

Donetsk National University, Ukraine

Faculty of Law and Economics

Fundamentals of International Health and Human Rights Law

Winter Semester 2001

Course meetings: Twice a week for one and half hours

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Human Rights:

...rights that belong to an individual as a consequence of being human. They refer to a wide continuum of values that are universal in character and in some sense equally claimed for all human beings. It is a common observation that human beings everywhere demand the realization of diverse values to ensure their individual and collective well-being. It also is a common observation that these demands are often painfully frustrated by social as well as natural forces, resulting in exploitation, oppression, persecution, and other forms of deprivation. Deeply rooted in these twin observations are the beginnings of what today are called "human rights" and the legal processes, national and international, associated with them.

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Course Purpose and Structure

This course focuses on the relationship between health and human rights. How does one define and understand international human rights? How can health professionals, economists, lawyers, social scientists, and others concerned with human rights improve individual and community health and well-being by protecting and promoting human rights?

The course provides an overview of human rights violations in the world and an analysis of the psychology of abuse. The course considers specific human rights concerns of women and children, identifying the impact of health policy on human rights, it examines the relationship between bioethics and human rights and the relationship between human rights, the environment and multinational corporations. Also, the contemporary human rights issues of universality and accountability are addressed.

The course aims to provide students with a basic understanding of human rights issues relevant to professionals. Lectures and in-class discussions will enable students to acquire knowledge and skills necessary for preventing and alleviating the human suffering caused by human rights abuses. In addition, research assignments will provide students with opportunities to raise meaningful questions by pursuing the study of original ideas, and their particular human rights issues of interest. Students' conceptual understandings and knowledge will be assessed through their participation in class. Their

abilities to develop original ideas and engage in critical thinking on human rights will be reflected in their research assignment selection, presentation and writing.

Assignment

Students are to choose a topic related to some aspect of human rights as covered in the course. Each student will be expected to write a paper on his or her subject. Students will present their research topics in class.

Grading

40% In-class presentations and contributions to discussion
60% research paper

Required Readings

There will be handouts as well as selected readings from

- o Louis Henkin, et al HUMAN RIGHTS, University Casebook Series, New York, New York, Foundation Press (1999) and Ray August, Public International Law: Text, Cases, and Readings.

Participation and Attendance

Your preparation for class, consistent attendance and active participation during class are essential both to your individual understanding of the materials and to the collective learning which is hoped to be accomplished in class. **Prior preparation of the assigned reading materials will therefore be presumed in the class discussion and lectures.**

Academic Honesty

Since the class meets only twice a week regular attendance is strongly advised. Absences due to illness or other legitimate reasons should be discussed with the instructor if possible before they take place. Students in this course are expected to adhere to the highest standards of academic honesty. Normal institutional policies regarding plagiarism, unauthorized multiple submissions or other forms of academic dishonesty are in effect in this course. If you unfamiliar with these policies, take the time to review academic integrity policies with me. Students submit their own assignments and take their own tests, working together is not permitted without permission from the professor.

Student Conduct

Students are expected to be courteous and polite to the instructor and to their fellow classmates. Students are expected not to interrupt the class by (among other things) entering the classroom late, leaving the classroom early, by visiting with other students during the course of a lecture, by sleeping during the class, by listening to cell phones, personal radios, etc. Students are expected to pay attention and to answer when called upon. All students are encouraged to ask questions (but not to be disruptive in doing so). Students who are disruptive will be asked to leave the class and may be dropped from the course by the instructor.

Human Rights and Health Law Course Syllabus

Week 1

Overview: What are Human Rights?

How do our understanding of human rights and our definitions of human rights abuses compare to the way these are understood internationally? What are the historical and philosophical origins of human rights and how have human rights and humanitarian law developed? What are the critical international documents that provide the world's framework for monitoring human rights abuses? What are non-derogable rights and what is meant by the interdependence and indivisibility of human rights? How can respect for human rights be enforced? Course introduction: individual introductions, outline of subjects to be covered, course objectives, student responsibilities, grading, office hours, reading material and explanation of assignments.

