

ARCHIVAL POLICIES IN THE PROTECTION OF HUMAN RIGHTS



Antonio González Quintana

**AN UPDATED AND FULLER VERSION OF THE REPORT PREPARED BY
UNESCO AND THE INTERNATIONAL COUNCIL ON ARCHIVES (1995),
CONCERNING THE MANAGEMENT OF THE ARCHIVES OF THE STATE
SECURITY SERVICES OF FORMER REPRESSIVE REGIMES.**

INTERNACIONAL COUNCIL
ON ARCHIVES Paris, 2009

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DIRECTORY OF PRINCIPAL ARCHIVES AND INSTITUTIONS WHICH CONTAIN MATERIAL ON THE VIOLATION OF HUMAN RIGHTS

LEGISLATION (SELECTION)

INTRODUCTION

This study has been prepared on behalf of the International Council on Archives.

The International Council on Archives (ICA) has expanded steadily from its beginnings in June 1948, in close association with UNESCO. Today the ICA is a worldwide organisation, with about 1,500 institutional and individual members and 80 professional associations, in about 190 countries and territories. Relying on this worldwide network, ICA provides a forum for professional discussion across borders and political divides, and has consistently championed the development of archives in developing countries. Acting as the international voice of archival institutions, associations, and professionals, it aims to enhance the permanent preservation of, and access to records and information by citizens.

The archival community through ICA has for many years expressed its deep concern about the fate of archives documenting human rights, joining its voice to that of civil society. Without records there can be little or no accountability. The preservation of records is essential to define responsibilities, to guarantee reparations, and to ensure that the mankind's collective memory endures. The ICA has been supporting projects and activities relating to effective records and archives management as a condition for good governance, transparency and democracy.

In 1995, together with UNESCO, ICA published its first study concerning records and archives created by security services of former repressive regimes. The study was developed in a context of democratization spreading at the end of the eighties and aimed to provide not only an analysis of the situation of these archives but also recommendations for their management and permanent preservation. Antonio Gonzalez Quintana was appointed as chair of the ad hoc working group carrying out this vital work.

In 2003, the ICA's International Conference of the Round Table on Archives focused on the theme Archives and Human Rights and was held in a symbolic place:- Cape Town, South Africa. Many participants found this deeply moving and influential in both a professional and

personal sense. The 1995 study was discussed in detail by the international archival community, led by Antonio Gonzalez Quintana, almost ten years after it had been developed.

The conference provided the ideal professional and political environment for ICA to develop a clear strategy in this field, to establish a permanent leadership group, and to launch a series of projects including an international database of archives documenting the violation of human rights, and the revision of the earlier study.

At the invitation of his colleagues, Antonio Gonzalez Quintana accepted, as he did in 1993, to tackle this delicate issue with renewed vigour and new perspectives. He continues as one of the best informed and most effective archival voices advocating and raising awareness of the fundamental importance of the archival record. This new study demonstrates that despite efforts in many parts of the world to identify, preserve, arrange and make known and available archives documenting rights issues, there remains much to achieve. This study also makes vividly clear the role that personal commitment when combined with professional expertise can play in making a difference. This study is a tribute to the dedication of many colleagues working in difficult circumstances.

Our profession cannot be absent from the issue of human rights. Archives in a democratic society serve the people. The preserved record, comprehensive in scope and documenting all of society, equally accessible to all, constitutes the irreplaceable foundation of evidence based governance. Only through an honest understanding of the societies we have inherited and which we continue to build, their strengths and weaknesses, can we effectively address the challenges of the 21st Century.

Ian Wilson

President of the International Council on Archives.

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In addition, I should thank Margarita Vázquez de Parga. As Sub-Director General of the Spanish State Archives in 1993, she entrusted me with this work, putting my name forward to the aforementioned international bodies as the person to undertake this project.

Some of the principal contributions which led to the report being updated arose out of experiences shared with colleagues who were part of the group on Archives and Human Rights. My special thanks go to Trudy Huskamp Peterson, the leading authority in this field, as well as to Jens Boel and Ana Svenson.

Many thanks are also due to those who took time to read the text when it was opened for debate on the ICA website, and offered their comments and criticisms. In particular, the corrections and suggestions made by Perrine Canavaggio, Anne Pérotin, Graciela Karababikian and Mariana Nazar have been of great importance.

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ARCHIVAL POLICIES IN THE DEFENCE OF HUMAN RIGHTS

From the management of archives of former repressive regimes to the implementation of archival policies in the defence of human rights.

At its meeting in Mexico in 1993, the Round Table of the International Council on Archives (CITRA) approved the establishment of a working party under the umbrella of the International Council of Archives, which was tasked with studying the archives of state security services in former repressive regimes. The group was asked to analyze the situation of archives dealing with political repression which had been produced and accumulated in those regimes in Europe, Africa and Asia, which were moving towards democratisation in the late 1980s. The international archival community thus aligned itself with those Human Rights organisations concerned with ensuring the survival of such documents, which are seen as essential in determining responsibility, in guaranteeing any eventual damages, in reconstructing social history or in preserving the collective memory; as well as in dealing with the implicit ethical questions raised by the custody and care of such documents. The Working Group was also tasked with producing a series of recommendations covering the steps to be taken with these documents throughout the process of transition towards democracy. The work, which took place between 1994 and 1995, was a collaborative venture between UNESCO and the International Council on Archives: I was Chairman of this group of experts.¹

The working group began work in January 1994, and aimed to include archivists with experience of this type of material or of archival ethics and experts in the defence of human rights, with the aim of ensuring that there was an equal balance of representation from countries in the process of transition from Central and Eastern Europe, Latin America, Africa and Western Europe (for example the Greek or Spanish dictatorships). Head of the Working

¹ A resumé of the report was published by the International Council on Archives: in English as 'Archives of the Security Services of Former Repressive Regimes' by Antonio González Quintana in *Janus*, 1998:2, and in French as 'Les archives de services de sécurité des anciens régimes répressifs' in *Janus*, 1999.1. In addition, the report, in Spanish and English is available on the UNESCO website at www.unesco.org/webworld/ramp/security.html.

Group was Antonio González Quintana, former Director of the Civil War section of the National Historical Archive of Salamanca from 1986-1994, while the rest of the group comprised: Dr Dagmar Unverhau, Director of the Stasi Archive in Berlin (Germany); Lazlo Varga, Director of the Municipal Archives of Budapest (Hungary); Vladimir Kozlov, of the State Archives of the Russian Federation in Moscow (Russia); Alejandro González Poblete, President of the National Body for Reparation and Reconciliation in Santiago (Chile); Narissa Ramdhani, Director of the Archives of the African National Congress in Johannesburg (South Africa); Eliana Resende Furtado de Mendoça, Director of the State Archives of Rio de Janeiro (Brazil) and Mary Ronan of the National Archives of the United States.

The group held its first meeting in 1994 in Paris at UNESCO headquarters. This first meeting resulted in the issue of a preliminary statement of its aims and objectives and set out a timetable for its work. The group next met in Koblenz (Germany) in February 1995, to pull together the work developed by its members and to deal with the specific issue of assessment of documents. The final meeting took place in Salamanca (Spain) in December 1995 and was concerned with approving the final text of the report.

After the Round Table Conference held in Cape Town in 2003 the Working Group on Archives and Human Rights, created in the course of the meeting, took over responsibility for this work. The updated report presented here is the result of numerous contacts and exchanges both within and outside the group, which makes the recommendations almost a collective enterprise.²

In the report of 1995 the working group of the International Council on Archives proposed a series of practical objectives. Without wishing to offer a set of guidelines which could be applied in every case, as each process of political transition is unique, the group sought to explain to archivists in countries in the process of transition towards democracy the range of problems they would have to face, while at the same time recognising the actions taken in countries which had been through a similar process, whether complete or in a more or less advanced stage.

² For information on the ICA Archives and Human Rights Group see www.ica.org/groups/

The work also sought to highlight those points of agreement which were summed up in the recommendations, ranging from the purely archival to the obviously political, which, although outwith their competence, the archival community could actively promote.

It was also considered very important to include the proposal that the treatment of this material should be guided by a Code of Ethics, which also forms part of the text of this study.

The working group finally started to collect information on the archives of repressive regimes, with the aim of creating a register of these. Without doubt, the primary means of preserving this heritage is to be aware of it and to make it known. The starting point was information provided by members of the group about their own countries, which was then added to by information provided by colleagues who completed questionnaires distributed among a limited number of countries (Latvia, Lithuania, Paraguay, Poland and Portugal).

In this register we have only included references to former repressive regimes in existence between 1974 and 1994 in the following countries: Germany, Brazil, Chile, Spain, Hungary, Latvia, Lithuania, Paraguay, Poland, Portugal, Russia, South Africa and Zimbabwe. Although the information obtained is very uneven, we attempted to obtain at least: the titles of the principal documentary collections, the covering dates of the documents preserved, where they are stored, and the approximate quantity, as well as, as far as possible, how the principle documentary collections are linked. Furthermore, information is given on the practical aspects of how these collections are used by the new political regime and the conditions of this use, which has facilitated a significant initial statistical evaluation.

This initial information was minimal when compared to what we currently hold, but has allowed us to draw up an outline schema which has proved fruitful in many cases. We should mention that up to date there have been at least three initiatives to create registers of those archives specifically covering human rights: the register managed by *Memoria Abierta*; the Human Rights Archives project *Archiveros Sin Fronteras*, and finally, the project to create a guide to the fonds concerned with violations of human rights managed by the International Council on Archives Human Rights group. In addition, Maria José Aldaz in his superb blog has compiled news reports on archives and human rights, and this is an indispensable source in keeping up to date with all the many daily developments on this subject (see his website at

www.archivistica.net). This has led to the creation of a *Map of Archives and Human Rights*, which shows graphically the locations of such archives on a world map.³

This report gives up to date details of the directory of archives and lists the principal fonds and documentary collections.

Finally, the bibliography and details of legislation which were restricted to a few pages in the 1995 report, are now included as a separate part of the finished work, with a selection of legal texts considered to be of significance in the growth of archival politics.

Archives and Human Rights: a social problem which transcends the limits of archival science

The 1980s saw an unprecedented dismantling of repressive political regimes world-wide.

On the one hand, the countries of Central and Eastern Europe which, since the Second World War, had been part of the wider Soviet Union in a world divided by the Cold War began a process which started on the periphery with Poland and culminated in the 1990s with the total destruction of Stalinist structures. The most symbolic event was the fall of the Berlin Wall and German reunification in 1989.

At the same time, in Latin America, another unstoppable process had begun to demolish repressive political regimes. Here these were the conservative military dictatorships which had dominated practically all of South America, in some cases for more than five decades, even although there had been more or less stable democratic intervals in several countries.

Furthermore, the African continent witnessed, after a long drawn out struggle, the end of those regimes based on the suppression of some races or ethnic groups by the political powers, from the democratization of Zimbabwe up to the fundamental landmark which was the end of the apartheid regime in South Africa.

³ Map of Archives and Human Rights. http://www.archivistica.net/archivos_derechos_humanos.htm

Finally, the 1970s saw the disappearance of conservative dictatorships in Western Europe: Portugal, Greece and Spain. The process of transition in these three countries, which took place in advance of the wider general process described above, comprised three very different experiences all of which act as important points of reference.

This period of little more than twenty years, between the Portuguese ‘Carnation Revolution’ of April 1974 and the end of the apartheid regime is the period covered by this study. This is not because the upheavals of the 20th century, such as the fall of Italian fascism or of Nazi Germany lack interest, and indeed reference is made to these periods throughout this text, but because these more recent experiences offer valid points of reference for the global political context in which we live at the beginning of the 21st century. Indeed, if we go much further back, to the beginnings of the modern state to where the first examples of repressive powers can be traced, we find the great example of the Spanish Inquisition. In all probability, the documentary collections of this institution can be seen as the predecessor of archives of modern systems of repression. This serves always to remind us of the enormous importance the preservation of this archive holds for the historian of the modern state: in fact, the National Historical Archive of Madrid (Spain) hold the records of the Supreme Council of the Inquisition as well as those of most of its district tribunals, all of which constitute an irreplaceable source of information not only on power relations in the Iberian kingdoms but also on the culture and mentality of the European Renaissance.

It is clear that repressive bodies have proliferated since the beginnings of the modern state. Archives world-wide are full of documents which bear witness to this. But we are especially interested in the archives of the most recent repressive institutions, because by reason of their contemporary nature, they are of social and political importance. With the change to a new political regime and the arrival of freedom and recognition of the Universal Declaration of Human Rights, these archives which were originally of fundamental importance in the exercise of repression, now became instrumental in the formation of new social relationships. The boomerang effect embodied in these records is both atypical and unique, and requires, from a professional archival point of view, a thorough reflection on the management of these records which place a hitherto unknown form of responsibility on these archival institutions.

Archives have a decisive influence on places and people. This is best illustrated by the records used by repressive regimes. The image of the archives of the state security services in repressive regimes graphically illustrates their importance. It is clear that throughout the time of these regimes, the victims of the political information services felt viscerally the weight of these archives, without being explicitly aware of them, and when democracy arrived and the fonds were opened their influence on the life of the people became crystal clear.

Richard Cox and David Wallace observe that, for them it was the power of the documents as sources to scrutinise actions which was their principal characteristic, one which frequently caused them to be featured in newspaper headlines or in the tribunal court rooms. Both archivists note that, over the past decade, archives have become key elements in the shaping of our world.⁴

Furthermore, the importance of these archives is not only that they throw light on our recent past, but that they have an administrative use in the exercise of individual rights which democracy normally allows: amnesty for those who expressed beliefs contrary to those generally accepted, indemnity for victims of the repression and their families etc. German and Spanish experiences are hugely illustrative. It is thus this primary value which we have to take into consideration when discussing this subject. There is no doubt that the historical dimension is enormously important, but the social repercussions which can result from these archives make a public service of the first magnitude. The archives best known in Spain are undoubtedly those of the National Historical Archive Civil War section at Salamanca⁵, basically because they supplied tens of thousands of certificates to those citizens who were involved with the armies and security services or administration of the Republic and who were later victims of the Franco repression.⁶ A similar case can be made for the archive of the former Stasi in Berlin.

As well as recognising the value of those archives produced by repressive organisations, in the late 20th and early 21st centuries we have become aware of the importance of conserving

⁴ Cox, Richard J. and Wallace, David. A. 2002. *Archives and the Public Good: accountability and records in Modern Society* (Westport)

⁵ Now integrated into the Documentary Centre for Historical Memory (created by Royal Decree 697/2007, 1 June)

⁶ González Quintana, Antonio. 'El archivo de la Guerra Civil de Salamanca' in *Historia 16*, no. 230, June 1995, pp12-26.

the witness statements of the victims or of their organisations. In spite of their relatively modest volume, when compared to the immense machinery of repression created by the political police, their value in legal cases as well as in the process known as ‘recovery of memory’ has been unquestionable.

Finally, the work of international Justice Commissions and Truth Commissions, of such importance in consolidating democracy, should ensure that the accumulated witness statements are stored in a safe place and should also introduce mechanisms to manage the records produced and to administer the archives which have been created, in order to guarantee their survival.

More than ten years have now passed since this initial report was published. Many things have changed and many events taken place which justifies an updating of the original recommendations. Above all, time has helped us to look more deeply at the link between archives and human rights. In updating this study, we decided, on the advice of various colleagues, that the priority had to be widening our investigations to other archives as well as those produced by agencies of repression.⁷

In order to find answers to those professional questions which we, as archivists, needed to know about the organisation, conservation and use of records relating to human rights, both from the point of view of the violation of these rights as well as from the perspective of their defenders, we needed to have the widest possible knowledge of the bodies which produced these records.

First, this report will analyze the genesis and care of records linked to the massive abuse of human rights by public institutions—the archives of repressive bodies—which can be found among subsets of the archives of the State Security Services, the archives of special tribunals, those of prisons or concentration camps, military archives, archives of the forces of public order, and those of the judiciary.

⁷ Karababikian, Graciela ‘Archivos y Derechos Humanos en Argentina’ in *Boletín del Archivo General de la Nación*. Año LXIX, vol. XXXII, no. 119, Santo Domingo, 2007.

It will continue by studying the documentary practices of those organisations dedicated to the defence of human rights or to the denunciation of the violation of these rights, which we will group under the general heading of civil society.⁸ Amongst these are the archives of victims' organisations, archives of parties, trade unions and clandestine opposition associations, or those in exile, organisations for the defence of human rights: religious bodies, jurists' and lawyers' collectives and civil bodies. These records have proved to be an essential, at times unique, source, providing awareness of past events, as well as acting as an alternative means of proof in the search for those guilty of the violation of human rights, of crimes against humanity or of genocide, and have proved useful as a tool for those seeking reparations.

Third, it will make recommendations on the archives of those institutions created after the fall of repressive regimes, established to judge those responsible for the violation of human rights or to achieve reparations for those damaged by the repressive actions of the State. Included are those emblematic organisations of the period of Transitional Justice, fundamentally the Truth Commissions which, in themselves, were also responsible for creating document such as victims' statements, although also, in some cases, statements from those guilty of repression, as, for example, in South Africa where the Truth and Reconciliation Commission invited them to come forward, with the guarantee of a pardon. These can be described as Archives of Justice, Shame and Catharsis.

Last but not least, general public archives are considered, because, more often than might be thought initially, these contain many proofs of the violation of human rights, above all because an integrated archival policy which covers all public records is the best guarantee that records important for the interests of the community are preserved and made available.⁹ Records in an archive spontaneously become mirrors of the society which produced them. If this was characterized by lack of liberty and the systematic abuse of rights, it is not surprising that much information about these elements can be found in material, which, at first, might be regarded as unlikely sources.

⁸ Alberti, Gloria. 'Los Archivos del dolor' in *Comma*, 2004

⁹ Nazar, Mariana. 'Dictadura, archivos y accesibilidad documental. A modo de agenda' in *Derechos humanos en Argentina. Informe 2007*, Informe anual del CELS, EUDEBA, 2007 and in www.cels.org.ar

Before beginning to update the report it was first necessary to offer an historical and sociological overview, albeit brief, of the years since the initial version was published, as a means of setting in context the changes needed in the new version.

First, we have to take into consideration the profound reflection which has taken place in the archival world in the last ten years, concerning the role of archives and archivists within society, as a guarantee of citizen's rights, and as essential elements in the collective memory of the people. This change has come about due to a series of factors:

- 1 The emergence of memory in the politics of managing the past, which grew out of a need both to manage the immediate past as well as to revise the management of the remote past. This phenomenon was already present in the 'new democracies' and also the 'old transitions' which decided to face up to knowledge about the past of which they initially professed ignorance in the interests, supposedly, of an easier route to reconciliation.
- 2 A social perception that the past conditioned the present, which led to a clear demand for an objective account of the truth and for official accounts and popular myths to be superseded.
- 3 The impact produced by the inrush of records of the State security services into the political transition process, not only because they were essential tools in the search for those responsible and in the process of reparation for the damages suffered by their victims, but they were also extremely powerful political tools which could be used in a partisan way to gain enormous advantages in the political arena such as by the controlled release of information at specific times, such as elections. The role of the archives of the intelligence services in countries in transition such as the Czech Republic or Germany was fundamental in establishing the politics of 'cleansing' or of analysing personal behaviour in times of repression, which characterized the evolution towards democracy in ex-communist countries, up until the very recent Romanian decision to renounce this method of transitional justice. The laws of 'cleansing', vetting, or scrutinising of

behaviour resulted initially in those guilty of greatest violations of human rights being able to hide under the shelter of a general loss of memory, the abuse of the power of the records resulted in excesses which are difficult to understand in terms of the defence of human rights. The clearest example of these abuses is the contested legislative reform which was carried out in Poland by the Kaczynski twins.

- 4 The growth in archival policies oriented towards the archives of opposition political movements or of archives of organisations defending human rights. The wealth of information these sources contain, in spite of their often reduced size, leads us to consider the need to compare sources. The perception of archives as central elements able to provide sources of a very varied kind is beginning to seep through to governments, parties, social agencies and citizens in general.
- 5 Meetings between archivists and those defending human rights. This has been a key element in opening the way to working in an inter-disciplinary fashion with archives, in which the archivist is not the only interpreter of the records. Sharing our views on the right to know the truth about our past with lawyers has allowed us to see that there are many points of agreement on the role of the archives. Thus the right to know and the need to record, as defined by Louis Joinet and Diane Orentlicher when writing about the struggle against immunity, have become essential reference points for the archivist. Equally, we should note the important observations made by other United Nations reporters such as Theo van Boven, when writing for the Council of Human Rights about the use of archives in validating the rights of victims to rehabilitation and compensation.

We also need to update information on the many archives found and opened for consultation in this period. These range from the archives of the National Police Force of Guatemala, found by accident in 2005, which is one of the most impressive sources for the study of political terror in Latin American dictatorships¹⁰, to the opening of the archives of Bad

¹⁰ Doyle, Kate. 'Los archivos de la atrocidad: descifrando los archivos de la guerra sucia de Guatemala', in *Pueblos*, 16 May 2008 (trans. by María de la Luz Muñoz from the original, published in English in *Harper's Magazine*, Dec. 2007).

Arolsen, with its collections covering the Nazi organisations involved in the Holocaust¹¹, which is now one of the centres for the study of the violation of human rights and a true archival monument for the history of genocide. There have also been important public or private collections deposited, or opened to researchers, in national or other general public archives, which contain important information on the abuse of human rights or the struggle to defend them. As an example, there is the work undertaken by the National Archives of the Dominican Republic in modernizing an institution which was created during the Trujillo dictatorship and an active protagonist in the political repression of the time, into a model institution which has brought together the records which it stored with those recently incorporated funds from the presidency of Rafael Leónidas Trujillo, which now totals more than 25, 000 individual files, the majority of which are already in the public domain.¹²

But without doubt, most changes have been made in the fields of legislation and of creating archival institutions or those dealing with the management of the past, and which contain archives and other reference tools: examples of which are archives and Memorial museums. Almost all Central and Eastern European countries in the process of transition have passed laws covering the regulation of archives of the repression, which clearly state what is to happen to these archival funds. Many new institutions (centres, archives or memorial museums) have regulated conditions of access to these records.

A meeting between lawyers, historians, archivists and defenders of human rights: the Joinet and Orentlicher reports

The concern of the International Council on Archives and UNESCO for the future of these archives was shared by other institutions and more especially by citizens' groups who organised various campaigns concerned with the preservation and use of these records. The last ten years have seen many conferences, symposia, day schools and seminars on the theme of the archives of the security services in countries in transition, from many diverse perspectives and generally dealing with the different models of political transition. In an attempt to summarize these meetings/initiatives, we can consider them in three separate

¹¹ Ross, John F.L. *Associated Press*, Oct.24 2007.

¹² Cassa, Robert. 'Informe sobre los avances archivísticos en la República Dominicana' in *Boletín del Archivo General de la Nación*, Año LXIX, vol/ XXII, no. 118.

groups; 1) archives and research, 2) archives and the collective memory, and 3) archives, establishing those responsible and compensating their victims.

The first of these concerned meetings between historians and other general researchers, whose interests were in accessing these sources for the study of recent history, which at times had been falsified. This type of approach to the subject was characteristic of the ex-communist regimes of Central and Eastern Europe, in which the opening of the archives to investigation was seen as a means of understanding the past, one which had been denied by the repressive regimes. The consultation of these documents, assisted by important international support, resulted in an unprecedented flourishing in the field of historiography, not only in those countries affected by political change, but also in many of their so-called 'enemies' in the period of the Cold War.¹³

The second group is where collective memory, the right to truth and the need to record events come together. These are mainly supported by those social groupings which seek a form of justice for the victims of the repression which the tribunals have been unable to offer, with the aim of ensuring that the memory of the horrific events is maintained. These meetings have discussed fully the role of archives in the process of making the collective memory part of a country's heritage. With this in mind, the aim has been to see how records can assist in ensuring that neither the repression nor its victims are forgotten. The final aim is both concrete and didactic: to ensure that these events can never be repeated. This approach to the subject has been fundamentally characteristic of Latin America, where the multiple traces of repression and its related atrocities have been wiped out by dictatorial regimes who hoped to cast doubts on the testimony of witnesses, their families or friends by employing a strategy of deliberately forgetting and which was designed to ignore the existence of the most serious crimes¹⁴.

¹³ For example, *Archives of political parties after the collapse of communism* (Budapest, 16-27 July, 2000); the Round Table meeting *The Opening of the Archives and the History of Communism* (at the 19th Congress of Historical Sciences, Oslo 6-13 August 2000).

¹⁴ Some of these meetings, in chronological order, were: a workshop on '*Preservación de la Memoria Histórica: documentos y archivos de derechos humanos en el Cono Sur*', Santiago de Chile, 25-28 April 1999; International conference on '*The Memory of the Century*', Vienna (IWM), 9-11 March 2000; International Seminar '*Arquivos de Relação. Autoritarismo, repressão e memória: Uma História Contemporânea*', Rio de Janeiro, September 2000; 3rd World Social Forum '*Memoria de las Dictaduras. Instrumentos para a Consolidação dos Direitos Humanos*' Porte Alegre, January 2003.

In the third group can be found those dedicated primarily to the theme of archives as a means of ensuring that victims of the repression can exercise their recognised rights during the process of political transition, and as special tools of information to be used against those denying responsibility for the violation of human rights.¹⁵

However, the most important body to debate these issues is, without doubt, the Commission for Human Rights (now the Council for Human Rights) of the United Nations.

Shortly after the work of the ICA-UNESCO group on the Archives of State Security in former Repressive Regimes was finished, and its final report presented to a meeting held in Salamanca, Spain in December 1995, Louis Joinet (who had been working since 1991 on the theme of the struggle against immunity being granted in cases of violations of human rights) presented his initial report to the Sub-committee of the United Nations Commission for Human Rights responsible for the Prevention of Discrimination and Protection of Minorities¹⁶, which was entitled *Principles for the protection and promotion of human rights and for preventing the granting of immunity*. In 1997 he presented his final revised report¹⁷ which was submitted to the Commission for Human Rights on 17 April 1998 at its 52nd meeting, which then passed a resolution on immunity from prosecution¹⁸. In this report, Joinet stated that a collective right was **the right to know**, and by this he meant not only the right of every victim and his family to know what happened to them, which could be the simple right to the truth, but also that this ‘right to know’ was a collective right which had its roots in history and was designed to ensure that future such violations could be avoided. In addition an **inalienable right to the truth** was implicit (principle 1) — which concerned the truth about what had happened, and the reasons which lay behind the massive violations of human rights and the perpetration of abhorrent crimes— and the **duty to record** (principle 2) which was incumbent on the State, in order to protect itself against the charge of rewriting history, of revisionism or denial. In effect, knowledge of the oppression suffered by people is

¹⁵ As, for example, the following: International Seminar ‘Impunidad y sus Efectos en los Procesos Democráticos’, Santiago de Chile 14 December 1996; ‘Mortos e Desaparecidos Políticos Reparação ou Impunidade’ Sao Paulo, 8-10 April 1997; International Conference ‘Archives of Repressive Regimes in the Open Society’, Riga 4-5 June 1998; ‘Verbrechen im Parteiauftrag: Akten, Archive, Aufarbeitung der kommunistischen, Verangenheit in Ostmitteleuropa’, Tutzing October 1998; Second Day School of Archiveros sin Fronteras ‘Archivos y Derechos Democráticos’, Barcelona 21-22 February 2003.

¹⁶ UN document E/CN.4/Sub.2/1996/18-20 June 1996.

¹⁷ E/CN.4/Sub.2/1997/20/Rev.1

¹⁸ C.H.R.res. 1998/53, ESCOR Supp. (no 3) at 175, U.N. Doc. E/CN.4/1998/53 (1998).

part of their heritage and should be preserved. These are the principle objectives of the right to know as a collective right.

The definition of the right to know as a collective right is similar to that expressed in the ICA-UNESCO report as the *right to the truth*. Although not expressed in exactly the same terms, the reference to the *duty to record* as an essential part of *the right to know* ought to be put on the same level as the *right to a collective memory*, which was also mentioned in our 1995 report, as part of the discussion of the integrity of the written memory and the need to include details of repression as an inseparable part of a people's history. The *duty to record*, at times painful, prevents the past being depicted as being one free from dark periods.

In addition, his report also suggested measures by which this collective right could be validated: first, through the creation of extra-judicial commissions on historical investigation and second through a series of measures designed to ensure that those archives concerned with the violation of human rights were preserved, which implied that, particularly during the period of transition the need to know meant that archives had to be preserved. In order to achieve these outcomes, the following measures should be taken:

- a) protective measures to be put in place to prevent theft, destruction or loss of sources
- b) an inventory to be created of those archives available, which should include those in custody of other countries, which would co-operate by making them available or by returning them.
- c) regulations on access to be changed to adapt to the new situation by, for example, offering those accused of crimes in the records, the possibility of the right of reply, by including their accounts of events in the documents.

The concrete principles contained in the Joinet report which concern the archives of repression are as follows:

C. Preservation and consultation of archives as a means of determining violations

Principle 13: Means of preserving archives

The right to know means that the archives have to be preserved. Measures should be put in place to prevent the sequestration, destruction, loss or falsification of archives with the aim of ensuring that those guilty of violations of human rights remain unpunished.¹⁹

Principle 14: Methods of facilitating consultation of archives

Consultation of archives should be made easier in the interests of victims and their relations in order to ensure their rights.

If necessary, they should also be open to the accused who need them as part of their defence.

When consultation is for historical investigation, in principle the formalities covering authorization ought to be carried out with the aim of managing access rather than those of censorship.

Principle 15 -Co-operation between archive services, tribunals and extra-judicial investigation commissions

Tribunals and extra-judicial investigation commissions as well as those who work under them should be enabled freely to consult the archives. Confidentiality cannot be invoked for reasons of defence. Nevertheless, by virtue of their sovereign powers of assessment, tribunals and extra-judicial investigation commissions can decide, exceptionally, not to make public specific information which could compromise the process of preservation or of re-establishing a state of law to which these commissions contribute.

Principle 16-Measures specifically relating to personal data

- a) As far as this principle is concerned, personal data means archives which contain information which would allow, either directly or indirectly the identification of people referred therein, in whatever form the information is stored, whether in files or paper or digitized indexes.*
- b) Everyone should have the right to know if they are named in the said archives, and, if so, after exercising their right to consult these, to challenge the legitimacy of the*

¹⁹ A much clearer and tighter explanation of this principle is offered in the non-official translation of the Nizkor team:

The right to know implies that archives should be preserved. A series of technical measures should be undertaken and penal sanctions introduced to impede the sequestration, destruction, loss or falsification of archives, aimed principally at ensuring that those guilty of the violations of human rights remain unpunished.

Unofficial translation of document E/CN.4/sub.2/1997/20/Rev.1, made and edited electronically by the Nizkor Team on 11 January 1998 and revised 31 March 2002 (<http://derechos.org/nizkor/doc/joinete.html>)

information concerning them and to exercise the right to reply. The document in which the corrected version is laid out should be added to the original document which has been challenged.

- c) Except when such information refers to those responsible or to permanent collaborators of security and information services, personal data contained in the archives of these services should not be the only proofs of responsibility, unless corroborated by other reliable and diverse sources.*

Principle 17- Specific measures relative to processes of re-establishing democracy and/or peace or of transition towards them

- a) Measures should be taken to place every archive centre under the responsibility of a named person. If this person is already in charge of the centre, he/she should be expressly confirmed in post by special decision, subject to conditions and guarantees laid out in principle 41.*
- b) The first priority should be making an inventory of the stored archives, and the verification of the reliability of existing inventories. Special attention should be paid to the archives of detention centres, especially if their existence is officially denied.*
- c) The inventory should also cover archives relative to third party countries which should, in the interests of establishing the truth, co-operate by providing information on their holdings or by repatriating them*

In 2005, Diane Orentlicher brought the Joinet report up to date²⁰, describing those principles relative to the conservation and diffusion of the archives thus:

Principle 14. Measures to preserve archives

The right to know implies the need to preserve the archives. Technical measures should be adopted, and penal sanctions applied, to impede the sequestration, destruction, dissimulation or falsification of archives with the aim of assuring that those responsible for violations of human rights and/or humanitarian law go unpunished.²¹

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²⁰ UN Doc. E/CN.4/2005/102/ADD.1., 8 February 2005

²¹ Translation corrected as noted in f/n 19. The official translation reads ‘...or the falsification of archives with the aim that those responsible for violations of human rights and/or human law go unpunished...’

Principle 15: Measures to facilitate the consultation of archives.

Consultation of the archives should be facilitated in the interests of victims and their families and to allow for the validation of their rights. When necessary, accused persons should also be allowed access which they seek in order to prepare their defence. When consultation is for historical purposes, the formalities for authorization should have the ultimate aim of safeguarding the integrity and security of the victims and of other persons. Formalities for authorization should not be applied with the aim of censorship.

Principle 16: Co-operation between archival services, tribunals and extra-judicial investigation commissions.

Tribunals, extra-judicial commissions and those who work for them should have free access to the archives. This principle should be applied in such a way as to respect personal privacy, particularly including guarantees of confidentiality given to the victims and to other witnesses as a pre-condition of their statements. Consultation of archives should not be refused on grounds of national security except when in exceptional circumstances such a restriction has been laid down in law: the government should demonstrate that such restrictions are necessary in a democratic society in order to protect the legitimate interest of national security and the refusal will be the subject of independent judicial examination.

Principle 17: Measures specific to archives containing information of a personal nature:

- a) This covers archives which contain information which would enable those mentioned therein, either directly or indirectly, to be identified*
- b) Everyone has the right to know whether their names are mentioned in the archives, and, if so, to have the right to see these files, to question their validity and to exercise the right of reply. The document challenged should contain a cross reference to the challenging document and both be readily available to whoever seeks the first. Access to archives of investigation commissions should be governed by the norms of confidentiality for victims and other witnesses who spoke in their support, in conformity with principles 8f) and 10d)*

Principle 18. Specific measures relative to the process of re-establishing democracy and/or peace or of transition towards these.

- a) *Measures should be taken to place every archive centre under the responsibility of a named person.*
- b) *When the inventory of the stored archives is compiled special attention should be paid to the archives of detention centres and other places in which serious violations of human rights and/or humanitarian law such as torture took place, especially if their existence is officially denied.*
- c) *Third party countries should co-operate with the aim of communicating information about, or of repatriating, archives, with the aim of establishing the truth.*

The rights of the individual in the process of historical investigation and above all, the right to know what documentation may exist in an archive, known as *habeas data*, are the same as those laid out in the International Council on Archives report (ICA-UNESCO). But the measures proposed by Joinet to guarantee the preservation of records, especially during periods of political transition are the most significant because it is not often that we archivists find an interlocutor so in tune with other social groups, to which, to our shame, we have not always been able to convey the importance of conserving and dealing with the documents in a professional manner, which would allow the exercise of rights recognised by law.

Finally, the question of archives and human rights has also been discussed over the past years in another important forum, the Inter-American Commission for Human Rights, part of the Organisation of American States. In 1998, to link with the 50th anniversary of the Universal Declaration on Human Rights, the Commission, in its 101st session, recommended that member states ‘*adopt legislative measures and others deemed necessary to make effective the rights to free access to information held in the archives and documents of the State, particularly in cases where investigations are seeking to establish responsibility for international crimes and grave violations of human rights*’²²

The demand for archives to be open

Although laws regulating freedom of information have existed since 1776, in the last ten years an unprecedented number of states have adopted Freedom of Information legislation.

²² Press release no. 21/98.

David Banisar notes that one of the reasons for this proliferation of legislation is *the collapse of authoritarianism in the 1980s, and the birth of new democratic states with new constitutions which specifically included a guarantee of the right to information. Such a constitutional guarantee needed new laws on access to information to be passed.*²³

The end of dictatorships and the beginning of the long road towards democracy in those countries in transition resulted in a series of demands related, directly and indirectly, to the archives of those bodies linked to the repression. Indirectly because they are tools indispensable in the exercise of justice, ordinary or transitional, and because they constitute an essential element in shaping the social memory. But also directly because, when their existence is clear, as in the majority of countries in Central or Eastern Europe which had been communist regimes until the end of the 1980s, there has been a demand for them to be opened. In particular, as far as those named ex-communist countries are concerned, the opening of the archives means *first that all archives in post-communist countries, particularly those of communist parties, held in public archives be managed in accordance with the laws of the particular democracy; second, access to all documents kept in these archives be equal for all users; third, the general opening of all documentary fonds created between the end of the First World War and the 1980s, and which were subject to manipulation or falsification by the communist authorities.*²⁴

The opening of the archives formed part of the great social agenda which arose in the Soviet Union and the rest of the European communist countries in the years following 1989 and, although determined in part by these changes, which although gradual and patchy, has given concrete expression to these changes. The search for truth about the recent past has been, all in all, in these countries, part of the political struggle for a new direction both in the domestic sphere as well as in the field of international relations.

Events have responded in a positive fashion to the question posed by Alexander Solzhenitsyn in the first few pages of the introduction to *The Gulag Archipelago (1918-1956)* when he said that he did not dare to write a history of the Archipelago: *...I have not been able to read the relevant documentation. Will anyone ever have access to it?* and the work which the

²³ Banisar, David. 2005. *The Irresistible Rise of a Right*. Eurozine.

²⁴ Prečan, Vilém. 'The Opening of the Archives and the History of Communism', in *the Millennium Congress: 19th International Congress of Historical Sciences*, Oslo 6-13 August 2000; Round Table 19.

opening up of the archives has allowed has reaffirmed, in the bureaucratic language used in official documents, the monumental literary denunciation of the Nobel prize-winner for literature in 1970.²⁵

Diane Orentlicher, the other independent expert commissioned by the United Nations Commission for Human Rights to come up with proposals for good practice in the struggle against immunity and to continue and put into practice the Joinet report of 1997²⁶, specified that in general, states should take measures to ensure that information on human rights violations should be available to the public. Laws governing access to such information are in place in many countries: *In view of the potential to improve the access of citizens to the truth about violations of human rights, it is recommended that States which do not yet have laws which permit their citizens to have access to state documents, including those containing information on violations of human rights, begin to promulgate them. As an example, we can cite the Federal Law on access to information passed in Mexico in 2002, which prohibits the retention of documents which describe 'grave violations' of human rights.*

In conformity with Joinet's principle 17c, States which have information relating to abuses committed in another State have a duty to make this known. One example of such a report is the communication issued by the government of the United States in August 2003, concerning 4, 677 documents relating to abuses of human rights in Argentina during the military dictatorship, many of which were relevant in cases investigated by Argentinean tribunals. The government also declassified documents concerning human rights and the politics of the United States relative to Chile, El Salvador, Honduras and Guatemala.

The work of Non-Governmental Organisations (NGOs)

²⁵ Werth, Nicholas. 1998. 'Un estado contra su pueblo: violencias, temores y represiones en la Unión Soviética', in *El libro negro del Comunismo: crímenes, terror y represión* (Madrid, Espasa Calpe)

²⁶ In its resolution 2003/72, the Commission for Human Rights asked the Secretary General to commission an independent study on 'best practice, including recommendations, to assist States to reinforce their national capacity in combating all aspects of immunity, taking into account the agreement on principles on the protection and promotion of human rights through the struggle against impunity (E/CN.4/Sub.2/1997/20.Rev.1, annex II), prepared by the Sub commission on the Promotion and Protection of Human Rights (the principles) 'and the manner in which they have been applied, recognising recent changes and examining the question of its last application, and also taking into account the information and observations received' of States in complying with the resolution 'and the study to be presented to the Commission, at the latest by its 60th session.

But it is not only the building of new archival centres as public institutions that has been important, but the initiatives developed by private associations and citizens groups which have built up banks of information and even archives valid for use in the search for information on those affected by violations of human rights, have also been of enormous importance. The final aim is to cover a wide spectrum ranging from the reconstruction of historical memory to finding those relatives who disappeared. The work of the organization *Memento* in countries such as Estonia, in searching for facts about Estonian citizens who were victims of repression, imprisoned or deported, or that of the group *Todos los nombres*, named after the novel by Saramago, and which developed in Andalucía (Spain) are illustrative of what can be done by civilians. It would be interesting to analyze the difference in the sources used by both groups. While *Memento* initially used material gathered from public archives, in the case of the Spanish group, the opposite occurred.

In the case of Estonia, in 1994 the State Archives counted some 43, 683 files of people arrested and 40, 455 for those deported. However, the search for personal data has shown that the archives lack information on a large number of those deported. To complement this data *Memento* (the Estonian group representing those illegally detained) created, under the aegis of a working group of its Committee on Information and History, a Register of Estonian victims of repression, aimed at establishing a database of information on all victims of repression between 1940 and 1988. Information will be sought from archives or from personal statements of those affected, or of their relatives.

The international dimension: universal justice (universal competence)

The debate on archives of the repression has been so thorough, that the events of the last ten years concerning the globalization of justice have been less important for the subject here under discussion.

In those countries in the process of transition from totalitarian regimes to democratic political systems, the link between archives and human rights acquires a special dimension. We have frequently mentioned the importance that records generated in the course of political repression have in perpetuating the memory of the people, in that they are testimony to the repression they suffered, but the most important argument in favour of conserving such

records within the new democratic regimes lies in the importance that they hold for people affected, either directly or indirectly, by the repression and that they are thus essential in the new political situation in the exercise of certain individual rights: rehabilitation, amnesty, reparations, indemnity, pensions, restoration of property. To all these domestic considerations should be added the international dimension, which incorporates the concept of universal justice to the link between archives and human rights. This was formulated in the 1940s in the convention against genocide at the time of the Nuremberg Trials, but it has only arisen as a general judicial practice as a result of recent experiences such as the creation of the Tribunal for the study of crimes in former Yugoslavia, the Rwanda Tribunal, or the actions of Judge Garzón against Augusto Pinochet and other judges and attorneys in different parts of the world. The encouraging result was the creation of the International Criminal Tribunal, especially when considering the obstacles brought about by the open hostility of the United States to this new institution, which began at the Rome conference in 1998 and has increased in a notorious manner since the beginning of the Bush administration in January 2001. In spite of this serious setback in the globalization of Universal Justice, it now seems that atrocities committed by those in charge of those regimes will be considered as crimes against humanity, which opens the possibility of third party countries becoming involved in their persecution. The lack of case law for such crimes and the generalization of practice such as in the case of Judge Baltasar Garzón,²⁷ largely followed throughout the world²⁸ have guaranteed the recommendation that the archives of State Security in former repressive regimes will be preserved and protected, as part of the World's Heritage. To sum up, these collections of records should remain available to the public, to preserve part of its collective memory, as well as the wider universal memory necessary in the struggle against barbarism and the systematic violation of human rights, and, with relevant guarantees, should be used in the cause of human rights. Thus, the responsibility for their custody transcends the limits of the state concerned, in as much as the investigation and sanction of violations of human rights

²⁷ For details about this see: *El caso de España contra las dictaduras chilena y Argentina: los documentos del Juez Garzón y la Audiencia Nacional*. Barcelona, Planeta 1998.

²⁸ As well as the detention, withdrawal of parliamentary privileges and the process against General Pinochet which resulted from the initiatives taken by the Unión Progresista de Fiscales de España in 199, and Judge Baltasar Garzón from the Audiencia Nacional Española, we should also mention a process followed in France against Captain Aztíz of the Argentinian Navy or the actions of Judge Luna in Mexico against Captain Cavallo. We should also mention the open process in the Audiencia Nacional de España by Judge Santiago Pedraz against the Guatemalan dictators Ríos Montt and others.

transcends the particular concerns of a stated society, and becomes a matter of interest for the entire international community.²⁹

The temporal dimension

But events have not only gone beyond the geographical context of the states affected by political transition, but they have also gone beyond the temporal context of transition. First we have to examine the initiatives taken in reconsidering the manner in which the process to transition took place, such as those set out in Argentina where the Chamber of Deputies, on the initiative of the government of Néstor Kirchner, abolished the laws of *Punto Final* and *Obediencia Debida*, thus clearing the way for those responsible for violations of human rights during the military regime, to be tried within the country. In this new situation, new detention orders were issued for those responsible for repression during the Argentinean dictatorship, and requests for extradition were re-opened. Thus Judge Rodolfo Canicoba, after receiving a request for extradition from Judge Baltasar Garzón ordered the detention of 45 ex-members of the military who took part in the repression. The Spanish magistrate had sought their extradition to Spain to try them on charges of violation of human rights. This order also included the ex-dictators Jorge Rafael Videla and Emilio Eduardo Massera, ex-generals Luciano Benjamin Menéndez and Antonio Domingo Bussi, responsible for executions and disappearances. The same judge ordered the detention of the sailor Alfredo Astiz, condemned to life imprisonment in his absence, in France. All had previously benefitted from the laws of *Punto Final* and *Obediencia Debida*.

Also in Chile in 2003, the Lagos government created the National Commission on Political Prison and Torture, with 45 offices throughout the country, and with the objective of gathering as much information as possible on the victims of the repression and of proposing means of making reparations, with the clear intent of improving on the conclusions reached by the Corporation for Reparation and Reconciliation in the 1990s.

On the other hand, we are finding cases of countries which supposedly reached the end of their political transition some years ago and in which are now emerging demands for

²⁹ Schaulsohn Brodsky, Patricia. 2000. 'Administración de Justicia y Corte Penal Internacional', in *Hacia una cultura de los derechos humanos*, ed. Alfred García, Geneva.

information on examples of repression which have not yet come to light, as can be seen in the case of those Spaniards who disappeared during the first years of the Franco dictatorship. The children and grandchildren of those Spaniards who disappeared in Spain during the 1940s have created various associations with the aim of discovering where their relatives are buried and to find proof which will allow them to correct information held in the civil registers, which is essential for them when rebuilding their family life. Other non-governmental organisations, taking note of petitions made by these organisations, have recently published a communication which makes clear the need to make available lists of archives and other documentary sources which could contain information relevant to locating the victims or to the circumstances of their 'disappearance', or in some cases, to their illegal execution. All of which, as we can appreciate is nearly 70 years after such disappearances took place.³⁰ The distance in time does not prevent this from happening because Spain has joined the list compiled by *Amnesty International* of those countries with disappeared people.

A similar case to that of the Spaniards who disappeared in the 1940s is that of those Mexicans who disappeared in the 1970s. In spite of having the outward appearance of democracy, it was not until the Fox government that the demand arose for clarification on the cases of more than 500 forced disappearances, which had been continuously reported by the Eureka Committee, and which were attributed to the governmental *Brigada Blanca*, part of the Mexican police force, and one which remains an unhappy memory for those who defend human rights. The new government established the National Commission on Human Rights to conduct an investigation into these disappearances. After their report, submitted in 2001, the Fox government went one step further in throwing light on the violation of human rights, ordering (Diario Oficial de la Federación, 18 June 2002) that all files, documents and information in general generated by the former Federal Security Department and the General Department for Political and Social Investigation, until then kept in the Centre for Investigation and National Security, should be open to the public once transferred to the National Archives.³¹

³⁰ A joint manifesto of Amnesty International, Greenpeace and Intermón before the general elections of 2004 http://www.a-i.es/esp/docs_esp.shtm

³¹ This information was supplied by Dr. José Enrique Pérez Cruz of the Archives of the Autonomous University of Mexico, who let me have a copy of his work 'Los archivos policianos y de seguridad nacional abren por primera vez sus puertas con la nueva legislación', September 2002.

The dawn of Memory³²

The emergence of memory as a cultural and political preoccupation in debates central to contemporary society is a global phenomenon.³³ Archives have been overwhelmed by this unprecedented wave, often without having the capacity to reflect deeply on these ideas.³⁴

It is clear that Memory and Archive are not the same phenomenon. The similarities between both concepts come more from a comparison of the meaning of both terms in the computing world, in which the internal or external memory of the computer is like a store or archive of documents. However, in daily life memory has connotations very distinct from those of the computer, above all in its capacity to forget or to be silent voluntarily. The archive as an institution cannot behave like this because it would sabotage its ability to analyze events fully.

All this leads us to conclude that it is necessary to think of conserving the records of the information services of the state which are linked to repression for a longer period than strictly necessary in order to satisfy the immediate needs of the victims or, in general, of those protagonists active politically in the most immediate period of transition.

New institutions to manage the past.

Truth Commissions have continued to be the means, official in the majority of cases, extra official in the minority, by which countries in the throes of transition to democracy have confronted their past in relation to the recently overthrown repressive regimes.

These have been created in large numbers over the last ten years, amongst the most recent being the Commission for Truth and Justice in Paraguay created on 16 October 2003. The most notable fact is that the model for Truth Commissions has been extended into the

³² Cuesta Bustillo, Josefina. 1998. 'Memoria e Historia: un estado de la cuestión', in *Memoria e Historia* (Madrid: Marcial Pons)

³³ Waldman, Gilda. 'La cultura de la memoria: problemas y reflexiones', in *Política y cultura*, no.26 (Autumn, 2006)

³⁴ Millar, Laura. 'Touchstones: considering the relationship between memory and archives' in *Archivaria; The Journal of the Association of Canadian Archivists*, no 61, spring 2006, pp. 105-126. (University of Toronto Press)

democratic tradition to allow for the study of episodes of violations of human rights, as in Mexico or Peru.

Some organisations have been simply users of archives as part of the process of investigation, but others have been and are at one and the same time, managers of records of the former repressive agencies of the previous regimes. For example, this was the case in the Office for Investigation and Documentation of the Crimes of Communism, set up in the Czech Republic and created in 1995 with full powers to investigate, persecute and collect documentation about these crimes. Linked to the police, this office intervened as a legal body in the judicial process, being able to bring forward relevant proofs as well as subpoenas to be judged. The functions of this Office were inherited in 2007 by the Institute for the Study of Totalitarian Regimes, now part of parliament not of the police, which guarantees that their work will be more balanced. The archives of the political police and other espionage organisations, previously disseminated amongst the Ministries of the Interior, Defence and Justice are also unified under the umbrella of this aforementioned Institute.

