

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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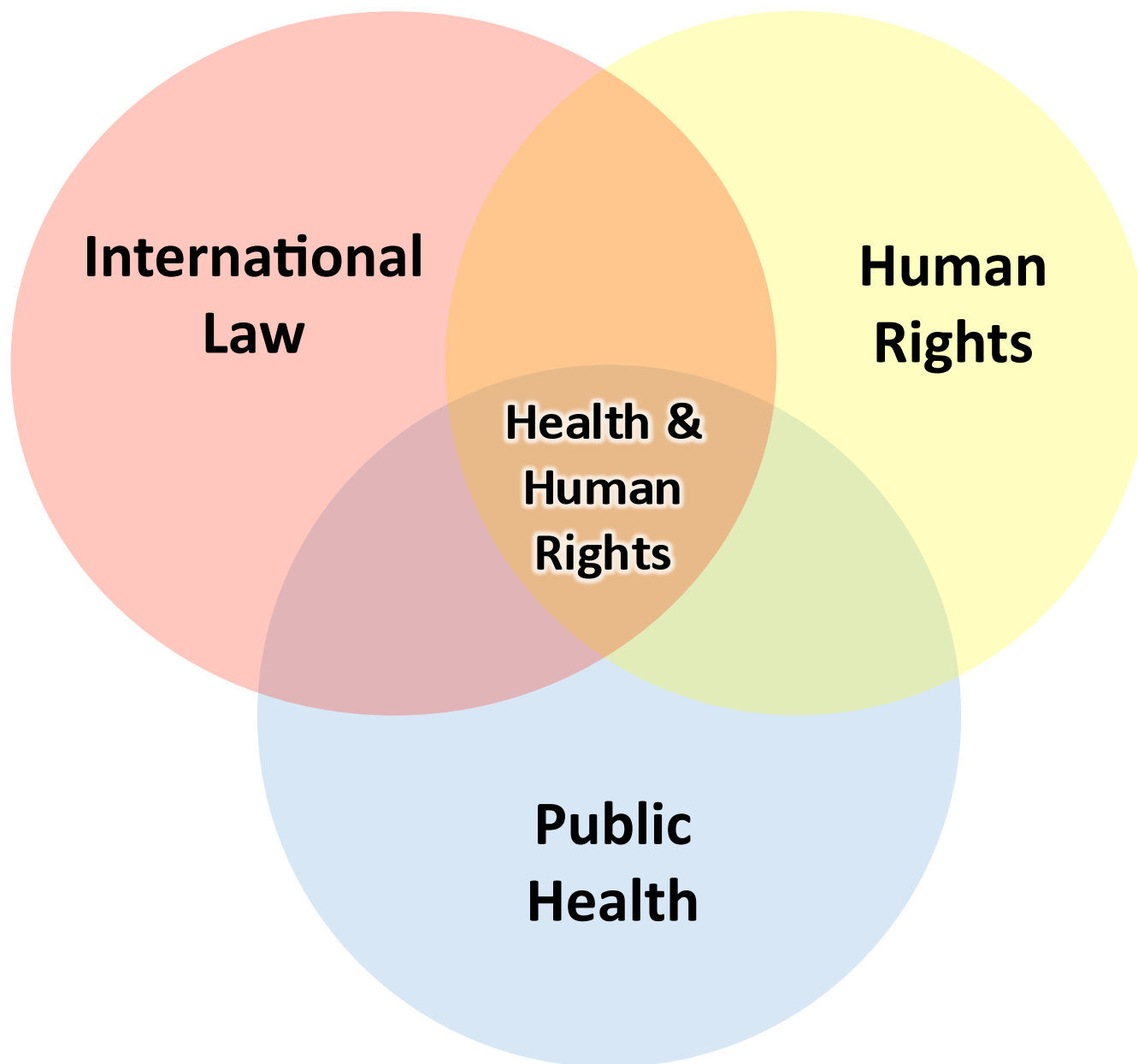
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at CHAPEL HILL

