

# RECORDS MANAGEMENT READINESS FOR OPEN GOVERNMENT IN THE KENYAN JUDICIARY

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## ABSTRACT

This article presents part of the results of a study that was undertaken between April and September 2014 to investigate records management practices in the Kenyan judiciary with a view to promoting transformation and facilitation of open government for effective and efficient justice delivery. The following research questions were addressed: ‘How are records created, accessed and used, stored and maintained, appraised and disposed of, and preserved?’; ‘What records management policies, plans and guidelines are available?’; ‘What skills and competencies do the records management staff have?’; ‘What is the level of awareness and attitude of staff towards sound records management practices?’; and ‘What records management strategies is the Kenyan judiciary

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using to achieve openness?' The population of the study comprised court registrars, deputy registrars, records officers, registry assistants, judges and magistrates in the high court and magistrates' courts in Nairobi and Uasin Gishu counties. The findings of the study revealed that although records management had been improved in the Kenyan judiciary, records were not managed well in a continuum from creation to disposition. Furthermore, there were no records management policies and well trained records officers were inadequate. Besides, though records were recognised as pivotal in the administration of justice, records management was not fully supported by top management. It is recommended that, among other things, records management in the judiciary should be improved by putting in place records management policies; building records management capacity; securing top management support; and using the open government implementation model to promote best practices.

**Keywords:** records management, e-readiness, e-government, open government, Kenya, judiciary

## 1. INTRODUCTION

Sound management of records in whatever format has increasingly become a topical issue (Moloi and Mutula 2007) due to the fact that records document the decisions and activities of government and organisations thus providing a benchmark upon which future activities and decisions are based. According to Mnjama and Wamukoya (2007), government records not only document past decisions but also establish and protect current rights and responsibilities of both the government and the governed. In the words of Chaterera (2016, 116), 'public records enable responsible authorities to uphold the rule of law and to demonstrate good governance through fair and equal treatments of citizens'. Therefore, records are viewed as 'organizational strategic resources that need to be managed within a sound records management system' (World Bank and IRMT 2000, 4).

The last 20 years have witnessed significant reforms in the public sector the world over that have increased the clamour for 'good governance', 'transparency', 'accountability', and more recently, 'open government'. Open government is a 'commitment to ensure that all aspects of the way that government and public services are administered and operated are subject to effective public scrutiny and oversight' (Centre for Technology Policy Research 2010, 2). Wamukoya (2013) points out that open government has its origin in the proclamation of the FoI legislations which were the first to recognise the citizen's right to access information held by a public agency. Open government is thus predicated on sound records management as the benchmark for making the decisions and services of governments more efficient and transparent. It anticipates that all public data should be openly published and made

available not only for scrutiny and review but also for potential re-use (Centre for Technology Policy Research 2010).

## 1.1. The Kenyan judiciary

‘The judiciary in Kenya has the responsibility of ensuring that the government governs within the rule of law so that both foreign and domestic investment can thrive to spur socio-economic development’ (Kioko 2000, 1–2). The judiciary also provides a forum for the just resolution of disputes in order to preserve the rule of law, maintain law and order, and protect the rights and liberties guaranteed by the Constitution of Kenya (JTF 2012).

Kenya has undergone a series of constitutional reforms since its independence from British colonial rule in 1963. A recent reform was the promulgation of the new Constitution in 2010, which contains a progressive bill of rights that addresses governance, equity and equality, security, and justice issues (Cowell 2010; Maingi 2010). The 2010 Constitution puts emphasis on addressing current and historical injustices, such as ‘human rights violations, including land clashes, massacres, arbitrary arrests, extrajudicial execution, and detention without trial, torture, electoral violence, grand corruption and economic crimes that the country has experienced since independence’ (Mue 2010 4). It establishes the framework for the restoration of constitutional democracy in Kenya and heralds a new beginning for most institutions (Human Rights World Report 2012), including the judiciary.

The quest for judicial reforms in Kenya has been a subject of continuing debate both nationally and internationally. The former Chief Justice and President of the Supreme Court in Kenya, Dr Willy Mutunga (2011, 6) lamented that

we found an institution so frail in its structures, so thin in resources, so low in its confidence, so deficient in integrity, so weak in public support that to expect it to deliver justice is wildly optimistic, we found a judiciary destined to fail.

