The International Right to Nondiscrimination on the Basis of Sex

Rebecca J. Cook
Bibliography

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Introduction

This bibliography references published works and judicial cases on the development, interpretation and implementation of the international right to nondiscrimination on the basis of sex established by the Convention on the Elimination of All Forms of Discrimination Against Women and other international and regional human rights conventions.1

The objective of this bibliography is to facilitate and stimulate the research and writing of scholars, students, and activists in the field of the international right to nondiscrimination on the basis of sex by assisting them in finding published works in this area. It is, thus, a working bibliography, and it will be updated periodically by the University of Toronto Law Library as part of the Faculty of Law's International Human Rights Programme.2 It is the first in a series of working bibliographies on spe-

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1. The bibliography is confined to international law and does not include materials on national or comparative sex discrimination laws. For such materials see, for example, the Canadian Journal of Women and the Law (Ottawa, Ontario, Canada), Harvard Women's Law Journal (Harvard University, Cambridge, MA, USA), Lawyers Collective (Bombay, India), Nemesis (Amsterdam, Netherlands), Wisconsin Women's Law Journal (University of Wisconsin-Madison, WI, USA), and The Women's Rights Law Reporter (Rutgers University, Newark, NJ, USA).

2. It would be greatly appreciated if readers would assist in this effort by sending copies of any relevant published works and judicial cases to:

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Faculty of Law Library
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cialized areas of international human rights law developed by this programme.

Format

Works are listed in the language in which they appear. When articles are not in English, the English translation of the title is given in parenthesis. When works are available in languages in addition to English, those languages are listed in parentheses.

The general format for articles appearing in periodicals is the name of the author, article title, volume number, periodical title, first and last page numbers, date, and country of publication where required for clarity.

The general format for books, monographs, and reports is the author's name, book title, editors (if any), location and name of publisher, date, and number of pages. Book chapters follow a similar format, with the chapter's author and the chapter's title appearing before the book title, and the first and last page numbers of the chapter indicated after the book title. Where the author of the chapter and the book are the same, the author's name is not repeated. Occasionally specific information on how to locate the publication is included in parentheses.

3. Editors' Note: These materials are not listed according to the standard rules for legal citations contained in A Uniform System of Citation. In addition, the Journal did not check the citations.

4. Works are listed in alphabetical order by the author's name. When a piece has more than one author, it is listed under the author who appears first in the work itself. When an author has more than one work in the bibliography, the entries are listed in alphabetical order by title.

5. When a volume comprises more than one issue, and the issues are separately paginated, the issue number is included in parentheses next to the volume number. When the issues are consecutively paginated, only the volume number is indicated.

6. The University of Toronto Law Library will provide copies of the listed articles and judicial cases on a cost recovery basis in accordance with copyright laws. They are currently available for U.S. $0.40 per page which includes airmail postage. They may be faxed at U.S. $1.30 a page plus an estimate based on long distance telephone charges. When requesting a particular article or case, please give the full citation and refer to this Bibliography to facilitate a quick response.

Funding is being sought to enable the Law Library to provide articles free of charge to Third World institutions and individuals. In addition, funding and arrangements are being pursued for other organizations to provide the materials in languages other than English. For example, the Clara Wichman Institute (Singel 373, 1012 WL Amsterdam, Netherlands) may be able to provide the Dutch materials, and the Servicios Legales Para Mujeres de Profamilia (Profamilia, Calle 34 No. 14-52, Bogotá, Colombia) may be able to provide Spanish materials.

Books may be obtained directly from the publisher; where materials are available from specific groups, please contact those groups directly. Neither these materials nor book chapters are available from the Law Library.
Nondiscrimination Bibliography

I. Publications


Canadian Continuing Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. The Convention on the Elimina-


International Women’s Tribune Centre. Derechos de la Mujer (Rights of Women: A Workbook of International Conventions Relating to Women’s Issues and Concerns). New York, NY: International Women’s Tribune Centre (IWTC) (1987) 152 pp. (Also available in French. The Spanish version is accompanied by 80 slides and a 12 minute tape explaining the conventions and suggesting strategies of how they can be
used at the national level. Both versions are available from the IWTC, 777 U.N. Plaza, New York, NY 10017, USA).


