



REGULATION OF MEMORIAL SITES IN THE SOUTHERN CONE: A CRITICAL ANALYSIS AND PROPOSAL FOR CHILE¹

Regulación de los sitios de memoria en el cono sur:
Análisis crítico y propuestas para Chile

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Abstract

This work explains the importance of regulating memorial sites in Chile by implementing a specific law. Along with explaining the contributions provided by memorial sites in the process of transitional justice, we analyze the current process that exists in Chile for them to be declared historical heritage, following the application of Law No. 17,288 on National Monuments. We then compare the process employed in the declaration and recognition of memorial sites in Uruguay and Argentina, through the application of specific norms that have been passed for this specific purpose: the Recent Past Memorial Sites and Law No. 26,691 on State Terrorism Memorial Site Preservation, Signposting and Outreach, respectively. Finally, we explain the overall guidelines of the MERCOSUR Instituto de Políticas Públicas en Derechos Humanos (Human Rights Public Policies Institute).

Keywords: *Memorial Sites; Human Rights Violations; Historical Memory; Right to Truth; Guarantee of Non-Repetition.*

Resumen

Este trabajo explica la importancia que tiene para Chile regular los sitios de memoria, implementando una ley específica. Junto con explicar los aportes de los sitios de memoria a los procesos de justicia transicional, se analiza el actual procedimiento existente en Chile para su declaración como patrimonio histórico, observando la aplicación de la Ley N° 17.288 sobre Monumentos Nacionales. Luego se compara el proceso utilizado en Uruguay y Argentina para la declaración y reconocimiento de los sitios de memoria, gracias a la aplicación de normativas específicas que han sido aprobadas para tales efectos: la Ley de Sitios de Memoria del Pasado Reciente y la

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Ley N° 26.691 sobre Preservación, Señalización y Difusión de Sitios de Memoria del Terrorismo del Estado, respectivamente. Finalmente, se explican los lineamientos del Instituto de Políticas Públicas en Derechos Humanos del MERCOSUR.

Palabras clave: *Sitios de memoria; violaciones a los derechos humanos; memoria histórica; derecho a la verdad; garantía de no repetición.*

I. INTRODUCTION

This research aims to explain that Chile requires the implementation of a Memorial Sites Law, this has been done through the analysis of the contributions that the latter provide on an educational, social, and legal level. The description of the advantages of having a special law on this matter – that would allow a swift, objective, and protective declaration process and its later management – by way of analytically comparing Argentinian and Uruguayan norms with the current situation in Chile. Additionally, we study the fundamental principles of memorial sites public policies that govern MERCOSUR, as these have set international standards, not only for the State Parties, but also to its associated members and the rest of the world. This comparative analysis has been carried out despite the social and cultural differences that exist between the countries of the Southern Cone, as comparative research in the region contributes to the truth and justice processes, given that they “provide an account of the potential of regional memories when confronting shared identities, and – thus – in integration process of South American nations.”¹

In the Argentinian case, we consider Law No. 26,691 on State Terrorism Memorial Site Preservation, Signposting and Outreach, from 2011, which with time has strengthened the institutional and administrative apparatus on this matter. Conversely, in the case of Uruguay we analyze Law No. 19.641 on Recent Past Memorial Sites, passed on July 13, 2018, which allows us to study a more recent norm, understanding its innovations in terms of processing and recognition of memorial sites. In Chile there is no specific law on memorial sites linked to human rights violations taken place between 1973 and 1990. The legislator has not defined the concept of memorial site, nor has made any reference to its importance, function, establishment, conservations, administration, and funding. Given this regulatory gap, the main law that has been applied is Law No. 17,288, as well as other lower rank norms. To date, the National Monuments Council (Consejo de Monumentos Nacionales) (hereafter CMN) has granted memorial site status to 42 memorial sites. Most of these sites are detention and torture centers,² although it has also named other compounds or locations as national monuments due to their symbolic and commemorative nature.

Our Parliament has not been oblivious to this reality, on March 4, 2019, a bill amending Law No. 17,288 on National Monuments was presented by the Arts and Culture Commission to the House of Representatives to regulate cultural heritage. This can be seen as a step forward

¹ MERCOSUR INSTITUTE OF HUMAN RIGHTS PUBLIC POLICIES (Instituto de Políticas Públicas en Derechos Humanos del MERCOSUR) (hereinafter IPPDH), p. 5.

² The National Commission on Political Prisoners and Torture (La Comisión Nacional Sobre Prisión Política y Tortura), known as the Valech Commission, identified 1,132 detention and torture centers across the country. THE NATIONAL COMMISSION ON POLITICAL PRISONERS AND TORTURE (2004), p. 305.

in this matter. The main contribution of this bill was to incorporate the memorial site category and propose a new composition of the CMN, including memorial site representatives. However, this has remained as a bill, which the Memorial Site Network of Chile (Red de Sitios de Memoria de Chile)³ has categorized as insufficient to take on this matter.⁴ We must clarify that our legislation has attempted to pigeonhole the concept of memorial sites into an already existing category: historic or public monument, but is unaware of the series of specific features that memorial sites possess, which is why they must be treated and managed in a particular way. Given this, a new legal framework – that is different to that applicable to national monuments – is required. Although memorial sites are part of our general heritage, they evoke different practices and needs than that of a common heritage property: the sustainability of the building or its commemorative nature, reclaiming memorial sites that are still seized by the Armed Forces, the State or private hands that have not been studied or managed in order to contribute to the processes of truth, reparation and non-repetition; archaeological evidence care of the sites and funding for the expertise required as evidence in the processes of disappeared, tortured, executed and surviving political detainees; policies against fascist attacks on memorial sites, amongst others.⁵ It is plausible that Law No. 17,288 is not attuned to the specific needs required to safeguard memorial sites in our country, and this is why we can anticipate that the most appropriate solution is the creation of a norm that adapts to this new heritage category.

This presentation initially shows the conception, importance, and roles of memorial sites, so that we can then understand the aspects that must be considered for the development of public policies on this matter in Chile. We then analyze the approach to memorial sites in Chile, with a legal and administrative lens, in order to understand the drawbacks of operating under the National Monuments Law rather than with a specific regulation. Furthermore, we analyze comparative views regarding memorial sites public policies deployed in Argentina and Uruguay, which have specific laws on the matter. Finally, we contrast everything we have seen against the principles suggested by MERCOSUR on a regional level regarding memorial spaces.

³ This is a Project called “Memorial Site Network for the promotion of Human Rights and the Strengthening of Democracy”, which emerged in 2012, with a call from the European Union to support the development and consolidation of “public spaces” that contribute to bolster a culture of respect for Human Rights and create collective reflection and awareness of the traumatic facts and sites that exist in Chilean democracy. It is formed by its articulator, Corporación Parque Por La Paz Villa Grimaldi, and those who were partners of the project: Fundación Patrimonio Nuestro, Universidad de Santiago de Chile, and the Instituto de la Comunicación e Imagen de la Universidad de Chile. This project included five organizations of the following memorial sites: “Ex Clínica Clandestina Santa Lucía”, “Nido 20”, “3 y 4 Álamos”, “Ex Cuartel Ollagüe de la Dina” and “Memorial Paine”.

⁴ Cfr. RED DE SITIOS DE MEMORIA (2019).

⁵ Cfr. RED DE SITIOS DE MEMORIA (2019).