In the same breath, Ndung’u (2012) noted that the desire by the Kenyan public for a new constitution has been spurred by decades of dissatisfaction with the judiciary’s performance and susceptibility to impunity. A report from the Security Sector Reforms (2000) noted that the judiciary was widely perceived as the weakest branch of government in Kenya, while the Constitution of Kenya Review Commission (2012) found the Kenyan judiciary to be among the most incompetent and insufficient in Africa. Similarly, a report from Human Rights Watch (2012) contended that judges in Kenya commonly accepted bribes and many were subject to political influence. The report also observed that the courts were understaffed and underfinanced, and Kenyans awaiting trial faced long delays that violated their right to due process. The 2010 Constitution has paved the way for Kenyans to institute much needed judicial reforms in this arm of government. One key pillar upon which the 2010 Constitution

is constructed is continuous engagement with citizens in the development of bills, the public vetting of state officers and oversight role on public affairs.

Additionally, the Kenyan judiciary launched the Judiciary Transformation Framework (JTF) in May 2012 with the three main pillars being: access to and expeditious delivery of justice; public participation and engagement; and stakeholder engagement (JTF 2012). All these pillars, among other things, point to an open and transparent judiciary. However, the effective implementation of an open and transparent judiciary will largely be determined by the records management regime that is put in place.

## 2. PROBLEM STATEMENT

During the launch of the JTF, Mutunga (2012, 3–4) observed that an ‘oft-repeated criticism of the Kenyan judiciary has been over accumulated impossible case backlogs’. He pointed out that ‘case delays had become the badge of inefficiency and ineffectiveness the judiciary wore as its mark of distinction and an important source of public frustration’. Moreover, Mutunga (2012, 4) noted that ‘where records storage, management and retrieval system is weak or non-existent, the commitment of judges and/or magistrates alone would not be adequate in preventing a miscarriage of justice’. Michira (2013) noted a very slow justice system in the Kenyan judiciary. He estimated that an appellant would be heard within five years at best and gave an example of a convict whose appeal had been pending conclusion for 19 years. He attributed these delays to limited capacity in the number of judicial staff, few or lack of courtrooms and poor records management. Michira (2013, 3) observed that ‘files containing years of criminal proceedings were strewn on broken chairs and many more spilled onto the earthen floor’. According to Michira (2013, 4), the ‘records were at times infested by termites and in a particular law court in Machakos, snakes and hedgehogs were found crawling under files in the dilapidated registry’.

## 3. PURPOSE OF THE STUDY AND RESEARCH QUESTIONS

The purpose of the study on which this article is predicated was to investigate records management in the Kenyan judiciary with a view to promoting transformation and open government so that justice can be achieved effectively and efficiently. The study addressed the following research questions:

1. How are records created, accessed and used, stored and maintained, appraised and disposed of and preserved?
2. What records management policies, plans and guidelines are available?
3. What skills and competencies do the records management staff have?

4. What is the level of awareness and attitude of staff towards sound records management practices?
5. What records management strategies is the Kenyan judiciary using to achieve openness?

## 4. RESEARCH METHODOLOGY

The study adopted a pragmatic paradigm with mixed methods research in which the qualitative approach was dominant while the quantitative method was less dominant. In addition, case study design was adopted where questionnaires, in-depth interviews, observation and document review techniques were used to collect data.

The study population comprised court registrars, deputy registrars, judges and magistrates of the high court and magistrates courts, respectively, executive officers, records officers (archivists) and registry assistants (executive assistants and clerical officers) in both the high court and the magistrates' courts in Nairobi and Uasin Gishu counties. Most of the subjects were located in Nairobi County, including: four court registrars, seven deputy registrars, 71 judicial staff (judges and magistrates), 11 executive officers, 12 records officers (archivists), and 20 registry officers. The other subjects were from Uasin Gishu County with one deputy registrar, 11 judicial staff, one executive officer, one records officer and four registry staff.

A complete enumeration of the study population (census) was undertaken to increase the reliability and validity of the results. The questionnaire was piloted and the data analysed for Cronbach's alpha. The results returned a Cronbach's alpha value of 0.7 which is an acceptable reliability.

