

Rule of Law for Public Policy Students 2018/19 Fall

General

Course Description

The rule of law requires that the government, institutions and individuals are accountable to publicly set out laws that are fairly, independently, equally and transparently applied, and protect human rights. Centered on the UN definition of the rule of law, this course will examine key national institutions required to achieve the goals of the rule of law: the executive, parliament and the judiciary, law enforcement bodies, and oversight mechanisms (such as ombudsmen and National Human Rights Institutions). It will also examine how the rule of law is promoted, developed, assessed and supported by the United Nations. Throughout the course, consideration will be given to what happens when the rule of law is absent or breaks down, using current situations in the world as examples.

Knowledge of the principles and requirements for the rule of law is important for all policy makers and analysts, as well as those working for international or regional organisations, or for any organisation interested in oversight and accountability. This course will approach rule of law from a human rights perspective, and will sensitise students to the basic principles of rule of law and the use of human rights approaches that they will be able to take with them into their future careers.

Learning Outcomes

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

1. Define the rule of law, and the basic principles and core concepts that relate to it.
2. Identify the main national and international actors relevant to the functioning of the rule of law, and understand their roles.
3. Work individually and in teams to critically analyse and evaluate real life situations and apply the basic principles of the rule of law.
4. Connect rule of law principles to real life scenarios including in post-conflict societies, understand barriers to the rule of law, and be able to formulate proposals for solutions/remedies.
5. Identify important sources of rule of law information and understand how rule of law principles are relevant to their future career.

Approach

This course also emphasises developing skills for practice. It will be participatory and all students should actively engage in each class. The course encourages critical thinking through readings, active class discussions, in-class exercises, and a presentation in class. Two classes will involve a practical exercise, where students will work in teams to propose a solution for a rule of law 'crisis', applying the principles learned in the course to a mock scenario. In the first of these two classes, students will be presented with the 'crisis'. They will work in teams to propose how it could be approached, and present this in the following class. Students will also write a research paper of 3000 words not including footnotes & bibliography. The purpose of the paper is to identify a rule of law problem and make proposals for change/resolution (see course requirements and grading, below, for more detail on the requirements for the paper).

Short Reading Exercises: For most of the classes, you will see a note that asks you *before* you do any of the readings to write down a sentence or some bullet points of your own thoughts/views/experience of the issue under discussion, and a few lines on whether/how your view changed after doing the readings, and to put this note into a 'journal'. Later in the course you will be asked to comment on a specific reading. The purpose of these exercises is to help to draw out your own views, assumptions and experience of the issues under discussion, before you do the readings, in order to identify how these may change, be challenged or be reinforced by the class readings, and through the course as a whole. You should not do any research on the pre-reading component, but just answer from your own knowledge/experience. These notes are included for the purpose of assessment as evidence of having done the readings, and they are also to help you in navigating the readings and in the discussions that we will have during class. See the guidance note, below, for more detail on this requirement.

Course Requirements and Grading

Students are expected to do the readings for every class, and to be present and actively participate in every class. Please also see the policy on lateness and absences below.

The course will be graded as follows:

1. **In-class exercise:** Two of the classes on the course will be dedicated to a practical exercise. Students will work in teams to propose solutions to a rule of law 'crisis', where they will apply learning from the previous classes. This will be worth **20% of the overall grade**.
2. **Active participation:** This comprises
 - (a) Engaging with the written material, assessed through evidence of having done the readings, through the short pre-class reading exercises presented in a journal (20%)
 - (b) active participation in class (10%).

Active participation will account for **30% of the overall grade**.

3. A **Term Paper** will account for **50% of the overall grade**. This paper is to be 3,000 words not including footnotes and bibliography (minimum 2,700 maximum 3,300) and due **Sunday, 18th November 2017** (midnight). **Late papers will receive a grade-mark penalty (as per Student Handbook)**. It is strongly advised that students begin work on drafting their papers early in the course so that they can obtain feedback and support in good time. Paper topic choice is due to the professor by Class 8 at the latest for approval and comments.

Note: it is important that you read the guidance on each of these elements for further information. See the Guidance Notes linked at the end of this section.

Plagiarism and Academic Honesty

Plagiarism is extremely serious academic misconduct. **Please make sure you have read and understand the 'Academic Dishonesty' part of the Student Handbook**, the CEU Policy on Plagiarism and accompanying guidelines [LINK](#) and the CEU Code of Ethics [LINK](#).

Turnitin software is used to verify the originality of all submitted material.

Policy on attendance and lateness

Attendance It is required that you attend all classes. An additional make-up assignment is required for any missed classes (apart from absence for medical reasons) and will be 500 words based on the work done in the missed class.

Please read the section of the Student Handbook on Attendance so that you are aware of the School's policy.

Lateness All classes start on time and out of respect for fellow students, anyone arriving more than 15 minutes late will be asked not to join the class, and will be asked to do a make-up assignment afterwards. Two late arrivals will be treated as an unexcused absence.

LAPTOPS and Phones are not permitted during class. If a laptop is needed for the purpose of the class, you will be notified in advance. If you have any concerns about this policy, please come to see me at the start of term.

Office hours

Regular office hours will be posted here at the start of term. Students can also email me with any questions or issues or to arrange a meeting at any point during the course.

Students are encouraged to come and see me at any time during the term to discuss the assignments or any issues they are having regarding the course.

Recording of lectures: Please be aware that recording of all or part of any class is not permitted without express agreement from all present. Please refer to the Student Handbook for the SPP policy on recording of lectures.

READING LIST

It is important that you do the required reading before each class. These provide the information that will be the basis for the work done in the class and the information in the readings will not be presented again in the class. Required readings are listed in the suggested order in which they should be read. The number of pages in

each reading is listed in bold and brackets as a guide to assist you in planning your reading. Additional reading and/or resources are suggested for each class, which can enhance your knowledge of the topic and/or provide another perspective.

Hyperlinks to the readings are provided wherever possible (click 'LINK'). Where they are not provided, please check the library, or Google Scholar to see if there is an online version you can access. Books listed will be available in the library.

