



ASIAN HUMAN RIGHTS COURT SIMULATION

Application No. 18-01

Between

Chiou, Ho-shun ... Applicant

And

Republic of China (Taiwan) ... Respondent

CORAM:

MAH Weng Kwai, *Court President*

Wen-Chen CHANG, *Judge Rapporteur*

Kevin TAN Yew Lee, *Judge*

Tae-Ung BAIK, *Judge*

Akiko EJIMA, *Judge*

Hualing FU, *Judge*

Sumaiya KHAIR, *Judge*

Date of Judgement: 17 October 2019

Counsel for the Applicant:

Mr. Yu, Po-Hsiang, Counsel and Advocate; Taiwan
Mr. Cheng, Kai-Hung, Counsel and Advocate; Taiwan
Mr. Lin, Chun-Hung, Counsel and Advocate; Taiwan
Mr. Kuo, Hao-Ren, Counsel and Advocate; Taiwan
Mr. Lee, I-Chuan, Counsel and Advocate; Taiwan
Mr. Wang, Thomas, Counsel and Advocate; United States of American
Ms. Huang, Shih-Hsin, Counsel and Advocate; Taiwan
Ms. Lin, Sin-Ping, Counsel and Advocate; Taiwan
Ms. She, Wan-Lin, Counsel and Advocate; Taiwan
Mr. Chen, Yan-Hsuan, Counsel and Advocate; Taiwan

Counsel for the Respondent

Dr. Yang, Alice CJ, Counsel and Advocate; United States of American
Mr. Liu, Chih-Wei, Counsel and Advocate; Taiwan
Mr. Tsai, David, Counsel and Advocate; Taiwan
Mr. Lee, Essen, Counsel and Advocate; Taiwan
Ms. Chiu, Ariel, Counsel; United States of American
Mr. Tsai, Meng-Han, Counsel; Taiwan
Ms. Jen Hsiao-Hsiang, Counsel; Taiwan

Grounds of Judgment

INTRODUCTION

- [1] An application, vide Application No. 18-01, was filed by Chiou Hoshun, the Applicant, a Taiwan national, under Article 5 of the Statute of Asian Human Rights Court Simulation on 20 December 2018.
- [2] On 31 January 2019, the Application was served on the Respondent.
- [3] On 18 May 2019, a pre-trial hearing was held by Judge Rapporteur Wen-Chen Chang, who was duly authorized by the Court President to hear submissions by Counsel for the Applicant and the Respondent on the undisputed and disputed issues to be determined at the hearing. On 26 July 2019, the Court continued with the pre-trial hearing and heard the submissions of Counsel on the motions raised by both parties. The motions were related to the evidence admitted during the trial and to procedural issues. The Application was heard on 27 and 28 July 2019.
- [4] The Court appointed independent experts, Dr. Michelle Staggs Kelsall, Professor Lin Chih-Chieh and Professor Chin Mong-Hwa, Professor Lin Chao-Chun, Lawyer James Lin, and Dr. Li Ful-Dien, to provide their opinions to the Court and heard their oral submissions on 26 to 28 July 2019. The Court also received *amicus curiae* written submissions from Sir Nicholas Blake, on behalf of the Death Penalty Project, United Kingdom and from Covenants Watch, Taiwan, and heard Professor Song-Lih Huang's oral submission on behalf of Covenants Watch,

Taiwan on 27 July 2019. The Court is extremely grateful for the assistance rendered by all the independent experts and acknowledges with gratitude the amicus curiae briefs submitted.

FACTS OF THE CASE

I. BASIC FACTS

[5] On 21 December 1987, a 9 year-old boy named Lu Zheng (“Lu Zheng”) was abducted in Hsinchu City, Taiwan while waiting for his parents in front of the school gate. Lu Zheng’s family received calls for ransom from the abductor the same day. The family negotiated with the abductor and paid a ransom, but Lu Zheng was not released and never returned home. In early October 1988, the Applicant along with 11 others (5 of whom were minors) were accused of kidnapping Lu Zheng for ransom and murdering him. They were also accused of robbing and murdering an insurance agent, Ke-Hong Yu-Lan (“Ke-Hong Yu-Lan”). On 1 October 1988, while being detained in prison for another case, the Applicant was interrogated by the police in connection with both the Lu Zheng and Ke-Hong Yu-Lan cases. During the said interrogations, the Applicant denied his involvement in both cases. However, during police investigations carried out on 8 and 9 of October 1988, the Applicant was said to have admitted his involvement in the Lu Zheng case by receiving the ransom and killing him. The Applicant was thus detained under the Prosecutor’s order on 14 October 1988 in respect of these two cases. Between 8 October and 5 November 1988, the

Applicant allegedly confessed to (a) the murder and mutilation of Ke-Hong Yu-Lan; and (b) the kidnapping and murder of Lu Zheng. On 3 February 1989, the Applicant was charged for murder in both the cases. On 29 November 1989, the Taiwan Hsin Chu District Court convicted the Applicant and sentenced him to death. Following his convictions and sentence, the Applicant appealed to the Taiwan High Court. On further appeal to the Supreme Court, the Applicant's case was sent back to the High Court for rehearing. As a consequence of subsequent appeals by the Applicant on various grounds, the case was heard a total of 11 times. In all, the Applicant underwent 25 hearings, once in the District Court, 12 in the High Court and 12 appeals in the Supreme Court.

- [6] On 12 May 2011, the case was finally sent back to the High Court for re-hearing. The High Court in its 12th judgement convicted and sentenced the Applicant to death for robbery, kidnapping and murder. The High Court found the Applicant guilty on the basis of several strands of evidence, one of which was the expert report on the examination of the alleged voice imprint of Yu Zhi-Xiang, a co-accused of the Applicant. However, the Applicant could not insist on having another expert to examine the voice recording of Yu Zhi-Xiang, as the recording was lost and could not be produced at the trial. The prosecution merely tendered selected excerpts of the graphic voice analyses, without the physical evidence. Also, the Applicant could not exercise his right to cross-examine the expert witness as the witness had died in the meantime. Further, a black plastic bag allegedly

containing a butcher's knife, male clothing, and female shoes (which according to the victim's daughter, belonged to the victim), animal-grade syringe, among others, was found near the body of the victim, Ke-Hong Yu-Lan. No forensic tests were carried out to link these items to either case. Lastly, the abovementioned contents of the plastic bag were also lost due to the negligence of the police officers and the prosecution.

[7] In the last appeal at the High Court, the Applicant's attorney argued that the voluminous testimonial evidence should not be admissible because: (1) the confessions and testimonies, including those of co-accused Luo Ji-Xun, Deng Yun-Zhen, Chen Ren-Hong, Yu Zhi-Xiang, Zeng Chao-Xiang, Huang Yun-Fu, Zhu Fu-Kun, and Lin Xin-Chun were recorded out of court; (2) the abovementioned evidence was wrongfully procured through police misconduct, which cast doubts on the voluntariness of the confessions; and (3) the testimonies and confessions were apparently unreliable. These last arguments were rejected by the High Court who proceeded to admit the abovementioned testimonies and confessions into evidence.

[8] In the trials by the fact-finding Courts (trial in the Hsin Chu District Court and High Court), Luo Ji-Xun, Zeng Chao-Xiang, Huang Yun-Fu, Yu Zhi-Xiang, Deng Yun-Zhen, Chen Ren-Hong all had alleged that they were tortured by the police during investigations. Yu asserted that during the police inquiry in early October 1988 he was tortured by the police, and thus confessed unwillingly. The police bureau involved in the investigation submitted a letter to the court denying any torture or

improper conduct during investigation. The policemen involved in investigation were subpoenaed before the court, but they denied all the allegations under oath in the 2nd Judgment [(81) Shang-Zhong-Gen-1-Zhi No.8] of the of the High Court in 1993.

[9] In 1993, the Respondent's Control Yuan (an independent constitutional institution whose functions are similar to those of an Ombudsman) filed an investigation report concerning the Applicant's case. In the Investigation Report 1993, the Control Yuan found an unfiled audio tape that proved that Yu Zhi-Xiang, a co-accused, was tortured by at least four police officers during the time the Applicant's case was being investigated. Three of the four accused police officers were found guilty and convicted by a district court of torturing Yu Zhi-Xiang to extract his confession (the fourth was also found to be involved in the conviction of torture and was placed on a wanted list). On appeal to the High Court, the conviction of two of the three officers for the crime of torture were confirmed, and one of the officers for perjury was also confirmed in 1996. The convictions were confirmed by the Supreme Court in 1998.

