



**A REPORT ON E-DISCUSSION ON ALIGNING RECORDS  
MANAGEMENT WITH ICT E-GOVERNMENT AND FREEDOM OF  
INFORMATION IN EAST AFRICA**

**A STUDY CONDUCTED BY INTERNATIONAL RECORDS MANAGEMENT TRUST WITH  
SUPPORT OF IDRC**

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## Introduction

The International Records Management Trust (IRMT) with the support of IDRC commissioned the Kenya ICT Action Network (KICTANet) to conduct a 10 day e-discussion on *Aligning records management with ICT e-government and Freedom of Information in East Africa*, a study that covered five Eastern African Countries namely Kenya, Rwanda, Uganda, Burundi and Tanzania.

The study findings are categories under three broad themes namely:

- a) **Planning for Records Management Requirements in ICT systems,**
- b) **Electronic Records and Citizens, and**
- c) **Freedom of Information and Records Management**

Under each theme, three main points of discussion were identified as follows:

### **1. Planning for Records Management Requirements in ICT systems**

- Lack of planning for records management requirements in ICT systems,
- Lack of planning for records management functionality in ICT systems,
- Consequences of the lack of planning for coordinated records management across systems.
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The discussion centered on how there is lack of service and training programmes for record managers which have been identified as a factor in the governments' inability to manage their records in the electronic environment.

It also dealt with how governments can address this problem; how various agencies and boards can be better harmonized to ensure that they are able to fulfill their mandate to co-ordinate ICT policy.

### **2. Electronic Records and Citizens**

- Records Management Controls Protect Records as Evidence: erroneous information can become 'authoritative' source in the absence of original records.
- Judicial processes are affected by the failure to address records management requirements.

- Evidentiary value of electronic records: relying on electronic records before the law recognizes them as evidence put government and citizens at risk. If electronic records are to have value as evidence, the laws of evidence need to be reformed.

The discussion centered around the consequences for citizens when records are kept in ICT systems that do not meet records management requirements. It dealt with the evidentiary value of electronic records in the judicial process; the security of e-records as opposed to hard copy records; and what steps need to be taken by governments to ensure admissibility of e-records in court processes and how this could be communicated to senior government officials and legislators.

### 3. Freedom of Information and Records Management

- Misconception of FOI in East Africa,
- Inconsistence between Acts of Parliament,
- Record keeping for freedom of information.

The questions posed under this section sought to determine issues relating to the management of records created electronically and the need to ensure that they provide complete and reliable evidence over time.

This discussion centered around the term *Freedom of Information* and legislation that provides for it.

The debate dealt with the misconceptions surrounding the term freedom of information; the inconsistencies between legislation governing freedom of information; the need for government in East Africa to take steps to legislate to embrace the concept of freedom of information; the need to strategise freedom of information law and records management initiatives.

The report is laid out in a matrix where the issue under discussion is in the first column, questions raised in the second column, issues of debate follow, and the last column has recommendations.

Theme	Planning for Records Management Requirements in ICT systems		
Point of Discussion	Questions	Issues	Recommendations
<p><b>Lack of planning for records management requirements in ICT systems.</b></p>	<ul style="list-style-type: none"> <li>• Is there an effective policy/plan for records management requirements in ICT systems in governments?</li> <li>• What systems if any are used by governments for records management?</li> <li>• Is there a body/institution tasked with ICT record management for governments?</li> </ul>	<ul style="list-style-type: none"> <li>• There is no single government agency taking responsibility (and cue) for records management. As a result it has inherently been left to the individual ICT departments in the various points of data capture to decide on the appropriate methods, policies and design of the information capture, a somewhat counterproductive situation since there is no effective way of leveraging all this information.</li> <li>• The Kenya National Bureau of Standards collects data specifically for statistics purposes then relevant ministries build up on the general provisions of services that touch on them.</li> <li>• Data collection by KNBS does not cater for what private bodies/organizations do in data collection.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Have a legally legitimate (and mandatory) organ tasked with handling data (and Data only). This would be tasked with designing a system to handle Data and calls to the database and develop the API which can be shared with system developers and integrators at the various levels</i></li> <li>• <i>It is important to review the following documents in order to strengthen study:</i> <ol style="list-style-type: none"> <li>1. <i>Public Archives and Documentation Service Act (Cap 19, Laws of Kenya)</i></li> <li>2. <i>The Kenya National Archives and Documentation Service.</i></li> <li>3. <i>The role of the Public Archives Advisory Council.</i></li> </ol> </li> </ul>

