**e-Discussion Papers**

**Theme 1: Planning for Records Management Requirements in ICT Systems**

***Introduction***

This discussion paper explores issues relating to the management of records created electronically and the need to ensure that they provide complete and reliable evidence over time. It is based on a study called *Managing Records as Reliable Evidence for ICT/ e-Government and Freedom of Information in East Africa*, funded by the International Development Research Centre and conducted by the International Records Management Trust. The research was carried out across the East African Community by national teams in each of the constituent countries: Burundi, Kenya, Rwanda, Tanzania and Uganda. The study has identified a consistent lack of planning for the management of electronic records generated by or stored in government ICT systems.

***The Need to Manage Records is Just as Important in the Electronic Environment as in the Paper Environment***

The research has shown that staff in government organisations across the region tend to feel that electronic systems are inherently secure. Many of those interviewed felt that records would be easier to manage in electronic systems, not realising that mismanagement would be even easier than with paper records. Despite their awareness of the importance of good record-keeping for the proper management of government resources, they had not begun planning for records management functionality in ICT systems.

***What Does Planning for Records Management Involve?***

Records managers have an important contribution to make to ICT development. Their knowledge of the business, its functions, activities and processes can help support the enterprise architecture component of ICT strategies, and their knowledge of classification, description, and preservation can help address the data and information management dimensions.

At the technical level, planning for records management functionality in ICT systems involves addressing issues in the broad areas of records creation (including capture, identification and classification), maintenance (including access and security, tracking record movement, retention and disposal, migration, export and destruction), dissemination (searching, retrieving and rendering (displaying, printing and redacting), and administration (reporting, back up and recovery). Each of these aspects of records management needs to be considered in the design of ICT systems. For example, the records creation process, alone, raises questions such as:

* What are the business processes that enable the organisation to fulfil its function?
* Where, in these processes, are records of decisions, actions and transactions created?
* Where should they be created? In what formats are they created?
* Once records are created by the system, when and how are they captured?
* How can alteration or destruction of the record during capture be prevented?
* How are the records named? Is naming automatic or manual? If automatic, from which record elements is the name derived? If manual, how will naming conventions be designed?
* How is metadata assigned to a record? How can automatic extraction or migration of metadata be supported?
* Can metadata be viewed by system users? Can additional metadata be added by users? If so, which users, and which kinds of metadata will be mandatory and which optional?

***Causes of the Lack of Planning for Records Management Requirements in ICT Systems***

The research has identified a number of interconnected factors that have contributed to the lack of planning for records management in the region.

Records management is viewed as a para-profession within the public service. Records management schemes of service are limited or do not exist, providing only limited opportunities for professional advancement. As a result, the records management function is often not represented at senior level, with no one taking the lead on records management. Often this is because records are not seen as valuable assets.

Some governments are taking steps to improve schemes of service for records managers, but they face the challenge of recruiting suitably qualified personnel. University programmes in records management are available in the region, but they do not yet have the necessary capacity in electronic records management, and the records professionals that they train are not equipped to work effectively with their ICT counterparts.

The combination of this failure to recognise the value of records and the lack of expertise in electronic records management in the region is already having an impact as government organisations make the transition to the electronic environment. By extension, this affects services to citizens and citizens’ rights.

***Consequences of the Lack of Planning for Records Management Functionality in ICT Systems***

Over time, government organisations are likely to face difficulties when they need to retrieve or audit records that have been created electronically or digitised if records management requirements for storage, access, description and disposition have not been addressed. For instance, electronic records cannot be read as a result of a lack of a data migration policy; electronic records cannot be located because appropriate metadata was not captured; vital electronic records cannot easily be identified because all electronic documents are kept, including those with short-term value, as a result of the lack of a retention policy.

To ensure that government information is complete, authentic and secure, careful planning for records management requirements in ICT systems must be undertaken within the context of sound legal frameworks, policies and procedures.

***Consequences of the Lack of Planning for Co-ordinated Records Management Across Systems***

The study showed that in a number of government organisations across the region, the authenticity and reliability of government records was jeopardised by the lack of planning to enable sharing records between different ICT systems. For instance, in one Ministry of Finance, there were four major electronic systems in use. Although these systems depended on access to the same records, they were developed independently and were not connected, either to each other or to systems managed by other government organisations. When data in one system were needed in another system, the information was downloaded, printed and input manually. Staff claimed that the ICT systems had improved efficiency and streamlined processes, but the lack of system integration was causing delays when data transfer was required.

