

**Specific instance under the OECD Guidelines for Multinational Enterprises  
submitted to the United Kingdom of Great Britain and Northern Ireland National  
Contact Point (NCP) for the OECD Guidelines**

**Against**

**Bonsucro Ltd, concerning its conduct in relation to its member, Mitr Phol Group**

**Submitted by**

**Inclusive Development International (IDI), Equitable Cambodia (EC) and the  
Cambodian League for the Promotion and Defense of Human Rights (LICADHO)**

**11 March 2019**

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## 1. Introduction

This Specific Instance outlines breaches of the OECD Guidelines for Multinational Enterprises by Bonsucro Ltd, a UK-registered non-profit company and multi-stakeholder initiative for the sugar industry. The complainants are Inclusive Development International (IDI), Equitable Cambodia (EC) and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) on behalf of approximately 3000 affected people from the five villages of O’Bat Moan, Khtum, Taman, Bos and Trapeang Veng in Kon Kriel commune, Samrong district, Oddar Meanchey province, Cambodia. This specific instance concerns the failure of Bonsucro to comply with the OECD Guidelines vis-à-vis its business relationship with one of its members, Thai company Mitr Phol Group, Asia’s largest sugar producer, which is responsible for forced evictions and other human rights violations in Oddar Meanchey.

Between 2008 and 2009, families living and farming in the five villages were violently displaced and dispossessed of their land, homes and livelihoods to clear the way for a sugar plantation being developed by a wholly owned subsidiary of a member of Mitr Phol Group. Those who sought to defend their land rights were met with harassment and in the worst cases, arbitrary detention. This included a pregnant woman who was forced to give birth during her eight months of imprisonment. The families, most of whom had legally recognizable claims to their property, have endured over a decade of lost income and other hardships as a result of the land seizures.<sup>1</sup> Mitr Phol has never provided any form of remediation to the victims of human rights violations caused by its business operations. Mitr Phol has since ceased its operations in the area, leaving behind only destruction and poverty.

Mitr Phol first became a member of Bonsucro in June 2010. In January 2011, the complainants submitted a complaint to Bonsucro, then called the Better Sugar Cane Initiative, regarding the human rights violations caused by Mitr Phol’s business operations in Cambodia. The complaint described how Mitr Phol had violated Bonsucro’s code of conduct (see Annex 1). In 2012, Mitr Phol chose to withdraw its membership in Bonsucro, rather than addressing the complaint. Bonsucro informed the complainants that in order to become a member again, the company “must re-engage in the complaints resolution process.”<sup>2</sup> Three years later, in June 2015, Mitr Phol was quietly readmitted as a member of Bonsucro. The complainants were not informed and Mitr Phol was never required to re-engage in the complaints resolution process.

In October 2015, after a two-year investigation of a complaint concerning the same allegations, Mitr Phol was found by the National Human Rights Commission of Thailand to be in serious breach of its responsibility to respect human rights under the United Nations Guiding Principles on Business and Human Rights. The commission found that Mitr Phol has an ongoing responsibility to provide compensation and other appropriate remedies for the losses and human rights impacts suffered by the Cambodian families as a direct result of its business activities. These findings were issued in an official public report soon after Mitr Phol recommenced its membership of Bonsucro (see Annex 2). Instead of

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<sup>1</sup> See attached complaints to Bonsucro and report of the National Human Rights Commission of Thailand.

<sup>2</sup> Email to David Pred from Kevin Ogorzalek, Chairman of the Bonsucro Complaints and Grievances Committee, 9 March 2012.

responding appropriately by using its leverage with its member to facilitate a remediation process, just two weeks after the Commission issued its findings of human rights abuses, Bonsucro presented Mitr Phol with its annual Sustainability Award.<sup>3</sup>

Upon discovering that Mitr Phol had been readmitted to Bonsucro, the complainants asked Bonsucro to reinitiate the complaints process. Bonsucro rejected this request. The complainants filed a second complaint in February 2016 in relation to the continuing human rights violations and breach of Bonsucro's code of conduct and standards, this time referring to the National Human Rights Commission's findings (see Annex 3).

After prolonged inaction, almost three years later, in December 2018, Bonsucro dismissed the complaint on the basis that the alleged violations had occurred prior to Mitr Phol's membership.<sup>4</sup> The complainants spent eight years engaged in Bonsucro's grievance processes to no avail. To this day, the complainants have received no compensation or other form of redress from Mitr Phol for the human rights violations that they continue to suffer.

Bonsucro claims to be "a multi-stakeholder organization that exists to promote sustainable sugarcane production around the world," with a mission "to ensure that responsible sugarcane production creates lasting value for the people, communities, businesses, economies and eco-systems in all cane-growing regions."<sup>5</sup> By design, Bonsucro confers a public stamp of approval on its members, who, by joining the initiative, commit to, *inter alia*, uphold the law and respect human rights in the production of sugarcane. Bonsucro conferred this public prestige on Mitr Phol by, not only awarding it membership, but by doubling down on its public endorsement of the company's social and environmental performance by bestowing it with a Sustainability Award. The week the present complaint was filed, Bonsucro was set to showcase Mitr Phol as a "leading member" at its annual "Bonsucro Global Week."<sup>6</sup> All of this is deeply offensive to the Cambodian communities who have suffered so greatly as a result of Mitr Phol's human rights violations.

As an organization that qualifies as a multinational enterprise under the OECD Guidelines and is registered in the United Kingdom, Bonsucro should be held to the standards of the OECD Guidelines. We submit that Bonsucro is in breach of the OECD Guidelines because it: 1) failed to conduct adequate human rights due diligence when admitting Mitr Phol as a member on two occasions and throughout its membership, despite well documented serious human rights violations in the public domain, which have never been remediated; 2) failed to exercise its considerable leverage to influence Mitr Phol to mitigate and address the adverse human rights impacts caused by the company's business operations; 3) does not have a policy commitment to respect internationally recognized human rights; and 4) as a multi-stakeholder initiative, does not provide for an effective grievance mechanism, and lacks the core criteria of legitimacy, accessibility, predictability, equitability, transparency, compatibility with the Guidelines and international human rights standards, and a source of continuing learning.

This specific instance is directed to the United Kingdom National Contact Point.

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<sup>3</sup> See: <http://www.nationmultimedia.com/news/business/corporate/30303685>

<sup>4</sup> Bonsucro, Public Notification of Decision. <https://www.bonsucro.com/public-notification-of-decision-idi-ec-licadho/>

<sup>5</sup> Bonsucro, <https://www.bonsucro.com/what-is-bonsucro/>

<sup>6</sup> Bonsucro Global Week, <https://bonsucroweek2019.bonsucro.com/en/agenda/>

## 2. Identity and interest of the complainants

Inclusive Development International works to advance social, economic and environmental justice by supporting communities around the world to defend their land, environment and human rights in the face of harmful investment projects. Through research, casework and policy advocacy, we hold corporations, financial institutions and development agencies accountable to their human rights and environmental responsibilities and work to promote a more just and equitable international economic system.

Equitable Cambodia (EC) is a leading advocate of housing, land and natural resource rights in Cambodia. Through policy research, advocacy at the national and international levels, coalition building, and community organizing and networking efforts, Equitable Cambodia is working to transform the Cambodian national development model into one that respects, protects and fulfils the human rights and economic livelihood of the Cambodian people, and the sustainable management of its natural resources.

