

The implications of the National Archives and Records Services Act on archival practice in Botswana

Tshepho Mosweu

Department of Information Studies: University of Botswana

tshephoh@yahoo.co.uk

Iwani Simon

Botswana National Archives and Records Services

iysimon@gov.bw

Abstract

Archival legislation is the basis for records and archives management in any country. The National Archives Act of Botswana was enacted in 1978 to give the Botswana National Archives and Records Services (BNARS) its mandate to provide a framework for conducting records and archival functions in Botswana. It mandates BNARS to collect, preserve and make accessible the nation's documentary heritage. In recognition of its deficiencies, amendments were made in 2007 to incorporate the management of current records, electronic records and recognition of private archives. A review of this legislation reveals that these amendments fared way below expectations as the Act currently has serious weaknesses that need to be addressed to improve archival practice in the country. Hence, the purpose of this paper is to examine the National Archives and Records Services Act in Botswana and its implications on archival practice in the country. This paper took a qualitative approach utilising documentary review to collect data and content analysis. This is an original study using a documentary review to review the archival legislation in Botswana. The findings of this paper would contribute towards the literature in archival legislation in Botswana and the ESARBICA region.

Keywords: archival legislation, archives, records, archival practice, Botswana

1. Introduction

Botswana's archival legislation has been found to be weak in so far as providing guidance to advance records and archives management agenda in the country is

concerned (Ngoepe & Keakopa 2011; Mnjama 2010; Sebina 2006). This may be attributed to the fact that in its original mandate, the Act was meant for the identification of archives, their preservation as well as access and not the management of records in their current and semi-current state (Sebina 2006:24). Furthermore, it has been highlighted by Ngoepe and Saurombe (2016) that national archival legislation in most Southern African countries was mostly written with paper records in mind while being silent on records that appear in other media such as microfilm, audio-visual and electronic. Records and archives legislation is an essential component of the wider legislative base of an accountable and effective government. It provides an essential framework that enables national records and archives service to operate with authority in its dealings (International Council on Archives 2004; Parer 2000). Without this legal framework, the operations of the archival service would be constrained, and may not be effective (Mnjama 2014). In other words, no national institution is supposed to operate without some legal framework as it acts as a guide on the activities and operations carried out by an organisation. In the same breath, Conture and Lajeunesse (1994) argue that the development of an effective and dynamic national programme is not possible without some sort of legal framework in order to provide a sense of consciousness about the importance of archives and they further argue that archival legislation reflects as well as shapes innovation. In other words, the importance of archives should clearly come out in archival legislation incorporating changes that take place in the archival field especially with technological changes. Therefore, it is the aim of this study to discuss the strengths and weaknesses of the National Archives and Records Services (NARS) Act and the implications on archival practice in Botswana.

2. Background to the study

The history of archives and record-keeping systems in Botswana can be traced to the pre-independence period in the early 60s when the seat of government was transferred from the old capital, Mafikeng, South Africa, to the new capital, Gaborone, Botswana (Ngoepe & Keakopa 2011:148). The Botswana National Archives and Records Services (BNARS) was established in 1967 and is governed by the National Archives and Records Services (NARS) Act of 1978 as amended in 2007. It is important to note that the department was established in 1967 but it was only in 1978 that the Act was passed. Before this Act was enacted, the Botswana National Archives operated through a presidential directive (Sebina 2006). For 11 years, the department operated without archival legislation to guide its records and archives work (Ngoepe & Keakopa 2011; Sebina 2006). The delays in passing the law could be explained by various factors such as the transition from a British colony to an independent country in 1966 and the fact that the country had little or no background of record keeping during that time. The NARS Act gives BNARS its mandate as it provides for a framework with which records and archival functions are to be conducted. According to Section 3A of the NARS Act, the functions of the National Archives and Records Services shall be to provide records and information management service to government agencies; as well as to collect, preserve and access the nation's documentary heritage.

