



អង្គការ សមធម៌កម្ពុជា  
equitable cambodia



Nestlé  
Benjamin Ware  
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Via email

Cc:

Leanne Geale, Executive Vice President, General Counsel, Corporate Governance and Compliance  
Henri de Castries, Vice Chairman of the Board of Directors and Chairman of the Nomination and Sustainability Committee  
Yann Wyss, Senior Public Affairs Manager, Social & Environmental Impact

November 02, 2020

Dear Mr. Ware,

Further to our letter dated March 20, 2018, we write regarding the class action *Hoy Mai & Others vs. Mitr Phol Co. Ltd.*, filed in Thai courts by more than 700 Cambodian families who were forcibly displaced between 2008-2009 to make way for a sugarcane plantation owned by Mitr Phol Group. As an important customer of Mitr Phol, Nestlé is directly linked to the company and its business activities. As such, we request your attention and engagement on this matter.

On July 31, 2020, Cambodian plaintiffs won a landmark victory when the Bangkok South Civil Court recognized their class status, which will allow the approximately 3,000 victims to proceed with litigation as a group. With the next court hearing scheduled for November 24, 2020, we are now writing to Mitr Phol's buyers to alert you to this critical opportunity to use your leverage to resolve the case through a negotiated settlement before the class action suit commences.

We are deeply disappointed that Nestlé, as a key buyer, has to date not used its leverage to ensure that Mitr Phol provides redress to the victims in Cambodia. Using all available leverage to address known human rights violations in a business enterprise's supply chain is a critical responsibility under the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights (UNGPs). Yet, despite comprehensive documentation of the grave violations at issue in this case – and the Thai National Human Rights Commission's validation of Mitr Phol's responsibility to provide compensation and other remedy – Nestlé has not taken appropriate action.

In response to our 2018 letter, you expressed concern about the allegations, but also asserted that Nestlé does not and has not sourced sugar from Mitr Phol in Cambodia. To the extent that this assertion was meant to suggest that Nestlé has *no responsibility* with regard to the forced

displacement of hundreds of families in Cambodia, it is inconsistent with the OECD Guidelines and the UNGPs. Both standards expect that when an enterprise is directly linked to human rights violations through a business relationship, it will use its leverage to influence the entity causing the adverse impacts to prevent or mitigate them.<sup>1</sup> The OECD-FAO Guidance for Responsible Agricultural Supply Chains gives an illustrative example, explaining that if enterprises “may be sourcing from or linked to any business partner violating legitimate tenure rights, they should work with them on corrective action and, to the extent possible, terminate the business relationship if no remedial action is taken.”<sup>2</sup>

There is ample evidence of Mitr Phol’s role in the forced displacement and other abuses at issue in this case, yet despite Nestlé’s engagement with Mitr Phol regarding its operations in Thailand, we are not aware of any evidence that Nestlé attempted to influence Mitr Phol to prevent or mitigate the adverse impacts of the company’s activities in Cambodia, or to redress the harms after the fact. This failure to use its leverage is especially notable given that Nestlé’s Responsible Sourcing Standard requires suppliers to demonstrate “evidence of respect for community land rights and free, prior and informed consent of the local community.”<sup>3</sup>

The assertion that Nestlé does not source sugar from Mitr Phol in Cambodia is a misconceived attempt to sidestep these responsibilities. In fact, *no one* now sources Cambodian sugar from Mitr Phol: the company cancelled its concession agreements and closed its Cambodian plantations in 2015. However, prior to its exit, Mitr Phol trucked sugarcane from its Cambodian plantations to its mills in Thailand. Therefore, if Nestlé was sourcing sugar from Mitr Phol in Thailand between 2009-2014, it likely purchased sugar grown on the plantations from which the Cambodian plaintiffs were forcibly displaced.

Moreover, regardless of whether Nestlé purchased sugar grown in Cambodia specifically, it has a responsibility to use its leverage with Mitr Phol. The fact that Mitr Phol has left Cambodia does not absolve it of its responsibility to remedy the grave violations committed. The Thai National Human Rights Commission agreed, finding that the company has an ongoing responsibility to provide compensation and other remedies for the losses and human rights impacts suffered as a direct result of its previous business activities in Cambodia. Similarly, Mitr Phol’s exit from Cambodia does not terminate the responsibility of Mitr Phol’s buyers to use their maximum leverage, including their collective leverage, to influence Mitr Phol to remedy its adverse human rights impacts.

As a member of Bonsucro, Nestlé is likely aware that our organizations filed a complaint with the UK National Contact Point for the OECD Guidelines for Multinational Enterprises against Bonsucro for, among other things, failing to use its leverage with Mitr Phol to bring about remedy

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<sup>1</sup> OECD Guidelines on Multinational Enterprises, 2011, <http://www.oecd.org/daf/inv/mne/48004323.pdf>; Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, United Nations Human Rights Council, 17th Session, A/HRC/17/31, 21 March 2011, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf).

<sup>2</sup> OECD-FAO Guidance for Responsible Agricultural Supply Chains, 2016, <https://www.oecd-ilibrary.org/docserver/9789264251052-en.pdf?expires=1598051255&id=id&accname=guest&checksum=2A00F5C6BF367570C01B37EF9E277D62>.

<sup>3</sup> Nestlé Responsible Sourcing Standard, July 2018, <https://www.nestle.com/sites/default/files/asset-library/documents/library/documents/suppliers/nestle-responsible-sourcing-standard-english.pdf>.

for the Cambodian families. The UK National Contact Point found the complaint admissible, noting that the allegations merit further examination.<sup>4</sup> Our attempted mediations with Bonsucro earlier this year failed, and the National Contact Point is now investigating Bonsucro's responsibilities under the OECD Guidelines in this case.

We believe the continuing litigation and pending public final statement by the UK National Contact Point place Mitr Phol's buyers' reputation and public image at risk. This is especially true for those buyers that fail to use their leverage to influence Mitr Phol to remediate the grave human rights violations that it caused, in breach of their own human rights responsibilities under the OECD Guidelines and UNGPs.

We therefore urge Nestlé to take action now. The class action is at a critical juncture and provides a clear opportunity for Nestlé to use its leverage to compel Mitr Phol to seek a negotiated settlement, including the payment of compensation to affected families. We request a response to this letter by November 16, 2020, when we intend to make this letter and your response or non-response public. We are also available at any time to have a telephone conversation to discuss these matters further.

Sincerely,



David Pred  
Executive Director  
Inclusive Development International



Eang Vuthy  
Executive Director  
Equitable Cambodia



Naly Pilorge  
Director  
League for the Promotion & Defense of Human Rights (LICADHO)

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<sup>4</sup> UK National Contact Point, Initial assessment: IDI, EC and LICADHO complaint to UK NCP about Bonsucro Ltd, 25 September 2019, <https://www.gov.uk/government/publications/idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd>.