

WOMEN'S RIGHTS IN TRANSNATIONAL LAW

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UNIVERSITY OF TORONTO
FALL 2017



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WOMEN'S RIGHTS IN TRANSNATIONAL LAW

Professor Rebecca J. Cook

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Fall Semester, 2017

3 Credits

COURSE OUTLINE

Mondays 2:10 pm – 4:00pm (with Sept 15 deemed as Monday)

1. Sept 11: Gender Challenges in International Human Rights Law
2. Sept 15 (Fri): Rewriting Judgments from Feminist Perspectives
3. Sept 18: Rewriting Judgments about Women in International Human Rights Law
4. Sept 25: Discrimination against Women and their Equality in International Human Rights Law
5. Oct 2: Discrimination against Women in the Exercise of their Right of Conscience
6. Oct 16: Discrimination against women and men in the military
7. Oct 23: Discrimination against women and men in the military
8. Oct 30: Discrimination against Women in the Design and Application of Criminal Law: Mercedes Cavallo, doctoral student, U of T Faculty of Law
9. Nov 13: Discrimination against Women in the Design and Application of Criminal Law
10. Nov 20: Discrimination against Indigenous Women
11. Nov 27: Discrimination against Indigenous Women
12. Dec 4: Wrap Up

WOMEN'S RIGHTS IN TRANSNATIONAL LAW, Fall 2017

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<https://www.law.utoronto.ca/sites/default/files/documents/reprohealth/coursewr.pdf>

Sept 11: Class 1: Gender Challenges in International Human Rights Law

- Christine Chinkin and Marsha Freeman, Introduction, 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) 1-25 1
- Andrew Byrnes, "Gender challenges for international human rights law", Scott Sheeran and Nigel Rodley (eds.) *Routledge Handbook of International Human Rights Law* (Milton Park, Oxon: Routledge, 2013) 615-634 26
- 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) 46

See also:

- Hilary Charlesworth, "What are "Women's International Human Rights"?" in R.J. Cook (ed.) *Human Rights of Women-National and International Perspectives* (UPenn Press, 1994) 58-84
- 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

Sept 15: Class 2: Rewriting Judgments from Feminist Perspectives

- Rosemary Hunter, "An Account of Feminist Judging" in Rosemary Hunter, Clare McGlynn and Erika Rackley in *Feminist Judgments- From Theory to Practice* (Oxford: Hart, 2010) 30-43 59
- Daphne Barak-Erez, "Her-meneutics: Feminism and Interpretation" in Beverly Baines, Daphne Barak-Erez & Tsvi Kahana (eds.) *Feminist Constitutionalism: Global Perspectives* (Cambridge: CUP, 2012) 85-97 73

Sept 18: Class 3: Rewriting Judgments about Women in International Human Rights Law

- Oona Hathaway and Harold Koh, "Applications," in: *Foundations of International Law and Politics* (New York: Foundation Press, 2005) 205-242 86
- Ruth Rubio-Marín and Martha Morgan, "Constitutional Domestication of International Gender Norms: Categorization, Illustrations, and Reflections from the Nearside of the Bridge" in Karen Knop (ed.) *Gender and Human Rights* (Oxford: OUP, 2004) 113-129 124

Paulina García-Del Moral, “Femicidio: TWAIL in Action,” (2016) 110 *AJIL Unbound* 31-36 141

See also:

Amrei Müller (ed.), *Judicial Dialogue and Human Rights* (Cambridge, England: CUP, 2017)

Sept 25: Class 4: Discrimination against Women and their Equality in International Human Rights Law

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) 51-70 147

Sandra Fredman, “Engendering Socio-Economic Rights” in Anne Hellum and Henriette Sinding Aasen (eds), *Women’s Human Rights: CEDAW in International, Regional and National Law* (CUP 2013) 217-241 167

Oct 2: Class 5: Discrimination against Women in the Exercise of their Right of Conscience

McGee v. Attorney General in Máiréad Enright, Julie McCandless and Aoife O’Donoghue (eds.), *Northern/Irish Feminist Judgments* (Oxford: Hart, 2017) 192
Emilie Cloatre and Máiréad Enright, Commentary, 95-106 192
Máiréad Enright, Judgment, 107-115 204

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

Decision of the European Court of Human Rights

Pichon and Sajous v. France, Case No. 49853/99, Eur. Ct. H.R. (2001) [Decision in English](#).

Decisions 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 [Download decision](#)

International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, Complaint No. 87/2012, Decision on the Merits, March 10, 2014 [Download decision](#)

Oct 16: Class 6: 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) 175-192 213

Gauthier v Canada (Canadian Armed Forces) [1989] CHR D No 3, [1989] DCDP No 3 (Canadian Human Rights Tribunal) 237

Oct 23: Class 7: 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) 148-170 277

Rewrite one aspect that relates to discrimination in one of the following judgments:

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](#).