BNARS' mandate has been mainly toward the public service but as far as the acquisitions and preservation of the documentary heritage are concerned, the department has not been visible in helping other organisations in the country with their records keeping processes since the records they generate would

ultimately be archived. Keakopa (2013:38) has observed that in Botswana, recordkeeping practices remain marginally developed with only a few organisations making efforts to design records management policies and procedures. A study done by Kalusopa (2011) on developing an e-records readiness framework for labour organisations in Botswana, acknowledged this and recommended that BNARS needs to develop mechanisms of advising other organisations such as the labour organisations on issues such as recordkeeping functionality and maintenance of electronic records over time.

3. Research problem

Archival legislation is closely associated with the management of current records and decisions about their creation, maintenance, access, and disposal (International Council on Archives 2004). The success in the full implementation of this Act depends mostly on the extent of its understanding across the public service but it has been argued by Anderson (2013) that archivists have not been widely successful in promoting their expertise outside their own professional circles and their expertise is often not acknowledged or understood by other professions. Keakopa (2018:204) posits that although the NARS Act was amended in 2007, it remains unclear on how records generated in electronic formats should be managed. This leaves uncertainties as to what constitutes the emerging new forms of records as well making record creators and legal officers uncomfortable with the use of such records as evidence because of their unclear status in the legislative provision. Therefore, this paper sought to examine the NARS Act and its implications on archival practice in the country.

4. Research purpose and objectives

The purpose of the study was to examine the NARS Act and its implications on archival practice in the country. The specific objectives were to:

- Outline and discuss strong provisions of the NARS Act;
- Outline and discuss the weakness of the NARS Act; and
- Make recommendations towards the improvement of archival practice through the NARS Act.

5. Research methodology

This study took a qualitative approach utilising documentary review to collect and analyse data. The National Archives and Records Services Act (1978) of Botswana was the main instrument used to compile data for this paper. Other sources used to collect data include books, internet sources, reports, and journal articles. Moreover, this study is also anchored by the experiences of the two authors as they have worked at the Botswana National Archives and Records Services for ten years and had the privilege to implement the NARS Act.

6. Literature review

Archives legislation provides the mandate of the archival authority, sets out the rules for its operation, defines what part of the collective memory of the country should be retained and preserved, and for whom and under what conditions the preserved records could be made available (International Council on Archives 2004:5). As a result, the National Archives and Records Services (NARS) Act

of 1978 as amended in 2007 gives the Botswana National Archives and Records Services its mandate. The International Council on Archives (2004) stipulates that for the National Archives to ensure the creation, identification and preservation of authentic, reliable and usable records of enduring value, and make them accessible to the largest possible extent according to the interests of the country and its citizens, the following archival principles should be adhered to:

- Archives legislation or records acts - A country may choose to tackle issues relating to records and archives in a single piece of legislation or in several laws but the statutory provisions and definitions should always be clear and consistent.
- Definition of records and archives - There is no single definition for records and archives. These terms must be defined and used without ambiguity in the archives legislation, and they must also be compatible with other related law.
- Scope - Archives legislation must define the scope and extent it applies. Apart from government bodies, consideration should be given to include organisations that perform public functions. Legislation must define the scope of the bodies to which it applies.
- Inalienability and imprescriptibility of public records and archives - The National Archives should have the right to inspect, replevin, recover and instruct protection of public records which are or believed to be estrays through an established mechanism.
- Records from the private sector - The National Archives should be given responsibility and flexibility to acquire archives from private sources for proper preservation or to enrich its collection through legal means.

- Establishment, responsibilities and structure of the archives institution - Archives legislation should provide for the establishment of the National Archives with a clear mission and broad functions that enable it to play a key part in making policies for and management of records throughout their entire life cycle.
- Advisory body - An advisory body may be created to strengthen relationships with the government and private groups to ensure that the National Archives remains responsible for public needs.
- Reporting responsibility - The National Archives should be established within the mainstream of public administration under an influential minister or above to lead and control records and information management in departments and agencies.
- National archival coordination – The National Archives should be given a leadership role within the community of archival institutions, both inside and outside governments (public and private sector) to facilitate the development of a national archival system or network.
- Records management - Archives legislation should direct the National Archives to develop, approve and review advisory and mandatory standards and regulations for adequate and accurate recordkeeping in departments and agencies, and audit their management of records from creation to ultimate disposition against mandatory requirements to ensure authenticity, integrity and usability.
- Appraisal and disposal - Archives legislation should stipulate that no public records should be transferred, migrated, altered, deleted, or destroyed without the consent of the National Archives. The

respective roles of the National Archives and government departments in appraisal and appropriate disposal of records should be defined and the ultimate authority specified.

