# Risk factors in managing records at court registries in Lusaka

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**ABSTRACT**

# The aim of the research was to assess risk factors in managing court records at courts of law registries. Specific objectives of the study were to: verify administrative risks in court registries; evaluate records storage risks at courts of law; assess environmental risks in managing court records; ascertain security risks at court registries; evaluate technological risks in managing court records; and assess accountability and reputational risks in court registries. The study was a qualitative survey. Purposive sampling was used to select the forty three (43) registry staff who took part in the study. Primary data was collected using a self-administered questionnaire and through participant observations. Primary data from the questionnaire was analysed using the Statistical Package for Social Sciences software (SPSS, Version 16.0.2 – 2008). Research findings showed that inadequate funding of the judiciary might affect smooth operations of court registries. Secondly, findings showed that lack of record centres, records control procedures and processes were more likely to worsen the management of inactive court records. Thirdly, storage of court files in un designated storage is more likely to expose records to environmental risks and security risks. Findings also showed that the implementation of electronic records management in court registries is likely to be affected by technological risks. Findings on accountability and reputation of court registries showed that some registry staff, litigants, and lawyers were involved in bribery and corruption. Research results also indicated that public confidence in courts of law is more likely to be worsened by perceptions about bribery and corruption in court registries.

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**Key words:** access to justice, court registries, records management, risk factors, risk management

**INTRODUCTION**

Records management is often taken for granted or viewed simply as a matter of convenience in some organizations. What such organizations cannot see is that the implementation of records management programmes can protect them from significant risks such as litigation, compliance issues, disaster recovery, confidentiality breaches and security threats among others. A well executed records management programme can help mitigate these risks in as much of the same way that legal counsel or an insurance policy does by acting as a safeguard against unexpected future events.

This study explores some of the risk factors in records management at courts of law. It is worrisome that fifty years of political independence has not brought any significant change in the way courts managed their records. A pilot records management improvement project, supported by DANIDA in 2007, was meant to improve the storage of inactive records at the Subordinate, High Court, and Supreme Court. However, the project was unbelievably met with resistance from registry staff. Within a short time the files that were re-organised into searchable bundles for storage in the newly created records centre and other locations were found scattered over the place. This just shows the extent that some people were prepared to go in creating confusion for selfish motives bordering on criminality. A court relies on records it generates as well as those brought to court as evidence. A loss or misplacement of such records might not only affect court operations but also the course of justice and hinder citizens’ access to justice. The computerisation of some of the court processes means that instead of just managing paper records registries will be required to manage electronic records as well. The management of electronic records would further expose court registries to more challenges and risks in managing court records.

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**Background of the Study**

The development of the judiciary or the court system in Zambia as we know it today could be traced back to 1889 when the British South African Company (BSAC) was given the power to establish a police force and administer justice within Northern Rhodesia. In this initial arrangement, the BSAC was instructed by the Colonial Office to have regard for the native’s customs and laws of their tribe or nation in cases where African natives appeared before courts. An Order in Council of 1900 created the High Court of North-Eastern Rhodesia which took control of civil and criminal justice; it was not until 1906 that North-Western Rhodesia received the same. In 1911 the two were merged into the High Court of Northern Rhodesia.

The objectives of the judiciary today are: to provide a forum for the peaceful, fair and prompt resolution of civil claims and family disputes, criminal charges and charges of juvenile delinquency, disputes between citizens and their government, and challenges to government actions; supervise the administration of estates of decedents, consider adoption petitions, and preside over matters involving the dissolution of marriages; provide legal protection for children, mentally ill persons and others entitled by law to the special protection of the courts; and to regulate the admission of lawyers to the Bar (Judiciary of Zambia, 2010:2).

**Court Systems in Zambia**

The court system in Zambia comprises the Supreme Court, High Court, Industrial Relations Court, Subordinate Court, Small Claims Court and Local Courts.

The Supreme Court of Zambia, created by Article 91(2) of the constitution, is the final court of appeal for Zambia. The court has jurisdiction to hear and determine appeals in civil and criminal matters as provided in the Act and such other appellate or original jurisdiction as may be conferred upon it by, or under, the Constitution or any other law (Supreme Court Act, 2005).

The Constitution Act and the High Court Act of the Laws of Zambia provide for the existence of the High Court of Judicature in Zambia. The constitution gives the High Court, except for matters reserved for the Industrial Relations Court, unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law, and such jurisdiction and powers as may be conferred on it by its constitution or any other law. In addition, the High Court hears appeals from the Subordinate Courts (High Court Act, 2005).

 **Figure 1: Structure of the court systems in Zambia**

**Supreme Court**

**Industrial Relations Court**

**High Court**

**Small Claims Court**

**Subordinate Court**

(Magistrates court)

**Local Court**

Source: Ndulo (2002).

The Industrial Relations Court has jurisdiction over employment and industrial disputes. The members of the court are appointed by the president (Industrial Relations Court Act, 2005). The court has power, authority, and jurisdiction to examine and approve collective agreements; to inquire into and make awards and decisions in any matters relating to industrial relations that may be referred to it; to interpret the terms of awards and agreements; and to generally inquire into and adjudicate on any matters affecting the rights, obligations, and privileges of employees, employers, and representative organizations (Ndulo, 2002: 1814).

