



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា  
Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល  
Supreme Court Chamber  
Chambre de la Cour suprême

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 18-May-2015, 13:19  
CMS/CFO: Sann Rada

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក  
Case File/Dossier N°. 002/19-09-2007-ECCC/SC

**Before:** Judge Chandra Nihal JAYASINGHE, Delegate Judge  
Judge MONG Monichariya, Delegate Judge

**Date:** 18 May 2015  
**Language(s):** English  
**Classification:** PUBLIC REDACTED

**WRITTEN RECORD OF WITNESS INTERVIEW – ROBERT T.F. LEMKIN**

**Co-Prosecutors**  
CHEA Leang  
Nicholas KOUMJIAN

**Co-Lawyers for NUON Chea**  
SON Arun  
Victor KOPPE

**Accused**  
KHIEU Samphân  
NUON Chea

**Co-Lawyers for KHIEU Samphân**  
KONG Sam Onn  
Anta GUISSÉ  
Arthur VERCKEN

**Civil Party Lead Co-Lawyers**  
PICH Ang  
Marie GUIRAUD

On the eleventh of May two thousand and fifteen at 2:00 p.m., at the seat of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”);

**We, Chandra Nihal JAYASINGHE and MONG Monichariya**, Delegate Judges of the Supreme Court Chamber of the ECCC, appointed pursuant to paragraphs 25 and 26 of the Interim Decision on Part of NUON Chea’s First Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01, issued by the Supreme Court Chamber on 1 April 2015 (Doc. No. F2/4/3) (“Appointment Decision”);

**Noting** Rules 24, 26, 28, 55(7) and 60 of the Internal Rules;<sup>1</sup>

**Recalling** paragraphs 21-26 of the Appointment Decision, in which the Supreme Court Chamber, in the framework of an additional investigation initiated pursuant to Rule 93 of the Internal Rules, elected *inter alia* to establish direct contact with Robert Thomas Fitzgibbon Lemkin (“Witness”) in order to assess whether the footage allegedly in his possession may be obtained within a reasonable period of time and what specific information could be derived from it;

**Considering** it appropriate to allow the interview to take place by means of audio- and video-link technology;

In the presence of SENG Phally, sworn Translator/Interpreter;

In the presence of Kerri MILES, Transcriber;

In the presence of Volker NERLICH, Senior Legal Officer and Greffier; Sheila PAYLAN and Paolo LOBBA, Legal Officers and Greffiers; and PHAN Theoun, Associate Legal Officer and Greffier;

**Recorded** the statement of the Witness, who provided the following information regarding his personal identity:

Name:	Robert Thomas Fitzgibbon
Surname:	Lemkin
Nationality:	British and New Zealand
Date of birth:	27 December 1961
Place of birth:	London, United Kingdom
Occupation:	Film Maker
Current residence:	Oxford, United Kingdom

He declared to be married to [REDACTED] and to be father of four children.

- The Witness declared that he reads, writes and understands the English language.
- We advised the Witness that an audio recording will be made of this interview.
- The Witness declared that, to his knowledge, he is not related to either an Accused, Civil Party or Civil Party Applicant in Case 002.<sup>2</sup>

<sup>1</sup> Internal Rules of the ECCC, Revision 9, 16 January 2015 (“Internal Rules”).

<sup>2</sup> Although during the interview the Witness declared to be “acquainted” with both Accused in Case 002, he subsequently clarified, by e-mail dated 14 May 2015 on file with the Greffier of the Supreme Court Chamber, that, to his knowledge, he is not related to either Accused or any of the Civil Parties in any of the ways listed under Rule 24(2) of the Internal Rules.

- The Witness took an oath, in accordance with Rule 24 of the Internal Rules.
- The Witness did not take an oath, due to forfeiture of this right as per art. 55(6) of the Cambodian Criminal Code.
- We notified the Witness of his right against self-incrimination, in accordance with Rule 28 of the Internal Rules.
- The Witness declared that he has not applied to be Civil Party in the case at hand.

