

## FACT SHEET: COMMUNITY FISHERIES AND DEVELOPMENT PROJECTS IN COASTAL AREAS

**Snapshot:** Community fisheries (“CFi”) are economic, social and cultural engines in Cambodia, structuring the daily lives of thousands, while feeding families across the country. However, the continued existence of many CFI, especially in coastal areas, is at stake, as development projects encroach on or destroy the land on which CFI depend on to survive. This factsheet will provide an overview of CFI in Cambodia, in particular looking at a case study of CFI in the provinces of Kampot and Kep who are facing threats from development projects, and provide tangible recommendations to the Royal Government of Cambodia and businesses to improve respect for fishing and land rights and fundamental freedoms along the coast and across the country.

### 1. Introduction

Community fisheries (“CFi”) play a major role across Cambodia. In addition to providing employment to millions of Cambodians, fisheries also contribute significantly to domestic food security, as 75% of the Cambodian population gets their animal protein intake from fish.<sup>1</sup> CFI include hundreds, sometimes thousands of households, the vast majority of which depend on fishing to survive. The livelihood that community members make from fishing enables them to realize key human rights, such as the rights to housing, food or access to education for their children. Threats to CFI are therefore threats to generations of Cambodians. Yet, recent years have seen an increasing number of development projects threatening the survival of CFI, and development pressures on marine and coastal areas figure among key environmental issues in the country.<sup>2</sup> By encroaching on the fishing space communities depend on to survive, many development projects hinder communities from carrying out their fishing activities and damage the environment, presenting a serious threat to the survival and way of living of CFI in Cambodia.

This factsheet will examine the key issues that CFI in Kampot and Kep provinces face due to development projects on the coast, initiatives the Royal Government of Cambodia (“RGC”) has taken over the years to regulate such development projects, as well as the relevant legal framework. This factsheet will also look at a case study of two CFI affected by a development project led by the Ching Kor Import Export Co. Ltd in Kampot province. Finally, it will provide tangible recommendations to the RGC and business actors operating in Cambodia to improve respect for the rights of CFI.

### 2. Key Issues: Community fisheries and development in Kampot and Kep Provinces

Due to their strategic proximity to the sea, the provinces of Kampot and Kep have been the sites of a number of significant land developments over recent years. In an attempt to increase tourism and boost industry in the provinces, development projects have been given the green light. They include, for example, the ambitious French Riviera Marina, a giant multipurpose tourism resort and marina,<sup>3</sup>

<sup>1</sup> WWF Cambodia, ‘Community Fisheries’, <[https://www.wwf.org.kh/projects\\_and\\_reports2/sustainable\\_use/community\\_fisheries/](https://www.wwf.org.kh/projects_and_reports2/sustainable_use/community_fisheries/)>.

<sup>2</sup> Asian Development Bank, ‘Cambodia’s Road Map for Sustainable Development: The National Environment Strategy and Action Plan’ (December 2018), p.3 <<https://www.adb.org/sites/default/files/publication/470846/cambodia-environment-strategy-action-plan.pdf>>.

<sup>3</sup> Ky Kosal, ‘New \$23b Kampot resort’ (*Khmer Times*, 16 August 2017) <<https://www.khmertimeskh.com/78212/new-23b-kampot-resort/>>.

the creation of a new town to be built from the ground up in Kampot's Bokor mountains;<sup>4</sup> the development of beaches in Kep;<sup>5</sup> the construction of a new tourism port;<sup>6</sup> as well as the building of a seaport and satellite city (see 'Case Study' below) in Kampot<sup>7</sup> just to name a few.

