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## International Human Rights

**22 June 2015**

### Outline Solutions

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#### Question 1 (10 points max.)

The NGO which published these findings is convinced that it has gathered enough proof of unacceptable human rights infringements in their substantive report on the hazelnut harvest situation in Despotania. They now turn to you – a human rights lawyer – seeking guidance in order to

- a) legally phrase their concerns, and to
- b) help the children and their families to get relief.

How would you “translate” the issues outlined in the above article into human rights language (sub-question a), and discuss which course of action you would recommend them to pursue (sub-question b)?

#### Sub-question a) (5 points max.)

Element	Points awarded
<i>Relevant human rights outlined and explained, e.g.:</i>	0.5 points per applicable right mentioned and linked to the case, including the reference to the respective legal source. Up to 1 point each for putting the human right into case-context in a well elaborated manner.  Bonus points awarded for providing a very thorough overview of possible legal sources.
<ul style="list-style-type: none"> <li>• Child labour, children’s rights in general, Art. 12, 2a ICESCR, ILO Convention 182, 138, Art. 32 CRC, ILO Conventions 138 and 182</li> </ul>	
<ul style="list-style-type: none"> <li>• Right to safe and healthy working conditions, decent work, Art. 7 ICESCR, Art. 23 UDHR</li> </ul>	
<ul style="list-style-type: none"> <li>• Right to an adequate standard of living, encompassing food, housing, Art. 11 ICESCR, Art. 25/27 UDHR, Art. 27 CRC</li> </ul>	
<ul style="list-style-type: none"> <li>• Right to physical health, Art. 12 I ICESCR, Art. 24 CRC, Art. 25 UDHR</li> </ul>	
<ul style="list-style-type: none"> <li>• Right to life, right to the integrity of the person, Art. 6 I ICESCR, Art. 3 UDHR</li> </ul>	
<ul style="list-style-type: none"> <li>• Right to education, Art. 13/14 ICESCR, Art. 26 UDHR</li> </ul>	

**Sub-question b) (5 points max.)**

Element	Points awarded
<i>Meaningful courses of action, e.g.:</i>	0.5 points for a brief outline of possible actions, up to 1 point per meaningful avenue if well elaborated and applicable.
<ul style="list-style-type: none"> <li>• Possibility to invoke affected human rights in domestic courts</li> </ul>	
<ul style="list-style-type: none"> <li>• Individual communication to the Committee on the Rights of the Child, to the Human Rights Committee and/or the CESCR</li> </ul>	
<ul style="list-style-type: none"> <li>• Compliant procedure to the Human Rights Council according to resolution 5/1</li> </ul>	
<ul style="list-style-type: none"> <li>• Approaching the company directly seeking internal remedy mechanisms</li> </ul>	
<ul style="list-style-type: none"> <li>• Contacting other NGOs in order to increase the PR leverage</li> </ul>	0.5, but only if elaborated that they might not be applicable depending on Despotania's geographical location
<ul style="list-style-type: none"> <li>• Considering and outlining a number of regional instruments</li> </ul>	
<ul style="list-style-type: none"> <li>• Alien Tort Claims Act</li> </ul>	0.5, but only if elaborated under which conditions this might work under the scenario described (e.g. link to the US)
<ul style="list-style-type: none"> <li>• OECD National Contact Points</li> </ul>	Only if elaborated that this venue might prove difficult as there may not be an NCP in Despotania and that a private actor needs to be factored in for the Guidelines to be applicable
<ul style="list-style-type: none"> <li>• Generally outlining the challenge that a private actor is infringing human rights</li> </ul>	Up to 1 if well explained and put into context

**Question 2 (10 points max.)**

The CEO of an internationally well-known chocolate company which also partially purchases its hazelnuts in Despotania turns to you, stating that he was not aware of these working conditions since the company buys all its hazelnuts on the commodities exchange, but never directly from the producers or via the Despotanian government.

While the CEO obviously does not agree with the findings of the NGO, he was told by his compliance team that there is no legal duty to act on these infringements. Taking note of this, the CEO is still interested in your legal opinion as an external advisor, as he is not keen on having any kind of legal risk issues in the future.

- a) Do you agree with the company’s compliance department and its findings?
- b) Irrespective of your answer to the first question: What would be your recommendation(s) to the company if they want to be on the safe side in the future?

**Sub-question a) (5 points max.)**

<b>Element</b>	<b>Points awarded</b>
<i>Meaningful and substantial arguments/explanations for rebuttal (or defense) of the company’s point of view, e.g.:</i>	0.5 points for a brief description, more if discussed in depth and <b>put into context of the case</b> . Merely stating general recommendations without relating them to the specific case awards less points.
<ul style="list-style-type: none"> <li>• Generally outlining the problem of a lack of legal personality of private companies in international (human rights) law and the difficulties this encompasses</li> </ul>	
<ul style="list-style-type: none"> <li>• Instruments do exist, however they might not be binding, e.g. the UN Guiding Principles on Business and Human Rights, the UN Global Compact Principles, the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration, the IFC Sustainability Framework or the Global Reporting Initiative</li> </ul>	
<ul style="list-style-type: none"> <li>• Notwithstanding the non-binding character of respective instruments, they are important for companies serving as guidelines for its behaviour and should therefore not be neglected</li> </ul>	
<ul style="list-style-type: none"> <li>• Increased litigation risk due to worldwide trends of legal accountability – or non-judicial settlements – even if the procedural avenues might not be visible at first glance / generally anticipating the trend towards more corporate responsibility (“being at the forefront as a best-of-class and co-shaping the developments rather than lagging behind”)</li> </ul>	
<ul style="list-style-type: none"> <li>• Check if the NGO report really is adequately representing the situation in Despotania</li> </ul>	
<ul style="list-style-type: none"> <li>• Not underestimating the “sphere of influence” even though the infringements happen all the way down the supply chain as they might still get attributed to the company</li> </ul>	

