

# HUMAN RIGHTS PROGRAM HARVARD LAW SCHOOL

Annual Report 2021-2022

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Human Rights @ Harvard

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## The Human Rights Program A Pioneering Institution

Founded by Professor Emeritus Henry J. Steiner '55 in 1984, the Human Rights Program (HRP) at Harvard Law School (HLS) is fast approaching its 40-year anniversary, making it one of the oldest centers of human rights legal scholarship. Since its inception, HRP has been expanding the frontiers of human rights research, pedagogy and practice. As part of the broader human rights community at Harvard, HRP works closely with other faculty, clinics, numerous graduate students, and research centers at the Law School and University.

As a center for critical thinking, HRP organizes conferences and other events; publishes working papers and books; offers summer and post-graduate fellowships to launch students in human rights careers; and administers the Visiting Fellows Program. Through this program, HRP continues to provide a platform for groundbreaking human rights scholars. Countless leaders in the human rights field from around the globe have passed through HRP, be it as permanent staff or as visiting fellows and professors. HRP's consistently (self-)critical and reflective outlook that brings together academia and the world of practice is at the heart of its activities.

#### **Our Mission**

The Human Rights Program seeks to inspire critical engagement with the human rights project and to inform developments in the field through impartial, innovative, and rigorous research.

"The mission of the Human Rights Program is to inspire critical engagement with issues of human rights," says Gerald L. Neuman, JD '80, Director of HRP and J. Sinclair Armstrong Professor of International, Foreign, and Comparative Law. "That may mean thinking about problems that the field of human rights addresses, but it also means thinking critically about human rights law, defects in human rights law, and ways in which the law can be improved."

HRP has lost none of its ambition to inspire engagement with the global human rights project at Harvard

and beyond, and to inform developments in the field through impartial, innovative, and rigorous research. Dr. Abadir M. Ibrahim, HRP's Associate Director, notes that "In a time of crises, it is of utmost importance to provide spaces and opportunities to think about the nature of these crises and the necessary response to them. As events of world historic significance unfold, HRP has been on the forefront of bringing knowledge to the service of human rights, equal dignity and solidarity."

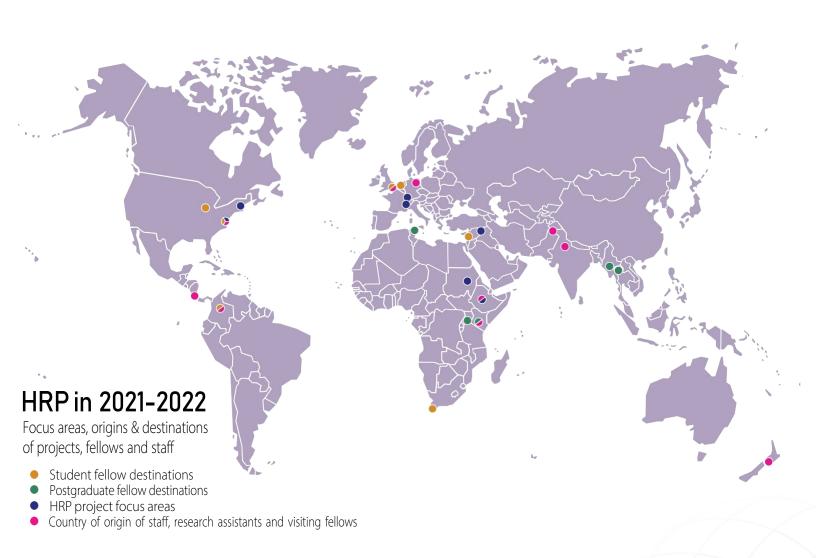
With the fateful outbreak of the Covid-19 pandemic, which has changed the way we live and work, HRP has adapted its mode of work to guarantee the safety of the broader HLS community while pursuing its mission. "While government responses to the pandemic were forcing the human rights community to confront a whole set of unprecedented complex challenges", notes Professor Neuman, "it was critical for HRP to quickly adjust itself to the dislocating effects of the pandemic and promptly turn its attention to mitigating the impacts of Covid on human rights."



The Wasserstein Hall, Caspersen Student Center, & the Clinical Wing (WCC), where the Human Rights Program is housed at Harvard Law School.

## **HRP Around the World**

HRP student fellows, faculty, staff and visiting fellows work on projects that cross a variety of geographic regions. The map below displays the extent of HRP's global reach in 2021-2022. In addition to the geographically-focused work shown below, HRP is involved in many areas of work that cross borders and have global and comparative implications.



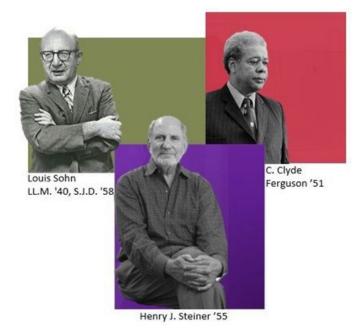
## Human Rights at Harvard Law School A History of Innovation and Leadership

HRP emerges from a rich educational history at HLS which has produced renowned academics, practitioners and global leaders in the human rights field. International human rights teaching began with Professor Louis Sohn LL.M. '40, S.J.D. '58. Sohn started his career as an assistant for Professor Manley Hudson, LL.B. 1910, S.J.D. 1917, who had solidified the place of international law at HLS and was serving as a judge on the Permanent Court of International Justice.

Sohn made influential contributions to the drafting of the United Nations Charter and the Statute of the International Court of Justice and is considered to be a founding figure in human rights law and international environmental law. While teaching human rights at HLS, Sohn also coauthored a casebook with Professor Thomas Buergenthal LL.M. '61,

S.J.D. '68, who became another giant in the human rights field.

HLS continues to provide centers of excellence in teaching, research, practice, and advocacy in the human rights field. "The law school's



innovative leaps such as the expansion of experiential learning in the 1970s and the establishment of HRP in the 1980s," says Professor Neuman, "set the tone of engagement and reflection for the human rights community at HLS." In addition to its students and alumni from around the world, the human rights community of HLS today includes leading research programs and centers, clinics, law journals, and student organizations.

Louis Sohn was joined by Professor C. Clyde Ferguson, who had the distinction of being a civil rights lawyer and an established scholar of international human rights law as well as a diplomat who had leading roles in US policy in Africa and at the United Nations. He continued Professor Sohn's seminars and started a process of placing human rights at HLS on more solid ground. Although he launched an internship program that would later become HRP's Summer Fellowship Program, he passed away suddenly in

December 1983. The mission of establishing a permanent home for international human rights at HLS was taken up by another luminary at the forefront of international law scholarship, Professor Emeritus Henry J. Steiner. HRP was one of the first human rights programs to be based at an American law school, and the first such program at Harvard University.

