



The Independent Accountability Mechanism for IFC & MIGA

Compliance Appraisal of Complaint Regarding IFC's Exposure to six Microfinance Institutions in Cambodia (Acleda, Amret, Hattha Bank, Prasac, LOLC, and Sathapana)

IFC Project Numbers: #21856, #27827, #31467, #34748, #38609, #39167, #41294, #42480, #44211, #44231, #44742, #44882, #45535

June 13, 2023

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent office that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org.

About the Compliance Function

CAO's compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO's compliance function follows a three-step approach:

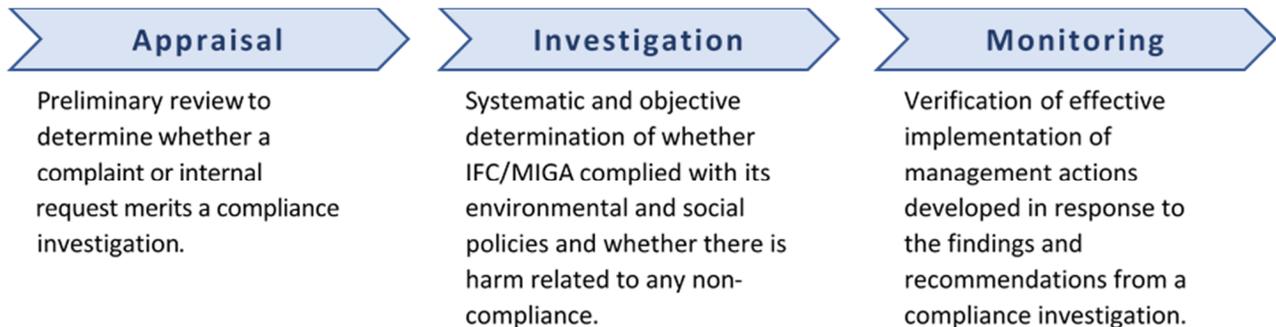


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Acronyms

Acronym	Definition
Aclede	ACLEDA Bank Plc.
Advans	Advans S.A. SICAR
AIP	Access to Information Policy
Amret	Amret Microfinance Institution Plc.
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CBC	Credit Bureau Cambodia
CMA	Cambodian Microfinance Association
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
FCP	Financial Consumer Protection
FI	Financial Intermediary
GIIP	Good International Industry Practice
Hattha Bank	Hattha Bank Plc.
IFC	International Finance Corporation
LOLC	LOLC (Cambodia) Plc.
MEF	Microfinance Enhancement Facility S.A., SICAV-SIF
MIFA	Microfinance Initiative for Asia Debt Fund SA, SICAV-SIF
MIGA	Multilateral Investment Guarantee Agency
MSME	Micro, Small, and Medium Enterprises
NBC	National Bank of Cambodia
North Thai	Haven North Haven Thai Private Equity L.P
PS	IFC Performance Standards

Acronym	Definition
Prasac	PRASAC Microfinance Institution Plc.
Sathapana	Sathapana Bank Plc.
SME	Small and Medium Enterprises
SPI	Summary of Proposed Investment
TOR	Terms of Reference

Executive Summary

This compliance appraisal documents CAO’s preliminary review of a complaint filed by two NGOs—the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Equitable Cambodia (EC)—on behalf of a group of microfinance borrowers residing in Cambodia (“the complainants”). The complaint alleges that six financial institutions in Cambodia, which are IFC clients or sub-clients, have lending and collection practices that resulted in significant negative social impacts, including loss of land and livelihoods. CAO concludes that the complaint merits a compliance investigation regarding IFC’s direct and indirect investments in the six financial institutions—Acleda, Amret, Hattha Bank, Prasac, LOLC, and Sathapana. The complaint meets the criteria for a CAO compliance investigation as there are preliminary indications that IFC may have failed to comply with its Environmental and Social (E&S) policies in assessing and supervising the social impacts of these investments, and that the alleged harm to complainants is linked to this potential non-compliance.

Context and Investments

Over-indebtedness among Cambodia’s poor and vulnerable populations is a growing international concern, voiced by the World Bank, IFC, and several UN agencies, among others.¹ Together with a weak consumer protection framework, this situation has had adverse social repercussions, affecting many Cambodians’ standard of living.

The World Bank Group (WBG) has provided extensive support to Cambodia’s financial sector, through technical assistance and direct investments with a focus on microfinance and the development of financial infrastructure. IFC in particular has made significant investments in several microfinance institutions. Related to this case, IFC has direct investments in Acleda, Amret, and Hattha Bank and indirect financial exposure to Prasac, LOLC, and Sathapana through investments in the Microfinance Enhancement Facility (MEF), the Microfinance Initiative for Asia Debt Fund (MIFA), North Haven Thai (a private equity company), and Advans S.A. (Amret’s parent company). In total, this case involves 13 IFC projects that support client lending to micro, small, and medium enterprises (MSMEs) and were active when the complaint was filed with CAO.

The Complaint

CAO received the complaint in February 2022 alleging that predatory lending and deceptive loan collection practices by Acleda, Amret, Hattha Bank, LOLC, Prasac, and Sathapana have resulted in significant negative social impacts, including loss of both land and livelihoods. The complainants argue that IFC repeatedly failed to conduct adequate E&S due diligence and supervision of its clients’ microfinance lending activities and “clearly inadequate” Environmental and Social Management Systems (ESMS). The complainants, all borrowers from one or more of these financial institutions, allege that these lenders ask them to use their land as collateral and

¹ Sources in the body of the report. See footnotes 27 to 34.

then force the borrowers into prematurely selling their land for loan collection. In addition to selling their lands—including indigenous communal territory—and other income-generating assets, such as tools of craft, the complainants claim to have rationed their food, taken their children out of school, and migrated to find work, all to repay rising loan debt.

The complaint states that IFC was aware of publicly available information regarding social harms resulting from inadequate consumer protections in Cambodia’s microfinance sector, yet continued to approve financing without additional requirements. It argues that IFC should have required these lenders to screen their activities for E&S risks and resulting harms to borrowers. The complainants point out that microfinance borrowers are likely to belong to vulnerable populations and thus require more protection and monitoring to ensure that IFC projects do not have harmful social impacts. They also express a fear of reprisals for speaking out against the microfinance industry and have asked CAO to keep their identities confidential.

IFC Response

IFC’s Management Response to the complaint acknowledges that the alleged harms are serious. However, it argues that impacts on microfinance borrowers fall outside the scope of IFC’s E&S policies, on the grounds that:

- Consumers of a client’s products are not referenced in the IFC Sustainability Policy or Performance Standards as a category of stakeholder to which E&S risk mitigation measures apply.
- The Sustainability Framework applies to potential E&S risks and impacts of the supported “business activity” on the “surrounding community and workers” but not to the E&S impacts on sub-clients themselves (in this case, microfinance borrowers).
- The business activity that IFC supports through FI clients is not microfinance lending itself but the activity that results from the use of those loans by the microfinance borrowers (for example small-scale agriculture or trading activities such as a convenience store).
- IFC addresses issues related to client lending and collection practices through its responsible finance framework and broader financial due diligence processes, not within the Sustainability Framework.

IFC also notes that, beyond the requirements of IFC’s Sustainability Framework, it has worked at institutional and sectoral levels to strengthen responsible finance practices in Cambodia.

CAO Analysis

According to the CAO Policy, the purpose of a CAO compliance appraisal is to determine whether a complaint merits an investigation by applying the following criteria: a) whether there are preliminary indications of harm or potential harm; b) whether there are preliminary indications that IFC may not have complied with its E&S Policies; and c) whether the alleged harm is plausibly linked to the potential non-compliance.

For this appraisal, CAO conducted an initial review of available information, including the complainants' personal accounts of adverse impacts from microfinance lending and relevant secondary sources. CAO concludes that the complaint meets the three criteria above in relation to IFC's direct investments in Acleda, Amret, Hattha Bank, Advans, North Haven Thai, MEF, and MIFA, and indirect investments in Prasac, LOLC, and Sathapana through MEF and MIFA.

a) **There are preliminary indications of harm** regarding the allegations of adverse impacts of microfinance lending raised by complainants. CAO reached this conclusion based on household level accounts of the adverse social impacts of microfinance lending provided by complainants, which are consistent with broader accounts of the risks and impacts of microfinance lending and over-indebtedness in Cambodia and other developing countries,² as follows:

- **Loss of land.** The complainants state that financial institutions coerced them into using land titles as collateral and then forced premature sales of the land for loan collection. These allegations are consistent with public reporting of such practices and the risks they pose for land loss to poor and vulnerable borrowers.
- **Livelihood impacts.** The complainants indicate that they have had to sell other assets and resorted to eating less or lower quality food as a result of their microfinance borrowing. A preliminary review of relevant studies provides evidence that the negative impacts of microfinance on the livelihoods of Cambodian borrowers often include eating less or lower quality food in order to make repayments.
- **Impacts on families.** Some complainants say they have had to remove their children from school to work or have had to migrate to repay their loans. Complainants have also highlighted reports of debt-driven suicides that are increasing in the country. Data from the International Labor Organization (ILO) and the International Organization for Migration (IOM) supports the plausibility of the complainants' allegation that debts are linked to child labor and migration in Cambodia. The complainants have also highlighted public reports of debt-driven suicides that are increasing in the country, as another impact on families from the situations described in their complaint.
- **Impacts on Indigenous Peoples.** The complainants, some of whom identify as Indigenous, state that the lenders have accepted Indigenous Peoples' land as collateral and later coerced them into selling such land, sometimes to persons outside their Indigenous community. This approach violates Indigenous communities' rights, cultures, traditions, and livelihoods. Public reporting supports the plausibility of these allegations, revealing that, while there are legal restrictions on selling Indigenous land, delays in collective land titling have enabled widespread use of soft land titles as collateral in Indigenous areas for Indigenous Peoples to access loans.
- **Threats and reprisals.** The complainants and the NGOs representing them have raised concerns about reprisals from the microloan providers and local authorities.

² Sources for the studies and public reporting indicated regarding each of the impacts are in the section on preliminary indications of harm in the body of the report. See footnotes 35 to 52.

NGOs and media report that microfinance institutions in Cambodia have accused industry critics of defamation and “coordination” to harm the industry’s image and have asked government authorities to take action against them.

- b) There are preliminary indications that IFC may not have complied with its environmental and social policies**, specifically its responsibility to carry out both E&S due diligence and ongoing supervision of these investments’ social impacts on microfinance borrowers.

CAO concludes that project impacts on microfinance borrowers are covered by IFC E&S Policies for the following reasons:

- The Sustainability Framework ***applies to all IFC projects*** and their E&S impacts, ***unless specifically excluded*** (see, for example, Sustainability Policy, paras. 1, 3, 20, and 22).
- There is no such exclusion or limitation regarding impacts on financial consumers or microfinance borrowers in IFC’s Sustainability Policy or Performance Standards (PS). Further, IFC guidance states that the project impact assessment process under PS1 should cover the “full scope of risks and impacts” associated with a project including any “unique impacts” not specifically covered by PS 2 through 8 (IFC Guidance Note to PS1, paras. 16 and 17).
- It follows that the social impacts alleged by the complainants, such as loss of land and livelihoods; impoverishment; loss of identity, culture, and natural resource-based livelihoods by Indigenous Peoples; and negative social impacts on families from economic migration and children being taken out of school, are covered by IFC’s E&S Policies.
- Additionally, there are specific requirements relevant to these microfinance investments in PS1 (Assessment and Management of Environmental and Social Risks and Impacts) regarding vulnerable populations and national law, PS7 (Indigenous Peoples), and the IFC Exclusion List regarding Indigenous Peoples.

Based on the above analysis, the Sustainability Framework applies to the impacts raised by the complainants. However, CAO’s preliminary review has found indications that IFC is not actively and systematically carrying out its obligations regarding project E&S due diligence and supervision in relation to the risks to and impacts on financial consumers of these investments.

- c) The alleged harms to the complainants are plausibly linked to IFC’s potential non-compliance**, because they could plausibly have been mitigated or otherwise addressed if the social risks and impacts associated with clients’ lending and collection practices had been identified by IFC in its E&S due diligence and supervision, as provided for by IFC’s Sustainability Framework.

Next Steps

CAO will proceed to conduct a compliance investigation of IFC's investments in Aceda, Amret, Hattha Bank, Advans, North Haven Thai, MEF, and MIFA, and indirect investments in Prasac, LOLC, and Sathapana, through MEF and MIFA, as they relate to the issues raised in the complaint. Terms of Reference for the investigation following the CAO Policy can be found in Appendix 7 of this report, and the IFC's Management Response in Appendix 5. The draft compliance investigation report will be completed within 18 months of the disclosure of this appraisal report.³

This appraisal report will be published on the CAO website and shared with the Board, IFC management, the clients, and the complainants.

³ As an interim measure toward implementation of the CAO Policy timelines, in FY24 CAO will complete draft compliance investigations within 18 months of the disclosure of an appraisal report.

1. Introduction

This section provides an overview and context on IFC's direct and indirect investments in six Cambodian financial institutions subject to a CAO complaint regarding lending and collection practices. It then describes the scope and methodology CAO uses for compliance appraisal as followed in this report.

a) Context of IFC's Microfinance Investments in Cambodia

The World Bank Group has provided extensive support to Cambodia's financial sector through technical assistance and direct investments with a focus on microfinance and development of financial infrastructure.³ IFC has supported the country's microfinance sector since at least 1998.

The Cambodian microfinance sector has provided access to formal credit for a large segment of borrowers previously excluded from the formal banking system, improving the welfare of many households in Cambodia. In parallel, IFC has worked with the Government of Cambodia, the National Bank of Cambodia (NBC), and financial sector associations to improve the country's financial infrastructure and promote responsible lending, transparent credit reporting, and good debt collection practices.⁴ However, the industry's rapid growth and the absence of a strong regulatory framework have raised concerns about the sector's sustainability and the potential adverse impacts of over-indebtedness.ⁱ

b) IFC Exposure to Six Cambodian Financial Institutions

In February 2022, CAO received a complaint in relation to the lending and collection practices of six financial institutions operating in Cambodia: ACLEDA Bank Plc. (Acleda), Amret Microfinance Institution Plc. (Amret), Hattha Bank Plc. (Hattha Bank), LOLC (Cambodia) Plc. (LOLC), Prasac Microfinance Institution Plc. (Prasac), and Sathapana Bank Plc. (Sathapana). IFC has direct investments in the first three and indirect financial exposure to the latter three, through investments in three funds—Microfinance Enhancement Facility S.A., SICAV-SIF (MEF), Microfinance Initiative for Asia Debt Fund SA, SICAV-SIF (MIFA), and North Haven Thai Private Equity L.P (North Haven Thai), as well as a holding company, Advans S.A. (Advans). In total, this case involves 13 IFC projects that support lending programs for micro, small, and medium enterprises (MSME),⁵ and were active at the time the complaint was filed with CAO.⁶ Further details on each of the IFC clients and sub-clients is provided in Appendix 1.

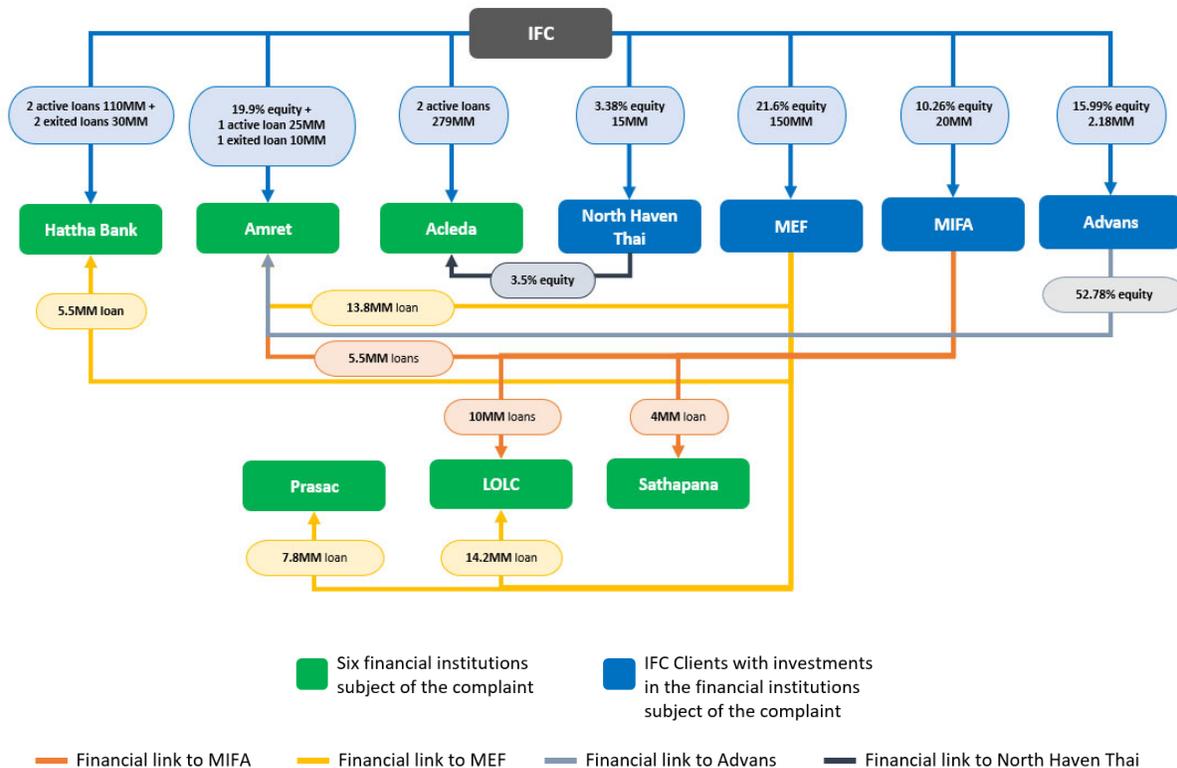
³ The World Bank Groups Country Partnership Framework for Cambodia (FY2019-FY2023), p. 25. <https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=24563>

⁴ The World Bank Groups Country Partnership Framework for Cambodia (FY2019-FY2023), p. 25.

⁵ Some of the loans establish a minimum of investments in categories of end-borrowers (e.g., 50 percent to fund women owned MSEs, or agribusinesses) but none limit all proceeds to one category of end-borrower.

⁶ **Acleda**: projects #44882 and #42480 which remain active. **Amret**: projects #34748, #44231, (both active) #41294 (exited on July 15, 2022). **Hattha Bank**: projects #39167, #44211 (exited on June 15 and 30, 2022, respectively) and #45535 and #44742 which remain active. **MEF** project #27827, **MIFA** project

Figure 1: IFC Financial exposure to Acleda, Amret, Hattha Bank, LOLC, Prasac, and Sathapana



c) Compliance Appraisal Scope and Methodology

The scope of this CAO compliance appraisal is limited to issues raised in the complaint and CAO’s Assessment Report.⁷ CAO has made the appraisal decision based on the appraisal

[#31467](#), **North Haven Thai** project [#38609](#), and **Advans S.A.** project [#21856](#). Of the 13 projects involved, 7 are categorized as FI-2, 3 as FI-3, and 3 as FI (under 2006 Sustainability Policy). Five other projects in Acleda were initially included in this case ([#32642](#), [#30607](#), [#34386](#), [#35963](#) and [#37594](#)) as they were recorded as active at the time CAO’s eligibility decision was made in April 2022. Since then, IFC has clarified to CAO that the first four projects were exited before the 15-month period allowed by the CAO policy to consider exited projects (para. 49 of the CAO Policy). Project [#30607](#) was exited in August 2018, [#32642](#) was exited in October 2019, [#34386](#) was exited in June 2018 and [#35963](#) was exited in June 2020. Therefore, these four Acleda projects will be excluded from consideration in this case. Project [#37594](#) was exited on February 15, 2021, which is within the 15 months provided for in the CAO Policy for potential acceptance of exited investments. However, CAO’s eligibility decision determined to exclude projects exited before the complaint was submitted to CAO. Thus, this project, which IFC has clarified was exited in February 2021, will also not be considered as part of the compliance review in this case. Notwithstanding, as was communicated with the eligibility decision in April 2022, while CAO will not review IFC’s compliance regarding these exited investments, CAO will consider all exited investments related to this case as part of the context of the complaint to ensure a full understanding of IFC’s financial links and relationships with the different clients and sub-clients.

⁷ CAO Policy, para. 88.

criteria and other relevant considerations contained in the CAO Policy. The appraisal involved a preliminary review of the following information:

- Documentation related to the complaint, CAO's Assessment Report, and the response from IFC Management to the complaint;
- IFC and client documentation on the implementation of the projects' environmental and social (E&S) requirements and responsible finance considerations;
- Information gathered through interviews with the complainants' representatives and IFC project teams; and
- Relevant public reports, academic literature, and media reports.

CAO extends its appreciation to all parties mentioned in this report who shared their perspectives, knowledge, and time.

2. Concerns Raised by Complainants

In February 2022, CAO received a complaint from two NGOs—the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Equitable Cambodia (EC)—on behalf of a group of individual borrowers from Cambodia. The complaint raised concerns regarding the lending and collection practices of six financial institutions and banks operating in the country.

The complainants are all recipients of loans from one or more of the six financial institutions concerned. Out of fear of reprisals, they requested that CAO keep their identities confidential, and not specify the number of complainants or details of their loans. A redacted version of the complaint is annexed to this appraisal report in Appendix 4.⁸

Collectively, the borrowers allege that they have been harmed by the banks' lending and collection practices and that they have been pressured into selling their assets to repay loans. They claim lenders failed to provide sufficient information to enable borrowers to assess the consequences of entering into loan agreements, including a lack of information in Indigenous languages.

The complainants argue that a combination of high market penetration, high saturation, lack of consumer protection, and insufficient government enforcement of existing laws has fueled aggressive, deceptive, and predatory tactics by microfinance institutions and bank loan officers. They allege it is a common practice for lenders in Cambodia—including those cited in the complaint—to expand their business by offering outsized loans to micro, small, and medium enterprises, sometimes repeatedly and for increased amounts, without fully assessing borrowers' ability to repay. When borrowers miss a payment by even a few days, the complainants state that microfinance lenders often employ coercive extrajudicial collection tactics. These include harassing borrowers at home, threatening to bring them before local

⁸ Complainants requested that their full written complaint and identities remain confidential. A redacted version of their complaint is attached to this appraisal report and published on CAO's case webpage here: <https://bit.ly/3B16eHG>

authorities, and pressuring borrowers into selling their land to repay loans rather than pursuing collection through the legal process.

The complainants argue that IFC has repeatedly failed both to conduct adequate due diligence of its investments in these financial institutions and to supervise them when active. Specifically, they allege that IFC did not adequately supervise the Environmental and Social Management Systems (ESMS) of microfinance provider clients, which they describe as “clearly inadequate to address the predatory and deceptive loan practices, irresponsible lending [...], and coercion and threats from loan officers”. They allege that this lack of proper project due diligence and supervision enables the associated social harms against complainants and their communities “to continue unabated in clear contradiction with IFC’s Performance Standards.”

The borrowers also allege that IFC transparency regarding investments in financial intermediaries (FIs) is limited, insufficient, and contrary to IFC’s Access to Information Policy. They argue that IFC disclosures on financial intermediary (FI) projects provide little and inconsistent information regarding the ESMS, related E&S assessments, and the Environmental and Social Action Plan (ESAP) agreed between IFC and client, as well as IFC’s subsequent supervision.

Due to such practices and omissions, the complainants allege that they have suffered the following negative impacts in violation of IFC’s E&S policies:

- **Loss of Land:** The complainants allege that microfinance lenders routinely ask them to put up their land—including Indigenous communal land—as collateral for loan approval and then force them into premature sales of the land for collection. They claim that lenders are more interested in securing land titles than in a borrower’s ability to repay a loan. Not only do microfinance institutions physically keep the land titles but they also often require borrowers to deposit multiple titles beyond the loan’s value to prevent them from using land titles to secure loans from another institution. According to the complainants, lenders coerced them to sell their land outside the legal procedures in place to collect on collateral and without sufficient prior information. Borrowers in Cambodia often have little understanding of their legal rights. Common misconceptions include fearing that a microfinance institution can sell their land if they are one day late in making a repayment, and that, if they do not sell the land themselves, lenders can do so at below-market value to recoup the loan. According to the complainants, microfinance institutions take advantage of borrowers’ ignorance of the legal process and their rights to imply that late repayment will bring additional consequences and to threaten recourse to local authorities.
- **Livelihood Impacts:** The complainants state that they have had to sell not only their lands but other sources of income, such as tools, to repay debts to lenders. As a result, their sources of income have diminished rather than grown due to microfinance borrowing, leading them to eat less and lower quality food in order to meet loan payments.
- **Impacts on Families:** The complainants include households that have had to remove their children from school, due to their inability to pay for education costs and the need

for their children to work and contribute to debt payments. Some families also report having migrated, or needing their children to migrate, to generate additional income to repay loans. In addition, the complainants reported an increase in debt-related suicides due to the over-indebtedness crisis.

- **Impacts on Indigenous Peoples:** Some complainants are members of Indigenous communities. They allege that lenders have often accepted Indigenous land as collateral, which then later gets sold to non-members of the community, violating Indigenous people's rights, cultures, traditions, and livelihoods. According to the complainants, lenders often incentivize Indigenous community members to seek individual soft land titles⁹ and discard their communal titles in order to secure loans.
- **Threats and reprisals:** The complainants expressed fear of reprisals from their microloan providers and local authorities, stating that loan officers often resort to threats, intimidation, and harassment. The NGOs representing the complainants also report being subject to threats of legal action and accusations of incitement by some microfinance institutions named in the complaint.

The complainants state that IFC has been aware of publicly available information regarding widespread social harms and inadequate consumer protections in Cambodia's microfinance sector since at least 2016 yet approved additional financing and classified the new projects as low risk. They argue that, despite these escalating social harms, there is no indication that IFC reassessed the commitment or capacity of its FI clients to conduct day-to-day management of projects with high social risks and impacts before approving additional investments.

They further allege that the practices and procedures under IFC's current E&S policies have exposed a gap in IFC's monitoring and supervision of its FI clients. Specifically, the complainants argue that IFC does not properly supervise the business activities of its microfinance clients since these clients are not required to screen their lending activities for E&S risks and resulting harms to borrowers. The complaint describes this gap in E&S supervision as significant since microfinance borrowers often belong to vulnerable populations and thus require more protection and monitoring to ensure that IFC projects do not have harmful social impacts.

In April 2022, CAO found the complaint eligible and started its assessment. Since there was no consensus for a CAO supported dispute resolution process, and with the complainants' consent, the case was transferred to CAO's compliance function on November 11, 2022 to conduct a compliance appraisal.¹⁰

⁹ The term *soft land titles* refers to the practice in Cambodia of local authorities issuing certifications of land ownership which are then traded outside the formal cadastral system.

¹⁰ CAO, Assessment Report regarding Concerns in Relation to IFC Projects and Subprojects in Cambodia regarding 7 Financial Institutions and 3 Funds, (IFC Project Numbers: #21856, #27827, #30607, #31467, #32642, #34386, #34748, #35963, #37594, #38609, #39167, #41294, #42480, #44211, #44231, #44742, #44882, #45535), November 2022, available at: <https://bit.ly/3HFXQ49>.

3. Summary of IFC Response

IFC's Management Response to the complaint argues that, while the alleged harms outlined in the complaint are serious, they are not the result of non-compliance with IFC's E&S policies.¹¹ According to IFC Management, impacts of microfinance lending on borrowers fall outside the scope of IFC's E&S Policies for the following reasons:

- a) Consumers of a client's products are not referenced in the Sustainability Policy or Performance Standards as a category of stakeholder to which E&S risk mitigation measures should apply.
- b) The Sustainability Framework applies to potential E&S risks and impacts of the supported "business activity" on the "surrounding community and workers", but it does not apply to the E&S impacts on sub-clients themselves (in this case, microfinance borrowers).
- c) The business activity that IFC supports through its FI clients is not microfinance lending itself, but rather the activity that results from the use of those loans by microfinance borrowers (for example, small-scale agriculture or trading activities such as a convenience store).
- d) IFC addresses issues related to client lending and collection practices through its responsible finance framework and as part of its broader financial due diligence processes, not within the Sustainability Framework.

In addition, IFC notes that, beyond the requirements of IFC's Sustainability Framework, it has worked at institutional and sectoral levels to strengthen responsible finance practices in Cambodia.

At the institutional level, these activities include working with FIs that have responsible lending practices, assessing FIs' underwriting and collection practices during due diligence processes, and monitoring the evolution of these practices through portfolio supervision.¹² In addition, IFC has provided advisory services to some of the FIs named in this complaint, helping them improve their corporate governance, risk management capacity, and responsible finance practices. In April 2021, IFC launched a responsible finance initiative, which assesses Cambodian FI clients' responsible finance practices and assists them in making time-bound improvements.¹³

At the sectoral level, IFC states that it has worked with the National Bank of Cambodia (NBC) since 2006 to build the Credit Bureau Cambodia (CBC), a source of transparency and information for credit reporting as well as a tool to reduce the risk of borrower over-indebtedness. In addition, IFC has collaborated with the Cambodian Microfinance Association (CMA), the CBC, and the SMART Campaign to promote microfinance lending guidelines, and implemented an insolvency

¹¹ See Appendix 2. IFC's Management Response (November 21, 2022).

¹² In this regard, IFC indicated it incorporated affirmative covenants in loan agreements of clients involved in this complaint to require compliance with Client Protection and Responsible Finance Principles, covering avoidance of over-indebtedness, transparent pricing, appropriate collection practices, ethical staff behavior, grievance redress mechanism, and/or data privacy protection.

¹³ Advisory Services Cambodia RF #606119.

and debt resolution project to strengthen fair and transparent debt collection practices in Cambodia more generally.

IFC's response states its commitment to reviewing and addressing the issues raised in the complaint, along with other relevant stakeholders such as the World Bank, NBC, CMA, the Association of Banks in Cambodia and other multilateral financial institutions. While insisting these issues are outside the Sustainability Framework, IFC proposes conducting activities at the project, sector, and regulatory levels. According to IFC, these would address "project-specific irregularities" alleged by the complainants, the risk of reprisals, IFC's approach to responsible finance, and financial consumer protection (FCP) regulation in Cambodia. For the full response, see Appendix 5.

None of the IFC clients provided CAO with a response to the complaint.

4. CAO Appraisal Analysis

This section summarizes CAO's analysis of the complaint based on research, document review, and interviews conducted between November 2022 and May 2023. It describes the relevant IFC policy framework and Performance Standards applicable to the complaint, and then presents CAO's conclusions regarding the three appraisal criteria required to initiate a compliance investigation, namely:

- a. Whether there are preliminary indications of harm or potential harm;
- b. Whether there are preliminary indications that IFC may not have complied with its E&S Policies; and
- c. Whether the alleged harm is plausibly linked to the potential non-compliance.¹⁴

Based on the analysis below, CAO finds that the complaint meets the criteria for a compliance investigation regarding IFC's direct investments in Aceda, Amret, Hattha Bank, Advans, North Haven Thai, MEF, and MIFA, and indirect investments in Prasac, LOLC, and Sathapana through MEF and MIFA.

a) Relevant IFC Policy Framework and Performance Standards

IFC's Policy on Environmental and Social Sustainability (the Sustainability Policy),¹⁵ Performance Standards (PS),¹⁶ and Access to Information Policy (AIP)¹⁷ are together referred to as the Sustainability Framework.

The Sustainability Policy states that "efforts to carry out investment and advisory activities with the intent to 'do no harm' to people and the environment" and "to enhance the sustainability of

¹⁴ CAO Policy, para. 91.

¹⁵ IFC. 2012. Policy on Environmental and Social Sustainability. Available at: <https://bit.ly/3BslSeg>

¹⁶ IFC. 2012. Performance Standards. Available at: <https://bit.ly/42UMsdc>

¹⁷ IFC. 2012. Access to Information Policy. Available at: <https://bit.ly/42zRGep>

private sector operations and the markets they work in” are “central to IFC’s development mission.”¹⁸ The Sustainability Policy commits IFC to “ensur[e] that the costs of economic development do not fall disproportionately on those who are poor or vulnerable.”¹⁹ To help meet this mandate, IFC commits to ensure that the projects it finances are “carried out in accordance with the requirements of the Performance Standards.”²⁰

IFC’s commitments under the Sustainability Policy are carried out through three stages of the project cycle:²¹

- The pre-investment E&S due diligence (also known as appraisal) which must be commensurate to the risks and impacts of the potential client’s business activity.
- The inclusion of applicable E&S requirements in the investment agreement (conditions of the investment), with which the client agrees to comply.
- The E&S supervision of the client’s compliance with the E&S commitments in the investment agreements.

Additionally, IFC has obligations under the Access to Information Policy (AIP) to disclose specific information regarding an FI’s main E&S risks and impacts.²²

Within the Sustainability Framework, the following E&S requirements are relevant to the allegations of harm made by complainants in this case:

- Performance Standard 1 (PS1): Assessment and Management of Environmental and Social Risks and Impacts of the business activity IFC supports, including mitigation of impacts on vulnerable groups and anti-retribution principles.
- Performance Standard 7 (PS7): Indigenous Peoples (IPs), including requirements to avoid impacts on Indigenous lands and culture and to engage with IPs in a culturally appropriate manner.
- The IFC Exclusion List,²³ particularly regarding the obligation to not impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.

¹⁸ Sustainability Policy, para. 9.

¹⁹ Sustainability Policy, para. 9.

²⁰ Sustainability Policy, para. 3.

²¹ Sustainability Policy, paras. 20, 21, 22, 24, 32, 33, 34, 35. and 45.

²² The AIP requires IFC disclose (i) the rationale for IFC’s categorization of the investment; (ii) a description of the main environmental and social risks and impacts associated with IFC’s investment and a summary of the Environmental and Social Management System (ESMS); and (iii) key measures identified to strengthen the ESMS, as specified in the ESAP.” AIP, para. 31(b).

²³ The IFC Exclusion List includes the following provision, which CAO finds applicable to the allegations in this case “When investing in microfinance activities, FIs will apply the following items in addition to the IFC Exclusion List: [...] Production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.” CAO however does not find the prohibition of child labor in the Exclusion List applicable to the allegations in this case, as the prohibition in the Exclusion List refer to the activities financed by the financial intermediary or project, i.e., it prohibits

The complainants assert that the impacts alleged also involved breaches of IFC Performance Standards 2, 4, and 5. However, these standards are not generally applicable in this case for the following reasons:

- PS2 applies to employment relationships between the IFC client and its workers, whether they are direct workers, contracted workers, or supply chain workers (PS2, para. 4). As a result, PS2 is not applicable. The risk of child labor linked to project related over-indebtedness alleged by the complainants is more appropriately handled under the general requirements of PS1.
- PS4 addresses the “risks and impacts to community health, safety, and security that may arise from project related-activities” with particular attention to impacts arising from project “equipment and infrastructure” (PS4, paras. 1 and 4). The health impacts alleged by the complainants (reduced nutrition and food intake, and debt-driven suicides related to over-indebtedness) would generally be addressed under PS1 rather than PS4 in the context of these microfinance-related investments.
- PS5 applies to “project-related land acquisition” (PS5, paras. 1, 5 and 6) and not to resettlement originated in “market transactions” (paras. 5 and 6) where the seller is provided with “fair compensation” based on their “informed consent” (PS5, GN17). PS5 states that “more generalized impacts on communities [...] are covered in Performance Standard 1.” (PS5, footnote 10). As a result, alleged land loss due to over-indebtedness would generally be addressed under PS1 rather than PS5.

b) Preliminary Indications of Harm

A CAO compliance appraisal is required to consider whether a complaint raises “preliminary indications of Harm or potential Harm.”²⁴ The CAO Policy defines harm as “Any material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future.”²⁵ A preliminary indication of harm, determined at the appraisal stage, is present when CAO’s initial review of available information generates a plausible or credible concern that harm has happened or is reasonably likely to occur. It is not equivalent to a *finding* of harm, which may only result from a compliance investigation.²⁶

There is a wide range of available literature documenting the extent and severity of social impacts associated with microfinance lending in Cambodia. Over-indebtedness among the country’s poor

the FIs from providing financial services for activities that involve harmful or exploitative forms of harmful child labor. It has not been argued that the FIs themselves are engaging in child labor or financing activities that engage child labor. The complainants’ allegations are covered under the general considerations of social impacts in PS1.

²⁴ CAO Policy, para. 91.

²⁵ CAO Policy, glossary.

²⁶ In this regard, para. 94 of the CAO Policy establishes that “the appraisal process does not lead to a definitive assessment of IFC/MIGA’s compliance with its E&S Policies or related Harm. CAO may make these assessments only in the context of an investigation.”

and vulnerable populations is a growing concern. Since 2015, IFC has identified the risks that such over-indebtedness, together with a weak consumer protection framework for financial markets, poses both to the Cambodian economy and individual consumers.²⁷ In 2019, the World Bank issued a Cambodia Policy Note on microfinance and household welfare that warned of “the quickly increasing debt-to-consumption ratio [that] has raised concerns about the debt repayment capacity of a significant number of borrowers.”²⁸ In 2020, IFC commissioned a Microfinance Index of Market Outreach and Saturation (MIMOSA) report. This concluded that Cambodia had reached the highest possible level of market saturation and noted growing loan sizes, increasing loan repayment periods, high market penetration, and lack of consumer protection and regulation.²⁹

The UN also has also raised concerns. In its 2022 report on Cambodia, the UN Secretary General stated that microfinance lending has heightened the vulnerabilities of already vulnerable populations,³⁰ and remarked that total outstanding debt owed to microfinance institutions as a percentage of GDP in Cambodia was among the highest in the world.³¹ The UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights (2020),³² the UN Secretary General and the Office of the High Commissioner for Human Rights (2021 and 2022),³³ and the UN Committee on Economic, Social, and Cultural Rights (2023)³⁴, have all expressed concern about the adverse social repercussions of over-indebtedness, and the “poverty trap” it generates, with private debt a barrier to an adequate standard of living for many low-income households in Cambodia.

