

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
DEGREE OF MASTER OF LAWS IN COMMERCIAL LAW – 2024/25
SEMESTER I END EXAMINATION

Business and Human Rights– TLLM 1234

(Three Hours)

Total Number of Questions: 04

Answer any **THREE (03)** Questions and **no more**.
(Candidates will be penalised for illegible handwriting.)

1. In 2020, Global Resource Holdings (GRH), a multinational company from a European Union country, secured a 99-year concession to extract oil from the ecologically sensitive Nigaro region in the post-conflict nation of Arazika. This agreement, signed with Arazika's transitional government under questionable legislative authority, grants GRH extensive access to mineral reserves and includes broad Investor-State Dispute Settlement (ISDS) protections. In the past three years, GRH's operations have resulted in significant problems, such as the forced displacement of indigenous and farming communities without adequate consultation or compensation, contamination of water sources leading to disease outbreaks, the employment of private security forces accused of extrajudicial killings and sexual violence, and the hiring of subcontractors associated with exploitative child labor.

Internal emails have been leaked, revealing that GRH executives were aware of legal issues surrounding the concession's ratification process. They intentionally selected Arazika due to its "low regulatory resistance" and a history of judicial capture. Victims have filed civil lawsuits in the company's home jurisdiction. However, the courts have dismissed these cases based on *forum non conveniens*, suggesting that "local remedies" in Arazika are available, despite evidence of political interference in its judicial system. Meanwhile, the European National Contact Point (NCP) has initiated a mediation process based on the OECD Guidelines. In contrast, GRH's internal grievance mechanism rejects all claims on the grounds of "subsidiary autonomy."

Critically evaluate the legal and ethical responsibilities of GRH, emphasizing the potential for holding parent companies accountable under common law tort principles. Discuss the challenges victims encounter when seeking remedies in both their home and host states. Analyze the effectiveness of non-judicial grievance mechanisms, highlighting

their limitations. Consider how colonial-era concession agreements influence contemporary investment protections and the accountability of human rights.

(20 marks)

2. GlobalManufacture Ltd. (GML), a multinational corporation headquartered in Country X, operates a factory in Country Y. Reports have surfaced that the factory is involved in severe human rights abuses, including forced labor, hazardous working conditions, and suppression of worker unions in Country Y. Local NGOs have raised these issues with both the management of GML and the government of Country Y, but no substantial actions have been taken to address the abuses. Additionally, it has been discovered that GML has been involved in illegal dumping of toxic waste, leading to serious environmental and health consequences for the local population in Country Y. Despite clear evidence, the government of Country Y has failed to prosecute the corporation or its executives.

Critically discuss the corporate responsibilities of GML regarding human rights violations in Country Y. Your answer must reflect how corporate criminal liability relates to the abuses committed by GML and the potential for holding GML accountable for its actions under the legal frameworks of both Country X and Country Y. Support your answer with reference to relevant legal precedents and international standards.

(20 marks)

3. In the state of Kaluna, where governance is weak and corruption is widespread, EcoMetrix Holdings (EH), a Dutch multinational conglomerate, initiated a large-scale infrastructure project. The project aimed to develop a “sustainable” mining and energy industry in Kaluna. EH managed the project through a local subsidiary, Eco-Tech Kaluna Ltd (Eco-Tech), and partnered with Eastern Horizons Security, a private military contractor, for on-site security. In the past four years, there have been numerous human rights violations, including the mass eviction of Indigenous communities, violent suppression of protests by Eastern Horizons Security resulting in deaths and disappearances, forced labor in construction projects by abusive subcontractors, and significant environmental degradation, particularly mercury pollution, which poses a long-term health risk to local communities.

Despite being aware of the risks identified in its internal human rights impact assessments, EH continued its operations, citing public ESG reports and third-party audits for compliance. Local courts in Kaluna are ineffective due to political issues, and attempts by victims to seek justice in the Netherlands were dismissed for lack of jurisdiction. Victims and NGOs have sought assistance from various international bodies, but outcomes have been inconclusive. EH denies legal responsibility, claiming that Eco-Tech operated independently and adhered to national laws.

Critically evaluate the extent to which home states can be held legally responsible under international law for human rights violations committed by Eco-Tech. In your answer, consider the principles of extraterritorial obligations, jurisdictional challenges victims seeking remedies through foreign courts. Support your analysis with relevant legislation, case law and key international soft law instruments.

(20 marks)

4. (a) Following a catastrophic industrial explosion at a chemical plant operated by LaChem Ltd., which is 94% owned by the foreign parent company ChemGlo Inc. based in a wealthy Western state, the incident resulted in the loss of over 180 workers' lives and left hundreds more seriously injured. Investigations indicated that the company neglected to adhere to even the most basic national safety regulations. Also, the explosion led to significant pollution of the Mahaweli River, harming local ecosystems and displacing numerous farming communities. In light of public outrage, Sri Lanka's Human Rights Commission has called for legislative reforms aimed at improving state accountability in regulating harmful corporate practices.

The Sri Lankan government has appointed you as a legal expert to prepare a report on the state responsibility to protect its citizens from human rights violations perpetrated by corporate entities. Your task involves a thorough assessment of the scope and nature of the Sri Lankan government's responsibility to safeguard its citizens from such violations by corporate actors. Prepare a report advising the government.

(12 marks)

- (b) Critically examine the scope of a multinational corporation's duty to identify, prevent, mitigate and account for human rights impacts under both international frameworks and domestic laws.

(08 marks)
