Archival Legislation and the Management of Public Records in Sub-Saharan Africa: The Case of the National Archives Act of Zambia

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Abstract
The paper discusses the role of records management in public institutions. It outlines reasons why effective records management is an important aspect of the public sector's ability to deliver efficient and effective services and in ensuring accountability and transparency in the management of public resources. Further on, the paper discusses archives legislation in Zambia and its role in the control and preservation of records of enduring value. The paper contends that archives legislation in Zambia has not kept pace with developments in information and communications technology vis-à-vis records management. It provides examples of archives legislation that have been reviewed and/or amended in other countries; and that as a result, archival institutions in those countries have been instrumental in promoting records management policies, standards and procedures. The paper contends that the way records are created and managed will determine the kind of records that would finally end up as archives. The paper concludes by making recommendations on the need for the National Archives of Zambia to extend its mandate to the management of records in public intuitions and that this can only be effectively carried out when there is a legal mandate to do so.

Introduction
Records management is defined as the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including the processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records (International Standards Organisation, 2001). Effective management of public records allows fast, accurate and reliable access to information, ensuring the timely destruction of redundant records and the identification and protection of vital and valuable records. Good records management is essential for any public institution to function effectively.

Records management ensures records can be accessed easily, can be destroyed routinely when no longer needed, and enables public institutions not only to function on a daily basis, but also to comply with legal, financial and other requirements. The preservation of public records ensures transparent, accountability, compliance with regulatory requirements and allows access to an important resource for future decision making.

Public institutions in the course of discharging their duties produce large amounts of information and consequently greater volumes of records, in both paper and electronic form. It is essential that this information is captured, managed and preserved in an organised system that maintains its integrity and authenticity. Records management therefore facilitates control over the volume of records produced through the use of disposal schedules, which provides in detail the time period and procedures for which different categories of records should be retained by an organisation (Chinyemba and Ngulube, 2005).
Records management is a fundamental and core activity of public sector management. In the absence of records as Wamukoya (2000) observes; there cannot be accountability and rule of law. Public officers need access to information for them to carry out their duties and responsibilities in a transparent way. Wamukoya (2000) argues that accountability determines whether organisations or individuals have met required organisational, business, legal, social or moral obligations.

On the other hand transparency requires that decisions and their enforcement are carried out in a manner that follows rules and regulations. It also requires that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It requires that enough information is provided in an easily understandable form and media. Transparency as a key element of good governance ensures the timely and accurate disclosure of information on financial situations, performance, risk management and governance of public institutions (Organisation of Economic Cooperation and Development, 2004). Without transparency accountability cannot be enforced. It could be argued that records make it possible for people who have a right or obligation to know how things have been done and to see exactly what has been done in public institutions (Wills, 2005). This therefore means that without efficient records management systems, it is very difficult to hold individuals in public office accountable for their deeds and omissions.

Archives Legislation
Parer (2001) observes that government cannot operate without records because they document its actions and provide a basis for good decision making. Those holding public office are required to account for their actions to the public and it would be impossible to be accountable without properly managed records. Government is also required to protect the rights of its citizens, the environment, land rights and territorial integrity. To this effect, government use legislation to ensure that its records and archives are properly managed and preserved over time for accountability and historical purposes (Parer, 2001). It must be noted therefore that archives legislation is an essential component of the broader regulatory framework of accountable and effective government.

Archives legislation enables archival institutions to operate with authority in its dealings with other public institutions. It sets out the responsibilities of the heads of public offices and those of the Director of the archival institution (Barata, Piers and Routledge, 2001). In other words, archival legislation legalises the establishment and operations of archival institutions. With legislation in place, archival institutions have the authority to protect and preserve the nation's records and archives. It means that archival institutions have responsibility in law for the management of both current and semi-current records, and archives. In some countries archival legislation mandates archival institutions to regulate the management of public records and archives at each stage of their life cycle. In order to ensure effective management of records through their life cycle, archival legislations will need to be supported by other international standards, procedures and instructions.

National Archives Act of Zambia

Background
The formulation of the National Archives Act in Zambia, like most archives legislation in the commonwealth countries was strongly influenced by the Public Records Act of 1958 of the United Kingdom. The Public Records Act of 1958 established a cohesive regulatory
framework for public records at the Public Records Office and other places of deposit. Its aim was to:

a) Prohibit destruction of records without prior approval;
b) Establish an archival authority to give or deny such approval;
c) Empower the authority to receive records not authorised for destruction;
d) Mandate transfer of records, generally after 25 to 30 years; and
e) Confer right of public access.

