**BEFORE THE SUPREME COURT CHAMBER**

**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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# IMMEDIATE APPEAL AGAINST TRIAL CHAMBER DECISION ON RULE 35 REQUEST FOR SUMMARY ACTION AGAINST HUN SEN

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## I. INTRODUCTION

1. Pursuant to Rules 35, 104, 105, and 107 of the ECCC Internal Rules[1] (the 'Rules'), counsel for the Accused Nuon Chea (the 'Defence') hereby submit this immediate appeal against the Trial Chamber's 'Decision on Rule 35 Application for Summary Action' (the 'Impugned Decision').[2] For the reasons stated below, the Defence argues that: (i) the appeal is admissible; (ii) the Impugned Decision is legally untenable for a number of reasons; and (iii) the Supreme Court Chamber (the 'SCC') can and should exercise its own discretion in order to remedy the various error committed by the Trial Chamber. As a preliminary matter, the Defence takes the position that the instant submission should be classified as a public one. In any event, it will treat it as such.

## II. RELEVANT FACTS & PROCEDURAL HISTORY

2. The Defence hereby adopts by reference the factual submissions (and underlying supporting material) contained in its 'Request for Summary Action Against Hun Sen Pursuant to Rule 35' (the 'Request').[3] To reiterate briefly, on 5 January 2012, it was reported in the Vietnamese press that Prime Minister Hun Sen made the following remarks two days earlier at a press conference in Dong Nai Province, Vietnam:

> Commenting on accusations by a former Khmer Rouge leader at a trial last month that Vietnam had invaded Cambodia in the 1970s, Hun Sen said it was not necessary to respond to such 'deceitful' words.
>
> 'The killer and genocide (perpetrator) is defending himself in an effort to evade the crime. Everybody knows our country used to have a genocidal regime and [now] we and the world have opened a trial against them,' he said.[4]

*Without a doubt*, the Prime Minister was referring to Nuon Chea—the only 'former Khmer Rouge leader' who has testified 'at a trial' in December 2011 about Vietnam's invasion of Cambodia in the 1970s.

3. Reacting to Defence efforts to condemn his remarks, the Prime Minister attempted to downplay the impact of his statement at a public forum:

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1 *See* ECCC Internal Rules (Rev 8), as revised on 3 August 2011.
2 Document No **E-176/2**, 11 May 2012, ERN 00806873–00806883.
3 *See* Document No **E-176**, 22 February 2012, ERN 00782947–00782959, paras 2–7.
4 Minh Nam, Tan Tu, and An Dien, *Than Nien News/Vietweek,* 'Vietnam did not invade, but revived Cambodia: Hun Sen', 5 January 2012 (reproduced in ECCC Media Clippings: 7–9 January 2012, p 8).

> 'I want to make a public announcement about Brother Number Two Nuon Chea's lawyer who wants to sue me', he said, calling for a response from Cabinet Minister Sok An. 'I was asked in Vietnam about Pol Pot's crimes in the Khmer Rouge regime, but Nuon Chea's lawyer accuses me of interfering in the Khmer Rouge trial. My speeches over [sic] Pol Pot, Nuon Chea, Khieu Samphan, and Ieng Sary didn't influence the current court.'[5]

Most telling, however, was his final comment on the issue: 'The court can do whatever it wants *but I had the right to condemn Khmer Rouge leaders*'.[6]

4. In the Request, which consolidated and formalized previous oral applications in writing (as per the Trial Chamber's general preference), the Defence argued that: (i) Hun Sen's recent remarks—a violation of Nuon Chea's right to be presumed innocent under the Constitution of the Kingdom of Cambodia—amount to an interference with the administration of justice at the ECCC;[7] and (ii) the Trial Chamber should have provided a practical and effective remedy for such violation.[8]

