

from international law to rights-based litigation: mapping health-related rights realization through the development of the health and human rights law database

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The World Health Organization, United Nations Population Fund, and O’Neill Institute for National and Global Health Law at Georgetown University have come together to develop a searchable Health and Human Rights Law Database, mapping the intersection between health and human rights in case law, international instruments, and national constitutions. Where states long remained unaccountable for violations of health-related human rights, litigation has arisen as a central mechanism in an expanding movement to create rights-based accountability for disease prevention and health promotion. Facilitated by the codification of international human rights standards in national law, this judicial enforcement has supported the implementation of rights-based claims, giving meaning to states’ longstanding commitment to realize the highest attainable standard of health. Yet despite these advancements in rights-based approaches to health, there has been insufficient awareness of the international and domestic legal instruments enshrining health-related rights and little understanding of the scope and content of litigation upholding these rights. As this accountability movement evolves—through the complementary efforts of international, governmental, and nongovernmental institutions—the Health and Human Rights Law Database seeks to chart this burgeoning landscape of international instruments, national constitutions, and case law for health-related rights. Employing international legal research to document and catalogue these three interconnected areas of human rights for the public’s health, the Database’s categorization by human rights, health topics, and regional scope provides a comprehensive means to assess health and human rights law. Through these categorizations, the Health and Human Rights Law Database serves as a basis for analogous legal reasoning across states to serve as precedents for future cases, for comparative legal analysis of similar health claims in different country contexts, and for empirical research to clarify the impact of human rights cases on public health outcomes.

introduction

Human rights impact health through international treaties, regional instruments, and national constitutions, laws, and policies. In this process, national legal frameworks—giving meaning to international treaty obligations and providing individual causes of action—have direct effect in ensuring human rights accountability. Pursuant to national constitutions and legislation, states have laid the groundwork over which a rapidly expanding accountability movement has arisen at the intersection of health and human rights, empowering previously marginalized individuals to raise human rights claims for health and providing rights-based enforcement in national, regional, and international courts and quasi-judicial bodies. Supporting accountability for human rights, these cases have been shown to provide essential medicines to the sick, to alleviate state infringements on individual liberties, and to restrict harmful determinants of the public’s health. This expanding case law, based upon international instruments and national constitutions, has only begun to show tangible gains in national health policy and measurable improvements in public health outcomes. As this jurisprudence flourishes, human rights are elevating from principle to practice, concretizing legal obligations through judicial interpretation and implementing international law through national policy.

However, despite international evolution in health-related human rights and jurisprudential advances in creating accountability for these rights, there exists no comprehensive assessment of either the substantive content of these legal instruments or the enforcement claims litigated under these human rights standards for health. As this accountability movement grows—through the complementary efforts of international, governmental, and nongovernmental institutions—there arises an imperative not only to increase awareness of the international and domestic legal instruments protecting health-related human rights, but to establish precedent for rights-based claims, develop ‘best practices’ in human rights enforcement, and harmonize practices conducive to the effective realization of human rights in health. Where individual rights-based claims have proven successful in reforming national policies, these claims must be compared across nations and issues – developing consistency in human rights jurisprudence, facilitating universality through rights-based policy, and assessing causality for public health outcomes.

Through the cooperative efforts of the World Health Organization (WHO), the United Nations Population Fund (UNFPA), and the O’Neill Institute for National and Global Health Law at Georgetown University (O’Neill Institute), an online Health and Human Rights Law Database has been developed to document and catalogue the intersection between health and human rights, creating searchable resources to identify:

- 1) *Case Law* – The case law section of the Database provides a systematic survey of jurisprudence addressing health-related human rights claims, categorizing cases on the basis of human rights, health topics, and regional scope and thereby mapping the interaction between health and human rights in national, regional, and international case law.
- 2) *International Instruments* – Complementing this case law resource, the international instruments section of the Database illustrates how health-related rights are recognized in international and regional legal frameworks, providing summaries of legally binding and non-binding instruments (the latter referred to as “soft law”) under international human rights law.

- 3) *National Constitutions* – Likewise, by providing access to provisions of national constitutions that enshrine health-related human rights, the national constitutions section of the Database demonstrates how health-related rights have been recognized as basic law capable of supporting actionable claims.

