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Decision

Initial assessment by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: complaint from IDI, EC and LICADHO against Bonsucro Ltd

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Summary of the UK NCP decision

- The complainants are:
 - Inclusive Development International (IDI),
 - Equitable Cambodia (EC)
 - Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
- The complainants allege that Bonsucro Limited (Bonsucro), a multi-stakeholder membership organisation, has failed to conduct adequate due diligence and apply leverage to its member Mitr Phol Group – Thailand (MPG-T) with regard to alleged human rights violations in Cambodia. The complainants also allege that Bonsucro does not have in place adequate human rights policy commitments and an effective grievance mechanism in line with the OECD guidelines.
- The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) has decided the issues raised in the complaint merit further examination and has accepted the complaint for further consideration.
- This initial assessment decision is made on the basis of the information offered by the parties. The decision to further examine the claim is not a finding against Bonsucro and does not mean that the NCP considers the company has acted inconsistently with the guidelines.
- The NCP will now offer the parties an opportunity to mediate. If the parties do not want to mediate or cannot reach an agreement, the NCP will examine further the claim about whether Bonsucro's actions and policies are consistent with the OECD guidelines.

Substance of the complaint

1. The complaint has been brought jointly by 3 complainants:

- Inclusive Development International (IDI), a civil society organisation based in the United States that works to advance social, economic and environmental justice by supporting communities
- Equitable Cambodia (EC), a civil society organisation based in Cambodia that works to promote housing, land and natural resource rights in Cambodia
- Cambodian League for the Promotion and Defense of Human Rights (LICADHO) a civil society organisation based in Cambodia that is the national Cambodian human rights organisation

2. The complainants refer to a company Bonsucro Limited (Bonsucro). Bonsucro is a London based company limited by guarantee and describes itself as a global multi-stakeholder non-profit organisation.

3. The allegations of the complaint concern Bonsucro's conduct in relation to its member, Mitr Phol Group – Thailand (MPG-T) (<http://www.bonsucro.com/members/mitr-phol-group-thailand/>). MPG-T is a Thai based privately owned group of subsidiary companies that the complainants allege have operated land concessions in Cambodia where human rights violations, including forced eviction and land seizures are alleged to have occurred.

4. The complainants allege that Bonsucro is in breach of the OECD guidelines as it:

I. has failed to conduct adequate human rights due diligence when admitting MPG-T as a member on 2 occasions (2010 and 2015)

II. has failed to exercise its leverage to influence MPG-T to mitigate and address adverse human rights impacts that it is directly linked to through its business relationships

III. does not have a policy commitment to respect human rights

IV. does not provide for an effective grievance mechanism that is compatible with the guidelines and internationally agreed standards

5. The complainants request the UK NCP's good offices to resolve the dispute with Bonsucro and/or for the UK NCP to make recommendations to Bonsucro on its behaviour in line with the guidelines including with respect to due diligence.

6. Bonsucro accepted an invitation from the UK NCP to respond to the complaint. It does not accept the allegations set out by IDI, EC and LICADHO.

Guidelines provisions cited

7. The complainant has cited a number of general issues in their complaint. However, they specifically refer to the following articles of the guidelines:

Chapter II - General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A. Enterprises should:

1. 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 as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
2. 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.

Chapter IV: human rights

States have the duty to protect human rights. 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:

3. 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.
4. Have a policy commitment to respect human rights.
5. 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.
6. 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.

The initial assessment process

8. The initial assessment process is to determine whether the issues raised merit further examination. It does not determine whether the company has acted inconsistently with the guidelines.

Handling process

11/03/2019	The <u>UK NCP</u> receives complaint
18/03/2019	The <u>UK NCP</u> acknowledges receipt of the complaint by return of email to the complainants and informs them that the complaint has been passed to the respondent
18/03/2019	The <u>UK NCP</u> contacts Bonsucro to inform them of the complaint
22/03/2019	The <u>UK NCP</u> is contacted by Bonsucro, acknowledging receipt of the complaint
26/03/2019	The <u>UK NCP</u> spoke with representatives of Bonsucro to explain the complaint process
09/04/2019	The <u>UK NCP</u> spoke with representatives of <u>IDI</u> , <u>EC</u> and <u>LICADHO</u> to explain the complaint process
09/04/2019	The <u>UK NCP</u> receives a letter from Bonsucro in response to the complaint
12/04/2019	The <u>UK NCP</u> shares Bonsucro's response with <u>IDI</u> , <u>IC</u> and <u>LICADHO</u> and minutes of meetings it held with both parties
20/05/2019	The <u>UK NCP</u> receives a letter from <u>IDI</u> , <u>EC</u> and <u>LICADHO</u> in response to Bonsucro's response to the complaint
31/05/2019	<u>UK NCP</u> issues draft initial assessment to the parties
14/06/2019	The <u>UK NCP</u> receives comments from both parties in response to the draft initial assessment
26/07/2019	The <u>UK NCP</u> shares comments it received with both parties
25/09/2019	The <u>UK NCP</u> publishes its initial assessment

9. All documents provided in the complaint and response have been shared between the parties.

10. The UK NCP offered each party the opportunity to meet / discuss to explain the process. The offer to speak with the NCP was taken up by both parties.