The location of some of these projects along the coast of Kampot and Kep have raised fears that the prioritization of economic growth over the rights of traditional CFI will come at the cost of thousands of families' livelihoods and way of living. While development projects aimed at bolstering tourism and stimulating industry in the provinces are likely to have great economic benefits, there is little doubt that they will be highly detrimental to fishing communities. Loss of fishing grounds and rights, pollution, destruction of mangroves and seagrass beds, filling-in of beaches with soil, dwindling fish stocks, loss of access to the sea, and increased vulnerability to climate change are just some of the issues that CFI worry these commercial developments might bring.<sup>8</sup> To this can be added concerns about insecurity of land tenure, as the registration that CFI secure from the Ministry of Agriculture, Forestry and Fisheries to conduct their fishing activities do not provide permanent land ownership and can be withdrawn, raising concerns that CFI could be dislodged without notice to make way for more lucrative projects.

#### Government initiatives protecting against negative development impacts

The sustained growth that Cambodia has enjoyed over recent decades has attracted an ever-increasing number of investors to the country, leading to entire swathes of land being privatized and allocated to private actors for development purposes. While economic growth has been at the forefront of the RGC's agenda, there have been a number of positive government initiatives aimed at regulating development projects to protect Cambodia's natural resources. These include:

- **Environmental and Social Impact Assessments ("ESIAs"):** Cambodian law provide that an ESIA must be conducted prior to development projects being given the go-ahead, in order to ensure the projects' harmonization with environmental, social and cultural considerations.<sup>9</sup>
- **Fisheries protection:** An ambitious fisheries reform started in 2001 when the RGC designated 51% of fishing lots – previously allocated to private owners – as open access. In 2012, the RGC went further and transferring fishing rights in full to local communities. Communities established local fishing committees, also known as CFI, to manage natural fisheries resources in their area. In 2007, the Law on Fisheries was adopted, *"to promote the livelihood of people in local communities for the social-economic and environmental benefits, including the sustainability of the conservation of biodiversity and natural cultural heritages"*.<sup>10</sup>

<sup>4</sup> Thou Vireak, 'Bokor town plans unveiled' (*Phnom Penh Post*, 27 June 2019) <<https://www.phnompenhpost.com/business/bokor-town-plans-unveiled>>

<sup>5</sup> Thou Vireak, 'Kep tourism to receive facelift as two islands are pegged for development' (*Phnom Penh Post*, 4 June 2020) <<https://www.phnompenhpost.com/national/kep-tourism-receive-facelift-two-islands-are-pegged-development>>

<sup>6</sup> Leonie Kijewski and Yon Sineat, 'Report warns on pier project' (*Phnom Penh Post*, 27 June 2017) <<https://www.phnompenhpost.com/national/report-warns-pier-project>>

<sup>7</sup> Richard Finney, 'Cambodian Fishing Villages Fear Job Loss Due to Mangrove Beach Development Plans' (*Radio Free Asia*, 14 May 2020) <<https://www.rfa.org/english/news/cambodia/villages-05142020193954.html>>

<sup>8</sup> Matt Bloomberg, 'Mega developments set to transform a tranquil Cambodian bay' (*Mongabay*, 21 January 2018) <<https://news.mongabay.com/2018/01/mega-developments-set-to-transform-a-tranquil-cambodian-bay/>>;

<sup>9</sup> These include the National Environment Strategy and Action Plan 2016-2023, the Prakas No. 021 on Classification of Environmental Impact Assessment for Development Project, as well as the Law on Environmental Protection and Natural Resources Management.

<sup>10</sup> Article 1, 2007 Law on Fisheries.

### 3. Relevant legal framework on Community Fisheries, Land and Environmental Rights

#### International Law

The destruction of or encroachment on the fishing grounds on which CFI depend to survive without adequate consent or consultation breaches the international human rights enshrined in a number of legally binding treaties ratified by Cambodia, including the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). This includes:

- The right to an adequate standard of living, including the right to food and the right to housing,<sup>11</sup> as enshrined in Article 11 of ICESCR;
- The right to work, as enshrined in Article 6 of ICESCR;
- The right to take part in cultural life, as enshrined in article 15 of ICESCR<sup>12</sup>;
- The right to information,<sup>13</sup> as an inherent part of the right to freedom of expression, as enshrined in Article 19 of the ICCPR.

