



អង្គការ សមធម៌កម្ពុជា
equitable cambodia



PepsiCo
Andrew Slight
Director, Global Public Policy and Government Affairs
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Via email

Cc:

Jim Andrew, Executive Vice President, Beyond the Bottle businesses and Chief Sustainability Officer
Dina Dublon, Independent Director & Chairman of the Public Policy and Sustainability Committee
Darren Walker, Independent Director & member of the Public Policy and Sustainability Committee

November 02, 2020

Dear Mr. Slight,

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, PepsiCo 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 PepsiCo, 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 – PepsiCo has not taken appropriate action.

In response to our 2018 letter, you asserted via email to a representative of Inclusive Development International that PepsiCo *could not intervene* with regard to the forced displacement of hundreds of families in Cambodia because it does not source sugar from Cambodia and does not have a

relationship with Mitr Phol in Cambodia. This position 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 with an entity causing the adverse impacts, it will use its leverage to influence that entity to prevent or mitigate them.¹ 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.”²

There is ample evidence of Mitr Phol’s role in the forced displacement and other abuses at issue in this case, yet we are not aware of any evidence that PepsiCo 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 PepsiCo’s “zero tolerance” policy for “land displacements of any legitimate land tenure holders” and recognition that “PepsiCo has a responsibility to address” such situations when they occur.³

The assertion that PepsiCo 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 PepsiCo 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 PepsiCo 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, PepsiCo 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 for the Cambodian families. The UK National Contact Point found the complaint admissible,

¹ 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.

² 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>.

³ PepsiCo Land Policy, March 18, 2014, https://www.pepsico.com/docs/album/esg-topics-policies/pepsico_land_policy.pdf?sfvrsn=fce24e93_8.

noting that the allegations merit further examination.⁴ 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 PepsiCo to take action now. The class action is at a critical juncture and provides a clear opportunity for PepsiCo 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)

⁴ 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>.