

IRMT/World Bank Evidence-based Governance in the Electronic Age

Global Forum Electronic Discussions

Summary of Discussion Three:

Legal and Judicial Reform and Record Keeping

24-28 February 2003

Introduction to the Summary

The following is a brief summary of the Global Forum electronic discussion on **Legal and Judicial Reform and Record Keeping**. The electronic discussion, held from 24-28 February, was organized by the International Records Management Trust and the World Bank Information Solutions Group and World Bank Institute, with funding provided by the UK Department for International Development and the Commonwealth Secretariat.

Background to this Discussion

This is one of four electronic discussions being organized by the IRMT and World Bank, to be held between 27 January and 14 March 2003. The other discussions address the following topics:

- Information Technology, Electronic Records, and Record Keeping (27-31 January)
- Financial Management Reform and Record Keeping (10-14 February)
- Public Sector Reform and Record Keeping (10-14 March)

Once these electronic discussions are completed, the IRMT and World Bank will host a series of video conferences with senior government officials around the world, to examine the issues raised in more detail and to seek concrete solutions to the challenges of electronic records management.

Participants in the Discussion

Participants in the invitation-based discussion included representatives of legal and judicial departments and representatives of record keeping departments of Commonwealth governments around the world, as well as other invited officials involved with electronic records or legal and judicial issues and selected observers from around the world. Contributions to the discussion came from such diverse parts of the world as Tanzania, Pakistan, The Gambia, Swaziland, Uganda, Singapore, St. Lucia, Malaysia, Botswana, South Africa, and Tanzania. A total of 193 participants were registered in the discussion, from over 30 countries.

Purpose of the Electronic Discussion

The purpose of this electronic discussion was to facilitate a dialogue among experts in their own fields about the relationship between legal and judicial reform, record keeping, and accountable and efficient government and governance. The goal was to identify key emerging issues, and gaps in understanding, about the creation and management of legal and judicial records in governments in developing countries. The ultimate goal was to raise awareness amongst all participants of the legal, administrative, and record keeping issues involved with creating, managing, and protecting government information. The project organizers hope that the dialogue will start the process of building a network of professionals in regions around the world who share related concerns.

The Process of the Discussion

The discussion began with participants answering introductory questions about legal and judicial management and reform; the questions were designed to highlight possible relationships between legal and judicial management and record keeping. These questions included the following:

1. What, in your opinion, are the major challenges in protecting court records so that they safeguard individual rights?
2. What are the challenges you have experienced in protecting the authenticity of court and legal records?
3. In your experience, is the paperless court a realistic objective in the short- to medium- term?
4. Given the reality of limited resources, how do you think the recording of court proceedings (such as the proceedings of a trial or hearing) be improved?

These questions served as a starting point, but the participants introduced a range of other issues throughout the week.

Results of the Discussion

Throughout the discussion, participants emphasized the importance of the effective creation and management of authentic, reliable, and secure legal records. Legal records were needed to protect citizens' rights and uphold the rule of law, and their security and integrity were critical to the administration of justice. The move from paper to electronic records was a major concern, as participants recognized the urgent need to ensure the records protecting legal rights and confirming obligations were protected regardless of medium.

As some participants noted, the key issue in legal and judicial record keeping was not the protection of records but the provision of justice and the maintenance of an administrative environment that respected and upheld the rule of law. The protection of records was one mechanism for ensuring that citizens were protected and accused criminals tried and judged fairly. As a participant from Malaysia noted, efficient record keeping was critical, as governments ultimately had to ensure that legal and judicial systems served the ultimate goal of justice for citizens. As he added, “justice hurried is justice buried.”

A contributor from St. Lucia also expressed the overarching concern of all participants for the care of legal records.

[The] prevailing RM issues are basically the same regardless of the industry/specific group: inadequate training, lack of respect for the function of records management personnel, the exorbitant amount of documents, duplicate copies of documents, the storage of non-records, the reluctance to destroy, inadequate storage facilities, etc.

