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### Authors

Wood, Stacy  
Carbone, Kathy  
Cifor, Marika  
et al.

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### **An Analysis of Warrant for Rights in Records for Refugees**

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## An analysis of warrant for rights in records for refugees

This paper argues that personal actualisation of human and personal rights articulated in key conventions, declarations and other internationally recognized instruments is significantly impeded without similar recognition of individual rights 'in and to records'. It reports on a study in which archival literary warrant analysis was applied top-down on 19 such instruments, and on professional international guidelines for records relevant to human rights. Warrant was also derived bottom-up from media and personal accounts of documentation and recordkeeping challenges faced by refugees. The results of the analyses were used to identify potential rights in and to records necessary to enable and actualise refugees' human rights. These potential rights were then clustered within a framework together with the warrants from which they were derived. While this study makes the case for how a platform of rights in records could support refugees in enabling and actualizing their human rights, further research is necessary to test whether it is sufficiently inclusive to encompass *any* context in which documentation and recordkeeping play key roles in enabling and actualising human rights, and whether rights in and to records should themselves be recognized as fundamental human rights.

Keywords: archives; documentation; human rights; recordkeeping; refugees; rights in records framework

### Introduction

Tropes such as 'undocumented person', 'it will go on your permanent record' and even 'on the record' are commonplace in daily discourse and are often associated with lawbreaking and threats of negative consequences. Anthropologists, classification experts and post-colonial theorists studying 'bureaucratic' or 'structural violence' and knowledge organization have provided ample evidence of ways in which the epistemologies, procedures and documentary forms of bureaucracies and information institutions can systematically disadvantage, disempower, dismiss, mis-classify, criminalize and exclude certain populations.<sup>1</sup> However, despite considerable recent expansion in conceptualizations of human rights, there remains insufficient public understanding or appreciation in either policy or law of the ways in which records and other forms of documentation actively direct, circumscribe and potentially liberate individual lives, opportunities and even fundamental human rights until an individual is actually faced with a situation where such outcomes become evident. Moreover, too often there is little will or concerted action on the part of international bodies, national governments or recordkeeping<sup>2</sup> institutions to ameliorate negative effects of records and recordkeeping upon some of the world's most vulnerable populations. Indeed, problems with the availability, acceptability or readability of documentation are often used by those in authority as reasons to refuse to address the dire situations in which these populations find themselves or have been placed, or to limit the ability of vulnerable populations to actualise their human rights. At the same time, biometric and DNA-based identification, geolocation tracking, and border surveillance technologies among others instead subject these populations to increasing datafication.<sup>3</sup> Moreover, populations such as asylum seekers and other migrants increasingly find themselves subject to systematic documentation-based evidentiary inequity, where any documents or media that they carry with them, including their social media accounts and other materials and communications that may be carried on or substantiated through their mobile phones may be used by authorities as evidence against their claims and

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3 yet it may be challenged or deemed unacceptable when introduced as evidence by asylum  
4 seekers and other migrants in support of their own cases.

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6 Documentation, data gathering and recordkeeping requirements are most commonly  
7 exercised in support of sovereignty and other national interests, or to meet organizational  
8 programmatic or accountability needs and responsibilities. There is a critical imperative,  
9 however, also to consider such requirements from the perspectives of those humans who are  
10 most affected by them, and, in a globalized world with increasing numbers of mobile  
11 populations, to do so within a framework capable of considering international and  
12 transnational, as well as national and local dimensions, contexts and needs. This paper reports  
13 on a study conducted as part of the Refugee<sup>4</sup> Rights in Records (R3) Project, initiated in 2017  
14 as a collaboration between the University of California, Los Angeles (UCLA) Center for  
15 Information as Evidence and Liverpool University Centre for Archive Studies (LUCAS).<sup>5</sup>  
16 The overall goal of the R3 Project is to identify how humanitarian-centred recordkeeping  
17 interventions in the arenas of recordkeeping systems and practices, technologies, law and  
18 policy might assist refugees and their descendants across time and geographies. The study  
19 applied literary warrant analysis to surface ways in which documentation, and particularly  
20 records, as well as the data they contain and the recordkeeping purposes, systems and  
21 processes that produce and manage them, play under-appreciated roles in securing or denying  
22 fundamental human and other personal and data rights of internally displaced persons,  
23 asylum-seekers, refugees and others who have experienced forced displacement. With these  
24 warrants in hand, the study then identified possible individual rights in and to records that  
25 might promote enabling and actualising<sup>6</sup> the human rights of those who have been displaced  
26 while also improving the effectiveness of recordkeeping by agencies and authorities who are  
27 assisting or otherwise interacting with them. Such a framework of rights directly and  
28 indirectly would support these by, for example, providing mandates for more effective and  
29 efficient records creation and maintenance at implicated agencies and sites; insisting upon the  
30 creation of and personal access to evidentially robust copies of documents necessary to  
31 support one's fundamental human rights; underscoring the need to (re)construct and digitize  
32 national recordkeeping infrastructures and vital records, especially in newly formed, re-  
33 formed or post-conflict nations from which many displaced people have come; changing the  
34 scope and authority of archives and other recordkeeping agencies that hold official records to  
35 ensure that they are responsive to the rights and needs of those whose records they hold; and  
36 for systematizing and making consistent how personal data protection legislation is  
37 implemented nationally and transnationally, especially with regard to biometric and DNA  
38 data. The paper presents the potential rights that were identified through the study in a  
39 framework where they are grouped by type of right in and to records, together with examples  
40 of the warrants from which they were derived.

## 41 42 43 44 45 46 47 **Background**

48 Documentation is central to and threaded through every facet of the life of a refugee even before the  
49 moment of forced displacement or flight and certainly from then on for the rest of their lives and those  
50 of their immediate families and descendants. Critically, the documentation in question is  
51 predominantly created by or through an interaction with an authority or agent other than the refugee  
52 who almost always is or becomes the entity to whom responsibility for managing and making key  
53 decisions about that documentation is assigned, even in the case of aid agencies. While the  
54 documentation may well include the personal testimonies, photographs, social media and possibly  
55 artefacts provided by a refugee to authorities during asylum interviews, hearings and other refugee  
56 processes, many official records and other forms of data are also required, privileged and invoked in  
57 these and subsequent processes. Among the most common are birth, marriage and death certificates;  
58 travel and transit documents; police, security or intelligence records; property and tax records;  
59 education and health records (including medical records indicating injuries sustained as a result of  
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3 persecution or conflict); records of prior employment and military service; even newspaper reports  
4 and satellite footage. Datafied borders, biometrics and DNA collection in camps and elsewhere, and  
5 surveillance and intelligence operations have also become important generators of data and records  
6 relating to refugees, although refugees may be unaware of the existence or consequences of many of  
7 these.

8 This study encompasses all of these kinds of documentation, considering anything  
9 that is introduced into a legal, bureaucratic or humanitarian process involving refugees to be  
10 some form of record, broadly defined. Some records relate to the prior life of refugees and  
11 their families and communities, even to their predecessors; and some are created during their  
12 journeys—in medical facilities, camps, or border crossings, or through asylum-seeking  
13 processes. Yet other bureaucratic records are created during and after the resettlement of  
14 refugees or their return to their homelands when they must (re)integrate into local  
15 bureaucracies to obtain social services, education and healthcare, seek employment, vote, or  
16 obtain or reclaim property and generally claim their rights as residents and participate in civil  
17 activities.

