

COURSE SYLLABUS

HEALTH AND HUMAN RIGHTS

Details

Course Number 1411744440

Spring Semester 2021 (7 March to 13 June 2021, 13 classes)

Sundays 14:15-15:45 (90 minutes)

Tel Aviv University, The Buchmann Faculty of Law

Lecturer

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Office Hours: by appointment (individual Zoom meeting; please do not hesitate to contact me!)

Attributes

- Teaching method: This course is a lecture-based course with preparatory readings, class discussions, cases studies, and various media presentations;
- Due to the exceptional situation created by the COVID-19 pandemic, the course is taught through the Zoom online conference system;
- Language of instruction: English;
- Method of evaluation: final exam (90%); active class participation (including one short in-class presentation on an assigned topic) (10%).

Exam

The exam takes place on Wednesday 23 June 2021 at 14:00. It is open-book and includes two or three essay questions. Detailed instructions will be provided in due course.

Description

This course provides an opportunity to explore ways in which human health is interrelated with human rights. It studies and assesses the basic components of governmental obligations related to health under international human rights law. The course begins by examining the emergence of health and human rights as a distinct field. Following this, it considers the meaning of the international right to health, stressing the differences between civil and political rights, on the one hand, and economic, social, and cultural rights, on the other. Although the course focuses broadly on health and human rights issues, special consideration is given to the right to health as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Beyond the ICESCR, the course also refers to other international instruments (*e.g.*, Convention on the Elimination of all Forms of Discrimination Against Women) and regional instruments (*e.g.*, European Convention on Human Rights), national constitutions and legislation, as well as regional and national cases.

After exploring a series of foundational themes and issues (Part I – The field of health and human rights), the course critically analyzes the human rights dimensions of a variety of health challenges through in-depth case studies (Part II – Applying the health and human rights framework to different health topics). Finally, the course identifies ways in which a human rights approach can be used as an advocacy tool to improve the policies that shape the public's health. It also debates current critiques of the rights' discourse and analyze future directions of health and human rights in an age of populism and (post) COVID-19 (Part III – Beyond the rights' discourse).

Objectives and Learning Outcomes

Following successful completion of the course, you will be able to:

- Discuss the relationship between health and human rights in a variety of contexts, exploring the role of human rights as both a safeguard against harm and a catalyst for health promotion;
- Describe the means and methods through which health outcomes can be influenced using a human rights approach;
- Comprehend the theoretical framework underlying a human rights approach to health;
- Debate the relevance of international human rights law for health;
- Understand the normative content of the international human rights system as it relates to health, including but not limited to international treaties, covenants, declarations, and regulations, such as those resulting from the World Health Organization, United Nations human rights treaty bodies, and the World Trade Organization;
- Master substantive knowledge about the scope and content of the right to health;
- Comprehend various mechanisms for realizing the right to health, including litigation and advocacy;
- Apply analytical skills and critical reflection to evaluate the human rights dimensions of a variety of health challenges around the world.

Expectations (Zoom, preparatory readings, class participation and presentations)

- Our class meets through Zoom. We adopt the same rules as in a physical classroom (take notes, participate by asking and answering questions, etc.). For everyone's benefit, join the course in a quiet place. Turn on your video. Mute your microphone unless you are speaking. Close browser tabs not required for participating in class. Success with this form of learning depends on the same commitment we all bring to the physical classroom.
- You are expected to attend and participate in all online classes, having read all the readings assigned for the class. The course does not rely entirely on professorial lecture. Active learning through class participation and discussion are an important component of the course. Some classes include interactive exercises for which you are divided into smaller working groups ("Zoom break-out rooms").

- Class participation is assessed on a qualitative rather than quantitative basis. This assessment includes a short in-class presentation on an assigned topic.
- All 13 Zoom classes are recorded. Should you, exceptionally, not be able to attend the Zoom meeting at the scheduled time, please contact me to inform me of your absence. You may have a look at the Zoom recording after the class. The PowerPoint presentations of each class will be available on the course website:
<https://moodle.tau.ac.il/course/view.php?id=1411744440>.
- We begin every class with a short discussion of an example of current events or news relating to the course topic of health and human rights (“Health and Human Rights in the News”). Please screen the news for such examples and be prepared to briefly present one at the beginning of every class.
- I have long been fascinated by the subject matter of this course. I hope you will share my enthusiasm for the intellectually challenging ideas presented in the readings and the class work. I look forward to getting to know you and to many thoughtful discussions. If I can ever be of assistance, please contact me and we can talk at any mutually convenient time.

Reading Material

For every class, a variety of articles, book chapters, court cases, and other materials are available on the course website (<https://moodle.tau.ac.il/course/view.php?id=1411744440>). The “questions for discussion” that follow the list of readings in the detailed course outline below are designed to guide you through the readings. After completing the assigned readings, you should be able to answer those questions for yourself. They are not necessarily the questions to be examined in class. Your understanding of the “questions for discussion” should help you place the readings in a broader context of health and human rights. Finally, I encourage you to ask and debate questions related to the course materials on the course website’s forum.

Schedule Overview

	Part I – The field of health and human rights	Date
Session 1	Introduction to health and human rights	7 March 2021
Session 2	Foundations of a human rights approach to health	14 March 2021
Session 3	The right to health	21 March 2021
Session 4	Litigating the right to health – case studies	24 March 2021
Session 5	Justiciability of the right to health – critical discussion	11 April 2021
	Part II – Applying the health and human rights framework to health topics	
Session 6	Infectious diseases	18 April 2021
Session 7	COVID-19 and human rights	25 April 2021
Session 8	Non-communicable diseases	2 May 2021
Session 9	Medicines and markets	9 May 2021
Session 10	Women’s health I: sexual and reproductive health	23 May 2021
Session 11	Women’s health II: maternal health	30 May 2021
Session 12	Prison health	6 June 2021
	Part III – Beyond the rights’ discourse	
Session 13	Critiques of the right to health and future directions in an age of populism and (post) COVID-19	13 June 2021

DETAILED COURSE OUTLINE

Part I The field of health and human rights

Session 1 Sunday 7 March 2021

Introduction to health and human rights

- Course overview
- What is health?
- Distinguishing public health, health care, and social determinants of health
- Linking health and human rights: history and context

Required readings

- Lawrence O. Gostin *et al.*, *70 years of human rights in global health: drawing on a contentious past to secure a hopeful future*, 392 *THE LANCET* 2731 (2018).
- Alicia E. Yamin & Andres Constantin, *A Long and Winding Road: The Evolution of Applying Human Rights Frameworks to Health*, 49 *GEORGETOWN JOURNAL OF INTERNATIONAL LAW* 191 (2018).

