Specific instance under the OECD Guidelines for Multinational Enterprises submitted to the Dutch National Contact Point (NCP) for the OECD Guidelines

Submitted by

The Cambodian League for the Promotion and Defense of Human Rights (LICADHO)

Equitable Cambodia (EC)

FIAN Deutschland e.V. (FIAN Germany)

Against

OIKOCREDIT, Ecumenical Development Cooperative Society U.A. ("Oikocredit")

សម្ព័ន្ធខ្មែរជំរឿននិងការពារសិទ្ធិមនុស្ស លីកាដូ

LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

LICADHO is a national Cambodian human rights organisation. 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 from its main office in Phnom Penh and 12 provincial offices. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of human rights abuses perpetrated by private and public actors in Cambodia.

អង្គការ សមធម៌កម្ពុជា

equitable cambodia

Equitable Cambodia (EC) is a national leader in advocating for the protection and defence of housing, land, and natural resource rights in Cambodia. EC was established in 2012 to enhance and safeguard the rights of all Cambodians from a protracted land-grabbing crisis and human rights abuse. Through policy research, advocacy at the national and international level, coalition-building and community organising, EC endeavours to transform the land and economic development practices of the country into a model that respects, protects, and fulfils the human rights of the Cambodian people. EC accomplishes its goals through three dynamic programs, each striving toward our vision of a Cambodia in which all people are able to enjoy their basic human rights and natural resources are managed sustainably for the common good.

FIAN Germany
FOR THE RIGHT TO FOOD AND NUTRITION

FIAN Deutschland e.V. ("FIAN Germany") is the German section of the international human rights organization FIAN International, a not-for-profit organization without religious or political affiliation that has a consultative status to the United Nations. FIAN Germany has been advocating for the Right to Food and Nutrition since 1986. FIAN's overarching goal is to strengthen People's Struggle for the Right to Food and Nutrition and related human rights, working towards the vision of a world free from hunger and malnutrition, in which every person fully enjoys all human rights in dignity and self-determination, particularly the human right to adequate food and nutrition.

Table of Contents

Table of Contents 3
Summary 4
Requests 5
Chapter 1: Background to the complaint 6
Chapter 2: Oikocredit's status as a multinational enterprise with links to human rights violations in Cambodia's microfinance sector 8
Chapter 3: Oikocredit's Breaches of OECD Guidelines 13
3.1 Failure to conduct adequate due diligence and prevent or mitigate known risks 13
3.2 Failure to effectively establish or implement risk management systems 16
3.3 Refusal to engage in a safe and meaningful way with stakeholders 19
3.4 Failure to use leverage to prevent or mitigate adverse human rights impacts 20
3.5 Failure to promote consumer interests 21
Chapter 4: Evidence 23
Chapter 5: Conclusions 27
Appendices (Confidential): 28

Summary

This specific instance of non-observance of the OECD Guidelines for Multinational Enterprises ("the Guidelines") is directed to the Dutch National Contact Point.

The Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Equitable Cambodia (EC) and FIAN Germany are deeply concerned by the activities and conduct of Oikocredit, Ecumenical Development Cooperative Society U.A. (Oikocredit) in relation to its financing of Prasac Microfinance Institution Plc. (Prasac), LOLC (Cambodia) Plc. (LOLC), and Amret Plc. (Amret) – three Cambodian microfinance institutions (MFIs) linked to threats and intimidation, predatory lending practices, coerced sale of land including land owned by Indigenous Peoples, child labour, loss of home and livelihood, forced migration, food insecurity, and termination of children's education. Oikocredit contributes to or is at minimum directly linked to these abuses through its business relationships with the microfinance institutions (MFIs) and is therefore in breach of the Guidelines and international human rights standards.

Evidence establishes that Oikocredit was aware of risks and negative social impacts associated with their activities in Cambodia's microfinance sector since as early as 2017. Reports raising concerns of over-indebtedness emerged as early as 2016. In addition, since 2019, human rights NGOs, unions and civil society groups in Cambodia have publicly and repeatedly raised concerns about issues in the MFI sector including threats and intimidation, violations of the rights of Indigenous Peoples, child labour, food insecurity, and forced migration.

Despite this, Oikocredit expanded its funding of Cambodia's predatory and harmful microfinance sector, increasing its portfolio in the sector in 2018, 2019, 2021, and 2022, without bringing its activities into compliance with internationally recognised standards of responsible business conduct. Moreover, Oikocredit has refused to meet and discuss these issues with some interested stakeholders, including the organisations filing this instance, in a confidential and safe manner despite knowledge of risks to complainants. Oikocredit has further failed to address the negative social impacts of its investments, contrary to its own goal "to improve the lives of low-income people and communities."[1]

The material issues of this complaint are substantiated by information gathered and published by LICADHO, EC, and FIAN Germany; publicly available reports and media articles; and reports initiated and supported by Oikocredit. Oikocredit breached the Guidelines regarding General Policies, Human Rights, and Consumer Interests by contributing to, as well as through its direct links through a business relationship, severe and adverse human rights impacts ongoing in Cambodia's microfinance sector.

---

[1] *See* Oikocredit, "Social Impact", https://www.oikocredit.coop/en/what-we-do/social-impact/social-impact

Requests

EC, LICADHO and FIAN Germany request that Oikocredit bring its activities and conduct into line with OECD Guidelines by taking the following steps:

1) **Remediation of adverse human rights impacts, specifically:**
    a. **Compensate:** Provide compensation to borrowers harmed by Oikocredit investments. Divert all profits made from loans to Prasac, LOLC and Amret since 2017 to a debt relief fund to provide remediation of adverse human rights impacts that are plausibly linked to those investments. Use all available leverage to encourage investment partners to do the same.
    b. **Lobby:** Engage in collective, public action with other international social investors regarding the market- and company- specific risks in Cambodia's microfinance sector.
    c. **Acknowledge:** Publicly acknowledge the harms caused by Oikocredit's investments in Cambodia's microfinance sector.
    d. **Suspend:** Provide public assurances that no further investments will be made in Cambodia's microfinance sector until and unless land titles held as collateral for microloans are returned to their owners, and compensation is provided to victims harmed by well-documented predatory lending practices.
2) **Increase transparency and improve due diligence, specifically:**
    a. **Disclose:** Disclose details on Oikocredit's partner selection, specifically its "very high standards" for ESG scoring and new sectors as applied to evaluation of Prasac, LOLC, and Amret and Cambodia's microfinance sector, including: when they were last updated and how Oikocredit "monitors the developments of the partner[s'] activity and ESG scores, as well as its adherence to social covenants (in case of credit deals, namely requirements in the loan agreement with respect to improvements or minimum criteria for impact and social conduct)".[2]
    b. **Explain:** Publish detailed explanations on how due diligence informs risk management and impact measurement throughout the life of projects, including if and how those systems were altered in consideration of problems identified in the Oikocredit-supported 2017 "Over-indebtedness in Cambodia II" report. Further explain how any changes to risk management and impact measurement systems were assessed for effectiveness.
    c. **Investigate:** Launch an independent audit of how existing due diligence procedures and ESG scoring at Oikocredit failed to account for the severity and extent of harms occurring in Cambodia's microfinance sector.
    d. **Reform:** Improve due diligence procedures to prioritise engagement with stakeholders and NGOs raising human rights concerns around Oikocredit investments in the future. Ensure that risks and documented harms properly inform investment decisions to ensure compliance with the Guidelines.

We request that the Dutch NCP offers its good offices to find a mutually acceptable solution in this matter. If dialogue between the parties cannot reach such a solution, we request that the NCP employ other tools at its disposal to effectively implement the OECD Guidelines, including conducting an examination of allegations and facts in this specific instance, making a determination as to whether Oikocredit has acted in accordance with OECD Guidelines, and issuing recommendations to improve implementation of the Guidelines.

---

[2] "Annual Report 2021", Oikocredit, p. 50, available at https://www.oikocredit.coop/en/publications/annual-reports

Chapter 1: Background to the complaint

Since at least 2016, academics, journalists, economists, and Cambodian civil society organisations have made apparent Cambodia's growing over-indebtedness crisis in the microfinance sector and associated irresponsible business practices and infringements of human rights. There is a wealth of publicly available, verifiable, credible and specific reporting on widespread and systematic human rights violations in Cambodia's microloan sector[3], including threats and intimidation, predatory lending practices, coerced sale of land including indigenous-owned land, child labour, loss of home and livelihood, forced migration, food insecurity, and termination of children's education. Multiple times since 2017, Oikocredit raised concerns itself or acknowledged these concerns, including in annual reports[4] and investment prospectus.[5] Despite this, Oikocredit continued to expand its investments in the sector, contributing to infringement of human rights, or at minimum being directly linked to those adverse impacts through its business relationships with Cambodian MFIs, in violation of OECD Guidelines.

