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Резюме

Грицик А. С. Відповідальність у разі невиконання чи неналежного виконання умов шлюбного договору.

У даній статті звертається увага на наявність підстав для відповідальності у випадку невиконання чи неналежного виконання умов шлюбного договору, вказується на те, що зазначені підстави можуть бути передбачені цивільним, сімейним законодавством та безпосередньо самим шлюбним договором. Акцентується увага на тому, що шлюбним договором можливо передбачити відповідальність за завдану як матеріальну, так і нематеріальну (моральну) шкоду постраждалій стороні.

Ключові слова: шлюбний договір, відповідальність, невиконання, неналежне виконання, зобов'язання.

Резюме

Грицик А. С. Ответственность в случае невыполнения или ненадлежащего выполнения условий брачного договора.

В данной статье обращается внимание на наличие оснований для ответственности в случае неисполнения или ненадлежащего исполнения условий брачного договора, указывается на то, что перечисленные основания могут быть предусмотрены гражданским, семейным законодательством и непосредственно самим брачным договором. Акцентируется внимание на том, что брачным договором возможно предусмотреть ответственность за причиненный как материальный, так и нематериальный (моральный) вред пострадавшей стороне.

Ключевые слова: брачный договор, ответственность, неисполнение, ненадлежащее исполнение, обязательство.

Summary

Grytsyk A. Liability in case of non-fulfillment or not proper fulfillment of the marriage contract.

This article draws attention to the existence of grounds for liability in case of failure or improper execution of the marriage contract, indicates that these reasons may provide for civil, family law and directly by the marriage contract. Special attention is paid to the fact, that the marriage contract may provide for liability for both material and non-material (moral) harm to the injured party.

Key words: marriage contract, responsibility, failure, improper performance obligations.

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IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS IN AGRIBUSINESS WITH RESPECT TO LESSONS IN EXTRACTIVE SECTOR

1. INTRODUCTION

Human rights are basic standards aimed at securing dignity and equality for all. They are universal standards that express the “recognition of the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world”.¹ Human rights are universal, indivisible and inalienable.

Globalization increased the impact of multinational and transnational corporations on human rights. Over the past years, human rights have entered in the discourse on Corporate Social Responsibility and Sustainability. However, capacities of some states to properly regulate and prevent possible adverse consequences that business activity may bring to human rights has not kept up with equal pace.² Individuals do not enjoy adequate protection if corporate activity leads to negative impacts because the law and its enforcement are not adequate.

Respect to human rights, corporate social responsibility, and sustainability, can help companies create value. Sustainable business models appear where societal and business goals coincide.³ Implementation UN Guiding Prin-

principles on Business and Human Rights in the extractive sector have demonstrated how this can be done in agribusiness.

2. HUMAN RIGHTS VIOLATIONS IN AGRIBUSINESS

Transnational Agribusinesses with their abundant capitals have a growing influence on the agriculture and agricultural policies of nations around the globe.⁴ They allocate labor-intensive processes to low-wage countries, environmentally difficult processes to countries with lenient environmental regulations, and capital-intensive processes to their countries. Further, they seek excess profits by pursuing various cost-reducing or profit-increasing methods.

By International Labor Organization (ILO), the agricultural sector employs an estimated 1.3 billion workers worldwide; that is half of the world's labor force.⁵ Regarding fatalities, injuries, and work-related illhealth, it is one of the three most hazardous sectors of activity (along with construction and mining).⁶ According to ILO estimates, at least 170,000 agricultural workers are killed each year. Workers in agriculture run twice the risk of dying on the job compared with workers in other sectors.⁷ There are numerous of human rights violations which still exist in the agricultural sector: labor rights abuses, including child labor, hours and wages, and human trafficking; the right to water and sanitation; the right to food; indigenous people's rights violations, etc. This paper will discuss the acutest cases of human rights abuses in the agricultural sector.

