Executive Summary

Immediately following the contested National Assembly (“NA”) elections, which took place on 28 July 2013, Cambodian people were able to exercise their right to freedom of assembly in an unprecedented manner. However, on 15 September 2013, security forces resorted to their old tactics and have since repeatedly and disproportionately used excessive force to crack down on protesters. The post-election violence has already led to the death of six persons, the disappearance of at least one individual and to dozens of injured. However, while protesters have been arrested and are currently facing charges, an independent investigation into the excessive use of force by Cambodian security forces has yet to take place.

The first section of this Briefing Note describes the use of excessive force by security forces and correlated gross human rights violations during the post-election period. The second section summarizes the legal obligations of the Royal Government of Cambodia (“RGC”) to protect the rights to truth, justice and remedy for the victims of violence by state security forces, while the third section demonstrates how the RGC has failed to uphold these obligations. The concluding section outlines CCHR’s recommendations to the RGC in order to bring those responsible to justice and to end the cycle of impunity. CCHR’s recommendations to the RGC include the following:

- Carry out prompt, thorough and effective investigations by independent and impartial bodies into all reports of excessive use of force and firearms by law enforcement officials;
- Release the results of all investigations to the general public, especially the victims and their families;
- Bring those identified as responsible for gross human rights violations before a competent, independent and impartial tribunal; and
- Ensure victims’ right to remedy and reparations.

This Briefing Note is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia. For the purpose of this Briefing Note CCHR has decided to focus on events that illustrate the highest level of violence during the post-election period. The Briefing Note does not recount all instances of excessive use of force by state security forces in the post-election period.
Excessive Use of Force and Gross Human Rights Violations since the NA Elections

On 28 July 2013, Cambodia held elections for the NA. While the run-up to the elections saw a decrease in electoral-related violence from previous years, the lead-up to the elections was still marked by restrictions on freedom of speech and an unequal capacity to campaign between the opposition Cambodian National Rescue Party (“CNRP”) and the ruling Cambodian People’s Party (“CPP”). Although the CNRP had won more seats in the NA than the opposition ever before, 55 seats out of 123, there were serious allegations of fraud and other election irregularities, which sparked calls for an independent election inquiry and resulted in the CNRP’s boycott of the NA. The CPP remains the only party in the NA at the time of writing.

Mass protests began in August 2013, as CNRP supporters contested the allegedly fraudulent elections results. By the end of 2013, protests had occurred on a more regular basis, as garment workers and land rights activists also took to the streets to call for better working conditions and a higher salary and the respect of their land rights.

While the first couple of weeks of opposition protests were met by a rare and unexpected tolerance from the authority, freedom of assembly soon was challenged and security forces resorted to their old tactics. On 15 September 2013, clashes broke out in Phnom Penh between security forces and demonstrators who had attended a CNRP rally. As many as 30,000 CNRP supporters gathered in Freedom Park to express their discontent with the election results. Some demonstrators spilled out of Freedom Park, hoping to stage an impromptu march through the city. However they were soon thwarted by security forces. After a lengthy face off with security forces, violence erupted around Sisowath Quay between dozens of stone-throwing youths and hundreds of military police and riot police armed with guns, rubber bullets, tear gas, smoke grenades and water cannons. Throughout the day and late into the night, several tumultuous clashes occurred around Phnom Penh, leaving commuters, residents and workers trapped in the middle. During one clash at the Kbal Thnal overpass, some five kilometers from the scene of the original clashes at Sisowath Quay, the security forces discharged live ammunition, severely wounding at least nine and killing Mr. Mao Sok Chan, a 29-year-old bystander who was attempting to go to his work as a newspaper hawker.