The Subordinate Courts Act, No. 28 of 1965 and Act No. 11 of 1990 of the Laws of Zambia provide for the establishment of courts subordinate to the High Court in each District. Subordinate courts are presided over by magistrates appointed by the Judicial Service Commission. The jurisdiction of the subordinate or magistrates’ court depends on its class rating and the type of magistrate sitting.

The small claims court was established in 1992 under the Small Claims Courts Act (Cap 47) of the Laws of Zambia. The court has no prescribed jurisdiction as such and would be situated in such areas as the Chief Justice may consider necessary, having regard to the needs of a particular area. A small claims court has jurisdiction in respect to causes of action including: (a) proceedings for the delivery of movable or immovable property whose value does not exceed the amount specified; (b) proceedings for debts that are due and payable; (c) proceedings for rentals that are due and payable in respect of any premises; (d) proceedings for possession against the occupier of any premises where the right of occupation per month does not exceed the sum that the Chief Justice may by statutory instrument specify; (e) proceedings relating to or arising from out of a cheque or an acknowledgement of debt signed by a debtor; and (f) counterclaims in respect of any proceedings mentioned under section 5(1) of the Small claims Courts Act (Kerrigan *et al*, 2010: 72).

The lowest level of the Zambian court systems are the Local Courts as established under the Local Courts Act of 1966. The Local Courts are categorized into classes (for example, class one, two, and three). Their jurisdiction is limited according to the grade that the court warrant assigns to them (Kerrigan *et al*, 2010: 69).

**Court Registries**

The Zambian judiciary provides for provision of court registries at the Supreme, High and Subordinate Courts. Section 28 of the Supreme Court Rules states that “(1) The registry shall be situated in Lusaka, (2) Proceedings in the Court shall be instituted in the Registry, and (3) All documents and proceedings filed subsequently to the institution of any proceedings in the Court shall be instituted in the registry”. Part VIII of the High Court Act provides for the establishment of district registries and appointment of District Registrars.

Functions performed by the court registries include registering new court cases, opening of new court case files, filing court records, movement of files, protection of records from hazards such as rain/water, dust, fire, humidity, rodents and theft, and safe transfer of court records from one court jurisdiction to another. Though the public has the freedom to access court records, in practice, active court records can only be accessed by those authorized by the court.

The Judiciary has two types of registries. These are the administrative registries and court registries. Administrative registries include the personnel registries (all personnel files of judiciary staff are managed and stored here), finance and accounts registries, and the planning registry. Court case registries are of two types namely civil and criminal registries. Civil registries deal exclusively with all civil matters while criminal registries deal with criminal matters before the courts of law. This paper looks at civil and criminal court registries.

Subordinate and High Court registries are distinctively divided into civil and criminal entities. For the sake of convenience the civil or principal registry at the High Court of Zambia is sub-divided into the civil and commercial registries. This means that all civil case related records are managed from the civil registry, criminal records from criminal registry, and commercial records from the commercial registry respectively. The Supreme Court does not have separate registries but one that combines both criminal and civil case matter records.

Officers responsible for the records management function at courts of law include the Chief Registry Officer, the Senior Registry Officer, Registry Officers, Assistant Registry Officers and Registry Clerks. Registry Clerks are subordinate to Assistant Registry Officers.

**Statement of the Problem**

Despite some improvements made in the management of court records in court registries in Lusaka, there are still some challenges that courts of law still face in as far as managing its records was concerned. Incidences about court files or records going missing, mutilated, stolen, hidden or being misfiled are still a common feature.

There are still complaints that court case records were still not produced on time when needed by the court justices. As a result adjournments are the order of the day, accused persons are still being incarcerated without trial because case records cannot be found, criminal cases are discontinued and dangerous criminals are set free because case files or records have been lost, and the innocent have been jailed and denied justice because evidence has been tempered with. Such incidences are in violation of Article 18 of the Constitution of Zambia which guarantees citizens’ equal access to justice (Kerrigan et al, 2010: 68). Therefore, the purpose of this paper was to assess risk factors in court registries that might hinder the public from accessing justice at courts of law.

# Research Objectives

The aim of the study was to assess risk factors in managing records in the court registries that might impact on the process of accessing justice at courts of law in Lusaka. Specific objectives of the study were to:

1. assess administrative risks in court registries;
2. evaluate records storage risks at courts of law;
3. verify environmental risks in managing court records;
4. ascertain security risks at court registries;
5. evaluate technological risks in managing court records; and
6. assess accountability and reputational risks in court registries;

**Significance of the Study**

Expected outcomes from the study include a contribution to the body of knowledge on the subject of risk in records management in general and risk in managing court records in particular. Secondly, it is hoped that the study will help in creating awareness on the importance of good records management practices in contributing to access to justice in our courts of law. Thirdly, it is also hoped that the study will alert registry staff, litigants, lawyers and the general public on reputation risks and their consequences on public confidence in the courts of law and court registries in particular.

**REVIEW OF LITERATURE**

Risk is defined as a probability or threat of damage, injury, liability, loss, or any other negative occurrence that is caused by external or internal vulnerabilities that may be avoided through pre-emptive action. Lemieux (2010: 201) identifies four categories of risks in records management and these are administrative, records control, legal/regulatory, and technological risks.

