

Women's Law and Human Rights
JUR 1910 BACHELOR AND JUS 5910 MASTER
Guidance for examiners' 2022

Draft 10 June 2022 (May be subject to adjustment in dialogue with examiners)

I GENERAL INFORMATION

The course is for bachelor and master students from different parts of the world. The teachings constituted a mixture of lectures, group discussions and student presentation

Aim of the course and the aim of the exam:

The teaching of the course and the exam questions are closely related to the core topics that constitute the key learning requirements of the course:

- The concept of gender equality and non-discrimination (direct, indirect, systemic and intersectional) embedded in the UN Convention on the Elimination of All Forms of Discrimination against Women and related instruments such as the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, the European Convention on Human Rights, the European Union Treaty and The African Charter on Human and People's Rights.
- *Gender stereotyping within CEDAW, Inter-American and African human rights jurisprudence*
- The right to gender equality and non-discrimination in relation to work, reproductive health, land/housing, water and sanitation.
- Women's right to protection against violence in the public and private domain under the CEDAW and the Rome Statute establishing the international court.
- The CEDAW's gender specific, *transformative* and holistic approach and its contribution to engenderment and queering of international law.
- Sources and principles of the interpretation of human rights.
- The implementation and monitoring of the CEDAW. The composition and competence of the CEDAW Committee, its strengths and weaknesses.
- Legal, political, social and cultural processes that affect the implementation and realization of women's human rights at the national and at the local level.

Examination

- Written home exam, duration 3 days, maximum 4000 words master and maximum 3000 words for bachelor.
- **Open access.** During the exam, the students have access to the course literature that is posted in LEGANO. They also have access to the sources posted the course modules in CANVAS, such as recorded lectures, power points and legal sources like general recommendations from treaty bodies, concluding observations by treaty bodies and case law is made available in the course modules in CANVAS and case law.

Assessment of the home exam: Different standards for master and bachelor level

Note that the required prerequisite knowledge for courses at the bachelor's the master's level is different. Each candidate should be assessed individually in relation to **the different achievement requirements for bachelor's and master's level.**

Master level:

- Students at master level have passed 1st - 3rd year of the 5-year degree Master of Laws (Master i rettsvitenskap at UiO) (or exams that qualify for exemption for these) or hold a 5-years Master's degree in Laws (Master i rettsvitenskap at UiO) or equivalent.
- For this group, the main literature consists of approximately 600 pages.
- Students at master level should have **a thorough understanding** of the core topics listed in the achievement requirements (see below)

Bachelor level:

- At BA level, there are no compulsory requirements for prior knowledge beyond general study competence. This group of students consists both of students who have never before studied law and of law students who take Women's Law and Human Rights BA level as part of their third year of study.
- For this group, the main literature consists of approximately 400 pages.
- Students at bachelor level should have **a general understanding** of the core topics listed in the achievement requirements (see above)

II The exam questions

The exam questions addresses topics that constitute the key learning requirements of the course listed above. **The students should be able to use the course material to answer the exam questions. Very good students should be able to go one step further and use additional relevant sources.**

The formulation of the exam questions are the same for master and bachelor students – the master students have, however, been given additional questions. Thus, the relative weight of the exams questions are not exactly the same for bachelor and master.

The students have to answer all the questions. As regards the weighting of the different questions in the overall assessment of the exam it should be had mind that the exam questions to a certain extent are overlapping and that the students may have chosen a way of structuring their essay that does not correspond to the structure of the exam questions.

Please note the exam questions are wide and that there are many ways of answering them – the guidance below is not meant to be exhaustive.

Question 1 (Master and Bachelor)

What is the CEDAW Committee's three pronged approach to equality and why is it relevant for the new Maryland Government's reform program? (Master 2/10th of the report, Bachelor 3/10th of the report)

The first part of the question calls for an understanding of overall theoretical perspectives provided by the course literature and teaching of the course:

The main article in this regard is Rikki Holtmaat's article "The CEDAW: A holistic approach to women's equality" in *Women's Human Rights* by Hellum and Aasen (CUP 2013). The students should be familiar with the overall perspective of this article, particularly how the goal of the CEDAW, which is to achieve substantive equality, is divided into three sub-aims:

- To ensure full equality before the law, to improve de facto position and to modify/eliminate gender stereotypes.
- This approach, which is termed the CEDAW's transformative approach, draws together key elements in the state obligation under article 2 as developed through the Committee's jurisprudence. The three key elements in the state obligation are:
- Ensure equality under the law

- Take social and economic measure to ensure de facto equality
- Take measures to modify and eliminate gender stereotypes rooted in laws, customs, social, cultural and religious beliefs etc..

