
Guiding Principles for Safe Havens for Archives at Risk

NOTE

The Guiding Principles for Safe Havens for Archives at Risk have been developed by an ad-hoc international working group consisting of representatives of international, governmental and non-governmental institutions, coordinated by swisspeace. Copyright the International Council on Archives, is licensed under CC BY NC 4.0.

The working group included representatives of the following institutions:

- International institutions: International Council on Archives (ICA), International Committee of the Red Cross (ICRC), UNESCO
- Governmental institutions: Finish National Archives, Historical Archive of the National Police of Guatemala, National Center of Historical Memory of Colombia, National Records of Scotland, Swiss Federal Archives, Swiss Federal Department of Foreign Affairs
- Non-governmental institutions: International Institute for Social History, UMAM Documentation and Research, University of Texas at Austin
- Individual experts: Trudy Huskamp Peterson, David Sutton

swisspeace has been mandated by the Federal Department of Foreign Affairs of Switzerland to coordinate the international working group and the elaboration of these Principles.



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PREAMBLE

There is growing consensus among practitioners with regard to the need for a general approach to the protection of archives/records at Risk.

The Guiding Principles for Safe Havens for Archives at Risk, based on a wide range of existing international experience, provide guidance for both 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, or to preserving archives/records requiring immediate action to protect them from the effects of natural disasters.

Dealing with the Past refers to the processes addressing the rights of victims and societies as a whole to truth, justice, reparation and guarantees of non-recurrence in the aftermath of grave human rights violations, breaches of international humanitarian law and related grave forms of corruption that facilitated these crimes. Archives/records serve as irreplaceable materials for ongoing and future processes for Dealing with the Past and their preservation thus requires special efforts.

Such archives/records are often at risk of destruction or alteration for a number of reasons, including conscious and unconscious acts, neglect, or storage in inappropriate conditions. Archives/records are also threatened by natural disasters, often due to the effects of climate change, such as the rise in seawater levels, earthquakes and hurricanes. These types of situation, and many others, often require a rapid response to protect the documents concerned in safe havens abroad. The following document seeks to establish a set of principles to enable this protection for Archives at Risk.

The Guiding Principles for Safe Havens for Archives at Risk take into account the Universal Declaration on Archives, the rights of victims and societies as well as the obligations of States 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. In the context of these Principles, archives/records consist of any kind of documentary evidence that provides information relevant for Dealing with the Past.

In exceptional circumstances, the risk that such archives/records face is so serious and immediate that their continued existence requires that the archives/records themselves or security copies thereof are sent to a safe haven including, where necessary, in another country. As this type of action 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 a temporary measure. Given the concerns referred to above, action of this kind should always be based on a set of clearly defined principles.

A. DEFINITIONS

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

Do no harm: Do no harm is a concept geared to recognizing that intervention, of any kind, in a (conflict) context becomes part of that context. It aims at minimizing the harm programs and activities may inadvertently cause by simply providing assistance in a conflict situation.

Conflict sensitivity: Conflict sensitivity refers to the practice of understanding how activities interact with conflict in a particular context, to mitigate the unintended negative effects of the activities on the context, and to exert a positive influence on the conflict wherever possible.

Custody: Care and control, especially for security and preservation; guardianship. This includes responsibility for the care of documents based on their physical possession. Custody does not *per se* include legal ownership or the right to control access to records.

Dealing with the Past: Dealing with the past refers to the processes for addressing the rights of victims and societies as a whole as well as the obligations of States with regard to truth, justice, reparations and guarantees of non-recurrence in the aftermath of grave human rights violations, breaches of international humanitarian law and related grave forms of corruption that facilitated these crimes.

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.

Ownership: The right or state of being an owner. An owner is a person, family, or organization, public or private, who has the legal or rightful title to something, one to whom property belongs.

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.

Safe haven: A safe haven is a secure repository provided by an institution for temporary, fiduciary custody of digital or physical archives/records that are in danger in the country of the owner or the owning institution.

