

TANZANIA'S 2002 RECORDS AND ARCHIVES MANAGEMENT ACT: A CRITICAL APPRAISAL

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ABSTRACT

The paper critically assesses the strengths and weaknesses of the Tanzania's Records and Archives Management Act of 2002. The Act repeals the 1931 Records Disposal Ordinance 9 (Cap.9), the 1965 National Archives Act no. 33 and the Presidential Circular no.7 of 1963 on the Care and Disposal of Public Records. It argues that the Act is progressive and if effectively implemented can improve the management of and access to public records in Tanzania. However, some critical areas that need serious revisiting include supporting the Act with adequate resources, training, provisions on electronic records and records created by Union Government. The paper recommends facilitation of ample resources, training on the Act, reduction of power of director of the Records and Archives Management Division, inclusion of provisions on electronic records, provisions for the records created by the Union Government and, reduction of 30 year period for access to some of the records.

INTRODUCTION

The Records and Archives Management Act of 2002 comes as a relief to the professional management of records in Tanzania. The Act repeals the Records Disposal Ordinance (Cap. 9) of 1931; the National Archives Act No. 33 of 1965 and its amendments, and the Presidential Circular No.7 of 1963 (that is: "The care and Disposal of records circular"). Despite that records underpin all government operations and are the critical basis for transparency and evidence for accountability, in Tanzania as in many other African countries the management of public records whether archival or otherwise has been and is still in a very chaotic state. This denies the government and its statutory bodies a very important resource vital for effective decision-making, policy planning and implementation,

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management, rational allocation of resources and provision of adequate and effective services to the public. The importance of records/information as a critical resource in stimulating socio-economic development and protection of national interests was best underscored by Mazrui (1999) that for a while now, the distribution of real power is based not on who owns what but on who knows what!

The Act is primarily the most significant change in the way record keeping is to be coordinated by public offices for a number of reasons. Firstly, it legally lays the foundations of effective records and archives management in relation to legislation, introducing effective records management systems in public-related agencies and government offices for all types of records. Secondly, the Act is crucial as it intends to resuscitate achievements in records and archives administration recorded between 1965 and 1969 when the deterioration and collapse of records management and archives administration systems began. According to available evidence, in this period basic principles/systems of records management and archives administration were established. Had these been implemented effectively, they could have transformed themselves into functional and effective records and archives management policy and programmes for all types of public records in Tanzania. Thirdly, through its various provisions specifically on structural mechanism of managing records, the Act tries to provide and facilitate a unified records management structure both at central and local government levels. The Act has therefore come at the right moment in trying to create the basis for facilitating the maintenance of good record keeping systems which is of particular significance specifically now when vital records are needed in response to the public sector reform currently underway in the country.

This paper is therefore a critical assessment of the 2002 Act in relation to its various provisions. It also highlights the strengths and weaknesses of the Records and Archives Management Act of 2002 as a tool to manage public sector records. In addition, the paper recommends ways through which the Act can be improved given the changing scenario of the records themselves in terms of their amount, formats and their professional management techniques.

RATIONALE FOR THE 2002 RECORDS AND ARCHIVES MANAGEMENT ACT

Rectifying Operational Environment of the previous Legislation on Records and Archives

Several factors necessitated the passing of the Act. These include the fact that the Records Disposal Ordinance Cap.9 of 1931 and the National Archives Act of 1965 have failed to provide the kind of records management environment in which records can be timely accessed to satisfy the ever changing political, social, and economic contexts. This can be evidenced from the several amendments subsequent to the 1965 National Archives Act which, of course, implied that it had severe inadequacies as regards records management. In other words and as Nauta observes (1985:275) any information management system (in this case the two Acts) that no longer interacts with its current environment is dead because it fails to come to terms with the structure and environment within which it is used. According to the Tanzania Government Records Management Improvement Programme (2001) of the Civil Service Commission, the 1965 National Archives Act was seriously inadequate in that the country's civil service was facing many records management challenges as a result of the development of new government functions, increased activities and the many reorganizations that had been taking place due to political pluralization and economic liberalization.

