proficient and operative, thus, affecting public service delivery. He further established that although the existing records and archives legislation in Kenya had certain strengths, it also had weaknesses which hindered the effective management of records in that country. In the case of Uganda, Luyombya (2010) concluded that there was a lack of clear policies, guidelines and procedures and that the Uganda National Records Centre and Archives legislation was not fully implemented or properly enforced. Mohamed, Rasheli and Mwangi (2018) on the other hand, argue that records management is a corporate function similar to other organisational functions such as human resources, finance and estates management to name a few and, therefore, it should be recognised as a specific corporate function within an organisation. This argument reveals that records management in Tanzania is not given the impetus in the public service as it is the case for other organizational functions.

## **3.0 Methodology**

This paper is a desk research and collected data from a systematic review of secondary sources such as reports, journal articles, online resources, and various types of legislation relating to records and archives management in Esarbica countries.

## **4.0 Findings**

The study aimed specifically to examine the current status of laws on the management of records in electronic environment in Esarbica countries; assess management of records in electronic environment in Esarbica Countries and examine the implications of current records management practices in Esarbica countries for future direction in laws for electronic era.

### **4.1 Current Status of Records and Archives Management Laws**

The findings show that most (70%) of the countries in the region including Namibia, Zambia, Tanzania, Malawi, Kenya, Zimbabwe and Mozambique have not adopted progressive

legislation which emphasises on the management of records including those in electronic formats. Only three countries (30%) namely Botswana, Uganda and South Africa have adopted progressive legislation which emphasises on the management of records including those in electronic formats. This implies that the management of electronic records in Esarbica countries is not healthy as most of the legislation relating to records and archives management in these countries do not provide for their management.

#### **4.2 Management of Records in Electronic Environment**

The study aimed at assessing the management of records and archives in electronic environment in Esarbica countries. Most of the countries in Esarbica region were found to lack effective mechanisms in managing records in an electronic environment. In Zimbabwe, for instance, the study revealed that there is a lack of records management procedure manuals for both paper and electronic records. Moreover, the study found out that Namibia experienced poor records management practices as there was a lack of clarity on records management, and an inadequate legal and regulatory environment. This is also experienced in Botswana where the conditions of records management practices is poor because recordkeeping practices remain marginally developed in the public sector.

It was further revealed that recordkeeping in Kenya was not proficient and operative, thus affecting public service delivery. It was further established that although the existing records and archives legislation in Kenya had certain strengths, it also had weaknesses which hindered the effective management of records in that country. In Uganda a lack of clear policies, guidelines, and procedures were cited as weaknesses of records management practices and that the Uganda National Records Centre and Archives legislation was not fully implemented or properly enforced. The study revealed further that records management in Tanzania is not given the impetus in the public service as is the case with other organizational functions. The implication of this is that notwithstanding the massive use of ICTs in the selected countries, the laws relating to the management of records in all formats did not change to accommodate the management of electronic records.

### **5.0 Conclusion and Policy Implications**

Based on the findings, it was concluded that in spite of the immense use of ICTs in government businesses in all selected countries, little has been done on the laws relating to Records and Archives Management to accommodate the electronic records. It can thus be concluded that the management of electronic records in Esarbica countries is not healthy as most of the legislation relating to records and archives management in these countries do not provide for their management. It is further concluded that notwithstanding the massive use of ICTs in the selected countries, the laws relating to the management of records have never been reviewed in order to accommodate the management of electronic records. While the current study has revealed that most of the reviewed countries are faced with challenges brought by the emergence of information and communication technologies (ICTs) and ineffective and out-dated records and archives legislation, it is therefore recommended that: the member states should review their legislation so as to support the management of records including those in electronic formats. The amendments of the legislation will assist in the implementation of records management programmes and create clear policies

and procedures that will cater for records in all media. It is further recommended that, for the successful management of electronic records, there must be a close co-operation and support between the National Archives Services and Governmental bodies. The existing national archival legislations in the region should therefore, be revised to incorporate aspects of electronic records management. Finally, it is recommended that additional funds are needed from governments for national archival institutions to meet the added costs of managing electronic records.

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