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CASTING A WIDER NET



**More Consultation needed
for the Kampot Pier Project**

January 2017

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Hun Boramey, Country Director
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Glossary

ADB	Asian Development Bank
CCHR	Cambodian Center for Human Rights
CESCR	Committee on Economic, Social and Cultural Rights
EIA	Environmental Impact Assessment: A document required by Cambodian law, which must be approved by the Ministry of Environment before projects which may affect the environment may go ahead.
EMC	Environmental Monitoring Consultant
EMP	Environmental Monitoring Plan: A document prepared by consultants for the Ministry of Tourism, forming part of the loan agreement between the ADB and the Royal Government of Cambodia for the Kampot Pier Project.
FPIC	Free, prior and informed consent
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEE	Initial Environmental Examination: A document prepared by consultants for the Ministry of Tourism, forming part of the loan agreement between the ADB and Royal Government of Cambodia.
IUCN	International Union for Conservation of Nature
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCU	Project Coordination Unit: A committee created within the Ministry of Tourism to oversee the Kampot Pier Project.
PIU	Project Implementation Unit: A committee created within the Department of Tourism in Kampot Province to oversee implementation of the Kampot Pier Project.
UN DRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

Introduction and Executive Summary

On 18 December 2014, the Royal Government of Cambodia and the Asian Development Bank (ADB) agreed a loan to construct a pier for tourists near Kampot city in southern Cambodia. The loan will fund the construction of the pier and support facilities on four hectares of land at the mouth of the Tuek Chhou river and upgrade 6.5 km of access roads linking the pier to National Highway 33.

This report assesses the potential impact of the Kampot Pier Project on land rights, livelihoods and the right to consultation for people living in the adjacent communes of Chum Kriel, Trapeang Sangkae and Koun Satv. While it does not appear that the project will affect people's land rights, the construction and operation of the pier may affect the sensitive ecosystem in Kampot bay that thousands, if not tens-of-thousands, of people rely on for their livelihoods. The government has proposed detailed measures to minimise this impact and to monitor any pollution. Given the potential impact on people's rights, fishing people must be meaningfully consulted on these plans. People interviewed for this research are waiting for reliable information from the government about this and other projects proposed for Kampot bay.

The most important recommendation coming from the research is that the Ministry of Tourism, responsible for implementing the Kampot Pier Project, should increase the scope of planned consultations to include all potentially-affected people, particularly fishing people in Trapeang Sangkae and Koun Satv communes. The consultations should give people adequate information to assess the impact of the project on their lives and enable them to provide feedback on the plans for the pier's design, as well as on the proposals for monitoring and reporting on the project's impact and on how they can register any complaints.

Kampot Pier Project

The Ministry of Tourism designed and will

implement the Kampot Pier Project. The Ministry set out its plans for the project in documents submitted to the ADB in 2014, including in Initial Environmental Examination (IEE) and Environmental Management Plan (EMP) documents. The ADB agreed to provide 95.9% of the USD 9.62 million expected cost of the project. This report is based on information contained in the existing project documents and on information gained through interviews with the Ministry of Tourism, Department of Tourism in Kampot and ADB staff. Consultants hired by the Ministry of Tourism are currently completing further detailed designs for the pier and are updating the EMP. The recommendations of this report should be included in these revised project documents. A construction contractor is expected to be hired in the first half of 2017 and construction completed in the first quarter of 2018.

Legal Framework

International human rights law establishes the right to adequate housing, right to adequate food and the right to meaningful consultation. Cambodia's Constitution directly incorporates these international rights into domestic law and Cambodian law provides the framework through which these rights can be protected, respected and fulfilled by the government. To protect livelihoods from environmental damage, Cambodia's Law on Environmental Protection requires that large projects prepare Environmental Impact Assessments, which the Ministry of Environment should enforce. International organizations, such as the ADB, are bound by general rules of international law, including the obligation to respect human rights norms.

Land Rights

Kampot Provincial Government acquired the four-hectare plot of land for the pier from a wealthy individual in October 2015. It does not appear that the project will negatively impact people's land rights. In the three communes studied for this report, few residents have formal land titles. However, in 2014 the

Department of Land Management, Urban Planning and Construction began the process of registering land in these communes. The majority of residents are still going through the registration process. The government should continue the registration and titling process to ensure residents have security of tenure. In these communes, some individuals live on state land. All alternatives to evictions should be explored, in consultation with potentially-affected individuals, and they should be afforded the maximum of protections available under domestic and international law.

Livelihoods

Thousands, and possibly tens-of-thousands, of people depend on the ecosystem of Kampot bay for their livelihoods. At the foundation of the ecosystem are over 8,435 hectares of seagrass beds and 1,960 hectares of mangrove forests. Among other benefits, seagrass beds and mangrove forests provide breeding grounds for fish and other fauna collected by fishing people, including species at risk of extinction. A rough estimate puts the economic value derived from the seagrass beds at USD 10 million per year.¹

Approximately 9,000 people in Trapeang Sangkae and Koun Satv communes fish, or are dependent on fishing, in Kampot bay for their livelihoods. More than 1,100 fishing people have formed Trapeang Sangkae and Kampong Samaki Community Fisheries, which invest in the ecosystem and protect it from illegal fishing. Men and women collect snails and crabs in mangrove forests and seagrass beds in shallow coastal waters. Others push nets along the seabed by hand to catch shrimp or catch fish from small boats.

Livelihoods: Risk of Pollution

The Ministry of Tourism's project documents identify potential risks to the environment

¹ Based on the estimated value of seagrass beds in Cambodia per hectare, from the United Nations Environment Programme (UNEP), and the most recent estimate of seagrass bed coverage, from the International Union for Conservation of Nature (IUCN). See Chapter 4 of this report for more information.

resulting from pollution during construction and operation of the pier. Pollution could damage the ecosystem, thereby reducing the availability of food, a component of the right to food. The Ministry of Tourism has proposed measures to mitigate the risk pollution. These measures must be fully implemented, rigorously monitored and properly enforced.

Livelihoods: Access to Fishing Resources

Fishing people are concerned that the new pier may prevent them from accessing Koh Samao mangrove island or fishing areas around Coconut Mountain, west of Kampot city. This would reduce the accessibility of food, another component of the right to food. The Ministry of Tourism proposes to develop a navigation management plan that would determine rules for access to the waterway. The plan must ensure that communities east of the pier will still be able to cross the waterway in front of the pier. Fishing people who use the waterway should be adequately represented on the committee developing the navigation management plan so they can protect their interests.

Livelihoods: Monitoring

The Ministry of Tourism has identified potential environmental impacts of the project and proposed measures to mitigate the impact. In addition, it has proposed that construction will be carefully monitored by an independent Environmental Monitoring Consultant (EMC) and the Department of Tourism. However, the project documents note the absence of specialist knowledge within the department and do not say what steps should be taken if evidence of environmental damage is discovered. The EMP is being revised and will be submitted to the Ministry of Environment as the Environmental Impact Assessment (EIA) for the project. It should include further information on how the Department of Tourism will be trained and what steps will be taken if environmental damage is discovered. All reports should be shared with the Department of Environment to enable them to fulfil their statutory duty to protect the environment.

Right to Consultation

The IEE and EMP were developed following consultations with stakeholders, including 100 members of Chum Kriel and Kampong Kandal communes. These initial consultations did not include Trapeang Sangkae and Koun Satv communes. The Kampot provincial government also informed commune heads and the Community Fishery committee heads about the pier during a meeting about other projects in 2014. The government has not yet done enough to fulfil the rights of fishing people to information and to participate in decisions which affect their lives. Further consultations are planned. They should ensure that all potentially-affected people are informed and meaningfully consulted about the project, including fishing people in Trapeang Sangkae and Koun Satv communes.

Consultation: Communication

Most people interviewed by the research team recognised the potential benefits of the Kampot Pier Project. They were concerned, however, that they lacked the education to compete for jobs created by the pier, or that the potential benefits of increased tourism would be outweighed by lost income from fishing. In some cases, people's concerns were already addressed by the existing proposals. This information gap highlights the need for more communication. Interviewees proposed that the government should inform them about the project and consult them at public forums, through local authorities or through Community Fisheries.

Consultation: Complaints mechanism

The project will create a grievance mechanism to allow people to complain about the project. As part of ongoing consultations, the project implementers should seek feedback from fishing people on the adequacy of the proposed reporting and complaints mechanisms.

Other Developments

In the last five years, developments at the proposed project site have damaged the ecosystem in Kampot bay. The land reclamation

destroyed coastal mangrove forests, which sustained an important ecosystem for local fishing people. Over several years the Tuek Chhou river channel has been deepened, which has damaged seagrass beds and obstructed fishing people's access to resource-rich areas of Kampot bay. The ongoing channel deepening should be suspended, pending consultations with affected people and an assessment of its environmental impact.

The Cambodian government is considering several proposals for new tourism projects in Kampot bay. These include 'New Kampot Town' – a tourism island that would be constructed on 248 hectares of reclaimed land – and 'French Riviera City' – two tourism islands that would be constructed on over 4,000 hectares of reclaimed land between Kep and Kampot provinces. These projects are of a different order of magnitude to the Kampot Pier Project. If constructed, severe impact on thousands of people's livelihoods will be unavoidable. The government must ensure that there are meaningful consultations with the potentially-affected communities before these projects are approved.

Recommendations

In light of the potential impact on people's livelihoods, this report focusses its recommendations on minimizing this impact and to ensuring fishing people are meaningfully consulted. The Ministry of Tourism is responsible for ensuring the mitigation measures are adequate to prevent pollution and that they are properly implemented. The Ministry of Environment should only approve the EIA if the proposed measures are adequate to prevent damage to people's livelihoods and should conduct its own monitoring of the ecosystem in Kampot bay. The Ministry of Tourism should conduct meaningful consultations with all potentially-affected people, particularly in Trapeang Sangkae and Koun Satv communes. They should be consulted on the pier's design, as well as on the system for monitoring and reporting on the project's impact and on how they can register any complaints. The ADB should support the

Ministry of Tourism to implement these recommendations.

The Kampot Pier Project may increase land values and future development projects may put people's land rights at risk. The Department of Land Management should complete the ongoing systematic land registration in coastal communes to fulfil people's right to security of tenure.

Detailed recommendations are set out below:

Land Rights:

Department of Land Management:

- While not directly related to the Kampot Pier Project, the Department should begin the land registration process in the remaining villages of Koun Satv Commune and ensure all residents of Chum Kriel, Trapeang Sangkae and Koun Satv communes receive formal title as soon as possible, to provide them with security of tenure.
- For people living on state land, all alternatives to evictions should be explored, in consultation with those individuals, and they should be afforded the maximum of protections available under domestic and international law.

Livelihoods:

Ministry of Tourism and Department of Tourism:

- Ensure that the mitigation measures in the final EMP / EIA for the Kampot Pier Project are sufficient to prevent adverse impacts on the livelihoods of fishing people in the Kampot bay area.
- Rigorously monitor and properly enforce the mitigation measures set out in the final EMP / EIA.
- Include guidance in the final EMP / EIA on action to be taken by the Project Implementation Unit (PIU) and Project Coordination Unit (PCU) if there is evidence of environmental damage.
- If further deepening or extension of the Tuek Chhou river channel is considered necessary in the future to enable access to the new pier, conduct detailed environmental studies and adequate

consultations with potentially-affected people.

- Ensure that the navigation management plan allows fishing people to cross the waterway without reducing their access to fishing resources.
- Ensure that fishing people who use the waterway are adequately represented on the committee developing the navigation management plan so they can protect their interests.
- Include information on reporting to stakeholders as one of the performance monitoring indicators that should be included in PIU quarterly reports.
- Make all environmental monitoring reports, including baseline data gathered by the EMC, available to the Ministry of Environment, as proposed in the existing EMP / EIA.

Ministry of Environment and Department of Environment

- Make all environmental data on the Kampot bay area publicly available, including any EIAs relating to projects in the bay.
- Ensure that the EIA for the Kampot Pier Project is rigorously monitored and properly enforced.
- Ensure that sufficient resources are made available to enable the Department of Environment, in collaboration with the Fisheries Administration, to collect regular information on environmental indicators, such as water quality and the extent and quality of seagrass beds and mangrove forests.
- Ensure that that sufficient resources are made available to enable the Department of Environment to adequately monitor the implementation of the EIA (as per Article 11 of the Sub-decree on Environmental Impact Assessment Processes (1999)).