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 13 provincial offices.

IDI, EC and LICADHO have supported and represented the affected families through Bonsucro's complaints resolution process.

IDI, EC and LICADHO submit this complaint on behalf of approximately 711 families who were residing in the villages of O'Bat Moan, Bos, Khtum, Trapaing Veng and Taman, in Oddar Meanchey province Cambodia, at the time the human rights violations described herein took place. Families from these villages suffered these violations as a result of violent forced evictions, destruction of their housing and property, and seizure of their land and natural resources that were supporting their livelihoods. The affected communities suffered these adverse impacts to make way for the business operations of Mitr Phol Group, a member of Bonsucro.

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### 3. Identity of the respondents

Bonsucro Ltd. defines itself as “a global multistakeholder non-profit organisation that exists to promote sustainable sugarcane production, processing and trade around the world.”<sup>7</sup> Bonsucro has over 500 members in over 40 countries, from all elements of the sugarcane supply chain, including farmers, millers, traders, buyers and support organisations.<sup>8</sup> Bonsucro is incorporated as a “limited by guarantee” company in the United Kingdom. Previously, the company was registered with Companies House as the Better Sugar Initiative Ltd. It is a non-profit organization that generates revenue through membership fees and charges for licensing, branding and third-party certification.

The human rights violations and other adverse impacts suffered by the Cambodian communities and families were a consequence of the business operations of Bonsucro member Mitr Phol Group (Mitr Phol Sugar Corporation Limited), a privately owned group of companies domiciled in Thailand. Mitr Phol engages in large-scale sugarcane cultivation, and production and distribution of sugar, with operations in Thailand, China, Australia, Laos and formerly Cambodia. Mitr Phol is one of the world’s largest sugar producers and supplies major consumer brand companies.

This specific instance relates to Bonsucro’s failure to prevent and mitigate adverse human rights impacts that are directly linked to its operations, products or services by its business relationship with Mitr Phol in a manner consistent with its responsibility to respect human rights under the OECD Guidelines.

### 4. Applicability of the OECD Guidelines to Bonsucro as a multinational enterprise

The OECD Guidelines establish that “[a] precise definition of multinational enterprises is not required for the purposes of the Guidelines.”<sup>9</sup> As the multi-stakeholder platform for the coordination and promotion of responsible sugarcane production, processing and trade around the world,<sup>10</sup> Bonsucro is inherently multinational. Bonsucro is legally domiciled as a limited by guarantee company in the UK, but it is fundamentally a global association; the membership of Bonsucro comprises over 500 commercial and other entities across more than 40 countries. The 2017 Bonsucro outcomes report stated that 25 percent of land used for sugarcane worldwide is “engaged” with Bonsucro.<sup>11</sup> The reach of Bonsucro commercial activities and its business relationships is, by design, firmly multinational in character.

In considering the applicability of the Guidelines to a comparable multi-stakeholder initiative, the Roundtable for Sustainable Palm Oil (RSPO), the Swiss NCP noted in its recent Initial Assessment that the OECD Guidelines establish standards for responsible business conduct, and stated:

“The key question should therefore be whether an entity is involved in commercial activities, independently of its legal form, its sector of activity or its purpose (profit or non-profit).<sup>12</sup>

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<sup>7</sup> Bonsucro. “What is Bonsucro: A little more about us”. <https://www.bonsucro.com/what-is-bonsucro/>

<sup>8</sup> Ibid.

<sup>9</sup> OECD Guidelines on Multinational Enterprises, Chapter I (1).

<sup>10</sup> See, Bonsucro. “What is Bonsucro: A little more about us”. <https://www.bonsucro.com/what-is-bonsucro/>

<sup>11</sup> Bonsucro 2017 Outcomes report, page 5. [https://www.bonsucro.com/wp-content/uploads/2017/01/Bonsucro-Outcome-Report-2017\\_Final.pdf](https://www.bonsucro.com/wp-content/uploads/2017/01/Bonsucro-Outcome-Report-2017_Final.pdf).

<sup>12</sup> National Contact Point of Switzerland Initial Assessment Specific Instance regarding the Roundtable for Sustainable Palm Oil submitted by TuK Indonesia, Berne, 31 May 2018, at § 6(c).

The Swiss NCP found RSPO's activities to be of a commercial nature on the basis that its income is generated in prominent part through contributions from sustainable palm oil trade, and that the RSPO Trademark, a globally recognized ecolabel, is contributing to the value of sales products on a global level, and therefore the generation of income for relevant companies in the palm oil sector.<sup>13</sup> The Swiss NCP thus concluded that the OECD Guidelines are applicable to the activities of RSPO.

Likewise, Bonsucro generates income by charging membership fees and providing services to commercial entities active in the sugar industry across the globe. Bonsucro states that it is funded predominantly by commercial actors operating in the global sugar industry. Bonsucro's website states, "Bonsucro is funded by members, among who are consumer companies."<sup>14</sup> In 2015-16, Bonsucro generated income of £727,875 from membership fees and £293,683 from "certification commissions", amongst other revenue streams generated through professional services.<sup>15</sup> As well as generating income for Bonsucro, membership and certification delivers commercial advantage to its members and certified actors in the sugar industry.<sup>16</sup> The perception of "sustainable sugar" products authenticated by Bonsucro membership and certification provides a premium to actors in the sector.

We submit therefore that the OECD Guidelines are applicable to Bonsucro.

## 5. Enhanced responsibility of multi-stakeholder initiatives under the OECD Guidelines

Bonsucro positions and promotes itself to the public as the leading global multi-stakeholder initiative for the sugarcane sector "dedicated to reducing the environmental and social impacts of sugarcane production."<sup>17</sup> Bonsucro states:

"The mission of Bonsucro is to achieve a sugarcane sector that is continuously improving and verified as sustainable by acting collaboratively within the sector and working to continuously improve the three pillars of sustainability: economic, social and environmental viability. Bonsucro aims to achieve this mission through providing the definition for sustainable sugarcane and all sugarcane derived products through a multi-stakeholder approach."<sup>18</sup>

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[https://www.seco.admin.ch/dam/seco/en/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/NKP/Statements\\_konkrete\\_F%C3%A4lle/Rapporto\\_Initial\\_Assessment\\_RSPO/Rapporto\\_Initial\\_Assessment\\_RSPO.pdf.download.pdf/SwissNCP\\_InitialAssessment\\_TuK\\_RSPO\\_for\\_publication.pdf](https://www.seco.admin.ch/dam/seco/en/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/NKP/Statements_konkrete_F%C3%A4lle/Rapporto_Initial_Assessment_RSPO/Rapporto_Initial_Assessment_RSPO.pdf.download.pdf/SwissNCP_InitialAssessment_TuK_RSPO_for_publication.pdf)

<sup>13</sup> Ibid.

<sup>14</sup> Bonsucro. "Bonsucro: Frequently Asked Questions v1.1" (2010).

