

**Archival Legislation and the Management of Public Sector Records
in Zambia: A critical Review.**

By

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Abstract

Governments all over the world require comprehensive archival legislation ensure that records and archives are managed accordingly for effective running of the current operations of organisation as well as for posterity. The paper argues that comprehensive legislation in the records management and archives administration act as a guiding principle to custodians and users of records and archives. Furthermore, the paper discusses archives legislation in Zambia and its role in the control and preservation of records of enduring value. The paper points out that the National Archives Act does not mandate the National Archives to manage current records and this hinders its operations. The paper contends that archives legislation in Zambia is not tandem developments in Information and Communications Technology (ICTs) vis-à-vis records management and issues that have to do with Freedom of Information Legislation (FOIL). It provides examples of archives legislation that have been reviewed and/or amendment in ESARBICA

that as a result archival institutions in those countries be instrumental in promoting records management policies, standards and procedures. 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 institutions the need to manage electronic records and ensure that the Freedom of Information is developed and implemented.

Key words: Archival legislation, Electronic Records, National Archives of Zambia, Freedom of Information

Introduction

The International Standards Organisation (2001) points out that records management entails the efficient and systematic control of records from the time they are created up to the time they are disposed off. It should be noted that effective management of public records allows for fast, accurate and reliable access to information. It ensures the timely destruction of redundant records and the identification and protection of vital and valuable records. In this regard, good records management is essential for any public institution to function effectively. It can thus be argued that poorly managed records entails that government cannot have ready access to authoritative sources of administrative, financial and legal information to support sound decision making or the delivery of programmes and services. 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, for this to happen there must be legislation in place.

Mittal(1971: 4) points out that legislation in general terms means 'laying down of the instructions to the persons responsible for running a

government in order to properly discharge each function of government'. It provides for the powers, obligations and limits of such institution. Legislation relating to public records or national archives exists in some form in most countries. However, some legislation of have some weaknesses. The weaknesses which can be found in older public records and archives legislation stem largely from its failure to recognise 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. It should however be noted that comprehensive, up-to-date records and archives legislation is a critical prerequisite of effective life-cycle records and archives management, since it establishes the framework within which appropriate records and archives systems can be created and provides the authority necessary for their implementation.

Archives Legislation: The General perspective

Parer (2001) observes that government cannot operate without records because they document its actions and provide a basis for good decision making. Additionally, those that hold public office are supposed to account for their actions to the public. This mostly will be without properly managed records. Government on the other hand is also required to protect the rights of its citizens, the environment, land rights and territorial integrity. To this effect, government must use legislation to ensure records and archives are properly managed and preserved over time. It is in this regard that archives legislation becomes an essential component of the broader regulatory framework of accountable and effective government. It is in this vein that Barata, Piers and Routledge

(2001) submits that archival 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.

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. In the case of Zambia, there is the National Archives of Zambia (NAZ) Cap 175 of the laws of Zambia 1995 edition operational.

The National Archives of Zambia Act, Cap 175 of 1995

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. 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 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 the establishment of the National Archives Advisory Council, offences and penalties as well as regulations.

Management of current records in relation to NAZ Act

Zambia, which was initially known as Northern Rhodesia got independent in 1964 and become a nation called Zambia. The United National Independence Party (UNIP) under the leadership of Dr. Kenneth Kaunda obtained majority votes and subsequently formed government on behalf of the Zambia people. Independence led to the revision of several acts to consolidate the vision of the new government in the management of the affairs of the nation. Amongst the Acts that were revised was the Archives and Judicial Records, Chapter 24 of the Laws of Northern Rhodesia Act. After revision, the Act was cited as the National Archives Act, Chapter 268 of the Laws of Zambia, and 1969 edition. The Act was meant to provide for the preservation, custody, control and disposal of public archives including public records in Zambia. In the Act public archives entailed all public records that are specified by the Director of National Archives of Zambia as being of enduring value and have been transferred to the department. On the

other hand, public records in the Act entailed any records of the government that are in the custody of the government and secondly have been transferred to the National Archives of Zambia. Furthermore, the Act stipulated that public records also involved any records of a corporation, society, association, institution or organization that are prescribed by the Minister by statutory instrument and which were in the custody of such organization, society, association, institutions or organization.

The significant difference with Act before independence and that of post independence was the fact that the Act before independence considered all records as public archives which was not the case for the Act after independence. The Act before independence also considered only those public archives from government departments. However, the Act after independence not only considered records from government departments but also embraced any records of a corporation, society, association, institutions or organization which was prescribed by the Minister by statutory instrument. This was considered important because government had a lot of interest in other institutions as the government in fact created them to perform certain functions.

The other new provision in the Act was Part 111(5) 2(e) of the Act provided that “at the request of a government department”, the Director of National Archives was mandated to “examine any public records in the custody of such department and advise such department as to the care and custody thereof” while Part 111(5) 2(f) of the same act provided that “at the request of a corporation, society, association, institution or organization which is prescribed by the Minister by statutory instrument”, the Director of National Archives was mandated to “examine any public records in the custody of such corporation, society, association,

institution or organization and advise it as to the care and custody thereof” .The problem with this the concept “at the request”. Assuming there was no request, as it happens most of the times, it goes without saying that the records neglected. It should be recognized that the previous Act did not have the concept of “at the request”. This provision creates a problem for comprehensive management of records and archives. It should be noted that the Act before independence mandated the Government Archivist to actually examine and advise accordingly without being requested by the departments to do so.