As practitioners and scholars examine the realization of health-related rights through these three cross-linked sections, this Database can provide a basis for assessments of rights-based accountability efforts, allowing for legal reasoning across national contexts to serve as precedents in future cases and for comparative analysis of similar health claims in different country contexts. Given the growth of this Database, it is expected that these resources may form the basis of future research to clarify the impact of health-related rights claims on health outcomes.

background

Given the evolving interaction between human rights law and national health policy, there is demonstrated promise for human rights in providing legal accountability through justiciable rights-based commitments. Supported by a wide range of international actors—ranging from the WHO, to the UN Special Rapporteur on the Right to Health, to scholars, practitioners, and advocates—the development of a database to catalogue human rights jurisprudence for health will promote the realization of health-related rights at the international, regional, and domestic level.

Health & human rights

With health and human rights practitioners employing human rights under international law as a tool for public health, human rights offer a powerful framework to advance justice in health.¹ Construing health disparities as “rights violations” offers international standards by which to frame government responsibilities and evaluate conduct under law, shifting the analysis from social justice to legal enforcement.² First elucidated by the 1948 Constitution of the World Health Organization, states declared that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being,” defining government obligations for specific health and social measures to realize for each individual “a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.”³ Building from this expansive WHO standard, through the international legal institutions developed since the end of the Second World War and the founding of the United Nations (UN), international human rights law has sought to identify individual rights-holders and their entitlements and corresponding duty-bearers and their obligations,⁴ empowering individuals to seek legal redress for health violations rather than serving as passive recipients of government benevolence.⁵

Human rights now impact health through an expansive and reinforcing set of international treaties, regional instruments, and national laws and policies. Codified seminally in the 1966 International Covenant on Economic, Social and Cultural Rights—providing for “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”⁶—the human right to health has evolved in subsequent international instruments to offer normative guidance for health policy. Gaining legitimacy through the development of health-related human rights in the advancement of global health governance,^{7,8} UN agencies, development organizations, and advocacy groups have increasingly invoked a “rights-based approach to health,” grounded in the right to health and rights to various underlying determinants of health, as a means to frame the legal and policy environment,

integrate core principles into policy and programming, and facilitate accountability.⁹ Where scholars and practitioners long debated the enforceability of accountability mechanisms for social and economic rights—with these debates grounded largely in the politics of the Cold War—the 1990s brought with it a global consensus that all human rights are universal, indivisible, interdependent, and interrelated.¹⁰

Structuring accountability for these interconnected human rights and correlative governmental duties, the UN Committee on Economic, Social and Cultural Rights (CESCR) issued a General Comment in 2000 to provide authoritative interpretation of state obligations pursuant to the right to health.¹¹ As the Committee clarified these obligations in General Comment 14, the right to health depends on a wide variety of interconnected rights – beginning in preventive and curative health care and expansively encompassing underlying rights to food, housing, work, education, human dignity, life, non-discrimination, equality, prohibitions against torture, privacy, access to information, and the freedoms of association, assembly, and movement.

Implementing this evolving interpretation, states commit to respect, protect, and fulfill the right to health, with human rights now understood to offer a normative framework for national health policy. As states have moved to incorporate health-related rights under national constitutions and laws,^{12,13} this rights-based approach to health is explicitly shaping these governmental efforts – framing the legal and policy environment, integrating core principles into policy and programming, and evaluating systematic implementation of programs and budgets.¹⁴ Yet these rights remain meaningless without accountability. With an expanding movement to hold governments accountable for these health-related rights, litigation has served as a means to enforce government commitments with respect to both de jure and de facto violations of human rights, evaluating national policies and securing access to justice for individual health needs.¹⁵

Human rights litigation to meet health needs

Litigation has become a central strategy in creating state accountability for realizing international treaty obligations, providing causes of action for the public’s health and empowering individuals to raise human rights claims for disease prevention and health promotion. Supporting efforts to facilitate rights-based accountability through national political advocacy and international treaty monitoring, a rapidly expanding enforcement paradigm has arisen at the intersection of human rights litigation and national health policy.¹⁶ Where experience has shown that human rights are justiciable for health, litigation before national, regional, or international courts (or quasi-judicial bodies, such as the United Nations Human Rights Committee and the Inter-American Commission on Human Rights) allows individuals to seek impartial adjudication from a formal institution with remediation authority.¹⁷ With this litigation thought to deliver benefits beyond the individual claimant, such cases are often sought to reform policies that will impact the health of entire classes of people. These cases, based upon international human rights instruments and national constitutional provisions, have only begun to show tangible gains in national health policy, with tribunals around the world expansively exercising their authorities to interpret human rights, clarify individual claims, and prescribe national policies in response to leading threats to health.^{18,19}

