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# CARDOZO LAW INSTITUTE *in Holocaust and Human Rights*

## FALL 2020 NEWSLETTER

### PROFESSOR GABOR RONA FILES COMPLAINT AGAINST U.S. GOVERNMENT FOR EXECUTIVE ORDER SANCTIONING THE ICC



Professor of Practice and Director of CLIHHR's Law and Armed Conflict Project Gabor Rona, along with the Open Society Justice Initiative and three other law professors—Diane Marie Amann, Milena Sterio, and Margaret deGuzman—[filed a complaint](#) against the U.S. government over Executive Order 13928, implementing economic sanctions and punishment for supporters of the International Criminal Court (ICC). Filed on October 1, 2020 in federal court in the Southern District of N.Y. against President Trump, Secretary of State Mike Pompeo, Secretary of Treasury Steven Mnuchin, Attorney General William Barr, and their respective U.S. Departments, the complaint alleges the executive order violates constitutional rights, including free speech rights, and stops plaintiffs from engaging in international justice advocacy in support of the ICC, threatening advocates with sanctions, including fines and imprisonment. This lawsuit comes on the heels of sanctions the U.S. imposed on chief prosecutor of the ICC Fatou Bensouda and a high-level aide for carrying out the work at the Office of the Prosecutor (OTP).

Professor Rona contends that the order impedes his and others' professional work to hold the perpetrators of atrocity crimes accountable: "This executive order causes irreparable harm to my and my colleagues' work in support of the Court. All those who speak, write and advocate for issues of international justice around the world are chilled by such draconian measures." Jim Goldston of the Open Society Justice Initiative has called the executive order a "reckless assault on a judicial institution and the victims it serves." The ICC is the world's first permanent international criminal court, established to investigate and prosecute international crimes, including genocide, war crimes and crimes against humanity. The executive order is the latest in a series of attacks to undermine the legitimacy of the ICC. For more information, visit the [Open Society Justice Initiative](#).



## PROFESSOR RICHARD WEISBERG FILES AMICUS TO U.S. SUPREME COURT

Professor Weisberg helped prepare and file an *amicus curiae* brief to the Supreme Court of the United States in the upcoming case of *Simon v. Republic of Hungary*, where the Court will determine how U.S. courts should answer claims for compensation by heirs of Hungarian Holocaust victims under the Foreign Sovereign Immunities Act. The case is against sovereign entities, including the Hungarian National Railroad (MAV), which transported Jews to death camps in 1944. Oral arguments for the case will be heard on December 7, 2020.

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## RECENT PUBLICATIONS

Ali Cain, *“Abort the Government”: Polish Citizens Challenge Poland’s Retreat to Autocracy*, Columbia RightsView, November 17, 2020.

Jocelyn Getgen Kestenbaum, Caitlin Williams and Benjamin Mason Meier, *Populist Nationalism Threatens Health and Human Rights in the COVID-19 Response*, American Journal of Public Health, November 12, 2020.

Gabor Rona, Diane Marie Amann, Margaret deGuzman, and Milena Sterio, *Why We Are Suing President Trump*, Just Security, October 8, 2020.

Ali Cain, *German Populist AfD Party Uses Moria Fires to Reinvigorate Anti-Refugee Sentiment*, Columbia RightsView, October 1, 2020.

Jocelyn Getgen Kestenbaum, Fernanda Frizzo Bragato and Marco Antonio Delfino de Almeida, *Indigenous Peoples, Genocide and Pandemics in Brazil*, Revista Culturas Jurídicas, August 14, 2020.

Gabor Rona, *Why the Executive Order on the ICC is Unconstitutional and Self-Defeating*, OpinoJuris, August 13, 2020.

Gabor Rona, *Letter to the Editor: There is No Affront to U.S. Sovereignty in the Int’l Criminal Court Investigation*, Just Security, July 2, 2020.