This situation posed threats to the security of government information because each additional step created an opportunity for human error or tampering with the records. Although the electronic systems were expected to ensure the authenticity of the records and eliminate human error and fraud, the Ministry had identified a number of data entry errors and cases of fraud since the systems went into use.

There was also a problem with information sharing between headquarters and up-country offices. In a number of instances, processes had only been computerised in the central office, which meant that information from hardcopy records received from up-country had to be input on receipt at headquarters. It was felt that errors made during this inputting process had caused the loss of a number of court cases. A local area network had been established for the central office. The department intended to extend this to offices up-country but could not do so until fibre-optic cables had been installed. If records management had been considered in the planning for the computerisation of the central office, the threats to the authenticity and security of the information posed by these information sharing processes could have been identified, and data entry errors reduced.

***Discussion Questions***

*Question 1*: The lack of schemes of service and training programmes for records managers has been identified as a factor in the governments’ ability to manage their records in the electronic environment. How can governments address this problem?

*Question 2*: The lack of co-ordination between systems has been identified as an issue by governments in the region. A number of agencies and boards have been established in each of the countries studied to address this lack of co-ordination. How is the lack of attention to records management impeding these agencies and boards from fulfilling their mandate to co-ordinate ICT implementation?

*Question 3*: Standards have been developed internationally for introducing records management requirements in ICT systems. However, governments and standards bureaux in the East African region have not adopted/adapted these standards. Why is this the case, and what steps could be taken to support the introduction of good practice standards in the region?

**Theme 2: Electronic Records and Citizens’ Access to Justice**

***Introduction***

This discussion paper explores the consequences for citizens when records are kept in ICT systems that do not meet records management requirements. It is based on a study called *Managing Records as Reliable Evidence for ICT, e-Government and Freedom of Information in East Africa*, funded by the International Development Research Centre and conducted by the International Records Management Trust. The research was carried out across the East African Community by teams in each of the constituent countries: Burundi, Kenya, Rwanda, Tanzania and Uganda. The study found a consistent lack of planning for the management of electronic records generated by or stored in ICT systems in ministries, departments and agencies and in courts. The implications for citizens’ access to justice are summarised below.

***Records Management Controls Protect Records as Evidence***

When electronic records are mishandled, access to justice is affected, as illustrated by the experience of an NGO based in the region. The NGO staff explained that a government agency with which they worked was given funding to digitise records summaries. The NGO had already digitised the same category of records for in-house use and offered to share the copies. The agency declined the offer, and when the NGO later tested the output of the agency’s project, it found that many of the entries contained erroneous information.

The agency had not referred to the original records but had tried to make information contained in records summaries available electronically by re-keying it. This created considerable scope for error. This approach was probably chosen because the electronic data could be searched more easily and used to produce reports more flexibly than could digital surrogates (scans or digital photographs of the records), which require optical character recognition software to enable full text searching. The agency had not realised how important it was to protect the integrity of the records and ensure that the information that it provided to the public was reliable.

The ease with which error can be introduced into electronic systems is clear from this and other experiences of government organisations across the East African region. When erroneous information becomes the ‘authoritative’ source in the absence of original records, there are implications for citizens, especially if the information is relied upon in court.

***Judicial Processes are Affected by the Failure to Address Records Management Requirements***

Erroneous information can directly affects citizens’ access to justice in the courts, and there is a risk that this may occur when records management is not included in the design of ICT systems for the courts. The inability to retrieve records efficiently is another significant risk. When records cannot be retrieved in a timely way, the judicial process is affected. Delays in judicial processes can inhibit litigants from legal justice and, in some cases, it can result in costs that make justice unaffordable.

