

Le 3 mai est la Journée mondiale de la liberté de presse, le 22 mai est la Journée internationale de la diversité biologique, le 29 mai est la Journée internationale des Casques bleus des Nations Unies

Nouvelles d'avril 2012

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Ce qui suit est le numéro vingt-neuf dans une série de brèves discussions sur les articles de la Déclaration universelle des droits de l'homme (DUDH) et les fonds d'archives qui s'y rapportent.

Déclaration des droits de l'homme, Article 27

- 1. Toute personne a le droit de prendre part librement à la vie culturelle de la communauté, de jouir des arts et de participer au progrès scientifique et aux bienfaits qui en résultent.*
- 2. Chacun a droit à la protection des intérêts moraux et matériels découlant de toute production scientifique, littéraire ou artistique dont il est l'auteur.*

L'Article 27 semble à la fois donner et reprendre, mettre l'accent sur la propriété commune et la propriété privée. Le premier paragraphe donne à chacun le droit de «jouir» et de «participer», tandis que le second paragraphe donne à un individu le droit de protéger les «intérêts moraux et matériels» de son travail. Cependant, aussi large que semble l'affirmation dans le premier paragraphe, Johannes Morsink souligne qu'elle dit la communauté, niant ainsi implicitement que plusieurs communautés existent au sein des Etats et que les minorités ont le droit de participer au sein de leurs propres communautés culturelles. Les débats sur les droits des minorités au sein des sessions de rédaction de la DUDH étaient controversés et complexes, mais finalement la Déclaration ne comprend pas d'article séparé sur les droits des minorités, bien que les droits des minorités sont expressément pris en compte dans les articles sur la religion et l'éducation. (Morsink, *The Universal Declaration of Human Rights : Origins, Drafting and Intent*, pp. 269-280).

Le deuxième paragraphe a carrément placé les rédacteurs dans les débats sur le droit d'auteur et le droit des brevets, et certains délégués ont fait valoir que ces concepts fondés sur le droit ne devaient pas être inclus dans la Déclaration. Le deuxième paragraphe a également mis sur la table les positions internationales contradictoires quant à savoir si les créateurs ont le «droit moral» de contrôler leur travail, même après que l'oeuvre a été vendue ou s'il y a rupture du droit d'auteur. Cependant, plusieurs facteurs ont contribué à l'addition finale de ces deux paragraphes:

l'influence de l'UNESCO nouvellement créée qui met l'accent sur la culture; la conférence de juin 1948 sur la Convention du droit d'auteur international de Berne, qui a révisé la clause relative aux droits moraux dans la Convention; et en avril 1948, la Déclaration américaine des droits et devoirs de l'homme qui comprenait une disposition du droit d'auteur. Néanmoins, cela reste un article portant deux idées très distinctes.

Le Pacte international de 1966 relatif aux droits économiques, sociaux et culturels a suivi l'exemple de la Déclaration, écrivant dans l'article 15 (1) (c) que chaque État partie doit "reconnaître le droit de chacun. . . pour bénéficier de la protection des intérêts moraux et matériels découlant de toute production scientifique, littéraire ou artistique dont il [ou elle] est l'auteur." Peter K. Yu note, dans son analyse en profondeur de l'article 27 de la DUDH, et l'article du Pacte et des droits de l'homme, que "le sens de l'article 27 (2) de la DUDH et l'article 15 (1) (c) du Pacte n'ont pas beaucoup changé depuis l'adoption des instruments", leur donnant un "impact significatif" sur le développement des régimes du droit de propriété. (Peter K. Yu, "Reconceptualizing Intellectual Property Interests in a Human Rights Framework," http://74.220.219.58/~drafting/sites/default/files/paper_article/Yu_Human%20Rights%20and%20IP%20Framework.pdf.) Le Conseil international des Archives a un groupe de travail sur la propriété intellectuelle qui traite du droit d'auteur et des questions connexes, et des groupes similaires se trouvent dans les organisations représentant les bibliothèques et les domaines connexes. Soulignant l'élément scientifique dans l'article, l'Association américaine pour l'avancement des sciences a créé un Programme légal de responsabilité scientifique et droits de l'homme qui s'occupe des "questions éthiques, juridiques et droits de l'homme liées à la conduite et à l'application de la science et de la technologie." <http://shr.aaas.org/>

