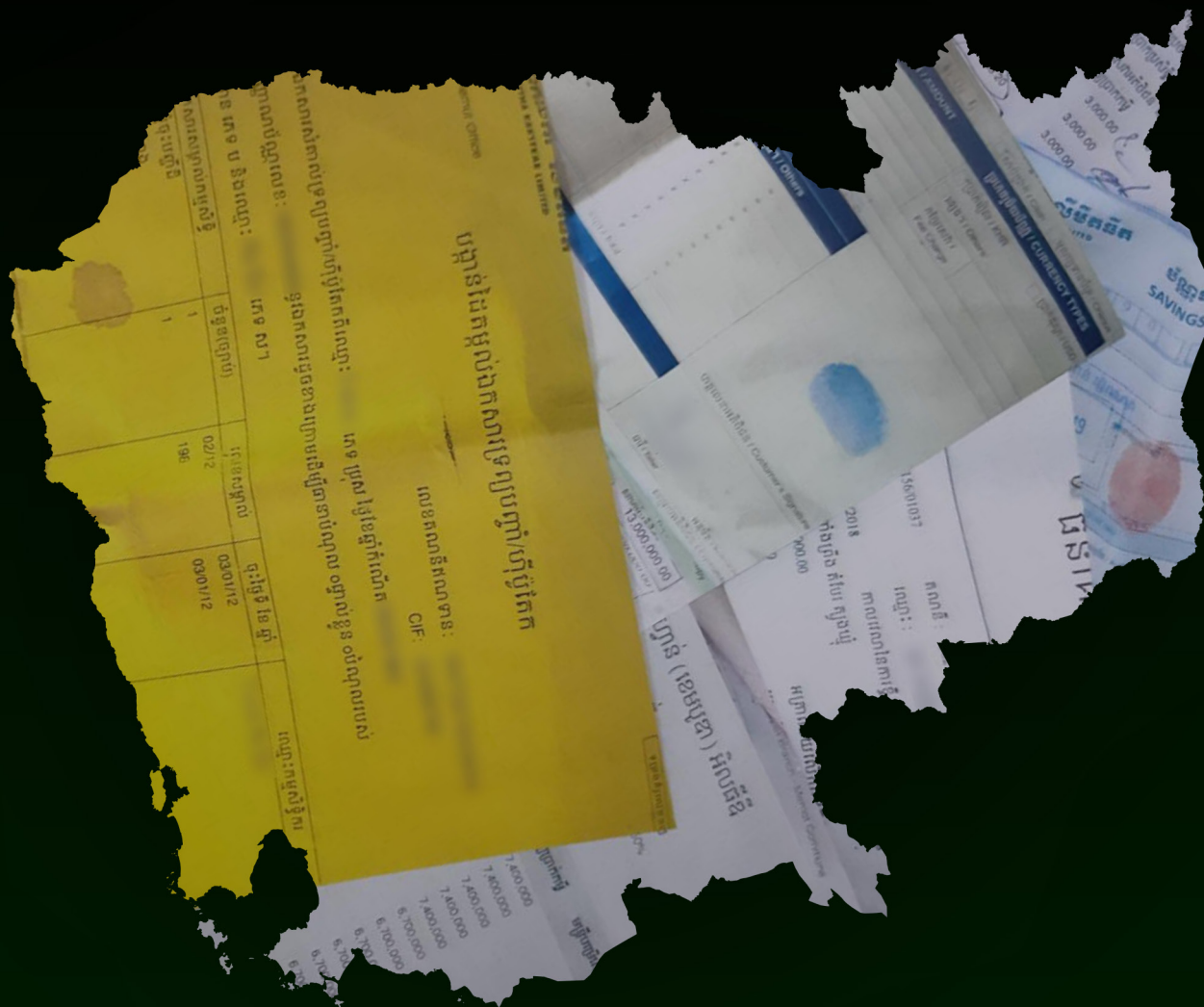




COLLATERAL DAMAGE

LAND LOSS AND ABUSES IN CAMBODIA'S MICROFINANCE SECTOR

A report issued in August 2019

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Land loss and abuses in Cambodia's microfinance sector

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LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (LICADHO)

LICADHO is a national Cambodian human rights organisation. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 13 provincial offices.

LICADHO's Monitoring Office investigates human rights violations perpetrated by the state and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials. LICADHO's Medical & Social Work Offices provides assistance to prisoners and prison officials in 14 prisons, victims of human rights violations, and families in resettlement sites; its Prison Monitoring Office monitors 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation. The organisation's Legal Office provides victims legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers. LICADHO's Advocacy Office compiles human rights abuses in a central database, so that accurate information can be easily accessed and analyzed, and produces periodic public reports.

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SAHKMAKUM TEANG TNAUT (STT)

Sahmakum Teang Tnaut (STT) was founded in 2005 and officially registered in 2006 as a local NGO supporting urban poor communities. STT started as a small NGO that focused on technical upgrades in poor communities and has since grown to produce community maps, research and advocacy in order to achieve its goal of helping poor communities realise their rights to land and housing.

STT envisions urban poor and vulnerable communities receiving adequate housing, improved living conditions and prosperity. Its mission is to develop advocacy tools, empower, and support urban poor and vulnerable communities to obtain adequate and comfortable housing. The organisation's projects focus on community mapping and research; community mobilization and empowerment; ICT and media training; and land and housing rights.

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This research is not intended to be statistically representative of Cambodia or of all MFI clients in the country. It seeks to highlight issues that researchers discovered in target areas, such as land loss, that clearly stand to undermine the human rights of a significant and growing section of Cambodia's poor. Further research is necessary to determine the full extent and severity of the issues raised in this report.

This is the first in a series of reports from LICADHO about microfinance in Cambodia.

Executive Summary



Microfinance debt in Cambodia, the majority of which is collateralised by land titles, poses a significant threat to land tenure security for indebted families and has led to serious and systematic human rights abuses in the country. While working on this report, researchers found numerous instances of microfinance institutions (MFIs) preying upon borrowers in order to ensure their loans are repaid. Interviews with MFI clients and executives raise questions about whether the MFI sector's low non-performing loan (NPL)¹ ratio is only made possible due to coerced land sales, child labour, debt-driven migration, food insecurity, and other human rights abuses. MFIs originally began as poverty reduction projects intended to provide credit to people who normally would not gain access to credit from banks, and they still enjoy a positive reputation among many development partners. Most of Cambodia's largest MFIs are supported or owned by foreign banks, investment firms and Western development agencies, but these same MFIs have relied on inadequate government regulation and the widespread complicity of local authorities to facilitate and pressure coerced land sales, extracting hundreds of millions of dollars in profit from many of Cambodia's poorest families. This practice has proved profitable, as the seven largest MFIs alone made more than \$130 million in profit in 2017.

At the beginning of 2019, around 2.4 million Cambodians held a total of at least \$8 billion in outstanding microloans,² an amount equal to about one-third of the country's 2018 gross domestic product (GDP).³ The average microloan debt per borrower in Cambodia was around \$3,370, the highest average amount in the world.⁴ That number is close to the entire median disposable income for rural Cambodian households in 2017 (about \$3,900) and is more than double the 2017 GDP per capita (\$1,427).⁵ The \$8 billion estimate is a conservative valuation of Cambodia's microloan sector, as it only captures MFIs and two commercial banks. Informal lending is largely undocumented and unresearched, making comprehensive assessments of small loans in Cambodia difficult.

Over the course of three weeks of field work, researchers

interviewed 28 households whose members had suffered multiple and/or serious human rights abuses as a result of MFI debt. Of these 28 households, 22 had experienced a coercive land sale; 13 had engaged in child labour; 18 had a family member migrate due to debt; and 26 had eaten less or lower quality food in order to make loan payments. Additionally, 20 households had taken out at least one additional loan to repay an existing MFI loan, and 22 households had borrowed from a private lender while also borrowing from an MFI, indicating that MFI loans and informal private loans are used in tandem, forming a cycle that drives clients further into debt.

Another common theme observed by researchers was the reckless lending of many MFI credit officers, both by offering loans to clients who clearly could not afford to repay them and in pressuring clients to repay loans through coercive land sales or other unethical measures. All of the interviewees described how they fell into a worse situation than they were in before borrowing from MFIs.

Microloan growth in the country has far outpaced income growth, but Cambodians have continued to largely repay their loans on time. The NPL rate, or the percentage of loans with borrowers more than 30 days late on repayments, for microloans was reportedly just 1.8 percent at the end of 2018, widely considered to be a sign of a healthy credit sector. However, the findings of this research indicate that this figure is made possible in-part because Cambodians are selling land, both productive farmland and homes, and borrowing additional money to repay their loans.

Land sales often occur after people are pressured by MFIs or local authorities. Much of this land was posted as collateral for the MFI loan, and MFI officers would later insist that clients had to sell that land in order to repay their microloan. Most of the MFI clients interviewed by researchers suffered from multiple rights abuses due to their unrepayable debts.

¹ A "non-performing loan" is a loan where the borrower is more than 30 days late on a payment.

² Includes the "small loan" portfolios of ACLEDA and Sathapana.

³ There is no set definition for "microloan" in Cambodia. This report uses the working definition of a loan from a microfinance institution or from the "small loan" portfolio of a commercial bank.

⁴ "Microfinance Barometer 2018", Convergences, p. 2. Peru is the second-ranked country, with an average of \$2,471.

⁵ "Cambodia Socio-Economic Survey 2017", National Institute of Statistics, p.76, available at: <https://www.nis.gov.kh/index.php/en/14-cses/12-cambodia-socio-economic-survey-reports>

What little government regulation has been passed and what little self-oversight MFIs employ have failed to adequately protect Cambodian borrowers or slow the sector's growth.⁷ The government has long touted microfinance as a key part of their poverty reduction plan. The Socio-Economic Development Plan 2001-2005 and the National Poverty Reduction Strategy 2004-2005 both highlighted microfinance as a top governmental area of focus for poverty alleviation. Prime Minister Hun Sen declared 2006 the "Year of Microfinance,"⁸ and the sector has continued to enjoy lax regulation and supportive national policies since. An annual interest rate cap of 18 percent imposed in March 2017 has proven ineffective at providing relief for consumers, as MFIs have begun requiring up-front fees from customers structured as percentages of the loans, ensuring that effective interest rates remain higher than the cap.

Most of the abuses in this report stemmed from MFI loans given by one of the nine largest microloan providers in Cambodia, which together dominate 90 percent of the sector. This suggests that abuses are not limited to a certain subset of MFIs, but rather form a key component of the microfinance business model in Cambodia. In cases recorded by researchers for this report, MFI employees ordered clients to sell land and threatened legal action if they did not, a threat that was taken seriously by clients due to the fact that MFIs physically take possession of their land title. Two current and former MFI executives with more than two decades of experience in the sector told researchers that MFIs regularly pressure their clients to sell land in order to repay their loans. With the condition of anonymity, the two executives described the widespread use of local authorities to increase that pressure when necessary. The cases of intimidation and forced land sales observed by researchers are thus unlikely to be isolated events perpetrated by lone credit officers, but likely reflect routine and widespread practices in the sector.

Despite these problems, MFIs continue to receive financial support and backing from Cambodia's major

bilateral donors, including the World Bank's International Finance Corporation (IFC), European and US development agencies, and European state development banks, all of whom have provided millions of dollars in capital to expand Cambodia's microfinance sector and, in some cases, hold shares of Cambodian MFIs.⁹

Problems in Cambodia's microfinance sector remain underreported and understudied; abuses do not appear in balance sheets or MFI annual reports, allowing issues to be swept under the rug. As early as 2017, some academics warned of fears of a "microcredit meltdown" and noted that MFIs were leading to the "gradual dispossession of land from the poor."¹⁰ Some problems were identified by stakeholders themselves, but never released publicly or included in reports. For example, an October 2017 report about over-indebtedness in Cambodia – produced with support from the German development agencies Federal Ministry of Economic Cooperation and Development (BMZ) and KfW – surveyed more than 1,660 Cambodian microfinance clients. The report found that 50 percent of MFI borrowers reported being over-indebted. There was also evidence that Cambodia's rural poor were being hit the hardest, as 55 percent of interviewed clients with agricultural loans reported eating lower-quality food, while 47 percent reduced the amount of food they ate, in order to cope with their debts. Despite these and other worrying findings, the 2017 report was never publicly released. BMZ and KfW continued to financially support Cambodia's MFI sector, which grew by more than 30 percent the year after the study was published.

MFIs, as they currently operate, pose a direct threat to the land tenure security of millions of people in Cambodia. At least 50 percent of households in every province except Phnom Penh hold an MFI loan, most of which are secured by land titles, and the penetration rate in some provinces exceeds 80 percent of households.¹¹ The rapid growth of the sector, lax regulatory environment, and demands for profit growth from foreign investors has led to abuses, land loss, and the exploitation of MFI clients across the country.

⁷ See section on consumer protection and regulation.

⁸ David J. Norman, "Neoliberal Strategies of Poverty Reduction in Cambodia: The Case of Microfinance", Cambodia's Economic Transformation, edited by C. Hughes & K. Un, Nordic Institute of Asian Studies, p.166, 2011.