Two of the most well known theories or models in the field of records management are the records life cycle and the records continuum models. The records life cycle concept was founded and invented by the National Archives of the United States of America in the 1930s (Hare and McLeod, 1997: 5; Penn, Penix and Coulson, 1994:12) in response to the ever increasing volume of records produced by public institutions. The life-cycle concept of the record is an analogy from the life of a biological organism, which is born, lives and dies. In the same way a record is created, used for so long as it has continuing value and then disposed by complete destruction or transfer to an archival institution.

Recent developments in electronic records management systems have caused a paradigm shift in which a record did not necessarily need to follow the records management cycle. Cox (1997:242) asserts that electronic records management systems have dictated a change in the core concept and the need to replace the life cycle with the continuum. Upward (1996:43) notes that the records continuum is the whole extent of a record’s existence. He points out that while the life-cycle principle recognises the cyclic nature of paper records the ‘records continuum concept’ suggests that four actions (identification of records, intellectual control of records, provision of access to records, and their physical control) continue or recur throughout the life of a record and cut across the traditional boundary between records management and archival administration.

Stuart and Bromage (2010:221) stress that the concept of the original, authentic, and reliable record (including electronic records) should remain a fundamental principle for organisations regardless of where records are being created and managed. Similarly, Iacovino (1998:65) and MacNeil (2000:91) point out that records and archives are fundamental aspects of law and as such records evaluation should be considered not only for accessibility and business purposes but also for accountability, reliability, and evidential requirements.

Inadequate funding to courts of law has the potential of affecting the smooth operations of court registries. At a recently Commonwealth Magistrates and Judges Association Conference held in Livingstone, Zambia, Mr Justice Vertes pointed out that the problem of inadequate resources for courts was big in many countries and it affected the smooth operations in the judiciary (Hatyoka, 2014: 10). Kemoni and Ngulube (2008:303) attributed the bad state of records management in institutions to a general neglect of registries in most government institutions, a lack of support from senior officers, an absence of records management committees, lack of training opportunities for registry staff and inadequate staffing. In their studies Githaka (1996:7), Kemoni and Ngulube (2008: 303) mention the lack of interest to finance records management as a hindrance to implementation of records management programmes in some institutions.

Many institutions in Africa are said to have serious problems of storage in relation to costs, space, physical conditions or accessibility. It is also argued that these problems are worsened by increases in the volume of records produced, storing records in inappropriately places and preserving records for far too long (Twining and Quick (1994:20), Mnjama (2003:94). Mnjama (2003:94) attributes some of the poor state of records management keeping in Kenya to lack of adequate storage facilities.

Wamukoya (2007:19) points out that bad records management is compounded by a number of factors such as the lack of national policy on records management, lack of records management standards, lack of records management guides/manuals, and lack of trained staff in records management who should provide guidance or assistance to institutions. Musembi (2005:1) points out that poor records management at courts of law may result in compromising the administration of justice. Schrinel (1983:106) reasons that the success or failure of nearly every court function (such as case processing, statistical reporting, dispute resolution, personnel and financial management) will be evidenced by the proper or improper control of its records.

Thurston (2005:2) argues that dysfunctional records management undermines legal and judiciary reform. He adds that (court) decisions may be made without full information about cases, and the absence of systematic recordkeeping and controls leaves scope for corruption or collusion between court officials and lawyers, court time is wasted, delays are created, and the judiciary’s standing is lowered. Secondly, effective records management is essential because of the large volume of records passing through a typical court system, records sensitivity and time pressure on courts. Griffin and Roper (1999:70) propose that in order to improve case file tracking systems in institutions basic records tracking tools such as file location cards, file movement sheets, file transfer slips, and records census forms should be used.

Moloi and Mutula (2007:291) posit that the effectiveness of any records management system can be deduced from the systematic control of the creation, receipt, maintenance, use and disposition of records including the process for capturing and maintaining evidence of information about business activities and transactions in the form of records. They also point out that sound records management collectively enhances transparency, accountability and good governance. Twining and Quick (1994:7) reason that valuable legal records were being lost through deliberate destruction, random or arbitrary destruction by those responsible for them, or by operation of nature, fire, revolution, neglect or oversight.

Thomas, Schubert and Lee (1983:160) suggest that in order to prevent the loss of records in case of a disaster, institutions should identify those records which were considered vital in the access to justice process and such records should be digitised, produced in multiple copies and kept in secure facilities within the institution or entrusted to trusted off site facilities. Millar (1999: 36) argues that there is a very close relationship between governance issues and records management. Muthaura (2003:302) reasons that a properly functioning public service is a reflection of the integrity and accountability of its records management system. Abdulai (2009:3) argues that freedom of information laws provide a practical mechanism for achieving the good governance principles of transparency, accountability, and public participation.

Kemoni (1998:55) identifies issues relating to integrity and accountability in records management to include a breakdown of discipline, ineffective supervision, weak management structures, corruption/bribery and non delivery of services. Kemoni and Ngulube (2008:303) attributed the bad state of records management in institutions to a general neglect of registries in most government institutions, a lack of support from senior officers, an absence of records management committees, lack of training opportunities for registry staff and inadequate staffing.