- Transfer of archives - Legislation should require government agencies and public organisations to timely and systematically transfer archival records to the National Archives or relevant institutions as the National Archives directs. The National Archives may assume the role for the proper management, control and preservation of archival records regardless of their custody.
- Arrangement and description - The National Archives should be given the lead in developing and promulgating archival arrangement and description standards.
- Access - Access to public records, subject to prescribed conditions and exemptions for the protection of privacy, copyright and official secrets should be granted as a right preferably in single legislation. Restrictions to record access should not be forever. A specified authority may grant exceptional access to closed records or change the closure period.
- Preservation: Legislation should recognize the role of the National Archives in proper preservation and conservation of archival records by providing it with appropriate resources, equipment and facilities, and allowing it to prescribe necessary standards and instructions to government or public offices.
- Sanctions: Sanctions to enforce the fundamental principles of archives protection and preservation should be provided by law.

Strengths of the NARS act

As mandated by the NARS Act, it is the duty of BNARS to provide national leadership in the management of archives and records in the country in line with the principles of archival practice. That can be effectively done through developing a sound national policy on archives and records so that its role and the role of other agencies or stakeholders are specifically outlined. Identified among the strengths of this legislation are the clear interpretation and definitions, comprehensive roles and management structures, clear prescriptions, direction on the development of regulations and policies, publication of archives, validity, evidence and copyright as well as legal deposit requirements.

Clear interpretation and definitions

The NARS Act of 1978 as amended in 2007 clearly spells out and defines keywords in the archives and records management such as the definition of the word ‘records’ as it includes all record formats inclusive of electronic records. The Act makes a deliberate specification on all types of records being public records, public archives, private archives, judicial records, historical, places of deposit and the role of the director as the overseer are defined in Part 1 of the Act, Section 1 to 2.

Comprehensive roles and management structures

The governing or management of BNARS is clearly prescribed in the Act. Part II of the Act establishes and gives the mandate of BNARS. Part III of the Act outlines the roles and responsibilities of the director of BNARS. Furthermore, Part VII of this Act establishes the National Archives and Records Service Advisory Council and its functions.

Clear prescriptions

The NARS Act gives the director of BNARS certain powers and privileges in relation to the preservation of the national documentary heritage in Botswana. One of those which is the declaration of places of Deposit. Chapter 4 of the Act outlines that with the agreement of authorities of a place, a facility may be declared to be a place of deposit for the transfer and preservation of public archives. Part 3, Section 6 of the Act gives the Minister the power to declare “prescribed bodies”. It reads;

“the Minister may, by order published in the Gazette, declare any public body, corporation, society, association, institution, organization or anybody of persons, whether incorporated or not, to be a prescribed body for the purposes of this Act and the documents of such body shall be public records”.

The Act is also clear on the selection, transfer and preservation of and access to public archives. Katundu (n.d) opines that public access to information or records is critical for individual citizens to assert their civil rights in holding the government accountable and help detect and deter corruption and fraud. Under PART IV of sections 10 to 13, NARS Act regulates the selection of and access to public archives. Furthermore, instructions are given on records inspections, records transfers, preservation and access to public archives. Some of the instructions extracted from sections 10 to 13 are as follows:

“The Director or any authorised officer may examine public records which have not been transferred to the National Archives and Records Services or place of deposit and select those which ought to be preserved...”

“Public records selected by the Director shall be transferred to the National Archives and Records Services or a place of deposit as the Director shall direct...”

“Subject to subsection (2), no person shall destroy or otherwise dispose of, or authorise the destruction or other disposal of, any public records of any kind which are in his possession or control except with the written consent of the Director given under this section, and the Director may consult with any person whom he considers qualified to advise him as to the worth of such public records for permanent preservation before authorizing the destruction thereof...”