Reading

- HUMAN RIGHTS CORRESPONDENCE SCHOOL - EDUCATION MODULES UNDERSTANDING HUMAN RIGHTS, This module is compiled by: Marita Ishwaran; Edited by: Caroline D'Souza, Jaya Menon; Published by: Research and Documentation Centre, Justice and Peace Commission, Bombay, India

Weeks 2 -5

Fundamentals of Human Rights Law

- Historical development
- Origins
- Criticism and acceptance
- Definition of human rights
- Nature
- Content
- The first generation
- The second generation
- The third generation
- Legitimacy and priority
- International human rights: prescription and enforcement
- Before World War II
- Human rights in the United Nations
- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights and the Optional Protocol
- The International Covenant on Economic, Social and Cultural Rights
- Other UN human rights conventions
- UN human rights declarations
- Human rights and the Helsinki process
- Regional developments
- European human rights system
- Inter-American human rights system
- African human rights system
- International human rights in domestic courts

Reading

- Chapter 6 pp 247-340, Ray August, Public International Law: Text, Cases, and Readings.

[See the outline of this material](#)

Week 6

Origins of Health Concerns

How has ideology shaped our understandings of sickness, health and healing? Are human rights valid health concerns? How are the interests of individuals and society represented in medical encounters and health policy? What is the legal foundation for a right to health and how is it applied internationally?

Readings

- World Health Organization. Declaration of Alma Alta.
- Jonathan Mann, Lawrence Gostin, Sofia Gruskin (and others) "Health and Human Rights," *Health and Human Rights*, vol. 1(1), 1994;
- Virginia Leary, "The Right to Health in International Human Rights Law," *Health and Human Rights*, vol. 1(1), 1994 (both articles can be accessed at <http://www.hri.ca/partners/fixbcenter/journal/>)
- *Journal of the American Medical Association* 280 (1998): 462-68. "Forging the Link Between Health and Human Rights"

Week 7

Limiting Human Rights on Public Health Grounds: Case Study of Immunization

To enable students to recognize human rights issues in a typical public health measure, and to familiarize them with the application of human rights by demonstrating how advantages of immunization outweigh human rights argumentation against compulsory immunization.

Recommended Readings

- "Public health [as grounds for limiting human rights]," submission of the World Health Organization, in *The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights*, UN Publication, Sales No. E.82.XTV.1, 1983, p. 100, 126-27.
- "Immunization Cases: Fay Godfrey v. United Kingdom" [No. 8542/79], Decision of the European Commission on Human Rights of 4 February 1982.
- *Wain v. United Kingdom* [No. 10787/84], Decision of the European Commission on Human Rights of 12 December 1985.
- "Prevention: "Inoculation and Vaccination," in *Biology, Medicine and the Bill of Rights*. Special Report, Office of Technology Assessment, Congress of the United States, OTA-CIT-371, Washington, DC. September 1988, pp. 65-66.
- de Moerloose, J. "Compulsory or Voluntary Vaccination," in *The Role of Immunization in Communicable Disease Control*, Public Health Papers No. 8, Geneva: World Health Organization, 1961, pp. 85-100.
- Senault, R. et al. "Legal Aspects [of vaccination]," in *Legislation on Vaccination in the Member States of the European Economic Community*. Geneva: World Health Organization, 1965, pp. 15-23.
- "WHO/EPI: Missed opportunities for immunization. Ethiopia", *Weekly Epidemiological Record*, No. 22, June 1, 1990, pp. 167-70.

International Instruments

- Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights

Week 8

Protection of Human Rights of Mentally Ill People

To discuss the application of human rights protection to a category particularly susceptible to abuses, the mentally ill.

Recommended Readings

- Heginbotham, C. *The Rights of Mentally Ill People*. London: Minority Rights Group, MRG, No.74, 1987, pp. 1-4.
- Daes, I.E., Special Rapporteur, *Principles, Guidelines and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill-health or Suffering from Mental Disorder*, UN Doc E/CN.4/Sub.2/1983/Rev.1, paras. 153-223, pp. 22-27.
- Curran, W.J. and Harding, T.W. "Human Rights in Mental Health," in *The Law and Mental Health: Harmonizing Objectives*. Geneva: World Health Organization, 1978, pp. 87-101.

