

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 *Aligning Records Management with 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 affect 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 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 legislators?