

*May 17 is World Information Security Day*

**News from the ICA Human Rights Working Group**

**April 2011**

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The following is number seventeen 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 16.** *(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

Article 16 was and is an exceedingly controversial Article. It encompasses the right to marry outside one's race and religion; it contemplates divorce and the right of women to share in the division of property; it opposes forced marriage; it defines family as a "natural" social unit without specifying who makes up such a unit; and it requires States to protect family life. Before the Universal Declaration was drafted, the United Nations had already taken a several important steps with regard to the rights of women that are stated in Article 16. The Charter of the United Nations affirmed "the equal rights for men and women;" the First General Assembly of the United Nations in 1946 passed a resolution asking member states to adopt "measures necessary to fulfill the purposes and aims of the Charter by granting women the same political rights as men," and the new Economic and Social Council appointed a Sub-Commission on the Status of Women, which was shortly raised to the status of a full commission. During the drafting of the Declaration, the chair of the Commission on the Status of Women, Bodil Begtrup of Denmark, and the Soviet delegations consistently argued for equality of men and women and opposed drafts containing sexist language.

Remarkable statements were made during the debates. Shaista Ikramullah, the extraordinary woman who represented Pakistan, said that "it was imperative that the peoples of the world should recognize the existence of a code of civilized behavior which would apply not only in international relations, but also in domestic affairs," and while she thought equal rights did not mean identical rights she wanted "to ensure protection of women after divorce and the safeguarding of their property." The delegate from Uruguay, Sr. Fontaina, in the debate on the nature of the family, argued that the word "natural" was unnecessary because "the family was the fundamental group unit of society and that it was the cell around which the state was

formed; the way in which the family was constituted was of secondary importance,” which can be read to mean that the sexual orientation and composition of the family members are irrelevant to the right being protected. Jamil Baroody, the Saudi delegate “emphasized the fact that apparently the authors of the draft declaration had for the most part taken into consideration only the standards recognized by western civilization.” All these ideas have been tested repeatedly in the years since the UDHR was adopted.

Opposition to the various drafts of Article 16 was widespread but divided, based on the point at issue. The explicit mention of divorce roused opposition from various Christian groups, and the debate on the nature of the family as a social unit found many delegates at odds with each other. The delegation from Saudi Arabia so deeply opposed the language about marrying outside one’s religion that Saudi Arabia eventually abstained from approving the entire Declaration, based largely on its opposition to Article 16. (Quotations from Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, pp. 24-26, 116-125, 254-257.)

Subsequent to the adoption of the UDHR, the United Nations passed a number of conventions and standards in support of the principles articulated in Article 16: the Convention on the Nationality of Married Women (1957, in force 1958); the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962, in force 1964); Convention on the Rights of the Child (1989, in force 1990); and the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1965). The number of these formal actions attests to the continued concern over the issues embedded in the “marriage article.”

Records relating to marriage are found in the public authorities that certify and sanctify marriages, usually civil registers, and in the records of faith institutions. The records of dissolution of marriage are found in courts, civil and religious as well. Court records also reflect struggles over same sex marriage, child custody and other family battles, while immigration services have records of family separations and reunions. Non-governmental organizations focusing on human rights, law firms and legal aid offices have records on both general patterns of family life and on particular cases. Adoption agencies and child welfare departments have records on families. News organizations and journalists that cover family issues have relevant files. Personal papers often contain copies of marriage licenses, birth certificates, and other documentation of family life. Just as Article 16 declares the family the “natural and fundamental group unit,” so are the records of family life a natural and fundamental part of archives and, like the family, they should be protected by the state.

## **General.**

Lawyers, international courts, and archives. Geoffrey Nice, a British barrister best known as the lead prosecutor of Slobodan Milosevic at the International Criminal Tribunal for Yugoslavia, in an interview with the *International Justice Tribune* said of international trials, “You could say the verdicts in these cases are a great deal less important than the record of evidence that they leave behind. A record that would never be available but for these trials that show how things happened. Because if we can learn from how things happen—then maybe we’ll be clever enough and sensible enough to reduce their occurrence in the future.” <http://www.rnw.nl/international-justice/article/geoffrey-nice-your-service> David Tolbert, the former deputy chief prosecutor at ICTY and the current president of the International Center for Transitional Justice, in answer to an interviewer’s question about transitions in the Middle

East said, “Truth-telling processes are no doubt going to play a critical role. These countries have regimes that have been around for long, long periods of time. There are archives to be opened, and may difficult truths to be told.” <http://www.ictj.org/sites/default/files/ICTJ-Global-Newsletter-April-2011-English.pdf>

Mobile phones tracking users. The capacity of cellular telephones to record the geographic location of a person has sparked widespread debates in many countries. In Europe, this debate has fed into a larger discussion of the European Data Retention Directive. A German politician and privacy advocate, Malte Spitz, published a half year’s worth of the tracking data Deutsche Telekom had on him to show how much information the telephone companies are keeping pursuant to the Directive. Germany, Romania and the Czech Republic have declared the Data Retention Directive unconstitutional.

