

# **Evidence-Based Governance in the Electronic Age**

## **Case Study**

### **Legal and Judicial Records and Information Systems in The Gambia**

*This case study has been prepared by the International Records Management Trust and does not reflect the views of the World Bank nor the Government of The Gambia.*



*A World Bank/International Records Management Trust  
Partnership Project*

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## CONTENTS

Introduction	1
Executive Summary	3
The Legal and Judicial System	5
Records and Information Reform Initiatives	7
Plans for the Computerisation of Judiciary Functions	11
Records and Information Management: Key Issues	12
Appendix A: List of People Consulted	17
Appendix B: Court Structure Showing Direction of Appeals	18
Appendix C: Description of Record-Keeping Systems in the Judiciary	19

## INTRODUCTION

- 1 *Evidence-Based Governance in the Electronic Age* is a three-year project delivered in partnership between the World Bank and the International Records Management Trust. It involves coordinating a global network of institutions and organisations to facilitate the modernisation of information and records systems.
- 2 Records, and the information they contain, are a valuable asset that must be managed and protected. Records provide the essential evidence that a particular action or transaction took place or that a particular decision was made. Records support all business functions and are critical to the assessment of policies and programmes, and to the analysis of individual and organisational performance. Without reliable records, government cannot administer justice and cannot manage the state's resources, its revenue or its civil service. It cannot deliver services such as education and health care. Without accurate and reliable records, and effective systems to manage them, governments cannot be held accountable for their decisions and actions, and the rights and obligations of citizens and corporate bodies cannot be upheld.
- 3 New technologies provide great potential to improve services and efficiency, but the evidence base upon which governments depend must continue to be protected and preserved. For initiatives such as e-government and e-commerce to be successful, governments must have access to information that possesses certain crucial characteristics: the information must be available, accurate, relevant, complete, authoritative, authentic and secure.
- 4 The aim of the *Evidence-Based Governance* project is to make records management a cornerstone of the global development agenda. The challenge is to rebuild and modernise information and records management systems in parallel with complementary measures to improve the broader environment for public sector management. The project represents a major opportunity to integrate records management into global strategies for good governance, economic development and poverty reduction.
- 5 During the first phase of the project, studies were carried out within the World Bank and in a range of countries to explore the requirements for managing personnel, financial and judicial records in a hybrid, electronic/paper environment. This report is one of thirteen case studies that illustrate the issues involved. The studies have been supplemented by findings derived by a global discussion forum involving senior officials and records and archives professionals. The knowledge gathered through these means is providing the basis for the development of assessment tools to measure the quality of records and information systems in relation to clearly defined functional requirements and benchmarks. The project will develop tools for use in the three areas of study: personnel, financial and judicial records systems. Ultimately, the information gathered will also help to define the requirements for global capacity building for managing electronic records.

- 6 The case studies have been chosen to represent differences in geographic regions, administrative structures and resource environments. The management of legal and judicial records has been examined in Argentina, Ecuador, The Gambia, Singapore and South Africa. These countries give a broad geographical spread and represent different degrees of development in financial reform and the use of electronic records.

## **Terms of Reference and Methodology**

- 7 This report covers a visit to The Gambia by Andrew Griffin from 11 to 18 December 2001. The purpose of the visit was to examine the improvements to records and information systems that are being undertaken in the judicial area. A secondary purpose was to test the prototype of an assessment tool for legal and judicial records and information systems. Findings from the case study are being used to develop the assessment tool. The assessment tool will be published separately from this report.
- 8 The report is based on observations made and interviews conducted during the visit, and also on a large body of reports produced by the International Records Management Trust for the Government of The Gambia and UK Government during the past five years. These reports provide a detailed account of the progress made in improving records and information systems in the Judiciary of The Gambia.
- 9 The case study represents a snapshot in time. The observations it contains were current as of December 2001. Since then, new developments and improvements have taken place on a regular basis and therefore the case study does not represent the situation at present. It is hoped that the findings in this report will highlight issues that will continue to arise in many other situations.
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## **Acknowledgements**

- 11 Grateful thanks are extended to His Lordship Mr Justice Lartey, Chief Justice of The Gambia, for allowing the visit to take place and for taking time to discuss issues. The Principal Registrar of the High Court, Alhaji Haruna Jaiteh, facilitated the visit and provided valuable advice and guidance throughout. His support and enthusiasm are greatly appreciated. The judges, court officials, legal practitioners and records staff who kindly made themselves available for interviews also provided much useful information. A full list of people consulted is at Appendix A.