[http://www.bonsucro.com/assets/Bonsucro\\_FAQS\\_V1\\_1.pdf](http://www.bonsucro.com/assets/Bonsucro_FAQS_V1_1.pdf). These consumer company members include Bacardi, Tate & Lyle, The Coca-Cola Company, Cadbury Schweppes; commodity traders (e.g. ED & F Man, Cargill); NGOs (e.g. WWF, Solidaridad, Reef Catchments), national and local producers (e.g. UNICA, EID Parry) and oil companies (e.g. Shell, BP, North Sea Petroleum). The last available financial statement demonstrating income from commercial activities relates to the financial year 2015-16. <https://www.bonsucro.com/wp-content/uploads/2017/10/Accounts-2016.pdf>

<sup>15</sup> Bonsucro Accounts 2015-16. <https://www.bonsucro.com/wp-content/uploads/2017/10/Accounts-2016.pdf>;

Membership fees operate on a sliding scale based on the nature of the member's business and its annual turnover. See <http://www.bonsucro.com/join-the-network/>

<sup>16</sup> See, for example, the study of the business case for membership and certification in the Brazil sugarcane industry; Agricone, "The Business Case for Mill Compliance with and Certification to the Bonsucro Production Standard", Manila, November 2014 < <http://agroicone.com.br/uploads/2014/11/agroicone-bonsucro-business-case.pdf> > at pages 15-16; 28-29 (commissioned by Bonsucro members IFC, Royal Dutch Shell and Solidaridad)

<sup>17</sup> Bonsucro Production Standard (2016). <http://www.bonsucro.com/wp-content/uploads/2017/04/Bonsucro-PS-STD-English-2.pdf>

<sup>18</sup> Ibid.

Bonsucro has also publicly stated:

“Our membership community recognises both the significant opportunity for investment in agriculture to create lasting value for the people, businesses, communities, economies and ecosystems of canegrowing origins, as well as the significant risks that the industry can inadvertently or even deliberately cause harm. The Bonsucro Production Standard is the only sustainability standard for sugarcane created with the open and transparent collaboration of the industry, civil society and concerned stakeholders and in accordance with the Code of Good Practice for Setting Social and Environmental Standards produced by ISEAL. Our Production Standard is a comprehensive and objective performance framework used by the industry to measure the positive value created (environmental, social and economic), to demonstrate legal compliance, and to identify, manage and mitigate all risks of social and environmental harm.”<sup>19</sup>

Given the scale of this industry and its social, environmental and human rights impacts worldwide, and the large number of enterprises that make up Bonsucro’s membership, it is critical that it be held accountable to ensure the credibility and legitimacy of its public claims. Bonsucro, by design, provides a public stamp of approval with respect to, *inter alia*, human rights and the environment, to the companies that it accepts as members. This reputational benefit is used by these companies to advance their business, including attracting investment, finance, customers, and securing land deals for plantations and mills -- all with human rights implications. Through actively positioning itself as a regulatory body, albeit voluntary in nature, Bonsucro creates a public expectation and arguably a duty of care to meet minimum standards of regulatory oversight. Bonsucro therefore must be held accountable to its representations.

The OECD Guidelines themselves encourage membership of multi-stakeholder initiatives as a means by which multinational enterprises can achieve and collectively ensure compliance.<sup>20</sup> The Guidelines note that members of multi-stakeholder initiatives should “[ensure] that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognised standards.”<sup>21</sup> It is apparent that by encouraging membership of multi-stakeholder initiatives, the intent of the Guidelines is to promote these mechanisms as one way to strengthen adherence to human rights and other standards embodied in the Guidelines. It is certainly not to promote a mechanism that would provide cover to its corporate members for violating human rights though its stamp of approval.

The UN Guiding Principles on Business and Human Rights,<sup>22</sup> with which the human rights chapter of the Guidelines explicitly align,<sup>23</sup> note the particular role multi-stakeholder initiatives have as non-state-based grievance mechanisms in their own right. Principle 30 calls upon multi-stakeholder initiatives to ensure effective grievance mechanisms are available, noting that the legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms. This is an additional, compelling reason to expect multi-stakeholder initiatives such as Bonsucro to be held to high standards to respect human rights and have effective processes in place to address business-related human rights harms caused or contributed

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<sup>19</sup> Bonsucro’s response to Business and Human Rights Resource Center’s request for comment, 30 June 2016. <https://www.business-humanrights.org/sites/default/files/documents/Bonsucro%20Response%20to%20IDI%20-%20Business%20%20Human%20Rights%20Resource%20Centre%20June%202016.pdf>

<sup>20</sup> OECD Guidelines, Chapter II (B)(2); Commentary on General Policies, para 24

<sup>21</sup> *Ibid.*

<sup>22</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, United Nations Human Rights Council, 17<sup>th</sup> Session, A/HRC/17/31, 21 March 2011.

<sup>23</sup> OECD Guidelines, Foreword, page 3; and Chapter IV: Commentary on Human rights, para 36.

to by its members. The effectiveness and legitimacy of Bonsucro's grievance mechanism is discussed in section 7.4 below.

## **6. Mitr Phol's violation of human rights, Cambodian law and Bonsucro Code of Conduct**

The facts underlying this Specific Instance relate to Bonsucro member Mitr Phol Group's conduct in violation of its human rights responsibilities and Cambodian law. These violations should have been regarded by Bonsucro as contrary to its code of conduct and Bonsucro's first principle, obey the law, and second principle, respect human rights.

These violations suffered by communities to this day are summarized in this section and laid out in Annexes 1-3.

In January 2008, Cambodia's Ministry of Agriculture, Forestry and Fisheries granted three 70-year economic land concessions (ELCs) for industrial sugarcane production in the Samrong and Chongkal districts of Oddar Meanchey province. The concessions were granted to three companies connected to Mitr Phol Group.<sup>24</sup>

Throughout 2008-2009, at least 711 families who lived and farmed within the boundaries of the ELCs - many of whom had recognizable legal claims to the land<sup>25</sup>-- were forcibly made to give up their land for Mitr Phol's business operations. Affected households lost extensive rice fields, plantation/orchard land, and grazing land as well as the associated crops that sustained their livelihoods. Households lost five hectares of rice fields on average. Annual net losses due to the inability to grow rice averaged approximately US\$1,000 per family. Common property resources, including community-managed forests, were also lost or degraded as a result of Mitr Phol's plantation development, affecting the livelihoods of thousands of people. The company engaged in extensive illegal logging of old growth, high-value timber within the concession.

The most grave human rights violations occurred in O'Bat Moan village, which was entirely destroyed to make way for Mitr Phol's plantations. In April 2008, 154 homes in the village were forcibly demolished by government security forces and company workers under the guidance of local authorities. Further evictions occurred in October 2009, when around 100 homes were burned to the ground by approximately 150 police, military police and hired demolition workers.

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<sup>24</sup> The names of these subsidiary companies are Angkor Sugar Co. Ltd., Tonle Sugar Cane Co. Ltd., and Cane and Sugar Valley Co. Ltd.

<sup>25</sup> Some of these claims are recognized by various provisions in chapter 4 of the Cambodian 2001 Land Law. In summary, if before the effective date of the law a person started to peacefully and openly occupy and use (Article 38) "State private land" (Article 17), then under the law he/she is a "possessor" of the property. Thereafter the land is no longer State land (Article 12) unless the possessor abandons it (Article 38). No formal possession title is necessary to secure this right, although it is possible to obtain a possession title (Article 40). The possessor may sell and in other ways transfer the land to others (Article 39). The transferees are also possessors as long as they continue to occupy and use the land (Article 30). After five years of possession the possessor has the right to obtain a formal ownership title to the land (Article 30). Many of the complainant families qualified as possessors. Many of the claims are recognized by Cambodian Land Law articles 83 and 84 which concern the State donating land for social purposes: a great deal of the land in this case had been donated to the affected families well before the ELCs were granted.