By the end of the week, the participants had identified six distinct issues as central to the current problems of – and critical to the future success of – legal records management and the protection of records related to the administration of justice. These issues are

1. The volume of records and the consequent problem of storage, duplication, and obsolescence
2. The management of electronic records and the need for systems to protect, authenticate, migrate, and make accessible legal records in digital formats
3. The need for an effective legislative framework that protected the legal record and ensure justice systems remain accountable
4. The need to balance privacy and access, particularly with regard to personal information
5. The need for an integrated “continuum of care” in the management of legal records
6. The importance of education and training in record-keeping issues, not just for record keepers but also for all records creators and users, including judges, lawyers, clerks, and others responsible for legal and judicial records.

Each of these key issues is discussed in more detail below.

Issue No. 1

The volume of records

Background

The participants identified the volume of records, and the consequent problem of storage, duplication, and obsolescence, as major concerns for the care and management of legal records and the delivery of legal and judicial services. Several participants commented on the sheer volume of legal records and the lack of clarity about whether, and which,

records need to be kept on file for future reference. As the contributor from Pakistan noted, in both criminal and civil cases, the volume of records created was in part a result of the lack of distinction in records systems between those documents needed for reference and those that can be destroyed after a stipulated time.

Participants also commented on the paucity of records storage areas, the question of whether duplicate records need to be kept in case the original is destroyed in error, and the mountains of records that are created in the course of administering legal and judicial services. As a participant from Malaysia noted,

There is no point of having a system that is incapable of giving justice, unable to produce the real evidence, [that practices] unsafe record keeping and causes dissatisfaction to the parties involved.

Several participants urged the development of policies for the retention of records, so that many records could be destroyed and only the minimal essential information could be retained after a legislated period. As a participant from Pakistan noted, it is possible to identify specific time frames for the retention of records in both criminal and civil cases and to establish processes for retaining only key documents and a short history sheet of the case.

As the contributor from Uganda noted, however, there are countries where the governments are “less than democratic” and where destruction becomes a political choice, “especially where there may be a prospect of future lawsuits. Of particular concern were the actions of “truth commissions,” human rights hearings, and outgoing governments wishing to protect information about past actions from incoming governments.

Suggestions for action

1. Improve record keeping facilities throughout government, including records storage rooms and vaults.
2. Formalize records retention schedules and policies so that only key records are retained and unneeded records are destroyed in a timely fashion according to established and approved criteria.
3. Establish record-keeping procedures that distinguish physically and administratively between records with long-term value and records to be retained only for the short term, so that disposal can be carried out efficiently and effectively.

Issue No. 2

The management of electronic records

Background

Participants noted that the issue of digitization was closely related to the problem of the volume of records. Many governments were turning to electronic records as a means of reducing the volume of and improving access to legal and judicial records, but participants agreed that the move to an electronic environment was not in fact reducing

the volume of paper – or the quantity of records, regardless of form – that had to be dealt with. It was agreed that electronic records had to be managed more effectively and that systems were needed to protect, authenticate, migrate, and make accessible legal records in digital formats.

As a participant from Uganda noted,

computers are still a novelty for many levels of staff, and even then the procurement and maintenance of such equipment may prove a challenge for cash strapped governments. So there is need to consider the least expensive, but most effective technology in records management.

As a contributor from Singapore suggested, technology has not reduced the volume of paper produced. Quite the contrary, computer databases, photocopiers, faxes, e-mails, the Internet have all led to an increase in paper produced and filed in the court. The increase in volume is affecting the record-keeping process, since all these additional records still have to be filed. Even more important, the increasing volume means that judges and lawyers have to spend more time reading the ever-thicker bundles of documents generated from electronic technologies and added to case files.

In Uganda, the commercial court is experimenting with the process of archiving records on CD-ROM technology and removing hard copies of records to a central storage facility. As the participant noted, the “retrieval of the whole record remains possible, but only a minimum is actually stored on the premises.”

Others agreed that computerization was a current trend but that it was essential to establish appropriate policies and procedures in order to ensure the authenticity of the records. Several participants urged the development of centralized databases, with uniform case numbering systems to allow the tracking of cases. Such databases would also make it easier to match information about previous offences or alleged criminals, so that their history with the judicial system can be more easily identified.