Nsambu (2008:67) reveals that corruption in Uganda had not only invaded judicial seats but that it has also found fertile ground in the court registries in that without a tip a file may be lost and never make its way to a hearing. He also adds that bribery at courts of law in Uganda has not only made justice unaffordable but ruined the capacity of the justice system to fight corruption and to serve as a beacon of independence and accountability. According to Iruoma (2005: 37) in Nigeria corruption in the court registry is said to be a big impediment in not only accessing justice but also in the timeliness of court proceedings. He adds that court registry officials often times are unwilling to perform their duties except when bribed. For example, some officials in Nigerian courts are said to out rightly demand payments for things which should ordinarily be free of charge.

**RESEARCH DESIGN AND METHODOLOGY**

The study was a non experimental qualitative research. The target population in the study was registry staff. Purposive sampling method was used in selecting the study population. Primary data was collected using a self administered questionnaire and through participant observations. Data from the questionnaire was analysed electronically using Statistical Package for Social Sciences (SPSS) software version 16.0.2 – 2008.

The conceptual framework of the study assumes that there are risk factors that may affect the management of court records in court registries which in turn may impinge on the processes of accessing justice in the courts of law.

**Figure 2: Conceptual framework of the study**

**Risk**

**Factors**

**Access to**

**Justice in**

**Courts of Law**

**Court**

**Records Management**

**Limitations of the Study**

The study focused on a relatively new emerging phenomenon in Zambia, that is, how records management might affect access to justice at courts of law. Undoubtedly, this represents a challenging task for research regardless of the more specific interests that the study may have. In this study, the phenomenon of the contribution of records management towards access to justice at courts of law has been studied from a rather narrow localized perspective. The restriction of the study to the Subordinate, High and Supreme Courts of Lusaka naturally brought forth many limitations as far as the generalizations of study results were concerned.

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The study should also have included a questionnaire to solicit for responses from actual users of court registries services such as lawyers, judges, magistrates and litigants. A country wide study could, however, not be conducted because of the limited funds available to the researcher. However, some of the limitations and gaps observed in the study might be seen as possible avenues from which future research could be conducted under a similar theme.

**Ethical Considerations**

Permission to conduct research at the courts of law was obtained from the Deputy Director - Court Operations in the Judiciary. Before the questionnaire was distributed the overall purpose of the research was explained to the Deputy Director and later on to the research participants. Research participants were also informed that they were free to participate in the research or not. The research participants were also assured of confidentiality. For example, they were asked not to indicate their names or any personal particulars on the questionnaire. Research participants were also assured that the data collected from the questionnaire would be treated as collective responses from all the respondents. The researcher made sure that the research would not pose any physical or psychological danger to the respondents, for example, by avoiding emotional questions.

**FINDINGS AND ANALYSIS OF DATA**

**Demographic Attributes of Study Participants**

Twenty four 24 (55.8%) male and 19 (44.2%) female participants took part in the research survey. In terms of respondents’ ages, 2.3% (one) respondents were in the age range 19-23 years, 13(30.25%) were in the age range 24-28 years, 11(25.6%) were in the age range 29-33 years, 12 (27.9%) were in the age range 34-38 years 6 (14%) were in the age range 39-43.

Research findings on the level of education attainment showed that 21(48.85%) of the research participants were school leavers or had no professional qualifications in records management or related subjects, 16 (37.2%) had certificates in records management and six (14%) graduated with diplomas in records management or similar studies.

Research findings on work experience showed that 21(48.8%) research participants had work experience in the range of 0-5 years, 14(32.6%) were in the work experience range of 6-10 years, seven (16.3%) were in the range 11-15 years, and one (2.3%) person was in the range 21-25 years of work experience.

# Administrative Risk

Research findings showed that in 2013 the Judiciary headquarters had an increase in budget allocation of more than K134.9 Million compared to K88.7 Million in 2012 and K90.7 Million for the 2011 budget.

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**Table 1: Judiciary and courts of law annual budgets (2008, 2009 & 2010)**

|  |  |  |  |
| --- | --- | --- | --- |
| Court | 2011 | 2012 | 2013 |
| Headquarters  | K 86,764,488 | K60,233,206 | K100,131,973 |
| Supreme Court | K4,303,978 | K5,978,892 | K7,555,410 |
| High Court | K4,802,257 | K12,884,916 | K17,063,320 |
| Subordinate Court | K8,497,604 | K9,660,866 | K10,191,889 |
| Totals | K90,768,466 | K88,757,880 | K134,942,492 |

Source: Derived from the Appropriation Act of Zambia (2011, 2012 & 2013).

**Storage Risk**

When respondents were asked about whether there was enough storage space for active court records 20 (46.5%) of the respondents stated that there was enough space, 19 (44.2%) were of the view that there wasn’t enough storage space for active records while 4 (9.3%) were not sure. Results on storage space for active records are shown in Table 2 below.

**Table 2: Storage space for active files in the court registries**

|  |  |  |
| --- | --- | --- |
| Responses | Frequency | Percent |
| Yes | 20 | 46.5% |
| No | 19 | 44.2% |
| Not sure | 4 | 9.3% |
| Total | 43 | 100% |

The researcher’s observation on the newly installed cabinets in the registries was that of the size of court files could not fit well in cabinets meant to hold A4 files (see Figures 3 below) and that edges of the files got torn as a result.

