

Chapter 3

Archival Legislation and Archival Services in Africa

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ABSTRACT

The chapter provides conceptual underpinnings and experience of archival legislation and archival services in Africa. General perspectives of archival legislation and the development of archival services in Africa are outlined. Thereafter, the chapter links the concepts discussed to e-Government therefore accentuating the important role that archival services play even in emerging digital archiving environments.

INTRODUCTION

Duchain (1993, p. 57) avers that “archives and records legislation is probably as old and universal as archives themselves.” He further asserts that since archives are non-current records that have been selected for permanent preservation, “their preservation and use have long been regulated by the public powers.” The value of a well formulated archives and records legislation was perhaps best summed up by Roper (1999, p. 3) when he wrote saying, “the enactment and implementation of comprehensive, up-to-date records and archives legislation is a critical prerequisite for the establishment of an effective, integrated system for managing records and archives throughout their life cycle.”

Parer (2000) asserts that archives and records legislation may be categorized into primary and secondary legislation. Primary legislation include acts, decrees, and ordinances usually passed by parliament while secondary legislation consists of statutory instruments such as rules and regulations which would normally be formulated by the minister responsible for the national archives. According to Hurley (1994), archives and records legislation in the world has been undergoing regular transformations. He sees each transformation as a generation. Hurley (1994) argued that archival institutions operating under the first generation archives and records legislation focus on:

- establishing an archival authority;
- prohibiting destruction without the archival authority’s approval;

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- empowering the authority to receive records withheld from destruction; and
- Permitting access to transferred records unless restricted.

Archival institutions operating under the second generation may be categorized as those institutions which have gone beyond the first stage and are now involved in the management of current records and with the provision of greater access to information contained in them. Such archival institutions would normally:

- require the transfer of records to the archival institution or approved depository after a prescribed period;
- regulate records management activities; through setting of standards, formulation of policies and procedures; and
- establish public rights of access to records after a specified lapse of time.

Finally, Hurley (1994) suggests that that third generation legislation will be distinguished by characteristics such as:

- it will assume that recordkeeping is the business of government rather than just the business of an archival authority; and
- it will outline the outcomes of recordkeeping and perhaps the principles for recordkeeping but will not concern itself with how recordkeeping happens or who undertakes it.

The introduction of information communication technologies has revolutionized the way in which government conducts its business and interacts with its citizens. Increasingly governments are now practicing what is commonly referred to as e-government by providing e-services, conducting e-commerce and practicing e-management resulting with the creation of electronic records which require a new approach in their manage-

ment and utilization. The need to address records born digital demands that amendments to the existing archival and records legislation be made. The section that follows provides an overview of archival and records management legislation in Africa and demonstrates how the introduction of information technology which has resulted in the emergence of e-government and the creation of electronic records calls for major amendments in archives and records management legislation of most of the countries in East and southern Africa.

IMPORTANCE OF ARCHIVES AND RECORDS LEGISLATION

The value of a well formulated archives and records legislation in the overall performance and functions of an archival institution as well as the management of public records cannot be overstated. Without this legal framework, the operations of the archival service would be constrained, and may not be effective. The importance of archives and records legislation was recognized in 1982 by Ketelaar (1982) when he wrote saying:

Comprehensive [archives] legislation...recognizes the fundamental nature of the relationship of government records as instruments of accountability by the government to the people, evidence of public and private rights and obligations, and information source on matters involving the continuous administration and management of government; preserves the patrimony of the state as evidenced in its records; and provides exclusive authority to carry out archives and records management functions on a government-wide basis.

The value of an effective legislation was further emphasized by Lihoma (2008, p. 6) the Director of Malawi National Archives when he stated that “the National Archives Act (1975) under which the NAM operates needs total revision in order to address among other pertinent areas, issues of

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