Please note: specific pages that should be read are noted with an asterisk (*), if there are no pages/section specified, you should read the whole piece.

Basic Reference Texts:

There is no single textbook for this course, and readings are provided from different sources for each class. However, the following books will be of use to students in their research:

- James E. Fleming (ed), *Getting to the Rule of Law* (New York University Press 2011).
- Council of Europe Commission for Democracy through Law (Venice Commission)'s *Rule of Law Checklist* (2016), provides a useful source of relevant legal standards (see Section III) relating to the Rule of Law [LINK](#)
- T. Weiss and R. Wilkinson, *International Organization and Global Governance* (Taylor and Francis, 2013).
- Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004).
- David Feldman, *English Public Law* (1st Edition, OUP). While this is a textbook on English Law, it is a useful resource for the principles of the rule of law and the different national actors as they operate in that system.



Guidance Notes

Guidance Notes for Students with more information on:

- Reading Notes
- Practical Exercise
- Term Paper
- Marking Criteria



test

Restricted

Not available unless: Your **First name** is **Kirsten** (hidden otherwise)

0 participants Submitted

Papers are submitted to Turnitin



TERM PAPERS

please upload your term paper here ****make sure to click the final 'submit' button or it wont register as submitted****

Deadline is 18th November at midnight. **Late papers will incur a grade penalty for each 24-hours they are late.**

0 participants Submitted **Due 18 November 2018**

Papers are submitted to Turnitin



Main Course Forum

Add a new topic to this forum

Class 1 - Basic Principles of the Rule of Law I: Defining Rule of Law

The purpose of this class is (1) to introduce the UN definition of the rule of law, (2) to consider some of the competing definitions, and (3) to examine what the *purpose* of the rule of law should be.

Short Reading Exercise: *Before* you do the readings, please think about and write down a few short sentences on: 1) what *you* understand by the term 'rule of law', 2) how 'rule of law compliant' you feel your country/jurisdiction is and why (this should just be your own views, you do not need to do any research on this). *After* you have done the readings, please write a few sentences as to whether your views have changed, and how, with page references to the readings. (This note should be 200-300 words max.) Please save this into your online 'journal' with the date of the class on it. **See above Guidance Note on the reading exercises for more information, including a template for the reading note.**

Required Reading

Rule of Law Syllabus 2018/19; course description, policies, Guidance Notes and grading (above), and CEU Policy on Plagiarism and accompanying guidelines [LINK \(6 pages\)](#)

UN Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (UN Doc. A/RES/67/1) 30 November 2012 [LINK \(6 pages\)](#)

Rule of Law Institute of Australia, Video - Rule of Law Series – Part 1 – Defining Rule of Law **(3 minutes)** [LINK](#) and Part 2 – Dicey's Rule of Law [LINK \(4 minutes\)](#)

Rachel Kleinfeld Belton, 'Competing Definitions of the Rule of Law', Carnegie Papers: Rule of Law Series, 55 (2005). *pp. 3-29 **(26 pages)** [LINK](#)

Carnegie Endowment Video - On New Development Consensus **(3 mins)** [LINK](#) See also accompanying brief [LINK \(1 page\)](#)

Politico.eu, How to fix Europe's 'rule of law' *blindspot*, Michael Meyer-Resende, 10 June 2017 [LINK \(1 page\)](#)

TheShift.com Back to Basics: What is the 'Rule of Law'? [LINK \(1 page\)](#)

Summary of the rights contained in the International Covenant on Civil and Political Rights (ICCPR)

Summary of the rights contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) by the Council of Europe (Compass Manual on Human Rights Education) [LINK \(1 page\)](#)

US State Department Human Rights Report 2014 – Turkmenistan. *pp. 1-11 (to 'Academic Freedom'). When reading this report, please think about the Rule of Law issues that may be involved (8 pages)
[LINK](#)

Additional Reading/Resources

Lord Bingham (UK Master of the Rolls), Video – The Rule of Law (2010): 28 minutes [LINK](#)

Council of Europe Venice Commission, Rule of Law Checklist (2016) [LINK](#)

Council of Europe Venice Commission, Report on the Rule of Law, CDL-AD(2011)003rev [LINK](#)

James A. Goldston, 'New Rules for the Rule of Law' (Open Society Foundation, 2013) [LINK](#)

Robert Stein, 'Rule of Law: What Does it Mean?', 18 Minn. J. Int'l L. 293 (2009) [LINK](#)

Martin Krygier, 'Four Puzzles About the Rule of Law: Why, What, Where? And Who Cares?' in James E. Fleming (ed) *Getting to the Rule of Law* (New York University Press 2011), pp. 64 – 105.

Mary Robinson, Kevin Rudd, Judy Cheng-Hopkins, 'Same Millennium, New Goals: Why Peace, Security, Good Governance and the Rule of Law Must Be Included in the New MDGs' *the Huffington Post* 12 May 2013 [LINK](#)

Tom Bingham, *The Rule of Law* (Penguin, 2011)

Daniel Rodriguez, Mathew McCubbins and Barry Weingast, 'The Rule of Law Unplugged', 59 Emory Law Journal 1455 (2010) [LINK](#)

International Commission of Jurists, 'The Rule of Law in a Free Society' (1959) [LINK](#)

Joseph Raz, 'The Rule of Law and its Virtue' in *The authority of law: Essays on law and morality* (Clarendon Press, 1979) [LINK](#)

Class 2 - Basic Principles of the Rule of Law II: Key Concepts

The purpose of this class is to examine the core concepts relating to the rule of law that will be discussed throughout the course. It builds on the discussion in class 1 on the definition and purpose of the rule of law. The following concepts will be considered as they relate to the rule of law:

- Accountability, transparency, participation, and inclusion.
- Effectiveness, legitimacy, and non-discrimination.
- Independence, impartiality, fairness, responsiveness, and predictability (of law).
- Corruption.

Short Exercise: *Before* you do the readings, please copy and paste the list of terms below onto a blank page of your journal, and write one sentence giving *your own understanding* of each term in the context of the rule of law. *After* you have done the readings, please write a few sentences as to whether your views on any of these terms have changed, and how, with (page) references to the readings. (This note should be 200-300 words max.) Please save into your online journal with the date of the class.

