

WOMEN'S RIGHTS IN TRANSNATIONAL PERSPECTIVE (JPJ2049) (LAW301H1F)

Professor Rebecca J. Cook
Faculty of Law, University of Toronto

Fall Semester, 2018
3 Credits

COURSE OUTLINE

Tuesdays 2:10 pm – 4:00pm in the Solarium (FA 2)

and some Fridays 12:30 to 2:30pm in FA 3

[Sept 4: rescheduled class to Friday Sept 21 at 12:30 in FA 3)

1. Sept 11: Equality and Non-Discrimination under CEDAW
 2. Sept 18: Rewriting Judgments-Feminist Methods, Approaches and Perspectives
Professor Denise Reaume
 3. Sept 21 (**Fri 12:30**): The International Human Rights Context of Rewriting Judgments
 4. Sept 25: Sustainable Development and Women's Rights
 5. Oct 2: Discrimination against women in the exercise of the right to conscience
 6. Oct 9: Discrimination against women in the exercise of the right to conscience
- Oct 16: rescheduled class to Friday Oct 26 at 12:30 in FA 3
- Oct 22: lunch with Professor Brenda Gunn, Faculty of Law, University of Manitoba
7. Oct 23: Discrimination against Indigenous Women
 8. **Oct 26 (Fri 12:30)**: Discrimination against Indigenous Women
 9. Oct 30: Discrimination against women in criminal law
 10. **Nov 13**: Discrimination against women in criminal law
 11. Nov 20: Discrimination against women and men in the military
 12. **Nov 27**: Discrimination against women and men in the military

WOMEN'S RIGHTS IN TRANSNATIONAL PERSPECTIVE

Fall 2018

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[Sept 4: Class rescheduled to Sept 21.]

1. Sept 11: Equality and Non-Discrimination under CEDAW

Andrew Byrnes, "Article 1" (Discrimination against Women) in Marsha Freeman, Christine Chinkin and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford: OUP, 2012) 51-70, 19pp [MyAccess](#). Quercus #01

Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW) adopted December 18, 1979, G.A. Res. 34/180, UN GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 13 (entered into force September 3, 1981) [CEDAW Convention text](#). Quercus #02

Cook, Rebecca J. and Cusack, Simone. "The Committee on the Elimination of Discrimination against Women" in Tara Van Ho and Nigel Rodley, eds, *Research Handbook on Human Rights Institutions and Enforcement* (Edward Elgar Publishing Ltd, forthcoming 2019) 9pp [Online through T-Space](#). Quercus #03

Website: <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

See also:

Andrew Byrnes, "Gender challenges for international human rights law", in Scott Sheeran and Nigel Rodley (eds.) *Routledge Handbook of International Human Rights Law* (Milton Park, Oxon: Routledge, 2013) 615-634

Sylvia Tamale and Joseph Oloka-Onyango, "'The Personal is Political,' or Why Women's Human Rights are Indeed Human Rights: An African Perspective on International Feminism" (1995) 17 *Human Rights Quarterly* 691-731, 697-713, 16pp.

2. Sept 18: Rewriting Judgments-Feminist Methods, Approaches and Perspectives

Rosemary Hunter, "An Account of Feminist Judging" in Rosemary Hunter, Clare McGlynn and Erika Rackley eds., *Feminist Judgments- From Theory to Practice* (Oxford: Hart, 2010) 30-43 Quercus #04. (Book on Reserve at Law Library)

Ruth Rubio-Marin and Clara Sandoval, "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the *Cotton Field* Judgment" (2011) 33(4) *Human Rights Quarterly* 1062-1091, **read only 1064–1071, 1083–1089** Quercus #5 [MyAccess](#).

Denise Réaume, Turning Feminist Judgments into Jurisprudence: The Women’s Court of Canada on Substantive Equality, Oñati Socio-legal Series forthcoming 2018 Quercus #06 [Online at SSRN](#)

Sept 21 (Fri): The International Human Rights Context of Rewriting Judgments

Acculturation/Socialization: Ryan Goodman and Derek Jinks, “How to Influence States; Socialization and International Human Rights Law” (2004) 54 *Duke L J* 621 **read only 638-656**. Quercus #07. [MyAccess](#).

Boomerang: Caroline Bettinger-López, “The Long Arc of Human Rights: A Case for Optimism,” 97.3 (2018) *Foreign Affairs* 186-190, reviewing *Evidence for Hope: Making Human Rights Work in the 21st Century* by Kathryn Sikkink, Princeton University Press, 2017. Quercus #08. [Article online](#). [MyAccess](#).

