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Records and Archives Legal and Policy Frameworks in Uganda

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Introduction

Records are a valuable business asset. They are the lifeblood of the organisation's businesses and therefore should be treated with the utmost concern. One of the key ways organizations are held accountable for their actions is through evidence of business transactions in the form of records. Records and Archives provide platform to access information about the past by researchers, scholars, students, journalists, lawyers, and others who want to know about people, places, and events in the past (Magara, n.d). Without an organized records and archives management framework there is a deficit in information access created. Such deficit contributes to inadequate and improper decision making within organisational and national establishments. To avert the crisis, information provision and attention to records and archives management, preservation and conservation of archival materials need to be anchored in with effective legislative and policy frameworks. Laws have a direct impact on the ways in which governments, organisations and individuals carry out their daily affairs. As well, laws affect the way in which people create and use records since, in virtually all parts of the world, records form the basis for legal evidence. In the case of disputes – between governments and citizens, between organisations and employees, between different levels of government – records are the means for proving or disproving claims or complaints (IRMT 2009). Therefore, understanding how to manage records, requires understanding the legal context in which records can and should be created and managed. Governments use legislation to ensure that its records and archives are appropriately managed and preserved over time for accountability and historical reasons. According to Chibambo (2003), a good records management framework consists of information-related laws, policies and programmes, records management standards and practices, and the necessary qualified human resources to implement and manage the systems. The legal and policy frameworks ensures a strategic approach to building capacity to capture, process, store, use, conserve and preservation records and national heritage.

Statement of the Problem

In a bid to look at records and archives problems in Africa and Uganda in particular, emphasis has been put at: inability by researchers to use archival information; inadequate finding aids; lack of recognition by national governments of the role played by archival institutions; inadequate number of professional archivists; lack of adequate records and archival training schools; poor systems of records and archival arrangement and description; understaffing of records and archival services; poor storage facilities for records; and inadequate retrieval tools (Mnjama, 2005). Despite the fact that Records and archives legislation is considered as an essential component of the wider legislative base of accountable and effective government, the issues of outdated records and archival legislation have not been given enough prominence in Uganda. Where the laws are in place, not much is done to ensure its implementation and effective functioning. The absence of legislation and the existence of ineffective and outdated laws can affect how records are managed. Many countries in developing countries have either weak laws or inactive legislative provisions to promote good records and archives management. Secondly, not much effort have been made to engage legal and policy makers on the need and value of functional legal and policy provisions for records and archives management. This study based on literature review highlights the existing legal and policy frameworks that support the management of records and archives in Uganda and in particular discusses The National Records and Archives Act, 2001 for efficient management of records and archives in Uganda.

Objectives

The objectives of this study were to:

- i. highlight the existing legal and policy frameworks for records and archives management in Uganda
- ii. examine the Uganda National Records and Archives Act, 2001
- iii. propose interventions for effective implementation of The National Records and Archives Act, 2001 for efficient management of records and archives in Uganda.

Literature Review

According to the Association of Commonwealth Archivists and Records Managers (2007), the effective management of records and archives throughout their life cycle is a key component of national development. Unorganised or otherwise poorly managed records mean that government does not have ready access to authoritative sources of administrative, financial and legal information to support sound decision making or the delivery of programmes and services. Nor does the government have the means of holding itself accountable for what it has done or upholding the rights of its citizens (Association of Commonwealth Archivists and Records Managers 2007). Furthermore, if records are not well organised during the earlier stages of their life cycle, those of enduring value will not be readily identified and safeguarded as part of the national archival heritage. However the efficient management of records and archives must be guided by a well laid down legal and policy frameworks in the country. This is because legislation provides the essential framework that enables a national records and archives service to operate with authority in its dealings with other agencies of the state.

Why records and archives legislation?

No government can operate without records, because they document its actions. Additionally, government and civil servants must account for their actions to the citizens.