II. MEMORIAL SITES

This section takes on the definition and scope of the concept of memorial site, as well as all the aspects and challenges that must be considered when elaborating public policies, we hope will be implemented in our country, especially given the societal contributions these sites provide.

Referring to memorial sites immediately evokes physical locations where State agents committed serious human rights violations during the Dictatorship. However, this definition can include other locations that are significant to the victims, their families, and the community as a whole, given that they are associated – albeit not physically – to these events and are created to transmit and create memories and awareness. Some of these places include museums, memorials, monuments. Thus, the scope of this concept will determine the adoption of a broad or restrictive term for memorial site.

It then becomes relevant if a country's legislation adopts a strict or broad view of the meaning of memorial site, as this is the basis for the identification and creation of processes that will set in place.⁶ Chile does not have a law that provides a clear definition, but it can be inferred that it tends towards granting the term a broader sense, which is tacitly expressed with the creation of the Museo de la Memoria y los Derechos Humanos (Museum of Memory and Human Rights) in 2010. Given the social and political implications of the events taken place during the civic-military Dictatorship, a series of challenges, strategies, and efforts to grant visibility to a memorial site begin to arise. The physical spaces and public places where public policies regarding society's memory are intended to be carried out always entail social struggle and conflict.

The first step in the recognition and installation of memorial sites is to interweave the notion of the location of the memory and the memorial site, bearing in mind the following aspects: 1. The materiality and existence of spaces, ruins, real and movable sites; 2. The link between these spaces and historical events that they bear witness of (such as vestiges or commemorative elements); 3. The link between the two aforementioned aspects by way of a social decision that is manifested by institutions that aim for the preservation of said assets, their elevation as historical testimony of commemorative references by creating memorial monuments of territorial inscriptions.⁷ All in all, it means acknowledging a place that is linked to national history and understanding the importance within the community.

Although Chile uses the memorial site concept in its broader sense, it is also necessary to work on noting the difference between memorial area and memorial site, understanding the divergence between the concepts of space and place. A space can be understood simply as a geographical location, whereas a place leads to the visualization of an area that has been lived in and appropriated by the experience of subjects within it. The transformation of space to place relates to granting the site symbolic value. This value is directly proportional to the political, social and cultural position regarding the events of exhumation and human repression that took place during in the context of the dictatorship, which was granted by the civil society

⁶ IPPDH (2012), p. 17.

⁷ CMN (2018), p. 33.

on a political, historical and ethical level. The MERCOSUR Institute of Human Rights Public Policies defines memorial sites as:

All the places where serious human rights violations were committed, or where said violations were resisted or challenged, or are linked in some way to the victims, their families, or the communities associated to those events, and are used to recover, rethink, and transmit traumatic processes, and/or honor and make reparations to the victims.⁸

This term is especially broad, which can also lead to confusion on the indiscriminate use of the concepts of memorial sites and memorial. In Chile term memorial can be used in relation to commemorative heritage, which is manifested in the figure of a public monument. Articles 17 to 20 of Law No. 17,288 states that only memorials located on State owned public spaces destined as public use national assets and fulfill the aim of commemorating victims of repression, human rights' defenders, individuals, or groups that offered resistance or those who aided the reinstatement of democracy will be granted protection. Memorial sites are associated to the heritage figure of the national monument, which finds its legal recognition and protection in articles 9 through 16 of the National Monuments Law. Historical monuments are known for their historical relevance and refer to physical places that provide material evidence of compounds or enclosures used for the purposes of repression, intelligence or counterintelligence, places where the State violated human rights, historical sites linked to the defense of human rights or are associated to political resistance. It is worth reiterating that the norm does not provide a definition for memorial site, which is why in places it in the historical monument category. However, the CMN – curiously – uses the concept of memorial site on an administrative level, understanding it as:

Physical places that provide material evidence of enclosures and spaces used for various objectives and circumstances: With the purpose of repression, intelligence or counterintelligence, places where State agents committed serious human rights violations, historical sites that are associated to human rights defense and/or are linked to political resistance. Conversely, these are included in a process of struggles and disputes by cultural and/or human rights groups with various authoritarian hubs, bureaucratic inertia, and de facto powers in favor of their invisibility, destruction and neglect. These memorial sites are part of the recovery processes of enclosures and compounds that express the collective management and elaboration processes of various cultural, heritage and commemorative practices associated to said site, as well as the political and social processes they were a part of. Finally, they are a material expression of the symbolic reparation policies and of the effective guarantees of non-repetition on behalf of the States that committed systematic human rights violations of their population.⁹

⁸ IPPDH (2012), p.21.

⁹ CMN (2018), p. 38.

The concept of memorial site must be granted legislative value, not only on an administrative legal, as societies that have experienced a period of State repression and terrorism usually seek to both identify these places and also protect, recover, interpret and broadcast them. Thus, there are certain assets that are recognized as valuable or significant for their identity and are therefore sought out to be positioned as a key part of the collective memory, because the military government did not only aim for a political and social reorganization, but also influence these spaces. Urban planning prevented communal relationships and solidarity among citizens. It isolated people, installing individualistic interaction devices, through the practices of fear, isolation, and suspicion. According to Estela Schindel, “the massacres against mass groups are not only made up by the act of extermination itself; they begin before the crime is committed by way of a long process of progressive stigmatization, hostility and exclusion of the population or group in question. For the crime to take place it is necessary to isolate future victims from the rest of society, the group must be removed”.¹⁰ Recovering and giving these places values helps societies reencounter and re-establish the lost communal networks, share the principles and foundations on which they found these relationships again, especially regarding the memorial sites: relationships based on the respect for human rights.

Another important role played by memorial sites is that enables the creation of a transition in the change of the values and interaction between the State, individuals, and the community, within a new legal and political regime., as it seeks to heal the past wounds and build a society based on respect for human dignity. However, this reconstruction has its difficulties, as the narration of social history necessarily involves attempting to solve the conflicts embedded within. It may be that the memory has different or contrary contents or aims, as there may be “goals that intend to hide the truth of the violations, that are founded on the unawareness of the victims’ dignity or that seek revenge”,¹¹ and thus result in encouraging actions that go against the framework of values that they intend to include in the community with these places. These expressions must be rejected if they seek to encourage historical memory, as their contents may be restricted but can never be fully defended. The turning point will be provided by the ethics that will be promoted through the application of public policies regarding memorial sites. According to Torres, “a procedural approach to memory can be used to ensure its efficacy as a transitional tool, but on the other hand it enables the goal of respecting the principle of equality and freedom of expression”.¹² What must be sought is favoring the dialog mechanisms between all social actors, avoiding intolerance and denial. This must become a focal point for the authority as it prevents social polarization.

History can be recovered from the site by collecting and preserving the tangible heritage represented by architectural works and material objects, but it is also relevant to integrate immaterial heritage that is linked to the sites and that originate from the social practices and rites of each community. This social and historical function is directly linked to symbolic reparation because the story reproduces the facts that were State crimes against its citizens, acknowledging that their victims had their inherent rights encroached on, which - undoubtedly - publicly asserts the nation’s responsibility in these acts. In this sense, the proposals and

¹⁰ SCHINDEL (2013), p.3.

¹¹ TORRES (2013), p. 157.

