

Human Rights Violations in Germany: Gender, Colonial Crimes & Transnational Corporations

8 January – 26 January

CATEGORY Law & Economics

COURSE STRUCTURE

You will receive a total of **45 hours of academic lessons** (one lesson equals 45 minutes; 15 hours per week). Lessons will comprise lectures, group work, discussion sessions, and excursions.

WEEKLY SCHEDULE

HUWISU courses are grouped into different time tracks. Your course will take place in **Track B**

Monday: 1.30 pm – 3 pm & 3.20 pm – 4.50 pm
Tuesday: 9.00 am – 10.30 am & 11.00 am – 12.30 pm
Wednesday: 9.00 am – 10.30 am & 11.00 am – 12.30 pm
Friday: 1.30 pm – 3 pm & 3.20 pm – 4.05 pm

COURSE LANGUAGE

This course is taught in **English**, including the readings. For the understanding of the texts and the discussions in class, a language-level of B2 (Common European Framework of Reference for Languages) is required.

TARGET GROUP

Undergraduate students with a strong interest in law, religious studies, cultural studies, social sciences, European studies and students with a strong interest in the topic.

CREDITS & CERTIFICATES

Participants will receive **6 ECTS** credit points and a certificate if they attend regularly (at least 80% attendance), participate actively and fulfill all course assignments. Additionally, six weeks after the end of the course a Transcript of Records is issued by Humboldt-Universität zu Berlin. All courses are accredited according to the European Credit Transfer System (ECTS).

CULTURAL ACTIVITIES

You are invited to **join our cultural and social program**. We offer a fine selection of interesting activities that aim to give you an unforgettable stay in Berlin. Through excursions, social gatherings, and sport activities, you have the opportunity to get to know the city, the university, and to meet students from all parts of the world. **Costs for these offers are included in the program fee.** Below, you find examples of previously offered cultural activities. You will be informed about the respective cultural program shortly before the start of the program via email as well as during the course period.



POLITICAL AND HISTORICAL GUIDED TOURS

- Federal Chancellery (*Bundeskanzleramt*)
- German Parliament (*Bundestag*)
- House of Representatives (*Abgeordnetenhaus*)
- Topography of Terror exhibition
- Political Archive of the Federal Foreign Office

CULTURAL GUIDED TOURS

- Kreuzberg Tour
- Museum Island (*Museumsinsel*)
- Berlin Cathedral (*Berliner Dom*)
- Daytrip to Potsdam
- Exhibitions

SOCIAL GATHERINGS

- Welcome Session
- Ice Skating
- Farewell Get2gether

EXPECTATIONS & POLICIES

Preparation for lively discussions in the classroom: Be on time, have at least the required readings completed, and points in mind for discussion or clarification.

Assignments: Complete all assignments according to the specified requirements on the schedule including handing them over to the lecturer.

Commitment in class: Pay particular attention to the lecturer and respect differences of opinions (classmates', lecturers').

Academic guidelines: Comply with academic integrity policies (such as no plagiarism or cheating, nothing unethical) especially the academic honor code and the student code of conduct.

Attendance policy: No unexcused absences are permitted. Students must follow teachers' instructions to catch up on missed work – to excuse absence please contact the HUWISU office.

COURSE DESCRIPTION

Can human rights be universal? What exclusions and injustices are inherent in law that treats everyone "equal" in unequal societies? How is it that some human rights have been finally recognized, whereas others are continuously dismissed? Which actors are involved and why? What role do power and knowledge play? Who 'wrote' 'the' history of human rights? Who was excluded from this process?

Departing from an interdisciplinary perspective the Winter School will give an insight into Critical Human Rights Discourse and Litigation in Germany. On the basis of concrete human rights cases students will learn about the different bodies and instruments of human rights protection in Germany, their practical advantages, challenges and inherent exclusions. By focusing on specific sectors (Gender, Colonial Crimes and Transnational Corporations) and their intersectional effects students are taught to see the canon of rights protected within the legal system as constructed and thus embedded in social and political processes of deliberations on different levels. With the understanding that strategic human rights litigation is only one of the many tools used to forward social change and justice, we talk about how these legal strategies and instruments can and should be intertwined with grassroots political awareness campaigns, the creation of associations to strengthen visibility, investments in public relations and advocacy for change and justice within social movements. Studies concerning the impact of Strategic Public Litigation will be used in the discussion, potentially with representatives from NGOs involved in some of the relevant Public Interest Litigations.

