

**INTERNATIONAL COUNCIL ON ARCHIVES
SECTION ON ARCHIVES AND HUMAN RIGHTS**

**THEMATIC STUDY BY THE WORKING GROUP ON ENFORCED OR INVOLUNTARY
DISAPPEARANCES ON
'NEW TECHNOLOGIES AND ENFORCED DISAPPEARANCES'**

Comments submitted by the Section on Archives and Human Rights,
International Council on Archives, 2 February 2023

The International Council on Archives [ICA], an international association created in 1948 to promote the development of archives, with advisory status to UNESCO in the field of archives and documentary heritage, commends the initiative of the United Nations' Working Group on Enforced or Involuntary Disappearances in respect of 'New Technologies and Enforced Disappearances'.

Supporting this initiative, the International Council on Archives, informed by the work of its Section on Archives and Human Rights [SAHR], is pleased to suggest steps that would provide enhanced management of the digital records and archives that contain evidence of enforced or involuntary disappearances. In its response, SAHR has focused on questions 9, 11 and 13 of the circulated document.

9. Can obstacles to the search linked to the passing of time be overcome through the use of new technologies? If so, how?

(a) Significance of the long term retention of evidence and use of forensic tools

In this response, SAHR focuses upon the use of new technology on evidence found in archival documents, in other words the documentary by-product of human activity retained *for their long-term value*. These documents can be the by-product of humanitarian and truth seeking organisations, governmental bodies or from individuals directly and indirectly involved in enforced disappearances. Arranging for long term preservation of the data in well-regulated ways is an important part of a reliable process.

As digital preservation matures and digital records can now be retained for a long period of time, archivists are developing and uncovering metadata in digital content through forensic tools that can enable the validation, identification, analysis, interpretation, documentation and presentation of digital information derived after-the-fact from digital sources. These methods not only help with the long term preservation of these documents, but also with the discoverability of information held within them.

An important part of this forensic work is the comparison of databases created by different organisations: comparing a database from an NGO with a database maintained by a government service, for instance often yields interesting and telling discrepancies. In the case of enforced or involuntary disappearances, the digital data held by military or police agencies are of particular interest. These may be difficult to access, but a more general truth remains - not all the information on a particular disappearance is held in one place, but in various

sources. Seeking out and preserving diverse but overlapping sources of evidence is a useful way to overcome certain obstacles.

(b) Digitisation as a tool for access to evidence and computational access

The digitisation of archival records can overcome barriers to accessing evidence. Access to information that has been digitised is no longer restricted to visiting an archive collection, and therefore cost prohibitive to some if they are not based in the same country. OCR (Optical character recognition) and HWR (handwriting recognition) also opens up access to archival information, as researchers are able to search for specific words or names across multiple documents.

Computational access¹ to archive data further enables text mining where a machine can significantly reduce the time taken to discover patterns in evidence across multiple dataset.

(c) Facial and voice recognition

Facial and voice recognition also enable researchers to review audio-visual information produced in the past. An example of this would be the ability to use technology to comparing ante-mortem photographs held by the families with forensic scene documentation. As explained in the paper Automatic Face Recognition for Forensic Identification of Persons Deceased in Humanitarian Emergencies, “automatic recognition systems could be of paramount importance for reducing the search time in databases of face images and for providing a second opinion to the scientists”²

11. What are the “evidences” that you would regard as essential to prove the crime of enforced disappearance and that can be retrieved through the use of new technologies? Do you see any specific problem in the preservation of the chain of custody here and in the admissibility of some specific pieces of evidence of this crime collected through the use of new technologies?

(a) Provenance and chain of custody of the records

Archivists are custodian of society's memory, keenly aware of the importance of provenance and chain of custody³ in ensuring the authenticity of documentation collected via “new technology” that is submitted as evidence of a crime. Documenting the chain of custody and recording the preservation processes undertaken at each stage are critical to the long term credibility of the source.