¹² TORRES (2013), p. 158.

initiatives that provide an openness to identify, signal, recover, preserve, and keep the places where the torture crimes, illegal detention and extermination open to the public, as well as open spaces to grieve are particularly relevant – such as Memorial del Patio 29 in Cementerio General de Santiago (Santiago’s General Cemetery).

At the same time, memorial sites are key piece in the development of legal roles that are born from the nation’s obligation to investigate and sanction, in as much as they refer to human rights violations. On this matter, the Inter-American Court of Human Rights (hereafter IHR Court) has stated that:

The State Parties’ obligation is to “guarantee” the free and full exercise of the rights recognized in the Convention to every person who is a subject of their jurisdiction. This obligation implies the duty of State Parties to organize all the governmental apparatus and, overall, all the structures by which the exercise of public power is expressed, to legally ensure the free and full exercise of human rights. As a result of this obligation, the States must prevent, investigate, and sanction every rights violation recognized by the Convention and, also, ensure, if possible, the reestablishment of the right that has been affected and – if applicable – reparation of the damage caused due to that human rights violation.¹³

This duty requires physically safeguarding the locations where the human rights violations took place, as they are fundamental on an evidentiary level. All the existing technical measures must be provided in order to prevent the loss, damage, removal, destruction or falsification of evidence that can be collected on site. The completion of this task requires an interdisciplinary specialized group. The IPPDH has stated that States must ensure the availability and access to judicial and administrative mechanisms to request the preservation of memorial sites by any individual or institution to safeguard its intangibility. Said guarantee also entails archive access, as these can rebuild the operation of the enclosures during the Dictatorship and support victims’ testimonies.¹⁴

Another point to analyze regarding memorial sites is their management. Organizations dedicated to understanding and valuing the heritage they manage, encouraging and directing restoration, preservation and upkeep become particularly relevant. The place can be made known to the community, either by direct contact with the site or by other means of communication that allow the presentation of their features, attributes, and values. These are taken from sources of information that are related to the site in question, thus consolidating their cultural management. This allows the completion of the most relevant social function of memorial sites: education. This allows to link past and present, implementing teaching mechanisms that allow reflection and critical thinking, and consolidating the insurance of non-repetition.

The social contribution provided by the protection of memorial sites and commemorative places is embodied throughout this section, as it translated in the multiple

¹³ Velázquez Rodríguez con Honduras (1988).

¹⁴ IPPDH (2012), pp. 8-9.

roles that have already been discussed. They also are essential in the recognition, promotion of historical memory, reparation, justice and guarantee of non-repetition.

III. CHILEAN NORMS AND INSTITUTIONS

In this section we will provide legal and institutional context for what takes place on Chilean memorial sites, as it becomes imperative to understand the foundations that uphold the recognition, declaration, management, and funding processes of these places, as there is no specific legal mandate that regulates them. In order to tackle the legal framework, we must consider the international treaties on heritage that our country has entered into, focussing on its implications regarding the protection of the right to peoples' culture and historical memory. According to Article 5 of the Constitution, international norms such as the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Inter-American Convention on Forced Disappearance of Persons, the International Covenant on Economic, Social and Cultural Rights or the International Covenant on Civil and Political Rights, are all norms that are relevant within the national legal system. The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage¹⁵ in its Article 4 states the obligation of State Parties to identify, protect, preserve, rehabilitate and transmit to future generations the cultural and natural heritage located on national territory, also considering that the destruction or damage of this kind of heritage is not only a disservice to the country they are in, but it entails the nefarious impoverishment of the heritage of all the people of the world. On March 13, 2009, the Convention for the Safeguarding of Intangible Cultural Heritage, passed by UNESCO in 2003, came into force in Chile. In its article 2 it defines immaterial cultural heritage as:

The uses, representations, expressions, knowledge, and techniques – along with their inherent instruments, objects, artifacts and cultural spaces – that communities, groups and in some cases, individuals recognize as an integral part of their cultural heritage. This immaterial cultural heritage, which is transmitted through the generations, is constantly recreated by the communities and groups according to their environment, their interaction with nature, and their history, infusing them with a sense of identity and continuity, thus contributing to promote the respect for cultural diversity and human creativity.

This Convention indicates the profound codependence that exists between immaterial and cultural heritage in societies, endowing its safeguarding with international recognition. We can thus appreciate the relevance of human rights defenders and the families of victims of the dictatorship in creating heritage awareness on the use and representation of the memorial sites as an integral part of Chilean culture, in the intergenerational transmission of the acts that took place during the dictatorship – as a component of our national and world history that must be

¹⁵ The Convention concerning the Protection of the World Cultural and Natural Heritage was approved by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its 17th session, held in Paris on November 16, 1972. Chile promulgated this norm in 1980.

preserved and safeguarded in time. Additionally, article 5 of the Convention concerning the Protection of the World Cultural and Natural Heritage¹⁶ notes that State Parties shall provide protection to the natural and cultural heritage, with the task of creating general planification programs, incorporating protection, preservation, and appreciation services with staff that has been trained for this, including legal, financial, technical, and administrative measures to achieve the aim. Additionally, they must carry out scientific and technical research to prevent dangers that threatened the heritage, amongst others.

In agreement with International Law, article 19 No. 10 of the Constitution sets down the State's duty to promote educational development on every level; stimulate scientific and technological research, artistic creation, and the protection and enhancement of the nation's cultural heritage - which could encompass memorial sites. In order to comply with these mandates, the Ministry of Cultures, Arts and Heritage was created in 2017 by Law No. 21,045.¹⁷ This new norm is key in order to verify certain principles stated in its article 1: In number 6^o it acknowledges cultural heritage as a public asset, and as such it transforms it into a space of reflection, recognitions, construction, and reconstruction of identities and of the national identity. On the other hand, number 8^o recognizes that historical memory is one of the fundamental cornerstones of the country's intangible culture and heritage, which recreates and projects itself in its continuous respect for fundamental rights, diversity, tolerance, democracy, and the Rule of Law. Therefore, declaring memorial sites historical monuments becomes a key mechanism for the development of the national cultural heritage and historical memory of our country. This idea is strengthened by Article 3 of Law No. 21,045, regarding the functions of this ministry - the most relevant public organ on regarding memorial sites. The main role is to contribute to the recognition and safeguard of cultural heritage, promoting its knowledge and access, and encouraging people and communities to take part in the processes of collective memory. Additionally, number 20 indicates its duty to ensure that Chile complies with the international conventions on cultural, artistic and heritage matters it is a part of, as well as

¹⁶ Article 5 of the Convention Concerning the Protection of the World Cultural and Natural Heritage. States Parties shall provide protection to the World Cultural and Natural Heritage, and to the extent possible:

- (a) Adopt a general policy aimed at giving the cultural and natural heritage a function in the life of the community and at integrating the protection of this heritage into general planning programs;
- (b) Establish within its territory, where they do not already exist, one or more services for the protection, conservation, and presentation of the cultural and natural heritage, with adequate staff and the means to enable them to carry out the tasks incumbent upon them;
- (c) Develop studies and scientific and technical research and to improve methods of intervention which will enable a State to deal with dangers threatening its cultural and natural heritage;
- (d) Take appropriate legal, scientific, technical, administrative, and financial measures for the identification, protection, conservation, presentation and rehabilitation of such heritage; and,
- (e) Enable the establishment or development of national or regional centers for training in the protection, conservation and presentation of the cultural and natural heritage and encourage scientific research in this field.