International Instruments

- Declaration on the Rights of Mentally Retarded Persons
- United Nations Commission on Human Rights: Principles for the protection of persons with mental illness and for the improvement of mental health care

Week 9

Case Study of Gender Discrimination in Health

To discuss the nature, concepts and application of the core human rights principle, non-discrimination, by discussing gender discrimination in health and ways and means of its eradication.

Readings

- HUMAN RIGHTS CORRESPONDENCE SCHOOL - EDUCATION MODULES WOMEN AND HUMAN RIGHTS, This module is compiled by: Marita Ishwaran; Edited by: Caroline D'Souza, Jaya Menon; Published by: Research and Documentation Centre, Justice and Peace Commission, Bombay, India
- Von Struensee, "Sex Trafficking: A Plea for Action"

Recommended Readings

- "Son Preference," in Report of the Working Group on Traditional Practices Affecting the Health of Women and Children, UN Doc. E/CN.4/1986/42, 4 February 1986, paras. 139-71, pp. 24-30.
- "Hands of the MTP Act!" (The Maharashtra Regulation of Use of Prenatal Diagnostic Techniques Act), The Lawyers Collective, Bombay, October 1988, pp. 22-3.
- Gruenbaum, E. "The Islamic Movement, Development and Health Education: Recent Changes in the Health of Rural Women in Central Sudan," *Social Sciences and Medicine*, Vol. 33, no. 6, 1991, pp. 637-45.
- "Women and Health: More than Maternal Mortality," *The Woman's Watch*, Vol. 2, no. 3, December 1988, pp. 1-3.

Supplementary Reading

- Levine, C. "Depo-provera and Contraceptive Risk: A Case Study of Values in Conflict," *Hastings Center Report*, Vol. 9, no. 4, August 1979, pp. 8-11.
- Byrnes, A.C., "The 'Other' Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women", *Yale Journal of International Law*, Vol. 14, No. 1, pp. 1-67.

International Instruments

- Human Rights Committee. General Comment No. 18 (37) - Non-discrimination Convention on the Elimination of All Forms of Discrimination Against Women (substantive provisions only)
- Committee on the Elimination of Discrimination Against Women (CEDAW): General recommendation No. 14 (Female circumcision)
- Committee on the Elimination of Discrimination Against Women (CEDAW): General recommendation No. 15 (Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS))
- World Health Organization (WHO): Women, health and development, resolution WHA38.27 World Health Organization (WHO): Women's health, resolution WHA42.42

Week 10

Discussion

What is the relationship between social ideals and claims to universal human rights? Do human rights apply to all people and for all time? Does the "human rights idea" represent merely a "western" model? How does the practice of female genital cutting or lack of education for girls in Afghanistan or the former practice of foot binding in China exemplify the discourse on universality and cultural relativity? Consider other examples of this discourse.

Week 11

Unrealized Economic, Social and Cultural Rights: Overview of the International Covenant on Economic, Social, and Cultural Rights

What are the health consequences of development and global monetary policies? What is the extent of poverty, hunger, and overpopulation in the world today? What are the health consequences of militarism? How are these problems interrelated and how do they affect the environment? What is the role of International Monetary Fund and the World Bank. What are the effects of structural adjustment policies on poverty and health?

What other models exist for developing countries? What is the relation between freedoms and unrealized human needs?

Readings - Handouts:

- Selected Human Rights Documents, International Covenant on Economic, Social, and Cultural Rights.
- 50 Years is Enough: The Case Against the World Bank and the International Monetary Fund. pp. ix-xi.
- Selections from Handbook on Promoting and Defending Economic, Social & Cultural Rights, AAAS/HURIDOCs Economic, Social & Cultural Rights Violations Project

Week 12

Bioethics and Human Rights

What is the relationship between bioethics and human rights? How have people become unwitting participants in human experimentation? How have governments, scientists, and health professionals colluded in the misuse of their own citizenry? How have public health officials participated in human experimentation? Historical examples of this include the eugenics movement, Nazi medicine and the concentration camp experiments, human radiation, mind control, and chemical and biological warfare. What is known about the role of health professionals in experiments and torture?

Readings

- Handouts

Week 13

Human Rights Violations in the World Today

Overview of the current scope and patterns of human rights violations in the world. Overview of the problems of war, political violence, and violations of human rights and humanitarian law.