Information and consultations:

Ministry of Tourism and Department of Tourism:

- Include fishing people living in Trapeang Sangkae and Koun Satv communes as potentially-affected people in consultation

and information plans for the Kampot Pier Project.

- Conduct further assessments to determine the full extent of communities who fish in the Koh Samao area or travel between Koh Samao and the coast for their livelihoods and include these people in consultation and reporting plans.
- Translate the Executive Summary of the IEE into Khmer and make it available online.
- Ensure meaningful consultation with potentially-affected communities, ideally conforming to the principles of free, prior and informed consent, including through:
 - Organising public meetings in potentially-affected communities and distributing written information in Khmer at these meetings, at commune offices, online and via social media;
 - Explaining the Kampot Pier Project, its current status, plans for monitoring and reporting on the project's impacts and the proposed grievance mechanism; and
 - Requesting and allowing adequate time for people to provide feedback on all aspects of the project, including the monitoring and reporting plans and the grievance mechanism.
- At a minimum, reporting to potentially-affected people should involve a full public disclosure of the PIU's quarterly reports to the PCU, with annexed reports from EMC and construction contractor.
- Require that all documentation on complaints is included in the PIU's quarterly reports to PCU.
 - Ensure that residents understand they have recourse to the courts at any time and their participation in the grievance mechanism does not affect that right.

Asian Development Bank:

- Ensure that potentially-affected people know about the ADB's accountability mechanism.
- Support the Ministry of Tourism to implement the recommendations set out in this report.

Other Developments:

Kampot Provincial Government:

- Begin meaningful consultations regarding the ongoing deepening of the Tuek Chhou river channel with fishing people who currently use the waterway.
- Suspend the deepening of the Tuek Chhou river channel until such consultations have taken place.
- As the Kampot Provincial Government develops plans for the New Kampot Town project, it should disclose information and open meaningful consultations with all potentially affected people.

Ministry of Environment:

- Hold public consultations on all EIAs with potentially-affected people, including the EIAs for New Kampot Town and French Riviera City.

Council for the Development of Cambodia:

- As the Council for the Development of Cambodia considers plans for the French Riviera City project it should disclose information and open meaningful consultations with all potentially affected people.

Methodology

The terms of reference for this research established four objectives:

- “To document Traipaing Sangke and Kampong Samaky Fishery Communities’ tenure rights to control over and access to aquatic resources;
- To identify and document the development process whether the principles of Free, Prior Informed Consent (FPIC) is being applied;
- To assess the direct and indirect socioeconomic impacts and potential impacts of the project on fisher-folks and fishery communities; and
- To identify constructive approaches and strategies to 1) address the socioeconomic impacts of the infrastructure development project; and 2) engaging with relevant stakeholders to identify a mechanism where communities, authorities and investors can have direct dialogue to address socioeconomic impacts on livelihood of fishery communities.”²

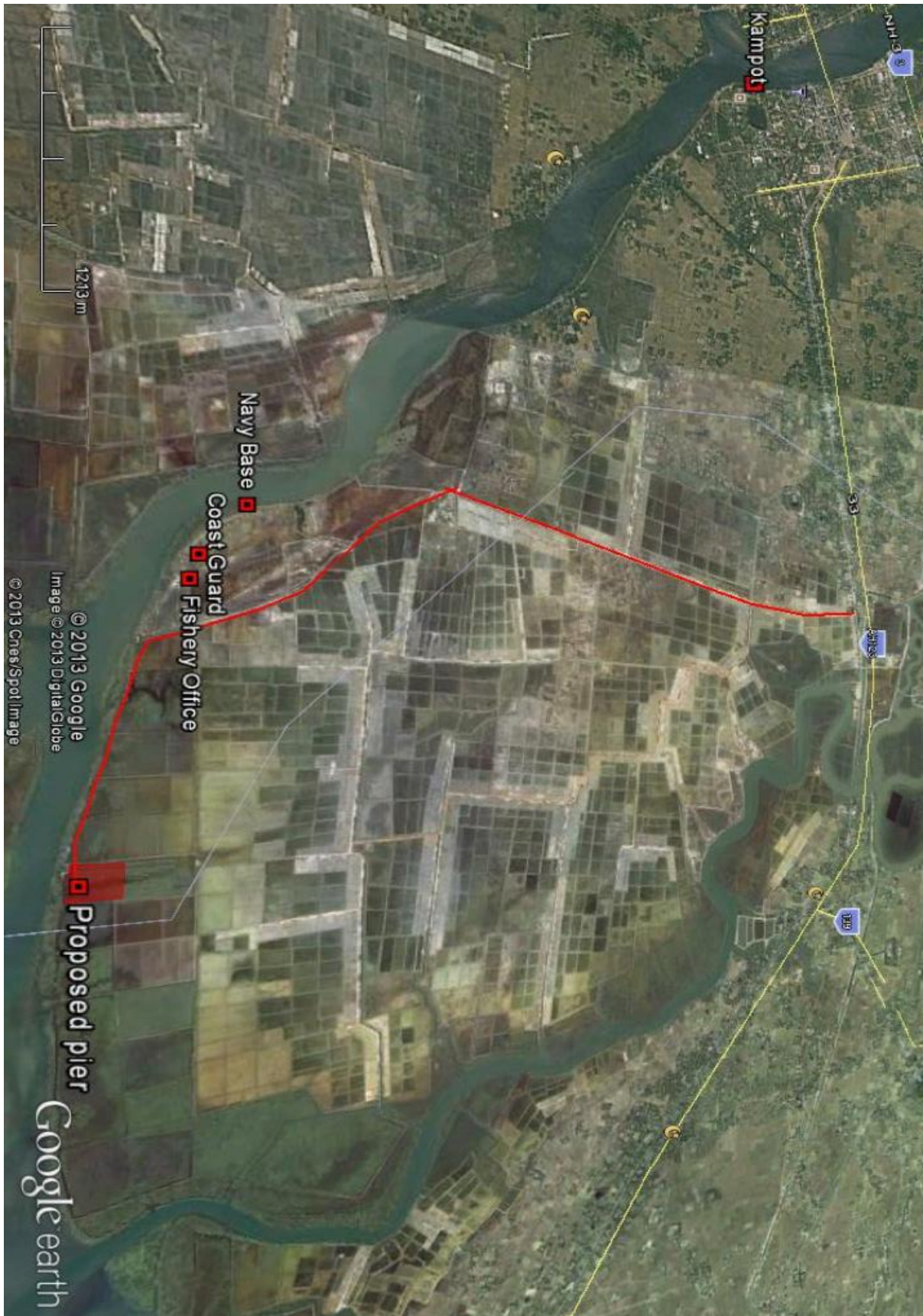
As the Kampot Pier Project has not begun, the research team sought to identify the likely impacts of the project by asking respondents about the impact of recent development projects and their expectations for the Kampot Pier Project. During interviews, the research team provided information about the project plans based on the documentation available on the ADB’s website and information received during meetings with the Ministry of Tourism, authorities in Kampot Province and the ADB.

Between August and November 2016, the research team reviewed relevant documents, interviewed government officials and residents of the Trapeang Sangkae and Koun Satv communes, and visited the project site in Chum Kriel Commune. The research team met with officials of the ADB and Ministry of Tourism in Phnom Penh, and the Department of Tourism, Department of Land Management, Urban Planning and Construction, Department of Environment and Fisheries Administration in Kampot. The Kampot Governor’s office did not respond to requests for a meeting. The team interviewed the heads of Chum Kriel, Trapeang Sangkae and Koun Satv communes, three village heads or deputy village heads, and the committees of Trapeang Sangkae and Kampong Samaki Community Fisheries. The research team interviewed a further 11 people from Trapeang Sangkae Commune and 11 from Koun Satv Commune. Of these, nine were men and 13 were women; while 17 identified as Khmer and five identified as Cham. They were selected because their household’s livelihoods were partly or entirely dependent on fishing (including catching shrimp and collecting crabs and snails).

After completing the research, the team held three validation workshops to present the findings, ensure there were no factual or analytical errors and to seek responses. On 25 October 2016, the team held a workshop with the committees of the two Fishery Communities and a second workshop for officials from the Department of Tourism, Department of Environment, Department of Land Management and the Fisheries Administration in Kampot. On 3 November 2016, the team held a workshop in Phnom Penh. Although officials from the Ministry of Tourism and ADB were invited to attend, they were not able to do so.

² ActionAid Cambodia “Terms of Reference: Investigative Study on Resource Grabs in Kampot Province: ‘Cases of Traipaing Sangke and Kampong Samaky Fishery Communities’” July 2016.

Chapter 1: The Kampot Pier Project



Project History

The Asian Development Bank (ADB) is a regional development bank with 67 member states. It has provided USD 2.65 billion to Cambodia in loans, grants and technical assistance since 1966.³ The ADB currently supports projects promoting inclusive economic growth, environmentally sustainable growth, and regional cooperation and integration.⁴ On 18 December 2014 the ADB agreed a loan to support the Greater Mekong Strategy Tourism Infrastructure for Inclusive Growth Project.⁵ The project will include improvements to the market in Kep and the construction of a pier near Kampot city.

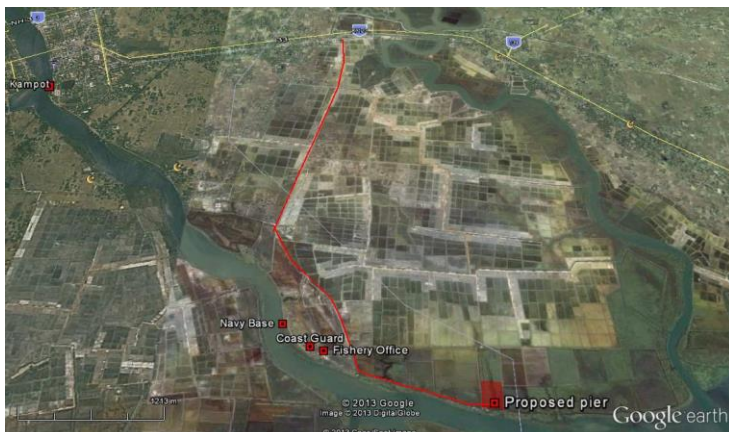


Figure 1: Diagram showing the proposed pier location from the Initial Environmental Examination submitted to the ADB.

interpretive mangrove demonstration area... [to] create awareness of the ecological importance” of mangrove forests.⁶

The project will be constructed on four hectares of land at the mouth of the Tuek Chhou river in Chum Kriel Commune, approximately 10 km from Kampot city (see figure 1). The land was owned by a private individual, who sold the plot to the Kampot Provincial Government in October 2015. The construction work will include 150 m of embankment stabilization and a 50 m jetty with 1,500 m² landing area.

The project was designed, and will be implemented, by Cambodia’s Ministry of Tourism. Consultants working on behalf of the Ministry of Tourism prepared an Initial Environmental Examination (IEE) and Environmental Management Plan (EMP) in March 2014, a Resettlement Action Plan in August

³ Asian Development Bank (ADB,) “Asian Development Bank and Cambodia: Fact Sheet” April 2016. Available from <https://www.adb.org/publications/cambodia-fact-sheet>.

⁴ ADB, “ADB in Cambodia: Country Strategy 2014-2018” November 2014. Available from <https://www.adb.org/documents/cambodia-country-partnership-strategy-2014-2018>.

⁵ ADB, “Loan Agreement (Special operations) for GMS Tourism Infrastructure for Inclusive Growth Project” 18 December 2014. Available from <https://www.adb.org/projects/documents/loan-agreement-special-operations-gms-tourism-infrastructure-inclusive-growth-project-cambodia>.

⁶ P. i, ADB, “Initial Environmental Examination” March 2014. Available from <https://www.adb.org/projects/documents/gms-tourism-infrastructure-inclusive-growth-project-kampot-and-kep-provinces-iee>.

