BEFORE THE TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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OBSERVATIONS CONCERNING THE SCHEDULING ORDER FOR HEARINGS OF 19 AND 20 OCTOBER 2011

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Before:

The Trial Chamber
Judge NIL Nonn
Judge Silvia CARTWRIGHT
Judge YOU Ottara
Judge Jean-Marc LAVERGNE
Judge YA Sokhan

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

All Civil Party Lawyers

All Defence Teams

MAY IT PLEASE THE TRIAL CHAMBER

1. On 10 October 2011, the Trial Chamber issued a Scheduling Order for Hearings of 19 and 20 October 2011,[1] according to which:

> Other Defence teams and Civil Parties are not required to be at the Accused IENG Thirith's fitness hearing, but may attend all public portions of this hearing if they so wish. Should any other Defence team wish at this hearing to be heard on question (iv) posed by the Chamber (below), they are requested to inform the Trial Chamber Senior Legal Officer as soon as possible. (…)
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> iv. As found by the Experts, the nature of the Accused IENG Thirith's condition is degenerative and may entail ongoing delays to the proceedings due, for example, to the need for additional or ongoing medical testing or day-to-day fluctuations in her condition. Given the impact of these factors on the rights of the other Accused to an expeditious trial and the likely overall lengthening of proceedings in Case 002, do the parties consider it to be in the interests of justice that the Accused IENG Thirith be severed from these proceedings pursuant to Internal Rule 89*ter* (as an alternative to termination of the proceedings against her in the event of a finding of unfitness to stand trial)?[2]

2. As Mr KHIEU Samphan will not be heard on the question (I) set out by the Chamber, he hereby responds thereto (II).[3]

I – TIME LIMITS FOR SUMMONS TO HEARINGS

3. Mr KHIEU Samphan wishes to remind the Chamber that he is represented by both a national **Co**-Lawyer **and** an international **Co**-Lawyer.[4] The international Co-Lawyer practices and resides outside Cambodia while hearings are not held daily or almost daily.[5]

4. Mr KHIEU Samphan has the right to be defended by a lawyer of his choice.[6] To ensure the effectiveness of this right, the Trial Chamber must bear in mind that at this

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[1] Scheduling Order for Hearings of 19 and 20 October 2011, 10 October 2011, E129 ("Order").
[2] *Ibid*, pp. 4 and 5.
[3] Pursuant to Internal Rule 92. The submissions have been filed in French only; the Khmer version will be filed as soon as the translation is completed so as to be made available to the Chamber and the parties concerned prior to the hearing.
[4] He will be represented by two international Co-Lawyers along with his national Co-Lawyer.
[5] He practices and resides in Paris, France. The soon-to-be second international Co-Lawyer practices and resides in Montreal, Canada.
[6] Internal Rules 21(1)(d) and 22.

stage of the proceedings, Mr KHIEU Samphan's international **Co**-Lawyer needs time to make travel arrangements and to schedule his other professional and personal engagements in order to be able to attend hearings in Phnom Penh.

5. Eight days advance notice of a hearing is very largely inadequate for him to make arrangements, and makes it practically impossible for him to represent Mr KHIEU Samphan by being present at the hearing.

6. It is owing to such practical considerations – which must be taken into account in order to ensure effective representation of an accused – that International Tribunals give defence counsel several weeks advance notice of hearings. It is also standard practice for Defence counsel to be notified by the Chamber through informal channels; this is necessary for the effective management of complex cases.

7. The ECCC Trial Chamber communicates extensively through its Senior Legal Officer allowing the parties to provide her with information to enable the Chamber to organise its work. Therefore, this channel should also be used to notify the parties of any upcoming hearings.

8. Mr KHIEU Samphan wants the Chamber to be in no doubt as to his choice to be defended by an international C**o**-Lawyer alongside his national **Co**-Lawyer, as is his right. In order for his international **Co**-Lawyer not to be put in a situation where he is materially incapable of being present at hearings, Mr KHIEU Samphan is therefore requesting that his Defence Team be notified as soon as possible, and at least 3 weeks in advance, of any upcoming hearings – regardless of whether he is required to be present – until such a time as hearings are held daily or almost daily.