“Subject to any written law prohibiting or limiting the disclosure of information obtained from members of the public and to the provisions of this section, public archives which have been in existence for a period of not less than 20 years may be made available for public inspection, and the Director or custodian of a place of deposit shall provide reasonable facilities at such times, and on the payment of such fees as may be prescribed, for the public to inspect or obtain copies or extracts from public archives in the National Archives and Records Services or place of deposit...”

Development of regulations and policies

Most archival legislations have a provision for the development of regulations to augment the Act. Similarly, Chapter 22 of the NARS Act mandates the development of regulations for the provision of the following matters or purposes:

- *Prescribing anything which in terms of this Act is to or may be prescribed;*
- *The admission of the public to the National Archives and Records Services and the inspection by the public of the public archives;*

- *The transfer of any public records to the National Archives and Records Services;*
- *Responsibilities of public officers for the custody of public records;*
- *The conditions under which documents in the National Archives and Records Services may be reproduced or published or extracts made therefrom;*
- *The fees to be paid for the use of facilities of the National Archives and Records Services and for any services provided by the Director; and*
- *The preservation, destruction and protection of public archives.*

The NARS Regulations were laid before Parliament in February 2012 and are currently fully enforced by BNARS. The archives should be responsible for setting mandatory standards and guidelines for the creation, maintenance, evaluation, custody, storage, preservation, and access to public records (Parer 2000:35). The NARS Act refers to archival processes such as arrangement and description, preservation, destruction of records as the archival practice demands but it does not outline responsibilities associated with these processes. Therefore, it is upon the archives to issue detailed instructions like guidelines and manuals. Parer (2000) has noted that archival legislation does not specify the descriptive standards to use or level of intellectual control required for the management of archives. He goes on to state that the arrangement and description of archives should be done according to accepted archival principles and methods, which are now embodied in the international standard ISAD (G). Keakopa (2013:38) has observed that the literature on records management in Botswana showed a growing concern on lack of policies and procedures which were essential in implementing records management strategies. However, Thanye, Kalusopa and

Bwalya (2015:58) argue that BNARS enacted a number of regulatory instruments such as Generic Records Management Policy, Appraisal Guidelines, Generic Classification Scheme, Records Transfer manuals, in order to ensure that there is uniformity in the management of records across the country.

Publication of archives

The National Archives and Records Services Act mandates the Botswana National Archives and Records Services to make accessible the nation's documentary heritage to the public. Section 5(i) and 5(L) requires the director to publicise National Archives holdings. Section 5 (i) stipulates that the Director *“may compile, make available and publish indices and guides to public archives in the National Archives”*; while Section 5(l) requires the Director to *“prepare publications concerning the activities of, and the facilities provided by, the National Archives or any place of deposit”*. This provision requires BNARS to publicise the archival holdings and any publications on records and archives they produce for wider access. BNARS markets itself through exhibitions, workshops, advertising, and tailor-made presentations as well as the use of social media in recognition of today's online world. These efforts might not be as effective as a study conducted by Mampe and Kalusopa (2012), which found that many records users and records management personnel surveyed at the Ministry of Health, Botswana were not aware of the records management procedures, policies and standards set by BNARS. This may have a negative impact on archival practice in the country and hence loss of the country's documentary heritage.

Validity, evidence and copyright

The other important part of the NARS Act is PART VI, sections 16 to 19, which talks about issues of validity, evidence and copyright. The sections provide for the legal validity of public records, their authentication as well as the protection of somebody's work from unauthorised reproduction, which demands accountability in the management of records. According to Sebina (2006:3), accountability depends on the availability of information as evidence relating to the account that is being made whereby in the event that an account is queried, authentic records can be accessed to clarify whatever is being questioned.

Legal deposit/ delivery of public records by government printer

The Government Printer is expected to deliver two copies of all documents printed save for those considered to be secret, confidential or restricted according to Section 21 of the NARS Act.

- The Government Printer has been making regular deliveries of any public documents they print.
- Deposits are also made on all published works where a research permit was granted in fulfilment of the Legal Deposit requirements.
- Organisations are also requested to deposit published works on Botswana e.g. parastatals, NGO's etc. It is difficult to track works done by permit holders as they may publish outside the country, change address, or may not even carry out or complete the research. Letters have been written to permit holders as a follow-up.