From the above, it could be argued that archives legislation strongly influenced by the Public Records Act of 1958 did not empower archival institutions to regulate records management. As Parer (2001) observes, archival legislation generally focused on issues involving the preservation of government records, public access and rights of appeal. How records were first created and managed was not given the required attention. Paper was the main medium for public records and these would be transferred from public institutions to the archives for permanent retention and preservation. The archives were basically the end players in a process over which they exercised little control.

The National Archives Act, 1969

Cap 175 of the Laws of Zambia states as follows:

"An Act to provide for the preservation, custody, control and disposal of public archives, including public records of Zambia; and to provide for matters incidental to or connected with the foregoing"

The Act is divided as follows:

(a) Part I of the Act deals with the preliminaries such as definitions. Of interest is the definition of records and public records. The Act defines records as papers, documents, registers, printed materials, books, maps, plans, drawings, photographs, microfilms, cinematograph films, sound recordings, photocopies, negatives and positives of pictures. On the other hand public records are defined as any records of the government which are in the custody of the government; or have been transferred to the National Archives of Zambia. Public records are also defined as any records of a corporation, society, association, institution or organisation which is prescribed by the Minister by statutory instrument and which are in the custody of such corporation, society, association, institution or organisation or have been transferred to the National Archives of Zambia.

(b) Part II of the Act legalises the establishment of the National Archives of Zambia for the storage and preservation of public archives. It also provides for safe keeping and preservation of public records and their inspection by the public in some place other than the National Archive.

(c) Part III of the Act provides for appointment of the Director of National Archives of Zambia and sets out his/her responsibilities for the carrying out of the provisions of the Act. Basically the responsibilities of the Director are those that relate to the preservation of public records.

(d) Part IV of the Act deals with the selection and preservation of public records and their transfer to National Archives and the circumstances under which records that have not
been transferred to the National Archives may be destroyed. Part IV of the Act also states at which stage of the records life span members of the public can have access to the records. It also gives authority to the Director of National Archives to inspect public archives and the circumstance under which such inspection can be carried out.

(e) Part V provides for restriction of exportation of or unauthorised removal of public archives and public records. It also provides conditions under which some records can be declared as historical records.

(f) Part VI is designed to cater for issues such as the legal validity of public records, authentication of copies, copyright and reproduction of public archives.

(g) Part VII deals with miscellaneous issues such as the establishment of the National Archives Advisory Council, offenses and penalties as well as regulations.

Analysis of the National Archives Act

Definitions

a) The definition of Records
The definition of records as provided for in the National Archives Act, 1969 is limited and it is not in tandem with the current understanding of what constitute a record. The definition does not take into account the impact of information and communications technology on records management and the changes brought about by this impact in creation, maintenance, use and disposal of records.

The management of electronic records has emerged as a major issue for public institutions and records managers. As Parer (2001) puts it, archives legislation needs to provide adequately for electronic records and should outline how to deal with electronic records creation, accessibility and disposal. Contemporary institutions; both public and private now deal with a mixture of paper and electronic formats and this should be captured in the definition of a record. The definition of records as provided under the Act is too narrow even when applied to the traditional functions of archival institutions. It therefore means that the preservation, custody, control and disposal of public archives would not cater for archival electronic records.

An assessment of the definition according to the Act, indicates that it does not take into account the emerging issues and developments in records management. In the recent past, most developing countries including Zambia have been engaged in public service reforms. Some of the key areas of these reforms have been financial management, human resource, decentralisation, etc. Linked to the key areas are information systems such as Integrated Financial Management Information Systems (IFMIS) and Human Resources Management Systems (Mazikana, 2009). It therefore means that the definition of a record as provided under the Act; records of archival value generated and stored in these systems would not be or are not being preserved for accountability and historical purposes.

The International Organization for Standardization (ISO) defines a record as information created, received, and maintained as evidence and information by an organisation or persons, in pursuance of legal obligations or in the transaction of business. On the other hand; a record is defined as a specific piece of recorded information generated, collected or received in the initiation, conduct or completion of an activity and that comprises sufficient content, context and structure to provide proof or
evidence of that activity (International Council of Archives, 2009). Although the definition of a record is usually identified strongly with a document, a record can either be a tangible object or digital information which has value to the organisation and this would include items like office documents, certificates, databases, application data, and e-mail. To this effect, an assessment of the definitions as provided by the National Archives Act of Zambia, ISO and International Council of Archives (ICA) indicates that the definitions of a record as stated by ISO and ICA are more comprehensive and takes into account emerging issues in records management.

b) The Definition of Public Records

The definition of public records as provided for under the National Archives Act seems to cover various organisations and institutions including those that not are public in nature and manner of operations. The concern of this paper however, is drawn to the institutions that are established by statutes. These are institutions that are established using public resources either directly or indirectly and are therefore accountable to the public for their actions and omissions. In this context therefore, public records refers to records that have been created or received by public institutions in the course of undertaking business and administrative processes of the institutions irrespective of the format in which they are created and stored. Public records therefore need to be retained unaltered over time for as long as they are required.

