Concentrations of Inhumanity

An Analysis of the Phenomena of Repression Associated With North Korea's *Kwan-li-so* Political Penal Labor Camps According to the Terms and Provisions of Article 7 of the Statutes of the International Criminal Court and the Parallel Provisions of Customary International Law on Crimes Against Humanity

David Hawk
FREEDOM HOUSE

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About the Author

DAVID HAWK directed the Cambodia Office of the UN High Commissioner for Human Rights in the mid-to-late 1990s. In the 1980s Hawk documented the Khmer Rouge atrocities in Cambodia under the auspices of the Columbia University Center for the Study of Human Rights. In the early 1990s, Hawk directed the Cambodia Documentation Commission, which sought an international tribunal for the Khmer Rouge leadership, and human rights provisions in the 1991 Cambodia peace treaty and subsequent UN transitional peacekeeping operation. In August 1994 and again in 1995 Hawk went on missions to Rwanda for the US Committee for Refugees and Amnesty International respectively. Hawk is a former Executive Director of Amnesty International, USA and has served on the board of directors of AIUSA and Human Rights Watch/Asia.

His recent publications include "Confronting Genocide in Cambodia" in *Pioneers of Genocide Studies*, eds. Totten and Jacobs, Transaction Press; *Hidden Gulag: Exposing North Korea's Prison Camps – Prisoner Testimonies and Satellite Photographs,* US Committee for Human Rights in North Korea; *Thank You Father Kim Il Sung: Eyewitness Accounts of Violations of Freedom of Thought, Conscience and Religion in North Korea*, US Commission on International Religious Freedom; "Human Rights and the Crisis in North Korea" in *North Korea: 2005 and Beyond*, eds. Yun and Shin, APARC/Stanford University, Brookings Institution Press; "Factoring Human Rights into the Dismantlement of Cold War Conflict on the Korean Peninsula" in *Human Rights in North Korea: Towards a Comprehensive Understanding*, Sungnam: The Sejong Institute, Seoul, 2007.

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FOREWORD

David J. Scheffer
Mayer, Brown, Rowe & Maw/Robert A. Helman Professor of Law and Director, Center for International Human Rights, Northwestern University School of Law

Former US Ambassador-at-Large for War Crimes Issues and former Head of the U.S. delegation to the U.N. negotiations on the Rome Statute of the International Criminal Court

The international community has focused on the Kim Jong Il regime in North Korea primarily for two reasons: its development of nuclear weapons and its support for international terrorism. But should those threats define the regime's character and how major powers deal with P'yŏngyang? Perhaps not. There are the occasional well-scripted diplomatic remarks and non-governmental missives about the human rights situation within North Korea. But rarely has an expert and independent investigator of David Hawk's caliber journeyed deep into the cauldron of human misery and death consuming that forsaken country. It is even more extraordinary that Hawk has chosen as his vehicle of analysis the fast-developing field of international criminal law known as *crimes against humanity*. The Kim Jong Il regime's systematic and widespread attack on hundreds of thousands of its own civilians, particularly within the confines of nightmarish *kwan-li-so* political penal labor camps, is not generally known or understood. To fill that vacuum of information and bring the culture of the North Korean government's criminality into the daylight, Hawk conducted extensive interviews of survivors of the labor camps who had fled the country. He then tested his research against the rigorous standards for crimes against humanity set forth in the Rome Statute of the International Criminal Court (ICC). In that exercise Hawk has accurately understood the requirements for the various categories of crimes against humanity, including extermination, enslavement, the forcible transfer of population, arbitrary imprisonment, torture, sexual violence, enforced disappearances, persecution, and other inhumane acts.

The fundamental premise for each crime against humanity, as set forth in Article 7 of the Rome Statute and in its Elements of Crimes, is that it must constitute acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, and that the course of conduct involves the multiple commission of illegal acts against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack. That policy requires that the State or organization actively promote or encourage such an attack against a civilian population. Hawk remains faithful to these over-arching standards of analysis. He necessarily can reveal only snapshots of the closed North Korean system through his interviews and other investigations. But his effort is path-breaking and should profoundly influence the formulation of any nation's policy towards the Kim Jong Il regime in the future.

In the conclusion to his report, Hawk presents a realistic set of options for meaningful initiatives by the international community to end the criminal conduct of the North Korean government. It is my strong belief that given the probable continuing character of the labor camp atrocities reaching far beyond mid-2002 when the ICC's temporal jurisdiction commenced, the United Nations Security Council should approve a U.N. Charter Chapter VII resolution referring the situation in North Korea to the ICC for investigation and, if merited, prosecution of the leadership of the Kim Jong Il regime and its labor camp system. David Hawk's report is Exhibit A for such an initiative, which is long overdue.

Chicago, Illinois
May 2007

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I. PREFACE

All, or almost all, countries have human rights problems of one sort or another: miscarriages of justice, carry-overs from deep seated social or political problems that have not been fully resolved, or over-reactions by the government in power or its agents to unanticipated events.

A smaller, but still much too large number of countries have long-standing and severe human rights problems. In human rights terminology these problems are identified as "a consistent pattern of gross violations of internationally recognized human rights." Often, these are acts of discrimination, persecution or abuse against various vulnerable groups such as racial, ethnic, political or religious minorities, or even major segments of the population such as women or girls.

Sometimes the "consistent patterns of gross violations" are so egregious and severe that they "affront the conscience of mankind." These affronts, when committed on a large scale in pursuit of State policy against a civilian population, are now considered and carefully defined to be "crimes against humanity." The phenomena of repression associated with the political prison camp system of the Democratic Peoples Republic of Korea (the DPRK or North Korea), are clear and massive crimes against humanity as now defined in law.

The idea or legal doctrine of "crimes against humanity" has been around for a century or more. But it is only within the last decade – with the Statutes of the ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), the permanent International Criminal Court (ICC), and the now voluminous judicial decision, from the judges in the trial and appeals chambers of the Yugoslav and Rwanda tribunals – that crimes against humanity have come into clearer focus and definition as both "positive law" and "customary law."

It is also only within the last decade that numbers of former North Korean political prisoners escaped or were released from detention in North Korea and fled to China as part of a much larger famine-related population outflow from North Korea to China. A comparatively smaller number of North Koreans who fled to China made their way to South Korea (the Republic of Korea or ROK). Only at that point, did sufficient numbers of former North Korean political prisoners become accessible to journalists, scholars and human rights investigators. And only within the last several years has it been possible to obtain first hand, factual details of repression in a deliberately self-isolated North Korea, and to begin to fill in the previously missing pages for North Korea in the various global surveys of human rights violations around the world.

In late 2003, the US Committee for Human Rights in North Korea published *Hidden Gulag: Exposing North Korea's Prison Camps – Prisoner's Testimonies and Satellite Photographs,* the first comprehensive analysis of political detention, torture and related repression in the DPRK. Based on interviews conducted in South Korea with former North Korean political prisoners, *Hidden Gulag* told the stories of individual political

prisoners, described the various categories or kinds of detention facilities where persons were imprisoned and tortured for their real or suspected political beliefs, or for exercising what are universally understood as inalienable human rights. The report also published satellite photographs of the different kinds of political detention facilities with the prison landmarks identified by the former prisoners from those detention facilities.[1]

The present report analyzes, according to the provisions of the international law defining crimes against humanity, the unique phenomena of repression associated with the core element of the DPRK gulag: the *kwan-li-so* political penal labor encampments where as many as 200,000 persons, including both suspected wrong-doers and wrong-thinkers, and up to three generations of their family members, are imprisoned without trial and subjected to forced labor under extremely severe conditions. The present analysis is based on follow-up interviews in South Korea in October of 2006 with former prisoners previously interviewed for *Hidden Gulag*, and on interviews with additional former political prisoners who arrived in South Korea after 2003. The purpose of the present report is to examine their testimony according to the norms set forth in the Rome Statute of the International Criminal Court and the jurisprudence of the *ad hoc* International Tribunals for the former Yugoslavia and Rwanda.

Following an executive summary, this report provides an introduction to the *kwan-li-so* political prison camp system in North Korea, and an introduction to crimes against humanity as defined in contemporary international law. This report then compares – provision by provision – information drawn from the testimony of the former North Korean prison camp survivors to the elements set forth in Article 7 of the Statute of the International Criminal Court and the corresponding judgments of International Criminal Tribunals for the former Yugoslavia and Rwanda that further define and elucidate the elements that constitute crimes against humanity.

[1] Available online at <www.hrnk.org>.

Information Sources

The factual content of this report is based on interviews with former *kwan-li-so* prisoners and guards who were previously interviewed for *Hidden Gulag*. Additional former *kwan-li-so* prisoners, who had not yet arrived in Seoul during the research for *Hidden Gulag* in 2002-2003, were interviewed for the present report. One former prisoner and two former guards and prison system officials interviewed for *Hidden Gulag* were unavailable during the research for the present report.

Those whose testimony provides the basis for the present report include the following:

Mr. Kang Chol Hwan was imprisoned from 1977 to 1987 along with his grandmother, father and sister in a section of Camp No. 15 for the families of ethnic Koreans who had repatriated to Korea from Japan.[2]

Mr. An Hyuk was imprisoned in the "singles" section, at Daesuk-ri, of Camp No. 15 for a year and a half, from 1987 to 1989, following a previous 20 months in solitary confinement in a *Bo-wi-bu ku-ryu-jang* detention and interrogation facility.[3]

Mr. Kim Tae Jin was also imprisoned in the *Daesuk-ri* singles section of Camp No. 15 from 1998-2002.[4]

Mr. Lee Young Kuk was also imprisoned in a singles section of Camp No. 15 from 1995 to 1999, following six months in a *bo-wi-bu* detention/interrogation facility.[5]

Mrs. Kim Young Sun was imprisoned, along with her father, mother and four of her children for eight years in Camp No. 15; five years in a family section of *Knup-ri* 'revolutionizing zone', and for three years she was assigned to be a section leader in the *Yongpyon-ri* section of the lifetime 'total control zone' for the remaining "third generation" of family members of former landlords, Japanese collaborators, and Christian pastors and elders (church lay leaders) whose heads of family had fled to South Korea decades ago.[6]

Anonymous prisoner #1 was imprisoned in the *Seorimchon* section of Camp No. 15 from 2000 to 2003. He only recently fled to South Korea, and with family members remaining in North Korea he would only be interviewed on conditions of anonymity.

Mr. Kim Yong, was imprisoned in the singles Camp No. 14 from 1993 to 1995 and with his mother in the family Camp No. 18 from 1995-1998.[7]

Anonymous prisoner #2 was imprisoned at age 12 with his father, mother and three brothers and sisters for seven years, from 1978 to 1985 in Camp No. 18. He only recently fled to South Korea, and with family members remaining in the North, would only be interviewed on conditions of anonymity.

Mr. An Myong Chol, was a former guard for eight years at *kwan-li-so* Camp Nos. 22, 26 (closed in 1991), 13 (closed in 1990), and 11 (closed in 1989).

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[2] See *Hidden Gulag*, p. 30 for photo and brief biography of Mr. Kang. He is the now well known co-author, with Pierre Rigoulot, of the prison memoirs, *Aquariums of Pyongyang: Ten Years in the North Korean Gulag,* Basic Books, New York, 2001. See *Hidden Gulag*, p. 34-36 for brief description of Camp No. 15 and pp. 90-100 for satellite photographs of Camp No. 15.

[3] See *Hidden Gulag*, op. cit., p. 31-32 for photo and brief biography of Mr. An.

[4] See *Hidden Gulag*, op. cit., p. 32 for photo and biography of Mr. Kim.

[5] See *Hidden Gulag*, op. cit., p. 33 for photo and biography of Mr. Lee.

[6] Mrs. Kim is the most senior and only woman among the former *kwan-li-so* political prisoners now actively promoting North Korean human rights in South Korea. A former professional dancer prior to her imprisonment in the DPRK, Mrs. Kim has recently achieved recognition in South Korea and the USA as the choreographer of the musical "Yodok Story."

[7] See *Hidden Gulag*, op. cit., p. 36-37 for photo and biography of Mr. Kim Yong. For descriptions of Camp Nos. 14 and 18 see pp. 37-38. For satellite photos of Camp Nos. 14 and 18 see *Hidden Gulag* pp. 101-112.

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT[8]

ARTICLE 7

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systemic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy; enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, … or other grounds that are universally recognized as impermissible under international law in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of person;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

[8] Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, Rome, Italy.

II. EXECUTIVE SUMMARY

The purpose of this report is to examine the testimony of former prisoners in the North Korean *kwan-li-so* political penal labor camps according contemporary international legal norms defining crimes against humanity.

According to the definitions set forth in the Statute of the International Criminal Court and the judicial decisions of the International Tribunals for Rwanda and Yugoslavia, "crimes against humanity" are committed when murder, extermination, enslavement, deportation or forcible population transfer, imprisonment or severe deprivations of physical liberty (in violation of fundamental rules of international law), torture, rape or sexual slavery, persecution on political, racial, national, ethnic, cultural, gender or religious grounds, enforced disappearances, apartheid, and other inhumane acts of a similar character are knowingly committed as part of a widespread or systematic course of conduct against a civilian population in furtherance of State policy.

In the Democratic Peoples Republic of Korea, crimes against humanity are committed as follows:

1. Perceived wrong-doers or wrong-thinkers and/or their family members are subjected to "enforced disappearance." These persons are picked up by police from the DPRK State Security Agency,[9] which thereafter refuses to acknowledge the deprivation of freedom and refuses to provide information on the fate or whereabouts of those persons with the intent of removing those persons from the "protection of law" for a prolonged period of time.[10]

2. The abducted persons are subjected to deportation or forcible transfer[11] from the area in which they were lawfully present[12] without grounds permitted under international law.[13]

3. The abducted and deported persons are deposited at distant, remote, penal labor colonies or encampments, called *kwan-li-so* (literally translated as "managed place" or "controlled place") where they are subjected to "imprisonment or severe deprivation of physical liberty in violation of fundamental rules of international law."[14] These abductions, deportations and the subsequent imprisonments all take place without any judicial process whatsoever. There is no arrest, charges, trial, conviction or sentence whatsoever, as these processes are detailed in the DPRK Criminal Code and the DPRK Criminal Procedures Code. In international law and in the legal systems of most nations around the world, perceived or suspected crime-doers are entitled to "due process" and/or

[9] The North Korean term for the political police, *Kuk-ga-bo-wi-bu*, is also sometimes translated as the National Security Agency.
[10] This is precisely the definition of "enforced disappearance" in Articles 7.1(i) and 7.2(i) of the Statute of the International Criminal Court.
[11] ICC Statute, Article 7.1(d).
[12] In fact, such persons would have been previously assigned to their former areas by State authorities.
[13] ICC Statute, Article 7.2(d).
[14] ICC Statute, Article 7.1(e).

judicial proceedings. Wrong-thinking is not recognized in international law as a permissible criminal offense. The practice of forcible transfer and imprisonment of the children and/or grandchildren of perceived, though un-tried and un-convicted, wrong-doers or wrong-thinkers is far outside the permissible grounds of international law.

4. The imprisonment of family members is clearly what the ICC Statute refers to as "persecution." Most prisoners are detained for the rest of their lives. The small number who are released are subjected to discrimination even after their release. This also is "persecution" within the meaning of ICC Statute. The camp system in its entirety can be perceived as a massive and elaborate system of persecution on political grounds.[15]

5. Once cut off from former family and friends, and any contact with the country or world outside of the prison camp, the imprisoned persons are subjected, usually for a life-time, to forced labor under extremely severe circumstances, beginning with the provision of below subsistence level food rations. The conditions of detention in the labor camps make a mockery of the UN Standard Rules for the Treatment of Prisoners. While some forms of prison labor are permitted under international law, the exaction of extreme forms of forced labor under such severe conditions has been judged by the *ad hoc* International Criminal Tribunals to constitute enslavement.

6. The political penal camp system itself is entirely outside the DPRK legal framework or DPRK laws. North Korean laws and courts do not cover or reach the prison camps, which are thus "extra-judicial." The prisoners have been precisely "removed from the protection of the law"[16] for the duration of the imprisonment, which for most prisoners is a lifetime. Actions that should be subject to the law and legal proceedings even when a person is deprived of his or her physical liberty, such as the execution of prisoners, are carried out "extra-judicially." These extra-judicial executions, many of which are carried out publicly, commit the crime against humanity of murder.[17]

7. Prisoners are regularly subjected to beatings and sometimes more systematic torture for infractions of prison camp regulations. Torture is not allowable under international law under any circumstances. It is prohibited in Article 7 of the International Covenant on Civil and Political Rights, to which the DPRK is a States Party. As carried out in the circumstances of the DPRK gulag, torture is a crime against humanity.[18]

8. Not always, but on numerous occasions, the prisoners who have been compelled to observe the executions (which are carried out publicly to demonstrate to other prisoners the severe consequences of escape attempts and/or non-compliance with camp regulations) are also compelled to pass close by and defile the hanging or slumped-over corpse of the just-executed prisoner. This practice constitutes an "other inhumane act… causing great suffering and injury to… mental health."[19]

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[15] ICC Statute, Article 7.1(h) and 7.2(g).
[16] ICC Statute 7.2(i).
[17] ICC Statute 7.1(a).
[18] ICC Statute 7.1(f) and 7.2(e).
[19] ICC Statute 7.1(k).

9. Prison camp officials and guards are regularly able to exact sexual relations with female prisoners under circumstances that have been judged to constitute rape or sexual violence[20] as it has been defined by judges at the ad hoc Tribunals, namely, "any act of a sexual nature which is committed on a person under circumstances which are coercive…. [noting further that] coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances."[21]

10. Extermination,[22] as defined by the ICC Statute, "includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of a part of the population."[23] The high rates of deaths in detention from combinations of malnutrition, starvation, exhaustion (from forced labor) and disease would likely be deemed by legal scholars and judges to constitute the crime of humanity of extermination.[24] The high rate of deaths-in-detention is accompanied by a prohibition on procreation by prisoners. Young men and women sent to, or growing up in the prison camps, are not allowed to marry or have children. Such pregnancies as inevitably occur are terminated by involuntary abortion. It is the clear and stated intention of the political prison camp system to terminate the families, up to three generations, of these traitors to the nation and betrayers of the Great Leader and Dear Leader, Kim Il Sung and Kim Jong Il, respectively. The prevention of births intended to bring about the deliberate ending of the family lineage of the scores of thousands of prisoners in the gulag camps' populations would also likely qualify as the crime against humanity of extermination.

