

## **International Human Rights**

**23 June 2016**

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**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 with two sub-questions (a and b) each.

### **Notes on marking**

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

Question 1	1/3 of total points
Question 2	1/3 of total points
Question 3	1/3 of total points

**We wish you a lot of success!**

Please read the following newspaper article about a newly published report by an NGO coalition on the human rights impact of the Rio Olympic Games carefully before answering the questions at the end of the text:

***Rio Olympics linked to widespread human rights violations, report reveals***

*The 2016 Olympics have prompted widespread violations of human rights, according to a new report of alleged abuses compiled by academics and nongovernmental organisations.*

*Evictions, police violence and poor labour conditions top a long list of problems linked to this year's Games in Rio de Janeiro, claim the authors who are calling on the International Olympic Committee (IOC) to pay greater attention to human rights.*

*Their report claims that at least 4,120 families have lost their homes and another 2,486 are threatened with removal as a result of infrastructure projects associated with the 2014 FIFA World Cup and the upcoming Olympics. As a result, they say, thousands of people, many of them children, have been displaced and left – at least temporarily – unable to access education, healthcare and other social services.*

*The report further claims that teenagers have been the victims of an increase in police and army violence as a result of a struggling favela pacification program that is part of the city's efforts to prepare for mega-events. Some have been shot and killed, many wounded and countless others psychologically scarred by gunfights and tension. Among many other concerns, the report noted the disappearances of several street children who were removed from the streets in "social cleansing" operations ahead of major events.*

*The Rio city government disputes the allegations. It says that most of the displacements, with one exception, are unrelated to the World Cup and the Olympics. Instead, it says 72% of relocated families have been moved away from areas prone to floods and landslides, and 9.6% for transportation and other infrastructure projects that benefit the city as a whole. A spokesman said the city's citizens are now better off than before thanks to increased spending on healthcare and education.*

*The authors of the report counter that the social costs of mega-events outweigh the benefits, which are skewed towards the wealthier parts of the city.*

*Ahead of this year's Games, the authors of the study call on the government to halt evictions, harassment of street vendors, and "cleansing" of homeless children and adolescents. The report also urges the IOC to issue a human rights commitment and introduce monitoring systems for all stages of the Games.*

*"The IOC should ensure that the 2016 Summer Olympics do not cause or exacerbate human and child rights abuses in Rio. It is time that the IOC lives up to the values declared in the Olympic Charter," said one of the leading authors of the report.*

*The report was launched a month before the IOC is going to meet in Lausanne (Switzerland) to discuss Agenda 2020, the strategic roadmap for the future of the Olympic Movement. The governing body will discuss the fundamental principles of sport at a time when football is mired in a FIFA corruption scandal, athletics is plagued by doping revelations and the Olympics is dogged by claims of human rights violations in host countries.*

## Question 1

According to the authors providing the above report, the IOC has a unique opportunity to address the outlined problems at the Agenda 2020 meeting that is coming up in Switzerland. They think that the IOC's governing body should re-examine its long standing policies and practices to ensure that the IOC respects human rights and makes changes that address the violations documented in this report. Further, the IOC should help to provide adequate remedies to those who have already suffered violations because of the Rio city government's actions mentioned in the report.

In order to provide the IOC with a coherent and constructive follow-up document, the NGO coalition turns to you – a human rights lawyer – seeking guidance in order to legally phrase their concerns and to make suggestions to be submitted to the IOC, reminding them of their international responsibilities.

- a) **How would you “translate” the issues outlined in the above article into human rights language?**
- b) **What concrete measures could the IOC adopt in order to mitigate current human rights infringements in Rio and to prevent issues related to future editions of the Olympic Games?**

## Question 2

Despite its rather constructive approach which goes beyond the simple “naming and shaming” of many of the other critical observers, the NGO coalition was afraid that its report might not get the desired attention. In fact, the IOC has not reacted to the report at all even though it was sent to it directly through official channels.

Not willing to give up so easily, the NGO coalition again turns to you, asking for legal advice on how to bring these issues to the attention of the IOC via more institutionalized means.