18 Exercising personal control over records and other data that relate to oneself is  
19 increasingly difficult under the best of circumstances, given the ever-growing number of  
20 records, security and surveillance documentation, and social media in which information  
21 about oneself is now captured both with and without one's knowledge, consent, or active  
22 participation. In this respect, every individual should be concerned about their rights in and to  
23 records. However, for certain vulnerable populations, of which refugees constitute one of the  
24 largest, awareness of the existence of records; locating, producing and translating required  
25 records and demonstrating their reliability and authenticity; and challenging and annotating  
26 incorrect or inappropriate records contents, can pose especial problems. Further, when people  
27 are not able to effect the above actions, their fundamental human rights are easily  
28 compromised or forfeited. Particular impediments to doing so for refugees include their  
29 physical circumstances and personal safety; their freedom and financial ability to travel; their  
30 literacy levels, age, gender and language; and their familiarity with relevant bureaucratic  
31 practices and record types in their home and other jurisdictions. They may encounter hostile  
32 authorities that are not prepared to provide certified copies of records, or at an affordable  
33 cost; they may be denied the right to have a copy of records created as part of being  
34 interviewed by border authorities or aid agencies without adequate explanation as to why this  
35 is the case; they may lack the legal right to access records that have been created about them  
36 in their home countries. A record required by an asylum process may never have been created  
37 in the first place; may contain bureaucratic errors or inappropriate or deliberate mis-  
38 classifications; may have been issued by a country that no longer exists; or may have been  
39 destroyed deliberately or as collateral damage during conflict. Even when all of these issues  
40 have been addressed, they may fall foul of rapidly changing regulations at borders and  
41 asylum hearings regarding the kinds of documentation that must be presented or signed and  
42 the implications of doing or not doing so. One of the many records and recordkeeping  
43 infrastructure limitations that is highlighted by the plight of individual refugees and  
44 multiplied by mass forced migration is that recordkeeping infrastructures are rarely designed,  
45 mandated or incentivized to operate and interoperate transnationally or even across multiple  
46 government agencies. For example, the recent debacle with the reunification under court  
47 order of separated children and parents at the US southern border (discussed further below)  
48 was in no small measure due to poor recordkeeping processes by border authorities and lack  
49 of ability to work across different agency systems. In many countries, official recordkeeping  
50 infrastructures (both active and archival) may still not be comprehensively and  
51 retrospectively in digital form; or they may have been significantly disabled, impeded or  
52 rendered non-reliable by conflict, corruption, lack of competence or the effects of  
53 international sanctions.

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3 The list of challenges involving records and recordkeeping is seemingly endless, but  
4 failure to acknowledge and surmount these challenges too often results, among other  
5 outcomes, in denial of asylum claims and return of displaced individuals into dangerous  
6 spaces, statelessness, separation of and difficulties in reuniting families, and heightened  
7 vulnerability for women and children, who comprise more than fifty percent of what the  
8 United Nations estimates to be almost 70 million displaced people around the globe. These  
9 kinds of concerns are the domain of archives and records professionals. So too are the  
10 recordkeeping systems and technologies they design and implement. These professionals  
11 have been largely absent parties in addressing documentation challenges associated with  
12 humanitarian crises and denials of basic human rights associated with mass migration and  
13 forced displacement and need to play a much more integral and systematic role (Gilliland,  
14 2016; 2017; Mnjama, 2006). Having an internationally recognized policy platform of  
15 individual rights in and to records would considerably increase the likelihood that this might  
16 happen.  
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### 20 **Human rights, privacy rights, data protection and records**

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22 Although archivists and others responsible for keeping records have not been prominent in  
23 addressing such global crises, they have been involved in the formulation of the 2016  
24 European Data Protection Regulation and its implementation with regard to archival concerns  
25 about potential future uses of records, and in delineating the role of archives and records in  
26 human rights actions such as war crimes tribunals.<sup>7</sup> They have also been actively contributing  
27 to the growing discourse on individual rights, in particular with the notion of rights in and to  
28 records. In 2015, Anne Gilliland proposed a set of individual rights in the description of  
29 records that was subsequently extended by Gilliland and McKemmish to include rights in the  
30 appraisal of records.<sup>8</sup> This approach has been significantly expanded in two ongoing  
31 multifaceted research initiatives, the Refugee Rights in Records Project and the Archives and  
32 the Rights of the Child Research Program based at Monash University in Melbourne.<sup>9</sup>  
33 Privacy and data protection activism in particular provides important warrant for rights in  
34 records. However, it also exposes important counter-arguments for why certain rights in  
35 records might be strongly resisted by governments and other agencies. In attempting to  
36 delineate, refine and implement any proposed rights in records platform, both must be taken  
37 into account.  
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41 While international human rights law recognizes privacy (Article 12 of the *Universal*  
42 *Declaration of Human Rights* (1948)<sup>10</sup> and Article 17 of the *International Covenant on Civil*  
43 *and Political Rights* (1966)<sup>11</sup>), the matter of data privacy and protection is a more recent, and,  
44 in our interconnected world of trans-border data flows, an indisputable global concern over  
45 the last few decades. In fact, over one hundred countries have adopted data protection  
46 legislation at both regional and national levels<sup>12</sup> and concomitantly, the idea of personal data  
47 protection (including access to and the ability to correct or delete one's data) as a  
48 fundamental right is gaining traction around the world.<sup>13</sup> In addition, the United Nations,  
49 concerned with data protection in humanitarian sectors, recommended in a key 2012 report,  
50 *Humanitarianism in the Network Age*, that humanitarian organizations develop standards 'for  
51 the ethical use of new forms of data, including protocols for protecting privacy and  
52 guaranteeing informants' safety'.<sup>14</sup> Despite the adoption of data protection legislation, the  
53 United Nation's recommendation, and the development of a number of international  
54 guidelines and instruments dealing with data protection,<sup>15</sup> the International Conference of  
55 Data Protection and Privacy Commissioners (ICDPPC) noted in 2015 that 'the adoption of  
56 such frameworks by the overall humanitarian community is still scarce'.<sup>16</sup> According to  
57 Kuner et al, many humanitarian organizations are in critical need of guidance on how to  
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3 employ data protection and privacy in their processes—especially since the disclosure or  
4 exploitation of their data could endanger the security, safety, and lives of the displaced  
5 persons with whom they work as well as of their own employees and contractors. Data  
6 protection in the humanitarian aid sector, they state, ‘can literally be a matter of life and  
7 death’.<sup>17</sup> In a recent special issue of the *International Review of the Red Cross* dedicated to  
8 migration and displacement issues, Vincent Bernard also observes that humanitarian  
9 organizations are facing ever increasing challenges with regard to protecting data, stating that  
10 protection is one of the ‘most serious humanitarian problems related to the phenomenon of  
11 migration and displacement’ (along with unaccompanied minors, missing migrants, urban  
12 displacement, and immigration detention).<sup>18</sup> In 2017, the International Committee of the Red  
13 Cross (ICRC) and the Brussels Privacy Hub (BPH) of the Vrije Universiteit Brussel (VUB)  
14 published *The Handbook on Data Protection in Humanitarian Action*. Based and building  
15 upon a substantial number of existing data guidelines, practices and procedures, the  
16 *Handbook* seeks to raise awareness and help humanitarian organizations to comply with  
17 personal data protection standards by offering guidance on interpreting data protection  
18 principles—especially when using new technologies.<sup>19</sup>

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22 The situation with national official recordkeeping in many countries is often not in  
23 much better shape and is in stark contrast to the massive investment that has been made in  
24 national research infrastructures, which are increasingly required to have data management  
25 plans (DMPs) that comply with ‘the growing international base of principles and policies that  
26 can cross national space to address open scholarship and research data’, and that can produce  
27 FAIR (Findable, Accessible, Interoperable, Reusable) data.<sup>20</sup> But even these research  
28 infrastructures require constant vigilance to ensure that their ever-growing scope and  
29 sophistication do not compromise personal privacy.

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31 The concept of rights in records aligns with growing concerns about data protection  
32 and privacy for vulnerable populations and could play a role in both facilitating and  
33 complementing humanitarian action through its focus specifically on records and  
34 recordkeeping aspects. Security and identification systems are perhaps the most glaring  
35 example of the risks posed by globally interoperable records and data creation where there is  
36 insufficient oversight or accountability. In September 2018, Brett Solomon, Executive  
37 Director of Access Now, an NGO in the digital rights community, wrote an op ed in *Wired*  
38 regarding the various digital identification systems being implemented in several countries  
39 around the world using technologies such as facial recognition, geolocation or social credit  
40 systems ‘without any transparency or judicial review’. This situation, he argued, posed  
41 unprecedented risks to human rights.<sup>21</sup> He cites the ‘universally applicable’ 2013  
42 *International Principles on the Application of Human Rights to Communications*  
43 *Surveillance* (The ‘Necessary and Proportionate Principles’ or ‘13 Principles’) developed by  
44 civil society and privacy and security experts ‘to apply existing human rights law to a new  
45 world: a world of technically sophisticated and pervasive digital surveillance of ordinary  
46 individuals’.<sup>22</sup> These principles emphasize transparency, impartiality, systems integrity and  
47 public oversight and are endorsed by the UN Human Rights Council.