As a participant from Singapore commented, the challenge of electronic records involves getting all the stakeholders in the administration of justice to agree on the best method for protecting the authenticity of court and legal records. As noted, all stakeholders, including judges, lawyers, law society representatives, law enforcement officers, administrators, archivists, record-keeping specialists, and others, are all involved in the planning, design and implementation of the authentication system. In an electronic system, the authenticity of the record is easily questioned, and so it must be protected throughout its life or else it will not serve its purpose.

Suggestions for action

1. Convince governments to understand that conversion of record-keeping or administrative activities to an electronic environment will not improve systems if the underlying processes are not structured in an efficient and effective fashion.
2. Encourage donor agencies to require effective record-keeping mechanisms when funding the installation of computer systems or any related reform measure involving digitization of activities or processes.

3. Involve all stakeholders in the planning, design, and implementation of any administrative system involving record-keeping or producing records, including judges, lawyers, law society representatives, law enforcement officers, administrators, archivists, and record-keeping specialists.
4. As noted under Issue 1, formalize records schedules, policies, and procedures so that, regardless of whether records are in paper or electronic format, decisions have been made about their retention and disposition, and ensure those decisions are acted upon in a timely, efficient, and planned fashion.
5. Establish an advisory group to assist lawyers, judges, and others with the selection and use of electronic technologies for records creation and management, and maintain a regular dialogue to ensure decisions are made that suit the government as a whole and not just one department or office.

Issue No. 3

The need for an effective legislative framework

Background

Participants agreed to one overarching concern, one that affected both the problem of records volume and computerization. This problem was the absence in many countries of an effective legislative framework that protects the legal record and ensures justice systems remain accountable. Several participants commented that important decisions – such as about which records are classified, which are kept, and which are destroyed – were often made in an ad hoc manner. The legal infrastructure often did not seem to exist to ensure records were protected.

While participants did not specifically discuss access to information and protection of privacy legislation, their concerns clearly related to the need for such laws in countries where they were not yet in place. Equally, there was a concern that – even when such laws existed – they may not be well implemented if they did not have sufficient power, by way of sanctions, to ensure satisfactory compliance.

A participant from Botswana demonstrated the importance of sanctions for inappropriate management of records by citing a case of the destruction of records at a private bank in Kenya, where, as cited in the news report, “vital records of transactions at the bank were destroyed just two days before fraud investigators moved in” (Kenya, *Daily Nation*, Friday, 28 February 2003).

Participants hoped that an effective legislative framework would help ensure that records were maintained in a secure and confidential environment, that adequate measures were in place for their preservation, and that sufficient resources – including staff – were provided for their care.

Suggestions for action

1. Develop effective legislation for the protection of legal and judicial records, including national archives or records acts, access to information and protection of privacy legislation, and related records and data protection laws.

2. Develop the infrastructure necessary to enforce legislation and ensure compliance across government.
3. Include in the necessary legislation provisions for
 - a. the management of records in a secure environment
 - b. the protection of privacy and confidentiality
 - c. the opportunity for citizens to know what information the government has about them and to correct misinformation
 - d. the provision of adequate resources for the preservation and care of records.
4. Establish advisory or oversight groups to ensure that all stakeholders are consulted and that any legislation developed is regularly reviewed and updated as required.

Issue No. 4

The need to balance privacy and access

Background

Related to the need for legislation was the concern, expressed by participants: that governments had to ensure mechanisms were in place to balance privacy and access in the management of records. This concern was especially relevant in the management of the personal information of citizens.

One participant expressed concern that archivists, as professionals, had to find a way to balance rival interests in information – how does an archivist provide access to records and ensure he or she is not participating in a misuse of that information or in a miscarriage of justice? As another participant from Uganda commented, the question hinges on equity and access: “if the information is deemed public then one must provide the information to whomever requests it.” Underlying the issue, again, is the need for access legislation which would clarify in law what records could be made available to whom and under what terms and conditions.

As a participant from Singapore noted, the choice of technology will have a significant impact on the protection of privacy and confidentiality in the management of records. Governments have to make sure that information captured in court records – or all records – are accurate and that the records are protected as the data is migrated or refreshed, depending on the technological choices made to manage record-keeping systems.

Suggestions for action

1. As noted under Issue 3, effective access legislation, with clearly outlined privacy components, needs to be implemented in order to ensure both privacy and confidentiality are balanced against access.

