

Remember: Human Rights Day is 10 December

News from the ICA Human Rights Working Group

November 2010

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The following is number twelve 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 11. *(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

Article 11 contains three ideas: the presumption of innocence, the right to a defence, and the non-retroactivity of law (also known as no ex post facto law). The first paragraph was adopted relatively easily by the Declaration's drafting commission, but the second paragraph led to long debates. The principal problem stemmed from the war crimes trials at Nuremberg. One of the main defenses of the Nazis tried there was that they were "acting according to laws existing at the time," pointing out that the existing Hague and Geneva Conventions did not include either crimes against peace or crimes against humanity which formed two of the charges against the Nazis. Although the judges rejected that defense, the drafters of Article 11 wanted both to ensure that no one would be judged guilty of an act which was not a crime at the time it was committed and to uphold the decisions reached at Nuremberg. After a great deal of drafting and redrafting, the second provision was adopted. (Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, pp.52-58.)

The non-retroactivity principle is a part of the International Covenant on Civil and Political Rights adopted by the UN General Assembly in 1966 (Article 15, paragraph 1), as well as in the African Charter on Human and Peoples' Rights, the American Declaration on the Rights and Duties of Man, the Arab Charter on Human Rights, and the European Convention on Human Rights. The principle has featured in cases as varied as a 2003 case at the European Court of Human Rights against two Estonians for the deportation of civilians to the Soviet Union in 1949 (Kolk and Kislyiy v. Estonia), cases at the International Criminal Tribunal on the Former Yugoslavia, and even in defense of Spanish Judge Baltasar Garzon's decision to investigate crimes against humanity committed during the dictatorship of Francisco Franco (see the 23 March 2010 "Open letter to Spanish judiciary authorities in solidarity with Justice Baltasar Garzon" at <http://www.fidh.org/Open-letter-to-Spanish-judiciary-authorities-in>).

The archival records that support Article 11 are those of the judiciary, the prosecutors and defense counsel, and the NGOs that monitor the judicial process. But the Article also requires public archives to preserve authentic official laws of the states; for some countries this is the published law (for example, Germany) and for others this is the signed law (for example, the United States). The difference between a publication requirement and a signature requirement

was clearly demonstrated recently when the Huntington Library in California transferred to the U.S. National Archives the Nuremberg Laws of 1935 signed by Adolf Hitler. At the end of World War II, U.S. General George Patton was given the laws, reportedly found in a German bank vault by U.S. soldiers, and took them to the Library for “safekeeping.” The German Bundesarchiv holds the published Nuremberg Laws, which for Germany is the official copy and the signed original is not legally significant. For the U.S., with its legal tradition, the signed copy is the one that it valued and that is the one it now holds. The U.S. National Archives will give a copy of the signed laws to the Bundesarchiv.

Human Rights Day 2010. The Office of the High Commissioner for Human Rights is providing free downloadable promotional materials for use on Human Rights Day 10 December. The theme of this year’s observance is “human rights defenders who act to end discrimination.” <http://www.ohchr.org/EN/NewsEvents/Pages/HRDay2010.aspx>

Publications. The European Network of Official Authorities in Charge of the Secret-Police Files has published a “Reader” on the legal foundations, structures and activities of the secret police in Bulgaria, the Czech Republic, Germany, Hungary, Poland, Romania and Slovakia. The Reader can be obtained by writing to the Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen DDR (the archives of the Stasi), BStU, 10106 Berlin, Germany, or by FAX to +49 (0)30 2324-6619. Thank you to Karsten Jedlitschka for sending this information.