The next incident where state security bullets lead to the death of a civilian happened in November 2013. Over a number of months, a series of, occasionally violent, strikes from workers at the SL Garment Processing factory in Meanchey District, culminated on 12 November 2013, when over a few hours, several chaotic clashes took place between the protestors and the armed forces. During the clashes, the armed forces violently disbanded the demonstrators by discharging live ammunition, rubber bullets and tear gas canisters. During the confrontations, a 49-year-old street vendor, Ms. Eng Sokhom, who was a bystander not participating in the protest, was shot and was pronounced dead on arrival at the hospital. In total, nine protestors were wounded by police
gunfire, one of whom is now paralyzed for life, and several others were severely beaten with batons by the police.\(^5\)

Demonstrations intensified towards the end of 2013, when garment workers went on a national strike asking for an increase in the minimum wage. As the New Year began, the crackdown on freedom of assembly and protesters intensified. On 2 January 2014, military command special unit 911 cracked down on a garment workers protest at the Yak Jin factory in Pursenchey district, Phnom Penh, violently arresting and beating ten union activists and garment workers, and five monks.\(^6\) While the five monks were released later that same night, the 10 others are still being detained and have been charged with violence and intentionally causing damage with aggravating circumstances. Angered by the violent arrests that took place at the Yak Jin factory, garment workers gathered at night on Veng Sreng road, by the Canadia Industrial Park. After a night of facing off with the police, security forces in the morning of 3 January 2014 indiscriminately fired live ammunition into the crowd, killing at least four and injuring dozens.\(^7\) Security forces took the lives of four garment workers: Yean Rithy, 25, Pheng Kosal, 23, Kim Phaleap, 24, and Sam Ravy, 25.\(^8\) On that day, an additional 13 persons were arrested. In addition, Khem Sophat, a 16 year old boy, has been missing since. He was last seen lying on the ground with blood pouring from what appeared to be a gunshot to his chest. No information about his whereabouts has been released by the authorities so far.

The protection of the right to life and the right to liberty and security of the person\(^9\) are at the heart of international human rights law and the Constitution of the Kingdom of Cambodia (the “Constitution”). Killings through the illegitimate use of force by state security forces amount to an arbitrary execution. The Code of Conduct for Law Enforcement Officials (the “Code of Conduct”) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the “Basic Principles”), adopted by the United Nations, give guidance as to what can amount to legitimate or illegitimate use of force by security forces.

According to the Basic Principles, before any contemplation of the resort to the use of force and firearms, all measures to provide a non-violent resolution need to be exhausted. Force is to be used only when strictly necessary and is to be always proportional to lawful objectives. Firearms are to be used only in extreme circumstances, and only in self-defense or defense of others against imminent threat of death or serious injury. Similarly, intentional lethal use of force and firearms shall be permitted only when strictly unavoidable in order to protect human life.\(^10\)

The use of force by security forces in Cambodia was clearly illegitimate and amounted to disproportionate and excessive force. As such, the state security forces have committed arbitrary

\(^{5}\) Ibid
\(^{8}\) Licadho, “List of the dead and missing men from January 3, 2014 demonstration” http://bit.ly/1kpFgxK
\(^{9}\) Article 3 and 9 of the Universal Declaration for Human Rights (“UDHR”), Article 6 and 9(1) of the International Covenant for Civil and Political Rights (“ICCPR”)
executions, most like forcibly disappear a protester and are responsible for serious violations of the right to freedom of peaceful assembly.¹¹

The Right to Truth, Right to Justice, and Right to Remedy
The rights to truth, justice and remedy for victims of gross human rights violations are intrinsically linked and create obligations for the State in order to combat impunity. The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (the “Updated Principles”) from February 2005¹² states in the Principle One:

“Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.”

