

KINGDOM OF CAMBODIA

Impunity in Kampot Province: the death of Chhoern Korn

Introduction

Kampot Province was the focus of much international attention between August and November 1994, when following an attack on a train by forces of the National Army of Democratic Kampuchea (NADK, commonly known as the Khmer Rouge), sixteen people were taken hostage including three western tourists. Troops from the Royal Cambodian Armed Forces (RCAF) attacked the NADK base at Phnom Voar where the hostages were apparently held captive. The three Western hostages were killed by their captors in September and buried near the base. Their bodies were brought back to Phnom Penh in November, and repatriated to their home countries. The majority of NADK forces in the area defected under an amnesty program, and were accepted into the RCAF.

In September 1994, while media attention focused on the events at Phnom Voar, a Cambodian man was killed in Chhouk District, Kampot. The man, a woodcutter and timber merchant called Chhoern Korn, lived with his wife and their six children in Chum Kiri District, Kampot Province. His death went unreported and uninvestigated, and his widow and children were left to attempt to find out why Chhoern Korn was killed and who was responsible for his death. The only assistance they received in their efforts was from local human rights workers who heard of the case and tried to help. When Amnesty International arrived in Kampot Province to investigate the case, it soon became apparent how little the authorities had done to identify those responsible and bring them to justice. In the account that follows, Amnesty International has not published the names of people who spoke to the organization, or the names of people implicated in their testimony.

Background

In March 1995, Amnesty International published a major report on human rights in Cambodia. In that report, the organization identified impunity for human rights violators as the most important human rights issue facing Cambodia today. Following extensive investigations in the country, and talks with ministers of the Royal Cambodian Government, Amnesty International concluded that:

"Members of the armed forces and police are able to impose their will on the civilian population with impunity, committing acts of violence including deliberate and arbitrary killings and extrajudicial executions. The Cambodian authorities appear to lack the political will and the ability to bring these

human rights violators to justice, and the cycle of human rights violations goes on."¹

In April 1995 Amnesty International visited Cambodia to carry out research into human rights violations, and to find out if progress had been made in addressing the issue of impunity. During that visit, the organization went to Kampot Province in the southwest of the country, and investigated cases of human rights violations there. The case described in this document epitomises the problem of impunity throughout the country. Amnesty International is drawing attention to this case because it illustrates the nature of the problem, and the effect that it has on the victims, their relatives, and the wider community. It is also a case where local human rights workers have tried hard to secure justice for the victim's family, but where no proper official investigation appears to have been carried out. Amnesty International wrote to the Royal Cambodian Government at the beginning of September 1995, asking for an update on progress in the investigation. At the time of writing, no reply had been received.

The case of Chhoern Korn

Chhoern Korn had lived in Chum Kiri District with his wife since 1979. He worked as a woodcutter and timber merchant, spending several weeks at a time in the forest and then selling the timber he had cut. According to an official in Chum Kiri District, Chhoern Korn used to do business in the forest and was in contact with the NADK, which controlled some of the areas where he worked. When Chhoern Korn came back to Chum Kiri to visit his family and sell timber, the local police regularly came to his house for a drink and to ask a few questions. He did not have any problems with the police, until a few months before he was killed. A district official told Amnesty International that a few months before his death, Chhoern Korn came back from the forest with an expensive motorbike. The local police told him he would have to pay them a bribe in order to be allowed to keep the motorbike, as he had bought it from the NADK, the enemy of the Royal Cambodian Government. Shortly after this, he sold the motorbike. He did not buy a new one but made a deal to exchange some timber for a motorbike and some money, with a policeman who was building a new house. This man had served in the Chum Kiri District Police Force, and had recently been transferred to the Chhouk District Police.

