
International Human Rights

25 June 2014

Duration: 120 minutes

- Please check the number of question sheets both at receipt as well as at submission of the exam. The examination contains four pages (including this one) and three questions.

Notes on marking

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1 33 $\frac{1}{3}$ % of total points

Question 2 33 $\frac{1}{3}$ % of total points

Question 3 33 $\frac{1}{3}$ % of total points

Total 100 %

We wish you a lot of success!

Read the following excerpt of an NGO report carefully before answering the questions at the end of the text:

United States: Child Labour on Tobacco Farms

Child labour is common on tobacco farms in the United States, where children are exposed to nicotine, toxic pesticides, and other dangers. Child tobacco workers often labour 50 or 60 hours a week in extreme heat, use dangerous tools and machinery, lift heavy loads, and climb into barns several stories tall, risking serious injuries and falls. The tobacco grown on US farms is purchased by the largest tobacco companies in the world.

In the US, it is illegal for children under 18 to buy cigarettes or other tobacco products. However, US law fails to recognize the risks to children of working in tobacco farming. It also does not provide the same protections to children working in agriculture as it does to children working in all other sectors. In agriculture, children as young as 12 can legally work for hire for unlimited hours outside of school on a tobacco farm of any size with parental permission, and children younger than 12 can work on small farms owned and operated by family members. Outside of agriculture, the employment of children under 14 is prohibited, and even 14 and 15-year-olds can only work in certain jobs for a limited number of hours each day.

Tobacco farmed in the US enters the supply chains of at least eight major manufacturers of tobacco products who either purchase tobacco through direct contracts with tobacco growers or through tobacco leaf supply companies. Some of these companies manufacture the most popular brands of cigarettes sold in the US.

Tobacco is a labour-intensive crop, and interviewed children described participating in a range of tasks, including: planting seedlings, weeding, applying pesticides, harvesting tobacco leaves by hand or with machines, cutting tobacco plants with “tobacco knives” and loading them onto wooden sticks with sharp metal points, lifting sticks with several tobacco plants, and stripping and sorting dried tobacco leaves.

Many of the symptoms reported by child tobacco workers are consistent with acute nicotine poisoning, known as Green Tobacco Sickness, an occupational health risk specific to tobacco farming that occurs when workers absorb nicotine through their skin while having prolonged contact with tobacco plants. Public health research has found dizziness, headaches, nausea, and vomiting are the most common symptoms of acute nicotine poisoning. Though the long-term effects of nicotine absorption through the skin are unknown, public health research on smoking indicates that nicotine exposure during adolescence may have long-term adverse consequences for brain development. Public health research indicates that non-smoking adult tobacco workers have similar levels of nicotine in their bodies as smokers in the general population.

While pesticide exposure is harmful for farmworkers of all ages, children are more vulnerable to the adverse effects of toxic exposures as their bodies are still developing. Tobacco production involves application of a range of chemicals at different stages in the growth process, and several pesticides commonly used during tobacco farming are known neurotoxins. According to public health experts and research, long-term and chronic health effects of pesticide exposure include breathing problems, cancer, neurologic deficits, and reproductive health problems.

Most children interviewed attended school full time and worked in tobacco farming only during the summer months, after school, and on weekends. However, a few children who had migrated to the United States for work and had not settled in a specific community told that they did not enroll in school at all or enrolled in school but missed several months in order to perform agricultural work, including in tobacco farming. Some children stated that they occasionally missed school to work in times of financial hardship for their families.

Question 1

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).

Question 2

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?
- b) 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?

Question 3 is on the following page.

Question 3

Read the following text and answer the question below:

Detention and torture of suspected spy

Mr Mutombo (hereinafter “M”) is a national of the Democratic Republic of Congo (DRC) where he used to live prior to August 2007. He was captured and detained for several months in 1998 by the Congolese Rally for Democracy, a group of rebels forcefully recruiting men to overthrow the President of the DRC. M managed to escape and moved to another province of the country, fearing for his life.

In April 2002, he was arrested by the Presidential Special Police Department who accused him of being a Rwandan spy and assisting to stage a coup against the President.

M was subsequently taken to the premises of the national intelligence service, where he was mistreated and tortured by officials demanding that he confess that he had planned to kill the President and take power in the capital, Kinshasa. As well as being deprived of food and water, M also feared that he would be killed at any moment. During his detention, M was not allowed any contact with his wife and new-born daughter, who he feared were also in danger.

In July 2002, without prior notice, M was taken to the Court of State Security, accused of being a Rwandan intelligence officer. Although no evidence was presented against him and the Court did not convict him of any crime, the Court ordered that he be moved to Makala Civilian Prison.

In October 2002, as a result of growing public pressure by human rights organizations, M was released from Makala Civilian Prison. Although M had not been convicted of any crime, the release document from the prison stated that he had been imprisoned for an attempt on the security of the State. Seven days later, M left for the Republic of the Congo, the DRC’s western neighbour state.

In August 2007, M moved to Australia with his family having obtained a humanitarian visa.

According to his trauma counsellor, M now suffers from long-term problems resulting from his detention and torture, including sleep and appetite problems, as well as physical pain.

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)