Optional readings

- Paul Farmer, *Pathologies of Power: Rethinking health and human rights*, 89 *AMERICAN JOURNAL OF PUBLIC HEALTH* 1486 (1999).
- LAWRENCE O. GOSTIN, *GLOBAL HEALTH LAW* 59 (2014) (Chapter 3 on *Global Health Law in the Broader Currents of Global Governance for Health*).
- Sofia Gruskin, *Is There a Government in the Cockpit: A Passenger's Perspective on Global Public Health: The Role of Human Rights*, 77 (2) *TEMPLE LAW REVIEW* 313 (2004).
- Benjamin M. Meier *et al.*, *The Birth and Development of Human Rights for Health*, in *FOUNDATIONS OF GLOBAL HEALTH AND HUMAN RIGHTS* 23 (Lawrence O. Gostin & Benjamin M. Meier eds., 2020).
- Benjamin M. Meier & Lawrence O. Gostin, *The Origins of Human Rights in Global Health*, in *HUMAN RIGHTS IN GLOBAL HEALTH: RIGHTS-BASED GOVERNANCE FOR A GLOBALIZING WORLD* 21 (Benjamin M. Meier & Lawrence O. Gostin eds., 2018).
- Alicia E. Yamin, *Democracy, Health Systems and the Right to Health: Narratives of Charity, Markets and Citizenship*, in *HUMAN RIGHTS, DEMOCRACY, AND LEGITIMACY IN A WORLD OF DISORDER* 185 (Silja Voeneke & Gerald L. Neuman eds., 2018).
- ALICIA E. YAMIN, *POWER, SUFFERING AND THE STRUGGLE FOR DIGNITY: HUMAN RIGHTS FRAMEWORKS FOR HEALTH AND WHY THEY MATTER* 73 (2017) (Chapter 3 on *Redefining Health: Challenging Power Relations*).
- ALICIA E. YAMIN, *POWER, SUFFERING AND THE STRUGGLE FOR DIGNITY: HUMAN RIGHTS FRAMEWORKS FOR HEALTH AND WHY THEY MATTER* 229 (2017) (*Conclusion: Another World Is Possible*).

Session 2 Sunday 14 March 2021

Foundations of a human rights approach to health

- Legal theory of health and human rights
- Distinction between civil and political and economic, social, and cultural rights
- Rights and corresponding State obligations
- Non-discrimination and equality; participation; accountability

Required readings

- Jonathan M. Mann *et al.*, *Health and Human Rights*, 1(1) HEALTH AND HUMAN RIGHTS 6 (1994).
- John Tobin & Damon Barrett, *The Right to Health and Health-Related Human Rights*, in FOUNDATIONS OF GLOBAL HEALTH AND HUMAN RIGHTS 67 (Lawrence O. Gostin & Benjamin M. Meier eds., 2020).

Optional readings

- Mey Akashah & Stephen P. Marks, *Accountability for the Health Consequences of Human Rights Violations*, 9(2) HEALTH AND HUMAN RIGHTS 257 (2006).
- AUDREY R. CHAPMAN, GLOBAL HEALTH, HUMAN RIGHTS AND THE CHALLENGE OF NEOLIBERAL POLICIES 1 (2016) (chapter 1 on *The right to health as an emergent human right*).
- AUDREY R. CHAPMAN, GLOBAL HEALTH, HUMAN RIGHTS AND THE CHALLENGE OF NEOLIBERAL POLICIES 29 (2016) (chapter 2 on *Evaluating interpretations of the right to health*).
- Audrey Chapman, *Conceptualizing the Right to Health: A Violations Approach*, 65 TENNESSEE LAW REVIEW 389 (1998).
- Cheryl E. Easley *et al.*, *The Challenge and Place of International Human Rights in Public Health*, in PERSPECTIVES ON HEALTH AND HUMAN RIGHTS 519 (Sofia Gruskin *et al.* eds., 2005).
- Timothy Goodman, *Is There a Right to Health?*, 30 JOURNAL OF MEDICINE AND PHILOSOPHY 643 (2005).
- Sofia Gruskin *et al.*, *Human rights in health systems frameworks: What is there, what is missing and why does it matter?*, 7(4) GLOBAL PUBLIC HEALTH 337 (2012).
- Paul Hunt, *Interpreting the International Right to Health in a Human Rights-Based, Approach to Health*, 18 HEALTH AND HUMAN RIGHTS 109 (2016).
- Virginia Leary, *The Right to Health in International Human Rights Law*, 1(1) HUMAN RIGHTS QUARTERLY 24 (1994).
- Leslie London, *What Is a Human-Rights Based Approach to Health and Does It Matter?*, 10 HEALTH AND HUMAN RIGHTS 65 (2008).
- Stephen P. Marks, *Jonathan Mann's Legacy to the 21st Century: The Human Rights Imperative for Public Health*, 29(1) JOURNAL OF LAW, MEDICINE & ETHICS 131 (2001).

- Benjamin M. Meier, *Advancing Health Rights in a Globalized World: Responding to Globalization Through a Collective Human Right to Public Health*, 35 JOURNAL OF LAW, MEDICINE & ETHICS 545 (2007).
- Benjamin M. Meier & Lawrence O. Gostin, *Framing Human Rights in Global Health Governance*, in HUMAN RIGHTS IN GLOBAL HEALTH: RIGHTS-BASED GOVERNANCE FOR A GLOBALIZING WORLD 63 (Benjamin M. Meier & Lawrence O. Gostin eds., 2018).
- Benjamin M. Meier & Larisa M. Mori, *The Highest Attainable Standard: Advancing a Collective Human Right to Public Health*, 37 COLUMBIA HUMAN RIGHTS LAW REVIEW 101 (2005).
- Gerald M. Oppenheimer *et al.*, *Health and Human Rights: Old Wine in New Bottles*, 30 JOURNAL OF LAW, MEDICINE & ETHICS 522 (2002).
- Eibe Reidel, *The Human Right to Health: Conceptual Foundation*, in REALIZING THE RIGHT TO HEALTH - SWISS HUMAN RIGHTS BOOK VOL. 3 21 (Andrew Clapham *et al.* eds., 2009).
- JOHN TOBIN, THE RIGHT TO HEALTH IN INTERNATIONAL LAW 44 (2012) (chapter on *The right to health - its conceptual foundations*).
- Brigit Toebes, *Towards an Improved Understanding of the International Human Right to Health*, 21 HUMAN RIGHTS QUARTERLY 661 (1999).
- Brigit Toebes, *Health and Human Rights: In Search of the Legal Dimension*, 9 HUMAN RIGHTS & INTERNATIONAL LEGAL DISCOURSE 212 (2015).
- ALICIA E. YAMIN, POWER, SUFFERING AND THE STRUGGLE FOR DIGNITY: HUMAN RIGHTS FRAMEWORKS FOR HEALTH AND WHY THEY MATTER 99 (2017) (Chapter 4 on *Health Systems as “Core Social Institutions”*)
- Alicia E. Yamin, *Will We Take Suffering Seriously? Reflections on What Applying a Human Rights Framework to Health Means and Why We Should Care*, 10 HEALTH AND HUMAN RIGHTS 45 (2008).
- WORLD HEALTH ORGANIZATION & UN OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS, A HUMAN RIGHTS-BASED APPROACH TO HEALTH (2010).

Questions for discussion

- How does an issue become part of the international human rights agenda?
- Who is bound by international human rights law?
- What is meant by a “human rights-based approach to health”?
- How do human rights under international law complement social justice advocacy for public health?
- Why are human rights sometimes perceived as an obstacle to sound public health interventions?
- Given the existence of a right to health, why is it also necessary to consider a rights-based approach to health?
- Why was the right to health a central dispute in the ideological conflict among the Cold War superpowers?

Session 3 Sunday 21 March 2021

The right to health

- Emergence of the right to health: historical perspective
- Nature of the right to health and its normative content in international human rights law
- Access to essential medicines; universal health care
- Accountability mechanisms of international human rights law instruments
- International, regional, and domestic dimensions of the right to health

Required readings

- World Health Organization Constitution (1946) (Preamble).
- United Nations Universal Declaration of Human Rights (1948) (Preamble, Article 25(1)).
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) (Preamble, Articles 2 & 12).
- Declaration of Alma Ata, International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978.

