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RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES

Archives



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INTRODUCTION

Archives are vital to the successful operation and outcome of all transitional justice processes. They are crucial to the exercise of individual rights, such as the right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, about the victims' fate. Archives also play a key role in ensuring an undistorted written record, and the right of each people to know the truth about its past.¹

When a period characterized by widespread or systematic human rights violations comes to an end, those who suffered under the previous regime or during a conflict will particularly seek to fulfil their rights to the truth, justice and reparation, as well as demand institutional reforms to prevent the recurrence of violations. To meet these demands States use a variety of approaches: investigations and prosecutions, truth-seeking activities, reparation initiatives, and institutional reforms to reduce the possibility that repression or conflict will recur. Every one of these processes relies on archives.²

Most of the key records important for human rights purposes are governmental. However, important documents are also often in the possession of international intergovernmental bodies, private sector entities and individuals. Strengthening and building capacity in the national archives system—one that is able to handle both governmental and non-governmental materials—are therefore vital steps in a transition.

At the same time as the national archives system is being renewed, transitional justice institutions, whether judicial mechanisms or truth commissions, vetting panels or reparation programmes, are eager to gain access to a wide variety of records for their work. Furthermore, transitional justice initiatives themselves create records. When a transitional justice institution completes its work, it will have assembled a large—in some cases, extremely large—volume of records. These records are a concentrated, rich source of information for the history of the country and its people. They must be preserved and made available to future users.

This rule-of-law tool for post-conflict States aims to provide guidance to United Nations field missions, transitional administrations and civil society on the management, reform, use and preservation of archives to help guarantee and enforce human rights, particularly the right to the truth.³

¹ See "Updated Set of principles for the protection and promotion of human rights through action to combat impunity" (E/CN.4/2005/102/Add.1), principles 3–4.

² See "Report of the Office of the United Nations High Commissioner for Human Rights on the seminar on experiences of archives as a means to guarantee the right to the truth" (A/HRC/17/21).

³ Ibid.

The tool focuses on the means to strengthen archives through the identification of good practice for the management of different types of records and archives, highlighting considerations and issues for reform, and setting out steps and strategies. It will also address which records are the most pertinent to various transitional justice processes and identify key issues for the preservation of the records they produce.

This publication is divided into five chapters. The first sets out the legal framework for the right to know the truth, and describes archives and the management of records at the national level. Chapter II sets out the key issues to consider during the reform of national archives and highlights steps and strategies. Chapter III discusses the records used by transitional justice processes. Chapter IV sets out considerations for the management and preservation of records produced by transitional justice mechanisms. The final chapter looks at the role of the international community.

I. ARCHIVES AND THE RIGHT TO KNOW THE TRUTH

A. International legal framework

Archives are crucial to guarantee the right to the truth. The right to know the truth finds its roots in international law, particularly with regard to the right of families to know the fate of their relatives, together with the obligation of States to search for the missing persons.⁴

The Human Rights Committee has expressly recognized the right to the truth for families of victims of enforced disappearance in connection with the right not to be subjected to torture or ill-treatment, given the anguish and stress the relatives of the victims suffer.⁵ It took the same approach in relation to cases of secret execution.⁶

The right to know the truth is explicitly recognized in the International Convention for the Protection of All Persons from Enforced Disappearance. Particularly, its article 24 defines as “victim” not only the disappeared person, but also any individual who suffered harm as a direct consequence of an enforced disappearance. It further establishes that each “victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard”.

In 1997, Louis Joinet submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities a study setting out principles for the protection and promotion of human rights through action to combat impunity.⁷ The principles affirmed, *inter alia*, the right of individual victims or persons closely related to them to know the truth about what happened. They were updated in 2005⁸ and since their submission in 1997 have had an influential role in domestic efforts to combat impunity.

⁴ Additional Protocol I to the Geneva Conventions of 1949, art. 32. See also *ibid.*, art. 33, and Geneva Convention (IV) relative to the Protection of Civilian Persons in the Time of War, art. 16.

⁵ See, for instance, *Quinteros v. Uruguay*, communication No. 107/1981, Views adopted on 21 July 1983, para. 14.

⁶ *Staselovich v. Belarus*, communication No. 887/1999, Views adopted on 3 April 2003, para. 9.2.

⁷ E/CN.4/Sub.2/1997/20/Rev.1.

⁸ E/CN.4/2005/102/Add.1.

The Updated Set of principles reaffirms the right of individuals to know the truth about violations of human rights and humanitarian law, recognizes the important role played by archives in giving effect to this right, and underscores the duty of States to preserve archives to facilitate knowledge of these violations.⁹

According to principle 2, every people has the “inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes.” Principle 4 further details that, irrespective of any legal proceedings, the victims of human rights violations and their families have the “imprescriptible right to know the truth about the circumstances in which the violations took place, and in the event of death or disappearance, the victims’ fate.”

Seeking information from archives is instrumental for victims to realize their right to know the truth.¹⁰ Principle 5 explicitly requires States to “ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law.”¹¹ In this regard, principle 14 further establishes that the “right to know implies that archives must be preserved. Technical measures and penalties should be applied to prevent any removal, destruction, concealment or falsification of archives, especially for the purpose of ensuring the impunity of perpetrators of violations of human rights and/or humanitarian law.”

Principle 15 establishes that access to archives shall be facilitated, both to victims and, as necessary, to persons implicated who request it for their defence. In relation to archives containing names, principle 17 establishes that “all persons shall be entitled to know whether their name appears in State archives and, if it does, by virtue of their right of access, to challenge the validity of the information concerning them by exercising a right of reply.”¹²

Importantly, the Updated Set of principles affirms that access to the archives must be granted to transitional justice institutions mandated to establish the circumstances surrounding the violations of human rights and humanitarian law as well as the violations themselves. States

⁹ Ibid., principles 2–5.

¹⁰ The International Covenant on Civil and Political Rights establishes that everyone “shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information” (art. 19.2). See reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission on Human Rights resolutions 1997/26 and 1999/36 (E/CN.4/1998/40 and E/CN.4/2000/63); “Study on the right to the truth” (E/CN.4/2006/91), paras. 31 and 43. See also Inter-American Court of Human Rights, *Gomes Lund et al. v. Brazil*, Judgement of 24 November 2010, Series C, No. 219, para. 201.

¹¹ Principle 18 also provides that “measures should be taken to place each archive centre under the responsibility of a specifically designated office”. It is further recommended that, “when inventorying and assessing the reliability of stored archives, special attention should be given to archives relating to places of detention and other sites of serious violations of human rights and/or humanitarian law such as torture, in particular when the existence of such places was not officially recognized.” Third countries are “expected to cooperate with a view to communicating or restituting archives for the purpose of establishing the truth.”

¹² “For the purposes of this principle, archives containing names shall be understood to be those archives containing information that makes it possible, directly or indirectly, to identify the individuals to whom they relate.” Principle 17 further establishes that “the challenged document should include a cross reference to the document challenging its validity and both must be made available together whenever the former is requested.”

should give courts and non-judicial commissions of inquiry, as well as the investigators reporting to them, access to the relevant archives. Access may not be denied on grounds of national security unless in exceptional circumstances: (i) the restriction has been prescribed by law; (ii) the Government has demonstrated that the restriction is necessary in a democratic society to protect a legitimate national security interest; and (iii) the denial is subject to independent judicial review.¹³ The Updated Set of principles, however, also stresses that the application of this principle must be implemented in full respect of applicable privacy concerns, particularly as regards confidentiality concerns of victims and other witnesses.¹⁴ Similarly, while stating that access to archives should also be facilitated in the interests of historical research, this should be subject to “reasonable restrictions aimed at safeguarding the privacy and security of victims and other individuals.”¹⁵

Furthermore, the jurisprudence of regional human rights bodies provides important guidance on a range of human rights issues related to archives, including on access.¹⁶

B. What are archives?

“Archives” is a word that must be understood in context. In some countries and languages, the term “archives” is synonymous with “records.” For the purposes of this tool, “records” means items and documents, regardless of physical type, made or received by an institution or organization in the course of its operation or in the fulfilment of its legal obligations. “Archives” refers to the records of long-term or permanent value, as well as to the institution that manages them and the building that houses them.

¹³ See also the 2013 *Global Principles on National Security and the Right to Information* (Tshwane Principles), which set out guidelines on how to guarantee, to the extent possible, public access to government information while protecting legitimate national security concerns. They also address transitional justice processes and provide that a successor State “should immediately protect and preserve the integrity of, and release without delay, any records that contain such information that were concealed by a prior government” (see principle 10).

¹⁴ Principle 16. Principle 17 also establishes that “access to the files of commissions of inquiry must be balanced against the legitimate expectations of confidentiality of victims and other witnesses testifying on their behalf in accordance with principles 8 (f) and 10 (d).” The International Covenant on Civil and Political Rights, in its article 17, provides for the right of every person to be protected against “arbitrary or unlawful interference” with his or her privacy. State parties are therefore under an obligation not to interfere with this right, unless such interference is permitted by a law which is itself in accordance with the provisions, aims and objectives of the Covenant. State parties also have an obligation to provide a legislative framework prohibiting interference with the right to privacy by any natural or legal person. See Human Rights Committee, general comment No. 16 (1988) on the right to privacy.

¹⁵ Principle 15.

¹⁶ Note that the Inter-American Court of Human Rights has consistently found the refusal by States to grant relatives of victims access to State-held information to constitute a violation of the prohibition of torture and other cruel, inhuman or degrading treatment. See, e.g., *Bámaca Velásquez v. Guatemala*, Judgement of 25 November 2000, Series C, No. 70, para. 160; also *Claude Reyes and others v. Chile*, Judgement of 19 September 2006, Series C, No. 151. As regards information gathered by previous regimes and still held by the State, the European Court of Human Rights has focused in particular on violations of the European Convention arising from the withholding of documents by the State and the refusal to grant full access to them (see, for instance, *Association “21 December 1989” and others v. Romania*, application No. 33810/07, Judgement of 25 May 2011; also *Antonieta Tudor v. Romania*, application No. 23445/04, Judgement of 24 September 2013; *Turek v. Slovakia*, application No. 57986/00, Judgement of 14 February 2006). It has also addressed the impossibility for petitioners to challenge the information contained in such documents (see *Kamburov v. Bulgaria*, application No. 14336/05, Decision of 6 January 2011). See also Council of Europe, Committee of Ministers, Recommendation No. R (2000) 13 on a European policy on access to archives.

Records important to the promotion and protection of human rights are found in the custody of governments (national, provincial and local), international intergovernmental bodies, non-governmental organizations (NGOs) and private sector institutions. Individuals also possess documents that are useful for the protection of their own rights and those of others.

Each governmental and intergovernmental organization manages its own records, controls access to them and maintains its own archives.¹⁷ Similarly, NGOs and institutions in the private sector own their records, control access to them and decide what to do with their archives.¹⁸

Records relevant to the protection of human rights can be found in any physical format, from paper to audiovisual and electronic media. Until the 1990s, most records and personal documents were paper, photographs, audio and video recordings, films, maps and measured drawings. Now electronic records are increasingly predominant.