Most families in O’Bat Moan lost all of their possessions during the evictions and were left landless and homeless. Even their rice crops, which they were about to harvest, were reportedly looted by company workers and security forces, leaving them without essential food and income in the immediate aftermath of the evictions. These forced evictions were preceded by arrests and an assault on the former village chief. Two community leaders were sentenced to two years in jail on charges of ‘clearing State forest’, while two others were released after serving over six months in pre-trial detention. One was pregnant at the time and gave birth during her eight months of imprisonment.

Despite significant loss of housing, land, property and resources supporting livelihoods, compensation was generally not provided. Several families received replacement land as compensation but the plots provided were much smaller than what they lost and were of vastly inferior quality. None of the families who were illegally evicted from their land were granted their right to return and no efforts were made to rehabilitate the displaced.

As a result, after the evictions, affected people suffered a severe retrogression in their enjoyment of economic and social rights, including the human rights to adequate housing, food, work, education and health. Of those who were physically displaced from their homes, over 1000 men, women and children were left homeless and landless. Most affected households have suffered increased food insecurity, deterioration of livelihoods and loss of income-earning opportunities as a result of their de-capitalization and loss of natural resources that previously provided a safety net. In some cases, the forced evictions led to extreme hunger and possibly starvation. Many people resorted to illegal migration to Thailand in search of work - putting themselves at the mercy of people smugglers, after their land was seized for Mitr Phol’s sugarcane concessions.

In March 2015, all three Mitr Phol concessions were cancelled and the company withdrew from its operations in Cambodia. Its request to the government at the time that it return the land to the communities did not result in any land restitution or compensation. Independently of what the Cambodian government might have done, Mitr Phol has not offered compensation for the harms and losses caused by its business operations. The affected communities continue to experience the adverse impacts of these violent forced evictions and land seizures to this day, over a decade since they occurred.

The facts indicate that Mitr Phol colluded with Cambodian authorities to breach a host of Cambodian laws and regulations, including the Constitution, Land Law, Forestry Law, Sub-Decree on Economic Land Concessions, Labor Law, Penal Code and Civil Code, as well as Cambodia’s international human rights treaty obligations, including under the International Covenants on Civil and Political and Economic, Social and Cultural Rights. These legal violations are set out in the second (amended) complaint submitted to Bonsucro in Annex 3.

The acts described above amount to a violation of several internationally recognized human rights. The UN Human Rights Commission has affirmed in two resolutions (1993/77 and 2004/28) that the practice of forced evictions constitutes “a gross violation of human rights.”<sup>26</sup> In addition to the violation of the right to adequate housing, the human rights to an adequate standard of living including adequate food, the rights to health and education, the rights to security of person, privacy and security of the home, to

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<sup>26</sup> See also Committee on Economic, Social and Cultural Rights (CESCR), General Comment 7.

peaceful enjoyment of possessions, freedom of assembly, and freedom from arbitrary detention were all violated.<sup>27</sup>

These violations give rise to the right to an effective remedy, a well-established principle in international law.<sup>28</sup> The right to remedy encompasses both process (access to justice) and outcomes (reparation). Reparation can take various forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition). When it comes to land, international standards and best practices call for the return of land or the provision of replacement land of equal or better size and quality, and compensation for losses suffered.<sup>29</sup>

While the Cambodian government had the duty to protect and respect the human rights of families and individuals in Oddar Meanchey in relation to the granting of ELCs, land seizures and forced evictions, and has a continuing duty to provide remedy for the above human rights violations, the government's obligations do not in any way absolve Mitr Phol from its own responsibility to respect human rights under the OECD Guidelines and the UN Guiding Principles on Business and Human Rights.<sup>30</sup> This responsibility requires that business enterprises avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur, including through commensurate remediation.<sup>31</sup> An enterprise cannot, by definition, meet its responsibility to respect human rights if it causes or contributes to an adverse human rights impact and then fails to enable its remediation.<sup>32</sup>

Mitr Phol has not taken any meaningful steps to remediate the harms it caused or to which it contributed. It has yet to compensate and rehabilitate the families whose lives were destroyed as a result of its business activities in Cambodia between 2008-2015. In the absence of remediation, the affected communities represented in this complaint have been suffering the multiple consequential harms of physical and economic displacement for a decade; they have not recovered their homes, land or natural resources, nor their livelihoods. Therefore, from the time that the violations first occurred until today, Mitr Phol is in violation of its responsibility to respect human rights, including through the provision for or cooperation in remediation.

## **7. Breaches of the OECD Guidelines on Multinational Enterprises**

### **7.1. Bonsucro's direct linkage to adverse human rights impacts as a result of its business relationship with Mitr Phol**

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<sup>27</sup> The raft of rights violated are recognized in, inter alia, the International Covenant on Economic, Social and Cultural Rights articles 10, 11, 12, and 13 and the International Covenant on Civil and Political Rights articles 9, 10, 12, 14,15, 17, 21 and 23.

<sup>28</sup> International Covenant on Civil and Political Rights, article 2(3). Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly Resolution 60/147.

<sup>29</sup> ESCR General Comment 7; see also Office of the UN High Commissioner for Human Rights, 'Land and Human Rights: Standards and Applications', at:[https://www.ohchr.org/Documents/Publications/Land\\_HR-StandardsApplications.pdf](https://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf)

<sup>30</sup> OECD Guidelines, Ch.IV Human Rights, Commentary; UN Guiding Principles on Business and Human Rights, principle 11.

<sup>31</sup> Ibid, Principle 13.

<sup>32</sup> Office of the UN High Commissioner for Human Rights, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, Q.62 (2012).

***Chapter II. General Policies (12): Enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.***

The analysis under this section assesses Bonsucro's failures to abide by its responsibilities under the OECD Guidelines for adverse human rights impacts that are directly linked to its operations, products or services through its business relationship with Mitr Phol.

The Commentary on Chapter II defines the term 'business relationship' as including relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services.<sup>33</sup> This definition accounts for a broad spectrum of relationships that could include both traditional commercial relationships and those of membership organisations such as multi-stakeholder initiatives.

Mitr Phol pays a membership fee in order to access the benefits associated with the Bonsucro brand and membership of the organisation. They also have certified sugar mills in Thailand, which required the payment of commissions for third party certification by Bonsucro. As such, Bonsucro and Mitr Phol have a clear business relationship whereby Mitr Phol has accessed and benefited from services provided by Bonsucro in exchange for remuneration.

As a consequence, Bonsucro has a responsibility to exercise due diligence and use its leverage to prevent and mitigate adverse human rights impacts that are caused or contributed to by its member Mitr Phol.

## **7.2 Failure to carry out Due Diligence**

***Chapter II General Policy (A)(10): Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts [...], and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.***

***Chapter IV Human Rights (5): Enterprises should carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.***

The Commentary on the Guidelines states: "For the purposes of the Guidelines, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems."<sup>34</sup>

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<sup>33</sup> OECD Guidelines, Commentary on Chapter II, para. 14

<sup>34</sup> OECD Guidelines, Commentary on Chapter II General Policies at para 14.

Due diligence should not only cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, but it should also cover these impacts which may be directly linked to the business enterprise's operations, products or services by its business relationships.<sup>35</sup> We contend that Bonsucro has failed to exercise human rights due diligence vis-à-vis its business relationship with Mitr Phol.