Records management systems that existed in Tanzania before the 2002 Act could no longer keep pace by supplying the required information/records to meet the ever changing social, political and economic transformations the country was experiencing. In other words, the two legislation had outlived their usefulness in responding to the government's working environment wherein instant information/records is constantly needed. The same argument is put forward by Kisanga (1991:25) who emphasizes the need to develop an up-to-date law which is in line with society's needs of the day in the management of its affairs (in this case of records) and asserts that:

The laws of a given society must respond to the changes taking place in the society. They must reflect the value of that society for which they were made. [and] cannot be

allowed to lag behind while other aspects of the society forge ahead...otherwise the social system is liable to breakdown at some point.

Legal confusion between the 1931 Records Disposal Ordinance and the 1965 National Archives Act

In the 1965 Act No.33 establishing the National Archives of Tanzania, the provisions of the Records Disposal Ordinance (Cap. 9) of 1931 were amalgamated, hence empowering the 1965 Act to take over the responsibilities of managing and disposing of public records without repealing Cap. 9. In effect therefore the 1931 Ordinance remained in the country's legislative books as a legal and enforceable legislation. The 2002 Records and Archives Management Act has thus reconciled these two previous legislation under one umbrella. This has been a very important move in order to iron out the legal confusion and/or misinterpretation that may have arisen given the dual existence and hence application of the Records Disposal Ordinance Cap. 9 of 1931 and the National Archives Act of 1965 as regards records management in the country.

Public Sector Reform versus the current public records management crisis

In most public enterprises including government, records management has neither been integrated nor considered as a strategic management function with other information management functions of the enterprise with a view to creating a competitive advantage in their functions, specifically in ensuring the public sector's ability to function effectively and provide documentary information to facilitate good governance. Due to this dichotomy many public organizations and most government offices have lacked not only integrated and functional current and semi-current records management programmes, but also effective and relevant records management policies. A good example here has been the absence of legal provisions in the 1965 National Archives Act as regards the management of current and semi-current records in most public agencies. The Act has been silent on this and implicitly it was left to the creators of these records to determine their management. This can create an environment conducive to poor accountability, corruption, fraud and maladministration. Records

management policies and programmes according to Cook (1993), are critical in enabling organizations to:

- Allocate resources on the basis of principles and directions laid down by the policy
- Establish control over records management activities, in particular by putting regulatory policies that are required for coordination, sharing of records, standardization, creation and maintenance of all types of records
- Improve chances of locating accountability, defining organizational responsibilities and spearhead change in the records management processes
- Stimulate an integrated approach to records management, or motivate coordination among existing records units and effective creation and use of professional and technological capabilities.

All these have been difficult to implement without relevant public records management policies for the government and public organizations in Tanzania. To highlight problems in the management of public records specifically in Africa and Tanzania in particular. Mchombu (1992:187) sarcastically observes that:

One of the hallmarks of a good African civil servant or manager is the ability to take decisions without having all the relevant information!

The above observation clearly characterizes the conditions within which Tanzania's public institutions and government offices operate since in most of them effective records management programmes are non-existent. Studies (Kitalu, 2001, Kalumuna, 2001, and Ndibalema, 2001) conducted in the Ministry of Education and Culture, the three Local Municipal Authorities of Dar-Es-Salaam region, and the National Social Security Fund headquarters in Dar-Es-Salaam on the state of public records management in these and other public offices, reported that records were inadequately and inefficiently managed to effectively satisfy the information needs of these organizations. It is against this gloomy picture of public records in Tanzania that a critical assessment of the 2002 Records and Archives Management Act is

made in order to determine its strengths and the inadequacies as a tool to effectively manage all types of public sector records.