11. With the exception of the crime of apartheid,[25] which is defined as systematic, institutionalized, racial oppression,[26] virtually all of the particular criminal acts included within the various iterations of crimes against humanity in modern international law are committed in North Korea. However, while most of these acts are criminal acts of one sort or another under most domestic laws, penal codes and legal systems of most UN Member States, it is only when these acts are conducted under specified conditions that they become "crimes against humanity." Those conditions apply when these acts are "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."[27]

These specifications reflect the historical association of crimes against humanity with war crimes: war crimes being specified atrocities committed against enemy soldiers or

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[20] ICC Statute 7.1(g).
[21] *Akayesu*, (Trial Chamber, ICTR, September 2, 1998, para. 686-688).
[22] ICC Statute 7.1(b).
[23] ICC Statute 7.2(b).
[24] See *Failure to Protect: A Call for the UN Security Council to Act in North Korea*, DLA Piper and the US Committee for Human Rights in North Korea, Washington DC, 2006, pp. 91-93.
[25] ICC Statute, Article 7.1(j).
[26] ICC Statute, Article 7.2(h).
[27] ICC Statute, Article 7.1.

combatants, crimes against humanity being committed against civilians. Hence, the retention of the word "attack."

12. "Attack," however, is carefully defined as "a course of conduct involving the multiple commission of acts [as specifically described above] against any civilian population, pursuant to or in furtherance of State or organizational policy…."[28] And the judges at the UN-established International Tribunals have made further clarifications: "An attack may also be non-violent in nature, like imposing a system of apartheid…, or *extending pressure on the population to act in a particular manner* (emphasis added)."[29] This is obviously, one of the intended consequences of the *kwan-li-so* gulag system in North Korea, both for the victim populations in the camps, and for the general population which is well aware of the "people who are sent to the mountains."

13. Widespread or systematic has been defined by judges at the *ad hoc* International Criminal Tribunals as "massive, frequent, large scale action, carried out collectively with considerable seriousness against a multiplicity of victims"[30] and as a reference to the "scale of the acts perpetrated and the number of victims."[31] According to the judges of the International Tribunal for Rwanda, "The concept of 'systematic' may be defined as thoroughly organized, and following a regular pattern on the basis of a common policy involving substantial public or private resources."[32]

Further, the judges have noted that these conditions [widespread or systematic] are intended to "exclude isolated or random inhumane acts committed for purely personal reasons."[33] It is not required that the inhumane acts be **both** widespread and systematic. However, any system such as the *kwan-li-so* political prison camp system in North Korea that involves hundreds of thousands of victims, that exists over a period of at least forty years, and necessitates thousands of military and police personnel to operate, administer and control is both widespread **and** systematic.

14. Lastly, according the Statute of the International Criminal Court, to be a crime against humanity the specifically proscribed inhumane acts have to be conducted "with knowledge of the attack."[34] This formulation is the "mental element," "intent" or "guilty mind" (*mens rea*) requirement for crimes against humanity. The purpose of this provision is to exclude inhumane acts that have occurred accidentally, inadvertently or for personal reasons. In short, it means that the perpetrators had to have known what they were doing and did it on purpose.

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[28] ICC Statute, Article 7.2(a).
[29] *Akayesu* (Trial Chamber, ICTR, September 2, 1998, para. 581).
[30] Ibid, para. 580.
[31] *Blaskic*, (Trial Chamber, ICTY, March 3, 2000, para. 206).
[32] *Akayesu* (Trial Chamber, ICTR, September 2, 1998, para. 580).
[33] *Kayishema and Ruzindana* (Trial Chamber, ICTR, May 21, 1999, para. 122-123, n.28).
[34] ICC Statute, Article 7.1.

III. THE DPRK GULAG SYSTEM

1. Continuous Waves of Political Prisoners

Following Japan's defeat in WWII, and under Soviet tutelage in Korea north of the 38th parallel, Kim Il Sung instituted what is usually known as a "national democratic revolution." This included genuinely popular reforms such as establishing an eight-hour work day, positing the formal equality of the sexes and prohibiting prostitution, concubinage, and female infanticide. It also included a purge of Koreans in the police and government bureaucracies who had collaborated with the harsh Japanese conquest and colonization of Korea and a sweeping land reform program that expropriated the landholdings of absentee Japanese landlords and the native Korean landed aristocracy.[35] Numerous purged police officials and disposed Korean landlords fled to the south, but their family members who remained in the north remained under suspicion and many ended up in the North Korean gulag.

In the 1930s, Kim Il Sung had waged a guerrilla war against the Japanese occupation of Korea from bases in Manchuria. After the Japanese occupation of Manchuria, Kim and his fellow partisans fled to the Soviet Union. Following Japan's defeat in WWII, when the Soviets installed Kim in power north of the 38th parallel there was no Communist Party in Korea.[36] While Kim attempted to fuse returning Korean exiles (who had been at Moscow's instructions members of the Chinese, Japanese or Soviet Russian communist parties) into the Korean Workers Party, along with leftists from the south of Korea who were fleeing to the north, his plans for northern Korea were challenged by other Korean political parties affiliated with two religions: Protestant Christianity (*Kiddokyo*) and an indigenous syncretic faith known as "Eastern Learning" (*Tonghak*) later called "Followers of the Heavenly Way" (*Chondokyo*).[37] These religiously-based social movements had led the internal opposition to Japanese colonial rule in Korea and were very well organized in the northern areas of the Korean peninsula. Suppressing these non-communist parties[38] led to the arrests and executions of Protestant and *Chondokyo*

[35] For an overview see Charles Armstrong, *The North Korean Revolution: 1945-1950*, Cornell University Press, Ithaca, NY, 2003.

[36] An earlier formation of a Korean Communist Party was dissolved by the Comintern in the mid-1920s because of excessive factionalism.

[37] *Tonghak/Chondokyo*, a synthesis of Confucianism, Buddhism and Catholicism distilled by disaffected Confucianist scholars in the 19th century, was an eschatological, millenarian belief system that preached that mankind was god and heaven could be realized on earth. Large numbers of disposed Korean peasants rallied to the *Tonhak* banner to fight against corrupt feudal officials and the foreign powers, particularly the Japanese, who were encroaching on Korean sovereignty during the terminal decline of the five-hundred-year-old Chosun dynasty. Also in the late 19th century, northern Korea, centering on Pyongyang, became the epicenter of Protestant Christianity in all of Asia. While in other parts of Asia, Christianity was associated with the colonial European powers, in Korea, threatened, then occupied by Japan, Protestantism was perceived as a modernizing, nationalistic force.

[38] In particular, the Protestants and *Chondokyo* followers opposed the Soviet-American plan for "Korea Trusteeship" and North Korea's unwillingness to allow UN elections to be held north of the 38th parallel.

leaders, while others fled below the 38th parallel.[39] Again, family members who remained in the north remained under suspicion and many would end up in the camps.

Following the Korean War (1950-53), Kim instituted a series of intense purges within the ruling Communist party of North Korea. First, Kim Il Sung purged his leftist rivals who had fled from south to north, whom he scapegoated for the failure to liberate the south from American imperialist occupation and re-unify the Korean peninsula under Communist control.[40] Next, Kim purged rival Korean communist leaders who had been affiliated with the Chinese communist party and army.[41] After that, he purged the Korean communists who had been affiliated with the Soviet Union.[42] These purges involved executing the leaders (initially after Stalinist-type show trials), and sending their networks of supporters in the party, the army and the bureaucracy to the camps. Finally, the only faction left was Kim's loyal band of Manchuria-based anti-Japanese partisans who became the enduring basis of the present North Korean regime.

Another development following the Korean War would profoundly affect the nature of North Korean society, including the operation of the prison labor camps. Following the death of Stalin in 1953, the Soviet Union and most of Eastern Europe curbed the worst excesses of Stalinism in anticipation of what became known as "revisionism," the possibility of "peaceful co-existence" between capitalism and socialism, and greater regard for what was termed "socialist legality."

Ruling Communist parties in East Asia took the dramatically different course that has been described as "national Stalinism."[43] Most famously, in China, Mao Zedong set off

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[39] It should be noticed that while Soviet Kim Il Sung was repressing and arresting Christians and *Chondokyo* religionists north of the 38th parallel, the US-installed leader, Syngman Rhee, was repressing leftists in the south of the peninsula with even more violence. Indigenous radicalism in Korea was centered in the southwest part of the peninsula. Many leftist leaders fled north to escape Rhee's repression. Others fled to nearby Japan. The Korean leftists who fled to the north were brutally suppressed by Kim following the Korean war. A substantial number of the Korean leftists who fled from South Korea to Japan would later migrate from Japan to North Korea, where many of those also ended up in the gulag.

[40] It is probable that Kim expected southern leftists to lead an uprising in South Korea in support of his advancing army from the north.

[41] There have always been large populations of ethnic Koreans on what became the Chinese side of the China-Korea border. Because of the Japanese occupation of Korea, many Korean-Chinese joined Mao's Red Army to fight the Japanese who were also occupying large parts of China. After WWII the ethnic Korean divisions of Mao's Red Army played a major role in China's civil war, defeating the US-backed Chang Kai Chek's Kuomintang army in Manchuria and handing northern China over to Mao. Mao returned the favor by handing over these battled-hardened ethnic Korean troops to Kim Il Sung to use in his civil war against US-backed Syngmun Rhee in South Korea. But following the Korean war, Kim Il Sung didn't trust the loyalty of the "Yan'an faction" named after Mao's headquarters in China during WWII and had them purged, imprisoned and executed.

[42] In the late 19th and early 20th century thousands of ethnic Koreans from Korea or Manchuria moved into Siberia and the Soviet maritime provinces. Hundreds of these Korean residents in the USSR and their families returned to the north of the peninsula as administrators or members of the Communist Party of the USSR or simply as Russian-Korean translators.

[43] For a general discussion of the term see Andrei Lankov, *Crisis in North Korea,* University of Hawaii Press, 2005.

on the radical and disastrous policies of the "great leap forward" and the "cultural revolution."

In North Korea, in an attempt to Koreanize Stalinism, often referred to as "socialism in our style" (*urisik sahoejuui*), Kim turned to the only Korea he and his Manchurian guerilla fighters knew, or imagined – the Korea that had existed prior to the Japanese occupation where the feudalist Chosun dynasty had ruled for nearly five hundred years.

Chosun dynasty feudal practices were incorporated into the Stalinist system bequeathed to North Korea by the Soviet Union: a return to "hermit kingdom" national self-isolation in an attempt to keep foreign influences out, while developing a uniquely distinctive national political culture. North Koreans were, and still are, forbidden to leave North Korea without permission, and only a few carefully selected diplomats, students and businessmen or women are given such permission.

This restriction most obviously affects North Koreans who travel to China, the only country other than South Korea with a large land border with North Korea. Any unauthorized travel to China risks short-term detention in a mobile work brigade, called *ro-dong-dan-ryeon-dae*. If there is a political component imputed to North Koreans who traveled to China, such as coming into contact with South Koreans or South Korean radio, TV, videotapes, or magazines, the repatriated or returning North Koreans face a high risk of being sent to the camps for longer-term imprisonment at hard labor.

Following the Korean War, the entire North Korean population was divided into three semi-hereditary *Songbun* classes: "loyal," "wavering" and "hostile" (based on a family's social standing and posture toward the Japanese occupation). These are roughly comparable to the three classes of Chosun dynasty: aristocrat, commoner and outcast/slave – the prisoners in the political penal labor camps being the modern day 'outcast/slaves'.

The North Korean Workers Party determined residence, educational opportunities, occupations and work sites for the citizenry, all based on calculations of loyalty toward the Kim regime. Salaries and wages were largely replaced by a Public Distribution System for food and clothing. Agricultural production was collectivized. Private selling of goods and services was prohibited. Slave-labor and the feudal practice, *yeon-jwa-je*, "guilt-by-association," three-generation collective punishment for political dissent, was re-introduced.

As in the Chosun dynasty, a rigid and extreme ideological orthodoxy was instituted.[44] Variously termed "*Juche* thought" or the "*Juche* idea"[45] or simply "KimIlSungism," this

[44] Prior to the Chosun dynasty (1392-1910) Buddhism, as the State religion, and Confucianism, as a theory of social and political relations, co-existed for a thousand years. For four hundred years, Chosun dynasty officials persecuted Buddhism almost to the point of extinction. When in the 18th century, Roman Catholic Christianity was introduced by Korean diplomats who had learned of it at the Ming Dynasty Court in Beijing, the Korean scholar-diplomats bringing in these new doctrines about the "Lord of Heaven" were executed. When in the 19th century, itinerant scholars-visionaries constructed a syncretic system of ideas called *Tonhak* (Eastern learning), they were hunted down and executed. Only when the Chosun dynasty

ideology was promulgated as "the one-and-only ideology system (*yuil sasang chegye*).[46] North Koreans, and even foreign leftists working in the North Korean Foreign Ministry, who had been heard to say, even in private, that *Juche* thought was contrary to Marxism, could be and were sent to prison camps.

An extreme cult of personality was organized around Kim Il Sung and his family, going back to his great grandfather,[47] and extending toward his son, Kim Jong Il, as dynastic succession was reintroduced. Kim Il Sung was revered and venerated as the founder of a new dynasty, comparable to the founders of the previous Koryo and Chosun dynasties. Kim was even elevated into the status of a Korean messiah, destined to liberate the virtuous, though abused, Korean people from the consecutive and seamless evils of Japanese colonialism and American imperialism. Portraits or statues of the Kim's were required in every house. Everybody was required to affix a Kim button to his or her lapel. Hallowed, church-like "Kim Il Sung revolutionary thought study halls" (*Kim Il Sung Wonsu hyukmyeong hwaldong yeongusil*) were set up in every factory, farm, school and office and the entire population was required to attend weekly sessions to master KimIlSungism. Failure to attend these propaganda classes or to show sufficient respect to the portraits or the Great Leader and Dear Leader risks consignment to the camps.

The extreme ideological orthodoxy effectively criminalized "wrong thought" or "wrong knowledge" as well as "wrong-doing." A strong gloss of religiosity coats the extreme North Korean ultra-orthodoxy. As expressed by a former *kwan-li-so* prison guard interviewed for this report, North Korea is like a giant religious cult. Thinking that is not in accord with the thinking of the cult is simply not allowed, and, if suspected, is punished severely.

In the 1990s, when the North Korean economy imploded as industrial production plummeted and the public distribution of food was drastically cut back, citizens naturally began complaining about the breakdown of the system. But such complaints, if

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was in terminal decline did another thought system, Protestant Christianity, make its way onto the Korean peninsula. In the late 19th century, during the waning days of the Choson dynasty, Protestantism and the previously outlawed "Eastern Learning" flourished and grew into social-political movements. These two religions spearheaded the internal Korean opposition to the Japanese colonial occupation.

[45] "*Juche*" is often, somewhat misleadingly, translated at "self-sufficiency." It is better understood as "self-command" or "being the subject rather than the object." (The *Juche* or KimIlSungist economy in North Korea has always been dependent on Chinese and Soviet foreign aid. When the USSR collapsed and China temporarily charged commercial rates for food and oil exported to North Korea, the North Korean economy basically collapsed, leading to the famines of the 1990s).

[46] Scholars who have read the theoretical formulations of the '*Juche* thought" in the Korean language original, contend that not only did Kim and his supporters re-create a Choson dynasty-like rigid ideological orthodoxy, but that, in fact, it was the same orthodoxy as prevailed in the Choson dynasty: "metaphysical Neo-Confucianism" that grafted onto the social relationship arrangements of earlier Confucianism, doctrines about human nature and physical reality, and the "family-state."

[47] According to official North Korean histories (Chosun Chonsa), Kim's great grandfather led the attack on a US-flagged vessel, the General Sherman, that sailed up the Taedong river to Pyongyang, burning the ship and killing all on board. This first repulse of US imperialism is proclaimed to be the turning point in modern Korean history. See Charles Armstrong, "A Socialism of Our Style: North Korea's Ideology in the Post-Communist Era," in *North Korean Foreign Relations in the Post-Cold War Era*, ed. Samuel Kim, Oxford University Press, 1999, p. 32.

overheard by the ubiquitous surveillance networks, were treated as disloyalty to the regime. According to former guards at the labor camps, in the 1990s large numbers of "complainers" were being sent to the camps.

A huge prison camp system – operating in secret and completely outside the law and the reach of the law, such as is the case in North Korea – risks becoming a dumping ground for all sorts of persons. It is widely suspected that the camps have become the location sites for un-repatriated South Korean prisoners of war from the Korean War, and for other South Korean and Japanese citizens who have been abducted by North Korean security and police operatives over the course of the last forty to fifty years.

2. Zones of Total Control and Revolutionizing Process

The present report focuses on the large-scale detention facilities that, in today's world, are unique to North Korea: the *kwan-li-so* political-penal labor camps, where up to two hundred thousand persons are subjected, mostly for life, to forced labor in mines, timber-cutting in forests and agricultural labor on state farms, all under extremely brutal conditions including below-subsistence level food rations.[48] What is unique to North Korea's *kwan-li-so* prison-labor camps is that the prisoners are sent there without any form of judicial process whatsoever: no charges, no trial, no conviction, no sentence. And that up to three generations of the families of the presumed wrong-doers or wrong-thinkers are also imprisoned, though usually in a different camp or section of the camp, from the presumed principle wrong-doer or wrong-thinker, through the *yeon-jwa-je* guilt-by-association system.

