

News from the ICA Human Rights Working Group

December 2010

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The following is number thirteen 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 12. *No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

Article 12 functions as a hinge between the Declaration's first articles focusing on judicial processes and protection and the later articles dealing with economic, social and cultural rights. It is a complex article, referring to rights ranging from interference with correspondence to attacks on honor. The "catch-all" nature was the result of many compromises in drafting or, as Johannes Morsink writes, "One of the difficulties with Article 12 had to do with the disparate character of the rights in question and how to capture that fact in one good sentence." (Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, pp. 135). Furthermore, Article 12 is phrased in the negative (in other words, it doesn't say that people have a right to the sanctity of home and privacy but rather that there should not be interference with that right), which may have led the delegates to adopt the second sentence, proposed by the USSR, to clarify who is responsible for combating the interference.

Because this Article specifically covers correspondence, it is of particular interest to archivists. Morsink reports that many of the world's constitutions in 1947 had statements on the inviolability of privacy rights, including the inviolability of personal papers. He cites Egypt, Iraq, Lebanon, Belgium, Denmark, and Luxembourg, and quotes Argentina ("The domicile is inviolable, as also epistolary correspondence and private papers"); Bolivia ("epistolary correspondence and private papers are inviolable"); Yugoslavia ("the privacy of letters and other means of communication is inviolable"), and the United States ("the right of the people to be secure in their persons, houses, papers and effects"). Notice that these constitutions protect private papers generally, but Article 12 protects only correspondence (that is, as defined in the International Council on Archives' *Dictionary of Archival Terminology*, 2nd edition, "any form of addressed and written communication sent and received including letters, postcards, memoranda, notes, telegrams or cables") seemingly omitting items such as diaries and items written but not sent to anyone.

Currently the privacy element of Article 12 is cited in an enormous variety of arguments. The United Nations Population Fund uses Article 12 in support of the right to decide the number and spacing of one's children and to have access to contraception methods. The International Gay and Lesbian Human Rights Commission cites Article 12 when arguing for the privacy rights of gay men and women. A human rights brief produced by the Center for Human Rights and Humanitarian Law at the Washington College of Law on virginity testing in Turkey says, "Virginity testing is a substantial intrusion upon women's privacy and is carried out in the context of questioning women's honor and reputation, clearly violating Article 12." (Chante Lasco, "Virginity Testing in Turkey: A Violation of Women's Human Rights,"

<http://www.wcl.american.edu/hrbrief/09/3turkey.cfm>). And surely if Wikileaks publishes private correspondence, whether email or another form, Article 12 could be cited in protest.

Given the breadth of the issues involved in Article 12, the records relevant to the Article are vast. Records of police, courts, and military entities are, of course, central, but so are any media records that would show that someone has been libeled or slandered in “attacks upon his honour and reputation.” Facebook and other social media postings, blog essays, recorded call-in radio programs: these are a few of the records that might be implicated in an Article 12 “honour and reputation” case.

Publications.

The Centre for Information Policy Leadership issued a paper “Data Protection Law and the Ethical Use of Analytics,” by Paul Schwartz, a professor at the University of California, Berkeley, law school. According to Schwartz, analytics (the use of computer technology to extract meaningful information from large quantities of data) should take into account risks to privacy. He argues for responsible data processing during collection, integration and analysis, decision-making and review and revision of data. The paper also examines the questions that analytics raises for enforcement of data protection laws. The study was sponsored by a number of large corporations.

http://www.huntonfiles.com/files/webupload/CIPL_Ethical_Underpinnings_of_Analytics_Paper.pdf

PCMag.com reported on a survey by LG Electronics on the stress caused by losing the data on a personal laptop or phone. The 2000 men and women surveyed in the UK had responses varying from data loss as equal to learning of a loved one’s illness to the stress of “failing to fit into favorite jeans.” If this is how stressed the respondents feel about the loss of files and messages they personally have, think how much more stressful it is to a society as whole that loses health information, property registers, and other data that are important to human rights.

<http://www.pcmag.com/article2/0,2817,2374669,00.asp>

Calls for papers.