## CLIHHR HOLDS STRATEGY MEETING ON RIGHT TO HOUSING, HEALTH AND FOOD



On November 12 and 13, 2020, CLIHHR partnered with the University of Miami School of Law Human Rights Clinic to hold a strategy meeting on the right to housing, health and food. This meeting followed the Cardozo Law Review's Symposium *Fault Lines in the Constitution*, which included a [panel](#) on affirmative rights. Over thirty experts and activists from around the country convened to discuss efforts to protect and institutionalize the right to housing, health and food at the local, state and national level. Three panels, each covering one of the three rights discussed, were held to exhibit current advocacy work and to help participants think through future collaboration and long-term strategies. Following the strategy meeting, CLIHHR and Miami's Clinic held a screening of and panel on the film *Push* which looks at the global housing crisis. Panelists explained how adequate housing falls along racial and class lines, and how international investment companies contribute to lack of housing and financialization of housing in violation of human rights. The panel can be viewed [here](#).

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## CLINIC SUBMITS PETITION ON BEHALF OF BRAZIL'S INDIGENOUS COMMUNITIES



The Benjamin B. Ferencz Human Rights and Atrocity Prevention Clinic recently co-authored an early warning petition to the Committee on the Elimination of Racial Discrimination (CERD) on behalf of Brazil's indigenous communities at risk of genocide and other atrocity crimes. By submitting this Request, the Clinic and its partners seek to hold the Brazilian government accountable for its continued discrimination against indigenous peoples. Indigenous groups in Brazil have faced racism and discrimination under the Bolsonaro regime and have been affected disproportionately by COVID-19 as they lack access to healthcare and hospitals with necessary equipment and personnel. The Clinic and its partners urge the Committee to pressure the Brazilian government to refrain from perpetrating human rights abuses and implementing harmful policies that put indigenous peoples at risk while acting to improve preventive measures and healthcare access for indigenous communities during the pandemic.

## RAMYA JAWAHAR KUDEKALLU STARTS AS CLIHHR'S NEW TELFORD TAYLOR TEACHING FELLOW



Ramya Jawahar Kudekallu began working with CLIHHR in June 2020. Prior to her position with CLIHHR, Ramya received the Crowley Fellowship with the Leitner Center for International Law at Fordham Law School. She's taught human rights scholarship courses and has led research on labor, gender-based discrimination and access to justice.

### **What prompted your interest in international human rights law?**

Most of my work and interest has been driven by my early experiences volunteering with community-based movements. I was offered an insight into grassroots organizing and how imperative representation, a gendered perspective and inclusivity are for successful advocacy. Human rights law both as a framework and a strategy demands accountability from nation states, but without comprehensive ownership and the political will to realize or protect rights, communities remain in the margins. I believe it is my responsibility to lift the burden off of communities who are trying to create awareness of human rights violations while being disenfranchised and suffering ongoing violations themselves.

### **How would you describe your experience working as a clinical instructor and what are some of the projects that you're currently working on?**

I am enjoying my time as an instructor with CLIHHR! I joined the Institute in the midst of the COVID-19 pandemic but knew that we had important work ahead of us. I am really looking forward to the rest of my time here, as we innovate our advocacy and our pedagogy to respond to these challenging times. I am currently working on two projects with partners based in India. Both cut across gender rights, access to justice and government accountability. The pandemic has hit vulnerable communities the hardest, and a critical part of our approach in the Institute has been ensuring that we respond to and prioritize our partners' current needs. Through these projects we hope to sustain some level of international advocacy on behalf of them.

### **What are some of the most challenging and most rewarding aspects of your work?**

We are at a point of reckoning in our world. Grappling with systemic hegemonies that continue to oppress and discriminate, while attesting to widespread authoritarianism that empowers these structures. These realities are not separate from our failed and toxic relationship with our planet, the brunt of which falls squarely on the most marginalized. I am not sure whether it feels rewarding, but it is a solace to know that I am, in some small way, part of the reformation and the conversation on these issues.