On 17 August 1994, there was an attack on the District Offices in Chum Kiri by the NADK. During the attack, the District Chief was killed. On 19 September 1994 a second attack took place. According to an official who spoke to Amnesty International, rumours

¹ See *Kingdom of Cambodia: Human rights and the new government* (ASA 23/02/95, 14 March 1995).

and accusations were heard that Chhoern Korn had links with the NADK, after these attacks. At the time of the second attack, Chhoern Korn was working in the forest, but he returned to make sure his wife and children were safe. He apparently did not bring any timber back with him, which caused rumours to circulate. An official who spoke to Amnesty International said:

"In this area, if you accuse people of being [connected with the] NADK, you can bring them in and extort four or five *chi* of gold from them². I'm about the only person in the District who has tried to stand up against false accusations to the point where I have been engaged in serious arguments with the authorities."

Ten days before Chhoern Korn was killed, the policeman with whom he had made the timber deal came to his house. Chhoern Korn had kept his part of the deal and provided the timber. The policeman from Chhouk District had handed over the motorbike, but still owed Chhoern Korn seven *chi* of gold. According to a witness to the meeting, the policeman made a verbal promise to Chhoern Korn to pay the gold in 10 days' time, if Chhoern Korn came to his house, near Nour Riay village in Chhouk District to collect it.

On the morning of 23 September 1994 Chhoern Korn left his house at about 9am. A witness who spoke to Amnesty International said:

"On the morning when Chhoern Korn disappeared, he was sitting drinking coffee in the market with a couple of policemen, and some people he gets timber with. He said to me 'I'm in a hurry to get money for timber.'"

After this, Chhoern Korn got on his motorbike and drove off in the direction of Nour Riay village, Chhouk District to collect the gold owed to him.

Arrest and Detention

The exact details of what happened to Chhoern Korn after he left the market in Chum Kiri District town on the morning of 23 September are not clear. However, according to people who spoke to Amnesty International, Chhoern Korn got as far as Paen Ko market, east of Chhouk District town and was detained there and brought back to the District Office. Some people said that it was the Chhouk District Police who detained him. A relative of Chhoern Korn's wife saw him when he was being arrested, and drove to his house to inform his wife. When the wife heard that Chhoern Korn had been detained, she borrowed a

² One *chi* of gold is worth approximately US\$47.50.

motorbike and drove to Chhouk District to search for her husband. She eventually saw his motorbike, in the compound of a brick building used by District officials. She asked the men in the building, who were wearing uniforms, where her husband was, but they said they did not know, and that the District authorities had brought the motorbike there. However, stallholders in the front of the building said that they had seen someone who matched Chhoern Korn's description "tied up, put in a khaki-coloured military vehicle with six wheels and taken away". These people told Chhoern Korn's wife that they had seen him being brought out of the District Police Station. When she went there to question the police about her husband, they said they knew nothing. At 3pm on 23 September, unable to find out any more information as to her husband's whereabouts, his wife returned home to care for their children.

The death of Chhoern Korn

At 11 am on 23 September, people near Nour Riay mountain saw a khaki-coloured truck heading towards the mountain, in Chhouk District. At about midday, people heard five shots being fired, then saw the truck come back along the same route. Witnesses reported that the truck stopped and the driver got out, borrowed a bucket of water from a monk in the vicinity and used it to wash blood off his truck. He reportedly warned the witnesses that if any of them reported the incident, he would kill them and their families. Witnesses saw nine people in the truck, all wearing uniforms.

On the morning of 24 September 1994, Chhoern Korn's wife heard a rumour that her husband had been killed by the police in Chhouk District, near Nour Riay mountain. She borrowed a motorbike and went to the area. People nearby confirmed that a man matching her husband's description had been shot in the vicinity the day before. Although she had not yet seen the body, she was convinced that her husband was dead, and went to get a letter of permission to reclaim the body. This letter had to be signed by the District Chief of Chum Kiri District. When she had this letter, she returned with other family members to Nour Riay in Chhouk District to find her husband's body. At first the local people were too frightened to speak to the family, but eventually a small child told them that a man had been shot behind some trees. They walked along a path and found Chhoern Korn's body. His hands had been tied behind his back at the wrists with electric cable, and he had bullet wounds in his side, head and chest. It appeared that he had been shot through the back of the head at very close range. The family took the body away in a hammock as quickly as possible. They were frightened that whoever had killed Chhoern Korn was still in the area and might shoot them too.