E-government applications are expected to correct problems with court processes, but they do not always achieve this aim, as illustrated by the research in one Court of Appeal in the region. A number of computerisation and digitisation projects had been introduced in the court but had ground to a halt because the project planning had not addressed a number of key requirements, including records management requirements. The court’s assistant registrar stated that a case management system was implemented but that it was not used. The court had such a poor ICT infrastructure, in terms of hardware and networking infrastructure and access to the city’s power supply, that the new system caused frequent delays to cases before the court. The electronic records stored in the system could not always be accessed when needed, and staff ultimately reverted to using hardcopy records. Planning for the case management system had failed to take account of the fact that a stable operating environment is a requirement for accessing the records in electronic systems.

An ‘e-Filing System’ for web-based filing of new cases is now being implemented in the same court. It is expected that the project will enable citizens to engage with the legal process without having to travel to the court in person. However, it is likely that the same problems will arise during the rollout of this system, since measures to address records management requirements have not been included in the project plan. It is unclear what storage arrangements have been made for the electronic information that the system will create and use and what security measures are in place for this information.

***The Evidentiary Value of Electronic Records***

ICT systems are being introduced in government organisations in all sectors and these systems generate electronic records. However, the countries in the region had not yet addressed the legal admissibility of electronic records or else had not reconciled new laws with existing laws of evidence. For example, in one of the countries studied, the Prime Minister has asked the Law Reform Commission to review the Evidence Act with a view to ensuring that electronic records could be used as evidence; the Evidence Act has yet to be amended.

Government records, whether hardcopy or electronic, provide evidence of decisions, actions and transactions. They are relied upon, both by government organisations and by citizens, during the course of business and in courts. Relying on electronic records before the law recognises them as evidence puts the government and citizens at risk.

If electronic records are to have value as evidence, the laws of evidence need to be reformed. Hard copy records carry evidential weight because they can be examined and judgements can be made as to their authenticity, but the same is not the case with electronic records. Instead, the system in which the records are generated and stored must be shown to meet certain criteria relating to security, accessibility and audit. These criteria had not been clearly defined in the countries in the region, so there was no standard against which the systems could be assessed.

***Discussion Questions***

*Question 1*: The widespread misperception in government organisations in East Africa, that electronic records are inherently more secure than hardcopy records, is encouraging computerisation and digitisation that is not necessarily well-planned. How can the risks of overlooking records management issues during computerisation be highlighted to senior management within government?

*Question 2*: Poor hardcopy records management has been cited as a cause of delays in judicial processes. Electronic records management is often expected to reduce these delays, but the research shows this has not been the experience of the courts in the EAC countries. What steps could be taken to ensure records management inputs to computerisation and digitisation projects in the courts?

*Question 3*: Government organisations across the EAC are already creating electronic records of their decisions, actions and transactions with citizens, though the laws of evidence in the EAC countries do not recognise electronic records. Reform of these laws is the first step to ensuring that electronic records can be considered as admissible evidence in court. What steps could be taken to raise this issue with Law Reform Commissions and legislator?

**Theme 3: Freedom of Information and Records Management**

***Introduction***

This discussion paper concerns Freedom of Information (FOI, also called Right to Information) legislation. FOI laws require public bodies to release information requested by citizens or groups outside government, subject to certain exemptions pertaining to such matters as national security, personal privacy and intellectual property. This paper is based on a study called *Managing Records as Reliable Evidence for ICT/ e-Government and Freedom of Information in East Africa*, funded by the International Development Research Centre and conducted by the International Records Management Trust. The research was carried out across the East African Community by teams in each of the constituent countries; Burundi, Kenya, Rwanda, Tanzania and Uganda. FOI legislation has not been drafted in Burundi, Rwanda and Tanzania, has stalled in Cabinet in Kenya, and has been passed but not implemented in Uganda. The study has identified a series of records management issues affecting FOI implementation in the region.

***Misconceptions about Freedom of Information***

The research found that there was a prevalent misconception of FOI in the East African region. With the exception of the staff of the National Archives in the five countries, the policy makers and public servants interviewed consistently believed that enacting FOI legislation would require the publication of government information, rather than the release of unpublished government information on request. The idea that governments can choose what information to release, when, and in what formats is not in keeping with the spirit of FOI laws, which seek to change the way that information is shared between public bodies and the public.

In Uganda, for example, the Access to Information Act, 2005, was seen as requiring proactive information dissemination by ministries, departments and agencies, rather than creating processes by which citizens could request and be supplied with information. This misconception may be seen in the steps towards implementation taken by the Office responsible for FOI, which included weekly radio addresses by the Minister and public fora (barazas) held for the purpose of questioning civil servants about activity and expenditure.