- Lisa Forman & Sivan Bomze, *International Human Rights Law and the Right to Health: An Overview of Legal Standards and Accountability Mechanisms*, in *THE RIGHT TO HEALTH - THEORY AND PRACTICE* 33 (Gunilla Backman ed., 2012).
- LAWRENCE O. GOSTIN, *GLOBAL HEALTH LAW* 243 (2014) (Chapter 8 on *Health and Human Rights - Human Dignity, Global Justice, and Personal Security*).

Optional readings

- Committee on Economic, Social and Cultural Rights, *General Comment No.14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/2000/4 (July 4, 2000).
- WHO Model Lists of Essential Medicines:
<https://www.who.int/medicines/publications/essentialmedicines/en/>

- Gunilla Backman *et al.*, *Health Systems and the Right To Health: An Assessment Of 194 Countries*, 372 *THE LANCET* 2047 (2008).
- Judith R. Bueno De Mesquita *et al.*, *The Future of Human Rights Accountability for Global Health through the Universal Periodic Review*, in *HUMAN RIGHTS IN GLOBAL HEALTH: RIGHTS-BASED GOVERNANCE FOR A GLOBALIZING WORLD* 537 (Benjamin M. Meier & Lawrence O. Gostin eds., 2018).
- AUDREY R. CHAPMAN, *GLOBAL HEALTH, HUMAN RIGHTS AND THE CHALLENGE OF NEOLIBERAL POLICIES* 283 (2016) (chapter 8 on *Right to health perspectives on universal health coverage*).
- Audrey R. Chapman *et al.*, *Evaluating essential health packages from a human rights perspective*, 16(2) *JOURNAL OF HUMAN RIGHTS* 142 (2017).
- Chris Desmond *et al.*, *Relative response: Ranking country responses to HIV and AIDS*, 10(2) *HEALTH AND HUMAN RIGHTS* 105 (2008).

- Colleen M. Flood & Aeyal Gross, *Introduction: Marrying Human Rights and Health Care Systems*, in *THE RIGHT TO HEALTH AT THE PUBLIC/PRIVATE DIVIDE: A GLOBAL COMPARATIVE STUDY 1* (Colleen M. Flood & Aeyal Gross eds., 2014).
- Colleen M. Flood & Aeyal Gross, *Conclusion: Contexts for the Promise and Peril of the Right to Health*, in *THE RIGHT TO HEALTH AT THE PUBLIC/PRIVATE DIVIDE: A GLOBAL COMPARATIVE STUDY 451* (Colleen M. Flood & Aeyal Gross eds., 2014).
- Aeyal Gross, *The Right to Health in an Era of Privatization and Globalization, National and International Perspectives*, in *EXPLORING SOCIAL RIGHTS: BETWEEN THEORY AND PRACTICE 289* (Daphne Barak-Erez & Aeyal Gross eds., 2007).
- Hans V. Hogerzeil, *Essential Medicines*, in *THE RIGHT TO HEALTH - THEORY AND PRACTICE 263* (Gunilla Backman ed., 2012).
- Eleanor D. Kinney & Brian A. Clark, *Provisions for Health and Health-Care in the Constitutions of the Countries of the World*, 37 *CORNELL INTERNATIONAL LAW JOURNAL* 285 (2004).
- Stephen P. Marks, *The emergence and scope of the human right to health*, in *ADVANCING THE HUMAN RIGHT TO HEALTH 3* (José M. Zuniga *et al.* eds., 2013).
- Stephen R. Marks & Adriana L. Benedict, *Access to medical products, vaccines, and medical technologies*, in *ADVANCING THE HUMAN RIGHT TO HEALTH 305* (José M. Zuniga *et al.* eds., 2013).
- Benjamin M. Meier & Virginia B. Gomes, *Human Rights Treaty Bodies - Monitoring, Interpreting, and Adjudicating Health-Related Human Rights*, in *HUMAN RIGHTS IN GLOBAL HEALTH: RIGHTS-BASED GOVERNANCE FOR A GLOBALIZING WORLD 509* (Benjamin M. Meier & Lawrence O. Gostin eds., 2018).
- Amartya Sen, *Universal Health Care: The Affordable Dream*, 5 *HARVARD PUBLIC HEALTH REVIEW* 1 (2015).
- JOHN TOBIN, *THE RIGHT TO HEALTH IN INTERNATIONAL LAW 14* (2012) (chapter on *Charting the history of the right to health*).
- Veronika J. Wirtz *et al.*, *Essential medicines for universal health coverage*, 389 *THE LANCET* 403 (2017).
- Alicia E. Yamin, *Not Just a Tragedy: Access to Medications as a Right under International Law*, 21 *BOSTON UNIVERSITY INTERNATIONAL LAW JOURNAL* 325 (2004).
- ALICIA E. YAMIN, *POWER, SUFFERING AND THE STRUGGLE FOR DIGNITY: HUMAN RIGHTS FRAMEWORKS FOR HEALTH AND WHY THEY MATTER 131* (2017) (Chapter 5 on *Beyond Charity: The Central Importance of Accountability*).

Questions for discussion

- Is there a human right to health? Is there a human right to healthcare?
- Why is a right to healthcare insufficient in reflecting the normative content of the right to health?
- How does the right to health relate to other human rights?
- How is this right monitored internationally?
- How do overlapping monitoring and review mechanisms across levels of governance (national, regional, and international) complement each other in assessing the implementation of health-related human rights?

Session 4 Wednesday 24 March 2021

Litigating the right to health – case studies

- Emergence and evolution of right to health litigation
- Case studies: Argentina, Brazil, Colombia, India, Israel, and South Africa
- In-class presentations: 5 to 7 minutes; you can prepare a few PowerPoint slides to be shared on Zoom with all of us (summary)

Required readings (for all)

- Coleen Flood & Aeyal Gross, *Litigating the Right to Health: What Can We Learn from a Comparative Law and Health Care Systems Approach*, 16 HEALTH AND HUMAN RIGHTS 63 (2014).
- Colleen M. Flood & Bryan Thomas, *Justiciability of Human Rights for Health*, in FOUNDATIONS OF GLOBAL HEALTH AND HUMAN RIGHTS 177 (Lawrence O. Gostin & Benjamin M. Meier eds., 2020).

Required readings (depending on your assigned case study for in-class presentations)

Case study: Argentina

- Victor Abramovich & Laura Pautassi, *Judicial activism in the argentine health system: recent trends*, 10(2) HEALTH AND HUMAN RIGHTS 53 (2008).
- Paola Bergallo, *Argentina – courts and the right to health: achieving fairness despite “routinization” in individual coverage cases*, in LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? 43 (Alicia E. Yamin & Siri Gloppen eds., 2011).

Case study: Brazil

- João Biehl *et al.*, *The Judicialization of Health and the Quest for State Accountability: Evidence from 1,262 Lawsuits for Access to Medicines in Southern Brazil*, 18(1) HEALTH AND HUMAN RIGHTS 209 (2016).
- Octavio L. Motta Ferraz, *Brazil – health inequalities, rights, and courts: the social impact of the judicialization of health*, in LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? 76 (Alicia E. Yamin & Siri Gloppen eds., 2011).
- Mariana M. Prado, *The debatable role of courts in Brazil’s health care system: does litigation harm or help?*, 41(1) JOURNAL OF LAW, MEDICINE & ETHICS 124 (2013).

Case study: Columbia

- Alicia E. Yamin *et al.*, *Colombia – judicial protection of the right to health: an elusive promise*, in LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? 103 (Alicia E. Yamin & Siri Gloppen eds., 2011).
- Alicia E. Yamin & Oscar Parra, *Judicial Protection of the Right to Health in Colombia: From Social Demands to Individual Claims to Public Debates*, 33(2) HASTINGS INTERNATIONAL AND COMPARATIVE LAW REVIEW 431 (2010).

