

# Principles on Public Policies on Memory in the Americas

RESOLUTION 3/2019



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The IACHR visits the memory site building ESMA (Navy School of Mechanics), former clandestine center of detention, torture, and extermination, in the framework of 162 Extraordinary Period of Sessions in Buenos Aires, Argentina.

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Credits: Ricky Levy/IACHR

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## **Principles on Public Policies on Memory in the Americas**

(Adopted by the IACHR during its 174<sup>th</sup> Period of Sessions on November 9, 2019)

The Inter-American Commission on Human Rights (IACHR), under the auspices of its Rapporteurship on Memory, Truth and Justice, by virtue of Article 41(b) of the American Convention on Human Rights; and

CONSIDERING that public policies on memory are part of the obligations of States in the provision of truth, justice, reparation, and measures to prevent repetition of serious human rights violations;

CONSIDERING the obligation to provide comprehensive reparation for harm caused by serious human rights violations, through the adoption of measures of financial reparation; satisfaction; restitution; rehabilitation; investigation of the facts; determination and, as appropriate, punishment of those responsible; and guarantees of non-repetition;

CONSIDERING the right of victims of serious human rights violations, their families, and society in general to know the truth about such violations to the fullest possible extent, in particular, the identity of the perpetrators, the causes, the facts, and the circumstances in which they occurred;

UNDERSCORING the importance of addressing public policies on memory in a comprehensive and regional manner based on the systematization of national and local experiences, as well as the relevance of adopting a human rights-based, gender-aware, and intercultural approach that encompasses vulnerable and historically discriminated populations adversely affected by serious human rights violations;

RECALLING that the member states of the Organization of American States (OAS) have an obligation to make available effective and comprehensive mechanisms to ensure the right to truth of both victims of serious human rights violations and society as a whole; the investigation, prosecution and punishment of those responsible for serious human rights violations; comprehensive reparation for the harm suffered by victims of serious human rights violations; and the establishment of mechanisms that prevent the repetition of serious human rights violations committed;

RECOGNIZING the need to develop principles for addressing public policy on memory in accordance with standards set by international human rights law;

DULY TAKING INTO ACCOUNT the principles and provisions contained in the following international instruments: the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on Forced Disappearance of Persons; the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women; the Inter-American Convention on Protecting the Human Rights of Older Persons; the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance; the Inter-American Convention against All Forms of Discrimination and Intolerance; the American Declaration on the Rights of Indigenous Peoples; and other instruments of the universal human rights system, such as the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of all Persons from Forced Disappearance; the Convention on the Rights of Persons with Disabilities; and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, among others;

CONSIDERING also OAS General Assembly resolutions AG/RES. 2175 (XXXVI-O/06), AG/RES. 2267 (XXXVII-O/07), and AG/RES. 2406 (XXXVIII-O/08); the resolution E/CN.4/2005/L.84 of the UN Commission on Human Rights; the Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, document E/CN.4/Sub.2/1993/8; the Revised final report on the question of impunity of perpetrators of human rights violations (civil and political), document E/CN.4/Sub.2/1997/20/Rev.1; the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, document E/CN.4/2005/102/Add.1; the Principal Guidelines for a Comprehensive Reparations Policy of the IACHR; the IACHR thematic report “The Right to the Truth in the Americas”; among other documents, as well as the experience of victims’ organizations, civil society organizations, social movements, and human rights organizations;

TAKING INTO ACCOUNT the Fundamental Principles of Public Policies on Memory Sites by the MERCOSUR Institute of Public Policies on Human Rights and the Toolkit for Memorialization in Post-Conflict Societies of the International Coalition of Sites of Conscience;

CONSIDERING the content of the IACHR thematic report “Public Policies with a Human Rights Approach,” as well as the decisions and jurisprudence of the Inter-American Human Rights System;

OBSERVING the challenges and progress in relation to public policies on memory, truth, and justice in the Americas; the impunity of those who have perpetrated or planned serious human rights violations as one of the problems that worst affect and revictimize the victims; the human rights violations of the present that are a continuation of the serious human rights violations of the past; the noted tendency of a return to the involvement of the armed forces in public security matters; and the urgent need to sensitize new generations about the importance of defending representative

democracy with all its guarantees and of ensuring respect for the rule of law and human rights,

ADOPTS the following PRINCIPLES ON PUBLIC POLICIES ON MEMORY IN THE AMERICAS,

### **GENERAL PROVISION**

These principles contain recommendations that could guide the design, development, and implementation of public policies on memory, that take into account the standards established in international human rights law and national and local experiences, based on a comprehensive approach from a human rights, gender, and intercultural perspective, encompassing vulnerable and historically discriminated populations adversely affected by serious human rights violations.