2015 and a Gender Action Plan, which all form part of the loan agreement with the ADB. The Ministry of Tourism established a Project Coordination Unit (PCU) in Phnom Penh and a Project Implementation Unit (PIU) at the Department of Tourism in Kampot. Detailed Design and Supervision Consultants, hired in March 2016, are preparing detailed engineering designs and bidding documents to recruit a construction contractor.⁷ A construction contractor is expected to be hired in the first half of 2017 to implement the project.⁸

Impacts and Safeguards

The project documents state that the project will have significant positive social and economic impacts that will improve people's livelihoods. The IEE also identifies several potential negative impacts on the environment. These include construction-related pollution, and potential impacts on the ecosystem in Kampot bay as a result of increased traffic. The IEE notes that these "critical habitats support well known rare and endangered species such as the marine mammal *Dugong ssp*, sea turtles, a rich diversity of fishes and crustaceans, as well as the inshore and offshore fisheries".⁹

In order to mitigate these risks, the project allocates responsibility for implementing safeguards among different actors involved in the project, proposes specific mitigation measures, and recommends consultation, monitoring, reporting and complaints processes.

Within the PCU at the Ministry there will be a safeguards coordination unit and within the PIU at the Department in Kampot there will be a safeguard specialist. The safeguard specialist will liaise with the construction contractor's environmental officer. The Detailed Design and Supervision Consultants will include international and national environmental specialists and they will also hire an Environmental Management Consultant (EMC) to conduct technical scientific research.

The EMP outlines several specific measures to be taken to avoid negative environmental impacts. Under Cambodian law the project requires an Environmental Impact Assessment (EIA) to be approved by the Ministry of Environment. The EMP will be reviewed and updated once the detailed designs for the pier are finalised and submitted to the Ministry of Environment as the project's EIA.

Consultations

The project documents make several references to consultations that either had happened or were expected to happen. The Project Administration Manual states that "the IEE and EMP have been prepared in consultation with local communities and provincial stakeholders".¹⁰ The EMP states that further consultations are expected before, during and after construction of the pier.

Monitoring, Reporting and Complaints

⁷ ADB, "Project Data Sheet" 25 July 2016. Available from <https://www.adb.org/projects/46293-004/main#project-pds>.

⁸ Meeting with the Ministry of Tourism, 8 September 2016.

⁹ P. ii, ADB, "Initial Environmental Examination" March 2014.

¹⁰ P. 42, ADB, "Project Administration Manual" October 2014. Available from <https://www.adb.org/projects/documents/cam-gms-tourism-infrastructure-inclusive-growth-project-pam>.

The construction contractor will be required to report to the PIU on the implementation of mitigation measures. The EMC will monitor compliance with environmental standards through a baseline study and quarterly monitoring during the construction phase. It will also submit quarterly reports to the PIU. In turn, the PIU is expected to send quarterly reports to the PCU and hold regular meetings with stakeholders.

The project will establish a grievance committee, which is responsible for resolving any complaints. Community members will be able to complain to a commune-level grievance committee, and can subsequently appeal to district and provincial-level grievance committees. Individuals also have access to the Cambodian courts and the ADB's own complaints mechanism.

Next Steps

At a meeting in September 2016, the Ministry of Tourism informed the research team about the current status of the project. The Detailed Design and Supervision Consultants are working on detailed designs for the pier and bidding documents to recruit the construction contractor. The bidding process is expected to take place in the first half of 2017. International and local environmental consultants submitted a revised version of the EMP to the Ministry of Environment, and are currently incorporating the Ministry's feedback. The EMC has not yet been recruited.

The Ministry of Tourism also stated that the plans under consideration include a market on the pier site and, separately to the Kampot Pier Project, the government is identifying opportunities for developing small and medium-sized enterprises to enable people to benefit from increased tourism.

According to the Project Administration Manual, the project is expected to be completed in the first quarter of 2018.¹¹

¹¹ P. 13, ADB, "Project Administration Manual" October 2014.

Chapter 2: Legal Framework

International law

International human rights law protects the right to an adequate standard of living. The International Covenant on Economic, Social and Cultural Rights (ICESCR), which Cambodia ratified in 1992, protects this right, which includes “adequate food, clothing and housing” (Article 11).

The Committee on Economic, Social and Cultural Rights (CESCR) provided an authoritative interpretation of states’ obligations with regard to the right to adequate housing. The CESCR clarified that this right includes legal security of tenure, which entails legal guarantees against forced evictions.¹² The CESCR has emphasized the procedural safeguards that must be in place to avoid forced evictions, including adequate consultation, the ability to seek legal recourse and adequate compensation.

The CESCR has also clarified states’ obligations with regard to the right to adequate food. The right to food includes the availability of food, which refers to “the possibilities ... for feeding oneself directly from productive land or other natural resources”.¹³ States’ responsibility to protect the right to food requires that they “take appropriate steps to ensure that activities

of the private business sector and civil society are in conformity with the right to food”.¹⁴

International human rights law also protects people’s right to participate in decisions that may affect their rights. This flows from the right to freedom of expression, guaranteed at Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which includes the right to information, and from the right to participate in public affairs (ICCPR, Article 25).

The CESCR has stated that, for indigenous communities, the right to take part in cultural life (Article 15, ICESCR) requires respect for the principle of free, prior and informed consent (FPIC) in all matters which concern their rights.¹⁵ The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) also states that FPIC should be used prior to any project that would require resettlement (Article 10) or “prior to the approval of any project affecting their lands or territories and other resources” (Article 32(2)).

FPIC is increasingly seen as a vital tool to ensure that people’s rights are respected in the context of economic development projects. ActionAid promotes FPIC as an essential prerequisite for land and resource-based development projects, with the aim of ensuring affected communities are meaningfully involved in key decisions that impact their lives and livelihoods.

¹² Paragraph 8, Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No.4: The right to adequate housing” 13 December 1991. Available from

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGE%2f4759&Lang=en.

¹³ Paragraph 12, CESCR, “General Comment No.12: The right to adequate food” 12 May 1999. Available from

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en.

¹⁴ Paragraph 27, CESCR, “General Comment No.12: The right to adequate food” 12 May 1999.

¹⁵ Paragraph 37, CESCR, “General Comment No.21: Right of everyone to take part in cultural life” 21 December 2009. Available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f21&Lang=en.

Other international guidelines propose the standard of ‘meaningful consultation’ in projects which affect the rights of non-indigenous communities. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) were endorsed by the UN Committee on World Food Security in 2012 following intergovernmental negotiations. The VGGT states that consultation and participation are essential principles of implementation, defining them as “engaging with and seeking the support of those who... could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes”.¹⁶ This definition mirrors the elements of FPIC.

The UN Guiding Principles on Business and Human Rights, reaffirm states’ human rights obligations regarding private sector activities and outline the implications of human rights law for business enterprises. The Guiding Principles note that individuals whose rights are potentially affected by business activities should be meaningfully consulted (Principle 18b); that any impacts on rights should be continually monitored with the participation of those affected (Principle 20b) and that businesses should communicate the steps they have taken to address human rights impacts to affected stakeholders (Principle 21).¹⁷

¹⁶ Food and Agriculture Organisation, “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” 2012. Available from <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

¹⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Guiding Principles on

Domestic law

The ICESCR and ICCPR are specifically incorporated into Cambodian law through Article 31 of the country’s Constitution, which states that Cambodia shall recognize and respect human rights as stipulated in the Universal Declaration of Human Rights and the “covenants and conventions related to human rights, women’s and children’s rights.”

Cambodia’s Constitution gives Khmer legal persons and legal entities the right to own property and provides that the expropriation of property can only be conducted in accordance with the law, in the public interest and with fair and just compensation provided in advance (Article 44). The Land Law of 2001 repeats the right to private land ownership (Article 8) and establishes a process for people without title, who have continuously, peacefully and publically occupied property, to be awarded ownership (Article 30).

The Land Law also provides that illegal occupants of property may be evicted by competent authorities, following a court process initiated by the titled owner (Article 35). The 2010 Law on Expropriations sets out the mechanism by which individuals can be lawfully evicted and mandates safeguards against forced evictions, including consultation with ‘all concerned parties’ (Article 16) and compensation (Articles 19 and 21).

The Law on Fisheries 2006 creates a presumption that subsistence fishing is permissible (Article 31). The right to fish can be restricted where fishing occurs in a protected area (Article 19), threatens fish stocks, coral or sea grass (Article 48 and 52), or disturbs the passage of vessels (Article 46). Cambodian

Business and Human Rights” 2011. Available from http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

citizens also have the right to form ‘community fisheries’ to “take part in the sustainable management, conservation, development and use of fishery resources” (Article 59). Community fisheries are regulated by the Sub-Decree No. 80 on Community Fisheries Management.

Cambodian law also protects the environment from activities which could undermine fisheries. The Constitution provides that the government shall “protect the environment and the balance of natural resources and establish a precise plan for the management of land, water, ... ecological systems, ... fish and aquatic resources” (Article 59). The Law on Environmental Protection and Natural Resource Management (1996) requires that ‘Environmental Impact Assessments’ (EIAs) are submitted along with applications for investment projects (Article 7). The Sub-Decree on Environmental Impact Assessment Processes (1999) mandates the Minister of Environment with evaluating, monitoring and ensuring compliance with EIAs (Article 3), which must cover the impact of a project on “natural resources, ecosystem, human health and public welfare” (Article 8). Among other objectives, the Sub-Decree states that its function is to “encourage public participation in the implementation of the EIA process and take into account their input and suggestions in the process of project approval” (Article 1).

The Asian Development Bank and Human Rights

International organizations are bound by general rules of international law, including the obligation to respect human rights norms. The CESCR has stated that international agencies should make every effort “at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into

account”.¹⁸

The ADB is managed by a Board of Governors, comprising of states. The CESCR has made clear that states parties that are members of such international institutions are obliged to ensure that these institutions conform to human rights standards.¹⁹

The ADB has published a Safeguards Policy Statement to ensure that the ADB’s operations “promote the sustainability of project outcomes by protecting the environment and people from potential adverse impacts of projects”.²⁰ The policy includes safeguards to protect against human rights violations and it explicitly rules out funding for projects that do not comply with the terms of the policy and with “laws implementing host country obligations under international law.” In this way, the ADB recognizes the need to comply with Cambodia’s human rights framework. Through its Accountability Mechanism policy, the ADB has established a system for people affected by ADB-funded projects to register complaints about the ADB’s compliance with its own policies.²¹

¹⁸ Paragraph 17, CESCR, “General Comment No.7: The right to adequate housing: forced evictions” 20 May 1997.

¹⁹ Paragraph 56, CESCR, “General Comment No.17: The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author” 12 January 2006 and Paragraph 56, CESCR, “General Comment No.13 The right to education”. Available from

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f17&Lang=en and http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f10&Lang=en.

²⁰ ADB, “Operations Manual. Bank Policies. Safeguard Policy Statement” 1 October 2013 (OM Section F1/BP). Available from <http://www.adb.org/sites/default/files/institutional-document/31483/om-f1-20131001.pdf>

²¹ ADB, “Operations Manual. Bank Policies. Accountability Mechanism” 24 May 2012 (OM Section L1/BP).