⁹ See section on ownership.

¹⁰ Milford Bateman, "Opinion: Microcredit Sector Hits Wall of Own Making", Cambodia Daily, 12 May 2017, available at: <https://www.cambodiadaily.com/news/opinion-microcredit-sector-hits-wall-making-129618/>.

¹¹ "Over-Indebtedness Study Cambodia II", October 2017.

Background



Microfinance began in Cambodia in the early 1990s as an international development project to provide poor Cambodians with access to credit in order to allow them to create informal microenterprises. In January 1993, the United Nations Development Programme (UNDP) and the International Labour Organization (ILO) collaborated to set up the Association of Cambodian Local Economic Development Agencies (ACLEDA). ACLEDA went on to become the country's largest commercial bank and now holds more than \$3 billion in outstanding loans, including more than \$1.6 billion in its "small loan" portfolio. This transition was made possible with significant financial and technical assistance from the UN, IFC, and European and US development agencies.¹²

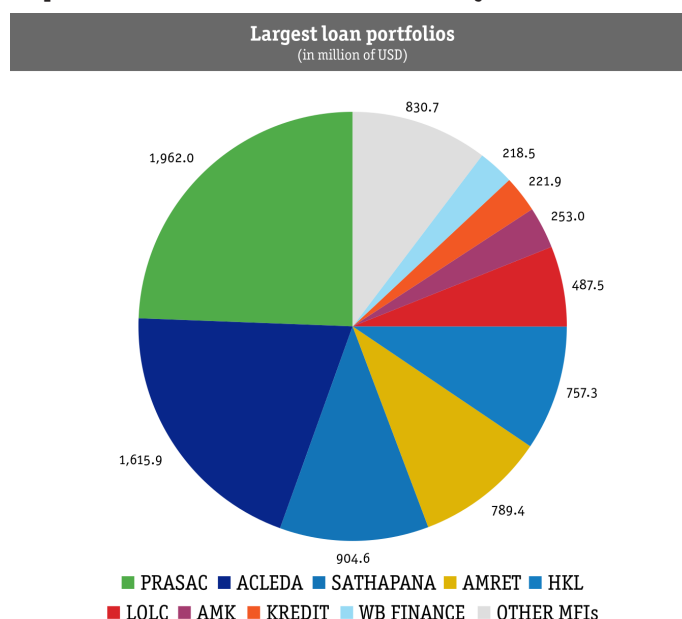
Cambodia's MFI sector began to grow in the early 2000s, and from 2009 onwards an explosion of foreign investment led to rapid growth that has continued for the last decade. At the start of 2019, there were more than 80 MFIs registered with the National Bank of Cambodia (NBC), including "the big seven" microfinance deposit-taking institutions (sometimes referred to as MDIs).¹³ That number does not include the additional hundreds of smaller NGOs and rural credit operators that also offer microloans.

The official MFI loan portfolio in Cambodia grew from about \$300 million in 2009 to \$1.3 billion in 2013, and reached around \$5.4 billion at the end of 2018.¹⁴ With the inclusion of the "small loan" portfolios of ACLEDA and Sathapana Bank, two commercial banks that are involved in the microloan market, the total microloan portfolio rises to \$8 billion. This \$8 billion in outstanding loans is spread across 2.38 million borrowers.

This astonishing growth has outpaced borrowers' ability to repay loans. Between 2004 and 2014, the average MFI loan size grew four times faster than household incomes.¹⁵ The average loan size is quickly approaching the average household income for a rural family, and is already more than double the GDP per capita. Between 2015 and 2017, average loan size grew by 80 percent.¹⁶ Growth has since continued, with the total MFI loan portfolio growing by more than 30 percent in 2018.¹⁷ That same year, the International Monetary

Fund reported that the "growing systemic importance of microfinance institutions (MFI) continue to pose risks to financial and macroeconomic stability."¹⁸

This growth has proved immensely profitable for MFI shareholders and lending partners. Profits continued even after the NBC issued a prakas, or executive regulation, in March 2017 capping interest rates for new MFI loans at 18 percent annually while keeping the higher rates of older loans unchanged.¹⁹ These profits are mostly captured by nine financial institutions: the seven deposit-taking MFIs as well as ACLEDA and Sathapana, which combined hold more than 90 percent of all microloans in the country.



All of the largest microloan providers are wholly or majority-owned by foreign institutions with the exception of ACLEDA, which is 51 percent owned by Cambodian interests. Over the last few years, many MFIs have been purchased by foreign investors, as profits from the sector have soared. Major shareholders in these institutions include the World Bank's IFC, several European development agencies, as well as highly profitable private banking institutions.

¹² "History", ACLEDA, available at: https://www.acledabank.com.kh/kh/eng/ff_history.

¹³ Ordered by loan portfolio size, from largest to smallest: Prasac Microfinance Institution, Amret Microfinance Institution, Hattha Kaksekar Limited (HKL), LOLC (Cambodia), Angkor Mikroheranhvatho Kampuchea (AMK), KREDIT Microfinance Institution, and WB Finance.

¹⁴ Data from CMA annual reports.

¹⁵ "Cambodia: Multiple Borrowing and Loan Sizes", Microfinance Index of Market Outreach and Saturation, p.2, June 2016, available at: <https://cma-network.org/files/OIDWORKSHOP/MIMOSA%20Circular%20%20Cambodia%20Jun%202016.pdf>.

¹⁶ "Microfinance and Household Welfare: Cambodia Policy Note", World Bank Group, p. 11, February 2019, available at: <http://documents.worldbank.org/curated/en/144661552916327946/pdf/128266-REVISED-WP-PUBLIC-Nota-MFI-web.pdf>.

¹⁷ Sok Chan, "Banks and MFIs Growing at a Healthy Rate: Central Bank", Khmer Times, 28 January 2019, available at: <https://www.khmertimeskh.com/50572675/banks-and-mfis-growing-at-a-healthy-rate-central-bank/>.

¹⁸ "IMF Staff Completes 2018 Article IV Mission to Cambodia", International Monetary Fund, 2 October 2018, available at: <https://www.imf.org/en/News/Articles/2018/10/02/PR18371Cambodia>.

¹⁹ Prakas on Interest Rate Ceiling on Loan, 2017.

The Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Sahmakum Teang Tnaut (STT) have decades of experience documenting the situations of hundreds of thousands of Cambodians who have lost their land due to the predatory behaviour of powerful individuals and institutions.

The research presented in this report was conducted in 10 communes across the four provinces of Kampong Cham, Kandal, Prey Veng and Tbong Khmum, in addition to Phnom Penh. Interviews occurred over the course of three weeks, between March and May 2019. Two teams of two researchers each conducted screening interviews that sought to identify whether individuals had suffered human rights abuses due to MFI debts. Nearly everyone who was preliminarily interviewed had suffered one or multiple abuses. Researchers identified 28 cases where multiple or serious human rights abuses had occurred due to MFI debt, after which they conducted in-depth, semi-structured interviews with those affected individuals. Questions were asked about clients' history of taking out MFI loans, experience with taking loans, business and income history, experience paying off loans, and any issues caused by MFI loans in their households or communities. Researchers took notes and, in some cases, audio recordings of the interviews, which lasted about one hour. Researchers informed interviewees beforehand that they would publish the content of the interview but remove any identifying information, such as names or communes. Researchers explained the research topic and received verbal consent from interviewees to have their answers recorded before each interview began.

Locations for the research were selected based on the

number of loans per household and/or on whether there was a large ratio of non-performing loans to total number of loans in the area. Research teams sought out highly indebted areas and actively pursued cases in which land loss had occurred as the result of an MFI loan. Two current and former MFI executives with more than 20 years of experience in the sector were also interviewed for several hours and spoke candidly about common practices in the sector on condition of anonymity.

Whilst research was conducted to account for gender issues, further research on the role gender plays in coping with MFI debt would be beneficial to understanding how these loans affect women and men differently. Researchers found that MFI clients overwhelmingly viewed debt as a household issue. In households with both a husband and a wife, both members of the couple were informed of the debt beforehand and both worked to repay it. However, there is a notable gender imbalance in MFI lending, as about 75 percent of all MFI clients are women and some funding from Western development agencies enters MFIs through gender development programs. Traditionally, women in Cambodia have been in charge of household finances, thus making a more in-depth gender analysis of MFI debt necessary.

It is important to point out that this research is not intended to be statistically representative of Cambodia or of all MFI clients in the country, but rather seeks to highlight issues that researchers discovered in target areas, such as land loss, that clearly stand to undermine the human rights of a significant and growing section of Cambodia's poor. Further research is necessary to determine the full extent and severity of the issues raised in this report.





UNETHICAL LENDING PRACTICES

This research's findings show that a client's personal interaction with an MFI almost always occurs through credit officers. These officers scout villages to offer loans and sign contracts, and they reappear each month when payments are due. As in many other countries with major microfinance sectors,²⁰ credit officers often face pressure from their managers to meet monthly lending quotas and to ensure that loans are repaid on time, even if that means issuing a new, larger loan or coercing a land sale. Pressure on lower-level credit officers is often transferred to clients, with multiple instances of unethical and predatory behaviour having been reported during interviews with clients.

Researchers recorded 10 instances in which MFIs lent money to people when they explicitly knew that the money would be used to repay existing debts. In other cases, credit officers ought to have reasonably concluded that the borrower would not be able to pay off the loan. In one case, a client of Sathapana was more than 15 days late on a payment; a credit officer told him to sell his land or take out private loans to resolve the debt. The client did both, selling farmland and taking a private loan to make the payment. Three days after paying off the loan – concerned about how he would feed his children – the client returned to Sathapana, and the same officer gave him an additional loan for a larger amount.

"I would be very happy if my message could be sent to Europe: If MFIs keep putting pressure on farmers like me, we will continue losing our land."

In other cases, the lack of regulation and the profit-driven nature of the MFI sector converge to encourage poor loan practices that should be avoided. In many cases, MFIs offered loans to families dealing with the illness of a family member, leading to lower income generation in the household. In other instances, failed repayments were recognised early in a loan repayment cycle, but no remedy

was provided by the lending institution, leading clients to rack up thousands of dollars in accrued interest and late fees.

In some cases, borrowers took out loans to pay for vital services, such as food, medicine, medical bills, or school costs. Cambodia lacks many social services, such as comprehensive medical care or free adequate schooling, and MFI loans were occasionally used to subsidise costs that are crucial to a healthy and dignified life. A legitimate contract requires both parties to enter the agreement freely and without any external duress, but the socio-economic situation of many MFI borrowers raises questions about whether taking a loan in order to feed one's children or send one's relative to a hospital can be considered a voluntary choice free from duress.

Unethical lending practices case study

Sokha²¹ is a father of five who works as a cassava farmer. He first took out a microloan of \$3,250 with Sathapana in 2016, to buy machinery for his cassava farm. He put up one hectare of farmland as collateral. As the price of cassava began to plummet, when his principal payments were due, Sokha was unable to pay.

After missing his first payment, credit officers from Sathapana came to his house twice in 15 days. Sokha asked for a one-month extension to get more money, but the officers only gave him 15 days and told him if he did not sell his land or take a private loan, they would "follow the law based on the original contract". Sokha knew this meant they would sell his land, and for below market value, so he sold some himself and took out two informal loans to pay off the Sathapana loan.

Three days later, Sokha went back to Sathapana. The same credit officer gave him an additional loan for \$3,500, collateralised with an even larger plot of land. Crop prices fell once more, and again Sokha told the Sathapana officers that he could not make his payments. The officers told him to borrow from private lenders because, if he paid off this loan, he could get a new, larger loan and gain a few months of relief. Sokha did as they said and, after paying off Sathapana, was given a new loan for \$5,000.

Today, with crop prices still low and a large principal payment due soon, Sokha has had to remove his 10-year-old and 7-year-old children from school to work on his cassava farm. He knows he will likely be forced to sell his remaining farmland soon to pay off his current loan. He has taken more than \$11,000 in MFI debt just to buy machinery to help him farm cassava. "If I don't pay, they will sell my land," he said. "Please tell them, if we can't pay on time, they shouldn't take our land or our house."

²⁰ Mathilde Maitrot. "Sustainability Paradigm to Paradox: A Study of Microfinance Clients' Livelihoods in Bangladesh." In *The Rise and Fall of Global Microcredit: Development, Debt and Disillusion*, edited by M. Bateman, S. Blankenburg, and R. Kozul-Wright, 143–165. (2019), Oxford: Routledge.

²¹ Key details such as names and locations were withheld in all case studies in this report to protect the borrowers' identities.

COERCED LAND SALES

Twenty-two of the 28 case studies conducted for this research had coerced land sales, an astonishingly high percentage that raises serious concerns about land loss due to the microfinance sector. Of particular note is the importance of land to the people who were forced to sell it. In most cases, the land that was lost was income-generating, either being used to plant crops or raise cows. The rural poor, the main borrowing group, have strong links to their land as a source of livelihood, especially those who are farmers. Rural Cambodians often rely on their land and without it cannot continue to earn income. Loss of land is therefore more than just a transfer of real estate: it jeopardizes a family's livelihood, career and identity.