South African History Online, the History Workshop (University of the Witwatersrand, JHB), and the Department of Historical Studies (University of Johannesburg) are organizing a major conference around the 100th anniversary of the African National Congress (ANC). The conference will be held in Johannesburg, 20-24 September 2011, and abstracts for papers are due 28 February 2011. For more information contact Jon Soske: soske.jon@gmail.com or Omar Badsha: omar@sahistory.org.za. <http://www.h-net.org/announce/show.cgi?ID=181044>

The Centre for the History of Sciences and Humanities of the Institute for Contemporary History of the Academy of Sciences of the Czech Republic will host an international conference in Prague, 24-26 May 2011, on “Scholars in Exile and Dictatorships of the 20th Century.” Paper proposals are due 20 January 2011 to nytrovaz@vcdv.cas.cz. <http://www.h-net.org/announce/show.cgi?ID=181452>

The School of Advanced Study, University of London, is holding the third in its series of London Debates (international discussion workshops that bring together outstanding early-career researchers and invited senior researchers) 19-21 May 2011 on the subject: Is there a future for human rights in a non-Western world? The Call for Papers, open to scholars mainly based in the EU/EEA who are in their final-year of doctoral study or up to 10 years beyond, is open until 7 February 2011. Further information contact Par Engstrom

(par.engstrom@sas.ac.uk) or Rosemary Lambeth (rosemary.lambeth@sas.ac.uk).
<http://www.sas.ac.uk/londondebates.html>

International news.

France/Red Cross International Tracing Service (Germany) The International Tracing Service of the Red Cross, located in Bad Arolsen, Germany, gave the French National Archives 13 “data volumes,” each of 500 gigabytes, of documents on German actions following the occupation of France. In addition to records of the persecution of Jews and other minorities, the documents chart the deportation of French resistance fighters and the exploitation of French slave laborers, according to a report in the *Winnipeg Free Press*.

<http://www.winnipegfreepress.com/world/breakingnews/wwii-archive-in-germany-hands-over-data-to-french-national-archives-111851304.html>

Poland/Russia. Russia delivered some 50 volumes of documents from the investigation into the 1940 Katyn massacre, including lists of Poles arrested by the NKVD, Stalin’s secret police. This is the third delivery, following 67 volumes provided in May 2010 and another 20 volumes in September. <http://www.thenews.pl/international/print.aspx?id=144766> and http://english.ruvr.ru/_print/36206521.html

US/world. The U.S. National Archives released a report required by the Congress on *Nazi War Crimes: Hitler’s Shadow: Nazi War Criminals, U.S. Intelligence, and the Cold War*. The report by two historians is based on findings from newly-declassified Army and CIA records released under the Nazi War Crimes Disclosure Act of 1998. It has chapters on major Nazi figures and former Gestapo officers, the Nazis and the Middle East, the U.S. Army Counterintelligence Corps and right-wing shadow politics, and the Organization of Ukrainian Nationalists. <http://www.archives.gov/iwg/reports/hitlers-shadow.pdf>

National news.

Bangladesh. At a seminar on "Bangladesh Archives and Record Management and Future Plan," the Law Minister, Shafique Ahmed, said that “the government which took over state power in undemocratic way, destroyed huge stock of important information in their own interest.” The report in bdnews24.com did not specify what information was destroyed.

<http://www.bdnews24.com/details.php?id=181019&cid=3>

Brazil. The Inter-American Court of Human Rights announced on 14 December 2010 that a 1979 Brazilian amnesty law covering crimes during Brazil’s 1964-1985 dictatorship was invalid. The judge also ruled that Brazil was responsible for the forced disappearance of at least 61 persons who were part of a resistance movement. The Court ordered Brazil to conduct a criminal investigation into the disappearances, prosecute guilty parties, and search for the disappeared. These mandated activities will involve important research in Brazilian archives from the dictatorship.

http://www.corteidh.or.cr/docs/comunicados/cp_19_10_esp.pdf

China. Certain records, including those of the Communist Party, relating to the great famine of 1958-1962 are being made available for research, according to Frank Dikotter, a professor at the University of Hong Kong. http://www.nytimes.com/2010/12/16/opinion/16iht-eddikotter16.html?_r=4

India. According to an article published in the *Sangai Express*, the order issued by the President of India granting Statehood to Manipur in 1972 has gone missing. The order is needed to help resolve land and boundary disputes involving 107 villages.