As noted, the forced labor camp system operates outside the laws and courts of North Korea. And it is run by a police agency that, according to former officials who defected to South Korea, does not report to a ministry as part of the governmental structure but reports directly to the "Dear Leader" Kim Jong Il. But while the labor camp system can

[48] Political imprisonment in the DPRK also takes additional forms. There are also essentially misdemeanor (less serious) and felony (more serious) level prisons, termed *jip-kyul-so* and *kyo-hwa-so* respectively, holding persons convicted of both 'criminal' and 'political' offenses, or what in non-totalitarian societies would be deemed as essentially political actions that should not be criminalized to begin with. However, whether the offence is criminal or political, prior to being sent to the *kyo-hwa-so* felony level penitentiary, the person would be arrested, charged in accordance with the DPRK Criminal Code, and tried, convicted and sentenced in accordance to the DPRK Criminal Procedure Code. Further, proximate to the North Korean border with China, there are a series of *ro-dong-dan-ryeon-dae* "labor training centers" instituted to detain for short periods in mobile labor brigades the forcibly repatriated Koreans who had crossed the border to China in search of food or employment during the height of the mid-1990s famine crisis, a criminalized act in North Korea, in such large number as to overwhelm the provincial and district level *jip-kyul-so*. And there are a series of detention facilities, termed *ka-mok* or *ku-ryu-jang*, where Koreans suspected of wrong-doing or wrong-thinking are held for questioning and interrogation. For descriptions of these political detention facilities see *Hidden Gulag*, op. cit., pp. 43-69 and pp. 118-120.

be termed extra-judicial or extra-constitutional, it does fit within the logic of "KimIlSungism[49]" – a thoroughly thought through, total socio-economic-political ideology system that does not recognize what the rest of the international community refers to as the "rule of law," notwithstanding North Korea's accession to four of the core international human rights conventions that provide the key framework for the application of the rule of law to social, economic, political, civic and cultural life within the modern nation-state system.[50]

It is possible to envision the camp system as a form of administrative or preventive detention, although a lifetime of imprisonment and hard labor under brutal conditions is not what is usually meant by administrative or preventive detention. It is also possible to portray the camp system as a restoration of the feudal practice of banishment, where social or political undesirables are expelled from civilized Korean society and sent to remote mountain areas in the northeast of the peninsula, which is, in fact, where most of the camps are located today. This comes close to the euphemism used by North Koreas for the political prisoners, as it is much too dangerous to talk openly of the network of camps, "people who are sent to the mountains."

But they are not simply banished from civil society, or what the ICC Statute calls "the protection of the law," and sent to fend for themselves in remote wilderness mountainsides. The operating principles of the *kwan-li-so* encampments are otherwise: the detainees are told they are traitors to the nation who have betrayed the Leader (Kim Il Sung or Kim Jong Il, respectively) and thus deserve execution, but whom the [Korean Workers] Party has decided, in its mercy, not to kill, but to keep alive in order repay the nation for their treachery, through forced labor for the rest of their natural lives.

The other main operating principle, "guilt by association" or "collective responsibility" is related to the semi-hereditary aspect of the class system and the penal practices that Kim Il Sung and Kim Jong Il revived from Chosun dynasty feudalism. The imprisonment of family members of wrong-doers and wrong-thinkers is attributed to a well known 1972 statement by Kim Il Sung, "Factionalists and enemies of class, whoever they are, their seed must be eliminated through three generations" which former *kwan-li-so* guards describe as carved into wood signs placed above the entrance to prison guard headquarters.

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[49] While some of the provisions of earlier versions of the DPRK Criminal Procedure Code identifying law as an instrument of "proletarian dictatorship" have been revised, these laws still are entrusted with ushering "the entire society into Juche Ideology." Lee Jae-do, *Criminal Procedure Laws*, Kim Il Sung University Press, Pyongyang, 1987, pp. 11,17,48, as cited in Kim Soo-Am, *The North Korean Penal Code, Criminal Procedures, and their Actual Applications*, Korea Institute for National Unification, Seoul, 2006, p. 4.

[50] Despite successive revisions in the North Korean Criminal Law that change "anti-revolutionary crimes" into "anti-State crimes" and delete references to the role of law in "inculcating animosity toward class enemies" (*The Political Dictionary*, Social Science Publishing House, Pyongyang, 1973, p. 1249), North Korean Criminal Codes and Criminal Procedures Law still seem to be guided by Kim Il Sung's 1958 assertion that "law is the expression of politics, and subservient to politics" ("In Order to Carry Out Our Party's Judicial Policies, April 28, 1958 (*The Kim Il Sung Collections*, Workers Party of Korea Publishing House, Pyongyang, 1981, p. 221) as cited in Kim Soo-An, *ibid*, p. 3.

The penal labor encampments are located in the mountains and mountain valleys in the remote interior of north and north central North Korea. They cover huge areas, miles long and wide. The outer perimeters are surrounded by barbed wire and guard towers, except where the mountain ranges are considered impassible. The encampments have multiple thousands of prisoners who are housed in scattered areas or discrete villages for different categories of prisoners in the valleys or at the foot of the mountains. Single prisoners live in dormitories and eat in cafeterias. The families live in tiny shacks, sometimes multiple families to a single dwelling. Families do their own cooking. (When taken to the camps, the families are allowed to bring their cooking utensils, food, clothes and other personal effects, though usually all of this except for the most elemental cooking utensils are bartered away for food.) The prisoners labor in the coal, gold, and various iron-ore mines in the mountains or fell trees and cut timber the mountain hillsides. The valleys have state farms, small plants for furniture manufacture, distilleries, animal husbandry, etc.

A primary characteristic of the encampments is the combination of below-subsistence level food rations coupled with unceasingly hard, forced labor, a combination that obviously results in a high level of deaths in detention. The prisoners are provided with rations of corn insufficient to provide minimum daily nutritional requirement for even non-active persons. This is supplemented by eating grass or edible plants gathered in the forests, or animals such as snakes, frogs, rabbits, etc. Some prisoners use the corn to catch rats, which are eaten for protein. Hunger drives prisoners to steal food, often from the farm animals, a severely punishable offense. Keeping malnourished prisoners on the verge of starvation is basically a control mechanism. The policy was practiced, according to prisoner testimony, years before the North Korean famine of the 1990s. The constant hunger makes it easy for the prison officials to recruit snitches in exchange for the extra food rations. Each five-person work group has an informant, as does every prison camp "village."

Apart from the constant, enervating hunger, the other major grievance of the former prisoners is the excruciatingly hard, back-breaking labor. Mining and timber cutting with shovels, pick-axes, saws and axes is arduous in any event, as is hand-pushing carts of ore from the mine shafts up to the surface or carrying cut logs down from the mountains. Work teams are given stringent quotas, and the failure to meet them means even further reduced food rations.

Prisoners come into the camps in one of two ways. Suspected wrong-doers or wrong thinkers are picked up by officers of the *bo-wi-bu* (State Security Agency) who handle political matters, detained in small cells and subjected to intense and prolonged interrogation, almost always accompanied by beatings and severe torture, after which they are dispatched to one of the prison labor camps. Initially, at the camp they express relief, at being able to supplement their meager rations by eating grass and other edible plants and being able to stand up and walk around (while held in the *ka-moks* and *ku-ryu-jang* – local or preliminary detention and interrogation centers most prisoners had been compelled to kneel motionless or sit on the floor with poles behind the bent knees for hours and hours at a times). While not charged with specific offenses itemized in the

North Korean criminal code, based on their interrogators line of questioning, these prisoners can roughly deduce why they were imprisoned.

Family members have a different experience. The primary suspect in the family would have been picked up previously, and the rest of the family would not have been told of his or her whereabouts or condition. For the family, a *bo-wi-bu* truck shows up at the home while other police pick up young children from school or nursery. The family's belongings are packed into the truck and the family is driven away to an undisclosed location. The entrance gates of the camps are non-distinct, marked by signs saying "Border Patrol, Unit 2815" or the like. The new prisoners coming straight from North Korean society describe their shock at what they see: walking skeletons, covered in dirt with matted hair (from the inability to bathe or wash regularly), dressed in tatters and rags, many with hunched backs from bent over farm labor, and many hobbling about on stick crutches having lost arms and legs to mining or logging accidents, or minus fingers or toes lost to frostbite. It will be only a matter of months before all the food stores the new prisoners have brought from home are consumed, and all the clothing and household goods have been bartered away for food, until all they have left from their previous civilian life are the clothes on their back and the shoes on their feet. And these would shortly be dirt-covered, tattered and torn. These prisoners put considerable mental anguish into trying to figure out what precisely caused their family this dreadful turn of fate.

There are encampments, or areas of a camp, that are designated for wrong-doers and wrong-thinkers. Other camps or sections of camps are designated for the families of wrong-doers and wrong-thinkers. There has been, since the 1970s, a sub-division of Camp No. 15, known as Yodok after the name of the district in which it is located, where some of the prisoners can be released back into society.[51] Much more recently, a miniscule section of Camp No. 18 (which is primarily for the family members of prisoners held at Camp No. 14) has a tiny "revolutionizing" section from which prisoners can be released.[52] In the family areas of the "revolutionizing zones" there is half-day elementary education for young children, who are organized into light work brigades for the other half day. Prisoners in the revolutionizing areas of the camps are also subjected to "re-education," which mostly consists of the forced memorization of the speeches of Kim Il Sung, and sessions where prison officials read to the prisoners from the editorial of the Workers Party newspaper. There is not known to be education or re-education in the "total control zones" as these prisoners are not going to be released back into North Korean society.[53]

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[51] This subdivision, which is also divided into areas for families, who live together as families, and areas for single persons who live in dormitories, is termed the "revolutionary processing zone" (*hyuk-myung-hwa-kyuk*). The areas for those deemed to be incorrigible counter-revolutionaries is called the "total control zone" (*wan-jeon-tong-je-kyuk*) where the defacto sentences are lifetime.

[52] (It is primarily from the former prisoners released from these sections of the camps, and who subsequently fled North Korea that the outside world has learned about the prison-labor camps).

[53] For information on and satellite photos of various camps, and brief biographies of former prisoners from those camps, see *Hidden Gulag,* op. cit.

According to former officials of the police that run the camps who have defected to South Korea and were interviewed for this report, originally there were fourteen *kwan-li-so* camps. Many were closed and the prisoners transferred to five or six large encampments. Information for this report has been obtained for four of the presently operating camps.

The individual camps also evolve over time. For example, in 2000 a new small singles section named Seorimchon was opened in the "revolutionizing zone" of Camp No. 15. One of the prisoners from Seorimchon was released, successfully fled to South Korea and was interviewed for this report. While this prisoner would only be interviewed on the condition that his name not be used publicly as he still has relatives in North Korea, he had an exceptional memory, and provided a list of 121 names with biographical details to a South Korean non-governmental organization.[54] Of the named prisoners, thirty-four were imprisoned for defection (forcibly repatriated from China or Russia or caught trying to flee North Korea). Thirty-six were imprisoned for defaming or criticizing the Workers Party or Kim government or "reactionary discourse." Another eight were held for talking publicly about what was considered to be secret information. And thirteen were imprisoned for political or religious problems. During the three years the present informant was in the Seorimchon section of Camp No. 15 (1999 - 2003), of the 121 prisoners, twenty-six died and another six were taken away and never returned and were presumed executed. Of the twenty-six known deaths, twenty-three were from malnutrition, two were publicly executed and one died under torture.[55]

3. The DPRK State Security Agency: "Bodyguards of the King"

According to former guards and prison camp officials, detention camps for both common criminals and political prisoners were first established in 1945 almost immediately after the Japanese surrender. In the mid-1950s, the system was formalized and divided into *kyo-hwa-so* prison camps or penitentiaries for common criminals; and the *kwan-li-so* camps for political offenders. Prior to 1973 both types of camps were run by the police agency known as the *Sa-hoe-an-jeon-bu* Social Safety Agency, renamed in 1998 as the *In-min-bo-an-seong* Peoples Safety Agency. After the *Kuk-ga-bo-wi-bu*, State Security Agency (also translated, particularly in South Korea, as the National Security Agency, and commonly referred to simply as *bo-wi-bu*) was created in 1973; this agency took over the administration of the political penal labor camp system.[56]

According to a former *bo-wi-bu* camp guard, in every province, county and city there is a *Ban Taam Gwa* "anti-revolutionary detection department" within the *bo-wi-bu* to conduct initial investigations into suspected wrong-thinkers or suspected wrong-doers. Another section of the primary investigation unit, *Ye Shim Guk,* decides the severity of the offense

[54] A group of former North Korean political prisoners now residing in South Korea called the "Democracy Network against the North Korean Gulag."
[55] "Political Prisoners in Seorichon, Yodok" (1999-2003), <www.nkgulag.org/eng>.
[56] For unknown reasons, the People's Safety Agency retains some role in the administration of Camp No. 18, which also has the reputation of being marginally less "strict regime" than the other camps run entirely by the State Security Agency.

and whether the wrong-doer should be sent to the total control zone or the revolutionizing process zone, and gives the order to the local *bo-wi-bu* office to pick up the offender. Initially, in the 1970s *bo-wi-bu* officers used the "Ten Principles" to determine guilt or innocence.[57] In the late 1980s, the officers switched to the *hyung bub* "anti-reactionary provisions" of the North Korean penal code, although they do not consult DPRK courts as *bo-wi-bu* agents assume the function of prosecutors and judges. Nor are other provisions of the penal code utilized.

Another section of *bo-wi-bu* transports the prisoner from the *ku-ryu-jang* interrogation center and his or her family from their home to the *bo-wi-bu* "liaison office" at the outer perimeter of the labor camp. The central management of the *kwan-li-so* decides what section of the camp the prisoner and/or family should be assigned to, and when prisoners from the "revolutionizing process zones" can be released, either on account of individual circumstances, or as part of a larger *gwang-pok* "generous politics" amnesty, usually on the occasion of Kim Il Sung's birthday or some other regime holiday.[58] The *bo-wi-bu* section leader at the various areas or villages within the labor camp has the authority to send the prisoner to the punishment *ku-ryu-jang* detention facilities within the labor camp.

A sign above *bo-wi-bu* offices quotes a statement attributed to Kim Jong Il, *Bo-wi-bu nin nawi chin-wee-dae imnida,* "*Bo-wi-bu* is my body guard." "*Chin-wee-dae*" is a term used for royalty, as in bodyguards to the king.

Prosecutors and judges at the International Tribunal for the former Yugoslavia have developed another concept or phrase that might equally apply to the North Korean State Security Agency: a joint criminal enterprise – "actions perpetrated by a collectivity of persons in furtherance of a common criminal design."[59]

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[57] The "Ten Great Principles of the Unitary Ideology System" was promulgated in 1974 co-incident with the announcement that Kim Jong Il would succeed his father Kim Il Sung, the 10th principle establishing dynastic succession. See *Thank You Father Kim Il Sung: Eyewitness Accounts of Violations of Freedom of Thought, Conscience and Religion in North Korea,* US Commission on International Religious Freedom, Washington, 2005, www.uscirf.gov pp. 126-129 for the full text of the Ten Principles.

[58] *Aquariums of Pyongyang* describes the amnesty ceremonies, in which the prisoners to be released promise never to disclose information about the camps, and a representative of those to be released makes a speech pledging loyalty to the Party and Leader, and a representative of those not to be released also makes a speech pledging loyalty to the Party and Leader, and pledging continued hard work in the camps in the hopes of obtaining sufficient merit for future release. See pp. 155-161.

[59] *Tadic,* (ICTY, Judgment, 15 July 1999, para. 193), cited in William Schabas, *The UN International Criminal Tribunals*, Cambridge University Press, 2006, p. 309. See pp. 309-314 for a discussion of the use of "joint criminal enterprise" as a general principle of law utilized at the *ad hoc* International Tribunals.

IV. CRIMES AGAINST HUMANITY: AN INTRODUCTION

1. The Idea and the Law: From the Hague Conventions to the Rome Statute of the International Criminal Court

The title of this report "concentrations of inhumanity" is suggested by Kang Chol Hwan's prison camp memoir, *Aquariums of Pyongyang: Ten Years in the North Korean Gulag*,[60] which is infused with a common sense understanding that such concentrated, rampant and blatant inhumanity as is endured by the labor camp inmates is something that is criminal or should be – that their dignity has been so affronted, they have been so dehumanized, and that the punishments against them and their fellow prisoners, starting with their unexplained deportation and incarceration, have been so atrocious and on such a scale that a great crime has been committed against them.

This common sense understanding of what are now called crimes against humanity is reflected in the Preamble to the most definitive exposition of crimes against humanity in modern law, the Statute of the International Criminal Court:

> unimaginable atrocities that deeply shock the conscience of humanity…
> the most serious crimes of concern to the international community as a whole. [61]

In the modern world "crimes against humanity" as a legal doctrine or body of laws, along with the related concept of "war crimes," developed in response to and revulsion against the growing human destructiveness of modern industrialized warfare: "war crimes" being atrocities committed against enemy soldiers or prisoners of war; "crimes against humanity" being atrocities committed against civilians in time of war or occupation. A series of diplomatic conferences taking place in The Hague,[62] most importantly in 1889 and 1907,[63] sought to codify and prohibit such atrocities. But the diplomats fully realized that their definitions were incomplete. So they posited in the Preamble:

> Until a more complete code of the laws of war is issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and rule of the principles of law of nations, as the resulted from *the usages established among civilized peoples, from the laws of humanity, and the dictates of public conscience* (emphasis added).[64]

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[60] Kang Chol Hwan and Pierre Rigoulot, Basic Books, New York, 2001.
[61] The ICC Statute is also known as the "Rome Statute."
[62] The Capitol of The Netherlands (Holland).
[63] Referred to as the Hague Conventions on the Law and Customs of War.
[64] Often referred to as the "Martens clause" after the Russian diplomat who drafted this language. Scholars have also noted the fundamental principle emerging from these conferences: "the individual, irrespective of nationality, had rights and duties inherent in human nature and was both a subject and a member of the international community." See Howard Ball, *Prosecuting War Crimes and Genocide: The Twentieth-Century Experience,* University Press of Kansas, 1999, p. 14-15.

References to the "principles of international law," sometimes termed "customary law" or "customary international law," have an important bearing on the North Korean situation, as is noted below. Both customary law and codified law, usually termed "positive law" or "treaty law" would further evolve together in the course of the 20th century, more often than not, in response to recurring atrocities that continued to "shock the conscience of mankind."