Chhoern Korn's family took his body back home and held a funeral ceremony there. After the ceremony his widow went back to the place in Chhouk District where she had seen her husband's motorbike, in order to retrieve it. The Chhouk District authorities told her she needed a letter of permission signed by her local village, commune and district, so

she went home, and got a letter to this effect and returned to Chhouk, only to be informed by local people that the officials had all moved and had taken the motorbike with them. She returned home without the motorbike. Since then, the policeman whose house Chhoern Korn was on his way to the day he was killed has refused to pay the widow the seven *chi* of gold he owed her husband for the timber, and denies agreeing to pay it.

Police and judicial procedures following a murder

According to Cambodian law, responsibility for initial investigations into a crime rests with the police. The district police have a duty to investigate crimes which occur in their area of jurisdiction, and to transmit the results of such enquiries to the Provincial Police Commissariat. The judicial (penal) police investigate the case and then send the case file to the Prosecutor, indicating if they have already identified a suspect. The Deputy Police Commissioner for Kampot Province told Amnesty International that in cases of murder, the Provincial Police Commissariat would expect to be informed by District Police within 24 hours of the crime being discovered. He said that as soon as they hear that a violent crime has been committed, staff from the Police Commissariat are sent to the district to cooperate with the District authorities in the investigation. He said:

"In a serious case of, for example a murder, if the investigation carried out by the police commissariat is unable to achieve a result, the Ministry [of Interior, Phnom Penh] will send down a specialist to help obtain a result in the investigation. In the instance in which for example a district police official was involved in activities making problems for the local people, we have mechanisms in place to investigate incidents. *If we find evidence implicating a police official in a crime, we implement the same procedures as we would in any criminal case.*"[emphasis added].

The Deputy Police Commissioner assured Amnesty International that police officers suspected of having committed a crime were dealt with in the same way as other criminals. He said that any case of murder in Kampot Province would be investigated by the Provincial Police and by the District Police where the murder occurred.

When the police have conducted an investigation, the procedure is to send the case file to the Prosecutor, who can investigate further and may issue an arrest warrant at this point, if there is sufficient evidence. The file is then sent to the investigative magistrate who also conducts an investigation, but can only do so on receipt of a case file from the Prosecutor. When the magistrate's investigation is complete, the file is returned to the Prosecutor, who, on the basis of the available evidence may then issue a warrant for the arrest of a suspect and recommend a prosecution.

Action following Chhoern Korn's death

According to information gathered by Amnesty International, the proper procedures were not followed in the case of Chhoern Korn. The organization interviewed officials, witnesses and human rights workers in the District town and the Provincial town in order to find out what had happened to the investigation and the case file.

Local human rights workers in Kampot Province heard about the violent death in Chhouk District and came to investigate. They visited the area just days after the murder occurred. Chhoern Korn's widow made a complaint about the death of her husband, and was helped to deliver it to the Prosecutor by some human rights workers. Human rights workers in Phnom Penh helped her to visit the capital and explain her case to Kem Sokha MP, the Chairman of the Commission on Human Rights and Reception of Complaints at the National Assembly. However, in spite of these actions taken by Chhoern Korn's widow, there appeared to be no serious attempts by the District and Provincial Police and Prosecutor to investigate the murder of her husband.

Although Chhoern Korn was killed on 23 September, and the Prosecutor's office in Kampot Provincial town received a complaint about the murder from the victim's widow in early October, no proper investigation appears to have been carried out, by either the police or the prosecutor. The first visit the widow received from anyone in the police was in December, when a man described by witnesses as tall and heavy-set, wearing civilian clothes, arrived at her house on a motorbike, claiming to be a policeman from Phnom Penh. He said he wanted to "make contact and find out how much you want to help your hardship and look after your kids." He told her that if she asked for a lot, she would get nothing, but if she asked for a reasonable amount she would get something. He went away and came back five days later saying he wanted to fix a price. However, he said that the sum requested by the widow to help look after the children was too high, the matter could not be resolved at that point, and that he would come back the next day. In fact, he never returned. At no point did he ask any questions about how Chhoern Korn had been killed and why. Nor did he explain why a policeman from Phnom Penh was involved in the case and was offering her money. In spite of the assurances given by the Deputy Police Commissioner to Amnesty International about the work of the police in Kampot Province, no other police personnel - such as the District or Provincial Police - came to the widow's house to inform her about the progress of the investigation, or to ask any questions.

