

RECORDS AND ARCHIVES LEGISLATION



Felesia Mulauzi

Acting Assistant Director

NATIONAL ARCHIVES OF ZAMBIA

1.0 Introduction

The importance of records and archives cannot be overemphasized. They document essential activities, decisions and evidence of government. Without records and archives, government can neither operate effectively and efficiently nor be accountable to its citizens. Besides, the rights of its citizens including that of the environment, land rights and territorial integrity cannot be protected without records. The future of any nation depends on the past. Past records are used as gateway into the past. Thus governments all over the world require records and archives legislation for compliance and to ensure that records and archives are managed accordingly for posterity and historical purposes. The absence of records and archives legislation to act as a guiding principle to custodians, creators and users of records and archives poses risks that cannot be ignored.

2.0 Significance of records and archival legislation

The importance of records and archives legislation cannot be overemphasised. As a set of recognised binding principles and rules, records and archives legislation not only grants power and bestow rights but also specifies limits of every archival

institution. They set out rules for archival operation. In other words, they are fundamental in not only legalizing the functions of archival institutions but also in supporting and promoting records management culture in a nation. Additionally, records and archives legislation form part of the wider base of an accountable and effective government. Further, they enable all stakeholders to comply.

3.0 Status of records and archives legislation in the Commonwealth region

While some of the archival institutions in the Commonwealth region are governed by records and archives legislations, there still exist other countries with no legislation on records and archives. Regrettably, in most countries where records and archives legislation exists, they are outdated and need to be revised or updated. This is so because most of these legislations were passed in the 1950's. A good example is the Zambia National Archives whose National Archives Act and the Printed Publications Act were passed in the 1960's.

With a strong milieu on administrative laws, most of these laws passed in the 1950's and 60's mainly focussed on public access, rights of appeal including preservation of government records mainly in paper form. Little if at all do they empower Archival institutions to control the management of current records, (Parer, 1999). Thus the importance of records and archives as a strategic resource was not widely recognised as it is today. Additionally, the impact of information technology on records keeping and access to information was not foreseen. As a result, the majority of the 1950's and 60's legislation do not take into account technological changes that have taken place over the years. Thus technological advancements and its ever-increasing availability have rendered these legislations increasingly ineffectual, (Tale & Alefaio, 2005).

4.0 Why introduce new archives and records legislation?

Considering the fact that most of the records and archives legislation existing in the Commonwealth region are out of date, a thorough review is crucial and timely. Additionally, the nature of records and archives including the social, political and business context in which they are used has changed dramatically since the 1950's when the majority of the records and archives legislation were introduced. The

public service including government ministries and departments and their related programmes and activities has significantly expanded thereby having an impact on the management of records. Further, the importance of records management is increasingly being recognised as an important element of the overall business process. This call for the need for governments to have a sound legislative framework for their management activity so as to enable them deliver major business benefits and to comply with new legislative requirements where they have been introduced such as the Freedom of Information Act.

Furthermore, unlike in the past when paper was the main form of record, there has been a proliferation in electronic records due to the emergence of electronic ways of working. Most of the existing records and archives legislation have no capacity to deal adequately with huge volumes of electronic records currently being generated and apparently do not provide adequately for their long-term preservation in an authentic and reliable form. In fact, in courts the authenticity of e-records is not open to any doubt and cannot be challenged as a source of legal evidence. For governments and records managers, the management of these records has become a major challenge being faced today. Thus records and archives legislation need to provide adequately for such records and outline how to deal with the creation, accessibility and disposal of electronic records, (Parer, 1999). “Without [a law] that take into account the growing prominence of electronic records in the overall body of the public and historical record, governments, archives and the community at large will begin to lose access to a significant, and, eventually, overwhelming, proportion of the evidentiary and permanent record,” (Sinclair, n.d).

In view of the current developments, it is imperative for governments to consider updating or revising their records and archives legislation or introduce new legislation where they do not exist. How should new records and archives legislation look like? New records and archival legislation should reflect best practice archival principles which include the following:

- Need to reflect on the needs of the country regarding records,
- Safeguard the interest of the public
- Reflect on the best practices of records and archival management

- Authorise the role of the archives and
- The services the archives will provide, (Parer, 1999).