The loss of control of public records has consequences for citizens especially the poor who are unable to defend themselves. Relevant and accountable public records are essential to preserving the rule of law and demonstrating fair, equal and consistent treatment of citizens (World Bank, 2000). Without access to records, there will be no evidence by which those holding public office would be held accountable. Furthermore, all aspects of service delivery in public institutions such as health, education, pensions, land and judiciary rights depend on well managed public records. To this effect, unless measures are put in place to ensure that public records are created in the best format for the purpose they are created and that their authenticity is guaranteed there will be no archives to talk about and preserve.

Functions and Responsibilities

The functions of the National Archives and the responsibilities of the Director as stipulated under the Act are limited to the preservation of public archives. One weakness that has been identified with the archives legislation in Zambia like other archives legislations in Sub Saharan Africa is that they are only in control of the last phase of the records life cycle (Mnjama, 1996). As a result archival institutions are seen as cultural institutions created for storage and preservation of historical records.

The interest of archival institutions in records management should not only be limited to the preservation of records of archival value. The manner and format in which records are created, maintained and used has got implications on the records that would be finally preserved or transferred to archival institutions as records of archival value. To this effect, there is need for the National Archives of Zambia to have a legislative mandate that enables it to be involved with public institutions at an early stage in establishing and prescribing record keeping requirements. As Parer (2001) observes, the efficient creation and management of public records rests on the authoritative role an archival institution has in setting mandatory standards that ensure the necessary business records of all public institutions are maintained and made accessible.
The archives legislation in Zambia outlines the roles and responsibilities of the National Archives as far as public records are concerned with the emphasis on archives administration obligations and not on records management obligations. This is narrow and it does not provide a good image of the contribution of the archival institution to development. Because the National Archives of Zambia does not play any roles in the management of public records it has been unable to take advantage of the benefits that came with Public Service Reforms. The National Archives of Zambia should have been involved and be able convince government on the need to include records management as part and parcel of the reform process.

In Tanzania records management was made one of the core components of the Public Services Reform Programme (Mazikina, 2009). Through the Management Information Systems Component, it was realised that public service managers need information that was accurate, reliable and timely in order to be effective decision makers. To this effect, public service reform initiatives require the support of efficient and effective records management and archiving systems. Such initiatives has been lacking in the public service reforms carried out in Zambia.

Mazikina (2009) argues that while some of the legislation may not specifically empower the institutions in respect of such areas as electronic records, nevertheless they are not barred or inhibited from involving themselves with media. While this may be true to some extent; such involvement lacks legality and may lead to unnecessary conflict with other public institutions who may consider such moves as interference. Further, archival institutions like the National Archives of Zambia would require adequate resources to effectively play an important role in the management of public records. Government would not provide such resources if the mandate is restricted to the control and preservation of archives. It is therefore important to have an effective legislation because the success of a total records management programme depends on a broad carefully constructed legislation that would regulate the management of public records.

**Electronic Records**

The use of information technology to achieve efficiency savings and add value to way public institutions undertake business is transforming the way work is done in the office environment. However, the unique and fragile nature of electronic records demands a re-evaluation of the way public institutions manage records (National Archives and Records Service of South Africa, 2006). The process and procedures created to meet the needs of record management in the paper environment do not apply equally to electronic records. As a result, this places new demands on records officers and requires changes in the way records management responsibilities are carried out. To this effect, traditional practices employed for managing records are not sufficient to ensure authentic and reliable records. This means that if such records are to be preserved as archival electronic records, archival institutions would require positioning themselves at the conception stage, even before records are created (International Council on Archives, 1997). It also means that archival institutions need to take a vantage position in order to influence policy, standards and the design of record keeping systems.

An analysis of the National Archives Act of Zambia in the context of electronic records and archives indicates that the legislation has not kept pace with the rapid changes in information technology. The Act was written with paper records in mind and with a
simpler model of archival function and role of an archival institution being that of the preservation of paper based records. It could therefore be said that the options available to the National Archives of Zambia in dealing with electronic records are constrained by the existing legislation.