Les archivistes le savent, les questions de vie culturelle et le droit des créateurs sont un thème central de notre travail. Les archives de l'UNESCO et de l'Organisation mondiale de la propriété intellectuelle sont essentiels pour comprendre le développement de ces droits, de même que ceux des administrations culturelles gouvernementales, les offices des brevets, marques et droits d'auteur, les tribunaux et les assemblées législatives. Les archives du secteur privé documentent également abondamment ces droits. Par exemple, la Phonothèque juive de Dartmouth a récemment mis en ligne sa base de données contenant près de 40'000 chansons, des émissions et des interviews qui reflètent une gamme de la vie culturelle juive: <http://thedartmouth.com/2012/04/16/news/archive>.

La lutte en cours pour savoir qui détient les droits sur les documents de Franz Kafka avait été mentionnée dans les nouvelles d'avril ; une enquête de la police israélienne essayait de déterminer si certains manuscrits de Kafka, trouvés il ya un mois, avaient été volés. <http://www.haaretz.com/news/national/israel-police-probing-possible-theft-of-kafka-papers-1.426392>. Et aux Philippines, le président a ordonné à toutes les administrations gouvernementales de remettre leurs films originaux et autres audio-visuels à la National Film Archive afin de préserver la richesse artistique et historique du pays. <http://www.zambotimes.com/archives/46611-Aquino-orders-preservation-of-all-Philippine-films-and-audio-visuals.html>.

Quelle que soit la source, toutes les archives contiennent des éléments concernant les droits énoncés à l'Article 27.

Les nouvelles sont en anglais

General.

Every news organization in the world carried articles on the conviction of Charles Taylor by the Special Court for Sierra Leone. The trial, which began in 2006, produced almost 50,000 pages of transcript and used over 1000 exhibits, making it an enormous record of the violence inflicted on Sierra Leone between 1996 and 2002. Records of radio and telephone conversations between Taylor and the rebels in Sierra Leone were key exhibits in the trial.

Swisspeace launched its website “Archives and dealing with the past” in support of a joint project of the Swiss Federal Department of Foreign Affairs and the Swiss Federal Archives in cooperation with Swisspeace. The aim of the project is to provide a support to governments, international organizations and NGOs related to the protection of archives that document human rights violations. The project is conceived as a hub, offering “a platform of contact between actors who need support and experts in this field, as well as a platform of exchange of best practices and lessons learned, for practitioners and experts in both archival and dealing with the past/transitional justice fields.” <http://www.swisspeace.ch/topics/dealing-with-the-past/activities/archives-and-dwp.html>

Kate Doyle of the National Security Archive, a U.S. non-governmental organization, provided expert witness testimony before the Inter-American Court of Human Rights in the case focusing on victims shown in the *Diario Militar* (Case 12.590, Gudiel Alvarez et al. (*Diario Militar*) vs. Guatemala). The *Diario* is a logbook of the activities of a Guatemalan death squad during the civil war. For an excerpt of Doyle's testimony, see <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB378/> and for a blog posting on the trial, see <http://nsarchive.wordpress.com/2012/05/03/the-death-squad-diary-hearing/Kate>. Doyle and Fredy Peccerelli, Executive Director of the Guatemalan Forensic Anthropology Foundation, are this year's recipients of the ALBA/Puffin Award for Human Rights Activism, one of the largest human rights awards in the world, given jointly by ALBA and the Puffin Foundation. The announcement of Doyle's award commends her advocacy “for the declassification of U.S. government archives in support of” criminal investigations in Mexico, Guatemala, El Salvador and Honduras. <http://www.albavolunteer.org/2012/03/2012-alba-puffin-human-rights-award-honors-fight-against-impunity-in-guatemala/>

International news.

Al-Qaeda. In late April the U.S. began giving journalists access to records seized during the raid on Osama bin-Laden's compound in 2011. According to the *Washington Post*, the records show the planning and strategy and alliances that al-Qaeda maintained. <http://www.stripes.com/mobile/news/al-qaida-is-weaker-without-bin-laden-but-its-franchise-persists-1.175887> These findings support the analysis of the bureaucracy needed to run terrorist organizations described in a January article by Jacob Shapiro and David Siegel, “Moral Hazard, Discipline, and the Management of Terrorist Organizations,” *World Politics* (2012) 64, 39-78;

for an abstract see <http://www.princeton.edu/piirs/worldpolitics-journal/issues/v64n1/shapiro-siegel.xml>.