In an unsuccessful attempt to grapple with the atrocities committed in the context of World War I, the phrase "crimes against humanity" was coined[65] "thirty years before Nuremberg would make it a household word."[66] There was considerable diplomatic discussion following WWI about criminal prosecutions for those "guilty of offenses against the laws and customs of war or the laws of humanity,"[67] but nothing came of it.[68]

The post-WWI peace treaties drawn up at Versailles did not settle the international conflicts that had given rise to world war, and these conflicts re-ignited across Europe, Asia and the Pacific and North Africa into WWII, with its unspeakable atrocities in Europe and Asia alike. Following WWII, with the Nuremberg Charter and Judgments, the prohibition against crimes against humanity was "officially recognized in positive international law."[69]

The basic definition of crimes against humanity set forth in the Statute of the International Military Tribunal (IMT), the formal name for the Nuremberg tribunal was carried into the International Military Tribunal for the Far East (IMTFE), the "Tokyo Trials,"[70] and into "Control Council Law No. 10" which was used for post-Nuremberg trials in Germany. The Nuremberg formulations were also used for important trials of Nazi "war criminals" in France, Canada and Israel. With some variation, the Nuremberg formulation was re-iterated in successive codifications by the United Nations International Law Commission,[71] and again with some variation, set forth in the much more recent separate Statutes of the International Criminal Tribunals for the Former Yugoslavia, for Rwanda and for Sierra Leone, and the Statute of the International Criminal Tribunal.

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[65] Initially, "crimes against humanity and civilization", Joint Declaration of Great Britain, France and Russia, May 28, 1915, cited in Daryl Robinson, "Defining 'Crimes Against Humanity' at the Rome Conference," *American Journal of International Law*, Vol. 43, 1999, p. 44.

[66] Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, Princeton University Press, 2000, p. 116. See Chapter Four for an engaging discussion of the failed attempts to establish criminal tribunals following WWI.

[67] Margaret McMauliffe deGuzman, "The Road from Rome: The Developing Law of Crimes Against Humanity," Human Rights Quarterly, Vol. 22, Johns Hopkins Press, 2000, footnote 28, p. 344.

[68] For more on pre-Nuremberg precursors regarding crimes against humanity see Cherif Bassiouni, note 28, Ibid, p. 344.

[69] Ibid, p. 344.

[70] It should be noted, however, that there were no prosecutions in Tokyo for crimes against humanity, leaving open wounds among Chinese and Korean peoples that have continued to fester.

[71] Often in successive versions of the "Draft Code of Offenses Against the Peace and Security of Mankind." Particular elements now included among crimes against humanity such as torture, genocide, and disappearances were also further refined in separate multilateral treaties.

There is considerable scholarly writing on the differences between the delineations of crimes against humanity in these various statutes and legal instruments.[72] Regarding North Korea, the most important difference is that the ICC Statute completely severed the previous connection or nexus between crimes against humanity and war or armed conflict. No longer were crimes against humanity limited to terrible acts committed against civilian populations in time of war.[73]

Also relevant in the Korean context is the fact that, while the Nuremberg and Tokyo formulations were imposed by the victors of WWII,[74] and while the Statutes of the Yugoslav and Rwanda tribunals were promulgated by the fifteen-member UN Security Council,[75] the Statute of the ICC was painstakingly negotiated by 160 UN Member States, only seven of which voted against the adoption of the "Rome Statute." Article 7, which establishes the ICC Statute's definition of crimes against humanity, was adopted unanimously after prolonged and detailed consideration. The ICC's formulation is the most detailed, and because so many nation states participated in its drafting and agreed to its adoption, it is now the most definitive and authoritative definition.

2. Judicial Decisions and Customary Law

Along with the "international conventions" or "treaty law" described above, "judicial decisions," "international custom, as evidence of a general practice accepted as law" and the "general principles of law recognized by civilized nations" are also held to be sources of international law.[76] These sources of law are termed customary law or customary international law: "a general and consistent practice of States that is followed by them from a sense of legal obligation."[77]

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[72] See *Failure to Protect*, op cit., pp. 121-128, and William Schabas, *The UN International Criminal Tribunals*, op. cit., pp. 185-225.

[73] Scholars suggest that the ICC formulation severing the nexus between crimes against humanity and armed conflict reflects contemporary customary international law.

[74] The Nuremberg Charter and Judgments were subsequently recognized as valid international law by the United Nations.

[75] Promulgated under Chapter VII of the UN Charter, these actions of the Security Council carry the weight of law.

[76] Article 38, Statute of the International Court of Justice (World Court).

[77] Theodor Meron, "Customary Law" eds. Roy Guttman and David Rieff, *War Crimes*, Norton and Company, New York, 1999, p. 113. See William Schabas, *The UN Tribunals*, op. cit, Chapter 3 "Sources of Law," for a general introduction to the legal basis of the international criminal tribunals.

On some matters of law there is such widespread agreement among states, and/or such a large body of judicial decision that these norms, including crimes against humanity are considered to be *jus cogens*:

> "a preemptory norm of general international law is a norm accepted and recognized by the international community of States as a whole from which no derogation is permitted…"[77] (Vienna Convention on the Law of Treaties, 1979, Article 53, cited in Schabas, UN Tribunals, op. cit., p. 101).

Such "preemptory norms" entail "an obligation to the international community as a whole." In the word of the International Court of Justice (World Court):

> "In view of the importance of the rights involved, all States can be held to have a legal interest in their protections; they are an obligation *erga omnes*. Such obligations derive, for example, in

According to a prominent legal scholar who now serves as the President of the International Criminal Tribunal for the former Yugoslavia:

> The most obvious significance of a norm – a principle or rule – of a customary character is that it binds States that are not party to the treaty in which the norm is restated. It is, of course, not the treaty provision, but the customary norm with identical content that binds such States.[78]

A further distinction is made of considerable importance to the North Korean situation:

> Even repeated violations are often not regarded as negations of customary law provided they are responded to by protests or condemnations by other States or international organizations, and that the State accused either denies the facts of its questionable conduct…[79]

Thus, in addition to the overwhelming consensus of States that gathered at the Diplomatic Conference of Plenipotentiaries in Rome to promulgate the Statute of the ICC, there is now a substantial body of jurisprudence that applies directly and tellingly to the various repressive acts ongoing in North Korea today. In the words of a group of attorneys who have recently examined the North Korea case:

> Customary international law's definition of crimes against humanity today is derived from the jurisprudence of the ICTY and ICTR." … The significant commonality between them [and the definition in the ICC Statute] identifies the elements that must be satisfied to bring a claim of crimes against humanity against a state [including North Korea] that is not a signatory to the Rome [ICC] Statute. [80]

This report, uses the provisions and definitions of crimes against humanity drawn from both the Statute of the International Criminal Court and the parallel judicial decisions from the International Criminal Tribunal for the former Yugoslavia (ICTY) and the

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> contemporary international law from the outlawing….of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and discrimination."[77] *Barcelona Traction*, para. 33 and 34, cited in Nigel Rodley, *The Treatment of Prisoners Under International Law*, Clarendon Press, Oxford, 1987, p. 66.

[78] Theodor Meron, "Customary Law," Gutman and Rieff, *Crimes of War*, op. cit., p. 113.

[79] Ibid, p. 113. Hence the importance of the recognition and condemnation of DPRK violations by large numbers of fellow Member States at the UN General Assembly and Commission on Human Rights. See, for example, the series of resolutions at the UN Commission on Human Rights: E/CN.4/RES/2003/10; E/CN.4/RES/2004/13; and E/CN.4/RES/2005/11 or General Assembly Resolution 60/173, December 16, 2005 and Res. 61/174, March 1, 2007. In light of the Human Rights Commission and General Assembly resolutions, the Concluding Observations of the UN Human Rights Committee and the other UN expert reviews of the human rights conventions to which DPRK is a States Party, and the balanced and forward-looking reports by the UN Special Rapporteur on Human Rights in the DPRK, the North Korean attempts to minimize and obfuscate their gross violations of internationally recognized human rights lack credibility. The DPRK denials and the repeated condemnations by large numbers of States, exemplifies the applicability of the customary law cited by the current President of the ICTY.

[80] *Failure to Protect*, op. cit., pp. 121-133.

International Criminal Tribunal for Rwanda (ICTR) as norms to examine the phenomena of repression in North Korea as described in the testimony of former political prisoners from and former guards and officials of the North Korean gulag system of camps.

3. The Structure of the Law

Crimes against humanity, like genocide and war crimes, are set forth in a general definitional statement called a *chapeau*, the French word for "hat" meaning herein "an overarching cover," followed by a listing of the prohibited "guilty acts" (*actus reus*). Most of the prohibited or guilty acts such as killing, torture, rape, etc., are crimes in most nearly every domestic legal system. It is the conditions and circumstances set forth in the *chapeau* that elevate the crimes enumerated in the *actus reus* listing into international crimes, and render the perpetrators thereof to be fit subjects for an international criminal tribunal.

Article 7.1 of the Statute of the ICC lists eleven prohibited acts. What elevates these acts – murder, torture, enslavement, etc. – into crimes against humanity is when, as stipulated in the *chapeau*, they are "committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack."[81] Many of the same prohibited acts are also included in the *actus reus* of war crimes and genocide. It is the requisite circumstances set forth in the *chapeau* that determines when these guilty acts are international crimes and of what sort.[82]

This report examines the phenomena of repression in the North Korean gulag system according the contextualizing *chapeau* elements and the *actus reus* ("guilty acts") elements of crimes against humanity as set forth in both the Statute of the ICC and in the parallel provisions of contemporary customary law. As in any matter involving law,

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[81] Reflecting its historical association with war crimes, the Statute of the ICC uses, for brevity, the term "attack" though "attack" is defined, in Article 7.2(a) as "a course of conduct involved in the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack." In other words, "attack" does not have to be a military attack. And there is no requirement that crimes against humanity can only occur in a situation of armed conflict. There had been such a jurisdictional connection or nexus between crimes against humanity and armed conflict in the statutes of the Nuremberg Tribunal and the ICTY because those tribunals were established to try crimes committed during World War II and the armed conflicts associated with the violent dissolution of the former Yugoslavia respectively. But after careful deliberation, the diplomatic representatives negotiating the provisions of the Statute of the ICC removed any ongoing connection between crimes against humanity and armed conflict, domestic or international. Judicial decisions of the ad hoc tribunals have confirmed the present separation of crimes against humanity from situations of armed conflict.

[82] By way of comparison, the *chapeau* for the crime of genocide is "…acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such." (ICC Statute, Article 6). War crimes are "Grave breaches of the Geneva Conventions of 12 August 1949, namely any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention…" ICC Statute Article 8(a) and "Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts…" ICC Statute 8(b).

legal tribunals and jurisprudence, there are myriad technical and/or jurisdictional issues best addressed by legal scholars and practicing attorneys in international criminal law. The purpose of the present report is to utilize the norms set forth in contemporary positive and customary law to evaluate the severe human rights violations in North Korea.

However, there is one technical issue worthy of special note.

4. The Temporal Jurisdiction of the ICC and the Preponderance of Evidence

Unlike the international tribunals at Nuremberg, Tokyo, Yugoslavia and Rwanda, and including the mixed national/international tribunals for Sierra Leone and Cambodia, all of which were established to judge crimes already committed, the permanent International Criminal Court (ICC) was established without territorial limitations common to the aforementioned tribunals, but only for crimes that might be committed in the future.[83] Article 11.1 of the Statute of the ICC states "The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute." The ICC Statute was adopted on 17 July 1998. Upon a sufficient number of State ratifications or accessions, the ICC Statute "entered into force" four years later, on 1 July 2002. Prohibited acts committed before July 2002 may be crimes under customary international law, but the International Criminal Court has little or no jurisdiction over them.[84]

There is almost always a time lag of two to five years between the time a North Korean prisoner is released or escapes and the time that person becomes available in South Korea at which time his or her testimony can be obtained.[85] With one exception, the phenomena of criminal repression in North Korea analyzed in this report is based on the personal experience and eye-witness accounts of prisoners who escaped or were released prior to 1999, and covers repressive acts from 1977 to 1999. The one exceptional prisoner whose account obtained for this present report was released from Camp No. 15 in 2003.

Some of the commercial satellite photographs of the North Korean prison camps, with detailed landmarks carefully identified by the former prisoners; that were initially

[83] See William Schabas, *An Introduction to the International Criminal Court*, Cambridge University Press, 2004, p. 71.

[84] Additionally, ICC Statute Article 22.1 states, "A person shall not be criminally responsible under the Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court."

[85] A released prisoner, of whom there are very few to begin with, will need to reside for months or years in North Korea to obtain the funds and/or connections necessary to flee North Korea (an act that is illegal in North Korean law for which the person can be punished severely) to China. While residing in China, (without proper emigration or immigration documents), the former North Korean prisoner has to live in hiding in the community of ethnic Koreans in Northeast China, for months or years to acquire the funds and connections necessary to travel from China to South Korea, an arduous journey, most often down through China into South East Asia that itself can take months, before arranging air transport to Seoul. Once in South Korea, the escaped North Koreans usually undergo several months of interrogation and re-orientation by South Korean government authorities before starting a new life in South Korea.

published in *Hidden Gulag* were taken in 2001.[86] Others were taken in 2002 and 2003.[87] Thus, the evidence available on the criminally repressive acts analyzed in this report straddles the entry into force of the Rome Statute, although most of it precedes July 2002.[88]

The issue of "continuing crimes" – prohibited acts, such as enforced disappearances, deportations, arbitrary imprisonment, etc. – that were initiated prior to the Statute entering into force but that continue thereafter was discussed during the drafting of the Statute, but could not be resolved in a timely fashion.[89] In the words of a leading scholarly analysis of the Rome Statute negotiations, "Thus, the issue of 'continuous crimes' remains undecided and it will be for the Court to determine how it should be handled."[90]

In the case of North Korea, released political prisoners have their incarceration noted on their identity papers, and they remain under surveillance and suspicion. Many come to conclude that they are "finished" in North Korea, meaning they believe they have no prospect for a reasonable future there. These former prisoners will continue to flee to China and South Korea. It is only a matter of time before the preponderance of evidence about the DPRK's criminal acts take place subsequent to the ICC Statute's entry into force, and hence, within the temporal jurisdiction of the International Criminal Court.

Potential cases for investigation and prosecution are brought to the attention of the International Criminal Court in one of three different ways. The approach most relevant to the North Korea situation, as a non-States Party to the Rome Statute, is a potential referral from the UN Security Council, as happened in the case of Darfur (Sudan).[91] Such a referral requires a vote of nine Members of the Security Council, and is of course,

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[86] See pp. 90-100. These detailed satellite photographs can be viewed on line at <www.hrnk.org>.
[87] Ibid, pp. 113-116 and pp. 101-112, respectively.
[88] According to the one former prisoner whose testimony about various prohibited acts committed against him continued subsequent to the entry into force of the Rome Statute, there were three other recently released former prisoners who had fled North Korea, but who were not available for interviewing at the time of the research of this present report (October 2006).
[89] At one point, the Drafting Committee noted "The question has been raised as regards a conduct which started before the entry into force and continues after the entry into force." But one considered remedy foundered, it is reported, on the difficulty of translating past tense verbs into the six working languages at the Rome negotiations. So, on the recommendations of the Chair of the Working Group on General Principles, the matter was left unresolved. See William Schabas, *An Introduction to the ICC*, op. cit., p. 73.
[90] Ibid, p. 73.
[91] The other two ways are via a referral from a States Party to the Rome Statute itself, as happened in the case of Democratic Republic of Congo and Uganda, and for the Prosecutor at the ICC to initiate an investigation, *proprio motu* (on his or her own authority). In that case, the Prosecutor must seek the approval of the Court before issuing any indictments. *Proprio motu* proceedings are more likely to happen in regard to a State Party to the Rome Statute or a UN Member State that has otherwise recognized the jurisdiction of the ICC. And this is more likely to happen after the ICC has developed a track record on a number of cases referred by the Security Council and/or States Parties themselves. Up to this point, the ICC Prosecutor has declined requests to initiate investigations on Iraq and Venezuela. Some legal authorities suggest the possibility of Prosecutor initiated investigation of non-States Parties, such as the DPRK. (See Schabas, *Introduction to ICC*, op. cit. p. 72). Survivors of the labor camps may at some point want to consider an appeal directly to the ICC Prosecutor.

subject to a veto by any one of the five Permanent Members of the Security Council.[92] Such a referral could be made directly by the Security Council, or possibly following a report of Commission of Inquiry or Group of Experts, appointed by the UN Secretary General, that would make its own investigation into the facts of the case and make a *prima facie* ("at first look" or "on the face of it") determination that serious crimes under international law have been committed, and make recommendations as to how the international community should respond to those violations.

[92] China, France, Great Britain, Russia and the United States.

V. *KWAN-LI-SO*: CLEAR AND MASSIVE CRIMES AGAINST HUMANITY

As noted previously, crimes against humanity include proscribed acts, which, when committed under the requisite circumstances, rise to the level of crimes against humanity. The present chapter looks first at the requisite circumstances that are set forth in the overarching cover statement, known as the *chapeau,* as these circumstances apply in the North Korean situation. Following that, this chapter examines ten of the eleven proscribed acts, as these acts are committed in North Korea's prison camp system. A few, and for reasons of space, only a few, examples are provided from the testimony of former prisoners and/or former guards in the political penal labor camps.
Parallel judicial decisions from the crimes against humanity convictions at the International Tribunals for the former Yugoslavia and Rwanda are also included as these decisions, based on real-life situations, define crimes against humanity with even more precision, and make it even clearer how thoroughly the preemptory legal norms of the highest order are being routinely violated in North Korea.

The Requisite Circumstances

> … a widespread or systematic attack directed against any civilian population, with knowledge of the attack… ICC Statute, Article 7.1

1. Attack

The use of the word "attack" reflects crimes against humanity's historical association with war crimes. Article 7.2 of the ICC Statute defines "attack" as "a course of conduct involving the multiple commission of [the enumerated proscribed] acts against any civilian population, pursuant to or in furtherance of a State or organizational policy…."

