Assessment

The requirements for this course can be satisfied either by taking the end of semester exam or by writing a three credit paper. The exam will be an open book, three hour, in class, exam, based on the materials prescribed for the course and the class discussions.

If you wish to write a paper, this is how it works:

- This is a 4 credit course, and so the paper is worth 4 credits. It must be at least 10,000 words in length (including footnotes).
- The topic must focus on an aspect of ESR and will ideally be closely related to one of the issues dealt with in the course.
- It is your responsibility to propose a topic. Once I have indicated agreement in principle, you will need to submit an outline of at least one page identifying a specific research question, describing the methodology, and outlining the proposed structure of the paper. March 24 is the strict deadline for submitting this outline.
- The paper is due by the end of the exam period, and should be sent to me at Philip.alston@nyu.edu
- No extensions of the deadline for papers will be given. A student who cannot meet the deadline will need to take the exam instead of writing a paper.

Grading

Note that the NYU grading curve is compulsory for this course. That means that papers will also be graded on a relative basis.

Final grades for the course will take account of class participation.

Office hours

Office hours are from 11.00-1.00 on Mondays, sign-up with Pamela Mercado VH 310 (Pamela.mercado@nyu.edu)
OUTLINE

A. THE FOUNDATIONS OF ESR
1. Introduction to ESR
2. Case study of ESR in practice: Saudi Arabia
3. Theories of ESR (I)
4. Theories of ESR (II)
5. Historical origins of the international ESR legal regime

B. LEGAL RECOGNITION
6. The ICESCR
7. What Difference Does a Human Rights Framework Make?
8. Gender Dimensions
9. Constitutional Recognition of ESR

C. RESOURCES
10. ‘Available resources’: Affordability
11. The relationship between the two sets of rights
12. Inequality
13. Privatization and Austerity

D. INSTITUTIONS: PROMOTIONAL
14. Indicators and Poverty Lines
15. Social Protection Floors and Universal Basic Income
16. The Right to Health and the USA
17. International NGOs and ESRs

E. INSTITUTIONS: INTERNATIONAL MONITORING
18. The UN Human Rights Council and ESR
19. ESR in the Context of the Sustainable Development Goals and the 2030 Development Agenda
20. ESR Complaints Systems
21. Reporting under the ICESCR

F. INSTITUTIONS: ADJUDICATORY
22. The right to education: Non-discrimination and equality
23. Reviewing Governmental Actions for Reasonableness
24. The Role of ESR in the Future of Human Rights
25. Kenya: A Case Study of ESR
26. The right to health: Public interest litigation
27. South Africa: The right to water
28. Course wrap-up
COURSE MATERIALS

A. THE FOUNDATIONS OF ESR

1. Introduction to ESR

International Covenant on Economic, Social and Cultural Rights (1966)
Map of Ratifications of ICESCR
Eduardo Porter, ‘Electing to Ignore the Poorest of the Poor,’ NYT, Nov. 17, 2015

2

3. Theories of ESR (I)

A. The Importance of Philosophical Considerations in Evaluating ESR

Securing Access to Health Care, Report of the President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (March 1983)
Debate on ESCR at the UN Commission on Human Rights, March-April 2004

B. Religious, Philosophical and Other Perspectives

Religious texts
Isaiah, Ch. 58 (Holy Scriptures, Masoretic Text, 1917)
Matthew, Ch. 26 (Holy Bible, King James Version)
The Holy Qur’an, Surah 63: Al Munafiqun, 9 and 10

C. Eighteenth-Century Philosophical and Political Treatises

Jonathan Swift, A Modest Proposal (1729)
Immanuel Kant, The Doctrine of Virtue, in The Metaphysics of Morals (1797)
Thomas Paine, The Rights of Man (1792)
Declaration of the Rights of Man and the Citizen (1793)
Thomas Robert Malthus, Essay on the Principle of Population (1798)

**D. Philosophical Responses to ESR after their Recognition in the UDHR**

*(a) Critical perspectives*
Maurice Cranston, Are There Any Human Rights?, 112/4 Daedalus (1983)