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51 Finally, it is important to note several inter-related and often poorly understood  
52 considerations directly related to the nature of records themselves that considerably  
53 complicate the development of any potential rights in records platform. Firstly, a rights  
54 regime must recognize that several individuals may have rights in the same record. While  
55 many privacy regimes recognize this and grapple over ‘degrees’ of rights different parties  
56 might have in the same record (sometimes that might even be a victim and a perpetrator),  
57 they do not always address what should happen when two parties have the same degree of  
58 rights in a record but would not necessarily be in accord over how that record should be  
59 managed or accessed and by whom. For example, records relating to an individual's  
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3 citizenship or health status may also pertain to or have a primary impact upon another person  
4 such as a parent, spouse, child, grandchild or other family or even community member. It is  
5 always a possibility, therefore, that honouring one person's right(s) in or to the record might  
6 impinge upon another's. Secondly, records exist within a complex of documentary  
7 relationships with other records and rights need to be considered across that complex. For  
8 example, they may be related by version or by issuance sequence (for example, current and  
9 superceded passports); by their dependence upon other records in certain bureaucratic  
10 processes (for example, issuance of a passport often is dependent upon the production of a  
11 base or 'feeder' document, such as a birth or naturalization certificate); or by data points that  
12 they have in common (for example, birth certificates, passports and driving licences all  
13 include the date of birth of the same individual). For various reasons, deliberate and  
14 accidental, however, the necessary sequences or chains of documents may not be able to be  
15 established or produced, or data points in common between records (for example, date of  
16 birth or form of name) may not contain exactly the same data. Thirdly, any or all records  
17 pertaining to an individual may remain relevant or have a latency for activation over an  
18 unforeseeably long period, and likely one that exceeds that individual's lifetime. They may be  
19 used in the future to secure the rights and wellbeing of other individuals such as descendants,  
20 as well as to support their ability to learn more about their own predecessors, heritage and  
21 identity. Equally, however, opening those records even after an individual's lifetime may  
22 render descendants vulnerable to discrimination, persecution or exposure in ways often not  
23 addressed by privacy, security and access regimens for preserved records.  
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## 29 **Developing a framework of rights in and to records**

### 30 **1. Data analyses**

31 An assumption of this study was that analyses of disparate data sources might each suggest  
32 unmet needs for records that refugees might have in asserting their human rights across their  
33 various life circumstances and locations, especially if those rights were to include a right to  
34 migrate as has been widely argued in recent years.<sup>23</sup> The study applied a method known in  
35 the archives and recordkeeping field as 'archival literary warrant analysis.' Adapted by the  
36 field from a concept originally used in library classification, archival literary warrant analysis  
37 has been used for purposes as diverse as establishing business acceptable requirements for  
38 electronic recordkeeping systems design to community archiving requirements to an  
39 examination of children's rights in records.<sup>24</sup> Warrant, in this sense then, refers to what are  
40 regarded as authoritative sources that provide social mandates for recordkeeping best  
41 practices. These might include legislation, sector regulations, professional best practices,  
42 experiential knowledge of domain experts, oral communications of Indigenous Elders, and  
43 even novels, biographies and memoirs.<sup>25</sup> Duff and Cumming state that, 'Warrant sources can  
44 be existing, recognised sources of authority or, considering the concept of cultural warrant,  
45 can be requirements from emerging voices or insights that are based on the assumptions,  
46 values and predispositions of a culture'.<sup>26</sup> In this study, archival literary warrant analysis was  
47 applied bi-directionally—both top-down and bottom-up—to cross-inform the results of  
48 individual warrant analyses.  
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53 Several different sources of warrant that had been collected and compiled as part of  
54 the Refugee Rights in Records Project were analyzed for their records and recordkeeping  
55 implications. Bottom-up sources included cases and stories that have been publicly reported  
56 in the English and Arabic language news media and in reports of various NGOs over the past  
57 two years.<sup>27</sup> As top-down sources of warrant a chronological selection of nineteen of the most  
58 prominent internationally-agreed upon instruments and other authoritative statements of  
59 human, civil and information/data rights was used. This selection captured, albeit non-  
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3 exhaustively, the cumulative and increasingly complex nature of human rights policy  
4 development as it has responded to world events and shifting social and technological  
5 concerns [see Appendix A]. The rapidly increasing number in recent years of such  
6 instruments and statements testifies to growing concern about each of these rights areas, to  
7 relationships that exist between human rights and information and data concerns (although  
8 not explicitly records and recordkeeping concerns), and also to the increasing complexity and  
9 contestations evident in the policy landscape and discussed above. To address archives and  
10 recordkeeping concerns more specifically, the study also analysed the 2016 Working  
11 Document, *Basic Principles on the Role of Archivists and Records Managers in Support of*  
12 *Human Rights*<sup>28</sup> developed and promulgated by the International Council on Archives, the  
13 international body that develops standards and best practices for state and other types of  
14 archives around the world. Additional sources of warrant, that might be considered to  
15 represent both top-down and bottom-up authorities, were presentations and participant  
16 discussions that occurred at an ongoing series of symposia sponsored by the R3 project in  
17 Budapest, Dublin, Southern California, Zagreb and Malmö in 2018 and R3 Project  
18 presentations that took place at professional conferences and other forums in Yaoundé,  
19 London and Melbourne. The symposia drew participants from major international agencies,  
20 local organizations working with migrants, asylum seekers and refugees, asylum lawyers,  
21 literacy experts, scholars, artists and those who are currently or formerly were refugees or  
22 'undocumented migrants', as well as national and academic research archives.

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27 A close reading of each source identified any explicit or implicit records or  
28 recordkeeping implications and then contemplated whether there might be a potential 'right in  
29 or to records' that might better support any human rights concern associated with those  
30 implications. All of the potential rights surfaced by the study were compiled into a single  
31 framework together with an indication of the warrant with which they were associated while  
32 noting any counter-arguments to this right that might also have been surfaced. SwissPeace's  
33 *Conceptual Framework for Dealing with the Past* delineates three kinds of rights--the Right  
34 to Know; the Right to Reparation; and the Right to Justice, as well as the Guarantee of  
35 Reform and this model proved helpful in considering how to present the results of the study's  
36 analysis. 29 individual rights in and to records were articulated and each was then placed  
37 under one of nine rubrics or kinds of rights, which if recognized, would also directly support  
38 the four areas of rights delineated SwissPeace's conceptual framework. The juxtaposition of  
39 the top-down and bottom-up warrants also allowed the framework to illustrate where there  
40 are significant gaps in considerations of particular issues by either existing international  
41 instruments and policies, or by the international archives and recordkeeping professional  
42 body.

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45 The following two brief examples of related cases demonstrate how potential rights in  
46 and to records emerged from or were manifested through the case analyses.

#### 47 48 **i. The US family separation policy**

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51 In the United States, the Trump administration's family separation, unification, and  
52 deportation efforts as well as its endeavours to discourage immigration of all kinds and  
53 attempts to undermine and demolish the US asylum system<sup>29</sup> surface critical human rights  
54 and attendant documentation and recordkeeping issues that call for humanitarian-centred  
55 frameworks and policies for transforming records and recordkeeping processes, systems and  
56 infrastructures (Gilliland, 2017; Gilliland and Lowry, 2019).