Representative fundamental texts of critical legal theory will be read, discussed and applied to the German context. These are interactive courses that have participants practicing the shifts of perspective proposed by the authors of the texts as acts of resistance to the premises of objectivity, neutrality, reasonableness and universality of contemporary hegemonic law. The courses will be team taught and aim to create a platform for dialogue on equal terms. Class sessions will usually open with lecture and/or discussant presentation, case-oriented inquiry, theoretical exploration and class discussion of the topic/theme for the session.

Students will be able to communicate directly with Berlin NGO's activists and state agencies in the field of human rights and anti-discrimination.

COURSE OBJECTIVES AND LEARNING OUTCOMES

By the end of the course, students will be able to:

- assess and analyse human rights in the fields of Gender, Colonial Crimes and Transnational Corporations in the German context
- compare human rights developments in different regional and national contexts in Germany
- assess the interaction between domestic law and human rights norms
- assess and analyse historical human rights developments in different societal sectors and contextualise them
- critically evaluate common human rights theories
- assess and analyse challenges for law enforcement in human rights cases
- assess and analyse both the potential and limits of strategic litigation and NGO participation for strengthening human rights in Germany
- articulate and discuss human rights issues

READINGS

Reading materials will be available via Moodle during the course.

ASSIGNMENT INFO

In order to be granted 6 ECTS, students are required to

1. participate actively in all classes,
2. to write an essay on one of our topics

A minimum of 80% class attendance is required. The final grade will be composed of active participation during class discussions as well as an essay and a blogpost on a subject the students chose. Failure to fulfill one of the mentioned components results in failure of the class.



YOUR INSTRUCTOR

Theurer, Karina, M.A. (Berlin) is an international legal expert on Human Rights Advocacy and Strategic Litigation – particularly in the areas of colonial crimes / decolonization, sexual and reproductive rights / Gender (equality), and social justice. Currently, she mainly focuses on a strategic litigation for reparations for colonial crimes committed in what is today Namibia. She works as a legal consultant for the Namibian law firm Dr. Weder, Kauta & Hoveka and the affected communities of Ovaherero and Nama. She has been teaching international law, human rights, and decolonial legal theory at various universities, amongst others at Humboldt University, Bucerius Law School and Alice Salomon Hochschule. Between 2017 and 2013, she conceptualized and directed the Institute for Legal Intervention of the European Center for Constitutional and Human Rights (ECCHR). At this organization, she developed its work on the legal reappraisal of colonial crimes and contributed to criminal proceedings on sexualized, reproductive and gender-based violence. Until 2019 she co-coordinated the Humboldt Law Clinic Human Rights at Humboldt University in Berlin. She also worked as a Graduate Research Assistant at the Chair of Public Law and Gender Studies at the Faculty of Law of Humboldt-University. She studied Law at the Ruprecht-Karls-University in Heidelberg, the Université Robert Schuman in Strasbourg und the Humboldt-University, where she was awarded the Graduate Prize for Academic Achievement in European and International Law. Additionally, to her state exam in law she holds a Master of Arts in "Interdisciplinary Latin American Studies" with a focus on literature. She has founded and directed the literature magazine "alba-leyendo latinoamerica" and regularly translates poetry from Spanish to German.

COURSE SCHEDULE

I. Gender & Women's Rights in Germany – Violence, Discrimination & Inequality

08.01.2024

1.30 pm – 2.15 pm

Welcome & Getting to know each other.

2.45 pm – 4.50 pm

Input & Discussion: The protection of Human Rights – What legal instruments do we have on an international, regional and national level? How are the different levels intertwined from a German perspective?

Assignment:

- Rudolf, Beate (2016): Human Rights in Germany – A view from Germany's National Human Rights Institution, in: International Journal of Legal Information, pp- 50-58

Additional Readings:

- Articles 59 and 25 Grundgesetz (German Constitution)
- Please click through the overview of Human Rights Instruments on the website of the DIMR: <https://www.institut-fuer-menschenrechte.de/en/human-rights-instruments/>

09.01.2024

9.00 am – 10.30 am

Group Work & Presentation of results: The CEDAW-Convention and its tools to address gender-based violence and discrimination in Germany

Assignment:

- UN Convention on the Elimination of Discrimination Against Women CEDAW

Texts for Group Work:

