

2019 Hypothetical Case  
Version 2 (January 27, 2019)  
Nelson Mandela World Human Rights Moot Court Competition  
Moseidon Attorneys for Dignity versus WangPole  
Before the  
Krokodilos Court of Human Rights



1. WangPole (pronounced *VanPo*) is a state of around 15 million inhabitants located in the north-west of *Krokodilos Continent* (KC). KC was named after the Ancient Greek phrase “*ho Krokodilos tou potamou*”, which means “the lizards of the river”, referring to the slender-snouted crocodiles that were first discovered in the longest river on the continent, the *Zeus’ Tear*. The river was named *Zeus’ Tear* because the aerial view of the river looks like a teardrop as it flows down the continent from north-west to south-west pouring into the Dilosian Sea. On KC, *Zeus* is the name of the god of rain.

1. All the states on KC are members of both the Krokodilos Union (KU) and the United Nations (UN). The human rights system of KC consists of the Krokodilos Convention on Human Rights (Krokodilos Convention), the Human Rights Commission of Krokodilos (Krokodilos Commission) and the Krokodilos Human Rights Court (Krokodilos Court). The Krokodilos Convention is similar in substance to the Arab Charter on Human Rights, Articles 1 to 39. The Krokodilos Court has jurisdiction over all human rights claims based on the Krokodilos Convention and any other international human rights treaties ratified by member states of KU. Krokodilos Court’s admissibility rules are similar to those of the European Court of Human Rights. On legal standing, Article 36 of the Statute establishing the Krokodilos Court states that “any person who claims that their human rights have been violated by a state has access to the Court. Registered human rights non-governmental organisations (NGOs) have legal standing before the Court in their own capacity or representing another person”. WangPole has signed and ratified the Krokodilos Convention and all the international human rights instruments in the UN framework.

1. WangPole has dense cities, hundreds of shrines, temples and imperial palaces. Moseidon, the capital of WangPole, is known for its high-tech industries, extraordinary infrastructure, with the highest skyscrapers on KC, and massively intertwined road traffic interchanges popularly known as “spaghetti roads”. Tourists also visit Moseidon for its amazing pop culture and nightlife. On KC, Moseidon is the global financial center. The KU and Krokodilos Court headquarters are also located in Moseidon.

1. WangPole’s bullet trains connect Moseidon to the Republic of Nero, a state to the south of WangPole. For a very long time, there have been serious confrontations between WangPolis (citizens of WangPole) and Neronians (citizens of Nero). Tensions, however, heightened in November 2017 when the Government of Nero accused the WangPole Department of Defence (DoD) of dropping chlorine munitions on suspected Neronian terrorists in the eastern region of Nero. WangPole is also involved in an armed conflict with KaDove, a state east of WangPole. The majority of people in KaDove are of WangPolis origin.

1. Over 3 million Neronians live in Moseidon and many have become WangPole citizens. That notwithstanding, journalists have accused the Government of WangPole of discriminating against people of Neronian origin. For example, in

October 2018, local journalists accused the DoD of using nerve agents against WangPole of Neronian origin. The 67 victims were wanted suspects of human trafficking. Between 2017 and 2018, Fundamentals of Fundamental Human Rights (FFH) noted in its annual report that there were 682 court cases filed against the WangPole Police Department (WPD) on allegations of police brutality, racial profiling and discrimination against people of Neronian origin. FFH is registered as a human rights NGO in terms of the WangPole Civil Societies Act of 1992.

1. The first ten Articles of WangPole's Constitution are similar in substance and numbering to Articles I to X amending the Constitution of the United States of America; Article 11 of the Constitution corresponds with Article 13 of the Constitution of Colombia; and Article 12 with Article 1 of the German Basic Law. WangPole's court system is similar to that of South Africa. WangPole Attorney General's Office (WAGO) is responsible for prosecution of cases on behalf of the state. However, in 2013, the WangPole Government enacted the Private Prosecution Act, allowing the Minister of Justice to issue private prosecution certificates to non-state entities in cases where WAGO declines to prosecute, or the applying entity shows evidence of unwillingness to prosecute. Private prosecution has since been enshrined in WangPole's Constitution.

