

Recent complaint submitted to the Dutch NCP exposes structural human rights violations by Cambodian microfinance institutions

March 31, 2023

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This article talks about a recent complaint that has been submitted by Cambodian NGOs in the Dutch National Contact Point against a Dutch social impact investor for its alleged lack of due diligence before investing in the microfinance sector in Cambodia. The Cambodian microfinance institutions have a very poor track record of violating human rights of its poor clients. This article aims to analyse the link between global financial markets and the Cambodian microfinance sector, and how the recent NCP complaint sheds light on the importance of including financial institutions in due diligence processes.

The Cambodian microfinance sector and Oikocredit

On the 12th of December 2022, two Cambodian NGOs, namely Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Equitable Cambodia (EC), along with FIAN Germany submitted a complaint to the Dutch National Contact Point (NCP) against the Dutch social impact investor Oikocredit. The complaint alleged that Oikocredit has failed to conduct appropriate due diligence on the microfinance institutions (MFIs) it has invested in. MFIs in Cambodia, for years, have been involved in blatant human rights abuses on their clients, through their aggressive borrowing and recollection techniques. According to the complainants, much of these human rights abuses stem from investments made by Oikocredit in the sector. This complaint came on the backdrop of another complaint filed by EC and LICADHO against the International Finance Corporation (IFC) for their investments in six Cambodian MFIs. It was filed to the Compliance Advisor Ombudsman of the International Finance Corporation (IFC) on 3rd May 2022. The complaint was then accepted by the latter. The six MFIs and micro-loan providers mentioned in the complaint are AMRET, ACLEDA Bank, Prasac Microfinance, Hattha Bank, Sathapana Bank, and LOLC (Cambodia). These six banks combined hold 75% of Cambodia's microloans. The complaint alleged the IFC of the same misconduct as Oikocredit, that is, it failed to do proper due diligence before investing in and providing loans to the mentioned MFIs and banks, which have a very poor track record of inflicting human rights abuses on its borrowers.

Cambodia's microfinance sector is the largest per-capita in the world. The average size of the loans provided by the microfinance institutions (MFIs) in Cambodia is triple the average incomes of the Cambodian people. Oikocredit is a very significant investor in the Cambodian microfinance sector, who has increasingly invested large amounts of capital in some of the country's most prominent microfinance institutions from 2017 to 2022. Its investments in 2022, as of September, rose to more than € 67 million, up from € 50 million in 2017.

An NCP is a non-judicial complaints-addressing body which every member state and adhering state of the OECD Guidelines for Multinational Enterprises is required to set up. The purpose of an NCP is to address complaints that are filed against any adverse impacts, which might be faced by any impacted community, due to the business activities of multinational enterprises and/or its business relationships. The job of an NCP is to facilitate the resolution of the issues raised in the complaint. Since, it is a non-judicial body, participation in an NCP mediation by a party to the dispute is voluntary. The complaint against Oikocredit has been filed to the Dutch NCP since Oikocredit is based in the Netherlands.

How does microfinance work?

Microfinance programmes are very common poverty alleviation mechanisms in the countries of the developing world. In the Global South, the absence of large-scale welfare measures for alleviating poverty creates highly-profitable markets for commercial finance to intervene in poverty alleviation programmes. The people belonging from underprivileged socio-economic classes in the Global South have a general lack of liquidity in their hands for meeting their day-to-day consumption needs, generating enterprise, and building long-term assets.

Commercial finance encashes on this widespread poverty by creating a market for generating lucrative profits out of it. They provide small-loans or microcredits to the poor people and charge very high interest rates on these loans. The interest rates charged on these microcredits are much higher than what a general bank charges on a loan. It can range from around 20% to 30%. The loans are provided to the poor clients either against some sort of collateral or against the joint liability of a group, consisting of other clients of the lender. This operation of commercial lending and borrowing of microcredit is called microfinance and the lending institutions are called commercial MFIs. MFIs provide loans to people who would not have otherwise been eligible for a loan from a commercial bank.

The operations of these commercial MFIs are, however, not only limited to the local market of poverty financing, but they are very much linked to the global financial markets as well. Commercial MFIs raise capital through public and private equity, loans from commercial banks, and other sources such as selling their loans as debt products (also known as securitization). The commercial MFIs will not be able to lend to the poor without raising this capital. On the other hand, since the microfinance markets are so lucrative – a combined result of high demand for credits among the poor, high interest rate, and high rate of loan repayment – that global investors and banks are also attracted to have a share of this profit. As a result, investors like Oikocredit invest in MFIs across the Global South.