Chapter 3: Land
Land Rights in Cambodia

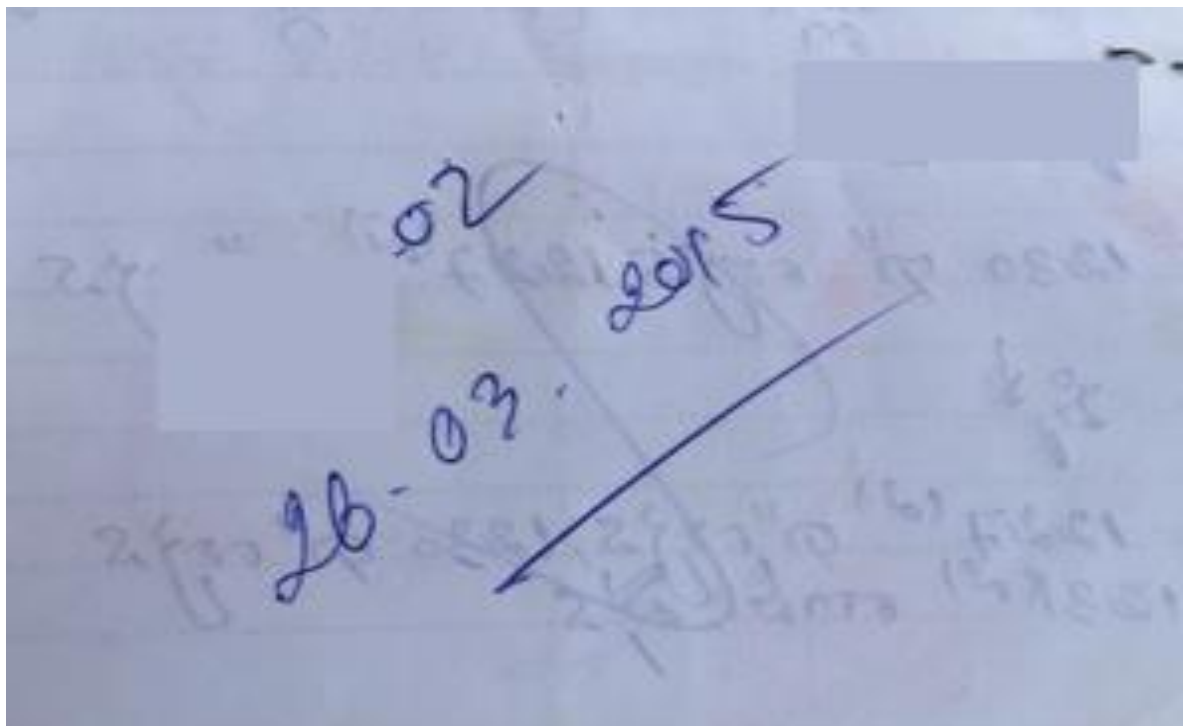
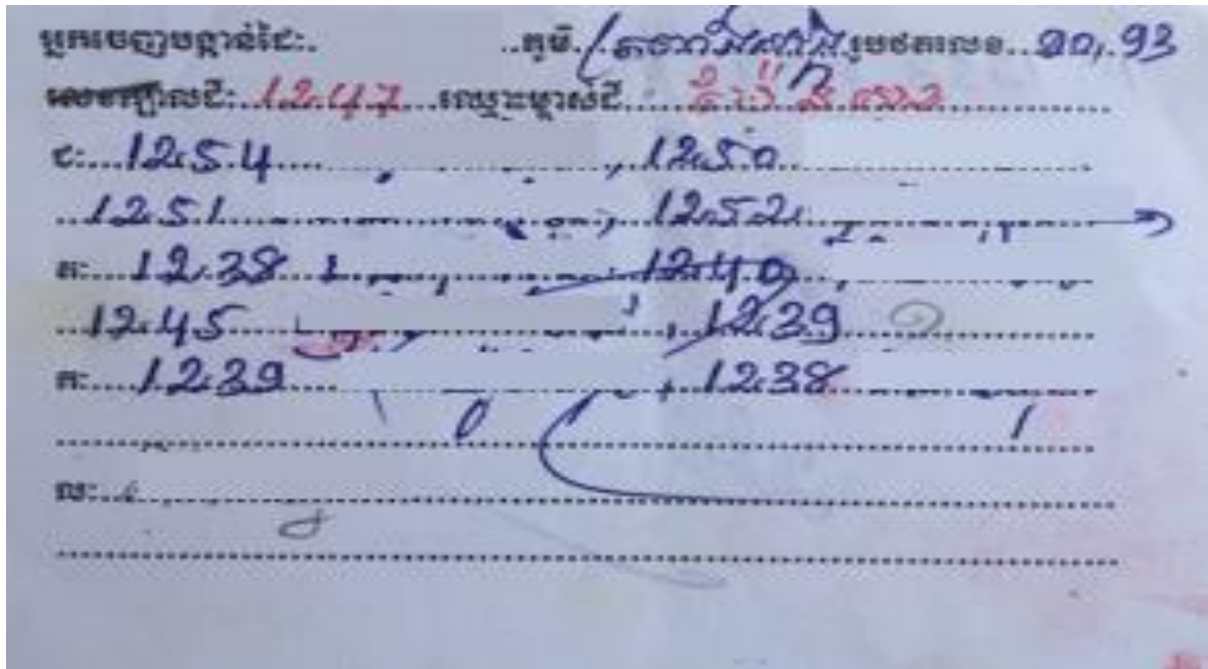


Figure 2: Front and back of a registration receipt issued by the Department of Land Management to a resident of in Trapeang Sangkae village, Trapeang Sangkae Commune. Names of individuals redacted.

In the last two decades, Cambodia has experienced repeated controversies regarding the acquisition of land for development projects. Since the abolition of private property and mass displacement during the Khmer Rouge regime (1975 -1979), people have struggled to attain security of tenure. The government re-instated private property rights in 1989, however few people had the ability to acquire formal titles. Human rights groups have documented a pattern of forced evictions following the allocation of Economic Land Concessions in rural areas and urban redevelopment projects.²² In response, the government instituted measures to increase security of tenure. Ongoing land registration processes have awarded more than 4 million titles as of January 2016, according to the government.²³ The UN and human rights groups have criticised these processes for excluding disputed areas where some of the most marginalised people, especially indigenous communities, have come into conflict with commercial and political interests.²⁴

Globally, women are disproportionately more likely to be negatively affected by the increasing pressure on land.²⁵ In Cambodia research by the Cambodia Center for Human Rights found that women are particularly impacted through “widespread domestic violence, exacerbated by the onset of land conflict; a deterioration of women’s mental health as a result of land conflict,” while children are affected through “increase[d]... exposure to domestic violence, decrease[d] ... access to education, and increase[d] incidence of child labour”.²⁶

Land Registration in Kampot Province

²² See for example Cambodian Center for Human Rights (CCHR), “Cambodia: Land in Conflict: An Overview of the Land Situation” December 2013 and OHCHR “Eviction and Resettlement in Cambodia: Human Costs, Impacts and Solutions” 28 February 2012. Available from http://cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=report_detail.php&reid=104&id=3 and http://cambodia.ohchr.org/sites/default/files/Thematic-reports/Resettlement_Study-28_Feb_2012_Eng.pdf.

²³ UN Secretary General, “Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights” 26 August 2016. Available from http://cambodia.ohchr.org/sites/default/files/Ohchr-report/A_HRC_33_39_en.pdf.

²⁴ Paragraphs 55 – 59, UN Secretary General, “Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights” 26 August 2016. See also Human Rights Watch, “Cambodia: Land Titling Campaign Open to Abuse” 12 June 2013 and ADHOC, “A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012” February 2013. Available from <https://www.hrw.org/news/2013/06/12/cambodia-land-titling-campaign-open-abuse> and <http://www.adhoc-cambodia.org/report-a-turning-point-land-housing-and-natural-resources-rights-in-cambodia-in-2012/>.

²⁵ International Land Coalition, “Strategies to get gender onto the agenda of the “land grab” debate” March 2011. Available from http://www.landcoalition.org/sites/default/files/documents/resources/6_PBs_mokoro.pdf.

²⁶ P. 19, CCHR, “Cambodia’s Women in Land Conflict” 28 September 2016. Available from http://cchrcambodia.org/index_old.php?title=Cambodia-s-Women-in-Land-Conflict&url=media/media.php&p=report_detail.php&reid=116&id=5&lang=eng.

In the three communes studied in this report, the Department of Land Management, Urban Planning and Construction (hereafter ‘Department of Land Management’) has initiated a systematic registration process. Officials from the Department visited the commune to map people’s existing land claims. They asked residents how they acquired the land, requested copies of documentation demonstrating their continued residence and mapped the location of the plot. The Department issued residents with a receipt confirming that the land has been registered and the details of the bordering plots of land (see figure 2).

Any disputed boundaries were not registered. The owners must agree on the boundaries before the Department will register the land. Owners may seek mediation by village or commune heads, but the Department will not intervene.

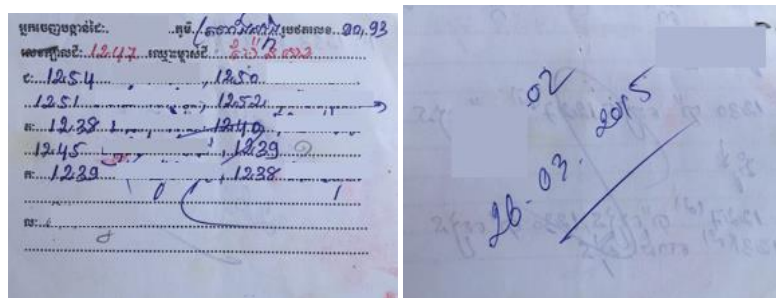


Figure 2: Front and back of a registration receipt issued by the Department of Land Management to a resident of in Trapeang Sangkae village, Trapeang Sangkae Commune. Names of individuals redacted.

The Department will publish information about the registered land after the registration process is complete. Owners will have 15 days to register a complaint if they believe the information is inaccurate. The Department will then issue certificates to land owners.

In Chum Kriel Commune, the Department is in the process of issuing people’s formal land titles following their completion of the registration process. All three villages in Trapeang Sangkae Commune were registered during 2014 and 2015. Two of Koun Satv Commune’s four villages, Kampong Tnaot and Kampong Nong, were registered in February 2016. According to the Department of Land Management, the remaining two villages will be registered from April 2017.²⁷ Residents and the Department of Land Management told the research team that there are some disputes over land boundaries in the three communes that are currently being negotiated between owners.

Residents’ accounts of the process match the description given by the Department of Land Management. Those whose land was registered, but have not received their certificates understand the next steps. For example, Mr. Chea Sovath, a 38-year-old fisherman living in Trapeang Sangkae village with his wife and three children, explained the registration process to the research team:



Figure 3: Mr. Chea Sovath, a fisherman from Trapeang Sangkae

²⁷ Meeting with the Department of Land Management, Urban Planning and Construction, September 2016.

*“My land has been registered, but I have not received the title yet. I got a receipt from the [Department of Land Management] when they came one year ago. I had to show my ID card, family book, registration, and birth certificate. Before they release the certificates, they will release a map at the Commune office. They will post a map with the names of people, so you can check the locations against the receipts. If it is not correct, then people can complain and they will give time for corrections before they issue the final certificate. If there is a dispute we resolve and negotiate. If we disagree the [Department] will not register the land. They will come when the dispute is resolved”.*²⁸

Most people interviewed for this research were married. During the registration process, they chose to register the land under the names of both husband and wife. When the land was inherited from one of the couple’s parents, sometimes the land was registered in the name of only one spouse.

Almost all people interviewed believed that their tenure is secure. There are, however, some residents in the communes living on state land. The research team interviewed a woman in Kampong Tnaot who lives with her six children. She said that officials told her that she is living on state land during a land mapping process about three decades ago. The land has not been mapped as part of the current registration process. The Department of Land Management confirmed that people living on state land do not have a right to live there and said that the government would work with them to find alternative land. There are no Economic Land Concessions in these communes, and so there is no threat of eviction from this source.

Land Acquired for the Kampot Pier Project

The Kampot Pier Project is expected to be constructed on four hectares of private land in Chum Kriel Commune. The commune is bounded by the coast to the south, the Tuek Chhou river to the west, and another river to the east. Most of the land between National Highway 33 to the coast is occupied by salt farms. Although land which forms the immediate coast is state land, inland the terrain is owned by a wealthy private individual. The Department of Land Management confirmed that the Kampot



Figure 4: Entrance to the project site in Chum Kriel Commune,

²⁸ Interview with Chea Sovath, Trapeang Sangkae Commune, September 2016.

Provincial Government acquired a four-hectare plot of land from this private owner on 7 October 2015. It does not appear, therefore, that the Kampot Pier Project will directly affect people's land rights.

As the Initial Environmental Examination notes, "lateral independent commercial and urban development that develops to serve and benefit from the tourism created by the project" may have impacts that are beyond the control of the Kampot Pier Project.²⁹ Chapter 6 examines several other development projects planned in Kampot bay which would increase the value of land in these communes. These projects may attract agents with significant economic and political power to invest and acquire land in the region. Given the recent history of land conflict in Cambodia, highlighted at the beginning of this chapter, completing the land titling process will provide residents with the best protection against any potential threats to their land rights.

Recommendations:

Department of Land Management:

- Begin the land registration process in the remaining villages of Koun Satv Commune and ensure all residents of Chum Kriel, Trapeang Sangkae and Koun Satv communes receive formal title as soon as possible, to provide them with security of tenure.
- For people living on state land, all alternatives to evictions should be explored, in consultation with those individuals, and they should be afforded the maximum of protections available under domestic and international law.