II – FITNESS TO STAND TRIAL AND SEVERANCE

9. The Trial Chamber has asked the parties whether they consider it to be in the interests of justice that Mrs IENG Thirith be severed from the proceedings pending a

final decision on termination of the proceedings against her, in the event of a finding of unfitness to stand trial.[7]

10. Mr KHIEU Samphan is of the view that the issue of severance is premature and that, at any rate, it cannot be addressed until a final decision has been made as to Mrs IENG Thirith's fitness to stand trial.

A – THE ISSUE OF SEVERANCE IS PREMATURE

1 – The Trial Chamber should distinguish between reasons for a decision on fitness to stand trial and reasons for a decision on severance

11. In its Order, the Trial Chamber invites the parties to state their position regarding the interpretation of *Strugar* and its application in this case.[8] It then goes on to raise the potential delays in the conduct of the proceedings that may be caused by Mrs IENG Thirith's medical condition, and the impact of those delays on the rights of the other Accused. It asks the parties to address the question as to whether the Accused IENG Thirith may be severed from the proceedings immediately pending a final decision on whether to possibly terminate the proceedings against her.[9]

12. It is inappropriate to invite the parties to start reflecting on the relevance of a severance in a debate where the focus should be whether or not Mrs IENG Thirith is fit to stand trial.

13. In a manner that is prejudicial to the clarity of the proceedings, the Trial Chamber thus seems to place the right of the Accused to a fair trial at par with the consequences of her medical condition on the expeditiousness of the proceedings. While these two issues are closely linked because both stem from Mrs IENG Thirith's medical condition, they raise different legal issues that the Chamber ought to address in the order in which they arise.

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[7] Order, p. 5.
[8] *Ibid.*
[9] *Ibid.*

14. As to the fitness of the Accused to stand trial, the Chamber relies on the assessment of a number "capacities"[10] as identified in *Strugar*. The purpose of this assessment is to ensure that Mrs IENG Thirith will be able "to exercise effectively [her] rights in the proceedings against [her]".[11] The tests established by this jurisprudence are aimed at setting a threshold below which it would be unfair or unjust to try a person whose capabilities are patently insufficient to ensure a fair trial.[12]

15. The assessment to be conducted in determining the fitness of the Accused to stand trial, which could possibly lead to termination of the proceedings against her, is therefore a different matter from the reasons for severance. By referring to possible delays, the Chamber in fact raises the issue of balancing the right of Accused to be present at her trial with the right of her Co-Accused to an expeditious trial. Yet, the ICTR has held that:

> The overriding principle is the interests of justice, and **severance will only be granted if serious prejudice to a specific right of an accused can be shown**. Indeed, there is a preference for joint trials of individuals accused of acting in concert in the commission of a crime [...].[13]

16. Therefore, severance of the proceedings should be predicated upon the principle of proportionality based on a balancing of the rights of the four Accused.[14] Only the

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[10] *Ibid.* The Chamber is referring to "(a) Accused IENG Thirith's capacity (a) to plead, (b) to instruct counsel, (c) to testify, and d) to understand the course of the proceedings, the details of the evidence and the consequences of the proceedings."

[11] *Prosecutor v. Pavle Strugar*, IT-01-42-T, Decision Re The Defence Motion to Terminate Proceedings, Trial Chamber of the International Criminal Tribunal for the former Yugoslavia, 26 May 2004, ("*Strugar* Decision"), para. 35.

[12] *Ibid.*, para. 34. In *Strugar*, the ICTY Trial Chamber declared that it was particularly mindful, *inter alia*, of the decision in *Dusky v United States* [362 U.S. 402 (1960)] in which the United States Supreme Court held that "the test must be whether [the Defendant] has **sufficient present ability** to consult with his lawyer with a **reasonable degree of rational understanding** and whether he has **a rational as well as factual understanding** of the proceedings against him".

[13] *The Prosecutor v. Edouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, ICTR-98-44-T, Decision on Remand Regarding Continuation of Trial – Rule 82 (B) of the Rules of Procedure and Evidence, 10 September 2009, para. 6.

[14] *Prosecutor v. Jovica Stanišić and Franko Simatović*, IT-03-69, Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008, ("*Stanišić* Decision") para. 18. Regarding the amount of control must exercise, the Trial Chamber observed that: "in determining the future course of the proceedings in this case, **the Trial Chamber's decision to balance the right of the Accused to be present with the right of both the Accused and his Co-Accused to an expeditious trial was reasonable."**

existence of an insurmountable conflict of interests resulting in a substantial infringement of the rights of the Co-Accused would warrant severance of the proceedings against Mrs IENG Thirith.