- **Accountability**
- **Transparency**
- **Participation**
- **Inclusion**
- **Effectiveness**
- **Legitimacy**
- **Non-discrimination**
- **Independence**
- **Impartiality**
- **Fairness**
- **Responsiveness**
- **Corruption**

Required Reading

USAID, 'The Rule of Law Strategic Framework - A Guide For USAID Democracy And Governance Officers' [LINK](#) *pp. 1-2 (essential elements), and p. 7 (**2 pages**)

UN Rule of Law Indicators [LINK](#) *pp. 41-65 (**24 pages**) [When reading the indicators, please consider how the UN has defined the different key concepts listed above].

Thomas Carothers, *Rule of Law Temptations*, 33(1) The Fletcher Forum of World Affairs (2009) [LINK](#) (**12 pages**)

World Justice Project, Rule of Law Factors <http://worldjusticeproject.org/what-rule-law> *please read through the paragraphs describing each of the factors - click 'read more' beneath each (**7 pages**)

Scottish Human Rights Commission, 'What is a human rights based approach to policy and decision making?' (website) [LINK](#) (**1.5 pages**)

UNICEF, 'A Human Rights-Based Approach to Education For All' (2007) [LINK](#) *pp. 10-11 'the principles that inform a human rights based approach' (**1.5 pages**)

Council of Europe Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration [LINK \(1 page\)](#)

Additional Reading/Resources

Thomas Carothers and Saskia Brechenmacher, 'Accountability, Transparency, Participation, and Inclusion: A New Development Consensus?' Carnegie Endowment, 2014 [LINK](#)

Evan Fox-Decent, 'Is the rule of law really indifferent to human rights?' 27(6) *Law and Philosophy* 533 (2008).

UNODC, *State of implementation of the United Nations Convention against Corruption: Criminalization, law enforcement and international cooperation* (2015) [LINK](#)

Transparency International, *Corruption Perceptions Index 2015*, [LINK](#)

UNDP/DESA, *Public Sector Transparency and Accountability in Selected Arab Countries: Policies and Practices* (UNDP and Department of Economic and Social Affairs, New York 2004).

Jane Stromseth, David Wippman, Rosa Brooks, *Can Might Make Rights? Building the Rule of Law after Military Interventions* (Cambridge University Press, 2006) *Chapter 3

M Versteeg and T Ginsburg, 'Measuring the Rule of Law: A Comparison of Indicators', *Law & Social Inquiry* (January 2016). *pp.1-12.

Council of Europe, *Criminal Convention against Corruption* [LINK](#)

Council of Europe, *Additional Protocol to the Criminal Law Convention on Corruption, (on measures to be taken at the national level)*, [LINK](#)

Council of Europe, *Civil Convention on Corruption* [LINK](#)

UN, *Convention Against Corruption* (2003) [LINK](#)

OAS, *Inter-American Convention against Corruption* (1996) [LINK](#)

Class 3 - The Executive

The purpose of this class is to examine the role of the executive, that is, the body that is responsible for governing the country through the exercise of authority, shaping of policy, and the execution of laws (e.g. the President/Prime Minister and her or his cabinet of ministers). The class will consider:

- The role and functions of the executive.
- Rule of law limitations on executive powers.
- The executive in the absence of rule of law: Autocracy.

Short Exercise: Before you do the readings for this class, please write down a few sentences on what *you* consider should be the role of the executive and how executive power is constrained (that

is, how is executive power limited by other branches of government/laws); 1) in your country, 2) 'ideally' in a rule of law-compliant society. After you have done the readings, please write a few sentences as to whether your views have changed, and how, with page references to the readings. (This note should be 200-300 words max.) Please add this to your journal before class, with the date of the class.

Required Reading

Venice Commission, Rule of Law Checklist (2016). *pp. 7-24 **(15 pages)** [LINK](#)

Commonwealth (Latimer House) *Principles on the Three Branches of Government* (November 2003) [LINK](#) *pp. 10-14 **(3 pages)**

European Union - *A new EU Framework to strengthen the Rule of Law* (2014), [LINK](#) **(9 pages)**

James Goldgeier and Elizabeth N. Saunders, *The Unconstrained Presidency*, Foreign Affairs, September/October, [LINK](#) **(8 pages)**

US State Department Human Rights Report 2014 – Turkmenistan. *pp. 9-17 (Sections 2 & 3). When reading this report, please think about the Rule of Law issues that may be involved. [LINK](#) **(8 pages)**

Anne-Marie Slaughter, "On Thinking Like a Lawyer" (Harvard Law Today, May 2002) [LINK](#) **(1.5 pages)**
Please read this with a view to thinking about how you write and approach arguments.

Additional Reading/Resources

Frank E. Cooper, 'The Executive Department of Government and the Rule of Law' 59(4) Michigan Law Review (February 1961), *pp. 515-530 [LINK](#)

Council of Europe, Recommendation CM/Rec(2000)10 of the Committee of Ministers to members States on codes of conduct for public officials, [LINK](#)

Ozan O. Varol, Stealth Authoritarianism, 100 Iowa L. Rev. 1673 (2015)

Antonin Scalia, 'The Rule of Law as a Law of Rules', 56(4) The University of Chicago Law Review 1175 (1989) <http://www.jstor.org/stable/1599672>

Shirin Sinnar, 'Rule of Law Tropes in National Security', 129 Harvard Law Review 1566 [LINK](#)

World Bank, 'Governing Systems and Executive-Legislative Relations (Presidential, Parliamentary and Hybrid Systems)', concept paper [LINK](#)

Lionel K McPherson, 'The Instability of "Executive Discretion"' in James E. Fleming *Getting to the Rule of Law* (New York University Press 2011).

Human Rights and Rule of Law: Constitutional and Legal Reform: Afghan Independent Human Rights Commission, Harvard Program on Humanitarian Policy and Conflict Research, Roundtable Report, September 2003.

Class 4 - Parliaments/legislatures

The purpose of this class is to examine the role of the legislature (parliament/national assembly) in the national system, both as a control on the powers of the executive, and in its own right. This class will examine:

- Role and functions of the legislative branch.
- Rule of law limitations on its powers.
- The legislative branch in the absence of the rule of law.