²⁹ P. 30, ADB, "Initial Environmental Examination" March 2014.

Chapter 4: Livelihoods



Figure 5: A woman collects snails among seagrass beds in Kampot bay.

“They filled in the mangrove forest where we used to fish... Before there were hundreds of people there, but now there is no-one. They have all moved to the Community Fishery area. Before there was a large area to fish in, but now the same number of boats have a smaller area... Whatever [the pier project does], we need access to get to Coconut Mountain. If they close the passage, it will affect several communes.”

- 53-year-old fisherman in Trapeang Sangkae village.

The Kampot Bay Ecosystem

The Kampot bay area, for the purposes of this report, is the stretch of coastline that runs between Coconut Mountain in Traeuy Kaoh Commune in Kampot District and the border with Kep Province. This area includes the mouth of the Tuek Chhou river, which flows from Kampot city into the bay. From west to east, this coastline includes the communes of Traeuy Kaoh commune in Kampot District, Chum Kriel, Trapeang Sangkae and Koun Satv communes in Tuek Chhou District.

The research team was unable to find comprehensive statistics on the number of people who depend on the Kampot bay ecosystem for their livelihoods. A survey by the International Union for Conservation of Nature (IUCN) of four coastal villages in Kampot Province, with a population totalling 7,391 people, found that all respondents depended on fishing for their livelihoods.³⁰ There are 10 community fisheries in Kampot Province with a total of 3,054 members.³¹ Each community fishery typically includes only a portion of the people who are dependent on fishing for their livelihoods. For example, the Trapeang Sangkae Community Fishery has 734 members, but the population of Trapeang Sangkae Commune is 5,859. Thousands, if not tens-of-thousands, of people depend on the resources of Kampot bay for their livelihoods.



Figure 5: A woman collects snails among seagrass beds in Kampot bay.

The ecosystem of Kampot bay is sustained by seagrass beds and mangroves. Seagrass beds provide nursery and spawning grounds for many fish, crustaceans and invertebrates; they are a source of nutrition for grazers such as turtles, dudongs and some herbivorous fish; while other fish living within seagrass beds feed on algae and invertebrates growing on seagrass leaves. Kampot’s seagrass beds are home to several species vulnerable to extinction, including dugongs, seahorses and green turtles. The IUCN found that 89% of species caught by

³⁰ P. 28, Kaarlep, A., “Socio- economic survey on the importance of seagrass beds to coastal communities in Kampot Province” 2014. Available from http://cmsdata.iucn.org/downloads/jan_2015_bcr_kampot_seagrass_report_final_draft_26_3_15_final.pdf

³¹ P. 20, Supkong, P. and Bourne, L., “A survey of seagrass beds in Kampot, Cambodia” 2014. Available from http://cmsdata.iucn.org/downloads/bcrsurvey_of_seagrass_beds_in_kampot_final_25_3_15_final.pdf.

fishing people in Kampot are dependent on seagrass for survival.³² Seagrass beds also help prevent coastal erosion, protect the coast from storms, and store CO₂, helping to prevent climate change.³³

Kampot bay has some of the most extensive seagrass beds in the South China Sea. According to a 2004 United Nations Environment Programme (UNEP) report, Kampot bay contained 25,240 hectares of seagrass beds. A more recent study by the IUCN in 2013 mapped 8,435 hectares of seagrass in Kampot bay.³⁴ The economic value of seagrass beds is difficult to quantify. In 2007, the UNEP estimated the annual economic value of Cambodia's seagrass beds to be USD 1,186 per hectare. However, the IUCN argues that, as this estimate includes only captured fish and other resources and excludes "the values of beach protection, nursery functions, carbon sequestration, oxygen release and nutrient removal", it greatly underestimates the value of seagrass beds.³⁵ Taking the UNEP estimated value per hectare and the most recent estimate of seagrass bed coverage, the economic value of Kampot's seagrass beds are at least USD 10 million per year. Despite the importance of seagrass beds for the ecosystem and the economy, they are under threat from illegal fishing, overfishing, pollution and sedimentation resulting from coastal development projects.³⁶

Mangrove forests are another essential part of the ecosystem. Mangroves are a nursery for juvenile fish and they trap sediment, preventing sediment from settling on seagrass beds and starving them of the sunlight they need to survive. Mangroves also prevent coastal erosion and protect against storms.³⁷ There are an estimated 1,960 hectares of mangroves along Kampot's coastline. The research team could not find estimates of the economic value of these mangroves. Mangroves are also under threat from other coastal development projects (see Chapter 6).

Livelihoods

This report focussed on the potential impact of the Kampot Pier Project on the people of Trapeang Sangkae and Koun Satv Communes. In these communes, fishing is an essential part of most people's livelihoods. In 2016, just less than 15,000 people live in Trapeang Sangkae and Koun Satv Communes (see the table below). According to commune heads interviewed by the research team, there are only two villages where no-one fishes: Koun Satv and Bos Ninh. Discounting these villages, approximately 9,000 people in the two communes depend primarily on fishing for their income.

In the shallow water around mangrove forests and seagrass beds, men and women from these communes collect snails and crabs. They go out into the water when the tide is out and pick the snails and crabs from the sea floor with their hands or, in deeper water, their feet. Several collectors share a boat to travel to the best areas. Typically, they can collect snails and crabs from the mouth of

³² P. 33 & 42, Kaarlep, A., "Socio- economic survey on the importance of seagrass beds to coastal communities in Kampot Province" 2014.

³³ P. 9, Supkong, P. and Bourne, L., "A survey of seagrass beds in Kampot, Cambodia" 2014.

³⁴ P. 27, Supkong, P. and Bourne, L., "A survey of seagrass beds in Kampot, Cambodia" 2014.

³⁵ P 18, Kaarlep, A., "Socio- economic survey on the importance of seagrass beds to coastal communities in Kampot Province" 2014.

³⁶ P. 48 – 51, Supkong, P. and Bourne, L., "A survey of seagrass beds in Kampot, Cambodia" 2014.

³⁷ P. 8, Paul - Emmanuel Muylaert, "Assessing coastal resilience in Kampot: A pathway to adapt to climate change" 2015. Available from https://www.iucn.org/sites/dev/files/import/downloads/iucnbcr_resilience__final_draft_14_7_15.pdf.

the Tuek Chhou river and around Koh Samao mangrove island. When they return to shore each day, they sell their snails and crabs to traders, who take the seafood to markets.

Shrimp collectors push bamboo poles with a net suspended between them along the bay floor. The majority of shrimp collectors are men. Groups of shrimp collectors take small boats out to the coastal areas at dusk and spend the night pushing their nets in the shallows, returning to shore at around 3 or 4 am. They sell their catch to an intermediary as soon as they land. However, if prices are low, they or their wives sell their shrimp at the market, or dry the shrimp and sell it later. In the communes visited by the research team, shrimp collectors typically went to the mouth of the Tuek Chhou river, Koh Samao mangrove island or the coast near Coconut Mountain.

Commune	Village	Families	People
Trapeang Sangkae		1,092	5,859
	Trapeang Thum	304	1,579
	Trapeang Sangkae	458	2,729
	Kampong Kaes	330	1,551
Koun Satv		1,848	8,944
	Kampong Tnaot	501	2,216
	Kampong Nong	344	1,662
	Koun Satv	385	2,064
	Bos Nhin	618	3,002
Total		2,940	14,803

Other fishing people in these communes catch fish with nets in Kampot bay. The mangroves are essential for all fishing people: not only as the foundation of the ecosystem, but also as a refuge during storms. A minority of people work on larger boats that can travel through deep water to neighbouring provinces.

Interviewees described various trends and events that pose a threat to their livelihoods, including demographic changes, illegal fishing and other coastal developments (see Chapter 6). During a focus group discussion in Koun Satv Commune, interviewees discussed the impact of increasing population

on their incomes:



Figure 6: A shrimp collector with a hand-push net preparing take a boat to Kampot bay for the night.

“The number of fisherman has increased. People come from other villages and people marry into the community. This reduces our income. They come from villages along the coast, including from other provinces because the shallow water has many resources”³⁸.

Other people complained about the use of illegal fishing devices which damage the ecosystem and impact fish stocks.³⁹ A 44-year old woman from Koun Satv Commune explained how it has affected her family’s income:

“My husband is a fisherman and we also grow crops around the home. We have a small motor boat and catch crabs close to Koh Samao. We can sell 1 kg of small crabs for 10,000 Riel [USD 2.5]. If the crabs have a lot of meat we can sell them for more than USD 5 per kg. Sometimes there are good years, sometimes bad. Last year was a bad year. There were a lot of boats with a special type of net that can catch all the resources. They collect shrimp, squid and tiny fish. Everything. It was people from far outside the community. They tried to fish at night, because it is illegal. If we find out, we will report it to the police. This has been going on for two to three years. The catch has gone down from 3 kg to 1 kg so our income has gone down. We hope they will not come back. In a bad year, we grow vegetables, we need the money for our children’s education”.⁴⁰

Many households supplement income from fishing with agriculture: planting rice in the fields near their homes, raising livestock and growing vegetables. People who own agricultural land or livestock are able to use these assets to compensate for fluctuations in income from fishing. Without such assets, people face food insecurity. A woman from Koun Satv Commune, who was pregnant with her seventh child, told the research team about the challenges of coping without agricultural land:

“Our income really varies. There are good months and bad months. The last few months have been difficult. When the catch is good, we spend it on pig feed and gasoline for travelling and we buy rice as we have no fields. When there is less, we eat less”.⁴¹

³⁸ Focus group discussion with three women and four men from Koun Satv Commune, 13 September 2016.

³⁹ See also P. 39, Kaarlep, A., “Socio- economic survey on the importance of seagrass beds to coastal communities in Kampot Province” 2014.

⁴⁰ Interview with a woman in Koun Satv Commune, 12 September 2016.

⁴¹ Interview with a woman in Koun Satv Commune, 12 September 2016.

In some cases, family members migrated to other parts of Cambodia or the region to work in garment factories, on large-scale fishing boats or in the services sector.

Community Fisheries

In Trapeang Sangkae and Koun Satv Communes, fishing people formed community fisheries. These are associations with responsibility “to take part in the sustainable management, conservation, development and use of fishery resources”, with oversight from the Fisheries Authority, an agency of the Ministry of Agriculture, Forestry and Fisheries.⁴² The Community Fisheries protect the ecosystem, including by reporting illegal fishing. Fishing people who are not members of the community are allowed to use the community fishing area as long as they abide by the by-laws of the community. The Fisheries Authority is responsible for stopping fisheries offences and resolving conflicts in the community fishing areas. Community fisheries agreements must be renewed every three years.

While the Community Fisheries establish a cooperative relationship between the fishing people and the government, the community fishing areas remain state public property⁴³ and the Minister of Agriculture, Forestry and Fisheries may abolish the community fishing area “for public benefit” with only six months’ notice.⁴⁴ Fishing people would still retain the right to conduct ‘family-scale’ fishing on the coast if the community fishery is abolished.

The Kampong Samaki Community Fishery was registered in 2011 with 396 members (258 men and 138 women) from Kampong Tnaot and Kampong Nong villages in Koun Satv Commune. All residents of Koun Satv Commune are ethnic Khmer. The Community Fishery area, depicted in Figure 7, is 577 hectares. The Trapeang Sangkae Community Fishery was formed in 2009 and registered in 2011 with 734 members (371 men and 363 women) from all three villages in Trapeang Sangkae Commune, including ethnic Khmer and Cham members. The Community Fishery area, also shown in Figure 7, is 337 hectares.

The majority of people interviewed for this study were members of the Community Fisheries. Non-members said they did not join because they did not want to attend regular meetings, or they worked on large boats that do not fish in Kampot bay. A village head also said that those who lived further from the centre of the community did not join because they found it hard to attend meetings.

⁴² Article 59, Law on Fisheries 2006.

⁴³ Article 3, Sub Decree No.80 on Community Fisheries Management.

⁴⁴ See Article 63, Law on Fisheries: “The Minister of Agriculture, Forestry and Fisheries is entitled to abolish community fishing area for public benefit if deemed so” and Article 27, Sub-Decree No. 80 on Community Fisheries Management: “Community fishing area agreements may be cancelled [following]... judgment by the Royal Government that another purpose provides higher public and social benefit to the Kingdom of Cambodia.”



