

INTERNATIONAL COUNCIL ON ARCHIVES SECTION ON ARCHIVES AND HUMAN RIGHTS

SPECIAL INITIATIVE MARKING THE 30TH ANNIVERSARY OF THE UNITED NATIONS DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

Submitted by the Section on Archives and Human Rights, International Council on Archives
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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 High Commissioner for Human Rights to review the impact of the Declaration on the Protection of all Persons from Enforced Disappearance in the thirty years since its adoption.

Supporting this initiative, the International Council on Archives, in particular informed by the work of its Section on Archives and Human Rights, is pleased to suggest steps that would provide enhanced access to the records and archives that contain evidence of enforced disappearances.

As High Commissioner Ms. Michelle Bachelet wrote in the recent volume *Archives and Human Rights*,

“The careful documentation of atrocities is an essential step towards accountability for the perpetrators, justice and reparations for the victims and preventing further conflict by deterring and preventing further conflict by deterring and preventing further abuses. Public access to archival information about serious violations of human rights and humanitarian law is also essential to ensuring the right to truth.”

The Declaration on the Protection of all Persons from Enforced Disappearance refers to maintaining registers of information (Article 10), providing access to documents (Articles 10, 13, and 20) and prohibiting the “act of altering or suppressing documents” (Article 20). In addition, other Articles presume the existence of adequate and accessible records, such as for the purpose of reviewing orders justifying enforced disappearances (Article 6), expulsion to a State where enforced disappearance is a danger (Article 8), and supervision of a chain of command to ensure compliance with law (Article 12).

The Declaration is focused on the obligation of States under the Charter of the United Nations, as relating to the protection of persons from enforced disappearance. However, archives relating to human rights abuses, including enforced disappearance, are held in many institutions, including national and local governments, intergovernmental bodies, businesses, faith-based entities, and nongovernmental institutions (both local and international). In addition, relevant records may have been deposited with collecting institutions, such as university archives and special libraries.

To bolster the Articles, a commentary to the Declaration should emphasize the following points:

States, intergovernmental bodies, businesses, faith-based institutions and nongovernmental organizations must:

1. Identify publicly the locations where records relating to enforced disappearances are held.

The ability to provide information to families and their counsel is hindered if the relevant authorities cannot identify where records relevant to enforced disappearances are held. Further to this, effective judicial remedy cannot be assured if the relevant authorities are not privy to all the information on the situation. Truth and reconciliation efforts are also severely hindered if they do not have the ability to identify where evidentiary records are held, especially when this program happens long after the events occurred.

2. Ensure the preservation of records relating to enforced disappearance.

Identification is not sufficient without safekeeping.

- (a) Archival institutions must be authorized to hold materials relating to enforced disappearance. Archives must have the authority to manage and be entrusted to retain personal information if it is in the public interest, to enable long-term accountability, such as for public inquiries, other official investigations, and public understanding of historical events.
- (b) Records must be managed from their creation to preserve their value and meaning as authoritative sources of information underpinning accountable and transparent administrative actions. In particular, records creators and holders must ensure that all electronic records continue to be authentic, reliable, useable, and maintain the complete and unaltered integrity of the record. When records are transferred to an archives, processes must be undertaken to safeguard both access to and intellectual control of the materials. This work is done irrespective of the format or media in which the record was created in. Preserving the context within which the records were created, accumulated, maintained is crucial to understanding them.

3. Address the need for public access to records relating to enforced disappearance.

The Declaration on the Protection of all Persons from Enforced Disappearance highlights the rights of the individual in accessing information relating to themselves and their family members. It also acknowledges the need for access by competent national authorities for the purpose of law enforcement. However, the Declaration does not state any provision for or right to public access to information relating to enforced disappearances. This oversight does not acknowledge the wider public interest in learning the fate of the disappeared, the perpetrators of the disappearance, and the patterns of institutional conduct that facilitated or tolerated the disappearances. Informed consent, the application of closure periods, and the ability to anonymize records when necessary can enable the public to access evidence that could support and shape future human rights programs as well as clarify the understanding of the nation's history.

4. Acknowledge the importance of the role of information managers, archivists, and records managers in ensuring the integrity of the documentary record.

Adequate resources must be allocated to support the proper management of archives, including the employment of trained professionals. The commentary should highlight the importance of professional and expert knowledge in archives management to facilitate preservation of and access to information relating to enforced disappearances and other human rights abuses.

States must:

1. Enact legislation requiring the preservation of records relating to enforced disappearances.

States must enact legislation requiring both governmental and nongovernmental bodies to preserve indefinitely the records relating to enforced disappearances and to make public a clear statement of access policy for such records.

Archives provide evidence of what has happened and their legitimate use can help shape a better future. Reporting on human rights abuses such as enforced disappearances benefits not only survivors and their families, but can also act as a form of collective healing. Strengthening the Declaration by making explicit the role of archives will benefit and support the advance of human rights.

The International Council on Archives would be pleased to provide any further comment or explanation on our recommendations above.

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