1/ Mato Grosso do Sul in Brazil case

Mato Grosso do Sul has the second largest indigenous population in Brazil.⁸ It is found with worst indices of demarcated lands and with the highest indices of human rights violations as a result of the systematic omission of the public powers of the government in complying with and respecting the determinations stipulated in Article 231 of the Federal Constitution of 1988 and international treaties that Brazil has signed.⁹

At present the Kaiowá, Guarani, Terena, Guató, and Kinikinau Ofayé indigenous lands listed on the map, total just under 140,000 hectares 12 corresponding to 0.39 % of the territory of southern Mato Grosso do Sul.¹⁰ Of these lands little more than 50 % are in sufficient possession of the indigenous peoples, that is, approximately 75,000 ha.¹¹ The rest, a good part of them, under court order, are still in possession of various types of rural producers and related agribusiness companies.

Report on Violence against Indigenous Peoples in Brazil indicated an increase in violations of human rights in general and, specifically, in suicide and murder cases¹². In the year of 2014, there were 135 suicides, most of them committed by youngsters. Forty-eight of those cases happened in Mato Grosso do Sul alone. Considering records from between 200 and 2014, only in that state, we find an alarming number of 707 suicides. The cases of murder are also very serious. In 2014, 138 were registered, many of which on account of the land conflict, with the purpose of curbing the fights and frightening indigenous leaders.

The federal executive branch has been ceding to pressures from agribusiness to not promote efficiently the solution to the demands for demarcation; and human rights violations. For example, during the dominance of the Cia Matte Laranjeira company, until the decade of 1940, in the Colônia Agrícola Nacional de Dourados, the CAND, which began in 1943, – there is impressive documentation attesting to the criminal omission of the public organs regarding the crises of the villages affected by the CAND. This is also the case in the subsequent implantation of the agribusiness projects, especially as of 1950.¹³

Since October 2015 more than 90 national and international social movement organizations, NGOs, government agencies support the Boycott Campaign to the purchase and consumption of products from the Mato Grosso do Sul, convened by the Conselho do Povo Terena and Conselho Aty Guassú do Povo Guarani-Kaiowá.¹⁴ However, it is not enough. Agribusinesses in Brazil should take steps to implement “Protect, Respect and Remedy” Framework to respect human rights of indigenous people.¹⁵ It will re-establish companies' relations with indigenous people; rebuild companies' reputation and avoid litigation costs withdrawal.

2/ Thailand's shrimps' case

Shrimp is the most-loved seafood in the U.S., with Americans downing 1.3 billion pounds every year, or about 4 pounds per person.¹⁶ Thailand's shrimp made its way into the supply chains of major U.S. food stores and retailers such as Wal-Mart, Kroger, Whole Foods, Dollar General and Petco, along with best-known seafood brands and pet foods, including Chicken of the Sea and Fancy Feast, which are sold in grocery stores from Safeway and Schnucks to Piggly Wiggly and Albertsons; restaurants such as Red Lobster and Olive Garden. Thus, Thailand quickly dominated the market and now exports nearly half of its supply to the U.S.

At the same time, human trafficking, forced labor, debt bondage as well as slavery are common for the seafood industry of Thailand. The Thai Frozen Foods Association lists about 50 registered shrimp sheds in the country. Tracking shipments from the Gig Peeling Factory found major slave-peeled shrimp exporters: N&N Foods, owned by one of the world's largest seafood companies, Tokyo-based Maruha Nichiro Foods; Okeanos Food, a subsidiary of Thai Union; Kongphop Frozen Foods and The Siam Union Frozen Foods, which have customers in the U.S., Canada, Europe, Asia and Australia.

However, hundreds more operate in Samut Sakhon, the country's leading shrimp processing region where human rights violations are common. An International Labor Organization report estimated 10,000 migrant children aged 13 to 15 work in this city. Another U.N. agency study found nearly 60 percent of Burmese laborers toiling in its seafood processing industry were victims of forced labor.