This misconception may be contributing to the lack of government enthusiasm for enacting and implementing FOI, since many government organisations in the region already publish some information.

***Inconsistencies Between Acts of Parliament***

Those interviewed stated consistently that FOI would not change the ‘thirty year rule’, a convention in many Commonwealth countries, usually embodied in National Archives and Official Secrets Acts, that permits the opening of government files to the public thirty years after closure. Neither the Ugandan Access to Information Act nor the Kenyan Freedom of Information Bill, 2007, has clearly addressed this convention, which persists as the dominant principle in the release of government information. If the perceptions of public servants in Burundi, Rwanda and Tanzania are an indicator, it is likely that FOI laws that are unclear on this issue will have not have the anticipated level of impact in these countries.

In Kenya, the Freedom of Information Bill reallocates responsibilities to the Freedom of Information Commission that are already assigned to the National Archives under the Public Archives and Documentation Service Act. For example, Section 42. (1) indicates that the Minister may prescribe anything under the act, including:

*(f) the measures which public authorities shall take to ensure that adequate records are created and maintained by public authorities;*

*(k) the records that public authorities shall be required to keep.*

Should be Bill proceed in this form, responsibility for government record-keeping could be dispersed between the two bodies, which could result in divergent records management policies and guidance to government organisations.

In Tanzania, where no Freedom of Information Bill has been drafted, interviews with the Media Council of Tanzania revealed that media laws and policies were not reformed during the period of media liberalisation in the 1990s. The Council considered a number of these laws to be impediments to FOI. The Tanzanian National Security Act, 1970, which gives government the right to withhold information, at its discretion, was given as an example. A Commission was established in 1990 to study obsolete and unconstitutional laws; this Commission advised abolishing the laws in question, but, still, no action has been taken.

***The Implications of Government Record-Keeping for Freedom of Information***

The problem of information retrieval will need urgent attention if FOI laws are to be enacted and implemented in eastern Africa. In order to answer FOI requests, it must be possible for government organisations to search for all records relating to a particular matter, retrieve them easily, review them against the exemptions of the Act and prepare suitably framed responses.

Interviewees who did understand that FOI is properly a citizen-initiated process rather than a government-initiated one, stated that government organisations are not ready for FOI. Staff of one ministry in Kenya cited the British strategy of allowing five years after enactment for FOI implementation as a model the Kenya Government might follow. This would allow time for government records to be put in order. However, some staff members felt that even this would not allow sufficient time to ensure that adequate planning and preparation were carried out.

Section 41 (2b & 2c) of the Kenyan Bill requires that all records, including those held in electronic format, should be maintained in good order and condition. The Bill indicates that within three years of enactment, every government organisation should computerise its records and information management systems in order to facilitate efficient and effective access to information.

The Bill is forward-looking in its inclusion of electronic records, but the provision for computerising systems in government organisations poses a problem. If existing records are not in order and new ICT systems are not capable of managing the electronic records they produce, the Bill, in encouraging computerisation, will result in the transfer of existing problems into the electronic environment and the creation of new problems. Computerising systems and digitising hardcopy records do not, of themselves, facilitate efficient and effective access to information.

***Discussions Questions***

*Question 1*: Given that the Kenyan Bill has been under consideration for four years, the Ugandan Act has not been implemented in the six years since its enactment, and there is no discernible plan to introduce Freedom of Information in Burundi, Rwanda and Tanzania, East African governments do not seem to be embracing FOI. What factors have caused this lack of enthusiasm?

*Question 2*: The conflicts between existing Acts of Parliament and new FOI laws need to be addressed, particularly the 30 year rule. FOI laws may erode the powers of National Archives and contradict the provisions of existing Acts. What steps can be taken to highlight these issues to legislators, given that the recommendations of Law Reform Commissions and NGOs have not yet been acted upon?

*Question 3*: Government organisations in the region are unprepared for the demands that FOI will place on records management services. Poor record keeping may serve as an argument for delaying Freedom of Information enactment and the failure to implement Freedom of Information Acts. What strategies could be developed to synchronise Freedom of Information and records management initiatives?