## 5. FINDINGS AND DISCUSSION

This section presents the major findings based on the research questions and discussions thereof.

The findings cover the following aspects: (i) records management from creation to disposition; (ii) records preservation, disaster planning and preparedness; (iii) e-records management in the Kenyan judiciary; (iv) e-records readiness in the Kenyan judiciary; and (v) records management strategies used to achieve openness in the Kenyan judiciary.

A total of 46 interviews with the registrars, executive officers, records officers and registry assistants were done compared to 61 interviews that were planned giving a response rate of 75 per cent. Likewise, a total of 82 questionnaires were administered to judicial officers comprising judges and magistrates and only 43 were completed and returned representing a 52 per cent response rate. This level of response rate was attributed to the fact that the respondents had extremely busy schedules and could not make time to respond to the questionnaires. This seemingly

low response rate was seen as a major limitation of the study since it became impossible to obtain information from part of the targeted subjects. However, the low response was compensated by the fact that the deputy registrars who also served as administrators and magistrates were interviewed and a wealth of data subsequently gathered. Moreover, according to Babbie and Mouton (2001), a response rate of 52 per cent is still considered adequate for answering a research problem.

## 5.1. Records management from creation to disposition

This section discusses the findings of the study on how records were being managed from creation through to disposition at the Kenyan judiciary.

### 5.1.1. Records creation

The findings showed that the judiciary depended entirely upon records in the delivery of justice. However, at the point of records creation there were no documented instructions to guide the staff on how the records needed to be created. This meant that the staff were left to rely on experiential knowledge which often led to inconsistency in standardisation in records creation and discontinuity especially whenever there were staff retirements, transfers or new recruitment. The absence of records management guidelines or metadata undermined transformation and open government and an efficient justice delivery service.

The findings corroborated those of Kemoni's (2007) in a study on records management practice and public service delivery in Kenya which decried the absence of instructions in registries in Kenya. Kemoni concluded that this had negative implications for service delivery in the public sector. Uwaifo (2004) in a study on 'the management and use of records in the Delta State University, Abraka, Nigeria', also found that there were no established procedures for controlling records creation.

### 5.1.2. Records access and use

The findings revealed that access and use of records in the Kenyan judiciary was fairly well managed. All registries which were studied had filing systems that enabled the records to be organized in an orderly manner using an alpha-numeric classification scheme thus facilitating retrieval of the records. Additionally, a few of the registries had computerized catalogues that facilitated retrieval of the records. Except in isolated cases, all the shelves where records were stored were labelled to facilitate retrieval. The judiciary also had in place a good records tracking system where any record leaving the storage areas was recorded and the recipient of the file(s) signed as proof of receipt. The tracking of files was facilitated by file movement registers. In some cases electronic tracking systems complemented the manual registers. The ISO 15489, the International Standard for Records Management, underscores the

importance of effective management of records access and use in upholding the integrity of the records and in maintaining an audit trail as proof that records were effectively protected from unauthorised use, alteration or destruction (ISO 2001).

However, the findings indicated that the judiciary did not have a policy to regulate access to the records and how the access was to be managed. The lack of records access policy presented challenges regarding who has the right of access to the records. Garaba (2010) observes that access to records should be facilitated by a relevant policy.

### 5.1.3. Records storage and maintenance

The findings showed that the majority of the registries did not have designated areas for storing current, semi-current and non-current records. Consequently, these records were all stored together in a congested and disorganised manner. Overall, the Kenyan judiciary had a serious problem of shortage of storage space such that at the time of the study some of the records were dumped on the floor without any logical arrangement as shown in Figure 1. This problem affected retrieval of records as misfiling was common.



**Figure 1:** Files dumped on the floor in one of the registries

*Source: Field data (2014)*

The findings further revealed that generally the Kenyan judiciary did not have appropriate storage equipment. The most common storage equipment available was wooden shelves which would aggravate disaster in the event of fire. The situation was exacerbated by the fact that the majority of the registries used bulk filers which

were considered inappropriate since records could not be retrieved from more than one section simultaneously.

