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Decision

Final statement: IDI, EC and LICADHO complaint to UK NCP about Bonsucro Ltd

Updated 11 January 2022

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This publication is available at <https://www.gov.uk/government/publications/idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd/final-statement-idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd>

Summary

The complainants are:

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

The above complainants claimed that Bonsucro Limited (Bonsucro), a multi-stakeholder membership organisation, failed to conduct adequate due diligence and apply leverage to its member Mitr Phol Group - Thailand (MPG-T) regarding alleged human rights violations in Cambodia. The complainants also claimed that Bonsucro did not have in place adequate human rights policy commitments or an effective grievance mechanism in line with the OECD Guidelines (the Guidelines).

The alleged human rights violations of this complaint took place in 2008 and 2009. MPG-T was a member of Bonsucro from June 2010 to 2011 when they withdrew. They were then readmitted by Bonsucro again in July 2015.

The Guidelines were updated to include human rights due diligence provisions in 2011. The UK NCP cannot hold Bonsucro accountable under the 2011 Guidelines for actions it took before 1 September 2011, unless those actions have outstanding impacts that the company is aware of and is able to address. Therefore, the 2011 Guidelines apply to Bonsucro's 2015 actions and any outstanding impacts known to Bonsucro at the time.

The UK NCP's initial assessment accepted the complaint for further examination. The parties took part in mediation in January 2020. However, mediation between the parties was not successful and so in May 2020 the UK NCP began further examination of the issues that were accepted in the initial assessment.

The UK NCP has found that Bonsucro breached the Guidelines in relation to due diligence and leverage when reaccepting MPG-T as a member.

However, the UK NCP notes that from the time the complaint was sent to the UK NCP to now, Bonsucro has taken steps to align with the Guidelines, namely with their new grievance mechanism and with their updated code of conduct which includes reference to the [OECD-FAO Guidance for Responsible Agricultural Supply Chains \(https://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm\)](https://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm), and the [UN Guiding Principles on Business and Human Rights \(https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf\)](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

Findings and recommendations

The UK NCP examined the complaint by 3 NGOs, IDI, EC and LICADHO (the complainants) about Bonsucro's conduct as a membership organisation.

Based on the information examined, the UK NCP found that Bonsucro did not meet the following paragraphs when it readmitted MPG-T in 2015:

- 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 (Chapter IV, Paragraph 3 and Chapter II section A, paragraph 12).

- 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 (Chapter IV, Paragraph 5 and Chapter II - General Policies section A, paragraph 10).

Based on the information examined, and in particular the new Code of Conduct adopted by Bonsucro in April 2020 after the submission of the complaint, the UK NCP found that Bonsucro has now met, the following recommendation under of the OECD Guidelines to:

- Have a policy commitment to respect human rights (Chapter IV, Paragraph 4).

Based on the information examined, the UK NCP has not found that Bonsucro breached the following recommendation under the OECD Guidelines to:

- 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 (Chapter IV, Paragraph 6).

As a result of this, the UK NCP recommends that Bonsucro takes steps to continually improve their internal processes in order to uphold the highest levels of ongoing due diligence of its members.

The UK NCP will issue a follow-up report to this final statement in January 2023.

The OECD Guidelines and the UK NCP complaints procedure

The Guidelines are voluntary principles for responsible business conduct in areas including employment, human rights and the environment.

Each country adhering to the Guidelines is required to maintain a National Contact Point to consider complaints under the Guidelines. The UK government maintains the UK NCP to meet this requirement. The NCP is not part of the OECD and has no wider responsibilities for OECD functions.

The UK NCP is staffed by officials in the Department for International Trade (DIT). It operates independently of Ministers, who have no role in UK NCP decision making on complaints. A Steering Board, including members from business, trade unions and civil society, has general oversight of the NCP.

The UK NCP follows [published procedures \(https://www.gov.uk/government/publications/uk-national-contact-point-procedures-for-complaints-brought-under-the-oecd-guidelines-for-multinational-enterprise\)](https://www.gov.uk/government/publications/uk-national-contact-point-procedures-for-complaints-brought-under-the-oecd-guidelines-for-multinational-enterprise) in handling any complaint, including:

- An initial assessment to decide whether a complaint is accepted for further examination
- An offer of mediation if a complaint is accepted
- A further examination if mediation is refused or fails to produce an agreement between the parties

- A final statement reporting the outcome of mediation or further examination.