STRENGTHS OF THE 2002 ACT

Repositioning the Implementation of the Act

A brief history of the management of records in Tanzania indicates that it has been an activity frequently transferred or oscillating between Ministries and major government offices. For example, prior to the establishment of the National Archives in 1965 the responsibility for archival records was under the Vice President's office until 1963 when it was transferred to the Ministry of Education and Culture up to 2002, while the management of semi and current records was left in the hands of their creators and the Civil Service Commission. The critical implication of this was that records management agencies like the National Archives had existed with no powers to influence or issue directives to other ministries in the effective and coordinated management of all types of records in the country. The current repositioning of records management under the President's office accompanied by the creation of a fully-fledged Department within the Civil Service Commission responsible for the management of all types of public records imply not only that now the management of public records is under one organization but also the importance and recognition of the value of all types of records to government business and the possibility of records management functions being adequately resourced. According to the 2002 Act this:

Will give legal power to control records in the whole lifetime from creation to disposition or for permanent preservation...It also will give the Department legal powers to manage current, and semi-current specialized records that is personnel, electronic, lands, judiciary, etc. which were not covered in the amended Act No. 6 of 1979 and National Archives Act No. 33 of 1965.

In contrast to the situation in Tanzania in developed countries such the USA and UK, records are highly regarded and valued as an information resource. In these countries, records

management fall under key central coordinating ministries whose activities cut across all other ministries' functions.

Comprehensive roles and management structures of the Act

While the 1965 Act is deficient in its provisions as regards the effective management of all types of records from a professional point of view, the 2002 legislation is much inclusive and improved in terms of its provisions to records management. For example, it defines records including current and semi-current, electronic records and archives both public and private. It further emphasizes the inalienable and impressibility of public records, details the functions and responsibilities of not only the newly created Department of records and archives but also those of different officers and practitioners as regards the holistic approach to records management.

Further, the composition of 2002 Act has been more sensitive in creating an Advisory Board of which its composition is likely to be more useful as it is comprised of those who would be most critical in terms of impact and influence in the development of records and archives management programmes in the country. For example, besides its positioning in a key ministry in the overall government organizational hierarchy, it includes representatives from key ministries like President's office, Legal Affairs and the Ministry of Finance and Economic Planning. These Ministries may be critical in the facilitation of the required resources when implementing different provisions of the Act. Contrary to the 1965 Act, it is now safe to say that in terms of the management and administrative environment of all types of records, a transparent management and administrative structure has now legally been defined and put in place. This will facilitate the implementation of the Act, which is to be spearheaded by the Records and Archives Management Department under the Civil Service Commission in the President's office. The Department has equally been streamlined into four sections to cater for specific types of records and related activities i.e. records management, archives management, records centre services, and technical services sections.

Responsibility for current, semi-current and archival records

For the first time creating agencies' management whether public and quasi-private offices and organizations, are now by law required to manage and maintain both public current and semi-current records. This is unlike the 1965 Act, where no such mention was made. This responsibility is now clearly detailed to involve record creators in the management of records created within their organizations while the Records and Archives Management Department through the National Archives, is given an advisory role of assisting record creating agencies in the management of current and semi-current records. This provision is critical in that top management in the agencies is legally bound to oversee, apportion adequate physical and fiscal resources and establish effective programmes in the management of these records. However, one serious observation in this is that given the extent and amount of public records in the country and the level of resources available to the Records and Archives Management Department at the moment it is likely to be overwhelmed and overstretched in its provision of advisory services to public agencies as regards the management of current records.

WEAKNESSES OF THE 2002 ACT

Poor Public Commentary on the Bill

The general public, local experts and other stakeholders were not adequately involved in the discussion of the proposed Bill except at the last minute when the latter were invited by the Parliamentary Committee on Social Services to comment on the Bill. These should have been involved at every stage of its formulation and development. Failure to do so has resulted in passing a law that is not well balanced as is reflected by the inadequacies discussed in this paper. Limited public involvement and commentary on the Bill may have emanated from the fact that Tanzania's Civil Service Reform Programme under which the records management improvement programme falls, is a World Bank funded project, and the consultancy on improving public records management was undertaken by experts from the International Records Management Trust, a charity organization from the UK.

