2019-20 Intensive Pro Bono Research Project Descriptions:

1. **Basel Institute on Governance**
   Identifying best practices regarding the prosecution/litigation of unexplained wealth legislation through a comparative analysis of international case law
   January 6-10, 2020

Supervisor: Andrew Dornbierer, Asset Recovery Specialist, Basel Institute on Governance

**Background**

The Basel Institute on Governance is a not-for-profit organisation that seeks to combat and prevent corruption. A specialised division of the Institute, the International Centre for Asset Recovery (ICAR), works towards this objective by providing direct assistance to officers in law enforcement and prosecution agencies in transitional and developing countries. This assistance will generally include efforts to reinforce capacities to investigate and prosecute corruption and other related financial crimes, with a strong focus on increasing an agency’s ability to target and recover proceeds of crime.

**Context and objective**

Also referred to as illicit enrichment or unjust enrichment, unexplained wealth refers to a significant increase in a person’s assets or expenditure that cannot be justified through reference to that person’s lawful income. While unexplained wealth is covered under Article 20 of the United Nations Convention Against Corruption, as well as a number of other international instruments, the enactment and implementation of laws covering unexplained wealth by signatory countries has varied widely. Notably, while a significant number of countries have enacted these types of laws, many of them (particularly developing countries) are not utilising these laws to actually target and recover stolen assets. For example, while Tanzania has had unexplained wealth laws since 2007, prosecutors have only just recently commenced the first set of proceedings for these types of offences. Similarly, while these laws have existed for several decades in Malawi, prosecutors have only managed to achieve a single conviction regarding this offence. While furthermore in Uganda, prosecutors are yet to achieve a successful conviction to date despite unexplained wealth laws having existed since 2009.

As this is a relatively new area of law, which has produced a comparatively small amount of jurisprudence, little research has been done regarding the best practices that investigators and prosecutors can refer to in their efforts to actually prove the existence of unexplained wealth. In working alongside officers of African-based anti corruption institutions, many investigators and lawyers have noted this lack of guidance as a reason for not actively pursuing unexplained wealth proceedings against suspects, even when there are sufficient grounds to do so.

This project aims to comprehensively collate existing legislation and case law from the widest possible number of jurisdictions, with the ultimate aim of systematically analysing this information to identify key instances where prosecutors around the world have managed to:

- Establish the existence of unexplained wealth; or
- Successfully oppose challenges regarding the validity of unexplained wealth legislation.

The project then seeks to draft a comprehensive list of internationally reoccurring best practices regarding the investigative and prosecutorial methods utilised to successfully prosecute/litigate unexplained wealth matters, with a focus on the types of evidence, analysis and legal arguments used by prosecutors in these cases. Finally, ICAR would seek to distribute this comprehensive list of best practices amongst ICAR-partner countries, including Tanzania, Kenya, Malawi and Uganda, as well as other developing countries in which these types of laws are being
underutilised, to assist practitioners in these countries in their pursuit of unexplained wealth, and to promote an increased use of unexplained wealth laws to target and recover stolen assets.

**Required language skills across the research team:**

In addition to English, Spanish would be considered an excellent asset, as there are a number of South American jurisdictions with unexplained wealth laws. Moreover, all other languages (and particularly major international languages) would be considered beneficial as this would mean a higher number of jurisdictions could be examined thoroughly.

**Quick source to understand the concept of unexplained wealth:**

2. Solidarity Center
International Lawyers Assisting Workers (ILAW) Network
January 6-10, 2020

Supervisors: Jeffrey Vogt, Solidarity Center, Director of Law
Jon Hiatt, Solidarity Center, Of Counsel and former General Counsel of the AFL-CIO

Solidarity Center is a Washington, D.C.-based non-profit, non-governmental organization, affiliated with the U.S. labor movement, whose mission is to promote worker rights in approximately 60 countries throughout the world.

It has recently embarked on a new project to create a global network of international union and worker rights lawyers and scholars to facilitate the sharing of information and expertise, more effective collaboration, and joint strategizing over issues and cases that increasingly transcend national boundaries. The network – International Lawyers Assisting Workers (ILAW) – will operate both online through a members-only website and in person through regional and global meetings and conferences.