While some records are public, others may include sensitive information and are therefore confidential or closed.¹⁹ Depending on the level of confidentiality of the records, these may be made available to the public following the redaction²⁰ of the sensitive information, or they may remain confidential and be accessible only for limited purposes and by a limited number of individuals, such as prosecutors, defence counsel, the accused and judges in any specific trial.

C. From records to archives

All records have a life cycle. During the first stage they are created or received and actively used (current records), during the second stage they are used only occasionally (semi-current records) and, finally, when they are no longer needed by the creating office (non-current records), they are either saved in archives for historical purposes or destroyed. No organization can save every record it creates. A basic task of archivists is to determine the value of records and their disposition. Most records have value only until their administrative, fiscal or legal purpose is completed and can then be destroyed, but some have long-term value as evidence of what an organization did or because they contain unique information about persons, places, things or phenomena.²¹ These records are preserved as archives (permanently valuable records).

¹⁷ For example, the United Nations Archives and Records Management Section establishes the basic retention and reference service policies for the Organization, including the components of the Secretariat, the Security Council and subsidiary bodies.

¹⁸ Businesses need archival procedures, particularly if their work has a direct impact on human rights, such as businesses in the health or environmental sector. Religious, educational and medical institutions, and political parties, all control their records and determine the fate of their archives. NGOs either maintain their archives themselves or find a trusted custodian to whom to transfer the records they no longer need for their current work.

¹⁹ For example, witness statements containing material that may disclose the identity of protected witnesses, or victims of rape or sexual violence, or child victims or combatants.

²⁰ Redaction is the process of removing confidential information from a document prior to release.

²¹ For example, a contract for janitorial services can be destroyed, while the file on surveillance of a person (evidence of what the police did) and census records (information about the persons who lived in the area) are permanent.

1. Current records

Good management of records throughout their life cycle is part of good administration. It is the key to sound, trustworthy documentation of actions and transactions, and it should start when the records are created. Inaccurate social service rolls, for example, deny services to some and provide multiple benefits to others; incomplete land registries can lead to displacement and loss of property. In medical services, inaccurate information can jeopardize lives.

A growing number of international documents address the management of current records. The most important is the International Organization for Standardization's ISO 15489 on records management, published in 2001.²² It recommends that decisions on which records to save and which to destroy should be based on an assessment of the business and accountability needs for the records and the rights and interests of all stakeholders in the records. It specifies that records that document the rights and obligations of individuals and organizations and contribute to building historical and cultural memory should be retained.

2. Semi-current records

All semi-current records should be housed appropriately. This is the stage in their life cycle when they are most vulnerable to destruction by neglect, as they are not used daily by the creating entity and are not yet part of the official archives. Damaged semi-current records may be difficult or impossible to repair. It is important to ensure that semi-current electronic and audiovisual records are properly stored and preserved. This requires specialized equipment, trained staff and adequate funding.

Government agencies, in particular the army and the police, may manage their own semi-current records. In other cases, the national archives run a storage facility and all parts of the government send records to it. In the private sector the records-creating body usually manages its own semi-current records, whether or not it donates its permanent records to an archive.

3. Non-current records and permanently valuable records

Every country needs to preserve the documentary heritage of its government, of non-government institutions and individuals. When records are no longer needed by the creating entity but are determined to be of permanent value, they are preserved in the archives. A national archival system may be concentrated in a single institution or may encompass many different archives, governmental and non-governmental, each with separate responsibilities. Most national archival systems are composed of several institutions, ranging from the governmental institutions at all levels (national, provincial and local) to non-governmental and private institutions (businesses, labour unions, churches, etc.). Irrespective of the number of institutions, a national archival system should ideally have the following characteristics:

²² ISO 15489 applies to all records: government and non-government, commercial and non-commercial. All standards of the International Organization for Standardization (ISO) are available from either the country's ISO member (often a ministry of trade) or from ISO itself.

At the national level

1. Authority in one or more institutions to select, preserve and make available the records of the *government* at all levels.
2. Authority in one or more institutions to accept donations of *non-governmental records and personal papers* to ensure that the totality of the country's history is preserved, not just the history of the government and its officials.
3. A framework of laws covering government records, including an archives law, an access law or freedom of information act, and a privacy or data protection law. The archives law should affirm that it is the responsibility of the State to preserve government records.

At the level of the individual archival institution

1. Clear responsibility placed in each archival institution for appraising the parent institution's records for disposal or for transfer to the archives, for arranging and describing the records, and for providing access and reference services.
2. A strategy for preserving archives of all physical types and the necessary capacity and technical ability to do so.
3. Adequate resources to carry out the assigned functions, adequate staff numbers with an appropriate pay scale, and the responsibility for control of budgets and staff.
4. Physical facilities that are secure and sufficient to protect the types of records stored there, as well as appropriate equipment to preserve the records and make them available for research.
5. Professional training programmes for staff throughout their careers, adherence to a professional code of ethics,²³ participation in international professional developments and adoption of international standard practices for archival work.

²³ The International Council on Archives (ICA) Code of Ethics is translated into many languages and available from www.ica.org/?lid=5555&bid=225 (accessed 24 October 2014).

II. REFORMING ARCHIVAL INSTITUTIONS AND MANAGING ARCHIVES

A. Reforming archives during transition

A strong national archival system is essential to ensure that records important for the promotion and protection of human rights are preserved. The system must include institutions that preserve governmental records and institutions that preserve non-governmental records and personal papers. As the importance of archives becomes clear to the public in a post-conflict or post-repression period, the creation of new, specialized archives to hold a specific body of records is frequently called for, particularly if the national archives institution is viewed as incompetent, unreformed, weak or corrupt. While this may be a necessary temporary step, especially in countries that have experienced a complete collapse in infrastructure, the long-term solution should be to reform the national archives.²⁴

Maintaining all the government records in a national archives institution has three important benefits. It helps build consistency in applying restrictions and access rules to archival records, once these rules have been established or reformed. If, for example, truth commission records are in one institution and the national archives in another, coordinating access policies will be difficult, with the risk that the public will be able to have access to certain types of documents in one institution and not in the other. Furthermore, placing sensitive bodies of records in the national archives will enable the national archives staff to gain experience and confidence in their ability to handle difficult access problems. Finally, it is less expensive to manage a single national archives institution than to operate two. This is a serious consideration for most countries in transition.

²⁴ In some countries, the Government has decided to establish a temporary body to work with politically sensitive archives. These temporary solutions are usually the result of a political situation that does not permit the normal transfer of the records to the national archives. This is the model followed in Germany for the Ministry for State Security archives, which have been temporarily entrusted to a commission separate from the national archives, with a view, however, to eventually transferring them to the national archives. In Guatemala, a special unit within the Human Rights Ombudsman's office worked for nearly four years to arrange, describe and scan records found in the police archives, before these could be transferred to the Archivo General de Centro América. Such a model should be adopted only when no other solution is politically possible. For an overview of the placement and laws governing archives of State security services, see Open Society Justice Initiative, "Archives of State security service records", Briefing Paper, January 2013, available from www.opensocietyfoundations.org/sites/default/files/echr-janowicz-annex-20130116.pdf.

In some countries it may be important to establish new archives expressly for non-governmental records and personal papers. Preserving records of human rights organizations poses a particular challenge. If an organization is not comfortable with depositing its records in the national archives and if no alternative archives exist within the country, the organization is faced with the choice of either maintaining its own records at increasing cost to itself or sending the records out of the country. The former puts the records at risk of search and seizure if the political situation deteriorates, while the latter deprives the country of a key part of its documentary heritage.²⁵ Separate archives respecting the private property rights of the donors can preserve the records and provide access to them in accordance with donor instructions. In another variation, Colombia created human rights archives to hold copies of documents from “natural or legal persons”, including government departments, that relate to the armed conflict, while the national archives will continue to hold the original records from the government departments.²⁶

On occasion, it has been suggested that sensitive records should be taken out of the country for at least temporary preservation in a secure repository, because external institutions have the experience, resources and technical expertise to help with preservation, organization, database development, electronic scanning and electronic access. Except in extreme cases, however, this solution should be avoided because it does not help strengthen the capacity of archival institutions inside the country.²⁷

Finally, the participation of victim groups and civil society in reforming archives containing records of violations of international human rights and humanitarian law should be considered at all stages. Their participation is likely to inspire greater public support for the resulting policy and increase trust in the newly reformed archival institution. Furthermore, the participation of victims can help ensure that policies effectively respond to actual needs.

²⁵ For basic information on managing NGO records, see ICA, *The Records of NGOs, Memory ... to be Shared: A Practical Guide in 60 Questions* (2004). Available from www.ica.org/10105/toolkits-guides-manuals-and-guidelines/the-records-of-ngos-memory-to-be-shared.html.

²⁶ Ley de Víctimas y de Restitución de Tierra, No. 1448, June 2011, arts. 144–148.

²⁷ For example, the Truth and Reconciliation Commission of Liberia sent all its records to the Georgia Institute of Technology in the United States, which according to the Institute is the first time that a national truth commission has expatriated its records for preservation. Taking original records out of the country is a separate issue from depositing a secure copy of records in an external location. See chap. V, sect. C, below.

B. Challenges and issues to consider when reforming archives

By definition, all national archives operate in a political context. It is therefore important to understand how the national archival system worked during the period of repression or prior to the conflict in order to plan a capacity-building programme for archives in a State ruled by law. If the former regime was authoritarian, the archival institution may be relatively strong but politicized; if the country is emerging from a period of armed conflict, the archival institution is likely to be extremely weak.

Typically, a national law subordinates the national archives to the Head of State, to the ministry responsible for the police services or to another ministry, such as the culture or education ministry. Any of these options can work, but each brings different political pressures. National archives reporting to the Head of State may have high visibility within the Government and tight political control. National archives reporting to the interior ministry may be able to acquire records from other ministries because they assume that the interior ministry will never grant liberal access. However, this last option may also see the archives authorize more destruction of records than archives reporting to the Head of State or to “soft” ministries. National archives located in the ministry of culture or education may find it difficult to persuade military and security agencies to turn modern records over to them, because they are perceived as interested only in “history” or “culture” and as unable to protect national security information adequately.

The military and security agencies and the ministry of foreign affairs often maintain their own archives and control access to them, particularly if they perceive that other government archives are not adequately equipped to protect information of national security importance. Although they constitute part of the national archival system, these archives may have little or no working relationship with the national archives.

1. Protection of records

Governments may order records destroyed, before or after periods of transition.

In Tunisia in 2012, according to the national archivist, “much of the archives” of the ministry charged with targeting propaganda to foreign media was “largely destroyed shortly after the revolution” and the “files of certain municipalities and local police bureaus, as well as most regional branches of the RCD, Ben Ali’s ruling party, have also disappeared.”^a

The military records in the national archives of Iraq, for example, were destroyed by arson just prior to the United States entry into Baghdad in 2005.^b In 1989 Greece destroyed “16 million government files on the political activities of citizens” dating from the 1946–49 civil war to the end of the dictatorship in 1974.^c The destruction by the KGB of its records in late 1991 in the former Lithuanian Soviet Socialist Republic is well documented,^d as is the destruction of records in other countries of Central and Eastern Europe when the Soviet system fell apart.

