Public Health Litigation for Human Rights Realization

The Development of the World Health Organization - O’Neill Institute Health & Human Rights Database

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Outline

1. Background – Health and Human Rights
2. History – Limited Evolution of the Right to Health to Provide Justiciability
3. Analysis – Justiciability as Accountability
4. Discussion – A Health & Human Rights Litigation Database
Human Rights-Based Approach

Human Right = Valid claim & Corresponding duty
(“X has a right against Y in relation to Z”)

Programs to Realize Rights

Rights holder

Demand of Rights

Duty bearer

E.g.: “A woman has a valid claim to a right to health, which is realized through the duties of the national government to provide HIV Treatment.”

Goals – (1) Define duty-bearers and rights-holders, (2) Impose legal obligations on duty-bearers, (3) Inform rights-holders of their rights and how these rights can be claimed and enforced
Health & Human Rights

- The Health & Human Rights Movement
- Human Rights Matter
- Human Rights Evolve
- Evolution of Human Rights in International Law
- Enforcement of Human Rights in National Jurisprudence
Human Rights Neglect

- Right to Health Does Not Address Underlying Determinants of Health
- Neoliberal Development Policy – Exacerbating Health Inequalities
Human Rights Neglect

- From Legal Obligation to Non-Binding “Commitment”
- Human Right to Health?
- UN Advances Health Rights
Litigation for Health Rights

• General Comment 14
  – State Obligation to:
    • Respect
    • Protect
    • Fulfill
  – Accountability Under National Law
    • Policy Gaps
    • Implementation Gaps

• WHO Reengages with Health & Human Rights

Specificity of Obligation → Increase in Litigation
WHO Interest in Human Rights

- Department of Ethics, Trade, Human Rights and Law
  - Supporting governments to integrate a human rights-based approach in health development.
  - Strengthening WHO’s capacity to integrate a human rights-based approach in its work.
  - Advancing the right to health in international law and international development processes.

Human Rights Litigation Database

WHO

+ Georgetown

+ Academic Oversight
Health & Human Rights Databases

• Actors Database

From Actors to Cases
Litigation Database Survey

• Sources
  – Articles
  – NGO Announcements
  – International Organizations
  – Westlaw/Lexis

• Case Identification
  – Adjudicated by an international, regional or state court
  – Argues a right of individuals or groups or an obligation of duty-bearers
  – Makes reference to
    • a relevant international legal instrument or
    • a human right codified in a national constitution
  – Implicates health issues
Litigation Database Design

Health and Human Rights Law Database

Winterwerp v. Netherlands

- Title: Winterwerp v. Netherlands
- Citation: IHRL 24 (ECH 1979)
- Year: 1980
- Country: Netherlands
- Court: European Court of Human Rights, Chamber
- Rights: Right to liberty; right to health Human Rights,
- Health Topic: Mental Health
- Facts: Mr. Winterwerp was committed to a psychiatric
- Decision: It was held that it was essential that a person
- Excerpt: To sum up, the various decisions ordering or
- Regional Scope: Europe
- Keywords: Europe

- Citation
- Year
- Court
- Rights
- Health Topics
- Facts
- Decision
- Excerpt
- URL
Litigation Database Categorization

• **Rights**
  - Right to Health
  - Right to Life
  - Right to Bodily Integrity
  - Right to Water
  - Right to Food
  - Right to Social Security
  - Right to Privacy
  - Right to Due Process
  - Right to Education
  - Right to Housing
  - Right to Development
  - Right to Clean Environment
  - Freedom from Torture
  - Right of Access to Information
  - Freedom from Discrimination

• **Health Topics**
  - Health and Healthcare
  - Communicable Diseases
  - Non-communicable Diseases
  - Health throughout the life course
  - Environment Health
  - Public Emergencies
  - Health Technology and Pharmaceuticals
  - Health Systems
  - Cross cutting issues
  - Population groups
  - Reproductive and Sexual Health
  - Tobacco/Substance abuse
  - Mental Health
  - Occupational Health
World Health Organization / O’Neill Institute - Health and Human Rights Database

**Background:** Human rights impact health through a number of international treaties, regional instruments, and national laws and policies. Out of these national laws, a burgeoning enforcement movement has arisen at the intersection of health and human rights, providing rights-based accountability in national and regional courts. Through this jurisprudence, human rights have moved from principle to practice, transforming ambiguous declarations into legal obligations and programmatizing international law through national policy.

**Methods:** Relevant cases have been selected for inclusion in the database and summarized where the case (1) is either adjudicated by an international, regional or state court; (2) argues (a) a right of individuals or groups or an obligation of duty-bearers; (3) makes reference to (a) a relevant international legal instrument or (b) a human right codified in a national constitution; and (4) implicates specified health issues. Based upon the comprehensive classification system developed by the United Nations Committee on Economic Social and Cultural Rights in General Comment 14, this database categorizes case law on the basis of both the human rights implicated and the health issues advanced.

**Results:** Through the cooperative efforts of the World Health Organization and the O’Neill Institute for National and Global Health Law, these institutions have worked together to summarize relevant case law at the intersection of health and human rights and categorize these summaries in the present health and human rights database. This searchable database provides a systematic survey of human rights jurisprudence for health, mapping the interaction between health and human rights in national, regional, and international case law.

**Conclusions:** Categorized by both human rights and health issues, this organization of cases allows for comparative legal analysis of similar claims in different national contexts. As practitioners and academics engage in comparative analyses of legal strategies, analogous legal reasoning across national contexts may serve as precedents for future cases. Given the growth of this database, it is hoped that such a resource may provide clarification on the impact of human rights on public health outcomes.
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