[10] Having notice of the Investigation Report 1993, the Supreme Court directed the High Court to inspect the audio tapes that the High Court referred to in the 3rd Judgment of the Supreme Court [(83) Tai-Shang-Zhi No.6433], 4th Judgment of the Supreme Court [(84) Tai-Shang-Zhi No.1361], 5th Judgment of the Supreme Court [(86) Tai-Shang-Zhi No.5757], and 6th Judgment of the Supreme Court [(87) Tai-Shang-Zhi No.3115]. The High Court accordingly followed the Supreme Court's

directions and inspected the tapes in the 7th Judgment [(87) Zhong-Shang-Gen-6- Zhi No.145].

[11]On 28 July 2011, the Taiwan Supreme Court dismissed the Applicant's appeal and affirmed its (100) Tai-Shang-Zhi No. 4177 criminal judgment. The case became final and the Applicant was found guilty of both murders.

[12]After the Applicant's conviction in 2011, the Control Yuan issued another two investigation reports on the Lu Zheng and the Ke-Hong Yu-Lan cases in 2013 and 2014 respectively. In the two reports, the Control Yuan found that the High Court's final judgment on the Applicant was based solely on the co-accused's wrongfully-extracted confessions and uncorroborated evidences. On the basis of these two Control Yuan investigation reports, the Applicant filed an extraordinary appeal to the Supreme Court and requested the High Court for a re-trial. However, both the Supreme Court and the High Court rejected the Applicant's applications.

[13]During the 12th trial in the High Court, the Respondent enacted the Speedy Trial Act in 2010. Article 7 of the Speedy Trial Act states: "Where no final judgement is made after eight years from the date the case is pending in the first instance, except when a not guilty verdict shall be rendered, the court may, upon the request of the accused, and after considering the following circumstances, reduce the sentence at discretion if the court concludes that the accused right to a speedy trial is gravely violated so that remedies shall be provided:

1. Whether the delay in litigation proceeding is caused by the accused;
2. The balance between the complication of the case in terms of legality and facts and the delay in proceeding; and
3. Other circumstances related to the speedy trial.”

[14]The Applicant did not make any applications under the said Act.

II. THE JUDGES

[15]The Applicant’s case was reviewed twelve times by the Supreme Court.

On the twelfth occasion, the Supreme Court dismissed the Applicant’s appeal, and the conviction and sentence became final. Sixteen judges participated at least twice in the Supreme Court’s judgments. Among the twelve judgments in the Supreme Court, the second to the twelfth cases were decided by the Judges who had participated in the previous hearings.

[16]Of the 13 trials (including the trials in the District Court and High Court), one judge participated in both the 5th trial of the High Court, (85) Zhong-Shang-Geng-(4)-Zi No. 45 and the 9th trial of the High Court, (93) Zhong-Zhu-Shang-Geng-(8)-Zi No. 1. Before the conviction was affirmed by the Supreme Court, the Applicant did not file any motion to disqualify any of the judges based on this possible ground of conflict.

III. THE APPLICANT’S POSITION AFTER HIS ARREST

[17]The Applicant was arrested on 5 October 1988 on charges of robbery and kidnapping for ransom and murder of Ke-Hong Yu-Lan and Lu Zheng. He was held in detention under the prosecutor's order on 14 October 1988.

[18]From his initial incarceration on 14 October 1988 until the Supreme Court's affirmation of the conviction and sentenced him to death on 28 July 2011, the Applicant was continuously detained. He was incarcerated for nearly 23 years before the Supreme Court's final decision.

[19]During the 23 years of his detention, the Applicant was made to wear foot shackles for 18 years. He was also incarcerated in solitary confinement for 4 years, and has been on death row awaiting cution since the date of conviction in 2011.

IV. THE APPLICANT'S CLAIMS

[20]The Applicant claims that:

1. The Respondent and its prosecutorial agencies engaged in torture to wrongfully extract confessions from him and have thus violated Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2, section 1, of the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Ill-treatment of the Applicant during police investigations included stripping, beating, forcible ingestion of spicy liquid, suspending upside down, forcibly sitting on a block of ice and assault to his

genitalia with a baton or an electric probe.

2. The Courts had wrongly convicted the Applicant by relying on the said incriminating evidence, thereby violating Article 15 of the CAT.
3. The Courts had wrongly admitted and relied on co-accused Yu Zhi-Xiang's confession which was proved to have been wrongfully extracted by torture, and wrongly denied the Applicant and his co-accused their right of cross-examination, thereby violating the Applicant's right under Article 14 of the ICCPR. Yu Zhi-Xiang was subjected to similar forms of physical ill-treatment and torture.
4. From 14 October 1988 to 2011, until the Supreme Court's affirmation of the death penalty, the Applicant was held in detention for 23 years:
 - 4.1. The Applicant was kept in solitary confinement for 4 years from 1989 to 1993, in violation of Article 7 of the ICCPR and Article 16, section 1, of the CAT.
 - 4.2. The Applicant was incarcerated with foot-shackles for 18 years from 1989 to 2007. This constituted inhumane and degrading treatment under Article 7 of the ICCPR and Article 16, section 1, of the CAT.
 - 4.3. During his incarceration, the Applicant lived in constant fear of the death penalty. Further, the circumstances of his confinement were very restrictive, with poor sanitary facilities. This constituted torture or cruel, inhumane or degrading

treatment under Article 9, section 3, and Article 10, section 1 of the ICCPR and Article 16, section 1, of the CAT.

4.4. While the Applicant was being incarcerated, he was unable to prepare himself for his case, which violates his rights under all sections of Article 14 of the ICCPR.

4.5. The Applicant was sentenced to death under the aforementioned circumstances. The Respondent has violated his rights under Article 7 and all sections of Article 14 of the ICCPR, and Article 16 Section 1 of the CAT.

4.6. The Applicant's case had been heard and tried twelve times over 23 years, yet he still faces the death sentence without any relief in sentencing. The Respondent has violated the Applicant's right to a speedy trial under Article 14 Section 3 (c) of the ICCPR.

5. The Applicant has been on death row since 2011. The Respondent has violated the Applicant's rights under Article 7 of the ICCPR and Article 16 Section 1 of the CAT under such circumstances.

6. Due to the prosecution's loss of the telephone voice recording of the alleged demand for ransom, the Applicant was not able to request for another expert examination or investigation into the alleged voice recording. The Respondent has violated the Applicant's rights under all sections of Article 14 of the ICCPR through the loss of this vital evidence.

7. Due to the loss of the plastic bag allegedly containing a pair of

black plastic shoes (which according to the victim's daughter, belonged to the victim), a butcher's knife, a rectangular knife, a animal-grade syringe, and male clothing, the Applicant was not able to request for another investigation based on this evidence. The non-confessional evidence was inconsistent with the Applicant's alleged confession and other alleged confessional evidences and the courts ignored physical evidence that was favorable to the Applicant. All of the above constituted a violation of all sections of Article 14 of the ICCPR through the loss of this vital evidence.

8. By failing to recuse themselves, the judges who repeatedly sat in the High Court and Supreme Court hearings of the Applicant, violated all sections of Article 14 of the ICCPR.

V. THE RESPONDENT'S CLAIMS

[21]The Respondent raised a preliminary objection to the case being brought before this Court, arguing that they have not submitted to the jurisdiction of this Court, and/or accepted judgments rendered by any agency, organizations, or international courts for complaints of infringement of human rights brought by any persons. Since this Court lacks the proper legal bases to assert jurisdiction over the Respondent, the Court has no jurisdiction to hear this Application made by the Applicant.

[22]In the event the Court holds that it has jurisdiction to hear this case, the Respondent denies all of the Applicant's claims and submitted that this

Court should dismiss the Applicant's application for the following reasons:

1. The ICCPR came into effect on 10 December 2009. In this case, the Applicant's claims include alleged breaches of the ICCPR which occurred before 10 December 2009. The Court should not examine the Respondent's violations of the ICCPR, which allegedly took place prior to 10 December 2009 as the Respondent then had no legal obligations under the said Covenant.
2. The Respondent is not a contracting party to the CAT and has not completed the process of accession or unilateral declaration to undertake the Convention's obligations. As such, it follows that the Respondent bears no obligation under the CAT.
3. In the case of the Respondent's alleged violations of the ICCPR that took place after 10 December 2009, reference is made to Article 6, section 1 of the Statute of Asian Human Rights Court, which provides:

"The Court may exercise its jurisdiction in any matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law."

