

Refugee Rights in Records Framework

Refugee Rights in Records (R3) initiative
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Introduction

As of 2020, the United Nations High Commission for Refugees (UNHCR) was reporting that 82.4 million people around the world have been forced to flee their homes, 24 million people were refugees and more than half of those were under 18. Additionally, 281 million people live outside their country of origin, many millions of whom are stateless.¹ These figures do not reflect the latest conflicts in Ukraine and elsewhere that have displaced millions more people. Indeed, there are more displaced people in the world today than at any point since the end of World War II. These figures also do not include millions more people who are not officially considered to be refugees but who travel as migrants seeking better lives elsewhere, forced from their homes and homelands because of drought, famine, gang violence and lack of economic opportunity.

Although refugees are more highly tracked, surveilled and documented by states, intelligence services and aid agencies than at any point in human history, as human beings, they are among the most marginalized and absent from archives, and among the least empowered to tell their own stories and keep their own records. Official records and recordkeeping systems and the data they contain, regardless of their form or format have increasingly become primary impediments to realizing human rights and self-determination and no more so than in the case of refugees. To counter this situation, this Framework was developed by the Refugee Rights in Records (R3) initiative led by Anne Gilliland (University of California, Los Angeles) and James Lowry (Queen's College, City University of New York and formerly Liverpool University) based on extensive collaborative research and consultation in different sites around the world between 2017 and 2021.

The Framework engages with the discourse of human rights and lays out a set of human-centered and often inter-dependent rights that are inherent to every individual refugee, and in some cases, collectively to families or particular communities. We would note also that participants in records are participants in records through time and may have associated responsibilities to others, and that records also have one-to-many relationships with multiple persons across generations.

Understandings of human rights and their scope have expanded considerably over the past century. The 1948 Universal Declaration of Human Rights first enshrined a set of rights that recognized “the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” The 1990 UN Convention on the Rights of the Child further specified specific rights of children, stating that

¹ <https://www.unhcr.org/en-us/figures-at-a-glance.html>. In this framework for convenience of reference we refer to the various categories of displaced peoples under the term “refugees”.

"the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." The 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) delineated the individual and collective rights of Indigenous peoples, including their rights to self-determination and self-governance, as well as to protect their own culture, identity, language and traditional lands.

The origins of rights discourses can be traced back to Western thinkers such as Aquinas, and the definition and acceptability of rights has been the subject of much debate for hundreds of years. Rights, both natural (i.e., those that are inherent to being human, that cannot be taken away from that human or transferred by human action or law) and legal (i.e., those identified and supported by a society's laws and juridical systems), are commonly understood to be legal, social or ethical principles that guarantee an individual's entitlement or justified claim to a particular kind of freedom, or treatment, assistance and non-interference by others. Accepting that certain rights are inherent to being human also implies recognition that certain kinds of duties and responsibilities on the part of others may also be associated with ensuring those rights are attainable and actualized. By definition such rights should be applicable universally and consistently recognized and applied.

The rights in records and recordkeeping contained in the Framework pertain to all people "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" (UN Convention on the Rights of the Child, 1990) and without regard to literacy status or form. They are also framed with respect for the people and purpose-oriented Global Indigenous Data Alliance's 2019 CARE Principles for Indigenous Data Governance (Collective Benefit, Authority to Control, Responsibility and Ethics),² and in recognition of those individuals and peoples whose traditional lands, physical presence and legal status do not fall within the boundaries and citizenship of nation states.

While the rights are universal in their applicability, they specifically seek to address the needs and experiences of the many and various individuals and communities who have suffered from mis- and under-representation in, marginalization and oppression by, and ultimately the weaponization of bureaucratic recordkeeping systems and technologies against them. They also seek to remove the legal, infrastructural and resource constraints placed upon the ability of individuals and communities to create, keep and share personal, familial and community documentation and other kinds of records of their own lives and experiences. Widespread acceptance of such a Framework puts in place certain guarantees and promotes the development of equitable infrastructure and restructuring of official and archival priorities.

It is expected that specific aspects of these rights would be implemented through international and national laws, regulations and agreements, and that these would also address the specifics of particular contexts and situations. This will indubitably take time to be put in place, especially

2

https://static1.squarespace.com/static/5d3799de845604000199cd24/t/5d79c383e904c741c9e9cd86/1568260995760/CARE+Principles+for+Indigenous+Data+Governance_FINAL_Sept+06+2019.pdf

in less compliant contexts. Many of the rights in the Framework directly invoke the duties, responsibilities, support and care of archivists and other recordkeepers to ensure that it is possible for individuals and communities to actualize those rights. It is hoped that this will also promote consultation and cooperation by archivists, recordkeepers and recordkeeping institutions with the peoples concerned that is encouraged in UNDRIP. In these ways, archivists and their institutions will not only purposively work to actualize human rights as laid out by the United Nations, but will also affirm the fundamental importance of the right to self-determination of all peoples that are enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights, the 1976 International Covenant on Civil and Political Rights, and the 1993 Vienna Declaration and Programme of Action.