Health Consequences of Armed Conflicts and Human Rights Violations: What are the immediate and long-term effects of death and disability, destruction of infrastructure, supplies of food, water, housing, health services during times of war and civil conflicts. How do the laws of war aim to protect people in times of war? What constitutes medical neutrality?

Health Status of Refugees and Displaced Persons: What are the immediate and long-term health needs triggered by mass migrations of people during armed conflicts? What constitutes appropriate health services for humanitarian assistance?

Readings

- Handouts from Landmine Survivors Network

Week 14

Torture

How is torture defined? What is the scope of its practice and its prevalence among refugees and asylum seekers? What are the physical, psychological, and social health consequences of torture? How can survivors be helped? What are the possible conceptual and clinical limitations of post-traumatic stress disorder (PTSD) as a diagnosis? How do literary accounts by survivors inform health professionals' efforts to prevent and alleviate suffering?

The Psychology of Abuse: What are the origins of abuse? How do processes of moral disengagement and dissociation promote abuse? What is the unconscious structure of torture? Why does causing death and injury seem to confer power to the victimizer?

Resettlement and Asylum: What health issues arise in countries of asylum? What factors determine the asylum process and how do refugees integrate into new cultures?

Readings

- Handouts

Week 15

Health and Women's Human Rights

What are women's human rights? How has feminism contributed to human rights discourse? How does gender discrimination manifest as abuses of women's human rights? What are reproductive rights and how have they been challenged ?

Readings

- Handouts

Week 16

Health and Human Rights of Children

What are the rights of children? How are they violated. What are the immediate and long-term health consequences of such violations? What is the impact of psychological trauma on development and family dynamics? How does the conceptualization of childhood influence treatment approaches? What are the causes of child labor, hunger, and malnutrition and what remedies can be identified?

Readings

- HUMAN RIGHTS CORRESPONDENCE SCHOOL - EDUCATION MODULES VIOLATION OF THE CHILD'S HUMAN RIGHTS, This module is compiled by: Marita Ishwaran; Edited by: Caroline D'Souza, Jaya Menon; Published by: Research and Documentation Centre, Justice and Peace Commission, Bombay, India

Week 17

Environment, Multinational Corporations, Health and Human Rights

Note: Research Paper Proposals and Presentations Topics due

What are the effects of industry practice, pollution, and dumping on the health rights of populations? Are human rights and a free market compatible? What is the role of government policy in making trade-offs between growth and health? How can multinational corporations be held accountable for human rights abuses? Access to Information in Environmental Health: Case Study of Chernobyl.

To enable students to use the human rights norm on access to information to reinforce public health policies and measures against environmental hazard, particularly in nuclear safety.

Recommended Readings

- "International co-operation to address and mitigate the consequences of the accident at the Chernobyl nuclear power plant", Resolution 45/190 of the United Nations General Assembly of 21 December 1990, pp. 209-210.
- "Information on the economic and social consequences of the accident at the Chernobyl nuclear power plant", submitted by the delegations of the USSR, the Byelorussian SSR and the Ukrainian SSR, Annex to UN Doc A/45/342-E/1990/102 of 9 July 1990, pp. 3-19.
- "Not Just a Nuclear Explosion. The Effects of What Happened at Chernobyl Five Years Ago this Friday Will Earn a Double Place in the History Books," The Economist, April 27, 1991, pp. 19-21.
- IAEA Conventions on Nuclear Safety Provide for Co-operation in Wake of Nuclear Accident," UN Chronicle, Vol. 23, No.5, November 1986, pp. 74-5.
- Vukasovic, V. "Human Rights and Environmentally Issues," in Human Rights and Scientific and Technological Developments, Weeramantry, C.G. (ed.). United Nations University, Tokyo, 1990, pp. 185-202.

- Frankel, M. "Freedom of Information," in Human Rights in the United Kingdom, P. Sieghart (ed.). London: Pinter Publishers, 1989, pp. 95-109.