Records may be stolen. For example, both paper documents and a laptop computer containing records of the truth commission in Panama were stolen.^e Government agents may seize or damage records. Other records of the Truth Commission in Panama were seized by State agents.^f Records may be taken by a fleeing Government, as was the case in Rwanda in 1994.^g And records may simply be abandoned, as in Libya at the end of Muammar Qaddafi’s rule.^h

^a Mischa Benoit-Lavelle, “Director of Tunisia’s National Archives: ‘We need action’ on transitional justice”, *Tunesialive*, 9 June 2012.

^b Carl Hartman, “Archives of Saddam rule were destroyed at Iraqi National Archives as Baghdad fell”, *Associated Press*, 8 June 2004.

^c “Symbolic healing of Greek civil war’s wounds”, *New York Times*, 30 August 1989. When Hungary threatened to destroy archives of its communist-era security services, the Society of Greek Archivists wrote an open letter to the Government explaining the damage caused in Greece by the loss of the security files and urging the Hungarian Government not to proceed with the plan. See <http://hungarianarchives.com/2011/03/04/society-of-greek-archivists-writes-to-hungarian-ambassador-in-athens/> (accessed 3 November 2014).

^d See, for example, Romuald J. Misiunas, “The archives of the Lithuanian KGB”, *Berichte des Bundesinstituts für ostwissenschaftliche und internationale Studien*, No. 3 (1994).

^e Trudy Huskamp Peterson, *Final Acts: A Guide to Preserving the Records of Truth Commissions* (Baltimore, Maryland, Johns Hopkins University Press, 2005), pp. 72–73. Available from www.wilsoncenter.org/sites/default/files/Petersonfinpdf.pdf.

^f *Ibid.*

^g Donatella Lorch, “Mugunga journal: A refugee camp hums with the spirit of home”, *New York Times*, 18 July 1995.

^h Peter Bouckaert, “The Gaddafi files”, *Foreign Policy*, 20 October 2011.

Many break-ins and seizures of private records and archives of non-governmental institutions and opposition movements have also been reported during periods of repression or conflict.

After the fall of the Salazar dictatorship in Portugal in 1974, for instance, the records of the political police were found to contain letters, photographs and other personal materials they had seized.^a In December 2008, security forces in St. Petersburg, Russian Federation, seized the archives of the Memorial Research and Information Centre, a private human rights organization, including hard drives and “20 years of archives on Soviet repression and gulags.”^b In November 2013 armed men broke into the office of Pro-Busqueda, an NGO that works in El Salvador to locate children missing from the 1980s civil war, set fire to the archives, destroying about 80 per cent of them, and stole computers.^c

^a Antonio Costa Pinto, “Settling accounts with the past in a troubled transition to democracy: The Portuguese case”, in *The Politics of Memory: Transitional Justice in Democratizing Societies*, Alexandra Barahona de Brito, Carmen Gonzalez-Enriquez and Paloma Aguilar, eds. (Oxford, Oxford University Press, 2001), p. 87. The Government has not returned these materials to their owners; they are with the records of the political police that were transferred to the national archives.

^b Human Rights Watch, “Russia: Police raid prominent rights group”, 4 December 2008. Available from www.hrw.org/en/news/2008/12/04/russia-police-raid-prominent-rights-group.

^c Marcos Aleman, “Armed men burn records of El Salvador war missing”, *Associated Press*, 14 November 2013. Available from <http://bigstory.ap.org/article/armed-men-burn-records-el-salvador-war-missing>.

The records of local organizations may be in even more jeopardy than those of organizations in the national capital. During repressive periods, some NGOs send their records, or copies of the most important items, out of the country for safekeeping.

2. Archives staff

Persons chosen to head the archives during periods of repression may be selected primarily for their political reliability rather than for their knowledge or interest in archives. Archives staff may not be aware of current international standards of practice and ethics. Furthermore, staff in the national archives during repressive periods often adopt defensive strategies, such as working with older records that are “safe” while letting more modern records wait. Some archives do not acknowledge the records they store, and the description of archives may be intentionally misleading to conceal information from users.²⁸

²⁸ It is important to recall that there have been instances of brave staff members hiding records that were in peril. See, for example, a 2013 interview with the Director of the Czech National Film Archives. Available from www.radio.cz/en/section/one-on-one/staff-ruses-helped-preserve-valuable-footage-during-communism-says-nfa-head-bregant.

Reforming national archives may therefore require a change in their **leadership**. Key personnel at the national archives should be vetted.²⁹ The Government should appoint a new leader for the archives based on professional qualifications.

The personnel of the archives will need **training**, an introduction to international standards and good practices, professional standards, and a discussion of professional ethics that emphasizes the archivist's dual role, providing a service both to the entity that created the records and to the public using them.

In addition, it is very helpful to have an association of archivists in the country, particularly if there is more than one archive. Some associations might have existed in repressive countries but were tools of the repressive State. Other associations may simply need to be reinvigorated. Helping archivists to share information and experiences is a way to build and empower a professional community that can speak as a group and articulate professional values to the public.

3. Archives law and access to archives

During periods of repression, laws on archives are often inadequate or ignored. Public access to government archives may be limited to certain kinds of records, such as older ones, or to part of the public, such as academics in favour of the regime or representatives of government agencies.

The **law** governing the national archives should be reviewed to determine whether it needs to be amended or rewritten. A standard law on archives should authorize the staff of the national archives to have access to the records of all parts of the government. If certain government bodies absolutely must be permitted to maintain their own archives, the national archives' rules of professional practice, including the access rules, should govern them and the national archives should have the authority to inspect and supervise their work. The law should give the national archives the authority to restrict access to records for reasons of privacy or other causes and to hold security-classified material. Electronic records must be declared records to be appraised and transferred to the national archives just as all other physical types of records are managed.³⁰ If new freedom of information or privacy laws are being considered, the access provisions of the archives law should be harmonized with them.

4. Funding and logistic support

Funding for the archives may be minimal during periods of regime change. Archives that were at one time operating at a reasonable standard may fall into near collapse. Countries in transition will most likely face a great challenge in securing the financial and technical support necessary to reform the national archives. Renovations or additional physical space for the archives, as well as equipment for their preservation, may be necessary. Funding will also be necessary to hire qualified staff or train new archival staff.

²⁹ See *Rule-of-law Tools for Post-conflict States: Vetting: An Operational Framework* (United Nations publication, Sales No. 06.XIV.9).

³⁰ The International Council on Archives has posted "Draft principles for archives and record legislation" on its website (www.ica.org).

By the spring of 2008 the national archives in Sierra Leone, for example, set in order with the help of a British archivist in the 1950s, had no assured source of electricity, no temperature or humidity controls, inadequate security, no audio or video equipment, no operating copying equipment, and had never had a computer. Yet important records, including the records of Sierra Leone's post-conflict demobilization, disarmament and reintegration programme, continued to arrive.

C. Steps, strategies and resource requirements

During periods of transition, the incoming authorities must take immediate steps to secure the archives of the institutions that formed the repressive apparatus of the previous government or regime. These steps should include taking custody of the archives, authorizing a specific body to control them, permitting professional description of their contents, adopting a clear policy on access and establishing an access regimen.

Identifying, protecting and making available archives relevant to human rights are a long-term, complex process. The six basic stages are: record appraisal, survey, accession, arrangement and description, preservation, and access review leading to reference service.

While the following discussion focuses on practical archival tasks, decision-making in the governmental or the non-governmental institution that created the records will need to take place before many archival issues can be addressed. This is often the most complex part of the process and where progress often founders. Outsiders can provide models and suggest good practices, but only the national actors can enact the law and make the rules.

1. Appraisal

During transitions, the incoming authorities should order a temporary halt to all destruction of government records, with criminal penalties for unauthorized destruction. This freeze on destruction must be brief, however, because without the authority to destroy routine housekeeping records, government offices quickly become clogged with paper and computer systems become overburdened.³¹

During the freeze, the Government should designate a trusted person, ideally the national archivist, to review any general destruction instructions that were given to *all* government agencies and determine which can be reinstated, which should be revised and which should be withdrawn. In the next phase, the trustee should review, reinstate or revise any instructions that were issued to *specific* agencies, such as courts or security agencies. Finally, records that have no existing disposition instruction need to be appraised for permanent retention or destruction after a stated period of time has elapsed.

³¹ Any institution has utterly routine records—e.g., requisitions for stationery, office equipment inventories and duplicate copies of general issuances—which can be destroyed without causing any prejudice to the establishment of the truth or the assertion of human rights.

2. Records survey

Surveys are useful to determine where records relevant to human rights are located. As records are found in many different institutions, a survey will most likely be most successful if limited in focus. For example, a survey might try to determine the location of all the records of a certain kind of government agency (e.g., all police records), or the records in one province or a specific type of record wherever located (land records or records of births, marriages and deaths). Another survey might try to locate the records of all human rights NGOs in the country.

Surveying what relevant records exist outside the country is a special challenge. Several categories of records held abroad may be of interest to the national archives as part of the national heritage and also useful to a human rights investigation:

1. Records sent or taken to another country (for example, the government records that the last Republican leader of Spain took with him into exile in 1939);^a
2. Records transferred to another country for safekeeping, in particular during periods of conflict or instability (for example, the civil war-era records of the Spanish Confederación Nacional del Trabajo, which were given to the International Institute of Social History in Amsterdam);
3. Records seized and removed to a third country (for example, Panamanian records seized by the United States in 1989 during Operation Just Cause);^b
4. Records abandoned in another country (for example, the Second World War records of Japan now in the Jilin Provincial Archives in China);^c and
5. Records created abroad by nationals of the country during a period of exile.

^a These records returned to Spain in 2013 but remain in private hands, with a copy deposited in the national archives of France and the Documentary Centre for Historical Memory in Salamanca, Spain. See Tereixa Constenla, "End to exile for a key political archive", *El País*, 26 December 2013. Available from http://elpais.com/elpais/2013/12/26/inenglish/1388070929_144060.html.

^b Douglas Cox, "The lost archives of Noriega: Emancipating Panamanian human rights documents in U.S. military custody", *Boston University International Law Journal*, vol. 32, No. 1 (Spring 2014).

^c "Japan's State role in wartime sex slaves documented", *Xinhua*, 9 January 2014, and "Japanese biological warfare crimes documented", *Xinhua*, 10 January 2014. Both available from www.xinhuanet.com/english/.

The first step is to identify and locate these records, whether governmental or non-governmental. Thereafter the national authorities can decide whether to seek the return of the records or to obtain copies.³²

³² For background information on the return of displaced archives, see Hervé Bastien, "Reference dossier on archival claims", *Janus Special Issue, Proceedings of the International Conferences of the Round Table on Archives, XXIX–XXXI, 1993–1995* (Paris) and Trudy Huskamp Peterson, "Macro archives, micro States", *Archivaria*, No. 50 (Fall 2000).