The average Cambodian borrower owes about twice as much in microloan repayments than they make in income each month, and most of these loans are collateralised with borrowers' land titles. Cambodians held roughly $14.4 billion in microloans from banks and microfinance institutions in the country at the end of 2021. The country has the highest average microloan size in the world, far exceeding average annual incomes. Most of the 2.9 million microloans in the country require the pledging of land as collateral.

In the UN Secretary-General's September 2021 report to the UN Human Rights Council, it was noted that, "[i]n recent years, Cambodians have turned increasingly to microfinancing schemes to meet their basic needs; the average loan repayment for a Cambodian family is now equal to US$182/month. With land being the most common form of collateral for underwriting loans, loss of property among those unable to pay is foreseeable."[6] This US$182 average loan repayment figure can be compared to the minimum monthly wage in Cambodia's garment and footwear sector, which was US$192 in 2021,[7] as well as the median monthly income, which was just US$96 in 2021.[8]

An insufficiently regulated and oversaturated market has fuelled predatory lending and abusive collection practices by microfinance credit officers, who pressure borrowers – many of whom are illiterate or have low literacy levels - to take out-sized loans secured with land titles. Set up to fail and vulnerable to economic shocks, many borrowers subsequently struggle with food insecurity, send children to work in service of their debt, and/or migrate involuntary, before MFI and bank credit officers coerce them into privately selling their land to repay their loans. This practice subverts the legal process for default, which is rarely used by MFIs.[9] A 2022 study funded by Germany's Federal Ministry of Economic Cooperation and Development

---

3 See Appendix I

4 "Annual Report 2017", Oikocredit, p. 62, available at: https://www.oikocreditus.org/news (Oikocredit's annual reports prior to 2019 are not published on its main website)

5 "Prospectus 2022/2023", Oikocredit, p. 19, June 2022, available at: https://www.oikocredit.coop/en/prospectus

6 "Report of the Secretary-General to the Human Rights Council, Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights", A/HRC/48/49, para. 40, September 2021, available at: https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F48%2F49&Language=E&DeviceType=Desktop&LangRequested=False

7 Prakas No. 303/20 on Minimum Wage Determination for Textile, Garment and Footwear Workers for 2021, Cambodia Ministry of Labour and Vocational Training, 10 September 2020

8 "Report of Cambodia Socio-Economic Survey 2019/20", National Institute of Statistics, Cambodia Ministry of Planning, December 2020, p. 113 at Table 3, available at https://www.nis.gov.kh/nis/CSES/Final%20Report%20of%20Cambodia%20Socio-Economic%20Survey%202019-20_EN.pdf (391,000 riels is approximately US$96)

9 Matt Blomberg & Mech Dara, "Land to lose: coronavirus compounds debt crisis in Cambodia", Reuters, 21 September 2020, available at: https://www.reuters.com/article/us-cambodia-finance-loans-idUSKCN26C02S

(BMZ) found that approximately 167,000 Cambodian households have sold land to repay a microloan in the last five years – equalling nearly 100 debt-driven land sales each day, for the last half-decade. None of the land sales documented by that study occurred through the legal process for foreclosure. Over this same five-year period, Oikocredit gave multi-million dollar loans to some of Cambodia's largest microloan providers.

Chapter 2: Oikocredit's status as a multinational enterprise with links to human rights violations in Cambodia's microfinance sector

This specific instance details how Cambodia's microfinance sector operates in a predatory manner contrary to OECD guidelines; provides evidence indicating Oikocredit should have known and taken steps to mitigate or avoid these issues; and lays out specific actions Oikocredit should take to bring its actions into compliance with OECD guidelines. Regarding the assessment criteria of relevance for this specific instance:

The Dutch NCP is the proper entity to handle this notification.

Oikocredit, Ecumenical Development Cooperative Society U.A. (Oikocredit) is incorporated in the Netherlands and operating under Dutch law.[10] Its corporate seat is situated in Amersfoort, the Netherlands.[11] Oikocredit is registered at the Chamber of Commerce under number 31020744, and its Legal Entity Identifier is 7245000951PB3SFR7U57.[12] Some of the breaches of the Guidelines – specifically, failures in due diligence – occurred in the Netherlands. Moreover, one objective of this notification is to positively impact investment practices at Oikocredit headquarters.[13] In addition, there is no OECD National Contact Point in Cambodia where other breaches of the Guidelines occurred. The Dutch NCP is therefore the proper entity to assess these issues as it is the country of the headquarters of the multinational enterprise involved.[14]

The reporting parties have direct interest in the case.

LICADHO and EC are legally registered Cambodian human rights NGOs, with decades of experience documenting and reporting on human rights violations in the country.[15] LICADHO and EC have specifically researched and reported on the adverse human rights impacts in Cambodia's microfinance sector since 2019, and campaigned for improved investor responsibility and accountability in the sector.[16] LICADHO and EC have interviewed multiple clients from Prasac, LOLC, Amret, and other microloan providers, who have suffered adverse human rights impacts as a result of their microloans, and provided them support and paralegal advice. FIAN Germany is a registered non-profit in Germany that has focused on German and European investments linked to abuses in Cambodia's microfinance sector since 2019.[17] This includes Oikocredit, which draws the majority of its member capital from German investors.[18] Our research, reporting

---

[10] Articles 2.1—2.3, Articles of Association of OIKOCREDIT, Ecumenical Development Cooperative Society U.A., 1975 (2022 ver.), available at: https://www.oikocredit.coop/en/articles-of-association; Prospectus 2022/2023, *supra* note 5, at p. 5

[11] Article 2.3, Articles of Association of OIKOCREDIT

[12] Prospectus 2022/2023, *supra* note 5, at p. 5

[13] *See* Dutch National Contact Point, Initial Assessment, *Milieudefensie/Friends of the Earth Netherlands, WALHI/Friends of the Earth Indonesia and SDI/Friends of the Earth Liberia v. ING*, 20 January 2020, p. 4, 5

[14] Dutch National Contact Point, "Submitting a specific instance", https://www.oecdguidelines.nl/notifications/submitting-a-specific-instance

[15] *See* https://equitablecambodia.org/website/; https://www.licadho-cambodia.org

[16] *See, e.g.,* https://www.mficambodia.com/

[17] *See, e.g.,* "Mikrokredite und Überschuldungskrise in Kambodscha", FIAN Germany, February 2022, available at: https://www.fian.de/wp-content/uploads/2022/02/FIAN-Ueberschuldungsstudie-Studie-17.02.pdf (German language only)

[18] "Q3 2022 Quarterly Report: Facts & Figures", Oikocredit, September 2022, p. 2, available at: https://www.oikocredit.coop/k/en/n171/news/view/355533/462/q3-2022-quarterly-report-moving-in-the-right-direction.html

and advocacy against abuses perpetrated by multinational companies in Cambodia's microfinance and microloan sector thus establishes our organisations' interest in this case.[19]

Oikocredit is a multinational enterprise according to the Guidelines.

Oikocredit qualifies as a multinational enterprise within the meaning of the Guidelines. The Netherlands NCP has previously found that investors with substantial international investments and branch offices in multiple countries meet the definition of multinational enterprise.[20] Oikocredit is registered and headquartered in the Netherlands and has offices in India, Peru, the Philippines, Kenya, Argentina, Brazil, Costa Rica, Côte d'Ivoire, Ghana, Guatemala, Mexico, Nigeria, Paraguay and Uruguay, as well as "national support offices" in Germany, Austria and France.[21] They have a development financing portfolio of loans and investments of 995.9 million Euros (as of end of 2021), with a total asset value of over 1.2 billion Euros. According to Oikocredit's Annual Report 2021, they have 204.7 million Euro portfolio in Africa; a 307.3 million Euro portfolio in Asia; and a 454.9 million Euro portfolio in Latin America.

In addition, Chapter I(4) of the Guidelines establishes that principles and standards of good corporate practice extend to the financial sector and financial institutions. Chapter I(3) clarifies that the Guidelines apply globally, wherever multinational enterprises have activities. Oikocredit should thus carry out risk-based due diligence and otherwise comply with the Guidelines in its business relations with Cambodian MFIs, including establishing effective risk management systems for the prevention, mitigation and remediation of any adverse impacts linked to its investments.[22]

Cambodia is the second-largest exposure for Oikocredit investments as measured by country, behind India.

The issues raised in this complaint are material and substantiated.

Allegations of harms caused by institutions funded by Oikocredit are well-documented and well-publicised, as documented in "Chapter 4: Evidence" and Appendix I. Local and international human rights NGOs, local and international journalists, academics, investors (including Oikocredit), bilateral investors such as BMZ, and others have indicated serious risks and harms in Cambodia's microfinance sector, and provided ample evidence to merit enhanced due-diligence, harm mitigation, and compensation for affected victims.