## EXECUTIVE SUMMARY

- 12 The Gambia judicial system recognises customary, Sharia and common law. The subordinate courts consist of Cadi courts, district tribunals and magistrate's courts. The superior courts consist of the High Court, Gambia Court of Appeal, and Supreme Court. (paras 27 to 35 and Appendix B)
- 13 The judicial system's complex network of relationships with other agencies and stakeholders is an important factor in considering records and information requirements. (paras 36 to 37)
- 14 Until 1995, record-keeping systems throughout the Judiciary were poorly managed and could not be relied upon to meet the needs of the courts, government and civil society. Concerns were raised by the most senior court officials about the magnitude of records and information problems. (paras 38 to 44)
- 15 In 1996 the British High Commission in The Gambia provided limited support to improve registry and record-keeping procedures in the superior courts and to establish a records centre for semi-current records. However, a far greater effort was needed to extend and institutionalise improvements and to develop more specialised records management skills. The need to improve systems in the Department of State for Justice was also recognised. (paras 45 to 48)
- 16 With these objectives in mind, judicial records were included as one of five modules in a three-year records management project of the Government of The Gambia, commencing in 1998 and funded by the UK Department for International Development. Strong ownership of the project by the Chief Justice and Principal Registrar, High Court, was a contributing factor to success. Amongst the specific improvements delivered, the project also worked with stakeholders to clarify objectives for the computerisation of business and information functions within the High Court. Improvements delivered by the project included:
- restructuring of records systems in the High Court
  - developing a procedures manual
  - providing in-country and overseas training in records management
  - developing a model system for records management in magistrate's courts
  - upgrading a judicial records centre for semi-current records
  - building capacity towards computerising case records and information management
  - improving records systems in the Department of State for Justice. (paras 49 to 56 and Appendix C)

- 17 The Gambia's National Governance Programme includes legal and judicial reform as a component. The aspiration is to use information and communication technology to improve efficiency and services. Senior staff in the superior courts have been provided with computers and basic computer skills training. Computerisation of court reporting, court records and case management are objectives. (paras 57 to 60)
- 18 It is understood that funding is being sought to computerise court functions in line with these objectives, but it is recognised that the delivery of justice may be undermined unless the electronic systems capture records in an authentic form, preserve them securely over time and enable them to be accessed when required. (paras 61 to 62)
- 19 During the study visit a test was conducted of an early draft of an assessment tool for judicial records and information systems. In the light of comments made during the test, the assessment tool was redrafted. (para 63)
- 20 During interviews with stakeholders, views were expressed about the effectiveness of the systems. All agreed that records management had greatly improved. For example, files were rarely lost, missing documents were more likely to be the result of human error than ineffective systems and there were stricter controls over access. (paras 64 to 69)
- 21 High Court judges' handwritten notes continue to be the only record of court proceedings. Computerisation of court reporting is therefore a priority. The supply of information to officials and lawyers about individual cases is regarded as inadequate, underlying the need for a case flow management system. Lack of direction from senior management, leading to inconsistency in procedures, is another concern. (paras 70 to 72)
- 22 Despite improvements in the status of records work in recent years, lack of promotion opportunities and the absence of training opportunities are still regarded as a cause of high staff turnover. Court clerks receive no formal training. (paras 73 to 74)
- 23 All senior staff interviewed regard computerisation as essential to achieve greater efficiency. An information strategy is needed to guide decisions on the priorities for, and sequencing of, computerisation. The strategy, covering both paper and computerised record-keeping systems, will need to be based on the information needs of the courts and other stakeholders in the judicial system. An option being considered is to develop a case administration system first and then add modules to meet particular requirements (such as court reporting, electronic library and management information systems). (paras 75 to 77)
- 24 It is anticipated that with a logical and sequenced plan for computerising Judiciary functions, donor funds will be made available under the National Governance Programme. The Judiciary has already demonstrated its capability to upgrade paper systems and maintain the improvements made in the last few years. To ensure that computerised systems are sustained, the information strategy will need to be implemented over a number of years. A phased, rather than 'big-bang', approach will enable problems to be dealt with as they arise, and new procedures and systems to be developed and brought into use in stages. Pilot projects with low risk and added value

will help build confidence and capacity while minimising the scope for costly failure. (paras 78 to 81)

- 25 A strong business case must also guide computerisation. The business case must consider whether there will be an added value, such as an increased capacity to manage cases and deliver justice, or a reduction in service delivery costs. Planners and judicial administrators must also take into account, for example, whether there will be greater equability through standardisation of judgements or through the ability to make quicker or more consistent judgements. The need to motivate and retain the staff who will manage the new systems should also be considered. (paras 82 to 85)
- 26 The management of electronic records is also a critical issue, both within the Judiciary and across the public sector as a whole. Not only is there a lack of capacity and resources to store, preserve and provide access to e-records over time but, in the absence of government-wide policies and standards, the risk is that computerisation programmes will not have built in records management functionality. The National Records Service (NRS) has a mandate to oversee all public sector records and provide leadership and guidance in the management of records in all formats. It has a crucial role to play in co-ordinating records management programmes and providing policies and standards, thereby helping to protect the Government's evidence base. There is a need to continue building capacity within the NRS, particularly in electronic records management. (para 86)

## **THE LEGAL AND JUDICIAL SYSTEM**

- 27 The Gambia is a small West African country of 1.2 million people. It achieved independence from Great Britain on 18 February 1965 and became a republic in 1970 following a national referendum. The Constitution provides for an independent Judiciary.
- 28 The judicial system in The Gambia recognises customary, Sharia and common or general law. Customary law covers, for example, traditional marriage, divorce and family matters, inheritance, land tenure and tribal and clan leadership. Sharia law, which has to some extent displaced customary law, is observed primarily in Muslim marriage, family and inheritance matters. Common law, following the English model, provides the residual law. Trials are public and defendants have the right to legal representation at their own cost. The courts system forms a hierarchy which is shown in diagrammatic form at Appendix B.
- 29 The subordinate courts consist of the Cadi (or Khadi) courts (proceedings of which are in Arabic), district tribunals and magistrate's courts. The Cadi courts have jurisdiction to apply the Shari'a in matters of marriage, divorce, child custody and inheritance where the parties or other interested parties are Muslims. A panel consisting of the Cadi and two other scholars of the Sharia preside at hearings at first instance. Appeals against decisions of Cadi courts are made to the High Court. The Cadi Court in the capital, Banjul, was constituted in 1905 and is one of only a handful of Muslim Courts established under British rule throughout the world. It is one of two such courts in The Gambia; the other is located in Kanifing some ten miles outside the capital.