Judgments of the *ad hoc* International Tribunals have further indicated that an attack does not have to be violent, or of a military nature, or acts that take place in the course of a war.

> In the context of a crime against humanity, the phrase 'attack' is not limited to the use of armed force; *it also encompasses any mistreatment of the civilian population* (emphasis added). (*Vasiljevic,* Trial Chamber, ICTY, November 2002, para. 29, 30)[93]

[93] Unless otherwise noted, for ease of reference, the citations of ICTR and ICTY cases are taken from the invaluable Human Rights Watch compilations, *Genocide, War Crimes, and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia*, New York, 2004, and a subsequent compilation in 2006 covering only ICTY, *Genocide, War Crimes, and Crimes Against Humanity: A Topical Digest of the Case Law of the International Criminal Tribunal For the Former Yugoslavia*.

> An attack may also be *non-violent in nature*, like imposing a system of apartheid…or *exerting pressure on the population to act in a particular manner* (emphasis added). (*Akayesu,* Trial Chamber, ICTR September 2, 1998, para. 581)

An overview of the "course of conduct" in North Korea, was described in Chapter III, "The DPRK Gulag System." The particulars of the "multiple commission of acts" are outlined below.

2. Widespread or Systematic

At the Rome Conference to negotiate the Statute of the ICC, there was considerable discussion of whether the "multiple commission of acts" needed to be "widespread *and* systematic" or "widespread *or* systematic." The delegates decided that the "multiple commission of acts" could be either systematic or widespread. In the case of North Korea, this does not matter. It is both, as is explained below.

Fundamentally, "widespread or systematic" is intended to exclude from crimes against humanity accidental, inadvertent or personal acts against a single individual or very small group.

> Either of these conditions [widespread or systematic] will serve to exclude isolated or random inhumane acts committed for purely personal reasons. (*Kayishema and Ruzindana,* Trial Chamber, ICTR, May 21, 1999, paras. 122-123, n.28)

Widespread

In the words of judgments from the ad hoc International Tribunals:

> The concept of 'widespread' may be defined as massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. (*Akayesu,* Trial Chamber, September 2, 1998, para. 580)

> [A] crime may be widespread or committed on a large scale by the cumulative effect of a series of inhuman acts or the singular effect of an inhumane act of extraordinary magnitude. (*Kordic and Cerkez*, Trial Chamber, ICTY, February 26, 2001, para. 179)

> The widespread characteristic refers to the scale of the acts perpetrated and to the number of victims. (*Blaskic*, Trial Chamber, ICTY, March 3, 2000, para. 206)

The characterization "widespread" differentiates a crime against humanity from a war crime, which can be committed by a single soldier against a single person.[94] The inhumane North Korean labor camp system, as it now operates, has been in place for more than four decades, involving hundreds of thousands of prisoners. By the judicial formulation set forth in the *Kordic and Cerkez* decision by the ICTY – "an inhumane act of extraordinary magnitude" – enables the establishment of the *kwan-li-so* prison-labor camp system itself to be portrayed as a criminal act. The cumulative number of proscribed criminal acts, committed against scores of thousands of persons is countless.

Systematic

Organizing and maintaining labor camps with scores of thousands of prisoners requires thousands of camp officials, as does the process of transporting the deported persons to the camps. As does the investigation and interrogation process that selects out those North Koreans who are suspected of betraying the nation and its Leader, and who do not deserve to be part of the Kim Il Sung nation, and who deserve execution, but who, owing to the mercy of the Workers Party, will be allowed to repay their debt by a lifetime of forced labor. The North Korean labor camp system is exactly that: systematic.

The meaning of the "systematic" qualification has been clearly enumerated in multiple judgments from the *ad hoc* International Tribunals. The specifications of these judicial opinions clearly apply to the North Korean *kwan-li-so*:

> The element 'systematic' requires an organized nature of the acts and the improbability of their random occurrence. (*Naletilic and Martinovic*, Trial Chamber, ICTY, March 31, 2003, para. 236)
>
> [P]atterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of systematic occurrence. (*Kunarac, Kovac and Marinovic*, Appeals Chamber, ICTY, June 12, 2002, para. 94)
>
> In assessing what constitutes a "widespread" or "systematic" attack… first identify the population which is the object of the attack upon the population, ascertain whether the attack was indeed widespread or systematic…. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether or not the attack satisfies either or both requirements of a 'widespread' or 'systematic' attack. (*Kunarac, Kovac and Vokovic*, Appeal Chambers, ICTY, June 12, 2002, para. 95)

[94] Aryeh Neier, *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice*, Times Books/Random House, New York, 1998, p. 17.

The concept of 'systematic' may be defined as thoroughly organized, and following a regular pattern on the basis of a common policy involving substantial public or private resources. (*Akayesu,* Trial Chamber, ICTR, September 2, 1998, para. 580)

The systematic character refers to the four elements, which… may be expressed as follows: [1] the existence of a political objective, a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word…; [2] the perpetration of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another; [3] the preparation and use of significant public or private resources, whether military or other; [4] the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan. (*Blaskic*, Trial Chamber, ICTY, March 3, 2000, para. 203)

The existence of an acknowledged policy targeting a particular community, the establishment of parallel institutions meant to implement this policy, the involvement of high-level political or military authorities, the employment of considerable financial, military or other resources and the scale or the repeated, unchanging and continuous nature of the violence committed against a particular civilian population are among the factors which may demonstrate the widespread or systematic nature of the attack. (*Jelsic*, Trial Chamber, ICTY, December 14, 1999, para. 53)

This plan [required for determining if the attack is systematic]… need not necessarily be declared expressly or even stated clearly and precisely. It may be surmised from the occurrence of a series of events, *inter alia* [a] the general historical circumstances and the overall political background against which the criminal acts are set; [b] the establishment and implementation of autonomous political structures at any level of authority in a given territory; … [c] the scale of the acts of violence perpetrated – in particular, murders and other physical acts of violence, rape, arbitrary imprisonment, deportations and expulsions… (*Blaskic*, Trial Chamber, ICTY, March 3, 2000, para. 204)

3. Directed Against Any Civilian Population

[T]he expression 'directed against' is an expression which 'specifies that in the context of a crime against humanity the civilian population is the primary object of the attack. (*Kunarac, Kovac, and Vukovic*, Appeals Chamber, ICTY, June 12, 2002, para. 90)

[P]rotection … extends to 'any' civilian population, including…that state's own population. (*Vasiljevic*, Trial Chamber, ICTY, November 29, 2002, para. 33)

> The requirement that the prohibited acts must be directed against a civilian population' does not mean that the entire population of a given State or territory must be victimized… Instead the 'population' element is intended to imply crimes of a collective nature and thus excludes single or isolated acts which although possibly constituting crimes under national penal legislation, do not rise to the level of crimes against humanity. (*Bagilishema*, Trial Chamber, ICTR, June 2001, para. 80)
>
> The use of the word population does not mean that the entire population of the geographical entity in which the attack is taking place must have been subject to the attack. It is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a 'population,' rather than against a limited and randomly selected number of individuals. (*Kunarac, Kovac, and Vukovic*, Appeals Chamber, ICTY, June 12, 2002, para. 90)

As can be seen in Chapter III, many different elements of the North Korean population have ended up in the prison-labor camps over the decades of their existence. What these different population groups share in common, however, is that they were all, in one way or another, deemed to be real, potential or imagined threats to the creation and perpetuation of the Kim family dynasty and the promulgation and perpetuation of it's "one and only ideology system." In other words, the members of the North Korean population who did not fit into the "Kim Il Sung nation" were consigned to be its outcast/slaves.

4. Furtherance of State or Organizational Policy[95]

From what is told to all prisoners as they are shipped to the camps – that they are traitors to the nation and betrayers of the [Great or Dear] Leader – and from what the small numbers of prisoners who are released are told upon their forthcoming return to North Korean society, it is obvious and apparent that they were previously removed from society and deprived of their physical liberty in "furtherance of State policy." The police organization that initially interrogates the detainees, transports them and their families to the camps, and runs the prison camps is formally identified, and known to North Koreans, as *Kuk-ga-bo-wi-bu*, the State Security Agency.[96] Another North Korean police agency, for ordinary crimes, is called the *In-min-bo-an-seong*, the Social Safety Agency.[97]

[95] Article 7.2(a).
[96] *Kuk-ga-bo-wi-bu* is also translated into English as the National Security Agency, particularly in South Korea. Generally, former North Koreans refer to the agency in shorthand, "*bo-wi-bu*."
[97] Prior to 1998, the police for normal criminal activity was called the Social Safety Agency, *Sa-hoe-an-jeon-bu.*

5. With Knowledge of the Attack

"With knowledge of the attack" is the wording adopted at the Rome Conference to express the "mental element" (*mens rea*) for crimes against humanity. Like all criminal acts, crimes against humanity must have two parts, "guilty acts" (*actus reus*) proscribed by law and a "guilty mind" (*mens rea*). At its most basic level, the required element of *mens rea* is for the purpose of excluding from prosecution prohibited acts that were committed accidentally, inadvertently, or for personal reasons.

In describing the mental element of a crime, reference is often made to the distinction in common law systems between intent, knowledge, advertence and accidental, or premeditation, intention, recklessness or negligence. In civil law systems the differentiation is made between *dolus specialis, dolus generalis, dolus directus, and dolus eventualis.* The required mental element for crimes against humanity, "knowledge" is deemed to be less stringent than the mental element for genocide, "intent."[98]

Basically, in the case of North Korean prison camps, the perpetrators had to have *known* what they were doing. For example, *bo-wi-bu* officials had to have *known* that the persons sent to the camps were being deprived of their physical liberty; the guards who sent prisoners to punishment cells for infraction of camp rules had to have *known* those rule-breakers were going to suffer mental and physical pain; the guards who executed prisoners for attempting to escape had to have *known* this would end the life of the persons who were shot or hung. The designers and creators of the labor camp system had to have *known* that the politically and ideologically undesirable population, identified as traitors to the nation and betrayers of the Leader would be removed from the "protection of the law." The perpetrators had to have *known* they were doing these things pursuant to or "in furtherance of State or organizational policy."

A legal distinction is made between *intent* and *motive*. The *motive* behind the political prison camp system might well have been to maintain the ideological purity of the Korean people or the ideological hegemony of the "*juche* idea." The *intent* of the system is to deprive those tainted by colonial, imperialist or counter-revolutionary impulses, influences or connections of their physical liberty. The *motive* behind the public execution of prisoners who attempted to escape may have been to deter other escape attempts. The *intent* of the firing squad is to end the life of the person caught trying to escape.

It is *intent* not *motive* that matters:

> [T]he requisite *mens rea* for crimes against humanity appears to be comprised by (1) the intent to commit the underlying offense, combined with (2) the knowledge of the broader context in which that offense occurs. (*Kupreskic et al*., Trial Chamber, ICTR, January 2000, para. 556)

[98] See William Schabas, *The UN International Criminal Tribunals*, op. cit., pp. 292-296, and *Introduction to the ICC,* op. cit., pp. 108-110.

> The accused must have the intent to commit the underlying offence or offences with which he is charged… (*Vasiljevic*, Trial Chamber, ICTR, November 29, 2002, para. 37)
>
> [T]he motives of the accused for taking part in the attack are irrelevant…. [T]he accused need not share the purpose or goal behind the attack. (*Kunarac, Kovac and Vokovic*, Appeals Chamber, ICTR, June 12, 2002, para. 103)
>
> It is settled that the motives of the accused are not relevant in this context. (*Kordic and Cerkez,* Trial Chamber, ICTR, February 26, 2001, para. 187)
>
> It is irrelevant whether the accused intended his acts to be directed against the targeted population or merely against this victim. It is the attack, not the acts of the accused, which must be directed against the target population, and the accused need only know that his acts are part thereof. (*Kunarac, Kovac and Vokovic*, Appeals Chamber, ICTR, June 12, 2002, para. 103)

The Prohibited Acts

Although it is recognized that the prohibited criminal acts can be overlapping, these criminal acts are set forth discretely, so that the acts can be prosecuted and judged, whether they stand alone or in combination.

This account orders and clusters the individual criminal acts according to the phenomena of repression in the DPRK political prison camp system. For example, three separate criminal acts – enforced disappearance,[99] deportation,[100] and arbitrary imprisonment[101] – are committed as part of single police action, sometimes within a single day. Other phenomena of repression, such as compelling prisoners to witness executions at close range and defile or mutilate the corpses, could constitute either "other inhumane acts"[102] or torture[103] – the infliction of mental pain – on those family members or friends compelled to observe at close range and/or desecrate the corpses.

As previously noted, the most definitive iteration of crimes against humanity in contemporary international criminal law, the Statute of the International Criminal Court, itemizes eleven separate criminal acts. Ten of those criminal acts – the crime of apartheid being the only exception – are committed as part and parcel of North Korea's labor camp system.

[99] Article 7.1(i).
[100] Article 7.1(d).
[101] Article 7.1(e).
[102] Article 7.1(k).
[103] Article 7.1(f).

1. Enforced Disappearance, Deportation and Arbitrary Imprisonment

The Enforced Disappearance of Persons

The Statute of the International Criminal Court (ICC) itself defines the "enforced disappearances of persons" to mean "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."[104]

This is exactly what happens to North Koreans sent to the *kwan-li-so* prison camps. The former North Korean prisoners use a Korean word for arrest, *chey-poh*, meaning being picked-up and detained by the *bo-wi-bu* State Security Agency police. But these detained persons have not been apprehended in the act of committing a crime, nor has a warrant been obtained for their arrest. Even though the DPRK legal code has provisions criminalizing what are essentially political actions, persons arrested by *bo-wi-bu* are not charged with specific violations of the DPRK Penal Code and they are not held pursuant to the prescribed procedures of the DPRK Criminal Procedures Code.[105]

It is more precise to say that they have been picked-up or rounded-up, that is "abducted" (*nap-chee*) or "detained" (*kahm-keum*) in the words of the Rome Statute. The family members of suspected wrong-doers or wrong-thinkers are picked-up from their homes, schools or places of employment. The targeted wrong-doers or wrong-thinkers themselves will have been previously picked-up and detained by *bo-wi-bu* in interrogation facilities (*ka-moks* and/or *ku-ryu-jangs*) where they are being investigated and interrogated, almost always under torture.

If these North Koreans were forcibly repatriated from China, they would have been first turned over by the Chinese immigration authorities to the regular North Korean police, the *In-min-bo-an-seong*, Peoples Safety Agency. If the Peoples Safety Agency police have determined that the detainee's sojourn in China had a political aspect – the intention to defect to South Korea, meeting South Koreans while in China, listening to South Korean radio or TV programs while in China, at times, attending Korean-Chinese churches while in China – the repatriated person would have been turned over to the *bo-wi-bu* political police for further investigation, usually under torture.

The intent of the *bo-wi-bu* State Security Agency is precisely, to remove the prisoner from "the protection of the law" for a prolonged period of time. Unlike the misdemeanor level prisons or felony level penitentiaries, neither the North Korean courts, penal code,

[104] Article 7.2(i).

[105] There may be a defacto or even official prosecutor or prosecutor's office within the State Security Agency, but the present author is not aware of any provision within the DPRK Criminal Code or Criminal Procedures Code that allows for the State Security Agency to function as arresting officer, prosecutor, judge and penal authority or that allows "trials" to be held *in absentia* and *in camera,* that is, in secret and without the knowledge or participation of the accused.

criminal procedures code or regular police have presence or reach in the *kwan-li-so* labor camps to which the prisoners are sent and held.

The detained persons are told they are "traitors to the nation." In some arrest situations, the *bo-wi-bu* agents read from a document that is not then provided to the prisoner. But this document is a political declaration, bearing little or no similarity to an arrest warrant or criminal indictment. None of the previously detained persons were told their precise "crime" or "criminal act" for which they were now being held, although from the interrogation questions, the prisoners could fairly easily deduce what it was that the political authorities cared about and wanted to find out.

These arrests, abductions and detentions clearly have the character of "enforced disappearances" as the detained prisoners are not told how long they will be detained or where they are being sent. Nor does the State Security Agency provide to non-arrested family members (cousins, aunts, uncles, etc) or neighbors or former co-workers where the arrested relatives or friends are being sent or held. The other family members of persons previously seized and held by *bo-wi-bu* are denied information as to the fate and/or whereabouts of the previously seized and held family member, one of the qualifying characteristics of "enforced disappearances."

The small number of persons who have been released from the *kwan-li-so* and are able to visit their former neighborhoods or contact their former friends all confirm that their friends and neighbors were never informed about their fate or whereabouts.[106] Further the small number of released prisoners report that they are threatened with "re-arrest" if they tell others about the places where they have been detained, indicating and reinforcing the *incommunicado* nature of these detentions.

In short, the prisoners in the DPRK gulag camps have been "forcibly disappeared."[107]

[106] Of course, there are exceptions. Kang Chol Hwan's mother, from a "Heroes of the Revolution" family was not taken away to the camps but required to seek divorce. According to Kang's account, following his release from Camp No. 15, when he reunited with his mother after ten years, she told him that she had pleaded with the authorities to send her away with her family. But, reportedly, the authorities threatened in that case to also send away her sister and brother and all their children. But Kang's mother then at least had some idea of the fate of her family. Mr. Kim Yong was a Lt. Col. in the North Korean military when he was arrested for the suspected previous disloyalty of his father. Kim's military buddies apparently knew where he was imprisoned and, Kim believes, persuaded *bo-wi-bu* to transfer him from Camp No. 14 to Camp No. 18 (for the families of prisoners at Camp No. 14) so that he would live with his imprisoned mother. (Prior to that time Kim himself did not know his mother was at Camp No. 18, but apparently *bo-wi-bu* in this case was willing to share the information about Kim Yong's whereabouts with his fellow army officers.)

[107] Former prisoners also report "disappearances" from the labor camps – prisoners who are taken away permanently for infractions of camp rules, presumably executed, without any information provided to fellow prisoners or family members remaining in the camp, as was the case for the father of Anonymous Prisoner #2 interviewed for this report.