In the Gig shed, employees' salaries were pegged to how fast their fingers could move. Tin Nyo Win and his wife peeled about 175 pounds of shrimp for just \$ 4 a day, less than half of what they were promised. A female Thai manager, who slapped and cursed workers, often cut their wages without explanation.

“We had to get up at 3 in the morning and then start working continuously,” said EaeHow, 16, whose arms were a patchwork of scars from infections and allergies caused by the shrimp. “We stopped working around 7 in the evening. We would take a shower and sleep. Then we would start again.” Lunch breaks were only 15 minutes, and migrants were yelled at for talking too much. Several workers said a woman died recently because she didn’t get proper medical care for her asthma. Children never went to school and began peeling shrimp just an hour later than adults.

In response to human rights violations in the seafood industry, the companies that ended up being the face of slave-produced shrimp say they were not aware of the working conditions involved in their shrimp processing chain, and that they abhor the forced-labor practices.¹⁷ For example, Thai Union admitted that it hadn’t known the source of all its shrimp, and sent a note outlining corrective measures to U.S. businesses.¹⁸ “We were concerned that, despite regular audits, it is hard to guarantee that all external preprocessors were adhering to our code of conduct,” Thai Union CEO Thiraphong Chansiri said in a statement. The company promised to use in-house labor exclusively.

According to the “Protect, Respect and Remedy” Framework, business enterprises should avoid causing or contributing to adverse human rights impacts through their activities, mitigate adverse human rights impacts that are directly linked to their operations.¹⁹

However, no real steps except promises were made by the companies. It is recommendable that

Wal-Mart, Kroger, Whole Foods, Dollar General, Petco, Chicken of the Sea, Fancy Feast, Red Lobster and Olive Garden stop buying from Thailand until the situation with human rights violations in seafood industry got fixed.

3/ Agricultural workers in Mexico case

Mexican mega-farms export to the U.S. reached \$7.6 billion in the last decade.²⁰ At the same time, according to the Global Slavery Index 2014, there are currently an estimated 266,900 people in modern slavery in Mexico, with the most vulnerable populations being indigenous, migrants, and children.²¹ There are thousands of agricultural workers in Mexico who suffer daily from their human rights abuses (forced labor, harsh working and living conditions, violations of human rights of indigenous people, child labor law violations, etc.).

Bioparques de Occidente is an example of Mexico’s largest tomato exporters and has mega-farms in both Jalisco and Sinaloa.²² It sells under the “Kaliroy” brand to U.S. retailers including Walmart, Albertsons, and Safeway. The information on Bioparques, human rights violations, came to light on June 11, 2013, from three workers successfully escaped and notified authorities in Guadalajara about it. After that was found that Bioparques farm laborers are trapped for months at a time in rat-infested camps, often without beds and sometimes without functioning toilets or a reliable water supply; camp bosses illegally withhold wages; those who seek to escape their debts and miserable living conditions have to contend with threats of violence from camp supervisors.²³

The State Attorney General of Jalisco descended on the farm, arresting people who were charged with human trafficking. Bioparques also received \$700,000 in penalties for violating health and labor laws. The State Attorney General has yet to comment on the status of a case of the Bioparques camp, and the World Bank has not withdrawn financial support of the Corporation.²⁴ However, some of Bioparques’ retailers have responded, such as Walmart, which stated that it would no longer purchase from that farm. Nevertheless, as Marosi writes, those responsible for the agribusiness human rights violations and deplorable conditions continue to evade justice. “When the mistreatment of the workers at the camp was finally exposed, Mexican authorities made arrests, imposed fines and promised to make an example of the company. A year and a half later, however, the case of Bioparques speaks more to the impunity of Mexican agribusiness than to accountability”.