Figure 7: Community Fishery areas of Kampong Samaki (left) and Trapeang Sangkae (right) Communities.

Potential Impact of the Kampot Pier Project: Pollution

Unless construction and operation of the pier is carefully managed, pollution could damage the ecosystem. The Initial Environmental Examination (IEE) submitted by the Ministry of Tourism to the ADB identifies pollution leading to loss of biodiversity as a potential impact of the project. If construction materials are released into the sea, sediment will settle on seagrass, blocking sunlight and preventing the seagrass from photosynthesising, thereby degrading the seagrass beds. A study by the IUCN found that the construction of a pier for the Kampot special economic zone increased turbidity in the water leading to seagrass degradation in Kampot bay.⁴⁵ During operation, the increased volume of boats increases the risk of waste being leaked into the water and physical damage to seagrass beds from propellers and anchors.

The IEE proposes that careful management of construction activities, through waste management procedures and silt curtains in the water around the construction sites, can mitigate construction-related pollution. It also proposes the regulation of boats in the Kampot bay area through a navigation management plan that, “among other directives, should specify maximum boat draft and length, establish dedicated marked channels and lanes for different boat types, and demarcate the seagrass conservation areas, and mangrove areas which must not be traversed by boat”.⁴⁶

Independently of the Kampot Pier Project, the Tuek Chhou river channel is being deepened (see Chapter 6). If the channel is widened or deepened to accommodate more or larger boats for the Kampot pier, the disturbance to the seabed would increase sediment in the water which could further degrade seagrass in Kampot bay. The IEE states in a footnote that “The subproject does not require dredging and will not dredge the river”.⁴⁷ Officials from the ADB and Department of Tourism confirmed that the channel would not be deepened as part of the Kampot Pier Project. However, the authorities may decide to deepen the channel outside the ADB-sponsored project and there are reasons to believe they may do so. The IEE notes that “The bathymetry of the approximately 80-

⁴⁵ P. 22, Paul - Emmanuel Muylaert, “Assessing coastal resilience in Kampot: A pathway to adapt to climate change” 2015.
⁴⁶ P. ii, see also P. 36, ADB, “Initial Environmental Examination” March 2014.
⁴⁷ Footnote 25, P. 41, ADB, “Initial Environmental Examination” March 2014.

100m X 5km boat channels should be surveyed to ascertain that sufficient depth at low tide exists for future boat drafts, and whether both channels will be needed to accommodate the expected boat traffic”.⁴⁸ Further it proposes that one of the benefits of the project will be that cargo boats using the existing port “will not have to continue with the current practice of off-loading cargo downstream during low tide or dry season conditions” suggesting that the Pier may encourage further deepening of the channel.⁴⁹

Activity which could impact the ecosystem in Kampot bay is of deep concern to fishing people living in Trapeang Sangkae and Koun Satv Communes. Unless it is carefully managed, construction work on land and operation of the pier could continue the degradation of seagrass beds, damaging people’s livelihoods. The ongoing deepening of Tuek Chhou river channel must be carefully evaluated by the Kampot Provincial Government (see Chapter 6).



Figure 8: Image of the dredged river channel taken from the top of one embankment. Koh Samao is visible on the left. The photo looks north towards the proposed pier location.

Potential Impact of the Kampot Pier Project: Access to Fishing Resources

Fishing people are also concerned that the new pier may prevent them from accessing Koh Samao mangrove island or fishing areas around Coconut Mountain, west of Kampot. To reach these areas, fishing people have to cross between the recently-constructed embankments protecting the deepened Tuek Chhou river channel and the pier site. The only alternative is to travel around the channel’s embankments into deep water. This would increase the length of people’s journeys and many said it would be unsafe for them to cross deep water in their small boats.

⁴⁸ P. 37, ADB, “Initial Environmental Examination” March 2014.

⁴⁹ P. 29, ADB, “Initial Environmental Examination” March 2014.

Increased traffic at the pier site may increase journey times and costs. Some people are also concerned that they will be prohibited from crossing the waterway between the channel and pier altogether. During a focus group discussion, participants explained the potential impact of reducing access:

“Three or four years ago they [deepened the channel and built embankments]. Now we have to go around. If there is a pier, we don’t know if we can cross [the waterway between the channel and the coast]. It would be difficult for us as we would have to go around the channel. This is dangerous as our small boats have to go into deep water. Also, when we move far away, we pay more for gas. Before we used half a litre now we use one litre. The cost is higher. Sometimes you don’t catch anything, and you still have to pay”.⁵⁰

In the absence of detailed information, people are concerned that the Kampot Pier Project will cut off people’s access through this route.

The Environmental Management Plan (EMP) submitted to the ADB states that a “Committee [is] to be formed comprised of [Department of Tourism, Department of Agriculture, Forestry and Fisheries, Department of Public Works and Transport, Department of Environment], other marine navigation authorities, and Kampot cargo & fishing boat associations to review navigation needs, existing reports, and required studies needed to produce data/information necessary develop navigation management plan and regulations”.⁵¹ It is vital that people who use this water way are adequately represented on this committee and their interests are reflected in the navigation management plan.

Monitoring and Reporting

In order to ensure that safeguards against negative environmental impacts are implemented, the EMP proposes a detailed monitoring framework. The Project Implementation Unit (PIU) in the Department of Tourism in Kampot is responsible for implementing the EMP. The PIU will oversee the work of the construction contractor and will review monthly reports from environmental officer of the construction contractor. The



Figure 9: Mangrove planting area in Trapeang Sangkae Community Fishery.

The environmental specialists within the Detailed Design and Supervision Consultants will provide technical support to the PIU and will also hire an Environmental Management Consultant (EMC) to

⁵⁰ Focus group discussion in Koun Satv Commune, 13 September 2016.

⁵¹ P. 8, ADB, “Environmental Management Plan” March 2014. Available from <https://www.adb.org/projects/documents/gms-tourism-infrastructure-inclusive-growth-project-kampot-pier-development-emp>.

conduct scientific monitoring and analysis. Prior to construction, the EMC is expected to take baseline measurements of surface water quality and update baseline information on rare or endangered species, critical habitats, and aquatic resources, among other tasks. During construction, the EMC will continue to take quarterly measurements of surface water quality and submit quarterly reports to the PIU. The PIU will bring together the information from the construction contractor and EMC, and submit quarterly reports to the Project Coordination Unit at the Ministry of Tourism. It will be important to ensure that the EMC has the required independence, resources and technical ability to monitor and report on any pollution. The project will apply Cambodian environmental standards, as set out in the Government Sub-decree on Water Pollution Control (1999), and will apply the Environmental, Health and Safety Guidelines of the IFC/World Bank (2007) in the absence of relevant national standards.

A note on baseline data

There is little publicly available official baseline data on environmental indicators in Kampot bay. The Department of Environment does not regularly monitor water quality and ecosystems in the Kampot bay area. The Department previously received support from Danida, the Danish development agency, to produce a 'State of Environment' report in 2009, which is referenced in the EMP. The Ministry of the Environment published the 'State of the Coastal Environment and Socio-Economy in Cambodia' in September 2005 and a 'State of Environment Report: Kampot Province' in April 2002. Occasional monitoring is also carried out when preparing Environmental Impact Assessments (EIAs) for other projects. The most recent data is contained in an EIA from 2011. The research team was not able access EIAs for projects in Kampot bay and there is no public information on how many EIAs exist. Currently, the best available environmental data is contained in the 2014 International Union for Conservation of Nature's report on seagrass beds in Kampot, produced with the collaboration of the Department of Environment and Fisheries Administration.

The EMP acknowledges that "Currently there is little experience and capacity for environmental assessment and management amongst national counterparts responsible for the implementation of the EMP."⁵² The EMP proposes that the Detailed Design and Supervision Consultants will identify training needs and provide training to members of the PIU (staff of the Department of Tourism). While this training may help overcome the absence of technical knowledge, the effectiveness of the PIU's oversight will also depend on the willingness of the PIU and PCU to take action when there is evidence of environmental impacts. Although the EMP contains a detailed monitoring plan, the EMP does not state what actions will be taken if the quarterly reports contain evidence of an impact on the environment. This should be addressed in the revised EMP submitted to the Ministry of Environment for final approval.

Under Cambodian law, ultimate responsibility for ensuring that Environmental Impact Assessments (EIAs) are implemented rests with the Ministry of the Environment. The Department of Environment in Kampot recognized that it was their responsibility to oversee the implementation of the EIA, although it lacks the financial or human resources to conduct water quality tests themselves.⁵³ The Department would have to request specialist assistance from the Ministry of Environment to conduct its own tests. As the EMC reports to the PIU and PCU in the Ministry of Tourism, only the

⁵² P. 26, ADB, "Environmental Management Plan" March 2014.

⁵³ Interview with the Department of Environment, 4 September 2016.

Ministry of Environment is in a position to provide independent oversight of the environmental impacts of the project. The EMP states that the PIU's quarterly reports to the PCU will be shared with the Department of the Environment. This will assist the Ministry of Environment perform its oversight function.

Recommendations:

Ministry of Tourism and Department of Tourism:

- Ensure that the mitigation measures in the final EMP / EIA for the Kampot Pier Project are sufficient to prevent adverse impacts on the livelihoods of fishing people in the Kampot bay area.
- Rigorously monitor and properly enforce the mitigation measures set out in the EMP / EIA.
- Include guidance in the final EIA on action to be taken by the PIU and PCU if there is evidence of environmental damage.
- If further deepening or extension of the Tuek Chhou river channel is considered necessary in the future to enable access to the new pier, conduct detailed environmental studies and adequate consultations with potentially-affected people.
- Ensure that the navigation management plan allows fishing people to cross the waterway without reducing access to their fishing resources.
- Ensure that fishing people who use the waterway are adequately represented on the committee developing the navigation management plan so they can protect their interests.
- Include information on reporting to stakeholders as one of the performance monitoring indicators that should be included in PIU quarterly reports.
- Make all environmental monitoring reports, including baseline data gathered by the EMC, available to the Ministry of Environment, as proposed in the existing EMP / EIA.

Ministry of Environment and Department of Environment

- Make all environmental data on the Kampot bay area publicly available, including any Environmental Impact Assessments relating to projects in the bay.
- Ensure that the EIA is rigorously monitored and properly enforced.
- Ensure that sufficient resources are made available to enable the Department of Environment, in collaboration with the Fisheries Administration, to collect regular information on environmental indicators, such as water quality and the extent and quality of seagrass beds and mangrove forests.
- Ensure that that sufficient resources are made available to enable the Department of Environment to adequately monitor the implementation of the EIA (as per Article 11 of the Sub-decree on Environmental Impact Assessment Processes (1999)).

Chapter 5: Consultation

“They promised that people will have jobs. But without education who will employ them? We want to know exactly what they will be doing and how it will affect the community and how it will affect the fish. If it will affect the resources, then there should be consultation directly with the community.”

- Trapeang Sangkae Community Fishery Committee.⁵⁴

Consultations so far

In order to prepare the Initial Environmental Examination (IEE) and Environmental Management Plan (EMP), consultants hired by the Ministry of Tourism conducted consultations with potentially-affected stakeholders. The IEE states that “The stakeholder consultation strategy during project preparation embodied the principles of meaningful engagement, transparency, participation, and inclusiveness to ensure that affected and marginalized groups such as women and the poor were given equal opportunities to participate in the design of the project”.⁵⁵ It says that interviews were conducted with village leaders and households in affected communities, including “Vulnerable and/or marginalized groups who have an interest in the identification and implementation of measures that support and promote their involvement and participation in the project”.⁵⁶ They were asked to identify potential benefits of the project and list any environmental concerns they had for both construction and operation phases, and to propose mitigation measures.

According to information provided by the ADB, the consultants interviewed 27 residents of Chum Kriel village in Chum Kriel Commune and 73 residents of Sovansakor village in Kampong Kandal Commune, Kampot District in 2013 and 2014. No breakdown of these numbers by ethnic or gender identity was provided. The consultants also held meetings with government officials.⁵⁷

In a meeting in September 2016, the Ministry of Tourism told the research team for this report that there had been several meetings with community members, and a community leader in Kampot, but did not provide further information about how many people were consulted or when these meetings took place.

