E-Justice to Bridge Records Management Gap at The High Court in Namibia

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Abstract

E-justice is an electronic records management system aimed at enhancing the availability of electronical court records to support the discharge of justice. Urgent need to assess the relevance of the system was required as statistical information from 2019, indicated that approximately 25440 high court cases could not be finalised between 2015 and 2019 due to a lack of access to reliable court records. This created perpetual embarrassment as suspects who are innocent until proven guilty, remain imprisoned. Towards exploring the enhancement of an e-justice system to expand access to records in the judiciary, the study adopted a qualitative approach in which data was collected through interviews and observation. Twelve participants were interviewed, and numerous high court offices visited, to assess the extent to which improvements to an e-justice system is required. Findings revealed that a lack of specific policies and procedures to govern the management of records impacted negatively on the access to court records. In addition, financial limitations, old ICT infrastructure and poor human resource skill further exacerbate the problem. The solution towards the problem is based on the development and implementation of an e-justice framework where records are captured, categorised, and made accessible to high courts through advanced information and communication infrastructures. Towards this end, it is recommended that the Namibian Judiciary embark on a change management process where updated ICT infrastructure support records management life cycle functions and where all members of the judiciary are well versed in the use of an e-justice system.

Keywords: E-justice; Namibian judiciary; e-records management practices; knowledge sharing; discharge of justice; High Court.

Introduction

Records are valuable assets of public administration in that they provide essential evidence of organisational activities. Wamukoya (2000) regards records management as the foundation for preserving cultural and national history which reflects the aspirations and identity of society and individuals. This is also the case where records support business functions that are critical for the assessment of organisational performance, including the discharge of justice. Mnjama and Wamukoya (2004) argue that without reliable records, courts of laws may not effectively meet their expected responsibilities. Mosweu and Kenosi (2018) explain that this is even more so in the case where records are unavailable to support the judiciary process. A case in point as observed by Immanuel (2019) is the fact that only 4765 court cases were resolved in Namibia between 2015 and 2019, with an additional 25400 cases requiring access to records to complete the judiciary process. Though the Namibian Judiciary implemented a Namibian Ministry of Justice Case Management System (NAMICS) to store and ensure access to court records digitally, Nakuta and Chipepera (n.d.) indicate that the system falls short of ensuring such access.

Towards finding a solution for the judiciary problem persisting in Namibia, Kisongo (2016) proposes the implementation of a well-constructed e-justice system. According to the author such an e-justice system will improve records management practices for the delivery of justice through its capacity to capture, store and retrieve accurate and up-to-date case files. Such an e-justice system will support the reduction of the backlog of court cases, support systematic filing, ease of retrieval of records, quick service delivery in the finalisation of court cases, and improved delivery of judgements of the high courts. The value of a well-constructed e-justice system is supported by Mosweu and Kenosi (2018) who argue that the demand for implementing an e-justice system is to realise an efficient court administration system that can help justice seekers to overcome obstacles in the long bureaucratic situations related to remands, bail, pleas, trials, sentencing and appeals. The records created and accumulated during these activities should be available in electronic format to allow members of judiciary to carry out their mandate of ensuring an efficient and effective discharge of justice (Mosweu, Bwalya & Mutshewa 2017).

Brief Literature Review

Nabombe (2012:15) asserts that in cases where records are not properly managed, the court of law is unable to make informed decisions, thereby, depriving citizens of the claim to execute their constitutional rights. Within the legal system, records serve several functions, such as supporting legal rights and obligations within the legal system; providing evidence or proof that a particular activity has taken place; and contributing to accountability in organisations. For these reasons, the author argues that, without organised records, there can be no rule of law and no accountability. Therefore, records need to be managed properly so that they can remain accessible. Marsh and Gouanou (2004) explain within the context of ensuring effective records management practices, laws, policies, standards, and procedures are required to enable organisations to put into place successful records management strategies. Similarly, Piggot (2002), Blake (2005) and Okello-Obura (2011) suggest that legislation and aligned policies and procedures for records management will promote compliance in records management practices. Such compliance may relate to ensuring access to information, preservation, and the disposal of records. Organisations the world over have adopted the international standards on records and document management (ISO 15489) as a guiding principle on records and archives management. According to Gunnlaugsdottir (2002:232), ISO 15489 supports quality records management practices as it acts as a blueprint that provides guidance for developing and implementing standards, policies, and procedures towards effective and efficient records management practices. Within the context of the ISO 15489 requirements, Ladan (2014:33) asserts that court records, by their very nature, should provide proof and exhibit evidence of activities related to court decisions. Ngoepe and Makhubela (2015) is of a similar opinion and stipulate that court records are required to document information about the rights of individuals and society, thereby enforcing and supporting courts of law in speeding up decision-making processes. However, Ndenje-Sichalwe (2010) argues that, despite records harbouring evidence of