5. In disposing of the Request, the Trial Chamber recognized that Hun Sen's remarks—which 'would seem to refer specifically to Nuon Chea'[9]—amounted to a patent violation of international human-rights law: 'Irrespective of whether or not the alleged remarks have been accurately reported in the press […], such remarks are incompatible with the presumption of innocence to which Nuon Chea is entitled'.[10] Assessing the Prime Minister's statements against Rule 35's 'minimum, threshold condition for inquiry',[11] the Chamber held as follows:

> The Chamber considers that the alleged public statements on the guilt of Nuon Chea made to the press by the Prime Minister give rise to such a reasonable belief and thus satisfy this threshold condition. These remarks, if accurately reported, would constitute statements incompatible with

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5 *The Cambodia Herald,* 'Hun Sen calls for government response to accusations by Nuon Chea's lawyer', 18 February 2012.

6 *Ibid*; *see also* Vong Sokheng & David Boyle, *The Phnom Penh Post,* 'KR leadership fair game: PM', 20 February 2012 ('During a closed-door meeting with government officials and civil society representatives on Friday, the premier said he would not be prevented from freely expressing himself about Nuon Chea's alleged crimes under the Khmer Rouge. "Preventing me from speaking to condemn Nuon Chea and Pol Pot regime means that I was wrong to fight to topple the Pol Pot regime," he was recorded saying. "Look! Together help to defend me and do not allow Nuon Chea's lawyer to act arrogantly".')

7 Request, paras 1, 17–20.

8 Request, paras 1, 21–23.

9 Impugned Decision, para 25.

10 Impugned Decision, para 26; *see also ibid*, para 18 ('It is therefore clear from the international jurisprudence that any declaration of an accused person's guilt by a public official prior to a verdict being delivered by a court is incompatible with the presumption of innocence.')

11 Impugned Decision, para 20; *see also ibid* ('This threshold will be satisfied where the material basis for the allegation reasonably leads a Chamber to believe that the allegation is not merely speculative. Where there is a reasonable belief that a person may have interfered with the administration of justice, the Chambers […] may—but need not—take one or more of the courses of action set out in Rule 35(2), which includes dealing with the matter summarily.')

> the presumption of innocence. As Nuon Chea's case is currently pending before the Trial Chamber […], the Chamber considers that they risk being interpreted as an attempt to improperly influence the judges in charge of the case. It follows that the Chamber may therefore take any of the measures listed in Internal Rule 35(2) […].[12]

In the Trial Chamber's estimation, once the requisite threshold is 'triggered by a "reasonable belief" that conduct with the potential to threaten the administration of justice may have occurred[,] [this] *gives rise merely to further inquiry* and does not require the Chamber to engage in detailed examination of the merits of an allegation or suspicion of interference, or to assess questions of individual criminal responsibility'.[13] Notably, the bench fails to explain what precisely is meant by 'further inquiry' or why such inquiry—given: (i) the Defence's inability to conduct its own investigations pursuant to Rule 35 and (ii) the 'unknown' context and 'ambiguous' nature of the remarks[14]—could not include additional examination by the Trial Chamber of the merits of the admittedly *prima facie* claim. Unsurprisingly, no legal support is offered for this position.

6. In other words, while accepting the satisfaction of Rule 35's low threshold and acknowledging that such satisfaction triggers 'further inquiry', the Trial Chamber nevertheless determined that 'it [was] unnecessary to conduct an investigation in order to establish the authenticity of [the] alleged remarks'.[15] The bench took the position that its general reminder—a bland and toothless restatement of what the Defence considers to be, at best, an unsustainable platitude[16]—was 'sufficient at this stage and […] [that] no further action [was] required'.[17]

7. Inexplicably, much of the Impugned Decision was taken up with a rather convoluted red herring. While the Request acknowledged the Defence's position that Hun Sen's remarks amount to criminal conduct, the Defence clearly conceded that such issue—

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[12] Impugned Decision, para 29; *see also ibid*, para 30 ('[T]he Prime Minister's statements […] satisfy the lower standard for intervention under […] Rule 35(2). Pursuant to this sub-rule, the Chamber has therefore reaffirmed for the benefit of all actors the principles of the independence of the judiciary and the presumption of innocence, outlining their significance for the proper functioning and credibility of the ECCC.')