The term "coerced land sales" includes forced land sales, in which clients are threatened, intimidated, ordered, or otherwise directly pressured by MFI officers to sell land in order to repay loans. It also includes pressured land sales, in which clients sell land due to perceived pressure, most commonly caused by the fear that the MFI will sell their land for a sub-market price and/or that local authorities will summon them if they do not pay. In all cases of land sales in this research, clients did not want to sell their land but were not aware of other possible ways to pay back their loans.

It is standard practice among Cambodian MFIs to require clients' land titles to serve as collateral for all new MFI loans, and all people interviewed for this research had given a land title in return for a loan. This includes "hard titles", legally recognised and nationally registered land titles, as well as "soft titles", which are registered through a local-level authority. In every case examined for this research, the likely market value of the land submitted as collateral exceeded the value of the MFI loan, although accurately estimating land prices is difficult in many parts of Cambodia. Other research has found that ACLEDA devalues any land used as collateral by 50 to 75 percent as a matter of policy, to account for fluctuations in the land sector.²²

Whilst it is difficult to estimate, at least one million land titles are held by MFIs, based on an internal study conducted by MFIs in October 2017 that found that about half of MFI loans were secured by land title.²³ The actual number is likely higher than this, as the same study also found that MFIs engaged in the "common malpractice" of requiring all the client's land titles, not just enough to cover the cost of the loan itself, in order to ensure the client was unable to get another loan at a different MFI.²⁴ This finding was corroborated by this research, as many people reported depositing more than one land title for a single MFI loan.

Coerced land sale case study

Chamroeun first borrowed from Hattha Kaksekar Limited (HKL) in 2010 to build a house. He paid back the loan, and several years later took a \$3,000 loan to plant pepper and rubber trees from Thaneakea Phum, which changed its name to LOLC (Cambodia) in 2015 while he was repaying the loan.

After a year, Chamroeun had a principal payment due, but his crops had failed. The credit officers at LOLC told him to use a private lender and introduced him to a woman he had never met before. At first he resisted borrowing from the woman due to the high interest rate, but the LOLC officers told him they would bring him to court if he did not pay, so he eventually agreed to take the private loan.

For more than two months, Chamroeun struggled to pay the private debt, sending his children away to stay with a relative and eating less food to save money. Finally, he got a loan from HKL to pay off much of the private lender, and sold some land to pay the rest. He told HKL before receiving the loan that he was going to use the money to pay off a private lender, but all the HKL officers wanted from him was a land title. A few months later, as he fell behind on payments, HKL went to a third party and told them to offer to buy Chamroeun's land from him. At first he resisted, but HKL sent 11 people, with four motorbikes and a car, to his house to threaten him with legal action if he didn't pay. Faced with no other options, Chamroeun sold the land to HKL's suggested buyer. "There are no benefits of MFIs," Chamroeun said. "I used to have food, but today my life is much more difficult."

²² W. Nathan Green, "From Rice Fields to Financial Assets: Valuing Land for Microfinance in Cambodia", Royal Geographical Society, p.9, April 2019.

²³ "Over-Indebtedness Study Cambodia II", October 2017.

²⁴ *Ibid.*

The physical possession of a client's land title gives the MFI leverage to pressure clients for repayment. Many people reported feeling pressure to pay back their loans on-time because they feared that if they were late on a single payment, then the MFI would sell their land at sub-market value without their consent. Researchers found two cases where this type of sale had occurred, but the majority of cases involved coercing the borrower into selling the land themselves.

Researchers recorded cases of MFI officers threatening clients with legal action, a tactic that appeared common despite the fact that MFIs very rarely pursue legal cases against defaulters. The officers frequently referred to the "original contract" when clients were just a few days late on payments, a reference to the loan agreement that was widely understood by clients as a threat that the MFI would sell their land if they could not pay.

In one case a credit officer from VisionFund Cambodia, which was part of the international Christian NGO World Vision until it was sold to a South Korean bank and was renamed WB Finance in mid-2018, posted a for-sale sign at a client's house without her consent after she was just several days late on a payment. This was a source of fear for many clients, who felt the MFI would sell their land at a sub-market value without their permission, thus adding additional pressure for clients to sell the land themselves to ensure a better price.

In addition, in several cases, local village- and commune-level authorities acted as enforcers for MFIs to pressure clients into making repayments, or preyed upon indebted villagers by offering them private loans at exorbitant interest rates. In one case, a village chief from a neighbouring village offered an MFI client a private loan in exchange for two land titles, and then sold her land titles and forged her thumbprint without her consent when she was unable to repay her debt. In another case, a villager reported that the commune chief had called in other MFI borrowers who were late on their payments, and she was so afraid of being summonsed that she sold her land in order to avoid a late payment. A case from nearly 10 years ago involved a village chief who operated as the ringleader of a multi-group MFI loan for PRASAC. The chief was able to control interest rates and maintain power over the clients by not revealing who else was in the group or how they could contact the MFI lender. Eventually, one of the clients decided to sell their land, fearing that they would lose more if they did not do so.

The institutional nature of these pressure tactics was confirmed by two current and former MFI executives, who said that this type of pressure was widely used by all MFIs. The two executives have served in high- and mid-level positions at several different MFIs in Cambodia, with more than 20 years of combined experience in the sector. These current and former executives also reported that MFIs routinely pressure clients to sell land in order to pay back loans. One executive noted that the MFIs rely on land sales to keep non-performing loan rates low, saying, "Land

"If the investors come here, please do research on the negative effects of MFIs. Understand the farmers' situation first before investing. There isn't enough money to support our families and pay our debts."

prices are the single most important factor for the MFI market right now."

Interviews with MFI executives and field research both revealed that, in some cases, if a client resists selling their land, MFIs turn to village- or commune-level authorities and pay them a fee to help pressure payment. The MFI executives independently estimated that about 10 percent of all MFI loan repayments were made due to these forced land sales involving local authorities. They estimated an even higher percentage for those due to coerced land sales not involving local authorities.

These harmful consequences run counter to the stated aims of MFIs and their bilateral funding partners, who speak of wanting to do social good by alleviating poverty. The harmful and lasting consequences of these sales demand more action on the part of MFIs and the government to ensure that coerced land sales do not continue.



LOSS OF HOUSING

While MFI executives told researchers that credit officers rarely force sales of primary residences because of the harsh consequences for their clients, researchers nonetheless identified four cases in which houses had been sold to pay off microloan debts. In two cases, respondents were told by MFI staff that they should sell their houses to avoid accruing additional interest and late fees on their debt.

The loss of housing as a result of their failure to repay debt placed three families, including one with young children aged 3-years-old and 5-years-old, in desperate situations, and none of the families have since secured adequate housing.

Loss of housing is not only contrary to the stated goals of MFIs, but also to the international conventions which Cambodia has signed and ratified, namely the International Covenant on Economic, Social and Cultural Rights. Article 11 stipulates that states must recognize the right to adequate housing and “take appropriate steps to ensure the realization of this right”.²⁵ None of the MFI clients who lost houses were aware of any legal protections or authorities whom they could refer to in order to avoid homelessness.

Three of the four families who lost a house are now at risk of being without shelter. While one family has managed to secure their housing rights, the other three remain vulnerable to eviction at any time without any safeguards. Despite huge investments in housing over the past decade, there remains virtually no affordable housing built for Cambodia’s poorest residents.



Loss of housing case study

Looking across a plot of land behind closed gates, Oum Teav points to where her house once stood. For more than 20 years, she had lived in that house under the shade of large mango trees; the house in which her daughter and son were raised. But now, in her sixties, her former land is unused and her house demolished after she sold it to pay back her MFI debt.

Oum Teav took out loans from Daikou to buy food, milk and medicine for her two grandchildren. Their parents had migrated for work, but their remittances were not enough to make Oum Teav’s loan payments. For three years, MFI officers came and told her to repay her loan, and for three years Oum Teav told them she could not afford to feed her grandchildren and make the repayments. At one point, she recalls, the MFI workers provided a solution. “You should go to find work and put the children in an orphanage,” they told her.

While her original debt was \$5,000, the MFI saddled her with late fees and penalties totalling more than \$3,000, bringing her total debt to \$8,000. At the urging of credit officers, Oum Teav sold her home for \$9,000, paying all of that money to the MFI to settle her debt and thus left with almost nothing.

Oum Teav now lives with her 3-year-old and 4-year-old grandchildren in a shack made of corrugated iron located on state land. Her neighbours gave her the money to build the shack and her village chief gave her permission to use the land, but her standard of living has dropped dramatically. She is vulnerable to eviction without prior notice, a thought that weighs heavily on her mind. Oum Teav notes her new house gets unbearably hot during the day due to the iron roof and lack of trees, but she has nowhere else to go, and two small grandchildren to look after.

“I still go to sit by my old house,” Oum Teav told researchers. “It’s shady, and I miss it. I miss talking with my friends there.”

²⁵ Article 11, International Covenant on Economic, Social and Cultural Rights, 1966.

CHILD LABOUR

Households that experienced difficulty making MFI payments often resorted to child labour and removed their children from school to work on farms or to migrate for waged jobs in order to increase their household income. Thirteen of the 28 households interviewed used child labour to make MFI loan repayments. Most of the children employed to service debt were between the ages of 13 and 17 years old, although researchers heard cases of children as young as seven years of age being required by their parents to work on personal farms in order to service debts.

Cases of child labour were only counted in this research if the interviewees reported that MFI debt was the primary motivating factor for the child working. Many of these cases involved teenagers between the ages of 15 and 17 years old who moved to the capital, with boys most often

being employed in the construction sector and girls most often working as domestic workers. This work can be hazardous and puts children at risk of trafficking, injury and exploitation. Many interviewees expressed regret that it was necessary to use their children as labourers, and expressed a desire to send them to school instead. However, they felt unable to do so because of MFI credit officers' demands. An additional burden for the parents had been the costs associated with school attendance. State schools are purportedly free to attend but often require additional fees for students to learn, which were eliminated by withdrawing their children. The most common cases of child labour involved children being removed from school to help their parents work their personal farmland, in order to save money on renting labour or to allow parents to work other jobs.

Child labour case study

Vandy is a genial man and he smiles easily, cracking jokes as he lays out seven different MFI term sheets in a semi-circle in front of him. His upbeat attitude fades, however, as he launches into the explanation of how he acquired so much debt, and how he's had to use his six children as labourers and income earners to stay afloat.

His loans began small, with a group loan from Angkor Mikroheranhvatho Kampuchea (AMK) to help his farming. As he made payments, he began borrowing larger amounts from HKL and VisionFund to plant cassava. Later, about a month after receiving a new land title from Prime Minister Hun Sen's youth volunteers, he used the title to get new loans, and then took private loans to pay those loans. Soon, Vandy had \$10,000 in debt to KREDIT Microfinance Institution. He hasn't seen any of his four land titles in years.

He sold 2.9 hectares of land, about half of his farmland, to repay the \$10,000 loan and settle some of his debts with private lenders. His village chief recommended using private lenders, from whom he obtained loans which he then used to make ends meet while repaying his MFI loans. However, the lenders' exorbitant interest rates meant he could not afford to repay their loans and feed his children.

In 2018, Vandy took out an ACLEDA loan, which he was again unable to pay. KREDIT loan officers told him he could take out a KREDIT loan to pay off his loan to ACLEDA, which he did. His 10, 13, and 15-year-old children began to help him plant and harvest cashews, while his two other 15 and 16-year-old daughters migrated through a local broker to be domestic workers in Phnom Penh. The 15-year-old came home a few months ago because the work was too hard, and the 16-year-old was recently evicted from the house in the middle of the night, forcing a relative in the capital to rescue her from the streets. Vandy was worried sick about his daughter, and continues to worry for her, but he feels he has no other options to be able to afford his MFI payments.



DEBT-DRIVEN MIGRATION

Migration, including by children under the age of 18, was common among households with MFI debt. Eighteen of 28 households interviewed had a family member who migrated primarily to increase their income in order to repay MFI debt.

This growing problem was highlighted in a 2016 report from the International Organization of Migration, which found that 40.6 percent of Cambodian migrants left the country due to financial debts.²⁶ This was followed by an August 2017 report released by the UN Office on Drugs and Crime which noted the link between MFI debt and migration, saying, “For many Cambodians, microfinance loans often do not lead to financial relief. Instead, they only serve to push borrowers further into poverty.”²⁷ The report also noted that, “The nexus between microfinance debt, migration and trafficking in persons is not currently well documented or explored in research literature but warrants further attention and analysis.”

Researchers conducting this study primarily spoke with family members who reported abuses suffered by relatives who had migrated and commonly expressed regret that migration was necessary to repay their microfinance loans. In one case, an underage girl was thrown out of a Phnom Penh house where she worked as a domestic worker in the middle of the night. In another case, a mother of children aged 3- and 5-years-old moved to Singapore to work as a domestic worker. In yet another case, a mother of several

small children left for Thailand with her husband in order to work and pay off an MFI loan, but when the bank noticed she was no longer in the village, they sold her land without her permission, even though she had never been late on a payment.

