



Initial Assessment

LICADHO, Equitable Cambodia (EC) and FIAN Germany vs Oikocredit

Date: 15 September 2023

Notification to the Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises from the 1. Cambodian League for the Promotion and Defense of Human Rights (LICADHO), 2. Equitable Cambodia (EC) and 3. FIAN Germany concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by the Ecumenical Development Cooperative Society U.A.

The objective of the initial assessment process under the Procedural Guidance is to determine whether the issues raised in the specific instance merit further examination. If so, the NCP will offer, or facilitate access to, consensual and non-adversarial procedures, such as dialogue, mediation or conciliation (e.g. 'good offices') to the relevant parties. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a conciliation or mediation process.

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Executive summary

On 12 December, 2022 the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a notification of a specific instance from the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Equitable Cambodia (EC) and FIAN Germany, hereinafter together referred as the notifying party with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter the Guidelines) by the Ecumenical Development Cooperative Society U.A., hereinafter Oikocredit.

The issues raised in the submission are: concerns with the activities and conduct of Oikocredit in relation to its financing of Prasac Microfinance Institution Plc. (Prasac), LOLC (Cambodia) Plc. (LOLC), and Amret Plc. (Amret) – three Cambodian microfinance institutions (hereinafter MFIs) linked to threats and intimidation, predatory lending practices, coerced sale of land including land owned by Indigenous Peoples, child labour, loss of home and livelihood, forced migration, food insecurity, and termination of children’s education. The notifying party raises the issue of Oikocredit contributing to or at least being directly linked to these abuses through its business relationships with the MFIs.

The issues raised in this submission relate to the OECD Guidelines’ Chapter II, General Policies, Chapter IV, Human Rights, and Chapter VIII, Consumer Interests.

Brief overview of the timeline

On 31 March the NCP had a first online meeting with the notifying party. On 14 April the NCP had a first meeting with Oikocredit.

On 4 May, the NCP received the initial written response from Oikocredit.

The NCP shared the draft initial assessment with the parties on 26 June 2023 for comments within two weeks and three additional weeks due to the summer holidays. The Initial Assessment was published on the NCP website on 15 September 2023.

Conclusion

The Dutch NCP concludes that the notification concerning Oikocredit **merits further consideration** based on the following criteria:

- The Dutch NCP is the right entity to assess the alleged violation against Oikocredit;
- The notifying party is a concerned party with a legitimate interest in the issues raised in the notification;
- The alleged issues are material and prima facie substantiated, meaning that they are plausible and related to the application of the OECD Guidelines;
- There is a link between the activities of the enterprises and the alleged issues raised in the specific instance;
- The consideration of this specific instance may contribute to the Guidelines’ objectives and enhance their effectiveness.

The decision to accept this specific instance for further examination is not based on conclusive research or fact-finding, nor does it represent a conclusion as to whether the enterprise observed the Guidelines or not.

Substance of the submission

This section provides an overview of the issues raised in the submission against Oikocredit, how the issues concerning Oikocredit relate to the Guidelines, and the enterprises’ initial response.

On 12 December, 2022 the NCP received a notification of a specific instance from LICADHO, Equitable Cambodia (EC) and FIAN Germany with regard to an alleged violation of the Guidelines by Oikocredit.

The submitting organisations LICADHO and EC are Cambodian NGOs, advocating for the protection and defence of civil, political, economic and social rights and the protection of natural resources and housing and land in Cambodia.

They have specifically researched and reported on the adverse human rights impacts in Cambodia's microfinance sector since 2019. FIAN Germany is a non-profit organisation in Germany that has focused on German and European investments linked to abuses in Cambodia's microfinance sector since 2019.