Neither did the Prosecutor and Investigative Magistrate attempt to conduct a serious investigation into Chhoern Korn's death. Although the Prosecutor received a complaint from the widow in early October 1994, he did not go to visit her in Chum Kiri District, and did not send the file on the case to the investigative magistrate until February 1995. Amnesty International questioned the Kampot Provincial Prosecutor about the case on 7 April 1995, and asked what the normal procedure would be in cases of murder. He said:

"According to the procedure, the complainant comes to the Prosecutor with a complaint. The role of the Prosecutor is to get more information from the complainant to further the investigation. But for the results of the investigation, I've yet to receive any. It is the role of the prosecutor to receive evidence from the district authorities and the police. But in this case I did not receive any evidence from the police or the district."

Amnesty International asked the Prosecutor why it had taken so long for him to send a file to the investigative magistrate. He said:

"In a concrete case of murder, the role of the prosecutor is to go down to the place of the murder, gather evidence from the place, and from the police. But this was not a concrete case of murder, as the complaint did not reach the office for a month...The normal procedure is for the police to forward any evidence in cases of murder to the prosecutor in order to make an investigation. Because this case implicated the police themselves, they were not able to forward any evidence ... I haven't gathered any evidence. I've just passed on the names of those involved to the magistrate's investigator for them to look into the case."

The Prosecutor claimed that Chum Kiri District was an insecure area, and thus he had not dared go down to investigate the case himself. However, he said he had sent invitations to the widow to come to his office, but she never came. Chhoern Korn's widow is illiterate so would have been unable to read any letters sent to her; even if she received the messages and found someone to read them to her, she would have had to pay for transport into Kampot Provincial Town, when she has no income. Amnesty International asked why the Prosecutor did not consider the case of the death of Chhoern Korn to be a concrete case of murder. He said that because he did not receive a complaint straight away, and because he only interviewed the complainant once and received no evidence from the police, he could not consider it to be a concrete case. He did not provide any explanation for the five month delay between receiving the complaint and sending the case file to the magistrate for further investigation.

As mentioned above, the investigative magistrate's office cannot conduct investigations into a case until the case file is sent by the Prosecutor. In this case, the file was not sent until February 1995. However, in December 1994, a clerk who claimed to come from the magistrate's office visited the widow and told her that he knew everything about who had killed her husband, but if she wanted an investigation done, she would have to pay him. Chhoern Korn's widow had no money to pay anyone to investigate her husband's death. Since the case file was sent to the investigative magistrate's office, the man has not returned.

Later in December 1994, Chhoern Korn's widow was summoned to a meeting at Chhouk District Police Station by the man who had visited her offering her money. This man was as the meeting with three other people from the Ministry of Interior in Phnom Penh, all of whom were wearing uniforms. A representative from the Provincial Police also attended the meeting. The widow was asked how much she thought her husband's motorbike had been worth. She named a sum, and was asked if she would accept less, to which she replied she was in no position to refuse any amount of money. They offered one and a half million riels (approximately US\$650), which she accepted. She was told to come back at 4pm and collect the money, and to tell anyone who asked that the "money came from the province". When Chhoern Korn's widow collected the money, she had to put her thumbprint on a document which she could not read. The policemen told her that it said she agreed to receive the money in compensation for her husband's missing motorbike.

