

# FORCED EVICTION AND RESETTLEMENT IN CAMBODIA: CASE STUDIES FROM PHNOM PENH

CHI MGBAKO\*  
RIJIE ERNIE GAO\*\*  
ELIZABETH JOYNES\*\*\*  
ANNA CAVE\*\*\*\*  
JESSICA MIKHAILEVICH\*\*\*\*\*

## TABLE OF CONTENTS

INTRODUCTION.....	40
I. LEGAL BACKGROUND.....	42
A. <i>Cambodian Law on Forced Eviction and Resettlement</i> .....	44
B. <i>Land Title: Five-Year Possession Law in Cambodia</i> .....	46
1. <i>Documentation: “Family Record Book” and</i> <i>Government-Issued “Receipts”</i> .....	47
2. <i>Owners’ Rights vs. Renters’ Rights</i> .....	49
II. FROM BOEUNG KAK TO DAMNAK TRAYOENG.....	51
A. <i>Background</i> .....	51
B. <i>Pre-eviction Challenges Faced by Boeung Kak Residents</i> .....	55
C. <i>Post-eviction Challenges Faced by Boeung Kak Residents</i> <i>in Damnak Trayoeng</i> .....	57
1. <i>Income</i> .....	57
2. <i>Education</i> .....	59
3. <i>Health Care</i> .....	60
4. <i>Infrastructure</i> .....	61
5. <i>Land Title</i> .....	62

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\* Clinical Associate Professor of Law, Fordham Law School; Director, Walter Leitner International Human Rights Clinic; J.D. (2005), Harvard Law School; B.A. (2001), Columbia University. The authors thank the representatives of organizations in Cambodia who provided valuable information about their programs; Ken Wong of the Face-to-Face AIDS Project; and the Salvation Center Cambodia. Most importantly, we thank the families in Damnak Trayoeng, Boeung Kak Lake, An Dong, and the Borei Keila Green Shelters who agreed to be interviewed, and who have faced the injustice of forced eviction and resettlement with great dignity.

\*\* J.D. (2009), Fordham Law School.

\*\*\* J.D. (2010), Candidate Fordham Law School.

\*\*\*\* 2008 Pro Bono Supervisor, Walter Leitner International Human Rights Clinic; J.D. (2005), Columbia University; B.A. (2001), Duke University.

\*\*\*\*\* J.D. (2009), Fordham Law School.

6. *Lack of Information*..... 63

III. THE EFFECTS OF RESETTLEMENT ON HIV-AFFECTED FAMILIES:

BOREI KEILA AND AN DONG..... 64

A. *Background*..... 64

B. *Post- eviction Challenges Faced by PLWHA*..... 66

1. *Income*..... 66

2. *Cost and Access to Health Care*..... 69

3. *Cost and Access to Food and Nutrition*..... 70

4. *Infrastructure*..... 71

5. *Land Title*..... 73

6. *Stigma and Discrimination*..... 74

CONCLUSION: RIGHTS EDUCATION FOR FAMILIES IN RESETTLEMENT SITES..... 75

INTRODUCTION

The rise of urbanization and development in Cambodia in recent years has led to a dramatic increase in land prices, with particularly high values for land in the capital city of Phnom Penh.<sup>1</sup> Some government officials have benefited from the high price of land by unlawfully granting land title to private developers in exchange for compensation. Once these officials have granted land title to developers, they forcibly evict from the property existing residents, who mostly come from poor and marginalized communities.<sup>2</sup> There is rampant corruption at every stage of the “development” process.<sup>3</sup> Forced evictions as a result of development projects, land disputes, and land grabbing are now among the most widespread human rights violations in Cambodia.<sup>4</sup> More than one hundred fifty thousand Cambodians are currently at risk of being forcibly evicted.<sup>5</sup>

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1. *Lake Inferior: Cambodia’s Disappearing Capital*, ECONOMIST, Jan. 31, 2009, at 48 (reporting that prime property prices in Phnom Penh have grown ten-fold in the last two years).

2. Joel Brinkley, *Cambodia Visits Cruelty on Weakest Citizens*, S.F. CHRON., Aug. 31, 2008, at G-8, available at [www.sfgate.com](http://www.sfgate.com) (in “full archive” search “Cambodia Visits Cruelty”).

3. See Press Release, Housing Rights Task Force (“HRTF”) and Cambodian Center for Human Rights (“CCHR”), *Boeung Kak Contract Violates Cambodian Law* (Feb. 21, 2007) [hereinafter Press Release, HRTF & CCHR], available at <http://www.licadho-cambodia.org/press/files/143HRTFPRBoeungKakSelling07.pdf>.

4. AMNESTY INT’L, RIGHTS RAZED: FORCED EVICTIONS IN CAMBODIA at 4, 44 (2008) [hereinafter AMNESTY INT’L], available at [www.amnesty.org](http://www.amnesty.org) (search “rights razed”; then follow “Cambodia: Rights Razed” hyperlink; then follow “pdf” hyperlink).

5. *Id.* at 44.

The Cambodian Constitution incorporates international law, which requires that the government provide adequate alternative housing and compensation for all those affected by forcible eviction, regardless of whether they rent, own, or occupy their homes on the land at issue.<sup>6</sup> The Cambodian government's resettlement practices following forced evictions have not conformed with its obligations under international law; after forced eviction, the government resettles residents in relocation sites located on the periphery of Phnom Penh, far from resources and jobs in the capital.<sup>7</sup> While the conditions of resettlement sites vary, the sites are frequently an inadequate substitute for prior homes and are sometimes uninhabitable. Most lack basic infrastructure and services, such as running water, sanitation systems, and access to education and healthcare.<sup>8</sup> Due to the long distances between resettlement sites and Phnom Penh, most resettled residents are unable to keep their old jobs in the city, resulting in drastic reductions in income.<sup>9</sup> With no opportunities to earn a living in resettlement sites, it is not uncommon for many families to abandon resettlement sites and return to Phnom Penh and live in precarious conditions.<sup>10</sup>

This Article culminates a project undertaken by the Walter Leitner International Human Rights Clinic (hereinafter "Leitner Clinic") at Fordham Law School to examine the effects of land resettlement on communities that were forcibly evicted or are at risk of forced eviction from their homes, and, in particular, the effects of forced evictions on the Boeung Kak Lake community in central Phnom Penn and on people living with HIV/AIDS ("PLWHA"). This Article is based on field research the Leitner Clinic conducted in Cambodia in the fall of 2008. While in

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6. CONSTITUTION OF THE KINGDOM OF CAMBODIA art. 31 ("The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights"); International Covenant on Economic, Social and Cultural Rights, arts. 11, § 1, 19, Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR] (mandating that state parties shall recognize the right of all persons to an adequate standard of living, including access to adequate food, shelter, housing and continuous improvement of living conditions). For more on Cambodia's international legal obligations as it pertains to housing and land rights, see AMNESTY INT'L, RIGHTS RAZED *supra* note 4, at 12–24; *see also infra* notes 91, 101, 103.

7. *See* Map, Sahmakum Teang Tnaut ("STT"), Relocation Sites in Phnom Penh (Aug. 2007) (on file with author); Map, STT, Phnom Penh Original Sites (Aug. 2007) (on file with author).

8. AMNESTY INT'L, RIGHTS RAZED, *supra* note 4, at 30–33 (citing Press Release, Asian Coalition for Housing Rights ("ACHR"), Big Breakthrough (May 25, 2003)).

9. *See infra* Part III.D.1; Interviews with Damnak Trayoeng Families #1, #2, #3, in Phnom Penh, Cambodia (Oct. 5, 2008).

10. Interview with Meas Kim Seng, Sahmakum Teang Tnaut ("STT"), in Phnom Penh, Cambodia (Oct. 7, 2008).

Cambodia, the Leitner Clinic interviewed families from four different communities: resettlement camps in Dam Nak Trayoeng and An Dong; Boeung Kak Lake, where residents are facing forced eviction; and the Green Shelters at Borei Keila where forcibly evicted PLWHA and their families await resettlement. The Leitner Clinic also met with local human rights and land rights organizations and organizations working with PLWHA.

This Article presents the findings of this research effort. The Article begins in Part I with background information on forced eviction and resettlement in Cambodia, highlighting the human rights violations implicated in this traumatic process. It then surveys the legal framework of land rights in Cambodia as it relates to communities at risk of forced eviction, and the government's failure to uphold legal guarantees related to land rights. Part II discusses the Boeung Kak Lake resettlement scheme and how the lack of government accountability and the poor bargaining position of marginalized communities converge to produce grave human rights abuses. A case study focuses on the effects of resettlement in Boeung Kak Lake and Damnak Trayoeng. Interviews of people living in these communities reveal that the effects of resettlement are most strongly felt in five main areas: income, education, healthcare, infrastructure, and land tenure.

In Part III, a second case study analyzes how resettlement impacts families affected by HIV/AIDS. This analysis is based on interviews in two communities with families that have HIV-positive members, one awaiting resettlement in the Green Shelters at Borei Keila, and the other already relocated to An Dong. The Leitner Clinic found that the challenges of resettlement are amplified for families living with HIV/AIDS due to their special needs and vulnerabilities. The conclusion suggests how organizations can assist affected communities that either will be evicted or have already been resettled, through rights education.

## I. LEGAL BACKGROUND

Between 1998 and 2003, the Phnom Penh municipality forcibly evicted eleven thousand families, most of whom were poor families living in the center of the capital.<sup>11</sup> In the last five years, an additional thirty thousand individuals have been displaced by forced evictions in Phnom Penh.<sup>12</sup> A

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11. AMNESTY INT'L, RIGHTS RAZED, *supra* note 4, at 6–7 (citing World Bank, *Cambodia: Halving Poverty by 2015?*, at 48, Cambodia Poverty Assessment (Feb. 7, 2006)).

12. AMNESTY INT'L, RIGHTS RAZED, *supra* note 4, at 7.

2007 map by Sahmakum Teang Tnaut (“STT”), a Cambodian non-governmental organization, documents forty-one resettlement sites in and around Phnom Penh alone, which account for almost sixteen thousand affected families.<sup>13</sup>

The Cambodian government is actively involved in the process of forced evictions. The government uses threats, intimidation, violent force, and police detention to suppress community resistance.<sup>14</sup> To frighten protestors and to suppress criticism, the government has arrested community leaders on fabricated and exaggerated charges.<sup>15</sup> The government has also harassed residents and non-governmental organization (“NGO”) workers, and has detained journalists.<sup>16</sup> Consistent with a larger pattern of widespread corruption and impunity, Amnesty International found that “[t]he Cambodian authorities are not only failing to protect—in law and practice—the population against forced evictions, but are also actively involved in such acts, which contravene international law.”<sup>17</sup>

These human rights violations are not isolated instances. Rather, they are part of a widespread and coordinated effort between the government and private companies to capitalize on quickly rising land prices in Phnom Penh by taking advantage of the most marginalized members of society.<sup>18</sup> After forced evictions, the government sometimes designates the newly vacated lands as State public land for government infrastructure projects.<sup>19</sup> Other times, the government designates the land for exchanges with

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13. See Map, STT, Relocation Sites in Phnom Penh, *supra* note 7.

14. Souhayr Belhassen, Salih Booker, Brad Adams & Sam Zarifi, *Cambodia: Open Letter Regarding the Forced Eviction of Residents of Boeung Kak Lake in Phnom Penh Municipality* [sic], HUMAN RIGHTS WATCH, Dec. 4, 2008, <http://www.hrw.org/en/news/2008/12/04/open-letter-regarding-forced-eviction-residents-boeung-kak-lake-phnom-penh-municipali>; see also AMNESTY INT’L, RIGHTS RAZED, *supra* note 4, at 35–38.

15. Chhay Channyda, *Arrest of Protester Prompts More Boeung Kak Residents to Depart*, PHNOM PENH POST, Oct. 17, 2008, <http://www.phnompenhpost.com/index.php/2008101722190/National-news/Arrest-of-protester-prompts-more-lake-residents-to-depart.html>; see also AMNESTY INT’L, RIGHTS RAZED, *supra* note 4, at 39–40.