Oikocredit's investments in Cambodian MFIs are linked to the issues raised in this notification.

Oikocredit's loans to three Cambodian MFIs associated with adverse impacts in the microfinance sector, for the express purpose of financing the MFIs' microfinance activities, combines both entities' activities and contributes to the adverse impacts.[23] Oikocredit acknowledges its loans to Prasac, LOLC, and Amret in its annual reports, and the loans amount to substantial contributions.[24] These investments are intended to expand loan portfolios of these institutions and thus directly contribute to the harms associated with the sector.

---

[19] *See* Dutch National Contact Point, Initial Assessment, *Oxfam Novib, Greenpeace, BankTrack, Friends of the Earth Netherlands (Milieudefensie) v. ING*, 14 November 2017, p. 4

[20] *See, e.g.,* Dutch National Contact Point, Initial Assessment, *Shakti Abhiyan et al. v. ABP*, 18 January 2013, p. 2–3

[21] Annual Report 2021, *supra* note 2, at p. 31

[22] Initial Assessment, *Shakti Abhiyan et al.,* p. 1 (regarding the notification against ABP and APG for not having taken the appropriate steps to prevent or mitigate negative impacts related to their investments in South Korean iron and steel company Posco)

[23] *See* "Due diligence in the financial sector: adverse impacts directly linked to financial sector operations, products or services by a business relationship", OECD, June 2014, p. 2–3 [OECD, "Due diligence in the financial sector"]

[24] See Appendix II

Cambodia is the second-largest exposure for Oikocredit investments as measured by country, behind India which has a population 81 times larger than the population of Cambodia. Oikocredit only began giving detailed financing amounts regarding the top 10 countries with development portfolio exposure in 2020. However, its annual reports dating back to at least 2017 include graphs that allow for estimates of portfolio exposure and show that Oikocredit increased its overall investment in Cambodia's microfinance sector from 2017-2019, and then again in 2021 and 2022.

Oikocredit "Development financing portfolio" – Cambodia
[All data extracted from Oikocredit Annual Reports or Facts and Figures]

30 September 2022 – 67,000,000 Euros

2021 – 62,968,000 Euros (6.3% of total portfolio)

2020 – 40,869,000 Euros (4.8%)

2019 – 67,572,000 Euros (6.3%)[25]

2018 – Approximately 60,000,000 Euros (exact number and percent not given)

2017 – Approximately 50,000,000 Euros (exact number and percent not given)

In addition, and more specifically, webpages downloaded from the Oikocredit website indicate specific loan information as of 10 Feb 2022,[26] including:

- $10,000,000 USD loan to Prasac MFI Ltd
- $31,000,000 USD loan to Amret Ltd
- $32,000,000 USD loan to LOLC (Cambodia) plc

Oikocredit's partners - Prasac, LOLC, and Amret - are three of the nine large financial institutions that account for about 90% of Cambodia's microfinance sector.[27] As of the end of 2021, Prasac had an MSME portfolio of $3.75 billion; LOLC, $1.04 billion; and Amret, $1.36 billion – together totalling more than $6 billion worth of loans in Cambodia's $14.4 billion microloan sector. The three MFIs have been named in numerous reports regarding unethical business practices and negative social impacts in the sector,[28] and the International Finance Corporation's (IFC) own microfinance investments in those institutions is under review by the Compliance Advisor Ombudsman to the IFC.[29] LICADHO and EC have documented abuses of human rights, predatory lending, and the negative impacts listed above directly linked to MFI loans offered by these three institutions.

The increases in Oikocredit's already substantial contributions to Cambodian MFIs is significant to this specific instance because Oikocredit commissioned a report on over-indebtedness in Cambodia's

---

[25] *See* "Annual Report 2020", Oikocredit, p. 38, available at: https://www.oikocredit.coop/en/publications/annual-reports (specific amount for 2019 published in 2020 report)

[26] See Appendix II

[27] "Collateral Damage: Land Loss and Abuses in Cambodia's Microfinance Sector", LICADHO & STT, August 2019, p. 3 chart, available at: https://www.mficambodia.com/reports/Report-CollateralDamage-2019-en.pdf [Collateral Damage]

[28] *See, e.g.,* "Right to Relief: Indebted Land Communities Speak Out", Equitable Cambodia & LICADHO, June 2021, p. 10-37 [Right to Relief]; Collateral Damage, *supra* note 27 at p. 11–12; "Driven Out: One Village's Experience with MFIs and Cross-Border Migration", LICADHO, May 2020, at 6; "Worked to Debt: Over-Indebtedness in Cambodia's Garment Sector", CENTRAL, LICADHO et al., June 2020, p. 3. All available at: https://mficambodia.com/reports

[29] Compliance Advisor Ombudsman, "Cases: Cambodia: Financial Intermediaries-04", https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-04

microfinance sector in 2017 – a report that was never released publicly, but which has deeply concerning findings including "many examples of inappropriate practices in loan disbursement and collection".[30]

While Oikocredit is making substantial contributions to adverse human rights impacts through this direct financing of Cambodian MFIs, Oikocredit's activities are also, at minimum, directly linked to those impacts through its business relationships regardless of whether the loan agreements included requirements for the MFIs to comply with certain environmental and social standards. It is well-established that investments amount to business relationships within the scope of the Guidelines.[31] The Dutch NCP has also previously concluded that financial institutions, investors, and their financial services are included in the scope of business relationships.[32] Thus, Oikocredit has a responsibility to seek to prevent or mitigate any actual or potential adverse impacts linked to them through that business relationship, regardless of whether they contributed to the impacts.[33]

There is no relevant applicable legislation and procedures, including court rulings.

There is no relevant parallel procedure involving Oikocredit's investments in Cambodia at this time, and no ongoing legislation or procedures involving these investments.

Recent actions by other independent accountability mechanisms (IAMs) on similar issues, however, are relevant in that they demonstrate the importance in IAMs receiving complaints regarding the social performance of institutional investors and the role such IAMs can play to ensure such investors are accountable under international norms for responsible business conduct in their business relationships. For example, the Compliance Advisor Ombudsman (CAO) for the IFC of the World Bank Group has accepted and is in the process of reviewing a complaint regarding the IFC's microfinance investments in Cambodia, including investments in Prasac, LOLC, and Amret, and allegations of related social harms.[34] These IFC investments do not involve Oikocredit and the CAO's review concerns compliance with the IFC's own Performance Standards and Environmental and Social Framework, which are distinct from the OECD Guidelines. The CAO's review of the IFC's investments in Cambodia's microfinance sector therefore does not preclude any decisions or statements by this NCP concerning the application of the Guidelines to Oikocredit's activities. The Dutch NCP's acceptance of this notification, however, could contribute to establishing consistent standards of responsible business conduct to ensure respect for human rights in the international financial services sector.

Consideration of this specific problem would contribute to Guideline objectives and effectiveness.

Addressing the issues raised in this specific instance would contribute to further clarifying how due diligence consistent with the Guidelines should be applied and considered in the financial sector, specifically investments in microfinance and microloans in developing nations that often lack consumer protection and legal safeguards for affected borrowers.

---

30 "Over-Indebtedness Study Cambodia II", October 2017, p. 63, attached at Appendix IV [OID Study 2017]

31 Statement, OECD Committee on International Investment (CIME), 2003, available at: https://www.oecd.org/daf/inv/mne/scopeoftheguidelinesandtheinvestmentnexus.htm; *see* "Responsible Business Conduct Working Party, Scope and application of 'business relationships' in the financial sector under the OECD Guidelines for Multinational Enterprises", OECD, 2014, p. 3 n.14

32 Dutch National Contact Point, Final Statement, *Shakti Abhiyan et al. v. ABP*, 18 Sept. 2013, p. 4–5

33 OECD Guidelines, Chapter II.A, p. 20 para. 12; *see* OECD, "Due diligence in the financial sector", *supra* note 23, p. 3–4

34 Compliance Advisor Ombudsman, "Cases: Cambodia: Financial Intermediaries–04", https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-04

In addition, addressing the specific problems in this complaint can help to clarify and reinforce the responsibility of institutional investors to apply appropriate leverage in their business relationships to seek to avoid causing or contributing to adverse impacts through their financial services.

Chapter 3: Oikocredit's Breaches of OECD Guidelines

The microfinance investment activities of Oikocredit in Cambodia have resulted in numerous violations of the Guidelines for responsible business conduct. The body of credible evidence (Chapter 4) supports the conclusion that Oikocredit has failed to incorporate adequate due diligence into its risk management systems in order to prevent or mitigate adverse human rights impacts. Oikocredit has therefore contributed to infringements of human rights through its investments, and is also directly linked to those adverse impacts through its business relationships with its MFI partners. In addition, there is no indication that Oikocredit has conducted any remediation for those negative impacts, and Oikocredit has refused to engage with stakeholders on these issues in a safe and confidential setting.

