

News from the ICA Human Rights Working Group

May 2010

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The following is number six 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 5. *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

Torture has been much in the news in the aftermath of the Abu Ghraib, Iraq, prison crimes of 2004 committed by U.S. Army and other U.S. personnel. Torture, like slavery that is prohibited by Article 4, has a long, sordid history. Its ubiquity led the drafters of the 1789 French Declaration of the Rights of Man, while not using the word “torture,” to write in article 9, “if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law.” (English text from http://avalon.law.yale.edu/18th_century/rightsof.asp.)

But what exactly is considered torture and prohibited punishment, and therefore where would we find relevant records? The Office of the High Commissioner for Human Rights compiled a number of definitions of torture as found in international and regional legal instruments (see http://www2.ohchr.org/english/about/funds/torture/docs/compilation_torture.pdf). The 1966 International Covenant on Civil and Political Rights (1966) adds to the UDHR definition the sentence, “In particular, no one shall be subject without his free consent to medical and scientific experimentation.” This is a clear reference to the medical experiments on prisoners carried out by the Hitler regime. The 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment includes the limitation that “such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” This seems to eliminate the possibility that non-state actors could inflict torture, which is manifestly untrue. The Rome statute of the International Criminal Court of 1998, currently under review at a major conference in Kampala, Uganda, dropped this limitation, defining torture in Article 7, paragraph 2, as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”

As with most human rights, government records are crucial sources. The records of police, secret police, military police, juvenile and immigration detention centers, “reform” schools, workhouses, prisons and poor farms are all potential sources for information on torture and inhuman treatment of persons. But in addition to government records, we may find information about at least severe mental and physical pain and suffering of a person under the control of another in the records of some businesses, religious entities, para-military bodies, and extremist organizations. Some of the most dramatic evidence comes from personal sources, such as the appalling photographs of abuse at Abu Ghraib taken by U.S. military prison guards with their personal digital cameras. Information on torture and abuse can be found in the records assembled by those trying to investigate the abusive behavior, from courts and prosecutors to NGOs, journalists and media organizations, academics, and international organizations ranging from the UN High Commissioner and its special

rapporteur on torture (established in 1985) to the International Committee of the Red Cross. Sadly, many archives will find themselves holding records relating to incidents of severe pain and suffering and some will have the records of torture.

In 1997 the United Nations General Assembly designated June 26 as the International Day in Support of Victims of Torture, marking the day that the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment came into force in 1987 and the UN Nations Charter was signed in 1948. Archives with relevant holdings may wish to use 26 June as a day for an educational program or other public event.

International Council on Human Rights Policy online discussion forum. This Geneva-based human rights policy research institution invites all interested persons to participate in a discussion (English, French and Spanish) online about human rights principles and NGO accountability. www.ichrp.org/en/forum

Federation of International Human Rights Museums. From Valerie Love comes the information that a Federation of International Human Rights Museums has been established and will hold its inaugural conference September 15-16 in Liverpool, England. The International Slavery Museum in Liverpool is coordinating the conference. More information about the conference and FIHRM is available here: <http://www.fihrm.org/index.aspx>

Journal of Human Rights and the Environment launched. Edited by two law professors in the United Kingdom, the new *Journal of Human Rights and the Environment* is making its first issue available online for free. <http://e-elgar.metapress.com/content/121644>

News.

Bolivia. Antoon De Baets forwarded an article from Bolivia, reporting that the minister of justice will comply with a judicial order to declassify archives relating to the dictatorship of 1980. Of particular importance is the opening of archives about the disappearances of persons. http://www.prensa-latina.cu/index.php?option=com_content&task=view

Brazil. The Bar Association of Rio de Janeiro posted on its website an appeal to the government, asking it to open up the military archives of the dictatorship (1964-1985). The website also provides a space where persons can register on line to support the call for opening the archives. <http://www.oab-rj.org.br/forms/abaixoassinado.jsp>

The recent issue of the Brazilian archives journal, *Acervo* (volume 21, number 02, for the period July-December 2008) is on the archives of the military regime. The artwork on the journal's cover shows stamps from various security forces and for "confidential" and "secreto." To obtain a copy, contact the Arquivo Nacional, Praca da Republica, 173, CEP 20211-350, Rio de Janeiro RJ, Brasil.

Guatemala. Following the arrest in the United States on 5 May of a former member of the Guatemalan army's special counterinsurgency unit (Kaibiles), the National Security Archive posted on its website declassified US Embassy cables that describe the massacre at Dos Erres in which this unit participated.

<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB316/index.htm>

India. The *Times of India* reports “most of the official records of the war that led to the liberation of Bangladesh have been destroyed.” These include the records of the camps where freedom fighters were trained. It is not clear from the report whether the loss of the records will affect veterans’ ability to prove the nature and duration of their military service.

<http://timesofindia.indiatimes.com/india/Truth-lost-1971-Bangladesh-war-files-missing/articleshow/5907855.cms>

Iraq. A delegation of Iraqi officials, including the director-general of the Iraq National Library and Archive, met with U.S. government officials in Washington on the topic of the Iraqi records held in the United States. These records include those of the Ba’ath Party, police records from the Kurdish region, and Jewish archives from Baghdad. This meeting is the first step towards possible repatriation of the materials.

http://news.yahoo.com/s/nm/20100519/lf_nm_life/us_iraq_usa_archives.

Morocco. In April the project management agency of the Community Reparations Program launched a call for new proposals for actions of reparation in the regions affected by violations of human rights. Proposals are sought for projects to preserve memory through the rehabilitation of sites of memory or the creation of spaces to preserve memory and to collect information about the period in which violations of human rights occurred (mainly the 1960s through the 1980s, which are called the “Years of Lead”).

<http://www.ccdh.org.ma/spip.php?article2690>

Paraguay. Giulia Barrera sent a news story from Paraguay’s *Pagina/12* on the transfer to archival custody in the Supreme Court of Justice of the “Archives of Terror II.” The “Archives of Terror I” is more than three tons of documents from the security services on the repression of 1954-1989 and the cooperation between the security forces of the Southern Cone known as Operation Condor. The new accession, amounting to another two tons of documents, includes material from earlier periods of Paraguayan history, such as information on the reorganization of the army, the purchase of armaments during the War of the Triple Alliance, and a list of names of Bolivian prisoners captured in the Chaco War of 1932-1935.

<http://www.pagina12.com.ar/diario/elmundo/4-143890-2010-04-15.html>

United States. The Inspector General of the Environmental Protection Agency (EPA) reported that EPA officials intentionally stopped keeping records concerning potentially hazardous landfills in New Mexico and marked unclassified records as “confidential” to eliminate the possibility of disclosure under the national Freedom of Information Act.

http://www.fas.org/blog/secretcy/2010/05/epa_ig.html

Uruguay. The president of the Supreme Court of Justice announced that the court and the University of the Republic received funding from the European Union to preserve the records of the civilians who were tried by military justice during the dictatorship in Uruguay. Thanks to Giulia Barrera for the reference.

<http://www.larepublica.com.uy/politica/407993-preservaran-archivo-de-la-justicia-militar>