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58 On May 7, 2018, a 'zero-tolerance policy' was enacted by the US government at the  
59 US-Mexico border, making it a federal crime to cross the US border illegally. Under this  
60 policy, every immigrant entering the US—including those with valid asylum claims—in a

location other than a formal port of entry were to be arrested and charged with a crime before being placed in immigration detention. This policy also ensured the separation of children from their parents since by law children cannot be held in federal criminal detention facilities.<sup>30</sup> As a result, children were turned over to the custody of the US Department of Health Human Services' Office of Refugee Resettlement and their parents were transferred from the Border Control to the US Marshals Service to be tried for the misdemeanour of illegal entry or the felony charge of illegal re-entry.<sup>31</sup> Responding to the growing public outcry and outrage over the US government's zero tolerance policy—which became known as the 'family separation policy'—on June 20, 2018 President Trump signed an executive order banning the separation of children and parents and directed the Department of Homeland Security to detain immigrant families together during immigration proceedings.<sup>32</sup> A week later a Federal court ordered the US Government to reunify the more than 2,500 children who had been forcibly separated from their families.<sup>33</sup> To date, however, hundreds of the children remain separated from their families and in US custody.<sup>34</sup>

The US government had no procedures in place for *keeping track of the children and parents or guardians they separated, for knowing who constituted families, for identifying which children accompanied which adults, for keeping children and parents or legal guardians in contact with one another, and for eventually reuniting the families*. On April 20, 2018, *New York Times* journalist Caitlin Dickerson reported that children separated from their families at the US-Mexico border were taken to shelters run by NGOs, *where workers would try to find a relative or guardian who could take over the care of a child*; however, Dickerson wrote, 'if no such adult is available, the children can languish in custody indefinitely'. She went on to state that workers in these facilities are often not able to find the parents of separated children because 'the children arrive without *proper records*', and that the shelter system *lacked procedures for determining if a child had been separated from someone who was legitimately their parent or for reuniting parents with their children*.<sup>35</sup> A major report by the US Department of Homeland Security's (DHS) Office of the Inspector General (OIG) flagged both recordkeeping and technology issues with the family separation processes, stating that the DHS 'struggled to identify, track, and reunify families separated under Zero Tolerance due to limitations with its information technology systems, including a lack of integration between systems'. The report goes on to mention that the DHS also *provided 'inconsistent information' to parents who arrived with children, resulting in 'some parents not understanding that they would be separated from their children' and that they would not be able to communicate with them post-separation*.<sup>36</sup> A further consequence of the family separation policy was that *children—including babies and toddlers—were assigned their own immigration cases and had no parents to help them through their immigration procedures or right to an attorney to represent them*.<sup>37</sup> Several possible refugee rights in and to records are suggested by this case:

- 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 requested by the mother
- The right to a safe and secure personal recordkeeping place or space to preserve, manage, and access records and authentic copies of records about oneself
- The right to be able to read and understand records about oneself or about one's own case
- The right to know why a record about oneself is being created, what it will contain and what it may be used for *before* one agrees to participate in that record's creation

- The right to request and be provided with a records advocate or expert in legal and bureaucratic processes
- Recognition that family members may have rights in records about oneself

### ***ii. Indigeneity at the border***

There have also been a number of reports about language barriers at the US-Mexico border as well as during asylum and family reunification processes. For example, when a Guatemalan indigenous woman who spoke the Mayan dialect of K'iche' and broken Spanish sought asylum with her 5-year old son in the US, authorities separated her and her son, sending them to different detention centers, and *the woman had tremendous difficulty understanding—as no one explained to her in her language—what was happening to her, the whereabouts of her son, the jail's rules and procedures and the asylum process.*<sup>38</sup> Possible rights in and to records suggested by such cases include:

- The right to a records advocate or expert in legal and bureaucratic processes
- The right to access one's own record according to one's own literacy and modality
- The right to be able to read and understand records about oneself or about one's own case

### ***iii. A proposed framework of rights in and to records and the warrants from which they were derived***

The following framework delineates a set of proposed refugee rights in and to records suggested by the analyses of the different data sources. Each rubric and attendant rights assertions are accompanied by a table illustrating how, for one of the rights under that rubric, the right was derived from and is supported by specific warrants.<sup>39</sup>

#### 1. 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 requested by the mother
- 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

**[Insert table 1 here]**

#### 2. Rights to know:

- The right to know that a record about oneself exists
- The right to know where a record about oneself exists
- The right to know what records an entity/organization holds or does not hold a record about oneself and why
- The right to know if there is a classified record or data impeding an action one is trying to complete
- The right to know why a record about oneself is being created, what it will contain and what it may be used for *before* one agrees to participate in that record's creation

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- The right to know who can see one's record
  - The right to know how one's record and the information about oneself that it contains will be secured

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10 3. Right to records expertise:

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- The right to request and be provided with a records advocate or expert in legal and bureaucratic processes
  - The right to be able to read and understand records about oneself or about one's own case
  - The right to have one's record read, adjudicated and otherwise acted upon taking into account the historical and provenancial context within which it was created and kept
  - The right to be provided with the index terms or other metadata necessary for searching and retrieving records

24 **[Insert table 3 here]**

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27 4. Cultural, self-identity and family rights in records:

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- 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
  - Recognition that family members may have rights in records about yourself

36 **[Insert table 4 here]**

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39 5. Right to respond and to annotate:

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- The right to respond to, and include an annotation permanently attached to records about oneself

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47 6. Refusal and deletion rights:

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- 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 own human rights or those of others
  - The right to request deletion of a record or deletion of data about oneself from a record if that record or data would compromise one's human rights

56 **[Insert table 6 here]**

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58  
59 7. Access, reproduction and dissemination rights

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- The right to access records about oneself, including those that are still subject to legal or other closure periods
- The right to access your record according to one's own literacy and modality
- The right to guaranteed safe, secure and timely access to relevant records about oneself upon request
- The right to receive copies of records about oneself and to request a particular format or else to be given a clear explanation as to why one may not
- The right to receive timely copies of records about oneself and at reasonable or no cost
- The right to transmit or share records about oneself

[Insert table 7 here]

#### 8. 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

[Insert table 8 here]

#### 9. Personal recordkeeping rights:

- The right to a safe and secure personal recordkeeping place or space to preserve, manage and access records and authentic copies of records about oneself

[Insert table 9 here]

## 2. Discussion

This framework is presented in recognition that there are substantial complexities, contingencies, complications and likely contestations involved in pursuing rights of the kinds proposed here. For example, some rights may be incommensurate with each other, such as individual and familial rights in the same record, the rights of an individual and the rights of others with a legitimate reason to have similar rights in particular records (e.g., an individual right vs. a community right; an individual right vs. a collective societal right<sup>40</sup>), or when legal standing or understandings do not align between documents that are dependent on each other (e.g., marital status—gay or polygamous marriage, immigration or reunification policies, or a gender change on a birth certificate and whether that can be recognized on a passport issued by a different juridical authority). Other rights might raise significant national or personal security concerns or might support the ability of perpetrators and other 'bad guys' to protect themselves to the detriment of those who are less powerful or victims, especially since these individuals ironically are often best positioned to obtain or even generate the kinds of judicial and official documents of the types required by border regimes and asylum authorities. Moreover, some rights might be at odds with one or more existing human, civil or data instruments, statements, or policies. For example, 'the right to request deletion of a record or



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3 deletion of data about yourself from a record if that record or data would compromise your  
4 human rights' conflicts with both Article 24 of the Vienna Convention on Diplomatic  
5 Relations (1961),<sup>41</sup> which states that 'The archives and documents of the mission shall be  
6 inviolable at any time and wherever they may be' and Principle 14 of the Orentlicher  
7 Principles, which declares that 'The right to know implies that archives must be preserved.  
8 Technical measures and penalties should be applied to prevent any removal, destruction,  
9 concealment or falsification of archives, especially for the purpose of ensuring the impunity  
10 of perpetrators of violations of human rights and/or humanitarian law'.<sup>42</sup> The matrix of  
11 considerations presented here also indicates quite clearly where responses to particular  
12 concerns arising either from policy instruments or from specific cases are partially or  
13 completely missing from the archives and recordkeeping fields. However, we would argue  
14 that if some or all of the kinds of rights that are proposed here are indeed recognized as  
15 essential or integral to refugees' ability to assert or secure their human rights, then it follows  
16 that we should consider whether they must also be considered to be fundamental and  
17 therefore applicable to all humans in all of their circumstances. If, however, these individual  
18 rights in and to records were instead to be viewed or adopted more as general principles, then  
19 they would likely need to be accompanied by agreed upon exceptions and exemptions and  
20 would presumably be implemented in different ways and according to different conditions in  
21 different contexts. We would argue, however, that while both approaches would tackle the  
22 kinds of problems laid out by this paper, it is possibly only the former that can directly and  
23 explicitly address the fundamental power inequities that undergird how documentation is  
24 used to control, dismiss and disempower the world's most vulnerable populations.  
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## 29 **Conclusion**