Incorporating underlying determinants of health, human rights litigation for health includes all the civil, political, economic, social, and cultural rights that affect health. While the justiciability of social and economic rights now a reality in almost all states, the post-Cold War consensus on human rights, memorialized in health through General Comment 14, has recognized that these so-called “positive” rights can be enforced even in their progressive realization.²⁰ Often in contentious dialectic with the

political branches of government, courts have advanced the interests of resurgent social movements against recalcitrant government actors. Spurred on by the “exceptional” rights-based response to HIV/AIDS—beginning in freedoms from discrimination and transitioning to access to essential medicines—litigation has produced wide-ranging health policy reforms.^{21,22} With human rights influencing a wide range of accountability mechanisms for the progression of human dignity—including international monitoring bodies, human rights indicators, and “naming and shaming” advocacy—jurisprudence has the ability to complement and concretize these other mechanisms for the realization of rights.²³ As this accountability movement develops across multiple countries, with courts often standing firm as a last resort in protecting the public’s health, human rights are translated from principle to practice through judicial action.

Since General Comment 14, the number of such cases has increased dramatically, throughout the world and especially in middle- and low-income countries. An “integrated approach” to positive and negative rights has led to the adjudication of health issues pursuant to an expanding range of health-related human rights claims – from freedom from medical discrimination to the right to water and sanitation.²⁴ Likewise, these cases have focused on an expanding range of health topics, including, among others, access to health services and medication; public health prevention; and underlying determinants of health such as poverty, gender, and violence. Despite criticism that this rights-based litigation has distorted national health governance, there seems to be a clear trend toward more (and more progressive) cases²⁵ – a trend that is likely to accelerate given the creation of a supranational individual complaint mechanism under the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.²⁶ Yet in advancing this litigation to realize health-related rights—whether brought by individuals with a specific health concern or by activists seeking to hold governments accountable for public health obligations—there is limited understanding of the legal strategies for litigation success, the policy effects across varied national health systems, and the public health implications of these cases.

WHO addresses human rights litigation

Given this limited understanding, WHO has sought to develop a basis for comparative assessments of human rights in support of global health. Fulfilling this mission, WHO’s Department of Ethics, Equity, Trade and Human Rights seeks to:

- (1) Support governments to integrate a human rights-based approach in health development,
- (2) Strengthen WHO’s capacity to integrate a human rights-based approach in its work, and
- (3) Advance the right to health in international law and international development processes.²⁷

With both the institutional authority and legal capacity to establish international coordination and cooperation for rights-based approaches to health, WHO has undertaken efforts to “mainstream” human rights as a cross-cutting policy, collaborating with organizations, scholars, and advocates at the intersection of health and human rights.²⁸

In these efforts, WHO has encouraged studies to facilitate a deeper understanding of accountability for health-related rights, reaching out to academic institutions to undertake comprehensive surveys

and comparative analyses on the application of human rights law to global health policy. By cataloguing human rights for health in national, regional, and international case law, international instruments, and national constitutions, access to this comparative information can provide a means to support rights-based accountability.

This Human Rights Law Database arises through the cooperative efforts of WHO and the O'Neill Institute, later joined by UNFPA, to develop a searchable online database that would provide a systematic survey of human rights jurisprudence for health and would catalogue the interaction between health and human rights in national, regional, and international case law, international and regional instruments, and national constitutions. Following up on a WHO Actors Database—which surveys organizational structures and programs at the intersection of health and human rights²⁹—this Database aims to provide comprehensive access to human rights law for the public's health. Partnering with the O'Neill Institute and UNFPA to map the legal and jurisprudential landscape at the intersection of public health and human rights, the Health and Human Rights Law Database strengthens WHO's capacity to work with states in developing human rights-based approaches to health and strengthens individuals' resources to create accountability for these state obligations to realize the highest attainable standard of health.

methodology

The Health and Human Rights Law Database seeks to bring together three connected areas of human rights law for the public's health, investigating the intersection of health and human rights by compiling, summarizing, and categorizing health-related human rights in case law, international instruments, and constitutional provisions.

Case law section

The Health and Human Rights Law Database aims to provide comprehensive access to case law at the intersection of health and human rights, categorized on the basis of the human rights claimed, the health topics advanced, and the geographic region concerned.

Following an exhaustive search for cases in multiple languages—identified through leading journals and books, NGO announcements, international organizations and agencies (in particular, UNFPA), and online electronic databases—relevant cases (largely under common law legal systems, but with examples from civil law systems) were selected for inclusion in the Database and summarized where the specific case:

- (1) is adjudicated by an international, regional, or domestic court (or quasi-judicial body, such as the UN Human Rights Committee or the Inter-American Commission on Human Rights);
- (2) argues a health-related 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 topics.