2. If access legislation exists but privacy concerns are not fully addressed, separate privacy legislation may have to be introduced or access legislation expanded to include the protection of privacy.
7. Decisions about electronic technologies need to be made with full consideration of the protection of privacy, confidentiality, and security.

Issue No. 5

The need for an integrated “continuum of care”

Background

Participants agreed that there needed to be an integrated “continuum of care” in the management of legal records. Record keepers needed to be recognized as key stakeholders and included in the process of strategic and operational planning in order to ensure records were well protected throughout their life cycle.

As a participant from Pakistan outlined a project launched in his country entitled the “Access to Justice Programme” (AJP), aimed at carrying out reforms in the judicial and police sectors of government. This project aims to facilitate the reform process. It was recognized that record keeping was an essential part of any such reform.

Other participants also noted the importance of involving record keepers in all stages of the justice system. In some countries, for example, local courts – attempting to offer quick and inexpensive justice for poorer citizens – tend not to keep written records. If the case in question is appealed, however, the formal justice process is stalled because of the lack of records of the proceedings. In Uganda, record keeping is seen as essential in the entire legal system – from “entry to exit” – including the work of the Police, the Prosecution, the Judiciary, and the Prisons. The need for effective record keeping also stretches into the commercial justice system, such as in the creation and management of land registries or corporate legal records. The focus needs to be on the maintenance of “best evidence”, which requires the protection of quality records.

Suggestions for action

1. Establish a continuum of care for the management of legal records, including the following specific steps:
 - a. Identify all records in question – including paper-based and electronic – and establish priorities for retention, from vital to obsolete,
 - b. Determine schedules for retention and destruction
 - c. Ensure the provision of adequate facilities and resources for the care of records during their life
 - d. Ensure government is committed to maintaining records system and updating facilities as required to protect records, whatever their medium or form.
 - e. Establish adequate security protocols to ensure records cannot be accessed by unauthorized personnel

- f. Review systems regularly to ensure they remain efficient and adequate to the government's needs.
2. Extend systems beyond individual offices or departments whenever possible and involve all areas of government, in order to develop coherent and harmonized records care across the public sector.
3. Whenever possible, involve quasi government agencies, regulatory bodies, and related organizations such as the Bar Council, legal firms, the Attorney General's chambers, schools of law, legal organizations and so on, to encourage the widest possible consultation and consensus.
4. Review all mechanisms and systems regularly to ensure they remain effective and appropriate.

Issue No. 6

The importance of education and training

Background

Participants agreed that education and training in record-keeping issues were critical. Such training should not be limited to record keepers but should extend to all records creators and users, including judges, lawyers, clerks, and others responsible for legal and judicial records.

As a participant from Pakistan noted, the lack of training in record keeping is one of the major problems in protecting legal and court records. No reform can be fully effective without effective and continuous training for key personnel. A contributor from Malaysia suggested that courses should be developed for judges and court staff, especially when electronic systems are implemented, to teach them the strengths and weaknesses of electronic information management. Equally useful in such teaching would be to get feedback from these participants about how record-keeping systems can be improved to support their core functions. Ideally, such courses could also be offered to lawyers and legal practitioners.

The lack of training programs is closely related to the lack of appreciation for the importance of records management. As a contributor from Uganda noted,

In Uganda, records managers/store clerks are typically the lowest cadre of staff with minimal pay and little appreciation of the importance of their task. If we were to "professionalize" the role, then there is more chance that the reforms would be effective.

Government-wide records training would introduce all those involved in records care with the practical, legal, administrative, and organizational issues involved with protecting recorded information. Everything from records policies to the storage of files and destruction of documents would be introduced in order to raise awareness across government.

Suggestions for action

1. Establish effective educational programs for record keepers so that they are well qualified to perform their duties.

2. Expand educational and training programs to other stakeholders in government so that they understand the role of record keeping in providing accountable and efficient legal and judicial services. (Ultimately, as participants noted, such education and training should expand to all areas of government.)
3. Introduce awareness raising programs to educate senior officials, members of the public, interest groups, and others in the importance of quality record keeping for accountability, efficiency, and effectiveness.