One of the leading researchers in this area is Maryann Bylander, who has published several papers linking microfinance debt and migration in Cambodia. As she wrote in 2018:

“While there is little indication that migrants are credit risks for MFIs, we do know that debt heightens vulnerability for migrant workers. Given the strong incentives to repay debts at home, indebted migrants often make riskier choices. Indebtedness has been identified as causing migrants to move into exploitative work, making it more difficult for them to leave bad working situations, causing anxiety and depression, increasing the likelihood of forced labor, and impelling them to run away from employment contracts, which can lead to the loss of legal status within their host country.”²⁸

In 2018, STT was conducting research on communities that had recently moved to Phnom Penh from rural areas. In some cases, families appeared to have migrated to escape MFI credit officers and find other sources of income to repay their debt. Some of these communities had settled on state land illegally, placing themselves in danger of eviction, and were often living in conditions of hardship in order to try and earn a living.

Debt-driven migration case study

Saroth first took a microloan from AMK in order to build a house. She took successively larger loans from AMK, and later from Thaneakea Phum and VisionFund, using the MFI loans to develop her small farm. She also used informal loans to help pay off her MFI loans, in order to apply for new, larger MFI loans. As her debts began to grow faster than her income, she decided to consolidate her loans by taking one large loan from ACLEDA, using her only plot of farmland as collateral, and moved to Thailand with her husband to make enough money to repay the loan. “There were no jobs here [in Cambodia],” she explained.

Saroth paid her ACLEDA loan from Thailand each month and was never late on a payment. Despite this, she says that credit officers began asking neighbours and relatives at her home village why she was no longer around. She suspects that they became concerned she would not return because her five small children were also not in the village. While she has never learned the exact details, Saroth returned home a few years ago to find that the bank had arranged for the sale of her farmland to a rich land broker from outside the village. She suspects they cooperated with local authorities to forge her thumbprint on sale documents, which she has never seen. All the bank would tell her when she returned was that her land was sold and her debt was paid.

Saroth was left with a one-room shack where she now lives with her five children. Her oldest child, a 14-year-old boy, helps farm cashew nuts for a daily wage in the village in order to help pay back informal loans, which she was forced to take out in order to feed her family after the bank stole her land. Her younger daughter is sick, but Saroth is afraid to take out another MFI loan to pay for her treatment. She fears they will take the family’s house, the only property she has left, if she cannot repay. “The bank doesn’t care,” Saroth said. “They just want their money.”

²⁶ “Assessment Report: Profile of Returned Cambodian Migrant Workers”, International Organization for Migration (IOM) Cambodia, p. 14, 2016, available at: <https://www.iom.int/sites/default/files/country/docs/IOM-AssessmentReportReturnedMigrants2016.pdf>.

²⁷ “Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand”, United Nations Office on Drugs and Crime, p.18, August 2017, available at: https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Trafficking_in_persons_to_Thailand_report.pdf.

²⁸ Maryann Bylander, “The Wider Impacts of Microcredit: Over-Indebtedness and International Migration”, American Sociological Association, p.2, 2018, available at: https://sociologyofdevelopment.files.wordpress.com/2018/03/3_2_bylander.pdf.

DEBT BONDAGE

High levels of MFI and private debt lead thousands of Cambodians into debt bondage working in the country's brick factories. LICADHO released a December 2016 report titled "Built on Slavery: Debt Bondage and Child Labour in Cambodia's Brick Factories" detailing the criminality and abusive nature of these factories and their use of debt bondage, as well as the serious health risks faced by workers. Many of these workers were indebted to MFIs or "rural credit operators", registered NGOs that offer microloans but have small enough portfolios to avoid the requirements for an MFI license. Since the release of LICADHO's report, the Cambodian government has failed to take action to stop debt bondage in brick factories. A later report from UK researchers also found that many of the debt-bonded labourers' original debts were from MFIs.²⁹ A case published by researchers in 2014 found that an MFI had required a legal minor to contractually bind herself to labour for the payment of her mother's debt.³⁰ Despite debt bondage violating the UN Convention on the Abolition of Slavery³¹ and the ILO Convention No. 29 on Forced Labor,³² it is still widespread, particularly in Cambodia's brick factories, and often still caused by MFI debt.

Debt bondage case study

In March 2019, a 9-year-old girl lost her arm after it became entangled in a machine while she was working at a brick factory in Kandal province. Her family had entered into debt bondage with a brick factory after being unable to pay a \$2,000 loan from Thaneakea Phum, which was renamed LOLC after being purchased in 2014.

They fell behind on payments after the girl's grandmother became sick, and the more than \$100 per month payments became unmanageable. Credit officers from the MFI told the girl's family that if they could not pay the loan back in three months, they would take the land used as collateral – the family's primary residence and only land at the time – in order to ensure repayment.

To avoid losing their home and land, 12 members of the family sold themselves into debt bondage at a brick factory near Phnom Penh, at first using wages garnished by the brick factory owner to pay back the MFI. They later took a large loan from the brick factory owner to pay off the MFI loan, locking them further into debt bondage. The family's three youngest children, all under the age of 14, worked in the factory from time to time, as is common in brick factories where workers are often debt bonded.

After the 9-year-old girl lost her arm, the brick factory owner told the family that he forgave their debt. The family is now back at their home, with some family members transporting wood for wages. They have a new MFI loan, this time from Chamroeun Microfinance. The family has not been late on payments yet, but the grandmother said it is "difficult every day... I sit and sleep with stress to get money."



²⁹ "K. Brickell et al., "Blood Bricks: Untold Stories of Modern Slavery and Climate Change from Cambodia", Royal Holloway, University of London, p. 19, 2018.

³⁰ Jan Ovesen & Ing-Britt Trankell, "Symbiosis of Microcredit and Private Money Lending in Cambodia", Asia Pacific Journal of Anthropology, pp. 187-88, 2014.

³¹ Article 1(a), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956.

³² Articles 1 and 2(1), Forced Labour Convention (No. 29), 1930.

PRIVATE LENDERS

One of the purported benefits of MFIs is that they supposedly decrease the need for the use of private lenders, who often charge high interest rates, in many cases exceeding a monthly rate of 30 percent. This claim was not supported by this research, as 22 of the 28 interviewees used private lenders to supplement their lending in order to cope with the debt burden of their MFI loans.

MFI credit officers routinely tell clients that they are unable to give new loans to clients who have existing MFI loans. This policy is intended to prevent clients from taking multiple loans from different MFIs, and has been more strictly enforced in recent years as the MFI sector has increasingly reported borrowing data to the Credit Bureau of Cambodia.

However, the findings show that this policy drives clients to take out loans from private money lenders in order to pay off their MFI loan. After paying off the MFI loan with the private loan, they often return to the MFI and take out a larger loan, sometimes just days after repaying the original loan, for which they could qualify with greater ease because they had paid off their previous loan. They then use most of this new MFI loan to pay off the private lender, who in some cases is a village chief. This common experience is a clear example of the cycles of debt that exist in the communities visited by researchers. In other

cases, people used private loans as supplements to make basic need payments, such as food purchases or medical expenses, while spending all of their household income servicing MFI debt.

This research found that MFIs relied on private lenders to form a key part of a cycle of debt that allowed lenders to pay off their loans and acquire new, larger loans. In some cases, MFI officers recommended private lenders, encouraging clients to take private loans or simply never questioning how their clients who were behind on payments one day could pay thousands of dollars to settle a loan the next day. In one case, MFI officers from VisionFund promised to give a new loan to a client with an existing loan if he took out a private loan to resolve the current debt; in another, LOLC credit officers introduced a client who was behind on payments to a private lender and encouraged him to take a private loan to pay back their loan.

Even when MFI officers are not directly involved, private lending can lead to negative consequences. One interviewee reported that a village chief acted as a private lender to provide a private loan to an MFI client and then forged a document to sell the client's land without their permission. In another case, an elderly woman with almost no income, saddled with thousands of dollars in MFI debt, turned to private lenders, who then pressured her into selling off nearly all of her farmland in order to resolve the debt.

Private lenders case study

One year into her loan term, Sophea had paid off \$1,250 of her \$2,750 loan from HKL. She had used the loan to plant pepper and rice, and had supplemented it with other microloans from VisionFund and ACLEDA. She had told the MFIs that she couldn't accurately predict her income because she worked as a day labourer and her farms were reliant on market prices. Despite this, each of the MFIs only required land titles in order to give the loans.

During the second year of the HKL loan term, Sophea fell ill and pepper prices began to decline. As she began to fall behind on payments, a businessman showed up unannounced at her home, accompanied by an HKL credit officer. The HKL representative arranged a sale of her mechanised plough, against her will, in order to pay off her debt. "I did not want to sell it, but they called someone to buy it," Sophea said. Without the plough she couldn't work enough of her land to feed her children, but she felt powerless to stop the sale.

After the sale of the plough, Sophea fell behind on her \$1,500 loan to VisionFund. Credit officers came to her house and told her to sell her land. "If I sell it, what else do I have?" she said. "I will have nothing." Instead of selling she went to a private money lender, to pay off the VisionFund loan. When she fell behind on the private loan payments, the private lender went to the village chief and forced her to transfer most of her land to them. They took the land surrounding her home, including her backyard. She now lives on a house surrounded by land that she has been forced to sell, and continues to worry about how she will pay back her remaining loans, given that the MFIs and private lender have taken much of her land and critical farming equipment. "How can I be happy, if I don't have any income?" she said. "How can I pay the loans?"

Consumer protection and regulation



Meaningful consumer protection regulations are almost non-existent in Cambodia's microfinance industry. The NBC is responsible for licensing and regulating MFIs, however it has issued very few consumer protection regulations, none of which have had a measurable ameliorative effect on the lives of MFI clients. The courts are empowered to protect and oversee borrowers who default, but institutional corruption and MFIs' strong aversion to court processes ensure that individual borrowers are unwilling or unable to avail themselves of their legal rights. MFIs purport to self-regulate, pledging to uphold certain ethical principles, but there is no external enforcement mechanism in place to enforce self-regulations or evidence that they succeed in protecting consumers.

The 1999 Law on Banking and Financial Institutions defines the legal status of MFIs as a provider of loans and deposits to poor and low-income households and micro-enterprises, as regulated by the NBC.³³ Only MFIs with portfolios larger than 250 million Khmer riel (\$61,500) have to obtain a licence; smaller so-called "NGOs" need only register. An indefinite licence to operate is granted to successful applicants.³⁴ Licensed MFIs are faced with more stringent regulations to ensure liquidity and protect investors, such as legal provisions dictating capital reserve requirements,³⁵ but there is very little consumer protection written into the law. Provided they are able to show sound management and profitability, MFIs can later request a separate licence to collect deposits from the public,³⁶ which are not insured by any government body. Most borrowers take MFI loans by thumbprinting a standard, pre-printed contract that is also approved by local authorities, usually the commune chief.

Cambodian law allows borrowers to make "antichrèse", or pledges of immovable property (e.g. land) in order to obtain loans.³⁷ The law also requires that financial institutions go through the courts when clients default. The World Bank has observed that around the world, a court process tends to ensure results favourable to the borrower, as opposed to out-of-court settlements which

favour financial institutions.³⁸ However, this requirement is regularly and easily avoided by MFIs, who instead, as shown in this report, pressure clients to sell land without ever taking them to court. The lack of extensive legal knowledge among MFI clients, low levels of financial literacy, and the very low levels of public trust in the highly corrupt Cambodian judiciary results in few clients ever exercising their right to a court-monitored default process.

Cambodia's Civil Code requires that contracts be in the public order and follow "good customs",³⁹ meaning they must respect written and customary law. In addition, the Civil Code lists ways in which a contract may be rescinded, such as "where the declaration of intention is made as the result of the other party's act that aims to obtain excessive profits and exploits the surrounding situation."⁴⁰ Another article says that if "a contracting party used his/her economic or social position that is better than the other party or used other circumstances so that the other party cannot contest, the other party may rescind the contract on the ground of the defect of the declaration of intention."⁴¹ Predatory lending and economic imbalances were a key feature of cases recorded during this research.

In addition, MFI executives told researchers that smaller MFIs sometimes funnel clients into less regulated lending schemes, by using informal lenders or pawn shops, to extract further profit from indebted individuals. Cambodian business registry documents confirm that there is significant crossover between shareholders of several smaller MFIs and pawn shops, as well as land investment companies.

Many of the people interviewed never received their terms and conditions in physical copy, although all of them had read or had them explained to them. Most do not have access to legal services or advice should they encounter any issues when dealing with MFIs. Distrust in the courts, a lack of legal knowledge and a lack of publicly available legal support leads the vast majority of disputes related

³³ "Regulators/Legal Framework", Cambodia Microfinance Association, 2018, available at: <https://www.cma-network.org/en/regulators-legal-framework>. See also Article 2, Prakas on Registration and Licensing of Microfinance Institutions, 2002.

³⁴ Article 9, Prakas on the Licensing of Microfinance Institutions, 2000.

³⁵ Article 16, Prakas on the Licensing of Microfinance Institutions, 2000.