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32 As already noted, this paper presents these proposed individual rights in and to records for  
33 consideration as fundamental human rights that pertain to all humans, regardless of age, or  
34 gender, ethnic or marital status. It does so in full recognition that human rights in general  
35 remain largely aspirational and that they are still in a form that requires further discussion and  
36 debate. Nevertheless, the hope is that such a platform will in due course become normalized  
37 expectations even within countries that are not signatories to them, in much the same way as  
38 has the 1948 Convention; and as such they will provide the impetus for actualisation in laws,  
39 policies, bureaucratic processes and the design of recordkeeping and data management  
40 systems. As we mark the 70<sup>th</sup> anniversary of the UN Declaration of Human Rights (10  
41 December 2018), the instruments used in this study demonstrate what an extensive and  
42 diverse body of human rights work has been developed over the decades since 1948. The  
43 proposed rights in and to records represent a potential addition and extension to that work, in  
44 an area that is only likely to grow in importance as increasing volumes of data and records  
45 relating to individuals from all walks of life are generated, kept, distributed and withheld  
46 according to idiosyncratic and uncontrolled state and corporate regimes.  
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**APPENDIX A: INSTRUMENTS ANALYZED**

1. UN Declaration of Human Rights, 1948
2. Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 1950/1953
3. Convention and Protocol Relating to the Status of Refugees, 1951/1967
4. International Covenant on Civil and Political Rights, 1966
5. Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, 1981
6. Guidelines for the Regulation of Computerized Personal Data Files, 1990
7. Orentlicher Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 2005
8. UN Declaration on the Rights of Indigenous Peoples, 2007
9. International Standards on the Protection of Personal Data and Privacy (The Madrid Resolution), 2009  
EU Charter of Fundamental Rights, 2012
10. International Council on Archives: Principles of Access to Archives, 2012
11. The Organisation for Economic Co-operation and Development (OECD) Privacy Framework, 2013
12. Necessary & Proportionate: International Principles on the Application of Human Rights to Communications Surveillance, 2014
13. Policy on the Protection of Personal Data of Persons of Concern to UNHCR, 2015
14. International Council on Archives: Basic Principles on the Role of Archivists and Records Managers in Support of Human Rights, 2016
15. EU General Data Protection Regulation (GDPR), 2016
16. New York Declaration for Refugees and Migrants, 2016
17. Marrakesh Political Declaration, 2018
18. The Global Compact for Safe, and Orderly and Regular Migration, 2018
19. The Global Compact on Refugees, 2018

## TABLES

**Table 1:** Example of warrants for the right to have a birth certificate, and to have both parents' names listed on the birth certificate if requested by the mother

| WARRANTS FROM INSTRUMENTS/POLICIES   | WARRANTS FROM ICA BASIC PRINCIPLES   | WARRANTS FROM R3 ANALYSES   |
|--|--|---|
| <p><i>New York Declaration for Refugees and Migrants, Annex I (5f)</i>: Work to ensure the immediate birth registration for all refugee children born on their territory.</p> <p><i>Global Compact for Safe, Orderly and Regular Migration, Objective 4, (20)</i>: We...commit to ensure, through appropriate measures, that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, at all stages of migration, as a means to empower migrants to effectively exercise their human rights.</p> <p><i>Global Compact on Refugees, 2.8(82)</i>: States and relevant stakeholders will contribute resources and expertise to strengthen the capacity of civil registries to facilitate timely access by refugees and stateless persons, as appropriate, to civil and birth registration and documentation, including through digital technology and the provision of mobile services, subject to full respect for data protection and privacy principles.</p> | <p>ICA does not address records creation, even though this is a fundamental component of recordkeeping. It only focuses on records that have already been created.</p> | <p>Countries such as Syria require that all births be registered in a family booklet but do not issue an individual birth certificate. Refugees must travel to a consulate in their host country or back to Syria in order for the birth to be registered in the family booklet. In some host countries, such as Lebanon, a child must be registered within a statutory time requirement. Without a birth certificate, children and their descendants cannot be registered, may not be eligible for education, health and social services, and can easily become and remain stateless.</p> <p>The majority of refugees are women and children. Many have lost or been separated from the adult males of their families. Women may give birth without the father of their child present. In some Middle Eastern countries where children inherit citizenship through their father, even if the hospital will put the name of the missing father on a birth certificate, the police will refuse to validate the certificate unless the father is present.</p> |

**Table 2:** Example of warrants for the right to know where a record about oneself exists

| WARRANTS FROM INTERNATIONAL INSTRUMENTS/POLICIES  | WARRANTS FROM ICA BASIC PRINCIPLES  | WARRANTS FROM R3 ANALYSES  |
|---|---|--|
| <p><i>Orentlicher Principles, Principle 17</i>: All persons shall be entitled to know whether their name appears in State archives.</p> <p><i>Guidelines for the Regulation of Computerized Personal Data Files, Principle 4</i>: Everyone who offers proof of identity has the right to know whether information concerning him is being processed.</p> <p><i>Policy on the Protection of Personal Data of Persons of Concern to UNHCR, Principle 3.2(ii)</i>: Upon request the data subject may receive from UNHCR information on the personal data being</p> | <p><i>Principle 5</i>: A State has many options for supporting preservation and access to non-governmental archives, such as making forceful public statements on preservation and access, enacting legislation requiring such archives be preserved, obtaining court rulings that require specific archives be preserved, providing monetary support for non-government archives, conducting surveys and creating databases to identify for the public where relevant archives are located, taking donations of private sector</p> | <p>Refugees often do not know what records about them exist, where records that they might need are located, or who or how to ask for them. Relevant records may exist in many agencies and digital systems in multiple countries and jurisdictions.</p> |

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| <p>processed, the purposes for processing such data and the Implementing Partner(s) and/or third parties to whom such data has been, is being or will be transferred.</p> <p><b>Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Article 8(a):</b> Any person shall be enabled to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file.</p> <p><b>The OECD Privacy Framework, Principle 13(a):</b> Individuals should have the right to obtain from a data controller, or otherwise, confirmation of whether or not the data controller has data relating to them.</p> | <p>archives, or providing a 'safe haven' trusted repository for endangered archives.</p> <p><i>Principle 7:</i> Archivists should include in the description of archival holdings information that to the best of their knowledge enables users to understand whether the archives might contain information that would be useful to exercise a claim of human rights, with particular regard to information regarding gross human rights violations, information that would help resolve the fate of missing persons, or information that may enable individuals to seek compensation for past violations of human rights.</p> <p><i>Principle 8:</i> Archivists and records managers should provide timely arrangement and description of the archives in the holdings to ensure equal, fair and effective access for users, giving priority to organizing and describing archival holdings documenting gross human rights violations.</p> <p><i>Principle 9:</i> Governments should ensure that access is provided to their archives concerning violations of human rights and humanitarian law.</p> <p><i>Principle 10:</i> Archivists and records managers should advocate for and support the right of access to government archives and encourage non-governmental institutions to provide similar access to their archives.</p> <p><i>Principle 14:</i> Institutions, professional associations of archivists and records managers and individuals should promote programs to inform the public about their right of access to archives and the important role of archivists in protecting their fundamental freedoms. Special attention should be given to ensuring that disadvantaged persons know that they may call upon archivists to locate and retrieve archives that may enable them to assert their rights.</p> |  |
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**Table 3:** Example of warrants for the right to be able to read and understand records about oneself or about one's own case