The findings from the current study are similar to those of a study by Tsabedze, Mutula and Jacobs (2012) on records management in the government of Swaziland which revealed poor state of records storage. The study showed that although registries were available for storage of current records, a majority of action officers (81.1%) would rather keep records in their offices because they feared losing them if they kept them in the registries. In the study by Tsabedze et al. (2012), 52.2 per cent of respondents kept the records in the registries and another 24.4 per cent kept the records in a storeroom. The study established that the action officers moved the records to the store room when there was no more space in their offices. Regrettably the records in the store room competed for space with non-records materials, such as chairs and old computers, and such records were neither arranged nor documented. Retrieving such records when required was reportedly a big challenge. In a related study, Nengomasha (2009) investigated managing public sector records in Namibia. The findings showed that there was lack of storage space for paper records in the selected ministries resulting in congestion and inappropriate storage for semi-current and non-current records thus affecting service delivery in the ministries. Similarly, Kargbo (2009) in a study of the connection between good governance and record keeping in Sierra Leone, found that records in all sectors of government were utterly neglected.

#### 5.1.4. Records security, appraisal and disposal

The overall results showed that the records in the Kenyan judiciary were relatively secure given that closed circuit television (CCTV) cameras had been installed in the corridors and some rooms in all the court stations that were visited. Additionally, except in few isolated cases, most of the registries were restricted to staff only. Moreover, specific clerical officers were charged with the responsibility of overseeing files created in a particular year and this instilled in them a sense of responsibility to ensure the files were properly stored for ease of retrieval. Millar (2003) cautions that where security of court records is not guaranteed, corruption is rife and cases of missing files and documents geared towards evidence destruction is common.

The overall findings on records appraisal and disposition in the Kenyan judiciary showed that the judiciary did not have a well-coordinated programme for appraisal and disposition of its records. This role it would appear was left to the discretion of the 'archivist' who was often overwhelmed with so much responsibility that he/she hardly undertook regular appraisal and disposal of records. The findings of the current study are similar to those of a study by Ngulube and Tafor (2006) on the management of public records and archives in the member countries of Eastern, Southern Africa Regional Branch of the International Council on Archives (ESARBICA). Their study showed that appraisal and disposition was done as the need arose because a



majority of the countries that were studied did not have an effective programme for records appraisal and disposition. Similarly, Iwhiwhu (2005) observed that appraisal and disposition of records is often left to the discretion of the officer in charge of the records.

The findings further revealed that although the Kenyan judiciary did not have a regular appraisal and disposition programme, it had an elaborate procedure for appraising and disposing of records. This procedure begins with an audit of the records and culminates in destruction and issuance of a destruction certificate. Thereafter, documentation of the action is made in the destruction register as evidence of records that have been destroyed and how and why they were destroyed. However, the appraisal and disposition of the court records should be done in consultation with the Chief Archivist of the Kenya National Archives and Documentation Service (KNADS). KNADS is mandated by law as explained elsewhere to, among other things, examine any public records and advise on the care, preservation, custody and control thereof (Kenya Law Reporting 2010). A study by Maseh (2015), however, established that the judiciary sought the much needed advice from KNADS on rare occasions. As Kemoni and Ngulube (2007) pointed out, KNADS had not sufficiently carried out its mandate of advising public agencies to manage their records effectively as per the provisions of the Act.

## 5.2. Records preservation, disaster planning and preparedness

The overall findings on records preservation in the Kenyan judiciary showed that records were not well preserved. Specifically, environmental conditions were neither monitored nor controlled in almost all the registries. Ironically most of the storage areas were in the basements of buildings requiring thorough monitoring and control since such basements normally are associated with high relative humidity and poor aeration. Thus, the records were vulnerable to relative humidity and temperature. Ngulube (2007) observes that the maintenance of proper temperatures and relative humidity is key in preserving records since inappropriate temperature and relative humidity contribute significantly to deterioration of records of all formats.