International Law from Below: Paulina García-Del Moral, “Femicidio: TWAIL in Action,” (2016) 110 *AJIL Unbound* 31-36. Quercus #09. [MyAccess](#).

Global Constitutionalism/ Constitutional Domestication: Karen Knop, “Here and There: International Law in Domestic Courts” (2000) 32(2) *NYU J. of Int’l Law and Politics* 501-535, 525-535, 10pp Quercus #10

See also:

Jutta Brunnée and Stephen Toope, “Interactional international law and the practice of legality” in *International Practices* E. Adler and V. Pouliot eds. (Cambridge: Cambridge University Press, 2011) 108-135 [Library access](#).

3. Sept 25: Sustainable Development and Women’s Rights

Sustainable Development Goals

Sandra Fredman, Jaakko Kuosmanen, and Meghan Campbell, “Transformative Equality: Making the Sustainable Development Goals Work for Women” (2016) 30(2) *Ethics and International Affairs* 177-187 Quercus #11. [Library access](#).

Reinterpreting the Equality and Non-Discrimination Provisions of the Convention on the Elimination of All Forms of Discrimination against Women

Meghan Campbell, *Women, Poverty, Equality - The Role of CEDAW* (Oxford, UK: Hart Publishing, 2018): Quercus #12. Book on Reserve at Law Library

A Comprehensive Interpretation: Equality and Non-Discrimination in CEDAW, 88-113, 25pp

Introducing Gender-Based Poverty into CEDAW 224-229, 5pp

4. Oct 2: Discrimination against Women in the Exercise of the Right to Conscience

McGee v. Attorney General in Máiréad Enright, Julie McCandless and Aoife O'Donoghue (eds.), *Northern/Irish Feminist Judgments* (Oxford: Hart, 2017): Quercus #13.
--Emilie Cloatre & Máiréad Enright, Commentary on *McGee v. Attorney General*, 95-106
-- Máiréad Enright, Judgment, 107-115

Maria Sjöholm, *Gender-Sensitive Norm Interpretation by Regional Human Rights Law Systems*, (Leiden: Brill/Nijhoff, 2018) "Non-Discrimination and Equality," 191-227, **read only: Europe** 194-219, 25pp. Quercus #14 [MyAccess](#).

See also:

Bernard M. Dickens, "The Right to Conscience," in *Abortion Law in Transnational Perspective: Cases and Controversies*, ed. Rebecca J. Cook, Joanna N. Erdman and Bernard M. Dickens (University of Pennsylvania Press, 2014), 210-238 [Institutional access to book](#). [Chapter abstract](#).

CEDAW Committee, *General Recommendation No. 24: Women and Health*, U.N. Doc. A/54/38/Rev.1 (1999)

University of Toronto, International Sexual & Reproductive Health Law Program: See working bibliography on the right to conscience: [Conscientious Objection](#). See also: [Website](#). [Reprohealthlaw Blog](#)

European Court of Human Rights - <https://www.echr.coe.int/>

5. Oct 9: Discrimination against Women in the Exercise of their Right to Conscience

Addressing Medical Professionals' Refusals to Provide Abortion Care on Grounds of Conscience or Religion (New York: Center for Reproductive Rights, 2018) Fact sheet. 24pp [Fact Sheet online](#). Quercus 15

Rewrite one aspect of the following judgment that relates to discrimination:

Decision from the European Committee of Social Rights:

Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint no. 91/2013, Decision on admissibility and the merits, April 11, 2016 [Decision online](#). Quercus #16.

Oct 16: Class rescheduled to Oct 26

Oct 22: lunch with Professor Brenda Gunn, Faculty of Law, University of Manitoba

Background:

Brenda Gunn, *Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples-An Introductory Handbook* (Winnipeg, Indigenous Bar Association, 2011) [Handbook](#). Quercus #17.

Brenda L Gunn, "Self-Determination and Indigenous Women: Increasing Legitimacy through Inclusion" (2014) 26 CJWL 241-275. [Library access](#). Quercus #18.

UN Declaration on the Rights of Indigenous Peoples, UNGAOR 61st Sess, 107th Plen Mtg, UN Doc A/61/L.67, adopted 2007 [UN Declaration RIP](#) Quercus #19.

