**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 risks[4], 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

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[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 2021[10], as well as the median monthly income, just US$96[11]. 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,

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[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 Cambodia[14] - 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. MIFAis now managed by BlueOrchard Investment Managers.[18] IFC currently funds MIFA up to US$20million in mezzanine shares through project number 31467.[19]

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[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 microfinance[21] 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

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[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]

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[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/819960BRI0Meas00Box379851B00PUBLIC0.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_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]

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[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. <u>THIS COMPLAINT FALLS WITHIN THE CAO'S MANDATE BECAUSE THE COMPLAINANTS ARE AFFECTED BY SOCIAL ISSUES ASSOCIATED WITH IFCPROJECT INVESTMENTS.</u>

49. [Redacted]

50. [Redacted]

51. [Redacted][53] [54] [55]

52. [Redacted][56]

53. [Redacted]

54. [Redacted]

55. [Redacted][57] [58] [59] [60]

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[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]
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57. [Redacted][65]

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71. [Redacted][80] [81] [82] [83] [84] [85] [86] [87]

72. [Redacted]

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75. [Redacted]

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77. [Redacted]

78. [Redacted][99] [100] [101] [102]

79. [Redacted][103]

80. [Redacted][104]

81. [Redacted][105] [106] [107]

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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 projects[110], and in consideration of the UN Guiding Principles on Business and Human Rights.

90. Financial intermediaries such as the IFC Client Microfinance Providers[111] 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

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[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 7[114] 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*

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[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 ofexisting 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

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[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 OID 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 aconsequence 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 inCambodia

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.

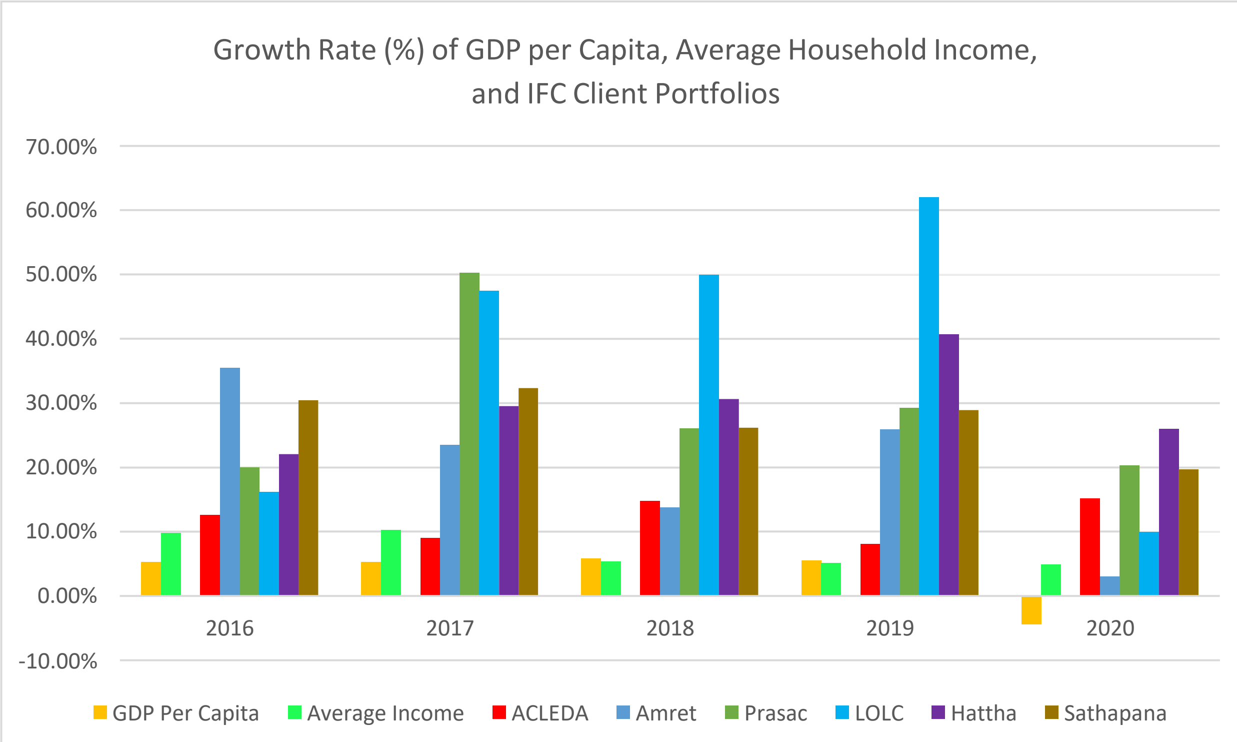
Feb. 2021, https://vodenglish.news/land-loss-debt-rise-recorded-in-latest-socio-economic-survey/ (citing to the Planning Ministry of Cambodia's National Institute of Statistics Cambodia Socio-Economic Survey for 2019–2020).

[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 toapply 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 default[143], and by some calculations the market saturation rate was as high as 59 to 82 percent[144] indicating the microfinance sector in Cambodia was at a "critical stage" and at "high vulnerability to shocks"[145]. The study further recited a long list 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

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[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] OID 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 years[149], 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]

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[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, systemicissues, 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

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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 efforts[178] 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 Honduran, 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

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[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 developments[188] as well as broader time periods[189] 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 requiredto 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] Financialintermediaries 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

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[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 policyand the environmental and social performance of financial intermediary clients, the CAO concludedthat 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 andescalation 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 inthose 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 andsupervision 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

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[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

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[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 onestablishing 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 (abox-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 lendingpractices 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 relatedto 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.

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[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 inits 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]

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[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 tosubmit 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.

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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 risks[257] 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 agreements[258] 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 aspects[262], 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

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[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 indicators[273]; 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]

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[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) <u>Hattha Bank</u>

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 - ChildLabor

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 Organization[286] 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 education[293] and moreover force their children into harmful work[294] 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 Organization[295]

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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 Workersand 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

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https://www.ilo.org/ipec/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 food[309] is well-established as food constitutes between 64–66 percent of household consumption budget in Cambodia[310]. In a2013 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 adult[316], 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

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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-elegibility-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 loan[326]; **[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 housing[329] 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 cowered" by the complexity of the task.[330] The special rapporteur has also criticized the tactic of blaming borrowers, who suffer the harms[331], for taking on too much debt without addressing the need for systemic reform[332], and the tendency to prioritize support for financial institutions rather than responding to the needs of those whose right to adequate housing is at stake[333].

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[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 sell[338]; 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]

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[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

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[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 toeliminate 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

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[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 ofthe 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,"

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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 ensured 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]

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[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,

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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.

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[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][430][431][432][433]

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]