Deportation and Forcible Transfer of Population

As defined in the ICC Statute, "Deportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."[108] The judges at the *ad hoc* International Criminal Tribunals have rendered opinions which utilize comparable definitions.

"Deportation" stems from Roman law connoting "displacement within the borders of the Roman Empire."[109] More recently "deportation" came to mean displacement outside of the borders of a given nation state. Thus, the phrase "forcible transfer of population" was added to cover situations in which people are forcibly displaced from the previous place of lawful residence to some other area within the same nation state. However, the Appeals Court of the ICTY has restored the original usage and determined that deportation does not have to involve state border crossing.[110]

Deportation or forcible transfer of population brings to mind the recent phenomena of "ethnic cleansing" in which villages are cleared of unwanted ethnic or religious minorities during which time sizable groups of people were expelled from their previous place of lawful residence. Deportation also encompasses situations more akin to North Korea, such as the WWII era deportations of unwanted elements of German population such as Jews, gypsies [now termed "Roma"], homosexuals and other undesirables, in which individuals or families were taken from their areas of lawful residence and deposited in concentration camps inside Germany or other Nazi-conquered states in Eastern Europe. In North Korea, individuals or families, considered deviant or undesirable on any number of grounds (none of which are permissible under international law), are similarly forcibly transported to the distant encampments. The forcible transfer of North Koreans from places of legal residence by the State Security Agency to the political penal labor encampments in the remote mountainous areas of northern North Korea, also recalls the feudalistic Chosun dynasty penal practice of banishment were deviants or undesirables were banished from civilized society to the remote mountains of the northeast, some of the same areas of Korea where today's *kwan-li-so* are located.

The phrase "without grounds permitted under international law" is intended to cover such situations as the evacuations of civilians for their own security in times of war, as is permitted under such laws as the 1950 Convention Relative to the Protection of Civilian Persons in Time of War, and the Additional Protocol to the 1949 Geneva Conventions and Relating to the Protection of Victims of Non-International Armed Conflicts (1979).[111] No such permission would remotely apply to present day North Korea even if the North Koreans would wish to contend they remain, since 1953, in a technical-legal

[108] Article 7.2(d).
[109] William Schabas, *The UN International Criminal Tribunals*, op. cit, p. 204.
[110] Footnote #119, ibid. p. 204.
[111] Ibid, footnote #113, p. 204.

state of war.[112] According to the judgments at the ICTY, such evacuations as are permitted under international law are "by definition a temporary and provisional measure and the law requires that individuals who have been evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased."[113]

The prohibitions on deportation or forcible transfer of population would clearly apply to those individuals and families interviewed for this report who were picked-up by *bo-wi-bu* agents at their homes or schools and sent to the far away camps, as these individuals were residing in these cities, towns and neighborhoods "legally" as it were by definition since residence in North Korea requires state selection and approval. Forcible transfer would also apply to those individuals interviewed for this report who were initially detained for interrogation prior to being transported to the mountain encampments.

Imprisonment or Other Severe Deprivation of Physical Liberty
in Violation of Fundamental Rules of International Law[114]

When North Korean officials deny that they have political prisons, if not a deliberate fabrication, it is likely that such a denial stems from an unwillingness to consider or translate "*kwan-li-so*" as a prison in the sense of being building, such as a police jail (*kamok*), a misdemeanor-level detention facility known as *jip-kyl-so* or a felony-level penitentiary-like complex of buildings surrounded by a brick walls and/or barbed wire fences that are called *kyo-hwa-so*. The literal translation of the sprawling labor camps known as *kwan-li-so* is "a managed place" or "controlled place." It is possible that North Korean officials consider those who live therein as being "managed" or "controlled," not imprisoned.

It was, however, precisely the desire to avoid such definitional disputation that the diplomats, lawyers and judges who have drafted the legal statute or rendered judicial decisions added the phrase "or other severe deprivations of physical liberty" to this iteration of a crime against humanity. In North Korea, the forcibly disappeared persons are deported to the sprawling labor camps where they are deprived of their physical liberty. There is no question that those detained in North Korea's labor camps consider themselves "prisoners." Those who try to "leave" or "move away" (the word used by the former prisoners is "escape") are executed with all the other prisoners in that section of the camp being compelled to watch.

There are few situations in today's world with a more "severe deprivation of physical liberty" than DPRK's political penal labor colonies. By the judicial standards established in the jurisprudence of the *ad hoc* International Tribunals, it is likely that the conditions

[112] The Korean War was not concluded with an armistice not a peace treaty. And the DPRK has been demanding a peace treaty ever since. (The US says it is willing to conclude a peace treaty with the DPRK in the event that North Korea agrees to end its nuclear weapons programs).
[113] *Blagojevic*, (ICTY, 17 January 2005, para. 5970), cited in Schabas, *UN…Tribunals*, ibid., p. 204.
[114] Article 7.1(e).

of detention are so extremely harsh that the whole system would be considered as an "inhumane act."

A required qualification in this element of crimes against humanity is the condition "in violation of fundamental rules of international law." Judgments at the *ad hoc* International Criminal Tribunals have clearly indicated this essential fundamental rule of international law with respect to imprisonment, namely (1) when an individual is deprived of his or her liberty, and (2) The deprivation of liberty is imposed arbitrarily, that is, no legal basis can be evoked to justify the deprivation of liberty.[115]

Numerous additional judgments at the International Criminal Tribunals confirm that the imprisonment must be "arbitrary" to constitute a crime against humanity. "Arbitrary imprisonment" is repeatedly defined as "the deprivation of liberty without due process of law."[116] "Due process of law" has a very precise definition established in Article 14 of the International Covenant on Civil and Political Rights which includes right to a fair and public hearing by independent and impartial tribunal, the right to be informed of the charges against him or her, the right to counsel, the right to presumption of innocence, and the right to appeal a conviction.

The DPRK has been a State Party to the International Covenant on Civil and Political Rights since 1918.[117] It cannot be contended that the right to a trial and the other "due process" rights spelled out in Article 14 of the International Covenant do not apply to or in North Korea. Article 2 of that Covenant specifically obligates States Parties "to take the necessary steps to adopt such laws or other measures as may be necessary to give effect to [these] rights."[118]

Although they do not use the legal terminology, one of the striking features of the testimonies of former prisoners in North Korea's political labor camps is their keen awareness of having been denied "due process." The former *kwan-li-so* prisoners remain offended that they were not told of the charges against them, for never having had their day in court, or any ability to defend themselves against their unjust incarceration and extreme punishment to which they and often their family members were subjected.

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[115] *Simic, Tadic, and Zaric*, (ICTY, Trial Chamber, October 17, 2003, para. 64).
[116] Ibid. See also *Krnojelac* (ICTY, Trial Chamber) March 15, 2002, para. 115, *Kordic and Cerkez*, (ICTY, Appeals Chamber, December 17, 2004, para. 116.
[117] The human rights conventions implementation review system is the only part of the UN human rights system that North Korea cooperates with, even to the point, some evidence suggests, of making minor revisions in the DPRK criminal procedures codes based on the recommendations of the UN Human Rights Committee, the treaty implementation review body for The Civil and Political Rights Covenant. The DPRK is not unaware of the "these fundamental rules of international law" set forth in the Convention to which it is a States Party.
[118] Article 2(1) International Covenant on Civil and Political Rights, as cited in *Failure to Protect*, op. cit., footnote #220, p. 30.

Article 14 of the International Covenant on Civil and Political Rights

(excerpts)

1. …Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law….any judgment rendered in a criminal case or in a suit at law shall be made public….

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing…

(e) To examine, or have examined, the witnesses against him…

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law…

Further, a group of attorneys who have recently examined the human rights situation in the DPRK have enumerated additional "fundamental rules of international law" violated in the course of the severe deprivation of physical liberty endured by the *kwan-li-so* political imprisonment system in North Korea, where persons are imprisoned in violation of other provisions of the International Covenant on Civil and Political Rights:

> Article 6 (right to life);
> Article 7 (right not to be subjected to torture or to cruel, inhuman, or degrading treatment);
> Article 8 (right not to be held in slavery or servitude);
> Article 9 (right not to be held in arbitrary detention);
> Article 10 (right for all persons deprived of liberty to be treated with humanity);
> Article 12 (right to free movement);
> Article 16 (right to recognition as a person);
> Article 17 (right not to be subjected to arbitrary interference with privacy, family, home or correspondence);
> Article 18 (right to freedom of thought, conscience and religion);
> Article 19 (right to hold opinions without interference);
> Article 21 (right to peaceable assembly);
> Article 22 (right to freedom of association);
> Article 26 (rights to equal protection and non-discrimination, including on grounds of political or other opinion, birth, or other status).[119]

North Korea has also acceded to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Prevention of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child. In all likelihood, many of the provisions of those Conventions would be considered as being among the fundamental rules of international law, and a similar listing of the most fundamental provisions in these Conventions that are violated in the prison-labor camp system, starting with the right to be free from hunger set forth in Article 11.2 of the International Covenant on Economic, Social and Cultural Rights.

Even where a State has imprisoned a citizen, whether rightly or wrongly, that State is not relieved or absolved of its obligation to respect the right to food of those who have been be deprived of their physical liberty. Keeping the *kwan-li-so* labor camp prisoners malnourished and on the verge of starvation as a control mechanism, a phenomenon of repression that predated the North Korean famine of the 1990s by several decades, is itself a gross and severe violation of the fundamental rules of international law associated with political imprisonment in the DPRK.

[119] *Failure to Protect*, ibid, p. 31.

2. Enslavement/Forced Labor (Article 7.1(c))

According to Article 7.2(c) of the ICC Statute, enslavement "means the exercise of any or all of the powers attaching to the rights of ownership over a person…" As further defined and affirmed by numerous judgments of the *ad hoc* International Tribunals, the severe forms of forced labor in North Korea's gulag encampments would appear to constitute the crime against humanity of enslavement:

> In determining whether or not enslavement has been established, the indicia of enslavement… include: control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, *subjection to cruel treatment and abuse, control of sexuality, and forced labour* (emphasis added). (*Kunarac, Kovac and Vokovic*, Appeals Chamber, ICTY, June 12, 2002, para. 119)
>
> *[T]he exaction of forced or compulsory labor or service* is an 'indication of enslavement' and a 'factor to be taken into consideration in determining whether enslavement was committed (emphasis added).' (*Krnojelac*, Trial Chamber, ICTY, March 15, 2002, para. 359)
>
> [K]eeping someone in captivity…would … usually, not constitute enslavement. Further indications of enslavement include exploitation; *the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship…* (emphasis added). (*Kunarac, Kovac and Vokovic*, Trial Chamber, ICTY, February 22, 2001, para. 542)
>
> [D]uration is not an element of the crime, but a factor in the proof of the elements of the crime. *The longer the period of enslavement, the more serious the offence* (emphasis added). (*Kunarac, Kovac and Vokovic*, Appeals Chamber, ICTY, June 12, 2002, para. 121, 356)
>
> The lack of resistance or the absence of a clear and constant lack of consent during the entire time of the detention, cannot be interpreted as a sign of consent. Lack of consent is not an element of the crime of enslavement. (*Kunarac, Kovac and Vokovic*, Appeals Chamber, ICTY, June 12, 2002, para. 120)

The extremely hard labor under brutal conditions with the imposition of strict production quotas, was, along with the constant hunger, the main complaint of the former prisoners. The threat of further reduced food rations, kept the prisoners working strenuously, even though already weak from malnutrition.

Mr. Kim Tae Jin was assigned as an agricultural laborer in corn fields, and also cutting logs into firewood. Subsequently he was assigned to a furniture factory. Mr. An Hyuk had a terrible assignment as a waterworks construction worker. This entailed gathering stones from one point in a river bed, even if they had to first break the ice on the river

before wading in and then transporting the stones to other points where they would construct small dams and waterways. Subsequently he was assigned to fell and cut logs on the mountainside. Many of his co-workers on these projects died from exposure to the elements and work accidents.

At Camp No. 14, Kim Yong was a coal mine tunnel shaft digger, one of the most dangerous jobs. Without mechanization, the miners dug with picks and shovels. After transfer to Camp No. 18, he was assigned to repairing coal cars for the train that transported prison-mined coal to a nearby power generating plant.[120]

Kang Chol Hwan, imprisoned as a child in the revolutionizing zone at Camp No. 15, attended primary school in the morning and spent his afternoons as a bee keeper, rabbit keeper, and ginseng root gatherer. After he outgrew the primary school he as assigned full time to transporting cut logs down from the mountainside and grave digging detail.[121] One of the anonymous former prisoners interviewed for this report, was, like Kang, imprisoned in the revolutionizing zone as a twelve to nineteen year old child. After school he was assigned to a digging brigade. Even if there were no real holes to dig, these older children were compelled to dig holes only to refill them upon completion.

None of the former prisoners interviewed for this report received pay or compensation. All reported that failure to meet work quotas would bring either beatings or further reductions in food rations for the work team, or both. "Forced labor" is an anodyne depiction of the conditions of work imposed on the prisoners in the labor camps. By the standards of crimes against humanity jurisprudence, the repression in the *kwan-li-so* camps is a severe and extreme form of enslavement. The conditions of work described by former North Korean political prisoners in mines, forests and fields, is tantamount to the chattel slavery in the agricultural plantations of the American south prior to the Civil War, except that the enslavement is to and by the State, not private owners.

3. Murder, Torture, and Other Inhumane Acts

Murder[122]

Prisoners who violate camp rules (mostly "stealing" food, or other violations of camp rules committed in the process of gathering food) or attempt to escape are executed, usually publicly, most frequently by firing squad, but also by hangings for those who managed to escape but were later recaptured outside the perimeters of the camps. The former prisoners recall with bitterness the constant hunger, the terrible work and working conditions, and the unfairness of being imprisoned without charges or trial. But they report the compulsory gatherings for public executions of fellow prisoners to be the most sickening experience in the camps.

[120] See *Hidden Gulag,* pp. 110 and 106 for satellite photos showing his mine face opening at Camp No. 14 and the coal train freight yard at Camp No. 18.
[121] A work assignment that allowed those prisoners to take the clothes from the deceased to barter for food.
[122] ICC Statute, Article 7.1(a).

As noted previously, the labor camps are outside DPRK law and outside the "protection of the law." There is no judicial system or processes to which these prisoners have recourse prior to execution. These killings are extra-judicial, and would appear to constitute murder, as defined in the Statute of the ICC and the judgments of the *ad hoc* Tribunals:

> The legal and factual elements of the offense of murder are [a] the death of a victim; [b] the death must have resulted from an act of the accused or his subordinate; [c] the accused or his subordinate must have been motivated by the intent to kill the victim or to cause grievous bodily harm in the reasonable knowledge that the attack was likely to result in death."[123]
>
> Murder is defined as homicide committed with the intention to cause death. The legal ingredient of the offence as generally recognized in national law may be characterized as follows: [a] the victim is dead; [b] as a result of an act of the accused; [c] committed with the intent to cause death."[124]

It is not necessary for the International Tribunal or officials thereof to have witnessed or examined the corpse. "Proof beyond a reasonable doubt that a person was murdered does not necessarily require proof that the dead body of the person has been recovered. [T]he fact of a victim's death can be inferred circumstantially from all of the evidence presented to the Trial Chamber."[125] What is necessary for such executions to be a crime against humanity is that, according the ICC's *Elements of Crimes*, "The conduct was committed as part of a widespread or systematic attack directed against a civilian population."[126] These deliberate killings are clearly part of the overall course of conduct directed against this severely persecuted segment of the North Korean population.

With two exceptional situations, all former prisoners interviewed for this report were compelled to witness public executions while in the camps. The two exceptions were Camp No. 14, which, according to Kim Yong, did not have public executions, because there had previously been a prisoner riot during a public execution which required the guards to shoot down scores of additional prisoners to restore order. Thus, between 1993 and 1995, prisoners who violated camp regulations were taken away, never to return and were presumed by other prisoners to have been executed in secret.

The second exceptional circumstance was that, according to former guard Ahn Myong Chol, for one year at Camp No. 13 there were no executions for reasons that are unknown.[127] According to Mr. Ahn, who was employed at four different camps from May 1987 to December 2002, the camp guards hated the public executions because they feared reactions from the concentrations of aggrieved and shocked prisoners who were

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[123] (*Blaskik*, Trial Chamber, ICTY, March 3, 2000, para. 217).
[124] (*Jelisic*, Trial Chamber, ICTY, December 14, 1999, para. 35).
[125] *Krnojelac*, Trial Chamber, ICTY, March 15, 2002, para. 326).
[126] ICC Statute, Article 7(1)(a) para 2.
[127] (Camp No. 13 was closed in 1990).

required to witness the executions at close range. It was one of the few occasions when the guards were fully armed in the camps.

Mr. Kim Yong told of three to four executions by hanging or firing squad every month for escape attempts, stealing food or not observing camp regulations during the three years he spent at Camp No. 18. Another anonymous prisoner interviewed for this report was compelled to witness ten public executions by firing squad in the seven years he spent in the minuscule "revolutionizing process" section of Camp No. 18.

Mr. Kim Tae Jin witnessed five public executions by firing squad in the Daesuk-ri section of Camp No. 15. The prisoners to be executed were tied to poles. Mr. Kim could cope with the executions when the firing squads shot into the heart and the prisoners' bodies just slumped over held up by the ropes. But when the executioners shot into the heads at close range and the heads blew apart, it made Kim vomit.

Torture and Other Inhumane Acts

A particularly gruesome element of some of the public executions in the prison camps – the compulsory defilement of the corpse of the just executed prisoner – would likely also constitute the crime against humanity of torture[128] and that of "other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health."[129] In these instances, prisoners who have been compelled to witness an execution (whether by hanging or firing squad) at close range, are further compelled to walk by the deceased and throw a stone at the corpse, or in one instance, to strike the deceased's body by hand. This practice is designed to deny the executed prisoner even a measure of dignity and humanity in death, and, of course, to instill in those other prisoners the knowledge and fear that they too risked defilement in death if they attempted to escape or for serious violations of camp regulations such as breaking machinery.