It would be impossible to be accountable without records, if government records

were

non-existent or poorly managed (Parer 2000). Government must also protect the rights of its citizens, the environment, land rights and territorial integrity. Past records must be used to plan for the future of the nation and serve as part of its national heritage. Governments therefore, often protect their records more rigorously than private organizations or business entities do. All these are possible if there are functional government legislation in place to ensure that its records and archives are appropriately managed and preserved over time for accountability and historical reasons. Legislation is expected to compel designated officers in records creation, processing and management to perform their duties. It is thus imperative to assert that Records and archives legislation is an essential component of the wider legislative base of accountable and effective government. It provides the essential framework that enables a national records and archives service to operate with authority in its dealings with other agencies of the state.

Records, archives legislation and regulations

The precise format and language of legislation is determined by legal draftsmen (such

as the Parliamentary), but it is essential that senior managers in records and archives institutions be able to present a sound and professional case for what the legislation should cover. This is possible in countries where records and archives professional body exists and acknowledged and respected by the Government.

As Parer (2000) notes, Records and archives legislation may be composed of both primary and secondary legislation. Primary legislation (such as acts, decrees, and ordinances) is enacted by parliament or some other supreme legislative authority. Secondary legislation (such as statutory instruments, rules, regulations) is promulgated, usually by a minister, under powers conferred by the primary legislation. Records and archives managers need to be ably consulted and involved at both primary and secondary level of the legislation if the implementation is to be understood and smoothly flow. Putting in place legislation and not instituting regulatory mechanisms for their operations is as good as not having the law. There must also be regulations set to compel both government and private sector to manage records well.

Identifying Records-related Legislation

People often talk about 'records-related' or 'records-oriented' legislation as those laws specifically affecting the creation and use of records. In reality, however, virtually every piece of legislation created by a government can have record-keeping implications (IRMT 2009). In order to ensure the appropriate management of records, the records professional needs to identify all legislation and regulations that could have an impact on the creation and retention of records. Some of the many laws that can influence the way in which records are created and used include:

- Access to information
- Archives and historical records
- Heritage management
- Computer use and misuse
- Human rights, Copyright, designs and patents
- Identity theft and identity protection
- Corporations and organisations
- Criminal code, Insurance
- Data protection and information security
- Labour relations, defence and security

- Education and training
- Records and document management
- Electronic transactions
- Social security and benefits
- Emergency planning and business resumption
- Employment, Taxation and financial management
- Evidence and Privacy

Kennedy and Chander (2000) allude to the above argument and said that regulations of concern to records and archives management should include legislation which:

- specifies or implies the requirements to create and retain certain records
- specifies how long records should be stored if they are to be admissible as evidence in a court of law
- affects access to records, including the privacy and freedom of information legislation
- covers disposal of government records

It is important to note that the above list is representative, but not comprehensive. When determining how to manage certain types of records, records managers need to carry out detailed research into specific situations relevant to their own jurisdiction.

Regulatory and Policy Issues

In addition to researching legislative frameworks, it is important for the records professional to understand – and if possible influence – the policies and regulations under which information and records are created, used and managed (IRMT 2009). Regulations are usually subordinate legislative instruments to actual laws: there ought to be a law in effect before a regulation is established. Laws can have quite a broad scope, but regulations are usually quite detailed. Policies can also be very broad: a policy on data management, for instance, could clarify who owns the organisation's data (the organisation, not the individual) and confirm that it will be stored according to accepted standards, but the policy will not outline the specific procedures involved in ensuring those requirements are met (IRMT 2009). It is also important to note that policies can be difficult to enforce as they can be interpreted as optional and desirable but not essential. IRMT (2009) enumerates some of the important Records-related Regulatory and Policy Issues to cover the following:

- Acquisition of records
- Appraisal of records
- Contracting of IT services
- Data management and storage
- Database management and use
- Destruction of data on electronic storage devices
- Disaster recovery and business continuity
- Disposal of records
- Electronic mail management
- Electronic records creation and use
- Information technology procurement
- Network management
- Remote access to servers and networks
- Scanning and imaging of records
- Security and privacy
- Training of records staff
- Transferring and storing records
- Use of wireless computer devices
- Web access and use

Methodology

Literature review was used for this paper. To qualify the information gathered through the relevant literature, LIS colleagues, records and archives practitioners were consulted to critique the paper. This engagement of practitioners helped to improve on the quality of the content of the paper.