3. Acquisition and transfer

Government records that are relevant to human rights need to stay in its legal custody. If these records are not already in the custody of the national archives, they will need to acquire such records from the bodies or agencies that are holding them. Many national archives need leverage to secure such a transfer. Archival laws or regulations may need reforming to give the national archival institution the authority to compel the transfer or an executive order or court order to that effect may need to be issued. Even if the national archives cannot work with the records immediately, it is still better to transfer sensitive records to the custody of the national archives and establish physical security over them than to leave them in the creating agency or its successor.

The permanent records of non-governmental bodies can either remain with the creating entity or be transferred to another custodian for preservation. If the non-governmental body does not wish to maintain its archives, it may need help in identifying an archival institution to hold its records. Both parties will need assistance to develop an agreement that documents the transfer and controls the subsequent use of the records.³³

4. Arrangement and description

Description of the material held in an archival institution is essential if researchers are to have meaningful access to it. If records are in demand for transitional justice processes or human rights claims, the archivists will need at least some time to do minimal arrangement and description and essential preservation. Depending on the degree of damage or disarrangement, this may require a substantial effort.³⁴

If the archives essential to a transitional justice process are still in the hands of a creating agency that is unwilling to permit archivists to describe the records, the transitional justice institution, with the archives, could seek a court order naming a group of archivists as “special masters” of the court for the purpose of describing the existing records and reporting back to the court. This would, at a minimum, provide knowledge of what records exist.

The first control over transferred records is a master location register. This critical tool tells the archival institution what it has and where it is physically located. The register is usually an electronic database, but it can also be maintained on paper.

After initial physical control is established, archives should be described following international standards.³⁵

³³ Many sample legal agreements exist in the archival literature, see, for example, Gary M. Peterson and Trudy Huskamp Peterson, *Archives and Manuscripts: Law* (Chicago, Illinois, Society of American Archivists, 1985), pp. 28–34. Available from <http://files.archivists.org/pubs/free/Archives&Mss-Law.pdf>.

³⁴ Very large and disorganized bodies of records can take dozens of people several years to arrange and describe fully; this is the situation with the police archives of Guatemala.

³⁵ The International Council on Archives has posted the General International Standard Archival Description in several languages on its website: www.ica.org/10207/standards/isadg-general-international-standard-archival-description-second-edition.html (accessed 28 October 2014). The associated Access to Memory (ICA-AtoM) open-source software is also available through ICA.

The archival description identifies and explains both the records' content (what information is in the records) and context (who created them and what function were they fulfilling when they created them). Archivists keep the records of a creating entity together (protecting provenance) and, if possible, maintain the original order of the records. Provenance and original order help protect the evidence in the records. For example, if the police kept a card index on persons of interest and that card index refers to documents that were filed in numerical order, keeping the documents in that numerical order will allow the researcher to easily access the relevant document based on what is stated on the card.

Finally, the archival institution must make the descriptions public, whether electronically or on paper or both.

5. Preservation

Preservation requires a secure building with adequate space for all the records, appropriate environmental conditions for each physical type of material stored, containers to protect the records, and equipment to play, duplicate and conserve the records.

In archives with human rights materials, protecting the records from intruders is a serious concern. The records may need to be transferred to a more secure storage location, a set of fire and intrusion alarms may need to be installed or a new guard service may be needed.

Obtaining an appropriate archives building and maintaining environmental controls are a challenge in most countries. The International Organization for Standardization issued ISO standard 11799 on document storage requirements for archive and library materials in 2003. Archival institutions need to work towards buildings that meet these requirements.³⁶

In addition to the security and environmental concerns, the archives must conserve the physical records. Preservation costs depend on the physical types of records to be preserved and on their physical condition when they are transferred to the archives. Trying to read old computer disks, restoring motion picture film, copying still photographs or flattening maps have different levels of cost. Staff need to be trained in basic preservation techniques, and additional training will be required for persons handling special electronic and audiovisual formats.

6. Access and reference service

Clear legal authorization to read the records is another essential element for meaningful access. The legal authorization for access to government records is generally regulated in an archives law, access law or freedom of information act, and a privacy or data protection law. The legal authorization for access to records of private organizations or persons that have been

³⁶ For ICA advice on this subject, see Hans-Peter Jost, "Concevoir un bâtiment d'archives: Une méthode" (2003). Available from www.ica.org/11195/toolkits-guides-manuals-and-guidelines/conceive-an-archive-building-a-method.html.

transferred to an archival institution is stated in the instrument of transfer negotiated when the records were acquired. Legal authority for access to private records that are maintained by the creating entity, whether an organization or a person, rests with that entity. Archival institutions have the responsibility both to release records in accordance with laws and regulations and to withhold information covered by legal constraints.

In 2012 the International Council on Archives (ICA) adopted *Principles of access to archives*.³⁷ They reflect worldwide best practice in archives and apply to both governmental and non-governmental archives. Principle 6 specifically refers to the United Nations Updated Set of principles. The ICA Principles have now been supplemented with *Technical guidance on managing archives with restrictions*, providing practical advice and examples.³⁸

During the transition from a repressive regime or conflict situation to one adhering to the rule of law, the law or regulation governing access to government records may need to be amended to permit the archives to provide access to records for human rights investigations.

Most records relevant to human rights claims require screening by an archival or other authority before they are made available to an individual or institution. The reviewer must determine whether the requested records include information that, under existing laws and regulations, must be withheld from public access. Screening is a slow and detail-oriented task, often requiring hours of reading and decision-making, followed by more time to physically remove those items that cannot be made available and to control the removed materials. Archivists that have not handled human rights materials previously are usually unaware of the size of this task and most need training to establish a screening regimen.³⁹

The most common demands during a transitional period are for access to the records of the secret services of the military and the police.⁴⁰ These demands should be subject to reasonable expectations of privacy for persons named in the records, such as witnesses, family members of a person under surveillance and bystanders.⁴¹ If the new government determines that the names of these persons cannot be released to the person who is the subject of the file or to the public, the records must be reviewed and, if necessary, portions must be redacted before they can be used for research. This can delay disclosure, but it is essential in order to balance the need to grant access against the need to guarantee privacy.

³⁷ Available from www.ica.org/13619/toolkits-guides-manuals-and-guidelines/principles-of-access-to-archives.html (accessed 28 October 2014).

³⁸ Available from www.ica.org/15369/toolkits-guides-manuals-and-guidelines/technical-guidance-on-managing-archives-with-restrictions.html (accessed 28 October 2014).

³⁹ See "Technical guidance on managing archives with restrictions" for a detailed discussion of screening techniques.

⁴⁰ See Antonio Gonzalez Quintana, "Archives of the security services of former repressive regimes" (Paris, UNESCO, 1997), which is available from <http://unesdoc.unesco.org/images/0014/001400/140074e.pdf> and was revised in 2009. For police archives, see Trudy Huskamp Peterson, "Securing police archives: A guide for practitioners" (Berne, Swiss Peace Foundation, 2013).

⁴¹ Government personnel usually cannot put forward privacy concerns in order to have their names deleted from the official documents they created in the course of their work: for example, a policeman filing a report cannot delete his name, nor can a military officer take his name off an order. In some cases, security services argue that they can withhold the names of their agents from public disclosure to prevent danger to or harassment of these agents. This is often contested in freedom of information cases and the argument there is danger, not privacy.

In addition to redaction, two special questions arise: does the person named in the file have the authority to order the archives to make his or her file public and can that person make corrections or deletions to the record. The access system should permit the person to order the archives to make his or her file public, subject to the privacy and security concerns of others named in the file. Corrections to the case file or deletions, however, should not be allowed. According to the Updated Set of principles, the person named in the file must be permitted to submit to the archival institution any information he or she wants corrected, which the archival institution will maintain in a separate file, which will always be made available when the original file is used by researchers.

After review and redaction are completed, the archives need to make the releasable records available for use. This can range from providing the documents in a reading room, to making and mailing copies, or scanning and posting items on their website. Each has an associated cost. If sound recordings or videotapes are included in the materials to be made available, the archives will need viewing equipment for researchers or will need to digitally copy the materials and make them available electronically.

Researchers from a transitional justice institution may have greater access to records than the general public and need a workspace away from public view. Archives staff should always monitor researchers using original records. The number of separate research spaces that are required for this purpose will have an impact on the staff time that will be absorbed in research room duties. Furthermore, if the content of the records is likely to be emotionally disturbing to some researchers, it is helpful to train archives staff in techniques to use when dealing with persons in distress.

III. USING RECORDS IN TRANSITIONAL JUSTICE PROCESSES

The needs of transitional justice institutions for archives are likely to be at their peak at a time when archival institutions are being reformed and archival processes are under way. All transitional justice processes require documents. Some records may be useful for several transitional justice processes, but in most cases the records required for a vetting programme are different from those required for a reparations process and both are different from those required for prosecutions or truth-seeking.

This chapter sets out some suggestions to help researchers understand and locate records. It then discusses the types of records that are often used by some specific transitional justice processes and that should be the priority for the archival institution to obtain, arrange, describe and preserve. The chapter will focus on records used in investigations and prosecutions, truth-seeking, institutional reform and reparations processes.

A. Understanding institutions, locating records

The first step in using records for a transitional justice process is to understand how the State worked during the repression or prior to the conflict. Researchers will then need to understand three things about each institution whose records they plan to use: (i) its structure; (ii) the functions it performed; and (iii) the records it created as it carried out its functions. This applies regardless of whether that institution is a government department, an opposition group or a paramilitary body.

Understanding the functions and sphere of activity of the institution includes understanding its geographic jurisdiction, its relationships to other organizations and powers, as well as its history and the way it operated at various periods of its existence.

If the records are already in an archival institution, their archival description⁴² may provide the basic information about the structure and functions of the institution. If the archivists have made record surveys, those results will be very useful in understanding what material exists, whether or not it is in the archives.

⁴² This is also referred to as the “finding aids” to the records.

The next step entails understanding the records within the target institution. Both the public and the staff of a transitional justice institution are likely to be unfamiliar with the way records flow in an institution and may have difficulty analysing the records they obtain. Archivists have experience with both document flow and document analysis, and their knowledge can be very useful to researchers. File markings on a document have important meanings, and after working with the filing system for a while the archivist will understand their significance. Investigations may have to rely on brief papers prepared by the archivists on the system of documentation encountered in, for example, military archives, on how to “read” a document to extract the maximum amount of information from it, and on the basic principles the archivists have used when describing the records.