¹⁷ The Ministry of Cultures, Arts and Heritage is the State secretariat in charge of collaborating with the President of the Republic in the design, formulation, and implementation of policies, plans and programs that contribute to country's harmonious and equitable cultural and heritage development in all its diversity, recognizing and valuing the cultures of indigenous peoples, geographical diversity, and the regional and local realities and identities.

explore, establish, and develop international links and programs on these matters, requiring collaboration with the Ministry of Foreign Affairs. Finally, number 35 expressly determines as a function the declaration of national monuments by way of national decree, according to Law No. 17,288 and prior favorable report issued by the CMN.

The creation of the Ministry of Cultures, Arts and Heritage brought along structural changes to the CMN - created in 1925 and previously under the Ministry of Education. We presently talk of a technical, highly specialized body that is under this new ministry, and that is concerned with the protection and stewardship of monumental heritage. In order to carry out its role it collaborates with one of the two ministerial sub secretariats: Heritage. This sub secretariat is in charge of proposing policies to the State Secretary, designing and assessing plans and programs on matters pertaining to folklore, traditional cultures, indigenous culture and heritage, material and immaterial cultural heritage, heritage infrastructure, and citizen participation in the processes of collective memory and heritage definition. This hierarchical peak of this organ is the Subsecretary, which can be inferred from article 12 of Law No. 21,045. Additionally, it manages the action of other internal branches, such as the Cultural Heritage National Service (Servicio Nacional del Patrimonio Cultural), in charge of implementing policies and plans, and designing and carrying out programs destined to fulfill the duties of the Ministry. In other words, the sub secretariat creates a plan, and the National Service carries it out. The Service is under charge of the National Director. Additionally, the following national heritage institutions are integral part of the Cultural Heritage National Service: Biblioteca Nacional (National Library), Archivo Nacional (National Archive), Museo Nacional de Bellas Artes (National Museum of Fine Arts), Museo Histórico Nacional (National History Museum), Museo de Historia Natural (Museum of Natural History), Cineteca Nacional (National Cinema) and the Secretaría Técnica del CMN (CMN Technical Secretariat). This Service will be territorially deconcentrated through the Heritage Regional Offices.

Our analysis thus far would lead us to believe that we are facing a normative and institutional framework that is sufficiently robust to carry out the declaration and installation of public policies on memorial sites in Chile. But we must bear in mind, however, that the Ministry of Cultures, Arts and Heritage can create a decree declaring that certain memorial places are memorial sites, but only if there is a previous report that allows it to grant said status to a memorial site, which is elaborated by the CMN - the organ in charge of carrying out Law No. 17,288. The CMN is made up of 22 advisors,¹⁸ none of which are human rights specialists. On the other hand, its composition could imply impartiality in decision-making, considering who its members are: one representative of the Ministry of Interior, who can be a superior office of Carabineros (Chile's national paramilitary police force) and one representative from the Ministry of National Defense, who must be a superior official of the Armed Forces. The controversial issue is that memorial sites are incidents in the judicial procedures on human rights violations that took place during the dictatorship, given that they are physical evidence of these events, where the people accused in those cases happen to be State agents, which includes members of the military and the police force. This creates insecurity as the advisors could have a protectionist attitude in favor of the institution that they represent or simply proceed without the required objectivity. According to what has been presented, the composition of the organ

¹⁸ Article 2º of Law No. 17,288 of 1970.

that decides whether a space should be declared a memorial site must be promptly reassessed, as it should consist of an expedited and deliberative process carried out by experts on this matter.

Given that Chile does not have a law on memorial sites, the norm applied to date is Law No. 17,288 on National Monuments. This legal body mentions that a historical monument encompasses the places, ruins, constructions, and objects that are owned by the State, a borough, or by an individual that are declared as such by supreme decree – prior request and agreement of the CMN – due to their historical, antique, or artistic qualities or interest.¹⁹ These are under the control and surveillance of said Council, who must authorize each work of conservation, reparation, or restoration on this matter. Conversely, it shall provide for the authorization and way objects that belong or are part of a historical monument will be removed. The reviewed legal definition allows us to incorporate the duty to protect memorial sites – given the importance of their testimony of the history of the dictatorship in Chile. However, a limited conception of the term is created when referring to their material safeguard.

Another relevant provision is Article 12 of said norm and it states that if the real estate belongs to an individual, the owner must keep it and cannot destroy, transform, or repair it, or carry out any construction on its surroundings unless the CMN has given its authorization for this.²⁰ If a piece of private property that houses a historical monument goes on the market or is put up for auction, the State shall have preference for its acquisition. It also imposes the obligation on auction houses, as they must inform the CMN of the public or private auction of the assets that notoriously could be considered historical monuments.²¹ Additionally, article 16 lays down that the CMN may request the competent organs to seize private property that should be kept in the hands of the State. However, must note that all these safeguards of memorial sites are created as attributes of the CMN, and not as obligations or impositions on individuals, and thus the possibility of carrying out the protection, preferred purchase or seizure of these sites is at the discretion of this organ.

The National Monuments Law also makes space for the broad conception of memorial site. Statues, columns, fountains, pyramids, plaques, crowns, engravings and – overall – all the objects placed to perpetuate remembrance in fields, streets, squares and parks or public places are under the stewardship of the CMN. This definition is in line with article 17 regarding public monuments. Their upkeep will be in charge of the borough where they are located, and the Intendents and Governors of the respective provinces and departments of each jurisdiction must ensure their adequate state of conservation, and thus must inform any damage or alteration experienced by these monuments to the CMN.²²

After analyzing how memorial sites are integrated into the categories contemplated in Law 17,288, we can begin to see issues that need attention, considering that there is not legal definition in a specific law or particular category in the National Monuments Law. First, this

¹⁹ Article 9 of Law No. 17,288 of 1970.

²⁰ *Vid.* Article 12 of Law No. 17,288 of 1970.

²¹ Article 15 of Law No. 17,288 of 1970.

²² Article 20 of Law No. 17,288 of 1970.

situation enables the inexistence of legislative recognition of human rights violations carried out by State agents during the dictatorship, and there is no clarity on the scope of the term memorial site when defining the public policies that should be considered. Additionally, given that the CMN's composition does not include experts on memorial sites, it is necessary to verify that all the archeological conservation measures are taken on memorial sites in order to adequately preserve the evidence in cases of human rights violations taken place in our country. This could even merit the creation of protocols geared to the archeological and preservation work done on memorial sites, which allows to reveal and emphasize their attributes in their various interpretations.²³

Overall, the process of declaring a memorial site as such is born from society's effort, rather than from the CMN's own initiative, as was the case with the first recovered site - Villa Grimaldi²⁴ - in 1994. Regarding this, Article 10 of Law 17,288 states that any person or authority may report the existence of a historical monument that corresponds to a movable or real estate. The applicant, however, must provide an extensive list of historical records,²⁵ which hinders and slows the process. This has led to various sites not receiving adequate and timely protection, and some were even destroyed by the new owners, who in some cases had apparent political interest in concealing the truth about what had transpired.²⁶ This has occurred mainly because there is no centralized budgetary investment or incentives for an interinstitutional articulation on memorial sites. We are facing the inexistence of a heritage protection public policy on them and given the lack of State bodies that is open to receiving citizen reports on the existence of these sites and plays an active role in their investigation and declaration. Bearing in mind that the Valech Report determined that the State would be in charge of declaring that symbolic clandestine detention, torture, and disappearance centers be deemed national monuments, which means the State has the obligation of defining a memorial policy on these places.