According to the testimony of former prisoners, these occasions are the worst experiences within the altogether squalid life inside the camps. Some of the prisoners are given to responses of feinting, screams of anguish and distress, and temporary loss of sanity. Former prisoner Lee Young Kuk names another prisoner, Ahn Sung Eun, at Camp No. 15, who was shot and killed for losing self-control and yelling at the guards that they had lost their last shred of humanity in making other prisoners defile the corpse of an executed prisoner. [130]

[128] ICC Statute, Article 7.1(f).
[129] ICC Statute, Article 7.1(k).
[130] Such also is the level of deliberate dehumanization in the camps that, according to Kang Chol Hwan, some of the other prisoners hurl stones at the corpse with gusto.

The judges at the ICTY determined that "[B]eing forced to watch serious sexual attacks inflicted on a female acquaintance was torture for the forced observer…."[131] According to the testimony of all the former prisoners, family members of the executed person, if the execution took place in a camp section for family members, or the closest friends if the execution took place in a singles area of the camp were required to sit in the front rows for the public execution. By the standards of international jurisprudence, it is likely that the being forced to watch and/or participate in the desecration of the corpse of an executed fellow prisoner would be deemed an act of torture against those required to observe and/or participate in the desecration.

Other Forms of Torture: Routine Beatings and Punishment Cells

Many of the prisoners in the labor camps who have been sent there directly from *bo-wi-bu* detention/interrogation facilities have been tortured severely, systematically and repeatedly in the process of North Korea's extremely coercive interrogations.[132] The torture that takes place within the *kwan-li-so* camps themselves is of a different nature: most frequently it takes the form of more-or-less routine beatings by guards for minor violations of camp regulations, and for failure to meet production quotas. Mr. Kim Yong provides the example at Camp No. 18 of his mother who was severely beaten for returning late to the prison camp after being allowed outside the gates to scavenge for edible plants on an adjacent hillside. Failing to fulfill work quotas is also described as a very common cause of beatings.

Former guard Ahn Myong Chol stated that guards were allowed to beat prisoners and often did as the prisoners were considered "sub-human." According to Kang Chol Hwan, beatings did not appear on official lists of sanctioned punishments, but they were the camp's most common currency. "No trifle was too small to serve as the pretext for the beating of a child or adult."[133]

Additionally, former prisoners describe the use of "punishments cells" or "sweat boxes," detention facilities, sometimes underground, within the camps that are so small that the prisoners being punished cannot fully stand up or lie down and where prisoners who are being punished for infractions of camp regulations are subjected to even more reduced food rations. Many of the prisoners sent to the punishment cells do not survive their punishments or die shortly after release back into the larger prison camp. Some former prisoners recount in amazement the few cases of mentally and physically hardened prisoners who persisted in disregarding camp regulations yet survived repeated trips to the punishment cells.

[131] *Kvocka et al*, ICTY, Trial Chamber, 2 November 2001, para. 149, as cited in William Schabas, *The UN International Criminal Tribunals*, op. cit., p. 208.
[132] See *Hidden Gulag*, op. cit., p. 35.
[133] *Aquariums of Pyongyang,* op. cit., p. 151.

ICC Statute, Article 7.2(e) defines torture as "the intentional infliction of severe pain or suffering, whether physical or mental upon a person in the custody of or under the control of the accused..." The ICC *Elements of Crimes* details:

> 1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
> 2. Such person or persons were in the custody or under the control of the perpetrator.
> 3. Such pain and suffering did not arise only from, and was not inherent in or incidental to lawful sanctions.
> 4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population...[134]

The judges at the ICTR defined the essential elements of torture as:

> (i) The perpetrator must intentionally inflict severe physical or mental pain or suffering upon the victim for one or more of the following purposes:
> (a) to obtain information or a confession from the victim or a third person;
> (b) to punish the victim or a third person for an act committed or suspected of having been committed by either of them;
> (c) for the purpose of intimidating or coercing the victim or a third person;
> (d) for any reason based on discrimination of any kind.
> (ii) The perpetrator was himself an official, or acted at the instigation of, or with the consent or acquiescence of, an official or person acting in an official capacity."[135]

The treatments meted out in punishment cells within the political penal labor colonies constitute the crime against humanity of torture.

Cruel, Inhuman or Degrading Treatment or Punishment

The International Criminal Court Statute uses the short formulation for torture: "severe pain or suffering, whether physical or mental…." However, "The ad hoc tribunals have regularly described the definition in the Convention Against Torture as a reflection of customary international law."[136] The full title of that core normative convention is "The Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment." As noted, according to the testimony of former prisoners, using semi-starvation as a prisoner control mechanism in the labor camps long preceded the North Korean famine of the 1990s. A strong case can be made that keeping prisoners on the verge of starvation while forcing them to engage in hard labor under brutal conditions, in and of itself, constitutes "cruel, inhuman or degrading treatment or punishment." As

[134] Article 7 (1)(f) paras. 1-4.
[135] (*Akayesu*, Trial Chamber, ICTR Sept. 2, 1998, paras. 593-595, 681).
[136] Schabas, *The UN Tribunals*, op. cit. p. 51.

legal scholars have noted, "Like slavery, torture is among those human rights violations whose prohibition is generally regarded as *jus cogens*.[137]

4. Rape and Enforced Prostitution

North Korea's political prison camps are hardly the only detention facilities where male prison guards exact sex from female prisoners. However, keeping prisoners on the verge of starvation, renders the female inmates even more vulnerable. According to former prisoners and guards, there is constant sexual relations between guards and female prisoners in the *kwan-li-so* prison-labor camps, almost always in exchange for food or for job assignments within the camp that would increase access to food. Such sexual relations constitute the crime against humanity of rape and/or enforced prostitution as criminalized in the ICC Statute Article 7.1 (g) and judgments of the Yugoslav and Rwanda Tribunals.

Two former prisoners, interviewed separately about the practice used the same phrase, "The guards lived like kings." This was not a reference to palatial guard barracks, which they were not, but the feudal practice where royalty kept concubines within the palace grounds for the king's pleasure.

Kang Chol Hwan notes that in the section of Camp No. 15 for imprisoned Koreans who had returned from Japan there was a nice house which is where the women went for sex with the prison officials. At Camp No. 18, which is for the families of primary wrong-doers who were imprisoned at Camp No. 14, there was quite a number of twenty to forty-year old women whose husbands were imprisoned in other camps. According to an anonymous prisoner interviewed for this report, in the small "revolutionizing zone" within Camp No. 18, women traded sexual favors for work in the cafeteria or food processing plants or as attendance takers and statistical clerks. In the larger "total control zone" area, women traded sexual favors to get jobs as machine operators, rather than drilling or digging work teams.

Former guard Ahn Myong Chol noted that officially sex between guards and prisoners was not allowed, so that it was done surreptitiously, though on such a large scale that it was well known to all. And that the "*dam-hwa-shil*" discourse or dialogue rooms, which existed in many villages within the camps, were most often used for sex between prisoners and prison officials.

Kim Yong was also aware that women prisoners were trading sex for food and better jobs at Camp No. 18. He was not aware of any prison official who was ever penalized for this. The prison camp officials, he said, had enormous discretion. When they called you to their offices, you had to go. And they could do whatever they wanted. One of the anonymous prisoners interviewed for this report was only aware of one instance in which

[137] Steven Ratner and Jason Abrams, *Accountability for Human Rights Atrocities in International Law*, 2nd Edition, Oxford University Press, 2001, p. 117.

an incorrigible prison official flagrantly had sex with so many women that he was demoted, demoted again, demoted yet again, and finally dismissed.

Women prisoners made pregnant by the guards were usually given abortions. But Kim Yong is aware of several women prisoners made pregnant by guards who were taken away to the fields and never returned.

The ICC Statute defines "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as crimes against humanity.[138] In the *Elements of Crimes* virtually the same language is used in further detailing the crimes against humanity of "enforced prostitution:"

> …the perpetrator of enforced prostitution caused one or more persons to engage in one or more acts of a sexual nature by force or the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[139]

Several judgments of the Ad Hoc Tribunals have further defined rape and sexual violence. Most salient to the North Korean situation is the element of "coercive circumstances."

> The Chamber [ICTR] defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive… Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by… a public official or other person acting in an official capacity.[140]

> Sexual violence, which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive…. Coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion, and other forms of duress which prey on fear or desperation may constitute coercion, and *coercion may be inherent in certain circumstances* (emphasis added).[141]

Unlike virtually all of the other prohibited elements of crimes against humanity detailed in this report, sexual relations between prison guards and officials and women imprisoned in inherently coercive circumstances, the prohibited acts of rape, sexual violence, or enforced prostitution, are not systematic in the sense of being pursuant to State policy. But the requisite conditions are either "widespread or systematic." According to the accounts of former prisoners, coerced sex between prisoners and guards is widespread.

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[138] Article 7.2(g).
[139] See Elements of the Crime, Article 7.1(g) (1) para. 2, and Article 7.1(g) (3) para. 1.
[140] *Akayesu*, (ICTR Trial Chamber, September 2, 1998, paras. 596-598).
[141] *Akayesu*, (ICTR Trial Chamber, September 2, 1998, paras. 686-688).

5. Persecution

In language taken directly from the definition of crimes against humanity in the Nuremberg Charter,[142] the Statute of the International Criminal Court defines persecution as meaning "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."[143] Article 7.1(h) prohibits "persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious…or other grounds that are universally recognized as impermissible under international law, in connection with [the other particular acts defined as crimes against humanity]…"

A series of judgments from the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda have rendered persecution a crime against humanity under customary as well as treaty or statutory law.[144] As summarized by one legal scholar, "examples of acts given by the tribunals that constitute persecution have included: attacking cities, towns and villages; *unlawful detention of civilians; …seizure, collection, segregation and forced transfer of civilians to camps;* sexual violence; destruction and damage of religious or educational institutions (emphasis added)."[145]

As "persecution" is associated with other prohibited acts (*actus reus*) in the definitions of crimes against humanity, the purpose is to introduce the element of "specific intent"[146] rendering the acts prohibited in and of themselves to be even more offensive. In the words of the ICTY, "acts rendered serious not by their apparent cruelty but by the discrimination they seek to instill within humankind."[147]

A key element in the crime against humanity of persecution is the qualification, "identifiable group or collectivity on political, racial, national, ethnic, cultural, religious…or other grounds that are universally recognized as impermissible under international law…"[148] This provision can be interpreted narrowly or more broadly.

A narrower interpretation of "identifiable group or collectivity" would focus on the lifetime imprisonment the family members of suspected wrong-thinkers and wrong-doers – clearly an identifiable collectivity – on grounds that are not recognized as permissible under international law. Three to five of the former North Korean political prisoners interviewed for this report were imprisoned because of the perceived wrong-doings or

[142] Schabas, *The UN Tribunals*, op. cit., p. 215.
[143] Article 7.2(g).
[144] Indeed the element of "persecution" is fundamental to all other acts specified as crimes against humanity in the Statute of the Rwanda Tribunal.
[145] Schabas, *The UN Tribunals*, op cit, p. 221, referring to footnote 217, *Kordic et al*, ICTY, 26 February 2001, paras. 202-207; *Kvocka et al*., ICTY, 2 November 2001, para 186; *Blaskic*, ICTY, 3 March 2000, para 234; *Stakic*, ICTY 31 July 2003, paras 747-773; *Deronjic*, ICTY, 30 March 2004, paras. 119-123; and *Blaskic*, ICTY, 29 July 2004, paras. 143-159.
[146] Schabas, ibid, p. 218.
[147] *Blaskic*, ICTY, Judgment, 3 March 2000, para. 227, as cited in Schabas, ibid, p. 218.
[148] Article 7.1(h).

wrong-thinking of other family members: their fathers in two cases, and a grandfather in the other.[149] The merit of a narrow interpretation of "identifiable group or collectivity" is that the persecution of imprisoned family members lies in calling particular attention to a North Korean political-penal practice that is impermissible under international law and countenanced nowhere else in the modern world.

Another narrow interpretation of the persecution of an "identifiable group or collectivity" would pertain to the treatment of the small number of prisoners who are released from the camps. According to their testimonies, their imprisonment is noted on the identity papers all North Koreans are required to carry. The released prisoners fear they will never be able to obtain further education or good jobs – the assignments to which are made by Workers Party officials. Those who lawfully resided in Pyongyang prior to their imprisonment fear they will never be again allowed to rejoin family and friends in the privileged citizenry of the capital city, where residence requires the approval of the Workers Party. The released prisoners fear that some additional act of omission or commission will send them back in the prison camps, next time for life.

This common fear is the reason why numerous released prisoners flee North Korea to China, despite the attendant risks. "A well-founded fear of persecution should a person remain in his or her country of origin" is the classic definition of a refugee, once that person is outside his or her country of origin. The perception of discrimination in residence, employment, education against former political prisoners may well be a form of persecution that follows the prisoner out the gates of the political prison camps.

An alternative interpretation of persecution would look at the qualification, "identifiable group or collectivity… on political grounds" more broadly. Despite the heterogeneity of the prison population – whether they are grandchildren of someone who collaborated with the Japanese occupation prior to WWII, whether they are the children of a Presbyterian pastor or elder who fled to the south when Kim Il Sung sought to abolish religious observance after the Korean war, whether they were orthodox Marxist-Leninists who thought that the *juche* idea (*juche sasang*) or dynastic succession was un-Marxist, or whether in the late 1980s they were North Korean students studying in Eastern Europe who had the harmful knowledge of the joy of many East German, Polish, Hungarian or Czech peoples at the fall of Communist regimes – all of these prisoners had one common identifiable characteristic: they all were perceived to pose risk to the hegemony of the "one and only ideology system" (*yuil-sasang-chegye*) constructed and perpetuated by Kim Il Sung and Kim Jong Il.

In this perspective, perhaps the *kwan-li-so* system in its historical entirety can be seen as systematized persecution on political grounds on a huge scale. In the judgments of the International Criminal Tribunal for Rwanda, "political grounds include party political

[149] With two additional prisoners interviewed for this report, it is difficult to determine precisely as there have been no specific charges. Kim Yong's father had been previously executed as an American spy. Mrs. Kim Young Sun's husband had been forcibly disappeared before she was pick-ed up and sent to Camp No. 15. But it was possible that they themselves were suspected of also having committed some wrong-doing, wrong-thinking, or wrong-knowledge.

beliefs and political ideology."[150] In the famous 1985 *Barbie* case, a French Appeals Court (Cour de Cassation), using the Nuremberg definition held that the crime against humanity of persecution was not only against persons by reasons of the membership in a racial or religious group, but also against any opponents of the government's policy of ideological hegemony, whatever the form of their opposition.[151] In the North Korea situation, it would be the perceived or presumed doubters, dis-respecters or opponents of KimIlSungism's ideological supremacy.

6. Extermination

Deaths in Detention and the Prevention of Births

All former *kwan-li-so* prisoners describe very high rates of deaths in detention from combinations of malnutrition and forced labor in the sections of the camps in which they were previously detained. Elderly prisoners, such as Mrs. Kim Young Sun's parents at Camp No. 15 simply died of malnutrition and the illnesses and diseases that malnourished bodies cannot fight off.[152] One of the anonymous prisoners interviewed for this report notes that at Camp No. 18 his mother died of malnutrition within six months of their incarceration. His father "disappeared" that is, was taken away and never returned and was presumed to be dead. His twenty-year old brother became very depressed and committed suicide. It is not advisable to project the death rate of one family to the entire camp, but for this family of four, only one survived imprisonment. In the section of Camp No. 15 for Koreans returned from Japan where Kang Chol Hwan was imprisoned for ten years, one hundred persons died of malnutrition each year in a section of the camp that held between two thousand and three thousand persons – a cumulative death-in-detention rate of one-third to one-half.

Death rates could be even higher in the sections of the labor camp where prisoners were required to mine coal or other minerals. Kim Yong described that in his 500 person tunnel digging work force at Camp No. 14, five or six malnourished workers died every month from work accidents in the deep mine shafts. Similarly, Mr. An Hyuk reported frequent deaths from starvation and work accidents in the "singles" section of Camp No. 15 where he was imprisoned.

Such is the level of deaths in detention from slave labor in mines, forests and farms, combined with below subsistence-level food rations, that scholars and practicing attorneys familiar with the prosecution and judgments at the *ad hoc* International

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[150] *Kayishema and Ruzindana,* (ICTR, Trial Chamber, May 21 1999, para. 130).

[151] *Barbie*, 78 ILR at 137, cited in Ratner and Abrams, *Accountability for Atrocities in International Law*, op. cit., p. 63.

[152] Again, it should be recalled that below subsistence food rations in the political prison camps preceded by decades the North Korean famine crisis of the 1990s. Additionally, the fact that the *kwan-li-so* prisoners were deprived of their liberty without due process of law, the deprivation of liberty does not absolve the authorities of the responsibility for depriving the prisoners of their right to food.

Tribunals would make the case that the crime against humanity of extermination has been and is being committed in North Korea's *kwan-li-so* prison camps.

The Prevention of Births

In addition to the high level of deaths in detention from the conditions of life imposed on the prisoners, there is another element of the phenomena of repression in the North Korean prison camps that impinges on consideration of the crime against humanity of extermination: the prohibitions against marriage and childbirth among the children and grandchildren of presumed offenders who grow up and spend their entire adult lives in the camps or sections of the camps for the families of the presumed wrong-doers or wrong-thinkers.

This issue does not arise in all of the prison camps. According to Kim Yong, at Camp No. 14 the men's and women's sections were completely segregated, so the issue of marriage between male and female prisoners, or having children did not come up. In the area for families of former Protestant pastors and elders in the "total control zone" of Camp No. 15 where Mrs. Kim Young Sun spent three years, there were not many men to begin with, and further, "the place was so bad people would not want to have children anyway."