16. Belhassen et al., *supra* note 14; see also AMNESTY INT’L, RIGHTS RAZED, *supra* note 4, at 42–43.

17. AMNESTY INT’L, RIGHTS RAZED, *supra* note 4, at 43.

18. See, e.g., U.N. Human Rights Council, *Written Statement Submitted by the Asian Legal Resource Centre (ALRC), a Non-governmental Organization in General Consultative Status: Land-grabbing, Corruption and the Absence of the Rule of Law in Cambodia*, ¶¶ 2–5, 8, U.N. Doc. A/HRC/4/NGO/62 (Mar. 7, 2007), available at [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=12721](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=12721) (follow “E” hyperlink next to “A/HRC/4/NGO/62”) [hereinafter Letter from ALRC] (discussing various cases where the combined effect of force and pressure of private companies and government evicted local communities for development projects).

19. Land Law of 2001, art. 16 (Cambodia).

private entities, or grants land concessions to private developers who have ties to the ruling Cambodian People's Party.<sup>20</sup>

#### A. *Cambodian Law on Forced Eviction and Resettlement*

Under the Cambodian Constitution and the 2001 Land Law, Cambodians have the right to own land.<sup>21</sup> Individuals may only be deprived of ownership when removal is in the public interest and only with appropriate and just compensation, as decided by a court with due process of law.<sup>22</sup> Yet, violent, forced evictions that occur without proper consultation or compensation have become the norm in Cambodia, revealing a land rights scheme existing in a "legislative vacuum."<sup>23</sup> Relevant authorities too often ignore legal provisions related to eviction and resettlement in the Constitution and Land Law, and the courts show little interest in enforcing such guarantees.<sup>24</sup>

Forced evictions in Cambodia typically occur when the government grants land concessions to third parties by swapping plots of land that have drastically increased in value, usually occupied by poor communities, in exchange for isolated plots on the outskirts of Phnom Penh.<sup>25</sup> According to the Land Law, all land concessions must be for social or economic purposes<sup>26</sup> and are limited to a maximum duration of ninety-nine years.<sup>27</sup>

20. The Cambodian Government often grants these concessions to private companies where a majority shareholder or member of the board is a prominent government minister or their family relation. *See, e.g.*, Special Representative [Yash Ghai] of the Secretary-General for Human Rights in Cambodia, *Report on Technical Assistance and Capacity-Building*, ¶ 65, U.N. Doc. A/HRC/7/42 (Feb. 29, 2008), available at <http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm> (follow "E" hyperlink next to "A/HRC/7/42") [hereinafter Ghai] (discussing a land concession of five hundred hectares to a private company whose majority shareholder is the Minister of Finance's sister, for which indigenous villagers received compensation for only fifty hectares); *Lake Inferior*, *supra* note 1 (discussing private development companies TNG and Shukaku, linked to Prime Minister Hun Sen and the ruling Cambodian People's Party Senator Lao Meng Khin, respectively, which have been awarded favorable land grants by the Government).

21. CONSTITUTION OF THE KINGDOM OF CAMBODIA art. 44; Land Law of 2001, art. 4 (Cambodia).

22. CONSTITUTION OF THE KINGDOM OF CAMBODIA arts. 51, 44; Land Law of 2001, arts. 4, 5 (Cambodia).

23. U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *Economic, Social and Cultural Rights: Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living: Addendum: Mission to Cambodia*, ¶ 29, U.N. Doc.E/CN.4/2006/41/add.3 (Mar. 21, 2006) (prepared by Miloon Kothari) [hereinafter Kothari].

24. *See id.* (anticipating an increase in force evictions and large scale displacement as a result of ineffective enforcement of existing laws); *see also* Ghai, *supra* note 20, ¶¶ 62, 64 (noting systemic problems in law enforcement and the failure of the Cambodian judiciary to uphold the law).

25. For a discussion of how land swaps are used by the Cambodian government to dispossess local communities of their land, *see* Kothari, *supra* note 23, ¶¶ 30–36.

26. Land Law of 2001, art. 49 (Cambodia).

Despite the requirement that exchanges be in the public interest,<sup>28</sup> the government often leases or sells land to private companies for private gain.<sup>29</sup> The government does not conduct open or transparent bidding processes, and frequently signs contracts with private developers without consulting the affected communities.<sup>30</sup>

According to Cambodian law, families that lose their property to land exchanges have a right to fair and just compensation.<sup>31</sup> In practice, however, private companies have offered rates of compensation far below fair market value that are grossly inadequate.<sup>32</sup> In some cases, threats, intimidation, and outright trickery have been used to coerce families to accept inequitable deals, making it virtually impossible for them to subsequently contest the amount of compensation offered.<sup>33</sup> Land exchanges have in many, if not most, cases led to the relocation of families to areas lacking basic infrastructure, where they are cut off from their jobs or other sources of income to which they have been accustomed.<sup>34</sup>

To meet the public interest requirement for land concessions, the municipal government (e.g., the public prosecutor) and private companies involved in land concessions often premise evictions on vague claims of modernization and development; such plans, however, are not subject to oversight, and instead, private interests appear to be benefitting at the expense of the greater society.<sup>35</sup> In order to discourage and crack down on

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27. Land Law of 2001, art. 61 (Cambodia).

28. CONSTITUTION OF THE KINGDOM OF CAMBODIA art. 44.

29. Kothari, *supra* note 23, ¶ 32; Letter from ALRC, *supra* note 18.

30. Kothari, *supra* note 23, ¶ 44; Press Release, HRTF & CCHR, *supra* note 3.

31. CONSTITUTION OF THE KINGDOM OF CAMBODIA art. 44; Land Law of 2001, art. 5 (Cambodia).

32. *See, e.g.*, Kothari, *supra* note 23, ¶ 33 (“[T]he rates of compensation offered by the private companies have been far under the market price and have been grossly inadequate.”); Letter from ALRC, *supra* note 18, ¶ 4; *Lake Inferior*, *supra* note 1 (discussing the “paltry compensation” obtained by residents of Boeung Kak Lake currently facing eviction).

33. Kothari, *supra* note 23, ¶ 33; Ghai, *supra* note 20, ¶ 65 (discussing how local chiefs extracted the fingerprints of indigenous villagers onto blank papers while they were inebriated and subsequently used them to seal a deal for five hundred hectares of land instead of fifty).

34. *See, e.g.*, *Lake Inferior*, *supra* note 1 (stating that some evictees from Boeung Kak Lake have been relocated to city outskirts without access to amenities or means of livelihood); Ghai, *supra* note 20, ¶ 62 (stating that low-income neighborhoods have “no access to water, electricity and sanitation”).

35. Kothari, *supra* note 23, ¶¶ 25, 32, 41–42; *see also* CENTRE ON HOUSING RIGHTS AND EVICTIONS (“COHRE”), UNTITLED: TENURE INSECURITY AND INEQUALITY IN THE CAMBODIAN LAND SECTOR 11–12, 37–39 (2009), *available at* <http://www.cohre.org/store/attachments/090930%20UNTITLED%20-%20Tenure%20Insecurity%20and%20Inequality%20in%20the%20Cambodian%20Land%20Sector.pdf> [hereinafter UNTITLED]; Letter from ALRC, *supra* note 18, ¶¶ 3–4 (discussing instances where land was marked for development but “secretly sold” to private economic interests, and where 146 families in Phnom Penh were threatened with forced eviction in the name of “beautification and development”).

community resistance to evictions, the government deliberately spreads misinformation, uses military or police force,<sup>36</sup> and files bogus criminal complaints against communities resisting eviction,<sup>37</sup> charging them with unauthorized possession of the land.<sup>38</sup> The Cambodian judiciary fails to check such abuses of law, and the government enjoys impunity, allowing it to silence local criticism of its land development policy.<sup>39</sup>

### *B. Land Title: Five-Year Possession Law in Cambodia*

Cambodian law provides a mechanism through which land possession can ripen into legal ownership. According to the Land Law, any person who enjoys peaceful, unambiguous, and uncontested possession for at least five years can theoretically demonstrate a valid legal claim to his property, thus giving him the right to apply for definitive title of ownership.<sup>40</sup> However, due to poor rights education among Cambodian communities, families who are eligible for legal ownership after five years of possession are often unaware of the procedure for claiming this right.<sup>41</sup> This lack of knowledge is critical, especially for poor families living on land that is subject to a concession.

The issue of title is particularly urgent when urban poor communities are earmarked for development because such areas are often treated as “informal settlements,” a classification which prevents such communities from applying for title without permission from the authorities.<sup>42</sup> Because only title-holders are entitled to receive fair compensation for a public taking,<sup>43</sup> many of the most vulnerable communities in Phnom Penh face eviction without either the prospect of a fair evaluation of their tenure status, or the possibility of receiving compensation.<sup>44</sup>

36. Kothari, *supra* note 23, ¶ 61; *see also* UNTITLED, *supra* note 35, at 21 (discussing the persistent dissemination of incorrect information regarding land title by government officials).

37. *See, e.g.*, Ghai, *supra* note 20, ¶¶ 35–37; Letter from ALRC, *supra* note 18, ¶ 5.

38. Land Law of 2001, art. 247 (Cambodia) (imposing criminal and civil penalties for unauthorized infringement of ownership).

39. Ghai, *supra* note 20, ¶ 58; *see also* Press Release, Bank Information Center, Cambodian Communities Facing Forced Eviction Launch Inspection Panel Complaint Against World Bank (Oct. 1, 2009), *available at* <http://www.bicusa.org/en/Article.11515.aspx> (noting increasing harassment of human rights defenders and political dissidents in Cambodia over the controversial Boeung Kak lake development).

40. Land Law of 2001, art. 30 (Cambodia). The right to *apply* for title, as opposed to the right to title itself, is a semantic shift often taken advantage of by Cambodian authorities. *See infra* note 51 and accompanying text.

41. Kothari, *supra* note 23, ¶ 9; UNTITLED, *supra* note 35, at 43.

42. *See* UNTITLED, *supra* note 35, at 30.

43. Land Law of 2001, art. 5 (Cambodia); *see also* UNTITLED, *supra* note 35, at 30.

44. *See* UNTITLED, *supra* note 35, at 30. Prior to eviction, government authorities distinguish

Even when individuals with five years of legal possession do apply for land title, applications in areas earmarked for development are routinely denied on the dubious basis that legal possession under the Land Law creates only an entitlement to apply for title, but not a right to receive title.<sup>45</sup> Lack of transparency and corruption also infect the titling process; authorities will invoke the fact that an area has been zoned for development as a reason to deny title applications.<sup>46</sup>

Problems with tenure security persist long after families have been resettled. Under Cambodian law,<sup>47</sup> families are eligible for land title to their new plots five years after resettlement, but individuals forcefully evicted from their homes and placed in resettlement sites almost never receive land title.<sup>48</sup> The Community Legal Education Centre (“CLEC”), a prominent Cambodian land rights NGO, cannot cite a single case where an individual received title after five years in a resettlement location.<sup>49</sup>

*1. Documentation: “Family Record Book” and Government-Issued “Receipts”*

The “family record book” and the government-issued “receipt” are two documents that are especially important to families facing forced eviction and resettlement. The family record book is a census mechanism that provides proof of occupancy, which is important to secure compensation from the government following a land concession.<sup>50</sup> The government-issued receipt is also critical for families in resettlement sites.<sup>51</sup>

When the government forcibly evicts people from their land, it determines who is eligible for relocation based on the family record

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residents according to lawful or illegal occupancy, and have misclassified poor families as illegal occupants even if they have lived on their land for over five years. For a case study of one such eviction in Dey Krahorm, Phnom Penh that occurred in January 2009, see *id.* at 66–70.

45. See *id.* at 31; see also Interview with Natalie Bugalski, Legal Officer, Asia and Pacific Programme, Centre on Housing Rights and Evictions (“COHRE”), in Phnom Penh, Cambodia (Oct. 7, 2008).

46. See UNTITLED, *supra* note 35, at 34.

47. Royal Government of Cambodia, Sub Decree on Social Land Concessions Art. 18, No. 19 ANK/BK (Mar. 19, 2003) (“After correctly complying with the criteria of the social land concession program for five (5) years the target land recipient has the right to ownership of the land and may request ownership title according to procedures determined in the instruction of the Minister of MLMUPC.”) (unofficial English translation available at <http://www.gocambodia.com/laws/pdf/ANK-19-03-Social%20Concessions-E.pdf>).

48. Interview with Man Vunthy, Coordinator, Community Legal Education Center (“CLEC”), in Phnom Penh, Cambodia (Oct. 8, 2008); see also UNTITLED, *supra* note 35, at 32–33.

