

# HUMR 4140 - Human Rights Law – Take Home Exam

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## Background

Leilani Elan is thirteen years old. Five years ago, she came with her family as refugees to the State of Nadroj from the neighbouring State of Otiuiq. They live in an informal settlement on the outskirts of Turo, a rapidly growing mid-sized city of approximately 300,000 inhabitants. Leilani has not been to school in five years. Due to the public schools being under-resourced and class sizes exceeding 50, the local authority created a waiting list based on the time a child's family had lived in the area. Parents were expected to use private schooling if they could not obtain public schooling. Elan's parents are too poor to afford this option.

On 14 March 2010, Leilani's father, Mr. Elan, was arrested on suspicion of terrorism. In January 2010, a new armed conflict had broken out between the Government of Otiuiq and the Horastra ethnic minority in their country. Talks over establishing regional autonomy collapsed. Otiuiq then placed considerable pressure on the Government of Nadroj to arrest Horastrians who might be contributing to the conflict. On 28 February, an Otiuiqi Horastran suicide bomber blew themselves up outside the Nadrojian parliament protesting Nadroj support to Otiuiq.

Mr. Elan, who is a Horastrian, was placed in solitary isolation for 28 days. Prison officers placed water and bread through a hole in the door during that period but that was the only contact he had with any person. At the end of this period, he confessed to supporting the bombing operation. After an international campaign by religious and human rights organisations, Mr Elan and other Horastrians were released from jail and the charges were dropped. Since that time, Mr Elan has not been able to maintain his courier job as he suffers from a post-traumatic stress disorder.

The State of Nadroj is a middle-income country that has ratified the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol. The State's system is dualist in relation to international law and the Constitution of Nadroj includes two justiciable rights, the right to life and right to fair trial. However, cases take an average of 11 years to be decided by the court at first instance and the Supreme Court.

## Questions

*You must answer Question 1 and either one of the sub-questions in Question 2. Both questions are of equal value for the exam.*

1. The Elan family decides to bring an individual communication against Nadroj to the UN Human Rights Committee for the treatment of Mr Elan in prison and the exclusion of Leilani from local schooling. Do you think the Human Rights Committee could find a violation and order remedies? (3/4 of this answer). Would it be different if they could take their claim under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights? (1/4 of this answer).

2. Answer ONE of the following questions:

- a) The State of Elan has ratified the Second Optional Protocol to ICCPR but has not abolished the death penalty in its' domestic law. Another suspect in the 28 February bombing was found guilty of assisting the operation and has been sentenced to death. He has appealed his claim to the Supreme Court of Nadroj on the basis that the right to life in the Nadroj constitution must be interpreted in accordance with international law. You are asked to present an amicus curiae legal brief to Court on the arguments for and against relying on an international human rights convention to support a legal interpretation at the domestic level. What would be your key arguments and conclusion?

OR

- b) It is 2012, and the State of Nadroj has received a petition from the Children's Rights Coalition to ratify the newly adopted Optional Protocol to the Convention on the Rights of the Child (CRC). The State earlier ratified the CRC: This protocol allows individual complaints to the Committee on the Rights of the Child. The final text is essentially the same as the draft of August 2010 that was presented to the Human Rights Council by the Chairperson of the Working Group (see [http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/docs/ChairDraft\\_OEWG.doc](http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/docs/ChairDraft_OEWG.doc)).<sup>1</sup> You are asked by the Foreign Minister to prepare a brief on the relevant arguments for and against ratifying the protocol, including both domestic and foreign policy considerations.

OR

- c) Some argue that the international human rights system is not well-equipped to deal with the extra-territorial obligations of States or the actions of transnational corporations or intergovernmental organisations. Do you agree? Choose a particular actor or issue as an example as part of answering the question.

OR

- d) Is the international human rights legal system too oriented towards the rights of individuals? In particular, to what extent has it been able to address collective rights or claims made by either indigenous peoples or trade unions?

### **Additional Instructions**

1. In answering the questions, you are not expected to use materials not included or mentioned in the course pensum or lectures. However, you are free to use other material as long as you indicate the source where it is used in an argument.
2. Please follow the Guidelines for referencing of both cases and secondary literature. Full references are not needed for treaties.
3. Please upload your Exam in Fronter with a document name formatted in the following style: "Candidate Number – HUMR 4140 Exam".

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<sup>1</sup> You can also find discussions in the first session of the Working Group at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/13/43&Lang=E>.