<http://e-pao.net/GP.asp?src=5..081210.dec10>

Liberia. Liberia recently passed a Freedom of Information Act (FOI), and the Center for Media Studies and Peace Building held a meeting for public relations officers within government ministries and agencies, members of civil society and journalists. The public relations officers “are custodians of some of the information that will be needed in the public domain,” according to an article in the Liberian *Daily Observer*, and the Act calls for the appointment of an Information Commissioner to supervise and oversee the implementation of the law. The impact of the law on the national archives was not reported.

<http://www.liberianobserver.com/node/9342>

New Zealand. The owner of a fish shop was fined \$4000 and warned of even heavier penalties if he again fails to keep accurate records of the fish he sells to other shops. The *Christchurch Court News* quoted the prosecutor for the ministry of fisheries saying that the records were “essential for the overall management of the fisheries Quota Management System. Record keeping was accepted as second nature among fish dealers. It was the primary tool to detect black-market fish.” Although the legal issue seems to be the management of fish stocks, the records should also help document the safety of the food supply. <http://courtnews.co.nz/story.php?id=3251>

Rwanda. The Rwanda Genocide Archive was officially launched on 10 December 2010 at the Kigali memorial center in Gisozi. It serves as a “unified repository” for all information related to the 1994 massacres. The archives’ initial holdings include 1,500 audiovisual recordings and more than 20,000 documents and photographs.

<http://www.guardian.co.uk/world/2010/dec/10/rwanda-unveil-genocide-archive>

<http://allafrica.com/stories/201012131304.html>

Scotland. The Historic Hospital Admission Records Project (HHARP), a joint effort of archives and hospitals in England and Scotland, recently added the records of the Glasgow Hospital for Sick Children. The records chronicle the treatment of children at the hospital from 1883 to 1903. The HHARP site is <http://hharp.org/>

<http://www.researchbuzz.org/r/>

South Africa. The South African History Archive (SAHA) launched the SAHA/SABC *Truth Commission Special Report* Multimedia Product, featuring the *Truth Commission Special Report* television series, which documented the testimonies given at TRC hearings across South Africa. The Product is aimed at supporting history, heritage and reconciliation education, outreach initiatives, as well as the emerging field of transitional justice, in the wake of the Truth and Reconciliation Commission (TRC), according to SAHA. The Product is on display in the ‘The Struggle Against Forgetting: Human Rights and the Unfinished Business of the TRC’ exhibition at Constitution Hill from 9 December 2010 – 31 March 2011.

info@saha.org.za

Tanzania. The government of Tanzania launched the National Data Archive (NADA) and the Statistical Information and Data Access Policy Information that will enable the general public and other stakeholders to access statistical data online. The NADA is part of the National Statistical Office. <http://allafrica.com/stories/201012010732.html>

Ukraine. Records from the security service of Ukraine during the great famine 1932-1933 have been declassified. In November a guide to them was published by the Center for Studies of the Liberation Movement in cooperation with the Main State archives of the Security Service of Ukraine. An article by Volodymyr Vistrovych discussing the destruction and control of records about the famine was published on the *Day* website.

<http://www.day.kiev.ua/318945>

United States. A new law, the Social Security Number Protection Act, aims to reduce identity theft by limiting access to U.S. social security numbers (SSNs). The act prohibits printing SSNs or any derivative of an SSN on government-issued checks and bars governments from employing prisoners in jobs that would allow them access to social security numbers. The text of the law can be found at <http://www.govtrack.us/congress/bill.xpd?bill=s111-3789>

In a case on the privacy of email, the Sixth Circuit Court of Appeals ruled that the government must have a search warrant before it can secretly seize and search emails stored by email service providers. The court found that email users have the same reasonable expectation of privacy in their stored email as they do in their phone calls and postal mail.

<http://www.eff.org/deeplinks/2010/12/breaking-news-eff-victory-appeals-court-holds>

A number of lawsuits on behalf of children who sustain damage as a result of improper medical care at birth have used fetal monitor strips as important evidence. (Fetal monitor strips are essentially a continuous recording of what was happening with the maternal contractions and the fetal heart rate.) The fetal monitor strips are part of the medical record of the obstetrical procedure. *Law Technology News* published good summary of the various cases.