3.1 Failure to conduct adequate due diligence and prevent or mitigate known risks

Relevant OECD Guidelines:

- Chapter II General Policies (A.1): *Enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development*
- Chapter II General Policies (A.2): *Enterprises should respect the internationally recognized human rights of those affected by their activities.*
- Chapter II General Policies (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 those 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.*[35]

The evidence indicates that Oikocredit's current due diligence does not adequately assess risk in Cambodia's microfinance sector and that Oikocredit disregards known risks of adverse human rights impacts when making investments. This contravenes the Guidelines, which establish that multinational enterprises should carry out human rights due diligence and further clarify that effective due diligence should identify, prevent, mitigate and account for actual and potential adverse human rights and consumer impacts of investments. The risk of such impacts should inform decision-making and risk management systems.[36]

Oikocredit does not publicly disclose the details of its existing due diligence processes, but the limited information available through its reports indicates that such processes are woefully inadequate to address the size and influence of Oikocredit's partners in Cambodia's microfinance sector. As noted above, Oikocredit's current partners, Prasac, LOLC, and Amret, account for almost half of all MFI loans in Cambodia - more than $6 billion in a sector worth $14.4 billion. Prasac's loans alone account for a quarter of the sector. In addition, these MFIs all have substantial influence over the sector and voluntary codes of conduct: all three currently sit on the board of the Cambodia Microfinance Association (CMA), with LOLC's chief executive officer as chairman.[37] The CMA is a nongovernmental organisation and professional association comprised of microfinance industry representatives that has been criticized as a "lobby group" that "only

[35] *See also* OECD Guidelines, Chapter II Commentary, p. 24 para. 15

[36] OECD Guidelines, Chapter II Commentary, at 23 para. 14

[37] Cambodia Microfinance Association, "Board of Directors", https://cma-network.org/about-us/board-of-directors/

produces PR material that celebrates and promotes the work of its key members and the donor groups."[38] Microfinance experts have further concluded that "both the data and reporting of the activities of [the CMA's] leading members simply cannot be trusted to be fair and accurate."[39]

In addition, existing due diligence does not sufficiently consider the context of a sector that has been widely reported to lack sufficient consumer protection and involve predatory lending, abusive collection practices, and significant risk of severe, adverse human rights impacts.[40] Oikocredit claims to carefully screen its potential partners and monitor existing partners for alignment on its social and environmental objectives, using "environmental, social and governance (ESG) scorecards".[41] The exact indicators and scores of these ESG scorecards is not disclosed. Oikocredit further claims to employ "action plans" as necessary and desired to improve partners' ESG scores, which are also not publicly disclosed.[42] Notably, the experiences of the end clients of Oikocredit's products and services—in this case, the individual microfinance borrowers whose rights are infringed—are not properly considered.[43] The significance of this gap in Oikocredit's due diligence is emphasised by the widely published reports of borrowers' experiences with predatory lending, threats and intimidation, land dispossession, infringement of the rights of Indigenous Peoples, food insecurity and other severe adverse human rights impacts associated with microfinance activities, including those of Oikocredit's partners.

For example, Oikocredit either misunderstands or misconstrues its Cambodian partner organisations' use of land as collateral – a highly relevant and material aspect of abuses that occur in Cambodia's microfinance sector, particularly land dispossession. In response to a February 2022 report by FIAN Germany regarding problems in Cambodia's microfinance sector, Oikocredit issued a public statement claiming, "Microfinance institutions that Oikocredit finances in Cambodia only use land as collateral for large-volume loans to corporate clients, i.e. SMEs."[44] This is patently false and easily disprovable with even the most superficial due diligence – Prasac, an Oikocredit partner, acknowledges in its 2021 audited financial statement that approximately $3.743 billion of its entire $3.748 billion portfolio is collateralised with land titles.[45] That represents a 99.87% collateralisation rate. The lack of knowledge about such a crucial aspect of their partner organisation's operations in Cambodia as late as February 2022 supports the conclusion that Oikocredit's due diligence procedures are severely deficient.

Despite its inadequate due diligence, Oikocredit had clearly identified risks of severe adverse human rights impacts in Cambodia's microfinance sector in 2017, yet it increased its investment in the sector after those findings, apparently without improving its risk-based due diligence on partners or its management systems to prevent and mitigate those negative impacts. In 2017, Oikocredit and three other investors and investment managers supported a study on over-indebtedness in Cambodia, which was implemented by two organisations. The study found that between 28% and 50% of Cambodian borrowers were "insolvent",

---

[38] David Hutt, "Can we trust the Cambodia Microfinance Association?", The Diplomat, 08 January 2021, available at: https://thediplomat.com/2021/01/can-we-trust-the-cambodia-microfinance-association/ (quoting Milford Bateman in his book "Why Microfinance Doesn't Work? The Destructive Rise of Neoliberalism)

[39] Ibid.

[40] *See, e.g.,* Jack Brook, "Report details abuses in Cambodian microfinance", Southeast Asia Globe, 11 July 2022, available at: https://southeastasiaglobe.com/report-details-abuses-in-cambodian-microfinance/ (quoting Jost Kadel, deputy head of Germany's mission to Cambodia, on the risk of "intolerable collateral damage" from investments in Cambodia's microfinance sector)

[41] Annual Report 2021, *supra* note 2, at p. 11

[42] Ibid. at p. 11

[43] In 2021, Oikocredit conducted its first "client self-perception survey" to assess the impact of its financial inclusion initiatives with partners. The survey was conducted in only four countries and did not include Cambodia. *See* Annual Report 2021, *supra* note 2, at p. 11

[44] "Kritik an Mikrofinanz in Kambodscha", Public Statement, Oikocredit, 25 February 2022, available at: https://www.oikocredit.de/k/n557/news/view/349684/345786/kritik-an-mikrofinanz-in-kambodscha.html (German language only)

[45] "Financial Statements for the year ended 31 December 2021 and Report of the Independent Auditors", Prasac, December 2021, p. 82-83, available at: https://www.prasac.com.kh/wp-content/uploads/2022/04/PRASAC_Audited-Financial-Statements-31-Dec-2021_EN.pdf

"critical", or "at risk", with 28% owing more in debt repayments than they made in income each month. Documented "malpractice" included loan officers offering larger loans than a borrower's business could absorb and offering large loans to "buy out" other existing debt. The report also documented widespread food insecurity, noting, "the most common strategy among the borrowers and most frequently used during the year is the reduction of food quality." It found that coping strategies used by borrowers to repay microfinance debt included: sending children to work (5% of borrowers); taking children out of school (5%); selling assets (7%); reducing medical expenses (9%); taking new loans (15%); migrating (19%); working over 10 hours (19%); getting help from family (20%); using savings (26%); reducing food quantity (29%); and reducing food quality (35%). The report also cautioned that substantial incentive systems for loan officers reporting low non-performing loan rates could result in "aggressive collection efforts." It also noted that the widespread use of land as collateral posed a "severe threat to low-income households of losing livelihood assets in case of default."[46] MFIs surveyed in the study included Prasac, LOLC, and Amret—Oikocredit's partners.

Oikocredit explicitly referenced the survey and "concern" over the findings in its 2017 annual report, noting that it had launched a follow-up study and developed "practical recommendations for microfinance institutions, regulators and the investor community to address these challenges."[47] There is no indication whether any recommendations were adopted by Cambodian institutions or added as standard conditions in Oikocredit's future loan agreements, or how the impact of any implemented regulations was measured and taken into consideration in future loan decisions. There is no publicly available evidence that Oikocredit, now aware of the risk of severe adverse human rights impacts, prioritised its due diligence accordingly for screening partners for future investments or established internal and systematic measures to improve its identification of risk and prevent or mitigate potential adverse impacts in the future.[48]

In its 2018 annual report, Oikocredit announced it had taken the decision to close its Cambodia office, despite the heightened risk and evidence of harms in the market, and despite the fact that Cambodia was its fourth-largest country by assets at the time.[49] The Oikocredit offices in the other four of Oikocredit's Top-5 exposure countries (India, Ecuador, Bolivia, and Paraguay) were not closed.