[13] Impugned Decision, para 20 (emphasis added).

[14] Impugned Decision, para 30.

[15] Impugned Decision, para 31.

[16] *See* Impugned Decision, para 27 ('The Trial Chamber emphasizes once again that any such remarks will not influence it or any of its individual judges in the exercise of their duties. As the Chamber has repeatedly held, the ECCC judges are presumed to be able to perform their judicial functions with integrity, independence, and impartiality by virtue of their oath of office, training, and experience. They are legally qualified and are not influenced by public commentary as lay members of the public might be. The Chamber will consider all relevant facts, evidence, submissions, and law applicable under its legal framework, and will not take into account any public comments on the guilt or innocence of any of the Accused in reaching its verdict.')

[17] Impugned Decision, para 31.

one currently pending before the Cambodian Court of Appeal—was 'another matter';[18] that is to say, the question of Hun Sen's 'criminal culpability'[19] was manifestly *not* the subject of the Request, which dealt squarely and solely with an alleged human-rights violation. Nevertheless, the Chamber spent an inordinate (and misleading) amount of space pronouncing on the standard of proof for criminal liability:

> Where criminal culpability is alleged, the threshold for intervention by a Chamber is higher. In this regard, a person may be found liable for interference with the administration of justice and sanctions imposed only where it is shown that the individual in question has "knowingly and willfully" interfered or attempted to interfere with the administration of justice. […] [N]o issue of criminal culpability arises in this case pursuant to [Rule 35(1)]. The Chamber has, however, issued a reminder to all actors of the need to respect the norms safeguarding the independence of the judiciary and the presumption of innocence pursuant to Rule 35(2).[20]
>
> In relation to alleged criminal responsibility under […] Rule 35(1), the Chamber does not consider the standard of proof required for criminal liability to have been satisfied in the present case […] [as] the context in which these remarks were uttered is unknown and the alleged remarks […] are ambiguous.[21]

Yet at no point in the Request did the Defence suggest that any such heightened standard had been met. Indeed, the argument was confined to the satisfaction of Rule 35's *prima facie* threshold triggering further inquiry by the Chamber.

8. Trial Chamber ultimately concluded that the Request was inadmissible in part and otherwise without merit.[22]

## III. RELEVANT LAW

### A. Interference with the Administration of Justice, the Presumption of Innocence, and Equitable Compensation for Non-Pecuniary Damages

9. The Defence hereby adopts by reference the legal submissions set out at paragraphs eight through fifteen of the Request.[23] Additionally, with respect to Rule 35, this Chamber has recently held as follows:

> Judicial competence over a case at the ECCC is divided according to the stage of the case. The Co-Investigating Judges and the Pre-Trial Chamber are competent during the investigative stage, while the Trial and Supreme Court Chambers are competent during the trial and final

[18] Request, para 20.
[19] Impugned Decision, para 30.
[20] Impugned Decision, para 21.
[21] Impugned Decision, para 30.
[22] Impugned Decision, disposition, at p 11.
[23] *See also* Document No **E-116/1/1**, 'Immediate Appeal Against the Trial Chamber Decision Regarding the Fairness of the Judicial Investigation', 10 October 2011, ERN 00746636–00746658 (the 'Fairness Appeal'), paras 15–18.

> appeal stages. This general allocation of judicial competence, if rigidly applied to Rule 35 applications, would undermine the Court's inherent responsibility to guarantee the integrity of the proceedings and the Accused's right to a fair trial.[24]

Without a doubt, therefore, the Trial Chamber can (and should) act liberally—pursuant to its 'wide discretion' under Rule 35[25]—in the interests of ensuring the legitimacy of its own proceedings. Equally, where the Trial Chamber neglects to do so, this Chamber can (and should) affirmatively remedy such failing.