Short Exercise: Before you do the readings this class, please write down a sentence or two on what *you* expect from your parliament and political parties in your country (in the context of rule of law) and are there any issues that you consider might be problematic? **After** you have done the readings, please write a few sentences as to whether your views have changed, and how, referencing the readings. (This note should be 200-300 words max.) Please add this to your journal before class, with the date of the class.

Required Reading

Inter-Parliamentary Union, *Parliament and Democracy in the Twenty-First Century: A guide to good practice*, *Chapters 1, 2 & 6 (1. [Introduction](#), 2. [Representation](#), 6. An effective parliament (I): The national level) **(25 pages)**

Roberts Lyer and Webb, *Parliaments as Human Rights Actors*, EJIL: Talk! 21 June 2018, **(2 pages)** [LINK](#)

Freedom House Index, Freedom in the World 2015: Hungary, *Executive Summary to end of Electoral Process **(5 pages)** [LINK](#)

Freedom House Index, Freedom in the World 2018: Hungary, *Executive Summary to end of Electoral Process **(4 pages)** [LINK](#)

Economic Commission for Africa – Governance and Public Administration Division, ‘The Role of Parliament in Promoting Good Governance’ [LINK](#) *pp.51-58 Findings and Conclusions **(7 pages)**

Additional Reading/Resources

USAID, ‘USAID’s Experience Strengthening Legislatures,’ Center for Democracy and Governance, Bureau for Global Programs, Field Support, and Research, USAID, June 2001.

USAID, Handbook on Legislative Strengthening, (2000) [LINK](#)

Robert and Ann Seidman, Nalin Abeysekere, *Assessing Legislation: A Manual for Legislators*. 2003. *Chapter 9 [LINK](#) * Please skip the exercises in the chapter.

J. Gandhi and A. Przeworski, ‘Authoritarian Institutions and the Survival of Autocrats’, 40(11) *Comparative Political Studies* 1270 (2007). *pp 1270-1292. [Consider the authors’ views on the role of

Comparative Political Studies 1279 (2007). pp. 1279-1293. [Consider the authors' views on the role of the legislature]. [LINK](#)

Rick Stapenhurst, Niall Johnston, Riccardo Pelizzo (eds), *The Role of Parliament in Curbing Corruption* (World Bank Institute, 2006) [LINK](#)

John K. Johnson and Robert T. Nakamura, *Orientation Handbook for Members of Parliaments* (World Bank Institute, 2006) [LINK](#)

Johnson, John K., and Robert T. Nakamura, 'A Concept Paper on Legislatures and Good Governance', UNDP, July 1999. [LINK](#)

Alexander Horne, Gavin Dewry, Dawn Oliver (eds), *Parliament and the Law* (Hart, 2014). *Chapters 12 and 13.

Class 5 - The Justice Sector I: The Judiciary

The purpose of this class is to begin an examination of the justice sector, which is essential for the proper functioning of the rule of law. This class will examine the role of the judiciary, in particular:

- The role & functions of the judiciary and the judicial process.
- Independence of the judiciary.
- Abuses of power.

Short Exercise: *Before* you do the readings this class, please write down a few sentences/bullet points on what you consider to be the purpose of the judiciary in your country and what you consider 'judicial independence' requires. *After* you have done the readings, please write a few sentences as to whether your views have changed, and how, with reference to the readings. (This note should be 200-300 words max.) Please save this in your online journal.

Required Reading

United Nations Basic Principles on the Independence of the Judiciary, [LINK](#) (1 page)

Venice Commission, *Report on the Independence of the Judicial System Part I: The Independence of Judges*, CDL-AD(2010)004 [LINK](#) *pp. 4- 18 please pay particular attention to the paragraphs/sentences in bold and conclusions. (14 pages)

Report of the UN Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/32/34, 5 April 2016 *pp. 7-14 (Sections III & IV) [LINK](#) (7 pages)

Ruth Bader Ginsburg, 'Remarks on Judicial Independence', 43(3) *Court Review: The Journal of the American Judges Association* 245 (4 pages) [LINK](#)

Nurgul Novruz Justice for Sale in Azerbaijan's Courts? Citizens say they are falling victim to a skewed judicial system, Institute for War and Peace Reporting 7 April 2016 <https://iwpr.net/global-voices/justice-sale-azerbajjans-courts> (3 pages)

Reuters, *Chronology: Poland clashes with EU over judicial reforms, rule of law* 4 July 2018 [LINK](#) (1 page)

page)

Poland: Reforms a serious blow to judicial independence, says UN rights expert, 25 June 2018
[LINK \(1 page\)](#)

Navi Pillay, High Commissioner for Human Rights, 'Equality and Justice in the Courtroom' 5 March 2014 [LINK \(1 page\)](#)

Additional Reading/Resources

United Nations, *Basic Principles on the Role of Lawyers* (1990) [LINK](#)

United Nations, *Guidelines on the Role of Prosecutors* (1990) [LINK](#)

UN Human Rights Council, *Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers* Resolution 23/6 (2013) [LINK](#) [scroll down the list of resolutions to find the relevant one].

Council of Europe, 'Judges: independence, efficiency and responsibilities' Recommendation CM/Rec(2010)12 and explanatory memorandum [LINK](#)

Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, Legal Digest of International Fair Trial Rights, [LINK](#)

Gretchen Helmke, *Courts Under Constraints: Judges, Generals, and Presidents in Argentina*, (Cambridge University Press 2012). *conclusion

A Wallace Tashima, 'The War of Terror and the Rule of Law' 15 *Asian American Law Journal* 245 (2008). *Section IV. A Course Correction (you will have to look earlier in the draft for the meaning of the acronyms used in the conclusion) [LINK](#)

Sandra Day O'Connor, 'The Threat to Judicial Independence' *The Wall Street Journal* 27 September 2006 [LINK](#)

T Ginsburg and T Moustafa, 'Introduction: the functions of courts in authoritarian politics in T Ginsburg and T Moustafa (eds) *Rule by law: The Politics of Courts in Authoritarian Regimes* (2008 Cambridge University Press).

