

Gender Equality in Transnational Legal Perspective

(LAW301H1F) For graduate students, the course number is LAW6021H

rev. 7-17-2023 rc

Instructor: Rebecca Cook

Time Slot: Wednesday – 8:30-10:20; Classroom: Jackman 225

Maximum Enroll: 22

Course Description:

This course is structured around three goals:

- i. to move beyond the formalistic approaches to gender discrimination to envision new ways of thinking about gender equality in specific contexts;
- ii. to provide retrospective views of the struggles to eliminate gender equality in international and regional treaty systems, and
- iii. to reconstruct gender equalities in concrete ways by the rewriting of legal and policy documents, including court judgments and treaty body recommendations. The course applies a rewriting approach to explore such questions as:
 - what methods, feminist and otherwise, are used to expose forms of gendered harms of different subgroups of individuals, such as raped women, Indigenous women or women in the health sector?
 - how can the gender equality analysis be sharpened, for example by reference to different theories of equality? and
 - how can regressive subthemes that allegedly subvert specific kinds of gender equality be more adequately addressed?

Judgments are selected from relevant human rights treaty bodies to address forms of gender discrimination that are of transnational concern.

Text: *Frontiers of Gender Equality-Transnational Legal Perspectives* (UPenn Press, 2023)

Evaluation:

90% for written work is based on two papers of about 2,100-2,500 words each, written during the semester for the 2nd and 3rd parts of the course. The first paper will be a case comment on a court decision assigned for class, and the second paper will be rewriting a section of a judgment or legal and policy recommendations assigned for class. 10% for class participation is based on one-page response papers for three of the classes where students are not submitting a longer paper.

All papers and comments are due by 12noon the day before the class in which they are discussed.

A limited number of students may arrange with the professor to write a supervised upper year research paper (SUYRP) in the course. If a student completes the SUYRP, that paper will constitute 90% of the grade and will replace the two written papers, but not the one-page response papers required for the 3 sections of the course.

I. Understanding Gender Inequality and Equality

Assignment for Part I: one-page response paper for classes Sept 13, 20 or 27

Sept 6 Overview of the course syllabus & Rebecca Cook, Many Paths to Gender Equality, Introduction

See also:

Vicki Jackson, "Feminisms, Pluralisms, and Transnationalism: On CEDAW and National Constitutions" in *The Public Law of Gender: From the Local to the Global*, edited by Kim Rubenstein and Katharine G. Young eds. (2016, CUP) 437-464 <https://www-cambridge-org.myaccess.library.utoronto.ca/core/books/public-law-of-gender/feminisms-pluralisms-and-transnationalism-on-cedaw-and-national-constitutions/C8C1F5225BA370F5AEB8FC02649BECD9>

Sept 13 Francisca Pou Giménez, Taking Stock of Gender Equality, Conclusion

See also:

Colleen Sheppard, The principles of equality and non-discrimination, a comparative law perspective – Canada, 2020 <https://policycommons.net/artifacts/1426871/the-principles-of-equality-and-non-discrimination-a-comparative-law-perspective/2041443/>

Obstacles to Crossing the Discrimination Threshold: Connecting Individual Exclusion to Group-Based Inequalities
<https://cbr-cba-org.myaccess.library.utoronto.ca/index.php/cbr/article/view/4448>

Sept 20 Inequality and Equality

Sophia Moreau, Faces of Gender Inequality, ch 1

Sandra Fredman, Challenging the Frontiers of Gender Equality: Women at Work, ch 2, **EXCERPT:** 38-43

Sept 27 Priorities, Rights Talk and International Dialogues

Shreya Atrey, A Prioritarian Account of Gender Equality, ch 3, **EXCERPT:** 55-61

Daniel Del Gobbo, queer Rights Talk: the Rhetoric of Equality Rights for LGBTQ+ Peoples, ch 4, **EXCERPT:** 68-76

Siobhan Mullally, CEDAW Reservations and Contested Equality Claims, ch 5, **EXCERPT:** 88-91

Marieme Lo, Gender Equality and the Sustainable Development Goals, ch 6, **EXCERPT:** 108-114

ii. Advancing Gender Equality through Human Rights Treaties

Assignments for Part II:

- one case comment on an aspect of the court decision assigned for class (2,100-2,500 words)
- one-page response paper for a class where you are not submitting a case comment

Oct 4 Shreya Atrey, Fifty Years On: The Curious Case of Intersectional Discrimination in the ICCPR, w/ a postscript, ch 7

Case: ***Fulmati Nyaya v Nepal***, CCPR/C/125/D/2556/2015

<https://juris.ohchr.org/casedetails/2568/en-US>

Option: Meghan Campbell, Like Birds of a Feather? ICESCR and Women's Socioeconomic Equality, ch 8

Case: ***Trujillo Calero v. Ecuador***, E/C.12/63/D/10/2015

<https://juris.ohchr.org/casedetails/2409/en-US>

Oct 11 Loveday Hodson, Gender Equality Untethered-CEDAW's Contribution to Intersectionality, ch 9

Case: ***Isatou Jallow v. Bulgaria***, CEDAW/C/52/D/32/2011

<https://juris.ohchr.org/casedetails/1692/en-US>

Oct 18 Collective Complaint Procedures and the Meaning of Systemic Gender Discrimination [Sophia Moreau will join us for class]

a. What is meant by systemic discrimination?