Substantive equality and transformative equality is also addressed in Andrew Byrnes article “Article 1” in the CEDAW commentary by M.A Freeman, C. Chinkin and B. Rudolf (Oxford University Press 2012) and Sandra Fredman’s article.

The second part of the question calls for ability to apply the theoretical knowledge to an actual situation.

The students should, with reference to the description of the legal, political, economic and socio-cultural situation in Maryland be able to discuss the need to:

- Change the Constitution and the wide range of discriminatory laws,
- Make economic investment in health, school, welfare system and the police
- Take measures addressing the widespread existence of gender stereotypes both within state law and state legal institutions, within religious and customary institutions that carry out state functions and within the population at large.

Question 2 (1/10th of both Master and Bachelor)

Master and Bachelor: *How does the CEDAW address conflicts between the principle of gender equality and legal, religious, customary and social norms? What must the state do to ensure that the CEDAW takes effect in national law?*

In the discussion of the first two questions, the students are expected to show that they are aware of the legal and the socio-cultural processes that affect the implementation and realization of women’s right to equality and non-discrimination at the national and at the local level. This involves:

- An interpretation of the State obligation under Article 2 such as 2 f) with reference to relevant sources, such as General Recommendation 28.
- Reference to the wider theoretical discussion about how to handle such conflicts – for example:
 - Frances Raday’s article that addresses the State parties duty to change national constitutions and laws that come into conflict with the principle of equality and non-discrimination.
 - Rikki Holtmaat’s article that discusses the need to combine legal change with measures aimed at changing culture through dialogue between governments, traditional leaders, religious leaders and NGO’s

In their discussion of the second question, the students are expected to address the State obligation under Article 2 (a) with reference to relevant sources, such as General Recommendation 28.

Only Master: *How can the Constitution be changed to this effect*

In their discussion of this question, the students are expected to show what a constitutional provision ensuring that the equality principle embedded in CEDAW will take precedence when coming into other national law will look like. This can be done in different ways – some may use constitutions from different countries around the world as examples – some may draft a new provisions – some may list principles that should be included.

Question 3 Bachelor and Master (4/10th of the report)

The first question:

Analyze the relationship between women’s protection against domestic violence under Maryland’s Constitution and Tribal Leadership Act and the CEDAW Committee’s interpretation of the prohibition against discrimination in Article 1.

To answer this question, which is the main question, the students are expected to identify the legal problems that the situation in Maryland, where family matters are regulated by customary norms and traditions that are enforced by traditional leaders, gives raise to. With reference to relevant legal sources they shall give account of what the CEDAW requires. Key legal issues and relevant sources of interpretation are:

- **What is discrimination?** Violence against women is, in the light of the CEDAW Committee’s dynamic and holistic jurisprudence interpretation of Article 1 defined as form of discrimination against women. Relevant legal sources in this regard are GR 19 and GR 35 where the Committee states that domestic gender violence constitutes a form of discrimination against women.
- **Public/private divide.** CEDAW, according to the state obligation rooted in Article 2 applies in all areas, the family, religious organizations etc..
- **State accountability for private actors.** The Committee has, through its jurisprudence established state accountability for violence committed by private actors (GR 19). The due diligence standard according to GR 35 requires that States Parties: adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors. The due diligence standard is given content through a series of individual communications that are addressed in Andres Byrnes, Andrew and Eleanor Bath’s article “Violence against Women, the Obligation of Due Diligence, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women – recent Developments”
- **The CEDAW requires that States have laws, institutions and a system in place to address gender violence** in general and domestic violence in particular. Issues that should be highlighted are:
 - The duty to take legislative measures to combat gender-related violence as set out in GR 35 which requires that States Parties: adopt legislation prohibiting all forms of gender-based violence against women and harmonizes national law with the CEDAW. This requires that Maryland repeals all laws that constitute discrimination against women, including those which cause, promote or justify gender-based violence or perpetuate impunity for such acts. Clearly, Maryland’s Constitution and Tribal Leadership Act, by defining family matters as a matter of customary norms and practice is in breach of the Convention.
 - The duty to have legislation that prohibit domestic violence in place is accompanied by a duty to ensure effective enforcement and sanctions. According to GR 35 States Parties

have a duty to: ensure effective access of victims to courts and tribunals. This implies that criminal law and a prosecution should be in place to bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties. Clearly, Maryland's Constitution and Tribal Leadership Act, that gives the Tribal leaders exclusive power to handle family cases is in breach of this obligation.