1. Professor Camillo Prometheus is a prominent scientist who is held in high regard in WangPole and beyond. Born to peasant Neronian parents in the southern part of WangPole and near the northern border of Nero, Professor Prometheus proudly embraces his Neronian culture. Neronians are excellent hunters and many of them participate in trophy hunting. In fact, hunting is considered part of Neronian culture and traditions.

1. On 11 April 1965, Camillo Prometheus turned 14 and as part of his birthday present, he accompanied his father to the jungle near the banks of the Zeus' Tear. While fetching some water for his father, Camillo was viciously attacked by a crocodile and lost both of his legs. This disability did not stop Camillo's interest in hunting, animal biology and artificial intelligence (AI). Years later, he established himself as a prominent AI professor and a renowned scientist.

1. In 2003, together with his colleague, Professor Jonah Heart, Professor Prometheus registered an AI company under the name ShingKoK Artificial Intelligence (SAI). On its website, SAI is described as "a company of machine learning specialists dedicated to building artificial intelligence platforms to better human life". SAI has produced cutting edge AI applications that have helped revolutionise WangPole's various sectors such as health, commerce and the justice system.

1. In 2013, WangPole's Ministry of Justice, together with WPD, contracted SAI for a 30-billion-dollar project known as "Project iPiJ" (iProsecute, iJudge). Project iPiJ was aimed at bettering WangPole's justice system into what the Minister of Justice called "smart investigation, smart prosecution and smart sentencing". Under iPiJ, the most popular platforms are the "Intelligent Bail Assessment Platform" (IBAP) and the Too Intelligent To Fool" (TITF) system.

1. IBAP is an algorithm that was developed by Professor Prometheus. It analyses a person's personal history such as previous criminal offences, level of education, economic prospects, family ties and on a score of up to 10 indicates whether an accused person is a low, medium or high flight risk if released on bail. The score helps the judge to decide whether someone will commit further crimes or flee if released. However, the algorithm does not do qualitative assessments such as telling how dangerous a person is. It has been reported in local newspapers that some university students released research pointing out that IBAP is biased against people of Neronian origin.

1. TITF – also developed by Professor Prometheus – is an algorithmic system that combines AI and sensors that measure body temperature and do facial recognition and voice semantic structure. These sensors and thermal cameras capture a person's heart rate, breathing rate and skin temperature while the person responds to questions posed to him or her. In general, the basis of the technology is that when humans lie, they sweat, and their heart rate and breathing rate changes. Professor Prometheus explained that the brain and eyes respond to deception and when a person is lying, the cognitive load increases and it affects the eyes. The TITF system, therefore, also measures the pupil diameter, fixations, blinks and eye movement. The system then calculates a person's credibility score that helps the police, the prosecutor and the judge to make decisions. Before being used, the TITF system was tested on a sample of real court cases across WangPole and it had a success rate of 95%, compared to humans whose ability to read deception, according to the most reliable scientific evidence, stands at 53%.

1. In 2016, when Project iPIJ was officially deployed, the Commissioner of Police said: "With TITF, police do not need to sweat any suspects anymore. My officers will no longer have to second-guess themselves that they may be arresting a wrong person. I can assure you, even the unfortunate incidents of torture and police brutality will decrease". In support of the Commissioner of Police, the Minister of Justice also added: "In the courtroom, the cruel cross-examination of witnesses will soon disappear. We can now get to the truth in a civilised manner. I know my fellow lawyers love cross-examination. This is not an attack on you learned friends. We are just introducing something more learned and smarter. We are replacing human-cruel-cross-examination with smart cross-examination. I am sure you all remember the victim of rape who was recently asked hurtful, unnecessary and devilish questions by the defense lawyer in a televised trial. Those days are coming to an end my friends".

1. In a television interview, Professor Prometheus was asked whether he himself would want "to be tried by a computer algorithm" than by fellow humans to which he replied: "In the presence of tried and tested algorithms like the one I developed, it would be totally foolish for me to subject myself to subjective humans who are not only subject to misguided emotions but often make terrible errors. I do rather call a computer 'Your Honour' all day and any day".