First, Bonsucro failed to conduct due diligence before admitting Mitr Phol as a member in June 2010. While at this time, the company's role in the Cambodian forced evictions was obfuscated because it operated through local subsidiaries, an adequate due diligence assessment by Bonsucro should have made the connection. A February 2010 article in the Bangkok Post discussed Mitr Phol's investment in Cambodia,<sup>36</sup> while the forced evictions themselves, carried out as a result of Mitr Phol subsidiary Angkor Sugar Company obtaining its ELC, and with the participation of company employees, were widely publicized at the time in the English language press and NGO reports.<sup>37</sup> A company search of the directors of Angkor Sugar Company (which the complainants performed at the time) revealed that they were all senior figures in Mitr Phol: Mr. Buntoeng Vongkusolkiet (Managing Director) and Mr. Krisda Monthienvichienchai (President), and Mr. Tat Wanakornkul (Vice-President).<sup>38</sup>

By the time Mitr Phol applied to be re-admitted in 2015, Bonsucro had much information at its direct disposal to inform a thorough human rights due diligence process, including a complaint submitted to its grievance redress mechanism and correspondence with the affected community representatives. A credible due diligence process would have assessed the allegations of human rights abuses raised by the complainants and considered whether Mitr Phol had taken any meaningful steps to address the harm suffered by the communities.

Yet Mitr Phol was re-admitted with no conditions, and with no sign of any credible due diligence, in June 2015. To justify Mitr Phol's re-admittance into the organization, Bonsucro stated that what mattered to the organization was the demonstration of:

“(...) the principle of *continuous improvement*, with our farmer and mill members using the Standard to measure and manage their impacts. (...) We do not expect Members to be perfect before they join and recognise that complex issues could exist that require dialogue and time to resolve. (...) The fact that Mitr Phol was accepted into membership (through exactly the same process as every other Member) and remains a Member is because they are committed to continuous improvement and are working in complete transparency with us.”<sup>39</sup>

Like Bonsucro, we have no expectation that business enterprises rise to the level of “perfection” – either before or after they join Bonsucro and similar initiatives. However, we do expect that business enterprises respect basic human rights, including by providing for remediation of serious adverse impacts that they

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<sup>35</sup> UN Guiding Principles on Business and Human Rights, Principle 17(a).

<sup>36</sup> Bangkok Post, Sweet Success Ahead, 8 February 2010.

<sup>37</sup> See, for example Licadho Briefing Paper, “Mitr Phol Sugar: Timeline of a Forced Eviction in Oddar Meanchey” 12 October 2009. <http://www.licadho-cambodia.org/reports.php?perm=197>; and Phnom Penh Post, Burnt-out village smoulders, 12 October 2009.

<sup>38</sup> <http://www.elc.maff.gov.kh/comprofiles/udmangksugar.html>: accessed by Bridges Across Borders Cambodia on 28 October 2010.

<sup>39</sup> Bonsucro's response to Business and Human Rights Resource Center's request for comment, 30 June 2016.

<https://www.business-humanrights.org/sites/default/files/documents/Bonsucro%20Response%20to%20IDI%20-%20Business%20%20Human%20Rights%20Resource%20Centre%20June%202016.pdf>

have caused or to which they have contributed. It would render Bonsucro's responsibility to exercise human rights due diligence, and indeed its membership criteria, a complete farce if companies were allowed to join Bonsucro with the only requirement being a commitment to 'continuous improvement', from any baseline, no matter how low and reprehensible, and without any commitment to begin its process of improvement by addressing the existing violations and adverse impacts it had caused or contributed to.

Over the years, Mitr Phol did not show any sign it was committed to addressing the human rights issues in its operations, and made no serious efforts to meet the nebulous 'continuous improvement' criteria in this regard. For instance, despite our requests to the company directly and through Bonsucro, Mitr Phol never once agreed to enter into dialogue with the community complainants with a view to providing remediation. As far as we are aware, the only step taken by the company was to ask the Cambodian government to return the land to the original owners (which the government did not do) upon withdrawing its operations in the country and having no more need for the land, which had not been sufficiently productive. Mitr Phol evidently also attempted to find a local development agency to work with the community, but this never came to fruition. Bonsucro evidently concluded that these two actions, which did not result in any redress or benefits to the affected communities, was enough to demonstrate Mitr Phol's commitments to Bonsucro's principles and code of conduct.<sup>40</sup> Bonsucro sets a low bar indeed, and one that is fully incompatible with its responsibility under the OECD Guidelines.

By disregarding ongoing adverse impacts caused by a company in considering membership applications, Bonsucro in effect wipes the human rights slate clean for companies wishing to join its club. This demonstrates a lack of intent to give effect to the OECD Guidelines and the human rights standards it contains.

Furthermore, the responsibility to conduct human rights due diligence does not stop after the development of a new activity or relationship (in this case admission into membership); rather it is an "*on-going* exercise, recognizing that the human rights risks may change over time."<sup>41</sup> Weeks after Mitr Phol was re-admitted to Bonsucro, the National Human Rights Commission of Thailand issued a public report affirming that serious human rights violations occurred and recommended that Mitr Phol compensate the affected communities (Annex 2).<sup>42</sup> Importantly, the Commission found that, although Mitr Phol has since ceased its operations in Cambodia and relinquished its ELCs there, the company had an ongoing responsibility to provide compensation and other appropriate remedies for the losses and human rights impacts suffered by the communities as a direct result of its previous business activities. The human rights commission's findings confirmed the severity, extent and specific nature of the human rights violations. The issuance of the report by an expert quasi-judicial body ought to have led Bonsucro to undertake renewed commensurate human rights due diligence with regard to its member.

Instead, two weeks after the Commission issued its findings, Bonsucro granted Mitr Phol its 2015 Sustainability Award. Even if Mitr Phol's farming model in Thailand does reflect good industry sustainability practices, an assessment of a company's potential and actual human rights and environmental impacts should take place across all of its operations. The Guiding Principles note that

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<sup>40</sup> Ibid.

<sup>41</sup> OECD Guidelines, Ch.IV(45); UN Guiding Principles on Business and Human Rights, Principle 17(c).

<sup>42</sup> Turton, S., Phak, S., "Rights report decries sugar firm's tactics", Phnom Penh Post, 29 October 2015. <https://www.phnompenhpost.com/national/rights-report-decries-sugar-firms-tactics>

businesses should identify general areas where the risk of adverse impacts is most significant and most severe and prioritize these for human rights due diligence.<sup>43</sup> Good practices in one part of a company's operations do not absolve it of its responsibilities to address and remediate severe violations caused by other parts of its operations.

Finally, we note that due diligence requires additional action once actual and potential human rights impacts are assessed, namely: integrating and acting upon the findings; tracking responses; and communicating externally on how impacts are addressed.<sup>44</sup> If Bonsucro did make any serious attempt to assess actual adverse human rights impacts caused by Mitr Phol in its Cambodia operations (which we are not aware of), nothing in Bonsucro's actions from 2010 until today shows that it made any attempt to integrate and act upon findings of its due diligence assessment, track its actions and responses, and communicate externally to stakeholders, including our organizations, about such efforts.