### B. Admissibility of Appeals Against Decisions Made Pursuant to Rule 35

10. Pursuant to Rule 104(4), 'decisions on interference with the administration of justice under Rule 35(6)' are subject to immediate appeal.[26] A party seeking to appeal such a decision 'shall file an immediate appeal setting out the grounds of appeal and arguments in support thereof'.[27] Such appeals 'shall identify the finding or ruling challenged, with specific reference to the page and paragraph numbers of the decision of the Trial Chamber'.[28] 'In the case of a decision of the Trial Chamber, which is open to immediate appeal as provided for in Rule 104(4) paragraphs (a) and (d), the appeal shall be filed within 30 (thirty) days of the date of the decision or its notification.'[29]

### C. General Standard of Appellate Review for Immediate Appeals

11. 'Pursuant to […] Rules 104(1) and 105(2), an immediate appeal may be based on one or more of the following three grounds: [a]n error on a question of law invalidating the decision; [a]n error of fact which has occasioned a miscarriage of justice; or [a] discernible error in the exercise of the Trial Chamber's discretion which resulted in

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[24] Document No **E-116/1/6**, 'Summary of the Reasons for the Decision on Immediate Appeal by Nuon Chea Against the Trial Chamber's Decision on Fairness of Judicial Investigation', 30 January 2012, ERN 00772881–00772887 (the 'Fairness Decision'), para 14 (citing Document No **D-314/1/12**, 'Second Decision on Nuon Chea's and Ieng Sary's Appeal Against OCIJ Order on Requests to Summons Witnesses', 9 September 2010, Separate Opinion of Judges Catherine Marchi-Uhel and Rowan Downing, paras 10–12).

[25] Fairness Decision, para 15.

[26] Rule 104(4)(d); *see also* Rule 35(6) ('Any decision under this Rule shall be subject to appeal before the Pre-Trial Chamber or the Supreme Court Chamber as appropriate. […] An appeal to the Supreme Court Chamber shall be filed in compliance with Rules 105(2) and 107(1).')

[27] Rule 105(2).

[28] Rule 105(4). *N.B.* Immediate appeals shall: 'be filed with the Greffier of the *Trial Chamber*' and 'be signed by the appellant *or* appellant's lawyers'. Rules 106(2) and 106(4), respectively, (emphasis added).

[29] Rule 107(1).

prejudice to the appellant.'[30] This Chamber has clarified 'that the grounds for appeal listed under […] Rule 105(2), in relation to immediate appeals are to be read as *disjunctive*'.[31] 'For these purposes, the [SCC] may itself examine evidence and call new evidence to determine the issue.'[32]

## IV. ARGUMENT

### A. The Appeal is Admissible

12. As the Impugned Decision amounts to a ruling 'on interference with the administration of justice under Rule 35(6)',[33] it is subject to immediate appeal. Moreover, the instant submission: (a) sets out 'the grounds of appeal and arguments in support thereof';[34] (b) 'identif[ies] the finding [and] ruling challenged, with specific reference to the page and paragraph numbers of the decision of the Trial Chamber';[35] and (c) has been 'filed within 30 (thirty) days of the date of the decision or its notification'.[36] Accordingly, the appeal is both admissible and timely.