			<p>4. <i>The Statistics Act 2006</i></p> <p>5. <i>The Government Code of Regulations (Revision 1992) giving guidelines on the publication of documents.</i></p> <p>6. <i>The Manual on records management issued to all government departments by the Kenya National Archives and Documentation Service.</i></p> <p>7. <i>The Records Disposal Act (Cap 14, Laws of Kenya).</i></p> <p><i>There may be other relevant documents such as the Government Financial Regulations regarding the management of accounts documents, Registered Land Act (Cap 300) regarding land records and even others regarding disposal of personnel record.</i></p>
<p><b>Lack of planning for records management functionality</b></p>	<ul style="list-style-type: none"> <li>• What bodies/institutions are tasked with government records management?</li> <li>• What type of systems do these bodies use to manage records?</li> </ul>	<ul style="list-style-type: none"> <li>• The Public Archives and Documentation Service Act, has mandated the Kenya National Archives and Documentation Service to be in charge of housing, control and preservation of public records.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>There is need for government to incorporate document management system and basic enterprise resource planning systems tailor made for government,</i></li> </ul>

<p><b>in ICT systems</b></p>	<ul style="list-style-type: none"> <li>• Is there any co-ordination between these bodies?</li> </ul>	<ul style="list-style-type: none"> <li>• The National council for Law Reporting manages publication of law reports which contain judgments, rulings and opinions of the court as far as the judiciary is concerned and it is established under the National Council for Law Reporting Act,1994 and given the exclusive mandate to publish what are known as the Kenya Law Reports</li> <li>• There is lack of co-ordination among government bodies because they have competing interests for donor funds and other perks</li> </ul>	
<p><b>Consequences of the lack of planning for coordinated records management across systems.</b></p>	<ul style="list-style-type: none"> <li>• What standards are used in records management in Kenya, Uganda, Tanzania, Rwanda and Burundi if any?</li> <li>• Are the standards international, local or regional?</li> <li>• Are there global standards in place?</li> <li>• Have any of the governments adopted these standards?</li> </ul>	<ul style="list-style-type: none"> <li>• The Private Sector lose motivation to deliver service / solutions after they get government contracts possibly due to the political process that wears out companies that tough it out.</li> <li>• The government inordinately delays the deployment of software/solutions long after they have been developed</li> </ul>	<ul style="list-style-type: none"> <li>• <i>There is a need to bring records management in line with international best practice</i></li> <li>• <i>There are well established standards for records management and also for data conversion and data interchange. The standards already in place should be adapted to the Kenya situation instead of having to set our own standards.</i></li> </ul>

Theme	Electronic Records and Citizens		
Points of Discussion	Question	Issues	Recommendations
<p><b>Records Management Controls Protect Records as Evidence: erroneous information can become 'authoritative' source in the absence of original records.</b></p>	<ul style="list-style-type: none"> <li>• Are electronic records more secure than hard copy records?</li> <li>• How can governments ensure that security is maintained when digitizing records?</li> <li>• How can governments ensure that originality of records is maintained when digitizing records?</li> <li>• What planning is needed to ensure that digitized records are secure and retain their originality?</li> </ul>	<ul style="list-style-type: none"> <li>• Electronic records are more secure than hardcopy records.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>There will be need for FOI and Data Protection legislation, the latter being critical in ensuring that personal data held by authorities is accurate and that the data subject right to correct erroneous information is upheld.</i></li> <li>• <i>Using means such as Public Key-Private Key cryptography and document hashes makes it easy to secure and detect manipulation of documents</i></li> </ul>
<p><b>How Judicial Processes are Affected by the Failure to Address Records Management Requirements</b></p>	<ul style="list-style-type: none"> <li>• Have poor keeping of hard copies resulted in delays in the judicial process?</li> <li>• Is the keeping of electronic records going to reduce these delays?</li> <li>• Is information lost when digitization is taking place?</li> </ul>	<ul style="list-style-type: none"> <li>• Does it mean that "e-Files" will not disappear as they conveniently do in paper-based systems?</li> <li>• What will it take for e-Records to contribute to fair delivery of justice and do away with the culture of "lost files?"</li> </ul>	<ul style="list-style-type: none"> <li>• <i>A proper system in the human resource acquisition means that when e systems are introduced in an organization, then there will be proper qualified persons to manage them rather than have unqualified persons lead</i></li> </ul>

	<ul style="list-style-type: none"> <li>• How best can the electronic records be managed to ensure their effective use?</li> </ul>		<p><i>the organization.</i></p> <ul style="list-style-type: none"> <li>• <i>Re-engineering business processes and then taking into consideration how records are managed within this “reformed” electronic environment is key. So records management needs to be seen within this integrated approach.</i></li> <li>• <i>There is need to interrogate the commitment to keeping records for dispensing justice.</i></li> <li>• <i>Visionary Leadership, is required to facilitate the role of ICT as an enabler of efficiency and effectiveness</i></li> </ul>
<p><b>Evidentiary Value of Electronic Records</b></p>	<ul style="list-style-type: none"> <li>• What laws define the rules of evidence in Kenya?</li> <li>• What do these laws provide in respect of admissibility of electronic records as evidence in judicial and quasi-judicial processes?</li> </ul>	<ul style="list-style-type: none"> <li>• In the case of Kenya ,The Evidence Act,Cap.80 was amended vide Cap 411A, to include electronic records and PART VII- ELECTRONIC RECORDS was added in Chapter III of CAP80.</li> <li>• When it comes to admissibility of electronic records the court is guided by Sections 106A-I of the</li> </ul>	<ul style="list-style-type: none"> <li>• <i>There is still some work to do with respect to admissibility of electronic records Kenyan court rooms.</i></li> <li>• <i>We need to build a public key infrastructure (PKI) which basically is a set of hardware, software,</i></li> </ul>