Hansjörg Strohmeyer, 'Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor', 95(1) *American Journal of International Law* 46 (2001) <http://www.jstor.org/stable/2642036>

Ewa Wojkowska, 'Doing Justice: How informal justice systems can contribute' United Nations Development Programme Oslo Governance Centre The Democratic Governance Fellowship Programme (December 2006) [LINK](#)

Inter-American Court of Human Rights Advisory Opinion OC-9/87: 'Judicial Guarantees in States of Emergency' [LINK](#)

Venice Commission, Report on Judicial Appointments, CDL-AD(2007)028 [LINK](#)

Linn Hamnergren, 'Do Judicial Councils Further Judicial Reform? Lessons from Latin America' Carnegie Endowment Rule of Law Series No.28 (June 2002) [LINK](#)

Penal Reform International, 'Access to Justice in Sub-Saharan Africa: The role of Traditional and Informal Justice Systems', November 2000. [LINK](#)

See also the resources on the website of the UN Special Rapporteur on the Independence of Judges and Lawyers [LINK](#)

MJ Trebilcock, Ronald J. Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress*, (Edward Elgar Publishing, 2009). *Chapter 2, pp. 66-77 (Latin America)

Class 6 - The Justice Sector II: Law Enforcement

The purpose of this class is to consider the role of policing in a society that operates under the rule of law, as well as the place of prisons, and the potential abuse of each by those in power. This class will consider:

- Rule of law-based policing.
- Military 'policing'.
- Treatment of those in prison.
- Abuses of power.

Short Exercise: *Before* you do the readings this class, please write down a sentence or two on 1) what you consider to be the role and purpose in your country of law enforcement bodies, and 2) what rule of law challenges might be needed to improve the police in your country. *After* you have done the readings, please write a few sentences as to whether your views have changed, and how, with reference to the readings. (This note should be 200-300 words max.) Please save this in your online journal.

Required Reading

United Nations, *Code of Conduct for Law Enforcement Officials* (1979) and Guidelines for the effective implementation of the code (1986) and Basic Principles on the Use of Force and Firearms [LINK](#) *p.343-356 **(13 pages)**

David H. Bayley, 'Law Enforcement And The Rule Of Law: Is There A Tradeoff?' 2(1) Criminology and Public Policy 2002 [LINK](#) **(15 pages)**

Council of Europe Commissioner on Human Rights, Police Abuse – A Serious Threat to the Rule of Law, Comment, 25 February 2014 [LINK](#) **(2 pages)**

Redditt Hudson, 'I'm a black ex-cop, and this is the real truth about race and policing' Vox 7 July 2016 [LINK](#) **(8 pages)**

US State Department Report - Azerbaijan 2015 Human Rights Report. *pp. 5-10 (Prison and Detention Center Conditions) [LINK](#) **(4 pages)**

OHCHR, Women and Detention, factsheet - September 2014 [LINK](#) **(2 pages)**

Additional Reading/Resources

OHCHR, Human Rights Standards for the Police, Professional Training Series No. 5 [LINK](#)

UNODC, Handbook on Police Accountability, Oversight and Integrity, (2011) [LINK](#)

The UN Standard Minimum Rules for the Treatment of Prisoners (2016) [LINK](#)

M. J. Trebilcock, Ronald J. Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress*, (Edward Elgar Publishing, 2009) *Chapters 3 & 5

Human Rights Watch, Malaysia: End Police Abuses: Excessive Use of Force, Shootings, Deaths in Custody 'A Major Problem' (2014) [LINK](#)

Amnesty International, 'Officially, You Do Not Exist' – Disappeared And Tortured In The Name Of Counter-Terrorism' (July 2016) [LINK](#)

Amnesty International – Dutch Section, *Police Oversight*, Short Paper Series No. 2 [LINK](#)

United Nations Office on Drugs and Crime, *Criminal Justice Assessment Toolkit* [LINK](#)

United Nations Office on Drugs and Crime, *Criminal Justice Assessment Toolkit: Gender in the criminal Justice System* [LINK](#)

'Report of the Special Rapporteur on the independence of judges and lawyers', UN Doc. A/66/289 (2011) [LINK](#)
*see in particular paragraphs on gender stereotyping

Council of Europe, *The European Code of Police Ethics*, Recommendation Rec(2001)10 [LINK](#)

Robert Perito, *Where is the Lone Ranger When We Need Him: America's Quest for a Post Conflict Stability Force*, (United States Institute of Peace, 2004). Chapter 3.

Donald J Campbell and Kathleen M. Campbell, 'Soldiers as Police Officers/Police Officers as Soldiers: Role Evolution and Revolution in the United States', 36(2) *Armed Forces & Society* 327 (2010). [LINK](#)

Simon Romero and Taylor Barnes, 'In Brazil, Officers of the Law, Outside the Law', *The New York Times*, 9 January 2012. [LINK](#)

Diane E. Davis, 'Undermining the Rule of Law: Democratization and the Dark Side of Police Reform in Mexico', 48(1) *Latin American Politics and Society* 55 (2006).

Class 7 - Practical Exercise I – Dealing with a rule of law 'crisis'

This class will be a team-based practical exercise. Using mock scenarios centred on a rule of law 'crisis', students will work in teams of 4 or 5 to identify the relevant issues and provide written advice or other outputs in a short time frame. Teams will be asked to prepare short advice memos, press releases, or identify points for the content of resolutions of international organisations. [See guidance note on the practical exercise.](#)

Note: There is reduced reading load for this class, it is strongly recommended that you use this as an opportunity to work on a draft outline for your term paper.