As these selection criteria implicate decisions defining the scope and content of health and human rights, the researchers developed these qualifications through an iterative decision making process, by which an initial set of proposed criteria were revised based upon expert feedback and refined based upon compiled cases, with each case honing the initial criteria and formulating more specific criteria for future consideration. In initially proposing this comprehensive classification system, the case law section of the Database was divided principally through the human rights claimed (grouped under clusters of freedoms, entitlements, and underlying determinants developed in General Comment 14) and the health topics advanced (based on WHO classifications), revising these categories (e.g., adding a health topic based upon “population groups”) to arrive at the following human rights and health topics:

Table 1 – Human Rights and Health Topics Classifications

Human Rights	Health Topics
<ul style="list-style-type: none"> • 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 and Cruel, Inhuman, or Degrading Treatment or Punishment • Right of Access to Information • Freedom from Discrimination 	<ul style="list-style-type: none"> • Health Services (e.g., healthcare, equipment, staff, information, adequate drugs) • Health Promotion (e.g., education, community development, policy, legislation, regulation) • Infectious Diseases (e.g., HIV/AIDS, tuberculosis, tropical diseases) • Chronic Diseases (e.g., cancer, cardiovascular diseases, diabetes, respiratory tract diseases) • Child Health and Development • Aging • Environmental Health (e.g., water, drinking water, sanitation, food safety, environmental pollution, air pollution, climate change, social environment) • Emergencies (e.g., armed conflicts, disasters, disease outbreaks, bioterrorism) • Health Technology and Pharmaceutical Products (e.g., essential medicines, biomedical technologies, medical devices, research, drug resistance, eHealth) • Health Systems (health financing, health services, health education, medical education, health workforce, health legislation, health policies, social security, research, research policy) • Clinical Trials (e.g., vulnerable population, case control, ethics, informed consent) • Poverty (e.g., social determinants of health) • Gender • Violence (e.g., gender-based violence) • Population Groups (e.g., children, women, older persons, indigenous populations, persons with disabilities, migrants, prisoners, refugees) • Reproductive and Sexual Health (e.g., family planning, infertility, pregnancy, maternal health, breastfeeding, sexuality, sexually transmitted infections, female genital mutilation) • Tobacco/Substance abuse

Human Rights	Health Topics
	<ul style="list-style-type: none"> • Mental Health • Occupational Health

By arranging national, regional, and international jurisprudence in accordance with these categories, including cases in more than one category where circumstances warrant, this Database endeavors to provide a complete picture of rights-based health litigation for health. After the initial identification and categorization, the researchers described each case on the basis of the parties, arguments, judicial reasoning, holding, and outcome. Once summarized, these cases were delineated and described on the basis of a variety of instrumental criteria—year, country, court, human rights, health topics, facts, decision, excerpt, and online link—incorporated into the database development software FileMaker Pro, and posted to the Database’s online interface.

International and regional instruments section

Complementing this rights-based jurisprudence, the Health and Human Rights Law Database seeks to assess the international legal instruments that codify the health-related rights identified in General Comment 14.

From the specific international instruments referenced in the case law section, international and regional legal instruments were selected for inclusion in the Database and excerpted where the instrument:

- (1) is of international or regional (multinational) scope;
- (2) is legally binding, partially legally binding, or soft law that has been widely recognized as central to the promotion of health through a human rights framework; and
- (3) contains provisions that address a health-related right of individuals or groups or an obligation of duty-bearers that has been identified in General Comment 14.

Following initial identification, the researchers excerpted relevant provisions, and each instrument was described on the basis of a number of instrumental criteria—year of adoption, year of entry into force, legal status (legally binding or non-legally binding), regional scope, excerpt, and online link—incorporated into the database development software FileMaker Pro, and posted to the Database’s online interface.

National constitutions section

Given the growing “constitutionalization” of health-related rights and the role of constitutions in the national implementation of international law, the Health and Human Rights Law Database seeks to highlight constitutional provisions that uphold health-related rights, including those constitutions that draw upon referenced international instruments.

Constitutions were selected for inclusion in the Database and excerpted where a constitutional provision:

- (1) addresses a right or an obligation considered to be explicitly linked with or interpreted in relation to health services or the underlying determinants of health;
- (2) explicitly states either a right of individuals or groups or an obligation of the government (including provisions on freedoms, such as freedom from torture, which may be stated as a prohibition); and
- (3) contains clauses that concern general principles of equity, non-discrimination, and participation in relation to health or relevant to the implementation of the health-related rights identified by General Comment 14.