| WARRANTS FROM INTERNATIONAL INSTRUMENTS/POLICIES   | WARRANTS FROM ICA <u>BASIC PRINCIPLES</u>   | WARRANTS FROM R3 CASE ANALYSES  |
|--|---|---|
| <p><i>Policy on the Protection of Personal Data of Persons of Concern to UNHCR, Principle 3.1(i):</i> When collecting personal data from a data subject, UNHCR should inform the data subject of the following, in writing or orally, and in a manner and language that is understandable to the data subject, the specific purpose(s) for which the personal data or categories of personal data will be processed.</p> <p><i>The OECD Privacy Framework, Principle 13(b)(iv):</i> Individuals should have the right to have communicated to them, data relating to them in a form that is readily intelligible to them.</p> <p><i>International Standards on the Protection of Personal Data and Privacy, Principle 16.2:</i> Any information furnished to the data subject must be provided in an intelligible form, using clear and simple language.</p> | <p><i>Principle 12:</i> Archivists should provide reference service without discrimination that is proscribed by the Universal Declaration of Human Rights. All persons are entitled to call upon the assistance of an archivist to help them locate and retrieve archives that may enable them to establish their rights.</p> <p><i>Principle 14:</i> Institutions, professional associations of archivists and records managers and individuals should promote programs to inform the public about their right of access to archives and the important role of archivists in protecting their fundamental freedoms. Special attention should be given to ensuring that disadvantaged persons know that they may call upon archivists to locate and retrieve archives that may enable them to assert their rights.</p> | <p>Many refugees are unable to read and/or write, or even if they are, they are unfamiliar with the language, script or bureaucratized of the records they must produce or contribute to/sign in each jurisdiction. Some may have come from Indigenous communities that do not have a written language. Beyond that, many have never had experience interacting with bureaucratic processes or even with written records.</p> <p>Almost 50% of all refugees are children, including infants and other very young children. Children are often required to represent themselves in asylum processes and have no right to legal representation or a records advocate.</p> |

**Table 4:** Example of warrants for the right to have one's self-identity acknowledged in records about oneself

| WARRANTS FROM INSTRUMENTS/POLICIES  | WARRANTS FROM ICA <u>BASIC PRINCIPLES</u>   | WARRANTS FROM R3 CASE ANALYSES   |
|---|---|--|
| <p><i>UN Declaration on the Rights of Indigenous Peoples (UNDIIP), Article 6:</i> Every indigenous individual has the right to a nationality.</p> <p><i>Article 7 (2):</i> Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.</p> <p><i>Article 8 (1):</i> Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.</p> <p><i>Article 8 (2):</i> States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.</p> <p><i>Article 33(1):</i> Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.</p> | <p><i>Principle 3:</i> Archivists should ensure that they acquire archives that reflect and are pertinent to all groups. Some archives have a special focus, such as archives of faith-based bodies, archives of indigenous communities, or archives documenting social movements. These institutions discriminate in their acquisition program in accordance with their mandate, but regardless of their special focus within their mandate they are inclusive.</p> <p><i>Principle 22:</i> In countries where there exist groups, communities or regions whose needs for archival services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, governments, professional associations of archivists and records managers, archival and educational institutions and individual professionals should take special</p> | <p>Refugees may find that they are assigned an ethnic or national identity other than that of their self-identity in the course of going through another country's asylum processes or as a condition of those processes, especially if they migrated or were displaced via another country or arrived in the country in which they claimed asylum by boat without papers. Additionally, some national or ethnic identities are actively discriminated against or are not recognized by other states. For example, the United States does not recognize 'Palestinian' as a national identity.</p> <p>Indigenous persons may not be provided with support in asylum proceedings or detention facilities for their language or cultural needs and Indigenous children may be separated from their families and placed in non-Indigenous holding or care facilities, something that for which there is a pre-existing, longstanding traumatic</p> |



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|  | <p>measures to provide opportunities for persons from these groups to enter the archival profession and should ensure that they receive training appropriate to the needs of their groups.</p> | <p>legacy in many regions around the world.</p> <p>One's gender identity may also not be recognized in official documents, asylum proceedings or assignment to camp or detention facilities in any state (including the home state) that does not recognize non-binary or transgender identities. Wives in polygamous or underage marriages may also not have their marital and family status recognized in states with different marriage laws</p> <p>Conversely documents provided in host states and states of asylum may not be recognized by the home state if laws differ regarding self-identity. This may be a future concern for return, claiming reparations or (re)claiming rights and citizenship in the country of birth. For example, <i>The California (USA) Gender Recognition Act (SB 179)</i> provides a non-binary gender option for birth certificates and driver's licenses and Australia, Germany and several other countries have three gender options—male, female and indeterminate—for passports.</p> |
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**Table 5:** Example of warrants for the right to respond to, and include an annotation permanently attached to records about oneself

| WARRANTS FROM INTERNATIONAL INSTRUMENTS/POLICIES  | WARRANTS FROM ICA BASIC PRINCIPLES | WARRANTS FROM R3 CASE ANALYSES  |
|---|------------------------------------|---|
| <p><i>Policy on the Protection of Personal Data of Persons of Concern to UNHCR, Principle 3.3.1:</i> The data subject may request the correction or deletion of personal data that is inaccurate, incomplete, unnecessary or excessive</p> <p><i>The OECD Privacy Framework, 13(d):</i> Individuals should have the right to challenge data relating to them and, if the challenge is successful to have the data erased, rectified, completed or amended.</p> <p><i>Orentlicher Principles: Principle 17:</i> All persons shall be entitled to know whether their name appears in State archives and...if it does, by virtue of their right of access, to challenge the validity of the information concerning them by exercising a right of reply. The challenged document should include a cross-reference to the document challenging its validity and both must be made available together whenever the former is requested.</p> |                                    | <p>Many refugees have been subject to surveillance and informing. Others have been subject to misrepresentation of their ethnic, sexual, gender or other identity. They should have the right to challenge, correct, respond to and annotate records kept about them accordingly. Whether or not an incorrect record should be deleted or destroyed and not just rectified is a matter of debate across the other sources of warrant.</p> |

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| <p><i>EU Charter of Fundamental Rights, Article 8:</i> Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.</p> <p><i>EU GDPR, Article 16, Right to Rectification:</i> The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.</p> |  |  |
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**Table 6:** Example of warrants for 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 own human rights or those of others

| WARRANTS FROM INTERNATIONAL INSTRUMENTS/POLICIES  | WARRANTS FROM ICA <u>BASIC PRINCIPLES</u> | WARRANTS FROM R3 CASE ANALYSES   |
|---|---|--|
| <p><i>Policy on the Protection of Personal Data of Persons of Concern to UNHCR, Principle 3.1(vii):</i> When collecting personal data from a data subject, UNHCR should inform the data subject of [their] right to object to the collection of personal data.</p> <p><i>UN Declaration of Human Rights, Article 12:</i> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.</p> <p><i>International Standards on the Protection of Personal Data and Privacy, Principle 18.1:</i> The data subject may object to the processing of personal data where there is a legitimate reason related to his/her specific personal situation.</p> <p><i>European Union General Data Protection Regulation, Article 7(3):</i> The data subject shall have the right to withdraw his or her consent at any time.</p> |   | <p>LGBTQ refugees who fear persecution in a host or home country may refuse to participate in medical examinations, to sign records that attribute a different gender marker to them than their own gender identification, to contribute DNA that might be used to separate non-biological family members, or to provide passwords to social media and other online accounts that might be used as evidence against them or others.</p> <p>Refugees may wish to refuse datafication, for example, through the collecting and further distribution of their biometric or DNA data at borders, camps or during other bureaucratic processes without sufficient guarantees that it will not compromise their human rights or those of their family members now or at a future time.</p> |