Professor Steiner's many contributions to the field included a leading interdisciplinary human rights book International Human Rights in Context: Law, Politics, Morals (1st ed. 1996), produced in collaboration with Professor Philip Alston, and later joined by Steiner's successor as HRP director, Professor Ryan Goodman. Starting in 2012, HRP was jointly directed by Neuman and Clinical Professor Tyler Giannini. Neuman was a co-author of another leading human rights casebook, Human Rights (1st ed. 1999), written with legendary international law scholar Louis Henkin '40.

Since its founding, HRP has been 66 asking critical questions about the human rights movement. In this process, HRP has helped push the boundaries of human rights scholarship, pedagogy, and practice. In addition to the pioneering role it

The law school's innovative leaps ... set the tone of engagement and reflection for the human rights community at HLS.

played in the development of curricula and innovative clinical pedagogy, the Program has been a leader in cutting edge research and the publication of human rights books, reports, law journal articles, working papers, and other publications in its field. These and the Program's other activities aim at enriching the internal life of the school and the external human rights movement.

Another area on which HRP had focused included public interest work that bridges theory and practice. The Program developed clinical pedagogy in the 1990s through an initiative led by HRP Administrative Director Jennie Green. In 2004 the International Human Rights Clinic (IHRC) was formally established as a component of HRP under the direction of James Cavallaro, who was its first Clinical Director and later the Executive Director of HRP. Starting that year, HRP comprised both the Academic Program and the Clinic, which made strides together in grappling with pressing human rights issues around the world.

Over the years, the Clinic has partnered with leading international and grassroots organizations, pursued projects that impacted a diverse range of human rights and humanitarian issues, and trained hundreds of HLS students to become effective social justice advocates. As of 2021, the Clinic is now a separate entity

distinct from HRP, under the direction of Clinical Professor Susan Farbstein '04.

HRP continues to support human rights education and public interest work, which are channeled into activities including its various fellowship programs that provide students with practical human rights experience and events focused on student learning. More broadly, the Human Rights Program, together with its current and former students, visiting fellows, staff, and professors, forms an integral part of the human rights ecosystem at Harvard and the global human rights community.



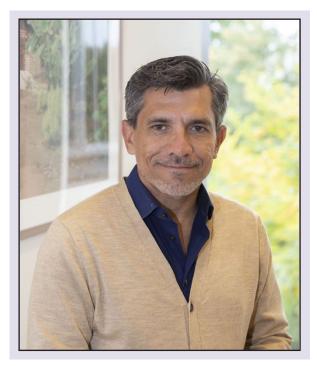
Faculty and staff of HRP and IHRC, clockwise from the upper left: former Co-Director of HRP and IHRC Tyler Giannini (left) sitting with current IHRC Director Susan H. Farbstein; former HRP Director Ryan Goodman at the blackboard; former HRP Associate Director Makau Mutua (left) standing next to 300th Anniversary University Professor Martha Minow; former HRP Academic Director Emily Nagisa Keehn; former HRP Executive Director Jim Cavallaro; former HRP Academic Director Mindy Roseman; and HRP founder and former Director Henry J. Steiner (right) seated next to current HRP Director Gerald L. Neuman.

## An Academic Home for a Global Mandate

Victor Madrigal-Borloz is known internationally as a distinguished and a determined advocate for the rights of LGBT individuals. As the United Nations Independent Expert on the protection from violence and discrimination based on sexual orientation and gender identity (IE SOGI), his mandate comes directly from the UN Human Rights Council. Through thematic reports, official country visits, keynote speeches, and behind-the-scenes organizing and advocacy, he diligently works to promote a rights-respecting reality for LGBT individuals. At HLS, Madrigal-Borloz has spent the past three years as the Eleanor Roosevelt Senior Visiting Researcher with HRP and has hired research assistants from the student body to aid in his reporting as the Independent Expert.

The preparation for thematic reports is intense. In addition to conducting literature review, Madrigal-Borloz and his team of research assistants collect data, organize and digest information, and drive forward the process of report writing. In more than four years as the Independent Expert, Madrigal-Borloz has produced nine such reports which are submitted to the UN General Assembly and the UN Human Rights Council and disseminated to a global public. The topics of these reports include the impact of Covid-19, social, cultural, and economic inclusion, and practices of exclusion against LGBT individuals.

A common thread throughout the reports is a deliberate emphasis on intersectionality and an international



lens. Gaining access to Harvard's libraries was an invaluable asset, but Madrigal-Borloz still found himself struggling to diversify his sources.

"Even having access to what I think must be one of the most comprehensive knowledge bases in the world, I've also become acutely aware of the limitations of knowledge available in relation to the lived experiences of people in the Global South. Every time we do a literature review or background note, it becomes immediately evident how much more we know about the lives of people in the Global North. Their lives and statistics are so much more well documented and researched upon," Madrigal-Borloz said. "Aware of this, I have a new goal for the

mandate: to make this vast asymmetry known, and in exposing it, hopefully rectify it, to the extent that I can."

Madrigal-Borloz became affiliated with the Human Rights Program in 2019, after visiting for a talk about his mandate. He had been searching for an academic home that would allow him to ground his work in research and theory. "A political home would harness the energy surrounding the mandate towards a set of goals. I saw an academic home as providing a space for objective analysis of the state of law and the state of discrimination and violence. Politics would give me traction, but academia would give me grounding," he said.

In his time at HLS, Madrigal-Borloz has immensely enriched the culture and scholarly conversation at HRP. "He has contributed key insights to our projects and has made HRP a partner in some of his own," said Professor Neuman. "HRP's ongoing exploration of the law of indirect discrimination has greatly benefited from Victor's invaluable contributions. His creativity and energy are extraordinary."

Madrigal-Borloz's engagement with indirect discrimination enriched the published proceedings of two workshops and he penned an article in the Harvard Human Rights Journal applying the theory of indirect discrimination to the lived realities of LGBT persons.

To disseminate the findings of his work among the public, Madrigral-Borloz participated in HRP-organized virtual panel Introduction

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discussions on the rights of LGBT individuals. HRP staff have further supported his mandate outreach efforts, for example, in organizing virtual consultations of LGBT communities from around the world.

Prior to the pandemic, Madrigal-Borloz devoted a good deal of his time to exposure, education, and awareness. He believes that giving talks around the world, meeting with NGOs and advocates, and visiting countries where he could take stock of the religious, public, and government attitudes toward his mandate helped with de-stigmatization, inclusion, and antidiscrimination. Madrigal-Borloz had become used to a certain way of operating—one that included a different continent almost every week. That all changed in March 2020.

"Covid-19 has meant I have had to realize a new way of working: some of it is reproducible online, but much is not," he said. "A lot of the information I glean happens in moments of human interaction. People have to feel safe to talk. That can't happen on Zoom, where people are scared of being recorded or quoted."