### **DEFINITIONS**

For the purposes of this document,

*Memory* means the ways in which people and peoples build meaning and relate the past to the present in the act of remembering serious violations of human rights and/or the actions of victims and civil society in defense and promotion of human rights and democratic values in such contexts;

*Public policies on memory* means the different interventions, based on documentary and testimonial evidence, and forged with the participation of victims and civil society, oriented towards the State's acknowledgment of the facts and its responsibility for serious human rights violations committed, the vindication and preservation of the memory and dignity of the victims, the dissemination and preservation of historical memory, and the promotion of a culture of human rights and democracy aimed at the non-repetition of the events;

*Memory initiatives of an educational, cultural or other nature* means State and non-State interventions aimed at advancing the objectives of public policies on memory;

*Memory sites* means all those places where serious human rights violations were committed, endured or resisted, or where victims or local communities, for whatever reason, believe can commemorate such events and which are used to revisit, recover, and convey traumatic processes, and/or to pay tribute or make redress to victims;

*Archives* means documentary repositories or collections, in any medium, having to do with serious violations of human rights, or of any nature that may contribute to their investigation, as well as those having to do with the actions of civil society in defense and promotion of human rights and democratic values in such contexts. Public archives include documents linked to national and local government agencies, including the headquarters of the police and other institutions linked to security forces, armed forces, the judiciary, the public prosecutor's office, the ombudsman's office, truth commissions, and reparation commissions, among others. Non-state archives of public value may include those belonging to: (a) nongovernmental organizations; (b) academic institutions

involved in protection of human rights; (c) private companies and institutions; (d) insurgent groups, and (e) intergovernmental organizations, among others.

*Victim* means any person or group of persons that, whether individually or collectively, has suffered serious human rights violations. This concept includes immediate family members who have endured pain and suffering as a result of such violations. It also recognizes the work performed by human rights defenders, justice operators, and those who provide assistance to victims and are themselves victims of rights violations as a result of their participation in processes connected with the provision of support and access to justice for victims of serious violations.

*Local communities* means those communities that, due to their geographical proximity, social ties, or sociocultural affinity have an especially close connection with the serious human rights violations committed.

## **GENERAL PRINCIPLES**

### Principle I

#### Comprehensive approach to memory

States should ensure a “comprehensive approach to memory,” understood as the obligation to adopt public policies on memory coordinated with justice and accountability processes, including the search for truth, the establishment of reparations, and non-repetition of serious human rights violations. This approach includes the State's duty to develop memory policies as a basis for addressing past and present serious human rights violations; and considers human rights universal, indivisible, and interdependent.

The “comprehensive approach to memory” includes the obligation of States to ensure the representation and participation of victims and society.

### Principle II

#### Participation of victims

States have the obligation to ensure that victims and local communities can participate in all stages of public policies on memory and that they can promote and manage independent memory initiatives that are consistent with the guidelines set out herein. To that end, States should provide the means to enable them to participate unhindered, take appropriate measures to ensure their safety, and provide them with psychophysical and technical assistance.

Without prejudice to the foregoing, the obligation to develop public policies on memory rests with States and cannot be made dependent solely on the initiative of the actors mentioned.

Principle III  
Involvement of civil society

States should carry out active dissemination and awareness strategies aimed at civil society in order to stimulate their involvement in the formulation of public policies on memory. Such strategies should include information campaigns and the formulation of mechanisms and activities that encourage the broadest possible participation.

The adoption of decentralized and differentiated measures is essential in order to overcome geographical, economic, linguistic and gender barriers, among others, so as to encourage the participation of the entire community, particularly vulnerable and historically discriminated groups.

Principle IV  
Suitability of persons in charge of memory policies

People who are in charge of public institutions that formulate or implement the policies contained in this document should be recognized for their proven track record in defending and promoting human rights and democratic values.

Principle V  
Interdisciplinarity

Public policies on memory should envisage the formation of interdisciplinary teams of investigators, assistance experts, and, jurists, respectively, in the elucidation of acts committed and psychosocial support for victims.

The development of protocols for the systematization of interdisciplinary team practices is recommended. The qualifications of the members of such teams are essential to inspire public confidence and underpin the legitimacy of their work.

Principle VI  
Intercultural and gender approach

Public policies on memory should respect and promote construction of the memories of communities, organizations and groups, based on recognition of the different cultural visions and conceptions of well-being and development of diverse ethnic and cultural groups; as well as on a gender approach that tends towards the establishment of relations of equity and equality in terms of opportunities and rights.

Principle VII  
Regional integration

Regional integration should promote ties of mutual cooperation and technical assistance aimed at, *inter alia*, circulating documentation for the prevention, investigation, prosecution, and punishment of serious human rights violations committed; exchanging experiences and good practices; and

connecting victims' organizations.