**4. Theories of ESR (II)**

*(b) Supportive/sympathetic perspectives*

**E. The Challenge of Grounding ESR**

**F. Human Dignity as a Possible Foundation for ESR**

**5. Historical origins of the international ESR legal regime**

**A. Pre-1945**
ADD ILO 1919 Const
ILO, Declaration of Philadelphia, 1944

**B. National-level precedents**
Constitution of Mexico, 1917
Constitution of the German Reich (‘Weimar Constitution’) 1919
Constitution of the Union of Soviet Socialist Republics, 1936
UK and US post-War planning
(a) The United Kingdom
Sir William Beveridge, Social Insurance and Allied Services (1942)
(b) The United States
National Resources Planning Board, A New Bill of Rights (1943)
Franklin D. Roosevelt’s Four Freedoms Address (1941)
Atlantic Charter, August 14, 1941
Franklin D. Roosevelt, A Second Bill of Rights, State of the Union Address to the Congress (1944)
Note on the American Law Institute’s Statement of Essential Rights
UN Commission on Human Rights Drafting Committee, International Bill of Rights, Documented Outline (1946)
ESR in the UDHR
Commission on Human Rights, Drafting Committee on an International Bill of Human Rights, (July 1947)

ESCR Provisions of the UDHR
The most controversial right: rest and leisure
From the UDHR to the ICESCR
The influence of the UN Specialized Agencies

B. LEGAL RECOGNITION

6. The ICESCR

Excerpts from the ICESCR
Differences between the ICESCR and the ICCPR
The terminology of ESCR
Implementation — the ESCR Committee
UN Committee on ESCR, General Comment 3 (1990), The nature of States parties obligations
A Typology of Duties under Human Rights Treaties

7. What Difference Does a Human Rights Framework Make?

Sally Engle Merry, Inequality and Rights: Commentary on Michael McCann’s “The Unbearable Lightness of Rights”, 48 *Law & Society Rev* (2014) 285
Guy Standing, *Conditionality and Human Rights, 19 May 2014*

8. Gender Dimensions

Convention on the Elimination of All Forms of Discrimination against Women, 1979
Sandra Fredman, Engendering Socio-Economic Rights, Oxford Legal Research Paper Series, June 2010
Jill Rubery, ‘Austerity, the Public Sector and the Threat to Gender Equality’, 46 *The Economic and Social Review* (2015) 1

9. Constitutional Recognition of ESR


C. RESOURCES

10. Available resources: Affordability

Center for Economic and Social Rights, *Equatorial Guinea Fact Sheet*, July 7, 2009
11. The relationship between the two sets of rights

32
Daron Acemoglu et al, Democracy Does Cause Growth, WP May 2015

12. Inequality

Angus Deaton, What does the empirical evidence tell us about the injustice of health inequalities?, January 2011
An Economy for the 99%, Oxfam Briefing Paper, January 2017

13. Privatization and Non-state actors

High Court of Israel, *Academic Center of Law and Business v. Minister of Finance*, HCJ 2605/05
Catrina Stewart, Bridge International Academies: Scripted schooling for $6 a month is an audacious answer to educating the poorest children across Africa and Asia, *The Independent*, 28 July 2015
Andrew Green, What went wrong for Bridge Academies in Uganda? Devex, 12 December 2016
Bridge International Academies gets high marks for ambition but its business model is still unproven, *The Economist*, Jan 28th 2017


**D. INSTITUTIONS: PROMOTIONAL**

**14. Indicators and Poverty Lines**


Sally Engle Merry, The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking (2016), Ch. 1


**15. Social Protection Floors and Universal Basic Income**

International Labour Organization, Social Protection Floors Recommendation, 2012 (No. 202)


**16. The Right to Health**

The Right to Health, Article 12, ICESCR

The right to the highest attainable standard of health, Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000)


