

News from the ICA Human Rights Working Group

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The following is number nine in a series of brief discussions of the articles of the Universal Declaration of Human Rights (UDHR) and the archival holdings that relate to them.

Universal Declaration of Human Rights, Article 8. *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

We have Latin America to thank for Article 8. In April 1948 twenty-one nations of Latin America and the United States adopted the American Declaration of the Rights and Duties of Man, which said, in its Article XVIII, “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.” When the draft of the Universal Declaration was debated, Mexico and Cuba each proposed to add language like that of the American Declaration to it in order to establish the right to an effective judicial remedy if a person believed his basic rights had been violated. Their proposal was accepted, and the Article adopted, giving protection to the individual from abuses by state authorities. The principle was underscored when the UN General Assembly in 1966 adopted the International Covenant on Civil and Political Rights that, in its Article 9, points 3 and 4, covers the same ground.

The Article has not been controversial in the six decades since it was drafted, but recently a new debate began. Brian Farrell, a legal scholar, proposed that Article 8 implicitly guarantees a right to habeas corpus (a legal action to release someone from unlawful detention). Noting the Latin American background to the Article, Farrell points to the widespread procedure in Latin America known as *amparo* that could be used “to remedy the violation of any fundamental rights, including those of personal liberty.” He argues that the final version of Article 8 is “equivalent to the general remedy of *amparo*” and because the right to habeas corpus “has assumed an enhanced importance in recent years due to practices employed in the fight against terrorism,” Article 8 may be of increasing importance in the future. (Brian Farrell, “Does the Universal Declaration of Human Rights Implicitly Guarantee a Right to Habeas Corpus?” <http://www.wcl.american.edu/hrbrief/16/1farrell.pdf?rd=1>)

The focus on the state in Article 8 once again means that the archives of courts, prosecutors, and private attorneys (including those working for human rights NGOs) are important sources, as are the records of government agencies that may be perpetrators. Extending Article 8 to cover habeas corpus cases also means that the records of prison and other places of involuntary habitation are important. But what if the question is whether the tribunals themselves were “competent” in terms of the language of Article 8? This leads us to the records of groups that serve as court monitors, watching the progress of trials to determine their basic adherence to fair judicial procedures. And it also takes us to the personal papers of judges, which judges traditionally take home with them when they leave the bench. Archivists need to be alert to the significance of the papers of judges and either acquire them or maintain a record of the location of them, particularly for judges who have recently retired. (For a brief discussion of the disposition of the personal papers of judges in the US and

Canada, see Peterson, *Temporary Courts, Permanent Records*, Woodrow Wilson International Center for Scholars, pp. 61,
http://www.wilsoncenter.org/topics/pubs/TCPR_Peterson_HAPPOP02.pdf)

Annual Report of the Network of Concerned Historians. The 2010 *Annual Report* of the Network of Concerned Historians is now on the Network's revitalized website. The *Report*, written by Antoon De Baets, covers events of importance to historians and archivists in 98 countries. <http://www.concernedhistorians.org/content/ar.html>

International Covenant on Civil and Political Rights, Article 19, freedom of expression. Sarah Van Deusen Phillips of the Center for Research Libraries, writing to the human rights archives list serve (see reference below), reports that the UN Human Rights Committee “convened in late July to read a draft of comment 34, which will clarify article 19 of the *International Covenant on Civil and Political Rights*, which addresses the right to freedom of expression. The committee is deliberating on how to best analyze and determine when local legal practice is in fact an infringement on basic human rights to free speech, as well as the role of legal precedent in determining such matters. The goal is to have a final draft ready for circulation after the 100th convocation of the committee in October.” She also points to a comment about the draft on the DevelopmentProfessionals.org blog:
<http://developmentprofessionals.org/blog/human-rights/human-rights-committee-draft-general-comment-no-34/4639>

Society of American Archivists' Human Rights Archives Roundtable. The first formal meeting of the Society of American Archivists' Human Rights Archives Roundtable was held on 11 August at the SAA annual meeting. The Roundtable meeting featured reports from Sarah Van Deusen Phillips on the Center for Research Libraries' human rights electronic evidence study and from T-Kay Sangwand on the University of Texas libraries' human rights documentation initiative. The Roundtable is co-chaired by Valerie Love, University of Connecticut, and T-Kay Sangwand, University of Texas. The SAA website now hosts the email list serve for the Roundtable; to join the list serve go to
http://saa.archivists.org/Scripts/4Disapi.dll/4DCGI/committees/SAATBL-HRA.html?Action=Show_Comm_Detail&CommCode=SAA**TBL-HRA&Time=-1940072242&SessionID=14235466o152752769su4k5urzx64i252h4rcs18q613y7s4o722hw86v7d34b06