In the last trial of fact conducted by the High Court [(98) Shu-Shang-Zhong-Gen 11 Zi No. 7], the Applicant failed to allege any violations of the ICCPR. After that retrial, the Applicant continued to appeal to the Supreme Court, but still did not allege any violations of the ICCPR (Taiwan Supreme Court (100) Tai-Shang-

Zi No, 4177). In all of these instances, the Applicant clearly had ample opportunity to address his claims in the courts of Taiwan but failed to do so. Accordingly, Art. 6 section 1 and 2 mandates that this court deem the Petitioner's claim inadmissible as he has failed to exhaust all domestic remedies.

4. This Court should decide solely on facts ascertained by the courts in Taiwan. In this case, the Applicant's claims were often contradictory to the Courts' findings of fact. An example of this is the Applicant's claim that the Respondent's prosecutorial agencies engaged in torture to wrongfully extract confessions from the Applicant and his co-accused. However, in the last decision of the High Court, which was based on the findings of facts, a long explanation was given to clarify the Court's conclusion that the allegations of torture had not been proven. It was also specifically pointed out in the last decision of the Court that although some officers actually forced the co-accused Yu Zhi-Xian to confess involuntarily during his interrogation in early October 1988, these wrongfully extracted confessions were excluded as inadmissible evidence and did not form the basis for the Applicant's conviction.
5. The Applicant's claim that he was detained and put on a death row for a long time and had suffered torture by the so-called death row phenomenon is denied. The Respondent denies the existence of such a phenomenon.
6. If the Applicant thought that the treatment in prison was improper, and not suitably resolved, the Applicant could have sought

remedies under the Criminal Procedure Act, Detention Act and Prison Act. Without first seeking domestic remedies, the Applicant directly submitted his complaints to this Court, thereby violating Article 6, section 1 of the Statute of the Asian Human Rights Court which stipulates that cases can only be brought to the Court “after domestic remedies have been exhausted”.

7. The Applicant’s 23-year incarceration before his conviction was finally affirmed arose from the fact that he committed an offence that was punishable by death. As such, the Respondent had no alternative but to detain him and restricted his freedom in accordance with the then prevailing domestic laws for security and public policy reasons.
8. The Respondent does not deny that the Applicant was detained with foot-shackles for 18 years. However, Article 19 of the Enforcement Rules of the Detention Act provides:

“The Detention Center shall not utilize any constraining devices as a means of punishment on defendants. In circumstances where the utilization of constraining devices is necessary due to some legal reasons, precautionary procedures shall be taken pursuant to the regulations contained hereinafter:... (6)The weight of feet shackles and chains shall be limited to a maximum of 2 kilograms. If necessary, the weight can be increased to 3 kilograms. The weight of handcuff shall not exceed one half of a kilogram.”

It was necessary to have the Applicant wear the foot-shackles to restrain and prevent him from escaping. The use of the foot-shackles was consistent with prevailing domestic laws.

9. The Respondent does not deny that the Applicant was kept in solitary confinement for 4 years from 1989 to 1993 but submits that this was legal under Article 14, section 1 of the Detention Act which provides:

“A defendant shall be confined individually, but he can be accommodated in group cell in terms of their status, occupation, age, character or the condition of body and mentality. The defendants who have co-suspects or have relative legal case cannot be accommodated in a same group cell,”

It was thus lawful for the Respondent to place the Applicant in solitary confinement.

10. Furthermore, Article 6 of the Detention Act states:

“A criminal defendant can appeal to the judge, public prosecutor or inspector once he has been receiving inappropriate treatment from a detention house. When a judge, public prosecutor or inspector receives an aforesaid appealing case, he shall report to the principal of the court or the chief public prosecutor.”

As the Applicant did not attempt to seek any remedy under the relevant domestic laws for inappropriate treatment while under

detention, the Applicant failed to exhaust all possible domestic remedies and his claims should accordingly be dismissed.

11. The Applicant's argument that he has suffered the long delay while on death row since 2011 is without merit. The delay was caused by the Applicant's own repeated applications seeking legal remedies such as retrials, extraordinary appeals and requests for constitutional review. In order to comply with international covenants for the protection of rights on human life, the Respondent had permitted the Applicant to file the applications in accordance with General Comment No. 36, paragraph 43 of the Human Rights Committee.
12. Notwithstanding the fact that several judges sat repeatedly in subsequent trials and appeals, the Applicant did not complain that there was any wrong in such composition of the Bench and did not apply to have any judge recuse himself.
13. Finally, regarding the fact that a judge sat in the High Court's 5th and 9th trials, both of which were before 10 December 2009, this was consistent with domestic law, and the Applicant did not file any motion to disqualify the judge in the High Court's 9th trial. The Applicant accused the Court of being unjust only after it held against him. In addition, Taiwan's Code of Criminal Procedure adopts the "Reviewing Court System". The Applicant continually brought appeals after the 9th judgment of the High Court, and the Supreme Court concluded that the decision was erroneous and remanded the case for retrial. The composition of the last court in

charge of fact-finding was not the same as those of previous fact-finding courts. Based on the principles under the “Reviewing Court System”, the last court should review the case *de novo*, and the case was remitted to another court. Such a situation does not affect the procedural legitimacy of the final decision in the Applicant’s case.

THE APPLICABLE LAW

I. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

[23]On 31 March 2009, the Legislative Yuan of Taiwan (‘Legislative Yuan’), approved the resolution of the ratification of the ICCPR, which the President of Taiwan signed on 14 May 2009. While the deposit of the ratification instruments was not completed according to Article 48, Section 2 of the ICCPR, Taiwan’s President nonetheless promulgated Taiwan’s accession to the ICCPR. On 31 March 2009, ‘The Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights’ (‘Act’) was enacted, and came into force on 10 December 2009. Article 2 of the Act stipulates that the human rights protection provisions in these two Covenants have legal status in Taiwan.

[24]The Respondent is not a contracting party to the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Legislative Yuan has not passed any resolution on the ratification of the CAT. However, on 6 December 2018, the Executive Yuan Council of Taiwan passed the draft of the Implementation Act of

the CAT and on 7 December 2018 transmitted it to the Legislative Yuan for discussion.

[25]On the applicability of the ICCPR in Taiwan, the Court observes that the Respondent did not sign the Vienna Convention on the Law of Treaties (VCLT) adopted on 23 May 1969 (which came into force on 27 January 1980) even though the Respondent had signed the ICCPR in 1967 and ratified it in 2009. For this reason, the Court will not take the provisions of VCLT into consideration directly.

[26]However, Article 38 of the Statute of the International Court of Justice provides that, in addition to “international conventions,” to be applied in cases, “*the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: ...b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations*”. The preamble of the Statute of Asian Human Rights Court Simulation states that this Court is an independent court for the people of Asia to promote human rights protection. Article 5 of the Statute provides that the Court “*may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim/s of a human right(s) violation by any government in Asia.*”, The Court’s jurisdiction covers any “human rights violation” by *any* government in Asia and this includes that of Taiwan. And to determine if human rights have been violated, the Court shall consider all relevant international conventions, customs, and general principles of law recognized by civilized nations.

[27]On the issue as to whether the Respondent must conform to the terms of the ICCPR after its signature in 1967, the Court notes that Article 18 of the VCLT makes it plain that:

“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; ...”

In its commentary on the relevant draft article of the VCLT (Article 15 of the draft ultimately became Article 18 of the VCLT), in 1966, the International Law Commission has stated:

“That an obligation of good faith to refrain from acts calculated to frustrate the object of the treaty attaches to a State which has signed a treaty subject to ratification appears to be generally accepted.”¹

Further, in the earlier draft of VCLT in 1953, the International Law Commission also noted:

“The statement that ‘signature, or any other means of assuming an obligation subject to subsequent confirmation . . . implies the obligation, to be fulfilled in good faith, to submit the instrument to the proper constitutional authorities for examination with the

¹ Reports of the Commission to the General Assembly, Document A/6309/ Rev.1 , [1966] 2 Y.B. INT’L L. COMM’N. 202.

view to ratification or rejection ‘, is controversial, as expressing a rule of international law, even in the present — conspicuously qualified — formulation. The view most frequently expressed is that there is no obligation to ratify a treaty previously signed by a State. That view accurately expresses the existing rule of international law on the subject.... It must be regarded as a requirement of good faith, which is in itself part of the law and not merely of political prudence, that signature implies the obligation to cause the treaty thus signed to be examined by the competent constitutional authorities with the view to determining whether the signature ought to be confirmed.’²,

The aforementioned documents indicate that a State bearing an obligation of good faith to refrain from acts calculated to frustrate the object of the treaty is a general principle of law recognized by civilized nations.