McDougal, M., Lasswell, H., and Chen, L. "Human Rights for Women and World Public Order: The Outlawing of Sex-Based Discrimination..."


Plata, I. and Yanusova, M. Los Derechos Humanos y La Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer 1979 (Human Rights and the 1979 Convention on the Elimination...


Smirnova, I. “Convention on Elimination of All Forms of Discrimination against Women,” Sovetskoye gosudarstvo i pravo no. 3 (1982) (USSR). (This article is listed for information purposes only. It evidently appears in Russian, but the University of Toronto Law Library does not have a copy. See supra note 2.).


Nondiscrimination Bibliography


II. Judicial Decisions Interpreting Nondiscrimination on the Basis of Sex Provisions of International and Regional Human Rights Conventions

A. International Human Rights Conventions


Mrs. S.W.M. Broeks, a Netherlands citizen, petitioned the Human Rights Committee claiming a violation of article 26 of the _International Covenant on Civil and Political Rights_ (Political Covenant) (ensuring all persons equal protection of the law), and article 9 of the _International Covenant on Economic, Social and Cultural Rights_ (recognizing right to social security). Mrs. Broeks had been dismissed from her job because of a disability. She received unemployment payments for a period, but the payments were discontinued because she was not the "breadwinner" in her household as required by the Netherlands Unemployment Benefits Act (pre-1984). The Human Rights Committee held in her favor because no similar burden was placed on married men, and because the differentiation was unreasonable. The Committee explained that article 26 of the Political Covenant requires that once a state adopts social security legislation, it must provide benefits equally. The Committee explained that the Political Covenant "would still apply even if a particular subject matter is referred to or covered in other international instruments." (Para. 12.1). (For further discussion of this case, see Scott, C. "Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the


Same holding as in Broeks case.


Mrs. S. Aumeeruddy-Cziffra and nineteen other Mauritian women petitioned the Human Rights Committee claiming that the Mauritius Immigration Amendment Act, 1977, and the Deportation Amendment Act, 1977, limiting the rights of foreign husbands but not foreign wives, to Mauritian resident status was unlawful sex discrimination under the International Covenant on Civil and Political Rights (Political Covenant). The Human Rights Committee held that the acts violated articles 2(1), 3 and 26 of the Political Covenant in regard to articles 17(1) and 23(1). Articles 2(1) and 3 require respect for the rights recognized in the Covenant without distinction as to sex, and article 26 requires the equal protection of the law. Article 17 prohibits arbitrary or unlawful interference with the family and article 23(1) requires that the family be protected. The Committee reasoned that

the protection of a family cannot vary with the sex of the one or the other spouse. Though it might be justified for Mauritius to restrict the access of aliens to their territory and to expel them therefrom for security reasons, the Committee is of the view that the legislation which only subjects foreign spouses of Mauritian women to those restrictions, but not foreign spouses of Mauritian men, is discriminatory with respect to Mauritian women and cannot be justified by security requirements.

(Para. 9.2(I)(ii)3).


Mrs. Sandra Lovelace, a Canadian Maliseet Indian, lost her status and rights as an Indian upon her marriage to a non-Indian in accordance with Canada's Indian Act. She subsequently divorced and sought the right to return to her tribe but was prevented from doing so because of
the loss of her Indian status. Pointing out that an Indian man who mar-
ries a non-Indian woman does not lose his Indian status, she claimed that
the Act discriminated on the basis of sex and thus violated the Inter-
national Covenant on Civil and Political Rights. The Human Rights Com-
mittee recognized that the right to choose one's residence (art. 12), the
right to protection of family life and children (arts. 17, 23, 24), and the
right of nondiscrimination on the basis of sex (arts. 2, 3, 26) of the Cove-
nant were indirectly at stake in the case. However, they declined to
reach the merits of the case because Mrs. Lovelace married before the
Covenant came into force in Canada. (Paras. 11, 12, 18). The Commit-
etee did, however, state that “to deny Sandra Lovelace the right to reside
on the reserve is [neither] reasonable [n]or necessary to preserve the iden-
tity of the tribe.” Thus, preventing her from being recognized as belong-
ing to the tribe was an unjustifiable denial of her right to enjoy her own
culture as preserved by article 27 of the Covenant. (Paras. 17, 19).