- 30 Districts tribunals and magistrate's courts have jurisdiction to hear less serious criminal and civil proceedings. District tribunals are located in the five administrative centres of the country and deal with matters under traditional laws and custom. There are eight magistrate's courts, the largest being at Kanifing where several hundred civil and criminal cases are heard each month. Many cases heard by magistrates are non-contentious and are disposed of within a day.
- 31 The superior courts consist of the High Court, the Gambia Court of Appeal and the Supreme Court.
- 32 The High Court (known as the Supreme Court before 1997) is normally constituted by a single High Court judge. Three judges sit in treason trials. The High Court has original jurisdiction to hear and determine all civil and criminal proceedings and to interpret and enforce the fundamental rights and freedoms provided by the Constitution. It also has jurisdiction in appeals from subordinate courts, and it has supervising jurisdiction over all lower courts and adjudicating authorities.
- 33 There are proposals to create additional High Courts in some of the administrative centres of The Gambia. As at December 2001, many of the High Court judges in The Gambia, as well as the Chief Justice, are foreign nationals working on contract. However, the aim of the Government of The Gambia is that Gambians will take over these positions.
- 34 The Gambia Court of Appeal is presided over by the President of the Court of Appeal and is constituted by three judges. The court has jurisdiction over appeals from judgements, decrees and orders of the High Court, as well as over appeals from Courts Martial. The Court of Appeal, the High Court and the Banjul Cadi Court are located in the Law Courts complex in Banjul.
- 35 The Supreme Court, established under the new Constitution in 1997, is the highest court in The Gambia. The Supreme Court building in Banjul is adjacent to the Law Courts complex and was officially opened on 5 December 1999. The Supreme Court is constituted by an uneven number of not less than five judges and is presided over by the Chief Justice. The court acts as the final court of appeal and also has original jurisdiction including interpretation of the Constitution and determining whether laws have been made *ultra vires*.
- 36 A complex network of relationships exists between the judicial system and a range of agencies and stakeholders. These agencies and stakeholders include the Department of State (or Ministry) for Justice, the Police, the Prison Service, Parliament, the legal profession and civil society. Each agency has its own records and information needs, but the Judiciary's records and information management systems must also meet requirements for information proved to, received from, and coordinated and shared with these other stakeholders.
- 37 A few examples of the flows of information to and from the Judiciary are shown in Table 1.

**Table 1: Flows of Information to and from the Judiciary**

<b>From</b>	<b>To</b>	<b>Nature of Information</b>
Judiciary	Prisons	Committal warrants and decisions relating to those in custody
Prisons	Judiciary	The status of persons in custody in the prisons
Police	Attorney General/ Director Public Prosecutions (DPP)	Investigations and prosecution of cases
DPP	Judiciary	Prosecution and progress of cases
Justice	Judiciary	Elite law reports, statue law, publications
Judiciary	Attorney General	Statistics on crime, litigation, and prisoners
Public/Legal Reps	Judiciary	Applications, hearing, affidavits, etc
Judiciary	Public/Legal Reps/ DPP	Individual case progress, operational standards, and performance indicators

## **RECORDS AND INFORMATION REFORM INITIATIVES**

- 38 Prior to 1995, record-keeping systems throughout the Judiciary were inadequately managed and could not be relied upon to meet the information needs of the courts, government and civil society. Not only were records poorly protected physically, but there was also a general lack of security.
- 39 For example, there was open access to the registries where case records were kept. In the superior courts, inactive case files were piled in heaps in the central registry and ‘archive room’, and there was no systematic removal of inactive files from current records systems, nor was there any destruction of files and records of no further value. The manual registers (the control record for cases) were in poor physical condition and were often unreliable and incomplete. Files and individual documents were frequently missing, leading to delays and adjournments. Judges complained that there was insufficient information available to them about judgements and case precedents. There was no collection of statistics about court sittings to indicate workload, performance and trends.
- 40 In the magistrate’s courts, records were kept in extremely poor conditions, frequently in a state of disorder. Few registers were kept of civil cases. Consequently, much time was spent searching for case records and missing documents, often without

success. Individual case files were not opened; instead, papers relating to a case were stapled together with the result that papers were often lost or difficult to find, and there were many loose and unidentified papers lying about the courts.