Cambodian microfinance and its track record of human rights abuse

For years, Cambodian civil society, journalists, and other researchers have documented that the lending and recollecting practices in the Cambodian microfinance sector are highly unethical and involves serious human rights violations. These violations include aggressive collection practices, land dispossession, loss of livelihoods, health impacts, forced migration, food insecurity, and child labour. A report from the one of the complainants, LICADHO, published in 2019, details these abuses. These harms have also

been recognized by the UN Secretary General, and a March 2020 report published by the Microfinance Index of Market Outreach and Saturation (MIMOSA). Cambodia is also facing a severe debt crisis in its microfinance sector. Such over-indebtedness among its borrowers have exposed them to severe social impacts.

Most MFIs in Cambodia urge the borrowers to pledge their land titles as security against the loans. According to a study published by the Institute for Development and Peace (INEF), Universität Duisburg-Essen, the debt-driven land sales in Cambodia in the last five years are as high as one land sale in every 16 minutes. This has given rise to a project of homelessness in Cambodia by the MFIs and their investors. Surprisingly, Oikocredit's own research in 2017 revealed many of these issues (Oikocredit never released this study to the public). However, there is no clear evidence that Oikocredit has sought to address these issues before investing in this sector.

Interestingly, there are other global actors as well who have heavily invested in the Cambodian microfinance sector. Although no complaint has been filed against these global financial institutions so far, the volume of their capital injection into the Cambodian microfinance sector is no less than the IFC or Oikocredit. Among these institutions, there is the Dutch development bank, FMO, which invested US \$ 50 million in October 2021 in AMRET. During that same time, a fund which has KfW, IFC, BMZ, and other state actors from Europe as its shareholders, increased its investment in the microfinance sector in Cambodia. More recently, in April 2022, the Asian Infrastructure Investment Bank approved a loan of US \$ 175 million to Prasac and ACLEDA. Amongst this amount, US \$ 75 million is pledged to Prasac and US \$ 100 million to ACLEDA. Ironically, AIIB started financing them in the exact same month in which the IFC's Compliance Advisor Ombudsman accepted the complaint lodged against them by the Cambodian NGOs.

Importance of the NCP complaint

While the NCP complaint has just been filed in December and is yet to be accepted by the Dutch NCP, it is significant for two reasons. Firstly, the complaint exposes the grave human rights abuses that Cambodian MFIs allegedly conduct on a regular basis on their poor borrowers, who are already vulnerable to increasing indebtedness. Secondly, it can be seen that the Cambodian microfinance sector is extremely complicated and involves investments from multiple global state-based and non-state investors, as well as multilateral development banks. Although this complaint has only been filed against Oikocredit (and the IFC in a different instance), it has also revealed the alleged lack of due diligence by other large-scale investors on the sufferings of the microcredit borrowers in Cambodia. This revelation is important to generate larger civil society and public pressure against these other institutions for their investments in Cambodian microfinance, and pressurise these institutions to conduct proper due diligence before investing in the sector. This one complaint against Oikocredit has exposed an entire network of Cambodian and global financial actors who are collectively responsible for the alleged dehumanisation of the poverty-stricken microcredit borrowers in Cambodia.

The European Parliament is currently discussing a draft directive on Corporate Sustainability Due Diligence (CSDD) where it is debating whether to bring financial institutions under the obligation of due diligence processes or not. Although, the Parliament is expected to adopt a position in May 2023, the Parliament and the Council of the EU are already divided on the question of whether to including financial institutions into the ambit of this directive or not. While the former is for it, the Council has proposed softer regulations for financial institutions. The inclusion of financial institutions in due diligence processes is significant as it obliges them to carry out due diligence on the supply chains and business activities of the companies that they invest in. It is because, companies which are responsible for adverse human rights or environment impacts can become a legal risk for the financial institution itself. This will lead to financial institutions identifying, preventing and mitigating any risk to environment or human rights resulting from their investments.

Suggested citation: U. Natic 'Recent complaint submitted to the Dutch NCP exposes structural human rights violations by Cambodian microfinance institutions', Nova Centre on Business, Human Rights and the Environment Blog, 31st March 2023.