Case study: Costa Rica

- Bruce M. Wilson, *Costa Rica – health rights litigation: causes and consequences*, in LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? 132 (Alicia E. Yamin & Siri Gloppen eds., 2011).

Case study: India

- Sharanjeet Parmar & Namita Wahi, *India – citizens, courts, and the right to health: between promise and progress*, in LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? 155 (Alicia E. Yamin & Siri Gloppen eds., 2011).

Case study: Israel

- Aeyal Gross, *The right to health in Israel between solidarity and neoliberalism*, in THE RIGHT TO HEALTH AT THE PUBLIC/PRIVATE DIVIDE: A GLOBAL COMPARATIVE STUDY 159 (Colleen M. Flood & Aeyal Gross eds., 2014).

Case study: South Africa

- Carole Cooper, *South Africa – health rights litigation: cautious constitutionalism*, in LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? 190 (Alicia E. Yamin & Siri Gloppen eds., 2011).
- Lisa Forman, *What Future for the Minimum Core? Contextualizing the implications of South African socioeconomic rights jurisprudence for the international human right to health*, in GLOBAL HEALTH AND HUMAN RIGHTS: LEGAL AND PHILOSOPHICAL PERSPECTIVES 62 (John Harrington & Maria Stuttaford eds., 2010).
- Lisa Forman, *Justice and justiciability: advancing solidarity and justice through South Africans' right to health jurisprudence*, 27 JOURNAL OF MEDICINE AND LAW 661 (2008).
- Marl Heywood, *South Africa's treatment action campaign: combining law and social mobilization to realize the right to health*, 1(1) JOURNAL OF HUMAN RIGHTS PRACTICE 14 (2009).

Case study: Venezuela

- Mary Ann Torres, *The Human Right to Health, National Courts, and Access to HIV/AIDS Treatment: A Case Study from Venezuela*, 3 CHICAGO JOURNAL OF INTERNATIONAL LAW 105 (2002).

Questions for discussion (to be addressed during in-class presentation)

- To what extent is the right to health justiciable? What about the right to healthcare?
- How successful is access to healthcare litigation in different domestic legal frameworks?
- What type of human rights law do the courts refer to? Domestic and/or international?
- What are the justiciability approaches taken by the various courts (*e.g.*, minimum core, reasonableness)?
- What are the advantages and disadvantages of realizing the right to health through the courts?

Session 5 Sunday 11 April 2021

Justiciability of the right to health – critical discussion

- Enforcing health-related claims through courts, both at the international and domestic levels
- Judicial activism
- Discussion of separation of power, democratic legitimacy, and other critical issues in the context of public resource allocation

Required readings

- Siri Gloppen & Mindy J. Roseman, *Introduction: Can Litigation Bring Justice to Health?*, in LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? 1 (Alicia E. Yamin & Siri Gloppen eds., 2011).
- Keith Syrett, *Evolving the Right to Health: Rethinking the Normative Response to Problems of Judicialization*, 20(1) HEALTH AND HUMAN RIGHTS 121 (2018).
- Alicia E. Yamin, *Power, Suffering, and Courts: Reflections on Promoting Health Rights through Judicialization*, in LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? 333 (Alicia E. Yamin & Siri Gloppen eds., 2011).

Optional readings

- Oscar A. Cabrera & Ana S. Ayala, *Advancing the right to health through litigation*, in ADVANCING THE HUMAN RIGHT TO HEALTH 25 (José M. Zuniga *et al.* eds., 2013).
- Varun Gauri & Daniel M. Brinks, *Introduction: The Elements of Legalization and the Triangular Shape of Social and Economic Rights*, in COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD 1 (Varun Gauri & Daniel Brinks eds., 2008).
- Siri Gloppen, *Litigating Health Rights: Framing the Analysis*, in LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH? 17 (Alicia E. Yamin & Siri Gloppen eds., 2011).
- Siri Gloppen, *Litigation as a Strategy to Hold Governments Accountable for Implementing the Right to Health*, 10(2) HEALTH AND HUMAN RIGHTS 21(2008).
- Hans V. Hogerzeil *et al.*, *Is Access to Essential Medicines as Part of the Fulfilment of the Right to Health Enforceable Through the Courts?*, 368 THE LANCET 305 (2006).
- Benjamin M. Meier & Alicia Ely Yamin, *Right to Health Litigation and HIV/AIDS Policy*, 39 JOURNAL OF LAW, MEDICINE & ETHICS 81 (2011).
- Alicia E. Yamin, *Promoting Equity in Health: What Role for Courts, Special Issue on Health Rights Litigation*, 16(2) HEALTH AND HUMAN RIGHTS 1 (2014).
- Alicia E. Yamin & Fiona Lander, *Implementing a Circle of Accountability: A Proposed Framework for Judiciaries and Other Actors in Enforcing Health-Related Rights*, 14 JOURNAL OF HUMAN RIGHTS 312 (2015).

Questions for discussion

- Why is it important for a state to codify health-related human rights obligations in domestic law and policy?

- To what extent is the right to health justiciable? What about the right to healthcare?
- What are some ways in which a human rights-based approach has been used to overcome the obstacles to access to essential medicines in resource-poor countries? In what ways might it act as a hindrance?
- What are the advantages and disadvantages of realizing the right to health through the courts?
- How should courts approach questions of national resource constraints in the progressive realization of health-related human rights?
- Should courts decide whether individuals have a right to reasonable level of publicly funded healthcare, education, social assistance, and other social determinants of health - or should this be left to public policymakers in the legislative and executive branches of government?

Part II Applying the health and human rights framework to health topics

Session 6 Sunday 18 April 2021

Public health emergencies: the case of major infectious disease outbreaks

- Role of the International Health Regulations as the main international legal instrument to control the international spread of disease
- Public health protection as a legitimate limit to the enjoyment of human rights
- Public health and civil liberties: conflict and complementarity
- Case study: HIV/AIDS

Required readings

- LAWRENCE O. GOSTIN, GLOBAL HEALTH LAW 177 (2014) (Chapter 6 on *The International Health Regulations Responding to Public Health Emergencies of International Concern*).
- Sharifah Sekalala & John Harrington, *Communicable Diseases, Health Security, and Human Rights - From AIDS to Ebola*, in FOUNDATIONS OF GLOBAL HEALTH AND HUMAN RIGHTS 221 (Lawrence O. Gostin & Benjamin M. Meier eds., 2020).

Optional readings

- Britta Baer *et al.*, *Human rights-based approaches to HIV, tuberculosis, and malaria*, in ADVANCING THE HUMAN RIGHT TO HEALTH 245 (José M. Zuniga *et al.* eds., 2013).
- Eyal Benvenisti, *The WHO - Destined to Fail?: Political Cooperation and the COVID-19 Pandemic*, 114(4) AMERICAN JOURNAL OF INTERNATIONAL LAW 588 (2020).
- David P. Fidler, *Public Health and National Security in the Global Age: Infectious Diseases, Bioterrorism and Realpolitik*, 35 GEORGE WASHINGTON INTERNAT LAW REVIEW 787 (2003).
- LAWRENCE O. GOSTIN, GLOBAL HEALTH LAW 305 (2014) (Chapter 10 on “*Getting to Zero*” *Scientific Innovation, Social Mobilization, and Human Rights in the AIDS Pandemic*).
- LAWRENCE O. GOSTIN, GLOBAL HEALTH LAW 359 (2014) (Chapter 12 on *Pandemic Influenza - A Case Study on Global Health Security*).
- Lawrence O. Gostin & Rebecca Katz, *The International Health Regulations: The Governing Framework for Global Health Security*, 94 MILBANK QUARTERLY 264 (2016).
- Sofia Gruskin & Shahira Ahmed, *HIV and AIDS*, in THE RIGHT TO HEALTH - THEORY AND PRACTICE 191 (Gunilla Backman ed., 2012).
- Pedro A. Villarreal, *Public Health Emergencies and Constitutionalism Before COVID-19: Between the National and the International*, in CONSTITUTIONALISM UNDER EXTREME CONDITIONS - LAW, EMERGENCY, EXCEPTION 217 (Richard Albert & Yaniv Roznai eds., 2020).