- 41 In a typical court, routine criminal cases were kept together in monthly files but numbered inconsistently, and all cases finalised were filed together by month, causing difficulties in retrieval. There was no systematic destruction of unwanted records and, since they were poorly stored, many tended to deteriorate until they became unusable. There was no system of notification from the High Court to magistrate's courts of the result of appeals, with the consequence that appeal files within the magistrate's courts tended to remain indefinitely in current record-keeping systems. Court exhibits were stored haphazardly and without any security; frequently cases could not proceed because vital exhibits were missing.
- 42 At Kanifing Magistrate's Court, many case records were kept in the Principal Magistrate's office in overfilled cupboards, in broken filing cabinets and on open shelves. Little of this storage was lockable. There were no reliable means of finding case records and no separation of closed or redundant files. Many exhibits were also stored in insecure conditions in offices. In the exhibits room itself, old or unclaimed items were left to build up in a huge disorderly backlog. The loss of evidence and records through theft was known to occur.
- 43 In 1994-95, concerns were raised by the most senior court officials in The Gambia about the magnitude of the records management problems. There was a realisation that reform of the legal system could not succeed unless these problems were addressed. Funding was therefore sought from donors to institute an improvement programme.
- 44 A preliminary survey in December 1995 confirmed that registry systems in the Judiciary had largely broken down. The clerks responsible for receiving and filing documents were not carrying out their work systematically. There were no controls over file or record movements, with the result that records could not be located when required. These problems were most acute in the busiest courts, particularly in the magistrate's courts. Judges and magistrates had to make decisions in the absence of adequate information about earlier decisions or case precedent, and advocates were able to exploit these deficiencies to the advantage of their clients. The failure of records systems resulted in wasted court time and unnecessary delays, and a lowering of the Judiciary's standing in the eyes of the public.
- 45 In 1996, the British High Commission in The Gambia provided limited support so that the work of improving records management could begin. Some improvements in registering and indexing cases and handling files were introduced in the central registry and sub-registries of the superior courts. A judicial records centre was established on the ground floor of the Law Courts complex in Banjul to serve the High Court (formerly the Supreme Court) and the Court of Appeal.
- 46 These achievements were considerable given the limited scope of the project, but a far greater effort was required to extend and institutionalise improvements, to upgrade storage equipment and materials and to provide training to staff in managing and handling records. Improvements were also required at the lower levels of the

Judiciary to improve the flow of cases through the judicial system. Administrators recognised the need to improve records management in magistrate's courts as well.

- 47 At the same time, the government realised that, in order to enhance the delivery of justice and the protection of citizens' rights, improvements had to be made to information systems in the Department of State for Justice and Attorney General's Chambers (for example in the offices of the Director of Public Prosecutions, Director of Civil Litigation, Curator of Intestate Estates and Registrar General).
- 48 In general, the development of more specialised skills was required to raise the standards of records and information management within the legal and judicial sector. Computerisation of information systems was seen by many as a fast track to greater efficiency, but others were of the opinion that computer skills were lacking and that the capacity to make best use of electronic systems needed to be built gradually.
- 49 With these reform objectives in mind, judicial records were included as one of five modules in a three-year records management improvement project of the Government of The Gambia, funded by the UK Department for International Development. (The four other modules were financial, hospital, and personnel records and capacity building within the National Records Service, the government body with overall responsibility for public records). Work in the judicial area commenced in January 1998 with the following aims:
- to survey records and information throughout the judicial system and make recommendations for the most cost-effective and practical methods of control, storage and retrieval
  - to establish a model records management system at Kanifing Magistrate's Court
  - to strengthen and streamline existing control systems for managing paper-based records in the superior courts
  - to develop a procedures manual for managing judicial records
  - to train a judicial records officer to sustain and develop the improvements in records management throughout the judicial system, who would in turn train staff in records management operations
  - to build capacity for computerisation in the superior courts
  - to develop and implement effective records management for selected records and information systems within the Attorney General's Chambers and Department of State for Justice.
- 50 Between 1998 and 2001, records systems in the superior courts were restructured or improved. The new systems are documented in a procedures manual and desk instructions which provide guidance, set standards and support training. (Some of the systems introduced are described in more detail in Appendix C.)

- 51 The implementation of the new systems was given strong personal support by the Chief Justice, whose recognition of the importance of records management for justice delivery was a significant factor in the project's success. The Principal Registrar of the High Court also made a vital contribution by raising the importance of records management within the Judiciary and beginning the process of 'professionalising' the records function.
- 52 The Principal Registrar completed a four-month certificate course in records management at University College London during the first year of the project. This professional training proved to be an effective way of ensuring that skills could be cascaded to staff throughout the Judiciary, while at the same time ensuring that records and information requirements were represented and championed at a senior level. For the first time, the Judiciary established a central budget to cover ongoing costs, and a Records and Information Committee was created to oversee activities and provide direction.
- 53 The judicial records centre, located in the Law Courts complex and purpose-designed for the storage of semi- and non-current records, was upgraded and its procedures firmly embedded and institutionalised. During the course of the project, many inactive records were listed, boxed and transferred to the records centre, thereby reducing the storage requirement for current records, improving working conditions for registry staff, and greatly speeding retrieval of both current and non-current records.
- 54 A model records management system was established at Kanifing Magistrate's Court. (See Appendix C for more details.) The intention was to replicate the system in other magistrate's courts throughout the country. At the time of the case study, the plan was to introduce this system in two more magistrate's courts in early 2002. However, lack of funds for records storage equipment and stationery supplies in the magistrate's courts remains a problem.
- 55 As a first step towards building capacity for the computerisation of information management in the central courts, a stand-alone computer was provided for the central registry in the High Court. This computer was to be used for file registration and simple file tracking and for word processing and training. A case file database has been designed by a Gambian records manager from the National Records Services who received training in information technology skills as part of the project. A Judiciary Task Force has prepared costed proposals for the computerisation of case management and court reporting in the superior courts. (Plans for computerisation are dealt with in the next section of this report. See paragraphs 57 to 62.)
- 56 Key areas of the Department of State for Justice and Attorney General's Chambers (Curator of Intestate Estates, Registrar General's Office, Director of Public Prosecutions, Director of Civil Litigation) have also benefited from improvements to records control systems and storage facilities as part of this project. A major achievement has been to restore order to a huge accumulation of original records, some dating back to the nineteenth century, that provide the legal source of evidence of land and property titles, intestate estates, marriages, company registration and trademarks. Previously, many of these vital records had been irretrievable and all were in danger of complete deterioration as a result of poor storage conditions and

inadequate controls over access.