<http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202475909219&rss=ltm>

The Wikileaks publication of non-public government documents has renewed concern about the privacy of electronic medical records. An example of the debate is found at

<http://www.foxnews.com/politics/2010/12/07/wikileaks-breach-raises-concern-privacy-electronic-medical-records/>

Arizona. In 2004 a researcher discovered records in an Ethiopian warehouse from a Save the Children (Sweden) refugee camp; the records included the documentation of interviews that field workers had with Sudanese child refugees. With agreement from Save the Children and grants from the Mellon Foundation, the records were scanned and digital images are now available online through the Arizona Lost Boys Center (AZLBC), a nonprofit organization dedicated to the child refugees from Sudan. These refugee records are nearly all the documentation that exists about the background of these children, now adults and scattered in countries around the world. <http://www.lostboysreunited.org/>

<http://blackchristiannews.com/news/2010/11/sudans-lost-boys-take-a-look-back-at-records-of-childhood.html>

California. A pipeline exploded in San Bruno, a town south of San Francisco, in September 2010, killing eight people, burning more than 50 homes, and causing other personal injuries and property damage. Now the U.S. National Transportation Safety Board says there are discrepancies in the records of the pipeline, with the electric company's records saying the pipe was of seamless steel construction and the investigators finding that the line actually included welded seams. The accuracy of such corporate records is essential to protect life and

property. <http://www.latimes.com/news/local/la-me-san-bruno-pipeline-20101215,0,7299885.story>

Connecticut. Gay & Lesbian Advocates & Defenders (GLAD) is donating many of its legal records to the manuscripts and archives department at Yale University. Most of the resources, which range from photographs to financial items, will be open to researchers in early 2011. <http://www.yaledailynews.com/news/2010/nov/30/library-acquires-lgbt-records/>

Florida. More than a dozen civil rights "Freedom Fighters" from St. Augustine, Florida, were arrested and fined during the racially turbulent 1960s. Now the state government has cancelled their convictions, and the records of their arrests and prosecutions will be sent to the state archives. The state governor, Charlie Crist, said, "These records will forever serve as a living viable testament to the demonstrators' courage and bravery in 1963 and 1964." <http://staugustine.com/news/local-news/2010-12-09/freedom-fighters-win>
<http://staugustine.com/news/local-news/2010-12-06/freedom-fighters-records-be-erased>

Texas. The state supreme court ruled that the birth dates of state employees are confidential and the public cannot gain access to them under the state Public Information Act. http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN-dob_04pro.ART.State.Edition1.4c295d2.html
http://www.dallasnews.com/sharedcontent/dws/dn/opinion/editorials/stories/DN-records_07edi.State.Edition1.2421160.html

Update. The October Newsletter reported a Maryland judge's threat to send a defendant with prison for willfully destroying electronic information pertinent to a lawsuit. On appeal, a district court judge declined to order imprisonment but upheld a fine of more than \$337,000. <http://www.ediscoverylaw.com/2010/11/articles/case-summaries/district-court-declines-to-order-incarceration-for-defendants-bad-faith-spoliation-but-orders-monetary-sanction-of-33779637>

Zimbabwe. According to SW Radio Africa news and the *Independent* newspaper on 3 December 2010, the coordinator of the Constitution Select Committee, Peter Kunjuku, complained that "all the important information that was collected during the constitutional outreach meetings is being kept at the Copac offices in Harare, but is not secured and can easily be accessed and manipulated." The records, he said, include signed hard copies of records from outreach meetings, audio and visual records, digital cameras, compact video cameras and laptops that were used by Copac officials around the country. Kunjuku suggested in a 20 October memorandum that the records be "temporarily stored" at the National Archives of Zimbabwe and some were briefly delivered but the proposal "was turned down" and the records taken back from the Archives. On 17 December the *Financial Gazette* reported that Kunjuku's contract with the Committee has not been renewed. <http://www.swradioafrica.com/news031210/consupdate031210.htm>
<http://www.financialgazette.co.zw/top-stories/6689-copac-boss-fired.html>

The central ID and passport production center of Zimbabwe was gutted by a fire on 31 December. According to *The Zimbabwe Mail*, the Zimbabwe government "has been battling to register millions of Zimbabweans" in South Africa; South Africa requires Zimbabweans to get passports to "regularize" their residence there. <http://www.thezimbabwemail.com/zimbabwe/7000.html>

Happy New Year and best wishes for 2011.

Please share news with us! trudy@trudypeterson.com or J.Boel@UNESCO.org

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