[28] The Respondent signed the ICCPR in 1967 and ratified it in 2009. The instrument of the Respondent’s accession to the ICCPR, however, was not deposited with the United Nations Secretary General in accordance with Article 48, Section 2 of the ICCPR. Nevertheless, the Respondent passed ‘the Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights’ (‘Act’), which came into effect on 10 December 2009. Article 2 of the Act stipulates that the human rights protection provisions in the ICCPR have domestic legal status. Article 8 of the Act

² Law of Treaties, document A/CN.4/63, [1953] 2 Y.B. Int’l L. Comm’n. 108-09.

states that all levels of governmental institutions and agencies should review laws, regulations, directions and administrative measures within their functions according to the ICCPR. Since 2009, the Respondent has periodically issued State Reports on its ICCPR implementation in accordance with Article 40 of the ICCPR, and invited an international group of independent experts (most of whom had served or are serving in the Human Rights Committee) to review its State Reports and to provide concluding observations and recommendations.

[29] On the applicability of the ICCPR between 1967 to 2009, the Court notes that the Respondent did not enter any reservation for the ICCPR after signing it in 1967. Hence, the Respondent was obligated in good faith to refrain from acts calculated to frustrate the object of the ICCPR. Regarding to the object of the ICCPR, the United Nations Human Rights Committee has indicated its objects include protecting people from torture, or cruel, inhuman or degrading treatment or punishment and their right to fair trial.³ The Respondent is thus bound by its

³ UN Human Rights Committee (HRC), CCPR General Comment No. 24 (Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant), 4 November 1994, para. 8 (“Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant. Although treaties that are mere exchanges of obligations between States allow them to reserve inter se application of rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction. Accordingly, provisions in the Covenant that represent customary international law (and a fortiori when they have the character of peremptory norms) may not be the subject of reservations. Accordingly, **a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and**

obligations under the ICCPR from the date of its signature in 1967.

[30] Even though the Respondent argued that its conduct before 10 December 2009 was not constrained by the provisions of the ICCPR, but since 10 December 2009, the Respondent has and is abiding by the ICCPR. At that time, the Applicant's case had NOT become final. As a result, the provisions in the ICCPR applied to the present case. Also noteworthy is Article 3 of the Act, that states that in applying the ICCPR, the court should refer to their legislative purposes and interpretations as set out by the Human Rights Committee. In applying ICCPR provisions to the present case, references are made to the General Comments of the Human Rights Committee as well as interpretations made by the said Committee.

[31] On the applicability of the ICCPR to the present case, this Court adopts the jurisprudence of the Human Rights Committee on the principle of "a continuing state of affairs" or "continuing violations". The Human Rights Committee has found claims to be admissible in cases where the alleged violations, although occurring before the instrument came into force, continue or have effects which themselves constitute violations, after that date.⁴ And the failure to grant the victim specific relief for such violations have been considered a "continuing violation".⁵ A

religion, to presume a person guilty unless he proves his innocence,...And while reservations to particular clauses of article 14 may be acceptable, a general reservation to the right to a fair trial would not be.").

⁴ *Lovelace v. Canada*, UNHRC, Views of 30 July 1981, UN Doc. A/36/40 (Sup. No. 40), para. 11.

⁵ *S.E. v. Argentina*, UNHRC, Views of 26 March 1990, CCPR/C/WG/36/DR/275/1988, para. 7.2.

person continues to be a victim “*unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention*”.⁶

[32]. The Respondent is bound by the ICCPR since the Implementation Act came into effect on 10 December 2009. At that time, the Applicant was still being tried for the crimes he was alleged to have committed in 1988 and was under detention pending the final decision of the court. He was still pursuing appeals and retrials, and both the prosecution and the courts were under an obligation to apply ICCPR standards to all issues relating to the admissibility of confessions, proof of guilt and so on.⁷ The Applicant did not receive any relief for the alleged violations. This must be considered a continuing state of affairs under the ICCPR. When the High Court delivered its judgment in 2011 and the Supreme Court confirmed it as the final judgment, the court ought to have considered the relevant provisions in the ICCPR⁸, which were definitely applicable due to the Act.

II. CONVENTION AGAINST TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)

[33] When CAT became available for signature, ratification and accession

⁶ *Scordino v. Italy (No. 1)* [GC], no. 36813/97, ECHR 2006, para. 180. *See also* Amicus curiae submission from the Death Penalty Project (UK), para. 58.

⁷ Amicus curiae submission from the Death Penalty Project (UK), para. 56.

⁸ Amicus curiae submission from the Death Penalty Project (UK), para. 56 “It is not the date of the misconduct or malpractice that is decisive, but the domestic court’s decisions about the fairness of the trial”.

in December 1984, Taiwan was no longer a member of the United Nations. Thus, even if the Respondent wanted to, it was impossible for them to be a party to CAT. As such, CAT is not binding on the Respondent. That said, the Court notes that the Respondent's present Cabinet, the Executive Yuan Council, passed the draft Implementation Act of the CAT on 6 December 2018 and transmitted it to the Respondent's national legislature, the Legislative Yuan, on 7 December 2018.

[34] Even if the Respondent was not a party to CAT, a general prohibition of torture has already evolved in customary international law⁹. The International Court of Justice held in *Belgium v. Senegal* that:

“the prohibition of torture is part of customary international law and it has become a peremptory norm (jus cogens). That prohibition is grounded in a widespread international practice and on the opinio juris of States. It appears in numerous international instruments of universal application (in particular the Universal Declaration of Human Rights of 1948, the 1949 Geneva Conventions for the protection of war victims; the International Covenant on Civil and Political Rights of 1966 ; General Assembly resolution 3452/30 of 9 December 1975 on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment),

⁹ *Prosecutor v. Anto Furundzila* IT-95-17/1-T, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, para. 137.

and it has been introduced into the domestic law of almost all States; finally, acts of torture are regularly denounced within national and international fora.”¹⁰

Given that the Respondent has reiterated its respect for customary international laws, those norms in CAT that have obtained the status of customary international laws apply in the present case. Nothing prohibits this Court from considering the applicable rules of instruments which the Respondent had not yet incorporated into its domestic law as “*it would be a travesty of justice for the Court in the instant proceedings to assume that a procedural bar should prevent the court from hearing the applicant’s case*”¹¹.

III. CUSTOMARY INTERNATIONAL LAW AND OTHER RULES

[35] Article 141 of the Respondent’s Constitution, states that:

“the foreign policy of the Republic of China shall, in a spirit of independence and initiative and on the basis of the principles of equality and reciprocity, cultivate good-neighborliness with other nations, and respect treaties and the Charter of the United Nations, in order to protect the rights and interests of Chinese citizens residing abroad, promote international cooperation, advance international justice and ensure world peace.”

¹⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* Judgment, I.C.J. Reports 2012, p. 422, para. 99.

¹¹ Expert opinion submitted by Dr. Michelle Staggs Kelsall, para. 26 and 41. See also *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, ECHR 2001, Judge Loucaides dissenting opinion, 34.

[36] Treaties to which the Respondent is not a party, do not bind the Respondent. In such cases, references to international law, case law or foreign cases serve the purpose of reference and offer insights into the jurisprudence developed elsewhere.

[37] It is our understanding that the Respondent's courts generally welcome references made to international law, case law or foreign laws in judicial practices.¹² To the extent appropriate, references to these non-binding, but nevertheless informative legal or judicial authorities in other jurisdictions, will be made.

APPLICATION OF THE LAW TO THE FACTS

[38] With regard to the Applicant's allegedly torture-extracted confession, Article 7 and Article 14 of the ICCPR are applicable.

[39] With regard to the Applicant's solitary confinement for 4 years from 1989 to 1994, Article 7 of the ICCPR are applicable.

[40] With regard to the Applicant's incarceration with foot-shackles for 18 years from 1989 to 2007, Article 7 of the ICCPR are applicable.

[41] With regard to the Applicant's lack of a fair trial due to the loss of physical exhibits during trial, without any opportunity to cross-examine the witnesses, and by judges repeatedly taking part in

¹² See Fu-Te Liao, Court's Challenges When Applying the ICCPR and the ICESCR- Review of Judgments of Administrative Courts, CHINA LAW JOURNAL Vol 59:2, p1-42(2014), and Ci-Wei Lin, Mental disorder and Death Penalty in ICCPR—Comment to the Supreme Court Judgment (104)Tai-Shang-Zi No, 2268, TAIWAN BAR JOURNAL, vol 19:11, p14-25 (2015).

subsequent trials, Article 14 of the ICCPR is applicable.

[42] With regard to the death-row phenomenon, Article 7 of the ICCPR is applicable.