Understanding the way an institution reports to itself and to others can also be key to locating information. Archivists who work with researchers from transitional justice institutions should be especially on alert for series of records containing reports, either paper or electronic. A common characteristic of military and security organizations is repeated reporting. There may be weekly or monthly reports of actions, and in police and military records there may be periodic reports from prisons, prison hospitals and military hospitals which may include lists of names. Reports exist in at least two copies: the one retained by the sender and the one sent. Reports may also be sent laterally in an organization; for example, a field office may receive the reports sent to headquarters by other field offices. While reports are always sent up the hierarchy, in some institutions a mid-level office will send a copy of its report to its superior to all its subordinate offices. Thus, the destruction of one copy, such as the one in the receiving office, does not extinguish the possibility of finding one elsewhere.

Researchers should also determine what procedures were followed in the creating body for backing up and storing electronic records. Even if a stored copy cannot be obtained, hard drives can be used to recreate the files that were stored on them. Likewise, old floppy disks may be read by emulating the original operating system. Digital imaging experts may be employed to assess whether images were digitally altered.

As an archivist or researcher begins to examine an unknown body of records, especially government records, it may be useful to consider the organization of similar records in other countries. For example, the fingerprint system used by Guatemala is the system used by the United States Federal Bureau of Investigation. Also, Governments donate records systems, particularly in the form of computerized systems, to other Governments. The former German Democratic Republic, for example, gave aid to the Derg regime in Ethiopia to create the file system for the secret police and helped the Ministry of State Security of Viet Nam “in the field of documents.”⁴³

⁴³ “An archive of murders past”, *Economist*, 29 September 2007; Martin Grossheim, “The East German ‘Stasi’ and the Modernization of the Vietnamese Security Apparatus, 1965-1989”, Cold War International History Project e-Dossier No. 51, Woodrow Wilson International Center for Scholars, available from www.wilsoncenter.org/publication/stasi-aid-and-the-modernization-the-vietnamese-secret-police (accessed 28 October 2014). It is worth remembering the important role that serendipity plays in locating records and documentary materials. Not many could have imagined that the Guatemalan police archives would emerge nearly a decade after the truth commission finished its work, that in 1992 the files of the political

Finally, locating records in other countries can present difficulties. Both the United Nations Educational, Scientific and Cultural Organization (UNESCO) and ICA maintain non-exhaustive lists of government, non-government and international organization archives.⁴⁴

B. Records for truth-seeking

Truth-seeking takes many forms. A person may want to see the file that was kept on him or her during the repressive regime or may want to know what happened to a loved one who disappeared. Non-governmental organizations often support or lead the demand to know the fate of the disappeared, and some transitional Governments establish a special body to resolve such cases. Establishing the fate of missing persons can include searching through records, carrying out interviews, exhuming bodies and conducting DNA tests.

In addition to an individual's search for the truth, the wider public also seeks an answer to what happened within the society as a whole. During the past three decades, one of the most popular vehicles for truth-seeking has been the truth commission.

Countries in transition may enact a freedom of information law for citizens to obtain government information. As a 2006 report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) notes, "Legislation on access to information and/or habeas data constitutes an important step to ensuring the right to the truth."⁴⁵ Using this legislation to obtain records is often a slow process, but it can yield important results. Like all other research in institutional records, the more the requester knows about the organization and functions of the institution, the more likely the request will be successful. Using leads gained from any records released, the researcher can then follow up with more requests. If the freedom of information law is new, external help may be especially useful, both to requesters and to government agencies that must develop procedures to handle the requests. Freedominfo.org is an online network of freedom of information advocates who can provide assistance to inexperienced users.

1. Seeking a personal file

A person may want to know whether a security body—military, police, secret police—maintained a file on him or her and, if so, what it said. Some countries have legislated the right of individuals to see their own files; the German legislation covering the Ministry of State Security files is the best-known case.⁴⁶ There is usually no difficulty identifying what

police during the dictatorship of General Alfredo Stroessner would be discovered in Paraguay, or that a person with just the right knowledge would walk into a Rwandan government office in the aftermath of the 1994 genocide and find documents relevant to prosecutions on the floor.

⁴⁴ See, for example, www.unesco.org/archives/sio/Eng/.

⁴⁵ E/CN.4/2006/91, para. 32.

⁴⁶ See www.bstu.bund.de/EN/Home/home_node.html.

institution has the records the person seeks: either the originating agency still has them or they have been transferred to an archive or other official body.

In addition, a person may seek his or her medical file, not only to determine future treatment and medication, but also to show any past involuntary psychiatric incarceration or medical experimentation.

2. Locating missing persons and victims of enforced disappearance

Individuals demand the truth about the fate of the missing. A person may go missing for a variety of reasons and in diverse circumstances, such as flight and displacement, death or detention during an armed conflict (internal or inter-State), or by the actions of State agents.

Refugees and internally displaced persons. The primary source for anyone seeking information on internally displaced persons and refugees are the records of the Office of the United Nations High Commissioner for Refugees (UNHCR), OHCHR, the International Organization for Migration (IOM) and the International Tracing Service. Various faith-based institutions and NGOs that work with refugees and internally displaced persons also have records that may provide helpful information.

*Persons missing during an armed conflict.*⁴⁷ Combatants who are killed may be buried in haste (often in a mass grave) or their bodies abandoned or destroyed, with no records made. In organized armies, combatants will generally wear identification tags. However, members of other armed groups may not have such tags and may therefore not be easily identified. Similarly, persons who have been forcibly recruited into armed groups, particularly children, are unlikely to have identification. While organized military forces often have daily unit reports of the strength of forces, including those lost in action, irregular units probably do not.⁴⁸ If government forces are involved on one side of the conflict, records of the units and their movements, records of military medical services and burial details, maps of conflict areas and press reports (both official and independent) can provide clues for further investigation.

Civilians who go missing during an armed conflict are more difficult to trace. A combination of records of units involved in the battle, maps, press reports and interviews with survivors may refine the search. Records of local government units like the police are important in these inquiries, as are cemetery, morgue and hospital records, records of burials by faith-based institutions, and databases of the missing developed by NGOs during the conflict.

⁴⁷ The term “missing persons” or “persons unaccounted for” is different and broader in scope than “victims of enforced disappearance” and refers to those whose families are without news of them and/or those who are reported missing, on the basis of reliable information, owing to international or non-international armed conflict or internal violence. See “The missing and their families: documents of reference” (Geneva, International Committee of the Red Cross, 2004).

⁴⁸ However, some non-government combat units do maintain such records. See Rukmini Callimachi, “\$.60 for cake: al-Qaida meticulously records every expense”, *Associated Press*, 30 December 2013. Available from www.ap.org/Content/AP-In-The-News/2013/For-cake-al-Qaida-records-every-expense.

If UNHCR was present while fighting was taking place, as it was during the war in Bosnia and Herzegovina in the early 1990s, reports from its local office to headquarters may provide basic information about population movements and deaths. The records of OHCHR, other international organizations and NGOs present in the conflict area may also contain useful leads.

Victims of enforced disappearance. Because enforced disappearances are the result of the actions of the State or of persons or groups of persons acting with the authorization, support or acquiescence of the State, government records, particularly those of the security services, are the most important sources of information. However, considering that a characteristic of enforced disappearance is the State's refusal to acknowledge the deprivation of liberty or its concealment of the fate or whereabouts of the disappeared person, establishing the fate of such victims will often build on information collected by families, NGOs, religious bodies and the media. In Lebanon in early 2014 the Shura Council ruled that the families of people who disappeared during the civil war (1975–1990) should have full access to official documents, including confessions by former militants related to cases of missing Lebanese, giving important impetus to disclosure.⁴⁹ Members of the public are often impatient to gain access to the records of the security services because they believe that their records must contain answers for unexplained events, particularly disappearances. While the security services usually maintain extensive records because information is their source of power, there is not always a file or computer entry for an individual.

Although the destruction of records or a lack of record-keeping is a problem, the inertia of bureaucratic processes and the duplication inherent in record systems mean that there is often a document in the system that provides at least a clue to the nature of the disappearance. Police training, for example, stresses the importance of record-keeping as a means to increase arrest rates, and demands for information on an individual “of interest” are widely disseminated throughout the police forces, so even if the central file on the person or the index or database entry is deleted, other documents are likely to exist.

Individual members or small units of security services may decide to keep a record of their actions, at least in part for self-protection. The logbook maintained by a military death squad in Guatemala is a notable example.^a

^a See the logbook online at www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB15/dossier-color.pdf (accessed 29 October 2014).

⁴⁹ Jana El Hassan, “Families of disappeared remain skeptical”, *Daily Star* (Beirut), 14 March 2014. Available from www.dailystar.com.lb.

3. Truth commissions

Truth commissions rely on both the records they obtain from other sources and the records they produce themselves, depending on their success in gaining access to records and personal papers, on the one hand, and in taking testimony, both in closed sessions and in public hearings, on the other.

Truth commissions use a broad range of records, including records of government (especially military, police, civil registries, land records, court and prosecutor records), morgue and cemetery records, records of NGOs, radio and television broadcasts, records of international organizations, and personal papers.

Records compiled by NGOs often form the backbone on which commissions build their documentary record.

In Chile, the National Commission for Truth and Reconciliation, for example, drew up a list of those who had died as a result of human rights violations, based on lists sent in by NGOs, political parties, families, the various branches of the armed forces and the police, and trade unions and professional associations. It then consulted the archives of human rights organizations, particularly *Vicaría de la Solidaridad*. This enabled the Commission to draw on the information that these organizations had already gathered.

Source: Informe de la Comisión Nacional de Verdad y Reconciliación (Informe Rettig), vol 1., pp. 2–3.

Many truth commissions have had difficulty obtaining government records, especially those of the military and police.

The destruction and concealment of the documentation concerning the grave crimes committed by the *de facto* Government made it extremely difficult for the Argentinian Commission on the Disappearance of Persons to reconstruct what had occurred. The Commission also reported on the alteration and falsification of documents carried out by agents of the repressive regime.^a In Guatemala, the police informed the Commission that they had destroyed all their records; however, the Human Rights Ombudsman discovered the police records in 2005.

^a Comisión Nacional sobre la Desaparición de Personas, “Nunca Más” (1984), chap. I, sects. L and LL. In November 2013 the Minister of Defence announced the discovery, in the basement of the headquarters of the Argentine Air Force, of the minutes of meetings of the junta and “black lists” of persons. Ailín Bullentini, “Actas secretas, biblioratos y listas negras”, *Página 12*, 5 November 2013. Available from www.pagina12.com.ar.

Other commissions have had more success.

In Brazil the State archives of Sao Paulo digitized about one million documents relating to the period of the military dictatorship^a and the National Archives also undertook a major digitization project on behalf of the National Truth Commission.

The mandate of the Truth and Dignity Commission in Tunisia specifies that it will have access to public and private archives, regardless of any restrictions contained in the applicable legislation.^b

^a The Sao Paulo documents are available from www.arquivoestado.sp.gov.br.

^b Organic Law on Establishing and Organizing Transitional Justice, art. 40.

Even if a commission is successful in obtaining security-classified documents from the Government, it may have difficulty getting them declassified for publication in its report.