Required Reading

- Go back over the power points presentations from the course
- Read the guidance note on the practical exercise (Guidance Notes section).
- Venice Commission Rule of Law Checklist pp. 20 - 31 [LINK \(11 pages\)](#)
- Office of the High Commissioner for Human Rights (OHCHR), *Human Rights: A Basic Handbook for UN Staff*. *p. 2-5 ['what are human rights' to state responsibility] [LINK \(3 pages\)](#)
- Read the following press releases carefully but only for the purpose of language, tone and approach in making recommendations and presenting the issues: the reason to read these is for you to understand how they look for when your team will draft one. [LINK](#) and [LINK](#) and [LINK \(3 pages\)](#)

Class 8 - Practical Exercise II – Results and Discussion

The purpose of this class is for the teams to present the results of the previous class's 'rule of law crisis' practical exercise. Each team will give an oral presentation on their work to the class, after which there will be a class discussion on the exercise, focussing on how the crisis could be approached and how rule of law principles could be applied.

Please note: There is no required reading for this class so that you have time to prepare for the presentation of the outcome from the practical exercise.

Class 9 - Oversight, Accountability & Remedies for Victims

The purpose of this class is to discuss the 'how and why' of oversight of the actions of state bodies through independent mechanisms, the importance of accountability, and the situation of victims of abuses of power (particularly human rights violations). This class will particularly consider:

- Formal oversight mechanisms: examples and requirements for functioning and independence.
- Informal oversight through civil society, journalists and Human Rights Defenders.
- Accountability: procedures and requirements.
- Remedies for victims.

Short Exercise: What method(s) to promote accountability and reform - as discussed by Schedler - do you find the most persuasive? (you can approach this answer either 'globally' or more locally from the perspective of your own country). References (page) should be made to the Schedler article. This note should be 200-300

words max. Please save this in your online journal.

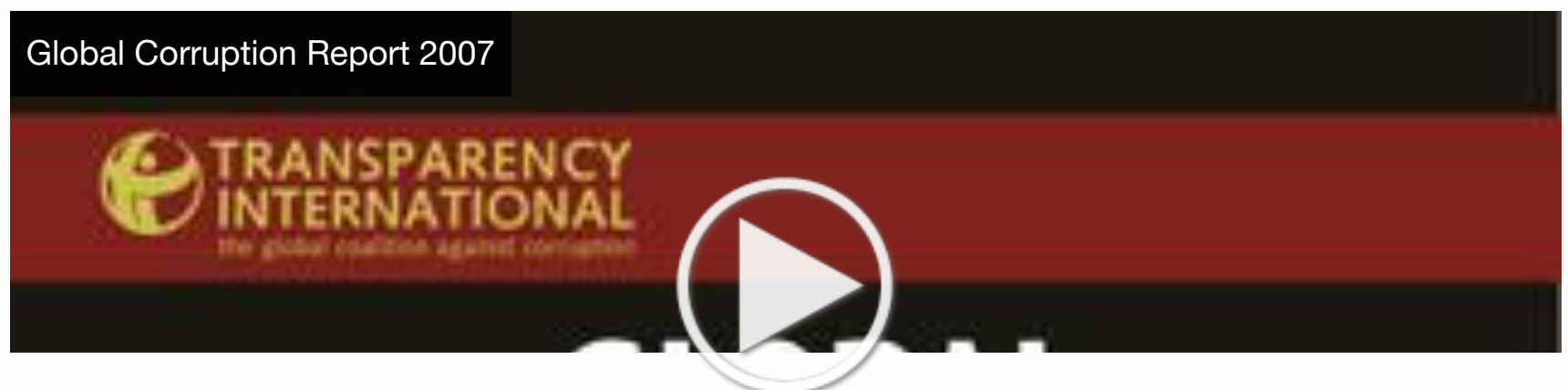
Required Reading

Andreas Schedler, 'Conceptualising Accountability' in Andreas Schedler (ed) *The Self-restraining State: Power and Accountability in New Democracies* (Lynne Rienner Publishers, 1999). *pp.13-27 **(14 pages)** [LINK](#)
see end of page for link to chapter, **Conclusion** [LINK](#) **(10 pages)**

UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Adopted By General Assembly Resolution 40/34 (29 November 1985). [LINK](#) **(3 pages)**

UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted by General Assembly resolution 60/147 (16 December 2005) [LINK](#) **(4 pages)**

Katya Salazar and Jacqueline de Gramont, 'Civil Society's Role in Combatting Judicial Corruption in Central America', *Global Corruption Report 2007: Corruption in judicial Systems* (Transparency International, 2007) *pp. 115-121 **(5 pages)**



UN Plan of Action on the Safety of Journalists and the Issue of Impunity (2012) UN Doc. CI-12/CONF.202/6 **(8 pages)** [LINK](#)

Tom Philipps, 'China seeks to eradicate 'vile effect' of independent journalism', *The Guardian* 26 July 2016 [LINK](#) **(1 page)**

Additional Reading/Resources

Oversight Bodies, Accountability and Impunity

Asia NGO Network on National Human Rights Institutions, *Report on the Performance and Establishment of National Human Rights Institutions in Asia 2014* (2014).

Ruth W Grant and Robert O. Keohane, 'Accountability and Abuses of Power in World Politics', 99(1) *American Political Science Review* 2005 [LINK](#)

Amnesty International, 'No Impunity for enforced disappearances: checklist for effective implementation of the international convention for the protection of all persons from enforced disappearance', 2011. [LINK](#)

Nick Jorgensen, 'Impunity and Oversight: When Do Governments Police Themselves?', 8(4) *Journal of Human Rights* 385 (2009).

E Gilligan, 'The Human Rights Ombudsman in Russia: The Evolution of Horizontal Accountability' 32(3) *Human Rights Quarterly* 577

F. Uggla, 'The Ombudsman in Latin America', 36(3) *Journal of Latin American Studies* 423(2004).

Carol Wang, 'Rule of Law in Afghanistan: Enabling a Constitutional Framework for Local Accountability', 55(1) *Harvard International Law Journal* 211 (2014)

Civil Society

Jan Aart Scholte, 'Civil Society and NGOs' in T. Weiss and R. Wilkinson, *International Organization and Global Governance* (Taylor and Francis, 2013).

Thomas Carothers. *Aiding Democracy Abroad: The Learning Curve*. (Brookings Institution, 2011). *Chapter 8: "From the Bottom Up: Civil Society".

F. Halliday, 'The Romance of Non-State Actors' in D Josselin and W Wallace (eds), *Non-State Actors in World Politics* (Pallgrave Macmillan, 2001).