The issue arises in the camps and sections of camps for family members, and in the "revolutionizing process zones" where there are singles sections for men and for women. According to former guard Ahn Myong Chol, prisoners could not have babies "because of the policy to terminate the generations of the anti-[Workers] Party people." In the "revolutionizing zones" women who did become pregnant were usually forced to abort the fetus. If, for some reason, the pregnancy came to full term, the baby would be killed immediately after birth and the father would be assigned to the most dangerous jobs in the mines or chemical plants. Kang Chol Hwan tells of a young woman who became pregnant and disguised her pregnancy for some time. When discovered, she was forced to disrobe in front of her assembled fellow prisoners, male and female, expose her pregnant body and compelled to recount publicly the details of her sexual encounter.

According to Kim Yong, prisoners at Camp No. 18 were not allowed to have sex because they were not allowed to have children. An anonymous prisoner confirms the no children policy at Camp No. 18 but cites one known exception – a prisoner from the "revolutionizing zone" (from which there is the possibility of release) impregnated a woman from the "total control zone" in the camp (from there is no possibility of release). The male prisoner was allowed to give up the possibility of release and move with his pregnant partner to the lifetime sentence "total control zone" within the camp. They were allowed to have the baby, but it died at the age of four.[153]

Kang Chol Hwan writes that sex between prisoners was forbidden at Camp No. 15 because "it would give rise to another generation of counter-revolutionaries."[154] Kang

[153] This seems the sort of exception that proves the rule.

quotes the oft-cited command attributed to Kim Il Sung, "desiccate the seedlings of counter-revolution. Pull them out by their roots. Exterminate every last one of them."[155] The word used is *myulhada*, which is accurately translatable as "exterminate."

It would seem likely that the requirements for the crime against humanity of "extermination" – considering the prevention of births and the high rates of deaths-in-detention resulting from the conditions of life imposed on the prisoners – have been met.[156] The families of the irremediably counter-revolutionary wrong-doers or wrong-thinkers are to be terminated, though it is termination with a particular twist – first the wrong-doers will be required to work-off their debt to the Workers Party for betraying the Leader by years or decades of slave labor.

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[154] *Aquariums of Pyongyang*, op. cit., p. 146.
[155] Ibid, p. 78.
[156] Legal scholars note that the 'intent' requirements for the crime against humanity of extermination is different and less stringent than the 'intent' requirement for the separate and distinct crime of genocide. (See Schabas, *UN Tribunals*. op. cit. p. 265).

VI. CONCLUSIONS AND RECOMMENDATIONS

North Korean diplomats officially contend that allegations of human rights abuse are deliberately hostile provocations that infringe upon the sovereignty and dignity of the DPRK.[157] These representatives vow that North Korea will "further consolidate and develop our socialist system… which is the home and happiness of our people."[158] North Korea may continue to insist that "our style socialism" (*urisik sahoejuui*) and the "happiness of [its] people" absolutely require the lifetime, severe incarceration of the nearly one percent of its population that are imprisoned in hard labor camps on account of their suspected political thoughts or family affiliations.

But it is not clear that this necessarily has to be the case. It is not clear that the *kwan-li-so* camp system could not be dismantled. Indeed, within the context of North Korea's present social system, such dismantlement is not hard to envision.

Dismantling the Labor Camps

Prisoners in the labor camps "revolutionizing process zones" are already officially designated as eligible for release, and should be released forthwith as part of a "generous politics" (*gwang pok*) amnesty. The way to end slave labor is to pay the residents for their work – either in wages or via the Public Distribution System (PDS) if it is re-established[159] – the same salaries or the same allocations of food and clothing as North Koreans are paid or provided for the same occupations or work everywhere else in the country.[160] Allow the former prisoners to have the same access to mail and telephone services, newspapers, radio, television, and the internal travel regulations that are available to all other DPRK citizens. Stop the practice of routine beatings, the use of miniscule punishment cells, and public executions. Allow residents to marry and have children.

The way to rectify the previous removal of prisoners from "the protection of law"[161] is to extend the DPRK Criminal Code, Criminal Procedures Code and court system to the areas of the camps. The use of hunger as a control mechanism, and the high rates of deaths in detention from starvation and malnutrition can be ended by allowing the World

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[157] See "Statement by the Delegation of the Democratic People's Republic of Korea at the 4th Session of the [UN] Human Rights Council," Geneva, March 23, 2007.
[158] Ibid.
[159] During the famine crisis of the 1990s, in many parts of North Korea the Public Distribution System broke down as the State did not have the food to adequately distribute for the minimum daily nutritional needs of the population, so people turned to foraging for food and the authorities were compelled to allow markets to spring up. There are some indications that efforts are presently being made to re-institute the PDS, but it is not clear that those efforts will succeed.
[160] It has long been normal practice for State and/or Party officials to assign residence and occupation to the heads of household of most North Korean families. Unless this practice is ended nationwide, it would be expected to apply to former prisoners on the same basis as the rest of the citizenry.
[161] ICC Statute, Article 7.2(i).

Food Program and other humanitarian agencies to regard the former prisoners as a "vulnerable group" and provide them with food aid until food availability is brought up to the level of the general population. And so on.

The thousands of guards and police officials currently required to administer the camps and prevent prisoner escapes could be much more productively employed elsewhere, such as an expanded Kaesong export process zone. Elements of the former camp population deemed irremediably alienated from North Korean society should be eligible (without prejudice as to the causes of such alienation or the well founded fear of persecution should those persons remain in their country of origin) for a negotiated "orderly departure program" for re-settlement in third countries in order to end the risks incurred to North Korean refugees who presently spill-over into neighboring and more distant states in East Asia.

If DPRK authorities continue to hold that the practices described in this report constitute a necessary component of the North Korean social system, a number of forums are available to recognize, address and possibly seek redress for these severe human rights violations. Some potential avenues or forums for consideration and redress are particular to crimes against humanity. Other potential avenues or forums include those that can address the consistent patterns of gross violations of internationally recognized human rights in which crimes against humanity are committed.

The General Assembly and UN Human Rights Council

The most recent report of the Special Rapporteur on the situation of human rights in the DPRK has recognized the "responsibility of the State authorities to protect human rights and freedoms, and related accountability."[162] Recognition that the DPRK violations constitute crimes against humanity could be incorporated into the resolutions on the DPRK human rights situation at the Human Rights Council and General Assembly, particularly in light of DPRK's refusal to cooperate with the Special Rapporteur and High Commissioner for Human Rights. (This sort of diplomatic pressure is not, as DPRK alleges "a conspiracy…of ill-minded political purposes aimed at eliminating the social system of the DPRK."[163] It is exactly the comparison of state practice to the international norms that have been drafted and proclaimed under United Nations auspices to which Member States agree to cooperate when they accede to the UN Charter and join the United Nations).

In addition to ongoing resolutions particular to the DPRK at the General Assembly and Human Rights Council (which has replaced the former Commission on Human Rights) the new Human Rights Council will engage in the periodic review of the human rights practices of all Member States. While the terms and provisions for these reviews have not yet been set, it is possible that the review exercise will be genuine. In which case, it will afford, in the coming several years, a comparison of DPRK policy and practice to the

[162] A/HRC/4/15, February 7, 2007, paras. 38-41, pp. 13-14.
[163] "Statement by the Delegation of the DPRK to the 4th Session of the Human Rights Council" op. cit.

well-established international human rights norms, possibly including those set forth in the Rome Statute.

The Six Party Talks

The Beijing-centered talks between North Korea, South Korea, China, Japan, Russia and the United States are, of course, not focused on the dismantlement of North Korea's labor camps, but on the dismantlement of its nuclear weapons and nuclear weapons programs – in exchange for normalized relations between the DPRK and the US and Japan; the replacement of the Korean War armistice with a "peace regime" on the Korean peninsula;[164] North Korean integration into a security/cooperation arrangement in Northeast Asia; and energy assistance and considerable amounts of bilateral and multilateral foreign assistance.[165]

The Six Party Talks certainly do not provide a forum for the discussion of the North Korean human rights and humanitarian crises in the terms in which these matters are discussed in this report. However, if the talks do not break down again, if they continue along the path outlined in the September 2005 "Joint Statement," human rights and human security issues will arise in several of the Working Groups.[166]

It may turn out that Kim Jong Il and the DPRK National Defense Commission, which has replaced the Central Committee of the Korean Worker's Party (or the Standing Committee thereof) as North Korea's defacto ruling body, may prefer to remain a closed "hermit kingdom" nuclear weapons state, rather than risk its ability to manage the internal contradictions that a policy of peace and economic integration and development would surely bring. In which case, a peace regime on the Korean peninsula will likely have to await a new generation of leadership in the DPRK. On the other hand, mutual co-existence and a recognized end to what North Korea calls US "enmity" and "hostile intent" – if it can be negotiated – would bring an entirely different context and dynamic to the consideration of humanitarian, human security and human rights issues in the DPRK.[167] If nothing else, a successful outcome to the Six Party Talks, or even prolonged negotiations in a positive direction, should it occur as the multiple facets of

[164] A "peace regime" is generally thought to be broader and more inclusive than a "peace treaty."
[165] Taken together, these components amount to the assurance that the United States recognizes North Korea as a sovereign state, will not attack it, and will allow, or indeed, even facilitate, a place for the DPRK in the US-designed post-WWII geo-political order in East Asia – a regional/global economic order that brought peace and prosperity to Japan, South Korea and Taiwan, and later, post-"reform and opening," facilitated the world's fastest economic growth rates in China and Vietnam. See Robert Carlin and John Lewis "What North Korea Really Wants" Nautilus Institute, Policy Forum Online 07-009A, February 2, 2007, www.nautilus.org/fora/security/07009CarlinLewis.html.
[166] See Hawk, "Factoring Human Rights into the Dismantlement of Cold War Conflict on the Korean Peninsula," *Human Rights in North Korea: Toward a Comprehensive Understanding*, eds. Park and Han, Sungnam: The Sejong Institute, 2007.
[167] "Hostile intent," however, it should be noted, is an extremely elastic concept. If North Korea is not satisfied with US action and/or US-controlled payments to it, "hostile intent" can be projected into the distant future.

denuclearization are tackled, would open direct and indirect bilateral and multilateral dialogue with North Korea on human rights, humanitarian and human security issues.[168]

Human Rights and the South Korean Engagement Agenda with North Korea

Related to, but also separate from, the amount of progress in the Six Party Talks, inter-Korean dialogue will surely continue. Human rights issues have always been part of inter-Korean dialogue.[169] It was obvious that, given the North Korean famine and ongoing food shortages and the advancing age of family members separated by the Korean War, the recent forms of South Korean engagement with the North would focus initially on food security and family re-unifications. Other matters that fall within the purview of human rights and human security will surely be addressed as inter-Korean reconciliation process continues.

Some of these concerns, such as unreturned South Korean prisoners of war (POWs) and South Koreans previously abducted by North Korea, touch upon the prison camps discussed in this report, as it is believed that at least some of the South Korean POWs and some of the abductees have been detained in the labor camps. Some of these issues may arise in the context of the defacto four party "peace regime" discussions specified in the Six Party Talks. Or it may be part of bi-lateral Korea discussions.

How far such discussions will get remains, of course, to be seen. There has been, in some South Korean pro-engagement political circles, the idea that "peace" with North Korea must be achieved before "human rights" issues in North Korea should be raised.[170] This idea is gradually yielding to the realization that "peace" and "human rights" concerns are mutually reinforcing. How human rights concerns can be introduced into the "engagement agenda" with North Korea is under consideration within South Korea. How this will happen is, of course, up to Koreans. However, the more enabling the

[168] Two examples of possible indirect discussions flowing from ongoing comprehensive negotiations: if the working party dealing with economic cooperation progresses, the EU might need to be brought into the discussions, and this might occasion the revival of the EU-DPRK human rights dialogue previously suspended by the North Koreans. At some point in discussions of economic cooperation, DPRK's relations to the UN system in its totality, including for example, the recent withdrawal of United Nations Development Program (UNDP), and the working modalities of the World Food Program (WFP) in the event that increasingly large donations of food will be made under multilateral intergovernmental auspices, will have to be tackled by a high level UN envoy of one sort or another. Such a high level review of DPRK relations with the UN system as a whole will need to include reconsideration of non-cooperation with the High Commissioner for Human Rights and the relevant UN Special Rapporteurs.

[169] See, for example, the provisions of the December 1991 "Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation between South and North Korea" popularly known as the "Basic Agreement" (which however, was never implemented owing to the first North Korean nuclear crisis in 1992).

[170] A corollary of this viewpoint blamed the United States for "non-peace" on the Korean peninsula, and even asserted that human rights issues were being raised within and by the United States precisely to prevent peace between Koreans north and south of the 38th parallel, and even to build up public support for a US military attack on North Korea.

international environment, the more likely it is that more human rights and human security concerns will become part of inter-Korean dialogue and engagement.

Security Council Consideration

An effort spearheaded by Hon. Vaclav Havel, former President of the Czech Republic, Hon. Kjell Magne Bondevik, former Prime Minister of Norway, and Nobel Peace Prize Laureate, Elie Wiesel, that also analyzes the phenomena of repression in North Korea according to the international norms setting forth crimes against humanity, has called for consideration of the humanitarian and human rights crises in North Korea by the UN Security Council according to the emerging norm on "the responsibility to protect."[171] This effort seeks a non-punitive Security Council resolution, under Article Six of the UN Charter,[172] and focuses on North Korea's failure to protect its own people, the threats to peace and security resulting from North Korea's refugee outflows, illicit activities as well as its missile and nuclear weapons programs, and urges North Korea to free political prisoners, allow unhindered access to vulnerable groups by humanitarian aid workers, and cooperate with the UN Special Rapporteur for human rights in the DPRK.

In 2006, the UN Security Council twice passed resolutions on the DPRK. Resolution 1718 in December 2006, following North Korea's nuclear weapons test referred to the "other security and humanitarian concerns of the international community…" It is possible that the UN Security Council will again turn its attention to North Korea, perhaps in response to the appeal from Havel, Bondevik and Wiesel, or perhaps in response to additional missile or nuclear tests. If so, it is possible that the Security Council will take a more comprehensive approach to the variety of security and peace-threatening, illicit and criminal actions emanating from North Korea, including the concerns repeatedly mentioned in successive Commission/Council and General Assembly resolutions on the DPRK.

State Responsibility and Personal Accountability

There are rarely "quick fixes" to severe human rights problems. North Korea will be no different. All of the approaches and ameliorative measures mentioned above will take time to show positive results. And, as noted above, it is entirely possible that the DPRK will take the position that the political prison labor camp system described in *Hidden Gulag* and analyzed in this present report is a necessary and irrevocable part of what North Korean representatives variously refer to as its "sacred social system" or "socialism in our style."

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[171] See *Failure to Protect: A Call for the UN Security Council to Act in North Korea*, op. cit. For additional background on the "responsibility to protect" see various papers and speeches by Gareth Evans, former Foreign Minister of Australia, now President of the International Crisis Group (ICG) available online at <www.crisisgroup.org/thematic issues/responsibility to protect>.

[172] Actions under Chapter Six of the UN Charter are not considered as "binding" as those taken under Chapter Seven, and therefore "non-coercive" and "non-punitive."

If over the next several years, that appears to be the case, another option for remedy and redress will become available. As discussed earlier in this report,[173] while the atrocities analyzed in this report constitute crimes against humanity, only those criminal atrocities committed after July 2002 fall within the jurisdiction of the International Criminal Court.[174] As also noted above, the preponderance of evidence, based on the testimony of former North Korea political prisoners who have fled the DPRK and are now accessible to human rights investigators and/or legal scholars in South Korea or elsewhere, pertains to extreme violations that occurred in North Korea prior to the time that the Rome Statute entered into force.

However, in several years time, if the *kwan-li-so* system is not dismantled, the preponderance of evidence regarding the crimes against humanity within the DPRK labor camps will fall within the temporal jurisdiction of the International Criminal Court.

Referring the DPRK situation to the ICC would likely require action by the UN Security Council under Article 7 of the UN Charter, as specified in Article 13(b) of the Rome Statute. Issues of state responsibility and personal accountability within the UN system are usually initiated through the appointment of a commission of inquiry or group of experts – a group of internationally recognized legal specialists – appointed by the Secretary General upon the recommendation of the Security Council or General Assembly who make a *prima facie* determination that grave breaches of international law have occurred and make recommendations to the UN for the appropriate international response.

It has been in response to the findings and recommendations of such UN expert groups that the tribunals for Yugoslavia and Rwanda were created, the situation in Darfur was referred to the ICC, and that the UN entered into negotiations with the Cambodian government to create a tribunal for those most responsible for the Khmer Rouge genocide. Most of the expert groups assigned to undertake the *prima facie* investigation into the commission of criminal acts in these different situations were appointed by the Secretary General upon the recommendation of the Security Council. In the Cambodian case, the group of experts was appointed following the recommendation of the General Assembly, when the Member States that sponsored the resolution on human rights in Cambodia included such a recommendation within the annual General Assembly resolution on Cambodia.

A similar course of action could be taken by the sponsors of the General Assembly resolution on the situation of human rights within the DPRK, particularly if the General Assembly resolutions begin to follow the recommendations of the Special Rapporteur on Human Rights in the DPRK that take note of the issues of responsibility and accountability. While a subsequent referral to the ICC would have to come from the

[173] See section IV.4.

[174] Again, as noted in Chapter IV.4 of this report, the inter-governmental negotiations in Rome, where the ICC Statute was negotiated, were unable to resolve the issue of "ongoing violations" that is crimes that were initiated before the Statute would enter into force but continue thereafter.

Security Council,[175] either the Security Council or the General Assembly could initiate the recommendation for the *prima facie* investigation and recommendations.

Lastly, it is of course, the former North Korean political prisoners who fled North Korea and now reside in South Korea and elsewhere, who will know when the preponderance of evidence on the crimes committed in the DPRK coming from the more recent escapees from North Korea pertains to atrocities committed after 2002. At such a time, it would also seem possible for the former victims of the criminal violations in the DPRK to communicate directly with the Prosecutor of the International Criminal Court asking him or her to initiate, *proprio motu,* an investigation into the crimes committed against the prisoners in the North Korean *kwan-li-so*.

[175] This, of course, would require the support, non-opposition or abstention of veto-capable Permanent Members of the Security Council, as happened in the case of Darfur.