The **submission** details an alleged violation of OECD Guidelines' Chapters II (General Policies), Chapter IV (Human Rights) and Chapter VIII (Consumer Interests) by Oikocredit by contributing, or at least being directly linked through a business relationship, to severe and adverse human rights impacts ongoing in Cambodia's microfinance sector. The notifying party states to be deeply concerned by the activities and conduct of Oikocredit in relation to its financing of Prasac Microfinance Institution Plc. (Prasac), LOLC (Cambodia) Plc. (LOLC), and Amret Plc. (Amret) – three Cambodian microfinance institutions (MFIs) that, according to the notifying party, are linked to threats and intimidation, predatory lending practices, coerced sale of land including land owned by Indigenous Peoples, child labour, loss of home and livelihood, forced migration, food insecurity, and termination of children's education.

The notifying party states that evidence establishes that Oikocredit was aware of risks and negative social impacts associated with their activities in Cambodia's microfinance sector since as early as 2017. They state that despite this, Oikocredit expanded its funding of Cambodia's microfinance sector by increasing its portfolio in the sector in 2018, 2019, 2021 and 2022 and did not bring its activities into compliance with internationally recognised standards of responsible business conduct.

Furthermore, they assert that Oikocredit has refused to meet and discuss these issues with some interested stakeholders, including the organisations filing this instance, in a confidential and safe manner, despite knowledge of risks to complainants.

Finally, they state that Oikocredit has failed to address the negative social impacts of its investments, contrary to its own goal "to improve the lives of low-income people and communities."

The notifying party requests that Oikocredit brings its activities and conduct into line with OECD Guidelines by taking the following steps:

- 1) Remediation of adverse human rights impacts, specifically:
 - a. Compensate: Provide compensation to borrowers harmed by Oikocredit investments. Divert all profits made from loans to Prasac, LOLC and Amret since 2017 to a debt relief fund. Use its leverage to encourage investment partners to do the same;
 - b. Lobby: Engage in collective, public action with other international social investors regarding the market- and company- specific risks in Cambodia's microfinance sector;
 - c. Acknowledge: Publicly acknowledge the harms caused by Oikocredit's investments in Cambodia's microfinance sector;
 - d. Suspend: Provide public assurances that no further investments will be made in Cambodia's microfinance sector until and unless land titles held as collateral for microloans are returned to their owners, and compensation is provided to victims.
- 2) Increase transparency and improve due diligence, specifically:
 - a. Disclose: Disclose details on Oikocredit's partner selection, specifically its "very high standards" for ESG scoring and new sectors as applied to evaluation of Prasac, LOLC, and Amret and Cambodia's microfinance sector;
 - b. Explain: Publish detailed explanations on how due diligence informs risk management and impact measurement throughout the life of projects;
 - c. Investigate: Launch an independent audit of how existing due diligence procedures and ESG scoring at Oikocredit failed to account for the severity and extent of harms occurring in Cambodia's microfinance sector;

- d. Reform: Improve due diligence procedures to prioritize engagement with stakeholders and NGOs raising human rights concerns around Oikocredit investments in the future. Ensure that risks and documented harms properly inform investment decisions to ensure compliance with the Guidelines.

According to the Specific instance, the notifying party requests that the Netherlands' NCP offers its good offices to find a mutually acceptable solution in this matter.

Provisions of the Guidelines referred to in the specific instance:

Chapter II of the Guidelines on General Policies:

- A.1: Enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development
- A.2: Enterprises should respect the internationally recognized human rights of those affected by their activities.
- A.7: Enterprises should develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
- A.10: Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts...and account for how those impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
- A.11: Enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.
- A.12: Enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship...
- A.13: In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.
- A.14: Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account...

Chapter IV of the Guidelines on Human Rights:

- Art 1: Enterprises should respect human rights, avoid infringing on the rights of others, and address adverse human rights impacts with which they are involved.
- Art 2: Enterprises should avoid causing or contributing to adverse human rights impacts within the context of their own activities and address such impacts when they occur.
- Art 3: Enterprises should seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
- Art 5: Enterprises should carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts

Chapter VIII of the Guidelines on Consumer Interests:

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

The enterprises' initial response

Oikocredit states that since the founding of the cooperative 47 years ago, it has remained devoted to social impact investing. They state to see evidence of the good microfinance does in improving lives and Oikocredit is conscious of the potential harm that can arise from malpractice in the sector. Oikocredit underlines that any misconduct therefore is unacceptable to them.

