

News from the ICA Human Rights Working Group

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Trudy Huskamp Peterson, Chair

The following is number eight 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 7. *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

Johannes Morsink, a scholar of the Declaration, calls Article 7 “one of the most poorly written in the entire Declaration,” noting that it “seems redundant and overlaps in its second sentence with Article 2.” (Article 2 says, “Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.) However, Article 7 makes two important contributions to the Declaration: the open-ended statement that everyone is entitled to equal protection and the prohibition against incitement to discrimination.

The phrase “without any discrimination” was intended to prohibit future types of discrimination that are not specifically enumerated in the Declaration. As the delegate from the Philippines said, referring to legislation recently passed in South Africa, “certain rights, such as the right to travel on railroads without discrimination, were not [explicitly] mentioned in the Declaration but should certainly be covered.” The protection against incitement to discrimination appears to conflict with the rights of freedom of speech found in Article 19. It seems to support government action to prohibit hate speech and to require governments to balance the right to speech with the right to be protected from hate speech. The incitement clause makes another important contribution because it recognizes that the actual perpetrator of the discrimination may not be the intellectual author of it and that the author is equally culpable. This accountability is essential to prosecute higher-level officials in a bureaucracy that discriminates in violation of the Declaration. Article 7 may also have increasing importance when Internet speech incites discrimination, a method of speech the delegates drafting the Declaration could not have imagined, although they were very familiar with incitement via radio. (Quotations in the first two paragraphs from Morsink’s *The Universal Declaration of Human Rights: Origin, Drafting and Intent*, commentary on Article 7 found on pp. 45-47 and 69-72.)

The thrust of the Article is protection by the law, which in turn requires the state or international body administering the legal system to affirmatively protect the individual. This is, of course, a major problem when legal systems are corrupt, racist or otherwise discriminatory.

The breadth of the Article suggests that many kinds of records would support the exercise of the rights to non-discrimination protected by it. Court records, records of law-making bodies, and records of non-governmental organizations devoted to protesting discrimination are key sources. But so are the records of, for example, employers. A recent article in *Business Daily Africa* titled, “Can labour officials seize records from your office?” discussed the Kenya government’s rights to review records of private businesses.

<http://www.businessdailyafrica.com/Can%20labour%20officials%20seize%20records%20from%20your%20office/-/539444/960678/-/u0qbu6z/-/> These are precisely the records that would be needed if employees allege discrimination in hiring, promotion, or assignment. Business archivists have special responsibilities for retaining records of employment, just as labor union archives are responsible for retaining records showing that all complaints made to them are handled equally and medical services are responsible for records documenting equal treatment. The archival preservation of Internet speech, especially hate speech by private individuals, will surely be the focus of litigation in the future.

Award to Guatemala police archives. Each year the US-based Institute for Policy Studies (IPS) gives human rights awards in memory of Orlando Letelier, a former Chilean diplomat and director of the Institute’s Transnational Institute, and Ronni Karpen Moffitt, an IPS development associate, who were assassinated by a car bomb in Washington on September 21, 1976. This year the Guatemala Police Archives will be one of the honorees. The announcement of the award to the Police Archives said, “This dedicated band of human rights activists are cleaning, organizing, and digitizing the towers of decomposing papers that were discovered accidentally in a forgotten corner of a police station in 2005. The files tell story after story of assassination, kidnapping, and torture, all committed by the national police. These archivists are keeping alive not only the memories of the victims but also the history of those who courageously opposed the repressive government.” Congratulations to the staff of the Police Archives!

<http://www.ips-dc.org/about/letelier-moffitt>

International implications of national records. While most records of importance to human rights are national, in some instances the records of one county are directly relevant to human rights in another. For example, in 2000 the United States Congress created a Congressional-Executive Commission on China to “monitor human rights and the development of the rule of law in China” and to submit an annual report on the subject to the President and Congress. The Commission has just announced a revision to its online Chinese political prisoner database. For information on the Commission see <http://ppd.cecc.gov/>; for the announcement of the new version of the database see <http://www.cecc.gov/index.php?PHPSESSID=59361fab90f5e0b2fea15b299daae7eb>. Eventually the records of the Commission will be deposited in the U.S. National Archives.