### 7.3 Failure to use its leverage to mitigate adverse human rights impacts

***Chapter II General Policy (A)(12) Enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.***

***Chapter IV Human Rights (3) Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.***

The Commentary on Chapter II of the Guidelines states that where an enterprise identifies risk it should use its leverage to mitigate any remaining impacts to the greatest extent possible. It notes that leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that caused the harm. Leverage can be used alone or in cooperation with other entities.<sup>45</sup> The Commentary on Chapter IV clarifies that among the factors that will enter into the determination of the appropriate action (to seek ways to prevent or mitigate adverse human rights impacts directly linked through a business relationship) are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, and the severity of the impact.<sup>46</sup>

Bonsucro has special leverage when it comes to the social, environmental and human rights conduct of its members. This special leverage is derived from Bonsucro's *raison d'être*: its very mission is to promote responsible sugarcane, and the reason companies seek membership is to obtain the attendant reputational benefits to secure customers, investors and the like, who seek comfort from Bonsucro's acceptance of the company into its membership in order to, *inter alia*, protect their own reputation and public image. This means Bonsucro has considerable leverage over companies that seek membership or wish to maintain their membership. The OECD Due Diligence Guidance for Responsible Business Conduct envisages precisely this type of leverage by flagging that exercising leverage includes "linking business

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<sup>43</sup> UN Guiding Principles on Business and Human Rights, Principle 17 and Commentary.

<sup>44</sup> UN Guiding Principles on Business and Human Rights, Principles 17-21.

<sup>45</sup> OECD Guidelines, Chapter II, Commentary on General Policies (19-20).

<sup>46</sup> UN Guiding Principles on Business and Human Rights, Principle 19 Commentary.

incentives [...] with performance on RBC”, and “communicating the possibility of disengagement if expectations around RBC are not respected.”<sup>47</sup>

Moreover, the UN Guiding Principles note that if a business enterprise lacks leverage there may be ways for the enterprise to increase it, including collaborating with other actors.<sup>48</sup> Bonsucro’s board and membership consists of the dominant players in the sugar industry, including some of Mitr Phol Group’s biggest customers, past and present, including The Coca-Cola Company, PepsiCo, Mars Wrigley, Nestlé and Corbion. These companies have a degree of influence over and responsibility for Bonsucro’s decision-making. As both Bonsucro members and past and present customers of Mitr Phol, all of these companies could have - but failed to - use their leverage to mitigate and address the adverse human rights impacts being suffered by the Cambodian families. Bonsucro certainly could have strengthened its considerable influence over Mitr Phol by co-operating with these other entities, specifically Mitr Phol’s customers.

Particular points of leverage existed when Bonsucro first admitted Mitr Phol in 2010 and again re-admitted the company in 2015. In fact, after Mitr Phol chose to withdraw from Bonsucro in 2011, the complainants received assurances in writing from Bonsucro’s Chair of the Complaints Resolution Committee at the time that Mitr Phol would not be re-admitted until concerns regarding human rights violations and land grabbing had been addressed.<sup>49</sup> This assurance was negated, however, when Mitr Phol was re-admitted with no conditions attached, and complainants were told that their initial complaint was no longer valid. More generally, Bonsucro’s leverage existed during both periods of membership, and remains just as strong today.

Yet, Bonsucro never meaningfully or effectively exercised this leverage to mitigate the continuing adverse human rights impacts being suffered by the communities in the almost nine years since Mitr Phol first became a member, including through its grievance redress process. At no point, for example, despite our requests, did Bonsucro offer to facilitate a meeting between its member and the complainant communities so that Mitr Phol representatives could hear the community’s grievances directly. Nor did it offer to provide the support of a professional mediator to try to facilitate an agreement between the parties. Bonsucro certainly did not suspend Mitr Phol for failing for years to remediate the harms, as suggested by the OECD Guidelines Commentary as an option available to multinational enterprises with respect to a non-compliant business partner.<sup>50</sup> More recently in 2018, Bonsucro could have exercised its leverage and encouraged Mitr Phol to cooperate in mediations under the auspices of the South Bangkok Civil Court following the class action lawsuit against Mitr Phol filed by Cambodian plaintiffs in March 2018, as we requested of it. To the best of our knowledge Bonsucro did not make any serious attempts to exert its leverage, and Mitr Phol refused to engage in court-ordered mediation.

Instead of exercising its leverage to ensure rights compliance and effective remedies, Bonsucro has dismissed the community’s complaint and bestowed awards and acclaim on Mitr Phol. In addition to the 2015 Sustainability Award, the week of the submission of the present complaint to the UK NCP, Bonsucro is set to promote Mitr Phol as one of its “leading members” at Bonsucro’s Global Week 2019

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<sup>47</sup> OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, Q.36, p.78. See also OECD Guidelines Ch.II General Policies (22).

<sup>48</sup> OECD Guidelines, Chapter II, Commentary on General Policies (19-20).

<sup>49</sup> Email from Kevin Ogorzalek, Op cit. Correspondence can be provided on request.

<sup>50</sup> OECD Guidelines Chapter II, para. 22

in Bangkok, Thailand. Bonsucro's promotion of Mitr Phol as an award winning and leading member, and its dismissal of the community's complaint with the statement that "the Board considers that there is sufficient evidence to demonstrate that Mitr Phol is committed to improving the social, environmental and economic sustainability of sugar cane production,"<sup>51</sup> signals to Mitr Phol that there is no expectation from the industry that it remediates the human rights violations suffered by the Cambodian families at its hands. Indeed through its encouragement and backing of the company, Bonsucro's involvement may have even *reduced* the likelihood that Mitr Phol would address its adverse human rights impacts in Cambodia.

#### 7.4 Illegitimate and ineffective complaints resolution process

***Chapter IV. Human Rights (6) Enterprises should provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.***

***UN Guiding Principles on Business and Human Rights, Principle 30: Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.***

Mitr Phol has the obligation under the OECD Guidelines and the UN Guiding Principles to engage in remediation, either by itself or in cooperation with other actors, to remedy the human rights harm it caused and contributed to. While there is no obligation on business enterprises to *remedy* adverse impacts that are directly linked to their operations, products or services by a business relationship, multi-stakeholder initiatives such as Bonsucro are in a category of their own. The UN Guiding Principles, to which the OECD Guidelines chapter on human rights expressly align, highlight the specific role and responsibility of multi-stakeholder and other collaborative initiatives as non-State based grievance mechanisms in their own right. Principle 30 stresses that: "Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available." Such mechanisms should be 'effective', which means they should be *legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning*, according to principle 31 of the UN Guiding Principles.<sup>52</sup>

The Commentary to principle 30 further highlights that the "legitimacy of such [multi-stakeholder] initiatives may be put at risk if they do not provide for such mechanisms. (...) These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts." Bonsucro does have its own grievance mechanism and includes human rights in its standards (see section 7.5). However in the experience of the complainants, this mechanism clearly does not satisfy the effectiveness criteria and has failed to ensure accountability and remediation of the adverse human rights impacts.

The initial complaint was submitted in 2011 and accepted for review in 2012. An amended (second) complaint was submitted in early 2016. Bonsucro rendered its decision on the complaint in December 2018, almost eight years after the initial submission of the complaint, during which time the communities continued to suffer severe adverse human rights impacts. It is difficult to identify any legitimate reasons

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<sup>51</sup> Bonsucro, Public Notification of Decision. <https://www.bonsucro.com/public-notification-of-decision-idi-ec-licadho/>

<sup>52</sup> These criteria are reflected in the OECD Guidelines Chapter IV(6).

to account for such delay. The process leading to the 2018 decision was marred by attempts to delay and minimize the legitimacy and urgency of the complaint. This was particularly the case under Bonsucro’s management until 2016. In fact, civil litigation was initiated against Mitr Phol in Thailand in 2018, largely due to the lack of effectiveness of Bonsucro’s grievance mechanism.