(emphasis added)

The right to truth is an inalienable and autonomous right.¹³ Principle 4 of the Updated Principles articulates that “[i]n requisite of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.” More recently, the United Nations General Assembly adopted a resolution in December 2013 on the right to the truth which reiterated the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights.¹⁴

The right to the truth is closely linked to the State’s obligation to conduct effective investigations into gross human rights violations. The Updated Principles reiterate victims’ rights to justice and the state’s obligation to investigate and ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished.¹⁵ The right to justice includes the access to a judicial remedy. The United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution also reaffirms the duty of the Government to investigate all arbitrary and summary executions.¹⁶ In addition, the International Convention for the Protection of All Persons from Enforced Disappearance (“ICCPED”)¹⁷ that Cambodia acceded to on 27

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¹¹ Article 41 of the Constitution of the Kingdom of Cambodia and Article 21 of the ICCPR
¹⁵ Update Principles, Principle 19
¹⁷ Enforced disappearance is defined in Article 2 of the ICCPED as: “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” http://bit.ly/1lUkk2q
June 2013 makes it incumbent on the RGC to investigate cases of enforced disappearance under Article 3.18

The right to remedy is heavily intertwined with the aforementioned rights, as well as the right to reparation and is guaranteed in Article 8 of the Universal Declaration for Human Rights (“UDHR”) and Article 2 of the International Covenant on Civil and Political Rights (“ICCPR”). The right to remedy includes: access to justice, reparations for the harm they have suffered, and access to the details surrounding the violations they experienced and the reparation mechanisms.19 Reparations for these violations should be proportional to the harm suffered by victims, and includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

The RGC’s Failure to Uphold its Obligations
Following the clash on 12 November 2013 between SL Garment Factory workers and state security forces, National Police spokesman Kirt Chantarith told the Phnom Penh Post that an investigative committee had been set up to identify the policeman who had used guns.20 As of the time of this writing, no results have been released.21

On 7 January 2014, Brigadier General Tito said that any investigation of the January 3 killings would not be into the role of military police, but into the role of the “inciters” who led the protest,22 and on 10 January 2014, the RGC announced the creation of two commissions headed by Interior Minister Sar Kheng to investigate the damage caused by “anarchic demonstrators,” and the second to investigate how incidents occurred.23 Three weeks later, it was announced that the investigations had been completed, but no official results have been released.24 In late January 2014, five officers, whose names are unknown, were questioned by the prosecutor at the Phnom Penh Court of First Instance about their involvement with the clash, but according to Brigadier General Kheng Tito, none will face charges as they were acting in self-defense.25

The commissions established by the RGC are not to investigate the role of the army and police in disproportionately using excessive force and shooting live ammunitions at protesters but to investigate protesters themselves. The commissions are neither independent nor transparent as the Ministry of Interior is the head of a commission to investigate the forces under his command, and the findings are not shared with the public. These commissions are nothing more than empty shells established to appease the international community. In addition, the RGC’s rhetoric and actions only reveals its bias towards security forces.

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18 ICCPED, Article 3
20 Shane Worrell and Mom Kunthear “Police in strike shootings to be investigated” The Phnom Penh Post (13 November 2013) http://bit.ly/1i28U7t
On 30 January 2014, according to the Koh Santepheap newspaper, Prime Minister Hun Sen and his wife Bun Rany gave 29 military police officers and 16 national police officers gifts of around $200 each for “protect[ing] social order and security.” The article quotes “[Mr. Hun Sen and Ms. Rany] praise the strong stance of police forces and military police forces that made efforts to protect social order and security while the opposition party created the situation by walking around to incite violence.” On 20 February 2014, Prime Minister Hun Sen spoke at the annual meeting of the Ministry of Interior, reiterating that the handling of the problems of 2013 was a success. Minister of Interior Sar Kheng on 7 March 2014 also announced that about 3,100 police officers would receive bonuses of $17.50 to thank them for suppressing protests. In addition, during the last Universal Periodic Review of the United Nations Human Rights Council the Cambodian delegation deferred the recommendation made by the Czech Republic to “investigate impartially cases of use of excessive force against protesters and cases of killings during recent demonstrations.” Security forces, instead of being questioned, are praised for their actions that lead to the death and disappearance of protesters.