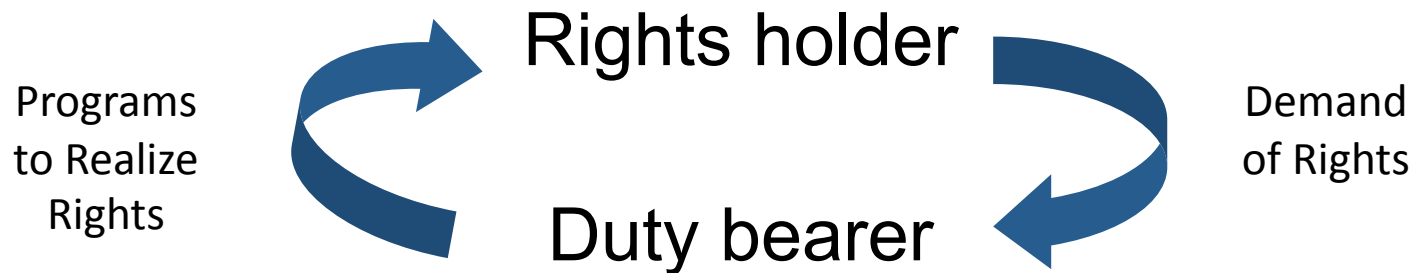
Outline

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*”)



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**

International
Law

Health &
Human
Rights

Public
Health

Human
Rights

- 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



World Health Organization

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Health and Human Rights

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Activities

Information Resources

Databases

Key Instruments

Links

Database on Health and Human Rights Actors

This database contains information gathered from a survey of organizations related to their structures and programs. It is searchable by country (where the organization is located) or by specific health issue.

Country

All countries

"All countries" will find organizations in any country.
"International" refers to international organizations who are active in several countries.

Health Program Area

All program areas

Search

[Alphabetical list of all HHR actors organizations](#)

[Link to the OHCHR website on national human rights institutions](#)

In partnership with the Program on International Health and Human Rights at the Harvard School of Public Health

[Click here for more information](#)

KEY WHO INFORMATION

[Director-General](#)
Director-General and senior management

[Governance of WHO](#)
WHO Constitution, Executive Board and World Health Assembly

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
View Document Library Report

New Delete Find

Winterwerp V. Netherlands

Title	Winterwerp V. Netherlands	
Citation	IHRL 24 (ECHR 1979)	
Year	1980	
Country	Netherlands	
CourtLBody	European Court of Human Rights, Chamber	
Original Language		
Rights	Right to liberty; right to health Human Rights,	
Health Topic	Mental Health	
URL 1	http://0-ildc.oxfordlawreports.com.gull.	Link to full text
URL 2		
URL 3		
Facts	Mr. Winterwerp was committed to a psychiatric	
Decisions	It was held that it was essential that a person	
Excerpt	To sum up, the various decisions ordering or	
Regional Scope	Europe	
Keywords		
Notes		

- Citation
- Year
- Country
- 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



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*discovering innovative solutions
to the most pressing health concerns facing the nation
and the world*

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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.



World Health Organization

Links

» Have an interesting case that you think should be included here? [Click here to submit a new case!](#)

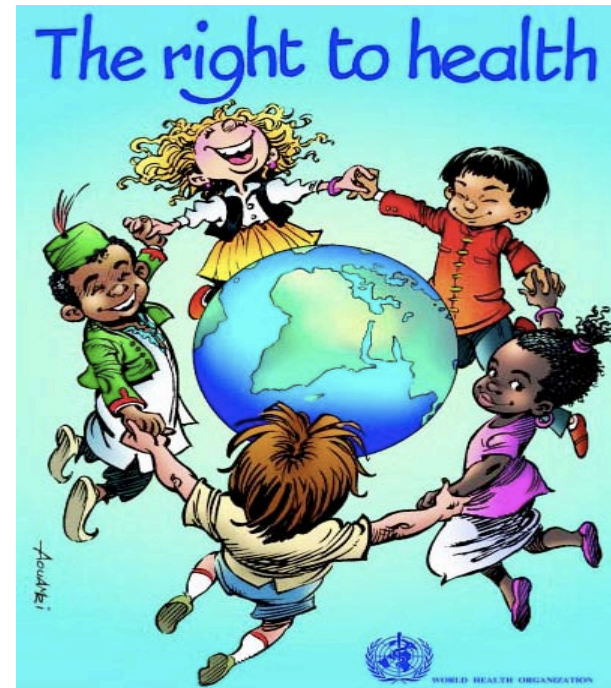
Search

Rights:

Health Topic:

Regional Scope:

Keyword:



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