2 – The Trial Chamber has no good cause to order severance of the proceedings at this stage

17. According to the Trial Chamber, severance of the proceedings in the interests of justice would be justified by the delays that the proceedings against Mrs IENG Thirith would cause to the proceedings against her Co-Accused. This therefore implies that the Accused has been found fit to stand trial, and that the proceedings against her have been maintained. For that reason, severance at this stage would be premature, based as it is on a hypothetical situation and would therefore be unfounded, especially given that "when making a determination as to whether there has been undue delay, the Chamber will only consider any delay up to the present. The Chamber will not speculate on whether the Accused's right to trial without undue delay might be violated at a future date".[15]

18. Further, the Chamber seems to be operating on the premise that any delay stemming from the medical condition of the Accused would justify severance forthwith. The Chamber is therefore suggesting that the fact that Mrs IENG Thirith may not be able to be present at all the hearings would automatically be grounds for terminating the proceedings against her.

19. That reasoning is based on an incorrect interpretation of the applicable law. The non-absolute nature of the right of an accused to be present at his/her trial is a very familiar issue before the International Tribunals, and the jurisprudence relating thereto is quite plain. For example, the ICTY Appeals Chamber has held that:

> An accused appearing before the International Tribunal is entitled to certain minimum guarantees pursuant to Article 21(4) of the Statute of the International Tribunal

[15] *The Prosecutor v. Edouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, ICTR-98-44-T, Decision on Continuation of Trial – *Articles 19 and 20 of the Statute and Rule 82(B) of the Rules of Procedure and Evidence*, 3 March 2009, ("*Karemera* Decision") para. 62.

> ("Statute"). Article 21(4)(d) of the Statute grants the accused the right "to be tried in his presence." **The Appeals Chamber has interpreted this right as meaning that an accused has the right to be physically present. This right, however, is not absolute. An accused can waive or forfeit the right to be physically present at trial.** [...].The Appeals Chamber has observed that the right of an accused to be present at trial pursuant to Rule 80(B) of the Rules can be restricted "on the basis of substantial trial disruptions". **The Appeals Chamber has further found that this Rule is not limited to intentional disruptions.**[16]

20. As a consequence, Mrs IENG Thirith's alleged "need for additional or ongoing medical testing" or "day-to-day fluctuations in her condition" cannot be justification for automatic severance of the proceedings. Accordingly, speculation about changes in her medical condition cannot at this stage be a valid basis to sever the proceedings against her.

21. Further, in recent observations formulated by Mr IENG Sary[17] it is stated that:

> While an accused has the fundamental right to be present at his trial, procedural rules at the international level establish that **an Accused has the right to waive his presence voluntarily**, without being required to provide reasons for his absence. As the right to be present at trial belongs to an Accused, the right is also his to waive.[18] [...] **Even where an Accused waives his right to be present at his trial, his rights remain protected by counsel.**[19]

22. The Chamber must be mindful of the fact that it also has to try three octogenarians and who could also experience "day-to-day fluctuations in [their] condition". Before the ECCC more than anywhere else, an unequivocal interpretation of the right of the accused to be present at his/her trial would not be in the interests of justice.

23. Given the Chamber's mission to conduct the trial of Accused who are in poor health, it would be conducive to the smooth conduct of the proceedings to allow counsel

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[16] *Stanišić* Decision, para. 6. See also *Slobodan Milošević v. Prosecutor*, IT-02-54, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defense Counsel, 1 November 2004, para. 14; *Protais Zigiranyirazo v. The Prosecutor*, ICTR-2001-73-AR73, Decision on Interlocutory Appeal, 30 October 2006, para. 14.

[17] IENG Sary's Observations on Whether the Trial Chamber May Compel an Accused to Be Present in Court When the Accused Has Voluntarily, Knowingly and Unequivocally Waived His Right to Be Present and Is Represented by Counsel, 11 October 2011, E130.

[18] *Ibid.*, para. 10.

[19] *Ibid.*, para. 20.

to represent their clients alone at the proceedings, where so requested by them. That would enable the Chamber to limit the reasons for suspending the proceedings, and to ensure that the severance issue would not arise frequently.