Akussah (2002) shares this view and points out that controlling the environmental conditions should be done following the results of environmental monitoring. Meanwhile, Dean (2002) explains that high temperature levels accelerate the rate at which chemical reactions occur, thus causing damage to the records. He also observes that high relative humidity causes the growth of mould which causes decomposition of the records and also creates a hospitable environment for insects and other biological organisms to thrive causing harm to the records. Abankwah and Ngulube (2012) assert that a 10 °C increase in temperature accelerates a chemical process by a factor of two, while a 10 °C drop in temperature retards a reaction to half its speed. Dean (2002) recommends temperature levels of between 20–21 °C

and a relative humidity between 35–40 per cent. However, Orr (1999) contends that different information materials require different temperature and relative humidity levels. The optimum temperature and relative humidity levels for paper records and cartographic materials for instance are 18–20 °C and 35–45 per cent respectively.

The findings also showed that light readings were not recorded and windows were positioned in such a way that they allowed light into the storage areas. Moreover, the windows did not have curtains and/or blinds to filter the light. Further, all registries had artificial lighting (fluorescent tubes) systems to complement the natural light. In most cases, light from florescent tubes was not filtered. In addition, because of the space shortage it was common for files to be placed on top of the shelves in close proximity to the florescent tubes, thus exposing the records to imminent danger of damage. Garaba (2010) notes that light has been seen as a silent destroyer of records and other information materials since its damage is mostly invisible to the eye. Williams (2006) adds that the damage is cumulative and irreversible and so direct light from the sun should be prevented from reaching the records by use of curtains and blinders and fitting filters in the case of florescent tubes. Ngulube (2005) explains that light provides the energy required for chemical reactions and acts as a catalyst to the oxidation process which weakens the records and other information materials. Ndenje-Sichalwe (2010) has observed that records can become very vulnerable especially when exposed to light for a long time during displays or when they are stored under constant light, for example in front of a window. Orr (1999) recommends light levels of about 50 lux.

Additionally, the findings showed that the Kenyan judiciary did not have a preservation policy to guide preservation of its records. Equally, the staff seemed oblivious of the role that such a policy would play in facilitating the preservation of the records. Ngulube and Tafor (2006) have identified preservation planning and policy formulation as some of the activities that would ensure the maintenance of records and other materials in a useable state. Orr (1999) notes that a clearly documented and realistic preservation policy is an essential foundation for any sustainable preservation programme. If the preservation policy were to be formulated, it would serve the following purposes: provide a statement of intentions that underpin preserving the records; serve as a mandate for the activities of a preservation manager; demonstrate to staff and stakeholders that preserving records is important to the organisation; be used to solicit funds from the parent organisation or donors; and would serve as a training tool for both the staff and the user. Akussah (2012) posits that, among other things, policies on preservation of records should be formulated by government and government agencies and any other organisation in order to strengthen the preservation of records and other information materials to ensure their continued access.

The findings further showed that the Kenyan judiciary did not have a disaster preparedness plan, thus exposing records to imminent loss or damage in the event

of disasters. Similarly, the findings showed that the Kenyan judiciary did not have a vital records management programme. This meant that in the event of a disaster, the judiciary was not likely to resume its normal operations easily as records would easily be destroyed. The findings of the current study concur with a study by Okello-Obura and Sseketo (2011) on records and information disaster preparedness in selected organisations in Uganda. They found that although the organisations studied were committed to disaster management, they handled the disasters in a rather haphazard manner posing even a greater risk. The findings of the current study were also similar to those of Ngoepe and Van der Walt (2009) which established that South African public sector departments were ill prepared to handle disasters with 77.8 per cent of the respondents indicating that they did not have disaster recovery plans.

### 5.3. E-records management in the Kenyan judiciary

The findings revealed that the Kenyan judiciary was just starting to put in place infrastructure for managing e-records, such as computer hardware, internet connection and audio recording systems in courtrooms. The infrastructure was being developed and pilot studies had been done in two different court stations and plans were underway to roll this out to all other court stations in Kenya. At the time of the current study there was little to show with regard to systems for the management of e-records as almost all the records were created and managed manually. However, the staff seemed to be aware of the need for and importance of managing e-records in the same way as paper records. In the same vein, Wato (2006) in a study of e-records readiness in the ESARBICA region noted that national archives in the ESARBICA region had no capacity to preserve e-records. This was attributed to inadequate skills and lack of policies among other issues. Ndenje-Sichalwe (2010) opines that lack of policies presents a danger of losing access to e-records, a view echoed by Moloi (2009), who comments that in the absence of an enabling policy, e-records may not be captured in a systematic manner. Keakopa (2007) has observed further that the absence of policies and procedures may compromise the long-term preservation and availability of electronic records as archives.