- a) **What course(s) of action would you suggest to the NGO coalition?**

In addition to tackling the IOC about the reported human rights issues, the NGO coalition decides to pursue the more straightforward way of approaching the state government. Since it had already tried to raise the attention of the Brazilian government in the context of the 2014 FIFA World Cup through similar reports without success, they would like to know from you if there are any international human rights instruments for pressuring the Brazilian government to act according to its international obligations and how to use them effectively.

- b) **What would be your answer to the NGO coalition?**

## Question 3

The Olympic Charter states that “sport is a human right.” It elevates the principle of human dignity and proclaims, “The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.”

In the eyes of the NGO coalition, the IOC has a serious problem: how to bridge the gap between these lofty words and the ugly reality on the ground.

One particularly enthusiastic journalist working for the NGO coalition suggests that with these strong commitments enshrined in the IOC's charter, it should obviously be quite easy to hold the IOC accountable for the many human rights infringements caused by the Olympics and thus also by the IOC. Before launching an article on this however, he wants to consult with somebody who has a strong legal background just to be on the safe side.

**a) How would you reply to the journalist?**

The IOC has become rather nervous after having heard rumours about possible legal claims based on its charter. Its governing body is now hastily considering to weaken the language and to remove terms such as "human rights" from its charter, which appears to them to be a simple way out of this inconvenient attention. The internal discussion about this possible measure however was rather controversial, mainly due to the fear of bad publicity in case of a charter revision. Since you have proven to be a neutral expert in the field, they now turn to you for general legal advice and a brief risk analysis.

**b) What would be your advice to the IOC's governing body?**

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## International Human Rights

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### Outline Solutions

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#### Question 1

According to the authors providing the above report, the IOC has a unique opportunity to address the outlined problems at the Agenda 2020 meeting that is coming up in Switzerland. They think that the IOC's governing body should re-examine its long standing policies and practices to ensure that the IOC respects human rights and makes changes that address the violations documented in this report. Further, the IOC should help to provide adequate remedies to those who have already suffered violations because of the Rio city government's actions mentioned in the report.

In order to provide the IOC with a coherent and constructive follow-up document, the NGO coalition turns to you – a human rights lawyer – seeking guidance in order to legally phrase their concerns and to make suggestions to be submitted to the IOC, reminding them of their international responsibilities.

- a) How would you “translate” the issues outlined in the above article into human rights language? (5 points max.)**

Element	Points awarded
<i>Relevant human rights outlined and explained, e.g.:</i>	0.5 points per applicable right mentioned and linked to the case, including the reference to the respective legal source. Up to 1 point for putting a specific human right into case-context in a well elaborated manner.
<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>	

**b) What concrete measures could the IOC adopt in order to mitigate current human rights infringements in Rio and to prevent issues related to future editions of the Olympic Games? (5 points max.)**

<b>Element</b>	<b>Points awarded</b>
<i>Reasonable potential short- and long-term measures that the IOC could aim for, e.g.:</i>	0.5 points per measure mentioned and linked to the case, including the reference to the respective legal / soft law source. Up to 1 point for substantially elaborated and meaningful suggestions.
<ul style="list-style-type: none"> <li>• Introduce an IOC-specific human rights document / policy which could potentially be signed by the participating countries in order to adhere to</li> </ul>	
<ul style="list-style-type: none"> <li>• Collaboration with the ILO for labour-related issues</li> </ul>	
<ul style="list-style-type: none"> <li>• Reach out to the authors of the report to gain more insight beyond what is written within the findings</li> </ul>	
<ul style="list-style-type: none"> <li>• Contact local NGOs to verify the infringements</li> </ul>	
<ul style="list-style-type: none"> <li>• Make use of the potentially big leverage of the IOC by threatening to move the location to another country/city</li> </ul>	
<ul style="list-style-type: none"> <li>• Internal measures, e.g. setting internal guidelines, drafting a clear HR strategy, putting into place internal grievance mechanisms</li> </ul>	
<ul style="list-style-type: none"> <li>• Introducing HR provisions with sub-contractors of the IOC</li> </ul>	
<ul style="list-style-type: none"> <li>• Appointing an independent officer / equivalent to an ombudsperson</li> </ul>	
<ul style="list-style-type: none"> <li>• Specific application of the relevant UN Guiding Principles (mapping the initial HR situation, writing a policy statement, HR impact assessment, Implementing due diligence, Guarantee access to remedy, tracking performance of the efforts made)</li> </ul>	0.5 points per measure mentioned if linked to the case, less if only copy/pasted from the UNGPs.