6. Oct 23: Discrimination against Indigenous Women in Accessing Justice

OAS, Inter-American Commission on Human Rights, *Indigenous Women and Their Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 44/17 (2017). Quercus #20. [Entire report.](#)

29-55 ch 3: Guiding Principles and Legal Basis of the Report

IACHR, Missing and Murdered Indigenous Women in British Columbia, Canada, OEA/Ser.L/11., Dec 21, 2006. [Entire report online.](#) Quercus #21

44-53 Discrimination and inequality against indigenous women (i. the nature and manifestations of violence against indigenous women; ii. The link between discrimination and violence)

65–71: International obligations to guarantee women’s rights to equality, non-discrimination, and non-violence

Maria Sjöholm, *Gender-Sensitive Norm Interpretation by Regional Human Rights Law Systems*, (Leiden: Brill/Nijhoff, 2018) “Non-Discrimination and Equality,” **read only: Inter-American 219-224** Quercus #22 [Library access to whole chapter.](#) [Library access to entire book.](#)

See also:

OAS, General Assembly, 3rd Plen Sess, *American Declaration on the Rights of Indigenous Peoples* OR OEA AG/RES. 2888 (2016) [ADRIP](#)

Inter-American Commission of Human Rights - <http://www.oas.org/en/iachr/>

Inter-American Court of Human Rights - <http://www.corteidh.or.cr/index.php/en>

Committee on the Elimination of Discrimination against Women, *Report of the Inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (2015) UN Doc CEDAW/C/OP.8/CAN/1 [Online.](#)

Committee on the Elimination of Discrimination against Women, *Information received from the Government of Canada on the measures taken in response to the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (27 June 2016) UN Doc. CEDAW/C/OP.8/CAN/3 [Document online.](#)

Oct 26 (Fri): Discrimination against Indigenous Women

OAS, Inter-American Commission on Human Rights, *Indigenous Women and Their Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 44/17 (2017). Read ch 5: Access to Justice for Indigenous Women: 93-117. Quercus #23. [Entire report online.](#)

Rachel Sieder, “Legal Pluralism and Indigenous Women’s Rights in Mexico: The Ambiguities of Recognition” (2015) 48 *NYU J. Intl L & Politics* 1125- 1150, **read only 1125-1146**. Quercus #24

Rewrite an aspect of the following judgment that relates to discrimination in accessing justice:

Fernández Ortega et al. v Mexico (2010), Inter-Am Ct HR (Ser C), No. 215 (excerpts on access to justice) Quercus #25.

See also:

Committee on the Elimination of Discrimination against Women, *Report of the Inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (2015) UN Doc CEDAW/C/OP.8/CAN/1 [Online.](#)

Committee on the Elimination of Discrimination against Women, *Information received from the Government of Canada on the measures taken in response to the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (27 June 2016) UN Doc. CEDAW/C/OP.8/CAN/3 [Document online.](#)

7. Oct 30: Discrimination against Women in Criminal Law

Sylvia Tamale, “Paradoxes of sex work and sexuality in modern-day Uganda,” in S. Tamale (ed.) *African Sexualities – A Reader* (Cape Town: Pambazuka Press, 2011), 145-173, 20pp Quercus #26.

Lucy Nyambura & Another v. Town Clerk, Municipal Council of Mombasa & 2 Others [2011] eKLR, Petition No. 286 of 2009 (High Court of Kenya) [Conviction for loitering for purposes of prostitution upheld constitutional.] *Legal Grounds III Reproductive and Sexual Rights in Sub-Saharan African Courts* (Pretoria: Pretoria University Law Press, 2017) 125-132: [Summary and comment on Nyambura case, by Godfrey Kangaude.](#) Quercus #27

Mary Joe Frug, “A Postmodern Feminist Legal Manifesto (An unfinished draft),” *Harvard Law Review* 105.5: 1045-1075 (1992) **read only 1045-1059 focusing on prostitution, 14pp** [Hein Online.](#) Quercus #28

Maria Sjöholm, *Gender-Sensitive Norm Interpretation by Regional Human Rights Law Systems*, (Leiden: Brill/Nijhoff, 2018) Non-Discrimination and Equality: 191-227. **read only: African 224-226.** Quercus #29. [Library access to whole chapter](#). [Library access to book](#).

African Commission on Human Rights - <http://www.achpr.org/>

See also:

Chi Adanna Mgbako, *To Live Freely in this World: Sex Worker Activism in Africa* (NYU Press, 2016) [Institutional access](#).