The Human Rights Archives Roundtable and the Latin American and Caribbean Cultural Heritage Archives Roundtable jointly sponsored a session called “Silence No More! Archives Threatened by Political Instability in Central America,” with presentations by Dario Enrique, the former director of the Honduran Institute of Anthropology and History, Yesenia Martinez, the former director of the Honduran History Research Unit, Kate Doyle, the director of the Guatemala Documentation Project at the National Security Archives, and Trudy Huskamp Peterson. Other notable sessions relating to human rights at the SAA annual meeting were a session on archives and international justice with Antonio Gonzalez Quintana, author of the acclaimed UNESCO report on the archives of security services of former repressive regimes, and Martha Hunt, audiovisual archivist for the United Nations International Criminal Tribunal for Rwanda, and a session on digitizing sensitive and vulnerable records, featuring papers presented on the Timbuktu manuscripts project (Lorraine Dong), the Khmer Rouge archives (Michelle Caswell) and the human rights projects at the University of Texas (Joanna Steele).

News.

Canada. The Canadian Truth and Reconciliation Commission is researching church archives to find records of First Nations children who died in Indian residential schools. According to an extended article in *The United Church Observer*, an estimated 100,000 students attended 130 residential schools over more than a century, the majority of the schools operated by Roman Catholic entities, about a quarter of the schools run by the Anglican Church, and the remainder by Presbyterians and the United Church.

http://www.ucobserver.org/faith/2010/07/forgotten_children/

Czech Republic. The Institute for the Study of Totalitarian Regimes published a database in March with the names of thousands of communist-era military intelligence agents. The database was to contain only the names of those agents who did not serve after the collapse of the communist regime; however, at least 380 names were those of agents who did continue to work after 1989. According to the Defense Ministry, none of these persons are currently employed. The database was shut down in June, and a number of senior staff members at the Institute have been replaced. <http://abcnews.go.com/Technology/wireStory?id=11304544>
<http://www.praguepost.com/news/5426-new-chief-for-scandalized-ustr.html>

Nigeria. The governor of Lagos state urged Nigerians to “cultivate the habit of keeping records because it could aid governance,” reported *vanguardngr.com*. The governor was quoted as saying, “Records will help us to know how to serve other human beings. It will help every human being to learn, benefit and gain experience and wisdom in which we all need to co-exist positively and to co-exist with other human beings as it concerns Nigeria.”
<http://www.vanguardngr.com/2010/08/09/fashola-tasks-nigerians-on-record-keeping/>

Scotland. The *Telegraph* reported that the results of more than 35,000 court cases from the year 2007 have yet to be recorded in the criminal record system. An official report by Her Majesty’s Inspectorate of Constabulary said this is “potentially compromising public and police officer safety,” pointing out that employers making background checks will not have all the relevant information about a person and judges and police officers will not be able to judge the risk posed by a suspect.

<http://www.telegraph.co.uk/news/newsttopics/politics/scotland/7926049/Scottish-public-at-risk-from-missing-criminal-records.html>

United Kingdom. By contrast to the Scottish case, the North Yorkshire police database apparently is up to date and overflowing. The problem is that it mingles information on criminal suspects with information on innocent persons who simply report information and persons who are victims. According to the *Gazette and Herald*, the database contains information on over 38,000 suspects, over 181,000 people who have reported information, and over 107,000 victims.

http://www.gazetteherald.co.uk/news/8324701.Files_on_thousands_of_innocent_people_held_on_police_database/

United States. People who were, as children, in foster care in Texas are finding it difficult to get the records of their biological families. The *Texas Tribune* says that the state agency that manages the records of adoption and foster care has a backlog of 10,000 requests for information; it employs 45 “redaction specialists, each reading 1,200 pages of case files a day.” The average wait for a response to an inquiry on foster care records is currently 317

days. <http://www.texastribune.org/texas-state-agencies/child-protective-services/former-foster-kids-struggle-to-get-records/>

Issues relating to medical records continue to be vigorously debated in the United States. When the *New York Times*' "Well Blog" posted an article "Whose Records Are They Anyway?" on whether patients should read a doctor's notes, it generated 157 responses. <http://nyti.ms/ayLKry> Meanwhile in the state of Missouri, state health officials deleted all information from 2005-2008 about hospital infection data. The website *stltoday* in St. Louis, Missouri, quoting unnamed "consumer advocates," pointed out that "without access to infection data from previous years, consumers won't be able to adequately assess a hospital's performance in preventing infections."

http://www.stltoday.com/business/article_9959b4e1-2634-5722-b21d-c32876d205a0.html

Please write. If you have any information or news that you would like to share on human rights issues, please write archivesthp@aol.com or J.Boel@unesco.org!