The company asserts to have collaborated with Cambodian regulators, impact investing peers, microfinance institutions and microfinance clients to establish and implement standards, guidelines and best practices that safeguard the welfare of microfinance clients. Oikocredit has also provided financial literacy training for microfinance clients in Cambodia, sponsored studies on issues affecting the financial inclusion sector, the sector that provides access for individuals and businesses to useful and affordable financial products and services that meet their needs. Oikocredit also provided follow-up support in the form of capacity building.

The company underlines that microfinance is a complex tool with unique challenges. Oikocredit states that the presence of impact investors like Oikocredit in markets such as Cambodia is therefore critical to support the mission set out by the early promoters of microfinance: to improve the lives of low-income people through inclusive finance that is responsible, accountable and sustainable.

Oikocredit states to screen the organizations in which they invest – their partners – extensively. They indicate that their processes include thorough social and financial due diligence. They continuously monitor the performance and progress of their partners, targeting a sustainable balance between impact, risk and return. The company says that partners with which Oikocredit chooses to work must adhere to the highest standards of client protection.

Oikocredit states that their investigations into the allegations made in the complaint to the NCP revealed no sign of misconduct by Oikocredit's partners in Cambodia, but they welcome the opportunity to learn from and work with organizations who monitor the microfinance sector, and look forward to receiving more specifics on the allegations.

In the meantime, they intend to strengthen their complaint procedure for external parties to ensure a low-barrier set-up is in place for anyone wishing to notify them of possible misconduct involving Oikocredit or its partners, and they welcome input for further improvements.

The proceedings of the NCP to date

Since the receipt of the submission, the NCP has carried out the following actions:

On 9 and 10 January 2023, the NCP has informed the enterprise of the notification and sent a confirmation of receipt to the notifying party. Both parties also received a description of the NCP procedure. Following an introductory call on the NCP procedure between the NCP secretariat and representatives of the company, the NCP had its first meetings.

On 31 March 2023, the first online meeting with the notifying party took place.

On 14 April 2023, the first meeting with representatives of the enterprise took place.

On 4 May, the NCP received the initial written response of Oikocredit.

On 26 June 2023, the draft initial assessment was sent to both parties for comments within five weeks, an extended period was granted due to the summer holidays.

On 15 September 2023, the initial assessment was published.

All documents provided in the submission were shared with Oikocredit.

Initial assessment by the NCP

The NCP has decided to accept the submission. This decision has been taken following an elaboration of the criteria below, as outlined in the commentary to the Procedural Guidance, para 25.

Is the Dutch NCP the right entity to assess the alleged violations against Oikocredit?

The alleged impacts mentioned in this submission occur in Cambodia. Cambodia does not have an NCP. The impacts give rise to issues or allegations which implicate Oikocredit. Oikocredit is headquartered in the Netherlands and therefore the Dutch NCP can act as the NCP assessing the alleged violations against Oikocredit.

What is the identity of the submitter(s) and what is the nature of their interest in the submission?

The submitting organisations are two Cambodian and one German organisation defending varying causes, amongst others civil, political, economic and social rights in Cambodia, the protection and defence of housing, land, and natural resource rights in Cambodia and the right to food and nutrition and related human rights. The organizations have long experience in documenting and reporting on human rights violations in the country and are active on the issue of adverse human rights impacts in Cambodia's microfinance sector since 2019.

It is standing practice that NCPs will accept submissions filed by trade unions, NGOs or other organisations that address causes they defend (Guide for NCPs on the Initial Assessment of Specific instances, p. 6.).

As the notifying party consists of three organisations defending causes that relate to the issues raised, the NCP is of the opinion that the notifying party has a legitimate interest in the issues raised in the submission.

Are the issues raised by the submitter(s) material and substantiated?

The NCP interprets 'material and substantiated' to mean that, based on the information submitted, the issues raised are plausible and related to the application of the OECD Guidelines.

The submission is material in the sense that it refers to the alleged non-observance of provisions of Chapter II, Chapter IV and Chapter VIII of the OECD Guidelines.