ILAW intends to offer a variety of services to its member lawyers, including a global directory of labor and worker rights lawyers and allied legal professionals; a library/clearinghouse of news, research, articles, case materials in the fields of labor and employment law; a space for blog-format and listserv discussion and debate on legal developments; and a forum for webinars and other topical educational and training opportunities.

An ILAW Advisory Board consisting of 20 lawyers from 20 countries (four from Asia, three from Africa, four from South America, three from Europe, two from North America, one from Australia, and two from global organizations) has been providing guidance as the organization takes form.

For now, ILAW is focusing on seven broad topic areas: global supply chain accountability, migrant worker rights, the fissured employment relationship, employment discrimination in all its forms, the informal economy, organizing and bargaining with multinational employers, and trade union rights. Given the global nature of work and common trends that affect workers worldwide, an international network is needed now more than ever to effectively represent workers in these areas.

The platform will provide materials in English, Spanish, and French at the outset, and will hope to be able to offer additional languages over time, as resources permit.

Overview of the Proposed Research Project

Over time, the member practitioners will be expected to supply their own materials to share on the website. In the short-term, however, it will be important for the site to contain as wide and deep a body of content in each of the seven subject matter areas listed above, and from as many countries and in as many languages, as possible.

The content will include agency and court decisions, accompanying briefs and other case documents, law review articles, NGO reports, legislation, pending bills, and other relevant materials.

A number of JD and LLM students from several law schools are working with ILAW this fall semester to begin to identify and populate the website with relevant materials. We would like to recruit a team of NYU LLM students from any and all countries who, under the guidance of supervising lawyers with expertise in the seven subject matter areas, could provide research in one or more of these topic areas this coming winter.
3. Open Society Justice Initiative  
Climate Change  
January 6-10, 2020

Supervisors: Erika Dailey, OSJI, Senior Officer for Research  
Joy Chia, OSJI, Program Officer

The Open Society Foundations, founded by George Soros, are the world’s largest private funders of independent groups working for justice, democratic governance, and human rights. George Soros opened his first international foundation in Hungary in 1984. Today, the Open Society Foundations support a vast array of projects in more than 120 countries, providing hundreds of grants every year through a network of national and regional foundations and offices.

Unlike the rest of the organization, the Open Society Justice Initiative – the Foundations’ largest program -- does not engage in grantmaking. Rather, with a focus on human rights, the Justice Initiative uses strategic human rights litigation and legal advocacy to advance OSF’s mission. The Open Society Justice Initiative strives to ensure that the law, too often an instrument of power alone, is shaped and employed in the service of justice. Among other issues, JI places an emphasis on access to justice, anti-corruption, civic space, equality, and citizenship.

An overview of the research topic(s) and scope

Anthropogenic climate change is both the cause and the symptom of human rights violations. As such, and because of the urgency of greenhouse gas emissions reductions, equitable climate change mitigation and adaptation efforts around the world are the historical challenge of the current human rights movement. Climate change poses an existential threat not only to human and non-human life, but also to the human rights movement. UN Special Rapporteur on Extreme Poverty, Philip Alston, recently warned that “human rights might not survive the coming upheaval.”

The relevance of the project(s), including intended audience

The project is relevant to many areas of human rights law and environmental law, including the right to life and ESC rights. Moreover, it is extremely time-sensitive, and therefore could be a good match for the rapid-fire research the LLM program is designed to produce.

The research would be primarily for internal use within the Justice Initiative, to help us frame our litigation and advocacy strategy, but may also be shared with partners in the field.

Relevant websites for context


Preferences for student participants, such as language skills or professional experience

It would be helpful to work with students with high skills in Spanish, Indonesian, Portuguese. Other languages as relevant.