Nevertheless, in 1995 an institution of great interest in the analysis of the evolution of the management of episodes of repression in the past was created. In Brazil, a Special Commission was given a federal brief, to pass judgement on the deaths of the disappeared including those deaths which were attributed to the violence of political repression, and in every case, to consider whether it was appropriate for the State to offer indemnity to the relatives. This was a governmental, official body, but one which made no claim, as did the Truth Commissions, to offer a global study of previous atrocities, or to act as a means of collective catharsis. On the contrary, it followed a path with very distinct outcomes seeking to satisfy demands of the victims of political repression. Law 9140, passed on 4 December 1995, known as the 'Law of the disappeared', recognised as dead, those people who had disappeared because of their political participation, or the accusation of such involvement in the period from 2 September 1961 to 15 August 1979. A Special Commission was established comprising 7 members named by the President of the State, of whom four were sought from amongst, respectively, members of the Commission on Human Rights of the Chamber of Deputies, the relatives of the disappeared, members of the Public Ministry and of the armed forces. In order to achieve its aims the commission was enabled to seek 'records from every public body' (art.9.1)

In the state of Río Grande do Sul under decree no. 39.680 of 24 August 1989, a special commission was created with the aim of organizing an historical heritage collection on the subject of the fight for democracy and which was aimed at denouncing the violations of democratic liberties and of human rights committed by the military dictatorship which took over on 31 March 1964. This collection would cover all types of material: records, books, files, periodical publications etc. donated by private individuals or non-governmental organisations, audiovisual records, published documents relating to bodies of the State administration or other branches of the federation, and personal recorded testimonies about this period of history and suitable for publication. Decree no. 40.318 of 28 September 2000 declassified the documents of the political police active in the State of Río Grande do Sul, and the remaining archives of the political repression in the power of the State. In the same way, the archives of the information services of the Buenos Aires police were put at the disposal of the Commission of Memory, including the building in which they were placed, just as the Public Archives of the State of Rio de Janeiro was allocated the building of the former Department of Political and Social order as its headquarters.

Other fonds concerned with repression

Something which has been clear throughout the open debate about archives, political repression and the defence of human rights is that, in order to have a complete overview of the subject, and because they are often the only sources of information, we have to consider not only the archives of state security services— in effect the archives of the repression—but also the fonds and documentary collections produced by the organisations for the defence of human rights or those bodies concerned with investigating the past and its management.

In her report, mentioned above, entitled *Principles for the protection and promotion of human rights by means of the struggle against immunity*, Diane Orentlicher, continuing the work of Joinet, noted the importance of preserving the records produced by such bodies, above all because they can be, and indeed have already been, used as proof by the judiciary against those responsible for crimes:

PRINCIPLE 8. DEFINITION OF THE MANDATE OF A COMMISSION /.../

e) Commissions of investigations will seek to preserve proofs in the interests of justice.

f) The mandate of investigation commissions should emphasise the importance of preserving the archives of the commission. From the outset of their work, the commissions should make clear the conditions governing access to their archives, including those concerning documents closed for reasons of confidentiality, while preserving the rights of the public to consult their archives.³⁵

In this last chapter, besides statements taken by official Commissions of Investigation, Truth Commissions such as those of Chile, El Salvador, South Africa, Panama, Peru or many others, sources compiled by other non-governmental commissions of investigation linked to churches or other social movements, should be emphasized.

The archive of the *Vicaría de la Solidaridad* in Chile, also known as ‘the conscience of Chile’ which has already exhaustively documented every case, notified by the relatives of those who disappeared and of reprisals, is an inestimable source of information on the period of the Chilean dictatorship. In recognition of its fight in favour of respecting human rights, it received the Simon Bolivar prize in 1988.³⁶ Finally, the importance of this archive led, in 2003, to its inclusion in the Register of the Memory of the World programme of UNESCO, together with other collections of Chilean documents for various human rights organisations.

Other archives of this type also merit special mention: amongst which can be listed the archives of the movement *Brasil Nunca Mai*³⁷ This is an especially interesting example, as its investigations were based on official sources, obtained through illicit copying of the proceedings of the military Justice, stored in the *Tribunal Superior Militar* (Brasilia). The files were requested by the lawyers representing the victims of the repression who hoped to have recourse to the Amnesty Law of 1979, passed by the government of Joao Figueiredo.

³⁵ ‘Principles for the protection and promotion of human rights by means of the struggle against immunity’. Report by Diane Orientlicher, independent expert charged with drawing up these principles. United Nations. Distr. GENERAL. E/CN/4/2005/102/Add.1, 8 February 2005.

³⁶ Cruz, Angèlica María. 2002. ‘Silencios, contingencias y desafíos: el archive de la Vicaría de la Solidaridad en Chile’, in *Los archivos de la represión: documentos, memoria y verdad*. (Madrid)

³⁷ Brasil: Nunca Mais. Rio de Janeiro: Vozes, 1985.

These copies formed the basis of the documentary collection *Testemunhos Pró Paz*, stored in the Archives of the Metropolitan Curia of Sao Paulo as well as (in microfilm and digital format since 1987) in Geneva at the headquarters of the World Council of Churches and in Chicago in the Latin-American Project-Lamp. Precisely, this compares the *Brasil Nunca Mais* report with the Argentinean *Nunca Más*, published by CONADEP, and other books or reports which denounced political repression in Latin America, concluding that for the first time that denunciations had been made based on official records, recorded in military tribunals whose veracity could not be doubted, as in other cases where denunciations were based on witness statements made on the fringes of judicial institutions³⁸

In Argentina, in 2007 proposals were made to, and accepted by, the Committee for the Memory of the World for the inclusion of fonds from human rights associations. Those of public bodies such as CONADEP, an initial collection of the National Archive of Memory created in 2004, records of the former DIPBA (Intelligence Division of the Buenos Aires Police), stored in the Provincial Commission for Memory of the Province of Buenos Aires, were accepted. Thus for the first time, the Memory of the World register includes records produced by one of the branches of the repression, DIPBA; a more cathartic organisation CONADEP, part of the Transitional Justice, and of various human rights bodies such as SERPAJ, CELS, APDH or *Madres de la Plaza de Mayo*, *Linea Fundadora*, all drawn together in *Memoria Abierta*. Thus the tendency to include only the archives of bodies which might be described as exemplary has been broken, and it is accepted that it is important for the memory of humanity to include also evidence of its darker side (the Paraguayan fonds of the *Archivo del Terror* were also nominated for inclusion in the register in 2000, but were rejected: in 2008 these were re-submitted and accepted for inclusion in the register in July 2009)

In 2008, the Dominican Committee for the Memory of the World submitted for inclusion in the Register of the Memory of the World the documentary fonds and collections produced by associations integrated in the Federation of Patriotic Foundations (Fundación Manolo Tavárez, Fundación Hermanas Mirabel, Fundación Héroes de Constanza...), which preserved the documents of the principal associations involved in the struggle against the

³⁸ Da Silva Catela, Ludmila. 2002. 'Territorios de memoria política', in *Los archivos de la represión: documentos, memoria y verdad*. (Madrid, Siglo XXI)

Trujillo dictatorship and which constitute the nucleus of the project of the Museum of Dominican Resistance. The nomination was accepted, and the documentary fonds entered in the Register of the Memory of the World in 2009. As in the cases of Chile and Argentina, with the exception of the records of the Division of Police Intelligence of Buenos Aires, these are private collections, of bodies involved in the defence of human rights or in political struggle, including armed struggle, against repressive regimes.³⁹

As far as the typology fonds is concerned, Elizabeth Jelin has offered a useful method of classifying the types of documents covering political repression, which she puts into three groups of 'archival heritage' 1) those of repressive institutions 2) those of bodies investigating the past, such as Truth Commissions 3) archives of human rights organisations or of those who opposed dictatorships or repressive regimes.⁴⁰

Another classification is offered by Orentlicher in her previously mentioned report, when defining what is meant by the concept of archives.

/.../

E. Archives.

As far as the present proposals are concerned, the word 'archives' refers to records concerned with violations of human rights and humanitarian law which includes; a) national governmental organisations, especially those which played an important role with respect to violations of human rights b) local bodies, such as Police Commissions, which participated in violations of human rights c) state bodies, including the Public Prosecutor and judicial authorities which helped to protect human rights and d) materials gathered by Truth Commissions and other investigatory bodies.

All archives: archival politics and the politics of memory

But if we go even further, we can say that in almost all those countries which have suffered an extended period of dictatorship, the records produced by those bodies expressly dedicated

³⁹ www.museodelaresistencia.org

⁴⁰ Jelin, Elizabeth. 2002. *Los Archivos de la represión: documentos, memoria y verdad* (Madrid)

to the repression both inform and act as witness to the repression, but that those which we call conventional archives are riddled with statements about repressive events which could be of extraordinary importance when seeking to allocate responsibilities or in allocating damages.

As has already been noted elsewhere, archives are always a true reflection of the society which produced them, thus during the period of the dictatorship in Spain between 1939 and 1977, archives of all public bodies reflected repressive activities and we can discover information on violations of human rights in previously unconsidered records. This was the case in the general archives of the *Tribunal de cuentas*, without doubt the primary and major source for detailed knowledge of the concentration camps

and both the Workers' and the Disciplinary Battalions, and which are much more informative than the fonds relating to these bodies which are stored in the general military archives of Avila and Guadalajara. Because they were obliged to supply the Tribunal, charged with controlling expenses, with a justification of their expenses, these military units submitted monthly reports of deposits and withdrawals, with details of those interned and the costs of maintaining them (with proofs).

The group of archivists in charge of the fonds of the *Tribunal de Cuentas* have over the past few years, produced detailed lists of these proofs of more than three hundred bodies, including camps and battalions of workers and disciplinary battalions, between 1937 and 1943. Thus, in the last four years, this has allowed for thousands of certificates to be issued to the victims who were imprisoned or sent to slave labour camps.⁴¹

This single example leads us to consider the necessity of an integral archival policy, which would treat all official records in a professional manner and would include awareness of and support of private archives. The best policy for memory, from the archival point of view would be one which incorporated an archival policy which was capable of managing the records of public bodies scientifically and efficiently, while being aware of, supporting and promoting the use of private archives.

⁴¹ González Quintana, Antonio. 'La política archivística del Gobierno español y la ausencia de gestión del pasado desde el comienzo de la Transición', in *HISPANIA NOVA, Revista de Historia Contemporánea*. Número 6 (2006)

Globalization and archives: the necessary international compromise.

Not only the so-called traditional archives of countries with repressive regimes in their past can offer essential information on the defence of human rights, but such relevant documentation can also be found in democratic countries. One clear example can be found in the search for those Nazis guilty of genocide or other crimes against humanity who fled from justice; commonly known as the hunt for Nazis. We saw in the 1990s, how, after many difficulties, Klaus Barbie was tried and condemned in Lyon (France) in 1987 for crimes against humanity, thus clearing the way in France for those Nazis or their French collaborators to be brought to justice, for example Paul Touvier in 1994 and Maurice Papon between 1997-1998.⁴²

In many countries, the importance of public records such as for example the registers of the immigration services, has been shown in the hunt for those Nazis whose repatriation was sought from different countries. What is more, in some cases as, for example, that of Canada, the destruction of such registers which was done in accordance with the retention schedules established by the National Archives, has thrown light on evaluation criteria for documents: these have often been established on the basis of criteria insensitive to or far removed from reality.⁴³

⁴² *Le process Barbie: justice pour al Memoire et l'Histoire. Lyon, Centre de Recherche de la résistance et de la Déportation, 2005*

⁴³ See the article by Terry Cook on the destruction of the immigration registers.

RECOMMENDATIONS

RECOMMENDATIONS TO PUBLIC POWERS

1-Records which bear witness to the violation of human rights should be preserved.

The first recommendation is that which makes possible all the others: in order to manage the records and to administer the archives, they have to exist. The aforementioned Joinet and Orentlicher reports begin their recommendations on archives by stating the necessity to conserve them.

The right to know means that it is necessary to preserve archives. Precautionary methods need to be put in place to avoid theft, destruction, concealment or falsification of those records which contain information on violations which have been committed.

After these measures have been adopted, legislative or similar reforms should be introduced to regulate permanently the storage, preservation and consultation of these archives, as set out in the principles which will be explained later; as for records which list names, specific measures should be adopted, in conformity with Principle 18. In addition, third party countries which possess such archives are invited to co-operate with a view to their repatriation. Theft of archives, especially for commercial gain, should be dealt with severely.⁴⁴

The right to know means that it is necessary to preserve the documents. Technical methods and penal sanctions need to be adopted to impede the theft, destruction, concealment or falsification of the archives, especially when done with the aim of seeking immunity for those guilty of violations of human rights and/or of humanitarian law.⁴⁵

⁴⁴ **PRINCIPLE 13: METHODS FOR PRESERVING THE ARCHIVES.** (Joinet, Louis. *Principios para la Protección y la Promoción de Derechos Humanos para combatir la impunidad*. C.H.R. res. 1998/53, ESCOR Supp. (no. 3) at 175, U.N. Doc. E/CN.4/1998/53 (1998)

⁴⁵ **PRINCIPLE 14: METHODS FOR PRESERVING THE ARCHIVES.** (Orentlicher, Diane. *Conjunto de principios para la protección y la promoción de los Derechos Humanos mediante la lucha contra la impunidad*. E/CN.4/2005/102/Add.1, 8 February 2005.

Reasons for preserving those records relating to repression.

The first point to be made in any debate about the archives of former State Security institutions in countries in the process of transition to democracy is the need to consider whether their preservation is advisable. All later discussions about how they are cared for archivally, on their use by the citizens in the new regime, or on the ethics relating to their content, is determined by the response to this first question. Thus this was our first point of reflection.

We met with examples of countries in which all types of archives of the repressive institutions produced during the pre-democracy era, had been preserved almost in their entirety. Equally, we met with contrary examples, where no written testimony to the repression remained, or at least, any that we were aware of. In between were those countries which, after the records had been used during the initial period for administrative reasons, these were destroyed for ethical reasons.

Amongst the first group is Chile, the example par excellence of the impossibility of locating or recovering the archives of the intelligence services during the dictatorship (DINA or, in its later guise CNI). Thus, in the initial phase of the transition process, the need to know the truth about the political violence, the disappearances and assassinations of the Pinochet regime, was faced with a huge obstacle because supporting documentation did not exist. The Commission for Truth and Reconciliation, a pioneer of this type of commission, created in 1990, was faced with the challenge of reconstituting fifteen years of the country's history almost entirely from personal testimonies and aided by the oral or written memorials of those involved. By their efforts they were able to make people aware of the outrages committed by the former regime, but they were unable to throw light on the fate of many of the disappeared or on those responsible for the atrocities. The Chilean experience is in this instance very illuminating: those who had most to lose with the disappearance of the records were the Chilean people and those with most to gain were the agents of the repression and those most responsible for it. It is clear that the Chilean way to democracy is through reconciliation, but it is also clear that the possibility of finding those responsible has largely vanished.

A similar situation can be found in South Africa in relation to the documentation of the NIA, which has, for some time, continued to be the body responsible for the records it produced in the past.

In Spain, one of the documentary fonds whose whereabouts is unknown (if it has not been destroyed) is that of the SD of the Presidency of the Government, which operated as an intelligence service during the last years of the dictatorship, under the control of Colonel San Martín.

But the case of Chile is not exceptional. In Africa, between 1979 and 1980, the Rhodesian government completely destroyed the records produced by the four most important repressive bodies active in the last years of the regime: the Central Intelligence Agency; the Special Branch-Police; the Special Courts and the Selous Scouts Army. Destruction of records also took place in South Africa during the final years of apartheid: these went as high as the principal intelligence bodies and was conducted in a systematic manner, and aimed to eliminate all proofs which could be used against those responsible for violations of human rights in that country, in advance of the imminent political transition.

On the other hand, the example of what happened in the former German Democratic Republic after the fall of the wall and re-unification, is illustrative of a process of transition in which the archives of the omnipresent Stasi have been preserved, if not in their entirety, at least in their majority. This was made possible, above all, by the role played in their preservation by the German people, who, from the outset, were aware of the importance of the records kept by the Stasi. Thus, from the moment the documents passed into the hands of the new authorities, the actions of the German people enabled the paths set out by the new representatives of the popular will to be followed, and, amongst other things, that those formerly responsible for the repression were purged from the new administration. The parallel legal process was at the same time, exemplary. Two laws, one for the DDR itself before unification and one for a united Germany, culminated in their being used for democratic purposes. The people were the protagonists in this process. The role of groups such as that of the Reverend Gauck was a determining factor. Perhaps Germans remember the use to which the archives of the Nazi regime were put at the end of the Second World War, as part of the Nuremberg trials. But in that instance it was not the German citizens who

were not the principal protagonists in the process, but the military forces of the Allied Countries.

The situation in Greece lies mid-way between these last two. Here the records of the repressive bodies were used for administrative matters such as compensation and in the search for those responsible, in the years immediately following the end of the dictatorship. But they were later destroyed, supposedly following an ethical agreement reached by the new legislative powers, which judged it to be undesirable that references to people linked to activities or attitudes considered illegal by the former regime, should remain in the registers and the archives. The purging of those responsible and compensation of the victims has been achieved to the extent that there is no written historical memory of the repression, which leaves the Greek people as the only keepers of the memory of the recent past. The total destruction of the archives has made it all the more difficult to write the history of this period, which will remain entirely dependent on peoples' memories; because, even if we accept the axiom that people do not forget, not all citizens remember the same thing at the same time⁴⁶ Elsewhere, alternative paths to compensation have been closed. By so doing, a line has been drawn under the Dictatorship of the Colonels, which cannot be considered a positive outcome from the point of view of enriching the Greek historical and documental patrimony.

In Spain questions have also been asked about the destruction of those materials in police archives which reflect on former politicians, trade unionists and ideologists considered to be disaffected by the Franco regime. The anecdotal tale of the detention in Madrid airport of the Communist Deputy, Enrique Curiel, during the period of the new political regime, on the grounds that he was listed in police databases as a clandestine activist, led to the Spanish parliament debating a proposal that this material be destroyed. The decision was taken to begin to destroy all such information on socio-political activities held in police registers in existence since the time of the previous regime, and, at the same time, to transfer to the National Historical Archive all the files kept in the Police political archive. The Minister of the Interior, responsible for the Central Police Archive and the Minister of Culture, responsible for the National Historical Archives signed an agreement on this. By such means,

⁴⁶ Anastassiades, Anastasios 'Le peuple n'oublie pas...l'État, si. La destruction des archives grecques de la sécurité intérieure entre usages politiques, histoire et concurrence mémorielle', in *Colloque International Casa de Velazquez, 4-6 June 2007 : Violence et transitions politiques à la fin de XXe siècle. Europe du Sud-Amérique latine*.

an invaluable collection of records for the study of social opposition movements to the Franco regime for a period of more than forty years has been preserved.

We have stated on more than one occasion, that archives are the most faithful reflection of the history of people and that they constitute the most explicit memory of nations. If this is generally accepted, it is even more unquestionable in the case of totalitarian or dictatorial regimes, or repressive regimes, as we prefer to call them in this study. In the absence of legal measures which would enable us to reflect on the plurality of ideas and behaviour, only the archives of such regimes, and above all of the police and information services which controlled the population, will reflect the social divisions which existed within the regimes, in a more or less latent form. When confronted with the public image which such regimes frequently tried to put over, one can discover its real face in the files and papers of its repressive services. Another common characteristic of all these regimes is the existence of important police archives. The repressive sections, generally large in number, relied on a very important documentary framework in which information on people and collectives, constantly updated, which proved on many occasions to be the only guaranteed method of sustaining the regime.

Nonetheless, in all countries which have lived through a period of political repression, interest in the archives amongst researchers has been enormous at the end of this period. From historians to journalists, there has been a legitimate desire to know in depth the reality of the repression which they had lived through. It was necessary to meet this need, with guarantees that this would not interfere with judicial processes, and, at the same time, to safeguard the privacy of the victims of repression. We have to try to assert this right particularly in those countries where laws of *Punto Final* have been promulgated.

The argument in favour of preserving these records seems clear. Nonetheless, there remains an important doubt about the possible outcome of such preservation: that they might be of use again in times of repression. When there is no absolute guarantee that such documentation has been destroyed or passed to the cultural authorities clearly distanced from the repression of the previous regime, as in the case of Chile, for example, it could be that they could be used again against human rights. In the same way, in the hypothetical case of a return to the repressive regime, the documents could once more be used for nefarious purposes. In every

case, it is always best that the documents are subject to the framework of the law of the State and that they are in the hands of professional archivists.

Finally, we can argue that records generated throughout the political repression are important for the memory of the people, in that they are an unquestionable testimony to the repression they suffered. But the most important argument in favour of the records of the repression being preserved by the new democratic regime lies in the importance they hold for those affected by the repression, either directly or indirectly. Records of the repression are essential in the new political situation for the exercise of individual rights: amnesty, indemnity, pensions, general civil rights such as inheritance, property etc.

The need to highlight the key role archives play in political transition.

There are a great many alternative solutions for the archives of State Security systems in repressive regimes, depending on their chosen route to democracy. In general, the way in which the repressive regime fell determines to a large extent the future of the archives of the repression. Where there is an *agreed break with the past* or a process of *national reconciliation* the question of compensation for the victims takes precedence and, in some cases those responsible are not brought to justice, under the so-called laws of *punto final*, supposedly aimed at social peace. In cases of revolution or of the sudden failure of the system, the primary importance is to seek those responsible. It is this latter instance where the task of the archivist is easier, because the collapse of the system leads to new approaches, the removal of those responsible and a break in routine. However, in those democratic processes which were initiated from within the repressive regime itself, or which come at the end of a long period of evolution, there are always a number of obstacles which are difficult to overcome: principally, that many of those formerly in positions of responsibility in the former regime, if not actually those responsible for the repression itself, continue to hold positions of responsibility.

As previously stated, no process of transition is similar to any other, and we can thus take as illustrative examples of the two alternatives: that of the Germany and the Stasi archive and that of Spain and the archives of repressive organisations during the Franco period, two completely different routes to transition, one which arose from the total collapse of the

system (Germany) and the other from a long process of transition which arose from within the regime itself, and without an obvious confrontation with its 'legal status'.

Given the aforementioned prominence of archives in the political transition process, they become essential in validating collective and individual rights. The effectiveness of the methods used to offer reparation and compensation to the victims of the repression, as well as actions taken to purge those responsible or whatever the processes of transition might be, will be largely conditioned by the use of the records of the repressive institutions. Support for their preservation and the promotion of the institutions charged with their custody in the new political era will be determining factors in the process of consolidation of the democracy.

Moratorium on the destruction of public records

In every case, and as a means of precaution, a moratorium should be imposed on the destruction of public records, including in cases where this is legally regulated, for at least a period of ten years. In Latin America, this moratorium has taken the form of judicial orders which prevents any innovation⁴⁷, and which has been applied in concrete examples such as the Ministry of Defence in Argentina.⁴⁸

⁴⁷ This order, decreed by tribunal, means that nothing new can be made, changed or nothing new introduced.

⁴⁸ Carta de Seminario del Servicio de Paz y Justicia sobre la situación actual de la impunidad. Buenos Aires, 24 May 1007 (see <http://www.derechos.org/nizkor/arg/doc/impu/html>)

2-Records which bear witness to violations of human rights should be available for the exercise of rights in a democracy.

It would be hugely long-winded to detail all the possible uses of these records as elements in reaffirming democracy. But among the most fundamental, concerning the exercise of rights, both collective and individual, which archives have to facilitate, we should cite the following:

Collective rights

Free choice of the model of transition

The right of people and nations to choose their own method of political transition will be largely determined by the existence of documents. Without archives, there is no real freedom of choice.

The German situation is a good illustration of this. The population knew the importance of the Stasi archive for their future, and to what extent their past had been conditioned by the actions of the services of information and political repression. In the memory of the German people was the experience of the use to which the archives of Nazism were put after the Second World War and of the important effects brought about by collecting and preserving records.

Truth Commissions, as for example in Chile or South Africa, can only do their work to a greater or lesser extent, in a good or bad way, if the documentary sources for the repression have been kept.

Right to memory

The right to memory not conditioned by the absence of documentary sources or the selective destruction of proof ought to be sacrosanct. The option of forgetting or the granting of

pardon, freely assumed by a community which opted for this route to political transition, should not result in the disappearance of the documents which concern the most catastrophic or negative part of the history of its people. Nations have the right and the obligation to preserve their memory, an essential part of which is that deposited in their archives. Although one generation might be free to decide on its political processes, it cannot mortgage the roots of future generations: the right to choose the way of transition excludes the right to destroy records.

The case of the colonial administration in the Congo is an example of this. According to Adam Hochschild, Belgium provides a magnificent demonstration of the politics of forgetting. Both King Leopold II and the Belgian colonial administrators went as far as they possibly could to destroy archives, and, along with that, possible proofs of guilt.⁴⁹ The destruction of public archives, carried out with the misleading aim of protecting the reputation of Belgium, and sustained by the rigid limits placed by the State on access to the limited number of documents covering the cited period preserved in their archives⁵⁰ answers the question posed by Mario Vargas Llosa in his prologue to the Spanish edition of Hochschild's work on how it is possible that everything known by the averagely informed person about this black Congolese adventure at the time of Leopold's death (1909), has been eclipsed from public memory nowadays.⁵¹

Throughout the apartheid era, the South African state was routinely destroying records in order to keep certain processes secret. Between 1990 and 1994 they put into practice the policy of wide scale cleansing of the sources of memory with the aim of putting any information which might have been used against it or its principal members, far out of the reach of any future democratic government. As part of this process, all those records confiscated by the State from resistance organisations over many years were destroyed. Many other records were also destroyed in the course of raids or bombings of places occupied by anti apartheid organisations. One of the specific mandates of the Truth and Reconciliation Commission, which spent three years throwing light on the dark corners of the apartheid

⁴⁹ Hochschild, Adam. 2002. *El fantasma del Rey Leopoldo*.(Barcelona), pp. 433-453

⁵⁰ See Marchal, Jules 'L'État Libre du Congo: Paradis Perdu. L'Histoire du Congo (1786-1900) Borgloon 1996 ; and 'E.D. Morel contre Leopold II. Histoire du Congo (1900-1910), Paris 1996.

⁵¹ Vargas Llosa, Mario. 'En el corazón de las tinieblas' prologue to *El fantasma del Rey Leopoldo*. Barcelona, 2003, p.11.

system, was to investigate the destruction of records ordered to cover up huge violations of human rights. The government finally imposed a moratorium on the destruction of any official records throughout the period in which the Truth and Reconciliation Commission was active. Verne Harris, describing his personal experiences as South African State Archivist throughout this period, told how, in 1993, he received orders from government officials to destroy a series of classified records: an order which, fortunately, he ignored, although by such a refusal he faced a punishment of ten years imprisonment.⁵²

The right to truth

Closely linked to the two previous rights is that of the citizens, via their parliamentary or other legitimately considered representatives, to the totality of information on the actions of the previous regime. This is a question of an ‘objective’ truth made public by means of a report. Such is the basic characteristic of the so-called Truth Commissions, such as that previously mentioned for Chile (the Truth and Reconciliation Commission), for South Africa (Truth and Reconciliation Commission) or for Poland (Supreme Commission of the Research of the Crimes against the Polish Nation).

The right to justice

The right to ensure that violations of human rights or great crimes against humanity do not go unpunished, ought to be seen as a collective right, independent from the legitimate right of every victim to seek justice in his own case. The immunity granted to governments guilty of genocide or to those responsible for the greatest atrocities in the repressive regimes offers carte blanche to the granting of a general immunity in societies in transition, which is one of the greatest anti-democratic burdens which many Latin American countries carry, as in some of these more than 90% of crimes remain unpunished. In the words of the United Nations High Commissioner on Human Rights, Louise Arbour ‘*where immunity for past crimes is the order of the day, it is not surprising that current crimes prevail*’⁵³

⁵² Harris, Verne. 2000. *Exploring Archives. An Introduction to Archival Ideas and Practice in South Africa*,

⁵³ Declaration of Louise Arbour during her visit to Guatemala, BBC News 28 May 2006.

In Argentina, the attempt to bring to justice those guilty of crimes against humanity during the military dictatorship has been a constant in important sectors of civil society since transition began, as they knew that the opening of such judicial processes would lay down a solid base for the strengthening of a state of law and of democratic institutions. Thus, since the annulment of the laws of *punto final y obediencia debida*, 212 cases have been opened in Argentina, with 1036 people implicated and 17 condemned. The former archive of the Department of Intelligence of the Buenos Aires Police (DIPBA), managed by the Commission of Memory of Buenos Aires Province, and open to the public since 2003, made an important contribution to proof in significant cases such as those of Etchecolatz, Von Wernich, Hospital Posadas, Comisaria Quinta, or CNU Mar del Plata., amongst others.⁵⁴

The right to know those responsible for crimes against human rights.

The right to know the names of criminals and agents of the repression ought to be considered independently of whatever political decision is taken on whether or not they should be held responsible, as well as on their possible continuation as public servants. The possibility of applying methods of clemency such as amnesty or pardon for those responsible for the violation of human rights was an option adopted by some countries in the process of transition to democracy. Such methods can be taken in the interests of reconciliation. But in a democracy, people ought to know the names of those responsible for such atrocities, in order to avoid their possible political promotion under the guarantee of anonymity for those responsible for crimes against human rights. The legislator has to regulate the way in which this can be achieved, as has been done in the above mentioned German law. The ‘Law concerning Stasi records’ specifies those who can be investigated in relation to their possible links to the repressive machinery: basically authorities, public people and citizens representatives. Thus the scope of the investigation is restricted and it is difficult to avoid a situation where agents and collaborators of the Ministry of the Interior remain hidden within the power structures, through lack of awareness. On the other hand, German legislation limits the exercise of this right when those under investigation were under 18 years old at the point of beginning their alleged activity. Equally, a time limit on investigation is imposed: 15 years since the promulgation of the law (until 2006).

⁵⁴ *Encuentro sobre archivos de la represión y juicios por delitos de lesa humanidad*, La Plata 2-e July 2008. www.comisionporlamemoria.org

Individual reghts

The right to exoneration and rehabilitation

The restoration of their reputation to a large number of people, unjustly accused of all types of crimes or misdemeanours as a means of justifying their being purged, is one of the principal demands of the citizens of ex-communist countries. The re-opening of their cases and their public rehabilitation have been important achievements for many citizens.

Only in Latvia, between 1990 and 1998 were some 92,293 people exonerated, with the aid of public archives in which the records produced by the repressive agencies of the so-called era of occupation were stored. This was the major use made of the records concerning the former repressive bodies in Latvia; they were also used in the investigation of crimes against humanity, in re-establishing the right to property or in providing evidence to ensure that the State servants in the new democratic era had not been involved in the activities of the repressive institutions.⁵⁵ It was only in 1994 that some 220,000 people were rehabilitated by the Czech district and regional tribunals.⁵⁶

The right to know the whereabouts of those family members who disappeared during the period of repression

One of the worst things about the repression is the lack of knowledge about what happened to family or friends who disappeared without notice. The archives of the repression ought to be a fundamental element in clarifying this situation.

The need to preserve and make available the archives of repressive bodies was apparent throughout the period of parliamentary debates in Brazil which preceded the approval of the Law on the Disappeared, law 9140/1995: the request to open the archives acted as a means of

⁵⁵ Klavina, Daina. 'Preservation and access to the archives of the repressive institutions of the occupational period', in *see f/n 46*.

⁵⁶ Bartosek, Karel. 'Europa central y del sureste' in *'La otra Europa victim del comunismo', tercera parte del Libro negro del comunismo*. Madrid: Espasa Calpe. 1998

rectifying the State's responsibility for this;⁵⁷ especially when taking into account the intense efforts made by the relatives of the disappeared seeking information about them, and who received almost no help from the State.

Article 15 of the German law of 1991 on the Stasi archives, also ruled on the right of close family members of the disappeared or those who were killed, to information, to inspect and to request documents:

- (1) Those close relatives can petition for information in order to
 - (i) rehabilitate the disappeared or those who were killed
 - (ii) protect the personal right of the disappeared or those who were killed, and above all to seek clarification in cases of accusation of collaboration with the State Security services
 - (iii) seek clarification on the fate of the disappeared or those who were killed

The petition should set out the reasons for which this information is being sought, the truth of the information and the relationship to the person who disappeared or was killed.

- (2) Article 13, paragraph 1, sentence 2 and paragraphs 2 to 6 will be validated retrospectively.
- (3) Close relations are defined as spouses, children, grandchildren, parents and siblings.
- (4) Paragraph 1 will not be valid, if the disappeared or dead have left other provisions, or, if, for other reasons, they have expressed wishes to the contrary.

The right to know of the existence of information on anyone kept in the archives of the repression.

Known as 'habeas data' this guarantees the right to know if the police or repressive information services kept any information on any given person and of judging whether political, ideological, ethical or racial repression had affected his/her personal, family or professional life. 'I want my file' was the slogan of those groups of citizens who occupied the

⁵⁷ Da Silva Catela, Ludmila. 2002 'territorios de memoria politica', in Los archives de la represión : documentos, memoria y verdad' (madrid)

offices of the Stasi on 15 January 1990, who carried placards stating 'Security for our records' and 'Freedom for my file' ⁵⁸

This law ought also to cover agents and employees of the repressive services.

Article 13 of the 1991 Law covering records of the State Security Services of the former Democratic Republic, covering the right of those affected and of third parties, to information, inspection and to request documents lays down that:

- 1 Those affected by the repression will, on making a personal request, have the right to documents which contain information on themselves. It will not be necessary to state the reasons for seeking this information.
- 2 The information will contain a description of the surviving documents concerning the person affected, and an explanation of their basic contents. This information can be initially limited to an acknowledgment that the documents exist and that the affected person can consult them.
- 3 The affected person will, on petition, have the right to inspect those documents which contain personal information about themselves.
- 4 On petition, the affected person can seek copies of the documents. Information on others affected, or third parties, will remain confidential.
- 5 If, on inspecting the documents concerning himself, or copies of the same, the affected person comes across false information provided by those who collaborated with the State Security Services, they can seek information on this and can seek the names of those collaborators, as well as other means of identification as can be deduced in an unequivocal manner from the records of the State Security Services. Point 1 is also valid for those who denounced the affected person in writing, if this had proved damaging to the affected person. The interests of collaborators and those who denounced others and whose names were kept secret, will not stop their names being revealed.
- 6 Paragraph 5, sentences 1 and 2 will not apply if the collaborator or denunciator of the State Security Services had not yet reached 18 years of age at the time he was collaborating.

⁵⁸ Ketelaar, Eric. 'Access; the democratic imperative' in *Archives and Manuscripts*, 34, no.2 (2006), pp.62-81

- 7 Paragraphs 1 to 6 will cover third parties to the extent that the applicant can provide references to find the information. Information will only be provided if the effort required to find it does not outweigh the stated reasons of the applicant.

In both articles, numbers 16 and 17, the Law concerning the Stasi records expands this right to collaborators and agents of the Stasi and thus to the beneficiaries of the Stasi respectively.

Article 16. The rights of those who collaborated with the State Security Services to information, to inspect and request documents

- 1 Those who collaborated with the State Security Services will have the right to apply for documents which contain information referring to people and concerning themselves.
- 2 The information should contain a transcription of the type and extent of their activities, the circle of people on whom they informed as well as the frequency of their reports.
- 3 Collaborators will be allowed to apply to inspect their personal files. Article 12, paragraph 4, point 2.2 will not apply.
- 4 Collaborators will be allowed to apply to inspect information on the reports they made but only if they can convincingly demonstrate that this is for judicial purposes. It will not be valid if it breaks the confidentiality of those affected, or of third parties.
- 5 Collaborators will be able to apply for copies of their personal files. These copies will anonymise the information on those affected or on third parties.

Article 17. The right of beneficiaries to information, inspection and requests for documents

- 1 Article 16, paragraphs 1, 3 and 5 will cover the right of beneficiaries to inspect, and request information.
- 2 The beneficiary should supply dates which will assist in finding the information.
- 3 Paragraph 1 will not apply if the appropriate Supreme Federal authority or the appropriate regional authority state before the federal commissioner that access to the information cannot be granted because it is not in the public interest.

The right to historical and scientific investigation

All citizens have the right to study the history of their nation. The scientific and historical use of documents will always be governed by the need to protect the privacy of the victims of the repression as well as that of third parties mentioned in the documents.

Freedom and amnesty for political prisoners and prisoners of conscience

Liberation, reintegration into the workforce or, in some cases, taking the time served in prison as equal to that at work, for prisoners and those who suffered political repression. In all processes towards democracy, those condemned by tribunals or deprived of work on purely political, religious, ethnic or racial grounds will be set free, readmitted into the workforce or alternatively offered compensation. Often, it is only in the records contained in the archives of the former repressive bodies that proof of the political, religious, ethnic or racial nature of the judicial bodies, or of those responsible for dismissals, can be found.

The right to compensation or reparation for damages suffered by the victims of the repression.

When the authorities of the new democratic regime decide to set up a compensation scheme for those who were victims of the repression, it is the records preserved in the former repressive institutions which will supply them with the necessary proofs.

Estonian law states that one year in prison or in exile for those who illegally suffered reprisals will count as three years of work, for pension purposes.

The right to restitution of confiscated property

When citizens have the legal right, under the new regime, to the restitution of personal property confiscated by the previous regime because of their beliefs or ideology, the documents of the repression will supply details of the nature of this property, and information

on where it can be found, or what happened to it. In this way, if restitution is not possible because it has disappeared or because there are new, legitimate owners of the same, then fair compensation can be offered.

In the Czech Republic, still within the legal framework of the Federal Czech and Slovakian Republic, there are laws covering the restitution of property confiscated by the authorities since 25 February 1945.⁵⁹

The most polemical example in this respect was that arising from the claim for restitution of the archives seized from the Catalan Government at the end of the Spanish Civil War.

⁵⁹ Bartosek, Karel. 1998. 'Europa central y del suresete., in "La otra Europa víctima del comunismo' third part of *Libro negro del comunismo* (Madrid : Espasa Calpe)

3-The archives of the repressive services should be subject to democratic legislation.

Legislation and archives should work hand in hand during the process of political transition. The legislator needs to take the fundamental role of the archives into account in order that legislation is effective. The example of Spanish legislation shows us that the practical application of regulations covering amnesty or indemnity and compensation is intimately linked to the documents which will facilitate the validation of those rights decreed by law. On their part, archivists need to take note of the law, and take on board the changes which will take place in the period immediately after the end of the repressive regime, to ensure that they will be able to uphold the rights recognised by the new situation.

Conscious of these needs and of the indispensable role played by the records of the repression, the archival community in each nation, from the highest public authorities in the archival administration to the archivist on the lowest rung, should drive forward the growth of legislation in their respective states. Thus, the safeguarding of collective and human rights described above, or of any others which can be identified, can be sustained by legal means.

Within the spectrum of archives of the bodies of the former regime can be emphasised above all the archives of the totalitarian parties which politically sustained the regimes, as they were, in many cases, constitutional elements of the political-administrative structure. In the case of totalitarian parties, we come across statements hard to find in the records of public administration. In order to secure proof of those responsible for the design and execution of extermination policies, genocide or serious crimes against humanity, the archives of these parties ought to have great value. Thus, for example, the grade of immunity demonstrated in the archives of the Central Committee of the Communist Party to the communist leaders proposing or approving the greatest atrocities, gives us an unheard of example in public archives, of written recognition of the proposal for and execution of mass extermination or indiscriminate repression of collectives and communities.⁶⁰

⁶⁰ See the biographies of Lenin, Trotsky and Stalin published by Dimitri Volkogonov, responsible for the opening of Russian archives, and ex-director of the Russian Historical Military Archive, which used previously

The legal proceedings concerning title, custody and administration of the documentary heritage produced by these parties ought above all to be a substantial part of archival policy in the process of political transition.

unknown material mostly obtained from the Archive of the Central Committee of the PCUS (Dimitri Volkogonov *The Real Lenin*. Madrid. 1996)

The importance of this can be seen in the work of J. Arch Getty and Oleg V. Naumov (sub director of the Russian Centre for the conservation and study of documents for recent history [] the logic of terror: Stalin and the self-destruction of the Bolsheviks, 1932-1939. Barcelona 2001.

4-The archives of the former repressive services should remain under the control of the new democratic authorities.

The records produced or collected by the former bodies of the repression ought to be placed at the earliest opportunity, under the control of the new democratic authorities, which ought to begin to enumerate these records. The new democratic regime ought immediately to set up commissions, which should include archivists, and which should take charge of the records of these former bodies. Such commissions should, at the same time, have control of the records of the intelligence services, or of the forces of public order which continue to exist in the new regime; these commissions should select those files which the police or the security or intelligence bodies do not need to keep, if their content does not indicate that they are important for the legitimate functioning of such bodies in a legal state. The commissions should be responsible for the transfer of files and documents thus selected to the general archives of the nation or at least to those archival services temporarily established to deal with questions of compensation or reparation for victims of the repression, for the purging of those responsible or for the work of the Truth Commissions.

5-Archives of Truth Commissions and similar bodies should be protected and their use covered by legislation

It would appear that after the publication of the report that these commissions are called to make, all subsequent concerns about the documents produced in the exercise of their duties are superfluous. The frequent discretion which can be exercised by these parts of the transitional jurisdiction system, as well as the prohibition in naming the oppressors, as expressed in their constitutional mandate (the ability to pass sentence and thus to recognise the guilty is the preserve of the judiciary), has favoured a major shift in responsibility for the custody and the regulation of use of these documents.⁶¹

Most frequently it has either been the case that documents remain the responsibility of the Commission or that they are made part of the body charged with taking over, after its activities are finished. This will be the case in Chile, where the archives of the Rettig Commission will be placed in the hands of the National Reparation and Reconciliation Corporation, charged with continuing investigations into the disappeared. The Valech Commission have also emphasised from the outset in their report the importance of its archives. And the methods concerning preservation and communication are contained in its final recommendations; principally, they advised that their records should be deposited in an Institute of Human Rights whose creation this body will instigate, and be opened for access in a maximum period of thirty years; and if such an institute is not established, they ought to be deposited in the State archival service.⁶² In Peru the model is a body dedicated to the management of the Commission's archives.⁶³

South Africa took the decision to incorporate the archives of the Truth and Reconciliation Commission in the National Archives, albeit with set restrictions and time limits on access to its records.

⁶¹ On the matter of the management of the archives of Truth Commissions, see Petersen, Trudy. 2005 *Final acts: a guide to preserving the records of Truth Commissions* (Washington: Woodrow Wilson Center Press).

⁶² Perotin-Dumon, Anne. 'El pasado vivo de Chile en el año del informe sobre la Torture : Apuntes de una historiadora', in *Nuevo Mundo Nuevos Mundos*, no 5, 2005

⁶³ Mendoza Navarro, Aida Luz. 2006. *Archivos y Derechos Humanos: los documentos de la CVR* Lima.

The primary recommendation is obviously to guarantee their conservation, especially when taking into consideration previously known cases of raids being made on the headquarters of these bodies and archives destroyed ⁶⁴, but as well as this, it is essential to regulate their use by the Fiscal Ministry, judges, the victims themselves and finally, by the researchers.

In all cases, given that the records accumulated and produced by these commissions are a fundamental part of the collective memory, and that they will include guarantees of impartiality and reliability which are not easily found in other fonds or collections, it ought to be beyond doubt that these ought to be integrated, sooner or later into the National Archives of the country in question, just as every other collection originating from a State body. It does not seem necessary to impose a longer period than thirty years before these archives are finally incorporated in the National Archives although some series ought to have restricted access for a longer period: this should be the responsibility of the said national archives.

⁶⁴ Adital. 'Allanan por segunda vez la Oficina de la Comisión de la Verdad (de Panamá), in *Las noticias de Panamá*. Volume 9, number 14. 20 July-2 August 2003.

6-A solution should be negotiated for the custody and conservation of the Archives of the Justice Tribunals created with the aim of judging crimes of war or crimes against humanity

Those Joint Tribunals, created during post-conflict situations—often by United Nations resolution and often linked to the organisation itself—produce, as in the case of Truth Commissions, records of exceptional value for the memory of those countries which are affected by its jurisdiction and content. Special Tribunals such as those for ex-Yugoslavia, for Rwanda and Burundi, created by resolution of the United Nations Security Council, or those of Sierra Leone, East Timor or Kosovo, the first created by International Treaty and the others by United Nations Missions. It is precisely the temporary nature of these bodies which makes it advisable to seek permanent solutions to deal with the documents of clear informational value which will perfectly well justify their indefinite preservation.

The basic arguments in this case revolves around where and under whose authority these archives should be maintained, once the tribunal has been dissolved. One possible solution is that they be kept in a new body created at the Headquarters of the International War Crimes Tribunal at The Hague, where the archives produced by these special temporary tribunals could be permanently preserved. Another alternative is that those dependant on the UN end up in Geneva, as part of the archives of the UN Headquarters (at least those which were promoted by the UN). A third possibility is to deposit the archives in the appropriate National Archive. This last might be the right solution, once the material is no longer required for its original judicial and administrative purposes, as it would maintain within the country a substantial source for the constitution of its memory, and would be determined in large part by the official status granted to this part of the heritage thus produced and especially by the storage capacity available and security offered at the different stages of transition which these countries have reached at the end of the mandate of the special tribunals.⁶⁵

⁶⁵ Peterson, Trudy H. *Temporary Courts, Permanent Records: Special Report*. Washington, United States Institute of Peace. 2006

7-Records which bear witness to the past should be preserved in archival centres

Records of former repressive bodies should be preserved in archival institutions which are within the general archival system of the state public administration, or in archival institutions especially created by the new regime with the aim of seeking those responsible, getting compensation for the victims of repression or for any other of the objectives mentioned above as part of the collective or individual rights. Whenever possible, the second option should be sought. The German and Portuguese experiences demonstrate the advantages of this approach when compared to the Spanish model. Arising from the recognition of the rights above mentioned, a flood of demands from new users which will be directed to these archives created for purely administrative purposes, and could lead to the collapse of normal activity in traditional archives, which are generally not provided with the necessary specific budgets or with personnel. Thus the alternative of creating a temporary institution which takes charge of these tasks is always preferable, as it can have a group of workers especially dedicated to the task and thus offer a better service to the citizens, without diminishing the capacity of the conventional archives. However the temporary nature of these institutions should remain clear because, as these documents form part of the collective memory, their final destination ought to be the historic archives of the state.

Old and new archival institutions: the integration of fonds and documentary collections as elements in transitional justice or their incorporation into already existing centres within the archival system

In some cases, the central archives of the police services responsible for political repression have been kept in the building which these services formerly occupied (the most obvious case is that of the Lubianka in Moscow).⁶⁶ In other cases, the fonds have been transferred to the National Archives and incorporated therein as another group of records produced by public administration; a third method can be found in those new systems created to accommodate

⁶⁶ Vitali Chentalski describes his experiences when entering the Lubianka to start his researches on literary archives in *De los archivos literarios del KGB*. Madrid 1994.

these fonds within a new institution; such as centres, archives, museums or memorial institutes, which, because of their importance and temporary nature, need to be managed in a particular way, and which makes us stop to consider these institutions in particular.

As one example, there is the Provincial Commission for Memory in Buenos Aires, which took in both the archives of DIPBA as well as other fonds created by bodies concerned with the defence of rights, and used the old building which had been, during the dictatorship, the headquarters of the Intelligence Division. The use of such emblematic sites leads us to conclude that keeping the same building contributes to the consolidation of the collective memory

The slogan which can be found on a plaque at the entrance to the building which houses the Commission for Memory in Buenos Aires ('where horror lived, life will prevail') nevertheless clearly demonstrates that this old institution which has become, as a result of the a boomerang effect which we have mentioned on previous occasions, a new body with a totally different mandate.⁶⁷ The documents stored there are no longer a source of suffering, torture or death, but ought to be tools for making amends for the atrocities committed and a means of ensuring they will not happen again. Such a use of prisons, or other such sinister centres of information ought to be subject to new laws and above all to a new ethical agreement on the part of archivists and other personnel in charge of the archive. Both these ingredients, positive laws and ethics, ought to act as a cleansing agent to allow those buildings to completely lose all connection with the role that they played in the previous regime.

Is it more appropriate to create archival institutions as centres for memory, as offices for the management of reparations, or as aseptic sites which offer a guarantee of public credibility? This is a topic for consideration in another article. In every case it is clear that the choice is a result, in large part, of the models of transition and of the geographical ambit of traditional archival communities and cultures in general, and that this has advantages and disadvantages. Nevertheless, the same option can evolve in different ways. Credibility, in effect, bears a

⁶⁷ Gonzales Quintana, Antonio. 'Archivos y Derechos Humanos' in *Actas del VII Congreso Nacional de ANABAD: Información y derechos de los ciudadanos: Teoría y realidad en el XX aniversario de la Constitución. Boletín de la Asociación Española de Archiveros, Bibliotecarios, Museólogos y Documentalistas*, XLIX, 1999, no 3-4, July-December, pp 371-3890. In ANABAD Bulletin, no 1999

heavy burden: good law and bad practice is a combination which does not serve the citizens well. It is in this field that professional associations have a vital role. Many public archives in countries emerging from dictatorship or from a repressive regime have a negative image of human rights as far as the unequal and incorrect treatment of their users is concerned. In other cases the archive, whose essential worth lies in treating the records as produced by an institution or person in the exercise of their duties, can lose its essential meaning if its collections are mixed with of different types (books, videos, oral testimonies...), if the new institutions do not in the end have personnel appropriate to deal with the different types of documents.

Archives or documentary centres: archivists or activists.

The lack of credibility faced by public institutions, and national and general archives not sufficiently remodelled, professionalized and strengthened in budgetary terms at the end of the repressive regimes in some countries in course of transition, has led to the search for alternative bodies to manage the records concerning the abuse of rights. In many cases these new entities have been put in the hands of those militants in the cause of democracy or human rights as this was thought to be the best way of making obvious the links with victims and with justice. The records of the archives produced by individuals or judicial bodies in the course of their duties, competencies or activities ought to be dealt with professionally, maintaining their context and respecting their origins and original order. And their management should not be governed by the same technical norms as those of documentary centres where the accumulation of data in response to an equal demand for information is the primary objective, regardless of the characteristics of the records which contain the information, of its authenticity and of the manner in which it was generated or how it reached the dossier.

It is the professionals in the archives, the archivists who know how to deal appropriately with the records, and those who are aware that their value as witnesses can be affected by the manner in which they are treated. Taken out of context, the majority of documents which bear witness to violations of rights, repression or violence can lose a large part of their value.