FINDINGS

I. THE APPLICANT’S ALLEGED TORTURE-EXTRACTED CONFESSION

[43] Article 7 of the ICCPR provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 4 of the ICCPR deems this right absolute, pre-emptory, and non-derogable at any time. It is observed that there are no justification or extenuating circumstances that may be invoked to excuse a violation of Article 7.¹³ Since treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule,¹⁴ the Court holds that the prohibition of torture is not only part of customary international law but is now a peremptory norm (*jus cogens*) that has crystalized in CAT.¹⁵

¹³ UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 3 (“The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.”).

¹⁴ UN Human Rights Committee (HRC), CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), 10 April 1992, para. 3-4.

¹⁵ See also Amicus curiae submission from the Covenants Watch (Taiwan), para. 34.

[44]General Comment 20 of the Human Rights Committee on Article 7 demands that States take positive measures to prevent torture and other inhuman and degrading treatment, and that this Article be read in conjunction with Article 2, paragraph 3, of the ICCPR. The right to lodge complaints against treatment prohibited by Article 7 must be recognized by the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.¹⁶.

[45]General Comment 32, Paragraph 41 of the Human Rights Committee, states that:

“Article 14 (3)(g) guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or under psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. It is unacceptable to treat an accused person in a manner contrary to Article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements of confessions obtained in violation of Article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this

¹⁶ *Id.*, at para. 14 (“Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”).

provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will.”

The comment is the marrow extracted from the opinion of the Human Rights Committee in *Nallaratnam Singarasa v. Sri Lanka*.¹⁷

[46] Article 7 of the ICCPR and its case laws reflect the origin and purposes of the prohibition and prevent states from relying on confessions

¹⁷ *Nallaratnam Singarasa v. Sri Lanka*, UNHRC, Views of 30 July 2004, U.N. Doc. CCPR/C/81/D/ 1033/2001 (2004), para 7.4. (“On the claim of a violation of the author's rights under article 14, paragraph 3 (g), in that he was forced to sign a confession and subsequently had to assume the burden of proof that it was extracted under duress and was not voluntary, the Committee must consider the principles underlying the right protected in this provision. It refers to its previous jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall ‘be compelled to testify against himself or confess guilt’, must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt. The Committee considers that it is implicit in this principle that the prosecution prove that the confession was made without duress. It further notes that pursuant to section 24 of the Sri Lankan Evidence Ordinance, confessions extracted by ‘inducement, threat or promise’ are inadmissible and that in the instant case both the High Court and the Court of Appeal considered evidence that the author had been assaulted several days prior to the alleged confession. However, the Committee also notes that the burden of proving whether the confession was voluntary was on the accused. This is undisputed by the State party since it is so provided in Section 16 of the PTA. Even if, as argued by the State party, the threshold of proof is ‘placed very low’ and ‘a mere possibility of involuntariness’ would suffice to sway the court in favour of the accused, it remains that the burden was on the author. The Committee notes in this respect that the willingness of the courts at all stages to dismiss the complaints of torture and ill-treatment on the basis of the inconclusiveness of the medical certificate (especially one obtained over a year after the interrogation and ensuing confession) suggests that this threshold was not complied with. Further, insofar as the courts were prepared to infer that the author's allegations lacked credibility by virtue of his failing to complain of ill-treatment before its Magistrate, the Committee finds that inference to be manifestly unsustainable in the light of his expected return to police detention. Nor did this treatment of the complaint by its courts satisfactorily discharge the State party's obligation to investigate effectively complaints of violations of article 7. The Committee concludes that by placing the burden of proof that his confession was made under duress on the author, the State party violated article 14, paragraphs 2, and 3(g), read together with article 2, paragraph 3, and 7 of the Covenant.”)

obtained by torture or cruel, inhuman or degrading treatment. Under the ICCPR, principles of a fair trial mean that:

1. No person is required to incriminate himself. Only a truly free and voluntary confession is admissible in law.
2. There is danger in relying on involuntary confessions as an accused may incriminate himself due to pressure, threats, violence, promises and inducements.
3. It is for the prosecution to prove its case beyond reasonable doubt and this includes the voluntariness of a confession. The burden is not on the accused to prove that the confession was involuntary.
4. An involuntary confession, if wrongly admitted as evidence, has little or no probative value.

[47] Confessions obtained by torture or cruel, inhuman or degrading treatment are not only prohibited under the ICCPR. Article 15 of the CAT also provides that “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.” As explained by the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

“The exclusionary rule applies not only where the victim of the treatment contrary to the prohibition of torture or other ill-treatment is the actual defendant, but also where third parties are concerned. Such a conclusion is plainly intended by the wording of article 15, which provides that “any statement...in any

proceedings” shall come within the scope of exclusion and not just one given by the accused in a domestic court.

...

The admission of evidence, including real evidence obtained through a violation of the absolute prohibition of torture and other ill-treatment in any proceedings, constitutes an incentive for law enforcement officers to use investigative methods that breach those absolute prohibitions. It indirectly legitimizes such conduct and objectively dilutes the absolute nature of the prohibition.”¹⁸

[48] International bodies have applied a low burden of proof on individuals alleging that a statement or evidence was obtained through torture before shifting the burden to the State to demonstrate otherwise. For instance, in *Othman v. United Kingdom* (2012), the European Court of Human Rights (“ECtHR”) held that there is a “real risk” that evidence admitted was obtained as a result of torture, is sufficient to result in a “flagrant denial of justice.”¹⁹ Explaining this low standard, the ECtHR held that:

International law, like the common law before it, has declared its unequivocal opposition to the admission of torture evidence. There are powerful legal and moral reasons why it has done so fundamentally, no legal system based upon the rule of law can countenance the admission of evidence – however reliable –

¹⁸ Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/25/60, 10 April 2014, para. 28, 30.

¹⁹ Expert opinion submitted by Lawyer James Lin, para. 25.

which has been obtained by such a barbaric practice as torture. The trial process is a cornerstone of the rule of law. Torture evidence damages irreparably that process; it substitutes force for the rule of law and taints the reputation of any court that admits it. Torture evidence is excluded to protect the integrity of the trial process and, ultimately, the rule of law itself.

....

For the foregoing reasons, the Court considers that the admission of torture evidence is manifestly contrary, not just to the provisions of Article 6 [right to fair trial], but to the most basic international standards of a fair trial. It would make the whole trial not only immoral and illegal, but also entirely unreliable in its outcome. It would, therefore, be a flagrant denial of justice if such evidence were admitted in a criminal trial²⁰.

Therefore, the trial court must be satisfied beyond reasonable doubt that the confession was not obtained by torture or cruel, inhuman or degrading treatment or punishment.²¹ It is not the Applicant to satisfy this Court that the ill-treatment complained of has occurred, but merely that it may have²².

[49] In the present case, the Applicant alleged that he was tortured into confessing in 1988, and the confession appears to have been used as evidence against him. In addition, six of the co-accused also alleged

²⁰ *Othman v. United Kingdom* [4th Section], no. 8139/09, ECHR 2012 para.264, 267.

²¹ Amicus curiae submission from the Death Penalty Project (UK), para. 36-38.

²² Amicus curiae submission from the Death Penalty Project (UK), para. 17.

that they were subjected to torture to make them confess during their investigations. One of the co-accused, Yu Zhi-Xiang, who had confessed, was convicted. Subsequently an audiotape recording was found evidencing torture against that co-accused. Two police officers responsible was convicted by the High Court for the crimes of torture and one for perjury in the Applicant's case.

[50] This Court considers the following facts germane:

1. the Applicant and his co-accused were all investigated by the same police bureau. No records indicate that during the investigation, they had access to a lawyer.
2. The police bureau involved in the investigation submitted an office letter to the court denying any torture or improper conduct during investigation. The police officers involved in investigation were subpoenaed before the court, but they denied all the allegation of torture under oath in the 2nd Judgment [(81) Shang-Zhong-Gen-1- Zhi No.8] of the of the High Court in 1993.
3. The Respondent's Control Yuan found an audio tape proving that Yu Zhi-Xiang was tortured by at least four police officers during the Applicant's case investigation. Two of the four accused police officers were found guilty in 1996, and the convictions were affirmed by the Supreme Court in 1998 for torturing Yu Zhi-Xiang (both officers), concealing secret witness and lying to court in the Applicant's case (one of the two officers).
4. Although the High Court inspected all the other audio or video tapes

the police bureau provided to the court, no audio or video tape could prove the Applicant and his co-accused were tortured. However, the High Court had indicated that the audio tape may be incomplete (12th judgement, (98) Shang-Zhong-Gen-11-Zhi No. 7 criminal judgment).

5. Although the High Court found that Yu Zhi-Xiang had been tortured by the police officers at least once, it nevertheless admitted Yu's other confessions in investigation as evidence to prove the Applicant's guilt on the grounds that the Applicant could not prove that these confessions were extracted by torture.