### 5.4. E-records readiness in the Kenyan judiciary

This section summarises the findings addressing research questions 2, 3 and 4. The summaries are provided in sections covering: records management legislative and regulatory framework; skills and competencies of staff; the level of awareness about records and attitude of staff towards sound records management.

#### 5.4.1. Records management legislative and regulatory framework

The findings covering the existing policies, plans and guidelines, and legislations governing records management at the Kenyan judiciary revealed that the Kenyan judiciary did not have a records management policy. However, the judiciary had recently launched a registry operations manual that had not been operationalised. The absence of the policy could hamper effective management of records. According to Mnjama and Wamukoya (2007), the level of organisational commitment to managing records can be gauged by the existence or non-existence of records management policies, plans and guidelines. This view is supported by ISO 15489-1, which recommends that organisations seeking to manage their records effectively should first and foremost establish, document, maintain and promulgate policies, procedures and practices for records management (ISO 2001). As Roper and Millar (1999) point out, policy and legislative frameworks are necessary to create a conducive environment for effective management of records. Meanwhile, ISO (2001) indicates the objectives of records management policy as the creation and management of authentic, reliable and useable records capable of supporting business functions and activities for as long as they are required.

With regard to future plans, the Kenyan judiciary had a five-year plan that envisaged computerisation of registries and courtrooms. As per the plan, the Kenyan judiciary would implement an electronic system meaning records would be created and maintained electronically by the year 2017. The JTF, which is anchored on four pillars and 10 key result areas, aims at achieving access to and expeditious delivery of justice to all. Two of the four pillars seem to stand out as having the greatest effect on records management in the judiciary, namely: pillar one on access to and expeditious delivery of justice, which identifies development and deployment of an electronic case management system and embracing information and communication technologies (ICT) to enhance court efficiency and effectiveness; and pillar four on harnessing technology as an enabler for justice which identifies digitising of court records and ensuring automatic recording of proceedings among other plans.

The research sought to determine which laws guided the management of records at the Kenyan judiciary. The findings revealed that the 2010 Constitution, the Public Archives and Documentation Services Act (Cap 19) of 1965 and the Records Disposal Act (Cap 14) of 1962 formed the key legislative framework for records management at the Kenyan judiciary. The study revealed that article 35 of the 2010 Constitution accords every citizen the right to access information held by the state. Thurston (2012) opines that all public records must be properly managed to facilitate the right to access information held by the state and all government agencies.

In addition, the Public Archives and Documentation Services Act established KNADS and provided for the preservation of public archives and public records. Section four of the Act mandates the director of KNADS or any officer of the service authorised or designated to among other things examine any public records and

advise on their care, preservation, custody and control thereof (Kenya Law Reporting 2010).

Lastly, the Records Disposal Act provides for the disposal of records in the custody of the high court and other subordinate courts. Section two of the Act empowers the chief justice to make rules for the disposal by destruction or otherwise of such records as books and papers in custody of the Kenyan courts that he may consider to be of no further use or unworthy of being permanently preserved. The rules should be made in consultation with the chief archivist (from KNADS) and subject to the provisions of the Public Archives and Documentation Services Act.

#### 5.4.2. Skills and competencies of staff

The findings showed that the judiciary did not have adequate trained records management personnel. Those who were trained were designated as archivists and charged with the responsibility of managing semi-current and non-current records. The implication of this arrangement is that the registries were operated by registry clerks and executive assistants who did not have any records management training. This seemed to affect the quality of records management in the registries especially with regard to appraisal and disposition since this cadre of staff did not have the knowledge on technical aspects of records management. Skills and competencies in records management are necessary for organisations to demonstrate accountability, transparency and a commitment to root out corruption and malpractice (Wamukoya and Mutula 2005).