The Truth and Reconciliation Commission of South Africa gained access to some government records from the National Archives, the National Intelligence Agency, the South African Police Service and the South African National Defence Force archives.^a However, while it could refer to some of the documents in its report, it was required to return them to the agencies of origin rather than keep them in its evidence files and archives.

^a Truth and Reconciliation Commission of South Africa, "Report", vol. 1, p. 380.

Some commissions have been able to obtain declassified documents from other countries that shed light on government activities.

The Truth Commission in Panama received declassified United States government records, while the Truth and Reconciliation Commission in Honduras used United States documents leaked to Wikileaks in 2010 by a United States Army soldier. In the summer of 2014, the United States began providing declassified documents to the National Truth Commission in Brazil.^a

^a "Remarks by the Vice President to the Press at U.S. Embassy -- Brasilia, Brazil", 17 June 2014.

Most truth commissions take extensive oral testimonies, which can be corroborated by other records they have gathered or obtained. Similarly, truth commissions may send questionnaires to former government officials and their answers can be compared to information in the records.⁵⁰

⁵⁰ Extensive discussions of the methodology of truth commissions and the records they used can be found in their final reports as well as in the archival and human rights literature cited throughout this publication. For a review of the variety of records used by recent truth commissions, see Sandra Rubli and Briony Jones, "Archiving for a peaceful future: Case descriptions" (draft) (Swiss Peace Foundation, 2013). See chap. IV below for further information on managing the records of truth commissions.

C. Records for investigations and prosecutions

The demand for justice under the rule of law is met through investigations and prosecutions aimed at ensuring that individuals responsible for committing crimes, including violations of international humanitarian and human rights law, are tried in accordance with international standards of fair trial and, where appropriate, punished. Investigations and prosecutions may be in international tribunals or domestic courts or “hybrid” courts that have both national and international elements.⁵¹

Investigators and prosecutors use any documentary materials that are pertinent to the matter being investigated. These may be government records (especially of the military and the police and security services, overt or covert), records of Governments not party to the conflict,⁵² records of non-governmental and international organizations, records of religious groups and businesses, banks, schools, hospitals and morgues, copies of radio and television broadcasts (whether of government-owned media such as Radio Télévision Libre des Mille Collines in Rwanda or the reporting of investigative journalists, domestic or foreign), and personal papers, such as diaries.⁵³ They also use all physical types of records: paper, electronic, photographic,⁵⁴ mapping and satellite imagery⁵⁵ and databases.

If the prosecutors are trying “system” crimes (genocide, crimes against humanity and large-scale war crimes),⁵⁶ understanding the flow of information to or from the leaders, whether generals or presidents or leaders of rebel groups, is crucial. This requires a serious analysis of the records of the institution’s highest levels. To this end, the registers of documents sent and received by an office, and reports from subordinate units to headquarters can be especially useful. If the person under investigation or his or her associates used electronic systems, tracking the e-mails sent and received can provide significant information to investigators.

Prosecutors may obtain records from NGOs, international organizations, and faith-based groups that were present in the region when the crimes occurred. Pertinent records created by these institutions may be regular reports back to their headquarters, interviews with persons they are assisting, and correspondence with the local authorities as the organizations

⁵¹ For more information on hybrid courts, see *Rule-of-law Tools for Post-conflict States: Maximizing the Legacy of Hybrid Courts* (United Nations publication, Sales No. 08.XIV.2).

⁵² For example, the correspondence between an embassy and its headquarters may contain detailed reports that are useful in establishing the context of crimes. Cables from the United States Embassy in Lima, to the State Department in Washington, D.C., were used in the Fujimori trial in Peru, for example. “Archive expert testifies in Fujimori trial”, National Security Archive Electronic Briefing Book No. 256, 9 September 2008.

⁵³ Eighteen military notebooks of Ratko Mladić are part of the evidence used in his trial at the International Criminal Tribunal for the former Yugoslavia.

⁵⁴ At the trial of Slobodan Milošević at the International Criminal Tribunal for the former Yugoslavia, a videotape made by a member of the Scorpions unit showing the July 1995 execution of six Bosnians from Srebrenica was screened.

⁵⁵ Eric Schmitt, “Spy photos indicate mass grave at Serb-held town, US says”, *New York Times*, 10 August 1995.

⁵⁶ “System” crime as a term comes from the Tokyo tribunal after the Second World War. The assumption is that the scale of the acts is so large that an organized “system”, usually a State security force, is responsible for them. See *Rule-of-law Tools for Post-conflict States: Prosecution Initiatives* (United Nations publication, Sales No. 06.XIV.8), chap. I, sect. C.

struggle to get permission to bring in or ship out goods, aid workers or refugees. As many of these organizations have substantial experience in working in countries in crisis, their records providing an account of the events may have special value.

D. Records for institutional reform

Institutional reform includes reforming or building fair and efficient public structures, from justice systems to national archives, to ensure that these institutions are organized in a manner that ensures respect for the rule of law and protection of human rights. These structural changes include reviews and amendments of laws, regulatory reform, training sessions to introduce new standards and ethical practices, and renovation of physical structures.

Along with these formal structural changes, institutional reform may also involve assessing the conduct of individuals who were in positions of authority in the former regime. This process, known as vetting, aims at excluding from public service those persons whose continued employment would impair civic trust in legitimate public institutions.

Key records used in vetting are personnel records, particularly government records and those of political parties. Government personnel records may be stored centrally or separately in each agency. In addition to official personnel records, informal files on staff members may be held by supervisors. It is likely that the military, the police and other security services maintain separate personnel files. Personnel records usually have an index (in earlier times on index cards, today usually in an electronic system) that leads to a file on the person.⁵⁷ Sometimes the index itself will contain sufficient information for vetting purposes. While it is prudent to be sceptical about the veracity of any information in records of a repressive regime, personnel records, which the organization used to control its members, are often reliable. Furthermore, because personnel files relate to the benefits of employees, documenting years of service or recording on-the-job injuries, employees want the records to be correct. This internal pressure makes personnel records systems operate with a fair degree of accuracy.

Additional sources of information for vetting are police records (including those of the secret police), court records, political party records, election registers, reports of bodies such as the United Nations and its agencies, NGOs, and truth commissions, media reports, both domestic and foreign, and independent investigation reports.⁵⁸ These are particularly useful if the relevant personnel records are partially missing or unreliable.

⁵⁷ Governments and political parties maintain lists or indexes of personnel, but so do clandestine structures. For example, the Government of Colombia captured a computer belonging to the Revolutionary Armed Forces of Colombia (FARC) which contained lists of members. Similarly, a computer belonging to Al-Qaida in Iraq and containing a list of members was captured.

⁵⁸ *Rule-of-law Tools for Post-conflict States: Vetting*, chap. IV, sect. A.

E. Records for reparations

Reparations aim to provide redress for harm suffered.⁵⁹ In 2005, the United Nations General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁶⁰ The Basic Principles describe different forms of reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Restitution, compensation and rehabilitation are particularly dependent on the use of records.

1. Restitution

Restitution refers to measures which “restore the victim to the original situation before the gross violations ... occurred.”⁶¹ This can relate to ownership of land, housing, livestock and personal effects. The research necessary in such cases is often complex and may require the use of many government and non-government records, aiming at establishing who is the legitimate owner. If the owner is presumed or known to be dead, the person seeking restitution will need to prove that the original owner is dead and that he or she is the heir, which in turn may require proving familial relationships and the inheritance pattern. Civil registries, religious group records, hospital and medical records, and probate court files are all important sources in these cases.

In cases relating to land, the Government’s land records, notarial records, other local registries and maps may be particularly useful in verifying ownership. If no land registry exists, local maps can be linked to vital records (such as records of births and deaths) or school records or family documents to show at a minimum who lived or worked where.

2. Compensation

Compensation should be provided for any economically assessable damage.⁶² The processes to establish whether an individual falls within the category of persons who are entitled to any compensation rely heavily on records.

⁵⁹ See E/CN.4/2005/102/Add.1, principles 31–34.

⁶⁰ Resolution 60/147 of 16 December 2005.

⁶¹ *Ibid.*, para. 19.

⁶² *Ibid.*, para. 20.

In the United States, citizens of Japanese ancestry were interned in prison camps during the Second World War. Starting in 1988, the Government paid each individual compensation for the time he or she spent there.^a To help determine eligibility for compensation, the Government used the original cards that were maintained on each person sent to a camp, and lists compiled by Japanese-American NGOs. The use of these complementary sources allowed the Government to verify the validity of claims and pay compensation. By contrast, the Nuclear Claims Tribunal in the Marshall Islands, established to provide compensation for victims of above-ground nuclear tests by the United States in the 1940s and 1950s, began by asking claimants to submit documentation of injury, which in the majority of cases were medical records.

^a In addition, the sites where the internment camps had been located are designated as national historic sites, a form of societal reparation.

3. Rehabilitation

The restoration of citizenship, of the right to vote or of employment requires the use of documents that can prove the person's prior status, such as voter registration lists, a court case file or a labour record showing the employees at a specific place of work.⁶³ Vital records (birth, death and marriage registers) are important, particularly in countries where the authorities deliberately destroyed personal identity documents, such as the destruction of identity documents of those fleeing during the Kosovo conflict in early 1999.⁶⁴

⁶³ See General Assembly resolution 60/147, para. 21.

⁶⁴ Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo. In an example of what the international community can do, the European Union Rule of Law Mission in Kosovo (EULEX), in cooperation with the European Union Special Representative and the Danish Refugee Council, copied and certified a total of 12,391 civil and religious registry books of birth, marriage and death in Serbia and handed them over to the Kosovo Civil Registration Agency. See Joint Rule of Law Coordination Board, "Compact progress report" (June 2014).

IV. MANAGING AND PRESERVING THE RECORDS OF TRANSITIONAL JUSTICE INSTITUTIONS

Records of a transitional justice institution must be competently managed while the institution is active. When the institution completes its work, its records need to be appraised and those judged to be permanently valuable transferred directly to an archival institution.

A. Managing the records of transitional justice institutions

Transitional justice institutions may be international or national. The national institutions may be a special part of an existing institution (court, prosecutor's office) or wholly new temporary bodies (vetting panels, truth commissions, reparations programmes). Most of them will be government institutions, with the possible exception of court monitoring projects and some truth commissions.

The records of prosecutions and national courts relating to the prosecution of those responsible for the commission of crimes, including violations of international humanitarian and human rights law, are part of the records of the larger justice sector. These include the records of the prosecutors and investigators, the prisons and detention centres, and the police. These records belong in the Government's archives system.

The records of transitional bodies—vetting panels, reparations programmes, truth commissions—are not part of the Government's regular records system, yet they are vital to the country and its history. These institutions create and receive large quantities of records in diverse formats within a short period of time, including administrative and investigative records, case files and reports (published and unpublished), as well as databases and media broadcasts. They may be in paper, electronic or audiovisual format. Regardless of format, managing this flow is an important task because these records are evidence for both the conclusions reached and the process that the institution followed in reaching them.