The second question:

What changes are required to ensure that Maryland's laws, practices and procedures concerning domestic violence are in consonance with the CEDAW's three pronged approach to transformative equality?

To answer this question the students should discuss what the three pronged approach requires. Elements in the discussion would be:

- How the legal requirements could be satisfied by passing a domestic violence act that is enforced by the police and the courts
- How the state is obliged to take social and economic measures to ensure that the protection is real. This require funding for socio-legal measures like crisis centers and women friendly police stations
- How the state is obliged to take measures to modify customs and practice that create and uphold gender stereotypes that justify violence against women in the family. The students should show they have understood that it is not sufficient to change the wording of the Constitution and repeal the Tribal leaders power to handle family matters. They should engage in a discussion of the need to engage Tribal leaders in dialogue of change and to train police officers.

Question 4 Bachelor and Master (2/10th of the report)

How has the CEDAW through its jurisprudence dealt with abortion?

This question calls for a discussion of how the CEDAW Committee through its interpretation Article 12 on the right to health, has restricted the legislative power of states when it comes to regulation of abortion. A key source in this regard is GR 24 where the Committee has stated that: "Measures to eliminate discrimination against women are considered to be inappropriate if a health-care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a state party to refuse to provide legally for the performance of certain reproductive health services for women." The students should show how the CEDAW Committee, in the light of this overall position, has dealt with abortion.

- The CEDAW Committee has found that denial of access to abortion can amount to a violation of numerous rights, including the rights to health, life, and freedom from discrimination. It has called on States to review and repeal restrictive laws that criminalize abortion, at a minimum when pregnancy poses a risk to the woman's life or health or is the result of rape or incest. Relevant sources in this regard is the Committees

inquiries on reproductive rights and abortion rights in the Philippines and Northern Ireland and concluding comments to state reports.

- The CEDAW require that timely and effective procedures ensuring that women can exercise their legal abortion rights are available. This position is elaborated in L.C. v Peru where the Committee reiterated its recommendations from earlier COs that Peru review its restrictive interpretation of its abortion laws in line with the Committee's GR 24 . The Committee, in this case, concluded that the Peruvian State, which allowed therapeutic abortion under Penal Code art. 119, was obliged to provide a procedure to assess the possible health effects that the continuation of a pregnancy may have on the woman's health. The Committee stated that: "[i]t is essential for this legal framework to include a mechanism for rapid decision-making, with a view to limiting to the extent possible risks to the health of the pregnant mother, that her opinion be taken into account, that the decision be well-founded and that there is a right to appeal. "

What changes are required to ensure that Maryland's legislation and procedures regarding abortion are in consonance with the CEDAW's three pronged approach to transformative equality?

The second part of the question calls for a discussion of:

- What are the legal and procedural changes that are needed? Such as decriminalization, introduction of a wider range of discrimination grounds, clear, transparent and timely procedures.
- What are the social and economic measures needed. Such as investment in public hospitals and information programs ensuring that women get access to information about their rights.
- What measures are needed to modify and eliminate gender stereotypes that bar women's right to self determination in reproductive and sexual matters. Ranging from education in schools to education of health personnel to ensure that they are aware of women's and abortion rights

Question 5 Only Master students (1/10th of the report)

Analyze the relationship between women's right to family planning under CEDAW and laws and practices in Maryland. What changes are required to ensure that Maryland's laws and practices concerning family planning are in consonance with the CEDAW's three pronged approach to transformative equality?

The first question calls for a short discussion of Article 12 of the CEDAW with focus on the right to family planning as an equal right issue and how it is interpreted in General Comment 24. A key element in the discussion of CEDAW's non-discriminatory approach to family planning is Article 1 in the CEDAW convention that prohibits discrimination on the basis of marital status. Whether laws that limit family planning to married is in consonance with the CEDAW can be defended on the basis of the right to religion and culture may be discussed here. (In answering this question students are not required to address the situation of adolescent girls)

The second question calls for a discussion of issues like:

- What changes are needed in the Responsible Parenthood and Reproductive Health Act which limits information about family planning to married couples.
- What investments are needed to build a public health service system that can serve local populations
- What measures are needed to change religious and customary beliefs – both among health personnel and the population at large – that see sexuality and reproduction as linked to marriage.