1. In 2018, having been granted permission to approach the WangPole Constitutional Court directly, Moseidon Attorneys for Dignity (MAD) argued before

the Court that Project iPIJ violates Articles 6 and 12 of the WangPole Constitution. In the constitutional case brought by MAD, the Government of WangPole appeared as the 1<sup>st</sup> Respondent while the Ministry of Justice, the Commissioner of Police and Professor Prometheus appeared as 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents respectively. On 29 January 2019, the Constitutional Court ruled in favour of the respondents.

1. MAD is a registered law firm with the WangPole Law Society and also registered under the Legal Practice Act of 1979. On its website, MAD states: “We are a pro bono organisation of human rights experts dedicated to human rights protection through private prosecution of criminal and civil wrongs related to artificial intelligence, ethics and human rights. Our team of experts guarantee a pronounced difference in any court proceeding and subsequent remedies and enforcement”. Since 2014, MAD has held a private prosecution certificate that was issued by WangPole Government in terms of the Private Prosecution Act.

1. Between February 2016 and March 2019, non-governmental organisations’ statistics show that incidents of torture, incidents of criminals re-offending while on bail, wrongful arrests and convictions have dramatically decreased by 48% in WangPole. The Government of WangPole attributed this decrease to the effective use of Project iPIJ. Furthermore, during the same time, 117 inmates who were serving lengthy sentences were exonerated and released through Project iPIJ re-trials which proved their innocence.

1. Meanwhile, impressed by Professor Prometheus’ successes, the WangPole Department of Defense (DoD) hired him on a permanent basis. Local newspapers carried stories that huge sums of money exchanged hands for Professor Prometheus to work on some classified military applications. Although Professor Prometheus had often talked to local and international media in the past, no one heard from him between October 2016 and December 2018.

1. On 31 December 2018, Professor Prometheus – looking 15 years older than he last appeared on television in October 2016 – appeared in a live Facebook broadcast titled: “The Last Supper”. In the video, he said: “I call this the last supper because it can be my last. I am, however, not afraid anymore and my conscience cannot allow me to keep silent. Five years back, some men identifying themselves as members of WangPole Central Intelligence (WCI) approached me and asked for the data that is in the hands of SAI. This included not only satellite images, but people’s personal data legally obtained by SAI in its day to day business. While they offered me huge sums of money, I initially resisted. After some threats, however, I obliged, took the money and handed over your personal information. Some of this information has been used in DoD’s targeting missions resulting in deaths. As you know, DoD later contracted me to lead a project called Project Zeus. This project has seen the development and deployment of lethal autonomous weapon systems. These are killer machines with the ability to make decisions about who to kill and who not to kill without any further human control once they are activated. Yes, these killer machines have already been deployed and very soon you will know where. I am ashamed to have helped DoD in coming up with these abhorrent weapons. These weapons are a weapon of choice for the racist, as you will see that

these weapons are only being deployed against certain people. I will not continue to participate in the destruction of my own people. What is sad is that WangPole Government has stopped funding other important projects such as AI and scientific projects on cancer while giving billions to Project Zeus". He further claimed that he was making the disclosure in the public interest as he was convinced the public deserved to know what their government had been using their taxes for. The video went viral.

1. On 1 January 2019, the DoD rejected Professor Prometheus' accusations and explained that he was acting out of disgruntlement since he was dismissed on 20 November 2018. On 3 January 2019, confidential documents relating to Project Zeus were leaked on the internet. It included designs of the project, missions that were completed using Project Zeus, future missions, people who were targeted and numbers of civilian casualties. The leak generated an uproar worldwide, with human rights organisations like FFH asking for a United Nations commissioned investigation of Project Zeus.