Knowledge of and interest in environmental law, tort claims against corporate actors, and the climate-change field would be helpful, but are not required.
Q: What types of recommendations have UN-mandated human rights investigations made regarding women’s rights and sexual and gender-based violence (SGBV)? And to what extent have these recommendations been implemented?

a. Background

Since 2009, UN Women has deployed sexual and gender-based violence (SGBV) investigators and gender advisors to UN-mandated human rights investigations, to ensure that women’s rights violations and SGBV are fully documented. Last year, a group of NYU LLM students read through 52 past UN human rights investigation reports and provided UN Women with a detailed gender analysis of their findings. This year, UN Women would like a group of LLM students to compile and analyze all of the recommendations of these reports relating to SGBV and women’s rights, and conduct open source research on how these recommendations have (or have not) been implemented by the relevant actors, including the United Nations.

b. Research Goals

The research will contribute to the UN Women’s efforts to end impunity for women’s rights violations sexual and gender-based violence (SGBV), by providing an in-depth analysis of how women’s rights and SGBV have been reflected in the recommendations of UN-mandated human rights investigations, and to monitor how these recommendations have or have not been implemented.

Ultimately, UN Women will use the research to work with expert investigators and gender advisors to strengthen recommendations on SGBV and women’s rights violations in human rights investigation. We will also use the research to enhance UN Women’s and the UN system’s action and advocacy on reports’ recommendations. The outcomes of the research should be shared with UN Women in a short paper and presentation.

c. Research team

The researchers should be knowledgeable about international criminal law and international human rights law. Several investigation reports are available only in French, so 1-2 French speakers on the team would be a plus.

d. Recommended Reading

- OHCHR website on investigations: https://www.ohchr.org/EN/HRBodies/HRC/Pages/COIs.aspx
Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. During an armed conflict, occupation and crisis situations vulnerable groups have little if any access to justice. While often studied post-conflict, justice processes such as war crimes tribunals, truth commissions, reparations, and amnesties are often adopted by governments while violence is ongoing. During-conflict justice processes often have different aims than those of transitional justice. Nevertheless, these processes have important impacts on the conflict, as well as on long-term solutions.

The 2014 Maidan protests in Kyiv and the March 2014 Russian illegal annexation of Ukrainian peninsula, Crimea (its status is determined by the UN General Assembly resolution 68/262 on the territorial integrity of Ukraine) were followed by the outbreak of armed hostilities in eastern Ukraine. This brought about an influx of fighters and mercenaries from abroad that has had significant influence on human rights in Ukraine and the war itself. Access to justice, the use of judicial and quasi-judicial processes during the war and occupation in Ukraine has not been sufficiently studied. Various processes, including trials, truth commissions, amnesties, purges, or exiles, are directly related to the actions and abuses of the conflict itself—a phenomenon we refer to as during-conflict justice.

This document will examine the situation vulnerable groups, often victims of human rights violations find themselves in the ongoing war and occupied territory of Crimea while trying to effectively access justice. The dynamics of the armed conflict in Ukraine affect vulnerable groups (children, women, elderly) differently. They have been victims of multiple violations of their rights because the very fact of being vulnerable, and have disproportionately experienced the violence perpetrated during war and occupation.

Thus the goal of this research is to examine the individual right of access to justice in times of crisis, such as armed conflict, emergency, or occupation in order to make recommendations and suggest policy approaches to assist the most vulnerable and underprivileged groups.

We will examine “judicial, quasi judicial processes and institution as means to the individual access to justice. We will explore a variety of issues related to access via the prism of international law's response to situations of crisis, with particular reference to the distinctive categories of emergency and armed conflict. Research will evaluate the extent to which individual access to justice constitutes a linchpin of the interface between international human rights law and the regulation of crisis. Will review international humanitarian law's approach to individual access, and identify current challenges. Furthermore, we will look into how these tensions manifest themselves in practical terms as constraints on individual access to justice. We will examine if there have been normative advances that make it possible to make visible, prevent and confront violence against vulnerable groups, and recognize victims as rights holders.

**Eligibility:** A strong interest in human right, humanitarian law and international relations.

**Preferred:** Students with good knowledge of international human rights and humanitarian law.

**VOLYA Institute for Contemporary Law and Society (VOLYA Institute)** is dedicated to generating and promoting intellectual leadership in the field of civil society, human rights and the rule of law. Comprised of an international team of scholars and practitioners, the organization engages with issues of concern to Ukrainian society from a range of local, regional, and global multidisciplinary perspectives.