

**Does the adoption of electronic records systems improve access to information? – A
Gaborone Magisterial District, Botswana Case Study.**

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Abstract

The Department of Administration of Justice (AOJ) in Botswana has since 2005 implemented an electronic Court Records Management System (CRMS) to manage case file records at the High Courts and Magistrate Courts of Botswana from 2006 as one of the government’s public sector reforms in order to improve service delivery. One of the requirements was that CRMS would have a stakeholder interface for the exchange of information between the AOJ and its stakeholders. A research survey using questionnaires, interviews and observation was conducted at the Gaborone Magisterial District as well as at justice stakeholders, which are Department of Public Prosecutions and the Department of Prisons and Rehabilitation. The research assessed whether CRMS has brought about improved service delivery at the Gaborone Magisterial District using Records models. Despite the notable improvements brought by CRMS, the study revealed that CRMS had some shortcomings when it comes to access to electronic case files captured on CRMS among others. Even though the court personnel are able to access case file records captured on CRMS, the same advantage was not extended to the AOJ stakeholders such as the Department of Public Prosecution, the Department of Prisons and Rehabilitation and the public. This paper explores access issues of electronic case files on CRMS at Gaborone Magisterial District.

Keywords: Court Records Management System, Access to information, Public Sector reforms, Botswana

Introduction

The Administration of Justice has been proactive in its effort to improve service delivery as can be seen in the reforms that have been introduced such as Judicial Case Management (JCM), Court Annexed Mediation and Court Records Management System (CRMS) (Botswana Government 2011). This paper draws from a study undertaken at the Gaborone Magisterial District on CRMS. The main purpose of the study was to assess the Court Records Management System (CRMS), an electronic system adopted and implemented by the Department of Administration of Justice (AOJ) to manage case file records at the Gaborone Magisterial District. The study wanted to establish the extent to which the system has brought about improved service delivery at the said Magistrate Court since its adoption in 2006 and whether records were managed in accordance with accepted records management standards. This paper discusses findings on access to electronic files captured on CRMS and presents recommendations

Research problem

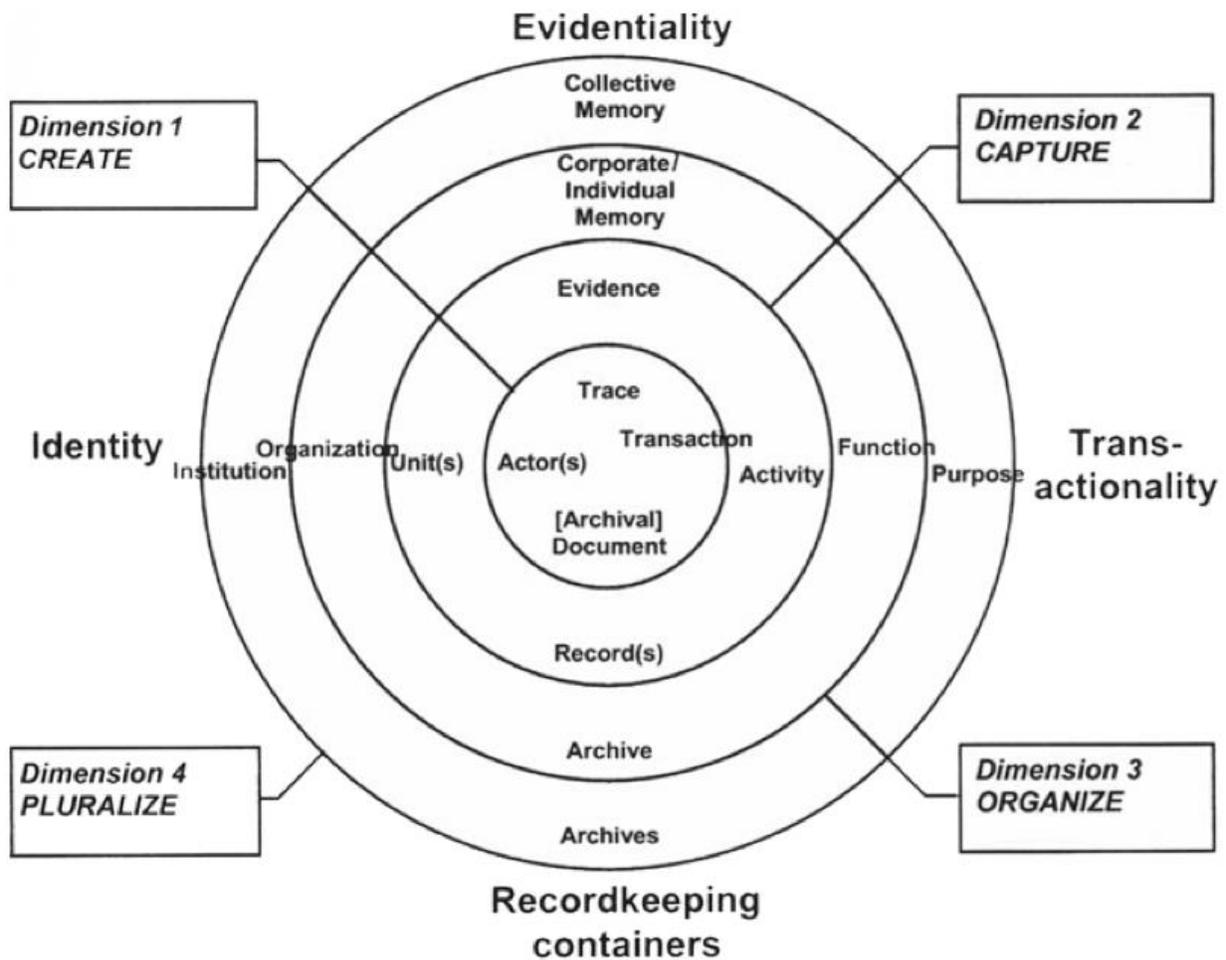
Tafa (2005) points out that the Court Records Management System (CRMS) was introduced in 2005 as an electronic system to modernise and improve the efficiency of the courts as the court records had been manual since Botswana's independence in 1966. By 2010, after 5 years of the adoption of CRMS, some of the problems that were meant to be addressed by the system still persisted. The study assessed whether CRMS has led to improvement in the management of case files or it has brought more problems as Roper and Millar (1999:100) argue that "a large proportion of computer projects fail to produce expected business improvements" not only in developing countries but even in developed countries. Studies done by the IRMT in Argentina, Ecuador, The Gambia, Singapore and South Africa exploring the requirements for managing judicial records in an electronic environment indicates that the projects had lots of challenges. The use of ICT in Africa is faced with many problems such as the digital divide, inadequate IT infrastructure and skills shortage of professional and technical staff. The Botswana National ICT policy, 'Maitlamo' under which CRMS was premised had recommended that all government services appropriate for on-line delivery be made available over the internet but that was not the case with CRMS. Although Tafa (2005) argues that CRMS had a scanning module which was a component of the system that availed case information to multiple users at the same time, that privilege was limited to court personnel . Hence the rationale for the study was to explore these short-comings of CRMS.