It is important to remember that the option of choosing a specialized institution to deal with the large archives concerning the former political police (as with the German Stasi or the KGB), is highly recommended, as this allows for the use of these records in legal cases or for reparations of damages caused to victims of the repression, without imposing this responsibility on the national or general archives which are normally lacking staff and means to carry out their daily duties and clearly unable to incorporate what in some cases amounts to hundreds of linear metres of new material. But this should be a temporary solution and the fonds of the political police should finally be deposited in the national or general archives once the period of high administrative use by the institutions or judiciary figures of the transition is past.

Another alternative to take into consideration is the creation of information offices for victims within the pre-existing public archive, as was the case with the Central Archive of the Ministry of the Interior in Russia, with the creation of the Centre for Archival Information and for the Rehabilitation of the Victims of Political Repression, created in 1992. But the creation of private archives to manage small quantities of documents and to collect such small volumes of archives with books, magazines, collections of brochures, press releases, copies of records from other archives, oral sources, museum objects in a thematic fashion which makes their repatriation impossible, can never be justified to, and even less so, given that there are few official records (above all in countries which have not been able to locate the archives of their state security bodies from the previous regime). In these cases, it would seem more logical to incorporate small collections of records in the general archives and that those institutions charged with managing the past should devote their energies to creating centres of reference for sources on the repression, locating these in the most obvious place within the archival system and putting at the service of justice, Truth Commissions, victims or users in general not only the references to the location of these sources but also the means by which they can be submitted to the tribunals as proofs, or to initiate the processes of *habeas data* or of providing the certificates which the victims need to accompany their demands for reparation. The example of the Reference Centre for the Repression (*Memorias Reveladas-Centro de Referencia de las Lutas Politicas no Brasil* (1964-1985))⁶⁸ created by the National Archives of Brazil is undoubtedly the most appropriate model: it provides resources, brings together the sources of information and regulates the process of description.

⁶⁸ <http://www.memoriasreveladas.arquivonacional.gov.br/cgi/cgilua.exe?sys/start/htm?sis=43>

In Uruguay after a petition of parties and trade unions for the creation of a National Archive for Memory, like that created in Argentina, the reaction of professional archivists demonstrated the inherent risks in this type of initiative and the need to manage archives according to professional criteria. Thus, in an open letter, signed by more than forty archivists it was stated:

There is no doubt that the idea for this project arose as a response to an existing preoccupation within various sectors of society and in the heart of government concerning the need to investigate and elucidate all episodes, contexts and processes linked to the exercise of state terrorism during the previous dictatorship. However, we believe it is important to recognise the advances that have been made in this field thanks to the means adopted by the current government. We affirm at the same time our commitment to archival policies which ensure the detection, conservation and accessibility of information on these events. And we offer to co-operate in this as far as our means allow.

However, we feel obliged to demonstrate our conviction that the creation of this new archive could have consequences contrary to the intentions laid out in the project.

Putting to one side other criticisms and objections which have been made about particular aspects of this project, we must state that the creation of the ANM puts the integrity of the archive in danger by leaving the selection of documents which will be integrated from the dismantling, transfer or reproduction of existing archives to the discretion of the management. It is worth remembering that the institutional context in which documents are produced is the key to understanding them⁶⁹

⁶⁹ Archivo Nacional de la Memoria de Uruguay y una carta de profesionales, Montevideo, 24 August 2007 Jose Pedro Barran and 66 other signatories. Information from <http://archivosmunicipales.blogspot.com/>

8-Archives which store records about the repression should be given the legal protection of goods of cultural interest

Regulations to protect records of former repressive regimes legally should be promoted, as they are goods of cultural interest. If a country relies on laws which protect their cultural patrimony, these records should be included in the category of protected cultural goods. Where regulations exist to offer a general protection to the records stored in National Archives, the simple transfer of these records will place them in the situation of protected cultural goods. In other cases, they should be specifically declared as such.

The preoccupation with conserving archives has been principally felt in countries which have lived through a progressive period of transition in which the structures of the state did not undergo radical transition, as was fundamentally the case in the former military dictatorships in Latin America.

In 1993 a law was proposed in Asunción (Paraguay) which aimed at declaring the archives found the previous year to be part of the National and Cultural Patrimony. This became law five years later, but was never enacted, leaving the archives still in the custody of the judiciary and resulting in an important dispute breaking out between judges, the victims associations and the defenders of human rights.⁷⁰

The International Consultative Council on the Project to recover the Archive of the National Police of Guatemala felt that one of its principal duties was to ensure the continuity and survival of the archive once the Procurator for Human Rights, who had been charged with its management and putting it to use in discovering the recent past of the country, had no further need of it.⁷¹ In July 2009, the transfer of these records to the General Archive of Central America in Guatemala City provided the means of meeting this priority, when President

⁷⁰ González Vera, Myrian 'Los archivos del Terror de Paraguay', in *Los archivos de la represión : documentos, memoria y verdad*. Madrid, 2002

⁷¹ International Consultative Council for the Project for the Recuperation of the archives of the National Police of Guatemala. Constitutional declaration, 21 March 2007.

Colom transferred responsibility for the archives from the Ministry of the Interior to the Ministry of Culture.

At the international level, the best mechanism for protecting archives which witness violations of human rights can be found in the UNESCO Memory of the World programme. Inclusion in the Register of the Memory of the World makes fonds and documentary collections part of the patrimony of humanity. There have already been very positive examples of this, such as the inclusion of the archives of Chilean and Argentinean human rights organisations; the archives of the Intelligence Division of the Political Police of Buenos Aires; the archives of the police services during the Stroessner dictatorship in Paraguay; the archives of the Tuol Sleng Genocide Museum in Cambodia; the archives of those civil organisations in the Dominican Republic which defended human rights during the Trujillo dictatorship (nominated in 2003,⁷² 2007,⁷³ and 2009⁷⁴). Note should also be taken of the inclusion in 2007 of a private file directly related to political repression. This concerned case 253/1963 against Nelson Mandela and others and known as the Rivonia Process, which was heard in the Supreme Court of Pretoria and which is now kept in the South African National Archives as part of the fonds transferred from the tribunal.⁷⁵

⁷² Human Rights Archives Chile in http://portal.unesco.org/ci/en/ev.php-RL_ID=22872&URL_DO=DOTOPIC&URL_SECTION=201.html

⁷³ Human Rights Documentary Heritage 1976-1983-Archives for Truth, Justice and Memory in the Struggle against State Terrorism (Argentina), in http://portal.unesco.org/ci/en/ev.php-RL_ID=27285&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁷⁴ 1 Archives of Terror, in [http:// portal.unesco.org/ci/en/ev.php-RL_ID=27285&URL_DO=DO_TOPIC&URL_SECTION=201.html](http://portal.unesco.org/ci/en/ev.php-RL_ID=27285&URL_DO=DO_TOPIC&URL_SECTION=201.html)

2-Documentary Heritage on the Resistance and Struggle for Human Rights in the Dominican Republic, 1930-1961, in http://portal.unesco.org/ci/en/ev.php-RL_ID=26956&URL_DO=DO_TOPIC&URL_SECTION=201.html

3-Tuol Sleng Genocide Museum Archives, in http://portal.unesco.org/ci/en/ev.php-RL_ID=27486&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁷⁵ Criminal Court Case no. 253/1963 (State versus N Mandela and others), in http://portal.unesco.org/ci/en/ev.php-RL_ID=22347&URL_DO=DO_TOPIC&URL_SECTION=201.html

9-The use of the archives of repression should be regulated

Legislative initiatives should be promoted, leading to a guarantee of the exercise of individual rights with the support of the archives, either through a new general law covering the archives of the country, which takes account of particular situations which have been described, or through partial or concrete regulations which develop the general law where one already exists and does not need modification. These general laws or partial regulations ought to consider the role of archives in the exercise of these rights in such a way that they guarantee:

-that everyone will have the right of free access to the archives to discover whether or not a file or other information in whatever form exists about them. Access to this information should also be guaranteed in the most efficient manner which equally guarantees the privacy of third parties.

-that everyone not having been part of the repressive organisations will have the right to determine, once the existence of their personal files is known, whether or not these can be consulted by third parties: it being understood in all cases that, without the declaration of those affected in one way or another, the personal files of victims of the repression will remain closed to public consultation without their express permission or that of their heirs, for a reasonable period of time, to be established by the legislator. Equally, the possibility that an individual can make corrections or clarifications on the information held on them in their personal files if they so wish, should be regulated. Such corrections, clarifications or statements should be incorporated into the files and clearly differentiated from the records which were kept by the repressive body. These latter files should not be modified.

-that everyone will have the right to access the files of the agents of the repression, with guarantees of their security to be established by the legislator

A good example, which took these proposals into consideration, can be found in an abridged format, in the analysis of a particular case in a report written in 1995 by the Committee for the Opening of the Archives of the Ministry of the Interior in Hungary.⁷⁶

New Archival Legislation

From the time of the passing of the Archival Law for the former Stasi⁷⁷, other Central European countries have tried to create structures similar to those of the Federal Commission for the Administration of the Archives of the former Stasi (popularly known as the *Gauck Office*, named after its first federal commissioner, Reverend Joachim Gauck). They also sought to produce laws which, inspired by the German example, allowed investigations to be made on the existence, within the new democratic regimes, of those formerly involved as agents or collaborators with the political police, politicians or public servants. These were known as laws of ‘cleansing’⁷⁸. This was finally achieved in Hungary, Poland and the Czech Republic, but only at a high political cost, given the resistance of those in power to the loss of such means of control formerly used to discredit their political adversaries. A Hungarian version of the Gauck Office was established in Budapest but its social standing did not reach the levels of the German office.⁷⁹ In effect, a Law on ‘cleansing’ was passed in Hungary in 1996, after a first attempt had failed in 1994, and the Historical Office⁸⁰ was founded, charged with conserving records of the state security services.

A short time before, in 1995, an Archival Law was passed which cut the 30 year closure period for the consultation of records of the Communist Party, opening those up to 1989 to investigation. In 2003 a law on the opening of secret activities was promulgated and the Historical Security Archive for the state of Hungary was created. Poland also considered creating its own ‘Gauck’ office in 1996. Prime Minister Jozef Olensky made a statement to

⁷⁶ Varga, Lázló (chairman).-*The file opening committee of the Ministry of the Interior: Report*. Budapest, 1995 (report presented by Lázló Varga to the Working Group of the International Council on Archives)

⁷⁷ Gesetz über die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republic (Stasi-Unterlagen-Gesetz-Stug) = Act regarding the Records of the State Security Service of the former German Democratic Republic (Stasi Records Act). 20 December 1991.

⁷⁸ We could also call them laws of examination, scrutiny, cleansing or purging.

⁷⁹ Rainer, János. ‘Opening the Archives of the Communist Secret Police. The Experience in Hungary’ Paper presented to the Round Table *The Opening of Archives and the History of Communism 1990-2000*, at the 19th Congress of Historical Science Oslo 2000.

⁸⁰ Ungarisches Gesetz nr. XXIII vom 05.04.1994 ‘über die Überprüfung von personen, die einige wichtige ämter bekleiden und über das historische amt.

the press on the 19th January 1996 to the effect that the time had arrived to make public the archives, while at the same time ensuring that they could not be used by the special services for political ends. The body would be called the Commission for Public Confidence and would work in tandem with a law on ‘cleansing’ or examination (the Gesetz law) which would make obligatory an analysis of the past of the President, Ministers, provincial governors, members of parliament, judges and lawyers.⁸¹ In 1998 the National Institute for Memory and the Commission for Prosecution of Crimes against the Polish Nation (law of 18th December) were created. As has already been mentioned, a final version of the ‘cleansing’ legislation in Poland was brought in by the Kaczynski government: in this, investigations about the past of people go much further than those already noted. The Czech Republic, finally, approved two laws of examination after 1991⁸² through which they sought to deny the presence of former staff or collaborators from the StB, the secret security service from the communist era, in managerial posts within State bodies, the army, the police and prison services. In 1996 another law was passed to regulate the use of archives of the former political police.⁸³ Rumania, finally, approved a law on 7 December 1998 which created the National Council for the Study of Security Archives.⁸⁴

In its reform, Russia followed a policy of breaking with the past completely, opting to give authority to the National Archives. Not only were fonds transferred to the Archives, but the older archives of the central services of the repressive bodies, albeit under their new names, were placed within the Russian archival system. In accordance with the presidential decree of August 1991, the central archives of the KGB were transferred to the jurisdiction of the state archive system, under the authority of the Rosarkiv. As far as the archives of the repressive bodies are concerned these are largely managed by the TsA FSB Rosii (Central Archives of the Federal Security Service), which keeps the records of the KGB and its former incarnations in political repression intact. Other fonds on the repression to be found in the full public archival network remain under the protection of the decree above cited. Russian

⁸¹ Polnisches Gesetz Nr 443 vom 11.04.1997. Über die Offenlegung der Tätigkeit in den Sicherheitsorganen des Staates oder der inoffiziellen Zusammenarbeit mit ihnen in den Jahren 1944-1999 von Personen in öffentlichen Ämtern.

⁸² Tschechoslowakisches Gesetz Nr. 451 vom 04.10.1991. Über einige weitere Voraussetzungen für die Ausübung einiger Funktionen in staatlichen Organen und Organisationen der Tschechischen und Slowakischen Föderativen Republik, der Tschechischen Republik und der Slowakischen Republik Czechoslovakian.

⁸³ Tschechisches Gesetz Nr. 140 vom 26.04.1996. Über das Zugänglichmachen von Akten, die aufgrund der Tätigkeiten der ehemaligen Staatssicherheit angelegt wurden.

⁸⁴ www.cnsas.ro

legislation on the use of these fonds is not very precise, even if it accepts in general the right of victims to consult the files which concern them. In other cases, especially those of researchers, access is largely left to the discretion of those responsible for particular archives and many documents are still awaiting declassification.

Legislative changes in the remaining countries of the former USSR have been very different. Thus, for example, in Ukraine which passed three pieces of legislation in 1994, when it became a sovereign state: Law on Information, Law on National Archives and Archival Institutions and the Law on State Secrets. By means of this legislation, they sought to overturn the principle that the interests of the State and the Party were of primary importance, and thus to ensure the rights of individuals such as the right to security and the right to protection of personal information. This legislation governs access to the records of the former Ukrainian KGB and, in this context, the rights of ex-members of the Communist Party of the Soviet Union are also protected: only the Justice tribunals, and the public prosecutor can investigate these, in addition to the people concerned, their direct families or their heirs.⁸⁵

In Estonia, the archives of the former secret services became part of the national archival system in 1993. In March 1994 a law was passed to regulate the use of the archives of the former secret services. This differentiated between collective and individual rights, allowing unlimited access to victims of the repression to files concerning them (in Estonia victims of repression have a legal right to compensation and to have confiscated property returned), allows historical investigation, limiting the use of data concerning the individual's private life. The law also prohibits the destruction of the archives of the former repressive regime as well as making their export impossible.⁸⁶

Latvia promulgated its archival law in 1993 which regulated access to the records stored in the public archives in the country. The following year, a law was promulgated specifically to conserve and allow access to the records of the former State Security Council, with the aim of making available the names of those who collaborated with the KGB, which was similar to the laws on examination in the central European area. The Latvian law on State Secrets

⁸⁵ Ivanenko, Boris V. 'Ukrainian archives statutory and ethical problems' in *Janus*, 1994.1

⁸⁶ Ohmann, Valdur. 'The archives of the secret services of the Estonian SSR, their preservation and the current regulation of their accessibility. Survey of the situation in Estonia'. in *International Conference on the Archives of the Repressive Regime in an Open Society* (Thesys). Riga, 4-5 June 1998.

should also be mentioned: article 5 prohibits the assignation of the status of state secret to information on violations of human rights, which would result in access being restricted.⁸⁷

As a model of good practice in the former USSR countries, we should cite the case of Lithuania. Decree 452, of the 12 April 1996 (which repealed number 551, of 22 July 1993), approved the regulation of the storage, management, research and use of the specific section of the archival fonds of the state of Lithuania amended by Decree 1069 of 29 September 1997. The collections which form this specific section are: the archives of the former State Security and Intelligence Services which were in operation in Lithuania, including the Lithuanian division of the KGB, as well as the archives of the Ministry of the Interior of the former Soviet Socialist Republic of Lithuania and the Lithuanian Communist Party. It prescribes the conditions governing conservation, conditions of access to the deposits, the register of consultation and the need to replace, on a daily basis, the documents consulted by archival staff or users, except when their loan has been agreed, for up to a maximum period of two months, to the State Security Services of Lithuania, to the State Prosecutor or to the tribunals which might request them. It sets out the levels of security to be put in place in the repositories where the archives of the Lithuanian division of the KGB are stored. It states that the fonds should be used to establish those responsible for the Lithuanian genocide and for the restoration of civil rights. The files concerning the former agents of the Secret Services (KGB and the Ministry of the Interior of the Soviet Socialist Republic of Lithuania), as well as files concerning the operations of these services, can only be consulted with the authorization of the Department of Security in Lithuania, the State Prosecutor, tribunals, or of the Centre for the Investigation of Lithuanian Genocide. The remaining documents can only be consulted for historical research with the authorization of the Archives Department of Lithuania, of Lithuanian Scientific Institutions, of the Ministry of the Interior or the Centre for the Investigation of the Lithuanian Genocide

⁸⁷ Briede, Jautrite. 'Availability of the archives of the repressive institutions: legal aspects' in *International Conference Archives of Repressive Regime in the Open Society*, Riga, 4-5 June 1998

10.-Statements which bear witness to violations of human rights which are found in countries with a democratic tradition should also be conserved and made accessible. Equally, countries in the process of transition should seek records on the violation of human rights and repression which concern them and which are in the control of the intelligence services in countries with a democratic tradition.

Unfortunately, violations of human rights by public institutions are not, nor ever have been, exclusively confined to repressive regimes. Important records on serious violations of human rights have been produced in countries with a strong democratic tradition, or, at least with the experience of so being. These usually cover a specific concrete time of political crisis (Mexico 1968 and the decade of the 1970's as we have seen above), or specifically concern the repression of concrete minorities of political groups, ethnic, indigenous or aboriginal, such as in Puerto Rico with the Hispanic minority who were seeking independence⁸⁸, or Australian or Canada with their indigenous minorities. There are also frequent examples of scandals which, from time to time, shake the consciences of democratic countries when they acknowledge episodes of the dirty war in the anti-terrorist struggle: examples such as Spain (dirty war against ETA), France (political actions against Algerian independence fighters), United Kingdom (political actions against IRA), or the USA (the witch-hunts of the McCarthy period, racial segregation in the southern states, or more recently, the denial of rights of enemies in the 'war' against international terrorism).

The intelligence records of the United States merit a separate chapter: they are of unquestionable value in documenting violations of human rights in Latin America and are now becoming known thanks to the process of declassification of secret service records. This arose as a result of demands for access and was protected by the Law on Freedom of Information.⁸⁹ One key example is offered in his work on Chile by Peter Kombluh⁹⁰, a

⁸⁸ I should acknowledge the generosity of Joel A. Blanco who allowed me access to his extremely interesting work: *'The Forbidden files: creation and use of surveillance files against the independence movement in Puerto Rico'*, University of Michigan, School of Information.

⁸⁹ In this respect we should draw attention to initiatives of bodies like the NGO *National Security Archive* or the *Open Society Archives*.

member of the National Security Archive, an Institute within the George Washington University dedicated to the collection, treatment and diffusion of records classified by the federal agencies of the USA, once they were no longer deemed to be secret or reserved. Thus, although the Clinton government during its first mandate had began the important process of declassifying American documents which would allow, amongst other things, that previously secret records relevant to El Salvador, Honduras and Guatemala would be made public, the detention in London of General Pinochet resulted in the mobilization of many groups involved in the cause of defending human rights in the USA as well as many families of Northamerican victims of the repression instigated by the ex-President of Chile, which demanded proofs which would support the efforts of Spanish judges to bring Augusto Pinochet before the courts. Thus, although it was not started with the aim of supporting Judge Garzón, the Chilean declassification project resulted in 25,000 records being released: this amounts to an inestimable source for not only the last years of Chilean history and the chronicle of the repression which arose after the coup d'état which brought General Pinochet to power but also on the *twenty dramatic and secret years of politics and American operations in Chile*.⁹¹

Orentlicher cites as an example of the use of the Freedom of Information Act in the USA, the request submitted by Bámaca Velásquez to the Inter-American Court concerning the disappearance of her husband. Thanks to the above mentioned Freedom of Information legislation, she was able to find documents which proved that her husband was alive for some time after his initial detention by the Guatemalan government forces.

The National Security Archive helped the El Salvador, Guatemalan and Peruvian Truth Commissions to obtain declassified records concerning violations of human rights covered by their respective mandates and has collaborated with Mexican NGOs in the analysis and the publication of records relative to the massacre which took place in Tlatelolco, Mexico in 1968.

It does not appear logical to draw attention to the ethical importance of conserving those records which witness the violation of human rights in those countries which have recently

⁹⁰ Kornbluh, Peter. *Pinochet: the secret archives*. Barcelona 2004. (The original title makes the subject matter much clearer. Here *The Pinochet File* had the subtitle *A Declassified Dossier on Atrocity and Accountability*)

⁹¹ Kornbluh, Peter. *Pinochet: the secret archives*, p22

suffered under a tyrannical regime, while, on the other hand, to avoid ensuring the survival of those which witness other atrocities simply because they have taken place in countries which, in principle, respect human rights. We have to increase our efforts equally to preserve those records of the repression in those countries which, under democratic laws, have committed or helped in the commission of grave violations of human rights, so well guaranteed by their deeply rooted democratic tradition. It would also be a very important advance in the defence of these rights if the international archival community would support, in its Code of Ethics, those professionals who refused official orders to deny the existence of records within the archive which bore witness to violations of human rights on the part of public institutions or of people responsible to them. It would also be a positive move to seek to make laws which would impede the protection of information about violations of human rights, under the banner of official secrecy. As an example, we can cite the aforementioned Law of State Secrets in Latvia, which, in article 5 prohibits the imposition of the status of state secret or restricted access on information on violations of human rights.

11.-Archives of public bodies involved in violations of human rights should be located and listed.

The period of time which we are considering in this report has confirmed our thesis that archives are indispensable in the process of systematic repression in totalitarian regimes. The volume of material which results, relative to the time these regimes were active, makes its complete destruction very difficult, although many of those responsible for the atrocities were interested in so doing. Thus it is not easy to deny the existence of these records at the end of the repressive regime. On the other hand, it does not surprise us that many archives have been found, many of which are very significant.

Since the archives of the Technical Police, or Security Services of the Stroessner government responsible for political repression⁹² were found in Paraguay, at the end of 1992, there has been a constant demand, at least in Latin America, that archives of the repression be found and opened for democratic use. There have been numerous indications of the existence of archives of repression in Argentina or Uruguay, but the discovery of archives of repression in Haiti or Cambodia, or some police intelligence bodies in Argentina, and above all, of the political police in Brazil, has confirmed the hope that these records exist, in spite of their presumed destruction.

The archives of the Uruguayan political police were the subject of debate after one of the supposed repressors, Colonel Manuel Cordero, implicated by the tribunals established after the report of the Peace Commission (the Uruguayan version of Truth Commission), used in his defence a file comprising documents from the political police. He sought to challenge the judge, who, according to information in one of the documents contained in the file had been a subordinate of the accused in the sinister Coordination Body for Anti-subversive Operations (COCA). According to his statement, Judge Balcaldi had, between 1975-1980, been part of a network within the Law Faculty which aimed to root out those students who were members

⁹² Bocia, González, Palau. *Es mi informe. Los archivos secretos de la Policía de Stroessner*. Asunción, 1994 and González Vera, Myriam 'Los archivos del terror de Paraguay. La historia oculta de la represión'. In *Los archivos de la represión*. (op.cit)

of the Federation of Uruguayan students.⁹³ Two obvious questions arise: who controls the OCOA archives, whose existence has been repeatedly denied? And should details of OCOA collaborators be conserved? The demand that these archives be opened and under the control of the democratic authorities in Uruguay are nowadays more justifiable.

Nor is there any lack of information about the existence of an Argentinean archive on those who disappeared during the military dictatorship, which was taken from the country to Switzerland, prior to microfilming. From statements made by an ex-agent of the intelligence services, Leandro Sánchez Reisse, to a Commission of the United States Senate on 23 July 1987, it is clear that files on the disappeared of Argentina were deposited in a Swiss bank. Judges Bagnasco of Argentina and Garzón of Spain have made many attempts to follow the trail of accounts and data existing in Swiss banks, relating to the supposed Argentinean repressors.

But as indicated above, the archive of the Intelligence Division of the Buenos Aires Police (DIPBA) was discovered in 1998⁹⁴ and placed under the management of to the Provincial Commission for Memory, by the provincial government. This has proved to be a major advance in making available to Argentinean citizens primary sources on political repression. To a lesser extent, this has also given important weight to the recovery of some documentary series from the fonds of the police in General Provincial Archive of Santa Fe which has allowed light to be thrown on at least 19 cases of people who disappeared.⁹⁵

In Latin America in this period, other important archives of repressive services have come to light, if only by chance.

In volume and quality of information contained, possibly one of the most important archives to be recovered is that of the National Police of Guatemala, replaced by the National Civil Police in the transition after the 'internal conflict' had been dealt with. It was by chance that the Procurator for Human Rights obtained basic clues as to its existence, and that, after an

⁹³ Mazzarovich, Gabriel. 'Que muestran todos los archivos de la dictadura ' in La Republica, 30/07/2003

⁹⁴ Olmo, Dario. 'Reconstruir desde restos y fragmentos. El uso de archivos publicos de la Antropologia Forense en Argentina' in *Los archivos de la represion*. (op.cit)

⁹⁵ Cechini de Dallo, Ana Maria 'La demanda de las victimas de un antiguo regimen represivo' in *Comma*, 2003-2/3

initial inspection of the sites where the documents were stored, and which had since been totally abandoned, he obtained judicial authority to close these sites to allow examination of the archives and identification of the fonds they contained. From this point on, the project for the recuperation of the historic archive of the Guatemalan police was started with active international support and co-operation once the scale of the fonds was known and their importance validated for what they could offer in the struggle against immunity in that country and in the reparation of harm done to victims of political repression

The work in Guatemala can be considered as a model both in terms of the archival conception of the project, from the study of the institutions which produced the records to the documentary description and the strategy put in place which resulted in them being organized and described in a rapid and efficient manner. This project ought to act as a reference point for other similar cases: how the principle of provenance was applied, how basic cleaning of the documents was achieved, as well as how the future conservation of the documents was planned.

However, the most difficult part of this ambitious and fundamental project was rolling out a strategy to consolidate the future integration of the archive within the Guatemalan archival system which institutionally speaking was very weak: either through transferring the Guatemalan National Archive to the General Archive of Central America, or through creating an independent institution linked to the politics of memory or to the transitional justice system, such as those already existing centres or archives for memory. In any case, in order that this collection could be made available to the citizens, it needed to be removed from the political sphere, because even if the project was directed by the Procurator for Human Rights, the responsibility for the documents in the first instance lay with the body which inherited the role of the National Police, i.e. the National Civil Police, and which imposed many constraints and difficulties on its use.⁹⁶ Finally it was decided to transfer it and integrate it within the General Archive of Central America,⁹⁷

⁹⁶ Peterson, Trudy H. *The end of the beginning: the completion of phase I of the Proyecto de Recuperacion del Archivo Historico de la Policia Nacional, Guatemala*. Speech by Trudy Huskamp Peterson, 18 January 2008. www.trudypeterson.com

⁹⁷ 'Documentos de la PN trasladados al Archivo General de Centro America' in *Diario de Centro America*; organo oficial; de la Republica de Guatemala. 1 June 2009.

In 1994 troops of the USA commissioned by the United Nations as part of the multinational contingent created under resolution 940 of the Security Council found the intelligence archives of the armed forces of Haiti. The aforementioned troops had intervened in support of the Haitian constitutional authorities who asked for help in bringing to an end the military dictatorship which had, de facto, governed the country and to replace it with a constitutional government. Immediately after their arrival in Haiti the international troops, teams of the American army charged with the seizure of records, entered the offices of the Haitian army and of the paramilitary National Front for the Advance of Progress of Haiti (FRAPH). Records seized by these teams were transferred to the USA without the knowledge or consent of the Haitian government: they contained, according to soldiers and officials involved in this seizure, amongst other material photographs of those responsible for violations of human rights and their victims, audio and video tapes of torture sessions and records concerning the structure of these bodies and of the personnel. These documents are important for the inhabitants of this country both in establishing the truth about the military dictatorship which governed it from 1991 to 1994 as well as in the preparation of cases against those responsible for violations of human rights. They will be particularly important in incriminating the military and paramilitary leaders implicated in the most serious crimes against humanity. In the fragile process of transition which has just begun, the Haitian authorities will continue to seek the return of this material to their country, a return which is supported by the Civil International Mission of the Organization of American States and of the United Nations in Haiti,⁹⁸

However without doubt the most important experience in Latin America as far as the recovery of archives of repression is concerned has been that of Brazil where, between 1991 and 1996, records of the political police of many of its states: Rio de Janeiro, São Paulo, Pernambuco, Maranhão, Rio Grande do Sul, Rio Grande do Norte, Paraná, Goiás, Alagoas and Espírito Santo were found and transferred to public archives. Despite the fact that the records of the military information services have not been found, or at least open to the public, the sources of the Delegations of Public and Social Order (DOPS) have constituted records of extraordinary value for the exercise of *habeas data* acknowledged in the Brazilian constitution, for the claims for compensation by made by victims of violations of human

⁹⁸*Situation concerning democracy and human rights in Haiti. A report of the Secretary General to the United Nations General Assembly. a/52/986. 20 July 1998*

rights and in finding those who disappeared. The final place of deposit of these records has varied from state to state. Thus in some cases the documentation was transferred to the Public Archive, in others to the Historical Archive. In some cases, such as that of Rio Grande do Sul, although placed within the State Historical Archives, Centres of Memory (the heritage of memory) have been constituted which have been put in charge of managing the records with the aim of making reparations to the victims and of consolidating the collective memory. Also, because of the specific value of the collection for countries of the sub-continent as a whole, the records of the political police of Rio de Janeiro merit specific mention. These have been integrated within the State Public Archive which has claimed that the building of the former DOPS should be the final headquarters of the archive. It was thus consolidated it as a place of memory of the repression and seen as a major place for cultural initiatives with the result that the archive is viewed as being actively involved in bringing together the collective memory, over and above the strict value its collections offer as a witness to past events.⁹⁹

Other Latin American countries are attempting to systematize their efforts to recover their archives, thus Colombia in its Law on Justice and Peace in Colombia has also tried to establish means for the preservation of archives.¹⁰⁰ Article 58 of Colombian Law 975 of 2005¹⁰¹ sets out means of facilitating access to the documents:

/.../

CHAPTER X

Conservation of archives

Article 56. *The right to memory.* Knowledge of the history of the causes, growth and consequences of the actions of armed groups operating at the margins of the law should be maintained by means of adequate procedures, in compliance with the right to preservation of the State's historic memory.

Article 57. *Means of preserving the archives.* The right to truth implies that archives are preserved. The judicial bodies which have charge of these, such as the General State

⁹⁹ Da Silva Catela, Ludmila 'Territorios de memoria politica' in *Archivos de la repression* (op.cit.)

¹⁰⁰ Gómez Isa, Felipe. *Desmovilizacion paramilitaria en Colombia: entre la Paz y la Justicia*. Madrid, Fundacion para las relaciones interacionales y el dialogo exterior. Documentos de trabajo no 57, April 2008

¹⁰¹ Law 975 of 25 June 2005' por la cual se dictan disposiciones para la reincorporación de miembros de grupos armados organizados al margen de la ley, que contruyen de manera efectiva a la consecución de la paz nacional y se dictan otras disposiciones para acuerdos humanitarios (Diario Oficial 445.890)

Prosecutor, should adopt means to impede theft, destruction or falsification of archives which might seek to impede immunity: the latter without prejudice in the application of pertinent penalties.

Article 58. *Means of allowing access to archives.* Access to archives ought to be facilitated in the interests of victims and their families to ensure their rights.

When access is sought in the interests of historical investigation, authorization formalities will only have the aim of controlling access, custody and appropriate care of the material, and not with the aim of censoring it.

In every case, methods necessary for protecting the rights to privacy of victims of sexual violence and children and adolescents who were victims of armed gangs working at the edge of the law should be taken, in order to avoid provoking additional unnecessary damage to the victim, to witnesses or to other people, and to avoid creating a risk to their security.

Also recently, in Ecuador, as a result of petitions of records lodged with the public authorities by the Truth Commission, created on 3 May 2007, the government of Rafael Correa showed its willingness to open the archives of the Council for National Security (COSENA) and other fonds and documentary collections which might contain information on crimes against humanity or grave violations of human rights.¹⁰²

In other Latin American countries in which have appeared important indications that archives of the repression exist, such as the above mentioned case of Uruguay, significant steps have not been made in locating these, or of making records which bear witness to political repression available to potential users: *in the regional context Uruguay shows noticeable delay in identifying and making publicly available documentation concerning the recent authoritarian period.*¹⁰³ It is almost certain that countries such as Bolivia or Nicaragua have archives about their information services and other repressive bodies, but as yet we lack information about these.

¹⁰² *Prensa Latina*, 2 July 2008.

¹⁰³ Seminar on *Archives and Human Rights: final declaration*. Montevideo, 2 December 2004.

The archives of the Cambodian political police during the regime of the Khymer Rouge (Santebal) were placed in Phnom Penh in 1996, as part of the Cambodian Centre for the documentation of the programme of genocide, established in 1995, with the aim of collecting together any documentation which would throw light on the huge numbers of assassinations which took place during the former 'Kampuchean Democracy'. The programme on the Cambodian genocide is a project of the Programme of Studies of Genocide, run by the University of Yale and sponsored firstly by the Office for the Investigation of the Cambodian genocide within the State Department of the United States, and later also supported by Australia and Holland. Documents in the Documentation Centre are dealt with (listed and microfilmed) and later offered to the research community by Yale University.

Finally, within the European sphere, we can confirm that in practically all of the former communist countries, archives of the political police have been conserved and placed within the new administration. Since the decree of the Russian Federation of August 1991 which placed the archives of the Soviet repressive services under the control of the Russian National Archives, the records of the political police and other bodies specializing in repression have been identified and transferred to national archives or specially created archival institutions forming part of the archival system of the country.

In Iraq, after the invasion of the country during the Second Gulf War, important documentary records of the Ba'ath Party and of the political police of Saddam Hussein were found and deposited in the Foundation for Memory of Iraq, which took them from the country and sent them to the United States in order to examine them at the Hoover Institute.¹⁰⁴ After the Iraqi government was constituted, the Iraqi National Archives reclaimed these records, which they consider to belong to them.¹⁰⁵

As in the case of Haiti, in Iraq we are confronted with the reality of the taking and displacing of archives in the time of war, which causes a profound debate on the practices employed in times of war. In all cases, it seems logical to recognise the principle that documents taken in time of war, and removed from their country, can only be done as a legitimate practice in the struggle against violations of human rights and in the persecution of those guilty of such

¹⁰⁴ Peterson, Trudy H. *Iraqi Records, US involvement*. 17 February 2008 www.trudypeterson.com.

¹⁰⁵ Saad Eskander, Director of the Iraq National Archive is seeking the repatriation and restitution of diverse media (www.archivistica.net)

crimes, as well as in seeking compensation for the victim, that this transfer of records ought to be for a limited period, and that they ought to be repatriated and delivered to the new authorities in the country in question, once the reasons for their confiscation have been satisfied.¹⁰⁶

¹⁰⁶ Peterson, Trudy H. *Archives in service to the state*. www.trudypererson.com

12.-Means of promotion should be introduced to enable the location, protection and archival management of records produced by human rights organizations and bodies in opposition to the repressive regimes

Documents generated by organizations opposing tyrannies offer us an indispensable counterpoint to the statements of those in power. Any attempt to seek the truth of what happened needs to take these statements into consideration. Given the existing difficulties in organizing and conserving good archives, sadly these organisations, who were obliged to carry out their work in conditions of secrecy, in general have a reduced amount of written sources: thus the importance of conserving them.

By contrast, human rights organizations, legally protected or tolerated in a way not available to resistance bodies, have gathered together important documentary collections not only in quality, but in quantity and range. The best example is the aforementioned archives for the legal defence of the *Vicaria de Solidaridad* for the Archbishop of Santiago, a body created in January 1976 to offer legal and social help to the victims of the most serious violations of human rights following the military coup of 11 September 1973, with the aim of recording what had happened in order to raise awareness of the crimes and thus allow justice to be achieved at a later date. Public bodies should, as part of the transition, put into place programmes for finding, repatriating whenever necessary and for the treatment of these documentary collections. In addition, they should advocate the creation of institutions for their custody and consultation, or at least to encourage their deposit in public archival bodies.

An alternative solution, when there are alleged economic reasons for not putting such programmes into practice, is to appeal for international aid, as shown in the case of the Archives of the Political Police of Guatemala, which was able to attract enormous support from many countries.

13.-Awareness of those archives which witness the violation of human rights should be spread.

The culmination of this process lies in correct information being disseminated on the rights established by the new regime, as well as awareness of those archives and institutions which should support this with the help of documents. This task of dissemination should be shared by the relevant public bodies, but also those groups affected, political parties, trade unions, religious bodies, and foundations and institutions for the defence of human rights. Finally, the involvement of the media, principally radio and television is essential.

Considerations and professional recommendations

As a general rule, we have to take into consideration that general archival principles are equally applicable to archives of the repression. It is often the case that the apparent mixture of documents which are contained in the archives of repressive institutions, above all in the information services, makes the archivist believe that a new and global system of classifying documents is necessary. The archivist should not rush into this method of appraisal. Generally, behind the apparent disorganisation there lies a logical structure, perhaps very simple, but one which guaranteed that the work undertaken by the body in question was very efficient. Political logic determines the particular structure of these fonds. Thus, the principles for respect for the fonds and their original order should be maintained. The work of the archivist will be essentially to be aware of the working dynamic of these institutions and to make this clear by means of the classification system and descriptive tools.

The same rule applies to the archives of NGOs which defend human rights, except that in those cases, the logic which lies behind the structure of the documents gathered together or described is the denunciation of violations or the demands of justice.

1.- Proceed to identification of fonds.

The first archival task to be undertaken will be to identify the fonds. Archivists ought to be aware of the agency, body or institution which produced the records which they are faced. An analysis of the historical evolution of its structure and responsibilities as well as of its institutional and administrative departmental structure will need to be undertaken.

A correct analysis of the structure and responsibilities of these bodies is the best means of understanding the key to the organising of its records. Beginning to classify records without this initial task can be as complicated as it is inadequate. We have to think that the original order of the documents was designed for the purposes of the body in question: the repressive regimes. Ironically, the more efficient the organization of the documents was for political purposes, if this order is respected, the archives will be more effective in protecting human rights under the new political order. The task of identification should start by studying the legal regulations and the internal rules which regulated the work of the body throughout its history.

It is therefore recommended that these initial studies leading to the identification of fonds is undertaken by archivists working within the bodies charged with winding up the former regimes, as was mentioned in the chapter of general recommendations, and before these fonds are transferred to an archival institution. Uncontrolled movement of documents can irreparably distort the original order of the records.

The variety of repressive institutions is huge and it is not easy to define the reach of the term 'repression'. We have to apply the term widely not only to political ideas, but also within the ambit of ideology and personal conduct: religion, philosophical beliefs, sexual behaviour and other such freedoms recognised by the Universal Declaration on Human Rights, which we take as our point of reference. Thus the UNESCO-ICA working group has established the following categories of repressive institutions: intelligence services, paramilitary bodies, special tribunals, concentration camps, special prisons, psychiatric centres for 're-education' and others. These concern institutions specifically created by repressive regimes and which are only and exclusively linked to their survival. However, records concerned with the

repression can be found in traditional institutions within the administration which have continued to exist throughout the period of the totalitarian regime. In this category, the working group has established the following: Intelligence, Armed Forces, Police and Security Bodies, Prison Services, Ordinary Tribunals and bodies within the Civil Administration.

From among all these categories of institutions, those which present the most characteristic documental typology, and one removed from the traditional organisation of records within the public administration, are those of the intelligence services. On the other hand, their records are the richest in terms of information on people and repressive bodies.

The archives of the intelligence services in repressive regimes are generally organised by means of a huge card index or computerised index. These indices were designed in order to obtain information immediately whenever information was sought about any individual. Thus the index cards often offer a summary of the information contained in the documents to which they refer. We can describe these, as colleagues within the State Archives of Rio de Janeiro have done as **self-explanatory index cards**¹⁰⁷ which are essentially different from those which can be described as **index reference cards**. These latter only identify one document or one file and do not contain additional information. Finally there are **indexes of the indexes** which refer to other indexes or to the files of those responsible for the use of the sources.

It is advisable that the original reference number assigned to files in their original place of deposit remain the same once they are transferred to a new archival institution. If this is not possible when the fonds are integrated into a new place of deposit then the archivist should prepare a conversion table indicating the old and new reference numbers.

Often, the source of information used by the intelligence services came from other institutions or bodies. The use of confiscated records was standard practice in repressive regimes. It is important to identify those records which have come from other ‘archives’ within the fonds of the repressive bodies, but, if possible, to avoid the temptation to physically organise them as a distinct collection within the collection as a whole. The use of

¹⁰⁷In the DIPBA collections within the Provincial Commission for Memory in Buenos Aires, these are called *alphabetical index cards*.

computers in the task of archival description should, however, help the archivist to present the confiscated documents in the best manner to facilitate historical research on those bodies or people who were the object of confiscation, undertaking the computerized 'reorganisation' of the documents in line not with political logic but with that of the structure and responsibilities of the people or the bodies concerned.

Individual people are the fundamental object of the files of intelligence services dedicated to repression. Information on these people can be found in one or many files, however the résumé of information contained in the *self-explanatory indices*, where these exist, or on reference cards for a single person will always enable all files to be found. The documents to which these index cards refer are the fundamental proofs in support of claims or administrative or judicial decisions. Thus it is very important that the link between index and documents is not broken in any case: the global coherence of the documents of the intelligence services is established by its indexes, whether in paper or computerized form.

It will be more difficult to identify the documentary series relating to the repression which can be found in those traditional bodies which continue to exist in the democratic era. In such cases, we have to try to identify and separate those files relating to the repression from the others. Once separated from the others, these series, sometimes complete, can be considered as a closed series to be transferred for permanent preservation to the general archives within the public administration. It is very important to remember that this somewhat atypical process is not recommended from an archival point of view for other fonds. It is done in this instance taking into account the sensitive political and social nature of the information these documents contain, and with a predetermined period set for their return to their original place. Thus the archivist will have as a long-term objective the task of bringing together in the same place all the files and series of these bodies. But at the same time he runs the risk of allowing future generations to think that these institutions had nothing to do with political repression during non-democratic times.

2.-To carry out the appraisal work and to seek the opinions of other professionals

There are two fundamental tasks of appraisal for the archivist working with documents of the repression: 1) the study of the different series of records identified in order to know their value in relation to the protection of individual rights as well as their informational value as evidence for the history of the repressive body and of the country in general; 2) the selection of files which concern the persecution of human rights, with the aim of separating them from the rest of the records of those traditional bodies which continued to exist in the period of democracy. Thus, we are distinguishing between the task of appraisal in closed fonds and that of appraisal in fonds still open.

In relation to the task of appraisal in closed fonds, once the different series have been identified, their respective values have to be determined: legal and administrative on the one hand, and informational on the other hand. As far as the legal value of the documents is concerned, we have, above all, to enter the debate on authenticity and reliability. Many series of documents of the repression are characterized by the absolute lack in the documents of any means of verification (signatures or seals). This is the case, for example, in the above mentioned 'self-explanatory index'. Many of the reports and documents from these fonds of files probably have no legal value of proof in the democratic process. There is no doubt that the data which they contain are, in many cases, pure lies. But they are authentic documents. In the democratic period, the records of the repression of the former regimes became authentic and true proof of actions taken against individuals on political, ideological, religious, ethnic and racial grounds. In this sense, they are valid documents for the exercise of rights such as rehabilitation, or reparation and compensation for the victims of the repression.

But on some occasions, the certainty that these documents offer of the existence of persecution for the above stated reasons is not considered sufficient to obtain compensation or for reparations to be obtained. There are some laws, as in the case of Spain, in which the right to compensation is only recognised for those people who served more than three years in prison. Faced with these legal requirements, only a judicial decree on the quashing of the sentence can facilitate access to the benefits foreseen by the legislators. With these reflexions,

we wish to underline the importance of the archivist being aware of legislation which affects the rights of citizens to enable him to determine which documents are the most appropriate to offer people whatever their case. By the same token, this will act as a guideline to determine how the documents should be described in more detail and what should be the order of priority in the task of description.

The documentary series of personal files of the agents and employees of the repressive services have an especial value. Amongst these files, especially in the service records of military personnel, the biographical details which they contain are fundamental in answering questions on their responsibilities under the repression.

All files which contain information on people who were victims of the repression ought to be permanently preserved as much for their primary value in the exercise of rights, as for their great historical values in learning about the spread of repressive activities.

In the case of open fonds, the selection of files to be separated from those records still in the use of the organization, should be based on the typology of the crimes. The files of those suspected or charged with alleged crimes not considered as such in the democratic era should be transferred to the general archives. Selection criteria ought to be as wide as possible: where there are doubts about the inclusion of certain files, we suggest that they should be transferred. In Spain, files of this character have been separated from the central police archive and transferred to the National Historical Archive. In order to achieve this task a report was compiled which recognised the distinct types of crime which could clearly in some cases, less clearly in others, be considered as not existing in a state of law. Such 'crimes' are as follows: threats to the authorities, personal threats, apology for terrorism, illicit meetings, attack, coercion, collaboration with armed groups, illegal groupings against special legislation and internal state security, damages, deposit of arms and munitions, contempt, disobedience, illegal detention of individuals, paramilitary association, devastation, evasion, strike, printing, fire, breaking the military justice code, attacking the government, breaking the Public Order act, damage to the authorities, insulting authority, illegal demonstration, conscientious objection, illegal crossing of the frontier, belonging to an armed group, illegal press and propaganda, breaking a sentence, rebellion, resistance, illegal

meeting, sedition, holding arms and explosives, terrorism and insulting the nation, its symbols or flags.

In open fonds we also have to discriminate between those records classified as secret and concerned with the repression of human rights. This task can only be achieved if the commissions charged with the analysis of the records of the institutions do not meet with any obstacle within the body in which they have to work. Obviously all its members are covered by the laws on official secrecy as concerns the genuine state secrets, for which they can obtain the relevant authorization.

Finally, it is recommended that research is undertaken on public archives in general, aimed at discovering what information can be found in their fonds on the subject of human rights. In order that such work can be guaranteed to be successful, appropriate archival policies should be introduced by the democratic authorities to cover:

- a) Archival systems
- b) Systems for managing records
- c) Infrastructure and personnel plans.

3.-Application of the principle of provenance

We have mentioned previously the atypical character of the records of the intelligence services as compared to other repressive bodies such as tribunals, prisons, hospitals etc. and noted the frequent presence of records seized from individuals, from civil institutions or from politicians, with the aim of integrating these records, for information purposes, within the rest of the fonds such as journals, reports of agents etc. Thus, when the records of these intelligence services are transferred to the general archives within the democratic administration, the only principle of provenance that needs to be respected is the latter i.e. that of records created, copied and manipulated by the information services.

Integrity of the fonds

Related to the principle of origin, we also have to accept the principle of the integrity of the fonds. Thus, if legislation covers the right of people to have their personal goods restored, this right can conflict with maintaining the integrity of the collection of records about the repression, and multiple claims for restitution could endanger the survival of fonds of records which, at the same time we consider to be part of the Nation's heritage.

Finding a balance seems difficult, but one means of compromise might be to make a distinction between purely personal documents which ought to be returned to their owners or heirs, and those records which refer to the activities of people as part of their public or political responsibilities such as organizations and institutions, and which ought to remain in the archives together with the rest of the records. The right to financial compensation for owners and heirs of this records should be recognised when they do not opt voluntarily to deposit these documents in the archive. It is also recommended that in the case of goods returned to private individuals, if they opt for selling them to third parties, the government could exercise the right of first offer.

Another question to be considered is the very concept of fonds in the case of the branches of the police or of the army which specialised in repression. For these specialised bodies, when

the documents have been separated from the rest, it is recommended that they are considered as a collection in themselves, and a minimalist approach taken when treating them as a closed collection, and transferring their documents to the general archives.

The only exception to the rule of maintaining the integrity of the fonds ought to be when, as described previously, files relating to the repression have been separated from those necessary for the continuation of the work of the bodies in question, providing that they had originally been intermingled. In these cases, as has already been indicated, temporary separation is recommended.

Chain of custody

The use of documents as proof of responsibility in open judicial processes against those who violated human rights, in countries in periods of transition, has demonstrated that, in order to validate the proof, it is important to guarantee the origin of, and context in which the records were produced.

It is precisely the establishment of records management systems and archival systems as a basis of archival policies which guarantees the authenticity and reliability of documents stored in public archives, whose production and management have been legally regulated throughout their life-cycle. Public archives which have been managed in such a way can thus offer a full guarantee of authenticity and that the records in their care have not been subject to manipulation

Nevertheless when the process of gathering documents together in an archival institution, or other such body, has not followed the usual methods for transferring of records appropriate to an system of managing records within the context of a given archival system, it is necessary to ensure their authenticity by means of the appropriate method of establishing legal proofs as applied in tribunals, known as the 'chain of custody'¹⁰⁸ When records are moved from one

¹⁰⁸ Chain of custody: the movement and location of physical evidence, from first being obtained to the moment it is presented in court (West's Encyclopaedia of American Law, 2005). The chain of custody of proof is the procedure of control of material relating to a crime, from its location to its validation by those charged with administering justice and which has the aim of not vitiating their use and thus preventing any alterations, substitutions, corruption or destruction /.../Individuals who for work reasons or to enable them to complete their

place to another without any continuity being established, to establish the chain of custody all movements of records, the names of those responsible for these, whether internal or external, the lists of documents or collection of documents, from their initial location and identification to their eventual possible claim and judicial use, ought to be noted in a register.