3. LESSONS OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS IMPLEMENTATION IN EXTRACTIVE SECTOR

Extractive sector is one of the most powerful, wealthiest and commercially viable in the world. At the same time, its profit depends on the natural resources of the country where this business operates. The impact of extractive operations on citizens, who ultimately own these resources, posed a significant source of reputational, legal and operational risk. It led to reputational damage, losses of social license to operate, etc. However, extractive companies found ways to re-establish their relations with stakeholders and rebuild companies’ reputation using “Protect, Respect and Remedy” Framework.²⁵ That is why; it is recommendable to learn lessons of UN Guiding Principles on Business and Human Rights implementation in extractive sector to implement it successfully in agribusiness.

1/ Case of Shell Oil in Nigeria

The Shell Petroleum Development Company (SPDC) and its joint-venture partners – notably the Nigerian National Petroleum Corporation – have earned billions of dollars from the oil extracted from the land of the Ogoni in the Niger since 1956.²⁶ At the same time, companies’ activities have had a devastating impact on the region’s environment.²⁷ Oil spills, gas flaring, and deforestation have stripped the land of its environmental resources, destroying the subsistence farming and fishing based economy of the Ogoni. Nigerian Government and Shell Corporation was engaged in egregious human rights abuses and violations of the Ogoni people, resulting in forcibly displaced communities, destruction of homes and looting property, physical injuries, and extrajudicial killings of community members.²⁸

Ken Saro-Wiwa, founding member and president of the Movement for the Survival of the Ogoni People (MOSOP) brought worldwide attention to the human rights violations committed against the Ogoni through international campaigning and his poignant writing.²⁹ He was nominated for a Nobel Prize and awarded the Right Livelihood Award and the Goldman Prize for his environmental and human rights activism. In response to growing Ogoni opposition, Shell, and the Nigerian government coordinated a public relations campaign to discredit the movement,

falsely attributing airplane hijackings, kidnapping and other acts of violence to Ken Saro-Wiwa and MOSOP. Shell was involved in the development of the strategy that resulted in the unlawful execution of the Ogoni Nine.

On March 14, 1996, by the Social and Economic Rights Action Committee (SERAC) of Nigeria and The Center for Economic and Social Rights (CESR) on behalf of the people of Ogoniland brought the case to African Commission.³⁰ They alleged that the state of Nigeria was in violation of a series of articles of the African Charter on Human and Peoples Rights. The Commission found Shell liable for its negligence operations, resulting in environmental degradation, which in turn led to community dispossession of their lands affecting their livelihoods. The Commission also found that community members were vulnerable to health risks and complications because of land contamination from Shell's activities.

In the same year, one more case was brought under the Alien Tort Statute and Torture Victim Protection Act by Center for Constitutional Rights (CCR), Earth Rights International (ERI), and other human rights attorneys to the United States District Court for the Southern District of New York.³¹ On the eve of the trial, the lawsuits were settled for \$15.5 million in damages.

After that, Shell launched a public relations campaign to repair its negative image among customers and investors in western countries. It re-introduced itself as a company with human rights, social responsibility, and sustainable development at the core of its values and practices. Shell has been closely involved in the Global Compact in 2007. It worked together with Dutch network in a "Business & Human Rights Initiative". This initiative was aimed to support and implement "Protect, Respect and Remedy" Framework.

However, in 2008 and 2009 Shell continued to demonstrate that it has failed to learn valuable lessons. There were several pipeline spills which led to environmental damages and human rights violations. The 40,000 residents of the Bodo Community primarily relied on fishing and their way of life and source of livelihoods has been destroyed for years to come.³² Finally, six years after two oil spills destroyed thousands of livelihoods in the Bodo area in southeast Nigeria, Shell has agreed to \$84 million settlement with residents of the Bodo community in the Niger Delta for two oil spills.³³

This case shows how not respecting human rights can harm company's reputation and brand image. Human rights abuses lowered Shell's employee morale, restricted access to equity capital markets as a result of concerns of Social Responsible Investors, and led to strikes. From a cost perspective, abusing human rights increased withdrawal of financing, litigation, and project financing costs.