Theoretical framework

This study uses the Continuum model to explore the management of case file records created by the Court Records Management System at the Gaborone Magisterial District. The continuum model has been associated with an Australian Archivist, Frank Upward. Upward(2001) indicates

that the continuum is being used in Australia as a metaphor to assist in getting records management ‘right’ in recordkeeping environments built around electronic communications. He uses four continuum actions represented as sets within a space time continuum model as depicted in Figure 1 below; identity, transactionality, evidentiality, and recordkeeping containers;

- Transactionality - relates to records as products of activities.
- Identity - relates to the authorities by which records are made and kept, including their authorship, establishing particularities of the actors involved in the acts of records creation, the empowerment of the actors and their identity viewed from broader social and cultural perspectives.
- Evidentiality - relates to the records as evidence, [in an early draft, this was titled integrity and continuity].
- Recordkeeping Containers - relates to the objects we create in order to store records.



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Bantin (1998:5) argues that “perhaps the most basic difference between the continuum model and the life cycle approach is that while the life cycle model proposes a strict separation of records management responsibilities, the continuum model is based upon an integration of the responsibilities and accountabilities associated with the management of records”. The effective management of case files throughout their life-cycle is a very important component of an efficient administration of justice. This means when a case file is created, after sometime it is closed and when the files are no longer active they have to be disposed.

Purpose of the study

The main purpose of this study was to assess whether the introduction of the Court Records Management System (CRMS) has brought improvements in the management of case file records at the Gaborone Magisterial District and thereafter make recommendations for the improved use of Court Records Management System. One of the specific objectives of the study which this paper is based on was to establish how electronic case files are used and accessed through CRMS at the Gaborone Magisterial District.

Methodology

The study used a case study research design as it allows for an in-depth investigation of the problem at hand. The research studied the Gaborone Magisterial District as a case study. Qualitative and quantitative research approaches were used for this study. Data was collected through observation, document reviews, in-depth interviews and questionnaires from Magistrates, Court Clerks, Court Interpreters and Court Reporters, the Prosecutor, Prison Warden and the System Analyst. These respondents were purposively selected. Data analysis on questionnaires administered was based on the sixteen questionnaires returned by the respondents at the Court and the three interview respondents whose designations were System analyst, Prosecution Counsel and Prison Warden. The response rate stood at 70%. The data collected was analysed using Statistical Package of Social Sciences (SPSS) and was later presented as tables and charts after being migrated to Microsoft Excel.