49. Interview with Man Vunthy, *supra* note 48.

50. *Id.*

51. *Id.*

book.<sup>52</sup> Both renters and owners are registered in the family record book.<sup>53</sup> This document is also the strongest piece of evidence that families can use to prove they have possessed their land uncontested for five years and are thus entitled to formal land title under the law.<sup>54</sup>

However, the family record book system is extremely flawed because its information is often outdated. When the government offers relocation as compensation for eviction, it only recognizes the residents listed in the family record book.<sup>55</sup> However, it is common for families to divide their plots of land after receiving a family record book, without properly recording who the new residents are. For example, individuals may assign part of their plots to their grown children who do not appear in the family record book.<sup>56</sup> Others may sell sections of their plots to purchasers, who then live on the property, but who also do not appear in the family record book.<sup>57</sup> When the government forcibly evicts, it only offers compensation to the individuals listed in the family record book for the original plot, even if others occupy sections of the plot.<sup>58</sup> If residents are not recorded in the family record book, regardless of legal possession of land for five years or more, the municipality treats them as renters, and they are not offered compensation.<sup>59</sup>

The most important document for resettled families is a government-issued receipt. The receipt lists the owner's name and specifies the size and location of the new plot of land that the owner is "awarded" in a resettlement site as compensation for forcible eviction.<sup>60</sup> This document confers possessory, as opposed to ownership, rights to the recipients.<sup>61</sup> The receipt provides the documentation required of holders who apply for land title after five years of possession of the plot under the 2001 Land Law.<sup>62</sup>

While it is the duty of local municipalities to issue receipts to families when they are resettled to relocation sites,<sup>63</sup> both corruption and misinformation plague the process. The municipality has withheld receipts

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52. *Id.*

53. Interview with Rachana Bunn, Housing Rights Monitoring Officer, and Ly Neup, Community Empowerment Officer, Housing Rights Task Force ("HRTF"), in Phnom Penh, Cambodia (Oct. 7, 2008).

54. Interview with Man Vunthy, *supra* note 48.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

from the residents forcibly evicted from Dey Krahom who are resettled in Damnak Trayoeng.<sup>64</sup> The Boeung Kak residents resettled in Damnak Trayoeng are likely to meet the same fate.<sup>65</sup> Unbeknownst to the rightful owners, local municipal authorities often issue receipts to multiple families for the same plot of land at the relocation site,<sup>66</sup> further enabling them to give the withheld receipts to their friends and family or to sell receipts for their own profit.<sup>67</sup> Village chiefs sometimes inflate the number of people in the family record book in order to obtain extra receipts that they then sell for profit.<sup>68</sup> Most victims of forced eviction never receive receipts in resettlement sites.<sup>69</sup>

## 2. *Owners' Rights vs. Renters' Rights*

Authorities grant owners and renters different rights during land concessions and forcible evictions. For relocated Boeung Kak residents, the municipality currently offers compensation options only to property owners;<sup>70</sup> it has not offered compensation to renters.<sup>71</sup>

Under international human rights law, renters who are victims of development-based forced evictions have the same rights to adequate housing as owners.<sup>72</sup> Cambodia's constitution gives the force of law to the Universal Declaration of Human Rights, which guarantees the right to adequate housing.<sup>73</sup> The Cambodian government is further obligated to respect, protect, and realize Cambodians' right to adequate housing as a State Party to the International Covenant on Economic, Social and Cultural Rights,<sup>74</sup> the International Convention on the Elimination of All

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64. Interview with Rachana Bunn, *supra* note 53.

65. Interview with Chan Soveth, Land and Human Rights Officer, Cambodian Human Rights and Development Association ("ADHOC"), in Phnom Penh, Cambodia (Oct. 8, 2008).

66. *Id.*

67. *Id.*

68. Interview with Man Vunthy, *supra* note 48.

69. Interview with Chan Soveth, *supra* note 65.

70. Interview with Rachana Bunn, *supra* note 53.

71. *Id.*

72. Interview with Natalie Bugalski, *supra* note 45; United Nations in Cambodia (June 2008), [http://www.un.org.kh/index.php?option=com\\_content&view=article&id=178:un-country-viewpoint-resettlement-and-evictions&catid=44:un-speeches-and-statements&Itemid=77](http://www.un.org.kh/index.php?option=com_content&view=article&id=178:un-country-viewpoint-resettlement-and-evictions&catid=44:un-speeches-and-statements&Itemid=77).

73. CONSTITUTION OF THE KINGDOM OF CAMBODIA art. 31.

74. *See* International Covenant on Economic, Social and Cultural Rights art. 11, § 1, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) ("The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this

Forms of Racial Discrimination,<sup>75</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>76</sup> and the Convention on the Rights of a Child.<sup>77</sup>

Nonetheless, renters do not have many rights under Cambodian law.<sup>78</sup> In the case of forced evictions from the Borei Keila community in Phnom Penh, touted by the government as a model of a successful land concession, the government originally committed to including renters in the resettlement compensation scheme.<sup>79</sup> The official government policy provided Borei Keila residents, who had rented since 1994, the option of relocating to apartments in the buildings to be constructed on the site.<sup>80</sup> Residents who had been renting since 1998 were entitled to relocation to a different site.<sup>81</sup>

Ultimately, the government did not honor its compensation offers to Borei Keila renters. The Leitner Clinic visited an informal resettlement site, Tropenganchang Village, where the government had forcibly relocated forty-two Borei Keila renter-families.<sup>82</sup> The residents reported that, instead of fulfilling its promises, the government had classified them as “illegal settlers” because of their status as renters and not owners.<sup>83</sup> One resident described the forcible evictions from Borei Keila: police and

effect the essential importance of international co-operation based on free consent.”) (emphasis added).

75. International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(iii), Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 14, 1996) (“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . . Economic, social and cultural rights, in particular: . . . The right to housing.”).

76. Convention on the Elimination of All Forms of Discrimination Against Women art. 14, § 2(h), G.A. Res. 180, Annex, U.N. GAOR, 34th Sess., Supp. No. 46, at 194, U.N. Doc. A/34/46 (Dec. 18, 1979) (“States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: . . . To enjoy adequate living conditions, particularly in relation to *housing*, sanitation, electricity and water supply, transport and communications.”) (emphasis added).

77. Convention on the Rights of the Child art. 27, § 3, G.A. Res. 25, Annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (Nov. 20, 1989) (“States Parties, in accordance with national conditions and within their means, shall . . . in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”).

78. Interview with Natalie Bugalski, *supra* note 45.

79. Interview with Rachana Bunn, *supra* note 53.

80. *Id.*

81. *Id.*

82. Interview with Tropenganchang Village Family #1, in Phnom Penh, Cambodia (Oct. 5, 2008).

83. *Id.*

military police arrived at Borei Keila, dismantled their houses, handcuffed the renters, and arrested some of the residents. The officers surrounded the community and forced forty-two families to go to Tropenganchang. When they arrived in Tropenganchang, they were not provided with any shelter or infrastructure. The only thing the government gave each family was a plot of land measuring twelve meters by five meters, the pieces of wood from their deconstructed houses, some tin, and a blue plastic bin for water. The municipal officer gave residents 100,000 riel, equivalent to \$25 USD,<sup>84</sup> for relocation costs.<sup>85</sup>

The government has not offered renters in Boeung Kak any compensation thus far,<sup>86</sup> and most local land rights NGOs predict that renters are unlikely to receive post-eviction compensation.<sup>87</sup> Renters at Boeung Kak have protested against the government and demanded the same offers of compensation that those with soft-title have received,<sup>88</sup> but the arrest of one renter on October 15, 2008, whom the government accused of leading the protests, has halted the demonstration for renters' rights and resulted in an increase of "voluntary" departures of Boeung Kak renters.<sup>89</sup>

## II. FROM BOEUNG KAK TO DAMNAK TRAYOENG

### A. Background

On February 6, 2007, the Municipality of Phnom Penh ("Municipality") signed a ninety-nine-year lease with Shukaku Inc., a private developer, for the use of the site encompassing Boeung Kak Lake and the area surrounding it.<sup>90</sup> The lease gives the private developer management of 133 hectares of land, including ninety percent of the lake.<sup>91</sup> If Shukaku Inc. develops eighty percent of the land, it stands to

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84. All currency conversions in this Article were obtained on Nov. 23, 2009 using <http://www.xe.com/ucc/>.

85. Interview with Tropenganchang Village Family #1, in Phnom Penh, Cambodia (Oct. 5, 2008).

86. Interview with Rachana Bunn, *supra* note 53.

87. *Id.*; Interview with Natalie Bugalski, *supra* note 45; Interview with Man Vunthy, *supra* note 48.

88. Interview with Rachana Bunn, *supra* note 53.

89. Channyda, *supra* note 15.

90. CENTRE ON HOUSING RIGHTS AND EVICTIONS, LEGAL ANALYSIS OF THE BOEUNG KAK LAKE CASE 1 (2008), available at [http://www.cohre.org/store/attachments/COHRE%20BKL%20Legal%20Analysis%20\(December%202009\).pdf](http://www.cohre.org/store/attachments/COHRE%20BKL%20Legal%20Analysis%20(December%202009).pdf) [hereinafter LEGAL ANALYSIS].

91. Press Release, Amnesty Int'l, Cambodia: Lake Filling Must Not Lead to Forced Evictions (Aug. 27, 2008), available at <http://www-secure.amnesty.org/en/for-media/press-releases/cambodia->

make a profit of approximately \$2.12 billion USD.<sup>92</sup> In order to allow a private developer to make such a substantial profit, the Municipality is forcing the residents of Boeung Kak Lake to vacate their homes,<sup>93</sup> and only those who can show proof of ownership have been offered compensation, which remains far below fair market value.<sup>94</sup> The Municipality is offering compensation in the form of three choices: (1) relocation to Damnak Trayoeng, a government-approved resettlement site located twenty kilometers from the city, (2) payment of compensation in the amount of 33,500,000 riel (\$8,500 USD),<sup>95</sup> or (3) access to alternative housing that will be built around the new Boeung Kak lakeshore, estimated to be completed no earlier than 2013.<sup>96</sup> As of December 2008, the Municipality had not offered Boeung Kak renters relocation or compensation.<sup>97</sup>

Amid a heavy police presence, Shukaku Inc. contractors started pumping sand into the lake on August 26, 2008 to prepare for constructing the commercial and residential housing project.<sup>98</sup> The pumping caused homes on and around the lake to flood, making homes uninhabitable and dangerous.<sup>99</sup> Pumping was set to continue for eighteen hours a day,<sup>100</sup> every day, until eighty hectares of the ninety-hectare lake were filled.<sup>101</sup> Boeung Kak residents did not receive advance notice about the pumping

lake-filling-must-not-lead-forced-evictions-20080827.

92. *Boeung Kak Facts and Figures*, SAVE BOEUNG KAK CAMPAIGN (Phnom Penh, Cambodia), Sept. 2008, at 1 (on file with author).

93. Natalie Bugalski, *Housing Rights Litigation in Cambodia. The Boeung Kak Lake Case*, HOUSING & ESC RIGHTS L.Q., Dec. 2008, at 1, 1–4 [hereinafter Bugalski, *Housing Rights*], available at <http://www.cohre.org/store/attachments/081231%20COHRE%20Quarterly%20Vol%205%20No%204.pdf>.

94. Interview with Rachana Bunn, *supra* note 53.

95. Currency converted on Dec. 2, 2009 using <http://www.xe.com/ucc/>.

96. Interview with Damnak Trayoeng Family #1 in Phnom Penh, Cambodia (Oct. 5, 2008); interview with Rachana Bunn, *supra* note 53.

97. Interview with Natalie Bugalski, *supra* note 45.

98. Andrew Nette, *Rights-Cambodia: Mass Evictions May Follow Lake Grab*, IPS NEWS, Aug. 29, 2008, available at <http://ipsnews.net/news.asp?idnews=43720>.

99. Open Letter by International Federation for Human Rights (FIDH), the Centre on Housing Rights and Evictions (COHRE), Human Rights Watch and Amnesty International Regarding the Forced Eviction of Residents of Boeung Kak Lake in the Phnom Penh Municipality to Mr. Kep Chuktema, Governor of the Municipality of Phnom Penh (Dec. 4, 2008), <http://www.cohre.org/store/attachments/FIDH%20COHRE%20AI%20HRW%20letter%20regarding%20BK%20lake%20C%20Cambodia%20%28final%29.pdf> (“Residents have sought to halt the filling of the lake which is gradually destroying homes.”).