Al-Qaeda/United States. A new book by the retired CIA officer who ordered the destruction of video tape showing waterboarding in Thailand of al-Qaeda members Abu Zubaydah and Abd al-Nashiri says he decided to destroy the tapes because “I wasn’t going to sit around for three years waiting for people to get up the courage’ to do what CIA lawyers said he had the authority to do,” the *Associated Press* reported. He called his order to destroy “just getting rid of some ugly visuals.” <http://www.foxnews.com/us/2012/04/24/ex-spy-destroying-cia-tapes-purged-ugly-visuals/>

Moldova/United States. During the Second World War, tens of thousands of Romanian Jews were killed by the Nazis and Romanian military forces acting with them. After the USSR took control in 1944 of the area in what is today Moldova, the Moldovan KGB carried about “about 50 investigations and trials” that continued into the late 1950s, investigating the killings. Copies of about 15,000 pages of testimony, interrogation transcripts, and other documents related to the trials were given by the Government of Moldova to the U.S. Holocaust Museum at the end of March.
http://www.rferl.org/content/archive_reveals_new_details_of_moldova_holocaust/24540310.html

United Kingdom/former colonies. The National Archives, acting on behalf of the Foreign and Commonwealth Office (FCO), released more than 1,200 records from 12 former colonial territories; these records were recently “discovered” in a government center in Buckinghamshire. (See April 2011 *HRWG News* for background.)
<http://www.guardian.co.uk/uk/2012/apr/18/britain-destroyed-records-colonial-crimes?newsfeed=true>. William Hague, the foreign secretary, said that under the obligations of the Public Records Act 1958, the FCO should have assessed the documents and passed any of historical interest to the National Archives at Kew in Surrey and he commissioned an inquiry by Anthony Cary, the former British high commissioner to Canada, to establish what had gone wrong and what lessons could be learned. <http://www.guardian.co.uk/uk/2012/apr/18/sins-colonialists-concealed-secret-archive?newsfeed=true>. For a critical commentary on the release of the records by historian Caroline Elkins, who won the Pulitzer Prize for her book *Britain’s Gulag: The Brutal End of Empire in Kenya*, see <http://www.guardian.co.uk/politics/2012/apr/18/colonial-papers-fco-transparency-myth?newsfeed=true>

National news.

Albania. A new report by the World Bank identifies the “inefficiencies in [land] registry operations” as contributing to “land abandonment on a large scale.” http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2012/04/09/000158349_20120409095922/Rendered/PDF/WPS6032.pdf

Bosnia. At a press conference announcing that Sarajevo Siege Museum will be constructed to commemorate the 1992-1996 siege of the city during the Balkan war, the “Virtual FAMA collection – The Siege of Sarajevo” debuted. The collection contains “over 1000 interviews with around 450 people from Sarajevo, a survey about the survival in Sarajevo, over 10,000 text messages related to the period between 1991 and 1995,” *BIRN* reported. <http://www.balkaninsight.com/en/article/the-siege-museum-new-symbol-of-sarajevo>. To view the Virtual FAMA, see <http://famacollection.org/eng/>

Canada. The *National Post* began investigating reports of “coerced adoptions targeting single women from the 1940s to the 1980s.” In response, three churches announced internal reviews of the records of the maternity homes they operated during the period. Four archivists and one researcher are working with the United Church of Canada, and the Presbyterian Church in Canada and the Salvation Army also are reviewing their archives. The newspaper reported that “at least 100 mothers” contacted it to report that “they were coerced or forced by social workers, medical professionals and maternity-home staff into handing over their illegitimate babies.” <http://news.nationalpost.com/2012/04/22/united-church-archives-ground-zero-in-search-for-evidence-of-forced-adoptions/>

Employment records belonging to “about 30 people who had applied for employment insurance, providing their names, previous employer, severance pay, social insurance numbers and signature,” were sent accidentally by Service Canada to private house in Toronto. The couple opened the envelope containing the records, then turned it over to Service Canada. <http://www.theglobeandmail.com/news/national/sensitive-documents-end-up-at-toronto-home-in-service-canada-blunder/article2377207/>