[Legal Grounds III online edition with updates](#) [[Nyambura decision online](#)]

8. Nov 13: Discrimination against Women in Criminal Law

Sylvia Tamale, “Exploring the Contours of African Sexuality: Religion, Law and Power” (2014) 14 *African Human Rights Law Journal* 150-177. Quercus #30. [Open Access through PULP](#). [Alternate direct link to online journal](#).

Rewrite an aspect of the following judgment that relates to discrimination:

Dorothy Njemanze & 3 Ors V Federal Republic of Nigeria, Suit No.: ECW/CCJ/APP/17/14 (ECOWAS Court, Abuja, Nigeria) Decision of October 12, 2017. Quercus #31. [Online at ECOWAS](#)

9. Nov 20: Discrimination against women and men in the military

Rebecca Cook and Cornelia Weiss, “Gender Stereotyping in the Military: Insights from Court Cases,” in Eva Brems and Alexandra Timmer eds, *Stereotypes and Human Rights Law* (Antwerp, Belgium: Intersentia, 2016) 175-192, **read only section on exclusion cases 178-188** Quercus #32. [Online at TSpace](#).

Gauthier v Canada (Canadian Armed Forces) [1989] CHR D No 3, [1989] DCDP No 3 (Canadian Human Rights Tribunal), 39pp, [Decision online](#). Quercus #33

Review: Maria Sjöholm, *Gender-Sensitive Norm Interpretation by Regional Human Rights Law Systems*, (Leiden: Brill/Nijhoff, 2018) Non-Discrimination and Equality: 191-227. Europe 194-219, 25pp Quercus #14. [Library access to whole chapter](#). [Library access to book](#).

10. Nov 27: Discrimination against women and men in the military

Alexandra Timmer, “From inclusion to transformation: Rewriting Konstantin Markin v. Russia” in *Diversity and European Human Rights-Rewriting Judgments of the ECHR* (Cambridge: CUP, 2013) 148-170. [Library access](#). Quercus #35

Rewrite one aspect that relates to discrimination in the following judgment:

Angela Sirdar v The Army Board, Secretary of State for Defence, Case C-273/97 [1999] ECR I-07403 (European Court of Justice) (“Judgment” only) [Judgment online](#). Quercus #36.

See also:

Konstantin Markin v. Russia ECHR, 7 October 2010 [Decision online](#).

Konstantin Markin v. Russia, ECHR (GC), 22 March 2012, paras 119-123, 124-152, [Judgment online](#)

United Kingdom, *Report on the 'Review of the Exclusion of Women from Ground Close-Combat Roles'* (London: Ministry of Defence, 2010) [Report online](#).

* * *

Audre Rapoport Prize for Scholarship on Gender and Human Rights is awarded annually to the winner of an interdisciplinary writing competition on international human rights and gender. Deadline usually July 1, this \$1000 prize honors the work of Audre Rapoport (1923-2016), who advocated for women in the United States and internationally, particularly on issues of reproductive health. [Details and papers by past winners online](#)

COURSE DETAILS

Contact Information:

Rebecca Cook rebecca.cook@utoronto.ca, 416 978-4446, J380 available by appointment
First Term: 3 credits; 2 hour classes

Schedule: Tuesdays (except Sept 4 and Oct 16), 2:10 pm – 4:00pm, in Solarium (FA 2) and
Fridays Sept. 21 and October 26, 12:30 to 2:30 in FA 3.

Course satisfies “Perspective” or “International/Comparative/Transnational” requirements

Text: Casebook on Quercus

Evaluation:

80% written work in the form of three short papers (about 2,100-2,500 words each, which is about 9 pages) commenting on one judgment, and rewriting two others, integrating the reading materials assigned for the class and integrating learnings from previous classes.

Learning Objective: Demonstrate an understanding of how to rewrite a judgment from feminist perspectives in international human rights law

80% written work in the form of three short papers (about 2,100 -2,500 words each, which is about 9 pages) commenting on one judgment, and rewriting two others, for three different classes. Students can choose from four different classes. A limited number of students may arrange with the professor to write a SUYRP in the course. If a student completes the SUYRP, that paper will constitute 80% of the grade and will replace the three short papers. Short papers are due by 12 noon *the day before the class in which the judgment is to be discussed*, via email to: rebecca.cook@utoronto.ca.

Please see Writing Guide below for further information on evaluation of written work. The University of Toronto provides a number of writing resources: www.utoronto.ca/writing.