100. Press Release, Housing Rights Task Force, Housing Rights Groups Condemn Illegal Filling of Boeung Kok (Aug. 26, 2008), available at <http://saveboeungkak.wordpress.com/2008/08/26/press-release-housing-rights-groups-01/>.

101. Bugalski, *Housing Rights*, *supra* note 93, at 1.

and have received few details about what will happen to the displaced residents.<sup>102</sup> According to a statement released by the HRTF:

“This contract, which threatens to displace at least 4,252 families, was negotiated in a shroud of secrecy without even the pretense of participation from the tens of thousands of people who will be directly affected . . . . If these families are forcibly removed from their homes, following recent precedents by the Municipality and the poor track record of Shukaku’s director Lao Meng Khin, this would mark the largest single displacement of people in Cambodia since the privatization of land in 1989.”<sup>103</sup>

“Boeung Kak Lake has historically been one of the most important of seven natural lakes around Phnom Penh, dating back to the early 1900s.”<sup>104</sup> The government contract with Shukaku Inc. ultimately risks destroying the public function of the lake—both as a place of recreation and enjoyment for Phnom Penh’s residents and as a natural reservoir for excess water during the monsoon season<sup>105</sup>—in violation of the Cambodian Land Law.<sup>106</sup> Despite objections to the lease, “officials at the Municipality have been told by [a] higher authority that any impediments to Shukaku’s development project should not and will not be tolerated.”<sup>107</sup> By mid-November 2008, “hundreds of houses around Boueng Kak Lake have been dismantled and the residents moved on” to resettlement sites.<sup>108</sup>

Despite failures in the court system, the Center on Housing Rights and Evictions (“COHRE”) is collaborating with an attorney to pursue a court case on behalf of the Boeung Kak residents.<sup>109</sup> Even though both parties believe litigation is unlikely to prove successful, they argue that it is their duty to challenge the court system in an attempt to show the judiciary that the residents and legal community in Cambodia will fight to protect their rights.<sup>110</sup> On September 22, 2008, the Phnom Penh Municipal Court refused an application submitted by residents of the Boeung Kak

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102. Nette, *supra* note 98.

103. Press Release, HRTF & CCHR, *supra* note 3 (quoting the HRTF).

104. Press Release, Housing Rights Task Force, *supra* note 101.

105. Bugalski, *Housing Rights*, *supra* note 93, at 3.

106. Press Release, HRTF & CCHR, *supra* note 3; Bugalski, *Housing Rights*, *supra* note 93, at 2, 2 n.2 (citing Article 16 Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities, No. 129 ANKr. BK 27/11/06).

107. Bugalski, *Housing Rights*, *supra* note 93, at 4.

108. *Id.* at 1, 4.

109. Interview with Natalie Bugalski, *supra* note 45.

110. *Id.*

community for an injunction to stop pumping sand into the lake.<sup>111</sup> The attorney working with COHRE, on behalf of the residents of Boeung Kak, appealed the decision to deny the injunction,<sup>112</sup> but the Court of Appeal dismissed the complaint on December 25, 2008.<sup>113</sup>

The lease contract itself appears to violate various areas of Cambodian law. According to article 15 of the 2001 Land Law, bodies of water are considered to be state public property.<sup>114</sup> Likewise, article 58 of the Constitution classifies lakes as state public property.<sup>115</sup> Articles 16 and 18 of Sub-Decree 129 ANK/Boeung Kak state that the lease of state public property must not exceed fifteen years and must not damage the property or change its function in providing a public service.<sup>116</sup> The contract for the concession of Boeung Kak Lake to Shukaku Inc. violates this provision since the contract is for a term of ninety-nine years, eighty-four years longer than the law permits. Article 4 of the Sub-Decree on State Land Management No. 188 HNK/Boeung Kak also protects property with a “natural origin,”—such as natural lakes—as public state property, since such property has a public interest use.<sup>117</sup> The property around the lake, including parks and public schools, are similarly protected as forms of state public property.<sup>118</sup> In an attempt to circumvent these laws, the Municipality released Sub-Decree No. 108, which purported to transfer Boeung Kak Lake and the surrounding area from state public property to state private property.<sup>119</sup>

According to local housing rights groups, Shukaku Inc. manipulated the environmental impact assessment (“EIA”), which is required under Cambodian law,<sup>120</sup> in order to justify construction.<sup>121</sup> The Shukaku Inc. EIA highlights some of the challenges arising from the project, but

111. Chhorn Chansy, *Court Refuses to Issue Injunction in Lake Filling*, CAMBODIA DAILY, Sept. 23, 2008.

112. Interview with Natalie Bugalski, *supra* note 45.

113. Ros Dina, *Rage and Despair of Boeung Kak Residents After Their Complaint Is Dismissed by the Court of Appeal*, KA-SET, Dec. 25, 2008, <http://cambodia.ka-set.info/hot-news/news-boeung-kak-anger-rage-residents-court-decision-complaint-shukaku-municipality-lawyer-081225.html>.

114. Land Law of 2001, art. 15 (Cambodia).

115. CONSTITUTION OF THE KINGDOM OF CAMBODIA art. 58.

116. Press Release, Housing Rights Task Force, *supra* note 101.

117. LEGAL ANALYSIS, *supra* note 90, at 4.

118. *Id.*

119. *Id.* at 6.

120. See Law on Environmental Protection and Natural Resource Management of 1996 (Cambodia), available at <http://wepa-db.net/policies/law/cambodia/01.htm>; Law on Investment of 1994 (Cambodia).

121. Sebastian Strangio & Khouth Sophak Chakrya, *Lake Development Based on Biased Impact Study: NGOs*, PHNOM PENH POST, Nov. 21, 2008, available at <http://www.phnompenhpost.com/index.php/2008112122807/National-news/lake-development-based-on-biased-impact-study-ngos.html>.

provides broad justification for the decision to fill the lake with sand, a process that has come under fire from urban architects who believe it will likely increase flooding in the city.<sup>122</sup> Shukaku's study claims that filling the lake "will not cause any negative effect" since the body of water "does not play a role as a natural lake [or] bio-fishery."<sup>123</sup> In actuality, if the lake is filled in its entirety, it could spell disaster for all of Phnom Penh, which has already experienced increased flooding during the rainy season due to the filling of other city lakes.<sup>124</sup> Municipal officials continue to deny that the filling of the lake is correlated with recent flooding.<sup>125</sup>

One of the most contested segments of the impact study indicates that the company "will conduct public consultations in 2008" and that "project information and [the EIA] report will be posted on and accessible from the website."<sup>126</sup> Yet, without proper public consultation,<sup>127</sup> the Municipality has nevertheless approved the construction project.<sup>128</sup>

#### *B. Pre-eviction Challenges Faced by Boeung Kak Residents*

Boeung Kak residents face two main problems: (1) the government's lack of transparency about the impending forcible eviction, and (2) the government's use of threats and harassment against anyone who protests the pending eviction. First, the government has consistently failed to consult the residents of Boeung Kak in the decision-making process, and even concealed information from the residents about the transfer of the lake to Shukaku Inc.<sup>129</sup> A shroud of secrecy and intentional lack of transparency have marked the project from the beginning. The Leitner Clinic's interviews of Boeung Kak residents reveal that not only are residents unaware of their rights, but most have not been told when they will be evicted or of their options for resettlement.<sup>130</sup> Most people are forced to rely on rumors and word of mouth, which only contribute to the

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122. *Id.*

123. *Id.*

124. *Development Blamed For Floods*, PHNOM PENH POST, Oct. 14, 2008, <http://www.phnompenhpost.com/index.php/2008101422115/National-news/Development-blamed-for-floods.html>.

125. *Id.*

126. Strangio & Chakrya, *supra* note 121.

127. LEGAL ANALYSIS, *supra* note 90, at 13.

128. Strangio & Chakrya, *supra* note 121.

129. Nguon Suvon & Sebastian Strangio, *Last Sunset on Boeung Kak Lake as Developers Move In*, PHNOM PENH POST, Aug. 13, 2008, available at <http://www.phnompenhpost.com/index.php/2008081321183/National-news/last-sunset-on-boeung-kak-lake-as-developers-move-in.html>.

130. Interviews with Boeung Kak Lake Families #1, #2, #8, in Phnom Penh, Cambodia (Oct. 6, 2008).

spread of misinformation.<sup>131</sup> Even more importantly, there are many long-term residents who have not applied for land title under the 2001 Land Law, despite being entitled to do so.<sup>132</sup>

The government has shown a lack of transparency and has taken affirmative steps to shut down opposition to the development. In an open letter addressed to the governor of the Municipality, a coalition of human rights and land rights NGOs described how threats and harassment have plagued the eviction process:

Government officials and company workers have threatened residents in and around Boeung Kak Lake and NGOs supporting them, when they have campaigned against the filling of the lake and imminent eviction. Heavily armed police, including military police, frequently harass community leaders and NGO workers and block access to the area. . . . Journalists face intimidation when reporting about the developments . . . .<sup>133</sup>

Police recently arrested a man from Village 4 in the Boeung Kak Lake community on fabricated charges of inciting people to protest.<sup>134</sup> This is not uncommon. When communities resist evictions, they are often arrested for the “destruction of property” or “infringement of property,” which means that not only are they unable to pursue their rights, but other community members are intimidated into giving up their rights and demands as well.

The result of these two problems—the lack of information and government threats and harassment—is that many residents are left in the dark about when evictions will take place, what will happen after they are forcibly evicted, and whether they have any right to compensation. Due to government crackdowns on freedom of expression and association, it is difficult for community activists to disseminate information and organize protests and meetings in Boeung Kak.<sup>135</sup> Thus far, the most vulnerable residents—those whose homes flooded first—have been forced to either accept compensation far below market value or take one of the shelters at Damnak Trayoeng, which is far from the markets, schools, hospitals, and jobs in the city center.<sup>136</sup>

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131. Interviews with Boeung Kak Lake Families #1, #8, in Phnom Penh, Cambodia (Oct. 6, 2008).

132. Suvon & Strangio, *supra* note 129.

133. Belhassen et al., *supra* note 14.

134. Channyda, *supra* note 15.

135. Interview with Rachana Bunn, *supra* note 53.

136. Interviews with Damnak Trayoeng Families #1, #2, #4, in Phnom Penh, Cambodia (Oct. 5,

C. *Post-eviction Challenges Faced by Boeung Kak Residents in Damnak Trayoeng*

1. *Income*

One of the primary concerns facing people in resettlement camps is the possible loss of their sources of income. Many have built their livelihoods on a particular trade facilitated by the location of their previously “owned” land in Phnom Penh.<sup>137</sup> Whereas Boeung Kak Lake is centrally located in Phnom Penh, close to markets, with lots of foot traffic and thousands of businesses and restaurants, Damnak Trayoeng, where many Boeung Kak Lake residents are being resettled, is twenty kilometers from the city center and far removed from commercial enterprise. Residents of the relocation site say they cannot afford to travel the distance to find work in the city, as it takes an hour round trip to Phnom Penh.<sup>138</sup>

The location of the Damnak Trayoeng resettlement site has negatively impacted the household incomes of former Boeung Kak residents who have relocated there. For example, one woman who had recently relocated to Damnak Trayoeng said that previously in Boeung Kak, her husband worked for the government security service earning seventy U.S. dollars a month, but now, he is unemployed as a result of the resettlement.<sup>139</sup>

Those who attempt to commute back into the city for work face increased travel time and elevated transportation costs.<sup>140</sup> Many of the women interviewed in Damnak Trayoeng have husbands who were moto-taxi drivers in Phnom Penh and are now attempting to work as moto-taxi drivers again after relocating to Damnak Trayoeng.<sup>141</sup> However, they explained, their husbands can no longer earn a livable wage because of the cost of gasoline spent traveling back into the city to find customers.<sup>142</sup> One woman said that her husband earns just enough to pay for gasoline.<sup>143</sup> With such high costs of transportation, many men are forced to find new jobs. However, as one woman explained, her husband has no other options

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2008).