Details of the parties involved

The complainants

The complainants are:

- [IDI](#) - a civil society organisation based in the United States that works to advance social, economic and environmental justice by supporting communities to defend their rights in the face of harmful investment projects.
- [EC](#) - a civil society organisation based in Cambodia that works to promote housing, land and natural resource rights in Cambodia.
- [LICADHO](#) - a civil society organisation based in Cambodia that is mandated to promote human rights and monitor human rights violations in Cambodia.

The company

Bonsucro is a London based company limited by guarantee and describes itself as a global multi-stakeholder non-profit organisation that exists to promote sustainable sugarcane production, processing and trade around the world.

The complaint refers to the actions of one of Bonsucro's members, [MPG-T](#). [MPG-T](#) is a Thailand based, privately owned company with subsidiaries. The [UK NCP](#) details in the further examination of Paragraph 3 of Chapter IV (Human Rights) its understanding of the relationship between Bonsucro and [MPG-T](#).

UK NCP process

Initial assessment of the complaint by the UK NCP

The [UK NCP](#) received the complaint on 11 March 2019.

The complainants claimed that Bonsucro, a multi-stakeholder membership organisation, failed to conduct adequate due diligence and apply leverage to its member [MPG-T](#) regarding alleged human rights violations in Cambodia. The complainants also claimed that Bonsucro did not have in place adequate human rights policy commitments and an effective grievance mechanism in line with the Guidelines.

The [UK NCP](#) published its [initial assessment \(https://www.gov.uk/government/publications/idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd/initial-assessment-idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd\)](https://www.gov.uk/government/publications/idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd/initial-assessment-idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd) accepting the issues for further examination on 25 September 2019 on GOV.UK.

The [UK NCP](#) accepted for further examination issues relating to Bonsucro's recommendations under the below provisions of the Guidelines.

The UK NCP also referred to the OECD Due Diligence Guidance for Responsible Business Conduct (OECD Due Diligence Guidance), which provides practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises, as the basis of some of its further examination.

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:

10) 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.

12) 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.

Mediation

All parties accepted the UK NCP's offer of mediation and the proposed mediator. Due to the wide geographical spread of the parties involved, remote mediation using videoconferencing and telephone calls was proposed and accepted.

A first meeting with the mediator took place in January 2020. In the following months, the mediator reported that the parties were continuing to pursue an agreement. However, in May 2020, the mediator notified the UK NCP that the parties would not be able to come to an agreement.

In May 2020, the UK NCP wrote to the parties to say that it would begin a further examination of the issues that were accepted in the initial assessment.

Further examination by the UK NCP

Information reviewed in further examination

Following confirmation that mediation had ended, the UK NCP wrote to all parties on 17 June 2020 and received further information from IDI, EC, LICADHO on 21 July 2020 and from Bonsucro on 22 July 2020. Bonsucro provided additional information regarding their grievance mechanism on 11 September 2020, and IDI provided additional factual commentary on 13 October 2020.

The UK NCP conducted desk-based research including online searches for additional information about public statements made by Bonsucro and relevant news articles. The UK NCP also spoke to the Foreign, Commonwealth and Development Office regarding information they might have on the issue.

Information sharing

All information provided to the UK NCP has been shared with all parties to the complaint. Information is shared on the understanding that while the complaint is under consideration it should not be shared further or made public.

Once the UK NCP has issued its final statement the parties can communicate publicly about the complaint. Information and views provided during the proceedings by another party involved remain confidential unless that party consents to its release.

Limitations of information review

The UK NCP operates within boundaries set by the Guidelines, including the voluntary nature of the Guidelines and the requirement on NCPs to operate transparently.

The UK NCP is not a statutory body and has no powers to require any party to provide information to it, nor any special status permitting it to obtain confidential information that other government officials are under statutory obligation to protect.

The UK NCP expects, in any case, to share information it obtains with the parties in the complaint. The UK NCP has some ability to share sensitive information on a conditional basis. Its ability to do this depends on parties' own transparency or confidentiality obligations, however, and also on the level of good faith with which parties approach the process. Where there is little trust or limited engagement, it is unlikely that sensitive information will be shared.

