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## **Tribunal faces detainee deadline**

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THE timeline for a possible indictment in the Khmer Rouge tribunal's second case, announced last week as judges said they considered their investigation complete, was far from arbitrary: a failure to adhere to it could put the court in the difficult position of having to release Nuon Chea, Democratic Kampuchea's Brother No 2, on bail.

Last week's announcement set in place time frames during which the parties to the case may request and appeal decisions about further investigative actions. Though the progress of the case is subject to how the parties exercise their procedural rights, UN court spokesman Lars Olsen said Thursday that the co-investigating judges "will endeavour to issue a closing order in September of this year".

The September target is especially significant with respect to Nuon Chea. The Khmer Rouge ideologue was arrested on September 19, 2007, at his home in Pailin. According to the UN-backed tribunal's internal rules, suspects can be held for up to three years without an indictment before being released on bail. If delays hamper the process, therefore, Nuon Chea could briefly taste freedom in eight months' time.

Anne Heindel, a legal adviser for the Documentation Centre of Cambodia, said she was "very sceptical" that a closing order would arrive by September, or even by November, when the three other regime leaders awaiting a first round of indictments reach their three-year detention marks. In a closing order, judges issue indictments or dismissals in a case.

"These challenges take a long time, these procedures take a long time – if they go as slowly as they did in the Duch case, I think that's fairly optimistic," Heindel said, referring to former S-21 prison chief Kaing Guek Eav, alias Duch. "You've got four accused here, so things are going to take exponentially longer to deal with."

Lawyers at the court, however, said delays were unlikely.

Victor Koppe, Nuon Chea's international co-lawyer, said that although the Case 002 investigation was "in no way finished", he would be "highly surprised" if a closing order was not issued by September. "I think everything is being done to meet those

deadlines,” he said.

Civil party lawyer Silke Studzinsky acknowledged that eight months is “not a lot of time considering what will happen until September”, but said she, too, was confident that the closing order would come on time. “I’m really convinced that they will comply with this deadline,” she said.

The investigation of Duch, the accused in the tribunal’s first case, ended on May 15, 2008, with a closing order issued in August of that year. The prison chief was held by a military court for eight years before transfer to the tribunal, an unlawful period that prosecutors cited as a factor in their decision to seek 40 years rather than life in prison for him.

Heather Ryan, a trial monitor for the Open Society Justice Initiative, said if the tribunal were to change its rules to allow for the detention of suspects past the three-year mark, “it would be open to attacks by the accused that their fundamental rights are not being respected”.

Heindel agreed that the court would be unwise to change its rules in the event of a delayed closing order, though she added that the suspects’ release would be “tremendously controversial” in the eyes of the Cambodian public. “There’d be a lot of confusion.... I just think it would be sort of unfathomable to people, and it’s hard to say how they’d respond,” she said.

Koppe dismissed these concerns, however, saying public order and the judicial process would not be compromised in the event of his client’s release.

“You can still have a proper trial and proper justice without someone being in custody,” he said, adding: “There’s no direct linkage between the two.”