### Principle VIII

#### Financing

States have the obligation to ensure funding for public policies on memory, and the government budget may be supplemented with international cooperation or by alternative means.

Especially where the availability of government resources is limited, consideration should be given to public policies on memory being integrated with and strengthening public policies on development.

## **PRINCIPLES RELATED TO MEMORY INITIATIVES OF AN EDUCATIONAL, CULTURAL OR OTHER NATURE**

### Principle IX

#### Design and implementation of memory initiatives

States should design and implement initiatives to acknowledge and apologize for events connected with serious human rights violations; restore the memory and dignity of victims; and establish and disseminate the historical truth of such events. Such initiatives may include public acts and educational, cultural, and other measures that are respectful of interculturality and diversity and adopt a human-rights approach and a gender perspective. Examples include the following:

- a. Holding public acts of acknowledgment of responsibility by the State, with an apology from the authorities agreed upon with the victims or their representatives and disseminated through the media;
- b. Incorporation of human rights education at all curricular levels, in order to generate knowledge about human rights violations committed in the past and present and their historical processes, utilizing the following as educational resources: the participation of victims, testimonies, archives, and memory sites, among other resources collected or produced in processes to search for the truth, justice and reparation;
- c. Creation of a national day of remembrance of serious human rights violations;
- d. Publication and official dissemination of court judgments on serious human rights violations;
- e. Establishment of monuments, signage in public spaces, memorials, and museums in recognition of the victims, as well as removal or contextualized modification of monuments, memorials, museums, shields, insignia, and plaques that praise the memory of perpetrators;
- f. Commemorations and homages to victims, evoking their lives and stories;
- g. Installation of plaques in different places where victims left their mark;
- h. Removal or contextualized modification of street names, tokens of national currency, and public buildings that praise the memory of perpetrators of serious human rights violations;
- i. Elimination of national dates and prohibition of official events that celebrate the memory of perpetrators of serious human rights violations;
- j. Provision of ongoing, up-to-date training in international human rights law in formal and non-formal educational settings imparted by civilian instructors with human rights qualifications, targeting the general population and, in particular, the military, security forces,

- intelligence agencies, judiciary, and prisons system;
- k. Development of human rights guidelines in the use of media;
  - l. Development of advertising and dissemination initiatives on access to memory sites and archives;
  - m. Campaigns for the donation of objects and collection of information relating to the perpetration of serious human rights violations;
  - n. Promotion of cultural events (theater, cinema, art exhibitions, etc.) and use of social networks and media to disseminate information about the serious human rights violations committed.

## **PRINCIPLES RELATING TO MEMORY SITES**

### Principle X

#### Regulatory framework

In order to guarantee the legal certainty of memory sites, States should provide a precise and appropriate regulatory framework governing their identification, signage, creation, recovery, preservation, and sustainable management, as well as ensuring the participation of victims at all stages and in accordance with international standards in that regard.

That regulatory framework could be established as specific legislation on memory sites or, alternatively, by declaring memory sites as cultural or historical heritage or the like. Such a framework should also include specific measures designed to prevent the destruction or alteration of the buildings or properties, such as restrictions on their use or access by persons who could pose a risk to the site or the preservation of evidence; designation of depositaries or guarantors; introduction of penalties for non-compliance, and/or provision of external and internal security. Such specific measures should avoid the requirement of highly specialized technical expertise that render the protection of sites and of forensic evidence illusory.

### Principle XI

#### Identification and signage

States should promote the identification and signage of memory sites as widely as possible. When such sites are also premises of security forces, armed forces, and intelligence or judicial agencies, the involvement of current agents and officials should be encouraged in the identification and signage work, bearing in mind the educational function of such processes.

### Principle XII

#### Construction or recovery and preservation

The physical measures to ensure memory sites should conform to current international standards on construction and archaeological, architectural and forensic recovery and preservation.

In turn, States should ensure administrative mechanisms through autonomous and precautionary measures so that any person or institution with a legitimate interest can appeal for the construction or recovery and preservation of sites. Precautionary measures, particularly injunctions against changes, should be contemplated for the purpose of ensuring that sites remain untouched while

proceedings are ongoing.

Principle XII  
Sustainable management

States should ensure the sustainable management of memory sites through:

- a. Establishment of funding mechanisms with an institutional design that ensures their sustained, normal operation over time, transparency, monitoring, evaluation, and accountability.
- b. Promotion of management modalities that guarantee the autonomy of victims, human rights organizations, and local communities and ensure their continuity as State policies. It is advisable to promote the management of sites by victims, human rights organizations and local communities with state support and funding, or forms of co-management with the State.
- c. Establishment of suitable, permanent interdisciplinary work teams, working in cooperation with victims, human rights organizations, and local communities on the study of serious human rights violations committed and on creative strategies to avoid their repetition. It is advisable that sites concomitantly adopt a touring capability to reach geographically remote communities.
- d. The opening to society at large through activities targeting a wide audience, including open competitions to select winning designs for sites, activities, or permanent or temporary exhibits; mediated visits aimed at new generations; and cultural and artistic activities related to human rights.