### B. The Trial Chamber's Decision Pursuant to Rule 35 is Untenable for a Number of Reasons

#### *1. The Trial Chamber Erred in Law by Failing to Impose a Suitable Remedy for the Acknowledged Human-Rights Violation*

13. Having acknowledged a clear human-rights violation pursuant to the applicable international jurisprudence,[37] the Trial Chamber neglected (without explanation) to take the next step—the crafting of an appropriate judicial remedy as mandated by the very same case law. While the Request contained explicit requests for remedial action[38] and equally explicit references to equitable compensation for non-pecuniary damages under the relevant law,[39] the Trial Chamber simply ignored its obligation in this regard. According to the

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[30] Document No **E-50/2/1/4**, 'Decision on Immediate Appeals by Nuon Chea and Ieng Thirith on Urgent Applications for Immediate Release', 3 June 2011, ERN 00702255–00702274 (the 'Release Decision'), para 27.
[31] Release Decision, para 28; *see ibid* ('Accordingly, in order to invoke either the first or second of these grounds of appeal (error of law or error of fact), an appellant is not required to additionally demonstrate a discernible error in the exercise of the Trial Chamber's discretion which resulted in prejudice to him or her.')
[32] Rule 104(1).
[33] Rule 104(4).
[34] Rule 105(2).
[35] Rule 105(4).
[36] Rule 107(1).
[37] *See* Impugned Decision, para 29.
[38] *See* Request, paras 21–23.
[39] *See* Request, para 15.

jurisprudence cited by the bench, Nuon Chea is entitled to some form of compensation (be it a monetary award or an eventual sentence reduction). And it is eminently within the purview of this tribunal to impose such remedies in line with international human-rights norms.[40] However, the Trial Chamber failed to even address this issue, let alone consider the available options—despite having identified an actual violation of the presumption of innocence, a serious infringement which necessitates a commensurate remedy. Such failure amounts to '[a]n error on a question of law invalidating the decision'.[41]

### *2. The Trial Chamber Abused its Discretion by Failing to: (a) Directly Rebuke and Warn the Prime Minister and (b) Conduct Further Investigations Into the Context and Nature of His Remarks*

14. To the extent the Trial Chamber has 'deal[t] with the matter [of Hun Sen's remarks] summarily'[42]—if that, in fact, is what the Impugned Decision purports to have done[43]—the bench *must* have determined that there were 'sufficient grounds' to proceed under Rule 35(2),[44] despite the fact that the Impugned Decision contains no discussion on this point. However, the extremely limited action taken by the bench amounts to neither a practical nor an effective solution to the problem of executive violations of fundamental human-rights guarantees in Cambodia. Equally, the Trial Chamber's failure to 'conduct further investigations to ascertain whether there [were] sufficient grounds for instigating proceedings'[45]—particularly, in light of the bench's own description of the comments' unknown context and ambiguous nature[46]—suggests a lack of genuine judicial concern with Hun Sen's consistent meddling in the affairs of the ECCC. In both cases, the Trial Chamber's lack of appropriate action amounts to a 'discernible error in the exercise of [its] discretion which [has] resulted in prejudice to the appellant'.[47]

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40 *N.B.* For example, in Case 001, the Trial Chamber reduced Duch's ultimate sentence as compensation for his illegal detention—a violation of one of his fundamental human rights.
41 *See* para 11, *supra*.
42 Rule 35(2)(a).
43 *See* Impugned Decision, para 30 ('Pursuant to [Rule 35(2)], the Chamber has therefore reaffirmed for the benefit of all actors, the principles of the independence of the judiciary and the presumption of innocence, outlining their significance for the proper functioning and credibility of the ECCC.')
44 *See* Document No **D-314/1/12**, 'Second Decision on Nuon Chea's and Ieng Sary's Appeal Against OCIJ Order on Requests to Summon Witnesses', 9 September 2010, ERN 00600748–00600774, para 36. *N.B.* As the Defence understands the current 'interpretation' (not to say logic) of a Rule 35 inquiry at the ECCC, where there is 'reason to believe' an individual may have interfered with the administration of justice, such suspicion triggers 'further inquiry' which, if such inquiry so demonstrates, could establish 'sufficient grounds' for pursuing one of the options under Rule 35(2), which may ultimately—should there exist proof 'beyond reasonable doubt'—lead to the imposition of sanctions.
45 Rule 35(2)(b).
46 *See* Impugned Decision, para 30.
47 *See* para 11, *supra*.