²⁷ IFC, Promoting Financial Consumer Protections in Cambodia, 2015, pp. 29–33. Available at <https://bit.ly/3VCU817>

²⁸ World Bank Group, Cambodia Policy Note on Microfinance and Household Welfare, 2019, p.11. Available at <https://bit.ly/3NITywl>

²⁹ MIMOSA Report on Cambodia, March 2020, p. 7-8. After the Mimosa report, Human Rights Watch urged the World Bank Group to investigate Cambodia’s micro-loans, and sent [two letters](#) to IFC highlighting abuses in micro-lending (such as allegedly forced land sales) and to alert IFC of the exacerbation of the problem during Covid-19. Information available here: <https://tinyurl.com/3bwakzby>. Amnesty International has also highlighted how Cambodia is the most microfinance-indebted country in the world, and that socio-economic insecurity was exacerbated by high levels of microfinance debt and a failure to protect vulnerable populations from forced land sales due to the use of land titles as collateral. Amnesty International, Report 2020/21, p. 106 and 108, available at: <https://bit.ly/3p9M8bE>.

³⁰ Report of the UN Secretary-General to the Human Rights Council, Annual Report of OHCHR, 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 (hereinafter “OHCHR 2021-2022 Cambodia Report”), 17 August 2022, A/HRC/51/63, para. 42.

³¹ OHCHR 2021-2022 Cambodia Report, 17 August 2022, A/HRC/51/63, para. 42.

³² UN Independent Expert Report on Private Debt and Human Rights, Annual Report of OHCHR, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, (2020), A/HRC/43/45 at p.1 and para. 32–34.

³³ Report of the UN 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, 16 September 2021, A/HRC/48/49, para. 40, (hereinafter “OHCHR 2020-2021” Cambodia Report) and OHCHR 2021-2022 Cambodia Report, 17 August 2022, A/HRC/51/63, para. 42.

³⁴ Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Cambodia, 27 March 2023 E/C.12/KHM/CO/2, paras. 38 and 39(b).

Taking into account this general context, the complainants' personal testimony is consistent with published accounts of the risks and social impacts of microfinance lending and over-indebtedness in Cambodia and other developing countries. On this basis, CAO finds there are preliminary indications of Harm or potential Harm in relation to the following issues raised by the complainants:

- 1. Loss of land.** The complainants allege that the financial institutions named in the complaint coerced them into using land titles as collateral and then forced them to sell the land prematurely for collection. In many cases, this land was their primary source of income. These allegations appear consistent with public reporting dating back to 2015, which has noted the risk of land loss associated with microfinance lending in Cambodia, given widespread use of land as collateral for poor borrowers. Since then, numerous studies and reports support the complainants' allegations regarding the link between microfinance borrowing and land loss for poor and vulnerable households.³⁵

IFC published its own report on the topic, "Promoting Financial Consumer Protections in Cambodia", in 2015. This identified the practice of requiring land as collateral from poor households with low levels of literacy as a key consumer risk.³⁶ Additional studies in 2017 and 2020 identified land as the most common collateral used for microfinance loans in Cambodia, representing a particular risk for low income households.³⁷ In 2022, a study by INEF-BMZ estimated that microfinance debt had triggered up to 167,000 land sales since 2017.³⁸ The impact on household farming was documented in the Socio-Economic Survey by the Planning Ministry's National Institute of Statistics which found that 1 million households had stopped farming or reduced their farm land between 2017 and

³⁵ In addition to the studies and papers individually cited below, see, among others: Bateman (2017) argues that the microfinance sector is increasingly driving the poor into landlessness, with the "gradual loss of land resulting from unrepayable microloans" being one of the "most deleterious outcomes associated with the rise of the microfinance model in Cambodia". Bateman, Milford "The Rise of Cambodia's Microcredit Sector: An Unfolding Calamity", *Globalisation at the Crossroads, Rethinking Inequalities and Boundaries*, EADI NORDIC, 2017, pp. 14, 16. See also, among many others: Green, Nathan W., Bylander, Maryann, "The Exclusionary Power of Microfinance: Over-Indebtedness and Land Dispossession in Cambodia", *Sociology of Development*, Vol.7.2, 2021; Rido, Thath, "Microfinance in Cambodia: Development, Challenges, and Prospects", *MPRA Papers*, 2018, pp. 10-11; Marks, Simon, Reaksmey, Hul, "A way out for some, but a debt trap for others", *Cambodia Daily*, May 2011, available at <https://bit.ly/3IN7Gj>; Surrusco, Matt, Kimsay, Buth, "Microloans work for some, leave many in debt", *Cambodia Daily*, March 2017, available at <https://bit.ly/42gN8J9>

³⁶ IFC, *Promoting Financial Consumer Protections in Cambodia*, 2015, pp. 29–32. Available at <https://bit.ly/3VCU817>

³⁷ Microfinance Centre (MFC), *Good Return, CBC, Over-Indebtedness Study Cambodia II: Final Report*, October 2017, pp. 62-63 and MIMOSA Report on Cambodia, March 2020, p. 7.

³⁸ Given the particular circumstances of the Cambodian context regarding land titling and possession, quantifying the scale of the impacts can be difficult. Bliss, Frank, "Micro Finance in Cambodia. Development, Challenges and Recommendations", *AVE Study 30/2022, Ways out of Poverty, Vulnerability and Food Insecurity*, Institute for Development and Peace (INEF), University of Duisburg-Essen, 2022, p. 76. Project funded by the German Federal Ministry for Economic Cooperation and Development (BMZ).

2019/2020, with a higher negative impact on women landowners.³⁹ The Coalition of Cambodian Farmer Community indicated that this was due to farmers selling land for emergency cash due to the escalating debt crisis.⁴⁰

- 2. Livelihood impacts.** The complainants allege that in order to repay loan debt, in addition to selling their lands, they have sold other income-generating possessions such as tools and means of transport. As their income declined, they describe resorting to eating less or lower quality food to reduce expenses. Such measures were corroborated in studies supported by the German Federal Ministry for Economic Cooperation and Development (BMZ) in 2017 and 2022.⁴¹

Given Cambodia's indebtedness crisis, CAO concludes that the data above related to land and livelihood loss and impact, together with complainants' personal accounts, result in preliminary indications that microfinance lending may be negatively impacting the livelihoods of rural communities in Cambodia.⁴² This is particularly the case for poorer households and those who lose land that was provided as collateral.

- 3. Impacts on families.** The complainants allege that some households have had to remove their children from school, either because they can no longer afford the costs or because they need their children to work to help repay loans. This results in more children dropping out of school and potential incidences of child labor, which is a major concern in Cambodia.⁴³ The International Labor Organization (ILO) and other sources have warned about a correlation between child labor and the needs of poor families to repay debts.⁴⁴

³⁹ National Institute of Statistics of the Ministry of Planning, Report of Cambodia Socio-Economic Survey 2017, available at: <https://bit.ly/3LXJlod>; National Institute of Statistics of the Ministry of Planning, Report of Cambodia Socio-Economic Survey 2019/20, available at: <https://bit.ly/3NMoYIS>;

⁴⁰ Techseng, Tran, Dickison, Michael, "Land Loss, Debt Rise Record in Latest Socio-Economic Survey", *VOD*, February 2021, available at <https://bit.ly/41alrAZ>

⁴¹ According to the 2017 Microfinance Centre (MFC) study 48 percent of borrowers reduced food quality in 2012, 35 percent in 2017, while 44 percent reduced food quantity in 2012 and 29 percent in 2017. The 2022 study (Bliss, 2022) found that 36.6 percent had restricted their consumption (particularly of food purchases) to make repayments. Microfinance Centre (MFC), Good Return, CBC, Over-Indebtedness Study Cambodia II: Final Report, October 2017, pp. 49-50. Bliss, Frank, "Micro Finance in Cambodia. Development, Challenges and Recommendations", *AVE Study 30/2022, Ways out of Poverty, Vulnerability and Food Insecurity*, Institute for Development and Peace (INEF), University of Duisburg-Essen, 2022, pp. 45 and 76. Project funded by the German Federal Ministry for Economic Cooperation and Development (BMZ). See also, Green, Nathan W., Bylander, Maryann, "The Exclusionary Power of Microfinance: Over-Indebtedness and Land Dispossession in Cambodia", *Sociology of Development*, Vol. 7.2, 2021, pp. 202 and 211.

⁴² On the possible risk to household welfare see also, World Bank Group, Cambodia Policy Note on Microfinance and Household Welfare, 2019, p.8. Available at <https://bit.ly/3NITywl>.

⁴³ In 2020, Cambodia was the worst rated State in South East Asia regarding child labor. See: <https://tinyurl.com/yc2nn635>.

⁴⁴ ILO, Int'l Programme on the Elimination of Child Labour (IPEC), Good Practices for Tackling Child Labour in Cambodia, 2014, p. 22. Available at <https://bit.ly/429drl4>. U.S. Department of State, Cambodia Business Advisory on High-Risk Investments and Interactions, Press Release, 10 Nov. 2021, Available at <https://bit.ly/41cQmfV>. Microfinance debt has also driven children to perform hazardous work in the agricultural sector, such as spraying pesticides on banana plantations or otherwise being exposed to

The complainants have also alleged other impacts affecting their families, such as migration driven by economic needs and an increase in debt-driven suicides. Regarding migration, the International Organization for Migration reported that, as early as 2016, 40.6 percent of Cambodian migrants left the country due to financial debts.⁴⁵ Regarding debt-driven suicides, there are known experiences from other countries where microfinance debt has resulted in this type of social impact.⁴⁶ Cambodian media have also reported incidences of suicides in the context of microfinance over-indebtedness.⁴⁷

4. Impacts on Indigenous Peoples. The complainants, some of whom identify as Indigenous, allege that the financial institutions involved in this case have accepted Indigenous Peoples' land as collateral and later coerced them to sell. Sometimes the land is sold to non-community members, which violates Indigenous communities' rights, cultures, traditions, and livelihoods. A 2018 OHCHR study reported that an average of 70-80 percent of Indigenous households surveyed in three provinces in Cambodia were indebted through microfinance loans or to other types of credit providers.⁴⁸ While there are legal restrictions on selling Indigenous communal lands, a 2021 report by the UN Secretary-General noted that Indigenous Peoples in Cambodia are at heightened risk of land loss due to delays and obstacles in receiving collective titles for their traditional lands.⁴⁹ In 2022, the government condemned the use of soft land titles in protected Indigenous areas, noting it had become a widespread illegal practice.⁵⁰ The OHCHR and others report that Indigenous peoples often use these soft titles as collateral to access loans, in part due to the pressure and coercive practices of financial institutions.⁵¹

5. Threats and reprisals. The complainants and their NGO representatives have raised concerns about reprisals from the microloan providers named in this case and relevant

dangerous chemicals. Muyhong, Chan, Narin, Sun, Sarath, Sorn, Nagemson, Andrew, "Workers, including underage children, brave dangerous chemicals to make a living at Cambodia's banana plantations," *CamboJA News*, November 2021, available at <https://bit.ly/41ds4m4>.

⁴⁵ Dickson, Brett, Koenig, Andrea,, "Assessment Report: Profile of Returned Cambodian Migrant Workers", International Organization for Migration (IOM) Cambodia, 2016, p. 14. Available at: <https://bit.ly/3nGFLwk>

⁴⁶ See: Biswas, Soutik "India's micro-finance suicide epidemic", *BBC News*, December 2010, available: <https://tinyurl.com/yfjkpjtns>, and UN Independent Expert Report on Private Debt and Human Rights, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, 2020, A/HRC/43/45 at p.1 and para. 33.

⁴⁷ Chakrya, Khouth Sophak, "Suicide takes lives of 873 year-to-date: National Police", *The Phnom Penh Post*, December 2022, available at <https://tinyurl.com/yc7sm3je>

⁴⁸ The study surveyed ten Indigenous Peoples communities in the provinces of Ratanakiri, Mondulakiri and Kratie. These ten communities were among the 18 communities in Cambodia that had collective land titles at the time the study was carried out in 2017. OHCHR Cambodia, Assessment of the Credit Opportunities for Indigenous Communities in Cambodia Holding a Collective Land Title, Indigenous people communities in the Provinces of Ratanakiri, Mondulakiri and Kratie, October 2018, pp. 7 and 25.

⁴⁹ OHCHR 2020-2021 Cambodia Report, 16 September 2021, A/HRC/48/49, para. 52.

⁵⁰ Brook, Jack, "Land loss and debt: the bottom line for misleading microloans", *South East Asia Globe*, May 2022, available at <https://bit.ly/44C6L0s>

⁵¹ OHCHR Cambodia, Assessment of the Credit Opportunities for Indigenous Communities in Cambodia Holding a Collective Land Title, Indigenous people communities in the Provinces of Ratanakiri, Mondulakiri and Kratie, October 2018, p. 27, and Brook, Jack, "Land loss and debt: the bottom line for misleading microloans", *South East Asia Globe*, May 2022, available at <https://bit.ly/44C6L0s>

local authorities. NGO and media reports lend credence to this concern, describing how microfinance institutions and government bodies have accused critics of microfinance lending in Cambodia of defamation and “coordination” to harm the industry’s image. Media reports note that microfinance institutions have urged government authorities to take action “against any individuals or groups who incite [the people], leading to economic instability and a loss of trust in the banking system.” Other media reports describe people being sued for defamation after criticizing microfinance institutions and the arrest of activists after a demonstration calling for suspension of loan repayments.⁵²

The above considerations and supporting information provide sufficient preliminary indications of harm to complainants due to practices related to their microfinance debt.

c) Preliminary Indications of Non-Compliance with IFC Policies

A compliance appraisal must also consider whether a complaint raises *preliminary indications* that IFC may not have complied with its E&S Policies.⁵³ A preliminary indication of non-compliance, determined at the appraisal stage, is present when CAO’s initial review of available information generates a plausible or credible concern regarding IFC’s compliance with its E&S Policies, such that further analysis during a compliance investigation is merited. Such a determination is not equivalent to a *finding* of non-compliance. Such a finding may result only from a compliance investigation⁵⁴ and requires “sufficient relevant evidence” based on objective consideration of “such facts, circumstances, information, and evidence as may be available to (CAO) from documents, interviews, statements, reports, correspondence, and other sources as CAO determines relevant.”⁵⁵

Based on available information during this appraisal, CAO finds preliminary indications that IFC did not comply with its E&S obligations regarding its pre-investment review and supervision of social impacts related to responsible finance and financial consumer standards regarding its investments in Aceda, Amret, Hatha Bank, MEF, MIFA, North Haven Thai, and Advans.

Application of IFC’s Sustainability Framework

IFC argues that issues related to the impacts on borrowers of microfinance lending fall outside the scope of its E&S Policies, as the 2012 Sustainability Framework contains no specific

⁵² Radio Free Asia, Cambodian Bank Demands ‘Action’ Against NGOs Who Say Workers Need Debt Relief, July 2020, available at <https://bit.ly/3NNJZwS>; Surrusco, Matt, “Critics of Critical MFI Report See Media ‘Coordination,’ Socialism, Broad Brush”, VOD, August 2019, available at <https://bit.ly/42x46Dp>; Narin, Sun, “Financial Institutions, Civil Society Spar Over Indebtedness Reports”, VOA, July 2020, available at <https://bit.ly/418HurS>; Dara, Dara, “Microfinance Firm Sues for Defamation After Branch Manager’s Desperation”, VOD, November 2021, available at <https://bit.ly/3nLVmui>; Sovuthy, Khy, “Six detained for protesting microfinance repayments”, *Camboja*, May 2020, available at <https://bit.ly/3HJhNY8>.

⁵³ CAO Policy, para. 91.

⁵⁴ In this regard, para. 94 of the CAO Policy establishes that “the appraisal process does not lead to a definitive assessment of IFC/MIGA’s compliance with its E&S Policies or related Harm. CAO may make these assessments only in the context of an investigation.”

⁵⁵ CAO Policy, para. 117.

requirements on financial consumer protection (FCP) practices and risks. IFC further states that the Sustainability Framework does not apply to E&S impacts on sub-clients themselves (the microfinance borrowers in this case). Instead, IFC argues it applies only to the “business activity IFC supports through its FI clients and sub-clients [...] resulting from the use of proceeds of loans by sub-borrowers (for example, loans for individual consumption purposes or loans to purchase inputs for small-scale agriculture or to finance small-scale trade activities).”⁵⁶

In discussions with CAO, IFC Management clarified that this approach—excluding risks to and impacts on microfinance borrowers from E&S due diligence and supervision—has been consistently applied to microfinance projects under the 2012 Sustainability Policy. Thus, while IFC has played an important role in the development of principles and standards for Cambodia’s microfinance sector, such as the Smart Campaign’s Client Protection Principles, it addresses financial consumer protection risks and impacts outside its E&S Policies.⁵⁷

However, CAO finds that the text of the Sustainability Framework does not support IFC Management’s argument that social impacts on microfinance borrowers are outside the scope of its E&S Policies. For the reasons outlined below, the lending-related risks and impacts raised by the complainants, such as loss of land; loss of livelihood; impoverishment; and loss of identity, culture, and natural resource-based livelihoods by Indigenous Peoples, are covered by IFC’s Sustainability Framework. Identifying and managing these risks and impacts is required by IFC’s Sustainability Policy and relevant IFC Performance Standards, and is consistent with IFC’s development mission to carry out “investment activities with the intent to ‘do no harm’ to people and the environment, to enhance the sustainability of private sector operations and the markets they work in, and to achieve positive development outcomes.”⁵⁸ It is also consistent with IFC’s commitment to ensure “that the costs of economic development do not fall disproportionately on those who are poor or vulnerable.”⁵⁹

In this regard, CAO finds that:

- 1. The Sustainability Framework is clear that it applies to all projects and their E&S impacts unless specifically excluded.** The Sustainability Policy mandates IFC to apply its Sustainability Framework to all investments.⁶⁰ The Performance Standards are similarly clear that they apply to “*all relevant* environmental and social risks and potential impacts.”⁶¹ Performance Standard 1 (PS1) establishes that it applies to “*all projects* that

⁵⁶ IFC Management Response, paras. 33, 34, and 35.

⁵⁷ IFC Management provided an internal memo from 2011 and communications from 2012 that support this has been its practice since at least 2011. IFC Management also provided a timeline of its efforts to convene and lead sector-wide initiatives related to responsible finance since 2008, when it co-founded the [Smart Campaign](#) which developed the Client Protection Principles, to 2022, when it participated in the re-launch of the Responsible Finance Forum (RFF), which aims to bring investors, donors and financial institutions together to share experiences, identify best practices and discuss issues around responsible finance.

⁵⁸ Sustainability Policy, para. 9.

⁵⁹ Sustainability Policy, para. 9.

⁶⁰ Sustainability Policy, paras. 1, 3, 20 and 22.

⁶¹ PS Overview, para. 3.

have environmental and social risks and impacts [and that] the requirements section of each Performance Standard [apply] *to all activities financed under the project, unless otherwise noted* in the specific limitations described in each paragraph.”⁶² PS1 also states that a client’s E&S risk assessment should consider “*all* relevant environmental and social risks and impacts” of the project and “those likely to be affected by such risks and impacts.”⁶³

2. **There is no specific exclusion or limitation in the Sustainability Framework regarding impacts on consumers or microfinance borrowers.** As noted in IFC’s response, the Sustainability Policy specifically extends IFC E&S requirements to the end use of funds resulting from its investments in financial intermediaries (i.e., the impacts of the business activities of those who borrow from an IFC FI client).⁶⁴ However, the Policies do not exclude E&S impacts emerging from the business activity of the FI client itself (in this case the impacts of microfinance lending on borrowers). Since they are not specifically excluded, IFC’s E&S Policies are understood to cover social impacts from the main business activity IFC is supporting, in this case the provision of financial services to the poor.
3. **IFC’s E&S Policies apply to all project E&S impacts, even those not specifically mentioned in the Policies.** IFC guidance is clear that the project impact assessment process under PS1 should cover the “full scope of risks and impacts” associated with a project including any “unique impacts” not specifically covered by Performance Standards 2 through 8.⁶⁵ In other contexts, such as gender-based violence and child abuse, IFC accepts that its E&S policies cover social impacts not explicitly named in the Performance Standards. In any case, PS1 states that an IFC client’s risks and impacts identification process should be “consistent with good international industry practice” (GIIP).⁶⁶
4. **Exclusion of microfinance borrowers from the scope of IFC’s E&S Policies does not have a strong basis in the Policies.** IFC’s argument that its E&S Policies do not apply to social impacts on microfinance borrowers rests significantly on a footnote to the Sustainability Policy and PS1 which defines E&S impacts as “any change, potential or actual, to (i) the physical, natural, or cultural environment, and (ii) impacts on surrounding community and workers, resulting from the business activity to be supported.” Specifically, IFC argues that microfinance borrowers are not part of the “surrounding

⁶² PS Overview, para. 4 and GN1, para. 5 Similarly PS1 (para. 4) provides that “The requirements of this Performance Standard **apply to all business activities** unless otherwise noted in the specific limitations described in each of the paragraphs below.”

⁶³ PS1, para. 7.

⁶⁴ Sustainability Policy, para. 1.

⁶⁵ See IFC Guidance Note to PS1, paras. 16 and 17.

⁶⁶ See PS1, para. 7. GIIP is “Defined as the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally.” See PS1, FN10.

community”.⁶⁷ This is an insufficient basis to exclude microfinance borrowers from the scope of IFC’s E&S Policies, particularly considering that microfinance lenders in Cambodia typically operate through local branches.⁶⁸ As a result, borrowers can be considered part of the “surrounding community” or, in the language of PS1, as “local communities”⁶⁹ that may be affected by the operations of a microfinance lender. Further, the complainants’ allegations of impact, particularly by Indigenous Peoples who allege violations of their rights, cultures, traditions, and livelihoods due to loss of communal lands associated with over-indebtedness, may entail a change to the “physical, natural, or cultural environment” and thus meet other elements of the definition of E&S impact cited by IFC.

5. **The impacts alleged by the complainants are social in nature and fall within the scope of IFC’s E&S Policies.** IFC does not contest the complainants’ assertion that the harms alleged are negative social impacts of microfinance lending.⁷⁰ The impacts raised by the complainants, such as loss of land and livelihood; impoverishment; and loss of identity, culture, and natural resource-based livelihoods by Indigenous Peoples are addressed in IFC’s E&S Policies. This is consistent with industry norms that define social impacts broadly, for example, as “issues associated with a planned intervention (i.e., a project) that affect or concern people, whether directly or indirectly” and should be identified “from an awareness of the project and an understanding of how the project will affect what is important to the project’s stakeholders.”⁷¹ It is also consistent with IFC E&S guidance that the process for identifying project-affected people needs to be considered based on “the project’s particular circumstances.”⁷²
6. **These projects are designed to provide credit to poor and vulnerable households, who are groups that may be differentially or disproportionately affected due to their disadvantaged or vulnerable status.** It is well established that microfinance borrowers are often disadvantaged by literal and financial illiteracy and may face increased risks of over-indebtedness and predatory lending, with associated negative social impacts, unless adequate prevention and mitigation measures are taken. Under PS1, IFC clients

⁶⁷ Sustainability Policy, FN2. PS1, FN3. Elsewhere PS1 refers to Policies applying to “Affected Communities” broadly defined as “local communities directly affected by the project” (PS1, para 1).

⁶⁸ For example, [Acleda](#) has 264 branches in Cambodia and is present in every province and district in the country, as well as many sub-district towns. [Amret](#) has 156 branches in every district across 25 cities and provinces in Cambodia. [Hattha Bank](#) has 177 branches across all 25 provinces and the capital. [Prasac](#) has 182 branches across Cambodia. [LOLC](#) has 81 branches across all provinces in Cambodia, and [Sathapana](#) has over 170 branches.

⁶⁹ PS1, para. 1.

⁷⁰ IFC’s Management Response recognizes that the harms alleged by the complainants can be seen as social impacts of microfinance lending, arguing that it addresses these specific types of social impacts outside the Sustainability Framework. “IFC is committed to addressing **social impacts such as those specified in the Complaint** through its Client Protection and Responsible Finance practices.” IFC Management Response, para. 40, emphasis added.

⁷¹ IAIA (2015), SIA: Guidance for Assessing and Managing the Social Impacts of Projects, p.2. <https://bit.ly/3p7g3RO>

⁷² IFC, Good Practice Note, Addressing Grievances from Project Affected Communities (2009), p. 9.

should identify “groups that may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status”, implement “differentiated measures so that adverse impacts do not fall disproportionately on them”, and ensure that they are not “disadvantaged in sharing development benefits and opportunities.”⁷³ PS1 also requires client staff who interact with vulnerable or disadvantaged individuals or groups to be competent in their understanding of the specific issues related to such individuals or groups, which may warrant specific training.⁷⁴ The above provisions appear relevant and applicable to IFC’s microfinance investments in Cambodia.

7. **These projects allegedly impact Indigenous communities, with the result that specific requirements under PS7 and the IFC Exclusion List may apply.** IFC’s microfinance clients in Cambodia operate in areas where Indigenous Peoples live. Indigenous Peoples (including some of the complainants) are borrowing from microfinance lenders. PS7 applies to “all communities of Indigenous Peoples within the project area of influence who may be affected by the project.”⁷⁵ Where Indigenous Peoples may be impacted by a project, the IFC client is required to assess and mitigate those risks and impacts based on the informed consultation and participation of the affected Indigenous communities.⁷⁶ Additionally, the IFC Exclusion List requires microfinance activities to “not impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.”⁷⁷

8. **The Sustainability Framework requires IFC to ensure compliance with national law, which includes regulations for financial consumer protection applicable to these projects.** The Sustainability Policy and the PS require all FI clients to follow relevant national law.⁷⁸ Based on a preliminary review, there are indications that certain general consumer protection requirements apply to microfinance lending in Cambodia. These include provisions on transparency, data privacy, credit reporting, and consumer complaints management.⁷⁹ These provisions are relevant to the Sustainability Framework requirement that clients must comply with national law.

⁷³ PS1, para. 12.

⁷⁴ PS1, para. 18 and GN79.

⁷⁵ PS7, para. 8.

⁷⁶ PS7, para. 9.

⁷⁷ The IFC Exclusion List, available here: <http://www.ifc.org/exclusionlist>.

⁷⁸ Sustainability Policy, para. 35, and PS Overview, para. 5. It is also consistent with IFC procedures for appraisal of FI investments that require staff, “to review the client’s E&S risk management practices against the requirements of PS1 and any relevant country requirements” in general terms. ESRP (2014), section 7, paras. 2.7, 3.3.3 and 3.3.5.

⁷⁹ There are mixed reports regarding the scope and quality of the regulatory framework for financial consumer protection in Cambodia. The 2020 Mimosas report concluded that Cambodian regulation of client protection was modest, at best, and uneven. MIMOSA Report on Cambodia, March 2020, p. 7-8. More recent reports and project documents suggest the regulatory framework has evolved to include some clear requirements regarding financial consumer protection applicable to microfinance lending. Additionally, a new, sector-wide Code of Conduct was developed by the CMA, ABC, and the Cambodian Association of Finance and Technology and formally launched in March 2022.

9. IFC project documentation is not fully consistent with IFC’s conclusion that its E&S Policies do not apply to microfinance borrowers. A preliminary review of the documentation for the 13 projects involved in this case found that risks and impacts on borrowers have in some cases been considered part of the clients’ E&S management systems. For example:

- Advans’ Environmental and Social Management Policy includes client protection provisions and prevention of over-indebtedness.ⁱⁱ
- MEF has an Impact and ESG Framework that includes elements on client protection and its Impact report considers client protection practices one of the dimensions of “social performance.”ⁱⁱⁱ According to SPTF+Cerise (a leading platform for social performance of microfinance investments), MEF uses its social audit tool—which includes client protection standards—to assess clients’ social performance.⁸⁰

Preliminary indications of non-compliance throughout the project cycle

As with any project, IFC has obligations regarding prospective project appraisal, identification of PS gaps, inclusion of legal requirements, and supervision of such standards. Under the Sustainability Framework, IFC is required to review and supervise the E&S risks and potential impacts of its investments on microfinance clients.

Based on a preliminary review of IFC project documentation and considering the issues raised by the complainants, CAO finds preliminary indications of non-compliance throughout the life cycle of IFC’s microfinance investments in Cambodia. Areas of potential non-compliance include project appraisal, conditions of investment, and supervision as well as IFC’s obligations under its Access to Information Policy. Specifically, CAO’s findings include:

- **Appraisal:** IFC was required to conduct pre-investment due diligence in relation to the financial institutions named in the complaint. This included reviewing each client’s business activities to identify activities where the FIs and IFC could be exposed to risks as a result of their investments and defining requirements for managing these risks.⁸¹ IFC was also required to ensure that each client identified and assessed E&S risks and impacts on borrowers following good international industry practice (GIIP).⁸² The Sustainability Policy states that, during the appraisal, “IFC reviews the implementation

⁸⁰ Cerise+SPTF is a joint venture between two of the global leaders in social and environmental performance management. Founded in 2005, the Social Performance Task Force, or SPTF, developed, and regularly updates, the Universal Standards for Social and Environmental Performance Management (the Universal Standards). Cerise, a French nonprofit created in 1998, pioneered the implementation of social performance management, working with committed microfinance institutions to launch the Social Performance Indicators initiative in 2001. SPTF+Cerise took over the stewardship of the Client Protection Standards developed by the Smart Campaign in 2020. See: <https://cerise-sptf.org/timeline/>.

⁸¹ Sustainability Policy, para 34

⁸² PS1, para. 7.

capacity of FIs as well as their ESMS, as required by Performance Standard 1.”⁸³ In addition, IFC “recognizes the responsibility of business to respect human rights.”⁸⁴ Consistent with this responsibility, the Sustainability Policy states that IFC should undertake its due diligence “informed by country, sector, and sponsor knowledge”.⁸⁵

Taking these policy requirements into account, CAO concludes that:

- a. The Sustainability Framework, informed by GIIP⁸⁶ in this area, requires IFC to screen, review, require mitigation, and monitor environmental and social risks on microfinance borrowers related to their microfinance investments (see more details in Appendix 3). Based on CAO’s review of available documentation, IFC does not appear to have reviewed or addressed these risks in a systematic way regarding the 13 projects included in this case.
- b. IFC provided evidence of a responsible finance assessment completed for one client, Hattha Bank, which resulted in recommendations and an action plan that the bank implemented.^{iv} However, CAO did not find indications that IFC took a systematic approach to screening and reviewing responsible finance standards or consumer protection guidelines at the individual project level.
- c. The Performance Standards require special attention to vulnerable individuals and groups.⁸⁷ As outlined above, UN, academic, and NGO reports have highlighted how the microfinance debt crisis in Cambodia has heightened the vulnerability of already vulnerable groups, including Indigenous Peoples. The complainants allege that borrowers are often made to sign and commit to loans without properly understanding or being able to read the loan terms, due to language barriers or literacy issues. They also allege that members of Indigenous communities have been forced to compromise their communal land titles due to the collateral requirements of microfinance lenders. CAO did not find indications that IFC requires or ensures that the particular vulnerabilities of microfinance borrowers are addressed, managed, or adequately monitored by its FI clients in the context of the individual investment projects. This compliance appraisal found no indications that IFC ensured the inclusion of special considerations in these projects’ client agreements in order to address such vulnerabilities.
- d. With regard to national law on financial consumer protection⁸⁸, while CAO has found some indications of IFC reviewing clients’ compliance with such

⁸³ Sustainability Policy, para. 34.

⁸⁴ Sustainability Policy, para. 12.

⁸⁵ Sustainability Policy, para. 12.

⁸⁶ Good International Industry Practice for Microfinance Lending suggests screening, review, mitigating and monitoring of consumer protection risks in their FI investments. See more details in Appendix 3 below.

⁸⁷ PS1, para. 12.

⁸⁸ There are mixed reports regarding the scope and quality of the regulatory framework for financial consumer protection in Cambodia. The 2020 Mimososa report concluded that Cambodian regulation of client protection was modest, at best, and uneven. MIMOSA Report on Cambodia, March 2020, p. 7-8. More recent reports and project documents suggest the regulatory framework has evolved to include some clear requirements regarding financial consumer protection applicable to microfinance lending. Additionally, a new, sector-wide Code of Conduct was developed by the CMA, ABC, and the Cambodian Association of Finance and Technology and formally launched in March 2022.

requirements, such assessments appear not to be carried out systematically across all investments.

- e. PS7 and the Exclusion List require consideration of impacts on Indigenous Peoples. There are no indications that the IFC clients considered the potential adverse impacts of their activities on affected Indigenous communities or their land rights,⁸⁹ or sought to comply with all relevant national law requirements.
- **Conditions of investment:** The Sustainability Policy requires that IFC include applicable PS requirements in its investment agreements.⁹⁰ Specifically, it requires IFC, based on the results of pre-investment due diligence, to establish client requirements, the scope of which will “depend on IFC’s investment type, the use of proceeds from the IFC investment, and the level of risk associated with the FI’s portfolio”.⁹¹ In all cases, FI clients are required to develop and operate an Environmental and Social Management System (ESMS) “commensurate with the level of environmental and social risks in its portfolio, and prospective business activities ... [which incorporates the] relevant principles of Performance Standard 1”, the IFC Exclusion List, and national law.⁹²

This preliminary review indicates that not all investment agreements for IFC’s Cambodia FI clients related to this case contain measures related to the mitigation of E&S impacts on MSME borrowers. Some of the legal agreements with microfinance lenders (covering six of the 13 projects) do reference general financial consumer protection (FCP) standards and requirements.^{93v} However, based on information provided by IFC, it is not apparent that these are actionable or being monitored during supervision.⁹⁴

- **Supervision:** After a project has been approved by the IFC Board of Directors, committed, and disbursed, IFC monitors the FI’s performance and works with the client to “address any shortcomings in their ESMS”. This monitoring should include periodic reviews by IFC of the process and results of its client’s E&S due diligence, and may also include visits to the client and to recipients of client loans/investments, as commensurate with the risks identified during pre-investment review.⁹⁵ In cases where the client fails to comply with its E&S commitments, IFC must “work with the client to bring it back into

⁸⁹ PS7, para. 9.

⁹⁰ Sustainability Policy, para. 24.

⁹¹ Sustainability Policy, para. 35. Additionally, para. 24 of the same policy establishes that “IFC’s agreements pertaining to the financing of clients’ activities include specific provisions with which clients undertake to comply. These include complying with the applicable requirements of the Performance Standards and specific conditions included in action plans, as well as relevant provisions for environmental and social reporting, and supervision visits by IFC staff or representatives, as appropriate.”

⁹² Sustainability Policy, para. 35.

⁹³ These are the loan agreements for the following project included in this case: Amret (#44231 and #34748); and *Hattha Bank* (#39167, #44211, #44742, #45535).

⁹⁴ See Annex 3 to the IFC Management Response in Appendix 5 below.

⁹⁵ Sustainability Policy, para. 45. Additionally, paragraph 45 establishes that, to supervise FI investments, IFC must also “Implement a regular program of supervision of FI investments with environmental and social risks and/or impacts in accordance with the requirements of IFC’s Environmental and Social Review Procedures.”

compliance, and if the client fails to reestablish compliance, IFC will exercise its rights and remedies, as appropriate”.⁹⁶

Taking these policy requirements into account, IFC does not appear to have conducted any monitoring of social risks and impacts of its FI investments on microfinance borrowers in Cambodia. The six IFC investments that include affirmative client commitments to abide by responsible finance standards have no related reporting requirements or follow-up procedures on such covenants. CAO did not find indications of active IFC supervision on this issue at the individual project level.

- **Access to Information Policy (AIP):** IFC’s E&S policies include its obligations under the AIP. In this case, IFC was required to disclose the rationale for categorizing each project, a description of each FI’s main E&S risks and impacts, a summary of the agreed Environmental and Social Management System (ESMS), and the key measures put in place to strengthen the ESMS.⁹⁷ The complainants allege that IFC’s disclosures are insufficient, and a preliminary review of IFC’s disclosures related to the 13 projects supports their concerns. Based on a preliminary review, IFC’s disclosures of E&S information related to these clients is general in nature and may lack sufficient information about E&S risks and the measures required and implemented to address them.

d) Plausible Link between Harm Allegations and Potential IFC Non-compliance

Lastly, a CAO compliance appraisal must consider whether “the alleged Harm is plausibly linked to the potential non-compliance.”⁹⁸ In determining whether there is a “plausible link” between non-compliance and harm, CAO considers the relationship between the potential non-compliance and alleged harm without requiring causation or contribution.

In this case, CAO concludes that there is a plausible link between the harms alleged by complainants and IFC’s potential non-compliance in both its pre-investment review and E&S monitoring of its investments in Acleda, Amret, Hattha Bank, Advans, North Haven Thai, MEF, and MIFA.

It is widely recognized, as described earlier, that microcredit lending can have negative environmental and social impacts, including on those it is designed to serve.⁹⁹ There is also a general industry consensus that socially responsible financial service providers should, at a minimum, do no harm, and therefore have an obligation to ensure that their products and

⁹⁶ Sustainability Policy, para. 24, ESRP (2014), section 9, para. 2.1.