The researcher observed a general lack of (or suitable) record centres at all the courts taking part in the study. The researcher was shown a room set aside for the records centre at the Subordinate Court complex. The ‘records centre’ lacked shelves and as a result records were scattered all over the floor due to lack of shelves. At the Supreme Court closed/inactive case files were stored in holding cells in the basement. The main door leading to the holding cells in the basement was never locked.

At the High Court and Supreme Court the researcher observed that some of the files were more than 30 years old. This means that the courts did not comply with the legal requirement of transferring closed or inactive files to the National Archives.

**Figure 3: Showing torn file covers in the new storage cabinets**

 **at the High Court**



**Environmental Risks**

The researcher observed a new records centre built for the Supreme Court and High Court. However, the records centre was not purpose-built to be used for the storage of records. It lacked ventilation, lighting, fire detecting equipment, fire-fighting equipment and records were likely to be exposed to high temperatures in the steel containers.

**Figure 4: Showing the newly constructed records centre at the Supreme/High Court**

# IMG0034A

The researcher observed that closed/semi-active records were poorly managed at the High Court and Subordinate Court as shown in Figure 5 below. Court files are piled up on floors in various store rooms and in holding cells at the Subordinate, High Court and Supreme Court. At the Supreme Court records were stored in holding cells located in the basement.

# Figure 5: Semi-active/closed case files piled up on the floor in one of

 **the store rooms at the Lusaka High Court.**



**Security Risks**

The researcher observed that the main door leading to the holding cells in the basement of the Supreme Court were usually not locked. This showed that the security of the location in which the records were kept was not safe and that unauthorised persons might have had access to the files.

**Records tracking**

# When asked whether it was easy to track active case files 69.8% of the respondents were of the opinion that it was sometimes difficult to track active case files, 23.2% were of the view that it was not difficult to track active case files and 7% were not sure. Results on records tracking are shown in Table 3 below.

**Table 3: Showing results on tracking active records**

|  |  |  |
| --- | --- | --- |
| Tracking of active case files | Frequency | Percent |
|  Yes | 30 | 69.8% |
|  No | 10 | 23.2% |
|  Not sure | 3 | 7.0% |
| Total | 43 | 100% |

# When asked whether it was difficult to track closed case files a very significant number of respondents (76.7%) were of the view that it was difficult to track semi-active/closed case files, 16.3% of the respondents reported finding no difficulties in tracking them while 7% were not sure. Findings on tracking semi-active records are shown in Table 4 below.

**Table 4: Showing results on the ease with tracking semi-active records**

|  |  |  |
| --- | --- | --- |
| Tracking of semi-active records | Frequency | Percent |
|  Yes | 7 | 16.3% |
|  No | 33 | 76.7% |
|  Not sure | 3 | 7.0% |

The researcher also observed that ‘in-coming registers’ were used as records retrieval tools for locating and retrieving court files from the cabinets. The researcher also observed that out-going registers in the court registries were also used as record tracking tools. The use of in-coming and out-going registers as tracking tools were not only cumbersome but were also ineffective and time consuming.

**Records retrieval**

When asked whether it was easy to retrieve active records from court registries results showed that 79.1% of the respondents were of the view that it was easy to retrieve active records from cabinets, 18.6% were of the view that it was a difficult task and 2.3% of the respondents were not sure. Results on retrieval of current/active records are shown in Table 5 below.

#  Table Fig 5: Showing results on retrieval of active/current records

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|  |  |  |
| --- | --- | --- |
| Variables & Responses | Frequency | Percent |
| Retrieval of active records |  |  |
|  Yes | 34 | 79.1% |
|  No | 8 | 18.6% |
|  Not sure | 1 | 2.3% |
| Total | 43 | 100% |

**Misfiling**

When asked whether court records were often misfiled, a significant 54% of the respondents were of the opinion that it was common to misfile court records, 39.5% were doubtful and 7% of the respondents were not sure. Findings on misfiling of court records are shown in Table 6 below.

**Table 6: Misfiling of court records**

|  |  |  |
| --- | --- | --- |
| Responses | Frequency | Percent |
|  Strongly agree | 5 | 12.0% |
|  Agree | 18 | 42.0% |
|  Not sure | 3 | 7.0% |
|  Disagree  | 13 | 30.0% |
|  Strongly disagree | 4 | 9.0% |
| Total | 43 | 100% |

**Misplacement or loss**

When asked whether court records were often misplaced or lost in court registries significant aggregate results (56%) of the respondents were in agreement that records were often misplaced, 33% were in total disagreement and 11% of the respondents were not sure whether records were often misplaced in court registries or not. Findings on misplacement or loss of court records are shown in Table 7 below.

**Table 7: Misplacement or loss of court records**

|  |  |  |
| --- | --- | --- |
| Responses | Frequency | Percent |
|  Strongly agree | 6 | 14.0% |
|  Agree | 18 | 42.0% |
|  Not sure | 5 | 11.0% |
|  Disagree | 12 | 28.0% |
|  Strongly disagree | 2 | 5.0% |
| Total | 43 | 100% |

**Theft**

When asked about the extent of court records being lost as a result of theft in court registries a significant 51.1% of the respondents were in agreement that court records often got lost through thefts, 41.9% disputed these assertions and 7% were not sure. Findings perceived theft of court records are shown in Table 8 below.