Madrigal-Borloz has accepted this new reality. Instead of trying to replicate methods that worked in person, he realized what he could do: research. Rather than concentrating on one thematic report at a time, as he had previously done, he decided to launch work on all seven reports he plans to produce during his stay with HRP: gender equality; the right to health and Sustainable Development Goal 3; colonialism; religion; violence; discrimination; and conflict, peace and security. Madrigal-Borloz has already completed and released the first two. "Covid-19 has helped us see how themes surrounding violence and discrimination are interconnected. By working simultaneously in all of these areas, we will be able to actually identify the interconnectedness of issues such as religion and colonialism and limitations to the right to health, and the understanding of gender identities, all of which are actually, in my view, quite inextricably connected," Madrigal-Borloz said.

In a major victory for LGBT rights, after a tight vote the IE SOGI mandate was renewed for three years by the UN Human Rights Council in July 2022. Madrigal-Borloz will stay with HRP through 2023.



#### Spotlight on an IE SOGI Research Assistant

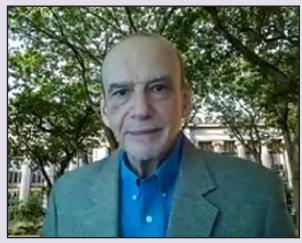
Courtney Dougherty JD'22 began working with Madrigal-Borloz after spending her summer with the International Lesbian, Gay, Bisexual, Trans and Intersex Association. This opportunity has been particularly enlightening for her as she considers her own career trajectory. "As someone who's considering a career in human rights and activism, learning how to understand opposition is really important," she said. "I've always known that we're going to be working against people that are anti-LGBTQ rights, but working with Victor has given me a glimpse of how interconnected the broader movement against so-called 'gender ideology' is. The anti-LGBTQ rhetoric is entwined with anti-feminist rhetoric and anti-abortion rhetoric. The opposition has really coalesced into one big behemoth force, and understanding the interconnectedness of this has been central to our work."

Dougherty explained that she has learned how to create a strategy that takes this force into account. In the future, Dougherty will be serving as a fellow at Democracy Forward conducting impact litigation on numerous issues involving for example education, healthcare, and LGBTQ rights.

## How Do You Protect Against Indirect Discrimination?

Covid measures, bans on face coverings in public, requirements to work on certain weekdays – all these policies harbor the risk of indirectly discriminating against certain populations. These examples were only some of the many cases which HRP and its affiliates discussed and analyzed in workshops and journal articles in 2020 and 2021 as part of an ongoing research series on indirect discrimination.

Indirect discrimination is a term that encompasses rules or laws whose intent may not be to discriminate against one group "on the face of it" but has the effect of doing so. In the workplace, for instance, a policy that requires employees to work on Saturdays may have severe effects for those of faiths that observe Saturday as a holy day of rest. Indirect discrimination affects a range of protected groups on the basis of race, religion, and other factors.



Professor Neuman moderated the workshop series focusing on indirect discrimination on the basis of religion, SOGI, and during Covid-19.

"It is easy to understand how intentional

discrimination imposes disadvantages on certain groups,"said Professor Neuman."Indirect discrimination, as opposed to direct, can involve unintended barriers that disproportionately hold back members of a group that may already be disadvantaged. How this concept should be applied in areas that are new for discrimination law, such as SOGI, raises important questions, like how narrowly groups should be defined or what unintended harms should be regarded as disproportionate."

The three past workshops respectively handled the topics of indirect discrimination on the basis of religion; on the basis of SOGI; and impacts of the Covid-19 pandemic on indirect discrimination. A fourth workshop in late 2022 will focus on chronological age.

"Covid-19 has presented a very specific magnifying glass as a case study for the mandate," said Madrigal-Borloz. The Independent Expert noted extreme cases of direct discrimination, such as where "some states were actively using the pandemic as an excuse to persecute and achieve objectives that had

become politically viable, such as Hungary's denial of legal recognition of gender identity to trans persons, or Uganda's targeted raiding of homeless shelters specifically dedicated to LGBT persons." On the side of indirect discrimination, Madrigal-Borloz brought up the gendered quarantine measures, as well as all of the unanticipated ways that LGBT individuals might experience further hardship when compounded with other risk factors, such as homelessness and poverty.

The workshops featured a wide range of participants from United Nations Special Procedures with a diversity of perspectives and mandates as well as members of UN treaty bodies and the Inter-American Commission on Human Rights. The discussions centered on how cases of indirect discrimination should be adjudicated, how advocates should frame and support their claims, and how governments can build a better rights-respecting reality.



Flávia Piovesan, Commissioner and Rapporteur on the Rights of LGBTI Persons for the Inter-American Commission on Human Rights (IACHR) and former HRP Visiting Fellow speaking at the February 2021 workshop.

The dialogues at the workshops on Covid-19 and SOGI highlighted the importance of intersectional thinking when talking about SOGI. "One can't talk about power without addressing poverty, gender, race, age, and the way all of these factors collide," said Madrigal-Borloz. Likewise, workshop participants constantly reflected on the position with which they approached an issue: were they considering whether discrimination was occurring on the basis of identity or activities? How did one affect the other?

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One can't talk about power without addressing poverty, gender, race, age, and the way all of these factors collide.

"This was an invaluable opportunity to concentrate on these issues with a brilliant set of individuals who brought varying perspectives to learn how to identify, analyze and address indirect discrimination.

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This positively impacts that protection of those who may be persecuted based on their sexual orientation and gender identity," said Madrigal-Borloz. As he prepared thematic reports to the UN General Assembly and UN Human Rights Council on topics such as religion, colonialism, and the right to health, he was

able to draw on such conversations to better understand discriminatory practices and the intersectional response required to produce an effective and efficient response. Ultimately, Madrigal-Borloz hopes this will lead to the common objective of eradicating violence and discrimination.

The workshop series resulted in a number of publications. Next to the publication of proceedings from the workshops about SOGI and Covid-19 by HRP, the Harvard Human Rights Journal published papers from the HRP workshop on religion in its summer 2021 issue. From HRP, Professor Neuman contributed an essay to the journal on the "normative background to prohibitions on indirect discrimination" and "the current state of indirect discrimination law domestically and internationally", while Madrigal-Borloz offered a commentary on how the theory of indirect discrimination might be applied to the lived realities of LGBT persons. Moreover, Professor Rashad Ibadov, former HRP Visiting Fellow and Dean of the School of Law at ADA University in Azerbaijan, penned an article on how liberal states can accommodate different cultures in public education.



Independent Expert Victor Madrigal-Borloz co-hosted the workshops in the 2020-21 academic year with Professor Neuman.

## Spotlight on Visiting Fellow

Professor Benyam Dawit Mezmur contributes to monitoring the status of child rights worldwide as a longstanding member and former Chairperson of the United Nations Committee on the Rights of the Child, as a member of an advisory body to Pope Francis on preventing child abuse in the Catholic Church, and as an academic. The seed for his stellar career as a child rights lawyer was planted more than two decades ago in the dusty streets of Mercato, a poor neighborhood of Ethiopia's capital Addis Ababa. Growing up in Mercato in the midst of poverty, but as part of an Ethiopian middle-class household where both his parents were employed as civil servants, reminded Mezmur of his relative privilege on a daily basis.