⁹⁷ AIP, para. 31(b).

⁹⁸ CAO Policy, para. 91.

⁹⁹ In 2020, the UN Independent Expert Report on Private Debt and Human Rights reported that “While some short-run benefits of microfinance could be found, it has also been associated with spiraling debt that results in deeper impoverishment, family breakdown and even suicide.” UN Independent Expert Report on Private Debt and Human Rights, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, (2020), A/HRC/43/45 at p.1 and paras.32-33.

services avoid harming clients.¹⁰⁰ While different initiatives have been developed, CAO's preliminary review suggests that the general consensus on GIIP for microfinance requires financial institutions to, at a minimum, incorporate financial consumer protection standards as part of their social performance management systems.¹⁰¹

The harms alleged by the complainants are social risks and impacts that IFC's Sustainability Framework seeks to address. It is plausible that the alleged harms could have been prevented, mitigated, or minimized if IFC had considered these issues as part of its E&S due diligence and required its clients to apply the relevant risk and impact mitigation measures, including GIIP regarding financial consumer protection safeguards, as required under the Sustainability Framework.¹⁰²

e) Additional Relevant Policy Requirements

According to the CAO Policy, a CAO compliance appraisal must take into account a series of additional considerations.¹⁰³ In this case, CAO considered two relevant additional requirements, described below.

1. Exited investments

The CAO Policy establishes that, "For any Project or Sub-Project where an IFC/MIGA Exit has occurred at the time CAO completes its compliance appraisal, [CAO will consider] whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite an IFC/MIGA Exit."¹⁰⁴ Three of the 13 projects included in this case have been exited

¹⁰⁰ See the Cerise+SPTF client protection standards manual here: <https://tinyurl.com/ypf7b59v> and <https://tinyurl.com/489cnhty>.

¹⁰¹ After the 2008 global financial crisis and other sector specific crises, such as the 2010 debtor suicides in Andhra Pradesh, industry leaders recognized a need to ensure safe and responsible treatment of microfinance borrowers and, through the Smart Campaign, developed the Client Protection Principles, which have been widely accepted as best practice in the inclusive finance industry. In 2020 the Smart Campaign was discontinued and the Social Performance Task Force (SPTF) and Cerise took over management of responsible finance and client protection standards, and published its Client Protection Pathway in 2021. See: Biswas, Soutik, "India's micro-finance suicide epidemic", *BBC News*, December 2010, available at <https://bit.ly/3OMLOKD>, and UN Independent Expert Report on Private Debt and Human Rights, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, 2020, A/HRC/43/45 at p.1 and para. 33. About the Smart Campaign, see: <https://bit.ly/45QtZkj>. The Client Protection Principles are considered the minimum standards that clients should expect to receive when doing business with a financial service provider. Distilled from the work of providers, international networks, and national microfinance associations, there is consensus within the financial inclusion industry that providers of financial services should adhere to these core principles. See references at: <https://bit.ly/3IOamzr>, <https://bit.ly/3q7MjET> and a detailed guidance on the Client Protection Principles here: <https://bit.ly/3WJ6uFi>, as well as the Cerise+SPTF Client Protection Standards, available at: <https://bit.ly/45FETZK>.

¹⁰² IFC PS1 requires that an IFC client's risks and impacts identification process should be "consistent with good international industry practice" (GIIP). PS1, para. 7.

¹⁰³ CAO Policy, para. 92.

¹⁰⁴ CAO Policy, para. 92(a).

since the complaint was submitted to CAO in February 2022. The three exited investments relate to Amret and Hattha Bank, current clients of IFC.¹⁰⁵

Following its Policy, CAO concludes that a compliance investigation that includes the three exited investments would provide particular value in terms of accountability, learning, or remedial action for the following reasons:

- While similar in their purpose and use of proceeds to the active investments in Amret and Hattha Bank, the three exited investments cover different time periods than those currently active. Incorporating these timeframes would enable a better understanding of IFC's evolving approach to its FI investments in Cambodia considering emerging trends in microfinance, including GIIP. Incorporating the exited investments in a compliance investigation regarding Hattha Bank will allow CAO to review IFC's financial relationship with Hattha Bank from 2017 onwards, instead of from 2021 onwards (when the currently active investments were approved). Similarly, including the exited investment in Amret in a compliance investigation will allow CAO to look at IFC's MSME lending to Amret from 2018 onwards, instead of from 2020 onwards (when the currently active MSME loan was approved). While IFC also has an active equity investment in Amret (2014-present), the nature and conditions of the equity investment and the MSME loans (2018-2022 and 2020-to present) are materially different. A CAO investigation that involves both forms of financing to the same client over a longer time period will provide a more comprehensive review of IFC's financial relationship with Amret. Incorporating the three exited investments would provide a lens on the dynamic aspects of IFC's investments that would enhance the learning and accountability value of the investigation.
- Including the exited investments in the investigation could also broaden the opportunity for remedial actions for those complainants who may have been harmed during the time the exited projects were active, particularly as the three exited investments are with current clients of IFC.

2. IFC proposed activities

The CAO Policy establishes that CAO will consider “[w]hether Management has provided a statement of specific remedial actions, and whether, in CAO’s judgment after considering the Complainant’s views, these proposed remedial actions substantively address the matters raised by the Complainant.”¹⁰⁶

¹⁰⁵ Specifically, projects [#41294](#) regarding Amret, which was a Senior loan for up to US\$ 40M to support Amret's sustainable growth of its micro, small and medium loan portfolio, approved in 2018, categorized as FI-2 and exited on July 15, 2022, and projects [#39167](#) and [#44211](#) regarding Hattha Bank. The first one ([#39167](#)) was a senior loan for US\$60M to support Hattha Bank's growth and development, especially its lending to micro borrowers and SMEs, approved in 2017, categorized as FI-3, and exited on June 15 2022. The second one ([#44211](#)) was a senior loan for US\$25M to support Hattha Bank's working capital and trade-related lending program to Cambodian MSME as a result of the COVID-19 pandemic growth and development, 30 percent of which had to be women-owned SMEs, approved in 2020, categorized as FI-3 and exited on June 30, 2022.

¹⁰⁶ CAO Policy, para. 92(d).

IFC Management has proposed a series of approaches and activities to address the issues raised in this complaint. IFC's proposals target the project, sector, and regulatory levels and are intended to cover "project-specific irregularities alleged by complainants," the risk of reprisals, IFC's approach to responsible finance, and financial consumer protection (FCP) regulation in Cambodia.¹⁰⁷ While CAO welcomes IFC's willingness to engage in these activities, CAO concludes that these proposed activities do not constitute a statement of remedial actions, nor do they substantively address the matters raised in the complaint for the following reasons:

- IFC Management does not consider that it has failed to comply with its E&S policies and views any harm suffered by the complainants as unrelated to obligations under the Sustainability Framework. The activities it proposes would thus be carried out independent of a CAO compliance process and IFC's obligations under the Sustainability Framework.
- Remedial actions in the context of a CAO compliance process should respond to harm caused or contributed due to a non-compliance with IFC E&S policies.¹⁰⁸ By definition, remedies are the response to harm caused or contributed due to the breach of an obligation.¹⁰⁹
- By denying any obligation under the Sustainability Framework to address the harms and impacts alleged by complainants, IFC Management is also indicating that it does not consider that it has a responsibility to remedy the harms alleged. Thus, CAO cannot consider the proposed activities as a statement of remedial actions.
- In addition to not addressing the alleged harms, these actions do not substantively address the matters raised in the complaint since none address the central issue raised by complainants. This overarching issue is the alleged lack of proper E&S due diligence and supervision by IFC of its microfinance investments in relation to associated negative social impacts as required by IFC's Sustainability Framework.

None of the other additional considerations in paragraph 92 of the CAO Policy are relevant in this case. For completeness, analysis of each of the additional policy requirements is presented in Appendix 6.

¹⁰⁷ See details in IFC Management's Response in Appendix 5 below.

¹⁰⁸ The CAO Policy establishes that "[...] Recommendations [are made after a compliance investigation has found non-compliances and related harm, and] may relate to the remediation of Project- or Sub-Project-level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances." CAO Policy, para. 113.

¹⁰⁹ UNGP on Business and Human Rights, commentary to principle 25. The IFC Approach to Remedial Action considers remedial actions those that "address adverse E&S impacts in IFC/MIGA projects" "due to non-compliance with IFC/MIGA E&S requirements". According to the IFC Approach, "Remedial actions by clients and other stakeholders within the remedy ecosystem aim to address adverse E&S impacts, in line with the Performance Standards, and related E&S harm due to non-compliance with IFC/MIGA E&S requirements, and such actions can take many forms. These forms may include restitution, compensation, rehabilitation, satisfaction, and guarantees/promise of non-repetition." IFC Approach to Remedial Action, p. 3.

5. CAO Decision

CAO will proceed with a compliance investigation into IFC's investments in Acleda, Amret, Hattha Bank, Advans, North Haven Thai, MEF, and MIFA, and indirect investments in Prasac, LOLC, and Sathapana through MEF and MIFA, on the basis that the complaint meets the three appraisal criteria, as described above.

This appraisal report will be shared with the Board, the World Bank Group President, IFC Management, the clients, and the complainants. CAO will also publish this appraisal report and IFC's Management Response on its website.¹¹⁰

Terms of reference for the compliance investigation are attached in Appendix 7.¹¹¹

¹¹⁰ CAO Policy, para. 106.

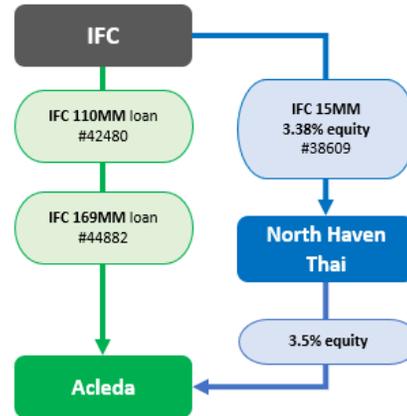
¹¹¹ Since this compliance investigation will involve more than one project, CAO consulted with IFC in preparing these TOR following para. 119 of the CAO Policy.

Appendix 1: IFC Case-Related Clients and Sub-clients

Acleda Bank

Acleda¹¹³ Bank is a public limited company, formed under the Banking and Financial Institutions Law of the Kingdom of Cambodia. Formerly a national NGO supporting micro and small enterprises' development and credit, Acleda has been an IFC partner since 1998. IFC supported Acleda's transformation from an NGO to a commercial microfinance institution and then a commercial bank. Currently, Acleda is the recipient of two direct IFC investments involved in this case (projects [#44882](#) and [#42480](#))¹¹⁴ which are active and both constitute loans that support lending programs for micro, small, and medium enterprises (MSMEs).¹¹⁵ In addition, IFC invested US\$15 million for a 3.38% equity stake in North Haven Thai Private Equity (project [#38609](#)),¹¹⁶ which acquired a 3.5 percent equity stake in Acleda in April 2022 through a secondary share purchase.

Figure 2: IFC financial links to Acleda Bank



¹¹³ Acleda Bank website: https://www.acledabank.com.kh/kh/eng/ff_overview

¹¹⁴ These projects were active when the complaint was submitted to CAO. The details of the individual Acleda projects involved in this case are in Appendix 2.

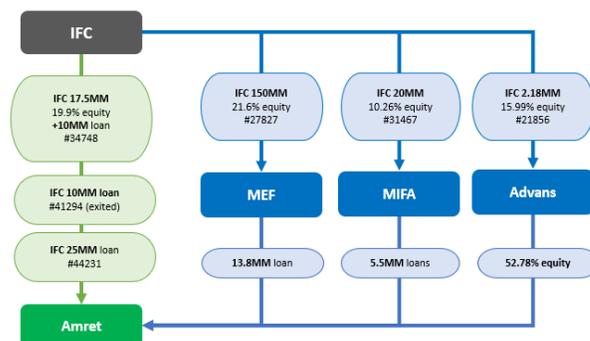
¹¹⁵ Five other projects in Acleda were initially included in this case ([#32642](#), [#30607](#), [#34386](#), [#35963](#) and [#37594](#)) as they were recorded as active at the time CAO's eligibility decision was made in April 2022. Since then, IFC has clarified to CAO that the first four projects were exited before the 15-month period allowed by the CAO Policy to consider exited projects (para. 49 of the CAO Policy). Project #30607 was exited in August 2018, #32642 was exited in October 2019, #34386 was exited in June 2018 and #35963 was exited in June 2020. Therefore, these four Acleda projects will be excluded from consideration in this case. Project [#37594](#) was exited on February 15, 2021, which is within the 15 months provided for in the CAO Policy for potential acceptance of exited investments. However, CAO's eligibility decision determined to exclude exited projects before the complaint was submitted. Thus, this project, which IFC has clarified was exited on February 2021, will also not be considered as part of the compliance review in this case. Notwithstanding, as was communicated with the eligibility decision in April 2022, while CAO will not review IFC's compliance regarding these exited investments, CAO will consider all exited investments related to this case as part of the context of the complaint to ensure a full understanding of IFC's financial links and relationships with the different clients and sub-clients.

¹¹⁶ North Haven Thai is a generalist private equity fund targeting mid-market companies primarily in Thailand. The Fund is managed by Morgan Stanley Private Equity Asia.

Amret

Amret¹¹⁶ is a microfinance institution in Cambodia and a subsidiary of the Advans Group, another IFC client. It provides financial services to low-to-middle income populations as well as MSMEs, with a focus on agriculture and rural areas. Amret was set up in 1991 by a French NGO (GRET) to deliver microcredit to rural populations and became a private limited company with a microfinance license from the National Bank of Cambodia in 2001. IFC has had a financial relationship with Amret since 2014, through an equity investment, and holds 19.9 percent of Amret's shares (project #34748). It has since provided additional loans to support Amret's MSME portfolio, including two loans related to this complaint (projects #44231 and #41294)¹¹⁷—one active and one exited. IFC also has indirect financial exposure to Amret through its investments in the MEF and MIFA funds, and 16 percent share ownership in Advans S.A. (project #21856)¹¹⁸ Advans is a venture capital investment company headquartered in Luxembourg that owns 52.78 percent of Amret's shares and aims to build a network of microfinance institutions in developing and emerging countries to cater to MSMEs.

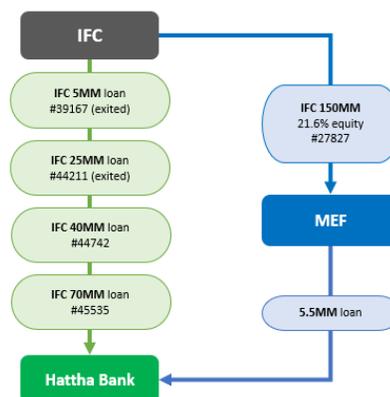
Figure 3: IFC financial links to Amret



Hattha Bank

Hattha Bank¹¹⁹ is a commercial bank licensed by the National Bank of Cambodia and the Ministry of Commerce in August 2020. It was founded in 1994 by OCSD/OXFAM–Quebec, a Canadian organization, to provide micro loans to rural communes in Pursat province and registered as a private limited company (Hattha Kaksekar Limited) for micro and small enterprises' development and credit in 2001. Hattha Bank has been an IFC partner since 2015 and is the recipient of four case-relevant IFC investments (projects #39167, #44211, #45535 and #44742).¹²⁰ The latter two investments remain active and the first two were exited in June 2022. All four were loans to expand Hattha Bank's MSME portfolio. IFC also has indirect financial exposure to Amret through its investment in MEF.

Figure 4: IFC financial links to Hattha Bank



¹¹⁶ Amret webpage: <https://www.amret.com.kh/en/about-amret>

¹¹⁷ These projects were active when the complaint was submitted to CAO. Since then, project #41294 was exited on July 15, 2022. Projects #34748 and #44231 remain active. The details of the individual Amret projects involved in this case are in Appendix 2.

¹¹⁸ Advans webpage: <https://www.advansgroup.com/about-us/our-mission/>

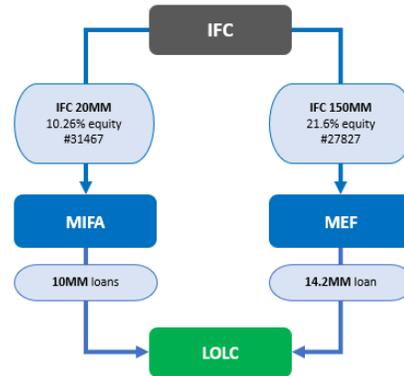
¹¹⁹ Hattha Bank webpage: <https://www.hatthabank.com/page/bank-profile>

¹²⁰ These projects were active when the complaint was submitted to CAO. Since then, projects #39167 and #44211 were exited on June 15 and 30, 2022, respectively. Projects #44742 and #45535 remain active. The details of the individual Hattha Bank projects involved in this case are in Appendix 2.

LOLC (Cambodia) Plc

LOLC is a microfinance institution licensed since 2003 by the National Bank of Cambodia. It was founded in 1994 as a credit program managed by the non-profit Catholic Relief Service and incorporated as Thaneakea Phum (Cambodia) Ltd. (TPC) in 2002. In 2015, Thaneakea Phum (Cambodia) Ltd. changed its name to LOLC (Cambodia) Plc.¹²¹ LOLC was formerly a direct IFC client through a loan to support MSME in the agricultural sector (IFC project #34422). IFC exited this project in 2017, and LOLC is now a sub-client through IFC's investments in MEF and MIFA.

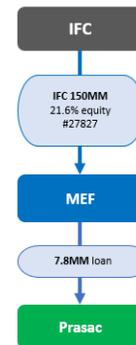
Figure 5: IFC financial links to LOLC



Prasac

Prasac¹²² has been licensed by the National Bank of Cambodia as a microfinance institution since 2003 and as a deposit taking institution since 2010. Founded in 1995 as a development project, it was initially funded by the European Union to help rehabilitate and support the agricultural sector in six Cambodian provinces. Prasac was formerly a direct IFC client through two loans (projects #36280 and #38235) designed to support Prasac's market growth, especially lending to MSME borrowers. IFC exited these investments in March 2021 and October 2020, respectively, and Prasac is now a sub-client through IFC's investment in MEF.

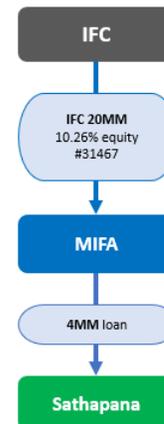
Figure 6: IFC financial links to Prasac



Sathapana Bank

Sathapana¹²³ is a commercial bank originally established as an NGO in 1995. After transitioning into a deposit-taking microfinance institution providing funds to low-income people, Sathapana was acquired by Maruhan Japan Bank Plc. in 2012. In 2016, these two banks merged to establish Sathapana Bank Plc. Sathapana is an IFC sub-client through IFC's investment in MIFA.

Figure 7: IFC financial links to Sathapana



¹²¹ LOLC webpage: <https://www.lolc.com.kh/en/an-overview-en>

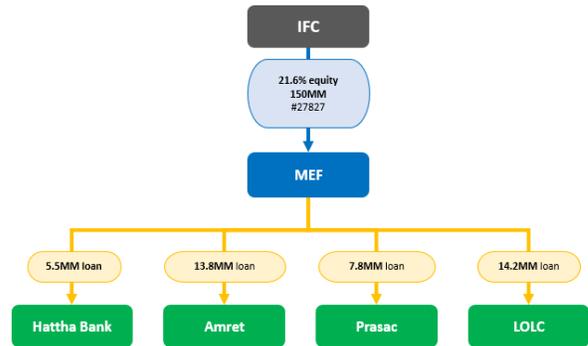
¹²² PRASAC webpage: <https://www.prasac.com.kh/en/about/milestones/>

¹²³ Sathapana Bank webpage: <https://www.sathapana.com.kh/about-sathapana/>

Microfinance Enhancement Facility (MEF)

MEF is a global microfinance liquidity facility (project #27827) launched by IFC, German development bank KfW, and the Development Bank of Austria (OeEB)¹²⁴ in response to the 2008/2009 liquidity crisis. Its aim was to provide short and medium-term financing to microfinance institutions worldwide that were encountering difficulties in securing market financing. IFC invested US\$ 150M in B shares, for which it holds 21.6 percent of MEF.^{vi} The investment was approved in 2009 and categorized as FI under IFC's previous 2006 Sustainability Policy.

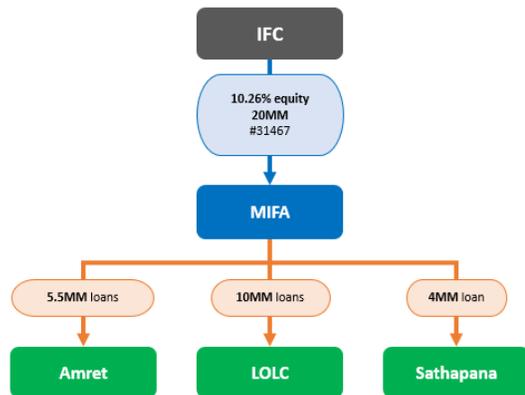
Figure 8: IFC financial links to MEF and sub-clients



Microfinance Initiative for Asia (MIFA)

MIFA was launched by IFC, KfW, and BlueOrchard Finance to increase access to finance for micro-borrowers and low-income households in East Asia, South Asia, and Central Asia (IFC project #31467).¹²⁵ IFC approved an investment of US\$ 20 MM in mezzanine shares in 2012, for which it holds a 10.26 percent stake in MIFA. The investment was approved in 2012 and categorized as FI under the IFC's previous 2006 Sustainability Policy.

Figure 9: IFC financial links to MIFA and sub-clients



¹²⁴ MEF is a special-purpose vehicle constituted in Luxembourg. Webpage: <https://www.mef-fund.com/mission.php>

¹²⁵ According to IFC Disclosure, “MIFA will: i) offer market-based debt financing – with an emphasis on local currency and longer-term financing – to financial entities serving micro businesses (“microfinance institutions” or “MFIs”), with a focus on reaching smaller and less developed MFIs; ii) help establish microfinance as an asset class with mainstream investors and leverage donor funds with private capital; and iii) support capacity building among financial entities serving micro entities”. The fund is managed by BlueOrchard Finance, a leading global commercial microfinance investment manager.

Appendix 2: Overview of Case-Related IFC Investment Projects

	Banks	IFC project #	Status	Project details
1	Aclea	#44882	Active	Senior loan of US\$169 MM to support Acleda in expanding its lending program to small and medium enterprises (SME), with a requirement that 50 percent of SME recipients were women-owned. Approved in 2021, categorized as FI-2.
2	Aclea	#42480	Active	Subordinated loan of up to US\$110 MM to support Acleda's growth strategy with a focus on digitalization and lending for SMEs and women-owned SMEs, approved in 2016 and categorized as FI-2.
3	Amret	#34748	Active	Equity investment of US\$17.5 MM for 19.99 percent of shares in Amret and a senior loan for US\$10 MM, to support Amret in its transformation and development plan. Approved in 2014 and categorized as FI-2.
4	Amret	#44231	Active	Senior loan of US\$25 MM to support Amret lending programs in Cambodia to MSMEs, with a requirement that 30 percent of recipients were women-owned. Launched in response to the COVID-19 pandemic, approved in 2020, and categorized as FI-3.
5	Amret	#41294	Exited	Senior loan for up to US\$10 MM to support Amret's sustainable growth of its micro, small, and medium loan portfolio. Approved in 2018, categorized as FI-2 and exited on July 15, 2022.
6	Hattha Bank	#45535	Active	Senior loan for up to US\$70 MM to support Hattha Bank's MSME portfolio and support access to finance during the pandemic. Approved in 2021 and categorized as FI-2.
7	Hattha Bank	#44742	Active	Subordinated loan for up to US\$40 MM to strengthen Hattha Bank's resilience amid the COVID-19 pandemic and support its long-term strategy to primarily grow financing to MSMEs, including women-owned firms. Approved in 2021 and categorized as FI-2.
8	Hattha Bank	#39167	Exited	Senior loan for US\$5 MM to support Hattha Bank's growth and development, especially its lending to micro borrowers and SMEs. Approved in 2017, categorized as FI-3, and exited on June 15, 2022.
9	Hattha Bank	#44211	Exited	Senior loan for US\$25 MM to support Hattha Bank's working capital and trade-related lending program to Cambodian MSMEs amid the COVID-19 pandemic, with a requirement that 30 percent of MSMEs were women-owned. Approved in 2020, categorized as FI-3, and exited on June 30, 2022.
10	MEF	#27827	Active	Equity investment for US\$150 MM in B shares of MEF—a 21.6 percent holding. Approved in 2009 and categorized as FI.
11	MIFA	#31467	Active	Equity investment of US\$20 MM in mezzanine shares, amounting to 10.26 percent participation in MIFA. Approved in 2012 and categorized as FI.
12	Advans S.A.	#21856	Active	Equity investment of 2.18 MM amounting to a 15.99 percent share in Advans S.A., a company specializing in startup capital and other financing for microfinance institutions in low-income countries. Approved in 2004 and categorized as FI.

13	North Haven Thai	#38609	Active	Equity investment of US\$15 MM for a 3.38 percent share in North Haven Thai, a private equity fund. Approved in 2018 and categorized as FI-2.
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Appendix 3: Good International Industry Practice for Responsible Investments in the Inclusive Finance Sector

Good International Industry Practice (GIIP) for responsible investments in the inclusive finance sector suggests that lenders and investors, including development finance institutions such as IFC, should screen, review, mitigate, and monitor consumer protection risks related to their FI investments. Good practice examples indicate that these steps consist of the following:

- **Preliminary screening:** Investors should carry out a preliminary review of the financial service provider's (FSP) business model, country context (including aspects such as evidence of intense competition in the market), regulatory environment, and other relevant factors to identify potential consumer protection issues associated with their practice.
- **Risk assessment:** Investors should assess the level and nature of consumer protection risks associated with the FSP's lending practices. This due diligence should include a review of the provider's policies and practice related to disclosure, fair treatment of clients, data privacy, and grievance and redress mechanisms. The Client Protection Pathway (and previously the Smart Campaign) provides [industry standards](#) for client protection with a detailed description of practices and indicators for each standard. For example, in terms of the issues raised in this complaint, the risk assessment should review whether:
 - The provider's collateral and guarantor requirements do not create severe hardship for clients. To meet this standard, the provider should establish a list of assets that cannot be pledged as collateral and includes items that would create severe hardship or significant loss of income earning ability for the client. In addition, the provider's collateral valuation should be based on a verifiable market price/resale value and a credit committee or second level approval should verify the collateral valuation. Thirdly, the provider's minimum requirement for collateral should not exceed twice the loan amount, and cash collateral should not exceed 20 percent of the loan amount. Fourthly, if the provider collects title documents, these should be returned to the client once the loan is repaid.
 - The provider's collections policy protects clients' rights to respectful treatment by including a list of appropriate and inappropriate debt collections practices, including collateral seizing practices, and a collections process schedule that allows time for the debt collector to determine why a client defaulted and for the client to find solutions. In addition, the provider should inform the client prior to seizure of collateral to enable the client to attempt to remedy the default. Finally, the provider should prohibit sales of clients' collateral to itself, its staff or their relatives, or to any third parties involved in the seizing process.
- **Mitigation/Action plan:** Investors should develop a plan to address any identified consumer protection risks. This may include making recommendations to change the provider's policies and/or practices in areas of concern (based on industry standards) and setting conditions for investment. In addition, investors may provide technical assistance to improve the provider's capacity to address risks to consumers.
- **Contractual requirements:** Investors should include specific contractual requirements that oblige FSPs to adopt responsible finance practices.
- **Monitoring:** Investors should require FSPs to regularly report progress toward meeting their contractual requirements to address identified consumer protection risks.
- **Capacity building:** Lenders may consider training FSP clients on responsible finance practices in general and consumer protection best practice in particular.

Sources: Client Protection Standards Manual from Cerise + Social Protection Task Force (SPTF), available [here](#); Client Protection Principles from the Smart Campaign, and CGAP - Technical Guide for Investors on Implementing Client Protection Principles, available [here](#).

Appendix 4: Redacted Complaint

**note: The original complaint filed on 10 February 2022 was 65 pages (438 footnotes), plus 12 annexes. Portions of the original complaint and the 12 annexes have been redacted as indicated here in order to protect the confidentiality and security of the Complainants.*

10 February 2022

By Email Only: CAO@worldbankgroup.org

Janine Ferretti
Director-General
Office of the Compliance Advisor Ombudsman
World Bank Group
2121 Pennsylvania Avenue, NW
Washington, DC 20433

Re: Complaint concerning IFC project investments in ACLEDA, Amret, Prasac, LOLC, Sathapana Bank, and Hattha Bank

Dear Director-General Ferretti:

1. [Redacted]¹
2. [Redacted]²
3. [Redacted]³
4. [Redacted]
5. Despite years of evidence documenting a highly saturated and overindebted sector with social risks⁴, IFC has continued to invest hundreds of millions of dollars into the financial institutions listed in this complaint, and repeatedly failed to conduct adequate due diligence on those investments. The IFC has further failed to adequately supervise the Environmental and Social Management Systems of its IFC Client Microfinance Providers, which are clearly inadequate to address the predatory and deceptive loan practices, irresponsible lending in the form of outsize loans, and coercion and threats from loan officers that have been used to circumvent the Cambodian legal system and gain possession of communities' and individuals' land while inflicting other social harms on the complainants. As a result of the IFC's failure to properly assess the risks of its investments in microloan providers in Cambodia and supervise its clients to ensure compliance with IFC Performance Standards, complainants have reported threats and intimidation, the coerced

¹ The harms suffered by the complainants are directly related to the 19 active projects (or recently exited within 15 months) listed in the table at 5. The complainants' claims are, however, representative of systemic problems with IFC project investments in Cambodia's microfinance sector and therefore a complete list of all 26 active IFC projects (or recently exited within 15 months) with seven MFIs and banks can be found in Annex A to demonstrate the scope and severity of these harms.

² [Redacted]

³ [Redacted]

⁴ See, e.g., Juan Pablo Bohoslavsky, Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, *Report to the Human Rights Council on Private debt and human rights*, A/HRC/43/45 (3 Jan. 2020), at para. 32–33 (noting that overlending and overborrowing has led to a microfinance crisis in Cambodia, and how in general microcredit schemes often have “effects opposite to those intended.”) [UN Independent Expert Report on Private Debt & Human Rights].

sale of indigenous land, loss of home and livelihood, eating less and poorer quality food, and discontinuing children's education to send them to work, all of which are contrary to IFC's Performance Standards.

6. [Redacted]^{5 6 7}
7. This complaint was prepared with the assistance of the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Equitable Cambodia (EC). LICADHO is a national Cambodian human rights organization established in 1992 and has been at the forefront of efforts to protect civil, political, economic, and social rights in Cambodia. LICADHO continues to be an advocate for the Cambodian people and a monitor of human rights violations from its main office in Phnom Penh and 13 provincial offices. Equitable Cambodia is a national Cambodian human rights organization with the goal of transforming the country's development model into a system that respects, protects and fulfils the human rights of all Cambodians.
8. [Redacted]
9. This complaint is structured as follows: **Section I** identifies the financial links between the IFC and Cambodian banks and microfinance institutions listed in this complaint; **Section II** details the facts of the complainants' cases and the social harms suffered as a result of these IFC projects; **Section III** provides an overview of the IFC's sustainability framework and the breakdown in IFC's due diligence and supervision; **Section IV** details how IFC's lack of due diligence and supervision result in specific harms to the complainants, which violate IFC's own social and environmental performance standards; **Section V** explains how IFC's lack of supervision results in project outcomes that are in breach of numerous provisions of Cambodian law; and **Section VI** lists outcomes sought by the complainants.
10. The following documents are attached in support of this complaint.
 - A. [Redacted]
 - B. [Redacted]
 - C. [Redacted]
 - D. [Redacted]
 - E. [Redacted]
 - F. [Redacted]
 - G. [Redacted]
 - H. [Redacted]
 - I. [Redacted]
 - J. [Redacted]
 - K. [Redacted]
 - L. [Redacted]

PREFATORY STATEMENT

11. Cambodia's microfinance sector has experienced astounding growth in recent years as international investors have pumped billions of dollars into a market that lacks any effective client protection. Cambodians hold more than US\$11.8 billion in microfinance loans, most of which require land titles as collateral, thus posing a significant risk to the land tenure security of Cambodia's poorest

⁵ [Redacted]

⁶ [Redacted]

⁷ [Redacted]

and most vulnerable.⁸ Cambodians are struggling under insurmountable debt with the highest average microloan sizes in the world at US\$4,280.⁹ In the UN Secretary-General's September 2021 report to the United Nations 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." This US\$182 average loan repayment figure can be compared to the minimum wage in Cambodia, US\$192 in 2021¹⁰, as well as the median monthly income, just US\$96¹¹. Thus, 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 collateralized with borrowers' land titles.

12. An insufficiently regulated and oversaturated market has fueled predatory lending and abusive collection practices by IFC client microfinance credit officers, who pressure borrowers – many of whom are illiterate or struggle to read Khmer - to take out-sized loans secured with land titles. Struggling under the enormous debt burden from IFC-funded microloans, borrowers are exposed to a range of social harms that violate the IFC's Performance Standards including adverse impacts and land dispossession in indigenous communities, illegally coerced land sales, forced migration, eating less food, and child labour.¹² Set up to fail and vulnerable to economic shocks such as the economic downturn caused by COVID-19, many borrowers fall behind on their loan payments and are coerced into private land sales to repay their debt, with MFI and bank credit officers regularly subverting the formal legal process for default that is considered slow and expensive by MFIs. Denied their day in court, borrowers are left without the opportunity to challenge unethical lending practices of microfinance providers and aspects of the underlying loan agreements, which could invalidate the contracts.
13. Throughout this debt crisis, microfinance has been a growing portion of IFC's lending portfolio.¹³ The social harms suffered by the borrowers and complainants in this case, however, indicate a systemic failure by the IFC to appropriately apply its environmental and social framework to microfinance projects.

I. THE COMPLAINT RELATES TO IFC PROJECTS IN THE FORM OF ACTIVE AND RECENTLY EXITED INVESTMENTS IN CAMBODIAN BANKS AND MICROFINANCE INSTITUTIONS

14. The CAO has the authority to investigate the claims in this complaint as they relate to active and recently exited IFC projects. The facts in this complaint and the annexes, specifically Annex A,

⁸ LICADHO, Equitable Cambodia, RIGHT TO RELIEF at 3 (June 2021)

⁹ *Id.*

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

¹¹ National Institute of Statistics, Cambodia Ministry of Planning, Report of Cambodia Socio-Economic Survey 2019/20 at 113, Table 3 (Dec. 2020), *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).

¹² *See generally id.*

¹³ *See, e.g.,* IFC, "IFC \$65 million syndicated loan helps expand microfinance lending in Cambodia," 30 June 2015, <https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=24965> (stating that IFC intended to expand microfinance lending in Cambodia beyond the 845,000 borrowers that it reached through just four MFIs in mid-2015). *See generally* IFC, Small Beginnings for Great Opportunities: Lessons Learned from 20 years of Microfinance Projects in IFC (2015), <https://openknowledge.worldbank.org/handle/10986/21795>.

clearly show direct links between IFC projects in the form of loans and other investments to microloan providers, including commercial banks and microfinance institutions (MFIs) in Cambodia, and the harms that resulted from the IFC clients' implementation of those project funds.

15. The micro and small loan providers at issue in this complaint are: ACLEDA Bank Plc (ACLEDA), Amret Plc (Amret), Prasac Microfinance Institution Limited (Prasac), LOLC Cambodia (LOLC), Sathapana Bank Plc (Sathapana), and Hattha Bank Plc (Hattha) (formerly Hattha Kaksekar Limited, or HKL). Since at least 2000, the IFC has approved projects with these loan providers (IFC Client Microfinance Providers) in the form of loans, investments, and other support to finance lending activities targeting IFC's microfinance priority. The following table provides a brief overview of active IFC project direct investments to the IFC Client Microfinance Providers, or project investments exited within 15 months, relating to the complainants' claims. A complete list of active and recently exited IFC project investments with IFC Client Microfinance Providers and other MFIs in Cambodia¹⁴ - 26 projects totaling over US\$960 million in investments - can be found in Annex A.

IFC Client Microfinance Provider	Active Projects	Recently Exited Projects
ACLEDA	#42480 – FI-2 – SME #37594 – FI-2 – SME #35963 – FI-2 – SME #34386 – FI-2 – SME #30607 – FI – Micro & SME #32642 – FI-2 – Micro	
Amret	#34748 – FI-2 – Equity #41294 – FI-2 – Micro	#37505 – FI-2 – Micro
Prasac		#36280 – FI-2 – Micro #38235 – FI-2 – Micro
Hattha Bank	#36242 – FI-3 – MSME #38239 – FI-3 – Micro #39167 – FI-3 – Micro #41223 – FI-3 – Micro #44742 – FI-2 – MSME #45535 – FI-2 – MSME	

16. In addition to IFC's direct support to the IFC Client Microfinance Providers, it also supports several of the IFC Client Microfinance Providers through two financial intermediary clients: the Microfinance Enhancement Facility (MEF) and Microfinance Initiative for Asia Debt Fund (MIFA). MEF was co-founded by IFC and KfW in 2009 for the sole purpose of funding MFIs in developing nations,¹⁵ and the IFC remains a "B" shareholder.¹⁶ Cambodia is MEF's third biggest exposure.¹⁷ IFC and KfW also established MIFA to provide financing and support to MFIs. MIFA is now managed by BlueOrchard Investment Managers.¹⁸ IFC currently funds MIFA up to US\$20million in mezzanine shares through project number 31467.¹⁹

¹⁴ The IFC has an active investment in Kredit Microfinance Institution, Plc. through the MEF.