Questions for discussion

- In what way are human rights and public health protection complementary? And where do they conflict?
- What lessons can be learned from applying a human rights framework to HIV/AIDS?
- To what extent do those lessons apply to other infectious diseases?

Session 7 Sunday 25 April 2021

COVID-19 and human rights

- Overview of legal tools and measures adopted in the COVID-19 pandemic; evaluation of their human rights implications
- COVID-19 at the intersection of public health and national security
- Case study: privacy concerns of digital contact tracing tools (e.g., phone applications)
- Case study: immunity passports

Required readings

- Armin von Bogdaandy & Pedro A. Villarreal, *Critical Features of International Authority in Pandemic Response: The WHO in the COVID-19 Crisis, Human Rights and the Changing World Order*, MPIL RESEARCH PAPER SERIES (2020-18).
- Peter Danchin *et al.*, *The Pandemic Paradox in International Law*, 114(4), AMERICAN JOURNAL OF INTERNATIONAL LAW 598 (2020).
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- Human Rights Watch, *Human Rights Dimensions of COVID-19 Response*, <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>.

Optional readings

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- Gian Luca Burci, *The Legal Response to Pandemics: The Strengths and Weaknesses of the International Health Regulations*, 11 JOURNAL OF INTERNATIONAL HUMANITARIAN LEGAL STUDIES 8 (2020).
- I. Glenn Cohen *et al.*, *Digital Smartphone Tracking for COVID-19: Public Health and Civil Liberties in Tension*, 323(23) JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 2371 (2020).
- Ezekiel J. Emanuel *et al.*, *Fair Allocation of Scarce Medical Resources in the Time of Covid-19*, 382 THE NEW ENGLAND JOURNAL OF MEDICINE 2049 (2020).
- Lawrence O. Gostin, *The Coronavirus Pandemic 1 Year On - What Went Wrong?*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION HEALTH FORUM (published online February 11, 2021).
- Lawrence O. Gostin *et al.*, *Responding to Covid-19: How to Navigate a Public Health Emergency Legally and Ethically*, 50(2) HASTINGS CENTER REPORT 8 (2020).
- Lawrence O. Gostin & Lindsay F. Wiley, *Governmental public health powers during the COVID-19 pandemic: stay-at-home orders, business closures, and travel restrictions*, 323(21) JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 2137 (2020).
- Conrad Nyamutata, *Do Civil Liberties Really Matter During Pandemics? Approaches to Coronavirus Disease (COVID-19)*, 9 INTERNATIONAL HUMAN RIGHTS LAW REVIEW 62 (2020).

- Wendy E. Parmet, *Quarantining the Law of Quarantine: Why Quarantine Law Does Not Reflect Contemporary Constitutional Law*, 9 WAKE FOREST JOURNAL OF LAW AND POLICY 1 (2019).
- Alexandra L. Phelan, *COVID-19 immunity passports and vaccination certificates: scientific, equitable, and legal challenges*, 395 THE LANCET 1595 (2020).
- Dainius Pūras *et al.*, *The Right to Health Must Guide Responses to COVID-19*, 395 THE LANCET 1888 (2020).

Useful websites with updates on the legal aspects of the unfolding COVID-19 pandemic

- The Oxford COVID-19 Government Response Tracker:
<https://www.bsg.ox.ac.uk/research/research-projects/coronavirus-government-response-tracker>
- The Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School - Resources: COVID-19: <https://petrieflom.law.harvard.edu/resources/covid-19>
- American Association for the Advancement of Science - COVID-19 and Human Rights Resources: <https://www.aaas.org/coalition/covid19>

Questions for discussion

- What distinguishes the COVID-19 pandemic from previous pandemics?
- Are we witnessing a new paradigm unfold in how states deal with the outbreak of an infectious disease?
- What are the human rights implications of declaring a state of emergency due to the COVID-19 pandemic?
- What happens if we consider public health as a security issue?
- How has the COVID-19 pandemic illustrated the health *versus* health dichotomy?

Session 8 Sunday 2 May 2021

Non-communicable diseases

- Application of human rights to disease prevention and health promotion
- The issue of individual lifestyle choices and behaviors
- Framework Convention on Tobacco Control
- Case study (group exercise): a human rights approach to tobacco control
- Case study: the global epidemic of obesity

Required readings

- LAWRENCE O. GOSTIN, GLOBAL HEALTH LAW 383 (2014) (Chapter 13 on *The “Silent” Pandemic of Noncommunicable Diseases*).
- Stephen Marks & Carolyn Dressler, *The Emerging Human Right to Tobacco Control*, 28(3) HUMAN RIGHTS QUARTERLY 599 (2006).

Optional readings

- World Health Organization, WHO Framework Convention on Tobacco Control, World Health Assembly Resolution WHA56.1 (May 21, 2003).
- Oscar A. Cabrera & Lawrence O. Gostin, *Global tobacco control: a vital component of the right to health*, in ADVANCING THE HUMAN RIGHT TO HEALTH 261 (José M. Zuniga *et al.* eds., 2013).
- Oscar A. Cabrera & Lawrence O. Gostin, *Human rights and the Framework Convention on Tobacco Control: mutually reinforcing systems*, 7(3) INTERNATIONAL JOURNAL OF LAW IN CONTEXT 285 (2011).
- Melissa E. Crow, *Smokescreens and State Responsibility: Using Human Rights Strategies to Promote Global Tobacco Control*, 29 YALE JOURNAL OF INTERNATIONAL LAW 209 (2005).
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- Benjamin M. Meier, *Breathing Life into the Framework Convention on Tobacco Control: Smoking Cessation and the Right to Health*, 5 YALE JOURNAL OF HEALTH POLICY, LAW & ETHICS 137 (2005).
- Rangita de Silva de Alwis & Richard Daynard, *Reconceptualizing Human Rights to Challenge Tobacco*, 17 MICHIGAN STATE JOURNAL OF INTERNATIONAL LAW 291 (2008-2009).
- Allyn L. Taylor & Ibadat S. Dhillon, *An international legal strategy for alcohol control: not a framework convention - at least not yet*, 108 ADDICTION 450 (2012).
- Bryan Thomas & Lawrence O. Gostin, *Tackling the Global NCD Crisis: Innovations in Law and Governance*, 41(1) JOURNAL OF LAW, MEDICINE & ETHICS 16 (2013).
- Yofi Tirosh, *The right to be fat*, 12(2) YALE JOURNAL OF HEALTH POLICY, LAW, AND ETHICS 264 (2012).

- Brigit Toebes & David Patterson, *Human Rights and Non-Communicable Diseases - Controlling Tobacco and Promoting Healthy Diets*, in FOUNDATIONS OF GLOBAL HEALTH AND HUMAN RIGHTS 243 (Lawrence O. Gostin & Benjamin M. Meier eds., 2020).