The UK NCP has made findings on information that was made available to it.

UK NCP's fact finding and conclusions

On the basis of the information provided, the UK NCP has reached the following understanding of the facts relating to the timeline, relationships, operations and impacts of the complaint regarding the alleged failure of Bonsucro to comply with the Guidelines due to its business relationship with one of its members, MPG-T.

This section covers two key areas: 1. Timeline of events, and 2. Consideration of each of the raised human rights paragraphs in the Guidelines. The UK NCP has made the decision not to separately address Chapter II - General Policies as these are covered within the human rights paragraphs.

Timeline of events

In 2008 Cambodia's Ministry of Agriculture, Forestry and Fisheries granted three 70-year economic land concessions (ELCs) to three companies connected to MPG-T. The names of these companies are Angkor Sugar Co. Ltd., Tonle Sugar Cane Co. Ltd., and Cane and Sugar Valley Co. Ltd

It is claimed that between 2008 and 2009 families were displaced from their land and homes to clear the way for sugar plantations for the three companies. It is also claimed that families were forcibly moved by government security forces, military police, hired demolition workers and company workers. Those who defended their land rights were met with harassment. MPG-T has not provided any form of remedy to the victims of the human rights violations.

In June 2010 MPG-T was admitted as a member of Bonsucro.

In January 2011 the one of the complainants, LICADHO, alongside a third party NGO (Bridges Across Borders Cambodia) submitted a complaint to Bonsucro (then called Better Sugar Cane Initiative) about the human rights issues and breaches of Bonsucro's code of conduct.

In 2011 MPG-T withdrew its membership from Bonsucro and did not address the complaint. Bonsucro informed the complainants that in order to be re-admitted as a member, the company "must re-engage in the complaints resolution process".

In May 2013, the complainants filed a separate complaint to the National Human Rights Commission (NHRC) of Thailand.

In March 2015 all three MPG-T concessionaries were cancelled and the company withdrew from Cambodia.

In June 2015 MPG-T were readmitted to Bonsucro, but Bonsucro did not re-examine the original complaint of 2011. Upon finding out MPG-T had been readmitted to Bonsucro the complainants asked for the original complaint to be reopened. Bonsucro requested the complaint be re-submitted.

In June 2015, MPG-T communicated with EC regarding the issues in Cambodia, updating them about the steps they were taking for a post-investment assessment of the concessions conducted by an independent third-party and requesting a meeting with EC to discuss how the issues relating to Cambodia might be resolved.

In July 2015, a meeting took place between representatives of MPG-T and EC to discuss the issues in Cambodia.

In October 2015, the NHRC found MPG-T to be in breach of its responsibilities to respect human rights under the United Nations Guiding Principles of Business and Human Rights. It found that MPG-T should compensate the families.

In November 2015, Bonsucro conducted a field trip to Cambodia to investigate some of the ongoing issues in sugarcane supply chains. As part of this trip Bonsucro met with the complainants and a number of other NGOs to understand on-going land issues in Cambodia.

In February 2016 the complainants filed an amended complaint to Bonsucro regarding MPG-T, this time referring to the NHRC's findings. Between February 2016 and September 2018 there was communication between both parties through Bonsucro's grievance process.

In November 2018, Bonsucro dismissed the complaint on the basis there was no breach of their relevant internal governance documents by MPG-T during the period(s) of membership.

Consideration of the Guidelines

Further examination of Paragraph 3 (IV. Human Rights chapter) and General Policies A:12

Paragraph 3 (IV. Human Rights chapter):

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 OECD commentary on this obligation is that:

“... Meeting the expectation in paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact... Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts”.

Additionally, under General Policies Chapter II - General Policies section A, paragraph 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.

Do provisions of the 2011 Guidelines apply?

The General provisions of the Guidelines obliging companies to respect human rights were in effect before 2011. As noted above, the UK NCP applies the new provisions to actions of enterprises from 1 September 2011 and outstanding impacts known to the company at that date.

For the purposes of this further examination, the UK NCP regards that the harms of 2008 and 2009 did happen. Bonsucro has not disputed this. The 2015 Thai Human Rights Commission report said the land was divided into the ELCs for the three subsidiary companies of MPG-T, and in entering these land concessions there was an illegal seizure of land from people in the area, the demolition of people's homes, and the destruction of their livestock and crops. Due to this, the UK NCP is proceeding with its further examination on the basis that these harms did occur.