Description

The work of description should be similar to that usually carried out by archivists with the medium term plan of producing descriptive instruments of a general nature such as guides or inventories, which will allow for a global knowledge of the content of the collection. However, it is not recommended that archivists create catalogues in which detailed information, including personal data on individuals which might endanger the protection of their privacy. In the case of those documents, which, after having been validated are considered to contain data relative to the privacy of an individual, descriptive instruments should stop at the level of the inventory, i.e. title of series, outside dates and relation to other material preserved. Personal name indices compiled from these documents should only contain the first name and surname of the individual and of the signatures on the documents. In addition, the files compiled by the repressive services, even if they are of great use to the archivist, should not be considered to be instruments of description nor offered as such to the users. On the contrary, they should be regarded as documents to be protected and managed as in the case of the rest of the records stored in the repository away from public access, these former instruments of control should be limited to the use of archivists. In the same way, the use of computers in the task of description should be restricted in such a way that the information contained in the descriptive tools thus created remain within limits established for the protection of privacy.

The principal demand of users will be to know whether or not there is data on them stored in the archives. The creation of a personal name index which refers to the file and its location will enable these demands to be met and information supplied.

tasks, specifically health service personnel who come into contact with material proofs and physical evidence are responsible for recollecting the, for conserving them and handing them over to the relevant authority' (Colombia, law 906, August 31 2004. Diario Oficial No. 45.658 1 September 2004. Code of penal procedure.

To do this, by way of example, the State Archives of Latvia has set up a project to create a unified Register of Victims of the Repression

4.-Archive administration

The archivist working with records of former repressive bodies should bear in mind the important question of the security of these records. Many people are affected by these records and, in some cases especially the former agents of these bodies, who might have an interest in the destruction of the documents. It is recommended that security measures be introduced for the preservation of the documents, which should, at least, be at the same level expected in the former bodies.

Preservation

Appropriate measures should be adopted to ensure the proper conservation of records which testify to the violation of human rights. Provision of suitable buildings is the primary recommendation, even if the lack of financial resources might make this alternative unviable. In every case, faced with the shortage of resources, the best recommendation is always to make best use of resources, through sharing investments and current costs. A good archival institution, at national or central level is preferable to numerous smaller institutions, all of them lacking the infrastructure and human professional resources necessary for the archival management of records.

Another alternative is to reproduce material to keep it in a secure institute, not only as a means of preventing the rapid deterioration due to the climatic conditions, but also to act as a means of protection against sabotage, aggression and attack on the integrity of the records in order to destroy the proof.

This has been done in several instances, such as with the Historical Archives of the Guatemala National Police;

On 8 July 2008 an agreement was signed between the Procurator of Human Rights in Guatemala, the Swiss Federal Archives and the Federal Department of Foreign Affairs in Switzerland, after a long period of negotiation lasting more than one year. The purpose of the

agreement was the preservation, management and guarantee of access in the long term to the digitized registers produced by the Project for the Recuperation of the Historical Archive of the Guatemalan National Police, and applying to that end the technical management infrastructure of the Swiss Federal Archives. By signing this agreement, the following have been achieved:

-the security of having, outside the country, a backup copy of all the digitized information produced as part of the process of recovering this archive

-the confidence that this material will be safeguarded in the best possible place, Switzerland because of its technical capacity, experience and support for this project

-‘digital preservation’ which as well as safeguarding all scanned images, photographs, documents and databases which are in the digital archives, will assure access to this information over time. The most suitable format for the management of digitized images currently is TIFF. The Swiss Federal Archives have undertaken to convert, en bloc, all those registers which they hold in the Archive, to an up to date technical format when that becomes necessary.¹⁰⁹

Management of the users

User’s management is an equally important point. It is recommended that a public reading room is opened within the archive. This office should undertake to produce a guide to collective and individual rights as guaranteed by law and effective through use of the archive. This guide should also provide basic information on the documentary contents of the archive and of conditions of access and the services offered to users.

¹⁰⁹ Project for the Recuperation of the Archives of the Guatemalan National Police: Noticia del Archivo: 7-11 July 2008. Suiza protege copia del Archivo.

5.-Those in charge of institutions which conserve records of the repression, archivists and the rest of the professions charged with this, should be guided by a Code of Ethics

Archivists in the ex-communist countries of Eastern Europe saw the necessity to apply democratic standards in their work, standards apparently natural in the rest of the world, but relatively new for them. Throughout the period of the USSR, under the totalitarian regime, the principal task of the archivist was the conservation of the records of the archive and their use was considered of secondary importance. But the transition from a totalitarian system to a democratic one found the archivists faced with the need to radically rethink their attitudes to the use of the records, and secondly, to rethink their priorities. Thus, while the administrative system had accepted that the greatest priority was the interests of the state, or rather of the ruling party, and that of 'nomenklatura', now the priority was that of the interests of individuals.¹¹⁰

The production of a Code of Ethics ought to be of great help in considering how to deal with the archives which have been the object of this study. The ICA Code of Ethics, approved in Beijing in 1996, has proved insufficient in dealing with the problems faced by archivists and other professionals working with archives of the repression on a daily basis. It is necessary not only to consider how it is applied, but also to consider the acceptance of the principles laid out in the code on the part of those politicians and administrators responsible for archival institutions.¹¹¹

Thus we propose that in those archives charged with the custody of such documents set in place such codes; but of greater importance is that those who work in these archives and also did so during the former regime, expressly agree to abide by the principles expressed in the code. As a guideline for compilation of a code, we offer the following points which, in our opinion, ought to constitute a starting point:

¹¹⁰ Krastrusska, Nina.V. 'Archival practice in the context of the introduction of access to information legislation in Eastern Europe' in *Access to Archives: legal aspects: proceedings of the thirty-second international conference of the round table on archives, Edinburgh 1997*. Paris. ICA, 1998.

¹¹¹ Cook, Michael 'Professional ethics and practice for archives and records management in a human rights context.' in the *Journal of the Society of Archivists*, vol27, no 1, April 2006, pp1-15

-the archivist agrees to respect the United Nations Declaration on Human Rights and will oppose all professional practice which runs contrary to the principles protected therein

-the records in an archive which bear witness to violations of human rights are the heritage of all people. They should be preserved in the most complete manner possible. Thus by extension and as a whole they form part of the heritage of all humanity in that they should help strengthen memory about the dangers of intolerance, racism and political totalitarianism and serve the cause of justice.

-the archivist is the executor of the popular will in respect of the way chosen in the process of transition and is subject to the power of the law. Nevertheless, he/she will oppose all orders from his superiors ordering to destroy records concerning the violation of human rights, or their closure to public consultation on the grounds of 'state security'

-the rights of individual victims of political repression will take precedence over historical research

-no document will be removed from its location in the archive on a criterion based on its value for historical research

-the archivist is not a censor. There are laws which determine which records and in which format they can be freely accessible.

The archivist should be able to interpret laws relating to access in situations where these do not offer sufficient examples of cases or situations. In such circumstances, advice should be taken from experts in administrative law and the balance always sought between interests and rights when these are in competition. The most frequent and thus the most difficult conflict is between the right to privacy and the right to historical research. In such cases the depersonalization of the possible names of victims or third parties in copies of original documents could offer a solution

-the archivist will pay the greatest possible attention to requests for certification or validation of photocopies presented in order to validate the rights of victims of the repression or any other person

-the archivist will establish the necessary controls to protect the records containing sensitive information in the custody of the archive. Records concerning the repression will be conserved, in the general archives, in separate strongrooms with specific security systems. Only archival personnel should be authorized to have access to these documents

-the archivist will limit the use of computerized databases which relate to victims of the repression to those uses necessary for the exercise of *habeas data*. These databases will be used exclusively to facilitate awareness of the existence of records on individuals and their whereabouts. The archivist should not authorize any other administrative or governmental use of these databases.

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List of websites with information on archives and human rights

<http://www.memoriaabierta.org.ar/censo/front/index.php> (Censo de Archivos de Derechos Humanos de *Memoria Abierta*)

<http://www.iisg.nl/abb/> (Base de datos del Instituto Internacional de Historia Social en Ámsterdam sobre archivos rusos)

<http://censoarchivos.mcu.es/CensoGuia/portada.htm> (Censo-Guía de Archivos de España e Iberoamérica, del Ministerio de Cultura de España)

http://www.archivistica.net/archivos_derechos_humanos.htm (Mapa de Archivos y Derechos Humanos de la web de María José Aldaz: *archivistica.net*)

<http://www.historizarelpasadovivo.cl/> (Información sobre archivos de Chile, Argentina y Perú)

<http://www.memoriasreveladas.arquivonacional.gov.br/cgi/cgilua.exe/sys/start.htm?tpl=home> (Memorias Reveladas, Centro de Referencia de las Luchas Políticas en Brasil, 1964-1985)

<http://www.ica.org/groups/> (Consejo Internacional de Archivos – Grupo de Trabajo de Archivos y Derechos Humanos)

<http://www.arxivers.org/es/index.php> (Página de la organización no gubernamental *Archiveros sin Fronteras*)

**DIRECTORY OF THE MAJOR ARCHIVAL INSTITUTIONS
WHICH HOLD MATERIAL ON HUMAN RIGHTS VIOLATIONS**

Germany

Bad Arolsen

Institución: **Servivio Internacional de Búsquedas
(International Tracing Service (ITS))**

Año de creación: 1945

Tipo de institución: Archivo

Dirección: Große Allee 5 - 9.- 34454 Bad Arolsen

Teléfono: +49 (0)5691 629-0

Sitio Web: <http://www.its-arolsen.org/>

E-Mail: [email\[at\]its-arolsen.org](mailto:email[at]its-arolsen.org)

Fuente de información: http://www.its-arolsen.org/en/archives/collection/inventory_lists/index.html

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Instituto Internacional de Búsquedas (Cruz Roja Internacional) y organismos precedentes</i>	1943 2006	Organismos de DDHH

Berlin

Institución: **Comisionado Federal para la Administración de los Archivos del Ministerio para la Seguridad del Estado de la República Democrática Alemana**

Año de creación: 1990

Tipo de institución: Archivo

Dirección: Karl-Liebknecht-Straße 31/33. D - 10178 Berlin-Mitte

Teléfono: +49 (0)30 23 24-50

Sitio Web: <http://www.bstu.bund.de/>

E-Mail: post@bstu.bund.de

Fuente de información: http://www.bstu.bund.de/nn_710332/EN/Archives/archives__node.html__nnn=true__nnn=true

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Ministerio para la Seguridad del Estado (Stasi)</i>	1950 1989	Organismos represivos

Argentina

Buenos Aires

Institución: **Archivo Nacional de la Memoria**

Año de creación: 2003

Tipo de institución: Centro de Memoria

Dirección: Mariano Moreno 1228, Subsuelo, (1091) Ciudad Autónoma de Buenos Aires

Teléfono: (54 11) 4382 6404

Sitio Web: <http://www.derhuman.jus.gov.ar/anm/inicio.html>

E-Mail: info@anm.derhuman.jus.gov.ar

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Comisión para el Estudio de las Personas Desaparecidas (CONADEP)</i>	1984 1984	Comisiones de verdad

Institución: **Asamblea Permanente por los Derechos Humanos (APDH)**

Año de creación: 1975

Tipo de institución: ONG

Dirección: Av. Callao 569, 3° Cpo. 1° Pis. C1022AAF Buenos Aires

Teléfono: (0054 11) 4372-8594

Sitio Web: www.apdh-argentina.org.ar

E-Mail: apdh@apdh-argentina.org.ar

Fuente de información: [http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=44&nombre=APDH%20\(Asamblea%20Permanente%20por%20los%20Derechos%20Humanos\)&idPais=1](http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=44&nombre=APDH%20(Asamblea%20Permanente%20por%20los%20Derechos%20Humanos)&idPais=1)

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Asamblea Permanente por los Derechos Humanos</i>	1975 0	Organismos de DDHH

Institución: **Centro de Estudios Legales y sociales (CELS)**

Año de creación: 1979

Tipo de institución: ONG

Dirección: Piedras 547. Código Postal: C1070AAK, Buenos Aires

Teléfono: (54) 11-43344200 / (54) 11- 4334-4200

Sitio Web:

E-Mail: www.cels.org.ar

Fuente de información: [http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=116&nombre=CELS%20\(Centro%20de%20Estudios%20Legales%20y%20Sociales\)&idPais=1](http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=116&nombre=CELS%20(Centro%20de%20Estudios%20Legales%20y%20Sociales)&idPais=1)

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Centro de Estudios Legales y sociales (CELS) (archivo institucional)</i>	1979	0 Organismos de DDHH

Institución: **Familiares de Desaparecidos y Detenidos por Razones Políticas**

Año de creación: 1975

Tipo de institución: ONG

Dirección: Riobamba 34. Buenos Aires

Teléfono: (54-11) 4954-5646 / (54-11) 4954-5646

Sitio Web:

E-Mail:

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=114&nombre=Familiares%20de%20Desaparecidos%20y%20Detenidos%20por%20Razones%20Políticas&idPais=1>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Familiares de Desaparecidos y Detenidos por Razones Políticas (archivo institucional)</i>	1975	2004 Organizaciones de Resistencia

Institución: **Madres de Plaza de Mayo - Línea Fundadora**

Año de creación: 1979

Tipo de institución: ONG

Dirección: Piedras 153, 1º A. Código Postal: 1070. Buenos Aires

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=113&nombre=Madres%20de%20Plaza%20de%20Mayo%20-%20Línea%20Fundadora&idPais=1>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Madres de Plaza de Mayo - Línea Fundadora (archivo institucional)</i>	1997	2005 Organizaciones de Resistencia

Institución: **Memoria Abierta**

Año de creación: 1999

Tipo de institución: Centro de Memoria

Dirección: Avda. Corrientes 2560, 2º E, (1046) Ciudad Autónoma de Buenos Aires

Teléfono: (54 11) 4951 4870 / 3559

Sitio Web: www.memoriaabierta.org.ar

E-Mail: contacto@memoriaabierta.org.ar

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=127&nombre=Memoria%20Abierta%20-%20Acción%20coordinada%20de%20Derechos%20Humanos&idPais=1>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Memoria Abierta</i>	1999	0 Organismos de DDHH
<i>Fiscalía Moreno Ocampo</i>	1975	1998 Tribunales de Justicia
<i>Colección de testimonios orales</i>	2001	0 Organismos de DDHH
<i>Colección de fotografías</i>	2002	0 Organismos de DDHH

Institución: **Servicio Paz y Justicia - SERPAJ Argentina**

Año de creación: 1974

Tipo de institución: ONG

Dirección: Piedras 730. Código Postal: C1070AAP. Ciudad autónoma de Buenos Aires

Teléfono: (54 11) 4361-5745 / (54 11) 4361-5745

Sitio Web: www.serpaj.org/

E-Mail: serpaj@serpaj.org.ar

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta2.1.php?idInstitucion=102&idPais=1&nombre=Servicio%20Paz%20y%20Justicia%20-%20SERPAJ%20Argentina&fondo=53>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>SERPAJ Argentina</i>	1974	0 Organismos de DDHH

La Plata

Institución: **Comisión Provincial por la Memoria**

Año de creación: 2000

Tipo de institución: Centro de Memoria

Dirección: Calle 54 N°485, (1900) La Plata,(provincia de Buenos Aires)

Teléfono: (54 221) 483 1737 / 489 5191

Sitio Web: www.comisionporlamemoria.org

E-Mail: cmemoria@speedy.com.ar

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>División de Inteligencia de la Policía de Buenos Aires (DIPBA)</i>	1940 1998	Organismos represivos

Mendoza

Institución: **Casa por la Memoria y la Cultura Popular**

Año de creación: 1999

Tipo de institución: Centro de Memoria

Dirección: Pasaje las Orquideas 767, Código Postal: 5501. Mendoza

Teléfono: 0261- 4295667

Sitio Web:

E-Mail: bibliotecaycasaporlamemoria@yahoo.com.ar

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=117&nombre=Casa%20por%20la%20Memoria%20y%20la%20Cultura%20Popular&idPais=1>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Departamento de Inteligencia de la policía de Mendoza (D2)</i>	1973 1978	Organismos represivos
<i>Casa por la Memoria y la Cultura Popular (archivo institucional)</i>	1976 0	Organismos de DDHH

Rawson

Institución: **Archivo Provincial de la Memoria del Chubut**

Año de creación: 2004

Tipo de institución: Centro de Memoria

Dirección: Conesa 284 1° Piso. 9103 Rawson

Teléfono: (02965) 483710 / 783

Sitio Web:

E-Mail: ddhh@chubut.gov.ar

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta2.1.php?idInstitucion=164&idPais=1&nombre=Archivo%20Provincial%20de%20la%20Memoria%20del%20Chubut&fondo=103>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Servicio de Inteligencia del Chubut (SICh)</i>	1960 1988	Organismos represivos

Rosario

Institución: **Museo de la Memoria de Rosario**

Año de creación: 1998

Tipo de institución: Centro de Memoria

Dirección: Av Aristóbulo del Valle y Call. Código Postal: 2000, Rosario

Teléfono:

Sitio Web:

E-Mail: 0054-341-4804-511 int. 231 ó 164

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=73&nombre=Museo%20de%20la%20Memoria%20de%20Rosario&idPais=1>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Colección de documentos y testimonios</i>	1975 1983	Organismos de DDHH

San Miguel de Tucumán

Institución: **Secretaría de Estado de Derechos Humanos de la Provincia de Tucumán**

Año de creación: 2003

Tipo de institución: Administración Pública

Dirección: 25 de mayo 90 - Casa de Gobierno. Código Postal: 4000. San Miguel de Tucumán (Tucumán)

Teléfono:

Sitio Web:

E-Mail: alejandraschwartz@yahoo.com.ar

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=148&nombre=Secretaría%20de%20Estado%20de%20Derechos%20Humanos%20de%20la%20Provincia%20de%20Tucumán%20-%20Archivo%20de%20la%20Comisión%20Bicameral&idPais=1>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Archivo de la Comisión Bicameral investigadora de las violaciones de los Derechos Humanos en la prov</i>	1984 1986	Organismos de DDHH

Santa Fe

Institución: **Archivo General de la Provincia de Santa Fe (Archivo Intermedio)**

Año de creación: 1961

Tipo de institución: Archivo

Dirección: Av. General López 2792 - Av. A

Teléfono: (54) 0342-4573029 – 4506600 int. 1594 / 1571

Sitio Web: www.ceride.gov.ar/sipar

E-Mail: sipar@ceride.gov.ar

Fuente de información: [http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=119&nombre=Archivo%20General%20de%20la%20Provincia%20de%20Santa%20Fe%20\(Archivo%20Intermedio\)&idPais=1](http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=119&nombre=Archivo%20General%20de%20la%20Provincia%20de%20Santa%20Fe%20(Archivo%20Intermedio)&idPais=1)

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Dirección General de Informaciones, Provincia de Santa Fe</i>	1976 1983	Organismos represivos
<i>Policía de la Provincia de Santa Fe</i>	1976 1983	Organismos represivos
<i>Servicio Penitenciario</i>	1976 1983	Organismos represivos

Brasil

Belo Horizonte

Institución: **Archivo Público Mineiro**

Año de creación: 1895

Tipo de institución: Archivo

Dirección: Avenida João Pinheiro nº: 372. Funcionários - Belo Horizonte. CEP: 30130-180

Teléfono: (31) 32691167; (31) 32691060

Sitio Web: <http://www.cultura.mg.gov.br/>

E-Mail: apm@cultura.mg.gov.br

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Departamento de Orden Político y Social del Estado de Minas Gerais</i>	1927 1982	Organismos represivos

Campinas

Institución: **Archivo Edgard Leuenroth – Centro de Investigación y Documentación Social**

Año de creación: 1974

Tipo de institución: Centro de Documentación

Dirección: Arquivo Edgard Leuenroth. Centro de Pesquisa e Documentação Social. Instituto de Filosofia e Ciências Humanas. Universidade Estadual de Campinas. Cidade Universitária Zeferino Vaz. Caixa Postal 6110. Campinas - SP - Brasil. CEP: 13083-970

Teléfono: (19) 3521-1622

Sitio Web: <http://www.ifch.unicamp.br/ael>

E-Mail: chalhoub@unicamp.br

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Brasil Nunca Mais (colección de materiales recopilados por Paulo Evaristo Arns y Jaime Wright)</i>	1964 1979	Organismos de DDHH

Curitiba

Institución: **Archivo Público Estatal de Paraná**

Año de creación: 1855

Tipo de institución: Archivo

Dirección: Rua dos Funcionários nº: 1.796 . Cabral - Curitiba . CEP: 80.035-50

Teléfono: (41) 3352.2299

Sitio Web: <http://www.arquivopublico.pr.gov.br/>

E-Mail: arquivo@pr.gov.br; daysilucia@seap.pr.gov.br

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Delegación de Orden Político y Social de Paraná (DEOPS)</i>	1920 1989	Organismos represivos

Fortaleza

Institución: **Archivo público del Estado de Ceará**

Tipo de institución: Archivo

Dirección: Rua Senador Alencar n°: 348 . Centro - Fortaleza. CEP: 60030-050

Teléfono: (85) 3101-2614; (85) 3101-2615

Sitio Web: <http://www.secult.ce.gov.br/equipamentos-culturais/arquivo-publico>

E-Mail: apec@secult.ce.gov.br

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Delegación de Orden Político y social de Ceará</i>	1963 1987	Organismos represivos

Porto Alegre

Institución: **Archivo Histórico de Río Grande do Sul**

Año de creación: 1954

Tipo de institución: Archivo

Dirección: Memorial do Rio Grande do Sul, na Rua Sete de Setembro, 1020- 2º andar, Centro, Porto Alegre-RS-Cep: 90010-191

Teléfono: (51) 3227.0883, 3221.0825.

Sitio Web: http://www.cultura.rs.gov.br/principal.php?inc=arq_hist

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Secretaría de seguridad Pública (DOPS)</i>	1094 1989	Organismos represivos

Recife

Institución: **Archivo Público Estatal de Jordão Emerenciano**

Año de creación: 0

Tipo de institución: Archivo

Dirección: Rua do Imperador Pedro II nº: 371. Santo Antônio - Recife. CEP: 500010-240

Teléfono: (81) 3181-4705; (81) 3181-4704

E-Mail: pedromoura@bol.com.br /danielemonclair@gmail.com

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Delegación de Orden Político y Social de Jordao Emerenciano</i>	1926 1991	Organismos represivos

Río de Janeiro

Institución: **Archivo Público del Estado de Río de Janeiro**

Año de creación: 1931

Tipo de institución: Archivo

Dirección: Praia de Botafogo, 480 - Botafogo - Rio de Janeiro, RJ - CEP 22250-040

Teléfono: Telefone: (21) 2332-1449

Sitio Web: <http://www.aperj.rj.gov.br/>

E-Mail: aperj@aperj.rj.gov.br

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Departamento Autônomo de Orden Político y Social del Estado de Río de Janeiro</i>	1934 1975	Organismos represivos
<i>Departamento de Oredn Político y Social del Estado de Guanabara</i>	1935 1982	Organismos represivos

Río de Janiero / Brasilia

Institución: **Archivo Nacional de Brasil**

Año de creación: 1838

Tipo de institución: Archivo

Dirección: Praça da República, 173. 20211-350 - Rio de Janeiro, RJ;
SIG Quadra 6 Lote 800. Prédio da Imprensa Nacional. 70604-900 - Brasília, DF

Teléfono: (21) 2179-1273 / 2179-1275 / 2179-1276

Sitio Web: <http://www.arquivonacional.gov.br>

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Servicio Nacional de Informaciones (SIN)</i>	1964 1974	Organismos represivos
<i>Consejo de Seguridad Nacional (CSN)</i>	1964 1980	Organismos represivos
<i>Comisión General de Investigaciones (CGI)</i>	1968 1979	Organismos represivos
<i>División de Inteligencia de Departamento de Polícia Federal (Distrito Federal, Minas Gerais y Paraná)</i>	1964 1985	Organismos represivos
<i>Divisiones de Seguridad e Informaciones de diversos organismos públicos</i>	1964 1985	Organismos represivos

Sao Luís

Institución: **Archivo Público del Estado de Maranhão**

Año de creación: 1974

Tipo de institución: Archivo

Dirección: Rua de Nazaré nº: 218. Centro - São Luís. CEP: 65010-410

Teléfono: (98) 3218-9927; (98) 3218-9928; (98) 3232-4544

Sitio Web: <http://www.cultura.ma.gov.br/>

E-Mail: apem@cultura.ma.gov.br

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Delegación de Orden Político y Social de Maranhão</i>	1968 1991	Organismos represivos

Sao Paulo

Institución: **Archivo Público del Estado de Sao Paulo**

Año de creación: 1842

Tipo de institución: Archivo

Dirección: Rua Voluntários da Pátria, 596 – Santana – São Paulo – SP

Teléfono: 2221-4785

Sitio Web: <http://www.arquivoestado.sp.gov.br/>

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:

Fechas:

Tipo:

*Departamento Estatal de Orden Político y
Social de Sao Paulo (DEOPS)*

1924

1983

Organismos represivos

Vitória

Institución: **Archivo Público del Estado de Espíto Santo**

Año de creación: 1908

Tipo de institución: Archivo

Dirección: Rua sete se setembro nº 414, Centro, Vitória, ES

Teléfono: (027) 32232952

Sitio Web: <http://www.ape.es.gov.br/index2.htm>

E-Mail: ape@es.gov.br

Fuente de información: <http://www.an.arquivonacional.gov.br/mr/seguranca/Principal.asp>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Delegación de Orden Político y Social de Espítitu Santos (DOPS/ES)</i>	1964 1985	Organismos represivos

Cambodia

Phnom Pehn

Institución: **Centro de Documentación de Camboya (Proyecto Genocidio Camboya -US Departamento de Estado)**

Año de creación: 1994

Tipo de institución: Centro de Documentación

Dirección: DC-Cam @ 66 Preah Sihanouk Blvd., P.O. Box 1110 Phnom Penh

Teléfono: Tel: (855-23) 211-875

Sitio Web: www.dccam.org

E-Mail: Email: dccam@online.com.kh

Fuente de información: http://www.dccam.org/Abouts/History/Documentary_materials.htm#2

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Partido Comunista de Kampuchea</i>	1975 1979	Partidos totalitarios
<i>Santebal (Seguridad del Estado)</i>	1975 1979	Organismos represivos
<i>Tribunal Popular Revolucionario de Pnom Pehn</i>	1979 1979	Tribunales de Justicia

Institución: **Museo Tuol Sleng del Genocidio**

Año de creación: 1979

Tipo de institución: Museo

Dirección: Department of museums (in charge of the Tuol Sleng Genocide Museum) House #23, Street 348, Boeung Kengkung III, Khan Chamkarmon Phnom Penh,

Teléfono: +85523216045

Sitio Web: <http://www.tuolsleng.com/>

E-Mail: sopheara@online.com.kh

Fuente de información: http://portal.unesco.org/ci/en/files/27488/12200140123TuolSleng_web.rtf/TuolSleng%2Bweb.rtf

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Centro de detención Tuol Sleng (prisión S-21)</i>	1975 1979	Organismos represivos

Chile

Santiago

Institución: **Archivo Nacional (Archivo Nacional de la Administración Central del Estado (ARNAD))**

Año de creación: 1887

Tipo de institución: Archivo

Dirección: Agustinas 3250, Comuna de Santiago Centro, Santiago

Teléfono: (56 2) 681 7979

Sitio Web: www.dibam.cl/archivo_nacional/an_admin.htm

E-Mail: marcela.cavada@dibam.cl

Fuente de información: http://www.historizarelpasadovivo.cl/es_resultado_textos.php?categoria=Archivos+para+un+pasado+reciente+y+violento%3A+Argentina%2C+Chile%2C+Per%FA&titulo=Archivos+para+el+estudio+del+pasado+reciente+en+Chile

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Diversos fondos de la administración del gobierno dictatorial del General Pinochet</i>	1973 1990	Organismos represivos

Institución: **Corporación Justicia y Democracia**

Año de creación: 1994

Tipo de institución: ONG

Dirección: Teresa Salas 786, Comuna de Providencia, Santiago

Teléfono: (56 2) 341 1574

Sitio Web: www.justiciaydemocracia.cl

E-Mail: justidem@terra.cl

Fuente de información: http://www.historizarelpasadovivo.cl/es_resultado_textos.php?categoria=Archivos+para+un+pasado+reciente+y+violento%3A+Argentina%2C+Chile%2C+Per%FA&titulo=Archivos+para+el+estudio+del+pasado+reciente+en+Chile

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Gabinete presidencial e Patricio Aylwin Azocar</i>	1990 1994	Gubernamental
<i>Comisión Nacional de Verdad y Reconciliación (Copia del Archivo)</i>	1990 1991	Comisiones de verdad

Institución: **Fundación de Documentación y Archivo de la Vicaría de la Solidaridad**

Año de creación: 1992
 Tipo de institución: ONG
 Dirección: Erasmo Escala 1872, tercer piso. Santiago
 Teléfono: 56 2 696 04 70 - 56 2 696 35.04 - 56 2 698 12
 Sitio Web: www.vicariadelasolidaridad.cl
 E-Mail: funvisol@iglesia.cl
 Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=109&nombre=Fundación%20de%20Documentación%20y%20Archivo%20de%20la%20Vicaría%20de%20la%20Solidaridad&idPais=3>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Vicaría de la Solidaridad</i>	1973 1982	Organismos de DDHH

Slovakia

Bratislava

Institución: **Instituto de la Memoria de la Nación**

Año de creación: 2002

Tipo de institución: Centro de Memoria

Dirección: Námestie slobody 6. 817 83 Bratislava 15. Slovak Republic

Teléfono: +421 2 593 00 311

Sitio Web: <http://www.upn.gov.sk/v2/index.php?lang=en>

E-Mail: info@upn.gov.sk

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Servicios de Seguridad del Estado (Eslovaquia-Checoslovaquia)</i>	1939 1989	Organismos represivos

Spain

Ferrol

Institución: **Archivo Intermedio Militar Noroeste**

Año de creación: 1995

Tipo de institución: Archivo

Dirección: Avenida del Rey, s/n.- 15400 FERROL, A CORUÑA

Teléfono: + 34 981 319 009

Fuente de información: http://www.mde.es/portalcultura/servlet/ConsultaCultura?ACCION=4&COD_OBJETO=158&COD_PROVINCIA=15&AREA_PORTAL=CULTURAL&TIPO_OBJETO=ARCHIVO

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Consejos de Guerra en Asturias, Cantabria, Castilla y León, Galicia, País Vasco y Rioja</i>	1936 1945	Organismos represivos

Guadalajara

Institución: **Archivo General Militar de Guadalajara**

Año de creación: 1967

Tipo de institución: Archivo

Dirección: Avenida del Ejército, nº 2. 19004 GUADALAJARA

Teléfono: +34 949 213 935

Sitio Web: <http://www.ejercito.mde.es/Unidades/es/unidades/Madrid/ihycm/Archivos/agm-guadalajara-index.html>

E-Mail: agm_guadalajara@et.mde.es

Fuente de información: http://www.mde.es/portalcultura/servlet/ConsultaCultura?ACCION=4&COD_PROVINCIA=19&TIPO_OBJETO=ARCHIVO&COD_OBJETO=43

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Consejo Supremo de Justicia Militar</i>	1936 1988	Organismos represivos
<i>Campos de concentración, Baltallones de Trabajadores y Disciplinarios (Unidades Disciplinarias)</i>	1939 1980	Organismos represivos
<i>Comisión Central de Examen de Penas</i>	1940 1977	Organismos represivos

Madrid

Institución: **Archivo General e Histórico de la Defensa**

Año de creación: 2008

Tipo de institución: Archivo

Dirección: Paseo de Moret s.n. (Acuartelamiento Infante don Juan).- 28071 Madrid

Teléfono: + 34 917808602

Sitio Web: http://www.mde.es/portalcultura/servlet/ConsultaCultura?ACCION=4&COD_OBJETO=159&COD_PROVINCIA=28&AREA_PORTAL=CULTURAL&TIPO_OBJETO=ARC

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Consejos de Guerra de Madrid, Castilla-La Mancha, Extremadura, Comunidad Valenciana y Murcia</i>	1936 1945	Organismos represivos

Institución: **Archivo Histórico Nacional**

Año de creación: 1866

Tipo de institución: Archivo

Dirección: C/ Serrano, 115.- 28006 Madrid

Teléfono: (34) 91 768 85 00

Sitio Web: <http://www.mcu.es/archivos/MC/AHN/index.html>

E-Mail: ahn@mcu.es

Fuente de información: <http://censoarchivos.mcu.es/CensoGuia/archivodetail.htm?id=9>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Dirección General de Seguridad (serie: expedientes policiales)</i>	1922 1977	Organismos represivos
<i>Causa General</i>	1940 1967	Organismos represivos

Salamanca

Institución:	Centro Documental de la Memoria Histórica
Año de creación:	2007
Tipo de institución:	Centro de Memoria
Dirección:	Calle del Expolio, 2.- 37008 Salamanca
Teléfono:	34 923212845
Sitio Web:	http://www.mcu.es/archivos/MC/AGC/index.html
E-Mail:	cdmh@mcu.es
Fuente de información:	http://censoarchivos.mcu.es/CensoGuia/archivodetail.htm?id=1

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Tribunal Especial para la Represión de la Masonería y el Comunismo</i>	1940 1964	Organismos represivos
<i>Tribunal de Responsabilidades Políticas</i>	1939 1945	Organismos represivos
<i>Tribunal de Orden Público</i>	1963 1977	Organismos represivos
<i>Delegación Nacional de Servicios Documentales</i>	1940 1977	Organismos represivos

United States of America

Washington

Institución: **Archivo Nacional de Seguridad (National Security Archive)**

Año de creación: 1986

Tipo de institución: ONG

Dirección: The National Security Archive, The George Washington University, Gelman Library, Suite 701. 2130 H St. N.W. Washington, D.C. 20037

Teléfono: (202) 994-7005 (fax)

Sitio Web: <http://www.gwu.edu/~nsarchiv/index.html>

E-Mail: nsarchiv@gwu.edu

Fuente de información: <http://nsarchive.chadwyck.com/marketing/collections.jsp>

Principales fondos documentales:

Fondos:

*Colecciones de documentos
desclasificados de organismos del
gobierno sobre política exterior*

Fechas:

1945

2000

Tipo:

Organismos de DDHH

Estonia

Tallin

Institución: **Archivos Estatales de Estonia (Eesti Riigiarhiivi filiaal)**

Año de creación: 0

Tipo de institución: Archivo

Dirección: 16 Tõnismägi Street. EE0100 Tallinn

Teléfono: (0) 693 8512

Sitio Web: <http://www.riigi.arhiiv.ee/?lang=eng&content=Inglise1>

E-Mail: lugemissaal.tm@ra.ee

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Comité para la Seguridad del Estado de la República Socialista Soviética de Estonia</i>	1940 1991	Organismos represivos
<i>Partido Comunista de Estonia</i>	1940 1991	Partidos totalitarios
<i>Liga de la Juventud Comunista de Estonia</i>	1940 1991	Partidos totalitarios

Institución: **Museum of Occupations**

Año de creación: 2003

Tipo de institución: Museo

Dirección: Toompea 8, 10142 Tallinn

Teléfono: +372 66 80 250, Fax +372 66 80 251

Sitio Web: <http://www.okupatsioon.ee/english/index.html>

E-Mail: muuseum@okupatsioon.ee,

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Colección de documentos sobre las ocupaciones</i>	1940 1991	Organismos de DDHH

Guatemala

Guatemala

Institución: **Archivo General de Centro América - Proyecto para la Recuperación del Archivo Histórico de la Policía Nacional**

Año de creación: 1968

Tipo de institución: Archivo

Dirección: 4 av. 7-41 zona 1. Ciudad de Guatemala.

Teléfono: (502) 22516695

Sitio Web: <http://www.archivogeneraldecentroamerica.com/>

E-Mail: archivo.historico.pn@gmail.com

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Policía Nacional</i>	1960 1995	Organismos represivos

Hungary

Budapest

Institución: **Archivos de la Sociedad Abierta (Open Society Archives)**

Año de creación: 1995

Tipo de institución: Archivo

Dirección: 1051 BUDAPEST, ARANY J. U. 32.

Teléfono: (36 1) 327-3250

Sitio Web: <http://www.osaarchivum.org/>

E-Mail: INFO@OSAARCHIVUM.ORG

Fuente de información: <http://osaarchivum.org/guide/fonds/communismandcoldwar.shtml>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Fondos relacionados con la historia del Comunismo y la Guerra Fría</i>	1919 2006	Partidos totalitarios
<i>Fondos relacionados con los derechos humanos</i>	1957 2006	
<i>Fondos de la Fundación Soros</i>	1938 2006	

Institución: **Archivos Históricos de la Seguridad del Estado Húngaro**

Año de creación: 2003

Tipo de institución: Archivo

Dirección: 1067 Budapest Eötvös u. 7.

Teléfono: (06-1) 478-6020

Sitio Web: http://www.abtl.hu/index_e_start.html

E-Mail: info@abtl.hu

Fuente de información: http://www.abtl.hu/index_e_start.html

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Servicios de Seguridad del Estado</i>	1944 1990	Organismos represivos

Latvia

Riga

Institución: **Archivo Estatal de Letonia**

Año de creación: 1991

Tipo de institución: Archivo

Dirección: Bezdeligu iela 1. Riga LV-1007. Latvija

Teléfono: (371-2)463377

Sitio Web: <http://www.itl.rtu.lv/LVA/indexe.php?id=21>

E-Mail: lva@lvarhivs.gov.lv

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Espedientes personales de deportados de Letonia el 14 de junio de 1941</i>	1941 1941	Organismos represivos
<i>KGB de la República Socialista Soviética de Letonia</i>	1940 1985	Organismos represivos

Institución: **Museo de la Ocupación de Letonia (1940-1991)**

Año de creación: 1993

Tipo de institución: Museo

Dirección: Strēlnieku laukums 1, Rīga LV-1050, Latvija

Teléfono: (+371) 67 212 715

Sitio Web: <http://www.omf.lv/>

E-Mail: omf@latnet.lv

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Colección de documentos sobre las ocupaciones Nazi y Soviética</i>	1940 1991	Organismos de DDHH

Lithuania

Vilnius

Institución: **Archivo Especial de Lituania**

Año de creación: 1990

Tipo de institución: Archivo

Dirección: Gedimino 40/1, LT-01110. Vilnius, Lithuania.

Teléfono: +370 5 251 4210

Sitio Web: <http://www.archyvai.lt/archyvai/index.jsp>

E-Mail: lya@archyvai.lt

Principales fondos documentales:

Fondos:

Fechas:

Tipo:

***División del KGB de la República
socialista soviética de Lithuania (KGB),
de la URSS***

1940 1991 Organismos represivos

Paraguay

Asunción

Institución: **Centro de Documentación y Archivo para la Defensa de los Derechos Humanos - Corte suprema de Justicia**

Año de creación: 1993

Tipo de institución: Centro de Documentación

Dirección: C/ Alonso y Testanova. Asunción.

Teléfono: (595-21) 424-311/15 interno 2269 / -

Sitio Web: www.pj.gov.py/cdya

E-Mail: luismbenitezr@hotmail.com

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=104&nombre=Corte%20Suprema%20de%20Justicia%20-%20Centro%20de%20Documentación%20y%20Archivo%20para%20la%20Defensa%20de%20los%20Derechos%20Humanos&idPais=4>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Departamento de Investigaciones de la Policía</i>	1917 1992	Organismos represivos
<i>Dirección nacional de Asuntos Técnicos ("La Técnica")</i>	1954 1992	Organismos represivos

Institución: **Comité de Iglesias para Ayudas de Emergencias - CIPAE**

Año de creación: 1976

Tipo de institución: ONG

Dirección: Independencia Nacional 579 e/. Asunción

Teléfono: (595-21) 493-381 / 493-382 / (595-21) 443-932

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=105&nombre=Comité%20de%20Iglesias%20para%20Ayudas%20de%20Emergencias%20-%20CIPAE&idPais=4>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Comite de Iglesias para ayuda de emergencias (archivo institucional)</i>	1980 2004	Organismos de DDHH

Institución: **Fundación Cristina Perez Almada**

Año de creación: 2000

Tipo de institución: Museo

Dirección: Carlos Antonio López 2273. Asunción

Teléfono: (595-21) 425-345 Y 425-873

E-Mail: msedu@rieder.net.py

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=103&nombre=Fundación%20Celestina%20Perez%20de%20Almada&idPais=4>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Colección Martín Almada</i>	1992	0 Organismos de DDHH

Institución: **Servicio de Paz y Justicia - SERPAJ-Paraguay**

Año de creación: 1998

Tipo de institución: ONG

Dirección: Celestino Prieto 354 c/ Doctor. Asunción

Teléfono: (595-21) 481-333 y 481-340 / 481-333

E-Mail: documentación@serpajpy

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=125&nombre=Servicio%20de%20Paz%20y%20Justicia%20-%20SERPAJ%20Paraguay&idPais=4>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Servicio de Paz y Justicia - SERPAJ-PY (archivo institucional)</i>	1998	0 Organismos de DDHH

Perú

Lima

Institución: **Asociación Ministerio Diaconal Paz y Esperanza (PAZ Y ESPERANZA)**

Año de creación: 1996

Tipo de institución: ONG

Dirección: Jr. Arnaldo Márquez 845, Lima 11

Teléfono: (51 1) 330 2911

Sitio Web: www.pazyesperanza.org

E-Mail: aspazes@dhperu.org

Fuente de información: http://www.historizarelpasadovivo.cl/es_resultado_textos.php?categoria=Archivos+para+un+pasado+reciente+y+violento%3A+Argentina%2C+Chile%2C+Per%FA&titulo=Los+archivos+de+los+derechos+humanos+en+el+Per%FA

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Paz y Esperanza (archivo institucional)</i>	1984 2000	Organismos de DDHH

Institución: **Asociación Pro Derechos Humanos (APRODEH)**

Año de creación: 1983

Tipo de institución: ONG

Dirección: Jr. Pachacútec 980, Lima 11

Teléfono: (51 1) 431 0482 / 424 7057 / 431 4837

Sitio Web: www.aprodeh.org.pe/

E-Mail: webmaster@aprodeh.org.pe

Fuente de información: http://www.historizarelpasadovivo.cl/es_resultado_textos.php?categoria=Archivos+para+un+pasado+reciente+y+violento%3A+Argentina%2C+Chile%2C+Per%FA&titulo=Los+archivos+de+los+derechos+humanos+en+el+Per%FA

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Asociación Pro Derechos Humanos (archivo institucional)</i>	1980 2004	Organismos de DDHH

Institución: **Centro de Información para la Memoria Colectiva y los Derechos Humanos - Defensoría del Pueblo**

Año de creación: 2004

Tipo de institución: Centro de Memoria

Dirección: Calle, Jr. Miroquesada N° 398. Lima 1. PERÚ

Teléfono: 426-7800 ó 311-0300 anexo 3181

Sitio Web: <http://www.defensoria.gob.pe/cinfo-contactenos.php>

E-Mail: rborja@defensoria.gob.pe

Fuente de información: <http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=132&nombre=CENTRO%20DE%20INFORMACIÓN%20PARA%20LA%20MEMORIA%20COLECTIVA%20Y%20LOS%20DERECHOS%20HUMANOS-DEFENSORÍA%20DEL%20PUEBLO&idPais=6>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Ex Fiscalías Especiales de Defensoría del Pueblo y Derechos Humanos del Ministerio Público</i>	1983 1996	Administración de Justicia
<i>Comisión de la Verdad y Reconciliación</i>	2001 2003	Comisiones de verdad

Institución: **Comisión Episcopal de Acción Social (CEAS)**

Año de creación: 0

Tipo de institución: ONG

Dirección: Av. Salaverry 1945, Lima 14

Teléfono: (51 1) 4710790 / 472 4712

Sitio Web: www.ceas.org.pe

E-Mail: ceasperu@ceas.org.pe

Fuente de información: http://www.historizarelpasado.vivo.cl/es_resultado_textos.php?categoria=Archivos+para+un+pasado+reciente+y+violento%3A+Argentina%2C+Chile%2C+Per%FA&titulo=Los+archivos+de+los+derechos+humanos+en+el+Per%FA

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>comisión Episcopal de Acción Social (archivo institucional)</i>	1980 2000	Organismos de DDHH

Poland

Varsovia

Institución: **Instituto Nacional de la Memoria-Comisión para la Persecución de los crímenes contra la Nación Polaca (IPN)**

Año de creación: 1998

Tipo de institución: Centro de Memoria

Dirección: ul. Towarowa 28, 00-839 Warszawa POLAND

Teléfono: (0-22) 581 86 00

Sitio Web: <http://www.ipn.gov.pl/portal/en/>

E-Mail: e-mail: sekretariat.ipn@ipn.gov.pl

Fuente de información: http://www.ipn.gov.pl/portal/en/22/55/Groups_of_Archival_Documents.html

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Organismos y autoridades de la Seguridad del Estado</i>	1944 1990	Organismos represivos

Portugal

Lisboa

Institución: **Archivos Nacionales - Torre do Tombo**

Año de creación: 1378

Tipo de institución: Archivo

Dirección: Alameda da Universidade. 1649-010 Lisboa. Portugal

Teléfono: +351 21 781 15 00

Sitio Web: <http://antt.dgarq.gov.pt/>

E-Mail: mail@antt.dgarq.gov.pt

Fuente de información: <http://digitarq.dgarq.gov.pt/default.aspx?page=regShow&searchMode=as&ID=4279956>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Polícia Internacional de Defesa del Estado / Dirección General de Seguridad PIDE/DGS</i>	1919 1975	Organismos represivos
<i>Legión Portuguesa</i>	1936 1975	Organismos represivos
<i>Servicio de Coordinación de Extinción de PIDE/DGS y Legión Portuguesa</i>	1975 1991	Administración transicional
<i>Archivo Salazar</i>	1908 1974	Partidos totalitarios

Czech Republic

Praga

Institución: **Archivo de los Servicios de Seguridad**

Año de creación: 1995

Tipo de institución: Archivo

Dirección: Archiv bezpečnostních složek. Siwecova 2. 130 00 Praha 3. P.O.BOX 17, 110 06 Praha 1

Teléfono: +420 221 008 211, +420 221 008 212

Sitio Web: <http://www.abscr.cz/en>

E-Mail: sekretariat@abscr.cz

Fuente de información: <http://www.abscr.cz/en/guide-to-the-collections>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Servicios de la Seguridad del Estado</i>	1948 1989	Organismos represivos

Dominican Republic

Santo Domingo

Institución: **Archivo General de la Nación**

Año de creación: 1935

Tipo de institución: Archivo

Dirección: C/ Modesto Díaz, 2. Santo domingo

Teléfono: 809 362 1111

Sitio Web: <http://www.agn.gov.do/inicio.html>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Presidencia R.L. Trujillo</i>	1935 1961	Organismos represivos
<i>Partido Dominicano</i>	1935 1960	Partidos totalitarios

Institución: **Museo de la Resistencia Dominicana**

Año de creación: 2007

Tipo de institución: Museo

Dirección: 210 Calle Arzobispo Nouel, Ciudad Colonial, Santo Domingo

Teléfono: 809 412 0245 o 809 221 4141, Ext. 302-304.