¹⁵ MEF, Investors, <https://www.mef-fund.com/investors.php>.

¹⁶ *Id.*, MEF, Fact Sheets (June 2021), https://www.mef-fund.com/downloads/factsheets/2021/MEF_Factsheet_June2021.pdf.

¹⁷ MEF, ANNUAL REPORT 2020 at 16.

¹⁸ IFC Project Information & Data Portal, Project No. 31467: Summary of Investment Information, Project Sponsor and Major Shareholders of Project Company, <https://disclosures.ifc.org/project-detail/SPI/31467/mifa-debt-fund>.

¹⁹ *Id.* at Total Project Cost and Amount and Nature of IFC's Investment.

17. These financial intermediary sub-projects with IFC Client Microfinance Providers are also eligible for review by the CAO.²⁰ The IFC’s investments in MEF and MIFA are clearly for the sole purpose of microfinance²¹ and the MEF and MIFA loans to IFC Client Microfinance Providers are thus within the scope of the IFC’s investments. As detailed in Annex A, MEF and MIFA have made substantial and multiple investments in several IFC Client Microfinance Providers, thus establishing a material link between the IFC clients and sub-clients. MEF is loaning up to US\$26.1 million to Prasac, LOLC, and Sathapana, while MIFA is loaning up to US\$30 million to LOLC and Sathapana.

IFC Client Microfinance Provider	Active Projects	Recently Exited Projects
Prasac	#27827 – FI – MEF loan	
LOLC	#31467 – FI – MIFA loan	#27827 – FI – MEF loan
Sathapana	#31467 – FI – MIFA loan	#27827 – FI – MEF loan

18. To the extent that any of the IFC projects or sub-projects relevant to this complaint are ring-fenced for the purpose of lending to very small or small enterprises (MSMEs or SMEs), rather than for individual microfinance activities, the loans taken out by the complainants fall within these ring-fences. Although the complainants received loans as individuals, the informal nature of small and micro enterprises in Cambodia, in combination with the IFC’s own proxy definitions, mean that, in this context, the complainants’ loans met requirements for lending to MSMEs/SMEs and therefore fall within the scope of the IFC’s projects and sub-projects.
19. All of the IFC projects and sub-projects at issue in this complaint are for the purpose of providing microfinance or loans to micro or small enterprises (MSME or SME). IFC defines a micro enterprise as one that meets two of the following three criteria: having less than 10 employees; having less than US\$100,000 in total assets; or having less than US\$100,000 in annual sales.²² In the alternative, an enterprise also qualifies as a micro-enterprise if it falls within the relevant loan size proxy: loans in amounts less than US\$10,000.²³ Thus under the proxy definition, loans for less than US\$10,000 related to the borrower’s economic activity qualify as loans to microenterprises.²⁴ The proxy definition—defining a micro enterprise based on the loan amount received by the borrower—was likely adopted in recognition of the fact that borrowers’ experiences are “varied and complex”—for example, many micro and microcredit loans can be related “both directly and

²⁰ See CAO, IFC/MIGA Independent Accountability Mechanism (CAO) Policy at para. 41(a), 28 June 2021.

²¹ See, e.g., IFC Project Information & Data Portal, Project No. 31467: Summary of Investment Information, Project Overview, <https://disclosures.ifc.org/project-detail/SPI/31467/mifa-debt-fund>.

²² IFC, IFC’s Definitions of Targeted Sectors, https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/financial+institutions/priorities/ifcs+definitions+of+targeted+sectors.

²³ *Id.*

²⁴ See IFC, Factsheet: Financing to Micro, Small, and Medium Enterprises Globally, at 1 n.1 (2014), available at https://www.smefinanceforum.org/sites/default/files/2014MSME%2BFactsheet-Global_1.pdf (“IFC’s Global Financial Markets categorized its clients’ sub-borrowers according to the following definitions: (1) microfinance institution: if loan < \$10,000 at origination”); see also World Bank Group, Global Financial Inclusion and Consumer Protection Survey, at 23 & Table 3.4 (2017) (reporting that in 64 percent of surveyed jurisdictions that use a definition, “microfinance” is defined by value/amount of product, and in 77 percent of jurisdictions, the term is defined by target clientele including low-income individuals). [hereinafter World Bank GFICP Survey 2017].

indirectly to a range of other sources of income and liabilities.”²⁵ The IFC’s proxy definition is moreover consistent with the definitional trends for products in this sector as reported by the World Bank; microfinance is defined by the value/amount of the product in 64 percent of surveyed jurisdictions.²⁶

20. [Redacted]^{27 28 29 30 31}

21. The end use of the financial product, in this case the microfinance loans, is not an element of the IFC’s targeted sector definitions.³² Therefore, how the funds were ultimately used by the borrowers is irrelevant to consideration of whether the loans fall within the IFC’s microfinance and MSME definitions.

22. [Redacted]^{33 34 35}

23. [Redacted]

24. [Redacted]

A. IFC Projects with ACLEDA Bank Plc (ACLEDA)

25. [Redacted]^{36 37 38}

²⁵ See Maryann Bylander, “Credit as coping: rethinking microcredit in the Cambodian context”, *Oxford Development Studies*, vol 43, No. 4 (2015), at 540; IFC, Assessing Private Sector Contributions to Job Creation: IFC Open Source Study, undated, http://documents1.worldbank.org/curated/en/602291468183841622/pdf/819960BRI0Meas00Box379851B00PUBLI_C0.pdf (“MFIs may not have the necessary criteria information for all borrowers”); see also World Bank GFICP Survey 2017, *supra* note 24, at 22–23, Annex A at 58 (noting significant variation in definition of “microfinance,” “microcredit,” and related products across global sectors, including Cambodia, and that 30 percent of surveyed jurisdictions have no formal definition for those terms).

²⁶ World Bank GFICP Survey 2017, *supra* note 24, at 23 & Table 3.4.

²⁷ IFC, IFC’s Definitions of Targeted Sectors, https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/financial+institutions/priorities/ifcs+definitions+of+targeted+sectors

²⁸ [Redacted]

²⁹ [Redacted]

³⁰ *Infra* Section II.

³¹ *Id.*

³² See IFC, IFC’s Definitions of Targeted Sectors, https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/financial+institutions/priorities/ifcs+definitions+of+targeted+sectors.

³³ [Redacted]

³⁴ Adrien Chorn & Jonathan Stromseth, “COVID-19 comes to Cambodia,” 19 May 2021, <https://www.brookings.edu/blog/order-from-chaos/2021/05/19/covid-19-comes-to-cambodia/>.

³⁵ See *id.*

³⁶ [Redacted]

³⁷ Milford Bateman, *Land Titling Improves Access to Microcredit in Cambodia: Be Careful What You Wish For*, Conference Paper for 2020 World Bank Conference on Land and Poverty, Mar. 2020, at 10, available at https://www.researchgate.net/publication/340558285_Land_Titling_Improves_Access_to_Microcredit_in_Cambodia_a_Be_Careful_What_You_Wish_For.

³⁸ See ACLEDA ANNUAL REPORT 2020 at 113 (35.1 (c)), available at https://www.acledabank.com.kh/kh/assets/pdf_zip/ACLEDA%20Bank%20-%20Annual%20Report%202020.pdf.

26. [Redacted]

27. [Redacted]^{39 40 41}

B. IFC Projects with Amret Plc (Amret)

28. [Redacted]

29. [Redacted]

30. [Redacted]^{42 43 44 45 46 47}

31. [Redacted]⁴⁸

C. IFC Projects with Prasac Microfinance Institution Limited (Prasac)

32. [Redacted]

33. [Redacted]

34. [Redacted]

35. [Redacted]

D. IFC Projects with LOLC Cambodia (LOLC)

36. [Redacted]

37. [Redacted]

38. [Redacted]

39. [Redacted]

E. IFC Projects with Hattha Bank Plc., formerly known as Hattha Kaksekar Limited

40. [Redacted]

41. [Redacted]

³⁹ [Redacted]

⁴⁰ *Infra* Section II.

⁴¹ *See* Annex A.

⁴² Amret ANNUAL REPORT 2020 at 13, available at https://www.amret.com.kh/storage/app/uploads/Annual-Report/English_2020.pdf? t=1624933328.

⁴³ Advans SA “Reference Shareholders”, available at <https://www.advansgroup.com/about-us/our-governance/>.

⁴⁴ *Id.*

⁴⁵ [Redacted]

⁴⁶ *Infra* Section II.

⁴⁷ [Redacted]

⁴⁸ MEF Quarterly Factsheet, 31 Mar. 2020, at 4, https://www.mef-fund.com/downloads/factsheets/2020/MEF_Factsheet_March2020.pdf.

42. [Redacted]^{49 50}

43. [Redacted]

F. IFC Projects with Sathapana Bank Plc. (Sathapana)

44. [Redacted]

45. [Redacted]⁵¹

46. [Redacted]⁵²

47. [Redacted]

48. [Redacted]

II. THIS COMPLAINT FALLS WITHIN THE CAO'S MANDATE BECAUSE THE COMPLAINANTS ARE AFFECTED BY SOCIAL ISSUES ASSOCIATED WITH IFCPROJECT INVESTMENTS.

49. [Redacted]

50. [Redacted]

51. [Redacted]^{53 54 55}

52. [Redacted]⁵⁶

53. [Redacted]

54. [Redacted]

55. [Redacted]^{57 58 59 60}

⁴⁹ [Redacted]

⁵⁰ [Redacted]

⁵¹ Sathapana Bank, ANNUAL REPORT 2020 at 44 (2020), available at <https://www.sathapana.com.kh/about-sathapana/about-us/annual-report/>.

⁵² [Redacted]

⁵³ [Redacted]

⁵⁴ [Redacted]

⁵⁵ [Redacted]

⁵⁶ [Redacted]

⁵⁷ [Redacted]

⁵⁸ [Redacted]

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57. [Redacted]⁶⁵
58. [Redacted]
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60. [Redacted]^{66 67 68 69 70 71 72 73}
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62. [Redacted]
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67. [Redacted]^{74 75 76 77 78 79}
68. [Redacted]
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⁷⁵ [Redacted]
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⁷⁸ [Redacted]
⁷⁹ [Redacted]

71. [Redacted]^{80 81 82 83 84 85 86 87}
72. [Redacted]
73. [Redacted]
74. [Redacted]^{88 89 90 91 92 93 94 95 96 97 98}
75. [Redacted]
76. [Redacted]
77. [Redacted]
78. [Redacted]^{99 100 101 102}
79. [Redacted]¹⁰³
80. [Redacted]¹⁰⁴
81. [Redacted]^{105 106 107}
82. [Redacted]

⁸⁰ [Redacted]
⁸¹ [Redacted]
⁸² [Redacted]
⁸³ [Redacted]
⁸⁴ [Redacted]
⁸⁵ [Redacted]
⁸⁶ [Redacted]
⁸⁷ [Redacted]
⁸⁸ [Redacted]
⁸⁹ [Redacted]
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⁹¹ [Redacted]
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⁹³ [Redacted]
⁹⁴ [Redacted]
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86. [Redacted]¹⁰⁸
87. [Redacted]

III. IFC'S LACK OF DUE DILIGENCE RESULTED IN IMPROPER RISK CLASSIFICATION AND INADEQUATE SUPERVISION OF PROJECTS THAT HAVE NEGATIVE SOCIAL IMPACTS.

88. IFC has breached its obligations under its own Environmental and Social Framework to conduct sufficient pre-project due diligence and project supervision of IFC clients by failing to address years of reports, including IFC-commissioned studies, regarding a microfinance crisis in Cambodia and related social harms. The IFC microlending projects listed in Sections I, II and Annex A have thus continued an ongoing scheme of predatory lending that accelerates land dispossession of Cambodia's most vulnerable populations, including indigenous communities. The lack of adequate due diligence and supervision of IFC microfinance projects allows for the associated social harms against complainants and their communities to continue unabated in clear contradiction with IFC's Performance Standards and in violation of the Exclusion List of prohibited activities.
89. IFC's investments cited in Section I and Annex A of this complaint were all approved after January 1, 2012 and are subject to the IFC's 2012 Policy on Environmental and Social Sustainability (E&S Policy), the eight Performance Standards (for high risk transactions)¹⁰⁹, and the Access to Information Policy. In addition, the IFC Exclusion List (2007), specifically the provisions regarding financial intermediaries engaging in microfinance, applies to all IFC projects and prohibits activities involving harmful child labour and activities that impinge on the land of Indigenous Peoples without their full, documented consent. The E&S Policy defines IFC commitments in projects, while the Performance Standards establish client responsibilities. IFC's Sustainability Framework was developed to ensure and improve the environmental and social outcomes of IFC projects¹¹⁰, and in consideration of the UN Guiding Principles on Business and Human Rights.
90. Financial intermediaries such as the IFC Client Microfinance Providers¹¹¹ are required to develop and operate an Environmental and Social Management System (ESMS) that is consistent with Performance Standard 1 and commensurate with the level of environmental and social risks in its portfolio and prospective business activities.¹¹² Financial intermediary clients are then required to identify, avoid or mitigate, and monitor the environmental and social (E&S) risks associated with IFC projects.¹¹³ Financial intermediaries such as the IFC Client Microfinance Providers are typically categorized as FI-2 (presenting moderate environmental or social risks) and are only

¹⁰⁸ [Redacted]

¹⁰⁹ IFC, Policy on Environmental & Social Sustainability (2012), at para. 35 [hereinafter IFC E&S Policy].

¹¹⁰ *Id.* at para. 1–2, 6–12.

¹¹¹ *See* IFC, Interpretation Note on Financial Intermediaries (2012, Nov. 2018 ver.), at para. IN1 [hereinafter FI Interpretation Note].

¹¹² IFC E&S Policy, *supra* note 109, at para. 37; FI Interpretation Note, *supra* note 111, at para. IN33, IN35.

¹¹³ *Id.*

required to apply relevant requirements of Performance Standards 2 through 7¹¹⁴ to higher risk transactions.¹¹⁵

91. There is limited transparency regarding IFC's investment agreements and supervision, the ESMS of IFC financial intermediary clients, and those clients' monitoring and reporting as this documentation is not to the best of our knowledge publicly available. IFC's online Project Information and Data Portal provides summaries of some information but not others—notably failing to disclose some information that may be important in determining IFC's compliance with its policy provisions. This lack of transparency creates an unnecessary hurdle for potential complainants and is contrary to the intent and principles of IFC's Access to Information Policy.¹¹⁶ These challenges were identified and addressed by an external review team of IFC and financial investment experts, specially composed to review IFC's E&S accountability and the CAO's role in that regard.¹¹⁷ The external review team specifically noted how increased investments in financial intermediaries revealed challenges for the CAO in eligibility determinations about complaints regarding financial intermediary clients, and recommended the IFC enhance the transparency of IFC-funded portfolios and sub-projects.¹¹⁸
92. IFC is required to conduct extensive due diligence prior to approving a project, including a determination of the environmental and social risk categorization of the project to “convey a sense of magnitude of potential risks and impacts.”¹¹⁹ Environmental and social categorization should reflect the level of environmental and social risks and impacts, requirements for disclosure under IFC's Access to Information Policy and differentiated risk categorization for investments in financial intermediaries (on a high to low-risk scale from FI-1 to FI-3) based on the tenor, size, and type of investments as well as sectoral exposure such as inherent environmental and social risks.¹²⁰ For investments in financial intermediaries, IFC determines the risk category based on environmental and social risks associated with the specified end use, such as microlending.¹²¹ For an existing operation, this will include its known operational impacts.¹²²
93. IFC's required pre-project due diligence also includes a review of client's ESMS, implementation capacity, and gaps in performance against the requirements of the Performance Standards.¹²³ The due diligence must be commensurate with the nature, scale, and stage of the business activity, and involves in part “reviewing all available information, records, and documentation related to the...social risks and impacts of the business activity”.¹²⁴ In addition, due diligence may be expanded to cover other business activities as part of IFC's risk management considerations.¹²⁵ Where there are significant social impacts associated with the business activity, *including past or*

¹¹⁴ Performance Standard 1 continues to apply to financial intermediaries in that it establishes the minimum requirements for an ESMS.

¹¹⁵ See IFC E&S Policy, *supra* note 109, at para. 3, 35; FI Interpretation Note, *supra* note 111, at para. IN10, IN12, IN13.

¹¹⁶ See IFC, Access to Information Policy (2012), at 1–2, 6–8, 13.

¹¹⁷ External Review of IFC/MIGA E&S Accountability, including CAO's Role and Effectiveness: Report and Recommendations, June 2020, at para. 27 [hereinafter IFC External Review].

¹¹⁸ *Id.*

¹¹⁹ IFC E&S Policy, *supra* note 109, at para. 34; IFC, Interpretation Note on Environmental and Social Categorization (2012), at para. IN6 [hereinafter IFC Note on E&S Categorization].

¹²⁰ IFC, Policy on Environmental & Social Sustainability, at para. 40, 42 & n.9, 44.

¹²¹ *Id.* at para. 44.

¹²² *Id.* at para. 42.

¹²³ *Id.* at para. 12, 25–28, 34.

¹²⁴ IFC E&S Policy, *supra* note 109, at para. 12, 28, 35.

¹²⁵ *Id.* at para. 26.

present adverse impacts caused by others, IFC is obligated to work with IFC clients to determine possible remediation measures.¹²⁶ IFC is further required to define any supplemental actions to ensure the business activity meets the Performance Standards as necessary conditions of the investment, *or decline new investments with existing clients that have less than satisfactory environmental and social impact performance*.¹²⁷

94. IFC is further required to supervise financial intermediary clients through a review of their ESMS implementation during the project.¹²⁸

A. Overview of social harms resulting from IFC’s projects in a high-risk sector.

95. The complainants are victims of predatory lending and deceptive loan practices on the part of IFC Client Microfinance Providers. Many have been coerced and threatened into selling their land and/or taking on additional loans to repay their loans. These methods have inflicted significant, negative impacts on the complainants including food insecurity, child labour, forced migration, increased indebtedness, loss of indigenous land, and loss of livelihood, contrary to IFC’s Performance Standards and Exclusion List and depriving the complainants of their most basic human rights. The IFC’s repeated project investments with IFC Client Microfinance Providers to support the microfinance sector are thus associated with the commission and continuation of these abuses. The nexus between IFC projects and social harms suffered by the complainants establishes the CAO’s authority to conduct an investigation of the issues in this Complaint.
96. Abusive practices are common in Cambodia’s microfinance sector and representative of many borrowers’ experiences.¹²⁹ As has been well-documented for many years, a combination of high market penetration, high saturation, a lack of consumer protection, and insufficient enforcement of existing laws at the national level has fueled aggressive and predatory tactics by MFI and bank loan officers.¹³⁰ Loan officers frequently drive into villages and seek out clients by offering them increasingly larger MSME loans to “buy out” existing loans, with no assessment of borrowers’ incomes or ability to repay.¹³¹ Loan officers are more interested in securing borrower’s land titles as collateral—routinely required in order for a borrower to be granted a loan. As a matter of policy, lenders in Cambodia often devalue land used as collateral to ensure the value of collateral far exceeds the value of the loan, and the institutions take and keep possession of the borrower’s land title. Borrowers suffer through a series of social harms in an attempt to repay the unsustainable loan, including eating less and poorer quality food, and pulling children from school and sending them to work. When a borrower misses a payment by even a few days, loan officers employ a range of extrajudicial and coercive tactics including harassing the borrower at home and threatening to call the borrower before local authorities to force the borrower to prematurely sell their land, outside of the formal legal process that MFIs and banks find costly and slow to pursue. One million Cambodians including Indigenous Peoples have become landless in the last few years, while average debt loads increased by 85 percent.¹³² In January 2020, the UN Independent Expert on the

¹²⁶ *Id.* at para. 26.

¹²⁷ IFC E&S Policy, *supra* note 109, at para. 28; FI Interpretation Note, *supra* note 111, at para. IN4.

¹²⁸ IFC E&S Policy, *supra* note 109, at para. 46.

¹²⁹ LICADHO et al., RIGHT TO RELIEF, *supra* note 8, at 2.

¹³⁰ See IFC, PROMOTING FINANCIAL CONSUMER PROTECTIONS IN CAMBODIA, at 29–33 (2015).

¹³¹ See MICROFINANCE CENTRE, GOOD RETURN, ET AL., OVER-INDEBTEDNESS STUDY CAMBODIA II: FINAL REPORT, at 62 (Oct. 2017) [hereinafter OI STUDY CAMBODIA II]; Microfinance Index of Market Outreach & Saturation (MIMOSA), Cambodia: Multiple borrowing and loan sizes, at 2–3 (June 2016) [hereinafter MIMOSA 2016 Special Circular].

¹³² Tran Techseng & Michael Dickison, VOD, Land Loss, Debt Rise Record in Latest Socio-Economic Survey, 23

effects of foreign debt on human rights acknowledged the negative social impacts that result from such predatory microlending schemes, noting that “private debt can be both a cause and a consequence of human rights violations.”¹³³

97. In its 2015 review of Cambodia’s consumer protection framework for financial markets, the IFC observed numerous key consumer risks in the financial sector, including: over-indebtedness; aggressive market conditions; pay incentives for loan officers that negatively impact borrowers by encouraging aggressive lending despite issues of “suitability and affordability”; lack of minimum sector wide standards for “truth in lending” and sales practices, which drives “a ‘race to the bottom’ in terms of ethical behaviour”; lack of internal and external consumer dispute mechanisms; lack of monitoring and reporting of consumer complaints; potential for inappropriate and coercive lending practices; and the potential for predatory lending, specifically where unscrupulous lenders know there is high likelihood of default that will enable the lender to take possession of valuable collateral that has much greater value than the amount of the loan.¹³⁴ The report concluded that all sectors “would benefit from unilateral adoption of consumer protection standards, particularly in the areas of disclosure, dispute resolution, and monitoring of market conduct.”
98. As discussed in the following section, the magnitude and type of harm experienced by complainants was, in other words, entirely predictable. The microfinance and MSME lending sector in Cambodia presents inherent, significant social risks to vulnerable individuals and communities.

B. Analysis of IFC’s failure to conduct adequate due diligence, resulting in an inappropriately low risk categorization of its microfinance and MSME activities in Cambodia

99. [Redacted]^{135 136}
100. In addition, data from the World Bank, National Bank of Cambodia and National Institute of Statistics indicate that for the past five years, microlenders who have received direct support from the IFC have increased their loan portfolios at much higher rates than the GDP per capita or average household incomes have increased. This has led directly to the crisis Cambodia is now experiencing, where average microloan sizes are several times larger than annual or median incomes.

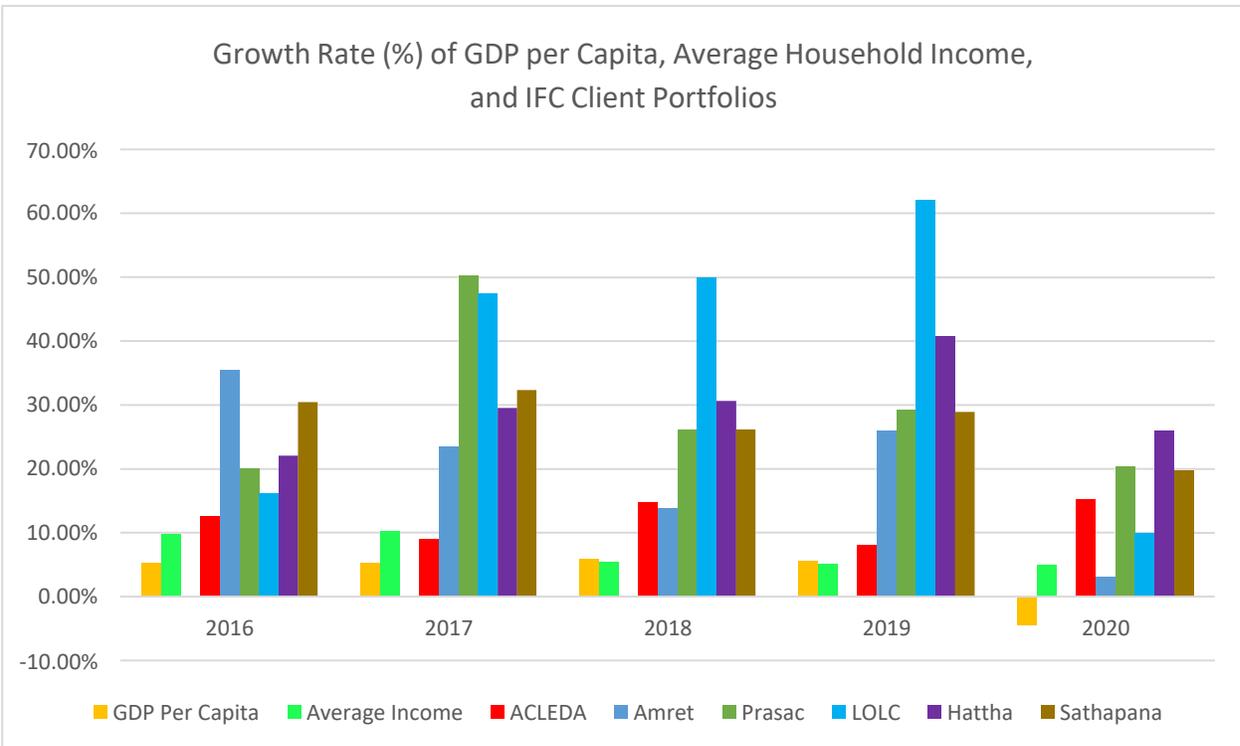
Feb. 2021, <https://vodenglish.news/land-loss-debt-rise-recorded-in-latest-socio-economic-survey/> (citing to the Planning Ministry of Cambodia’s National Institute of Statistics Cambodia Socio-Economic Survey for 2019–2020).

¹³³ UN Independent Expert Report on Private Debt & Human Rights, *supra* note 4, at Summary.

¹³⁴ IFC, PROMOTING FINANCIAL CONSUMER PROTECTIONS IN CAMBODIA, *supra* note 130, at 29–33.

¹³⁵ [Redacted]

¹³⁶ [Redacted]



**GDP per capita data from World Bank. Average income data from Cambodian Socio-Economic Survey. Portfolio data from the National Bank of Cambodia.*

101. Almost all the IFC investments identified in Section I are categorized as FI-2 under the rationale that “there is low likelihood for sub-borrowers exposed to significant environmental and social risks and impacts on community health and safety, occupational health and safety, environment, indigenous peoples, biodiversity or cultural heritage as well as involved in involuntary resettlement to be supported from the proceeds of this loan.”¹³⁷ Those IFC clients are therefore only required to apply the Performance Standards to higher risk transactions, as defined by the IFC client.¹³⁸
102. IFC’s repeated categorization of loans to Cambodian financial institutions for the purpose of microfinance activities and SME lending as “low risk” marks a dramatic and catastrophic failure to conduct adequate due diligence on associated social risks and IFC client ESMS as part of the pre-project review process, contrary to IFC’s own policies and procedures. IFC’s risk categorization is inconsistent with considerable research from a range of public and private international sources in recent years, including those within the microfinance sector and the IFC’s own commissioned reports.
- a) In June 2016, the Microfinance Index of Market Outreach and Saturation (MIMOSA) published a special circular on multiple borrowing and loan sizes in Cambodia. MIMOSA reported that from 2004 to 2014, the size of loans in Cambodia grew four times faster than borrowers’ incomes, and loan sizes significantly exceeded those in other countries. The circular further noted that increasing loan sizes correlated with a high level of loan penetration and were likely driven in part by MFIs offering increasingly larger loan amounts

¹³⁷ See, e.g., IFC Project Information & Data Portal, Project 42480 Summary of Investment Information (SII), Environmental & Social Categorization Rationale, <https://disclosures.ifc.org/project-detail/SII/42480/acleda-subdebt-3>.

¹³⁸ See *id.*

- to borrowers in an attempt to “buy out” existing loans.¹³⁹ MIMOSA concluded, in 2016, that overindebtedness was highly plausible in the Cambodian microfinance market.¹⁴⁰ Despite this, between 2016 and 2021, the IFC approved at least 16 projects to microloan providers in Cambodia, totaling more than US\$438 million.
- b) Numerous academics have published articles for years warning that MFIs are leading to dispossession of land from the poor.¹⁴¹ One prominent academic on microcredit crises, Milford Bateman, was invited to present a paper on land titling and microcredit in Cambodia at the 2020 World Bank Conference on Land and Poverty, which chronicled the rise of reckless lending and concluded that the “ultra-competition conditions” in Cambodia “have inflicted much damage, not least helping to push local average incomes down and many failing individual entrepreneurs into significant debt.” Bateman further provided a detailed overview of academic literature recording the rise in land dispossession amongst Cambodia’s poor due to the MFI practice of requiring land titles for collateral and the coercive practices applied to force premature sales of land.¹⁴²
 - c) In October 2017, the results of an overindebtedness study into Cambodia’s microfinance market were issued. The study was funded by BMZ, OikoCredit, KFW (which established and co-funded the Microfinance Initiative for Asia Debt Fund (MIFA) with IFC) and BlueOrchard (which managed MIFA). The study reported several critical indicators for a microfinance crisis in Cambodia, noting that the market penetration rate by some measures exceeded the tipping point for default¹⁴³, and by some calculations the market saturation rate was as high as 59 to 82 percent¹⁴⁴ indicating the microfinance sector in Cambodia was at a “critical stage” and at “high vulnerability to shocks”¹⁴⁵. The study further recited a longlist of lending “malpractice” concerns including the routine requirement to hold a land title as collateral, and the associated negative social impacts from the overall microfinance scheme including eating less and poorer quality food.¹⁴⁶
 - d) In 2018, the IMF conducted an internal assessment of the microfinance situation in Cambodia and noted the “growing systemic importance of microfinance institutions (MFI) continue to pose risks to financial and macroeconomic stability.”¹⁴⁷
 - e) In January 2019, the World Bank issued a policy note on Cambodia and warned that “risks are increasing for MFIs and the Cambodian economy in general, partly reflecting looser lending practices.”¹⁴⁸ The note cited a greater than tenfold increase in average loan sizes in

¹³⁹ MIMOSA 2016 Special Circular, *supra* note 131, at 2–3.

¹⁴⁰ *Id.* at 4. Notably, these findings were made when Cambodia’s microfinance sector was valued at US\$4 billion; the sector is currently worth over US\$11 billion.

¹⁴¹ LICADHO, COLLATERAL DAMAGE: LAND LOSS AND ABUSES IN CAMBODIA’S MICROFINANCE SECTOR at 2 n.10 (2019), available at <https://www.mficambodia.com/reports/Report-CollateralDamage-2019-en.pdf> (citing to a 2017 article by Milford Bateman).

¹⁴² Milford Bateman, *Land Titling Improves Access to Microcredit in Cambodia: Be Careful What You Wish For* (2020), prepared for presentation at the 2020 World Bank Conference on Land and Poverty, available at 10–11, 16, 26–30. The in-person conference was cancelled due to the COVID-19 pandemic, but Bateman’s paper was published on the World Bank conference website.

¹⁴³ OI STUDY CAMBODIA II, *supra* note 131, at 30.

¹⁴⁴ *Id.* at 31.

¹⁴⁵ *Id.* at 32.

¹⁴⁶ *Id.* at 50, 62–63.

¹⁴⁷ “IMF Staff Completes 2018 Article IV Mission to Cambodia”, International Monetary Fund, 2 Oct. 2018, <https://www.imf.org/en/News/Articles/2018/10/02/PR18371Cambodia>.

¹⁴⁸ World Bank Group, *Microfinance and Household Welfare: Cambodia Policy Note* (Jan. 2019), at 6 [hereinafter WB Cambodia Policy Note].

just five years¹⁴⁹, and that household debt levels had increased significantly.¹⁵⁰ The World Bank concluded that these concerning increases potentially resulted from intense competition in the sector, implicitly from a highly saturated market, and noted that “in most cases, incentives are provided to credit officers based on volume of lending, *without considering quality or risks.*”¹⁵¹ The World Bank called for improving lending practices *and supervision* to reduce risks.¹⁵²

- f) The IFC has also explicitly acknowledged that “potential tension between commercial profitability and the social aims of the organization” demands improved client in-house governance.¹⁵³
- g) In August 2019, LICADHO published *Collateral Damage: Land Loss and Abuses in Cambodia’s Microfinance Sector*, which detailed interviews with executives from two Cambodian MFIs. The executives confirmed that land titles are routinely demanded by all major MFIs, and that the borrowers are later coerced into prematurely selling their land, outside of the formal legal processes for default. In addition to avoiding costly and slow legal processes, one MFI executive admitted that by coercing borrowers into early land sales the MFIs were able to reduce the number of days a loan was overdue and thus manipulate the nonperforming loan rates to appear low.¹⁵⁴
- h) In January 2020, the UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights raised concerns about human rights violations related to private debt and Cambodia’s microfinance sector to the Human Rights Council.¹⁵⁵
- i) In March 2020, MIMOSA issued a second report on Cambodia’s microfinance sector and commissioned by the IFC. The report “found serious problems in Cambodia’s micro-loan sector” noting growing loan sizes, increasing tenors, high market penetration and poor consumer protection and regulation.¹⁵⁶ The report further graded Cambodia’s market saturation at the highest possible level of saturation, making it the only country out of 11 countries evaluated by MIMOSA to reach such a level.¹⁵⁷
- j) In May and June 2020, LICADHO published two additional reports documenting forced migration and human rights abuses in Cambodia’s garment sector resulting from coercive and predatory microfinance lending practices.¹⁵⁸

103. [Redacted]¹⁵⁹ 160 161 162

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 11.

¹⁵¹ *Id.* at 11.

¹⁵² WB Cambodia Policy Note, *supra* note 148, at 7.

¹⁵³ IFC, Microfinance Institutions,

https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/topics/microfinance+institutions.

¹⁵⁴ LICADHO, COLLATERAL DAMAGE, *supra* note 141, at 6–7.

¹⁵⁵ UN Independent Expert Report on Private Debt & Human Rights, *supra* note 4, at para. 33–34.

¹⁵⁶ MIMOSA, REPORT ON CAMBODIA (Mar. 2020), at 6–7 [MIMOSA IFC-COMMISSIONED 2020 REPORT].

¹⁵⁷ *Id.* at 7.

¹⁵⁸ *See generally*, LICADHO, DRIVEN OUT: ONE VILLAGE’S EXPERIENCE WITH MFIS AND CROSS-BORDER MIGRATION (May 2020), available at <https://www.mficambodia.com/>; DRIVEN TO DEBT: OVER-INDEBTEDNESS IN CAMBODIA’S GARMENT SECTOR (June 2020), available at <https://www.mficambodia.com/>.

¹⁵⁹ [Redacted]

¹⁶⁰ [Redacted]

¹⁶¹ [Redacted]

¹⁶² [Redacted]

104. [Redacted]¹⁶³ 164 165
105. [Redacted]¹⁶⁶ 167
106. IFC's failure to respond to widely reported social harms associated with its project investments, **[redacted]**, is further inconsistent with IFC's explicit policies on assessing environmental and social risk in investments to financial intermediaries. In the Interpretation Note on Financial Intermediaries, IFC states that project risk depends on contextual risk in the country or region, and cites specifically to land disputes, systemic issues, and historical government actions.¹⁶⁸
107. [Redacted]¹⁶⁹ 170
108. The potential for adverse social impacts to result on a large scale from microlending is a foreseeable risk that has been recognized by other banking accountability mechanisms, which should have informed at minimum the level of due diligence required for IFC's investments. The Compliance Review Panel for Asian Development Bank, for example, reviewed the bank's pre-project due diligence related to its issuance of over US\$42 million to the Royal Government of Cambodia for a railway rehabilitation project.¹⁷¹ As part of the project, a resettlement and compensation plan was established that included granting land titles to families relocating to one of five sites.¹⁷² Predatory lenders targeted families with land titles, granting out-size loans and demanding the newly acquired titles as collateral.¹⁷³ Families thus quickly found themselves under insurmountable debt and faced the apparently inevitable prospect of losing their land.¹⁷⁴ The Compliance Review Panel found that indebtedness was a foreseeable social impact of the project, and that certain aspects such as the use of land titles as collateral for loans was also foreseeable.¹⁷⁵ The Compliance Review Panel concluded that Asian Development Bank had thus failed to conduct adequate due diligence in project planning, and implied such issues could have been addressed through a credit scheme structured to protect against injurious lending practices.¹⁷⁶ IFC's conduct is similar regarding the investments at issue in this complaint. The low-risk categorization given to IFC's investments implies that IFC's pre-project due diligence did not adequately consider foreseeable and widely reported social harms associated with IFC's previous and current microfinance loans. IFC appears

¹⁶³ [Redacted]

¹⁶⁴ *Supra* at para. 91.

¹⁶⁵ *Cf.* Compliance Advisor Ombudsman (CAO), Honduras/Dinant-01/CAO Vice President Request, (website synopsis on the findings of a CAO audit that the "IFC was or should have been aware of a series of public allegations and negative perceptions in relation to its client that went significantly beyond those that were considered in the course of its integrity due diligence process."), https://web.archive.org/web/20210610060830/http://www.cao-ombudsman.org/cases/case_detail.aspx?id=188. The original documents from the three combined Dinant cases were scrubbed from the CAO website at some point between June 2021 and October 2021.

¹⁶⁶ [Redacted]

¹⁶⁷ [Redacted]

¹⁶⁸ IFC FI Interpretation Note, *supra* note 111, at para. IN8–IN9.