Questions for discussion

- What are the human rights issues of importance in dealing with the health aspects of tobacco and to what extent does the Framework Convention on Tobacco Control address them?
- Are there other behavioral issues in public health to which a human rights perspective might be of value?
- What obligations do states bear under the right to health to prevent individuals from unhealthy behaviors?
- How have advocates sought to facilitate corporate accountability for human rights?

Session 9 Sunday 9 May 2021

Medicines and markets

- Trade and health: the WTO's TRIPS agreement and access to medicines
- Intellectual property, access to medicines, and the right to health
- Case study (group exercise): *Novartis v. Union of India & Others* (Indian Supreme Court; Civil Appeal n° 2706-2716 of 2013; judgment of 1 April 2013) (blood cancer drug Glivec)
- Case study: neglected diseases

Required readings

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Part II (5) – Patents: Articles 27-34).
- World Trade Organization, Doha Ministerial Conference, 2001, Declaration on the TRIPS Agreement and Public Health (adopted on November 14, 2001).
- Amendment of the TRIPS Agreement, Decision of 6 December 2005, available at: https://www.wto.org/english/tratop_e/trips_e/wtl641_e.htm
- LAWRENCE O. GOSTIN, GLOBAL HEALTH LAW 270 (2014) (Chapter 9 on *Global Health, International Trade, and Intellectual Property Toward a Fair Deal for the Global South*).
- Suerie Moon & Thirukumaran Balasubramaniam, *The World Trade Organization: Carving Out the Right to Health to Promote Access to Medicines and Tobacco Control in the Trade Arena*, in HUMAN RIGHTS IN GLOBAL HEALTH: RIGHTS-BASED GOVERNANCE FOR A GLOBALIZING WORLD 375 (Benjamin M. Meier & Lawrence O. Gostin eds., 2018).

Optional readings

- Frederick M. Abbott, *The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health*, 99(2) AMERICAN JOURNAL OF INTERNATIONAL LAW 317 (2005).
- Alberto Alemanno & Enrico Bonadio, *Do You Mind My Smoking? Plain Packaging of Cigarettes Under the TRIPS Agreement*, 10(3) JOHN MARSHALL REVIEW OF INTELLECTUAL PROPERTY LAW: SPECIAL ISSUE 450 (2011).
- Rajshree Chandra, *The role of national laws in reconciling constitutional right to health with TRIPS obligations: an examination of the Glivec patent case in India*, in INCENTIVES FOR GLOBAL PUBLIC HEALTH: PATENT LAW AND ACCESS TO ESSENTIAL MEDICINES 381 (Thomas Pogge *et al.* eds., 2010).
- AUDREY R. CHAPMAN, GLOBAL HEALTH, HUMAN RIGHTS AND THE CHALLENGE OF NEOLIBERAL POLICIES 200 (2016) (chapter 6 on *Achieving improved access to medicines*).
- Philippe Cullet, *Patents and Medicines: The Relationship between TRIPS and the Human Right to Health*, 79(I) INTERNATIONAL AFFAIRS 139 (2003).
- Thana C. De Campos-Rudinsky, *Intellectual property and essential medicines in the COVID-19 pandemic*, INTERNATIONAL AFFAIRS (forthcoming 2021).
- Lisa Forman, *'Rights' and wrongs: What utility of the right to health for reforming trade rules on medicine?*, 10(2) HEALTH AND HUMAN RIGHTS 37 (2008).

- Sofia Gruskin & Zyde Raad, *Are Drug Companies Living Up to Their Human Rights Responsibilities*, 7(9) PLOS MEDICINE (2010).
- Ellen Hoen *et al.*, *Driving a decade of change: HIV/AIDS, patents and access to medicines for all*, 14(15) JOURNAL OF THE INTERNATIONAL AIDS SOCIETY (2011).
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- Joo-Young Lee & Paul Hunt, *Human Rights Responsibilities of Pharmaceutical Companies in Relation to Access to Medicines*, 40(2) JOURNAL OF LAW, MEDICINE & ETHICS 220 (2012).
- Thomas Pogge *et al.*, *Introduction: Access to essential medicines: public health and international law*, in INCENTIVES FOR GLOBAL PUBLIC HEALTH: PATENT LAW AND ACCESS TO ESSENTIAL MEDICINES 1 (Thomas Pogge *et al.* eds., 2010).
- Geralyn S. Ritter, *Are Drug Companies Living Up to Their Human Rights Responsibilities? The Merck Perspective*, 7(9) PLOS MEDICINE (2010).
- Aakash K. Shah *et al.*, *The ethics of intellectual property rights in an era of globalization*, 41(4) THE JOURNAL OF LAW, MEDICINE & ETHICS 841 (2013).
- Rudolf V. Van Puymbroeck *Basic Survival Needs and Access to Medicines – Coming to Grips with TRIPS: Conversion + Calculation*, 38(3) JOURNAL OF LAW, MEDICINE & ETHICS 520 (2010).
- JOHN TOBIN, THE RIGHT TO HEALTH IN INTERNATIONAL LAW 351 (2012).
- Chuang-Feng Wu & Chien-Huei Wu, *International Trade, Public Health, and Human Rights*, in FOUNDATIONS OF GLOBAL HEALTH AND HUMAN RIGHTS 351 (Lawrence O. Gostin & Benjamin M. Meier eds., 2020).

Questions for discussion

- Is international trade law a threat to health and human rights?
- How did the Doha Declaration seek to balance imperatives for international trade and human rights in an effort to protect public health?
- How can the WTO take into account a country's health and human rights obligations in assessing public health regulations that restrict trade?
- To what extent have the flexibilities under Article 31 of the TRIPS Agreement, as interpreted in the Doha Declaration of 2001 and as modified by the Protocol of 2005, allowed countries to face public health emergencies?
- How might pharmaceutical companies have (or not have) a binding legal responsibility to respect and support the right to access to essential medicines?
- What does the “right to health” mean in the context of access to medicines for neglected diseases?
- What are the preferred means of dealing with the consequence of insufficient investment in research and development on diseases that mainly affect developing countries?

Session 10 Sunday 23 May 2021

Women's health I: sexual and reproductive health

- Sexual and reproductive health as a human right
- Gender perspectives on the right to health
- Case study: Female genital mutilation
- Case study: Forced sterilization (*A.S. v. Hungary*, CEDAW committee, communication n° 4/2004, decision of 29 August 2006)
- Case study: Forced pregnancy (*S.C. and G.P. v. Italy*, Committee on Economic, Social and Cultural Rights under the Optional Protocol to the ICESCR, communication n° 22/2017, decision of 7 March 2019)

Required readings

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), (1979) (Article 12).
- Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation n° 24, Women and Health, UN Doc. n° CEDAW/C/1999/I/WG.II/WP.2/REV.1 (1999).
- WHO, Female Genital Cutting, <http://www.who.int/mediacentre/factsheets/fs241/en/>
- Gayle Binion, *Human Rights: A Feminist Perspective*, 17(3) HUMAN RIGHTS QUARTERLY 509 (1995).
- Stephen James, *Reconciling International Human Rights and Cultural Relativism: The Case of Female Circumcision*, 8(1) BIOETHICS 1 (1994).
- Alicia E. Yamin, *Women's health and human rights: struggles to engender social transformation*, in ADVANCING THE HUMAN RIGHT TO HEALTH 275 (José M. Zuniga *et al.* eds., 2013).