a. The Trial Chamber Should Have Issued a Strong Public Warning Directed Squarely at the Prime Minister

15. While the Trial Chamber has guardedly criticized the remarks in question (albeit exclusively in the conditional tense and in the most qualified manner imaginable),[48] the bench has manifestly *not* made any 'intervention under […] Rule 35(2)' as claimed.[49] Admittedly, the Trial Chamber has 'reaffirmed' the importance of the presumption of innocence. However, the maker of the 'alleged' statements—Hun Sen himself—has neither been rebuked for his past conduct nor warned against making further statements of a similar nature, as specifically requested by the Defence.[50] In fact, no action has been taken apart from the delivery of the Trial Chamber's banal decision.

16. Such oblique obeisance to executive power must be seen for what it is: mere lip service to empty fair-trial guarantees, the flouting of which incurs no actual sanction in this country. Contrary to the Trial Chamber's position, there is *no doubt* Hun Sen spoke the words in question.[51] There is likewise *no doubt* such words were directed against Nuon Chea.[52] And, without departing from the emphatic tense, they *most certainly* reflect the manner in which the Prime Minister maintains control over the Cambodian judiciary.[53] Unfortunately, the Impugned Decision equally reflects the degree to which members of the bench are incapable of *truly* criticizing (let alone sanctioning) unlawful manifestations of executive excess. Perhaps it is not surprising that Cambodian judges at the ECCC—political appointments to a man[54]—would not dare invoke the ire of this country's autocrat (in power now for more than 10,000 days), who recently offered the following warning to his political critics: 'I not only weaken the opposition, I'm going to make them dead ... and if anyone is strong enough to try to hold a demonstration, I will beat all those dogs and put them in a cage.'[55] Such chilling sentiments—among other things—ought to disabuse any reasonable student of Cambodian politics of the

[48] *See* Impugned Decision, para 25 (Hun Sen's comments '*would seem* to refer specifically to Nuon Chea'); *ibid*, para 26 (The comments '*would appear* to reflect and opinion that Nuon Chea is guilty even though he has not been proven so according to law'); *ibid*, para 26 ('*if* made' they '*would amount* to the prejudgment by a senior public official of a criminal case pending before the ECCC and *may have* an impact on the public perception of Nuon Chea's culpability'); *ibid*, para 29 ('*if* accurately reported' they '*would constitute* statements incompatible with the presumption of innocence'); and *ibid*, para 29 (they, therefore, '*risk* being interpreted as an *attempt* to improperly influence the judges in charge of the case').
[49] Impugned Decision, para 30.
[50] *See* Request, para 24.
[51] *See* Request, paras 2, 6.
[52] *See* Request, para 2.
[53] *See*, *e.g.*, Request, paras 19.
[54] *N.B.* To date, no Cambodian judge has expressed a judicial position at odds with those of the Royal Government of Cambodia.
[55] Brad Adams, *The New York Times*, '10,000 Days of Hun Sen', Op-Ed, 31 May 2012.

fanciful notion that Cambodian 'judges are presumed to be able to perform their judicial functions with integrity, independence, and impartiality'.[56]

17. Robust measures—not 'theoretical and illusory' affirmations—are needed when dealing with an individual like Hun Sen.[57] In order to be effective, legal action must take account of factual reality and rise to the level of the threat presented. If the Trial Chamber was in fact convinced of the Prime Minister's wrongdoing and its insidious effect on Nuon Chea's case, then it was incumbent upon the bench to truly condemn the man, not just his words. Indeed, one rightly wonders if Hun Sen was even informed of the Trial Chamber's hypothetical censure. If so, one can be quite certain that he has lost no sleep over it. In any event, the course of action undertaken by the Trial Chamber is patently insufficient to deter further violations on the part of the Prime Minister.

