

## **Transnational Public Interest Lawyering**

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This module introduces students to strategic human rights litigation through the exploration of a selection of cases, actors, strategies in the field of international and transnational public interest lawyering. Through examining the mobilisation of international legal strategies students will be introduced to key case-studies in order to develop a critical understanding of the promise and limitations of the rapidly expanding field of transnational legal practice, especially with regards to access of justice, systems litigation and the realisation of human rights claims. In addition to questioning the centrality of lawyers and the law to social change we will explore trends, methods and innovations that are reshaping practice or pushing beyond traditional legal forums in order to appreciate the rapid change in this burgeoning field.

Students will also confront a body of research on strategic litigation and develop an appreciation of its inter-play with non-legal activities and challenges. This theoretical component will inform consideration of the active cases of the Global Legal Action Network providing students with insights into professional and ethical difficulties associated with international practice. Finally, students will reflect on the complex task of lawyering across multiple legal orders and the opportunities presented by transnational and non-state law.

### Learning outcomes

Upon the successful completion of this course students will be able to:

- Understand the key critiques of international law relevant to human rights claims and protection mechanisms.
- Understand the role of transnational spaces and processes in the production of human rights violations, accountabilities and remedies.
- Evaluate the strengths and limitations of international human rights mechanisms, litigation strategies and remedies.
- Identify the practical, legal and ethical issues obstacles inherent in international human rights litigation.
- Appreciate the contingent nature of the role of the lawyer in the realisation and production of traditional and alternative forms of legal accountability.
- Critically assess the potential, risks and impact of strategic litigation strategies.

## Format

Students are expected to attend all seminars. The course will be taught by weekly seminars, each three hours, over four weeks. Students are expected to have read all prescribed readings in advance of each seminar (8-10 hours each week of independent learning). Students are expected to actively anticipate in class discussion, group activities and individual activities throughout the course of the module.

## Assessment

Presentation: Students will choose a litigation case study and make an individual presentation that takes a critical perspective on the design and impact the legal action. Case-studies should be selected and approved with the assistance of the course convenor (20%)

Essay: Students will be assigned an area of law and tasked with writing a short essay on a particular area of transnational litigation. Students will be permitted to draw on the literature encountered during seminar, the essay should be submitted in hardcopy and electronically via Blackboard (70%).

Class participation: (10%)

## Course Outline

### Week 1: Strategic litigation as a tool to advance human rights?

Bettinger-Lopez, C et al "Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice", (2011) 18 *Georgetown Journal on Poverty Law and Policy* 337.

Duffy, H. "Strategic Human Rights Litigation: 'Bursting the Bubble on the Champagne Moment'." (2017). <https://openaccess.leidenuniv.nl/bitstream/handle/1887/59585/oratie-helen-duffy-spreekversie.pdf?sequence=1>

O'Connell P. "Human Rights: Contesting the Displacement Thesis" (2018) 69 (1) *Northern Ireland Legal Quarterly* 19.

### *Further reading*

Spade, D. "Laws as tactics." *Columbia Journal of Gender and Law* 21 (2011) 40.

Balakrishnan, R. "International Law and Social Movements: Challenges of Theorizing Resistance", 41 *Columbia Journal of Transnational Law* 397 (2003)

Brown, C. "Universal Human Rights: A Critique", *International Journal of Human Rights*, Vol 1, No 2 (1997) 41.

Ellmann, S. "Struggle and legitimation." *Law & Social Inquiry* 20.2 (1995): 339-348.

Gearty, G. and Douzinas, C. "Introduction" in Gearty and Douzinas (eds.), *The Cambridge Companion to Human Rights Law* (CUP 2012) 1, 1

Kennedy, D. 'The international human rights regime: Still part of the problem?', in Rob Dickinson et al (eds.), *Examining Critical Perspectives on Human Rights* (Cambridge, 2012).

Hunt, A. "Rights and Social Movements: Counter-Hegemonic Strategies" (1990) 17 *Journal of Law and Society* 309, 320.