Volunteer working with a local NGO for orphans would turn out to be a catalyst for his career.

"I was not yet 18, and at the end of high school, when I asked my mother to help me find an internship at a children's organization," said Mezmur. "She found me one, and I had the opportunity to volunteer at the Orphan Support Program of a children's charity based in Addis Ababa for a period of 6 months. That was an eye opener, and a turning point for my professional life."

He would go on to earn his law degree at Addis Ababa University and an LLM in Human Rights and Democratization in Africa from the Centre for Human Rights at the University of Pretoria. Prior to

the LLM, Mezmur had gained professional field experience as a Legal Researcher for the Africa Child Policy Forum in Addis Ababa. From 2006-2009, he completed his Doctor of Laws degree at the University of the Western Cape, where he now serves as a Professor of Law and Deputy Dean for Research and Postgraduate Studies.

Mezmur's academic excellence and his growing reputation as a child rights expert set the stage for his 2010 election to the African Committee of Experts on the Rights and Welfare of the Child of the African Union. His election to the Committee on the Rights of the Child followed soon after in 2012.

In 2014, Mezmur was involved in the review process that led to a highly critical report by the UN Child Rights Committee which said the Catholic Church maintained a "code of silence" that enabled priests to sexually abuse tens of thousands of children worldwide over decades with impunity. Four years later, to Mezmur's pleasant surprise Pope Francis appointed him to join the Pontifical Commission for the Protection of Minors, the Pope's advisory body on child protection in the Church.

"It's true that a lot of additional work remains," Mezmur said. "But the fact that the work of the Pontifical Commission is moving forward under the leadership of its president and Archbishop of Boston, Cardinal Seán Patrick O'Malley, and that the Holy Father is in the business of 'well done' rather than 'well said' on this topic should be beyond question."

As the 2022-23 Eleanor Roosevelt Visiting Fellow at HRP, Mezmur will pursue a book project which takes a closer look at the African Charter on the Rights and Welfare of the Child, the only comprehensive regional child rights instrument. In addition, he plans to advance other academic enquiries on topics such as children's rights and climate change, children with disabilities, and childhood statelessness during his stay.

"Harvard's intellectual, reputational and logistical resources – which to me are second to none – are in full display here at the HRP at HLS," said Mezmur. "As a Visiting Fellow, I have the opportunity to benefit from, and contribute my 'drop in an ocean' share to, this unparalleled academic environment."



Professor Benyam Dawit Mezmur speaking at the United Nations Conference Center (UNCC) in Addis Ababa, Ethiopia.

## Conflict and Human Rights in Ethiopia

The human rights conditions in the Eastern African nation of Ethiopia have been worsening since a civil war erupted in November/December 2020. As the number of civilian victims mounted in the hundreds of thousands, it was important to examine the root causes of the conflict, suggest solutions to bring about sustainable peace, and inform the human rights community about the ways in which events were unfolding and potential areas of intervention.

In February 2022, HRP organized a webinar that took stock of developments in Ethiopia and examined the human rights outcomes of the different possible scenarios. Titled "Building the Foundations for a Rights-Centered Polity in Ethiopia: A Promise, a Plan, or an Illusion?", the event was attended by 128 participants and was later watched online over 800 times. Bringing together prominent Ethiopia experts, the event discussed critical questions about whether and how the foundations of a rights-centered polity may be built in Ethiopia. "I am glad we are able to convene a panel of experts on these challenges at a time when the input of experts was needed the most," commented Professor Neuman on the context of the event. According to Dr. Abadir M. Ibrahim "HRP's ability to bring levelheaded and



The participants in the discussion "Building the Foundations for a Rights-Centered Polity in Ethiopia: A Promise, a Plan, or an Illusion?", clockwise from left: HRP Associate Director Abadir M. Ibrahim, Professor Neuman, founder of *Addis Standard* magazine Tsedale Lemma, International Institute for Democracy and Electoral Assistance (IDEA) Program Officer Adem Kassie Abebe and Human Rights Watch Horn of Africa Director Laetitia Bader.

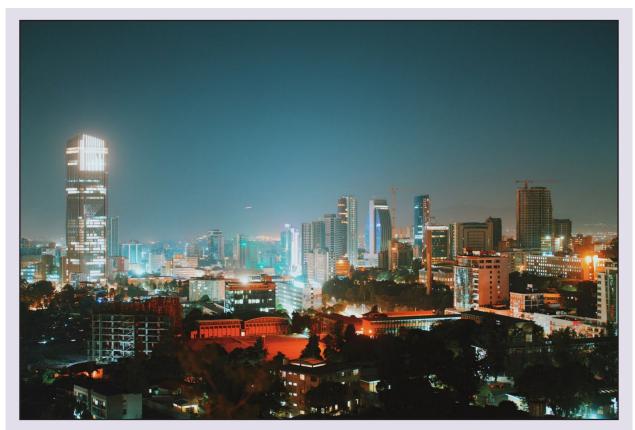
theoretically informed discussion to bear upon the discourse on Ethiopia was key, especially at a time when the country was facing multilayered challenges and Ethiopian academics were either silenced or shell-shocked by a polarized and violent discursive atmosphere."

The February event was followed by an interdisciplinary conference in May 2022 held in Addis Ababa, the capital of Ethiopia. HRP collaborated with the Buffett Institute for Global Affairs at Northwestern University and the

College of Law and Governance Studies at Addis Ababa University and organized a two-day conference which brought together Ethiopian scholars from a wide variety of fields including human rights law, constitutional law, history, anthropology, and political science in a setting designed to promote and

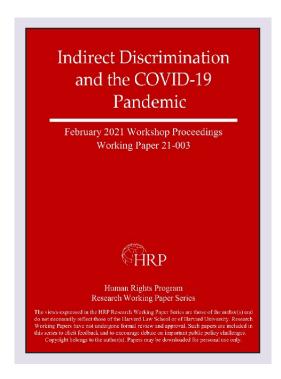
facilitate discussion on issues relevant to Ethiopia's constitutional and political future. The conference started from an assessment of the status quo. It identified the points of contention and unresolved national questions leading to cycles of violence. It then proceeded to outlining and imagining, or rather reimagining, ways in which an all-encompassing, stable and democratic Ethiopia can be built.

HRP's engagements with the unfolding situation in Ethiopia and the broader region will continue in the coming years with practical contributions to human rights and democracy in Africa. The proceedings of the May 2022 conference in Ethiopia will be published before the end of the year.



The Addis Ababa skyline. Credit: Hooaos. This photo is licensed under the Creative Commons Attribution-Share Alike 4.0 International license.

## Disentangling the Human Rights **Effects of Covid**



The Covid-19 pandemic and its knock-on effects have devastated the lives of tens of millions and have raised a complex set of challenges for the human rights movement. The HRP community has sought to shed light on these complex crises in a number of ways including panel discussions, workshops, reports and articles.