activities of organisations, institutions and individuals, the majority of African governments have not made sufficient efforts to improve records management practices to support accountability and the basic rights of citizens. A lack of effective records management practices leads to the inability of courts and individuals to turn to experiences of the past for guidance; hence, offenders are released, and innocent people are held in custody due to lack of access to records as evidence.

According to Nchonganyamberi (2016) the systematic approach to the management of records is essential for organisations and society to protect and preserve records as evidence of actions. As courts acclimatise to the technological advances of the knowledge society driven by the fourth industrial revolution, the judiciary must mutate from being a place of service, to a place of justice based on accurate, reliable, and trustworthy records. The adoption of an e-justice system may alleviate judicial backlogs, bringing convenience and cost savings to the average litigant (Gras, 2021). No wonder, Nchoganyamberi (2016). suggests that e-justice should be a commendable system that enables parties to submit arguments and evidence via the use of advance technology tools. This requires the submission of court documents over the Internet (e-filing), the use of videoconferences for the practice of certain hearings, the digital display of evidence in court and the digitisation of historical files and work processes (Gras 2021).

Contextualising the Problem

The management of court records is the cornerstone of a justice system (Motsaathebe & Mnjama 2009: Ngoepe & Makhubela 2015; Maseh 2015; Nafula 2018). For this reason, it is important that the government of Namibia make efforts to embrace sound records management practices through the improvement of an e-justice system that will provide opportunities for online access to judiciary records. Despite the benefits of e-justice, several factors impede on the effective utilisation of an e-justice system within Namibia. These include a lack of technical support, infrastructure limitations, lack of time to use the system, lack of training, outdated policies and procedures and lack of knowledge sharing strategies towards the utilisation of the e-justice system (Kalusopa 2016; Mosweu, Bwalya & Mutshewa 2017). This has prompted the current study to explore the necessity of strengthening the NAMCIS e-justice system towards the discharge of justice in Namibia. In doing this, the study may enable key beneficiaries such as policy makers, top management, and e-records managers to improve the overall functioning of the NAMICS e-justice system. The information presented in this research is informed by the following research question: What are the key practices that can be embarked upon to strengthen an e-justice system in support of the Judiciary of Namibia?

Methodological Conceptualisation

Following the analogy of Saunders, Lewis, and Thornhill (2012) related to the research onion, the study was conducted through the application of the interpretivist paradigm to obtain data from participants and based on own experiences to assess the extent of improvements required towards the NAMICS e-justice system in Namibian high courts. Since little is empirically known about the records management practices and their impact on the discharge of justice in Namibia, it was difficult to apply a quantitative design approach. Instead, it was important for the researchers to collect views and opinions about the improvements required towards e NAMICS e-justice system through a qualitative approach. Following a qualitative approach, according to Ngulube (2015:127),

provides the researchers with greater insights towards proposing improvements of records management practices towards the discharge of justice. The qualitative approach allowed the researchers to use multiple data collection techniques, including field notes, interviews, and observations (Creswell 2013:43). The population comprised of officials from the Ministry of Justice, the Ministry of Safety and Security, Correctional Services, and the Office of the Judiciary. Non-probability purposive sampling was used to identify participants that could provide important information on the topic (Maguire & Delahunt 2017). Data was analysed using a thematic analysis to identify important themes and patterns aimed to address the research question.