Legal Provisions on Electronic Records

Despite the fact that the 2002 Act adopts a good number of critical and basic records and archives management principles it however fails to cater for the management of ever-increasing electronic records in government business today. For example, Battin (1992) clearly cautions that:

We no longer have a choice because we will require digital technologies to manage the products of digital technologies. Our paper-based ways cannot possibly manage the intellectual products of the digital society we are getting into even by developing countries (*like Tanzania*). (*Emphasis is of the author*).

Although a mention is made of electronic records in the preamble of the Act when defining types of records based on their media, it is silent as to whether electronic records currently on the increase should be maintained separately or integrated in the current activities of the Records and Archives Management Department. This is still a dilemma, which needs to be resolved so that electronic records are given equal status as that accorded to paper records. Guidelines on the management of electronic records should have been included in the Act so that the concerns of electronic records become part of larger and effective public records management systems in the country, i.e. re-forging the links between paper-based and electronic records in a holistic approach to records management systems.

This inadequacy of the Act could have emanated from two sources. Firstly, is the level of electronic knowledge and experience of those who took part in the inner processes of working out the Bill and later the subsequent Act. Secondly, the public/expert involvement in commenting on the Bill. As seen before this was severely limited as the Parliamentary Committee on Social Services made no thorough consultation of local experts before the Bill was passed by Parliament.

Centralization of Power and Responsibilities of Records Management

Despite the aforesaid weakness the new legislation is important as it provides the legal basis upon which mandatory and effective

public records management can be undertaken by all public organs and agencies. The Act however, creates other problems in terms of rationalizing the responsibilities for, and control of records management issues. For example, the line of direction of the 2002 Act seems to be along a path that gives the Records and Archives Management Department more say (more power and more control) over record keeping throughout all public offices and institutions. Too many functions and powers are given to the Director of the Records and Archives Management Department at the expense of other public agencies. For example, from Part II Section 8 to 14 of the Act defines the functions of the Director, which in my view these functions are too many to be effectively accomplished by a single person. Such inadequacy has equally been cited in other similar Acts. For example, Reed (1998:3) observed that:

This has a problem in that in bureaucratic terms records laws are seen as charters; instruments for empowering one public Agency (*in this case the Records and Archives Management Department*) at the expense of others (agencies). In the interplay of bureaucratic politics, such legislation is routinely (even automatically) opposed and watered down by other agencies.

(Emphasis is of the author)

According to the 2002 Act, the responsibility of managing current records lies in the hands of creating agencies, while the Director of the Records and Archives Management Department is accorded just an advisory role to these agencies. However, this kind of relationship in the management of public records can only work effectively if there is mutual trust and cooperation between the creators of records and the Director of the Department. From past experience such a relationship seems to have been lacking. For example, Mulyansi (2000:18) observes that despite the fact that the requirements laid down by the 2002 Act are reasonable, there is no corresponding obligation or means of enforcing its provisions for the creators of records to comply with requirements or to have records transferred to the National Archives when they become archives. As of now, most public records that belong to the Archives are still held in the ministries rather than the National Archives (*or the new Department*).

Ideally, the 2002 Act should have made provisions that also recognize the critical role of records creating agencies and institutions to be responsible for all stages of public records as they pass through their life cycle. This will ensure that the responsibility of managing records is vested not only in a single institution in the country. Consequently, a decentralized but responsible, integrated and enforceable network of public records management aimed at an integrated holistic approach to the management of the whole life cycle of records will evolve.