Sitio Web: <http://www.museodelaresistencia.org/>

E-Mail: museodelaresistencia@gmail.com

Fuente de información: http://portal.unesco.org/ci/en/ev.php-URL_ID=26956&URL_DO=DO_TOPIC&URL_SECTION=201.html

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Archivos de las Fundaciones Patrióticas</i>	1930 1961	Organizaciones de Resistencia

Rumania

Bucarest

Institución: **Consejo Nacional para el Estudio de los Archivos de la Securitate (CNSAS)**

Año de creación: 1999

Tipo de institución: Archivo

Dirección: Street Matei Basarab no. 55-57, district 3, code 030671, Bucharest - Romania

Teléfono: 0374 189 167

Sitio Web: http://www.cnsas.ro/engleza/contact_en.html

E-Mail: office@cnsas.ro

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Securitate</i>	1945 1989	Organismos represivos

Russia

Moscú

Institución: **Archivo Central de Tropas Internas (TsAVV)**

Año de creación: 1923

Tipo de institución: Archivo

Dirección: 107150, Moscow, ul. Ivanteevskaja (formerly Podbel'skogo), 5

Teléfono: (499) 160-38-78

Sitio Web: <http://www.vvmvd.ru>

Fuente de información: <http://www.iisg.nl/abb/rep/C-9.tab1.php?b=C.php%23C-9>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Tropas Internas del Ministerio del Interior</i>	1951 1991	Organismos represivos

Institución: **Archivo Central del Ministerio del Interior (3ª división del Centro de Información Archivística y de Rehabilitación de las Víctimas de la**

Año de creación: 1992

Tipo de institución: Archivo

Dirección: 117418, Moscow, (GIATs): ul. Novocheremushkinskaia, 67; (Archive): ul. Zoi i Aleksandra Kosmodem'ianskikh, 5

Teléfono: (499) 745-79-90; (495) 332-30-58 (GIATs)

Sitio Web: <http://www.mvd.ru/>

E-Mail: osk@giz.mvd.ru

Fuente de información: <http://www.iisg.nl/abb/rep/C-8.tab1.php?b=C.php%23C-8>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Ministerio del Interior (MVD)</i>	1955 1991	Organismos represivos

Institución: **Archivo Central del Servicio de Seguridad Federal (TsA FSB Rossii)**

Año de creación: 1991

Tipo de institución: Archivo

Dirección: 101000, Moscow, ul. Bol'shaia Lubyanka, 2 (reception)

Teléfono: (495) 914-39-08

Sitio Web: <http://www.fsb.ru>
E-Mail: fsb@fsb.ru
Fuente de información: <http://www.iisg.nl/abb/rep/C-6.tab1.php?b=C.php%23C-6>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>KGB y agencias de seguridad precedentes: NKVD-MVD; OGPU; GPU y Cheka</i>	1917 1991	Organismos represivos

Institución: **Archivo Estatal de la Federación Rusa (GARF)**
Año de creación: 1992
Tipo de institución: Archivo
Dirección: 119992, Moscow, ul. Bol'shaia Pirogovskaia, 17; 121883, Moscow, Berezhkovskaia nab., 26
Teléfono: (495) 580-88-41, 580-88-67
Sitio Web: <http://garf.ru>
E-Mail: garf@online.ru
Fuente de información: <http://www.iisg.nl/abb/rep/B-1.tab1.php?b=B.php%23B-1>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Órganos Supremos del Estado Soviético</i>	1917 1991	Organismos represivos

Institución: **Archivo Estatal Militar Ruso (RGVA)**
Año de creación: 1920
Tipo de institución: Archivo
Dirección: 125212, Moscow, ul. Admirala Makarova, 29
Teléfono: (499) 159-80-91, 159-88-39
Sitio Web: <http://www.rusarchives.ru/federal/rgva/>
E-Mail: rgvarchiv@stream.ru
Fuente de información: <http://www.iisg.nl/abb/rep/B-8.tab1.php?b=B.php%23B-8>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
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*Agencias Soviéticas para Gestión de
Prisioneros de Guerra y Personas
Desplazadas (GULPVI)*

1939 1960 Organismos represivos

Institución: **Archivo Estatal Ruso de Historia Contemporánea**

Año de creación: 1999

Tipo de institución: Archivo

Dirección: 103132, Moscow, ul. Il'inka (formerly ul. Kuibysheva), 12, entrance 8

Teléfono: (495) 606-50-30

Sitio Web: <http://www.rusarchives.ru/federal/rgani/>

E-Mail: rgani@gov.ru

Fuente de información: <http://www.iisg.nl/abb/rep/B-13.tab1.php?b=B.php%23B-13>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Partido Comunista de la Unión Soviética (PCUS)</i>	1952 1991	Partidos totalitarios

Institución: **Archivo Estatal Ruso de Historia Político-Social
(RGASPI)**

Año de creación: 1999

Tipo de institución: Archivo

Dirección: 101999, Moscow, ul. Bol'shaia Dmitrovka (formerly Pushkinskaia), 15

Teléfono: (495) 629-97-26

Sitio Web: <http://www.rgaspi.ru>

E-Mail: RGASPI@inbox.ru

Fuente de información: <http://www.iisg.nl/abb/rep/B-12.tab1.php?b=B.php%23B-12>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Partido Comunista de la Unión Soviética (PCUS)</i>	1917 1991	Partidos totalitarios
<i>Komsomol</i>	1919 1991	Organismos represivos

Institución: **Memorial**

Año de creación: 1988

Tipo de institución: ONG

Dirección: Russia 127051 Moscow, Maly Karetnyi Pereulok 12

Teléfono: (095) 2097883

Sitio Web: <http://www.memo.ru/>

E-Mail: nipc@memo.ru

Fuente de información:

Principales fondos documentales:

Fondos:	Fechas:		Tipo:
<i>Represión Política en la URSS</i>	1918	1956	Organismos de DDHH
<i>Programa Polaco</i>	1930	1950	Organismos de DDHH
<i>Programa Víctimas de dos Dictaduras</i>	1940	1960	Organismos de DDHH
<i>Historia de la Disidencia en la URSS</i>	1953	1987	Organismos de DDHH
<i>Historia Oral y Biografías</i>	1990	0	Organismos de DDHH

San Petersburgo

Institución: **Archivo del Servicio Federal de Seguridad para San Petersburgo y Leningrado**

Año de creación: 0

Tipo de institución: Archivo

Dirección: 191123, St. Petersburg, Liteinyi prosp., 4

Teléfono: (812) 438-71-10

Fuente de información: <http://www.iisg.nl/abb/rep/D-19.tab1.php?b=D.php%23D-19>

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Administración para S. Ptersburgo-Leningrado del KGB y agencias de seguridad precursoras</i>	1918 1990	Organismos represivos

South Africa

Johannesburgo (Braamfontein)

Institución:	Archivo de Historia de Sudáfrica (SAHA)
Año de creación:	1988
Tipo de institución:	Archivo
Dirección:	P.O.Box 31719.- Braamfontein, South Africa, 2017
Teléfono:	+27 (11) 717 1941
Sitio Web:	http://www.saha.org.za
E-Mail:	sahap@library.wits.ac.za
Fuente de información:	http://www.saha.org.za/research/publications/SAHA_guidebook_06.pdf

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Colección Frente Democrático Unido (UDF) y otras colecciones sobre Luchas por la Libertad</i>	1900 1992	Organizaciones de Resistencia
<i>Colección de materiales relativos a la Comisión de la Verdad y Reconciliación</i>	1995 1998	Comisiones de verdad

Johannesburgo (Houghton)

Institución:	Fundación Nelson Mandela. Centro de Memoria y Diálogo
Año de creación:	2006
Tipo de institución:	Centro de Memoria
Dirección:	107 Central Street.- Houghton 2198. South Africa
Teléfono:	+27 11 728 1000
Sitio Web:	www.nelsonmandela.org
E-Mail:	nmf@nelsonmandela.org

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Oficina del Ex-presidente Mandela</i>	1999 0	Otros
<i>Archivo personal de Nelson Mandela</i>	1918	Organizaciones de Resistencia
<i>Colección de documentos de organizaciones y personas relacionadas con la biografía de Nelson Mandela</i>	0 0	Organizaciones de Resistencia

Pretoria

Institución: **Archivos Nacionales de Sudáfrica (National Archives and Records Service)**

Año de creación: 1996

Tipo de institución: Archivo

Dirección: 24 Hamilton Street, Arcadia, PRETORIA .- Private Bag X236, PRETORIA 0001

Teléfono: (012) 441 3200

Sitio Web: <http://www.national.archives.gov.za/>

E-Mail: archives@dac.gov.za

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Comisión de la Verdad y la Reconciliación de Sudáfrica</i>	1995 1998	Comisiones de verdad
<i>Fondos relativos al control y la represión de la población segregada (Apartheid)</i>	1948 1994	Organismos represivos

Ukraine

Kiev

Institución: **Archivo Central de las Organizaciones Públicas de Ucrania (TsDAHO)**

Año de creación: 1991

Tipo de institución: Archivo

Dirección: 01011, Kyiv, vul. Kutuzova, 8

Teléfono: (38-044) 285-55-16

Sitio Web: <http://www.archives.gov.ua/Archives/index.php?ca02>

E-Mail: cdago@online.com.ua

Fuente de información: http://www.huri.harvard.edu/abb_grimsted/K-2.html

Principales fondos documentales:

Fondos:	Fechas:		Tipo:
<i>Partido Comunista de Ucrania</i>	1921	1991	Partidos totalitarios
<i>KGB</i>	1920	1950	Organismos represivos

Uruguay

Montevideo

Institución:	Archivo General de la Nación. Uruguay
Año de creación:	1909
Tipo de institución:	Archivo
Dirección:	Convención 1474 y San Martín 2. Montevideo
Teléfono:	(+5982) 2035672; 2092810; 9007232; 9010315
Sitio Web:	www.agn.gub.uy
E-Mail:	consultas@agn.gub.uy
Fuente de información:	http://www.memoriaabierta.org.ar/censo/front/encuesta1.1.php?idInstitucion=173&nombre=Archivo%20General%20de%20la%20Nación&idPais=5

Principales fondos documentales:

Fondos:	Fechas:	Tipo:
<i>Justicia Militar</i>	1972 1988	Organismos represivos

LEGISLACIÓN ESPECIALIZADA (SELECCIÓN)

**Ley
sobre los documentos del Servicio de Seguridad del Estado de la antigua República Democrática
Alemana (Ley de los Documentos de la Stasi - Stasi-Unterlagen-Gesetz – StUG)
de 20 de septiembre de 1991¹¹²**

BGBI I 1991 pág. 2272, modificado por la Primera Enmienda de la Ley de Documentos del Stasi (StUÄndG), de 22 de febrero de 1994 (BGBI. I pág. 334); Segunda Enmienda de la Ley de Documentos del Stasi (2. StUÄndG) del 26 de julio de 1994 (BGBI. I pág. 1748); artículo 12 párrafo 22 de la Ley de Reorganización del Servicio de Correos y de Telecomunicaciones, de 14 de septiembre de 1994 (BGBI. I pág. 2325); Tercera Enmienda de la Ley de Documentos de la Stasi (3. StUÄndG), de 20 de diciembre de 1996 (BGBI. I pág. 2026), artículo 4 párr. 2 Sexta Ley para la Reforma del Derecho Penal Alemán (6. StrRG) del 26 de enero de 1998 (BGBI. I pág. 164); Cuarta Enmienda de la Ley de Documentos de la Stasi (4. StUÄndG), de 19 de diciembre de 1998 (BGBI. I pág. 3778); artículo 4 párrafo 2 de la Ley para la Reforma de Reglamentos sobre Grupos Parlamentarios (G zur Änd. von Vorschriften über parlamentarische Gremien), de 17 de junio de 1999 (BGBI. I pág. 1334);, artículo 3 núm. 3 de la Ley sobre la Reforma de pensiones civiles y militares, de 2001 del 20 de diciembre de 2001 (BGBI. I pág. 3926); artículo 6 de la Ley de 26 de junio de 2002 sobre adopción del Código Penal Internacional (BGBI. I pág. 2254), Quinta Enmienda de la Ley de los Documentos de la Stasi (5.StUÄndG) del 2 de septiembre de 2002 (BGBI.I. Pág. 3446). El artículo 4 de la Ley de Reforma de la regulación de Armas, de 11 de octubre de 2002 (BGBI I, pág.3970); Sexta Enmienda de la Ley de documentos de la Stasi, de 14 e agosto de 2003 (BGBI I, pág. 1654); Séptima Enmienda de la Ley de Documentos de la stasi, de 21 de diciembre de 2006 (BGBI I, pág. 3326)

¹¹² Traducción no oficial, realizada a partir de la versión inglesa publicada por el Comisionado Federal para la Administración de los Documentos de la Stasi.

Título Primero
Disposiciones generales

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- Art. 3 Derechos del individuo
- Art. 4 Acceso y uso de los documentos del Servicio de Seguridad del Estado
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Título Segundo
Custodia de los documentos del Servicio de Seguridad del Estado

Art. 7 Descubrimiento de Documentos del Servicio de Seguridad del Estado, el deber de notificación

Art. 8 Obligación de entrega de documentos por organismos públicos

Art. 9 Obligación de entrega de documentos por entidades privadas

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- Art. 11 Entrega y devolución de documentos de otras autoridades a través del Comisionado Federal.

Título Tercero
Utilización de los documentos del Servicio de Seguridad del Estado

Capítulo Primero

Los derechos de los afectados, terceros, empleados del Servicio de Seguridad del Estado y beneficiarios

- Art. 12 Normas de procedimiento para afectados, terceros, empleados y beneficiarios del Servicio de Seguridad del Estado
- Art. 13 El derecho de los afectados y terceros a información, consulta y reproducción de documentos
- Art. 14 (suprimido)
- Art. 15 El derecho de los parientes cercanos de los desaparecidos o fallecidos a información, consulta y reproducción de documentos
- Art. 16 El derecho de los empleados del Servicio de Seguridad del Estado a información, consulta y reproducción de documentos
- Art. 17 El derecho de los beneficiarios a información, consulta y reproducción de documentos
- Art. 18 El derecho a la apertura a la consulta y a la consulta y reproducción de los expedientes remitidos a los servicios de Seguridad del Estado por tribunales y fiscales.

Capítulo Segundo

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Art. 20 Uso, por organismos públicos y privados, de documentos que no contienen datos personales

Art. 21 Uso, por organismos públicos y privados, de documentos que contienen datos personales de afectados o terceros

Art. 22 Uso de documentos por comisiones parlamentarias de investigación

Art. 23 Uso de documentos con objeto de persecución penal y protección contra amenazas

Art. 24 Uso de los expedientes enviados por tribunales y fiscalías al Servicio de Seguridad del Estado

Art. 25 Uso de documentos por los Servicios de Inteligencia

Art. 26 Uso de instrucciones y planes de organización

Art. 27 Informes no solicitados a organismos públicos

- Art. 28 (derogado)**
- Art. 29 Límites de uso**
- Art. 30 Notificación**
- Art. 31 Revisión judicial de decisiones del Comisionado Federal**

Capítulo Tercero

Uso de documentos del Servicio de Seguridad del Estado para la investigación política e histórica, así como para su uso en prensa y radio

- Art. 32 Uso de documentos para la investigación de las actividades del Servicio de Seguridad del Estado**
- Art. 32a Notificación**
- Art. 33 Procedimiento**
- Art. 34 Uso de documentos en prensa, radio y cine**

Título Cuarto

Comisionado Federal para los Documentos del Servicio de Seguridad del Estado

- Art. 35 Comisionado Federal para los Documentos del Servicio de Seguridad del Estado de la antigua República Democrática Alemana.**
- Art. 36 Estatus jurídico del Comisionado Federal**
- Art. 37 Obligaciones y competencias del Comisionado Federal**
- Art. 38 Comisionado Regional, relación con el Comisionado Federal**
- Art. 39 El Consejo Consultivo**
- Art. 39a El Consejo Científico Asesor**
- Art. 40 Medidas para la protección de los documentos**
- Art. 41 Procedimientos automatizados, procesamiento de datos por encargo**

Título Quinto

Disposiciones finales

- Art. 42 Costes**
- Art. 43 Primacía de esta ley**
- Art. 44 Sanciones penales**
- Art. 45 Sanciones administrativas**
- Art. 46 Impunidad**
- Art. 46a limitación de los derechos fundamentales**
- Art. 47 Derogación de reglamentos, relevos en el organismo**
- Art. 48 Entrada en vigor**

Título Primero

Disposiciones generales

Art. 1

Finalidad y ámbito de aplicación de la ley

(1) Esta ley regula la custodia, el tratamiento, la administración y el uso de documentos del Ministerio para la Seguridad del Estado (Servicio de Seguridad del Estado) de la antigua República Democrática Alemana, y sus organizaciones antecesoras y sucesoras, con el fin de:

- 1. Facilitar el acceso de cada individuo a los datos personales, referidos a su persona, almacenados por el Servicio de Seguridad del Estado y, con ello, aclarar la influencia que el Servicio de Seguridad del Estado ha tenido en su destino personal,**
- 2. proteger a cada individuo, para no perjudicar sus derechos personales por causa de las informaciones, referidas a su persona, almacenadas por el Servicio de Seguridad del Estado,**
- 3. garantizar y potenciar la inspección de las actividades históricas, políticas y jurídicas del Servicio de Seguridad del Estado,**
- 4. poner a disposición de organismos públicos y privados de la información necesaria para lograr los objetivos señalados en esta ley.**

(2) Esta ley será aplicable a los documentos del Servicio de Seguridad del Estado que se encuentren en organismos públicos federales o regionales, en posesión de personas físicas o demás entidades privadas

Art. 2

Custodia, salvaguarda y administración de los documentos del Servicio de Seguridad del Estado

- (1) El Comisionado Federal para los documentos del Servicio de Seguridad del Estado de la antigua República Democrática Alemana custodiará, para su salvaguarda, administración y uso los documentos del Servicio de Seguridad del Estado con arreglo a lo establecido en esta ley.**
- (2) El Comisionado Federal podrá usar, con arreglo a esta ley, para el cumplimiento de sus funciones, la siguiente información del Registro Central de Habitantes de la antigua República Democrática Alemana:**
 - Apellido, nombre,**
 - Apellido de soltero/a, otros nombres,**
 - Lugar de nacimiento,**
 - Identificación personal,**
 - Última dirección,**
 - Característica de “fallecido”.**

Estos datos se entregarán a petición de los tribunales y de las autoridades penales para el cumplimiento de sus funciones.

Art. 3

Derechos del individuo

- (1) Cada individuo tendrá derecho a pedirle al Comisionado Federal información sobre si los archivos contienen información sobre su persona. En tal caso, el individuo tendrá derecho a información, consultar los documentos y al suministro de los documentos, conforme a esta ley.**
- (2) Cada individuo tendrá derecho a usar la información y documentos que haya recibido del Comisionado Federal, dentro del marco de las leyes generales.**
- (3) No se podrán perjudicar los legítimos intereses de otras personas a través de la entrega de información, la consulta o la entrega de documentos.**

Art. 4

Acceso y uso de los documentos del Servicio de Seguridad del Estado por los organismos públicos y privados

- (1) Los organismos públicos y privados tendrán acceso y podrán usar los documentos sólo en la forma establecida por esta ley. Si afectados, terceros, parientes cercanos de desaparecidos o fallecidos, empleados o beneficiarios del Servicio de Seguridad del Estado presentaran por iniciativa propia datos personales, estos datos podrán ser usados para la finalidad con el que se presentaron.
- (2) Si el Comisionado Federal averigua o se le comunica que la información referida a personas, que existe en los archivos no es correcta, o si la persona a la que se hace referencia, niega su veracidad, esto se anotará en una hoja separada y se adjuntará a los documentos existentes.
- (3) Si la información, referida a personas, se ha transmitido por causa de una petición, según los art. 20 a 25, y después se demuestra que los datos emitidos, referidos a personas, por los que se realizó la petición, no son correctos, se deberán corregir frente al receptor, a no ser que sea irrelevante para el caso bajo consideración.
- (4) No se podrán perjudicar los intereses legítimos, dignos de protección, de otras personas, por la utilización de los documentos.

Art.5

Prohibiciones especiales de uso

- (1) No es admisible usar los datos personales en detrimento de afectados o terceros si tales datos sobre ellos han sido obtenidos en el curso de investigaciones dirigidas contra ellos (incluidas las secretas) o mediante espionaje.. Esto no se aplicará a los casos referidos en el art. 21 párrafo 1 núm. 1 y 2, si los datos facilitados por los afectados o terceros resultan erróneos en parte o en su totalidad sobre la base de estas informaciones.
- (2) El uso de documentos será ilícito por un periodo de tiempo restringido, si la fiscalía competente o el tribunal declaran, frente al Comisionado Federal, que su uso durante un periodo determinado perjudica un procedimiento penal. Esto no será válido si, con ello, se perjudica a personas en la salvaguardia de sus derechos de manera inaceptable. En este caso, los documentos se usarán con la conformidad de la fiscalía o el tribunal.

Art. 6

Definiciones

- (1) Se consideran documentos del Servicio de Seguridad del Estado:
 1. toda información registrada, independientemente del soporte de almacenaje, en particular:
 - a) Expedientes, ficheros, documentos, tarjetas, planos, películas y demás grabaciones de audio y vídeo,
 - b) Las copias manuscritas o mecanografiadas y cualquier otro duplicado de los documentos arriba mencionados
 - c) los medios necesarios para su utilización, sobre todo programas para el procesamiento de datos automatizado, siempre que se crearan por el Servicio de Seguridad del Estado o en el campo de trabajo 1 de la policía criminal (Kriminalpolizei) de la policía popular (Volkspolizei), llegaran a su poder o se los entregaran para su utilización,
 2. Los documentos remitidos al Servicio de Seguridad del Estado por tribunales y fiscalías.
- (2) No se consideran documentos:
 1. Escritos del Servicio de Seguridad del Estado junto a disposiciones que mandara a organismos oficiales y entidades privadas, si tales organismos no tenían una relación legal o de facto con el Servicio de Seguridad del Estado,
 2. Documentos remitidos o devueltos a otras instancias por motivos de competencias y en los que no se encuentran indicios de que el Servicio de Seguridad del Estado tomara u ordenara esas medidas,
 3. Documentos, cuya tramitación finalizara antes del 8 de mayo de 1945 y en los que no haya indicios de que el Servicio de Seguridad del Estado los usara en su base de datos,
 4. Objetos o documentos que el Servicio de Seguridad del Estado sustrajera u ocultara a los afectados o terceros de forma ilegal. Si se trata de escritos, el Comisionado Federal podrá realizar duplicados y adjuntarlos a sus documentos.

- (3) Los afectados son aquellas personas, de las que el Servicio de Seguridad del Estado ha recogido información, debido a entregas dirigidas de información o espionaje, incluyendo la entrega de información secreta. La frase 1 no será válida para:
 1. empleados del Servicio de Seguridad del Estado, en caso de que la recogida de información se usara sólo como seguimiento y propaganda o sirviera como control de su actividad para el Servicio de Seguridad del Estado, y
 2. para los beneficiarios, en caso de que la recogida de información sólo sirviera como seguimiento y control de su conducta con relación al beneficio recibido.
- (4) Se considera empleados del Servicio de Seguridad del Estado a los empleados a tiempo completo y a los informadores no oficiales
 1. Se consideran empleados contratados a tiempo completo a aquellas personas que tuvieran una relación de trabajo o de servicio con el Servicio de Seguridad del Estado y a los oficiales del Servicio de Seguridad del Estado con una “tarea especial”.
 2. Se considera informadores no oficiales a aquellas personas que se declararon dispuestas a entregar información al Servicio de Seguridad del Estado.
- (5) Las disposiciones sobre los empleados del Servicio de Seguridad del Estado serán aplicables *mutatis mutandis* a:
 1. personas que legalmente o de facto tuvieran autoridad sobre los empleados del Servicio de Seguridad del Estado, con relación a su actividad en el Servicio de Seguridad del Estado
 2. informadores no oficiales del Departamento 1 de la División de Policía Criminal (Kriminalpolizei) de la Policía del Pueblo (Volkspolizei).
- (6) Se consideran beneficiarios a aquellas personas, que:
 1. fueran sustancialmente asistidas por el Servicio de Seguridad del Estado en particular mediante beneficios económicos,
 2. por causa del Servicio de Seguridad del Estado, o debido a sus ordenes, se librarán de la persecución penal,
 3. planearan o cometieran algún crimen con el conocimiento, la tolerancia o el apoyo del Servicio de Seguridad del Estado.
- (7) terceros son las demás personas, sobre las que el Servicio de Seguridad del Estado ha recogido información.
- (8) Para la obtención de información, se tendrá que comprobar por separado, si las personas eran empleados del Servicio de Seguridad del Estado, beneficiarios, afectados o terceros. Para la comprobación será determinante el fin con el que se recogió la información en los documentos.
- (9) El uso de documentos abarca la entrega de los documentos, el envío de la información procedente de los documentos, así como otro tratamiento y utilización de la información. Siempre que en este reglamento no se determine otra cosa, serán válidas las definiciones de los art. 2 y 3 de la Ley Federal de la Protección de Datos, con la condición de que las sociedades religiosas pertenezcan a las instancias no oficiales.

Título Segundo

Custodia de los documentos del Servicio de Seguridad del Estado

Art. 7

Descubrimiento de documentos del Servicio de Seguridad del Estado: el deber de notificación

- (1) Todos los organismos públicos apoyarán al Comisionado Federal en su obligación de encontrar documentos del Servicio de Seguridad del Estado, así como en su toma de posesión. Si tienen conocimiento, o descubrieran en el cumplimiento de sus obligaciones, que están en posesión de documentos del Servicio de Seguridad del Estado o copias, reproducciones u otros duplicados, deben comunicárselo inmediatamente al Comisionado Federal.
- (2) El Comisionado Federal podrá, con el acuerdo del organismo oficial, inspeccionar los registros, archivos y demás información, si existen indicios suficientes de la existencia de documentos del Servicio de Seguridad del Estado.
- (3) Personas físicas y entidades privadas tendrán la obligación, en cuanto tengan conocimiento de ello, de comunicarle al Comisionado Federal sin demora, que están en posesión de

documentos del Servicio de Seguridad del Estado, copias, reproducciones o demás duplicados de estos documentos.

Art.8

Obligación de entrega de documentos por organismos públicos

- (1) Todos los organismos públicos deberán entregar al Comisionado Federal, a petición de éste, de inmediato los documentos del Servicio de Seguridad del Estado que se encuentren en su poder, inclusive copias, reproducciones y demás duplicados.
- (2) En caso de que la instancia oficial necesitara los documentos para el cumplimiento de sus obligaciones, en el marco de vinculación finalista, según los art. 20 al 23 y 25, podrá añadir los duplicados a sus documentos. Sólo se podrá quedar con los documentos originales, en tanto sea imprescindible, en cada caso concreto, para el cumplimiento de sus obligaciones. En este caso, se entregarán los duplicados al Comisionado Federal, a petición de éste.
- (3) Los servicios de información federales y locales deberán entregar al Comisionado Federal los documentos sobre afectados, sin sustitución, en su totalidad.

Art. 9

Obligación de entrega de documentos por entidades privadas

- (1) Toda persona física o entidad privada deberá entregarle al Comisionado Federal, a petición de éste, de inmediato los documentos del Servicio de Seguridad del Estado, en tanto no sean de su propiedad. La comprobación de adquisición de la propiedad recae sobre la persona física o jurídica privadas. Se considerarán propiedad de las personas físicas o demás instancias no oficiales, según el art. 10 párrafo 4, los documentos que han confeccionado ellos mismos.
- (2) Si existe la obligación de entregarle al Comisionado Federal los documentos, se deberán entregar asimismo las copias y demás duplicados.
- (3) Cualquier persona física o entidad privada tendrá la obligación de confiarle los documentos del Servicio de Seguridad del Estado de su propiedad al Comisionado Federal, a petición de éste, para realizar copias, reproducciones o demás duplicados.

Art. 10

Documentos del Partido Socialista Unificado de Alemania (Sozialistische Einheitspartei Deutschland), de otros partidos ligados a él y organizaciones de masas, así como otros documentos relacionados con el Servicio de Seguridad del Estado

- (1) El Comisionado Federal podrá solicitar, para el cumplimiento de sus obligaciones, a las instancias pertinentes, información sobre la clase, el contenido y el lugar de conservación de documentos del Partido Socialista Unificado de Alemania, de otros partidos ligados a él y de organizaciones de masas de la antigua República Democrática Alemana.
- (2) El Comisionado Federal podrá solicitar la inspección de los documentos. Le deberán ayudar en su búsqueda de los documentos requeridos.
- (3) Al Comisionado Federal se le entregarán, a petición de él, los duplicados de dichos documentos, que tengan relación con la actividad del Servicio de Seguridad del Estado y que necesite para cumplir con sus obligaciones. Según el art. 6 párr. 1, los duplicados pasarán a formar parte de los documentos.
- (4) Los párrafos 1 a 3 serán válidos respectivamente para aquellos documentos, en los que se reconozca la relación de otros organismos públicos o no oficiales de la antigua República Federal Alemana con el Servicio de Seguridad del Estado, que se crearan por órdenes de él o para llevar a la práctica sus órdenes o advertencias.

Art. 11

Entrega y devolución de documentos de otras autoridades a través del Comisionado Federal

- (1) El Comisionado Federal deberá devolver los documentos pertenecientes a otras autoridades y que no contengan indicaciones o medidas tomadas u ordenadas por el Servicio de Seguridad del Estado a los organismos pertinentes:
 1. a petición de estos o:

2. si descubren la presencia de dichos documentos en el cumplimiento habitual de sus obligaciones.

El Comisionado Federal podrá hacer duplicados para sus archivos.

- (2) El Comisionado Federal deberá entregar al Ministro Federal del Interior o a las autoridades locales pertinentes, los documentos federales o locales, así como los documentos de su servicio de información, clasificados como confidenciales o en un grado superior. El Comisionado Federal podrá efectuar duplicados para sus archivos. Los documentos de organizaciones internacionales o supranacionales o de Estados extranjeros, que estén catalogados como documentos secretos o en un grado superior, y a cuya protección, para evitar su conocimiento no autorizado, esté obligada la República Federal Alemana, debido a Tratados de Derechos Internacionales, se entregarán al Ministro Federal del Interior como representante de la Oficina Nacional de Seguridad.
- (3) Los documentos sobre las instalaciones de empresas, procedimientos técnicos y sobre la contaminación medioambiental de los terrenos por empresas municipales, que estaban asociadas o incorporadas, en parte o en su totalidad, al Servicio de Seguridad del Estado, se entregarán, a petición, al poder directivo actual. El Comisionado Federal podrá realizar duplicados para sus archivos.
- (4) El Comisionado Federal deberá entregar los documentos sobre objetos y otras cosas, sobre todo de planos de plantas, planos de tuberías de abastecimiento, fontanería y calefacción y cables de teléfono a la persona o personal actualmente responsables de tales documentos. El Comisionado Federal podrá hacer duplicados a sus archivos.
- (5) Si se contrata para el servicio público a empleados a tiempo completo del Servicio de Seguridad del Estado, o si siguen empleados en un servicio oficial, se entregarán los expedientes personales necesarios al departamento de personal correspondiente. El Comisionado Federal podrá hacer los duplicados pertinentes para sus archivos.
- (6) Si los antiguos empleados del Servicio de Seguridad del Estado fueran receptores de pensiones, se entregarán los expedientes personales de esas personas, con la extensión necesaria, al encargado del pago de la pensión. El Comisionado Federal podrá hacer duplicados para sus archivos.

Título Tercero

Utilización de los documentos del Servicio de Seguridad del Estado

Capítulo Primero

Los derechos de los afectados, terceros, empleados del Servicio de Seguridad del Estado y de los beneficiarios

Art. 12

Normas de procedimiento para afectados, terceros, empleados y beneficiarios del Servicio de Seguridad del Estado

- (1) La petición de información e consulta de los documentos, o la entrega de documentos, se realizará por escrito. El solicitante deberá probar su identidad a través de una confirmación de la autoridad regional pertinente y, si va en calidad de apoderado, presentar su poder de representación. Si la petición se realiza a través de un apoderado, con el certificado del poder de representación. Se dará información, se permitirá la consulta de los documentos y se entregarán documentos:
 1. a los afectados, terceros, empleados, beneficiarios o:
 2. a su abogado, si se le ha dado poder expreso para ello.Si un derechohabiente a la consulta necesitara ayuda externa al inspeccionar los documentos, le podrá acompañar una persona de su confianza. Se deberá demostrar la necesidad de ayuda. El Comisionado Federal podrá rechazar la entrada del acompañante, si hay razones especiales que lo justifiquen.
- (2) El Comisionado Federal entregará la información por escrito, a no ser que, en un caso concreto, sea adecuada otra forma de información. Esa decisión la tomará tras una evaluación adecuada.
- (3) Se deberá razonar la causa de la urgencia, a fin de que una petición se trate con prioridad. Se considerarán causas urgentes, si la información sirve como objeto para la rehabilitación, reparación, la defensa de un derecho personal o para una exculpación de la recriminación de haber colaborado con el Servicio de Seguridad del Estado.

- (4) Se permitirá la consulta de documentos originales o de duplicados. Si los documentos contienen, además de la información referida al afectado, información sobre otros afectados o terceros, la consulta sólo se permitirá si:
 1. otros afectados o terceros están conformes o;
 2. no es posible una separación de la información sobre otros afectados o terceros, o si esto lleva a un esfuerzo injustificable y si no hay ningún motivo para pensar que predomine la salvaguardia de la información, digna de protección y confidencial, de otros afectados o terceros.
 Además, se permitirá la consulta de duplicados, en los que se convirtiera en anónima la información, referida a personas, de otros afectados o terceros. La consulta se realizará en la oficina central o en una de las agencias.
- (5) Sólo se entregarán los documentos, en forma de duplicados, en los que los datos personales sobre otros afectados o terceros, se convirtiera en anónima.
- (6) El derecho a consulta y entrega no será válido para los medios de ayuda necesarios para su análisis (art. 6 párr. 1 núm. 1 letra c). Si no se encontraran otros documentos, o si llevara un esfuerzo injustificable el encontrarlos, se extiende el derecho a la consulta y entrega de duplicados a las fichas que sirvan para el análisis de los documentos, y en los que haya datos personales, sobre el solicitante.

Art. 13

El derecho de los afectados y terceros a información, consulta y entrega

- (1) Se entregarán a los afectados, a petición suya, información sobre los documentos existentes con información sobre su persona. No será necesario indicar el objeto por el que piden esa información.
- (2) La información conlleva una descripción de los documentos existentes y elaborados sobre la persona del afectado, y una explicación de su contenido básico. La información se podrá limitar, en un principio, a la constatación de que existen documentos y que el afectado podrá inspeccionar estos documentos.
- (3) Se permitirá al afectado, a su petición, inspeccionar los documentos producidos que contengan información sobre su persona.
- (4) A petición de su parte, se entregarán duplicados de los documentos a los afectados. Se convertirá en anónima la información referida a otros afectados o terceros.
- (5) Si en los documentos producidos con información personal sobre el afectado, que ha inspeccionado el afectado, o de los que ha recibido un duplicado, constaran nombres en clave de empleados del Servicio de Seguridad del Estado que recogieran información sobre él, o la usaran o la dirigieran, se le facilitarán, a su petición, los nombres de tales empleados, así como otros datos de identificación, siempre que se deduzcan, de forma inequívoca, de los documentos del Servicio de Seguridad del Estado. La frase 1 es válida también para otras personas que hayan denunciado al afectado por escrito, si el contenido de la denuncia era capaz de producirle perjuicios al afectado. Los intereses de los empleados y denunciantes, de que se mantengan secretos sus nombres, no obstaculizarán la notificación de sus nombres.
- (6) Párrafo 5 frase 1 y 2 no serán válidos, si el colaborador del Servicio de Seguridad del Estado o denunciante todavía no hubiera finalizado su 18. año de vida, en el momento de su actividad contra el afectado.
- (7) Para terceros serán válidos los párrafos 1 a 6 respectivamente, en la medida que el solicitante deba dar indicios para facilitar el encuentro de la información. Sólo se entregará la información si el esfuerzo necesario no es excesivo en comparación con las razones de interés, en la información alegada por el solicitante.

Art. 14

(Suprimido)

Art. 15

El derecho de los parientes cercanos de los desaparecidos o fallecidos a información, consulta y entrega

- (1) A los parientes cercanos se les entregará, a petición, información para:
 - 1.- la rehabilitación de desaparecidos o fallecidos,

2., proteger el derecho personal de desaparecidos o fallecidos, sobre todo para la aclaración de las recriminaciones de colaboración con el Servicio de Seguridad del Estado,

3.- la aclaración del destino de desaparecidos o fallecidos.

En la petición se explicará el objeto para el que se recoge esa información, se demostrará su veracidad, y se demostrará la relación de parentesco con la persona desaparecida o fallecida.

- (2) Art. 13 párr. 1 frase 2 y párr. 2 a 6, serán válidos *mutatis mutandis*.
- (3) Se consideran parientes cercanos a cónyuges, hijos, nietos, padres y hermanos. También se considerarán parientes cercanos, en lo que respecta al parentesco biológico, los hijos adoptivos y los padres biológicos de los hijos adoptados cuando no se pueda excluir que el Servicio de Seguridad del Estado hubiera tenido influencia en la adopción o en el destino de los padres biológicos.
- (4) Parientes próximos serán también los de tercer grado si no hay constancia de la existencia de parientes en el sentido descrito en el párrafo 3.
- (5) El párrafo 1 no será válido, si el desaparecido o fallecido ha dejado otra disposición o si, por otras causas, se demuestra inequívocamente su deseo contrario.

Art. 16

El derecho de los empleados del Servicio de Seguridad del Estado a información, consulta y entrega

- (1) A los empleados del Servicio de Seguridad del Estado se les entregará, a petición, los documentos que contengan datos personales sobre ellos.
- (2) La información, además, podrá contener una transcripción de la clase y extensión de sus actividades, del círculo de personas del que han informado, así como de la frecuencia de sus informes.
- (3) Al empleado se le permitirá la consulta, a petición, de los documentos sobre su persona. Art. 12 párr. 4 frase 2 núm. 2, no será válidos.
- (4) Al empleado se le permitirá inspeccionar, a petición propia, la información sobre los informes que él hubiera realizado, siempre que demuestre, de forma convincente, que tiene un interés jurídico. Esto no será válido si se incumple el interés justificado de afectados o terceros en la confidencialidad.
- (1) Al colaborador se le entregará, a petición, duplicado de su expediente personal. En este duplicado, se convertirá en anónima la información personal referida a afectados y terceros.

Art.17

El derecho de los beneficiarios a información, consulta y entrega

- (1) Para el derecho de los beneficiarios a información, consulta de documentos y entrega, será válido el art.16 párr. 1, 3 y 5 respectivamente.
- (2) El beneficiario deberá aportar datos que posibiliten la localización de la información.
- (3) El párrafo 1 no será válido, si la autoridad federal suprema competente o la autoridad regional competente declaran, frente al Comisionado Federal, que no se autorice el permiso a la información, consulta de documentos o entrega de documentos, debido a la prioridad del interés público.

Art. 18

Derecho a la información: documentos remitidos por tribunales y fiscalías al Servicio de Seguridad del Estado

En los documentos guardados por el Comisionado Federal sobre tribunales y fiscalías, serán válidos, para el ejercer el derecho a la información, la consulta y entrega de documentos, en vez del art. 12 párr. 4 a 6 y de los art. 13, 15 a 17 y 43, las correspondientes normas de tramitación legales.

Capítulo Segundo

Uso de los documentos del Servicio de Seguridad del Estado por organismos públicos y entidades privadas

- (1) El Comisionado Federal permitirá a organismos públicos y entidades privadas la consulta y entrega de documentos, siempre que se permita su uso, según los art. 20 a 23, 25 y 26. En los casos de los art. 20 y 21 respectivamente, párrafo 1, núm. 6 letra c a h, núm. 7, letra b a f, se prohíbe la notificación, la consulta y la entrega, si no hay indicios de que tras el 31 de diciembre de 1975 haya existido una actividad no oficial para el Servicio de Seguridad del Estado, o para un servicio de información extranjero. La frase 2 no será válida para personas que soliciten un cargo, una función, la aceptación o contratación, en los casos de los art. 20 y 21 respectivamente, párrafo 1, núm. 6, letras a) a c) o núm. 7, letra a. La frase 2 tampoco será válida, si los documentos contienen indicios de que un colaborador, con relación a su actividad no oficial, ha cometido un delito o ha transgredido los derechos fundamentales de la humanidad o la legalidad constitucional.
- (2) Las peticiones se pueden dirigir al Comisionado Federal, por los organismos públicos encargados del cumplimiento de las correspondientes obligaciones. Si la petición la realiza una instancia no oficial, deberá demostrar su autorización por escrito, indicando el fundamento jurídico.
- (3) El Comisionado Federal comprobará si las peticiones de información, consulta o entrega se basan en un uso autorizado, en el marco de las obligaciones del solicitante, y hasta qué punto es necesaria la utilización para el objeto señalado. Si las peticiones provienen de tribunales, fiscalías y jefaturas de policía, siempre que actúen como organismos subsidiarios de las fiscalías, el Comisionado Federal sólo comprobará la autorización, si hay indicios que le lleven a ello.
- (4) El Comisionado Federal realizará las notificaciones por escrito, siempre que en un caso concreto no se adecue otra clase de notificación. Tomará la decisión tras una evaluación conforme a su deber.
- (5) Si una petición de notificación debe ser tratada con prioridad, se deberán exponer los motivos que justifiquen la urgencia. Se considerará que hay urgencia si:
 1. la notificación es necesaria para el objeto de rehabilitación, reparación, defensa de una amenaza a un derecho personal o para la exoneración de la acusación de colaboración con el Servicio de Seguridad del Estado,
 2. para la aclaración, custodia y protección del patrimonio de la antigua República Democrática Alemana y de los antiguos derechohabientes, con domicilio en su territorio, así como del patrimonio entregado al campo de la coordinación comercial,
 3. en caso de una investigación sobre personas, con arreglo al art. 20, párr. 1, núm. 6 y 7 y del art. 21, párr. 1, núm. 6 y 7,
 4. en caso de una prosecución penal y protección ante amenazas, según el art. 23, párr. 1, frase 1, núm. 1 letra a y b y núm. 2.
- (6) Si las notificaciones no son suficientes, se permitirá la consulta de los documentos. El art. 12 párr. 4 será válido, *mutatis mutandis*, con la condición de que en lugar del solicitante, se inscriba a la persona aludida.
- (7) Se entregarán los documentos, si la instancia solicitante argumenta que, con la notificación y la consulta, no tiene suficiente o si la consulta está ligada a un esfuerzo injustificable. Sólo se entregarán los documentos originales si son indispensables como objetos de prueba. Se devolverán sin demora al Comisionado Federal, en cuanto ya no se necesite para el objeto de uso. Si los documentos contuvieran, además de datos personales, sobre la persona a la que se refiere la petición, también sobre otros afectados o terceros, será válido el art. 12 párr. 4 frase 2 y 3 respectivamente.
- (8) Se negará la notificación, el derecho a consulta y entrega, según los art. 20 y 21 respectivamente, párrafo 1 núm. 6 y 7, si :
 1. la información se refiere a una actividad durante el cumplimiento del servicio militar obligatorio en las fuerzas armadas de la antigua RDA, o de un servicio sustitutivo al servicio militar obligatorio fuera del Ministerio para el Servicio de Seguridad del Estado, que no se haya entregado información sobre personas y que no haya continuado con la actividad al finalizar el servicio o:
 2. según el contenido de los documentos investigados, quede claro que, a pesar de existir un acuerdo para colaborar, no ha entregado información.
 El párrafo 3 frase 1, permanecerá intacto.

Uso de documentos por organismos públicos y entidades privadas, que no contienen información referida a personas, de afectados o terceros

(1) Si los documentos no contienen datos personales sobre afectados o terceros, podrán ser usados, en la medida en que sea necesario, por organismos públicos o privados, para los siguientes propósitos:

1. Rehabilitación de las personas afectadas, los desaparecidos y fallecidos; reparación y asistencia en virtud de la Ley de Asistencia al Prisionero,
2. Protección de la privacidad,
3. Esclarecimiento de la suerte de las personas desaparecidas y muertes no explicadas,
4. Suspensión de las prestaciones de jubilación en virtud de la Ley de Pensiones o la reducción, retirada o suspensión de las prestaciones en los casos aplicables según tal ley,
5. Reconocimiento, captura y protección de los bienes de la antigua República Democrática Alemana y la ex entidad en su territorio, así como de los bienes asignados al sector de Coordinación Comercial,
6. Examen de las siguientes personas, de acuerdo con las normas y con su conocimiento, para determinar si trabajaron a tiempo completo o de forma no oficial para el Servicio de Seguridad del Estado, a menos que lo hubieran hecho antes de cumplir los 18 años de edad:
 - a) Los miembros del gobierno federal o un gobierno estatal, así como otros en una relación de derecho público oficial
 - b) Los miembros del Parlamento, los miembros de los órganos representativos locales y los funcionarios electos locales,
 - c) los funcionarios que puedan ser retirados temporalmente en cualquier momento y los empleados para una función,
 - d) Los funcionarios y empleados que dirijan una agencia o administren una oficina similar,
 - e) los jueces profesionales y jueces honorarios,
 - f) los militares, que en cualquier momento puedan pasar al retiro, los militares, a partir del empleo de coronel, que dirijan una agencia, así como oficiales de Estado Mayor, los que detentan puestos con un peso significativo en el interior del país o en el extranjero,
 - g) Los miembros de la Mesa y la Junta y los altos ejecutivos de la Federación de Deportes Olímpicos de Alemania, las organizaciones de bases de los Juegos Olímpicos, los representantes del deporte alemán en los foros internacionales, así como los formadores y supervisores responsables de los equipos nacionales de Alemania,
 - h) las personas que aspiren a ocupar los cargos o puestos relacionados en las letras c a gEl examen puede referirse también a las actividades de inteligencia relacionadas con el exterior
7. Examen de las siguientes personas, de acuerdo con las normas y con su conocimiento, para determinar si trabajaron a tiempo completo o de forma no oficial para el Servicio de Seguridad del Estado, a menos que lo hubieran hecho antes de cumplir los 18 años de edad:
 - a) Miembros del Consejo Consultivo, en virtud del art. 39 y el Consejo Científico, de conformidad con el artículo 39 bis,
 - b) el comisionado Federal y su personal,
 - c) el comisionado provincial en virtud del artículo 38 y sus empleados,
 - d) los empleados de los organismos públicos involucrados en la tramitación de las solicitudes en el marco, la Ley de Rehabilitación Penal, Administrativa y Profesional,
 - e) los empleados de otros organismos que trabajen, principalmente, en la transformación de las actividades del Servicio de Seguridad del Estado o los mecanismos de gobierno de la antigua República Democrática Alemana o la antigua zona de ocupación,
 - f) las personas que aspiren a ocupar los cargos o puestos relacionados anteriormenteEl examen puede referirse también a las actividades de inteligencia relacionadas con el exterior
8. Procedimientos para la concesión o retirada de un permiso de armas en virtud de la Ley de Armas, la Ley Federal de Caza, la Ley de Explosivos y la ley de Control de Armamento de Guerra de la Ley de comercio exterior, a menos que las referencias a la documentación personal de la fiabilidad de los antiguos empleados del Servicio de Seguridad del Estado puso de manifiesto
9. El reconocimiento de períodos de empleo, el pago y la transferencia de las pensiones de los ex miembros del Servicio de Seguridad del Estado,
10. Los asuntos religiosos,
11. Seguridad de las personas en virtud de las leyes de seguridad de los gobiernos federal y estatal,

12. Verificación de antecedentes de las personas de conformidad con el artículo 7 de la Ley de Seguridad Aérea y artículo 12b, párrafo 2, n° 3 de la Ley de Energía Atómica y artículo 5, párrafo 1 n° 6, n° 6 y artículo 7, párrafo 3 del Reglamento de Inspección Atómica.

(2) El artículo 26 no se verá afectado.

(3) El uso al que se hace referencia en el párrafo 1 n° 6 supra quedará prohibido a partir del 31 de Diciembre 2011. Los documentos producidos y acumulados como consecuencia de las anteriores peticiones de información y examen pasarán al Bundesarchiv o al Archivo del Parlamento.

Art. 21

Uso de documentos por organismos públicos y entidades privadas, que contienen información referida a personas de afectados o terceros

(1) Si los documentos contienen datos personales sobre afectados o terceros, podrán ser usados, en la medida en que sea necesario, por organismos públicos o privados, para los siguientes propósitos:

1. Rehabilitación de las personas afectadas, los desaparecidos y fallecidos; reparación y asistencia en virtud de la Ley de Asistencia al Prisionero,
2. Protección de la privacidad,
3. Esclarecimiento de la suerte de las personas desaparecidas y muertes no explicadas,
4. Suspensión de las prestaciones de jubilación en virtud de la Ley de Pensiones o la reducción, retirada o suspensión de las prestaciones en los casos aplicables según tal ley,
5. Reconocimiento, captura y protección de los bienes de la antigua República Democrática Alemana y la ex entidad en su territorio, así como de los bienes asignados al sector de Coordinación Comercial,
6. Examen de las siguientes personas, de acuerdo con las normas y con su conocimiento, para determinar si trabajaron a tiempo completo o de forma no oficial para el Servicio de Seguridad del Estado, a menos que lo hubieran hecho antes de cumplir los 18 años de edad:

- a) Los miembros del gobierno federal o un gobierno estatal, así como otros en una relación de derecho público oficial
 - b) Los miembros del Parlamento, los miembros de los órganos representativos locales y los funcionarios electos locales,
 - c) los funcionarios que puedan ser retirados temporalmente en cualquier momento y los empleados para una función,
 - d) Los funcionarios y empleados que dirijan una agencia o administren una oficina similar,
 - e) los jueces profesionales y jueces honorarios,
 - f) los militares, que en cualquier momento puedan pasar al retiro, los militares, a partir del empleo de coronel, que dirijan una agencia, así como oficiales de Estado Mayor, los que detentan puestos con un peso significativo en el interior del país o en el extranjero,
 - g) Los miembros de la Mesa y la Junta y los altos ejecutivos de la Federación de Deportes Olímpicos de Alemán, las organizaciones de bases de los Juegos Olímpicos, los representantes del deporte alemán en los foros internacionales, así como los formadores y supervisores responsables de los equipos nacionales de Alemania,
 - h) las personas que aspiren a ocupar los cargos o puestos relacionados en las letras c a g
- El examen puede referirse también a las actividades de inteligencia relacionadas con el exterior

- 7.- Examen de las siguientes personas, de acuerdo con las normas y con su conocimiento, para determinar si trabajaron a tiempo completo o de forma no oficial para el Servicio de Seguridad del Estado, a menos que lo hubieran hecho antes de cumplir los 18 años de edad:

- a) Miembros del Consejo Consultivo, en virtud del art. 39 y el Consejo Científico, de conformidad con el artículo 39 bis,
- b) el comisionado Federal y su personal,
- c) el comisionado provincial en virtud del artículo 38 y sus empleados,
- d) los empleados de los organismos públicos involucrados en la tramitación de las solicitudes en el marco, la Ley de Rehabilitación Penal, Administrativa y Profesional,
- e) los empleados de otros organismos que trabajen, principalmente, en la transformación de las actividades del Servicio de Seguridad del Estado o los mecanismos de gobierno de la antigua República Democrática Alemana o la antigua zona de ocupación,
- f) las personas que aspiren a ocupar los cargos o puestos relacionados anteriormente

El examen puede referirse también a las actividades de inteligencia relacionadas con el exterior

8.- Seguridad de las personas en virtud de las leyes de seguridad de los gobiernos federal y estatal,

9.- Verificación de antecedentes de las personas de conformidad con el artículo 7 de la Ley de Seguridad Aérea y artículo 12b, párrafo 2, n° 3 de la Ley de Energía Atómica y artículo 5, párrafo 1 n° 6, n° 6 y artículo 7, párrafo 3 del Reglamento de Inspección Atómica.

(2) La prohibición de uso recogida en el artículo 5, párrafo 1 no se verá afectada.

(3) El uso al que se hace referencia en el párrafo 1 n° 6 supra quedará prohibido a partir del 31 de Diciembre 2011. Los documentos producidos y acumulados como consecuencia de las anteriores peticiones de información y examen pasarán al Bundesarchiv o al Archivo del Parlamento.

Art.22

Uso de documentos por comisiones parlamentarias de investigación

- (1) **El derecho a una diligencia de pruebas por una comisión de investigación parlamentaria, según el art. 44 párr. 1 y 2 de la Constitución, es aplicable también a los documentos del Servicio de Seguridad del Estado.**
- (2) **El párrafo 1 será válido respectivamente para las comisiones de investigación de los parlamentos de los estados.**

Art. 23

Uso de documentos con objeto de persecución penal y protección contra amenazas

- (1) **Los documentos, siempre que contengan datos personales, sobre afectados o terceros, se podrán usar, en la medida en que sean necesarios:**

1. para la persecución de:

- a) **delitos relacionados con el régimen de la antigua República Democrática Alemana, sobre todo si los delitos tenían relación con la actividad del Servicio de Seguridad del Estado, de otras autoridades de seguridad, de persecución de delitos y de cumplimiento de las penas, así como tribunales**
- b) **crímenes en los casos de los art. 211, 212, 239a, 239b, 306 a 306c, 307 a 309, 313, 314 o 316c del Código Penal, así como delitos por**
 - **art. 6 del Código Penal Internacional,**
 - **art. 51 y 52 párr. 1 y 2, letras c) y d) y art. 5 y 6 de la Ley de Armas,**
 - **art. 19 párr. 1 a 3, art. 20, párr. 1 o 2 respectivamente, también en relación con el art. 21 o el art. 22ª, párr. 1 a 3 de la Ley sobre el Control de Armas de Guerra,**
 - **art. 29, párr. 3, apdo. 2, núm. 1; art. 29ª párr. 1, n° 2 y art. 30, párr. 1, núm. 1 y 2 de la Ley de Narcóticos,**
 - **art. 30 párr. 1 núm. 4 de la Ley de Narcóticos, siempre que el delito se haya cometido como profesional o como miembro de una banda**
- c) **delitos relacionados con el régimen nazi,**
- d) **delitos según el art. 44 de esta ley,**

2. para el rechazo de una gran amenaza inminente para la seguridad pública, sobre todo para la prevención de delitos inminentes.