- Ninth periodic report submitted by Germany under article 18 of the Convention to the UN Committee on the Elimination of Discrimination Against Women (CEDAW). July 2021.
- Alternative Report / Contribution to the UN Committee on the Elimination of Discrimination Against Women (CEDAW) on the List of Issues Prior to Reporting by Germany (Ninth Periodic Report) submitted by the German Women Lawyers' Association (djb). Jan 2020.
- The Right to Equality. The status of CEDAW's Implementation in Germany. Statement by CEDAW-Allianz Deutschland. Submission to the UN Committee on the Elimination of Discrimination against Women, 77th Session, Review of Germany. January 2020.
- Joint Submission for the List of Issues Prior to Reporting to the UN Committee on the Elimination of Discrimination Against Women. 77th Pre -Sessional Working Group. German Alliance for Choice. February 2020.

11.00am – 12.30pm

Visit at the Deutsches Institut für Menschenrechte and presentation of their work on CEDAW

Additional Readings:

- Wersig, Maria: Overcoming Joint Taxation: The German Case (draft for discussion purposes, online)
- Prasad, Nivedita (2008): Domestic Workers Working for Diplomats, in: KOK – Trafficking in women in Germany.
- Raday, Frances (2012): Gender and democratic citizenship: the impact of CEDAW, in: International Journal of Constitutional Law, 2012, S. 512–530.

10.01.2024

09.00am – 10.30am

Group Work & Discussion: The Federal Constitutional Court and its role in human rights protection: The criminalization of abortion in Germany – A backlash?

Assignments:

- Article 3 Grundgesetz (German Constitution)
- Deutsche Welle, 24.06.2022: <https://www.dw.com/en/germany-moves-to-reform-abortion-law/a-62014740>
- Deutsche Welle, 27.09.2022: <https://www.dw.com/en/activists-in-germany-demand-legalization-of-abortion/a-50613936>
- Federal Constitutional Court (Bundesverfassungsgericht), Judgment 28th May 1993 – Schwangerschaftsabbruch [2 BvF 2/90]: <http://germanlawarchive.iuscomp.org/?p=1190>

Additional Readings:

- Derya Binışık: Population policy under the guise of protecting life – the history of Section 218: 6.09.2021: <https://www.gwi-boell.de/en/2021/05/11/population-policy-under-the-guise-of-protecting-life>
- Baer, Susanne (2010): Traveling Concepts: Substantive Equality on the Road, in: Tulsa Law Review, pp. 59-79.

11.00am – 12.30pm

Group Work & Discussion: Sexual violence: How is the situation in Germany? The ratification of the Istanbul convention and the reform of penalty law against sexualized violence in Germany

Assignments:

- Hörnle, Tatjana: The New German Law on Sexual Offenses, Available at SSRN: <https://ssrn.com/abstract=2999677>

Additional Readings:

- MacKinnon, Catharine A.: Sex Equality: On Difference and Dominance, in: MacKinnon, Toward a Feminist Theory of the State, Harvard University Press 1989, 215-234.
- Council of Europe Convention on preventing and combating violence against women and domestic violence (online)

12.01.2024

1.30pm – 4.05pm

Guest Lecture with Kaja Deller who works for the Berlin NGO JUMEN

Assignment:

- Committee on the Elimination of Discrimination against Women, 1st of september 2010: Communication No. 18/2008, CEDAW/C/46/D/18/2008

Additional readings:

- Optional Protocole to CEDAW
- MacKinnon, Catharine A.: Sex Equality: On Difference and Dominance, in: MacKinnon, Toward a Feminist Theory of the State, Harvard University Press 1989, 215-234.

15.01.2024

1.30pm – 3.00pm & 3.20pm – 4.50pm

Input, Group Work & Discussion: International Criminal Law & Universal Jurisdiction – Is Germany at the forefront or a safe haven for alleged perpetrators of gender-based violence?

(maybe Guest Lecture by Lily Kather)

Assignment:

- Karina Theurer: German Code of Crimes against International Law: gender bias and the need for reform, Website der Heinrich Böll Stiftung, 14.03.2023, online unter: <https://www.boell.de/en/2023/03/07/voelkerstrafgesetzbuch-gender-bias-und-reformbedarf>.