Bonsucro in their original response argued certain events, including the forced evictions, were out of scope of the 2011 Guidelines as they occurred between 2008 and 2009 when the Guidelines did not include a Chapter on human rights. They also argued the business relationship they had with MPG-T from 2010-2011 predated the 2011 update to the Guidelines.

The UK NCP cannot hold Bonsucro accountable under the 2011 Guidelines for actions it took before 1 September 2011, unless those actions have outstanding impacts that the company is aware of and is able to address.

The UK NCP considers that the 2011 Guidelines apply to Bonsucro's conduct in 2015 regarding any outstanding human rights impacts when they re-admitted MPG-T to their organisation.

Link between adverse impacts and Bonsucro through its business relationships:

As written in paragraph 25 of the initial statement, the UK NCP noted that the NCP process is between the 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.

However, part of this complaint is about how Bonsucro should have used its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. This adverse human rights impact is alleged to be linked to Bonsucro through its business relationship – in particular, in relation to the actions of MPG-T and its subsidiary companies. To examine this fully, the UK NCP examined the relationships between Bonsucro's member, MPG-T, and its subsidiary companies.

These subsidiary companies are named by the complainant as Angkor Sugar Co. Ltd., Tonle Sugar Cane Co. Ltd., and Cane and Sugar Valley Co. Ltd.

The complainants provided the following information as evidence of the relationship between MPG-T and the subsidiaries: * The directors of each of the three companies are, or were, all senior figures in MPG-T. * All three companies applied for the concessions on the same day, received approval from the Council of Ministers on the same day (and in the same letter), and signed the concession contract on the same day. * Angkor Sugar Co. is also noted as a subsidiary of MPG-T in the 2017 EY Financial Statement.

Bonsucro noted that their only relationship was with MPG-T, which they state is a single Thai based entity, and not a group of companies. Bonsucro claimed that the relationship between Bonsucro and MPG-T is based on the membership agreement between them, as set out in Bonsucro's policies and procedures in force at the time.

Additionally, Bonsucro notes that the harms took place prior to MPG-T's initial membership to Bonsucro in June 2010.

The OECD Due Diligence Guidance for Responsible Business Conduct outlines what is meant by different linkages to harms caused. In this instance, Bonsucro's linkage to MPG-T and its subsidiary companies would be defined as "Directly Linked".

"Linkage" is defined by the relationship between the adverse impact and the enterprise's products services or operations through another entity (i.e business relationship). "Directly linked" is not defined by a direct contractual relationships."

For the purposes of this further examination, the UK NCP regards Bonsucro as having a business relationship with MPG-T from June 2010 to July 2011 and July 2015 to present. This is because there is a transaction of membership fees between the two parties which gives members (MPG-T in this case) access to the benefits associated with the Bonsucro brand. The UK NCP finds that the harms caused by MPG-T's subsidiaries can be directly linked to MPG-T. The harms caused by the subsidiaries of MPG-T, are therefore linked back to Bonsucro.

The UK NCP considers that there is a link between the harm caused and Bonsucro through its relationship with its member, MPG-T and by extension, a link to Bonsucro and the harms caused by MPG-T's subsidiaries.

Did Bonsucro use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact?

The commentary in the Guidelines makes it clear that meeting the expectations in paragraph 3 of Chapter IV and A:12 of the General Policies entails an enterprise using its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact.

Additionally, under the OECD Due Diligence Guidance:

"Leverage is considered to exist "where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm." What is an appropriate approach to using leverage will depend on the impact in question, the degree of leverage an enterprise possesses with its business relationship..."

The complainants claimed that Bonsucro 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.

Bonsucro stated that in 2015 when it had leverage and readmitted MPG-T as a member it did so as it was satisfied:

- MPG-T had exercised the leverage it had at the time the concessions were handed back to the Cambodian Government

- MPG-T no longer had connections to Cambodia
- MPG-T had taken steps to address legacy issues in Cambodia by engaging an independent third-party to undertake a post-investment review of the concessions.