Given the aforementioned facts, this Court is of the opinion that the domestic courts only conducted an investigation to establish if the Applicant and his co-accused were tortured, but not whether their confessions were extracted by torture or other ill-treatments.

[51]As it was proved that the co-accused Yu Zhi-Xiang was tortured by the police officers and the latter found guilty, it has been shown that both the police bureau and the policemen involved in the investigation had given false statements to the court. This Court holds that the Applicant has satisfied his burden of proof in claiming that he had been tortured. This would have required the domestic court to take serious steps to meaningfully investigate the Applicant's allegations.

[52]On the standard of what constitutes a meaningful investigation, the ECtHR has held in the case of *Palić v. Bosnia And Herzegovina* (2011) that:

“The investigation must be independent and effective in the sense

that it is capable of leading to the identification and punishment of those responsible, afford a sufficient element of public scrutiny, including being accessible to the victim's family, and carried out with reasonable promptness and expedition''²³.

In this case, although the Applicant and his co-accused alleged that they were tortured at the very beginning of this case in 1989, and the Supreme Court requested the High Court to inspect all the video and audio tapes in 1994, the High Court failed to do so for four years, till 1998. And after the inspection, the High Court found that the tape was incomplete. Furthermore, a trial that takes 23 years to reach a final conclusion cannot be said to have been conducted within a reasonable period of time.²⁴ The overall circumstances indicates that there was no meaningful investigations into the Applicant's allegations of torture and whether the evidence admitted against him – both the confessions and other evidence – may have been obtained as the result of his or his co-accused's alleged torture-extracted confessions.²⁵ The foregoing leads this Court to the inexorable conclusion that the Applicant's trial violated his right to a fair trial under Article 14 of the ICCPR, as well as his right to be free from torture under Article 7 of the ICCPR and customary international law.

[53]As to the question on whether any part of the transcript of the confession in the Applicant's case can be used as evidence to ascertain

²³ *Palić v. Bosnia And Herzegovina* [4th Section], no.7407/04, ECHR 2011, para.63.

²⁴ Amicus curiae submission from the Death Penalty Project (UK), para. 25.

²⁵ Expert opinion submitted by Lawyer James Lin, para. 34.

facts, a close examination of the ECtHR's decision in the *Gäfgen v. Germany* is instructive.²⁶ In that case, the applicant, accused of kidnapping and murdering a child, confessed to the crime after being subjected to threats, and the ECtHR held it qualified as inhuman treatment. Based on his confession, the police located the crime scene and collected real evidence. The trial court, however, excluded the applicant's confession because it was obtained as the result of ill-treatment, but admitted the real evidence found. During the trial, the applicant confessed a second time.

[54]As noted earlier, in instances of torture, the ECtHR has drawn a clear line that *“incriminating real evidence obtained as a result of acts of violence, at least if those acts had to be characterised as torture, should never be relied on as proof of the victim's guilt, irrespective of its probative value.”*²⁷ But, with respect to acts that qualify as ill-treatment, the ECtHR has laid out a separate standard:

*“The Court considers that both a criminal trial's fairness and the effective protection of the absolute prohibition under Article 3 [in cases of ill-treatment that fall short of torture] are only at stake if it has been shown that the breach of Article 3 had a bearing on the outcome of the proceedings...”*²⁸

[55]International bodies generally agree that, whenever a real risk exists that evidence was obtained as a result of torture (not ill-treatment), its

²⁶ Expert opinion submitted by Lawyer James Lin, para. 36.

²⁷ *Gäfgen v. Germany* [GC], no.22978/05, ECHR 2011 para.167.

²⁸ *Id.*, at para. 178.

admission in the trial creates a flagrant denial of justice. On the other hand, in cases where evidence may have been obtained as a result of ill-treatment (not amounting to torture), the ECtHR requires proof that the *causal chain leading from the prohibited methods of investigation to the applicant's conviction and sentence* is broken.²⁹ The ECtHR required that the act of ill-treatment had no bearing on the trial court's decision on guilt and sentencing. Similarly, with respect to subsequent confessions or statements of guilt following ill-treatment, the ECtHR required that the "*status quo ante*" be restored to the situation prior to the breach of the individual's rights.³⁰

[56] Neither party disputes the fact that the testimonial evidence, including the confessions and testimonies of the Applicant and the co-accused were crucial incriminating evidence in the Applicant's case. As these confessions and testimonies impacted the outcome in the Applicant's case, the "*status quo ante*" has not been restored.

[57] This Court finds that the Applicant's right to be free from torture, or inhuman or degrading treatment and to the application of the exclusionary rule under Article 7 of the ICCPR and the right to fair trial under Article 14 have been violated.

II. THE APPLICANT'S SOLITARY CONFINEMENT FOR 4 YEARS FROM 1989 TO 1994

²⁹ *Id.*, at para. 180.

³⁰ *Id.*, at para. 182. *See also* Expert opinion submitted by Lawyer James Lin, para.

[58]According to General Comment 20 of the Human Rights Committee, *“prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7”*.³¹

[59]In addition to the prohibition on ill-treatment contained in Article 7, Article 10 of the ICCPR requires that all persons deprived of their liberty shall be treated with humanity and with respect for their inherent dignity. If the conditions of detention do not meet the United Nations Standard Minimum Rules for the Treatment of Prisoners, this provision will be violated. The excessive measures applied on a prisoner (imposition of foot shackles when in a cell, lengthy periods of solitary confinement) clearly violate ICCPR norms.

[60]Solitary confinement is defined as the physical and social isolation of an individual who is confined to his cell for 22 to 24 hours a day. On 17 December 2015, a revised version of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) was unanimously adopted by the United Nations General Assembly. According to Rule 43 of the Mandela Rules, indefinite or prolonged solitary confinement may amount torture or ill-treatment and is prohibited.

[61]In 2008, the United Nations Special Rapporteur on Torture similarly stated that prolonged isolation of detainees amounts to torture or ill-treatment. He based his statement on the current medical understanding

³¹ UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 6.

that individuals who have been subjected to solitary confinement often experience severe, adverse health effects, such as hallucinations, mental illness, insomnia, and confusion.³² Moreover, according to the Special Rapporteur's 2011 Report, prolonged solitary confinement (defined as an excess of 15 days) should be prohibited and regarded as torture or ill-treatment.³³ And research shows that prolonged solitary confinement can cause irreversible psychological damage, which may induce acts of self-mutilation and suicide.³⁴ The uncertainty of many detainees as to how long they will remain in solitary confinement enhances the risks of severe mental and physical trauma.³⁵

[62] While this Court accepts that solitary confinement may in some cases be necessitated by certain security considerations, it is not a measure that may justifiably be applied as a matter of procedure or course. This point was considered in the ECtHR's case of *Harakchiev And Tolumov v. Bulgaria*:

“The Court has held that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in the deterioration of mental faculties and social abilities (see Iorgov, cited above, §§ 83-84). It is true that the applicants in the present case were not

³² Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, 1 February 2013, para. 63.

³³ Juan E. Méndez, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268, 5 August 2011, para.76.

³⁴ *Id.*, at para. 68.

³⁵ *Id.*, at para. 59.

subjected to complete isolation and that an inmate's segregation from the prison community does not in itself amount to inhuman or degrading treatment. However, it cannot be overlooked that in the present case both applicants were kept under such an impoverished regime for extended periods of time – twelve and fourteen years respectively. In such circumstances, isolation should be justified by particular security reasons obtaining throughout the duration of this measure. It can hardly be accepted that this was automatically necessary solely on account of the applicants' sentences to whole life and life imprisonment respectively as an inherent part of the relevant punishment for at least the initial five years of the sentence.'³⁶

[63] In light of the applicable international standards on acceptable treatment of prisoners and our current medical understanding of the effects of prolonged solitary confinement, this Court finds that although the Applicant's detention in solitary confinement for four years was shorter than what the applicants suffered in *Harakchiev and Tolumov v. Bulgaria* of ECtHR, it is still a long time and such a length of confinement can only be justified by serious security concerns. However, the Respondent cannot provide any justifiable security reason for the Applicant's solitary confinement. This Court thus finds the Respondent in breach of the Applicant's right to be free from torture and ill-treatment under Article 7 of the ICCPR and customary

³⁶ *Harakchiev And Tolumov v. Bulgaria* [4th Section], nos. 15018/11 and 61199/12, ECHR 2014, para.204.

international law.