Likewise, the State should ensure complete access to memory sites, giving special attention to physical, educational, cultural, linguistic, and economic accessibility considerations.

**PRINCIPLES RELATING TO ARCHIVES**

Principle XIV

Creation, recovery, preservation, and sustainable management

States have a duty to create, recover, and sustainably manage archives as an important part of efforts to restore and recognize historical truth. Archives are also an educational tool against denialism and revisionism in that they ensure that victims, society at large, and future generations have access to primary sources. At the same time, they serve as a useful documentary foundation for the realization of rights, non-repetition of serious human rights violations, and dissolution of authoritarian enclaves that can survive in a democracy.

Therefore, States have the obligation to create, recover, and sustainably manage government archives and to assist in the creation, recovery, and sustainable management of non-state archives of public value. For these purposes, States should ensure the following:

- a. The creation of a list of state archives and non-state archives of public value.
- b. The instigation and implementation of search operations that include legally mandated searches and on-site visits to the places where the information could be located.
- c. Hearings with those who might know where information is located or who can reconstruct events, while guaranteeing their safety.

- d. Dispossession of archives of institutions whose members are attributed serious human rights violations.
- e. Preservation, classification, and systematization of documents that may contain information related to serious human rights violations or documents of any nature that may assist in their investigation.
- f. Legislative actions, administrative measures, and technical efforts to regulate and promote the digital reproduction of archival records necessary for the preservation of historical memory.
- g. Development of public policies that guarantee and facilitate citizen access to information contained in archives and promotion of research initiatives aimed at ensuring the proper preservation of the original records in their different media.
- h. Preparation of official records on the progress of trials for serious human rights violations committed.
- i. Work with affected communities and civil society organizations to preserve, classify, and systematize records, in any medium, on serious human rights violations and/or in relation to their actions in defense and promotion of human rights and democratic values.
- j. Work with affected communities with a primarily oral tradition in terms of memory, in order to develop archives that preserve the memory of events over time.
- k. Training for justice operators on archive consultation and documentary and testimonial analysis techniques, in order to make better use of resources and to encourage interdisciplinary work.
- l. Adoption of appropriate technical measures and penalties to prevent theft, destruction, obstruction, concealment or falsification of files.
- m. Make every possible effort to recover or reconstruct information necessary to clarify human rights violations that they had a duty to protect and which has been illegally destroyed or stolen.
- n. Non-destruction of documentation that could contain information about serious human rights violations. Any destruction of a document that could assist in the investigation of serious human rights violations should be delayed until a consultation has been carried out with evaluation committees made up of professionals, civil society organizations, and victims. State archives should keep complete records in which all decisions regarding the destruction of documents are recorded, including the list of deleted documents and the manner of their disposal.

#### Principle XV

##### Accessibility of state archives

States should ensure public, technical, and systematized access to archives that contain useful and relevant information for the investigation of serious human rights violations. In particular, courts, extrajudicial investigation committees, and investigators should be able to consult archives freely. Everyone has the right to know if their name and/or identity is in government archives, as well as to register a statement on the content of the information; however, in no circumstances may documents be modified. Whenever the original is requested, it should be made available together with the

comments thereon.

### Principle XVI

#### Restrictions on access to information in state archives

Information should be managed according to the principles of utmost transparency and good faith. Any limits on freedom of expression must be expressly established by law beforehand in a narrowly tailored, precise, and clear way.

Victims of serious human rights violations and their families, as well as society as a whole, have the right to know the truth about the atrocities committed in the past. Therefore, in no case may a State agency deny authorities investigating human rights violations state information that may help to clarify such violations.

Particularly, in relation to the investigation and prosecution of wrongdoing attributable to State security forces, government branches may not invoke mechanisms such as the official secrecy restrictions or national security exceptions to refuse information requested by judicial or administrative officials in charge of investigations in ongoing processes.

It should be stressed that laws in the region and the inter-American system recognize the principle that in the case of investigations into serious human rights violations, objections on grounds of national security or international relations are unenforceable, even when the interests in play are ones that the State may protect in other contexts.

Likewise, when an authority denies information, States must make available should have a simple, prompt and effective judicial recourse to determine if there has been an infringement of the requestor's right to information and, as appropriate, to order the body concerned to ensure proper access.