Section 21 of the NARS Act requires only the Government Printer to submit copies of publications with BNARS. There is a need for a clause to bind other agencies to deposit publications that may be deemed as having archival value in

the country as it is a requirement of the Legal Deposit Law. Section 14 subsection 4 of The National Archives South Africa of 1996 binds any person to deposit any published findings of research carried out in South Africa.

Weaknesses of the act

In assessing the National Archives Act of 1978 as amended in 2007, there were some areas that needed improvement to match up with the times and international standards. This paper looked at the current archival practice in the country as well as other archival legislations in Southern Africa. Notably the National Archives and Records Service of South Africa Act of 1996 as amended in 2001, National Archives Act of Zimbabwe of 1986 amended in 2002 and Records and Archives Management Act of Tanzania of 2002. An archival legislation is a crucial instrument in that the government may use it to ensure that its records and archives are appropriately managed and preserved over time for accountability and historical purposes (Parer 2000:1) but this may not be realised if the legislation is weak. The interpretation or definition of terms, functions of the National Archives and Records Services, Offences and penalties, Management of digital records and Declaration of places of Deposit are discussed as found lacking in the NARS Act.

Interpretation/definition of terms

Parer (2000: 23) indicates that the 1985 RAMP report advised that archival legislation should clearly define public records to dispel any ambiguity regarding the role archives had in relation to those records. Despite the fact that Bautier (1996) argues that any archival law starts with a definition of what exactly is meant by archives and more precisely what is meant by the record groups which law apply the interpretation of terms in the NARS Act has been found to be

limited. The NARS Act does not give the definition of “Archives” while that of a ‘record’ is given, but the two terms are different in a way because as famously known, “All records are archives but not all archives are records”. This is a serious oversight as it affects how the National Archives begin to address the practices and procedures associated with archives without its definition in the Act.

The 2007 amendment attempted to add some interpretations of "private archives" and "prescribed bodies" but it still left out some keywords without interpretations. In the current age of the virtual world, one expects digital records to be interpreted as well but this is not the case with the NARS Act. Electronic records are just included in the definition of records in Section 2. Other terms that could have included in interpretations are “advisory council” and “minister”.

The National Archives and Records Service of South Africa Act of 1996 as amended in 2001 has an adequate number of definitions including; electronic records systems and a Commission which is equivalent of an Advisory Council in Botswana. Ngoepe and Keakopa (2011:155) point out in their study assessing the state of national archival and records systems in the ESARBICA region, that most records managers in Botswana argued that the amendments still fall short in strengthening the Act’s role in the management of electronic record-keeping systems.

Functions of the National Archives and Records Services

The other area that needs improvement is Section 3 of the NARS Act which outlines the functions of the department. The functions of the department are too general and only two are outlined. It gives an assumption that there are only two

functions carried out in the department. National Archives of South Africa Act of 1996 has outlined the nine functions, making them more comprehensible. In contrast, the Records and Archives Management Act of Tanzania outlines four functions.

The management of private archives

There is also a minimal address on private archives. Other than the interpretation and duty of a director to acquire such, the Act lacks enforcement and direction on their acquisition. The donation of private archives is also a way that archival institutions add on their holdings. They are usually not treated the same way as public archives especially as they are characterised by copyrights and privacy issues (Bradsher 1989). This is unlike in South Africa where Section 14 of the National Archives of South Africa Act addresses private archives acquisition and management, and term private archives as non-public records. It is outlined as follows;

14. (1) “The National Archivist may on behalf of the State acquire by purchase or donation or on loan for a temporary period or in perpetuity, either unconditionally or subject to such conditions as may be agreed upon, non-public records which, in his or her opinion, have enduring value of national significance and which cannot be more appropriately preserved by another institution...”

Offences and penalties

The penalties that are imposed on offences concerning archival materials are generally low. Sections 14, 15, 19 & 23 of the NARS Act address these fines, and they range from P3500 to P7500 and/or a year or five years in prison. Archives are priceless documents because of their unique nature. Once an

archival document has been lost, it can never be replaced, therefore making them way valuable than money. The National Archives South Africa of 1996 imposes fines between R5000 and R10000. The fines are still very low as they cannot compensate for the loss of documentary heritage.