III. THE APPLICANT’S INCARCERATION WITH FOOT-SHACKLES FOR 18 YEARS FROM 1989 TO 2007

[64] According to General Comment 20 of the Human Rights Committee, “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7.”³⁷

[65] In addition to the prohibition on ill-treatment contained in Article 7, Article 10 of the ICCPR requires that all persons deprived of their liberty shall be treated with humanity and with respect for their inherent dignity. Where conditions of detention do not meet the United Nations Standard Minimum Rules for the Treatment of Prisoners, this provision is violated. This Court finds that the excessive measures applied on the Applicant (imposition of foot shackles when in a cell, lengthy periods of solitary confinement) violate ICCPR norms.

[66] International law recognizes certain legitimate reasons for using force or restraints such as to protect prisoners or staff, to prevent escape during transfer, and to prevent self-harm and suicide. Nonetheless, international law only permits the use of force and restraints in very narrow and exceptional circumstances, in line with the principles of legality, necessity, and proportionality and when all other less

³⁷ UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 6.

restrictive measures have been exhausted.

[67]The United Nations Standard Minimum Rules for the Treatment of Prisoners contain authoritative and generally accepted principles and practices for the treatment of prisoners and the management of penitentiary institutions. Since it was first adopted in 1955, the Standard Minimum Rules have prohibited the use of “irons and chains” and have restricted the use of other instruments of restraint to only the aforementioned circumstances.

[68]Revised in 2015, the Mandela Rules now provide in Rule 47 that: “*The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited (emphasis added).*” Further guidance on the use of restraints is provided in Rule 48, as follows:

1. When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply:

(a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;

(b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner’s movement, based on the level and nature of the risks posed;

(c) Instruments of restraint shall be imposed only for the time

period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.

[69] A mere breach of the Mandela Rules in the use of shackles does not necessarily mean a breach of an individual's right under Article 7 of the ICCPR or customary international law. Such restraint should then be subject to the principles of proportionality, necessity, and use of least restrictive measures as set out in the aforementioned Mandela Rules, and shall be considered in view of the overall circumstances of the detention. In the case *John D. Ouko v. Kenya* (African Commission on Human and People's Rights) the complainant alleged that the detention facility had a 205-watt light bulb that been left on through his ten-month detention, and he was also denied bathroom facilities. After taking overall the circumstances into consideration, the African Commission on Human and People's Rights concluded that these conditions violated the complainant's right to respect for his dignity and freedom from inhuman and degrading treatment.³⁸

[70] In this case, the Applicant had been shackled for 18 years, and this certainly represents an extraordinarily cruel treatment for an extremely long time that seems impossible to justify. In the Court's view, it violates all accepted principles of proportionality, necessity, and use of least restrictive measures as set out in the Mandela Rules. Considering the severity and extreme nature of this treatment, this Court finds that there has been a serious breach of the Applicant's right to be free from

³⁸ *Ouko v. Kenya*, Comm. 232/99, 14th ACHPR AAR Annex V (2000-2001), para. 22-23.

torture and ill-treatment under Article 7 of the ICCPR and customary international law.

IV. THE APPLICANT’S RIGHT TO FAIR TRIAL

1. Loss of Evidence

[71]The Applicant’s trial began in February 1989 and a final decision was delivered by the Supreme Court in July 2011. It is obvious that a trial that takes 23 years to reach a final conclusion cannot be said to have been conducted within a reasonable period of time. There appears to have been serious errors of fact and law in the trial processes which may amount to an arbitrary deprivation of life, which is prohibited by Article 6 of the ICCPR. General Comment 36 of the Human Rights Committee clearly states that any deprivation of life will be arbitrary if the trial process is inconsistent with international law. A death penalty imposed after serious errors in the trial process including excessive and unjustified delays will be held contrary to Article 14.³⁹

[72]Article 14 of the ICCPR guarantees the right to a fair trial. Article 14(5) provides: “*Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*” If evidence disappears during a direct appeal, it is obvious that a higher tribunal will not be able to review such evidence. However,

³⁹ UN Human Rights Committee (HRC), CCPR General Comment No. 36 (on article 6 of the International Covenant on Civil and Political Rights, on the right to life), 30 October 2018, para. 41-42.

evidence that is lost does not necessarily result in a breach of that right under paragraph 5, Article 14. The importance and significance of the loss of the physical evidence is self-evident in this case. In the context of losing evidence during trial, the Human Rights Committee explains that:

*“While recognizing that in order for the right to review of one's conviction to be effective, the State party must be under an obligation to preserve sufficient evidential material to allow for such a review, the Committee cannot see, as implied by counsel, that any failure to preserve evidential material until the completion of the appeals procedure constitutes a violation of article 14, paragraph 5. Article 14, paragraph 5, will, in the view of the Committee, only be violated where such failures prejudices the convict's right to a review, i.e. in situations where the evidence in question is indispensable to perform such a review.”*⁴⁰

[73] The Applicant's case was argued, back and forth between the High Court and Supreme Court for 23 years. It is obvious to this Court that the Supreme Court considered that in each of the cases, reasonable doubts arose and for that reason, it revoked the High Court's judgement for 11 times. The telephone voice recording of the ransom deal which the High Court used to prove co-accused Yu Zhi-Xiang's involvement and thought Yu Zhi-Xiang's confession persuasive was one of the most important pieces of incriminating evidence in the Applicant's case. Due

⁴⁰ *Robinson v. Jamaica*, Comm. 731/1996, U.N. Doc. A/55/40, Vol. II, at 116 (HRC 2000), para. 10.7.

to the loss of the telephone voice recording of the ransom deal, the Applicant could not request any further examination or investigation into it to prove whether Yu Zhi-Xiang committed the crime or not. This Court finds that the loss of telephone voice recording substantially prejudiced the Applicant's right to a review under Article 14 (5) of the ICCPR.

[74]Further, the Respondent lost other non-confessional evidence, such as the plastic bag containing a pair of black plastic shoes which belonged to the victim, a butcher's knife, a animal-grade syringe, and male clothing, etc. Since these non-confessional evidence appeared to contradict the Applicant's confession and other confession evidences, there is a reasonable likelihood that properly interrogated, the interpretation of such evidence may be changed in favor of the Applicant. Due to the loss of this evidence, the Applicant could not request that they be tested with any newly-developed technologies. This Court finds that the loss of this evidence also prejudiced the Applicant's right to a review under Article 14 (5) of the ICCPR.

2. Judges' repeated participation in the hearings and trials

[75]Article 14(1) of the ICCPR provides that:

"In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

And Article 14(3) c of the ICCPR provides that:

“In the determination of any criminal charge against him, everyone shall be entitled ... To be tried without undue delay”.

This rule can also be found in the text of Article 6(1) of the ECHR:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

[76] When interpreting the requirement of impartiality, the European Court of Human Rights adopts a two-prong test. First, the court must be subjectively impartial, meaning that no member of the court shall hold any personal prejudice or bias. Second, the court must also be objectively impartial, meaning that there shall be no ascertainable facts that might raise doubts as to the impartiality of the judges. For the objective prong, the court mentioned that *“even appearances may be of a certain importance”*, because *“what is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to the proceedings”*.⁴¹ The Human Rights

⁴¹ *Moiseyev v. Russia* [1st Section], no.62936/00, ECHR 2008 para.174 (“As to the requirement of “impartiality”, two aspects must be taken into account. First, the tribunal must be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. Personal impartiality is presumed unless there is evidence to the contrary. Secondly, the tribunal must also be impartial from an objective viewpoint, meaning it must offer sufficient guarantees to exclude any legitimate doubt in this respect. Under the objective test, it must be determined whether, quite apart from the judges’ personal conduct, there are ascertainable facts which may raise doubts as to their impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above

Committee provides similar two-prong test in General Comment No. 32:

*“The requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial.”*⁴²

The aforementioned two-prong test has also been applied in the Respondent’s Supreme Court while deciding whether a judge shall be disqualified in a specific case.⁴³

[77] In the present case, a key question is whether the judges’ repeated participation in the subsequent hearings and trials raises doubt on the impartiality of the court. From a subjective perspective, allowing judges who participated in previous trials may be inappropriate because the judges may have a fixed opinion on the case and thus defeat the purpose of granting the defendant a re-trial. On the other hand, even if judges who participated repeatedly in the same case can in fact remain

all in the parties to the proceedings (see *Academy Trading Ltd and Others v. Greece*, no. 30342/96, §§ 43-45, 4 April 2000, and *Pullar v. the United Kingdom*, judgment of 10 June 1996, Reports 1996-III, § 29).”).

⁴² UN Human Rights Committee (HRC), CCPR General Comment No. 32 Article 14 (Right to equality before courts and tribunals and to a fair trial), 23 August 2007, para. 21.