³⁶ Prakas on Licensing of Microfinance Deposit Taking Institutions, 2007.

³⁷ Article 206, Land Law, 2001.

³⁸ "Good Practices for Financial Consumer Protection", World Bank, p. 24, 2012, available at: http://responsiblefinance.worldbank.org/~/_/media/GIAWB/FL/Documents/Misc/Good-practices-for-financial-consumer-protection.pdf.

³⁹ Articles 354 and 357, Civil Code of the Kingdom of Cambodia, 2007.

⁴⁰ Article 345(3), Civil Code of the Kingdom of Cambodia, 2007.

⁴¹ Article 349(1), Civil Code of the Kingdom of Cambodia, 2007.

to MFI repayments to be settled outside of court, with local-level authorities serving as adjudicators. This is particularly worrying given the conflict of interest of some local authorities who receive payments from MFIs to help settle debts within their own communities.

The Cambodia Microfinance Association (CMA) unveiled a new Code of Conduct for its 87 members in 2017, aimed at “strengthening the integrity” of MFIs by condemning certain practices it deemed to be unethical.⁴² Eighteen MFIs in Cambodia have also endorsed the Smart Campaign, an international commitment to achieve a socially-focused and financially-sound microfinance industry.⁴³ Compliance with these international codes of conduct by MFIs is entirely voluntary. They lack external enforceability: the NBC’s supervision of MFIs is presently limited to overseeing their financial and legal compliance with regulations; it does not meaningfully extend to ensuring that MFIs act in an ethical and responsible way. In a study of the microfinance industry in the Dominican Republic, it was found that self-regulation does not do enough to protect microfinance consumers from over-indebtedness. The study found that when self-regulation was relied upon to protect the rights of customers, clients’ interests and well-being came a distant second to profitability.⁴⁴

In 2017, the government undertook a campaign to ensure that MFI clients knew the institutions were not state-run organisations. A guideline clarifying this separation was also included in the CMA’s Code of Conduct, mentioned above.⁴⁵ Major banks and MFIs, including ACLEDA, were forced to change logos that vaguely resembled those of state institutions, and Hun Sen ordered cell-service providers to send audio and text messages to their clients informing them that MFIs were private entities.⁴⁶ These policies, most likely driven by the fear of public opinion due to MFI malfeasance, may have had the effect of protecting

the government but did little to protect consumers.

In March 2017, in the lead up to the competitive commune elections, the government introduced a new annual interest rate cap of 18 percent for new MFI loans.⁴⁷ It justified this decision as a measure to “protect consumers from excessive interest rate charged by the institution and to effectively promote the use of affordable loan.”⁴⁸ Prior to this new cap, rates generally ranged from 20 to 30 percent.⁴⁹ Unsurprisingly, the cap was not well received by MFIs: they were quick to raise concerns about their ability to maintain high levels of lending moving forward. The push-back focused on two issues: first, that the supply of microcredit might dry up if the MFIs were unable to earn sufficient profits; and, second, as microlending dried up, Cambodia’s poor would be forced back into relying on the much more expensive informal sector for microloans.⁵⁰ The government then acted to “protect the sustainability” of the industry in November 2017, reducing the tax MFIs were required to pay on foreign loans from 14 to 10 percent.⁵¹ Growth and profits in the MFI sector continued to grow after the cap, as MFIs began to use other methods to generate income, such as up-front fees.

This was confirmed through this research and is also acknowledged by the NBC in a 2019 report showing that MFIs doubled their percentage of revenue generated from fees in 2018.⁵² The fees observed by researchers were structured as up-front percentages that were charged at the time of the loan disbursement. Interest rates were calculated as a percentage of the entire loan, but the client only received an amount equal to the loan minus the upfront fees. This resulted in effective interest rates that always exceeded the 18 percent rate cap. This further demonstrates that the government’s attempts at regulating the sector have failed to protect consumers.

⁴² Hor Kimsay, “CMA Issues Code of Conduct for Local MFIs”, The Phnom Penh Post, 26 July 2017, available at: <https://www.phnompenhpost.com/business/cma-issues-code-conduct-local-mfis>.

⁴³ “Cambodia”, The Smart Campaign, 2019, available at: <https://www.smartcampaign.org/tools-a-resources/730>.

⁴⁴ J. Afonso et al., “Doing Good by Doing Well? Microfinance, Self-Regulation and Borrowers’ Over-Indebtedness in the Dominican Republic”, *Journal of International Development*, pp. 931-32, 2016.

⁴⁵ *Supra* note 38.

⁴⁶ Kuch Naren, “Mobile Firms Told to Spread Message: MFIs Not State-Run”, The Cambodia Daily, 23 February 2017, available at: <https://www.cambodiadaily.com/news/mobile-firms-told-to-spread-message-mfis-not-state-run-125665/>.

⁴⁷ Article 4, Prakas on Interest Rate Ceiling on Loan, 2017.

⁴⁸ Article 2, Prakas on Interest Rate Ceiling on Loan, 2017.

⁴⁹ Hor Kimsay, “Government Reduces Tax Load on MFIs Receiving Money from Abroad”, The Phnom Penh Post, 15 November 2017, available at: <https://www.phnompenhpost.com/business/government-reduces-tax-load-mfis-receiving-money-abroad>.

⁵⁰ Daniel Rozas, “Interest rate cap will hurt rural families”, The Phnom Penh Post, 21 March 2017, available at: www.phnompenhpost.com/analysis-and-op-ed/interest-rate-cap-will-hurt-rural-families.

⁵¹ *Ibid.*

⁵² “Financial Stability Review 2018”, National Bank of Cambodia, p. 23, April 2019, available at: https://www.nbc.org.kh/download_files/publication/annual_rep_eng/FSR-for-publication-final-22Apr2019.pdf.

RECOMMENDATIONS:

MFIs:

1. Change MFI internal rules to prohibit requiring land titles as collateral for all new microfinance loans.
2. Immediately calculate and publish the number of land titles currently held as collateral.
3. Stop pressuring clients to sell land in order to repay debts and instead utilise existing legal mechanisms for default.
4. Stop the use of up-front fees that result in effective interest rates exceeding the 18 percent annual cap instituted by the National Bank of Cambodia in March 2017.
5. Support and facilitate independent investigations into industry practices and ensure meaningful relief and remediation is provided to borrowers when wrongdoing is uncovered.

Cambodian government:

1. Ensure local authorities do not accept bribes from MFIs in order to pressure clients into settling outstanding debts, which is prohibited under Article 594 of the Criminal Code.
2. Create laws or regulations prohibiting MFIs from pressuring clients to sell land in order to ensure that proper legal processes for defaults are followed.
3. Ensure that shareholders and investors in MFIs, including bilateral donors, conduct thorough investigations into Cambodia's MFI sector and encourage them to develop and fund alternative pro-poor financing programs.
4. Cooperate with MFI shareholders and lending partners to establish debt relief programs to limit the number of land sales related to debt repayment.
5. Prepare programs with the international development community to introduce the legislation, financial infrastructure and other background conditions and institutions required for community- and member-owned local financial institutions to emerge, as a longer-term replacement for MFIs.

MFI shareholders and lending partners:

1. Cooperate with the Cambodian government and the international development community to establish debt relief programs to ensure MFI clients are not required to sell land in order to repay their debts, with the primary goal of eradicating coerced land sales.
2. Conduct investigation and further research into human rights abuses caused by MFIs in Cambodia, and establish regular and robust monitoring mechanisms to evaluate borrowers' situations in Cambodia.
3. Demand that MFIs in Cambodia cease coercing land sales outside of the judicial system, end predatory lending practices, and take substantive steps toward reducing the number of land sales required to repay debts.
4. Develop and fund pro-poor financing programs in Cambodia that provide capital without relying on land titles or leading to human rights abuses.

Ownership

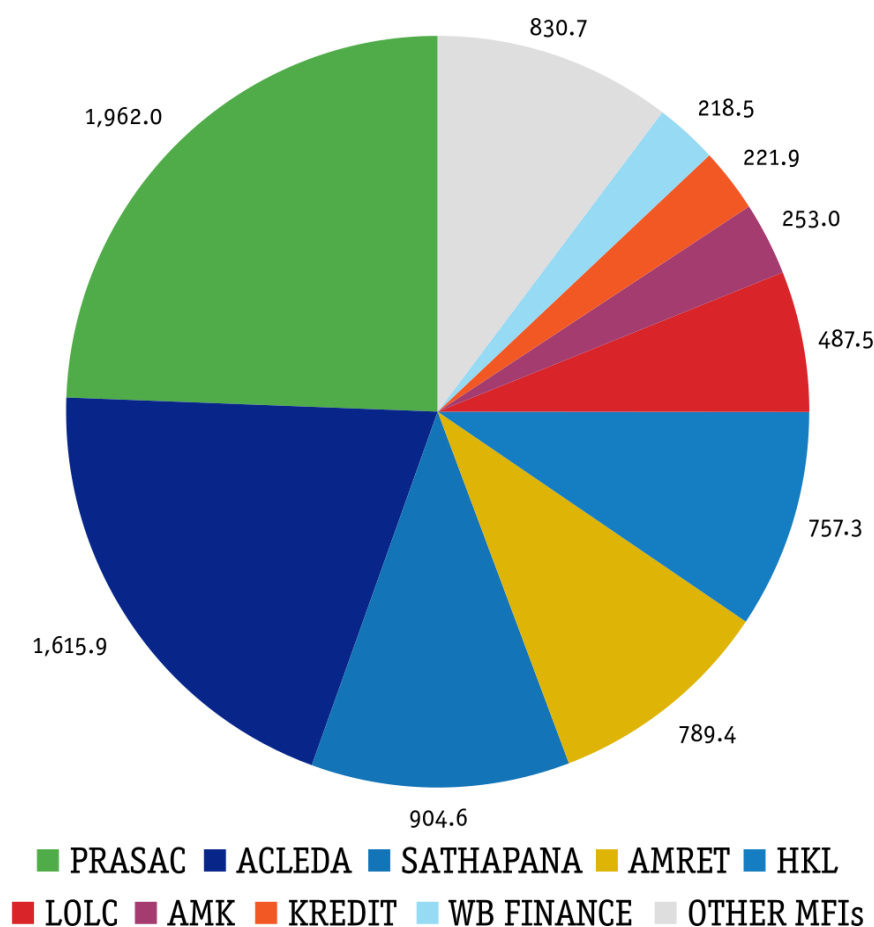


Cambodia's largest MFIs were set up with support and financing from international development agencies, and some continue to be owned or financially supported by such institutions. The IFC is a minority shareholder of Amret and since 2015 has facilitated more than \$300 million in loans to Cambodian MFIs in order to expand their loan portfolios, of which \$112 million was direct loans from IFC accounts. The development agencies or state banks of the European Union, Germany, France, the UK, the Netherlands, Japan, and other nations are among the shareholders or lending partners of the largest MFIs. USAID provided key support to the sector's early development and has continued to provide financial support to the sector through 2018.⁵³ MFI private lending partners include Bank im Bustum Essen, which boasts the slogan "Fair Banking" and counts the Catholic Church as a founding client, and Triodos Bank, which calls itself a "global pioneer in sustainable banking."

The aggressive tactics employed by MFIs have led Cambodian villagers to lose productive farmland and homes, decreased food security, contributed to child labour and migration, and caused a number of human rights abuses in the country. Each of these individual issues raises serious concerns. They are likely to become more routine and widespread as the levels of debt in Cambodia continue to grow. To date, there are no publicly available research papers conducted by MFI partners or funders which explore the negative effects of debts repayment failures in Cambodia.

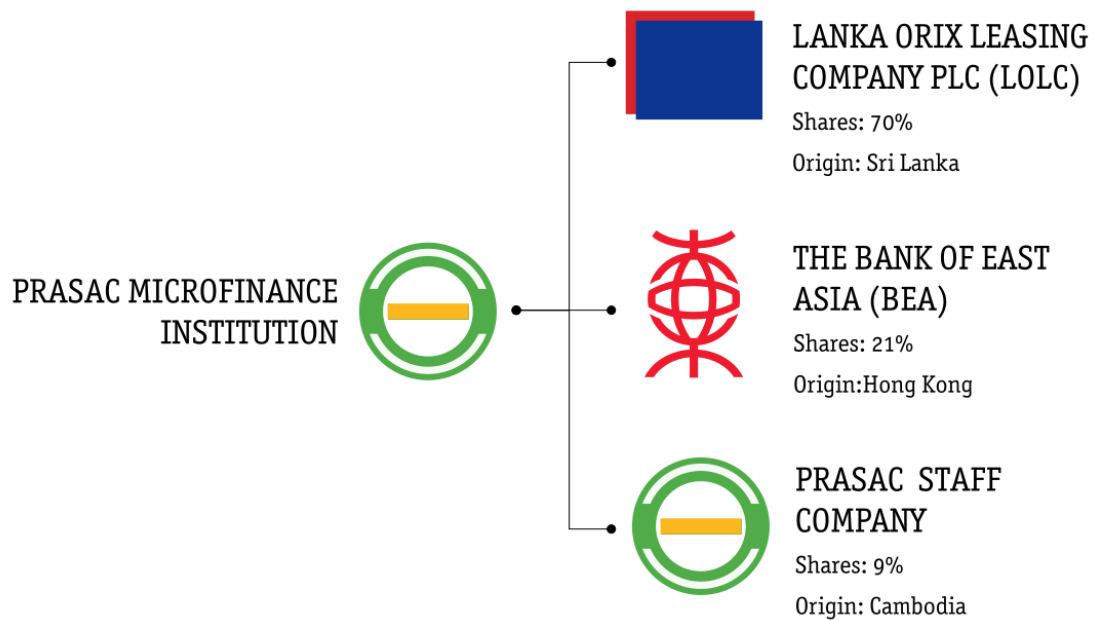
Listed below are the shareholder arrangements of the country's seven largest MFIs, as well as ACLEDA and Sathapana. Darker areas in the maps represent higher total loan amounts per household. Sources for this information include the Cambodia Business Registry, the annual reports of the MFIs and banks, shareholders' websites and reports, and other data.