Focusing on actionable constitutional provisions, national constitutions were not included where they provided only a statement of aspiration, a cursory reference to a relevant health issue, or a broad definition of the government's scope of work without an explicit declaration of the state's obligation or the rights of individuals and groups. Following initial identification, the researchers excerpted relevant provisions, and each constitution was described on the basis of a number of instrumental criteria—regional scope, year of adoption, year of enactment, original language, human rights, and online link—incorporated into the database development software FileMaker Pro, and posted to the Database's online interface.

Expert review and official launch of Database

To assure comprehensiveness in its scope and accuracy in its content, 52 human rights practitioners and scholars across geographic regions and health specialties reviewed the Database,³⁰ using an online evaluative survey to elicit feedback on the usability and substance of the online Database. In this survey, reviewers were asked to evaluate the Database based on the interface of the website and the ease with which they were able to search and find a pre-selected case, international or regional instrument, or national constitution using the various search categories provided on the Database's search page. This approach allowed the reviewer to confirm the usability of the search categories, as well as suggest categories that should be added. Where the reviewer was unable to find the case, international or regional instrument, or national constitution searched, the reviewer was invited to identify the case or legal instrument for its inclusion. Confirming the substance of the Database, reviewers were also asked to assess the categorization of the case law section based on the health topic and human right categories of the Database and evaluate the comprehensiveness, organization, and quality of the summaries across all three sections of the Database. Finally, reviewers were asked a series of conceptual questions on the Database's overall ability to capture the dynamic interaction between health and human rights through its collection and categorization of case law, international instruments, and national constitutions. With the researchers adding additional categories, revising summaries, and adding new sources in accordance with this review, the Database was launched publicly on July 1, 2011.

results

Through its online interface, users can search the Health and Human Rights Law Database under each of its three independent sections. In the case law section, users can search for cases by the human rights claimed (grouped under clusters of freedoms and entitlements), the health topics advanced (based on WHO classifications), the geographic region concerned (organized by WHO region), or a specific keyword search. In a similar manner, the international instruments and the national constitutions sections allow users to search for specific instruments or constitutions based on their regional scope or

through a keyword search. An interactive (flash) global map feature allows country-specific searches for case law and constitutional provisions.

Figure 1 – Search Page of the Health and Human Rights Law Database



O'Neill Institute
for National and Global Health Law

World Health Organization

UNFPA

What is the Health and Human Rights Law Database?

The Health and Human Rights Law Database is a project jointly undertaken by the World Health Organization (WHO), the United Nations Population Fund (UNFPA), and the O'Neill Institute for National and Global Health Law at Georgetown University to develop a searchable database that reflects the dynamic interaction between health and human rights. In response to the growing need for a comprehensive accounting of the international, regional, and domestic landscape of health and human rights, this Database categorizes (1) case law, (2) international and regional instruments, and (3) national constitutions that enshrine health-related rights. The Database seeks to provide advocates, practitioners, and scholars with access to existing instruments and caselaw on health and human rights law that seek to realize the highest attainable standard of health.

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> About the Database
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Project Partners

The screenshot shows the search interface for the Health and Human Rights Law Database. On the left, a sidebar has 'Caselaw' selected. The main area has three tabs: 'Caselaw' (selected), 'International and Regional Instruments', and 'National Constitutions'. Under 'Caselaw', there are dropdown menus for 'Human Right', 'Health Topic', 'Regional Scope', and 'Full Text Search', along with a 'Sort By' dropdown and a 'Search' button. Below the search area are three buttons: 'Recently Added Cases', 'See All Cases', and 'See All Cases by Map'.

Disclaimer: The designations employed and the presentation of the material in this database, including tables and maps, do not imply the expression of any opinion whatsoever on the part of the World Health Organization and the United Nations Population Fund concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

The mention of specific companies or of certain manufacturers' products does not imply that they are endorsed or recommended by the World Health Organization or the United Nations Population Fund in preference to others of a similar nature that are not mentioned. Errors and omissions excepted, the names of proprietary products are distinguished by initial capital letters.

Please note that the information provided in this database should not be construed as legal advice. Neither the researchers nor Georgetown University warrants that the information provided in this database is complete or accurate, and the Database should not be regarded as exhaustive for the purposes of litigation or as scientifically valid for the purposes of empirical research.

Due to language constraints, relevant cases from particular countries have not yet been integrated into the Database.

In viewing search results in each of the three sections of the Database, users can sort results based upon several categories determined to be pertinent through the expert review:

- *Case law section* – sorted by title, country, regional scope, or year.
- *International and regional instruments section* – sorted by title, regional scope, legal status, year of adoption, or year of entry into force.
- *National constitutions section* – sorted by country, regional scope, year of adoption, or year of enactment.

Figure 2 – Search Results Page

Health and Human Rights Law Database
Caselaw Database

[New Search](#)

Year

Displaying records 1 through 20 of 121 found. Sorted by Year.