20% class participation will be evaluated as follows: 10% contributions to class discussion, 5% performance during on-call days; 5% attendance. If you have to be absent from class, you are still responsible for the readings and asking a classmate for notes, and integrating the readings and discussion into the reflective papers. On-call days will require students to introduce one of the reading materials assigned for the class.

Email Policy:

Email will not be used as an alternative to meeting with the course instructors before or after class or by appointment. Email inquiries will be responded to only in exceptional circumstances. Please ensure you consult the syllabus and other course materials before submitting any email inquiry. All email messages must include in the subject line the course identifier and a concise and clear statement of purpose [e.g. Women’s Rights Seminar: short paper]. Inquiries of interest to all students will be addressed in class.

WRITING GUIDE

Requirements:

- Three Short Papers (about 2,100 -2,500 words each, which is about 9 pages) commenting on one judgment, and rewriting two others, for three different classes..
- Submission: Short papers are due by **12noon the day before the class in which the judgment is to be discussed**, via email to: rebecca.cook@utoronto.ca.
- Short papers will be used in class to guide class discussion.
- Graded short papers will be returned after class or in the next class with comments and a grade.

Objective: Active Reflection and Critical Engagement with the Reasoning of a Decision

Short papers should actively reflect on the reasoning of an assigned decision of a court or human rights tribunal by critically engaging with the court's reasoning and other materials (or any part of the material) assigned for that class, and integrating learnings from previous classes. Do not summarize or describe the decision or reading. Analyze the decision and the relevant reading. Additional research is not required.

Assume for purposes of your short comment that you are a commentator on a decision, or a judge rewriting a particular aspect of a decision.

Commentators may:

- Question and reflect on the meaning and uses of language or concepts of a decision;
- Examine how the reading reinforces or challenges hierarchies, constructions and relations in a decision;
- Investigate the assumptions, values and interests (related to, for example, gender, race and ethnicity, or sexual orientation) underlying a decision;
- Articulate conflicts, contradictions or uncertainties in a decision;
- Problematize the assumptions or analytic framework of a decision.

As a judge rewriting a particular aspect of a decision, you need to adopt judicial reasoning in your rewritten judgment. Examples include rewritten decisions in the course readings.

Assessment Criteria:

Short papers will be assessed on: analysis, structure, and style.

Analysis: What is of utmost interest is not your conclusion, but your reasons for drawing your conclusion. You must back up all assertions with reasons.

While it may be helpful to introduce the decision, your paper must go beyond description. You **MUST** analyze the decision and draw conclusions from your analysis.

Take an even-handed approach; so, although you are expected ultimately to draw a conclusion, it is often helpful to canvas alternative positions and arguments in the course of your paper and to rebut these to the extent that they are inconsistent with your arguments.

Use examples to illustrate your arguments. These may be cases, events, or hypothetical examples, where appropriate.

Some degree of originality is important. You are expected to develop your own thoughts and analysis, and not describe the thoughts and analysis of others.

Structure: Structure is essential to a clear and well-argued paper. You should include an introduction and a conclusion. You should outline your structure in your introduction.

Arguments should be clear and logical and ideas should be linked coherently. Subheadings are useful in delineating structure and moving from one idea or argument to the next. Each paragraph should have something relevant to say about your thesis or argument. If it does not, ask yourself or try to explain why you have included that paragraph.

Style: Clear expression, good presentation, accurate grammar and spelling, and appropriate use of vocabulary are essential.

Citations and Referencing:

For the accepted legal citation style at the University of Toronto, Faculty of Law, see the *Canadian Guide to Uniform Legal Citation* (referred to as the “McGill Guide”) or the Bora Laskin Law Library website.

All use of others’ language MUST be indicated in quotation marks and referenced. Use of others’ ideas should be fully referenced. Failure duly to acknowledge the work of others constitutes plagiarism and is a serious academic offence.

Plagiarism

Students might be required to submit their course essays to Turnitin.com for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the Turnitin.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin.com service are described on the Turnitin.com web site.

Turnitin.com is an electronic resource that assists in the detection and deterrence of plagiarism. Each submitted paper is checked for textual similarity using millions of resources stored in the Turnitin.com database. Once analyzed, originality reports are generated within 5-10 minutes for instructors, highlighting questionable areas. Using this information as well as any other relevant information, it is then up to the individual instructor to determine if these passages represent plagiarism.

Additional writing resources are available: <http://writing.utoronto.ca/>