**Questions (Q) - Answers (A):****QUESTIONING BY JUDGE JAYASINGHE:**

**Q1. Can you, Mr. Lemkin, please briefly describe your background, specifically, your career as a filmmaker, as well as give an overview of all films and documentaries that you have worked on in the past.**

**A1.** I am a graduate of Oxford University. I have been a film maker, journalist and television producer since 1985.

From 1985 until the early nineties I worked as an independent film producer making films about music in London. For the next 10 years or so I worked as a television producer and documentary film maker for BBC television in the United Kingdom, largely BBC2 and BBC World Service.

From 1999 until 2006, I ran an investigative journalism department at Channel 4 television in the UK. Since 2006 I have been an independent filmmaker through my own company "Old Street Films" which is based here in Oxford.

I have made many films on the subject of politics in Asia. Films about British imperial history in Asia; films about post war history, cold war history in Asia for BBC television, for ITV television, for various American television stations.

During the last 30 years I have made 50 television and film documentaries.

**Q2. Do you know a gentleman called Thet Sambath?**

**A2.** Yes, I do.

**Q3. Could you please tell us what film or films you are currently working on?**

**A3.** Currently I am making a film; I have just recently returned from West Africa, I am making a fictional drama film in West Africa for the British film institute. It is a completely separate subject.

Since the completion of the film "Enemies of the People", which was first completed in 2009 and then slightly revised in 2010, I have from then until 2012, worked with Thet Sambath on a second project but since he has been in the United States that project has not been able to move forward.

I would just add that that project which could be seen as a complementary film of "Enemies of the People", is based on material that initially I had planned to put in to the film "Enemies of the People" but in the end I had to decide that this was a very complicated piece of history that we were trying to tell and so we were not able to include large amounts of material from the original shooting that I had done between 2007 and 2009.

**Q4. There were public announcements a few years ago that you would be working on another documentary with Thet Sambath. The tentative title, as reported by the press, was "Suspicious Minds". Are you still working on this film?**

**A4.** No. That is the film I was referring to and since Thet Sambath relocated to the United States, there has been nothing done on that film. What could be done on it would have to be done in Cambodia and if he is not in Cambodia that is not feasible.

**Q5. It has been abandoned?**

**A5.** No. I think many films like this can sometimes take many years to mature. It has not been abandoned, the material exists; clearly the story exists so it has not been abandoned, but I have not been actively working on it.

**Q6. Are you hopeful that it will proceed in the future?**

**A6.** Yes. I think all film makers are hopeful. I have written a 10,000 word article which sums up the state of the information that we had gathered between 2007 and 2011. It is in the process of revision for publication.

**Q7. What is the date of your first visit to Cambodia?**

**A7.** September 2006.

**Q8. How many times have you returned since?**

**A8.** Eleven times.

**Q9. And how much time (cumulatively) can you estimate having spent in Cambodia?**

**A9.** Each trip was 2 weeks long, so 22 weeks.

**Q10. What is your knowledge of the history of the Khmer Rouge and how did you acquire it? Please respond briefly.**

**A10.** The reason I became interested in the subject was because when I was a BBC film producer in 1998 I made a film with the leader of the Malayan Communist Party about his experiences with the British in the war in Malaya, and this man, in 1975, had spent a month with Pol Pot in Phnom Penh in October and he told me about his time with Pol Pot and told me that I should take an interest in the story of the Khmer Rouge because it had never been properly told.

So I became interested in that subject; that was in 1998. I worked on it in the early 2000s but only from Europe. Then in 2006, in September, I made my first trip to Cambodia to make a film with Khieu Samphan, who I met and filmed with. But then I

decided that that film was not something that interested me. During that time I met Thet Sambath and the daughter of Ieng Sary. In November 2006, I went back to Cambodia to film Nuon Chea and various other people.