2010

A, B, & C v. Ireland

Year: 2010
Court: European Court of Human Rights (Grand Chamber)
Country: Ireland/European System
Regional Scope: Europe
Citation: A, B, and C v. Ir., App. No. 25579/05, Eur. Ct. H.R. 2032 (2010).
Facts: Three applicants, two Irish nationals and one Lithuanian national, travelled to the United Kingdom in 2005 to have an abortion, each applicant believing they were not entitled to an abortion in Ireland. The first applicant decided to have an abortion to avoid jeopardizing her chances of reuniting her four previous children who were in foster care at that time. The second applic... [Read More »](#)

Association for Social Justice & Research v. Union of India & Ors.

Year: 2010
Court: High Court of Delhi
Country: India
Regional Scope: South East Asia
Citation: Ass'n for Social Justice & Research v. Union of India & Ors., W.P. (Crl) 535/2010 (2010)(India).
Facts: The Association for Social Justice and Research filed a due process fact-finding petition on behalf of a minor girl to discover her whereabouts. The petitioner claimed that the minor girl's parents married her at the age of 11 or 12 for consideration to a 40-year-old man, Mr. Yashpal, who then kept the minor girl in hiding. When police ordered to locate the girl, her father o... [Read More »](#)

Judgment of 9 February 2010

Year: 2010
Court: Federal Constitutional Court of Germany
Country: Germany
Regional Scope: Europe
Citation: Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Feb. 9, 2010, 1 BvL 1/09 (Ger.).
Facts: The Federal Constitutional Court reviewed the constitutionality of the "Hartz IV legislation," which provides for standard benefits paid according to a newly created Second Book of the Code of Social Law (SGB II). The Court reviewed the legislation to determine whether it complied with the constitutional requirement following from Articles 1.1 and 20.1 of the Basic La... [Read More »](#)

Mandal, Laxmi v. Deen Dayal Harinagar Hospital & Ors.

Year: 2010
Court: High Court of Delhi
Country: India
Regional Scope: South East Asia
Citation: Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, W.P.(C) 8853/2008 (2010) (India).
Facts: Two petitioners filed suit against the Union of India, the National Capital Territory of Delhi (GNCTD) and the State of Haryana, among others, for deficiencies in the implementation of a cluster of substantive benefits schemes funded by the Government of India to reduce infant and maternal mortality. In both cases, systemic failure of the schemes resulted in denial of benefits... [Read More »](#)

Mórrigan, Estrella v. Coomeva EPS (T-310/10)

Year: 2010
Court: Constitutional Court of Colombia
Country: Colombia
Regional Scope: The Americas
Citation: Corte Constitucional [C.C.] [Constitutional Court], Sala Primera de Revisión abril 30, 2010, M.P.: María Victoria Calle Correa, Sentencia T-310/10 (Colom.).
Facts: 25-year-old Petitioner brought a legal protection action before the Municipal Court of Santa Rosa against Coomeva EPS for refusing to cover the labiaplasty surgery prescribed by her doctor to treat her condition, labia minora hypertrophy. Petitioner was unable to fully cover the procedure and therefore, claimed that the denial of coverage constituted a violation of her rights... [Read More »](#)

By selecting a specific result, users can find complete summaries of each case, international or regional instrument, and constitution. Supporting research beyond the categorizations and detailed summaries, the Database includes a link to each case decision, international instrument, and national constitution, enabling users to access the full text of the original source (in its original language, translated into English where available).

Figure 3 – (Case) Result Page

Health and Human Rights Law Database
Caselaw Database

[Back to Results](#) [New Search](#)

Kudla v. Poland
Kudla v. Pol., App. No. 30210/96, 35 Eur. H.R. Rep. 198 (2000).

Country: Poland/European System
Regional Scope: Europe
Court: European Court of Human Rights (Grand Chamber)
Year: 2000
Procedural Stage: Judgment on the Merits and Just Satisfaction
Original Language: English/French

Facts
Applicant, a Polish national suffering from chronic depression, alleged violations of Articles 3, 5, 6 and 13 of the European Convention claiming he did not receive appropriate psychiatric treatment when incarcerated.
Applicant was on detention for fraud charges. While in prison, twice he tried to commit suicide and went on a hunger strike. On more than 70 occasions, he requested his release or appealed against decisions to hold him in detention, a process which lasted more than nine (9) years.
Evidence existed that he received adequate medical attention, especially from the beginning 1995 when he attempted the second suicide until his release in 1996.
Applicant complains that when in detention, his Articles 3 (adequate psychiatric treatment), 5 § 3 (trial within a reasonable time), 6 § 1 (unreasonably long proceedings) and 13 (effective remedy) rights had been violated.