**Table 7:** Example of warrants for the right to guaranteed safe, secure and timely access to relevant records about oneself upon request

| WARRANTS FROM INTERNATIONAL INSTRUMENTS/POLICIES | WARRANTS FROM ICA <u>BASIC PRINCIPLES</u> | WARRANTS FROM R3 ANALYSES |
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| <p><i>The OECD Privacy Framework, Principle 13(b)(i):</i> Individuals should have the right to have communicated to them, data relating to them within a reasonable time.</p> <p><i>Global Compact for Safe, Orderly and Regular Migration, Objective 4, (20c):</i> Ensure adequate, timely, reliable and accessible consular documentation to our nationals residing in other countries, including identity and travel documents.</p> <p><i>Global Compact for Safe, Orderly and Regular Migration, Objective 4, (20d):</i> Facilitate access to personal documentation, such as passports and visas, and ensure that relevant regulations and criteria to obtain such documentation are non-discriminatory.</p> <p><i>Orentlicher Principles, Principle 15:</i> Access to archives shall be facilitated in order to enable victims and persons related to claim their rights... Access to archives should also be facilitated in the interest of historical research, subject to reasonable restrictions aimed at safeguarding the privacy and security of victims and other individuals. Formal requirements governing access may not be used for purposes of censorship.</p> | <p><i>Principle 8:</i> Archivists and records managers should provide timely arrangement and description of the archives in the holdings to ensure equal, fair and effective access for users, giving priority to organizing and describing archival holdings documenting gross human rights violations.</p> <p><i>Principle 12:</i> Archivists should provide reference service without discrimination that is proscribed by the Universal Declaration of Human Rights. All persons are entitled to call upon the assistance of an archivist to help them locate and retrieve archives that may enable them to establish their rights.</p> <p><i>Principle 19:</i> Institutions provide access to archives, including displaced archives, for transitional justice institutions and for persons, including victims and survivors of gross violations of human rights—regardless of their citizenship—who need them to seek compensation for previous damage to their human rights or to protect their fundamental rights.</p> | <p>In Turkey, which does not recognize polygamous marriages, for a Muslim male refugee to marry, he must first go to the consulate of his home country and obtain a document certifying that he is not already married. If he is an asylee or refugee because he is a dissenter of his home country's current government or is a member of a persecuted group, then he may put himself at risk by presenting himself at the consulate.</p> <p>Women of various ethnicities who lost their husbands and sons and were displaced by the wars in the former Yugoslavia were later required to return to the homelands from which they were displaced through 'ethnic cleansing', sometimes as often as every six months, to obtain new certified copies of identity documentation that would allow them to work in other countries that were established after the breakup of Yugoslavia, and where they now reside. Other displaced persons may experience difficulty gaining timely access to archives where property, educational and other needed records are held.</p> |
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**Table 8:** Example of warrants for the right to be consulted when and why another party, including family members, requests access to a record about oneself

| WARRANTS FROM INTERNATIONAL INSTRUMENTS/POLICIES   | WARRANTS FROM ICA BASIC PRINCIPLES | WARRANTS FROM R3 ANALYSES  |
|--|------------------------------------|--|
| <p><i>International Standards on the Protection of Personal Data and Privacy, Principle 10.2:</i> The responsible person shall provide to the data subjects...the intended purpose of processing [and] the recipients to whom their personal data will be disclosed.</p> <p><i>Guidelines for the Regulation of Computerized Personal Data Files, Principle 4:</i> Everyone who offers proof of identity has the right to know whether information concerning him is being processed...and, when it is being communicated, to be informed of the addressees.</p> |                                    | <p>Refugee records may be used for security, family reunification/separation purposes by authorities. They may also be requested by other family members. These uses may have positive or negative impacts on the refugees themselves and the refugee should be consulted. For example, individuals attempting to protect themselves or their children from a family abuser may wish to prevent personal information or records being given out.</p> |

**Table 9:** Example of warrants for the right to a safe and secure personal recordkeeping place or space to preserve, manage and access records and authentic copies of records about oneself

| WARRANTS FROM INTERNATIONAL INSTRUMENTS/POLICIES  | WARRANTS FROM ICA BASIC PRINCIPLES  | WARRANTS FROM R3 ANALYSES  |
|---|---|--|
| <p><i>New York Declaration for Refugees and Migrants, Annex I (7c)</i>: Encourage and empower refugees, at the outset of an emergency phase, to establish supportive systems and networks that involve refugees and host communities and are age- and gender-sensitive, with a particular emphasis on the protection and empowerment of women and children and other persons with specific needs.</p> | <p><i>Principle 1</i>: Systems that create and manage human rights archives needs to ensure those archives can be proven to be genuine, are accurate and can be trusted, are complete and unaltered, secure from unauthorised access, alteration and deletion, can be found when needed, and are related to other relevant archives</p> | <p>Displaced persons may have documents they are carrying on them removed by hostile authorities at borders or being found with those documents may result in further danger for them or forced repatriation. Digital copies of documents carried on devices such as smartphones may also be forcibly accessed by authorities and will also not likely be accepted as reliable evidence in asylum and other legal proceedings. Digital, Cloud-based, block-chain authenticated personal recordkeeping spaces offer the potential to overcome many of these concerns.</p> |

## Notes

<sup>1</sup> Pamela Neumann, 'When Laws Are Not Enough: Violence against Women and Bureaucratic Practice in Nicaragua'. *Social Forces*, 95, no. 3 (March 2017): 1105–1125, <https://doi.org/10.1093/sf/sow082>; David Graeber, *The Utopia of Rules* (Brooklyn: Melville House, 2015); Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (Durham: Duke University Press, 2012); Hope A. Olson, 'Sameness and Difference: A Cultural Foundation of Classification'. *Library Resources & Technical Services*, 45 no. 3 (2001): 115–122. [doi:10.5860/lrts.45n3.115](https://doi.org/10.5860/lrts.45n3.115).

<sup>2</sup> 'Recordkeeping' is the term used in the field of archival and recordkeeping studies to refer to all the processes associated with conceptualizing, creating, managing, preserving and otherwise carrying out bureaucratic and archival processes within and across organizations, places and time.

<sup>3</sup> Mark Latonero and Paula Kift, 'On Digital Passages and Borders: Refugees and the New Infrastructure for Movement and Control', *Social Media + Society*, 4 no.1 (March 2018), <https://doi.org/10.1177/2056305118764432>.

<sup>4</sup> All are referred to for brevity in this paper as 'refugees', but in full recognition of the several status categories into which an individual who has experienced forced displacement or fled due to actual or credible fear of persecution might fall or be placed.

<sup>5</sup> <https://informationasevidence.org/refugee-rights-in-records>.

<sup>6</sup> These terms echo and reinforce those used in the 2013 SwissPeace Archives Project report, *A Conceptual Framework for Dealing with the Past*, [http://archivesproject.swisspeace.ch/fileadmin/user\\_upload/archivesproject/Publications/DwP\\_Conceptual\\_Framework\\_October2012.pdf](http://archivesproject.swisspeace.ch/fileadmin/user_upload/archivesproject/Publications/DwP_Conceptual_Framework_October2012.pdf).

<sup>7</sup> Trudy Huskamp Peterson, *Final Acts: A Guide to Preserving the Records of Truth Commissions* (Baltimore: Johns Hopkins University Press, 2005); International Council on Archives, Archives and Human Rights Working Group, *Basic Principles on the role of Archivists and Records Managers in support of Human Rights*, updated October, 2016, <https://www.ica.org/en/basic-principles-role-archivists-and-records-managers-support-human-rights>.

<sup>8</sup> Anne J. Gilliland, 'Acknowledging, Respecting, Enfranchising, Liberating and Protecting: A Platform for Radical Archival Description', paper presented at the Radical Archives Conference, Asian/Pacific/American Institute at New York University, April 2014; Anne J. Gilliland and Sue McKemmish, 'The Role of Participatory Archives in Furthering Human Rights, Reconciliation and Recovery', *Atlanti: Review for Modern Archival Theory and Practice* 24 (2014), 79-88, and Anne Gilliland and Sue McKemmish, 'Rights in Records as a Platform for Participative Archiving', in *Archival Education and Research: Selected Papers from the 2014 AERI Conference*, ed. Richard J. Cox, Alison Langmead and Eleanor Mattern (Sacramento: Litwin Press, 2015), 355-385; Gregory Rolan, 'Agency in the Archive: A Model for Participatory Recordkeeping', *Archival Science*, 17, no. 3 (2017): 195-225.

<sup>9</sup> <https://rights-records.it.monash.edu/research-development-agenda/>.

<sup>10</sup> Article 12: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. <http://www.un.org/en/universal-declaration-human-rights/>

<sup>11</sup> Article 17: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

<sup>12</sup> For data protections laws around the world, See DLA Piper, “Data Protection Laws of the World”:

<https://www.dlapiperdataprotection.com/>

<sup>13</sup> One such example is Article 8 of the *Charter of Fundamental Rights of the European Union* (2000), which states: 1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. [https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en). See also: S. Rodota, 'Data Protection as a Fundamental Right', in *Reinventing Data Protection?*, ed. S. Gutwirth et al. (Dordrecht: Springer, 2009), 77–82.