**Q11. So that was your first meeting with Thet Sambath; is that correct?**

A11. Yes, September 2006.

**Q12. That is about the time you met Ieng Sary's daughter and the others?**

A12. That is the same trip, September 2006; I met all those three people.

**Q13. Have you conducted any historical or academic research on the Khmer Rouge policies?**

A13. I have, but not for any academic institution, but I have done proper historical research to make the film. That is what is needed to make films of any quality. Part of the making of a film is to consult leaders in the field. I have consulted with those who were leaders in the field. I have consulted with many people who have worked at this Court during the making of "Enemies of the People".

**Q14. When and why did you decide to cooperate on a film project with Thet Sambath?**

A14. Initially in September and November 2006, my estimation was that the most interesting person for a story was Nuon Chea. I realized the only way to be in touch with him and have any meaningful dialogue with him was to work with Thet Sambath. During 2007, I cooperated with Thet Sambath and he filmed many scenes at my request and I was in the UK doing research. That cooperation was successful. I felt I could trust him. Over the course of 2007, it became clear to me that this would be a workable partnership. The formalities of filming began in the middle of 2007.

**Q15. That was "Enemies of the People", correct?**

A15. Yes, I don't think it was called that at that point but that is the film that has come out of that work. As I said, not all of the footage was used and the extra material may become a second or third film.

**Q16. What was your role in the making of that film? I mean, what was your involvement in the different phases of filmmaking, such as field research, identifying interviewees, drafting interview questionnaires, writing the script of the film, editing and cutting the film, etc.?**

A16. The first material used in the film dates from November 2006. Prior to November 2006, in July Thet Sambath had recorded some interviews with Noun Chea, which were of low quality but touched on many of the key subjects, issues that we wanted to explore.

From November 2006 through till May 2009, the film was largely shot on the various trips that I made. I came over to Cambodia with a camera and I filmed myself. The only people that were working were myself and Thet Sambath. He was the translator

and he would also put the questions. Most of the questions were put by me and he would translate them.

We conducted many interviews with Nuon Chea which were done on the basis of questions that I had prepared which he then asked because they had not been asked in the July 2006 sessions.

In January 2009, I realized that we had got to a point where we could probably complete the film. That there was enough of a story here that we could do the dramatic things that one needs to do to make a film. So, in January 2009, I made one trip to secure a key witness that was the kind of person we needed to find for this story and then in May 2009 we conducted our last piece of principle photography.

During the course of 2008, I edited the film here in Oxford, before we had finished filming because the material that was being gathered was of a very complex nature. One had to understand what it was that people were really saying and of course, from the demands of a film, one then has to be able to make it simple so that an audience could follow what this story was really about.

So, in 2008, I edited here, an editor at my film company here in Oxford worked editing the film through most of 2008.

Then in January 2009, I began to think that the film had gathered enough material for it to be able to be completed. So we did two more principle photography shoots in January and May 2009. And then from May 2009 until November 2009, I edited the film with a new editor here, in London this time. And in October, having edited the film, I flew back to Phnom Penh and recorded a voice over that really is in the form of an interview with Thet Sambath which I then used as the overall voice of the film.

Script writing was done by me, however I decided that we would take joint credit on the film because I felt that that was a non-hierarchical and a suitably collective way of representing the work we had done. I also wanted to pay tribute to the fact that Thet Sambath had at times filmed some scenes that I could not get back to Cambodia for. And although I had given him some very rudimentary training in camera work and recording sound, he really had done a very effective job. There was one scene that he filmed that was in the final documentary and I was very pleased that he did that. So we decided to take a collective credit.

**Q17. From materials in the public domain, I understand that the interviews of former Khmer Rouge soldiers and officials were all conducted by Thet Sambath. Were they all translated into English, before being selected for the documentary?**

**A17.** Yes, the process of the interviews would be that we would agree what we needed to get from an interview. I would film it and he would ask the questions in Khmer. Then he would translate for me and I would then put supplementary questions to him which he would then ask in Khmer. And sometimes he would ask questions of his own because the two of us would collectively decide what we wanted to achieve in each interview.