Additional readings:

- Patricia Sellers: Gender, conflict-related violence and justice: Patricia V. Sellers in conversation with Louise Chappell, Australian Journal of Human Rights 2019, pp. 361-362.
- Alexandra Lily Kather and Alexander Schwarz: First Yazidi Genocide Trial Commences in Germany, published on 23 April 2020: <https://www.justsecurity.org/69833/first-yazidi-genocide-trial-commences-in-germany/>

II. (POST)COLONIAL INJUSTICE IN GERMANY – COLONIALISM AND PRESENT-DAY REPERCUSSIONS

16.01.2024

9.00am – 10.30am

The evolution of international law as we know it today during European colonialism.

Assignment:

- Anghie, Antony: The evolution of international law: Colonial and postcolonial realities, *Third World Quarterly*, 2006, p. 263-284.

Additional Readings and Resources:

- Anghie, Antony (2005), *Imperialism, Sovereignty and the Making of International Law*.
- Koskenniemi, Martti, (2016), *Colonial Laws, Sources, Strategies and Lesson?*, in: 18 *Journal of the History of International Law*, pp. 248-277.
- Gathii, James Thuo: *TWAIL: A brief history of its origins, its decentralized network, and a tentative bibliography*. *Trade Law and Development* 2011, 26-64.

11.00am – 12.30pm

Transatlantic Chattel Slavery and the Quest for Reparations

Assignment:

- Mutua, Makau: *Reparations for Slavery: A Productive Strategy?* In: Jacqueline Bhabha, Margareta Matache and Caroline Elkins: *Time for Reparations*. University of Pennsylvania Press, 2021, 19-34.

Additional Readings and Resources:

- Robinson, Patrick: *The Ascertainment of a Rule of International Law Condemning Transatlantic Chattel Slavery. Final Observations & Concluding Remarks*". In: Justine N. Stefanelli und Erin Lovall: *Reparations Under International Law for Enslavement of African Persons in the Americas and the Caribbean*. The American Society of International Law, 2022, 172-190.

17.01.2024

9.00am – 10.30am

Input, Group Work & Discussion: German colonialism in what is today Namibia: Historical Background and attempts of reappraisal, including the interstate negotiations

Assignment:

- Theurer, Karina: *Minimum Legal Standards in Reparation processes for Colonial Crimes: The Case of Namibia and Germany (June 23, 2023)*. *German Law Journal*, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=4488872>.

11.00am – 12.30pm

The doctrine of intertemporal law, the topic of reparations for colonial crimes and the decolonization of law

Additional Readings and Resources:

- Theurer, Karina: Litigating Reparations: Will Namibia Be Setting Standards?, *Völkerrechtsblog*, 25.01.2023, doi: 10.17176/20230125-095851-0. Online: <https://voelkerrechtsblog.org/de/litigating-reparations/>
- UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/76/180): Report on Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts. 19 July 2021.
- CARICOM Ten Point Plan for Reparatory Justice. Online: <https://caricom.org/caricom-ten-point-plan-for-reparatory-justice/>
- Theurer, Karina: Germany Has to Grant Reparations for Colonial Crimes: UN Special Rapporteurs Get Involved Right on Time, *Völkerrechtsblog*, 02.05.2023, doi: 10.17176/20230502-204347-0. online: <https://voelkerrechtsblog.org/de/germany-has-to-grant-reparations-for-colonial-crimes/#>
- Kämmerer, Jörn Axel: Introduction. Imprints of Colonialism in Public International Law: On the Paradoxes of Transition. *Journal of the History of International Law* 2016, 239-247.
- Wheatley, Steven: Revisiting the Doctrine of Intertemporal Law. *Oxford Journal of Legal Studies* 2021, 484-509.
- Goldmann, Matthias, (2018), Declaration of Matthias Goldmann before the SDNY Court in the case of the Ovaherero and Nama Peoples v. Germany (April 25, 2018).
- Lau, Brigitte: *The Hendrik Witbooi Papers*. National Archives of Namibia, 1995.
- Hillebrecht, Werner: Hendrik Witbooi and Samuel Maharero: The Ambiguity of Heroes. In: Jeremy Silvester: *Re-viewing Resistance in Namibian History*. University of Namibia Press, 2014.