The Documentation Affinity Group (DAG), a network of local action organizations across the globe, has released two new case studies — Zimbabwe and Ethiopia — as addenda to their 2009 report, *Documenting Truth*, a collection of best practices derived from the work of six documentation organizations in Cambodia, Burma, Guatemala, Iraq, Serbia, and the United States. The Ethiopia study is found at http://www.ictj.org/static/Publications/dag_briefing_Ethiopia_2010.pdf and the Zimbabwe study, which focuses on the documentation of healthcare, is at http://www.ictj.org/static/Publications/dag_briefing_Zimbabwe_2010.pdf

UNESCO launched a web site on post-conflict and post-disaster responses. <http://www.unesco.org/new/en/unesco/themes/pcpd/>

The International Justice Tribune published an interview with Dr. Larissa van den Herik of Leiden on the illegal exploitation of natural resources as a primary means of financing conflict in a number of countries. She argued that prosecuting pillage could play a critical role in challenging the companies and businessmen who fuel wars, and she talked about the records of businesses and truth commissions as sources of evidence. <http://www.rnw.nl/international-justice/article/prosecuting-pillage>

Patrick Pierce alerts us to a new article, “Autonomous Archives,” by Shaunna Moore and Susan Pell published in the *International Journal of Heritage Studies* 16:4/5 (July-September 2010): 255-268. He reports that the article explores non-governmental archives as a crucial component of democratic heritage practices; it focuses on the Union of British Columbia Indian Chiefs Archives, the Hope in Shadows Archive, and Friends of the Woodward's Squat Archive in Vancouver, Canada.

Conferences. SOLON, the Institute for Advanced Legal Studies University of London, and CCBH Kings College London will hold their 2nd Biennial War Crimes Conference, “Justice?

– *Whose* Justice? Punishment, Mediation or Reconciliation?” 3-5 March 2011. For further information, contact l.r.charlesworth@ljmu.ac.uk or judith.rowbotham@ntu.ac.uk. Details, including the programme and the booking form will be available on the SOLON, IALS, and CCBH websites: <http://www.perc.plymouth.ac.uk/solon/>; <http://ials.sas.ac.uk/>; <http://icbh.ac.uk/>

The National Archives of Brazil and the Brazilian project *Memorias Reveladas*, with the support of UNESCO, the Association of Brazilian Archivists, and the State of Rio de Janeiro’s School of Magistrates, hosted an international seminar on “Access to Information and Human Rights.” The papers, presented by historians, archivists, lawyers, and human rights activists, will be printed in the Brazilian archives magazine during 2011.

Calls for papers. The English Department of the University of Bucharest invites proposals for the Literature and Cultural Studies section of its 13th annual conference on the theme “Tales of War: Expressions of Conflict and Reconciliation,” to be held 2-4 June 2011. For further information contact litcultstbucharest@gmail.com or www.english-unib.ro/events.html.

The Imperial War Museum in London is seeking participants for its multidisciplinary conference titled “Beyond camps and forced labour: current international research on survivors of Nazi persecution,” to be held 4-6 January 2012. The deadline for proposals is 28 February 2011. For further information, contact: J.D.Steinert@wlv.ac.uk or www.iwm.org.uk/beyondcamps2012.

The German Historical Institute, Washington, D.C., will hold a workshop on “Economic Crime and the State in the Twentieth Century, a German-American Comparison,” 14-16 April 2011. Proposals should include a paper abstract (two pages maximum) and a short curriculum vitae in English and must be submitted via email (preferably in pdf format) by 14 January 2011 to Mario Daniels daniels@ghi-dc.org.

The British Sociological Association plans to publish a special issue of its journal on “The Sociology of Human Rights.” The deadline for submissions is 31 July 2011. For further information, contact Matthew.Waites@glasgow.ac.uk or www.britisoc.co.uk/publications/pubsvacancies.htm.

Position open. Impunity Watch is looking for a Coordinator of its new Burundi Programme. Impunity Watch is an international non-profit group that produces research-based policy advice, monitors state compliance with legal obligations towards the victims of crimes and advocates for tailored policy solutions. It is based in the Netherlands and currently runs country programmes in Guatemala, Serbia and Burundi. <http://www.impunitywatch.org/en/publication/76>

International news.