Key Findings

As the key question of the research focused on determining key practices that can be embarked upon to strengthen the NAMCIS e-justice system in support of the Judiciary of Namibia, key constructs towards exploring the solution were derived at based on theoretical models related to the court quality model by the European Commission for Efficiency of Justice (2008), the records life cycle model, modified by the Government of South Australia (2014), and the records continuum model proposed by Upward (2004). In considering the above models, a proposed e-justice records management conceptual framework was proposed and the relevance thereof towards developing and improved e-justice system explored through interviews and observations. As per Figure 1, the proposed conceptual framework comprises of variables that may be considered in developing an effective and efficient e-justice system to support the judiciary in Namibia:
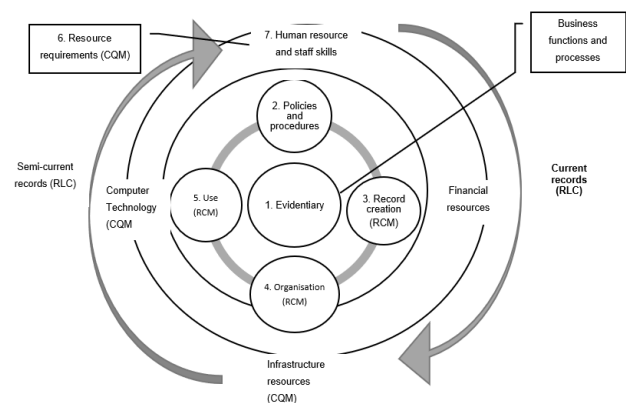

Figure 1: Conceptual framework of an e-justice system to support the judiciary

As per the variables included in Figure 1, good records management practices are the key element to the effective and efficient discharge of justice. Adequate records management practices to ensure easy access to court records are fundamental to all activities of the judiciary. This requires that records be kept as evidentiary value, based on policies, processes and procedures related to the records life cycle. During the interviews, all participants indicated that guidance via policy documents and procedures was important to support effective records management practices in the judiciary. However, as opined by one of the participants: '*there are no specific policies and procedures for managing legal records. Section 11 of the Supreme Court Act (No. 15 of 1990) provides a clause that referred to an authentic and reliable court records system, but limited information on how this*

should be achieved is available', whilst a second participant provided more detail by stating that there are policies and procedures in place 'which refers to recordkeeping. However, these two, and three other participants indicated that there is no indication of *how* judiciary records should be organised, made accessible or be disposed of. Though the National Archives of Namibia's (2018) proposed policy may be deemed as a guideline on the management of records, registries, and records offices, the lack of comprehensive policies and procedures for managing court records as supported by Ngoepe and Makhubela (2015) as well as Issa (2017), have been cited as a major challenge to support effective e-justice systems.

Linked to resources requirements towards an improved e-justice system, participants emphasised the importance of expanding ICT infrastructure, staff capacity and other infrastructure resource: '*due to inadequate funds and corrupted individuals who uses their positions to deny people their rights, members of the public do not have access to electronic case files on e-justice'*. Access to e-justice records is difficult, due to financial implication involved in acquiring legal aid and information on court proceedings. Also, *budget allocation to our divisions is secondary,* whilst another participant explains that: '*it is difficult to prioritise records management especially in the current situation where the country's economy battled with hunger, diseases, and many other social problems'*. Financial resources are always poorly allocated to records management functions – not because the funds are limited, but because management underrate the importance of records management (Mnjama & Wamukoya 2007). Participants further commented on the lack of electronic records accessibility due to limited internet access and inadequate devices: '*the network is sometimes being not stable such that I am unable to download certain documents. Lack of accurate information leads to the postponement of court cases for further investigation which takes time before a final ruling of a matter can be made*.' Participants also complained about restrictions in place on the current NAMCIS system to access court records: '*only prosecutors, magistrates, certain law enforcement practitioners and clerks of courts have access to the digital/electronic records and full transcribed records of the court hearing are often not available'*. Related to ICT infrastructure, network stability and security limitations, participants are of the view that the benefits of an e-justice system are limited and only beneficial to a few. This is contrary to the Namibian Constitution which stipulates the importance of finalising most court cases within the planned period (Republic of Namibia 2010).