**Q18. Whose decision was it to interview whom?**

**A18.** We interviewed many people that were not in the film. Essentially the process of deciding who to interview was based on Thet Sambath telling me who he knew of and me selecting from the people that he knew of, which people I would like to film with. Then we would film with certain people and if those people became interesting enough to me in terms of what we had filmed, then we would film with them again on a subsequent trip. The process is slow because I didn't speak Khmer at the time so there was a delay between filming the scenes and then me really fully understanding the important usefulness of each scene.

So then I would say to him "we need to find a person who does blah, blah, blah". At one point we traveled to very far west of the country up on the Thai border to a place because we thought this man was somebody who was part of the execution team after interviewing the two people that feature in "Enemies of the People".

So, I had asked Thet Sambath to find someone, he said that he thought that he was up in this place in the northwest on the Thai border. We went all the way there and when we filmed the man he denied being the correct person. So then I said we need to find someone else so we looked together, and that trip was January 2009, and in the end we did find somebody else and that man is in the film who initially says, "I didn't do anything", then about 20 minutes later, "well actually I did kill one person."

That scene is in the film and that man we found during the time that I was filming on that session because the original person we had hoped to find did not tell us anything useful.

**Q19. What criteria were followed to select the interviews, or the excerpts of interview, to include in the documentary?**

**A19.** The first criterion was that the person had to have full involvement in the events that we were recounting. They couldn't be somebody who was speaking about what they heard about.

**Q20. How did you determine the accuracy of those people who claimed that they knew what had happened?**

**A20.** The people were interviewed numerous times, more than 10 times. Their information was challenged repeatedly and efforts were made to triangulate or corroborate the information by asking other people about information that one person had given. We would ask other people if they knew anything about it. If that information appeared to be consistent then that was something that would lead towards that person being suitable to be included in the film.

The story that was told, many films like that which are pretty complex to make, of course get made in the cutting room, in the edit suite. There is a lot of material that's left out. There is a lot of material that you film at the time thinking that the story may go various ways so there are multiple paths you are taking and then when you edit a film you zero down to what you can put in for 90 minutes.

The clear point of the editing of the "Enemies of the People" was that people needed to be telling us things that were essentially relevant to the key events that had happened in Democratic Kampuchea as far as they had anything to do with them and

as far as what this film was about, which really was an exploration and an analysis of the political violence that was deployed during the time of the Democratic Kampuchea state and the impact on the people that were involved.

**Q21. Is it correct to say that while Thet Sambath conducted the field research and shot the raw footage, you were mainly involved in shaping the story and editing the footage?**

**A21.** No. That is not a correct statement. I don't know anybody who has made that statement but that is not correct in any way.

**Q22. It is a joint effort?**

**A22.** Yes. Essentially he worked as my fixer. But the presentation of the story became the story of the fixer.

**Q23. Would you say that you have a comprehensive familiarity with the footage that was not included in the final release of the movie?**

**A23.** Yes. I know everything. Nobody else does.

**Q24. To your knowledge, when did Thet Sambath stop doing his field research, as in travelling around the country and interviewing former Khmer Rouge members?**

**A24.** During the course of the making of "Enemies of the People" between 2006 and 2009 there was no stop, there was no pause. There was a pause in the sense that he had another job and so did I, we had other jobs we were doing but there was no pause, as in, we are not going to do this work now.

**Q25. So in other words he cooperated with you until the finish?**

**A25.** Yes.

**Q26. Can you tell us, before the filming was done, whether there was a rehearsal or were their memories were refreshed; or did they just go before the camera and you filmed it? Or were they put through a training process?**

**A26.** No. They weren't put through a training process but there are interviews in the film that were repeated in many different locations and different times. For example, there is a scene in which two Khmer Rouge executioners, who were called [REDACTED] go to a place where they killed a large number of people, people who were actually Kampuchea Khmer Krom people, and they took us to that place. We had already interviewed those people about that particular episode or that particular evening or in fact it was a week of killing. We had interviewed them on several occasions.