Meanwhile, protesters have received a different treatment, facing arrest, criminal charges and detention. Six people have been arrested and charged in relation to the events of 15 September 2013, when Mao Sok Chan was shot dead; however, according to Human Rights Watch, only one of them was an attendee of the opposition rally while the rest were bystanders trying to get home. On 28 February 2014, the Phnom Penh Court of First Instance found three of them guilty of “intentional violence and intentional destruction of property.” Two of the convicted are now free as their prison sentence was suspended. However, Nguyen Thydoc will have to serve a one-year sentence on the basis that he confessed throwing rocks at the police forces, even though he maintains that his confession was obtained due to coercion. These men have been sentenced despite a clear lack of evidence: during the hearing, all 30 police officers who testified failed to individually identify any of the six as perpetrators of specific criminal acts.

38 people were arrested on the day of the clashed at the SL Garment Factory on 15 November 2013, and two, Meas Non, 15, and Vanny Vannak, 19, were later charged for violence and destruction of property. Meas Non was released on bail on 8 January 2014 while Vanny Vannak remains in custody pending trial.

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27 Ibid.
34 Khouth Sophak Chakrya and Sean Teehan “Can’t place the face” The Phnom Penh Post (18 February 2014) http://bit.ly/1bZTKN
23 persons including union leaders and human rights activists were arrested on 2 and 3 January outside of the Yak Jin factory and the Canadia Industrial Park. Since their arrest, the 23 have repeatedly been denied their rights to a fair trial. They were held incommunicado by the authorities for five days, without access to lawyers, medical care or their families. The authorities finally revealed on 7 January that they were being held at Correctional Center 3 (“CC3”) in Kampong Cham province, six hours away by road from Phnom Penh. On 11 February 2014, the Court of Appeal denied bail to 21 of them as two other men were granted bail during a hearing on the morning of 7 February and released under judicial supervision the next day. This ruling upheld the decision of the Phnom Penh Court of First Instance, which had denied bail to all 23 men on the basis of ending crime, preventing new crime and ensuring detainees are available for trial. The Court of Appeal’s decision to deny bail was made despite serious concerns for the health of several of them.\footnote{CCHR, “Today’s bail denial for 21 human rights defenders and protesters illustrates the deteriorating human rights situation in Cambodia” (Press Release) (11 February 2014) \url{http://bit.ly/1eqzmoH}}

The RGC has failed to uphold the victims’ right to truth, justice and remedies by refusing to carry out independent and transparent investigations into the excessive use of force by state security forces that lead to arbitrary executions, disappearance and injuries. Instead, the RGC has been prosecuting and charging protesters and continues to deny Cambodians their right to freedom of assembly.

**Conclusion and Recommendations**

Members of security forces are promoted and praised, while families are torn apart in the aftermath of violence. This is far too regular of an occurrence and characteristic of the rampant culture of impunity in Cambodia. By not investigating and prosecuting those responsible of gross human rights violations the RGC is also sending the message that this type of behavior can occur again.

Justice must be achieved for the protesters and civilians killed, disappeared and injured since the National Assembly elections because of the excessive use of force by state security forces. CCHR therefore makes the following recommendations to the RGC:

- Carry out prompt, thorough and effective investigations by independent and impartial bodies into all reports of excessive use of force and firearms by law enforcement officials;
- Release the results of all investigations to the general public, especially the victims and their families;
- Bring those identified as responsible for gross human rights violations before a competent, independent and impartial tribunal;
- Ensure victims’ rights to remedy and reparations;
- Immediately release on bail the 21 arrested on 2 and 3 January 2014;
- Respect individuals’ right to freedom of peaceful assembly by ensuring that the ban on assemblies is officially and in practice lifted;
- Ensure that all law enforcement officials are provided with relevant trainings and are tested in accordance with appropriate proficiency standards in the use of force;
- Only deploy military personnel in matters of grave national security and cease involving district security guards in the dispersal of assemblies; and

• Ensure that law enforcement officials use non-lethal incapacitating weapons as much as possible.

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