Findings & Discussions

The study sought to assess how case file records are accessed thorough CRMS. The findings and recommendations are discussed below.

Inadequate Legislation

The study found that legislation for the management of electronic records was inadequate. This is has been collaborated by a study done by Kalusopa and Zulu 2009 which found out that terms of access to digital resources by members of the public in most heritage institutions in Botswana was undefined as only 14.3% of them had an access policy for digital materials. Ngoepe and

Saurombe (2016) also indicated that aside from South Africa, no countries had explicit digital records legislation and few had provisions for digital records in Africa.

Kruger (2005) also indicated that, the implementation of CRMS, along with future changes to the system, must be carried out in accordance with the proposed legislative framework that will support the national ICT Policy (Maitlamo) noting that while CRMS is a driver for change, it must also comply with any likely amendments to legislation. According to ISO 15489(2016), the policies and procedures of organisations should reflect the application of the regulatory environment to their business processes and an organisation should provide adequate evidence of its compliance with the regulatory environment in the records of its activities. Mutula (2004) also argues that Botswana lacks the necessary policies fully backed by government and the stakeholders to facilitate ICT development and universal service

Despite that gloomy picture, Keetshabe (2015) indicated that the government of Botswana had recognised these gaps in the legislation and were being addressed through the development of simple, consistent and technology-neutral legislation which recognizes all ICT processes and transactions - including recognition of electronic signatures as a valid authentication method for electronic transactions and give confidence to consumers, the business community and Government agencies participating in electronic transactions. As a result, the Electronic records (Evidence) Act and the Electronic Communication and Transactions acts were adopted in 2014 while the Data Protection Act is still not yet done. With these developments, the legislative framework looks promising even though the Gaborone Magisterial Districts needs to develop their own standards and guidelines to comply with these new legislation.

As the study also revealed that the Gaborone Magisterial District also lacked a Records Management Policy, it is recommended that they adopt such a policy to outline how their records would be managed. According to ISO 15489(2001), A Records management policy's objective should be the creation and management of authentic, reliable and useable, capable of supporting business functions and activities for as long as they are required.

CRMS usage

The study has revealed that even though the Court Records Management System (CRMS) has brought about improvement in the management of case file records at the Gaborone Magisterial District, there are some challenges which hinder the full realisation of the benefits that comes with CRMS. The major findings of the study are that CRMS is achieving its intended objectives as case file records are successfully captured and managed through the system. CRMS is able to produce reports on the status of case files and hence provide management with information and statistical data as long as users had captured information correctly. As most of the active case files have been captured and others scanned in CRMS, a lost or misplaced case file can always be retrieved from the system which resulted in speedy finalization of litigations.

Each case registered at the Gaborone Magistrate Court is captured on CRMS and the status of the case is updated as and when new documents are filed on the manual file. As a result, less time is lost in responding to enquiries from members of the public. As CRMS produces case numbers automatically, omissions and inaccuracies in maintaining and updating case registers are minimal. The System Analyst (interviewed by author) indicated that a central database server and an application server were located at Lobatse High Court. A standby database and application server were located at Gaborone to act as a backup in the event of a disaster at the Lobatse centralized server site. The study also found that CRMS has control access to ensure the integrity and authenticity of the records.

Despite such notable improvements brought by CRMS, at times capturing of case file information on the system delays progress of cases as indicated by the Prosecutions Counsel and the Prison Warden (interviewed by author) from the Department of Public Prosecutions and Department of Prisons and Rehabilitation respectively. Documented information on how case file records were managed with the manually system could not be located as it was difficult to produce statistical data under the manual system used before the adoption of CRMS. Documented policies and standards for the management of electronic records generated though CRMS could not be found at the Gaborone Magisterial District.

Access to electronic case files records

Even though court personnel at the Gaborone Magisterial District are able to access case file records captured on CRMS, the same advantage is not extended to the AOJ stakeholders such as the Department of Public Prosecution and the Department of Prisons and Rehabilitation. This is despite the fact the Section 7 of the Magistrate Court Act, Chapter 04:04 provides for access to court records and proceeding, and that court paper records are accessible to the public. Members of the public do not have access to electronic case files captured on CRMS unless they are party to the case. Section 7 of the Magistrate Court Act, Chapter 04:04 provides thus;

“The records and proceedings of every court shall in all cases be accessible to the public under the supervision of an officer of the court at convenient times and upon payment of such fees as may be prescribed”.