Uganda Legal and policy provisions for Records and Archives: highlights

Governments need to determine what records should be captured and retained as evidence in case of legal and other challenges. That is they need to identify the records that could be required as evidence of how the government conducts its business, the record that could be used in defending the government or in prosecuting claims on the government's behalf, the records that document the legal bases of the government operations. These can only be practically possible if there are proper legal and policy frameworks for records, information and archives management.

Regarding Uganda's situation there are several Acts, Regulations and policy documents, which provide the framework for the creation, management and usage of data, records and information (Okello-Obura 2008). Legislative and regulatory compliance often feature in organizational objectives and act as part of the environmental and strategic framework for records management. These laws provide the legal framework for records and archives management to operate. Some of the relevant laws in place include:

- National Records and Archives Act 2001.

Uganda did not have law relating directly to records until 2001. According to this law, all records with historical, administrative, legal, fiscal, informative, research and educational value must be deposited with the National Archives. The law also demands the surrender of memorabilia, maps, cartographic drawings and blue prints of important national buildings. In general the Act is divided into seven parts:

Part 1- gives the Preliminary (Short title, interpretation and reckoning of time.

Part II- gives the functions of a National Records and Archives Agency and how it should be established.

Part III - gives the responsibilities of the creators of public records for their proper management.

Part IV- Outlines the responsibilities of the Director of the National Records and Archives Agency for the management of public records and archives.

Part V – Local government records and access to archives

Part VI – gives financial provisions

Part VII – gives general issues regarding annual report, regulations, power of Minister to amend Schedules and repeal.

The National Records and Archives Act, 2001 provides for the rationalisation of the management of all government and other public records and archives under the supervision of one single body that is the Agency.

- The Local Government Act, 1997 (with Amendment Act 2001).

This act provides for the governance of district local entities. For purposes of accountability, the Ministry of Local Government expects the Councils to keep

records of activities and transactions and the Act requires that councils keep proper books of accounts and other related records.

- Access to Information Act 2005

Experts agree that the lack of public information fosters systemic corruption (Cote-Freeman, 1999). The public can only get to know of the information when the records are managed properly. Citizens who cannot substantiate claims of inefficiency and corruption in the delivery of public services are in a weakened position to express their dissatisfaction and demand better response from their public institutions (Palmer 2000). Dramatic growth is widely anticipated in records management due to changes in legislation and other compliance regimes. These translate into a number of identifiable business drivers that continue to raise the profile of the records sector. The Access to Information Act (2005) provides among others for a Code of Practice on records management for public sector organizations; Manual of functions and index of records of a public body; access to information and records; disclosure and automatic availability of certain records; access to health or other records and preservation of records.

Other legal and policy documents

Human Resources Management Manual for Local Governments in Uganda, 1999. Section 12 of the Human Resources Management manual for Local government spells out the requirements for handling and management of personnel records. Pertinent issues include: -Personnel records are to be handled according to the procedures as prescribed in the Records and Information Management Manual for Local Government. Personal files are numbered in accordance with the procedures in the above manual

Ministry of Public Service Records Management Policy 2008. The policy gives among others regulatory framework, roles and responsibilities of different personnel involved in records management, records classification systems and related records storage areas; disposal of records; access and security and legal admissibility and evidential weight

- Public Service Commission Guidelines to District Service Commission,
- Public Service Act 1969,
- Public Service Regulations 1994,
- Inspector General of Government Statute 2001,
- Leadership Code of Conduct, Government Standing Orders,
- Income Tax Act,
- The Constitution of the Republic of Uganda,
- Finance and Accountability Act 2003,
- Electronic Records Management Policy,
- The E-mail policy and the Web content management policy
- information security policy

A look at the legal and policy frameworks regarding records and archives management shows that the laws and relevant policies exist. What is required is the determination of their functionality. For the purpose of this paper, The National Records and Archives Act, 2001 is examined.

Analysis of The National Records and Archives Act, 2001

This Act was enacted in 2001 to “provide for the rationalized management of all Government and other public records and archives under one single authority, for the preservation, utilization and disposal of such records and archives, for the repeal of the Records (Disposal) Act and for other connected matters” (The National Records and Archives Act, 2001:3)

Part II of the Act stipulates the Establishment and Functions of A National Records and Archives Agency and the Agency shall be managed by a Director. The Act states that the Director and the other staff of the Agency shall be officers in the public Service of the Republic of Uganda and shall be appointed by the appropriate appointing authority. I find this section weak in that it does not take into consideration the expertise of appointee in records and archives management as the Director. To achieve political gain, the appointing authority can ignore this crucial need for a Director.