Art. 5 párr. 1 no se aplicará. Las prohibiciones de realización, según los reglamentos del código de enjuiciamiento criminal, quedarán intactas.

- (2) **Se podrán usar también otros documentos, siempre que sean necesarios, para la persecución de delitos, incluyendo ayuda legal en causas penales, así como el rechazo de grandes peligros para la seguridad pública, sobre todo para la prevención de delitos.**

Art. 24

Uso, por tribunales y fiscalías, de los expedientes dejados por el Servicio de Seguridad del Estado

- (1) **Si son los tribunales y las fiscalías las que usan los documentos custodiados por el Comisionado Federal, tendrán vigor, en vez de los art. 19 a 21, 23, 25 a 30 y 43, los respectivos reglamentos de procedimiento legales. El art. 5, párr. 1, no se aplicará, siempre que se trate de delitos relacionados con el art. 23, párr. 1, núm. 1.**

- (2) El Comisionado Federal entregará, a petición, los documentos mencionados en el párr. 1, frase 1, a tribunales, fiscalías y jefaturas de policías, siempre que actúen como organismos subsidiarios de la fiscalía. Los documentos se devolverán inmediatamente, en cuanto ya no sean necesarios.

Art. 25

Uso de documentos para su uso por el servicio de información

- (1) Los documentos no podrán ser usados por los servicios de información, si hay datos personales, sobre afectados y terceros. Se excluyen aquellos documentos que tienen datos personales, sobre
1. colaboradores de los servicios de información del Estado Federal, local o de los aliados y cuyo uso sea necesario para la protección de estos colaboradores o del servicio de información, o
 2. colaboradores de otros servicios de información y cuyo uso sea necesario para la defensa contra el espionaje.
- (2) Los documentos podrán ser usados, siempre que no contengan datos personales, sobre afectados o terceros, por o para los servicios de información del Estado Federal y local, en el marco de sus obligaciones legales, así como por o para los servicios de información de los aliados, si contienen información que tenga relación con
1. el espionaje o la defensa contra el espionaje,
 2. Violencia extremista o terrorismo, según su definición en la la Ley de Protección de la Constitución Federal.
- (3) En los casos del párrafo 1 frase 2, el art. 5 párr. 1, queda intacto.
- (4) En los casos del párrafo 1 frase 2 y del párrafo 2, el Ministro Federal del Interior podrá ordenar la entrega insustituible de los documentos si, al permanecer los documentos en poder del Comisionado Federal, se causaran perjuicios al bienestar del Estado Federal o local. La orden necesitará la aprobación de la comisión de control parlamentario según la Ley sobre el Control Parlamentario de las Actividades del Servicio de Información del Estado Federal.
- (5) Además, se podrán usar los documentos mencionados en el art. 26, por o para el servicio de información, en el marco de sus obligaciones legales.

Art. 26

Uso de instrucciones y planes de organización

Las normas, instrucciones, planes de organización y planes de instancias del Servicio de Seguridad del Estado se podrán usar también para otros objetos, siempre que no contengan datos personales, sobre afectados o terceros. Lo mismo es válido para los planos y listas de objetos y otras cosas del Servicio de Seguridad del Estado, sobre todo planos de plantas, planos sobre tuberías de abastecimiento y sobre cables de teléfono.

Art. 27

Notificaciones sin peticiones a organismos públicos

- (1) Si el Comisionado Federal, en el desempeño habitual de sus obligaciones, según el art. 37, averigua que han desempeñado una actividad contratada o no oficial para el Servicio de Seguridad del Estado
1. personas, que ocupan o desempeñan obligaciones o funciones en cargos públicos, según el art. 20, párr. 1, núm. 6, letras a) y b),
 2. personas que dirijan una oficina o lleven a cabo una función de acuerdo con el art. 20, párrafo 1, n° 7, letra a),
 3. personas, que por su actividad tienen permiso para usar los documentos, según el art. 20, párr. 1, núm. 4 o art. 21, párr. 1, núm. 4, deberá notificarlo a la instancia competente.
- (2) Si el Comisionado Federal, en el desempeño habitual de sus obligaciones, comprueba que en los documentos existen indicios de
1. un delito relacionado con la actividad del Servicio de Seguridad del Estado,
 2. alguno de los delitos mencionados en el art. 23, párr. 1, núm. 1 letra b),
 3. un notable peligro para la seguridad pública,

4. La presencia de patrimonio, según el art. 20, párr. 1, núm. 5 y del art. 21, párr. 1, núm. 5, debe comunicarse a la instancia competente.
- (3) Si el Comisionado Federal, en el desempeño habitual de sus obligaciones, según el art. 37, comprueba que, en los documentos se encuentra información sobre espionaje, defensa del espionaje, extremismos violentos o terrorismo, según la Ley de Protección de la Constitución Federal, deberá comunicárselo, por su cuenta, al Ministro Federal del Interior como autoridad de la Seguridad Nacional.
- (4) Las notificaciones previstas en los párrafos 1 a 3, sólo serán admisibles en la medida en que puedan ser realizadas atendiendo un requerimiento.

Art. 28
(derogado)

Art. 29
Límites de uso

- (1) Según los art. 19 a 23 y 25, así como los art. 27 y 28, sólo se podrá emplear y usar la información referida a personas, con la finalidad para la que se haya entregado. Sólo se podrá usar o emplear para otros fines, si se presentan las condiciones de los art. 20 a 23 y 25.
- (2) Se necesitará el consentimiento del Comisionado Federal, para emplear o usar para otros fines los datos personales sobre afectados o terceros, según el párrafo 1 frase 2.
- (3) Los párrafos 1 y 2 serán válidos respectivamente, para la información referida a personas, contenida en los documentos que, según el art. 8 párr. 2, permanezca en organismos públicos.

Art. 30
Notificación

- (1) Si el Comisionado Federal entrega datos personales sobre un afectado, según los art. 21, 27 párrafo 1, se deberá informar al afectado sobre la clase de información entregada, así como su destinatario.
- (2) No existirá la obligación de notificar, si el afectado obtiene el conocimiento del envío por otras causas, o si el aviso fuera posible sólo mediante un esfuerzo injustificable.
- (3) Se suspenderá la notificación durante el periodo de tiempo en el que la autoridad federal o local suprema competente haga saber al Comisionado Federal, que el conocimiento del envío podría amenazar la seguridad pública o causar perjuicios al bienestar de la Federación o del Estado.

Art. 31
Revisión judicial de decisiones del Comisionado Federal, a petición de las autoridades

- (1) Si el Comisionado Federal rechaza la petición de un organismo solicitando comunicación, consulta o entrega de documentos, será el tribunal supremo administrativo, a petición de la autoridad afectada, el que decida sobre la legitimidad del rechazo de esta petición, tras un juicio oral, a través de una resolución. La resolución no se podrá recurrir. No tendrá lugar un procedimiento previo. Será competente el tribunal supremo administrativo en cuyo distrito tenga su domicilio social el Comisionado Federal.
- (2) El presidente del tribunal podrá negar o limitar, por razones especiales, la consulta de expedientes o partes de los mismos, así como la producción o entrega de fragmentos o copias.
- Esta resolución y la resolución del tribunal supremo administrativo sobre la obligación de presentación de documentos, según el art. 99 párr. 2 de la Orden del Tribunal Administrativo, no serán impugnables. Por lo demás, los implicados estarán obligados a guardar secreto sobre los hechos que hayan conocido por la consulta de los expedientes.

Capítulo Tercero

Uso de documentos del Servicio de Seguridad del Estado para la investigación política e histórica, así como para su uso en prensa y radio

Art. 32

Uso de documentos para la investigación de las actividades del Servicio de Seguridad del Estado

- (1) Para la investigación política e histórica de las actividades del Servicio de Seguridad del Estado, así como para fines de formación política, el Comisionado Federal pondrá a disposición los siguientes documentos para la consulta:
1. Documentos, que no contengan información referida a personas,
 2. duplicados de documentos, en los que se haya convertido en anónima la información referida a personas, a no ser que la información sea notoria,
 3. documentos con datos personales de:
 - empleados del Servicio de Seguridad del Estado, siempre que no se trate de actividades para el Servicio de Seguridad del Estado realizadas antes de los 18 años, o
 - beneficiarios del Servicio de Seguridad del Estado,
 4. documentos con datos personales, sobre personajes de la historia contemporánea, titulares de funciones políticas o de cargos públicos, siempre que se trate de información que se refiera a su papel en la historia contemporánea, al cumplimiento con sus funciones o al cumplimiento de sus cargos públicos,
 5. documentos con otros datos personales, si se presenta el consentimiento escrito de la persona afectada; los consentimientos deberán señalar al solicitante, la pretensión y a las personas que llevarán a cabo la consulta.
 6. Cuando se trate de información sobre personas fallecidas, cuya muerte hubiera ocurrido treinta años atrás. Si la fecha de la muerte no puede ser precisada o sólo puede serlo con un gran esfuerzo, el período de retención de la documentación durará 110 años a partir de la fecha de nacimiento de la persona.
 7. Por añadidura, los documentos con datos personales en la medida en que:
 - a) Sean necesarios para la realización de un trabajo científico en universidades o centros de investigación
 - b) El uso anónimo de la información no es posible para la finalidad perseguida o la despersonalización implica un esfuerzo desproporcionado, y:
 - c) El receptor de la información es un funcionario o persona obligada por ley a guardar secreto.

Los documentos con datos personales, según la frase 1 núm. 3 y 4, sólo se podrán entregar si, a través de su uso, no se perjudica ningún interés principal, digno de protección, de las personas allí mencionadas. Para la valoración se tendrá en cuenta, sobre todo, si la información tiene clara relación con una violación de los derechos humanos.

- (2) Los documentos que, según el art. 37 párr. 1 núm. 3 letra b a d, se encuentren en un depósito especial, sólo se podrán usar con el consentimiento del Ministro Federal del Interior.
- (3) Información referida a personas, sólo se podrá publicar si
1. éstas son notorias
 2. se trata de información sobre:
 - empleados del Servicio de Seguridad del Estado, siempre que estas actividades para el Servicio de Seguridad del Estado no tuvieran lugar antes de los 18 años, o
 - beneficiarios del Servicio de Seguridad del Estado,
 3. se trata de información sobre personajes de la historia contemporánea, titulares de funciones políticas o de cargos públicos, siempre que se trate de información que se refiera a su papel en la historia contemporánea, al cumplimiento con sus funciones o al cumplimiento de sus cargos públicos, o
 4. las personas sobre las que se quieren publicar datos personales, hayan dado su consentimiento.
 5. Cuando se trate de información sobre personas fallecidas, cuya muerte hubiera ocurrido treinta años atrás. Si la fecha de la muerte no puede ser precisada o sólo puede serlo con un gran esfuerzo, el período de retención de la documentación durará 110 años a partir de la fecha de nacimiento de la persona.

A través de la publicación de datos personales, mencionada en la frase 1 núm. 2 y 3, no se podrá perjudicar los intereses principales, dignos de protección, de las personas

mencionadas. Para la valoración se tendrá en cuenta, sobre todo, si la divulgación de la información se basa claramente en una violación de los derechos humanos. Los datos personales referidos en el punto 5 del párrafo 1, solo podrán ser publicados si

- (4) Los párrafos 1 y 3, conforme al sentido, serán también válidos para la investigación política e histórica del pasado nacionalsocialista.

Art. 32a
Notificación

- (1) Cuando, según el art. 32, párr. 1, frase 1, núm. 4, se pongan a disposición documentos, se deberá avisar, con antelación y con tiempo suficiente, y sobre el contenido de la información, a las personas afectadas por ello, para que puedan formular sus objeciones a la accesibilidad a dichos documentos. El Comisionado Federal tendrá en cuenta las objeciones en la valoración de los intereses que debe efectuar, según el art. 32 párr. 1. Si no existe un acuerdo, sólo se podrá acceder a los documentos, cuando hayan pasado dos semanas de la notificación del resultado de la valoración.
- (2) Se podrá suspender la notificación, si no se teme que haya perjuicio de los intereses, dignos de protección, de la persona afectada, si la notificación no es posible, o si es posible sólo mediante un esfuerzo injustificable.

Art. 33
Procedimiento

- (1) Se podrán consultar los archivos con fines de investigación o para la formación política, en la oficina central o en las oficinas de las ramas del Comisionado Federal.
- (2) Debido a la importancia o al estado de conservación de los documentos, se podrá limitar la consulta a la consulta de duplicados.
- (3) A petición, se podrá solicitar la entrega de duplicados de los documentos, siempre que esté permitida la consulta de dichos documentos. Esta disposición no será aplicable a los casos referidos en el art. 32, párrafo 1, apartado 1, n° 7
- (4) Los duplicados, que se han entregado según el párrafo 3, no se podrán usar por el receptor para otros fines, ni se podrán dar a otras instancias.
- (5) No se autorizará la consulta de documentos no investigados.

Art. 34
Uso de documentos en prensa, radio y cine

- (1) Los art. 32 y 33 serán válidos respectivamente, para el uso de los documentos en prensa, radio, cine, por sus empresas auxiliares y por las personas que se dedican a la redacción y el periodismo.
- (2) Si la publicación de datos personales, a través de canales de radiodifusión del derecho federal, llevara a rectificaciones de personas mencionadas en la publicación, estas rectificaciones se añadirán a la información, referida a personas, y se guardarán junto a ella. La información sólo se podrá volver a publicar junto a la rectificación.

Título Cuarto
Comisionado Federal para los documentos del Servicio de Seguridad del Estado

Art. 35
Comisionado Federal para los documentos del Servicio de Seguridad del Estado de la antigua
República Democrática Alemana

- (1) El Comisionado Federal para los Archivos del Servicio de Seguridad del Estado de la antigua República Democrática Alemana es una autoridad superior federal, en el área de la autoridad federal competente en Cultura y Medios de Comunicación. Tendrá una oficina central en Berlín y agencias en los Länder de Berlín, Brandenburgo, Mecklemburgo-Pomerania occidental, Sajonia, Sajonia-Anhalt y Turingia.
- (2) El director de la autoridad se elegirá, a propuesta del gobierno federal, por el Bundestag, con más de la mitad de los votos legales de sus miembros. En el momento de su votación

debe haber cumplido 35 años de vida. El elegido llevará como título el nombre de su autoridad. Deberá ser nombrado por el Presidente Federal.

- (3) El Comisionado Federal prestará el siguiente juramento ante la autoridad federal competente en Cultura y Medios de Comunicación:
“Yo juro, que dedicaré todo mi esfuerzo para el bien del pueblo alemán, que aumentaré su provecho, apartaré de él los daños, respetaré y defenderé la Constitución y las leyes federales, que cumpliré con mis obligaciones escrupulosamente y que garantizaré justicia para todos. Lo juro con la ayuda de Dios”.
El juramento se podrá prestar también sin la aseveración religiosa.
- (4) La duración del cargo del Comisionado Federal es de cinco años. Se permitirá una sola reelección.
- (5) Conforme a esta ley, el Comisionado Federal tendrá una relación con el Estado Federal de cargo público y legal. En el ejercicio de su cargo será independiente y sólo se someterá a la ley. Estará subordinado a la vigilancia legal del Gobierno Federal. La vigilancia la realizará la autoridad federal competente en Cultura y Medios de Comunicación.

Art. 36

Situación jurídica del Comisionado Federal

- (1) La relación con el cargo del Comisionado Federal comienza con la entrega del documento de nombramiento. Terminará
1. con la finalización de la duración del cargo,
 2. con el cese.
- El Presidente Federal cesará al Comisionado Federal, si éste se lo pide o a propuesta del gobierno federal, si existen razones que, delante de un juez, justifiquen el despido de por vida de un servicio. En caso de finalización de la relación del cargo, el Comisionado Federal recibirá un documento realizado por el Presidente Federal. El cese será efectivo con la entrega del documento. A petición de la autoridad federal competente en Cultura y Medios de Comunicación, el Comisionado Federal estará obligado a seguir en el cargo hasta el nombramiento de su sucesor.
- (2) El Comisionado Federal no podrá tener, además de su cargo, otro remunerado, no podrá desempeñar ninguna profesión, ni oficio. No podrá ser dirigente, ni miembro del consejo supervisor o del consejo administrativo de una empresa con fines lucrativos. Tampoco podrá pertenecer a un gobierno o a un cuerpo federal legislativo. No podrá realizar dictámenes extrajudiciales a cambio de dinero.
- (3) El Comisionado Federal informará a la autoridad federal competente en Cultura y Medios de Comunicación sobre los regalos recibidos con relación a su cargo. El Ministro Federal del Interior decidirá sobre el uso de los regalos.
- (4) El Comisionado Federal, tras la finalización de su relación de servicio, estará obligado a guardar silencio sobre los asuntos que ha conocido gracias a su cargo. Esto no será válido para notificaciones en el ámbito del trabajo, o sobre hechos notorios, o los que, debido a su importancia, no requieren permanecer secretos. El Comisionado Federal, aunque ya no esté en el cargo, no podrá hablar sobre esas cuestiones sin el consentimiento de la autoridad federal competente en Cultura y Medios de Comunicación, en un juicio, ni de forma extrajudicial, ni tampoco dar explicaciones al respecto. Permanecerá intacta la obligación fundada en la legalidad de denunciar delitos y, ante una amenaza de las leyes fundamentales democráticas y liberales, luchar por su conservación.
- (5) El consentimiento de declarar como testigo sólo se suspenderá, si la declaración causara perjuicio al bienestar del Estado Federal o regional alemán o si el cumplimiento de las obligaciones públicas corriera un serio peligro o lo dificultara notoriamente. Se podrá suspender el consentimiento de realizar un dictamen, si esto perjudicara los intereses del servicio. El art. 28 de la Ley sobre el Tribunal Constitucional Federal, en la edición de su promulgación del 12 de diciembre de 1985 (BGBl. I pág. 2229), permanecerá intacto.
- (6) Desde el principio del mes natural en el que empieza su relación con el cargo, y hasta el final del mes natural en el que finaliza su relación con el cargo o, según el párrafo 1 frase 6, hasta el término del mes, en el que finaliza su gerencia, el Comisionado Federal recibirá un sueldo por su cargo por valor de un empleado federal con la categoría de sueldo de B9. Se aplicarán respectivamente la Ley Federal de Gastos de Viaje y la Ley Federal de Gastos de Traslado. Por lo demás, se aplicarán los art. 13 a 20 y 21ª, párr. 5 de la Ley del Ministro Federal, con la condición de que en el art. 15, párr. 1 de la Ley del Ministro Federal, en vez

de figurar una duración del cargo de dos años, figuren cinco años, y en el art. 21a párr. 5 de la Ley del Ministro Federal, en vez de la categoría de sueldo B 11, figure la categoría de sueldo B9. Divergiendo con la frase 3, en relación con los art. 15 a 17 y 21ª, párr. 5 de la Ley del Ministro Federal, se calcula el sueldo de la pensión de jubilación del Comisionado Federal añadiendo el periodo del cargo a sus años de servicio, en la respectiva aplicación de la ley de pensiones de los funcionarios, si esto le es más favorable y el Comisionado Federal, justo antes de su elección a Comisionado Federal, se encontraba ejerciendo su último cargo habitual como funcionario o juez, antes de alcanzar la categoría de sueldo B9.

Art. 37

Obligaciones y autorizaciones del Comisionado Federal

- (1) Según esta ley, el Comisionado Federal tendrá las siguientes obligaciones y autorizaciones:
1. custodia de los archivos del Servicio de Seguridad del Estado,
 2. La valoración, ordenación, aprovechamiento, custodia y administración de los documentos, siguiendo los métodos de archivo.
 3. Administración de los documentos en el archivo central de la oficina central y en los archivos regionales de las agencias; se guardarán por separado
 - a) las documentos remitidos al Servicio de Seguridad del Estado por tribunales y fiscalías,
 - b) los duplicados, según el art. 11 párr. 2, frase 2,
 - c) los documentos relacionados con empleados del servicio de información del Estado Federal, regional y de los aliados,
 - d) Documentos sobre colaboradores de otros servicios de información, con indicaciones técnicas o demás indicaciones profesionales o descripciones sobre posibilidades de movilización de medios y métodos en los campos del espionaje, la defensa del espionaje o del terrorismo, si el Ministro Federal del Interior declara, en un caso concreto, que la publicación de documentos puede amenazar la seguridad pública o producir perjuicios al bienestar federal o regional.
Para el archivo por separado, según las letras b) a d), serán válidos los reglamentos sobre el uso de documentos clasificados en el grado de documentos secretos o en un grado superior,
 - 4.- Suministro de información, comunicación de los documentos, la concesión de acceso a los documentos, publicaciones,
 - 5.- Estudio de la actividad del servicio de seguridad del Estado, informando al público acerca de la estructura, los métodos y el modo de acción del Servicio de Seguridad del Estado. Para la publicación de la información personal se aplica el art. 32, párrafo 3. La publicación también puede ser electrónica y por un sistema de comunicación con medios técnicos para garantizar que la información está intacta, completa y actualizada y que no se ha copiado o alterado electrónicamente por terceros y que la publicación en cualquier momento puede atribuirse a su origen. La copia electrónica puede ser admitida si el propósito de la publicación es lícito y por lo tanto no afecta a los intereses legítimos de las personas afectadas,
 - 6.-Apoyo a la investigación y la educación política en el análisis histórico y político de las actividades del Servicio de Seguridad del Estado, mediante la concesión de acceso a los documentos y la expedición de duplicados de los documentos y el apoyo de instalaciones y monumentos para la recuperación de la historia de la antigua República Democrática Alemana o de la antigua zona de ocupación en lo concerniente a las actividades del Servicio de Seguridad del Estado,
 - 7.- Información y asesoramiento a particulares, entidades privadas y organismos públicos. También las oficinas de las ramas de los länder podrán ofrecer información y asesoramiento,
 - 8.- Establecimiento y mantenimiento de centros de documentación y salas de exposición.
- (2) El Comisionado Federal garantizará el cumplimiento de principios comunes en el desempeño de sus funciones.
- (3) El Comisionado Federal presentará un informe de actividad ante el Bundestag sobre la solicitud de éste, al menos cada dos años, a partir del 1 De julio de 1993. A partir de su segundo informe periódico de actividades, informará sobre la medida y tiempo en que previsiblemente requerirá de los documentos para el desempeño de sus funciones. A petición del Bundestag alemán o el Gobierno Federal, el Comisionado Federal ofrecerá asesoramiento y producirá cuantos informes le sean

solicitados. El Comisionado Federal podrá, en cualquier momento, consultar al Bundestag. En los asuntos de un órgano legislativo, informará directamente a ese órgano.

Art. 38

Comisionado regional, relación con el Comisionado Federal

- (1) En los Länder de Berlín, Brandenburgo, Mecklemburgo-Pomerania occidental, Sajonia, Sajonia-Anhalt y Turingia se podrá nombrar un comisionado regional para que ayude con su trabajo al Comisionado Federal en el ejercicio de sus obligaciones, según el art. 37, que se hará cargo de los documentos del Servicio de Seguridad del Estado de la antigua República Democrática Alemana. Los demás detalles se regirán bajo el derecho del Land.
- (2) El Comisionado Federal dará la oportunidad al comisionado regional de adaptarse a las peculiaridades específicas de su Land en el uso de los documentos, según el título tercero de esta ley.
- (3) El derecho del Land podrá decidir, que los comisionados regionales asesoren a los implicados en la salvaguardia de sus derechos, según los art. 13 a 17. Esta actividad también se referirá al asesoramiento psicológico y social, tras la finalización de los procedimientos, según el art. 12.

Art. 39

El Consejo Consultivo

- (1) El Comisionado Federal creará un Consejo Consultivo. El consejo Consultivo constará de
 1. nueve miembros, que serán nombrados por los Länder de Berlín, Brandenburgo, Mecklemburgo-Pomerania occidental, Sajonia, Sajonia-Anhalt y Turingia, y
 2. ocho miembros, que serán nombrados por el Bundestag alemán.Los miembros del Consejo Consultivo se nombrarán por la autoridad federal competente en Cultura y medios de Comunicación por un periodo de cinco años.
- (2) El Comisionado Federal informará al Consejo Consultivo sobre asuntos fundamentales u otros asuntos importantes y los debatirá con él. El consejo consultivo asesorará al Comisionado Federal, en particular, sobre los siguientes asuntos:
 1. La custodia de los documentos del Servicio de Seguridad del Estado y el análisis de los documentos, según el art. 10,
 2. la fijación de los métodos de archivo para la valoración, ordenación, aprovechamiento, custodia y administración de los documentos,
 3. la fijación de los métodos normalizados para la consulta y entrega,
 4. la fijación de criterios de valoración en los casos del art. 20 párr. 1, núm. 6 y 7 y del art. 21 párr. 1, núm. 6 y 7,
 5. la fijación de prioridades en las peticiones de individuos y en las peticiones de organismos públicos y entidades privadas,
 6. la fijación de las obligaciones de las agencias regionales en su actividad asesora,
 7. la creación de programas de trabajo para la investigación de las actividades del Servicio de Seguridad del Estado, y la información posterior al público y
 8. el apoyo a la investigación y la formación política.Además, el consejo Consultivo se encargará de los informes de actividades contemplados en el art. 37 párr. 3 frase 1.
- (3) El Consejo Consultivo elaborará un reglamento interno que necesitará el consentimiento del gobierno federal.
- (4) Los miembros del Consejo Consultivo estarán obligados a guardar secreto profesional sobre los hechos que hayan conocido debido a su actividad, siempre que no sean notorios. La obligación de guardar secreto profesional se mantendrá incluso tras el término de su pertenencia al consejo consultivo.
- (5) El Consejo Consultivo se podrá dirigir al Bundestag, en cualquier momento, en materias importantes.

Art. 39a

El Consejo Científico Asesor

- (1) Para asesorar a los funcionarios federales en la investigación científica de las actividades del Servicio de Seguridad del Estado, así como en el diseño de su investigación existirá un Consejo Científico Asesor, que constará de nueve miembros. El Consejo Científico Asesor dará apoyo a la

labor de investigación y publicación del Comisionado Federal y promoverá y apoyará la cooperación y el intercambio de información del comisionado Federal con otras instituciones científicas.

(2) El Bundestag alemán nombrará nueve personas, con particular experiencia en el campo de la investigación sobre la antigua República Democrática Alemana, las dictaduras, el comunismo, la historia comparada o la estructura, los métodos y el modo de operación de los servicios secretos. La autoridad federal competente en Cultura y Medios de Comunicación designará a los miembros por un período de cinco años. Una única reelección es permitida.

(3) Los miembros del Consejo Científico Asesor estarán obligados a guardar secreto profesional sobre los hechos que hayan conocido debido a su actividad, siempre que no sean notorios. La obligación de guardar secreto profesional se mantendrá incluso tras el término de su pertenencia al consejo consultivo.

Art. 40

Medidas para la protección de los documentos

- (1) **El Comisionado Federal, dentro de su autoridad, tomará las medidas técnicas y de organización necesarias para evitar el acceso no autorizado a los documentos.**
- (2) **Debe garantizar, sobre todo, que:**
 1. **los empleados del Comisionado Federal sólo tengan acceso a los documentos y a los sistemas de procesamiento de datos en el marco de sus obligaciones asignadas, y que todo acceso a los documentos quede registrado, junto con la indicación del motivo.**
 2. **se impida la creación no autorizada de métodos de búsqueda de documentos y la entrada no autorizada de información, así como el conocimiento, la modificación o la anulación de información almacenada,**
 3. **se registre qué documentos o información contenida en los documentos se entregó o transmitió a qué hora,**
 4. **se pueda averiguar y controlar a posteriori, qué información se ha introducido y a qué hora en los sistemas de procesamiento de datos,**
 5. **el edificio, en el que están almacenados los documentos del Servicio de Seguridad del Estado, esté protegido contra la intrusión no autorizada,**
 6. **individuos no autorizados no obtengan acceso a los archivos y a los sistemas de procesamiento de datos que se emplean para el estudio de la información contenida en los documentos,**
 7. **los documentos no se puedan leer, copiar, modificar, destruir o extraer sin autorización,**
 8. **los documentos y los soportes de datos no se puedan leer, copiar, modificar, borrar o destruir durante su transporte,**
 9. **la organización interna esté estructurada de forma que se cumplan las medidas especiales de protección de datos.**

Art. 41

Procedimientos automatizados, procesamiento de datos por encargo

- (1) **El Comisionado Federal sólo podrá almacenar, modificar o usar la información referida a personas, de los documentos del Servicio de Seguridad del Estado en los programas automatizados, como medio de ayuda para el cumplimiento de sus obligaciones. Las bases de datos sólo contendrán la información necesaria para la localización de documentos y la identificación necesaria de personas. A estas bases de datos se aplicará el art. 20 de la Ley Federal de Protección de Datos.**
- (2) **Queda prohibida la instalación de procedimientos de búsqueda automática con objeto de transmisión. El art. 37, párr. 1, n°5 permanece inalterado.**
- (3) **El procesamiento de la información contenida en los documentos mediante un servicio Proxy (externo) sólo será permitido cuando no sea posible el procesamiento por el propio Comisionado Federal, con sus medios propios, o que éste sólo sea posible a través de un esfuerzo desproporcionado, y que el adjudicatario de la tarea, bajo una consideración especial de su idoneidad, se haya elegido expresamente para el uso de esta información. El adjudicatario de la tarea sólo podrá trabajar con esta información siguiendo las indicaciones expresas del Comisionado Federal.**

Título Quinto
Disposiciones finales

Art. 42
Costes

- (1) Se cobrarán los costes (tasas y gastos) por la realización de acciones administrativas, según los art. 13 y 15 a 17, así como frente a instancias no oficiales, según los art. 20, 21, 32 y 34. Asimismo, se cobrarán los costes en caso de una revocación o devolución de una acción administrativa, del rechazo o de la anulación de una petición, de una ejecución de una acción administrativa, así como por recusación o por devolución por reclamaciones. No se cobrarán los costes a los afectados, terceros, parientes cercanos de desaparecidos o fallecidos, así como tampoco se les cobrará por el permiso de consulta de los documentos.
- (2) La autoridad federal responsable de Cultura y medios de Comunicación estará autorizada a decidir, de acuerdo con la regulación estatutaria, el establecimiento de a tasas y tarifas.

Art. 43
Primacía de esta ley

Las disposiciones contempladas en esta ley estarán por encima de las regulaciones sobre transmisión de datos personales contempladas en otras leyes. La Ley Federal de Protección de Datos Personales no se aplicará, con excepción de los reglamentos sobre el control de la protección de datos, siempre que no se disponga lo contrario en el art. 6 párr. 9 y el art. 41 párr. 1 frase 2, de esta ley.

Art. 44
Disposición penal

El individuo que haga públicos, en su totalidad o en partes esenciales, del texto, documentos originales o duplicados de documentos originales protegidos por esta ley, con datos personales sobre afectados o terceros, será castigado con una privación de libertad de hasta tres años o con una multa. Esta sanción no será aplicable si el afectado o el tercero muestran su conformidad.

Art. 45
Sanciones administrativas

- (1) Infringe la ley quien, de forma dolosa o negligente, quien:
 1. no comunique en el plazo de a tiempo fijado o no comunique, la posesión de documentos referidos en el art. 7 párr. 3,
 2. no entregue a tiempo o no entregue documentos o copias y demás duplicados de documentos, a petición del Comisionado Federal, en oposición al art. 9 párr. 1, frase 1 y párr. 2, o:
 3. no le deje usar documentos al Comisionado Federal, en oposición al art. 9 párr. 3.
- (2) La infracción de esta ley puede ser castigada con una multa de hasta doscientos cincuenta mil euros.

Art. 46
Exoneración de castigo

Quien haya obtenido documentos del Servicio de Seguridad del Estado a través de delitos ilegales, no será castigado si cumple con su deber de notificación, según el art. 7 párr. 3, en un plazo de tres meses tras la entrada en vigor de esta ley.

Art. 46a
Limitación de los derechos fundamentales

Con arreglo a esta ley, se limitan el secreto postal, epistolar y el secreto de telecomunicación (Artículo 10 de la Constitución).

Art. 47

Derogación de reglamentos, relevos en el organismo

- (1) Se deroga el reglamento del anexo I capítulo II materia B título II núm. 2 letra b del Tratado de Unificación del 31 de agosto de 1990 (BGBl. II pág. 885, 912).
- (2) El estatus jurídico del titular de la oficina en el momento de la entrada en vigor de esta ley, nombrado con arreglo al reglamento mencionado en el párrafo 1 será el establecido en esta Ley. Las normas de transición sobre los sueldos y las pensiones legales, publicadas con arreglo al Tratado de Unificación, serán válidas respectivamente.

Art. 48

Entrada en vigor

- (1) Esta ley entrará en vigor el día después de su publicación.
- (2) El art. 35 párr. 2 frase 1 se aplicará al nombramiento del nuevo comisionado Federal de esta autoridad superior federal tras la finalización de la duración del cargo del actual titular de la oficina.

ARGENTINA

COMISION PROVINCIAL POR LA MEMORIA. REGLAMENTO PARA LA UTILIZACIÓN DEL ARCHIVO DE LA DIPBA.

CAPITULO I PRINCIPIOS GENERALES

Artículo 1º: El archivo de la Dirección de Inteligencia de la Provincia de Buenos Aires (DIPPBA) transferidos por LEY N º12642 a la COMISION PROVINCIAL POR LA MEMORIA, se encuentra enmarcado dentro del informe elaborado por el grupo de expertos, del **Consejo Internacional de Archivos y UNESCO** sobre Definición, Función y normativas para Archivos sensibles.

Artículo 2º: **Los documentos del Archivos de la DIPBBA conjugan diversos ejes que afectan a grupos, instituciones, e individuos. Estos documentos, constituidos en acervos, se relacionan con la verdad, con la memoria y con la identidad.**

Artículo 3º : El Archivo de la DIPPBA es un lugar para la investigación, para todos aquellos interesados en indagar, analizar y escribir sobre las dictaduras, la violación a los derechos humanos y/o la **reconstrucción histórica del pasado reciente.**

CAPITULO II DE LOS DOCUMENTOS Y SU DISPONIBILIDAD

Artículo 4º : Los documentos del Archivos de la DIPBBA conforman un conjunto de escritos de todo tipo. **Producido, recolectado, secuestrado y recopilado por un grupo de hombres que conformaban y participaban de las fuerza represivas, clasificando los documentos según su óptica policial y militar en : secretos, reservados y confidenciales.**

Artículo 4ºbis : Los documentos del Archivos de la DIPBBA fueron **desclasificados** por acción de la **Ley 12642.:** “*Art. 2º - La Comisión Provincial por la Memoria deberá hacer del archivo un centro de información con acceso público*” convirtiéndose en **documentos públicos**. Los documentos del Archivos de la DIPBBA son considerados acervos públicos de carácter **sensible**.

Artículo 5º : **Toda persona tendrá acceso a una copia de los documentos sobre la existencia o no de la información recogida sobre su persona . El acceso a la información se hará de la forma más eficaz garantizando la privacidad de terceros**

Artículo 7º: **Toda persona que no haya estado al servicio de los órganos represivos, tendrá el derecho a determinar, una vez conocida la existencia de documentos sobre ella, si tales documentos pueden o no ser consultados por terceros, entendiéndose, en todo caso, que sin declaración de los afectados, en un sentido o en otro, los datos personales de las víctimas de la represión estarán cerrados a la consulta pública sin el permiso expreso de aquellos, o de sus herederos.**

Artículo 8º: **Toda persona que no haya estado al servicio de los órganos represivos, podrán hacer constar cuántas correcciones o aclaraciones deseen hacer sobre los datos contenidos sobre ellos y sus expedientes personales. Tales correcciones, aclaraciones o manifestaciones, deberán incorporarse a los expedientes claramente diferenciados de los documentos que el órgano represivo conservaba que, por otra parte, no podrán ser modificados.**

Artículo 9º: **Todos los ciudadanos podrán hacer uso científico, histórico, o periodístico de los documentos y sólo se verán limitados por la protección a la privacidad de las víctimas de la represión, así como a terceras partes mencionados en los documentos.**

Artículo 10º: Los Organismos de Derechos Humanos nacionales o internacionales **que tengan como fin la defensa de los derechos humanos y las garantías individuales, tendrán libre acceso a los documentos.**

CAPITULO III

DE LOS PROCEDIMIENTOS PARA EL USO DE LOS ARCHIVO

Artículo 12: Para acceder a una copia de los datos de carácter personal obrante en el Archivo, los ciudadanos deberán completar un Formulario: **solicitud de información**, acreditando la identidad con DNI, C.I, L.E .o Pasaporte.

Artículo 13º: Para acceder a los datos sobre un familiar desaparecido, fallecido o con presunción legal de fallecimiento, se deberá completar el Formulario: **solicitud de información**, acreditando la identidad con DNI, C.I, L.E .o Pasaporte, el que será acompañado por: Copia de la partida de Defunción y/o Número de legajo denuncia en CONADEP, y copia de la documentación filiatoria que acredite el vínculo.

Artículo 14º: Para poder acceder a los documentos los investigadores deberán completar un Formulario: **solicitud de material**, acompañar carta de presentación que atestigüe el **interés legítimo**, en los casos pertinentes **aval de la casa de estudios**. Firmar un compromiso de responsabilidad por el uso que se haga de la información, el compromiso de señalar siempre la procedencia del material conforme a las pautas establecidas.

Artículo 15º: Las solicitudes podrán presentarse personalmente o por correspondencia. La información requerida será entregada sólo al solicitante o al familiar que realizó la presentación previo acreditación de identidad.

Artículo 16º: La información sólo podrá ser entregada a un tercero cuando acredite mandato expreso para tal fin, mediante poder especial confeccionado ante Escribano Público o autorización de un Juez de Paz.

Artículo 17º: En todos los casos la protección a terceros queda garantizada por el método de disociación que ampara la identidad, procediendo a tachar los nombres existentes.

Artículo 18º: El acceso a la información del archivo estará a cargo de peritos y referencistas designados por la Comisión Provincial por la Memoria.

CAPITULO IV

DE LAS PENALIDADES

Artículo 19º: El usuario que no cumpliera este Reglamento podrá ser limitado o impedido de consultar este Archivo.

CAPITULO V

CLAUSULA TRANSITORIA

Artículo 20 º: Los documentos del Archivo de la DIPPBA correspondientes al período 1976-1983 están protegidos por aplicación de la cautela dictada por la **Cámara Federal de Apelaciones de La Plata**, por lo que su consulta debe ser autorizada. El resultado de la intervención de la CFALP para la disposición del material debe ser acatado.

BRASIL

Decreto nº 5.584 de 2005. Dispõe sobre o recolhimento ao Arquivo Nacional dos documentos arquivísticos públicos produzidos e recebidos pelos extintos Conselho de Segurança Nacional - CSN, Comissão Geral de Investigações - CGI e Serviço Nacional de Informações - SNI, que estejam sob a custódia da Agência Brasileira de Inteligência - ABIN

O PRESIDENTE DA REPÚBLICA, no uso da atribuição que lhe confere o art. 84, inciso VI, alínea "a", da Constituição,

DECRETA:

Art. 1º Os documentos arquivísticos públicos produzidos e recebidos pelos extintos Conselho de Segurança Nacional - CSN, Comissão Geral de Investigações - CGI e Serviço Nacional de Informações - SNI, que estejam sob a custódia da Agência Brasileira de Inteligência - ABIN, deverão ser recolhidos ao Arquivo Nacional, até 31 de dezembro de 2005, observados os termos do [§ 2º do art. 7º da Lei nº 8.159, de 8 de janeiro de 1991](#).

Art. 2º O recolhimento dos documentos referidos no art. 1º observará o procedimento previsto neste Decreto, devendo ser coordenado, planejado e supervisionado por Grupo Supervisor composto por um representante de cada órgão a seguir indicado:

- I - Casa Civil da Presidência da República, que o coordenará;
- II - Gabinete de Segurança Institucional da Presidência da República;
- III - Secretaria-Geral da Presidência da República;
- IV - Ministério da Defesa;
- V - Ministério da Justiça; e
- VI - Advocacia-Geral da União.

Art. 3º As atividades técnicas necessárias ao recolhimento dos documentos referidos no art. 1º serão executadas por Grupo Técnico composto por cinco representantes do Arquivo Nacional e cinco representantes da ABIN.

Art. 4º Os representantes dos órgãos que compõem os Grupos Supervisor e Técnico serão designados pela Ministra de Estado Chefe da Casa Civil da Presidência da República, mediante indicação dos dirigentes máximos dos órgãos representados, a ser realizada no prazo de cinco dias, contados da publicação deste Decreto.

Art. 5º Os órgãos representados nos Grupos Supervisor e Técnico prestarão apoio administrativo e fornecerão os meios necessários à execução dos trabalhos.

Art. 6º Os trabalhos desenvolvidos pelos integrantes dos Grupos Supervisor e Técnico serão considerados prestação de relevante serviço público e não serão remunerados.

Art. 7º Para acesso e manuseio dos documentos referidos no art. 1º, os integrantes dos Grupos Supervisor e Técnico firmarão termo de manutenção de sigilo e receberão credencial de segurança no grau de sigilo correspondente ao dos documentos.

Art. 8º O recolhimento ao Arquivo Nacional dos documentos públicos referidos no art. 1º deverá estar acompanhado de instrumento descritivo que permita a sua identificação e controle.

Art. 9º Caberá ao Grupo Técnico constituído nos termos do art. 3º executar, dentre outras, as seguintes atividades técnicas:

I - quantificar os documentos referidos no art. 1º, se possível utilizando-se de relatórios gerados por suas respectivas bases de dados;

II - identificar as unidades de acondicionamento e elaborar as respectivas listagens de descrição e controle;

III - elaborar os competentes termos de recolhimento dos documentos referidos no art. 1º; e

IV - controlar o embarque dos documentos, o respectivo transporte e deslocamento, bem como o desembarque e alocação nos depósitos, previamente determinados, na Coordenação Regional do Arquivo Nacional no Distrito Federal.

Parágrafo único. As atividades técnicas previstas no **caput** deverão observar, no que couber, as normas de salvaguarda de documentos sigilosos dispostas no [Decreto no 4.553, de 27 de dezembro de 2002](#).

Art. 10. Recolhidos ao Arquivo Nacional, os documentos referidos no art. 1º deverão ser disponibilizados para acesso público, resguardadas a manutenção de sigilo e a restrição ao acesso de documentos que se refiram à intimidade da vida privada de pessoas ou cujo sigilo seja imprescindível à segurança da sociedade e do Estado, nos termos do [Decreto no 4.553, de 2002](#).

Art. 11. Este Decreto entra em vigor na data de sua publicação.

Brasília, 18 de novembro de 2005; 184º da Independência e 117º da República.

LUIZ INÁCIO LULA DA SILVA
Dilma Rousseff

ESLOVAQUIA

ACT of August 19th, 2002

**on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939 - 1989 and on Founding the Nation's Memory Institute (Ústav pamäti národa) and on Amending Certain Acts
(Nation's Memory Act)**

Amendment: 110/2003 Coll. Amendment: 610/2004 Coll. The National Council of the Slovak Republic, keeping in mind: - the large number of victims, losses and damages, incurred by the Slovak Nation and the members of minorities living in Slovakia in the years of the Second World War and after its ending, - patriotic traditions of the Slovak Nation in fighting occupants, fascism, and communism, the deeds of citizens acting in the interest of a free and democratic Slovakia and acting to protect freedom and human dignity, - the duty to persecute crimes against peace, humanity and crimes of war, as well as - the duty of our State to rectify the wrongdoings to all those who suffered damage on behalf of a State, which violated human rights and its own laws, - the duty of our State to disclose the activity of repressive authorities, which was kept in secrecy in the period of oppression 1939 - 1989 and to establish responsibility for subduing our Mother Country, murdering, enslaving, committing robberies and degrading others, the moral and economic decline accompanied by judicial crimes and terror against those of different opinions, the destruction of traditional principles of property rights, misuse of upbringing, education, science and culture for political and ideological purposes to express our persuasion that those who do not know their past, are condemned to repeat it, and that no unlawful act on behalf of the State against its citizens may be protected by secrecy or forgotten, agreed on the present Act:

Article I

Section One General Provisions

§ 1 Subject-Matter of the Act

The present Act shall regulate the following: a) establishment of the Nation's Memory Institute, b) recording, collecting, disclosing, publishing, managing and using documents of security authorities of the German Third Reich and of the Union of Soviet Socialist Republics, as well as security authorities of the State, which were created and collected in the period from April 18th, 1939 to December 31st, 1989 (hereinafter referred to as "crucial period") regarding crimes committed against persons of Slovak nationality or Slovak citizens of other nationalities, i.e. 1. Nazi crimes, 2. Communism crimes, 3. other crimes, which include crimes against peace, crimes against humanity or war crimes, 4. other repressive acts due to political reasons, committed by members of the Slovak and Czecho-Slovak authorities active in penal proceedings or persons acting on their behalf which were published in decisions of courts, against persons persecuted for acting in the interest of freedom, democracy and the existence of a free and democratic Slovakia, 5. activity of security authorities as stated in § 2, c) manner of proceeding in revealing or prosecuting crimes according to letter b), d) protection of personal data of prosecuted persons (§ 5), e) activity in the area of public education.

§ 2 Explication of Terminology

For the purpose of the present Act, the following shall be intended: a) by a file – a separate documentation unit created and kept in records by security authorities and registered in record tools of the statistical-registry department of the Federal Ministry of the Interior, of the individual directorates of security authorities, in record-keeping or archiving tools of the archive of the Ministry of the Interior (hereafter referred to as "Ministry") or statistical-registry departments of the regional directorates of the National Security Corps or their predecessors; a file being a personal file or a file containing personal data, b) by a personal file – a file kept in records regarding a particular physical person included in the relevant register of persons, c) by a file containing personal data – a file kept about a particular institution or a group of persons (objects), which contains data stating about particular physical persons, i.e. mainly an object file, d) by a record containing the results of the use of intelligence technology or of surveillance by State Security – a record about the performance of auxiliary intelligence services acting in order to secretly gain information about persons, e) by a personal (cadre) file of a security authority member – a file kept by the service office about a security authority member, containing data regarding the beginning, course and ending of his or her service; an extract from this file is a personal record card of the member, f) by a document – all types of files, sub-files, information outputs from files, records, personal (cadre) files and personal record cards, which are subject to be disclosed or made public according to the present Act, g) by a security authority – State Security, Main

Directorate of the Military Counterintelligence of the National Security Corps (Directorate III), Intelligence Directorate of the Main Directorate of the Border Patrol and State Border Protection, Department of Internal Protection of the Penitentiary Forces, Intelligence Service of the General Staff of the Czechoslovakian Army or predecessors of the above forces in the period from April 18th, 1939 to December 31st, 1989, h) by State Security – components of the former State Security, such as authorities of the National Security Corps, 1) the Main Directorate of Intelligence of the National Security Corps (Directorate I), the Main Directorate of Counterintelligence of the National Security Corps (Directorate II), the Directorate of Surveillance of the National Security Corps (Directorate IV), the Directorate of Intelligence Technology of the National Security Corps (Directorate VI), the Directorate of Passports and Visa of the National Security Corps, territorial units performing activities of the above forces or predecessors of the above forces and units, i) by a person kept in records as a collaborator of a security authority – a person, about whom at any given time during the period from February 25th, 1948 to December 31st, 1989 a file was kept in records by the State Security in the categories resident, agent, informer, keeper of a lent apartment or keeper of a conspiracy apartment, j) by the period of oppression – the period of the years 1939 – 1989, during which citizens of the State did not have a possibility, common in democratic countries at that time, to decide freely about their State and about themselves, and during which time the activity of democratic institutions is limited or abolished and human rights are breached permanently and constantly.

§ 3 Nazi and Communism Crimes

(1) According to the present Act, Nazi and Communism crimes are acts committed by representatives of State authorities during the crucial period, which consisted in the use of violence, repressive actions or other forms of human rights breach against individuals or groups of citizens or in relation to their application, which were criminal acts at the time when they were committed, or acts not reconcilable with basic principles of the law order of a democratic country. (2) For the purposes of the present Act, a representative of a State authority is a public officer as well as a person who was protected on the level of a public officer, especially a person who carried out a managing function in State authorities or Party bodies or organizations.

§ 4 Crimes against Humanity

For the purposes of the present Act, crimes against humanity are mainly crimes of genocide, war crimes, and crimes against humanity pursuant to the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, as well as torture pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and also other serious persecution due to the belonging of the persecuted persons to a certain nationality, political, social, racial or religious group, if they were carried out by representatives of State authorities or inspired or tolerated by them.2)

§ 5 Persecuted Persons

(1) For the purposes of the present Act, a persecuted person is a person, about whom security authorities of the State collected information in a secret manner, or a person who was limited in his or her rights in any other manner due to political reasons by authorities of the State. (2) In the case of death of a persecuted person, his or her rights resulting from the present Act are the competence of a person close to the deceased. This right shall not apply if there is evidence that it would be in contrast with the will of the persecuted person. (3) A persecuted person is not a person who later on became a member, employee or collaborator of State security authorities.

§ 6 Subject to Disclosure and Being Made Public

(1) Subject to being disclosed and made public shall be preserved and reconstituted documents, which were created as a result of the activity of State Security and other security authorities in the period from April 18th, 1939 to December 31st, 1989, of which records are kept in files or archives (registers) from those times by the above mentioned forces and authorities, or by authorities superior thereof.