Professor Neuman has been particularly engaged concerning the "Title 42" procedure, a method originally created by the Trump administration at the outset of the Covid pandemic and continued by the Biden administration to deport asylum seekers without hearing on supposed public health grounds. The procedure has been used to expel asylum seekers over 2 million times.

"The pandemic has underlined both the need for some controls on travel and the danger that public opinion will be inflamed against immigrants and minorities, as an extension of previous campaigns or to distract attention from government failings," said Neuman. "The pandemic also reveals the gaps in healthcare systems and worker protections, and creates an opportunity to improve social and economic rights, which will also require an effective movement."

November 2021, HRP 66 organized a panel discussion on the challenges of Title 42 in federal court and at the Inter-American Commission on Human Rights from perspectives of statutory law

The pandemic ... creates an opportunity to improve social and economic rights, which will also require an effective movement.

and international law. The panel included Professor Neuman, Denise L. Gilman, Clinical Professor at the University of Texas at Austin School of Law, and James C. Hathaway, Professor at University of Michigan Law School, as speakers. In the year before, Neuman had presented on the abuse of the Title 42 procedure in a discussion hosted by Harvard Law School. Moreover, since June 2020 Neuman has contributed to a

number of amicus briefs contesting the legality of the Title 42 procedure in several court cases at the federal level together with Professor Hathaway, T. Alexander Aleinikoff, Professor at the New School, and Clinical Professor Deborah Anker LL.M. '84, Founding Director of the Harvard Law Immigration and Refugee Clinic.

In a 2021 report to the United **Nations** General Assembly, Independent Expert Victor Madrigal-Borloz addressed the impacts of Covid-19 on LGBT persons, communities, and populations, highlighting social exclusion and violence, as well as institutional drivers of stigma and discrimination. Madrigal-Borloz subsequently joined discussion of his findings, which also included recommendations and identified good practices



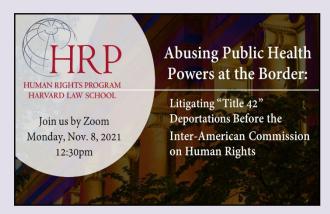
The panelists of the discussion "Abusing Public Health Powers at the Border: Litigating Title 42' Deportations Before the Inter-American Commission on Human Rights", clockwise from upper left: Professor Neuman, James C. Hathaway, Professor at University of Michigan Law School, Denise L. Gilman, Clinical Professor at the University of Texas at Austin School of Law.

aimed at creating a Covid-19 response and recovery free from violence and discrimination based on sexual orientation and gender identity.

These activities are in addition to an HRP workshop on indirect discrimination in the Covid-19 pandemic, for which the proceedings were published in August 2021. "No one had predicted the way that Covid-19 would produce impacts, the impact on economic conditions, the impact in terms of physical limitations, the way that sanitary measures would manifest themselves," noted Madrigal-Borloz in the workshop proceedings. "In this context, the question arises of what effects seemingly neutral policies that ended up being discriminatory have created."

## **HRP** Events

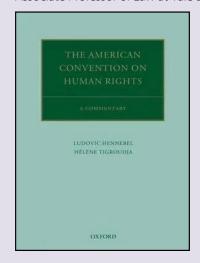
HRP hosted and co-sponsored a number of events in 2021-2022. Our partners have included Harvard research programs and student organizations, the United Nations Human Rights Special Procedures and research programs at other leading universities. Below is a selection of HRP-organized events from the year.



The panel "Abusing Public Health Powers at the Border" addressed ongoing legal challenges to Title 42. Next to Professor Neuman, the panelists were Denise Gilman, Clinical Professor at University of Texas at Austin School of Law, and James Hathaway, Professor at University of Michigan Law School.

Madrigal-Borloz conducted an investigation on the incorporation of and backlash against gender and gender identity in international human rights law. In a virtual launch event hosted by HRP, he discussed his findings with other renowned human rights experts including Melissa Upreti, Chair of the UN Working Group on discrimination against women and girls, Njeri Gateru, Executive Director of the National Gay and Lesbian Human Rights Commission in Kenya, Julia Ehrt, Executive Director at ILGA World, and Alice M. Miller, Associate Professor of Law at Yale Law School.





In November 2021, HRP hosted a book launch event to celebrate the publication of the first systematic article-by-article commentary in English on the American Convention on Human Rights, the fundamental human rights treaty for the Western Hemisphere. The book authors Ludovic Hennebel and Hélène Tigroudja, both Professors at Aix-en-Provence Law School of Aix-Mariseille University, joined the panel discussion together with Professor Neuman, Madrigal-Borloz and Courtney Hillebrecht, Professor at University of Nebraska-Lincoln.

## **HRP** Events



Professor Neuman and Abadir Ibrahim were joined by Alex de Waal, Professor at the Fletcher School at Tufts University, Hala Al Karib, regional director of the Strategic Initiative for Women in the Horn of Africa, Abdelkhalig Shaib, a Sudanese legal expert and Human Rights Watch researcher Mohamed Osman to explore different outcomes after the suppressed popular uprising in Sudan.

In this February 2022 event, HRP convened experts to discuss Ethiopia's human rights prospects in the face of war. In the discussion, Professor Neuman and Abadir Ibrahim were joined by Tsedale Lemma, founder of the Addis Standard magazine, Laetitia Bader, Horn of Africa director at Human Rights Watch, and Dr. Adem Kassie Abebe, program officer at the International Institute for Democracy and Electoral Assistance (IDEA).



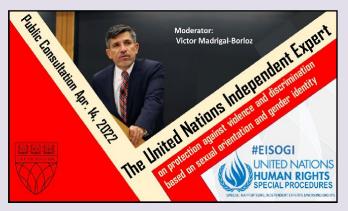


With Neuman as moderator, Anne Orford, Professor at Melbourne Law School, Benyam Dawit Mezmur, HRP Eleanor Roosevelt Fellow, and Jody Freeman, Professor at Harvard Law, discussed both the strengths and the weaknesses of human rights law as a vehicle to fight global climate change.

In an article presentation in March 2022, Eva Brems, Professor at Ghent University, analysed the case law of the European Court of Human Rights at the intersection of women's rights and religious freedom. While most of these cases concern bans on religious dress or symbols, other types of cases, such as those on legal pluralism involving religious law, were also included. Brems assessed the Court's reasoning in light of a few benchmarks of 'good intersectionality practice'.



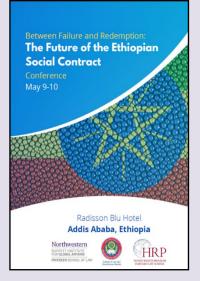
## **HRP** Events



In this HRP-organized event, IE SOGI Madrigal Borloz led a public consultation to explore how the human rights of people with diverse sexual orientations and gender identities can be incorporated into the national plans aimed at the realisation of the right to health, under the rubric of the Sustainable Development Goals.