And then I decided, having familiarized myself with the architecture of the event, what had happened; how it happened; how it evolved; how it ended; I decided that we should go to the place where the thing had actually happened and that is where we should talk to these two men. When we did that, they had, in the course of the proceeding days, already spoken about this incident, this massacre that they had been involved in. So, clearly it was already to the forefront of their mind.



But I think you can appreciate that when you are involved in events of such intensity, extremity and magnitude that they probably don't really ever leave your mind. And that was part of what we were doing when we were making this film, we were trying to explore that kind of psychology.

**QUESTIONING BY JUDGE MONG:**

**Q27. When you traveled to the Thai/Cambodia border, you said that you met the real executioner. How did you know he was the correct person?**

**A27.** If you're familiar with the film you can see that as part of the process of making that film we would show material to other people, so you would show video material to somebody else, to another witness to see how they responded to it.

I have just been discussing the massacre of the Kampuchea Khmer Krom people that ██████████ said they took part in, they said that they were with various other people and this man in ██████████ was one of the people, and he was actually mentioned in the dialog in the film, ██████████

Thet Sambath had identified ██████████ as living in ██████████ I don't know how he identified that but I can understand to some extent the process. It was a bit complicated and relied on some sketchy information but once we got there we played the tape of the interview with ██████████ and ██████████ said that he knew them but he wasn't there the day of the massacre described.

So because of that, somebody that is very low level, denying their involvement with these other people submitting information, this is something we can't get behind. So in terms in telling a story that an audience can follow, of course that is not really particularly interesting either.

**Q28. Now, let's move on to talk about the entirety of video and audio material that has been produced by you and Thet Sambath over the past years of research. Can you give us an idea of its length?**

**A28.** I did bring in my log of the tape, of the original material. I would say we are talking about something in the region of around 160 hours.

**Q29. Has the footage been completely digitalized or is it recorded on analog tapes?**

**A29.** It has been digitalized.

**Q30. What is the rough estimate of the length of Thet Sambath's interviews with Nuon Chea and what is the length of other people's interviews?**

**A30.** I am glad I brought my log of material. I think that's a difficult question to answer. I think with Nuon Chea we are probably talking about something in the region of 25 to 30 hours. When it comes to interview with other people, a guess would be 80 hours to 90 hours. You can appreciate that if the total material is 160 hours it is not all interviews.

**Q31. Do you know how many people's interviews, apart from Nuon Chea's, are contained in the material?**

**A31.** It would be something in the order of about 20 to 25 people. There are other people also who were interviewed but I didn't film them.

**Q32. Is there an inventory relating to the material?**

**A32.** Yes, that is what I have just been talking about it the log, an inventory.

**Q33. Are the cassettes, the tapes, and the DVDs labeled based on their content?**

**A33.** Yes.

**Q34. Nuon Chea's counsel, Victor Koppe, stated in Court that you sent him an e-mail last year, according to which you claimed that you have collected – and I quote – “a wealth of evidence about [Ruos] Nhim's agenda” (end of quote). This evidence, if I understand your view correctly, would establish that the killings which allegedly occurred at Tuol Po Chrey were ordered by Ruos Nhim, not by the central command. When you mentioned “a wealth of evidence” what kind of evidence were you exactly referring to?**

**A34.** I don't think there is anything in my email which says that we have amassed a wealth of evidence about how Ruos Nhim ordered the killing at Tuol Po Chrey. What I think I said was that we had amassed a wealth of evidence about Ruos Nhim's political agenda during the period 1975 to 1978, when he presumably was executed. Of course I also said some smaller things about the massacre at Tuol Po Chrey.