Section 22, subsection 3, states that Any person who borrows any public records or archive material from an organ of state, or from the National Archives or any other centre or archival repository under the control of the Director or from a place of deposit... and refuses to return such borrowed item commits an offence and is liable on conviction to a fine not exceeding one hundred currency points (A currency point is equivalent to twenty thousand Uganda shillings or approximately USD10) or imprisonment not exceeding two years or both. The subsection is weak in that it does not only fail to state the duration someone is expected to take for him or her to be considered as has refused to return the item but promotes borrowing of archival materials outside the building. This is dangerous to the security of the archival materials. Archival materials should not be taken outside the Archive building for proper protection.

Part VI Section 24 (b) says that the funds of the Agency consist of grants, gifts, donations and loans that may be received by the Agency from any source within or outside Uganda. This provision is too open that it allows even soliciting or receiving funds from countries considered hostile to Uganda. Sometimes donations from hostile countries have hidden strings attached that should be avoided.

Since Section 32 gives the Minister powers with the consent of the Cabinet, to amend the schedules to this Act by statutory instrument, this section should be urgently revoked to address the above loopholes.

Implementation of the ACT

Uganda is the only country in East and Southern Africa that does not have an independent national archive, although the institution was established by law and the first archived records acquired and preserved in 1955 in Entebbe. Today, the country's official archives are still housed in the basement of the former Colonial Secretariat building where English first set them up - premises that now also house the National Agricultural Research Organisation (Musinguzi 2007).

In a budget report, the Ministry of Public Service recommended that the government establish a national records and archives center in accordance with the Republic of Uganda's National Records and Archives Act, 2001. According to Okumu Ringa, Uganda's state minister for public service then, government property next to the Ministry of Health has been earmarked for the project. "It's going to be a fully fledged modern center with all the facilities and conservation structures that will cost us between \$10 and \$20 million," Ringa told The New Vision. "The suitable company to carry out the construction will be identified through a very competitive and transparent bidding process." This was an authoritative statement from the Minister then. But what has happened now? Nothing substantial!

Part II of The National Records and Archives Act 2001, spells out the establishment and functions of a National Records and Archives Agency that should be headed by a Director. Ten years now, there is no Agency and Director in place. How can then the Act be implemented? Political will from the government is required.

Discussion

In 1946, more than sixty years ago, the United Nations General Assembly recognized that "Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated" (UN General Assembly 1946). Soon after, the right to information was given international legal status when it was enshrined in Article 19 of the International Covenant on Civil and Political Rights (Rodrigues 2008). Since that time more than 80 countries have passed national legislation entrenching the right in domestic law. It is important to note that much as a law on access is essential mere enactment is not enough. By itself, legislation will do little to transform a closed governance environment into an open democracy (Rodrigues 2008). Entrenched bureaucratic cultures of secrecy, inconsistent legislation and lack of understanding of the law by officials are all hurdles which will need to be overcome on the road from secrecy to openness if governments are to function to the expectations of the citizens. In practical terms, opening up government will require the review, amendment and harmonization of all records, archives and information legislation, policies and guidelines to ensure that governments remain relevant to democratic societies.

The importance of legal and policy frameworks in the successful creation, processing, storing and preserving records and archives materials can not be overemphasized. However the structural set up for their operations are even more important. Otherwise there could be very useful laws and policies that are not operational. The decision of Uganda Ministry of Public Service to design a Records Management policy, 2008 is very impressive. This important initiative to operationalise Records and Archives Act, 2001 should roll out to all other public institutions or organs of the state. It is true that there are numerous challenges that still face the operationalisation of Record and Archives Act 2001. Magara's survey, based on interviews of key persons attending the consultative meetings with staff at the National Library of Uganda, Uganda Museum, National Archives and East African School of Library and Information Science, Department of Records and Archives Management, concludes: "It remains a professional challenge to Uganda in addressing the issues of space, funding, expertise, preservation, co-ordination, government intervention, publicity and accessibility and ensuring culture of access to information