<http://www.tmcnet.com/usubmit/2011/04/01/5418538.htm>. For another mobile phone data protest, this one from France, see “Tech Giants Challenge French Data Retention Law,” <http://www.informationweek.com/news/security/privacy/229401245>.

Missionary photographs on line. Twelve major archives in the United States and Europe are sharing the photographs they hold that were taken by Protestant and Catholic missionaries from Britain, Norway, Germany, and the United States between the 1860s until World War II. The 60,000 digitized photos show missionary activities in Africa, China, Madagascar, India, Papua New Guinea, and the Caribbean and include images that probably are the only existing ones of some local people. Called the International Mission Photography Archives, the digitized images are being made available through the Center for Religion and Civic Culture and the Digital Library at the University of Southern California.

<http://www.voanews.com/english/news/usa/Online-Archive-Preserves-Images-from-Christian-Missions-in-Africa-Asia-121026529.html>

Exhibition using documents instead of objects to illustrate Nazi history. The Topography of Terror documentation center opened in Berlin in May 2010. In an article in *The Chronicle of Higher Education*, the author quotes Thomas Lutz, the head of the center’s memorial-museums department, explaining the decision to focus the exhibitions on documents not objects: “‘What does it help if you have a black uniform, to explain what happened here?’” asked Lutz. ‘After 25 years of discussion about what to show—hats, weapons, artifacts,’ Lutz told me, the curators finally decided the central focus should be simply ‘good historical documentation, with pictures.’” <http://chronicle.com/article/Meticulously-Evil/127100/>

### **International news.**

Belarus/Poland. Since 2008, persons of Polish heritage living in one of the states of the former Soviet Union that do not permit dual citizenship have been eligible to apply for a “Polish Card” (Karta Polaka). This Card permits the holder to work and set up businesses in Poland and to obtain a Polish visa without cost. To obtain a Card, the applicant must provide documentation of Polish heritage. On April 7 the Belarusian Constitutional Court ruled that the Card “does not conform to international conventions on equality of states.” The *Telegraf.by* reported that Central Archives of Belarus has been ordered to stop providing records to persons trying to document their family backgrounds for the purpose of obtaining a Card. [http://www.thenews.pl/international/artykul152918\\_belarusian-courts-rule-polish-card-against-international-law.html](http://www.thenews.pl/international/artykul152918_belarusian-courts-rule-polish-card-against-international-law.html); <http://telegraf.by/2011/04/access-to-belarusian-archives-blocked-for-poles.html>

Guatemala/United States. Following review and redaction of information that would invade privacy, the U.S. National Archives and Records Administration posted scanned images of the records of the 1946-1948 Guatemala sexually transmitted disease experiments. A background story on the Archives' decision-making prior to posting the records was published by *the smoking gun.com* <http://www.thesmokinggun.com/documents/internet/archives-feared-unwanted-political-attention-809645> and Kate Doyle, a noted Guatemala expert, blogged on the case at <http://nsarchive.wordpress.com/2011/04/25/nara-posts-dr-cutlers-papers-on-medical-experiments-in-guatemala/>

Poland/Russia. In a case that never seems to end, Russia on 7 April handed over to Poland yet more files on the Katyn massacre, according to *RIA Novosti*.  
<http://en.rian.ru/russia/20110407/163414413.html>

Kenya/United Kingdom/former colonies. In 2009 five Kenyans sued the UK government, saying they were tortured during British rule in Kenya in the 1950s. On 5 April, two days before the first day of the trial, the Foreign Office said that it holds some 2000 boxes of files containing official records from 37 former colonies, none of which has ever been made available to the public. Of these, approximately 300 are related to Kenya, and 30 are reported to be relevant to the case. One of the suspected rebels detained during the 1950s Mau Mau uprising was U.S. President Barack Obama's grandfather, Hussein Onyango Obama. The Foreign Office minister said the records will be transferred to the National Archives, but that the transfer may take "some years to complete." Another official explained to the *Financial Times*, "All historical documents need to be read by reviewers ahead of their transfer to the National Archives." <http://www.bbc.co.uk/news/uk-12983289>,  
<http://www.ft.com/cms/s/0/c4fde0d2-5fb6-11e0-a718-00144feab49a.html#axzz1InSIGX3R>  
<http://allafrica.com/stories/201104100005.html>