In addition, Oikocredit professes to have a list of prohibited activities that it will not finance, which includes child labour.[50] Yet, reports have highlighted incidents of Cambodian children working in service of their parents' debts from at least 2017[51] through 2021.[52]

The primary purpose of due diligence is prevention—to avoid contributing to adverse human rights impacts and to prevent negative impacts directly linked through business relationships.[53] It must be an ongoing process that involves openness to dialogue with affected parties and civil society organisations. Oikocredit's knowledge regarding the risk of severe adverse impacts should have informed its "choices about whether to invest in or finance a particular client and also about whether to call a loan or divest as a

---

46 OID Study 2017, *supra* note 30, at p. 47, 49, 62, 63, attached at Appendix IV

47 Annual Report 2017, *supra* note 4, at p. 9

48 *See* OECD, "Due diligence in the financial sector", *supra* note 23, at p. 6–7

49 "Annual Report 2018", Oikocredit, p. 11, 28, available at: https://www.oikocreditus.org/news

50 Oikocredit, "Partner Selection", https://www.oikocredit.coop/en/what-we-do/social-impact/partner-selection

51 OID Study 2017, *supra* note 30, at 49, attached at Appendix IV

52 *See, e.g.,* "Child Labor and Forced Labor Reports", U.S. Dep't of Labor, Bureau of Int'l Labor Affairs, p. 2, 2021, available at: https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/Cambodia.pdf; Collateral Damage, *supra* note 27, at p. 1, 9

53 "OECD Due Diligence Guidance for Responsible Business Conduct", OECD, p. 16, 2018 ["OECD Due Diligence Guidance"]

last resort when it may not be possible to prompt change in a client involved in a particularly serious adverse impact."[54]

Instead, Oikocredit increased its investments in Cambodia's microfinance sector from 2017-2019, and then again in 2021 and 2022. Public reporting and evidence reveal that microfinance activities in Cambodia continued to be associated with severe adverse human rights impacts throughout this period and to the present, and the organisations filing this instance repeatedly were attempting to set up a meeting with Oikocredit to share more information as early as October 2021.

3.2 Failure to effectively establish or implement risk management systems

Relevant OECD Guidelines:

- Chapter II (A.11): *Enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*
- Chapter II (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 II (A.13): *In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.*

Oikocredit likely failed to use known information about severe adverse impacts in Cambodia's microfinance sector to sufficiently modify its risk management systems and improve tracking of its business relationships throughout the life of its projects to prevent or mitigate harms. Due diligence is fundamentally risk-based and should be commensurate to the severity and likelihood of adverse impacts.[55] The UN Guiding Principles on Business and Human Rights clarify that human rights due diligence "should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve."[56] Investors are responsible for both their actions and their omissions.[57]

As established in Chapter 2 above, Oikocredit has both contributed to the adverse impacts in Cambodia's microfinance sector as well as being directly linked to those impacts through its business relationship with Prasac, LOLC, and Amret. Thus, Oikocredit bears responsibility under the Guidelines for the prevention and mitigation of any adverse impacts linked to its investments – through, for example, the establishment of effective risk management systems – regardless of whether it contributed to those impacts or those impacts were caused by or contributed to by its partners.[58] Oikocredit is therefore responsible for any omission – its failure – to embed responsible business conduct into its own risk management systems and that omission can carry "reputational, financial or legal risks" for the investor.[59]

Oikocredit's own publications clearly establish the direct link between its investments and the impacts of its investee's activities. Oikocredit lauds its particularly close investor-investee "partnership" as going beyond simple transactions and "developing true partnerships" and interactive working relationships

---

[54] OECD, "Due diligence in the financial sector", *supra* note 23, at p. 7

[55] OECD Due Diligence Guidance, *supra* note 53, at p. 17

[56] UN Guiding Principles on Business and Human Rights, Pillar II(A)(17)(c)

[57] OECD, "Due diligence in the financial sector", *supra* note 23, at 9

[58] "Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises", OECD, p. 12-13, 2017 [OECD, "Responsible business conduct for institutional investors"]

[59] *See* ibid at 36 (cautioning investors to be aware of such risks to its own organisation where its investments are directly linked to adverse human rights impacts).

"focusing on the value we can add to our partners."[60] It credits these close partnerships as one key aspect of its place "at the forefront of impact investing", particularly in areas such as "our longstanding focus sectors of financial inclusion…" which includes microfinance activities.[61] The cornerstone of Oikocredit's mission and business model as "the preferred social investor and development partner"[62] is therefore its direct link to the impacts of investees' activities, to "implement…an innovative approach to investing".[63]

Moreover, the OECD Secretary-General has clarified that just "the existence of [responsible business conduct] risks (potential impacts) or actual…impacts in an investor's own portfolio means, in the vast majority of cases there is a 'direct linkage' to its operations products or services through this 'business relationship' with the investee company."[64]

Oikocredit has repeatedly acknowledged both the risk and occurrence of negative social impacts in Cambodia's microfinance sector, yet it is unclear what adjustments it has made to its internal risk management systems and whether it considered and employed identified appropriate approaches to prevention and mitigation as identified by the OECD Secretary-General.[65] Moreover, as harms continue to worsen through the years, Oikocredit's tracking of business conduct and severe adverse impacts appears inadequate.

In addition to knowledge of the negative social impacts reported in an Oikocredit-supported 2017 over-indebtedness survey, Oikocredit implicitly acknowledged continued unethical lending practices and risks of negative impacts in its 2019 annual report.[66] Independent qualitative research from the sector that year revealed that Cambodians had the highest average microloan debt per borrower in the world (US$3,370), and that many borrowers were coerced into privately selling their land by unethical MFI credit officers in order to repay these debts.[67] While Oikocredit stated that it had engaged with "partners and other international lenders on how to foster more responsible lending and address the risk of over-indebtedness for Cambodian microfinance clients", it is unclear whether Oikocredit modified its risk management system to improve tracking of the impacts of its business relationships. By the end of 2020, the average microloan in Cambodia had jumped to US$4,280—more than the annual income of 95% of Cambodians. As loan sizes continued to increase faster than incomes, Cambodians suffered from food insecurity, child labour, unsafe migration, and forced land sales in desperate, often coerced, attempts to repay their crushing debt.[68] As Covid-19 emerged and the economy slowed, many borrowers saw their incomes decrease or lost their jobs, while MFIs reported high profits. Oikocredit's partner, LOLC, reported record profits in 2020 of US$45.4 million, up 33% from 2019, alongside reports of LOLC borrowers being pressured to sell their homes to repay their debt.[69] One U.S. government aid adviser noted that foreign investment in the sector was "unethical" because "[w]hat you end up creating is a homelessness project."[70]

The European Investment Bank's Environmental and Social Standards for 2022 clarify the scope of business's human rights obligations that "impacts and risks need to be taken into account at the earliest

---

[60] "Vision and Strategy 2018–2022", Oikocredit, p. 12, available at: https://www.oikocredit.coop/en/strategy

[61] *See* Annual Report 2021, *supra* note 2, at p. 3

[62] Vision and Strategy 2018–2022, *supra* note 60, at p. 12

[63] *See* Annual Report 2021, *supra* note 2, at p. 3

[64] OECD, "Responsible business conduct for institutional investors", *supra* note 58, at p. 13 (emphasis in original)

[65] *See, e.g.,* ibid. at p. 32-33

[66] "Annual Report 2019", Oikocredit, p. 11, available at https://www.oikocredit.coop/en/publications/annual-reports

[67] Collateral Damage, *supra* note 27, at p. 1

[68] Right to Relief, *supra* note 28, at 2

[69] *See, e.g.,* Gavin Finch & David Kocieniewski, "Big money backs tiny loans that lead to debt, despair and even suicide", Bloomberg, 25 October 2022, available at: https://www.bloomberg.com/graphics/2022-microfinance-banks-profit-off-developing-world/?leadSource=uverify%20wall

[70] Ibid. (quoting Wade Channell, a former senior economic adviser at the U.S. Agency for International Development mission in Cambodia)

possible stage of planning and decision-making processes" to ensure consistency with principles such as "do no harm"[71]—the universality of which is also reflected in the UN Guidelines on Business and Human Rights.

Oikocredit claims to measure its social impact by surveying active partners annually on undefined "social performance metrics" that are linked to the Sustainable Development Goals (SDGs)—including the SDGs to eliminate poverty, hunger and foster decent work and economic growth. Of concern is that the surveys to partners appear to be voluntary self-reporting[72]—it is unclear what consequences if any result from failing to respond to the survey or failing to provide information on certain indicators—and Oikocredit does not disclose if there are any additional elements to its risk management systems to cross-check what information is reported.