When the existence of a memorial site is reported, the Technical Secretary of the CMN analyzes the provided information by the applicant(s) in three ways. 1^o) A documental analysis, where the information contained in the various documental sources are interpreted, where the most reliable ones are the reports made by the National Commission on Truth and Reconciliation and the National Commission on Political Imprisonment and Torture, as well

²³ Cf. SITIOS DE MEMORIAS. COLEGIO DE ARQUEÓLOGOS DE CHILE Y CENTRO NACIONAL DE RESTAURACIÓN Y CONSERVACIÓN (2017), p. 22.

²⁴ GUGLIELMUCCI & LÓPEZ (2019), p. 67.

²⁵ For real property, a letter addressed to the Technical Secretary of the CMN must be sent identifying the applicant(s), stating the arguments that support the request for declaration. In addition to other documents related to the property that will make up its technical file, including: geographic and political-administrative location, a proposal of the area sought to be protected, all regulatory information linked to territorial planning instruments, the current certificate of ownership, the name, national identity card and address of the owner, all relevant historical, judicial, and architectural information, plans, letter of support and the opinion of the owner (when the building is privately owned). In the case of movable property, the plans, regulations and domain certificate are eliminated, adding a technical form of the object or an inventory of the collection, according to whether its one or several pieces, and the accreditation of the property's ownership.

²⁶ INSTITUTO NACIONAL DE DERECHOS HUMANOS (National Institute of Human Rights) (hereafter INDH) (2018), p. 100.

as the transcripts and dossiers of the judicial cases that exist regarding human rights violations carried out by State agents. This analysis translates into traditional historiographical research.²⁷ 2^o) An ethnographic analysis complements the documental analysis, as it applied through an external observation methodology that focusses on the crucial points of a site or real estate regarding the manifested experience of a survivor of said location. 3^o) A structural and functional analysis, which incorporates the archeological and architectural dimensions of the place, allowing the special and cultural composition of the place or property to be read from the general analysis of the compound or area.²⁸ After creating the report, it is submitted to the decision of the CMN, who will indicate if the declaration of the historical monument or historical will proceed or not, according to each case.

Another aspect to inspect is the funding used to manage memorial sites, which is mainly obtained from competitive funds and donations made for cultural purposes. In the past, there were agreements signed with the Dirección de Bibliotecas, Archivos y Museos (Directorate of Libraries, Archives and Museums - DIBAM), who provided financial support to these establishment in accordance with Law No. 20,713.²⁹ Today, Article 26 of Law 21,045 enshrines the existence of a Cultural Heritage Fund.³⁰ In order to gain funds from this source, a public bidding process application is needed. The contributions that make up this fund come from various sources: Resources contemplated annually in the Public Sector's Annual Budget Law, donations, inheritances or legacies made to the Cultural Heritage National Service with the sole purpose of being used for this fund, contributions received by the Cultural Heritage National Service from international cooperation in order to fulfill its goals, and with the specific aim of being destined to this fund, and other resources that the Cultural Heritage National Service may receive, as long as it has been done with the specific directive to be used in this fund, according to decree No. 1,263 of 1975 on State Financial Administration.³¹

Donations made with cultural purposes are regulated in Article 8 of Law No. 18,985 (1990), modified by Law No. 20,675 (2013). This norm allows the owners of real estate that has been declared national monument, in all its diversity and regardless of whether they are publicly or privately owned, and the owners of historical conservation real estate recognized in the General Law of Urban Planning and Construction and its Bylaw, to be beneficiaries of these donations. Other possible beneficiaries include the CMN and the Cultural Heritage National Service, which would allow the donated funds to go directly to the owner of a memorial site or increase the Cultural Heritage Fund previously described.

Another way to generate funds is through the Projects, Memorials, and Institutional Management Area, which is inserted in the Human Rights Program, that in turn is under the Ministry of Justice and Human Rights. This Area is continually opening applications to public tenders for specific memorial site projects to encourage symbolic reparation works, in

²⁷ CMN (2018), p. 79.

²⁸ *Id.* P. 81.

²⁹ Article 41 established the Cultural Heritage Fund, which determined that the Heritage Natural Service was the DIBAM's successor.

³⁰ *Vid.* Article 26 of Law No. 21,045 of 2017.

³¹ Article 27 of Law N° 21,045 of 2017.

compliance with Law No. 19,123 and 19,980, which set the reparation measures the family members of victims of the dictatorship are entitled to.

IV. COMPARATIVE VIEWS

Having understood how the Chilean legal and administrative framework operates in Chile, it is necessary to look at other legislations that may allow us to improve legislative and organizational aspects of memorial sites. For this purpose, we shall focus on the Uruguayan case, as its unified norm on memorial sites has been in force since 2018, which allows us to analyze a current legal precept and witness the challenges it has had to face in its implementation. We will then study the Argentinian case, given that there has been an intention to implement laws of this nature since Néstor Kirchner's rule. This impulse translated into the implementation of a policy on signage, protection, and – in many cases – access, opening and upkeep of ex clandestine detention, torture, and extermination centers. This was done through the creation of Places of Remembrance which were initially declared historical monuments in the same way as Chile, but with time converged in a special norm on memorial sites, known as Law No. 26,691. On the other hand, we cannot disregard the international standards that are defining the development of public policies on memorial sites in the Southern Cone, where we will look at what has been said on this matter by MERCOSUR.

4.1 Uruguayan norms and institutions

Uruguay has subscribed to the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987), the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. In 1979, Uruguay ratified the ratified the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, and in 2007 ratified the Convention for the Safeguarding of the Intangible Cultural Heritage, also adopted by UNESCO.

Regarding constitutional matters, it is worth mentioning Article 34 of the Uruguayan Magna Carta: “All the artistic or historical riches of the country, whoever be its owner, are part of the Nation's cultural treasure; it shall be under the protection of the State and the law shall establish whatever it deems fit for its safeguarding.” This precept is related to the contribution memorial sites provide to the Uruguayan people, and as such, the State is committed to its protection. In 2018 Law No. 19,641 on Recent Past Memorial Sites came into force. This statute defines the declaration process and creates the institutions in charge of memorial sites.

This statute is in itself an affirmation of human rights violations perpetuated during the dictatorship. The creation and declaration of memorial sites enshrines a reminder and an acknowledgement of the existence of memorial sites where citizens were victims of terrorism or illegitimate State action motivated by political, ideological, or trade beliefs. It also expresses the importance that these places should be used as spaces that are open to the public to aid the recovery, construction, and transmission of memories, as well as operate as a way to honor and

repay the Uruguayan victims and their families. Article 4 of Law No. 19,641 specifically defines that memorial site is understood as:

The physical spaces where one or some of these events took place: a) State inflicted human rights violations, encompassing crimes against humanity such as torture, forced disappearances, assassination, wrongful imprisonment, rape and other sexual abuse crimes against men and women, political persecution, destitutions, or exile; b) Displaying acts of resistance and struggle in favor of constructing or recovering democracy; c) Other sites that victims, their families, or communities associate with those events and that have been created to build and transmit memories, such as memorials, museums, and other spaces, and that spaces which are open to the public for the recovery, construction, and transmission of memories and as a vehicle to honor and repay the victims and the communities.