¹⁶⁹ [Redacted]

¹⁷⁰ [Redacted]

¹⁷¹ Asian Development Bank, Final Report on Compliance Review Panel Request No. 2012/2, at para. 6, 9, 14 Jan. 2014 [hereinafter ADB Railway Project Compliance Review Report].

¹⁷² *Id.* at para. 8.

¹⁷³ *Id.* at para. 11

¹⁷⁴ *Id.* at 72–73.

¹⁷⁵ ADB Railway Project Compliance Review Report, *supra* note 171, at 72–73.

¹⁷⁶ *Id.*

to have ignored the foreseeable risk acknowledged by ADB's Compliance Review Panel that predatory lenders will grant outsize loans in exchange for land titles as collateral, which drives indebtedness and land dispossession.¹⁷⁷ The foreseeable risks are contrary to the goals and principles of IFC's own E&S Sustainability Policy, yet IFC made no apparent efforts¹⁷⁸ to adjust risk categorization or enact conditions in the loan agreements to improve lending practices as implicitly proposed by the ADB Compliance Review Panel.¹⁷⁹ IFC's failure to conduct adequate pre-project due diligence and related failure to assign an appropriate risk categorization thus warrants an investigation by the CAO.

109. The CAO has previously acknowledged when the IFC has failed to consider country-specific context and erroneously relied on incorrect assumptions about the levels of risk in an investment during pre-project due diligence. In its audit related to a series of complaints filed by local Indonesian communities regarding The Wilmar Group, a large agribusiness conglomerate specializing in palm oil, and its subsidiary, PT Asiatic Persada, the CAO concluded that the IFC failed to meet the requirements of its own performance standards in part by failing to assess the full supply chain associated with an investment. The CAO noted that the difference in scope of E&S reviews for different risk categories is considerable and in reality means that significant internal and external commercial pressure can skew the IFC's due diligence and categorization process towards a lower risk category.¹⁸⁰ Specifically, “[n]arrow interpretation of the investment impacts—in full knowledge of the broader implications—was inconsistent with IFC’s asserted role.”¹⁸¹ The CAO further concluded that, “incorrect assumptions were made about the impact of certain types of financial products...without proper consideration of the sector and country context of the investment. ...IFC should have considered the impacts of its investment, rather than a narrow interpretation of specific financial flows.”¹⁸² The IFC has repeatedly made the same mistakes with the pre-project due diligence of its microfinance projects in Cambodia, operating from a default position that microfinance is low risk and failing to consider the country-specific evidence of social harms resulting from the IFC's microfinance projects as applied in Cambodia. The IFC has therefore similarly narrowly considered the E&S risks associated with microlending and ignored the full range of associated social harms, which results in an inappropriately low risk categorization.
110. The IFC's insufficient due diligence into the level of risk associated with its microfinance projects in Cambodia is also similar to the overly narrow pre-project review that the CAO criticized in the Dinant cases. A series of complaints alleged that Corporacion Dinant, a palm oil and food company in Honduras, had used violence and private and public security forces to forcibly evict farmers, and that the IFC had failed to identify and respond to social risks given the temporal and country-specific context.¹⁸³ Following an audit, the CAO concluded that the IFC's pre-project review was not “commensurate to risk” based on available evidence of country conditions, and that the IFC should have known of public allegations that went beyond what was considered in the course of due diligence.¹⁸⁴ The CAO thus concluded that the IFC had adopted an overly narrow definition of

¹⁷⁷ *See id.*

¹⁷⁸ Based on a review of publicly available information on IFC's website, which as noted above does not sufficiently disclose critical details regarding project agreements and conditions placed on IFC's clients, which is inconsistent with IFC's Access to Information Policy.

¹⁷⁹ *See* ADB Railway Project Compliance Review Report, *supra* note 171, at para. 206 and p. 73.

¹⁸⁰ CAO, Wilmar Trading (IFC No. 20348) et al., Audit Monitoring and Closure Report, 27 Mar. 2013, at 8–9.

¹⁸¹ *Id.* at 9.

¹⁸² *Id.* (emphasis added)

¹⁸³ Compliance Advisor Ombudsman (CAO), Honduras/Dinant-01/CAO Vice President Request, website synopsis, https://web.archive.org/web/20210610060830/http://www.cao-ombudsman.org/cases/case_detail.aspx?id=188.

¹⁸⁴ *Id.*

project E&S risk and improperly assigned a lower categorization.¹⁸⁵ The IFC has in this case similarly disregarded public allegations of social risks specific to the project country, [redacted].¹⁸⁶ Notably, the information that was publicly available to the IFC here addressed sector-wide social harms,¹⁸⁷ evincing not just the severity but also the level of risk associated with the IFC's microfinance projects in Cambodia. The available information covered contemporary developments¹⁸⁸ as well as broader time periods¹⁸⁹ and provided evidence that social harms are associated with systemic issues rather than isolated cases. The IFC's repeated insistence on FI-2 lower risk classification for microfinance projects is therefore a similarly overly narrow definition of project E&S risk, resulting in improper categorization.

111. IFC restructured its environmental and social risk categorization in 2006 and again in 2012 to ensure that due diligence properly informed risk categorization.¹⁹⁰ The current practice of categorizing most microfinance loans as FI-2 without adequate due diligence into the level and magnitude of social risks associated with a project runs contrary to these reforms and the purpose behind a risk categorization framework. This categorization, done without appropriate due diligence, further exposes protection gaps in IFC's E&S Framework with respect to microfinance projects. While certain tools associated with the proper higher risk classification of FI-1, such as conducting an E&S identification prior to each borrower's sub-project, are inappropriate or unworkable in the microfinance sector, the IFC must revise its E&S framework to find the right tools to assess and manage risks in those projects—not ignore the social risks entirely. Willful or negligent disregard of clear social risks and demonstrated social harms associated with its investments is contrary to IFC's stated mission, roles and responsibilities.¹⁹¹ The CAO addressed such an issue in 2010, analysing IFC's financial intermediary and other investments and concluding that there were significant gaps between IFC's environmental and social sustainability policies and their implementation by clients.¹⁹² The CAO's recommendations on these gaps contributed to the revised E&S Framework in 2012 that helps to anchor IFC's mission and improve the social and environmental outcomes of its projects. The policy gaps and resulting social harms exposed in this complaint support another CAO investigation of IFC's policies.

C. Analysis of IFC's failure to conduct adequate due diligence on clients' ESMS

112. IFC's pre-project due diligence requirements include a comprehensive review of client's ESMS in consideration of levels of environmental and social risk. Financial intermediary clients are required to develop and operate ESMS that are consistent with the level of environmental and social risk in their portfolios and incorporate the principles of Performance Standard 1.¹⁹³ Financial intermediaries with business activities that present moderate to high environmental or social risks will require high risk business activities to apply the relevant requirements of the

¹⁸⁵ *Id.*

¹⁸⁶ [Redacted]

¹⁸⁷ Human Rights Watch, World Bank: Investigate Cambodia's Micro-Loans, 14 Dec. 2020, <https://www.hrw.org/news/2020/12/14/world-bank-investigate-cambodias-micro-loans>. See generally LICADHO, COLLATERAL DAMAGE, *supra* note 141.

¹⁸⁸ Human Rights Watch, World Bank: Investigate Cambodia's Micro-Loans, 14 Dec. 2020, <https://www.hrw.org/news/2020/12/14/world-bank-investigate-cambodias-micro-loans>.

¹⁸⁹ *Supra* Section III.B. at para. 102.

¹⁹⁰ IFC, Interpretation Note on Environmental and Social Categorization (2012), at para. IN3, Box 1, IN6 & n.5.

¹⁹¹ See IFC E&S Policy, *supra* note 109, at para. 8, 9, 19, 20, 21, 23, 46.

¹⁹² CAO, Advisory Note: Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, at 20–21 (2010).

¹⁹³ See IFC E&S Policy, *supra* note 109, at para. 35.

Performance Standards, which the ESMS must be designed to address.¹⁹⁴ In its 2010 review of gaps in IFC policy and the environmental and social performance of financial intermediary clients, the CAO concluded that the “IFC needs to assess its [financial intermediary] clients’ commitment to managing their [environmental and social] risks as an important investment screen.”¹⁹⁵ Given the continuation and escalation of social harms associated with the investments identified in Section I, there is no indication that IFC reassessed the commitment, willingness, or in-house capacity of its financial intermediary clients for day-to-day management of a high level of social risks and impacts before approving additional investments.

113. The IFC’s increase in microfinance investments has exposed gaps in the current E&S Framework where it does not adequately correspond to the IFC’s changed portfolio. As noted in the Prefatory Statement, the IFC has increased microfinance investments in recent years bringing about a shift in those affected by IFC projects from victims of IFC sub-client activities to the IFC sub-clients themselves. In the IFC’s current framework for financial intermediaries, the IFC client bears the responsibility for applying IFC Performance Standards and the Exclusion List to its business activities and those of its sub-clients. In addition, under the FI-2 risk categorization that is frequently applied to microfinance lending, the IFC client essentially has the discretion to decide which projects (if any) the Performance Standards should apply to.¹⁹⁶ IFC financial intermediary clients in microfinance, which this complaint has already demonstrated are engaging in widespread unethical lending and collection practices, are focusing on the activities of sub-clients rather than themselves. The activities of MFI borrowers, such as farming, are not causing the significant environmental and social harms; it is the business activities of the client which is not supervising itself. IFC Client [redacted] illustrated this fundamental problem when describing its own ESMS. [redacted] stated that its internal ESMS screens the business activities of borrowers for E&S risks and against the Exclusion List.¹⁹⁷ However, it does not apparently screen its own activities for E&S risks and resulting harms to the borrowers. This gap in monitoring and supervision is further significant in that a microfinance borrower is not a traditional sub-client; microfinance borrowers are most often not registered businesses and thus they require more protection and monitoring to ensure that IFC projects are not having harmful social impacts.
114. In addition, the IFC has previously expressed concern over financial intermediary policies that can drive loan officers to engage in irresponsible lending practices, engage in higher risk transactions, and also manipulate information on loan performance. In its 2015 review of consumer protections in Cambodia, the IFC expressed concern over bonuses paid to loan officers based on the amount of credit granted or for keeping the reported rate of loan delinquencies below a certain level.¹⁹⁸ The IFC acknowledged that this incentive system could lead loan officers to grant higher risk transactions and to “undertake more aggressive and inappropriate collection practices.”¹⁹⁹ The IFC concluded by calling for improved and active monitoring and auditing within financial intermediary ESMS.²⁰⁰ Public reporting from the sector four years after the IFC’s report, however, confirmed that predatory and aggressive lending and collection practices continued, suggesting that the IFC failed to appropriately integrate these improvements into its clients’ ESMS. In its 2019 report, *Collateral Damage*, [redacted], LICADHO reported that two current and former MFI executives stated that local village- and commune-level authorities act as enforcers for MFIs to pressure clients

¹⁹⁴ See *id.*

¹⁹⁵ *Id.* at 21.

¹⁹⁶ The Performance Standards apply to “high risk” projects, but the IFC Client determines which projects (if any)

¹⁹⁷ [Redacted]

¹⁹⁸ IFC, PROMOTING FINANCIAL CONSUMER PROTECTIONS IN CAMBODIA, *supra* note 130, at 7.

¹⁹⁹ *Id.*

²⁰⁰ See *id.*

into taking any means necessary to repay loans.²⁰¹ The MFI executives further confirmed that MFIs routinely pressure borrowers to sell their land privately to repay loans, with one executive stating, “land prices are the single most important factor for the MFI market right now.”²⁰² The widespread reporting on the increasing scale and level of social harms reveals the inadequacy of IFC Client Microfinance Providers in identifying and avoiding social risks; [redacted]. This implies that the IFC failed to follow-up on and adequately consider a significant known risk regarding financial intermediaries’ ESMS when approving subsequent loans.

115. The IFC’s failure to conduct adequate pre-project due diligence in these cases is similar to the IFC’s alleged lack of proper diligence regarding the investments under investigation in Rizal Commercial Banking Corporation. In Rizal, a community alliance filed a complaint with the CAO on behalf of communities from 19 different areas in the Philippines regarding IFC project investments to Rizal Commercial Banking Corporation, which in turn provided financing to 19 active or proposed coal-fired power plants. The communities alleged serious E&S impacts from the sub-project, and that Rizal’s ESMS was inadequate to address the high risk of those harms. Although the Rizal investment was categorized as higher risk than the investments in this complaint, the standard for IFC’s pre-investment due diligence on the client’s ESMS is the same: IFC must review the client’s capacity to implement the IFC’s requirements and its track record to date in ESMS implementation.²⁰³ In Rizal, the CAO decided to conduct a full investigation into IFC’s due diligence and other compliance questions, concluding there are substantial concerns regarding the E&S outcomes of IFC’s Rizal investment. In support of its decision, the CAO noted: (i) the specific allegations of adverse impacts raised in the complaints; (ii) the number of coal-fired power plants being financed; (iii) the E&S risk profile of the projects; and (iv) questions regarding the capacity of the client to implement an adequate ESMS.²⁰⁴ Implicitly, the severity and scale of actual or potential environmental and social harms raise questions regarding the sufficiency of an ESMS to safeguard against such risks and warrant thorough due diligence by the IFC. Similarly, the IFC investments at issue in this complaint relate to a significant number of projects (microfinance loans) that are associated with serious actual or potential social harms (i.e. the dispossession of Indigenous People’s land) on a significant scale (across Cambodia). Evidence of those social harms as noted above in Section II., in particular the increasing severity of those harms, raise serious questions regarding the adequacy of IFC clients’ ESMS, which warrant a CAO investigation into IFC’s pre-project due diligence.

D. Analysis of IFC’s failure to adequately supervise IFC clients’ performance and ESMS implementation

116. The E&S Framework requires IFC to supervise financial intermediaries throughout the investment through periodic review of the process and results of the client’s environmental and social due diligence and its ESMS implementation.²⁰⁵ In addition, IFC will periodically review a sample of the financial intermediaries’ other investments, especially for business activities with significant environmental and social risks.²⁰⁶ IFC supervision can include visits to the financial intermediary’s

²⁰¹ LICADHO, COLLATERAL DAMAGE, *supra* note 141, at 7.

²⁰² *Id.*

²⁰³ Office of the Compliance Advisor Ombudsman (CAO), Compliance Appraisal, IFC Investments in Rizal Commercial Banking Corporation, 2 Oct. 2019, at 12 (citing to the Environmental and Social Review Procedures, para 7.2.16–17).

²⁰⁴ *Id.* at 14–15.

²⁰⁵ IFC E&S Policy, *supra* note 109, at para. 45. *Cf.* United Nations Guiding Principles on Business and Human Rights, Principle 19 & Commentary (2011) (findings from impact assessments should inform appropriate action including oversight processes); OECD Guidelines for Multinational Enterprises, at para. 19–20 (2011).

²⁰⁶ IFC E&S Policy, *supra* note 109, at para. 45.

operations, as well as to the recipients of loans, particularly with high-risk subprojects.²⁰⁷ IFC shall work with its clients to address any shortcomings in their ESMS.²⁰⁸

117. Almost 10 years ago, the CAO expressed concern regarding IFC’s financial market, specifically financial intermediary, investments and a gap between IFC environmental and social policies and outcomes. In a 2012 sector-wide audit of financial market transactions including financial intermediary investments, the CAO noted that “IFC’s activities...are creating a potentially increasing risk for IFC to the extent that [investments] may result in environmental and/or social harm.”²⁰⁹ The CAO implied the risk is due to a failure of supervision, finding “that IFC’s focus on establishing a [ESMS] as a legally required product—instead of as part of a more fundamental change management process—creates the risk...the [ESMS] can become merely an end in itself (a box-ticking exercise, rather than a means of enhancing [environmental and social] performance outcomes on the ground.”²¹⁰ The CAO continued that IFC’s client supervision was focused on whether an ESMS was implemented but lacked tools for measuring actual E&S performance to confirm that there has been no harm.²¹¹ The CAO has conducted three monitoring reports in follow-up to the audit and as recently as 2017 continued to warn of supervision failings by the IFC of FI clients. In its 2017 monitoring report, the CAO ranked IFC’s supervision of financial intermediary investments a dismal 13 on a compliance scale of 35, stating that in the majority of cases reviewed the IFC’s “supervision did not provide assurance that the [financial intermediary client] was implementing an ESMS that met IFC’s requirements.”²¹²
118. The continued and escalating social harms evidenced in this complaint indicate that IFC’s supervision of its MFI clients in Cambodia suffers from the same problems. In response to Human Rights Watch’s 2020 letters to IFC regarding social harms in the microfinance sector, IFC’s Senior Country Manager for Cambodia, Laos and Vietnam simply stated that “we...monitor our clients’ compliance with these [responsible finance] principles” and referenced an advisory program to raise awareness of high-risk financing.²¹³ In response, Human Rights Watch pointed out that IFC had not clarified how it deals with non-compliance by a client.²¹⁴ IFC has also not addressed the disturbing admissions from executives with Cambodian MFIs admitting that they purposefully engage in predatory lending practices, including seeking land titles as collateral and then pressuring borrowers into extrajudicial land sales, dispossessing communities and Indigenous peoples of their land.²¹⁵ In contrast, IFC has continued to downgrade the risk of microfinance investments thus pushing the responsibility for deciding when Performance Standards apply—which transactions are high risk—to those very IFC clients [redacted]. The widespread pattern and practice of irresponsible and coercive lending practices that results in the myriad social harms referenced in this complaint amply demonstrates that IFC has, for years, failed to properly supervise its MFI clients in Cambodia and address any shortcomings in IFC’s supervision policies.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ CAO, Audit Report: Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries, at 9 (2012) [CAO 2012 FI Audit Report].

²¹⁰ *Id.* at 37.

²¹¹ *Id.* at 36.

²¹² CAO, Monitoring Report: Third Monitoring Report of IFC’s Response to CAO Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries, at 7, 11–12 (2017).

²¹³ [Redacted]. In addition, we cannot find any project information related to these “advisory services” in IFC’s Project Information and Data Portal or in the other publicly available information on IFC’s website.

²¹⁴ Human Rights Watch, *World Bank: Investigate Cambodia’s Micro-Loans*, 14 Dec. 2020, <https://www.hrw.org/news/2020/12/14/world-bank-investigate-cambodias-micro-loans>.

²¹⁵ See LICADHO, *COLLATERAL DAMAGE*, *supra* note 141, at 6–7.

119. [Redacted]^{216 217}
120. [Redacted]
121. In conclusion, IFC failed to conduct adequate due diligence regarding the social performance of its investments both pre-project and during project implementation, instead continuing to heavily invest in a sector responsible for widespread and well-documented harm to vulnerable individuals and communities. IFC further failed to assess, structure and supervise its investments in accordance with applicable IFC policies, procedures and standards. The long-standing nature of many of these failures, despite previous audits and reviews, supports that there continue to be significant gaps in IFC's E&S Framework and related policies and procedures that must be addressed, to improve the social performance of IFC's microfinance investments.
- IV. THIS MATTER FALLS UNDER CAO'S MANDATE BECAUSE IFC'S LACK OF DUE DILIGENCE AND SUPERVISION RESULTED IN PROJECTS THAT CAUSED SOCIAL HARMS TO THE COMPLAINANTS, IN VIOLATION OF IFC'S OWN PERFORMANCE STANDARDS AND EXCLUSION LIST.
122. The complainants' experiences illustrate the negative social impacts associated with the unethical and coercive business activities of IFC Client Microfinance Providers through IFC-financed microfinance projects in Cambodia. The harms identified in this complaint are in opposition to the IFC's mission, investment strategy, and E&S Framework. Reported incidents of child labour and adverse impacts on Indigenous Peoples are clear violations of the IFC's Exclusion List. The other negative social impacts reported by complainants, including eating less and poorer quality food and land dispossession, are inconsistent with the IFC's Performance Standards, which demonstrates both the level and severity of harms associated with IFC projects.
123. IFC's performance standards direct clients on how to avoid, mitigate, and manage risks and negative social and environmental impacts in project activities.²¹⁸ IFC's financial intermediary clients are only required to apply the performance standards to high-risk activities.²¹⁹ However, the varied social harms suffered by the complainants fall within the scope of at least five of the IFC's eight performance standards, including involuntary resettlement and adverse impacts on Indigenous Peoples. Those harms demonstrate that the IFC's microfinance investments in the current unregulated, predatory, and abusive environment in Cambodia are high-risk activities. The level of social risks and impacts are thus those that the IFC has designated to be of the utmost concern in its projects, and loan conditions and Client ESMS should have identified and appropriately avoided, mitigated and managed these risks.
124. In addition, the IFC Exclusion List applies to all financing and defines a list of prohibited projects for which IFC funds cannot be used. When investing in microfinance activities, the prohibited list includes projects or activities involving harmful child labour and activities that impinge on the lands owned or claimed by Indigenous Peoples without their full documented consent.

²¹⁶ [Redacted]

²¹⁷ [Redacted]

²¹⁸ IFC, Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts (2012), at para. 1 [hereinafter PS1].

²¹⁹ FI Interpretation Note, *supra* note 111, at para. IN10, IN12, IN13.

Performance Standard 1: Assessment and Management of Environmental and Social Risks & Impacts

125. The range of severe social harms suffered by the complainants, which are contrary to several of IFC's specific Performance Standards, indicate that the IFC Client Microfinance Providers have failed to establish and implement adequate ESMS, which the IFC has failed to properly consider in its due diligence and supervision. Performance Standard 1 applies to all projects that have environmental and social risks and impacts regardless of risk categorization.²²⁰ Performance Standard 1 guides IFC clients in the creation of (i) an integrated assessment to identify environmental and social impacts and risks associated with a project; (ii) effect community engagement and consultation on project activities; and (iii) IFC client's management of environmental and social performance throughout the life of the project.²²¹ Performance Standard 1 applies to all projects that have environmental and social risks and impacts.²²² Financial intermediaries when developing and operating their ESMS should incorporate Performance Standard 1.²²³
126. [Redacted]^{224 225 226 227}
127. [Redacted]^{228 229 230 231 232 233}
128. Grievance mechanisms must be established for affected communities to facilitate resolution of concerns through a prompt, understandable and transparent process.²³⁴ The IFC client bears the burden to inform affected communities about available grievance mechanisms.²³⁵
129. [Redacted]^{236 237 238}

²²⁰ See PS1, *supra* note 218, at para. 4.

²²¹ *Id.* at para. 3.

²²² *Id.* at para. 4.

²²³ See E&S Policy, *supra* note 110, at para. 35.

²²⁴ PS1, *supra* note 218, at para. 7.

²²⁵ "Defined as the exercise of professional skill, diligence, prudence and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally..." *Id.* at 3 n.10.

²²⁶ *Id.* at para. 7.

²²⁷ *Id.*

²²⁸ *Id.* at para. 13.

²²⁹ PS1, *supra* note 218, at para. 14–15.

²³⁰ *Id.* at para. 17.

²³¹ *Id.* at para. 22.

²³² *Id.* at para. 25.

²³³ PS1, *supra* note 218, at para. 23.

²³⁴ *Id.* at para. 35.

²³⁵ See *id.*

²³⁶ [Redacted]

²³⁷ [Redacted]

²³⁸ [Redacted]

130. [Redacted]^{239 240 241}

(a) ACLEDA

131. The details of ACLEDA’s ESMS are not publicly disclosed and ACLEDA’s published Environmental and Social Sustainability Report for 2020 is devoid of any mention of assessment or management of E&S risk from its microfinance activities.²⁴² ACLEDA surveyed a random sampling of 2,172 SME borrowers on their perceived income situation only between December 2020 and January 2021, and states that 15.61 percent perceived themselves as worse off than before.²⁴³ ACLEDA’s survey fails to consider all relevant E&S risks, including those to protected populations such as Indigenous Peoples. In contrast, the interviews conducted by independent NGOs such as LICADHO with ACLEDA borrowers have documented a variety of negative social impacts, including those relevant to the Performance Standards.²⁴⁴ ACLEDA’s website includes an online form to file grievances, and states that complaints regarding ACLEDA’s activities can also be submitted by email, through a telephone hotline, or in person at an ACLEDA office.²⁴⁵ The 2020 Annual Report contains no information regarding its grievance mechanism beyond the timelines to submit a complaint and receive a response, nor does it list the incidence of complaints or resolutions.²⁴⁶
132. In 2019, as a condition of Project 42480, an IFC syndicated subordinated loan to ACLEDA of up to US\$60 million with a focus on SMEs and women-owned SMEs, IFC required ACLEDA to “upgrade the ESMS to amend the scope of Performance Standards application.”²⁴⁷ The condition implicitly acknowledges problems with ACLEDA’s identification and management of harmful social impacts from its SME lending activities. Two-and-a-half years later, however, there is no publicly available information regarding how ACLEDA assessed and upgraded its ESMS or whether it complied with this condition in any meaningful way. IFC’s project database simply lists an “anticipated completion date” of 30 December 2019 to “upgrade ESMS.”²⁴⁸ To the contrary, the social harms that the complainants [redacted] suffered after borrowing in relation to this IFC project, which included unethical lending practices, abusive collection practices, loss of livelihood, and child labour, support the conclusion that problems persisted in ACLEDA’s identification and management of harmful social impacts. [redacted]²⁴⁹ The IFC’s failure to adequately supervise the project and client’s compliance with loan conditions thus permitted the continuation of project-related harms including child labour.

²³⁹ [Redacted]

²⁴⁰ [Redacted]

²⁴¹ [Redacted]

²⁴² See ACLEDA Bank, 2020 Annual Report at 38–42, 24 March 2021,

https://www.acledabank.com.kh/kh/assets/pdf_zip/ACLEDA%20Bank%20-%20Annual%20Report%202020.pdf.

The only social performance indicators identified by ACLEDA are the gender ratio and training of its employees. *Id.* at 38.

²⁴³ *Id.* at 41.

²⁴⁴ [redacted]

²⁴⁵ ACLEDA Bank, Complaint Form, https://www.acledabank.com.kh/kh/eng/cu_complaintform.

²⁴⁶ Cf. IFC, Good Practice Note, Addressing Grievances from Project-Affected Communities, Sept. 2009, at 7–27 [hereinafter IFC Practice Note on Grievances].

²⁴⁷ IFC Project Information & Data Portal, Project 42480 Summary of Investment Information (SII), Environmental & Social Categorization Rationale/Risks & Mitigation, Environmental & Social Management System, <https://disclosures.ifc.org/project-detail/SII/42480/acleda-subdebt-3>.

²⁴⁸ *Id.* at Mitigation Measures/Environmental & Social Action Plan (ESAP).

²⁴⁹ [Redacted]

133. [Redacted]^{250 251 252 253}

(b) Amret

134. The details of Amret’s ESMS are not publicly disclosed by the MFI or the IFC. The “Social Performance Management” section of Amret’s website provides an overview of the Smart Campaign’s Client Protection Principles which Amret has adopted as guidelines for consumer protection.²⁵⁴ Amret’s 2020 Annual Report provides an overview of some aspects of its ESMS.²⁵⁵ Amret broadly mentions screening loans for E&S risks, without specifying, for example, the baseline data, level of detail, and scope, the outcomes, or what procedures and plans were or could be employed to address or mitigate any identified risks.²⁵⁶ Moreover, Amret only reports screening loans above US\$10,000 for E&S risks²⁵⁷ despite the fact that screening and monitoring of microlending activities (loans of less than US\$10,000) is a requirement of Amret’s IFC project investment agreements²⁵⁸ and Amret issued a minimum of 2,848 individual loans in 2020.²⁵⁹ Amret’s 2020 Annual Report states that the MFI complies with the CPP guideline for “effective systems in place to receive and resolve client complaints”²⁶⁰; however there is no information regarding filing complaints publicly available on Amret’s website and the annual report does not explain what grievance mechanisms are in place or provide data regarding complaints received and resolved. The IFC’s Environmental and Social Review Summaries and related Environmental and Social Action Plans are not publicly available.²⁶¹

135. [Redacted] The lack of sufficient practices or enforcement thereof to address the abusive conduct perpetrated by multiple Amret officials on multiple occasions demonstrates that Amret lacks a comprehensive ESMS. Moreover, the absence of an effective grievance mechanism with investigation, resolution, and follow-up monitoring aspects²⁶², or the failure to implement it, further supports that Amret has not implemented or enforced an adequate ESMS. IFC’s pre-project due diligence and project supervision have thus failed to adequately assess continuing social harms associated with Amret investments.

(c) LOLC

136. The details of LOLC’s ESMS are not publicly disclosed by the MFI or the IFC. LOLC’s 2020

²⁵⁰ [Redacted]

²⁵¹ [Redacted]

²⁵² [Redacted]

²⁵³ See IFC, Guidance Note 1: Assessment and Management of Environmental and Social Risks and Impacts, 1 Jan. 2012, at para. 16 [hereinafter PS1 Guidance Note].

²⁵⁴ Amret, Social Performance Management, <https://www.amret.com.kh/en/environmental-social-performance>.

²⁵⁵ Amret, Annual Report 2020 at 47–52, <https://www.amret.com.kh/en/annual-reports>.

²⁵⁶ See *id.* at 48.

²⁵⁷ Compare *id.* at 48 (12,826 loans have been screened to detect E&S risks), with Amret, Social Performance Management, <https://www.amret.com.kh/en/environmental-social-performance> (12,826 loan requests, whose sizes were above \$10,000, were screened for E&S risks) (emphasis added).

²⁵⁸ See, e.g., IFC Project Information & Data Portal, Project 34748: Summary of Investment Information (SII), Environmental & Social Categorization Rationale/Risks & Mitigation, <https://disclosures.ifc.org/project-detail/SII/34748/amret-mfi-equity>.

²⁵⁹ See Amret, ANNUAL REPORT 2020, *supra* note 255, at 26 “Loan Portfolio”.

²⁶⁰ *Id.* at 52.

²⁶¹ See, e.g., IFC Project Information & Data Portal, Project 37505: Summary of Investment Information (SII), Environmental & Social Action Plan (ESAP), <https://disclosures.ifc.org/project-detail/SII/37505/amret-ab-loan>.²⁶² See IFC Practice Note on Grievances, *supra* note 246, at 2–4, 7–27.

²⁶² See IFC Practice Note on Grievances, *supra* note 246, at 2–4, 7–27.

Annual Report briefly refers to E&S guidelines, stating that risk identification is only performed for loans of US\$30,000 and up.²⁶³ A portion of LOLC’s funding comes from the Microfinance Initiative for Asia Debt Fund (MIFA), in which IFC holds shares and is a major investor. IFC’s equity investment and US\$20 million loan issued in 2021 (IFC Project 31467) requires supported MFIs to have a sufficient process in place for “*all investments*” to be “screened and processed to avoid supporting activities on the Microfinance Exclusion List”.²⁶⁴ LOLC’s website includes a link to file a complaint in English, however its Khmer page uses the word that translates to “opinion”, a more general feedback that is distinct from the Khmer word for “complaint”. Clicking the link opens to a general, abbreviated comment form and does not provide any additional information regarding the process, timeframes, protection against retribution, and transparency. The link also doesn’t appear on some browsers, such as Firefox.²⁶⁵

137. A portion of IFC-funded projects in LOLC are funneled through the Microfinance Initiative for Asia Debt Fund (MIFA), which was required to develop and implement an ESMS as a condition of the IFC’s investment.²⁶⁶ There is no publicly available information regarding an ESMS for MIFA and the periodic reports that it is required to submit to the IFC are also not publicly available.
138. **[Redacted]**^{267 268 269 270 271} LOLC’s failure to properly create and implement a sufficient ESMS, and the IFC’s due diligence failure to account for such deficiencies pre-project and throughout project supervision have created a continuing harm **[redacted]** in violation of IFC’s Exclusion List and Performance Standard **[redacted]**.

(d) Sathapana

139. The details of Sathapana’s ESMS are not publicly disclosed by the MFI or the IFC. Sathapana’s 2020 annual report refers to its policy on Environmental and Social Sustainability, which reportedly include performance standards and an exclusion list regarding prohibited activities, as well as E&S risk considerations in its credit policy.²⁷² Specific details regarding the performance standards, prohibited activities, procedures, practices and support, as well as mitigation measures, are not publicly available. The annual report only lists gender and income as social performance indicators²⁷³; there is no information provided on what social harm indicators are monitored, if any. There is no information regarding grievance mechanisms or filing a complaint on Sathapana’s website, and the link to file a complaint is hidden in a general feedback form, where in Khmer the word “complaint” is not translated to Khmer as “complaint”, but rather as “express dissatisfaction”.²⁷⁴

²⁶³ LOLC (Cambodia), Plc., Annual Report 2020, 26 Mar. 2021, at 29, <https://www.lolc.com.kh/en/annual-reports-investor-relation>.

²⁶⁴ IFC Project Information & Data Portal, Project 31467: Summary of Investment Information (SII), Environmental & Social Issues - Category, <https://disclosures.ifc.org/project-detail/SPI/31467/mifa-debt-fund> (emphasis added).

²⁶⁵ See LOLC (Cambodia) Plc., Comment, <https://www.lolc.com.kh/en/comment>.

²⁶⁶ *Id.*

²⁶⁷ [Redacted]

²⁶⁸ [Redacted]

²⁶⁹ [Redacted]

²⁷⁰ [Redacted]

²⁷¹ [Redacted]

²⁷² Sathapana Bank, ANNUAL REPORT 2020, *supra* note 51.

²⁷³ *Id.* at 44–45.

²⁷⁴ Sathapana Bank, Inquiry, Feedback, <https://www.sathapana.com.kh/inquiry/>.

140. [Redacted]²⁷⁵
141. A portion of IFC-funded projects in Sathapana are funneled through the Microfinance Initiative for Asia Debt Fund (MIFA), which was required to develop and implement an ESMS as a condition of the IFC's investment.²⁷⁶ There is no publicly available information regarding an ESMS for MIFA and the periodic reports that it is required to submit to the IFC are also not publicly available.
142. [Redacted]^{277 278}. IFC's failure to conduct adequate due diligence and project supervision to determine gaps in Sathapana's ESMS have created a continuing harm against [redacted].

(e) Hattha Bank

143. The details of Hattha Bank's ESMS are not publicly disclosed by the MFI or the IFC. Hattha Bank's 2020 annual report makes no reference to its ESMS.²⁷⁹ The only social performance indicators mentioned are gender, rural coverage, and client retention rate.²⁸⁰ There is no information regarding grievance mechanisms or link for filing a complaint on Hattha Bank's website. As conditions of several of its IFC projects, Hattha Bank is required to maintain its existing ESMS as its "E&S roles and responsibilities are broadly commensurate with the risks of its existing SME lending."²⁸¹
144. [Redacted]²⁸² IFC's failure to flag those ESMS deficiencies in pre-project due diligence or project supervision result in IFC funds being used in activities that [redacted].
145. What little information is publicly available on the IFC Client Microfinance Providers' ESMS indicates that they have not created, implemented, maintained, or updated ESMS that adequately incorporate the requirements of Performance Standard 1. The harms identified by the complainants in this case rather demonstrate that the ESMS of the IFC Client Microfinance Providers as implemented fail to adequately identify, address, prevent or mitigate the wide range of serious social harms inflicted by the IFC Client Microfinance Providers' business activities.

IFC Exclusion List & Performance Standard 2: Labor and Working Conditions - Child Labor

146. The trend of predatory lending and abusive collection practices applied by IFC Client Microfinance Providers, which is demonstrated by the complainants' experiences, drives child labour in Cambodia. [Redacted] complainants have had to resort to child labour to repay their IFC-financed loan. Financial intermediaries are prohibited from using IFC funds designated for microfinance in activities involving harmful or exploitative forms of forced labour or harmful child labour.²⁸³

[Redacted]

²⁷⁶ *Id.*

²⁷⁷ [Redacted]

²⁷⁸ [Redacted]

²⁷⁹ *See generally* Hattha Bank, Annual Report 2020 (2020), available at <https://www.hatthabank.com/publication/reports>.

²⁸⁰ *Id.* at 5.

²⁸¹ IFC Project Information & Data Portal, Project 44742: Summary of Investment Information (SII), Environmental & Social Management System (ESMS), <https://disclosures.ifc.org/project-detail/SII/44742/htb-sub-debt>.

²⁸² [Redacted]

²⁸³ IFC Exclusion List, https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/company-

Forced labour means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.²⁸⁴

147. Performance Standard 2 similarly prohibits IFC clients from employing children in their own workforce, directly, under contract, or in the supply chain, “in any manner.”²⁸⁵ The prohibition is based on international law including the conventions of the International Labour Organization²⁸⁶ and the instruments of the United Nations.²⁸⁷ “Child labor” is thus defined under the accepted international definition as any work that deprives children of their childhood, their potential and their dignity, and that is harmful to the physical and mental development.²⁸⁸ In particular, “child labor” refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by: (i) depriving them of the opportunity to attend school; (ii) obliging them to leave school prematurely; and (iii) requiring them to attempt to combine school attendance with excessively long and heavy work.²⁸⁹ The prohibition on the worst forms of child labour, including hazardous work, has been clarified by ILO experts as applying to all children under the age of 18.²⁹⁰
148. The spirit of Performance Standard 2 is to ensure that IFC projects fostering economic growth should proceed in a way that treats workers fairly and provides them with safe and healthy working conditions.²⁹¹ Applying PS2 in the context of this complaint would thus be consistent with that intent and analogous to monitoring for and resolving the risk for child labour throughout the supply chain. In addition, the IFC has clarified that clients should avoid practices that have the effect of creating unpayable debt obligations.²⁹²
149. The predatory lending practices, out-size loans, and abusive collection practices employed by IFC Client Microfinance Providers have created an insurmountable debt cycle for borrowers that is fundamentally the “unpayable debt obligation” prohibited under Performance Standard 2. Overwhelming debt payments leave borrower parents unable to pay the fees associated with their children’s education²⁹³ and moreover force their children into harmful work²⁹⁴ to repay funds to IFC Client Microfinance Providers and thus ultimately the IFC. The IFC’s investment projects thus ultimately create unpayable debt obligations that fuel child labour in Cambodia.
150. The correlation between insurmountable MFI debt and child labour, specifically hazardous work, is well-documented in Cambodia and has been noted by the International Labour Organization²⁹⁵

[resources/ifcexclusionlist](#).