3 – By ordering a premature severance, the Trial Chamber runs the risk of offending the ECCC's procedural rules

24. In determining the fitness of Mrs IENG Thirith to stand trial, the Trial Chamber and the Supreme Court Chamber will have to deal with the issue of the scope of Defence Counsel's mandate. It is crucial to address this issue in order both to assess the fitness of the Accused IENG Thirith to stand trial and to validly order severance of the proceedings against her.

25. As noted by the Trial Chamber in *Strugar*, the issue is subject to broad interpretative powers, in that "[t]he provision of assistance to help with one or more capacities **[…] adds a further dimension of complexity to any objective evaluation**".[20]

26. Therefore, the Trial Chamber cannot prejudge what the Supreme Court Chamber will decide on this issue. The Supreme Court Chamber has the power to annul a decision of the Trial Chamber on the ground that it "is based on an incorrect interpretation of the governing law". Therefore, the Trial Chamber ought to take this into consideration.

27. Indeed, it will be for the Trial Chamber, and subsequently, the Supreme Court Chamber should there be an appeal, to determine a threshold below which the state of health of an accused does not permit maintaining the proceedings against him/her, even when represented by Counsel.

28. Beyond this threshold, i.e. where the proceedings against an accused are maintained, it will be for the Trial Chamber to determine another threshold below which the proceedings cannot go ahead owing to the state health of one accused. Such a

[20] *Strugar* Decision, para. 37.

threshold must be based on a balancing of the right of an accused to waive his/her right to be present at the trial and the need to ensure continuity of the proceedings.

29. It is on the basis of this threshold that severance of the proceedings against one accused could be validly ordered in the interests of justice. Needless to say, determining the latter implies that a final decision has been reached regarding the former. As a consequence, before ordering severance of the proceedings against Mrs IENG Thirith, the Chamber must abide by the ECCC's two-tiered jurisdiction.

30. To consider that the proceedings would be rejoined in the event that the Accused is ultimately found fit to stand trial is pure conjecture. Yet, the Supreme Court Chamber could consider that by granting broad powers of representation to Counsel for Mrs IENG Thirith, she can exercise her rights through them, and is therefore fit to stand trial. If that were the case, her Counsel should be able to represent her in her absence by virtue of those same powers. The proceedings would thus not be suspended, and there would be no need to order severance in order to safeguard the right of her Co-Accused to an expeditious trial. Ordering severance of the Accused IENG Thirith at this stage could thus amount to encroaching on the Supreme Court Chamber's interpretative powers.

31. Considering the age and state of state health of all the Accused in Case 002, more than before any other court, the issue of the scope of counsel's mandate to represent their clients plays a central role. This issue can arise again at any moment, and in the interests of safeguarding clarity of the jurisprudence and treating the Accused equally, the ECCC's two-tiered jurisdiction must be taken into account.

B – THE NEED TO WAIT FOR A FINAL DECISION ON THE ISSUE OF FITNESS TO STAND TRIAL

1 – The four Accused in Case 002 were charged jointly and are prosecuted jointly in the interests of justice

32. A decision for joinder or severance must be based on whether the crimes alleged against the accused are part of the "same criminal enterprise", and whether the interests of justice and the rights of the accused are safeguarded.

33. Determining whether the crimes charged are part of the "same criminal enterprise" entails, in other words, whether the crimes with which each of the accused is charged are different, or were committed in different locations or even at different periods, if there are any factual allegations in the indictments to support a finding that the alleged acts or omissions are part of a common scheme, strategy or plan.[21]

34. "It is in the interests of justice that [...] accused, charged as they are with offences arising from the same course of conduct, should be tried together".[22]

35. The factors to consider in the interests of justice include: (i) avoiding the duplication of evidence; (ii) promoting judicial economy; (iii) minimising hardship to witnesses and increasing the likelihood that they will be available to give evidence; and, (iv) ensuring consistency of verdicts.[23]

36. Enumerating these entitlements and observing that joint proceedings afford the arrested persons the same rights as if they were being prosecuted separately, the ICC sets forth the "general rule that there is a presumption of joint proceedings for persons

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[21] Article 2 of ICTR and ICTY Rules of Proceudre and Evidence. See for example, *Prosecutor v. Pandurević and Trbić,* IT-05-86-AR73.1, Decision on Vinko Pandurevic's Interlocutory Appeal against the Trial Chamber's Decision on Joinder of Accused, 24 January 2006 ("*Pandurević* Decision"), para. 17.