Given the former, a clear and tangible definition comes to light in its letter c) as a broad concept of memorial site. Thus, Uruguayan public policies should tend towards encouraging the physical spaces where the human rights violations took place as well as the equal development of memorials and museums, involving the identification and material safeguarding against potential attacks as well as more funding. In terms of the extent in time, Article 5° of Law No. 19,641 determines two periods in time for these events to have taken place: 1°) from June 13, 1968, to June 26, 1973 (in the framework of the systematic application of prompt security measures and under the terms of the dominant national security doctrine), and 2°) from June 27, 1973, to February 28, 1985 (when the civilian-military dictatorship was established). It also states that it can include events taken place outside these time frames which involve State human rights violations or where there have been significant displays of popular resistance. This also give the concept of temporary memorial site a broad sense.

The institutions in charge of memorial sites are, firstly, the National Human Rights Institute and the Ombudsman's Office (hereafter INDDHH). This public organ is part of the Legislative Power, and its purpose is the overall defense, promotion, and protection of human rights recognized by the Constitution and International Law. It is not subjected to any hierarchy, is autonomously funded, and does not receive instructions or orders from other authorities.³² The Honorary Commission of Memorial Sites depends directly on this Institute. This Commission was created by Article 8 of Law N° 19,641, and has the following roles:

- A. Receiving, instructing, and resolving requests submitted for the declaration and creation of Historical Memorial Sites. For this to be carried out, they can request all the necessary information and historical records directly from public or private organs.
- B. Carry out - once the declaration of a memorial site has been authorized - the relevant actions to ensure its preservation, functioning, management, and upkeep.
- C. Promote the creation of Site Commissions, as well as determining the commemorative dates.

³² Articles 1° and 2° of Law No. 18,446 of 2018.

- D. Arrange the site's protection and conservation mechanisms with other competent authorities and organs, as well as promote its establishment and instrumentalizing the mechanisms that aid its access.
- E. Permanently create and update the National Memorial Site Catalog alongside the National Memorial Sites Network and the Sites Commissions, providing ample broadcasting of their content.
- F. Deciding the way that the memorial site will be individualized by placing a plaque or other symbol, as well as its evolution as a memorial site, museum or memorial.
- G. Promote and approve its internal operation bylaw.³³

As we can see, the Commission is the most influential organ in the decision to declare and keep those places that fulfill the conditions to be deemed memorial sites. By having so much input in the process, it cannot work alone and must therefore resort to the suggestions of the Advisory Council if deemed relevant. This organ is made up of a delegate from the Republic's Presidency, one from the Judicial Branch, another from the Intendents Council and one from the Municipal Plenary.³⁴

The process for the declaration of a memorial site can be initiated from an interested person or institution's petition - by submitting a request to the Memorial Sites Honorary Commission - or act on its own initiative in said diligence. The information that must be exhibited in order to elevate the request are as follows: 1) A document containing the information on the location of the memorial site to be created; 2) A description of the events that took place there, the dates when they occurred and the people and institutions directly involved; 3) Any other evidentiary element or information that backs up the request. This is notwithstanding the evidentiary measures set by the Memorial Sites Honorary Commission to ensure better success of the request.³⁵ This appears to be a straightforward procedure, involving a small number of documents that need to be submitted, lacking a specific denomination and not exhaustive. This allows a swift, easy, and expedited process that in the long run can result in a higher number of memorial sites recognized as such and thus have an increased physical protection.

Once the memorial site is declared as such or is created, the Uruguayan state can take various actions around it,³⁶ one of them the creation of access to the public. This is the measure that would we normally expect to be applied, but in practice the only site that is open to the community is that where the former Information Defense Service (hereafter SID) carried out its operations, determining where the INDDHH - the organ in charge of the site - would function, which requires the support of survivors and human rights organizations. Its funding comes from the annual budget, which is assigned to the body it depends on and who destines a fund for its operation and upkeep.

³³ Article 10 of Law No. 19.641 of 2018, Uruguay.

³⁴ Article 12 of Law No. 19.641 of 2018, Uruguay.

³⁵ Article 17 of Law No. 19,641 of 2018, Uruguay.

³⁶ See Article 18 of Law No. 19,641 of 2018, Uruguay.

The protection, preservation, safeguarding, non-innovation, and appreciation of memorial sites are other actions that they State can employ if a location is declared a memorial site. However, placing plaques or symbolic material expressions on places that have been declared memorial sites is the most common practice. This is because the State has minimal funds to allocate to this purpose, according to Mariana Mota, the Director of the Memorial Sites Honorary Commission.³⁷ This means that the management of memorial sites is practically inexistent. This is the root of the main problem, as not managing these places limits its role in terms of education, preserving memory, the guarantee of non-repetition, and – most importantly – the protection and investment in expert test that allow to collect evidence of the crimes committed there. Regarding the Montevideo Museum of Memory (MUME), it is an institution funded and managed by the city intendancy. When it was founded in 2006, many social and human rights organizations took place, creating its plans and projects.³⁸ It is worth specifying that the Memorial Sites Honorary Commission does intervene in any way in its upkeep and funding. We could be led to believe that “instituting a legal guarantee in order to recover, protect and develop memorial sites and turning them into honored places made for reflection on our democratic coexistence and human rights”,³⁹ is a task that takes time to develop, as in Uruguay there have been advances made in terms of their recognition and declaration. However, there is still no central memorial site management or a central institution in charge of overseeing them, of individual operators, or of state funding that allows it. We could state that the presence scenic remembrance that is open to the public by management of detention and torture centers created during the dictatorship is lacking, and that signage should not be the only contribution to aid the grief and symbolic reparation made to victims and their families.

Despite the former, it is worth highlighting the importance of Uruguay in the creation in the National Memorial Sites Network, and institution that aims to carry out memorial, research, education, and human rights activities on memorial sites in collaboration with the National Memorial Sites Honorary Commission. The Network include the Site Commissions that operate with the input of social sector and organizations linked to the defense of human rights and memory, as well as survivors, family members, neighbors, educational and cultural institutions, and the municipal, departmental and national government, as appropriate, in the territory corresponding to each site. The goal is to create a national memory route that facilitates public outreach of memorial sited that are part of the Network. Alongside this, the National Catalog of Historical Memory will be included, which will be open to public access and will be openly presented through the most adequate means.

4.2 Argentinian Norms and Institutions

In terms of human rights treaties, Argentina follows the same fate as Chile and Uruguay, as the heritage area is constrained to the Convention for the Safeguarding of the Intangible

³⁷ Interview to Mariana Mota, carried out on October 10, 2019, cited with her permission.

³⁸ Available at <http://mume.montevideo.gub.uy/centro-cultural-museo-de-la-memoria>.

³⁹ MACÉ (2019), p.99.

Cultural Heritage and the Convention concerning the Protection of the World Cultural and Natural Heritage, both by UNESCO. The Argentinian constitution refers to heritage or historical memory matter on two occasions: 1^o) Article 41, item 2^o, that states that the authorities will provide protection of the right to a healthy environment, the rational use of natural resources, the preservation of natural and cultural heritage and biological diversity, and environmental information and education. 2^o) Article 75 No. 19, final item, state mandates that one of the duties of Congress is pass laws that protect cultural identity and diversity, free creation and circulation of author's works, artistic heritage, and cultural and audiovisual spaces. Although the magna carta is not widely extended on this matter, our neighboring country has Law No. 26,691 on State Terrorism Memorial Site Preservation, Signposting and Outreach and its relevant regulations, by Decree 1,986/2014.