²⁸⁴ *Id.*

²⁸⁵ IFC, Performance Standard 2: Labor and Working Conditions (2012), at para. 4–7 [hereinafter PS2].

²⁸⁶ ILO Conventions 87, 98, 29, 105, 138, 182, 100, 111.

²⁸⁷ UN Convention on the Rights of the Child art. 32.1; UN Convention on the Protection of all Migrant Workers and Members of their Families; International Covenant on Economic and Social Rights art. 10.

²⁸⁸ See ILO Convention No. 138 on Minimum Age (of Employment) (1973); Int’l Labour Organization, Child Labour, <https://www.ilo.org/ipec/facts/lang--en/index.htm>.

²⁸⁹ *Id.*

²⁹⁰ ILO, Observation of the Cmt. of Experts on the Application of Conventions and Recommendations (2013); ILO Convention No. 182 on the Worst Forms of Child Labour (1999).

²⁹¹ See IFC, Guidance Note on Performance Standard 2: Labor and Working Conditions (2012), at para. 1.

²⁹² *Id.* at para. 72.

²⁹³ Cambodian state schools do not require tuition but there are often additional fees associated with a child’s education.

²⁹⁴ LICADHO, COLLATERAL DAMAGE, *supra* note 141, at 9.

²⁹⁵ See ILO, Int’l Programme on the Elimination of Child Labour (IPEC), Good Practices for Tackling Child Labour in Cambodia at 22 (2014), available at

and foreign governments in their business advisories regarding high-risk investments in Cambodia.²⁹⁶ LICADHO documented the association in its first report into the negative social impacts of Cambodia’s microfinance sector in 2019 [redacted]²⁹⁷, noting that burdensome debt often led to the removal of children from school to work locally or migrate for work.²⁹⁸ Children migrating alone to urban centres, often for employment as domestic workers or in the construction industry, found themselves in hazardous work that put them at increased risk for trafficking, injury and exploitation.²⁹⁹ MFI debt has also driven children to perform hazardous work in the agricultural sector, such as spraying pesticides on banana plantations or otherwise being exposed to dangerous chemicals.³⁰⁰ While private debt, specifically debt to MFIs, has been specifically noted as a driver of child labour in Cambodia, economic hardship generally has been linked to incidents of children leaving school to find work in other development projects as well, such as the ADB Railway Project.³⁰¹ The likelihood of child labour, a prohibited activity under the IFC Exclusion List and subject to guidance of Performance Standard 2, occurring was thus high and readily identifiable. [Redacted]³⁰² The IFC Client Microfinance Providers have therefore repeatedly failed to properly identify these transactions as high risk and apply the performance standards accordingly.³⁰³ The clients’ lack of an appropriate ESMS and Exclusion List violations should have been noted and addressed in IFC’s pre-project due diligence and client supervision.

151. [Redacted]³⁰⁴

Performance Standard 4: Community Health, Safety and Security

152. The adverse social harms resulting from IFC-financed microlending projects in Cambodia include food insecurity and additional threats to health which result from unsustainable levels of private debt. [Redacted] complainants have resorted to eating less and poorer quality food in an effort to meet their crushing loan payments.³⁰⁵ For high-risk activities, IFC Client Microfinance Providers are obligated to evaluate the risks and impacts to health and safety throughout the project life cycle and establish preventive and mitigation measures.³⁰⁶ Health risks are broadly construed in consideration of other guidance and would include food insecurity.³⁰⁷ In addition, food insecurity

https://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_27255/lang--en/index.htm (noting that “child labour is especially high in landless, migrant families who have had to sell their land to...pay off debts”).

²⁹⁶ U.S. Department of State, Cambodia Business Advisory on High-Risk Investments and Interactions, Press Release, 10 Nov. 2021, <https://www.state.gov/cambodia-business-advisory-on-high-risk-investments-and-interactions/>; see U.S. Department of Labor, 2020 Findings on the Worst Forms of Child Labor: Cambodia, at 2–3 (2021), available at https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Cambodia.pdf; U.S. Department of State, Cambodia 2019 Human Rights Report at 29 (2020), available at <https://www.state.gov/wp-content/uploads/2020/02/CAMBODIA-2019-HUMAN-RIGHTS-REPORT.pdf>.

²⁹⁷ [Redacted]

²⁹⁸ LICADHO, COLLATERAL DAMAGE, *supra* note 141, at 9.

²⁹⁹ *Id.*

³⁰⁰ Chan Muyhong, Sun Narin, et al., “Workers, including underage children, brave dangerous chemicals to make a living at Cambodia’s banana plantations,” *CamboJA News*, 26 Nov. 2021, <https://cambojanews.com/workers-including-underage-children-brave-dangerous-chemicals-to-make-a-living-at-cambodias-banana-plantations/>; see ILO Convention No. 182 on the Worst Forms of Child Labour art. 5(3) (1999) (listing commercial agricultural work among the worst forms of child labor).

³⁰¹ ADB Railway Project Compliance Review Report, *supra* note 171, at para. 40, 42.

³⁰² [Redacted]

³⁰³ [Redacted]

³⁰⁴ [Redacted]

³⁰⁵ [Redacted]

³⁰⁶ IFC, Performance Standard 4: Community Health, Safety, and Security (2012), at para. 5 [hereinafter PS4].

³⁰⁷ *Cf.* IFC, Guidance Note on Performance Standard 4: Community Health, Safety and Security (2012), at

has been linked as a driver of violations of other performance standards and prohibited activities, such as child labour.³⁰⁸

153. The correlation between high debt levels and eating less or poorer quality food³⁰⁹ is well-established as food constitutes between 64–66 percent of household consumption budget in Cambodia³¹⁰. In a 2013 poverty assessment, the World Bank noted that Cambodia was behind on progress in combating malnutrition in part due to poor quality of food.³¹¹ Food insecurity is also a well-established driver of child undernutrition, which was previously estimated to be the underlying cause of over 60 percent of Cambodia’s child mortality cases.³¹² Measures of child undernutrition, including stunting, wasting, underweight, and micronutrient deficiencies, are high in Cambodia despite years of economic growth.³¹³ Eating less and poorer quality food also results in undernutrition in women which negatively impacts the woman’s own health and productivity as well as the nutrition and development of future children.³¹⁴
154. Adversities faced in access to good nutrition and education in the earliest years of life can disrupt brain development, health, and development of human capital, the effects of which can continue throughout life in the form of lower school achievement, lower adult earnings, increased health expenditures, and high probability of adult noncommunicable chronic diseases.³¹⁵ Children raised under the burdens of high private debt that result from unethical lending practices—incomplete education, lack of proper nutrition, poor health—will be 49 percent less productive as an adult³¹⁶, repeating the cycle of poverty and microloan borrowing.
155. [Redacted]^{317 318 319 320}

Performance Standard 5: Land Acquisition and Involuntary Resettlement

156. The unethical lending practices employed by IFC Client Microfinance Providers target borrowers’ land—often the only asset for the poor—combining outsize loans with abusive collection practices to create a high risk of default and forced land sales that dispossess and displace Cambodia’s most

Annotated Bibliography, p. 16 (noting that the requirements of PS4 are based on principles in guidelines including IFC guidance on conducting a health impact assessment, INDEPTH guidance on longitudinal health and demographic evaluations, and WHO systems for measuring years of life lost from poor health).

³⁰⁸ See OHCHR, Fact Sheet No. 34: The Right to Adequate Food, at 6 (2010) (“children suffering from hunger and malnutrition are more vulnerable to being recruited into the worst forms of child labour to survive.”).

³⁰⁹ LICADHO, Right to Relief, *supra* note 8, at 4.

³¹⁰ See World Bank, Cambodia Poverty Assessment 2013 (2013), at 8, Box 1.

³¹¹ World Bank, Cambodia Poverty Assessment (2013), at XVIII.

³¹² World Bank, Cambodia Economic Update: Recent Economic Developments and Outlook, Selected Issue: Early Childhood Health and Nutrition, at 39 (May 2019) (citing to data from 2010).

³¹³ See *id.* at 3–6, 37.

³¹⁴ See World Bank, Cambodia Economic Update, *supra* note 312, at 37–38.

³¹⁵ *Id.* at 369.

³¹⁶ See *id.* at 34.

³¹⁷ See ADB Railway Project Compliance Review Report, *supra* note 171, at para. 40.

³¹⁸ See generally Independent Consultation and Investigation Mechanism (MICI), Inter-Am. Development Bank, Determination of Eligibility Memorandum, MICI-BID-HA-2017-0114, Aug. 2019, available at <https://www.accountabilitycounsel.org/wp-content/uploads/2019/08/mici-bid-ha-2017-0114-determination-of-eligibility-memorandum-english.pdf>.

³¹⁹ Cf. UN Food and Agriculture Organization, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, at 12.4 (2012), available at <https://www.fao.org/tenure/voluntary-guidelines/en/> [hereinafter FAO Voluntary Guidelines on Tenure of Land].

³²⁰ [Redacted]

vulnerable populations. [Redacted] complainants reported being coerced by IFC Client Microfinance Providers into selling their land outside of the legal foreclosure process in order to repay their loan.³²¹ Performance Standard 5 recognizes that project-related land acquisition and restrictions on land use, including lawful expropriation or restrictions on land rights, can have adverse social impacts including physical and economic displacement.³²² For those reasons, Performance Standard 5 includes the objectives to minimize displacement by exploring alternative project designs and avoid forced eviction, among others.³²³ The IFC further specifies that Performance Standard 5 should be applied by the client whenever project impacts on land or access to assets become significantly adverse regardless of whether there has been an actual acquisition or restriction of land.³²⁴ This approach is consistent with emerging norms regarding land tenure rights, for example in the UN Food and Agriculture Organization’s Voluntary Guidelines.³²⁵ Cambodian law restricts IFC Client Microfinance Providers from becoming the owners of the land that secures a loan³²⁶; [redacted].³²⁷

157. UN human rights experts have acknowledged the link between financialization of land and expanded credit and private debt, which makes “individual households vulnerable to predatory lending practices and the volatility of markets, the result of which is unprecedented housing precarity.”³²⁸ The UN Special Rapporteur on adequate housing³²⁹ has specifically criticized how the financialization of land as a commodity has led to widespread evictions and displacement, and called for improved human rights accountability within financial systems noting that “the global community cannot afford to be covered” by the complexity of the task.³³⁰ The special rapporteur has also criticized the tactic of blaming borrowers, who suffer the harms³³¹, for taking on too much debt without addressing the need for systemic reform³³², and the tendency to prioritize support for financial institutions rather than responding to the needs of those whose right to adequate housing is at stake³³³.

³²¹ [Redacted]

³²² IFC, Performance Standard 5: Land Acquisition and Involuntary Resettlement (2012), at para. 1–2, 5 [hereinafter PS5].

³²³ IFC, Guidance Note on Performance Standard 5: Land Acquisition and Involuntary Resettlement (2012), at 2–3.

³²⁴ PS5, *supra* note 322, at para. 7.

³²⁵ FAO Voluntary Guidelines on Tenure of Land, *supra* note 319, at 12.4, 12.15.

³²⁶ See Land Law art. 210, 221, NS/RKM/0801/14 (2001), (unofficial Eng. translation), *available at* http://huskyandpartners.com/images///Law%20Library/Real%20Property%20and%20Construction/20190604-Law%20on%20the%20Land_2001_Kh_En.pdf.pdf.

³²⁷ *Infra* Section IV at para. 180.

³²⁸ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, delivered to the UN Human Rights Council, at para. 5, U.N Doc. No. A/HRC/34/51, 18 Jan. 2017, <https://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx> [hereinafter 2017 Report of the Special Rapporteur on adequate housing].

³²⁹ *Cf.* IFC, Guidance Note on Performance Standard 5, *supra* note 323, at para. 14 (“Security of tenure is an important component of adequate housing.”).

³³⁰ 2017 Report of the Special Rapporteur on adequate housing, *supra* note 328, at para. 6, 9. *See id.* at para. 65 (“Decisions made by global financial corporations, institutions and private equity firms regarding access to credit, foreclosures and development priorities have a direct impact on homelessness, displacement and access to affordable housing.”).

³³¹ *See id.* at para. 58 (noting that the harms related to foreclosure and eviction are generally contrary to international human rights law).

³³² *See id.* at para. 22.

³³³ *Id.* at para. 67.

158. [Redacted]^{334 335 336 337}
159. [Redacted]
160. In addition, the complainants' private land sales are coerced and thus do not amount to voluntary transactions, and the complainants are further deprived of legal recourse. Performance Standard 5 does not apply to voluntary land transactions, including market transactions in which the seller is not obliged to sell³³⁸; however, as is clearly illustrated by the threats against **[redacted]** complainants, the presence of coercion in their cases supports that the borrowers are made to feel that they are obliged to sell their land rather than pursuing legal recourse. **[Redacted]**
161. Performance Standard 5 should therefore have been considered by the IFC clients and the IFC before and during the microfinance projects and any investments. Any investments should have been structured with conditions to reflect the regular restrictions placed on land when used as collateral and the high likelihood that borrowers will default on their loans and be forced into a private sale given the predatory lending and abusive collection practices that pervade Cambodia's microfinance sector. While the standard Resettlement Action Plan is not an appropriate solution to microfinance projects, the high risk of the same social harms occurring demands appropriate conditions on investments and at minimum modified guidance on Performance Standard 5 as it applies through financial intermediaries in the microfinance sector.

IFC Exclusion List & Performance Standard 7: Indigenous People

162. The numerous social harms associated with the IFC Client Microfinance Providers project activities have significantly impacted Cambodia's Indigenous Peoples in violation of the IFC's Exclusion List and contrary to Performance Standard 7. **[Redacted]** complainants in this case reported being coerced into selling or "pawning" indigenous land—sometimes to buyers outside of the Indigenous community—under coercion from the IFC Client Microfinance Providers.³³⁹ The IFC's Exclusion List prohibits the use of IFC financing in business activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.³⁴⁰ Performance Standard 7 dictates that adverse impacts on communities of Indigenous Peoples should be avoided and minimized where possible.³⁴¹ Indigenous Peoples must be restored and compensated in a culturally appropriate manner for any adverse impacts.³⁴² IFC clients whose business activities adversely impact Indigenous Peoples are required to implement a process of informed consultation and participation with the community, and in certain cases obtain the indigenous peoples' free, prior and informed consent.³⁴³

³³⁴ IFC, Guidance Note on Performance Standard 5, *supra* note 323, at para. 14.

³³⁵ [Redacted]

³³⁶ ADB Railway Project Compliance Review Report, *supra* note 171, at vi–vii.

³³⁷ IFC, Guidance Note on Performance Standard 5, *supra* note 323, at para. 28.

³³⁸ PS5, *supra* note 322, at para. 6.

³³⁹ [Redacted]

³⁴⁰ IFC Exclusion List,

https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/company-resources/ifcexclusionlist.

³⁴¹ IFC, Performance Standard 7: Indigenous Peoples (2012), at para. 9 [hereinafter PS7].

³⁴² *Id.*

³⁴³ *Id.* at para. 10–14; PS1 Guidance Note, *supra* note 253, at para. 32.

163. [Redacted]^{344 345 346}
164. The rights of Indigenous Peoples are well-recognized by the international community and guide the application of other international human rights instruments, “indicating the universal applicability of those instruments and signaling the emergence of customary international law in the area of indigenous peoples’ rights.”³⁴⁷ Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.³⁴⁸ Their territorial and property rights are *sui generis* and exist apart from any State titles.³⁴⁹ Indigenous Peoples are often the most marginalized and vulnerable populations and are particularly vulnerable if their lands and resources are transformed, encroached upon, or significantly degraded.³⁵⁰ The UN Special Rapporteur on the rights of Indigenous Peoples has stated that, “economic growth or national development cannot be used as a basis for non-consensual infringements on the territorial and cultural rights of indigenous peoples. This is reinforced by the *erga omnes* nature of the right of all peoples to self-determination, the prohibition of racial discrimination and the fact that their protection is a matter of public interest.”³⁵¹
165. The dispossession and degradation of Indigenous Peoples lands has had significant, negative impacts on their financial situations, education, and health.³⁵² Land tenure security is already under threat in Cambodia: the land rights of Indigenous Peoples are “constantly violated” and indigenous land is frequently granted to private interests for development.³⁵³ Civil society organisations have expressed concern that in Cambodia, the forced displacement of Indigenous Peoples from their lands is “extinguishing them as distinct groups.”³⁵⁴ [Redacted].³⁵⁵
166. The legal practice of accepting land titles as collateral and the default practice of requiring land titles for microloans is inimical to the legal protections granted to preserve Indigenous Peoples land rights and cultural traditions. For example, in 2014 several Samoan Indigenous Peoples filed a complaint to the accountability mechanism for the Asian Development Bank (ADB) regarding overlapping technical assistance and a grant relating to the use of leaseholds in customary indigenous land as collateral with ADB-client financial intermediaries. The complaint raised several concerns regarding the social impact of the projects on Indigenous Peoples and the individualisation and alienation of customary land, noting that land is an integral aspect of Samoan identity and the “customary land tenure system guarantees a durable and lasting security for all Samoan people.”³⁵⁶ The ADB accountability mechanism recommended and monitored the progress

³⁴⁴ [Redacted]

³⁴⁵ [Redacted]

³⁴⁶ [Redacted]

³⁴⁷ Report of the Special Rapporteur on the rights of indigenous peoples, to the UN Human Rights Council, at para. 14., U.N. Doc A/HRC/33/42, 11 Aug. 2016.

³⁴⁸ UN Declaration on the Rights of Indigenous Peoples art. 26 (1), 13 Sept. 2007.

³⁴⁹ Report of the Special Rapporteur on the rights of indigenous peoples, *supra* note 347, at para. 16.

³⁵⁰ PS7, *supra* note 341, at Introduction para. 1.

³⁵¹ Report of the Special Rapporteur on the rights of indigenous peoples, *supra* note 347, at para. 18.

³⁵² See CIPA UPR Submission on IPs, *supra* note 344, at para. 4.

³⁵³ Int’l Work Group for Indigenous Affairs (IWGIA) & AIPP, Joint Submission to the UN Human Rights Council on the human rights situation of Indigenous Peoples in Cambodia, 13 Sept. 2020, <https://www.iwgia.org/en/global-governance-cat/3844-hrc45-cambodia.html>.

³⁵⁴ *Id.*

³⁵⁵ [Redacted]

³⁵⁶ Complaint regarding Grant 0392 (SAM), 9 Sept. 2014, at para. 1, 6, 9, 10, 11, 13, 20, available at <https://www.accountabilityconsole.com/complaints/promoting-economic-use-of-customary-land-and-grant-no-0392-sam-samoa-agribusiness-support-project/>.

on a consultative process to ensure wider community participation in the leasing process, dependent on policy and legislative reform to ensure the land rights of customary landowners and explore related issues, risks, enabling and constraining factors.³⁵⁷ The Samoan leasehold case is similar to IFC's microfinance projects in this complaint in that while it intends to improve economic opportunities for vulnerable Indigenous Peoples by collateralising an ownership or leasehold interest in land, the financialization of land interests risks altering traditional relationships with the land and the communal land tenure system that underpins the indigenous community. The complainants here are at much greater risk than those in the ADB Samoan leasehold case, as they can ultimately lose all rights to their indigenous land. **[Redacted]** community thus lost access to those lands, with implications for the loss of their identity, culture, and natural resource-based livelihoods, as well as an increased risk for further impoverishment.

167. The prevailing microfinance scheme in indigenous communities **[redacted]** further impacts customary lands and natural resources, and thus should require free, prior, and informed consent of borrowers.³⁵⁸ The UN Declaration on the Rights of Indigenous Peoples is one international instrument that guides the IFC's policies on Indigenous Peoples and mandates that Indigenous Peoples shall not be forcibly removed from their lands or territories, and that no relocation can take place without free, prior and informed consent.³⁵⁹ In many instances, however, credit officers do not bother to explain contracts or terms to illiterate borrowers, and later implicitly rely on that ignorance and lack of informed consent to misrepresent court proceedings and pressure borrowers into forced private sales. **[Redacted]**.
168. The IFC uses an expansive definition of indigenous land and the requirements of Performance Standard 7 thus should apply to all lands traditionally occupied and used by Indigenous Peoples and that may be used for collateral or sold in a forced sale to make a loan repayment regardless of whether those lands are part of a collective title.³⁶⁰
169. **[Redacted]**³⁶¹
170. The fear and ignorance of the formal court process for loan default—the legally appropriate channel for default on the loan agreement and the disposition of any collateral—that is seen in the cases of complainants **[redacted]** is foreseeable and yet implicitly exploited by abusive collection officers. The IFC has explicitly stated regarding the implementation of Performance Standard 7 that, “In many cases, [the Indigenous Peoples’] economic, social, and legal status limits their capacity to defend their rights to, and interests in, land and natural and cultural resources, and may restrict their ability to participate in and benefit from development.”³⁶² The UN Special Rapporteur on the rights of Indigenous Peoples has also recognized the “implementation gap” that prevents Indigenous Peoples from challenging infringements on their rights: “even in jurisdictions with advanced legal

³⁵⁷ Asian Development Bank (ADB), Grant 0392 (46436-002)-SAM et al., Summary Review and Assessment Report of the Special Project Facilitator, Mar. 2015, at para. 7–8, 12, 14–15, available at <https://www.accountabilityconsole.com/complaints/promoting-economic-use-of-customary-land-and-grant-no-0392-sam-samoa-agribusiness-support-project/>. See also ADB, Chair's Summary of the Board Compliance Review Committee and Compliance Review Panel's Report on Eligibility of the Compliance Review Request for TA 4712, 7387, and 8481, 20 July 2016, at para. 3–4 (stating there was a lack of agreement on whether to conduct a full compliance review, and compliance review would therefore not proceed unless the Government of Samoa failed to eliminate the risk of material harm to complainants through proposed legislative changes).

³⁵⁸ See PS7, *supra* note 341, at para. 10–14.

³⁵⁹ UN Declaration on the Rights of Indigenous Peoples art. 10.

³⁶⁰ See IFC, Guidance Note on Performance Standard 7: Indigenous Peoples (2012), at para. 7.

³⁶¹ See, e.g., ILO Convention No. 169 on Indigenous and Tribal Peoples at Preamble art. 5 (1989).

³⁶² PS7, *supra* note 341, at Introduction para. 1.

frameworks, deep-rooted structural discrimination and vested interests can render ineffective the legal protections afforded to indigenous peoples.”³⁶³ The implicit strategy of IFC Client Microfinance Providers to exploit these systemic disadvantages through misrepresentation and pressured land sales is contrary to the intent of Performance Standard 7 and the prohibitions on the Exclusion List and further defies emerging international norms on protections for Indigenous Peoples.³⁶⁴

171. The practice of requiring Indigenous Peoples’ land as collateral chips away at traditional communities a case at a time but also drives larger divisions that threaten their cultures. Some Indigenous Peoples are incentivized to leave their communal land titles and seek individual land titles in order to secure loans.³⁶⁵ The increasing financialization of land thus erodes the historic communal land tenure networks that have supported indigenous communities’ traditions through the years and presents an existential threat to their survival.³⁶⁶ In the immediate future, this trend also counters the recognized protection and security that collective titles are supposed to guarantee indigenous communities, making it that much easier for individuals to lose indigenous land to predatory IFC Client Microfinance Providers.
172. The heightened risks inherently present for Indigenous Peoples’ land [redacted] support that the default practice of requiring indigenous land as collateral is a high-risk activity. There is no evidence that IFC Client Microfinance Providers properly assessed such projects as high risk and applied performance standards to avoid or minimize negative impacts, or that the IFC properly considered these risks and gave them the appropriate weight during pre-project due diligence and during any supervision throughout the project cycles. In addition, the scope of activities employed by the IFC Client Microfinance Providers clearly impinge in multiple ways on lands owned by Indigenous Peoples without their consent, thus amounting to numerous violations of the IFC’s Exclusion List and Performance Standard 7.

V. RELEVANT BREACHES OF CAMBODIAN LAW

173. [Redacted]³⁶⁷

A. Cambodia’s Legal and Regulatory Framework

174. The Constitution of Cambodia guarantees all Khmer nationals the right to own land either individually or collectively, and to have that ownership protected by law.³⁶⁸ Article 32 of the Constitution further guarantees every citizen the right to life, personal freedom, and security.³⁶⁹ Every Khmer citizen shall be equal before the law and enjoy the same rights regardless of social

³⁶³ Report of the Special Rapporteur on the rights of indigenous peoples, *supra* note 347, at para. 21.

³⁶⁴ See, e.g., ILO Convention No. 169 on Indigenous and Tribal Peoples at Preamble art. 3(2) (“no form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned”).

³⁶⁵ Jack Brook & Borin Sopheavuthtey, “Indigenous Cambodians choose between credit and communal land,” *Southeast Asia Globe*, 11 Nov. 2021, <https://southeastasiaglobe.com/cambodians-credit-communal-land-titles/>.

³⁶⁶ Cf. ILO Convention No. 169 on Indigenous and Tribal Peoples at Preamble (1989) (“noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded”).

³⁶⁷ [Redacted]

³⁶⁸ Constitution of the Kingdom of Cambodia art. 44 (1993) (unofficial English translation available on the Constitutional Council of Cambodia’s website at https://www.ccc.gov.kh/detail_info_en.php?txtID=791).

³⁶⁹ Constitution of the Kingdom of Cambodia art. 32.

status, wealth or other status.³⁷⁰

175. The Constitution of Cambodia states that international human rights treaties are recognised and respected as part of Cambodian law.³⁷¹ Cambodia's Constitutional Council reaffirmed the domestic application of international law in a 2007 decision that defined "laws" to include "international laws already recognized by the Kingdom of Cambodia".³⁷² Cambodia is thus obligated to uphold the principles of human rights law in its domestic legal framework.
176. The 2001 Land Law established the land registry system for issuing land titles. Land titles are most often in the form of a "hard title" or "soft title." Hard titles are ownership certificates provided by the Land Management and Planning office and are considered the strongest evidence of ownership.³⁷³ Soft titles are also recognized as possession claims to land and are provided by the local Sangkat/Commune or District office and not registered at the national level.³⁷⁴ Soft titles are the most common form of land ownership. Most borrowers in Cambodia's microfinance sector have soft titles.
177. The National Bank of Cambodia (NBC) is involved in setting the legal and regulatory framework governing MFIs in Cambodia, and the Cambodia Microfinance Association (CMA), an NGO and association of MFIs committed to the "prosperity" of the sector, has a regular consultative role.³⁷⁵ Cambodia's 1999 Law on Banking and Financial Institutions grants the NBC the authority to "license and supervise" specialized financial institutions.³⁷⁶ Subsequent Prakas in 2000 and 2007 directed the requirements for licensing of microfinance institutions (MFIs) and microfinance deposit-taking institutions (MDIs)³⁷⁷, defined in reference to the Law on Banking and Financial Institutions as providing credit services and savings.³⁷⁸ There is no specific definition of "microfinance" in Cambodian law.³⁷⁹
178. Cambodia's Civil Code requires that contracts be in the public order and follow "good customs,"

³⁷⁰ Constitution of the Kingdom of Cambodia art. 31

³⁷¹ Constitution of the Kingdom of Cambodia art. 31.

³⁷² Decision No. 092/003/2007 CC.D, Case No. 131/003/2007, Constitutional Council (10 July 2007), *available at* https://www.ccc.gov.kh/detail_info_en.php?_txtID=453.

³⁷³ LICADHO, COLLATERAL DAMAGE, *supra* note 141, at 6.

³⁷⁴ *Id.*

³⁷⁵ Law on Banking and Financial Institutions art. 6 (1999), (unofficial Eng. translation), *available at* https://www.nbc.org.kh/download_files/legislation/laws_eng/86004-Law-on-Banking-and-Financial-Institutions-1999.pdf. See ERNST & YOUNG, NPM, CLIENT PROTECTION IN MICROFINANCE: THE CURRENT STATE OF LAW AND REGULATION, at 14 (2014); IFC, PROMOTING FINANCIAL CONSUMER PROTECTIONS IN CAMBODIA, *supra* note 130, at 21.

³⁷⁶ Law on Banking and Financial Institutions art. 6. Cambodia's General Department of Taxation also has a narrow supervisory role over tax-related issues.

³⁷⁷ A licensed microfinance institution of at least three years, subsequently authorized to collect savings and fixed deposits that are not insured by any government entity. Prakas on Licensing of Microfinance Deposit Taking Institutions art. 2–3, No. B7-07-163 (2007), (unofficial Eng. translation), *available at* https://www.nbc.org.kh/download_files/legislation/prakas_eng/2378B7-07-163.pdf.

³⁷⁸ Prakas on the Licensing of Microfinance Institutions, No. B-7-00-06, (2000) (amended 2002, 2006, 2007) (unofficial amended Eng. translation), *available at*

https://www.nbc.org.kh/download_files/legislation/prakas_eng/7175B7-00-06.pdf and (amendment) https://www.nbc.org.kh/download_files/legislation/prakas_eng/322B7-06-209.pdf; Law on Banking and Financial Institutions art. 2. See Prakas on Licensing of Microfinance Deposit Taking Institutions art. 2–3.

³⁷⁹ MICROFINANCE CENTRE, GOOD RETURN, ET AL., OVER-INDEBTEDNESS STUDY CAMBODIA II: FINAL REPORT, at 28 & n.21 (Oct. 2017).

meaning they must respect written and customary law.³⁸⁰ A contract, such as a loan contract, is formed when one party makes an offer and the other party accepts the offer.³⁸¹ Each party's declaration of intention to enter into the contract (the offer or acceptance) must be free from defects such as mistake, fraud or misrepresentation.³⁸² In addition, a contract issuing credit must include clear information about products and services, including processing procedures, terms and conditions, interest rates, and all other applicable charges.³⁸³ If the contract itself contains a defect and does not comply with law, for example a loan contract failing to include the interest rates, it is void regardless of the parties' intentions behind the offer and acceptance.³⁸⁴

179. Most microfinance transactions involve standard, pre-printed contracts that the borrower signs or more commonly marks the document with their thumbprint.³⁸⁵ The contract is then approved by a local authority, such as the commune chief.³⁸⁶ It is common practice for microfinance lenders in Cambodia to demand an interest in land to secure the transaction.³⁸⁷
180. The Land Law establishes that land may be used as collateral for a loan.³⁸⁸ Land may be put up as surety by the owner to secure the debt in a contract as a mortgage, *antichrese* or *gage*.³⁸⁹ An *antichrese* is a type of contract where the debtor delivers the real property, land, to the creditor as a guarantee for payment of the debt, and the creditor may sell the property to be reimbursed for the debt or retain the property if allowed in the original contract.³⁹⁰ Any sale of property must proceed by court decision.³⁹¹ A *gage* is a type of contract where the debtor gives the property title to the creditor.³⁹² In the event of a borrower's default, the creditor may request a court to foreclose on the property.³⁹³ Under both an *antichrese* or *gage* contract, the creditor cannot become the owner of the property.³⁹⁴
181. In 2017, [redacted], the government issued a cap on interest rates at 18 percent for loans from banks, MFIs, MFDIs and rural credit operators under the NBC's supervisory authority.³⁹⁵ In 2019, the average interest rate on loans in the local currency (Khmer riel) was 17.9 percent.³⁹⁶ In addition, MFIs essentially charge borrowers interest rates exceeding the 18 percent cap by charging up-front fees at the time of loan disbursement and thus effectively reducing the total amount of the loan issued to the client although the interest rate is still calculated based on the full amount, pre-fees.³⁹⁷

³⁸⁰ Civil Code of the Kingdom of Cambodia art. 354, 357 (2007).

³⁸¹ Civil Code of Cambodia art. 336(1).

³⁸² Civil Code of Cambodia art. 345.

³⁸³ Prakas on Transparency in Granting Credit Facilities of Banks and Financial Institutions art. 3, No. B7-011-243 (2011) (unofficial Eng. translation), *available at* https://www.nbc.org.kh/download_files/legislation/prakas_eng/6683B7-011-243.pdf.

³⁸⁴ Civil Code of Cambodia art. 354(1)(a).

³⁸⁵ LICADHO, COLLATERAL DAMAGE, *supra* note 141, at 13.

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ Land Law art. 197, 206, 211, 219, 221, NS/RKM/0801/14 (2001).

³⁸⁹ Land Law art. 197.

³⁹⁰ Land Law art. 206.

³⁹¹ Land Law art. 211; Civil Code of Cambodia art. 417, 436.

³⁹² Land Law art. 219, 221.

³⁹³ Land Law art. 221.

³⁹⁴ Land Law art. 210, 221

³⁹⁵ Prakas on Interest Rate Ceiling on Loan art. 1–5, No. B7.017.109.PK (2017) (unofficial Eng. translation), *available at* https://www.nbc.org.kh/download_files/legislation/prakas_eng/Prakas-on-Interest-Rate-Cap-Eng.pdf.

³⁹⁶ Nat'l Bank of Cambodia, Annual Supervisory Report at p. 7 (2019).

³⁹⁷ LICADHO, COLLATERAL DAMAGE, *supra* note 141, at 14; WB Cambodia Policy Note, *supra* note 148, at 15–16,

The IFC foresaw and warned against this phenomenon in its 2015 report on consumer protections in Cambodia.³⁹⁸

182. In 2017, the government also issued an inter-ministerial decision for financial institutions under the NBC's authority, including MFIs, to establish Consumer Complaint Management Frameworks and related policies. The order established timelines for receiving and resolving complaints as well as reporting requirements to the NBC.³⁹⁹
183. The CMA issued lending guidelines in 2017 for MFIs, including limitations on the number of active MFI loans for borrowers.⁴⁰⁰ CMA also launched the Smart Campaign certification program for self-regulation by MFIs.⁴⁰¹ Guidelines issued by the CMA are problematic, however, in that they are self-regulating and lack oversight or enforcement.⁴⁰² The IFC itself has recognized that, "[voluntary] codes [by MFI industry associations] tend to be weak in their level of detail, effective monitoring, public reporting and enforcement."⁴⁰³ The CMA has no enforcement or formal supervisory powers and has been characterized as representing "the interests of the lenders, not the borrowers."⁴⁰⁴ Moreover, the limitation on number of active loans actually increases indebtedness because due to high market saturation, MFI lenders offer increasingly larger loans to customers in an attempt to "buy out" existing loans, thus enabling them to issue new loans while staying within the guideline limits.⁴⁰⁵
184. [Redacted]⁴⁰⁶

B. Lack of Consumer Protection

185. Cambodia has one of the worst records on government oversight of a microfinance sector.⁴⁰⁷ The laws on MFIs and MFDIs contain almost no provisions on consumer protection.⁴⁰⁸ Out of 55 countries assessed by The Economist Intelligence Unit in 2019 for their Global Microscope report,

Box 2 at 17.

³⁹⁸ See IFC, PROMOTING FINANCIAL CONSUMER PROTECTIONS IN CAMBODIA, *supra* note 130, at 31 ("There is also a concern that a lender can advertise lower loan rates...but the lender applies substantial and unadvertised fees or other unavoidable costs which could make the loan much more expensive in total than what is advertised.").

³⁹⁹ Prakas on Resolution of Consumer Complaints, No. B7-017-299 (2017) (unofficial Eng. translation), *available at* https://www.nbc.org.kh/download_files/legislation/prakas_eng/Prakas_on_Resolution_of_Consumer_Complaints_ENG.pdf.

⁴⁰⁰ Cambodia Microfinance Assoc., Memorandum of Understanding on Temporary Lending Guidelines (Preah Sihanouk MOU), 02 Dec. 2016, at 2(a)(ii)–(iii), *available at* <https://cma-network.org/information-center/other/>. See *Human Rights Watch, World Bank: Investigate Cambodia's Micro-Loans*, 14 Dec. 2020, <https://www.hrw.org/news/2020/12/14/world-bank-investigate-cambodias-micro-loans#>.

⁴⁰¹ David Hutt, "Can We Trust the Cambodia Microfinance Association?," *The Diplomat*, 8 Jan. 2021, <https://thediplomat.com/2021/01/can-we-trust-the-cambodia-microfinance-association/>.

⁴⁰² *See id.*

⁴⁰³ IFC, PROMOTING FINANCIAL CONSUMER PROTECTIONS IN CAMBODIA, *supra* note 130, at 8.

⁴⁰⁴ Hutt, *supra* note 401.

⁴⁰⁵ MIMOSA 2016 Special Circular, *supra* note 131.

⁴⁰⁶ [Redacted]

⁴⁰⁷ *Cf.* IFC, PROMOTING FINANCIAL CONSUMER PROTECTIONS IN CAMBODIA, *supra* note 130, at 8 ("NBC should review the adequacy of [financial service provider, including MFI] governance with respect to the quality of management's internal compliance monitoring regarding its compliance with laws, codes of conduct, corporate policies and operational practices designed to protect the consumer.").

⁴⁰⁸ See generally Prakas on the Licensing of Microfinance Institutions; Prakas on Licensing of Microfinance Deposit Taking Institutions.

