

KRT lawyers call for defendants' release

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Lawyers for former Khmer Rouge Brother No 2 Nuon Chea and head of state Khieu Samphan have lodged bids for their clients' release on bail ahead of the historic second case at Cambodia's war crimes tribunal.

In applications dated Tuesday and filed to the court's Trial Chamber, the lawyers charged that judges in the court's Pre-Trial Chamber had misinterpreted the tribunal's internal rules, causing Nuon Chea and Khieu Samphan to be detained unlawfully.

The Khieu Samphan defence team argued that the maximum allowable period of pre-trial detention provided for under the court's internal rules had expired; the Nuon Chea team, meanwhile, charged that the Pre-Trial Chamber judges had failed to issue a reasoned decision for rejecting the lawyers' appeal against their client's indictment, as they are required to do.

"This is a tribunal that tries to live up to international standards, and there are clear rules under which we must labour," said Jasper Pauw, a legal consultant for Nuon Chea. "The judges are bending the rules in an attempt to keep Nuon Chea in provisional detention."

Court rules state that defendants may be held in pre-trial detention for three years prior to being indicted, though this period may be extended for four months following an indictment at the discretion of the judges. Whether such an extension may be ordered only once, or in succession by the investigating judges and again by the Pre-Trial Chamber, is unclear, said Anne Heindel, a legal adviser at the Documentation Centre of Cambodia.

Nuon Chea, Khieu Samphan and their fellow defendants – former Khmer Rouge foreign minister Ieng Sary and social action minister Ieng Thirith – were arrested in 2007. The quartet were indicted in September of last year, just before the three-year limit on Nuon Chea's pre-trial detention expired, and at that point, the tribunal's Co-Investigating Judges ordered their detention extended an additional four months.

In decisions issued last week, the court's Pre-Trial Chamber ruled on the defendants' appeals against the indictment and ordered that they remain in detention until they appear before the Trial Chamber. This goes beyond the four-month extension provided for in September by the investigating judges, which expired on Sunday.

The Khieu Samphan defence argued, however, that any extension of the detention beyond this four-month period is unlawful.

"The decision of the Co-Investigating Judges to maintain Khieu Samphan in remand

ceases to have effect,” the lawyers wrote. “The Trial Chamber must order the release of Mr Khieu Samphan immediately.”

Heindel said court rules stipulate that provisions open to interpretation be read in favour of Khieu Samphan and the other accused.

“If there’s ambiguity in the rule and rules should be interpreted in favor of the defence, I think they’re right,” she said.

The Nuon Chea team argued that because the Pre-Trial Chamber did not explain their decision on the appeal against the indictment – only revealing the ruling and saying reasoning would be provided “in due course” – they had not met the requirement for Nuon Chea to be kept in detention.

Pauw acknowledged that there would be “outrage” if the defendants were released, and Heindel said there would be “confusion and distress”.

“I think people wouldn’t understand that [a release on bail] wasn’t itself a judgment of innocence,” she said. “It would take some explaining.”