In proposing the Framework, we recognize that implementing these rights inevitably requires changes in archival priorities and practices, as well as greater education by archivists of the general public regarding their rights in records and the ways in which records concerns can affect their human and civil rights, how personal and juridical identities may interact, how to keep and protect their own records, and the ways in which the value, role and accessibility of records may change in and over time and geography.

Framework development

Multiple mechanisms were used to gather and analyze data from sites around the world and working together with stakeholders that included current and former refugees, participants from the UN High Commission for Refugees, International Red Cross, international and local NGOs working with refugees, watchdog agencies engaged in documenting human rights abuses, archives and academic institutions, lawyers, historians, artists and journalists.

These mechanisms included:

- an analysis of relevant technology developments
- recordkeeping and archival warrant analysis based on input from
 - Stakeholders attending specially organized symposia
 - Feedback from professional presentations
 - English and Arabic language policy and media reports, 2016-2019
 - Relevant juridical instruments
- Historical case studies, e.g., Armenian diaspora, Windrush
- Fieldwork: Northern Macedonia, Croatia, Armenia and Nagorno-Karabakh, US-Mexico border
- Multi-stakeholder symposia and hosted by local archives, universities and community organizations
 - Initial symposium hosted by the Vera and Donald Blinken Open Society Archives in Budapest
 - Subsequent events in London, Zagreb, Dublin, Malmö, Melbourne and Los Angeles

The Framework is also grounded in three closely related archives and recordkeeping concepts:

Archival sovereignty -- the principle that every human being, regardless of their circumstances and background, should be able to exercise some control over records and recordkeeping systems and environments that relate to or affect them.

Archival autonomy -- the ability for individuals and communities to participate in societal memory, with their own voice, to become participatory agents in recordkeeping and archiving for identity, memory and accountability purposes, and to have the ability to tell their own stories.

Archival agency – the ethic that compels archivists and other recordkeepers to use their expertise and positions to advocate and exercise care for the humans who are subject to, captured in and affected by the archives, records and recordkeeping systems, practices and content with which they work.

Feedback on the Framework was received from stakeholder focus groups, presentations at events in many additional countries, and peer review of publications and conference presentations.

Finally, we have worked closely with the developers of the Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care and conducted extensive mapping exercises to identify areas in common. While the Charter and this Framework each address specific human situations and therefore necessarily diverge in some respects, it is important to emphasize not only that there is extensive overlap in the proposed rights that may point to certain core rights in records that should be recognized and supported for all humans, but also that the plight of children, and especially children being kept away from their families in out of home care and migrant detention centers, is a fundamental uniting concern.

Proposed rights in records for refugees

Rights to have a record created:

- The right to be provided with a universally recognized identity document upon request.
- The right to have a birth certificate, and to have both parents' names listed on that birth certificate if the father is deceased or otherwise unable to be present at his child's birth, if the mother requests it.
- The right for family members and other dependents to a process for issuing a death certificate when there is no body after a certain amount of time.

Rights to know:

- Prior to a record about oneself being created, the right to be fully informed about why it is being created, what it will contain, what it may be used for now and in the future, and how it will be secured.

- The right to know that a record about oneself exists, where, why, and who can see it and under what circumstances.
- The right to know if there is a classified record or data impeding an action one is trying to complete.

Rights regarding records expertise:

- The right to be provided, and at no cost, with the index terms or other metadata necessary for locating and retrieving records about oneself.
- The right to request and be provided with a records advocate or other expert in locating, introducing and challenging records.
- The right to have a records expert testify regarding the historical and bureaucratic circumstances surrounding the creation, management, reproduction, translation and reliability of records about oneself that are introduced in asylum and immigration adjudications, return, restitution and other actions.

Cultural, self-identity and family rights in records:

- The right to have one's cultural or community recordkeeping practices recognized in legal, bureaucratic and other processes that depend upon the introduction of records.
- The right to have one's self-identity acknowledged in records about oneself, including, but not limited to name, gender, and ethnicity.

Right to respond and to annotate (right to rectification):

- The right to respond to and include a permanent annotation on records about oneself.

Refusal and deletion rights:

- The right to refuse to participate in the creation of a record about oneself or to resist being recorded if there is a credible fear that doing so will compromise one's human rights or those of others.
- The right to request deletion of a record or deletion of data or metadata about oneself from a record if that record, data or metadata would compromise one's human rights.

Accessibility, reproduction and dissemination rights:

- The right to access records about oneself, including those that are still otherwise subject to legal or other closure periods.
- The right to access one's record according to one's own literacy, modality, writing or signing system.
- The right to guaranteed safe, secure, timely and low or no-cost access to relevant records about oneself upon request.

- The right to receive copies of records about oneself, and to specify the form and format of those records, or else to be given a clear explanation as to why one may not.
- The right to transmit or share records about oneself.

Consultation rights:

- The right to be consulted regarding how, where and when records about oneself are preserved or archived, made available for archival research, or disposed of.
- The right to be consulted when and why another party, including family members, requests access to a record about oneself.

Personal recordkeeping rights:

- The right to a secure personal recordkeeping/archival space.
- The right to a safe, secure, and trusted infrastructure for managing, preserving, certifying, and transmitting one's documents.

Further information

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