Professors Mezmur and Neuman participated in the panel discussion "Sins of the Fathers? - The Rights of Children Held in Camps in North-Eastern Syria" about the continued detention of children whose parents allegedly collaborated with ISIS, in northeastern Syria. The other panelists included Naz Modirzadeh, Professor at HLS, Fionnuala D. Ní Aoláin, the United Nations Special Rapporteur on counterterrorism, and Patrick Weil, Visiting Professor at Yale Law School.





In May 2022, HRP organized an interdisciplinary conference titled "Between Failure and Redemption: The Future of the Ethiopian Social Contract" in Addis Ababa together with Buffett Institute for Global Affairs at Northwestern University and the College of Law and Governance Studies at Addis Ababa University to promote and facilitate discussion on issues relevant to warriven Ethiopia's constitutional and political future. Participants mapped out pathways towards inclusivity, democracy and peace in Ethiopia. From HRP, Associate Director Abadir M. Ibrahim was present at the conference.

## **Speaking and Other Engagements**

#### Gerald L. Neuman

#### Book talk "Mental Health, Legal Capacity and Human Rights"

at Harvard Law School Library Book Talk with Professors Vikram Patel and Michael Ashley Stein about the edited volume *Mental Health, Legal Capacity, and Human Rights* (Cambridge University Press, 2021)

#### Panel discussion "Human Rights and Democracy"

with Professor Neuman as moderator, at the symposium *Envisioning the Next Decade of International Law: Global Solutions to Global Challenges*, hosted by the Harvard International Law Journal on March 4-5, 2022

#### Keynote Conversation "UN Human Rights Committee and Abortion"

at the symposium *Legislating Abortion: Comparative Legal Perspectives on Statutory Abortion Rights*, hosted by the Harvard Human Rights Journal on March 25-26, 2022

#### Abadir M. Ibrahim

#### Guest lecture for course "Regional Systems of Human Rights Protection"

St. Thomas University School of Law, February 22-26, 2022

#### **Benyam Dawit Mezmur**

**Guest lecture** "Rights of Children with Disabilities in Africa - Lessons from the Covid-19 Pandemic" at Harvard Law School Project on Disability, April 13, 2022

#### Guest lecture "The Convention on the Rights of the Child"

in the Erfurt Lecture Series titled *The wellbeing of the child: Promotion-Protection-Rights*, University of Erfurt (Germany), 14 April, 2022

#### Guest lecture "Children's rights in Africa"

in the Summer School titled *Children at the Heart of Human Rights*, University of Geneva (Switzerland), 02 June, 2022

#### Guest lecture "The African human rights system"

in the lecture series titled *Human Rights Mechanisms: Regional Mechanisms* at Geneva Academy (Switzerland), 03 June, 2022

**Expert Panel member at the "G. Barrie Landry Child Protection Professional Training Program"** at the FXB Center for Health & Human Rights at Harvard University, 13 June, 2022 and 17 June, 2022

#### Guest lecture "Contemporary issues on the rights of the child and child marriage"

in the Erfurt Lecture Series titled *The wellbeing of the child: Promotion-Protection-Rights*, University of Erfurt (Germany), 23 June, 2022

#### Guest lecture "The African human rights system and deprivation of liberty"

in the summer school titled *Human Rights and Persons Deprived of Liberty* offered by the Programme for Studies on Human Rights in Context, Human Rights Centre, Ghent University (Belgium), and the Global Campus on Human Rights (Austria) 07 July, 2022

### **Coursework by HRP Members**

Professor Neuman teaches introductory and advanced lecture classes on human rights and human rights treaty bodies at HLS, while HRP Senior Visiting Researcher Madrigal-Borloz teaches a course on regional human rights law. Eleanor Roosevelt Fellow Mezmur is regularly invited to give quest lectures in classes at various professional schools at Harvard.

#### HRP Courses and Reading Groups, 2021-2022

#### **Immigration Law**

(Professor Gerald Neuman, Spring 2022 Course)

#### Migration and Human Rights

(Professor Gerald Neuman, Spring 2022 Reading Group)

#### Regional Human Rights Law: The Inter-American Perspective

(Victor Madrigal-Borloz, Spring 2022 Reading Group)

#### The Rights of Children with Disabilities with a Focus on Africa

(Professor Benyam Dawit Mezmur, lecture in the Harvard Kennedy School Spring Disability Law and Policy class, Spring 2022)

#### The Rights of Children in the Context of International Migration

(Professor Benyam Dawit Mezmur, lecture in the Harvard Law School Reading Group on "Migration and Human Rights", Spring 2022)

#### Monitoring the Implementation of the Rights of Children with Disabilities in Africa

(Professor Benyam Dawit Mezmur, lecture in the Harvard Law School Disability, Human Rights, and Development class, Spring 2022)

## **HRP** Fellowships

HRP offers an array of fellowships for students interested in human rights work. Senior scholars and practitioners are invited to HRP as visiting fellows during the academic year and engage in research.

#### **Summer Fellowships**

HRP awards summer fellowships to students to intern for international human rights organizations around the world. In the 2021 summer, students worked remotely for organizations based both inside and outside the United States.

#### **Summer 2021 Fellows**

**Amre Metwally** JD'22 spent his summer working with Social Media Exchange, a digital rights group for the Middle East and North Africa based in Beirut, Lebanon.

**Kirin Gupta** is a JD/PhD student who worked at Rights & Security International (RSI), a UK-based human rights organization, for her 2021 summer fellowship.

#### **Summer 2022 Fellows**

**Andrew Santana** JD'23 interned with International Rights Advocates, working on class action litigation on behalf of the survivors of human rights abuses in Latin America.

**Ishita Petkar** JD'24 interned at EarthRights International in Washington D.C., working on corporate accountability for environmental and human rights violations.

**Julia Lee** JD'24 interned with Corporate Accountability Lab in Chicago, working on their combating forced labor, transitional justice, and ethical intellectual property projects.

**Madeleine Rogers** JD'22 interned with the International Institute for Democracy and Electoral Assistance on their Constitution Building Project.

**Zoe Shamis** JD'24 interned with the Clooney Foundation for Justice, working in their TrialWatch division, which monitors global criminal trials for human rights violations.



2022 summer fellows from left to right: Madeleine Rogers, Andrew Santana, Ishita Petkar, Zoe Shames, and Julia Lee.

#### **Winter Fellowships**

HRP awards winter term fellowships for students to undertake internships or independent research projects during the month of January.

#### Winter 2022 Fellows

**Azucena Marquez**, JD'23 conducted research for Centro De Estudios De Derecho, Justicia y Sociedad - Dejusticia, a social justice and human rights NGO, in Bogota, Colombia.

**Emma Svoboda**, JD'23, completed her clinical internship with the Legal Resources Centre(LRC) in Cape Town, South Africa, one of the country's oldest human rights centers.