Bonsucro did not provide the UK NCP with evidence of the above, nor the due diligence process it took to check the above before readmitting MPG-T.

Despite the harms taking place before membership, the complainants argued that Bonsucro has a ‘special leverage’ when it comes to the social environmental, and human rights conducts of its members due to the reputational benefit its membership gives.

The Guidelines state 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”. The complainants noted that these initiatives should promote high standards and strengthen adherence as opposed to merely “provide cover” or “stamp of approval” to its corporate members. In this way, Bonsucro could have used its leverage to not accept MPG-T as a member, or to ensure MPG-T had taken steps to mitigate the adverse human rights impacts before accepting it as a member.

The UK NCP accepts that Bonsucro did not have leverage for the historical harms which took place prior to MPG-T’s membership. However, Bonsucro did have leverage at the time it readmitted MPG-T as a member. The UK NCP finds that Bonsucro did not provide enough information of the benchmark it used to ensure it only gives its reputational benefits to responsibly acting businesses. The UK NCP finds that, due to the nature of it being a membership organisation, Bonsucro does have leverage over its members. Therefore, the UK NCP considers that Bonsucro did not use its leverage appropriately when readmitting MPG-T to the multi stakeholder initiative in 2015.

The UK NCP finds that Bonsucro did not meet the obligation under Chapter IV, Paragraph 3 and Chapter II section A, paragraph 2 when it readmitted MPG-T in 2015.

Further examination of Paragraph 4 (IV. Human Rights chapter):

Paragraph 4 (IV. Human Rights chapter):

The obligation under Paragraph 4 is to “Have a policy commitment to respect human rights.”

The OECD commentary on this obligation is that:

“Paragraph 4 recommends that enterprises express their commitment to respect human rights through a statement of policy that: (i) is approved at the most senior level of the enterprise;

(ii) is informed by relevant internal and/or external expertise;

(iii) stipulates the enterprise’s human rights expectations of personnel, business partners and

other parties directly linked to its operations, products or services;

(iv) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; is reflected in operational policies and procedures necessary to embed it throughout the enterprise.”

Does Bonsucro have a policy commitment to respect human rights?

The complainants claimed that Bonsucro did not have in place an adequate human rights policy. They highlighted that the Code of Conduct which was in place at the time in 2015, did not directly express any commitment of either Bonsucro or its’ members to respect human rights.

The complainants further highlighted that the full range of internationally recognised human rights were not covered in the Code of Conduct, including the prohibition of forced evictions.

Bonsucro noted that their Code of Conduct had changed over time, and on 1 April 2020 they launched a new Code of Conduct and Implementation Guide. The complaint did not discuss the new Code of Conduct, which was adopted following the submission of the complaint.

The UK NCP did not do a further examination on Bonsucro’s previous Code of Conduct, which was the subject of the complaint, but instead to examined Bonsucro’s latest Code of Conduct. The UK NCP has found that the latest version of Bonsucro’s Code of Conduct meets the following recommendations under the Guidelines for human rights policy statements:

I. Is the policy approved at the most senior level of the enterprise?

Yes.

II. Is the policy informed by relevant internal and/or external expertise?

Yes. The Code of Conduct Implementation Guidelines contains a section on “respect for Human Rights” which states:

“A responsibility to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights (Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. The code of conduct outlines is expectation of members in relation to human rights including remediation.”

III. Does the policy stipulate the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services?

Yes. Bonsucro’s Code of Conduct states it applies to:

“Bonsucro Members’ sugarcane production, processing and sourcing activities and the products and services linked to those activities by a business relationship. The Code also applies to Bonsucro Members that are civil society and/or non-governmental organisations... The Code applies to the entity that Bonsucro has a membership agreement with or, to all members part of a

Member Cohort.”.

IV. Is the policy publicly available and communicated internally and externally to all personnel, business partners and other relevant parties?

Yes. The code is publicly available on Bonsucro’s website and appears to have been communicated internally and externally to its members.

V. Is the policy reflected in operational policies and procedures necessary to embed it throughout the enterprise?

Yes, the policy is part of Bonsucro’s onboarding process as well as their grievance mechanism.

The UK NCP finds that Bonsucro has met the obligation under Chapter IV, Paragraph 4.