Management of digital records

Bautier (1996) asserts that it is advisable to make clear that the law applies to archival documents irrespective of their physical form, handwritten or typewritten. Basically, this implies the provision of incorporating even electronic records. The NARS Act acknowledges the existence of such but lacks the provision for the management of electronic records. This is unlike the National Archives of South Africa of 1996, which includes guidance on the management of electronic public records. This may suggest that the reluctance to go into detail on electronic records system is that the department does not have a comprehensive programme on how to manage electronic records, either at the creation stage, let alone at the archival stage. Marutha (2016:28) has also observed that in most African countries, the scope of records and archival laws covered the basic model of paper-based records archiving as well as the archive responsibilities, which has proved to be a challenge to many archival institutions when it comes to managing electronic records.

Declaration of places of deposit

There is also a lack of clarity on Section 6 which addresses declaration of places of Deposit. The Act stipulates that the director may declare an institution as a place of deposit when it has materials of archival value. However, it does not stipulate who will be responsible for managing those archives, whether the archivists or the institution's staff as well as who is responsible for preservation

issues. This has been a difficult task for BNARS to implement since the Act is silent on the responsibilities that have a negative impact on access to information in the country. This is in contrast to the Records and Archives Management Act of 2002 of Tanzania which stipulates that “The authority responsible for the public records in a place of deposit shall prepare appropriate guides, lists, indexes and other finding aids to those records and submit copies to the Director. As a result of this weakness in the NARS Act, since its inception, no place was ever declared as a place of deposit but there are several places that house or create documents of national and historical importance should be declared as such. For example, institutions like the Department of Broadcasting Services and the Department of Information Services document important events such as presidential activities and national events. Such events automatically qualify to be archived at the point of creation but currently, the information they hold is not accessible under the NARS Act. Another institution that could qualify for declaration as a place of deposit is the Geoscience Institute formerly known as the Department of Surveys and Mapping, which produces and have maps needed to be consulted by researchers. Mnjama (2010:142) argues that the law did not make it mandatory for creators of audio-visual records to deposit their works with the National Archives or the National Library. Therefore, the creators of audio-visual materials had no legal obligations or contractual arrangement with these national institutions to deposit their works with them resulting in major gaps in audio-visual holdings held by the Botswana National Archives and Records Services.

Centralisation of power and responsibilities of records management

The NARS Act gives the department the power to control records created in the public service. However, this has created problems because heads of

departments do not value or prioritise records management issues. The Records and Archives Management Act of Tanzania has given the heads of the department across public offices and parastatals records-keeping responsibilities and also clearly stipulates that the heads cooperate with the Head of Records and Archives Management Department. For example, Section 9 of the Act states; *“Heads of public Offices shall be responsible for creating and maintaining adequate documentation of the functions and activities of their respective public offices through the establishment of good records keeping practices...”*

The above section of the Records and Archives Management Act of Tanzania is not incorporated in the National Archives and Records Services Act of Botswana. The inclusion of the section would make heads of public offices commit more on records management issues. This section is imperative in establishing roles and relationships between the BNARS and other government departments. If it is included in the NARS Act government departments would understand that BNARS is responsible for records management policy formulation and they are responsible for implementation of the policies. Keorapetse and Keakopa (2012:31) have expounded this when they acknowledged that most registries in Botswana had low status in government structure and were managed by untrained personnel compounded by lack of proper policies, procedures and other guidelines. Moreover, BNARS had not been able to come up with a national records management policy from which government bodies can derive their own specific policies. Mei Yee Goh (2002) also concurs that records and archival legislations should have clear roles of records.

Access limitations

The National Archives and Records Services Act may limit access to archives as some records may not be accessible for public inspection before the 20-year period as stated in Section 12 and through secrecy mentioned in Section 12. According to Section 12 (3), “*The Minister may delegate to the Director his powers “to afford, restrict or withhold access to public archives”*”. On the other hand, Section 9 (1) states that “*Every person appointed under or employed in carrying out the provisions of this Act shall regard and deal with all public records which are secret or confidential or to which access may be restricted as secret.*” Although issues of privacy and access should be balanced with access to information, this restriction in the Act poses a challenge to the archivist because as much as they are mandated to make information accessible, they are also obliged to abide by these clauses which prohibit access. Mnjama (2008) posits that access to archives is a very important aspect in society as citizens are able to hold their governments accountable for its decision. Sebina (2006:199) also argues that the Botswana National Archives legislation facilitates access only to those records which have been declared archival denying citizens the opportunity to gain direct access to records which are more current and relevant to the governance process.