## **Question 2**

Despite its rather constructive approach which goes beyond the simple “naming and shaming” of many of the other critical observers, the NGO coalition was afraid that its report might not get the desired attention. In fact, the IOC has not reacted to the report at all even though it was sent to it directly through official channels.

Not willing to give up so easily, the NGO coalition again turns to you, asking for legal advice on how to bring these issues to the attention of the IOC via more institutionalized means.

**a) What course(s) of action would you suggest to the NGO coalition? (5 points max.)**

<b>Element</b>	<b>Points awarded</b>
<i>Relevant potential measures outlined and explained, e.g.:</i>	0.5 per element briefly outlined and applied to the case, up to 1 for each meaningful strategy if well developed and contextualized.  Points for listing legal avenues targeting Brazil as a state that were expected under the next question (2b) are only awarded once.
<ul style="list-style-type: none"> <li>• Outlining the problem of the unclear legal personality of the IOC in international (human rights) law and the difficulties this encompasses</li> </ul>	
<ul style="list-style-type: none"> <li>• Raising public awareness due to the rather large coalition and its potentially rather large influence</li> </ul>	
<ul style="list-style-type: none"> <li>• Contacting the National Contact Point (either assuming that Brazil is OECD member or that it adheres to the OECD Declaration)</li> </ul>	
<ul style="list-style-type: none"> <li>• Potential national grievance mechanisms in the home country of the IOC</li> </ul>	
<ul style="list-style-type: none"> <li>• Consider claims / “class action” against the IOC / Government / individual companies to be brought before Brazilian domestic courts, potentially including provisional measures to be issued by the judges</li> </ul>	
<ul style="list-style-type: none"> <li>• Check if the IOC already has an internal grievance mechanism</li> </ul>	
<ul style="list-style-type: none"> <li>• Generally outlining the challenge that a private actor is infringing human rights if linked to specific measures</li> </ul>	

In addition to tackling the IOC about the reported human rights issues, the NGO coalition decides to pursue the more straightforward way of approaching the state government. Since it had already tried to raise the attention of the Brazilian government in the context of the 2014 FIFA World Cup through similar reports without success, they would like to know from you if there are any international human rights instruments for pressuring the Brazilian government to act according to its international obligations and how to use them effectively.

**b) What would be your answer to the NGO coalition? (5 points max.)**

<b>Element</b>	<b>Points awarded</b>
<i>Meaningful avenues / courses of action, e.g.:</i>	0.5 per measure briefly outlined and applied to the case, up to 1 for each meaningful avenue if well developed, contextualized and evaluated.
<ul style="list-style-type: none"> <li>• Possibility to invoke affected human rights in domestic court</li> </ul>	
<ul style="list-style-type: none"> <li>• Individual communication to the Committee on the Rights of the Child, to the Human Rights Committee and/or the CESCR (assuming that Brazil has ratified the Ops)</li> </ul>	
<ul style="list-style-type: none"> <li>• Compliant procedure to the Human Rights Council according to resolution 5/1</li> </ul>	
<ul style="list-style-type: none"> <li>• Considering and outlining a number of regional instruments such as the Inter-American Court of Human Rights</li> </ul>	
<ul style="list-style-type: none"> <li>• Relating to Alien Tort Claims Act case law from the US</li> </ul>	
<ul style="list-style-type: none"> <li>• OECD National Contact Points</li> </ul>	

**Question 3**

The Olympic Charter states that “sport is a human right.” It elevates the principle of human dignity and proclaims, “The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.”

In the eyes of the NGO coalition, the IOC has a serious problem: how to bridge the gap between these lofty words and the ugly reality on the ground.

