

Course Outline

COURSE: LAWS 4601-A Transnational Law and Human Rights

TERM: Winter 2016

PREREQUISITES: One of LAWS 3503 or 3602

CLASS: **Day& Time:** Thursday 11:35-14:25
Room: Please check with Carleton Central for current room location

INSTRUCTOR: Tara Ashtakala
(CONTRACT)

CONTACT: **Office:** B442 Loeb Building
Office Hrs: By appointment
Telephone: 613-520-3690
Email: Tara_Ashakala@carleton.ca

Academic Accommodations:

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://carleton.ca/pmc/students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:
<http://carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

COURSE DESCRIPTION: Nelson Mandela was imprisoned for 26 years for his opposition to discrimination on the basis of race in South Africa; US soldiers exchanged photographs of detainees they had tortured and degraded in Iraq; a child in Afghanistan is compelled to leave primary school and work long hours in a carpet factory to help his family out of grinding poverty; a union leader is killed because of his efforts to organize fellow employees to protest dangerous working conditions; disabled women march for government programs to help them get jobs that their male counterparts are getting; Aboriginal people blockade a road to protest against the development of land they claim belongs to them...these situations that we hear about happening every day all over the world are not only examples of challenges to human dignity, but also are often circumstantial or even literal violations of actual laws. What prevents these violations of laws from being remedied in societies, communities and nations is most often a lack of knowledge about their content or about their existence. The laws that seek to protect people all over the world against violations of their physical and moral dignity are contained in the branch of public international law known as International Human Rights Law (IHRL). Governments, industry and courts are increasingly turning to this body of international rules for guidance on addressing allegations of human rights violations in their own countries by their citizens, customers and claimants. IHRL is therefore an essential area of knowledge for graduates of Legal Studies and Law programmes to possess before they seek employment in legal practice or policy work.

COURSE OBJECTIVES: This course will introduce the student to 1) the evolution and current status of international human rights law; 2) specific types of human rights, particularly those that are enshrined in existing international and regional treaties (written laws), and particular groups of people who are especially vulnerable to violations of their rights; and 3) the institutions and procedures that exist at the

international level for protecting against or remedying violations of those laws. By the end of the course, the student should be able to use the information in 1), 2) and 3) above to propose basic legal solutions to actual and fictitious human rights problems. The material will be imparted through lectures, assigned readings and case studies that apply the lecture and reading material.

REQUIRED TEXTS:

Required Readings will be posted on cuLearn; some will have online links. Some additional articles, as well as case study exercises, will be distributed in class

EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

All three (3) components must be completed in order to get a passing grade

(1) Term Essay- 40% of final grade

- essay due in class on 31 March 2016

- Length: 12-15 pages double-spaced, proper legal citation and bibliography required

The research piece will comprise the preparation of a legal opinion assessing the success of a potential case in an international human rights forum to uphold the specific human right(s) raised by the story of a specific complainant.

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(2) Open book final examination - 50% of final grade - 11-23 April 2016

-The final exam will consist of four questions, in which the student will be put in the shoes of a legal practitioner and asked to apply the relevant law and precedent to address a fictitious human rights violation, sourcing the lecture notes and assigned readings, in a formally scheduled 3 hour exam.

(3) Presentation and class participation - 10% of final grade

Each student will be required to give a 10-15 minute presentation on the subject of his/her Term Essay research paper, as well as participate in the discussions following each of the presentations of the other members of the class. The sign-up sheet will be available as of the first lecture.

- **You must sign up for a presentation date by 21 Jan**

SCHEDULE

14 Jan IHRL: Evolution, General Principles and Institutions

- Bauer, J. “The Challenge to International Human Rights”, Carnegie Council, 26 March 2003, at http://www.carnegiecouncil.org/publications/articles_papers_reports/905.html
- Posner, Eric. “The Case Against Human Rights”, opinion piece, The Guardian, 4 December 2014

- at <http://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>
- Toonen v. Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994), paras 2.1-4.2, 8.1-8.6 at <http://www1.umn.edu/humanrts/undocs/html/vws488.htm>
- Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 S.C.R. 76, 2004 SCC 4; Paras 1,2,7-12,31-42,50-62,71-76,106-111,125-128,186-189 at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2115/index.do>
- R. v. N.S., 2012 SCC 72, [2012] 3 S.C.R. 726, at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12779/index.do?r=AAAAAQAFbmlxYWIB>