(2) Subject to being disclosed and made public shall not be documents, which are excluded from being disclosed due to exceptional reasons. (3) An exceptional reason shall be a presumption that the disclosure or making public of a document might harm the interests of the Slovak Republic in international terms, its security interests or lead to a serious endangerment of a person's life. (4) In order to exclude a document from being disclosed and made public, a proposal of the Slovak Information Service or of the Ministry of Defense of the Slovak Republic shall be necessary, which was

approved by an appointed committee of the National Council of the Slovak Republic (hereafter referred to as "appointed committee"). (5) In order to request an approval, the pertinent authority pursuant to paragraph 4 shall present a document to be decided on, and the exclusion proposal along with a statement of reasons thereof. The appointed committee shall take a stand to the proposal within 60 days from delivery thereof. (6) The appointed committee shall further monitor and evaluate facts regarding the scope and the completeness of disclosure of documents. The appointed committee shall make public statements on the results of this monitoring and evaluation. (7) The proceedings of the appointed committee shall not be public. Once a year the appointed committee shall present a report on its activity at a meeting of the National Council of the Slovak Republic. Unless otherwise stipulated by the present Act, the establishment and proceedings of the appointed committee shall be governed by the provisions of a special act regarding the Rules of Procedure of the National Council of the Slovak Republic pertinent to its bodies.

Section Two Nation's Memory Institute

§ 7 Basic Provisions

- (1) Nation's Memory Institute (hereinafter referred to as "Institute") shall be a public-law institution. (2) The Institute shall be a legal entity. (3) The seat of the Institute shall be in Bratislava.

§ 8 The Tasks of the Institute

(1) The tasks entrusted to the Institute by the State shall be mainly as follows: a) to perform complete and unbiased evaluation of the period of oppression, mainly analyze the causes and manner of loss of freedom, symptoms of the Fascist and Communist Regimes and of their ideologies, participation of domestic and foreign persons in them, b) to disclose to persecuted persons documents regarding their persecution, c) to publish data on executors of the persecution and their activity, d) to make motions for criminal prosecution of crimes and criminal offences under § 1; in cooperation with the Attorney General's Office of the Slovak Republic, e) to provide necessary information to the public authorities, f) to collect systematically, and professionally document all types of information, evidence and documents relating to the period of the oppression, g) to cooperate with similar institutions in the Slovak Republic as well as abroad, especially with archives, museums, libraries, resistance memorials, memorials of concentration and labor camps, provide them with information, exploration possibilities and methodical aid, and promote their activity, h) to provide the public with the results of its activity, in particular to publish and declassify information and other documents on the period of the oppression 1939 - 1989 and on the acts and destiny of individuals, publish and disseminate publications, organize exhibitions, seminars, professional conferences, discussion forums, i) to promote the ideas of freedom and defense of democracy from the regimes similar to Nazism and Communism. (2) Within the scope of competence stipulated hereby the Institute shall be authorized to issue administrative decisions and impose penalties for offences. (3) The documents about the activity of the State security authorities [§ 2 letter f) and g)] in the ownership of the Institute are irretrievable testimony of the historical period in which they arose and thus as an important tool for preservation of the nation's memory they form its cultural heritage.

§ 9 Organization of the Institute

- (1) The details of the origination and activity of the organization units, their status and relations among them shall be regulated by the Statutes of the Institute. (2) The Institute shall be allowed to form workplaces without legal personality to fulfill the tasks under the present Act.

§ 10 The Bodies of the Institute

- (1) The bodies of the Institute shall be as follows:
a) Board of Directors, b) Committee, c) Supervisory Board. (2) Members of the Institute's bodies shall meet the condition of integrity (§ 11). (3) The membership in the Board of Directors or Supervisory Board shall cease to exist by a) expiry of the term of office of an Board of Directors or Supervisory Board member, b) a written waiver of the membership, c) a withdrawal from the post of a member of the Board of Directors or Supervisory Board, d) death. (4) The Chair of the Board of Directors shall be the statutory body of the Institute. (5) Members of the Board of Directors and Supervisory Board shall be entitled to reimbursement of the expenses connected with the activity in these bodies under special regulations. 2a) The Chair of the Board of Directors and the Chair of the Supervisory Board shall be entitled for the execution of the office to a remuneration on a monthly basis in the amount of the triple of the average monthly nominal wage of an employee in the economy of the Slovak Republic, established by the Statistical Bureau of the Slovak Republic for the calendar year preceding the year in which the remuneration is to be paid out. In addition to the remuneration, the Chair of the Board of Directors and the Deputy Chair of the Board of Directors shall be entitled to a bonus, the amount of which shall be determined by the Board of Directors. Other members of the Board of Directors and Supervisory Board shall be entitled for the execution of the office to a remuneration on a monthly basis in the amount of the double of the average monthly nominal wage of an employee in the economy of

the Slovak Republic, established by the Statistical Bureau of the Slovak Republic for the calendar year preceding the year in which the remuneration is to be paid out. The expenses connected with the execution of the office in the Board of Directors shall be settled from the Institute's budget. (6) The execution of the office in the Board of Directors and Supervisory Board shall be considered as an obstruction in work for the reason of a general interest in which the employee shall be entitled to time off with the wage compensation under special regulations. 2b)

§ 11 Integrity

For the purposes of the present Act, irreproachable is considered a person who was not a member of the Communist Party of Czechoslovakia, of the Communist Party of Slovakia, of political parties associated in the National Front or an officer of organizations associated in the National Front, and who neither was a member or employee of the security authorities of the State [§ 2 letter g) and h)], nor a member of People's Militias nor a person kept in the records as a collaborator of a security force [§ 2 letter i)]. Other provisions under a special regulation shall not be affected thereby 3).

§ 12 Board of Directors

(1) The Board of Directors shall consist of nine members. The Chair and four members shall be elected by the National Council of the Slovak Republic on the proposal of the appointed committee; the Government of the Slovak Republic and the President of the Slovak Republic shall nominate two members each. The Board of Directors shall elect one Deputy Chair. (2) The term of office of the members of the Board of Directors shall be six years. After the first election of the member of the Board of Directors the names of the half of four members appointed by the National Council of the Slovak Republic, two by the Government of the Slovak Republic and two by the President of the Slovak Republic shall be determined by lot, and their term of office shall terminate after three years. Upon the cessation of the membership of a member of the Board of Directors, a new member shall be elected by the body which elected the previous one, namely for the entire term of office. The first term of office of the Chair shall be six years. (3) A member of the Board of Directors shall be allowed to be withdrawn by the body which appointed him/her only on condition that he/she has been validly sentenced for a crime or fails to execute his/her office for the period of at least six months. (4) The scope of competence of the Board of Directors shall include in particular the following a) to appoint and manage the Committee and supervise its activity, b) to approve the wage rules of the Institute, c) to elaborate the draft budget of the Institute and submit it to the Government for discussion, d) to approve the Statute of the Institute and amendments thereof, e) to approve the rules of procedure of the Board of Directors and the Committee, f) to discuss annual financial statements of the Institute and submit them to the Government for discussion, g) to discuss the annual report on the Institute activity for the previous year at the latest by April 30th, h) to reserve the right to decide on matters being, in other circumstances, in the scope of competence of the Committee under the present Act and the Statute. (5) The Institute shall submit the annual report and upon discussion in the Government the draft budget and annual financial statements to the National Council of the Slovak Republic for approval. (6) The Board of Directors shall have a quorum if the absolute majority of the members of the Board of Directors takes part in its session. The consent of the absolute majority of all members shall be required for a decision. The Chair shall decide in case of equality of votes. (7) The Chair, and in his/her absence the Deputy Chair, shall sign the documents on behalf of the Board of Directors.

§ 13 Committee

- (1) The Institute's activity, when fulfilling the tasks hereunder and under the instructions of the Board of Directors, shall be ensured by the Committee.

(2) Provision of § 12 par. 6 shall apply in a similar manner. (3) The Committee shall consist of seven members. (4) The office of the Committee Chair shall be executed by the Deputy Chair of the Board of Directors; Committee's other members shall be appointed by the Board of Directors for the period of six years. The Committee members may be withdrawn by the Board of Directors only for the reasons stated in § 12 par. 3. (5) The Members of the Committee shall elect from among the midst of them no more than two Deputy Chairs. (6) The Members of the Committee, except for the Committee Chair, shall be the employees of the Institute.

§ 14 Supervisory Board

(1) The Supervisory Board shall be the supreme control body of the Institute; it shall consist of three members. Two members shall be elected and withdrawn by the National Council of the Slovak Republic on the proposal of the appointed committee and one member shall be elected and withdrawn by the Justice Minister of the Slovak Republic. The Supervisory Board shall elect a Chair from among their members. The term of office of the Supervisory Board members shall be six years. (2) The Supervisory Board shall control the activity and economy of the Institute, its Board of Directors and Committee, whether they are in accordance with the present Act, with other generally binding legal regulations and the Statute of the Institute. For this purpose the Members of the Supervisory Board shall be entitled to look into all documents related to the Institute activity. According to the nature of the matter the Supervisory Board shall advise the Board of Directors, the Government and the National Council of the Slovak Republic of the shortcomings established. (3) The Board of Directors shall discuss the draft budget, the annual financial statements and the annual report at presence of the Supervisory Board before presentation thereof to the National Council of the Slovak Republic.

§ 15 The Assets of the Institute

(1) The State shall transfer from the ownership of the Slovak Republic to the Institute the real estates enabling to fulfill the tasks hereunder. (2) The State shall be able to transfer or permanently lend to the Institute, without compensation, some visual and written documents and other materials related to the period of oppression 1939 - 1989 and to the tasks of the Institute. (3) The State shall further be able to transfer to the ownership of the Institute also other assets provided that the quality, extent and availability of the generally useful services provided by the Institute is improved thereby.

§ 16 Economy and Financing of the Institute

(1) The Institute shall manage a) assets of its own, b) the State assets. (2) The own assets shall represent money, securities, other movables and immovables as well as other proprietary rights and values which may be evaluated by money and which by their nature can serve to fulfill the Institute's tasks. (3) Handling of the State assets, managed by the Institute, shall be regulated by a special regulation. (4) For the purpose of fulfillment of the tasks hereunder the Institute shall be provided with subsidies and special-purpose subsidies from the state budget of the Slovak Republic. The Institute shall manage the mentioned subsidies according to special regulations. (5) For the purpose of the income tax and donation tax, each donation to the Institute shall be considered a donation to the Slovak Republic.

Section Three

Disclosing and Making Public the Documents in the Scope of Competence of the Institute § 17

(1) Upon a request of a physical person of 18 or more years of age, the Institute shall: a) notify the person whether there is a personal file or a file containing personal data regarding that person kept in records in the preserved information system of documents, which were created by the activity of the State Security, and whether this file is preserved and, moreover, whether a record is preserved containing the results of the use of intelligence technology or of monitoring of that person by the State Security and whether there is an information output from the files or actions preserved, b) disclose to this person a copy of the preserved file stated under letter a), and if it contains the name or a fictitious name (code name) of a person kept in records as a collaborator or member of a security authority, then disclose also 1. a copy of the preserved personal file of the person kept in records as a collaborator of a security authority and 2. a copy of the preserved personal (cadre) file of this member of a security force, c) disclose to this person the preserved record containing the results of the use of intelligence technology and of the monitoring of this person by the State Security, as well as the preserved information output from files, in which he or she is mentioned, including a copy of the preserved personal (cadre) file of the member of a security authority stated in this information output, d) disclose preserved documents, which were created as a result of the activities of the Main Directorate of the Military Counterintelligence of the National Security Corps (Directorate III), and documents, which were created as a result of the activity of other security authorities, kept in records in record tools of this directorate or in archive and record tools of archives of the armed forces, e) disclose preserved documents, which were created as a result of the activities of the Department of Internal Protection of the Penitentiary Forces; if it is a personal file of a person kept in records as a collaborator of the

Department of Internal Protection, it shall be disclosed in the case that this person was used for the interests of State security authorities. (2) After the death of a person as defined in paragraph 1, the Institute shall have the duties as defined in paragraph 1, also based on a request submitted by a person eligible to apply the right to protect the dignity of the deceased. 6) (3) If there is a court trial underway regarding the rehabilitation proceeding pursuant to special regulation, 7) persons eligible according to such regulation shall 7) be enabled access to the files created and kept by the State security authorities about persons, which are no longer alive and who suffered property losses or other wrongdoings, for the purpose of obtaining any evidence material regarding the facts as regulated by a special regulation.7)

§ 17a

The Institute shall provide the state bodies, for the purpose of fulfillment of the tasks under the special regulation 7a), with information or disclose the documents under § 6.

§ 18

The Institute further shall, upon a request by a physical person older than 18 years, a) notify, whether a file containing personal data, required by him/her, has been kept in the preserved information systems of the files created by the activity of the State Security and other security authorities and whether it has been preserved, b) notify, whether the person stated by him/her has been kept in records as a collaborator of the State Security and other security authorities and whether the personal file of such person has been preserved, provided that such person not being a foreigner, c) disclose to him/her a copy of the preserved file mentioned in letter a) and the document kept in letter b), provided that such person not being a foreigner, d) disclose to him/her a copy of the preserved personal (cadre) file or personal record card of a security authority member contained in the list published by the Institute under § 19.

§ 19 Publication of the Documents used for Registration and of Lists of Personal Files

(1) The Institute shall issue by print and by electronic media the rewritten form of records from preserved or reconstituted file protocols and other record tools of State security authorities from the years 1939 through 1989, stating mainly data regarding the date of creation of the file, its movement and archiving, type of file and its amendments, regarding persons, unless they are foreigners, or entities, for whom file records are kept. From the preserved protocols of files of the Main Directorate of Counterintelligence of the National Security Corps (Directorate I), the Institute shall issue an overview of object files kept up to December 31st, 1989 and an overview of active and influential measures. The Institute shall also issue by print and by electronic media the rewritten form of files protocol of the Department of Internal Protection of the Penitentiary Forces in the scope of object files and files of persons kept in records as collaborators of this Department, if they were used for the interests of State security authorities. (2) The Institute shall issue on an ongoing basis by print and by electronic media a list of personal (cadre) files of members of security authorities, disclosed according to § 17 section 1 letter b) point 2, along with the statement of the date of entry of that member into a security authority, the service functions performed in the security authority by that member and the date when this work relation ended.

Section Four Procedure of Disclosure of the Documents

§ 20 Application

(1) The documents shall be disclosed under § 17 and 18 on the basis of an application. The application shall be filed to the Institute in writing. (2) The applicant shall state his/her name, surname, birth identification number or, if he/she has not a birth identification number, the date of birth and his/her address in the application. In the application he/she shall further state a) his/her state citizenship, including previous ones, previous changes in his/her surname, birthplace, address of the permanent residence in the Slovak Republic, including the region names of previous permanent residences, provided that he/she has had or had them if he/she asks for disclosure of the documents under Art. 17 par. 1, b) the name of the institution or the organized group of persons, whom the object file should be related to, or surname and possibly the name and other identification traits of the person regarding whom he/she is asking about, whether he/she has not been kept in files as a collaborator of the State Security and other security authorities, provided that he/she applies for disclosure of the files under § 18 p b), c) identification of the personal (cadre) file under which the person has been recorded in the list published by the Institute under § 19, provided that he/she applies for disclosure of such file under § 18 par. d), d) name, surname and birth identification number of a deceased or if he/she has it not, then his/her date of birth and the data on the deceased stated in letter a), if the applicant is a person authorized to submit an application under § 17 par. 2.

(3) The applicant shall set with his/her officially certified signature to the application. The official certification of the signature shall not be needed if the applicant proves his/her identity upon a personal submission of the application.

§ 21 Attending to the Application

(1) The application not containing the requisites stipulated in § 20 par. 2 or 3, shall be rejected by the Institute without unreasonable delay, with stating the established shortcomings of the application; while the Institute shall do so always in a written form, with a personal delivery, with the exception for the cases when the applicant took his/her application back by a declaration into a protocol within an oral proceeding. (2) The application for disclosure of a personal file, containing the requisites stipulated in § 20 par. 2 and 3 shall be attended to by the Institute within 90 days from the delivery date of the application by a written reply to the applicant using a personal delivery. (3) The application for disclosure of documents that are not a personal file, provided that such application contains the requisites stipulated in § 20 par. 2 and 3, shall be attended to by the Institute without unreasonable delay after having ensured the technical resources.

(4) In the written reply the Institute shall notify the applicant about a) the data stated in § 17 par. 1 letter a) and § 18 letter a), b) the place of disclosure of the documents, c) the information on the records of existence of the file, provided that the file has not been preserved, especially its type, period and which part of the security authority it was kept by, d) the finding that the applicant is a person kept in the records as a collaborator of the State Security or another security authority.

§ 22 Method of Disclosure of the Documents

(1) The applicant whom the Institute notified that the documents he/she had applied for are subject to being disclosed, shall have the right to access them (hereinafter referred to as “authorized applicant”).

(2) The documents shall be disclosed by making the authorized applicant acquainted with the copies of the documents in the place notified to him/her by the Institute in the written reply. (3) The right to disclosure of documents stated in § 17 par. 1 shall also have, in addition to the authorized applicant, the physical person having presented the consent of the authorized applicant with his/her officially certified signature. The documents shall be disclosed to such person in the extent and way in which they are being disclosed to the authorized applicant. If the consent can be granted neither by the authorized applicant nor by the persons proving the right for protection of the deceased person, a designated committee of the National Council of the Slovak Republic may decide on disclosure of the documents.

§ 23 Personal Data Protection

(1) Before the disclosure of the file to an authorized applicant, the Institute shall make illegible in the copy of the document the date of birth and residence of other persons and also all data on their private and family life, on their criminal activity, health and property condition. If the document being disclosed is a personal (cadre) file of a security authority member, all data on the persons out of the member's service and public activity shall be also made illegible.

(2) If a physical person, to whom there is kept a personal file or a file containing personal data, hands over to the Institute a statement on the contents of the file or the fact of registration in the records in the information systems of the security authorities files, the Institute shall include such statement in the data regarding such person as an integral part of the document and to disclose it to the authorized applicants together with the documents or records on the registration.

§ 24

Application for notification of legitimate names

The authorized applicant may, when becoming acquainted with the documents being disclosed, ask the Institute for notification of the legitimate name of the person who is mentioned therein under a fictitious name (code name). If the person who is mentioned under a fictitious name (code name) in the document, is a person kept in the records as a collaborator of the security authority and identification of the names is possible, the Institute shall satisfy the authorized applicant without delay on the spot.

§ 25 Issue of a Copy of the Document

(1) The Institute shall issue to the authorized applicant, at his/her request submitted when becoming acquainted with the document being disclosed, one copy of the entire document or a selected part according to his/her choice. The Institute shall stamp each page of the issued copy. The authorized applicant shall confirm takeover of the issued copy by a signature. (2) For the issue of a copy, the Institute shall collect a fee in the amount of SKK 2 for each, even an incomplete page. This fee shall be the income of the Institute.

§ 26 Information System of the Documents

(1) For the purpose of disclosure of the documents the Institute shall operate an information system of documents. (2) The Institute shall keep in the information system the documents to be disclosed and published, data on the authorized applicants and if the authorized applicant is a person authorized under § 17 par. 2, then the data on a deceased person stated in § 17 par. 1. (3) The Institute shall not be

obliged to verify whether the data in a document and the data acquired into the information system of the documents from the preserved registration aids stated in paragraph 2 are accurate or truthful. (4) A part of the information system of the documents shall be the registration of applications. In this register the Institute shall keep the applications under § 20 and copies of the replies under § 21 and the confirmations on takeover of the copies under § 25.

§ 27 Duties of Public Authorities, Legal Entities and Physical Persons and Sanctions

(1) The Ministry of Interior of the Slovak Republic, the Ministry of Defence of the Slovak Republic, the Ministry of Justice of the Slovak Republic and the Slovak Intelligence Service shall hand over to the Institute the documents on the activity of the security authorities in their ownership, possession or administration, within eight months from the effective date hereof. They shall also hand over to the Institute the copies of the certificates, issued to the citizens of the Slovak Republic during the effect of the Act No. 451/1991 Coll. stipulating some other prerequisites for execution of some offices in state authorities and organizations of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic. (2) The public authorities and self-government authorities disposing of the evidence and other types of documents related to the activity of security authorities of the State hereunder, shall be obliged to cooperate free of charge with the Institute in preparation of visual, audio or other documentation. (3) Another person, disposing of evidence and other types of documents under paragraph 2, shall be obliged to enable to the Institute to prepare a visual, audio or other documentation at the Institute's expenses. (4) For the purpose stated in paragraphs 1 to 3 the Institute shall be considered the authority stated in a special regulation.⁹⁾ (5) A person who fails to comply with the duty under paragraph 3, may be imposed a fine up to SKK 100,000. When determining the amount of the fine, the relevancy, importance, period of duration and consequences of breaching the duty shall be taken into account. The fine may be imposed within one year from the day when the Institute established the breaching of the duty under paragraph 3, however, no longer than three years from the day when the duty was breached. (6) The fine shall be payable within 30 days from the day when the decision on imposing the fine came into force. The fine shall be revenue of the state budget. (7) As for other matters, the general regulations on offences shall apply to the procedure under paragraphs 3 and 5. 10)

§ 28 Joint Provisions

(1) The Government of the Slovak Republic shall ask the governments of the former member states of the Warsaw Pact and the Government of the Russian Federation, the Czech Republic and the Federal Republic of Germany to issue the documents under § 1 letter. a). The Government shall transfer such documents to the Institute's ownership. (2) The administrative procedure 11) shall not apply to the procedure hereunder, with the exception for the procedure under § 27 hereunder.

§ 29 Transitory Provisions

(1) An application for disclosure of the documents within the force of the Institute hereunder, when concerning § 17 and 18 hereunder, may be submitted no earlier than after seven months from the effective date hereof. (2) The Attorney General shall establish, within six months from the effective date hereof, a special group of attorneys at the Attorney General's Office of the Slovak Republic to fulfill the tasks hereunder. These attorneys shall meet the condition of integrity under § 11. (3) The term of office of a Supervisory Board member who executes the office of the Supervisory Board member as of December 1st, 2004, shall terminate by the expiry of six years from his/her election or appointment.

Article II

The Act of the National Council No. 149/1975 Coll. on Archiving, in the wording of the Act of the Slovak National Council No. 571/1991 Coll., of the Act of the National Council of the Slovak Republic No. 222/1996 Coll. and of the Act No. 312/2001 Coll. shall be supplemented as follows: In § 11 the paragraph 3 shall be supplemented by letter d) with the following wording: "d) if these are file materials and archival documents of the Communist Party of Czechoslovakia and other organizations based on its ideology, activity of which was focused on repressing human rights and democratic system, 1) unless otherwise stipulated by a special act.1a)". Remarks under line to the references 1 and 1a shall read as follows: "1) § 1 of the Act of the National Council of the Slovak Republic No. 125/1996 Coll. on Immorality and Illegality of the Communist System. 1a) The Act No. 553/2002 Coll. on Disclosure of the Documents on the Activity of the Security Authorities of the State between 1939 and 1989 and on Establishment of the Nation's Memory Institute and on Supplement to Some Acts (Nation's Memory Act)". The existing reference 1 shall be marked as reference 1b.

Article III

The Act of the Slovak National Council No. 320/1992 Coll. on Administrative Fees in the wording of the Act of the National Council of the Slovak Republic No. 181/1993 Coll. and of the Act of the National Council of the Slovak Republic No. 58/1995 Coll. shall be supplemented as follows: The item

2 at the end of the text "Exemption" in the tariff of administrative fees shall be supplemented by the following sentence: "If these are copies of the documents disclosed, issued under § 25 par. 1 of the Act No. 553/2002 Coll. on Disclosure of the Documents on the Activity of the Security Authorities of the State between 1939 and 1989 and on Establishment of the Nation's Memory Institute and on Supplement to Some Acts (Nation's Memory Act), the fee shall be reduced by 90 %."

Article IV

Act No. 140/1961 Coll. – the Penal Act in the wording of the Act No. 120/1962 Coll., the Act No. 53/1963 Coll., the Act No. 184/1964 Coll., the Act No. 56/1965 Coll., the Act No. 81 /1966 Coll., the Act No. 148/1969 Coll., the Act No. 45/1973 Coll., the Act No. 43/1980 Coll., legislative provision of the Presidium of the Federal Assembly of the Czechoslovak Socialist Republic No. 10/1989 Coll., the Act No. 159/1989 Coll., the Act No. 47/1990 Coll., the Act No. 84/1990 Coll., the Act No. 175/1990 Coll., the Act No. 457/1990 Coll., the Act No. 545/1990 Coll., the Act No. 490/1991 Coll., the Act No. 557/1991 Coll., the Act No. 60/1992 Coll., Ruling of the Constitutional Court of the Czech and Slovak Federative Republic of September 4th, 1992 published in the part 93/1992 Coll., the Act of the National Council of the Slovak Republic No. 177/1993 Coll., the Act of the National Council of the Slovak Republic No. 248/1994 Coll., the Act of the National Council of the Slovak Republic No. 102/1995 Coll., the Act of the National Council of the Slovak Republic No. 233/1995 Coll., the Act of the National Council of the Slovak Republic No. 100/1996 Coll., the Act No. 13/1998 Coll., the Act No. 129/1998 Coll., the Act No. 10/1999 Coll., the Act No. 183/1999 Coll., the Act No. 399/2000 Coll., the Act No. 253/2001 Coll., the Act No. 485/2001 Coll., the Act No. 237/2002 Coll. and the Act No. 421/2002 Coll. shall be supplemented as follows: § 67a shall be supplemented by the letter d) with the following wording: "d) other criminal actions committed in the period from 1939 up to December 29th, 1989, for which an exceptional penalty may apply, if due to political reasons unreconcilable with the principles of the law order of a democratic state there has been no lawful conviction and nor charges were dropped, if the criminal actions were committed by public officers or if they were committed in relation to persecution of an individual or groups of persons due to political, racial, or religious reasons."

Article V

§ 31 Effect

The present Act shall come into effect on the declaration date, with the exception for Art. I of the provision of § 19, which shall come into effect on the date of expiry of one year from the declaration date hereof. Act No. 110/2003 Coll. shall come into effect on March 28th, 2003. Act No. 610/2004 Coll. shall come into effect on December 1st, 2004.

Jozef Migaš, in his own hand Mikuláš Dzurinda, in his own hand

----- /1/ § 9 of the Act No. 40/1974 Coll. on National Security Corps /2/ Edict of the Minister of Foreign Affairs No. 32/1955 Coll. on the Convention on Prevention and Punishment of the Crime of Genocide. Edict of the Minister of Foreign Affairs No. 53/1974 Coll. on the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Provisions of Chapter Ten of the Penal Act. Edict of the Minister of Foreign Affairs No. 143/1988 Coll. on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. /2a/ Act No. 283/2002 Coll. on Reimbursement of Traveling Expenses. /2b/ For example § 136 of the Labor Code. /3/ § 20 of the Act No. 213/1997 Coll. on Non-profit Organizations Providing Generally Useful Services. /4/ Act Of the National Council of the Slovak Republic No. 278/1993 Coll. on Administration of the State Property, as amended. /5/ Act Of the National Council of the Slovak Republic No. 303/1995 Coll. n Budgetary Rules, as amended. /6/ § 15 of the Civil Code /7/ Act No. 87/1991 Coll. on Out-of-court Rehabilitations, as amended. /7a/ § 20 of the Act No. 241/2001 Coll. on Protection of Official Secrets and on Amendment and Supplement to Some Acts. /9/ § 11 par. 3 letter b) of the Act of the Slovak National Council No. 149/1975 Coll. on Archiving, as amended. /10/ The Act of the Slovak National Council No. 372/1990 Coll. on Offences, as amended. /11/ Act No. 71/1967 Coll. on Administrative Procedure (Code of Administrative Procedure).

HUNGRIA

Act No. III of 2003. On the Disclosure of the Secret Service Activities of the Communist Regime and on the Establishment of the Historical Archives of the Hungarian State Security

The Parliament wishes to facilitate the familiarisation with the activities of the state security services of the past

regime and with the information compensation of the victims. With a view to this, in order to guarantee the right of those concerned to the information self-determination and to enforce the constitutional right to getting acquainted with the data of public interest – in consideration of the constitutional interest linked up with the sovereignty and the guarantee of the constitutional order of the Republic of Hungary, as well as of the national security interests of the constitutional state – the Parliament passes the following Act:

Article 1: (1) The effect of the Act shall cover the documents and data which were produced at and belonged to

the archival materials of, in connection with the operation of the Hungarian State organs performing state security activities between 21 December 1944 and 14 February 1990,

a) the Office Division III of the Ministry of the Interior, its territorial and local organs, as well as their predecessors (the Political Security Departments of the police headquarters in Budapest and the countryside of the Hungarian State Police and the operative groups of the Economic Security Departments, the State Security

Department of the Hungarian State Police, the State Security Authority of the Ministry of the Interior, the State

Security Authority, the organizational units of the Ministry of the Interior having performed state security tasks

between 1953 and 1956, the Political Investigation Division of the Ministry of the Interior), the Reconnaissance

Department of the Border Guards of the Ministry of the Interior, as well as the Military Political Department of the Ministry of Defence, the Military Political Office Group of the Ministry of Defence, the Military Intelligence Office Division of the Ministry of Defence, the Office Division IV of the Ministry of Defence, the Office Division 2 of the General Staff of the Hungarian People's Army, the Foreign Affairs Department of the Ministry of the Interior, the Department for International Relations of the Ministry of the Interior, the Security Department of the Ministry of the Interior, the Internal Security Department of the Ministry of the Interior, the State Security Operative Registration Department of the Ministry of the Interior or

b) the Personnel Division of the Ministry of the Interior in connection with the employees of the Office Division

III of the Ministry of the Interior, as well as with its "secret" and "strictly secret" staff members,

c) and the committee controlling certain persons performing important, public confidence and public opinion forming positions.

(2) In the application of this Act:

1. *document and registration (hereinafter referred to jointly as document):* any document specified in item c) of

Article 3 of the Act LXVI of 1995 (hereinafter referred to as the Archival Act) on the official documents, public

archives and the protection of public archives materials;

2. *person concerned:* any natural person, whose personal data are included under any pretext in the documents

controlled by the Historical Archives of the Hungarian State Security (hereinafter as the Archives);

3. *person under observation:* any natural person, on whom the organizations having produced the documents as

specified under item a) of Article 1 gathered data purposefully, during an open or secret information collection

process;

4. *professional employee*: any person, who was in professional service relationship with the organizations having produced the documents coming under the effect of this Act, including both the “secret” and “strictly secret” staff members;

5. *collaborator*: any person, who provided reports secretly, under coverage and cover-name to the organizations having produced the documents coming under the effect of this Act, or signed a declaration of being hired to this effect or enjoyed an advantage for this activity;

6. *operative contact person*: any person, who was kept in records as “voluntary contact” or “occasional contact” by the organizations having produced the documents coming under the effect of this Act;

7. *third party*: any other natural person not falling under the effect of items 3-6, on whom the organizations, having produced the documents falling under the effect of items *a)-b)* of paragraph (1) of Article 1, controlled data;

8. *relative*: the spouse, the common-law partner (if the marriage or the common-law partnership existed in the time of the production of the document and of the death of the person concerned as well), the direct-line relative, the adopted child, stepchild and foster child, the adoptive parent, step-parent and foster parent, sister and brother;

9. *scientific researcher*: any person, who possesses the research permit issued by the advisory board controlled by paragraphs (2)-(3) of Article 23 of the Archival Act;

10. *applicant*: the person concerned, the scientific researcher and any person getting to know the data under Article 5;

11. *anonymization*: a technical procedure excluding the recognition of the connection between the person and the data;

12. *national security interest*: the interest defined in item *a)* of Article 74 of the Act CXXV of 1995 on the National Security Services;

13. *public servant*: any person, who exercises public power or was designated for a position entailing the exercise of public power and who forms or formed the political public opinion pursuant to his task. (3) It has to be stated separately in connection with each data that the person concerned shall be classified as a person under observation, a professional employee, a collaborator, an operative contact person or a third party. The legal status of the person concerned shall be stated in respect of the particular data by examining which purpose the data capture served for.

Article 2: (1) The previous security status of the data to be found in the documents falling under the effect of the Act shall cease to exist by virtue of this Act, except if the classification of the data is maintained by the person entitled thereto pursuant to paragraphs (2)-(3) under the Act LXV of 1995 on the State secrets and service secrets (hereinafter as the Secrecy Act).

(2) The security status of the data classified as a State secret from the sorts of data to be found in the documents falling under the effect of this Act, specified in the list of State secrets under the Annex to the Secrecy Act may be maintained, which

a) applies to a person, who was attached to the staff of the national security services at the period between 15 February 1990 and 26 May 2002 or in a part thereof, or secretly cooperated with them,

b) applies to an activity performed at the organs specified in Article 1, for which the person concerned would be threatened abroad with expulsion, ban on entry or a penal procedure,

c) applies to a person, of whom it can be thoroughly supposed for his activity performed at the organs specified in Article 1 that in case of revealing his identity a crime seriously violating or endangering life, health or the personal freedom would be committed against him or his relative for his said activity,

d) results in the disclosure of the personal identity of a collaborator or operative contact person, the recognition of whom would violate apparently or detectably the national security interests of the Republic of Hungary,

e) was produced during the proceedings of the judges controlling certain persons performing important, public confidence and public opinion forming positions, if as a result of the procedure its subject renounced or initiated his dismissal.

(3) Moreover, the State secret classification may be maintained under the Secrecy Act in respect of the data falling in the scope of State secrets, which

a) is regularly and indispensably necessary for the performance of the tasks laid down by law for the authority

legally possessing it,

b) leads to the disclosure of the device or method of the secret information collection, the familiarization with

which would violate overtly or detectably the national security interests of the Republic of Hungary,

c) in case of its becoming known to the public it would damage overtly or detectably the cipher system or

ciphering activity of the Republic of Hungary,

d) its becoming known to the public would violate overtly or detectably the international commitment of the

Republic of Hungary,

e) its becoming known to the public would violate overtly or detectably the relation between the Republic of

Hungary and an other State, or would damage the enforcement of the foreign policy goals of the Republic of

Hungary,

f) its becoming known to the public would violate overtly or detectably the interests of the Republic of Hungary

contained in paragraph (3) of Article 6 of the Constitution, linked up with the enforcement of its responsibility for the Hungarians living beyond the frontier,

g) its becoming known to the public would damage overtly or detectably the implementation of the defence policy goals of the Republic of Hungary, the international relations or combat availability of the Hungarian Army,

h) its becoming known to the public would violate overtly or detectably the national economy interests of the

Republic of Hungary.

Article 3: (1) A person under observation, a third party, a professional employee, an operative contact person and a collaborator may get to know and may make known the personal data included in a document managed in the Archives, which can be brought into connection exclusively with him.

(2) A person under observation may get to know the data necessary for identification of a collaborator, operative

contact person and a professional employee who can be brought into connection with him.

(3) A person under observation and a third party may get to know, and with the consent of the third party or the

person under observation, he may make known the data recording or describing the personal contacts established

between the person under observation and the third party (e.g. data gathered on personal meetings, conversations).

Article 4: (1) A scientific researcher may get to know the data contained in the documents controlled in the

Archives, within the limits laid down by paragraphs (2)-(3) and may use them in compliance with Article 32 of the Act LXIII of 1992 on the protection of personal data and the publicity of data of public interest.

(2) A scientific researcher may get to know the data about the state of health, the harmful habit and sexual life

after thirty years following the year of death of the person concerned. If the year of death is not known, the time of protection shall be ninety years as counted from the birth of the person concerned, and if neither the birth nor the death time is known, it shall be sixty years after the production of the archival material.

(3) A scientific researcher may get to know the data concerning the racial origin, the national, nationality and

ethnic status, the religious or other ideological persuasion – within the time of protection – in an anonymized form.

The advisory board defined under paragraph (2) of Article 23 of the Archival Act authorizes the familiarization without anonymization if the purpose of the surveillance can be brought into relation with the racial origin, the national, nationality and ethnic status, and with the religious and other ideological persuasion and the scientific researcher proves that his familiarization with these data is indispensably necessary for his research started earlier, supported by publications issued in professional journals.

Article 5: (1) Anybody may get to know and may make known in anonymized form the documents controlled in the Archives.

(2) The data of the person concerned may be familiarized with after thirty years following the year of his death –

within the limits of paragraphs (3)-(4) – without anonymization. If the year of death is not known, the time of

protection shall be ninety years as counted from the birth of the person concerned, and if neither the birth nor the

death time is known, it shall be sixty years after the production of the document.

(3) The data on the racial origin, the national, nationality and ethnic status, the religious or other ideological

persuasion, the state of health, the harmful habit and the sexual live may not be familiarized with until sixty years

after the death of the person concerned even in anonymized form. If the year of the death is not known, the time of protection shall be one hundred and twenty years as counted from the birth date of the person concerned, and if neither the birth nor the death time is known, it shall be ninety years after the production of the document.

(4) No anonymization shall be required for the documents,

a) which were recorded in connection with public performances at events open to the public or the audience,

b) which have already been made lawfully public,

c) which are necessary for the identification of the publicly acting professional employee, the publicly acting

operative contact person and the publicly acting collaborator,

d) to the familiarization with which the person concerned agreed in writing.

(5) The data not anonymized may be made public by anyone.

(6) If the applicant wishes to get to know data necessary for the identification of the publicly acting collaborator,

professional employee or operative contact person, the Archives shall request the public servant concerned to make a declaration whether he/she recognizes his/her capacity as a public servant. If in fifteen days after the receipt of the invitation the person concerned makes a declaration that he/she does not recognize his/her public servant's capacity, the Archives shall refuse the application for the familiarization with the data; otherwise it fulfils the request for familiarization. A legal remedy may be resorted to against the decision of the Archives under the provisions of Article 29 of the Archival Act, during which the Court takes up a position on the public servant's capacity of the person concerned. The judge of the Municipal Court of Budapest designated for this task shall proceed in the case. If the Court classifies the person concerned as a public servant, the Archives shall satisfy the application for familiarization.

Article 6: (1) A person under observation and a third party may prohibit in a written declaration the research of

the data under Articles 4-5 for ninety years after the production of the data at most.

(2) After the death of a person under observation or of a third party the rights due to him under this Act may be

exercised by the dependent of the deceased, except if the deceased prohibited it in writing or it is excluded by the law. The person who was authorised thereto in writing by the person under observation or the third party shall also have the right to get to know the documents.

(3) The person concerned may enforce his right to correction in respect of the data included in the documents,

applying to him, by attaching the correct data containing note to the document with leaving the original data

unchanged.

Article 7: (1) The official or employee of the authorities under the guidance of the Minister of Defence, of the Minister supervising the civil national security services and of the Minister of the Interior, as well as of authorities performing other public tasks may inspect in the matter falling to his/her scope of authority into the personal data contained in the documents deposited in the Archives in case if required for the performance of his/her task stipulated by law, after the prior approval by the National Security Committee of the Parliament or in cases necessitating specially prompt actions with his subsequent information.

(2) In case of the courts the prior approval as contained in paragraph (1) is not required.

Article 8: (1) It is the Archives that handles the documents falling under the effect of this Act with the exception of documents containing the data specified in paragraphs (2)-(3) of Article 2. The Archives shall be the legal successor of the Historical Office.

(2) The Archives shall be a publicly financed organization with independent, complete economic management

authority, an independent heading within the budget section of the Parliament.

(3) The Archive

a) shall ensure the exercise of the right to the familiarization with their personal data for those concerned under the conditions provided for by this Act;

b) shall provide for the data supply to the organizations performing the fact-finding as determined in the law on the publicisation of the national security past of persons playing public life roles;

c) shall ensure the pursue of the research activity with the conditions laid down by this Act;

d) shall perform the tasks specified in the Archival Act.

(4) The operation of the Archives shall be supervised by the Chairman of the Parliament.

(5) The Archives shall be headed by the Director General. The Director General and his Deputy after hearing the

opinion of the Director General shall be appointed by the Chairman of the Parliament for seven years.

The selection of the candidates shall take place by way of open competition. The candidates may be appointed if they have been heard previously by the National Security Committee, as well as the Cultural and Press Committee of the Parliament.

(6) The appointment of the Director General of the Archives and his Deputy shall be terminated if

a) his term of assignment expires,

b) he resigns,

c) he dies,

d) he is relieved by the Chairman of the Parliament,

e) the Chairman of the Parliament states incompatibility against him.

(7) Dismissal shall be applied if the Director General (Deputy Director General)

a) has become unworthy of his post,

b) cannot perform his job tasks continuously beyond 90 days for health reasons.

(8) The Director General (Deputy Director General) shall be deemed as unworthy of his post if the Court has found him guilty by a legally binding judgement in committing an intentional crime or if he fails to accomplish his tasks for any reason attributable to him.

Article 9: (1) The Director General (Deputy Director General) of the Archives may not be the person who was a

member of the Government, Under-secretary, an office-holder or employee of the countrywide organization of a

party in the ten years preceding the time of appointment. Neither may the Director General (Deputy Director

General) of the Archives be any person who was employed by the Office Division III of the Ministry of the Interior or by its predecessors or received their reports or was a collaborator or operative contact person who had maintained contact with the said agencies.

(2) The Director General (Deputy Director General) of the Archives may not accept any assignments other than a legal relationship of assignment under scientific, educational, artistic, copyright and patent protection, moreover aimed at literary advising, copy editing activities, may not pursue any salary-earning profession, may not be a lead official of an economic association or member of a supervisory board.

(3) The emergence of the reason of incompatibility shall be notified without any delay to the Chairman of the

Parliament. The reason of incompatibility shall be terminated within 30 days after the appointment or the emergence thereof.

(4) The Director General shall report annually to the committees of the Parliament set forth in paragraph (5) of Article 8.

(5) The Director General shall exercise the data classifying authority power provided by the Secrecy Act in respect of the systems and measures destined for the protection of data managed by the Archives, falling to the sphere of State secrets and service secrets.

(6) The rules applicable to the public administrative under-secretaries shall be applied to the Director General of the Archives with the divergences stipulated by this Act and the rules applicable to the deputy under-secretaries shall apply to the Deputy Director General *mutatis mutandis*. With the exception of the appointment and the dismissal, the other employer's rights in respect of the Director General shall be exercised by the Secretary General of the Parliament.

(7) The staff members of the Archives shall be governed in other matters by the provisions of the Act XXIII of 1992 on the Legal Relationship of Civil Servants governing the public service relationship of the civil servants of the central administrative authorities.

Article 10: (1) The operation of the Archives - unless otherwise provided for by this Act - shall be governed by the provisions of the Secrecy Act. Article 28 of the Secrecy Act shall not be applicable to the procedure of the Archives.

(2) The Archives makes the data recognizable in an anonymized form under this Act accessible to the applicant so that it hands over the duplicate copy of the document containing the data and renders the data unrecognizable to the applicant illegible on it. Every duplicate copy made of the documents shall be provided to the person under observation with special promptness and free of charge.

(3) The Archives shall provide for the compliance with the secrecy rules in respect of data classified under the Secrecy Act.

(4) The Archives shall provide for the registration and management under unified aspects of the documents received and produced.

(5) The effect of the data protection contract concluded under paragraph (3) 24/A of the Archival Act shall cover the documents managed in the Archives if this is explicitly provided for by the contract - with the exact enumeration of the documents.

Article 11: (1) The Act shall enter into force - with the exception contained in paragraph (2) - on the eighth day after its promulgation.

(2) Paragraphs (1)-(4) and (6)-(8) of Article 8, Article 9, as well as paragraph (3)-(4) of Article 13 of the Act shall enter into force on the 1st April 2003.

(3) In thirty days after the entry into force of the Act the Chairman of the Parliament shall announce a competition for performing the post of the Director General of the Archives and shall also provide for the evaluation of the tender within ninety days after the entry into force of the Act.

(4) In fifteen days after the appointment of the Director General of the Archives the Chairman of the Parliament shall announce a competition for performing the post of the Deputy Director General of the Archives and shall also provide for the evaluation of the tender within ninety days after the announcement.

(5) Any natural person and legal person, as well as any organization not having the status of a corporate body shall hand over the documents unlawfully found in his possession, falling within the competence of the Archives –including both their duplicates and copies – to the Historical Office within thirty days after the entry into force of the Act.

(6) He who possesses unlawfully any document falling within the competence of the Archives and hands it over or forwards it incognito to the Historical Office within thirty days after the entry into force of the Act shall be released from the legal consequences of the unauthorized data management and the abuse of special personal data, as well as of the State secret violation. The documents unlawfully possessed, falling within the competence of this Act may not be used as evidences before any authority or court.

(7) The Archives shall hand over any document, for the custody of which it is not authorized by this Act, to its

original owner or its legal successor, and to the competent archival office in case of official documents, within six months after the entry into force of the Act.

(8) The familiarization with a document managed by the Archives, classified under the Secrecy Act shall require the permit specified in item 7 of paragraph (1) of Article 2 of the Secrecy Act.

(9) The documents falling under the effect of the Act may be selected for destruction as from the date of the entry into force of the Act exclusively in compliance with the rules of the Archival Act, in the Archives.

Article 12: (1) Within ninety days after the entry into force of the Act a Committee shall be established, a member of which shall be appointed each by the Government, President of the Hungarian Academy of Sciences and the President of the Hungarian Historical Association. The members of the committee shall be appointed by the Chairman of the Parliament – after their "C" type national security control. The committee shall supervise the handover to the Archives of the documents falling under the effect of this Act. The rules of procedure of the committee shall be approved by the Minister of the National Cultural Heritage in agreement with the Minister controlling the civil national security services. The members of the committee may inspect without restriction into the documents falling under the effect of this Act at the document management organizations – with the exception of the documents included in a separate list specified in paragraph (5). The committee shall establish a report of the handover of the documents, which shall be forwarded to the Chairman of the Parliament within three months after the expiration of the deadline stated in paragraph (8). The assignment of the members of the committee shall be terminated within 30 days after the establishment of the report.

(2) The revisional procedure regulated in Article 10 of the Secrecy Act shall be conducted after the entry into force of the Act in respect of the documents set forth in items *a)-b)* of paragraph (1) of Article 1 – in consideration of the provisions of this Act, as well as of the Secrecy Act.

(3) The sets of documents which contain data the security status of which was terminated or maintained by the data classifying authority shall remain further on, too in the management of the organization managing the set of documents. As regards the part of the document set which contains data, the security status of which was terminated by the data classifying authority, the document set managing organization shall make a copy thereof shall hand it over to the Archives.

(4) The list of documents the security status of which was maintained by the data classifying authority shall be handed over to the Archives. The list may not contain any State secrets. If the Archives does not find it justified to maintain the security status of any document included in the list, it may apply to the Municipal Court of Budapest in order to enforce the termination of the security status. The lawfulness of the maintenance of the security status shall be proved by the data classifying authority. The Court shall decide on the case in a civil, amicable proceeding within thirty days. The judge of the Municipal Court of Budapest designated for this task in the matter shall proceed – after the "C" type national security control. The parties and their representatives may not be present at the hearing of each other. The observation of the regulations concerning the protection of State secrets shall be ensured at every phase of the procedure. No appeal shall be resorted to against the decision of the Municipal Court of Budapest. The Court decision may not contain any State secret.

(5) The Director General of the National Security Service shall draw up a separate list of the documents of outstanding importance from the viewpoint of the protection of the national security interest from among the documents containing data specified in paragraphs (2)-(3) of Article 2 during the revisional procedure, which shall be approved by the judge of the Supreme Court designated for this task – after the "C" type national security control. The documents included in the separate list established under this paragraph shall not be indicated in the list of documents set forth in paragraph (4).

(6) If the data classifying authority does not confirm the security status, maintained under paragraph (2) of Article 28 of the Secrecy Act, of the document emerged before 1970 within one hundred and eighty days after the entry into force of the Act, the security status of the document shall be terminated and the document shall be handed over to the Archives within thirty days.

(7) If the data classifying authority does not confirm the security status, maintained under paragraph (2) of Article 28 of the Secrecy Act, of the document emerged between 1970 and 1979 within one year after the entry into force of the Act, the security status of the document shall be terminated and it shall be handed over to the Archives within thirty days.

(8) If the data classifying authority does not confirm the security status of the document emerged in 1980 or after 1980 within two years after the entry into force of the Act, the security status of the document shall be terminated and it shall be handed over to the Archives within thirty days.

(9) The data classifying authority shall review under paragraph (1) of Article 10 of the Secrecy Act the documents containing the data specified in paragraphs (2)-(3) of Article 2, the security status of which he maintained during the revision determined in paragraph (2). If as a result of the revision, the data classifying authority terminates the security status, the document shall be handed over to the Archives within thirty days.

(10) The documents set forth in item c) of paragraph (1) of Article 1 shall be handed over to the Archives within

thirty days after the appointment of the Director General of the Archives.

Article 13: (1) The Articles 1/A, 25/A-25/I of the Act XXIII of 1994 on the control of certain persons performing important, as well as public confidence and public opinion forming positions and on the Historical Office, Articles 3 and 14 of the Act LXVII of 1996 on the amendment to the Act XXIII of 1994 on the control of certain persons performing important positions, as well as the Act XLVII of 2001 on the amendment to the Act XXIII of 1994 on the control of certain persons performing important, as well as public confidence and public opinion forming positions and on the Historical Office and on the law amendments related thereto shall cease to have effect on 31 March 2003.

(2) The Government shall receive an authorization to take the measures required for the implementation of the Act and to provide in this framework for the creation of the regulatory, organizational, budgetary and other conditions necessary for the disclosure of the antecedents of the document control and document protection, as well as for the unification of the documents in respect of those falling under the effect of the Act.

(3) Paragraphs (1)-(4) of Article 19 of the Archival Act shall be superseded by the following provisions:

"(1) Specialized State archives are the Military History Archives, the Archives of the Central Statistical Office and the Water Conservancy Archives, the Historical Archives of the Hungarian State Security, as well as the archives of institutions performing higher educational, scientific, cultural or health services sustained by the State.

(2) Scope of competence of the specialized archives – with the exception of the Historical Archives of the Hungarian State Security - shall cover the archivalia of the following organizations, moreover the archival materials produced during the operation of the legal predecessors of these -

a) in case of the Military History Archives the Ministry of Defence and the Military General Staff, as well as the

military organizations under the direct supervision or guidance of the former – with the exception of the military

national security services,

b) in case of the Archives of the Central Statistical Office the Central Statistical Office and the organizations

belonging under its direct supervision,

c) in case of the Water Conservancy Archives the water conservancy organizations under the supervision of the

Ministry of Transport and Water Conservancy,

d) in case of the archives of higher educational, scientific, cultural or health services providing institutions the

maintaining organization.