Provisions on Public Access to Records

Public access to information/records is critical for individual citizens and their representatives to assert their civil rights, hold government accountable, and help detect and deter corruption and fraud. However, many citizens in the rural areas of Tanzania are mostly unaware of the existence of Article 18 of the Tanzanian Constitution on the right to access information. Even in urban areas, the few who know that it exists do not know how to exercise their right to obtain information. In other words, mechanisms do not exist to provide guidance to citizens on accessing current and archival government information records. The National Archives Act of 1965 provided for the right of citizens to consult public records that are over 30 years old but it did not outline strategies and techniques through which citizens' constitutional right could be exercised. The 2002 Act repeats the same anomaly. The latter has even failed to take on board the existence of a proposed (but not yet passed) legislation that was drafted earlier to reduce the 30-year closure rule on public records in Tanzania to at least 25 years. In terms of research and obtaining critical information required for solving a given social problem at hand, waiting for 30 solid years to get the needed information is a denial of constitutional right of access to information to Tanzanian citizens.

The mechanisms expressed by the 2002 Act that one could bypass and access a record which is under a 30 year rule of access, are ambiguous because they depend upon the individual judgement and discretion of the officer in charge of the public records in this case, the Director of the Records and Archives Management Department. The Act also fails to account for public access to important government records that are still held by the ministries

and other public agencies that have yet to become either archives, or those already archives but not yet transferred to the Records and Archives Management Department to date. From available evidence it is known that up to now nothing of the public records post-dating 1973 had been transferred to the former National Archives or the created Records and Archives Management Department (Mulyansi, 2000:19).

Union Government Agencies and Institutions' Records

The 2002 Act is equally silent on records emanating from businesses of the Union government agencies and institutions. Despite that in Part I Section 3 of the Act, it is mentioned that the Act shall extend to Tanzania Zanzibar, there is no provision in the Act directing as who should be responsible for managing such records knowing that both parts of the Union i.e. Tanzania Mainland and Zanzibar each has its own system and institutions for managing current records as well as archival records. The Act thus implies that such records will have to be duplicated so that each part of the Union maintains a set of these records. Given the limited resources likely to be availed for records management, such arrangement is unnecessary and may prove to be expensive and self-defeating in the long run.

CONCLUSION AND RECOMMENDATIONS

While many of the provisions in 2002 Act can be regarded as progressive and if effectively implemented can in fact improve the management of and access to public records in Tanzania, critical areas that would need serious revision has been highlighted by this paper. Therefore, there is need for some serious broad consultation to correct these anomalies so that the 2002 Act can be more thorough and can correspond with the value being attached to public records as a critical information resource for both the government and its citizens. Consequently, the following recommendations are made for creating a legally functional and practical Act on records management for Tanzania:

- The Act needs to be supported by adequate resources, which are commensurate with the growing responsibilities of effective records management. This has always been one of the major problems of implementing most of the previous

records management Act, related circulars and repeals. For example, the crumbling of records management systems established in the National Archives of Tanzania in the 1970s was mainly as a consequence of under-resourcing of that public agency.

- Need for training on the importance of records in government offices and other public institutions, as the management may be ignorant of the 2002 Act and its requirements. This is critical in that it will empower management of these public offices to express records and archival concerns in ways, which are equally shared by the government. In addition, public agencies' management needs to be stepped up in order to gain appropriate support and resources for records management programmes.
- Radical thinking is required, leading to a possible transformation of the basic purposes of records and archival methods in order to provide for and integrate increasing electronic records as part of records management given their increasing role in government and other public businesses.
- The Act needs to be amended to reduce the concentration of power and control in hands of the Director of the new Records and Archives Management Department as it is currently provided. is also critical. Records creating agencies whether public or private should be given a larger stake in managing records in order to create a decentralized but more functional system of records management in the country.
- There is need to review the public accessibility of 30 years to a shorter period. The law should also provide distinction between what records should be labeled confidential/secret and other open records that may be good data for immediate national consumption and planning.
- Finally, the law should include provisions as regard the management status of records created by the Union government institutions. As it is, the 2002 Act is completely silent on the issue despite the fact that the Act extends to Zanzibar and that both sides of the United Republic of Tanzania have systems and institutions for records management.

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