Further examination of Paragraph 5 (IV. Human Rights chapter) and Paragraph Policies A:10 (General)

Paragraph 5 (IV. Human Rights chapter):

The obligation under Paragraph 5 is to: “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 OECD commentary on this obligation is that:

“Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed.

Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise’s operations and operating context evolve.”

Additionally, under General Policies Chapter II - General Policies section A, paragraph 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.

Did Bonsucro carry out an appropriate level of due diligence, taking into account their size, the nature and context of operations and the severity of

the risks of adverse human rights impacts?

Bonsucro noted that the due diligence they have undertaken is appropriate to their size (which at the time of 2011 was an income of £680,000 and a staff of 5).

The OECD Due Diligence guidance suggests that how an enterprise carries out due diligence can be affected by factors such as size, the context of its operations, position within the supply chain and the nature of its products or services. However basic due diligence involving desk-based research should be within the reach of most enterprises.

As a global multi-stakeholder non-profit organisation that exists to promote sustainable sugarcane, Bonsucro should have ensured that it did adequate due diligence before admitting members to its organisation to retain its credibility as a multi-stakeholder initiative.

In terms of the June 2010 admittance to Bonsucro, the complainants showed several news articles from February 2010 and NGO reports which discussed the ELCs and the human rights abuses which took place under these concessions.

Furthermore, the complainants submitted a complaint in 2011 to Bonsucro's grievance mechanism making them aware of adverse human rights impacts connected to their business relationship with MPG-T.

MPG-T voluntarily left Bonsucro, around the time of the complaint. MPG-T was then readmitted in 2015. Bonsucro provided the UK NCP with no evidence of what MPG-T's continuous improvement looked like, and what additional changes they required from MPG-T to be readmitted.

The complainants also noted that Bonsucro also gave MPG-T a Sustainability Award two weeks after the publication of the National Human Rights Commission of Thailand report which affirmed serious human rights violations against MPG-T. Additionally Bonsucro also showcased MPG-T as a "leading member" during the initiatives 2019 Global Week.

Whilst these accolades were for good environmental practices it demonstrates the extent of the information available to Bonsucro about MPT-G.

Bonsucro noted that ongoing requirements to undertake human rights due diligence aligns with Bonsucro's core objectives of continuous improvement but that if the standard of due diligence requires enterprises to rise to the level of 'perfection' before joining it would render the foundation for human rights due diligence obsolete.

Bonsucro noted that by becoming a member of Bonsucro the member promises to act in accordance with Bonsucro's Code of Conduct and must fill in a Self-Assessment. Bonsucro did not specify what due diligence steps it takes internally to verify these promises.

In terms of Bonsucro's Code of Conduct, it mentioned the need for members to complete the Code of Conduct Self-Assessment which will:

"identify where specific actions are required to bring its sugarcane production, processing and sourcing in line with the Code... Existing members will have 12 months from the coming into force of the Code to complete the Self-Assessment and start implementing any specific actions. The Self-Assessment template will be reviewed from time to time with any material changes

being notified to Members for comment.

Any specific actions referred to at paragraph above should include time-limited commitments which will ensure that they reach compliance with the Code within a reasonable period. Members will report to Bonsucro the status of any material changes to their actions or their compliance with the Code of Conduct by confirming that they have updated the Self-Assessment yearly. What is reasonable and material will depend on the individual circumstances of the Member.”

However, Bonsucro provided no information pertaining to their minimum benchmark of admittance in relation to human rights within their onboarding process and due diligence procedures, or the actions they took to support MPG-T's progress through continuous improvement.

The UK NCP finds that Bonsucro did not undertake an appropriate level of due diligence for their size, the nature and context of operations and the severity of the risks of adverse human rights impacts in 2015.

The UK NCP finds that Bonsucro did not meet the obligation under Chapter IV, Paragraph 5 in 2015.

Further examination of Paragraph 6 (IV. Human Rights chapter):

Paragraph 6 (IV. Human Rights chapter):

The obligation under Paragraph 6 is to:

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 OECD commentary on this obligation is that:

“When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the Guidelines recommend that enterprises have processes in place to enable remediation. Some situations require cooperation with judicial or State-based non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises’ activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning. Operational level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the Guidelines.”

Does Bonsucro 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 OECD Due Diligence guidance defines cause in the following way: an enterprise “causes” an adverse impact if the enterprise’s activities on their own are sufficient to result in the adverse impact.