The management of a transitional justice institution's archives needs to be planned before the institution starts creating and gathering records. Ideally, as soon as the institution's mandate is established, its leadership should decide who will be responsible for managing the records, where they will be stored (including in the computer system) in the short and long term, and how access to them will be controlled.

1. Organization of records

The organization of records in a transitional justice institution depends on the nature of the institution. The records of any special prosecutor and special chamber created to deal with violations of international human rights or humanitarian law within the existing judicial system will usually follow its national filing protocol.

Truth commission records will have a different structure than those of courts and will depend on the commission's mandate. Usually they will include the correspondence of the commissioners and the executive director (in electronic as well as paper files), minutes of meetings, evidence and documentation, investigations, legal matters, public affairs, media liaison, publication (of final report), and testimony (open and closed), as well as general administration, finance, human resources and information management. Reparation programmes and vetting panels will have administrative records like those of a truth commission but their programmatic records will usually be case files on each individual claimant.

The International Criminal Court, created as an international body independent of the United Nations, is responsible for its own archives. The situation of the ad hoc international tribunals is different. The International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda were created by the United Nations Security Council. Their records are records of the United Nations and the archival rules of the United Nations apply. The Special Court for Sierra Leone was established based on an agreement between the country and the United Nations that does not state whose records they are or whose archival responsibility they will become. However, the Special Court established a museum in Sierra Leone that holds a copy of its public records. The United Nations established Timor-Leste's special panels and serious crimes unit when it administered Timor-Leste starting in 1999. When Timor-Leste became independent in 2002, the records of these bodies were transferred to the Timorese Government and became government records. However, copies of the records of the serious crimes unit were deposited with the United Nations for security.^a The special panels also deposited copies of key records in their case files with the United Nations and several other institutions.^b

^a These have since become vital, because the Office of the Prosecutor-General of Timor-Leste was ransacked during riots in 2006 and a computer with prosecution information and some paper files were stolen. See "Report of the Secretary-General on justice and reconciliation for Timor-Leste" (S/2006/580), and *Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts*, chap. V.

^b Trudy Huskamp Peterson, "Temporary courts, permanent records", History and Public Policy Program Occasional Paper (Woodrow Wilson International Center for Scholars, 2008). Available from www.wilsoncenter.org/publication/temporary-courts.

2. Selection of record systems

Temporary institutions may select their records systems or be given one by a donor. Any system, whether for electronic or paper records, should meet the requirements of the international standard for records management (ISO 15489) to capture, classify, store, provide access, track and preserve permanent records and dispose of temporary records. An institution may choose to scan each paper or photographic document it acquires, which should be uploaded into the electronic records management filing system, while the incoming item should be filed in a parallel paper filing system. This incoming item should not be destroyed even if the scanned image is filed in a trusted electronic system, primarily because legal systems around the world do not fully agree on the legal acceptability of electronic records, including scans of items that originated in other formats. Electronic records management systems should have reliable software, track major system changes, validate data entry and provide active security controls.

The institution should consult or hire a professional archivist or records manager to help establish its records system. Institutions that are part of the national Government may be able to draw upon expertise in the national archives. In particular, the records system adopted by the institution should comply with any government-wide standards for selecting an electronic records system and managing databases, e-mail, web records and digital audiovisual materials, as well as paper and other audiovisual formats. This ensures that at the end of the institution's life the records can be efficiently moved into the national archives for preservation. If the national archives are unable to provide such support or if the transitional justice institution is not comfortable with engaging national archives staff members, archivists with experience working in transitional justice institutions in other countries may be able to provide support services.

3. Staff members of transitional justice institutions

Staff members of transitional justice institutions are responsible for ensuring that the records (including e-mail) they create and/or receive in performing their duties within the institution are filed in the official records systems and managed accordingly. To this end, they should be aware of the type of records the institution will create and receive, such as confidential and/or sensitive information regarding victims, witnesses or individuals being vetted or under investigation. They also need to be introduced to the records system that the institution has adopted and to the distinction between institutional records and private information (such as e-mail) that comes in through the institutional systems. It is useful to have staff members sign a statement acknowledging their responsibility for records when they take up their role in the transitional institution and a statement attesting that all their work is captured in the records system and that they are not taking away institutional records when they separate from the institution. If the institution employs contractors, one or more staff members should be assigned to make sure that the contractor work product is entered into the official record system and that the contractor turns in all records at the end of the contract.

4. Security

Security for the records of a transitional justice institution must be a major consideration. Electronic systems need robust firewalls and permission controls, while paper, photographic and audiovisual evidence must be stored in rooms or cabinets that are secured with locks and other anti-theft devices and alarm systems (smoke, fire and intrusion). Some transitional justice institutions may consider using cloud storage for electronic records, but should do so only after careful assessment of the vendors, the systems and storage before choosing a cloud-based service.⁶⁵

B. Selecting records for long-term retention

Selecting records for long-term retention is a critical task at the end of the institution's mandate. Archivists from what will be the future home of the records should work with the institution's leadership to select the records for permanent retention. While the initial instinct will be to retain everything and this may be right for the very short term, some of the administrative records certainly do not have long-term value.⁶⁶ Governments may have general instructions on what records are considered disposable. These instructions should be applied with great care to the records of transitional justice institutions to ensure that significant records are not destroyed.

All records proposed for destruction should be generally described and the description and proposed disposal made public with a period for receiving comments before a final decision is made. This procedure has two important benefits: first, it requires the archivists to be clear about the decision and the reasons for it; second, it allows members of the public to express their views and participate in the process. After giving due weight to any comments received, the archival institution makes the final decision and should publicize it.

A trusted person should witness the destruction, including secure deletion, of the records and write and file a memorandum certifying that the records have been securely destroyed.

Finally, when the transitional justice institution closes, all storage devices containing institutional records must be inspected to ensure that no records are left in drawers and that the electronic storage devices and hardware (unless they are to be transferred to the archival institution) are securely cleaned of all records.

⁶⁵ For more information, see Seth Anderson, "Feet on the ground: A practical approach to the cloud" (AVPreserve, 2014). Available from www.avpreserve.com/wp-content/uploads/2014/02/AssessingCloudStorage.pdf.

⁶⁶ For records of international criminal tribunals, see Huskamp Peterson, "Temporary courts", chap. 4.

C. Selecting the archival institution

It is crucial that the State should decide what archives will be responsible for the records of the Government's transitional justice bodies. The scattering of truth commission records shows what happens when records are not promptly moved to archival custody. Of the twenty truth commissions whose work was completed by 2005, the records of three are in the custody of the United Nations archives, those of three others are controlled by the country's national archives, the records of eleven others are in various locations, governmental and non-governmental, and in three countries the location of the records is not known.⁶⁷ At a minimum, the records should remain within the national archival system. If a portion of the records is needed by a successor body,⁶⁸ those records should be copied and a copy provided to the successor body. The original records should not be divided. Only by keeping the records together in an archive can the Government ensure that an accurate picture of what the body learned and did will remain available.

In the future, all temporary international or hybrid courts should have an archives clause in their founding charter, clarifying who is responsible for the records when the court closes. In addition, all current and future international courts that do not sit in the country where the crimes took place and whose records will not be deposited in that country should have a robust programme of duplicating publicly available records and depositing those copies in institutions in the countries affected. This duplication programme should be accompanied by a sustained description effort, making the information about the holdings available to all and enabling the public to order copies of records they wish to see.

D. Preserving the archives

The same considerations that apply to the preservation of archives in general apply to the preservation of the archives of a transitional justice institution. Preservation requires the physical housing of the materials, the staff to maintain the holdings and the supplies for preservation. The costs depend on the climate, the labour costs and skills available within the country, and the local availability of equipment and preservation supplies. It may be necessary to import supplies and equipment, with attendant delays and expense, but it may also be possible to persuade local manufacturers to make storage boxes, for example, or to find a computer service centre willing to have a staff member develop expertise in archival preservation techniques for electronic records.

⁶⁷ Trudy Huskamp Peterson, "Truth and the records of truth commissions", *Etudes et Sources*, vol. 30 (2004). The three in the United Nations archives are the records of the truth commissions of Burundi, El Salvador and Guatemala.

⁶⁸ For example, the records of a compensation commission may be requested by the Government's treasury to pay claims.

V. THE ROLE OF THE INTERNATIONAL COMMUNITY

A. Advocacy for preservation and access to archives

As a country emerges from conflict or repressive rule, the international community has an important role to play in advocating the protection, management, preservation of and access to the records pertaining to human rights violations.

At the outset, this can include urging that no records should be destroyed without public notice and assisting in the transfer to a secure location or to secure computer servers.

As transitional justice mechanisms are being designed and established, the international community should advocate early planning of archives management and preservation. This includes determining where the records will be stored during the life of the transitional institution and after its end.

The international community could further assist in facilitating access to professional advice for records management, including the management of electronic records of all types, and in developing an access protocol for the records, in cooperation with archival and legal experts from the country or abroad.

B. Financial and technical support

Very few countries can find the resources to reform the archives system and preserve records of transitional justice institutions without outside financial support. Many national archives will need additional space or renovated space and most will need equipment and supplies ranging from computers to preservation materials. Most will need additional staff, preferably hired to permanent posts but at least on long-term contracts. Surveys need financial support for planning, travel, payment to workers taking the survey and compiling the results, and publication. Money is needed for archival processing, from description and control work to preservation and screening projects in order to make the records available for use. Reading rooms need to be reorganized, refurbished, equipped and staffed. If part of the programme is extensive digitization of materials, equipment and training in best practices, including in the preservation of digital materials, will be needed.

In virtually all countries in transition, financial support may be needed to train staff and to translate professional materials to be used for training and for background reading. Some donors will pay to bring a trainer into the country, sometimes for both initial and follow-up visits. Some archival institutions will send an experienced staff member to the country, paying for all the trainer's expenses. More commonly, a donor archive will provide training in its institution for persons from other countries, either formal courses or internships or tours; usually this will not include trainees' travel and expenses. All of this assistance in kind from one archive to another is based on ad hoc arrangements. Support for attendance at regional and international professional meetings is very helpful in developing supportive professional contacts and increasing familiarity with current best practices.

Technical support may also be needed to draft new archives laws and freedom of information, privacy or data protection legislation. If these laws exist, they may need to be harmonized with each other or amended. Following the revision, regulations and implementation manuals will need to be developed, and here the advice of an outside specialist may also be useful.

Financial support can be provided Government to Government, private bodies to Governments, or private bodies to individuals and Governments.

A British charitable fund gave a grant of over £45,000 to a private individual to copy publicly available records of the Commission for Reception, Truth and Reconciliation in Timor-Leste.

The ICA Fund for International Development of Archives makes available small grants for training and the ICA website offers a list of past sources of financial support for archives projects.

Archivists without Borders volunteers provide assistance to archival projects, particularly in support of human rights.

C. Security deposit

Where the instability in a country continues throughout the period of transition, Governments or private entities such as NGOs may decide to make a duplicate copy of the most important records and store that copy separately from the originals to protect the information contained in vulnerable or sensitive records.