These human rights treaties are incorporated directly into Cambodia’s domestic law through Article 31 of the Constitution of the Kingdom of Cambodia (“the Constitution”), meaning they are directly applicable in Cambodian law and the RGC an obligation to protect and respect these rights, including against acts of third parties (such as businesses).

#### Soft Law<sup>14</sup>

In addition, relevant international soft law instruments offer guidance on land and fisheries or on businesses’ duties in relation to human rights have been adopted. These include:

- The **United Nations’ Guiding Principles on Business and Human Rights (“UNGPs”)**:<sup>15</sup> According to the UNGPs, businesses and private actors have the duty to respect human rights, meaning they are expected to avoid violating the human rights of others and to address the adverse human rights impacts they might cause or contribute to. When it comes to land, compliance with the duty to respect means that businesses should act with due diligence to avoid infringing on the legitimate tenure rights of others, notably by conducting ESIA and carrying out public consultations on their projects.
- The **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security**:<sup>16</sup> Recognize the central role that fisheries play in the realization of human rights and provide, *inter alia*, for the involvement of fisheries users in participatory processes of tenure governance and in decision-making.
- The **Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication**:<sup>17</sup> This explicitly cite as one of its guiding principles that States should regulate the activities of non-state actors that affect small-scale fisheries to ensure their compliance with international human rights standards.

<sup>11</sup> CESCR, ‘General Comment No. 4: The Right to Adequate Housing’ (1991), UN Doc E/1992/23, para. 9: the right to adequate housing includes, *inter alia*, the right to protection against arbitrary or unlawful interference with home and the right to legal security of tenure.

<sup>12</sup> CESCR, ‘General Comment No. 21: Right of everyone to take part in cultural life’ (2009), UN Doc E/C.12/GC/21, para. 13: the notion of “culture” encompasses “ways of life, [...] methods of production [...], natural and man-made environments, food, clothing and shelter [...]”.

<sup>13</sup> Having access to full, correct and timely information about land-related policies and their potential impact is an essential prerequisite for rights-holders to participate in decision-making in a meaningful way.

<sup>14</sup> For more information on these instruments, please see: ‘Business and Human Rights Handbook for Cambodia’, (CCHR, December 2016), <[https://cchrcambodia.org/admin/media/report/report/english/2016\\_Handbook\\_BHR\\_English.pdf](https://cchrcambodia.org/admin/media/report/report/english/2016_Handbook_BHR_English.pdf)>.

<sup>15</sup> ‘United Nations Guiding Principles on Business and Human Rights’ (OHCHR, 2011) <[https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)>.

<sup>16</sup> ‘Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security’, (Food and Agriculture Organization of the UN (“FAO”), 11 May 2012) <<http://www.fao.org/tenure/voluntary-guidelines/en/>>.

<sup>17</sup> ‘Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication’, (FAO, 2015) <<http://www.fao.org/3/i4356en/i4356EN.pdf>>.

### Domestic Law

Cambodian domestic law has a number of relevant instrument regulating CFI and land rights, however unfortunately these laws are relatively weak in terms of protecting CFI. Both the 2007 Law on Fisheries and the 2008 Law on Natural Protected Areas guarantee rights of customary use of fishery resources in fishing grounds throughout Cambodia. However, the modalities of granting rights are not specified and there is no registration mechanism to guarantee the rights to use or enjoy fishery resources. The Cambodian legal framework also fails to define what the legitimate tenure rights of fishing grounds or fishery resources are.

Further, there is no domestic law or mechanism safeguarding CFI against the seizing of their community fishing area should a development project be authorized by the RGC on that same area. The domestic law clearly provides that fisheries are state property,<sup>18</sup> meaning that the fisheries that CFI enjoy are state land and the use of the land can be withdrawn at any time for public use.<sup>19</sup> In case of a dispute in which the rights of customary use of fishery resources would be at stake, tenure holders could only obtain through Article 35 of the Constitution which broadly states that *“all requests from citizens shall be thoroughly considered and resolved by institutions of the state”*.

The weak state of domestic law means that CFIs are left vulnerable to the impacts of development projects, and the RGC should reform this law to comply with their human rights obligations and the international standards mentioned above.