## **PLANS FOR THE COMPUTERISATION OF JUDICIARY FUNCTIONS**

57 A National Governance Programme is being implemented in The Gambia. The programme aims to:

- increase citizens' participation in a democratic system of government
- strengthen transparency and accountability in government administration
- enhance government's policy-making capacity
- strengthen the administration of the justice system
- decentralise public sector authority and responsibility
- reform public administration institutions.

58 Legal and judicial reform is a component of the programme, which seeks to create a reliable and predictable legal environment for development of the rule of law and adherence to human rights. Many aspects of the legal and judicial reform component have implications for records and information management. The aspiration is to use information and communication technologies to improve efficiency and services. Of particular relevance are the following objectives:

- to computerise court reporting
- to computerise all court records to ensure proper records management and easy retrieval of information
- to establish effective and appropriate case management systems.

59 Another objective is the conversion to electronic format of the existing laws of The Gambia and published law reports, so that they are more readily accessible. Other Judiciary functions such as accounting and financial management are also being considered for computerisation, though not necessarily as part of the National Governance Programme.

60 Senior staff in the superior courts have already been provided with computers and basic training in computer skills. Installing stand-alone computers on desks is regarded as the first step towards automation, though observation suggests that some judges and senior officials have yet to make much use of their computers. The vision is that all professional staff will be using computers to perform their work; this will include using electronic mail and accessing information via the Internet, as well as using Intranet systems to document, manage and provide information about cases, and to conduct court business.

61 Although computerisation of core court functions was not part of the Records

Management Improvement Project, the project provided technical expertise and support to help court staff to prepare and cost outline proposals. The proposals have been subject to extensive discussion and revision, and it is understood that funding is now being sought to go ahead with implementation. It is recognised within the Judiciary that though there are substantial benefits to be gained from computerisation, there is also a risk that the rule of law could be undermined if insufficient care is taken to ensure the capture, preservation and accessibility of authentic evidence in electronic systems. Furthermore, court information systems need to be linked to information systems in other agencies, notably the Director of Public Prosecutions, the police, and the prison service, while preserving the Judiciary's independence. These issues must be addressed if the new computerised systems are to succeed.

- 62 As a general comment, there needs to be technical expertise, either within the Judiciary's own staff complement or constantly available to it from elsewhere in government, to minimise dependency on external and commercial agencies and to reduce system maintenance costs. A recommendation is that once a network is established within the Judiciary, there should be a full-time network administrator to support the staff in the use of the new systems at their desks.

## **RECORDS AND INFORMATION MANAGEMENT: KEY ISSUES**

- 63 During the visit, an early draft of an assessment tool for judicial records and information systems was discussed and tested with a range of stakeholders, including court officials and judges, records staff, a lawyer and a state counsel. The tool was greatly improved in the light of comments received. The opportunity to test the tool also provided valuable feedback on the usefulness of particular questions and on possible areas of duplication. A revised version of the assessment tool was prepared following the visit.
- 64 During the interviews with stakeholders, views were expressed on the effectiveness of the Judiciary's record-keeping systems and attention was drawn to a number of areas. The following paragraphs summarise the comments made. (see paras 65 to 74.) This section is followed by a brief description of the key issues facing the Judiciary in relation to the management of information and records, and the scope for further improvement. (see paras 75 to 85.)

### **General Comments**

- 65 All stakeholders were open and forthright in their opinions. There was unanimous agreement that recent reforms in records management had greatly improved the efficiency of the judicial service. It was very rare for case files to be lost and even when they were misplaced they could usually be located in a reasonable time. Documents were sometimes missing from files during the conduct of a case, resulting in adjournments. However, the cause of missing documents was thought to be human error, such as the failure of a clerk in a judge's chambers to place on file a document that had been forwarded.