21 Jan INTERNATIONAL AND REGIONAL IMPLEMENTATION

- “Regional Variances in the Adoption of Human Rights Mechanisms”. Shaw, Carolyn. http://citation.allacademic.com/meta/p_mla_apa_research_citation/0/7/3/1/6/pages73168/p73168-1.php
- Ireland v UK, European Court of Human Rights (1978), on CU Learn, read Part III pp. 475-487
- Amnesty International v Sudan, African Commission on Human and Peoples’ Rights, 15 November 1999, at <http://caselaw.ihrra.org/doc/48.90-50.91-52.91-89.93/> read Paras. 1-20, 28-40
- Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988). At http://www1.umn.edu/humanrts/iachr/b_11_12d.htm Read paras. 161-185

28 Jan GROUPS PARTICULARLY VULNERABLE TO RIGHTS VIOLATIONS: WOMEN, CHILDREN, INDIGENOUS PEOPLES, DISABLED PERSONS, REFUGEES, LGBT

- Reading:
- “Making Human Rights Treaty Bodies More Effective: A gender critique of reforms to the reporting process - the case of the ‘common core document’” at <http://www.iwraw-ap.org/aboutus/pdf/OPSIV.pdf>
- Cases:
- GH v Jamaica, HRC 1989 <http://www1.umn.edu/humanrts/undocs/html/dec370.htm>
- I.D.G. v Spain, Committee on Economic, Social and Cultural Rights, 2015: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/233/96/PDF/G1523396.pdf?OpenElement>
- Mr. Dragan Durmic v. Serbia and Montenegro, Communication No. 29/2003, U.N. Doc. CERD/C/68/D/29/2003 (2006). <http://www1.umn.edu/humanrts/country/decisions/29-2003.html>
- Agiza v Sweden <https://www1.umn.edu/humanrts/cat/decisions/233-2003.html>
- Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002 SCC 1
- AT v Hungary, CEDAW Communication, 2003 <http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf>
- Abdul Hamid-Aziz v Spain <http://juris.ohchr.org/Search/Details/1959> scroll down to download English PDF (o Español, si te gusta)
- Baker v Canada <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1717/index.do>
- X v Argentina, CRPD, 2012 <http://juris.ohchr.org/Search/Details/1989> scroll down to Eng PDF

- Hopu and Bessert v France, HRC <https://www1.umn.edu/humanrts/undocs/549-1993.html>
- Awas Tingni v Nicaragua http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf
- National Legal Services Authority v Union of India
<http://supremecourtfindia.nic.in/outtoday/wc40012.pdf>

4 Feb GROUPS PARTICULARLY VULNERABLE TO RIGHTS VIOLATIONS: WOMEN, CHILDREN, INDIGENOUS PEOPLES, DISABLED PERSONS, REFUGEES, LGBT (CONTINUED)

(continuation of readings above)

11 Feb Right to Life

- Legislation: Code of Conduct for Law Enforcement officials, adopted by the UNGA Resolution 34/169 of 17 December 1979 found at <http://textus.diplomacy.edu/Thina/txGetXDoc.asp?IDconv=1278>
- Reading: “Justice: lessons from Northern Ireland?” at <http://www.isrcl.org/Papers/2004/McGuirk.pdf>
- *Lubuto v. Zambia*, Human Rights Committee, 1995 at
- *Soering v. The United Kingdom*, European Court of Human Rights, Judgement of 7 July 1989
- *Judge v Canada* before the Human Rights Committee, 5 August 2002
- *Dzieciak v Poland [2008] ECHR 77761/01 (9 December 2008)*
- *Neira Alegría et al. v. Peru*, Inter-American Court of Human Rights, 19 January 1995
- *Nachova et al. v. Bulgaria, ECHR, 2004*
- *Castillo Páez v. Peru*, Inter-American Court of Human Rights, 3 November 1997
- *Yildirim v Austria*, CEDAW Communication No. 6/2005
- *Pretty v. The United Kingdom (ECHR, 24 April 2002)*

18 Feb Winter Break week, no class

25 Feb Right to Equality and Non-Discrimination

Legislation:

- ICCPR, CERD, CEDAW, CRPD

Readings:

- http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1333630 and click on the “SSRN” icon to download the full text

Case law:

- *Derksen v. The Netherlands*, Human Rights Committee, Communication No. 976/2001, Views of 1 April 2004
- *Edward Young v Australia*, Human Rights Committee, 6 August 2003
- *Belgian Linguistic case*, ECHR, Judgement of 23 July 1968
- *Advisory Opinion No. 4 ‘Proposed amendments to the naturalisation provisions of the Constitution of Costa Rica*, Inter-American Court of Human Rights OC-4/84 of 19 January 1984
- *Legal Resources Foundation v. Zambia*, ACHPR, 7 May 2001,
- *Lovelace v. Canada*, Human Rights Committee, Communication No. R.6/24, S. (Views adopted on 30 July 1981)
- *A. H. Waldman v. Canada*, Communication No. 694/1996, (Views adopted on 3 November 1999)
- *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 SCC 78, [2004] 3 S.C.R. 657

3 Mar Freedom of Expression

- Reading: <http://www.ifla.org/faife/papers/others/ife03.pdf>, sections 3,4 and 6
- Legislation: ICCPR, Regional Treaties, Convention on the Rights of the Child
- Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Inter-American Court of Human Rights Advisory Opinion No. 5, 13 November 1985
- Müller *et al.* v. Switzerland, European Court of Human Rights, 24 May 1988
- African Commission on Human and Peoples' Rights, Communication No. 228/99
- Kim v. Republic of Korea, Human Rights Committee, Views of 3 November 1998
- Olmedo Bustos *et al.* v. Chile (“The Last Temptation of Christ” Case), Inter-American Court of Human Rights, 5 February 2001
- R. v Sharpe, [2001] SCR 3-219, 45
- Faurisson v. France, Human Rights Committee, 8 November 1996
- Open Door and Dublin Well Woman v. Ireland, European Court of Human Rights, 29 October 1992
- Gauthier v. Canada, Human Rights Committee, 7 April 1999
- Ballantyne *et al.* v. Canada, Human Rights Committee, 31 March 1993
- Canadian Islamic Congress v. Rogers Media Inc., Canadian Human Rights Commission, 2007

10 Mar Economic Rights

- Legislation: UDHR, ICESCR, Convention on the Rights of the Child
- Reading: “Toward the Definition of Economic Rights”, posted on CU Learn
- UN Committee on Economic Social and Cultural Rights General Comment No. 9
- Gosselin v. Québec (Attorney General), 2002 SCC 84, [2002] 4 S.C.R. 429 read paras. 93-94, 330-333, 417-420 at <http://scc.lexum.org/en/2002/2002scc84/2002scc84.html>

17 Mar Labour Rights

- *Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol of 2002*
- *Occupational Health Services Convention, 1985 (No. 161)*
- *Safety and Health in Agriculture Convention, 2001 (No. 184)*
- *Worst Forms of Child Labour Convention, 1999 (No. 182)*
- *Uppal v Union of India*, Supreme Court, 2002
- *McGinley and Egan v UK*, Judgment of the European Court of Human Rights, 9 June 1998
- *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Maksteel Quebec Inc*, Supreme Court of Canada, 2003
- *Karlheinz Schmidt v Germany*, European Court of Human Rights, 1994
- *Mehta v State of Tamil Nadu*, Supreme Court of India, 1996
- *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016, 2001 SCC 94, 21 December 2001
- *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 R.C.S. 291, 2007 SCC 27, 8 June 2007

24 Mar Right to a Healthy Environment

Stockholm Declaration

Rio Declaration

UN Framework Convention on Climate Change

Paris Declaration 2015

Trail Smelter Arbitration (USA v Canada)

Nuclear Test Cases (Australia v France)
Gabcikovo-Nagyramos Dam case
Lopez Ostra v Spain (E Ct HR)
Yanomami v Brazil (1985) Am Ct HR
(SERAC) v Nigeria (2001)
Minors Oposa v. Secretary of the Department of Environmental and Natural Resources
M.C. Mehta v. Union of India

31 Mar IHRL: Modern and Future Challenges

7 April: REVIEW OF COURSE