137. Interviews with Damnak Trayoeng Families #1, #2, #3, in Phnom Penh, Cambodia (Oct. 5, 2008).

138. AMNESTY INT’L, RIGHTS RAZED, *supra* note 4.

139. Interview with Damnak Trayoeng Family #3, in Phnom Penh, Cambodia (Oct. 5, 2008).

140. Interviews with Damnak Trayoeng Families #1, #2, #3, in Phnom Penh, Cambodia (Oct. 5, 2008).

141. Interview with Damnak Trayoeng Family #1, *supra* note 96.

142. *Id.*

143. Interview with Damnak Trayoeng Family #2, in Phnom Penh, Cambodia (Oct. 5, 2008).

for work.<sup>144</sup> The woman worried about her husband's safety on the road at night since he now works much later than he once did.<sup>145</sup> In Boeung Kak, a moto-taxi driver could earn more money than in Damnak Trayoeng, and Boeung Kak had better road safety.<sup>146</sup> Facing reduced incomes, residents have attempted to start side businesses or find some ways to subsidize their dwindling household incomes. One woman started an "icee" stand as a side business.<sup>147</sup> She said that her family would rather have stayed in Boeung Kak, where it was easier to earn a higher income and there was better job security.<sup>148</sup>

Some people who resettled in Damnak Trayoeng changed jobs altogether. One man was forced to quit his job at the train station in Phnom Penh where he earned fifteen U.S. dollars per month, because he was unable to travel into the city and arrive by the 7 A.M. start time.<sup>149</sup> Another woman described how she once worked for a garment factory close to Boeung Kak before the eviction, but now lives too far away from the factory to continue to work there.<sup>150</sup> She now sells sugarcane juice out of her home but earns far less than she did at the factory because there are few customers in the remote Damnak Trayoeng location.<sup>151</sup> Furthermore, skilled workers cannot find employment. For example, one man said that he was a mechanic in Boeung Kak, but in Damnak Trayoeng he cannot find work and is now unemployed.<sup>152</sup>

The lack of job opportunities in Damnak Trayoeng directly contradicts many of the Boeung Kak Lake residents' expectations for resettlement. Boeung Kak Lake interviewees, who have yet to be evicted, assume they can continue their same lines of work after the resettlement, or find new job opportunities at the resettlement site. For example, one interviewee said that she does not know very much about the resettlement process and what life is like in Damnak Trayoeng, but she knows that if she moved to the resettlement site, she would sell groceries at the front of her house to earn money.<sup>153</sup> She also believed that she would be able to save money on

144. *Id.*

145. *Id.*

146. Interviews with Damnak Trayoeng Families #1, #2, #3, in Phnom Penh, Cambodia (Oct. 5, 2008).

147. Interview with Damnak Trayoeng Family #1, *supra* note 96.

148. *Id.*

149. *Id.*

150. Interview with Damnak Trayoeng Family #7, in Phnom Penh, Cambodia (Oct. 5, 2008).

151. *Id.*

152. Interview with Damnak Trayoeng Family #9, in Phnom Penh, Cambodia (Oct. 5, 2008).

153. Interview with Boeung Kak Lake Family #3, in Phnom Penh, Cambodia (Oct. 7, 2008).

transportation and stay at home with her children.<sup>154</sup> In actuality, the opposite is true: people spend far more of their incomes on transportation in Damnak Trayoeng and, in most cases, make less money because there are fewer markets for the provision of goods and services. People the Leitner Clinic interviewed in Boeung Kak were unaware that their household incomes would likely decrease if they relocated to a resettlement site.<sup>155</sup>

## 2. Education

Those facing resettlement are often concerned about access to adequate educational opportunities for their children. Boeung Kak families fear that forced eviction and resettlement will result in loss of access to supplemental education programs.<sup>156</sup> Multiple families reported that they were unable to afford state public school tuition and stressed that without the supplemental education programs offered in Boeung Kak, their children would not be able to attend school at all.<sup>157</sup> As one Boeung Kak resident described, she has difficulty paying for public school for her children, and sometimes, she simply does not have enough money for them to purchase the handout materials and photocopies supplied by their teacher.<sup>158</sup> Given the reduction in household income reported by resettled families in Damnak Trayoeng,<sup>159</sup> Boeung Kak families' ability to pay state public school fees will only be further constrained after resettlement.

Although there is a primary school in Damnak Trayoeng, parents reported that the class sizes were larger, and in at least one case, there were twice as many students than the number in classes in the Boeung Kak community.<sup>160</sup> More importantly, there is no secondary school in Damnak Trayoeng.<sup>161</sup> One mother worried about her children's access to secondary school education because the nearest secondary school is located far from the resettlement site.<sup>162</sup>

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154. *Id.*

155. Interviews with Boeung Kak Lake Families #2, #3, #6, in Phnom Penh, Cambodia (Oct. 7, 2008).

156. Interview with Boeung Kak Lake Family #6, in Phnom Penh, Cambodia (Oct. 7, 2008).

157. Interview with Boeung Kak Lake Family #3, *supra* note 153; Interview with Boeung Kak Lake Family #4, in Phnom Penh, Cambodia (Oct. 7, 2008).

158. Interview with Boeung Kak Lake Family #4, *supra* note 157.

159. Interviews with Damnak Trayoeng Families #1, #2, #3, in Phnom Penh, Cambodia (Oct. 5, 2008).

160. Interview with Damnak Trayoeng Family #2, *supra* note 143.

161. Interview with Damnak Trayoeng Family #7, *supra* note 150.

162. Interview with Damnak Trayoeng Family #8, in Phnom Penh, Cambodia (Oct. 5, 2008).

### 3. Health Care

Although it is the government's official responsibility to provide basic medical services to the Cambodian people,<sup>163</sup> human rights NGOs have stepped in to assume this responsibility.<sup>164</sup> Civil society groups such as Caritas Cambodia, Center of Hope, and Friends International, have filled this gap by acting as healthcare service providers.<sup>165</sup> As a result, those living in or around the city have access to medical services for free or for fees that are heavily subsidized.<sup>166</sup> In general, residents register with an NGO in order to receive medical services provided by that organization and an affiliated hospital.<sup>167</sup> Residents of the Boeung Kak community also reported that they have access to a number of hospitals that are close by, including Sihanouk Hospital, Chey Chunnak Hospital, Kanta Bopha Hospital, or Calmette Hospital.<sup>168</sup> Access to a wide variety of affordable medical treatment is one of the benefits of living in close proximity to the city. In direct contrast, the lack of such facilities near resettlement camps proves to be one of the biggest challenges for those who now live at the camps.

Resettled communities are often located in remote areas far from the city, and thus far from hospitals or health centers.<sup>169</sup> One woman who had recently been resettled to Damnak Trayoeng stated that she was unaware of a clinic, hospital, or any other form of free treatment center available to the residents of Damnak Trayoeng.<sup>170</sup> She went on to state that if one were to get sick in Damnak Trayoeng, they would have to go to Pochentong Hospital, which is located next to the airport, about twenty-five to thirty

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163. CONSTITUTION OF THE KINGDOM OF CAMBODIA art. 72 (“The health of the people shall be guaranteed. The State shall give full consideration to disease prevention and medical treatment. Poor citizens shall receive free medical consultation in public hospitals, infirmaries and maternities.”).

164. Interview with Chhavelith Vathdana, Center of Hope, in Phnom Penh, Cambodia (Oct. 8, 2008).

165. *Id.*

166. Interview with Boeung Kak Lake Family #1, in Phnom Penh, Cambodia (Oct. 7, 2008); Interview with Chhavelith Vathdana, *supra* note 164; Interview with An Dong Family #4, in Phnom Penh, Cambodia (Oct. 9, 2008).

167. Interviews with Damnak Trayoeng Families #1 and #3, in Phnom Penh, Cambodia (Oct. 5, 2008).

168. Interview with Damnak Trayoeng Family #3, in Phnom Penh, Cambodia (Oct. 5, 2008); Interview with Boeung Kak Lake Family #3, *supra* note 153; Interview with Boeung Kak Lake Family #1, in Phnom Penh, Cambodia (Oct. 6, 2008); Interview with Boeung Kak Lake Family #6, in Phnom Penh, Cambodia (Oct. 6, 2008).

169. Interviews with Damnak Trayoeng Families #1, #3, #7, and #9 in Phnom Penh, Cambodia (Oct. 5, 2008).

170. Interview with Damnak Trayoeng Family #1, *supra* note 96.

minutes away from the resettlement site.<sup>171</sup> Many of the residents interviewed at Damnak Trayoeng described the disparity between the availability of health care in Boeung Kak and the lack thereof in Damnak Trayoeng.<sup>172</sup>

Without healthcare and basic sanitation systems, diseases and infections only spread and multiply. This has been the case in other resettlement sites, where the lack of basic amenities has caused an increase in diarrhea, skin infections, malnutrition, and respiratory infections.<sup>173</sup> The government's failure to provide basic health care and the lack of resources of NGOs to provide stop-gap measures leave people living in resettlement camps with no viable medical care options.

#### 4. Infrastructure

The 7NG corporation originally purchased the land where Damnak Trayoeng sits as an investment to build middle-class residential housing.<sup>174</sup> This economic scheme failed to attract buyers.<sup>175</sup> Given the Damnak Trayoeng resettlement site's origins as a private economic development venture, it is no surprise that land rights NGOs have described its physical infrastructure as an improvement over other resettlement sites.<sup>176</sup> Unlike many resettlement camps, the units in Damnak Trayoeng are made of concrete, measuring four meters wide by ten meters long, and are generally of better construction than the houses in the Boeung Kak Lake community,<sup>177</sup> particularly as many of the homes in Boeung Kak flooded during the rainy season, and families feared children could easily drown.<sup>178</sup> One Damnak Trayoeng resident who previously lived in a floating house on Boeung Kak Lake reported having been afraid that her wooden Boeung Kak house would catch on fire in the night. She stated that her living conditions in Damnak Trayoeng are much better, and that she is happy to see the green of the farm and to finally sleep well.<sup>179</sup>

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171. *Id.*

172. *Id.*; Interview with Damnak Trayoeng Family #7, *supra* note 150; Interview with Damnak Trayoeng Family #9, *supra* note 152.

173. See AMNESTY INT'L, RIGHTS RAZED, *supra* note 4, at 29.

174. Interview with Damnak Trayoeng Family #7, *supra* note 150; Interview with Meas Kim Seng, *supra* note 10.

175. Interview with Meas Kim Seng, *supra* note 10.

176. *Id.*

177. Interview with Damnak Trayoeng Family #1, *supra* note 96.

178. Interviews with Damnak Trayoeng Families #8, #9, #10 in Phnom Penh, Cambodia (Oct. 5, 2008).

179. Interview with Damnak Trayoeng Family #4, in Phnom Penh, Cambodia (Oct. 5, 2008).

Although some families no longer worry about issues such as flooding, these benefits are outweighed by other hardships such as the loss of income.<sup>180</sup>

Despite Damnak Trayoeng's decent physical infrastructure, there are two major problems: lack of a hygienic water system and lack of a systematic method for sanitation. In Boeung Kak, most residents that were interviewed reported having access to both water and electricity.<sup>181</sup> In Damnak Trayoeng, while residents have access to electricity in their flats, they must pump their own water from a well located next to the main road, far from their flats.<sup>182</sup> Most, if not all, of the residents interviewed at Damnak Trayoeng said that the lack of easily-accessible water is one of their biggest problems.<sup>183</sup> In addition, the Leitner Clinic observed that there is no sanitation system, and people dump their garbage and waste wherever it is convenient. With dozens of new families moving into Damnak Trayoeng every day, the situation will only worsen.

### 5. Land Title

The government has used false promises of land title in Damnak Trayoeng to incentivize resettlement.<sup>184</sup> While many Boeung Kak residents should be entitled to apply for land title under the five-year possession law, most do not have the information or resources to enforce their rights. The government has played on the insecurity of land title in Boeung Kak Lake and has falsely promised residents they will receive title in Damnak Trayoeng. One Damnak Trayoeng resident reported that after attending a meeting at the municipal office, her husband told her that the Governor specifically promised that he would give them title to the new land if they resettled to Damnak Trayoeng. The municipal officer told her husband that the government would solve the problem of selling their land in Boeung Kak below fair market value by giving them actual title to the new housing in Damnak Trayoeng. She is currently under the impression that her family will be provided with full title to their new flat in Damnak

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180. Interview with Damnak Trayoeng Family #7, *supra* note 150.