(3) The competence of the Historical Archives of the Hungarian State Security shall cover the documents specified in paragraph (1) of Article 1 of the Act on the Disclosure of the Secret Service Activities of the Communist Regime and on the Establishment of the Historical Archives of the Hungarian State Security.

(4) The special rules for the operation of the Historical Archives of the Hungarian State Security, as well as its tasks beyond those stipulated in this Act are laid down by the Act referred to in paragraph (3)."

(4) Paragraph (2) of Article 23 of the Archival Act shall be supplemented with the following sentence: "The advisory board authorizes the scientific research in the Historical Archives of the Hungarian State Security."

(5) The subtitle before clause 151 of the State Secrets List and clause 151 in the Annex to the Secrecy Act shall be superseded by the following provision:

"Historical Archives of the Hungarian State Security" 151. data of the systems and measures serving for the protection of data falling into the scope of State secrets and service secrets managed by the Historical Archives of the Hungarian State Security. The longest validity time for the security status of a State secret: 90 years."

POLONIA

ACT of 18 December 1998 on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation

(Journal of Laws, 19 December 1998)

Having regard for:

- the preservation of the memory of the magnitude of the number of victims, the scale of the loss and damage suffered by the Polish Nation in the Second World War and thereafter,
- the patriotic traditions of the struggle of the Polish Nation with the occupying forces of Nazism and communism,
- the acts of citizens aimed at securing the independence of the Polish Nation and defending freedom and human dignity,
- the obligation to prosecute crimes against peace and humanity as well as war crimes,
- and the duty of our state to provide compensation to all persons suffering injury through state violation of human rights -
- the expression of our conviction that no unlawful action of the state against its citizens may be kept hidden in secrecy or allowed to be forgotten,
It is hereby resolved as follows:

Chapter 1

General provisions

Article 1

This Act shall govern:

1. the registration, collection, access, management and use of the documents of the organs of state security created and collected between 22 July 1944 and 31 December 1989, and the documents of the organs of security of the Third Reich and the Union of Soviet Socialist Republics concerning:
 - a) crimes perpetrated against persons of Polish nationality and Polish citizens of other ethnicity, nationalities in the period between 1 September 1939 and 31 December 1989:
 - ω Nazi crimes,
 - ω communist crimes,
 - ω other crimes constituting crimes against peace, crimes against humanity or war crimes,
 - b) other politically motivated repressive measures committed by functionaries of Polish prosecution bodies or the judiciary or persons acting upon their orders, and disclosed in the content of the rulings given pursuant to the Act of 23 February 1991 on the Acknowledgement as Null and Void Decisions Delivered on Persons Repressed for Activities for the Benefit of the Independent Polish State (Journal of Laws of 1993 No. 34, item 149, of 1995 No. 36, item 159, No. 28, item 143, and of 1998 No. 97, item 604),
 - c) the activity of the organs of state security referred to in Article 5,
2. the rules of procedure as regards the prosecution of crimes specified in point 1 letter a),
3. the protection of the personal data of grievied parties, and
4. the conduct of activities as regards public education.

Article 2

1. In the understanding of this Act, communist crimes shall be: acts committed by functionaries of the communist state in the period between 17 September 1939 and 31 December 1989, consisting in the use of repressive measures or other violations of human rights or in connection with their use with respect to individuals or groups of people; or acts which already constituted crimes in the understanding of the Polish Penal Act in force at the time of the perpetration of the crime.
2. In the understanding of this Act the functionary of the communist state shall be a public functionary or a person enjoying the protection equal to that of a public functionary, including, in particular, state functionaries and persons occupying high-ranking positions within the statutory body of the communist parties.

Article 3

(1) Crimes against humanity shall be, in particular, crimes of genocide in the understanding of the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 (Journals of Laws of 1952 No. 2, items 9 and 10, and No. 31, item 213, and of 1998 No. 33, item 177), and other serious persecutions on account of the persecuted persons belonging to a specific national, political, social, ethnic or religious group, provided such crimes have been committed, instigated or tolerated by public functionaries.

Article 4

1. (2) The crimes referred to in Article 1 point 1 letter a) which, according to international law, are crimes against peace, humanity or war crimes shall not be barred by the statute of limitations.

1a. (3) In the understanding of Article 2, the running of the period of limitation for communist crimes which are not war crimes or crimes against humanity, commences on 1 January 1990. Such crimes shall cease to be punishable - after 30 years where an act constitutes the crime of homicide, and after 20 years where an act constitutes a different communist crime. Article 4, Paragraph 1 of the Penal Code shall not apply.

2. Where the crimes enumerated in Article 1 point 1 letter a) have been perpetrated against persons other than Polish citizens and if these crimes have been perpetrated in the territory of the Polish State, they shall also be the object of the activity of the bodies established by this Act.

3. The regulations of acts and decrees issued before 7 December 1989 and providing for amnesty or abolition shall not apply to perpetrators of war crimes, crimes against humanity or communist crimes.

Article 5

1. In the understanding of this Act, organs of state security shall be:

- 1) the Public Security Department of the Polish Committee for National Liberation,
- 2) the Ministry for Public Security,
- 3) the Committee for Public Security Affairs,
- 4) organisational units subordinate to the bodies mentioned in points 1-3,
- 5) the organisational units of the Security Service of the Ministry of Interior and subordinate field units in provincial and district administration and equivalent headquarters of the Civic Militia and in provincial, regional and equivalent offices of internal affairs,
- 6) the Frontier Guards Reconnaissance Unit,
- 7) the Central Board of the Internal Service of the military units of the Ministry of Internal Affairs and subordinate units,
- 8) the Intelligence Services of the Polish Army, the Board of the Intelligence Services of the High Command of the Polish Army, the Head Office of the Intelligence Services of the Polish Army, the Central Board of the Intelligence Services of the Polish Army and units subordinated to these bodies,
- 9) the Army Security Service,
- 10) the Second Directorate of the Central Staff of the Polish Army,
- 11) other services of the Armed Forces conducting operational and intelligence activities or intelligence gathering activities, including activities with regard to types of weapons and in military regions.

2. In the understanding of this Act, organs of state security shall also include units of the Ministry of Internal Affairs which by law were subject to dissolution upon the establishment of the Office for State Protection, including units which were predecessors thereof.

3. In the understanding of this Act, organs of state security shall also include civilian and military bodies and institutions of foreign states with tasks similar to those of the bodies referred to in clause 1.

Article 6

1. In the understanding of this Act, an aggrieved party shall be a person about whom the organs of state security collected information on the basis of data collected intentionally and secretly.

2. In the event of the aggrieved party being deceased, his/her rights issuing from this Act shall be vested in his/her closest person in the understanding of Article 115 Paragraph 11 of the Penal Code. This regulation shall not apply if there is evidence that this would be inconsistent with the will of the aggrieved party.

3. A person who subsequently became a functionary, or an employee or collaborator of the organs of state security shall not be deemed an aggrieved party.

Article 7

In the understanding of this Act, a document shall be any object or record on a computer information carrier referred to in Article 115 Paragraph 14 of the Penal Code.

Chapter 2

The Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation and its Bodies

Article 8

1. For the purpose of the performance of the tasks specified in Article 1, the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation, hereinafter referred to as the Remembrance Institute, is hereby established.
2. The Remembrance Institute shall be financed by the state budget in which it constitutes a separate part.
3. (4) The organisation of the Remembrance Institute, to the extent not regulated by this Act, shall be defined by the statute adopted by the Council of the Remembrance Institute upon the request of the President of the Remembrance Institute.

Article 9

1. The Remembrance Institute shall be managed by the President of the Remembrance Institute.
2. (5) The President of the Remembrance Institute shall, in his/her office, be independent of state authorities.

Article 10

1. (6) The President of the Remembrance Institute shall be appointed and dismissed by the Sejm (Lower House) of the Republic of Poland by a majority of 3/5 votes and with the consent of the Senate, at the request of the Council of the Remembrance Institute. The Council of the Remembrance Institute shall present a candidate who is not a member of the Council.
2. (7) The term of office of the President of the Remembrance Institute shall be five years from the day of the President's taking the oath. After the lapse of the term in office, he/she shall perform the duties of President until the new President of the Remembrance Institute assumes office.
3. (8) Not earlier than six months and not later than three months before the lapse of the term in office of the President of the Remembrance Institute, the Chairman/Chairwoman of the Council of the Remembrance Institute shall announce a public competition for that office, in accordance with the principles and the procedure defined by the Council of the Remembrance Institute. In the event of the office of the President of the Remembrance Institute being vacated for any other reason, the time limit for nominating candidates for the competition for that office shall be 30 days from the competition announcement. Interviews of the candidates for the office of the President of the Remembrance Institute shall be public.
4. The same person may not be the President of the Remembrance Institute for more than two consecutive terms in office.

Article 11

1. A Polish citizen with high moral standing and knowledge conducive to the work of the Remembrance Institute may be appointed to the office of the President of the Remembrance Institute.
2. No person who has served, worked or collaborated with the organs of state security listed in Article 5 and no judge who in a judicial decision has offended the respect of their office, acting contrary to the independence of the judiciary, may be appointed to the office of the President of the Remembrance Institute.
- 2a.. Person with regard to whom there is evidence in state archive or archives of the Institute of any circumstances mentioned in point 2 shall not be appointed to the office of the President of the Remembrance Institute.
- 2b. (10) Neither may a person be appointed to the office of the President of the Remembrance Institute whose activity has been connected with the access to state secrets or, being under the protection of state secrecy, is prevented from making a thorough protected by state secret prevents through presentation of information on the course of such a person's service, work or collaboration be appointed to the office of the President of the Remembrance Institute.
3. The President of the Remembrance Institute may not belong to any political party or trade union, nor

may he/she conduct any public activity in conflict with the dignity of his/her office.

4. The President of the Remembrance Institute may not perform any professional activities, with the exception of the position of a professor of academic school 5. The office of the President of the Remembrance Institute may not be combined with a seat in the Sejm or Senate.

6. The conditions referred to in clauses 1, 2, 3 and 5 should also be fulfilled by the public prosecutors and employees of the Remembrance Institute, including the members of the Council of the Remembrance Institute.

Article 12

(11) Prior to the commencement of performing his/her duties, the President of the Remembrance Institute shall take the following oath before the Sejm of the Republic of Poland:

"I do solemnly swear, in the capacity at the position of the President of the Remembrance Institute entrusted with me, to serve the Polish Nation loyally, to uphold the law, to perform the duties of my office conscientiously and to be guided in my actions by the principles of dignity and integrity.

The oath may be taken with the following sentence added: "So help me God!"

Article 13

The Council of the Remembrance Institute shall request the dismissal of the President of the Remembrance Institute, by a majority of votes cast, if the President:

1. has resigned from the office,
2. has become permanently unfit to perform the duties of the President of the Remembrance Institute due to a disease, infirmity or loss of strength,
3. has been convicted by a valid court judgment of criminal intentional offence prosecuted ex officio,
4. (12) does not perform his/her duties imposed by this Act, or acts to the detriment of the Remembrance Institute.

Article 14

The President of the Remembrance Institute may not, without the prior consent of the Sejm of the Republic of Poland, be called to criminal liability or deprived of liberty. The President of the Remembrance Institute may not be detained or arrested, except if being caught in the act of committing a crime and his/her detention being necessary to ensure a proper course of justice. Such a detention shall be immediately brought to the attention of the Speaker of the Sejm, who may order the immediate release of the detainee.

Article 15 (13)

1. The Council of the Remembrance Institute shall be formed within the Remembrance Institute. A Polish citizen of high moral standing and knowledge conducive to the work of the Remembrance Institute may be a member of the Council of the Remembrance Institute.
2. The Council of the Remembrance Institute shall be elected for a term of seven years. The term in office shall commence on the day of the Council's gathering for its first session.
3. The Council of the Remembrance Institute shall consist of eleven members elected by the Sejm of the Republic of Poland by an absolute majority of votes, provided, however, that two candidates shall be proposed by the National Judiciary Council.
4. Membership in the Council of the Remembrance Institute shall expire as a result of the following:
 - 1) death of member,
 - 2) resignation,
 - 3) conviction for a criminal offence,
 - 4) dismissal by the Sejm by an absolute majority of votes, at the request of the Council of the Remembrance Institute (adopted by a 2/3 majority of votes cast by the statutory composition of the Council), on account of a long-term disease or the permanent incapacity to perform duties, or on account of the non-fulfillment of the duties required by this Act.
5. The Council of the Remembrance Institute shall elect from among its members a Chairman/Chairwoman of the Council and not more than three Vice-Chairmen/Vice-Chairwomen, for a one-year term.
6. Upon the expiry of membership prior to the lapse of the term of office, the Sejm shall elect a new member for the period until the end of the term in office of the Council of the Remembrance Institute.
7. In return for the performance of their tasks the members of the Council of the Remembrance Institute shall be granted allowances determined by an ordinance of the Prime Minister, and this shall

include the reimbursement of costs according to the principles governing business trips throughout the territory of Poland.

Article 16

1. The President of the Remembrance Institute shall perform his/her duties with the assistance of the organisational units of the Remembrance Institute listed in Article 18.
2. The President of the Remembrance Institute may appoint not more than three deputies.

Article 17

1. For the purpose of accomplishing the tasks of the Remembrance Institute in locations being seats of appellate courts, branch offices of the Remembrance Institute, hereinafter referred to as branch offices, are hereby established. In other towns, delegations of the Remembrance Institute, hereinafter referred to as delegations, may be established.
2. A branch office of the Remembrance Institute shall be headed by the branch office director and a delegation of the Remembrance Institute by the head of delegation. Branch office directors and heads of delegations shall be appointed and dismissed by the President of the Remembrance Institute.

Article 18

1. Within the Remembrance Institute the following shall be set up:
 - 1) the Chief Commission for the Prosecution of Crimes against the Polish Nation, hereinafter referred to as the Chief Commission,
 - 2) the Office for the Preservation and Dissemination of Archival Records,
 - 3) the Public Education Office.
2. Within the branch offices the following shall be set up:
 - 1) branch commissions for the prosecution of crimes against the Polish nation, hereinafter referred to as branch commissions,
 - 2) branch offices for the preservation and dissemination of archival records,
 - 3) branch public education offices.
3. Units for the preservation and dissemination of archival records shall be set up within the delegations.

Article 19

1. Public prosecutors of the Chief Commission and branch commissions shall be appointed and dismissed by the General Public Prosecutor at the request of the President of the Remembrance Institute.
2. The organisational units mentioned in Article 18 clause 1 points 2 and 3 shall be headed by directors appointed and dismissed by the President of the Remembrance Institute.
3. The organisational units mentioned in Article 18 clause 2 points 2 and 3 and Article 18 clause 3 shall be headed by heads appointed and dismissed by the President of the Remembrance Institute.
4. The Chief Commission shall be headed by the Chief Commission Director. The Chief Commission Director shall be appointed, from among public prosecutors of the Chief Commission, and dismissed by the Prime Minister at the request of the General Public Prosecutor whose request shall be presented in consultation with the President of the Remembrance Institute. The Chief Commission Director shall be one of the deputies of the General Public Prosecutor.
5. A branch commission shall be headed by the head of the branch commission. The head of the branch commission shall be appointed, from among the public prosecutors mentioned in clause 1, and dismissed by the General Public Prosecutor at the request of the President of the Remembrance Institute.
6. No employee of the Remembrance Institute may take up any other professional activity without the consent of the President of the Remembrance Institute.

Article 20

1. The employees of the Remembrance Institute shall be obliged to keep confidential all the information connected with the activity of the Remembrance Institute obtained in connection with their employment at the Remembrance Institute, also after the cessation of their employment.
2. The President of the Remembrance Institute shall specify types of information and categories of employees who may disclose such information in accordance with their official position.

Article 21

The President of the Remembrance Institute and the members of the Council of the Remembrance Institute shall be obliged to keep secret the information to which they had access in connection with the functions performed thereby, also after the end of their term in office or the cessation of their membership. This requirement shall not apply to publicly known facts.

Article 22

The President of the Remembrance Institute may, in particularly justified cases, allow the disclosure of information constituting state or business secrets or may allow the production of documents or materials covered by state secrecy to be made available, to a specified person or institution, if the preservation of secrecy would prevent the performance of the tasks of the Remembrance Institute defined in this Act.

Article 23

1. The President of the Remembrance Institute shall periodically present to the Council of the Remembrance Institute information on relevant issues related to the activity of the Remembrance Institute.
2. In addition to the other tasks defined in the Act, the Council of the Remembrance Institute shall, in particular, present its stance on the following issues:
 - 1) full acceptance of documents on issues referred to in Article 1 for the archival resources of the Remembrance Institute, and the evaluation of their completeness,
 - 2) specification of rules for archiving of documents with regard to evaluation, ordering, dissemination, storage and administration,
 - 3) specification of rules for providing access to documents and rules for their publication,
 - 4) specification of priorities as regards requests of particular persons, institutions, public authority bodies and other entities,
 - 5) evaluation of the Remembrance Institute's policy of prosecuting the crimes referred to in Article 1 point 1 letter a),
 - 6) specification of research projects as regards the development of the activity of organs of state security as well as informing and educating society.
3. The Council of the Remembrance Institute shall approve the annual statement referred to in Article 24 point 1.
4. The Council of the Remembrance Institute shall adopt resolutions by a majority of votes with the requirement that at least half of the statutory number of the Council members be present.

Article 24

1. The President of the Remembrance Institute shall, once a year, present an annual statement on the activity of the Remembrance Institute to the Sejm and the Senate.
2. The section regarding the security or defence of the state in the statement referred to in clause 1 may be concealed.
3. The annual statement of the President of the Remembrance Institute shall be made public, excluding the section referred to in clause 2.
4. The President of the Remembrance Institute shall, once a year, present a statement on the matters specified in Article 38 via the Speaker of the Sejm, exclusively to the members of the Sejm Committee for Special Services.

Chapter 3

Collection of Documents by the Remembrance Institute

Article 25

1. No later than within 60 days following the establishment of the Remembrance Institute, the bodies mentioned below shall be obliged to prepare for submission to the archives of the Remembrance Institute: documents, sets of data, registers and files produced and collected by organs of state security (including security agencies of the Third Reich and the Union of Soviet Socialist Republics) bodies, organs of the prison system bodies, courts and public prosecutor's offices, security agencies of the Third Reich and the Union of Soviet Socialist Republics. This duty shall be incumbent on:
 - 1) the Minister of the Interior and Administration and the Head of the Office for State Protection as regards documents, sets of data, registers and files, and files on functionaries, produced or collected until 6 May 1990;,

- 2) the Minister of National Defence as regards documents, sets of data, registers and files of military security bodies, including files on functionaries of such services, produced or collected until 31 December 1990;,
 - 3) the Minister of Justice as regards documents, sets of data, registers and files produced or collected by the organs of the prison system until 31 December 1956, documents, sets of data, registers and files produced or collected by the security department of the Central Board of Penal Institutions and units subordinated thereto until 31 December 1989, including penitentiary files on persons repressed for political motives, placed in penal institutions, held in detention or on remand centres and in isolation camps,
 - 4) presidents of civilian and military courts as regards files on persons repressed for political motives,
 - 5) public prosecutors heading civil and military organisational units of the public prosecutor's office as regards files on cases, including prosecutors' files on the subjects referred to in point 4,
 - 6) directors of the New Files Archives and other state archives as regards of files on the former Polish Workers' Party and the former Polish United Workers' Party concerning organs of state security bodies, including the files of the security agencies of occupying states,
 - 7) directors of the Archives of New Files and other state archives as regards documents, sets of data, registers and files referred to in points 1-5 and kept in other archives; submission thereof to the Remembrance Institute shall be made on a basis of lending.
2. The submission of files referred to in clause 1, point 6 shall consist of the delivery of copies .
 3. The duty specified in clause 1, points 1-5 shall also apply to copies of documents, sets of data and files, irrespective of the date of preparation thereof.
 4. The President of the Remembrance Institute may, at any time, demand that the bodies listed in clause 1, as well as other institutions, submit documents not hitherto submitted.
 5. The Minister of the Interior and Administration, the Head of the Office for State Protection and the Minister of National Defence may, for the needs of their office, make copies of files on functionaries in service, these files being produced in the periods referred to in clause 1, points 1 and 2 respectively.
 6. The President of the Remembrance Institute shall designate for the bodies specified in clause 1, points 1-7 dates for the take-over of documents, sets of data, registers and files referred to in this provision.

Article 26

Documents produced in the course of the proceedings specified in the Act of 11 April 1997 on the Disclosure of Cases of Work or Service in State Security Bodies or Collaboration with Them between 1944 and 1990 by Persons Holding Public Office (Journal of Laws No. 70, item 443 and of 1998 No. 113, item 715 and No. 131, item 860) shall be submitted to the archives of the Remembrance Institute upon the valid completion of the legal proceedings in a given case.

Article 27

1. After the notification of a relevant governmental, local self-governmental or professional body, the President of the Remembrance Institute may gain access to documents, sets of data, registers and files if there is a justified supposition that they contain information related to the scope of activity of the Remembrance Institute.
2. Anyone in possession of such documents, sets of data, registers and files referred to in Article 25 shall be obliged to notify the President of the Remembrance Institute thereof immediately.
3. Every governmental, local self-governmental or professional body shall be obliged to give immediately to the President of the Remembrance Institute, upon the request thereof, documents, sets of data, registers and files referred to in Article 25, being in the possession of such bodies. This duty shall also apply to the submission of copies.
4. The President of the Remembrance Institute may request that documentation other than that indicated in Article 25 be submitted , irrespective of the date of production or collection thereof, if such documentation is required for the performance of the tasks of the Remembrance Institute specified in the Act.
5. If documents, sets of data, registers or files are necessary for the bodies referred to in clause 3, for the performance of statutory tasks thereof, it may suffice to give the President of the Remembrance Institute copies thereof.

Article 28

1. He or she who, without a legal title is in the possession of documents, sets of data, registers and files containing information related to the scope of the activity of the Remembrance Institute, shall be obliged to release the same to the President of the Remembrance Institute immediately.

2. The owner or person holding a legal title to possess such documents, sets of data, registers or files as referred to in clause 1, shall be obliged to provide the President of the Remembrance Institute with access to the same, upon the request thereof, so that copies can be made.
3. The President of the Remembrance Institute may request any foreign persons or institutions for assistance in making documents, sets of data, registers and files available to grieving parties as well as for public education purposes.

Article 29

As regards its archival activity, the Remembrance Institute shall collect, keep, prepare and make available documents on crimes, where these documents present facts and circumstances related to the history of the Polish Nation in the years 1939-1989 and inform about casualties and damages sustained.

Chapter 4

Provision of Access to Documents by the Institute of National Remembrance

Article 30

1. An grieving party shall be, at his/her request, be provided with information on documents held and available, which are related to such a party.
2. Everyone shall have a right to inquire at the Institute of National Remembrance whether he/she is a grieving party in the understanding of the Act.
3. an application, to be filed in person, should include a declaration on the status of the applicant (the grieving party in the understanding of Article 6 clause 1 or the closest person in the understanding of Article 6 clause 2) and data enabling the localisation of documents should be given. One is not obliged to state his/her reasons for applying to access the information.
4. Citizens of foreign countries shall have the right to file applications on basis of the principle of reciprocity .
5. In cases justified by the applicant's health, his/her application shall be collected, at his/her request as mentioned in clause 3, from the place of his/her residence.
6. Upon the filing of the application, the applicant may appoint a proxy to exercise his/her rights arising out of the Act.
7. A person having his/her permanent residence abroad may file the application in person with a Polish consular office, the applicant's signature being required to be legalized by the head of the consular office.

Article 31

1. The Remembrance Institute shall inform an grieving party or his/her closest person about the existence in the archives of the Remembrance Institute of documents related to such an individual and the manner of gaining access thereto.
2. The grieving party shall be issued with copies of documents related thereto at the request thereof.
3. The personal data of other grieving parties or other persons on the copies of documents issued pursuant to clause 2 shall not be disclosed, unless this should prove technically impossible. This regulation shall not prejudice the right of the grieving party specified in Article 32.

Article 32

1. If the existing or available documents to which the grieving party has had access to or received copies of existent and available documents, and these contain the names of functionaries, employees or the cryptonyms of collaborators of organs of state security who collected or evaluated data concerning the grieving party or the names of those who supervised those collaborators, then, the grieving party, at his/her request thereof, should be given the names and further personal data of such functionaries, employees and collaborators, provided that they can be unequivocally determined on the basis of the documents of the relevant organ of such a state security body. This regulation shall also apply to other persons who denounced the grieving party.
2. No names or other identification data of persons who provided information on common offences shall be issued.
3. In the case of refusal to provide identification data of informers, the denial may be appealed against to the President of the Remembrance Institute.
4. () The Treasury shall bear liability for damage caused to a citizen by an employee of the Remembrance Institute on general principles.
- 5.) () If a claim for compensation of damage caused by an employee of the Remembrance Institute in

connection with the Institute's activity is accompanied by a statement on the absence of service, work or collaboration with the organs of state security referred to in Article 5, the court shall relieve the plaintiff of court fees.

Article 33

1. A grieved party shall have the right to include his/her own supplements, corrections, updates, clarifications and documents or copies thereof in the set of documents related to such a party. The data already included in the documents shall not, however, be changed.
2. The regulation of clause 1 shall apply respectively to the persons referred to in Article 35.
3. Supplements, corrections, updates, clarifications and documents or copies thereof shall be included in the set of documents with a designation allowing for them to be distinguished from the documents collected by the Remembrance Institute.
4. A grieved party, at his/her request thereof, shall be issued with objects which at the moment of their loss were his/her property or were in his/her possession, provided such objects are in the archives of the Remembrance Institute.

Article 34

1. Seven years after this Act comes into force, a grieved party shall have the right to request that their data to be made anonymous.
2. (16) In justified cases, the President of the Institute may reject the request to make data anonymous if:
 - 1) another person has a legally justified interest in using such data,
 - 2) such data are required for scientific studies,
 - 3) an authorised body of public authorities had presented a request for access to such data.

Article 35

1. Functionaries and employees of organs of state security bodies may, at their request, obtain a copy of service or work certificates and a copy of their employer's opinion on such service or work.
2. A functionary, an employee or collaborator of organs of state security, following the prior submission of a statement thereby to the Remembrance Institute on their service, work or collaboration with such organs, shall be informed, at the request thereof, about documents related thereto being available in the archives of the Remembrance Institute.

Article 36

Documents containing data on grieved parties or third parties may be used, to the required extent and in a manner not violating the rights of such persons, by public authorities and other institutions, organisations and persons for the following purposes:

1. (17) (repealed),
2. to perform the Act of 24 January 1991 on War Veterans and Certain Persons Being Victims of War and Post-War Repressions (Journal of Laws of 1997 No. 142, item 950 and of 1998 No. 37 item 204 and No. 106, item 668),
3. to perform the Act of 11 April 1997 on the Disclosure of the Cases of Work or Service in State Security Authorities or Cooperation with Them in the years 1994-1990 of Persons Performing Public Functions,
4. to prosecute crimes mentioned in Article 1 point 1 letter a),
5. (18) to carry out scientific research, if approved by the President of Remembrance Institute.

Article 37

1. A grieved party may reserve the following right: that the personal data related to the grieved party which are not subject to being made anonymous pursuant to Article 34. clause 1 and which were collected in a secret manner in the course of the operational and examination activities by organs of state security shall not be made available for research purposes for a specified period, in any event not longer than 90 years from their creation.
2. A grieved party may consent to his/her personal data, as specified in clause 1, to be made available to indicated persons or institutions and to the public opinion.
3. The personal data specified in clause 1 may, however, be the subject of research work if:
 - 1) the grieved party or, if deceased, the closest person, consents thereto,
 - 2) they are connected with a public appearance of the grieved party, his/her public activity or they are personal data required by the Act in connection with the performance of a public function.

4. Research work may also be conducted after the personal data referred to in clause 1 have been removed from the copies of documents.
5. The personal data specified in clause 1 may not be used to the disadvantage of the grieved party.

Article 38

1. The functionaries of special services authorised by the Head of the Office for State Protection and within the framework of their statutory tasks may, following the notification of the President of the Remembrance Institute, be provided with access to the data contained in the documents collected by the Remembrance Institute within the limits of their authorisation.
2. Documents of the organs of state security, unless they contain the personal data of a grieved party or a third party, may be used by authorised functionaries of special services within the framework of their statutory tasks if they contain information on the crime of espionage, terrorism or a crime against the constitutional order of the Republic of Poland.
3. Clause 2 shall accordingly apply to the functionaries of special services of the states with which the Republic of Poland has concluded a relevant international agreement if such documents contain information on a crime of espionage or terrorism.

Article 39

1. The Head of the Office for State Protection or the Minister of National Defence may reserve the right, for a specified period of time, to reserve access to specified documents apart from representatives appointed by them if this is necessary for state security. The bodies of other special services may request such a reservation via the Head of the Office for State Protection.
2. The documents referred to in clause 1 constitute a separate and secret file in the archives of the Remembrance Institute and are subject to special protection.
3. At the request of the Head of the Office for State Protection or the Minister of National Defence, the President of the Remembrance Institute shall approve or annul the reservation of access to specified documents. The Minister of National Defence and the Head of the Office for State Protection shall be entitled to an appeal against the decision of the President of the Remembrance Institute with the Council of the Remembrance Institute.
4. The reservation shall be subject to statesecret .
5. The provision of Article 39 shall not limit the rights of the court in the screening proceedings and of the Public Interest Ombudsman.

Article 40

If the President of the Remembrance Institute, in connection with the performance of his/her duties, discovers that documents contain information on crimes defined in Article 1 Clause 2 points 2-4 of the Act of 6 April 1990 on the Office for State Protection (Journals of Laws No. 30, item 180, of 1991 No. 94, item 422 and No. 107, item 461, of 1992 No. 54, item 254, of 1994 No. 53, item 214, of 1995 No. 4, item 17, No. 34, item 163 and No. 104, item 515, of 1996 No. 59, item 269, No. 106, item 496 and No. 156, item 775, of 1997 No. 28, item 153, No. 70, item 443, No. 88, item 554 and No. 141, item 943 and of 1998 No. 131, item 860), he/she shall immediately notify the Head of the Office for State Protection thereof. The provision of Article 304 of the Polish Code of Criminal Procedure shall not apply.

Article 41

1. The Director of the Office for the Preservation and Dissemination of Archival Records of the Remembrance Institute shall notify a grieved party in the event of the submission of his/her personal data to other persons or institutions pursuant to Articles 31, 36 and 37, informing the grieved party about the nature of the data submitted and the identity of the recipient thereof.
2. Clause 1 shall not apply in the event of the Minister of National Defence or the Head of the Office for State Protection presenting a statement to the President of the Remembrance Institute that such a notification could pose a danger to state security.

Article 42

If the Director of the Office for the Preservation and Dissemination of Documents of the Archive of the Remembrance Institute is notified, particularly as a result of the proceedings specified in the Act of 11 April 1997 on the Disclosure of Cases of Work or Service in State Security Authorities or Cooperation with them between 1944 and 1990 of Persons Performing Public Functions, that the personal data in

documents are inaccurate, this latter information shall be attached to the set of documents concerning a given person.

Article 43

Proceedings on matters regulated in this Act shall be conducted pursuant to the provisions of the Code of Administrative Procedure, unless the provisions of this Act stipulate otherwise. In the matters specified in Article 39, no complaints may be filed with the Supreme Administrative Court.

Article 44

Information obtained for scientific or journalistic purposes on the basis of documents of the Remembrance Institute may not be used for any other purposes or submitted to any other institutions.

Chapter 5

Investigative Functions of the Remembrance Institute

Article 45

1. Investigations into cases of crimes listed in Article 1 point 1 letter a) shall be initiated and conducted by the public prosecutor of a branch commission.
2. (19) As regards cases specified in Article 1, the public prosecutors of the Remembrance Institute shall hold the procedural rights provided for public prosecutors in the Code of Criminal Procedure. Whenever the Code of Criminal Procedure mentions an attorney for prosecution or public prosecutor, this shall be understood to mean a public prosecutor of the Remembrance Institute also in cases subject to adjudication by courts martial.
3. The objective of investigations into cases of crimes mentioned in Article 1 shall also be the comprehensive clarification of the circumstances of a case, and in particular the determination of grievied parties.
4. The circumstance referred to in Article 17 Paragraph 1 point 5 of the Code of Criminal Procedure do not represent an obstacle to the implementation of the objective referred to in clause 3. After the implementation of that objective, proceedings shall be discontinued.
5. The provisions of the Code of Criminal Procedure shall apply to investigations conducted by the Remembrance Institute, including the provision of legal assistance with regard to the crimes mentioned in Article 1 point 1.
6. The public prosecutor of a branch commission may desist from initiating an investigation and discontinue an investigation already initiated in connection with the perpetrator of a crime mentioned in Article 1 point 1 letter a) if such perpetrator has voluntarily disclosed, to a body established for the prosecution of crimes, all the relevant information on persons participating in committing a crime and the circumstances thereof, if such information permits the initiation of proceedings against a specific person. In desisting from prosecuting the perpetrator of a crime, the public prosecutor shall consider the degree of detriment to society of the crime committed by the perpetrator and the extent of his/her guilt as well as the type and nature of the disclosed crime. In particular the public prosecutor shall determine whether it is possible to disclose the identity of perpetrators or accessories of crimes in any other manner, and shall also assess the significance of the disclosure of a crime for the performance of the tasks by the Remembrance Institute.
7. The public prosecutor may re-launch an investigation with respect to a perpetrator whose prosecution he/she has abandoned pursuant to clause 6 only where, in the course of further proceedings, such a perpetrator has refused to testify or presents a different testimony from that which justified the decision not to begin proceedings or to discontinue proceedings already begun.
8. If a person whose prosecution has been abandoned pursuant to clause 6 is called as a witness, the public prosecutor of a branch commission may issue a decision to keep such a person's personal data confidential, even if the circumstances specified in Article 184 paragraph 1 of the Code of Criminal Procedure have not arisen.
9. The public prosecutors of the Chief Commission shall appear in appellate and cassation proceedings.

Article 46

Following consultation with the Chief Commission Director, the President of the Remembrance Institute may make public and disclose to other persons than those mentioned in Article 156 Paragraph 5 of the Code of Criminal Procedure the personal data of a perpetrator of the crimes mentioned in Article 1 point 1 letter a) if criminal proceedings do not conclude with a conviction for a reason

indicated in Article 17 paragraph 1 point 5 of the Code of Criminal Procedure or have been suspended pursuant to Article 22 paragraph 1 thereof.

Article 47

1. The Chief Commission Director shall be the superior public prosecutor for public prosecutors of that Commission and branch commissions.
2. Orders of the General Public Prosecutor other than those specified in Article 8 clause 5 of the Act of 20 June 1985 on Public Prosecutor's Office (Journals of Laws of 1994 No. 19, item 70 and No. 105, item 509, of 1995 No. 34, item 163, of 1996 No. 77, item 367, of 1997 No. 90, item 557, No. 98, item 604, No. 106, item 679, No. 117, items 752 and 753, No. 124, item 782 and No. 141, item 944 and of 1998 No. 98, item 607) exceeding the scope of tasks of the Remembrance Institute may be given to public prosecutors of the Remembrance Institute only upon the consent of the President of the Remembrance Institute.
3. The Chief Commission Director and public prosecutors thereof shall be superior public prosecutors with respect to public prosecutors of branch commissions.
4. A public prosecutor who has been recalled due to the resignation from the position of a public prosecutor of the Remembrance Institute shall have the right to return to the position previously held or be given a position equivalent to the one previously held, provided that there are not other legal obstacles.
5. The remuneration of public prosecutors of the Chief Commission shall be determined by the provisions on the remuneration of public prosecutors of the National Prosecutor's Office and the remuneration of public prosecutors of branch commissions shall be determined by the provisions on the remuneration of public prosecutors of the appellate prosecutor's office. Such remuneration, including related benefits of a personal nature, shall be financed from the resources of the Remembrance Institute.
6. In matters not regulated herein the provisions of the Act of 20 June 1985 on the Public Prosecutor's Office shall apply to prosecutors of the Remembrance Institute.

Article 48

A public prosecutor of a branch commission shall issue a decision to initiate or a refusal to initiate an investigation into a case of a crime listed in Article 1 point 1 letter a) within three months of the receipt of a notice of a crime.

Article 49

After the lapse of three months from the date of the initiation of an investigation into a case of a crime listed in Article 1 point 1 letter a), the public prosecutor conducting such an investigation shall submit to the superior public prosecutor a statement on the activities performed. Such a statement shall be submitted after the lapse of each subsequent three-month period of an investigation. The time limits for the completion of an investigation specified in Article 309 of the Code of Criminal Procedure shall not apply.

Article 50 (20)

1. The Chief Commission and branch commissions shall constitute organisational units of a prosecutor's office in the understanding of international agreements with other states binding the Republic of Poland on legal assistance and legal relations in civil, family, employment and criminal cases.
2. The ministers for justice may, at the request of the President of the Remembrance Institute, delegate a judge to perform activities for the Chief Commission and provide legal assistance.

Article 51

1. (21) The provisions on the regional prosecutor's office shall apply to the council of public prosecutors of branch commissions accordingly, and the provisions on the assembly and council of the appellate prosecutor's office shall apply to the assembly and council of public prosecutors of the Chief Commission.
2. (22) Members of the Disciplinary Court and Appellate Disciplinary Court for the public prosecutors of the Remembrance Institute shall be elected by the assembly of public prosecutors of the Chief Commission, in a number determined thereby, from among the public prosecutors of the Remembrance Institute for a period of four years. The Disciplinary Court and Appellate Disciplinary Court shall elect chairmen/chairwomen from among their members.

3. (23) The Disciplinary Court at the Remembrance Institute shall adjudicate in the first instance in the composition of three members and in the second instance in the composition of five members. No member of the Court who participated in issuing the judgment appealed against may sit in the adjudicating panel of the second instance.

4. (24) The disciplinary ombudsman for public prosecutors of the Remembrance Institute shall be appointed by the Public Prosecutor General from among public prosecutors of the Remembrance Institute, at the request of the Chief Commission Director.

Article 52.

Bodies of the judiciary, public prosecution, bodies and organisational units accountable to, supervised by or subordinate to the Minister of Interior and Administration, Minister of National Defence, Minister of Foreign Affairs and the Head of the Office for State Protection and bodies of governmental administration and territorial local-government shall be obliged, each within the scope of its activity, to provide assistance to the Remembrance Institute in the implementation of the tasks of the Remembrance Institute, as mentioned in Article 1.

Chapter 6

Educational Functions of the Remembrance Institute

Article 53

The Remembrance Institute shall:

1. carry out scientific research into crimes and events as mentioned in Article 1, and make available documents gathered to other scientific institutions to carry out such research, subject to the terms set forth herein,
2. provide information on documents gathered and publish collections of documents held,
3. inform the public of the structures and methods of activity of institutions within which the Nazi and Communist Crimes were committed and inform the public of the operational methods of the organs of state security,
4. disseminate, in Poland and abroad, the results of its work and research into other institutions, organisations and persons pertaining to the subject of its activity,
5. carry out exhibition activities,
6. formulate proposals as to historical education.

Chapter 7

Penal Regulations

Article 54

1. He who, without authorisation, destroys, hides, damages, removes or changes records in documents or informational records subject to submission to the Remembrance Institute pursuant to Article 25 and Article 28.1, or available in the archives of the Remembrance Institute, or otherwise prevents or materially obstructs an authorised person or institution in examining records, or interrupts or prevents the automatic collection or transfer of such information, shall be liable to the penalty of deprivation of liberty from six months to eight years.
2. He who, being in possession of documents or informational records subject to submission to the Remembrance Institute on the basis mentioned in clause 1, evades, obstructs or prevents such submission shall be liable to the same penalty.
3. He who, in order to obtain information provided to an aggrieved party pursuant to the provisions of this Act, tells a lie or conceals the truth, being aware that the circumstances referred to in Article 6, clause 3 apply to him/her or that his/her personal data may be disclosed pursuant to this Act without his/her consent shall be liable to the penalty of deprivation of liberty of six months to three years.
4. (25) He who makes a false statement mentioned in Article 32, clause 5 shall be liable to the penalty of deprivation of liberty of six months to three years.

Article 55

He who publicly and contrary to facts contradicts the crimes mentioned in Article 1, clause 1 shall be subject to a fine or a penalty of deprivation of liberty of up to three years. The judgment shall be made publicly known.

Chapter 8

Amendments to Applicable Provisions; Interim and Final Provisions

Article 56

In the Act of 31 July 1981 on the Remuneration of Persons Holding High-Ranking State Offices (Journals of Laws No. 20, item 101, of 1982 No. 31, item 214, of 1985 No. 22, item 98 and No. 50, item 262, of 1987 No. 21, item 123, of 1989 No. 34, item 178, of 1991 No. 100, item 443, of 1993 No. 1, item 1, of 1995 No. 34, item 163 and No. 142, item 701, of 1996 No. 73, item 350, No. 89, item 402, No. 106, item 496 and No. 139, item 647, and of 1997 No. 75, item 469 and No. 133, item 883) in Article 2, point 2 after the words "the Inspector General for the Protection of Personal Data," the following words shall be added: "the President of the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation,".

Article 57

In the Act of 16 September 1982 on the Employees of State Offices (Journals of Laws No. 31, item 214, of 1984 No. 35, item 187, of 1988 No. 19, item 132, of 1989 No. 4, item 24, No. 34, item 178 and 182, of 1990 No. 20, item 121, of 1991 No. 55, item 234, No. 88, item 400 and No. 95, item 425, of 1992 No. 54, item 254 and No. 90, item 451, of 1994 No. 136, item 704, of 1995 No. 132, item 640, of 1996 No. 89, item 402 and No. 106, item 496, of 1997 No. 98, item 604, No. 133, item 882 and 883 and No. 141, item 943, and of 1998 No. 131, item 860) the following amendments shall be made:

1. in Article 1, clause 13 the full stop shall be replaced with a comma and a clause 14 shall be added with the following wording:

"14) the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation.",

2. in Article 36, clause 5, point 1 the word "and" shall be replaced with a comma, and after the words ωthe Inspector General for the Protection of Personal Dataω the words ωthe Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nationω shall be added,ω.

Article 58

In the Act of 14 July 1983 on the National Archive Resources and Archives (Journal of Laws No. 38, item 173, of 1989 No. 34, item 178, of 1996 No. 106, item 496 and No. 156, item 775, of 1997 No. 88, item 554 and No. 141, item 943, and of 1998 No. 106, item 668) the following amendments shall be made:

1. in Article 5, clause 3, point 6 the full stop shall be replaced with a comma and a point 7 with the following wording shall be added:

"7) the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation ω the President of the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation.";

2. in Article 17, clause 3 shall have the following wording:

"3. The Ministers of National Defence, Interior and Administration, Foreign Affairs, the Head of the Office for State Protection, the President of the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation and the Heads of the Chancellery of the Sejm, the Chancellery of the Senate and the Chancellery of the President, in consultation with the Minister of National Education, shall set forth the rules and procedure for the provision of access to archival materials located in separate archives subordinate to them.ω,

3. the existing wording of Article 19 shall be marked as clause 1 and a clause 2 shall be added with the following wording:

"2. The authority relevant for the matters of the separate archive of the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation to the extent regulated by the provisions of this Act is the President of the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation.ω;

4. in Article 21, clause 4, point 3 the full stop shall be replaced with a comma and a point 4 shall be added with the following wording:

"4) the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation.";

5. in Article 29:

a) in clause 1, point 4 the full stop shall be replaced with a comma and a point 5 shall be added with the following wording:

"5) the archive of the Institute of National Remembrance ω Commission for the Prosecution of Crimes

against the Polish Nation.",

b) clause 3 shall have the following wording:

"3. The Ministers of National Defence, Interior and Administration, Foreign Affairs, as well as the Heads of the Chancellery of the Sejm, the Chancellery of the Senate and the Chancellery of the President, the Office for State Protection and the President of the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation shall determine the organisation of the separate archives subordinate to them.";

6. In Article 31, clause 3 shall be added with the following wording:

"3. The archival resources of the separate state archives subordinate to the President of the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation shall be set forth by the Act of 18 December 1998 on the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation (Journal of Laws No. 155, item 1016).ω

Article 59

In the Act of 20 June 1985 on the Public Prosecutor's Office (Journal of Laws of 1994 No. 19, item 70, No. 105, item 509, of 1995 No. 34, item 163, of 1996 No. 77, item 367, of 1997 No. 90, item 557, No. 98, item 604, No. 106, item 679, No. 117, item 752 and 753, No. 124, item 782 and No. 141, item 944, and of 1998 No. 98, item 607) the following amendments shall be made:

1. in Article 1, clause 1, after the words public prosecutors, the following words shall be added "and the public prosecutors of the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation";

2. in Article 6, a clause 3 shall be added in the following wording:

"3. Public prosecutors of the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation are public prosecutors of the Chief Commission for the Prosecution of Crimes against the Polish Nation of the Institute of the National Remembrance and public prosecutors of branch commissions for the prosecution of crimes against the Polish Nation of the Institute of National Remembrance.ω;

3. in Article 23, clause 1 the words ωdelegated to the Chief Commission for the Examination of Crimes against the Polish Nationω shall be replaced with the words: ωthe Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nationω.

Article 60

In the Act of 5 January 1991 ω Budgetary Law (Journals of Laws of 1993 No. 72, item 344, of 1994 No. 76, item 344, No. 121, item 591 and No. 133, item 685, of 1995 No. 78, item 390, No. 124, item 601 and No. 132, item 640, of 1996 No. 89, item 402, No. 106, item 496, No. 132, item 621 and No. 139, item 647, and of 1997 No. 54, item 348, No. 79, item 484, No. 121, item 770, No. 123, item 775 and 778, No. 133, item 883, No. 137, item 926, No. 141, item 943 and No. 158, item 1042) in Article 31, clause 3, point 2, after the words ωInspector General for the Protection of Personal Data,ω the words shall be added ωthe Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation,ω.

Article 61

In the Act of 23 December 1994 on the Supreme Chamber of Control (Journal of Laws of 1995 No. 13, item 59, of 1996 No. 64, item 315 and No. 89, item 402, of 1997 No. 28, item 153, No. 79, item 484, No. 96, item 589, No. 121, item 770 and No. 133, item 883, and of 1998 No. 148, item 966) in Article 4, clauses 1 and 2, after the words " of the Inspector General for the Protection of Personal Data," the words shall be added ωof the Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation,".

Article 62

In the Act of 23 December 1994 on Determining Resources for Remuneration in the State Budgetary Sector and on the Amendment of Certain Acts (Journal of Laws of 1995 No. 34, item 163, of 1996 No. 106, item 496 and No. 139, item 647, of 1997 No. 133, item 883, and of 1998 No. 117, item 756 and No. 155, item 1014) in Article 2, clause 2, point 1, after the words "the Office Inspector General for the Protection of Personal Data," the words shall be added ωthe Institute of National Remembrance ω Commission for the Prosecution of Crimes against the Polish Nation,ω.

Article 63

When this Act comes into force, the Chief Commission for the Examination of Crimes against the

Polish Nation, the Institute of National Remembrance shall be put into liquidation. The liquidator shall be appointed by the Minister of Justice.

Article 64

The President of the Remembrance Institute, appointed for the first term, shall submit to the Council of the Remembrance Institute the statute of the Institute for approval and establish the organisational units of the Remembrance Institute before the lapse of three months from being sworn in.

Article 65

The Sejm of the Republic of Poland shall elect the Council of the Remembrance Institute within one month of this Act coming into force.

Article 66

(26) The Council of the Remembrance Institute shall propose to the Sejm a candidate for the President of the Remembrance Institute not later than one month following the date of the first meeting of the Council of the Institute.

Article 67

The Sejm of the Republic of Poland shall elect the President of the Remembrance Institute for the first term within one month of the proposal of a candidate.

Article 68

1. The archival resources of the existing Chief Commission for the Examination of Crimes against the Polish Nation - the Institute of National Remembrance and its district commissions shall become archival resources of the Remembrance Institute.
2. The property of the existing Chief Commission for the Examination of Crimes against the Polish Nation - the Institute of National Remembrance and its district commissions shall become the property of the Remembrance Institute.

Article 69

In matters not regulated by this Act and relating to the research staff of the Remembrance Institute, the provisions of the Act of 25 July 1985 on Research and Development Units (Journal of Laws of 1991 No. 44, item 194 and No. 107, item 464, of 1992 No. 54, item 254, of 1994 No. 1, item 3 and No. 43, item 163, of 1996 No. 41, item 175 and No. 89, item 402, of 1997 No. 43, item 272, No. 75, item 467 and 469, No. 104, item 661, No. 121, item 769 and 770 and No. 141, item 943, and of 1998 No. 117, item 756) shall apply.

Article 70

With respect to employees of the Remembrance Institute other than public prosecutors and research staff, the provisions of the Act of 16 September 1982 on Employees of State Offices (Journal of Laws No. 31, item 214, of 1984 No. 35, item 187, of 1988 No. 19, item 132, of 1989 No. 4, item 24, No. 34, item 178 and 182, of 1990 No. 20, item 121, of 1991 No. 55, item 234, No. 88, item 400 and No. 95, item 425, of 1992 No. 54, item 254 and No. 90, item 451, of 1994 No. 136, item 704, of 1995 No. 132, item 640, of 1996 No. 89, item 402 and No. 106, item 496, of 1997 No. 98, item 604, No. 133, item 882 and 883 and No. 141, item 943, and of 1998 No. 131, item 860) shall apply.

Article 71

The activity of the Remembrance Institute, set forth in Article 1, shall permit the processing of such personal data as mentioned in Article 27, clause 1 of the Act of 29 August 1997 on the Protection of Personal Data (Journal of Laws No. 133, item 883), without the consent and knowledge of the person to whom such data pertain.

Article 72

The Act of 6 April 1984 on the Chief Commission for the Examination of Crimes against the Polish Nation - the Institute of National Remembrance shall be no longer effective (Journal of Laws No. 21, item 98 and of 1991 No. 45, item 195).

Article 73.

This Act shall enter into force upon the lapse of 30 days of its announcement.