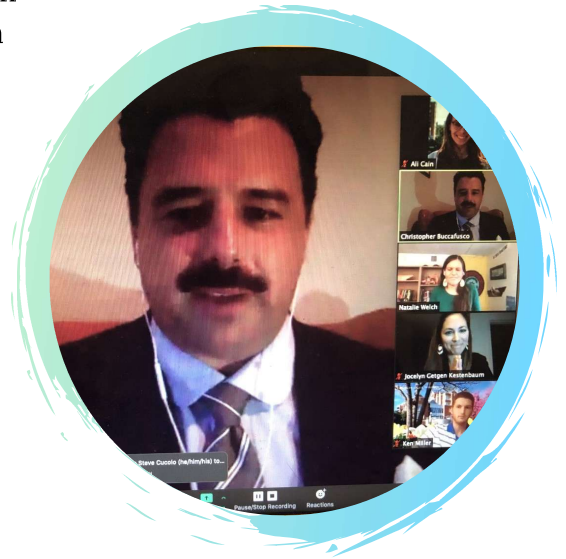
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## CLINIC ASSISTS LEGAL TEAM IN CONVICTION FOR 1989 JESUITS MASSACRE

The Benjamin B. Ferencz Human Rights and Atrocity Prevention Clinic assisted the legal team of the Guernica Centre for International Justice, in their role as private prosecutors, in the Spanish case against former Vice Minister of Defense Colonel Inocente Montano for ordering the 1989 assassinations of six Jesuit priests, their housekeeper and her daughter in El Salvador. The Court found Montano guilty of the crimes of terrorist murder because of his participation in small group of top commanders who ordered the assassinations. Over several years, successive clinic teams conducted investigations, analyzed data about U.S. military advisors stationed in El Salvador, wrote legal memoranda and, through FOIA and mandatory document review requests, collected, indexed, and organized a vast database of evidence from US declassified documents to further the prosecution's case against Montano. Students who have worked on this project include: Ariella Muller, Adriana Greaves, Afrodite Fountas, Chanel Vegh, Heidi Rhodes, Ali O'Brien, Ali Insinga, Tatiana Acevedo, Sam Hechlera and Asli Bilge. Read about the case and conviction [here](#).

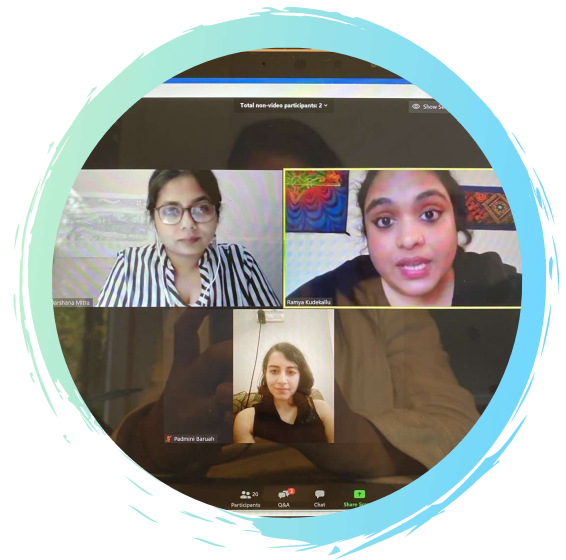
## FALL 2020 EVENTS

On September 15, CLIHHR Director Jocelyn Getgen Kestenbaum participated in a conversation on the future of Native American mascots in sports with Professor Natalie Welch (Linfield University) and Professor Chris Buccafusco (Benjamin N. Cardozo School of Law) as a response to the recent announcement that the Washington football team is changing its name and mascot. The discussion focused on: the false narrative that mascots honor Natives; the continued perpetration of atrocities against indigenous communities; and the use of legal remedies, including protections under intellectual property law, to retire Native mascots. The panel's discussion was part of CLIHHR's [Confronting Structural Violence: Law Teaching Guides Project](#) and connects to our *Cultural Property, Traditional Knowledge and Trademark Law Guide*. Watch the conversation [here](#).



On September 23, Professor of Practice Gabor Rona held a conversation with Professor Jennifer Trahan (NYU) on her new book [Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes](#). The book explores whether UN Security Council Members exercising veto powers to block mechanisms that could prevent or punish genocide, war crimes, and crimes against humanity are contrary to international law. View the discussion [here](#).