B. PRINCIPLES

GENERAL PRINCIPLES

1. Dealing with the Past Principle

Safe haven solutions should always be implemented if archives/records that contribute to Dealing with the Past are at risk of destruction or alteration.

2. Last Resort Principle

A safe haven solution abroad should only be implemented when it is deemed impossible to store, protect and preserve the information safely within the country of origin, especially when transferring originals.

3. Transparency Principle

The hosting institution should document all laws, policies, standards, processes and procedures that pertain to the archives/records in question, and make them available to the sending institution.

4. Legality and Agreement Principle

Any safe haven solution should always be defined in a written bilateral agreement between the sending and the hosting institutions. The agreement shall reflect the mutual understanding of the laws, policies and procedures that will be applied to the materials of the sending institution. It shall include the purpose, roles and responsibilities, liability, as well as legal and non-legal action in the event of disagreement.

5. Main Goal Principle

The goals of the sending institution in seeking a safe haven for archives/records should always be paramount in determining how they are treated by the hosting institution.

6. Ethics Principle

The hosting institution should have and adhere to a stated ethical code, transparently embedded into the institution's governance. Given that archives/records relevant for dealing with the past often contain highly personal and sensitive information on victims and perpetrators of human rights violations, the hosting institution shall be guided by ethics and the ideas of:

- a) Do no harm
- b) Conflict sensitivity
- c) Data protection and right to privacy.

7. Fair Agreement Principle

Safe haven arrangements should always 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.

8. No Financial Profit Principle

The hosting institution should not financially profit from providing safe haven for specific archives/records.

PRINCIPLES ON THE SUBSTANCE OF THE AGREEMENT

9. Processes in Agreement Principle

The agreement should define the rules and procedures for sending and returning the archives/records, the rules for access to the archives/records at the hosting institution, its publicity and privacy policies, as well as the technical standards it uses for description, handling storage, preservation and migration of the archives/records.

10. Ownership Principle

While the hosting institution becomes the custodian of the archives/records, this does not affect their ownership, including all rights to dispose of them, unless otherwise specified in the agreement. This includes the obligation of the hosting institution to return the records to the country of origin, if so requested by the sending institution.

11. Duration Principle

When negotiating the terms of the agreement, the parties should take into account the difficulty of planning the duration of the arrangement and include options for extension and closure. Precautions should be taken regarding possible changes of governments in both jurisdictions that could endanger the archives/records.

12. Anticipating Succession Principle

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 subject to major changes in reporting relationships.

13. Constituent Spirit Principle

When interpreting the agreement, the parties should be guided by the spirit of the agreement when it was signed.

PRINCIPLES ON THE CHARACTERISTICS OF HOSTING INSTITUTIONS

14. Legal Environment Principle

Hosting institutions should be embedded in an institutional framework with a functioning, independent judiciary and respect for the rule of law, which will reasonably prevent inappropriate state interference in the management of the archives/records. They should have support of their organizational hierarchy and their governing body for their safe haven activities.

15. Control of Material Principle

For security and access control purposes, all processing, storage, and preservation facilities and capabilities used to manage the hosted archives/records should always be demonstrably under the direct control of the hosting institution, unless stated otherwise in the agreement.

16. Physical Characteristics Principle

Hosting institutions should be located in a safe area in a building with the appropriate physical infrastructure, and should be able to fulfil the necessary organisational, legal and financial conditions to provide a long-term safe haven solution.

17. Professional Standards Principle

Hosting Institutions should work in accordance with internationally recognized professional standards.

PRINCIPLE ON RAPID RESPONSE

18. Rapid Response Principle

Even if there is a need for rapid response, the safe haven solution should be guided by the spirit of the Guiding Principles for Safe Haven for Archives at Risk. In exceptional cases of extreme urgency or danger, agreed by all parties, the following principles provide the minimum requirements for a safe haven solution (2, 5, 6, 7, 8, 10¹). The other principles may be deferred for later implementation.

¹ Principle 2: Last Resort Principle; Principle 5: Main Goal Principle; Principle 6: Ethics Principle; Principle 7: Fair Agreement Principle; Principle 8: No Financial Profit Principle; Principle 10: Ownership Principle.