Mutua, M. "Savages, Victims, and Saviors: The Metaphor of Human Rights" 42 *Harvard International Law Journal* 201, 214-17 (2001)

Haynes, DF. "Client-Centered Human Rights Advocacy" 13 *Clinical L. Rev.* 379 (2006)

### Week 2: Strategic human rights litigation and the transnational space

What is transnational law and what does it mean with respect to human rights litigation? Here we examine some conceptual approaches to this area of law and consider concrete case studies highlighting the potential and pitfalls of this domain of practice.

Jabareen, H" Transnational lawyering and legal resistance in national courts: Palestinian cases before the Israeli Supreme Court." *Yale Hum. Rts. & Dev. LJ* 13 (2010): 239.

Hoffman, B., & Vahlsing, M. "Collaborative Lawyering in Transnational Human Rights Advocacy" *Clinical L. Rev.*, 21, 255.

Tan, N.F. & Gammeltoft-Hansen T. "Topographical Approach to Accountability for Human Rights Violations in Migration Control" *German Law Journal* 21, 335 (2020).

### *Further reading*

Zumbansen, P "Defining the space of transnational law: legal theory, global governance, and legal pluralism." *Transnat'l L. & Contemp. Probs.* 21 (2012): 305.

Liste, P "Geographical knowledge at work: Human rights litigation and transnational territoriality." *European Journal of International Relations* 22.1 (2016): 217-239.

Regan Jr, Milton C., and Kath Hall. "Lawyers in the shadow of the regulatory state: transnational governance on business and human rights." *Fordham L. Rev.* 84 (2015): 2001.

Skinner G, McCorquodale R, De Schutter O "The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business" (2013)  
<http://humanrightsinbusiness.eu/portfolio/the-third-pillar/>

### Week 3: The role of the lawyer and NGO

Following an exposition of core concepts, we examine the relationship between the lawyer and social change and the preconception that lawyers and litigation are key to all sorts of social change movements.

Nayel, MA "Palestinian refugees are not at your service" *The Electronic Intifada* 17 May 2013

Elsesser, C "Community Lawyering – The Role of Lawyers in the Social Justice Movement" 14 *Loy. J. Pub. Int. L.* 375-404 (2013), available at  
<http://courses.povertylaw.org/mod/resource/view.php?id=6200>.

Gordon, J. (2007). The lawyer is not the protagonist: Community campaigns, law, and social change. *Cal. L. Rev.*, 95, 2133.

Blitt, R. C. (2004). Who Will Watch the Watchdogs-Human Rights Nongovernmental Organizations and the Case for Regulation. *Buff. Hum. Rts. L. Rev.*, 10, 261.

### Further reading

Crow, ME. "From dyad to triad: Reconceptualizing the lawyer-client relationship for litigation in regional human rights commissions." *Mich. J. Int'l L.* 26 (2004): 1097.

Moley, N. "Confronting the challenges of ethical accountability in International Human Rights Lawyering." *Stan. J. Int'l L.* 50 (2014): 359.

Rajkovic, NM "Rules, Lawyering, and the Politics of Legality: Critical Sociology and International Law's Rule", *Leiden Journal of International Law* Vol 27 (2014) 331.

### Week 4: Methods and Trends

From strategies and innovative approaches we turn to consider the practicalities of transnational lawyering including methods and resourcing.

Ferrando T. "Land Rights at the Time of Global Production: Leveraging Multi-Spatiality and 'Legal Chokeholds'" *Business and Human Rights Journal*, (2017) 2(2), 275-295.

Goldhaber, MD. "Corporate Human Rights Litigation in Non-US Courts: A Comparative Scorecard." *UC Irvine L. Rev.* 3 (2013): 127.

Meeran, R. (2011). Tort litigation against multinational corporations for violation of human rights: an overview of the position outside the United States. *City UHKL Rev.*, 3, 1.

#### *Further reading*

Barber, C. C. (2012). Tackling the evaluation challenge in human rights: assessing the impact of strategic litigation organisations. *The International Journal of Human Rights*, 16(3), 411-435.

Duffy, Helen. "Litigating Modern Day Slavery in Regional Courts: A Nascent Contribution" *Journal of International Criminal Justice* 14.2 (2016): 375-403.