Article 1 of Law No. 26,691 defines memorial sites as “places that operated as clandestine detention, torture, or extermination centers, or where emblematic events related to the illegal action carried out during State terrorism took place until December 10, 1983”.

Argentina has opted for a strict normative concept of memorial site, considering its chronology and space. Article 3 of Law No. 26m 691 states that memorial site will be understood as those where there is sufficient proof of their operation as such. In this sense it considers the report created by the National Commission on Disappearance of People (CONADEP), the testimonials given in judicial procedures, and the records on file at the National Memory Archive. We can appreciate that only some sources of information are considered reliable and are given probative value; this may complicate citizens from contributing new sights and antecedents if they exceed the aforementioned registries. Law No. 26,692 sets the Secretariat of Human Rights and Cultural Pluralism as the normative execution authority, who carries out its tasks through the National Directory of Memorial Sites.⁴⁰

The institutions that influence memorial sites in Argentina are in the hands of various organs that depend on the Ministry of Justice and Human Rights.⁴¹ Firstly, the Secretariat of Human Rights and Cultural Pluralism,⁴² whose mission is to protect and promote the human rights of all the people that inhabit Argentinian territory, receive claims, and follow up on human rights violations cases alongside the relevant national, provincial, municipal, and civil organs. Amongst the objectives they must carry out, the standout is that it must aid the Minister in everything pertaining the elaboration, execution, and follow up of the policies, plans, and programs made to promote and protect civil, political, economic, social, cultural, community rights, as well as collective rights. In order to carry that out, it coordinates the actions linked to the promotion and protection of human rights with other ministries in the National Executive Branch, the Judicial Branch, the Public Prosecutor's Office, the Public Defender, the National Congress, and any other civil society organizations. It also represents the State before international human rights organizations, amongst other responsibilities developed extensively in Decree 12/2016. This manifests the existence of two sub secretariats: for the Promotion of

⁴⁰ Article 6 of Law No. 26,691 of 2011, Argentina.

⁴¹ Created by Article 1 of Law No 22,520. The latest modification of the article comes from Decree 7/2019 of December 10, 2019, Argentina.

⁴² Incorporated into the Ministry of Justice and Human Rights through Decree 12/2016 of the National Public Administration, which modifies Decree No 357/2002, Argentina.

Human Rights and for the Protection of Human Rights. Additionally, Article 1 of Decree 1,295/2003 creates the National Archive of Memories, which is key in the registration, documentation, and archive of memories,⁴³ as it is considered as a reliable and key source for the declaration and recognition of memorial sites in Argentina. This is the source of its importance.

The National Directory of Memorial Sites is the body in charge of rebuilding recent history, according to the provisions of Law No. 26,691. This is relevant because it manages and oversees the memorial spaces that operate all over Argentina. In order to carry out its management duties, it relies on a research team, an architecture and design team, an archeological, preservation and content production team to ensure the preservation of each site, providing an account of the events that took place there and bring the community closer to that part of history. Similarly, it is in charge of coordinating the Federal Memorial Sites Network, who has the very important role of promoting the exchange of experiences between the different spaces, broadcast their production, and follow the development of new recovery projects all over the country.⁴⁴

Memorial Sites in Argentine are related in various ways to the Secretariat of Human Rights and Cultural Pluralism. In fact, the Memorial Site Museum ESMA is an internationally renowned site, as its ownership was recovered from the armed forces and given to the public as a museum since its creation in 2015, thus becoming a worldwide landmark. What is interesting is that it is a deconcentrated organ of the Secretariat of Human Rights and Cultural Pluralism, and as such is only supervised by this organ and has no relation to the National Directory of Memorial Sites. It is managed by an Executive Director and an Advisory Council, as well as three internal directions: 1^o) content and museum production; 2^o) institutional relations, and 3^o) technical administrative delegation. Its funding comes directly from budget sections in the National Budget Law, as well as from donations, created from the administration of these funds or the funds gained from agreements entered into with national or international, public or private institutions. When the Memorial Site Museum ESMA creates an exhibition project or any other expense, it sends a budget to the Secretariat, and this organ merely authorizes the amounts. On the other hand, the remaining memorial sites depend directly on the National Directory of Memorial Sites, and its annual funding is restricted to that which is allocated in the National Budget made by the Secretariat of Human Rights and Cultural Pluralism.

We can say that Argentina has a robust legal, governmental, archival and central funding apparatus

For memorial sites which enables broad development in its management and total progress of the roles that these must fulfill within the civil society, allowing strides to be made in the symbolic reparation, state recognition, evidence recovery of crimes committed during

⁴³ The National Archive of Memories is a decentralized body within the Secretariat of Human Rights of the Ministry of Justice and Human Rights, whose main activities will be to obtain, analyze, classify, duplicate, digitize, and archive information, testimonies, and documents on the violation of human rights and fundamental freedoms in which the responsibility of the Argentinian State is involved and on the social and institutional response to these violations.

⁴⁴ Available at <https://www.argentina.gob.ar/archivonacionaldelamemoria/direccionsitios>

the dictatorship, appreciation that gives way to education, historical memory and guarantee of non-repetition. Thus “the active involvement of the State in the Argentinian case had positive effects from the perspective of public guarantees and upkeep of memorial sites”.⁴⁵

4.3 Public Policy Principles on Memorial Sites in MERCOSUR

In 2012 MERCOSUR set a group of fundamental principles for public policies on the topic of memorial sites, which then became Latin American Standards. Although Argentina and Uruguay are state parties of MERCOSUR, and as such are compelled to follow its publications, Chile is not in the same position simply because it is a state member. However, the CMN has taken the tenets to analyze the memorial site public policies it has sought to implement. This is why we study these three countries under this same instrument. On the matter, the following canons have been set forth:⁴⁶

1. The broad concept of the term memorial site used by this international organ must be followed.⁴⁷
2. The States where severe human rights violations took place must implement the public policies that guarantee the creation, preservation, functioning, administration, and upkeep of said sites. Most importantly, it must manage the creation of places where there are no memorial sites.
3. The nations must ensure to uphold the probatory value of memorial sites, considering their importance in the investigation and sanction of the people responsible for the serious human rights violations occurred during the dictatorship.
4. They must contribute to guarantee the right to truth and to build collective memories regarding the serious human rights violations.
5. The creation of memorial sites and the provision for their adequate administration must represent a symbolic reparation measure and a guarantee of non-repetition, as they contribution with the processes of reformation and democratization of the institutions directly involved in the commission of serious human rights violations (security forces and armed forces).
6. Public policies on memorial sites must consider their pedagogical value for the creation of education plans and actions on human rights, so as to instill their respect in society, contributing to the idea of “Never Again”.
7. The States must encourage the participation of victims, their families, the local communities, human rights organizations, as well as society as a whole, regarding the decisions on the design and implementation of memorial site public policies.
8. Public policies on memorial sites may consider a regional approach.

⁴⁵ GUGLIELMUCCI & LÓPEZ (2019), p.75.