In a \$27-billion class-action lawsuit against three tobacco companies, a former tobacco company lawyer admitted that he “helped destroy dozens of company research documents, some of which dated back decades and spelled out health risks associated with smoking,” the *Globe and Mail* reported. In a commentary on the case, *Corporate Counsel* discussed the records management issues, noting that “when exactly” the tobacco company “instituted its document retention policy has been at issue in the trial.” The case is another example of the importance of corporate records for protecting human rights. http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202548140932&ExImperial_Tobacco_GC_Questioned_Over_Destroying_Health_Documents

A judge of the Quebec Superior Court granted a request by the Quebec government for a temporary injunction to stop the government of Canada from destroying the long-gun-registry records, *National Post* reported. The government in Quebec “repeatedly” asked the Canadian government “to hand over records on the 1,560,359 long guns registered in Quebec so that it could use the information to create its own registry,” but the federal government has refused. (For background, see the October and December 2011 *HRWG News*.) <http://news.nationalpost.com/2012/04/05/destruction-of-long-gun-registry-records-halted-at-eleventh-hour-by-quebec-court/>

Egypt. Candidates for the presidency of Egypt must have parents who were Egyptian citizens. A mother of a candidate for president of Egypt, Sheik Hazem Salah Abu Ismail, was a U.S.

citizen according to California public records and a Los Angeles voter registration Web site. The Egyptian Interior Ministry confirmed her citizenship; the candidate was disqualified.

http://www.nytimes.com/2012/04/05/world/middleeast/sheik-hazem-salah-abu-ismail-may-be-disqualified-from-egypt-presidential-race.html?_r=1;

http://latimesblogs.latimes.com/world_now/2012/04/islamists-rally-to-rescue-salafi-presidential-runners-bid.html

Georgia. While not strictly an archives story, the announcement by the Georgian Culture Minister that the museum honoring Josef Stalin would be “remodeled” to “exhibit the atrocities that were committed during the Soviet dictator’s rule,” is surely worth noting. The museum, opened in 1937 in the town of Gori where Stalin was born, has “some 47,000 exhibits, including his personal belongings and death masks,” reported *The St. Petersburg Times*.

http://www.times.spb.ru/index.php?action_id=2&story_id=35449

India. As reported in the March 2012 *HRWG News*, researchers are taking up the cause of improvement for the Indian archives system. In April, Sunil Khilnani, the director of King’s India Institute, contributed a column to the *Wall Street Journal’s* on-line edition, writing, “Archiving is important in a democracy. An understanding of the past can act as guide for what it should do next.” <http://www.livemint.com/2012/04/20154016/What-we-leave-for-the-future.html> Mushirul Hasan, the director general of the National Archives of India, gave an interview to *The Times of India*, in which he argued that the “National Archives can’t be run as a typical government office” and that “the National Archives and state-run archives ought to be run not by bureaucrats but by trained professionals – just like banks are run by bankers.”

<http://timesofindia.indiatimes.com/home/opinion/edit-page/National-Archives-cant-be-run-as-a-typical-government-office/articleshow/12734169.cms>

Kazakhstan. In an example of using records for control, a new law in Kazakhstan requires religious organizations to register annually (including submitting personal information on its members), religious workers to register annually, and all religious literature must be reviewed by the state’s Religious Affairs Agency. *Transitions Online* quoted a Kazakh religious scholar as seeing the registration law “as nothing but a detailed guide to suppressing believers’ rights and freedoms.” http://www.tol.org/client/article/23098-kazakhstans-faith-registry.html?utm_source=TOL+mailing+list&utm_campaign=ca56937f71-TOL_newsletter4_17_2012&utm_medium=email

Lebanon. UMAM Documentation and Research (a Beirut NGO), the Modern Arab World Research Center and the International Center for Transitional Justice launched a pilot project and website Badna Naaref (“we want to know”). It presents more than 100 summaries of interviews with people who were youth during the 1975-1990 war in Lebanon. The interviews were conducted by students in Beirut public and private schools to develop awareness “about the negative repercussions of political violence.” <http://www.badnanaaref.org/>

Iraq. Land issues are a constant in conflict zones. Kurds in Iraq were forced to relocate in the mid-1970s as part of the government’s policy to “dilute ethnic opposition.” According to the *New York Times*, “Kurds say that property records that would verify their ownership claims were destroyed.” Now Kurds have returned to their former properties, but the Arabs to whom the

properties were transferred in the 1970s are contesting their ownership. The *Times* reports the case of a man who “was taken to a police station in handcuffs several months ago and forced to sign papers turning the property over to an Arab who held the deed from 1975 to 2003.”

