

# INFS 332

# Introduction to Archives Administration

## Session 3 – Archival Legislation

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# Session Overview

Laws are needed to regulate the activities of institutions so that they perform their functions as required by the law. Besides the laws passed by parliament to guide the establishment of national archival institutions or archives, board of directors or managements of companies can also give directives or make regulations to guide the establishment and functioning of archival units in their companies. Session three looks at what archival legislations are, why the need to have such legislations and the content of archival legislations.

# Session Objectives

After completing this Session, the student should be able to:

- Explain what is meant by archival legislation.
- Explain the importance of archival legislation.
- Identify the principles of archival legislation.
- Explain archival legislation in Ghana.

# Session Outline

The key topics to be covered in the session are as follows:

- Topic one : Definition and Development of Archival Legislation
- Topic two : Principles of Archival Legislation
- Topic three : The Archival Legislation framework.
- Topic four : Archival Legislation in Ghana

# Reading List

- *Millar, L. A., (2010) Archives: Principles and Practices. Indiana University: New Schuman Publishers.*
- *Roper, M. and Millar, L. (1999). Managing Archives. International Records Management Trust. IRMT: London.*  
[http://www.irmt.org/documents/educ\\_training/public\\_sector\\_rec/IRMT\\_manage\\_archives.pdf](http://www.irmt.org/documents/educ_training/public_sector_rec/IRMT_manage_archives.pdf)

Topic One



# DEFINITION AND DEVELOPMENT OF ARCHIVAL LEGISLATIONS

# Definition of Legislation

- A legislation is a law which has been promulgated or enacted by a legislature or parliament. It is also referred to as a statutory law.
- Before an item of a legislation becomes law, it is normally referred to as a bill. In Ghana, for example, a draft law or legislation is called a bill and this is presented to parliament by the executive or president .

# Development/Evolution of Archival Legislations

- Archival legislations or laws are as old as archives institutions themselves. Archival legislations are legislations passed to govern or guide the establishment and operation of archival institutions.
- The idea of a comprehensive and systematic legislation to guide the establishment and management of archival institutions is credited to France during the French Revolution of 1789.



# Development/Evolution of Archival Legislations Cont..

- In 1790, the first recognized law or legislation to set up an archival institution was passed, leading to the establishment of the Archive National des Paris (National Archives of Paris). This was more or less an archives for the National Assembly or Parliament.
- In 1794, a second decree was passed, this time giving more authority to the national archives and extending its coverage to all central government records in France, records of provinces, churches, hospitals, universities and noble families.

# Development/Evolution of Archival Legislations Cont..

The United Kingdom passed a law in 1838, the Public Records Office Act, to establish the Public Records Office. A new law was passed in 1958 to amend the old law. In the United States, even though some of the states had their own state archival institutions, the main National Archives was established through the passage of a law in 1934.

- Other countries established their archival institutions at different periods as listed below

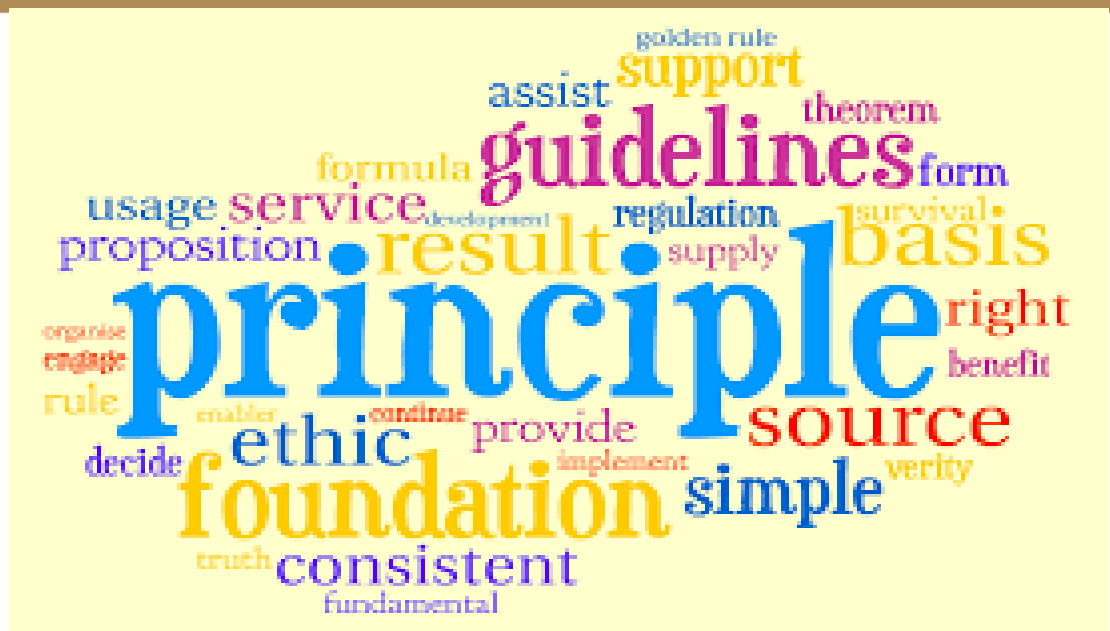
Canada	-	1872
Russia	-	1918
Germany	-	1919
Australia	-	1942
Israel	-	1949
Ghana	-	1955

# Purpose of Archival Legislations

- A records and archives legislation is an essential part of the wider legislative base for ensuring accountability and effective government.
- Archival legislations provide the essential framework that enable a national records and archives institution to operate with authority in its dealings with other agencies of the state.

The archivist, is expected to have the professional responsibility of being familiar with archival legislations and regulations concerning his institution.