1. The Attorney General of WangPole opened a criminal case against Professor Prometheus. He was formally accused and charged with treason for leaking state secrets in violation of the State Official Secrets Act of 1992. He was also charged of violating the WangPole Data Protection Act of 2008, which criminalises the "unlawful obtaining or disclosing of a person's data without the consent of the person". When he was arraigned before the High Court of WangPole, the question of Professor Prometheus' bail pending trial was submitted to IBAP which suggested bail in his favour.

1. While on bail, Professor Prometheus returned to SAI as Director of AI research. Professor Prometheus' interest in hunting was also renewed and he spent considerable time in the jungle with his hunting mates near the banks of Zeus' Tear. However, he faced considerable difficulties in mobility given his disability. On one occasion while hunting with Professor Heart, Professor Prometheus emotionally confessed: "Jonah, isn't it ironic that while I am a genius in the lab and behind any computer, I am useless in these jungles. I wish I could hunt while in my lab". Although the two laughed about it, Heart could not help but notice that Prometheus' eyes were teary when he said those words. Three months later on 11 April 2019, Professor Heart presented Professor Prometheus with a unique birthday present. It was a completed online hunting project that Heart secretly developed since Prometheus' confession. Professor Heart named the online hunting project "Virtual Eleven" or simply V11 in memory of Professor Prometheus' birthday.

1. V11 allows prospective hunters to sit in the comfort of their home or office and through a computer control a pre-installed rifle in a remote location and kill real game. A hunter would, for example, move the computer mouse around until he or she locates the animal and with a click of a finger, shoot at the animal in the remote location. Professor Heart had a discussion with Mr Rich, a wealthy Neronian who owned about 50% of the jungle to the south of WangPole, and obtained the permission to install about 50 rifles on his property that would be connected to V11. Furthermore, the contract signed by Mr Rich included a clause that the total number

of game that could be hunted through the V11 would be limited to 1000 per year. Thrilled by his present, Professor Prometheus announced it to the nation, describing it as follows: "This is such a good initiative, I have loved hunting from a young age. You all know where I lost my legs. Since that accident, it has been difficult to go into the woods."

1. Further, in support of the V11, Professor Prometheus started Project Soft-ShotGun (SSG). He designed a working plastic shotgun whose blueprints can be downloaded for free from the SAI website and produced by anybody with a 3D printer. He explained to his customers that since online hunting would involve placing a gun in the jungle, some may not be keen on leaving or losing their precious expensive guns in the woods. He said: "This is where SSG comes in, they are cheap, very cheap downloadable plastic guns. After use, you can leave it there if you so wish, and print another one next time. In any event, given that our Government is weaponizing everything these days, it is important that we have access to affordable guns. While they may not be actual physical guns, the blueprints on my website can get you there". Although the blueprints could be downloaded for free, one needed to register and pay a monthly subscription fee of US\$500 to be able to use the V11. Additionally, the total number of subscriptions to the V11 was limited to 300 per month on a first come first serve basis on the first day of each month, with a maximum number of 30 logins per subscriber, and each login session lasting for no longer than 2 hours.

1. V11 sparked an ethical debate in WangPole with many animal rights activists condemning such practices. The Governor of Moseidon angrily described V11 as follows: "Virtual 11 is hunting without virtue. It's for cowards". After a debate in the WangPole Parliament, the majority of Members of Parliament voted and adopted a new law banning online or internet hunting of wild animals through projects such as V11. Professor Heart approached the Constitutional Court arguing that the ban placed on V11 is in violation of his constitutional rights. At the beginning of the case, Professor Heart's lawyers asked that two of the nine judges recuse themselves, arguing that they are biased because they hold PhDs in AI, in addition to their legal training, and have extensively published in peer reviewed journals supporting the use of autonomous weapon systems by police and army officials. Resorting to the TITF system to establish whether these judges are or would be biased in this particular case, the Court found that the two judges did not have to recuse themselves. After hearing the case on merits, the Constitutional Court ruled in favour of the Government of WangPole.