Veronika Lakhno, LLM'22 was placed at REDRESS, an NGO that pursues legal claims on behalf of survivors of torture, in the Hague.

#### **Post-Graduate Fellowships**

#### Satter Human Rights Fellowship

The Satter Human Rights Fellowship, funded by the Satter Foundation and named after Muneer Satter JD/MBA'87, allows post-graduates to spend a year working on the defense of human rights in response to mass atrocities or widespread and severe patterns of rights abuse occurring in countries classified as "not free" by Freedom House.

#### Satter Fellows 2021-2022

**Brooke Davies** JD'21 joined the constitutionbuilding team at the International Institute for Democracy and Electoral Assistance (IDEA) in Tunis, Tunisia.

Emily Ray JD'21 worked with Partners in Justice International (PJI) to strengthen access to justice for victims of atrocity crimes in their home countries.

María Daniela Díaz Villamil LLM'21 was a Satter Fellow focusing on combatting conflict-related gender-based violence with the International Center for Transitional Justice in Kampala, Uganda.



2021-22 Satter Fellow María Daniela Díaz-Villamil (left) with colleagues at the Kampala office of the meeting with members of the Board of the International Center for Transitional Justice.



2012-22 Satter Fellow Emily Ray (left) at a PJI Independent Policing Oversight Authority (IPOA) and a representative of UN OHCHR in Nairobi.

#### Spotlight on the Satter Fellowship in Human Rights, 2021-2022

The Satter Human Rights Fellowship is designed to support and promote human rights defense in response to mass atrocities. The fellowship is made possible by a generous gift from Muneer A. Satter JD/MBA '87. These fellowships enable students to make a valuable contribution in the most severe human rights situations.

#### **Brooke Davies JD'21**

For her Satter Fellowship in the 2021-2022 academic year, Brooke Davies joined the constitution-building team for the Asia and West Africa region at the International Institute for Democracy and Electoral Assistance (IDEA). Like many of International IDEA's projects, Davies' work often took place during or immediately after one of the most intense moments of a conflict. For instance, by the time her fellowship started, the war in Yemen was estimated to have taken 377,000 lives, with all warring parties being accused of war crimes. Negotiations to bring about a ceasefire would succeed only in the later parts of her fellowship. Sudan was seen as a potential success story after a peaceful protest movement led to the removal of Omar Al-Bashir, who was indicted for genocide and war crimes by the International Criminal Court (ICC). A month into her fellowship the civilian transitional government was overthrown by the military in a coup d'état.



In the modern conflict landscape, the renegotiation of a country's fundamental political arrangements occurs while the parties are still engaged in active hostilities, as a government response to a popular protest movement demanding change, or as a mechanism of transformation into a new order. At the same time, the arrangements being negotiated are immensely technical, and they require careful and informed decision making and design choices.

This context has had a twofold impact on Davies' fellowship experience. One the one hand, she had to learn how to rapidly provide high-quality assistance on a slate of complex issues relating to six different countries. On the other, Davies had to find out how to help pivot her team's strategy when rapidly changing contexts required the reimagination of a project's implementation. During her fellowship, many of her project countries underwent significant upheaval. Sudan, Chad, and Mali, for example, went through coups that upturned the countries' constitutional reform efforts. Iraq's political crisis deepened following an assassination attempt on the country's Prime Minister, and the country went without a government for most of the year, leading to protests, nationwide curfews, and eventually outbreaks of armed conflict. In Libya, a country plagued by a

decade of conflict, parliament was stormed by protesters forcing the suspension of political negotiations.

"Coming from the stability of an institution like Harvard Law School, I feel a new level of comfort working in situations that are highly fluid, and that require an agile strategy and mindset," said Davies. "I have gained unparalleled experience in assessing a situation as it rapidly changes, identifying opportunities for our work to continue to have an impact, and executing on a revised strategy that itself is likely to constantly change. I now have a better understanding of the limits, and importance, of the constitution-building field that I am entering."

For Davies, the main highlights at International IDEA have been the breadth and depth of her work and the number of people and new perspectives she has been able to encounter. After the fellowship, Davies plans to continue working in the constitution-building field.



#### Emily Ray JD'21

The mission of Partners in Justice International (PJI) is to strengthen access to justice for victims of atrocity crimes in their home countries. The NGO organizes its work on a novel "accompaniment model" that is designed to support domestic judicial practitioners – prosecutors, investigators, and victim advocates – through sustained training and mentoring programs. It is also this highly collaborative model which drew Emily Ray to PJI for her 2021-2022 Satter fellowship.

At the outset of her fellowship, Ray planned to transition the Myanmar Legal Representation Project, an independent endeavor she had previously worked on for two years with the

HLS International Human Rights Clinic, to PJI. Due to the attempted military coup in Myanmar in February 2021, those plans were derailed, and Ray had to recalibrate her Myanmar focus. She nevertheless has used her Satter fellowship to reconnect with existing partner organizations and individuals working on accountability for crimes in Myanmar in order to advance access to justice. Additionally, on the one-year anniversary of the attempted coup, Ray coauthored an article titled "From '8888' to '2121': A New Generation of Resistance in Myanmar", which was published on Just Security, a prominent foreign policy forum.

In this publication, writing on the issue of accountability for crimes committed by the Burmese military against the Rohingya, Ray and her co-authors note that "[w]hile there has been significant progress around international accountability in Myanmar in recent years [...] the National Unity Government's deposit of a letter with the

ICC accepting jurisdiction by the Court for international crimes dating back to 2002 anywhere in the country is a major development." Further, they state: "This letter signals the NUG's commitment to join the international community, adhere to the rule of law, and address grave crimes throughout the country. The ICC should recognize the letter and authorize additional investigations beyond the Rohingya into international crimes, both historical and ongoing."

Throughout the fellowship, the question of what success means for a human rights project has accompanied Ray, and she has continued to apply the lessons learned at PJI to the planning and assessment of her work on Myanmar. At PJI, Ray has found her colleagues and supervisors to be an "incredible resource" whose support has helped guide Ray and her Myanmar project in a clearer direction.

#### María Daniela Díaz Villamil LLM'21

María Daniela Díaz Villamil is a Satter Fellow at the Ugandan program of the International Center for Transitional Justice (ICTJ) for the 2021-2022 academic year. Based in Kampala, she has been working on different issues related to bringing proper remedy and redress for victims of mass atrocities committed during the so-called bush war in Northern Uganda between 1989 and 2007. In her capacity as fellow, Díaz Villamil has undertaken research, advocacy, and administrative tasks, thereby supporting the ICTJ in its purpose of promoting accountability, full citizenship of victims, and reconciliation in societies affected by atrocities committed in the context of armed conflict and/or undemocratic rule.