[22] *Prosecutor v. Dario Kordic and Mario Cerkez*, IT-95-14/2, Decision on Accused Mario Cerkez's Application for Separate Trial, 7 December 1998, para. 11.

[23] *Prosecutor v. Gotovina; Prosecutor v. Čermak and Markać,* IT-01-45-AR73.1; IT-03-73-AR73.1; IT-03-73-AR73.2, Decision on Interlocutory Appeal against the Trial Chamber's Decision to Amend the Indictment and for Joinder, 25 October 2006 ("*Gotovina* Decision"), paras. 17 and 48 ; *The Prosecutor v. Katanga,* ICC-01/04-02/07, Decision on Joinder of the Cases against Germain KATANGA and Mathieu NGUDJOLO CHUI, 10 March 2008 ("*Katanga* Decision "), p. 8.

prosecuted jointly", "consistent with the jurisprudence of the International Tribunals for the former Yugoslavia and Rwanda".[24]

37. In this instance, the charges against the four Accused in Case 002 are part of the same criminal enterprise.[25] There are factual allegations both in the Final Submission and in the Indictment showing that the acts or omissions alleged against the Accused are part of a common scheme, strategy or plan. Indeed, the four Co-Accused are charged with "participation in the formation and the implementation of the joint enterprise".[26] The Co-Investigating Judges held that "the Charged Persons not only shared with the other members of the Joint Criminal Enterprise the intent that these crimes be committed as part of the common purpose, they were the driving force behind it.[27]

38. The joint trial of the four Accused in Case 002, whose magnitude and complexity are beyond doubt, guarantees fairer and more efficient proceedings in terms of judicial economy. Therefore, a joint trial is in the interests of justice.

2 – Severance would not be in the interests of justice

39. Severance of one of the Accused in Case 002 would not be in the interests of justice, because it would not be conducive to efficient proceedings. On the contrary. Severance would disrupt nearly one year of preparations for joint proceedings against four persons whose alleged crimes are part of the same criminal enterprise, after more than three years of joint judicial investigations. Severance would require re-organisation,

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[24] *Katanga* Decision, pp. 8 and 9.

[25] A Separation Order in respect of Mr KAING Guek Eav was issued on 19 September 2007 (D18), two months after the Co-Prosecutors filed the Introductory Submission by which they seised the Co-Investigating Judges of the case (D3). It was found to be in the interests of justice to separate Mr KAING Guek Eav who was charged with crimes committed on a smaller geographical scale and on the basis of a different mode of participation. The Co-Investigating Judges did not deem it necessary to separate any accused. Such a separation is no longer warranted at this time.

[26] Co-Prosecutors' Rule 66 Final Submission, 16 August 2010, D390, paras. 1150 and 1542: "Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith's membership of the joint criminal enterprise is demonstrated by: their contribution to and intent to participate in the criminal enterprise; their long standing positions of power and influence within the CPK and associated bodies; and their close working relationships with each other and other members of the joint criminal enterprise."

[27] Closing Order, D427, para. 1540.

substantial amendments to the Indictment[28] and changes to the preparation and pleadings of the parties. It would not only undermine the consistency of the case file, but it would also result in additional delays for the purposes of this re-organisation.

40. Moreover, severance would not be in the interests of justice, because it would not prevent duplication of the evidence, minimise hardship to witnesses or enhance the judicial economy of the proceedings.

41. Indeed, a very large number of witnesses and documents are common to all four Co-Accused.[29] Separating one of the four Accused would therefore require all these witnesses to repeat their testimony.[30] The fact that such witnesses may have to testify in both trials would be more draining, physically and psychologically, than in a joint trial.[31] It would be impossible to avoid inconsistency in the presentation of evidence, both oral and documentary.[32]

42. According to the Appeals Chamber of the *ad hoc* tribunals, "[t]wo separate trials, whether conducted simultaneously or otherwise, are still likely to require more court hours in total than one joint trial and require more judicial time and resources".[33]

43. This lengthening of the proceedings and increase in judicial resources would certainly arise before the ECCC which only have one Trial Chamber.