An important lesson for Shell was that corporate engagement must set out clear company value statements (e.g. business principles, code of conduct) with unambiguous deliverables. These statements should work and explicitly respect for human rights and endorse values such as integrity, honesty, and respect for people. These values should be strikingly similar to UN "Protect, Respect and Remedy" Framework.

2/ Case Tullow Oil in Kenya

Tullow Oil is a multinational oil and gas exploration company headquartered in London, with commercial oil basins in Ghana, Uganda, and Kenya.³⁴ In October 2013, Tullow had to temporarily suspend drilling operations on two blocks in northwest Kenya, following local community demonstrations, including a break-in at one of the sites.³⁵ The local Turkana people demanded more employment and voiced concerns over the company's use of outside staff and contractors.³⁶ Tullow's deputy general manager Sid Black said at the time: "the amount of financial losses we have due to the suspension of our work [...] is quite substantial".³⁷

After these events, the company provided an immediate public response.³⁸ It emphasized the importance of relationships with local communities and explained that it employed more than 800 local people out of its total of 1,400 employees. Tullow held dialogues with local community leaders, as well as the regional and national government. The company subsequently signed a Memorandum of Understanding with the Kenyan government to establish a safe, secure and sustainable environment in Turkana County supportive of petroleum operations.³⁹ The government agreed to provide enhanced security to the company, while Tullow agreed to ensure that the Turkana communities would be consulted throughout and benefit from the operations. Because of this, the company has increased social investment, trained locals, and now reserves part of the tenders for locals, including women and young people.⁴⁰

Tullow Oil explained not only how it responded to the incident and investigated the issues that led up to the work stoppage but also spoke about the lessons that had been learned. Tullow Oil reported that it had missed key signals ahead of the event, which could have helped prevent the incident. After the incident, Tullow Oil modified numerous aspects of its operations in Kenya. For instance, the company has established local field offices staffed by local Turkana people, which serve as points of contact for the local communities to access information and register grievances or concerns. In total, the community stakeholder engagement team in Kenya was increased to 36 staff. Tullow Oil and its partners have invested over \$ 2.73 million in social projects in Kenya, including sponsorship of Kenyan scholars on the Tullow Group Scholarship Scheme. This budget has almost doubled for 2014.

This case shows how the company could repair its reputation using "Protect, Respect and Remedy" Framework.⁴¹ Local problems often ask for local solutions, especially where it concerns the rights of communities and workers. Tullow Oil integrates grievance mechanism in stakeholder management which added a substantial level of accountability to the company.

3/ Case of Sakhalin Energy in Russia

Sakhalin Energy Investment Company Ltd. (SEIC) is developing the Piltun-Astokhskoye oil field and the Lunskoye gas field off the north-eastern coast of Sakhalin. Its activities include production, transportation, processing, and marketing of oil and natural gas.⁴²

According to the SwedWatch Report SEIC has dumped dredging material in the middle of a biologically sensitive bay, let out drilling waste in the sea, caused environmental damage by trench crossing of pipelines in rivers during the spawning season and gone through with installing the concrete basements of a platform very close to the only known feeding area of the threatened Western Pacific Gray Whale.⁴³ Moreover, SEIC together with other leading oil and gas operators took indigenous peoples land over by the construction of the pipelines, made storage of pipes on their graveyards.

In January 2005, the indigenous peoples organized a protest directed towards the main oil operators in the Nogliki region: Shell, Exxon, Rosneft and SEIC (shareholders include: OAO Gazprom, Shell, Mitsui, Mitsubishi). The protests got a lot of attention both locally and internationally.