Victims

UNODC, Criminal Justice Assessment Toolkit: *Victims and Witnesses* (Vienna, 2006) [LINK](#)

T. van Boven, 'Victim-Oriented Perspectives: Rights and Realities', in T. Bonacker and C. Safferling (eds.), *Victims of International Crimes: An Interdisciplinary Discourse* (2013).

Theo van Boven, 'Introductory note to The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' United Nations Audiovisual Library of International Law (2010) [LINK](#)

M. Cherif Bassiouni, 'International Recognition of Victims' Rights', 6(2) *Human Rights Law Review* 203 (2006). [LINK](#)

C. Fernandez de Casadevante Romani, *International Law of Victims* (Springer, 2012).

J. O'Connell, 'Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?', 46(2) *Harvard International Law Journal* 295 (2005) [LINK](#)

G. Kelly and M. Fitzduff, *Government Strategies on Victims in Post-Conflict Societies*, UNU/INCORE University of Ulster/United Nations University 2002 [LINK](#)

H. Liebling-Kalifani, et. al., 'Experiences of Women War-Torture Survivors in Uganda: Implications for Health and Human Rights', (2007) 8(4) *Journal of International Women's Studies*. [LINK](#)

M. Breen-Smyth, *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, Commissioned by WAVE Trauma Centre, May 2012. [LINK](#)

Dinah Shelton, *Remedies in International Human Rights Law* (3rd edn. Oxford University Press, 2015).

The purpose of this class is to consider the role of the United Nations as a driver and monitor of the rule of law. This class will particularly consider the role of the Human Rights Council and the Security Council, looking at how the UN provides rule of law assistance.

Short Exercise: Alston is writing about the role of the UN and place of human rights in the world in changed times - do you agree with his diagnosis of the issues? Are you convinced by his proposals? Please add this note (2-300 words) to your online journal.

Required Reading

Philip Alston, 'Human Rights in the Populist Era', Just Security, 18 October 2017 [LINK](#) (11 pages)

Guidance Note of the Secretary-General, UN Approach to Rule of Law Assistance (April 2008) [LINK](#) (7 pages)

Paul Williams and Alex Bellamy, 'The UN Security Council and Peace Operations' in T. Weiss and R. Wilkinson, *International Organization and Global Governance* (Taylor and Francis, 2013). *pp. 416-427 (11 pages).

UN Security Council Resolution 1325 (2000) [women, peace and security] UN Doc. S/Res/1325 [LINK](#) (3 pages)

Please also read the most recent report of the UN Human Rights Committee on your country (known as 'concluding observations'). This can be found on the following site [LINK](#) and then using the below instructions:

1. select your country from the list in the right hand box of the first section (**Filter by State/Entity or Geographic Region**)
2. select "CCPR" from the second section (**Filter by Committee**)
3. select "Concluding Observations" from the list in the right hand box of the third section (**Filter by Document Type**)
4. **click 'search' at the bottom of the page**
5. The list of documents will appear in a new page, select the most recent Concluding Observations

If your country does not have recent concluding observations (within the past 12-15 years), or you have trouble accessing the site, you may chose to look at a country of interest to you, or at the most recent concluding observations of Hungary [LINK](#)

Additional Reading/Resources

'Report of the Working Group on the issue of discrimination against women in law and in practice' UN Doc. A/HRC/23/50 (19 April 2013) [LINK](#) *pp. 13-23 (10 pages)

Axel Marschik, 'Enhancing Rule of Law' in Jared Genser and Bruno Stagno Ugarte (eds), *The United Nations Security Council in the Age of Human Rights* (Cambridge University Press, 2014). *pp.250-271.

Mari Katayanagi, 'UN Peacekeeping and Human Rights' in Jared Genser and Bruno Stagno Ugarte (eds), *The United Nations Security Council in the Age of Human Rights* (Cambridge University Press, 2014). *pp.123-154.

Leon Gordenker, *The UN System*, in T. Weiss and R. Wilkinson, *International Organization and Global Governance* (Taylor and Francis, 2013). *pp. 209-223.

Bertrand Ramcharan, 'The law making process', in Dinah Shelton (ed), *The Oxford Handbook of Human Rights* (Oxford University Press, 2013) Ch. 21 (pp. 499-527).

David Tolbert with Andrew Solomon, 'United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies', 19 *Harvard Human Rights Journal* 29 (2006) *From p. 33 ('B. A Framework...').

Hilary Charlesworth, 'Is there a human right to democracy' in Cindy Holder and David Reidy (eds) *Human Rights the Hard Questions* (Cambridge University Press, 2013). *pp. 271-282.

Simon Chesterman, *The UN Security Council and the Rule of Law: The Role of the Security Council in Strengthening a Rules-based International System - Final Report and Recommendations from the Austrian Initiative, 2004-2008*, Institute for International Law and Justice (NYU) [LINK](#)

Security Council Report (NGO), 'The Rule of Law: The Institutional Framework: International Criminal Courts and Tribunals (20 August 2015) [LINK](#)

Security Council Report, 'Cross-Cutting Report on the Rule of Law' (28 October 2011) [LINK](#)

Andrea Bianchi, 'Ad-Hoc-ism and the Rule of Law', 13 *European Journal of International Law* 263 (2002) [LINK](#)

UN Video - Peacekeeping <https://www.youtube.com/watch?v=oAHST5m1F54>

Clemens A. Feinäugle, 'The UN Declaration on the Rule of Law and the Application of the Rule of Law to the UN: A Reconstruction From an International Public Authority Perspective,' 7(1) *Goettingen Journal of International Law* 157 (2016) [LINK](#)

Roberta S. Jacobson, 'Women and the Rule of Law: A View from the Americas', 38(2) *The Fletcher Forum of World Affairs* 101 (summer 2014) [LINK](#)

Class 11 - Rule of Law in a post-conflict environment: Re-Establishment, and Transitional Justice

The purpose of this class is to examine the efforts made by the international community to (re)establish rule of law in post-conflict societies, looking at structural issues that may act as a barrier to the rule of law, and the questions of transitional justice and impunity.