- 66 Although there was a tendency to blame the central registry for missing documents, the registry (by virtue of its record-keeping system) was in many cases able to prove that the document in question had been recorded and signed for by the clerk to whom it had been passed. One of the judges interviewed alluded to another filing problem when saying that he always insisted on marking his own exhibits produced in court and ensuring that the court clerk immediately filed the exhibit correctly. Stakeholders also noted that sometimes documents were not completed properly or were not filed in appropriate order.
- 67 A complaint about the records service, made by a stakeholder outside the Judiciary, concerned failed attempts to file documents because the filing fee could not be paid. Several respondents explained that the Cashier's Office ran out of receipt books and therefore could not receive the fee and stamp the document prior to filing. Paper shortages – which might make it impossible to issue cause lists, for example – were also a concern. The lack of material supplies, or the resources to purchase them, are of course a common problem in developing countries.
- 68 In response to questions about consistency in the format of standard documents, reference was made to a particular judge, a non-Gambian, who used his own non-standard format for judgements. In general, however, procedures and forms as specified in court rules are followed.
- 69 All agreed that the introduction of stricter controls over access to case records had been a significant improvement. Only the most senior court officials are now allowed full access. Even court clerks are served at the central registry counter in the High Court and are not allowed inside. Security has also been improved in the sub-registries in judges' chambers. If, for example, a lawyer requests a copy of a document, a court clerk will ensure that a copy is made rather allow the lawyer to take away the original file for copying.
- 70 High Court judges still write out their own notes, which continue to be the only method of recording proceedings. The judges interviewed still find it necessary to take responsibility for maintaining copies of their own judgements. Judgements are not disseminated and law reports are not published regularly or kept up to date. Judges commented that they particularly felt a need for up-to-date reports of the Court of Appeal and Supreme Court. A primary aim is to use technology to release judges from the burden of writing down proceedings. In fact, the Judiciary had among its staff a number of trained court reporters prior to 1994, but none is now in post. Most of the court reporters were transferred to the Commissions of Enquiry, set up in the mid-1990s.
- 71 An area requiring improvement was the provision of information to officials and lawyers about individual cases. There is a need for a case flow management system, since manual registers do not track cases. Currently, the status of a case can only be known either from memory or by reference to the case file itself which, if active, is kept in the sub-registry of the relevant judge's chamber. There is no way of knowing that a time limit for a particular case or action has been reached. An action (such as the service of a warrant or writ) may need to be taken within a specified time and there may be penalties if the action is not taken in time. Consequently, the absence of case tracking is regarded as a serious shortcoming, leading to unnecessary expense,

delays and adjournments. A lawyer interviewed commented that legal representatives frequently have to ensure that evidence of service has been filed on time.

- 72 Some stakeholders interviewed commented on a lack of communication and direction from senior management, leading to inconsistency or uncertainty in procedures. The need for a ruling on the sealing of documents was cited as one example. Statistics, when available, were also felt to be unreliable.
- 73 One cause of records and information management problems is perceived to be the high attrition rate among records staff. A scheme of service and career path for a government 'records cadre' was introduced in the mid-1990s that incorporates the registry staff of the Judiciary. This change has had some effect in raising the status and attractiveness of records work. Furthermore, salaries, though low by international standards, compare favourably with similarly graded staff in the public service of The Gambia. However, lack of promotion and training opportunities are still regarded as a cause of the high turn over of records staff.
- 74 A range of opinions were expressed about the role and responsibilities of court clerks, whose effectiveness is key to court operations. There is no formal training; clerks learn their duties on the job. Some are considered to be too close in their relationships with lawyers. Others are regarded as over-qualified for the job and tend to stay in post only as long as it takes them to further their career in the legal profession or find a better paid job. On the other hand, the Judiciary may benefit from having this supply of well-educated staff. Those who are funded for legal training are bonded and, on qualification, have to serve a time equivalent to their period of training.

## **Key Issues**

### *Computerisation*

- 75 Senior officials interviewed all agreed that it was essential that the Judiciary should computerise some of its functions in order to achieve greater efficiency in the administration of justice. The Principal Registrar of the High Court, who is also secretary of the Judicial Task Force investigating options for computerisation, expressed clear views about the need for a planned programme. Before large-scale computerisation commences, an information strategy needs to be developed, together with a fully costed programme for its implementation, which supports the objectives of the National Governance Programme.
- 76 The Judiciary has already set some clear objectives to strengthen information systems, for example by planning to introduce a court case administration system and computerising court reporting or providing information technology assisted court reporting. As noted earlier, a large number of computers have already been purchased, and judges and court staff have received training in computer skills. The ultimate aim is to ensure that accurate and reliable information is available when required to support the delivery of justice in The Gambia.

77 It is anticipated that with a logical and sequenced plan for computerising Judiciary functions, donor funds will be made available under the National Governance Programme to implement the information strategy. The Judiciary has already demonstrated its capability to upgrade paper systems and sustain the improvements made in the last few years. To ensure an information strategy with a strong computerisation element is sustainable, it will need to be implemented in phases over a number of years. A phased rather than 'big-bang' approach will enable problems to be dealt with as they arise. As well, new procedures and systems can be developed in stages as work progresses. Pilot projects with low risk and a high return in terms of added value will help to build confidence and capacity while minimising the scope for costly failure.

### *Information Strategy*

78 As already noted, an information strategy is needed to guide decisions on the priorities for and sequencing of computerisation. The strategy will cover both paper-based and computerised systems. It will need to be based on the information needs of the courts and other stakeholders in the judicial system (the Department of State for Justice, the Police, the Prison Service, Parliament, the legal profession and civil society).

79 The relationships between the different elements of the 'legal sector' are complex. The strategy must take account of these relationships by mapping the sources of information and the flows of information between stakeholders. Though each area has its own specific functions and special needs, there are requirements for coordination and information sharing. Both the inter-connections and the boundaries between the different areas must be clearly defined and respected. The strategy will also need to consider factors such as privacy issues and the most appropriate medium (paper, electronic, published) for broad categories of information. Finally, the maintenance of the Judiciary's independence must also be taken into account when considering the flow of information among stakeholders.

80 The core aim is to improve case flow management as the basis for the efficient administration of justice. A possible approach that has been under consideration is to develop a case administration system first as the central system. Additional modules can be added to meet the particular requirements of the Judiciary and, where appropriate, the other stakeholders, such as the Department of State for Justice.