**17. International NGOs and ESRs**

One Year of HRW Reports – March 2016 to March 2017, List of Titles
Note on Amnesty’s approach to ESCR
Principal Amnesty ESCR-related Reports

E. INSTITUTIONS: INTERNATIONAL MONITORING

18. The UN Human Rights Council and ESR

‘UN Experts: Detroit Should Restore Water to Poor,’ Associated Press, 20 October 2014

19. ESR in the Context of the Sustainable Development Goals and the 2030 Development Agenda

General Assembly Resolution 70/1 (25 Sept 2015). Transforming our world: the 2030 Agenda for Sustainable Development
Thomas Pogge and Mitu Sengupta, A Critique of the Sustainable Development Goals’ Potential to Realize the Human Rights of All: Why being better than the MDGs is not good enough
Richard Jolly, Gabriele Köhler, Robin Luckham, and Philip Mader, Keeping the 2030 Agenda Alive, March 2017

20. ESR Complaints Systems

Guest Speaker: Prof Aoife Nolan, Member, European Committee of Social Rights.
Optional Protocol to the ICESCR, General Assembly Res. 63/117, 10 Dec. 2008
Views of the Committee on ESCR under the Optional Protocol to the ICESCR, Communication No. 2/2014, I.D.G. v Spain (June 2015)
Note on the European Social Charter
European Committee of Social Rights, Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the Merits, 25 June 2010

21. Reporting under the ICESCR
**Guest Speaker:** Christiaan van Veen, Senior Adviser, UN Special Rapporteur

Overview of the present working methods of the Committee on Economic, Social and Cultural Rights, UN Doc. E/2014/22

Report by China, UN Doc. E/C.12/CHN/2, published 6 July 2012, submitted by Govt: 30 June 2010

The Network of Chinese Human Rights Defenders & a Coalition of NGOs, Report Submitted to the Committee on Economic, Social and Cultural Rights, April 2014

Committee on Economic, Social and Cultural Rights, Concluding Observations on China, UN Doc. E/C.12/CHN/CO/2, 13 June 2014

Delegation of the PRC to the Committee Session

**E. INSTITUTIONS: ADJUDICATORY**

**22. The right to education: Non-discrimination and equality**

*D.H. and Others v. The Czech Republic*, European Court of HR (Nov 2007)

*Minister of Basic Education v Basic Education for All*, Supreme Court of Appeal, South Africa (2 December 2015)


**23. Reviewing Governmental Actions for Reasonableness**

Note on South Africa

The South African Constitution & ESCR


*Soobramoney v. Minister of Health (Kwazulu-Natal)*, Case CCT 32/97, 27 November 1997


*City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*, Case CCT 37/11, 1 December 2011


**24. ESR and the Future of Human Rights**

**Guest Speaker:** Prof César Rodríguez-Garavito

25. Kenya: A Case Study of ESR

Guest Speaker: Willy Mutunga, former Chief Justice, Supreme Court of Kenya


26. India’s Public interest litigation

Guest Lecturer: Rehan Abeyratne, Associate Professor of Law at the Jindal Global Law School, India

Constitution of India, 1950
Olga Tellis v. Bombay Municipal Corporation, Supreme Court of India, 1985, AIR 1986 SC 18
Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165
Rakesh Chandra Narayan v. State Of Bihar, Supreme Court of India, 1989 AIR 348,
Consumer Education & Research Centre v. Union of India, (1995) 3 SCC 42
Paschim Banga Khet Mazdoor Samity v. State Of West Bengal, 1996 4 SCC 37
Laxmi Mandal v. Deen Dayal Harinagar Hospital, W.P.(C) 8853/2008, and Jaitun v. Maternity Home MCD , Jangpura & Ors., W.P.(C) 10700/2009, Delhi High Court, 4 June 2010
‘The rights approach: India's rights-based activism is bound to yield less than it promises’, The Economist, March 18, 2010

27. The right to water: South Africa

Guest Speaker: Dikgang Moseneke, former Deputy Chief Justice of the South African Constitutional Court


28. Wrap-up