Bonsucro’s lack of **transparency** in keeping parties informed about the grievance process and its performance is of note. From the time of submission of the first complaint, the complainants received little communication from Bonsucro senior management about whether any steps had been taken to assess the facts presented in the original complaint, and to arrange for Mitr Phol to engage in a process of remediation. And when Mitr Phol sought re-admission into Bonsucro in 2015, no notification was made to the complainants about such application, despite the obvious relevance of the matter to the complainants and the ongoing complaint process. The complainants inadvertently came across the information that Mitr Phol had been readmitted. When we challenged Mitr Phol’s readmission after learning about it in November 2015, the then-Bonsucro CEO responded that “Mitr Phol applied for membership this year through proper channels and passed their 30-day consultation phase with no objections being raised.”<sup>53</sup>

As a consequence of the inadequate handling of our original complaint, a second complaint was submitted in early 2016. A year and a half later, in July 2017, we were informed that Bonsucro’s Board was “taking [our] complaint very seriously” but needed more time to undertake “a full and thorough review of the matter.”<sup>54</sup> We received no updates or requests for information from Bonsucro over the following ten months. In April 2018, we wrote to Bonsucro to inform them of the civil legal action against Mitr Phol that was taken by the Cambodian victims in the Thai courts because of Bonsucro’s failure to address their complaint in a timely manner.<sup>55</sup> It took Bonsucro one month to respond to this email, which informed us of a leadership transition at the organization. Further exchanges took place in 2018 with Bonsucro’s new CEO, who seemed to indicate a willingness to examine the complaint, though it was clear that no “full and thorough review of the matter” had been undertaken previously, as the Board committed to do a year earlier. Bonsucro ultimately declined to take any action pursuant to these well-evidenced complaints against Mitr Phol and declared the case closed in a brief statement on 21 December 2018.<sup>56</sup>

At no time during the process was there any attempt to ensure that the process was **equitable**, including by ensuring that the aggrieved communities had reasonable access to sources of information necessary to engage in a grievance process on fair terms, as the Guiding Principles require.<sup>57</sup> To the contrary, the communities and their NGO advisors were not informed about key decisions and sources of information as the above examples shows.

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<sup>53</sup> Email from Bonsucro CEO Simon Usher to David Pred, 21 December 2015. Correspondence can be provided upon request.

<sup>54</sup> Email from Bonsucro General Counsel Fraser Simpson to David Pred, 18 July 2017. Correspondence with Bonsucro can be provided upon request.

<sup>55</sup> Email from David Pred to Fraser Simpson, 3 April 2018.

<sup>56</sup> Public Notification of Decision in the matter of the Inclusive Development International (IDI), Equitable Cambodia (EC), and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) complaint against Mitr Phol, Bonsucro, 21 December 2018. <https://www.bonsucro.com/public-notification-of-decision-idi-ec-licadho/>

<sup>57</sup> UN Guiding Principles on Business and Human Rights, Principle 31(d).

There was also a failure to meet the **legitimacy** criteria. ‘Legitimate’ grievance mechanisms should, according to the UN Guiding Principles, “enable trust from the stakeholder groups for whose use they are intended, and be accountable for the fair conduct of grievance processes.” While we, the complainants, engaged in the process in good faith, it became quickly apparent that we could not trust that our complaint would be treated fairly and without bias. No independent, credible investigation of the factual allegations in the complaint was ever undertaken by Bonsucro, nor did the Bonsucro officials charged with assessing the merits of the complaint ever undertake to talk with members of the affected communities or with third party experts.<sup>58</sup> Nonetheless, Bonsucro asserted that it “carefully considered” the “significant amounts of information” submitted by both parties and then proceeded to dismiss the complaint some eight years after it was initially submitted, taking note of “Mitr Phol’s strong denials of any involvement in human rights violations, and its explanations of attempts to engage in Cambodia.”<sup>59</sup>

Concerns over the legitimacy and independence of Bonsucro’s complaints resolution process have been raised before. A third party assessment of dispute resolution and settlement for biomass certification schemes, conducted by the EPFL Energy Centre, criticized the fact that the CEO and the Board of Directors are themselves empowered to make decisions about complaints, noting that:

“They are not independent and this implies that there are potential conflicts of interests. In combination with the fact that the Board consists of more members representing company-interests in Bonsucro than civil society there is a risk of being biased to favor the industry interests.”<sup>60</sup>

A recent academic review comparing various multi-stakeholder initiatives concurred with this assessment and noted the disproportionate influence of major corporations within Bonsucro’s membership:

“In practice, the [Bonsucro]’s central decision-making body was dominated by a coalition of big brand companies and large Northern NGOs from the very beginning. Civil society groups from the Global South were not represented in this body and no veto mechanism was put in place to protect the organization from regulatory capture.”<sup>61</sup>

This suggests a conflict of interest with regards to Bonsucro’s due diligence, exercise of leverage and the handling of complaints by its grievance mechanism. We firmly believe that this bias plagued the process in the case at hand.

Lastly, the final decision by Bonsucro in December 2018, was not “**rights-compatible**”, that is, “ensuring that outcomes and remedies accord with international recognized human rights.”<sup>62</sup> Despite two complaints providing detailed evidence of violations and ongoing adverse impacts, and detailed additional

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<sup>58</sup> For example, Coca-Cola undertook a third-party assessment of the allegations after they were brought to its attention in 2014.

<sup>59</sup> Public Notification of Decision in the matter of the Inclusive Development International (IDI), Equitable Cambodia (EC), and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) complaint against Mitr Phol, Bonsucro, 21 December 2018. <https://www.bonsucro.com/public-notification-of-decision-idi-ec-licadho/>

<sup>60</sup> EPFL. “Dispute resolution and settlement for biomass certification schemes: A mapping analysis of needs and potentials, a research paper of the EPFL Energy Center” (2014), cited in Schliefer, P., “Varieties of multi-stakeholder governance: selecting legitimization strategies in transnational sustainability politics”, *Globalizations*, 16:1, 50-66, (2019) at p.57.

<sup>61</sup> Schliefer, *Ibid*, p.56.

<sup>62</sup> UN Guiding Principles on Business and Human Rights, Principle 17(f).

information provided to Bonsucro,<sup>63</sup> and authoritative findings by the Thai National Human Rights Commission, the Bonsucro board concluded: “The Board does not consider that it has received cogent evidence that, during its prior period of membership, Mitr Phol breached the terms of Bonsucro’s Code of Conduct in place at the time.”<sup>64</sup> This conclusion is not consistent with any objective assessment of the facts placed before the board and is not the considered decision of a legitimate and rights-compatible process capable of identifying involvement in adverse human rights impacts and ensuring their remediation. (See discussion of the incompatibility with human rights of Bonsucro’s code of conduct itself in section 7.5 below.)