Topic two



# PRINCIPLES OF ARCHIVAL LEGISLATION

# Principles of Archival Legislations

- The organizational structure of every public archival institution is closely related to the administrative system in the country and this is reflected in the archival legislation passed.
- In countries with centralized administrative system, the archival institution is often placed under one supreme authority.

# Principles of Archival Legislations

## Cont..

On the other hand, in non-centralized countries (that is where there is no supreme or single authority) with a federal system of administration, each level of archival authority is independent of the other. Examples of countries with federal system of government are the United States, Nigeria and Germany.

# Principles of Archival Legislations

## Cont..

- In non-centralized countries, there may be National and State archives with the national archives under the federal government with representatives in each state of the federation, but the states also may have their own archives.

Topic Three



# THE ARCHIVAL LEGISLATION FRAMEWORK



# Archival Framework

An archival legislation which specifies the framework under which an archival institution will operate should address the following issues. Within each issue are options that can be taken depending on the prevailing conditions in each country.

# Archival Framework Cont..

- **Objective Clause** - An archival legislation should include an objective clause indicating an Act or a law's major objectives and emphasizing that records management is the responsibility of all institutions and not just the archival institution.

The objective clause should state the intent of the legislation at the very beginning, as this will help to reinforce the role of archives in the country as a whole.

# Archival Framework Cont..

- **Placement of an archival institution** - It is of very vital importance that an archival institution is placed within the government hierarchy so that it can achieve its objectives. It is normally placed under the Education and Culture Ministry which often has a lot of responsibilities, thus limiting its effective administration of the archival institution.
- **Governance** - An archival legislation should clearly specify the form of governing or advisory body to be set up, if there is the need. The functions, duties, reporting requirements and powers of this body, including its governing powers should be stated.

# Archival Framework Cont..

- **Responsibilities** - the archival legislation must state the mission and major functions of the archival institution. It should state the reason why the institution has been set up. The role of the head and his/her designation should also be stated. In some countries the head of the Archival institution is referred to as **Keeper, Director or Director-General**.

# Archival Framework Cont..

**Powers of the Archivist** - An archival legislation must reflect the decisions made regarding the powers granted to the archivist or head of the institution. Generally, the roles and powers specified in most archival legislations include the following

- power to regulate and advise on record-keeping by public institutions
- power of deposit and impose penalties
- power to select, appraise and dispose of records
- power to accept private papers
- power to organize exhibitions, publish and lend records



# Archival Framework Cont..

- **Recovery and export of records** - Public records or archives are public property, part of the public domain and so national archival legislation should include the right of the archival institution to use replevin or at least a right to make copies of public archives which have gone astray.
- **Non-government records** - The law needs to authorize the archival institution to accept records given as gifts or to actively seek out such records. Individuals or organizations holding public records should be compelled by the law to inform the archival institution of the existence of such records.

# Archival Framework Cont..

- **Definitions** - The archival legislation should clearly define public records to prevent any ambiguity regarding the role the archival institution has in relation to those records. The definition should include the idea that records are created, received and maintained by an institution or individual in the transaction of its business.

# Archival Framework Cont..

- **Roles and Responsibilities in Respect of Public Records**

An archival legislation needs to outline the roles and responsibilities an archival institution has to public records. Normally, it is stated in the legislation that a public authority or institution is responsible for ensuring the safe custody and preservation of records in its possession.



# Archival Framework Cont..

- **Archives or Records Management or Both**

It is important that an archival legislation clearly specifies if the institution manages only archives or only records or both.

- **Ownership of Public Records**

Generally, ownership of public records is vested in the government of the country or it rests with the institution authorizing the legislation. Most often, archival legislations do not state this but it is assumed, however, some legislation specify ownership.



# Archival Framework Cont..

## Standard and Guidelines

Studies carried out in many countries especially in developing countries like Ghana, have shown poor records management. To overcome these deficiencies there is the need for the development and issue of records management standards and guidelines for government institutions. The archival institution should be responsible for setting mandatory standards and guidelines for the creation, maintenance, evaluation, custody, storage, preservation and access to public records



Topic Four



# ARCHIVAL LEGISLATION IN GHANA

# Archival Legislation in Ghana

## The Need for a New Records Legislation

- In 1997, the PRAAD Act, was passed to provide for the proper administration and management of public records, the preservation of national archives and for related purposes.
- The importance of this Act is to address the obvious deficiencies of the existing legislation on records management, and to emphasize the need for a new legislation that ensures a holistic approach to the management of records through their entire life cycle.

# Archival Legislation in Ghana

## Cont..

- **A Summary of the Act**

The Act is divided into four parts. Part I is made up of the first five sections of the Act. The first part gives the functions of the Public Records and Archives Administration Department (PRAAD) and the establishment of a Public Records Advisory Committee (PRAC).

The first law that was passed to establish and direct records and archives management was the Public Archives Ordinance, passed in 1955 by the colonial government. The current law, the PRAAD Act, Act 535 was passed by parliament in 1997.



# Summary

In this session you learned that

- Archival legislations are legislations passed to govern or guide the establishment and operation of archival institutions.
- An archival legislation which specifies the framework under which an archival institution will operate should address the following issues such as **objective clause, governance, power of the archivist, responsibility, standards and guidelines, recovery and export of records, placement of an archival institution etc.**

# Reading List

- *Millar, L. A., (2010) Archives: Principles and Practices. Indiana University: New Schuman Publishers.*
- *Roper, M. and Millar, L. (1999). Managing Archives. International Records Management Trust. IRMT: London.*  
[http://www.irmt.org/documents/educ\\_training/public\\_sector\\_rec/IRMT\\_manage\\_archives.pdf](http://www.irmt.org/documents/educ_training/public_sector_rec/IRMT_manage_archives.pdf)