Magara notes that although various efforts have focused on preservation of natural, historical and cultural heritage, there is no central strategy to integrate the libraries, archives and museum function to effectively collect, store, preserve, coordinate and enable access to documentary heritage in Uganda." The central strategy in my view is the amendment and operationalisation of the Records and Archives Act 2001 and all other related legal and policy guidelines coordinated by a functional Records and Archives Agency as entrenched in the National Records and Archives Act, 2001. This will be possible if the Agency as stated in the Law is established. Effective records systems will also need to be created, as well as training and guidance for officials responsible for implementing the legal and policy frameworks for records and archives management. This calls for unreserved effort and support from the Government of Uganda. As Rodrigues (2008) notes, experience has shown that change happens only when there is unequivocal political commitment to tearing down all barriers to access and well-crafted and deliberate strategies can be developed that support each element of the legal provisions. Upholding transparency, accountability and participation requires governments to send a strong message of openness to all records and archives policy makers and managers. Strong and engaged leadership can make all the difference, particularly in the early days of implementation of legal and policy frameworks to manage information, records and archives.

Conclusion and Recommendations

As The Association of Commonwealth Archivists and Records Managers (2007) notes, legislation relating to public records or national archives exists in some form or other in most, though not all, Commonwealth countries, but much of that

legislation dates from shortly after independence and is now urgently in need of review and modernisation. The weaknesses which can be found in older public records and archives legislation stem largely from its failure to recognize the life-cycle concept of records and archives and the importance of managing them in a continuum from their creation to their final disposal either by transfer to the national archives or by authorised destruction. This is often compounded by the inflexibility of the legislation in the face of the changing nature of records and archives in an electronic age (Association of Commonwealth Archivists and Records Managers 2007).

“A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance: and a people who mean to be their own governors, must arm themselves with the power which knowledge gives.” - James Madison, 4th President of the United States of America 4 August 1822.

The power of knowledge can only be generated if records and archives are properly managed. Good management of records and archives is fundamental to a well-functioning organisation since it supports business activity and provides a basis for efficient service delivery. It also provides the mechanism whereby both the private and public sectors can account for their decisions and actions. Simply put, good records management is simply good business practice. This is in essence possible with a functional legal and policy framework in place. It is prudent for the records and information professionals not just to accept that any legislation is good enough; it may be that obsolete laws need to be revised and restructured in order to address the realities of records and archives care in the 21st century. For this to be achieved in Uganda it is therefore imperative that some of these are addressed.

- As a matter of urgency, the National Records and Archives Agency as stipulated in Records and Archives Act 2001 should be established and the Director appointed to execute the duties assigned.
- The Government of Uganda should consider information, records and archives as a cornerstone to ensuring democratic governance, accountability and promotion of human rights and allocate resources for the construction of the National Records and Archives Center.
- Part VI Section 24 (b) of the National Records and Archives Act 2001 says that the funds of the Agency consist of grants, gifts, donations and loans that may be received by the Agency from any source within or outside Uganda. This provision as earlier noted is too open that it allows even soliciting or receiving funds from countries considered hostile to Uganda. Sometimes donations from hostile countries have hidden strings attached that should be avoided. This section should be amended to exclude countries considered hostile to Uganda.
- Section 22, subsection 3, of the Records and Archives Act 2001 should be amended to stipulate the archival materials are not supposed to be taken out of the Archive.
- The Records and Archives Act 2001 states that the Director and the other staff of the Agency shall be officers in the public Service of the Republic of Uganda and shall be appointed by the appropriate appointing authority. As earlier noted, I find this professionally unacceptable. There should be a statement indicating that these officers should be with adequate education, training and experience in information, records and archives management.
- As Rodrigues (2008) argues Practice shows that a resistant rule maker can defeat the purpose of access laws by developing regulations which narrow the right and/or create administrative hurdles which are a disincentive to requesters. While parliament may pass a strong access law, bureaucrats can effectively undermine its impact by promulgating regulations or implementing internal rules which restrict its ambit. To avoid this kind of scenarios, government bureaucrats should widely consult when designing

policy documents to operationalize relevant records and archives legislations.

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