One of Bonsucro’s justifications for dismissing the case was that the Thai National Human Rights Commission “places significant emphasis on the obligations of the Cambodian government.”<sup>65</sup> However, as mentioned above, the Commentary to the OECD Guidelines provides that a “State’s failure to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights.”<sup>66</sup> Bonsucro’s decision is clearly contrary to this principle and therefore not rights-compatible. We also wish to note that Mitr Phol’s responsibilities for the human rights violations in Cambodia were in fact explicitly recognized by the Thai National Human Rights Commission, which recommended that Mitr Phol provide remedies and compensation for harms suffered (see Annex 2).

Additionally, in its decision, the Bonsucro board stated that it “took particular note that its powers in relation to this complaint allowed it only to consider the actions of Mitr Phol during its period of membership, which commenced on 4 June 2010.”<sup>67</sup> This stance is not rights-compatible and, as discussed earlier, an abdication of Bonsucro’s human rights due diligence responsibilities. Any continuing human rights violation gives rise to the right to remedy under international human rights law. As mentioned above, the communities continue to this day to suffer from the adverse human rights impacts caused by the land seizures and forced evictions. The continuing failure of the business enterprise to provide for remediation despite ample opportunities to do so is manifestly still relevant. This is consistent with the well-established principle of the right to remedy under international human rights law. The decision of the Bonsucro board to exclude competency to consider these matters is an artificial and contrived distinction that runs contrary to international standards and unjustifiably limits accountability.

For the reasons detailed above, we do not consider Bonsucro to have provided an effective and legitimate grievance mechanism in the handling of this complaint. We consider the approach of Bonsucro throughout this process and in its final decision to be a denial of effective remedy and a failure to meet its responsibility under the OECD Guidelines and the UN Guiding Principles on Business and Human Rights.

## 7.5 Weak Human Rights Policy Commitments

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<sup>63</sup> Correspondence with Bonsucro available on request.

<sup>64</sup> <https://www.bonsucro.com/public-notification-of-decision-idi-ec-licadho/>

<sup>65</sup> Public Notification of Decision in the matter of the Inclusive Development International (IDI), Equitable Cambodia (EC), and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) complaint against Mitr Phol, Bonsucro, 21 December 2018, para. 37-38.

<sup>66</sup> OECD Guidelines, Chapter IV, Commentary.

<sup>67</sup> Public Notification of Decision, op. cit. We note that Bonsucro’s “Processing Procedure of Bonsucro’s Complaints Resolution Process” guidance states: “Matters that will not be considered include: Allegations of a member’s actions that occurred prior to that member joining Bonsucro and that they bear no relevance to the member’s current activities.” (Bonsucro Complaint Resolution Process. [https://www.bonsucro.com/wp-content/uploads/2017/10/bonsucro\\_complaint\\_resolution\\_process.pdf](https://www.bonsucro.com/wp-content/uploads/2017/10/bonsucro_complaint_resolution_process.pdf))

***Chapter IV Human Rights (4): Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations, have a policy commitment to respect human rights.***

An underlying impediment to Bonsucro’s stated ambition to be the gold standard of sustainability for the sugar industry is the overall weaknesses of its code of conduct and Production Standard when it comes to respect for human rights. This is also problematic vis-à-vis the OECD Guidelines and the UN Guiding Principles, which call on all enterprises to adopt a policy commitment to respect human rights, understood at a minimum as those expressed in the International Bill of Rights.

In order to become a member of Bonsucro, a company must commit to the code of conduct, which (in its current iteration) requires that they “acknowledge and agree to implement Bonsucro’s objectives and Standards through informed and explicit endorsement.”<sup>68</sup> While the code of conduct does not directly express any commitment of either Bonsucro or its members to respect human rights, it is one of the stated principles guiding Bonsucro’s Production Standard.<sup>69</sup> However, the principle of *respecting human rights* is defined in Bonsucro’s Production Standard as relating exclusively to labor standards.<sup>70</sup> The issue of forced evictions and related human rights are completely disregarded. The issue of land appears only in relation to Bonsucro’s Principle 1 of *obeying the law* and is limited to the demonstration of clear title to land in accordance with national law and practice. Only if a conflict has been registered and accepted by a recognized justice system does Bonsucro consider an affected person or community’s claim to be legitimate.<sup>71</sup> The rights to meaningful consultation and to free, prior and informed consent for affected communities, including Indigenous Peoples, are treated as ‘good practices’ rather than human rights under principle 5 (“continuously improve areas of business”); they appear as aspirational as opposed to being central to the respect of the rights of potentially affected groups and the conduct of due diligence.

Bonsucro’s policy is therefore not only incomplete for failing to reflect the full gamut of the internationally recognized human rights, including the prohibition of forced evictions,<sup>72</sup> but it runs contrary to international human rights standards. By recognizing only local land tenure claims that have been accepted by a recognized justice system, Bonsucro’s policy and standards reinforce a narrative that human rights violating governments and companies commonly use to justify land grabbing and forced evictions in countries in which justice systems are corrupt or otherwise dysfunctional.

As mentioned, forced evictions are a gross violation of human rights under international human rights law and are among the most important human rights risks of the sugarcane industry. By not explicitly stating its commitment to the prohibition on forced evictions and respect for housing and land tenure rights, among others, and requiring the same of its members, Bonsucro is in breach of its responsibility to respect human rights under the OECD Guidelines and the UN Guiding Principles. It cannot rightly

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<sup>68</sup> Bonsucro Code of Conduct. <http://www.bonsucro.com/wp-content/uploads/2017/01/Code-of-Conduct-December-2011.pdf>

<sup>69</sup> Bonsucro Production Standard. <https://www.bonsucro.com/production-standard/>

<sup>70</sup> Bonsucro Production Standard (December 2016), page 16 – 22, v.4.2. <http://www.bonsucro.com/wp-content/uploads/2017/04/Bonsucro-PS-STD-English-2.pdf>

<sup>71</sup> Ibid, page 15.

<sup>72</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No.7 ‘The right to adequate housing: Forced Evictions’.

claim a mantle as industry initiative for sustainable and responsible sugar production without this explicit human rights commitment.

Moreover, the production standard appears to be limited to members who wish to achieve certification for certain components of their business, which appears to mean that even the limited commitments to labor rights are not expected of Bonsucro's membership more broadly.

Aggravating these policy failures, Bonsucro misleadingly portrays to the public that membership does require a commitment to respect human rights by listing it prominently as one of its seven principles on its website. The fine print, however, discharges its members of any such responsibility.

## **8. Request for United Kingdom NCP assistance**

On behalf of the approximately 711 affected families from the villages of O'Bat Moan, Khtum, Taman, Bos and Trapaing Veng, IDI and EC request the UK NCP to offer its good offices to resolve this dispute with the Respondents consequent to their failure to comply with OECD Guidelines.

The complainants have undertaken efforts to engage with Bonuscro, including via its own grievance mechanism, since 2011. These efforts have not resulted in remediation for the complainants due to the ineffectiveness of Bonsucro's grievance mechanism.

The communities we represent recognize that Bonsucro is a multi-stakeholder initiative and not directly responsible for the forced evictions and harms they suffered. However, as explained above, as the sugar industry's leading multi-stakeholder initiative, Bonsucro bears a special responsibility in relation to this matter.

We therefore request that the UK NCP investigate this complaint and make specific recommendations to bring Bonsucro into compliance with the OECD Guidelines with respect to the Mitr Phol case in particular, and more generally with respect to its Code of Conduct, Production Standard, due diligence processes for accepting new members, and grievance mechanism.