On October 26, Visiting Instructor of Clinical Law Ramya Jawahar Kudekallu moderated a panel on India's Register of Citizens with Padmini Baruah (Justice and Liberty Initiative) and Darshana Mitra (Parichay). India's Register of Citizens (NRC), which singles out and expels religious minority communities, is the largest disenfranchisement exercise in recent human history. The panelists discussed the absence of birthright citizenship in India; how the problematic citizenship verification process operates in the Assam state; and how the lack of legal remedies available to millions of individuals classify them as stateless as they await to appeal decisions. Review the panel [here](#).



## CLINIC ALUMNI SPOTLIGHT:

### ALI INSINGA ('16)

After observing the International Criminal Tribunal for Rwanda, Ali knew she wanted a career advocating for people who endured unspeakable atrocities. She participated in the Benjamin B. Ferencz Human Rights and Atrocity Prevention Clinic and also worked as a post-grad research associate with CLIHHR. Ali currently works at the Bronx District Attorney's Office.



#### **How would you describe your experience having worked with the Benjamin B. Ferencz Human Rights and Atrocity Prevention Clinic?**

My involvement with the Clinic gave me both a depth and breadth of experience that expanded my understanding of what international criminal law and human rights work could look like. I spent both semesters of my 2L year in the Clinic where my work focused primarily on researching and drafting a section of an expert report on the risk of mass atrocity crimes facing the LGBTI population in Uganda for a federal lawsuit filed in the U.S. In the spring of my 3L year after a semester abroad at the Amsterdam Center for International Law, I worked for CLIHHR as a part-time research assistant on the Jesuits Massacre Documentation Project – a long-term project focused on gathering, analyzing, and indexing thousands of declassified U.S. Government documents ultimately to be used as evidence in a universal jurisdiction trial in Spain.

#### **Where has your career path led you since graduating from Cardozo?**

After I graduated, I was lucky enough to become a post-grad research associate with CLIHHR where I continued my work on the Jesuits Massacre Documentation Project in addition to focusing on sexual and gender-based crimes perpetrated by ISIS against the Yazidis. I was able to connect with so many of the people I admire in the field and was given the opportunity to attend incredible events, including the first International Yazidi Women's Conference in Germany with Patricia Viseur Sellers, Special Adviser on Gender to the Office of the Prosecutor of the ICC. After working with CLIHHR, I worked as a trial monitor for Civitas Maxima, a Geneva based non-government organization (NGO) that represents victims of war crimes and crimes against humanity. In this role, I monitored the immigration fraud trial of Liberian war criminal Mohammed Jabbateh in the U.S. District Court and prepared a daily trial blog, which was published as part of a larger advocacy campaign called the Quest for Justice. This position led to me being offered a fellowship with the Center for Justice & Accountability, a strategic human rights litigation NGO in San Francisco, where I spent close to a year working on cases concerning Syria, Liberia, Cambodia, and Somaliland. I then moved back to New York and started my current job as an Assistant District Attorney for the Child Abuse and Sex Crimes Bureau at the Bronx District Attorney's Office.

#### **What advice would you give to our current students?**

Be authentic and genuine in your communications with people. Be persistent in pursuing your career aspirations, even if they seem unattainable. Be open to all opportunities as the path to our goals is very rarely a straight line and you may learn things and meet people on those perceived detours that will lead you back to where you want to go or, perhaps, somewhere even better than you had imagined.

## CLIHHR OUT & ABOUT

On October 5, 2020, CLIHHR Director Jocelyn Getgen Kestenbaum moderated the *Manhattan Is Lenape* event which was part of the Greene Space's First People's Week. The discussion focused on the Lenape diaspora and the forced migration of the Lenape and other native communities. View the event [here](#).



On November 10, 2020 CLIHHR Director Jocelyn Getgen Kestenbaum moderated a panel, hosted by the Global Justice Center and the Global Centre for the Responsibility to Protect, on *Preventing Atrocities with a Women, Peace, and Security (WPS) Perspective, a Myanmar Case Study*. The panel explored the intersection of the R2P and WPS agendas, as well as the gender gap that remains in the development, assessment, and implementation of atrocity prevention frameworks in the context of the Rohingya Genocide. Watch the webinar [here](#).