UK NCP decision

11. The UK NCP's decision that the issues raised in the complaint merit further examination and to accept further examination of the complaint takes account of the following criteria, as set out in the OECD guidelines implementation procedures.

Identity of the complainants and their interest in the issue

12. The UK NCP accepts that the complainants have an interest in bringing this complaint in their capacities as civil society organisations. The UK NCP is satisfied that they have a valid interest in the issues raised. The NCP notes that the complainant organisations have campaigned on the issues in the complaint over a number of years and have been in contact with the company for several years through its own grievance procedures.

13. The complaint states that the OECD guidelines should apply to Bonsucro as its operations are inherently multinational, it being a limited company in the UK with over 500 company members across more than 40 countries. The UK NCP notes that a precise definition of multinational enterprises is not required for the purpose of the guidelines. The UK NCP considers that the guidelines apply to Bonsucro as a company with member organisations established in more than one country.

14. In response to the complaint, Bonsucro state that the UK NCP is not the appropriate forum for a complaint against MPG-T and that it is inappropriate to use Bonsucro as an avenue to complain about the behaviour of MPG-T. The UK NCP considers that as stated in the guidelines, it is appropriate for NCP's to consider allegations regarding issues that are linked to a company's operations, products or services by a business relationship. As the guidelines state this is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

Whether the issues are material and substantiated

15. The complainants have provided information in relation to the human rights harms related to MPG-T's business relationships. The complainants provide links to NGO reports (from 2009) which outline the timeline of forced evictions between 2008-2009 including photos and maps of the location of evictions. The complainants provide a report produced by the National Human Rights Commission of Thailand in 2015 (and an unofficial translation in English). The UK NCP has considered this translation for the purposes of the initial assessment as the report was not the sole evidence that was provided to the UK NCP in determining whether the issues merit further examination, the report's findings are in the public domain. Should the report be required as part of future mediation discussions or at the further examination stage, the UK NCP will verify the translation with the NHRC.

16. The complainants allege that Bonsucro has failed to carry out human rights due diligence. The complainants state that the information and evidence they have provided to the UK NCP referred to above were all widely publicised and publicly available to Bonsucro at the time of its membership admittance of MPG-T (in 2010) and its justification for readmission (in 2015) showed no sign that any credible due diligence had been conducted. In their response to the complaint, Bonsucro listed examples of human rights due diligence it had undertaken regarding readmitting MPG-T.

17. Bonsucro also stated that the underlying human rights impacts which is the basis of the complaint are out of scope as the alleged harm occurred before 2011, a period covered by the previous version of the OECD Guidelines which did not include a chapter on human rights and relevant sections of the general policies chapter. The NCP notes that in a review of a case¹ the UK NCP previously handled, the UK NCP considered the issue of which version of the guidelines should apply to allegations of human rights abuses. The review committee stated that complaints may still be made about harm that occurred prior to the 2011 guidelines, in relation to matters (or harms) that were known to the company after the new guidelines took effect. The review highlighted that in the context of alleged human rights abuses, a company may not be criticised for its conduct before 2011; however if that previous conduct raised human rights concerns covered in the new guidelines, an enterprise may have a duty to address those concerns in the light of its knowledge of the alleged harms.

18. The complainants allege that Bonsucro failed to use its leverage over MPG-T and highlight what it deems as clear opportunities for leverage including membership readmittance. In their response to the complaint Bonsucro state that the complainants have a fundamental misunderstanding of the leverage that Bonsucro has over members.

19. The complainants also provide evidence of their engagement through Bonsucro's grievance mechanism in the form of letters sent in 2011 and 2016 as well as a publicly made decision by Bonsucro on its website regarding MPG-T's membership. In their response to the complaint Bonsucro states that the complainants have misrepresented material facts related to the complainant's engagement with Bonsucro's grievance mechanism.

20. The complainants allege that Bonsucro does not have a human rights policy in place. In their response to the complaint Bonsucro state that it is in the process of updating its code of conduct for members, including an aim to align it with the OECD guidelines. Bonsucro states that it has invited the complainants to comment on the updated code.

21. The UK NCP considers that there would be merit in a further examination Bonsucro's business processes and policies with regards to its business relationships and the issues raised regarding the its grievance mechanism.

Whether there seems to be a link to the enterprises' activities and the issues raised

22. The complaint states that as MPG-T is a member of Bonsucro and therefore pays a membership fee to access the benefits associated with the Bonsucro brand.

