

Draft Guiding Principles for Safe Havens for Archives at Risk

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Preamble

Archives/records provide irreplaceable materials for ongoing and future dealing with the past processes.

Dealing with the past refers to the processes addressing the rights of victims and societies as a whole to truth, justice, reparations and guarantees of non-recurrence in the aftermath of grave human rights violations and breaches of international humanitarian law.

The Guiding Principles for Safe Havens for Archives at Risk take into account the Universal Declaration of Archives, the rights of victims and societies enshrined in international law, namely in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the four Geneva Conventions.

The United Nations Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, in Principles 14 to 18, refers to the special attention that archives/records should receive in dealing with the past. Archives/records in the framework of these Principles consist of any kind of material, which provides information relevant for dealing with the past processes. Such archives are often at risk of destruction or alteration for a number of reasons, including climate change, conscious and unconscious acts, neglect, or storage in inappropriate conditions.

In exceptional circumstances, the risk, which such archives face is so serious and immediate that their continued existence requires that the archives or security copies thereof are sent to a safe haven, if necessary even in another country. As this raises an array of ethical and practical issues, sending original archives or copies abroad should be considered only as a measure of last resort. In addition, removing original archives to a safe haven should, wherever feasible, be of a temporary nature.

Due to the concerns referred to above, such an action should always be based on a set of clearly defined principles. The Guiding Principles for Safe Havens for Archives at Risk provide guidance to sending and hosting institutions for situations in which the safeguarding of originals or security copies through relocation can contribute to dealing with the past processes. They are based on a wide range of existing international experiences.

A Definitions

Archives/records: Materials created or received by a person, family, or organization, public or private, in the conduct of their affairs and preserved because of the enduring value of the information they contain or as evidence of the functions and responsibilities of their creator.

Custody: Care and control, especially for security and preservation; guardianship.

Dealing with the Past: Dealing with the past refers to the processes addressing the rights of victims and societies as a whole to truth, justice, reparations and guarantees of non-recurrence in the aftermath of grave human rights violations and breaches of international humanitarian law.

Hosting institution: The term “hosting institution” refers to a governmental or non-governmental organization/ institution interested in or already offering a safe haven solution for archives/records at risk.

Sending institution: The term “sending institution” refers to a governmental or non-governmental organization/ institution or a person that has found or is looking for a safe haven for its archives/records.

B Principles for Safe Havens for Archives at Risk

General principles

1. Safe haven solutions should be implemented if archives/records that contribute to dealing with the past processes are at risk of destruction or alteration. (*Purpose of Dealing with the Past Principle*)
2. A safe haven solution abroad shall only be implemented when it is deemed impossible to store the information safely within the country, especially when transferring originals. (*Last Resort Principle*)
3. The hosting institution should document all laws, policies, standards, processes, procedures and the means of verification to which they comply and make them available to the sending institution. (*Transparency Principle*)
4. Any safe haven solution should be based on a written bilateral agreement between the sending and the hosting institution. The agreement should reflect the mutual understanding of the laws, policies and the procedures that will be applied to the materials of the sending institution. It should include the purpose, subject of the agreement, roles and responsibilities, liability, as well as judicial steps in case of disagreement. (*Legality and Agreement Principle*)
5. The goals of the sending institution in seeking a safe haven for archives/records shall be paramount in determining how they are treated by the hosting institution. (*Main Goal Principle*)
6. The hosting institution should have a stated ethical code, transparently embedded into the institution's governance. Taking into account that archives/records relevant for dealing with the past processes often contain highly personal and sensitive information on victims and perpetrators of human rights violations, the hosting institution should be guided by the ideas of:
 - a) Do no harm
 - b) Conflict sensitivity
 - c) Data protection and right to privacy. (*Ethics Principle*)
7. Safe haven solutions shall be based on a fair agreement, acknowledging the potential asymmetrical nature of the relationship, including language barriers, mitigating the risks deriving therefrom and not taking advantage of the asymmetry. (*Fair Agreement Principle*)
8. The hosting institution should not financially profit from providing safe haven for specific archives/records. (*No Financial Profit Principle*)

Principles on the substance of the agreement

9. The agreement shall define the rules and procedures for sending the archives/records, the rules for access to the archives at the hosting institution, its publicity and privacy policies, as well as describe the technical standards, process of storage, preservation and migration of the archives. (*Processes in Agreement Principle*)
10. While the hosting institution becomes the custodian of the archives/records, the sending institution keeps sole ownership, unless otherwise specified in the agreement. (*Ownership Principle*)
11. When negotiating the terms of the agreement, the parties shall take into account the difficulty of planning the duration of the arrangement and include options for extension and closure. (*Duration Principle*)
12. The sending and the hosting institution must agree on what will happen if either the sending or the hosting institution ceases to exist, or is subjected to major changes in reporting relationships. (*Anticipating Succession Principle*)
13. When interpreting the agreement, the parties shall be guided by the spirit of the moment when the agreement was signed. (*Constituent Spirit Principle*)

Principles on the characteristics of hosting institutions

14. Hosting institutions should be embedded in an institutional landscape with a functioning, independent judiciary and rule of law, which is likely to prevent inappropriate state influence with the management of the archives/records. They should have support for their activities related to safe haven by their organizational hierarchy and by their governing body. (*Legal Environment Principle*)
15. For security and access control purposes, all processing, storage, and preservation facilities and capabilities used to deal with or hold the hosted archives/records should be demonstrably under the direct control of the hosting institution, unless stated differently in the agreement. (*Control of Material Principle*)
16. Hosting institutions should have physical characteristics that make them apt to provide a safe haven solution. (*Physical Characteristics Principle*)
17. Hosting Institutions should work in accordance with internationally recognized professional standards. (*Professional Standards Principle*)