After that, in 2006, SEIC started consultation with the four indigenous groups – (Nivkhi, Uilta, Evenki, and Nanai). It led to adoption Sakhalin Indigenous Minorities Development Plan (SIMDP) which seeks to mitigate negative project impacts and to share project benefits.⁴⁴ Designing and implementing the SIMDP, including a Grievance Procedure, was done in consultation with the indigenous peoples.⁴⁵ SIMDP Grievance Procedure includes six stages: receipt of grievance; assessment, registration and assignment of the responsible person; acknowledgment of grievance receipt; investigation and settlement; close-out; and reporting and monitoring.⁴⁶ A special committee of only indigenous representatives, elected during public meetings, makes decisions regarding how SIMDP funds are used.⁴⁷ SEIC will allocate \$312,000 annually for five years (2011–2015) for the purpose of implementation of projects under the Second Five-Year Development Plan.⁴⁸

SEIC also paid attention to the preservation of indigenous languages and culture.⁴⁹ Some of the projects included: publication of the first ABC book of the Uilta language; a series of books published, including the Tales of the Northern Country for the Children of Sakhalin in Nivkh and Russian and a Cultural Heritage of the Peoples of the Russian Far East series; production of Quiet Songs of Ancestors with Nivkh folk songs; a number of language books and dictionaries have been developed and published in native languages including Uilta, Nivkh, and Russian. A separate joint project on Sakhalin Energy and the Russian Office of the UN High Commissioner for Human Rights is publishing the UN Universal Declaration of Human Rights and the UN Declaration on the Rights of Indigenous Peoples in Sakhalin Indigenous languages.⁵⁰

In 2009 SEIC joined UN Global Compact and agreed to follow its ten fundamental principles in the field of human rights, labor relations, environmental protection, and anti-corruption.⁵¹ Moreover, the company respects and recognizes human rights set out in the following documents: UN Universal Declaration of Human Rights; Basic conventions of the International Labor Organization; UN Guiding Principles on Business and Human Rights; Principles of the UN Global Compact; Guidance on Social Responsibility, ISO 26000; and Voluntary Principles on Security and Human Rights.⁵² SEIC received the main award in the all-Russian Corporate Philanthropy Leaders contest in nomination The Best Program for Corporate Philanthropy Policy and Company's Social Investments Principles.⁵³

This case shows the importance for the companies to adopt responsible business practices based on “Protect, Respect and Remedy” Framework.⁵⁴ It will avoid damage to the company, increase access to investment and capital, improve relations with stakeholders, and contribute to indigenous people through social investment programs.

4. RECOMMENDATIONS

Company stakeholders, ranging from employees and customers to investors and governments, expect and demand that companies either in the extractive or agriculture sector will integrate human rights into their business practices. Based on UN Guiding Principles on Business and Human Rights and lessons learned from implementation “Protect, Respect and Remedy” Framework in the extractive sector there are some main guidance points of its implementation in agribusiness:

1/ *Responsible business practices*

Mere compliance with the law does not always guarantee smooth operations for companies.⁵⁵ That is why agribusiness should use a pro-active approach and integrate human rights into their business practices based on “Protect, Respect and Remedy” Framework, Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work.⁵⁶

2/ *Clear company value statements*

Corporate engagement must set out clear company value statements (e.g. business principles, code of conduct) with unambiguous deliverables. These statements may state explicit respect for human rights and/or endorse values such as “integrity,” “honesty,” “decency,” “respect for people,” which are strikingly similar to the values embedded in the human rights framework, including “Dignity,” “equality” and “respect.” These values should be remarkably similar to UN “Protect, Respect and Remedy” Framework.⁵⁷

3/ *Grievance Mechanism*

Grievance mechanism has a lot of benefits for the agribusiness. It sets things right when abuse has occurred. Moreover, it serves as an early warning system. Grievance mechanism creates a positive attitude with company stakeholders. This, in turn, may give the company the benefit of the doubt when an accident or other disaster strikes out of the enterprise's control. Local problems often ask for local solutions, particularly when it concerns the rights of indigenous people, communities, and workers. It is recommendable for agribusiness to integrate grievance mechanism in stakeholder management which may add substantial level of accountability to the company.