**Table 8: Theft of court records**

|  |  |  |
| --- | --- | --- |
| Responses | Frequency | Percent |
|  Strongly agree | 5 | 11.6% |
|  Agree | 17 | 39.5% |
|  Not sure | 3 | 7.0% |
|  Disagree  | 15 | 34.9% |
|  Strongly disagree | 3 | 7.0% |
| Total | 43 | 100% |

**Vandalism**

When asked about mutilations or vandalism of records in court registries 53.5% (strongly agreed and agreed) of the respondents reported that it was quite common to find court records that were mutilated or vandalized, 32.5% (disagreed and strongly disagreed) of the respondents were in disagreement with the claim that court records were often deliberately vandalized while 14% were not sure. Study results on vandalism of court records are shown in Table 9 below.

**Table 9: Vandalism of court records**

|  |  |  |
| --- | --- | --- |
| Responses  | Frequency | Percent |
|  Strongly agree | 6 | 14.0% |
|  Agree | 17 | 39.5% |
|  Not sure | 6 | 14.0% |
|  Disagree  | 13 | 30.2% |
|  Strongly disagree | 1 | 2.3% |
| Total | 43 | 100% |

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**Technological Risk**

When respondents were asked whether computerization of records management in court registries would improve the records management at court registries 62.8% of respondents were confident that computerisation of some court processes would improve records management in court registries, 5% disagreed, 28% were not sure and 5% did not state their opinion. Study results on the computerization of registries are shown in Table 10 below.

**Table 10: Computerization of records management in court registries**

|  |  |  |
| --- | --- | --- |
| Responses  | Frequency | Percent |
|  Yes | 27 | 62% |
|  No | 2 | 5% |
|  Not sure | 12 | 28% |
|  No response | 2 | 5% |
| Total | 43 | 100% |

At the time when the study was being conducted there was talk about a project to computerise some of the court processes. The project has since been implemented in the Supreme Court and High Court in Lusaka. However, court registries are yet to be computerized.

When asked about the level of computer literacy among registry clerks findings showed that on aggregate a very significant 62.8% of registry clerks were computer literate (with 16.3% at advanced level, 16.3% at intermediate level and 30.2% at beginners’ level) while 37.2% of the respondents indicated that they were not computer literate. Findings on computer literacy among registry staff are shown in Table 11 below.

**Table 11: Computer literacy among registry clerks**

|  |  |  |
| --- | --- | --- |
| Responses | Frequency | Percent |
|  Advanced | 7 | 16.3% |
|  Intermediate | 7 | 16.3% |
|  Beginner | 13 | 30.2% |
|  None | 16 | 37.2% |
| Total | 43 | 100% |

**Accountability and Reputation Risks**

When asked about the prevalence of bribery in court registries aggregate results showed that a significant number of respondents (55.8%) were in agreement that bribery transpired in court registries, 25.5% of the respondents were in disagreement, while 18.6% were not sure. Findings on perceptions about bribery in court registries are shown in Table 12 below.

**Table 12: Perceptions about bribery in court registries**

|  |  |  |
| --- | --- | --- |
| Variable & Responses | Frequency | Percent |
| Bribery in court registries |  |  |
|  Strongly agree | 12 | 27.9% |
|  Agree | 12 | 27.9% |
|  Not sure | 8 | 18.6% |
|  Disagree | 5 | 11.6% |
|  Strongly disagree | 6 | 14.0% |
| Total | 43 | 100% |

When asked whether some registry clerks were involved in bribery, results showed that on aggregate 65.1% of the respondents were of the opinion that registry clerks participated in acts of bribery, 2.3% were in disagreement while 32.6% were not sure. Findings on the extent of perceived bribery among registry staff are shown in Table 12 below.

# Table 12: Perceptions about the extent of bribery among registry clerks

|  |  |  |
| --- | --- | --- |
| Responses | Frequency | Percent |
| Clerks soliciting for bribes |  |  |
|  Yes | 23 | 54% |
|  No | 12 | 27% |
|  Not sure | 8 | 19% |
| Total  | 43 | 100% |

When respondents were asked whether some litigants conspired with registry clerks to engage in acts of bribery research results showed that 33.0% of respondents were of the view that it was true litigants often enticed registry clerks to engage in acts of bribery, 37% disagreed and 30.0% were not sure. Perceptions about litigants bribing registry staff are shown in Table 13 below.

**Table 13: Perceptions about litigants bribing registry clerks**

|  |  |  |
| --- | --- | --- |
| Litigants bribing registry clerks |  |  |
|  Yes | 14 | 32.6% |
|  No | 16 | 37.2% |
|  Not sure | 13 | 30.2% |
| Total  | 43 | 100% |

When asked whether some lawyers took part in bribery research results showed that 32.6% of the respondents were of the opinion that lawyers were involved in acts of bribery at court registries, 37.2% disagreed and 30.2% were not sure. Findings on perceptions about lawyers bribing registry staff are shown in Table 14 below.

**Table 14: Perceptions about lawyers bribing registry clerks**

|  |  |  |
| --- | --- | --- |
| Lawyers bribing registry clerks |  |  |
|  Yes | 14 | 32.6% |
|  No | 16 | 37.2% |
|  Not sure | 13 | 30.2% |
| Total | 43 | 100% |

When research respondents were asked about their opinion on the public’s confidence in the courts of law, a significant 53% were of the view that the public had confidence in the courts of law, 12% of the respondents were of the opinion that the public had no confidence in the courts of law and 35% were not sure. Results on perceptions about public confidence in the courts of law vis-a-vis court registries are shown in Table 15 below.

