

## International Human Rights

**25 June 2014**

### Outline Solutions

**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 children working in the US. 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)? Please discuss which course of action you would recommend to the NGO (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, including the reference to the respective legal source. Up to 1 point each for putting the human right into case-context if well elaborated.  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.)**

<b>Element</b>	<b>Points awarded</b>
<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 US domestic courts</li> </ul>	
<ul style="list-style-type: none"> <li>• Individual communication to the Committee on the Rights of the Child</li> </ul>	
<ul style="list-style-type: none"> <li>• Individual communication to the Human Rights Committee and/or the CESCR</li> </ul>	
<ul style="list-style-type: none"> <li>• Filing a complaint at the OECD National Contact Point</li> </ul>	
<ul style="list-style-type: none"> <li>• Appeal to the Inter-American Commission on Human Rights</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>	
<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 one of the well-known tobacco companies mentioned in the article turns to you, stating that he was not aware of these working conditions since the company buys the tobacco through tobacco leaf supply companies, yet never directly from the farms involved. Additionally, and according to the company’s internal compliance department, the company does not have any kind of legal obligation as its current practice does not appear to violate US domestic law. Lastly, he personally does not see a problem with indirectly helping the families to earn some extra income.

While the CEO obviously does not agree with the findings of the NGO, he is nevertheless interested in your legal opinion, as he is not keen on having child labour related problems in the future.

- a) Do you agree with the company’s compliance department as well as the CEO’s reasoning for not having any obligation?

Irrespective of your answer to question a): 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.)**

Element	Points awarded
<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, up to 2 points each if discussed in depth and put into context
<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>Due to the fact that these farms are situated within the US, fact-finding is relatively easily doable which in turn can be expected to be assessed by the management</li> </ul>	
<ul style="list-style-type: none"> <li>Extra income earned by families not convincing as the families might have to bear extra costs for the medical treatment of their children</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 elaborated, up to 1 if detailed and applied to the case</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)</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>Up to 1 point if 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>• using business language instead of technical law expressions and transparent communication of the issues;</li> <li>• reference to the Dodd-Frank-Act since the tobacco company is US-based;</li> <li>• reference to the Alien Tort Claims Act;</li> <li>• the UN Global Compact principles do not include any kind of remedy mechanism, which therefore put 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> <li>• Reputational risks might be even more delicate since the tobacco industry is under the scrutiny of civil society due to its harmful products</li> </ul>	<p>Up to 1 point each if well argued, 0.5 if only briefly outlined.</p>

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

Mr Mutombo (M) has been seeking redress from the Democratic Republic of Congo (DRC) ever since he moved to Australia. However, after having exhausted all domestic remedies without any meaningful success, and being unfamiliar with international law, he is asking you for further legal advice.

What international avenue(s) would you recommend him to pursue, and why?

**(For this case, you can assume that the state actors have ratified all the relevant conventions discussed during the course)**

Element	Points awarded
<i>Generally, points were awarded for meaningful, legally founded suggestions, taking into account the case context.</i>	
<ul style="list-style-type: none"> <li>• Individual communication to the HR Commission according to Art. 1 of the 1<sup>st</sup> OP to the ICCPR               <ul style="list-style-type: none"> <li>○ Art. 6 ICCPR (right to life)</li> <li>○ Art. 7 ICCPR (freedom from torture)</li> <li>○ Art. 9 ICCPR (freedom from arbitrary arrest/detention)</li> <li>○ Art. 10 ICCPR (right to be treated with humanity)</li> <li>○ Art. 14 ICCPR (right to due process)</li> <li>○ Art. 15 ICCPR (presumption of innocence)</li> </ul> </li> </ul>	0.5 for simply mentioning the avenue with up to 3 points if well elaborated (including admissibility criteria), plus 0.5 points each for numbering and elaborating on the possibly affected rights
<p><i>Alternatively:</i></p> <ul style="list-style-type: none"> <li>• Individual communication to the CESCR according to Art. 2 of the 2<sup>nd</sup> OP to the ICESCR               <ul style="list-style-type: none"> <li>○ Art. 10 ICESCR (right to family)</li> <li>○ Art. 12 (right to health)</li> </ul> </li> <li>• Individual communication to the HR Council according to A/RES/HRC/5.1</li> <li>• Individual communication to the Committee against Torture</li> </ul>	0.5 for simply mentioning the avenue with up to 3 points if well elaborated (including admissibility criteria), plus 0.5 points each for numbering and elaborating on the possibly affected rights  If the individual communication to the HRC has already been described, points will only be given for previously uncovered rights, but not twice for the general procedure

<ul style="list-style-type: none"> <li>• Seeking redress through the African Commission for Human Rights</li> <li>• Diplomatic measures (cf. La Grand-Case)</li> <li>• Outlining similarities to the El-Masri-Case</li> </ul>	Up to 1 if well described
<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, e.g.:</i></p> <ul style="list-style-type: none"> <li>• Seeking diplomatic measures</li> <li>• Case similarity to El Masri v. former Yugoslav Republic of Macedonia</li> <li>• Due to erga omnes nature of human rights and ius cogens of torture, invoking M's rights in Australia might be possible</li> </ul>	Up to 1 point each if well argued, 0.5 if only briefly outlined