81 Once the central system is in place, modules could be developed for a computerised court case reporting system, an electronic library of the laws of The Gambia and The Gambia's law reports, and a management information system. These modules would need to be designed and implemented in a sequenced plan. As the strategy is developed, other requirements will be identified.

82 The Judiciary's aspirations for computerisation highlight the key issues of sustainability and effectiveness. The business case must consider whether there will be an added value, such as an increased capacity to manage cases and delivery justice, or a reduction in service delivery costs. Planners and judicial administrators must also consider, for example, whether there will be greater equitability through

standardisation of judgements or through the ability to make quicker or more consistent judgements.

- 83 Proposed new systems will need to be considered not only in terms of whether they will work technically and operationally, but also whether staff will make best use of them. Planners will need to consider whether the Judiciary can afford the systems and whether there are the resources and staff capacity to maintain them. The experience of other countries and jurisdictions would be particularly useful here.

### *Staffing Issues*

- 84 The Judiciary will need to plan carefully for the change to the new systems so that the work of the courts continues during the transition period. More resources will be required during this stage of development. Many staff will be involved in designing and implementing the new systems and acquiring new skills to operate them. It will be necessary to run the new computerised systems and the old manual systems in parallel until the new systems are fully tested and proven to be reliable, which will also add to the work load.
- 85 The issue of staff retention will also need to be tackled. Well-trained staff with marketable skills may easily be attracted by better paid jobs in other organisations. The risk of losing staff underlines the need to offer further training opportunities and to encourage personal development within the Judiciary. To be successful in its aspirations for records and information management, the Judiciary must be able to attract and retain a skilled and motivated staff. The Principal Registrar of the High Court has already taken important initiatives to motivate and train his records staff and to instil in them a sense of service.

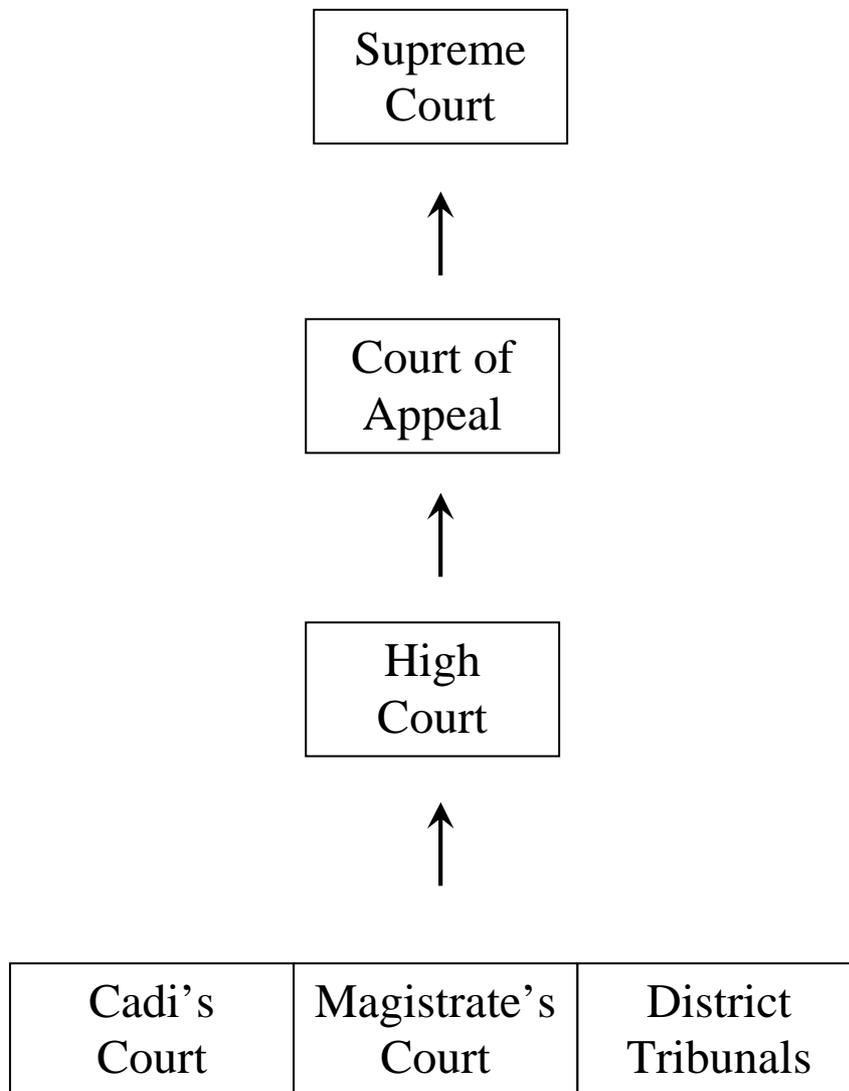
### *Electronic Records*

- 86 The management of electronic records is a critical issue, both within the Judiciary and across the public sector as a whole. Not only is there a lack of capacity and resources to store, preserve and provide access to e-records over time but, in the absence of government-wide policies and standards, the risk is that computerisation programmes will not have built in records management functionality. The National Records Service (NRS) has a mandate to oversee all public sector records and provide leadership and guidance in the management of records in all formats. It has a crucial role to play in co-ordinating records management programmes and providing policies and standards, thereby helping to protect the Government's evidence base. While the Records Management Improvement Project provided some support for professional and technical training of records management staff, there is a need to continue building capacity within the NRS, particularly in electronic records management.