Advisory Opinion on the Interpretation of the Convention of 1919 Con-
cerning Employment of Women During the Night, 1932 P.C.I.J. (ser. A/
B) No. 50, reprinted in 3 World Court Reports 99 (1932-35).

The United Kingdom, as a State Party to the Convention Concerning
the Employment of Women During the Night, sought an Advisory Opin-
ion from the Permanent Court of International Justice to determine
whether British women engineers were precluded from holding manage-
rial positions in electrical companies because such positions required wo-
men to work at night. Article 3 of the Convention prohibited women
from working at night in any public or private industrial undertaking,
but it was unclear whether it applied to women in all positions or just
those involving manual labor. The Court advised that article 3 prohib-
ited women from working at night regardless of their position. The effect
of this opinion was to prohibit all women from working at night and in
many cases from being paid extra for night work. The Convention was
subsequently revised in 1934 and in 1948 to exempt women in manage-
rial positions from the prohibition and to develop a more flexible defini-
tion of night. (For further discussion of this case, see Hevener, N.
International Law and the Status of Women, p. 16. (Boulder, CO: West-
view Press) (1983)).

B. Regional Human Rights Conventions

Paton v. United Kingdom (Application No. 8416/78), 19 European
Commission of Human Rights 244 (1980), 3 European Human Rights
Mr. Paton appealed the decision of the Family Division of the English High Court of Justice in which he was precluded from preventing his wife from having an abortion pursuant to the British Abortion Act 1967. \textit{(Paton v. British Pregnancy Advisory Service} (1979) Q.B. 276). Mr. Paton alleged that his inability to regulate his wife's decision or to be consulted on the issue was a violation of his right to respect for family life under article 8(1) of the \textit{European Convention on Human Rights}. The European Commission of Human Rights dismissed Mr. Paton's appeal, explaining that the British decision, "in so far as it interfered in itself with the applicant's right to respect for his family life, was justified under paragraph (2) of Article 8 as being necessary for the protection of the rights of another person." (Para. 26). In addressing Mr. Paton's alleged right to be consulted, the Commission did "not find that the husband's and potential father's right to respect for his private and family life can be interpreted so widely as to embrace such procedural rights as claimed by the applicant, i.e. a right to be consulted, or a right to make applications, about an abortion which his wife intends to have performed on her." (Para. 27).


Mrs. Abdulaziz Cabales and Mrs. Balkandali petitioned the European Commission of Human Rights alleging sex discrimination in the Rules of U.K. Immigration Act 1971 in violation of the \textit{European Convention on Human Rights}. According to these Rules, women lawfully settled in the U.K. also had to be either U.K. citizens, born in the U.K., or have at least one parent born there, before their foreign husbands could join them in the U.K. Men lawfully settled in the U.K., on the other hand, did not have to meet any other requirement for their foreign wives to settle with them in the U.K.

The European Commission unanimously concluded that the exclusion of the applicants' husbands from the U.K. "entailed sexual discrimination (Article 14) in the securement of the applicants' respect for family life (Article 8(1)), the application of the relevant immigration rules ... being disproportionate to the purported aims of the measure." (Para. 139(1)). This decision was affirmed by the European Court of Human Rights, 7 \textit{European Human Rights Reports} 471-511 (1985).

As a result of this decision, the U.K. Parliament tightened the Immigration Rules subjecting wives seeking to join their husbands in the U.K. to the more stringent conditions that applied to husbands seeking to join their wives. (For further discussion of this case, see Byrnes, A. "Recent


Paula Marckx, an unmarried woman, challenged a Belgian law, which required an unmarried mother to register and officially adopt her own child, as contrary to the *European Convention on Human Rights* (*European Convention*). The Belgian recognition procedure was contrary to the principle *mater semper certa est* applicable at the time in most member States of the Council of Europe. The European Commission of Human Rights and then the European Court of Human Rights held the Belgian law contrary to article 8 of the *European Convention* (respect for family life), and article 14 (nondiscrimination) as between legitimate and illegitimate children, as well as between married and unmarried mothers. (For further discussion of this case, see De Hondt, I. and Holtrust, N. "The European Convention and the 'Marckx-Judgment' Effect," 14 *International Journal of the Sociology of Law* 317-28 (1986) (UK)).