Amongst the provisions of the National Archives of Zambia that needs further analysis along the lines discussed above are;

- i. 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.
- ii. 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 the provisions of the Act. Basically the responsibilities of the Director are those that relate to the preservation of public records.
- iii. 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.

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 as Africa as (Mnjama, 1996) points out is that they are only in control of the last phase of the records life cycle. As a result archival institutions are seen as cultural institutions created for storage and preservation of historical records.

However, the interest of archival institutions should not only be limited to the preservation of records of archival value but also in the manner and format in which records are created, maintained and used. This is cardinal because it has got implications on the records that would be finally preserved or transferred to archival institutions as records of archival value. It is in this vein that Parer (2001) contends that 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.

It is thus regrettable that archival 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. It is in this regard that Mazikina(2009) notes that most archives legislations in the world now extend their mandate of the national archival institutions into the management of records including current records.

For instance 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. The Botswana and the Tanzania National archival institutions are some of the countries in the region that manages both current and archival records.

Management of Electronic Records in Relations to NAZ Act

The current National Archives Cap 175 of the Laws of Zambia in part 1 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. The definition of records as provided for in the National Archives Act, 175 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 this impact in creation, maintenance, use and disposal of records. The emergence of Information and Communication Technologies has made it possible for organisation to create and store records electronically that needs to be managed. In this vein, the management of electronic records has emerged as a major issue for public institutions and records managers. Consequently, Parer (2001) contends that archives legislation needs to provide adequately for electronic records and should outline how to deal with electronic records creation, accessibility and disposal.

It should be noted that in the recent past most developing countries including Zambia have been engaged in public service reforms. Apparently, the Zambian Government is involved in initiatives that involve ICTs in the public sector. According to the Zambian Government National Information and Communication Technology Policy (2006), a number of ICT projects have increased over the years resulting in building blocks such as the Integrated Financial Management System (IFMIS) project, Payroll Management and Establishment Control Project and building of Local Area Networks. It therefore means the definition of a record as provided under Act, records of archival value generated and stored in these systems would not be or are not being preserved for accountability and historical purposes.

It is common knowledge that 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.

The National Archives and Records Service of South Africa Act, 1996 was amended in 2001 to provide for the management of electronic records by the National Archivist. Some of the responsibilities of the National Archivist (the equivalent of 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 of South Africa 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).

It should be further noted that the National Archives of Namibia in 2006 developed the E-records guidelines that are to provide direction for Government ministries, offices and agencies in the management of records generated electronically. The guidelines draw their mandate from various legislative and regulatory instruments including the E-Governance Policy for the Public Service of Namibia (2005) and the Archives Act (1992). The E-records guidelines provides Namibian government ministries, offices and agencies with guidelines for the creation and management of authentic, reliable and usable records, capable of supporting business functions and activities for as long as there are required (National Archives of Namibia, 2006)..

The changes in the management of records both in South Africa and Namibia takes note of the fact that 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 to the way in which records management responsibilities are carried out. To this effect, traditional practices employed for managing records are not sufficient to ensure authentic and reliable records. In this regard, the International Council on Archives (1997) has noted that if archival electronic records are to be preserved, archival institutions would require positioning themselves at the conception stage, even before records are created. It also means that archival institutions will 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 of Zambia Act in the context of electronic records and archives indicates that the legislation has not kept pace with the rapid change in information technology. The Act was written with paper records in mind and with a simpler model of archival function and role of 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 to some extent for dealing with electronic records are constrained by the existing legislation.

Freedom of Information in relation to the NAZ Act

The current National Archives Cap 175 of the Laws of Zambia in Part IV of the Act states at which stage of the records life span members of the public can have access to the records. The provision indicates that public records can only be accessed after twenty years (20) years of their closure. This provision does not allow the public to access records when they are current and semi-current. The public can only access the records when they are non-current. This provision in its current form does not encourage transparency and accountability. It should be noted transparency and accountability are now key issues in the process of good governance.

It should be noted that transparency is a key element of good governance as it ensures the timely and accurate disclosure of information on financial situation, performance, risk management and governance of public institutions (Organisation of Economic Cooperation and Development, 2004). Furthermore without transparency, accountability cannot be enforced. It is in this regard that Wills (2005)

argue 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. This therefore means that without proper records management and archival administration legislation it is not possible for the public to access all government records and thus becomes is very difficult to hold individuals holding public office accountable for their deeds and omissions. It is in this vein that most countries now have enacted or are in the process of enacting Freedom of Information Legislation (FOIL).

Freedom of Information Legislation comprises laws that guarantee access to records held by government. They actually establish the right to know, legal process by which requests may be made for government held information to be received freely or at a minimal cost. It should be noted that over 85 countries in the world have implemented form of such legislation with Sweden's Freedom of the Press Act of 1766 being the oldest in the world. It is however, regrettable to note that most of the countries that have implemented such bills are not in Africa. The Freedom of Information Legislation by Country (2008) notes that only South Africa and Uganda has operational legislation in this area. South Africa passed the promotion of Access to Information Act in 2000 while Uganda did in 2005. The rest of the countries have not implemented the said legislation. Zambia falls in this category. However, it is important all countries embrace this legislation as it is intended to give effect to the constitutional right of citizen to access any information held by the state for transparency and accountability purposes.

Conclusions

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 such as electronic records and freedom of information have gained prominence over the years. It is therefore important to review archival legislation in Zambia to bring it acceptable international standards. Presently, the 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 in facilitating the application of international standards and best practice in records management in public institutions.

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