¹ The term computational access relates to the ability to enable users to access collections within a digital preservation repository (in a machine-readable manner, e.g., via download or API) in order to analyse, interrogate, or extract new meaning from that material (through, e.g., data or text mining, machine learning) as a means of investigating a particular research question.

Source: Computational Access: A beginner's guide for digital preservation practitioners, <https://www.dpconline.org/digipres/implement-digipres/computational-access-guide>, accessed 27/01/2023

² Automatic Face Recognition for Forensic Identification of Persons Deceased in Humanitarian Emergencies, https://piurilabs.di.unimi.it/Papers/CIVEMS_2021_Forensic.pdf, DOI: 10.1109/CIVEMSA52099.2021.9493678, accessed 27/01/2023

³ For definition on the role of Archivists, see ICA's webpage <https://www.ica.org/en/discover-archives-and-our-profession>, accessed 29/01/2023

(b) Risks relating to the manipulation of digital information

New technology has afforded a greater ability to document human rights abuses although the reliability of that evidence can be harder to prove:

“Technological advancements enable individuals to easily interfere with and manipulate digital information, raising questions about its credibility and authenticity, in contrast to previous trials when the use of technology was limited and mainly available in analogue form”⁴

(c) Implementing the Berkeley Protocol

It is also important to consider where evidence collection via new technology has been published. Open Source evidence is defined as information publicly available, generally acquired through the Internet, and may include, among others, social media content, images, videos, and audio recordings on websites.⁵ However, social media platforms are inherently fragile. The provider generally gives no commitment to preserving the long term access to information published to its platform, sites can be blocked by state actors, and the user who uploaded content may also remove content. Therefore investigators need to work with archivists to capture social media and web based content which ensure accessibility while retain a chain-of-custody. Documentation of any preservation actions will need to be recorded and also submitted.

There are methods that can mitigate risks associated with open source investigations. Implementing Berkeley Protocol is one step which can help with evidence produced via new technology. The protocol states that, “According to archivists, properties of a digital item that must be protected and preserved over time include its authenticity, availability, identity, persistence, renderability and understandability...”⁶

13. What are the main issues related to the subject of “new technologies and enforced disappearances” that should be covered in the findings and recommendations included in the thematic study of the Working Group?

In summary, as far as the archival aspect of the question is concerned, the following points should be covered in the findings of the thematic study:

- (a) Combating the inherent fragile nature of new technologies
 - Preventing the tampering of digital records
 - Collecting and recording evidence on fragile technology

⁴ Open-Source Digital Evidence in International Criminal Cases: A Way Forward in Ensuring Accountability for Core Crimes?, <http://opiniojuris.org/2021/01/26/open-source-digital-evidence-in-international-criminal-cases-a-way-forward-in-ensuring-accountability-for-core-crimes/>, accessed 27/01/2023

⁵ Open-Source Digital Evidence in International Criminal Cases: A Way Forward in Ensuring Accountability for Core Crimes? <https://opiniojuris.org/2021/01/26/open-source-digital-evidence-in-international-criminal-cases-a-way-forward-in-ensuring-accountability-for-core-crimes/>, accessed 29/01/2023

⁶ Berkeley Protocol on Digital Open Source Investigation: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law, [OHCHR_BerkeleyProtocol.pdf](#), accessed 27/01/2023

(b) Strengthening legal admissibility of evidence created via “New Technologies”

- Working with information management professions to ensure the long-term safekeeping of evidence
- Documenting processes using reliable methodologies

(c) Standardising the technical management of archived data sets through use of “New Technologies”

- Stipulating rigorous preservation processes, including the act of "reformatting" data owing to the obsolescence of software and hardware.

(d) Validating of data through use of “New Technologies”

- Recommending the use of comparisons of data sets, including automated checking

<https://www.ohchr.org/en/calls-for-input/2023/call-inputs-thematic-study-working-group-enforced-or-involuntary>