The study further found that the few staff who had skills in records management took the initiative to train themselves without the involvement of the judiciary. It was also revealed that the judiciary was not providing opportunities to staff for capacity building through workshops and conferences in records management. This impeded staff career developments and also meant knowledge on new and emerging issues in records management was not being acquired by the staff.

These findings seem to confirm those of a study done by the International Records Management Trust (IRMT 2011) on managing records as reliable evidence for ICT/e-government in the Kenyan judiciary, which decried the inadequacy of records management staff. The study showed that out of an establishment of 66 staff in the whole country's judicial system, only 40 had been hired and posted to stations. This cohort of staff was stationed in different courts around the country. The study further revealed that the staff who were trained had various qualifications, such as degrees, diplomas or certificates in archives and records management or related fields. The staff had taken the initiative to facilitate their own training.

Other related studies also seemed to indicate similar results. For example, a study by Ngulube and Tafor (2006) on the management of public records and archives in the member countries of ESARBICA, indicated that national archival institutions were experiencing shortages of qualified staff as only 40–50 per cent of them had

qualifications directly related to either library and information science or records and archives management. They pointed out that the shortage of records management personnel caused tremendous pressure on the few staff who were in post. A study by Chaterera (2016, 126) also showed that the bulk of records management personnel in Zimbabwe's public sector did not have any records management training.

#### 5.4.3. Level of awareness and attitude of staff towards records management

The findings established that records management was highly valued by staff as an important component in the administration of justice in the Kenyan judiciary. However, the findings revealed that top management did not accord full support to records management as far as resources, capacity building and infrastructure development were concerned. For example, there was no budgetary allocation for records management functions. Therefore, activities related to records management were funded from the general budget despite the fact that such funding was rarely available. In addition, the findings revealed that the records management portfolio did not have the status of a directorate like other administrative functions such as human resource management. The implication of this was that records management lacked a senior person responsible for championing records management interests with regard to policy, infrastructure, budgets, and more.

Previous related studies have indicated that records management in sub-Saharan Africa has perennially suffered lack of top management support and absence of budgetary allocation. Mutula and Wamukoya (2009) pointed out that one of the critical challenges facing the ESARBICA region was inadequate support by governments especially with regard to funding. It emerged from their study that governments did not provide adequate funding to ministries and government agencies. Similarly, among the challenges facing ESARBICA countries identified by Mnjama and Wamukoya (2004) was the absence of budgets dedicated to records management. In such a situation the records management agenda became difficult to implement. Chaterera, Ngulube and Rodrigues (2014) observed that in Zimbabwe, support to records management practices was continuously dwindling due to harsh economic conditions and stiff competition for resources. Mnjama and Wamukoya (2007) explained that awareness and attitude towards records management reflected the extent to which senior management understand and demonstrate commitment to a clear vision and set of objectives for records management.

#### 5.5. Records management strategies used to achieve openness in the Kenyan judiciary

The findings established that the judiciary was at the initial stages (data transparency) of implementing openness as envisaged in the 2010 Constitution and JTF. The

judiciary was in the meantime using many channels to publish information to educate the public on how they would access and use court services, including: judiciary website; e-mail services; judicial roadshows; judiciary open days; court users committees and social media. Through these channels, the judiciary was reportedly seen as being more transparent, open and accountable to the public.

Successful open government implementation requires a records management regime that ensures accuracy, integrity, authenticity and reliability of data. This is because records are a major source of information and the only reliable and legally verifiable data source. The study found that records management in the Kenyan judiciary was not conforming to best practices. For example, records were not managed well from creation to disposition; there were no records management policies; trained personnel were inadequate; and top management support was minimal. As a result, the open government initiative was likely to be compromised because accurate data needed for holding the judiciary accountable was difficult to achieve in such an environment.

Furthermore, the findings showed that the Kenyan judiciary was keen on deploying ICT as an enabler for its transformation and openness agenda. However, improving records management was not top on their agenda. The literature reviewed showed that open government cannot be successful without effective records management being addressed since much of the information generated and maintained by any government is in the form of records. Therefore, open government initiatives should be aligned with records management if the initiative is to succeed.