Her diverse research topics at ICTJ have encompassed international criminal justice, reparations for gross human rights violations, and feminist and anti-racist critical perspectives on international and transitional justice, among others. This broad range of research has resulted in a number of high-impact reports and briefs including an amici submission handed to the ICC Trial Chamber on the reparations proceedings in the case of Dominic Ongwen, the ICTJ report in Uganda's Universal Periodic Review in front of the UN Human Rights Council, and a submission to the Prosecutor of the ICC regarding accountability strategies against gender-based persecution.

"The time as Satter Fellow has been one of the most enriching personal and professional experiences of my life," said Díaz Villamil. "For starters, it is the first time I work a full-time job in English, which is not my first language. It might be insignificant to someone coming from an English-speaking background, especially in the Anglo-American world, but for a Colombian working-class lawyer it is an unparalleled and challenging experience."

Taking into account that she, like her Ugandan ICTJ colleagues, is from the Global South, Díaz Villamil commended the fellowship for supporting important exchanges between human rights professionals from the South: "I think the Satter Fellowship, as an academic opportunity granted to people having the rare privilege of accessing one of the most powerful schools in the entire world, should address North-South power inequalities by continuing to promote these dialogues among Global South human rights professionals."

#### HRP Visiting Fellows Program

Through the Visiting Fellows Program, HRP provides thoughtful individuals with a demonstrated commitment to human rights an opportunity to step back and conduct a serious inquiry in the human rights field. The fellows, who typically come from outside the United States, spend time in residence at the law school, where they are an integral part of the community.

#### 2020-21 Visiting Fellow



**Godfrey Odongo** (Kenya), Senior Program Officer with the Human Rights Program at the Wellspring Philanthropic Fund.

#### 2022-23 Visiting Fellow



**Benyam Dawit Mezmur** (Ethiopia), Professor at the University of the Western Cape in Cape Town and Member of the United Nations Committee on the Rights of the Child.

## **HRP** Publications

This year, HRP produced a range of publications, a sampling of which are below.

#### **Journal Articles & Book Chapters**

Gerald L. Neuman, "Questions of Indirect Discrimination on the Basis of Religion", Harvard Human Rights Journal, Harvard Human Rights Journal, Vol. 34 (2021).

Victor Madrigal-Borloz, "The Theory of Indirect Discrimination: Application to the Lived Realities of Lesbian, Gay, Bisexual, Trans, and Other Gender Diverse (LGBT) Persons", Harvard Human Rights Journal, Harvard Human Rights Journal, Vol. 34 (2021).

Abadir M. Ibrahim, "Strategic Human Rights Litigation Guideline", Lawyers for Human Rights – Ethiopia (2021).

Indirect Discrimination and Sexual Orientation or Gender Identity

October 2020 Workshop Proceedings



Human Rights Program Research Working Paper Series

The views expressed in the HRP Research Working Paper Series are those of the author(s) and do not necessarily reflect those of the Harvard Law School or of Harvard University. Research Working Papers have not undergone formal review and approval. Such papers are included in this series to clicit feedback and to encourage debate on important public policy challenges. Copyright belongs to the author(s), Papers may be downloaded for personal use only.

Gerald L. Neuman, "Divergent Human Rights Approaches to Capacity and Consent". In M. Stein, F. Mahomed, V. Patel, & C. Sunkel (Eds.), Mental Health, Legal Capacity, and Human Rights (pp. 56-69). Cambridge: Cambridge University Press, 2021.

#### **Workshop Proceedings**

Indirect Discrimination and Sexual Orientation or Gender Identity, October 2020 Workshop Proceedings & Working Papers (April 2021).

• "What is the Right Against Indirect Discrimination on the Basis of Sexual Orienation and/or Gender Identity?" (working paper by Gerald Neuman)

Indirect Discrimination and the COVID-19 Pandemic, February 2021 Workshop Proceedings, HRP Working Paper 21-003 (August 2021).

• "Indirect Discrimination, SOGI, and Public Health Measures in the Pandemic" (working paper by Gerald Neuman)

#### **Opinion Pieces & Media**

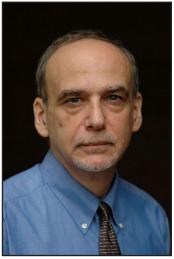
Gerald L. Neuman, "Coming to Grips with Populism After Trump", OpenGlobalRights (Nov. 10, 2021).

Abadir M. Ibrahim, ከፏፏቴው ጫፍ የደረሰች ጀልባ [Trans.: A Boat on the Edge of a Waterfall], Medium: whiteboard animation; Role: co-writing and direction (Nov. 14, 2021).

Abadir M. Ibrahim, "Ethiopia's Tortuous Path to Democratization", Ethiopia Insight (Jun. 9, 2021).

Gerald L. Neuman, "Another Trump Legacy That Won't Give Up", Harvard Human Rights Reflections (Mar. 28, 2022).

### Faculty and Staff 2021-2022



**Gerald L. Neuman**Director, Human Rights Program, and J. Sinclair Armstrong
Professor of International, Foreign, and Comparative Law

Neuman teaches human rights, constitutional law, and immigration and nationality law. His current research focuses on international human rights bodies, transnational dimensions of constitutionalism, and rights of foreign nationals. He is the author of Human Rights in a Time of Populism (Cambridge University Press, 2020), and co-author of the casebook Human Rights (with Louis Henkin et al., Foundation Press, 2009). Prior to joining HLS in 2006, he served on the faculties of the University of Pennsylvania Law School (1984-1992) and Columbia Law School (1992-2006). From 2011 to 2014, he was a member of the UN Human Rights Committee.



Abadir M. Ibrahim, J.S.D. Associate Director, Human Rights Program

Ibrahim plays a substantive and managerial role in innovating and implementing academic activities, including the speaker series, conferences, and HRP's various fellowships. He is the author of The Role of Civil Society in Africa's Quest for Democratization (Springer Int'l Pub., 2015) and co-editor of and co-edited Righting Human Rights through Legal Reform: Ethiopia's Contemporary Experience (Addis Ababa Univ., 2020). Before joining the HRP he was the Head of the Secretariat for the Legal and Justice Affairs Advisory Council where he was engaged in pro-democracy and pro-rights justice sector reform work in Ethiopia. His current research analyzes the evolution of human rights as impacted by Africa's (post)colonial, religious and traditional heritages under the rubric of African approaches to human rights.



Kai Mueller Program Assistant, Human Rights Program

Prior to joining the Human Rights Program, Mueller worked, studied and lived in a diverse set of countries including Rwanda, Morocco and Germany. His experience includes working as Political and Economic Advisor at the Embassy of the Federal Republic of Germany and English Education Volunteer with the U.S. Peace Corps in Rwanda. He also has experience working for Oxfam, Ecologic Institute, the Environmental Policy Research Institute of the Free University in Berlin, the Headquarters of the Federal Foreign Office in Berlin, and the Environmental Protection Agency in Washington D.C.

### **Acknowledgments**

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Bringing knowledge to the service of human rights and equal dignity.