Largest loan portfolios
(in million of USD)

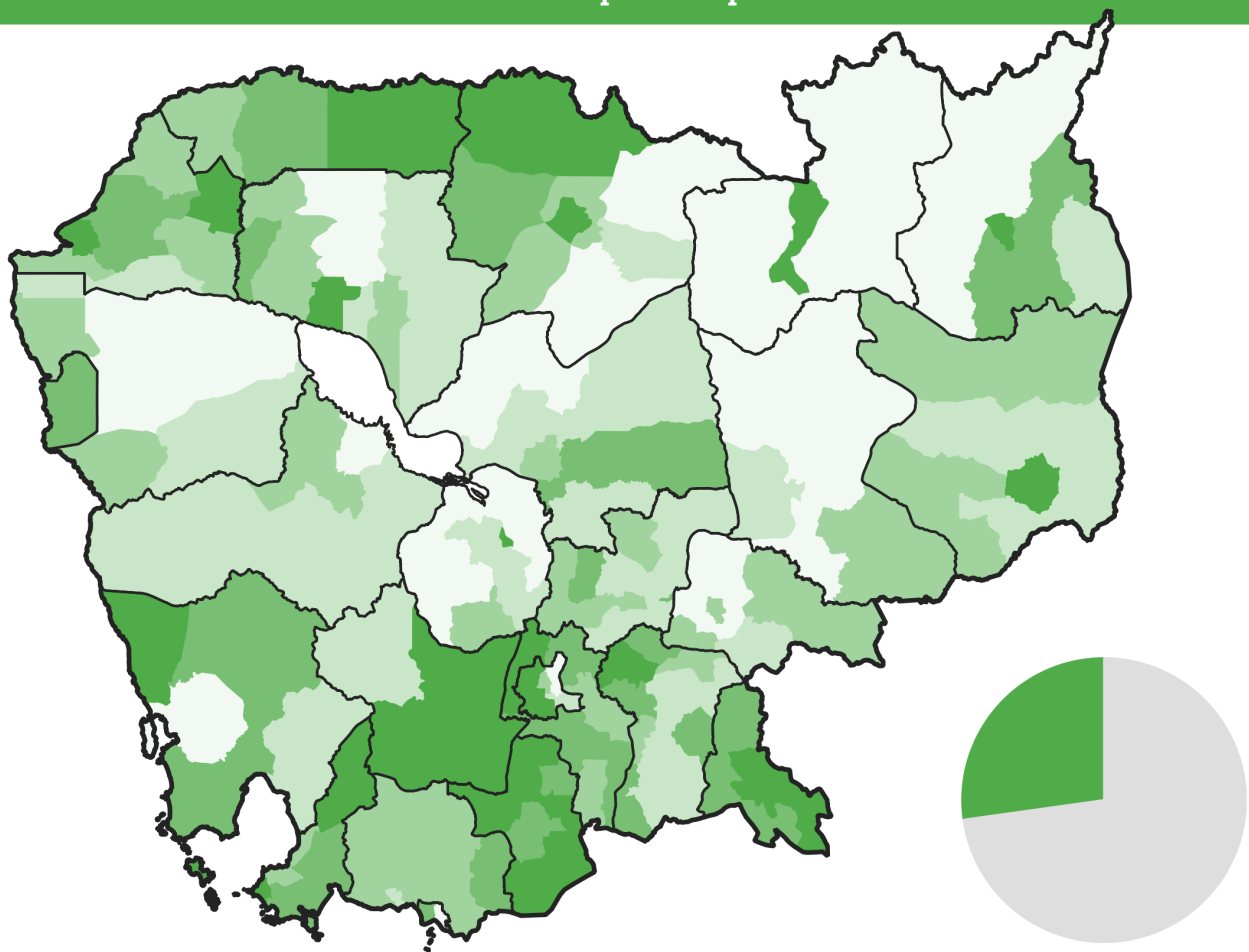


⁵³ "Cambodian Agriculture to Benefit from Exciting New Financing Resource", USAID, October 2017, available at: <https://www.usaid.gov/cambodia/press-releases/oct-17-2017-cambodian-agriculture-benefit-exciting-new-financing>.

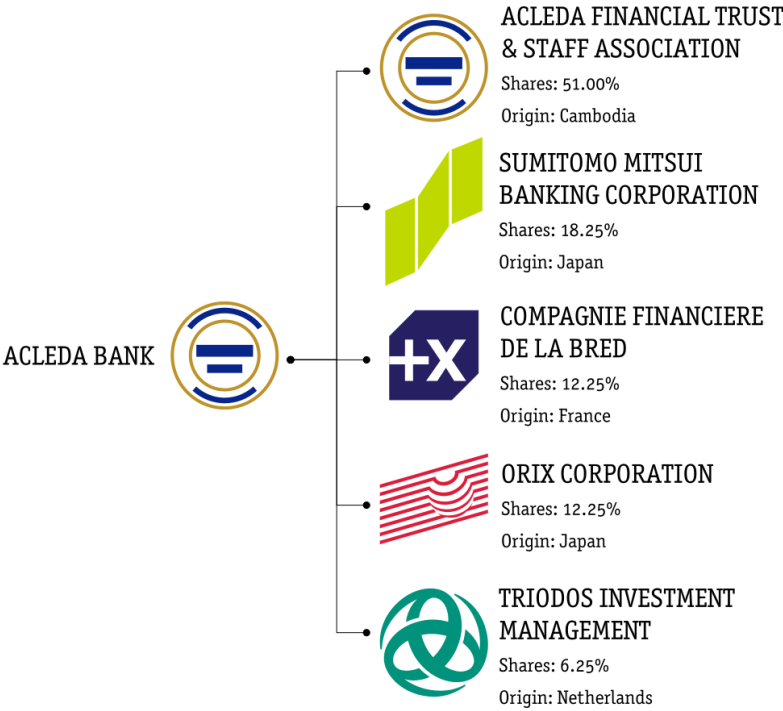
PRASAC MICROFINANCE INSTITUTION



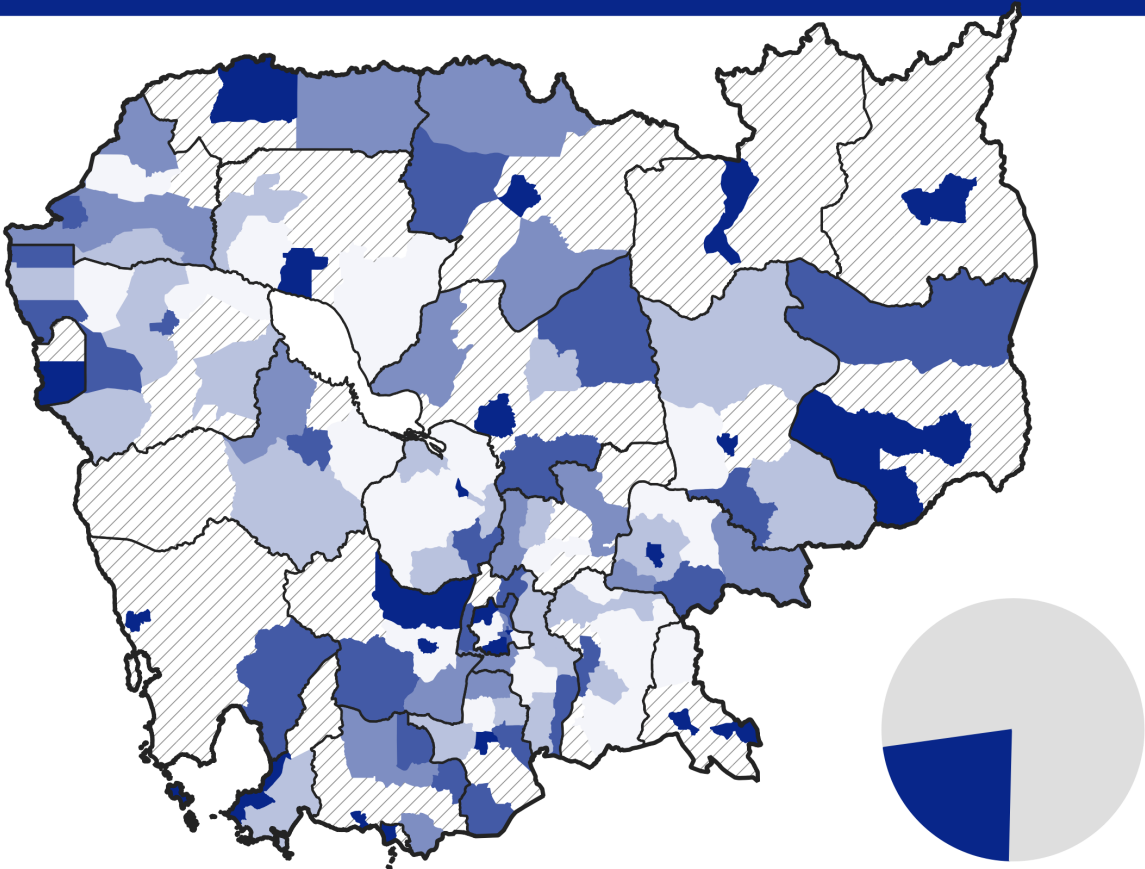
PRASAC's district-level loan portfolio per household



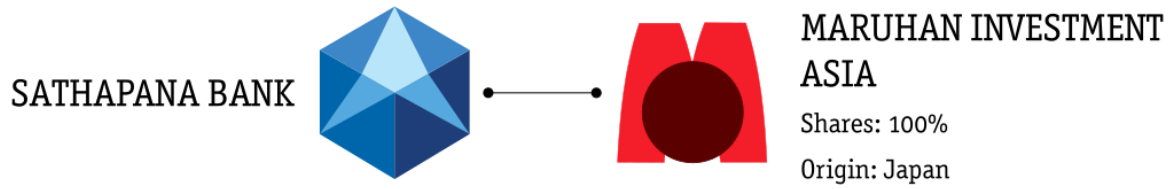
ACLEDA (SMALL LOANS)



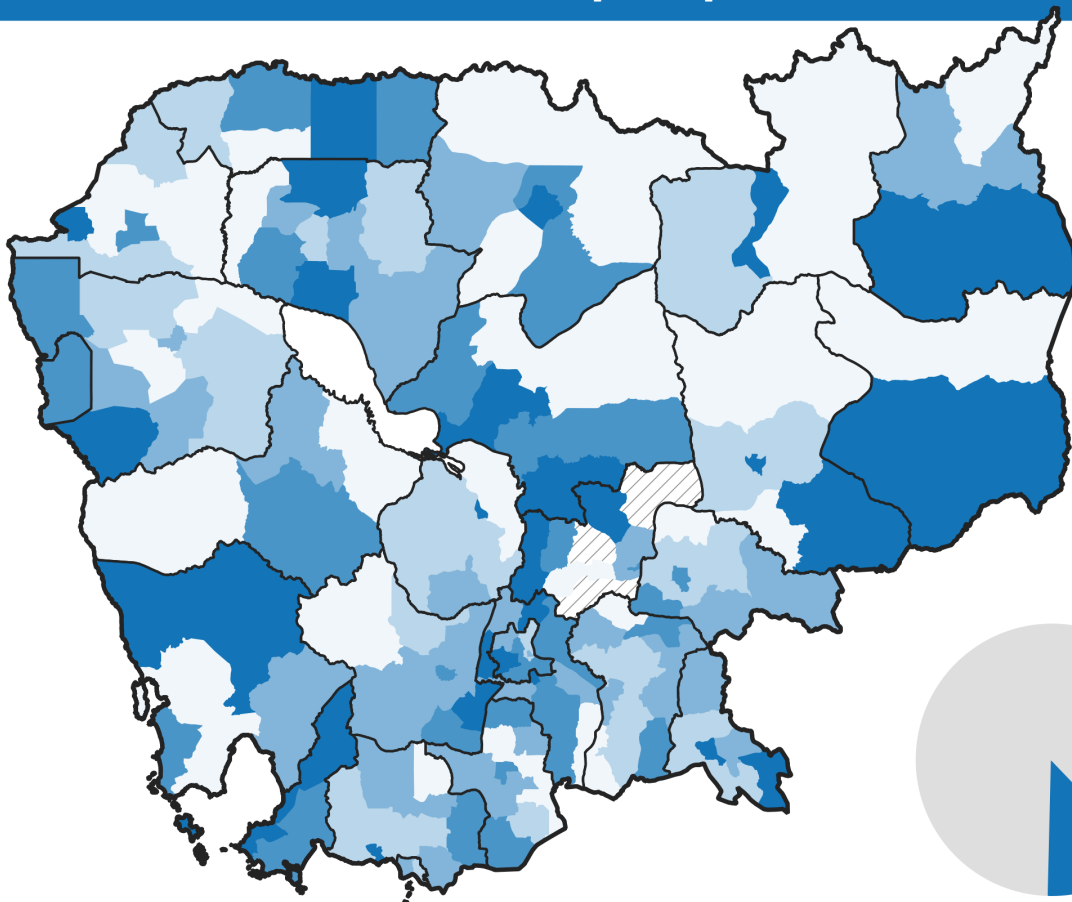
ACLEDA's district-level loan portfolio per household