4/ *Due Diligence*

The appropriate corporate response to manage the risk of infringing the rights of other is to do human rights due diligence.⁵⁸ There are several core suggestions for implementing human rights due diligence. First, human rights risks should not be weighed according to the employee risks and not just to the company. Second, agribusiness cannot compensate human rights abuses by building medical centers or schools. It could be a part of community relations initiative improvement. Agribusiness should keep a human rights responsibility baseline wherever it operates.⁵⁹ Third, agribusiness should demonstrate that it respects human rights through the companies' impacts and efforts to address potential human rights violations.

5/ Transparency

Agribusiness should be transparent through open dialogue with stakeholders, communities; provide opportunities to interact with the company; and complaints mechanisms.⁶⁰ "Because the main purpose of human rights due diligence is enabling companies to demonstrate that they respect rights, a measure of transparency and accessibility to stakeholders will be required".⁶¹

CONCLUSION

Agribusiness, regarding fatalities, injuries, and work-related illhealth, is one of the three most hazardous sectors of activity (along with construction and mining).⁶² It remains a challenge to embed "Protect, Respect, and Remedy" Framework in its day-to-day operations.⁶³

There is a hope that lessons from the UN Guiding Principles on Business and Human Rights implementation in extractive sector will help agribusiness and its investors to understand better how enhanced engagement and open dialogue can make a significant contribution to the people and company.

Responsible business practices, clear company value statements, grievance mechanism, due diligence, and transparency are main guidance points of UN Guiding Principles on Business and Human Rights implementation in agribusiness. It may help to avoid damage to the agribusiness, increase access to investment and capital, improve relations with stakeholders, and contribute to indigenous people through social investment programs.

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Резюме

Засць В. А. Імплементация Керівних принципів ООН щодо питань підприємницької діяльності та прав людини в аграрному секторі з урахуванням досвіду їх імплементатії у видобувному секторі.

У статті висвітлені порушення прав людини в аграрному та видобувному секторі. Проаналізовано результати впровадження Керівних принципів ООН з питань підприємницької діяльності у видобувному секторі. Досліджено важливість Керівних принципів ООН з питань підприємницької діяльності та прав людини. Надано рекомендації щодо їх впровадження в аграрному секторі.

Ключові слова: права людини, порушення прав людини, Керівні принципи ООН з питань підприємницької діяльності та прав людини, аграрний сектор, видобувний сектор.

Резюме

Заец В. А. Имплементация Руководящих принципов ООН по вопросам предпринимательской деятельности и прав человека в аграрном секторе с учетом опыта их имплементации добывающем секторе.

В статье обозначены нарушения прав человека в аграрном и добывающем секторе. Проанализированы результаты внедрения Руководящих принципов ООН по вопросам предпринимательской деятельности и прав человека в добывающем секторе. Исследовано важность Руководящих принципов ООН по вопросам предпринимательской деятельности и прав человека. Даны рекомендации по их внедрению в аграрном секторе.

Ключевые слова: права человека, нарушения прав человека, Руководящие принципы ООН по вопросам предпринимательской деятельности и прав человека, аграрный сектор, добывающий сектор.

Summary

Zayets V. Implementation of the UN Guiding Principles on business and human rights in agribusiness with respect to lessons in the extractive sector.

The following article defines the human rights violations in agribusiness and extractive sector. It analyses results from the implementation of the UN Guiding Principles on Business and Human Rights in the extractive sector. The article highlights the importance of UN Guiding Principles on Business and Human Rights in agribusiness and provides recommendations for its implementation.

Key words: human rights, human rights' violations, UN Guiding Principles on Business and Human Rights, agribusiness, extractive sector.