The OECD Due Diligence guidance defines ‘contribute’ in the following way: an enterprise “contributes to” an impact if its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact. Contribution must be substantial, meaning that it does not include minor or trivial contributions.

The UK NCP does not consider that Bonsucro has caused or contributed to the harms caused in 2008.

The UK NCP also notes that in the time since the complaint was raised with the UK NCP that Bonsucro has established an improved grievance mechanism.

As the OECD General Due Diligence Guidance highlights multi-stakeholder initiatives must “establish a functioning, accessible and effective grievance mechanism that enables stakeholders to raise concerns relating to the activities of the initiative itself, without fear of retribution.” However, the Guidance is clear that this grievance mechanism should only “pertain to the initiative’s activities and not to grievance mechanisms that initiatives may establish to facilitate the provision of remedy between impacted stakeholders or rightsholders and the members of the initiative.”

Bonsucro noted that their new grievance mechanism, which came into operation on 14 August 2020, is aligned with UNGP Effective Criteria, and was managed in partnership with external experts, and in consultation with Bonsucro members and other stakeholders.

Bonsucro provided the UK NCP with an annex explaining how their new Grievance Mechanism follows the UNGP Effectiveness Criteria and ensures it is legitimate, accessible, predictable, equitable, and transparent.

The complainants also provided the UK NCP with their assessment of Bonsucro’s new grievance mechanism. The complainants welcomed areas of improvement but believe several aspects of the mechanism that, in their view, do not meet the UNGP Effectiveness Criteria.

The UK NCP finds that Bonsucro’s conduct regarding the adverse human rights complained of has not breached the obligation under Chapter IV, Paragraph 6 because Bonsucro itself did not cause or contribute to the adverse impacts. Additionally, The UK NCP notes that in June 2020 Bonsucro launched new grievance mechanism which has established rules of procedure in line with best practice.

UK NCP Conclusions

Based on the information examined by the UK NCP, the UK NCP found that Bonsucro did not meet the following recommendations when it readmitted MPG-T in 2015:

- 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 (Chapter IV, Paragraph 3 and Chapter II section A, paragraph 12)
- 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 (Chapter IV, Paragraph 5 and Chapter II - General Policies section A, paragraph 10)

Based on the information examined, the UK NCP found that Bonsucro did meet, or has now met, the following recommendation under of the OECD Guidelines to:

- Have a policy commitment to respect human rights (Chapter IV, Paragraph 4).

Based on the information examined, the UK NCP has not found that Bonsucro breached the following recommendation under the OECD Guidelines to:

- 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 (Chapter IV, Paragraph 6).

Good company practice:

The UK NCP also considers where it has found examples of good company practice and engagement consistent with the Guidelines.

Examples of good company practice:

- In November 2015 Bonsucro conducted a field trip to Cambodia to investigate some of the ongoing issues in sugarcane supply chains. As part of this trip Bonsucro met with one of the complainants.
- When the second complaint was raised to them there is evidence that Bonsucro communicated with the complainants, as well as evidence of Bonsucro acting to connect complainants with MPG-T.
- The UK NCP notes above that Bonsucro's new grievance mechanism published this year is now in line with the OECD Guidelines.
- Bonsucro has updated their code of conduct in line with the OECD Guidelines and latest human rights guidance, and it now includes guidance for their users.

Recommendations to the company and follow-up

The NCP recommends that for Bonsucro to meet recommendations under Chapter IV, Paragraph 3 and 5, and Chapter II - General Policies section A, paragraph 10 and 12) it should take steps to continually improve its internal processes in order to uphold the highest levels of ongoing due diligence of its members.

When it makes recommendations, the UK NCP requests an update on implementation from parties after a specified interval and makes a follow-up statement based on parties' updates.

The UK NCP will request an update from both parties in January 2023 and will publish on its website a follow up statement reflecting the information received.

Wider relevance

The UK NCP would like to draw all multi-stakeholder initiatives' attention to the OECD Guidelines and in particular to the need to conduct appropriate due diligence (<https://www.oecd.org/investment/du-diligence-guidance-for-responsible-business-conduct.htm>) on responsible business conduct when admitting new members to their organisations

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