23. The UK NCP understands from the submissions from both parties that MPG-T was admitted as a member of the Better Sugar Cane Initiative Ltd (the forerunner of Bonsucro) from 2010 until July 2011. The complainants state that MPG-T withdrew from its membership after a complaint was submitted to the Better Sugar Cane Initiative's grievance mechanism regarding human rights violations caused by MPG-T's business operation's in Cambodia. The complainants state MPG-T was then admitted as a member to Bonsucro in 2015.

24. The UK NCP considers that based on the information provided there appears to be a link to the enterprises activities and the issues raised and a business relationship between Bonsucro and MPG-T. The parties disagree about the amount or relevance of leverage that Bonsucro has, and the UK NCP considers that further examination would be required to reach a conclusion.

25. The UK NCP notes that the NCP process is between the two named parties to the complaint. The UK NCP does not examine the actions of any party other than the company identified in a complaint and does not consider it would be within its remit to do so.

Relevance of applicable law and procedures, including court rulings

26. In addition to the OECD Guidelines the complaint includes references to several internationally recognised human rights instruments including UN Human Rights Commission resolutions (1993/77 and 2004/28). The complaint also includes references to standards of international law, including the International Covenant on Civil and Political Rights (ICCPR).

27. The complaint refers to the United Nations Guiding Principles (UNGP) which were published in 2011 and embedded in the latest version of the OECD guidelines. Specific UNGPs noted in the complaint include:

- 11 - the responsibility of enterprises to respect human rights
- 17 to 21 - that refer to the due diligence companies should carry out when assessing actual and potential human rights impacts
- 30 and 31 - that outline standards for grievance mechanisms and calls upon industry multi-stakeholder and other collaborative initiatives to provide effective grievance mechanisms

How similar issues have been, or are being, treated in other domestic or international proceedings

28. In their response to the complaint, Bonsucro highlighted that there were parallel proceedings in Thailand which had been issued by the complainants against MPG-T. The UK NCP understands that MPG-T were party to proceedings in Thailand which were concluded in July 2019, subject to appeal. The UK NCP has separate rules of procedure for handling complaints in which there are parallel proceedings²; which provide that the NCP will accept a complaint, when appropriate, even if it has notice that parallel legal proceedings are underway. The UK NCP considers that it is appropriate to accept the case for further examination as the decision to accept the case at the initial assessment stage is not a finding against Bonsucro.

29. The complainants refer to a case handled by the Swiss NCP³ which considered the applicability of the guidelines to a comparable multi-stakeholder initiative. The Swiss NCP accepted the case for further examination on the basis that it considered the organisation's purpose and activities to be of a commercial nature and to which the OECD guidelines are applicable. Bonsucro does not consider that its activities are comparable to those in the case handled by the Swiss NCP. Whilst the UK NCP considers the cases it receives on each case's own merit, the UK NCP notes the relevance (and differences) of the case the Swiss NCP handled.

Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the guidelines

30. The complainants state that they have undertaken efforts to engage with Bonsucro through its own grievance mechanism. The NCP notes that the parties currently disagree on the effective functioning of Bonsucro's grievance mechanism. The UK NCP considers that it serves the purpose and effectiveness of the guidelines to provide its good offices to help resolve issues between both parties regarding the functioning of this mechanism.

31. The complainant also requests that the UK NCP make specific recommendations to bring Bonsucro's behaviour into compliance with the guidelines in respect to amongst other things due diligence of membership as part of its multi-stakeholder initiative. The NCP considers that further examination of the complaint would contribute to a better understanding of how the guidelines apply to due diligence in this specific instance.

32. The conclusions reached by the UK NCP in this initial assessment are based on the information it has been provided by both parties. They relate to whether the issues raised are material to the guidelines and if they can be substantiated. It is not an assessment of the likely outcome of further examination.

Next steps

33. The UK NCP will formally ask the parties whether they are willing to engage in a mediation/conciliation process, with the aim of agreeing how the issues identified can be successfully addressed. Subject to their response, the UK NCP will liaise with the parties to arrange mediation/conciliation meetings. If these meetings lead to a resolution, the UK NCP will reflect this in a final statement without making a determination on whether the companies acted inconsistently with the guidelines.

34. If a mediated solution is not possible, the UK NCP will conduct a separate examination into the issues. The findings will be presented in a final statement.

12 September 2019

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

1. Complaint from IAP and WDM against GCM Resources Plc (20 November 2014) ←

2. Approach of the UK National Contact Point to specific instances in which there are parallel proceedings (16 September 2009, updated on 14 January 2011)
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31717/11-652-approach-national-contact-point-parallel-proceedings.pdf). ↩
3. Specific instance submitted by TuK Indonesia regarding the Roundtable for Sustainable Palm Oil (initial assessment 31 May 2018, final statement 5 June 2019) ↩