Week 14

(If time permits): Human Rights Violations/Reports From the Field

Overview of efforts to document violations of international human rights and humanitarian law, including the problems of genocide, extra-judicial executions, torture, rape, excessive use of force, prison condition, landmines, and chemical weapons. Methods of Documenting Human Rights Violations: What are the general conditions for a human rights investigation? How can epidemiology and other research methods be applied to the documentation of human rights violence? What forms of evidence should be collected?

Readings

- Handouts

Weeks 14/15-20

(Student Presentations)

Suggested Paper Topics

Human rights in the post-cold war period: The challenges of fractured societies

References:

- United Nations Department of Peacekeeping Operations, Multidisciplinary Peacekeeping: Lessons From Recent Experience (it can be accessed at <http://www.un.org/Depts/dpko/lessons/>)
- Philip Gourevitch, We Wish to Inform You that Tomorrow We Will Be Killed With Our Families.

The Human Rights Situation in Post-Soviet States

Reference:

- Peter Juviler, Freedom's Ordeal, pp. 1-103.

Human Rights in Post-Soviet States. Strategies of human rights promotion: the role of human rights education

References:

- References: Juviler, pp.104-88;
- George Andreopoulos and Richard Pierre Claude, Human Rights Education for the Twenty-First Century, pp. 3-50, and pp. 278-333.

Protection of Human Rights in Research on Human Beings: Vaccine Testing -- the human rights prohibition of involuntary and harmful experimentation, and to enable them to complement principles of research ethics with human rights norms in discussing research on human beings

References:

- Statement from World Health Organization Consultation on Criteria for International Testing of Candidate HIV Vaccines: Ethical, social and legal issues, Geneva, 27 February - 2 March 1989, GPA/INF/89.9, pp. 1-8.
- Stein, R.E. "Notes for Discussion: Legal Aspects", World Health Organization Meeting on Criteria for International Testing of Candidate HIV Vaccines, Geneva, 27 February - 2 March 1989, pp. 1-5.
- "Human Experimentation," in Health Aspects of Human Rights (with special reference to developments in biology and medicine). Geneva: World Health Organization, 1976, pp. 24-32.
- Belsey, A. "Patients, Doctors and Experimentation: Doubts about the Declaration of Helsinki," Journal of Medical Ethics, Vol. 4, 1978, pp. 182-185.
- Scicluna, H. "Clinical Trials and the Council of Europe," in Medical Experimentation and the Protection of Human Rights, N. Howard-Jones and Z. Bankowski (eds.). Geneva: CIOMS, 1979, pp. 31-9.

International Instruments

- World Medical Association: Declaration of Helsinki
- CIOMS: Proposed International Guidelines for Biomedical Research involving Human Subjects
- Council of Europe: Recommendation No. R (90) 3 concerning medical research on human beings

Freedom to Impart Information for Health Protection: Educational Curricula-the use of human rights argumentation to reinforce the public health necessity of e.g., AIDS prevention education.

References:

- Mace, D.R. et al. The Teaching of Human Sexuality in Schools for Health Professionals. Geneva: World Health Organization, 1974, pp. 9-13.
- Editorial: "AIDS and Sex," The Lancet, January 2/9, 1988, p. 31.
- Department of Community Services and Health, Australia, Consultation Paper No. 2, Report of the Working Panel on Discrimination and Other Legal Issues - HIV/AIDS. Canberra, May 1989, pp. 7-11.
- Guggenheim, M. "The Child's Access to Diverse Intellectual, Artistic and Recreational Resources," (articles 13, 17, 28, 31 and 31 of the Convention on the Rights of the Child), in Children's Rights in America: The UN Convention on the Rights of the Child Compared with the United States Law, C. Price Cohen and H.A. Davidson (eds.). Chicago, American Bar Association Center on Children and the Law and Defence for Children International/USA, 1990, pp. 289-301.
- Erkki Hartikainen v. Finland and Leo Hertzberg v. Finland, in de Zayas, A. and Moller, J., "Optional Protocol Cases Concerning the Nordic Countries Before the Human Rights Committee", Nordic Journal of International Law, Vol. 55, No. 4, 1986, pp. 388-91.
- Decision of the Human Rights Committee in the case A. and S.N. v. Norway (Communication No. 224/1987), UN Doc. CCPR/C/33/D/22 /1987 pp. 2-6.