#### **4. Case study: Preaek Tnout and Trapeang Rapov communities & ChingKor Import Export development<sup>20</sup>**

Preaek Tnout and Trapeang Ropov are two coastal fishing communities situated in Preaek Tnout commune, Teuk Chhou district, Kampot province. Both were formed in 2002 and were recognized by the RGC in 2011 and 2009 respectively. The Preaek Tnout fishing community is made up of around 300 households and covers an area of 1,168 hectares of sea.<sup>21</sup> The Trapeang Ropov community comprehends 1,251 hectares of sea as well as two villages, Trapeang Ropov and Prek Kreng, made up of around 1,170 households.<sup>22</sup> In both communities, between 70 and 80% of the population depend on sea fishing, which they rely on to sustain their livelihoods by being able to sell fish and generate income, and for food security for families and the community. Villagers expressed that access to land and fishing were of crucial importance to their lives, and the benefits that the sea space provides are reaped by all villagers, regardless of whether they engage in fishing.

Since September 2012, the areas on which these communities so heavily depend on for their survival have been included in a private company’s plan to dredge soil and develop large stretches of the coast for a port, resort hub and special economic zone. The company, Ching Kor Import Export Co.

<sup>18</sup> See: Article 15 of the 2001 Land Law; Article 9 of the 2007 Law on Fisheries and Article 3 of the Sub-Decree on Community Fisheries Management.

<sup>19</sup> Article 61 of fisheries law provides.. The Minister of Agriculture, Forestry and Fisheries is entitled to abolish community fishing area for public benefit if deemed so.

<sup>20</sup> Unless referenced, this information comes from CCHR’s field research. CCHR undertook field research in Kampot and Kep province in October 2020, where the team conducted three interview with authorities, three with local non-governmental organizations, and two with the community groups from each fishing village consisting of approx. 40 individuals. In addition to the field research, this case study is informed by this report: Further, information was obtained from this report: CCIM, ‘Investigative Report: Looking at Economic Development in Cambodia’, (CCIM, June 2019), p. 19-33, <[https://ccimcambodia.org/wp-content/uploads/2020/01/CCIM-Investigative-Reports-Final-print\\_Eng.pdf](https://ccimcambodia.org/wp-content/uploads/2020/01/CCIM-Investigative-Reports-Final-print_Eng.pdf)>.

<sup>21</sup> Mam Moniroth, ‘Former ruling party senator boosts coastal investment project in Kampot fishing community’, (VOD, 24 October 2019), <<https://vodkhmer.news/2019/10/24/ex-ruling-senator-pushes-mega-investment-violating-two-fishing-communities-in-kampot/>>.

<sup>22</sup> Ibid.

Ltd, belonged to the late Ms. Keo Maly, a former Cambodian People's Party Senator and Vice-President of the Cambodia Chamber of Commerce. Ms. Keo Maly unfortunately passed away in October 2020, and it is undetermined who now has control over the company.<sup>23</sup>

It is unclear how Ching Kor Import Export Co. Ltd obtained approval for its project, considering a January 2019 report of the National Committee for Management and Development of Coastal Areas provides that all forms of land management along the coastal areas is prohibited, as the land is considered to be protected.<sup>24</sup> Ms. Keo Maly also owns two rice factories on approximately 30 hectares of private land in Preak Tnout commune. According to CCHR's interviews, the rice factories have created difficulties for the local villagers, including complaints of a terrible smell and waste being leaked to the ocean, contributing to their fears about the impact of the new project.