<http://www.nytimes.com/2012/04/22/world/middleeast/displacement-of-kurds-tests-iraqs-fragile-unity.html>

Philippines. In an opinion piece in the *New York Times*, Gina Apostol recounts her rummage through Imelda Marcos’s office after the Marcos were ousted. “I found piles of confidential military documents mixed with love letters from male pop singers,” she wrote, adding that she found “banal evidence of a more ominous evil: boring documents outlining strategic maneuvers, backed by American aid.” <http://www.nytimes.com/2012/04/29/opinion/sunday/in-the-philippines-haunted-by-history.html?pagewanted=all>

Romania. The European Court of Human Rights ordered the government to adopt legislation by July to solve the issue of restitution to former owners of properties confiscated by the Communist government. *Balkan Insight* reports that only about 11 percent of claims have been resolved and “some properties have been illegally given to people who forged ownership documents or inheritance papers” because “the files of the real owners of properties dispossessed by the Communists lie abandoned in the archives of the Property Restitution Agency.”

<http://www.balkaninsight.com/en/article/romania-plans-controversial-new-properties-restitution-law>

Turkey. April was a very busy month in Turkey’s justice system. Not only did the two surviving leaders of the 1980 coup go on trial, but dozens more current and former military were arrested in an investigation of events in 1997 and other alleged coup attempts. While the evidence in the trial of the 1980 coup leaders has not yet been offered, archives are likely to play a major role.

<http://www.aljazeera.com/programmes/insidestory/2012/04/2012458312153239.html>

For a Turkish law professor’s views on the human rights implications of the trial, see <http://www.guardian.co.uk/commentisfree/2012/apr/11/turkey-coup-human-rights-violations/print>

United Kingdom. The South London Healthcare NHS Trust lost two unencrypted USB sticks, *SC Magazine UK* reported. In one case, an employee downloaded the data to a personal memory stick to do some work at home; the missing stick contained data relating to approximately 600 maternity patients. In a second incident the stick contained names and dates of birth of 30 children and full audiology reports on another three children. The sticks were later found.

<http://www.scmagazineuk.com/nhs-trust-reports-losses-of-unencrypted-usb-sticks/article/236637/>

United States. The National Labor College, the only higher education institution in the United States dedicated to educating labor leaders, decided to sell its campus which houses the archives of the AFL-CIO (American Federation of Labor/Congress of Industrial Organizations), the oldest and most important labor union in the United States. The college will “stop managing” the archives as of August 31 and will return them to the AFL-CIO, which is “considering many options” for their future, the *Chronicle of Higher Education* reported.

<http://chronicle.com/blogs/ticker/key-labor-archive-may-be-inaccessible-after-labor-college-sells-campus/42402>. On a more positive note, the records of the Justice for Janitors campaign, which is credited with “the transformation of labor union policies toward immigrant workers,” were donated to the University of California Library Special Collections by the Services Employees International Union United Service Workers West.
<http://newsroom.ucla.edu/portal/ucla/ucla-library-acquires-justice-232232.aspx>

In a major settlement of lawsuits brought against the federal government by 41 Native American tribes, the Justice Department announced it agreed to pay more than \$1 billion to the tribes because the federal government “mismanaged monetary assets and natural resources held in trust by the United States for the benefit of the tribes.” Records played a key role in determining the amount and distribution of the settlement. <http://www.nytimes.com/2012/04/14/us/us-to-pay-1-billion-settlement-to-indian-tribes.html>; for the Department of Justice press release, see <http://www.justice.gov/opa/pr/2012/April/12-ag-460.html>