Optional readings

- Belinda Bennett & Sara E. Davies, *Looking to the future: gender, health and international law*, in RESEARCH HANDBOOK ON FEMINIST ENGAGEMENT WITH INTERNATIONAL LAW 323 (Susan Harris Rimmer & Kate Ogg eds., 2019).
- Elizabeth H. Boyle & Sharon E. Preves, *National politics as international process: the case of anti-female-genital-cutting laws*, 34(3) LAW & SOCIETY REVIEW 703 (2000).
- Charlotte Bunch, *Women's rights as human rights: towards a re-vision of human rights*, 12 HUMAN RIGHTS QUARTERLY 486 (1990).
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- Martha F. Davis, *Infertility and Human Rights: A Jurisprudential Survey*, 40(1) COLUMBIA JOURNAL OF GENDER AND LAW 1 (2020).
- Michele Goodwin, *How the Criminalization of Pregnancy Robs Women of Reproductive Autonomy - Just Reproduction: Reimagining Autonomy in Reproductive Medicine* (special report), 47(6) HASTINGS CENTER REPORT 19 (2017).

- Laura D. Hermer, *Covid-19, Abortion, And Public Health in the Culture Wars*, 47 MITCHELL HAMLINE LAW REVIEW (2020).
- Sandra D. Lane & Robert A. Rubinstein, *Judging the Other: Responding to Traditional Female Genital Surgeries*, 26 THE HASTINGS CENTER REPORT 31 (1996).
- Alyssa C. Lareau, *Who decides? Genital-normalizing surgery on intersexed infants*, 92(1) GEORGETOWN LAW JOURNAL 129 (2003).
- Jessica MacKinnon & Alexane Bremshey, *Perspectives from a webinar: COVID-19 and sexual and reproductive health and rights*, SEXUAL AND REPRODUCTIVE HEALTH MATTERS (Published online 1 May 2020).
- Terry McGovern & Aziza Ahmed, *Equity in Health: Sexual and Reproductive Health and Rights*, in FOUNDATIONS OF GLOBAL HEALTH AND HUMAN RIGHTS 307 (Lawrence O. Gostin & Benjamin M. Meier eds., 2020).
- Bettina Shell-Duncan, *From Health to Human Rights: Female Genital Cutting and the Politics of Intervention*, 110 AMERICAN ANTHROPOLOGIST 225 (2008).

Questions for discussion

- How do human rights define women's health? Where does violence against women fit in?
- How did feminist advocacy transform the approach to sexual and reproductive health as a human right?
- How has the human rights framework been used in relation to the practice of female genital mutilation? Which human rights norms and mechanisms are relevant here?

Session 11 Sunday 30 May 2021

Women's health II: Maternal health

- Maternal health as a human right
- Gender perspectives on the right to health
- Family planning; access to abortion services; choices during pregnancy and childbirth; access to maternal care
- Case study: Maternal mortality (*Alyne da Silva Pimentel v. Brazil*, CEDAW Committee, communication n° 17/2008, decision of 25 July 2011)
- Case study: Access to abortion services (*Mellet v. Ireland*, UN Human Rights Committee, communication n° 2324/2013, decision of 31 March 2016; *L.C. v. Peru*, CEDAW Committee, communication n° 22/2009, decision of 17 October 2011; *A., B. and C. v. Ireland*, Grand Chamber, European Court of Human Rights, application n° 25579/05, judgment of 16 December 2010)
- Case study: Regulation of home birth (*Dubská and Krejzová v. the Czech Republic*, Grand Chamber, European Court of Human Rights, application n° 28859/11 and 28473/12, judgement of 15 November 2016)

Required readings

- Rebecca J. Cook, *Advancing safe motherhood through human rights*, in GIVING MEANING TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS 109 (Isfahan Merali & Valerie Oosterveld eds., 2001).
- Jane Cottingham *et al.*, *Use of human rights to meet the unmet need for family planning*, 380(9837) THE LANCET 172 (2012).
- Lance Gable, *Reproductive Health as a Human Right*, 60 CASE WESTERN LAW REVIEW 957 (2009).

Optional readings

- Dina Bogecho, *Putting It to Good Use: The International Covenant on Civil and Political Rights and Women's Right to Reproductive Health*, 13 SOUTHERN CALIFORNIA REVIEW OF LAW AND WOMEN'S STUDIES 229 (2004).
- Rebecca J. Cook, *Human Rights and Maternal Health: Exploring the Effectiveness of the Alyne Decision*, 41 JOURNAL OF LAW, MEDICINE & ETHICS 103 (2013).
- Jameen Kaur, *The role of litigation in ensuring women's reproductive rights: an analysis of Shanti Devi judgment in India*, 20(39) REPRODUCTIVE HEALTH MATTERS 21 (2012).
- Rajat Khosla *et al.*, *International Human Rights and the Mistreatment of Women During Childbirth*, 18(2) HEALTH AND HUMAN RIGHTS 131 (2016).
- Eszter Kismödi *et al.*, *Human rights accountability for maternal death and failure to provide safe, legal abortion: the significance of two ground-breaking CEDAW decisions*, 20(39) REPRODUCTIVE HEALTH MATTERS 31 (2012).
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- Alicia E. Yamin, *Maternal Mortality*, in THE RIGHT TO HEALTH - THEORY AND PRACTICE 159 (Gunilla Backman ed., 2012).
- Alicia E. Yamin & Deborah P. Maine, *Maternal Mortality as a Human Rights Issue: Measuring Compliance with International Treaty Obligations*, 21(3) HUMAN RIGHTS QUARTERLY 563 (1999).
- Christina Zampas *et al.*, *Operationalizing a Human Rights-Based Approach to Address Mistreatment against Women during Childbirth*, 22(1) HEALTH AND HUMAN RIGHTS 251 (2020).

Questions for discussion

- How do human rights define women's health?
- What human rights norms and mechanisms are relevant with regard to women's choices during pregnancy and childbirth?
- What role do human rights play for women's health in different socio-economic contexts (developing as opposed to developed world)?

Session 12 Sunday 6 June 2021

Prison health

- Responsibilities of health professionals for human rights protection
- Issue of dual loyalties
- Case study (group exercise): Hunger strike and force-feeding (*Israel Medical Association et al. v. Knesset et al.*, High Court of Justice, n° 5304/15, judgement of 11 September 2016)
- Case study: Psychiatric treatment in a prison setting (*Rooman v. Belgium*, Grand Chamber, European Court of Human Rights, application n° 18052/11, judgement of 31 January 2019)

Required readings

- Rick Lines, *The right to health of prisoners in international human rights law*, 4(1) INTERNATIONAL JOURNAL OF PRISONER HEALTH 3 (2008).
- Joanne Mariner & Rebecca Schleifer, *The right to health in prison*, in ADVANCING THE HUMAN RIGHT TO HEALTH 291 (José M. Zuniga *et al.* eds., 2013).

Optional readings

- Henriette R. Abbing, *Prisoners Right to Healthcare, a European Perspective*, 20 EUROPEAN JOURNAL OF HEALTH LAW 5 (2013).
- Jamal Barnes, *Force-feeding and the legacy of torture in the 'war on terror'*, 23(7) THE INTERNATIONAL JOURNAL OF HUMAN RIGHTS 1074 (2019).
- Donald M. Berwick *et al.*, *Protecting Incarcerated People In The Face Of COVID-19: A Health And Human Rights Perspective*, HEALTH AFFAIRS BLOG (Published online 1 May 2020).
- Sarah Glowa-Kollisch *et al.*, *Data-Driven Human Rights: Using Dual Loyalty Trainings to Promote the Care of Vulnerable Patients in Jail*, 17(1) HEALTH AND HUMAN RIGHTS 124 (2015).
- Zohar Lederman & Shmuel Lederman, *The land of no milk and no honey: force feeding in Israel*, 34(3-4) MONASH BIOETHICS REVIEW 158 (2017).
- Susannah Sirkin *et al.*, *The role of health professionals in protecting and promoting human rights: A paradigm for professional responsibility*, in PERSPECTIVES ON HEALTH AND HUMAN RIGHTS 537 (Sofia Gruskin *et al.* eds., 2005).