The European Commission of Human Rights found interference with a Dutch woman’s right to family life, as provided in article 8(1) of the *European Convention on Human Rights*, in preventing her foreign spouse from joining her in the Netherlands. However, the Commission held the interference justified under article 8(2) because her husband had been found guilty of dealing in heroin by Dutch authorities, and he was therefore declared an undesired alien in accordance with the Aliens Act.


Costa Rica, as a State Party to the *American Convention on Human Rights*, sought an Advisory Opinion from the Inter-American Court on Human Rights on a number of proposed amendments to the naturalization provisions of the Costa Rican Constitution. One of the proposed amendments would have distinguished between foreign women and foreign men marrying Costa Ricans. The Court noted that the proposed amendment followed the formula adopted in the current Constitution, which gives women but not men who marry Costa Ricans a special status for purposes of naturalization. This approach . . . was based on the so-called principle of family unity and is traceable to two assumptions . . . [One is that] all members of a family
should have the same nationality. The other derives from notions about paternal authority and the fact that authority over minor children was as a rule vested in the father and that it was the husband on whom the law conferred a privileged status of power, giving him authority, for example to fix the marital domicile and to administer the marital property. Viewed in this light, the right accorded to women to acquire the nationality of their husbands was an outgrowth of conjugal inequality.

(Para. 64). The Court unanimously held that the proposed naturalization amendments constituted discrimination incompatible with article 17(4) (equality of rights and responsibilities within marriage) and article 24 (equal protection of the law) of the Convention.

IV. Resources

The following, regrettably, is a limited listing of organizations that work toward the development of the international right to nondiscrimination on the basis of sex. Where it is known that the organization publishes a newsletter or a periodical, the title is indicated.

A. Non-Governmental Organizations

Asia Pacific Forum on Women, Law and Development, Asia Pacific Development Centre, Pesiaran Duta, P.O. Box 12224, 50770 Kuala Lumpur, Malaysia.

Association of African Women for Research and Development, B.P. 3304, Dakar, Senegal. This Association publishes the newsletter Echo in both French and English.

The Clara Wichman Institute, Singel 373, 1012 WL Amsterdam, Netherlands. This Institute publishes the periodical Nemesis in Flemish.

International Women's Rights Action Watch (IWRAW), Humphrey Institute, University of Minnesota, 301-19th Avenue South, Minneapolis, MN 55455, USA, or Development Law and Policy Program, Center for Population and Family Health, Columbia University, 60 Haven Avenue B-3, New York, NY 10032, USA. IWRAW publishes the quarterly newsletter Women's Watch in English.

International Women’s Tribune Centre (IWTC), 777 U.N. Plaza, New York, NY 10017, USA. IWTC publishes the quarterly newsletter Tribune in English, French, and Spanish.

Japanese Association of International Women’s Rights, Bunkyo Women's College, 1196 Kamekubo, Oimachi, Iruma-gun Saitama Prefec-

7. If you know of any NGO resource that should be included in the next revision of this bibliography, please inform Ann Morrison at the Law Faculty Library as indicated in supra note 2.
B. International and Regional Governmental Organizations

**European Community**, **Women's Information Office**, Rue de la Loi 200, Brussels, Belgium. This office publishes a variety of materials on European Community law and women in the languages of the European Community.

**United Nations Branch for the Advancement of Women**, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria.

**United Nations Information Office**, DESI/DPI Room 51061, U.N. Plaza, New York, NY 10017, USA.

C. Reporters

There are a number of reporters that frequently provide information on developments in international law relating to sex discrimination. They include but are not limited to:

- **Commonwealth Law Bulletin**, Commonwealth Secretariat, Malborough House, London SW1Y 5HX, UK.
- **Human Rights Internet Reporter**, Harvard Law School, Cambridge, MA 02138, USA.
- **Women at Work**, International Labour Office (Publications), 1211 Geneva 22, Switzerland or ILO Publications Centre, 45 Sheridan Avenue, Albany, NY 12210, USA.
- **Women's International Network (WIN) News**, 187 Grant Street, Lexington, MA 02173, USA.

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8. See supra note 1 for a listing of some of the periodicals with articles analyzing such developments. If you know of any additional reporters, it would be greatly appreciated if you could inform Ann Morrison as indicated in supra note 2.