Cambodia ranks in the bottom 10 with a score of just 37 out of 100 for government policies and regulation in microfinance.⁴⁰⁹

186. The IFC reported on the lack of consumer protection in 2015.⁴¹⁰ The World Bank similarly called for improvements to consumer protection to protect borrowers from predatory lending in its 2019 policy note on microfinance and household welfare.⁴¹¹

187. [Redacted]^{412 413 414 415 416 417}

C. [Redacted]

188. A widespread scheme of predatory lending has flourished in the absence of adequate investment restrictions and supervision. A combination of factors including imprudent pay incentives for loan officers and high market saturation and penetration have perpetuated the exact consumer risk observed by the IFC in 2015 where unscrupulous lenders coerce borrowers in the early stages of non-payment to sell their land without resorting to formal legal proceedings.

189. [Redacted]⁴¹⁸

190. MFIs have no shortage of tools at their disposal to coerce borrowers into a private land sale. MFIs often require borrowers to deposit multiple land titles well beyond the value of the loan to ensure that the borrower cannot use other land titles to secure loans from another MFI.⁴¹⁹ The MFI executives added that local authorities are complicit in applying additional pressure and leverage over landowners reluctant to do a private sale. The fact that the MFI can physically hold the land title creates additional pressure on borrowers who, not understanding the legal process in the event of default, fear the MFI can sell their property if they are even one day late in repayment—a fear unethical credit officers capitalize on.⁴²⁰ Borrowers who are late in repayment often fear that if they do not sell their land themselves, the MFI will sell it at below-market value to just recoup the value of the loan, which is often far less than the value of the land.⁴²¹ Borrowers' ignorance of the legal process and their rights under the loan agreement further enable MFIs to imply additional consequences from late repayment and threaten recourse to local authorities. The two MFI executives who spoke with LICADHO on condition of anonymity in 2019 affirmed that local authorities are frequently complicit in leveraging additional pressure on any landowners that are reluctant to make a private land sale.⁴²² This has been confirmed as common practice throughout research done by LICADHO, EC and other CSOs in Cambodia.

⁴⁰⁹ THE ECONOMIST, GLOBAL MICROSCOPE 2019: THE ENABLING ENVIRONMENT FOR FINANCIAL INCLUSION AND THE EXPANSION OF DIGITAL FINANCIAL SERVICES, at 8 (2019).

⁴¹⁰ *Supra* Section III.

⁴¹¹ WB Cambodia Policy Note 2019, *supra* note 148, at 22–23.

⁴¹² [Redacted]

⁴¹³ [Redacted]

⁴¹⁴ [Redacted]

⁴¹⁵ [Redacted]

⁴¹⁶ [Redacted]

⁴¹⁷ [Redacted]

⁴¹⁸ LICADHO, COLLATERAL DAMAGE, *supra* note 141, at 2, 6–7.

⁴¹⁹ *Id.* at 6 (citing to MICROFINANCE CENTRE, GOOD RETURN, ET AL., OVER-INDEBTEDNESS STUDY CAMBODIA II: FINAL REPORT (Oct. 2017)).

⁴²⁰ *Id.* at 7.

⁴²¹ *Id.*

⁴²² *Id.* at 2, 7.

191. The IFC was aware of predatory lending schemes and the risk for abusive collection practices when it examined a sampling of loan contracts as part of its 2015 review and detailed numerous concerning clauses supporting predatory lending and forced land sales. Specifically, the IFC cautioned that contractual language seemingly allowed lenders to “take the security/collateral even if the payment is late one day” and that there were no requirements on the lender “to provide the customer with an advanced notice before taking the security/collateral.”⁴²³ The IFC further noted that the contractual language “does not state that if the sale of the security/collateral exceeds the value of the loan that the surplus is returned to borrower and if so when. It does state that if the sale value is less than the loan, the borrower is still liable.”⁴²⁴ While many borrowers are unable to read their contracts or do not understand the terms, this language is revealing regarding the pressure credit officers exert on borrowers to force them into a rushed private sale. **[Redacted]**
192. **[Redacted]**. Article 363 of the Criminal Code of Cambodia criminalizes as ‘Extortion’ the act of obtaining by violence, threat of violence or coercion a signature or fingerprint, a commitment or an abandonment, or the handing over of any asset, among other things.⁴²⁵ Coercion is not separately defined in the Cambodian criminal code but is included in many other prohibitions in similar context—along with violence and threats of violence.⁴²⁶ Coercion is similarly defined by reference in international criminal law as “that caused by fear of violence, duress, detention, psychological oppression or abuse of power”.⁴²⁷ Coercion is thus implicitly the unlawful use of pressure by various means to force a desired outcome from another party.⁴²⁸ **[Redacted]**
193. **[Redacted]**⁴²⁹
194. **[Redacted]**⁴³⁰⁴³¹⁴³²⁴³³

D. Violations of the Rights of Indigenous Peoples

195. Articles 23 and 25 of Cambodia’s 2001 Land Law guarantee the rights of Indigenous Peoples to manage their community and immovable property, including the lands where they have established their residences, according to traditional customs.⁴³⁴ Non-members of the community are prohibited from acquiring rights to the immovable property of Indigenous Peoples.⁴³⁵ Implicit in these protections is the right of Indigenous Peoples to freely give or withhold their consent to any use of their land.⁴³⁶ The aggressive lending practices of the IFC Client Microfinance Providers include requiring rights to the land of Indigenous Peoples as collateral and forcing sales of that land

⁴²³ IFC, PROMOTING FINANCIAL CONSUMER PROTECTIONS IN CAMBODIA, *supra* note 130, at 34.

⁴²⁴ *Id.*

⁴²⁵ Criminal Code of the Kingdom of Cambodia art. 363 (2009).

⁴²⁶ *See* Criminal Code of the Kingdom of Cambodia art. 239, 288, 299.

⁴²⁷ *See, e.g.*, Int’l Criminal Court, Elements of Crimes, art. 6(e) para.1 & n.5, art. 7(1)(d) para.1 & n.12, art. 7(1)(g)-1 para.2 (2011).

⁴²⁸ *See id.*

⁴²⁹ **[Redacted]**

⁴³⁰ **[Redacted]**

⁴³¹ **[Redacted]**

⁴³² **[Redacted]**

⁴³³ **[Redacted]**

⁴³⁴ Land Law art. 23, 25.

⁴³⁵ Land Law art. 28.

⁴³⁶ *See* Complaint concerning IFC investments in Tien Phong Commercial Joint Stock Bank (TPBank) and Vietnam Prosperity Joint Stock Commercial Bank (VPBank), 12 Mar. 2019, at para. 36.

regardless of whether those sales are to borrowers outside of the indigenous community. **[Redacted]** The pattern of business activities of the IFC Client Microfinance Providers therefore violates the rights of the Indigenous Peoples to manage their community and immovable property, and permanently severs their cultural connections to the sold land.

196. [Redacted]

E. Deceptive Lending Practices and [Redacted]

197. [Redacted]^{437 438}

198. [Redacted]

VI. OUTCOMES SOUGHT BY THE COMPLAINANTS

199. [Redacted]

200. [Redacted]

201. [Redacted]

⁴³⁷ [Redacted]

⁴³⁸ [Redacted]

Appendix 5: IFC Management Response

INTERNATIONAL FINANCE CORPORATION

**MANAGEMENT RESPONSE
TO THE CAO COMPLAINT
CONCERNING**

THREE IFC CLIENTS:

ACLEDA (Projects #42480, #44882)

AMRET (Projects #34748, #44231)

HTB (Projects #44742, #45535)

and

**FOUR SUB-PROJECTS CONCERNING
ACLEDA BANK, HTB, AMRET, PRASAC,
SATHAPANA, AND LOLC**

(Projects #27827, #31467, #21856, #38609)

CAMBODIA

November 21, 2022

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ABBREVIATIONS AND ACRONYMS

ABC	The Association of Banks in Cambodia
ACLEDA	ACLEDA Bank Plc.
Advans	Advans SA SICAR
AMRET	Amret Microfinance Institution Plc.
CAO	Office of the Compliance Advisor Ombudsman
CMA	Cambodia Microfinance Association
CPF	Country Partnership Framework
CSO	Civil Society Organization
E&S	Environmental and Social
EC	Equitable Cambodia
FCP	Financial Consumer Protection
FI	Financial Institution
FY	Financial Year
HKL	Hattha Kaksekar Limited
HTB	Hattha Bank Plc.
IFC	International Finance Corporation
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
LOLC	LOLC (Cambodia) Plc.
MEF	Microfinance Enhancement Facility S.A., SICAV-SIF
MFI	Microfinance Institution
MIFA	Microfinance Initiative for Asia Debt Fund SA, SICAV-SIF
MSMEs	Micro, Small and Medium Enterprises
NBC	National Bank of Cambodia
NFIS	National Financial Inclusion Strategy
North Haven	North Haven Thai Private Equity L.P.
PRASAC	Prasac Microfinance Institution Plc.
Sathapana	Sathapana Bank Plc.
SMEs	Small and Medium Enterprises
US\$	United States Dollar
WBG	World Bank Group
WMSMEs	Women-owned Micro, Small and Medium Enterprises
WSMEs	Women-owned Small and Medium Enterprises

EXECUTIVE SUMMARY

- i. This Management Response pertains to the complaint received by the Office of the Compliance Advisor Ombudsman (CAO) on February 10, 2022, regarding ten active and three closed projects and sub-projects with six Financial Institutions (FIs) in Cambodia (the Complaint). The Complaint concerns three IFC clients, ACLEDA Bank Plc (ACLEDA), Amret Plc. (AMRET), and Hattha Bank Plc. (HTB), and three sub-clients, LOLC (Cambodia) Plc. (LOLC), Prasac Microfinance Institution Plc. (PRASAC), and Sathapana Bank Plc. (Sathapana), through investments by three funds, Microfinance Enhancement Facility S.A., SICAV-SIF (MEF), Microfinance Initiative for Asia Debt Fund SA, SICAV-SIF (MIFA) and North Haven Thai Private Equity L.P. (North Haven), and an investment holding company, Advans SA SICAR (Advans), in which IFC has direct investments.
- ii. The Complaint was filed by two local civil society organizations (CSOs), the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Equitable Cambodia (EC), on behalf of a group of individual affected borrowers (the Complainants). The Complaint raises concerns regarding the microfinance lending and collection practices of the six FIs in Cambodia. The Complainants allege that they have not been provided sufficient information, in language that is understandable to them, to fully grasp the conditions of the loans they agreed to. The Complaint alleges negative social impacts of these FIs' debt collection activities, including loss of land, loss of livelihood, food insecurity, threats to health, and child labor, as well as negative impacts on Indigenous Peoples. It also raises concerns related to IFC's environmental and social (E&S) due diligence, project categorization, and project supervision, and IFC's clients' compliance with its E&S requirements. The Complainants requested that CAO keep their identities confidential out of fear of reprisals.
- iii. The CAO found the Complaint eligible for assessment on April 7, 2022, after determining it met its eligibility criteria. IFC takes the issues raised in this complaint seriously. Regarding reprisals, IFC's Position Statement on Retaliation Against Civil Society and Project Stakeholders (October 2018)¹ makes clear that IFC does not tolerate any action by an IFC client that amounts to retaliation – including threats, intimidation, harassment, or violence – against those who voice their opinion regarding the activities of IFC or its clients.
- iv. The six FIs referenced in the Complaint are collectively considered as systemically important for the Cambodian financial sector. The projects and sub-projects are fully aligned with the World Bank Group (WBG) Country Partnership Frameworks, the WBG COVID-19 Crisis Response Approach Paper, and IFC's strategic priorities for Cambodia. Out of the ten active projects, two projects are qualified as Tier 2 capital and played a crucial role in supporting the regulatory capital base and resilience of the respective FIs during the COVID pandemic. Microfinance plays a critical role in Cambodia in reducing poverty, supporting livelihoods, and creating jobs, especially as the economy emerges from the strains of COVID-19.
- v. IFC has continuously worked to strengthen responsible finance practices in Cambodia at both institutional and sectoral levels. This work goes beyond requirements of IFC's Sustainability Framework. At the institutional level, IFC works selectively with FIs that have responsible lending practices, assesses FIs' underwriting and collection practices during due diligence processes, and monitors the evolution of these practices through portfolio supervision. IFC incorporated affirmative covenants requiring compliance with the Client Protection and Responsible Finance Principles (see

¹ https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34e-f73e5ad6a5c8/EN_IFC_Reprisals_Statement_201810.pdf?MOD=AJPERES&CVID=ocZ1hXY

sample in Annex 3), which cover avoidance of over-indebtedness, transparent pricing, appropriate collection practices, ethical staff behavior, grievance redress mechanism, and/or data privacy protection, in loan agreements of the clients and funds involved in the Complaint.² In addition, IFC has provided Advisory Services to the FIs, including helping transform from nongovernmental organizations to commercial microfinance institutions (MFIs) and to commercial banks, improving corporate governance and risk management capacity, and raising the standards of their responsible finance practices. IFC is also implementing an initiative since April 2021 (Cambodia RF #606119)³ to assess the responsible finance practices of IFC clients and assist them in making time-bound improvements.

- vi. At the sector level, IFC has worked with NBC since 2006 to build the Credit Bureau Cambodia (CBC), the country's first credit bureau and a source of transparency and information for credit reporting as well as a tool to reduce the risk of borrowers' over-indebtedness; IFC has collaborated with the Cambodian Microfinance Association (CMA), the CBC, and the SMART Campaign⁴ to promote the Lending Guidelines – an initiative established to reduce the risk of the credit market overheating; and has implemented an insolvency and debt resolution upstream project, which covers non-performing loan management and debt resolution, to strengthen fair and transparent debt collection practices. IFC believes that continued engagement in the Cambodian financial sector is important at both institutional and sectoral levels to further influence responsible finance and consumer protection practices.
- vii. IFC Management respects the CAO's process in its assessment of the Complaint in relation to IFC's investment in the six IFC clients and sub-clients. The alleged harms, while serious, are not the result of non-compliance with the IFC E&S Policies but are related to lending and collection practices by IFC clients, which IFC addresses through its responsible finance framework as described in v and vi above. Accordingly, IFC Management is of the view that the criteria for a compliance investigation are not met.
- viii. IFC's Sustainability Framework applies to the E&S risks and potential impacts of the supported *business activity on surrounding community and workers*. Customers or consumers of a client's products are not referenced in the Sustainability Policy or Performance Standards as a category of stakeholder to which E&S risk mitigation measures should apply.⁵ In the case of financial

² The three IFC clients referenced in the Complaint include ACLEDA, AMRET and HTB. IFC does not have direct agreements with sub-clients. IFC included affirmative covenants on Client Protection and Responsible Finance Principles in its direct loans to Prasac in 2015 and 2016 (projects number 36280 and 38235), ACLEDA (project number 34386), HTB (project numbers 44742 and 45535), Amret (project numbers 37505 and 44231) as well as in its equity investment in MEF (project number 27827) and MIFA (project number 31467).

³ IFC has been working on a responsible finance initiative in Cambodia (Cambodia RF #606119) since April 2021, which assesses its FI clients' responsible finance practices, assists its clients to make time-bound improvements and enables IFC's FI clients to continue providing sustainable financing solutions to their customers.

⁴ A global standard setting body for responsible finance and client protection that certified institutions for their adherence to a code of conduct of responsible finance. The SMART Campaign was discontinued in 2020, and the management of responsible finance and client protection standards was transferred to the Social Performance Task Force (SPTF) and CERISE. In September 2021, SPTF and CERISE launched the Client Protection Pathway, a new initiative to support client protection practices implementation.

⁵ 2012 Sustainability Policy (para 3, footnote 2) refers to environmental and social impacts as any change, potential or actual, to (i) the physical, natural, or cultural environment and (ii) impacts on "surrounding community and workers", resulting from the business activity to be supported. "Surrounding community and workers" are stakeholders considered when assessing potential environmental and social impact. Performance Standard 1 also specifies "other stakeholders" (beyond surrounding community and workers) as national and local authorities, neighboring projects, and/or nongovernmental organizations (para 1, footnote 1)).

intermediaries, the business activity IFC supports and assesses the E&S risk of, is the use of loans by sub-borrowers. IFC's Sustainability Framework does not focus on risks and impacts on individual sub-borrowers themselves.

- ix. Rather, IFC reviews these types of financial consumer protection issues through the lens of responsible finance and as part of its broader financial due diligence processes. Alongside implementing its Sustainability Framework requirements, IFC is committed to reviewing and addressing the issues raised in the complaint, which pertain to responsible finance and financial consumer protection (FCP) practices, along with other relevant stakeholders active in Cambodia -- such as the World Bank, NBC, CMA, the Association of Banks in Cambodia (ABC) and other multilateral development financial institutions. IFC will implement the following activities at the project, sector, and regulatory levels:

Project-specific irregularities alleged in the Complaint:

- Assess whether any irregularities related to responsible finance principles in loans provided to the Complainants occurred (provided that information on individual Complainants is shared with IFC) and, jointly with the FI clients, define any improvements necessary to avoid such irregularities in future.
- In instances where IFC ascertains that such irregularities related to responsible finance principles occurred, work with its client(s) to address them at the level of individual borrowers as appropriate.

Reprisals Risk

- Continue to engage with and train IFC's clients and sub-clients on preventing, managing, and addressing the risk of reprisals. IFC will build on the training provided on this topic to AMRET, HTB and PRASAC in November 2022 to improve their capacity to address reprisals. In addition, IFC is looking to provide similar training and guidance to the remaining clients and sub-clients involved in the complaint, as well as extending these sessions to the rest of the industry by partnering with the NBC and CMA. Supportive of the Complainants' request for confidentiality, IFC would welcome any engagement with the complainants and their representatives in the described activities to inform and strengthen responsible finance practices.

IFC approach to responsible finance:

- Open a public consultation on IFC's approach to responsible finance reflected in the Client Protection and Responsible Finance Principles, including specific conditions for disclosure of relevant loan-related information to borrowers. The consultation period would be open for 45 days, during which relevant parties in Cambodia, including the Complainants, would be able to provide their comments.
- Amend the approach to responsible finance within six months from the end of consultations, reflecting the consultation findings.
- Publish the approach to responsible finance and apply the revised version as a standard condition of financing for all microfinance lending in Cambodia.

Financial consumer protection (FCP) regulation in Cambodia:

- Engage the Cambodian Government in designing a FCP regulation to address any existing shortcomings at the sector level. This may include addressing implementation of the enhancements as described in the Cambodian NFIS.

I. INTRODUCTION

1. In February 2022, a complaint (the Complaint) was lodged with the Office of the Compliance Advisor Ombudsman (CAO) concerning IFC projects and sub-projects with ACLEDA Bank Plc. (ACLEDA), Hattha Bank Plc. (HTB) and Amret Plc. (AMRET), and IFC sub-projects with LOLC (Cambodia) Plc. (LOLC), Prasac Microfinance Institution Plc. (PRASAC), and Sathapana Bank Plc. (Sathapana) (together, six Financial Institutions, or FIs) in Cambodia. The IFC projects are financed directly by IFC, and the IFC sub-projects are financed by Microfinance Enhancement Facility S.A., SICAV-SIF (MEF), Microfinance Initiative for Asia Debt Fund SA, SICAV-SIF (MIFA), Advans SA SICAR (Advans), and North Haven Thai Private Equity L.P. (North Haven).

2. The Complaint relates to the following active and closed IFC projects (collectively, the Projects): ACLEDA projects #42480 and #44882; HTB projects #44211, #44742 and #45535; AMRET projects #34748, #41294 and #44231; MEF equity (#27827), MIFA equity (#31467), Advans SA equity (#21856), and North Haven equity (#38609), all active, and HTB senior loans (project #32642), which is closed.

3. The Complaint was filed by two local civil society organizations (CSOs) – the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Equitable Cambodia (EC) – on behalf of a group of individual borrowers residing in Cambodia (the Complainants). IFC does not have information about the total number of complainants or details on the number of complainants per project or sub-project. The Complainants make several allegations, which are presented in more detail in Section III below. The Complainants requested that CAO keep their identities confidential out of fear of reprisals.

4. In April 2022, the CAO found the Complaint eligible and initiated an assessment. In August 2022, the CAO extended the assessment period for 30 business days as per the CAO Policy, given that some of the parties to the Complaint expressed interest in a CAO-facilitated dispute resolution process. In September 2022, it was determined that such a process would not be possible due to lack of agreement by all the parties and that the Complaint would proceed to a compliance appraisal to determine whether the Complaint merits a compliance investigation or whether the case will be closed.

5. IFC takes seriously the allegations in the Complaint and is concerned especially by the fear of reprisals expressed by those making the complaint. IFC's Position Statement on Retaliation Against Civil Society and Project Stakeholders makes clear that IFC does not tolerate any action by an IFC client that amounts to retaliation – including threats, intimidation, harassment, or violence – against those who voice their opinion regarding the activities of IFC or its clients. Upon learning about the Complainants' fear of reprisals, IFC took immediate action. It directly engaged with its FI clients who are the subject of the Complaint to reinforce IFC's position regarding reprisals. IFC communicated verbally and in writing to these clients that IFC does not tolerate any action by an IFC client that amounts to retaliation and developed and shared specific guidance on how to manage the risk of reprisals as a FI. In addition, IFC has developed and continues to provide trainings to FI clients in terms of managing the risk of reprisals, preventing retaliatory practices by their employees, and addressing concerns on reprisals. In November 2022, IFC provided training to AMRET, HTB and PRASAC on this topic, and is coordinating to provide similar training to the rest of the entities involved in the complaint before the end of the year.⁶ IFC has supported and fully cooperated with the CAO in its assessment of the Complaint, including the facilitation of communications between the FIs and the CAO.

⁶ IFC held training sessions on Managing the Risk of Reprisal with AMRET on November 3, 2022; HTB November 16, 2022; and PRASAC November 18, 2022.

6. Management has reviewed CAO’s Assessment Report and prepared its response. The subsequent sections provide descriptions of the Projects’ background and the Complaint, and present Management’s Response.

II. PROJECTS’ BACKGROUND

7. Microfinance plays a critical role in Cambodia in reducing poverty, supporting livelihoods, and creating jobs, especially as the economy emerges from the strains of COVID-19. The six FIs referenced in the Complaint are collectively considered as systemically important for the Cambodian financial sector. The projects and sub-projects are fully aligned with the World Bank Group (WBG) Country Partnership Frameworks (CPF), the WBG COVID-19 Crisis Response Approach Paper as well as IFC’s strategic priorities for Cambodia.

8. For IFC’s projects that support FIs’ microfinance businesses, the E&S risks and potential impacts arising from the *use of proceeds* by individuals or microenterprises are usually very limited. The size of loans typically does not exceed US\$10,000 and the proceeds are used for individual needs or operations of micro businesses such as agriculture or convenience stores. Such lending is normally considered low risk from an E&S perspective and categorized as FI-3 (the lowest E&S risk category for FI projects). In line with paragraph 35 of the Sustainability Policy, FI-3 clients are required to implement a simple E&S screening procedure. Such screening is considered to constitute an Environment and Social Management System (ESMS) that is commensurate with the minimal level of E&S risk in these transactions. Where loans also may be provided to small and medium enterprises (SMEs), the E&S risks can be higher and such transactions are typically categorized as FI-2. Clients of FI-2 transactions are required to put in place a more sophisticated ESMS.

A. ACLEDA

9. ***IFC Investments in ACLEDA:*** ACLEDA has been a long-standing partner of IFC in Cambodia since IFC’s first engagement in 1998: the IFC-managed, donor-funded Mekong Private Sector Development Facility. Over the years, IFC has supported its transformation from a nongovernmental organization to a commercial microfinance institution (MFI) and then to a commercial bank and has provided ACLEDA and its subsidiaries with capital, funding, and Advisory Services to help it build institutional capacity, improve resilience, develop innovative products, and strengthen responsible finance practices and integrated risk management. With IFC’s encouragement, ACLEDA applied for SMART Campaign certification and became the first commercial bank in the country to be certified in 2017. IFC currently has two active investments (projects #42480 and #44882) with ACLEDA, with gross own account exposures of US\$160 million (see Annex 1 for details). IFC has also invested US\$15 million in equity in North Haven Thai (project #38609), a private equity fund, which acquired a 3.5 percent equity stake in ACLEDA in April 2022.

10. ***Project Context:*** The subordinated and senior loan projects (projects #42480 & #44882) align with the WBG’s CPF for Cambodia (FY2019-FY2023), and specifically with the first focus area of promoting state efficiency and boosting private sector growth by increasing access to finance for SMEs and promoting entrepreneurship and financial inclusion through specific targets for SMEs and women-owned/led SMEs (WSMEs). Project #44882 is fully aligned with the recovery phase pillar of “Rebuilding Better,” outlined in the “Saving Lives, Scaling-up Impact and Getting Back on Track: WBG COVID-19 Crisis Response Approach Paper” (June 2020), focusing on new opportunities to build a more sustainable, inclusive, and

resilient future. These investments also fit with IFC’s strategic priority of enhancing economic competitiveness and financial inclusion in the country (FY2020-FY2024).

11. **Project Purpose:** The subordinated loan (project #42480), which is qualified as Tier 2 capital under local regulations, is the first attempt by IFC at mobilizing Tier 2 capital in Cambodia from international lenders who have very limited appetite for Tier 2 capital due to the longer tenor and higher risk profile of the product. This project helped ACLEDA diversify its capital structure, strengthen its capital adequacy, and support its digitalization strategy. The senior loan (project #44882) enabled it to increase financial services for SMEs, including WSMEs and agricultural SMEs, as these enterprises work to sustain their businesses and recover from the impacts of the COVID-19 pandemic. The proceeds from IFC’s investments were ringfenced for these purposes. Under the legal documents, none of the proceeds of these loans may be used to refinance or reschedule existing indebtedness of an eligible sub-borrower to ACLEDA (including debt-to-equity conversions), unless that refinancing or rescheduling is part of a financial restructuring aimed at the acquisition of new capital assets by that eligible sub-borrower. IFC’s engagement with ACLEDA has strong demonstration effects and encouraged the latter to strengthen its cashflow-based credit assessment and commitment to responsible and sustainable finance.

12. **Advisory Services:** Since the initial engagement with ACLEDA in 1998, IFC provided technical and financial support to help ACLEDA prepare for its transformation from an MFI into a commercial bank and shared expertise in development of products of trade finance, SME finance, and agriculture finance etc. In June 2022, IFC completed a risk management advisory project, which helped ACLEDA to enhance its risk management capabilities, with focus on risk governance, capital management (internal capital adequacy assessment process), and stress testing to ensure its institutional strength under various market conditions and stress events, such as the COVID-19 crisis, as well as the higher capital adequacy ratio required by NBC.

B. HTB

13. **IFC Investments in HTB:** HTB, a commercial bank licensed by NBC in August 2020, has been a partner of IFC in Cambodia since 2015, when it was a leading microfinance deposit-taking institution, known as Hattha Kaksekar Limited (HKL). Over the years, IFC has provided funding and Tier 2 capital to HTB, supported its transformation from an MFI to a commercial bank, and provided Advisory Services and knowledge sharing to help it improve resilience, develop gender finance and SME lending, and strengthen responsible finance practices. As of April 7, 2022, IFC made four active investments in HTB with own account exposures of US\$45.7 million (see Annex 1); of these, two projects (#39167 and #44211) were fully repaid in June 2022, and two (#44742 and #45535) remain active as of the date of this Management Response. IFC has a further indirect exposure to HTB through its investment in MEF (project #27827), which has an outstanding loan of US\$3.5 million to HTB.

14. **Project Context:** The investment projects with HTB were aligned with the WBG’s CPF for Cambodia (FY2019-2023) and IFC’s strategic priorities for the country by contributing to the improvement of economic competitiveness and financial inclusion. In addition, projects #44211, #44742, and #45535 are fully aligned with the recovery phase pillar “Rebuilding Better,” outlined in the “Saving Lives, Scaling-up Impact and Getting Back on Track: WBG COVID-19 Crisis Response Approach Paper” (June 2020) focusing on new opportunities to build a more sustainable, inclusive, and resilient future.

15. **Project Purpose:** All the HTB projects referenced above aimed to promote entrepreneurship and financial inclusion for micro, small and medium enterprises (MSMEs) in Cambodia. The projects #44211, #44742, and #45535 were specifically aimed at supporting HTB and its MSME customers (including

WMSMEs) during and after the COVID-19 pandemic, thereby enabling business continuity and sustainable growth of MSMEs, which play a crucial role in the economy. In addition, project #44742, a subordinated loan syndication qualified for Tier 2 capital under local regulations, aimed at diversifying HTB's capital structure, strengthening its capital adequacy, and contributing to financial stability amidst the prolonged impact of the pandemic.

16. **Advisory Services and Upstream Engagements:** IFC provided advisory support for HKL's transformation into a commercial bank between 2017 and 2018. In addition, IFC conducted a responsible finance assessment of HTB between 2021 and 2022, which included a comparative review of HTB's lending practices against internationally recognized standards, aimed at promoting use of the highest responsible finance standards and enabling HTB to continue providing sustainable financing solutions to its customers.

C. AMRET

17. **IFC Investments in AMRET:** AMRET has been a long-standing partner of IFC in Cambodia since September 2014, when IFC made an equity investment of US\$17.5 million in Cambodian Riel equivalent, for 19.99 percent common equity stake in AMRET (AMRET equity project, #34748). Since then, IFC has been providing funding to support AMRET's lending to MSMEs, including WMSMEs, in Cambodia. In June 2020 and June 2021, IFC provided AMRET with one-year revolving senior loans of US\$37.5 million in total through two tranches under IFC's COVID-19 Working Capital Solution Crisis Response Facility to support AMRET's MSME (including WMSME) customers affected by the COVID-19 pandemic (project #44231). As of April 7, 2022, IFC had three active investment projects with AMRET with own account exposures of US\$45 million (see Annex 1), and as of the date of this Management Response, two projects, #34748 and #44231, remain active, with outstanding own account exposures of US\$30 million in total. Details of IFC's direct investment relationships are provided in Annex 1. As of March 31, 2022, IFC has an indirect exposure to AMRET through its investments in MEF (project #27827) and the MIFA Fund (project #31467), which have outstanding loans to AMRET of US\$13.8 million and US\$5.5 million, respectively. In addition, IFC holds a 16 percent equity stake in AMRET's parent company, Advans (project #21856). Advans in turn holds a 52.78 percent stake in AMRET.

18. **Project Context:** The AMRET equity project #34748 was aligned with WBG's CPF and IFC's strategy in Cambodia, which focused on promoting inclusive growth and strengthening Cambodia's economic competitiveness through broadening of financial markets. The project aimed to contribute to the development of the microfinance sector in Cambodia by supporting AMRET to improve and expand its financial services to its MSME clients in rural areas and engage in agriculture-related activities. Project #41294 was aligned with the WBG strategy in Cambodia in FY2016-2017, which focused on supporting Cambodia's export-driven economy to enhance the country's business climate and address competitiveness bottlenecks, improving service delivery to alleviate vulnerabilities, and promoting income-earning opportunities for the poorest segments of the population. Project #44231 was part of IFC's COVID-19 Working Capital Solution Crisis Response Facility and was fully aligned with the recovery phase pillar, "Rebuilding Better," outlined in the "Saving Lives, Scaling-up Impact and Getting Back on Track: WBG COVID-19 Crisis Response Approach Paper" (June 2020), focusing on new opportunities to build a more sustainable, inclusive, and resilient future.

19. **Project Purpose:** The AMRET equity project #34748 aimed to improve AMRET's shareholding structure, corporate governance, and institutional capacity. As a shareholder, IFC could provide more significant support in terms of strategy to help reinforce the company's mission to target the base of the

pyramid and MSMEs, while exploring the route for AMRET’s transformation into a commercial bank to make its operations more sustainable. Project #41294 aimed to provide medium-term funding to support AMRET’s on-lending activities to MSMEs and WMSMEs. Project #44231 provided short-term financial relief to MSMEs and WMSMEs in Cambodia affected by the COVID-19 pandemic.

D. PRASAC, LOLC and Sathapana Bank

20. IFC does not currently have active investments in PRASAC, LOLC, or Sathapana Bank, but it does have indirect exposures to these financial institutions through the following investments:

- MEF (project #27827), a microfinance investment vehicle, in which IFC has a 20 percent stake. MEF has outstanding senior loans of US\$7.8 million to PRASAC and US\$14.2 million to LOLC as of March 31, 2022.
- MIFA (project #31467), a microfinance investment vehicle, in which IFC has a 10 percent stake. MIFA has an outstanding subordinated loan of US\$3.2 million to Sathapana, two senior loans totaling US\$5.5 million to AMRET, and two subordinated loans totaling US\$9 million to LOLC.

21. ***IFC Investments in MEF and MIFA:*** Since pioneering commercial microfinance in the 1990s, IFC’s strategy for financial inclusion includes investing in the microfinance sector through structured investment vehicles and other forms of wholesale financing, demonstrating the business case for commercial microfinance and promoting it as a viable asset class to other institutional investors. Both MEF and MIFA were joint initiatives of IFC and KfW (the German development bank). The fund managers make their investment decisions independently, following a set of eligibility criteria and responsible finance principles, and are also required by IFC to apply relevant E&S requirements to their investments in the microfinance sector.

- MEF was launched as a response to the 2008/2009 global financial crisis to maintain confidence in the microfinance industry. IFC invested US\$150 million in mezzanine shares of the Fund, representing 20.2 percent. As of December 2021, MEF had total assets of more than US\$715 million and its investors include several European development banks and agencies, and private investors. Since inception, MEF has supported low-income borrowers by providing over US\$2.6 billion through 800 loans to more than 291 financial institutions active in microfinance in 59 developing countries, among them AMRET, HTB, LOLC, PRASAC, and Sathapana.
- MIFA was launched in 2012 as the first microfinance fund to focus exclusively on the Asia region, with the aim of expanding and deepening the delivery of microfinance services there, where the need and the potential to reach large populations were significant. IFC invested US\$16.75 million in mezzanine shares. As of June 2022, MIFA had total assets of US\$166 million and its investors include pension funds and private foundations. Since inception, MIFA has provided over US\$540 million in over 100 loans to more than 40 MFIs in 14 Asian countries, among them LOLC, Sathapana, and AMRET.

III. CAO COMPLAINT

22. On February 10, 2022, the Complaint was lodged with CAO by two local CSOs – LICADHO and EC – on behalf of the Complainants. They allege that they have not been provided sufficient information,

in language that is understandable to them, to fully grasp the conditions of the loan agreements into which they entered. They allege negative social impacts from the debt collection activities of the lenders, including loss of land, loss of livelihood, food insecurity, threats to health, and child labor, as well as negative impacts on Indigenous Peoples. The Complaint also raises concerns related to IFC's E&S due diligence, project categorization, and project supervision, and IFC clients' compliance with IFC's E&S requirements.

23. On April 7, 2022, the CAO informed IFC that the Complaint was eligible for an assessment in relation to IFC's investments in the projects after considering the three criteria for eligibility: (i) the complaint pertains to a project that IFC is participating in; (ii) the issues raised in the complaint pertain to CAO's mandate to address E&S impacts of IFC projects; and (iii) the complainant is, or may be, affected by the environmental and/or social impacts raised in the complaint.

24. On May 3, 2022, LICADHO and EC issued a joint statement published on their respective websites with a summary of the Complaint and the names of the six IFC clients and sub-clients. The statement did not identify the Complainants.

25. On May 20, 2022, the CAO shared a redacted Complaint with IFC to be further communicated with the concerned clients and sub-clients. The CAO also shared a redacted version for IFC's internal use. Given the desire of the Complainants to remain anonymous, the CAO has not shared the full text of the Complaint with IFC. It is not clear from the redacted Complaint which FIs are accused of which practices and what is the magnitude of the alleged malpractices as the number of Complainants affected has not been disclosed to IFC.

26. As noted earlier, the Complainants had requested CAO to keep their identities confidential out of fear of reprisals. While Management fully understands complainants' desire to remain anonymous it finds CAO's explanation linking disclosure of statistical data about the number of complainants and the risk of reprisals difficult to understand. During the CAO assessment process, IFC facilitated and encouraged the participation of its clients in the process, raised awareness of reprisal concerns, and provided capacity building of its clients to address such issues. On October 12, 2022, IFC also requested through CAO a meeting with LICADHO and EC to better understand the other allegations presented in the Complaint, but at the time of the release of this report the willingness of LICADHO and EC to meet IFC representatives has not been confirmed.

27. In August 2022, the CAO extended the assessment period for 30 business days as per the CAO Policy, given that nine of the Complainants shared their wish to engage in dispute resolution with the FIs to seek mutually acceptable solutions to their concerns. IFC's client AMRET, and two sub-clients, PRASAC and LOLC, initially expressed willingness to engage in dispute resolution but later did not confirm this intention.

28. The CAO released its draft Assessment Report on September 15, 2022. As consensus on engaging in a voluntary dispute resolution process to address the Complaint was not achieved, the Complaint moves to the CAO Compliance phase for appraisal, per the CAO's Policy.

IV. MANAGEMENT RESPONSE

29. IFC Management respects the CAO's process in its assessment of the Complaint in relation to IFC's investment in the six IFC clients and sub-clients. IFC acknowledges that the issues raised in the Complaint are serious and require further analysis and follow up by IFC and other stakeholders.