7. Conclusion and recommendations

This study has reviewed the Botswana National Archives and Records Services Act of 1978, as amended in 2007 and concluded that the Act is weak in many areas which may be an obstacle to the advancement of archives and records management in the country. Although attempts were made in 2007 to amend it, many critical areas that needed to be amended such as interpretation of terms,

functions and responsibilities, management of private archives, digital records, access to archives and penalties were left unchanged. The National Archives Act should be seen responding to challenges presented by a rapidly changing technological environment. The National Archives and Records Services Act needs to be amended to incorporate these issues even though Ngoepe and Saurombe (2016:26) posit that it is difficult to make changes to archives and records management practices and procedures in the light of changing external circumstances because such changes require time-consuming amendments to the primary legislation. This study recommends the following:

- *Interpretation/definition of terms* - To dispel ambiguities and ensure compliance, there is a need for clear definition of terms in the NARS Act such as what is meant by an ‘archive’ and ‘electronic records systems’. The National Archives and Records Service of South Africa Act of 1996 as amended in 2001 was considered to be more comprehensive in this regard.
- *Functions of the National Archives and Records Services* - The functions of BNARS should be expanded from the current two to be more explicit as stipulated in other archival legislations of countries in Africa such as South Africa as Tanzania.
- *Management of Private Archives* - There is a need for a section in the NARS Act that talks specifically on the acquisition and management of private archives as seen in the National Archives of South Africa Act. The current status has led to the Department struggling to acquire private archives resulting in gaps in the national archival holdings.

- *Offences and Penalties* - It is also recommended that penalties that are imposed on offences concerning archival materials be increased to reduce any threat to the national documentary heritage.
- *Management of Digital Records* - A provision on the management of digital records is of paramount importance in today's world where more and more digital records are produced daily. Currently, the department does not have any strategy to guide departments on how to manage digital records. Ngoepe and Saurombe (2016:27) argue that since technology has advanced and many organisations in the SADC region are increasingly saving and accessing records in the highly networked environment, it is imperative to update archival legislation to embrace records that are created and stored in networked environments.
- *Declaration of Places of Deposit* - Section 6 of the NARS Act which addresses declaration of places of Deposits lacks direction unlike the Records and Archives Management Act of Tanzania of 2002. The Act should stipulate the responsibilities of BNARS and of places declared as places of deposit to expand access to information in the country, which might otherwise be not available at the National Archives.
- *Power and Responsibilities of Records Management* - The powers given to the BNARS to control public sector records needs to be extended to heads of department in the public service. This has been observed in the Records and Archives Management Act of Tanzania

where heads of department across public offices and parastatals are also given records-keeping responsibilities,

- *Access to archives* - The 20-year period set by the NARS Act before public records may be accessed by the public limit access to information especially that the country has no access to information legislation. This study recommends a reduction to a reasonable time looking into all the circumstances regulating access to information. This is also supported by Mnjama (2007:25) who reported that ESARBICA members, which include Botswana, had made a resolution to promote the use of archives by removing access restrictions on archives.

References

- Anderson, K. 2013. Legislation – Archival Legal Frameworks for the Digital Future. Available at:
<https://www.archivists.org.au/documents/item/461> (Accessed 19 January 2019).
- Bautier, R.H. 1996. *A manual of tropical archivology*. Mouton & Company: The Hague.
- Botswana Government. 1978. *National Archives and Records Services Act. 1978*. Government Printer: Gaborone.
- Conture, C. & Lajeunese, M. 1994. *Impact of Archival legislation on National Archives Policies: A Comparative Study Archives. The Journal of the British Records Association* 11(91): 1-18.