**LIST OF PEOPLE CONSULTED**

His Lordship Mr Justice Lartey, Chief Justice of The Gambia  
Mr Justice Wallace Grant, High Court Judge  
Mr Justice Janneh, High Court Judge  
Mr Phillott, Judicial Secretary  
Mr Henry Carrol, Senior State Counsel, Attorney General's Chambers and Department of  
State for Justice  
Mr S Batchilly, Senior Magistrate  
Alhaji Haruna Jaiteh, Principal Registrar, High Court  
Mrs Anna Gye, Principal Registrar, Court of Appeal  
Mrs Joanna Sanneh, Registry Supervisor  
Mrs Amie Bensouda, Legal Practitioner  
Ms Penda E Bah, Acting Director, National Records Service  
Mr Kekuta Camara, Records Officer, National Records Service

**COURT STRUCTURE SHOWING DIRECTION OF APPEALS**



### DESCRIPTION OF RECORD-KEEPING SYSTEMS IN THE JUDICIARY

Record-keeping systems throughout the judicial system are currently manual, though there are plans to introduce a computerised case flow management system in the superior courts, as well as plans to automate the court reporting process.

#### Superior Courts

In the superior courts, a central registry opens files for each new case, and access to the files is strictly controlled. Parties to a case deposit new documents by presenting them to registry staff at a counter. Unauthorised staff (including legal representatives) are not allowed beyond the counter. A document is not received until the appropriate fee has been paid. Whilst cases are current, files are held in the sub-registries attached to each court (the judge's chambers). Files for active cases are stored in filing cabinets.

Currently, new cases are registered manually in bound registers (called Cause Books for civil suits). Separate registers are used for different types of cases. Each case is given a unique reference number that also serves as the file number. This is made up of a file prefix, such as CS for civil suits, followed by a unique number within the year series. Thus, the 33<sup>rd</sup> civil suit to be received in the year 2002 will have the file number CS 33/2002.

Only civil cases are indexed to facilitate file retrieval. It has been argued that there are insufficient criminal cases to justify indexing. Individual documents in a case are not indexed and no formal case tracking is undertaken in the manual system. To determine the status of a case, reference must be made to the case file itself, although staff also rely on the memories of court officials. All documents placed on file are tagged so that they are held securely, and then they are foliated (that is, numbered in sequence, beginning at number one for the first document).

The Principal Registrar sends new files to the Chief Justice, who signs the Writ of Summons and assigns the case to a judge. The file is then returned to the registry to record the judge's name, then the file is sent to the appropriate sub-registry serving that judge. New documents received in current cases are only registered by the central registry in civil cases, before being sent to the sub-registry.

When a case is finalised, the file is returned to central registry where details of the final action are entered in the register. The file is then held for a specified period before being transferred to the Judicial Records Centre. Closed files are stored in standard-size boxes. The disposition of files is controlled by schedules which determine how long different types of case and other judicial records are retained and whether they are ultimately destroyed or set aside for permanent preservation.

'Way Books' (movement registers) are used to record the movement files within the court system. They record the date the file is issued, file reference number and title of the file, and the name and location of the person to whom file is issued.

## **Magistrate's Courts**

The records management system in Kanifing Magistrate's Court was completely reformed in 1999 as part of the Government of The Gambia's Records Management Improvement Project. The intention was that Kanifing would serve as a model that could be replicated in all other magistrate's courts in the country.

During this project, a large backlog of records – most in poor order and many dating back twenty years or more – were organised and appraised. Semi- and non-current case files were sorted into case type and case number order; and loose papers, including many which were unidentifiable, were sorted into year order. Closed case records more than five years old were sorted, boxed and transferred to the Judicial Records Centre at the Law Courts Complex in Banjul.

Under the model system, new cases are entered in registers according to case type (civil/maintenance and criminal/traffic). Documents relating to a case were placed on a file, with documents secured to the file by means of a tag. Files are maintained in filing cabinets, with separate drawers allocated to case type, such as civil/maintenance, criminal/traffic, closed cases and cases adjourned *sine die*. Within the drawers files are stored in case number order.

Criminal and civil case files are transferred to a secure records store, either one month (for criminal cases) or three months (for civil cases) after the determination of the case. Files are placed on shelves in case number order. Periodically, the files are listed and boxed so that they remain in good order and are easily located. Records are kept of the removal of files from the store and their return. When the files are five years old, they are transferred to the Judicial Records Centre in the Law Courts Complex in Banjul.

Non-documentary exhibits are stored in a specially adapted, locked room, and each exhibit is labelled with the case number, exhibit number and shelf number where it is stored.

## **Cadi Courts**

All records of the Cadi's courts are kept in the Cadi's chambers. In the Banjul court, approximately one hundred cases are heard each year. The records, which are not voluminous, are mainly kept in filing cabinets. Records of the proceedings of the Cadi courts are taken in Arabic. Security and protection of records could be improved, particularly for official records such as those relating to marriages. Currently, there is no systematic disposal of older records. Apart from their legal and administrative value, the records of the Cadi courts may be of historical interest.

## **District Tribunals**

District Tribunals generate few records, most of their business being conducted verbally without a record being made. The National Records Service periodically makes inspection visits to the country's administrative centres and includes tribunal records in its monitoring exercises.