The law should apply to all court records, including those created and managed through CRMS. As a result the Gaborone Magisterial District should put measures in place for those permitted to access the records to access them. The Judicial Council of California (2011) also recognises that technology can save the court staffs’ time in serving the demand for court records from the media and public interested in high-profile criminal cases.

Although this paper advocates for access to case files records, access to court records by members of the public should be done in such a way that the privacy of individuals is not compromised. According to IRMT (1999:9), “the right of the public to access records is closely tied to the legal and political notions of the sovereignty of the people”. IRMT (2009:9) further points out that “a record-keeping system within a legal environment should ensure information about individuals is maintained in a secure environment, so their privacy is not violated. At the same time, provision must be made to ensure that some personal information can be retained for evidential, informational or research reasons once it has served its original purpose”. Chadwick (n.d) also argues that the protection of personal privacy is unquestionably a legitimate concern, and one which must be addressed in the adoption of any policy regarding access to electronic court records.

However, the System Analyst (interviewed by author) indicated that CRMS is a flexible enough system to allow stakeholders such as DPP to have access to CRMS case files and the system would have to be modified for that to happen. Moreover, Kruger (2005) had stated in the Project Initiation Document that CRMS software application shall be able to interface with and communicate to other applications in the Government of Botswana. It was a requirement that CRMS interfaced with other applications and in particular, the Police Systems, Social Welfare, Attorney General’s System, Prisons system, the Government Accounting and Budgeting System at the Ministry of Finance as well as the Civil Registration. Kruger (2005) indicated that the stakeholder interface will have to provide for the exchange in information between the AOJ and its stakeholders (Prisons, Police, Attorney General, Accountant General, Social Welfare; and, Private law practitioners, Industrial Court) for the purpose of processing cases.

At time of this study CRMS has no provision for electronic filing which was a desirable function for the system to improve service delivery. Despite this, it is worth noting that the government of Botswana has recognised this need as it states in the National Development Plan 11 that it will introduce e-filing through CRMS to make the files and products more accessible to the judges and magistrates and ensure efficient use/access of information through ICT.

Recommendations

It is recommended that stakeholders in the justice system in Botswana such as the Department of Public Prosecutions, The Police Service and the Department of Prisons and Rehabilitation should have access to case file records on CRMS. These stakeholders need to consult case file records to implement the court’s decisions or orders as such they do not have to always go to the Magistrate Court to access the files while the information can be obtained through the computer. This will go a long way in ensuring that delays in executing justice are minimised and hence improved service delivery in the country. Security measures in accordance standards such as ISO 15489(2001) will have to be put in put to ensure that the integrity and authenticity of the records

is not compromised in any way. As the study has also shown that there is lack of clear policies in the management electronic case file records, it would also be beneficial for the Gaborone Magisterial District to develop and implement electronic court records access policy to ensure balance between the people's right to access information and individuals rights to privacy.

The importance of having remote access to computerized courts records by the public and other stakeholders have been explored by the State of Missouri Courts. According to their website, by September 2011, the Missouri judiciary will begin implementing a new technology system that will allow registered users to file case documents electronically with the courts and to view those documents at nearly any time. The goal of the system is to enable attorneys and Court clerks to work more efficiently by reducing the time and effort they spend managing case files, which ultimately will save them time, money and resources. Moreover, according to Chadwick (n.d), in the United States of America, both the federal courts and the court systems of many states have begun to consider the adoption of, or have actually begun to implement, rules regarding public access to court records maintained in electronic form. Chadwick (n.d) cites the California Judicial Council as having promulgated proposed rules that would govern public access through electronic means to trial court records maintained in electronic form, and has invited public comments on those proposed rules and states that many states are in the process of considering or adopting such rules.

Providing online access to electronic court records will also be in-line with the Botswana National ICT policy as well as the Botswana's National e-Government Strategy (2011-2016). Section 6 of the Botswana National ICT policy outlining the recommendation talks about 'Government-Online' and the recommendation as explained under 6.3.4 reads thus;

In addition, all Government services, that are appropriate for on-line delivery, will be available over the Internet. For citizens, early on-line services will include license applications, on-line payments, school registration, OMANG and passport applications etc. Early candidates for electronic service delivery to businesses are company registration, tax submissions, micro-credit applications and export advice.

Conclusion

This paper found that although Court Records Management System (CRMS) is a good enterprise wide system, it has not been fully utilised to bring improved service delivery at the Gaborone Magisterial District especially electronic access of the records. Even though the court personnel are able to access case file records captured on CRMS, the same advantage was not extended to either the Administration of Justice stakeholders or the public which is a much needed function in the digital world.

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