Vatican/United States. Archbishop Timothy Dolan of New York, at a public dialogue on April 12, urged the Vatican to expedite the opening of its Holocaust-era archives. Jewish groups were promised in 1987 that the records would be opened, but the records of the papacy from 1939 to 1946 remain closed. Holocaust survivors, who are now very aged, want to know what Pope Pius XII did know during the war; the matter is complicated by the current push to beatify Pius XII. <http://www.forward.com/articles/136983/>

### **National news.**

Croatia. The Croatian public was outraged that the ICTY convicted Croatian generals Ante Gotovina and Mladen Markac, the *International Justice Tribune* reported, adding that the angry discussion included the question of who delivered the documents to the ICTY that led to the conviction: "The one responsible is considered as the ultimate traitor of the Croatian cause. Up to today, no one has owned up to say, 'I did it.'" The chief judge in the case complained that getting any documents from Croatia required "a lot of pressure" and that "not all documents ended up on his desk." <http://www.rnw.nl/international-justice/article/croatia-unpopular-judgement>

Germany. The state library in Berlin returned 13 books stolen by the Nazis to the Berlin Jewish community. Press reports say that the books have "negligible" monetary value; they include 19<sup>th</sup> and 20<sup>th</sup> century novels, history books, poetry collections, travel guides and bound newspaper volumes and bear stamps reading "Jewish Reading Room and Library

Berlin” and “Jewish Community-Boys School Berlin.” This echoes the types of materials from the Iraqi Jewish community now held in storage at the U.S. National Archives, whose ultimate disposition is a matter of controversy.

<http://www.google.com/hostednews/afp/article/ALeqM5jMFhXXwwe7o7ulhAZEgXQ-CBFq0g?docId=CNG.6426e8daf15657f3f0c24ada6c927552.351>

Kenya. The Kenyan Truth, Justice and Reconciliation Commission heard witnesses at Wajir (northern Kenya) describe the alleged February 1984 Wagalla massacre. One witness presented photographs he took during the massacre, saying that he had taken the photos while posing as a Red Cross humanitarian worker. The Commission’s mandate is to investigate human rights abuses from 1963 to 2008. <http://www.rnw.nl/international-justice/article/woes-facing-kenyas-truth-commission>

Libya. After Zwiyah, Libya, was retaken by forces loyal to Muammar el-Qaddafi, journalists taken to in a burned-out police station saw photographs of prisoners and corpses, while “workers were clearing out burned books and files.”

<http://query.nytimes.com/gst/fullpage.html?res=9C03E7DF1439F935A35757C0A9679D8B63>

Netherlands. The national archives of The Netherlands holds 500,000 dossiers from special post-World War II tribunals of 310,000 Dutch Nazi collaborators. The records are sealed until those named in them are dead and then will be available only to victims or their family members. However, a journalist and a team of researchers received special permission to review the dossiers of 250 collaborators who have died. This project led to the information about the arrests and deportation of some 9000 Dutch Jews; the names of 9000 victims will be added to a digital database that will be available to the families.

[http://www.boston.com/news/world/europe/articles/2011/04/12/dutch\\_archive\\_new\\_info\\_on\\_some\\_wwii\\_jews\\_arrests/?rss\\_id=Boston.com++Boston+Globe+--+World+News](http://www.boston.com/news/world/europe/articles/2011/04/12/dutch_archive_new_info_on_some_wwii_jews_arrests/?rss_id=Boston.com++Boston+Globe+--+World+News)

Nigeria. The *Sun News Online* published a feature on the dismal conditions in the National Archives of Nigeria. Using the example of trying to find a document on a land dispute settlement in a town in 1924, the reporter traces the problems of access and retrieval. He reports that no money is budgeted to the archives except the salaries of the workers, so the establishment must charge fees, including fees to make copies that are needed by individuals for use in courts, schools, and political filings.