The notification and the additional information and documentation provided by the notifying party contain extensive information relating to the issues raised and references to a wide variety of reports from various sources. Some of the reports are of a more general nature and concern the situation in the microfinance sector in Cambodia and some more specifically refer to the MFI's Oikocredit also invests in. The Dutch NCP finds that the notification refers to relevant provisions in the OECD Guidelines' text and commentary and is substantiated with documentation.

Is there a link between the activities of the enterprise and the issues raised?

The notification concerns alleged impacts and serious risks related to the microfinance activities of the Cambodian MFI's Prasac, LOLC and Amret. Oikocredit invests in/gives loans to these MFI's for the purpose of financing the MFI's microfinance activities.

Therefore, the Dutch NCP considers there is a link between the activities of Oikocredit and the issues raised in the specific instance.

What is the relevance of applicable legislation and procedures, including court rulings?

Existing domestic legislation and past and ongoing procedures, including court rulings, may provide useful orientation for the NCP in reviewing the submission.

According to the Guidelines, companies are expected to meet the requirements of domestic legislation. However, even if the company is compliant in terms of domestic law, this may not necessarily be equivalent to observing the Guidelines, as the Guidelines “extend beyond the law in many cases” (OECD Guidelines 2011, Chapter 1, para 2).

The NCP is not aware of any relevant court rulings or domestic legislation and procedures involving the investments of Oikocredit in MFI’s in Cambodia.

How similar issues have been, or are being, treated in other domestic or international proceedings?

As noted in the Commentary to the Procedural Guidance for NCPs, paragraph 26, already concluded or ongoing domestic or international parallel proceedings do not necessarily prevent the NCP from handling the specific instance by offering its good offices to the parties. However, in each individual case the NCP assesses whether or not the offer of good offices would make a positive contribution to the resolution of the issues raised or if it would prejudice either of the parties involved in other proceedings.

The NCP notes that the Compliance Advisor Ombudsman (CAO) for the IFC of the World Bank Group is handling a case regarding the IFC’s microfinance investments in Cambodia, including investments in Prasac, LOLC, and Amret. (see: [CAO Cambodia: Financial Intermediaries-04](#))

The case does not involve Oikocredit. The CAO’s review of the IFC’s investments in Cambodia’s microfinance sector does not prevent the NCP from handling the specific instance by offering its good offices to the parties.

Would considering this submission contribute to achieving the Guidelines’ objectives and enhancing their effectiveness?

The Dutch NCP believes that dealing with this notification may contribute to achieving the Guidelines’ objectives and enhancing their effectiveness in the sense that it could help clarify the responsibilities under the OECD Guidelines Chapter II (General Policies) for Oikocredit concerning their investments and activities in the microfinance sector in Cambodia.

Conclusion

The NCP is of the opinion that this submission **merits further consideration** on the basis of the criteria laid out in the commentary to the Procedural Guidance, para 25.

The conclusions reached by the NCP in this initial assessment are based on the information received from both parties. The NCP does not express an opinion on the correctness of the statements of the parties or the validity of the documentation provided by them, nor on their possible impact on the alleged issues raised in the specific instance.

Next steps

In accordance with the Dutch NCP Specific Instance Procedure, the NCP accepts this case for further examination and offers its good offices to the parties. The NCP will ask both parties whether they are willing to engage in a mediation/conciliation process, with the aim of agreeing how the issues raised can be successfully addressed.

The notifying party and the enterprise, Oikocredit, **have accepted** the NCP’s good offices. In accordance with the NCP procedure, further activities relating to the specific instance procedure will be confidential while good offices are ongoing. The NCP will, together with the parties, take the necessary steps to guarantee a careful and confidential process.

If the parties cannot reach agreement as a result of the good offices, the NCP will examine the issues and provide recommendations concerning the observance of the Guidelines. In any case, it will complete the procedure by issuing a Final Statement, which it will publish on its website.

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP, which is responsible for its own procedures and decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on the [NCP Website](#)

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