In addition, it is likely that Oikocredit's current measurement systems regarding social performance fails to account for the types of human rights abuses and OECD Guideline violations detailed in this specific instance. For instance, Oikocredit refers to its use of the Global Impact Investing Network's (GIIN) IRIS+ measurement system. However, due to the ability to tailor systems to individual clients, it is impossible to know which indicators Oikocredit includes in its partner surveys, and available information on Oikocredit's management system indicates that it is not sufficiently adapted to the unique context and risks in Cambodia's microfinance sector. Unlike many other countries that prohibit the acceptance of land as collateral in order to protect land tenure security, the majority of microloans in Cambodia are legally secured with borrowers' land titles. As noted by the UN Secretary-General in 2021, the loss of borrowers' property is foreseeable given how loan sizes in Cambodia have outpaced income. A recent study commissioned by BMZ confirmed prior research that widespread overindebtedness in Cambodia has resulted in an alarmingly high and "unacceptable" number of distressed land sales— 167,000 over five years, an average rate of one land sale every 16 minutes.[73] From the limited information available, there are no obvious GIIN IRIS+ indicators that would track this massive land tenure crisis associated with Cambodia's microfinance sector.

There is moreover no indication that due diligence was adapted to the nature of adverse impacts on specific groups, such as Indigenous Peoples. The feature of land as collateral in Cambodia has especially dire consequences on Indigenous Peoples; civil society organisations have expressed concern that forced displacement of Indigenous Peoples from their lands in Cambodia is "extinguishing them as distinct groups."[74] Improper issuance of individual land titles that overlap what is or should be legally protected Indigenous communal land has enabled some MFIs to accept that land as collateral on individual microloans. When a borrower is inevitably forced to sell the land to repay the unbearable debt, the Indigenous Community is surreptitiously stripped of land that is integral to its identity, spirituality, traditions, and livelihood in violation of the UN Declaration on the Rights of Indigenous Peoples[75] and other international instruments.[76] The Dutch NCP has determined in *Indigenous Federations from Peru et al. v. Pluspetrol Resources Corporation B.V.* that human rights obligations of companies can exceed even domestic law and "are expected to, as a minimum, make reference to international human rights" including

[71] "Environmental and Social Standards", European Investment Bank, p. 1, 2022

[72] *See* "Impact Report 2022", Oikocredit, p. 5, 6, available at: https://www.oikocredit.coop/en/impact-report

[73] "German government-funded study confirms grave problems in Cambodia's microfinance sector", Joint Statement, Equitable Cambodia & LICADHO, 14 September 2022, https://www.licadho-cambodia.org/pressrelease.php?perm=500

[74] "Joint Submission to the UN Human Rights Council on the human rights situation of Indigenous Peoples in Cambodia", Int'l Work Group for Indigenous Affairs (IWGIA) & Asia Indigenous Peoples Pact (AIPP), 13 September 2020, https://www.iwgia.org/en/global-governance-cat/3844-hrc45-cambodia.html

[75] Article 26(1), UN Declaration on the Rights of Indigenous Peoples, 2007

[76] *See, e.g.,* Preamble art. 3(2), ILO Convention No. 169 on Indigenous and Tribal Peoples, 1989 ("no form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned")

the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169 on Indigenous and Tribal Peoples.[77]

In its 2022/23 Prospectus, Oikocredit again acknowledged concerns about Cambodia's microfinance sector, noting that reporting on the actions of "certain partners" raised "doubts as to whether the Cooperative's MFI Partners have treated their customers, the micro borrowers, fairly."[78] In addition, in a communication with representatives of civil society organisations in March 2022, Oikocredit representatives affirmed that Oikocredit is aware of "the challenges facing Cambodia's microfinance sector."

Despite years of well-documented severe adverse social impacts and Oikocredit's awareness of those impacts, there is insufficient evidence that it prioritised due diligence as an aspect of its risk management system to mitigate known harms in relation to investments in Cambodia's microfinance sector.

3.3 Refusal to engage in a safe and meaningful way with stakeholders

Relevant OECD Guidelines:

- Chapter II General Policies (A.7): *Enterprises should develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.*
- Chapter II General Policies (A.14): *Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account…*

Oikocredit has refused to meet with certain stakeholders in a safe and confidential space despite being informed of the risk of reprisals against the stakeholders. Enterprises are encouraged to follow the OECD's guidance for social dialogue and engagement, including private engagement, with stakeholders.[79] This guidance builds from the OECD's recognition regarding the importance of stakeholder input in due diligence, project planning and decision-making, and the necessity of good faith on both sides.[80]

Appendix III provides a summary of communications sent to and from Oikocredit by LICADHO, EC and/or FIAN Germany regarding abuses in Cambodia's microfinance sector. Starting in late 2021, our three organisations have directly, repeatedly requested meetings with Oikocredit to discuss these issues and engage over their violation of OECD Guidelines. Oikocredit has repeatedly refused to engage safely and securely on these issues with local Cambodian human rights organisations.

The exchanges detailed in Appendix III (kept confidential to protect the privacy of individuals involved) show a pattern of wilful blindness on the part of Oikocredit, and a failure to comply with the Guidelines' recommendations to include stakeholder input in assessing and drafting due diligence.[81]

Oikocredit's responses show an alarming lack of respect for the safety and security of stakeholders, specifically its own end clients, and it has not engaged in good faith to create a relationship of confidence and mutual trust as is required by the Guidelines. Oikocredit's conduct breaches the letter and spirit of the

---

[77] Dutch National Contact Point, Initial Assessment, *Indigenous Federations from Peru et al. v. Pluspetrol Resources Corporation B.V.*, 20 April 2021, p. 6

[78] Prospectus 2022/2023, *supra* note 5, at p. 19; OECD Guidelines, Chapter IV Commentary, p. 33 para. 42

[79] OECD Guidelines, Chapter II Commentary, p. 25 para. 24

[80] OECD Guidelines, Chapter II Commentary, p. 25 para. 25

[81] *See* OECD Due Diligence Guidance, *supra* note 53, at p. 18-19

Guidelines as well as OECD guidance regarding responsible business conduct and safety considerations in engagement with shareholders.[82]

In addition, Oikocredit's refusal to meet with certain stakeholders, despite acknowledged harms in the sector, contravenes the Guidelines' recommendation for stakeholder input to inform due diligence.[83] Oikocredit's actions in meeting with one group of industry stakeholders while refusing to meet with (and thus implicitly dismissing the input of) another group of stakeholders sends a concerning message to stakeholders that Oikocredit is not prepared to address the adverse impacts that it contributes to, or at minimum is directly linked to, and that it does not "honestly represent their interests, intentions and concerns."[84]

3.4 Failure to use leverage to prevent or mitigate adverse human rights impacts

Relevant OECD Guidelines:

- Chapter IV Human Rights (1): *Enterprises should respect human rights, avoid infringing on the rights of others, and address adverse human rights impacts with which they are involved.*
- Chapter IV Human Rights (2): *Enterprises should avoid causing or contributing to adverse human rights impacts within the context of their own activities and address such impacts when they occur.*
- Chapter IV Human Rights (3): *Enterprises should 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 evidence has established significant risk of widespread, systemic, and severe adverse human rights impacts in Cambodia's microfinance sector, and specifically associated with the activities of Oikocredit's partners. The evidence has further established that Oikocredit has had knowledge of these harms for years. Once risks were identified, Oikocredit should have taken the necessary steps to cease or prevent the negative impacts, including by using its leverage to mitigate any remaining impacts to the greatest extent possible. Oikocredit has considerable leverage over its MFI business partners in that it provides significant and on-going financing of their activities.[85] It has the ability to effect change in the wrongful practices of the MFIs through the conditions that it places on its loans and its decision on whether it continues to issue loans to those MFIs.[86] The Guidelines advance broad ways in which that leverage can be used to mitigate impacts and prevent future impacts, including directing capital towards responsible investee companies over time, involvement in industry initiatives targeting certain risks, and collective action on specific geographic or country specific issues.[87] Oikocredit touts its socially responsible impact investing as an integral part of its brand and a model for "all to invest responsibly".[88] The entire mission of Oikocredit is arguably premised on the idea that they have leverage over entities that they invest in as well as other investors.[89]

The evidence of continuing and escalating harms through the financial services activities of Oikocredit's MFI partners, indicates that Oikocredit has not taken adequate measures to influence its partners through

---

[82] Ibid. at p. 49

[83] Ibid. at p. 48–51

[84] Ibid. at p. 49

[85] *See* OECD Guidelines, Chapter II Commentary, p. 24 para. 18–20

[86] OECD Guidelines, Chapter II Commentary, p. 24 para. 19

[87] *See, e.g.,* OECD, "Responsible business conduct for institutional investors", *supra* note 58, at p. 14

[88] Annual Report 2021, *supra* note 2, at p. 31

[89] *See, e.g.,* Impact Report 2022, *supra* note 72, at p. 6

contractual arrangements, risk mitigation efforts and other means.[90] Oikocredit also appears to have failed to consider other appropriate responses to such identified and likely risks, such as suspension of the relationship until improvements were made in risk mitigation or disengagement.[91]