One particularly enthusiastic journalist working for the NGO coalition suggests that with these strong commitments enshrined in the IOC’s charter, it should obviously be quite easy to hold the IOC accountable for the many human rights infringements caused by the Olympics and thus also by the IOC. Before launching an article on this however, he wants to consult with somebody who has a strong legal background just to be on the safe side.

**a) How would you reply to the journalist? (5 points max.)**

<b>Element</b>	<b>Points awarded</b>
<i>Reasonable legal considerations which are of importance for the journalist and his question about accountability of the IOC, e.g.:</i>	0.5 points per meaningful consideration mentioned and linked to the case, up to 1 for in-depth elaboration.
<ul style="list-style-type: none"> <li>• Clarifying / discussing that the term human rights accountability implies a legal obligation / enforceability dimension</li> </ul>	
<ul style="list-style-type: none"> <li>• Clarifying / discussing the legal nature of the IOC’s charter</li> </ul>	
<ul style="list-style-type: none"> <li>• Clarifying / discussing the legal personality of the IOC as an actor / possible subject under international law</li> </ul>	
<ul style="list-style-type: none"> <li>• Discussion about whether the “right to sport” can be considered to be a genuine human right as it is not specifically mentioned under the UDHR, ICCPR or the ICESCR</li> </ul>	
<ul style="list-style-type: none"> <li>• Pointing out the fact that the direct actions infringing human rights are generally coming from the state of Brazil which might make it more difficult to hold the IOC accountable</li> </ul>	
<ul style="list-style-type: none"> <li>• Discussion about whether the Olympics in Rio could be seen as a subsidiary of the IOC</li> </ul>	
<ul style="list-style-type: none"> <li>• Regardless of the charters exact legal nature, the IOC has due diligence responsibilities</li> </ul>	
<ul style="list-style-type: none"> <li>• Awareness of the domestic law and specific human rights risks of the Olympic games’ locations</li> </ul>	

The IOC has become rather nervous after having heard rumours about possible legal claims based on its charter. Its governing body is now hastily considering to weaken the language and to remove terms such as “human rights” from its charter, which appears to them to be a simple way out of this inconvenient attention. The internal discussion about this possible measure however was rather controversial, mainly due to the fear of bad publicity in case of a charter revision. Since you have proven to be a neutral expert in the field, they now turn to you for general legal advice and a brief risk analysis.

**What would be your advice to the IOC's governing body? (5 points max.)**

<b>Element</b>	<b>Points awarded</b>
<i>Reasonable legally relevant considerations, e.g.:</i>	
<ul style="list-style-type: none"> <li>• More detailed thoughts about possible reputational risks without a gain in legal protection if these terms were to be removed</li> </ul>	0.5 points per meaningful consideration mentioned and linked to the case, more for in-depth elaboration.
<ul style="list-style-type: none"> <li>• Removing the human rights language from the charter does not free the IOC from its obligations / IOC cannot be held responsible for human rights violations based on a commitment in its charter</li> </ul>	Elements mentioned under the above question might instead be awarded points here if suitably adapted to the form of advice for the IOC.
<ul style="list-style-type: none"> <li>• IOC should be proactive in identifying and working on its human rights challenges e.g. by following the UN GPs / OECD Guidelines as an active advocate for human rights, it could promote awareness on a global scale to both generate positive PR and reduce legal liability risks</li> </ul>	
<ul style="list-style-type: none"> <li>• With its funds, the IOC could educate its partners on HR issues</li> </ul>	
<ul style="list-style-type: none"> <li>• Instead of revising the charter as suggested, the IOC should rather attempt to come into conformity with the obligations set therein</li> </ul>	
<ul style="list-style-type: none"> <li>• IOC could issue a public statement clarifying the programmatic ideal of the charter</li> </ul>	
<ul style="list-style-type: none"> <li>• Taking into account more recent developments and the ongoing momentum about non-state-actors and human rights, it is conceivable that the IOC is going to fall under human rights accountability in the future, which is why it might be smart to take a lead and co-shape these developments now</li> </ul>	