Perhaps the most significant assistance that entities outside the country can provide to countries in transition is an offer to hold a security deposit; that is, keeping a duplicate copy of the records physically secure and actively preserved but remaining under the control of the depositor country or institution.

In 2013 the Swiss Government revised the legislation on the protection of cultural property, so that its agencies can provide a safe haven for the temporary storage of cultural property, including archives, seriously threatened in other countries, including in disaster and emergency situations. By enacting this much needed law, Switzerland became the first country in the world to offer this official protection.

The national archives of Finland and the city archives of Girona, Spain, also provide this service case by case.

The negotiations over handling such a deposit, including the responsibilities for the preservation of the deposited copy and the mechanism for providing authorized access, are both extremely complicated and unique to each situation. With a copy safely stored elsewhere, the owner of the records is spared the immediate problem of preservation, particularly if the copy is digital and the owner has yet to build digital preservation capacity. The owner can then develop its preservation capacity at its own pace and, if it chooses, call back the deposited material when it feels it can preserve the materials and the country is reasonably secure.

D. Whistle-blower support

In the course of their regular work, archivists may encounter material that appears to contain information, classified or otherwise confidential, showing violations of international human rights or humanitarian law. The archivist should first try to use any internal reporting mechanism, so long as doing so would itself not increase the risk of retaliation or the destruction of the material. If the archivist fears that the internal reporting system would either suppress the information or result in retaliation against her/him and if the alternative government mechanisms are not credible, the archivist may consider approaching a representative of the international community for possible assistance.

ANNEX Summary

I. ARCHIVES AND THE RIGHT TO KNOW THE TRUTH

A. International legal framework

- The right to know the truth finds its roots in international law, particularly with regard to the rights of families to know the fate of their relatives, together with the obligation of States to search for the missing persons. It has been explicitly recognized in the International Convention for the Protection of All Persons from Enforced Disappearance.
- The Updated Set of principles reaffirms the right of individuals to know the truth about violations of human rights and humanitarian law, recognizes the important role played by archives in giving effect to this right, and underscores that States have a duty to preserve archives to facilitate knowledge of these violations.
- The Updated Set of principles affirms that access to the archives must be granted to transitional justice institutions mandated to establish the circumstances surrounding the violations of human rights and humanitarian law, as well as the violations themselves.

B. What are archives?

- “Records” means items and documents, regardless of physical type, made or received by an institution or organization in the course of its operation or in fulfilment of its legal obligations. “Archives” refers to the records of long-term or permanent value, as well as to the institution that manages them and the building that houses them.
- Records can be found in any physical format, from paper to audiovisual and electronic media. They may be public or confidential.

II. REFORMING ARCHIVAL INSTITUTIONS AND MANAGING ARCHIVES

A. Reforming archives during transition

- Reforming the national archives has three important benefits: (i) it helps build consistency in applying restrictions and access rules to archival records;

- (ii) it enables the national archives staff to gain experience and confidence in their ability to handle difficult access problems and sensitive information; and
- (iii) it is less expensive to manage a single national archive than to operate two institutions.

B. Challenges and issues to consider when reforming archives

1. *Protection of records.* Protection of records is important, as Governments may order records destroyed, before or after periods of transition.
2. *Archives staff.* Persons chosen to head the archives during periods of repression may have been selected primarily for their political reliability. Reforming the national archives may therefore require a change in its leadership, vetting of key personnel and training of archives staff.
3. *Archives law and access to archives.* The law governing the national archives should be reviewed to determine whether it needs to be amended or rewritten.
4. *Funding and logistic support.* Countries in transition will most likely face a great challenge in securing the financial and technical support necessary to reform their national archives.

C. Steps, strategies and resource requirements

- The incoming authorities must take immediate steps to secure the archives of the repressive institutions from the previous Government or regime.
 - The six basic stages to identify, protect and make available archives relevant to human rights are record appraisal, survey, accession, arrangement and description, preservation, and access review leading to reference service.
1. *Appraisal.* The incoming authorities should order a temporary halt to all destruction of government records. A trusted person, ideally the national archivist, needs to be selected to review all destruction instructions that were given to government agencies and determine which can be reinstated, which should be revised and which should be withdrawn.
 2. *Record survey.* Surveys are useful to determine where records relevant to human rights are located.
 3. *Acquisition and transfer.* If the records of the former regime, particularly the repressive bodies, are not in the custody of the national archives, they will need to acquire them from the bodies or agencies that are holding them.
 4. *Arrangement and description.* Description of the material held in an archival institution is essential if researchers are to have meaningful access to it. The archival description identifies and explains both the records' content and context. Archivists keep the records of a creating entity together (protecting provenance) and, if possible, maintain their original order.

5. *Preservation.* Preservation requires a secure building with adequate space for all the records, appropriate environmental conditions for each physical type of material stored, containers to protect the records, and equipment to play, duplicate and conserve the records. Fire and intrusion alarms may need to be installed, or a new guard service may be needed.
6. *Access and reference service.* Clear legal authorization to read the records is another essential element for meaningful access. Most records relevant to human rights claims require screening by an archivist or other authority before they are made available to an individual or institution.

III. USING RECORDS IN TRANSITIONAL JUSTICE PROCESSES

- All transitional justice processes require documents. Some records may be useful for several such processes, but in most cases the records required for a vetting programme are different from those required for a reparations process, and both are different from those required for prosecutions or truth-seeking.

A. Understanding institutions, locating records

- The first step in using records for a transitional justice process is to understand how the State worked during repression or prior to the conflict. The next step entails understanding the flow of records within the institution. Understanding the way an institution reports to itself and to others can also be key to locating information.
- Researchers should also determine what procedures were followed in the creating body for backing up and storing electronic records.
- Finding records in other countries can present more difficulties. Both UNESCO and ICA maintain non-exhaustive lists of government, non-government and international organization archives.

B. Records for truth-seeking

- Truth-seeking takes many forms. A person may want to see the file that was kept on him or her during the repressive regime or may want to know what happened to a loved one who disappeared. During the past three decades, one of the most popular vehicles for truth-seeking has been the truth commission.

1. *Seeking a personal file.* A person may want to know whether a security body—military, police, secret police—maintained a file on him or her and, if so, what it said. Some countries have legislated the right of individuals to see their own files.
2. *Locating missing persons and victims of enforced disappearance.*
 - Other than the records of the Government responsible for the disappearance, the primary sources of information on displaced persons and refugees are the records of UNHCR, OHCHR, IOM and the International Tracing Service.
 - Records useful for locating combatants who have gone missing during an armed conflict include identification tags, daily unit reports, the records of the units and their movements, records of military medical services and burial details, maps showing areas where fighting occurred, and press reports (both official and independent).
 - Records useful for locating civilians who have gone missing during an armed conflict include a combination of records of units involved in the battle, maps, press reports, interviews with survivors, records of local government services like police, cemetery, morgue and hospital records, records of burials by faith-based institutions, and databases of the missing developed by NGOs during the conflict.
 - Establishing the fate of victims of enforced disappearance will often build on information collected by families, NGOs, churches and the media.
3. *Truth commissions.* Truth commissions use a broad range of records, including records of government services (especially military, police, civil registries, land records, courts and prosecutor records), morgue and cemetery records, records of NGOs, radio and television broadcasts, records of international organizations, and personal papers.

C. Records for investigations and prosecutions

- Records used in investigations and prosecutions may be government records, records of Governments not party to the conflict, records of non-governmental and international organizations, records of churches and businesses, banks, schools, hospitals and morgues, copies of radio and television broadcasts, reports by investigative journalists, domestic or foreign, and personal papers, such as diaries.

D. Records for institutional reform

- Along with these formal structural changes, institutional reform may also involve vetting. Records used in vetting are personnel records, particularly government records or those of political parties, and informal files on staff members which may be held by supervisors.

E. Records for reparations

1. *Restitution.* Records useful for restitutions include civil registries, religious group records, hospital and medical records, notarial records, maps, and probate court files.
2. *Compensation.* Records useful for compensation may be government records, personal papers, hospital records or records held by NGOs.
3. *Rehabilitation.* Records useful for rehabilitation may be voter registration lists, a court case file, a labour record showing the employees at a specific place of work, and vital records (birth, death and marriage registers).

IV. MANAGING AND PRESERVING THE RECORDS OF TRANSITIONAL JUSTICE INSTITUTIONS

A. Managing the records of transitional justice institutions

- The management of transitional justice institutions' archives needs to be planned well before the institution starts creating and gathering records. Ideally, as soon as the institution's mandate is established, its leadership should decide who will be responsible for managing the records, where they will be stored (including in the computer system) in the short and long term, and how access to them will be controlled.
1. *Organization of records.* The organization of records in a transitional justice institution depends on the nature of the institution. Truth commission records will have a different structure than those of courts and will depend on the commission's mandate. Reparation programmes and vetting panels will have administrative records like those of a truth commission, but their programmatic records will usually be case files on each individual claimant.
 2. *Selection of record system.* Any system, whether for electronic or paper records, should meet the requirements of the international standard for records management (ISO 15489) to capture, classify, store, provide access, track, preserve permanent records and dispose of temporary records. The institution should consult or hire a professional archivist or records manager to help establish the records system in the very early stages.
 3. *Staff of transitional justice institutions.* Staff of transitional justice institutions are responsible for ensuring that the records they create and/or receive are filed in the official records systems and managed accordingly. To this end, staff members

should be aware of the type of records the institution will create and receive, and receive appropriate training.

4. *Security.* Security for the records must be a major consideration.

B. Selecting records for long-term retention

- Archivists from what will be the future home of the records should work with the institution's leadership to select the records for permanent retention. All records proposed for destruction should be generally described and the description and proposed disposal made public with a period for receiving comments before a final decision is made.

C. Selecting the archival institution

- At a minimum, the records should remain within the national archival system. If a portion of the records is needed by a successor body, those records should be copied and a copy provided to the successor body. The original records should not be divided. Only by keeping the records together in an archive can the Government ensure that an accurate picture of what the body learned and did will remain available.

D. Preserving the archives

- The same considerations that apply to the preservation of archives in general apply to the preservation of the archives of a transitional justice institution.

V. THE ROLE OF THE INTERNATIONAL COMMUNITY

A. Advocacy for preservation and access to archives

- The international community has an important role to play in advocating the protection, management, preservation of and access to the records pertaining to human rights violations.
- This includes urging that no records should be destroyed without public notice and assisting in the transfer of the archives to a secure location or to secure computer servers.
- The international community could further assist in facilitating access to professional advice for records management.

B. Financial and technical support

- Financial support can be provided Government to Government, private bodies to Governments, or private bodies to individuals and Governments. Many national archives will need additional space or renovated space, equipment, supplies and additional staff. Financial support will be needed to carry out surveys, process the archives, and translate professional materials to be used for training of archival staff and for background reading.

C. Security deposit

- Entities outside the country could offer to hold a copy of sensitive records as a security deposit, where the duplicate copy of the records would be physically secure and actively preserved but remain under the control of the depositor country or institution.

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