CESCR General comment No. 20 E/C.12/GC/20

<https://www.refworld.org/docid/4a60961f2.html>

See also: Tom R. Burns, Towards a Theory of Structural Discrimination: Cultural, Institutional and Interactional Mechanisms of the "European Dilemma", in *Identity, Belonging and Migration* (Gerard Delanty, Ruth Wodak, & Paul Jones eds., 2008) 152-172.

b. Are collective complaint procedures equipped to address systemic discrimination?

Readings:

Karin Lukas and Colm Ó Cinnéide, Gender Equality within the Framework of the European Social Charter, ch 11

Case: ***European Roma Rights Centre (ERRC) v. Bulgaria*** Complaint No. 151/2017

[https://hudoc.esc.coe.int/eng/#{%22sort%22:\[%22ESCPublicationDate%20Descending%22\],%22ESCDcIdentifier%22:\[%22cc-151-2017-dmerits-en%22\]}](https://hudoc.esc.coe.int/eng/#{%22sort%22:[%22ESCPublicationDate%20Descending%22],%22ESCDcIdentifier%22:[%22cc-151-2017-dmerits-en%22]})

See also:

Meghan Campbell & Jane Connors, Optional Protocol in P. Schulz, R. Halperin-Kaddari, B. Rudolf and M. Freeman, eds., *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* 2nd ed. (Oxford University Press, 2022) 823, 877-889

Oct 25 Veronica Undurraga, Transformative Gender Equality in the Inter-American System of Human Rights, ch 12

Case: ***Workers of the Fireworks Factory in Santo Antonio de Jesus and Their Families v Brazil***,

2020 Inter-Am. Ct. H.R. (Set. C) No. 407 (26 October 2020) EXCERPT: pp. 38-56/paras. 140-204

https://www.corteidh.or.cr/docs/casos/articulos/seriec_407_ing.pdf

See also:

Bernard Duhaime and Nancy R. Tapias Torrado, The Inter-American System's Recent Contributions to the Development of Women's Human Rights Standards, *Revue Quebécoise de droit international* (Juin 2022) 212-246, 219 <https://www.sgdi.org/fr/the-inter-american-systems-recent-contributions-to-the-development-of-womens-human-rights-standards/>

Options:

Stephanie Hennette Vauchez, Gender Equality in the European Court of Human Rights, ch 10

Case: **A. A. and others v Sweden**, no. 14499/09 SKIM pp 1-14; EXCERPT: 14-26
<https://www.refworld.org/cases,ECHR,502157bf2.html>

Fareda Banda, African Gender Equalities, ch 13

Case: **SERAC v. Nigeria (The Ogoni Case), Communication No. 155/96**
<https://www.escri-net.org/caselaw/2006/social-and-economic-rights-action-center-center-economic-and-social-rights-v-nigeria>

Mervat Rishmawi, Advancing Gender Equality through the Arab charter on Human Rights, ch 14

Rewrite the objection by Mexico of 10 May 2010 to the reservations of Qatar:
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en#83

See also:

Jane Connors, Article 28 in P. Schulz, R. Halperin-Kaddari, B. Rudolf and M. Freeman, eds., *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* 2nd ed. (Oxford University Press, 2022), 785-813.

iii. Looking Back to Move Forward

Assignments for Part III:

- rewriting a section of a judgment or legal and policy recommendations assigned for class (2,100-2,500 words)
- one-page response paper for a class where you are not submitting a rewrite

Nov 1 Naina Kapur, Breathing Life into Equality: The Vishaka Case, ch 15

Assignment – rewrite some aspect of Vishaka & Ors vs State of Rajasthan & Ors (1997) 6 SCC 241 (Supreme Court of India) <https://indiankanoon.org/doc/1031794/>

See also:

Ruth Rubio-Marin, *Global Gender Constitutionalism and Women's Citizenship* (2022, CUP), see 3.3 Toward Substantive Gender Equality, 155-176 <https://www.cambridge-org.myaccess.library.utoronto.ca/core/books/global-gender-constitutionalism-and-womens-citizenship/participatory-constitutionalism/2B644A8A67A440F02A4F6218942F9136>

Option: Joanna Erdman and Mariana Prandini Assis, Gender Equality in Health Care: Reenvisioning CEDAW General Recommendation 24, ch 16

Rewrite paras. 37-39 of CEDAW General recommendation No. 34 (2016) on the rights of rural women, CEDAW/C/GC/34 <https://digitallibrary.un.org/record/835897?ln=en>

[Nov 8-reading week-no class]