From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions – *Open Society Justice Initiative* (2011)

<https://www.opensocietyfoundations.org/reports/rights-remedies-structures-and-strategies-implementing-international-human-rights-decisions>

Fairlie, M. A. (2016). The Hidden Costs of Strategic Communications for the International Criminal Court. *Tex. Int'l LJ*, 51, 281.

Forbes AV, Massagé I "Funding Effective Human Rights Work" *Journal of Human Rights Practice*, 2016 8(3) p311–315

Hurwitz, DR "Lawyering for Justice and the Inevitability of Human Rights Clinics", 28 *Yale Journal of International Law* 505 (2003).

Narine, M. "From Kansas to the Congo: Why Naming and Shaming Corporations Through the Dodd-Frank Act's Corporate Governance Disclosure Won't Solve a Human Rights Crisis." *Regent UL Rev.* 25 (2012): 351.

Prihandono, I. "Barriers to transnational human rights litigation against transnational corporations (TNCs): the need for cooperation between home and host countries." *Journal of law and conflict resolution*, (2011). 3(7), 89-103

#### Resources and further reading

Drimmer, J. (2010). Human rights and the extractive industries: Litigation and compliance trends. *Journal of World Energy Law & Business*, 3(2), 121-139.

Johnson DA & Pearson NL, "Tactical Mapping: How Non-profits Can Identify the Levers of Change", *The Nonprofit Quarterly* 92 (2009)

Kennedy D, "Legal Education as Training for Hierarchy" in *The Politics Of Law: A Progressive Critique* (David Kairys ed., 3d ed. 1998), available at [http://www.duncankennedy.net/documents/Legal%20Education%20as%20Training%20for%20Hierarchy\\_Politics%20of%20Law.pdf](http://www.duncankennedy.net/documents/Legal%20Education%20as%20Training%20for%20Hierarchy_Politics%20of%20Law.pdf)

McCorquodale, R. and Simons, P. "Responsibility beyond borders: state responsibility for extraterritorial violations by corporations of international human rights law." *The Modern Law Review* 70.4 (2007): 598-625.

Scott, C. M. (Ed.). (2001). *Torture as tort: comparative perspectives on the development of transnational human rights litigation*. Bloomsbury Publishing.

Ramasastri, A. (2015). Corporate social responsibility versus business and human rights: Bridging the gap between responsibility and accountability. *Journal of Human Rights*, 14(2), 237-259.

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The International Human Rights Fact-Finding Guidelines (The Lund-London Guidelines) – International Bar Association [https://www.ibanet.org/Fact\\_Finding\\_Guidelines.aspx](https://www.ibanet.org/Fact_Finding_Guidelines.aspx)

Human Rights Watch, "Our Methodology" available at <http://www.hrw.org/en/node/75141>

Amnesty International, "Our Methods" available at <http://www.amnesty.org/en/who-we-are/accountability/statute>

FIDH "Universal Jurisdiction Trial Strategies"  
[https://www.fidh.org/IMG/pdf/Universal\\_Jurisdiction\\_Nov2010.pdf](https://www.fidh.org/IMG/pdf/Universal_Jurisdiction_Nov2010.pdf)

Redress & FIDH Extraterritorial Jurisdiction In The European Union A Study Of The Laws And Practice In The 27 Member States Of The European Union (2010)  
[https://www.fidh.org/IMG/pdf/Extraterritorial\\_Jurisdiction\\_In\\_the\\_27\\_Member\\_States\\_of\\_the\\_European\\_Union\\_FINAL.pdf](https://www.fidh.org/IMG/pdf/Extraterritorial_Jurisdiction_In_the_27_Member_States_of_the_European_Union_FINAL.pdf)

European Centre for Constitutional and Human Rights (ECCHR) <https://www.ecchr.eu/en/>

Sherpa (France) <https://www.asso-sherpa.org/organization>

Blogs/reports

<https://www.openglobalrights.org/the-value-of-strategic-litigation-amidst-rising-illiberal-democracies/>

<https://www.alliancemagazine.org/blog/litigating-for-social-change-what-can-funders-learn-from-global-experience/>

[https://www.atlanticphilanthropies.org/insights/insights-books/strategic-litigation#about the book](https://www.atlanticphilanthropies.org/insights/insights-books/strategic-litigation#about%20the%20book)