**Sub-question b) (5 points max.)**

Element	Points awarded
<p><i>General human rights policies outlined:</i></p> <ul style="list-style-type: none"> <li>• <b>Mapping</b> the initial human rights situation</li> <li>• Writing a <b>policy statement</b></li> <li>• Human rights <b>impact assessment</b></li> <li>• <b>Implementation</b> of due diligence, reference to supply chain</li> <li>• Guarantee <b>access to remedy</b></li> <li>• <b>Tracking</b> performance of the efforts made</li> </ul>	<p>0.5 points each if at least briefly explained, up to 1 if detailed <b>and applied to the case</b>. Merely copying general UN Guiding Principles without relating them to the specific case awards less points.</p>
<p><i>References to soft law instruments can also be made here and are awarded if not already done so under sub-question a), e.g.</i></p> <p>the UN Guiding Principles on Business and Human Rights, the UN Global Compact Principles, the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration, the IFC Sustainability Framework or the Global Reporting Initiative</p>	<p>0.5 points each if not just enumerated and not already mentioned under sub-question a)</p>
<p><i>Good arguments in favour of or against a specific solution by putting oneself in the perspective of the legal advisor and contextualizing as well as generally worthwhile thoughts, e.g.:</i></p> <ul style="list-style-type: none"> <li>• due to the fact that these farms are situated within Despotania, fact-finding might prove relatively difficult which in turn can be expected to be assessed by the management and/or willing NGOs the chocolate industry is already under relatively close media scrutiny due to the problematic cocoa production particularly in West Africa</li> <li>• using business language instead of technical law expressions and transparent communication of the issues so that the managers of the chocolate company can “get to work” without the need to follow a human rights course</li> <li>• the UN Global Compact principles do not include any kind of remedy mechanism, which therefore puts less pressure on the company to quickly adhere to all principles</li> <li>• depending on the amount of costs the company is ready to bear, the adequate strategy should be chosen accordingly</li> <li>• the fact that the motives to define a HR policy for a company have a lot to do with improving the reputation and PR</li> <li>• the protection of consumers and humanitarian considerations might play a role as well in the company’s business decisions;</li> <li>• the country context in which its business takes place should be understood by the company</li> </ul>	<p>Up to 1 point each if well-argued and put in to the specific case context, 0.5 if only briefly outlined.</p>

**Question 3 (10 points max.)**

The Despotian government has been very unhappy with the ongoing criticism of the international community for a long time, feeling treated overly critical by mostly well-developed states. In the government's view, much progress has been achieved in recent years to fulfil international human rights obligations, especially when it comes to issues related to child labour. Also, being a very poor country, Despotania stresses the fact that it is highly dependent on its hazelnut exports and simply cannot afford to cease with the practice of its peoples' labour. The government argues that if they do, Despotian hazelnut prices will no longer be competitive on the international markets, which in turn greatly increases poverty and consequently raises other, more severe, human rights issues.

Nevertheless, the government has agreed on a meeting with you – a legal officer of an international organization – on possible avenues to follow up on its recent domestic measures to decrease child labour. Since more straightforward criticism has not proven to be a very effective strategy in the past, you are focusing on more recent approaches in international human rights law.

Are there any internationally applied models, best practices, or even innovative instruments to follow up on this avenue that you could suggest? What could be done on both the domestic as well as the international level in your opinion, taking into account the difficult situation within Despotania? What legal grounds, if any, would be necessary for these? Please elaborate on these questions and consider your role as described above.

Element	Points awarded
<p><i>Generally, points were awarded for meaningful, legally founded suggestions, taking into account the case context.</i></p> <p><i>Further good arguments in favour of or against a specific proposal by putting oneself in the perspective of a legal expert and contextualizing as well as generally worthwhile thoughts are also taken into account. E.g.</i></p>	
<ul style="list-style-type: none"> <li>• Acknowledging the difficult situation Despotania is in, yet outlining the progressive realization nature of many the affected rights and concluding that the poverty in itself is no excuse not to take measures</li> <li>• Outlining the general government HR-related duties due to its international obligations (“respect, protect, fulfil”), e.g. to allow for HR to be invoked on the domestic level, adopting new national law, investigate the infringements, compensate etc.</li> <li>• Mentioning the possibility of a National Action Plan to implement the UN Guiding Principles on a state-based level</li> <li>• Providing an OECD National Contact Point as a non-OECD adhering country</li> <li>• Trying to take aboard the ILO with their specific knowledge about labour issues for a special country-specific “mission” or equivalent implementation strategy, e.g. providing technical support on the implementation of labour standards</li> <li>• Considering recommendations contained within concluding observations of recent country reports made to the Human Rights Council or its treaty-based bodies</li> <li>• Considering to sign the respective Optional Protocols of relevant UN treaties allowing for individual complaints</li> <li>• Seeking economic support by institutions of the World Bank Group, e.g. via adhering to the IFC Sustainability Framework which might attract more foreign investors and thus increases the overall prosperity of Despotania</li> <li>• Seeking diplomatic measures with the help of neighbour states to try and improve the human rights situation in the sub-region</li> <li>• Outlining and discussing that according to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the competitive advantage of developing countries must not be diminished; however, according to the ILO Declaration on Social Justice for a Fair Globalization, the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage</li> <li>• Preferential treatment of Despotania’s exports within the international trade regime (WTO, Generalized System of Preferences etc.)</li> </ul>	<p>0.5 if at least briefly explained, more if well described and put into the specific context of Despotania’s situation.</p>