⁴³ Taiwan Supreme Court (108) Tai-Kang-Zhi No. 921 order.

impartial, from an objective perspective, repeated participation almost certainly undermines the appearance of an impartial court.⁴⁴ Therefore, this Court is of the view that repeated participation of judges who were involved in previous trials is a violation of Article 14(1) of the ICCPR.

[78] In this case, another related issue is that the Applicant did not file any motions in the High Court or Supreme Court to disqualify the judges who participated in previous trials. The Court does not consider the Applicant's failure to file motions of recusal prejudicial to his own case; neither does it relieve the courts from their duty to adhere to the standard provided by Article 14(1) of the ICCPR. As mentioned above, part of the purpose of having an impartial court system is to maintain the public's confidence in the judiciary. Thus, even when the parties omit or fail to file any motions requesting the recusal of the judges, the courts ought to have considered this on its own motion or volition to replace the judges who had participated in the previous trials. Courts need not wait for applicants to file motions for the recusal of any particular judge.

[79] In view of all the procedural defects or flaws outlined above, this Court holds that the Applicant's right to a fair trial under Article 14 of the ICCPR has been violated.

V. DEATH-ROW PHENOMENON AND RIGHT TO LIFE

⁴⁴ Expert opinion submitted by Professor Lin Chih-Chieh and Professor Chin Mong-Hwa, para. 34. *See also* Expert opinion submitted by Professor Lin Chao-Chun, page. 7.

[80]Article 14(3)(c) of the ICCPR provides that everyone shall have the right to be tried without undue delay. In General Comment No. 32, Human Rights Committee states that:

*“the right of the accused to be tried without undue delay [...] is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interest”*⁴⁵.

[81]A detained person who has been sentenced to death faces the agony of knowing that he may be deprived of his life anytime. A prolongation of this agony beyond a reasonable time to conclude any appeal and consideration of the prerogative of mercy may well lead to the death row phenomenon. The phenomenon itself constitutes a form of cruel or inhuman and degrading treatment, as the Applicant contends.⁴⁶ This was established in international human rights law in the case of *Soering v United Kingdom* in European Court of Human Rights. In that case, the UK proposed extradition of a German national to the state of Virginia USA, where he would be held for at least eight years before execution in the event of a capital conviction for murder. The European Court of Human Rights first concluded that whilst article 3 of the European Convention on Human Rights could not be interpreted at that

⁴⁵ UN Human Rights Committee (HRC), CCPR General Comment No. 32: Article 14 (Right to equality before courts and tribunals and to a fair trial), 23 August 2007, para. 35.

⁴⁶ See Amicus curiae submission from the Covenants Watch (Taiwan), para. 65.

time to mean that capital punishment was per se inhuman and degrading, the circumstances in which it was proposed to be administered may nevertheless contravene this absolute standard. The European Court of Human Rights stated that:

“III. For any prisoner condemned to death, some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable. The democratic character of the Virginia legal system in general and the positive features of Virginia trial, sentencing and appeal procedures in particular are beyond doubt. The Court agrees with the Commission that the machinery of justice to which the applicant would be subject in the United States is in itself neither arbitrary nor unreasonable, but, rather, respects the rule of law and affords not inconsiderable procedural safeguards to the defendant in a capital trial. Facilities are available on death row for the assistance of inmates, notably through provision of psychological and psychiatric services (see paragraph 65 above).

However, in the Court’s view, having regard to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant’s extradition to the United States would expose him to a real risk of treatment going beyond the threshold

set by Article 3 (art. 3).’’⁴⁷

A similar conclusion was reached in the United Kingdom by the Judicial Committee of the Privy Council (the highest court of appeal from Commonwealth countries that retain the jurisdiction) in *Pratt v Attorney General of Jamaica* ([1994] 2 AC 1).

[82] This Court would also note the Respondent’s obligations under Article 6 of the ICCPR in reference to General Comment 36 of the Human Rights Committee. Article 6 is the fundamental article in any case concerned with the imposition of capital punishment and sets the minimum standards that must be met in States that retain the death penalty if a capital sentence is to be imposed or upheld. General Comment 36 of the Human Rights Committee summarizes the established case law when it states:

“41. Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature and in violation of article 6 of the Covenant. Such violations might involve the use of forced confessions; inability of the accused to question relevant witnesses; lack of effective representation involving confidential attorney client meetings during all stages of the criminal proceedings including during criminal interrogation, or appeal....preliminary meetings trial and appeal; failure to respect the presumption of innocence which may

⁴⁷ *Soering v. The United Kingdom* [Plenary Court], no. 14038/88, ECHR 1989 para.111.

manifest itself being placed in a cage or being handcuffed during the trial ...lack of adequate time and facilities for the Submissions of preparation of the defence, including inability to access legal documents essential for conducting the legal defence excessive and unjustified delays in the trial and general lack of fairness of the criminal process....

42. *Other serious procedural defects not expressly covered by article 14 of the Covenant may nonetheless render the imposition of the death penalty contrary to article 6...*

43. *The execution of sentenced persons whose guilt has not been established beyond reasonable doubt also constitutes an arbitrary deprivation of the right to life. States parties must therefore take all feasible measures to avoid wrongful convictions in death penalty cases, to review procedural barriers to reconsideration of convictions and to re-examine past convictions on the basis of new evidence, including DNA evidence. States parties should also consider the implications for the evaluation of evidence presented in capital cases of new reliable studies including studies suggesting the prevalence of false confessions and the unreliability of eyewitness testimony”⁴⁸*

[83] In the present case, the Applicant was held in detention continuously and has not been released since 14 October 1988. He was sentenced to

⁴⁸ UN Human Rights Committee (HRC), CCPR General Comment No. 36 (on article 6 of the International Covenant on Civil and Political Rights, on the right to life), 30 October 2018, para. 41-43.

death for the first time in 1989. Until the Supreme Court's affirmation of the issued death penalty on 28 July 2011, the Applicant was held in detention for 23 years. And after his case became final, the Applicant has lived in constant fear of pending execution of his death penalty for 8 years. Such a procedural delay was unreasonable and constitutes a violation of Article 14(3)(c) of the ICCPR.

[84]The Applicant was sentenced to death by the Respondent's judiciary. The Respondent must ensure that all procedural and substantive rules are met with high standard under Article 6 of the ICCPR. However, as aforementioned, the Respondent violated the Applicant's right to be free from torture, right to a fair trial guaranteed in the ICCPR and other customary international law, which means that the Respondent failed to meet the high standard under Article 6 of the ICCPR.

CONCLUSION AND REMEDIES

[85]The Applicant has been and remains a victim of the violation of his ICCPR rights, and he will continue to be such a victim until his case is referred back to the Respondent's Supreme Court for proper judicial remedy.

[86]With regard to the Applicant's alleged torture-extracted confession, the Respondent has violated Article 7 and Article 14 of the ICCPR.

[87]With regard to the Applicant's solitary confinement for 4 years from 1989 to 1994, the Respondent has violated Article 7 of the ICCPR.

[88]With regard to the Applicant's incarceration with foot-shackles for 18 years from 1989 to 2007, the Respondent has violated Article 7 of the ICCPR.

[89]With regard to the Applicant's lack of a fair trial due to the loss of physical exhibits during trial, without any opportunity of cross-examination of the witnesses, and by judges repeatedly taking part in subsequent trials, the Respondent has violated the Applicant's right to a fair trial guaranteed under Article 14 of the ICCPR.

[90]With regard to the death-row phenomenon, the Respondent has violated Article 7 of the ICCPR.

[91]Given the apparent failures of the trial process, the serious errors of law and findings of facts, and the excessive delay and period of time taken to complete the trial and appeal hearings, this Court calls on the Supreme Court of the Respondent to do what is just and necessary to remedy and rectify all the breaches of human rights enumerated above, upon a judicial review of the convictions and sentences in order to protect and preserve the human rights of the Applicant and in the interest of justice. The Applicant was, is and remains a victim of the serious violations of his fundamental rights, especially his right to life.

By Asian Human Rights Court Simulation Judges:

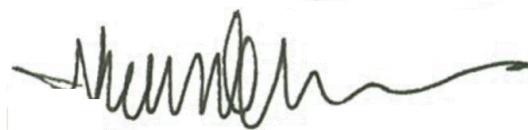
Court President MAH Weng Kwai,

A handwritten signature in black ink, appearing to read 'MAH Weng Kwai', with a stylized flourish at the end.

Judge Rapporteur Wen-Chen CHANG,



Judge Kevin TAN Yew Lee,



Judge Tae-Ung BAIK,



Judge Akiko EJIMA,



Judge Hualing FU,



Judge Sumaiya KHAIR,