On 23 December 1994, two weeks after this compensation was paid, a summons was sent to the Chum Kiri District Chief by the policeman from Phnom Penh, instructing him to bring Chhoern Korn's widow to a meeting in the Provincial Police Commissariat. The District Chief had to wait downstairs for part of the meeting, during which the widow was asked if she was going to continue with her complaint about the murder of her husband. She said that she was poor and had no money to continue, but before she let the complaint drop, she wanted the authorities to find the criminal who shot her husband and deal with him according to the law. She also requested some financial assistance to help care for her children. The policemen verbally agreed to her request, and she had to thumbprint a second document which she could not read. The policeman from Phnom Penh told her that her husband had been killed because he had connections with the Khmer Rouge. No one disputed the allegation that the Chhouk District Police had been responsible for her husband's death.

In July 1995, Chhoern Korn's widow received a payment of five hundred thousand riels (about US\$215), to help support her family. No progress has been made with the investigation. It is also unclear where the case file relating to the investigation is located. In April 1995, concerned human rights workers tried to raise the case with the investigative magistrate, as the case file had been sent to that office by the Prosecutor. However, they were told that the case file had been sent to the Ministry of Interior in Phnom Penh and that the Ministry had assumed responsibility for the investigation. Amnesty International was also told that there was an advisory note in the case file not to go to the district to investigate the case, as the area was insecure, so no one from the office carried out any investigations.

Impunity

"Not even a dog would dare to speak the truth in those districts because of the atmosphere."³

In the course of its investigations in Kampot Province, Amnesty International found that a climate of impunity is prevalent throughout its districts. People are frightened of the power of the police and the military, because they are able to commit criminal offences and are never brought to justice. Amnesty International has been told of cases where the perpetrators of violent crimes are simply transferred from one unit to another, and are then protected from prosecution. In April 1995, reliable sources informed the organization that there were 23 arrest warrants for murder cases, naming police and military personnel in Kampot province, yet the individuals had not been arrested. These people are still serving in units in the province, quite literally armed and dangerous. Local people are very frightened of these individuals, but no action has been taken to arrest them.

Amnesty International is gravely concerned for the safety of witnesses in Kampot Province and also for the safety of those members of the police and the authorities who are attempting to uphold the law. The organization knows of two cases where the Provincial Police Commissioner has ordered investigations into murder cases to be stopped, apparently on the instructions of the Ministry of Interior, when the evidence points to the involvement of police personnel. The investigation into the death of Chhoern Korn is one of these cases. Those people trying to find out the truth about what happened were told that as compensation had been paid, the police and authorities no longer had any obligations in this case.

Amnesty International checked with the Prosecutor about procedures in murder cases where there is no complainant or where the complainant withdraws. He confirmed that in such serious cases where there is no complainant, the Prosecutor has a responsibility to act, in order to ensure that a case is investigated. Although Amnesty International has not been able to read the two documents which Chhoern Korn's widow had to thumbprint, it is entirely possible that these documents stated that she withdrew her complaint. Nonetheless, even if this is the case, the police and the judicial authorities still have a duty to investigate the murder and to bring the perpetrator to justice.

Recommendations

Chhoern Korn was murdered. The Cambodian authorities have a duty to investigate who killed him. A year after his death, in spite of substantial evidence linking the police in Chhouk District to the killing, no investigation has been carried out. The responsible authorities have attempted to cover up the case by paying small sums of money to his poor

³ Interview with a concerned party, Kampot town, April 1995.

illiterate widow, and preventing anyone from gathering evidence, stating that the case is closed. Building a human rights culture in Cambodia requires as a starting point justice and equality before the law for all people there. Members of the police and security forces who are implicated in criminal cases must be subject to the same process of investigation, arrest and prosecution as civilians. In cases where the police are implicated in serious crimes, it is important that prompt, impartial investigations are carried out. If investigations reveal evidence that police officers have committed a crime, they should be brought to justice.

In the case of the murder of Chhoern Korn, Amnesty International believes that there has been no attempt to conduct a thorough, impartial investigation into his death, and that there is substantial evidence to link the police in Chhouk District with his killing. The organization recommends that the investigation into Chhoern Korn's killing be reopened, and that all available evidence be taken into consideration. Those implicated in his killing should be brought to justice, and full compensation should be paid to his widow.