Reading Exercise: How do you assess the OHCHR Rule of Law Tools after having read Samuels' assessment of the field of post-conflict rule of law reform? (This note should be 200-300 words max.) Please save this in your online journal.

Required Reading

OHCHR, Rule of Law Tools for Post-Conflict States: Mapping the Justice Sector (2006) [LINK](#) *pp. 5-25 (**20 pages**) While aimed at peacekeepers, this toolkit gives an overview of some of the range of post-conflict related issues that may arise with regard to the Rule of Law.

Kirsti Samuels, 'Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt' World Bank Social Development Papers; Conflict Prevention and Reconstruction Paper No. 37 (October 2006) [LINK](#) *pp. 1-25 (**25 pages**)

Fionnuala Ní Aoláin, 'Women, Security, and the Patriarchy of Internationalized Transitional Justice' 31 Human Rights Quarterly 1055 (2009) [LINK](#) *Introduction, and pp.1079-1085 (**7 pages**) [while not mandatory, I would encourage reading all of this article if you have time].

Additional Reading/Resources

Guidance Note of the Secretary-General: The UN Approach to Transitional Justice [LINK](#)

'Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies', UN Doc. S/2004/616 [LINK](#)

UN Peacekeeping: Women, Peace and Security, website [LINK](#) *see links to relevant UN Security Council Resolutions, in particular Resolution 1325.

Robert I Rotberg, 'Failed States, Collapsed States, Weak States: Causes and Indicators', in R Rotberg (ed) *State Failure and State Weakness in a Time of Terror* (Brookings Institution, 2004). *Chapter 1 {available online from the Brookings Institution} [LINK](#)

Susan Rose-Ackerman, 'Establishing the Rule of Law' in Robert Rotberg (ed) *When States Fail: Causes and Consequences* (Princeton University Press, 2010).

Jane E. Stromseth, 'Post-Conflict Rule of Law Building: The Need for a Multi-Layered, Synergistic Approach', 49 William and Mary Law Review 1443 [LINK](#)

Katherine Erbeznik, 'Money Can't Buy You Law: The Effects of Foreign Aid on the Rule of Law in Developing Countries', 18(2) Indiana Journal of Global Legal Studies Article 9 [LINK](#)

UNDP, Guidance Note on Assessing the Rule of Law Using Institutional and Context Analysis' [LINK](#)

Thomas Carothers, 'Promoting the Rule of Law Abroad: The Problem of Knowledge', Carnegie Endowment for International Peace: Democracy and Rule of Law Project, Number 34 (January 2003) [LINK](#)

P Gready and S Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' 8(3) International Journal of Transitional Justice 339 (2014).

Richard Goldstone, 'The Pursuit of International Justice', in T. Weiss and R. Wilkinson, *International Organization and Global Governance* (Taylor and Francis, 2013).

Open Society Justice Initiative, *International Crimes, Local Justice: A Handbook for Rule-of-Law Policymakers, Donors, and Implementers* (Open Society Foundations, 2011) [LINK](#)

Neil Kritz, *Transitional Justice: How Emerging Democracies Reckon with former Regimes*. United States Institute of Peace Press. Volume I pp. 157-206

Richard W. Miller, 'Might Still Distorts Right: Perils of the Rule of Law Project' in James E. Fleming (ed) *Getting to the Rule of Law* (New York University Press 2011).

Thomas Pogge, *World Poverty and Human Rights* (Polity Press, 2008). *Ch. 6 – Achieving Democracy.

Shelby Quast, 'Rule of Law in Post-Conflict Societies: What is the Role of the International Community', 39(1) *New England Law Review* 45 (2005) [LINK](#)

Victoria Sanford, 'The 'grey zone' of justice: NGOs and rule of law in postwar Guatemala', 2(3) *Journal of Human Rights* 393 (2003)

US Institute of Peace, 'Rule of Law' website: [LINK](#)

Class 12 - Race, Discrimination and the Rule of Law

The purpose of this class is to examine some of the rule of law issues that arise from discriminatory laws and practices, including barriers to access to justice.

Alternative reading exercise: Discuss Coates' article. Please save your note to your online journal

Required Reading

Russell G Pearce, 'White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law', 73(5) *Fordham Law Review*, Article 5 (2005) 2081 **(18 pages)** [LINK](#)

Ta-Nehisi Coates, "The Case for Reparations" *The Atlantic Monthly*, June 2014 [LINK](#) **(20 pages)**

Christopher Ingraham 'The 'smoking gun' proving North Carolina Republicans tried to disenfranchise black voters', *The Washington Post* 29 July 2016 [LINK](#)

While it is not mandatory reading, I would also recommend any student interested in this topic who has not already done so to read: Michelle Alexander, *The New Jim Crow* (New Press, 2013). *Introduction (available on Google Books)

Additional Reading/Resources

UN Human Rights Committee, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial (2007) [LINK](#)

Extreme Poverty and Human Rights, Report of the Special Rapporteur on extreme poverty and human rights UN Doc. A/67/278 (9 August 2012) [LINK](#)

United Nations General Assembly, 'Legal Empowerment of the Poor and eradication of poverty', UN Doc. A/64/133 (July 2009) [LINK](#)

Stephen Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative', Rule of Law Series: Democracy and Rule of Law Project, Number 41, (Carnegie Endowment for International Peace, October 2003). [LINK](#)

Open Society Foundation, *Legal Aid Reform and Access to Justice*, (February 2004). [LINK](#)

OHCHR Commissioned Report [Eliminating judicial stereotyping](#) (2014) [download]

Yash Ghai, 'Constitutionalism and the challenge of Ethnic Diversity' in J Heckman, R Nelson and L Cabatingan (eds) *Global Perspectives on the Rule of Law* (Taylor and Francis, 2013).

UNDP's Programming for Justice: Access for All. [LINK](#)

SP Baumgartner, 'Does Access to Justice Improve Countries' Compliance with Human Rights Norms? – An Empirical Study' (2011) 44 Cornell Int'l LJ 441

Rule of Law, Human Rights and Legal Aid in Southeast Asia and China. Report of the Practitioners' Forum. International Human Rights Law Group (2001).