	<ul style="list-style-type: none"> <li>• Have there been any reforms in respect of these laws?</li> <li>• What issues do these laws need to address?</li> </ul>	<p>Evidence Act.</p> <ul style="list-style-type: none"> <li>• Any information contained in an electronic record is now considered to be a document and admissible in evidence without need to produce the original document provided the conditions in the Evidence Act are met i.e. <ul style="list-style-type: none"> <li>◆ The information was produced from a computer which was used to process it by a person having lawful control over that computer,</li> <li>◆ The information was input into the computer in the ordinary course of business/activities,</li> <li>◆ The computer was operational during the period in which the information was stored and if not, the malfunction did not distort/affect the information,</li> <li>◆ If the information is entered by a series of computers, they shall be deemed to constitute one computer,</li> <li>◆ Regarding electronic signatures, the subscriber of that signature must prove that it is theirs unless the signature is secure,</li> <li>◆ The court will presume in the</li> </ul> </li> </ul>	<p><i>people, policies, and procedures needed to create, manage, distribute, use, store, and revoke digital certificates. In essence we shall enable virtual identity that makes it easier to authenticate information.</i></p> <ul style="list-style-type: none"> <li>• <i>A master plan has already been developed, it simply needs to be implemented</i></li> </ul>
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		<p>case of documents containing electronic signatures that the signature has not been altered since it was affixed, unless it is proved to the contrary,</p> <ul style="list-style-type: none"> <li>◆ Information contained in electronic form of the government gazette is admissible provided it is contained in the format required by law,</li> <li>◆ A court shall presume that every electronic record purporting to be an agreement containing the electronic signatures of the parties was concluded by affixing the digital signature of the parties,</li> <li>◆ Regarding e-mails and other electronic messages (sms) the court may presume that the message forwarded by the originator to the person to whom the message purports to be addressed corresponds with the message as fed into his computer (or phone as the case may be) for transmission, but the court shall not make any presumption as to the person by whom such a message was</li> </ul>	
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		<p>sent.</p> <ul style="list-style-type: none"> <li>◆ From the definition of computer in the act, the conditions would also apply to I pads and phones.</li> </ul>	
<b>Theme</b>	<b>Freedom of Information and Records Management</b>		
<b>Points of Discussion</b>	<b>Question</b>	<b>Issues</b>	<b>Recommendations</b>
<b>Misconception of FOI in East Africa.</b>	<ul style="list-style-type: none"> <li>• What does the term 'Freedom of Information' mean?</li> <li>• What misconceptions are there relating to this term?</li> <li>• What law(s) in Kenya and other East African countries, if any, govern Freedom of Information?</li> <li>• What steps have governments taken to ensure that a freedom of information law is passed?</li> </ul>	<ul style="list-style-type: none"> <li>• What is the difference between "Freedom of expression", "Freedom of information", "Information freedom"; or perhaps, "Freedom to access information".</li> <li>• The state has only a tiny custody of information consumable by the public.</li> <li>• There is alot of information/knowledge sought after by information consumers which falls outside the State domain.</li> <li>• How do we police those outside, who hoard information desperately needed by consumers?</li> <li>• What of those who deliberately avail misleading information/knowledge,</li> </ul>	<ul style="list-style-type: none"> <li>• '<i>Freedom of Information</i>' means the right of the public to access records or information under the custody or control of a public body.</li> <li>• '<i>Freedom of information</i>' which is also referred to as freedom of access to information is the right of the public to access official documents so that they may be better informed and the government held accountable for their actions.</li> <li>• '<i>Freedom of expression</i>' is freedom of speech,</li> </ul>