<sup>14</sup> UN Office for the Coordination of Humanitarian Affairs (OCHA), 'Humanitarianism in the Network Age', OCHA Policy and Studies Series (United Nations, 2013), 60.

<sup>15</sup> For example, the UN General Assembly: Guidelines for the Regulation of Computerized Personal Data Files (1990), International Standards on the Protection of Personal Data and Privacy (the Madrid Resolution) (2009), the OECD Privacy Framework (2013), and the Policy on the Protection of Personal Data of Persons of Concern to the UNHCR (2015).

<sup>16</sup> 37th International Conference of Data Protection and Privacy Commissioners, “Resolution on Privacy and International Humanitarian Action”, Amsterdam, 27 October 2015 (ICDPPC Resolution).

<https://icdppc.org/wp-content/uploads/2015/02/Resolution-on-Privacy-and-International-Humanitarian-Action.pdf>

<sup>17</sup> Christopher Kuner, et al., 'Data Protection and Humanitarian Emergencies', *International Data Privacy Law* 7, no. 3 (2017): 147.

<sup>18</sup> Vincent Bernard, 'Migration and Displacement: Humanity with Its Back to the Wall', *International Review of the Red Cross* 99, no. 904 (2017): 8.

<sup>19</sup> Christopher Kuner and Massimo Marelli, eds., *Handbook on Data Protection in Humanitarian Action*. (Geneva: International Committee of the Red Cross and Brussels Privacy Hub, 2017), 15.

<sup>20</sup> Stephanie Simms and Sarah Jones, ‘Next-generation Data Management Plans: Global Machine-actionable FAIR’, *International Journal of Digital Curation*, 12, no. 1 (2017): 36-45; European Research Council, Scientific Council, *Open Research Data and Data Management Plans, 2018*.

[https://erc.europa.eu/sites/default/files/document/file/ERC\\_info\\_document-Open\\_Research\\_Data\\_and\\_Data\\_Management\\_Plans.pdf](https://erc.europa.eu/sites/default/files/document/file/ERC_info_document-Open_Research_Data_and_Data_Management_Plans.pdf)

<sup>21</sup> Brett Solomon, “Digital IDs are More Dangerous than You Think”, *Wired*, September 2018.

<https://www.wired.com/story/digital-ids-are-more-dangerous-than-you-think/>

<sup>22</sup> <https://necessaryandproportionate.org/about>

<sup>23</sup> David Miller, ‘Is there a Human Right to Immigrate?’ In *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi, Oxford Scholarship Online, 2016, DOI:10.1093/acprof:oso/9780199676606.003.0002.

<sup>24</sup> Rolan, ‘Agency in the Archive.’

<sup>25</sup> Wendy Duff and Kate Cumming, ‘Respect My Authority’, in *Research in the Archival Multiverse*, ed. Anne J. Gilliland, Sue McKemmish and Andrew J Lau (Melbourne: Monash University Press, 2016), 456-478.

<sup>26</sup> Duff and Cumming, ‘Respect My Authority’, 460.

<sup>27</sup> For a report on the Arabic media sources collected, see Sakena Alalawi, ‘Struggles with Documents: A Review of Documentation Issues Affecting Refugees and Displaced Persons from Arab Middle East Countries’, Refugee Rights in Records Project, June 2018, <https://ucla.app.box.com/s/b2qz4ny5rh8nyuyal0x32syr3cpcvvh0>.

<sup>28</sup> <https://www.ica.org/en/basic-principles-role-archivists-and-records-managers-support-human-rights>.

<sup>29</sup> Amnesty International reports that in 2017 and 2018, U.S. Customs and Border Protection (CBP) initiated ‘a *de facto* policy of turning away thousands of people seeking asylum at official ports-of-entry along the entire US-Mexico border... forcing people back to Mexico without registering and determining their asylum claim’. Moreover, since 2017, US asylum-seekers face indefinite and mandatory detention during the processing of their asylum claims. Amnesty International, ‘USA: Catastrophic Immigration Policies Resulted in More Family Separations than Previously Disclosed’. <https://www.amnestyusa.org/reports/usa-catastrophic-immigration-policies-resulted-in-more-family-separations-than-previously-disclosed/> [emphasis in original].

<sup>30</sup> This policy is also in violation of human rights law—Articles 5, 9, and 12 of the *Universal Declaration of Human Rights*. <http://www.un.org/en/universal-declaration-human-rights/>

<sup>31</sup> Chris Cillizza, 'The Remarkable History of the Family Separation Crisis', *CNN Politics*, June 18, 2018, <https://www.cnn.com/2018/06/18/politics/donald-trump-immigration-policies-q-and-a/index.html>.



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<sup>32</sup> Donald J. Trump, 'Affording Congress an Opportunity to Address Family Separation', (The White House, June 20, 2018), <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>; Joshua Barajas, 'How Trump's Family Separation Policy Became What It Is Today', *PBS News Hour*, June 21, 2018, <https://www.pbs.org/newshour/nation/how-trumps-family-separation-policy-has-become-what-it-is-today>.

<sup>33</sup> During the peak of the family separation policy and reunification efforts there were varying reports as to the total number of children taken from their families—ranging from 2,551 to more than 3,700. A recent report by Amnesty International (October 11, 2018) however, confirms that between April 19 through August 15, 2018 the Trump administration separated 6,000 families at the US-Mexico border. See: Nick Miroff, Amy Goldstein, and Maria Sacchetti, "'Deleted" Families: What Went Wrong with Trump's Family-Separation Effort', *The Washington Post*, July 28, 2018, [https://www.washingtonpost.com/local/social-issues/deleted-families-what-went-wrong-with-trumps-family-separation-effort/2018/07/28/54bcdcc6-90cb-11e8-8322-b5482bf5e0f5\\_story.html?utm\\_term=.901fb7fe67ea](https://www.washingtonpost.com/local/social-issues/deleted-families-what-went-wrong-with-trumps-family-separation-effort/2018/07/28/54bcdcc6-90cb-11e8-8322-b5482bf5e0f5_story.html?utm_term=.901fb7fe67ea); Office of Inspector General, 'Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy', (U.S. Department of Homeland Security, September 27, 2018), 3–4, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>; Ryan Devereaux, 'The U.S. Has Taken More than 3,700 Children From Their Parents—And Has No Plan For Returning Them', *The Intercept*, June 19, 2018, <https://theintercept.com/2018/06/19/children-separated-from-parents-family-separation-immigration/>. Amnesty International, 'USA: Catastrophic Immigration Policies Resulted in More Family Separations than Previously Disclosed', October 11, 2018, <https://www.amnesty.org/en/latest/news/2018/10/usa-treatment-of-asylum-seekers-southern-border/>.

<sup>34</sup> Chronicle Editorial Board, 'The Trump Administration Wants to Resurrect Family Separation Policy', *San Francisco Chronicle*, October 15, 2018, <https://www.sfchronicle.com/opinion/editorials/article/Editorial-The-Trump-administration-wants-to-13309503.php>.

<sup>35</sup> Caitlin Dickerson, 'Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border', *New York Times*, April 20, 2018, <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html> (italics ours).

<sup>36</sup> Department of Homeland Security (DHS) Office of Inspector General, 'Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy', <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> (italics ours).

<sup>37</sup> Ryan Devereaux, 'The U.S. Has Taken More than 3,700 Children From Their Parents—And Has No Plan For Returning Them'. (italics ours).

<sup>38</sup> Candice Bernd, 'Indigenous Asylum Seekers Face Language Barriers and a Legacy of Oppression at the Border', *Truthout*, July 26, 2018, <https://truthout.org/articles/torn-away-traumatized-and-tongue-tied-seeking-asylum-while-indigenous/> (italics ours).

<sup>39</sup> For the full table of 29 rights and their warrants, see Refugee Rights in Records Project, <https://informationasevidence.org/refugee-rights-background>.

<sup>40</sup> SwissPeace, A Conceptual Framework for Dealing with the Past.

<sup>41</sup> [http://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf)

<sup>42</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/pdf/G0510900.pdf?OpenElement>