**Table15: Public confidence in the courts of law**

|  |  |  |
| --- | --- | --- |
| Variable and responses | Frequency | Percent |
| Public confidence in the courts of law |  |  |
| Yes | 23 | 53% |
| No | 5 | 12% |
| Not sure | 15 | 35% |
| Total | 43 | 100% |

**DISCUSSION OF FINDINGS**

The study identified a number of risk factors in court registries that might hinder the public from having access to justice at the courts of law. The risk factors identified include administrative risks, records storage risks, environmental risks, security risks, technological risks, and accountability risks.

**Administrative Risks**

Research findings showed that inadequate funding from the government was likely to create a ripple effect in the administration of courts of law. The minimal annual budget requirement for the Judiciary was estimated at K700 Million. On average the judiciary only received K53 Million as approved annual budgets from 2008 to 2010 (Mukwasa, 2011:1).

Research results on administrative risks suggest that the persistent inadequate funding problems experienced by the judiciary might have affected some of its services including court registry services. In order to offset the risks arising from inadequate government funding to the courts of law the then Chief Justice, Honourable Justice Sakala, proposed the introduction of a law that would make the Zambian Judiciary financially autonomous (Kalaluka, 2010:1).

**Storage Risks**

Research findings showed that court registries often stored active, semi-active and inactive records together due to inadequate storage space for active records and lack of record centres for semi-active/closed files. By keeping court files for more than 30 years in its premises is indicative of compliance risk. By law the judiciary is required to transfer its inactive records to the National Archives of Zambia.

The lack of records control in registries has to a greater extent contributed to records congestion seen in courts of law. Storing court files in un designated areas exposed court records to the risk of unauthorized access. At the time of carrying out the study findings showed that records retention and disposal schedules were none existent at courts of law. This meant that registry employees were more or less at ‘liberty’ to destroy records they deemed to be ‘un important’. There is a clear danger that court files might have been lost or destroyed in the process due to lack of records appraisal procedures. Study findings also signify a pressing need to increase storage space and equipment in court registries. As the volume of records grows the need for more space and storage equipment also grows. Inadequate storage space for active court files can undermine the overall efficiency of court registries and have negative consequences on the delivery of justice in the courts of law.

#

In a similar study Motsaathebe and Mnjama (2007:183) observed that the cabinets in the Botswana High Court registries were often crowded with active and semi-active records which often resulted in the retrieval of records and information from court registries slow and time consuming. Schrinel (1983:106) reasoned that the success or failure of nearly every court function (such as court case processing or administration) was evidenced by the proper or improper control of its records.

**Environmental Risks**

Findings on the lack of or inadequate record centres are indicative of failure to follow records management standards. Improper storage of semi-active files may expose court records to environmental risks such as dust, light, magnetic fields, mould, insects and vermin, excessive temperatures, fire, and floods among others.

**Security Risks**

Research findings showed significant exposure of court records to security risks. At the time when the study was being carried out most of the cabinets were not lockable. It was quite likely that courts records were deliberately removed from files, stolen, or vandalized in the process.

The loss of court records may not only expose courts to litigation risk but might also hinder the delivery of justice and expose the public to dangerous elements. For example, recently a named Lusaka lawyer, made a submission to the Legal and Justice Review Commission demanding for the acquittal and compensation of 40 convicts on death row. His argument was that the convicts could not appeal their cases because their court files had gone missing under the custody the courts (Zulu, 2014).

Study findings on theft showed that some registry staff were involved in the theft of court records for financial benefit. For example, documents relating to a bankruptcy matter concerning one named politician are said to have despaired from the High Court registry and other public institutions in unexplained circumstances. After the disappearance of bankruptcy records a the named lawyer is said to have threatened to sue anyone who would have wanted to pursue the matter. If sued it would not have been possible for the sued to have access to evidence to be used because they were removed or stolen from the court registry.

Study findings also showed that some registry staff were involved in deliberate acts of vandalising court records. In this case culprits are often rewarded by people facing court cases to either remove incriminating evidence from files or completely destroy the court files. In the absence of evidence courts have the option to either free the culprits or delay the court processes.

#

Wamukoya (2007:15) alluded to the research findings and mentioned that operational risks were a consequence of the loss of vital records, misplacement of records, wilful or accidental destruction, deterioration through careless handling or bad storage and all kinds of disasters. Similarly, Musembi (2005:1) argued that poor records management at courts of law had often resulted in compromised administration of justice in the courts of law.

# Research findings also showed a lack of disaster preparedness at courts of law. At the time of the study findings showed that the courts of law had no plans to protect court records in the event of a disaster (whether man made or natural) struck with the potential to damage or destroy records. Records can be protected in a number of ways which including counter disaster strategies for the prevention, preparedness and response to disasters and the recovery of operations following a disaster (Government of South Australia, 2007:9). Similarly, the Minnesota Historical Society (2011: 1) argues that basic precautions in disaster preparedness programmes might help in preventing unnecessary loss of valuable records in the instance of a disaster.

**Technological Risks**

Research findings have shown that there were high expectations among registry staff on the computerization of some of the court processes in improving court records management. Similarly, the then Chief Justice (Justice Ernest Sakala) pointed out that the objective of computerising some of the court processes was to make the justice delivery system affordable, accessible, cost effective, transparent and accountable to the public (Judiciary, 2010:13).