30. ***IFC's efforts in responsible finance at institutional level.***

- IFC strives to work only with a select group of FIs that are committed to good client protection and responsible finance practices.
- Responsible finance is an important aspect for all IFC investments in microfinance providers, including the projects and sub-projects mentioned in the Complaint. IFC's investment appraisal of microfinance providers includes detailed due diligence covering: (i) an extensive review of corporate governance; (ii) interviews with internal and external stakeholders; (iii) reviews of investees' policies involving their products, lending and collection practices, consumer protection policies, collateral policies, human resources management and performance incentives, and E&S related policies and frameworks; (iv) loan file reviews to check the consistency between policies in place and implementation; and (v) on-site visits of selected branches, with interviews of branch managers and borrowers (these visits could not be conducted during the pandemic but were replaced by virtual meetings with senior and branch managers during the course of the respective appraisals). Any repeat projects require a full review of the client's businesses. These due diligence procedures allow IFC to have a deep understanding of the responsible finance practices of its current and prospective FI clients.
- IFC is engaging with its clients to work on a responsible finance initiative to promote responsible finance principles, under which IFC aims to work with existing and prospective FI clients to review, assess, and provide recommendations to further develop the FIs' responsible finance policies and practices, as well as jointly agree on action plans to implement identified recommendations. IFC incorporated affirmative covenants requiring compliance with the Client Protection and Responsible Finance Principles (see sample in Annex 3), which cover avoidance of over-indebtedness, transparent pricing, appropriate collection practices, ethical staff behavior, grievance redress mechanism, and/or data privacy protection, in loan agreements of the clients and funds involved in the Complaint.⁷ IFC assesses client's compliance with the Principles and requires actions to address any identified gaps to its satisfaction along pre-agreed timelines. For example, where needed, IFC sets financial covenants in the loan agreements with FI clients to require high-risk refinancing loans⁸ to decrease as a proportion of monthly disbursements over time, as this discourages FIs from providing larger loans to borrowers too soon after making earlier loans, since such lending practices can lead to borrowers' over-indebtedness. More specifically, IFC assessed the responsible finance practices of each of the clients involved in the complaint during the appraisals conducted in the context of the referenced projects and addressed the identified areas for improvement via the adoption of the affirmative covenants abovementioned in this section.

31. ***IFC's efforts in responsible finance at sectoral level.*** IFC has proactively promoted responsible finance and client protection practices in the microfinance sector in Cambodia, in collaboration with various stakeholders. Since 2006, IFC has worked with the WBG and the NBC to set up the Credit Bureau Cambodia (CBC), the country's first, and a source of transparency and information for credit reporting and

⁷ IFC included affirmative covenants on Client Protection and Responsible Finance Principles in its direct loans to Prasac in 2015 and 2016 (projects number 36280 and 38235), ACLEDA (project number 34386), HTB (project numbers 44742 and 45535), Amret (project numbers 37505 and 44231) as well as in its equity investment in MEF (project number 27827) and MIFA (project number 31467).

⁸ High-risk refinancing loans in the CMA Lending Guidelines Report are defined as: (i) loans refinanced during the first trimester with the new loan amount higher than 140 percent of the old loan; or (ii) loans refinanced during the second trimester with the new loan amount higher than 180 percent of the old loan.

underwriting of as well as a tool for FIs to reduce the risk of borrowers' over-indebtedness. CBC currently serves 176 member FIs, including the six FIs named in the Complaint, and its database covers approximately 60 percent of the adult population in the country to date. CBC contributes to responsible finance monitoring by issuing reports to all financial institution members and providing sector-wide reporting to CMA and the Association of Banks in Cambodia (ABC). IFC has collaborated with the CMA, CBC, and SMART Campaign to promote the Lending Guidelines – an initiative established in 2016 to reduce the risks of the credit market overheating and borrower over-indebtedness. In 2020, IFC began implementing an insolvency and debt resolution upstream project in Cambodia, which covers non-performing loan management and debt resolution, to strengthen fair and transparent debt collection practices. Under this initiative, IFC is currently working on two components: (i) developing a mechanism for flexible out-of-court workouts, and (ii) developing and implementing the required specific regulations under the Insolvency Law, especially the rules governing insolvency administrators. Under the first component, IFC is supporting the National Commercial Arbitration Centre in Cambodia, to establish commercial mediation rules to facilitate dispute resolution alternatives. The project has provided commercial mediation training to 16 local commercial mediators who have been internationally accredited. Both components are expected to achieve key approvals from relevant government authorities in Cambodia by mid-2023, after which IFC will start working on strengthening the capacity of debt resolution stakeholders such as central bank, lenders, lawyers, insolvency judges and administrators.

32. The CAO Policy provides specific appraisal criteria for determining whether a compliance investigation is necessary, including: (a) whether there are preliminary indications of harm or potential harm; (b) whether there are preliminary indications that IFC may not have complied with its E&S Policies; and (c) whether the alleged harm is plausibly linked to the potential non-compliance.⁹ With respect to IFC, the CAO Policy defines “E&S Policies” as including: (i) IFC’s Policy on Environmental and Social Sustainability (the Sustainability Policy), (ii) the project-specific provisions of IFC’s Access to Information Policy of IFC; and (iii) any other Board-approved environmental and social commitments for projects.¹⁰ While respecting CAO’s independence in its eligibility decision and CAO Assessment Report findings, Management has reviewed the allegations set forth in the Complaint and is of the view that criterion “b” regarding “preliminary indications that IFC may not have complied with its E&S Policies” has not been met.

33. IFC considers that lending and financial consumer protection (FCP) practices and risks arising to sub-borrowers in this context do not fall within the scope or specific requirements of IFC’s 2012 Sustainability Framework. The Sustainability Policy focuses on managing potential E&S impacts *on surrounding community and workers* resulting from the *business activity* to be supported.¹¹

34. According to the 2012 Sustainability Policy, environmental and social impacts refer to any change to the physical, natural or cultural environment, and impacts on *surrounding community and workers*.¹² Performance Standard 1 also identifies other stakeholders as those not directly affected by the project but that have an interest in it, including national and local authorities, neighboring projects, and/or nongovernmental organizations.¹³ Customers or consumers of a client’s products are not referenced in the

⁹ CAO Policy, para 91(b).

¹⁰ CAO Policy, Glossary.

¹¹ Sustainability Policy, para 3, footnote 2.

¹² Sustainability Policy, para 3, footnote 2.

¹³ Performance Standard 1, Para 1, footnote 1.

Sustainability Policy or Performance Standards as a category of stakeholder to which E&S risk mitigation measures should apply.

35. According to Performance Standard 1, the term “project” refers to a defined set of business activities, including those where specific physical element aspects, and facilities likely to generate risks and impacts, have yet to be identified. With respect to financial intermediaries, the *business activity* IFC supports through its FI clients and sub-clients is the business activity resulting from the use of proceeds of loans by sub-borrowers (for example, loans for individual consumption purposes or loans to purchase inputs for small-scale agriculture or to finance small-scale trade activities). The Sustainability Policy does not apply to the E&S impacts on sub-borrowers themselves.

36. Instead, IFC addresses these types of financial consumer protection issues and risks as part of its broader financial due diligence processes and through the lens of responsible finance. In this context, IFC fully recognizes the importance of strong lending and consumer protection practices in the microfinance industry and has taken a number of actions at the institutional, sectoral, and national level to enhance financial consumer protection in Cambodia, which are described in detail in paragraphs 30 and 31.

37. The complainants allege that IFC’s pre-project due diligence resulted in improper risk classification of its investments. Aligned with the requirements of the Sustainability Policy, IFC’s E&S due diligence is focused on an assessment of E&S risks and potential impacts related to the sub-borrowers’ *use of proceeds* from microfinance facilities that IFC provides through its FI clients and not potential E&S impacts on the sub-borrowers themselves. When a FI’s existing or proposed portfolio includes financial exposure to business activities that predominantly have minimal or no adverse environmental or social impacts, IFC classifies these investments as FI-3. The E&S risks and potential impacts associated with individuals or microenterprises’ use of proceeds from facilities that IFC provided through its FI clients’ microfinance programs have been assessed and typically found to be minimal. Therefore, this type of microfinance lending is normally considered as low risk and categorized as FI-3. Beyond providing micro loans to individual or microenterprises, some of the active projects also included components to finance SMEs, in which case, and to reflect the overall E&S risk of the investment, these transactions were categorized as FI-2.

38. In line with paragraph 35 of the Sustainability Policy, FI clients are required to develop and operate an ESMS that is commensurate with the level of environmental and social risks in its portfolio, and prospective business activities. For FI-3 investments this involves screening of business activities they support against the IFC Exclusion List and national law. Such E&S screening procedures are considered as constituting an ESMS that is commensurate with the minimal level of E&S risk in these transactions.¹⁴ FI-2 clients are required to operate a more sophisticated ESMS where relevant requirements of the Performance Standards may be applied to higher risk business activities - project or long-term corporate lending.¹⁵ As noted, microlending to individuals or microenterprises is considered a low-risk activity as per the policy focus on E&S impacts arising from the use of proceeds. The E&S risk classification of all active projects as well as clients’ ESMSs are aligned with the requirements of the Sustainability Policy. Accordingly, it is Management’s view that there are no preliminary indications that IFC may not have complied with its E&S Policies with respect to this aspect.

39. Supervision of responsible finance practices are subject to IFC’s investment portfolio supervision, rather than being monitored by E&S specialists. During the project supervision stage, IFC’s investment

¹⁴ Sustainability Policy, footnote 7.

¹⁵ IFC Sustainability Policy, para 35.

portfolio supervision team (i) reviews periodically required reporting and covenants, including those linked to responsible finance, (ii) stays in regular touch with FI clients' management teams, key shareholders and other key stakeholders to keep abreast of the clients' latest strategic developments, including those related to responsible finance, and also (iii) conducts periodic updates to the integrity due diligence during portfolio supervision, which seeks to capture any reputational risks of the investees' directors, management, and sponsors.

40. Complainants allege that there are gaps in IFC's E&S framework that assess and manage E&S risks and impacts with respect to microfinance activities. However, the CAO appraisal criteria assess whether there are preliminary indications that IFC *may not have complied with its E&S Policies*, not whether such E&S Policies are adequate in their current form or whether IFC should revise its E&S Policies. IFC is committed to addressing social impacts such as those specified in the Complaint through its Client Protection and Responsible Finance practices, which are described below. Management recognizes that the issues related to responsible financing in Cambodia presented in the Complaint are serious ones that require further analysis and follow up by IFC and other stakeholders, such as the NBC, the CMA, and ABC. IFC is committed to addressing these issues and strengthening its Client Protection and Responsible Finance practices outside of a CAO compliance investigation process which is focused strictly on compliance with the Sustainability Policy.

41. IFC has adopted a programmatic approach to responsible finance in Cambodia, to instill and reinforce implementation of client protection and responsible finance practices by IFC's clients. Described above (paragraphs 30 to 31) are the actions that IFC has taken at the institutional, sectoral, and national level to enhance financial consumer protection in Cambodia.

42. Management recognizes that consumer protection could be further enhanced through the implementation of strategies reflected in Cambodia's National Financial Inclusion Strategy (NFIS).¹⁶ These include steps such as: (i) issuing a financial consumer protection (FCP) regulation through the regulator, NBC; (ii) further strengthening efforts in financial consumer education; (iii) introducing an independent ombudsman; and (iv) streamlining mechanisms for dispute resolution and enhancing self-governance by the industry associations. IFC, together with other multilateral development financial institutions, will coordinate with NBC, CMA, ABC, and other stakeholders to support these improvements.

43. IFC is strongly committed to reviewing and addressing the issues raised in the complaint which pertain to responsible finance and financial consumer protection practices, along with other relevant stakeholders active in Cambodia, such as the World Bank, NBC, CMA, ABC, and other multilateral development financial institutions. To this end, and independent of a CAO compliance investigation process related to the Complaint, IFC is committed to pursuing the following approaches and activities:

Project-specific irregularities alleged in the Complaint:

- Assess whether any irregularities related to responsible finance principles in loans provided to the Complainants occurred (provided that information on individual Complainants is shared with IFC) and, jointly with the FI clients, define any improvements necessary to avoid such irregularities in future.
- In instances where IFC ascertains that such irregularities related to responsible finance principles occurred, work with its client(s) to address them at the level of individual borrowers, as appropriate.

¹⁶ National Financial Inclusion Strategy 2019-2025 published on NBC's website:
https://www.nbc.org.kh/download_files/publication/blueprints_eng/Final_NFIS_in_English.pdf

Reprisals Risk

- Continue to engage with and train IFC's clients and sub-clients on preventing, managing, and addressing the risk of reprisals. IFC will build on the training provided on this topic to AMRET, HTB and PRASAC in November 2022 to improve their capacity to address reprisals. In addition, IFC is looking to provide similar training and guidance to the remaining clients and sub-clients involved in the complaint, as well as extending these sessions to the rest of the industry by partnering with the NBC and CMA. Supportive of the Complainants' request for confidentiality, IFC would welcome any engagement with the complainants and their representatives in the described activities to inform and strengthen responsible finance practices.

IFC approach to responsible finance:

- Open a public consultation on the IFC approach to responsible finance reflected in the Client Protection and Responsible Finance Principles, including specific conditions for disclosure of relevant loan related information to borrowers. The consultation period would be open for 45 days, during which relevant parties in Cambodia, including the Complainants, would be able to provide their comments.
- Amend the approach to responsible finance within six months from the end of consultations, reflecting the consultation findings.
- Publish the approach to responsible finance and apply the revised version as a standard condition of financing for all microfinance lending in Cambodia.

Financial consumer protection (FCP) regulation in Cambodia:

- Engage the Cambodian Government in designing a FCP regulation to address any existing shortcomings at the sector level. This may include addressing implementation of the enhancements as described in the Cambodian NFIS.

44. IFC welcomes any engagement with and participation of the Complainants and their representatives in the above activities to inform and strengthen responsible lending practices, while remaining supportive of their request for confidentiality.

45. Management is committed to provide updates to the Board, on request, about the status of implementation of the above-mentioned activities.

ANNEX 1: IFC's Investment Relationships with Direct FI Clients, ACLEDA, HTB, and AMRET

Table 1: IFC projects with ACLEDA that were mentioned in the initial Complaint

Project Number	Project Name	Committed Year	Initial Committed Amount			Status as of April 7, 2022	Status as of this Management Report	E&S Categorization
			IFC Own Account Investment	IFC Mobilization	Total			
#30607	ACLEDA Sub-Debt	2011	6	-	6	Closed	Closed	FI
#32642	CF ACLEDA Sub-Debt 2	2012	40	-	40	Closed	Closed	FI-2
#34386	ACLEDA Loan 2013	2013	50	-	50	Closed	Closed	FI-2
#35963	ACLEDA Group Loan	2015	40	70	110	Closed	Closed	FI-2
#37594	ACLEDA Gender Loan	2016	100	130	230	Closed	Closed	FI-2
#42480	ACLEDA Sub-Debt	2019	60	50	110	Active	Active	FI-2
#44882	ACLEDA Senior 2020	2021	100	69	169	Active	Active	FI-2

Table 2: IFC projects with HTB that were mentioned in the initial Complaint

Project Number	Project Name	Committed Year	Initial Committed Amount			Status as of April 7, 2022	Status as of this Management Report	E&S Categorization
			IFC Own Account Investment	IFC Mobilization	Total			
#36242	HKL Senior Loan	2015	10	-	10	Closed	Closed	FI-3
#38239	HKL AB Loan	2016	20	30	50	Closed	Closed	FI-3
#39167	HKL Senior 2017	2017	5	-	5	Active	Closed	FI-3
#41223	DCM HKL LCY Bond	2018	20	-	20	Closed	Closed	FI-3
#44211	WCS Covid HKL	2020	25	-	25	Active	Closed	FI-3
#44742	HTB Sub-Debt	2021	10	30	40	Active	Active	FI-2
#45535	Base of Pyramid (BOP) HTB Senior	2021	10	60	70	Active	Active	FI-2

AB – IFC A Loan and B Loan; BOP – Base of Pyramid; DCM –debt capital market; WCS - working capital solutions

Table 3: IFC projects with AMRET that were mentioned in the initial Complaint

Project Number	Project Name	Committed Year	Initial Committed Amount			Status as of April 7, 2022	Status as of this Management Report	E&S Categorization
			IFC Own Account Investment	IFC Mobilization	Total			

#34748	AMRET Equity Project	2014	17.5	-	17.5	Active	Active	FI-2
#37505	AMRET AB Loan	2016	7	53	60	Closed	Closed	FI-2
#601602	AMRET Transform	2016-2017	An Advisory Project			Closed	Closed	
#41294	AMRET Senior 18	2018	2.5	15	17.5	Active	Closed	FI-2
#44231	WCS COVID Tranche 1	2020	12.5	12.5	25	Active	Closed	FI-3
#44231	WCS COVID Tranche 2	2021	12.5	-	12.5	Active	Active	FI-3

AB – IFC A Loan and B Loan; WCS – working capital solutions

Table 4: IFC projects with PRASAC that were mentioned in the initial Complaint

Project Number	Project Name	Committed Year	Initial Committed Amount			Status as of April 7, 2022	Status as of this Management Report	E&S Categorization
			IFC Own Account Investment	IFC Mobilization	Total			
#36280	PRASAC Sr Loan 3	2015	10	-	10	Closed	Closed	FI-2
#38235	PRASAC AB Loan	2016	20	70	90	Closed	Closed	FI-2

AB - IFC A Loan and B Loan

ANNEX 2: IFC's Investment Relationships with Three Funds – MEF, MIFA, and North Haven

Table 1: IFC projects with MEF, MIFA, and North Haven that were mentioned in the initial Complaint

Project Number	Project Name	Fund Name	Committed Year	Initial Committed Amount	Status as of April 7, 2022	Status as of this Management Report
#27827	IFC – MLF	MEF	2009	150	Active	Active
#31467	MIFA Debt Fund	MIFA Debt Fund	2012	16.75	Active	Active
#38609	North Haven Fund	North Haven Thai Private Equity Fund L.P.	2018	15	Active	Active

Table 2: MEF's exposures on Cambodian FIs

MEF (Project #27827)	Product Type	Committed Amount US\$ million	Outstanding Exposure US\$ million
LOLC Cambodia	Senior Loan	14.2	14.2
Amret	Senior Loan	13.8	13.8
PRASAC	Senior Loan	7.8	7.8
HTB	Senior Loan	5.5	3.5
MEF's Total Exposures on Cambodian FIs		41.3	39.3

Table 3: MIFA's exposures on Cambodian FIs

MIFA (Project #31467)	Product Type	Committed Amount US\$ million	Outstanding Exposure US\$ million
Sathapana Bank Plc.	Subordinated Loan	4.0	3.2
Amret	Senior Loan	2.5	2.5
Amret	Senior Loan	3.0	3.0
LOLC Cambodia	Subordinated Loan	5.0	5.0
LOLC Cambodia	Subordinated Loan	5.0	4.0
MIFA's Total Exposures on Cambodian FIs		19.5	17.7

Table 4: North Haven's exposures on Cambodian FIs

North Haven (Project #38609)	Product Type	Committed Amount US\$ million	Outstanding Exposure US\$ million
ACLEDA Bank	3.5% Equity committed in April 2022	44.8	44.8

ANNEX 3: Client Protection and Responsible Finance Principles
(Example of Principles included in IFC's loan agreements with FI clients for IFC loans to support FIs' microfinance business)

Apart from compliance with consumer protection practices laid down by the Central Bank, or any other regulatory or supervising entity and other statutory bodies, the Borrower shall also ensure that it is fully transparent in the pricing, terms, and conditions of all financial products. The Borrower shall employ respectful collection practices and adopt high ethical standards in the treatment of clients. The following Client Protection Principles are the minimum standards that the Borrower shall adhere to while providing financial services to its clients:

- **Avoidance of Over-Indebtedness.** The Borrower will take reasonable steps to ensure that credit will be extended only if borrowers have demonstrated an adequate ability to repay and loans will not put the clients at significant risk of over-indebtedness. Similarly, the Borrower will take adequate care that only appropriate non-credit financial products (such as insurance) are extended to clients.
- **Transparent and Responsible Pricing.** The pricing, terms, and conditions of financial products (including interest charges, insurance premiums, all fees, etc.) will be transparent and will be adequately disclosed in a form understandable to clients. Responsible pricing means that pricing, terms, and conditions are set in a way that is both affordable to clients and sustainable for financial institutions.
- **Appropriate Collections Practices.** Debt collection practices of the Borrower will be neither abusive nor coercive.
- **Ethical Staff Behavior.** Staff of the Borrower will comply with high ethical standards in their interactions with its clients, and such providers will ensure that adequate safeguards are in place to detect and correct corruption or mistreatment of clients.
- **Mechanisms for Redress of Grievances.** The Borrower will have in place timely and responsive mechanisms for complaints and problem resolution for their clients.
- **Privacy of Client Data.** The privacy of individual client data will be respected in accordance with the laws and regulations of individual jurisdictions, and such data shall not be used for other purposes without the express permission of the client (while recognizing that the Borrower can play an important role in helping clients achieve the benefits of establishing credit histories).

Disclaimer

This IFC Management Response is provided in response to the Assessment Report of the Office of the Compliance Advisor Ombudsman (CAO) finding a complaint to a project supported by IFC finance or investment eligible for compliance appraisal.

Nothing in this IFC Management Response or in the process provided for in the CAO Policy (“CAO Process”) (1) creates any legal duty, (2) asserts or waives any legal position, (3) determines any legal responsibility, liability, or wrongdoing, (4) constitutes an acknowledgment or acceptance of any factual circumstance or evidence of any mistake or wrongdoing, or (5) constitutes any waiver of any of IFC’s rights, privileges, or immunities under its Articles of Agreement, international conventions, or any other applicable law. IFC expressly reserves all rights, privileges, and immunities. IFC does not create, accept, or assume any legal obligation or duty, or identify or accept any allegation of breach of any legal obligation or duty by virtue of this IFC Management Response.

While reasonable efforts have been made to determine that the information contained in this IFC Management Response is accurate, no representation or warranty is given as to the accuracy or completeness of such information. CAO is not a judicial or legal enforcement mechanism. Its analyses, conclusions, and reports are not intended to be used in judicial or regulatory proceedings nor to attribute legal fault or liability and it does not engage in factfinding nor determine the weight that should be afforded to any evidence or information. No part of this IFC Management Response or the CAO Process may be used or referred to in any judicial, arbitral, regulatory, or other process without IFC’s express written consent.

Appendix 6: CAO Policy Considerations for the Compliance Appraisal

The CAO Policy¹²⁶ provides for the compliance appraisal to take into account additional considerations, as outlined in the table below.

CAO Policy provision	Analysis for this case
<p>For any project or sub-project where an IFC/MIGA Exit has occurred at the time CAO completes its compliance appraisal, whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite an IFC/MIGA Exit (para. 92a).</p>	<p>CAO has concluded that a compliance investigation that includes the three exited investments in this case, in addition to the active ones, would provide particular value in terms of accountability, learning, and remedial action. While similar in their purpose and use of proceeds to the active investments in Amret and Hattha Bank, the exited investments cover different time periods than those currently active. Including the three exited projects will allow understanding any evolving IFC practices in this sector, compared with GIIP, over a longer period of time, which could potentially provide better accountability and learning possibilities for IFC. Additionally, including the exited investments in the investigation could broaden the opportunity for remedial actions for those sub-clients who may have been harmed during the time the exited projects were active.</p>
<p>The relevance of any concluded, pending or ongoing judicial or non-judicial proceeding regarding the subject matter of the complaint (para. 92b).</p>	<p>Not applicable.</p>
<p>Whether Management has clearly demonstrated that it dealt appropriately with the issues raised by the Complainant or in the internal request and followed E&S Policies or whether Management acknowledged that it did not comply with relevant E&S Policies (para. 92c).</p>	<p>As outlined in the body of this report, CAO finds preliminary indications of noncompliance. CAO concludes that IFC has not clearly demonstrated that it dealt appropriately with issues raised by the complaint at the individual project level, nor has IFC acknowledged non-compliance with relevant E&S Policies.</p>
<p>Whether Management has provided a statement of specific remedial actions, and whether, in CAO's judgment after considering the Complainant's views, these proposed remedial actions substantively address the matters raised by the Complainant (para. 92d).</p>	<p>Management has proposed a series of approaches and activities to address the issues raised in the complaint at the project, sector, and regulatory levels (see Appendix 5). However, CAO concludes that these proposed activities do not constitute a statement of remedial actions and do not</p>

¹²⁶ CAO Policy, para. 92.

	<p>substantively address the issues raised in the complaint, because IFC Management does not consider these issues to be within the scope of its E&S policies. In a CAO compliance process, remedies respond to harms caused or contributed to by non-compliances with E&S policies. IFC presents its proposed activities as independent of the CAO compliance process and IFC's obligations under the Sustainability Framework. Additionally, none of these activities address the central issue raised by complainants of a lack of proper E&S due diligence and supervision by IFC of its microfinance investments in relation to responsible finance and financial consumer protection principles.</p>
<p>In relation to a project or sub-project that has already been the subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available (para. 93).</p>	<p>Not applicable.</p>

Appendix 7: Terms of Reference of the Investigation



Terms of Reference for Compliance Investigation of IFC’s Environmental and Social Performance in relation to Exposure to Six Financial Institutions in Cambodia (Aceda, Amret, Hattha Bank, Prasac, LOLC, and Sathapana)

IFC Project Numbers: #21856, #27827, #31467, #34748, #38609, #39167, #41294, #42480, #44211, #44231, #44742, #44882, #45535

About CAO

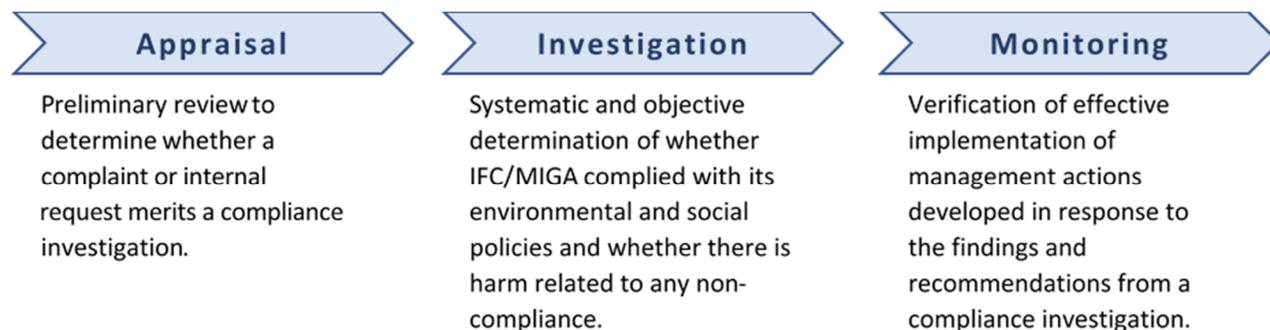
The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent office that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org.

About the Compliance Function

CAO’s compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO’s compliance function follows a three-step approach:



Context and Investment

Over-indebtedness of poor and vulnerable populations is a growing concern in Cambodia.¹²⁷ The World Bank, IFC, and different UN agencies have all raised concerns about the increasing over-indebtedness of Cambodian households, which together with a weak consumer protection framework, has adverse social repercussions and affects many Cambodians' standard of living.¹²⁸

The WBG has provided extensive support to Cambodia's financial sector through technical assistance and direct investments, particularly for the provision of microfinance and the development of financial infrastructure. IFC has made significant investments in several microfinance institutions. Related to this case, IFC has direct investments in Acleda Amret and Hattha Bank, as well as indirect financial exposure to Prasac, LOLC, and Sathapana through investments in the Microfinance Enhancement Facility (MEF), the Microfinance Initiative for Asia Debt Fund (MIFA), North Haven Thai (a private equity company), and Advans S.A. (Amret's parent company). In total, this case involves 13 IFC projects, that support lending programs for micro, small, and medium enterprises (MSME) which were active at the time the complaint was filed with CAO, and which link IFC to these six financial institutions in Cambodia.

The complaint

In February 2022, CAO received the complaint in relation to the lending and collection practices of Acleda, Amret, Hattha Bank, LOLC, Prasac, and Sathapana Bank in Cambodia. The complainants argue that IFC has repeatedly failed to conduct adequate environmental and social (E&S) due diligence and supervision on its clients who are microfinance providers. They allege the clients' Environmental and Social Management Systems (ESMS) are "clearly inadequate to address the predatory and deceptive loan practices, irresponsible lending [...], and coercion and threats from loan officers" that are common practice in Cambodia.

¹²⁷ See, among others, IFC, Promoting Financial Consumer Protections in Cambodia, 2015, pp. 29–33. Available at <https://bit.ly/3VCU817>; World Bank Group, Cambodia Policy Note on Microfinance and Household Welfare, 2019, p.11. Available at <https://bit.ly/3NITyWL>; MIMOSA Report on Cambodia, March 2020, p. 7-8.

¹²⁸ Report of the UN Secretary-General to the Human Rights Council, Annual Report of OHCHR, 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, 17 August 2022, A/HRC/51/63, para. 42; Report of the UN 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, 16 September 2021, A/HRC/48/49, para. 40; UN Independent Expert Report on Private Debt and Human Rights, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, (2020), A/HRC/43/45 at p.1 and para. 32–34; Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Cambodia, 27 March 2023 E/C.12/KHM/CO/2, paras. 38 and 39(b).

Specifically, the complainants allege that they have lost their land and livelihoods because microfinance lenders routinely request them to put up their land as collateral for the loans to be approved, including indigenous communal land, and then force them into premature sales of the land for collection. Moreover, to repay increasing debts, they have also sold other sources of income, such as tools, reduced their food intake, taken their children out of school, and been forced to migrate for work. The complainants state that IFC was aware of publicly available information regarding widespread social harms and inadequate consumer protections in Cambodia's microfinance sector but continued to approve additional financing in the sector without additional requirements. They argue that IFC is not properly supervising the business activities of its microfinance clients on the grounds that microfinance lenders are not required to screen their lending activities for E&S risks and resulting harms to borrowers. They consider this particularly significant since microfinance borrowers are likely to be part of vulnerable populations and thus require more protection and monitoring to ensure that IFC projects do not have harmful social impacts.

The complainants have also expressed a fear of reprisals for speaking out against the microfinance industry and have asked CAO to keep their identities confidential.

Investigation Terms of Reference¹²⁹

Where, as in the present case, the CAO appraisal process results in a decision to investigate, CAO's appraisal report includes terms of reference for the compliance investigation, outlining:

- a. *The objectives and scope of the investigation;*
- b. *Any limitations on the scope of the investigation that may be appropriate, considering, among others, issues closed at the appraisal stage, the presence of concurrent judicial proceedings, or an IFC/MIGA Exit;*
- c. *The approach and method of investigation and specific consultant qualifications; and*
- d. *A schedule for the investigation tasks, timeframe, and reporting requirements. This schedule will include deadlines for the submission of information by IFC/MIGA to inform the compliance investigation process.*¹³⁰

Investigation Objective and Scope

As established in the Compliance Appraisal Report, and as related to the complaint, CAO will conduct a compliance investigation of IFC's investments in Acleda, Amret, Hattha Bank, Advans, North Haven Thai, MEF, and MIFA, and indirect investments in Prasac, LOLC, and Sathapana, through MEF and MIFA. The investigation will determine whether IFC complied with its E&S Policies relevant to the investments and whether there is harm related to any IFC non-compliance. In determining whether IFC has complied with its E&S Policies, CAO will include,

¹²⁹ Following para. 119 of the CAO Policy, CAO consulted with IFC in preparing these TOR.

¹³⁰ CAO Policy, para. 118.

where appropriate, an assessment of whether IFC deviated in a material way from relevant directives and procedures.

Relevant to the issues raised in the complaint, the objective of the investigation is to determine:

1. Whether IFC has complied with its E&S Policies, including:
 - a. Whether IFC conducted a pre-investment E&S review of its investments in Acleda, Amret, Hattha Bank, Advans, North Haven Thai, MEF, and MIFA as required by the Sustainability Policy that was commensurate to the risks and impacts of these investments on the MSME borrowers (sub-clients in these investments); and
 - b. Whether IFC put in place contractual provisions requiring its clients named above to meet Cambodian national law, the IFC Exclusion List and the IFC Performance Standards, as relevant to each investment, regarding risks and impacts on the MSME borrowers; and
 - c. Whether IFC has supervised its investments in Acleda, Amret, Hattha Bank, Advans, North Haven Thai, MEF, and MIFA to ensure they comply with the requirements of Sustainability Policy, the Performance Standards, the IFC Exclusion List, and national law, as relevant to each investment, regarding risks and impacts on the MSME borrowers.
2. Whether the harms and potential harms raised by the complainants are related to any IFC non-compliance.¹³¹

In considering findings regarding harm and whether any harm is related to IFC non-compliance, CAO will assess IFC's review and supervision of its E&S requirements under the Sustainability Policy and the Access to Information Policy. CAO will consider project E&S performance including in relation to the application of the Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts), Performance Standard 7 (Indigenous Peoples), and the Exclusion List as relevant to the issues raised in the complaint.

Methodological Approach

CAO will base the compliance investigation on interviews, statements, reports, correspondence, CAO observations of activities and conditions, and other sources that CAO deems relevant.¹³² The compliance investigation process and compliance investigation report will include:

- a. *The investigation findings with respect to compliance, non-compliance, and any related Harm.*
- b. *Context, evidence, and reasoning to support CAO's findings and conclusions regarding the underlying causes of any non-compliance identified.*

¹³¹ CAO Policy, paras. 112–114.

¹³² CAO Policy, paras. 115 and 117.

- c. *Recommendations for IFC/MIGA to consider in the development of a Management Action Plan (MAP) relating to the remediation of project- or sub-project-level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances. In case of a project where the IFC/MIGA Exit has occurred, recommendations will take into account the implications of such an IFC/MIGA Exit.*¹³³

Sufficient, relevant evidence is required to afford a reasonable basis for CAO's compliance findings and conclusions. CAO will assess whether there is evidence that IFC applied relevant E&S requirements considering the sources of information available at the time the decisions were made and will not make findings and conclusions with the benefit of hindsight.¹³⁴

External Expert(s)

Following established practice, CAO will engage one or more external experts for this investigation, and considers the following qualifications as necessary:

- Significant expertise and experience in microfinance investments, responsible finance, and financial consumer protection standards;
- Significant expertise in land rights and Indigenous Peoples land issues in Cambodia;
- Significant expertise in socio-economic assessments;
- Knowledge of ethnic groups and indigenous peoples in Cambodia;
- Knowledge of the regulatory framework, practices, and procedures of microfinance institutions in Cambodia;
- Knowledge of IFC's E&S policies, standards, and procedures, particularly the Sustainability Policy, Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts), Performance Standard 7 (Indigenous Peoples), the IFC Exclusion List, and the Access to Information Policy;
- Experience and knowledge relevant to conducting compliance investigations;
- Experience in managing, addressing and considering risks of threats and reprisals to complainants.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts; and
- Fluency in Khmer and English.

Field Visit

Field visits to complainants' communities are anticipated during the compliance investigation, as well as to the offices and/or branches of Aceda, Amret, Hattha Bank, LOLC, Prasac, and Sathapana Bank. For such visits, the CAO case team, external experts, and an interpreter/translator would be expected to participate. Interviews with the relevant officers of MEF, MIFA, North Haven Thai, and Advans is also expected.

¹³³ CAO Policy, para. 120.

¹³⁴ CAO Policy, paras. 116–117.

Compliance Investigation Schedule, Timeframe, and Reporting Requirements

According to the CAO Policy,¹³⁶ a draft compliance investigation report will be completed within one year of the disclosure of an appraisal report.¹³⁷ A draft compliance investigation report for this case will be circulated to IFC Management for factual review and comment. Management may share the draft report with the client on the condition that appropriate measures are in place to safeguard the confidentiality of the draft report prior to public disclosure.¹³⁸ IFC will have 20 business days to provide written comments.

At the same time, the draft investigation report will be circulated to the complainants for their factual review and comment, provided that appropriate measures are in place to safeguard the confidentiality of the draft report prior to public disclosure. If such confidentiality measures are not in place, complainants will, at a minimum, receive a draft table of the investigation's findings for factual review and comment and as a source of information to inform future consultations on any IFC Management Action Plan (MAP).¹³⁹

Upon receiving comments on the consultation draft from IFC and the complainants, CAO will finalize the investigation report. The final report will be submitted to IFC senior management and circulated to the Board for information. The Board has no editorial input on the content of a CAO compliance investigation report. Once the investigation report is officially submitted to IFC Management and circulated to the Board, CAO will notify the public on its website of the investigation's completion.¹⁴⁰

Upon CAO's final submission of the compliance investigation report to IFC, IFC Management has 50 business days to submit a management report to the Board for consideration. The management report must include a MAP for Board approval. A MAP contains time-bound remedial actions that IFC proposes for the purpose of addressing CAO findings of non-compliance and related harm. IFC must consult with complainants and the client during its MAP preparation process, and its management report must also include a reasoned response to CAO's finding or recommendations regarding non-compliance or related harm that IFC is unable to address in the MAP.¹⁴¹

CAO will submit comments on the proposed MAP to the Board, and the complainants may submit a statement to CAO on the proposed MAP and the adequacy of consultations for circulation to the Board.¹⁴² Upon the Board's approval of the MAP, the compliance investigation report, management report, and MAP will be published on CAO's website.¹⁴³

¹³⁶ CAO Policy, para. 121.

¹³⁷ As an interim measure toward implementation of the CAO Policy timelines, in FY24 CAO will complete draft compliance investigations within 18 months of the disclosure of an appraisal report.

¹³⁸ CAO Policy, para. 122.

¹³⁹ CAO Policy, para. 124–125.

¹⁴⁰ CAO Policy, paras. 123, 127–129.

¹⁴¹ CAO Policy, paras. 130–132, 134.

¹⁴² CAO Policy, para. 135.

¹⁴³ CAO Policy, para. 138.