Nov 15 Cheryl Suzack, Equality for Indigenous Women: *Mclvor v. Canada*, ch 17 [Cheryl Suzack will join us for the class]

Assignment – rewrite

some aspect of the Legal Assessment pp. 49-54 or

some aspect of the Recommendations pp. 54-58

of the **CEDAW Committee, Report of the Inquiry Concerning Canada of the CEDAW Committee under article 8 of the Optional Protocol to the CEDAW Convention** (30 March 2015), CEDAW/C/OP.8/CAN/1 <https://digitallibrary.un.org/record/836103?ln=en>

See also:

Inter-American Commission on Human Rights, Missing and Murdered Indigenous Women in British Columbia, Canada (21 Dec 2014) OEA/Ser.L/V/II. Doc.30/14

<https://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>

Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019, [Volume 1a](#); [Volume 1B](#)

Brenda Gunn, Bringing a Gendered Lens to Implementing the UN Declaration on the Rights of The Rights of Indigenous Peoples in John Burrows et al eds., *Braiding Legal Orders – Implementing the United Nations Declaration on the Rights of Indigenous Peoples* (2019, Centre for International Governance Innovation) 55-65 <https://books-scholarsportal-info.myaccess.library.utoronto.ca/en/read?id=/ebooks/ebooks4/upress4/2019-07-11/1/9781928096801#page=5>

Kim Stanton, Inquiries and the Crisis of Missing and Murdered Indigenous Women and Girls in *Reconciling Truths – Reimagining Public Inquiries in Canada*, (UBC Press, 2022) 139-193

UN Special Rapporteur on the Rights of Indigenous Peoples: <https://www.ohchr.org/en/special-procedures/sr-indigenous-peoples>

OAS, Inter-American Rapporteurship on the Rights of Indigenous Peoples:

<https://www.oas.org/en/iachr/indigenous/mandate/functions.asp#:~:text=In%201990%2C%20the%20Inter%2DAmerican,promote%2C%20and%20systematize%20the%20>

Option: Ilias Trispiotis, Gender Equality and the Scope of Religious Freedom in *SAS v. France*, ch 18

Case ***Sonia Yaker v. France***, Commun No. 2747/2016, U.N. Doc. CCPR/C/123/D/2747/2016 (HRC) (2018)

Nov 22 Marta Machado and Mariana Prado, Institutional Dimensions of Gender Equality, ch 19 [Mariana Prado will join us for the first half of the class.]

Assignment – rewrite some aspect of the indicators on pp. 54-61 of Inter-American Commission of Women. Follow-up Mechanism to the Belém do Pará Convention (MESECVI). Practical Guide to the System of Progress Indicators for Measuring Implementation of the Belém do Pará Convention / [Prepared by Laura Pautassi & Natalia Gherardi for the Follow-Up Mechanism to the Belém do Pará Convention (MESECVI), Inter-American Commission of Women] (OAS. Documentos oficiales; OEA/Ser.L/II.6.15) 2015

https://www.oas.org/en/mesecvi/docs/Manual_Indicadores_ENG.pdf EXCERPT: pp 54-61

Follow-up Mechanism to the Belém do Pará Convention (MESECVI) is a systematic and permanent multilateral evaluation methodology that is based on exchange and technical cooperation between the States Party to the Convention and a Committee of Experts: https://belemdopara.org/CIM_MESECVI/. MESECVI analyzes progress in the implementation of the Convention by the States Party, as well as persistent challenges to an effective State response to violence against women. The responsibilities of the Committee of Experts include:

- Prepare and circulate the questionnaire on the implementation of the Convention of Belém do Pará
- Evaluate the responses of the States Parties and formulate recommendations to strengthen the implementation of the Convention
- Prepare the national reports and the consolidated Hemispheric Report
- Identify and circulate the indicators for monitoring the recommendations
- Prepare the monitoring report

Nov 29 Charles Ngwena and Rebecca Cook, Restoring Mai Mappingure’s Equal Citizenship, ch 20

Assignment – rewrite some aspect of the remedies of *LMR v. Argentina*

Case: ***LMR v. Argentina***, UN Doc. CCPR/C/101/D/1608/2007 <https://www.escr-net.org/caselaw/2013/lmr-v-argentina-un-doc-ccprc101d16082007>

See also: Alicia Yamin & Agustina Ramón Michel, Using Rights to Deepen Democracy: Making Sense of the Road to Legal Abortion in Argentina, *Fordham Int’l Law J* 46: 377-423 (2023), 403-406

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” *Human Rights Quarterly* 33 (4): 1062–91. <https://www.corteidh.or.cr/tablas/r27271.pdf>

Kent Roach, *Remedies for Human Rights Violations: A Two-Track Approach to Supra-National and National Law* (Cambridge: Cambridge University Press, 2021) <https://www.cambridge-org.myaccess.library.utoronto.ca/core/books/remedies-for-human-rights-violations/9336DE5D434CE91E89990EE71BBA6B6A>