- Desnoyers, M.F.1989. Personal Papers. In J.G. Bradsher (Ed.) *Managing Archives and Archival Institutions*. (78-91) Chicago, University of Chicago.
- Goh, E. Duranti, L. & Chu, S. 2012. Archival legislation for engendering trust in an increasingly networked digital environment. Paper presented at *a Climate of Change: International Council on Archives Congress*, Brisbane, 20-24 August 2012. Available at: <http://ica2012.ica.org/files/pdf/Full%20papers%20upload/ica12Final00287.pdf> (Accessed 19 January 2019).
- Hamooya, C., Mulauzi, F. & Njobvu, B. 2011. Archival legislation and the management of public sector Records in Zambia: a critical review. *Journal of the South African Society of Archivists* 44: 116-123.
- International Council on Archives. 2004. Principles for archives and records legislation. Available at: https://www.ica.org/sites/default/files/CLM_2004_archival-principle_paper_draft_EN.pdf (Accessed 25 January 2019).
- Mampe, G. & Kalusopa T. 2012. Records management and service delivery: the case of Department of Corporate Services in the Ministry of Health in Botswana. *Journal of the South African Society of Archivists* 45: 2-23.
- Kalusopa, T. 2011. Developing an e-records readiness framework for labour organisations. PhD Thesis, University of South Africa, Pretoria.
- Katundu, D.R.M. (n.d). Tanzania's 2002 Records and Archives Management Act: A Critical Review. *University of Dar es Salaam Library Journal* 4(1): 75-89.
- Keakopa, S.M. 2013. Implementation of a records management strategy at the Botswana Unified Revenue Service. *Journal of the South African Society of Archivists* 46: 37-46.

- Keorapetse, D. & Keakopa, S.M. 2012. Records Management as a means to fight corruption and enhancing accountability in Botswana. *ESARBICA Journal* 31: 24:35
- Ketelaar, E. 1985. *Records and archival management legislation and regulation: A Ramp Study with Guidelines*. UNESCO: Paris.
- Marutha, S.N. 2016. A framework to embed medical records management into the healthcare service delivery in Limpopo Province of South Africa. PhD Thesis, University of South Africa, Pretoria.
- Mei Yee Goh, E. 2002. Archival law from the trenches: the impact of archival legislation on records management in commonwealth countries. PhD Thesis, University of British Columbia, Vancouver.
- Mnjama, N. 2010. Preservation and management of audio-visual archives in Botswana. *African Journal of Library, Archives & Information Science* 30(2): 129-148.
- Mnjama N. 2008. Access to records and archives in Kenya. *African Research and Documentation* 106: 59-76.
- National Archives of South Africa. 1996. National Archives Act of South Africa. Available at:
<http://www.info.gov.za/gazette/acts/1996/a43-96.htm>
(Accessed 1 April 2017).
- Ngoepe, M. & Keakopa, S. 2011. An assessment of the state of national archival and records systems in the ESARBICA region - a South Africa-Botswana comparison. *Records Management Journal* 21(2): 145-160.
- Ngoepe, M. & Saurombe, M. 2016. Provisions for managing and preserving records created in networked environments in the archival legislative frameworks of selected member states of the Southern African Development Community. *Archives and Manuscripts* 44(1): 24-41.

- Okello-Obura, C. 2011. Records and archives legal and policy frameworks in Uganda. *Library Philosophy and Practice (e-journal)*. 608.
- Parer, D. 2000. *Archival Legislation for Commonwealth Countries*. Association of Commonwealth Archivists and Records Managers: Clifton Beach.
- Sebina, P.M. 2007, Information management in Africa to undergo a change? *World Library and Information Congress: 73rd IFLA General Conference and Council 19-23 August 2007, Durban, South Africa*. Available at: <http://www.ifla.org/iv/ifla73/index.htm> (Accessed 24 June 2017).
- Sebina, P.M. 2006. Freedom of information and records management: a learning curve for Botswana School of Library, Archive and Information Studies. PhD Thesis, University College London, London.
- Thanye, K.G., Kalusopa, T. & Bwalya K. J. 2015. Assessment of the appraisal practices of architectural records at the Gaborone City council in Botswana. *ESARBICA Journal* 34: 45:64.