⁴⁶ IPPDH (2012), pp. 21-22.

⁴⁷ See above note 21.

The IPPDH has created a subheading specifically for the conservation and non-destruction of memorial sites that witnessed serious human rights violations, thus granting their probatory function and relevance higher significance. The States must implement the physical, technical, administrative, judicial, and legal measures to prevent the destruction or alteration of said places, both for their conservation, as well as for their internal and external upkeep. This is for the purposes of evidence that could be assessed judicially by the expert analysis or recognition of places, amongst other, and prevent structural modifications that could alter the historical or heritage value of said sites.⁴⁸ Any measure that is taken should be based on the recommendations made by the relevant specialists, including anthropologist, archeologists, historians, museum curators, conservators, restorers, archivists, lawyers, amongst others.

The States are under obligation to preserve the archivers linked to memorial sites and should therefore take all measures necessary for the fulfillment of this purpose and ensure its accessibility. Similarly, they should keep the availability and accessibility of judicial and administrative mechanisms so that any person or institution with a legitimate interest can request the preservation of the sites, with measures that ensure their intangibility. A tool States need at their disposal in order to identify and ensure the lands in question is the collaboration of armed forces and security forces, as well as the penitentiary and judicial agencies, among others. This is because the material preservation of the sites must be at the international standards currently in force regarding the preservation of crime scenes.

A group of principles applicable to the institutional design was simultaneously elaborated for the identification, signage, and election of the content of memorial sites. Victims, their family members, human rights organizations, and the society as whole should be guaranteed the right to take part in the identification and determination of the form and content of the signage. They must also guarantee the publicity and accessibility to the archives related to each site and keep interdisciplinary research teams that can study and publish widely on these subjects.

Finally, the principles that States must apply to the institutional design regarding memorial sites have yet to be defined. One of the most relevant points is to adopt a precise and adequate legal framework that allows the creation, preservation, functioning, and administration of memorial sites. This aims to ensure institutional and budgetary sustainability, given the emphasis on that a legal standard regulation may result in an institutional strengthening. This is where the importance of implementing a specific norm stem from, so that it can create adequate institutions that are constrained by transparency, oversight, and assessment mechanism that allow accountability and societal control, including the budget execution.

V. CONCLUSIONS

From the conceptual, legal, and institutional analysis on memorial sites in the Southern Cone, we can affirm that given that Chile does not have a specific norm it lacks a legal recognition of these places. This is remedied by Law No. 17,288, which identifies them as

⁴⁸ Cfr. IPPDH (2012), p. 22.

historical monuments or national monuments, as appropriate. This is a response to the victims, their families, and human rights organizations insistence to gain some sort of declaration to provide an answer regarding the request of recognition. This is striking situation, in the understanding that from an administration perspective the CMN uses the concept of memorial sites recurrently and has even given it its own definition. Thus, as Veneros said, “there seems to be an accepted acknowledgment of the deaths, of the abuse of power, of torture, and other forms of repression”⁴⁹ but no legislative manifestation. This situation contrasts with what took place in Argentina and Uruguay, where both laws specifically express what they understand as memorial site, the time frames in which they can be acknowledged, and the State responsibility in human rights violations. We are currently urged to create a specialized norm, given that the standards suggested by the IPPDH regarding the adoption of a precise and adequate legal framework for the creation, preservation, functioning and management of memorial sites are not being followed.

Another aspect that would improve with the creation of a Memorial Sites Law are the institutions in charge of the declarative process. A legal norm that clearly and precisely details the necessary institutions for the fulfillment of the objectives that need to be regulated regarding memorial sites, with the adequate specialization for each organ, specifying their mission, objectives, attributes, and inspection provides legal certainty and governmental professionalism, as well as compliance with the standards suggested by the IPPDH. The construction of an organization chart from scratch for the execution of public policies that will be carried out ensures the correct interrelation and collaborative work of its various components, which eventually translates into an agile and expedited process. Chile, on the other hand, applies its plans on memorial sites based on an institutional and normative organization, which is though for the execution of the themes of national monuments - or rather - for a topic that could arise from in a genus-species relationship between national monuments and memorial sites. We must think in a re-functioning of memory policies that allow us to expand and strengthen the processes throughout the country.

Regarding the composition of the CMN, we could follow the Uruguayan lead on the composition of the Memorial Sites Honorary Commission, given its specialization its members have on human rights, the strong human rights defense organizations that take place, Article 9 of Law No.19,641 defines the members as:

- A. A delegate from the National Human Rights Institution and Ombudsman's Office, who will be the Chair.
- B. A delegate from the Ministry of Education and Culture.
- C. A delegate from the Universidad de la República.
- D. A delegate from the National Administration of Public Education.
- E. Two delegates from two social organizations who are renowned in the struggle for memory and human rights, registered in the Registry of Social Organizations of the National Human Rights Institution and Ombudsman's Office, who will be elected in a face-to-face instance summoned for such purposes by said institution.
- F. Three delegates from the National Network of Sites of Memory.

⁴⁹ VENEROS (2009), p. 217.

The process of the declaring a memorial site should be as expedited and accessible as possible, a reality that needs to change in Chile, specifically because it is particularly long. This is because the list of conditions is wide-ranging and detailed, particularly regarding real-estate, as it is required to submit a current certificate of good standing and the plans of the establishment until the opinion of the owner, if the property is not State owned at the time when the memorial site is being sought. This situation involves spending time and money to obtain the requested documentation, which is the first obstacle to initiate the process. Additionally, it is worth bearing in mind that the absence of one of the requested documents to make up the technical report of the memorial site can make the process even slower,⁵⁰ given that the CMN will not issue an opinion until the documentation is complete, requesting all the missing material. In this sense, the Uruguayan principles could be followed, where the simple submission of the antecedents that acknowledge the existence of a memorial site, not needing a source or set number for it. It would be beneficial to simultaneously complement this with the Argentinian memories archival apparatus that allows the near categorization of the antecedents that will be ready when needed.

Although our country has a funding system in place, it is inconsistent as mostly made up of donations and competitive funds that force various managed sites to compete for resources. This situation directly affects the management and staff that each establishment can count on. Although these ways to access funds exist, we must ensure a stable and available sum through the Annual Budget Law, as in Argentina.⁵¹

Chile needs a comprehensive legal project on memorial sites issues that is built on the pillars of transitional justice, particularly on reparation and the guarantee of non-repetition, and the need to overcome the isolated and precarious State actions in this matter. The slow progress of our country regarding the basic principles set forth by the IPPDH is glaringly apparent, given that the governments must take go the extra mile in the political discussions and think of the practical benefits that the implementation of a Memorial Sites Law would entail: evidence, right to truth, collective memory, symbolic reparation, and guarantee of non-repetition, also emphasizing the value of this heritage. Although some legislative attempts to incorporate the memorial site category and modify the composition of the CMN have been made by way of bills of law that modify the National Monuments Law, the Chilean Network of Memorial Sites has categorically stated that this is an insufficient measure and that a special norm is required for these issues, one that can take on the special characteristics required in the treatment of memorial sites.⁵²

⁵⁰ Taken from the file of the CMN of the Alberto Bachelet Museum of Memory.

⁵¹ Cfr. GUGLIELMUCCI, Y LÓPEZ (2019), p.68.

⁵² Cfr. RED DE SITIOS DE MEMORIA(2019).

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