However, computerisation of some of the court processes is likely to bring challenges in managing court records. One such a challenge is that of technical know-how. For instance, it is most likely that registry staff lacked knowledge in using electronic records/document management systems. In her study Mutiti (2001:58) raised similar concerns and identified the lack of adequate technical expertise as one of the major constraints hampering the development of electronic records management programmes in Eastern and Southern Africa. Secondly, the courts might be unable to sustain the computerised system due to, among other things, the rate at which equipment and software become obsolete (i.e., the cost of replacing hardware and software). Thirdly, there is a danger in that courts might find it difficult to migrate records from other media formats (such as print on paper, magnetic and optical media) to electronic media as a way of preserving the records. Fourthly, access to computerized records might be hindered by coded access such as passwords which would make it difficult to open or use electronic files. There is also a danger that electronic files might be damaged due to lack of protection against hackers and due to lack of antivirus software or failure to upgrade antivirus software.

Electricity power surges currently experienced in the country might also affect the creation, use and storage of electronic court records. Similarly, Lomas (2010:192) argued that as technology changed and new ways of working evolved there was a likelihood that new risks in managing records would arise. In a similar study Thurston (2007:196) noted that erratic power supply, the cost of equipment and software, maintenance costs and the lack of specialised electronic records units and unfavourable environmental conditions for storage of electronic records were bound to contribute to technological risks in the management of electronic records.

Wato (2005:52), Wamukoya (2007:19), Mnjama (2005: 457), Burns, Ferris and Liatsopoulos (2009:17) alluded to Thurston’s arguments and observed that electronic record readiness in the East and Southern Africa Regional Branch of the International Council on Archives (ESARBICA) was inadequate with regard to national policy, legislation, standardisation, authentification of electronic records, staff training in e-records management, physical infrastructure, suitable storage environment, and preservation of electronic records.

**Accountability Risks**

Study results show that there is a strong likelihood that acts of bribery take place in court registries among stakeholders such as registry staff, litigants and lawyers. These acts are seen as means used in circumventing the course of justice in the courts of law. Therefore, loss of confidence in the courts of law is more likely to be affected by perceived or actual acts of corruption in the judiciary.

The study findings on corrupt activities in the judiciary have been echoed by the Acting Chief Justice, Lombe Chibesakunda. The Chief Justice is on record as having said that corruption in the judiciary was real and not just a public perception (Lusaka Times, 2014). She also argued that corruption acts were not only morally wrong but undermined public confidence in the outcome of judicial matters. She also called for an urgent need to rid the cancer from the system if justice is to be offered to Zambians (Lusaka Times, 2014). Similar sentiments were raised by Justice Fredrick Chomba, the former Judiciary Complaints Authority chairperson and past Supreme Court of Zambia Judge, who observed that the continuous missing of court records had put the entire court system in disarray. He pointed out that some support staff (in registries) actually engaged in bribery and received some monetary gain in order to facilitate irregularities in the judiciary machinery (Open Society Initiative for Southern Africa, 2008:8). Recently the Attorney General, Musa Mwenye, mentioned that there was an increase in the number of criminal activities among lawyers in the country calling them ‘criminals in robes’ (Sichikwenkwe, 2014).

A number of other researchers have voiced similar sentiments and argued that judiciary bribery and corruption (in Africa) contributed to poor functioning of access to justice mechanisms in the courts of law (Savoia ,2006:43; Iruoma, 2005:37; Nsambu, 2008:1; and Motsaathebe and Mnjama, 2007:176). Kerrigan et al (2010:68) also alluded to research findings and noted that prolonged court cases, rampant reports of missing prosecution files (from court registries) and allegations of corruption have eroded the public’s confidence in the Judiciary in Zambia. They also added that as a result of the loss of confidence in the judiciary, the public have often opted to settle disputes outside courts in order to elude the tedious and labourious proceedings that go with accessing justice in the courts of law.

**CONCLUSION**

Research results have clearly shown that accessibility to justice at the courts of law may be affected by a number of risk factors. The risk factors include administrative risks, storage risks at courts of law; environmental risks, security risks, technological risks and accountability risks.

Study findings have shown that some aspects of records control have been affected by inadequate storage space, equipment, and procedures and processes in managing court records. Findings have also shown that there was a general lack of disaster preparedness at the court registries. There is a danger of damage to court records as a result of humidity, excessive rises in temperature, fire outbreaks, and floods as well everyday threats such as mould, rats, roaches, dust, dampness, theft and vandalism of court records. Findings also suggested that the security of closed/inactive court files might have been compromised.

The most significant findings to emerge from the research was the perception about bribery or corruption in courts of law and registries in particular said to be perpetrated by registry staff, litigants, and lawyers. Findings also showed that the courts of law standing in the country might have been compromised by negative public confidence in the judiciary.

**RECOMMENDATIONS**

In order to reduce risk factors in courts of law and registries the judiciary should:

1. develop policies and procedures that help mitigate identified risks;
2. implement and enforce the policies and procedures;
3. monitor risk and report results;
4. conduct regular risk assessments and analysis reviews; and
5. sensitise stakeholder on the effects of risks factors in the delivery of justice at the courts.

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