Decision
The Court found violations of Articles 5, 6 and 13 as alleged by applicant, however, not of Article 3.
The Court accepted that the very nature of applicant's psychological condition made him more vulnerable than average, also that his detention may have exacerbated his distress, anguish, fear and jeopardized his life—especially when he had been kept in custody despite a psychiatric opinion that continuing detention may result in an attempted suicide. However, the Court did not find that the evidence substantiated ill-treatment so severe it would come within the scope of Article 3.

Excerpt(s)
93. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment.
94. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see, mutatis mutandis, the Aerts v. Belgium judgment of 30 July 1998, Reports 1998-V, p. 1966, §§ 64 et seq.).

Tags
[Applicant](#), [Detention](#), [Treatment](#)

[Back to Results](#) [New Search](#)

Health Topics
» Mental Health
» Population Groups

Human Rights
» Right to Health
» Right to Life
» Right to Bodily Integrity
» Right to Due Process
» Freedom from Torture and Cruel, Inhuman, or Degrading Treatment or Punishment

International/Regional Instruments
» [Convention for the Protection of Human Rights and Fundamental Freedoms \(European Convention on Human Rights \(ECHR\)\)](#)

National Law
» The Law of 6 June 1997
» The New Code of Criminal Procedure

Links
» [Decision \(PDF\)](#)
» [External Link to Decision](#)

The case law section of the Database now houses summaries of over 300 cases, arising from a wide range of country contexts, health topics, and human rights claims. While this non-empirical survey does not claim to represent the field completely, and the total number of judgments may well exceed those currently compiled (including those that did not result in written decisions), the methodology and expert review provide confidence in assessing the full scope and content of case law at the intersection of health and human rights.

In the continuing development of the Database, where specific legal sources are not yet included, users have the opportunity to suggest additional case law, international or regional instruments, and national constitutions for inclusion, with an online form allowing for attachment of the original source and user-initiated categorization. Following the Database launch, the researchers are continuously updating the Database through user communications and periodic evaluations, assuring the Database's ongoing relevance to a rapidly changing human rights landscape.

implications

By summarizing case law, international and regional instruments, and national constitutions and categorizing these summaries in a searchable Health and Human Rights Law Database, this systematic survey catalogues the interaction between health and human rights at national, regional, and international levels. Despite national progress in creating accountability structures for health-related rights, there exists little assessment of the reasoning, content, and effect of legal claims pursuant to these human rights standards. As judicial enforcement has increased, rising alongside a burgeoning accountability movement at the intersection of health and human rights, both proponents and opponents of rights-based policy have begun to question the limits of this legal strategy for national policy and the impact of litigation on global health. Given this growing critique of human rights law—leading to criticisms of public interest litigation, questions of legal legitimacy, and claims of “judicial activism”—there arises an imperative for interdisciplinary analysis – examining these precedents for rights-based claims, comparing divergent legal strategies conducive to the realization of human rights, and assessing the effects of law reforms on the public’s health. Addressing this imperative, the Database provides the academic and practice community with a research base to identify relevant legal instruments and case law precedents (facilitating policy reforms), enable comparative analysis of human rights jurisprudence (supporting legal and social scientific research), and create a framework for future scholarship on the role of human rights as a determinant of the public’s health (clarifying the impact of health-related rights on public health outcomes).

Transnational precedent

Serving as illustration and inspiration, successful rights-based claims can lead to the translation of compelling jurisprudential reasoning across national contexts. While legal reasoning is not considered to be binding precedent across nations, it has long been recognized that both regional and national case law has persuasive authority well outside their jurisdictions.³¹ Compounding their direct effect, these cases have indirect effects in raising global health awareness, catalyzing transnational movements, and spurring additional rights-based claims.¹⁶ In the context of health-related human rights claims, scholars have begun to identify the claims most likely to find jurisprudential success, adding some measure of consistency across nations and claims.³² Through similarities in reasoning, judicial bodies can examine

analogous factual situations and governmental responses, with norms emerging and cascading across jurisdictions and through supranational forums.^{33,34} Given the categorization under this Database, it is expected that as practitioners and academics engage in comparative analyses of legal strategies, analogous legal reasoning across national contexts may serve as precedents for future cases – reinforcing universality in the core content of rights, facilitating harmonization where comparable circumstances warrant, and appreciating difference in national approaches to rights realization.