<http://www.sunnewsonline.com/webpages/features/living/2011/apr/09/living-09-04-2011-003.htm>

South Korea. South Korea enacted a new comprehensive privacy law covering both government agencies and “nearly all businesses,” the *Privacy & Information Security Law Blog* reported. [http://www.huntonprivacyblog.com/2011/04/articles/international/south-korea-enacts-comprehensive-privacy-law/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed:+PrivacyInformationSecurityLawBlog+\(Privacy+%26+Information+Security+Law+Blog\)](http://www.huntonprivacyblog.com/2011/04/articles/international/south-korea-enacts-comprehensive-privacy-law/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+PrivacyInformationSecurityLawBlog+(Privacy+%26+Information+Security+Law+Blog))

Syria. Syrian president Bashar al-Asad granted citizenship to 300,000 Syrian Kurds who, at the time of the 1962 census in Syria, were living in the Al-Hasakah Governorate and were excluded from the right of citizenship. They were refused passports and identification cards; instead they had identification certificates provided by the mayor, but these did not permit travel, auto registration, house registration, or school certificates beyond the ninth grade,

reported the BBC quoting a report aired by Lebanese Hezbollah Al-Manar TV.  
<http://www.bbc.co.uk/news/world-middle-east-12995174>; <http://www.middle-east-online.com/english/?id=45407>

Taiwan. In a case with angry charges and cross-charges, the *Taipei Times* reports that the Presidential Office accused 17 former officials of the Democratic Progressive Party with “failing to return” 36,000 documents to the National Archives “a few years ago.” Most of the documents are said to be classified; there is no indication of their contents, the agency of origin, whether they were ever in fact filed or, if they were, how they left the Archives.  
<http://www.taipeitimes.com/News/taiwan/archives/2011/04/03/2003499807>

Tunisia. Some officials of the transitional government in Tunisia are making an effort to collect and preserve the archives of the Interior Ministry, the *Los Angeles Times* reports. The interim government issued an order for all government agencies to safeguard their records and posted troops around the headquarters of the former ruling party. The national archives requested that the government seize all files in the party headquarters.  
<http://www.latimes.com/news/nationworld/world/la-fg-tunisia-archives-20110417,0,7232106.story>

United Kingdom. The High Court ruled that the Health Department must release its statistical data on the number of late abortions carried out because of disability. The Department opposed the release, fearing that individual doctors or patients could be identified from the statistics alone, but an independent tribunal said the likelihood of identification was “remote.”  
<http://www.telegraph.co.uk/health/8457884/Publish-abortion-data.html>;  
<http://www.channel4.com/news/department-of-health-loses-abortion-secrecy-bid>

United States. Doctors who conducted a controversial study of lung cancer involving more than 50,000 patients at numerous hospitals now cannot locate 90 percent of the consent form that the patient who participated in the study signed. The controversial study reported in 2006 that 80 percent of lung cancer deaths could be prevented through use of CT scans, but in 2008 the *New York Times* reported that part of the research was financed by a company that makes cigarettes. A 2008 confidential report on patient consent recommended that the trial stop, but it continues. [http://www.nytimes.com/2011/04/30/health/research/30lung.html?\\_r=1](http://www.nytimes.com/2011/04/30/health/research/30lung.html?_r=1)

California. California Watch, an NGO based in earthquake-prone California, merged thousands of records from public sources to create an interactive database to locate all schools located in seismic hazard zones. All schools in California must be designed and built to meet state safety guidelines; during the project the researchers attempted to determine how many schools are not certified by state inspectors as meeting the guidelines. They found that many inspected schools “could not be verified due to sloppy recordkeeping and other technicalities.” <http://californiawatch.org/k-12/thousands-records-merged-create-seismic-safety-database-9632>

Two doctoral students at the University of California at Davis conducted an eight-year study of two California school districts. They found that at the high school level, more than 21 percent of student records are missing and even more are incomplete or inaccurate.  
[http://www.news.ucdavis.edu/search/news\\_detail.lasso?id=9835](http://www.news.ucdavis.edu/search/news_detail.lasso?id=9835)

Texas. The Texas state comptroller’s office posted private data on millions of persons to a public server. The 3.5 million records exposed include 1.2 million records of education

employees and retirees for the teacher retirement system, 2 million records from the unemployment system, and 281,00 records from the state employees retirement system. The records included names, mailing addresses, social security numbers, and in some cases dates of birth and driver's license numbers. The data was not encrypted.

<http://www.informationweek.com/news/security/attacks/229401489>

*Wisconsin.* On 24 August 1970 a bomb set off on the campus of the University of Wisconsin killed one person, injured others, and caused millions of dollars in damage. One of the bombers is now dead, two others were convicted and served prison sentences, but a fourth has never been caught. The FBI, responding to a Freedom of Information Act request by the Associated Press, released its file on the bombing.

<http://www.greenbaypressgazette.com/article/20110410/GPG0101/104100699/1970-UW-bombing-records-released?odyssey=tab|topnews|img|GPG-News>

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