181. Interviews with Boeung Kak Lake Families #1, #2, #3, #5, #6, #7, #8, #9 in Phnom Penh, Cambodia (Oct. 6, 2008).

182. *E.g.*, Interview with Damnak Trayoeng Family #2, *supra* note 143; Interview with Damnak Trayoeng Family #1, *supra* note 96.

183. *E.g.*, Interview with Damnak Trayoeng Family #2, *supra* note 143; Interview with Damnak Trayoeng Family #7, *supra* note 150; Interview with Damnak Trayoeng Family #9, *supra* note 152.

184. Interviews with Damnak Trayoeng Families #1, #2, #3 in Phnom Penh, Cambodia (Oct. 5, 2008).

Trayoeng, though 7NG has not provided the title letter yet. Her neighbor told her that 7NG is waiting until two hundred families relocate to Damnak Trayoeng before giving anyone a title letter.<sup>185</sup>

Other Damnak Trayoeng residents also stated that they had been told or had heard rumors that they would receive land title at some point in the future.<sup>186</sup> However, as has been the case at every stage of the forcible evictions, the government misinforms residents to its advantage. Some residents are under the mistaken impression that they already have title, even though a leading human rights group asserts that no families in Damnak Trayoeng have received formal title.<sup>187</sup> In fact, the Human Rights Task Force and other land rights organizations do not expect that families resettled in Damnak Trayoeng will ever receive title.<sup>188</sup>

#### 6. *Lack of Information*

Some of the families the Leitner Clinic interviewed in Boeung Kak reported knowing very little about the forced eviction and resettlement process due to lack of direct information from the government.<sup>189</sup> One interviewee echoed what most others felt. She was not sure where her family would be moved.<sup>190</sup> She has never heard about any policy pertaining to renters or the options available to residents evicted from Boeung Kak.<sup>191</sup> Nor has she received any information from the owner from whom she is renting.<sup>192</sup> Another Boeung Kak resident admitted to feeling hopeless.<sup>193</sup> Similarly, those living in Damnak Trayoeng felt that they had not been presented with full disclosure of information and were given no real options other than resettlement.<sup>194</sup>

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185. Interview with Damnak Trayoeng Family #2, *supra* note 143.

186. Interviews with Damnak Trayoeng Families #1, #3, in Phnom Penh, Cambodia (Oct. 5, 2008).

187. Interview with Damnak Trayoeng Family #7, *supra* note 151; Interview with Rachana Bunn, *supra* note 53.

188. Interview with Rachana Bunn, *supra* note 53.

189. Interviews with Boeung Kak Lake Family #1, #2, #3, #8, in Phnom Penh, Cambodia (Oct. 6, 2008).

190. Interview with Boeung Kak Lake Family #3, in Phnom Penh, Cambodia (Oct. 6, 2008).

191. *Id.*

192. *Id.*

193. Interview with Boeung Kak Lake Family #8, in Phnom Penh, Cambodia (Oct. 6, 2008).

194. Interview with Damnak Trayoeng Family #7, *supra* note 150.

### III. THE EFFECTS OF RESETTLEMENT ON HIV-AFFECTED FAMILIES: BOREI KEILA AND AN DONG

#### A. Background

This part analyzes the effects of forced eviction and resettlement on families affected by HIV/AIDS. The analysis draws upon the interviews the Leitner Clinic conducted with HIV-affected families at the Borei Keila Green Shelters in Phnom Penh and at the An Dong resettlement site.

While the prevalence of HIV/AIDS in Cambodia is declining,<sup>195</sup> the problem is still endemic. A survey from 2006 estimates the number of people living with HIV/AIDS (“PLWHA”) in Cambodia to be 67,000 (including 35,000 in women and 32,000 in men).<sup>196</sup> A recent Red Cross report cautions that although “Cambodia has made significant progress in reversing the growth in HIV prevalence, the danger of rapid resurgence remains if risk behaviors increase, especially in light of the generalized nature of the epidemic.”<sup>197</sup> PLWHA are among the most vulnerable groups in Cambodian society. PLWHA often do not have adequate access to health care and are frequently abandoned by their families, evicted from their homes, or fired from their jobs once their HIV status is revealed.<sup>198</sup> The impact of forced eviction and resettlement on HIV-affected families in Cambodia has received scant attention.<sup>199</sup>

Cambodian law prohibits discrimination against those persons “suspected or known to be infected with or affected by HIV/AIDS.”<sup>200</sup> The Law on the Prevention and Control of HIV/AIDS forbids quarantining or

195. HIV prevalence refers to the number of people living with HIV in Cambodia. CAMBODIAN RED CROSS NATIONAL SOCIETY HEALTH DEPARTMENT, HIV/AIDS PROGRAMME 2008–2010, at 3 (2008), available at <http://www.ifrc.org/docs/appeals/09/CRC-GAHIV-March09.pdf> [hereinafter HIV/AIDS PROGRAMME]; NATIONAL AIDS AUTHORITY [NAA] OF CAMBODIA, UNGASS [U.N. GENERAL ASSEMBLY SPECIAL SESSION ON HIV/AIDS] COUNTRY PROGRESS REPORT: CAMBODIA 2 (2008) [hereinafter UNGASS REPORT].

196. UNGASS REPORT, *supra* note 195, at 2.

197. HIV/AIDS PROGRAMME, *supra* note 195, at 3 (2008).

198. ASIAN DEVELOPMENT BANK, CAMBODIA: ENABLING A SOCIOECONOMIC RENAISSANCE 21 (2000), available at [http://www.adb.org/Documents/COSSs/CAM/COSS\\_cam\\_2000.pdf](http://www.adb.org/Documents/COSSs/CAM/COSS_cam_2000.pdf); U.N. WORLD FOOD PROGRAMME, THE FIRST LINE OF DEFENCE: WHY FOOD AND NUTRITION MATTER IN THE FIGHT AGAINST HIV/AIDS 6 (2003), available at <http://www.wfp.org/sites/default/files/First%20Line%20of%20Defense%20English.pdf>.

199. Medecins Sans Frontieres (“MSF”) conducted a quick site assessment for the housing conditions at Tuol Sambo. See Medecins Sans Frontieres—France (“MSF-F”), Tuol Sambo: Quick Site Assessment Facts (2008) (on file with author). Caritas Cambodia has an informal PowerPoint presentation on the families living in the Green Shelter. Caritas Cambodia, A Quick Assessment on Community Needs of 52 HIV/AIDS Families of Borei Key La (on file with author).

200. Law on the Prevention and Control of HIV/AIDS, art. 2 (Cambodia).

isolating individuals or family members on the basis of perceived or suspected HIV/AIDS status.<sup>201</sup> Despite the guarantees of non-discrimination against PLWHA codified in Cambodian law and sub-decrees,<sup>202</sup> the Municipality of Phnom Penh's treatment of PLWHA in the resettlement context demonstrates blatant discrimination. The HIV-affected families at the Borei Keila Green Shelters are set apart from the rest of the community and are uncertain of whether and when the government will relocate them to a village designated for HIV-affected families at Tuol Sambo, located far from central Phnom Penh.<sup>203</sup> According to Manfred Hornung at LICADHO, one of Cambodia's leading human rights organizations, the government's proposed policy of segregating PLWHA into "AIDS villages" at Tuol Sambo is motivated by a lack of foresight and a blithe unawareness of the stigma that would be attached to such villages.<sup>204</sup>

The Borei Keila Green Shelters located in central Phnom Penh are proverbial halfway houses between forced eviction and resettlement. The families moved to the Green Shelters, which are hastily constructed, temporary tin flats, after private companies began redeveloping the site following purported government attempts to use the site for the Ministries of Education and Tourism.<sup>205</sup> There are approximately fifty-two families living in tight confines on a small plot of land at the Green Shelters.<sup>206</sup> Although the Green Shelters lack consistent running water and electricity and adequate infrastructure,<sup>207</sup> the HIV-affected families the Leitner Clinic interviewed were pleased that they had not yet been permanently resettled to Tuol Sambo.<sup>208</sup> In large part, this is because they are still in central Phnom Penh, close to their means of livelihood and healthcare.<sup>209</sup>

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201. *Id.* art. 38.

202. Under the law, no Cambodian may be discriminated against based upon on their HIV status, and persons with HIV/AIDS shall enjoy freedom of abode. Law on the Prevention and Control of HIV/AIDS, art. 2, 38 (Cambodia).

203. Anne-Laure Porée, *Too Poor to Care for the Dead*, PHNOM PENH POST, Oct. 2, 2002, <http://www.phnompenhpost.com/index.php/2008100221927/National-news/Too-poor-to-care-for-the-dead.html>.

204. Interview with Manfred Hornung, Monitoring Consultant, LICADHO [Cambodian League for the Promotion & Def. of Human Rights], in Phnom Penh, Cambodia (Oct. 7, 2008).

205. Interview with Karona Ean and Maia Diokno, OHCHR [Office of the U.N. High Comm'r for Human Rights] Cambodia, during site visit to Borei Keila Green Shelters in Phnom Penh, Cambodia (Oct. 8, 2008).

206. The tin of the flats becomes extremely hot during the day and small openings in the tin ceilings are the only form of ventilation. Interview with Karona Ean and Maia Diokno, *supra* note 205.

207. *Id.*

208. Interviews with Borei Keila Green Shelter Families #1, #4, #5, in Phnom Penh, Cambodia (Oct. 8, 2008).

209. Interviews with Borei Keila Green Shelter Families #1, #3, #4, #5, #6, in Phnom Penh,

Nonetheless, because they have been dispossessed of their homes and their prospects of permanent resettlement remain unclear, the families remain in a tenuous position.

An Dong, one of Cambodia's most notorious resettlement sites, also has a significant population of PLWHA, most of whom were renters living in informal settlements in Phnom Penh prior to their forced eviction.<sup>210</sup> The conditions at the An Dong resettlement site have been the subject of much criticism from local and international human rights NGOs.<sup>211</sup> The conditions at An Dong are generally regarded as the worst of all the resettlement sites.<sup>212</sup> There is no adequate sewage system, running water, electricity, or proper shelter.<sup>213</sup> An Dong remains a human dumping ground for marginalized communities.

The negative effects of forced eviction and resettlement are exacerbated with in the HIV-affected population because of their increased physical, psychological, and social vulnerability.<sup>214</sup> The HIV-affected families the Leitner Clinic interviewed in An Dong and the Borei Keila Green Shelters that were either resettled or at risk of resettlement, highlighted that their greatest concerns were their access to means of livelihood, healthcare, nutrition, education, infrastructure, and land title.<sup>215</sup>

## *B. Post-eviction Challenges Faced by PLWHA*

### *1. Income*

The most immediate consequence of resettlement is individuals' increased economic hardship due to the distance of resettlement sites from the capital's commercial center where the most job opportunities exist.<sup>216</sup> For instance, it took the Leitner Clinic forty-five minutes to travel the twenty-five kilometers from central Phnom Penh to An Dong by car.

Cambodia (Oct. 8, 2008).

210. Interview with Karona Ean and Maia Diokno, *supra* note 205; Interviews with An Dong Families #1, #2, #3, #4, #6, in Phnom Penh, Cambodia (Oct. 9, 2008).

211. *See, e.g.*, AMNESTY INT'L, RIGHTS RAZED, *supra* note 4.

212. Telephone Interview with Brittis Edman, Amnesty Int'l, in New York, N.Y. (Sept. 24, 2008).

213. Seth Mydans, *In Cambodia Progress for Some Means Eviction for Others*, N.Y. TIMES, July 17, 2008, <http://www.nytimes.com/2008/07/17/world/asia/17iht-cambo.1.14568946.html>.

214. Interview with Naly Pilorge and Manfred Hornung, Monitoring Consultant, LICADHO [Cambodian League for the Promotion & Def. of Human Rights], in Phnom Penh, Cambodia (Oct. 7, 2008).