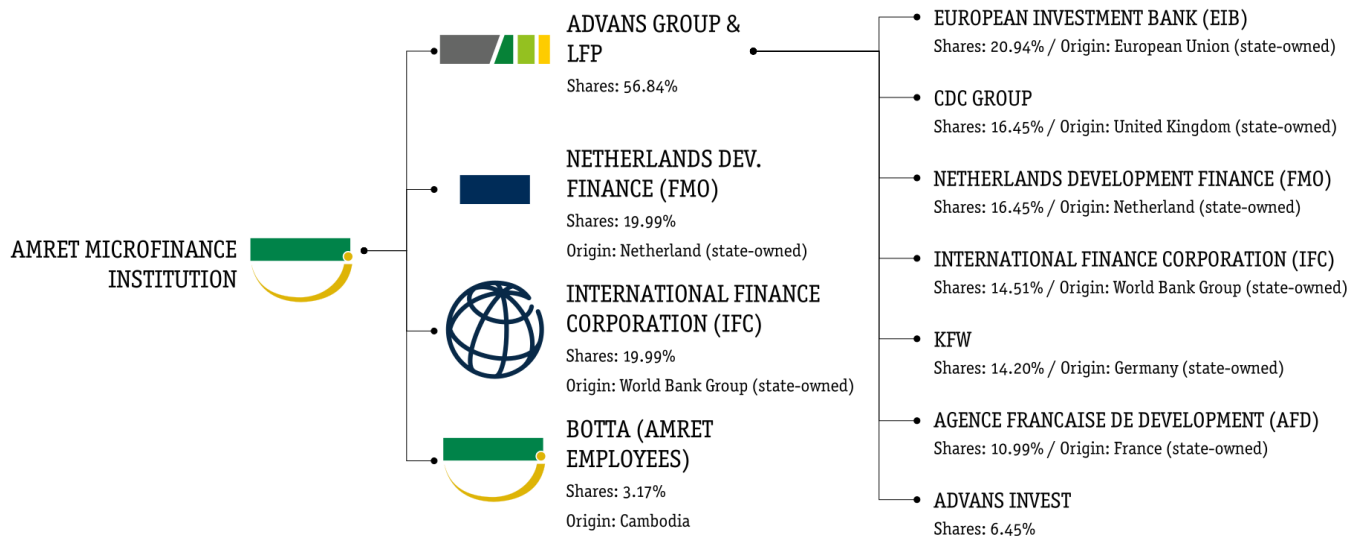
SATHAPANA (SMALL LOANS)



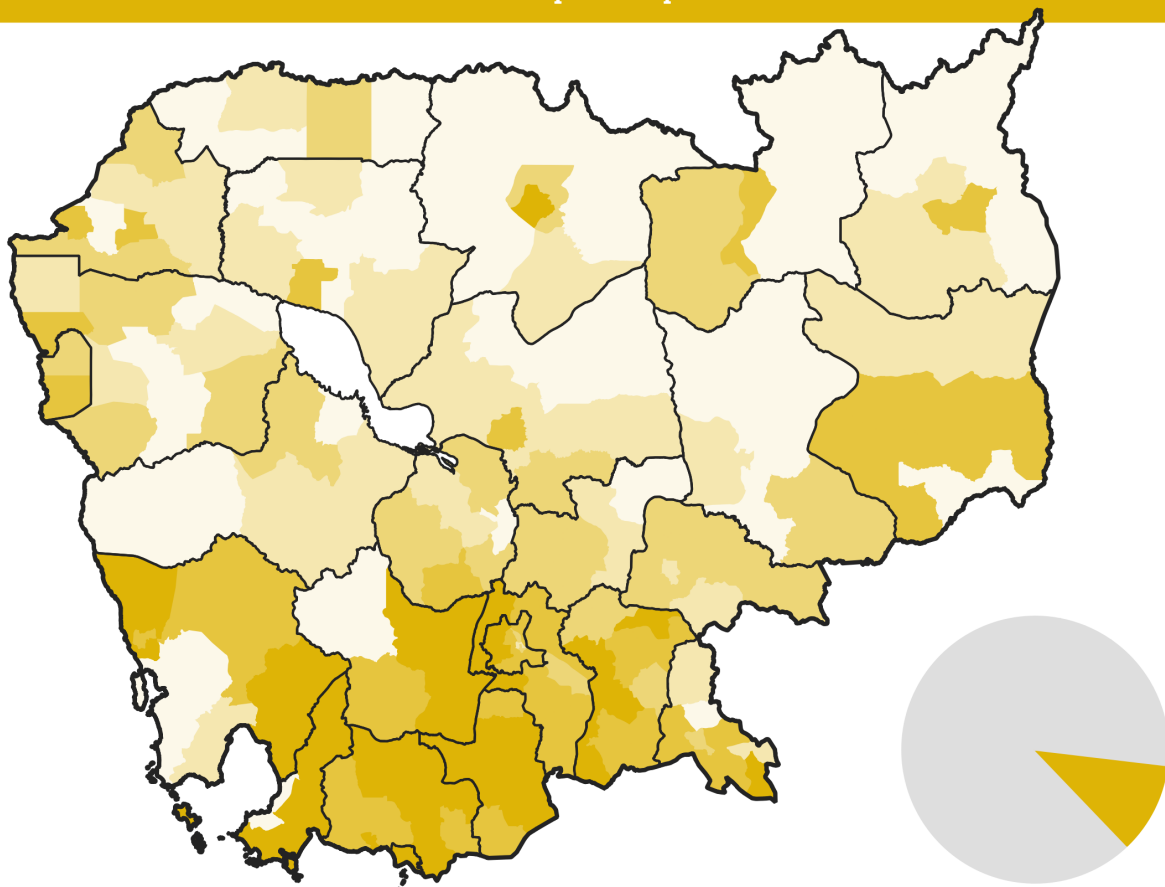
SATHAPANA's district-level loan portfolio per household



AMRET MICROFINANCE INSTITUTION



AMRET's district-level loan portfolio per household



HATTHA KAKSEKAR LIMITED (HKL)

HATTHA KAKSEKAR
LIMITED (HKL)

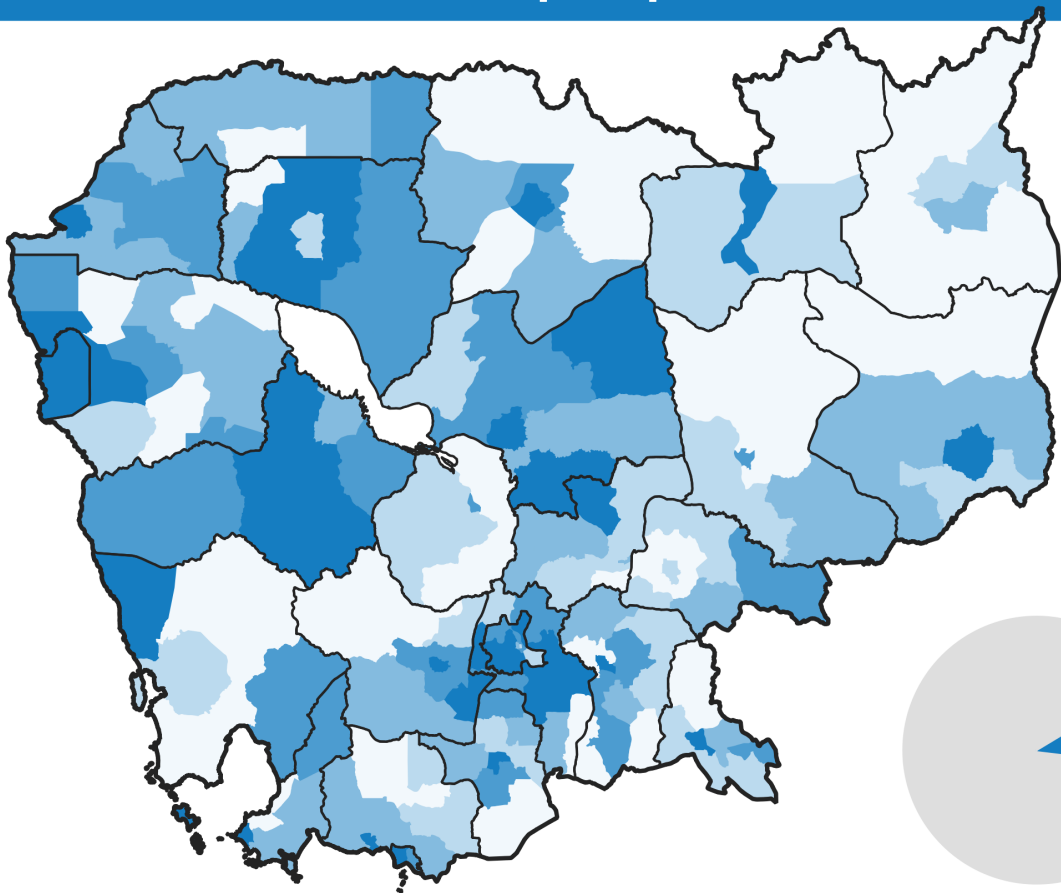


BANK OF AYUDHYA
(KRUNGSRI)