Europe/Israel. The European Holocaust Research Infrastructure (EHRI) was inaugurated in Brussels on 16 November. The project combines Holocaust information in European archives with that in the Yad Vashem Holocaust Museum in Israel under one technological infrastructure. Thirteen countries and 20 research institutes took part in this enterprise over the past four years, at an investment of some €7 million (about \$9.5 million), reports *Jewish World*. <http://www.ynetnews.com/articles/0,7340,L-3985452,00.html>

Guatemala/United States. The U.S. Department of Health and Human Services released a report of its review of the archives of Dr. John Cutler on the Guatemala sexually transmitted diseases inoculation study. http://www.hhs.gov/1946inoculationstudy/cdc_rept_std_inoc_study.html For additional links to information, see the October 2010 newsletter.

Indonesia/Netherlands. Survivors of a 1947 massacre of men and boys in Rawagede village, Indonesia, by Dutch military forces filed a civil suit last December in The Hague, seeking reparations and an official apology. The defense attorneys for The Netherlands acknowledged the killings, reports the *International Justice Tribune*, but contend that the case has exceeded the statute of limitations and should be dismissed. The records of the Dutch military for this period are in the National Archives of The Netherlands; see in *archieff van de procureur-generaal van het Hooggerechtshof Nederlands-Indië (1945-1950)* especially file no. 1304 Executie van gevangenen zonder voorafgaand onderzoek of proces te Krawang (execution of prisoners without trial at Krawang) and finding aid nr. 2.10.17. Thanks to Fred van Kan for the archival references. <http://www.rnw.nl/international-justice/article/netherlands-claim-moratorium-war-crimes-indonesia>

Iraq/United States. Jeff Spurr, a specialist on Iraqi archives, gave a talk in April 2010 on "Devastation And Controversy: Consequences of the US Invasion for Iraqi Archives." It is now available at: <http://www.international.ucla.edu/cnes/podcasts/article.asp?parentid=114974>

National news.

Australia. *The Age* reports that the Australian Labor Party secretly recorded personal details of tens of thousands of people in the state of Victoria, Australia--including sensitive health and financial information--in a database that was available to campaign workers ahead of the state election on November 27. Database entries seen by *The Age* include details of a family's concern about an East Malvern man's prostate cancer, a man's financial problems after he purchased a gaming agency, a Brighton family's complaint about superannuation payments, and details of a woman's victims of crime compensation claim. <http://www.theage.com.au/victoria/state-election-2010/revealed-how-the-alp-keeps-secret-files-on-voters-20101122-1845e.html#comments>

Canada. In a wonderful example of the use of archives for rights, a group representing several Baffin-area communities, in collaboration with the National Archives of Canada and the environmental consultancy Strata360, used records in the National Archives to create maps of Inuit hunting grounds at the north end of Baffin island. These maps will help define the boundaries for a proposed ecological reserve and marine park. The researchers also created a special finding aid to the "mountains" of recordings, interview transcripts, hand-drawn maps, and other documents gathered by university researchers from Inuit hunters and elders in 1972 and 1973. http://www.montrealgazette.com/story_print.html?id=3821125&sponsor

In a less happy story, tons of confidential documents, including income tax forms and documents from Library and Archives Canada were found stored by a recycling firm without adequate security. A journalist entered the facility on two occasions through "wide-

open doors,” according to the *Toronto Sun*.

<http://www.torontosun.com/news/canada/2010/11/12/16109031.html>

Guatemala. Two former police officers were sentenced to 40 years in prison over the disappearance of a union leader 26 years ago. This is the first case and first convictions using the records from the police archives. Of the 750 documents used in evidence in the case, 661 came from the archives. <http://www.alertnet.org/thenews/newsdesk/N29288012.htm>

South Africa. As South Africa continues to debate a Protection of Information Bill (see report in the October newsletter), Graham Dominy, the national archivist, published “Protecting Information: A Practical View” on the *Archival Platform* website on September 9, 2010. Thank you to Graham for sending this.

http://www.archivalplatform.org/news/entry/protecting_information/

Timor-Leste. The International Center for Transitional Justice reports that Timor-Leste’s parliament has postponed until February any action on two draft laws that would create a national reparations program and establish an “Institute of Memory” which would, among other tasks, assemble and preserve human rights documentation. These laws would implement recommendations made by Timor-Leste’s two truth commissions.