The research team interviewed local government officials and residents in Trapeang Sangkae and Koun Satv communes to assess their understanding of the project and find out about their participation in any consultations. Commune heads, one village head and members of the two Community Fishery Committees said that they had attended a meeting organized by the Provincial Governor in Kampot in 2014. At the meeting, they were presented with plans for a large development called ‘New Kampot Town’ (see Chapter 6) and one component of the plan was the proposed Kampot Pier Project. Attendees were not given any documentation at that time, asked for their feedback or asked to seek feedback from community members.

⁵⁴ Discussion with Trapeang Sangkae Community Fishery Committee, 10 September 2016.

⁵⁵ P. 24, ADB, “Initial Environmental Examination” March 2014.

⁵⁶ P. 25, ADB, “Initial Environmental Examination” March 2014.

⁵⁷ Email from staff at the Asian Development Bank’s Cambodia Resident Mission, 8 November 2016.

In August 2016, staff from the Ministry of Tourism met with various local government departments in Kampot city to discuss the detailed designs. An international consultant also met with local government officials in Chum Kriel Commune to discuss the detailed design of the pier and visit the pier location.

The research team was not able to find evidence that fishing people in Trapeang Sangkae and Koun Satv communes had been consulted during the project design phase. The heads of both communes informed the research team that the project would have no impact on people in their communes as the project site is located in Chum Kriel. While there may be no effect on their land rights, fishing people in these communes depend on the ecosystem around the project site for their livelihoods. Individuals have the right to participate in decisions which affect their rights. Those responsible for the project must ensure that meaningful consultation with potentially-affected people occurs during the current design phase and throughout construction.

Further planned consultations

The EMP states that there will be additional consultations in the pre-construction phase of the project. The first step will be disclosure of the IEE to affected stakeholders and returning to consult again with those who participated in the first round of discussions to revise the EMP. Although the IEE states that the Executive Summary should be translated into Khmer and distributed to all affected persons, this has not yet happened. The IEE and “all project reporting with specific reference to stakeholder consultation minutes, environmental monitoring, and reports on EMP implementation” should be available at Ministry and Department of Tourism offices and websites, at district offices and at the project site. At present the IEE is only available on the ADB’s website.

In order to collect baseline environmental information, the Environmental Monitoring Consultant is expected to conduct community consultations. The estimated cost of environmental monitoring includes USD 3,000 for collecting information on ‘cultural receptors’ during the pre-construction phase and a further USD 2,000 for public consultations during construction. Ministry of Tourism officials told the research team for this report that additional consultations were planned but did not provide further information.

It is vital that the fishing people of Trapeang Sangkae and Koun Satv communes, and all those whose rights may be affected by the project, are meaningfully consulted. They should be provided with objective and complete information in a timely and accessible way. Individuals should have the opportunity to consider this information and provide feedback on the proposals, which is considered and reflected in the project design or adequately addressed. Consultations should include steps to ensure the full participation of women and minority groups.

Consultations should ideally be based on the principle of free, prior and informed consent. Free, in this context, means that consent is given voluntarily and without coercion, intimidation or manipulation. The process timeline and decision-making structure of consultation should be directed by rights-holders. All people must be free to participate regardless of their gender, age or other identity. ‘Prior’ means that consent is sought sufficiently far in advance of any authorization or commencement of activities, at the early stages of a development plan. The timeline should reflect

the amount of time required to understand, access, and analyse information on the proposed activity, and then come to a decision. ‘Informed’ means that information should be objective, complete, accessible and provided continuously throughout the process. ‘Consent’ means a collective decision on whether or not to accept the proposal, where consent can be given with conditions and can be withdrawn at a later date.⁵⁸

Views from Trapeang Sangkae and Koun Satv communes

Some interviewees had heard rumours about the Kampot Pier Project or had seen the billboard on National Highway 33 announcing the project. For many, the interview with the research team was the first time they had heard about the project. When the research team asked residents about the Kampot Pier Project almost all identified the project’s benefits. They noted that the pier would create jobs, that tourists would bring money into the local economy and potentially increase the demand for ecotourism projects in the communes. At the same time, some expressed doubts that these benefits would reach them directly. Several people noted that they and the majority of residents did not have the necessary education to compete for the jobs that the pier will create.

Almost all of those interviewed raised concerns about the potential negative impacts the project may have, although they felt they did not have enough information about the project to make a considered judgment. People’s concerns were often based on their experience of other developments in the Kampot bay area (see the Chapter 6). The questions posed by a village head in Koun Satv Commune were typical of the issues raised:

“I want to know whether the project is just four hectares. Will it affect the fishery community and people dependent on fishing? Will there be more sand dredging? Maybe people will lose their jobs because they cannot fish. They might bring in technical people and people here will not be able to find jobs. If the area is already developed, maybe another project will appear that might affect my community. The waterway might be blocked. If they close their area for boats, then people cannot fish”.⁵⁹

These issues have been considered in the project design and many of people’s concerns could be addressed through further consultations.

The research team asked residents how they wanted to be consulted about the project. Some suggested using existing structures such as village and commune heads to share information. Another person proposed that the Community Fishery committees would be a natural focal point for informing potentially-affected people. One person suggested using social media to share information about the project and seek people’s feedback or receive complaints. The village

⁵⁸ See for example UN REDD Programme, “Guidelines on Free, Prior and Informed Consent” January 2013. Available from <http://www.uncclearn.org/sites/default/files/inventory/un-redd05.pdf>.

⁵⁹ Interview with village head in Koun Satv Commune, 11 September 2016.

headfrom Koun Satv Commune proposed a public forum that “should be very detailed and allow us to raise concerns and they should respond to these concerns after the public forum”.⁶⁰

Reporting and complaints

The Guiding Principles on Business and Human Rights emphasize that communicating how impacts are addressed is an ongoing process and that information provided should be “sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved”.⁶¹ The EMP provides that reporting “should be conducted in conjunction with regular meetings with stakeholders as part of the continuation of stakeholder communications”.⁶² These meetings are the responsibility of the ‘safeguards specialist’ within the PIU.⁶³ The existing EMP does not specify how regular these meetings should be, what should be communicated or exactly who is included in the category of stakeholders, although it does appear to include residents and NGOs. While follow-up consultation for the review of the EMP is included as a ‘performance monitoring indicator’ during the pre-construction phase, there is no indicator for reporting to stakeholders during construction. During project implementation “all environmental and EMP reporting submitted by the EA/PCU will also be available on the project and ADB web site”.⁶⁴

During the pre-construction phase a grievance mechanism will be communicated to all stakeholders through a public information campaign.⁶⁵ The mechanism will enable all affected people to “lodge complaints regarding any perceived issue with the affected environment, or aspect of the land acquisition and resettlement requirements”.⁶⁶ Complaints should be made to a grievance committee at the commune-level. If this committee does not respond within 15 days, or fails to resolve the complaint, people making the complaint can appeal to committees at the district and, in turn, provincial level. The IEE suggests that people may also appeal to the courts if they are not satisfied with the decision of the provincial-level committee.

On receiving a complaint, the grievance committee should immediately contact the construction contractor and PIU to resolve the complaint. Records of all complaints, meetings of the committees and actions taken will be made available to complainants and “shall also be provided to the [Department of Tourism], PIU and ADB upon request”.⁶⁷ The PCU is responsible for overseeing the grievance mechanism and may request further action to address any complaints. The project documents do not specify how the PCU will be informed of the complaints before the grievance committees. The Detailed Design and Supervision Consultants “will provide the necessary training to improve grievance procedures and strategy for the grievance committee members when required”.⁶⁸ People may also make complaints to the ADB’s internal dispute-resolution mechanism.

⁶⁰ Interview with village head in Koun Satv Commune, 11 September 2016.

⁶¹ Guiding principles 17 (c) and 21 (b), OHCHR, “Guiding Principles on Business and Human Rights” 2011.

⁶² P. 17, ADB, “Environmental Management Plan” March 2014.

⁶³ P. 3, ADB, “Environmental Management Plan” March 2014.

⁶⁴ P. 44, ADB, “Initial Environmental Examination” March 2014.

⁶⁵ P. 44, ADB, “Initial Environmental Examination” March 2014.

⁶⁶ P. 44, ADB, “Initial Environmental Examination” March 2014.

⁶⁷ P. 44, ADB, “Initial Environmental Examination” March 2014.

⁶⁸ P. 45, ADB, “Initial Environmental Examination” March 2014.

There are advantages to the grievance mechanism proposed by the Ministry of Tourism. Commune-level grievance committees are likely to be accessible to affected-people, as long as they are established in all communes with potentially-affected people (such as Trapeang Sankgkae and Koun Satv communes). The final EMP / EIA needs to clarify what powers the committees will have to change the behaviour of the construction contractor and how communities can have access to the information, advice and expertise necessary to engage in the grievance mechanism. The Special Representative of the UN Secretary-General on business and human rights has said that grievance mechanisms should be legitimate, accessible, predictable, equitable, rights-compatible and transparent.⁶⁹ The detailed design for the grievance mechanism should embody these principles.

The research team asked people for their opinions on the proposed reporting and complaints procedures. Comments on reporting procedures were similar to the feedback on consultation. People recommended that information should be relayed through the Community Fisheries, or that the commune and village heads could serve this function, while others wanted to be informed directly through town hall meetings. Some respondents agreed that complaints were best handled by village or commune-level authorities first. Others argued that the Community Fisheries should represent complainants in the process. One respondent suggested that local authorities would not have the influence to change the behaviour of a company or government body, and so proposed that complaints should go to the Fisheries Authority. It is important that, as part of ongoing consultations, the project implementers seek feedback from fishing people on the adequacy of the proposed reporting and complaints mechanisms.⁷⁰

Recommendations

Ministry of Tourism and Department of Tourism:

- Include fishing people living in Trapeang Sangkkae and Koun Satv communes as potentially-affected people in consultation and information plans for the Kampot Pier Project.
- Conduct further assessments to determine the full extent of communities who fish in the Koh Samao area or travel between Koh Samao and the coast for their livelihoods and include these people in consultation and reporting plans.
- Translate the Executive Summary of the Initial Environmental Examination into Khmer and make it available online.
- Ensure meaningful consultation with potentially-affected communities, ideally conforming to the principles of free, prior and informed consent, including through:

⁶⁹ Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Protect, Respect and Remedy: A Framework for Business and Human Rights" 7 April 2008. Available from <http://www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A-HRC-8-5.doc>.

⁷⁰ In this respect, see the advice of the Office of the Compliance Advisor/Ombudsman for the International Finance Corporation, Multilateral Investment Guarantee Agency, Members of the World Bank Group, "Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects" 2008. Available from <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf>.

- Organising public meetings in affected communities and distributing written information in Khmer at these meetings, at commune offices, online and via social media;
- Explaining the Kampot Pier Project, its current status, plans for monitoring and reporting on the project's impacts and the proposed grievance mechanism; and
- Requesting and allowing adequate time for people to provide feedback on all aspects of the project, including the monitoring and reporting plans and the grievance mechanism.
- At a minimum, reporting to potentially-affected people should involve a full public disclosure of the PIU's quarterly reports to the PCU, with annexed reports from EMC and the construction contractor.
- Require that all documentation on complaints is included in the PIU's quarterly reports to PCU.
 - Ensure that residents understand they have recourse to the courts at any time and their participation in the grievance mechanism does not affect that right.

Asian Development Bank:

- Ensure that potentially-affected people know about the ADB's accountability mechanism.

Chapter 6: Other Projects in Kampot Bay

During the course of researching this report, community members and government officials shared information with the research team about recent projects in Kampot bay that had affected people's rights, and proposals for new development projects that could affect their rights. These projects were not the focus of the initial terms of reference for this research and report and it is not possible to come to firm conclusions about these projects without additional research. However, on the information available so far, there is cause to fear that if the proposed projects go ahead, severe impact on people's rights will be unavoidable.

Recent Developments

In the last five years, developments in Kampot bay have damaged the ecosystem, reducing the availability and accessibility of resources on which people depend for their livelihoods. From 2010, Kampot Provincial Government authorised the reclamation of land along the coast of Chum Kriel Commune. Mangrove forests that grew along the coast were destroyed. Both fishing people and available satellite imagery (see figure 10) confirm this change.⁷¹ The Kampot Pier will be constructed on four hectares of this reclaimed land.