Related to the effective management of records, participants complained about a lack of staff skills and knowledge to effectively engage in these. Aligned to the views of Rahman, Islam and Abdulla (2017), the issue of the effective retention of e-justice records, inclusive of the disposal of these records can be linked back to a lack of knowledge and skills of records management staff. Of the twelve participants interviewed, only four indicated that they had the necessary skills to work with an e-justice system. Participants complained about a lack of secondary qualifications in the field of archives and records management and limited opportunities for skills development: ´*I do not have a tertiary qualification in records management, however, if government could make provision for people managing registries funds to further their studies, I will register myself*'. All participants indicated the need for training on an e-justice system to ensure the effective retention, access, and disposition of records: '*I feel that records management is neglected by most officials because even when it comes to capacity building programmes our institution only avail funds to staff for other*

departments'. Further exploration into the appointment of records management staff revealed that most of the officers in records management units in the Judiciary were transferred from non-records management units, such as Stock Control and Finance. The practice of deploying untrained officers to records management units has been cited by Mutula and Wamukoya (2009) to have had detrimental effects on records management. For instance, Nengomasha (2009) and Abankwa and Hamutumwa (2017) cite cases of public sector institutions in Namibia where records management officials had no skills to manage records. These officials were unable to engage in important records management practices related to the arrangement, appraisal, and disposal of records.

Proposed Recommendations

Considering the conceptual framework components presented in Figure 1, and feedback on these as obtained during the data collection process, the research proposes the adoption of an e-government framework based on the following key components as presented in Figure 2:
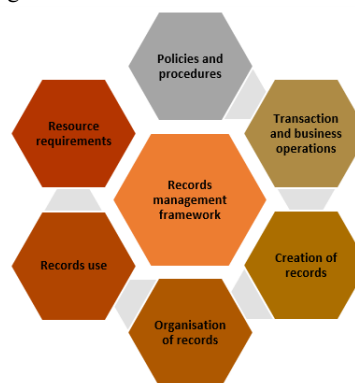

Figure 2: Proposed e-justice records management framework

In terms of the compliance with records management international standard ISO-15489-1 (2016), the findings of the study revealed that institutions of the judiciary did not have written policies and procedures for the management of court records. The establishment of specific policies and procedures to guide the management of different types of records is imperative, and with it the consideration of new developments brought about by the increasing use of ICTs. These technologies are to be considered and used in the inventory or descriptive listing of legislative functions and transactions that results in the creation and generation of records. The purpose should be to develop a records classification scheme, as well as a retentions and disposal schedule to support records management practices related to the applications of recordkeeping technology, establishing filing systems, maintenance practices, identification of vital records, and adequate record security practices. Related to the Judiciary, timely access to records must be provided to authorised users to promote the discharge of justices. Institutions involved in the discharge of justice should provide adequate protection to sensitive information and ensure that records are classified according to their level of security at a particular time. To ensure good records management practices in the Judiciary of Namibia, a specific budget for records management programmes is required to acquire and maintain computerised

databases for the management of electronic records, effective storage and access of records, migration of paper-based records to digital media, auditing of records management processes and training of staff to obtain skills and competencies as professional records managers.

Conclusion

This research confirmed that e-justice is imperative to ensure access to court records. An improved e-justice system is required to ensured that court records are scanned and uploaded on the system and that lost or misplaced records could be retrieved to support a fair and functioning judiciary system. The judiciary of Namibia faces serious problems in terms of policy directives on the management of records, accessibility to records, outdated technology systems, restricted budgets, and limited staff training. Towards resolving these issues, the research proposes the implementation of an improved e-justice records management framework, founded on revised policies and procedures, aligned business operations that will guide the creation and organisation of records, processes, and procedures to be put in place to ensure the secure access and use of records and the expansion of financial, technological, and human resources to effectively implement, manage and maintain the system. Linked to the proposed e-justice framework, further research is required to determine the extent of financial resources that may be required towards the creation of an effective e-justice system, the extent of training required to upskill current administrative employees of the judiciary as professional records managers and the establishment of processes and procedures to ensure the effective appraisal and disposition of records to only retain those of enduring value. Within the context of adjudicating and discharge of justice, records must be perceived as powerful sources of information, cherished by a desire to seek justice.

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