3.5 Failure to promote consumer interests

Relevant OECD Guidelines:

- Chapter VIII Consumer Interests (2): *Enterprises should provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions…*
- Chapter VIII Consumer Interests (4): *Enterprises should not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.*
- Chapter VIII Consumer Interests (8): *Enterprises should take into consideration, in applying the above principles, i) the needs of vulnerable and disadvantaged customers…*

Cambodia has one of the worst records on government oversight and regulation of a microfinance sector. Out of 55 countries assessed by the Economist Intelligence Unit in 2019 for their Global Microscope report, Cambodia ranks in the bottom 10, with a score of just 37 out of 100 for government policies and regulation in microfinance.[92] In the 2020 Global Microscope Report, Cambodia ranked lowest in the "Asia and Eastern Europe" region, with a score of just 15 out of 100 in the consumer protection category,[93] and the report noted that there was an "ongoing over-indebtedness crisis" in the country.[94] Laws regulating financial institutions contain almost no provisions on consumer protection and accountability is largely reliant on voluntary guidelines.[95] The OECD Guidelines caution, however, that enterprises "should avoid potential…investment distorting effects of codes and self-regulatory practices."[96]

This largely unregulated and oversaturated market has predictably fostered an ultra-competitive environment where predatory lending and coercive collection practices are the norm amongst actors. Reporting from communities across the country has revealed aggressive lending and collection practices, pressured land sales and threats and intimidation. In addition, credit officers frequently failed to communicate clear information to borrowers regarding the terms of their loans and their rights and obligations, and many borrowers thumbprinted documents they could not read or were communicated in a language they did not understand.[97]

Oikocredit claims to require commitments from its partners regarding consumer protection standards under the successor to the now-defunct Smart Campaign's Client Protection Principles: the Client Protection Pathway managed by Social Performance Task Force (SPTF) and Cerise.[98] It is clear, however, that Oikocredit's MFI partners could not satisfy the SPTF's standards in consideration of public reporting on the sector. For example, the first standard regarding client protection is that "the provider does not overindebt

---

[90] *See* OECD Guidelines, Chapter II Commentary, p. 24 para. 21

[91] *See* OECD Guidelines, Chapter II Commentary, p. 24 para. 21–22

[92] "Global Microscope 2019: the Enabling Environment for Financial Inclusion and the Expansion of Digital Financial Services", The Economist Intelligence Unit, p. 8, 2019

[93] "Global Microscope 2020: The Role of Financial Inclusion in the Covid-19 Response," The Economist Intelligence Unit, p. 22, 2020, available at: https://content.centerforfinancialinclusion.org/wp-content/uploads/sites/2/2020/11/EIU_Microscope_2020_161120.pdf

[94] Ibid. at p. 35

[95] *See, e.g.,* "Cambodia launches banking and financial institutions' code of conduct", Association of Banks in Cambodia, 09 March 2022, available at: https://www.abc.org.kh/news/cambodia-launches-banking-and-financial-institutions-code-conduct

[96] OECD Guidelines, Chapter II Commentary, p. 26 para. 27

[97] *See generally* Right to Relief, *supra* note 28

[98] Annual Report 2021, *supra* note 2, at p. 11–12

clients", yet the average size of a Prasac microloan is $7,903 compared to the median monthly income of a Cambodian borrower of $96.[99] In 2017, at least 28% of borrowers were identified as overindebted;[100] by 2022, the number is estimated to be as high as 50% of households.[101]

In addition, the application of these standards alone would not be sufficient to monitor for rights infringements that are common in Cambodia's microfinance sector, such as coerced land sales.[102] Notably the widespread practice of requiring land as collateral and some credit officers' use of aggressive and deceptive collection practices to pressure overindebted borrowers into selling their land infringes on borrowers' rights to property, adequate home and livelihood.[103] The failure to identify, prevent or mitigate such rights infringements is contrary to the text and intent of the Guidelines to support "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[104]

---

99 Report of Cambodia Socio-Economic Survey 2019/20, supra note 8, at p. 113 Table 3

100 OID Study 2017, *supra* note 30, at 47, attached at Appendix IV

101 "German government-funded study confirms grave problems in Cambodia's microfinance sector", *supra* note 73

102 *Compare* "'Micro' Finance in Cambodia: Development Challenges and Recommendations", Institute for Development and Peace (INEF), p. 83, 2022, attached at Appendix V ("possibly 167,400 individuals or households were forced to sell land due to over-indebtedness in the last five years"), *with* "Universal Standards for Social and Environmental Performance Management", SPTF & Cerise, February 2022, available at: https://sptf.info/images/USSEPM_EnglishManual2022_FINAL.pdf (none of the listed standards include indicators that would account for forced land sales)

103 ICESCR art. 11; UDHR art. 17, 25; UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Guideline 3.2

104 World Commission on Environment and Development, 1987 (cited in OECD Guidelines, Chapter II Commentary para. 3 n.4)

Chapter 4: Evidence

These reports from various sources, in addition to the diverse and credible sources cited above, are a sampling of a wide range of existing evidence indicating the types of harms caused throughout by Cambodia's microfinance sector. While not an exhaustive list of all reports of abuses in Cambodia's microfinance sector, these reports provide comprehensive evidence indicating the harms and adverse impacts of microfinance institutions in Cambodia. Several of them specifically reference the MFIs that Oikocredit invests in. Any one of them alone would be cause for enhanced due diligence measures. All of them taken together demonstrate that the problems in Cambodia's MFI sector are systemic across institutions, regions, and actors, and they make it clear that Oikocredit's investments were in breach of OECD guidelines.

1. **Report:** "Multiple Borrowing and Loan Sizes: Special Circular"
   Date: June 2016
   Published by: MIMOSA Project (Microfinance Index of Market Outreach and Saturation)
   Summary: The European-based MIMOSA project issued a report in 2016 on Cambodia's microfinance sector. Its findings include: Cambodia's loan sizes grew four times faster than incomes between 2004 and 2014; Cambodia was an outlier among major MFI markets globally in terms of rapid loan growth; "it seems challenging to distribute the above loans in such a way that they can all be held by households with sufficient earnings to afford them"; and "a path to overindebtedness is very plausible in the Cambodian market."

2. **Report:** "Over-Indebtedness Study Cambodia II"
   Date: October 2017
   Published by: Unpublished [The report indicates "Supported by" Oikocredit, BlueOrchard, KfW, and BMZ, and includes those organisations' logos. Oikocredit Annual Report from 2017 references this report.]
   Summary: The report is labelled "strictly private and confidential" and "intended only for internal use." Its findings include that between 28% (using credit bureau data) and 50% (using the report's own survey data) of Cambodian borrowers were "insolvent", "critical", or "at risk". The report's own survey found that 28% of borrowers were "insolvent", meaning they owed more in debt repayments than their household's net monthly income. The report noted, "The most common strategy among the borrowers and most frequently used during the year is the reduction of food quality." It found that coping strategies used by borrowers to repay microfinance debt included: sending children to work (5% of borrowers); taking children out of school (5%); selling assets (7%); reducing medical expenses (9%); taking new loans (15%); migrating (18%); working over 10 hours a day (19%); getting help from family (20%); using savings (26%); reducing food quantity (29%); and reducing food quality (35%).

3. **Report:** "Collateral Damage: Land Loss and Abuses in Cambodia's Microfinance Sector"
   Date: August 2019
   Published by: LICADHO and Sahmakum Teang Tnaut (STT)
   Summary: Interviews with 28 households whose members had suffered human rights violations as a result of MFI debt. In order to repay MFI debts, 22 of the households had sold land after being coerced; 13 had engaged in child labour; 18 had a family member migrate; and 26 had eaten less or lower quality food. In addition to noting the abuses are widespread across MFIs and regions, not specific to any single MFI, the report includes an anonymized case study alleging abuses by LOLC.

4. **Report:** "Driven Out: One Village's Experience with MFIs and Cross-Border Migration"
   Date: May 2020

Published by: LICADHO

Summary: Researchers selected a village with high levels of debt and migration and conducted surveys at 30 of the roughly 60 households in the village. All of the households interviewed had at least one family member who had migrated to Thailand, while 23 out of 30 had MFI debt. In 17 of the households, the need to repay MFI loans was a reason for migrating. At least five underage migrants were reported among them. In 15 of the households, people reported feeling "scared" about their microfinance debt, while the most common problem reported about MFI debts was intimidation and pressure after being forced to put land as collateral for the loan. The report includes an anonymized case of a Prasac credit officer threatening to force a land sale.