## CLIHHR STUDENT FELLOW 2020-2021

### SIMRAN KAUR ('22)

Simran Kaur, originally from Delhi, India, is a 2L at the Benjamin N. Cardozo School of Law and is CLIHHR's student fellow for the academic year. She assists the Institute with event planning, editing, and other administrative tasks.



#### How would you describe your experience with CLIHHR?

CLIHHR gives me the opportunity to learn about the laws and legal systems of various countries. As a student fellow, I am exposed to innumerable human rights violations against people all across the world and the role that the international community plays with respect to international crimes.

#### What area(s) of law are you interested in and why?

I'm interested in the intersection of human rights law and intellectual property law. I'm also interested in advocating for rights and protections for independent artists. Before coming to law school, I used to work in media and advertising where I was exposed to the power of media and its ability to influence minds. During my 1L summer, I worked with the Queens Public Defenders' Office, representing adolescent offenders. My interactions provided me with a much deeper insight into the role one's race, class, and gender plays in limiting access to various professions, especially the arts. I want to contribute by providing that access in terms of rights and protections afforded by intellectual property law.

#### What advice would you give to aspiring law students?

Law school can get excruciatingly hard but always remember to hang in there because it does get better.

## NEW STUDENT EDITORS JOIN INTLAWGRRLS BLOG

IntLawGrrls serves as an outlet for scholars, professionals, and students who are studying and working in the field of policy and international law. We focus on current event topics affecting the international community worldwide, whether they be human rights, environmental, or social policy related. IntLawGrrls has formed a network of passionate contributors and readers who wish to provide and gain insight into law and policy.



Fernanda Canessa is a second-year law student at Benjamin N. Cardozo School of Law in New York City. Prior to attending Cardozo, she received her MA in International Economics and International Studies at the Johns Hopkins School of Advanced International Studies (SAIS), where she spent her first year in Bologna, Italy. She plans on pursuing a career in international human rights.

Kendall Coniaris is a second-year law student at Benjamin N. Cardozo School of Law. Prior to law school, she received her B.A. in International Affairs with a concentration in international Environmental Studies and B.A. in Dance from George Washington University. Her environmental interests led her to attend law school, with the hope of contributing to the constantly evolving intersection of environmentalism and international human rights.



Prerna Tara is a masters student in Public International Law at Leiden Law School. She holds her undergraduate degree in Law from College of Legal Studies, University of Petroleum and Energy Studies, India. Prerna is currently working on her thesis which is based on the ICC's reparation system for victims of conflict-related sexual violence. She is also a researcher for the Leiden Advocacy Project on Plastics where her work deals with legislative regulations related to plastic pellets.

## CLIHHR TEAM



**Ali Cain**  (@AliCain10), CLIHHR Program Coordinator



**Eric Freedman**, European Advisor and Visiting Professor of Law



**Simran Kaur**, CLIHHR 2020-2021 Student Fellow




**Jocelyn Getgen Kestenbaum**  (@JocelynGetgen), Associate Professor of Clinical Law and Director of CLIHHR and the Benjamin B. Ferencz Human Rights & Atrocity Prevention Clinic



**Ramya Jawahar Kudekallu**, Visiting Instructor of Clinical Law and Telford Taylor Teaching Fellow for the Benjamin B. Ferencz Human Rights and Atrocity Prevention Clinic



**Gabor Rona**  (@GaborRona1), Professor of Practice and Director of the Law and Armed Conflict Project



**Richard H. Weisberg**, CLIHHR Founding Director and Walter Floersheimer Professor of Constitutional Law

*Wishing you the quiet contemplation this season can bring from all of us at CLIHHR*

PLEASE CONSIDER MAKING AN END-OF-THE-YEAR DONATION TO AID IN OUR FIGHT FOR HUMAN RIGHTS AND ATROCITY PREVENTION. WE APPRECIATE YOUR CONTINUED SUPPORT AND INTEREST IN OUR WORK!

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