1. Following the judgment, an international journalist posed the following question to the Chief Justice of WangPole: "As one of the judges who presided in this matter, do you consider your judgment to be consistent with the rights that are contained in the Convention on the Rights of Persons with Disabilities (CRPD)?" The Chief Justice responded: "There can never be a constitutional jungle. Hunting is an outdoor activity and often rough. It is what it is. It would be crazy to ask for a CRPD compliant jungle. One cannot even call it hunting because hunting is supposed to be outdoors. This is more of an online animal slaughter and will endanger all animal species". Just after leaving the Constitutional Court building, the same journalist

asked Professor Heart what he thought of the Court's judgment, to which he responded: "We are in very interesting times; a generation where people are more worried about online slaughter of animals but don't care about online slaughter of humans. If the Chief Justice is sincere about ethics he should ask the Government to stop using armed drones and Project Zeus".

1. On 29 May 2019, Professor Prometheus was arrested for illegal firearm dealing. On 30 May, there was a break-in at SAI and a malicious virus was installed which damaged all the SAI systems. It also deleted all the SSG blueprints online. At the time of deletion, there had already been 941,000 downloads. After a thorough assessment, Professor Heart and other independent experts concluded that the virus that was used to attack SAI systems belongs to the DoD, which Prometheus recognised as part of projects he developed for the DoD. Prometheus came up with a list of named DoD suspects which he submitted to the WPD. The Attorney General declined to prosecute stating that there was lack of evidence. Prometheus approached the High Court of WangPolis asking the Court to compel the Attorney General to prosecute but the case was dismissed on the merits.

1. For Prometheus' first appearance on the charge of illegally dealing in firearms, the presiding judge stated that there was no need to use IBAP since the accused had already "shown a propensity of committing further crimes" while on bail. Consequently, he was denied bail. Prometheus' trial on the charge of treason, unlawfully distributing personal data and of illegally dealing in firearms started on 1 June 2019. Throughout his trial and during sentencing, the state relied on TIFT. On 12 June 2019, Prometheus was found guilty of treason, illegally dealing in firearms and disclosing personal data without the owners' consent. Throughout the trial, Prometheus insisted on his innocence. In articulating aggravating circumstances, the state showed that 2 months after SSG was put online, cases of untraceable gun violence increased by 33 %. Of that percentage, 14% were fatal. Prometheus was sentenced to life imprisonment without the possibility of parole.

1. Meanwhile, Gun Soldier, a rapper and one of the 117 prison inmates who were released through the Project iPIJ re-trials, was diagnosed with cancer in September 2018. Before his release, he had received a life sentence for shooting an army officer in a bar back in 2010. In May 2019, Gun Soldier released one more hit song called "Smart Prison Break" whose chorus have the following bars:

*WangPolis, go ask the police, I fooled them like an OJ.  
Am the real WangPolis, Yeah, ask soldier boy of DoD.  
Am the OG, made TITF mean walk "Through IT Fam" like you're OJ.  
WangPolis, go ask the police, I fooled them like an OJ.*

1. On 28 June 2019, a prominent journalist visited Gun Soldier on his death bed to ask him about the meaning of his hit song "Smart Prison Break" which continued to dominate both local and regional charts. With a frail smile, Gun Soldier feebly answered: "I wonder why people think my song is controversial; there is no controversy there. I cheated the system like I am some kind of OJ Simpson. Of



course, I killed soldier boy". In the early morning of 29 June 2019, Gun Soldier died while waiting to be put in the limited government facilities for cancer patients.

1. On 29 June 2019, after obtaining permission from Professor Prometheus, MAD approached the Krokodilos Court asking the Court to adjudge and declare the following:

a. Professor Prometheus' prosecution, sentence and use of TITF during his trial violated his fundamental human rights.

b. WAGO's refusal to prosecute the case concerning the invasion of SAI violates Prometheus and others' fundamental human rights.

c. WangPole's ban on V11 violates Prometheus and others' fundamental human rights.

The Krokodilos Court has set the hearing of oral arguments between 15 and 19 July 2019.

### **Instruction**

Prepare written memorials on behalf of MAD (the Applicant) and the Government of WangPole (the Respondent) addressing jurisdiction, legal standing, admissibility of claims, merits and remedies in respect of claims **a**, **b** and **c**.