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

See also:

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

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

Oct 30: Class 8: Discrimination against Women in the Design and Application of Criminal Law: Mercedes Cavallo, doctoral student, U of T Faculty of Law

Andrew Byrnes, “Article 2” (Obligations) 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) 71- 92 300

CEDAW Committee, *General Recommendation No. 24: Women and Health*, U.N. Doc. A/54/38/Rev.1 (1999), para. 31(c) (“When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion”)

Mary Joe Frug, “A Postmodern Feminist Legal Manifesto (An unfinished draft),” *Harvard Law Review* 105: 1045-1075 (1992) 322

University of Toronto, International Sexual & Reproductive Health Law Program: [Website](#). [Reprohealthlaw Blog](#).

Rewrite one aspect of one of the following three judgments that relates to discrimination:

L.C. v. Peru, Communication No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (4 November 2011), [Decision online](#).

Mellet v. Ireland, U.N. Human Rights Committee (HRC), U.N. Doc. CCPR/C/116/D/2324/2013, 9 June 2016, [Decision online](#).

Whelan v. Ireland, CCPR/C/119/D/2425/2014, U.N. Human Rights Committee (HRC), 12 June 2017, [Decision online](#).

See also:

Rebecca Cook and Veronica Undurraga, “Article 12” (Health) 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) 311

Nov 13: Class 9: Discrimination against Women in the Design and Application of Criminal Law

Sylvia Tamale, “Exploring the Contours of African Sexualities: Religion, Law and Power” (2014) 14 *African Human Rights Law Journal* 150-177. [Article online](#).

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

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.] [Decision online](#) *Legal Grounds III Reproductive and Sexual Rights in Sub-Saharan African Courts* (Pretoria: Pretoria University Law Press, 2017). [Legal Grounds III book online from PULP](#) or from [University of Toronto](#).

See also:

Alan Brudner, “The Wrong the Bad and the Wayward: Liberalism’s Mala in Se” in François Tanguay-Renaud and James Stribopoulos, *Rethinking Criminal Law Theory: New Canadian Perspectives in the Philosophy of Domestic, Transnational, and International Criminal Law*, (Oxford: Hart, 2012) 55-74

Nov 20: Class 10: Discrimination against Indigenous Women

The Aboriginal Justice Implementation Commission, *Report of the Aboriginal Justice Inquiry of Manitoba*, Winnipeg: Statutory Publications Office, 1999), vol 1 at chapter 13 [Chapter online](#)

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](#).

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

See also:

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

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

Catherine O'Rourke, "Advocating Abortion Rights in Northern Ireland: Local and Global Tensions" (2016) 25:6 *Social & Legal Studies* 716-7 [Published PDF](#)

Nov 27: Class 11: Discrimination against Indigenous Women

Review: Andrew Byrnes, "Article 2" (Obligations) in M. Freeman, C. Chinkin and B. Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford: OUP, 2012) 71, 86-92 315

Mary A. Eberts, Sharon McIvor & Teresa Nahanee, "Native Women's Association of Canada v Canada" (2006) 18:1 *Canadian Journal of Women and the Law* 67-119 353

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

Kell v Canada, (2012) UN Doc CEDAW/C/51/D/19/2008 [Decision online](#)

See also:

Heather Douglas et al, "Introduction: Righting Australian Law" in Heather Douglas et al, eds, *Australian Feminist Judgments: Righting and Rewriting Law* (Oxford: Hart, 2014) 1, 34-36.

Heather Douglas, "Intersectionality and Indigenous Sentencing Courts: *R v Morgan*" in Heather Douglas et al, eds, *Australian Feminist Judgments: Righting and Rewriting Law* (Oxford: Hart, 2014) 339-344

R v Morgan [2010] VSCA 15 at paras 7-42

Elena Marchietti & Janet Ransley, Feminist Rewrite of *R v Morgan* [2010] VSCA 15 in Heather Douglas et al, eds, *Australian Feminist Judgments: Righting and Rewriting Law* (Oxford: Hart, 2014) 345-355

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.](#)

Dec 4: Class 12: Wrap Up

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: **Mondays 2:10 pm – 4:00pm (with Sept 15 deemed as Monday)**
Course satisfies “Perspective” or “International/Comparative/Transnational” requirements

Text: Casebook

Evaluation:

80% written work in the form of three short papers (about 2,100-2,500 words each, which is about 9 pages) analyzing the reading materials assigned for 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) rewriting three judgments for three different classes. Students can choose from five 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 6 pm Sunday 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) analyzing the reading materials assigned for class.
- Submission: Short papers are due by **6 pm Sunday 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 discussion of the materials.
- 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 other materials (or any part of the material) assigned for that class. 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 the judge and are rewriting a particular decision. Short papers 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.

Assessment Criteria:

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

Analysis: Clearly state at the outset your thesis or argument. 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/>

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