In 2019, Ms. Keo Maly claimed that villagers from the communities had agreed to be relocated and that development work would begin as soon as the ESIA's were completed. An CFI representative from the Trapeang Ropov community denied this claim, saying that only a handful of villagers – none of whom were from the fishing community – had agreed to the relocation after being bought. Another CFI representative from the Preaek Tnout fishing community, echoed this, claiming that no information on the impact assessments had been made available and that villagers expressed their rejection of the development plans during community forums that were organized with company representatives.<sup>25</sup>

Interviews conducted by CCHR at the end of October 2020 seem to confirm the community leaders' allegations: community members from the two affected communities, as well as local non-governmental organizations, all revealed that community members have been consistent in expressing their objection to the development project, despite being pressed to agree to it by company representatives and authorities alike. Both communities claim they have repeatedly raised their concerns with authorities but that their calls have remained unanswered. Interviews conducted with local authorities on the other hand show conflicting answers: one authority alleged that only a minority of villagers from Trapeang Ropov opposed the project. Further, while a second authority revealed they had not heard about an ESIA being undertaken, another said it was already underway and that the CFI had indeed agreed to move to make way for the development project.

There is no doubt that development projects do create benefits for the region in terms of providing employment and developing infrastructure, and it is reported that the company has agreed to recruit workers from the affected CFI in priority. However, many community members worry that the company could not match the income they make from fishing, that living conditions in the communities would nevertheless deteriorate and that elderly people would not be offered alternative employment opportunities. Further, community members, non-governmental organizations and authorities alike have great concern about the environmental impacts of such development, fearing pollution, waste and a destruction of biodiversity.

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<sup>23</sup> KBN News, 'Keo Maly dies of illness at Thai hospital at 65', (*KBN News*, 14 October 2020), <<https://kbn.news/archives/185613>>.

<sup>24</sup> CCIM, (n. 20) p. 23.

<sup>25</sup> CCIM, 'Mega investment encroaching on two fishing communities in Kampot' (*CCIM*, 6 November 2019) <<https://ccimcambodia.org/?p=1871>>.

## 5. Conclusion and Recommendations

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The threat that development projects represent for CFI in Cambodia is extremely serious, as the race for development continues to have multi-generational impacts on the human rights of thousands of Cambodians. While development projects are good for growth, safeguards must ensure that they are not achieved at the expense of human rights. With that in mind, it is crucial that CFI are given due consideration and meaningfully engaged with when development projects are envisaged in coastal areas. CCHR makes the following recommendations:

### Recommendations to the RGC:

- R1.** Implement **appropriate legal reforms** to align national law with best practice as set out in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication. This should must include a formal process to recognize, protect and facilitate the legitimate rights of Cfi to their fishing grounds and surrounding lands;
- R2.** Take measures to **strengthen the capacity of local authorities and key actors** to understand the **legitimate tenure rights of CFI**, including developing guidelines for local authorities to certify or issues license of tenure rights to CFI;
- R3.** **Effectively remedy all human rights violations**, and ensure that any remedy meets the effectiveness requirements of Principle 31 of the UNGPs;
- R4.** Ensure that **meaningful consultations with affected communities** take place prior to any contract designated for developments and that communities are kept informed and give consent prior to the granting of state or private rights over fishing grounds;
- R5.** **Clearly require ESIA's before allowing any development, infrastructure project or special economic zone**, and ensure that they are made available to affected communities and to the public in a timely manner, and that implementation mechanisms used are in accordance with international human rights standards, including Principle 18 of the UNGPs;
- R6.** Develop and adopt a **National Action Plan on Business and Human Rights**, in consultation with civil society, to disseminate and implement the UNGPs.

### Recommendations to businesses:

- R7.** **Exercise due diligence prior** to starting any operation in Cambodia, in accordance with Principles 15, 17 and 18 of the UNGPs;
- R8.** **Conduct ESIA's**, make them available to affected communities and to the public in a timely manner, and put into place mechanisms to monitor their implementation, in accordance with international human rights standards such as Principle 18 of the UNGPs;
- R9.** Consult with **affected communities, key stakeholders and authorities**, in a meaningful, timely and transparent manner to take into account and address their concerns;
- R10.** **Effectively remedy all human rights violations**, and ensure that any remedy meets the effectiveness requirements of Principle 31 of the UNGPs;
- R11.** Establish an **effective, accessible and transparent operational-level grievance mechanism** for those adversely affected by business activities, in line with Principle 29 of the UNGPs.

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