19.01.2024

1.30pm – 4.05pm

Joint Visit at the German Foreign Office

22.01.2024

1.30pm – 4.50pm

Debates on the Restitution of looted Art and Cultural Belongings & Joint Visit at Humboldt Forum

Assignment:

- LeGall, Yann; Machona, Gwinyai: *Possessions, Spoils of War, Belongings: What Museum Archives Tell us About the (Il)legality of the Plunder of African Property*, *VerfBlog*, 2022/12/02, <https://verfassungsblog.de/possessions-spoils-of-war-belongings/>, DOI: [10.17176/20221216-091248-0](https://doi.org/10.17176/20221216-091248-0).

Additional Readings:

- The Guardian: 'Inconvenient truths': Berlin's Humboldt Forum faces up to its colonial past. Online: <https://www.theguardian.com/culture/2022/sep/19/inconvenient-truths-berlin-humboldt-forum-faces-up-to-its-colonial-past>
- Speech of Chimamanda Ngozi Adichie at the opening of the Humboldt Forum in September 2021: <https://www.youtube.com/watch?v=K1Cxbq0gF6E>
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- Sarr, Felwine & Savoy, Bénédicte, (2018), The Restitution of African Cultural Heritage. Toward a New Relational Ethics. Online: https://restitutionreport2018.com/sarr_savoy_en.pdf

III. HUMAN RIGHTS & TRANSNATIONAL CORPORATIONS FROM A DECOLONIAL PERSPECTIVE

23.01.2024

9.00am – 10.30

Input, Group Work & Discussion: Newly independent states and a (neo)colonial global world order?

Assignment:

- Antony Anghie, Legal Aspects of New International Economic Order, in: Humanity: An International Journal of Human Rights, Humanitarianism, and Development 6, 1, 2015, p. 145-158.

Additional Readings:

- Pahuja, Sundhya, und Saunders, Anne: Rival Worlds and the place of the corporation in International Law. In: Philipp Dann und Jochen von Bernstorff (Hg.): The Battle for International Law. South-North Perspectives on the Decolonization Era. Oxford University Press.
- Mgbeoji, Ikechi: Global Biopiracy: Patents, Plants, and Indigenous Knowledge. Cornell University Press. 2006.

11.00am – 12.30pm

Input, Group Work & Discussion: Human Rights from a Decolonial Perspective

Assignment:

- Mutua, Makau: The human rights movement – A truly universal system? Centre for Human Rights. University of Pretoria (Podcast). Online: <https://www.chr.up.ac.za/art-season-1/art-episode-1-prof-makau-mutua>.

Additional Readings:

- Lugones, Maria: Heterosexualism and the Colonial / Modern Gender System, in: Hypatia, 2007, S. 186-209.
- Rivera Cusicanqui, Silvia: Pachakuti: Los horizontes históricos del colonialismo interno, in: Violencias (re)encuadradas en Bolivia. La Paz: Piedra Rota, 2010, S. 39-63.
- Lorde, Audre: The Master's Tools will never dismantle the Master's House. Sister Outsider: Essays and Speeches: Crossing Press, 1984, 110-114.
- Gunn Allen, Paula: The Sacred Hoop: Recovering the Feminine in American Indian Traditions. Beacon Press.

24.01.2024

9.00am – 10.30am

Input, Group Work & Discussion: The role of transnational corporations and international investment protection

Texts for Group Work:

- Lorenzo Cótula, Investment disputes from below: whose rights matter? Mining, environment and livelihoods in Colombia, 2020, available online: <https://www.iied.org/investment-disputes-below-whose-rights-matter>
- Stephen Ferry, Documentary about the Arhuaco in the Sierra Nevada: <https://www.nationalgeographic.com/history/article/indigenous-protectors-sacred-peaks-secret-until-now>
- Interview with Leonor Zalabata Torres: <https://www.france24.com/es/programas/5-minutos-con/20210305-5minutos-leonor-zalabata-mujer-ambiente>

11.00am - 12.30pm

Human Rights NGOs from a decolonial perspective

Assignment:

- Makau Mutua: Savages, Victims, and Saviors: The Metaphor of Human Rights. Harvard International Law Journal 42, 2001, p. 31-39.

26.01.2024

1.30pm – 4.05pm

Wrap-Up, short Group Work & Discussion: What are our take-aways? Should human rights be universal or is this a form of epistemic violence?

Assignment:

- Oyěwùmí, Oyèrónké: Conceptualizing Gender: The Eurocentric Foundations of Feminist Concepts and the Challenge of African Epistemologies. JENdA: A Journal of Culture and African Women Studies 2, 1, 2002.