		<p>including state?</p> <ul style="list-style-type: none"> <li>• Does the right to freedom of information confer a mandatory responsibility upon the citizen to ensure their exercise of this right?</li> <li>• Would the populace lack thereof, of basic information access be considered an infringement on this fundamental right/ liberty by the state?</li> <li>• In what formats should this information be stored in?</li> <li>• Do we foresee a situation where we will be able to transform data to knowledge which informs decisions?</li> </ul>	<p><i>assembly or religion sometimes termed as freedom of speech.</i></p> <ul style="list-style-type: none"> <li>• <i>The right is worded in a way that guarantees every citizen access to information held by the state - in most cases it is the state that holds certain information like on census or statistics. The State has a monopoly in some cases - for example commissions and Inquiries - which historically in Kenya, the state has at times withheld the findings of such commissions.</i></li> <li>• <i>The right extends to getting information held by another person, which is useful for a person to exercise his/her fundamental rights and freedoms.</i></li> <li>• <i>'Freedom of Information' clause in the constitution is designed to give citizens free access to public information held by the state, it generally does</i></li> </ul>
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			<p><i>not impose a positive obligation on the state to impart such information on the individual.</i></p> <ul style="list-style-type: none"> <li>• <i>In certain instances, failure to provide the information to an individual can be considered to constitute an interference with their private rights and a breach of the state's human rights obligations.</i></li> <li>• <i>Although, freedom of information legislation is reluctant to impose a positive obligation on the state, the considered view as adopted is that the freedom of information legislation should impose a duty on the state to impart information to the public.</i></li> <li>• <i>Similarly private bodies that receive substantial public resources for execution of public service are deemed to fall within the purview of FOI laws.</i></li> <li>• <i>Apart from keeping in retrievable formats and</i></li> </ul>
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			<p><i>proactively making as much of such information public, public servants/officers should have a duty to assist citizens who may not know where to find information they may need which may be held by another public body or a private body.</i></p> <p><i>The government is already working on data standards for the open data.</i></p> <ul style="list-style-type: none"> <li>• <i>However, there is need for apps that will make it easier for the public to navigate through and find information they are looking for.</i></li> <li>• <i>Public and private organizations need to manage their information as well as records well enough that citizens can have access to quality information that will enable them ascertain their various rights. This will require a more systematic approach in</i></li> </ul>
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			<p><i>the way registries are automated to ensure provision of quality information.</i></p> <ul style="list-style-type: none"> <li>• <i>Government efforts in various information sectors such as ICT, e-Government, Records Management and FOI need to be adequately coordinated.</i></li> <li>• <i>All our government information should be in digital format. It will be easier to manage the databases and create more software development jobs. Digital records are easier to manage, search and greater sharing of information.</i></li> <li>• <i>In the western world, the basis is that citizens have right of access to information, especially information used to reach decisions that impact the citizenry. It is rooted in the need for transparency and used as a weapon against those that may take advantage of their</i></li> </ul>
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			<p><i>positions for the benefits of specific interests. Indeed, implied in this is inherent suspicion of government that can become wayward and hence should be held in check.</i></p> <ul style="list-style-type: none"> <li>• <i>While confidentiality of information is a necessity, especially in matters of national security, courts in the west have been used to strike the balance between a right to know and national interest/security/privacy/e tc.</i></li> <li>• <i>“Proactive disclosure” may be the way to go for some of these important pieces of information – that may not be classified as “in the interest of national security.”</i></li> <li>• <i>Records are critical to FOI and must go hand in hand with Records Management.</i></li> <li>• <i>Whereas information and knowledge are important for various reasons, value</i></li> </ul>
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			<p><i>is added if the records that evolve out of these are captured into sound Records Management systems for continued use as evidence as well as both institutional and societal memory.</i></p> <ul style="list-style-type: none"> <li>• <i>The main areas to consider when dealing with FOI include:</i> <ul style="list-style-type: none"> <li>◆ <i>FOI response process/system</i></li> <li>◆ <i>Costs of compliance</i></li> <li>◆ <i>Time spent processing requests and backlogs</i></li> <li>◆ <i>FOI training and awareness for public authorities</i></li> <li>◆ <i>Senior management's role</i></li> <li>◆ <i>Record keeping is key to FOI's success</i></li> </ul> </li> </ul>
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## **Conclusion**

Although the discussion was meant to deal with the East African region, most of the participant commented purely on the situation in Kenya. It became apparent from the discussion that not only was there insufficient records management for

government records but that there was also a serious lack of Freedom of Information legislation and awareness in the public.

Many issues were raised about the lack of records management and freedom of Information legislation, but there were very few recommendations given on how to tackle the issue.

### **Other Emerging Issues**

This discussion mainly centered around the need to go beyond the theoretical discussion of Freedom of Information legislation and other initiatives and take steps towards actual implementation of the information for the benefit of the public.

There was a suggestion that information should not be sought for purely cosmetic reasons. A knowledge society uses information to enhance their livelihood. Listers agreed that there is a need in Kenya to focus on a more knowledge based society that would drive forward a knowledge based economy.

It was also pointed out that because the topic of Freedom of Information is an important, there was need for a larger multi-stakeholder forum to be held in which the issue of records management and Freedom of Information could be discussed to tackle information management. There was a suggestion to call it '*Information Value Chain Management for Socio-Economic and Political Development.*'