Questions for discussion

- How do human rights, and the right to health more specifically, apply in the prison setting?
- Are health professionals bound by human rights?
- How successful are the mechanisms that have been established to hold medical and health professionals accountable?
- What is the role of the physician in the prevention and punishment of torture? Do medical ethics and human rights conflict in that role?

Part III Beyond the rights' discourse

Session 13 Sunday 13 June 2021

Critiques of the right to health and future directions in an age of populism and (post) COVID-19

- Effectiveness and limits of the human rights approach to health
- Threats to health and human rights
- Cultural relativism in health and universality of human rights
- Decolonization of global health
- Normative space for new international law instruments?

Required readings

- Lawrence O. Gostin *et al.*, *Global Health and Human Rights in the Age of Populism*, in FOUNDATIONS OF GLOBAL HEALTH AND HUMAN RIGHTS 439 (Lawrence O. Gostin & Benjamin M. Meier eds., 2020).
- Aeyal Gross, *Is There a Human Right to Private Health Care?*, 41(1) THE JOURNAL OF LAW, MEDICINE & ETHICS 138 (2013).
- Dianne Otto, *Linking Health and Human Rights: A Critical Legal Perspective*, 1 HEALTH AND HUMAN RIGHTS 272 (1994).
- Alexis Palmer *et al.*, *Does ratification of human rights treaties have effect on population health?*, 373 THE LANCET 1987 (2009).

Optional readings

- Seye Abimbola & Madhukar Pai, *Will global health survive its decolonisation*, 396(10263) THE LANCET 1627 (2020).
- I. Glenn Cohen, *On the Human Right to Health: Statistical Lives, Contingent Persons, and Other Difficult Questions*, in HUMAN RIGHTS, DEMOCRACY, AND LEGITIMACY IN A WORLD OF DISORDER 163 (Silja Voenekey & Gerald L. Neuman eds., 2018).
- Paul Farmer, *Challenging Orthodoxies: The Road Ahead for Health and Human Rights*, 10(1) HEALTH AND HUMAN RIGHTS 5 (2008).
- Lawrence O. Gostin, *Global Health: Meeting Basic Survival Needs of the World's Least Healthy People: Toward a Framework Convention on Global Health*, 96 (2) GEORGETOWN LAW JOURNAL 331 (2008).
- Lawrence O. Gostin, *A Proposal for a Framework Convention on Global Health*, 10(4) JOURNAL OF INTERNATIONAL ECONOMIC LAW 989 (2007).
- Lawrence O. Gostin & Jonathan Mann, *Towards the development of a human rights impact assessment for the formulation and evaluation of public health policies*, 1(1) HEALTH AND HUMAN RIGHTS 58 (1994).
- Lindsey N. Kingston *et al.*, *Debate: Limitations on universality: the "right to health" and the necessity of legal nationality*, 10(11) BMC INTERNATIONAL HEALTH AND HUMAN RIGHTS (2010).

- Benjamin M. Meier, *Global health governance and the contentious politics of human rights: mainstreaming the right to health for public health advancement*, 46(1) STANFORD JOURNAL OF INTERNATIONAL LAW 1 (2010).
- Benjamin M. Meier, *The World Health Organization, Human Rights, and the Failure to Achieve Health for All*, in GLOBAL HEALTH AND HUMAN RIGHTS: LEGAL AND PHILOSOPHICAL PERSPECTIVES 163 (John Harrington & Maria Stuttaford eds., 2010).
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- Dianne Otto, *Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law*, 18 AUSTRALIAN YEARBOOK OF INTERNATIONAL LAW 1 (1997).
- Ann-Belinda S. Preis, *Human rights as cultural practice: An anthropological critique*, 18 HUMAN RIGHTS QUARTERLY 286 (1996).
- Kate Raworth, *Measuring human rights*, in PERSPECTIVES ON HEALTH AND HUMAN RIGHTS 393 (Sofia Gruskin *et al.* eds., 2005).
- Jerome A. Singh *et al.*, *Health and Human Rights 2: Do Human Rights Matter to Health?*, 370(4) THE LANCET 521 (2007).
- Ewe Speed & Russell Mannion, *The Rise of Post-Truth Populism in Pluralist Liberal Democracies: Challenges for Health Policy*, 6 INTERNATIONAL JOURNAL OF HEALTH POLICY AND MANAGEMENT 249 (2017).
- Fernando Teson, *International Human Rights and Cultural Relativity*, 25 VIRGINIA JOURNAL OF INTERNATIONAL LAW 869 (1985).
- Caitlin R. Williams *et al.*, *Populist Nationalism Threatens Health & Human Rights in the COVID-19 Response*, 110(12) AMERICAN JOURNAL OF PUBLIC HEALTH 1766 (2020).
- Alicia E. Yamin, *Taking the Right to Health Seriously: Implications for Health Systems, Courts, and Achieving Universal Health Coverage*, 39(2) HUMAN RIGHTS QUARTERLY 341 (2017).
- Alicia E. Yamin, *Our Place in the World: Conceptualizing Obligations Beyond Borders in Human Rights-Based Approaches to Health*, 12(1) HEALTH AND HUMAN RIGHTS 3 (2010).
- Health and Human Rights Journal: *Special Issue: Evidence of the Impact of Human Rights-Based Approaches to Health*, 17(2) 2015.

Questions for discussion

- Are cultural relativism in health and universality of human rights incompatible?
- Do human rights work? Does a human rights-based approach to social rights work?
- Do human rights interfere with public health practice?
- Is international law relevant to global health?
- Why have populist leaders sought to isolate their nations from the world?
- Why are human rights crucial in responding to the global health harms of populist forces?

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- JOHN TOBIN, *THE RIGHT TO HEALTH IN INTERNATIONAL LAW* (2012).
- ALICIA E. YAMIN, *WHEN MISFORTUNE BECOMES INJUSTICE - EVOLVING HUMAN RIGHTS STRUGGLES FOR HEALTH AND SOCIAL EQUALITY* (2020).
- ALICIA E. YAMIN, *POWER, SUFFERING AND THE STRUGGLE FOR DIGNITY: HUMAN RIGHTS FRAMEWORKS FOR HEALTH AND WHY THEY MATTER* (2017).
- ALICIA E. YAMIN & SIRI GLOPPEN (EDS.), *LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH?* (2011).
- JOSÉ M. ZUNIGA, STEPHEN P. MARKS, LAWRENCE O. GOSTIN (EDS.), *ADVANCING THE HUMAN RIGHT TO HEALTH* (2013).

USEFUL WEBSITES

- Health and Human Rights Journal. <https://www.hhrjournal.org>.
Health and Human Rights explores the reciprocal influences of health and human rights, including the impact of public health programs and policies on human rights, the consequences of human rights violations on health, the importance of health in realizing human rights, and the ways in which human rights can be integrated into public health strategies.
- Global Health and Human Rights Database: A Free Online Database of Health and Human Rights Law. <http://www.globalhealthrights.org>.
This portal is a free online resource of law from around the world relating to health and human rights. The site offers an interactive, searchable, and fully indexed database of case law, national constitutions, and international instruments, with three sections: (1) judgments, (2) international and regional instruments, and (3) national constitutions.