5. **Report:** "Worked to Debt: Over-Indebtedness in Cambodia's Garment Sector"

   Date: June 2020

   Published by: LICADHO, Center for Alliance of Labor and Human Rights (CENTRAL), and Cambodian Alliance of Trade Unions (CATU)

   Summary: The report interviewed 162 workers who were union members in CATU, and found 158 had at least one loan. Of the 106 workers who had a formal microloan, 20% of the loans were from either Prasac, LOLC, or Amret. According to the survey, 72% of borrowers had eaten less food to repay their debts, while 51% had taken another loan to make repayments. Sixteen (15%) had already sold land, while twice as many planned to sell land in the future, to repay their debts. Average expenses to repay loans and buy food already exceeded the average income.

6. **Report:** Global Microscope 2020: The role of financial inclusion in the Covid-19 response

   Date: 2020

   Published by: The Economist Intelligence Unit (EIU)

   Summary: In the "Asia and Eastern Europe" section on p. 22, the EIU scores 14 countries' microfinance markets on several categories, including "Consumer protection". Cambodia is given a score of 15/100 in "consumer protection", the lowest score of any country in the region. Out of all of the countries surveyed in the report, Cambodia ranks 53 out of 55 in "consumer protection".

7. **Report:** Right to Relief

   Date: June 2021

   Published by: LICADHO, Equitable Cambodia

   Summary: Researchers went to 14 communities and interviewed 124 community members in focus-group discussions and 47 people individually to speak about human rights violations associated with microloan debt. The report details how credit officers regularly engage in coerced land sales; aggressive practices; threats; and fraud. It details how in every community, people were eating less food and borrowing from private lenders to repay microloans; in 13 of 14, they were selling possessions; in 12, they were eating less food; in 11, they were using child labour to make repayments; in 11, they migrated to make repayments; in 10, children had left school to help repay MFI debts; and in 10, people had taken addition MFI loans to repay existing loans. The report provides specific details on how MFIs drive land dispossession and directly contribute to human rights abuses across Cambodia.

8. **Report:** Microfinance in Times of Covid-19: Consumer Protection and the Loan Restructuring Process in Cambodia

   Date: June 2021

   Published by: Phasy Res, The Center for Khmer Studies

   Summary: Interviews with more than 100 microfinance borrowers, as well as more than a dozen MFI employees, found that the 'restructuring' model implemented by microlenders in Cambodia during Covid-19 was ineffective and, in some cases, increased the overall debt burdens of borrowers, often through "credit circulation", or the taking of additional loans to repay existing loans. The study notes a lack of enforced client protection, specifically noting the ineffectiveness of self-regulation methods, such as the SMART Campaign or 'Client Protection Principles'. The three main strategies employed by households faced with debt distress and income loss were: "1) Reduce household food consumption and/or deplete savings; 2) Credit circulation; 3) Last resort strategies, including the sale of land, and other least desirable options."

9. **Report:** Cambodia
   Date: March 2020
   Published by: MIMOSA Project (Microfinance Index of Market Outreach and Saturation)
   Summary: The report notes that there is a "looming crisis" in Cambodia's economy and MFI sector, and calls the current context of the MFI market in the country "not very positive", noting massive over-saturation, large loan sizes, and little ability for households to cope with economic slowdown. It notes Cambodia has the highest saturation score of any country to ever be measured by the framework; gives Cambodia poor scores on "overall quality of regulation", "consumer protection (overindebtedness)"; and "consumer protection (transparency, sales, collections, consumer rights framework)". The report notes that in a survey, 45% of borrowers mentioned "seizing collateral for sales", making it the second most common method MFIs used to be repaid. It also notes that between 2015 and 2019, the number of borrowers grew by 14%, while portfolio sizes grew by 158%, and GDP grew by just 39%.

10. **Report:** Big Money Backs Tiny Loans That Lead to Debt, Despair and Even Suicide
    Date: May 2022
    Published by: Bloomberg
    Summary: "Cambodia is a poster child for what can go wrong." This Bloomberg report lays out harmful and predatory practices in Cambodia's microfinance sector, including a specific story of an LOLC borrower named Nan who was affected by Covid-19, and then pressured by LOLC credit officers to sell her home and land to repay her debts. She eventually sold her land to repay LOLC. "'They forced me to go out to find money for them at night' and wouldn't leave until she paid them, says Nan, sitting in a makeshift bedroom under a house built on stilts, protected from the elements only by sheets of corrugated metal. 'They came like they wanted to rob us'."

11. **Report:** JPMorgan's $175 Million CLO Packaged Pain Into Profit
    Date: June 2022
    Published by: Bloomberg
    Summary: Bloomberg reporters interviewed several Prasac customers who described "high-pressure tactics used by the firm's loan officers". One such borrower, Suy Sokna – who has limited reading and writing skills – ended up with a US$27,000 loan from Prasac. Credit officers from Prasac pressured her to sell land, which she did. She now lives with five other family members in a one-room house, without a toilet or running water. The report notes that Prasac reported a $155.5 million profit in 2021, a 43% rise over the previous year, despite millions of Cambodians experiencing an economic downturn due to Covid-19.

12. **Report:** "Micro" Finance in Cambodia: Development, Challenges and Recommendations
    Date: September 2022
    Published by: Institute for Development and Peace (INEF), University of Duisburg-Essen
    Summary: BMZ-funded a quantitative survey of Cambodian households, deemed by the authors to be representative of the nationwide population within standard confidence level/error margins. When extrapolated to nationwide, the survey reveals that 167,000 Cambodian households have sold land to repay microfinance debts in the last five years, with no cases documented in the research going through the legal system for foreclosure, meaning that all such land sales were extra-legal. The study concludes that "human rights violations as a result of over-indebtedness" are "likely to be numerous, even on a

national scale." It also references the 2017 Over-Indebtedness study supported by Oikocredit (Item 2 in this section), noting that "With this, the problem of over-indebtedness of a larger group of borrowers must have been clear to all actors in the sector."

13. **Report:** Trapped in the service of debt: How the burdens of repayment are fueling the health poverty trap in rural Cambodia
    Date: September 2022
    Published by: Dalia Iskander, Fiorella Picchioni, Long Ly Vouch, Laurie Parsons, Vincent Guermond, Sébastien Michiels, Katherine Brickell, Giacomo Zanello, Nithya Natarajan. Department of Geography, Royal Holloway, University of London
    Summary: Based on a survey of 621 households, 30 structured interviews with households, and more than 50 stakeholder interviews, the report finds that "over-indebtedness is associated with increased short-term health sacrifices made to repay debt, and physical, mental and social suffering that is endured in the longer term." It calls for acknowledgement that "household debt crisis in Cambodia is a public health crisis." It notes that "As a result of sacrificing food, health and basic living standards to meet debt obligations, many rural poor Cambodians remain unable to secure good health in the immediate term."

14. **Report:** Microfinance, over-indebtedness and climate adaptation: New evidence from rural Cambodia
    Date: September 2022
    Published by: Guermond, V, Parsons, L., Ly Vouch, L., Brickell, K., Michiels, S., Fay, G., Bateman, M., Zanello, G., Natarajan, N., Iskander, D., and Picchioni, F.
    Summary: The report analyses microfinance in rural Cambodia in the context of climate change, finding that "debts are, once taken, difficult if not impossible to repay in the long term, meaning that indebtedness persists and deepens over time." The report notes the pressure tactics widely employed by credit officers of MFIs in Cambodia; the disastrous consequences of land as collateral; the impacts on physical and mental health that debt has on Cambodian borrowers; and the common coping strategies of eating less food, selling assets, and working more to repay debts. It concludes that debt relief is needed in Cambodia's microfinance sector.

Chapter 5: Conclusions

The evidence credibly and plausibly supports that Oikocredit breached the Guidelines on General Policies, Human Rights, and Consumer Interests by continuing and increasing its direct investments in Cambodia's microfinance sector despite knowledge of ongoing adverse human rights impacts, and failing to use its leverage to mitigate or provide remediation for those harms. Widespread public reporting on escalating harms in the sector support the conclusion that Oikocredit failed to conduct effective due diligence and design and implement adequate risk management systems for its business activities. Oikocredit further failed to safely engage with local stakeholders regarding these concerns. Oikocredit thus contributed to, and was directly linked through a business relationship to, severe and adverse ongoing human rights impacts in Cambodia's microfinance sector.

LICADHO, EC, and FIAN Germany request that the Dutch NCP offers its good offices to address Oikocredit's breaches of the Guidelines and to facilitate remediation for the adverse human rights impacts caused.

Appendices (Confidential):

Appendix I: Media Coverage of human rights issues and reports in international media

Appendix II: Oikocredit investments

Appendix III: Communications between EC, LICADHO, FIAN Germany, and Oikocredit

Appendix IV: Over-Indebtedness Study Cambodia II: Final Report (Ch. 4, Item 2)

Appendix V: INEF Report (Ch. 4, Item 12)