The evidence that had been gathered regarding the general political position and agenda of Ruos Nhim consisted of:

- A series of interviews with a man who was Ruos Nhim's [REDACTED] in one of the districts of the northwest;
- A series of interviews with a man who was [REDACTED] in the army of the northwest who had attended a lot of meetings with Ruos Nhim concerning the political activities during the Democratic Kampuchea time;
- A series of interviews with a man who [REDACTED] Ruos Nhim [REDACTED] of Northwest Zone when Ruos Nhim was brought to Phnom Penh in March or April 1978. [REDACTED]
- A series of interviews with a man who is [REDACTED] of Ruos Nhim who was involved in his political and military activity from 1975-1978.

The source of this information is a series of interviews with four different people. There were other people but they were people who were interviewed fairly sketchily, maybe once and we didn't progress with them.

All of them had knowledge of Ruos Nhim's political agenda regarding his view of the control of the Communist Party of Kampuchea; his view of the line of the Communist Party of Kampuchea; his view about what to do about that line; his view and his activities in an attempt to take over control of the Party.

**QUESTIONING BY JUDGE JAYASINGHE:**

**Q35. Would you be able to quickly identify this specific footage you referred to in the email to Victor Koppe among the entirety of the audio and video material?**

**A35.** Yes those interviews are clearly named and labeled. But may I just add at this point that in the film "Enemies of the People" there is a person who appears in silhouette, you don't identify this person. [REDACTED]

[REDACTED] This woman was not identified in this film because those were her terms under which she was prepared to speak and of course when people make those terms you can't change that afterwards. [REDACTED]

So for my purposes and for internal purposes, the things are very clearly labeled. In terms of the labelling for external use, this may be another matter.

**Q36. Would you be prepared to cooperate with the Court so that the Court can obtain a copy of the footage of the four people you referred to? You mentioned one person, only her silhouette appears and her identity is withheld. If you so desire we will not disclose the identity of any of the four persons.**

**A36.** Firstly, she is not one of the four people; she is already in the film and I was just giving her as an example. The interview with the four people, so long as Thet Sambath is happy for those tapes or that material to be handed over, then I have no problem with it.

I can't make that decision myself; I think that it is only proper that you seek that from him direct.

What I can do, and I would be very happy to do this, would be to give you the excerpts of the material that I have written, which will be shortly in the public domain, to give you an idea of the scope of what those four people say, which may assist you in identifying which bits you need.

I can provide you with that now; I can also provide you with other material, subject to logistics, but only after Thet Sambath has approved that those four peoples interviews could be handed over.

**Q37. Would it be possible for you to put Thet Sambath on notice that we are seeking to obtain the statements then we will get in touch with him direct? So that he will know that we are not going behind your back.**

**A37.** Yes that's fine. I think he is already aware of that that you have made contact with him.

**Q38. You were mentioning about an article you have written, to be in the public domain very soon. Would it be possible for you to let us have a copy before it is released into the public domain? We will only share it among us.**

**A38.** Yes, as I just said I would be very happy to give you -- it probably would be the excerpts that would be relevant to you because some of the parts of the article are not relevant.

**Q39. Do you have any objection to these interview notes being made public at a later date?**

**A39.** Not at all.

The interview ended at 3:15 p.m. on the same day.

The Written Record was made available to the Witness and the Witness had no objections to it.

Considering that the Witness was interviewed by means of video-link technology, he did not sign it.







<b>សាក្សី</b>	<b>ក្រុមធុរកិច្ច</b>	<b>ចៅក្រមតំណាង</b>	<b>ចៅក្រមតំណាង</b>	<b>អ្នកប្រតិចារឹក</b>
<b>Witness</b>	<b>Greffier</b>	<b>Delegate Judge</b>	<b>Delegate Judge</b>	<b>Transcriber</b>
<b>Témoïn</b>	<b>Greffier</b>	<b>Juge délégué</b>	<b>Juge délégué</b>	<b>Transcripteur</b>