Shares: 100%

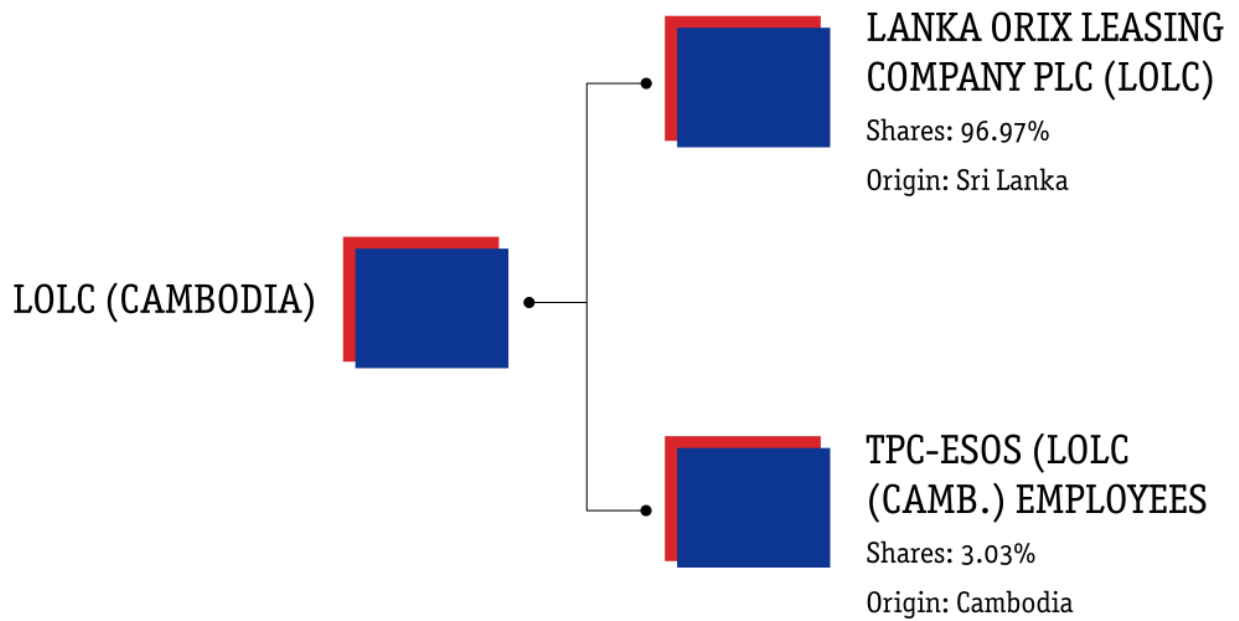
Origin: Thailand

HKL's district-level loan portfolio per household

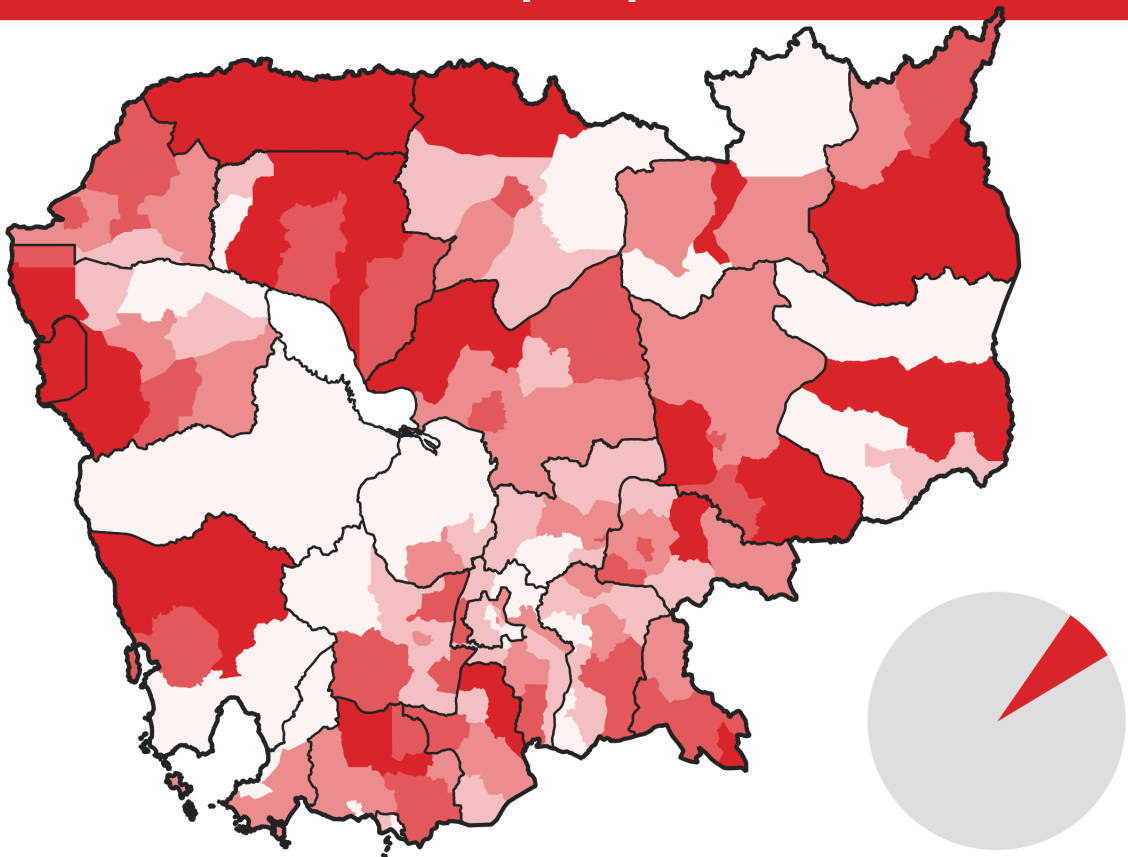


LOLC (CAMBODIA)

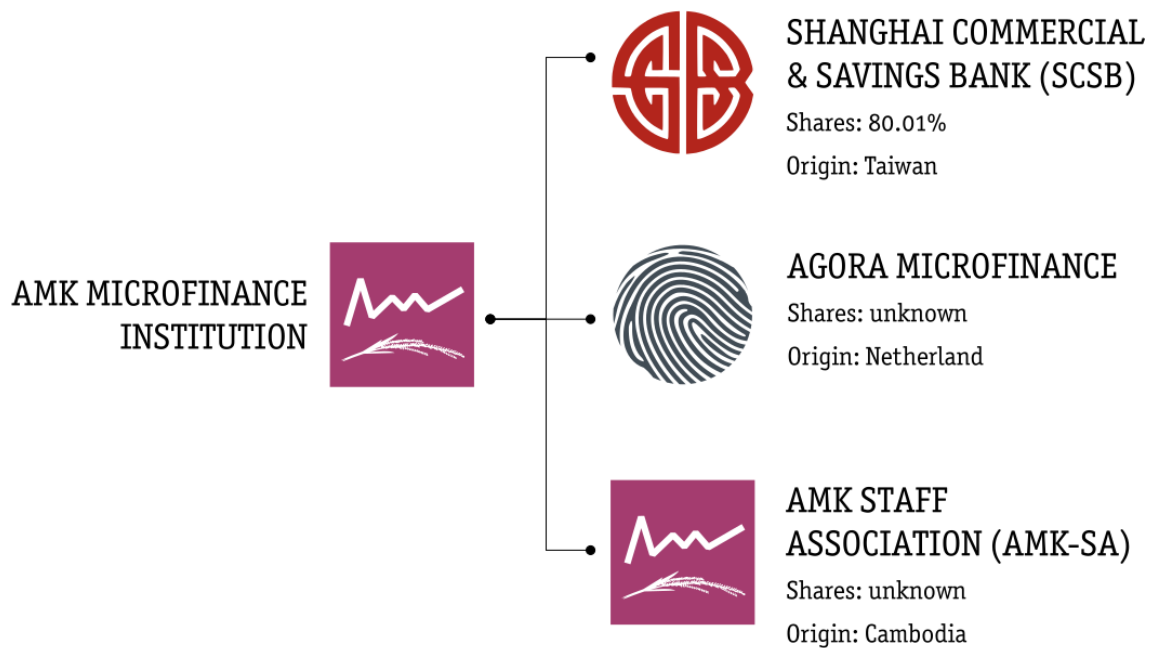
(formerly Thaneakea Phum)



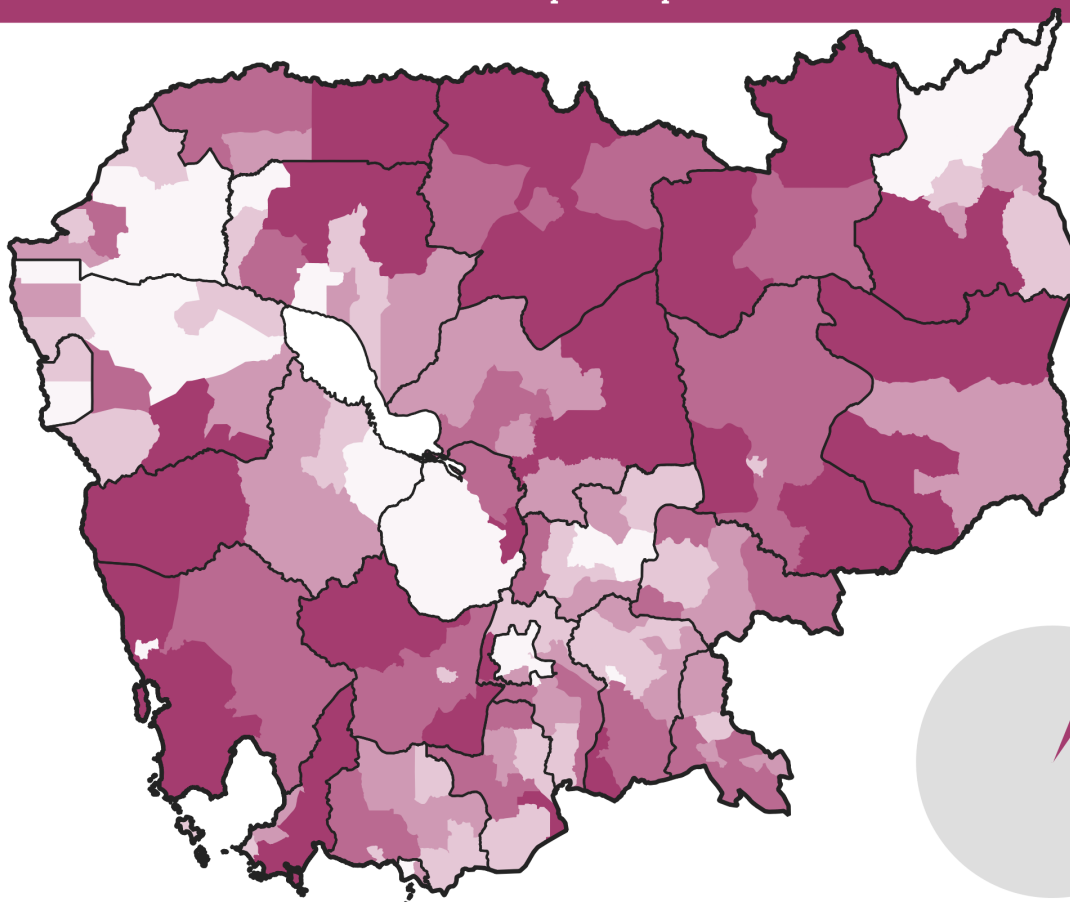
LOLC's district-level loan portfolio per household



ANGKOR MIKROHERANHVATHO KAMPUCHEA (AMK)



AMK's district-level loan portfolio per household



KREDIT MICROFINANCE INSTITUTION

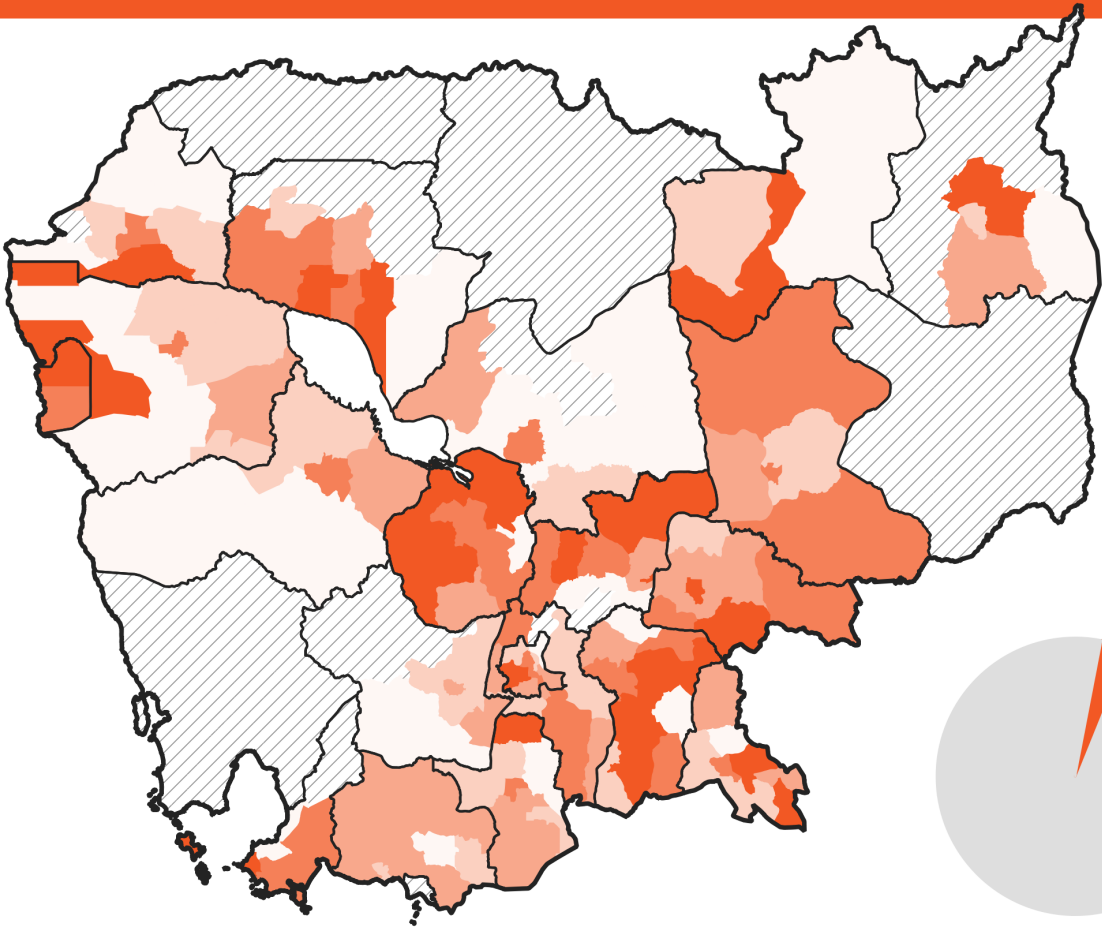
KREDIT MICROFINANCE
INSTITUTION



PHILIPCAPITAL
GROUP

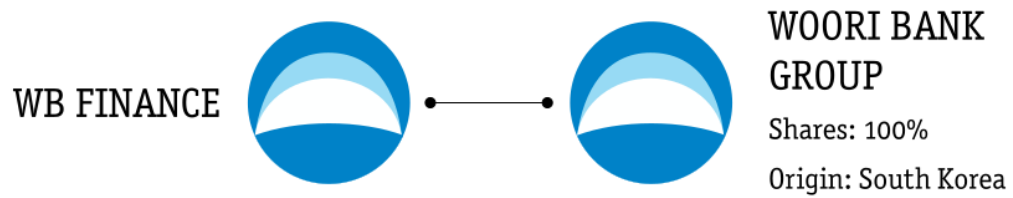
Shares: 100%
Origin: Singapore

KREDIT's district-level loan portfolio per household



WB FINANCE

(formerly VisionFund)



WB Finance's district-level loan portfolio per household