**Developments in Archives Legislation**

**Review and/or Amendments**

A number of countries have reviewed and/or made amendments to their archives legislation to accommodate emerging issues such as management of electronic records and the role of records management in enhancing accountability and transparency in public institutions. Most archives legislations in the world now extend their mandate of national archival institutions to the management of records including current records (Mazikina, 2009). The following are good examples of archives legislations that have empowered archival institutions to be involved in records management:

**Public Records Act of 1958, United Kingdom**

Earlier in this paper, it has been stated that the formulation of most archival legislation in the commonwealth was strongly influenced by the Public Records Act, 1958 of the United Kingdom. It is however, interesting to note that this Act has been substantially amended once by the Public Order Act of 1967 and in detail many times by other statutes and statutory instruments (The National Archives of UK, 2009). To this effect, the National Archives of the United Kingdom provides advice and guidance to records managers across the public sector. This covers the entire lifecycle of public records, in whatever format, from creation through destruction or transfer to the National archives or to approved places of deposit. Further more The National Archives of UK works with government departments, the wide public sector and other stakeholders to develop, implement and improve the standards for electronic records management across the public sector.

**The National Archives and Records Service of South Act, 1996**

The National Archives and Records Service of South Africa Act, 1996 was amended in 2001 to provide for among others the proper management and care of the records of public institutions. The Act makes specific provisions for efficient records management in public institutions (South Africa, 1996). Some of the responsibilities of the National Archivist of South Africa (the equivalent of the Director of National Archives of Zambia) are to determine which records management systems should be used by public institutions and the conditions according to which electronic records systems should be managed.

The National Archives and Records Service has endorsed some standards as the required benchmarking tool for records management and public institutions are required to abide by this requirement. The standards that have been endorsed as benchmarking tools include the US DoD 5015.2 Design Criteria Standard for Electronic Records Software Applications and the UK National Archives' Functional Requirements for Electronic Records Management System (National Archives and Records Service of South Africa, 2006).

**Public Records Act of New Zealand, 2005**

One of the purposes of the Public Records Act 2005 is to enable the government to be held accountable by ensuring that full and accurate records of the affairs of central and local government are created and maintained. Under this Act, one of the duties of the Chief Archivist is to provide advice or to issue guidelines; on the procedures or best practices for the creation, maintenance or
efficient management of public records and to review, amend or revoke the advice or guidelines and to monitor and report on the compliance of public offices with the Act (New Zealand, 2005).

The Archives Act of 1983, Australia

The Act provides for the establishment of the National Archives of Australia and one of its functions is to promote, by providing advice and other assistance to Commonwealth Institutions (public institutions), the creation, keeping and management of current Commonwealth records in an efficient and economical manner and in a manner that will facilitate their use as part of the archival resources of the Commonwealth (Australia, 2009). In 1998 the government of Australia constituted a Law Commission Reform which included a review of the Archives Act of 1983. One of the recommendations advocated for a new Act to be be drafted (Parer, 2000) and as a result an amendment bill was introduced in 2006. Because of having good archives legislation, the National Archives of Australia has been in the forefront of promoting good records management. The archival institution has developed an information management framework comprised of policies, procedures and systems to enable, the effective management of both paper-based and electronic records in public institutions (National Archives of Australia, 2009).

Conclusions and Recommendations

The current archival legislation in Zambia does not reflect the changing aspects of archives and records management. A number of archival and records management issues have gained prominence over the years and therefore there is need to review archival legislation in Zambia that was formulated a few years after independence. The present Act focuses on the preservation of archives, not the broader issues involving records management. In view of the above, there is no reason why the archives legislation in Zambia should remain outdated and thereby inhibiting the National Archives of Zambia from playing a vital role in the management of public records.

Having archives legislation that take into account all records management issues would empower the National Archives of Zambia to adopt a more strategic approach to serving the public institutions. This will enable the National Archives of Zambia to among others:

(a) Gain comprehensive understanding of the state of records management in all public institutions. This would enable the National Archives of Zambia to target the provision of its services and products certain priority areas in order to improve the management of public records;

(b) Actively engage public institutions in raising awareness of their records management obligations and how the National Archives of Zambia can assist in improving records management;

(c) Ensure that core records management activities such as the disposal and transfer of records are adequately and efficiently conducted; and

(d) Facilitate the application of international standards and best practice in records management in public institutions.

The Zambian government has established the Records Management System and Policy Development Unit under the Human Resources Information and Planning Department of the Public Service Management Division. The functions of the Unit in the management of public records include among others the following:

(a) Update Registry Service Manuals
(b) Develop Records Management Policies
(c) Design and install records systems
(d) Inspect and re-organise registry systems

While the above functions are appropriate to some extent, the Unit does not have enough authority to extend its services to other public institutions other than the public service. In view of the above, there is need to have a legislation that requires public institutions to manage records in accordance with the established standards and best practice in order to promote the effective management of records throughout their lifecycle.

References