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ДЕЯКІ ПРОБЛЕМНІ АСПЕКТИ ВЧИНЕННЯ МОРСЬКОГО ПРОТЕСТУ В УКРАЇНІ

Законом України «Про нотаріат» у ст. 24 передбачено 22 види нотаріальних дій, які вчиняються нотаріусами України, серед яких і вчинення морських протестів¹.

Однак при дослідженні відомостей про вчинення нотаріусами України такої нотаріальної дії виявилось, що інформації з цього питання майже немає.

Слід зауважити, що саме зі складення судових паперів та торговельних угод можна відраховувати зародження нотаріату – в Римі таку функцію зі зростанням цивільного обороту почали виконувати табеліони, яких по праву вважають зачинателями сучасного нотаріату².

Враховуючи перспективу відродження українського торгового флоту, який наразі перебуває не в найкращому стані, доцільно було б привести до ладу і законодавство, яке регулює вчинення морських протестів, адже це справа не одного дня, однак свого часу може стати в пригоді.

Загалом, наповнення та вдосконалення кожного виду дій, які вчиняє нотаріус, сприятиме розвитку нотаріату в Україні в цілому, підвищенню культури права та якості послуг, що надаватимуться нотаріусами громадянам.

Питання вчинення нотаріусами морського протесту в різних його аспектах висвітлювалось С. Я. Фурсою у статті «Вчинення морських протестів: матеріальна природа та нотаріальна процедура», Н. В. Ільєвою у статті «Процесуальний порядок складення нотаріусом акта про морський протест», а також такими науковцями, як В. В. Баранкова, В. В. Комаров, О. М. Криштопа, Л. К. Радзівська, С. Г. Пасічник, В. В. Луць.

Дана стаття присвячена окресленню певного кола проблематики, на яку слід звернути увагу в розрізі нотаріального провадження при вчиненні морського протесту, зокрема, доцільності огляду нотаріусом об'єктів матеріального світу та місця події (судна, люку), статусу свідків, яких має допитати нотаріус для складення акта про морський протест.

Мета статті – виокремлення і характеристика вищезазначених проблем та аналіз пропозицій для їх вирішення.

Найперше слід зауважити, що закон не розкриває поняття події, у зв'язку з якою може бути заявлено морський протест.

Законом України «Про нотаріат» визначено, що нотаріус приймає заяву капітана судна про морський протест, якщо в період плавання або стоянки судна мала місце подія, що може стати підставою для пред'явлення до судновласника майнових вимог³. Аналогічне положення міститься і в Главі 18 Порядку вчинення нотаріальних дій нотаріусами України⁴. У положеннях ст. 341 Кодексу торговельного мореплавства України додається, що заява про морський протест робиться з метою забезпечення доказів для захисту прав і законних інтересів судновласників⁵.

Н. В. Ільєва зазначає, що подіями, через які на практиці може бути заявлено морський протест, є насамперед події, які мають характер непереборної сили (форс-мажору), або виникнення небезпеки і непередбачених випадків на морі (ураган, шторм, зіткнення з айсбергами, плаваючими предметами, пожежа на судні тощо), інші події, пов'язані зі специфікою мореплавства і які можуть стати причиною пошкодження судна й вантажу та завдати значних збитків.

Збитками, які можуть виникнути внаслідок подій такого характеру, можуть бути: шкода, заподіяна вантажу, самому судну, майну третіх осіб, які на момент події не знаходилися на судні, життя та здоров'ю осіб (членів екіпажу, пасажирів)⁶.

Тобто, роль нотаріуса при вчиненні морського протесту зводиться до забезпечення доказів, на які в подальшому зможе посилатися судновласник при захисті своїх прав та які нададуть йому змогу убезпечити себе від претензій третіх осіб за неналежне виконання зобов'язань і вимог щодо компенсації шкоди.

Забезпечення доказів нотаріусом здійснюється у вигляді створення письмових документів, зокрема, в даному випадку, акта про морський протест.