<http://www.ictj.org/en/news/press/release/4138.html>

Uganda. Makerere University and the Northern Uganda Transition Initiative began construction of a war memorial museum in the northern Kitgun district, according to the *New Vision* website. Among other functions, the museum is to collect and preserve documentary materials on the conflict in northern Uganda. <http://www.newvision.co.ug/PA/8/16/734862>

United Kingdom. The coalition government announced last May that it would scrap the controversial ID cards scheme and the National Identity Register. Now the press reports that the government is beginning to shred identity card data and clear government computer disks of the personal data that had been acquired.

<http://www.zdnet.co.uk/news/regulation/2010/11/09/government-to-begin-shredding-id-card-data-40090796/>

After World War II, a man on the Channel Island of Guernsey, which had been under German rule during the war, compiled testimonies from islanders about German persecution during the war. Statements were taken and forms for compensation were completed and sent to the British government, which had received a “one-off sum” from Germany to use to compensate British citizens who suffered under the Nazis. The original testimonies “were stuffed into a briefcase and stored in the wardrobe in his daughter’s house until the summer of 2010.” Now rediscovered, a Cambridge University researcher calls the testimonies “the single most important resistance archive ever to emerge from the Channel Islands.” The forms sent to the UK government have not been released, according to BBC News.

<http://www.bbc.co.uk/news/world-europe-guernsey-11779963?print=true>

United States. The Justice Department announced on 9 November that it will not file criminal charges against officials of the Central Intelligence Agency who destroyed videotapes of brutal interrogations of terrorism suspects. However, the next day the National Archives announced that it will reopen an inquiry into whether the CIA actions were an improper destruction of federal records.

http://www.nytimes.com/2010/11/10/world/10tapes.html?_r=2&partner=rss&emc=rss&page_wanted; <http://www.msnbc.msn.com/cleanprint/CleanPrintProxy.aspx?1291162507796>

A 2006 study by the Justice Department on the history of U.S. Nazi-hunting and Nazi-sheltering since World War II was released in heavily redacted form to an FOI requester. Subsequently the full text was leaked to the *New York Times*, allowing the requester, the National Security Archive, to compare the redacted document with the complete text. The study shows that Nazi war criminals were sheltered which, said the Archives director, “the public needs to know and has a right to know.” The full study has not yet been released officially. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB331/index.htm>; <http://www.nytimes.com/2010/11/14/us/14nazis.html>

Barclay T. Blair, a researcher on information management, released a report saying that for every 1044 pages of evidence preserved, captured, copied, collated, reviewed and handled in e-discovery during the investigation phase of a lawsuit in the United States, only 1 page is actually produced when the case goes to court. <http://barclaytblair.com/todays-information-governance-powerpoint-slide-the-hard-drive-in-the-haystack/>

A survey done by the privacy and data management firm Ponemon Institute reports that healthcare organizations in the US “are still using archaic data management techniques and run the risk of spending an average of US \$1 million per year dealing with data breaches.” <http://www.cmswire.com/cms/information-management/data-breaches-cost-the-healthcare-industry-up-to-us6-billion-annually-009305.php>

Illinois. The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) proposed fining a regional distribution center for a lumberyard and hardware store \$182,000 for failing to document and report employee injuries and illnesses. Underscoring the importance of business records, the OSHA area director said, “Accurate injury and illness records are vital to protecting workers’ health and safety. Accurate records are an important tool that employers and workers can use to identify hazards in the workplace, and they also enable OSHA to better target its resources.” http://www.wifr.com/news/headlines/US_Labor_Departments_OSHA_fines_Lowes_Rockford_Distribution_Center_182000_for_willful_and_repeat_recordkeeping_violations_106642503.html

Zimbabwe. Reporters Without Borders issued a statement on 17 November calling for the withdrawal of a bill that would allow the government to block public access to judicial decisions, new legislation, and other public records. <http://en.rsf.org/zimbabwe-bill-would-restrict-public-access-17-11-2010,38832.html>

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