**Midterm Exam – Guidance on Answers**

**Business and Human Rights (BHR)**

**Fall, 2016**

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**Question 1 (5 points):** Protect, Respect, Remedy

**Question 2 (7.5 points):** Below is a list of the core issues that could have been raised to receive all 7.5 points:

* CEO is wrong
* Human rights implicated: right to health, clean environment, possibly life (additional responses possible)
* UNGP #1 – States must protect against HR violations on their territories through “effective policies, legislation, regulations”
* UNGP #2 – States should set out the expectation that all businesses domiciled on their territories respect human rights
* UNGP #11 – a corporation’s responsibility to respect human rights exists above and beyond the host state’s ability or willingness to protect human rights
* UNGP #12 – Business responsibility to protect human rights requires “at a minimum” following the International Bill of Human Rights and ILO’s Fundamental Principles and Rights of Work (in general: following international standards, not just local legislation)
  + *I gave you guys full credit for simply saying “international standards” for human rights*
  + *For those of you who do not know what the International Bill of Human Rights is, go to:* [www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf](http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf)[this is a basic part of human rights law!]
* UNGP #13 – Businesses must avoid causing adverse human rights impacts (0.5 points) and must address such impacts when they occur (0.5 points)

**Question 3 (12.5 points):** Below is a list of the core issues that could have been raised to receive all 12.5 points:

* Human rights implicated (no need to have mentioned all, but at least a few):
  + Child labor;
  + Failure to pay wages (ILO treaties);
  + Employees fired without due process or compensation;
  + Retribution (firing) for reporting of human rights abuses;
  + State complicity in HR abuses – monitoring civil society activists;
  + Business lacks an effective internal complaint mechanism, due diligence system, and relevant human rights policies and procedures.

How should the company respond to the state?

* The company needs to dissuade the State from continuing to violate the rights of the civil society activists (the State’s explicit monitoring of the activists and possible suppression of their freedom of association and speech are *clear human rights violations*). If the company does not tell the State to stop such actions, it is committing an omission that implicates it in the State’s violation of activists’ human rights. [UNGP #13. For extra points you could raise additional UNGP like #19].
* The company should consider ending its operations in this country, given the ongoing concerns about human rights and the State’s complicity in their violations. The company should communicate this clearly to the State.

What should the company do?

* Business has an obligation to (i) address human rights impact [UNGP #11, 13] and (ii) prevent and mitigate harm caused by its foreign factories [UNGP #13]:
  + Officer for Business and Human Rights has a clear duty to address human rights violations already committed in relation to the factory employees:
    - Hiring of child laborers was contrary to International Bill of Human Rights [UNGP #12] – must provide remedies (possibly compensation)
    - Non-payment of wages was contrary to ILO’s Fundamental Principles [UNGP #12] – must provide remedies (compensation? Apology? Interest for delay in payment? Re-hiring? Many options…)
    - Firing of employees without consideration of potential hardship (in case of children) and in retaliation for their free speech was violation of their human rights [UNGP #12] – must provide remedies
  + Officer for Business and Human Rights also has a clear duty to address the State’s ongoing violation of civil society activists’ (CSAs’) rights [already discussed]
    - State violation of CSA’s rights under International Bill of Rights (incl. ICCPR)
    - Business has an obligation to mitigate State’s violation of CSAs’ rights – otherwise it is committing an omission that implicates it in the State’s violations as well [UNGP #13; for extra points you also could have mentioned UNGP #19]
    - Additionally, business may want to set up its own non-State forum to allow activists to express their concerns and receive remedies [UNGP #22]
  + Officer for Business and Human Rights must determine how to prevent similar violations in the future (many, many possible ideas for how she could do this)
* Business should have a full due diligence process in place [UNGP #17]. (Note that business duty to conduct HR due diligence does not appear to have been met until after international scandal)
* Business needs to provide remediation for all of the HR abuses that have occurred [UNGP #22]
* **Extra Points:** Business should have in place policies and processes regarding HR impact [UNGP #15]
  + Officer for Business and Human Rights needs to determine if the company has such policies and process; if not, she needs to create them and make them a priority (and make them public) across all levels of the company [UNGP #16]
* **Extra Points:** having conducted (some) due diligence in the wake of the international scandal, the business needs to conduct an impact assessment [UNGP #18] and take an appropriate course of action to mitigate and prevent future HR harm [UNGP #19]
* **Extra Points:** accurate discussion of State failures