

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

9 January – 27 January 2023

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 (Track B)

- Monday: 1.30 pm – 3 pm & 3.20 pm – 4.50 pm
- Tuesday & 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, language-level 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 = 5 ECTS

All courses are accredited according to the European Credit Transfer System (ECTS).

CULTURAL ACTIVITIES

Learning extends beyond your course! As a participant in HUWISU, you are invited to join our cultural and social programs. We offer a fine selection of interesting extra-curricular activities that aim to give all participants an unforgettable stay in Berlin. Through excursions, social gatherings, and sport activities, we are providing you with the opportunity to get to know the city, the university, and your classmates and to meet students from all parts of the world. The 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 after your enrolment 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 Get-Together
- Ice Skating
- Farewell Party

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 contact their class teachers 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

- asses and analyse challenges for law enforcement in human rights cases
- asses 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

ASSIGNMENT INFO

In order to be granted 5 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 fulfil 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. She works as an independent legal consultant for the Namibian Legal Assistance Center and Namibian actors fighting for reparations for German colonial crimes. She heads the Institute for Legal Intervention of the European Center for Constitutional and Human Rights (ECCHR), where she primarily worked on legal interventions on colonial crimes in Namibia and Tanzania and decolonization of law, as well as on criminal proceedings on sexualized, reproductive and gender-based violence. Until 2019 she coordinated and taught the Humboldt Law Clinic Human Rights at Humboldt University in Berlin. She was a Graduate Research Assistant at the Chair of Public Law and Gender Studies at the Faculty of Law of Humboldt-University and taught the Masters' Program "Social Work as a Human Rights Profession" at Alice-Salomon-Hochschule. She studied Law at the Ruprecht-Karls-University in Heidelberg, the Université Robert Schuman in Strasbourg und the Humboldt-University (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", has founded and directed the literature magazine "alba-leyendo latinoamerica" and regularly translates poetry from Spanish to German.

COURSE SCHEDULE

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

09.01.2023

1:30 – 2:15: **Welcome & Getting to know each other**

With your instructor Karina Theurer

In: Rungestraße 18, (Johanniter Unfallhilfe e.V.)

2:30 – 4:50: **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:

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

10.01.2023

9:00 – 10:30: **Group Work & Presentation of results: The CEDAW-Convention and its tools to address gender based violence and discrimination in Germany**

Assignments:

- CEDAW
- Optional Protocols to CEDAW
- CEDAW alternative report with reference to the combined Seventh and Eighth Periodic Report from the Federal Republic of Germany on the Convention on the Elimination of All Forms of Discrimination against Women drafted and compiled by the CEDAW Alliance of civil society organizations in Germany, November 2016 (online)
- Committee on the Elimination of All Forms of Discrimination against Women: List of issues and questions in relation to the combined seventh and eighth periodic reports of Germany, 2nd of August 2016, CEDAW/C/DEU/Q/7-8 (online)

11:00 – 12:30: **Group Work, Presentations & Discussion: Gender-based Human Rights Violations in Germany and their framing according to the CEDAW-Convention**

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.
- Combined Seventh and Eighth Periodic Report from the Federal Republic of Germany on the Convention on the Elimination of All Forms of Discrimination against Women, June 2016 (online)
- Reply to the List of Issues by the Federal Republic of Germany to the United Nations Committee on the Elimination of All Forms of Discrimination against Women, November 2016 (online)
- Raday, Frances (2012): Gender and democratic citizenship: the impact of CEDAW, in: International Journal of Constitutional Law, 2012, S. 512–530.

11.01.2023

09:00 – 10:30: Group Work & Discussion: The Federal Constitutional Court and its role in human rights protection: The criminalization of abortion in Germany – A backlash?

Assignments:

- Art. 3 Grundgesetz (German Constitution)
- Judgment 28th May 1993 – Schwangerschaftsabbruch [2 BvF 2/90], Federal Constitutional Court, from: <http://germanlawarchive.iuscomp.org/?p=1190>

Additional Readings:

- Nocturnal Employment Case (1992) – 85 BVerfGE 191 (A supervisor in a cake factory was fined for employing women to wrap cakes at night in violation of a statute basically forbidding the employment of women as blue-collar workers during the night. After exhausting her ordinary judicial remedies, the supervisor filed a constitutional complaint, arguing that the law offended the equality provisions of Article 3)
- *Baer, Susanne* (2010): Traveling Concepts: Substantive Equality on the Road, in: Tulsa Law Review, pp. 59-79

11:00 – 12:30: 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)

12.01.2023

1:30 – 04:05: **Guest Lecture with German lawyer Christina Clemm on Gender Stereotypes in German criminal proceedings on sexual violence**

Assignments:

- 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.

16.01.2023

1:30 – 2:00 & 2.20 – 04.50: **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?**

Assignment:

- Decisions of OLG Koblenz on first trial on state torture in Syria worldwide
- Karina Theurer: The German Code of Crimes of International Law (CCIL) as battlefield for the transnational legal recognition of conflict-related sexual violence. ZEFKO 2022.