POLICY AND HEALTH: how human rights could influence decision-making in public health by analyzing the human right to health in general, and specifically the implications of the Convention on the Rights of the Child in public health

References:

- Cook, R.J. "Human Rights and Infant Survival: A Case for Priorities," Columbia Human Rights Law Review, Vol. 18, No. 1, Fall-Winter, 1986-87, pp. 1-41.
- The World Bank, "Causes of Poor Health," in Health, Sector Policy Paper, Washington D.C., February 1980, pp. 20-8.
- Committee on Economic, Social and Cultural Rights, "The Nature of States Parties Obligations," General Comment No. 3 (1990), UN Doc. E/C.12/1990/CPR.5/Add.4, pp. 1-4.
- Implementation of the International Covenant on Economic, Social and Cultural Rights: Reports by States parties and their consideration by the Committee (Article 10, protection of the family, the mother and the child, and Article 12, the right to health).
- Zaire: Initial report concerning rights covered by Articles 10 and 12, UN Doc. E/1986/3/Add.7 of 26 October 1987, pp. 2-6, 8-9; and "Consideration of the report of Zaire", Committee on Economic, Social and Cultural Rights. Report on the Second Session, UN Doc. E/C.12/1988/4, paras. 275-85, 292-96, pp. 48-9, 51.

- Mexico: Initial report concerning rights covered by Article 12, UN Doc. E/1986/Add.13 of 9 December 1988, pp. 3-4, 51-57; and, "Consideration of the report of Mexico", Committee on Economic, Social and Cultural Rights, Report on the Fourth Session, UN Doc. E/C.12/1990/3, paras. 107-112, pp. 28-9.

International Instruments

- United Nations: Convention on the Rights of the Child
- United Nations: World Declaration on the Survival, Protection and Development of Children
- United Nations: Plan of Action for Implementing the World Declaration on Survival, Protection and Development of Children (excerpts)

Human Rights Organizations and Activities: How Does One Begin?

Specific examples of the work of the existing human rights organizations with the aim of assisting students in getting oriented how to obtain the information they may need, and how to develop some form of collaboration with the vast human rights network if the so wish.

References:

- National Institutions for the Protection and Promotion of Human Rights. Updated Report of the Secretary-General, UN Doc. E/CN.4/1989/47 of 16 December 1988 (excerpts).
- Wiseberg, L.S., "Suggestion for Building a Core Collection of Human Rights Documentation," in A Guide to Establishing a Human Rights Documentation Centre. Report of a UNESCO-UNU International Training Seminar on the Handling of Documentation & Information on Human Rights, 22-24 November 1988, United Nations University, Tokyo. Ottawa, Ontario Canada: Human Rights Internet. 1988, pp. 52-78.

Other selected human rights problems for presentation

- Protection of minorities
- Right to self-determination
- Protection of aliens and refugees
- Prohibition of torture
- Personal liberty and the rule of law
- Privacy
- Freedom of expression and assembly
- Right to Development

Human Rights Sources

- The United Nations Charter
- The Universal Declaration of Human Rights
- The 1947 Principles of Nuremberg
- The Geneva Conventions of 1949
- UN Covenant on Civil and Political Rights
- UN Covenant on Economic, Social and Cultural Rights
- The European and American Conventions on Human Rights
- The Convention on Torture.

Moreover, certain documents listed below can be accessed via internet. You must become familiar (if you are not already) with the World Health Organizations' web site (<http://www.who.org>) and the United Nations' web site (<http://www.un.org>). The World Bank is also an excellent resource <http://www.worldbank.org>. The following documents are available at <http://www.un.org/Docs/SG/>:

1. Secretary-General's Report to the UN Security Council on the causes of conflict and the promotion of durable peace and sustainable development in Africa
2. Agenda for Development
3. An Agenda for Peace (A/47/277-S/24111) 17 June 1992
4. An Agenda for Peace, Supplement (A/50/60-S/1995/1) 3 January 1995.

Finally, you should visit: (1) the United Nations High Commissioner for Human Rights web site (<http://www.unhchr.ch>); it includes a wealth of information and reports on human rights issues, and (2) the Consortium for Health and Human Rights web site (<http://www.healthandhumanrights.org/>)