b. The Trial Chamber Should Have Conducted Further Investigations

18. With Rule 35's 'threshold condition' satisfied[58]—that is, having found a *prima facie* violation—it fell to the bench to attempt to uncover the nature and full extent of the breach by way of further inquiry. Given the alleged ambiguity regarding the context of Hun Sen's comments,[59] the Trial Chamber should have proceeded pursuant to Rule 35(2)(b) in order to determine, to the extent possible, 'the intent with which [the Prime Minister's] remarks were made'.[60] Instead, the Trial Chamber undertook a misplaced discussion regarding 'the standard of proof required for criminal liability' (i.e. proof beyond reasonable doubt), making much of the fact that the Defence had failed to prove actual criminal culpability.[61] While the Defence has indeed made such a *claim* as part of a previous request to the Phnom Penh Municipal Court (now on appeal to the Cambodian Court of Appeal), the Request in no way suggested that such allegations had been conclusively established beyond reasonable doubt. Why the Trial Chamber chose to approach the Request from such an angle is unclear but seems, perhaps, designed in some way to acquit the Prime Minister of the stronger charge—at least in the public's perception—or, even more troubling, to improperly influence the pending municipal proceedings.

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[56] *See* Request, paras 22, 23.
[57] *See* Request, para 15.
[58] Impugned Decision, para 29.
[59] *See* Impugned Decision, para 30.
[60] Impugned Decision, para 29.
[61] *See* para 7, *supra*. *N.B.* The Defence did not suggest that the evidence presented demonstrated *conclusively* that Hun Sen had committed criminal activity; nor could it have done so (given its lack of proper investigative authority).

### *3. The Trial Chamber Erred in Finding the Request Partially Inadmissible*

19. While the Trial Chamber declared a portion of the Request inadmissible as a repetitious filing,[62] the bench nevertheless—in an eleven-page decision—'elaborate[d] on the reasons for its original ruling and set […] forth the applicable law regarding the presumption of innocence in relation to statements by public officials'.[63] Although the Defence readily concedes that such error was a harmless one in so far as the Trial Chamber actually addressed the merits of the *entire* Request and produced a facially 'reasoned' decision thereon, the lengthy recitation of the Request's procedural history,[64] along with the Trial Chamber's eventual capitulation, belies the bench's stated position on admissibility. Indeed, it seems—in fact, it is quite obvious to the Defence—that the Trial Chamber's position on this point reflects a petty desire to somehow chastise counsel for doggedly raising an important issue—though one obviously, not to say wildly, unpopular with the bench. In any case, perhaps the SCC will not fail to appreciate the continuous effort required to cajole the Trial Chamber into properly addressing fair-trial issues in Case 002.

## C. This Chamber Should Exercise its Own Discretion and Implement Further Measures Pursuant to International Jurisprudence and Rule 35

20. For the reasons contained in the Request and those expressed herein, this Chamber should: (i) impose an appropriate remedy for Hun Sen's violation of Nuon Chea's fair-trial rights in accordance with the relevant human-rights jurisprudence; (ii) directly, publicly, and robustly sanction the Prime Minister pursuant to Rule 35(2)(a) in a manner that will prevent further interference; and (iii) order an investigation pursuant to Rule 35(2)(b) into the nature and context of the remarks at issue. The SCC clearly has the authority to do so and the strictures of a fair trial demand such action.

## V. CONCLUSION

21. Accordingly, for the reasons stated herein, this Chamber should: (i) admit the instant appeal; (ii) declare the Impugned Decision invalid for the reasons set out above; and (iii) implement the further measures suggested by the Defence in the previous

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[62] *See* Impugned Decision, para 23. *N.B.* A portion of the Request was declared 'admissible as a discreet request under […] Rule 35'. *Ibid*, para 24.
[63] Impugned Decision, para 23.
[64] *See* Request, paras 2–7.

paragraph. Oral argument at an open hearing—in advance of any determination of the instant appeal—would be appropriate and is hereby further requested.

CO-LAWYERS FOR NUON CHEA

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