The findings further showed that the Kenyan judiciary had planned many open government activities that were being pursued simultaneously. In the opinion of the researchers, this could possibly overburden the judicial officers and staff, overstretch the budgets and overwhelm the public because the judicial officers were now expected to perform additional activities such as the judicial shows. Furthermore this had financial implications since all the activities would need funding.

Moreover, the study found several benefits that the judiciary had reaped from opening itself up to the citizens, including: enhanced transparency and accountability; enhanced judicial service delivery; and increased public confidence in the judiciary.

These benefits, however, were not without challenges, including: too much openness that brought about a drastic increase in litigations; negative criticism from the public; untrained paralegal staff; inadequate funding; and ineffective records management.

To address these challenges and pave the way for effective administration of justice, the respondents made the following proposals: enhancing capacity building; developing infrastructure; improving records management by formulating records policies and training the staff; computerising registries and court rooms; and raising awareness on the importance of records and records management in the justice chain.

## 6. CONCLUSION

The purpose of the study was to investigate records management in the Kenyan judiciary with a view to promoting transformation and open government so that justice can be achieved effectively and efficiently. The study established that the Kenyan judiciary had demonstrated improved records management practices following the promulgation of the Kenyan Constitution 2010 and the subsequent launch of the JTF. However, the study unearthed several weaknesses in the way the records were managed, including: absence of guidelines on how records should be created; absence of an access policy to regulate who has access to the records and how this should be facilitated; poor storage of records characterised by a serious lack of space and inappropriate storage equipment; absence of an appraisal and disposition programme; ineffective preservation of the records; absence of a disaster preparedness plan and a vital records management programme; absence of a general records management policy; inadequate trained records management staff; and inadequate top management support. In this kind of environment, it is not possible to guarantee the creation and management of records that are accurate, authentic, timely, reliable and whose integrity can be ascertained. Furthermore, the study established that the transformation and move towards openness in the Kenyan judiciary was pursued without a strong foundation of records management. In these circumstances there is a likelihood that the transformation and openness envisaged in the judiciary may be impeded since the evidence base required in formulating policy, managing judicial functions, building reliable systems and monitoring official transactions is undermined.

In view of this, the study proffered several recommendations on how records management could be improved so as to facilitate transformation and openness in the Kenyan judiciary in order to improve service delivery and overall administration of justice.

## 7. RECOMMENDATIONS

First and foremost, the study recommends the formulation of an all-inclusive records management policy which should include the management of records in electronic media by the Kenyan judiciary. The policy would give guidance and effect to records management from creation to disposition and address issues, such as records creation, access and use, records storage and security, records appraisal and disposition and records preservation. Alternatively, the judiciary would consider developing individual policies on these areas, which together with the overall records management policy, would streamline records management in the judiciary. Therefore, the policy will ensure that records are managed according to internationally accepted standards and ensure proper coordination of all the functional areas of records management.



Secondly, the Kenyan judiciary should consider providing an appropriate storage environment and media for the records. The judiciary's top management should prioritise the provision of alternate storage space for semi-current and non-current records in order to free space in the registries for the active records. Wema (2003) asserts that keeping current and non-current records together makes records storage difficult and may render the records irretrievable. The judiciary needs to either hire or build regional go downs where all the semi current and non-current records in a given region are stored. However, this should be done following an assessment of the growth of court records and ensuring that proper procedure for records appraisal, transfer and disposal are put in place. This would offer cheaper high density storage while relieving the primary storage space in the registries for current records hence easing congestion in the registries and facilitating easy and fast retrieval of records.

Lastly, the study recommends that the alignment of open government to records management using Lee and Kwak's (2011) model on open government implementation should be used as a benchmark. This will allow the judiciary to employ a logical and systematic approach in the way the open government implementation is approached to minimise risks and achieve better results. Thurston (2012) has observed that by aligning records management with open government initiatives, the information provided to citizens and other stakeholders can be trusted as a means of demonstrating transparency and a tool for the citizens to participate more fully in judiciary decision making. This is also important because records are a major source of information and probably the only reliable and legally verifiable data source (Wamukoya 2000). Additionally, ICT deployment need not be seen as the only tool that can facilitate transformation and openness in the judiciary. Stott (2012) decries the perception of open government as an ICT issue and emphasises the importance of a sound records management regime.

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