Inter-national migration records. The Spanish Ministry of Culture announced the establishment of the Ibero-american Migratory Movements Portal, a project coordinated

by the State Archives Department to “promote and facilitate access to documents on Spanish emigration to Ibero-america during the Modern Age.” At present the records available through the portal are from the Archivo General de la Administration of Spain and the Archivos Generales de la Nacion of Mexico and of the Dominican Republic. Documentation from the Archivo Nacional of Cuba will soon be incorporated, according to the announcement. <http://pares.mcu.ed/MovimientosMigratorios>.

National news.

Belgium. As part of an investigation into sex abuse allegations within the Roman Catholic Church, police officers raided both (a) the commission established in 2000 with the support of the church to investigate and aid victims of sexual abuse by priests and (b) the National Archives which held part of the records of the commission. According to the National Archives, this is the first time in the history of the Belgian National Archives that judicial authorities seized records in its custody.

http://www.nytimes.com/2010/07/01/world/europe/01belgium.html?_r=1&ref=roman_catholic_church_sex_abuse_cases

Guatemala. On July 20, a Guatemalan judge ordered the trial of police officers Hector Ramirez and Abraham Gomez for the disappearance of a union leader in 1984 during the Guatemalan civil war. The records in the police archives are the primary evidence for the case, the first trial of former police officers for human rights crimes committed during the civil war. <http://uk.reuters.com/article/idUKN20262214>

Israel. The government of Israel extended the period of classification for certain government records from 50 years to 70 years. The records affected include those of the Shin Bet (Israel’s internal security service), Mossad (the national intelligence agency) and the Institute for Biological Research. According to the report in the newspaper Haaretz, the extension followed “months of internal wrangling by Israel State Archive” and quoted the State Archivist as convinced that the records should not now be made public and that some of the material selected to remain classified “has implications over [Israel’s] adherence to international laws.” <http://www.haaretz.com/print-edition/news/state-archives-to-stay-classified-for-20-more-years-pm-instructs-1.304449>

Poland. During World War II a group of men and women in the Warsaw Ghetto documented daily life in the ghetto. They eventually buried the approximately 35,000 pages of documentation in 10 metal boxes in the basement of an elementary school. Dug up after the war, the documents from the boxes are a central source for the history of the ghetto during the Nazi occupation. Now a book telling the story of this archives, written by historian Samuel Kassow and titled *Who Will Write Our History?: Rediscovering a Hidden Archive from the Warsaw Ghetto*, has been published in both English (2009) and German (2010). An article on the book in *Spiegel Online* says it “throws new light on the exceptional source material.”

<http://www.spiegel.de/international/europe/0,1518,707506,00.html#ref=nlint>

Thailand. Patrick Pierce of the Burma Program at the International Center for Transitional Justice forwarded a link to an article in *New Mandala* on the plan by the National Archives of Thailand to collect information about the contentious and violent events that have occurred in Thailand since 12 March. The author of the article, Elizabeth Fitzgerald, is concerned that the archives collected will be incomplete and will not be available for research use; she also points to problems with the Freedom of Information Act implementation in Thailand. Thank you, Patrick.

<http://asiapacific.anu.edu.au/newmandala/2010/05/27/thai-institutions-archives/>

United States. A “suspicious” fire destroyed thousands of criminal records at a courthouse in Vallejo, California. The local newspaper quotes the fire chief as saying the fire began “in the same area that a bomb was ignited in January 1997 by friends of a drug suspect to thwart his prosecution.” http://www.mercurynews.com/breaking-news/ci_15409713?nclick_check=1

A controversial new law in Arizona on immigration raises questions about keeping records of personal information on individuals. <http://www.npr.org/blogs/thetwo-way/2010/07/28/128822896/arizona>

A Texas magazine called *Mugly!* prints photos of persons arrested in the Dallas, Texas, area (photos taken at the time of arrest are known as “mug shots,” hence the name of the magazine). Two jurisdictions in the Dallas area asked for a ruling from the Texas Attorney General’s office before releasing the photos and related jail logs to the publisher. The Attorney General’s office decided that the photos and logs should be released, saying that they are “either not intimate or embarrassing or [are] of legitimate public interest.”

http://blogs.dallasobserver.com/unfairpark/2010/07/ags_office_rules_irving_pd_mus.php