215. Telephone Interview with Brittis Edman, *supra* note 212.

216. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2007 Country Reports on Human Rights Practices: Cambodia (Mar. 11, 2008), <http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

Many families in An Dong have lost their conventional means of livelihood.<sup>217</sup> An Dong's crushing poverty<sup>218</sup> has suppressed the market for goods and services that many families were accustomed to in the city. One young mother who used to sell mangos when she lived in Phnom Penh noted that it was easier to make a living in Sambok Chap, her former village.<sup>219</sup> The amount of time spent on travel alone due to the isolated nature of the An Dong resettlement site results in the loss of economic opportunities. One young HIV-positive father who works as a construction worker in the An Dong vicinity noted that the cost of making the round trip journey into the city would essentially wipe out whatever daily earnings he could make in Phnom Penh.<sup>220</sup> He stated emphatically that his greatest challenge is the transportation cost.<sup>221</sup>

The loss of income is compounded by the fact that many HIV-positive individuals miss work due to their ill health.<sup>222</sup> One An Dong HIV-positive resident noted that she misses work on days when she feels dizzy or has a fever, and sometimes she can only work three or four days during a particular work-week.<sup>223</sup> As a result, these families often resort to fishing, simple vegetable farming, or asking neighbors for assistance to supplement their income.<sup>224</sup>

With no alternative avenues to receive the specialized medical care they need near the resettlement site, HIV-positive individuals in An Dong must resort to monthly trips back and forth to the city to access their anti-retroviral medications.<sup>225</sup> A round trip by moto-taxi from An Dong to Phnom Penh costs between 15,000 (\$3.59 USD) and 20,000 riel (\$4.79 USD),<sup>226</sup> an added expense that many HIV-affected families cannot afford due to their decreased incomes.<sup>227</sup> For families who live on five thousand to six thousand riel a day, roughly seventy cents USD, resettlement-related transportation costs present an immense burden in addition to basic food

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217. Interviews with An Dong Families #1, #2, #4, in Phnom Penh, Cambodia (Oct. 9, 2008).

218. The Leitner Clinic observed that there was no sanitation system, piled up garbage, and the "houses" were made of rotted wood and flimsy tin. There was no electricity or running water at An Dong.

219. Interview with An Dong Family #1, in Phnom Penh, Cambodia (Oct. 9, 2008).

220. Interview with An Dong Family #5, in Phnom Penh, Cambodia (Oct. 9, 2008).

221. *Id.*

222. Interviews with An Dong Families #1, #3, #4, in Phnom Penh, Cambodia (Oct. 9, 2008).

223. Interview with An Dong Family #3, in Phnom Penh, Cambodia (Oct. 9, 2008).

224. Interviews with An Dong Families #2, #4, in Phnom Penh, Cambodia (Oct. 9, 2008).

225. Interviews with An Dong Families #1, #2, #4, #5, #6, in Phnom Penh, Cambodia (Oct. 9, 2008).

226. Currency converted on Nov. 23, 2009 using <http://www.xe.com/ucc/>.

227. This was true of all the families we spoke to at An Dong.

and water expenditures. One HIV-positive woman remarked that her family has practically no money, and sometimes has to beg for food.<sup>228</sup>

The dire situation at An Dong is exactly what the HIV-positive families in the Borei Keila Green Shelters fear will happen if they are relocated to Tuol Sambo or any other resettlement site. When asked about the prospect of relocation to Tuol Sambo, one father stated, “I don’t know what my family would do about their jobs if we were to resettle, because we can’t afford the transportation back into the city.”<sup>229</sup> Another woman, noting the limited economic opportunities in relocation sites, remarked, “After all, what jobs are available in Tuol Sambo?”<sup>230</sup>

There are NGOs that are working with resettlement communities to help alleviate their economic hardship.<sup>231</sup> One immediate solution adopted by some of the Christian missionaries working in the An Dong area is to help defray the costs of transportation to access medication for PLWHA.<sup>232</sup> Other NGOs, like Friends International, help with income generation by giving PLWHA in An Dong and the Green Shelters an opportunity to make handicrafts or jewelry to sell in the local tourism industry.<sup>233</sup> These commendable efforts, however, do not reach the majority of families suffering in resettlement sites.

Lack of access to employment opportunities in resettlement sites is not a discrete category independent of the other challenges that PLWHA face on a day-to-day basis. For example, income reduction can have a negative impact on health status and ability to access nutritious food.<sup>234</sup> In addition, when household assets dwindle and the need for care rises, parents often remove their children from school to apply the money saved to care for the sick.<sup>235</sup>

228. Interview with An Dong Family #2, in Phnom Penh, Cambodia (Oct. 9, 2008).

229. Interview with Borei Keila Green Shelter Family #5, in Phnom Penh, Cambodia (Oct. 8, 2008).

230. Interview with Borei Keila Green Shelter Family #6, in Phnom Penh, Cambodia (Oct. 8, 2008).

231. Interviews with An Dong Families #1, #2, #3, in Phnom Penh, Cambodia (Oct. 9, 2008).

232. *Id.*

233. Interview with Borei Keila Green Shelter Family #1, in Phnom Penh, Cambodia (Oct. 8, 2008). While at An Dong the Leitner Clinic observed An Dong residents making handicrafts for Friends International.

234. Interview with An Dong Family #4, *supra* note 166.

235. U.N. WORLD FOOD PROGRAMME, *supra* note 198, at 6.

## 2. Cost and Access to Health Care

Access to adequate medical care and life-saving anti-retroviral therapy (“ARV”) is one of the most significant concerns for PLWHA both before and after resettlement.<sup>236</sup> HIV-affected families interviewed at An Dong consistently cite as serious issues the resettlement site’s distance from adequate medical services, and the resulting burden on both their health and income.<sup>237</sup> A majority of the families interviewed stated that they were dependent on NGO assistance to meet their transportation costs.<sup>238</sup>

Interviewees at the Green Shelter who face impending eviction were unanimous in expressing their worry that resettlement outside the city will make it impossible to access adequate medical care.<sup>239</sup> One HIV-positive man remarked that he wants to live in town because location is very important.<sup>240</sup> He wants to be close to work, to the hospital when he gets sick at night, and to the market.<sup>241</sup> According to him, the medical center at Tuol Sambo, the proposed relocation site for Green Shelter residents, is adequate only for general health concerns, and is not equipped to address the specialized needs of PLWHA.<sup>242</sup> In addition, a round trip from Tuol Sambo to central Phnom Penh would cost about 15,000 riel (\$3.95 USD), an added expense Green Shelters families can little afford.

For PLWHA, the lack of easy access to health services can be fatal. In 2007, the United Nations estimated that over twenty-nine thousand adults in Cambodia were in need of ARV, a number that is expected to increase to over thirty-five thousand by 2010.<sup>243</sup> However, the U.N. Joint Programme on HIV/AIDS (“UNAIDS”) notes that access to HIV-related

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236. See e.g., Interview with Naly Pilorge and Manfred Hornung, *supra* note 214 (discussing how resettlement disrupts PLWHA’s access to medication because of loss of income and insufficient funds for transportation); see also Lars Schwed Nygård, *AIDS in Cambodia: A Second Chance at Life*, MSF, Sept. 10, 2004, <http://www.msf.org/> (search “a second chance at life”; then follow “Cambodia feature” hyperlink; then follow “AIDS in Cambodia” photo hyperlink) (discussing how ARVs allow PLWHA to prolong their lives and provide for their families).

237. Interviews with An Dong Families #1, #3, #4, #5, #6, in Phnom Penh, Cambodia (Oct. 9, 2008).

238. Interviews with An Dong Families #1, #2, #3, in Phnom Penh, Cambodia (Oct. 9, 2008).

239. Interview with Borei Keila Green Shelter Family #1, #2, #3, #4, #5, #6, in Phnom Penh, Cambodia (Oct. 8, 2008). Thirty-one families at the Green Shelter were forcibly evicted in June 2009, and twenty of these families were resettled at Tuol Sambo. See LICADHO, Briefing Paper, *HIV/AIDS Families Evicted From Borei Keila 1* (June 26, 2009), available at <http://www.licadho-cambodia.org/reports/files/135LICADHObriefingpaperBK-TS.pdf>.

240. Interview with Borei Keila Green Shelter Family #4, in Phnom Penh, Cambodia (Oct. 8, 2008).

241. *Id.*

242. Interview with Borei Keila Green Shelter Family #5, *supra* note 229.

243. UNGASS REPORT, *supra* note 195, at 5.

health services and ARV sites “remains curtailed due to travel distances and the high costs of transportation, which especially affects the poor.”<sup>244</sup> The World Health Organization has identified “mobile populations” as major vulnerable populations,<sup>245</sup> a category that increases in number when the government resettles PLWHA outside of easy access to the medical services they require. Through its harsh resettlement policies,<sup>246</sup> the government is exacerbating its service provision problems and undermining its own policy on combating HIV/AIDS.

### 3. *Cost and Access to Food and Nutrition*

Adequate food and nutrition are essential to prolonging the lives of individuals with HIV/AIDS. When PLWHA are unable to secure adequate nutrition, “the disease progresses faster and with more force.”<sup>247</sup> The effectiveness of life-saving drug therapies often partly depends on an individual’s nutritional status.<sup>248</sup> Food and nutrition also play an important role in controlling the spread of other diseases, like tuberculosis, by strengthening an individual’s resistance to disease.<sup>249</sup>

Many of the HIV-positive families interviewed in An Dong and the Green Shelters were malnourished and visibly weak.<sup>250</sup> Interviewees at An Dong complained that the food is more expensive than food in Phnom Penh, most likely because of An Dong’s isolation from the markets in Phnom Penh.<sup>251</sup> Increased food costs, coupled with income reduction, have left many families desperate. An HIV-positive woman, whose husband is also HIV-positive, stated that since moving to An Dong, her husband has not been able to eat as well and he falls sick more often.<sup>252</sup> She was emphatic: they would be in dire straits if their neighbor did not otherwise help them out with two kilograms of rice from time to time.<sup>253</sup>

244. *Id.* at 13.

245. See WORLD HEALTH ORGANIZATION, CAMBODIA: SUMMARY COUNTRY PROFILE FOR HIV/AIDS TREATMENT SCALE-UP 1 (2005), [http://www.who.int/hiv/HIVCP\\_KHM.pdf](http://www.who.int/hiv/HIVCP_KHM.pdf).

246. See *supra* notes 14–20 and accompanying text. See also LICADHO, Briefing Paper, *supra* note 239, at 4–5 (discussing the negative impact of the Cambodian Government’s resettlement schemes on PLWHA at Borei Keila Green Shelters).

247. U.N. WORLD FOOD PROGRAMME, *supra* note 198, at 4.

248. *Id.* at 5.

249. *Id.* at 7.

250. At the Green Shelters, the Leitner Clinic observed that interviewees were thin and lethargic, and their general complaint was the lack of proper food and nutrition. See, e.g., Interview with Borei Keila Green Shelter Families #1, #2, in Phnom Penh, Cambodia (Oct. 8, 2008).

251. Interview with An Dong Family #6, in Phnom Penh, Cambodia (Oct. 9, 2008).

252. Interview with An Dong Family #4, *supra* note 166.

253. *Id.*

According to an informal study conducted by the NGO Caritas, the average expenditure of each of the fifty-two HIV-positive families living at the Borei Keila Green Shelters was ninety-four U.S. dollars per month.<sup>254</sup> Of that figure, the amount spent on food was almost sixty-seven U.S. dollars.<sup>255</sup> Due to their weakened health, these families often had unexpected medical expenses, leaving them unable to buy sufficient amounts food.<sup>256</sup> According to Caritas, almost seventy percent of these families borrow money to buy food, which pushes them further into debt.<sup>257</sup>

At both An Dong and the Green Shelters, families are caught in a familiar vicious cycle: inadequate food and nutrition lead to poor health, resulting in an inability to work. When family income is reduced, access to food becomes even more restricted. The disruption caused by forced resettlement to locations beyond city limits amplifies the problem. For many families, this cycle has become a terrible spiral that is all but impossible to escape.

#### 4. Infrastructure

Inadequate and deficient housing conditions are associated with higher mortality and morbidity rates.<sup>258</sup> The living conditions at the Green Shelters, and even more so at An Dong, are appalling. The families the Leitner Clinic interviewed were living among standing pools of dirty water, refuse, and waste. The conditions in An Dong are particularly stark—families live in thatched huts or lean-tos that are constructed out of flimsy wood or tarpaulin.<sup>259</sup>

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254. Caritas Cambodia, *supra* note 199.

255. *Id.*

256. According to Caritas, these families have no income security whatsoever, earning enough “for daily consumption only,” and forced to resort to borrowing money for food if they are too ill to work. *See id.*; *see also* LICADHO, Briefing Paper, *supra* note 239, at 4 (discussing the vulnerabilities of the PLWHA families at the Green Shelters to opportunistic infections which, coupled with food costs, place an immense strain on their income).