3 – Ordering severance immediately would not be in the interests of justice

44. In the event that Mrs IENG Thirith is found unfit to stand trial, two possible scenarios can be envisaged.

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[28] Unlike the recent Severance Order, E124, which only requires dividing the Indictment into "portions".
[29] See, the lists of the strikingly large number of witness lists or documents filed by the Co-Prosecutors in respect of the four Co-Accused: E9/4 and annexes, and E9/31 and annexes.
[30] See for example: *Pandurević* Decision, para. 21; *Prosecutor v. Tolimir, Miletić and Gvero,* IT-04-80-AR73.1, Decision on Radivoje Miletic's Interlocutory Appeal against the Trial Chamber's Decision on Joinder of Accused, 27 January 2006 ("*Tolimir* Decision"), para. 26.
[31] See for example: *Gotovina* Decision, para. 47; *Pandurević* Decision, para. 22.
[32] *Katanga* Decision, pp. 8 and 9.
[33] *Gotovina* Decision, para. 44; *Pandurević* Decision, para. 21; *Tolimir* Decision, para. 25.

a) No appeal is filed or no errors are found on appeal

45. Once final, a decision on fitness to stand trial purely and simply terminates the proceedings against Mrs IENG Thirith. Severance prior to that would therefore have been moot and its adverse impact would result unnecessarily.

b) An appeal is filed and the decision is quashed

46. There have been instances of severance in the past, which have had the types of negative consequences described above. This therefore raises the question whether joinder would be ordered again in the interests of justice and based on the presumption in favour of joint proceedings. Assuming this new joinder is possible, how would one proceed?

47. One likely remedy proposed by the *ad hoc* tribunals would be rehearing witnesses who have testified since the severance order.[34] Such a solution and its implications in terms of judicial economy and minimising hardship to witnesses can easily be avoided in this instance by waiting for a final decision, given that the substantive trial has not yet commenced and that the evidence is yet to be heard.

48. At any rate, the serious consequences and uncertainties stemming from severance can be avoided by waiting for the final decision as to whether Mrs IENG Thirith is fit to stand trial, especially because waiting for the decision would cause no undue delay.

4 – Waiting for a final decision on Mrs IENG Thirith's fitness to stand trial does not infringe Mr KHIEU Samphan's right to be tried without undue delay

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[34] *The Prosecutor v. Edouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, ICTR-98-44-T, Decision on Continuation of Trial – *Articles 19 and 20 of the Statute and Rule 82(B) of the Rules of Procedure and Evidence*, 3 March 2009, ("*Karemera* Decision"), para. 62. A parallel may be drawn with the *Stanišić* case where after its decision was reversed by the Appeals Chamber, the Trial Chamber decided to return to the pre-trial stage, even though a prosecution witness had testified in the absence of the co-accused. In practice, this entailed recalling the witness and resume the trial once the accused was able to attend the proceedings. *Prosecutor v. Jovica Stanišić and Franko Simatović*, IT-03-69, Decision on Provisional Release, 26 May 2008, paras. 62-63.

49. It is because of its impact on the proceedings that the Trial Chamber's impending decision on Mrs IENG Thirith's fitness to stand trial is among the few decisions that may be appealed immediately before the ECCC.[35] This is also the reason why the procedure for appealing such a decision is subject to strict, short time limits.[36]

50. Waiting for up to five months for a final decision on the exceedingly complex issue of Mrs IENG Thirith's fitness to stand trial does not infringe Mr KHIEU Samphan's right to be tried without undue delay, especially when this weighed against the adverse effects that a premature severance would have on the conduct of his trial.

FOR THESE REASONS

The Trial Chamber is requested:

- TO NOTIFY Mr KHIEU Samphan's Defence Team of any hearings at least three weeks in advance,

- TO FIND that it is not in the interests of justice to sever the case against Accused IENG Thirith at this time.

WITHOUT PREJUDICE,
AND IT WILL BE JUSTICE

	SA Sovan Jacques VERGÈS	Phnom Penh Paris	
Date	Name	Place	Signature

[35] Internal Rule 104(4).
[36] The parties have 30 days to appeal, while the Supreme Court Chamber has three to four months to render a decision, Internal Rules 107(1) and 108 4*bis* (b).