Comparative analysis

While recognizing a sweeping imperative for universal and enforceable human rights standards under international law, context matters – as both the capabilities of the rights-holder and the obligations of the duty-bearer depend upon local conditions. Distinct political environments are more conducive to rights-based claims, and among those environments, it is clear that only a portion of cases are responsive to treaty-based legal argumentation.³⁵ Taken to the extreme, this Database highlights entire country contexts in which there is scant evidence of any human rights jurisprudence for health. Even in those contexts where there is legal mobilization, it is clear that different states will achieve different levels of rights realization at different times, with institutional configurations determining both individual entitlements and the adjudicatory procedures by which these entitlements are decided and implemented.¹⁹ For example, given distinctions inherent in the principle of progressive realization, leaving state realization of rights contingent on national resources,⁶ it is necessary to compare national health policies for states at equivalent levels of economic development – ensuring consistency in resource-dependent claims across analogous countries and comporting with General Comment 14's admonition that states bear “a specific and continuing obligation to move as expeditiously and effectively as possible towards [] full realisation.”¹¹ Through such comparative analysis, moving beyond the emblematic case studies often cited in jurisprudential analysis, a deeper understanding of human rights can be found in explicating divergent jurisprudential approaches to achieving the same rights-based goals and indicators.

Empirical research

With the effects of such litigation largely unexamined, there is a pressing research need for the health and human rights community to employ this Database in seeking to clarify the connections between human rights litigation and public health promotion. Outside of legal success before a judicial body, it is necessary to move beyond judgments to research: the mechanisms by which international instruments, national constitutions, and judicial decisions are implemented through policies; the obstacles that impede implementation of rights-based policy reforms; and the pathways through which such implementation can be conducive to meeting basic health needs.³⁶ In recent years, scholars have argued that human rights litigation for health, especially when extended beyond the response to HIV/AIDS, may serve to entrench privilege through medical care, obstruct principles of distributive justice, and abandon those in greatest need.³⁷⁻³⁹ To some outside the human rights practice community, these potential distortions in national health governance are seen as fatal flaws of justiciability and cause for casting aside human rights in health policy.⁴⁰ Yet even as this litigation agenda faces growing opposition, too little remains known about the multi-valent effects of these cases on the public's health – including the policies impacted, the populations affected, and the outcomes achieved.⁴¹ Given the potential of these criticisms to undermine accountability for rights-based health policy, it is vital that human rights scholars examine the empirical as well as normative justification for health-related human rights.⁴² With a clear trend toward an expansion of litigation opportunities, as individuals and NGOs

seek to hold governments accountable for human rights obligations, there remains limited empirical understanding of the causal link between these international instruments, rights-based judgments, health policies, and public health outcomes. Examining these social and political processes through the growth of this Database, it is expected that such a resource may provide the basis for empirical research on the impact of health-related rights on the public's health.

Conclusion

In meeting the great challenges of global health, human rights law is playing an increasing role in national health policy, with human rights jurisprudence giving meaning to the content of international instruments and national constitutions. While this human rights litigation landscape is in a constant state of evolution, the Health and Human Rights Law Database will allow advocates, practitioners, and scholars to stay apprised of these changes. As WHO, UNFPA, and the O'Neill Institute work together to disseminate this Health and Human Rights Law Database, it will be necessary to document and categorize the continuing expansion of case law and related legal instruments, ensuring that these legal developments are available to world.

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References

- ¹ L. O. Gostin, E. A. Friedman, G. Ooms, et al. "The joint action and learning initiative: towards a global agreement on national and global responsibilities for health," *PLoS Medicine* 8(5) (2011): pp. 1-5, <http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1001031>.
- ² L. Gostin and J. M. Mann, "Towards the development of a human rights impact assessment for the formulation and evaluation of public health policies," *Health and Human Rights* 1 (1994): pp. 58-80.
- ³ Preamble to the Constitution of the World Health Organization (1948).
- ⁴ M. Robinson, "What rights can add to good development practice," in P. Alston and M. Robinson (eds), *Human Rights and Development: Towards Mutual Enforcement* (Oxford: Oxford University Press, 2005): pp. 25–43.
- ⁵ A. E. Yamin, "Beyond compassion: The central role of accountability in applying a human rights framework to health," *Health and Human Rights* 10(2) (2008): 1-20.
- ⁶ International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), 993 (1966). Available at <http://www2.ohchr.org/english/law/cesr.htm>.
- ⁷ B. Toebe, *The Right to Health as a Human Right in International Law* (Antwerpen, Groningen, Oxford: Intersentia/Hart, 1999).
- ⁸ B. M. Meier, "Global health governance and the contentious politics of human rights: Mainstreaming the right to health for public health advancement," *Stanford Journal of International Law* 46 (2010): pp. 1-50.