257. Caritas Cambodia, *supra* note 199.

258. MSF-F, Tuol Sambo, *supra* note 199 (citing Transitional Settlement: Displaced Populations, Oxfam and the University of Cambridge—Shelter Project).

259. The Leitner Clinic observed many interviewees at An Dong living under a roof with little more than a tattered sheet of tarpaulin offering shelter from the elements. One of the interviewees stated that when she was resettled to An Dong, the government gave her two tarpaulins and an empty plot of land; she had to construct the rest of her shelter out of pieces of wood she found. Interview with An Dong Family #1, *supra* note 219; *see also* Interview with An Dong Family #4, #6, in Phnom Penh, Cambodia (Oct. 9, 2008); AMNESTY INT’L, RIGHTS RAZED, *supra* note 4, at 27–28. Families living without adequate shelter as a result of the actions or omissions of the government are not an isolated phenomenon; the families at Borei Keila, prior to being moved into the Green Shelters, were reduced

The temperatures inside the tin walls and roofs of the Green Shelters are often unbearable. Half of the families interviewed at the Green Shelters were worried that the increased heat radiating from the metal sheet walls would cause their ARV to spoil.<sup>260</sup> One family had built a second thatched roof in an attempt to cool the space.<sup>261</sup> The Green Shelter families were uniformly concerned about the quality of the shelters at Tuol Sambo, which are also constructed out of metal sheets, in a style similar to those at the Green Shelters.<sup>262</sup> Electricity at the Green Shelters, when available, is either unreliable or exorbitantly expensive.<sup>263</sup> According to one interviewee, Green Shelters families are saddled with even higher electricity rates than foreigners in the city.<sup>264</sup>

The particular vulnerabilities of PLWHA to poor sanitary conditions are well known.<sup>265</sup> In the resettlement context, these vulnerabilities are amplified by the lack of clean running water and overcrowding. Families in An Dong and the Green Shelters do not have access to running water and rely on water from tanks that must be filtered. At the Green Shelters, the Leitner Clinic observed each family crammed into a small room

to living under tarpaulins after the Municipality demolished their homes in March 2007. *See* LICADHO, Briefing Paper, *supra* note 239, at 1; *see also* AMNESTY INT'L, RIGHTS RAZED, *supra* note 4, at 27.

260. Interview with Borei Keila Green Shelter Family #1, #2, #3, in Phnom Penh, Cambodia (Oct. 8, 2008). According to an USAID funded report, certain varieties of ARV medications must be stored at temperatures not exceeding twenty-five degrees Celsius. ROBERT RITZENTHALER, DELIVERING ANTI-RETROVIRAL THERAPY IN RESOURCE-CONSTRAINED SETTINGS: LESSONS FROM GHANA, KENYA AND RWANDA 62 (2005), available at <http://www.fhi.org> (search "delivering ART"; follow "FHI-Consulting Services" hyperlink; then follow "Download PDF" hyperlink). Daytime ambient temperatures in Phnom Penh routinely exceed thirty degrees Celsius, and the metal sheet construction of the shelters at either Borei Keila or Tuol Sambo offers no protection from the heat. *See* MSF-F, Tuol Sambo, *supra* note 199.

261. Interview with Borei Keila Green Shelter Family #1, *supra* note 233.

262. *See, e.g.*, Interviews with Borei Keila Green Shelter Family #1, #2, #3, in Phnom Penh, Cambodia (Oct. 8, 2008). For a detailed description of the Tuol Sambo shelters, *see* LICADHO, Briefing Paper, *supra* note 239, at 3.

263. Interview with Borei Keila Green Shelter Family #1, #2, #3, #4, #5, #6, in Phnom Penh, Cambodia (Oct. 8, 2008).

264. Interview with Borei Keila Green Shelter Family #4, *supra* note 240. Several interviewees stated they paid 1,700 riels for each kilowatt hour of electricity. Interview with Borei Keila Green Shelter Families #4, #5, #6, in Phnom Penh, Cambodia (Oct. 8, 2008). Foreigners and embassies in Phnom Penh, however, are charged 800 riels per kilowatt hour. *See* Electricity Authority of Cambodia, Decision, On Revision of Electricity Tariff for Consumer In Phnom Penh City and Kandal Province (2005), <http://www.eac.gov.kh/regulation.php> (follow "Decision On Revision of Electricity Tariff for Consumer In Phnom Penh And Kandal Province (2005)" hyperlink). While the specific reasons for the price discrepancy are unclear, one of the local translators attached to the Leitner Clinic suggested that it could be due to the use of private contractors to supply electricity to the Green Shelters.

265. LICADHO, *Borei Keila Community Relocation, A Derailed Social Project in Cambodia's Capital*, May 23, 2007, <http://www.licadho-cambodia.org/articles/20070523/53/index.html>.

approximately three by four meters in size.<sup>266</sup> This living space includes a concrete slab toilet, but without access to clean running water,<sup>267</sup> the chances of disease resulting from improper waste disposal are amplified. At both An Dong and the Green Shelters, the Leitner Clinic observed families living in very close quarters, with less than two meters between their plots, making each family more susceptible to the spread of disease.<sup>268</sup> The overcrowding and poor sanitary conditions common in resettlement camps and temporary shelters increase the risk of opportunistic infections like tuberculosis. Tuberculosis is often spread among those living in close quarters and is one of the most common causes of death for people living with HIV/AIDS.<sup>269</sup>

##### 5. Land Title

Like many of the An Dong residents before their forced eviction and resettlement, the Green Shelter families are predominantly renters with no formal title to their former homes.<sup>270</sup> Despite government promises that renters would have rights to the new apartments constructed as part of the Borei Keila land-sharing arrangement, the government has now said they are ineligible.<sup>271</sup> According to the U.N. Office of the High Commissioner on Human Rights in Phnom Penh, negotiations are still underway regarding the housing status of the HIV-affected Green Shelter families.<sup>272</sup> Some of the families who spoke with the Leitner Clinic were fearful that they would not receive land title after they are resettled to Tuol Sambo.<sup>273</sup>

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266. For a description of the conditions at the Green Shelters, see LICADHO, Briefing Paper, *supra* note 239, at 1–2.

267. When the Leitner Clinic visited the Green Shelters, the communal water pump had been turned off for two months already, and every family interviewed stated they had to purchase tanks of water for between 200–300 riel each. Interview with Borei Keila Green Shelter Families #1, #2, #3, #4, #5, #6, in Phnom Penh, Cambodia (Oct. 8, 2008).

268. See LICADHO, Briefing Paper, *supra* note 239, at 1–2; AMNESTY INT’L, RIGHTS RAZED, *supra* note 4, at 29.

269. U.N. WORLD FOOD PROGRAMME, *supra* note 198, at 8–9.

270. See AMNESTY INTERNATIONAL, BOREI KEILA—LIVES AT RISK 3–4 (2009) (Given that “[p]oor, homeless families are the primary beneficiaries of social land concessions,” and that the government designated “Borei Keila . . . as a so-called social land concession,” it is inferred that the residents of the Green Shelters are also poor, homeless families.), available at <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/BOREI%20KEILA%20LIVES%20AT%20RISK?CMD=VEROBJ&MLKOB=27485524848>; LICADHO, Briefing Paper, *supra* note 239, at 1.

271. Interview with Borei Keila Green Shelter Family #1, *supra* note 233.

272. Interview with Lumning and Maia Diokno, Human Rights Officer, Office of the U.N. High Comm’r for Human Rights in Cambodia, in Phnom Penh, Cambodia (Oct. 8, 2008).

273. Interview with Borei Keila Green Shelter Family #3, #5, in Phnom Penh, Cambodia (Oct. 8, 2008).

They worry that their family's future will be jeopardized without the possibility of attaining some degree of land security.<sup>274</sup> One middle-aged HIV-positive father, uncertain with how much longer he has to live, stated that his main concern was obtaining land title for his wife and children.<sup>275</sup> Another HIV-positive father emphasized the importance of land title to the future of his children, noting that he and his wife did not want to die without leaving something behind for their children.<sup>276</sup>

### 6. *Stigma and Discrimination*

Many people living with HIV/AIDS in Cambodia face stigma and discrimination from other Cambodians, particularly from those who live outside city centers.<sup>277</sup> The government's policy to resettle the remaining HIV-positive families in the Borei Keila Green Shelters in segregated "AIDS villages" in Tuol Sambo,<sup>278</sup> for instance, is blatantly discriminatory. The effects of discrimination are difficult to quantify, however, due to the highly sensitive nature of discussing the terminal disease; several of the HIV-positive families that the Leitner Clinic interviewed reported experiencing no discrimination. Such a response may indicate an acute sensitivity by PLWHA against talking about their HIV status to outsiders, particularly when other interviewees were more forthcoming about the discrimination they have experienced.<sup>279</sup> An effect of discrimination most acutely felt by PLWHA is its impact on their ability to earn income. One HIV-positive woman in An Dong described how discrimination made it difficult to make ends meet; she explained that some people would not buy things from her and would even actively discourage others from doing so, for fear of infection.<sup>280</sup>

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274. *Id.*

275. Interview with Borei Keila Green Shelter Family #5, *supra* note 229.

276. Interview with Borei Keila Green Shelter Family #3, in Phnom Penh, Cambodia (Oct. 8, 2008).

277. *See, e.g.*, LICADHO, Briefing Paper, *supra* note 239, at 3; AMNESTY INTERNATIONAL, BOREI KEILA—LIVES AT RISK, *supra* note 270, at 2.

278. For an account of the chain of events and specific governmental efforts taken to identify and segregate PLWHA families in the Borei Keila Green Shelters, see LICADHO, Briefing Paper, *supra* note 239, at 1–3.

279. At An Dong, a single mother who spoke with the Leitner Clinic stated that she used to keep her HIV-status secret, out of fear of discrimination; another woman spoke candidly about how she had not personally encountered any discrimination, but noted that her HIV-status was not widely known, she quickly changed the topic, however, when her neighbor dropped by. Interview with An Dong Families #1, #3, in Phnom Penh, Cambodia (Oct. 9, 2008).

280. Interview with An Dong Family #2, *supra* note 228.

HIV-related stigma and discrimination also take a toll on the family unit. A young, HIV-positive mother at An Dong told the Leitner Clinic that she had been abandoned by her husband because she was HIV-positive, and he was free of the disease.<sup>281</sup> Another HIV-positive mother in An Dong sent her HIV-negative children to live with relatives in her hometown so that they would not face the stigma associated with having HIV-positive family members. She emphasized that it was the fear of her children suffering discrimination at An Dong that prompted her to send them away.<sup>282</sup>

#### CONCLUSION: RIGHTS EDUCATION FOR FAMILIES IN RESETTLEMENT SITES

Local civil society organizations and international non-governmental agencies have an important role to play in the legislative and information vacuum that surrounds land tenure for both marginalized and resettled communities in Cambodia. While their implementation by the government leaves much to be desired, Cambodian laws track and adopt important developments in international law on economic and social rights. It is crucial, therefore, that affected communities are informed of their basic rights regarding land security under both domestic and international law, and are prepared for the challenges of resettlement.

Rights education is particularly important in the resettlement context. For example, to obtain access to a lot in a resettlement site like Damnak Trayoeng, and to apply for ownership rights after five years of possession, resettled residents must hold government-issued receipts. Municipalities, however, systematically and unlawfully deprive resettled families of these receipts. NGOs and other civil society organizations should educate their beneficiaries about the importance of receipts in establishing their right to title and advocate on behalf of families in resettlement sites regarding their right to government-issued receipts and land security.

By providing basic rights training and education, organizations might also avoid the “human rights dilemma” that service providers working in resettlement sites sometimes find themselves in. NGOs that provide resettlement sites with much needed services that are originally state legal obligations, risk falling into the trap of being perceived to be condoning the misdeeds of the government through their remedial efforts. By making their beneficiaries aware of the violations of their rights in conjunction

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281. *Id.*

282. *Id.*

with providing necessary services, service providers can ensure that they are condemning and not condoning the government's actions. Such activities will send the resounding message that, while the government's efforts to modernize Phnom Penh are not without merit, the needs of the poor must be addressed. Massive development projects must be planned and carried out in an open, transparent and participatory manner, in compliance with Cambodian and international laws, and in fulfillment of the promise of prosperity for all Cambodians, not just a select few.