An unusual archives is being established: the National Uranium Materials Archives in Oak Ridge, Tennessee. According to *knoxnews.com*, the archives will hold “a collection of uranium samples of various origins that could be used—in the event of nuclear terrorism, smuggling intervention or other institutions—to help determine where, and perhaps how, bomb-making materials were obtained.” <http://www.knoxnews.com/news/2012/apr/17/y-12-uranium-archive-to-be-used-for-nuclear/>

Georgia. Ten backup discs containing information on approximately 315,000 surgical patients treated between September 1990 and April 2007 are missing from a storage location at Emory University Hospital. The records on the discs contained Social Security numbers for about three-fourths of the patients, and all the records included “patient names, dates of surgery, diagnoses, procedure codes or the name of surgical procedures, device implant information, surgeon names and anesthesiologist names,” the press release from *Emory news center* reported.
http://news.emory.edu/stories/2012/04/ehc_missing_data/campus.html

Kansas. As described in the March 2012 *HRWG News*, a doctor put hundreds of patients' medical records in a recycling bin. His actions are now under investigation by the U.S. Department of Health and Human Services, while the Kansas Board of Healing Arts, the state regulatory board, “is working on an agreement on the permanent custody of other files still in his [the doctor's] possession,” the *Associated Press* reported.
<http://www.google.com/hostednews/ap/article/ALeqM5j1aMdhO4YDLzVedP6UcRZ6otL8zA?docId=cdb6f9716a84432d8d6e550479b82008>

New Mexico. The danger of putting records on line was highlighted in a case of identity theft. According to the *Star-Telegram*, “An identity theft ring based in Albuquerque has stolen the identities of 232 people” by using “Tarrant County court records available free online for use by the public.” The thieves used the information “to open lines of credit in the names of some of the victims.” After discovering the theft, the county hired a contractor to review the 12 million court documents online, and the contractor found that 2 million of them “listed birth dates or Social Security or driver's license numbers.” The contractor is now deleting the personal information before putting the records back on line. However, “the paper versions of the 2

million documents containing sensitive information are still available for public viewing at the courthouse, as required by law.”

<http://www.star-telegram.com/2012/04/01/3850878/new-mexico-ring-uses-tarrant-court.html>

Oregon. Prior to 1949, Chinese immigrant workers often asked that their remains be returned to China if they died in the United States. Now a collection of documents that show how more than 550 workers' remains were not repatriated has been donated to Oregon State University, digitized, and made available on line. A Chinese-American civic group hopes the documents, which were originally given to the local public radio station by an “anonymous source,” can help families locate ancestors gone missing early in the last century.

http://news.opb.org/article/rare_once-lost_pioneer_chinese_immigrant_docs_go_online/

South Carolina. An employee working for the Medicaid program in South Carolina “inappropriately transferred some personal information of more than 228,000” persons to his personal email, *The Post and Courier* reported. The information included names, phone numbers, addresses, birth dates, Medicaid ID numbers and, in some cases, Social Security numbers. The employee has been arrested; the state law enforcement office “confirmed that at least one other party received the information” that was transferred to the personal email.

<http://www.postandcourier.com/article/20120419/PC16/120419166&slId=2>

Utah. A breach of medical records also occurred in Utah, but unlike the stories from Georgia and South Carolina above, this time the hackers are believed to be from Eastern Europe. The case began on March 30, when a computer server at the state's health department was hacked and information on nearly 900,000 people was stolen. The information stolen included Social Security numbers, names, addresses, and “other personal information.” Officials assume that identity theft was the purpose of the hacking. For the Department's press release, see

<http://udohnews.blogspot.com/2012/04/data-breach-expands-to-include-more.html>; for a news report, see http://www.google.com/hostednews/ap/article/ALeqM5hxs85uMjZ-J_7-1yY376qATtyNg?docId=2d8f2ca147054ba0bfb80b775c0c6725

Uzbekistan. Demonstrating the importance of personal papers of journalists in human rights investigations, a journalist for the *BBC World Service* has documented a program in Uzbekistan to sterilize women, including sterilization without consent. The journalist reported interviewing Uzbek women who had relocated to Kazakhstan and also “gathered testimony by telephone and email, and in recordings brought out of the country by courier.”

<http://www.bbc.co.uk/news/magazine-17612550>

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