5.0 Challenges

One of the challenges facing archivists and record managers is lack of accessible training programmes and targeted awareness programmes on records and archives legislation and how to go about revising or updating the legislation including introducing such legislation. In this regard, gratitude goes to the Association of Commonwealth Archivists and Records Managers (ACARM). Recognising the importance of records and archives legislation, and the need to update and revise outdated legislation on records and archives, ACARM organised a workshop on Records Legislation in Manzini, Swaziland from 29th to 30th September, 2008. The workshop attracted participants from nine (9) Commonwealth countries. I was privileged to participate in this workshop. The workshop aimed to address the following:

1. Why have records legislation
2. Impact of different types of legislation on records
3. Examining the different types of records legislation throughout the Commonwealth
4. Exploring the implications of new technology and electronic records in relation to legislation, and
5. Identifying the benefits and limits of records legislation

6.0 Benefits of attending the records legislation workshop

The workshop was worth attending. Various issues were articulated in depth during the workshop. Thus, the workshop exposed me to other legislations existing in other Commonwealth countries including the UK thereby, giving me an opportunity to gain more knowledge on the importance of updating records and archives legislation in a country. Legislation has a major impact on records and archives administration, and has an implication on new technology and electronic records.

The workshop also afforded me an opportunity to share and exchange ideas with other archivists and records managers from other countries. The workshop provided an opportunity to the participants to bring out and share ideas about problems and practical solutions; and building of skills, confidence and ability on records legislation.

National Archives of Zambia has been making considerable efforts to update the existing records legislation and also to spear head the formulation of records management policy which is currently lacking in the country. For instance, the existing legislation does not cater for management of electronic records. Thus attending such a workshop has given us as a department the basis for justification to government for the need to update the records and archives legislation.

7.0 Did the workshop cover all the objectives?

The workshop covered all its set aims and objectives, and it provided the learning agenda for countries that have not yet updated their records legislation. The importance of updating the records legislation can not be over emphasised. It is therefore very imperative to have such workshops in future that can benefit the region and the world at large. In this regard, I would like to once again thank ACARM for sponsoring me to participate in this important workshop without which it would have not been possible for me to participate and gain the knowledge and experience that I gained.

8.0 The Way Forward

Zambia and other countries such as Swaziland and Malawi that have not updated or introduced their records and archives legislation need to do so by means of implementing best practice guidelines. As a way forward, the Zambia National Archives is considering updating its National Archives Act Cap. 175 and the Printed Publications Act Cap. 161 of the Laws of Zambia which dates as far back as 1969. The institution would like the following to be included in the National Archives Act:

1. The National Archives Act to be called the National Archives and Records Services Act since the institution not only manages archival materials but also non current records
2. Electronic records, which as a result of technological advancement are being generated in every government institution to be defined
3. The management of electronic records including appraisal, disposition and archival of these records to be catered for in the Act.
4. Private Archives to be defined
5. The management of private archives of both local and national significance to be catered for in the Act
6. The National Archives Advisory Council to be called the National Archives and Records Services Advisory Council
7. The Chair of the National Archives and Records Services Advisory Council to be appointed from among persons who are not members of staff or otherwise employed by the National Archives and Records Services
8. The number of Council members to increase from the current five (5) to eight or more so as to include independent people to have diverse views
9. The period for a member of the National Archives and Records Service Advisory Council to be extended to four (4) years to avoid frequent changes of members
10. Spell out and stiffen the penalties for those that contravene the Law
11. Management of non current records to be catered for in the Act since records management is now recognized as a discipline
12. Spell out the period under which the non current records are to be kept before opening them to the public or reviewing them

For this to succeed, the department is planning to hold a workshop with key stakeholders in the second quarter of 2009 on how to go about the review of the National Archives Act Cap 175 of the Laws of Zambia. For the Printed Publications Act, areas to be considered for amendments have already been submitted with the relevant authority and await presentation in Parliament.

9.0 Conclusion

The workshop was indeed educative and timely since the *Zambian Printed Publications Act* and the *National Archive Act* date as far back as 1969 and 1975 respectively. There is therefore, need to review and update the *Records Acts* for Zambia and other countries in the region and the world at large to reflect current situation, needs and technological developments. Failure to do so may result in public records being incomplete. As a result the memory of the nation will be lost.

References

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