The Kampot Provincial Government contracted a private company to construct an international commercial port on two hectares of this reclaimed land. To enable larger boats to access the port, the Kampot government also authorised the company to deepen the Tuek Chhou river channel from around 2014.⁷² Soil dug from the river bed was dumped next to the channel to create embankments.

This coastal area was an important resource for local fishing people. The mangrove forests provided a breeding ground for fish, shelter for fishing people and shallow waters in which to catch shrimp. Land reclamation destroyed the mangroves and the ecosystem. The channel embankments were built on top of seagrass. Both reclamation and the embankments are likely to have increased sedimentation in the water and degraded seagrass beds in Kampot bay.

One snail collector, a 55-year old Cham woman, told the research team about the impact of the land reclamation and channel dredging.

“When they filled the mangroves with soil, about four years ago, I could not collect over there. There used to be seagrass 20 cm tall and the snails are dependent on the seagrass. So when they filled in the land and there was spill-over of sand, it killed the seagrass. We also fished on the banks of the channel. Then, about a year ago, they dumped the channel sand onto the banks, killing the seagrass. Many people used to

⁷¹ Testimony and satellite imagery appear to contradict the claim in the Initial Environmental Examination that “The mangroves that once that lined the east bank of the river were removed by a land developer before 2005.” P. 21, ADB, “Initial Environmental Examination” March 2014.

⁷² Interview with community members, local government officials and the Department of the Environment, September 2016.

collect resources there”.⁷³

According to members of the Trapeang Sangkae Community Fishery Committee, the channel deepening has also had an impact on the growth of new mangroves.

“We plant mangoes in a muddy area, but when they did the channel it made the water polluted. Now the water carries sand from the channel and it flows over the mangroves and covers them so they cannot grow”.⁷⁴

The deeper channel and embankments also made it difficult for fishing people to navigate to the resources at Koh Samao mangrove island and the coast by Coconut Mountain. Several fishing people informed the research team that since the channel was constructed, they have to go around the channel to reach Koh Samao and Coconut Mountain, adding time and therefore costs to their journey.

Several interviewees reported that their incomes diminished as a result of the damage to the ecosystem resulting from land reclamation and channel deepening. Further research is required to conclusively establish the link between these developments and people’s livelihoods. However, the testimony of community members is consistent with the UCN’s report on seagrass beds in Kampot Province, which found increased pressure on coastal resources, resulting from an increase in fishing

Figure 10: Satellite images of the Tuek Chhou river mouth showing land reclamation and the construction of a deeper channel since 2000 for the international port. ©DigitalGlobe and CNES / Astrium.

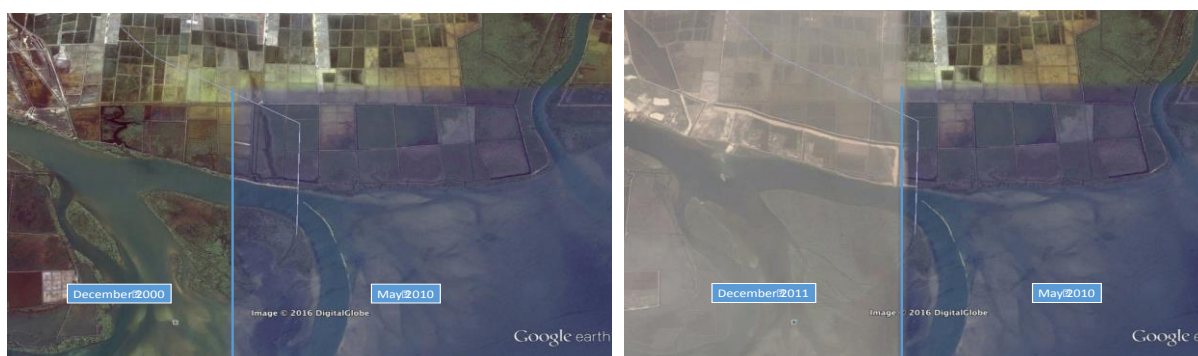


Figure 10 (a): Composite image from December 2000 and May 2010.

Figure 10 (b): Composite image from December 2011 and May 2010.

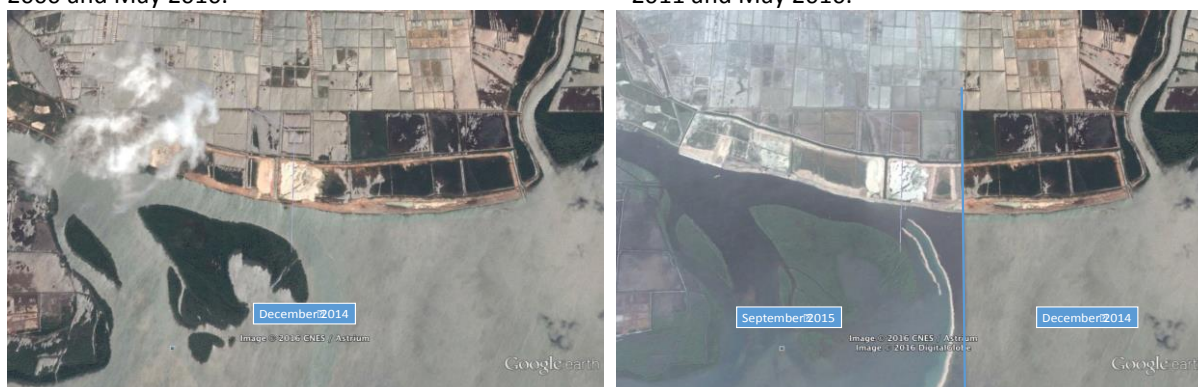


Figure 10 (c): Image from December 2014.

Figure 10 (d): Composite image from September 2015 and December 2014.

⁷³ Interview with a woman in Trapeang Sangkae Community, 14 September 2016.

⁷⁴ Discussion with Trapeang Sangkae Community Fishery Committee, 10 September 2016.

people, the use of illegal fishing gear and coastal development projects.⁷⁵

When the research team visited Kampot Province, work to deepen and lengthen the channel was ongoing. Workers on a barge were digging soil from the river bed and extending the embankments at the shore end of the channel (see figure 11). This work continues to limit the space for fishing boats to travel through to Koh Samao and Coconut Mountain.



Figure 11: Digging soil next to the proposed Kampot pier location. Koh Samao is visible on the left.

New Kampot Town

Kampot Provincial Government has prepared a proposal to construct an artificial island in Kampot bay for tourism. The island would feature a golf course, exhibition hall, restaurant and swimming pools. The island would reclaim 248 hectares of sea and be built over the seagrass beds currently in the bay. The Masterplan for New Kampot Town suggests that the development would overlap both Trapeang Sangkae and Kampong Samaki Community Fisheries (see figure 12).

The Masterplan was signed on 17 September 2014 by the former Provincial Governor, the Head of the Provincial Council and the Secretariat of the Committee of Land Management and Construction. According to local government officials the project is currently waiting for approval at the ministerial level before detailed planning begins and funding is secured. As noted previously, the provincial government presented its plans for New Kampot Town to commune heads in 2014. The research team was informed that more detailed consultations would happen during the detailed design phase, if approval is granted. The research team was not able to meet with the Kampot Governor's office to discuss this project.

⁷⁵ Kaarlep, A., "Socio- economic survey on the importance of seagrass beds to coastal communities in Kampot Province" 2014.

According to the *Phnom Penh Post*, the project's costs of USD 23.2 billion will be financed by Pallas' Dubai-based parent company.⁷⁸ The Ministry of Environment is currently reviewing the Environmental Impact Assessment for the project and the project is waiting for approval from the Council for the Development of Cambodia.



Figure 13: Diagram of French Riviera City from the Pallas Investment and Development Group website. The coast of Chum Kriel Commune and Koh Samao are visible at the top left of the proposed development site.

New Kampot Town and French Riviera City would both destroy large areas of seagrass beds in Kampot bay. As these beds serve as the foundation of the fishing ecosystem, it is difficult to see how they could be constructed without a severe impact on people's right to an adequate standard of living. Further, the projects carry the risk that actors with significant economic and political power may seek to acquire land in the communes studied here. Residents should receive their formal land titles as soon as possible to reduce any risks that the development projects could pose to their land rights.

⁷⁸ Phnom Penh Post, "Scepticism clouds massive coastal development plan" 17 October 2016. Available from <http://www.phnompenhpost.com/business/scepticism-clouds-massive-coastal-development-plan>.

Recommendations

Kampot Provincial Government:

- Begin meaningful consultations regarding the ongoing deepening of the Tuek Chhou river channel with fishing people who currently use the waterway.
- Suspend the ongoing deepening of the Tuek Chhou river channel until such consultations have taken place.
- As the Kampot Provincial Government develops plans for the New Kampot Town project, it should disclose information and open meaningful consultations with all potentially affected people.

Department of Land Management:

- Begin the land registration process in the remaining villages of Koun Satv Commune and ensure all residents of Chum Kriel, Trapeang Sangkae and Koun Satv receive formal title as soon as possible, to provide them with security of tenure.

Ministry of Environment:

- Hold public consultations on all Environmental Impact Assessments with potentially-affected people, including the EIAs for New Kampot Town and French Riviera City.

Council for the Development of Cambodia:

- As the Council for the Development of Cambodia considers plans for the French Riviera City project it should disclose information and open meaningful consultations with all potentially affected people.

Conclusion

Publically-available information suggests that the Kampot Pier Project will not have an impact on people's land rights, that it may affected people's livelihoods if the ecosystem in Kampot bay is polluted and, importantly, that further consultations are required to ensure people are able to fully participate in decisions which affect their lives.

Planning for the Kampot Pier Project is well under way. Funding for the project was agreed in December 2014. In October 2015, the Kampot Provincial Government acquired the land for the project from a wealthy private land owner. Consequently, it does not appear that the project will have a direct impact on people's land rights. However, future development of the coastal region may pose a threat to residents that lack formal tenure. A land registration process is underway in Chum Kriel, Trapeang Sangkae and Koun Satv communes, which should ensure that people have formal tenure before any future developments can threaten their land rights.

Consultants are currently developing detailed designs for Kampot Pier and are turning the Environmental Management Plan (EMP) into an Environmental Impact Assessment (EIA) for approval by the Ministry of Environment. The Ministry of Tourism and the Ministry of Environment must ensure that the environmental protection measures proposed in the EIA are adequate to prevent pollution and that the monitoring system is able to detect and take action if any pollution is detected. The Environmental Management Consultant must be independent and have the resources and technical ability to monitor and report on any pollution. The EIA should clearly state what action will be taken to halt polluting activities and provide a remedy for any damage caused. Further, the navigation management plan must ensure that boats visiting the pier do not cut off access for fishing people to this important waterway. These conclusions should be re-assessed when plans for the Pier and EIA are in their final form.

Several interviewees raised concerns that were already addressed by the EMP. This highlights the fact that many potentially-affected people have not been adequately informed or consulted about the project. Consultations have only taken place with 100 members of Chum Kriel Commune and Kampong Kandal Commune. People in several other communes, including Trapeang Sangkae and Koun Satv, fish in Kampot bay and would be affected by any damage to the ecosystem in the bay. They have not been consulted and, so far, their rights to information and to participate in public affairs have not been fulfilled. The Ministry of Tourism must ensure that future consultations include all potentially-affected people, are meaningful, and comply with FPIC principles.

There are several other projects proposed for Kampot bay that would have a much more significant impact on people's rights. The deepening of the Tuek Chhou river channel is already causing damage to the ecosystem. Proposals for the 248 hectare New Kampot Town development and the over 4,000 hectare French Riviera City raise concerns. If constructed, they could not avoid severely damaging thousands of people's livelihoods. The government must ensure there are meaningful consultations with potentially-affected communities before these projects are approved.

This research has generated many recommendations for protecting the rights of fishing people in Kampot bay. Above all, whether relating to Kampot Kier Project or other development projects, authorities must make sure they listen to the concerns of those who will be affected and, when it comes to consultations, cast a wider net.

This report assesses the potential impact of the Kampot Pier Project on land rights, livelihoods and the right to consultation for people living in the adjacent communes of Chum Kriel, Trapeang Sangkae and Koun Satv, Kampot Province.



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