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.
- ICC, Ongwen, 4 February, 2021
- 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

17.01.2022

9:00 – 10.30 & 11.00 – 12.30: **Input, Group Work & Discussion: German colonialism in what is today Namibia: Historical Background and the Quest for Reparations in front of US courts**

Assignments:

- Sarkin, Jeremy, (2008), Reparations for Historical Human Rights Violations: The International and Historical Dimensions of the Alien Torts Claims Act Genocide Case of the Herero of Namibia, 9 Human Rights Review, pp. 331-360.
- Jaspert, Felicia, Setback for the descendants of the Nama and Ovaherero indigenous peoples, A New York Court declines jurisdiction in Rukoro et al. v. Germany, available at <https://voelkerrechtsblog.org/de/setback-for-the-descendants-of-the-nama-and-ovaherero-indigenous-peoples/>.

Additional Readings and Resources:

- Colonial Repercussions: Namibia – 115 years after the Genocide of the Ovaherero and Nama (ECCHR publication available at: ECCHR website).
- *Vekuii Rukoro et.al v. Germany*, Defendant's Memorandum in Support of Motion to Dismiss, 17 cv 00062 (LTS), Filed 03/13/18.
- 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).
- Judgement *Rukoro v. Fed. Republic of Ger.*, 976 F.3d 218 (2d Cir. 2020).

18.01.2023

9:00 – 10.30 & 11.00 – 12.30: **Input, Group Work & Discussion: German colonialism in what is today Namibia: The German-Namibian negotiations for reparations and the Court case in Namibia**

Assignments:

- The Joint Declaration between Namibia and Germany
- Theurer, Karina, Imani, Sarah & Kaleck, Wolfgang (2021), ECCHR Statement „The Reconciliation Agreement – A Lost Opportunity?.
- Theurer, Karina / Mutua, Makau: The German-Namibian process for reparations – A legal perspective.

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.
- United Nations Economic and Social Council, Revised and updated report on the question of the prevention and punishment of the crime of genocide prepared by Mr. B. Whitaker, E/CN .4/Sub .2/1985/ 6, 2 July 1985.
- Frantz Fanon, (1963), Concerning Violence, in: *The Wretched of the Earth*, podcast: <https://www.youtube.com/watch?v=Fydi9CSXcw&list=PLLTpLv5a69exoz74C0D8Zt-yU4XO4lck-&index=2>

20.01.2023

1:30 – 04:05: Input, Group Work & Discussion: Repatriation of Human Remains to Tanzania

Assignments:

- ECCHR, ISD, Berlin Postkolonial e.V. joint submission to CERD (2021).

Additional Readings:

- <https://www.youtube.com/watch?v=R6urSuP1yFo>
- <https://www.bbc.com/news/world-africa-45916150>

23.01.2023

09:00 – 10:30: Debates Evolving Around the Restitution Looted Art and Cultural Properties

Assignments:

- Savoy, Bénédicte, "Property and Possession. Some considerations on the history of ideas relating to a pair of legal concepts", Völkerrechtsblog, 18 September 2018.
- Campfens, Evelien, (2019), The Bangwa Queen: Artefact or Heritage?, 26 (1) Journal of Cultural Property, pp. 75-110.

Additional Readings:

- Information on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) available here:
<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- Article 11 and Art. 19 UNDRIP and Art.1 and 27 ICCPR:
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- Sarr, Felwine & Savoy, Bénédicte, (2018), The Restitution of African Cultural Heritage. Toward a New Relational Ethics.
https://restitutionreport2018.com/sarr_savoy_en.pdf

11:00 – 12:30: Joint Visit of the Humboldt Forum or City walk with Postkolonial e.V.

We will either go for a guided visit with specific focus on looted arts at the Humboldt Forum or go for a guided walk through Berlin with Postkolonial e.V. to discover the remnants of colonialism in Berlin.

Mnyaka Sururu Mboro is one of the activists who is most vocal about the repatriation of human remains to Tanzania. He might be the one who would accompany us at the walking tour through Berlin

III. TRANSNATIONAL CORPORATIONS FROM A DECOLONIAL PERSPECTIVE

24.01.2023

9.00 – 12:30: **Input, Group Work & Discussion: Newly independent states and a (neo)colonial global world order? – The role of transnational corporations and international investment protection**

Assignments:

- 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.
- 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>

Additional Readings:

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25.01.2022

9:00 – 12.30: **Input, Group Work & Discussion: Can climate change be halted? The European Energy Charter as an example – Profit or sustainable development**

Assignments:

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Additional Readings:

- Bhupinder Chimni: International Law and World Order: A Critique of Contemporary Approaches. Cambridge: Cambridge University Press, 2017, p. 499-524.

Guest lecture by an activist: tbc.

27.01.2023

1:30 – 4:05: **Wrap-Up, short Group Work & Discussion: What are our take-aways? Should human rights be universal or is this a form of epistemic violence?**

Assignments:

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

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)encuertas en Bolivia. La Paz: Piedra Rota, 2010, S. 39-63.
- Mohanty, Chandra: Under western eyes: Feminist Scholarship and Colonial Discourses, in: Feminist Review, No. 30. (1988), S. 61-88.

The course and its syllabus are subject to change. Last update: October 2022